

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
Perkins & Marie Callender’s, LLC, <i>et al.</i> , ¹)	Case No. 19-[●] ([●])
)	
Debtors.)	(Joint Administration Requested)
)	

**DECLARATION OF JEFFREY D. WARNE IN SUPPORT
OF DEBTORS’ CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

I, Jeffrey D. Warne, do hereby submit this declaration (the “**Declaration**”) and declare under penalty of perjury that the following information is true to the best of my knowledge, information and belief:

1. I have held the position of President and Chief Executive Officer of Perkins & Marie Callender’s, LLC (“**P&MC**”), Perkins & Marie Callender’s Holding, LLC (“**P&MC Holding**”), and PMCI Promotions LLC, and President of the other debtors (collectively, the “**Debtors**”) since April, 2012. In my capacity as such, I have detailed knowledge of and experience with the business and financial affairs of the Debtors. Additionally, I have spent more than 20 years of my 35-year professional career in various senior executive positions within the restaurant management industry.

2. As the President and/or Chief Executive Officer, I am one of the officers of the Debtors responsible for implementing the Debtors’ business plans and strategies, and for generally overseeing the Debtors’ business, financial, operational, and legal affairs. Moreover,

¹ The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: Perkins & Marie Callender’s, LLC (2435); Perkins & Marie Callender’s Holding, LLC (3381); Marie Callender Pie Shops, LLC (1620); MC Wholesalers, LLC (2420); PMCI Promotions LLC (7308); MCID, Inc. (2015); Wilshire Beverage, Inc. (5887); FIV, LLC (9288); P&MC’s Real Estate Holding LLC (8553); and P&MC’s Holding Corp. (2225). The mailing address for the Debtors is 6075 Poplar Avenue, Suite 800, Memphis, Tennessee 38119-4709.

in my capacities as the President and Chief Executive Officer of P&MC and as an officer, manager and/or director of the other Debtors, I have been involved in the Debtors' restructuring process (the "**Restructuring**"), including, *inter alia*, (a) participating in the development, negotiations and implementation of a sale process under section 363 of the Bankruptcy Code (as defined below); (b) managing the professionals engaged by the Debtors in connection with the Restructuring; (c) supervising the preparation of the documentation necessary to implement a Restructuring; and (d) consulting with the Debtors' other officers and executives, and members of the Debtors' Boards of Directors or their equivalent, with respect to the foregoing.

3. On August 5, 2019 (the "**Petition Date**"), each of the Debtors filed a voluntary petition (collectively the "**Petitions**") for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), and each thereby commenced chapter 11 cases (collectively, the "**Chapter 11 Cases**") in United States Bankruptcy Court for the District of Delaware (the "**Court**"). The purpose of these Chapter 11 Cases is to, among other things, facilitate a sale or sales of substantially all of the Debtors' assets (the "**Assets**") pursuant to section 363 of the Bankruptcy Code (each, a "**Sale**"). Filed concurrently herewith is the *Debtors' Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of the Debtors' Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Auction for, and Hearing to Approve, Sale of Substantially all of the Debtors' Assets, (D) Approving Form and Manner of Notice of Sale, Auction and Sale Hearing, (E) Approving Assumption and Assignment Procedures and (F) Granting Related Relief; and (II)(A) Approving Sale of Substantially all of the Debtors' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (B) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting Related Relief* (the "**Sale Motion**"). As set forth in more

detail in the Sale Motion, the Debtors are seeking to sell substantially all of their assets to the bidder(s) that submit the highest or otherwise best offer(s) for all or a portion of such assets.

4. I submit this Declaration on behalf of the Debtors in support of the Debtors' (a) voluntary petitions for relief that were filed under chapter 11 of the Bankruptcy Code and (b) "first day" motions, which are being filed concurrently herewith (collectively, the "**First Day Motions**").² The Debtors seek the relief set forth in the First Day Motions to minimize the adverse effects caused by the commencement of these Chapter 11 Cases on their business so as to preserve the business pending the Sale(s). I have reviewed the Debtors' Petitions and the First Day Motions, or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is essential to ensure the uninterrupted operation of the Debtors' business and to successfully maximize the value of the Debtors' estates.

5. I have been advised by counsel that this Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. In addition, I have also been advised by counsel that venue of these Chapter 11 Cases is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

PART I

BACKGROUND

Overview of the Debtors' Businesses and History

6. The Debtors are leading operators and franchisors of family-dining and casual-dining restaurants, under their two (2) highly-recognized brands: (i) their full-service family

² Capitalized terms not otherwise defined herein shall have the meaning attributed to them in the relevant First Day Motion or the *Debtors' Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing and to Use Cash Collateral; (II) Granting Priming Liens and Providing Super Priority Claims; (III) Granting Adequate Protection to Prepetition Secured Parties; and (IV) Prescribing the Form and Manner of Notice and Setting the Time for the Final Hearing* (the "**DIP Motion**").

dining restaurants located primarily in Minnesota, Iowa, Wisconsin, Ohio, Pennsylvania and Florida under the name “Perkins Restaurant and Bakery” (“**Perkins**”) and (ii) their mid-priced, full-service casual-dining restaurants, specializing in the sale of pies and other bakery items, located primarily in California and Nevada under the name “Marie Callender’s Restaurant and Bakery” (“**Marie Callender’s**”).

7. Through the Debtors’ Foxtail Foods bakery goods manufacturing operations (“**Foxtail**”), the Debtors offer pies, muffin batters, cookies, brownies, pancake mixes, syrups and other food products for sale to both company-owned and franchised Perkins and Marie Callender’s restaurants, and to unaffiliated customers, such as food service distributors, supermarkets and third-party restaurants. Foxtail is the primary supplier of such goods to company-owned and franchised Perkins and Marie Callender’s restaurants and various third-party customers, which terms governing the sale to Perkins and Marie Callender’s are set forth in that certain Supply Agreement, dated as of May 16, 2019. Foxtail operates one manufacturing facility located in Corona, California, at which it produces pies and other bakery products primarily for the Marie Callender’s restaurants, and one facility in Fairfield, Ohio, at which it produces pies, pancake mixes, cookies, brownies, muffin batters, syrups and other baking products primarily for the Perkins restaurants and various third-party customers. The Debtors license from ConAgra Foods, Inc. (f/k/a ConAgra, Inc.) and ConAgra Food RDM, Inc. the use of the registered name “Marie Callender’s” in connection with restaurant operations and the sale of fresh bakery products pursuant to that certain Trademark License Agreement, dated as of June 9, 2011, pursuant to which the Debtors received a perpetual royalty free, worldwide license to use the applicable trademarks with respect thereto.

8. Perkins, founded in 1958, offers a full menu of approximately ninety (90) assorted breakfast, lunch, dinner, snack and dessert items. Breakfast items, which are available throughout the day, account for a majority of the entrees sold in the Perkins restaurants.

9. Marie Callender's, founded in 1948, has one of the longest operating histories within the full-service dining sector. Marie Callender's is known for serving quality food in a warm and pleasant atmosphere and for its premium pies that are baked fresh daily.

10. As of the Petition Date, the Debtors own one hundred and eleven (111) Perkins restaurants located in eleven (11) states, and franchise two hundred and fifty five (255) Perkins restaurants located in thirty (30) states and four (4) Canadian provinces.³ Similarly, as of the Petition Date, the Debtors own and/or operate twenty-eight (28) Marie Callender's restaurants located in three (3) states,⁴ and franchise twenty-one (21) Marie Callender's restaurants located in two (2) states and Mexico. Thus, the Debtors own, operate or franchise over four hundred (400) restaurants throughout the United States, Canada and Mexico.⁵

11. As of the Petition Date, the Debtors employed approximately 5,379 employees, with approximately 32% of those employees being employed full time and the remaining employees being employed part time.⁶

³ On July 8, 2019, 5171 Campbells Land Co. (CLC), a franchisee that owns twenty-seven (27) Perkins restaurants, filed for chapter 11 protection in the United States Bankruptcy Court of the Western District of Pennsylvania (Case No. 19-22715).

⁴ Four (4) of these restaurants are held in non-Debtor partnership entities, in which MCPS holds a percentage ownership interest such partnerships.

⁵ As further discussed in Section I.E below, prior to the Petition Date, the Debtors closed eleven (11) Perkins corporate-owned stores and twenty-one (21) Marie Callender's corporate-owned stores and have turned, or in the process of turning, these stores over to the relevant landlords. These closed stores are included in the store-count set forth in this paragraph.

⁶ As further discussed in Section I.E below, the closures of the Identified Restaurants (as defined herein) had the attendant effect of a reduction in workforce of approximately 1,190.

12. The Debtors' net revenues for the year ended December 31, 2018 were approximately \$335 million.

(a) **Corporate Structure**

13. P&MC Holding is a holding company that wholly owns P&MC. P&MC is the Debtors' principal operating entity and one of the primary obligors on the Debtors' Secured Prepetition Obligations (defined below). P&MC directly or indirectly owns and operates the Debtors' restaurant operations, oversees the Debtors' franchised restaurant operations and owns and operates its Foxtail business.

14. P&MC Holding owns and controls one hundred (100%) percent of P&MC and P&MC's Real Estate Holding LLC, which, in turn, owns and controls one hundred (100%) percent of P&MC's Holding Corp. P&MC owns and controls one hundred (100%) percent of PMCI Promotions LLC and Marie Callender Pie Shops, LLC ("MCPS"). Through MCPS, P&MC owns and controls one hundred (100%) percent of MC Wholesalers, LLC, MCID, Inc., Wilshire Beverage, Inc., and FIV, LLC. MCPS, together with its wholly-owned subsidiaries, owns and operates the Marie Callender's corporate restaurants and oversees the Marie Callender's franchised restaurant operations. The foregoing direct and indirect wholly-owned debtor subsidiaries of P&MC are hereinafter referred to as the "**Subsidiary Debtors**".⁷ A corporate organizational chart is attached hereto as **Exhibit A**.

Prepetition Capital Structure

Secured Debt Obligations

15. P&MC and MCPS, as borrowers (the "**Prepetition Borrowers**"), entered into that certain Credit Agreement, dated as of June 26, 2015 (as amended by that certain First

⁷ In addition, as set forth in the corporate organization chart attached hereto as **Exhibit A**, MCPS holds a percentage ownership interest in certain limited or general partnerships. These entities are not Debtors in the Chapter 11 Cases.

Amendment to Credit Agreement, Consent, Term Facility Increase Agreement and Termination of Intercreditor Agreement, dated as of December 11, 2015, that certain Second Amendment to Credit Agreement and Term Facility Increase Agreement, dated as of October 20, 2016, and has been amended, restated, supplemented and otherwise modified from time to time, including with respect to the Forbearance Agreements (defined below), the “**Prepetition Credit Agreement**”), with Bank of America, N.A., as administrative agent (the “**Prepetition Agent**”) and the lenders party thereto (the “**Prepetition Secured Lenders**” and, together with the Prepetition Agent, the “**Prepetition Secured Parties**”), consisting of a revolving credit facility with a sub-limit of \$15,000,000 for the issuance of letters of credit (the “**Revolving Credit Facility**”) and a term loan credit facility (the “**Term Credit Facility**”, together with the Revolving Credit Facility, the “**Prepetition Credit Facility**”). The Prepetition Credit Facility is guaranteed by P&MC Holding and the Subsidiary Debtors (excluding P&MC’s Real Estate Holdings LLC and P&MC’s Holding Corp., collectively, the “**Prepetition Guarantors**” and, together with the Prepetition Borrowers, the “**Prepetition Credit Parties**”).

16. The Prepetition Facility provided the Prepetition Borrowers with, among other things (a) \$25,000,000.00 in aggregate principal amount of revolving commitments, including letters of credit and (b) \$127,750,000.00 in aggregate principal amount in a term loan facility. As of the Petition Date, the Prepetition Lenders are owed on account of the Prepetition Facility approximately (i) \$14,541,010.00 in revolving loan principal obligations, including reimbursement obligations in the amount of approximately \$8,541,010.00 in respect of face amount of outstanding letters of credit; (ii) \$94,001,172.55 in term loan principal obligations, (iii) \$6,304,256.59 in accrued and unpaid interest, (iv) \$160,677.75 in respect of accrued and unpaid letters of credit fees and (v) \$91,821.22 in respect of accrued and unpaid commitment

fees (collectively, with any other reimbursement obligations (contingent or otherwise) in respect of letters of credit, any fees, expenses and disbursements (including, without limitation, attorneys' fees, accountants' fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), treasury, cash management and derivative obligations (including, without limitation, those constituting "Additional Secured Obligations" as defined in the Prepetition Credit Agreement), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Credit Parties' obligations pursuant to the Prepetition Credit Documents, including all "Secured Obligations" as defined in the Prepetition Credit Agreement, the "**Secured Prepetition Obligations**"). The Secured Prepetition Obligations are secured by substantially all of the assets of the Prepetition Credit Parties.

Unsecured Trade Obligations

17. In addition to the foregoing, as of the Petition Date, the Debtors have outstanding approximately \$8,100,000 in unpaid trade debt to their vendors and suppliers.

Events Leading to the Debtors' Chapter 11 Cases

18. In 2017 and 2018, the Debtors' financial performance was affected by: (i) a decline in sales across the family-dining and casual-dining industries due to decreased guest-traffic; (ii) the compounding impact of negative Perkins and Marie Callender's sales in 2017 and 2018 on Foxtail—a captive and material vendor to the restaurants; (iii) an elevated commodity environment; (iv) statutory increases in labor costs; (v) an increasingly tight labor market; (vi) lower overhead absorption at Foxtail following the loss of a large customer in 2017; and (vii) operational inefficiencies at Foxtail due to initial onboarding costs for new third-party customers in 2018. The Debtors have seen dramatic same-store-sales increases since late 2018 at the

restaurants due to several management initiatives, including a revised marketing and media strategy and the successful launch of an off-premise initiative in late 2018. Foxtail sales have also stabilized, with positive momentum from the expansion of existing customer relationships and new-customer wins. While the Debtors believe they have reached a point of stabilization, the challenges faced in 2017 and 2018 led the Debtors to begin considering certain restructuring alternatives and to begin negotiations with the Prepetition Secured Parties.

19. In October of 2018, the Debtors engaged FTI Consulting, Inc. (“**FTI**”) as their financial advisor to, among other things, help develop and implement plans for long term operational and financial restructuring of the Debtors or to assist any investment bankers in a sale of all or a portion of the Debtors’ assets.

20. The failure to make scheduled interest payments on the Prepetition Credit Facility in July and October of 2018, as well as a failure to make certain mandatory prepayments and the existence of certain technical defaults, resulted in the Prepetition Credit Parties entering into a forbearance agreement, dated as of December 17, 2018 (the “**First Forbearance Agreement**”), pursuant to which the Prepetition Secured Parties agreed to forbear from exercising their rights and remedies arising under the Prepetition Credit Agreement and related loan documents. Pursuant to the terms of the First Forbearance Agreement, Prepetition Credit Parties agreed to continue to retain FTI and agreed to engage an investment bank to assess potential strategic alternatives.

21. On March 21, 2019, the Prepetition Credit Parties and the Prepetition Secured Parties entered into that certain Second Forbearance Agreement (together with the First Forbearance Agreement, the “**Forbearance Agreements**”), which set forth, among other things,

certain investment banking process milestones regarding the marketing and sale of the Debtors' assets.

Prepetition Marketing Efforts and Objectives of the Sale Process

22. After entry into the First Forbearance Agreement, the Debtors initiated discussions with the Prepetition Secured Parties regarding the best path forward for the Debtors. In connection therewith, on January 24, 2019, with the consent and acknowledgement of the Prepetition Secured Parties, the Debtors retained Houlihan Lokey Capital, Inc. ("**Houlihan**")—an investment bank with expertise in mergers and acquisitions, recapitalization, and financial restructuring—to assist them with, among other things, exploring a potential sale of the Debtors' Assets, whether pursuant to an in- or out-of-court sale of the Debtors' Assets, an investment in P&MC or any of its subsidiaries, or a carve-out and asset sale of any of the operating business units (*i.e.*, Perkins, Marie Callender's and/or Foxtail).

23. As part of this effort, Houlihan began a robust marketing process and contacted approximately one hundred and twenty (120) potential strategic and financial acquirers to garner interest in pursuing a possible transaction.

24. As set forth in more detail in the Sale Motion, the Debtors, with the consent and acknowledgement of the Prepetition Secured Parties, ultimately selected Perkins Groups LLC as the stalking horse purchaser to purchase substantially all of the Debtors' Perkins Assets and certain of the Foxtail Assets. In addition, the Debtors are currently in discussions with various third parties regarding the sale of all or a portion of the Marie Callender's Assets and all of the Foxtail Assets (including the Foxtail Assets for which there is currently a stalking horse purchaser, subject to a higher or better offer being received for such Assets), including exploring whether a stalking horse(s) can be identified for the purchase of such Assets. Given the Debtors' extensive prepetition marketing efforts and significant diligence completed to date, coupled with

the “Sale Milestones” in the Debtors’ proposed DIP Credit Agreement, the Sale Motion requests the following timeline:

August 26, 2019	Hearing to consider approval of the Bidding Procedures and entry of the Bidding Procedures Order
September 10, 2019	Bid Deadline
September 11, 2019	Deadline for Debtors to notify Potential Bidders of their status as Qualified Bidders
September 12, 2019	Auction to be held at the offices of Akin Gump Strauss Hauer & Feld LLP (if necessary) Sale Objection Deadline
September 13, 2019	Target date for the Debtors to file with the Court the Notice of Auction Results
September 19, 2019	Proposed date of the Sale Hearing to consider approval of Sale and entry of Sale Order
Within seventy-five (75) days of the Petition Date (or such later date as may be agreed to by the DIP Agent and the Prepetition Agent)	Closing Date (Unless Successful Bidder agrees to waive the 14-day stay of Sale Order)

25. Upon entry of an order approving the bidding procedures and auction process, as detailed in the Sale Motion, the Debtors will continue to market and solicit offers for all or a portion of the Assets to potential purchasers and will work diligently with all parties that have expressed an interest in the Debtors’ Assets. In this way, the Debtors intend to maximize (i) the number of participants in the sale process and (ii) the value of the Assets.

26. The Debtors have determined that value will be maximized by commencing these Chapter 11 Cases and continuing an orderly sale process.⁸ While the prepetition solicitation process already was extensive, the commencement of these Chapter 11 Cases and the

⁸ Recognizing that a chapter 11 filing and a 363 sale process was the best path forward, and the importance of certain key employees to the process, prior to the Petition Date, the Prepetition Secured Parties agreed that the liens held by the Prepetition Agent, on behalf of the Prepetition Secured Parties, against the assets of the Debtors created pursuant to the Prepetition Credit Documents will be subordinated to the payments and obligations that become due and owing pursuant to a key employee incentive program (“**KEIP**”), subject to Bankruptcy Court approval. The Debtors will be seeking approval of the KEIP in a separate motion filed with this Court.

implementation of a Court supervised sale process allows other bidders to make competing bids and maximize the value of their estates for the benefit of the Debtors' stakeholders.

Prepetition Store Closings

27. In connection with the marketing process, and following discussions with the Prepetition Secured Parties as well as potential purchasers, the Debtors conducted a survey of certain Perkins and Marie Callender's restaurants to determine whether any of these restaurants were candidates for store closures. With the help of FTI, the Debtors identified eleven (11) underperforming corporate-owned Perkins restaurants and twenty-one (21) underperforming corporate-owned or operated Marie Callender's restaurants (collectively, the "**Identified Restaurants**"). The Debtors ultimately determined that the Identified Restaurants were unlikely to be purchased by any buyer in a section 363 sale during these Chapter 11 Cases. As such, prior to the Petition Date, the Debtors closed the Identified Restaurants. Specifically, on July 21, 2019, the Debtors closed two (2) of the Marie Callender's restaurants and have turned these properties over to the respective landlords. Immediately prior to the Petition Date, the Debtors closed the remaining Identified Restaurants (*i.e.*, the eleven (11) identified Perkins restaurants and the remaining nineteen (19) identified Marie Callender's restaurants) and are in the process of turning over the properties to the respective landlords. As such, the Debtors intend to file a motion (or motions) to reject, as applicable, the underlying leases *nunc pro tunc* to the Petition Date or such later date that the Identified Restaurants were turned over to the respective landlords.

PART II

FIRST DAY PLEADINGS

28. To enable the Debtors to minimize any adverse effects caused by the commencement of the Chapter 11 Cases on their businesses until the Sale is completed, the Debtors are seeking approval of the First Day Motions and related orders.

29. I have reviewed each of the First Day Pleadings, and participated together with other of the Debtors' personnel in the preparation thereof. I believe, to the best of my knowledge, that the facts and circumstances set forth in the Petitions and the First Day Pleadings are true and correct. Moreover, I believe that the relief sought in each of the First Day Motions (a) is vital to enabling the Debtors to make the transition to, and operate in, chapter 11 with minimum disruption to their business or loss of productivity or value and (b) is essential to maximizing the value of the Debtors' estates. This representation is based upon information and belief and through my review of various materials and information, as well as my history and experience with and knowledge of the Debtors' operations and financial condition. Based upon the foregoing, if called to testify before this Court, I could and would, testify competently to the facts set forth in each of the First Day Motions. A description of the relief requested and the facts supporting each of the First Day Motions (other than the DIP Motion, which is addressed and discussed in detail in the *Declaration of John Strek in Support of the Debtors' Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing and to Use Cash Collateral; (II) Granting Priming Liens and Providing Super Priority Claims; (III) Granting Adequate Protection to Prepetition Secured Parties; and (IV) Prescribing the Form and Manner of Notice and Setting the Time for the Final Hearing*) is set forth below.

I. ADMINISTRATIVE AND PROCEDURAL PLEADINGS

A. Joint Administration Motion⁹

31. By the Joint Administration Motion, the Debtors seek entry of an order directing the joint administration of their ten Chapter 11 Cases for procedural purposes only. Many of the motions, hearings, and other matters involved in the Chapter 11 Cases will affect the Debtors. Thus, I believe that the joint administration of these Chapter 11 Cases will avoid the unnecessary time and expense of duplicative motions, applications, orders, and other pleadings, thereby saving considerable time and expense for the Debtors and resulting in substantial savings for their estates.

B. Retention Applications

32. I believe that the retention of chapter 11 professionals is essential to the Chapter 11 Cases. Accordingly, during the Chapter 11 Cases, the Debtors anticipate that they will request permission to retain, among others, the following professionals: (a) Akin Gump Strauss Hauer & Feld LLP as co-counsel; (b) Richards, Layton & Finger, P.A. as co-counsel; (c) Kurtzman Carson Consultants LLC as claims and noticing agent and administrative advisor; (d) Houlihan as investment banker; and (e) FTI as financial advisor. I believe that these professionals are well-qualified to perform the services contemplated by their various retention applications, the services are necessary for the success of the Chapter 11 Cases, and the professionals will coordinate their services to avoid duplication of efforts. I understand that the Debtors may find it necessary to seek retention of additional professionals as the Chapter 11 Cases progress.

⁹ The “**Joint Administration Motion**” means the *Motion of Debtors for Order Authorizing Joint Administration*.

II. BUSINESS OPERATION MOTIONS

A. Cash Management Motion¹⁰

33. Pursuant to the Cash Management Motion, the Debtors seek entry of interim and final orders, (i) authorizing the Debtors to continue to use their Cash Management System and open the Restricted Account; (ii) authorizing the continued performance of Intercompany Transactions; (iii) waiving certain bank account and related requirements of the U.S. Trustee; and (iv) granting related relief. The Debtors also seek authority to (i) maintain and continue to use the Bank Accounts in the same manner and with existing account numbers, styles, and document forms as existed prior to the Petition Date; (ii) deposit funds in, and withdraw funds from, the Bank Accounts by usual means, including check, wire transfer, ACH transfer, draft, electronic fund transfer, centralized lockbox, or other items presented, issued, or drawn on the Bank Accounts; (iii) pay prepetition and ordinary course Processing Fees and Bank Fees; (iv) perform their obligations under the Bank Accounts' governing documents and agreements; and (v) treat the Bank Accounts for all purposes as "debtor in possession" accounts.

34. In the ordinary course of business, the Debtors utilize the Cash Management System to collect, concentrate, and disburse funds generated by their businesses. The Cash Management System also enables the Debtors to facilitate their cash forecasting and reporting, monitor the global collection and disbursement of funds, and maintain control over the administration of their bank accounts. Through the Cash Management System, the Debtors maintain the ability to control corporate funds, ensuring maximum availability of funds when

¹⁰ The "**Cash Management Motion**" means the *Motion of Debtors for Interim and Final Orders (I) Authorizing Continued Use of the Debtors' Existing Cash Management System and Bank Accounts; (II) Authorizing Continued Performance of Intercompany Transactions; (III) Waiving Certain United States Trustee Requirements; and (IV) Granting Related Relief*. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Cash Management Motion.

and where necessary. The Cash Management System also reduces the administrative burden on the Debtors by facilitating the movement of funds among and across all the Debtors. The Debtors' ability to continue using the Cash Management System and Bank Accounts during these Chapter 11 Cases is essential to maintaining the Debtors' business and maximizing the value of their estates.

35. Additionally, by the Cash Management Motion, the Debtors also seek to establish upon entry of the Interim Order a new account to be maintained at Regions (the "**Restricted Account**") for the purpose of holding \$200,000 for Regions' benefit to secure any Treasury Management Obligations that may come due and be owed to Regions in connection with the performance of its Treasury Management Services. It is necessary that the Debtors be permitted to open and maintain the Restricted Account during these Chapter 11 Cases because Regions, as a significant Bank at which many of the Bank Accounts are held, may refuse to perform Treasury Management Services absent establishment and maintenance of this account.

36. As described in more detail in the Wages Motion (as defined herein), the Debtors provide certain of their Employees with Business Expense Cards (each as defined in the Wages Motion) issued by Regions for which these Employees may incur business-related expenses and have these expenses billed directly to the Debtors to avoid these Employees being held personally responsible for the payment of expenses incurred on the Debtors' behalf. Regions has agreed to permit the Debtors to continue using the Business Expense Cards on a postpetition basis, provided that (i) any prepetition balances are paid (which relief is sought as part of the Wages Motion), (ii) the maximum combined account balance on the Business Expense Cards shall not exceed \$50,000 at any given time, and (iii) the Debtors shall pay in full any balances held on the Business Expense Cards on a daily basis (the foregoing (i), (ii), and (iii) being the

“**Business Expense Cards Payment System**”). I believe it is necessary to maintain the Business Expense Cards program in accordance with the Business Expense Cards Payment System so that the Debtors’ use of such program continues in the ordinary course and on an uninterrupted basis postpetition.

37. In the ordinary course of business, prior to the Petition Date, the Debtors engaged in various intercompany transactions with other Debtors and seven non-Debtor partnerships for which Debtor MCPS acts as the general partner (the “**Non-Debtor Partnerships**”)¹¹ relating to the business relationships between and among themselves (the “**Intercompany Transactions**”).¹² The Intercompany Transactions include, for example, payments in connection with intercompany distribution and services arrangements, taxes, wages, loans or advances, and other charges. Intercompany Transactions are tracked and reflected in the appropriate entity’s respective books and records.

38. If the Intercompany Transactions are prohibited, the ordinary course operations and efficiencies of the Debtors’ business would be unnecessarily hindered. Avoiding such hindrances by continuing the Intercompany Transactions is therefore in the best interests of the estates. The Debtors therefore request that the Court authorize them to continue the Intercompany Transactions in the ordinary course of business.

¹¹ At one time, each Non-Debtor Partnership operated a separate Marie Callender’s restaurant. On December 29, 2016, one Non-Debtor Partnership closed the restaurant that it operated and, on July 21, 2019, another Non-Debtor Partnership closed the restaurant that it operated (the “**First Closing Partnerships**”). With respect to the five remaining Non-Debtor Partnerships, immediately prior to the Petition Date, four such partnerships closed the restaurants operated by such partnerships (the “**Second Closing Partnerships**”); however, such restaurants are not expected to be vacated until the end of this current week. As of the Petition Date, there is only one restaurant that is currently being operated by a Non-Debtor Partnership (the “**Operating Partnership**”).

¹² Due to the nature of how the Debtors maintain their books and records and that the Debtors directly pay all of the Non-Debtor Partnerships’ obligations, certain of the amounts that the First Day Motions seek to pay may include amounts that are owed by the Non-Debtor Partnerships rather than the Debtors. However, for the avoidance of doubt, the Debtors are only seeking to pay such amounts to the extent set forth in the Cash Management Motion and not in any other First Day Motion.

39. In addition, historically, the Non-Debtor Partnerships relied on funding from the Debtors in order to pay their obligations in the ordinary course of business. As a result, consistent with pre-petition practices, the Debtors seek the authorization to continue funding the Second Closing Partnerships and the Operating Partnership in the ordinary course of business;¹³ *provided* that, upon entry of the Interim Order, the Debtors will only fund amounts on behalf of the Second Closing Partnerships and the Operating Partnership that are necessary to avoid immediate and irreparable harm to the Debtors in an aggregate amount not to exceed \$210,000, which amount consists of prepetition Covered Taxes and Fees (as defined in the Taxes Motion) and prepetition obligations on account of Compensation and Benefits Programs (as defined in the Wages Motion); *provided further*, that, upon entry of the Interim Order, the Debtors shall only fund amounts on behalf of the Second Closing Partnerships and the Operating Partnerships on account of post-petition obligations incurred by such partnerships in an aggregate amount not to exceed \$76,000.¹⁴

40. The Debtors believe it is critical to pay such amounts for at least two reasons. First, if the Covered Taxes and Fees and any obligations on account of Compensation Benefits Programs are not paid, Debtor MCPS, as the general partner (and any directors and officers of MCPS), could potentially be liable for such amounts. Second, as noted in the First Day Declaration, the Debtors are seeking to find a buyer for the Marie Callender's restaurants, which includes the restaurant that is operated by the Operating Partnership. In order to maximize the

¹³ By the Cash Management Motion, the Debtors are not seeking any relief to pay the obligations of the First Closing Partnerships.

¹⁴ The Debtors reserve the right to seek to pay additional amounts on behalf of the Second Closing Partnerships and the Operating Partnership at the final hearing on the Motion.

value of such restaurants in connection with any sale, the Debtors believe it is important to continue to fund the ordinary course obligations of the Operating Partnership.

41. The Debtors use a variety of preprinted Business Forms, including letterhead, correspondence forms, invoices, purchase orders, and other business forms in the ordinary course of business. The Debtors also maintain Books and Records to document their financial results and a wide array of necessary operating information. To avoid a significant disruption to their business operations that would result from a disruption of the Cash Management System and to avoid unnecessary expense, the Debtors request authorization to continue using all of the Business Forms and Books and Records in use immediately before the Petition Date (and as may be amended or modified in the ordinary course from time to time), including with respect to the Debtors' ability to update authorized signatories and services, as needed—without reference to the Debtors' status as chapter 11 debtors in possession—rather than requiring the Debtors to incur the expense and delay of ordering new Business Forms and creating new Books and Records. The Debtors do not, however, use preprinted checks. The Debtors print their own checks and, by the Motion, request that, within ten days after the date of entry of the Interim Order, they or their agents shall begin printing the “Debtor in Possession” legend and the bankruptcy case number on such checks.

42. Also, by the Cash Management Motion, the Debtors seek a thirty day extension of the time to comply with section 345(b) of the Bankruptcy Code, without prejudice to the Debtors' ability to seek a further extension (upon agreement with the United States Trustee) or a waiver of those requirements. During the extension period, the Debtors propose to engage the U.S. Trustee in discussions to determine if compliance with section 345(b) of the Bankruptcy

Code is necessary under the circumstances of these Chapter 11 Cases. The Debtors believe that the benefits of the requested extension far outweigh any harm to the estate.

43. Accordingly, based on the foregoing and those additional reasons set forth in the Cash Management Motion, I believe that the relief requested in such motion is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors' estates and their creditors and all other parties in interest.

B. Wages Motion¹⁵

44. Pursuant to the Wages Motion the Debtors seek entry of interim and final orders (i) authorizing, but not directing, the Debtors, in their sole discretion, to (a) pay prepetition wages, salaries, compensation, reimbursable expenses, and other obligations on account of the Compensation and Benefits Programs in the ordinary course of business not to exceed \$4,913,793 during the interim period and \$6,396,446 on a final basis and (b) continue to administer the Compensation and Benefits Programs and (ii) granting related relief.

45. As of the Petition Date, the Debtors had a current workforce of approximately 5,379 Employees nationwide as well as other Temporary Workers. The Debtors seek authority from the Court to pay various prepetition and postpetition wages, salaries, compensation, reimbursable expenses, and other administrative fees, obligations, and premiums in connection with their various Compensation and Benefits Programs, including (i) Compensation Obligations (*i.e.*, Employee Obligations, Payroll Processing Fees, Withholding Obligations, and Temporary Worker Obligations), (ii) Reimbursement Obligations (*i.e.*, Out of Pocket Expenses, Business

¹⁵ The "**Wages Motion**" means the *Motion of Debtors for Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Compensation, Reimbursable Expenses, and Other Obligations on Account of Compensation and Benefits Programs and (B) Continue Compensation and Benefits Programs and (II) Granting Related Relief*. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Wages Motion.

Expense Cards, obligations related to Vehicle Programs, Cell Phone Allowances, Relocation Expenses, and Independent Director Fees and Expenses), (iii) Employee Benefits Programs (*i.e.*, Health Care Plan Fees, Health Benefit Claims, an HSA, Insurance Plans, COBRA, Insurance Consultant services, a 401(k) Program, Paid Time Off, and Workers' Compensation and Unemployment Programs), (iv) Employee Incentive Programs, and (v) Termination Programs (*i.e.*, the Severance Programs and Outplacement Programs).

46. The Debtors seek the authorization to honor and continue prepetition these Compensation and Benefit Programs, and request that the Court confirm their right to continue each of the Compensation and Benefit Programs in the ordinary course of business during the pendency of these Chapter 11 Cases in the manner and to the extent that such Compensation and Benefit Programs were in effect immediately prior to the filing of these Chapter 11 Cases and to make payments in connection with expenses incurred in the postpetition administration of any Compensation and Benefit Programs.

47. In addition, the Debtors seek authorization to make Postpetition Severance Payments to non-insider Employees under the Severance Programs in connection with the postpetition termination of thirty-one (31) Employees due to the closure of eleven (11) Perkins and nineteen (19) Marie Callender's restaurants. The Debtors believe it is necessary for them to have the authorization to honor the Severance Programs to Employees terminated shortly after the Petition Date in order to maintain Employee morale and goodwill. If Employee morale suffers and Employees depart, the value of the Debtors' business may decline, which could jeopardize the Debtors' ability to successfully close the Sale with the stalking horse purchaser and market their remaining assets. Additionally, I understand that the supermajority, if not all, of the Employees that are to receive the Postpetition Severance Payments live paycheck-to-

paycheck. I believe that, if these Employees do not receive the Postpetition Severance Payments, then these Employees likely will suffer financial strain and hardship immediately following their employment with the Debtors. Furthermore, after discussions with counsel, I believe that none of the Employees that are to receive the Postpetition Severance is an insider of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code.

48. The vast majority of the Debtors' Workforce rely exclusively or primarily on the compensation and benefits they receive through the Compensation and Benefits Programs to pay their daily living expenses and support their families. The Workforce will face significant financial consequences if the Debtors are not permitted to continue to administer the Compensation and Benefits Programs in the ordinary course of business. Further, the Debtors' failure to honor their obligations in connection with the Compensation and Benefits Programs likely would result in attrition at a time when the Debtors need their Workforce to perform at peak efficiency. Additionally, making the Postpetition Severance Payments is vital to maintain Employee morale and goodwill and to avoid further Employee departures at this critical and sensitive time. Without the continued support of their Employees, the Debtors' efforts to maximize the value of their estates for the benefit of creditors and parties in interest will be severely hampered.

49. Accordingly, based on the foregoing and those additional reasons set forth in the Wages Motion, I believe that the relief requested in such motion is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors' estates and their creditors and all other parties in interest.

C. Taxes Motion¹⁶

50. By the Taxes Motion, the Debtors seek entry of interim and final orders (i) authorizing the Debtors, in their sole discretion, to pay any prepetition tax and fee obligations including, without limitation, Income Taxes, Sales and Use Taxes, Business Taxes, Property Taxes, and Other Taxes, including any other types of taxes, fees, assessments or similar charges and any penalty, interest or similar charges in respect of such taxes (collectively, excluding the Employment and Wage-Related Taxes, the “**Covered Taxes and Fees**”), not to exceed \$1,600,000 on an interim basis and \$1,800,000 on a final basis, that are owing to those international, federal, state and local governmental authorities, including taxing and licensing authorities listed on **Exhibit A** attached to the Tax Motion (the “**Governmental Authorities**”) and (ii) granting related relief.

51. In the ordinary course of the Debtors’ businesses, the Debtors collect, withhold and incur the Covered Taxes and Fees, including Income Taxes, Sales and Use Taxes, Employment and Wage-Related Taxes,¹⁷ Business Taxes, Property Taxes, and certain Other Taxes. The Debtors remit the Covered Taxes and Fees to the Governmental Authorities. I believe that many of the Covered Taxes and Fees were collected before the Petition Date and must be turned over to the relevant Governmental Authorities. Moreover, failure to pay such amounts may give rise to priority or secured claims that would, in any event, be entitled to payment in full.

¹⁶ The “**Taxes Motion**” means the *Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Pay Certain Taxes, Governmental Assessments and Fees and (II) Granting Related Relief*. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Taxes Motion.

¹⁷ By the Taxes Motion, the Debtors are not seeking authority to pay the Employment and Wage Related Taxes, which are addressed separately in the Wages Motion.

52. The Debtors also seek to pay prepetition Covered Taxes and Fees in order to forestall the Governmental Authorities from taking actions that might interfere with the Debtors' businesses, such as blocking the receipt or renewal of permits required for the Debtors' continued operations or possibly bringing personal liability actions against the Debtors' directors, officers and other employees in connection with non-payment of the Covered Taxes and Fees. I believe that actions against the Debtors' directors, officers and other employees would likely distract key personnel, whose full-time attention to the Chapter 11 Cases is required, and would likely cause potential business disruptions. Any such business disruptions would likely erode the Debtors' business reputation and negatively affect the Chapter 11 Cases. I believe that, as of the Petition Date, none of the Covered Taxes and Fees are past due or delinquent, and, furthermore, that the Debtors intend to pay such amounts as they come due in the ordinary course of business.

53. Accordingly, based on the foregoing and those additional reasons set forth in the Taxes Motion, I believe that the relief requested in such motion is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors' estates and their creditors and all other parties in interest.

D. Insurance Motion¹⁸

54. Pursuant to the Insurance Motion, the Debtors seek entry of interim and final orders (i) authorizing, but not directing, the Debtors to (a) maintain, continue and renew the Insurance Programs, (b) maintain, continue and renew the Premium Financing arrangements, (c) pay and honor, in their sole discretion, all amounts and obligations on account of prepetition Insurance Premiums, payments due under the Finance Agreements, Insurance Deductibles,

¹⁸ The "**Insurance Motion**" means the *Motion of Debtors for Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain Insurance Programs, (B) Maintain Premium Financing Arrangements and (C) Pay Prepetition Insurance Obligations, and (II) Granting Related Relief*. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Insurance Motion.

Broker's Fees, deductibles, taxes, charges, and other obligations owed under or with respect to the Insurance Programs (collectively, the "**Insurance Obligations**"), in an amount not to exceed \$88,705 on an interim basis and \$355,000 on a final basis, and (ii) granting related relief.

55. The Debtors maintain various liability, property, casualty, workers' compensation and other insurance programs in the ordinary course of their businesses (collectively, the "**Insurance Programs**") through several private insurance carriers (collectively, the "**Insurance Carriers**"). The Insurance Programs include coverage for, among other things, professional liability, operation of automobiles, workers' compensation,¹⁹ crime, breach of fiduciary duty by officers or directors, cyber security, and various other general liability coverages. The Insurance Programs renew on various dates throughout the year. All of the Insurance Programs are essential to the ongoing operation of the Debtors' businesses and the preservation of the value of the Debtors' estates.

56. The Debtors employ AON Risk Services Central Inc. (the "**Broker**") to assist them with the procurement and management of the Insurance Programs. Amounts due to the Broker are paid to it through the premiums the Debtors pay, through the Finance Agreements, to Insurance Carriers. The employment of the Broker allows the Debtors to obtain and manage the Insurance Programs in a reasonable and prudent manner and to realize considerable savings in the procurement of such policies. Because it is often not economically advantageous for the Debtors to pay their insurance premiums on a lump-sum basis, and in an effort to manage cash flows most efficiently, the Debtors have financed the premiums for certain Financed Policies pursuant to premium Finance Agreements with Chubb and AFCO (together with Chubb and

¹⁹ The Debtors separately seek authorization to honor their obligations under their workers' compensation programs (including making prepetition payments associated therewith) as part of the contemporaneously filed Wages Motion.

APF, the “**PFA Lenders**”). The Debtors’ obligations under the Finance Agreements are secured by all sums due under the Finance Agreements and any unearned premiums or other amounts that may become payable thereunder.

57. The nature of the Debtors’ businesses makes it essential for the Debtors to maintain their Insurance Programs on an ongoing and uninterrupted basis. Any interruption in such coverage would expose the Debtors to a variety of risks, including the possible (a) incurrence of direct liability for the payment of claims that otherwise would have been covered by the Insurance Programs, (b) incurrence of material costs and other losses that otherwise would have been reimbursed, such as attorneys’ fees for certain covered claims, (c) inability to obtain similar types and levels of insurance coverage, (d) incurrence of higher costs for re-establishing lapsed policies or obtaining new insurance coverage and (e) incurrence of potential liability arising from the breach of certain contractual obligations to maintain insurance coverage. The non-payment of any premiums, deductibles or related fees under the Insurance Programs and the Finance Agreements could result in one or more of the Insurance Carriers or the PFA Lenders terminating or declining to renew their insurance policies, the Finance Agreements, or refusing to enter into new insurance policies with the Debtors in the future. If any of the Insurance Programs lapse without renewal, the Debtors could be in violation of state and/or federal law and be exposed to substantial liability for personal and/or property damages, to the detriment of all parties in interest.

58. Accordingly, based on the foregoing and those additional reasons set forth in the Insurance Motion, I believe that the relief requested in such motion is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors’ estates and their creditors and all other parties in interest.

E. Utilities Motion²⁰

59. In the Utilities Motion, the Debtors request entry of interim and final orders, (i) approving an adequate assurance deposit as adequate assurance of postpetition payment to the utilities; (ii) establishing procedures for resolving any subsequent requests by the utilities for additional adequate assurance of payment; (iii) prohibiting the Debtors' utility service providers from altering or discontinuing service; (iv) authorizing the Debtors to honor obligations to Bill Consolidators in the ordinary course of business; and (v) granting related relief.

60. In connection with the operation of their businesses, the Debtors obtain Utility Services, including electricity, natural gas, telephone, internet, waste removal, and other similar services from more than fifty Utility Companies. A non-exclusive list of the Utility Companies and the Utility Services they provide is attached to the Utilities Motion as **Exhibit A**. For the vast majority of Utility Services and Utility Providers, the Debtors utilize three third-party Bill Consolidators to manage and pay bills and invoices from Utility Providers on account of the majority of Utility Services and to whom the Debtors pay Bill Consolidating Fees. Only a few Utility Providers that provide telecommunications services are paid directly by the Debtors.

61. Uninterrupted Utility Services are essential to the Debtors' ongoing operations and, therefore, the preservation of the value of the Debtors' estates. Should any Utility Company alter, refuse, or discontinue service, even for a brief period, the Debtors' business operations could be disrupted, and such disruption could jeopardize the Debtors' ongoing operations and, therefore, the preservation of the value of the Debtors' assets. Therefore, the Debtors seek to

²⁰ The "**Utilities Motion**" means the *Motion of Debtors for Interim and Final Orders (I) Establishing Procedures for Determining Adequate Assurance of Payment, (II) Finding Utilities Adequately Assured of Payment, (III) Prohibiting Utilities from Altering, Refusing, or Discontinuing Utility Services, (IV) Authorizing the Debtors to Honor Obligations to Bill Consolidators in the Ordinary Course of Business and (V) Granting Related Relief*. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Utilities Motion.

establish an orderly process for providing adequate assurance to their Utility Companies without hindering the Debtors' ability to maintain operations. Specifically, by the Utilities Motion, the Debtors seek approval of an adequate assurance deposit of approximately \$505,000.00 (which is approximately 50% of the estimated two-week cost of the Utility Services, based on historical averages over the prior twelve months) into a segregated account as adequate assurance of postpetition payment to the Utility Companies pursuant to section 366(b) of the Bankruptcy Code. Further, I am informed and believe that the proposed Adequate Assurance Procedures are consistent with procedures that are typically approved in chapter 11 cases in this District.

62. Accordingly, based on the foregoing and those additional reasons set forth in the Utilities Motion, I believe that the relief requested in such motion is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors' estates and their creditors and all other parties in interest.

F. Customer Programs Motion²¹

63. Pursuant to the Customer Programs Motion, the Debtors seek entry of interim and final orders (i) authorizing the Debtors to (a) administer certain prepetition customer programs and practices in the ordinary course of the Debtors' businesses and (b) honor or pay certain prepetition obligations including prepetition processing costs and fees associated with their customer programs and practices, and (ii) granting related relief.

64. In the ordinary course of their businesses, the Debtors engage in certain marketing and sales practices that are, among other things, (i) targeted to develop and sustain a positive reputation for their goods in the marketplace and (ii) designed to allow the Debtors to

²¹ The "**Customer Programs Motion**" means the *Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to (A) Maintain Customer Programs and (B) Pay and Honor Related Prepetition Obligations and (II) Granting Related Relief*. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Customer Programs Motion.

successfully compete in a highly competitive marketplace by ensuring customer satisfaction and generating loyalty and goodwill for the Debtors, thereby allowing the Debtors to retain current customers, attract new ones, and ultimately enhance their revenues and profitability (collectively, the “**Customer Programs**”). The Customer Programs described in detail in the Customer Programs Motion include the Gift Card Program, the Sales Promotions programs, and the Marketing Programs. Without the ability to continue the Customer Programs and to satisfy prepetition obligations in connection therewith, the Debtors risk losing customer loyalty, goodwill, and market share, which could cause a precipitous decline in the value of their businesses at a critical juncture. The Debtors’ ability to continue their Customer Programs and honor obligations related thereto is necessary to keep the reputation of the Debtors’ brands intact, meet competitive market pressures, ensure customer satisfaction, and, ultimately, maximize value for the Debtors’ estates and their stakeholders.

65. Accordingly, based on the foregoing and those additional reasons set forth in the Customer Programs Motion, I believe that the relief requested in such motion is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors’ estates and their creditors and all other parties in interest.

III. CONTINUING VENDOR MOTIONS

A. Critical Vendors Motion²²

66. Pursuant to the Critical Vendors Motion, the debtors seek entry of interim and final orders (i) authorizing, but not directing, the Debtors to pay prepetition Critical Vendor Claims of certain Critical Vendors in the ordinary course in an amount not to exceed \$2,100,000

²² The “**Critical Vendors Motion**” means the *Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Pay Prepetition Claims of Critical Vendors and (II) Granting Related Relief*. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Critical Vendors Motion.

on an interim basis and \$2,500,000 on a final, and (ii) granting related relief. For the avoidance of doubt, the Debtors are not seeking to prepay any Vendor's Claims.

67. The Debtors rely on their access to and relationship with a network of Critical Vendors, including domestic vendors, suppliers, and service providers. The Debtors' ability to generate income is dependent on sales of the Perkins and Marie Callender's family and casual-dining experience and Marie Callender's signature pies and other bakery items, all of which is dependent upon customer traffic and satisfaction. As such, the Debtors seek to maintain their access to and relationship with the Critical Vendors in order to continue operations in the ordinary course and facilitate a smooth transition into these Chapter 11 Cases. Anticipating this situation, the Debtors, with the assistance of their advisors, spent significant time prior to the Petition Date reviewing and analyzing their books and records, open accounts payable systems, and prepetition vendor lists to identify those vendors and suppliers that are in fact critical to the Debtors' operations, the loss of which could materially harm the Debtors' businesses or impair going-concern viability. Additionally, because of the timing of the Debtors' entry into chapter 11, the amount of Critical Vendor Claims the Debtors must seek authorization to pay the bulk of such claims during the interim period, the vast majority of which are on account of goods that were received within twenty days prior to the Petition Date.

68. It is my understanding that certain of the Critical Vendors that the Debtors seek to pay pursuant to the Critical Vendor Motion have executory contracts with the Debtors. I believe that the goods and services these Critical Vendors supply to the Debtors are so vital to the Debtors' business and operations that any loss of access to, or delay in delivery of, such goods and services resulting from the Critical Vendors termination or threatened termination of those contracts (or delay associated with the Debtors' attempt to enforce the contracts in the event that

the Critical Vendors refuse to perform thereunder) would materially, if not irreparably, harm the Debtors' operations. Accordingly, the Debtors seek authority, but not direction, to honor their prepetition obligations to Critical Vendors where such party may, in the Debtors' reasonable business judgment, be capable of terminating its contract, refusing to perform under its contract, or where the delay associated with the Debtors' attempt to enforce the applicable contract would threaten the viability of the Debtors' operations.

69. Without the relief requested in the Critical Vendors Motion, the Debtors believe that the Critical Vendors may cease providing goods and services, which would disrupt the Debtors' operations and could cause substantial delays, great expense, and irreparable harm to the Debtors' estates. Further, such a disruption would negatively impact the value of the Debtors' assets during the sale process.

70. Accordingly, based on the foregoing and the additional reasons set forth in the Critical Vendors Motion, I believe that the relief requested in such motion is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors' estates and their creditors and all other parties in interest.

B. PACA/PASA Motion²³

71. Pursuant to the PACA/PASA Motion, the debtors seek entry of interim and final orders (i) authorizing, but not directing, payment of certain claims under (a) the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §§ 499(a) *et seq.* (“PACA”), (b) the Packers and Stockyards Act of 1921, as amended, 7 U.S.C. §§ 181 *et seq.* (“PASA”), (c) any and all state statutes of similar effect; and (ii) granting related relief.

²³ The “PACA/PASA Motion” means the *Motion of Debtors for Interim and Final Orders (I) Authorizing Payment of Prepetition Claims Asserted Under the (A) Perishable Agricultural Commodities Act, (B) Packers and Stockyards Act, and (C) Any State Statutes of Similar Effect and (II) Granting Related Relief*. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the PACA Motion.

72. Certain of the Debtors' vendors PACA Goods to the Debtors that constitute either "perishable agricultural commodities," as such term is defined under PACA, or other eligible goods under state statutes of similar effect. The Debtors believe that many of their vendors of PACA Goods will file claims against the Debtors' estates under PACA or state statutes of similar effect if their prepetition claims are not paid in full. The Debtors also purchased PASA Goods (*i.e.*, meat, poultry and other similar products) from vendors that may be eligible to assert claims under PASA or state statutes of similar effect if their prepetition claims are not paid in full.

73. The Debtors estimate that they purchase approximately \$43,000,000 worth of goods from suppliers of PACA/PASA Goods on an annual basis. As of the Petition Date, the Debtors estimate that PACA/PASA Claims total approximately \$2,500,000 in the aggregate, of which approximately \$2,000,000 will become due and payable during the interim period. Payment of valid PACA/PASA Claims will benefit the Debtors' estates by preserving the goodwill of PACA/PASA Claimants and, thus, facilitating the continued supply of goods necessary to the Debtors' businesses and avoiding potential disruption to business operations.

74. It is my understanding that, to the extent that any valid PACA/PASA Claims remain unsatisfied by the Debtors, the Debtors' officers and directors may be subject to lawsuits during the pendency of these Chapter 11 Cases. Any such lawsuit (and the ensuing potential liability) would distract the Debtors and their officers and directors from their efforts to implement a successful restructuring strategy in these Chapter 11 Cases. It is my further understanding that, without the ability to pay PACA/PASA Claimants, the Debtors could be subject to numerous claims and adversary proceedings in these Chapter 11 Cases, which would result in the unnecessary expenditure of time, effort, and money by the Debtors and the Court.

C. Shippers and Warehousemen Motion²⁴

75. Pursuant to the Shippers and Warehousemen Motion, the Debtors seek entry of interim and final orders, under sections 105(a), 363 and 503 of the Bankruptcy Code, authorizing, but not directing, (i) the Debtors, in their sole discretion, to pay prepetition Shipping and Warehousing Claims in an amount not to exceed \$250,000 during the interim period and \$250,000 on a final basis, and (ii) granting related relief.

76. The Debtors maintain the flow of goods into their restaurants and into, and out of, the Foxtail manufacturing facilities by relying on a complex network of common vendors, suppliers, carriers, warehousemen, transportation service providers, and other related parties (collectively, the “**Shippers and Warehousemen**,” whose claims are “**Shipping and Warehousing Claims**”). The Shippers and Warehousemen are dedicated freight carriers for the delivery of product to the Debtors’ restaurants and manufacturing facilities and also provide third party storage and warehouse services. These Shippers and Warehousemen use a dedicated specialized fleet of trucks and trailers designed to handle the safe shipping of the finished items while minimizing damage and assuring the product is delivered to storage.

77. If the Debtors fail to pay any of the Shippers or Warehousemen for charges incurred in connection with the transport of goods, the Shippers or Warehousemen may be permitted by law or otherwise to assert possessory liens against the Debtors’ property. Further, because of the commencement of the Chapter 11 Cases, certain Shippers and Warehousemen that hold goods for delivery to or from the Debtors may refuse to release such goods pending receipt of payment for their prepetition services, which would disrupt the Debtors’ operations. The

²⁴ The “**Shippers and Warehousemen Motion**” means the *Motion of Debtors for Order (I) Authorizing the Payment of Prepetition Claims of Shippers and Warehousemen and (II) Granting Related Relief*. Capitalized terms used, but not otherwise defined, in this section shall have the respective meanings ascribed to them in the Shippers and Warehousemen Motion.

Debtors believe that a disruption in their chain of transportation and storage arrangements due to nonpayment of shipping and warehouse charges could cause substantial delays, great expense and irreparable harm to the Debtors' estates.

78. Accordingly, based on the foregoing and those additional reasons set forth in the Shipping and Warehousemen Motion, I believe that the relief requested in such motion is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors' estates and their creditors and all other parties in interest.

79. In conclusion, for all the foregoing reasons and the reasons as more fully set forth in each of the First Day Motions, I respectfully request that each of the First Day Motions be granted in its entirety, together with such other and further relief as the Court may deem appropriate.

I certify under penalty of perjury that the foregoing is true and correct based upon my knowledge, information and belief as set forth in this Declaration.

Dated: August 5, 2019
Memphis, Tennessee

/s/ Jeffrey D. Warne
Jeffrey D. Warne
President and Chief Executive Officer

EXHIBIT A

Organizational Chart

