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ATTORNEYS FOR DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
Tuesday Morning Corporation, <i>et al.</i> , ¹	§	Case No. 20-31476-HDH-11
	§	
Debtors.	§	Jointly Administered

**DEBTORS' OMNIBUS RESPONSE TO (I) MOTION OF SF V CLE
LENDING, LLC FOR ALLOWANCE AND PAYMENT OF
SUBSTANTIAL CONTRIBUTION CLAIM UNDER BANKRUPTCY
CODE §§ 503(B)(1) AND (4) AND (II) OBJECTIONS OF KEVIN BARNES
AND JEREMY BLUM TO MOTION OF SF V CLE LENDING, LLC FOR
ALLOWANCE AND PAYMENT OF SUBSTANTIAL CONTRIBUTION
CLAIM UNDER BANKRUPTCY CODE §§ 503(B)(1) AND (4)**

Tuesday Morning Corporation and its debtor affiliates, as debtors and debtors-in-possession in the above-referenced chapter 11 cases (collectively, the “Debtors”) hereby file this omnibus response (the “Response”) to the *Motion of SF V CLE Lending, LLC for Allowance and Payment of Substantial Contribution Claim under Bankruptcy Code §§ 503(b)(1) and (4)* [Docket No. 490] (the “Substantial Contribution Motion”), the objection of Kevin Barnes to the

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Tuesday Morning Corporation (8532) (“TM Corp.”); TMI Holdings, Inc. (6658) (“TMI Holdings”); Tuesday Morning, Inc. (2994) (“TMI”); Friday Morning, LLC (3440) (“FM LLC”); Days of the Week, Inc. (4231) (“DOTW”); Nights of the Week, Inc. (7141) (“NOTW”); and Tuesday Morning Partners, Ltd. (4232) (“TMP”). The location of the Debtors’ service address is 6250 LBJ Freeway, Dallas, TX 75240.

Substantial Contribution Motion [Docket No. 507] (the “Barnes Objection”), and the objection of Jeremy Blum to the Substantial Contribution Motion [Docket No. 550] (the “Blum Objection”).

In support of the Response, the Debtors respectfully state as follows:

Background

1. On May 27, 2020 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above captioned jointly administered cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

2. An official committee of unsecured creditors (the “Committee”) was appointed in these Chapter 11 Cases on June 9, 2020. No trustee or examiner has been requested or appointed in these Chapter 11 Cases.

A. The Debtors’ ABL DIP Financing

3. At the first day hearing held on May 28, 2020, the Court entered an interim order [Docket No. 67] (the “Interim DIP ABL Order”) approving the *Debtors’ Emergency Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 (I) Authorizing Debtors to (A) Use Cash Collateral on a Limited Basis and (B) Obtain Postpetition Financing on a Secured, Superpriority Basis, (II) Granting Adequate Protection, (III) Scheduling a Final Hearing, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 19] (the “ABL DIP Motion”). A final hearing on the ABL DIP Motion was held on June 26, 2020 where the Court approved the ABL DIP Motion as provided in the *Final Order (I) Authorizing Debtors to (A) Use Cash Collateral on a Limited Basis and (B) Obtain Postpetition Financing on a Secured, Superpriority Basis, (II) Granting Adequate Protection,*

(III) Scheduling a Final Hearing, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief [Docket No. 331] (the “Final ABL DIP Order”).

4. The Final ABL DIP Order includes a number of milestones that the Debtors are required to meet in order to remain in compliance under the terms of the ABL DIP Facility (the “Milestones”). One of the key Milestones provided that, not later than thirty (30) days after the Petition Date, the Debtors must obtain a commitment for and file a motion seeking approval of a fully underwritten secured debtor-in-possession term loan facility (a “Qualifying DIP RE Facility”) with a total loan commitment in an aggregate amount up to \$20,000,000 on terms and conditions reasonably acceptable to the DIP ABL Agent and secured on a first lien basis solely by the Debtors’ unencumbered real property (the “Real Estate Assets”). *See* Final ABL DIP Order at ¶ 88(iii). A related Milestone required that not later than forty-four (44) days after the Petition Date, the Court must approve, and the Debtors must consummate, a Qualifying DIP RE Facility. *See* Final ABL DIP Order at ¶ 88(iv).

B. The DIP Term Financing

5. In order to comply with the Milestones, the Debtors worked diligently to obtain debtor-in-possession (“DIP”) financing secured by the Real Estate Assets. As more fully described in the DIP Term Motion, the DIP Term Amendment, the First Supplement, the Second Supplement, the Doak Declaration, and the Supplemental Doak Declaration (each as defined below), the Debtors, with the help of their professionals, including their investment banker Miller Buckfire, LLC (“Miller Buckfire”), ran a competitive marketing process to obtain DIP financing secured by the Real Estate Assets. The Debtors initially received eight proposals to provide DIP financing secured by the Real Estate Assets. Based on the initial proposals submitted to Miller Buckfire, the Debtors determined that the proposal from BRF Finance Co.,

LLC (“BRF”) was the best proposal. The Debtors thereafter entered into a term sheet with BRF pursuant to which BRF agreed to provide up to \$25,000,000 in DIP financing secured by the Real Estate Assets. On June 16, 2020, Miller Buckfire received a proposed term sheet (the “Stabilis Term Sheet”) from Stabilis Capital Management, LP (“Stabilis”) pursuant to which Stabilis proposed to provide DIP financing secured by the Real Estate Assets at an overall lower cost to the Debtors than the BRF proposal. Given the Debtors’ timing concerns, however, and the fact that the Stabilis Term Sheet remained contingent on, among other things, further diligence by Stabilis, the Debtors determined that they could not move forward with Stabilis.

6. On June 17, 2020, the Debtors filed a motion requesting authorization to obtain DIP financing secured by the Real Estate Assets with BRF as the proposed lender [Docket No. 267] (the “DIP Term Motion”). In connection with the DIP Term Motion, the Debtors also filed a declaration from James Doak of Miller Buckfire [Docket No. 273] (the “Doak Declaration”) in support of the DIP Term Motion. Through the Doak Declaration, the Debtors disclosed that Miller Buckfire continued to engage with potential lenders and noted that, in addition to BRF, there was another “credible source of financing that may be prepared to offer requisite financing at an improved and lower overall cost to the Debtors.” Doak Declaration ¶ 15. A hearing to consider interim approval of the DIP Term Motion was initially scheduled for June 26, 2020.

7. Shortly after filing the DIP Term Motion, Stabilis submitted a binding term sheet to provide DIP financing to the Debtors secured by the Real Estate Assets on terms superior to the terms of the BRF proposal. With consent from the ABL DIP Agent and the Committee, the Debtors moved the hearing on the DIP Term Motion from June 26, 2020 to July 8, 2020 and converted the hearing from an interim hearing to a final hearing. The Debtors thereafter filed an amended DIP Term Motion [Docket No. 307] (the “Amended DIP Term Motion”) in which the

Debtors disclosed that they had received a competing proposal from Stabilis (although Stabilis was not specifically identified) and informed the Court that the Debtors had asked BRF and Stabilis to provide their best and final offers by 12 p.m. Central Time on July 2, 2020. The Debtors also informed the Court and parties-in-interest that if a Superior Proposal (as defined in the Amended DIP Term Motion) was received, that the Debtors would file a supplement to the Amended DIP Term Motion disclosing the material terms of the Superior Proposal and that the Debtors would request authorization to enter into the Superior Proposal at the July 8, 2020 hearing.

8. SF V CLE Lending, LLC (“SF V”), an affiliate of Stabilis, and Franchise Group, Inc. (“FGI”) each submitted proposals on July 2, 2020. BRF chose to not submit an updated proposal. After reviewing the proposals, the Debtors determined that the updated proposal from SF V represented the best value to the Debtors and their estates (the “SF V Proposal”). As contemplated by the Amended DIP Term Motion, on July 6, 2020, the Debtors filed a supplement to the Amended DIP Term Motion [Docket No. 396] (the “First Supplement”) pursuant to which the Debtors described the terms of the SF V Proposal and informed the Court and parties-in-interest that the Debtors intended to request authorization to obtain DIP financing in accordance with the terms of the SF V Proposal.

9. Thereafter, on July 7, 2020, Miller Buckfire received a subsequent proposal from FGI (the “FGI Proposal”). After careful review and consideration, the Debtors, with the help of their professionals, determined that the terms of the FGI Proposal were materially better than the terms of the SF V Proposal. Although the FGI Proposal was received after the July 2, 2020 date described in the Amended DIP Term Motion, the Debtors determined that because the FGI Proposal constituted a binding proposal with materially better terms than the terms of the SF V

Proposal, the Debtors, consistent with their fiduciary duties, should accept the FGI Proposal. Prior to accepting the FGI Proposal, the Debtors contacted SF V to inform them of the FGI Proposal and to extend SF V the opportunity to provide the Debtors with an updated proposal matching or improving the terms of the FGI Proposal. SF V declined to either match or improve the terms of the FGI DIP Proposal.

10. On July 8, 2020, in advance of the scheduled hearing, the Debtors filed a second supplement to the Amended DIP Term Motion [Docket No. 406] (the “Second Supplement”) pursuant to which the Debtors described the terms of the FGI Proposal and informed the Court and parties-in-interest that the Debtors would request authorization at the July 8, 2020 hearing to obtain DIP financing from FGI in accordance with the terms of the FGI Proposal. In support of the Second Supplement, the Debtors filed a supplement to the Doak Declaration [Docket No. 407] (the “Supplemental Doak Declaration”).

11. At the July 8, 2020 hearing, the Court approved the Debtors’ request for authority to obtain DIP financing from FGI in accordance with the terms of the FGI Proposal and entered a final order [Docket No. 429] (the “Final DIP Term Order”) authorizing the Debtors to obtain DIP financing from FGI in accordance with the terms of the FGI Proposal (the “DIP Term Facility”).

C. The Substantial Contribution Motion

12. Prior to the July 8, 2020, hearing, counsel to SF V communicated with the Debtors’ undersigned counsel and indicated that SF V would not object to the relief requested through the Second Supplement if the Debtors would agree not to oppose a subsequent motion by SF V seeking approval of an administrative expense priority claim in an amount up to \$60,000 to compensate SF V for having made a substantial contribution in the Debtors’ Chapter 11 Cases. The Debtors’ undersigned counsel agreed to the proposal. On July 21, 2020, SF V filed

the Substantial Contribution Motion requesting approval of an administrative expense priority claim under Bankruptcy Code § 503(b)(1) and (4) in the amount of \$60,000 to reimburse SF V for the expenses incurred in connection with the SF V Proposal. Consistent with the parties' agreement, the Debtors do not oppose the relief sought in the Substantial Contribution Motion.

D. The Objections

13. On July 23, 2020, Mr. Barnes, proceeding pro se, filed the Barnes Objection. Through the Barnes Objection, Mr. Barnes objects to the payment of any amount to SF V and in the alternative requested that “should this Court determine that SF V is due a portion or all of the requested, but contractually unnecessary, \$60,000 fee award, the funds should be awarded directly from the Debtors’ legal counsel (Haynes & Boone LLP) and/or financial advisor (Miller Buckfire & Co. LLC).” Barnes Objection p. 2. Mr. Barnes’ stated rationale for compelling the Debtors’ professionals to fund the substantial contribution claim was that Haynes and Boone and Miller Buckfire “apparently failed to act in the best interest of Tuesday Morning’s unaffiliated unsecured creditors and unrepresented equity holders due to their abject failure to run an effective and efficient financing sourcing process for the Tuesday Morning RE DIP Loan”. *Id.* Mr. Barnes did not identify any specific facts or evidence to support his allegations against Haynes and Boone or Miller Buckfire and instead relied exclusively on “SF V’s briefing”. *Id.* Besides failing to support his allegations with any specific facts or evidence, Mr. Barnes also failed to cite any statute, rule, legal opinion, or other authority in support of his request to require Haynes and Boone or Miller Buckfire to fund the payment of SF V’s requested substantial contribution claim.

14. On July 31, 2020, Mr. Blum, proceeding pro se, filed the Blum Objection. In the Blum Objection, Mr. Blum alleged that “the lack of an engaged Board of Directors or an Equity

Committee is allowing needless fees to be presented. This is the most egregious case.” Blum Objection p. 1. Mr. Blum did not provide any evidence or cite any facts to support his allegation that the Debtors’ board of directors is not “engaged”.

Response

15. Although the Debtors do not oppose the Substantial Contribution Motion, the Debtors have determined that it is necessary to file a response to address the unfounded and unsupported allegations contained in the Barnes Objection and the Blum Objection. Mr Barnes, without identifying any specific facts, has alleged that Haynes and Boone and Miller Buckfire “failed to act in the best interest of” the Debtors and parties in interest “due to their abject failure to run an effective and efficient financing sourcing process for the Tuesday Morning RE DIP Loan.” Barnes Objection p. 2. Mr. Blum, also without identifying any evidence or specific facts in support, has alleged that the Debtors’ board of directors is not “engaged” in the Chapter 11 Cases. Blum Objection p. 1.

16. Mr. Barnes described the process as ineffective, inefficient, and an “abject failure”. The final result of the process, however, proves otherwise and demonstrates that the process was highly effective as it resulted in savings of well over a million dollars to the Debtors and their estates. The table below contains a comparison of key terms contained in the proposals received from BRF, SF V, and FGI and illustrates the effectiveness of the Debtors’ process.

Proponent	Interest Rate	Up-Front Fee	Exit Fee	Coll. Mon. Fee	Maturity Date
BRF	LIBOR + 9%	2.50% (\$625,000)	2.50% (\$625,000)	\$200,000	Nov. 23, 2020
SF V Proposal	LIBOR + 6.49%	1% (\$250,000)	1.30% (\$325,000)	N/A	April 8, 2020 (w/ 3 month extension option)
FGI Proposal	LIBOR + 5.00%	0.75% (\$187,500)	0.75% (\$187,500)	N/A	9 months from closing (w/ 3 month extension option)

17. Notably, because the Debtors' failure in obtaining qualifying DIP financing would have resulted in an event of default under the ABL DIP Facility, it was imperative that the Debtors obtain DIP financing that would satisfy the Milestones and related terms of the DIP Facility. As noted in the Doak Declaration and the Doak Supplement, Miller Buckfire engaged in an extensive marketing process during which they contacted over 90 prospective providers of financing and that ultimately resulted in proposals to provide DIP financing secured by the Real Estate Assets from eleven potential lenders. The BRF proposal was the best of the initial proposals received by the Debtors which was the reason that the Debtors initially requested authority to obtain DIP financing from BRF. However, once the Debtors obtained a proposal from BRF that met the conditions required by the Interim and Final ABL DIP Orders, the Debtors' professionals, including primarily Miller Buckfire, remained engaged with other prospective lenders that had expressed interest in providing the DIP term financing. Because the Debtors' professionals remained engaged and continued to consider competing proposals, even after the DIP Term Motion was filed, the Debtors were able to obtain substantially more favorable terms in connection with the ultimate DIP Term Facility. Through the SF V Proposal, SF V agreed to provide the same amount of DIP financing secured by the same assets on substantially better terms than the terms agreed to by BRF. Specifically, the SF V Proposal included an interest rate that was 2.51% lower than the interest rate proposed by BRF and a \$875,000 reduction in loan fees. Subsequently, the FGI Proposal resulted in a further 1.49% reduction in the interest rate and an additional reduction of \$200,000 in loan fees.

18. Throughout the process, the Debtors' management, the Debtors' board, and the Debtors' professionals remained highly engaged and highly focused on pursuing the best interests of the Debtors and their estates. Besides maintaining their focus, the Debtors also

remained flexible throughout the process. In fact, it was the willingness of the Debtors' and their professionals, as well as the Debtors' board of directors, to remain flexible that allowed them to continue engaging with potential lenders and ultimately obtain qualifying DIP financing at a much lower overall cost to the Debtors and their estates. The Committee was also very proactive in considering alternative financing arrangements.

19. It was also the Debtors' flexibility that may have left outsiders unfamiliar with the bankruptcy process, such as Mr. Blum and Mr. Barnes, with the impression that the process was chaotic and ineffective. However, what the uninitiated may view as chaos, for example the amendment and multiple supplements to the original DIP Term Motion, continuing the hearing from June 26 to July 8, changing the hearing from an interim hearing to a final hearing, the filing of a second supplement only hours before the July 8 hearing etc., was a testament to the Debtors' willingness to adjust "on the fly" to maximize value to the estate. Here, the bankruptcy process worked and the Debtors and their professionals, with the cooperation and collaboration of the Committee, the ABL DIP Agent, SF V, FGI, BRF, the U.S. Trustee and each of their respective professionals were able to achieve a more favorable DIP term facility that benefited the Debtors and their estates.

20. As previously highlighted, the results speak for themselves. Far from being a failure, the process was a resounding success that resulted in a materially lower interest rate (4.00% lower), materially lower fees (reduced from \$1,450,000 to \$375,000 resulting in net savings of \$1,075,000 in loan fees), and a materially longer maturity date than initially anticipated.

Notice

21. Notice of this Response will be provided to: (i) the Office of the United States Trustee; (ii) the Debtors' secured creditors; (iii) any party whose interests are directly affected by this specific pleading; (iv) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (v) counsel for the DIP ABL Agent and DIP Term Agent; (vi) counsel for the Creditors' Committee; (vii) the list of the 20 largest unsecured creditors of each of the Debtors; and (viii) all governmental agencies having a regulatory or statutory interest in these cases (collectively, the "Notice Parties"). Based on the urgency of the circumstances surrounding this Response and the nature of the relief requested herein, the Debtors respectfully submit that no further notice is required.

RESPECTFULLY SUBMITTED this 14th day of August, 2020.

HAYNES AND BOONE, LLP

By: /s/ Ian T. Peck

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