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*Attorneys for the Official Committee of Unsecured
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**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> ,	:	Case No. 20-31476-HDH
	:	
Debtors.	:	(Jointly Administered)
	:	

**STATEMENT AND JOINDER OF THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS
REGARDING DEBTORS' MOTION TO ENFORCE**

TO THE HONORABLE HARLIN D. HALE, CHIEF U.S. BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the “Creditors’ Committee”) of Tuesday Morning Corporation and its affiliated debtors and debtors in possession (collectively, the “Debtors”), by and through its undersigned counsel, hereby files this statement and joinder (the “Statement and Joinder”) setting forth the Creditors’ Committee’s position on the *Debtors’ Emergency Motion For Entry Of An Order: (A) Enforcing The Order Granting Debtors’ Amended*

Motion For Entry Of An Order (I) Approving The Disclosure Statement, (II) Fixing A Record Date, (III) Approving Cure Procedures, (IV) Approving Solicitation Procedures, And (VI) Establishing Notice And Objection Procedures With Respect To Confirmation Of The Debtors' Chapter 11 Plan Of Reorganization; (B) Imposing Sanctions On The Claim Purchaser Group; And (C) Scheduling Discovery And Related Deadlines In Connection With The Potential Designation Of Any Votes Of Claim Purchaser Group Members, dated December 17, 2020 [Docket No. 1742] (the “Motion to Enforce”). The Creditors’ Committee respectfully states as follows:

JOINDER

1. The Debtors filed their Motion to Enforce due to the improper plan solicitation efforts of an ad hoc group of investment funds that purchased trade claims (collectively, the “Claim Purchaser Group”).¹ The Claim Purchaser Group has undermined the Court-approved solicitation process by soliciting creditors to reject the Plan through:

- the use of false and misleading statements on a Website,
- the use of false and misleading statements in a Press Release,
- and the use of false and misleading statements in direct communications with creditors.

2. Among other false and misleading statements and acts, the Claim Purchaser Group has:

- falsely held itself out as an official committee of trade claimants, when, in fact, it is not an official committee and is comprised of no actual trade claimants,
- falsely claimed the Federal Judgment Rate is 2.59%,
- falsely claimed that a vote to reject the Plan “will not jeopardize” creditors’ ability to be paid in full, and
- falsely claimed that if Class 5 votes the plan down confirmation and emergence will not be delayed.

¹ The group is led by a disgruntled proposed Plan sponsor. See Motion to Enforce, ¶18.

As these false and misleading statements could easily cause an innocent Class 5 creditor to reject the Plan, based on an incorrect belief that it could do no worse in rejecting the Plan, the Committee supports the Motion to Enforce and joins in the Debtors' requests for relief.²

STATEMENT

3. The *Revised Second Amended Joint Plan of Reorganization of Tuesday Morning Corporation, et al. Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1633] (the "Plan") was the product of months of hard work and negotiations which culminated in a 100% recovery (including applicable interest) to all general unsecured creditors.

4. In supporting the Plan, the Creditors' Committee's submitted its *Letter To All General Unsecured Creditors Of Tuesday Morning Corporation, et al. Recommending Voting In Favor Of The Proposed Second Amended Plan Of Reorganization* [Docket No. 1630, Exhibit G] (the "Creditors' Committee Letter"), which was included as part of the Debtors' plan solicitation package. In the Creditors' Committee Letter, the Creditors' Committee³ explained:

We are writing to you, as a general unsecured creditor, to recommend that you **VOTE IN FAVOR** of the proposed *Second Amended Joint Plan of Reorganization of Tuesday Morning Corporation, et al. Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan"), which is enclosed with this letter along with a ballot for voting on the Plan.

...

The Plan Is An Incredible Result For General Unsecured Creditors

Objectively, the Plan represents a tremendous outcome for the benefit of all general unsecured creditors, including providing for payment in cash of the face amount of claims of all general unsecured creditors, plus

² To the extent this Court approves the award of sanctions, the Committee submits that such award should also require the Claim Purchaser Group to reimburse the Debtors' estates for the payment of Creditors' Committee fees related to the Claim Purchaser Group's nefarious actions.

³ The Creditors' Committee is an official committee formed by the United States Trustee in accordance with the Bankruptcy Code. This is in stark contrast to the so-called Trade Claimants Committee, that is comprised solely of claims buyers who acquired claims after the filing of the bankruptcy, not actual trade claimants who provided goods or services to the Debtors. The Trade Claimants Committee has no actual duty to protect the interests of anyone other than themselves.

payment of some amount of interest from the date of the bankruptcy filing through the date of payment of those claims, in the months following the plan going effective (once claims are reconciled against the Debtors' books and records).

5. The Creditors' Committee truthfully explained the risks to creditors in voting to reject the Plan:

Dangers of Voting Against the Plan

If sufficient Class 5 creditors vote against the plan (as measured by number of creditors voting and/or amount of claims voted), it is possible that the Plan will not be confirmed (though the Debtors will likely try to confirm the Plan notwithstanding Class 5 voting against the Plan). If the Plan is not confirmed, it is possible that the financing that the Debtors have arranged will no longer be available, that alternative financing will not be available, and that a future plan could provide for less favorable treatment for unsecured creditors – potentially much less favorable treatment.

If an alternate plan cannot be confirmed, the Debtors' cases could be converted to a liquidation under Chapter 7 of the Bankruptcy Code, likely resulting in a significantly greater amount of total unsecured claims and significantly lower distributions to unsecured creditors.

All of these risks are amplified by the pending global pandemic and possible future government restrictions to combat the spread of the pandemic. **For these reasons, we recommend that Class 5 creditors vote in favor of the Plan.**

6. The Creditors' Committee Letter also set forth the facts concerning the applicable interest rate:

Open Issue with Applicable Interest Rate

As discussed above, the Plan provides for the payment of some amount of interest from the Petition Date through the date payment is made on the Claims, however, there remains disagreement among the Debtors and some creditors regarding the correct interest rate to use. The Debtors have proposed paying all general unsecured creditors interest on their claims at the Federal Judgment Rate on May 27, 2020 (the date the Debtors filed for bankruptcy), which is 0.16% interest. This is a rate of interest that has been used by certain bankruptcy courts in other cases.

Certain creditors have objected to the use of the Federal Judgment Rate, and instead have argued that creditors should receive the interest rate provided for in their contract with the Debtors (or a state judgment rate), rather than the Federal Judgment Rate. That interest rate would vary depending on each contract with the Debtors and the states in which transactions occurred, but would likely be greater than the Federal Judgment Rate.

As drafted, the Plan provides that Class 5 creditors who vote in favor of the Plan may be waiving their rights to argue that they are entitled to interest at a rate higher than the Federal Judgment Rate. Additionally, if Class 5 as a group votes in favor of the Plan, it is possible that Class 5 creditors may be unable to argue that they are entitled to interest at a rate higher than the Federal Judgment Rate.

7. Last, the Creditors' Committee explained the basis for its recommendation to vote in favor of the Plan, notwithstanding the open issue on interest rate, which is reserved for the Confirmation Hearing.⁴

Recommendation To Vote In Favor Notwithstanding Open Interest Issue

Notwithstanding the open issue regarding what interest rate should be used when calculating the amount of interest that Class 5 creditors receive on their claims, the Creditors' Committee still recommends that all Class 5 creditors affirmatively return their ballot and vote in favor of the Plan.

While the Plan may not be absolutely perfect with respect to every issue, on the whole, it remains a proverbial home run for Class 5 general unsecured creditors, providing for payment of 100% of the face amount of their claims, with some interest, in cash, within months, not years of the Plan going effective.

In light of the dangers posed by the raging global pandemic, and the uncertainty regarding the Debtors' ability to continue operating all of their stores in the face of potential government regulations to combat the

⁴ The Plan provides to pay all holders of allowed general unsecured claims in full "plus interest from the Petition Date through the payment date at the federal judgment rate in effect as of the Petition Date, *subject to a different rate in the event that the Bankruptcy Court determines that the Debtors are obligated to pay interest to holders of Allowed General Unsecured Claims at the contract rate or state law rate rather than the federal judgment rate.*" Plan, Exhibit A – Glossary of Defined Terms, General Unsecured Cash Fund, pg. 9 (*emphasis added*).

pandemic, the Committee believes it is imperative to get the Plan confirmed, have it go effective, and make distributions to Class 5 general unsecured creditors as quickly as possible.

WHEREFORE, the Creditors' Committee respectfully supports and joins the requested relief sought by the Debtors in their Motion to Enforce and respectfully requests the Court grant the relief sought therein.

Dated: December 8, 2020

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Deborah M. Perry

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***Attorneys for the Official Committee of Unsecured
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 8th day of December, 2020, she personally caused to be served a true and correct copy of the foregoing pleading via electronic mail through the Court's ECF transmission facilities on all parties registered to receive ECF notice in this case.

By: /s/ Deborah M. Perry
Deborah M. Perry