

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Greenbelt Division)**

In re:	)	
	)	Chapter 11
CREATIVE HAIRDRESSERS, INC., <i>et al.</i> ,	)	
	)	Case Nos. 20-14583, 20-14584-TJC
Debtors.	)	(Jointly Administered)
_____	)	

**DECLARATION OF SETH GITTLITZ**

I, Seth Gittlitz, hereby declare and state as follows:

1. I am over the age of eighteen (18) and am authorized by HC Salon Holdings, Inc. to submit this declaration (the “**Declaration**”) in support of the *Supplemental Objection to Debtors’ Motion to Compel HC Salon Holdings, Inc. to Comply with the Transition Services Agreement* (the “**Supplemental Objection**”) filed in opposition to the *Debtors’ Motion to Compel HC Salon Holdings Inc. to Comply with the Transition Services Agreement* [ECF No. 785] (the “**Motion to Compel**”). Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my discussions with members of HC Salon’s management team, employees or advisors, and my review of the relevant documents. If called as a witness, I could and would competently testify to the facts set forth in this Declaration.

2. I am the Chief Executive Officer of HC Salon Holdings, Inc. (“**HC Salon**”), a Delaware corporation and purchaser of substantially all assets of Creative Hairdressers, Inc. and Ratner Companies L.C. (collectively, the “**Debtors**”). I am also the Chief Executive Officer of Tacit Salon Holdings, LLC (“**Tacit Salon**”), a Delaware limited liability company that was formed to acquire hair salon businesses.

3. In the spring of 2020, the principals of Tacit Salon became aware that the Debtors were attempting to sell their business. At the time, the Debtors were experiencing severe financial

distress. The Debtors had defaulted on their \$40 million senior secured credit facility; they had virtually no liquidity; their protracted efforts to identify a new investor or asset purchaser had failed; and they faced an urgent and immediate threat of liquidation.

4. Following several introductory conversations, Tacit Salon expressed an interest in purchasing the Debtors' business and formed HC Salon as a purchasing entity. After extensive negotiations, HC Salon agreed to move forward with a transaction to acquire substantially all of the Debtors' assets (the "**Sale Transaction**") through a sale conducted pursuant to section 363 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Sale Transaction allowed for continuation of the Debtors' business as a going concern and saved thousands of jobs and hundreds of leases.

5. I am familiar with the discussions and negotiations that resulted in the Sale Transaction. I am also familiar with the documents that evidence the Sale Transaction, including the APA (as hereinafter defined) and the TSA (as hereinafter defined).

6. In connection with the Sale Transaction, HC Salon acquired the Debtors' senior secured debt from a bank group comprised of M&T Bank, Eagle Bank and Burke and Herbert Bank. In addition, HC Salon agreed to provide post-petition financing to the Debtors in the aggregate principal amount of up to \$41,765,235.66, consisting of a superpriority priming new money term loan facility in the final principal amount of \$6,090,000.00 and a roll-up of existing obligations and amounts outstanding under the Debtors' prepetition term loans and revolving loans owing to HC Salon as of the Petition Date in the amount of \$35,675,235.66.

7. On April 23, 2020, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On the same day, the Debtors and HC Salon entered into that certain *Asset Purchase Agreement by and among Creative Hairdressers, Inc. and other seller parties*

*thereto, HC Salon Holdings, Inc. and certain other parties identified on the signature pages thereto dated April 23, 2020.* Thereafter, the Debtors and HC Salon continued to negotiate and entered into the *Amended and Restated Asset Purchase Agreement by and among Creative Hairdressers, Inc. and other seller parties thereto, HC Salon Holdings, Inc. and certain other parties identified on the signature pages thereto dated May 27, 2020* (the “**APA**”). A true and complete copy of the APA in the form approved by the Bankruptcy Court is attached as **Exhibit 2** to HC Salon’s List of Exhibits.

8. The APA identifies the assets that HC Salon agreed to purchase, the liabilities it agreed to assume, and the consideration it agreed to pay.

9. The consideration that HC Salon agreed to pay, including the specific amount that HC Salon agreed to pay to fund costs of the “Wind Down” (as such term is defined Section 1.1 of the APA), is set forth in Section 2.3 of the APA, which provides as follows:

Section 2.3 Consideration; Deposit. The consideration for the Acquired Assets (the “Total Consideration”) shall be (i) the Assumed Liabilities, (ii) the credit bid in an amount equal to 90% of the Obligations (as defined in the DIP Financing Agreement) (the “Credit Bid”) (as an offset against, and reduction in the amount of Sellers’ debt in respect of such Obligations under the DIP Financing Agreement, pursuant to Section 363(k) of the Bankruptcy Code), and (iii) \$100,000 paid in cash, to fund the Wind Down (such amounts, together with the amount of the Senior DIP NM Term Loan Obligations and the Credit Bid, the “**Purchase Price**”); provided, however, that Purchaser reserves the right to increase the Purchase Price, subject to the Bidding Procedures Order and applicable Law. Notwithstanding the foregoing, the Buyer further agrees to waive any unsecured claims in the Bankruptcy Cases.

APA at § 2.3.

10. I understand that the Debtors assert that HC Salon’s wind down cost obligations are not capped or otherwise limited by the APA. Yet, Section 2.3 of the APA expressly provides that HC Salon would pay \$100,000 “to fund the Wind Down[.]” The \$100,000 figure was the result of extensive negotiations among the Debtors, HC Salon and the Creditors Committee. HC

Salon did not agree to pay any amount beyond \$100,000 to fund the Debtors' wind down costs, and the APA does not impose any obligation beyond \$100,000.

11. Under the definition of "Assumed Liabilities" in Section 1.1 of the APA, HC Salon agreed to assume "only the following Liabilities" that are specifically listed. In addition, as set forth in the closing language to the definition, "the Assumed Liabilities shall not include any Excluded Liabilities." *See* APA at § 1.1 (Definition of "Assumed Liabilities").

12. As set forth in subparagraphs (f) through (i) of the definition of "Assumed Liabilities," HC Salon expressly agreed to assume certain administrative expenses of the bankruptcy estates (in particular, certain court-approved real estate consulting fees, cure costs for contracts and leases being assumed and assigned, up to \$50,000 of liabilities arising under sections 503(b)(9) and 507(a) of the Bankruptcy Code, and up to \$500,000 of liabilities relating to "stub rent" administrative claims for rejected leases). The definition of "Assumed Liabilities," however, does not obligate HC Salon to assume any wind down costs of the Debtors. *See* APA at § 1.1 (Definition of "Assumed Liabilities").

13. The definition of "Excluded Liabilities" in Section 1.1 of the APA reinforces the fact that HC Salon agreed to assume only the specific liabilities identified in the definition of "Assumed Liabilities." "Excluded Liabilities" is defined as "any Liabilities of Sellers, whether existing on the Closing Date or arising thereafter as a result of any act, omission or circumstances taking place prior to the Closing, other than the Assumed Liabilities." In addition, the definition of "Excluded Liabilities" includes a detailed non-exclusive list of various types of excluded liabilities. *See* APA at § 1.1 (Definition of "Excluded Liabilities").

14. In negotiating the APA, the parties intended to set forth the specific liabilities that HC Salon agreed to assume. Except to the extent a liability was expressly assumed under the APA, it was excluded.

15. At no point does the APA provide for, or in any way reference, any obligation on the part of HC Salon to pay unlimited wind down costs of the Debtors. To the contrary, as set forth in Section 2.3, the APA provides for a specific dollar amount (*i.e.*, \$100,000) that was earmarked to fund the Debtors' wind down costs.

16. At all times relevant to the APA, HC Salon understood that it had agreed to pay only \$100,000 toward wind down costs. HC Salon never agreed to pay, nor did it intend to agree to pay, any amount beyond the \$100,000 figure set forth in Section 2.3 of the APA.

17. The parties closed the Sale Transaction on June 4, 2020.

18. In connection with the closing of the Sale Transaction, HC Salon paid the \$100,000 to fund wind down costs provided for under Section 2.3 of the APA.

19. The Debtors' contract with Salesforce.com, Inc. was not assigned to HC Salon in connection with the closing of the Sale Transaction. Further, HC Salon did not use or approve the use of any services under the Salesforce.com, Inc. contract (except Tomax, which was a point of sale system used during the transition period) at any time before or after the closing of the Sale Transaction.

20. Under Section 2.5(b) of the APA, the Transition Services Agreement (the "TSA") was identified as a closing deliverable. Consistent with the requirements of the APA, the parties entered into the TSA on June 4, 2020, contemporaneous with the closing of the Sale Transaction. A true and complete copy of the TSA in the form approved by the Bankruptcy Court is attached as **Exhibit 4** to HC Salon's List of Exhibits.

21. The TSA was intended as a short-term agreement under which the Debtors agreed to provide specified services to HC Salon for a limited time to assist in the transitioning of the acquired business.

22. The TSA includes a detailed schedule of the transition services that the Debtors agreed to provide, and for which HC Salon agreed to pay. The schedule, which grouped the transition services under six headings (marketing, total rewards, information systems, finance, operations support and miscellaneous third party management) was designed to set forth the specific services covered under the TSA. Each of the services covered under the TSA was intended to provide benefit to HC Salon by assisting its efforts to transition the acquired business.

23. The compensation to be paid to the Debtors by HC Salon is governed by Article 5 of the TSA. Under Section 5.1, HC Salon agreed to pay a fee of \$25,000 per month for the term of the TSA.

24. Under Section 5.2, HC Salon agreed to pay or reimburse the Debtors' out-of-pocket costs and expenses reasonably incurred in connection with the performance of services under the TSA, including wind down costs incurred in connection with the performance of services under the TSA, subject to a review and approval process. Section 5.2 provides as follows:

Section 5.2. Reimbursable Expenses. The Purchaser agrees to reimburse the Seller for any and all of its actual, documented, out-of-pocket costs and other expenses reasonably incurred in connection with the performance of the services hereunder or any wind down costs of seller, including the allowed fees of Sellers' professionals employed under one or more orders of the Bankruptcy Court provided that the Seller shall, where possible, inform the Purchaser of the actual or reasonably estimated amount of such expenses before they are incurred and shall not incur any such expenses without the Purchaser's prior written consent. All costs incurred must be presented with supporting documentation, such as receipts.

TSA at § 5.2.

25. At all times relevant to the TSA, HC Salon understood that it had agreed to pay only wind down costs that were reasonably incurred by the Debtors in connection with the performance of services under the TSA, subject to a review and approval process. HC Salon never agreed to pay, nor did it intend to agree to pay, any wind down costs that were not reasonably incurred by the Debtors in connection with the performance of services under the TSA.

26. At no time during the negotiation of the APA and the TSA did the Debtors even request that HC Salon pay unlimited wind down costs. Had such a request been made, it would have been summarily denied as overreaching.

27. On July 14, 2020, I sent a letter on behalf of HC Salon terminating substantially all services under the TSA for convenience effective July 17, 2020. A true and complete copy of the July 14, 2020 letter is attached as **Exhibit 7** to HC Salon's List of Exhibits.

28. On September 4, 2020, the TSA terminated by its own terms. *See* TSA at § 9.1 (providing that the TSA shall "continue until the earliest of . . . three (3) months from the Effective Date"). At no time did the Debtors or HC Salon request to extend the term of the TSA beyond September 4, 2020. By September 4, 2020, HC Salon no longer used any services provided by the Debtors under the TSA.

**[Signature on Following Page]**



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on January 31, 2021

By: 

Seth Gittlitz  
Chief Executive Officer  
HC Salon Holdings, Inc.