

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(GREENBELT DIVISION)**

In re:	*	Chapter 11
CREATIVE HAIRDRESSERS, INC., <i>et al.</i>¹,	*	Case Nos. 20-14583, 20-14584-TJC
	*	(Jointly Administered)
Debtors.	*	

* * * * *

**DECLARATION OF RODGER JACOBSON IN SUPPORT OF THE DEBTORS’
MOTION TO COMPEL HC SALON HOLDINGS, INC. TO COMPLY WITH THE
TRANSITION SERVICES AGREEMENT [ECF NO. 785]**

I, Rodger Jacobson, hereby declare under penalty of perjury:

1. I am serving as Controller (the “Controller”) for the Debtors, Creative Hairdressers, Inc. and Ratner Companies, L.C.

2. The facts set forth in this Declaration are based upon my personal knowledge, my services as Controller, my interactions with representatives of HC Salon Holdings, Inc. (“HC”), my review of relevant documents, my review of the Motion to Compel (as defined below) and HC’s Objection thereto, and my review of the Debtors’ filings and bank accounts.

3. On December 14, 2020, the Debtors filed a Motion to Compel HC Salon Holdings, Inc. to Comply With the Transition Services Agreement (the “Motion to Compel”) [Dkt. No. 785].

4. In Support of the Motion to Compel and hearing thereon, I incorporate by reference herein the following testimony from my deposition as a Corporate Designee of the Debtors taken on January 19, 2021:

- a. 5:8-10
- b. 6:8-21

¹ The Debtors in these chapter 11 cases are: (i) Creative Hairdressers, Inc. and (ii) Ratner Companies, L.C.

- c. 8:5-9:7
- d. 11:19-13:5
- e. 13:14-15:8
- f. 15:15-22
- g. 16:7-17
- h. 17:2-19
- i. 18:16-19:4
- j. 21:1-8
- k. 22:22-23:21
- l. 24:16-26:1
- m. 26:16-27:7
- n. 28:8-22
- o. 29:15-30:9
- p. 33:3-10
- q. 33:21-35:5
- r. 35:11-21
- s. 36:6-10
- t. 36:19-37:17
- u. 38:21-39:18
- v. 40:19-41:13
- w. 42:2-5
- x. 42:10-43:3
- y. 43:8-19
- z. 51:5-52:6
- aa. 52:18-53:9
- bb. 53:22-56:1
- cc. 56:22-58:6
- dd. 59:4-61:3

5. In addition to deposition references, I declare additionally as set out below.

6. From time to time I prepared Wind Down Budgets that were submitted to HC representatives for approval. One such version of the Wind Down Budget is attached to the Motion To Compel. Debtors' Exhibit No. 39 is an updated version of the Wind Down Budget ("Updated Budget") that was provided to HC on or about January 18, 2021. The Updated Budget, as with its prior versions, is the Debtors' reasonable estimate of the costs and expenses the Debtors will incur in resolving the Debtors' bankruptcy cases, and through the passage of time, the actual costs and expenses incurred to date. The Updated Budget also contains a "Variance to MTC" to detail on a

month-by-month and cumulative basis the difference in estimated wind down expenses between the Updated Budget and the version attached to the Motion to Compel.

7. The Debtors will continue to update the Wind Down Budget because its estimates change over time due to the actual expenses the Debtors incur, and as certain staffing changes are made. For instance, the Debtors anticipate reducing their current roster of four full-time employees to three employees when certain undertakings, such as issuing W-2's, are completed.

8. The Debtors believe that each line item in the Wind Down Budget represents a reasonable and necessary expense they will or have incurred in winding down their estates and resolving these bankruptcy cases.

9. Debtors' Exhibit No. 40 is a January 18, 2021 reconciliation (the "Reconciliation") I prepared. The Reconciliation details the amount of unused TSA funding (\$158,447.63) on deposit with the Debtors as of September 18, 2020, which is the date the Debtors transferred funds on deposit at M&T Bank to Severn Bank.

10. Thereafter, the Reconciliation lists each expense the Debtors contend HC is obligated to fund or reimburse as of the end of September 2020. Those expenses include:

- a. \$100,000, based on the \$25,000 per month for four months, payable to the Debtors under Section 5.1 of the TSA;
- b. \$47,016.00, based on the United States Trustee fees the Debtors have recently been able to compute that will be due for the 3rd Quarter 2020, payable pursuant to Section 5.3 of the TSA;
- c. \$71,658.00, based on the United States Trustee fees the Debtors incurred for the 2nd Quarter 2020, payable pursuant to Section 5.3 of the TSA;
- d. \$44,333.33, Salaries payable to me, payable pursuant to Section 5.2 of the TSA;
- e. \$58,348.56, the unpaid allows fees of Debtors' counsel Shapiro Sher through September 30, 2020 (see further amounts below), payable pursuant to Section 5.2 of the TSA;

- f. \$67,298.96, the allowed fees of the Littler law firm, payable pursuant to Section 5.2 of the TSA;
- g. \$98,871.96, the billings of Epiq through August 2020, the noticing agent for the estates that HC asked the Debtors to retain, payable pursuant to Section 5.2 of the TSA;
- h. \$1,548.77, ADP tax reconciliation fees, pursuant to Section 5.2 of the TSA, payable pursuant to Section 5.2 of the TSA;
- i. \$3,862.19, ADP tax filing fees for August 2020; pursuant to Section 5.2 of the TSA; \$294.38, ADP payroll processing fees for August 2020, payable pursuant to Section 5.2 of the TSA;
- j. \$30,000, for Stanton for PR Services provided to HC, payable pursuant to Section 5.2 of the TSA;
- k. \$57,651.20, Carl Marks Advisors, the Debtors' financial advisors, payable pursuant to Section 5.2 of the TSA; and
- l. Amounts due to certain other vendors of the Debtors whose services were provided to or for the benefit of HC, payable pursuant to Section 5.2 of the TSA.

11. The Reconciliation shows that in addition to amounts due from HC to the Debtors pursuant to the Wind Down Budget, HC owes the Debtors the sum of not less than \$422,435.41 as of September 30, 2020.

12. As of the date of this Declaration, HC has failed to pay Shapiro Sher or reimburse the Debtors the sum of \$241,383.37 for the allowed fees of Shapiro Sher through November 30, 2020, which amount is in addition to the retainer paid to Shapiro Sher by HC prior to the Petition Date. Additional legal fees have accrued and will continue to accrue, but will be payable after the date of this Declaration.

13. In its Objection, HC contends the Debtors are improperly withholding \$140,000. *See* ECF No. 798 at ¶ 11 and footnote 2. In his deposition, HC's CFO Chris Conover states that the Debtors retained \$222,000 of HC funding net of actual cash use as of the date of his TSA reconciliation. *See* Conover Deposition at 52:19-55:9. Thereafter, Mr. Conover states that the

amount HC contends in its Objection that the Debtors owe it is net of three months of the \$25,000 fee payable under the TSA (Section 5.1). *See* Conover Deposition, at 54:14-55:3. Mr. Conover's admission confirms that HC has not actually paid the \$25,000 per month fee due under Section 5.1 of the TSA, rather HC has chosen to net amounts that it owes the Debtors against any leftover TSA funding (hereinafter referred to as "Leftover TSA Funds").

14. A review of HC's records and emails from Mr. Conover supports a finding that HC's and Mr. Conover's calculations are incorrect. Rather, HC's records and emails appear to verify the Debtors' Reconciliation and determination therein that the amount of Leftover TSA Funds was \$158,447.63. Thus, any sums otherwise due to the Debtors can only be netted against that amount.

15. In the Debtors' reconciliation, I have added an additional \$25,000 for the month of September because banking services were being provided to HC by the Debtors under the TSA during that month. *See Debtors Exhibit No. 45.* As a result, the Debtors contend that \$100,000 is payable under Section 5.1 of the TSA. Therefore, I netted the resulting \$100,000 from Debtors' calculation of the Leftover TSA Funds to arrive at Debtors' final calculation of net amounts due to the Debtors.

16. As hereinafter described, HC's records demonstrate that the Leftover TSA Funds equalled the sum of \$158,447.63 as set forth in Debtors' Reconciliation.

17. Debtors' Exhibit No. 24 is a September 24, 2020 email with attached TSA Funding reconciliations that Mr. Conover provided the Debtors and which he relies upon to support his view that the Leftover TSA Funds are equal to \$222,877.25. *See* September 24, 2020 email, and last page, Attachment 2 to the September 24, 2020 email entitled "HC Salon Holdings, Inc. TSA Funding Updated 08-26-2020.

18. Debtors' Exhibit No. 23 is a September 18, 2020 email from Vania Ninova together with her attached daily DIP-TSA tracking report. On pdf page 28 of 92, you can see that on August 26, 2020 (which would have been visible on M&T banking reports the next day), HC transferred \$65,088.97 to its Chase bank account to repay itself for a series of HC Salon Bank Deposits from the preceding days. Mr. Conover's calculation of the Leftover TSA Funds, prepared as of August 26, 2020, does not appear to take this \$65,088.97 transfer to HC into account, nor does it take into account the other three small transactions occurring the next few days. Those four transactions, when netted against the \$222,877.25 that Mr. Conover asserts was Leftover TSA Funds as of the start of August 26, 2020, tie out to the sum of \$158,447.63, which is the Leftover TSA Funds starting point set forth in my Reconciliation. Ms. Ninova's own reconciliation set forth in her report confirms the \$158,447.63 amount. Mr. Conover's analysis appears to use the wrong date. Thereafter, the unpaid amounts described in paragraph 10 above are netted against this amount to arrive at the determination that HC owes the Debtors not less than \$422,435.41 as of September 30, 2020.

19. Lastly, upon a review of HC's records, I have determined that while Mr. Conover requisitioned \$35,000 to pay Stanton, I can find no evidence that this amount was funded by HC, and I have confirmed that this amount was never paid to Stanton.

PURSUANT TO 28 U.S.C. § 1746, I DECLARE
UNDER PENALTY OF PERJURY THAT THE
FOREGOING STATEMENTS ARE TRUE AND
CORRECT.

/s/Rodger Jacobson

Rodger Jacobson

Dated: February 1, 2021

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2021, a copy of the *foregoing* was served on the parties listed below by electronic mail:

Richard A. Chesley, Esquire
DLA Piper LLP (US)
444 West Lake Street
Chicago, IL 60606-0089
richard.chesley@us.dlapiper.com

Jamila Justine Willis, Esquire
DLA Piper LLP (US)
1221 Avenue of the Americas
New York, New York
jamila.willis@us.dlapiper.com

C. Kevin Kobbe, Esquire
DLA Piper LLP (US)
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209-3600
kevin.kobbe@us.dlapiper.com

Counsel for HC Salon Holdings, Inc.

Jeanette Rice, Assistant United States Trustee
Lynn A. Kohen, Esquire
OFFICE OF THE UNITED STATES TRUSTEE
6305 Ivy Lane
Suite 600
Greenbelt, MD 20770

Keith Costa, Esquire
FAEGRE DRINKER BIDDLE & REATH LLP
1177 Avenue of the Americas, 41st Floor
New York, NY 10036-2714

Counsel to Official Committee of Unsecured Creditors

I HEREBY FURTHER CERTIFY that on the 1st day of February, 2021, I reviewed the Court's CM/ECF system and it reports that an electronic copy of the *foregoing* will be served electronically by the Court's CM/ECF system on the following:

- **Aaron Solomon Applebaum** aaron.applebaum@saul.com, catherine.santangelo@saul.com
- **GWYNNE L BOOTH** GLB@GDLLAW.COM
- **Steven M Berman** sberman@shumaker.com
- **Alan Betten** abetten@sagallaw.com
- **Peter D Blumberg** heather.williams@fedex.com
- **Joshua D. Bradley** jbradley@rosenbergmartin.com, lfeigh@rosenbergmartin.com
- **Jodie E. Buchman** jbuchman@silvermanthompson.com, efiling@silvermanthompson.com
- **Donald F. Campbell** dcampbell@ghclaw.com
- **Katie Lane Chaverri** kchaverri@tlclawfirm.com, dtayman@tlclawfirm.com
- **Maria Ellena Chavez-Ruark** maria.ruark@saul.com
- **Kevin Davis** kdavis@capdale.com
- **Monique Bair DiSabatino** monique.disabatino@saul.com, robyn.warren@saul.com
- **Alan D. Eisler** aeisler@e-hlegal.com, mcghamilton@gmail.com
- **John T. Farnum** jfarnum@milesstockbridge.com, jfarnumecfnotices@gmail.com
- **William Henry Fisher** hank@ccoateslaw.com
- **Jeremy S. Friedberg** jeremy@friedberg.legal, ecf@friedberg.legal
- **Stanford G. Gann** sgannjr@levingann.com
- **Alan M. Grochal** agrochal@tydingslaw.com, mfink@tydingslaw.com; jmurphy@tydingslaw.com
- **William L. Hallam** WHallam@rosenbergmartin.com, kmartin@rosenbergmartin.com
- **Robert Hanley** rhanley@rmmr.com
- **Catherine Harrington** charrington@bregmanlaw.com
- **Jessica Hepburn-Sadler** sadlerjh@ballardspahr.com, andersonn@ballardspahr.com
- **James M. Hoffman** jhoffman@offitkurman.com, mmargulies@offitkurman.com
- **Patricia B. Jefferson** pjefferson@milesstockbridge.com
- **Ira T Kasdan** kdwbankruptcydepartment@kelleydrye.com; MVicinanza@ecf.inforuptcy.com
- **Lawrence A. Katz** lkatz@hirschlerlaw.com, lrodriguez@hirschlerlaw.com
- **Patrick J. Kearney** pkearney@sgrwlaw.com, jnam@sgrwlaw.com
- **Nicole C. Kenworthy** bdept@mrrlaw.net
- **C. Kevin Kobbe** kevin.kobbe@dlapiper.com, docketing-baltimore-0421@ecf.pacerpro.com
- **Lynn A. Kohen** lynn.a.kohen@usdoj.gov
- **Leonidas Koutsouftikis** lkouts@magruderpc.com, mcook@magruderpc.com
- **Joyce A. Kuhns** jkuhns@offitkurman.com
- **Jeffrey Kurtzman** kurtzman@kurtzmansteady.com
- **Robert L. LeHane** KDWBankruptcyDepartment@kelleydrye.com

- **Stephen E. Leach** sleach@hirschlerlaw.com, ndysart@hirschlerlaw.com; kburgers@hirschlerlaw.com; plaura@hf-law.com
- **Richard Edwin Lear** richard.lear@hklaw.com, kimi.odonnell@hklaw.com
- **Steven N. Leitess** sleitess@mdattorney.com, efiling@silvermanthompson.com
- **Michael J. Lichtenstein** mjl@shulmanrogers.com, tlockwood@shulmanrogers.com
- **Marissa K Lilja** mlilja@tydingslaw.com, edondero@tydingslaw.com
- **Keith M. Lusby** klusby@gebsmith.com
- **Kimberly A. Manuelides** kmanuelides@sagallaw.com
- **Michelle McGeogh** mcgeoghm@ballardspahr.com, stammerk@ballardspahr.com; cromartie@ballardspahr.com; bktdocketeast@ballardspahr.com
- **Stephen A. Metz** smetz@offitkurman.com, mmargulies@offitkurman.com
- **Brittany Mitchell Michael** brittany.michael@stinson.com, jess.rehbein@stinson.com, jayme.masek@stinson.com
- **Pierce C Murphy** pmurphy@mdattorney.com, rscaffidi@silvermanthompson.com; e_file@mdattorney.com
- **Michael Stephen Myers** michaelismyerslaw@gmail.com
- **Kevin M. Newman** knewman@barclaydamon.com, kmnbk@barclaydamon.com
- **Tracey Michelle Ohm** tracey.ohm@stinson.com, porsche.barnes@stinson.com
- **Jeffrey M. Orenstein** jorenstein@wolawgroup.com
- **Leo Wesley Ottey** otteyjr@gmail.com
- **Jeffrey Rhodes** jrhodes@blankrome.com, kbryan@blankrome.com
- **L. Jeanette Rice** Jeanette.Rice@usdoj.gov, USTPRegion04.GB.ECF@USDOJ.GOV
- **Bradshaw Rost** brost@tspclaw.com
- **Michael Schlepp** mschlepp@s-d.com
- **Joel I. Sher** jis@shapirosher.com, ejd@shapirosher.com
- **J. Breckenridge Smith** jsmith@foxrothschild.com
- **David Sommer** dsommer@gejlaw.com, ceyler@gejlaw.com; gomara@gejlaw.com
- **Aryeh E. Stein** astein@meridianlawfirm.com, aryhsteinecf@gmail.com; steinar93219@notify.bestcase.com
- **Ashley Elizabeth Strandjord** astrandjord@chasenboscolo.com
- **Matthew S. Sturtz** matt.sturtz@nelsonmullins.com, gary.freedman@nelsonmullins.com
- **Matthew G. Summers** summersm@ballardspahr.com, branchd@ballardspahr.com; heilmanl@ballardspahr.com; mcgeoghm@ballardspahr.com; ambroses@ballardspahr.com; buhrmank@ballardspahr.com; roglennl@ballardspahr.com; zarnighiann@ballardspahr.com; carolod@ballardspahr.com
- **Lisa Bittle Tancredi** ltancredi@gebsmith.com
- **Jonathan Harold Todt** jonathan.todt@faegredrinker.com
- **US Trustee - Greenbelt** USTPRegion04.GB.ECF@USDOJ.GOV
- **Maurice Belmont VerStandig** mac@mbvesq.com, lisa@mbvesq.com
- **Irving Edward Walker** iwalker@coleschotz.com, jdonaghy@coleschotz.com; pratkowiak@coleschotz.com
- **Mitchell Bruce Weitzman** , statum@jackscamp.com; iluaces@jackscamp.com

- **Craig B. Young** craig.young@kutakrock.com,
jeremy.williams@kutakrock.com;lynda.wood@kutakrock.com;david.fox@kutakrock.co
m;pamela.germas@kutakrock.com

/s/ Joel I. Sher

Joel I. Sher, Bar No. 00719

Richard M. Goldberg, Bar No. 07994

SHAPIRO SHER GUINOT & SANDLER

250 W. Pratt Street, Suite 2000

Baltimore, Maryland 21201

Tel: 410-385-4277

Fax: 410-539-7611

Email: jis@shapiroshe.com

rmg@shapiroshe.com

*Counsel for Debtors and Debtors in
Possession*