

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

In re:)	Chapter 11
)	
MONTESQUIEU, INC., <u>et al.</u> , ¹)	Case No. 19-10599 (BLS)
)	
Debtors.)	Joint Administration Requested
)	

**MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS AUTHORIZING
(A) CONTINUED USE OF CASH MANAGEMENT SYSTEM; (B) MAINTENANCE
OF EXISTING BANK ACCOUNTS; (C) CONTINUED USE OF EXISTING BUSINESS
FORMS; AND (D) CONTINUED PERFORMANCE OF INTERCOMPANY
TRANSACTIONS IN THE ORDINARY COURSE OF BUSINESS AND GRANT OF
ADMINISTRATIVE EXPENSE STATUS FOR POSTPETITION INTERCOMPANY
CLAIMS**

Montesquieu, Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned proposed counsel, file this motion (this “Motion”) for the entry of an order (the “Order”), substantially in the form attached hereto as Exhibit A (the “Interim Order”) and Exhibit B (the “Final Order,” and together with the Interim Order, the “Proposed Orders”), pursuant to sections 105, 345, 363, 364(b), 503(b), 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (i) authorizing the Debtors to continue (a) using the Cash Management System and Business Forms (each as defined below), (b) maintaining the Bank Accounts (defined below), and (c) performing Intercompany Transactions (defined below); (ii) waiving certain operating guidelines related to the Bank Accounts (defined below); and (iii)

¹ The Debtors and the last four digits of their respective taxpayer identification numbers include: Montesquieu, Inc. (8069), WG Best Weinkellerei, Inc. dba Montesquieu Winery (California) (0458) and Montesquieu Corp. (California) (4025). The headquarters and service address for the above-captioned Debtors is 8929 Aero Dr, San Diego, California 92123.

granting administrative expense status for postpetition Intercompany Claims (defined below). To enable the Debtors to carry out the relief requested, the Debtors also request that the Court authorize all Banks (defined below) with which the Debtors maintain accounts to continue to maintain, service, and administer such accounts on behalf of the Debtors. In support of this Motion, the Debtors respectfully state as follows:²

JURISDICTION

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtors consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are 105, 345, 363, 364(b), 503(b), 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”). Relief also is warranted under Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2.

² The facts and circumstances supporting this Motion are set forth in the Declaration of Fonda Hopkins in Support of Debtors' Chapter 11 Petitions and First Day Motions (the “First Day Declaration”), filed contemporaneously herewith. The Debtors further rely on the First Day Declaration in support of this Motion.

INTRODUCTION

4. On the date hereof (the "Petition Date"), each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

5. No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed.

6. A description of the Debtors' businesses, the reasons for commencing these chapter 11 cases, and the relief sought from this Court to allow for a smooth transition into chapter 11 are set forth in the First Day Declaration.

BACKGROUND

A. The Cash Management System

7. The Debtors' business requires the collection, payment, and transfer of funds through five bank accounts (the "Bank Accounts"), as described below and on the schedule attached hereto as Exhibit C. All of the Bank are located at branches of Wells Fargo, N.A. ("Wells Fargo"). The Debtors use the Bank Accounts as follows:

- a. The Bank Account ending in 5741 is the Debtors' primary operating account.
- b. The Bank Account ending in 2796 was historically used to pay Debtors' payroll and more recently is used to pay several of Debtors' reoccurring automatic charges.
- c. The Bank Accounts ending in 8499 and 8645 are Debtors' supplementary accounts.
- d. The Bank Account ending in 0237 is the primary account for Montesquieu, Inc.

8. Part of the Debtors' Cash Management System requires Debtors to utilize providers of Payment Processing Systems ("PPS"). Debtors utilize the PPS to process its customers' transactions. For example, when a customer purchases Debtors' Merchandise, an invoice is generated by Debtors' enterprise resource planning (ERP) system, Great Plains. Great Plains then processes the customer's payment through Nodus Technologies, a payment processing company. Nodus Technology then transfers the proceeds to First Data Merchant Services whom Debtors use to deposit funds in the Wells Fargo Bank account ending in 5741.

9. In the ordinary course of business and prior to the Petition Date, the Debtors maintained a centralized cash management system (the "Cash Management System") that utilizes the Bank Accounts. The Debtors designed their Cash Management System efficiently to collect, transfer, and disburse funds generated through the Debtors' operations and accurately to record such collections, transfers, and disbursements as they are made.

10. The Cash Management System is a feature of the Debtors' ordinary, usual, and essential business practices. The Cash Management System provides numerous benefits, including the ability to (a) quickly create status reports on the location and amount of funds, thereby allowing management to track and control corporate funds; (b) ensure cash availability and prompt payment of corporate, employee, and vendor related expenses; and (c) reduce administrative costs by facilitating the efficient movement of funds.

B. The Existing Business Forms and Check Stock

11. In the ordinary course of business, the Debtors use various checks and business forms. To minimize expenses to their estates and avoid unnecessarily confusing their employees, customers, and suppliers, the Debtors believe it is appropriate to continue to use all checks, correspondence, and other business forms (including, without limitation, letterhead,

purchase orders, and invoices) (collectively, the “Business Forms”) as such forms were in existence immediately before the Petition Date, and without reference to the Debtors’ status as debtors in possession, rather than requiring the Debtors to incur the expense and delay of ordering entirely new Business Forms.

C. Intercompany Transactions

12. Prior to the Petition Date, in the ordinary course of their business, the Debtors engaged in intercompany transactions and transfers (the “Intercompany Transactions”) among themselves that may result in intercompany receivables and payables (the “Intercompany Claims”). The Debtors maintain strict records of transfers of cash and can ascertain, trace, and account for all such Intercompany Transactions. The Debtors will continue to maintain such records, including records of all current intercompany accounts receivable and payable.

13. If the Intercompany Transactions were discontinued, the Cash Management System and related administrative controls would be disrupted to the Debtors’ and their estates’ detriment. As described in more detail below, discontinuing the Intercompany Transactions would disrupt the Debtors’ business operations, harming their creditors and other parties in interest. Accordingly, the Debtors seek authority to continue the Intercompany Transactions, and request, pursuant to Bankruptcy Code sections 503(b)(1) and 364(b), that postpetition Intercompany Claims resulting from ordinary course Intercompany Transactions be accorded administrative priority.

RELIEF REQUESTED

14. The Debtors seek entry of the Proposed Orders, pursuant to sections 105, 345, 363, 364(b), 503(b), 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2, (i) authorizing the Debtors to continue (a) using the Cash Management System and Business Forms, (b) maintaining the Bank Accounts and (c)

performing Intercompany Transactions; (ii) waiving certain operating guidelines related to the Bank Accounts; (iii) granting administrative expense status for postpetition Intercompany Claims; and (iv) granting an interim suspension of the deposit and investment requirements of section 345(b) of the Bankruptcy Code.

15. To enable the Debtors to carry out the relief requested, the Debtors also request that the Court authorize the Banks to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course, and to receive, process, honor, and pay any and all checks and drafts drawn on, or electronic transfer requests made on, the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be, in accordance with the orders of the Court.

BASIS FOR RELIEF REQUESTED

A. Continued Use of the Cash Management System Is Essential to the Debtors' Business Operations

16. The Debtors maintain the integrated Cash Management System in the ordinary course of their business operations, which allows them to effectively and efficiently administer their cash and financial affairs.

17. As described herein, any disruption to the Cash Management System would have an immediate adverse impact on the Debtors' businesses and would impair the Debtors' ability to successfully administer the Chapter 11 Cases. It would be time-consuming, difficult, and costly for the Debtors to establish an entirely new system of accounts and a new cash management system. The delays from revising cash management procedures, redirecting receipts, and implementing new payment protocols would create unnecessary pressure on the Debtors and their employees while they work to meet the other administrative obligations imposed by chapter 11. In addition, preserving a "business as usual" atmosphere and avoiding

the unnecessary and costly distractions that would inevitably be associated with any substantial disruption in the Cash Management System will facilitate the Debtors' efforts to reorganize.

18. The Debtors will maintain records of all transfers within the Cash Management System to the same extent they were recorded by the Debtors before the commencement of the Chapter 11 Cases. As a result, the continued use of the Cash Management System will enable the Debtors to record the transactions occurring within the Cash Management System without interruption for the benefit of all parties in interest.

19. Allowing the Debtors to utilize the prepetition Cash Management System is consistent with the applicable provisions of the Bankruptcy Code. Bankruptcy Code section 363(c)(1) authorizes a debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The purpose of Bankruptcy Code section 363(c)(1) is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without undue oversight by creditors or the court. *See, e.g., In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) Bankruptcy Code section 363(c)(1) facilitates a debtor's ability to continue the "routine transactions" necessitated by a debtor's cash management system. *Amdura Nat'l Distrib. Co. v. Amdura Corp., (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996). Accordingly, to minimize the disruption caused by these bankruptcy filings and maximize the value of the Debtors' estates, the Debtors request authority to continue to utilize the Cash Management System during the pendency of the Chapter 11 Cases.

20. Courts in this district have recognized that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd in part and rev'd in*

part, 997 F.2d 1039 (3d Cir. 1993). The Third Circuit emphasizes the “huge administrative burden” and economic inefficiency of requiring affiliated debtors to maintain all accounts separately. *Columbia Gas Sys.*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (maintaining an existing cash management system allows a debtor “to administer more effectively and efficiently its financial operations and assets”).

21. Courts routinely grant chapter 11 debtors authority to continue utilizing existing cash management systems and treat requests for such authority as a relatively “simple matter.” *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In addition, courts in this circuit have recognized that allowing a debtor to maintain its existing cash management system often is appropriate. *See, e.g., In re Genesis Health Ventures, Inc.*, 402 F.3d 416, 424 (3d Cir. 2005); *In re Kindred Healthcare, Inc.*, 2003 WL 22327933, at *1 (Bankr. D. Del. Oct. 9, 2003).

22. The Court may also exercise its equitable powers to grant the relief requested herein. Bankruptcy Code section 105(a) empowers the Court to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Continuing the Cash Management System without interruption is important to the success of the Chapter 11 Cases, and it is within the Court’s equitable power under Bankruptcy Code section 105(a) to approve its continued use.

23. The Debtors have used key components of the Cash Management System as a customary and essential business practice. The widespread use of such systems demonstrates the numerous benefits they provide, including the ability to control and monitor corporate funds, use idle cash productively, ensure cash availability, and reduce administrative expenses by facilitating the movement of funds. In light of the size and complexity of the Debtors’ operations, the value of the Debtors’ estates cannot be maximized if the Cash Management

System is substantially disrupted. In addition, preserving a “business as usual” atmosphere and avoiding the unnecessary distractions that inevitably would be associated with any substantial disruption of the Cash Management System will facilitate the stabilization of the Debtors’ business operations.

24. Parties in interest will not be harmed by the Debtors’ maintenance of the Cash Management System, including the Bank Accounts, because the Debtors have implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of obligations incurred prior to the Petition Date. Specifically, with the assistance of their professionals and consistent with prior practice, the Debtors will continue to maintain detailed records of all transfers of cash and record all transactions on applicable accounts. Therefore, the Debtors should be permitted to continue to manage their cash and transfer monies among the Bank Accounts in accordance with the Cash Management System.

B. Maintenance of Existing Bank Accounts

25. The Office of the United States Trustee (the “U.S. Trustee”) has established several operating guidelines for chapter 11 debtors in possession, including a requirement that the debtor in possession open new bank accounts and close all existing accounts. This requirement was designed to provide a clear line of demarcation between prepetition and postpetition claims and payments and to help protect against the inadvertent payment of prepetition claims. The U.S. Trustee’s guidelines also require opening a separate operating account and a special tax payment account into which all funds (including funds held in trust for employee tax withholdings) that may be collected and/or payable during the pendency of a debtor’s case will be deposited. This requirement is meant to provide cash collateral for, and ensure payment of, certain priority tax claims such as federal and state payroll taxes and sales taxes.

26. To avoid substantial disruption to the normal operation of their business and to preserve a “business as usual” atmosphere, the Debtors request that they be permitted to continue to use the existing Bank Accounts without establishing separate accounts for cash collateral or tax payments. Allowing the Debtors to maintain the Bank Accounts will assist them in accomplishing a smooth transition to operations under chapter 11. Moreover, the Debtors can distinguish between prepetition and postpetition obligations and payments without closing the Bank Accounts and opening new ones. Additionally, all Banks with which the Debtors maintain the Bank Accounts have been or are in the process of being advised not to honor checks, drafts, or other requests for payment issued prior to the Petition Date, except as otherwise expressly permitted by an order of the Court and directed by the Debtors. Therefore, the goals of the U.S. Trustee guidelines can be satisfied, and the Debtors’ creditors can be protected, without closing the Bank Accounts.

27. In addition, the Debtors are current on all of their known priority tax obligations (or are seeking permissions to satisfy them) and have systems in place to make sure that these claims are satisfied on a timely basis. Altering the Bank Account structure would interrupt these systems, thereby significantly disrupting the Debtors’ business operations and jeopardizing the Debtors’ prompt and timely payment of employee-related taxes and other priority tax obligations. The Debtors’ systems provide the protections required by the U.S. Trustee guidelines – ensuring payment of taxes-without requiring the creation of new accounts and payment procedures.

28. The Debtors respectfully request that the Court authorize the Banks to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course of business. The Banks should be authorized to receive, process, honor, and pay any and all checks, automated clearing house

payments (“ACH Payments”) and other instructions, and drafts payable through, drawn, or directed on such Bank Accounts after the Petition Date by holders, makers, or other parties entitled to issue instructions with respect thereto, whether such checks, drafts, wires, or ACH Payments are dated prior to or subsequent to the Petition Date consistent with any order of the Court and governing law; provided, however, that any check, draft, or other notification that the Debtors advised the Banks to have been drawn, issued, or otherwise presented prior to the Petition Date may be honored by the Banks only to the extent authorized by order of the Court.

29. The Debtors also request that, to the extent a Bank honors a prepetition check or other item drawn on any account that is the subject of this Motion either (a) at the direction of the Debtors, (b) in a good-faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as the result of an innocent mistake despite the above-described protective measures, such Bank will not be deemed to be liable to the Debtors, their estates or any other party on account of such prepetition check or other item honored postpetition. Both as part of this Motion and in other motions that have been concurrently filed, the Debtors are requesting authority, but not direction, to pay certain prepetition obligations. With respect to some of these obligations, the Debtors issued checks prior to the Petition Date that have yet to clear the banking system. In other instances, the Debtors will create the relevant check once the Court enters an order permitting the Debtors to do so. The Debtors intend to inform the Banks which such checks should be so honored. Therefore, the Debtors request that the Banks be authorized to rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtor prior to the Petition Date should be honored. The Debtors respectfully submit that such relief is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with a court order or otherwise.

30. In the ordinary course of business, the Banks and the providers of the Payment Processing Systems (the “PPS Providers”) charge, and the Debtors pay, honor, or allow the deduction from the appropriate account, certain service charges and other fees, costs, and expenses, including the Payment Processing Fees (collectively, the “Payment Provider Fees”). The Debtors respectfully request that the Court authorize the Banks and PPS Providers to (a) continue to charge the Debtors the Payment Provider Fees and (b) charge-back returned items to the Bank Accounts in the ordinary course of business, whether such items are dated prior to, on, or subsequent to the Petition Date.

31. Although the Debtors are requesting the suspension of the requirement that they close all Bank Accounts and open new debtor-in-possession bank accounts, the Debtors may determine, in their business judgment, that opening new bank accounts and/or closing existing Bank Accounts is in the best interests of the estates. Nothing contained herein should prevent the Debtors from opening any additional bank accounts, or closing any existing Bank Accounts, as they may deem necessary and appropriate in their sole discretion; provided that any new domestic account is established at a bank that is insured with the FDIC or the FSLIC and organized under the laws of the United States or any State therein, or, in the case of accounts that may carry a balance exceeding the insurance limitations set thereby, on the U.S. Trustee’s List of Authorized Bank Depositories for the District of Delaware.

C. Authorization to Use Existing Check Stock and Related Business Forms

32. Local Rule 2015-2(a) provides:

Where the debtor uses pre-printed checks, upon motion of the debtor, the Court may, without notice and hearing, permit the debtor to use its existing checks without the designation “Debtor-in-Possession” and use its existing bank accounts. However, once the debtor’s existing checks have been used, the debtor shall, when reordering checks, require the designation “Debtor-in-Possession” and the corresponding bankruptcy number on all such checks.

Del. Bankr. L.R. 2015-2(a).

33. The Debtors use numerous Business Forms in the ordinary course of their business. In order to minimize expenses to their estates, the Debtors request authority to continue using their existing prepetition Business Forms without reference to their status as debtors in possession or any other alteration. It is essential that the Debtors be authorized to continue using their existing Business Forms because they routinely deal with a large number of vendors and customers, and changing business forms would impose a substantial burden without corresponding benefit.

D. Cause Exists to Permit Continued Use of Intercompany Transactions and Postpetition Intercompany Claims Should Be Given Administrative Priority Status

34. As described above, the Debtors enter into certain Intercompany Transactions in the ordinary course of business. The Intercompany Transactions reduce the administrative costs incurred by the Debtors. If the Intercompany Transactions were to be discontinued, the Cash Management System and related administrative controls would be disrupted.

35. The continuation of the Intercompany Transactions will not prejudice the Debtors' estates or their creditors. Furthermore, the Debtors maintain strict records of transfers of cash and can ascertain, trace and account for all such Intercompany Transactions. Accordingly, the Debtors believe that continuation of the Intercompany Transactions is in the best interests of the Debtors' estates and creditors.

36. Because the Debtors engage in Intercompany Transactions on a regular basis and such transactions are common among similar enterprises, the Debtors believe the Intercompany Transactions are ordinary course transactions within the meaning of Bankruptcy Code section 363(c)(1) and, therefore, do not require the Court's approval. Nonetheless, out of an abundance of

caution, the Debtors are seeking express authority to engage in such transactions on a postpetition basis in a manner consistent with prepetition practice. The continued performance of the ordinary course Intercompany Transactions is necessary to ensure the Debtors' ability to operate their business after the Petition Date.

37. To ensure that each individual Debtor will not fund, at the expense of its own creditors, the operations of another Debtor, the Debtors respectfully request that, pursuant to Bankruptcy Code sections 503(b)(1) and 364(b), all Intercompany Claims arising after the Petition Date be awarded administrative expense priority status. If all Intercompany Claims against the Debtors are accorded administrative expense priority status, each entity will continue to bear the ultimate payment responsibility for such ordinary course transactions and its relative share of the cost of services provided.

38. Accordingly, the Debtors seek authority to continue the Intercompany Transactions and request, pursuant to Bankruptcy Code sections 503(b)(1) and 364(b), that post-petition Intercompany Claims be accorded administrative priority. In addition, the Debtors seek authority to continue the Intercompany Transactions in the ordinary course of business on a post-petition basis, provided, however, that the Debtors are not seeking to make cash payments on account of prepetition Intercompany Claims absent further Court order.

E. Authorization for Banks to Continue to Service and Administer the Bank Accounts

39. The Debtors respectfully request that the Court (a) authorize all applicable Banks to receive, process, honor, and pay all checks and transfers issued by the Debtors in accordance with this Motion, without regard to whether any checks or transfers were issued before or after the Petition Date; (b) provide that all Banks may rely on the representations of

the Debtors with respect to whether any check or transfer issued or made by the Debtors before the Petition Date should be honored pursuant to this Motion (such banks and other financial institutions having no liability to any party for relying on such representations by the Debtors provided for herein); and (c) authorize the Debtors to issue replacement checks or transfers to the extent any checks or transfers that are issued and authorized to be paid in accordance with this Motion are dishonored or rejected by the Banks.

SATISFACTION OF BANKRUPTCY RULE 6003(b)

40. Bankruptcy Rule 6003(b) empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003(b). Any disruption to the Cash Management System would seriously harm the Debtors and their estates. Indeed, without the Cash Management System, payments may not be made in a timely fashion, and the Debtors would be unable to track incoming receipts. This would likely result in the refusal of essential services, thereby causing a diminution in the value of the Debtors’ estates to the detriment of all parties in interest and, thus, result in immediate and irreparable harm. Accordingly, the Debtors meet the “immediate and irreparable harm” standard of Bankruptcy Rule 6003(b). Accordingly, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

REQUEST FOR WAIVER OF STAY

41. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth throughout this Motion, any disruption in, among other things, the Debtors’ ability to continue to use the Cash Management System would be detrimental to the Debtors, their creditors, and their estates,

and would impair their ability to optimize their business performance at this critical time as they begin the chapter 11 process.

42. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Order.

RESERVATION OF RIGHTS

43. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors; a waiver of the Debtors' right to dispute any claim; or an approval, assumption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

NOTICE

44. The Debtors have provided notice of the Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities holding the largest unsecured claims; (c) the Debtors' prepetition lenders; (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; (f) the Delaware Secretary of State; (g) the Delaware Secretary of Treasury; (h) the California Secretary of State; and (i) the California State Treasurer's Office. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

NO PRIOR REQUEST

45. No prior request for the relief sought in this Motion has been made to this or any other court.

Wherefore, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as

Exhibit A, granting the relief requested herein and granting such other and further relief as is just and proper.

Dated: March 20, 2019

FOX ROTHSCHILD LLP

/s/ Thomas M. Horan

Mette H. Kurth (DE Bar No. 6491)
Thomas M. Horan (DE Bar No. 4641)
919 N. Market St., Suite 300
Wilmington, DE 19899-2323
Telephone: (302) 654-7444
E-mail: mkurth@foxrothschild.com
E-mail: thoran@foxrothschild.com

-and-

Amanda Hunt
One Summerlin
1980 Festival Plaza Drive, Suite 700
Las Vegas NV 89135
Telephone: (702) 699-5162
E-mail: ahunt@foxrothschild.com

*Proposed Counsel to the Debtors and
Debtors-in-Possession*

EXHIBIT A

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

In re:)	Chapter 11
)	
MONTESQUIEU, INC. <u>et al.</u> , ¹)	Case No. 19-10599 (BLS)
)	
Debtors.)	Jointly Administered
)	
)	Re: D.I. _____
)	

INTERIM ORDER AUTHORIZING (A) CONTINUED USE OF CASH MANAGEMENT SYSTEM; (B) MAINTENANCE OF EXISTING BANK ACCOUNTS; (C) CONTINUED USE OF EXISTING BUSINESS FORMS; AND (D) CONTINUED PERFORMANCE OF INTERCOMPANY TRANSACTIONS IN THE ORDINARY COURSE OF BUSINESS AND GRANT OF ADMINISTRATIVE EXPENSE STATUS FOR POSTPETITION INTERCOMPANY CLAIMS

Upon the motion (the “Motion”)² filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”) seeking entry of an order (i) authorizing the Debtors to continue (a) using the Cash Management System and Business Forms, (b) maintaining the Bank Accounts and Corporate Credit Cards, and (c) performing Intercompany Transactions; (ii) waiving certain operating guidelines related to the Bank Accounts; and (iii) granting administrative expense status for postpetition Intercompany Claims; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of the Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and

¹ The Debtors and the last four digits of their respective taxpayer identification numbers include: Montesquieu, Inc. (8069), WG Best Weinkellerei, Inc. dba Montesquieu Winery (California) (0458) and Montesquieu Corp. (California) (4025). The headquarters and service address for the above-captioned Debtors is 8929 Aero Dr, San Diego, California 92123.

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate under the circumstances; and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and upon consideration of the First Day Declaration; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby ordered that:

1. The Motion is granted as set forth herein on an interim basis.
2. A final hearing on the relief sought in the Motion shall be conducted on _____, 2019 at _____ (ET) (the "Final Hearing"). Any party-in-interest objecting to the relief sought at the Final Hearing or the Final Order shall file by no later than _____, 2019 at _____ (ET) and serve a written objection, which objection shall be served upon (i) proposed counsel for the Debtors, Fox Rothschild LLP; 919 N. Market St., Suite 300, Wilmington, DE 19899-2323 (Attn: Thomas M. Horan) (ii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Linda Richenderfer)(linda.richenderfer@usdoj.gov); and (iii) counsel to any statutory committee appointed in these chapter 11 cases.
3. Except as provided herein, the Debtors are authorized to maintain and use the Cash Management System as described in the Motion.
4. The Debtors are authorized to (a) continue to use, with the same account numbers, the Bank Accounts, and Payment Processing Systems in existence on the Petition Date, including, without limitation, those accounts identified on Exhibit C to the Motion; (b) treat the

Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; and (c) use, in their present form, all Business Forms, without reference to their status as debtors in possession, except as otherwise provided in this Interim Order.

5. Wells Fargo is hereby authorized to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course, and to receive, process, honor, and pay any and all checks and drafts drawn on, or electronic transfer requests made on, the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; provided, however, that any check drawn or issued by the Debtors before the Petition Date may only be honored by a Bank if specifically authorized by the terms of a separate order of this Court authorizing such payment.

6. Notwithstanding any other provision of this Interim Order, if Wells Fargo honors a prepetition check or other item drawn on any account that is the subject of this Interim Order (a) at the direction of the Debtors, (b) in good faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as the result of an innocent mistake made despite implementation of reasonable item handling procedures, Wells Fargo shall not be deemed to be liable to the Debtors, their estates, or any other party on account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Interim Order.

7. Wells Fargo is authorized to debit the Debtors' accounts in the ordinary course of business without need for further order of this Court for: (a) all checks, items, and other payment orders drawn on the Debtors' accounts which are cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Bank's receipt of notice of filing of the Chapter 11 Cases; (b) all checks, automated clearing house entries, and other items deposited or

credited to one of Debtors' accounts with such Bank prior to filing of the Chapter 11 Cases which have been dishonored, reversed, or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to filing of the Chapter 11 Cases; and (c) all undisputed Payment Provider Fees, including, for the avoidance of doubt, any prepetition amounts outstanding as of the date hereof, if any, owed to Wells Fargo or any PPS Provider as service charges for the maintenance of the Cash Management System.

8. Wells Fargo may rely on the representations of the Debtors with respect to whether any check, item, or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this or any other order of this Court, and Wells Fargo shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

9. The Debtors are authorized to open any new bank accounts or close any existing Bank Accounts as they may deem necessary and appropriate in their sole discretion; *provided* that the Debtors give notice within fifteen (15) days thereafter to the U.S. Trustee and any statutory committees appointed in the Chapter 11 Cases; *provided, further*, that the Debtors shall only open any such new bank accounts at banks that have executed a Uniform Depository Agreement with the Office of the U.S. Trustee for the District of Delaware, or at banks that are willing to immediately execute such an agreement.

10. Wells Fargo and PPS Providers are authorized to continue to charge, and the Debtors are authorized to pay, honor, or allow the deduction from the appropriate account, the Payment Provider Fees, owed to Wells Fargo and PPS Providers and charged-back returned items in the ordinary course of business, whether such items are dated prior to, on, or subsequent

to the Petition Date, including, for the avoidance of doubt, any prepetition amounts outstanding as of the date hereof, if any, owed to Wells Fargo or any PPS Provider as service charges for the maintenance of the Cash Management System.

11. The Debtors are authorized to use their existing Business Forms and checks; *provided*, that once the Debtors' existing checks have been used, the Debtors shall, when reordering such checks, require the designation "Debtor in Possession" and the corresponding lead bankruptcy case number on the check; provided, further, that, with respect to checks that the Debtors or their agents print themselves, the Debtors shall use commercially reasonable efforts to begin printing the "Debtor in Possession" legend and the lead bankruptcy case number on such checks within ten (10) days of the date of entry of this Interim Order.

12. The Debtors are authorized to continue performing Intercompany Transactions in the ordinary course of business and to honor and pay obligations in connection with the Intercompany Transactions; provided however there shall be no payments on account of prepetition Intercompany Claims absent further Court order. Further, the Debtors shall not be authorized by this Interim Order to undertake any Intercompany Transactions that are not on the same terms as, or materially consistent with, the Debtors' operation of their business in the ordinary course during the prepetition period; provided further that the Debtors may not make any intercompany transfers to non-debtor affiliates or subsidiaries absent further order of this Court.

13. The Debtors shall maintain accurate and detailed records of all transfers, including Intercompany Transfers, so that all transactions may be ascertained, traced, recorded properly, and distinguished between prepetition and post-petition transactions.

14. All intercompany obligations owed by a Debtor to another Debtor shall be accorded administrative priority expense of the kind specified in section 503(b)(1) of the Bankruptcy Code to the extent such obligations arise after the Petition Date.

15. Notwithstanding use of a consolidated Cash Management System, the Debtor shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

16. Within five (5) business days from the date of the entry of this Interim Order, the Debtors shall (i) serve a copy of this Interim Order on Wells Fargo and (ii) request that Wells Fargo internally code each of the Bank Accounts as “debtor in possession” accounts.

17. Nothing in this Interim Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtors or their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates, or (c) shall be construed as a promise to pay a claim.

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.

19. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

20. The notice of the relief requested in the Motion satisfies Bankruptcy Rule 6004(a) and, pursuant to Bankruptcy Rule 6004(h), the terms and provisions of this Interim Order shall be immediately effective and enforceable upon its entry.

21. This Court shall retain jurisdiction to implement, interpret, and enforce this Interim Order.

Dated: _____, 2019

The Honorable Brendan Linehan Shannon
United States Bankruptcy Judge

EXHIBIT B

it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate under the circumstances; and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and upon consideration of the First Day Declaration; and upon the record in the Chapter 11 Cases and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having entered that certain Final Order Authorizing (A) Continued Use of Cash Management System; (B) Maintenance of Existing Bank Accounts; (C) Continued Use of Existing Business Forms; and (D) Continued Performance of Intercompany Transactions in the Ordinary Course of Business and Grant of Administrative Expense Status for Postpetition Intercompany Claims (the "Final Order") [D.I. _____]; and after due deliberation and sufficient cause appearing therefor, it is hereby ordered that:

1. The Motion is granted as set forth herein on a final basis.
2. Except as provided herein, the Debtors are authorized to maintain and use the Cash Management System as described in the Motion.
3. The Debtors are authorized to (a) continue to use, with the same account numbers, the Bank Accounts, and Payment Processing Systems in existence on the Petition Date, including, without limitation, those accounts identified on Exhibit C to the Motion; (b) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; and (c) use, in their present form, all Business Forms, without reference to their status as debtors in possession, except as otherwise provided in this Final Order.

4. Wells Fargo is hereby authorized to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course, and to receive, process, honor, and pay any and all checks and drafts drawn on, or electronic transfer requests made on, the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; provided, however, that any check drawn or issued by the Debtors before the Petition Date may only be honored by a Bank if specifically authorized by the terms of a separate order of this Court authorizing such payment.

5. Notwithstanding any other provision of this Final Order, if Wells Fargo honors a prepetition check or other item drawn on any account that is the subject of this Final Order (a) at the direction of the Debtors, (b) in good faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as the result of an innocent mistake made despite implementation of reasonable item handling procedures, Wells Fargo shall not be deemed to be liable to the Debtors, their estates, or any other party on account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Final Order.

6. Wells Fargo is authorized to debit the Debtors' accounts in the ordinary course of business without need for further order of this Court for: (a) all checks, items, and other payment orders drawn on the Debtors' accounts which are cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Bank's receipt of notice of filing of the Chapter 11 Cases; (b) all checks, automated clearing house entries, and other items deposited or credited to one of Debtors' accounts with such Bank prior to filing of the Chapter 11 Cases which have been dishonored, reversed, or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to filing of the Chapter 11 Cases; and (c) all undisputed Payment Provider Fees, including,

for the avoidance of doubt, any prepetition amounts outstanding as of the date hereof, if any, owed to Wells Fargo or any PPS Provider as service charges for the maintenance of the Cash Management System.

7. Wells Fargo may rely on the representations of the Debtors with respect to whether any check, item, or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this or any other order of this Court, and Wells Fargo shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

8. The Debtors are authorized to open any new bank accounts or close any existing Bank Accounts as they may deem necessary and appropriate in their sole discretion; provided that the Debtors give notice within fifteen (15) days thereafter to the U.S. Trustee and any statutory committees appointed in the Chapter 11 Cases; provided, further, that the Debtors shall only open any such new bank accounts at banks that have executed a Uniform Depository Agreement with the Office of the U.S. Trustee for the District of Delaware, or at banks that are willing to immediately execute such an agreement.

9. Wells Fargo and PPS Providers are authorized to continue to charge, and the Debtors are authorized to pay, honor, or allow the deduction from the appropriate account, the Payment Provider Fees, owed to Wells Fargo and PPS Providers and charged-back returned items in the ordinary course of business, whether such items are dated prior to, on, or subsequent to the Petition Date, including, for the avoidance of doubt, any prepetition amounts outstanding as of the date hereof, if any, owed to Wells Fargo or any PPS Provider as service charges for the maintenance of the Cash Management System.

10. The Debtors are authorized to use their existing Business Forms and checks; provided, that once the Debtors' existing checks have been used, the Debtors shall, when reordering such checks, require the designation "Debtor in Possession" and the corresponding lead bankruptcy case number on the check; provided, further, that, with respect to checks that the Debtors or their agents print themselves, the Debtors shall use commercially reasonable efforts to begin printing the "Debtor in Possession" legend and the lead bankruptcy case number on such checks within ten (10) days of the date of entry of this Final Order.

11. The Debtors are authorized to continue performing Intercompany Transactions in the ordinary course of business and to honor and pay obligations in connection with the Intercompany Transactions; provided however there shall be no payments on account of prepetition Intercompany Claims absent further Court order. Further, the Debtors shall not be authorized by this Final Order to undertake any Intercompany Transactions that are not on the same terms as, or materially consistent with, the Debtors' operation of their business in the ordinary course during the prepetition period; provided further that the Debtors may not make any intercompany transfers to non-debtor affiliates or subsidiaries absent further order of this Court.

12. The Debtors shall maintain accurate and detailed records of all transfers, including Intercompany Transfers, so that all transactions may be ascertained, traced, recorded properly, and distinguished between prepetition and post-petition transactions.

13. All intercompany obligations owed by a Debtor to another Debtor shall be accorded administrative priority expense of the kind specified in section 503(b)(1) of the Bankruptcy Code to the extent such obligations arise after the Petition Date.

14. Notwithstanding use of a consolidated Cash Management System, the Debtor shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

15. Within five (5) business days from the date of the entry of this Final Order, the Debtors shall (i) serve a copy of this Final Order on Wells Fargo and (ii) request that Wells Fargo internally code each of the Bank Accounts as “debtor in possession” accounts.

16. Nothing in this Final Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtors or their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates, or (c) shall be construed as a promise to pay a claim.

17. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

18. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

19. The notice of the relief requested in the Motion satisfies Bankruptcy Rule 6004(a) and, pursuant to Bankruptcy Rule 6004(h), the terms and provisions of this Final Order shall be immediately effective and enforceable upon its entry.

20. This Court shall retain jurisdiction to implement, interpret, and enforce this Final Order.

Dated: _____, 2019

The Honorable Brendan Linehan Shannon
United States Bankruptcy Judge

EXHIBIT C

Account Description	Bank	Last Four Digits of Account Number
WG Best Checking Account	Wells Fargo, N. A	5741
Montesquieu Corp. Checking Account	Wells Fargo, N. A	2796
WG Best Supplementary Checking Account	Wells Fargo, N. A	8499
Montesquieu Inc. Checking Account	Wells Fargo, N. A	0237
WG Best Supplementary Business Checking Account	Wells Fargo, N. A	8645