

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

In re:	)	Chapter 11
	)	
MONTESQUIEU, INC. <u>et al.</u> , <sup>1</sup>	)	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”)<sup>2</sup> 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

<sup>1</sup> 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.

<sup>2</sup> 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 April 23, 2019 at 11:00 a.m. (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 April 16, 2019 at 4:00 p.m. (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: March 22, 2019

  
The Honorable Brendan Linnhan Shannon  
United States Bankruptcy Judge