IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
PQ New York, Inc., *et al.*,[1]	)	Case No. 20-[●] ([●])
	)	(Joint Administration Requested)
Debtors.	)	

DECLARATION OF STEVEN J. FLEMING IN SUPPORT
OF DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS

Under 28 U.S.C. § 1764, I, Steven J. Fleming, declare as follows under penalty of perjury:

1. I am the proposed Chief Restructuring Officer ("**CRO**") of PQ New York, Inc. ("**PQ NY**"), a Delaware corporation, and its affiliates (collectively the "**Debtors**") in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"). I am authorized to submit this declaration (the "**First Day Declaration**") on behalf of the Debtors.

2. I am a Principal of PricewaterhouseCoopers LLP ("**PwC**"), an experienced, leading, full-service financial services, consulting, and accounting firm with over seventy-five (75) offices and more than 50,000 employees in the United States. I am the leader of the firm's U.S. Business Recovery Services Practice, a position that I have held since 2016 after being a senior member in the group for seven years. Prior to these positions, I held a senior position in PwC's Transaction Services practice in Dubai, UAE, where I was responsible for expanding the firm's Corporate Finance and Valuation practices across the Middle East and North Africa. I have been

[1] The last four digits of PQ New York, Inc.'s federal tax identification number are 1022. The mailing address for the debtors is 50 Broad Street, New York, New York 10004. Due to the large number of debtors in these chapter 11 cases, for which the debtors have requested joint administration, a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information and the debtors' press release may be obtained on the website of the debtors' proposed claims and noticing agent at *www.donlinrecano.com/pqny*.

employed by PwC since August 1998, and have held other senior positions, both domestically and abroad.

3. I received a Bachelor of Science in Finance from Lehigh University in 1998 and a Master of Business Administration from Columbia Business School in 2004. I am a Certified Insolvency and Restructuring Advisor (CIRA) and hold a Certification in Distressed Business Valuation, both of which are designations issued by the Association of Insolvency and Restructuring Advisors, where I serve as a board member on behalf of PwC. I have previously served as the CRO in *In re Munire Furniture Co., Inc.*, Case No. 14-29229 (CMG) (Bankr. D.N.J. Oct. 14, 2014). I have served as an advisor to debtors, committees and other significant stakeholders in numerous bankruptcy cases, including the following cases that were pending before the United States Bankruptcy Court for the District of Delaware (the "**Court**"): *In re Valeritas Holdings, Inc., et al.*, Case No. 20-10290 (LSS) (Bankr. D. Del.); *In re HDR Holding, Inc., et al.*, Case No. 19-11396 (MFW) (Bankr. D. Del.); *In re TK Holdings Inc.*, Case No. 17-11375 (BLS) (Bankr. D. Del.); *In re EWGS Intermediary, LLC*, Case No. 13-12876 (MFW) (Bankr. D. Del.); *In re Allied Systems Holdings, Inc.*, Case No. 12-11564 (CSS) (Bankr. D. Del.); and *In re Autobacs Strauss Inc.*, Case No. 09-10358 (CSS) (Bankr. D. Del.).

4. I am generally familiar with the Debtors' business, day-to-day operations, financial matters, results of operations, cash flows, and underlying books and records. All facts set forth in this First Day Declaration are based upon my personal knowledge of the Debtors' business, operations, and related financial information gathered from my review of their books and records, relevant documents, and information supplied to me by members of the Debtors' management team and advisors. If called to testify, I could and would testify competently to the facts set forth in this First Day Declaration.

5. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition commencing the Chapter 11 Cases. As detailed herein, prior to the Petition Date, the Debtors were forced to shutter all locations and terminate substantially all of their employees due primarily to the circumstances surrounding the COVID-19 pandemic. However, these Chapter 11 Cases represent a new, brighter day for the Debtors’ constituents. Through these Chapter 11 Cases the Debtors will seek to consummate a going-concern sale transaction (the “**Sale**”) of substantially all of the Debtors’ assets to LPQ USA, LLC (“**LPQ US**” or the “**Purchaser**”), an affiliate of Aurify Brands, LLC (“**Aurify Brands**”). Aurify Brands is an innovative New York City-based hospitality company that creates, grows and operates networks of category-leading fast casual restaurants including The Little Beet, Melt Shop, Fields Good Chicken, and The Little Beet Table. The Sale will provide for the reopening of no less than thirty-five (35) restaurant locations, create approximately 1,000 jobs and provide for the re-employment of a number of the Debtors’ former employees. The Sale enables the Debtors to avoid what otherwise would have been a complete liquidation under chapter 7 of the Bankruptcy Code, thereby maintaining a go-forward business partner and tenant for many of the Debtors’ vendors and landlords, respectively. Moreover, upon Closing, the Purchaser will continue to administer the Debtors’ customer loyalty programs and honor prepetition gift cards as part of its commitment to the Debtors’ valued customers.

6. I submit this First Day Declaration on behalf of the Debtors in support of the Debtors’ (a) voluntary petitions for relief that were filed under chapter 11 of the Bankruptcy Code and (b) “first day” motions, which are being filed concurrently herewith (collectively, the “**First Day Motions**”). The Debtors seek the relief set forth in the First Day Motions to minimize the adverse effects caused by the commencement of these Chapter 11 Cases on their business so as to preserve the business pending the Sale and effectuate a seamless transition of ownership in these

unprecedented and uncertain times. I have reviewed the Debtors' petitions and the First Day Motions, or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is essential to ensure the Sale of the Debtors' business and to successfully maximize the value of the Debtors' estates.

GENERAL BACKGROUND

A. The Company

7. PQ NY is a wholly-owned subsidiary of PQ Licensing SA ("**PQ SA**"), a Belgian company, and operated 98 restaurants in the United States under the trade name Le Pain Quotidien. PQ SA and its subsidiaries, including the Debtors and PQ SA's non-debtor subsidiaries, are collectively referred to herein as the "Company". The Debtors are headquartered in New York and, prior the COVID-19 outbreak, operated in the following geographic regions: the New York City metro area, the Mid-Atlantic region, California, Illinois and Florida. Until recently, the Debtors employed approximately 2,500 people.

8. On May 22, 2020, the Brussels Enterprise Court (the "**Brussels Court**") officially opened a judicial reorganization procedure regarding PQ SA, which suspended the ability of creditors to enforce claims against PQ SA through an initial period expiring on July 8, 2020. PQ SA anticipates sending a proposed reorganization plan to its creditors that will be considered by the Brussels Court at a hearing scheduled for June 24, 2020.

B. Debtors' History

9. The first Le Pain Quotidien was opened by Alain Coumont in Brussels, Belgium in October 1990. Le Pain Quotidien means the daily bread. As a young chef, Coumont became dissatisfied with the quality of bread available in Brussels, so he began making his own using a four-ingredient blend of organic stone-ground flour, sea salt, water, and a wild yeast leaven. The centerpiece of this first location, in what has become a tradition at Le Pain Quotidien, was a large

communal table, which was built from wood salvaged from the floors of retired Belgian trains. Gradually over time, additional items were added to the menu to complement Le Pain Quotidien's signature artisan bread, including pastries, salads, beverages, tartines (traditional, open-faced sandwiches) and specialty retail products.

10. Within a few months of opening this initial location, ten other Le Pain Quotidien locations had opened. In 1997, the first Le Pain Quotidien location opened in the U.S. with a flagship bakery on Madison Avenue in New York City. At its peak, the Company operated over 290 Le Pain Quotidien locations throughout the world, with the Debtors operating 98 Le Pain Quotidien locations in the U.S.

C. Events Leading to Chapter 11 Cases

i. Operational Difficulties Facing Debtors

11. In 2018, the Debtors generated sales of $175 million and EBITDA of $4.4 million. The Debtors, however, experienced eroding same stores sales in the following year, resulting in $153 million in sales and negative $16.8 million in EBITDA for 2019 in addition to suffering from the negative impact of expensive leases and underperforming store locations. Absent a "right-sizing" of the Debtors' business and implementation of certain operational and restructuring initiatives, the Debtors' business forecasts indicated a continuing negative EBITDA trend through 2023. These forecasts, however, were further reduced by the unforeseen and unquantifiable economic effects that the recent COVID-19 outbreak caused to the restaurant industry.

12. A number of factors contributed to the Debtors' declining numbers prior to the pandemic. First, the Debtors experienced significant pressure from increased competition in the Debtors' primary markets. Prior to the Petition Date, approximately ninety-six (96) percent of the Debtors' sales were concentrated in three (3) regions, with fifty-six (56) percent of sales allocated

to the New York City metro area. In 2017 alone, there were 593 additional restaurant openings in the New York City metro area. This growth was met with a movement away from the Debtors' casual "dine-in" concept, with delivery and to-go sales serving as the primary driver of growth in the restaurant industry. The traditional dining concept historically embraced by the Debtors was under pressure, as consumers displayed a preference for new dining formats that offer more convenience. Indeed, consumers had gravitated more towards the "grab n' go" concept, which provided for quicker transactions by using a simplified menu and a greater level of self-service that offered guests greater control over their dining experience.

13. The Debtors' business has also suffered historically from a lack of investment at the store level, leaving locations in need of remodeling to keep up with industry trends or in need of certain amenities. This lack of investment also contributed to a lagging digital platform. The restaurant industry has expanded quickly into various digital channels, which include, among other things, interactive websites and mobile phone apps, which can be used by the consumer to promote expediency and convenience in today's busy world.

14. The Debtors also suffered from significant turnover at the corporate level, with the majority of the Debtors' U.S. management team coming on board within the last two (2) years. Additionally, the Debtors experienced internal challenges due to changes implemented around the supply chain and with respect to store staffing strategies.

ii. Prepetition Operational Initiatives

15. During the second half of 2019, the Debtors began pursuing a series of initiatives intended to address the operational issues facing the Debtors' business.

16. The Debtors attempted to address consumer demand for greater convenience by shifting more towards a "Grab N' Go" restaurant concept. The "Grab N' Go" concept focuses on

a limited service model that provides prepackaged items for faster and easier transactions. In early 2019, the Debtors launched a comprehensive "Grab N' Go" offering through a concept pilot program launched in the New York City metro market, with the goal of doubling "Grab N' Go" sales over an 18-month period. The Debtors' efforts included a focus on a wider and better suited product range, updated presentation and labelling and a revamped look and feel to the Debtors' "Grab N' Go" cases. The Debtors ultimately planned to expand the "Grab N' Go" store model to other key markets. These efforts also focused on a more simplified offerings menu intended to lower operating expenses, while retaining the Debtors' overall food philosophy.

17. The Debtors also shifted their investment strategy towards a remodeling of their existing locations, rather than focusing on new store openings. Indeed, the Debtors decided not to open any new store locations in 2019 unless required by the terms of a lease. The Debtors' focus, instead, shifted towards a large-scale remodeling program. In addition to expanding the "Grab N' Go" component of their business, the Debtors' remodeling efforts focused on making Le Pain Quotidien a "home away from home", giving their restaurants a brighter and refreshed image. This shift in strategy also led to greater investment in key amenities and overall store maintenance.

18. The Company's operational initiatives also included a greater investment and focus on their digital footprint. These efforts included the development and implementation of (i) an in-store innovation lab offering, among other conveniences, self-ordering, customization, and checkout; (ii) a newly designed U.S. website; and (iii) a best-in-class mobile phone app. Whereas the Company's digital footprint had previously been almost non-existent, these advancements provided the Debtors' consumers with certain conveniences for which they have been accustomed to in the market place (e.g., "order ahead" and "pay in store" features). The enhanced digital

platform also enabled the Debtors to streamline their marketing efforts by growing their loyalty database and targeting their consumer based on behavioral and order data.

19. The Company also heightened the focus on its cost structure by developing a framework for better tracking and monitoring its general and administrative expenses. As part of this focus, the Company developed systems for mapping and budgeting its expenses in an effort to control costs. These cost control measures included an analysis of restaurant labor productivity to offset pressures caused by increases to the minimum wage. The Company also sought to address productivity through improvements to the store level management structure, performance forecasting and accountability, kitchen efficiency and upgraded equipment.

iii. Restructuring Initiatives

20. In addition to the operational initiatives discussed above, in September 2019, the Company began evaluating potential strategic and restructuring alternatives with regards to its European and U.S. businesses. In connection with this evaluation, the Debtors engaged PwC and Richards, Layton & Finger, P.A. to assist them in exploring and evaluating various strategic alternatives. The Debtors also retained RCS Real Estate Advisors on a prepetition basis to assist them in evaluating their lease portfolio.

21. With the assistance of their professionals, the Debtors performed a "four-wall" analysis of the Debtors' lease portfolio. In connection with this analysis, the Debtors identified under-performing stores and developed and assessed the impact of operating with a reduced portfolio of restaurant locations on a go-forward basis. The Debtors also began considering both in- and out-of-court restructuring alternatives for addressing the costs associated with the Debtors' underperforming leases. It became apparent over time, however, that a bankruptcy filing would be necessary given (i) the difficulty in renegotiating lease terms outside of bankruptcy; (ii) the

ongoing funding needs of the underperforming restaurants; and (iii) the realization that an out-of-court transaction would require significant funding from a potential purchaser or investor. Accordingly, in February 2020, the Debtors began planning for a potential in-court restructuring.

iv. Effects of COVID-19 on Restaurant Industry

22. The COVID-19 pandemic significantly affected the U.S. food and restaurant industry in March 2020, as state officials began to close restaurants or limit their mode of operations. These efforts began on or about March 15, 2020, with the State of Ohio ordering the closure of all bars and restaurants – within the following week thirty-eight (38) states and numerous major cities (including Los Angeles and New York City) had made similar pronouncements. The government closures mostly affected "dine-in" food service in an effort to promote "social distancing" and combat the spread of COVID-19, while permitting the continuation of takeout and delivery food services. Many restaurants, including the Debtors, were ill-equipped to deal with the significant decline in traffic and takeout/delivery-only model and were therefore forced to layoff portions of their workforce and/or close altogether.

23. While the Debtors' restructuring plans contemplated closing certain underperforming locations, as of March 20, 2020, the Debtors were forced to close all but five of their locations due to the COVID-19 pandemic. The Debtors initially attempted to operate a limited number of remaining locations on a takeout-only basis, but these efforts quickly proved unprofitable. Accordingly, by March 22, 2020, the Debtors had shuttered all of their restaurant locations and terminated all but a handful of their employees that would be necessary to oversee the sale of the business (or an orderly wind down if not possible) through a bankruptcy proceeding.

THE PROPOSED SALE

24. Notwithstanding the closures due to the COVID-19 outbreak, the Company continued its efforts to maximize value both in Europe and in the U.S. In connection with such efforts, on March 31, 2020, the Debtors retained SSG Advisors, LLC ("**SSG**") to provide investment banking services in connection with the Debtors' last-ditch effort to avoid a complete liquidation and locate a potential going-concern acquisition partner.[2] The Debtors and SSG conducted a marketing process for the U.S. assets contemporaneous with the restructuring efforts being undertaken in Europe. PQ SA's ownership of the Le Pain Quotidien intellectual property meant that any purchaser of the Debtors' assets would need a license in order to operate under the trademark in the U.S.

25. As part of its marketing efforts, SSG circulated an initial teaser to 204 prospective purchasers, which included strategic and financial parties in the U.S. and Europe. The Debtors received responses from forty-three (43) of these parties, who executed non-disclosure agreements and were provided with a confidential information memorandum (CIM) and access to an electronic data room. Notwithstanding the complications created by COVID-19, the marketing process generated a robust response. While parties were unable to conduct physical or virtual site visits, SSG was able to provide prospective purchasers with information responsive to due diligence requests and to coordinate calls between parties and the Debtors' management. The Debtors and SSG worked closely with PQ SA's insolvency professionals and, as a result, were able to coordinate discussions with parties that were interested in acquiring a license to operate Le Pain

[2] In support of this effort, PQ SA agreed to provide PQ NY with up to $4.533 in unsecured financing (the "**PQ SA Loan**"), which was used to, among other things, satisfy outstanding payroll claims, sale and use tax claims, supplier claims subject to either the United States Perishable Agricultural Commodities Act (PACA) or the United States Packers and Stockyards Act (PASA), and other outstanding amounts (including SSG's initial investment banking fee).

Quotidien restaurants in the U.S. The Debtors ultimately received term sheets from four (4) parties, including a non-binding term sheet from Aurify Brands, dated April 30, 2020.

26. The Debtors' lack of liquidity presented the largest obstacle in pursuing any transaction, given that the Debtors had exhausted the PQ SA Loan and shuttered all operations due to the COVID-19 outbreak. Accordingly, any purchaser would also need to finance the postpetition administrative costs associated with consummating the transaction. Aurify Brands was cognizant of this issue and structured its bid to provide the Debtors with much-needed liquidity, without which the Debtors would have filed for chapter 7 liquidation weeks ago.

27. On May 13, 2020, after Aurify Brands successfully bid for the Company's U.S. franchising rights in the Belgian insolvency proceeding,[3] and in furtherance of their sale discussions, with the Debtors, Aurify Brands' affiliate, LPQ U.S., in its capacity as lender ("**Lender**"), entered into that certain Secured Promissory Note (the "**Bridge Loan**"), whereby the Lender agreed to provide the Debtors with $122,000 (which was subsequently increased to $522,000) in bridge financing. The Bridge Loan was used to fund the Debtors' limited ongoing costs and to prepare for the commencement of the Chapter 11 Cases, including the documentation of definitive sale documents and a related DIP credit agreement pursuant to which the Lender would finance the Chapter 11 Cases.

28. The Bridge Loan allowed the Debtors and Aurify Brands to continue their extensive negotiations and enter into that certain Asset Purchase Agreement, dated as of May 26, 2020 (the "**APA**"), whereby the Purchaser agreed to acquire substantially all of the Debtors' assets for aggregate consideration of $3 million, plus the Adequate Assurance Deposit Amount (as defined

[3] On May 13, 2020, LPQ US and PQ SA entered into that certain Term Sheet, which provided LPQ US with the exclusive right to move forward with the documentation of a US Master Franchise Agreement (the "**Master Franchise Agreement**"), which divested PQ SA of its U.S. operations and permitted LPQ US to operate under the Le Pain Quotidien brand in the U.S.

in the APA), the assumption of certain liabilities and the payment of all cure amounts. The proposed transaction avoids what otherwise would have been a complete liquidation of the Debtors' assets in chapter 7 proceedings. Indeed, the APA contemplates the assumption and assignment of at least thirty-five (35) of the Debtors' leases, thereby providing for a reopening of certain of the Debtors' restaurants and the potential re-hiring of a number of former employees.

29. A critical piece of the overall transaction is the Purchaser's willingness to provide a $3 million DIP credit facility (the "**DIP Credit Facility**") pursuant to that certain Senior Secured Super-Priority Debtor-in-Possession Credit and Security Agreement, dated May 26, 2020 (the "**DIP Credit Agreement**"). The DIP Credit Facility is available for working capital and general corporate purposes, including the funding of postpetition operations and other chapter 11 related expenses, including professional fees. The DIP Credit Agreement also provides for a roll-up of the prepetition Bridge Loan. The Debtors' obligations under the DIP Credit Agreement are secured by liens on substantially all of the Debtors assets pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code (subject only to Prior Liens and the Carve-Out (as such terms are defined therein)). Other than the Bridge Loan, the Debtors do not have any prepetition secured borrowed debt, so the Lender is not seeking to prime any party in connection with the DIP Credit Agreement. The DIP Credit Agreement also provides the Lender with a super-priority administrative claim under section 364(c)(1) of the Bankruptcy Code. Pursuant to the terms of the APA, the outstanding DIP Obligations (as defined therein) shall be credit bid against the purchase price at closing pursuant to section 363(k) of the Bankruptcy Code. Prior to entering into the DIP Credit Agreement, the Debtors' Board consulted with SSG regarding potential financing alternatives. The Board quickly concluded, however, that there were no other financing alternatives (including through PQ SA or any other third party capital provider), particularly given

that the Debtors were not operating and due to the composition of their assets (leases and miscellaneous equipment that do not provide much security to a lender).

30. Given the robust prepetition marketing process and the unique circumstances surrounding these Chapter 11 Cases, the Debtors submit that it is appropriate to seek approval of the proposed sale to the Purchaser within thirty (30) days of the Petition Date. The proposed Sale is the result of an extensive marketing process in which SSG approached 204 prospective financial and strategic parties. The Purchaser not only submitted the highest and best bid for the Debtors' assets, but also agreed to provide the DIP Credit Facility necessary to fund the Chapter 11 Cases. As noted above, the proposed Sale will provide for the reopening of no less than thirty-five (35) of the Debtors' restaurants and the potential rehiring of employees at each such location. Given that the Purchaser also will also own the Company's U.S. franchising rights pursuant to the Master Franchise Agreement, the Purchaser is the natural sale partner for the Debtors' assets and it is highly unlikely another purchaser would be willing to pursue a transaction at a greater value. Nevertheless, should a buyer emerge that is willing to submit a higher and better offer for the Debtors' assets, the Debtors have negotiated a 'fiduciary out' in the APA. Moreover, the proposed timing of the sale process coincides with the loosening of restrictions associated with the COVID-19 outbreak. The Debtors are hopeful that the timing of the transaction will permit the Purchaser to resume operations at certain locations as governmental authorities allow for the post-COVID-19 reopening and operation of restaurants. The Debtors submit that this proposed timing will provide a significant benefit to the Debtors' vendors, landlords, former employees (to the extent re-hired as a result of the Sale), and a loyal customer base.

FIRST DAY MOTIONS

31. To enable the Debtors to minimize any adverse effects caused by the commencement of the Chapter 11 Cases on their businesses, the Debtors are seeking approval of

the following First Day Motions: (i) an application for an order approving the retention of Donlin, Recano & Company, Inc. as claims and noticing agent pursuant to section 156(c) of the Judicial Code and Local Rule 2002-1(f); (ii) a motion for an order authorizing the continued use of the Debtor's cash management system, including authorizing the Debtors to maintain existing bank accounts and business forms; (iii) a motion for an order authorizing the Debtor to provide adequate assurance of future payment to utility companies pursuant to section 366(b) of the Bankruptcy Code; (iv) a motion for an order authorizing the Debtors to maintain their existing insurance coverage; (v) a motion for an order authorizing the Debtors to pay certain tax claims that were due and owing as of the Petition Date; and (v) a motion for an order authorizing the Debtor to enter into the DIP Credit Agreement and granting certain related relief.

32. The Debtors are also filing a First Day Motion seeking to reject certain leases of nonresidential real property effective as of the Petition Date, as identified on Schedule 2.6(c) of the APA. These are leases which the Purchaser has identified for immediate rejection, and for which the Debtors have unconditionally surrendered possession of the premises to the landlord on or prior to the Petition Date. The Debtors will be seeking interim approval of such relief at the First Day Hearing and final relief following notice and a hearing.

33. I have reviewed each of the First Day Motions, proposed orders, and exhibits thereto, and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. Moreover, I believe that the relief sought in each of the First Day Motions is vital to enabling the Debtors to make the transition to chapter 11 and to therefore preserve and maximize the value of the Debtors' estates for the benefit of the Debtors' stakeholders. The relief requested in connection with the First Day Motion is also narrowly tailored so as to only seek such relief as the Debtors believe is necessary to avoid immediate and irreparable harm to the Debtors' estates.

CONCLUSION

34. The Debtors' ultimate goal in these Chapter 11 Cases is to maximize the value of their estates for the benefit of their stakeholders. A sale of the Debtors' assets under section 363 of the Bankruptcy Code is the best way to accomplish this. In the near term, however, to minimize any loss of value to their business, the Debtors' immediate objective is to promote stability during the early stages of these Chapter 11 Cases. I believe that if the Court grants the First Day Motions, the prospect for achieving this objective will be enhanced.

35. I hereby certify that the foregoing statements are true and correct to the best of my knowledge, information and belief and respectfully request that all of the relief requested in the First Day Motions be granted, together with such other and further relief as is just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of May 2020.

PQ New York, Inc., *et al.*
Debtors and Debtors in Possession

/s/ Steven J. Fleming
Steven J. Fleming
Proposed Chief Restructuring Officer