

Stephen A. McCartin (TX 16993800)
Clinton R. Snow (TX 24060629)
Virgil Ochoa (TX 24070358)
GARDERE WYNNE SEWELL LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201-4761
Telephone: 214.999.3000
Facsimile: 214.999.4667
smccartin@gardere.com
csnow@gardere.com
vochoa@gardere.com

**PROPOSED COUNSEL FOR DEBTOR,
SNUFFER’S RESTAURANTS, INCORPORATED**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: § **Chapter 11**
§
SNUFFER’S RESTAURANTS, § **Case No. 13-31095-SGJ-11**
INCORPORATED, §
§
Debtor. §

**AFFIDAVIT OF PATRICK D. SNUFFER
IN SUPPORT OF FIRST DAY MOTIONS**

I, Patrick D. Snuffer, declare as follows:

1. I am over 18 years of age and if called upon I would competently testify to the matters set forth herein from my own personal knowledge, from knowledge gathered from others, from my review of relevant documents, or my opinion based upon my experience.

2. Since 1978, I have been the President and Owner of SNUFFER’S RESTAURANTS, INCORPORATED, a Texas corporation (“Snuffer’s” or the “Debtor”). As president and owner, I oversee the day-to-day operations of Snuffer’s.

3. I submit this Affidavit in support of Debtor’s petition and various contemporaneously filed requests for relief in the form of motions and applications, as well as to

assist the Court and other interested parties in understanding the circumstances that compelled this chapter 11 case.

4. Except as otherwise indicated, the facts set forth in this Affidavit are based upon my personal experience, knowledge, and information concerning the operations of the Debtor, its history, industry, and books and records. Moreover, some of the information presented below is based upon my review of data regularly compiled by the Debtor in the ordinary course of its business.

5. Further, this Affidavit supports the following motions (collectively, the “**Emergency Motions**”):

(i) *Motion for Order Extending Time to File Schedules of Assets and Liabilities and Statement of Financial Affairs* (the “**Schedules Extension Motion**”);

(ii) *Motion for Order Limiting Notice and Establishing Additional Notice Procedures* (the “**Notice Procedures Motion**”);

(iii) *Motion for Interim and Final Order Providing Adequate Assurance of Utility Payments* (the “**Utilities Motion**”);

(iv) *Motion for an Interim and Final Order Authorizing Continued Use of Existing (a) Cash Management System, (b) Accounts and Business Forms, and (c) Deposit Practices* (the “**Cash Management Motion**”);

(v) *Motion for Authorization to Honor Certain Prepetition Customer Programs* (the “**Customer Programs Motion**”);

(vi) *Motion for Authority to Pay Pre-Petition Wages and Other Employee-Benefit Claims* (the “**Prepetition Wages Motion**”);

(vii) *Motion for Order Authorizing Debtor to Employ and Compensate Non-Bankruptcy Professionals in the Ordinary Course of Business* (the “**Ordinary Course Motion**”);

(viii) *Motion for an Order Authorizing Payment of Certain Prepetition Warehouse Charges* (the “**Warehouse Motion**”);

(ix) *Debtor’s Motion for Authority to (I) Pay Prepetition Obligations Under (a) General Liability Policies, (b) Property Insurance Policies, (c) Umbrella Policies, (d) Automobile Policies, and (e) Employee Practices Policies, (II) Continue to Administer These Insurance Policies, and (III) Continue to Pay Claims to the Extent They Become Due and Payable* (the “**Insurance Motion**”);

(x) *Motion for Entry of an Order Authorizing Procedures to Allow the Debtor to Pay Certain Prepetition Claims Arising Under Section 503(b)(9) of the Bankruptcy Code* (the “**503(b)(9) Motion**”);

(xi) *Motion for Entry of Order Authorizing Debtor to Pay Prepetition Obligations of Certain Critical Vendors and Service Providers* (the “**Critical Vendors Motion**”); and

(xii) *Emergency Motion for Interim and Final Orders Authorizing Debtor to Use Cash Collateral and Scheduling Final Hearing* (the “**Cash Collateral Motion**”).

A. General Background

6. On March 4, 2013 (the “**Petition Date**”), Snuffer’s filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.¹ It continues to operate its business and

¹ References to the “Bankruptcy Code” herein are to Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, unless otherwise noted.

manage its restaurants as a debtor in possession pursuant to Sections 1107(a) and 1108.² No trustee, examiner or committee has been appointed in the Debtor's bankruptcy case.

7. Snuffer's is a Texas corporation that I founded in 1978. I opened the first Snuffer's Restaurant & Bar that same year. Over the ensuing thirty-five years, the Debtor's brand has expanded from the original location to five owned locations in Addison, Preston Center, Rockwall, Southlake and Highland Village.

8. Throughout its long history, Snuffer's has enjoyed a loyal customer base and is well known and regarded in the Metroplex—thanks in no small part to its famous cheddar fries, tasty burgers and friendly service.

9. Due to the recent downturn in the economy and increased competition, Snuffer's experienced a decline in sales that led to difficulty paying its debt to Texans Credit Union (the "**Pre-Petition Lender**" or "**Texans**") and taxes due to the Internal Revenue Service (the "**IRS**"). At this time, the Pre-Petition Lender is owed approximately \$2.9 million and asserts a first priority lien on substantially all of the Snuffer's' assets. Similarly, the IRS asserts a lien on substantially all of the Snuffer's' assets to secure outstanding taxes.³ Since the majority of the Debtor's suppliers are on C.O.D. terms with the Company, unsecured debts are primarily legacy claims that the Debtor has been unable to pay due to its liquidity problems.

10. Snuffer's has approximately 400 employees, of which, approximately 330 are part-time employees. Two employees work at the corporate headquarters located at 16475 Dallas Pkwy Suite 185, Addison, Texas 75001. I own ninety-seven percent (97%) of the equity of the Company.

² Section ("§") references herein are to the Bankruptcy Code, unless otherwise indicated.

³ Snuffers has not reviewed the liens asserted by the Pre-Petition Lender and the IRS and reserves the right to challenge the validity, priority, and perfection of any asserted liens.

11. Snuffer's utilizes a number of vendors to supply its restaurants with food and other supplies and services. I estimate that Snuffer's' creditors, including its vendors but excluding employees, number over 100.

II. **THE EMERGENCY MOTIONS**

12. In preparing for the Debtor's bankruptcy filing, I have reviewed each of the Emergency Motions (including the attached exhibits) that were filed concurrently with this Affidavit and can attest to the veracity of the facts asserted therein. I believe that the entry of orders granting the relief requested in the Emergency Motions is critical to the Debtor's ability to continue in operation, and thus maximize the return to its estate and creditors. Factual information in support of the Emergency Motions is provided below as well as in the Emergency Motions filed concurrently herewith. If called upon to testify, I would testify competently to the facts set forth in this Affidavit.

A. The Schedules Extension Motion

13. Given the complexity of the Debtor's financial affairs, the large number of potential creditors and parties in interest, and the intricacies of the Debtor's case, it will take substantial time for the Debtor to analyze and compile the information needed to complete its schedules and statements of financial affairs (collectively, the "**Schedules**").

14. It is unlikely that the Debtor will be able to prepare and file its Schedules within fourteen days after the commencement of its chapter 11 case due to the fact that: (i) there are other urgent demands that have been placed upon the Debtor as a result of the filing of this case that will consume the time of key personnel; (ii) the Debtor has over 100 creditors; (iii) the Debtor's operations involve numerous contracts, leases, and other agreements; (iv) many of the Debtor's liabilities may constitute contingent, unliquidated claims relating to obligations that are

difficult to quantify; (v) the Debtor and its professionals need time to evaluate the information comprising the Schedules once compiled; and (vi) there is a limited number of qualified corporate staff members available to perform and/or oversee the work necessary to prepare the Schedules.

B. The Notice Procedures Motion

15. The mailing of notices of all matters to all creditors in this case, including approximately 400 of the Debtor's employees, would (i) prolong the process of providing notice in each particular instance, (ii) place a significant economic and administrative burden on the Debtor's estate, and (iii) impede the consummation of transactions, negotiation of settlements, or the granting of other relief that may be advantageous to the Debtor's estate and its creditors.

16. The proposed notice procedures set forth in the Notice Procedures Motion will streamline the distribution of notices, reduce the administrative cost of providing notice, yet provide all critical parties with an interest in this case with notice and an opportunity to be heard.

C. The Utilities Motion

17. Snuffer's uses electricity, water, telephone, internet, and similar services from numerous utility providers at numerous locations as described in more detail in Exhibit A to the Utility Motion. Uninterrupted utility service is essential to continue to operate the Debtor's restaurants and to maintain the estate's going concern value. The interruption of any of the utilities for even a short amount of time will impair revenues and the Debtor's reputation for consistent quality service. Loss of vital utility services at any of Debtor's locations would require immediate cessation of that location's operations until service could be restored.

18. The Proposed Adequate Assurance and Objection Procedures (as those terms are defined in the Utility Motion) adequately protect the rights of the utility providers. Deposits in

an amount equal to one month's worth of utility service provides sufficient adequate assurance of the Debtor's ability to continue making payments to its utility providers.

D. The Cash Management Motion

19. The Debtor's business and financial affairs are complex, requiring the collection, disbursement, and movement of funds through numerous bank accounts. Accordingly, the Debtor filed the Cash Management Motion, which seeks an interim order (i) authorizing the Debtor to continue to use the Cash Management System (as that term is used in the Cash Management Motion), (ii) authorizing the Debtor to use, in their present form, all correspondence and business forms and other documents related to the bank accounts as they existed immediately prior to the Petition Date, and (iii) directing the banks at which such accounts are held to maintain, service, and administer such accounts in the ordinary course of business, recognizing that such banks are not authorized to honor any check issued or dated prior to the Petition Date absent an order of this Court.

20. The Cash Management System consists of ten bank accounts (the "**Bank Accounts**"), eight of which are maintained by the Debtor at Branch Bank and Trust Company and two of which are maintained at Citibank, N.A. (collectively, the "**Banks**"). None of the Bank Accounts bear interest, and the Debtor does not maintain investment accounts for excess cash. The Banks are authorized depositories by the Office of the United States Trustee for the Northern District of Texas. The Company's Pre-Petition Lender asserts a first priority lien on substantially all of the Debtor's assets, including cash in the Company's Bank Accounts, to secure approximately \$2.9 million in prepetition indebtedness. The IRS also asserts a lien on the cash in the Bank Accounts to secure outstanding prepetition taxes.

21. All five of the Debtor's restaurant-level collection accounts are used for

collections as well as disbursements. C.O.D. payments to vendors that supply the given restaurant are made out of these restaurant-level accounts. Cash remaining in these accounts after disbursements are made is swept into the Company's general operating account on a daily basis. The Company uses the general operating account to pay all other operating costs and to fund Snuffer's two payroll accounts—one for hourly payroll, one for salaried payroll. Disbursements from the Company's accounts are made by ACH/Wire, checks, and debits.

22. A successful reorganization of the Debtor and preservation and enhancement of the Debtor's estate depends on an efficient Cash Management System. Disruption of that system will unnecessarily impair the Debtor's reorganization efforts.

23. If the Debtor were required to open separate accounts as a debtor-in-possession and modify the Cash Management System, it would necessitate opening new accounts for both collections and disbursements. This would likely require the Debtor and key staff members to focus substantially, if not exclusively, on immediately opening new bank accounts instead of on their daily responsibilities during this critical juncture. The time and energy spent opening new bank accounts would also increase operating costs, thereby negatively impacting the Debtor's cash flow. Most importantly, delays that would result from opening new accounts, revising cash management procedures, and instructing its merchant processors to redirect the Company's credit and debit card receipts would negatively impact the Debtor's ability to operate its business.

24. Additionally, the Debtor would be subject to significant administrative burdens and expenses because it would need to execute new signatory cards and depository agreements and completely reestablish its system for issuing checks and paying postpetition obligations, all as generally would be required by the U.S. Trustee Guidelines.

25. In the ordinary course of business, the Debtor uses various business forms, including, without limitation, checks, letterhead, purchase orders, and invoices. To minimize the expense to the bankruptcy estate associated with developing or purchasing entirely new forms, the delay in conducting business while obtaining such forms, and the confusion of employees, customers, and suppliers/vendors, the Debtor seeks authority to continue to use all correspondence and business forms as such forms existed immediately prior to the Petition Date; provided, however, the Debtor will note its status as a “debtor-in-possession” on checks that are electronically printed, as well as business forms other than those forms distributed or related to customers.

26. The Debtor has prepared various materials to distribute to parties with whom it conducts business. These materials will inform such parties of the pendency of the Debtor’s chapter 11 case. The Debtor believes that these direct communications will provide adequate notice of Debtor’s status as a debtor-in-possession.

27. Currently, the Debtor’s correspondence and business forms (e.g., letterhead, checks, purchase orders, invoices, and the like) are not marked as “debtor-in-possession;” however the Debtor will use all reasonable efforts to mark “debtor-in-possession” on the business forms as soon as practicable following the Petition Date. Upon depletion of the Debtor’s stock of business forms, the Debtor will obtain new business forms reflecting its status as a debtor-in-possession. As soon as practicable after the Petition Date, the Debtor will include “debtor in possession” on the checks it prints electronically.

28. Given the nature and scope of the Debtor’s business operations and the large number of suppliers of goods and services with whom the Debtor transacts on a regular basis, it is important that the Debtor be permitted to continue to use its existing checks and other business

forms without alteration or change. Indeed, because parties doing business with the Debtor will be aware of the Debtor's debtor-in-possession status, changing business forms is unnecessary and unduly burdensome.

29. Finally, in the Debtor's daily operations, the Debtor receives money from debit and credit cards, wires, ACH payments and cash transactions. Given the complexity of the Debtor's operations, it is necessary for the Debtor to continue using these and other similar methods. If the Debtor were prohibited from using such methods, the Debtor's ability to perform under its contracts and under its normal business operations would be severely impaired.

E. The Customer Programs Motion

30. In its ordinary course, the Debtor sells gift cards to its customers (a "**Customer Program**"). This Customer Program is an essential component of the Debtor's business strategy of ensuring customer satisfaction, driving sales, meeting competitive pressures, developing and sustaining customer loyalty, improving profitability, and generating goodwill for the Debtor and its products, thereby retaining current customers, attracting new ones, and ultimately enhancing net income. If the Debtor were to hastily terminate this Customer Program and fail to honor its outstanding gift cards, the Debtor would lose the good will of its customers as they lost faith in the Debtor's ability to keep its promises. Accordingly, the Debtor has requested authority to maintain this important Customer Program.

F. The Prepetition Wages Motion

31. Prior to the Petition Date and in the ordinary course of its businesses, the Debtor paid wages, salaries, and other compensation and benefits to its employees. The Debtor's employee obligations accrue on an ongoing and continuous basis but are paid only periodically. Snuffer's intervening bankruptcy filing has resulted in the accrual of unpaid prepetition wages,

salaries and/or other compensation owed to employees and related third-parties. If the Debtor does not pay these wages, it may lose employees. The loss of employees would interfere with the Debtor's ability to run its restaurants and would negatively impact the value of the Debtor's estate. Accordingly, the Debtor filed the Prepetition Wages Motion to address these unpaid prepetition obligations.

1. Wages, Salaries, and Other Compensation

32. The Debtor's hourly and salaried employees are paid every two weeks, but the pay periods are staggered so that only salaried or hourly employees (but not both) are paid on any given week. The Debtor processes its own payroll. Payroll for hourly employees is paid from a separate account than payroll for salaried employees. The last pre-petition payroll for hourly employees was released February 19, 2013, for wages accrued through February 10, 2013. The Debtor made its last prepetition payroll for salaried employees on February 28, 2013 for wages accrued through February 24, 2013. However, because some paychecks may not have cleared before the Company filed for bankruptcy, Employees could still be owed wages for payrolls released prior to the Petition Date.

33. On rare occasions, Snuffer's employees may incur business expenses that are reimbursed by the Company. Because it would be inequitable and would likely cause undue hardship if an employee were forced to bear such expenses without being reimbursed by the Company, Snuffer's is requesting that it be permitted to reimburse employees for any such expenses. Since employee expense reimbursement is not a common occurrence at Snuffer's, the Company does not expect to have to make any such reimbursements, but out of an abundance of caution has requested permission to reimburse *de minimis* expenses up to an aggregate amount of \$5,000.00.

2. Employee Benefits

34. The Debtor provides salaried employees with a stipend to purchase health insurance in the open market. This stipend amounts to \$200.00 per salaried employee per month for an aggregate of \$5,000.00 per month. Additionally, the Company provides certain of its salaried employees with a food stipend. For Mike Snuffer, Steve Cole, and Jeff Worley the stipend is approximately \$200.00 per month. The food stipend for General Managers is \$100.00 per month and other managers receive a \$75.00 stipend. Other than these stipends, the Debtor offers vacation and sick leave for salaried employees (collectively, “**Employee Benefits**”). The Debtor does not provide any other employee benefits. But these Employee Benefits are an integral part of each salaried employee’s total compensation package. Interruption of such Employee Benefits would seriously disrupt the morale of the salaried employees and would undermine the Debtor’s efforts to preserve the value of its estate. Thus, the Debtor requests authority to pay certain pre-petition amounts attributable to the Employee Benefits from time to time as and when such amounts become due in the ordinary course of business. The Debtor does not propose to pay unused, earned vacation in lump-sum payments but rather to permit eligible Employees to use their unused, earned vacation and other paid leave after the Petition Date in the ordinary course of business and at the Debtor’s discretion.

3. Miscellaneous

35. In addition, Snuffer’s may determine that there are other *de minimis* prepetition obligations related to employee compensation and benefits, which have not been identified in the Prepetition Wages Motion. Because the Debtor and its professionals may only learn of such amounts subsequent to the date hereof, the Debtor has requested authority to pay any such additional obligations up to an aggregate amount of \$5,000. The Debtor also reserves the right to

seek authority from the Court to pay any obligations in excess of the aforementioned cap.

G. The Ordinary Course Motion

36. In its ordinary course, the Debtor employs a number of attorneys, accountants and other professionals that will not play a central role in the Debtor's bankruptcy proceeding. The Debtor is requesting to continue to employ these ordinary course professionals without the need to incur the expense to employment and fee applications. These professionals are necessary to maintain the Debtor's day-to-day operations.

H. The Warehouse Motion

37. The Debtor currently has equipment and supplies stored in a warehouse in Rockwall, Texas. The Debtor needs to have access to the equipment and supplies and owes prepetition fees to the owner of the warehouse. The Debtor believes that the owner of the warehouse is entitled to possessory liens on the equipment and supplies stored in the warehouse to secure payment of the \$500 monthly warehouse charge. Given the risk of immediate and irreparable harm that would result from the foreclosure of liens on the items in storage at the warehouse, the Debtor believes the benefits of paying any undisputed prepetition warehouse charges outweighs the cost of doing so.

I. The Insurance Motion

38. In the ordinary course of business, the Debtor maintains various insurance policies, including without limitation property/equipment, general liability, umbrella coverage, and employee practices coverage. The Debtor does not subscribe to the Texas workers' compensation insurance system and is requesting authority to maintain its current insurance policies in accordance with past practices. The Debtor must maintain its insurance policies on an ongoing and uninterrupted basis. If the insurance policies are allowed to lapse, the Debtor would

be exposed to substantial liability for any damages resulting to persons or property of the Debtor and others, and the Debtor would then be forced to bear the costs and expenses of defense litigation. The Debtor maintains its Insurance Policies through a Premium Financing Agreement. The Debtor must continue to make the payments on the Premium Financing Agreement to maintain its insurance policies.

J. The 503(b)(9) Motion

39. The Debtor has also filed the 503(b)(9) Motion which seeks to establish procedures to efficiently handle claims brought against the Debtor pursuant to 11 U.S.C. § 503(b)(9). Without proper procedures in place, there could be a substantial amount of uncertainty among the Debtor's vendors over the proper procedure for asserting their 503(b)(9) Claims. This uncertainty would result in an unnecessary administrative and economic burden on the Debtor's estate and the Debtor's professionals.

40. The 503(b)(9) Procedures (as that term is used in the 503(b)(9) Motion), as proposed, are necessary, appropriate, and in the best interest of the Debtor, its estate, and its creditors. Such procedures will reduce the administrative and economic burden on the Debtor while also providing an orderly and clear procedure for Claimants to file their respective 503(b)(9) Claims.

K. The Critical Vendors Motion

41. The Debtor has also requested authority to pay certain Critical Vendor's (as that term is used in the Critical Vendors Motion) prepetition claims. The payment of the Critical Vendor Claims is vital to the Debtor's efforts to maintain the viability of its restaurants as a going concern and, thus to preserve and maximize the Debtor's estate. The Critical Vendors are the only source from which the Debtor can procure products and services within a timeframe that

would permit the Debtor to avoid a shutdown, irreparable disruption and/or depletion of asset value of the restaurants. The Debtor's inability to pay the Critical Vendor Claims would, in the Debtor's business judgment, result in the Critical Vendors refusing to provide products or services to the Debtor postpetition. Any refusal by the Critical Vendors to provide products or perform key services would have immediate and severe adverse repercussions, including, but not limited to, jeopardizing or impairing the value of the restaurants and the Company's good will with its customers.

L. The Cash Collateral Motion

42. Texans and the IRS have asserted liens on the Debtor's cash. This cash is necessary to continue the Debtor's ongoing operations and achieve its future business objectives. The use of Cash Collateral will permit the Debtor to, among other things, preserve the value of the Bankruptcy estate, continue operations of its business in an orderly fashion, maintain business relationships with vendors, suppliers, and customers, meet ongoing business payroll disbursements, maintain employee morale, and satisfy other working capital and operational needs.

43. Absent immediate use of the Cash Collateral, the Debtor would likely have to curtail or even cease business operations to the material detriment of creditors, employees, and other parties in interest. Therefore, the Debtor needs to ensure the availability of such working capital now. The Debtor anticipates using the Cash Collateral to fund its day-to-day operations thereby preserving the value of its bankruptcy estate. Liquidity is necessary for the Debtor to demonstrate to its customers, suppliers, vendors, and employees that it is capable of maintaining ongoing operations during the course of its bankruptcy.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 4, 2013.


Patrick D. Snuffer