

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

In re:

MRRC HOLD CO., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11164 (CTG)

(Joint Administration Requested)

**DECLARATION OF NICHOLAS D. RUBIN IN SUPPORT OF
CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

I, Nicholas D. Rubin, hereby declare under penalty of perjury as follows:

1. I serve as the Chief Restructuring Officer (“CRO”) of Rubio’s Restaurants, Inc. (“RRI”), MRRC Hold Co. (“MRRC”), and Rubio’s Incentives, LLC (“RIL”), the debtors and debtors in possession (collectively, the “Debtors” or the “Company”) in the above-captioned bankruptcy cases (the “Chapter 11 Cases”). I submit this declaration in support of the Debtors’ petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) filed on the date hereof (the “Petition Date”) and the relief requested pursuant to the Debtors’ applications and motions filed contemporaneously herewith (collectively, the “First Day Motions”).

2. I am a co-founder of and partner with Force Ten Partners, LLC (“Force Ten”), a national restructuring advisory firm. I have substantial experience providing interim management, turnaround consulting, financial advisory, and restructuring services for middle market companies and their lenders or investors. I have served as a chief restructuring officer, CEO, and turnaround advisor in various industries. My recent experience as a CRO, independent director, or financial

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: MRRC Hold Co. (1242); Rubio’s Restaurants, Inc. (0303); and Rubio’s Incentives, LLC (9359). The Debtors’ mailing address is 2200 Faraday Avenue, Suite 250, Carlsbad, CA 92008.

advisor in chapter 11 bankruptcy matters includes Corner Bakery, Watsonville Community Hospital, Jagged Peak & Trade Global, Alpha Guardian, Basic Water, Contour Opco 1735 Mission LLC, Contour Propco 1735 Mission LLC, My Fitness Store, and PME Mortgage Fund.

3. On April 7, 2024, Force Ten was engaged by the Debtors to provide interim management and restructuring advisory services. Since then I have served as the Chief Restructuring Officer, and as the lead for this engagement with overall responsibility on behalf of Force Ten, and have been working with the Debtors' board of directors, the Debtors' management team, team members of Force Ten, the Debtors' legal advisors, and the Debtors' investment bankers and real estate consultants to analyze the Company's financial condition and advise on liquidity and business strategies.

4. Force Ten and I regularly serve in the above-described capacities assisting troubled companies, debtors, secured and unsecured creditors, equity holders, and other parties-in-interest in bankruptcy matters, and have extensive experience providing fiduciary, financial advisory and management services in reorganization proceedings and complex financing restructurings. Force Ten has experience working on cases with similar circumstances to these Chapter 11 Cases and has performed services similar to those that I believe are needed in these Chapter 11 Cases.

5. I am familiar with the Debtors' operations and business affairs and the circumstances leading to these Chapter 11 Cases. Unless otherwise indicated, all facts set forth in this declaration are based on (a) my personal knowledge of the Debtors' business operations and finances or my review of relevant documents, (b) information received from persons working under my supervision or direction, or the Debtors' management team and their advisors, and/or (c) my opinion based upon my experience as a restructuring professional. If called upon to testify, I would testify competently to the facts set forth herein.

SUMMARY

6. The Debtors are operators and franchisors of restaurants serving coastal Mexican cuisine with a unique blend of fresh ingredients and Baja-inspired flavors. These restaurants offer limited-service in-store dining (*i.e.*, customers order and pay at a counter and the food is brought to their table), take-out, and delivery through partnerships with third-party delivery companies. The Debtors have built a strong presence with loyal customers in the Southwest since 1983 with The Original Fish Taco® and an array of one-of-a-kind recipes focusing on grilled seafood, tacos and bowls. They are recognized as a leader in the Mexican fast-casual space, with regular “Best Taco,” “Best Fish Taco,” and similar awards from local publications. As of the Petition Date, the Debtors operated 86 restaurants at leased locations in California, Arizona, and Nevada, and employ more than 1,900 individuals at their restaurants and corporate offices in Carlsbad, California. The Debtors have one restaurant in Oceanside California, that was previously damaged by a fire and is currently scheduled to reopen in July.

7. The Debtors commenced these cases because of various financial and operational challenges, including a number of underperforming locations, significant increases in the California minimum wage, and an unsustainable debt burden. The Debtors believe that a sale of substantially all of their assets as a going concern pursuant to section 363 of the Bankruptcy Code will deliver a value-maximizing result for their estates, creditors and other stakeholders.

PREPETITION CAPITAL STRUCTURE

8. The Debtors are borrowers or guarantors under that certain credit agreement dated as of December 30, 2020 (as amended, restated, supplemented, amended and restated or otherwise modified from time to time, and together with ancillary agreements, the “Prepetition Facility”) with TREW Capital Management Private Credit LLC (“TREW”), as administrative agent and

lender (“Prepetition Lender”).² As of May 31, 2024, the total indebtedness under the Prepetition Facility is \$72,681,924.98.³ All of the Debtors’ funded debt obligations as of the Petition Date arise under the Prepetition Facility and are secured by security interests in and liens on all or substantially all of their assets.

9. TREW acquired the entirety of the Prepetition Lender position in March 2024 from Golub Capital Markets LLC or affiliated entities (collectively, “Golub”). Subsequently, Golub divested its equity interest in OFT Holdings LLC, which holds all equity interests in MRRC, to JV20KL, LLC. MRRC holds all equity interests in RRI, which holds all equity interests in RIL.

EVENTS LEADING UP TO THESE CASES

10. On December 30, 2020, Rubio’s completed a restructuring through a prepackaged chapter 11 process that achieved a significant reduction of outstanding debt and an improved store footprint.⁴ However, despite emerging from bankruptcy and the reduction of pandemic-era restrictions impacting the restaurant industry, the Company has struggled in the face of additional macroeconomic headwinds. Further restructuring is needed to overcome these challenges and satisfy all debt obligations.

11. The Company has been adversely affected by the significant increases in food and utility costs over the past three years that have affected the broader restaurant industry. At the same time, the Company’s labor costs have substantially increased with (i) a tight labor market, and (ii) required increases in the minimum wage, in particular, the increase effective April 1,

² The Prepetition Credit Facility is the exit facility of the Prior Cases (as defined below).

³ All amounts outstanding are Term A Loan (as such term is defined in the Prepetition Facility) amounts accruing interest at 17% per annum. The Term A Loan Maturity Date (as such term is defined in the Prepetition Facility) is December 30, 2024.

⁴ These prior cases (the “Prior Cases”) were commenced in this district on October 26, 2020 and jointly-administered under the caption *In re Rubio’s Restaurants, Inc., et al.*, Case No. 20-12688 (MFW).

2024.⁵ The fast-casual market segment, in which the Company operates, is particularly competitive and reliant on price-sensitive customers. The Company has also experienced reduced in-store traffic attributable to work-from-home policies remaining in place, and achieving differentiation and a value proposition for online customers is increasingly challenging and results in lower operating margins. These macroeconomic factors have placed significant negative pressure on the Company's margins and cash flow.

12. Even with the restructuring efforts undertaken in the Prior Cases, these factors have caused the Debtors to continue to struggle financially. Many of the stores that the Debtors believed would bounce back from COVID-19 during the Prior Cases have underperformed and have caused a drag on the Debtors' financial performance and management attention. The Debtors have incurred net losses and negative earnings before interest, taxes, and depreciation (EBITDA) in recent years, and have had to borrow funds under senior credit facilities to fund its operating losses. The increased debt and associated reporting and oversight has added additional distraction to the management team attempting to enact a turnaround. The table below contains a summary of the Debtors' recent operating performance and funded debt levels.

	Year Ended 2022	Year Ended 2023	Year to Date 3/31/2024
Store Count (end of period)	152	145	139
Sales	\$ 217,252,550	\$ 218,337,822	\$ 51,061,085
EBITDA	(7,750,637)	(9,011,774)	(3,290,634)
Interest Expense	5,002,024	8,051,051	2,877,068
Net Loss	(15,599,507)	(19,972,048)	(7,929,915)
Funded Debt	52,067,879	67,528,593	70,737,976

⁵ From January 1, 2021 to January 1, 2023, at progressive intervals, the minimum wage in the State of California has increased from \$13.00 to \$15.50 per hour. From January 1, 2023 to April 1, 2024, the California minimum wage increased from \$15.50 to \$20 per hour.

13. The Company has been diligently working to address these factors and restore operating margins. These efforts have included recent capital investment and store refreshes, the launch of a custom mobile app and new website, development of a new menu, implementing certain price increases and promotions based on data-driven marketing and customer analysis, and optimizing staffing for corporate and store-level positions. In addition, the Company has been working with Hilco Real Estate, LLC (“HRE”) since November 2023 to negotiate lease concessions with landlords. Under my direction, the Company and Force Ten analyzed store-level free cash flow to identify underperforming locations and right-size the physical footprint. The Company has implemented its right-sizing plan, including closing 53 stores and workforce reductions during May 2024. With the new footprint, the Company will be focused on the core Southern California and Arizona markets, with a goal of retaining and gaining market share in areas with strong brand presence and management experience. In addition to the cost savings from these closures, the Company expects performance improvements for retained stores from lease concessions and contract renegotiations, as well as from customer migration from closed stores.

14. In November 2023, the Company engaged Hilco Corporate Finance, LLC (“HCF”) as its investment banker to prepare and market the Company or its assets, or positions in the Company’s debt or equity securities, for sale. Beginning in January 2024, HCF contacted 63 strategic parties and 293 financial sponsors in a process that included 43 parties executing confidentiality agreements and accessing the Company’s virtual data room. This process did not result in any offers or other promising indications of interest to acquire the Company or its assets outside of an in-court process. In March 2024, TREW acquired all of the senior secured first-lien debt obligations of the Company under the Prepetition Facility from Golub.

15. As noted above, Golub also divested its ownership interests in the Company in April 2024. On May 14, 2024, Alfred M. Masse was appointed as a director of RRI. Mr. Masse is a co-founder and managing partner of Broadway Advisors, LLC, a management consulting firm, and has extensive experience assisting companies in distressed situations. As of the Petition Date, Mr. Masse is the sole director or manager of the Debtors.

16. With no promising indications of interest from the broader sales process for an out-of-court transaction and insufficient liquidity to continue operating as a going concern, let alone to satisfy its pending debt obligations, the Company determined it would seek bankruptcy protection and pursue a going concern sale under section 363 of the Bankruptcy Code to deliver the greatest value for its creditors and stakeholders. Accordingly, the Company, with the assistance of HCF and their other advisors, refocused on preserving cash and securing a stalking horse bid and debtor-in-possession financing.

NEED FOR POSTPETITION FINANCING

17. As noted above, I believe that the Debtors' liquidity position, lease termination liabilities, and negative cash flow after debt service would not permit an orderly sale process or plan confirmation. I believe that the Debtors require new funding and access to cash collateral to ensure sufficient working capital to operate their businesses and administer their estates. The liquidity needs include payments to employees, third-party vendors, landlords, utilities, taxing authorities, and insurance companies, among others, who provide the essential services needed to operate, maintain, and insure the Debtors' assets. Accordingly, upon determining to pursue a value-maximizing transaction through section 363 of the Bankruptcy Code, the Debtors commenced discussions with TREW for a postpetition financing facility and the consensual use of cash collateral (the "DIP Facility"). In addition, the Debtors, through HCF, solicited third-party lenders for postpetition financing to assess the availability of such financing and confirm

appropriate terms for the Debtors to continue to operate and to administer these Chapter 11 Cases. Based thereon, I believe that actional alternative sources of financing are not available and the proposed DIP Facility presents the best financing proposal currently available to the Debtors.

18. Under my oversight, Force Ten worked with the Debtors to prepare the Budget (as defined in the DIP Facility). I am familiar with the Budget and its contents. As described therein, the Debtors require approximately \$1.5 million and a total of \$4 million of new funding during the interim period and initial thirteen-week period, respectively. I believe the Budget is fair, reasonable, and appropriate under the circumstances.

19. In my opinion, the DIP Facility provides the Debtors with necessary and sufficient capital to (a) avoid irreparable harm to the Debtors' estates; (b) smoothly transition into and operate throughout these Chapter 11 Cases; and (c) provide the Debtors with sufficient runway to achieve a going concern sale and plan confirmation in an orderly process. In my opinion, the DIP Facility is needed to assure customers, employees, landlords and vendors that these Chapter 11 Cases are sufficiently funded. Additionally, the DIP Facility will provide the Debtors with continued access to cash collateral, which will relieve the Debtors of the cost of borrowing additional amounts to replace that cash. In my opinion, the DIP Facility and access to cash collateral are critical to achieve a going concern sale of the Debtors in an orderly process.

20. I believe the DIP Facility is the product of good faith, arms-length, vigorous negotiation among the Debtors, its advisors, and TREW. Without access to additional funding and the continued use of cash collateral as contemplated under the DIP Facility, I believe that the Debtors would suffer immediate and irreparable harm, and would be forced to pivot to a liquidating sale.

21. Upon entry of an interim order approving the DIP Facility, the DIP Facility provides for a “roll up” of \$3,000,000 (the “Interim Roll-Up Amount”) of the loans under the Prepetition Facility with the Prepetition Lender on a cashless dollar-for-dollar basis. Upon entry of a final order approving the DIP Facility, the DIP Facility provides for an additional roll up of \$5,000,000 (the “Final Roll-Up Amount” and together with the Interim Roll-Up Amount, the “Roll-Up Amounts”) of the loans under the Prepetition Facility with the Prepetition Lender on a cashless dollar-for-dollar basis. I am informed that the Roll-Up Amounts are a material component of the consideration required by the Prepetition Lender as part of its commitment to provide the DIP Facility. Because no other actionable financing proposals were received by the Debtors, I believe that obtaining credit under the DIP Facility, even with the Roll-Up Amounts, is in the best interests of the Debtors, their estates, and other stakeholders.

THE FIRST DAY MOTIONS

22. Contemporaneously with the filing of this Declaration, the Debtors have filed or will file the First Day Motions to minimize the disruption and adverse effects of the commencement of the Chapter 11 Cases on the Debtors’ operations and to preserve value for their estates and all stakeholders.

23. The First Day Motions are:

- a. **Joint Administration.** *Debtors’ Motion for Entry of Order Directing Joint Administration of Related Chapter 11 Cases and Granting Related Relief;*
- b. **Creditor Matrix.** *Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to File a Consolidated (A) Creditor Matrix; and (B) Top 30 Creditors List; (II) Authorizing Redaction of Certain Personal Identification Information; and (III) Granting Related Relief;*
- c. **Cash Management.** *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, (D) Continue Certain Intercompany Transactions; and (II) Granting Related Relief;*

- d. **DIP Financing.** *Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to: (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, (V) Granting Adequate Protection, and (VI) Granting Related Relief;*
- e. **Vendors.** *Debtors' Motion For Entry Of Interim And Final Orders (I) Authorizing The Debtors To Pay Certain Prepetition Claims Of Critical Vendors, Section 503(b)(9) Claimants, and PACA/PASA Claimants; (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests; and (III) Granting Related Relief;*
- f. **Utilities.** *Debtors' Motion for Entry of Interim and Final Orders (I) (A) Approving the Debtors' Proposed Form of Adequate Assurance if Payment for Future Utility Services, (B) Approving the Debtors' Proposed Procedures for Resolving Additional Assurance Requests, and (C) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Services; and (II) Granting Related Relief;*
- g. **Employee Obligations.** *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Employee Benefits Obligations and Other Compensation, (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; and (II) Granting Related Relief;*
- h. **Customer Obligations.** *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Honor Certain Prepetition Obligations to Customers and (B) Otherwise Continue Certain Customer Programs In the Ordinary Course of Business; and (II) Granting Related Relief;*
- i. **Leases.** *Debtors' First Omnibus Motion for Entry of an Order (I) Authorizing (A) Rejection of Certain Unexpired Leases and (B) Abandonment of Certain Personal Property In Connection Therewith, Each Effective as of the Petition Date; and (II) Granting Certain Related Relief (the "Lease Rejection Motion");*
- j. **Insurance.** *Motion of the Debtors for Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Their Insurance Policies and (B) Pay All Obligations With Respect Thereto; (II) Authorizing Continuation of Insurance Premium Financing Arrangements; and (III) Granting Related Relief;*
- k. **Taxes.** *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees and (II) Granting Related Relief; and*

1. **Claims & Noticing Agent.** *Debtors' Application for Entry of an Order (I) Authorizing the Retention and Employment of Stretto as Claims and Noticing Agent, and (II) Granting Related Relief.*

24. The First Day Motions request authority to, among other things, enter into the DIP Financing, honor workforce-related compensation and benefits obligations, pay claims of certain critical vendors, suppliers, and taxing authorities, continue to honor certain customer programs, and continue the Debtors' cash management system and other operations in the ordinary course of business to ensure minimal disruption of the Debtors' business operations during these Chapter 11 Cases. For the avoidance of doubt, the Debtors request authority, but not direction, to incur indebtedness, and pay amounts or satisfy obligations with respect to the relief requested in the First Day Motions.

25. The Lease Rejection Motion requests authority to (a) reject certain unexpired leases (each defined as a "Lease" and, collectively, the "Leases" in the Lease Rejection Motion) and (b) abandon certain Personal Property (as defined in the Lease Rejection Motion) with such rejection and abandonment effective as of the Petition Date. Each "Lease" is for a restaurant determined to be underperforming or unprofitable, and which was closed in the weeks prior to the Petition Date. The Debtors have determined that the costs of the Leases outweigh any marginal benefits that could possibly be achieved from assignments or subleases of the Leases (to the extent permitted by the terms thereunder). Moreover, the Debtors have evaluated the "Personal Property" and have determined that (a) it is of inconsequential value or (b) the cost of removing and storing the Personal Property for future use, marketing, or sale exceeds the value of the Personal Property to the Debtors' estates. Accordingly, and as further detailed in the Lease Rejection Motion, the Debtors believe that the rejection of the Leases and the abandonment of the Personal Property as of the Petition Date is appropriate and in the best interests of the Debtors, their estates, and their creditors.

26. I have reviewed each of the First Day Motions (including the exhibits and schedules attached thereto) listed above, and the facts set forth in the First Day Motions are incorporated herein by reference. To the best of my knowledge, the facts set forth in the First Day Motions are true and correct, and if called upon to testify, I could and would testify competently to such facts.

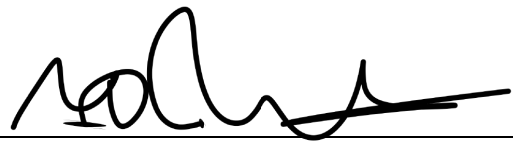
27. As described in the First Day Motions, I believe that the Debtors' requests for interim relief are narrowly tailored. It is my opinion that the relief sought in the First Day Motions is essential to avoid irreparable harm and to allow the Debtors to operate without disruptions, as well as to preserve the value of the Debtors' estates, and is in the best interests of the Debtors' estates, creditors and other stakeholders.

CONCLUSION

28. For the reasons described herein and in the First Day Motions, I believe that the relief requested in the First Day Motions should be granted by the Court, with such other and further relief for the Debtors as this Court deems just and proper, in the most expeditious manner possible.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: June 5, 2024



Nicholas D. Rubin
Chief Restructuring Officer of the Debtors