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Attorneys for Kenneth Dewayne Page

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

	§	
	§	
IN RE:	§	CHAPTER 11
	§	
FRESH ACQUISITIONS, LLC, <i>ET. AL.</i>¹,	§	CASE NO. 21-30721-SGJ
	§	(JOINTLY ADMINISTERED)
<i>DEBTORS.</i>	§	
	§	PRELIMINARY HEARING SET FOR:
	§	06/10/21 @ 1:30 P.m.

**KENNETH PAGE’S REPLY IN SUPPORT OF HIS
MOTION FOR RELIEF FROM AUTOMATIC STAY**

To the Honorable Judge Jernigan:

Kenneth Dewayne Page (“Movant”) files this *Reply in Support of His Motion for Relief from Automatic Stay* (“Reply”), seeking relief to allow Movant to proceed with personal injury claims against Alamo Buffets Payroll, LLC, and Fire Mountain Restaurants, LLC (collectively, the “Debtors”), and, in support hereof, states:

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Alamo Fresh Payroll, LLC (1590); Fresh Acquisitions, LLC (2795); Alamo Ovation, LLC (9002); Buffets LLC (2294); Hometown Buffet, Inc. (3002); Tahoe Joe’s Inc. (7129); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan’s Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); Food Management Partners, Inc. (7374); FMP SA Management Group, LLC (3031); FMP-Fresh Payroll, LLC (8962); FMP-Ovation Payroll, LLC (1728); and Alamo Buffets Payroll, LLC (0998). The Debtors’ principal offices are located at 2338 N. Loop 1604 W., Suite 350, San Antonio TX, 78248, United States.

I.
REPLY

1. Proposed counsel for the above-captioned debtors and debtors in possession filed an *Objection to the Motion for Relief from Stay to Permit Continuation of Personal Injury Litigation and to Pursue Insurance Proceeds by Kenneth Page* (“Objection”) on May 28, 2021, Docket No. 205. The Objection posits that the Debtors’ insurance policy requires a \$25,000 deductible which has not been provided for in the debtors’ budget. Thus any judgment, even against the Debtors nominally and pursued only against the insurer, would implicate the Debtors’ bankruptcy estate at least up to the amount of the deductible.

2. Movant submits that the automatic stay should still be lifted so that his claim against the Debtors may be liquidated, so he may file a proof of claim against the Debtors in the amount of their deductible (\$25,000), and then limit any further recovery only to proceeds from the Debtors’ insurer. The Commercial General Liability Policy (“Policy”) attached to the Debtors’ Objection expressly provides: “Bankruptcy or insolvency of the insured or of the insured’s estate will not relieve us of our obligations under this Coverage Part.” *See* Objection, Ex. B, page 38/114.

3. Further, the prejudicial effect of continuing to stay Kenneth Page’s Personal Injury Litigation – impairing his recovery for the personal injuries sustained – heavily outweighs the potential prejudice to Debtors in having to account for their insurance deductible. Additionally, while Debtors express concern about opening the floodgates to personal injury claimants, Movant submits that this worry is unfounded. To the extent there is a “flood” of persons injured at the Debtors’ restaurants, the burden should be borne by Debtors and not Kenneth Page.

4. Finally, assuming *arguendo* that the Debtors’ insurance deductible poses a significant enough threat to their bankruptcy estate to outweigh the equities favoring a lift of the stay, Movant submits that he will stipulate to a waiver of any distribution from the Debtors or the

Debtors' estate that he may otherwise receive on account of his proof of claim in the amount of the Debtors' insurance deductible – effectively circumventing the concern that he will collect as against the Debtors' bankruptcy estate.

II.
CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Kenneth Page requests that the Court enter an order granting the requested relief from the automatic stay to permit him to proceed with the Personal Injury Litigation and liquidate his claims against the Debtors, file a proof of claim against the Debtors in the amount of the Debtors' insurance deductible, and pursue recovery against the Debtors' applicable insurance coverage only. Movant further requests that any order granting the requested relief waive the requirements of Rule 4001(a)(3) and grant Movant all other and further relief as the Court may deem just and proper.

[SIGNATURE PAGE FOLLOWS]

Dated: June 4, 2021

/s/ Jonathan S. Petree (6/4/2021)

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CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2021, a true and correct copy of the foregoing was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Jonathan S. Petree (6/4/2021)

Jonathan S. Petree