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*Proposed Counsel for the Official Committee  
of Unsecured Creditors*

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

In re:

FRESH ACQUISITIONS, LLC, <i>et al.</i> , <sup>1</sup>	§	Case No. 21-30721 (SGJ)
	§	Chapter 11
Debtors.	§	(Jointly Administered)

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**OBJECTION TO DEBTORS' APPLICATION FOR ENTRY OF AN ORDER  
AUTHORIZING THE EMPLOYMENT OF HILCO REAL ESTATE, LLC AS REAL  
ESTATE CONSULTANT, EFFECTIVE AS OF APRIL 21, 2021**

The Official Committee of Unsecured Creditors (the "Committee"), by its undersigned proposed counsel objects to the *Debtor's Application for Entry of an*

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<sup>1</sup> The Debtors in these Chapter 11 cases ("Debtors") 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.

*Order Authorizing the Employment of Hilco Real Estate, LLC as Real Estate Consultant, Effective as of April 21, 2021* (the “Application”) [Docket No. 177]. The retention of Hilco Real Estate, LLC (“Hilco”) at this juncture is unnecessary and of no benefit to the Debtors’ estates.

## **BACKGROUND**

1. On April 20, 2021 (the “Petition Date”), each of the Debtors filed Voluntary Petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On April 30, 2021, the United States Trustee for the Northern District of Texas appointed the Committee pursuant to Section 1102 of the Bankruptcy Code.

3. On April 20, 2021, the Debtors filed a motion to reject 57 leases [Docket No. 9]. The Order granting the Motion was entered on April 23, 2021 [Docket No. 65] (“Rejection Order 1”).

4. On April 30, 2021, the Debtor’s filed motion to reject the following Furr’s Stores. The Order granting the Motion was entered on May 27, 2021 [Docket No. 202] (“Rejection Order 2”).

190 Lubbock, TX  
148 Garland, TX  
116 Santa Fe, NM  
123 Amarillo, TX  
175 Farmington, NM  
160 Albuquerque, NM

5. On May 4, 2021, the Debtors filed a motion to reject Furr’s Stores 235 in Lubbock, TX and 313 in Arlington, TX. The Order granting the Motion was entered on May 27, 2021 [Docket No. 201] (“Rejection Order 3”).

6. In sum, all of the Debtors' leases, with the exception of the six operating Tahoe Joe's and one closed store in El Paso, Texas, have been rejected.<sup>2</sup>

7. The Rejection Orders provide for the abandonment of *de minimus* personal property to the respective landlords. The Committee believes that most if not all of the premises of all rejected leases were surrendered to the respective landlords prior to the Petition Date.

8. On May 21, 2021, the Debtors filed the Application seeking to authorize the employment of Hilco as a real estate consultant in accordance with a Real Estate Consulting and Advisory Services Agreement with Buffets, LLC and its subsidiaries (the "Buffets Agreement") and an identical agreement with Fresh Acquisitions, LLC (the "Fresh Agreement," together, the "Agreements," each attached to the Application).

9. The Application (page 6) and the Agreements (page 1) specify the following services to be provided by Hilco:

- a) Meet with the Company to ascertain the Company's goals, objectives and financial parameters;
- b) Mutually agree with the Debtors with respect to a strategic plan for restructuring, assuming, assigning, rejecting, and/or shortening term of the Leases (the "Strategy");
- c) On the Debtors' behalf, negotiate the terms of restructuring and term shortening agreements with the landlords under the Leases, in accordance with the Strategy;
- d) Provide written reports periodically to the Debtors regarding the status of such negotiations;
- e) Assist the Debtors in closing the pertinent Lease restructuring and term shortening agreements; and
- f) Provide testimony with respect to the foregoing, as needed and requested by the Debtors.

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<sup>2</sup> The Debtors have not indicated any resolution of the El Paso lease. The Committee has been informed that the property has been damaged and that rejection has been delayed for that reason.

10. The Buffets Agreement provides for an initial fee of \$20,000 to be paid upon entry of an order approving the Application. This fee is deemed to be earned in full and is non-refundable.

11. The Fresh Agreement provides for an initial fee of \$10,000 to be paid upon entry of an order approving the Application. This fee, too is deemed to be earned in full and is non-refundable.

12. The Agreements each provide for additional fees for achieving a “Restructured Lease” or a “Term Shortened Lease.”

13. Each Agreement (in an appended Exhibit A) specifies the leases to be addressed by Hilco. The Buffets Agreement identifies seven Tahoe Joe’s Steakhouse restaurants, six of which are currently operated and one that has been rejected as per Order 1. The Fresh Agreement identifies eight Furr’s restaurant leases to be addressed, all of which were closed prior to the Petition Date and seven of which have been rejected as per Orders 2 and 3.

14. On May 18, 2021, the Debtors filed a motion requesting authorization to sell substantially all of their assets and approval of auction bidding procedures to accomplish the sale [Docket No. 165]. On May 21, 2021, the Debtors formally designated VitaNova Brands, LLC (“VitaNova”) as the stalking horse bidder and provided a proposed Asset Purchase Agreement (the “APA”) [Docket No. 178].

15. Clearly, the Tahoe Joe’s are the center-point of the upcoming sale as they are the only operating stores.

16. VitaNova is an insider of the Debtors. They share the same address. The Managers of VitaNova, Jason Kemp, Allen Jones, and Larry Harris, are the managers and directors of the Debtors. VitaNova and the Debtors share the same address and utilize the same CFO. The purported Independent Director of the Debtors was invited to be a member of each of the Debtors’ Boards by a letter

agreement placed on VitaNova letterhead and signed by Mr. Kemp as President of VitaNova.

17. VitaNova provides management services to Buffets, LLC by virtue of a Management Agreement dated January 1, 2021.

18. The Debtors have employed a Chief Restructuring Officer since February 2, 2021. The CRO and his firm are is responsible for the sale.

### **DISCUSSION**

19. Simply put, Hilco has no role to play in this bankruptcy. The services for which Hilco will be employed (identified above in paragraph 9) are unnecessary and irrelevant at this time.

20. Undoubtedly, the Tahoe Joe's leases will be assumed and assigned to VitaNova (or another party who outbids it at the sale). Certainly, VitaNova's APA is not contingent on any negotiation with the landlords, and in its role as the Manager has already had full access and contact with the landlords to explore any lease modifications. In any event, the VitaNova or another purchaser, not the seller, is the party to initiate and effectuate a new lease. There is no demonstrable benefit to the Debtors' estates to pay Hilco to perform these limited services.

21. Further, any questions regarding issues pertaining to these landlords, such as "cure" amounts are appropriately handled by the CRO.

22. Finally, the payment of a \$30,000 retainer that is deemed earned and non-refundable allows no opportunity for the Committee and other parties to examine and challenge the fees for reasonableness as would be the case for any administrative claimant.

## CONCLUSION

Given the posture of the case at this time, it is not in the best interest of creditors the estates to employ Hilco. Based on the foregoing, the Committee requests that the Court deny the Application.

Dated: June 11, 2021.

Respectfully submitted,

/s/ Carolyn J. Johnsen  
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Unsecured Creditors*

## CERTIFICATE OF SERVICE

I hereby certify that Notice of this document was electronically filed and served to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District on June 11, 2021.

/s/ Carolyn J. Johnsen  
Carolyn J. Johnsen

4833-4624-6638 v1 [97257-1]