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**PROPOSED COUNSEL TO THE
DEBTORS AND DEBTORS IN POSSESSION**

**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)
Debtors.	§	(Jointly Administered)

**NOTICE OF REVISED PROPOSED ORDER (I) AUTHORIZING THE
EMPLOYMENT AND RETENTION OF B. RILEY ADVISORY SERVICES,
TO PROVIDE THE DEBTORS A CHIEF RESTRUCTURING OFFICER AND
CERTAIN ADDITIONAL PERSONNEL AND (II) DESIGNATING MARK SHAPIRO
AS CHIEF RESTRUCTURING OFFICER, EFFECTIVE AS OF APRIL 20, 2021**

PLEASE TAKE NOTICE that on May 20, 2021, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Application for Entry of an Order (I)*

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.

Authorizing the Employment and Retention of B. Riley Advisory Services to Provide the Debtors a Chief Restructuring Officer and Certain Additional Personnel and (II) Designating Mark Shapiro as Chief Restructuring Officer, Effective as of the Petition Date [Docket No. 171] (the “Application”). A proposed order granting the Motion was attached thereto as Exhibit A (the “Original Proposed Order”).

PLEASE TAKE FURTHER NOTICE that attached hereto as Exhibit A is a revised proposed *Order (I) Authorizing the Employment and Retention of B. Riley Advisory Services, to Provide the Debtors a Chief Restructuring Officer and Certain Additional Personnel and (II) Designating Mark Shapiro as Chief Restructuring Officer, Effective as of April 20, 2021* (the “Revised Proposed Order”).

PLEASE TAKE FURTHER NOTICE that attached hereto as Exhibit B is a redline of the Revised Proposed Order marked against the Original Proposed Order.

[Remainder of page intentionally left blank]

Respectfully submitted this 22nd day of June, 2021.

GRAY REED

By: /s/ Jason S. Brookner

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CERTIFICATE OF SERVICE

I certify that on June 22nd, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Jason S. Brookner

Jason S. Brookner

Exhibit A

Revised Proposed Order

**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)
Debtors.	§	(Jointly Administered)
	§	
	§	Re: Docket No. 171

**ORDER (I) AUTHORIZING
THE EMPLOYMENT AND RETENTION
OF B. RILEY ADVISORY SERVICES, TO PROVIDE THE
DEBTORS A CHIEF RESTRUCTURING OFFICER AND CERTAIN
ADDITIONAL PERSONNEL AND (II) DESIGNATING MARK SHAPIRO
AS CHIEF RESTRUCTURING OFFICER, EFFECTIVE AS OF APRIL 20, 2021**

Upon the application (the “Application”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (the “Order”), pursuant to section 363(b) of title 11 of the United States Code (the “Bankruptcy Code”), (a) authorizing the employment and retention of GlassRatner Capital & Advisory Group LLC, d/b/a B. Riley Advisory

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.

² Capitalized terms used but not defined herein have the meaning ascribed to such terms in the Application.

Services (“B. Riley Advisory”), effective as of April 20, 2021, and (b) authorizing the designation of Mark Shapiro as the Debtors’ Chief Restructuring Officer (“CRO”) in the chapter 11 cases; and upon consideration of the upon the First Day Declaration and Shapiro Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the terms and conditions of B. Riley Advisory’s employment, including, but not limited to, the Fee and Expense Structure set forth in the Engagement Agreement and summarized in the Application, are reasonable as required by section 363 of the Bankruptcy Code; and this Court having found that B. Riley Advisory is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code; and this Court having found that the relief requested in the Application is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”), if any; and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. The Debtors are authorized to retain and employ B. Riley Advisory and to designate Mark Shapiro as the Debtors’ CRO, effective as of April 20, 2021 (the “Petition Date”), in

accordance with the terms and conditions set forth in the Application and the Engagement Agreement, and subject to the terms outlined herein. This Order does not approve B. Riley Advisory or its affiliates as financial advisors to the Debtors, and B. Riley Advisory is not retained by the Debtors as financial advisors to the Debtors; and B. Riley Advisory and its affiliates shall act only as CRO to the Debtors, and not act in any other capacity on behalf of the Debtors in connection with these chapter 11 cases. For the avoidance of doubt, B. Riley Advisory is expressly authorized to act as CRO for the Debtors, which includes management of the bidding procedures and sale process approved by this Court.

3. The terms of the Engagement Agreement, including, without limitation, the Fee and Expense Structure, and the Indemnification Provisions, are reasonable terms and conditions of employment and approved in all respects, as modified by this Order, and the Debtors are authorized to pay, reimburse, and indemnify B. Riley Advisory in accordance with the terms and conditions of the Engagement Agreement. Notwithstanding the foregoing, the Debtors' indemnification obligations to B. Riley Advisory shall be limited to claims arising pursuant to Services provided by B. Riley Advisory to the Debtors on and after the Petition Date and such indemnification shall not contravene *Bank of N.Y. Trust Co. v. Official Unsecured Creditors' Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009), *In re Southmark Corp.*, 163 F.3d 925 (5th Cir. 1999) or 11 U.S.C. § 524(e), to the extent such authorities are applicable.

4. The Debtors shall file a motion to modify this Order if the Debtors seek to have B. Riley Advisory personnel assume additional or different executive positions than CRO or to materially change the terms of the Engagement Agreement by either (i) modifying the functions of the personnel, (ii) adding new personnel in a materially different manner than contemplated in

the Application and Engagement Agreement, or (iii) materially altering the scope of the Services to be performed under this engagement.

5. No principal, employee or independent contractor of B. Riley Advisory or its affiliates shall serve as a director in any of the above-captioned Debtors during the pendency of these cases.

6. Notwithstanding anything to the contrary contained in the Application, the Engagement Agreement or any exhibits thereto, B. Riley Advisory shall not assign any tasks for which B. Riley Advisory is responsible to any person or entity other than employees of B. Riley Advisory or its affiliates other than for ministerial tasks for which B. Riley Advisory is not entitled to compensation hereunder.

7. The Fee and Expense Structure shall comply with the expense guidelines applicable in the Northern District of Texas. Prior to any deadline that this Court establishes for filing final fee applications, B. Riley Advisory shall file with this Court a summary final fee application to obtain final approval for the payment of its fees and expenses, which summary fee application shall be subject to the standard of review provided in section 330 of the Bankruptcy Code. B. Riley Advisory shall not be required to file any monthly or other interim fee applications or statements.

8. Notwithstanding the requirements of paragraph 7 above, B. Riley Advisory may be compensated on a monthly basis under the Fee and Expense Structure set forth in the Engagement Agreement and summarized in the Application, provided that B. Riley provide written staffing reports to the Debtors, United States Trustee, counsel for the DIP Lender, counsel for AB&T and counsel for the Committee (collectively, the "Notice Parties"). Such reports shall include summary charts which describe the services provided by each executive officer and staff employee provided,

and itemize the expenses incurred. Time records shall (a) be appended to the reports, (b) contain time entries describing the task(s) performed by the one-half hour, and (c) be organized by project category. All compensation paid to B. Riley Advisory hereunder shall be subject to review by the Court in the event an objection is filed within ten (10) days of the Notice Parties' receipt of such report. In the absence of timely objections, the Debtors are authorized to pay B. Riley Advisory all fees incurred by B. Riley Advisory consistent with the Fee and Expense Structure for Services related to those outlined in the Engagement Agreement. All fees and expenses paid to B. Riley Advisory pursuant to this paragraph shall be treated and allowed as administrative expenses in accordance with section 503 of the Bankruptcy Code, included in the Carve Out (as defined in Paragraph 15 of the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 157] (the "DIP Order")).

9. To the extent that there is any inconsistency between this Order and the Engagement Agreement, Application, or Shapiro Declaration, the provisions of this Order shall govern.

10. Notwithstanding anything in the Application or the Engagement Agreement to the contrary, for the avoidance of doubt, the Bankruptcy Court shall have jurisdiction over any and all matters arising under or in connection with B. Riley Advisory's engagement by the Debtors under the Engagement Agreement, including the Indemnification Provisions.

11. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order in accordance with the Application.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Submitted by:

Jason S. Brookner

Texas Bar No. 24033684

Aaron M. Kaufman

Texas Bar No. 24060067

Amber M. Carson

Texas Bar No. 24075610

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**PROPOSED COUNSEL TO THE
DEBTORS AND DEBTORS IN POSSESSION**

Exhibit B

Redline

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

<p>In re:</p> <p>FRESH ACQUISITIONS, LLC, <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	§ § § § § § § §	<p>Chapter 11</p> <p>Case No. 21-30721 (SGJ)</p> <p>(Jointly Administered)</p> <p>Re: Docket No. 171</p>
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**ORDER (I) AUTHORIZING
THE EMPLOYMENT AND RETENTION
OF B. RILEY ADVISORY SERVICES, TO PROVIDE THE
DEBTORS A CHIEF RESTRUCTURING OFFICER AND CERTAIN
ADDITIONAL PERSONNEL AND (II) DESIGNATING MARK SHAPIRO
AS CHIEF RESTRUCTURING OFFICER, EFFECTIVE AS OF APRIL 20, 2021**

Upon the application (the “Application”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (the “Order”), pursuant to section 363(b) of title 11 of the United States Code (the “Bankruptcy Code”), (a) authorizing the employment and retention of GlassRatner Capital & Advisory Group LLC, d/b/a B. Riley Advisory Services (“B. Riley Advisory”), effective as of April 20, 2021, and (b) authorizing the

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.

² Capitalized terms used but not defined herein have the meaning ascribed to such terms in the Application.

designation of Mark Shapiro as the Debtors' Chief Restructuring Officer ("CRO") in the chapter 11 cases; and upon consideration of the upon the First Day Declaration and Shapiro Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the terms and conditions of B. Riley Advisory's employment, including, but not limited to, the Fee and Expense Structure set forth in the Engagement Agreement and summarized in the Application, are reasonable as required by section 363 of the Bankruptcy Code; and this Court having found that B. Riley Advisory is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code; and this Court having found that the relief requested in the Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"), if any; and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. The Debtors are authorized to retain and employ B. Riley Advisory and to designate Mark Shapiro as the Debtors' CRO ~~under~~ effective as of April 20, 2021 (the "Petition

Date’), in accordance with the terms and conditions set forth in the Application and the Engagement Agreement, and subject to the terms outlined herein. This Order does not approve B. Riley Advisory or its affiliates as financial advisors to the Debtors, and B. Riley Advisory is not retained by the Debtors as financial advisors to the Debtors; and B. Riley Advisory and its affiliates shall act only as CRO to the Debtors, and not act in any other capacity on behalf of the Debtors in connection with these chapter 11 cases. For the avoidance of doubt, B. Riley Advisory is expressly authorized to act as CRO for the Debtors, which includes management of the bidding procedures and sale process approved by this ~~Order~~Court.

3. The terms of the Engagement Agreement, including, without limitation, the Fee and Expense Structure, and the Indemnification Provisions, are reasonable terms and conditions of employment and approved in all respects, as modified by this Order, and the Debtors are authorized to pay, reimburse, and indemnify B. Riley Advisory in accordance with the terms and conditions of the Engagement Agreement. Notwithstanding the foregoing, the Debtors’ indemnification obligations to B. Riley Advisory shall be limited to claims arising pursuant to Services provided by B. Riley Advisory to the Debtors on and after the Petition Date and such indemnification shall not contravene *Bank of N.Y. Trust Co. v. Official Unsecured Creditors’ Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009), *In re Southmark Corp.*, 163 F.3d 925 (5th Cir. 1999) or 11 U.S.C. § 524(e), to the extent such authorities are applicable.

4. The Debtors shall file a motion to modify this Order if the Debtors seek to have B. Riley Advisory personnel assume additional or different executive positions than CRO or to materially change the terms of the Engagement Agreement by either (i) modifying the functions of the personnel, (ii) adding new personnel in a materially different manner than contemplated in

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5. No principal, employee or independent contractor of B. Riley Advisory or its affiliates shall serve as a director in any of the above-captioned Debtors during the pendency of these cases.

6. Notwithstanding anything to the contrary contained in the Application, the Engagement Agreement or any exhibits thereto, B. Riley Advisory shall not assign any tasks for which B. Riley Advisory is responsible to any person or entity other than employees of B. Riley Advisory or its affiliates other than for ministerial tasks for which B. Riley Advisory is not entitled to compensation hereunder.

7. The Fee and Expense Structure shall comply with the expense guidelines applicable in the Northern District of Texas. Prior to any deadline that this Court establishes for filing final fee applications, B. Riley Advisory shall file with this Court a summary final fee application to obtain final approval for the payment of its fees and expenses, which summary fee application shall be subject to the standard of review provided in section 330 of the Bankruptcy Code. B. Riley Advisory shall not be required to file any monthly or other interim fee applications or statements.

8. ~~7.~~ Notwithstanding the requirements of paragraph 7 above, B. Riley Advisory may be compensated on a monthly basis under the Fee and Expense Structure set forth in the Engagement Agreement and summarized in the Application, provided that B. Riley provide written staffing reports to the Debtors, United States Trustee, counsel for the DIP Lender, counsel for AB&T and counsel for the Committee (collectively, the “Notice Parties”). Such reports shall include ~~contain~~ summary charts which describe the services provided by each executive officer and staff employee provided, and itemize the expenses incurred. Time records shall

(a) be appended to the reports, (b) contain time entries describing the task(s) performed by the one-half hour, and (c) be organized by project category. All compensation paid to B. Riley Advisory hereunder shall be subject to review by the Court in the event an objection is filed within ten (10) days of the Notice Parties' receipt of such report. In the absence of ~~timely~~timely objections, the Debtors are authorized to pay B. Riley Advisory all fees incurred by B. Riley Advisory consistent with the Fee and Expense Structure for Services related to those outlined in the Engagement Agreement. ~~Such amounts~~All fees and expenses paid to B. Riley Advisory pursuant to this paragraph shall be treated and allowed as administrative expenses in accordance with section 503 of the Bankruptcy Code, included in the Carve Out (as defined in Paragraph 15 of the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 157] (the "DIP Order").

9. ~~8.~~ To the extent that there is any inconsistency between this Order and the Engagement Agreement, Application, or Shapiro Declaration, the provisions of this Order shall govern.

10. ~~9.~~ Notwithstanding anything in the Application or the Engagement Agreement to the contrary, for the avoidance of doubt, the Bankruptcy Court shall have jurisdiction over any and all matters arising under or in connection with B. Riley Advisory's engagement by the Debtors under the Engagement Agreement, including the Indemnification Provisions.

11. ~~10.~~ The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order in accordance with the Application.

12. ~~11.~~ Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

13. ~~12.~~ This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Submitted by:

Jason S. Brookner
Texas Bar No. 24033684
Aaron M. Kaufman
Texas Bar No. 24060067
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**PROPOSED COUNSEL TO THE
DEBTORS AND DEBTORS IN POSSESSION**

Exhibit 1

Engagement Agreement

Document comparison by Workshare 10.0 on Monday, June 21, 2021 5:33:59 PM

Input:	
Document 1 ID	netdocuments://4843-9607-3963/1
Description	Furr's - ORDER on B. Riley Employment Application
Document 2 ID	netdocuments://4843-9607-3963/2
Description	Furr's - ORDER on B. Riley Employment Application
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Insertions	19
Deletions	12
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	31