



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 24, 2021

United States Bankruptcy Judge
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

GRAY REED

1601 Elm Street, Suite 4600

Dallas, Texas 75201

Telephone: (214) 954-4135

Facsimile: (214) 953-1332

Email: jbrookner@grayreed.com

akaufman@grayreed.com

acarson@grayreed.com

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

Exhibit 1

Engagement Agreement



3500 Maple Avenue, Suite 420
Dallas, TX 75219
Tel: (972) 794-1050
www.brileyfin.com

February 2, 2021

Mr. Martin Cortes, CFO
Buffets, LLC
Fresh Acquisitions, LLC
2338 N Loop 1604 W, Suite 350
San Antonio, TX 78248

Re: Buffets, LLC and Fresh Acquisitions, LLC *et al.* CRO (the “Matter”)

Dear Martin,

This Engagement Letter Agreement (the “Agreement”) confirms our engagement as Chief Restructuring Officer (“CRO”) by Buffets, LLC and Fresh Acquisitions LLC and their subsidiaries and affiliates as listed on Exhibit A (collectively, the “Company” or “Debtors”), including the scope of the services to be performed and the basis of compensation for those services. Upon execution of this letter by each of the parties below, this letter will constitute an agreement between the Company and GlassRatner Advisory & Capital LLC dba B. Riley Advisory Services (“B. Riley Advisory”), effective February 2, 2021.

Mark Shapiro, Senior Managing Director of the firm will lead B. Riley Advisory’s activities and will act as CRO, reporting to the Board of Directors. Mr. Shapiro will assign other professionals to the Matter as needed.

Scope of Services

Engagements such as this are dynamic, requiring a broad scope of services that may or may not be required as the matter progresses. Based on our limited conversations it appears the Company is considering a sale or a restructuring that may occur through a Chapter 11 or similar proceeding. As such, the Scope of Services may include the following:

- Assist in all aspects of the Company’ business activities and operations, including budgeting, cash management and financial management;
- Assist the Company in communications and negotiations with the Company’s lenders, tax and/or other governmental authorities or agents, vendors, landlords, and other stakeholders;
- Review daily operating activity, purchases and expenses;
- Cause the Company to exercise its rights under any agreements;
- Review historical and projected financial information, including operating results, capital structure and funding mechanics, for the Company and each of its affiliates;
- Assist the Company in developing financial and liquidity projections;
- Identify and assess potential restructuring alternatives for the Company;
- Assist and manage a sale of assets through a §363 sale process, an out-of-court sale process, or a plan of reorganization that would include but not limited to, among other things, preparation of marketing materials, solicitation of interested parties, valuation services (if required), coordination all activities on behalf of the Company, and execution of transaction
 - Provide court testimony to support the plan or sale, as necessary
- If a decision is made by the Company to initiate a Chapter 11 or similar proceeding:

B | RILEY *Advisory Services*

- Assist the Debtors with First Day Order data collection and preparing ongoing financial reporting;
 - With the Debtors' assistance, prepare the information required pursuant to statutory reporting requirements related to the chapter 11 proceedings, including the statements of financial affairs, schedules and, during the pendency of the case, the Monthly Operating Reports (MORs);
 - With the Debtors' assistance, prepare reports for, and communications with, the Bankruptcy Court, creditors, and any other constituents;
 - Review, evaluate and analyze the financial ramifications of proposed transactions for which the Debtors may seek Bankruptcy Court approval;
 - Provide financial advice and assistance to the Debtors in connection with a sale transaction;
 - Assist the Debtors in developing and supporting a proposed Plan of Reorganization;
 - Render Bankruptcy Court testimony in connection with the foregoing, as required, on behalf of the Debtors;
 - Manage the process to secure debtor-in-possession ("DIP") financing, including but not limited to negotiating terms of DIP financing; and
 - Work with the Debtors and their professionals to maximize the value of the estate.
- Any other services, duties or tasks which fall within the responsibilities of a Chief Restructuring Officer, including services, duties and tasks arising from or relating to those set forth above, at the direction of the Board.

Compensation

For this Matter, we will bill for our professional services at a fixed rate of \$20,000 per week ("Weekly Rate") plus reasonable out-of-pocket expenses incurred. The out-of-pocket expenses will be subject to a cap of \$2,500 per month ("Cap") and will be reimbursed in accordance with the Company's expense reimbursement policies in effect from time to time. We will obtain Debtors' approval in advance in the event that any monthly out-of-pocket expenses may exceed the Cap.

Debtors shall have the right to amend the Exhibit A to include or remove certain Debtors' subsidiaries from time to time during this engagement. We agree that our Weekly Rate will not change for the services rendered to all entities listed on the Exhibit A during this engagement.

Should this engagement end in the middle of a week, then the compensation for the last partial week shall be prorated based on the days we worked in the last week.

Retainer/Billing

In accordance with B. Riley Advisory's standard policy, we will require a retainer of \$80,000 to be applied to our final billing for the Matter or refunded to the extent it exceeds unpaid billings ("Retainer"). The Company agrees to invoice monthly, provided the Company has not filed a Chapter 11 bankruptcy petition. All invoices will be applied against the Retainer and subsequent payments will be used to replenish the Retainer. Should the Debtors initiate a Chapter 11 proceedings, the Debtors will direct their counsel to seek Bankruptcy Court approval of B. Riley Advisory and Mark Shapiro's designation as CRO with the payment of monthly fees in accordance with the terms hereof, the bankruptcy code, US Trustee Guidelines, and local rules, whether

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subject to interim fee application, staffing reports, or the submission to the court of itemized monthly fee statements.

The Retainer is not intended to be an estimate for the total cost of work that may be performed, nor have we provided a binding estimate or other form of cap. The Company recognizes that it is difficult to estimate the amount of time that this engagement may require. The time involved depends upon the extent and nature of available information. It also depends upon the developments that occur as our work progresses. It is our intention to work closely with the Company to structure our work so that the Company is aware of the scope and direction of our work as it progresses. Should the time demand increase, we may require an addition to our Retainer.

The Company agrees that all outstanding amounts due prior to commencement of a Chapter 11 proceeding must be paid prior to filing of a bankruptcy petition.

Limitations

B. Riley Advisory is not a public accounting firm. While our work may involve analysis of accounting records, the engagement does not include an audit or review of existing records in accordance with generally accepted auditing standards or standards for review engagements.

Please note that it is not our practice to retain working papers, notes, or data files that have been updated or superseded. If you wish us to follow a different retention practice, please indicate your specific request(s) in writing when returning a copy of this engagement letter.

Indemnification

The Debtors agree to indemnify and hold harmless B. Riley Advisory (including any employees or affiliated persons) from and against all claims, liabilities, losses and damages arising out of our services performed within the scope of this engagement upon the Debtors' behalf except to the extent caused by gross negligence or willful misconduct by us. Debtors may at its option assume the defense of such claim with counsel reasonably satisfactory to B. Riley Advisory. If Debtors have not assumed the defense of any claim within a reasonable time after receipt of written notice of the claim by B. Riley Advisory, B. Riley Advisory shall have the right to defend such claim and Debtors will reimburse B. Riley Advisory for its reasonable attorney's fees and expenses incurred in defending against the claim as incurred. If Debtors assume the defense of the claim, B. Riley Advisory shall be entitled to participate in (but not control) the defense of the claim with its legal counsel and at its own expense. B. Riley Advisory shall bear any expense of such participation if Debtors are defending against the claim unless: (i) defenses exist to B. Riley Advisory that are unavailable to Debtors or (ii) there exists a material conflict of interest between Debtors and B. Riley Advisory under applicable standards of professional conduct. Under such circumstances, Debtors will reimburse B. Riley Advisory for B. Riley Advisory's reasonable attorney's fees and expenses as incurred. B. Riley Advisory shall not be entitled to the indemnification and reimbursement of any such loss, damage, liability, claim or expense which arises out of or is based upon any action or failure to act by B. Riley Advisory under this Agreement or which constitutes gross negligence, other acts of willful misconduct in performance under this Agreement on the part of B. Riley Advisory. Such indemnification shall survive the completion of the engagement for a period of one year but be subject to approval of the Bankruptcy Court prior to the effective date of any plan of reorganization.

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The CRO shall be covered as an officer under the Debtors' existing director and officer liability insurance policies ("D&O") if such policy is in effect and the Debtor shall also maintain any such insurance coverage for the CRO for a period of not less than one year following the date of the termination of such officer's services hereunder. The Debtors shall provide evidence of said coverage in place and evidence of payment of premiums associated therewith. Such D&O policies must be at a coverage level satisfactory to B. Riley Advisory, otherwise binding additional coverage may be necessary. Notwithstanding the foregoing to the contrary, we hereby acknowledge our receipt of Debtors' current D&O policies and confirm such D&O policies are satisfactory.

Termination

Either party, in its sole discretion, for any reason whatsoever, may terminate this Agreement immediately. Upon termination of this Agreement, B. Riley Advisory shall be entitled to the compensation for services provided and reasonable out-of-pocket expenses incurred pursuant to this Agreement which is due and payable pursuant hereto.

Confidentiality

B. Riley Advisory agrees not to disclose or permit the disclosure of any of the terms of this Agreement or any information relating to the project to be performed hereunder, provided that such disclosure may be made (a) to any person who is an officer, director or employee of B. Riley Advisory solely for their use in the performance of the services hereunder and on a need-to-know basis, (b) with the prior written consent of the Debtors, or (c) pursuant to a subpoena or order issued by a court, arbitrator or governmental body, agency or official. In the event that B. Riley Advisory shall receive a request to disclose any of the terms of this Agreement under a subpoena or order, B. Riley Advisory shall (i) promptly notify the Debtors, (ii) consult with the Debtors on the advisability of taking steps to resist or narrow such request and (iii) if disclosure is required or deemed advisable, cooperate with the Debtors in any attempt it may make to obtain an order or other assurance that confidential treatment will be accorded those terms of this Agreement that are disclosed.

Integration

This Agreement contains the entire agreement and understanding between B. Riley Advisory and the Debtors concerning B. Riley Advisory's services for the Debtors in conjunction with the Matter. This Agreement supersedes and replaces all prior negotiations, estimates, proposed agreements, and/or agreements (oral and written) concerning B. Riley Advisory's services for the Debtors in conjunction with the Matter.

Governing Law; Dispute Resolution

The laws of the State of Texas shall govern this Agreement. Any dispute arising out of or relating to this Agreement, including for recovery of fees by B. Riley Advisory, shall be resolved by binding arbitration in accordance with the Commercial Rules of the American Arbitration Association (the "AAA"), and the AAA's Expedited Procedure shall be used where applicable. The arbitration shall be conducted through the AAA by a single arbitrator chosen from the AAA's panel of arbitrators. Debtors and B. Riley Advisory agree that the arbitration shall take place in San Antonio, Texas. Judgment upon the award rendered by the arbitrator may be entered in any

B | RILEY *Advisory Services*

court having personal jurisdiction over the party responsible for payment under the award. The prevailing party in any dispute arising out of or relating to this Agreement shall be entitled to recover from the other all fees and costs incurred, including legal fees and costs of arbitration, in any proceedings, including, but not limited to arbitration, litigation, bankruptcy, and in any appellate proceedings as well.

Conclusion

All correspondence should be directed to:

Mark Shapiro
B, Riley Advisory Services
3500 Maple Avenue, Suite 420
Dallas, TX 75219
mshapiro@brileyfin.com

If the arrangements described in this Agreement are acceptable to the Debtors, and the services summarized above are in accordance with the understanding of the Debtors, please sign and return a copy of this letter. This Agreement shall be enforceable against the Debtors so long as the Debtors sign below. We look forward to working with you on this Matter.

Yours very truly,

**GLASSRATNER ADVISORY & CAPITAL GROUP LLC, DBA B. RILEY
ADVISORY SERVICES**



Mark Shapiro, Senior Managing Director

[Signature page follows]

B | RILEY *Advisory Services*

The services summarized in this Agreement are in accordance with our requirements and are acceptable.

Accepted:

Company

By: 
Authorized Signer Martin Cortes, CFO


Date

GlassRatner Wire Instructions:

Wells Fargo Bank
Woodland Hills, CA
Beneficiary: BRGR Revenue Depository
ABA# 121 000 248
Account Number: 4208 220418

Reference:

Swift code for incoming international wires in US\$: WFBIUS6S
Swift code for incoming international wires in foreign currency: WFBIUS6W

Wells Fargo Bank - WARNER RANCH
6001 TOPANGA CANYON BLVD
WOODLAND HILLS, CA, 91367
Phone: 818-716-4606

Exhibit A
Debtor Entities

Buffet, LLC
Fresh Acquisitions, LLC
Hometown Buffets, Inc.
OCB Restaurants Co., LLC
OCB Purchasing Co
Ryan's Restaurant Group, LLC
Fire Mountain Restaurants, LLC
Tahoe Joe's, Inc.
FMP-Ovation Payroll, LLC
Alamo Buffets Payrolls, LLC
Alamo Ovation, LLC
Buffets Restaurants Holdings, Inc.
Buffets Holdings, LLC
Alamo Fresh Payroll, LLC
FMP-Fresh Payroll, LLC
Food Management Partners, Inc.
FMP SA Management Group, LLC