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NORTHERN DISTRICT OF TEXAS

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

Signed June 24, 2021


United States Bankruptcy Judge

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

In re:

FRESH ACQUISITIONS, LLC, *et al.*,¹

Debtors.

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Chapter 11

Case No. 21-30721 (SGJ)

(Jointly Administered)

Re: Docket No. 172

**ORDER ESTABLISHING PROCEDURES FOR INTERIM
COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR PROFESSIONALS**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") authorizing the Debtors to (a) establish procedures for interim compensation and compensation and reimbursement of

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 otherwise defined herein have the meanings ascribed to them in the Motion.

expenses for Professionals, and (b) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion 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 Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion 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 Motion is granted as set forth herein.
2. All Professionals in these cases may seek compensation in accordance with the following procedures (collectively, the "Compensation Procedures"):
 - a. Starting immediately upon entry of the Order and continuing no more than once per month thereafter, each Professional may submit to the Notice Parties (as defined below) a statement (each, a "Fee Statement") for the prior one month period for which compensation and reimbursement of expenses is sought.³ Each Fee Statement shall include (i) a description of the services rendered, (ii) the time spent, (iii) the hourly rates charged, and (iv) the name of the attorney, accountant, other professional, or paraprofessional performing the work. The Fee Statement need not be filed with this Court, rather, each Fee Statement shall be served by email to:
 - i. counsel to the Debtors, Gray Reed, Attn: Jason S. Brookner (jbrookner@grayreed.com), Aaron M. Kaufman

³ The initial Fee Statement served by any Professional may include all periods prior to the entry of the Order.

(akaufman@grayreed.com), and Amber M. Carson (acarson@grayreed.com);

- ii. counsel to the Debtors' prepetition secured lender, Arizona Bank & Trust ("AB&T"), Engelman Berger, P.C., Attn: Patrick A. Clisham (pac@eblawyers.com);
- iii. counsel to the proposed debtor in possession financing lender (the "Lender"), Carrington Coleman, Attn: Mike Sutherland (msutherland@ccsb.com);
- iv. counsel to the Committee, Dickinson Wright PLLC, Attn: Carolyn J. Johnsen (CJJohnsen@dickinson-wright.com); and
- v. the U.S. Trustee, Attn: Meredyth A. Kippes (meredyth.a.kippes@usdoj.gov).

(collectively, the "Notice Parties").

- h. Each Notice Party shall have five (5) calendar days (the "Objection Deadline") following service of a Fee Statement to evaluate the Fee Statement and serve a Notice of Objection as provided in paragraph c., below. Upon the expiration of the Objection Deadline, except as to that portion of a Fee Statement that is the subject of a Notice of Objection as provided in paragraph c., below, the Debtors may pay 80% of the undisputed fees and 100% of the actual and necessary expenses set forth in the Fee Statement (the "Reduced Monthly Payment"); *provided, however*, that such payments must be consistent with the Approved Budget (as that term is used in the *Interim 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, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 71] (the "Interim DIP Order"), and any final order entered by the Court in connection therewith).
- i. If any of the Notice Parties determine that the compensation or reimbursement sought in a particular Fee Statement is inappropriate or unreasonable, or that the numbers and calculations are incorrect, such Notice Party shall, on or before the Objection Deadline, serve on (i) the Professional whose statement is objected to, and (ii) except to the extent duplicative of the foregoing clause, the Notice Parties, a Notice of Objection to the Fee Statement (the "Notice of Objection"), with a statement setting forth the precise nature of the objection and the amount at issue. Thereafter, the objecting party and the Professional whose statement is objected to shall confer and attempt to reach an agreement regarding the correct payment to be made. If, however, the parties are unable to reach a resolution of the

objection within 14 days after service of the Notice of Objection, the objecting party shall file its objection (the “Objection”) with the Court within three business days and serve such Objection on the respective Professional and each of the Notice Parties. Thereafter, the Professional whose Fee Statement is the subject of the Objection may either (i) file with the Court a response to the Objection, together with a request for payment of the difference, if any, between the total amount requested in the Fee Statement and the amount of compensation or reimbursement subject to dispute (the “Disputed Amount”), or (ii) forego payment of the Disputed Amount until the next fee application hearing, at which time this Court shall consider the Objection. Within three (3) days following entry of an order resolving an Objection to a Fee Statement, if applicable, the Debtors shall pay any outstanding portion of the fees and expenses authorized for payment by such order.

- j. The first Fee Statement may be submitted by each of the Professionals no earlier than the entry of the Order.
- k. Once every three (3) months, each of the Professionals may file with the Court and serve on the Notice Parties, on or before the last day of the month following the end of the period for which compensation is sought, an application for interim Court approval and allowance, pursuant to section 331 of the Bankruptcy Code, of compensation and reimbursement of expenses incurred during the prior three months (an “Interim Fee Application”).
- l. The pendency of an Objection to payment of compensation or reimbursement of expenses shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses under the Compensation Procedures.
- m. Neither the payment of nor the failure to object, in whole or in part, to the payment of fees and reimbursement of expenses as provided herein shall bind any party in interest or the Court with respect to the allowance of compensation and reimbursement of expenses included in any fee application as to any Professionals.

3. In each Interim Fee Application and final fee application, all Professionals who have been or are hereafter retained pursuant to sections 327, 363, or 1103 of the Bankruptcy Code shall (i) apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtors’ Cases in compliance with sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, Local Rules, and any other

applicable procedures and orders of the Court, and (ii) shall make commercially reasonable best efforts to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in *Appendix B Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under United States Code by Attorneys in Larger Chapter 11 Cases Dated June 11, 2013*.

4. The amount of fees and expenses sought in any request for compensation and reimbursement of expenses shall be stated in U.S. dollars (if applicable, calculated at the prevailing exchange rate on the date of submission of the relevant fee application).

5. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with the Approved Budget and 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*.

6. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

7. The Debtors are authorized to take all reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

8. 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:

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Aaron M. Kaufman

Texas Bar No. 24060067

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