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

In re:

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

**EMERGENCY MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE
COMMITTEE TO FILE CERTAIN TRIAL EXHIBITS UNDER SEAL, AND (II)
LIMITING ATTENDANCE AT TRIAL**

The Official Committee of Unsecured Creditors (the “**Committee**”) files this motion (the “**Motion to Seal**”) pursuant to Local Rule 9077-1 requesting the Court to

¹ 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.

grant the Committee permission to file under seal certain trial exhibits (“**Exhibits**”) to be presented at the hearing scheduled for August 24, 2021 (the “**Sale Hearing**”). In order to protect confidentiality, the Committee also requests the Court to limit attendance at the Sale Hearing as suggested herein.

A. JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and other bases for the relief requested herein are 11 U.S.C. §§105(a) and Rule 9077-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “**Local Rules**”).

B. BACKGROUND AND BASIS FOR THE MOTION

3. The Debtors each filed a voluntary Chapter 11 petition on April 20, 2021 (the “**Petition Date**”).

4. Prior to the Petition Date, the Debtors hired B. Riley as their Chief Restructuring Officer.

5. The Committee was appointed on April 30, 2021.

6. In mid-May, 2021, the Debtors and the Committee entered into the Confidentiality Agreement attached as Exhibit A (the “**Debtors’ CA**”). The Debtor’s CA restricts the Committee from disclosing any “Confidential Information” provided by the Debtors or their professionals. Confidential Information is broadly defined as all confidential, proprietary, or non-public information including virtually all documents, reports and analyses (see Paragraphs 1 and 2).

7. On July 14, 2021, the Court entered its *Amended Order Directing Arizona Bank & Trust to Produce Documents and Appear for Examination Pursuant to Rule 2004* (the “**2004 Order**”) [Doc No. 299].

8. On July 12, 2021, the Committee entered into the Confidentiality Agreement with Arizona Bank & Trust (“**ABT**”) attached as Exhibit B (the “**ABT CA**”). The ABT CA restricts the Committee from disclosing any “Confidential Information” defined as all documents materials, and information produced in connection with the 2004 Order.

9. Over the course of the bankruptcy case, the Debtors, B. Riley and ABT have provided multiple documents that likely constitute Confidential Information under the respective CA’s.

10. On May 18, 2021, the Debtors filed a motion to sell by auction substantially all their assets (the “**Sale**”). [Docket No. 165]. VitaNova Brands, LLC (“**VitaNova**”) has been designated as the “Successful Bidder” and has executed an Asset Purchase Agreement, as amended [Doc No. 326]. The Sale hearing is scheduled currently for August 24, 2021.

11. On July 12, 2021, the Committee filed its *Initial Objection to Proposed Sale of Debtors’ Assets* (“**Initial Objection**”), arguing that (a) the Debtors cannot legally transfer the Chapter 5 Avoidance Actions to VitaNova, an entity owned and controlled by the ultimate equity holders of the Debtor; (b) the Debtors have not provided any evidence of the value of the Causes of Action nor have they allocated any portion of the purchase price to their sale; and (c) allowing VitaNova to “pay” a substantial portion of the purchase price by assuming liabilities is in violation of the Bankruptcy Code including the priorities for distribution to creditors [Doc No. 296].

12. On August 16, 2021, the Committee filed an objection to the Debtors’ request to extend exclusivity [Doc No. 350] and the matter was considered at a hearing on August 17, 2021. The Committee advised the Court that it was restricted by the Debtors’ CA and the ABT CA from presenting various arguments based on Confidential Information and that it would be seeking to file documents under seal.

13. The Debtors CA provides that in order to file or submit to the Court any Confidential Information, the Committee must obtain the Debtors' written consent or seek leave of the Court to file such materials, provided however that the Committee may contemporaneously file a pleading with the Court with the confidential Information redacted. The Debtors CA provides further that if the Committee intends to orally disclose Confidential Information to the Court, it must seek authority to make the disclosure *in camera* or in some other protective manner (see Paragraph 4).

14. The ABT CA provides that any filing that contains, attaches or references any Confidential Information shall be filed under seal (see Paragraph 2(c)).

C. RELIEF REQUESTED

15. The Committee has filed its list of Trial Exhibits necessary to support its objection to the Sale [Doc No. 381]. These include documents containing or referencing Confidential Information. An unredacted copy of the Trial Exhibits has been provided to the Court contemporaneously with this pleading.

16. Local Rule 9077-1 provides that "If no statute or rule requires or permits a document to be filed under seal, a party may file a document under seal only on motion and by permission of the Presiding Judge."

17. The Committee proposes the following protocol:

a. Unredacted copies of the Trial Exhibits shall be provided to counsel for the Debtors, counsel for the United States Trustee ("**UST**"), counsel for the Guarantors²; counsel for VitaNova; counsel for ABT and any other party that has executed the Debtors CA.

c. At the request of the UST, the following language shall be included in the Order granting the Motion to Seal:

² The Guarantors refers to Jason Kemp, Alan Jones, Brian Padilla, and Larry Harris.

The Committee shall provide an unredacted copy of the sealed documents to the Office of the United States Trustee. The United States Trustee and his counsel are bound by the terms of this Order; however, notwithstanding any other language in this Order, the obligations of the United States Trustee concerning criminal matters or ethical matters are not affected by the terms of this Order.

d. When arguments and evidence are being presented that may include Confidential Information, attendance at the Sale Hearing shall be limited to Debtors' counsel; Debtors' managers and officers; counsel for the Guarantors; representatives of B.Riley; Committee counsel; members of the Committee, the Committee's financial advisor; VitaNova's counsel and its representatives; ABT's counsel and its representatives; counsel for the UST; and counsel for any other party who has agreed to be bound by the Debtors' CA.

18. The Committee has advised counsel for the Debtors and ABT's of the Motion to Seal and sought their consent.

E. CONCLUSION

Based on the foregoing, the Committee requests the Court to enter the proposed Order attached hereto as Exhibit C.

Dated: August 22, 2021

Respectfully submitted,

/s/ Carolyn J. Johnsen

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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 August 22, 2021.

/s/ Carolyn J. Johnsen
Carolyn J. Johnsen

4853-0073-5223 v1 [97257-1]