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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)

**MOTION TO MODIFY ORDER AUTHORIZING THE RETENTION AND
EMPLOYMENT OF CALIBER ADVISORS, LLC AS FINANCIAL ADVISOR FOR
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE
IS FILED WITH THE CLERK OF THE BANKRUPTCY COURT AT EARLE CABELL
FEDERAL BUILDING, 1100 COMMERCE ST., RM. 1254, DALLAS, TX 75242-1496
BEFORE THE CLOSE OF BUSINESS ON THE DATE THAT IS TWENTY-FOUR**

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.

(24) DAYS FROM THE DATE OF SERVICE HEREOF. ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED, A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY. IF NO HEARING ON SUCH MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT HEREIN.

The Official Committee of Unsecured Creditors (the “**Committee**”), by its undersigned counsel files this *Motion to Modify Order Authorizing the Retention and Employment of Caliber Advisors, LLC as Financial Advisor for the Official Committee of Unsecured Creditors* (the “**Motion**”). Specifically, the Committee requests a modification to increase to \$60,000 the monthly cap on billing as set forth in the Court’s previous order.

BASIS FOR THE MOTION

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 May 24, 2021, the Committee filed an *Application for an Order Authorizing the Retention and Employment of Caliber Advisors, LLC as Financial Advisor for the Official Committee of Unsecured Creditors* (the “**Application**”) [Doc No. 184].

4. The Application included the Committee’s letter agreement (“**Agreement**”) with Caliber Advisors, LLC (“**Caliber**”) that provided for the terms of

Caliber's employment as financial advisor to the Committee including services to be rendered and compensation (see Agreement attached as **Exhibit A**, paras. 2 and 3).

5. Specifically, the Agreement provided for an hourly fee of \$400.00 for principal David Gonzales, an hourly fee of \$250.00 for associate Ashley Loesch, and that monthly billings would be limited to \$15,000 per month (see para 3a).

6. On June 25, 2021, the Court entered its *Order Authorizing the Retention and Employment of Caliber Advisors, LLC as Financial Advisor for the Official Committee of Unsecured Creditors* (the "**Order**") [Doc No. 267]. The Order authorized the retention of Caliber as of May 12, 2021 "to perform the services as set forth in the Application" (Order, para. 1). The Order further provided that Caliber "will be compensated in accordance with the procedures set forth in the Application and retention letter attached thereto providing that month billings are limited to \$15,000" (Order, para. 3).

7. At the time of the engagement, both the Committee and Mr. Gonzales believed that the amount of work would be within the billing limitation. However, as the case progressed, the issues particularly involving necessary and extensive financial review of the Debtors' operations and management, became increasingly demanding and more complicated, thus requiring more of a time commitment than originally anticipated.

8. For example, Calibers' monthly billings have been as follows: May-\$14,971.32; June-\$14,973.36; July-\$45,379.00; and August-\$44,733.32. These amounts are clearly not excessive under the circumstances. By comparison, the Debtors employ a chief restructuring officer (B.Riley) that performs similar tasks and is compensated \$20,000 per week. The Debtors also employ a management company that has been compensated over \$400,000 in the four months since the Petition Date.

9. The Committee believes that Caliber has provided critical financial advice to enable the Committee to meet its fiduciary obligations to investigate the Debtors' actions and file objections when necessary.

10. The Committee believes Caliber has provided a benefit to the Debtors' estates and the creditor constituency as a whole and should be compensated accordingly.

11. Therefore, the Committee has amended the Agreement to increase the monthly billing cap to \$60,000. (See attached **Exhibit B**).

CONCLUSION AND REQUEST FOR RELIEF

Based on the foregoing, the Committee requests the Court modify its Order to increase the billing cap and enter such other and necessary relief as is just and proper. The Committee understands that the Debtors will not oppose the motion. A proposed form of order is attached as **Exhibit C**.

Dated: September 16, 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 September 16, 2021.

/s/ Carolyn J. Johnsen

Carolyn J. Johnsen

4838-6853-4266 v2 [97257-1]