



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 April 22, 2021


United States Bankruptcy Judge

**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. 21

**ORDER GRANTING DEBTORS' EMERGENCY APPLICATION
FOR ENTRY OF AN ORDER (I) AUTHORIZING THE EMPLOYMENT AND
RETENTION OF BMG GROUP, INC. AS CLAIMS, NOTICING, AND SOLICITATION
AGENT AND (II) APPOINTING BMC GROUP, INC. AS ADMINISTRATIVE AGENT**

Upon the application (the "Application")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"): (a) 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 otherwise defined herein shall have the meanings ascribed to them in the Application.

Debtors to retain and employ BMC Group, Inc. (“BMC”) as their claims, noticing, and solicitation agent effective as of the Petition Date, in accordance with the terms and conditions set forth in the Services Agreement; and (b) granting related relief; and upon the First Day Declaration and the Feil Declaration; 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 Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Application; and the Court having held a hearing on the Application; and all objections, if any, to the Application have been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Application is approved on a final basis as set forth herein.
2. The Debtors are authorized to retain and appoint BMC as Claims and Noticing Agent under the terms of the Services Agreement, as of the Petition Date, as set forth herein.
3. BMC is authorized and directed to perform noticing and solicitation services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these chapter 11 cases, and other related tasks as described in the Application, the Services Agreement, and this Order. The Clerk shall provide BMC with CM/ECF credentials that allow BMC to receive CM/ECF notifications and file certificates of service.
4. BMC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these chapter 11 cases and is authorized and

directed to maintain official claims registers for each of the Debtors and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

5. BMC is authorized to provide an electronic interface for filing of proofs of claim and to obtain a post office box or address for the receipt of proofs of claim. BMC shall provide public access to the claims register, including complete proofs of claim with attachments, if any, without charge.

6. The Debtors and BMC are authorized to perform their respective obligations set forth in the Services Agreement, and BMC is authorized to perform all related tasks to solicit a chapter 11 plan or plans, tabulate the votes thereon and serve and keep track of the various solicitation materials to be provided to parties in interest, all as more fully described in the Application and the Services Agreement.

7. BMC is authorized to take such other action as is reasonably necessary to comply with all duties and Services set forth in the Application, the Services Agreement, and this Order.

8. Notwithstanding sections 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2016, the Debtors are authorized to compensate BMC in accordance with the terms of the Services Agreement upon the receipt of reasonably detailed invoices setting forth the Services provided by BMC and the rates charged for each, and to reimburse BMC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for BMC to file fee applications or otherwise seek Court approval for the compensation of its Services and reimbursement of its expenses.

9. Notwithstanding anything to the contrary herein, upon the conclusion of providing services for the Debtors (either upon the consummation of a chapter 11 plan or the conversion of

these cases to chapter 7 of the Bankruptcy Code), BMC shall file with this Court a summary fee application to obtain final approval of its fees and expenses.

10. BMC shall maintain records of all Services showing dates, categories of Services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the Office of the United States Trustee, counsel for the Debtors, counsel for any official committee appointed by the U.S. Trustee, and any party in interest who specifically requests service of the monthly invoices.

11. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Services Agreement or monthly invoices; *provided* that the parties may seek resolution of the matter from the Court if resolution is not achieved.

12. Without further order of the Court, pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of BMC under this Order shall be an administrative expense of the Debtors' estates.

13. BMC may apply its retainer to all prepetition invoices, which retainer may be replenished to the original advance amount, and thereafter, BMC may hold its retainer under the Services Agreement during these chapter 11 cases as security for the payment of fees and expenses incurred under the Services Agreement.

14. The Debtors shall indemnify BMC under the terms of the Services Agreement, as modified pursuant to this Order. BMC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Services Agreement for services other than the Services provided under the Services Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by this Court. Notwithstanding anything to the contrary herein or in the Services Agreement, the indemnification approved by this Order shall only be to

the extent allowed under Fifth Circuit authority, including *Bank of N.Y. Trust Co. v. Off. Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 253 (5th Cir. 2009).

15. Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify BMC, or provide contribution or reimbursement to BMC, for any claim or expense that is judicially determined (the determination having become final) to have arisen solely from BMC's gross negligence, willful misconduct, fraud, bad faith, self-dealing, or breach of fiduciary duty (if any).

16. In the event BMC is unable to provide the Services set forth in this Order, BMC will immediately notify the Clerk and proposed counsel to the Debtors and, upon approval of this Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' attorney.

17. After entry of an order terminating BMC's services, upon the closing of these cases, or for any other reason, BMC shall be responsible for archiving all proofs of claim with the Federal Archives Record Administration, if applicable, and shall be compensated by the Debtors in connection therewith.

18. Notwithstanding anything to the contrary herein or in the Services Agreement, BMC's employment shall terminate in the event of dismissal or conversion of these chapter 11 cases.

19. Notwithstanding anything to the contrary in the Services Agreement, this Court shall be the sole venue for determination of disputes related to the relief granted herein during these chapter 11 cases.

20. BMC shall not cease providing claims processing services during the chapter 11 cases for any reason, including nonpayment, without an order of the Court.

21. In the event of any inconsistency between the Services Agreement, the Application, and this Order, this Order shall govern.

22. The Debtors and BMC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

23. 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, the Court's *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*, and any final order entered by the Court in connection therewith.

24. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

25. This Court shall retain jurisdiction to resolve all matters arising out of the Services Agreement or this Order.

END OF ORDER

Submitted by:

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Aaron M. Kaufman

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

Exhibit 1

Services Agreement



AGREEMENT FOR SERVICES

This Agreement for services (the "Services Agreement" or "Agreement") is entered

Between Buffets, LLC, Fresh acquisitions, LLC, FMP SA Management, LLC and its affiliate and subsidiaries as set forth on Exhibit A

(collectively "Customer") and BMC Group, Inc. ("BMC"). The services rendered by BMC pursuant to this Agreement will commence on the date first set forth below and will continue until the Agreement is terminated as set forth below.

I. SERVICES

- A. BMC agrees to provide Customer with services assisting the Customer, Customer's counsel "Counsel" and Office of the Clerk with legal noticing and compilation, administration, evaluation and production of documents and information necessary to support a restructuring effort. At Customer's, Counsel's or the Clerk's Office's direction, as the case may be, and in accordance with any court orders or rules in the bankruptcy case(s) (including any court order authorizing BMC's engagement), BMC will (1) prepare and serve those notices required in the bankruptcy cases; (2) receive, record and maintain copies of all proofs of claim and proofs of interest filed in the bankruptcy cases; (3) create and maintain the official claims register(s); (4) receive and record all transfers of claims pursuant to Bankruptcy Rule 3001(e); (5) maintain an up-to-date mailing list for all entities who have filed proofs of claim and/or requests for notices in the bankruptcy cases; (6) assist Customer and Counsel with the administrative management of claims and notice data; (7) if requested, print, mail and tabulate ballots for purposes of plan voting; (8) create and maintain a case-specific website, (9) assist with the production of reports, exhibits and schedules of information or use by the Customer, its counsel, or to be delivered the Court, the Clerk's Office, the U.S. Trustee or third parties; and (10) provide other technical and document management services of a similar nature requested by Customer or the Clerk's office.
- B. BMC also agrees to provide the Customer with consulting services regarding legal notice, claims management and reconciliation, plan solicitation, balloting, disbursements, preparation of schedules of assets and liabilities and statement of financial affairs, communications, confidential online workspaces and data rooms (publication to which should not violate the confidentiality provisions of this agreement) and any other service agreed upon by the parties or otherwise required by applicable law, governmental regulations or court rules or orders (Collectively the "Services").



- C. The Customer acknowledges and agrees that BMC will often take direction from the company's representatives, employees, agents and/or professionals with respect to providing Services hereunder. The parties agree that BMC may rely upon, and the Customer agrees to be bound by, any request, advice or information provided by the Customer and its agents to the same extent as if such requests, advice or information were provided by the Customer.
- D. Customer agrees that none of the Services provided by BMC contain legal advice or opinion, and neither BMC nor its personnel shall be deemed to practice law thereunder.

II. TECHNOLOGY SUPPORT

BMC agrees to provide computer software support and to educate and train Customer in the use of the support software, provide BMC's standard reports as well as consulting and programming support for Customer requested reports, program modifications, database modification, and/or other features.

III. TERMS AND CONDITIONS

- A. This Services Agreement is effective as of the date of its acceptance by both the Customer and BMC. BMC acknowledges, however, that a court order approving BMC's engagement may be required for employment in the Customer's bankruptcy matter.
- B. If the Customer commences a case under chapter 11 of the Bankruptcy Code, the Customer shall promptly file applications with the Bankruptcy Court to retain BMC (i) as claims and noticing agent pursuant to 28 U.S.C Section 156(c) and (ii) as administrative advisor pursuant to section 327(a) of the Bankruptcy Code for all Services that fall outside the scope of 28 U.S.C. Section 156(c). The form and substance of such applications and any order approving them shall be reasonably acceptable to BMC.
- C. If any Customer Chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, BMC will continue to be paid for Services pursuant to Section 156(c) and the terms of the Services Agreement.

IV. PRICES, CHARGES AND PAYMENT

- A. BMC will provide Services upon request or agreement of the Customer, in accordance with the Pricing Schedule attached.



- B. BMC reserves the right to make reasonable increases to the unit prices, charges and professional service rates reflected in the Pricing Schedule on an annual basis effective January 1, 2020. BMC shall provide thirty (30) days' prior written notice to Customer of such proposed increases.
- C. Customer agrees to reimburse BMC for any out-of-pocket expenses necessarily incurred in support of the services provided under this Agreement.
- D. Wire transfer information for the transmission of payments is as follows:

Bank Name - Bridge Bank, N.A.
ABA/Routing # - 121143260
Account Name - BMC Group, Inc.
Account # - 0102705027

- E. In connection with high volume noticing, or publication services, Customer may be required to prepay BMC estimated postage or publication amounts with respect to each notice. Alternatively, Customer may authorize BMC to cause courier's charges (such as UPS or FedEx) to be stated to Customer's own account with such courier.
- F. BMC agrees to regularly invoice Customer and Customer agrees that the amount invoiced is due and payable within thirty (30) days. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, Customer further agrees to pay a late charge, calculated at one and one-half percent (1-1/2%) of the amount unpaid, accruing monthly from the invoice date. In the case of a dispute in the invoice amount, notice shall be given to BMC within ten (10) days of receipt of the invoice by Customer. Late charges shall not accrue on any amounts in dispute. The undisputed balance of the invoice amount is due and payable in the normal course.
- G. Customer shall pay or reimburse all taxes applicable to services performed under this Agreement and, specially, taxes based on disbursements made on behalf of Customer, notwithstanding how such taxes may be designated, levied or based. This provision is intended to include sales, use and excise taxes, among other taxes, but is not intended to include personal property taxes or taxes based on net income of BMC.
- H. To the extent permitted by applicable law, BMC shall receive a retainer in the amount of _____ (the "Retainer") that may be held by BMC as security for Customer's payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. BMC shall be entitled to hold the Retainer until the termination of the Agreement. BMC may use the Retainer against unpaid fees and expenses hereunder. BMC may use the Retainer against all pre-petition fees

and expenses, the Retainer will then be replenished to the original amount by the Customer. Following termination of the Agreement, BMC shall return to Customer any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

- I. In the event of termination pursuant to Section VII hereof, Customer shall be liable for all amounts then accrued and/or due and owing to BMC under the Agreement.

V. RIGHTS OF OWNERSHIP

- A. The parties understand that the software programs and other similar proprietary materials furnished by BMC pursuant to this Agreement and/or developed during the course of this Agreement by BMC are the sole property of BMC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, subroutines, procedural manuals, and documentation. Customer agrees not to copy or permit others to copy for unauthorized use the source code from the support software or any other programs or similar proprietary materials furnished pursuant to this Agreement.
- B. Customer further agrees that any ideas, concepts, know-how or techniques relating to data processing or BMC's performance of its services developed during the course of its Agreement by BMC shall be exclusive property of BMC. Fees and Expenses paid by the Customer do not vest in the Customer any rights in such property.
- C. The Customer agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished/provided under the Services Agreement.

VI. CUSTOMER DATA

- A. The Customer is responsible for, and BMC does not verify, the accuracy of the programs, data and other information it or any agent of the Customer submits for processing to BMC and for the output of such information, including without limitation, with respect to preparation of statement of financial affairs and schedules of assets and liabilities (collectively "SOFA's and Schedules"). BMC bears no responsibility for the accuracy and content of SOFA's and Schedules, and the Customer is deemed hereunder to have approved and reviewed all SOFA's and Schedules filed on its behalf.
- B. The Customer agrees and represents and warrants to BMC that before delivery of any information to BMC: (i) the Customer has full authority to deliver such information to BMC, (ii) BMC is authorized to use such information to perform

Services hereunder,

- C. Any data, storage media, programs or materials furnished to BMC by the Customer may be retained by BMC until the Services hereunder are paid in full. The Customer shall remain liable for all fees and expenses incurred by BMC under this Agreement as a result of data storage or other materials maintained, stored or disposed by BMC.
- D. The Customer agrees to initiate and maintain back up files that would allow the Customer to regenerate or duplicate all programs, data or information provided by Customer to BMC.
- E. Upon Customer's request at any time or times while this Agreement is in effect, BMC shall immediately deliver to Customer at Customer's sole expense, any or all of the nonproprietary data, information and records held or controlled by BMC pursuant to this Agreement, in the form requested by Customer. Any information, data and records, in whatever form existing, whether provided to BMC by Customer or developed by BMC for Customer under this Agreement, may be retained by BMC until all amounts due under this Agreement are paid in full, it being understood that neither party asserts rights of ownership in the official claims register or materials filed with BMC as an agent of the court.
- F. Customer shall remain liable for all charges imposed under this Agreement as a result of data or physical media maintained by BMC. BMC shall dispose of the data and media in the manner requested by Customer. Customer agrees to pay BMC for reasonable expenses incurred as a result of the disposition of the data or media. After giving Customer thirty (30) days' advance notice, BMC reserves the right to dispose of data or media maintained by BMC for Customer if Customer has not utilized the services provided herein for a period of at least ninety (90) days or if Customer has not paid all charges due to BMC.

VII. FORCE MAJEURE

Whenever performance by BMC of any of its obligations hereunder is materially prevented or impacted by reason of any act of god, government requirement, strike, lock-out or other industrial or transportation disturbance, fire flood, epidemic, lack of materials, law, regulation or ordinance, act of terrorism, war or war condition, of by reason of any other matter beyond BMC's reasonable control, then such performance shall be excused, and the Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

VIII. ARBITRATION

Any dispute arising out of this Services Agreement or the breach thereof shall be finally



resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. There shall be three arbitrators' names in accordance with such rules. The arbitration shall be conducted in the English language in accordance with the United States Arbitration Act.

Notwithstanding the foregoing, upon the commencement of any chapter 11 case(s) by the Customer, any disputes related to this Services Agreement shall be decided by the bankruptcy court handling such chapter 11 case(s).

IX. ATTORNEYS FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance of or interpret the provisions of the Services Agreement, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs and other related expenses.

X. SYSTEM IMPROVEMENTS

As part of its ongoing efforts to improve our service offering, BMC is constantly improving its proprietary database and related reports. BMC therefor reserves the right to make changes in operating procedures/systems, programming languages, application programs and time-period accessibility so long as such changes do not materially interfere with ongoing services provided to the Customer in accordance with the Services Agreement and/or Customer's chapter 11 filing.

XI. NON-SOLICITATION

Customer agrees that it shall not, directly or indirectly, solicit for employment, employ or otherwise retain staff of BMC during the term of this Agreement, nor for a period of twelve (12) months after termination of this Agreement unless BMC provides prior written consent.

XII. CONFIDENTIALITY

BMC agrees to, and shall cause its servants, agents, employees, licensees, and subcontractors, to safeguard and keep confidential all data, records, information and communications of any sort or form, regardless of whether written, oral, visual or otherwise recorded or transmitted, with respect to Customer, but excluding such data, records, information and communications that exist in the public domain by reason other than a breach of BMC's obligations under this Section. BMC will use the

Confidential Information only for the benefit of Customer in connection with the provision of services under this Agreement. Customer agrees to, and will cause its servants, agents, employees, licensees, and subcontractors to keep all information with respect to BMC's system, procedures and software confidential; provided, however, that if either party is required to produce any such information by order of any governmental agency or other regulatory body, it may, upon not less than five business days' written notice to the other party, release the required information. The obligations set forth in this paragraph shall survive termination of this Services Agreement.

XIII. TERMINATION

- A. This Agreement shall remain in force until terminated by (i) Customer, or, by BMC upon thirty (30) days' prior written notice to the other party; or (ii) the failure of the Customer to pay BMC invoices for more than 60 days from the date of the invoice or accrual of invoices or unpaid services in excess of the Retainer held by BMC where BMC reasonably believes it will not be paid.
- B. If this agreement is terminated after BMC is retained pursuant to Bankruptcy Court Order, the Customer promptly shall seek entry of a Bankruptcy Court order discharging BMC of its duties under such retention, which order shall be in form and substance reasonably acceptable to BMC.
- C. In the event that this contract is terminated, regardless of the reason for such termination, BMC shall cooperate with Customer to orderly transfer to Customer or its designee (or destroy, at Customer's direction) data, records and information in its possession or control and to effect an orderly transition of record-keeping functions. BMC shall provide all necessary staff, services and assistance required for an orderly transfer and transition. Customer agrees to pay for such services in accordance with BMC's then existing prices for such services.

XIV. NO REPRESENTATIONS OR WARRANTIES

BMC makes no representation or warranties, express or implied, including, without limitation, any express or implied warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

XV. INDEMNIFICATION

Except with respect to breaches under Section XII "Confidentiality" above, Customer shall indemnify and hold BMC, its officers, employees and agents harmless against any

and all losses, claims, damages, judgments, liabilities and expense whether direct or indirect (including reasonable counsel fees and expenses) resulting from action taken or permitted by BMC in good faith with due care and without negligence in reliance upon instructions or orders received from Customer as to anything arising in connection with its performance under this Agreement. The Customers indemnification obligation shall survive the termination of this agreement.

XVI. LIMITATION OF LIABILITY

Except as expressly provided herein, BMC's liability to the Customer for any losses, unless due to BMC's gross negligence or willful misconduct, shall be limited to the amount paid by the Customer for the portion of the particular work that gave rise to the alleged loss. In no event shall BMC's liability to the Customer for any losses arising out of this services Agreement exceed the total amount actually paid to BMC for Services provided hereunder. In no event shall BMC be liable for any direct, special or consequential damages (such as loss of anticipated profits or other economic loss) in connection with or arising out of the Services provided hereunder.

XVII. NOTICES

Any notices or communications required or permitted to be given by this Agreement must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by facsimile or electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

If to BMC Group, Inc.:

BMC Group, Inc.
Attn: Tinamarie Feil
600 1st Avenue
Seattle, WA 98104
Email: tfeil@bmcgroup.com
Telephone: 206.499.2169

If to the Customer:

Martin Cortes 2338 N. Loop 1604 W. Ste 350 San Antonio TX, 78248 Direct: 210-245-8265 E-mail: mcortes@vitanb.com
--

With a copy to:

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is faxed or sent electronically, provided that the sender has received a confirmation of such fax or electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, fax number, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section XVII.

XVIII. APPLICABLE LAW

This agreement shall be construed in accordance with the laws of the State of Washington, without regards to that state's provisions for choice of law and may be modified only by a written instrument duly executed by an authorized representative of Customer and an officer of BMC.

XIX. ENTIRE AGREEMENT/ MODIFICATIONS/SEVERABILITY

Each party acknowledges that it has read this Services Agreement, understands it, and

agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and other agreements, oral and written between the parties relating to the subject matter of this Services Agreement. The Services Agreement may not be modified or altered by written instrument duly executed by both parties. Customer represents that it has the authority to enter into this Agreement, may be subject to bankruptcy court approval, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. In the event of any conflict between a term of this Agreement and any order of the court exercising jurisdiction over the Customer bankruptcy case, the term(s) of the order shall govern.

XX. ASSIGNMENT

The Services Agreement and the rights and obligations of BMC and the Customer hereunder shall bind and inure to the benefit of any successors or assigns hereto.

XXI. EFFECTIVENESS OF COUNTERPARTS

This Services Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which shall constitute one and the same agreement. This services Agreement will become effective when one or more of the counterparts have been signed by each of the parties and delivered to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

BMC Group, Inc. Representative:

Customer Representative:


Signature

Tinamarie Feil

Printed Name

President

Title



Signature

MARTIN CORTES

Printed Name

CFO

Title

Exhibit A

Buffets, 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
Fresh Acquisitions, LLC
Alamo Fresh Payroll, LLC
FMP-Fresh Payroll, LLC
Food Management Partners, Inc
FMP SA Management Group, LLC

RATES

BASIC PRINT, MAIL & NOTICING SERVICE

Copy/Print	\$0.10
Fold/Collate, Insert, Post	Included (no hourly charges)
Envelopes	Varies by size
Postage, Courier	Discounted rates; reimbursed at cost
Mass data transmission.....	Varies by media (CD-Rom, Flash, USB, FTP)
Certified Electronic Noticing Service	\$50 / 1000
Legal Notice Publication	Quote (BMC Discounted Rate applies)

CLAIMS MANAGEMENT

eClaims & eBallot platform hosting.....	Included
Filed Claim Receipt, Process, Docketing	At Clerical hourly rate
Add'l Scans & Link to DB	\$0.08/image
Schedules Data Collection & Prep	Upon request at hourly rates quoted
Analysis & Reconciliation	Upon request at hourly rates quoted
Secure Client Access	No Charge, unlimited authorized users
Balloting solicitation & tabulation.....	Upon request at hourly rates quoted

DOCUMENT & INFORMATION MANAGEMENT

Document Imaging & link to DB	\$0.08/image
Live Operator Call Center	\$60 per hour
Automated (IVR) Call Center	\$0.30 per minute
Data storage & maintenance	\$0.08/record/month (\$800/mo. cap)
Public case website hosting	Waived
SmartRoom (VDR)	See SmartRoom proposal: no charge first 4 mo.
Physical Document Storage	\$1.45/box/month (Waived)

HOURLY RATES

Clerical & Document Custody.....	\$25 - \$40 /hour
Analysts/Case Support Associates	\$65 - \$90 /hour
Technology/Programming	\$75 - \$125 /hour
Consultants/Senior Consultants	\$95 - \$125 /hour
Project Manager/Director	\$130 - \$175 /hour
Executive	Charges Waived