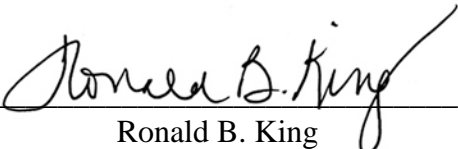




The relief described hereinbelow is SO ORDERED.

Signed March 09, 2016.

  
Ronald B. King  
Chief United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

In re: § Chapter 11  
§  
BUFFETS, LLC, *et al.*<sup>1</sup> § Case No. 16-50557-rbk  
§  
Debtors. § (Jointly Administered)

**INTERIM ORDER (I) DETERMINING THAT UTILITY PROVIDERS HAVE BEEN PROVIDED WITH ADEQUATE ASSURANCE OF PAYMENT, (II) APPROVING PROPOSED ADEQUATE ASSURANCE PROCEDURES, (III) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES, (IV) DETERMINING THAT DEBTORS ARE NOT REQUIRED TO PROVIDE ANY ADDITIONAL ASSURANCE, (V) SCHEDULING A HEARING TO CONSIDER ENTRY OF A FINAL ORDER, AND (VI) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtors' federal tax identification number, are: Buffets, LLC (2294); Hometown Buffet, Inc. (3002); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan's Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); and Tahoe Joe's, Inc. (7129). The address for all of the Debtors is 120 Chula Vista Drive, Hollywood Park, Texas 78232.

Upon the Motion (the "Motion")<sup>2</sup> of Buffets, LLC, *et al* (the "Debtors"), debtors and debtors-in-possession in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), for entry of an Interim Order and a Final Order, pursuant to sections 105(a) and 366 of the Bankruptcy Code and Bankruptcy Rule 6004 (i) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance, (ii) approving the Adequate Assurance Procedures as proposed herein, (iii) prohibiting the Utility Providers from altering, refusing, or discontinuing Utility Services on account of prepetition amounts outstanding and on account of any perceived inadequacy of the Adequate Assurance Procedures, (iv) determining that the Debtors are not required to provide any additional assurance beyond what is proposed in this Motion, (v) scheduling a final hearing (the "Final Hearing") to consider entry of the Final Order, and (vi) granting such other and further relief as requested in the Motion or as the Court may otherwise deem necessary or appropriate; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estate, their creditors, and other parties-in-interest; and the Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed and considered the Motion and the First Day Declaration; and the Court having

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings set forth in the Motion or the First Day Declaration, as applicable.

heard the statements in support of the relief requested in the Motion at an interim hearing before the Court (the "Interim Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Interim Hearing 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 Motion is granted on an interim basis as set forth herein.

2. Absent compliance with the procedures set forth herein, the Debtors' Utility Providers are prohibited from altering, refusing, or discontinuing Utility Service on account of any unpaid prepetition charges or the commencement of the Chapter 11 Cases.

3. The security deposits placed with the Debtors' Utility Providers prior to the Petition Date; the history and course of payment of any prepetition amount owed; the continued ability to debit the Debtors' accounts for amounts owed, if any; and the Adequate Assurance Procedures (defined below), all in conjunction with the Debtors' cash position, (a) demonstrates the Debtors' ability to pay for future Utility Services in the ordinary course of business and (b) constitutes adequate assurance to the Utility Providers (the "Proposed Adequate Assurance").

4. The Debtors' Utility Providers are prohibited from requiring additional adequate assurance of payment other than in accordance with the following procedures (the "Adequate Assurance Procedures"):

- (a) Any Utility Provider requesting additional assurance of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an "Additional Assurance Request") so that it is received by the following parties: (i) the Debtors, 120 Chula Vista Drive, Hollywood Park, Texas 78232; (ii) proposed counsel to the Debtors, John E. Mitchell, Akerman LLP, 2001 Ross Avenue, Suite 2550, Dallas, Texas 75201; (iii) the Office of the United States Trustee for the Western District of Texas (the "U.S. Trustee"), 615 E. Houston Street, Suite 533, San Antonio, TX 78205 (collectively, the "Notice Parties").

- (b) Any Additional Assurance Request must (i) be made in writing, (ii) set forth the location for which Utility Services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any Pre-petition Security Deposits, and (iv) set forth why the Utility Provider believes that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment in accordance with section 366 of the Bankruptcy Code.
- (c) Upon the Debtors' receipt of any Additional Assurance Request in accordance with the notice procedures described above, the Debtors shall have the greater of (i) twenty (20) calendar days from the receipt of such Additional Assurance Request or (ii) thirty (30) calendar days from the Petition Date (collectively, the "Resolution Period") to negotiate with the Utility Provider to resolve such Utility Provider's Additional Assurance Request.
- (d) The Debtors may, in their sole discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in its sole discretion, provide a Utility Provider with additional assurance of future payment, including, but not limited to, cash deposits, prepayments, or other forms of security, without further order of the Court if the Debtors believe that such additional assurance is reasonable. Any such agreement may include a recharacterization of some or all of the Debtors' payment for prepetition Utility Services as a post-petition Adequate Assurance deposit.
- (e) If the Debtors determine that the Additional Assurance Request is not reasonable and is not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurances of payment with respect to such Utility Provider (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code. Any Determination Hearing scheduled will be without prejudice to the Debtors to seek return of any prepetition payments for Utility Services provided as Adequate Assurance, should the Utility Provider request additional security deposits as adequate assurance.
- (f) Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider shall be prohibited from discontinuing, altering, or refusing service to the Debtors for any reason, to include on account of any objections to the Proposed Adequate Assurance.
- (g) The Debtors will either fax, e-mail, serve by first class mail, or otherwise expeditiously send a copy of this Motion and the Orders, which include the proposed Adequate Assurance Procedures, to each Utility Provider within five business days after entry of the Orders by the Court.

- (h) The Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors on the earlier of (a) the Debtors' termination of such services from such provider; (b) the confirmation of a plan of reorganization; and (c) the conclusion of the Chapter 11 Cases, if not applied earlier.

5. The Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance. The Adequate Assurance Procedures as proposed are hereby approved. The Utility Providers are prohibited from altering, refusing or discontinuing Utility Services on account of any prepetition amounts outstanding, if any, and on account of any perceived inadequacy of the Adequate Assurance Procedures. The Debtors are not required to provide any additional adequate assurance beyond what is stated in this Interim Order.

6. A Utility Provider shall be deemed to have adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code unless and until (a) the Debtors, in their sole discretion, agree to an alternative assurance of payment with the Utility Provider or (b) the Court enters an order requiring that additional adequate assurance of payment be provided.

7. The Debtors are authorized to amend the Utility Provider List, in their sole discretion, to add any subsequently identified Utility Provider. The Interim Order shall be deemed to apply to any such Utility Provider regardless of when a Utility Provider may be added to the Utility Provider List. The Debtors shall serve a copy of the Motion on any Utility Provider that is subsequently added to the Utility Provider List. Such subsequently added Utility Providers who object to the entry of this Interim Order must file an objection in accordance with the Bankruptcy Rules, the Local Rules, and the Adequate Assurance Procedures.

8. Nothing in this Interim Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any

executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

9. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim. Nothing in this Interim Order nor the Debtors' payment of claims pursuant to this Interim Order shall be construed as (w) an agreement or admission by the Debtors as to the validity of any claim on any grounds, (x) a waiver or impairment of Debtors' rights to dispute any claims on any grounds, (y) a promise by the Debtors to pay any claim, or (z) an implication or admission by the Debtors that such claim is payable pursuant to this Interim Order.

10. The requirements set forth in Bankruptcy 6003(b) are satisfied.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

12. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a) and 6004(h) or otherwise, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry and the requirements of Bankruptcy Rules 6004(a) and 6004(h) are hereby waived.

13. The Final Hearing to consider entry of the Final Order is scheduled for ***March 24, 2016 at 1:00 p.m. (Central time)*** before the Court. On or before March 9, 2016, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order

and the Motion, on (a) the parties having been given notice of the Interim Hearing, (b) any party which has filed prior to such date a request for notices with the Court, and (c) counsel to any statutory committee appointed in the Chapter 11 Cases. The Final Hearing Notice shall state that any party-in-interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of Court no later than on *March 21, 2016 at 5:00 p.m. (Central time)*, which objections shall be served so as to be received on or before such date by the Notice Parties and all parties entitled to notice pursuant to the Bankruptcy Rules and Local Rules.

14. Any Utility Provider that fails to timely file an objection or make an Adequate Assurance Request pursuant to the Adequate Assurance Procedures is deemed to consent to the Proposed Adequate Assurance and shall be bound by this Interim Order.

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

16. The Court retains jurisdiction with respect to all matters arising from relating to the implementation, interpretation, and enforcement of this Interim Order.

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