

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<p>In re:</p> <p>COUNTRY FRESH HOLDING COMPANY INC., <i>et al.</i>,</p> <p style="text-align: center;">Debtors.¹</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Chapter 7</p> <p>Case No. 21-30574 (MI)</p> <p>(Jointly Administered)</p>
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**COVER SHEET FOR FINAL APPLICATION OF
KILPATRICK TOWNSEND & STOCKTON LLP FOR COMPENSATION
FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED
AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR
THE PERIOD FROM FEBRUARY 26, 2021 THROUGH AND INCLUDING JUNE 21, 2021**

Name of Applicant:	Kilpatrick Townsend & Stockton LLP	
Applicant's Role in Case:	Counsel for the Official Committee of Unsecured Creditors	
Date Order of Employment Signed:	March 31, 2021 [Docket No. 449] (effective as of February 26, 2021)	
	Beginning of Period	End of Period
Time period covered by this Application:	02/26/2021	06/21/2021
Time period(s) covered by prior Applications:	N/A	N/A
Total amounts awarded in all prior Applications:	N/A	
Total fees requested in this Application:	\$1,241,173.35 ²	

¹ The Debtors in these chapter 7 cases and the last four digits of each Debtors' taxpayer identification number are as follows: Country Fresh Holding Company Inc. (7822); Country Fresh Midco Corp. (0702); Country Fresh Acquisition Corp. (5936); Country Fresh Holdings, LLC (7551); Country Fresh LLC (1258); Country Fresh Dallas, LLC (7237); Country Fresh Carolina, LLC (8026); Country Fresh Midwest, LLC (0065); Country Fresh Orlando, LLC (7876); Country Fresh Transportation LLC (8244) CF Products, LLC (8404) Country Fresh Manufacturing, LLC (7839); Champlain Valley Specialty of New York, Inc. (9030); Country Fresh Pennsylvania, LLC (7969); Sun Rich Fresh Foods (NV) Inc. (5526); Sun Rich Fresh Foods (USA) Inc. (0429); and Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

² Kilpatrick Townsend agreed to reduce the total fees on each monthly invoice by 5% during the pendency of these chapter 11 cases. The total compensation sought for the final period includes \$11,452.50 in compensation incurred after the occurrence of the conversion of these cases in connection with the preparation of final fee applications for Committee professionals, consisting of \$8,952.50 incurred from June 22, 2021 through July 8, 2021 (as reflected in

Total professional fees requested in this Application:	\$1,218,270.50
Total actual professional hours covered by this Application:	2,775.3
Average hourly rate for professionals:	\$438.97
Total paraprofessional fees requested in this Application:	\$12,053.00
Total actual paraprofessional hours covered by this Application:	36.5
Average hourly rate for paraprofessionals:	\$313.71
Reimbursable expenses sought in this application:	\$35,168.54
Total to be Paid to Priority Unsecured Creditors:	N/A
Anticipated % Dividend to Priority Unsecured Creditors:	N/A
Total to be Paid to General Unsecured Creditors:	N/A
Anticipated % Dividend to General Unsecured Creditors:	N/A
Date of Confirmation Hearing:	N/A
Indicate whether plan has been confirmed:	N/A

PRIOR MONTHLY FEE STATEMENT NOTICED

DATE NOTICED	PERIOD COVERED	REQUESTED FEES (80%)	REQUESTED EXPENSES	FEES PAID TO DATE	EXPENSES PAID TO DATE	UNPAID FEES	UNPAID EXPENSES
5/18/21	2/26/21-4/30/21	\$684,291.46	\$19,257.63	\$278,597.19	\$6,524.21	\$576,767.13	\$12,733.42

time sheets attached hereto as **Exhibit D**) and an additional estimated \$2,500 that will be incurred in connection with the finalizing, filing, and prosecution of the Committee professionals' fee applications. For the avoidance of doubt, Kilpatrick Townsend will only seek compensation of the actual, reasonable, and necessary compensation actually incurred.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: COUNTRY FRESH HOLDING COMPANY INC., <i>et al.</i> , <div style="text-align: right;">Debtors.¹</div>	§ § § § § § § § §	Chapter 7 Case No. 21-30574 (MI) (Jointly Administered)
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**FINAL APPLICATION OF KILPATRICK TOWNSEND
& STOCKTON LLP FOR COMPENSATION FOR SERVICES RENDERED
AND REIMBURSEMENT OF EXPENSES INCURRED AS COUNSEL TO
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR THE
PERIOD FROM FEBRUARY 26, 2021 THROUGH AND INCLUDING JUNE 21, 2021**

THIS APPLICATION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE ON OR BEFORE JULY 26, 2021 AT 4:00 P.M. (PREVAILING CENTRAL TIME). YOUR RESPONSE MUST STATE WHY THE APPLICATION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE APPLICATION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

¹ The Debtors in these chapter 7 cases and the last four digits of each Debtors' taxpayer identification number are as follows: Country Fresh Holding Company Inc. (7822); Country Fresh Midco Corp. (0702); Country Fresh Acquisition Corp. (5936); Country Fresh Holdings, LLC (7551); Country Fresh LLC (1258); Country Fresh Dallas, LLC (7237); Country Fresh Carolina, LLC (8026); Country Fresh Midwest, LLC (0065); Country Fresh Orlando, LLC (7876); Country Fresh Transportation LLC (8244) CF Products, LLC (8404) Country Fresh Manufacturing, LLC (7839); Champlain Valley Specialty of New York, Inc. (9030); Country Fresh Pennsylvania, LLC (7969); Sun Rich Fresh Foods (NV) Inc. (5526); Sun Rich Fresh Foods (USA) Inc. (0429); and Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

Kilpatrick Townsend & Stockton LLP (“Kilpatrick Townsend”) hereby submits this Final Application (the “Application”), seeking compensation for services rendered and reimbursement of expenses incurred as Counsel to the Official Committee of Unsecured Creditors (the “Committee”) for the period from February 26, 2021 through and including June 21, 2021 (the “Final Period”). By this Application, Kilpatrick Townsend seeks final allowance in the amount of \$1,276,341.89, which is comprised of fees in the amount of \$1,241,173.35² and reimbursement of actual and necessary expenses incurred in the amount of \$35,168.54.

JURISDICTION

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

BACKGROUND

2. On February 15, 2021 (the “Petition Date”), the Debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On February 25, 2021, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee for Region 7 appointed the Committee [Dkt. No. 149].

² The total compensation sought for the final period includes \$11,452.50 in compensation incurred after the occurrence of the conversion of these cases in connection with the preparation of final fee applications for Committee professionals, consisting of \$8,952.50 incurred from June 22, 2021 through July 8, 2021 (as reflected in time sheets attached hereto as **Exhibit D**) and an additional estimated \$2,500 that will be incurred in connection with the finalizing, filing, and prosecution of the Committee professionals’ fee applications. For the avoidance of doubt, Kilpatrick Townsend will only seek compensation of the actual, reasonable, and necessary compensation actually incurred.

4. On February 26, 2021, the Committee selected Kilpatrick Townsend as its proposed counsel. On March 2, 2021, the Committee selected PricewaterhouseCoopers LLP (“PwC”) as its proposed financial advisor. On March 11, 2021, the Committee selected Cassels Brock & Blackwell LLP (“Cassels”) as its proposed Canadian counsel.

5. On March 31, 2021, this Court entered its order authorizing the Committee’s employment of Kilpatrick Townsend as its counsel, with such retention being effective as of February 26, 2021 [Dkt. No. 449].

6. On May 12, 2021, this Court entered the *Order Granting Emergency Motion for Administrative Order Under Bankruptcy Code Sections 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* dated May 12, 2021 [Docket No. 598] (the “Interim Compensation Order”).

7. On May 18, 2021, the Committee served the Notice Parties (as defined in the Interim Compensation Order) with the *First Combined Monthly Fee Statement of Kilpatrick Townsend & Stockton LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Counsel to the Official Committee of Unsecured Creditors for the Period From February 26, 2021 Through and Including April 30, 2021* (the “First Monthly Fee Statement”) seeking payment of compensation in the amount of \$684,291.46 (80% of \$855,364.32) and expense reimbursements in the amount of \$19,572.63 for a total of \$703,864.09.

8. On June 1, 2021, the Ad Hoc Group of Lenders filed the *Objection and Reservation of Rights of the Ad Hoc Group of Lenders to the First Combined Monthly Fee Statements of Kilpatrick Townsend & Stockton LLP and PricewaterhouseCoopers LLP, as Counsel and Financial Advisor, Respectively, to the Official Committee of Unsecured Creditors*

[Dkt. No. 671]. Also on June 1, 2021, the Debtors filed the *Debtors' Notice of Objection to Fee Statements of Committee Counsel and Committee Financial Advisor and Joinder to Objection and Reservation of Rights of the Ad Hoc Group of Lenders to the First Combined Monthly Fee Statements of Kilpatrick Townsend & Stockton LLP and PricewaterhouseCoopers LLP, as Counsel and Financial Advisor, Respectively, to the Official Committee of Unsecured Creditors* [Dkt. No. 672]. To date, Kilpatrick Townsend has received reimbursement of fees in the amount of \$278,597.19 and expenses in the amount of \$6,524.21 in connection with its First Monthly Fee Statement.

9. On June 21, 2021, the Court entered its *Order (I) Authorizing and Approving the Conversion of the Chapter 11 Cases, (II) Extending the Designation Rights Period, and (III) Granting Related Relief* [Dkt. No. 719] (the "Conversion Order"), converting these cases to cases under chapter 7.

FEES AND EXPENSES FOR WHICH ALLOWANCE IS SOUGHT

10. This Application is made pursuant to sections 330 and 331 of the Bankruptcy Code, Rule 2016(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 2016-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the "Local Rules"), the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses (the "UST Guidelines," the "Guidelines"), and the Interim Compensation Order for all professional services performed and expenses incurred after the Petition Date (as defined hereinafter), for an final award of compensation for services rendered to the Committee during the Final Period in the amount of \$1,241,173.35, and for reimbursement of expenses in the amount of \$35,168.54 incurred in connection with the rendition of such services.

11. During the Final Period, Kilpatrick Townsend's attorneys and paraprofessionals expended a total of 2,811.8 hours for which compensation is requested. The blended hourly rate for all Kilpatrick Townsend professionals during the Final Period was \$313.71 for paraprofessionals and \$438.97 for attorneys. A summary of the hours spent, the names of each professional and paraprofessional rendering services to the Committee during the Final Period, the regular customary billing rates and the total value of time incurred by each of the Kilpatrick Townsend attorneys rendering services to the Committee is attached hereto as **Exhibit A**. A summary of time recorded by project billing category is attached hereto as **Exhibit B**. A statement of expenses incurred by Kilpatrick Townsend during the Final Period is attached as **Exhibit C**. Kilpatrick Townsend's billing statements for the Final Period are attached to this Application as collective **Exhibit D**. As set forth in the Certification of Todd C. Meyers, a partner of Kilpatrick Townsend, attached hereto as **Exhibit E**, all of the services rendered during the Final Period for which final compensation is sought herein were rendered for and on behalf of the Committee and in connection with the chapter 11 cases. In further support of this Application, Kilpatrick Townsend submits as collective **Exhibit F**, its budget and compensation summary and its staffing plan, and as **Exhibit G**, its customary and comparable rate disclosures.

12. All services rendered for which compensation is requested and all costs incurred for which reimbursement is sought by Kilpatrick Townsend in this Application were reasonable, necessary and appropriate and were performed for or incurred on behalf of the Committee during the Final Period. In addition, Kilpatrick Townsend worked closely with Cassels, the Committee's Canadian counsel, and PwC, the Committee's financial advisor, to ensure that all matters were appropriately and diligently handled for the Committee in a timely and efficient manner.

SUMMARY OF SERVICES RENDERED AND EXPENSES INCURRED

13. The following is a summary description of the primary services rendered by Kilpatrick Townsend during the Final Period that highlights the benefits conferred upon the Committee and the Debtors' estates. All of the professional services rendered by Kilpatrick Townsend are set forth in the computerized time records maintained by Kilpatrick Townsend that are attached to this Application as collective **Exhibit D**.

14. The services rendered by Kilpatrick Townsend, as counsel to the Committee, during the Final Period are grouped into the categories set forth below. These categories are generally described below, with detailed descriptions of the specific services provided in Kilpatrick Townsend's billing statements, which, as noted, are attached to this Application as collective **Exhibit D**.

(a) Asset Disposition
Fees: \$177,845.00 Hours: 186.3

15. The Committee and its professionals were engaged in every step of the sale process, including the Debtors' marketing efforts, the auction, the form of sale order, the lengthy post-auction negotiations of the asset purchase agreement (the "APA") and the various post-closing disputes between the Debtors and Stellex. Indeed, Kilpatrick Townsend devoted extensive resources to reviewing and revising portions of the Stellex APA and the sale order to ensure that the documents appropriately memorialized Stellex's agreement (i) not to purchase claims against the Debtors' directors and officers and (ii) to purchase and not pursue preference actions against certain entities. Additionally, this billing category encompasses the time and resources relating to, inter alia, engaging with the Debtors and their investment banker regarding the sale process; reviewing the Debtors' bidding procedures; reviewing and analyzing the bids; working with PwC to analyze the sale process and value of bids received; attending the auction;

negotiating terms of the proposed sale order; reviewing and revising the asset purchase agreement; communicating with Stellex, the Debtors and the Committee throughout the sale process; reviewing the objections filed to the sale motion; drafting a limited objection to the sale motion; reviewing the Debtors' and Stellex's dueling motions to enforce the sale order; and attending all hearings related to the sale process.

(b) Case Administration and Analysis
Fees: \$ 179,066.00 Hours: 216.2

16. This billing category encompasses services rendered related to general case administration including, *inter alia*, reviewing and analyzing the Debtors' first day motions, drafting a memorandum regarding the Debtors' first day motions; reviewing and analyzing the Committee's case strategy; preparing a diligence list; attending the 341 meeting; drafting a protective order regarding the production of documents from the Debtors; corresponding with Debtors' counsel regarding document productions; attending various hearings throughout the case; preparing witness and exhibit lists; and performing other tasks to facilitate the day to day administration of these chapter 11 cases for the benefit of unsecured creditors. Time in this billing category also includes certain services rendered in connection with preparing Rule 2004 motions and meeting and conferring with the Debtors' counsel regarding same. This billing category also encompasses significant time spent by Kilpatrick Townsend reviewing and analyzing the Debtors' conversion motion, drafting an objection to the conversion motion and proposed order, negotiating the Conversion Order with the Debtors and Lenders, and attending the hearings on the conversion motion. Through the Conversion Order, Kilpatrick Townsend successfully negotiated an extension of the chapter 7 trustee's Challenge Deadline through and including August 10, 2021 with respect to certain causes of action.

(c) Claims Administration and Objections
Fees: \$ 5,343.50 Hours: 5.7

17. The services rendered in this category include, *inter alia*, reviewing motions for payment of administrative expense claims, analyzing the PACA order, and reviewing critical vendor payments and PACA claims.

(d) Lien Investigation
Fees: \$265,218.00 Hours: 253.7

18. Upon its appointment as counsel to the Committee, Kilpatrick Townsend undertook a comprehensive investigation of the validity and priority of alleged liens on the Debtors' assets. The investigation encompassed initial analysis of the Debtors' credit facilities, review and analysis of public filings and other sources of information regarding such facilities, review of applicable instruments and related documents, lien and mortgage searches, analysis of applicable law, preparation of various memoranda regarding defects in the perfection and/or validity of certain liens that were identified by Kilpatrick Townsend's review and analysis, and the drafting of a standing motion and related proposed complaint. A component of the Committee's lien analysis dealt with alleged liens on the proceeds of insurance claims in connection with a prepetition listeria outbreak at the Debtors' Dallas facility. The Debtors notified their insurance carriers of significant product recall claims related to the listeria outbreak. During the chapter 11 cases, the Debtors received in excess of \$4 million from its insurance carriers for their product recall claims. Based upon the Committee's lien investigation, the Committee believed, pursuant to the applicable credit agreements, section 552 of the Bankruptcy Code and applicable common law, that the Debtors' recoveries of the product recall proceeds were not encumbered by prepetition liens. Prior to the conversion of the cases, the Committee's Challenge Deadline was extended with respect to certain claims, including those

related to the product recall proceeds, to July 9, 2021. Accordingly, the Committee had not filed the standing motion and complaint prior to conversion of these cases. Kilpatrick Townsend has discussed the Committee's draft complaint with the chapter 7 trustee and provided a copy of the same and Kilpatrick Townsend's legal analysis to the trustee.

19. As set forth in paragraph 27 of the Final DIP Order, the DIP Secured Parties consented to the Committee using the DIP Secured Parties' collateral in an amount not to exceed \$125,000 for the purpose of the Committee's investigation. Kilpatrick Townsend seeks allowance of \$251,957.10 (\$265,218.00 minus the 5% discount) in fees it incurred in connection with the Committee's investigation. From the DIP Secured Parties' collateral, Kilpatrick Townsend seeks payment of \$122,008.00 and PwC seeks payment of \$2,992.00 in connection with the Committee's investigation for a total of \$125,000. Kilpatrick Townsend seeks an allowed administrative expense claim pursuant to section 503(b)(2) of the Bankruptcy Code for the remaining \$129,949.10 incurred by Kilpatrick Townsend in connection with the Committee's investigation.

(e) Employee Benefits/Pensions
Fees: \$71,839.00 Hours: 71.2

20. Kilpatrick Townsend's work regarding employee benefits was performed primarily in response to the Debtors' motion to approve a key employee incentive plan ("KEIP"). In connection therewith, Kilpatrick Townsend, together with PwC, analyzed the KEIP motion, researched legal issues relating thereto, prepared an objection to the KEIP motion, performed analyses of the incentives proposed to be provided, conferred with the Debtors' counsel regarding issues relating to the KEIP, attended multiple hearings concerning the KEIP, conferred on multiple occasions with the U.S. Trustee regarding the Committee's and U.S. Trustee's objections to the KEIP, analyzed the KEIP metrics and whether the KEIP participants

achieved such metrics, and prepared a supplemental objection to the KEIP in light of the changed circumstances in the cases created by the Debtors' filing of the conversion motion.

(f) Fee/Employment Applications
Fees: \$38,761.50 Hours: 56.0

21. This billing category encompasses services rendered related to, *inter alia*, the drafting of Kilpatrick Townsend's retention application, reviewing and commenting on the Committee's retention applications for PwC and Cassels, preparing monthly fee statements, and drafting interim and final fee applications.

(g) Fee/Employment Objections
Fees: \$35,911.00 Hours: 45.1

22. This billing category encompasses services rendered related to the Debtors' and lenders' professionals retention applications including, *inter alia*, reviewing and analyzing the retention applications filed by the Debtors' professionals and reviewing invoices served by the prepetition lenders' professionals. Kilpatrick Townsend also spent significant time defending the Cassels' retention application against the Debtors' objection to the same, which included the review of the Debtors' objection, preparation of a reply and attending a hearing on the retention application. **However, Kilpatrick Townsend is not seeking reimbursement for any time spent defending its own fees and expenses.**³

(h) Financing
Fees: \$210,579.00 Hours: 230.3

23. This billing category encompasses services rendered related to the *Emergency Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Financing; (II) Authorizing the Debtors to Use Cash Collateral; (III) Granting Liens and Providing Superpriority Administrative Expense Claims; (IV) Granting Adequate Protection to Prepetition*

³ Such fees related thereto incurred thus far are over \$16,000.

Secured Parties; (V) Modifying the Automatic Stay; (VI) Scheduling a Final Hearing; and (VII) Granting Related Relief (the “DIP Financing Motion”), the final order on the DIP Financing Motion [Dkt. No. 335] (the “Final DIP Order”) including, *inter alia*, reviewing and analyzing the interim DIP Order and the DIP Credit Agreement (as defined in the DIP Financing Motion), reviewing and revising the Final DIP Order, preparation of the Committee’s issues list, drafting an objection to the DIP Financing Motion, negotiating with the Debtors and the DIP Lenders regarding a consensual resolution of the Committee’s issues with the DIP Financing Motion, and reviewing and analyzing various wind down budgets. As a result of Kilpatrick Townsend’s efforts, the Final DIP Order provided that (i) the DIP Lenders would use reasonable efforts to first satisfy the DIP obligations from DIP collateral other than Avoidance Action Proceeds, actions against directors and officers and proceeds therefrom; (ii) the Prepetition Secured Parties would use reasonable efforts to satisfy any post-petition adequate protection claims from collateral other than Avoidance Action Proceeds, actions against directors and officers and proceeds therefrom; and (iii) the Debtors could use cash collateral to pay any outstanding invoices for unpaid post-petition goods or services consistent with the DIP Budget during the Remedies Notice Period.

24. Kilpatrick Townsend also incurred significant time preparing a motion to extend the Committee’s Challenge Deadline [Dkt. No. 547, 559] (the “Challenge Deadline Extension Motion”) after the Debtors failed to comply with the Court’s *Stipulation and Agreed Order Regarding Debtors’ Production of Documents to the Official Committee of Unsecured Creditors* [Dkt. No. 514], which required that the Debtors produce certain documents by a date certain in order for the Committee to complete its investigation. Such motion was filed due to a provision in paragraph 31 of the Final DIP Order, which required the Committee to obtain consent from

the Prepetition Secured Parties or file a motion in order to extend its Challenge Deadline. *See* Final DIP Order ¶ 31(c). Subsequent to the filing of the Challenge Deadline Extension Motion, Kilpatrick Townsend incurred significant time engaging with counsel for the Ad Hoc Group of Lenders and negotiating the *Stipulation and Agreed Order Extending the Challenge Deadline with Respect to Certain Specified Assets that May Not be Subject to Prepetition Liens and Providing Related Relief* [Dkt. No. 612] (“Challenge Deadline Stipulation”), which, among other things, extended the Committee’s Challenge Deadline with respect to the product recall claims and equitable subordination claims through July 9, 2021 and contained an acknowledgement that the Prepetition Lenders did not have any prepetition liens on commercial tort claims. The Challenge Deadline Stipulation also extended the chapter 7 trustee’s Challenge Deadline with respect to such claims, which protected the chapter 7 trustee’s ability to commence a challenge and potentially distribute any proceeds of such challenge to unsecured creditors.

**(i) Litigation General
Fees: \$193,711.00 Hours: 1,621.4**

25. Subsequent to engaging counsel and a financial advisor, the Committee began sending requests for documents and information to the Debtors. The Committee’s professionals sent an initial diligence request on March 5, 2021 to the Debtors’ Chief Restructuring Officer requesting various documents and information. The Committee requested, among many other things, documents related to (i) the 2017 acquisitions of Country Fresh, LLC and its affiliated entities and the Sun Rich Fresh Foods brand by Kainos Capital (the “2017 Transactions”); (ii) the 2019 debt restructuring and exchange transaction in which the Debtors’ prepetition lenders equitized certain senior secured debt and became controlling owners of the Debtors (the “2019 Transaction”); (iii) documents regarding the Debtors’ multimillion dollar insurance claim arising out of the listeria outbreak at the Debtors’ Dallas facility; (iv) board minutes and presentations

from the last five years; (v) the Debtors' corporate formation documents; (vi) the Debtors' historical financials; and (vii) prepetition valuations and solvency analyses. Certain documents, primarily related to requests surrounding the Debtors' sale process and certain financials, were provided in the dataroom created in connection with the sale.

26. However, many documents requested remained outstanding, including documents related to the 2017 Transactions and the 2019 Transaction. Counsel to the Committee continued to engage Debtors' counsel on certain high priority document requests, including copies of all board minutes and resolutions from the last five years. When the Committee indicated to the Debtors that it was in the process of preparing a motion pursuant to Bankruptcy Rule 2004 due to the Debtors' failure to produce documents on an informal basis, the Debtors agreed to enter into a stipulation regarding the production of documents. After negotiations, on April 8, 2021, the Committee and the Debtors entered into the *Stipulation and Agreed Order Regarding Debtors' Production of Documents to the Official Committee of Unsecured Creditors* [Dkt. No. 513]. On April 9, 2021, the Court signed the stipulation (the "Document Production Order") [Dkt. No. 514], which ordered the Debtors to produce all responsive documents requested by the Committee, set forth on Exhibit A to the Document Production Order, by April 16, 2021 at 5:00 p.m. (prevailing Central Time).

27. The Debtors ultimately produced over 100,000 documents; however, over 98% of the documents were produced after the Court ordered deadline, which necessitated the preparation and filing of the Committee's Challenge Deadline Extension Motion. This billing category encompasses services rendered related to potential litigation, including, *inter alia*, reviewing and analyzing transactions involving the Debtors and potential claims related thereto, preparing document requests for the Debtors, and significant time reviewing document

productions from the Debtors. In connection with these investigatory efforts, Kilpatrick Townsend attorneys reviewed over 100,000 documents. The Committee has made available to the chapter 7 trustee its work related to this project category.

(j) Meetings of Creditors
Fees: \$86,380.50 Hours: 96.3

28. This billing category encompasses services rendered related to meetings of the Committee, including Kilpatrick Townsend's efforts related to hosting Committee conference calls regarding the status of the chapter 11 cases. For each meeting and call, Kilpatrick Townsend prepared an agenda and presentation materials in advance of each meeting to foster productive discussions on relevant case issues. Kilpatrick Townsend also prepared minutes for each meeting and corresponded regularly via email with the Committee regarding case status, pleadings filed and to be filed, the outcomes of hearings, and other pertinent matters pending before the Court.

(k) Plan and Disclosure Statement
Fees: \$20,103.00 Hours: 18.5

29. This billing category encompasses services rendered related to settlement discussions between the Committee and the Debtors' prepetition lenders, including the drafting of settlement term sheets, which occurred from the outset of Kilpatrick Townsend's retention through a few days prior to the filing of the conversion motion.

(l) Relief from Stay Proceedings
Fees: \$1,477.00 Hours: 2.5

30. This billing category encompasses services rendered related to, *inter alia*, reviewing and analyzing motions seeking relief from the automatic stay.

(m) Insurance
Fees: \$8,208.50 Hours: 8.6

31. This billing category encompasses services rendered related to, inter alia, reviewing the Debtors' prepetition insurance policies, analyzing the potential claims related to the Debtors' product recall insurance claim, and corresponding with the Debtors' professionals regarding the Debtors' insurance policies and claims.

SUMMARY OF EXPENSES INCURRED

32. During the Final Period, Kilpatrick Townsend incurred or disbursed actual and necessary costs and expenses related to the chapter 11 cases in the aggregate amount of \$35,168.54. The expenses incurred included costs for e-discovery services, delivery services and court filing fees. A summary of the expenses incurred by Kilpatrick Townsend during the Final Period is attached hereto as **Exhibit C**.

LEGAL STANDARD

33. Section 330(a)(1) of the Bankruptcy Code allows the payment of:

(A) Reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person and

(B) Reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a)(1).

34. Section 330 also sets forth the criteria for the award of such compensation and reimbursement of expenses:

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

35. The appropriateness of these statutory criteria was upheld by the Fifth Circuit in *Barron & Newburger, P.C. v. Texas Skyline, Ltd. (In re Woerner)*, 783 F.3d 273, 276 (5th Cir. 2015) (affirming that the reasonableness and necessity of the legal services performed by debtor's counsel are assessed as of the time the services were rendered, not based upon hindsight). Prior to the enactment of § 330(a)(3)(A), *In re First Colonial Corp. of America*, 544 F.2d 1291 (5th Cir.), *cert. denied*, 431 U.S. 904 (1977) was the controlling authority that Courts within the Fifth Circuit relied upon in evaluating requests for payment of professional fees. The § 330(a)(3)(A) factors are subsumed within the more extensive *First Colonial* factors, also known as the “Johnson factors.” The Fifth Circuit considers the following twelve factors set forth in *First Colonial* in determining the validity of awards of attorneys’ fees in bankruptcy cases: (i) time and labor required; (ii) the novelty and difficulty of the questions; (iii) the skill required to perform the legal services properly; (iv) the preclusion of other employment by the professional due to acceptance of the case; (v) the customary fee; (vi) whether the fee is contingent or fixed; (vii) time limitations imposed by the client or the circumstances; (viii) the amount involved and the results obtained; (ix) the experience, reputation and ability of the attorneys; (x) the “undesirability” of the case; (xi) the nature and length of the professional relationship with the client; and (xii) awards in similar cases. *First Colonial*, 544 F.2d at 1298-99. The following analysis of the *First Colonial* factors supports the reasonableness of the requested fees.

36. **Time and Labor Required.** Kilpatrick Townsend attorneys and paraprofessionals, in the performance of legal services, expended a total of 2,811.8 hours during

the Final Period. The names of the attorneys and paraprofessionals who worked on these cases during the Final Period are listed in the time sheets attached hereto as **Exhibit D**, along with detail regarding the specific services performed by each individual. Many of the services rendered required a high degree of professional competence and expertise in order to be administered expeditiously with skill. Kilpatrick Townsend enlisted the assistance of e-discovery attorneys billing at \$75.00 per hour to review the over 100,000 documents produced to the Committee in order to review such documents in a cost-effective manner. Kilpatrick Townsend attorneys and paraprofessionals made an effort to avoid any unnecessary duplication of work and time expended. Kilpatrick Townsend submits that the time and labor its attorneys and paraprofessionals have expended in these cases is appropriate and reasonable.

37. **Novelty and Difficulty of Legal Problems Involved.** These cases presented numerous difficult and complex legal issues, which required knowledge of the application of the Bankruptcy Code, the Bankruptcy Rules, local rules and case law, including, among other things, issues related to the Debtors' DIP Financing Motion and the Final DIP Order, analysis of alleged liens on the product recall proceeds, investigation into various potential causes of action, analysis of the propriety of the KEIP, numerous PACA issues and the various sale related issues and disputes. Kilpatrick Townsend's attorneys effectively exercised considerable expertise to address complex issues arising in these cases.

38. **Skill Required for Performance of Legal Services.** Representing the Committee in these cases and in connection with a number of difficult issues and matters addressed in these cases required considerable legal skill and bankruptcy expertise. Kilpatrick Townsend attorneys and paraprofessionals of varying levels of skills and expertise were involved to address matters as they arose in these cases. Kilpatrick Townsend sought to limit the number of attorneys who

worked on these cases and used the most appropriate attorney or paraprofessional for each task. The compensation requested is consistent with the compensation awarded in other cases of similar size and complexity.

39. **Preclusion of Other Employment Due to Acceptance of the Case.** Kilpatrick Townsend has not declined any representation solely because it serves as counsel to the Committee in these cases.

40. **Customary Fee.** Kilpatrick Townsend agreed to a 5% discount of its customary fees in connection with its engagement as the Committee's counsel. Such discount resulted in an overall \$64,722.15 reduction in fees that, if allowed, would be payable by these estates. The fees charged by Kilpatrick Townsend are similar to the fees charged by comparable law firms. The compensation sought herein is not unusual given the size of these cases and the time spent in connection with Kilpatrick Townsend's representation of the Committee.

41. **Whether the Fee is Contingent or Fixed.** Kilpatrick Townsend billed its fees hourly.

42. **Time Limitations Imposed by the Client or Other Circumstances.** Kilpatrick Townsend has had to respond to tight time-constraints in these cases, including in connection with emergency hearings for which Kilpatrick Townsend needed to quickly review the related relief requested and prepare for such emergency hearings. Kilpatrick Townsend worked efficiently with the assistance of the Committee's other professionals to ensure that the Committee and its constituency were well represented.

43. **Results Obtained.** Although these cases ultimately converted to chapter 7, Kilpatrick Townsend's actions in these cases ensured that the Committee was well represented and their interests protected. Indeed, Kilpatrick Townsend devoted extensive resources to

ensuring ensure that the APA and sale order appropriately memorialized Stellex's agreement (i) not to purchase claims against the Debtors' directors and officers and (ii) to purchase and not pursue preference actions against certain entities. Kilpatrick Townsend identified the potential challenge to the Prepetition Secured Parties' liens on the product recall proceeds. Kilpatrick Townsend's negotiations of the consensual Final DIP Order also ensured that the Prepetition Secured Parties would pay post-petition administrative claims. Further, Kilpatrick Townsend negotiated an extension of the chapter 7 trustee's Challenge Deadline in order to ensure that the chapter 7 trustee had the ability to commence a challenge related to the product recall proceeds and potential equitable subordination claims to try to recover proceeds that might be distributable to unsecured creditors. Kilpatrick Townsend also successfully eliminated proposed language in the Conversion Order that would have mandated payment of professional fees from potentially unencumbered assets.

44. **Experience, Reputation and Ability of the Attorneys.** Kilpatrick Townsend possesses extensive experience and expertise in chapter 11 cases generally and in the representation of Official Committees of Unsecured Creditors. Kilpatrick Townsend is nationally recognized for representing committees, indenture trustees, debtors, and individual creditors in the Bankruptcy Court for the Southern District of Texas and many other districts. Kilpatrick Townsend's bankruptcy and financial restructuring attorneys are experienced in all aspects of bankruptcy matters and have an excellent reputation for such matters.

45. **"Undesirability" of the Case.** Acting as Committee counsel in these cases has not been undesirable for Kilpatrick Townsend.

46. **Nature and Length of the Professional Relationship with the Client.** Kilpatrick Townsend was selected as the Committee's counsel shortly after the Committee's

formation on February 26, 2021 and was retained effective as of that date. Kilpatrick Townsend rendered services to the Committee from February 26, 2021 through the June 21, 2021 conversion of these cases and the related dissolution of the Committee.

47. **Awards in Similar Cases.** Kilpatrick Townsend believes that its fees are consistent with fees allowed in similar proceedings for similar services rendered and results obtained.

48. Kilpatrick Townsend submits that the services for which it seeks final compensation and the expenditures for which it seeks reimbursement in this Application were necessary for and beneficial to the preservation and maximization of value for all stakeholders and to the orderly administration of the Debtors' chapter 11 estates. Such services and expenditures were necessary to and in the best interests of the Debtors' estates and creditors. The compensation requested herein is reasonable in light of the nature, extent, and value of such services to the Committee and its constituency--unsecured creditors of the Debtors.

49. Kilpatrick Townsend has calculated its compensation requested in this Application by applying its standard hourly rates. Kilpatrick Townsend's calculation is based upon hourly rates that are well within the range of rates that are charged by comparable firms in similar bankruptcy cases. Furthermore, the amount of fees requested herein is not unusual given the complexity, accelerated deadlines, and size of the Chapter 11 Cases. Accordingly, Kilpatrick Townsend's rates should be determined to be reasonable under section 330 of the Bankruptcy Code.

50. Section 330(a)(1)(B) of the Bankruptcy Code permits reimbursement for actual, necessary expenses. Kilpatrick Townsend's expenses incurred during the Final Period are set forth in this Application and constitute only those necessary expenses that were incurred for the

benefit of the Committee. Kilpatrick Townsend has properly requested reimbursement of only actual, necessary and appropriate expenses.

51. Except as permitted by Rule 2016 of the Bankruptcy Rules, no agreement or understanding exists between Kilpatrick Townsend and/or any third person for the sharing or division of compensation in connection with the Chapter 11 Cases. All of the services for which compensation is requested in this Application were rendered at the request of and solely on behalf of the Committee.

52. Pursuant to the standards set forth in sections 330 and 331 of the Bankruptcy Code, Kilpatrick Townsend submits that the compensation requested is for actual and necessary services and expenses and is reasonable, based upon the nature, extent and value of such services, the time spent thereon, and the costs of comparable services in a case under the Bankruptcy Code. Kilpatrick Townsend submits, therefore, that its fees and expenses were actual, necessary, reasonable, and justified, and should be allowed in full.

WHEREFORE, Kilpatrick Townsend respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit H**, (i) approving on a final basis 100% of Kilpatrick Townsend's fees earned in the amount of \$1,241,173.35 and expenses incurred in the amount of \$35,168.54 during the Final Period; (ii) directing payment of all outstanding amounts owed for the Final Period; and (iii) granting to Kilpatrick Townsend such other and further relief as is just and appropriate.

Dated: July 12, 2021

By: /s/ Paul M. Rosenblatt

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Creditors*

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July 2021, a true and correct copy of the foregoing was served by electronic transmission upon all parties eligible to receive service through this Court's CM/ECF system and served via email, or first-class U.S. mail where email unavailable, on all parties listed on the current Master Service List in these cases.

/s/ Paul M. Rosenblatt

Paul M. Rosenblatt