

APPLICATION DATE: JULY 12, 2021
OBJECTION DEADLINE: JULY 26, 2021

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

In re:	§ Chapter 7
	§
COUNTRY FRESH HOLDING	§ Case No.: 21-30574 (MI)
COMPANY INC., et. al.	§
	§ Jointly Administered
Debtors.	§

**COVER SHEET FOR FIRST AND FINAL FEE APPLICATION OF
FOLEY & LARDNER LLP AS COUNSEL TO THE DEBTORS FOR ALLOWANCE
AND PAYMENT OF COMPENSATION FOR SERVICES RENDERED AND
REIMBURSEMENT OF EXPENSES INCURRED DURING THE PERIOD FROM
FEBRUARY 15, 2021 THROUGH JUNE 21, 2021**

Name of Applicant:	Foley & Lardner LLP	
Applicant's Role in Case:	Counsel for the Debtors	
Date Order of Employment Signed:	03/31/2021 [Docket No. 452]	
	Beginning of Period	End of Period
Time period covered by this Application:	02/15/2021	06/21/2021 ¹
Total fees requested in this Application:	\$2,074,164.00 ²	
Total professional fees requested for the Total Period:	\$1,968,457.00	
Total actual professional hours for the Total Period:	3144.60	
Average hourly rate for professionals:	\$625.98	
Total paraprofessional fees requested for the Total Period:	\$55,707.00	
Total actual paraprofessional hours for the Total Period:	194.00	
Average hourly rate for paraprofessionals:	\$287.15	
Post-Conversion Flat Fee	\$50,000.00	
Reimbursable expenses sought in this application:	\$48,193.62	
Date of Conversion to Chapter 7:	06/21/2021	

¹ The Application includes a flat fee for services rendered after June 21, 2021 (the “**Post-Conversion Flat Fee**”) related to the preparation and prosecution of this Application and other services to the Debtors related to the conversion of the cases from Chapter 11 Cases to cases under chapter 7.

² Total amount represents (a) \$2,024,164.00 incurred from February 15, 2021 through June 21, 2021, and (b) the Post-Conversion Flat Fee of \$50,000. Foley requests Court approval of a flat fee for services rendered after June 21, 2021 to the Debtors in support of the conversion of the Chapter 11 Cases to cases under chapter 7 (defined above as the Post-Conversion Flat Fee).

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

In re: COUNTRY FRESH HOLDING COMPANY INC., et. al.³ Debtors.	§ Chapter 11 § § Case No.: 21-30574 (MI) § § Jointly Administered §
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**FIRST AND FINAL FEE APPLICATION OF FOLEY & LARDNER LLP AS COUNSEL
TO THE DEBTORS FOR ALLOWANCE AND PAYMENT OF COMPENSATION FOR
SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED
DURING THE PERIOD FROM FEBRUARY 15, 2021 THROUGH JUNE 21, 2021**

THIS MOTION 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 WITHIN 14 DAYS⁴ OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION 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 MOTION 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.

³ The debtors in these chapter 7 cases (the “Debtors”) and the last four digits of each Debtor’s 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.

⁴ The Conversion Order (defined below) established the objection deadline for any fee applications as July 26, 2021.

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

Foley & Lardner LLP (“**Foley**”), counsel for Country Fresh Holding Company Inc. and its above-captioned debtors affiliates, as debtors and debtors-in-possession (collectively, the “**Debtors**”) in the above-referenced chapter 11 cases (the “**Chapter 11 Cases**”), files this first and final application (the “**Application**”) for allowance of compensation for professional services provided during the period from February 15, 2021, through and including June 21, 2021 (the “**Total Period**”) in the amount of \$2,024,164.00, plus the Post-Conversion Flat Fee of \$50,000 (for a total of **\$2,074,164.00** in fees) and reimbursement of actual and necessary expenses in the amount of **\$48,193.62**. In support of this Application, Foley respectfully states as follows:

I.
JURISDICTION

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

2. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 330 and 331, Rule 2016(a) of the Federal Rule 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**”), and 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* [Docket No. 598] (the “**Interim Compensation Order**”).

II. **BACKGROUND**

A. The Bankruptcy Filings

3. On February 15, 2021 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors’ resulting bankruptcy cases (the “**Chapter 11 Cases**”) have been jointly administered under Case No. 21-30574.

4. Information on the Debtors, their business, and the relief requested in this Application can be found in the *Declaration of Stephen Marotta in Support of First Day Motions* (the “**Marotta Declaration**”) [Docket No. 19] and incorporated herein by reference.

5. On February 25, 2021, the United States Trustee appointed an Official Committee of Unsecured Creditors (the “**Committee**”) in these Chapter 11 Cases as reflected in the notice filed at Docket No. 149.

B. Foley’s Retention.

6. On March 12, 2021, the Debtors filed the *Emergency Application for Entry of an Order Authorizing the Retention and Employment of Foley & Lardner LLP as Counsel to the Debtors and Debtors in Possession as of the Petition Date* [Docket No. 271].

7. On March 31, 2021, the Court entered its order authorizing the Debtors’ employment of Foley as its counsel as of the Petition Date [Docket No. 452].

C. Interim Compensation and Monthly Statements.

8. On March 15, 2021, the Debtors filed their *Emergency Motion for Administrative Order Under Bankruptcy Code Sections 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No. 298] (the “**Interim Compensation Motion**”).

9. On May 12, 2021, approved the relief sought in the Interim Compensation Motion through entry of the Interim Compensation Order at Docket No. 598.

10. Pursuant to the Interim Compensation Order, estate professionals, including Foley, are to submit monthly statements (the “**Monthly Statements**”) of fees and expenses to certain notice parties. If no objections are raised during the applicable notice period (14 days), the Debtors are authorized to pay eighty percent (80%) of uncontested fees and one hundred percent (100%) of uncontested expenses in each applicable Monthly Statement.

11. The Interim Compensation Order also provides that the Monthly Statements for the first three months of these Chapter 11 Cases could be submitted to the notice parties in a combined statement. In addition, the first interim fee application also was to cover the first three months of these Chapter 11 Cases.

12. In accordance with the Interim Compensation Order, Foley submitted its Monthly Statements for February 2021, March 2021⁵ and April 2021 to the requisite notice parties on May 18, 2021. Prior to the filing of this Application, Foley did not submit its Monthly Statement for May 2021; however, collectively, the Monthly Statements for February, March, April, May, and June 2021 are referred to herein as the “Foley Fee Statements.” Each Foley Fee Statement consisted of a statement as to the fees and costs incurred in the stated month, including the associated detailed time entries, pursuant to the procedures set forth in the Interim Compensation Order.

⁵ The Monthly Statements for February and March 2021 were included in one submission to the Notice Parties. That hours summary included in that submission inadvertently omitted hours billed during those months; however, the amount of fees and expenses incurred (in terms of dollars) was correct on that submission and has not changed. As set forth below, true and correct copies of the Monthly Statements, including for February and March 2021, are attached hereto as Exhibit D.

13. The objection deadline for the Foley Fee Statements for February, March, and April 2021 was June 1, 2021. Foley did not receive any objections to those Foley Fee Statements. A chart setting forth the fees and expenses incurred by Foley to date and reflected in the Foley Fee Statements is below.⁶

Monthly Statements (Month Year)	Fees	Expenses	Total Compensation Sought	Amount Paid	Remaining Outstanding Balance
February 15, 2021 – February 28, 2021	\$230,428.50	\$14,016.00	\$244,444.50	\$198,358.00	\$46,086.50
March 1, 2021 – March 31, 2021	\$650,187.00	\$2,440.95	\$652,627.95	\$522,590.55	\$130,037.40
April 1, 2021 – April 30, 2021	\$629,669.50	\$12,316.73	\$641,986.23	\$516,052.33	\$125,933.90
May 1, 2021 – May 31, 2021	\$349,301.00	\$9,754.94	\$359,055.94	\$0.00	\$359,055.94
June 1, 2021 – June 21, 2021	\$164,578.00	\$9,665.00	\$174,243.00	\$0.00	\$174,243.00
Post-Conversion Flat Fee	\$50,000.00	\$0.00	\$50,000.00	\$0.00	\$50,000.00
Total Monthly Statement Amounts from Total Period: (PLUS FLAT FEE)	\$2,074,164.00	\$48,193.62	\$2,122,357.62	\$1,237,000.88	\$885,356.74

III. SUMMARY OF PROFESSIONAL COMPENSATION AND REIMBURSEMENT OF EXPENSES REQUESTED

14. Foley seeks final allowance and award of compensation for the professional services rendered by Foley as counsel for the Debtors during the Total Period with regard to (i) fees for legal services in the amount of \$2,074,164.00, representing 3,338.60 hours of professional services (and including the Post-Conversion Flat Fee for services rendered after the conversion of the Chapter 11 Cases to chapter 7), and (ii) expenses in the amount of \$48,193.62.

⁶ Though Foley has not distributed and will not distribute a Monthly Statement for the period between June 1, 2021 and June 21, 2021 also included in this Application, the information for that period is also set forth for the purposes of completeness.

15. Pursuant to the Interim Compensation Order, Foley has been paid \$1,208,227.20 in fees and \$28,773.68 in expenses during the Total Period, covering the period from February 15, 2021 through and including April 30, 2021, as requested in the Foley Fee Statements. Since submission of the Foley Fee Statements, Foley has incurred additional fees in the amount of \$513,879.00 and expenses in the amount of \$19,419.94. Foley hereby seeks payment of the outstanding balance of \$815,936.80 in fees and \$19,419.94 incurred but unpaid during the Total Period and the Post-Conversion Flat Fee in the amount of \$50,000.00 (for a total of \$885,356.74 in unpaid fees and expenses).

IV. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASES

A. The First-Day Pleadings and Hearing.

16. On the Petition Date, the Debtors filed fourteen (14) “First-Day Pleadings” requesting relief necessary for the administration of these Chapter 11 Cases and to allow the Debtors to continue operations in bankruptcy. Included in those First-Day Pleadings were: a) four (4) motions⁷ seeking relief related to administration of the Chapter 11 Cases (together, the “**Administrative Motions**”); b) seven (7) motions⁸ relating to the payment of pre-petition obligations and/or post-petition utility deposits (together, the “**Operational Motions**”); and c) two (2) motions⁹ requesting relief relating to their consolidated, enterprise-wide cash management system and the procurement of post-petition financing (together, the motions being referred to as the “**Financing Motions**”).¹⁰

⁷ Docket Nos. 2-5.

⁸ Docket Nos. 6-9, 11, and 13.

⁹ Docket Nos. 10 and 16.

¹⁰ The fourteenth pleading was a *Notice of Designation as Complex Chapter 11 Case* [Docket No. 14].

17. Due to the timing of the filing of the Chapter 11 Cases, exigent circumstances involving the weather affecting most of the State of Texas on or about the Petition Date, notice considerations, and objections of various parties in interest, the Court ultimately conducted five (5) contested interim and final hearings concerning the First Day Pleadings on February 16, 22, and 25 and March 12 and 18. Interim and/or final orders were entered in connection with all of the Debtors' First-Day Pleadings.¹¹

18. The DIP Motion filed by the Debtors at Docket No. 16 was particularly important given the facts and circumstances of these Chapter 11 Cases and the successful Sale Process described below. Through the DIP Motion, the Debtors sought authority to borrow (and/or guarantee the borrowing of) up to \$11,500,000 of DIP Loans (as defined in the DIP Motion and inclusive of an Upfront Fee, also as defined and described in the DIP Motion) on an interim basis and an additional \$1,916,000 upon entry of a final order. In exchange for the proposed financing (the combined amount of \$13,416,000 plus capitalized interest thereon being the "**DIP Facility**"), the Debtors requested authority to grant certain liens and security interests, as well as super-priority administrative-expense claims, and various forms of adequate protection, to the proposed DIP Lenders. Following negotiations by and between Foley, as counsel for the Debtors, counsel for the United States Trustee, and counsel for certain of the DIP Lenders, and the interim hearing on the DIP Motion conducted on February 16, 2021, the Court entered its Interim DIP Order¹² and set a final hearing on the DIP Motion for March 18, 2021 (the "**Final DIP Hearing**").

¹¹ The Debtors' *Emergency Motion for Authority to Pay or Honor Prepetition PACA Claims* [Docket No. 11] (the "**PACA Motion**") was initially granted by interim order before being ultimately withdrawn by the Debtors.

¹² *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 42].

19. During the approximately one-month time period between entry of the Interim DIP Order and the Final DIP Hearing, and concurrently with the Sale Process, Foley (as counsel to the Debtors) continued to negotiate with counsel for certain DIP Lenders, counsel to the Committee (which was formed during that time period), counsel for the United States Trustee, and counsel for various other parties, including PACA Claimants (defined below) to resolve issues and controversies relating to the proposed final DIP Order. With respect to the Committee's objections, those efforts were successful, and the Committee supported entry of the proposed final order. With respect to the objections raised by certain PACA Claimants, the Debtors filed their *Omnibus Reply* [Docket No. 319] addressing the arguments raised thereby. On March 18, 2021 following a heavily contested hearing earlier that day and over approximately twenty (20) objections and/or joinders thereto filed primarily by PACA Claimants seeking to completely derail the Chapter 11 Cases, the Court entered its Final DIP Order.¹³

20. The approval of the DIP Facility by the Court represented a hard-fought victory for the Debtors and Foley in these Chapter 11 Cases paved the way for the Debtors to conduct the Sale Process outlined below for all or substantially all of their assets. The intersection of PACA and bankruptcy included several instances where the law is, at best, poorly developed, and required the Debtors to prepare for and participate in numerous contested hearings involving, primarily, PACA issues.

B. Retention of the Debtors' Professionals.

21. In addition to Foley, the Debtors filed pleadings seeking authority to retain Epiq Corporate Restructuring, LLC ("**Epiq**") as claims, noticing, solicitation and administrative agent

¹³ *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 335].

[Docket No. 5]; Ankura Consulting Group, LLC (“**Ankura**”) to provide the services of Stephen Marotta and B. Lee Fletcher as Chief Restructuring Officer and Restructuring Officer, in addition to supporting personnel [Docket No. 279]; and Stout Capital, LLC (“**Stout**”) as investment banker to the Debtors [Docket No. 276].

22. The application to retain Epiq was granted by order entered at Docket No. 21. Following a hearing on March 31, 2021, the Court entered orders approving the Debtors’ retention of Ankura and Stout at Docket Nos. 451 and 453, respectively.

C. The Debtors’ Sale Process.

23. On February 26, 2021, the Bankruptcy Court entered its *Order (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing the Debtors’ Entry into the Stalking Horse Purchase Agreement; (C) Authorizing and Approving Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures* [Docket No. 164] (the “**Bid Procedures Order**”)¹⁴ in the Chapter 11 Cases, authorizing Debtors to market their business and assets in accordance with the sale and bid procedures (the “**Sale Process**”).

24. Following an auction conducted pursuant to the Bid Procedures Order on the two preceding days, on March 24, 2021, Debtors filed a Notice designating Stellex/CF Buyer (US) LLC (“**Buyer**”) as the successful bidder at the auction held in accordance with the Bid Procedures Order at Docket No. 404.

25. On March 29, 2021, the Court entered its *Order Authorizing Country Fresh Holdings Company Inc. and Its Affiliated Debtors to (I) Sell Substantially All of the Debtors’*

¹⁴ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Bid Procedures annexed thereto, as applicable.

Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Authorizing and Approving the Debtors' Performance under the APA, (III) Authorizing and Approving the Assumption and Assignment of Certain of the Debtors' Executory Contracts, Unexpired Leases, And Permits Related Thereto, and (IV) Granting Related Relief [Docket No. 437] (the “**Sale Order**”) authorizing the Debtors to sell all or substantially all of their assets to the Buyer and granting related relief.

26. Between approval of the Sale Order and the Closing Date, the Debtors' professionals, including Foley, spent a significant amount of time working with counsel for the Buyer, counsel for certain of the DIP Lenders and/or the Ad Hoc Group of Secured Lenders, and counsel for the Committee regarding issues relating to the negotiation and finalization of definitive sale documentation with the Buyer. Because the Bid Procedures Order originally contemplated a single sale of the Debtors' assets alongside those of the Canadian Debtors to the Buyer (in its role as the stalking-horse purchaser at that time), and the ultimate outcome of the Sale Process was three separate sales to three separate buyers, with the Buyer purchasing all or substantially all of the Debtors' assets, significant revisions to the proposed Asset Purchase Agreement (the “**APA**”) and related documentation, including the Transition Services Agreement (the “**TSA**”), were necessary. At the same time, the Debtors' professionals grappled with repeated attempts by PACA Claimants to either overturn the Sale Order completely (alongside the Final DIP Order) or prevent the sale from occurring based on their asserted rights under PACA.

27. On April 29, 2021 (the “**Closing Date**”), the Debtors filed their *Notice of Closing* at Docket No. 548 indicating that the sale to the Buyer pursuant to the Executed APA attached thereto had closed earlier that day. The following day the Debtors (on behalf of the Buyer) began

making payments necessary for the continued operations of the Debtors' businesses (by the Buyer) and performing their obligations under the TSA.

D. Disputes with PACA Claimants.

28. One of the major issues faced by the Debtors in these Chapter 11 Cases that was not completely resolved prior to conversion concerns certain of the Debtors' pre- and postpetition vendors that supply perishable agricultural commodities—primarily fresh fruit and vegetables—and thus assert rights under the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §§ 499a *et seq.* (as modified from time to time, “PACA,” and any such claims arising thereunder being “PACA Claims” and any holders of PACA Claims, “PACA Claimants”).

29. Beginning at the first hearing conducted in the case on February 16, 2021, the Debtors made known their intention to satisfy all legitimate PACA Claims, either through direct payment by the Debtors themselves or through assumption and payment by the ultimate purchaser of the Debtors' assets and operations. The Debtors also took affirmative steps in every proposed order that could be construed to impact PACA Claims or the rights of any PACA Claimants, to protect such rights. Recognizing that their obligations under PACA and bankruptcy law—specifically their fiduciary duties to *all* of their creditors and their estates—required a delicate balance, the Debtors attempted to ameliorate any and all concerns raised by PACA Claimants as much as possible.

30. Regardless, almost immediately upon the filing of the Chapter 11 Cases, various PACA Claimants began objecting to virtually everything the Debtors attempted to do, including, but not limited to, seeking authority to actually pay their claims. On the Petition Date, the Debtors filed their PACA Motion (defined above) designed to allow them to pay or otherwise satisfy prepetition PACA Claims, drawing objections from certain PACA Claimants. By tripartite order entered at Docket No. 53, the Court granted the Debtors interim authority, pending a further

hearing to be conducted following additional notice to parties in interest, to pay up to \$5 million in the aggregate of, among other things, prepetition PACA Claims.

31. As was the case for all proposed payments of prepetition obligations, the Court conditioned the Debtors' payment of prepetition PACA Claims to PACA Claimants on such claimants' continuing to provide goods or services to the Debtors on a postpetition basis on the same or better terms than the terms that existed prior to the Petition Date. However, despite the inclusion of additional language in the same order stating unequivocally that "[b]y agreeing to continue doing business with the Debtors [on the same or better terms], no vendor shall be deemed to have relinquished, impaired, or waived any statutory rights or privileges to the extent such terms differ from statutory requirements, and all validly preserved PACA trust rights shall be unaffected by such agreement[,]"¹⁵ certain PACA Claimants continued to argue that agreeing to the "same or better terms" with the Debtors would jeopardize their rights under PACA.

32. On February 22, 2021, the Court heard the remaining "first-day motions" including further interim relief on the PACA, critical vendors, and shipping motions. At that hearing, certain PACA Claimants reasserted their concerns about whether negotiating postpetition terms with the Debtors would jeopardize their status under PACA, notwithstanding explicit protections afforded to them in the Court's prior and anticipated subsequent orders. Following that hearing, the Debtors and certain PACA Claimants continued negotiations but were unable to reach agreement, necessitating a further hearing on February 25, 2021. The Court then entered its *Interim Order Conditionally Authorizing Payment of Pre-Petition PACA Claims* [Docket No. 162] (the "**Interim PACA Order**"), which authorized the Debtors the pay up to \$15 million in prepetition PACA Claims and states that "[n]o PACA Claimant is required to accept any payment under this Order."

¹⁵ Docket No. 53 at par. 7.

The Interim PACA Order also affirmed the administrative-expense status of any postpetition obligations incurred by the Debtors to PACA Claimants, protected postpetition payments to vendors providing the Debtors with goods covered by PACA from potential disgorgement, and again set forth the “same or better terms” requirement from prior orders with respect to the payment of any prepetition claims by the Debtors.

33. Beginning on or about February 25, 2021, certain PACA Claimants began arguing that not only should the Debtors not be allowed to pay only a portion of their prepetition PACA claims, they should also be required to “create and fully fund a segregated PACA trust account for the benefit of all PACA trust creditors.”¹⁶ To “fully fund” such an account would require setting aside funds to pay all prepetition PACA claims in full, something that the Debtors could not do given the magnitude of the asserted PACA Claims prior to the sale of the Debtors’ assets. This demand for a so-called “PACA escrow” would continue throughout the Chapter 11 Cases, even after the Sale Process outlined above concluded successfully. It also formed a central tenet of the PACA Claimants’ challenges to the proposed DIP Facility and their attempts to stymie or overturn the Court’s Interim and Final DIP Orders. So, too, did the argument raised by counsel for certain PACA Claimants that PACA itself prohibited the Debtors from making any payments to any parties, including employees, utility providers, other suppliers, and landlords, before the PACA Claimants were paid in full. Though the Debtors attempted to resolve the objections raised by the PACA Claimants, the PACA Claimants continued to object.

34. Ultimately the Court approved the proposed sale as described above. Notably, one outcome of the Sale Process was that pursuant to the APA negotiated by and between the Debtors and the Buyer, the Buyer agreed to pay certain liabilities, including undisputed PACA Claims,

¹⁶ Docket No. 134 at 11; *see also*, Docket No. 135 at 3-4.

immediately after the Closing Date up to a negotiated cap. The Buyer also agreed to pay disputed PACA Claims (once they were resolved or become undisputed) subject to that same cap, as well as assume certain liabilities.

35. Payments to PACA Claimants of undisputed PACA Claims began on or about April 30, 2021 and totaled more than \$18.5 million, leaving a relatively small portion of asserted PACA Claims unpaid and disputed. The process of verifying and reconciling PACA Claims was just one of many tasks conducted by the Debtors' professionals, primarily Ankura with Foley's assistance, between the entry of the Sale Order and the Closing Date. The Debtors (on behalf of themselves and the Buyers) have since paid additional significant amounts to PACA Claimants on account of asserted PACA Claims, and several recent hearings have been dedicated to establishing a PACA reserve for the remaining disputed PACA Claims, a substantial portion of which have also been reconciled and paid.

E. Disputes Related to the Sale.

36. Though the PACA Claimants constituted one of the most vocal constituencies in the Chapter 11 Cases, they are far from the only ones with whom the Debtors had disputes. Various other parties objected to the proposed sale on various grounds relating to proposed cure amounts, the use of leased equipment or vehicles, and the payment of administrative-expense claims, whether by the Debtors or the Buyer. The use by the Debtors of leased vehicles on behalf of the Buyer as part of their obligations under the TSA was a particularly prominent issue, as was the cancelation of the Debtors' insurance policies once they were no longer needed after the Closing Date. Foley was involved in resolving each of these disputes on behalf of the Debtors and instrumental in ensuring a relatively smooth process for consummation of the Court-approved sale and resolution of related issues.

37. Additionally, significant controversy arose between the Debtors and the Buyer, on the one hand, and the Debtors *or* the Buyer and third-party claimants, on the other, relating to the construction and interpretation of the TSA and the payment of postpetition, preclosing trade payables thereunder. This controversy eventually expanded to include other parties, as well, and required significant attention from Foley and the Debtors' other professionals and several contested hearings to resolve. One of the results of this dispute was the creation of the PACA reserve discussed above, as well as a process for the identification and reconciliation of postpetition, preclosing payables by and between the Debtors and the Buyer.

F. Conversion of the Chapter 11 Cases to Chapter 7.

38. On May 14, 2021, the Debtors and an ad hoc group of certain affiliated lenders (the "**Ad Hoc Group of Secured Lenders**") filed the *Joint Motion of the Debtors and the Ad Hoc Group of Secured Lenders for an Order Authorizing and Approving the Conversion of the Chapter 11 Cases and Granting Related Relief* [Docket No. 609] (the "**Original Conversion Motion**"). On June 2, 2021, the Debtors and the Ad Hoc Group of Secured Lenders filed an amended motion to convert the Chapter 11 Cases [Docket No. 673] (the "**Amended Conversion Motion**," together with the Original Conversion Motion, the "**Conversion Motion**").

39. Between the filing of the Original Conversion Motion, through the filing of the Amended Conversion Motion, and the first hearing on the Conversion Motion that occurred on June 17, 2021 (the "**First Conversion Hearing**"), the Debtors worked closely with the Ad Hoc Group of Secured Lenders, the Committee, the Buyer, and numerous other parties, primarily PACA Claimants, to address issues relating to the proposed conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code. Substantially all of the major issues between the parties were resolved prior to the First Conversion Hearing with the exception of disputes relating to leased vehicles previously used by the Debtors in connection with their operations, a requested

extension of the Challenge Period (as defined in the DIP Orders) by the Committee, and concerns over the preservation and form of various reserves and/or escrows established throughout these Chapter 11 Cases for the benefit of, solely by way of example, unpaid PACA Claimants and estate professionals.

40. On June 21, 2021, the Court entered an order granting the Conversion Motion [Docket No. 719] (the “**Conversion Order**”). Following conversion of the Chapter 11 Cases to chapter 7, Foley has continued to assist the Debtors to fulfill their obligations pursuant to the Conversion Order and the Bankruptcy Rules, as well as interface with the Chapter 7 Trustee appointed in the converted cases. Foley also prepared this Application

V.
PROFESSIONAL COMPENSATION
AND REIMBURSEMENT OF EXPENSES REQUESTED

A. Case and Services Rendered

41. Since their employment as counsel to the Debtors, Foley has been charged with all services attendant to representing Debtors, as more fully set forth below and in the Exhibits attached hereto.

42. Foley maintains computerized records of the time spent by all timekeepers in connection with its representation of the Debtors. All services for which compensation is requested by Foley were performed for or on behalf of the Debtors. To the extent any compensation set forth above remains unpaid, Foley further requests payment of all unpaid amounts approved by the Court, including amounts previously held back pursuant to the Interim Compensation Order.

43. The fees charged by Foley in this case are billed in accordance with Foley’s normal hourly rates and procedures in effect during the Application. Foley’s fees are reasonable based on

the customary compensation charged by comparably skilled practitioners in comparable non-bankruptcy cases in a competitive national legal market.

B. Hourly Fee/Expense Summary

44. Pursuant to, and in compliance with, the Local Rules and the Department of Justice Appendix B Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under United States Code by Attorneys in Larger Chapter 11 Cases, certain exhibits have been attached to this Application.

45. The Customary and Comparable Compensation Disclosure can be found on **Exhibit A** attached hereto. A Summary of the Timekeepers included in this Application is attached as **Exhibit B**, which sets forth each attorney or paraprofessional's billing rate, hours expended, and the total fees accrued at the corresponding hourly rate during the Total Period. The legal services rendered by Foley to the Debtors during the Total Period fall within the categories specifically listed below and as summarized in **Exhibit C-1**, and the expenses incurred by category during the Total Period are listed in **Exhibit C-2**. Finally, legal services rendered and reimbursement of expenses sought during the Total Period is fully set forth in the Foley Fee Statements, attached hereto as **Exhibit D**, which report in detail the description of the legal services rendered by Foley, the dates on which Foley's attorneys and paraprofessionals rendered such legal services, the identity of those attorneys and paraprofessionals, and the time spent by each such attorney and paraprofessional, as well as the expenses incurred by Foley.

46. The following summary of services rendered during the Total Period is not intended to be a detailed description of the work performed – the time records are set forth in Exhibit D. Instead, the following summary highlights certain services Foley rendered to the Debtors and identifies some of the matters and issues that Foley addressed for the benefit of the Debtors and their estates during the Total Period.

C. Project Billing – Description of Services by Project Category

47. During the Total Period, Foley provided the following services, separated into the major project categories identified below. Foley classified all services performed for which compensation is sought into categories. In doing so, Foley attempted to place the services performed in the category that best relates to the services provided. However, because certain services may relate to one or more categories, time spent on certain tasks may be included in another category. Below is a narrative description of Foley's accomplishments in each project category, except for any project categories for which billing was de minimus during the Total Period

a. Category B110 - Case Administration

48. This category includes fees applicable to a broad scope of services, including, but not limited to: (i) maintaining calendars and downloading and circulating pleadings filed; (ii) work related to the Debtors' Schedules and Statements of Financial Affairs; and (iii) other tasks associated with the representation of the Debtors not characterized under any specific task.

49. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	104.40	\$52,021.00

b. Category B120 - Asset Analysis and Recovery

50. This category comprises identification and review of potential assets that belong to these bankruptcy estates, specifically claims, causes of action, and non-litigation recoveries. This category includes the services rendered to identify potential claims and causes of action against third parties, including those related to a listeria product recall.

51. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	3.60	\$2,809.50

c. Category B130 - Asset Disposition

52. This category includes the services provided in relation to the sale of substantially all of the Debtors' assets pursuant to the Sale Process. Foley assisted the Debtors, Ankura, and Stout, with respect to all aspects of the Sale Process, including, but not limited to, negotiating with potential buyers, negotiating and drafting various transactional and related documents and pleadings, preparing for and conducting the auction, consulting with and advising the Debtors' management regarding various aspects of the Sale Process, and responding to and ultimately overcoming numerous objections to the proposed sale from various parties.

53. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	1042.70	\$636,192.50

d. Category B140 - Relief from Stay/Adequate Protection Proceedings

54. This category encompasses services performed with respect to analyzing various motions seeking relief from the automatic stay and conferring with creditors and other parties-in-interest regarding the requested relief, as well as responding to such motions.

55. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	53.20	\$31,049.00

e. **Category B150 - Meetings of and Communications with Creditors**

56. This category includes certain services related to (i) meetings, conferences and correspondence with the Committee and individual Committee members; (ii) conferences and correspondence with the Committee's professionals; (iii) conferences and correspondence with various unsecured creditors; and (iv) other matters in connection with the same, including informal discovery.

57. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	65.60	\$50,154.00

f. **Category B160 - Fee/Employments Applications**

58. This category includes services related review of the employment applications filed by the Committee's professionals and preparation and prosecution of the employment applications for all of the Debtors' professionals, as well as related matters.

59. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	113.50	\$62,852.00

g. **Category B170 - Fee/Employment Objections**

60. This category includes review of and objections to employment applications of the Committee's professionals. This category also includes the negotiations with the Committee's professionals to resolve the Debtors' objections to such employment applications.

61. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	31.40	\$21,291.50

h. Category B180 – Avoidance Action Analysis

62. Time spent in this category relates to review of potential avoidance actions under Sections 544-549 of the Code to determine whether adversary proceedings or other appropriate actions are warranted. This category includes services related to a potential preference issue with Select Staffing.

63. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	4.50	\$2,766.00

i. Category B185 – Assumption/Rejection of Leases and Contracts

64. Time spent in this category relates to analysis of leases and executory contracts and preparation and prosecution of motions to assume or reject executory contracts and/or leases. This category includes services related to the cure notice and numerous objections to the cure amounts.

65. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	68.90	\$42,536.00

j. Category B190 - Other Contested Matters

66. This category includes analysis and preparation of all other motions or oppositions to motion and reply memoranda in support of motions, as well as the preparation for and participation in contested hearings or status conferences related to same. This category also includes preparation for numerous evidentiary hearings, discovery, and other tasks related thereto,

particularly with respect to pleadings filed by various PACA claimants throughout these Chapter 11 Cases.

67. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	616.00	\$427,443.00

k. Category B210 – Business Operations

68. This category includes time spent assisting the Debtors with their business, including ensuring that their business operations continued uninterrupted and in a manner that enhanced value for all stakeholders. Foley professionals assisted the Debtors and their other advisors in addressing and evaluating a number of different vendor and customer relationships. As part of those efforts, Foley professionals addressed and advised on various issues related to customer and vendor contracts and business operations during the Debtors' transition to operating as debtors-in-possession in these Chapter 11 Cases and assisting the Debtors in operating their business through and following closing of the Sale Process.

69. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	117.90	\$70,375.00

l. Category B220 – Employee Benefits/Pensions

70. During the Total Period, Foley attorneys devoted time to labor and employment issues. Among other things, Foley attorneys spent time analyzing and advising the Debtors with respect to employee issues, including employee compensation matters, severance, 401(k)

termination issues, COBRA benefits and the KEIP program, as well as employment issues relating to or arising from the Sale Process.

71. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	56.50	\$41,946.50

h. Category B230 - Financing/Cash Collections

72. This category includes services related to the debtor-in-possession financing motion filed, the objections raised by PACA creditors to such financing motion, and the negotiations related to resolution of the financing motion.

73. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	190.40	\$124,874.50

i. Category B240 – Tax Issues

74. This category includes services related to tax issues arising in connection with the Chapter 11 Cases and the debtor-in-possession's operations therein.

75. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	8.30	\$4,837.50

j. Category B250 – Real Estate

76. Throughout the Total Period, Foley attorneys devoted time addressing issues concerning the Debtors' real property interests, particularly in connection with the Debtors' DIP Facility and Sale Process. Specifically, Foley's real estate attorneys engaged in an extensive

review and analysis of the Debtors' owned and leased real property interests in order to facilitate the pledge of those interests for the DIP Facility and the disposition of those interests through the Sale Process. In addition, Foley's real estate attorneys (a) coordinated the recording of security instruments in favor of the DIP Facility lenders and, in connection with the Sale Process, assisted the Debtors with respect to the post-petition negotiation and amendment of the asset purchase agreement and schedules thereto; (b) prepared and coordinated conveyance and assignment documents, transfer tax returns, releases of the DIP Facility security instruments and title company certificates; (c) assisted the payoff or other cure of title encumbrances and contractor liens; and (d) engaged in extensive discussions with the real estate counsel for the purchaser of the Debtors' assets, and the title company and closing agents. All of the foregoing real estate work was performed to ensure that the Debtors fulfilled all closing and post-closing requirements for the pledge and transfer of their real estate interests.

77. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	75.30	\$40,920.00

k. Category B260 – Board of Director Matters

78. This category includes certain matters related to the Debtors' corporate governance and meetings and other activities of the Debtors' board of directors. During the Total Period, Foley professionals attended several meetings of the Debtors' board of directors. Foley professionals also advised members of the Debtors' management team in connection with board meetings related to the Chapter 11 Cases, including meetings related to case developments and the Sale Process.

79. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	207.90	\$137,803.50

l. Category B310 – Claims Administration and Objections

80. During the Total Period, Foley attorneys spent time reviewing and analyzing, among other types of claims, insurance, product liability, and employment litigation claims, and discussing and corresponding with the Debtors and the Debtors' other professionals regarding the valuation of those claims and potential grounds for disallowance of certain claims. Foley also engaged in negotiations to resolve potential claims against the Debtors, including preference claims.

81. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	153.90	\$72,854.50

m. Category B320 – Plan and Disclosure Statement

82. During the Total Period, contemporaneously with the Sale Process, Foley professionals worked on matters relating to a potential chapter 11 plan of liquidation for the Debtors to be filed following the conclusion of the Sale Process itself. Foley attorneys spent time drafting and revising the Debtors' plan, disclosure statement, and related documents

83. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	44.90	\$25,592.50

n. Category B410 – General Bankruptcy Advice/Opinions

84. This category includes time spent by Foley attorneys related to general bankruptcy advice rendered to the Debtors' management team with respect to these Chapter 11 Cases.

85. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	26.20	\$15,635.50

o. Category B440 – Adversary Proceedings

86. This category includes time spent by Foley attorneys related to various litigation matters and actions that were pending in various courts prior to the Petition Date. During the Total Period, Foley professionals responded to inquiries from litigation parties or the relevant courts in those actions regarding the Chapter 11 Cases, mediation issues, and proposals for lifting or modifying the automatic stay.

87. The total fees and hours of professional services during the Total Period in this category are provided in the table below:

	Hours	Fees
Total Period	353.50	\$160,210.00

D. Expenses Incurred by Foley

88. Section 330 of the Bankruptcy Code authorizes “reimbursement for actual, necessary expenses” incurred by professionals employed in a chapter 11 case. Foley incurred a total of \$48,193.62 in expenses on behalf of the Debtors during the Total Period. Foley submits that these expenses were actual, reasonable, and necessary in light of the services provided.

89. Foley maintains the following policies with respect to expenses for which reimbursement is sought:

- a. all computerized research (i.e., Westlaw and/or Lexis) is invoiced at actual cost;
- b. reimbursements sought at actual cost include filing fees, transcription, postage, delivery charges and e-discovery hosting services, as applicable; and

- c. Expenses for which reimbursements are not sought by Foley, include office overhead, word processing, and secretarial overtime.

VI.
REQUEST FOR ALLOWANCE OF FEES AND EXPENSES

90. Section 330 of the Bankruptcy Code authorizes the Court to award professional persons employed pursuant to section 327 for reasonable compensation for actual and necessary services rendered and reimbursement for actual and necessary expenses incurred. See 11 U.S.C. §§ 327 and 330. As more fully stated below, Foley submits that the elements governing awards of compensation pursuant to sections 330 and 331 of the Bankruptcy Code justify the allowance of the fees and expenses incurred in its representation of the Debtors during the Total Period

91. In 1974, the Fifth Circuit established a set of guidelines for use by lower courts when ruling on attorneys' fee requests. See *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974). The *Johnson* court found the following factors necessary to consider:

- a. the time and labor required;
- b. the novelty and difficulty of the questions presented;
- c. the skill requisite to perform the legal services properly;
- d. the preclusion of other employment due to the acceptance of the case;
- e. the customary fee;
- f. whether the fee is fixed or contingent;
- g. time limitations imposed by the client with the circumstances of the case;
- h. the amount involved and the results obtained;
- i. the experience, reputation and ability of the attorney;
- j. the undesirability of the case;
- k. the nature and length of the professional relationship with the client; and
- l. awards in similar cases.

Id.

92. *In re First Colonial Corp. of America*, 544 F.2d 1291, 1298–99 (5th Cir. 1977), cert. denied, 431 U.S. 904 (1977), the Fifth Circuit applied the Johnson factors to the analysis of fee awards in bankruptcy cases.

93. Under an analysis utilizing the Johnson factors and the standards customarily applied to fee awards under Sections 330 and 331 of the Bankruptcy Code, Foley submits that its request for compensation and reimbursement of expenses is reasonable and proper, and that such request should be allowed in the amounts requested.

A. Detailed Application of the Johnson Factors

94. The professional services rendered by Foley during the Total Period required a high degree of professional competence and expertise so that numerous restructuring, debt, corporate, litigation, and other issues that arose could be addressed with skill and efficiency. Foley submits that the services rendered to the Debtors during the Total Period were performed efficiently and effectively, and that the results obtained have provided tangible, identifiable, and material benefits to the general unsecured creditors in these Chapter 11 Cases.

B. Time and Labor Required

95. Foley’s attorneys and paraprofessionals have expended 3,338.60 hours during the Total Period in the representation of the Debtors. Over the Total Period, the blended billable rate for the fees requested is approximately \$606.29 per hour for all timekeepers. All of the time spent was necessary and appropriate for the representation of the Debtors in these Chapter 11 Cases.

96. Foley’s representation of the Debtors has required it to balance the need to provide quality services with the need to act quickly and to represent the Debtors in an effective, efficient, and timely manner. Foley submits that the hours spent were reasonable given the significant (and

often times urgent) legal and business issues raised and the numerous pleadings filed in these Chapter 11 Cases.

C. Novelty and Difficulty of Questions Presented

97. These Chapter 11 Cases are designated as “complex” cases [Docket No. 22] and necessarily involve a significant number of issues in the areas set forth above. This case has required Foley to draft, review, and address many motions (and their respective legal authorities) in a relatively short period of time and participate in substantial evidentiary hearings in connection with same. The specific circumstances of these cases, including the Sale Process and related matters as well as the participation of a number of parties in interest, have also contributed to the complex nature of this engagement.

D. Skill Requisite to Perform Legal Services Properly

98. Due to the nature and complexity of the legal issues presented in these cases, a high degree of legal skill related to bankruptcy law and other issues was required by Foley in representing the Debtors. These skills exceeded those of the average practitioner because they included, among others, finance, corporate and litigation skills. Foley believes that its attorneys have been used effectively and efficiently to meet the exigencies of these Chapter 11 Cases, and have provided tangible benefits to the Debtors during the Total Period

E. Preclusion of Other Employment

99. Although Foley’s representation of the Debtors often involved matters that were time-critical and required substantial efforts, Foley’s representation of the Debtors did not materially preclude Foley from accepting other engagements. However, when working on these Chapter 11 Cases at any given time, Foley professionals and paraprofessionals necessarily could not be working on other matters.

F. Customary Fee

100. During the time period of this Application,¹⁷ discounted hourly rates of the specific Foley attorneys performing legal services on behalf of the Debtors ranged from \$330 to \$905 per hour. For Partners, \$530 to \$905 per hour for the Senior Counsel, \$510 to \$620 per hour for the Of Counsel, \$615 to \$785 per hour for the Associates, \$365 per hour for the Law School Graduate, \$330 to \$575 per hour for the Paraprofessionals, \$230 to \$320 per hour, \$175 per hour for the Research Librarian.

G. Whether Fee is Fixed or Contingent

101. The fees requested in this Application represent fees incurred based upon a fixed hourly rate basis. As is true for counsel in every bankruptcy case, Foley's compensation is contingent upon the Court's allowance of all requested fees.

H. Time Limitations

102. Foley provided capable legal representation within the time limitations imposed under the unique circumstances of these Chapter 11 Cases, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, and counsel for various parties-in-interest. During these Chapter 11 Cases, there were numerous instances in which it was necessary for Foley to deliver services on very short notice and under significant time constraints.

I. Amounts Involved and Results Obtained

103. The dates that Foley attorneys and paraprofessionals performed services for the Debtors, the individual performing such services, a description of the services, and the time

¹⁷ Foley undertakes rate adjustments on an annual basis.

expended are all detailed in Foley's Fee Statements and Foley Invoice Nos. 50212802, 50212803, 50236438, 50239821, and 50240810 (expense only) attached hereto as **Exhibit D**.¹⁸

104. Foley submits that such information, as well as the narrative provided supra with regard to each category of service, establishes that its requested compensation is reasonable and fair in light of the results obtained.

J. Experience, Reputation and Ability of Counsel

105. As reflected in the information contained in **Exhibit B**, each of Foley's attorneys who performed services for the Debtors possesses a reputation for skill, quality, integrity, and ability. Foley's attorneys have represented numerous debtors, banks, creditors, bidders for estate assets, trustees, and official committees in some of the largest and most sophisticated bankruptcy cases in the country.

K. Undesirability of the Cases

106. These Chapter 11 Cases are not undesirable. However, Foley has had to draw from significant firm resources as counsel to the Debtors, without absolute certainty as to compensation or reimbursement.

L. Nature and Length of Professional Relationship

107. Foley has represented the Debtors in these matters since the Petition Date.

M. Awards in Similar Cases

108. The fees and expenses for which Foley seeks compensation and reimbursement are not excessive and are substantially similar to or below the rates awarded in similar cases in this district for similar services rendered and results obtained.

¹⁸ The attached Foley Fee Statements are redacted due to attorney-client and work product privileges. Unredacted copies of the Foley Fee Statements will be made available to the Court for an in camera review, if necessary.

109. The fees and expenses requested by Foley are more fully described in **Exhibit C-1** and **Exhibit C-2**. After taking into consideration the time and labor spent thus far, and the nature and extent of the representation and the results achieved, Foley believes the allowance prayed for herein is reasonable and should be approved

VII.
SECTION 504(b) COMPLIANCE

110. No agreement or understanding exists between Foley and any third person for the sharing of compensation, except as allowed by section 504(b) of the Bankruptcy Code and Bankruptcy Rule 2016 with respect to sharing of compensation between and amongst shareholders at Foley.

111. All services for which compensation is requested hereunder were rendered at the request of and solely on behalf of the Debtors and not on behalf of any other entity.

VIII.
RESERVATION OF RIGHTS

112. Although every effort has been made to include all fees and expenses incurred in the Total Period, some fees and expenses might not be included in this Application due to delays caused by accounting and processing during the Total Period. Foley reserves the right to make further application to the Court for allowance of such fees and expenses not included herein.

IX.
NOTICE

113. Foley has provided notice of this Application to: (i) counsel to the Debtors, Foley & Lardner, LLP, Attn. John P. Melko (jmelko@foley.com); Sharon M. Beausoleil (sbeausoleil@foley.com); and Mark C. Moore (mmoore@foley.com); (ii) Counsel to the Required DIP Lenders, Paul, Weiss, Rifkind, Wharton & Garrison LLP, attn.: Elizabeth R. McColm (emccolm@paulweiss.com); John T. Weber (jweber@paulweiss.com); and Grace Hotz

(ghotz@paulweiss.com); (iii) counsel to the Committee, Kilpatrick Townsend & Stockton, Paul M. Rosenblatt (prosenblatt@kilpatricktownsend.com); and Todd C. Meyers (tmeyers@kilpatricktownsend.com); (iv) Counsel to the Administrative Agent for the Debtors' debtor-in-possession financing facility, Norton Rose Fulbright US LLP, attn: David Rosenzweig (David.rosenzweig@nortonrosefulbright.com) and Stephen Castro (Stephen.castro@nortonrosefulbright.com); (v) the Office of the United States Trustee for the Southern District of Texas, Attn.: Hector Duran, Jr., Esq. (Hector.Duran.Jr@usdoj.gov) and Stephen Statham (Stephen.Statham@usdoj.gov); (vi) the Chapter 7 Trustee, Janet Northrup (JNorthrup@hwa.com), and her counsel, Heather McIntyre (HMcIntyre@hwa.com) and Wayne Kitchens (wkitchens@hwa.com); and, (viii) all parties that have filed a notice of appearance and requested notice of pleadings in these cases.

X. CONCLUSION

WHEREFORE, Foley respectfully requests that the Court enter an order (a) allowing, on a final basis, Foley's requested compensation for fees in the amount of **\$2,074,164.00**, and reimbursement of Foley's expenses in the amount of **\$48,193.62**; (b) authorizing and directing the Debtors to pay to Foley all unpaid amounts awarded herein; and (c) granting such other and further relief, both at law and in equity, as this Court deems just and proper.

Dated: July 12, 2021
Houston, Texas

Respectfully submitted,

FOLEY & LARDNER LLP

/s/ John P. Melko

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**COUNSEL TO DEBTORS AND DEBTORS-IN-
POSSESSION**

CERTIFICATE OF SERVICE

I do hereby certify that on July 12, 2021, a true and correct copy of the foregoing pleading was served via CM/ECF to all parties authorized to receive electronic notice in this case.

/s/ Mark C. Moore
Mark C. Moore