

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

In re:	§	
	§	
COUNTRY FRESH HOLDING COMPANY INC., et al.¹	§	Case No.: 21-30574 (MI)
	§	
Debtors.	§	Jointly Administered
	§	

**AMENDED LIMITED OBJECTION OF THE AD HOC
GROUP OF SECURED LENDERS TO THE 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 TROUGH AND INCLUDING JUNE 21, 2021**

[Relates to Document Nos. 671, 770]

The ad hoc group of certain unaffiliated lenders (the “Ad Hoc Group of Secured Lenders”)² hereby amends 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* [Docket No. 671] (the “Initial Objection”) and submits this amended limited objection (the “Limited Objection”) to the *Final Application of Kilpatrick Townsend & Stockton LLP For Compensation For Services Rendered and Reimbursement of*

¹ 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.

² The identities and disclosable economic interests of the members of the Ad Hoc Group of Secured Lenders are set forth in the *Verified Statement of Paul, Weiss, Rifkind, Wharton & Garrison LLP and Porter Hedges LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019* [Docket No. 31].

Expenses Incurred as Counsel to the Official Committee of Unsecured Creditors For the Period from February 26, 2021 Through and Including June 21, 2021 [Docket No. 770] (the “Final Fee Application”) submitted by Kilpatrick Townsend & Stockton LLP (“Committee Counsel”), as counsel to the Official Committee of Unsecured Creditors (the “Committee”), and respectfully states as follows:

BACKGROUND

1. On February 15, 2021, the Debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code from February 15, 2021 until June 21, 2021.

2. On February 25, 2021, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee for Region 7 (the “U.S. Trustee”) appointed the Committee [Docket No. 149]. On March 10, 2021, the U.S. Trustee appointed two additional members to the Committee [Docket No. 241].

3. On March 18, 2021, the Court entered the *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 the Automatic Stay, and (VI) Granting Related Relief* [Docket No. 335] (the “Final DIP Order”), which, among other things, established a (i) \$125,000 cap for the Committee to investigate the validity, enforceability,

priority or extent of the Prepetition Liens,³ (ii) limitation on use of Cash Collateral, and (iii) Carve-Out for payment of professional fees of the Debtors and the Committee.

4. On March 31, 2021, the Court entered the *Order Authorizing the Employment and Retention of Kilpatrick Townsend & Stockton LLP as Attorneys for the Official Committee of Unsecured Creditors of Country Fresh Holding Company Inc., et al., Effective as of February 26, 2021* [Docket No. 449].

5. On May 12, 2021, the 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* [Docket No. 598].

6. On June 1, 2021, the Ad Hoc Group of Secured Lenders filed the Initial Objection.

7. On June 21, 2021, the Court entered the *Order (I) Authorizing and Approving the Conversion of the Chapter 11 Cases, (II) Extending the Designation Rights Period, and (III) Granting Related Relief* [Docket No. 719]. Thereafter, Janet S. Northrup was appointed as the chapter 7 trustee.

8. On July 12, 2021, the Committee Counsel filed the Final Fee Application.

OBJECTION

9. The Committee Counsel's fees in excess of the investigation cap established under the Final DIP Order should not be paid from Cash Collateral, including from the Carve-Out. The Final DIP Order includes a \$125,000 cap (the "Investigation Cap") on the fees and expenses that the Committee's professionals, in the aggregate, may seek reimbursement for from Cash Collateral (including the Carve-Out) in connection with, among other things, the investigation of the

³ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Final DIP Order.

prepetition secured parties' liens and claims, and actions taken in furtherance of such investigation. (*See* Final DIP Order at ¶ 27.) The Debtors, the Prepetition Agents, the Ad Hoc Group of Secured Lenders and the Committee agreed after arm's-length, good faith negotiations that the allocated Investigation Cap in the Final DIP Order was the maximum amount that the Debtors' estates could (and should) bear from Cash Collateral to fund any investigation by the Committee. Accordingly, any payment from Cash Collateral (including the Carve-Out) of fees and expenses incurred by the Committee Counsel related to such investigation, including any related discovery and actions taken to extend the Challenge Deadline in furtherance of such investigation, should not exceed the Investigation Cap.

10. The Committee Counsel seeks allowance and payment for aggregate fees and expenses related to the investigation that exceed the Investigation Cap. The Ad Hoc Group of Secured Lenders reviewed the Final Fee Application and believes that it seeks allowance and payment for fees of at least \$335,307.50⁴ related to the Committee's investigation,⁵ well in excess of the \$125,000 Investigation Cap. This amount is based on the Committee Counsel's time entries that are clearly related to the investigation in task codes B130 (Case Administration and Analysis), B141 (Lien Investigation), B180 (Financing), and B190 (Litigation General). As a result, the

⁴ The Final Fee Application indicates that the Committee Counsel agreed to reduce the total fees on each monthly invoice by 5% during the pendency of the chapter 11 cases. The \$335,307.50 does not take into account any such discount.

⁵ While the Committee Counsel states that it only seeks allowance of \$265,218.00 in investigation-related time billed to task code B141 (Lien Investigation), *see* Final Fee Application ¶ 19, the Ad Hoc Group of Secured Lenders believes that certain time entries billed to task codes B130 (Case Administration and Analysis), B180 (Financing), and B190 (Litigation General) also relate to the investigation, thus rendering the total amount subject to the Investigation Cap higher than what is asserted as such in the Final Fee Application. A schedule of the additional entries that the Ad Hoc Group of Secured Lenders believes relate to the investigation is attached hereto as **Exhibit A**.

Court should prohibit the payment from Cash Collateral (including the Carve-Out) of the Committee Counsel's investigation-related fees and expenses in excess of \$121,434.00.⁶

11. For the avoidance of doubt, by this Limited Objection the Ad Hoc Group of Secured Lenders does not object to the allowance of the fees and expenses requested in the Final Fee Application but, consistent with the Final DIP Order, any fees and expenses incurred in connection with the investigation that exceed the Investigation Cap may not be paid from Cash Collateral (including the Carve-Out), and shall be subject to allowance and payment in accordance with section 726(b) of the Bankruptcy Code.

CONCLUSION

12. For the reasons stated herein, the Ad Hoc Group of Secured Lenders respectfully requests that this Court (i) prohibit the payment from Cash Collateral (including the Carve-Out) of the Committee Counsel's fees and expenses related to the Investigation in excess of \$121,434.00 and (ii) grant such other and further relief as the Court deems appropriate.

[Remainder of page intentionally left blank.]

⁶ The Committee's financial advisor, PricewaterhouseCoopers LLP ("PwC"), seeks payment of \$3,566 in connection with the Committee's investigation, for a total of \$125,000. To the extent the Committee does not seek to have all or a portion of such amounts incurred by PwC apply to the Investigation Cap, the Ad Hoc Group of Secured Lenders objects to such PwC's fees on the grounds set forth herein.

Dated: July 30, 2021
Houston, Texas

PORTER HEDGES LLP

/s/ John F. Higgins

John F. Higgins, State Bar No. 09597500
M. Shane Johnson, State Bar No. 24083263
Megan Young-John, State Bar No. 24088700
1000 Main Street, 36th Floor
Houston, TX 77002-6341
Telephone: (713) 226-6648
Facsimile: (713) 226-6248
Email: jhiggins@porterhedges.com
sjohnson@porterhedges.com
myoung-john@porterhedges.com

-and-

**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**

Elizabeth R. McColm, Esq.*
John T. Weber, Esq.*
1285 Avenue of the Americas
New York, NY 10019
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
Email: emccolm@paulweiss.com
jweber@paulweiss.com

**Admitted Pro Hac Vice*

*Co-Counsel to the Ad Hoc Group of Secured
Lenders*