

**ENTERED**

August 25, 2021

Nathan Ochsner, Clerk

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

**In re:**

**COUNTRY FRESH HOLDING  
COMPANY INC., et. al.<sup>1</sup>**

**Debtors.**

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**Case No.: 21-30574 (MI)****Jointly Administered**

**STIPULATION AND AGREED ORDER AUTHORIZING THE CHAPTER 7 TRUSTEE  
TO USE CASH COLLATERAL IN ACCORDANCE WITH THE FINAL DIP ORDER**

Janet S. Northrup, the Chapter 7 Trustee (the “**Trustee**”) of the bankruptcy estates of Country Fresh Holding Company, Inc. et. al. (the “**Debtors**”), Cortland Capital Market Services LLC (“**Cortland**”), as collateral and administrative agent for the prepetition secured lenders, and the ad hoc group of unaffiliated secured lenders (the “**Ad Hoc Group of Secured Lenders**”), by and through their respective undersigned counsel, hereby stipulate and agree (this “**Stipulation & Agreed Order**”) to the following:

**RECITALS**

A. On February 15, 2021 (the “**Petition Date**”), the Debtors each filed a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the “**Court**”).

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<sup>1</sup> The Debtors in these 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.

B. 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 Automatic Stay, and (VI) Granting Related Relief* (the “**Final DIP Order**”) [Docket No. 335].<sup>2</sup>

C. Thereafter, on March 29, 2021, the Court approved the sale of substantially all of the Debtors’ assets (the “**Sale**”) to the Buyer (as defined below) pursuant to the *Order Authorizing Country Fresh Holding Company Inc. and Its Affiliated Debtors to (I) Sell Substantially All of the Debtors’ 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**”).

D. The Sale closed on April 29, 2021 pursuant to the terms of that certain Asset Purchase Agreement (the “**APA**”), by and between the Debtors and Stellex/CF Buyer (US) LLC (the “**Buyer**”), and a transition services agreement (the “**TSA**”) by and between the Debtors and the Buyer. Substantially contemporaneously with the Sale, in two separate transactions, the Debtors’ affiliates in Canada sold substantially all of their assets (the “**Canadian Sales**”).<sup>3</sup>

E. The Debtors operated as debtors-in-possession from February 15, 2021 until June 21, 2021, when the Court entered its order of conversion to Chapter 7—*Order (I) Authorizing*

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<sup>2</sup> Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Final DIP Order.

<sup>3</sup> As contemplated by the Sale Order, a portion of the proceeds of the Sale were used to repay the DIP Obligations in full and a portion of the proceeds of the Canadian Sales were used to repay in full the Super-Senior Obligations.

*and Approving the Conversion of the Chapter 11 Cases, (II) Extending the Designation Rights Period, and (III) Granting Related Relief* [Docket No. 719] (the “**Conversion Order**”). Thereafter, Janet S. Northrup was appointed as the Trustee of the above-referenced bankruptcy estates (the “**Bankruptcy Estates**”).

F. Paragraph 8 of the Conversion Order authorized the Trustee to use Cash Collateral in accordance with a budget to be agreed between the Ad Hoc Group of Secured Lenders and the Trustee.

G. On June 30, 2021, the Court entered its *Order Granting Trustee’s Emergency Motion for Authority to Operate Pursuant to 11 U.S.C. § 721 as of June 21, 2021* [Docket No. 747] (the “**Operating Order**”) allowing the Trustee to operate and facilitate all activities necessary under the Sale Order, APA and TSA.

H. The preservation, monitoring, maintenance, and enhancement of the value of the Bankruptcy Estates and compliance with applicable law are of the utmost significance and importance. The Trustee lacks sufficient available sources of cash, however, to liquidate or operate the Bankruptcy Estates without the use of Cash Collateral. Moreover, the Trustee’s need to use Cash Collateral is immediate; absent the ability to use Cash Collateral, immediate and irreparable harm to the Bankruptcy Estates would be inevitable.

I. The Trustee has requested that Cortland and the Ad Hoc Group of Secured Lenders consent to the Trustee’s use of Cash Collateral to enable the Trustee to wind-down the Bankruptcy Estates in accordance with the Bankruptcy Code. The Ad Hoc Group of Secured Lenders and Cortland are willing to consent to such use solely in accordance with the Modified Budget (as defined below) and the other terms and conditions set forth herein.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:**

1. The terms of this Stipulation & Agreed Order were negotiated in good faith and at arm's length between the Trustee, Cortland and the Ad Hoc Group of Secured Lenders. The permission granted herein to use Cash Collateral is necessary, essential, and appropriate to avoid immediate and irreparable harm to the Bankruptcy Estates. The entry of this Order is in the best interests of the Bankruptcy Estates and their stakeholders as its implementation will, among other things, allow the Trustee to preserve and maintain the value of the Bankruptcy Estates.

2. The Trustee is authorized to use Cash Collateral, in an amount not to exceed \$1,335,000 in the aggregate, solely in accordance with this Stipulation & Agreed Order and the Final DIP Order, as modified hereby, to pay expenses of the Bankruptcy Estates, including both the Total Recurring Disbursements and the One-time Disbursements (as designated in the Modified Budget), pursuant to the budget attached hereto as **Exhibit A** (as such budget may be modified or extended from time to time with the written consent (via email confirmation from counsel) of the Ad Hoc Group of Secured Lenders, the "**Modified Budget**"). For each calendar month, the aggregate actual expenditures by the Trustee for Total Recurring Disbursements (as designated in the Modified Budget) shall not in any event exceed the aggregate amount budgeted therefor in the Modified Budget for such period by more than ten percent (10%) of the budgeted amount. Subject to the immediately preceding sentence, the actual expenditures of the Trustee shall not, for any line item in the Modified Budget under the heading Total Recurring Disbursements, exceed the amount budgeted for such line item in the Modified Budget by more than fifteen percent (15%) of the budgeted amount for such monthly period. To the extent actual monthly expenditures are less than that provided for in the Modified Budget, then the unused portion of the Modified Budget for such month shall be available for the Trustee's use in other months.

3. The Trustee is authorized to use Cash Collateral solely in accordance with the Modified Budget and the terms hereof and the Final DIP Order, as modified hereby, until the earlier of (x) the occurrence and continuance of an Event of Default as defined in the Final DIP Order, which, for the avoidance of doubt, shall include a breach of the budget covenant set forth in paragraph 2 above, and (y) October 31, 2021 (as such date may be extended with the written consent (via email confirmation from counsel) of Cortland and the Ad Hoc Group of Secured Lenders, the “**Termination Date**”).

4. Cortland and the Ad Hoc Group of Secured Lenders consent to the use of Cash Collateral for the payment of reasonable trustee compensation in accordance with 11 U.S.C. § 326.

5. Cortland, in its capacity as the Prepetition Agent having the then most senior Prepetition Liens, acting at the direction of the requisite Prepetition Secured Parties, is designated as the successor to the DIP Agent with respect to consent and enforcement rights under the Final DIP Order.


6. Upon the Termination Date, the Prepetition Agent may deliver a DIP Termination Declaration and seek an emergency hearing before the Court on not less than five (5) business days’ notice for authorization to terminate the Trustee’s use of Cash Collateral and for other related relief.

7. Immediately upon entry of this Stipulation & Agreed Order, by agreement among the parties hereto, the Trustee’s Challenge Deadline (as defined in the Conversion Order, as has been extended from time to time) shall, without further action, be deemed to have expired for all purposes.

8. Except as modified hereby, the Final DIP Order remains in full force and effect, including but not limited to the provisions for Adequate Protection Liens, 507(b) Claims, Adequate Protection Payments, Adequate Protection Obligations, and Debtors' Stipulations, as provided for therein.

IT IS SO ORDERED.

Signed: August 25, 2021



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Marvin Isgur  
United States Bankruptcy Judge

**AGREED AND ACCEPTED:**

**HUGHES WATTERS ASKANASE, LLP**

/s/ Heather McIntyre

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**COUNSEL FOR CORTLAND CAPITAL MARKET SERVICES LLC**



**EXHIBIT A**  
**MODIFIED BUDGET**

## EXHIBIT "A"

## Modified Budget

## Chapter 7 Administrative Expenses

	<u>Total Recurring Disbursements</u>					<u>One-Time Disbursements</u>
	<u>Month 1 - June</u> <u>2021</u>	<u>Month 2 - July</u> <u>2021</u>	<u>Month 3 -</u> <u>August 2021</u>	<u>Month 4 -</u> <u>September 2021</u>	<u>Month 5 -</u> <u>October 2021</u>	
General Counsel (HWA)	\$ 50,000.00	\$ 150,000.00	\$ 125,000.00	\$ 100,000.00	\$ 100,000.00	\$ -
Financial Consultant (Juengling PC)	\$ 5,000.00	\$ 35,000.00	\$ 60,000.00	\$ 40,000.00	\$ 40,000.00	\$ -
ERISA Counsel	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,000.00
Property Tax Consultants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50,000.00
Tax Accountants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 225,000.00
Hourly Consultants for bookkeeping	\$ 20,000.00	\$ 20,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ -
Ankura	\$ 75,000.00	\$ 75,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ -
Trustee Expenses	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ -
Misc. Expenses	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00	\$ -
<b>Totals</b>	<b>\$ 158,000.00</b>	<b>\$ 288,000.00</b>	<b>\$ 228,000.00</b>	<b>\$ 183,000.00</b>	<b>\$ 183,000.00</b>	<b>\$ 295,000.00</b>

## Aggregate Cash Collateral That May Be Utilized By The Trustee

Hereunder Through and Including October 31, 2021: \$ 1,335,000.00