

ENTERED

September 07, 2021

Nathan Ochsner, Clerk

**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.¹ §
§ **Jointly Administered**
Debtors. §

**STIPULATION AND AGREED ORDER REGARDING RELEASE OF ESCROWED
FUNDS BY CITIBANK, N.A. TO BUYER**
[Related to Docket No. 645]

This stipulation and agreed order (“Stipulation and Agreed Order”) is entered into by and between Janet Northrup, as chapter 7 trustee (the “Trustee”) of the estates of Country Fresh Holding Company Inc., et al. (collectively, the “Debtors”), the Ad Hoc Group of Secured Lenders, and Stellex/CF Buyer (US) LLC (the “Buyer”, and together with the Trustee, on behalf of the Debtors, and the Ad Hoc Group of Secured Lenders, collectively, the “Parties”). The Parties hereby stipulate and agree as follows:

RECITALS

WHEREAS, on February 15, 2021, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code;

WHEREAS, on March 29, 2021, the Court approved the sale of substantially all the Debtors’ assets to the Buyer pursuant to the *Order Authorizing Country Fresh Holdings Company*

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.

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] (as the same has been and may further be amended, supplemented, or otherwise modified from time to time in accordance with its terms, together with all exhibits thereto, the "Sale Order");

WHEREAS, as authorized by the Sale Order, the Debtors and the Buyer entered into that certain Asset Purchase Agreement, dated as of April 29, 2021 (as the same has been and may further be amended, supplemented, or otherwise modified from time to time in accordance with its terms, together with all exhibits and schedules thereto, the "APA")

WHEREAS, as authorized by the Sale Order and the APA, the Debtors and the Buyer entered into the Transition Services Agreement, dated as of April 29, 2021 (as the same has been and may further be amended, supplemented, or otherwise modified from time to time in accordance with its terms, together with all exhibits and schedules thereto);

WHEREAS, in accordance with the APA, the Parties entered into an escrow agreement dated April 29, 2021 (the "Escrow Agreement")² whereby the Buyer placed the Adjustment Escrow Amount, License Escrow Amount, and Replenishment Funds (if any) into escrow with Citibank, N.A., as escrow agent;

WHEREAS, on April 29, 2021, the Closing of the sale with the Buyer occurred;

WHEREAS, on May 24, 2021, the Court entered the *Stipulation and Agreed Order Resolving (I) Stellex/CF Buyer (US) LLC's Emergency Motion to Enforce the APA and the Sale*

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the APA or the Escrow Agreement, as applicable.

Order and (II) Debtors' Emergency Motion for Entry of Order Enforcing Sale Order [Docket No. 645] (the "May 24 Stipulation and Agreed Order");

WHEREAS, 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];

WHEREAS, on June 21, 2021, Janet Northrup was appointed as the Trustee in the above-captioned cases;

WHEREAS, on June 30, 2021, the Court entered the *Order Granting Trustee's Emergency Motion for Authority to Operate Pursuant to 11 U.S.C. § 721 as of June 21, 2021* [Docket No. 736];

WHEREAS, the Buyer circulated to the Trustee a request to pay certain CF Payables and SR Payables (each as defined in the May 24 Stipulation and Agreed Order);

WHEREAS, the Trustee reviewed the request to pay and does not dispute the release of funds from the Adjustment Escrow Amount to the Buyer in the aggregate amount of the CF Payables and SR Payables set forth on **Exhibit A** (the "Payables") to pay amounts set forth thereon that are not disputed (the "Allowed Payables");

WHEREAS, the Parties agree that the limit on assumed Post-Petition Trade Payables set forth in paragraph 3 of the May 24 Stipulation and Agreed Order shall be increased as set forth herein;

WHEREAS, in accordance with the May 24 Stipulation and Agreed Order, the Parties agree that funds from the Adjustment Escrow Amount shall be released to Buyer for the sole purpose of paying the Allowed Payables; and

WHEREAS, pursuant to the *Order (I) Denying the Trustee's Expedited Motion for Turnover of Funds Pursuant to 11 U.S.C. § 543 and Oral Court Order and (II) Granting Related*

Relief [Docket No. 847], the Trustee is substituted for the Debtors under the Escrow Agreement for all purposes and the authorized representative of the Debtors set forth on Schedule 1-B thereof is replaced with Janet Northrup in her capacity Trustee.

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

1. The recitals to this Stipulation and Agreed Order are incorporated as if fully set forth herein.
2. The limit on assumed Post-Petition Trade Payables subject to resolution and payment through the May 24 Stipulation and Agreed Order set forth in paragraph 3 therein is increased from \$7,000,000 to \$7,443,234.87.
3. The Trustee is authorized and directed to execute a Joint Instruction Letter releasing the amount of the Payables from the Adjustment Escrow Amount to the Buyer.
4. Upon receipt of the funds from the Adjustment Escrow Amount, the Buyer shall pay the Allowed Payables in accordance with this Stipulation and Agreed Order and the May 24 Stipulation and Agreed Order; *provided* that to the extent a Payable remains subject to a pending dispute as set forth on Exhibit A, the Buyer shall only pay such Payable once such Payable is no longer disputed by the Trustee (which agreement may be by email among counsel for the Trustee and counsel for the Buyer without further Court approval). If funds remain after the Payables are fully and finally reconciled and paid, the Buyer shall promptly replenish the Adjustment Escrow Amount in an amount equal to amounts that remain unpaid.
5. The Parties are authorized to take all actions necessary to effectuate the relief granted pursuant to this Stipulation and Agreed Order.
6. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Stipulation and Agreed Order.

7. This Stipulation and Agreed Order is effective and immediately enforceable upon entry.

IT IS SO ORDERED.

Signed: September 07, 2021

A handwritten signature in black ink, consisting of a stylized 'M' followed by a wavy line and the letters 'Isgur'.

Marvin Isgur
United States Bankruptcy Judge

AGREED AND ACCEPTED:

HUGHES WATTERS & ASKANASE

/s/ Heather McIntyre
Wayne Kitchens TBN 11541110
wkitchens@hwa.com
Heather McIntyre TBN 24041076
hmcintyre@hwa.com
HUGHESWATTERSASKANASE, LLP
Total Plaza
1201 Louisiana, 28th Floor
Houston, Texas 77002
Telephone: (713) 759-0818
Facsimile: (713) 759-6834

**PROPOSED COUNSEL FOR CHAPTER
7 TRUSTEE FOR THE ESTATE OF
COUNTRY FRESH HOLDING
COMPANY INC., et. al.**

WINSTON & STRAWN LLP

/s/ Carey D. Schreiber
Carey D. Schreiber*
200 Park Avenue
New York, New York 10166
Telephone: (212) 294-6700
Facsimile: (212) 294-4700
E-mail: cschreiber@winston.com

*Admitted *Pro Hac Vice*

COUNSEL FOR THE BUYER

PORTER HEDGES LLP

/s/ Diane Meyers
John F. Higgins, State Bar No. 09597500
Shane Johnson, State Bar No. 24083263
Megan Young-John, State Bar No. 24088700
1000 Main Street, 36th Floor,
Houston, Texas 77002-2764
Telephone: (713) 226-6000
Facsimile: (713) 226-6248
jhiggins@porterhedges.com
sjohnson@porterhedges.com
myoung-john@porterhedges.com

and

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

Elizabeth R. McColm*
John T. Weber*
Diane Meyers*
Grace C. Hotz*
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000
(212) 757-3990 (Fax)

emccolm@paulweiss.com
jweber@paulweiss.com
dmeyers@paulweiss.com
ghotz@paulweiss.com

**Admitted Pro Hac Vice*

**COUNSEL TO AD HOC GROUP OF
SECURED LENDERS**

Exhibit A

Payables