

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

<b>In re:</b>	§	<b>Chapter 7</b>
	§	
<b>COUNTRY FRESH HOLDING COMPANY INC., et. al.<sup>1</sup></b>	§	<b>Case No.: 21-30574 (MI)</b>
	§	
<b>Debtors.</b>	§	<b>Jointly Administered</b>
	§	

**FOLEY & LARDNER LLP’S REPLY TO TRUSTEE’S LIMITED OBJECTION TO THE  
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**

Related to Docket No. 807

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Foley & Lardner LLP (“Foley”) hereby submits this Reply to Trustee’s Limited Objection to the 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 (“Reply”), and would respectfully show the Court as follows:

**I.  
BACKGROUND**

1. Paragraphs 1 – 6 of the Trustee’s Limited Objection (the “Objection”) setting forth

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<sup>1</sup> 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.

some basic facts about the case, and an assertion of the trustee's administration to date of the case are admitted.

## **II. RESPONSE TO OBJECTION**

2. The trustee correctly recites that Foley's Final Fee Application contains an estimated flat fee for post conversion transition services and wrapping up Chapter 11 matters including the preparation of the Final Fee Application itself. The trustee then makes three objections or requests with respect to the Fee Application as detailed below.

3. Paragraph 8 of the Objection requests the court to require Foley to file a separate application for post conversion fees. In several conversations with the trustee and counsel, Foley offered to send the detail of existing balances to the trustee and her advisors. As noted on the initial Witness & Exhibit List filed by Foley, the detail of time and expense incurred through August 31, 2021, August balances would not be available until today. A Supplement to the Exhibit List is being filed contemporaneously with this Response.

4. Moreover, it is commonplace for lawyers filing Chapter 7 cases to charge, pre-petition, an amount which will cover initial debtor conferences, the 341 meeting and any hand off of information to the trustee. The fee estimate was meant to replicate that practice and include "reasonable charges for preparing [Foley's] final fee application," which are compensable under the United States Trustee's *Appendix B Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under United States Code by Attorneys in Larger Chapter 11 Cases*. The new exhibit reflects time attendant to those typical Chapter 7 services and the preparation of Foley's final application, net of voluntary write downs, as well as write offs of time related to internal "document holds" to ensure availability of all information for the trustee on an ongoing basis.

5. Also, as discussed orally and via email to the trustee's counsel, the trustee has not retained Foley in any capacity, but due to the nature of the case, and not having to do with any failing of the trustee, a significant amount of transition time (which continues) was required to assist the trustee and her team in getting up to speed. At this point, Foley has incurred approximately \$59,000 in transition and related matters in these cases.

6. This case presented many unusual challenges, including attendant to conversion. While substantially all assets of the estate had already been sold before the date of conversion, each of the sales of the three major components of the Debtors' businesses were subject to Transition Services Agreements ("TSAs"). Those TSAs included maintaining a few operational employees and significant cash management responsibilities. The trustee had to learn and fulfill these tasks on the fly. Since neither she nor her counsel had any exposure to the case before appointment, expecting them to come in cold to learn what had to be done instantly was impractical. This procedure was not of the Debtors' or Trustee's design, but rather a product of cessation of debtor-in-possession ("DIP") funding availability.

7. Paragraph 9 of the Objection is based on the trustee's lack of clarity as to whether all administrative expenses of the Chapter 11 and Chapter 7 cases will be paid. However, the final DIP order ("Final DIP Order") contained certain upfront protection for fee and expenses of the United States Trustee, any subsequently appointed trustee (up to a cap), as well as professionals of the Debtors and the Committee. *See* Final DIP Order, at para. 26 [Dkt. No. 335]. Specifically, the DIP Lenders and the First Lien Lenders subordinated a portion of their collateral to the various parties.<sup>2</sup> This list was later amended to include other specified creditors, and to increase amounts

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<sup>2</sup> All capitalized terms not defined herein have the meaning ascribed to them in the Final DIP Order. *See* Dkt. No. 335.

for the trustee and Committee professionals. Foley understands that the trustee has secured additional financing through the use of cash collateral to pay for Chapter 7 expenses, as well.

8. Moreover, the Final DIP Order provides that it is binding on the lenders, Debtors, any subsequently appointed trustee, and conversion to Chapter 7. *See id.* at para. 48.

9. Paragraphs 10 and 11 of the Objection, dealing with a requested direction to the trustee to pay approved fees and expenses, and strict application of section 726(b) respectively, likewise ignore the provisions of the Final DIP Order, including paragraph 26.

10. Finally, paragraph 12 of the Objection is the trustee's reservation of rights. Foley will fully and promptly comply with orders of the court, including for example, any direction to supplement the existing Application with the post conversion time, or such other mechanism as the court directs.

WHEREFORE, Foley respectfully request that this Court enter an order (a) approving the Foley Fee Application, and (b) granting such other relief that this Court deems just and proper.

DATED: September 7, 2021

Respectfully submitted by:

**FOLEY & LARDNER LLP**

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**CERTIFICATE OF SERVICE**

I do hereby certify that on September 7, 2021, a true and correct copy of the foregoing pleading was served by United States mail, first class, postage prepaid to the parties on the attached Master Service List or via CM/ECF to all parties authorized to receive electronic notice in this case.

/s/ John P. Melko  
John P. Melko