

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

In re:

Chapter 7

COUNTRY FRESH HOLDING COMPANY, INC., *et al.*

Case No. 21-30574

Debtors¹.

(Jointly Administered)

**MOTION OF AGPRO FARMS II, INC. FOR ALLOWANCE AND PAYMENT OF
AN ADMINISTRATIVE EXPENSE CLAIM UNDER 11 U.S.C. § 503(b)(1)**

A hearing will be conducted on this matter on October 6, 2021 at 9:00 am in Courtroom 404, 4th floor, 515 Rusk, Houston, Texas 77002. You may participate in the hearing either in person or by audio/video connection. Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. You will be responsible for your own long-distance charges. Once connected, you will be asked to enter the conference room number. Judge Isgur's conference room number is 954554.

You may view video via GoToMeeting. To use GoToMeeting, the Court recommends that you download the free GoToMeeting application. To connect, you should enter the meeting code "Judge Isgur" in the GoToMeeting app or click the link on Judge Isgur's home page on the Southern District of Texas website. Once connected, click the settings icon in the upper right corner and enter your name under the personal information setting. Hearing appearances must be made electronically in advance of the hearing. To make your electronic appearance, go to the Southern District of Texas website and select "Bankruptcy Court" from the top menu. Select "Judges' Procedures," then "View Home Page" for Judge Isgur. Under "Electronic Appearance" select "Click here to submit Electronic Appearance". Select the case name, complete the required fields and click "Submit" to complete your appearance.

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txs.uscourts.gov/>

¹ The Debtors in these Chapter 11 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.

within 21 days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

Notice pursuant to Local Rule 9013-1

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 within 21 days 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.

TO THE HONORABLE MARVIN ISGUR, U.S. BANKRUPTCY JUDGE:

Agpro Farms II, Inc. (“Agpro Farms”), by and through their undersigned counsel, Harris Beach PLLC, hereby submits this *Motion of Agpro Farms II, Inc. for Allowance and Payment of an Administrative Expense Claim Under 11 U.S.C. § 503(b)(1)* (the “Motion”). In support of the Motion, Agpro Farms respectfully states the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. § 503.
2. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein are under 11 U.S.C. § 105 and § 503.
3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

4. On February 15, 2021 (the “Petition Date”), the above-captioned debtors and debtors-in-possession (collectively, “Debtors”) filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

5. 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 and approving the Conversion of the Chapter 11 Cases, (II) Extending the Designation Rights Period, and (III) Granting Related Relief* [Dkt No. 719] (the “Conversion Order”). Thereafter, Janet S. Northrup was appointed as the Chapter 7 Trustee.

6. Agpro Farms is a commercial vendor and provides broker services to the Debtors related to the sale and procurement of apples, along with the procurement of storage and maintaining the quality of the stores apples throughout the year (the “Broker Services”).

7. At the request of, and for the benefit of the Debtors, Agpro Farms provided the Broker Services for the Debtors which assisted in the preservation of the Debtors’ bankruptcy estates.

8. On or about April 1, 2021 through and including April 30, 2021, Agpro Farms provided their Broker Services to the Debtors in the ordinary course of Debtors’ business for which it did not receive payment.

9. On or about August 10, 2021, the Court entered its *Order Granting Chapter 7 Trustee’s Expedited Motion to Establish Administrative Expense Bar Date for 11 U.S.C. § 503(b) Claims Arising Before June 21, 2021* [Dkt. No. 860] where the Court set September 10, 2021 (the “Bar Date”), as the deadline for filing administrative expense claims incurred during between the Petition Date and June 21, 2021 (the “Conversion Date”).

10. Agpro Farms asserts an administrative expense claim pursuant to 11 U.S.C. § 503(b)(1) against the Debtors in the amount of **\$19,230.76** (the “Administrative Expense Claim”) for the Broker Services provided to the Debtors after the Petition Date.

11. True and correct copies of the invoices comprising the Administrative Expense Claim (the “Invoices”) are attached hereto as **Exhibit “A”** and incorporated herein by reference for all purposes.

12. The Invoices were timely tendered to the Debtors and no objections to the Invoices have ever been raised.

RELIEF REQUESTED

13. By this Motion, Agpro Farms requests that the Court enter an Order: (a) allowing the Administrative Expense Claim in the full amount of \$19,230.76; (b) authorizing the Chapter 7 trustee to pay the balance of Agpro Farms’ Administrative Expense Claim as such time as distributions are made to other administrative claimants, and in accordance with the priorities under the Bankruptcy Code; and (c) granting such and further relief as the Court deems just and proper.

BASIS FOR RELIEF REQUESTED

14. Under Bankruptcy Code §§ 503(b)(1) and 507(a)(2), the “actual, necessary costs and expenses of preserving the estate” are designated as administrative expenses that are entitled to priority in payment. *See* 11 U.S.C. §§ 503(b)(1) and 507(a)(2). Administrative priority is given to post-petition vendors as an inducement to engage in business transactions with a debtor’s estate. *See In re TransAmerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1993) (citing *In re Coastal Carriers Corp.*, 128 B.R. 400, 403 (Bankr. D. Md. 1991)). Generally, in order to qualify as an actual and necessary expense, the obligation (1) must have arisen “from a transaction with the debtor-in-possession; and (2) the goods or services supplied enhanced the ability of the debtor-in-possession’s business to function.” *In re TransAmerican Natural Gas Corp.*, 978 F.2d at 1416.

15. Post-petition, the Debtors requested that Agpro Farms continue to provide the Broker Services for the Debtors. Agpro Farms adhered to the Debtors' request, provided the requested Broker Services, and thereby conferred a direct post-petition benefit to the Debtors' estates. *See* Exh. "A."

16. The cost of the Broker Services constitutes an actual and necessary cost of preserving the Debtors' estate, because the Broker Services allowed to operate their business and preserve existing customer relationships pending the sale of substantially all of the Debtors' assets. Accordingly, Agpro Farms is entitled to the Administrative Expense Claim in the amount of \$19,230.76 pursuant to Bankruptcy Code § 503(b)(1).

17. As a result of the foregoing, Agpro Farms urges the Court to issue an order allowing the Agpro Farms Administrative Expense Claim in its entirety. A copy of the proposed Order granting the Motion is attached hereto as **Exhibit B**.

18. Agpro Farms reserves its right to assert additional claims against the Debtors for amounts not contemplated by this request or allowed by the Court pursuant to section 503(b)(1) of the Bankruptcy Code, and to amend, modify, and/or supplement this Motion as appropriate under the circumstances.

CONCLUSION

WHEREFORE, Agpro Farms respectfully requests that the Court enter an Order: (a) allowing the Administrative Expense Claim in the full amount of \$19,230.76; (b) authorizing the Chapter 7 trustee to pay the balance of Agpro Farms' Administrative Expense Claim as such time as distributions are made to other administrative claimants, and in accordance with the priorities under the Bankruptcy Code; and (c) granting such and further relief as the Court deems just and proper.

Dated: September 8, 2021

Respectfully submitted,

HARRIS BEACH PLLC

/s/ Lee E. Woodard

Lee E. Woodard, Esq. (*pro hac vice pending*)

Brian D. Roy, Esq. (*pro hac vice*)

Attorneys for AgPro Farms II, Inc.,

333 W. Washington St., Ste. 200

Syracuse, New York 13202

Telephone: (315) 423-7100

Facsimile: (315) 422-9331

Email: bkemail@harrisbeach.com

CERTIFICATE OF SERVICE

I hereby certify that, on September 8, 2021, this filing has been served electronically by the Clerk of the Bankruptcy Court in the method established under CM/ECF Administrative Procedures Manual and the General Order Approving Administrative Procedures for Filing, Signing and Verifying Documents by Electronic Means dated March 27, 2002 on all attorneys who have appeared.

/s/ Lee E. Woodard
Lee E. Woodard, Esq.