

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

**FIRST INTERIM APPLICATION FOR COMPENSATION AND FOR
REIMBURSEMENT OF EXPENSES BY HUGHES WATTERS ASKANASE, L.L.P.
AS ATTORNEYS FOR TRUSTEE FOR JUNE 21, 2021 – AUGUST 31, 2021**

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 AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR 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.

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.

FEE APPLICATION COVER SHEET

Name of Applicant:		Hughes Watters Askanase, L.L.P.
Applicant's Role in Case:		General Counsel for the Trustee
Effective date of order approving professional's retention:		June 21, 2021
	Beginning of Period	Ending of Period
Total period covered in application	June 21, 2021	August 31, 2021
Time period(s) covered by any prior applications	NA	NA
Total amounts awarded in all prior Applications:		NA
Total fees requested in this Application:		\$296,533.50
Total professional fees requested in this Application:		\$296,533.50
Total actual professional hours covered by this Application:		599.50
Average hourly rate for professionals:		\$487.40
Total paraprofessional fees requested in this Application:		\$4,335.00
Total actual paraprofessional hours covered by this Application:		45.70
Average hourly rate for paraprofessionals:		\$94.86
Reimbursement expenses sought in this Application:		\$2,159.67
Total to be paid to priority unsecured creditors:		To be determined ²
Anticipated % dividend to priority unsecured creditors:		To be determined
Total to be paid to general unsecured creditors:		To be determined
Anticipated % dividend to general unsecured creditors:		To be determined
Date of confirmation hearing:		NA
Indicate whether Plan has been confirmed:		NA

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Hughes Watters Asanas, L.L.P. ("Applicant" or "HWA"), respectfully submits its *First Interim Application for Compensation and for Reimbursement of Expenses by Hughes Watters Askanase, L.L.P. as Attorneys for the Trustee* for the period from June 21, 2021 – August 31, 2021 (the "**Application**"). The total amount for which the Court's approval is sought is compensation of \$296,533.50 in professional fees and \$2,159.67 in reimbursement of expenses for the period covered by this Application, totaling \$298,693.17. In support of the Application, Applicant respectfully shows as follows:

² At this time, all cash on hand appears to be cash collateral and a distribution to unsecured creditors appears unlikely.

Background

A. The Debtor's Bankruptcy Case and the Appointment of the Trustee.

1. On February 15, 2021, Country Fresh Holding Company, Inc et. al. ("**Country Fresh**" or "**Debtors**"), filed a Voluntary Petition for Relief under Chapter 11, Case No. 21-30574-H1-11.

2. The Debtors operated as a debtor-in-possession from February 15, 2021 until June 21, 2021, when the Court entered its order of conversion to Chapter 7 [Docket No. 719] (the "**Conversion Order**"). Thereafter, Janet S. Northrup was appointed as the Chapter 7 Trustee (the "**Trustee**").

B. The Employment of HWA as Attorneys for the Trustee.

4. On July 15, 2021, the Trustee filed her *Application to Employ Counsel* (the "**HWA Employment Application**"). [Docket No. 788]. On August 10, 2021, the Court entered its *Order Authorizing Employment of Counsel* which approved the employment of HWA as general bankruptcy counsel to the Trustee effective as of June 21, 2021 (the "**HWA Employment Order**"). [Docket No. 859].

5. HWA has performed legal services as general counsel to the Trustee pursuant to the HWA Employment Order and the Trustee's requests. All of the services rendered by HWA were performed for and on behalf of the Trustee and not on behalf of any committee, creditor, or other person.

6. HWA is a law firm composed of attorneys duly licensed to practice law before the courts of the State of Texas, the United States District Court for the Southern District of Texas, and other relevant courts. HWA's offices are located at Total Plaza, 1201 Louisiana Street, 28th Floor, Houston, Texas 77002.

7. HWA has made the disclosures required by law and has no agreement or understanding with any other person with respect to sharing the compensation to be allowed HWA for services rendered in the Case.

8. If HWA is not allowed compensation as requested herein, such denial would have the effect of HWA having provided, without compensation, valuable services, expertise, and experience to the Trustee and would undermine the intent of § 330 of the Bankruptcy Code. *See Matter of Baldwin United Corp.*, 36 B.R. 401 (Bankr. S.D. Ohio 1984); *In re Wilson Foods Corp.*, 36 B.R. 317 (Bankr. W.D. Okla. 1984).

3. The Amount of Fees and Expenses Requested.

9. This Application seeks payment for HWA's professional services rendered and out-of-pocket expenses incurred from June 21, 2021 through August 31, 2021 (the "**Application Period**"). HWA rendered a total of 645.2 hours of professional services on behalf of the Trustee during the Application Period. Attached as Exhibit A is a detailed statement of the services performed by HWA for the Estates. Included in Exhibit A are statements reflecting the hours spent on the Case and the hourly rate of each participating attorney, law clerk, and legal assistant.

10. As shown in detail in **Exhibit "A"**, HWA's professional fees of \$296,533.50 and expenses of \$2,159.67 for the period covered by this Application totaling \$298,693.17. Included in **Exhibit "A"** are statements reflecting the hours spent on the Case and the hourly rate of each participating attorney, law clerk, and legal assistant. **Exhibit "A"** also includes the details of expenses advanced during the representation. All of HWA's services rendered were for and on behalf of the Trustee. No agreement or understanding exists between HWA and any other

person with respect to sharing any compensation awarded to HWA in connection with its representation of the Trustee in the Case.

Summary of Major Tasks

11. **General Background.** On February 15, 2021, Country Fresh Holding Company, Inc et. al. (“**Country Fresh**” or “**Debtors**”), filed a Voluntary Petition for Relief under Chapter 11, Case No. 21-30574-H1-11.

12. The Debtors operated as a debtor-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.

13. Prior to conversion, on March 29, 2021, the Debtors sold their assets to Stellex/CF Buyer (US) LLC (the “**Buyer**”) pursuant to this Court’s *Order Authorizing Country Fresh Holdings 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* [Dkt. No. 437] (the “**Sale Order**”).

14. On April 29, 2021, pursuant to the Sale Order, the Debtors and Buyer entered into the Asset Purchase Agreement [Dkt. No. 659-2] (as may be amended, supplemented, or otherwise modified from time to time in accordance with its terms, together with all exhibits and schedules thereto, the “**APA**”).

15. Also on April 29, 2021, the Debtors and the Buyer entered into the Transition Services Agreement [Dkt. No. 659-3] (as may be amended, supplemented, or otherwise modified from time to time in accordance with its terms, together with all exhibits and schedules thereto, the “TSA”).

16. The legal services performed by HWA can be summarized by project as follows:

17. **Task 1. General Administration (82.50 hours; \$41,183.50).** General case administration includes matters not allocable to particular tasks, but which nonetheless must be performed to ensure the Case proceeds properly. In this case, upon the Trustee’s appointment, HWA conferred with interested parties and stakeholders including Debtors’ counsel, UCC counsel, the Ad Hoc Group of Secured Lenders, Buyer’s counsel, former management, and the Debtors’ CRO to learn about the case background and events leading to conversion. HWA attended to various matters including the operation of the Debtors in a limited capacity which included operating under the APA and TSA, terminating employees, paying remaining employees and operational expenses, hiring former employees as consultants to assist in the winddown process, and preservation of records and evidence. Time in this category includes overall case management and conferring with the Trustee to keep the Trustee informed as to case status.

18. During the Application Period, HWA also contended with material wire fraud issues including investigation and filing a status report as to such fraud under seal.

19. **Task 2. Asset Analysis and Recovery (202.1 hours; \$102,610.50).** Asset analysis and recovery includes fees incurred for the identification of potential Estate assets and the evaluation of whether further action should be taken in connection therewith. In this case, the Debtors sold their assets prior to conversion to the Buyer as well as two other buyers in

Canada. The asset purchase agreements and transition services agreement associated with the sales required certain post-closing activities to facilitate the sales.

20. HWA filed a motion to operate the Debtors to perform under the APA and TSA. These operations include reconciling activities under the TSA, reconciling accounts receivable collected in Debtor accounts but due to Buyer or the Canadian buyers, addressing accounts payable requests from the Buyer under the Court order at Docket No. 645 regarding payment of post-petition, pre-closing administrative claims, and addressing the closing statement and asset purchase price adjustment required under the APA to finalize the purchase price and account for the \$12 million purchase price adjustment account.

21. HWA has coordinated and directed these necessary activities using Debtors' former CRO firm and coordinated extensively with Buyer's counsel to facilitate the TSA reconciliation and closing statement process which resulted in numerous stipulations regarding ongoing issues under the APA and TSA.

22. This category also includes time for investigation of possible causes of action related to Debtors' director and officer liability insurance, investigating Debtors' multiple bank accounts and bringing funds into the Trustee's accounts, coordinating necessary access to Debtors' books and records from Buyers on multiple occasions, coordinating employment and oversight of Debtors' former employees employed by the Estates as consultants pursuant to the order to operate to assist in the winddown activities [Dkt. No. 747].

23. **Task 5. Tax Matters (20.30 hours; \$10,602.50).** In this case, HWA hired the Debtors' existing property tax protest professionals to continue ongoing protests to reduce tax liability. The tax protests resulted in lowering the value of Debtors' property for a tax savings of at least approximately \$104,590.

24. In addition, HWA corresponded with Debtors' prior tax accounting firm and prior audit firm to obtain records necessary for the Estates' completion of required tax filings. HWA conferred with four additional tax accounting firms and requested quotes for reparation of the Debtors' tax returns and ultimately chose a tax accounting firm that agreed to address the Estates' tax filing needs at a much lower cost than the Debtors' prior tax accounting firm which resulted in a savings of approximately \$450,000.

25. Time in this category includes conferring with tax professionals to meet the Estates' tax filing requirements.

26. **Task 7. Claims Administration, Analysis and Objections (180.30 hours; \$77,990.00).** PACA. In this case, a significant issue included resolving claims asserted by vendors that qualify as PACA³ licensees subject to specific legislation affording the PACA Vendors unique rights. 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 Order and (II) Debtors' Emergency Motion for Entry of Order Enforcing Sale Order* [Docket No. 645] (the "**May 24 AO**"), in which the Court, among other things, required \$3.5 million to be set aside for the payment of PACA claims.

27. During the Application period, HWA attended to evaluating claims asserted by PACA and preparing a motion to pay remaining PACA claims from the \$3.5 million set aside and release the balance of the set aside which was filed on September 2, 2021 at Docket No. 915. HWA's investigation resulted in the withdrawal of several proofs of claims.

28. KEIP. On March 12, 2021, the Debtors filed their *Emergency Motion For Entry of an Order (A) Authorizing and Approving the Debtor's Key Employee Incentive Plan and*

³ Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §§ 499(a) *et seq.* (as modified from time, "PACA").

(B) *Granting Related Relief* (the “**KEIP**” and the “**KEIP Motion**”) [Dkt. No. 275]. A number of parties filed objections to the KEIP Motion. *See* Docket Nos. 324, 376, 388, 390, and 397. After taking the KEIP Motion under advisement. On July 12, 2021, the Court issued its Memorandum Opinion and Order concerning the KEIP Motion (the “**KEIP Opinion**” and the “**KEIP Order**”), which directed the Trustee to investigate the appropriate payments to Debtors’ former management. *See* Docket Nos. 771 and 772.

29. HWA attended to the KEIP investigation which resulted in filing a stipulation as to the proper KEIP payments which the Court granted at Docket No. 913.

30. HWA also attended to filing a motion to set an administrative claim bar date for pre-conversion administrative claims and entered into numerous stipulations as to such claims to reduce costs to claimants and the estate.

31. Time in this category includes corresponding with creditors as to inquiries and claims.

32. **Task 8. Employment Applications (48.3 hours; \$16,638.50).** HWA attended to its application to employ itself as general counsel to the Trustee in this case [Dkt. No. 859]. In addition, HWA attended to employing (i) special counsel to address ERISA matters and matters relating to the Debtors’ 401K plan [Dkt. No. 831]; (ii) property tax protest professionals to conclude protests as to property tax valuations to reduce tax liability owed by the Debtors [Dkt. No. 858]; (iii) special financial consultant to assist the Trustee with financial analysis and related matters [Dkt. No. 865]; and (iv) Debtors’ former CRO firm to assist the Trustee with the winddown operations required under the APA and TSA.

33. **Task 11. Creditor Matters. (6.0 hours; \$2,910.00).** HWA corresponded with creditors to address creditor inquiries as to claims and case status.

34. **Task 14. Employee Benefits/Pensions (2.4 hours; \$1,140.00).** HWA conferred with the Trustee and special ERISA counsel to attend to matters concerning the Debtors' 401K Plan including the employment and application for compensation of Matthew Borrer to address the Debtors' 401(k) Plan.

35. **Task 15. Insurance (4.8 hours; \$2,410.00).** In this case, Debtors were due insurance proceeds related to an approved insurance claim. HWA worked with the insurers' contact to bring the remaining amount of insurance proceeds of approximately \$750,000 into the estate.

36. **Task 18. Use of Cash Collateral (22.9 hours; \$10,942.50).** In this case, the currently known assets of the estate appear to be cash collateral under 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**") [Dkt. No. 335]. HWA has conferred with the 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**") as necessary throughout the case and in particular on issues relating the use of cash collateral to fund the Trustee's administration of this case which resulted in a stipulation and order for the use of cash collateral at Docket No. 883 (the "**Cash Collateral Order**").

37. **Task 29. Executory Contracts – investigation, assumption, and rejection (35.10 hours; \$11,658.50).** In this case, HWA attended to the status of various executory contracts including multiple leases and filed two motions rejecting such contracts which the

Court granted at Docket Nos. 746 and 817. HWA attended to the assumption of several executory contracts per the Buyers request under the terms of the APA and TSA which matter is still pending.

38. **Task 32. Fee Application Preparation (40.5 hours; \$18,447.50).** Multiple professionals were employed by the Debtors in the chapter 11 case. HWA attended to reviewing and objecting to chapter 11 fee applications as necessary, including filing limited objections to the fee applications of Kilpatrick Townsend & Stockton LLP, Cassels Brock & Blackwell LLP, Foley & Lardner LLP, Ankura Consulting Group, LLC, and PricewaterhouseCoopers LLP. *See* Docket Nos. 805, 806, 807, 808, and 835.

The First Colonial Factors

39. HWA has not received any payments for fees or expenses during this Application Period. The Estate currently holds cash collateral sufficient to pay the fees and expenses requested herein pursuant to the Cash Collateral Order.

40. The approved cash collateral budget allows for general counsel expenses of \$325,000 during the Application Period. *See* Docket No. 883. The fees and expenses sought herein total \$298,693.17. Thus, the fees and expenses requested herein are within the cash collateral budget approved by the Ad Hoc Group of Secured Lenders.

41. The Fifth Circuit in *In re First Colonial Corp. of America*, 544 F.2d 1291 (5th Cir.), *cert. denied*, 97 S. Ct. 1696 (1977), described certain factors which should be considered in compensating attorneys in Chapter 7 cases and instructive here. Those factors are discussed in the following paragraphs.

42. Time and labor required and novelty and difficulty of the questions involved. As reflected in Exhibit A, the Applicant's attorneys have expended a total of 645.20 hours on the

case during the Application Period. The blended hourly rate for the attorneys is \$487.40. HWA has devoted the time necessary to efficiently attend to the procedures, correspondence and pleadings involved in the Case.

43. Reputation of attorneys. The attorneys involved in the Case have regularly appeared before the Courts of the Southern District. These attorneys have significant experience in bankruptcy law including reorganizations and liquidations and have regularly represented Chapter 11 Debtors and Chapters 11 and 7 Trustees in both large and small cases for many years. Therefore, HWA's attorneys are well qualified to represent the Trustee in the Case.

44. Skill required. The preceding paragraphs reflect the skill required by the Case. An ordinary degree of skill has been required and employed by HWA in the representation of the Trustee for the reasons indicated.

45. Preclusion of other employment. HWA was precluded from engaging in other employment only to the extent of the 645.20 hours in the Case during this Application Period.

46. Undesirability of the Case. A Chapter 7 case is only undesirable to the extent that HWA's compensation is always contingent upon the availability of sufficient assets with which to reimburse HWA for its fees and expenses incurred.

47. Results obtained. HWA has efficiently attended to the matters as described above, with recoveries for the Estates as noted above.

48. Time limitations imposed by the case. HWA's attorneys have been available at all times to meet the Trustee's needs as they have arisen. There were a number of matters requiring immediate attention of counsel, particularly with respect to liquidating the Debtor's physical assets to limit administrative costs and to the liquidation proceedings in Singapore.

49. Customary charges for the services rendered. The hourly rates of HWA's attorneys are described at the end of **Exhibit "A"**. The rates charged are commensurate with the abilities of the persons involved and are on the low end of the rates customarily charged in this district for excellent legal counsel.

50. Contingent nature of the fee. Any fees to be paid to HWA in any Chapter 7 case are dependent on the availability of assets and/or recovery of voidable transfers. Representation of a bankruptcy Trustee is always of a contingent nature because of the uncertainty concerning the existence of sufficient assets for liquidation. HWA was not, however, hired on a percentage contingency agreement, but at the regular hourly rates of the professionals doing the work, subject to available funds.

51. Nature and length of professional relationship with client. HWA has represented the Trustee in many Chapter 7 and Chapter 11 cases over the past several years and has a close working relationship with her. Since 2007, the Trustee is of counsel to HWA, but not a partner in HWA.

52. Awards in similar cases. This Court is familiar with the size of fee awards in cases similar to this Case. The Court may wish to consider that awards of similar or larger fees have been made in other cases over the past years in this district.

53. Economic administration of the Estate. In its representation of the Trustee, HWA has sought to conserve the Estates and believes that the fees and expenses requested herein were reasonable and necessary in light of the circumstances at the time.

54. HWA believes the compensation and reimbursement of expenses sought herein are reasonable and represent work that was necessary to the proper administration of the Estates.

55. HWA, in compliance with Rule 2016 of the Bankruptcy Code, hereby states that: (i) no compensation previously received has been shared with any other entity; and (ii) no agreement or understanding exists between HWA and any other entity for the sharing of compensation received or to be received for services rendered in connection with the Case. HWA did not receive any pre- or post-employment retainer in this matter and is holding no funds belonging to the Trustee or the Debtor.

56. HWA has submitted this Application to the Trustee for review prior to filing it, and she has no objection to it.

Conclusion

Hughes Watters Askanase, L.L.P. prays that this Court, after notice and hearing, enter an Order (i) authorizing the payment of compensation to HWA for its professional fees of \$296,533.50 and expenses of \$2,159.67 which total \$298,693.17 incurred during this Application Period, such payment being a priority administrative expense under 11 U.S.C. § 507(a)(2); and (ii) granting such other and further relief to which HWA may be entitled.

Dated: September 21, 2021.

Respectfully submitted,

/s/ Heather Heath McIntyre

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**ATTORNEYS FOR CHAPTER 7 TRUSTEE,
JANET S. NORTHRUP**

CERTIFICATE OF CONFERENCE

The undersigned conferred with the Ad Hoc Group of Lenders beginning on September 17, 2021, and the Ad Hoc Group of Secured Lenders does not object to the relief sought herein.

/s/ Heather Heath McIntyre
Heather Heath McIntyre

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on (i) all parties receiving ECF notice in the case, and (ii) all parties listed on the attached “Master Service List” by electronic transmission or first class, U.S. mail, postage prepaid on September 21, 2021.

/s/ Heather Heath McIntyre
Heather Heath McIntyre

EXPLANATION OF EXPENSES

Copy Costs (In-House) – In-house copies of various notices, pleadings, letters, etc. as required by this representation at the rate of \$.20 per page.

CertificateofService.com/Filing Fees – Actual Costs of filing fees for pleadings.

Mailings/Postage – Actual cost for postage used for the service of various notices, pleadings, letters, etc.