

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

IN RE:

**COUNTRY FRESH HOLDING
COMPANY, INC., *et. al.*¹**

Debtors.

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Case No.: 21-30574

Jointly Administered

**TRUSTEE'S FIRST INTERIM APPLICATION FOR COMPENSATION
AND EXPENSES FOR JUNE 21, 2021 THROUGH 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.

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

Janet S. Northrup (the "Trustee"), the chapter 7 trustee for the bankruptcy estates of Country Fresh Holding Company, Inc. *et. al.* (the "Debtors"), the debtors in the above-styled chapter 7

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.

bankruptcy case, files this *Trustee's First Interim Application for Compensation and Expenses for June 21, 2021 through August 31, 2021* (the "Application").

JURISDICTION AND VENUE

1. The court has jurisdiction over this Application and the relief requested pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This motion is a core matter under 28 U.S.C. § 157(b).

SUMMARY OF RELIEF REQUESTED

3. The Trustee seeks approval of interim compensation in the amount of \$259,999.14 plus expenses of \$745.21 for total compensation in the amount of \$260,744.35 based on distributions between June 21, 2021 and August 31, 2021 (the "Application Period").

BACKGROUND AND STATUS

4. On February 15, 2021, the Debtors filed their voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"). 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* [Docket No. 719] (the "Conversion Order"). Thereafter, the Trustee was appointed.

5. 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 [Docket No. 437] (the "Sale Order").

6. On April 29, 2021, pursuant to the Sale Order, the Debtors and Buyer entered into the Asset Purchase Agreement [Docket 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").

7. Also on April 29, 2021, the Debtors and the Buyer entered into the Transition Services Agreement [Docket 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").

8. On May 24, 2021, the Court entered its *Stipulation and Agreed Order Resolving (I) STELLEX/CF BUYER (US) LLC'S Emergency Motion to Enforce APA and the Sale Order and (II) Debtors' Emergency Motion for Entry of Order Enforcing Sale Order* [Dkt. No. 645] (the "Enforcement Order").

9. 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 [Dkt. No. 747].

10. The Trustee operates the Debtors per Court order which, *inter alia*, includes operating under the APA and TSA and more specifically includes the handling of accounts payable requests from the Buyer under the Enforcement Order and related stipulation for payment of post-petition, pre-closing administrative claims.

11. In relation to the Enforcement Order, the Trustee, the Buyer, and the Ad Hoc Group of Secured Lenders entered into the *Stipulation and Agreed Order Regarding Release of Escrowed Funds by CitiBank, N.A. to Buyer* [Dkt. No. 863] on August 11, 2021.

12. On August 25, 2021, the Court entered the *Stipulation and Agreed Order Authorizing the Chapter 7 Trustee to Use Cash Collateral in Accordance with the Final DIP Order* [Dkt No. 883] (the “Cash Collateral Stipulation”). The Cash Collateral Stipulation states that “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.” Cash Collateral Stipulation, para. 4.

RELIEF REQUESTED

13. The Trustee requests that she be awarded interim compensation based on the total disbursement of \$7,846,638.03 during the Application Period. The Trustee’s Form 2 Cash Receipts and Disbursements Record (“Form 2”) reflects the receipts and disbursements of funds by the Debtors’ estates during the Application Period and is attached hereto as **Exhibit A**. Form 2 reflects total compensable disbursements by the Trustee of \$6,511,871.80 for the Application Period.

14. On June 22, 2021, the sum of \$695,592.00 was delivered to the Buyer from a CitiBank, N.A. trust account (the “June 22 Transfer”) pursuant to the Enforcement Order, and this amount is also included in the total disbursements of \$7,846,638.03 on which compensation is sought by the Trustee. The joint instruction letter relating to the June 22 Transfer is attached hereto as **Exhibit C**, and an excerpt of the trust account bank statement reflecting the June 22 Transfer is attached hereto as **Exhibit D**.

15. The *Stipulation and Agreed Order Regarding Release of Escrowed Fund by CitiBank, N.A. to Buyer* [Docket No. 863] entered on August 11, 2021, is attached hereto as **Exhibit B** and reflects Buyer making disbursements of \$639,174.23 on the Debtors' bankruptcy estates pursuant to the Enforcement Order, and this amount is also included in the total disbursements of \$7,846,638.03 on which compensation is sought by the Trustee.

16. The requested interim compensation is calculated on all moneys disbursed or turned over in the case by the Trustee to parties in interest, excluding the Debtors, but including holders of secured claims, as follows:

25% on the first \$5,000 disbursed	\$1,250.00
10% on the next \$50,000 disbursed	\$5,000.00
5% on the next \$1,000,000 disbursed	\$50,000.00
3% on the next \$6,791,638.03 disbursed	<u>\$203,749.14</u>
Total	\$259,999.14

11 U.S.C. §326.

17. The Trustee seeks reimbursement of expenses in the total amount of \$745.21, as is further detailed in the Time and Billing Expense Report attached hereto as **Exhibit E**.

ANALYSIS AND AUTHORITIES

18. Section 726 of the Bankruptcy Code governs distribution to creditors in a chapter 7 case. Section 326 of the Bankruptcy Code sets forth the amount of compensation to be paid to chapter 7 trustees as a percentage of "all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims", and § 331 of the Bankruptcy Code authorizes interim compensation to trustees. Section 105 of the Bankruptcy Code allows the court to issue any order necessary or appropriate to carry out the provisions of the Bankruptcy Code.

19. For the reasons noted above, the Trustee believes the interim compensation and reimbursement of expenses sought herein are justified and appropriate at this time.

WHEREFORE, the Trustee prays that the Court grant this Application and approve payment of the interim compensation and reimbursement of expenses and grant such other relief as the Court finds appropriate and just.

Dated: October 13, 2021.

Respectfully submitted,

/s/ Janet S. Northrup
Janet S. Northrup, Trustee
Total Plaza
1201 Louisiana St., 28th Floor
Houston, Texas 77002
(713) 759-0818 Telephone
(713) 759-6834 Facsimile

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that she conferred with the U.S. Trustee's office beginning on September 19, 2021, and the U.S. Trustee is unopposed to the relief sought herein.

/s/ Heather Heath McIntyre
Heather Heath McIntyre

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Trustee's First Interim Application for Compensation and Expenses June 21, 2021 through August 31, 2021* was served on (i) all parties receiving ECF notification in this case, and (ii) all parties shown on the attached Master Service List by first class mail, postage prepaid and/or ECF, on October 13, 2021.

/s/ Heather Heath McIntyre
Heather Heath McIntyre