

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

**IN RE:**

**COUNTRY FRESH HOLDING  
COMPANY, INC., *et. al.*<sup>1</sup>**

**Debtors.**

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**Case No.: 21-30574**

**Jointly Administered**

**TRUSTEE’S MOTION TO (I) EMPLOY COMMERCIAL UTILITY  
CONSULTANTS, INC. AND (II) APPROVE AND PAY FINAL FEES**

**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:**

COMES NOW Janet S. Northrup, the Chapter 7 Trustee (the “**Trustee**”) of the bankruptcy estate of Country Fresh Holding Company, Inc *et. al.* (“**Country Fresh**” or “**Debtors**”), Debtors

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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.

in the above-styled Chapter 7 case and files this *Trustee's Motion to (I) Employ Commercial Utility Consultants, Inc. and (II) Approve and Pay Final Fees* (the "**Motion**"), seeking authority (i) to retain Commercial Utility Consultants, Inc. (together with employees of its affiliates, its wholly owned subsidiaries, and independent contractors, "**CUC**") pursuant to 11 U.S.C. § 327(a), § 330 and Rule 2014 of the Federal Rules of Bankruptcy Procedures, and (ii) to compensate CUC for its services; and respectfully represents as follows:

### **PRELIMINARY STATEMENT**

1. Trustee seeks authority to employ CUC as professional utility consultants to analyze the rates, tariffs, discounts, riders and total charges that apply to Debtors' utility billings and to seek refunds of overpayments for sales taxes paid on electric billings in Hatfield, Pennsylvania and to compensate CUC its services up to 25% of any amounts collected through CUC's efforts upon fifteen (15) days' notice filed with the Court without further fee application as requested by the Ad Hoc Group of Secured Lenders to reduce administrative costs to the estate.

2. CUC was engaged by the Debtors pre-petition and identified a refund of \$20,000 owed to the estate. Thus, The Trustee seeks to employ CUC *nunc pro tunc* to realize this asset. CUC has agreed to reduce its compensation by half for this engagement.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. This Court has constitutional authority to enter a final order with respect to this Motion. The employment of professionals of the estate has no equivalent in state law, thereby rendering the Supreme Court's opinion in *Stern v. Marshall* inapplicable. See *In re Carlew*, 469

B.R. 666, 672 (Bankr. S.D. Tex. 2012) (discussing *Stern v. Marshall*, — U.S.—, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011)). In the alternative, the employment of professionals for the estate is an essential bankruptcy matter which triggers the “public rights” exception. *See id.*

### **BACKGROUND**

5. On February 15, 2021 (the “**Petition Date**”), the Debtors filed a Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code (the “**Case**”).<sup>2</sup>

6. 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, Janet S. Northrup was appointed as the Chapter 7 Trustee.

7. On information and belief, pre-petition on or about November 8, 2019, Debtors engaged CUC, a sales tax consulting firm, to protest certain sales taxes paid on electric bills in Hatfield, Pennsylvania. CUC began rendering services pre-conversion for the benefit of the Debtors. Pre-petition the Debtor agreed to compensate CUC in an amount equal to fifty percent (50%) of any refund resulting from CUC’s analysis. During this time CUC identified a potential refund \$20,100.71 due from operations in Hatfield, Pennsylvania.

8. The Trustee has negotiated a post-conversion agreement for CUC to continue these services and recover any refunds due to the estate on a contingency basis in an amount equal to twenty-five percent (25%) of the refund, as further set forth in the attached Service Agreement.

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<sup>2</sup> Additional information about the Debtors and their business can be found in the *Declaration of Stephen Marotta in Support of First-Day Motions* filed at Docket No. 18 in this Case.

**RELIEF REQUESTED – EMPLOYMENT OF CUC**

9. Section 327(a) of the Bankruptcy Code authorizes a Trustee to retain professionals as necessary to represent or assist the Trustee in carrying out her duties:

the Trustee, with the court's approval, may employ, one or more attorneys, accountants, appraisers, auctioneers, or other professional persons . . . to represent or assist the Trustee in carrying out the Trustee's duties under this title.

*See* 11 U.S.C. § 327(a).

10. Pursuant to this provision of the Bankruptcy Code, the Trustee seeks to employ CUC to assist her in carrying out her duties. The Trustee has evaluated the services to be provided by these professionals and, in consultation with the Ad Hoc Group of Secured Lenders, believes it is in the best interests of the estate to employ CUC based on their expertise and knowledge in the matters on which they are employed. CUC is a professional firm that has represented industrial and commercial businesses as well as private and governmental agencies since 1975. CUC is comprised of skilled professional utility consultants.

11. The professional services that CUC will render to the Trustee are limited to services outlined in the Services Agreement attached hereto as **Exhibit "1"** with the modifications that compensation will be twenty-five percent (25%) of any refund or credit resulting from CUC's analysis and paragraph three does not apply.

12. To the best of the Trustee's knowledge and other than as set forth herein, CUC does not have any connection with or any interest adverse to the Debtors, the Trustee, any creditors, or any other party in interest, or their respective attorneys or accountants, the United States trustee, or any person employed in the office of the United States trustee and is a "disinterested person" within the definition of § 101(14) of the Bankruptcy Code on the matters for which it is to be engaged. See the Declaration of Joseph P. McGillian attached hereto as

**Exhibit “2”.** Out of an abundance of caution, it is hereby disclosed CUC does have clients who use Hudson Energy, but they did not get Hudson through CUC and CUC has no interest in the arrangement.

13. The Trustee seeks *nunc pro tunc* employment of CUC. CUC was employed pre-petition by the Debtors and the Trustee became aware of CUC’s efforts the expected recovery of \$20,000 on September 24, 2021. The Trustee files this Motion, which includes this application *nunc pro tunc* along with the motion to approve final fees and pay CUC, in an effort to conserve estate resources.

14. The Trustee does not believe approval of the application to employ CUC will prejudice any parties-in-interest. But for CUC’s efforts, the estate would not be expecting to receive the \$20,000 tax refund less CUC’s compensation.

15. As such, the Trustee seeks an order employing CUC on behalf of the Trustee as of June 21, 2021, the date of her appointment, pursuant to 11 U.S.C. §§ 327(e), 328(a), and 330 and Bankruptcy Rules 2014(a) and 2016 and Local Rules 2014-1 and 2016-1.

16. Based upon the foregoing, the Trustee believes that the employment of CUC is necessary and in the best interest of this estate, its creditors, and parties in interest.

**RELIEF REQUESTED –  
APPROVAL OF CUC’S FEES WITHOUT FUTHER FEE APPLICATION**

17. As requested by the Ad Hod Group of Secured Lenders, the Trustee seeks the Court’s approval of CUC’s fees in an amount equal to twenty-five (25%) of any recovery from such services upon fifteen (15) days’ notice filed with the Court without separate fee application to reduce administrative costs to the estate. Bankruptcy Code § 330 permits professional persons to apply to the Court for compensation and reimbursement of expenses. In this case, CUC is providing discrete, specialized services to the Trustee for which a recovery is expected.

**The First Colonial Factors**

18. 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. Those factors are discussed in the following paragraphs.

19. Time and labor required and novelty and difficulty of the questions involved. CUC expects to recover at least \$20,100.71 for the benefit of the estate with fees of approximately \$5,025.18. It is necessary for the Trustee to employ CUC as they are experienced in providing professional utility consulting, an area which the Trustee's general bankruptcy counsel lacks specialized knowledge and expertise in.

20. Reputation of CUC. CUC has represented industrial and commercial businesses as well as private and governmental agencies for over 45 years. CUC is comprised of skilled professionals and experts in utility consulting services and is well qualified to represent the Trustee in this case.

21. Skill required. The preceding paragraphs reflect the skill required by this case. A higher than ordinary degree of skill has been and will be required and employed by CUC in the representation of the Trustee for the reasons indicated.

22. Preclusion of other employment. CUC will be precluded from engaging in other employment as is necessary to perform the tax services described.

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

24. Results obtained. CUC expects to protest the sales taxes in this case as efficiently as practical as possible and provide the services outlined in the attached Service Agreement.

25. Time limitations imposed by the case. CUC has been and will be available at all times to meet the Trustee's needs as they arise. CUC will attend to matters with due regard for the Trustee's desire to quickly administer the assets and thereafter close the bankruptcy case.

26. Customary charges for the services rendered. CUC provides services on a contingency basis. In this case, CUC will provide services on a contingency basis of twenty-five percent (25%) of any refund recovered. The rate charged is half of what CUC typically charges for equivalent work.

27. Contingent nature of the fee. Fees to be paid to CUC in any Chapter 7 case are dependent on the availability of assets and/or recovery of refunds. CUC was hired on a percentage contingency agreement, as noted herein.

28. Nature and length of professional relationship with client. CUC regularly assists industrial and commercial businesses as well as private and governmental agencies since 1975. Trustee has never before retained CUC to her knowledge.

29. CUC believes the compensation and reimbursement of expenses sought herein are reasonable and represent work that will be necessary to protest and collect a refund of the sales taxes, and thus allow proper administration of the estate.

30. CUC, 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 CUC and any other entity for the sharing of compensation received or to be received for services rendered in connection with this case. CUC

did not receive any pre- or post-employment retainer in this matter and is holding no funds belonging to the Trustee or the Debtors.

**PRAYER**

**WHEREFORE**, the Trustee prays that the Court enter an order authorizing the Trustee to (i) employ CUC, effective June 21, 2021, on the terms set forth herein, (ii) pay CUC for its services up to 25% of any recovery received by the estate upon fifteen (15) days' notice to the Court, without fee application or further Court order and (iii) such other and further relief as is just and proper.

Dated: November 10, 2021.

Respectfully submitted,

/s/ Heather Heath McIntyre

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



Respectfully submitted,

/s/ Joseph P. McGillian

Joseph P. McGillian

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**PROPOSED UTILITY CONSULTANTS FOR  
CHAPTER 7 TRUSTEE, JANET S.  
NORTHROP**

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that she conferred with Steve Statham with the U.S. Trustee Office via telephone and email starting on September 29, 2021, and that the U.S. Trustee does not oppose the relief sought herein.

The undersigned further certifies that she corresponded with Diane Meyer, attorney for the Ad Hoc Group of Lenders, beginning on September 29, 2021, and that the Ad Hoc Group of Lenders does not oppose 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 *Trustee's Motion to (I) Employ Commercial Utility Consultants, Inc. and (II) Approve Attorneys' Fees* 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 U.S. mail, first class, postage prepaid on November 10, 2021.

/s/ Heather Heath McIntyre

Heather Heath McIntyre