

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: NOVEMBER 1, 2017
CALENDAR: 1:30 P.M. CHAPTER 11 AND 9 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [17-13112](#)-A-11 PIONEER NURSERY, LLC MOTION TO ASSUME LEASE OR
[FW-1](#) EXECUTORY CONTRACT
PIONEER NURSERY, LLC/MV 10-11-17 [[120](#)]
PETER FEAR/Atty. for dbt.

No Ruling

2. [17-13112](#)-A-11 PIONEER NURSERY, LLC MOTION TO COMPROMISE
[FW-10](#) CONTROVERSY/APPROVE SETTLEMENT
PIONEER NURSERY, LLC/MV AGREEMENT WITH TRIANGLE E FARMS
10-11-17 [[66](#)]
PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part, denied in part

Order: Civil minute order

Parties to Compromise: Triangle E Farms

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 2,681 replacement trees

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CONFIDENTIALITY

The motion to approve the compromise, and the settlement agreement on which it is based, each purport to require that the settlement be confidential. Confidential Settlement Agreement ¶ 6 ("The terms and conditions of this Agreement and matters relating thereto shall remain confidential between the Parties and shall not be disclosed to any other person. . . ."). Limited exceptions to the confidentiality requirement exist, including a catch-all phrase "as otherwise required by applicable law or regulation." *Id.* Presumably the exception would encompass the limited disclosure necessary for obtain Rule 9019 approval of the settlement by this court.

LBR 9018-1(a) authorizes documents to be filed under seal. Parties wishing to invoke the protections of LBR 9018-1(a) must move to seal the document, preferably before it is filed with the Clerk. LBR 9018-1(b). Here, the debtor in possession has not moved to seal the settlement agreement, but instead has filed the Confidential Settlement Agreement as an exhibit in support of the motion. It also summarized the terms of the settlement in the motion itself. Admitted, some recitation of the terms of settlement will be required in most, if not all, Rule 9019 motions. But in this case, it appears that the debtors has disclosed the entire agreement, including the settling parties and the terms of settlement. As a consequence, the court deems the parties to have waived any confidentiality provision

contained in the settlement agreement.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Pioneer Nursery, LLC's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 69, except for para. 6 of the Confidential Settlement Agreement.

IT IS ORDERED that all other relief is denied.

3. [17-13112](#)-A-11 PIONEER NURSERY, LLC MOTION TO COMPROMISE
[FW-11](#) CONTROVERSY/APPROVE SETTLEMENT
PIONEER NURSERY, LLC/MV AGREEMENT WITH PALLA & SONS
10-11-17 [[72](#)]
PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part, denied in part

Order: Civil minute order

Parties to Compromise: Palla & Sons

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 29,253 replacement trees

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CONFIDENTIALITY

The motion to approve the compromise, and the settlement agreement on which it is based, each purport to require that the settlement be confidential. Confidential Settlement Agreement ¶ 6 ("The terms and conditions of this Agreement and matters relating thereto shall remain confidential between the Parties and shall not be disclosed to any other person. . . ."). Limited exceptions to the confidentiality requirement exist, including a catch-all phrase "as otherwise required by applicable law or regulation." *Id.* Presumably the exception would encompass the limited disclosure necessary for obtain Rule 9019 approval of the settlement by this court.

LBR 9018-1(a) authorizes documents to be filed under seal. Parties wishing to invoke the protections of LBR 9018-1(a) must move to seal the document, preferably before it is filed with the Clerk. LBR 9018-1(b). Here, the debtor in possession has not moved to seal the settlement agreement, but instead has filed the Confidential Settlement Agreement as an exhibit in support of the motion. It also summarized the terms of the settlement in the motion itself. Admitted, some recitation of the terms of settlement will be required in most, if not all, Rule 9019 motions. But in this case, it appears that the debtors has disclosed the entire agreement, including the settling parties and the terms of settlement. As a consequence, the court deems the parties to have waived any confidentiality provision contained in the settlement agreement.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a

compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Pioneer Nursery, LLC's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 75, except for para. 6 of the Confidential Settlement Agreement.

IT IS ORDERED that all other relief is denied.

4. 17-13112 -A-11 PIONEER NURSERY, LLC FW -12 PIONEER NURSERY, LLC/MV PETER FEAR/Atty. for dbt.	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH NORTH BOWIE FARMING 10-11-17 [78]
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Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted in part, denied in part
Order: Civil minute order

Parties to Compromise: North Bowie Farming
Dispute Compromised: Rhodococcus-infected trees
Summary of Material Terms: 67,250 replacement trees

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CONFIDENTIALITY

The motion to approve the compromise, and the settlement agreement on which it is based, each purport to require that the settlement be confidential. Confidential Settlement Agreement ¶ 6 ("The terms and conditions of this Agreement and matters relating thereto shall remain confidential between the Parties and shall not be disclosed to any other person. . . ."). Limited exceptions to the confidentiality requirement exist, including a catch-all phrase "as otherwise required by applicable law or regulation." *Id.* Presumably the exception would encompass the limited disclosure necessary for obtain Rule 9019 approval of the settlement by this court.

LBR 9018-1(a) authorizes documents to be filed under seal. Parties wishing to invoke the protections of LBR 9018-1(a) must move to seal the document, preferably before it is filed with the Clerk. LBR 9018-1(b). Here, the debtor in possession has not moved to seal the settlement agreement, but instead has filed the Confidential Settlement Agreement as an exhibit in support of the motion. It also summarized the terms of the settlement in the motion itself. Admitted, some recitation of the terms of settlement will be required in most, if not all, Rule 9019 motions. But in this case, it appears that the debtors has disclosed the entire agreement, including the settling parties and the terms of settlement. As a consequence, the court deems the parties to have waived any confidentiality provision contained in the settlement agreement.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Pioneer Nursery, LLC's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 81, except for para. 6 of the Confidential Settlement Agreement.

IT IS ORDERED that all other relief is denied.

5. 17-13112 -A-11 PIONEER NURSERY, LLC FW -13 PIONEER NURSERY, LLC/MV PETER FEAR/Atty. for dbt.	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH S&H RANCH 10-11-17 [84]
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Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part, denied in part

Order: Civil minute order

Parties to Compromise: S & H Ranch

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 1,175 replacement trees

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CONFIDENTIALITY

The motion to approve the compromise, and the settlement agreement on which it is based, each purport to require that the settlement be confidential. Confidential Settlement Agreement ¶ 6 ("The terms and conditions of this Agreement and matters relating thereto shall remain confidential between the Parties and shall not be disclosed to any other person. . . ."). Limited exceptions to the confidentiality requirement exist, including a catch-all phrase "as otherwise required by applicable law or regulation." *Id.* Presumably the exception would encompass the limited disclosure necessary for obtain Rule 9019 approval of the settlement by this court.

LBR 9018-1(a) authorizes documents to be filed under seal. Parties wishing to invoke the protections of LBR 9018-1(a) must move to seal the document, preferably before it is filed with the Clerk. LBR 9018-1(b). Here, the debtor in possession has not moved to seal the settlement agreement, but instead has filed the Confidential Settlement Agreement as an exhibit in support of the motion. It also summarized the terms of the settlement in the motion itself. Admitted, some recitation of the terms of settlement will be required in most, if not all, Rule 9019 motions. But in this case, it appears that the debtors has disclosed the entire agreement, including the settling parties and the terms of settlement. As a consequence, the court deems the parties to have waived any confidentiality provision contained in the settlement agreement.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Pioneer Nursery, LLC's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 87, except for para. 6 of the Confidential Settlement Agreement.

IT IS ORDERED that all other relief is denied.

6. [17-13112](#)-A-11 PIONEER NURSERY, LLC
[FW-14](#)
PIONEER NURSERY, LLC/MV
MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH STADDEN FARMS,
INC.
10-11-17 [[90](#)]
PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part, denied in part

Order: Civil minute order

Parties to Compromise: Stadden Farms, Inc.

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 6,000 replacement trees

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CONFIDENTIALITY

The motion to approve the compromise, and the settlement agreement on which it is based, each purport to require that the settlement be confidential. Confidential Settlement Agreement ¶ 6 ("The terms and conditions of this Agreement and matters relating thereto shall remain confidential between the Parties and shall not be disclosed to any other person. . . ."). Limited exceptions to the confidentiality requirement exist, including a catch-all phrase "as otherwise required by applicable law or regulation." *Id.* Presumably the exception would encompass the limited disclosure necessary for obtain Rule 9019 approval of the settlement by this court.

LBR 9018-1(a) authorizes documents to be filed under seal. Parties wishing to invoke the protections of LBR 9018-1(a) must move to seal the document, preferably before it is filed with the Clerk. LBR 9018-1(b). Here, the debtor in possession has not moved to seal the settlement agreement, but instead has filed the Confidential Settlement Agreement as an exhibit in support of the motion. It also summarized the terms of the settlement in the motion itself. Admitted, some recitation of the terms of settlement will be required in most, if not all, Rule 9019 motions. But in this case, it appears that the debtors has disclosed the entire agreement, including the settling parties and the terms of settlement. As a consequence, the court deems the parties to have waived any confidentiality provision contained in the settlement agreement.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Pioneer Nursery, LLC's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 93, except for para. 6 of the Confidential Settlement Agreement.

IT IS ORDERED that all other relief is denied.

7. [17-13112](#)-A-11 PIONEER NURSERY, LLC
[FW-15](#)
PIONEER NURSERY, LLC/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ARIOSIO FARMING
10-11-17 [[96](#)]

PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part, denied in part

Order: Civil minute order

Parties to Compromise: Arioso Farming

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 2,200 replacement trees

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CONFIDENTIALITY

The motion to approve the compromise, and the settlement agreement on which it is based, each purport to require that the settlement be confidential. Confidential Settlement Agreement ¶ 6 ("The terms and conditions of this Agreement and matters relating thereto shall remain confidential between the Parties and shall not be disclosed to any other person. . . ."). Limited exceptions to the confidentiality requirement exist, including a catch-all phrase "as otherwise required by applicable law or regulation." *Id.* Presumably the exception would encompass the limited disclosure necessary for obtain Rule 9019 approval of the settlement by this court.

LBR 9018-1(a) authorizes documents to be filed under seal. Parties wishing to invoke the protections of LBR 9018-1(a) must move to seal the document, preferably before it is filed with the Clerk. LBR 9018-1(b). Here, the debtor in possession has not moved to seal the settlement agreement, but instead has filed the Confidential Settlement Agreement as an exhibit in support of the motion. It also summarized the terms of the settlement in the motion itself. Admitted, some recitation of the terms of settlement will be required in most, if not all, Rule 9019 motions. But in this case, it appears that the debtors has disclosed the entire agreement, including the settling parties and the terms of settlement. As a consequence, the court deems the parties to have waived any confidentiality provision contained in the settlement agreement.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a

compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Pioneer Nursery, LLC's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 99, except for para. 6 of the Confidential Settlement Agreement.

IT IS ORDERED that all other relief is denied.

8. [17-13112](#)-A-11 PIONEER NURSERY, LLC MOTION TO COMPROMISE
[FW-16](#) CONTROVERSY/APPROVE SETTLEMENT
PIONEER NURSERY, LLC/MV AGREEMENT WITH NETTO WEST
FARMING
10-11-17 [[102](#)]
PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part, denied in part

Order: Civil minute order

Parties to Compromise: Netto West Farming

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 850 replacement trees

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CONFIDENTIALITY

The motion to approve the compromise, and the settlement agreement on which it is based, each purport to require that the settlement be confidential. Confidential Settlement Agreement ¶ 6 ("The terms and conditions of this Agreement and matters relating thereto shall remain confidential between the Parties and shall not be disclosed to any other person. . . ."). Limited exceptions to the confidentiality requirement exist, including a catch-all phrase "as otherwise required by applicable law or regulation." *Id.* Presumably the exception would encompass the limited disclosure necessary for obtain Rule 9019 approval of the settlement by this court.

LBR 9018-1(a) authorizes documents to be filed under seal. Parties wishing to invoke the protections of LBR 9018-1(a) must move to seal the document, preferably before it is filed with the Clerk. LBR 9018-1(b). Here, the debtor in possession has not moved to seal the settlement agreement, but instead has filed the Confidential Settlement Agreement as an exhibit in support of the motion. It also summarized the terms of the settlement in the motion itself. Admitted, some recitation of the terms of settlement will be required in most, if not all, Rule 9019 motions. But in this case, it appears that the debtors has disclosed the entire agreement, including the settling parties and the terms of settlement. As a consequence, the court deems the parties to have waived any confidentiality provision contained in the settlement agreement.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Pioneer Nursery, LLC's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 105, except for para. 6 of the Confidential Settlement Agreement.

IT IS ORDERED that all other relief is denied.

9. [17-13112](#)-A-11 PIONEER NURSERY, LLC MOTION TO COMPROMISE
[FW-17](#) CONTROVERSY/APPROVE SETTLEMENT
PIONEER NURSERY, LLC/MV AGREEMENT WITH SUMMIT NUT CO.
10-11-17 [[108](#)]
PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part, denied in part

Order: Civil minute order

Parties to Compromise: Summit Nut Co.

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 10,000

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CONFIDENTIALITY

The motion to approve the compromise, and the settlement agreement on which it is based, each purport to require that the settlement be confidential. Confidential Settlement Agreement ¶ 6 ("The terms and conditions of this Agreement and matters relating thereto shall remain confidential between the Parties and shall not be disclosed to any other person. . . ."). Limited exceptions to the confidentiality requirement exist, including a catch-all phrase "as otherwise required by applicable law or regulation." *Id.* Presumably the exception would encompass the limited disclosure necessary for obtain Rule 9019 approval of the settlement by this court.

LBR 9018-1(a) authorizes documents to be filed under seal. Parties wishing to invoke the protections of LBR 9018-1(a) must move to seal the document, preferably before it is filed with the Clerk. LBR 9018-1(b). Here, the debtor in possession has not moved to seal the settlement agreement, but instead has filed the Confidential Settlement Agreement as an exhibit in support of the motion. It also summarized the terms of the settlement in the motion itself. Admitted, some recitation of the terms of settlement will be required in most, if not all, Rule 9019 motions. But in this case, it appears that the debtors has disclosed the entire agreement, including the settling parties and the terms of settlement. As a consequence, the court deems the parties to have waived any confidentiality provision contained in the settlement agreement.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Pioneer Nursery, LLC's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 111, except for para. 6 of the Confidential Settlement Agreement.

IT IS ORDERED that all other relief is denied.

10. [17-13112](#)-A-11 PIONEER NURSERY, LLC MOTION TO COMPROMISE
[FW](#)-18 CONTROVERSY/APPROVE SETTLEMENT
PIONEER NURSERY, LLC/MV AGREEMENT WITH TOM MARTELLA
10-11-17 [[114](#)]
PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part, denied in part

Order: Civil minute order

Parties to Compromise: Tom Martella

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 5008 replacement trees

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CONFIDENTIALITY

The motion to approve the compromise, and the settlement agreement on which it is based, each purport to require that the settlement be confidential. Confidential Settlement Agreement ¶ 6 ("The terms and conditions of this Agreement and matters relating thereto shall remain confidential between the Parties and shall not be disclosed to any other person. . . ."). Limited exceptions to the confidentiality requirement exist, including a catch-all phrase "as otherwise required by applicable law or regulation." *Id.* Presumably the exception would encompass the limited disclosure necessary to obtain Rule 9019 approval of the settlement by this court.

LBR 9018-1(a) authorizes documents to be filed under seal. Parties wishing to invoke the protections of LBR 9018-1(a) must move to seal the document, preferably before it is filed with the Clerk. LBR 9018-1(b). Here, the debtor in possession has not moved to seal the settlement agreement, but instead has filed the Confidential Settlement Agreement as an exhibit in support of the motion. It also summarized the terms of the settlement in the motion itself. Admitted, some recitation of the terms of settlement will be required in most, if not all, Rule 9019 motions. But in this case, it appears that the debtors has disclosed the entire agreement, including the settling parties and the terms of settlement. As a consequence, the court deems the parties to have waived any confidentiality provision contained in the settlement agreement.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Pioneer Nursery, LLC's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 117, except for para. 6 of the Confidential Settlement Agreement.

IT IS ORDERED that all other relief is denied.

11. [17-13112](#)-A-11 PIONEER NURSERY, LLC
FW-9
PIONEER NURSERY, LLC/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DR. JOSEPH IPE
10-11-17 [[60](#)]

PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part, denied in part

Order: Civil minute order

Parties to Compromise: Joseph Ipe

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 8,384 replacement trees

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CONFIDENTIALITY

The motion to approve the compromise, and the settlement agreement on which it is based, each purport to require that the settlement be confidential. Confidential Settlement Agreement ¶ 6 ("The terms and conditions of this Agreement and matters relating thereto shall remain confidential between the Parties and shall not be disclosed to any other person. . . ."). Limited exceptions to the confidentiality requirement exist, including a catch-all phrase "as otherwise required by applicable law or regulation." *Id.* Presumably the exception would encompass the limited disclosure necessary for obtain Rule 9019 approval of the settlement by this court.

LBR 9018-1(a) authorizes documents to be filed under seal. Parties wishing to invoke the protections of LBR 9018-1(a) must move to seal the document, preferably before it is filed with the Clerk. LBR 9018-1(b). Here, the debtor in possession has not moved to seal the settlement agreement, but instead has filed the Confidential Settlement Agreement as an exhibit in support of the motion. It also summarized the terms of the settlement in the motion itself. Admitted, some recitation of the terms of settlement will be required in most, if not all, Rule 9019 motions. But in this case, it appears that the debtors has disclosed the entire agreement, including the settling parties and the terms of settlement. As a consequence, the court deems the parties to have waived any confidentiality provision contained in the settlement agreement.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a

compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Pioneer Nursery, LLC's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 63, except for para. 6 of the Confidential Settlement Agreement.

IT IS ORDERED that all other relief is denied.

12.	<u>16-10015</u> -A-9	SOUTHERN INYO HEALTHCARE DISTRICT	CONTINUED STATUS CONFERENCE RE: CHAPTER 9 VOLUNTARY PETITION 1-4-16 [<u>1</u>]
	ASHLEY MCDOW/Atty. for dbt. CONTINUED TO 11/8/17		

Final Ruling

The status conference is continued to November 8, 2017, at 11:00 a.m. in Bakersfield. Telephonic appearances are authorized.

13. [16-10015](#)-A-9 SOUTHERN INYO HEALTHCARE CONTINUED AMENDED DISCLOSURE
[BH](#)-19 DISTRICT STATEMENT
7-20-17 [[302](#)]

ASHLEY MCDOW/Atty. for dbt.

Final Ruling

The hearing is continued to November 8, 2017, at 11:00 a.m. in Bakersfield. Telephonic appearances are authorized.

14. [17-12389](#)-A-11 DON ROSE OIL CO., INC. CONTINUED MOTION FOR APPROVAL
[LAK](#)-2 OF STIPULATION AUTHORIZING
SALLYPORT COMMERCIAL FINANCE, AMENDMENT TO ACCOUNT SALE AND
LLC/MV PURCHASE AGREEMENT
9-26-17 [[435](#)]

RILEY WALTER/Atty. for dbt.
SCOTT SIEGEL/Atty. for mv.

No Ruling

15. [17-12389](#)-A-11 DON ROSE OIL CO., INC. MOTION FOR RELIEF FROM
[RWR](#)-1 AUTOMATIC STAY
NATIONS FUND I, LLC/MV 10-12-17 [[471](#)]
RILEY WALTER/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

No Ruling

16. [16-10015](#)-A-9 SOUTHERN INYO HEALTHCARE MOTION TO CONTINUE HEARING
[BH](#)-20 DISTRICT 10-26-17 [[338](#)]
SOUTHERN INYO HEALTHCARE
DISTRICT/MV
ASHLEY MCDOW/Atty. for dbt.
OST 10/26/17

No Ruling