

**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 29, 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 CONTINUED 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); continued from November 1, 2017

Disposition: Denied

Order: Civil minute order

Parties to Compromise: Triangle E Farms

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 2,681 UCB1 replacement trees

Pioneer Nursery, LLC moves to resolve a claim against the estate by Triangle E. Farms arising from the sale of 2,681 UCB1 Rhodococcus-infected pistachio root-stock trees. The motion The settlement proposes to replace the trees on a tree-for-tree basis with healthy UCB1 trees. Confidential Settlement Agreement ¶ 2, October 11, 2017, ECF # 69. The Official Creditors Committee opposes the settlement with UCB1 trees, but is agreeable to replacement with a different kind of pistachio root-stock tree, PG1 or PG2 trees. From the opposition, the court infers that the kind of root-stock in the swap is a material term of the settlement agreement.

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.*

In a close case, the court finds that the movant has not shown by a preponderance of the evidence that the settlement is, in fact, in the best interests of the estate. First, evidence offered in support of the motion makes only a general showing that the estate's interests are best served by this settlement. There has been almost no showing of the probabilities of success. Blackwell decl. ¶ 13, October 11, 2017, ECF # 68 ("Pioneer has been sued in state court by purchasers of its trees who alleged harm from *Rhodococcus*. Pioneer believes it has meritorious defenses to these state court claims."). Since the debtor is the defendant the difficulties in collection is either not applicable or neutral as to settlement. Because the central issue with respect to the settling defendant is one of products liability in a commercial, agricultural contest, the court assumes that the litigation is complex and, likely expensive. *Id.* at ¶ 14 (noting the litigation would be "very expensive" without specifying amount). Based on the nature of the litigation and claims involved, the court also presumes significant delay associated with continued litigation of the issue.

Second, the Official Committee of Unsecured Creditors opposes the motion, at least to the extent that the debtor in possession intends to use UCB1 trees, rather than PG1 or PG2 trees, for settlement. In this case, the court believes it proper to give particular weight to the objection of the committee. While always a fiduciary for creditors, in this case the debtor in possession's stated intention of liquidation, rather than reorganization, truly means the debtor has no (or almost no) stake in the outcome. Here, the parties most impacted by the bankruptcy, and this settlement, are the creditors, and particularly unsecured creditors. As a consequence, consistent with *A & C Props.*, the court assigns particular weight to the comments of the committee. For each of these reasons, the court finds that the evidence tips against approval of the settlement.

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, opposition, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

IT IS FURTHER ORDERED that the parties have waived confidentiality provisions of the settlement agreement.

2. 17-13112 -A-11 PIONEER NURSERY, LLC FW -11 PIONEER NURSERY, LLC/MV PETER FEAR/Atty. for dbt.	CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PALLA & SONS 10-11-17 [72]
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Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2); continued from November 1, 2017

Disposition: Granted

Order: Civil minute order

Parties to Compromise: Palla & Sons

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 29,253 PG1 replacement trees

Pioneer Nursery, LLC moves to resolve a claim against the estate by Palla & Sons arising from the sale of 29,253 UCB1 and PG1 Rhodococcus-infected pistachio root-stock trees. The settlement proposes to replace the trees on a tree-for-tree basis with healthy PG1 trees only. Confidential Settlement Agreement ¶ 2, October 11, 2017, ECF # 75. The Official Creditors Committee supports the settlement on the condition that only PG1 trees, and not USB1 trees, are used for settlement of Palla & Sons' claim.

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, as well as the support of the Official Committee of Unsecured Creditors, 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 FURTHER ORDERED that the parties have waived confidentiality provisions of the settlement agreement.

3. [17-13112](#)-A-11 PIONEER NURSERY, LLC
[FW-12](#)
PIONEER NURSERY, LLC/MV

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH NORTH BOWIE
FARMING
10-11-17 [[78](#)]

PETER FEAR/Atty. for dbt.

Tentative Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(2); continued from November 1, 2017

Disposition: Denied

Order: Civil minute order

Parties to Compromise: North Bowie Farming

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 67,250 UCB1 replacement trees

Pioneer Nursery, LLC moves to resolve a claim against the estate by North Bowie Farming arising from the sale of 67,250 UCB1 Rhodococcus-infected pistachio root-stock trees. The settlement proposes to replace the trees on a tree-for-tree basis with healthy UCB1 trees. Confidential Settlement Agreement ¶ 2, October 11, 2017, ECF # 81. The Official Creditors Committee opposes the settlement with UCB1 trees, but is agreeable to replacement with a different kind of pistachio root-stock tree, PG1 or PG2 trees. From the opposition, the court infers that the kind of root-stock is a material term of the agreement.

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.*

In a close case, the court finds that the movant has not shown by a preponderance of the evidence that the settlement is, in fact, in the best interests of the estate. First, evidence offered in support of the motion makes only a general showing that the estate's interests are best served by this settlement. There has been almost no showing of the probabilities of success. Blackwell decl. ¶ 13, October 11, 2017, ECF # 80 ("Pioneer has been sued in state court by purchasers of its trees who alleged harm from *Rhodococcus*. Pioneer believes it has meritorious defenses to these state court claims."). Since the debtor is the defendant the difficulties in collection is either not applicable or neutral as to settlement. Because the central issue with respect to the settling defendant is one of products liability in a commercial, agricultural contest, the court assumes that the litigation is complex and, likely expensive. *Id.* at ¶ 14 (noting the litigation would be "very expensive" without specifying amount). Based on the nature of the litigation and claims involved, the court also presumes significant delay associated with continued litigation of the issue.

Second, the Official Committee of Unsecured Creditors opposes the motion, at least to the extent that the debtor in possession intends to use UCB1 trees, rather than PG1 or PG2 trees, for settlement. In this case, the court believes it proper to give particular weight to the objection of the committee. While always a fiduciary for creditors, in this case the debtor in possession's stated intention of liquidation, rather than reorganization, truly means the debtor has no (or almost no) stake in the outcome. Here, the parties most impacted by the bankruptcy, and this settlement, are the creditors, and particularly unsecured creditors. As a consequence, consistent with *A & C Props.*, the court assigns particular weight to the comments of the committee. For each of these reasons, the court finds that the evidence tips against approval of the settlement.

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, opposition, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

IT IS FURTHER ORDERED that the parties have waived confidentiality provisions of the settlement agreement.

4. 17-13112 -A-11 PIONEER NURSERY, LLC FW -13 PIONEER NURSERY, LLC/MV PETER FEAR/Atty. for dbt.	CONTINUED 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); continued from November 1, 2017

Disposition: Denied

Order: Civil minute order

Parties to Compromise: S & H Ranch

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 1,175 UCB1 replacement trees

Pioneer Nursery, LLC moves to resolve a claim against the estate by S & H Ranch arising from the sale of 1,175 UCB1 Rhodococcus-infected pistachio root-stock trees. The settlement proposes to replace the trees on a tree-for-tree basis with healthy UCB1 trees. Confidential Settlement Agreement ¶ 2, October 11, 2017, ECF # 87. The Official Creditors Committee opposes the settlement with UCB1 trees, but is agreeable to replacement with a different kind of pistachio root-stock tree, PG1 or PG2 trees. From the opposition, the court infers that the kind of root-stock is a material term of the agreement.

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.*

In a close case, the court finds that the movant has not shown by a preponderance of the evidence that the settlement is, in fact, in the best interests of the estate. First, evidence offered in support of the motion makes only a general showing that the estate's interests are best served by this settlement. There has been almost no showing of the probabilities of success. Blackwell decl. ¶ 13, October 11, 2017, ECF # 86 ("Pioneer has been sued in state court by purchasers of its trees who alleged harm from *Rhodococcus*. Pioneer believes it has meritorious defenses to these state court claims."). Since the debtor is the defendant the difficulties in collection is either not applicable or neutral as to settlement. Because the central issue with respect to the settling defendant is one of products liability in a commercial, agricultural contest, the court assumes that the litigation is complex and, likely expensive. *Id.* at ¶ 14 (noting the litigation would be "very expensive" without specifying amount). Based on the nature of the litigation and claims involved, the court also presumes significant delay associated with continued litigation of the issue.

Second, the Official Committee of Unsecured Creditors opposes the motion, at least to the extent that the debtor in possession intends to use UCB1 trees, rather than PG1 or PG2 trees, for settlement. In this case, the court believes it proper to give particular weight to the objection of the committee. While always a fiduciary for creditors, in this case the debtor in possession's stated intention of liquidation, rather than reorganization, truly means the debtor has no

(or almost no) stake in the outcome. Here, the parties most impacted by the bankruptcy, and this settlement, are the creditors, and particularly unsecured creditors. As a consequence, consistent with *A & C Props.*, the court assigns particular weight to the comments of the committee. For each of these reasons, the court finds that the evidence tips against approval of the settlement.

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, opposition, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

IT IS FURTHER ORDERED that the parties have waived confidentiality provisions of the settlement agreement.

5. [17-13112](#)-A-11 PIONEER NURSERY, LLC CONTINUED MOTION TO COMPROMISE
[FW](#)-14 CONTROVERSY/APPROVE SETTLEMENT
PIONEER NURSERY, LLC/MV 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); continued from November 1, 2017

Disposition: Denied

Order: Civil minute order

Parties to Compromise: Stadden Farms, Inc.

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: "6,000 replacement trees"

Pioneer Nursery, LLC moves to resolve a claim against the estate by Stadden Farms, Inc. from the sale of 6,000 UCB1 Rhodococcus-infected pistachio root-stock trees. The motion does not specify whether the root-stock replacement trees are UCB1, PG1 or PG2. The settlement proposes to replace the trees on a tree-for-tree basis with healthy trees. Confidential Settlement Agreement ¶ 2, October 11, 2017, ECF # 93. The Official Creditors Committee supports the settlement as long as the trees are only PG1 or PG2. The court presumes that the kind of root-stock is a material term of the agreement.

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.* If UCB1 tress were intended, the applicability of the *A & C Props.* analysis is set forth below.

MOTION INSUFFICIENTLY STATES RELIEF REQUESTED

Federal Rule of Bankruptcy Procedure 9013 requires a written motion to "set forth the relief or order sought" and to "state with particularity the grounds" for that request. Under this rule, a motion lacking proper grounds for relief (or lacking the relief sought) does not comply with this rule by including them in the declaration, exhibits or other papers in support.

Local Rule 9014-1(d) (3) (A) amplifies Rule 9013. It provides: "The application, motion, contested matter, or other request for relief

shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request" To illustrate what this rule requires, a simple motion for stay relief that complies with Fed. R. Bankr. P. 9013 and LBR 9014-1(d) (3) (A) might state as follows:

Here, the motion fails for lack of particularity. Neither the motion, nor any ancillary documents specify whether the pistachio root-stock trees are of the UCB1, PG1 or PG2 variety. From the Official Unsecured Creditors Committee's opposition, the court presumes that the kind of tree involved in the swap is a material term. Moreover, that the settlement agreement does not so specify. Without specifying which tree is involved, the court will not approve the settlement.

If Replacement Trees Refers to UCB1 Pistachio Root-Stock

In the event that UCB1 trees were intended, the court would deny approval consistent with its ruling on similar motions. "In a close case, the court finds that the movant has not shown by a preponderance of the evidence that the settlement is, in fact, in the best interests of the estate. First, evidence offered in support of the motion makes only a general showing that the estate's interests are best served by this settlement. There has been almost no showing of the probabilities of success. Blackwell decl. ¶ 13, October 11, 2017, ECF # 92 ("Pioneer has been sued in state court by purchasers of its trees who alleged harm from *Rhodococcus*. Pioneer believes it has meritorious defenses to these state court claims."). Since the debtor is the defendant the difficulties in collection is either not applicable or neutral as to settlement. Because the central issue with respect to the settling defendant is one of products liability in a commercial, agricultural contest, the court assumes that the litigation is complex and, likely expensive. *Id.* at ¶ 14 (noting the litigation would be "very expensive" without specifying amount). Based on the nature of the litigation and claims involved, the court also presumes significant delay associated with continued litigation of the issue. Second, the Official Committee of Unsecured Creditors opposes the motion, at least to the extent that the debtor in possession intends to use UCB1 trees, rather than PG1 or PG2 trees, for settlement. In this case, the court believes it proper to give particular weight to the objection of the committee. While always a fiduciary for creditors, in this case the debtor in possession's stated intention of liquidation, rather than reorganization, truly means the debtor has no (or almost no) stake in the outcome. Here, the parties most impacted by the bankruptcy, and this settlement, are the creditors, and particularly unsecured creditors. As a consequence, consistent with *A & C Props.*, the court assigns particular weight to the comments of the committee. For each of these reasons, the court finds that the evidence tips against approval of the settlement." Motion to Approve Compromise with S & H Ranch, FW-13.

If Replacement Trees Refers to PG1 and/or PG2 Root-Stock

In the event that PG1 and/or PG2 trees were intended by the motion, but not specified in the agreement, the court will not approve the motion as potentially compelling respondent settling party to accept trees of a lesser grade than bargain for. Such an instance would appear to preclude formation of a contract based on mutual mistaken in

which neither party is at fault or both parties are at fault. *Merced County Sheriff's Employees' Assn. v. Merced*, 188 C.A.3d 662, 676 (1987); *Raffles v. Wichelhaus*, 2 H. & C. 906, (no contract resulted where agreement called for one party to purchase goods arriving on the ship "Peerless," and there were two such ships of that name.). As a result, the motion will be denied.

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, opposition, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

IT IS FURTHER ORDERED that the parties have waived confidentiality provisions of the settlement agreement.

6. [17-13112](#)-A-11 PIONEER NURSERY, LLC CONTINUED MOTION TO COMPROMISE
[FW](#)-15 CONTROVERSY/APPROVE SETTLEMENT
PIONEER NURSERY, LLC/MV 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); continued from November 1, 2017

Disposition: Denied

Order: Civil minute order

Parties to Compromise: Arioso Farming

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 2,200 UCB1 replacement trees

Pioneer Nursery, LLC moves to resolve a claim against the estate by Arioso Farming arising from the sale of 2,200 UCB1 Rhodococcus-infected pistachio root-stock trees. The settlement proposes to replace the trees on a tree-for-tree basis with healthy UCB1 trees. Confidential Settlement Agreement ¶ 2, October 11, 2017, ECF # 99. The Official Creditors Committee opposes the settlement with UCB1 trees, but is agreeable to replacement with a different kind of pistachio root-stock tree, PG1 or PG2 trees. From the opposition, the court infers that the kind of root-stock is a material term of the agreement.

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.*

In a close case, the court finds that the movant has not shown by a preponderance of the evidence that the settlement is, in fact, in the best interests of the estate. First, evidence offered in support of the motion makes only a general showing that the estate's interests are best served by this settlement. There has been almost no showing of the probabilities of success. Blackwell decl. ¶ 13, October 11, 2017, ECF # 98 ("Pioneer has been sued in state court by purchasers of its trees who alleged harm from *Rhodococcus*. Pioneer believes it has meritorious defenses to these state court claims."). Since the debtor is the defendant the difficulties in collection is either not applicable or neutral as to settlement. Because the central issue with respect to the settling defendant is one of products liability in a commercial, agricultural contest, the court assumes that the

litigation is complex and, likely expensive. *Id.* at ¶ 14 (noting the litigation would be “very expensive” without specifying amount). Based on the nature of the litigation and claims involved, the court also presumes significant delay associated with continued litigation of the issue.

Second, the Official Committee of Unsecured Creditors opposes the motion, at least to the extent that the debtor in possession intends to use UCB1 trees, rather than PG1 or PG2 trees, for settlement. In this case, the court believes it proper to give particular weight to the objection of the committee. While always a fiduciary for creditors, in this case the debtor in possession's stated intention of liquidation, rather than reorganization, truly means the debtor has no (or almost no) stake in the outcome. Here, the parties most impacted by the bankruptcy, and this settlement, are the creditors, and particularly unsecured creditors. As a consequence, consistent with *A & C Props.*, the court assigns particular weight to the comments of the committee. For each of these reasons, the court finds that the evidence tips against approval of the settlement.

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, opposition, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

IT IS FURTHER ORDERED that the parties have waived confidentiality provisions of the settlement agreement.

7. [17-13112](#)-A-11 PIONEER NURSERY, LLC CONTINUED 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); continued from November 1, 2017

Disposition: Denied

Order: Civil minute order

Parties to Compromise: Netto West Farming

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 850 UCB1 replacement trees

Pioneer Nursery, LLC moves to resolve a claim against the estate by Netto West Farming arising from the sale of 850 UCB1 Rhodococcus-infected pistachio root-stock trees. The settlement proposes to replace the trees on a tree-for-tree basis with healthy UCB1 trees. Confidential Settlement Agreement ¶ 2, October 11, 2017, ECF # 105. The Official Creditors Committee opposes the settlement with UCB1 trees, but is agreeable to replacement with a different kind of pistachio root-stock tree, PG1 or PG2 trees. From the opposition, the court infers that the kind of root-stock is a material term of the agreement.

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.*

In a close case, the court finds that the movant has not shown by a preponderance of the evidence that the settlement is, in fact, in the

best interests of the estate. First, evidence offered in support of the motion makes only a general showing that the estate's interests are best served by this settlement. There has been almost no showing of the probabilities of success. Blackwell decl. ¶ 13, October 11, 2017, ECF # 104 ("Pioneer has been sued in state court by purchasers of its trees who alleged harm from *Rhodococcus*. Pioneer believes it has meritorious defenses to these state court claims."). Since the debtor is the defendant the difficulties in collection is either not applicable or neutral as to settlement. Because the central issue with respect to the settling defendant is one of products liability in a commercial, agricultural contest, the court assumes that the litigation is complex and, likely expensive. *Id.* at ¶ 14 (noting the litigation would be "very expensive" without specifying amount). Based on the nature of the litigation and claims involved, the court also presumes significant delay associated with continued litigation of the issue.

Second, the Official Committee of Unsecured Creditors opposes the motion, at least to the extent that the debtor in possession intends to use UCB1 trees, rather than PG1 or PG2 trees, for settlement. In this case, the court believes it proper to give particular weight to the objection of the committee. While always a fiduciary for creditors, in this case the debtor in possession's stated intention of liquidation, rather than reorganization, truly means the debtor has no (or almost no) stake in the outcome. Here, the parties most impacted by the bankruptcy, and this settlement, are the creditors, and particularly unsecured creditors. As a consequence, consistent with *A & C Props.*, the court assigns particular weight to the comments of the committee. For each of these reasons, the court finds that the evidence tips against approval of the settlement.

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, opposition, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

IT IS FURTHER ORDERED that the parties have waived confidentiality provisions of the settlement agreement.

8. [17-13112](#)-A-11 PIONEER NURSERY, LLC
[FW-17](#)
PIONEER NURSERY, LLC/MV

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
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); continued from November 1, 2017

Disposition: Denied

Order: Civil minute order

Parties to Compromise: Summit Nut Co.

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 10,000 "replacement trees"

Pioneer Nursery, LLC moves to resolve a claim against the estate by Summit Nut Co. from the sale of 10,000 UCB1 Rhodococcus-infected pistachio root-stock trees. The motion does not specify whether the root-stock replacement trees are UCB1, PG1 or PG2. The settlement proposes to replace the trees on a tree-for-tree basis with healthy trees. Confidential Settlement Agreement ¶ 2, October 11, 2017, ECF # 111. The Official Creditors Committee supports the settlement as long as the trees are only PG1 or PG2. The court presumes that the kind of root-stock is a material term of the agreement.

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.* If UCB1 trees were intended, the applicability of the *A & C Props.* analysis is set forth below.

MOTION INSUFFICIENTLY STATES RELIEF REQUESTED

Federal Rule of Bankruptcy Procedure 9013 requires a written motion to "set forth the relief or order sought" and to "state with particularity the grounds" for that request. Under this rule, a motion lacking proper grounds for relief (or lacking the relief sought) does not comply with this rule by including them in the declaration, exhibits or other papers in support.

Local Rule 9014-1(d)(3)(A) amplifies Rule 9013. It provides: "The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request" To illustrate what this rule requires, a simple motion for stay relief that complies with Fed. R. Bankr. P. 9013 and LBR 9014-1(d)(3)(A) might state as follows:

Here, the motion fails for lack of particularity. Neither the motion, nor any ancillary documents specify whether the pistachio root-stock trees are of the UCB1, PG1 or PG2 variety. From the Official Unsecured Creditors Committee's opposition, the court presumes that the kind of tree involved in the swap is a material term. Moreover, the settlement agreement does not so specify. Without specifying which tree is involved, the court will not approve the settlement.

If Replacement Trees Refers to UCB1 Pistachio Root-Stock

In the event that UCB1 trees were intended, the court would deny approval consistent with its ruling on similar motions. "In a close case, the court finds that the movant has not shown by a preponderance of the evidence that the settlement is, in fact, in the best interests of the estate. First, evidence offered in support of the motion makes only a general showing that the estate's interests are best served by this settlement. There has been almost no showing of the probabilities of success. Blackwell decl. ¶ 13, October 11, 2017, ECF # 110 ("Pioneer has been sued in state court by purchasers of its trees who alleged harm from *Rhodococcus*. Pioneer believes it has meritorious defenses to these state court claims."). Since the debtor is the defendant the difficulties in collection is either not applicable or neutral as to settlement. Because the central issue with respect to the settling defendant is one of products liability in

a commercial, agricultural contest, the court assumes that the litigation is complex and, likely expensive. *Id.* at ¶ 14 (noting the litigation would be "very expensive" without specifying amount). Based on the nature of the litigation and claims involved, the court also presumes significant delay associated with continued litigation of the issue. Second, the Official Committee of Unsecured Creditors opposes the motion, at least to the extent that the debtor in possession intends to use UCB1 trees, rather than PG1 or PG2 trees, for settlement. In this case, the court believes it proper to give particular weight to the objection of the committee. While always a fiduciary for creditors, in this case the debtor in possession's stated intention of liquidation, rather than reorganization, truly means the debtor has no (or almost no) stake in the outcome. Here, the parties most impacted by the bankruptcy, and this settlement, are the creditors, and particularly unsecured creditors. As a consequence, consistent with *A & C Props.*, the court assigns particular weight to the comments of the committee. For each of these reasons, the court finds that the evidence tips against approval of the settlement." Motion to Approve Compromise with S & H Ranch, FW-13.

If Replacement Trees Refers to PG1 and/or PG2 Root-Stock

In the event that PG1 and/or PG2 trees were intended by the motion, but not specified in the agreement, the court will not approve the motion as potentially compelling respondent settling party to accept trees of a lesser grade than bargain for. Such an instance would appear to preclude formation of a contract based on mutual mistaken in which neither party is at fault or both parties are at fault. *Merced County Sheriff's Employees' Assn. v. Merced*, 188 C.A.3d 662, 676 (1987); *Raffles v. Wichelhaus*, 2 H. & C. 906, (no contract resulted where agreement called for one party to purchase goods arriving on the ship "Peerless," and there were two such ships of that name.). As a result, the motion will be denied.

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, opposition, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

IT IS FURTHER ORDERED that the parties have waived confidentiality provisions of the settlement agreement.

9. [17-13112](#)-A-11 PIONEER NURSERY, LLC CONTINUED 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); continued from November 1, 2017

Disposition: Denied

Order: Civil minute order

Parties to Compromise: Tom Martella

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 5008 "replacement trees"

Pioneer Nursery, LLC moves to resolve a claim against the estate by Tom Martella from the sale of 5008 UCB1 Rhodococcus-infected pistachio root-stock trees. The motion does not specify whether the root-stock replacement trees are UCB1, PG1 or PG2. The settlement proposes to replace the trees on a tree-for-tree basis with healthy trees. Confidential Settlement Agreement ¶ 2, October 11, 2017, ECF # 117. The Official Creditors Committee supports the settlement as long as the trees are only PG1 or PG2. The court presumes that the kind of root-stock is a material term of the agreement.

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.* If UCB1 trees were intended, the applicability of the *A & C Props.* analysis is set forth below.

MOTION INSUFFICIENTLY STATES RELIEF REQUESTED

Federal Rule of Bankruptcy Procedure 9013 requires a written motion to "set forth the relief or order sought" and to "state with particularity the grounds" for that request. Under this rule, a motion lacking proper grounds for relief (or lacking the relief sought) does not comply with this rule by including them in the declaration, exhibits or other papers in support.

Local Rule 9014-1(d)(3)(A) amplifies Rule 9013. It provides: "The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request" To illustrate what this rule requires, a simple motion for stay relief that complies with Fed. R. Bankr. P. 9013 and LBR 9014-1(d)(3)(A) might state as follows:

Here, the motion fails for lack of particularity. Neither the motion, nor any ancillary documents specify whether the pistachio root-stock trees are of the UCB1, PG1 or PG2 variety. From the Official Unsecured Creditors Committee's opposition, the court presume that the kind of tree involved in the swap is a material term. Moreover, the settlement agreement does not so specify. Without specifying which tree is involved, the court will not approve the settlement.

If Replacement Trees Refers to UCB1 Pistachio Root-Stock

In the event that UCB1 trees were intended, the court would deny approval consistent with its ruling on similar motions. "In a close case, the court finds that the movant has not shown by a preponderance of the evidence that the settlement is, in fact, in the best interests of the estate. First, evidence offered in support of the motion makes only a general showing that the estate's interests are best served by this settlement. There has been almost no showing of the probabilities of success. Blackwell decl. ¶ 13, October 11, 2017, ECF # 116 ("Pioneer has been sued in state court by purchasers of its trees who alleged harm from *Rhodococcus*. Pioneer believes it has meritorious defenses to these state court claims."). Since the debtor is the defendant the difficulties in collection is either not applicable or neutral as to settlement. Because the central issue with respect to the settling defendant is one of products liability in

a commercial, agricultural contest, the court assumes that the litigation is complex and, likely expensive. *Id.* at ¶ 14 (noting the litigation would be "very expensive" without specifying amount). Based on the nature of the litigation and claims involved, the court also presumes significant delay associated with continued litigation of the issue. Second, the Official Committee of Unsecured Creditors opposes the motion, at least to the extent that the debtor in possession intends to use UCB1 trees, rather than PG1 or PG2 trees, for settlement. In this case, the court believes it proper to give particular weight to the objection of the committee. While always a fiduciary for creditors, in this case the debtor in possession's stated intention of liquidation, rather than reorganization, truly means the debtor has no (or almost no) stake in the outcome. Here, the parties most impacted by the bankruptcy, and this settlement, are the creditors, and particularly unsecured creditors. As a consequence, consistent with *A & C Props.*, the court assigns particular weight to the comments of the committee. For each of these reasons, the court finds that the evidence tips against approval of the settlement." Motion to Approve Compromise with S & H Ranch, FW-13.

If Replacement Trees Refers to PG1 and/or PG2 Root-Stock

In the event that PG1 and/or PG2 trees were intended by the motion, but not specified in the agreement, the court will not approve the motion as potentially compelling respondent settling party to accept trees of a lesser grade than bargain for. Such an instance would appear to preclude formation of a contract based on mutual mistaken in which neither party is at fault or both parties are at fault. *Merced County Sheriff's Employees' Assn. v. Merced*, 188 C.A.3d 662, 676 (1987); *Raffles v. Wichelhaus*, 2 H. & C. 906, (no contract resulted where agreement called for one party to purchase goods arriving on the ship "Peerless," and there were two such ships of that name.). As a result, the motion will be denied.

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, opposition, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

IT IS FURTHER ORDERED that the parties have waived confidentiality provisions of the settlement agreement.

10. [17-13112](#)-A-11 PIONEER NURSERY, LLC
FW-9
PIONEER NURSERY, LLC/MV

CONTINUED 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); continued from November 1, 2017

Disposition: Denied

Order: Civil minute order

Parties to Compromise: Joseph Ipe

Dispute Compromised: Rhodococcus-infected trees

Summary of Material Terms: 8,384 UCB1 replacement trees

Pioneer Nursery, LLC moves to resolve a claim against the estate by Joseph Ipe arising from the sale of 8,384 UCB1 Rhodococcus-infected pistachio root-stock trees. The settlement proposes to replace the trees on a tree-for-tree basis with healthy UCB1 trees. Confidential Settlement Agreement ¶ 2, October 11, 2017, ECF # 63. The Official Creditors Committee opposes the settlement with UCB1 trees, but is agreeable to replacement with a different kind of pistachio root-stock tree, PG1 or PG2 trees. From the opposition, the court infers that the kind of root-stock is a material term of the agreement.

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.*

In a close case, the court finds that the movant has not shown by a preponderance of the evidence that the settlement is, in fact, in the best interests of the estate. First, evidence offered in support of the motion makes only a general showing that the estate's interests are best served by this settlement. There has been almost no showing of the probabilities of success. Blackwell decl. ¶ 13, October 11, 2017, ECF # 62 ("Pioneer has been sued in state court by purchasers of its trees who alleged harm from *Rhodococcus*. Pioneer believes it has meritorious defenses to these state court claims."). Since the debtor is the defendant the difficulties in collection is either not applicable or neutral as to settlement. Because the central issue with respect to the settling defendant is one of products liability in a commercial, agricultural contest, the court assumes that the litigation is complex and, likely expensive. *Id.* at ¶ 14 (noting the litigation would be "very expensive" without specifying amount). Based on the nature of the litigation and claims involved, the court also presumes significant delay associated with continued litigation of the issue.

Second, the Official Committee of Unsecured Creditors opposes the motion, at least to the extent that the debtor in possession intends to use UCB1 trees, rather than PG1 or PG2 trees, for settlement. In this case, the court believes it proper to give particular weight to the objection of the committee. While always a fiduciary for creditors, in this case the debtor in possession's stated intention of liquidation, rather than reorganization, truly means the debtor has no (or almost no) stake in the outcome. Here, the parties most impacted by the bankruptcy, and this settlement, are the creditors, and particularly unsecured creditors. As a consequence, consistent with *A & C Props.*, the court assigns particular weight to the comments of the committee. For each of these reasons, the court finds that the evidence tips against approval of the settlement.

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, opposition, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

IT IS FURTHER ORDERED that the parties have waived confidentiality provisions of the settlement agreement.

11. [16-10015](#)-A-9 SOUTHERN INYO HEALTHCARE DISTRICT CONTINUED STATUS CONFERENCE RE: CHAPTER 9 VOLUNTARY PETITION 1-4-16 [[1](#)]
ASHLEY MCDOW/Atty. for dbt.

No Ruling

12. [16-10015](#)-A-9 SOUTHERN INYO HEALTHCARE DISTRICT CONTINUED AMENDED DISCLOSURE STATEMENT 7-20-17 [[302](#)]
[BH](#)-19
ASHLEY MCDOW/Atty. for dbt.
RESPONSIVE PLEADING

No Ruling

13. [16-10015](#)-A-9 SOUTHERN INYO HEALTHCARE DISTRICT CONTINUED MOTION TO TERMINATE HCCA MANAGEMENT AGREEMENT AND/OR MOTION TO MODIFY THE TERMS OF THE HCCA MANAGEMENT AGREEMENT 10-17-17 [[325](#)]
[BH](#)-19
SOUTHERN INYO HEALTHCARE DISTRICT/MV
ASHLEY MCDOW/Atty. for dbt.
RESPONSIVE PLEADING

No Ruling

14. [15-12827](#)-A-11 BLUEGREENPISTA ENTERPRISES, INC. MOTION TO ALLOW TRUSTEE AND TRUSTEE'S COUNSEL TO FILE FURTHER FEE APPLICATIONS 11-1-17 [[734](#)]
[TGM](#)-31
RANDELL PARKER/MV
TRUDI MANFREDO/Atty. for mv.

Final Ruling

Motion: for Rule 60(b) Relief re Orders, January 10, 2017, ECF # 528, 530

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written

opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. 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).

DISCUSSION

Rule 60(b) allows relief from an order based on mistake, inadvertence, surprise, or excusable neglect. Fed. R. Civ. P. 60(b), *incorporated* by Fed. R. Bankr. P. 9024. In December 2016, trustee Randell Parker and her attorney Trudi G. Manfredo filed final fee application, based on the belief that the estate was administratively insolvent. Parker decl. ¶ 11, December 13, 2016, ECF # 483. Those applications were granted. Orders, January 10, 2017, ECF # 528, 530. Since then, the estate received an unexpected "grower bonus" for the 2015 crop year in the amount of \$559,937.98. This bonus will necessitate further work by the movants. Based on the Parker's supporting declaration, the court finds surprise and will grant the motion.

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.

Randell Parker's and Trudi G. Manfredo's motions having been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted;

IT IS FURTHER ORDERED that the Orders, January 10, 2017, ECF # 528 and # 530, are each modified as follows: (1) the word "final" in the third paragraph, first sentence is replaced with "interim;" and (2) the fourth sentence of the third paragraph is stricken; and

IT IS FURTHER ORDERED that trustee Randell Parker and attorney Trudi G. Manfredo may file such further interim and final applications for compensation and costs as are authorized by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

15. [11-17165](#)-A-11 OAKHURST LODGE, INC., A
CALIFORNIA CORPORATION

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-22-11 [\[1\]](#)

DONNA STANDARD/Atty. for dbt.

No Ruling

16. [17-12389](#)-A-11 DON ROSE OIL CO., INC. CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
6-22-17 [[1](#)]

RILEY WALTER/Atty. for dbt.

No Ruling

17. [17-13112](#)-A-11 PIONEER NURSERY, LLC MOTION TO EMPLOY HAGOP T.
[KDG](#)-1 BEDOYAN AS ATTORNEY(S)
OFFICIAL COMMITTEE OF 11-14-17 [[192](#)]
UNSECURED CREDITORS/MV
PETER FEAR/Atty. for dbt.

No Ruling

18. [17-13112](#)-A-11 PIONEER NURSERY, LLC CONTINUED MOTION TO ASSUME
[FW](#)-1 LEASE OR EXECUTORY CONTRACT
PIONEER NURSERY, LLC/MV 10-11-17 [[120](#)]
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

No Ruling

19. [17-13112](#)-A-11 PIONEER NURSERY, LLC MOTION TO EXTEND TIME TO ASSUME
[FW](#)-21 OR REJECT UNEXPIRED LEASE OF
PIONEER NURSERY, LLC/MV 11-16-17 [[223](#)]
PETER FEAR/Atty. for dbt.
OST

Final Ruling

At the suggestion of the parties, the matter is continued to December 12, 2017, at 1:30 p.m. Not later than seven days prior to the continued hearing, the parties shall file a joint status report.