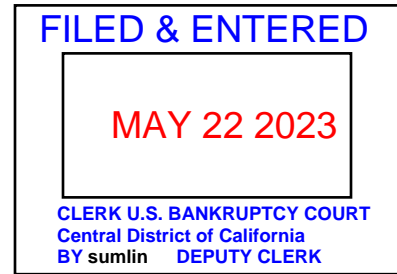


DAVID L. NEALE (SBN 141225)
JULIET Y. OH (SBN 211414)
LINDSEY L. SMITH (SBN 265401)
LEVENE, NEALE, BENDER, YOO & GOLUBCHIK L.L.P.
2818 La Cienega Avenue
Los Angeles, California 90034
Telephone: (310) 229-1234; Facsimile: (310) 229-1244
Email: dln@lnbyg.com; jyo@lnbyg.com; lls@lnbyg.com

Attorneys for Chapter 11 Debtor
and Debtor in Possession



CHANGES MADE BY COURT

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re	) Case No.: 2:22-bk-15163-NB
)
THE HACIENDA COMPANY, LLC,	) Chapter 11 Case
	) Subchapter V
Debtor.)
	) MEMORANDUM DECISION
	) AUTHORIZING SOLICITATION OF
	) VOTES ON PLAN, AND RELATED
	) PROCEDURES
)
	) <u>Status Conference:</u>
	) DATE: May 16, 2023
	) TIME: 2:00 p.m.
	) PLACE: Courtroom 1545
	) 255 E. Temple Street
	) Los Angeles, California
)
	) <u>Plan Confirmation Hearing:</u>
	) DATE: July 11, 2023
	) TIME: 2:00 p.m.
	) PLACE: Courtroom 1545
	) 255 E. Temple Street
	) Los Angeles, California
)

1 The Bankruptcy Court has issued an order [dkt. 142] (the “Order”) setting a combined
2 hearing on final approval of the disclosures set forth in, and confirmation of, the *Debtor’s Second*
3 *Amended Chapter 11 Liquidating Plan Dated March 30, 2023* [dkt. 129] (the “Plan”) proposed by
4 The Hacienda Company, LLC, the debtor and debtor in possession in the above-captioned case and
5 the proponent of the Plan (the “Debtor”). This Memorandum Decision memorializes and further
6 explains this Court’s reasoning relating to the proposed Plan.

7 This Court finds and concludes that the issues set forth in the tentative ruling posted prior to
8 the status conference regarding a prior version of the Plan on March 7, 2023, a true and correct
9 copy of which is attached hereto as Exhibit A, have been adequately addressed, for purposes of
10 balloting, by the Plan [dkt. 129, *see also* redline, dkt. 130]. The Court therefore authorizes balloting
11 on the proposed Plan and the setting of deadlines and procedures related to the confirmation of the
12 proposed Plan, in accordance with the terms of the Order.

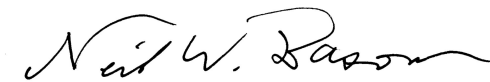
13 The Court notes that it has not required any separate Disclosure Statement so Rule 3017.1 of
14 the Federal Rules of Bankruptcy Procedure does not apply. But even if such Rule could be deemed
15 to apply, that would not change this Court’s procedures. Creditors may object to confirmation of
16 the proposed Plan based on allegedly inadequate disclosures within the Plan, just as they ~~may~~
17 would have been entitled to object to disclosures in a separate disclosure statement.

18 //

1 It will be a confirmation issue how long a period the Debtor should have, and what
2 conditions if any should be imposed, to liquidate its shares in Lowell Farms, or alternatively to
3 distribute those shares to creditors, considering all facts and circumstances. Those facts and
4 circumstances include (but are not limited to) not wanting to flood the market, and the fluctuating
5 value of the shares. *See generally* 1st Am. Plan [dkt. 106], p. 4:5-10 (reflecting \$1.74/share as of
6 February 25, 2021 and \$0.13/share as of January 31, 2023).

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23 Date: May 22, 2023


Neil W. Bason
United States Bankruptcy Judge

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, May 16, 2023

Hearing Room 1545

2:00 PM

CONT... The Hacienda Company, LLC

Chapter 11

Tentative Ruling for 3/7/23:
Appearances required.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, May 16, 2023

Hearing Room 1545

2:00 PM

CONT... The Hacienda Company, LLC

Chapter 11

(1) Current issues

(a) Fee Application of LNBYG (dkt. 77, 82, 98); no opposition on file
Allow \$82,460.00 in fees and \$4,840.03 in expenses, for a total award of \$87,300.03, and authorize and direct payment in the reduced amount of \$52,040.08 after exhausting the remaining funds being held in retainer. See dkt. 77, p. 3:6-7 & 82, p. 2.

(b) Fee Application of Subchapter V Trustee (dkt. 80, 82); no opposition on file

Allow \$5,775.00 in fees and \$0.00 in expenses, for a total award of \$5,775.00, and authorize and direct payment of the full amounts allowed.

Proposed orders: Unless otherwise ordered, Applicants are directed to lodge a proposed order on each of the foregoing matter via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)).

(b) Amended plan (dkt. 106, "AmPlan") and redline (dkt. 107); Status Report of U.S. Trustee ("UST") (dkt. 113); Status Report of Debtor (dkt. 116)

(i) Disclosure statement

This Court anticipates addressing with counsel for Debtor, the United States Trustee, and any other parties in interest whether to order Debtor to prepare a disclosure statement under 11 U.S.C. 1181(b). As a preliminary matter, the tentative ruling is that this issue is properly before this Court, even without a motion by the UST to require a disclosure statement.

This Court is not aware of any rule requiring a noticed motion on this issue. In addition, this Court has the general authority to address such issues at a status conference. See 11 U.S.C. 105(d)(2) (including sub-paragraph (B) (i) thereof) and Rule 9029(b) (Fed. R. Bankr. P.) (procedure when no controlling statute or rules). Cf. Rule 3017.1(a) (Fed. R. Bankr. P.) (analogous authorization for court to approve disclosure statement conditionally "on its own initiative").

Alternatively, the tentative ruling is that it is appropriate to treat the parties' stated positions in their status reports as a motion and opposition, and to hold that, because the parties have not requested a different procedure, any requirement of a different procedure has been forfeited or waived. See *In re Hamer*, 138 S.Ct. 13, 17 n. 1 (2017) (distinguishing forfeiture and waiver). The tentative ruling is that, if the status reports are

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, May 16, 2023

Hearing Room 1545

2:00 PM

CONT... The Hacienda Company, LLC

Chapter 11

treated as a motion and an opposition, it is appropriate to shorten time to address this issue, with any reply orally at the hearing, and without further notice. See 11 U.S.C. 102(1)(A) and Rules 2002, 9006(c), 9013, and 9029(b) (Fed. R. Bankr. P.) (general requirements regarding notice and time).

For all of the foregoing reasons, this Court now turns to the merits of the parties' positions. The tentative ruling is to agree with the UST that there is "cause," within the meaning of 11 U.S.C. 1181(b), to require a disclosure statement, for three reasons: (x) the possibility that if Debtor were to opt to distribute stock instead of cash that *might* expose creditors of criminal prosecution, (y) the likelihood that former "farm workers" are not "sophisticated investors" (dkt. 113, p. 3:6), and (z) the risk that "the cost to liquidate the stocks may exceed the value of the stock itself" (dkt. 113, p. 3:19-20).

Debtor argues (dkt. 116, pp. 2:27-3:14) that any illegality is unsupported by the law, and Debtor points to this Court's Opinion (dkt. 102), which held that for purposes of the UST's motion to dismiss this case it had not established illegality. But the tentative ruling is that this Court's Opinion did not determine all possible illegality, and that disclosure of possible risks is appropriate. See Opinion (dkt. 102) p. 7, n. 3 (emphasizing that Debtor's *apparent* lack of illegal activity was determined on *limited briefing*, and solely for purposes of motion to dismiss, not for other purposes).

Debtor argues (dkt. 116, pp. 3:15-4:2) that, even if farm workers are not sophisticated investors, they are represented by a class action attorney and class representatives. But the tentative ruling is that the burden should not be on the claimants to research possible risks, when the Bankruptcy Code generally requires debtors who are proposing chapter 11 plans to provide "adequate information" (11 U.S.C. 1125(a)(1)), even in small business cases (11 U.S.C. 1125(f)(1)), and the policy choice to streamline Subchapter V cases by dispensing with disclosure statements unless ordered otherwise is predicated on the lack of complexity of most Subchapter V cases.

Debtor also argues (dkt. 116, p. 4:3-10) that the UST's anticipated objection to confirmation of the Plan makes a disclosure statement unnecessary, and that no creditors have requested a disclosure statement. Debtor suggests that requiring a disclosure statement would only serve to increase administrative expenses with "no corresponding benefit to creditors." Dkt. 116, p. 4:9-10. But the tentative ruling is that, again, the burden should not be on other parties to provide adequate information for informed voting on

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, May 16, 2023

Hearing Room 1545

2:00 PM

CONT... The Hacienda Company, LLC

Chapter 11

the proposed AmPlan.

The tentative ruling is that a disclosure statement must "do the math" to show what a typical farm worker might receive in either cash or stock, and as well as the hypothetical costs of establishing a brokerage account and selling the stock. For example, the data in the record to date suggests that there was a \$1.2 million settlement (dkt. 106, p. 4:4), which must be divided among "several hundred farm worker employees" (dkt. 113, p. 3:5), and Debtor's proposed AmPlan estimates a recent stock price of \$0.13 per share (dkt. 106, p. 4:25) and a possible distribution of 4.63 shares per dollar of claim (dkt. 106, p. 6:1 & nn. 1&2), *i.e.*, a distribution of approximately 60 cents on the dollar ($4.63 \times \$0.13 = \0.6019).

These figures are solely for illustrative purposes, and as Debtor notes there are many uncertainties. But the tentative ruling is that a couple of hypothetical examples are necessary to provide adequate information for voting purposes.

(ii) Other Plan-related issues

The parties are directed to address whether, before the AmPlan can be distributed for voting and/or objections, this Court should establish any preliminary briefing schedule and/or direct Debtor to file a further amended plan to address the following issues.

First, the amended plan estimates some claims at \$0.00. See AmPlan (dkt. 106), Ex. 1. The parties should be prepared to address how much money should be put into a "disputed claims reserve" for these claims. See, *e.g., id.*, ("Shongdezai Matangira with a filed claim of \$2,600,000.00 but estimated to be \$0.00").

Second, there is a question about whether to limit how long a period Debtor can take to liquidate its shares of Lowell Farms stock. Part of this Court's decision not to dismiss this case was predicated on the estate not having too close of a connection to the cannabis industry *for too long*. See Opinion on Motion to Dismiss Cannabis-Related Case (dkt. 102) p. 7, fn. 3 & 12:26-13:2 ("Debtor's apparent ownership of 9% of the stock of a cannabis business puts it in uncomfortably close proximity to the cannabis industry[.]" but concluding that "so long as Debtor's process of selling or distributing its stock in the Canadian company does not take too long" dismissal was not warranted under 11 U.S.C. 1112(b)).

The tentative ruling is that it will be a confirmation issue how long a period Debtor should have to liquidate its shares, considering all the facts and

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, May 16, 2023

Hearing Room 1545

2:00 PM

CONT... The Hacienda Company, LLC

Chapter 11

circumstances. Those facts and circumstances include (but are not limited to) not wanting to flood the market, and the fluctuating value of the shares. *See generally* AmPlan (dkt. 106), p. 4:5-10 (reflecting \$1.74/share as of 2/25/21 and \$0.13/share as of 1/31/23)).

(iii) Conclusion

The parties are directed to address whether this Court should direct Debtor to prepare and file a Disclosure Statement, its contents, how to deal with any disputed claims reserves, and whether and how to address any limits on the period of time in which Debtor can sell or distribute shares in Lowell Farms. The parties are also directed to address any schedule for briefing and future hearings on the AmPlan and/or a further amended Plan and/or any Disclosure Statement.

(2) Dates/procedures. This case was filed on 9/21/22. The petition was amended to elect Subchapter V on 9/21/22 (dkt. 6).

- (a) Bar date: 11/30/22 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt. 15).
- (c) Plan: see above (DO NOT SERVE - except on the U.S. Trustee). See Procedures Order.
- (d) Continued status conference: 4/25/23 at 1:00 p.m. No written status report required.

[PRIOR TENTATIVE RULING(S) OMITTED]

Party Information

Debtor(s):

The Hacienda Company, LLC

Represented By
David L. Neale
Lindsey L Smith

Trustee(s):

Susan K Seflin (TR)

Pro Se

EXHIBIT A