

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

In Re: §
§
JAY CHRISTOPHER HUMPHREYS, and §
wife, TINA CHERRINGTON, § **Case No. 18-10375-12**
§
Debtors. §

SAN QUINTIN VALLEY FARMS, LLC, §
USA § **Case No. 18-10376-12**
§
SAN QUINTIN VALLEY FARMS S DE §
RL DE CV, MEXICO § **Case No. 18-10377-12**
§ **(Chapter 12 – Jointly Administered)**

**DEBTORS' MOTION TO APPROVE
COMPROMISE AND SETTLEMENT AGREEMENT**

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

There will be a hearing on this motion on Wednesday, December 18, 2019 at 10:00 a.m. at U.S. Bankruptcy Courtroom for the Southern District of Texas, located 1701 West Bus. Hwy. 83, McAllen, Texas.

TO THE HONORABLE EDUARDO V. RODRIGUEZ, U.S. Bankruptcy Judge:

NOW COME, JAY CHRISTOPHER HUMPREYS (“Humphreys”), and wife, TINA CHERRINGTON, along with their wholly-owned companies, SAN QUINTIN VALLEY FARMS, LLC, a Texas limited liability company (“SQVF”), and SAN QUINTIN VALLEY FARMS S DE RL DE CV, MEXICO (“San Quintin Mexico”), a corporation organized under the laws of the United Mexican States, the Debtors in the above-captioned cases (“Debtors” or “SQFV”), and file this Motion to Approve Compromise and Settlement Agreement (“Debtors’ Motion”), pursuant to Federal Rule of Bankruptcy Procedure 9019, seeking approval of a compromise and settlement to resolve the dispute the Debtors have with certain creditors of the estates, and in support thereof would respectfully show the Court as follows:

Factual Background

1. Humphreys, and wife, Tina Cherrington, are residents of Cameron County, Texas, who are family farmers as defined under the provisions of 11 U.S.C. § 101(18), and the two Debtor entities, SQVF, and San Quintin Mexico, are affiliates of Humphreys and Tina Cherrington as defined under the provisions of 11 U.S.C. § 101(2).

2. In 2014, Humphreys entered into an investment with Juan Antonio Garcia, Jr. (“Garcia”) and the two of them formed JJ San Jose De Baja, LLC (“JJ De Baja”), JJ San Jose De Baja, LP (“San Jose LP”), and San Jose Baja Ranch S. De R.L. de CV (“San Jose Mexico”) (collectively referred to herein as “San Jose entities”). Humphreys and Garcia each own fifty percent (50%) of JJ De Baja, which in turn serves as the general partner of San Jose LP. San Jose LP then owns all of the shares of San Jose Mexico. These entities were formed to enable San Jose Mexico to engage in the farming of fresh produce in San Quintin, Mexico.

3. In order to finance and provide operating capital for the farming operations conducted by San Jose Mexico, Garcia obtained loans on behalf of San Jose LP from members of his family and certain family trusts specifically being, Maria Elena Useda, individually (“Mrs. Useda”), Juan Antonio Garcia, Jr., as Trustee of MEU 2012 Trust for J. Garcia (“Juan’s Trust”), and Celina Garcia-Anderson, as Trustee of MEU 2012 Trust for C. Garcia (“Celina’s Trust”) as well as from the father of Jay Humphreys, Jack Humphreys. The outstanding balance owing on these notes aggregate to a total of between \$1.5 and \$2.2 million.

4. A dispute arose between Garcia and Humphreys concerning the operations of San Jose Mexico, and on January 26, 2018, Garcia filed a lawsuit under Cause No. C-0320-18-C in the 139th District Court of Hidalgo County, Texas (“State Court Case”), against Humphreys alleging breach of contract, breach of fiduciary duties, and other causes of action involving the operations of San Jose Mexico as well as Humphreys’ formation and operation of SQVF and San Quintin Mexico.

5. Humphreys and Tina Cherrington, SQVF, and San Quintin Mexico filed Chapter 12 petitions on December 7, 2018, in the U.S. Bankruptcy Court for the Southern District of Texas, Brownsville Division, and the three bankruptcy cases are being jointly administered under Case No. 18-10375-12 (“Bankruptcy Case”).

6. Upon the filing of the Bankruptcy Case, Humphreys filed pursuant to 28 U.S.C. § 1452, and Federal Rule of Bankruptcy Procedure 9027, a Notice of Removal of the State Court Case which resulted in the initiation of an adversary proceeding under Adversary No. 19-1001 styled Juan Garcia vs. Jay Humphreys pending in the U.S. Bankruptcy Court for the Southern District of Texas, Brownsville Division (“Adversary Proceeding”).

7. Proofs of claim have been filed under each of the case numbers involved in the Bankruptcy Case on behalf of Garcia (\$1,790,170.18), JJ De Baja (\$1,740,000.00), and San Jose LP (\$1,740,000.00) (collectively referred to hereinafter as “San Jose Claims”), along with Mrs. Useda (\$741,270.54), Juan’s Trust (\$518,338.29), Celina’s Trust (\$665,927.87), and Jack Humphreys (\$100,192.09) (collectively totaling \$2,187,787.09 and referred to hereinafter as “Investor Note Claims”).

8. On March 7, 2019, Debtors’ Original Joint Chapter 12 Plan of Reorganization and Motion for Valuation of Collateral (Docket No. 62) (“Plan”) was filed in the Bankruptcy Case and notice was sent to creditors and parties in interest informing them of the opportunity to object to confirmation of the Plan and about the scheduled hearing on confirmation of the Plan set for Friday, April 12, 2019.

9. On May 17, 2019, the Plaintiffs filed the Second Amended Complaint (“Complaint”) (Docket No. 14) in the Adversary Proceeding which alleges causes of action against Humphreys and seeks a judgment granting an accounting, along with the dissolution of San Jose LP, JJ de Baja, LLC and San Jose Mexico, as well as monetary damages, costs of court and pre-judgment and post-judgment interest, exemplary damages, disgorgement and reasonable and necessary attorneys’ fees and requests that the judgment so awarded be non-dischargeable pursuant to the provisions of Sections 523(a)(2)(A), 523(a)(4), and 523(a)(6) of the Bankruptcy Code.

10. On June 21, 2019, Humphreys and SQVF filed their Motion to Dismiss for Failure to State a Claim Under Rule 12(b)(6) or Alternatively to Dismiss for Failure to Properly Plead under Rule 9, and Brief in Support (Docket No. 16) in the Adversary Proceeding, asserting

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that all causes of action in the Complaint should be dismissed because they fail to state claims upon which relief can be granted and further arguing that all of the causes of action seeking to except any indebtedness owed by Humphreys from discharge under Section 523 of the Bankruptcy Code should be dismissed because there are no allegations of fact demonstrating any legal basis for such a remedy.

11. Due to the existing disputes between the Parties in the State Court Case, the Adversary Proceeding, and the Bankruptcy Case over both the Investor Note Claims and the San Jose Claims as well as the ownership and control of San Jose LP, JJ de Baja, LLC and San Jose Mexico, the Parties do desire to compromise and settle the issues in controversy between them in accordance with the terms and conditions of the Agreement.

Terms of the Agreement

12. The Parties have reduced the terms of their agreement to writing in a Compromise and Settlement Agreement (“Settlement Agreement”) which will be incorporated by the Debtors into a Second Amended Plan of Reorganization (“Amended Plan”). The terms and provisions of the Settlement Agreement are summarized as follows:

- A. The Amended Plan creates a class of unsecured claims associated with the unpaid trade claims of San Jose Mexico. The creditors filing proofs of claim in such class hold claims totaling approximately \$806,018.66 and the claims allowed in such class will be paid in full over the life of the Plan through the Chapter 12 Trustee.
- B. The Amended Plan provides for the compromise and settlement of all claims and causes of action of the holders of the Investor Note Claims or any related parties, agents, attorneys, etc., including any and all Garcia/San Jose Claims against the Debtors.
- C. Jay Humphreys consents to the entry of a non-dischargeable judgment against him based upon the provisions of 11 U.S.C section 523(a) (4) in favor

of Mrs. Useda in the amount of \$520,649.00, in favor of Juan's Trust in the amount of \$730,966.65, in favor of Celina's Trust in the amount of \$553,686.02, all together totaling the aggregate amount of \$1,805,301.67 (hereinafter referred to as "Judgement No. 1"). So long as Debtors perform their obligations as provided in the Amended Plan, as it may be modified and approved by the Court, no collection actions will be undertaken by Mrs. Useda, Juan's Trust or Celina's Trust.

D. Jay Humphreys also consents to the entry of a non-dischargeable judgment based upon the provisions of 11 U.S.C. section 523(a) (4) against him in favor of Garcia, in the agreed upon sum of Five Hundred Thousand and no/100 Dollars (\$500,000) (hereinafter referred to as "Judgment No. 2"). Similarly no actions will be undertaken to collect upon it so long as Debtors perform their obligations under the terms of the Amended Plan.

E. The Amended Plan shall provide for the treatment of the Investor Note Claims, including the claim of Jack Humphreys, by including them in a class of claims denominated as "Allowed Claims of Investor Notes Issued by San Jose, LP," and such class shall be afforded the treatment substantially as described below. Figures or issues may be adjusted so long as the adjustments do not materially or substantially change the effect of the notice given to creditors.

(i). On or before January 10, 2020 ("Effective Date"), the Debtors shall pay to the Chapter 12 Trustee in the Bankruptcy Case Twenty Percent (20.00%) of the Allowed Claims of the Holders of the Investor Notes less an Eighty Thousand Credit for funds already paid (\$381,078.76 - \$80,000.00 = \$301,078.76), plus an additional Five Percent (5.00%) (\$15,053.94) as the Chapter 12 Trustee's commission pursuant to the provisions of 11 U.S.C. § 326(b), or the total sum of Three Hundred Sixteen Thousand One Hundred Thirty-Two Dollars and 70/100 (\$316,132.70). Upon receipt of such payment, the Chapter 12 Trustee shall distribute the funds in the following manner to the parties set forth below:

<u>Holder of Investment Note</u>	<u>Amount of Allowed Claim</u>	<u>Amount of Initial Payment (20.00%)</u>	<u>Trustee's Commission (5.00%)</u>	<u>Payment Date</u>
Maria Elena Useda 222 East Ridge Road Suite 108 McAllen, Tx. 78503	\$520,649.00	\$81,057.80	\$4,052.89	Jan. 10, 2020
Trust for C. Garcia 222 East Ridge				

Road Suite 108 McAllen, Tx. 78503	\$553,686.02	\$86,201.20	\$4,310.06	Jan. 10, 2020
Trust for J. Garcia 222 East Ridge Road Suite 108 McAllen, Tx. 78503	\$730,966.65	\$113,801.33	\$5,690.07	Jan. 10, 2020
Jack Humphreys P.O. Box 2517 Red Oak, Tx. 75154	\$100,092.15	\$20,018.43	\$ 1,000.92	Jan. 10, 2020
<u>Totals</u>	\$1,905,393.82	\$301,078.86	\$15,053.94	

(ii). Additionally, on the Effective Date, Debtors shall become obligated in accordance with the provisions of the Plan to pay to the Chapter 12 Trustee the principal sum of One Million Two Hundred Eighty Four Thousand Three Hundred Fifteen Dollars and 06/100 Dollars (\$1,284,315.06) and said sum shall bear interest at the annual rate of eight percent (8.00%) per annum, and shall be payable to the Chapter 12 Trustee in two equal annual payments of One Hundred Sixty Three Thousand Four Hundred Ninety Four Dollars and 13/100 Dollars (\$163,494.13) each with the first such payment to be due on or before January 10, 2021, and an equal amount being due on January 10, 2022. In addition to the annual payments of principal and interest referenced above, Debtors will fund sufficient money to the Chapter 12 Trustee each year such that his three percent (3.00%) commission will be paid by Debtors and not deducted from the annual payments due to the holders of the Investor Note Claims. The first two annual payments shall be distributed to Mrs. Useda, Celina's Trust, and Jack Humphreys only as the amount owing to Juan's Trust for the first two years of the Plan will be paid directly to Garcia in Twenty-Four (24) equal monthly of \$10,000 each and shall be credited against the principal balance owing Juan's Trust on Agreed Judgment No. 1.

Following the first two annual payments to the Chapter 12 Trustee Juan's Trust shall then be included in the annual distributions by the Chapter 12 Trustee, and the Debtors shall be obligated to pay to the Chapter 12 Trustee three annual payments of principal and interest with the first two payments being in the sum of Two Hundred Twenty Three Thousand Four Hundred Eighty Nine Dollars and 78/100 Dollars (\$223,489.78) each with the first such payment to be due on or before January 10, 2023, and the second payment in an equal amount being due on January 10, 2024, whereupon

on January 10, 2025, the final payment of all remaining principal and interest totaling \$763,953.03 shall become due and payable by the Debtors to the Chapter 12 Trustee. In addition to the annual payments of principal and interest referenced above, Debtors will fund sufficient money to the Chapter 12 Trustee each year such that his three percent (3.00%) commission will be paid by Debtors and not deducted from the annual payments due to the holders of the Investor Note Claims.

The specific annual payments and the amount to be funded for Trustee's fees each year of the Plan are described and set forth below:

<u>Holder of Investment Note</u>	<u>Balance of Claim Owning</u>	<u>Amount of Annual Payment</u>	<u>Trustee's Commission (3.0%)</u>	<u>Payment Due Dates</u>
Maria Elena Useda 222 East Ridge Road Suite 108 McAllen, Texas 78503	\$416,519.20	\$72,480.49	\$2,174.41	1/10/21 1/10/22 1/10/23 1/10/24
	\$259,270.00	\$259,270.00	\$7,778.10	1/10/25
Trust for C. Garcia 222 East Ridge Road Suite 108 McAllen, Texas 78503	\$442,948.82	\$77,079.63	\$2,312.39	1/10/21 1/10/22 1/10/23 1/10/24
	\$275,721.00	\$275,721.00	\$8,271.63	1/10/25
Trust for C. Garcia 222 East Ridge Road Suite 108 McAllen, Texas 78503	\$442,948.82	\$77,079.63	\$2,312.39	1/10/21 1/10/22 1/10/23 1/10/24
	\$275,721.00	\$275,721.00	\$8,271.63	1/10/25
Trust for J. Garcia 222 East Ridge Road Suite 108 McAllen, Texas 78503	\$344,773.32	\$59,995.65	\$1,779.87	1/10/23 1/10/24
	\$299,541.00	\$299,541.00	\$8,986.23	1/10/25

Jack Humphreys P.O. Box 2517 Red Oak, Texas 75154	\$80,073.72	\$13,934.01	\$418.02	1/10/21 1/10/22 1/10/23 1/10/24
	\$49,843.00	\$49,843.00	\$1,495.29	1/10/25

(iii) As stated in paragraph (ii) above, the first Two Hundred Forty Thousand Dollars (\$240,000.00) of payments due Juan's Trust under the terms of the Plan shall be paid directly by the Debtors to Garcia in 24 equal monthly installments of Ten Thousand Dollars and No/100 (\$10,000.00) each and shall be credited to the balance owing to Juan's Trust following the initial Twenty percent (20%) down payment to be made on the Effective Date of the Plan. The first such monthly installment in the sum of Ten Thousand and No/100 Dollars shall be due and payable on January 10, 2020, and the remaining 23 payments shall be due on the same date of each month thereafter until the final payment is made on December 10, 2021. All such monthly payments shall be paid directly to Garcia by depositing the monthly installments into his designated depository account.

F. To secure the payment of the \$240,000 worth of monthly payments to Garcia San Jose Mexico shall execute an asset pledge agreement governed by the laws of Mexico in favor of Garcia pledging all of the assets of San Jose Mexico. Upon the payment in full of the \$240,000 in monthly payments to Garcia referenced in paragraph (iii) above, Garcia agrees to release and discharge the Mexican Asset Pledge Agreement and all of the assets of San Jose Mexico shall be free and clear of any Garcia claims.

G. As additional security for the payment of the Investor Note Claims, Humphreys will execute a stock pledge and security agreement against such interests he acquires in JJ de Baja and San Jose LP, and any interest he individually may own, if any, in San Jose Mexico which he acquires from Garcia.

H. In exchange for the agreement to the entry of the non-dischargeable judgments, as well as the treatment to be afforded the holders of the Investor Note Claims in the Amended Plan, Garcia agrees and transfers, grants, assigns and conveys to Humphreys, and Humphreys agrees to acquire, all equity interest which Garcia owns in JJ de Baja, San Jose LP, and any interest he

individually may own, if any, in San Jose Mexico. Garcia further agrees that upon closing of the purchase of the member interest, partnership interest in JJ de Baja, LLC, San Jose LP and any interest he owns, if any, in San Jose Mexico he will deliver possession of the limited liability company and partnership records, as well as any corporate records associated with the San Jose Mexico as listed in Exhibit E to the Compromise and Settlement Agreement which will include any originals that are in his possession.

- I. In exchange for the transfer of the member interests, the partnership interest and the equity interest to Humphreys by Garcia, the Debtors shall indemnify and shall cause the San Jose entities to indemnify Garcia against any claims arising out of the San Jose entities' default on such indebtedness whether known or unknown as of the date of the signing of the Settlement Agreement. Such indemnification shall include any claim of third parties arising out of the conduct of the business of the respective entities brought against Garcia or any causes of action based upon contract, tort, products liability, workers compensation or any other theories of liability, including any tax liabilities whether in Mexico or the United States, disclosed or not disclosed.
- J. In exchange for the agreement to the entry of non-dischargeable judgments as well as the treatment to be afforded the Investor Note Claims in the Amended Plan, Mrs. Useda, Juan's Trust, and Celina's Trust, along with Garcia, individually, will grant the Debtors, as well as all agents and parties in privity with them, including but not limited to Deardorff Family Farms and Tom Deardorff, and any other vendors or brokers associated with either the San Jose entities or the Debtors, as listed in the Compromise and Settlement Agreement, a full and complete release of any and all other claims, known or unknown, and any and all causes of action of any nature whatsoever. (Provided, however, it is specifically understood and agreed that nothing herein is intended nor shall it be construed to release the Debtors from the obligations set forth in the Amended Plan to pay the Allowed Claims of the Holders of the Investor Notes nor effect a release of the non-dischargeable judgments until the payments owed to the Holders of the Investor Notes as set forth in the Amended Plan are paid in full).
- K. The terms of the Amended Plan provide that upon the full and complete performance of all of the obligations under the Settlement Agreement and the Amended Plan, including payment in full of the Investor Note Claims, that both Judgments, being Judgment No. 1 granted to Mrs. Useda, Juan's Trust, and Celina's Trust, and Judgment No. 2 granted in favor of Garcia against Humphreys, will be considered fully extinguished, paid and discharged, and all forms of relief sought or rendered in the State Court Case and the

Adversary Proceeding have been fully satisfied, abrogated, extinguished and discharged.

- L. In order to provide additional security for the performance of the Debtors to satisfy the claims of the holders of the Investor Note Claims as set forth and described in the Amended Plan, Humphreys shall take all necessary and advisable steps in connection with converting New York Life insurance policy #24-819-319 to a term policy and agrees to execute any documents and to promptly take any action reasonably requested by Juan Navarro or such other authorized New York Life representative to consummate the conversion of such life insurance policy to a term policy or to obtain a new term life insurance policy with comparable coverage. Provided, however, that upon the consummation of the Amended Plan, and the payment in full of that the New York Life insurance policy #24-819-319 Garcia and Mrs. Useda will cooperate and take all actions necessary for the policy to be transferred and assigned to Jay Humphreys and neither Garcia, Mrs. Useda, nor any other party to this Agreement shall have any interest in nor claim upon such policy or the benefits associated with it.
- M. Contingent upon the full and complete satisfaction of all obligations pursuant to the terms of the Settlement Agreement and the Amended Plan the parties mutually agree to the release of all claims they may own or hold against each other save and except those obligations and duties set forth in the Settlement Agreement and Amended Plan.

Legal Analysis of Settlement

13. The Bankruptcy Court has wide discretion to determine whether a proposed compromise should be approved. Compromises are a normal part of the process of reorganization. *Protective Committee for Independent Stockholders of TMT Trailer, Inc. v. Anderson*, 390 U.S. 414, 424, 88 S. Ct. 1157 (1968). Whether to approve a proposed compromise is a matter within the sound discretion of the bankruptcy court. *In Re Aweco, Inc.*, 725 F.2d 293 (5th Cir. 1984). In reviewing a settlement, a bankruptcy judge must compare the terms of the compromise with the likely rewards of litigation. *Id.* at 425. In a ruling on the propriety of the compromise, the Court should determine whether the settlement is in the best

interest of the bankruptcy case. *In re Aweco, Inc.*, 725 F.2d 293 (5th Cir. 1984). Bankruptcy settlements “are a normal part of the process of reorganization: and are desirable and wise methods of bringing to a close proceedings otherwise lengthy, complicated and costly.” *River City v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980).

14. Courts in this circuit have been instructed to consider the following factors in determining whether to approve a proposed settlement:

- (a). The probability of success in the litigation, with due consideration of the uncertainty of facts and law;
- (b). The complexity and likely duration of the litigation and any expense, inconvenience and delay and possible problems collecting a judgment;
- (c). The interest of the creditors and proper deference to their reasonable views; and
- (d). The extent to which settlement is truly the product of arms-length negotiations.

See In re Cajun Electric Power and Coop, Inc., 119 F. 3d 349, 355-56 (5th Cir. 1997).

15. The compromise and settlement as proposed is fair, reasonable, and in the best interests of the Debtors’ estates and creditors.

16. Additionally, the Settlement Agreement resolves litigation that would be costly and time consuming to the Debtors’ estates leaving the Debtors’ estates, and their management, with the ability to focus on the reorganization and completion of their proposed plan.

WHEREFORE, PREMISES CONSIDERED, the Debtors pray that after notice to creditors and parties in interest and opportunity for hearing, that the Court enter an order

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approving the Settlement Agreement between the parties as allowed pursuant to the provisions of Bankruptcy Rule of Procedure 9019 and also seek such other and further relief at law or in equity as the Court may deem necessary and proper.

Respectfully Submitted,

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***Counsel for Debtors, Jay Humphreys & Tina
Cherrington, San Quintin Valley Farms, LLC and
San Quintin Mexico***

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the Debtors' Motion To Approve Compromise and Settlement Agreement filed in the above-referenced bankruptcy case was sent regular, first class mail, postage prepaid to the parties listed below on November 12, 2019.

1. All creditors and parties in interest in the bankruptcy case as reflected on the attached mailing matrix.

/s/ David R. Langston

David R. Langston