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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re:

WEST COAST GROWERS, INC.,
 Debtor-in-Possession.

Case No.: 15-11079-B-11

Chapter 11

DCN: KDG-5

Date: May 14, 2015

Time: 2:30 p.m.

Place: United States Bankruptcy Court
 2500 Tulare Street, Fifth Floor
 Department B, Courtroom 12
 Fresno, California

Judge: Honorable W. Richard Lee

**REPLY TO GROWERS' SUPPORT OF MOTION FOR ORDER
 AUTHORIZING DEBTOR-IN-POSSESSION TO MAKE
FIRST INTERIM DISTRIBUTION TO 2014 GROWERS**

Debtor-in-Possession files this reply to discuss some concepts raised by the Growers. There is no dispute that the producer's lien attaches to the growers' crops delivered to Debtor, and the identifiable proceeds from the crops' sale. But Debtor-in-Possession addresses a few grower assertions.

Growers' Fact Statements.

Paragraph 6(c), footnote 6: While it is true CVCB allowed about one-half million in checks to clear the bank post-petition, the half million dollars was advanced by CVCB. Because the funds originated from CVCB, and not from the sale of Growers' raisins, a finding

1 that the half million dollars is Growers' collateral is not supported by the facts or the producer's
2 lien law. While those payments may be avoidable under 11 U.S.C. § 549, and recoverable
3 under 11 U.S.C. § 550, Debtor-in-Possession believes any recovery will inure to the estate's
4 benefit under 11 U.S.C. § 551.

5 Paragraph 6(d): According to its proof of claim, the IRS's debt was calculated based on
6 unfiled returns. The returns are actually filed, and Debtor-in-Possession believes the accurate
7 IRS debt is indeed about \$360,000.00 as scheduled.

8 Paragraph 6(f): The reclassification of 2013 grower payment to 2014 crop-year debt
9 was made for the purposes of the pending Motion only. The Growers describe Debtor-in-
10 Possession's reclassification as if it was made for all purposes—which it was not: "If WCG's
11 reclassification of the unlawful payments made to 2013 growers from 2014 proceeds is
12 accomplished this will reduce the 2014 secured growers' claims by \$2,771,543 to \$8,012,066."

13 This paragraph, and paragraph 7, also described how Growers "reserve all right to
14 pursue recoveries on account of the unlawful conversion of their product and proceeds thereof.
15 They also reserve all rights to claim priority to any possible avoidable transfer recoveries
16 stemming from payments or transfers made from 2014 raisin sale proceeds." To the extent
17 Growers are asserting that they are entitled to funds recovered by Debtor-in-Possession or a
18 trustee in the exercise of avoidance powers under 11 U.S.C. § 544, 547, 548, or 549, and
19 recovery under 11 U.S.C. § 550, Debtor-in-Possession notes the effect of 11 U.S.C. § 551 and
20 that recoveries made by Debtor-in-Possession or trustee are preserved for the benefit of the
21 estate. While this is an issue of first impression, it cannot be assumed that all recoveries will
22 benefit Growers on account of their liens.

23 Paragraph 6(f), footnote 7: Growers note they intend to pursue recovery of payments
24 made by Debtor to 2013 growers who are not also 2014 growers. Note that Debtor-in-
25 Possession or a trustee has standing to seek recoveries under the above-noted bankruptcy code
26 sections, for preference period payments, fraudulent transfers, and post-petition transfers.

27 Paragraph 8: Debtor-in-Possession agrees the debt owed to many growers is not fixed.
28 In addition to the reasons cited by the Growers, some raisins require reconditioning, or other

1 processing, which reduces the per-pound price payable to growers. That is another reason the
2 Motion is without prejudice to such determinations. While the claims bar-date is important in
3 the claims-fixing analysis, Debtor-in-Possession or a trustee may find it necessary to object to
4 claims. For that reason, the arrival of July 22 will not resolve all issues related to allowed
5 claims.

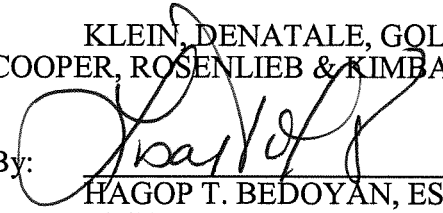
6 Paragraph 9 notes Growers will request that all funds held in the segregated growers'
7 account be distributed, less a small reserve. Based on the need to "true up" grower debt on and
8 after July 22, it would be improvident to distribute all the funds. Because the "reallocation" of
9 2013 payment to 2014 debt is for this Motion's purposes only, and because debt to growers is
10 subject to finality after claims are filed and allowed, a cushion is necessary to protect all
11 growers. Further, Debtor's unsecured creditors should not bear the burden of Debtor-in-
12 Possession's and its counsel's efforts to liquidate growers' collateral, and a surcharge under 11
13 U.S.C. § 506(c) is appropriate.

14 Paragraph 10 is Growers' reservation of rights. Similarly, Debtor-in-Possession, as the
15 estate's fiduciary, reserves all rights regarding this and subsequent grower distributions.
16 Debtor-in-Possession intends to work closely with Growers and other growers, to fairly
17 distribute their collateral. Debtor-in-Possession must also protect the rights of its unsecured
18 creditors, including not charging the estate's unsecured creditors with the cost of liquidating
19 secured creditors' collateral.

20 Dated: May 11, 2015

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