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Attorneys for Creditor Wells Fargo Bank,
National Association

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

In re:

WALKER LAND & CATTLE, LLC,

Debtor.

Case No. 13-41437-JDP
Chapter 11

**WELLS FARGO'S RESPONSE TO OBJECTIONS TO WELLS FARGO'S
DISCLOSURE STATEMENT**

Wells Fargo Bank, National Association (“Wells Fargo”) hereby responds to the objections to its Disclosure Statement (Dkt. No. 390) (the “Disclosure Statement”). The objections to which Wells Fargo responds are the following: the objection filed by Sometimes a Great Notion Land and Cattle Company (Dkt. No. 398) (the “Sometimes a Great Notion Objection”); the objection filed by Debtor, Walker Land & Cattle, LLC (Dkt. No. 424) (the “Debtor’s Objection”); and the objection filed by the Official Committee of Unsecured Creditors (Dkt. No. 426) (the “Committee’s Objection”).

1. Response to the Sometimes a Great Notion Objection.

Sometimes a Great Notion objects to the Disclosure Statement because it does not indicate that Sometimes a Great Notion and Debtor dispute whether Sometimes a Great Notion is adequately protected, and whether the lease between Sometimes a Great Notion and Debtor is in default. Wells Fargo will add this information to its Disclosure Statement if the Court so requires.

2. Response to Debtor's Objection.

Wells Fargo responds to each of Debtor's objections as follows:

Summary of Debtor's Objection: Wells Fargo's Disclosure Statement falsely accuses Debtor of misreporting inventory, and Wells Fargo's Disclosure Statement should be amended to insert a statement of Debtor's position that inventory was properly accounted for.

Wells Fargo's Response: Debtor's proposed insert would make the Disclosure Statement misleading. Wells Fargo reiterates that Debtor misreported inventory, as stated on page 13 of Wells Fargo's Disclosure Statement. Specifically, Debtor shipped approximately 524,000 cwt of potatoes (net of tare and shrink) to Walker Produce while still showing that it had these potatoes in its position reports on and prior to August 31, 2013. The Debtor showed the arrangement as a "negative receivable," making it undetectable. As set forth in the Affidavit of Gregory J. Mondon (Dkt. No. 29), the "negative receivable" became apparent when Debtor's certified public accountants required its disclosure and treatment as a payable in Debtor's fiscal year end 2012 reviewed financial statement.¹ That financial statement was not delivered to Wells Fargo until late September 2013. Further, on October 24, 2014, the Debtor's then chief financial

¹ See, Wells Fargo's Exhibit 205 and Exhibit 237 at the February 2, 2014 and April 3, 2014 cash collateral hearings.

officer, Rod Roberts, admitted that although the potatoes were shipped, they were not deducted from the potato inventory.²

Summary of Debtor's Objection: Wells Fargo's Disclosure Statement incorrectly states that a \$5.3 million balloon payment would be necessary to pay unsecured creditors in full. Wells Fargo's Disclosure Statement should be amended to insert a statement that "General Unsecured Claims are paid 100% in five equal annual installments of \$1,818,261" and that parties related to Debtor will be paid only after all other unsecured creditors have been paid.

Wells Fargo's Response: Wells Fargo calculated the balloon payment by subtracting the first four annual installment payments to unsecured creditors from the total amount of unsecured claims, which is \$12,659,325 according to pages 28 and 163 of Debtor's disclosure statement. This leaves \$5,386,281 that would be paid at the time of the fifth payment if all of the unsecured claims represented by the Debtor were paid. Wells Fargo will modify its disclosure statement to exclude the reference to the balloon payment.

Debtor's proposed insert is inaccurate and would render the disclosure statement misleading in at least two respects. First, Debtor's statement that General Unsecured Claims will be paid 100% is not true. Under Debtor's Plan, general unsecured creditors will not receive interest and fees on their claims, so they will not receive 100% of their true claims. Also, according to Debtor's disclosure statement, unsecured claims will be paid in fixed installments of \$1,818,261 under Debtor's Plan. If Debtor has underestimated even one unsecured claim by any amount, the fixed installment payments will be insufficient to compensate general unsecured creditors in full. For example, Debtor states on page 26 of its disclosure statement that it will reject certain John Deere leases. If it turns out that even one of those lease rejections gives rise

² See Exhibits 210 and 211 at the February 27, 2014 and April 3, 2014 cash collateral hearings.

to a rejection claim, Debtor's proposed payments to general unsecured creditors will be less than 100% of the principal amount of the claim, let alone interest and fees.

Second, Debtor's repeated emphasis that related parties will be paid after General Unsecured Creditors has potential to mislead creditors, for the reasons stated in Wells Fargo's Objection to Debtor's Disclosure Statement (Dkt. No. 422). More specifically, Debtor's insiders and affiliates appear to owe Debtor far more than what they are owed by Debtor, giving rise to setoff and other defenses, but creditors could be misled to believe that insiders are willingly subordinating valuable claims. For example, Debtor's Schedule B, section 16 accounts receivable shows Walker Produce and McNeil Fruit owe Debtor \$3,745,506; other Walker Land affiliates owe Debtor \$1,403,693; and promissory notes owed to Debtor by its affiliates exceed \$200,000.

Summary of Debtor's Objection: Wells Fargo's Disclosure Statement should be amended to state that Wells Fargo has a security interest in Debtor's interest in R-Life Line Company, LLC.

Wells Fargo's Response: Debtor's proposed amendment is unnecessary. If, however, Wells Fargo is required to amend the Disclosure Statement's discussion of Debtor's investment in R-Life Line Company, the inserted language should also make clear that Debtor's investment in R-Life Line was a breach of Debtor's covenant in its credit agreement with Wells Fargo that Debtor would not, without Wells Fargo's prior consent, make such an investment and that only after Wells Fargo discovered the breach did Wells Fargo obtain a security interest in the investment. Furthermore, certain parties have asserted attorneys liens on the recovery.

Summary of Debtor's Objection: The Disclosure Statement contains no support for Wells Fargo's assertion that creditors would be paid sooner under Wells Fargo's Plan than under a chapter 7 liquidation.

Wells Fargo's Response: On the contrary, Wells Fargo's Disclosure Statement explains that "[t]he Creditor's Plan requires that the Plan Administrator sell all of Debtor's Assets by no later than December 31, 2015. A chapter 7 Trustee would be subject to no such constraints. Therefore, creditors may have to wait longer for Distributions in a chapter 7 liquidation." Wells Fargo submits that this is sufficient support of Wells Fargo's assertion. The logic is simple: Wells Fargo's Plan includes hard deadlines, including a December 31, 2015 deadline to sell Debtor's assets, and bonus incentives to sell assets and make distributions. Chapter 7 does not include a hard outside date by which all of a debtor's assets must be sold, and a chapter 7 trustee's compensation is not increased based on the timeliness of distributions. Accordingly, creditors can have greater certainty of prompt repayment under Well Fargo's Plan.

Summary of Debtor's Objection: The Disclosure Statement contains no support for Wells Fargo's assertion that a chapter 7 trustee's compensation could be almost \$2 million.

Wells Fargo's Response: On the contrary, Wells Fargo's Disclosure Statement explains that "[i]n chapter 7, a trustee may be entitled to fees and commissions based on a percentage of the assets sold. Because the value of the Estate's assets is substantial, a chapter 7 trustee's compensation could be significant in this case. In fact, if the presumptive statutory fee were awarded according to the formula set forth in Bankruptcy Code § 326(a), the chapter 7 trustee's compensation could be almost \$2 million." This estimate is based on a straightforward application of the formula in § 326(a) using the Debtor's own estimate of the value of its assets,

which is over \$63 million, since the proceeds from the sale of all of the debtor's assets would be distributed in a chapter 7 case. Debtor's disclosure statement, p. 28.

As explained in footnote 5 of Wells Fargo's Disclosure Statement, the statutory commission for a chapter 7 trustee should be presumptively awarded absent "extraordinary circumstances." This is the holding of two recent cases. In *Hopkins v. Asset Acceptance LLC (In re Salgado-Nava)*, 473 B.R. 911 (B.A.P. 9th Cir. 2012) the Ninth Circuit Bankruptcy Appellate Panel reversed the bankruptcy court and held that "absent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate." *Id.* at 921. The BAP declined to define the scope of "extraordinary circumstances," but noted that such circumstances must go beyond a lodestar analysis or the bankruptcy court's own idea of a reasonable rate of compensation for the services rendered. *Id.* at 922. The Fourth Circuit Court of Appeals reached the same conclusion in *In re Rowe*, 750 F.3d 392 (4th Cir. 2014). In that case, the Fourth Circuit reversed a district court that awarded a chapter 7 trustee less than the presumptive statutory commission. The Court held that "absent extraordinary circumstances, a Chapter 7 trustee's fee award must be calculated on a commission basis, as those percentages are set forth in § 326(a)." *Id.* at 397. It identified possible "extraordinary circumstances" as "rare and unusual circumstances . . . such as where the trustee's case administration falls below acceptable standards or where it appears a trustee has delegated a substantial portion of his or her duties to an attorney or other professional." *Id.*

Wells Fargo therefore submits that its assertion regarding possible chapter 7 trustee compensation is amply supported in the Disclosure Statement.

Summary of Debtor's Objection: The Disclosure Statement contains no support for Wells Fargo's assertion that a Plan Administrator and his professionals will be less expensive than a chapter 7 trustee.

Wells Fargo's Response: As described in Wells Fargo's Disclosure Statement and in the prior section of this Response, a chapter 7 trustee's compensation could be almost \$2 million, depending on the sales prices of Debtor's assets. In contrast, as also described in the Disclosure Statement, the proposed Plan Administrator, Gary Rainsdon, has agreed to be compensated at a rate of \$175 per hour (plus potential incentive bonuses of up to \$100,000 for paying creditors in full before December 31, 2015). Although it is difficult for him to estimate, Mr. Rainsdon believes that his work could take between 1,000 and 2,000 hours, for a total hourly compensation of between \$175,000 and \$350,000, without bonuses.

As for professional fees, Mr. Rainsdon has not yet identified the specific professionals he would retain, but in any event, professional fees will likely to be significantly less under Wells Fargo's Plan than they would in a chapter 7 liquidation because, for example, in a chapter 7 liquidation each asset sale would have to be approved by the Bankruptcy Court under Bankruptcy Code § 363. The cost of obtaining numerous approvals of this type could be significant. In contrast, under Well Fargo's Plan, the Plan Administrator would be authorized to sell assets without further court approval, subject to the oversight of the Wind Down Committee. There are also numerous other examples where the Plan Administrator would not be required to seek prior Bankruptcy Court approval of his actions under the Creditor's Plan.

Moreover, the liquidation analysis summary on page 29 of Wells Fargo's Disclosure Statement is net of sales costs, including professional fees, such as realtors. In other words,

professional fees related to the sales are already disclosed and accounted for in the Disclosure Statement.

3. Response to the Committee's Objection.

Wells Fargo and the Committee are working to resolve the Committee's objections to Wells Fargo's Disclosure Statement. Any such resolution will be placed on the record at the hearing.

4. U.S. Trustee's Objection.

Wells Fargo has also had discussions with the U.S. Trustee's Office concerning its objections to Wells Fargo's Disclosure Statement. Wells Fargo believes these objections have been resolved and the resolution of them will be placed on the record at the hearing.

CONCLUSION

Based on the foregoing, Wells Fargo states that it will make certain amendments to address the objections of Sometimes a Great Notion, the Committee and the U.S. Trustee's Office. Wells Fargo respectfully requests that the Court otherwise approve Wells Fargo's Disclosure Statement.

Dated this 29th day of July 2014.

HOLLAND & HART LLP

By /s/ Larry E. Prince
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