

1 BARRY A. CHATZ SB# 140638
2 KEVIN H. MORSE SB# 253066
3 **SAUL EWING ARNSTEIN & LEHR LLP**
4 161 N. Clark Street, Suite 4200
5 Chicago, IL 60601
6 Tel: 312-876-7100
7 Fax: 312-876-0288
8 E-Mail: barry.chatz@saul.com
9 kevin.morse@saul.com

6 - and -

7 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
8 AMY L. GOLDMAN, SB# 134088
9 E-Mail: Amy.Goldman@lewisbrisbois.com
10 LOVEE D. SARENAS, SB# 204361
11 E-Mail: Lovee.Sarnas@lewisbrisbois.com
12 633 W. 5th Street, Suite 4000
13 Los Angeles, California 90071
14 Tel: 213-250.1800
15 Fax: 213-250.7900

12 [Proposed] Attorneys for Debtors
13 and Debtors in Possession

14 **UNITED STATES BANKRUPTCY COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **LOS ANGELES DIVISION**

17 In re:
18 ECLIPSE BERRY FARMS, LLC,¹
19 Debtor(s) and Debtor(s) in
20 Possession.

Case No.: 2:18-bk-10443 BR

Chapter 11

**DEBTORS' MOTION FOR APPROVAL
OF AGREED USE OF CASH
COLLATERAL ON AN INTERIM AND
FINAL BASIS**

[11 U.S.C. §§361 and 363; Fed. Rule Bankr.
P. 4001]

Date: [TBD]
Time: [TBD]

25 ¹ Debtors are the following three entities (the last four digits of their respective taxpayer identification
26 numbers follow in parentheses): Eclipse Berry Farms, LLC (5837), Rosalyn Farms, LLC (8986), and
27 Harvest Moon Strawberry Farms, LLC (4328) (collectively, the "Debtors"). The motion to administer
28 jointly the above-referenced case and the bankruptcy cases of Rosalyn Farms and Harvest Moon
Strawberry Farms has been filed and is currently pending before the Court.

Ctrm.: 1668
255 E. Temple Street
Los Angeles, CA 90012

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4 TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE,
5 THE OFFICE OF THE UNITED STATES TRUSTEE, CREDITORS, AND OTHER
6 INTERESTED PARTIES AND/OR THEIR RESPECTIVE COUNSEL OF RECORD:

7 Eclipse Berry Farms, LLC ("EBF") , *et al.*, debtors and debtors in possession, by its
8 proposed attorneys, hereby move this Court (the "Motion"); pursuant to Sections 105(a), 361
9 and 363 of Title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, and
10 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local
11 Bankruptcy Rule 4001-2 for the United States Bankruptcy Court for the Central District of
12 California (the "LBR") for the entry of an interim order (the "Interim Cash Collateral Order")
13 and, after further notice and a hearing, the entry of a final order (the "Final Cash Collateral
14 Order") authorizing the Debtors on a stipulated basis (a) to use the cash collateral (as defined in
15 section 363(a) of the Bankruptcy Code) in which Ventura Strawberry Farms, Inc. ("Ventura")
16 may hold an interest (the "Cash Collateral"); and (b) to provide and grant replacement liens to
17 Ventura. The Debtors believe no other creditor holds a secured interest in the Debtors' cash
18 collateral. This Motion is supported by the memorandum of points and authorities contained
19 herein, the Declaration of Robert Marcus, Chief Restructuring Officer, in Support of First Day
20 Motions ("Marcus Declaration") and the exhibits attached thereto filed concurrently herewith,
21 all pleadings filed and the record in this case, and the argument of counsel at the hearing on
22 this Motion. The relief requested in this Motion and the Budget (as defined below) are agreed
23 to and supported by Ventura.

24 **Proposed Use of Cash Collateral**

25 The Debtors require the use of Cash Collateral to pay for: (a) the costs of the orderly
26 liquidation of their business, and (b) the costs of administration of the Debtors' chapter 11
27 cases, including the payment of the CRO's compensation, Debtors' professional fees, and U.S.
28 Trustee's fees. The Debtors also desire to use Cash Collateral to pay for pre-petition insurance

1 premiums, employee wages, and other necessary expenditures for the administration of the
2 bankruptcy estates as set forth more fully in the Debtors' proposed budget ("Budget") attached
3 to the Marcus Declaration as Exhibit ii-A.²

4 **Material Terms Regarding Use of Cash Collateral**

5 The material terms and provisions of the Debtors' proposed use of Cash Collateral are:

6 a. Use of Cash Collateral. The Debtors shall use Cash Collateral in
7 accordance with the Budget attached to the Marcus Declaration as Exhibit ii-A. Prior to the
8 final hearing on the Cash Collateral Motion, the Debtors shall submit a Supplemental Budget
9 for further time periods as needed. Additionally, the parties have agreed and consented,
10 pursuant to Section 363(c)(2) of the Bankruptcy Code, to allow Debtors use of their cash
11 collateral from the Petition Date through the preliminary hearing date on this Motion.

12 b. Deposits of Cash Collateral. Debtors shall deposit all Cash Collateral
13 into the debtor in possession accounts opened at JPMorgan Chase Bank (collectively, the
14 "Cash Collateral Accounts"), in accordance with the U.S. Trustee Guidelines and
15 Requirements for Chapter 11 Debtors in Possession promptly upon receipt thereof.³

16 c. Budget. The Debtors have prepared a Budget which sets forth the
17 required uses of Cash Collateral through April 15, 2018. A copy of the Budget is attached to
18 the Marcus Declaration as Exhibit ii-A. The Debtors intend to submit modified or
19 supplemental Budgets for periods beyond April 15, 2018 at later dates as agreed upon by the
20 parties. Notwithstanding the amount of cash collateral existing in any of the Debtors'
21 accounts, Debtors will be allowed to expend cash and funds to pay those charges and expenses
22 set forth in the attached Budget, with an agreed variance of up to 10% for each line-item.

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25 ² The Debtor intends to seek authority to pay these amounts through a separate motion.

26 ³ The Debtors are seeking authority to maintain certain prepetition payroll accounts for the payment of
27 wages, and related expenses, with respect to prepetition wages of Debtors' employees. All Cash
28 Collateral, except that remaining in the prepetition payroll accounts, will be deposited into the Cash
Collateral Accounts. The amounts remaining in the payroll accounts are not included in the Budget but
will be accounted for and detailed in the respective Debtors' monthly operating report.

1 d. Adequate Protection. In order to provide Ventura with adequate
2 protection for the Debtors' use of their cash collateral, the Debtors will grant the following:

3 i. Replacement Liens. Pursuant to § 361 of the Bankruptcy Code,
4 Ventura shall be granted replacement liens (the "Replacement Liens") in the Debtors' existing
5 and after-acquired assets post-petition to the extent of the Debtors' use of their cash collateral.
6 The Replacement Liens shall be of the same extent, scope, validity and priority as the pre-
7 petition liens of Ventura.⁴

8 **Pre-Petition Loans**

9 On July 11, 2017, to meet current obligations owed to Wells Fargo Bank, N.A. ("Wells
10 Fargo"), Ventura advanced \$4.3 million to EBF, memorialized through a promissory note
11 dated the same date. On August 2, 2017, Ventura advanced an additional \$17.3 million to
12 EBF, through an amended promissory note, enough to satisfy the full amount of the Wells
13 Fargo line of credit and caused Wells Fargo to release all of its liens against Debtors' assets.
14 The obligations under the amended promissory note were purportedly secured through a
15 Security Agreement dated August 2, 2017, granting Ventura liens on all of Debtors' assets,
16 including cash. A copy of the relevant Ventura loan documents is attached as Exhibit ii-B
17 to the Marcus Declaration. Ventura asserts that EBF's outstanding debt totals more than \$29.6
18 million, consisting of the \$21.6 million advanced in July and August 2017 ("Secured Claim"),
19 and \$8 million in unsecured advances made prior to July 2017 ("Unsecured Claim"). On
20 September 1, 2017, Ventura filed a UCC-1 financing statement purportedly securing the \$21.6
21 million July and August advances against all of EBF's assets. A copy of the Ventura UCC-1
22 financing statement is attached as Exhibit ii-C to the Marcus Declaration.

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26 ⁴ The Debtors have entered into discussions with Ventura on the extent and amount of Ventura's liens, if
27 any, against its assets. EBF and Ventura have agreed to the use of cash collateral pursuant to the terms
28 of the Budget attached to Marcus' Declaration and will continue negotiating the treatment of Ventura's
claims against the Debtors.

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4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. Jurisdiction And Venue**

6 The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is
7 a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A) and (M). Venue is proper
8 in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

9 **II. Statement Of Facts**

10 On January 16, 2018 (the "Petition Date"), Debtors filed a voluntary petition for relief
11 under chapter 11 of the Bankruptcy Code, thereby commencing this case. Debtors continue to
12 operate the business through EBF, maintain control and possession of their assets, and have the
13 rights, powers and duties of debtors in possession, pursuant to sections 1107 (a) and 1108 of the
14 Bankruptcy Code.

15 Eclipse Berry Farms, LLC ("EBF") was organized in 1999 by Norman Gilfenbain
16 ("Gilfenbain") and Robert Wiviott ("Wiviott"). Gilfenbain is deceased and his fifty percent
17 (50%) membership interest in EBF is currently held by the Gilfenbain Family Trust dated May
18 15, 1990 ("Gilfenbain Trust"), with Gary Finkel and Gloria Gilfenbain, serving as Trustees of
19 the Gilfenbain Trust. Ventura Strawberry Farms, LLC ("Ventura") holds the remaining fifty
20 percent (50%) membership interest in EBF. Ventura is wholly owned by the Wiviott Family
21 Trust dated May 8, 1992 (the "Wiviott Trust"), with Stacey B. Torchon and Jeffrey R. Richter,
22 serving as Trustees of the Wiviott Trust. EBF is the operating entity of the Debtors while
23 Rosalyn Farms, LLC ("RF") and Harvest Moon Strawberry Farm, LLC ("HMSF") are non-
24 operating pass-through payroll entities of the Debtors.

25 At its origins, EBF began with a 240 acre farming operation in Oxnard, California.
26 Over time, EBF expanded its farming operations into Salinas, California (Monterey County)
27 and Santa Maria, California (Santa Barbara County). At its peak, EBF had a 2,500+ acre
28 farming operation and more than 3,000 employees working in offices and farmland across its

1 various leased farms in Northern and Southern California. EBF did not own any of the real
2 property on which it operated its farms or its offices.

3 EBF's core operation was farming strawberries and its expanded operations into Salinas
4 and Santa Maria allowed it to offer an extended growing season over many of its competitors.
5 EBF's customer base included retailers (such as Walmart, H-E-B Grocery, and Kroger),
6 brokers/wholesalers (such as C&S Wholesale Produce, Westlake Fresh, and Blazer Wilkenson),
7 and processors (such as Sunrise Growers, Tree Top, and Island Oasis. In order to provide its
8 extensive customer base with year-round strawberries, EBF entered into supply agreements with
9 strawberry growers in California, Florida, and Mexico.

10 In late-July 2017, Wells Fargo informed the Debtors that Wells Fargo would no longer
11 renew its long-standing \$49 million lines of credit that were essential to Debtors' operations.
12 These lines of credit in the aggregate available amount of \$49 million were pass-through lines
13 of credit with Wells Fargo and Ventura and were secured by the Debtors' assets. Traditionally,
14 the growing season in California began in August of the preceding year with the season ending
15 in July through November of the following year. Like most farms, EBF would draw on its line
16 of credit at the beginning of the growing season (August), when overhead and capital was
17 required to plant the new crops, and pay off the outstanding line by the end of the growing
18 season (following year).

19 On July 11, 2017, to meet current obligations owed to Wells Fargo Bank, N.A. ("Wells
20 Fargo"), Ventura advanced \$4.3 million to EBF, memorialized through a promissory note dated
21 the same date. On August 2, 2017, Ventura advanced an additional \$17.3 million to EBF,
22 through an amended promissory note, enough to satisfy the full amount of the Wells Fargo line
23 of credit and caused Wells Fargo to release all of its liens against Debtors' assets. The
24 obligations under the amended promissory note were purportedly secured through a Security
25 Agreement dated August 2, 2017, granting Ventura liens on all of Debtors' assets, including
26 cash. *See Exhibit ii-B.* Ventura asserts that EBF's outstanding debt totals more than \$29.6
27 million, consisting of the \$21.6 million advanced in July and August 2017, and \$8 million in
28 advances made prior to July 2017. On September 1, 2017, Ventura filed a UCC-1 financing

1 statement purportedly securing the \$21.6 million July and August advances against all of EBF's
2 assets. See Exhibit ii-C.

3 On September 6, 2017, with the consent of the respective managers and members, the
4 Debtors appointed Robert Marcus as Chief Restructuring Officer to, *inter alia*, evaluate
5 company operations and implement procedures to maximize the recovery for all legally
6 interested parties (the "CRO"). The Debtors filed these cases to finalize the orderly liquidation
7 of their estates, wind-up their affairs, and adjudicate all outstanding claims in a single forum to
8 ensure that creditors, on all levels, are treated fairly and equitably. Use of cash collateral is
9 needed while the Debtors continue to manage their financial affairs in chapter 11.

10 III. Legal Argument

11 Pursuant to Section 363(a) of the Bankruptcy Code, cash collateral includes cash,
12 deposit accounts, and proceeds in which the estate and an entity other than the estate have an
13 interest. 11 U.S.C. § 363(a).

14 The Debtors' cash held as of the Petition Date and all monies to be received by the
15 Debtors from sales of inventory, collection of accounts receivable, and proceeds from sales of
16 other assets may constitute the cash collateral of Ventura.

17 Section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may not
18 use cash collateral unless "(a) each entity that has an interest in such cash collateral consents; or
19 (b) the court, after notice and a hearing, authorizes such use . . . in accordance with the
20 provisions of this section." 11 U.S.C. § 363(c)(2). "The ability to use cash collateral under 11
21 U.S.C. § 363(c)(2) extends to the Debtors by virtue of § 1107(a), which endows a Chapter 11
22 debtor-in-possession with 'virtually all the rights and powers of a bankruptcy trustee . . .'" *In re*
23 *Village Green I.G.P.*, 435 B.R. 525, 530 (Bankr. E.D. Tenn. 2000). Additionally, the Court may
24 enter a preliminary order authorizing the debtor to use property of the estate otherwise pledged
25 as collateral so long as "there is a reasonable likelihood that the trustee will prevail at the final
26 hearing under subsection (e) of this section," which addresses adequate protection. 11 U.S.C. §
27 363(c)(3).

1 Section 361 of the Bankruptcy Code does not define adequate protection. The
2 legislative history of section 361, however, makes clear that bankruptcy courts are given broad
3 flexibility in deciding what constitutes adequate protection, stating:

4 This section specifies the means by which adequate
5 protection may be provided. It does not require the court to
6 provide it. To do so would place the court in an administrative
7 role. Instead, the trustee or debtor in possession will provide or
8 propose a protection method. If the party that is affected by the
9 proposed action objects, the court will determine whether the
10 protection provided is adequate. The purpose of this section is to
11 illustrate means by which it may be provided and to define the
12 contours of the concept.

13 *In re Robson*, 10 B.R. 362, 365 n.4 (Bankr. N.D. Ala. 1981) (quoting legislative history).

14 Section 361 of the Bankruptcy Code delineates the forms of adequate protection which
15 may be provided and includes replacement liens. What constitutes adequate protection must be
16 decided on a case-by-case basis. *See In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In*
17 *re Martin*, 761 F.2d 472 (8th Cir. 1985); *In re Shaw Indus., Inc.*, 300 B.R. 861, 865 (Bankr.
18 W.D. Pa. 2003). The focus of the requirement is to protect a secured creditor from diminution in
19 the value of its interest in the particular collateral during the period of use. *See In re Swedeland*
20 *Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) ("The whole purpose of adequate protection
21 for a creditor is to insure that the creditor receives the value for which he bargained
22 prebankruptcy.") (internal citation omitted).

23 The Debtors respectfully submit that the adequate protection proposed to be provided to
24 Ventura, particularly in light of Ventura's agreement to the relief requested and Budget, is
25 reasonable and appropriate and should be approved.

26 Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash
27 collateral or obtain credit, respectively, may not be commenced earlier than fourteen (14) days
28 after the service of such motion. Upon request, however, the Court is empowered to conduct a

1 preliminary expedited hearing on the motion and authorize the use of cash collateral and the
2 obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a
3 Debtors' estate pending a final hearing.

4 Pursuant to Bankruptcy Rules 4001(b) and (c), the Debtors request that the Court: (a)
5 authorize the Debtors to use Cash Collateral on an interim basis, pending entry of a final order,
6 in order to avoid immediate and irreparable harm and prejudice to the Debtors' estate and all
7 parties in interest; and (b) schedule a hearing to consider entry of a final order.

8 The Debtors have an urgent and immediate need for cash to preserve and maximize the
9 value of its assets. Currently, the Debtors do not have sufficient unencumbered funds with
10 which to do so. Absent authorization from the Court to use Debtor's Cash Collateral, as
11 requested, on an interim basis pending a final hearing on the Motion, the Debtors will be
12 immediately and irreparably harmed.

13 WHEREFORE, the Debtors respectfully request that this Court: (1) approve the use of
14 cash collateral on an interim basis in accordance with the proposed Budget pending final
15 approval of the Motion; (2) enter the proposed Interim Cash Collateral Order; (3) schedule a
16 final hearing to approve this Motion; (4) after further notice and a hearing, enter a Final Cash
17 Collateral Order; (5) authorize the Debtors to execute such documents as are necessary to
18 carryout the Court's order; and (6) grant such other and further relief this Court deems just,
19 equitable, and proper.

20
21 Dated: January 18, 2018

ECLIPSE BERRY FARMS, LLC, *et al.*, debtors
and debtors in possession

22
23 By: 

BARRY A. CHATZ (CA Bar No. 140638)
KEVIN H. MORSE (CA Bar No. 253066)
SAUL EWING ARNSTEIN & LEHR, LLP

24
25
26 - and -

27 By: 

28 AMY GOLDMAN

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LOVEE SARENAS
LEWIS BRISBOIS BISGAARD &
SMITH LLP

*[Proposed] Attorneys for Debtors
and Debtors in Possession*

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 633 West 5th Street, Suite 4000, Los Angeles, CA 90071.

A true and correct copy of the foregoing document entitled (*specify*): DEBTORS' MOTION FOR APPROVAL OF AGREED USE OF CASH COLLATERAL ON AN INTERIM AND FINAL BASIS

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 01/18/18, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Ron Maroko: ron.maroko@usdoj.gov
- Kevin H. Morse: kevin.morse@saul.com
- United States Trustee (LA): ustpreion16.la.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 01/18/18, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

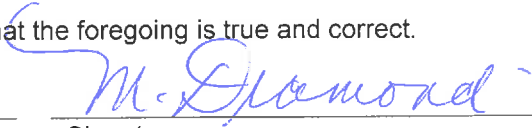
3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 01/18/18, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

01/18/18
Date

Marion Diamond
Printed Name


Signature

SERVICE LIST

BY U.S. MAIL:

DEBTOR:

Eclipse Berry Farms, LLC
11812 San Vicente Boulevard, Suite 250
Los Angeles, CA 90049

Harvest Moon Strawberry Farms, LLC
11821 San Vicente Boulevard, Suite 250
Los Angeles, CA 90049

Rosalyn Farms, LLC
11821 San Vicente Boulevard, Suite 250
Los Angeles, CA 90049

SECURED CREDITOR:

COUNSEL TO VENTURA STRAWBERRY FARMS, LLC
Alan I. Nahmias
Mirman, Bubman & Nahmias LLP
21860 Burbank Boulevard, Suite 360
Woodland Hills, CA 91367-7406

THE HONORABLE BARRY RUSSELL:

(Sent Via Messenger Hand Delivery)

United States Bankruptcy Court
Central District of California
255 East Temple Street, Suite 1660
Los Angeles, CA 90012

LIST OF 20 LARGEST CREDITORS:

Advance Plant Nutrition LLC
2888 Estates Drive
Aptos, CA 95003

AG RX, Inc.
751 South Rose Avenue
Oxnard, CA 93030

Alex Camany
18825 Heritage Court
Salinas, CA 93908

American Express
P.O. Box 0001
Los Angeles, CA 90096-8000

Armstrong Transport Group Inc.
P.O. Box 560687
Charlotte, NC 28256-0687

BNSF Logistics, LLC
2710 S. 48th Street
Springdale, AR 72762

C H Robinson Worldwide Inc.
P.O. Box 9121
Minneapolis, MN 55480-9121

Cal-Tex Transportation, LLC
P.O. Box 107
Visalia, CA 93291

Central Cold Storage
P.O. Box 742352
Los Angeles, CA 90074-2352

Coastal Growers Supply, Inc.
1450 Soloman Road
Santa Maria, CA 93455

Crop Production Services (649)
P.O. Box 657
Salinas, CA 93902

George-Pacific Corrugated LLC
Attn: P.O. Box 743348
1000 W. Temple St.
Los Angeles, CA 90012

Golden Four Express, LLC
c/o Crecia Sue Plaughter
13287 El Nogal Ave
Visalia, CA 93292

Jerue Truck Broker, Inc.
P.O. Box 33080
Lakeland, FL 33807

Robert Mann Packaging, Inc.
1051 S. Rose Avenue
Oxnard, CA 93030

TCI Business Capital, Inc.
9185 Paysphere Circle
Chicago, IL 60674

Tri Cal, Inc.
8100 Arroyo Circle
Gilroy, CA 95020

Unified Carries
1105 South M Street
Oxnard, CA 93033

Ventura Strawberry Farms, Inc.
5000 N. Parkway Calabasas
Suite 107
Calabasas, CA 91302

Cal Dept. of Food & Agriculture
Headquarters Legal Office
1220 N. Street, Fourth Floor
Sacramento, CA 95814

Employment Development Dept.
Bankruptcy Group MIC 92E
P.O. Box 826880
Sacramento, CA 94280-0001

Franchise Tax Board
Bankruptcy Section MS: A-340
P.O. Box 2952
Sacramento, CA 95812-2952

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

Los Angeles County Tax Collector
P.O. Box 54110
Los Angeles, CA 90054-0110

Santa Barbara County Treasurer
511 Lakeside Parkway, #104
Santa Maria, CA 93455

State Board of Equalization
Special Ops Bankruptcy Team MIC 74
P.O. Box 942879
Sacramento, CA 94279-0074

Treasurer – Tax Collector of
Monterey County
P.O. Box 891
Salinas, CA 93902-0891

United States Trustee
915 Wilshire Boulevard, Suite 1850
Los Angeles, CA 90017

Frontier Communications
P.O. Box 740407
Cincinnati, OH 45274-0407

Frontier Communications
c/o Corporation Service Company
401 Merritt 7
Norwalk, CT 06851

Spectrum Business
2939 Nebraska Avenue
Santa Monica, CA 90404

Alan I. Nahmias
Mirman, Bubman & Nahmias LLP
21860 Burbank Boulevard, Suite 360
Woodland Hills, CA 91367-7406

Alliant Insurance Services, Inc.
701 B Street, 6th Floor
San Diego, CA 92101

Growers Captive Group
c/o York Risk Services Group
333 City Boulevard West, Suite 1500
Orange, CA 92868