



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
September 16, 2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:
QUICKER LIQUOR LLC,

Debtor.

Case No. 22-10331-mkn

(Jointly administered)
Case No. 22-10332-mkn

Chapter 11

In re:
NEVADA WINE CELLARS, INC.

Jointly Administered Debtor.

Date: September 7, 2022
Time: 3:30 p.m.

ORDER ON MOTION TO APPROVE SETTLEMENT WITH THE ERNEST W. MOODY REVOCABLE TRUST PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019¹

On September 7, 2022, a hearing was held on the Motion to Approve Settlement With the Ernest W. Moody Revocable Trust Pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Settlement Motion”), brought by the above-captioned debtors. The appearances of counsel

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the above-captioned case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. §101, *et seq.* All references to “Bankruptcy Rule” are to the provisions of the Federal Rules of Bankruptcy Procedure. All references to “Civil Rule” are to the provisions of the Federal Rules of Civil Procedure. All references to “FRE” are to the Federal Rules of Evidence.

1 were noted on the record.² After arguments were presented, the matter was taken under
2 submission.³

3 **BACKGROUND⁴**

4 On January 31, 2022, Quicker Liquor LLC (“QL”) and Nevada Wine Cellars, Inc.
5 (“NWC”), filed separate “skeleton” Chapter 11 petitions. (QL ECF No. 1; NWC ECF No. 1).
6 Both Chapter 11 petitions were filed by the law firm of Larson & Zirzow, LLC (“L&Z Firm”).
7 On the same date, a Notice of Chapter 11 Bankruptcy Case was entered informing parties in
8 interest of the QL and NWC Chapter 11 bankruptcy proceedings; the deadline of June 1, 2022,
9 for creditors to file a proof of claim and August 1, 2022, for any governmental unit to file a proof
10 of claim; and set a meeting of creditors required by Section 341 (“341 Meeting”) for March 3,
11 2022.

12 On February 3, 2022, QL and NWC filed separate emergency motions for order directing
13 joint administration of their respective Chapter 11 cases for “procedural convenience and cost
14 efficiencies” (“Joint Admin Motion”). (QL ECF No. 7; NWC ECF No. 7).

15 On February 4, 2022, an order was entered shortening time for the Joint Admin Motion to
16 be heard on February 9, 2022, along with other motions. (QL ECF No. 16; NWC ECF No. 18).
17 The other motions consisted of additional requests (“First Day Motions”) by QL and NWC.
18 Those additional matters included the following: (1) First Day Motion Authorizing Debtors to
19 Pay Employee Wages, etc. (“Employee Wages Motion”) ; (2) First Day Motion Authorization to:

21 ² At the hearing, attorney David A. Stephens appeared in support of the Settlement
22 Motion. On May 23, 2022, attorney Stephens filed an unsecured proof of claim in the NWC
23 proceeding in the amount of \$80,000, on behalf of R.N.G., Inc. That creditor is listed in the
amended schedules of NWC as having a disputed and unliquidated claim in the same amount.

24 ³ A variety of other matters were heard on the same date as well and are the subject of
25 separate orders entered contemporaneously herewith. Certain of the Background described in
the instant order is repeated in the other and prior orders.

26 ⁴ Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the
27 docket in the above-captioned bankruptcy case. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir.
1980). See also Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee
28 Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015) (“The Court may consider the records in this
case, the underlying bankruptcy case and public records.”).

1 (i) Continue Using Existing Cash Management System..., (ii) to Honor Certain Prepetition
2 Obligations Related to the Use of Cash Management System, and (iii) Maintain Existing Bank
3 Accounts (“Cash Management System Motion”); (3) First Day Motion to Approve Kathy Trout
4 as the Designated Responsible Person in Their Chapter 11 Cases (“Designated Person Motion”);
5 and (4) First Day Motion for Continuation of Utility Service and Approval of Adequate
6 Assurance of Payment to Utility Company (“Utilities Motion”). (QL ECF Nos. 8-11; NWC ECF
7 Nos. 8-11). The Joint Admin Motion and the First Day Motions were all scheduled to be heard
8 on February 9, 2022.

9 On February 4, 2022, an omnibus declaration of Kathy Trout (“Trout”) in support of the
10 First Day Motions was filed (“First Trout Declaration”). (QL ECF No. 17; NWC ECF No. 14).
11 QL is the holder of 100% of the shares in NWC, while NWC is the owner and operator of
12 Pahrump Valley Winery (“PVW”). See First Trout Declaration at ¶ 2.

13 On February 8, 2022, an order was entered authorizing the Moody Trust to conduct an
14 examination under Civil Rule 2004 (“2004 Examination”) of the person most knowledgeable for
15 QL (“QL 2004 Examination Order”). (QL ECF No. 22).

16 On February 8, 2022, an order was entered authorizing the Moody Trust to conduct a
17 2004 Examination of the person most knowledgeable for NWC (“NWC 2004 Examination
18 Order”). (NWC ECF No. 22).

19 On February 9, 2022, an order was entered granting joint administration of the cases and
20 QL was designated as the lead debtor in possession (collectively “Debtors”). (QL ECF No. 24;
21 NWC ECF No. 23). A Notice of Deadline to File Combined Matrix was also filed. (QL ECF
22 No. 25). On this same date, interim orders were entered granting the Cash Management System
23 Motion, the Employee Wages Motion, the Utilities Motion, and Designated Person Motion.
24 (QL ECF Nos. 26, 27, 29, and 32).

25 On February 11, 2022, Debtors filed their consolidated matrix for the jointly administered
26 cases. (QL ECF No. 34).

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1 On February 14, 2022, Debtors filed an application for authorization to employ the L&Z
2 Firm as bankruptcy counsel for both Chapter 11 debtors in possession, supported by the
3 Declaration of Matthew Zirzow (“First Zirzow Declaration”). (QL ECF Nos. 38 and 39).

4 On February 14, 2022, Debtors filed their schedules of assets and liabilities (“Schedules”)
5 along with, inter alia, their statements of financial affairs (“SOFA”). (QL ECF No. 40; NWC
6 ECF No. 28). The Schedules and SOFA for both Debtors are signed under penalty of perjury by
7 Trout on behalf of the managing member of QL and as secretary/treasurer of NWC.

8 On February 17, 2022, Debtors filed a motion to employ the law offices of Timothy
9 Elson (“Elson”) as special counsel, accompanied by the Declaration of Timothy Elson. (ECF
10 Nos. 42 and 43). On the same date, Debtors filed a notice of hearing setting the motions to
11 employ the L&Z Firm and Elson to be heard on March 23, 2022. (ECF No. 44).

12 On March 3, 2022, the 341 Meeting was concluded. (ECF No. 60).

13 On March 25, 2022, Debtors filed their monthly operating report for the period ending
14 February 28, 2022 (“February MOR”). (ECF No. 75).

15 On March 28, 2022, a final order was entered granting the Employee Wages Motion.
16 (ECF No. 76).

17 On March 29, 2022, the Moody Trust filed in the QL case a proof of claim in the amount
18 of \$8,602,810.32. On the same date, the Moody Trust filed in the NWC case a proof of claim in
19 the same amount.

20 On March 30, 2022, the Moody Trust filed a motion to prohibit the Debtors’ use of cash
21 collateral (“Cash Collateral Prohibition Motion”), supported by the Declaration of David Keys
22 (“First Keys Declaration”). (ECF Nos. 81 and 82). The motion was noticed to be heard on April
23 27, 2022. (ECF No. 84).

24 On April 11, 2022, an order was entered authorizing the Debtors’ employment of the
25 L&Z Firm (“L&Z Employment Order”). (ECF No. 91).

26 On April 11, 2022, an order was entered denying authorization for the Debtors to employ
27 Elson. (ECF No. 92).

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1 On April 22, 2022, Debtors filed their monthly operating report for the period ending
2 March 31, 2022 (“March MOR”). (ECF No. 111).

3 On April 25, 2022, Debtors objected to the proof of claim filed by the Moody Trust in the
4 NWC estate. (ECF No. 115).

5 On April 27, 2022, an order was entered denying the Cash Collateral Prohibition Motion.
6 (ECF No. 121).

7 On May 3, 2022, the Moody Trust filed a notice of issuance of subpoena for inspection of
8 the premises of NWC (“Inspection Subpoena”). (ECF No. 127).

9 On May 4, 2022, an order was entered approving the Moody Trust’s withdrawal without
10 prejudice of its proof of claim filed against NWC and vacating the hearing scheduled on the
11 claim objection. (ECF No. 129).

12 On May 5, 2022, the Moody Trust filed a notice of withdrawal without prejudice of the
13 proof of claim it had filed in the NWC proceeding. (ECF No. 36).

14 On May 17, 2022, the L&Z Firm filed a motion to withdraw as counsel for the Debtors
15 (“L&Z Withdrawal Motion”), supported by the Declaration of Matthew C. Zirzow (“Second
16 Zirzow Declaration”). (ECF Nos. 133 and 134).

17 On May 23, 2022, an order shortening time was entered authorizing the L&Z Withdrawal
18 Motion to be heard on June 1, 2022. (ECF No. 143).

19 On May 23, 2022, proof of claim number 5-1 (“POC-5”) was filed in the NWC
20 proceeding by R.N.G., Inc. (“RNG”) in the unsecured amount of \$80,000. POC-5 is based on an
21 agreement in August 2018, for NWC to purchase grapes grown by RNG.

22 On May 23, 2022, proof of claim number 6 (“POC-6”) was filed in the NWC proceedings
23 by Giacomo Minella and Claudia Luppi (“Minella and Luppi”) in the unsecured amount of
24 \$4,900,034.59. POC-6 is based on an affidavit of confession of judgment signed by Trout on
25 December 12, 2014, on behalf of herself as well as on behalf of MagPly, Inc.

26 On May 25, 2022, Debtors filed their monthly operating report for the period ending
27 April 30, 2022 (“April MOR”). (ECF No. 145).

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1 On May 25, 2022, Debtor’s Motion to Extend Exclusivity (First Request) (“Exclusivity
2 Extension”) was filed by NWC, along with a supporting declaration of Kathy Trout (“Second
3 Trout Declaration”). (ECF Nos. 149 and 150).

4 On May 25, 2022, a Motion for Entry of an Order of Debtors’ Contempt of Rule 2004
5 Orders and Subpoenas for Debtors’ Production of Documents and Inspection of Equipment by
6 Todd Shirey, Motion to Compel Production and for Sanctions, was also filed by the Moody Trust
7 (“Contempt and Compel Motion”), along with supporting declarations of Ogonna M. Brown,
8 Esq. (“First Brown Declaration”) and Todd Shirey (“Shirey Declaration”). (ECF Nos. 154, 155,
9 and 157).

10 On May 25, 2022, Debtors filed an objection to POC-6 filed by Minella and Luppi,
11 accompanied by the declaration of Kathy Trout (“POC-6 Claim Objection”). (ECF Nos. 156 and
12 158) A hearing was scheduled for July 13, 2022. (ECF No. 159)

13 On May 25, 2022, the Moody Trust filed a motion to dismiss the Chapter 11 proceedings
14 (“Dismissal Motion”), along with supporting declarations of David Keys (“Second Keys
15 Declaration”), Derek Groff (“Groff Declaration”), Glenn J. Rigdon, MA, IFAS, ASA (“Rigdon
16 Declaration”), and Ogonna M. Brown, Esq. (“Second Brown Declaration”). (ECF Nos. 165-
17 169).

18 On May 26, 2022, a Notice of Hearing and Notice of Entry of Order Granting Ex Parte
19 Application for Order Shortening Time to Hear Debtor’s Motion to Extend Exclusivity was filed
20 setting the hearing for June 1, 2022. (ECF No. 177).

21 On May 27, 2022, an order shortening time was entered authorizing both the Dismissal
22 Motion, as well as the Contempt and Compel Motion to be heard on June 15, 2022. (ECF No.
23 180).

24 On May 31, 2022, a joinder to the Exclusivity Extension was filed by QL. (ECF No.
25 188).

26 On May 31, 2022, a stipulation was filed for the law firm of Kung & Brown (“K&B
27 Firm”) to substitute as Chapter 11 counsel for QL in place of the L&Z Firm. (ECF No. 187).

1 On May 31, 2022, an opposition to the Exclusivity Extension was filed by the Moody
2 Trust, along with a supporting declaration of Ogonna M. Brown, Esq. (“Third Brown
3 Declaration”). (ECF Nos. 189 and 190).

4 On May 31, 2022, a proposed joint Chapter 11 plan of reorganization was filed on behalf
5 of QL and NWC. (ECF No. 192).

6 On June 1, 2022, an order was entered granting the L&Z Withdrawal Motion. (ECF No.
7 199). On the same date, the K&B Firm filed an application for authorization to be employed as
8 Chapter 11 counsel for QL, along with a supporting Declaration of A.J. Kung, Esq. (ECF No.
9 197). The application was noticed to be heard on July 13, 2022. (ECF No. 198).

10 On June 1, 2022, a proof of claim in the amount of \$249,654.00 was filed by JEH NV
11 Investments, Inc., in the QL case.

12 On June 1, 2022, the hearing on the Exclusivity Extension was continued to June 16,
13 2022. (ECF No. 202).

14 On June 10, 2022, a joint opposition to the Contempt and Compel Motion (“Joint
15 Contempt and Compel Opposition”), including a Countermotion for Protective Order
16 (“Protective Countermotion”) was filed by the Debtors, along with supporting declarations of
17 Kathy Trout (“Third Trout Declaration”) and Tracy M. O’Steen, Esq. (“First O’Steen
18 Declaration”). (ECF Nos. 213-215).

19 On June 10, 2022, an opposition (“Dismissal Opposition”) to the Dismissal Motion was
20 filed by the Debtors, along with supporting declarations of Kathy Trout (“Fourth Trout
21 Declaration”) and Tracy M. O’Steen, Esq. (“Second O’Steen Declaration”). (ECF Nos. 220-
22 222).

23 On June 13, 2022, Debtors filed a disclosure statement to accompany joint plan of
24 reorganization (“Disclosure Statement”). (ECF No. 223). A hearing to approve the Disclosure
25 Statement was noticed to be heard on July 13, 2022. (ECF No. 224).

26 On June 13, 2022, an order was entered shortening time to allow the Protective
27 Countermotion to be heard on June 16, 2022, in conjunction with the Contempt and Compel
28 Motion. (ECF No. 231).

1 On June 13, 2022, an order was entered granting Debtors' request to file a certain
2 document marked as Exhibit "H" under seal. (ECF No. 232).

3 On June 13, 2022, a reply in support of the Contempt and Compel Motion was filed
4 ("Contempt and Compel Reply"), along with a declaration of Ogonna M. Brown, Esq. ("Fourth
5 Brown Declaration") in support thereof. (ECF Nos. 235 and 236).

6 On June 13, 2022, a reply in support of the Dismissal Motion was filed along with
7 supporting declarations of David Keys ("Third Keys Declaration") and Ogonna M. Brown, Esq.
8 ("Fifth Brown Declaration"). (ECF Nos. 238-240).

9 On June 14, 2022, Debtors filed an errata to the Disclosure Statement to include Exhibit 3
10 – "Debtors' Pro Forma Projection" and Exhibit 4 – Debtors' "Joint Liquidation Analysis" to the
11 Disclosure Statement. (ECF No. 243).

12 On June 14, 2022, a stipulated order was entered approving the stipulation for protective
13 order. (ECF No. 244).

14 On June 15, 2022, an opposition to Protective Countermotion was filed by the Moody
15 Trust, along with a supporting declaration of Ogonna M. Brown, Esq. ("Sixth Brown
16 Declaration"). (ECF Nos. 248 and 249).

17 On June 15, 2022, a supplemental declaration of Ogonna M. Brown, Esq. in support of
18 the Dismissal Motion was filed ("Seventh Brown Declaration"). (ECF No. 250).

19 On June 16, 2022, a concurrent expedited hearing was held on the Dismissal Motion,
20 Exclusivity Extension, Contempt and Compel Motion, and Protective Countermotion. Separate
21 orders on each matter are entered contemporaneously herewith.

22 On June 22, 2022, an order was entered granting in part and denying in part the Contempt
23 and Compel Motion. (ECF 256). As a result, Debtors are subject to a continuing duty to
24 supplement their prior responses to document subpoenas issued by the Moody Trust and were
25 required to pay attorney's fees attributable to the Debtors' interference with an equipment
26 inspection.

27 On June 22, 2022, an order was entered denying the Dismissal Motion ("Dismissal
28 Order"). (ECF 258).

1 On June 22, 2022, an order was entered granting the Exclusivity Motion (“Exclusivity
2 Order”). (ECF 260). As a result, the Debtors’ exclusive period to confirm a joint Chapter 11
3 plan has been extended to November 30, 2022.

4 On June 22, 2022, an order was entered denying the Protective Countermotion. (ECF
5 262).

6 On June 27, 2022, an order shortening time was entered scheduling a hearing on approval
7 of the Disclosure Statement for July 13, 2022. (ECF No. 277).

8 On June 29, 2022, Minella and Luppi filed a response to the POC-6 Claim Objection.
9 (ECF No. 287).

10 On June 30, 2022, an objection to approval of the Disclosure Statement was filed by
11 Minella and Luppi. (ECF No. 288).

12 On June 30, 2022, an objection to approval of the Disclosure Statement was filed by the
13 Moody Trust, accompanied by the supporting declaration of Ogonna Brown. (ECF Nos. 289 and
14 292).

15 On July 6, 2022, Debtors filed a reply in support of the POC-6 Claim Objection. (ECF
16 No. 298).

17 On July 13, 2022, the hearing on approval of the Disclosure Statement, as well as other
18 pending matters, was continued to September 7, 2022. On the same date, the hearing on the
19 POC-6 Claim Objection was continued to August 10, 2022.

20 On July 18, 2022, an order was entered scheduling a settlement conference to be
21 conducted on August 15, 2022, between the Debtors and the Moody Trust. (ECF No. 331). The
22 settlement conference would be conducted by the Honorable Gregg W. Zive, United States
23 Bankruptcy Judge.

24 On August 10, 2022, a status hearing on POC-6 Claim Objection was conducted and an
25 evidentiary hearing was scheduled.

26 On August 11, 2022, an order was entered setting an evidentiary hearing on the POC-6
27 Claim Objection. (ECF No. 347). The evidentiary hearing was scheduled to be held on
28 February 27 and 28, 2023, as well as March 2, 2023.

1 On August 12, 2022, NWC filed amended property Schedules “A/B” and amended
2 unsecured creditor Schedules “E/F.” (ECF No. 350). Amended Schedule “A/B” at Item 75 adds
3 the following: “Potential claim against R.N.G., Inc. and Roger Gehring Jr. Unknown Nature of
4 claim: conversion and intentional interference with economic advantage, conspiracy.” It also
5 changes the description of the claim against the Moody Trust parties as follows: “Potential
6 claims against Ernest W. Moody Revocable Trust and related parties, including Ernest Moody
7 and Izaac Villalobos amount Unknown Nature of claim libel, slander, interference with
8 economic advantage, conspiracy, fraudulent transfer.” Amended Schedule “E/F” deletes the
9 priority unsecured claims previously listed for NWC’s full-time employees, presumably because
10 those claims were paid in full as a result of the Employee Wages Motion. Amended Schedule
11 “E/F” now lists a total of nine, non-priority unsecured creditors of NWC, including RNG for an
12 unknown amount, totaling \$609,937.41.

13 On August 15, 2022, the Settlement Conference between the Debtors and the Moody
14 Trust was conducted before Judge Zive. A settlement was reached and placed on the record.

15 On August 18, 2022, the Moody Trust filed a notice vacating several depositions it had
16 scheduled in connection with its various objections. (ECF No. 355).

17 On August 23, 2022, the Debtors filed the instant Settlement Motion, along with
18 supporting declarations of Candace C. Carlyon, Ernest W. Moody, Kathy Trout, and John
19 Hobbs. (ECF Nos. 359, 361, 363, 364 and 365).

20 On August 24, 2022, an order was entered shortening time so that the Settlement Motion
21 could be heard on September 7, 2022. (ECF No. 366).

22 On August 24, 2022, Debtors filed a proposed second amended joint Chapter 11 plan of
23 reorganization (“Second Chapter 11 Plan”) along with a second amended disclosure (“Second
24 Amended Disclosure Statement”). (ECF Nos. 367 and 368).

25 On September 2, 2022, Manella and Luppi filed an objection to approval of the Second
26 Amended Disclosure Statement (“Manella and Luppi Disclosure Opposition”). (ECF No. 378).

27 On September 2, 2022, Manella and Luppi filed an opposition to the Settlement Motion.
28 (ECF No. 379).

1 On September 6, 2022, Debtors filed a reply in support of approval of the Second
2 Amended Disclosure Statement. (ECF No. 380).

3 On September 6, 2022, Debtors filed a reply in support of approval of the Settlement
4 Motion. (ECF No. 381).

5 On September 7, 2022, Debtors filed a supplement to the Settlement Motion consisting of
6 a signed copy of the Settlement Agreement. (ECF No. 382).

7 **APPLICABLE LEGAL STANDARDS**

8 A Chapter 11 debtor in possession has a fiduciary obligation to all creditors of the
9 bankruptcy estate, not to the individual principals of the pre-bankruptcy debtor. See Woodson v.
10 Fireman’s Fund Ins. Co. (In re Woodson), 839 F.2d 610, 614 (9th Cir. 1988); In re Rosenblum,
11 2019 WL 5782589, at *5 n.17 (Bankr. D. Nev. Jul 15, 2019). A debtor in possession has both
12 the rights and duties of a bankruptcy trustee. See 11 U.S.C. § 1107(a); FRBP 9001(11). FRBP
13 9019(a) authorizes a bankruptcy trustee to seek court approval of a compromise or settlement
14 after notice and a hearing. The trustee bears the burden of proving that the proposed
15 compromise or settlement is in the best interests of the estate. Appropriate weight is given to a
16 trustee’s business judgment, but the requirement of notice and a hearing assures that decisions of
17 a trustee are not simply rubber stamped. See, e.g., In re Hyloft, Inc., 451 B.R. 104, 109 (Bankr.
18 D. Nev. 2011). In determining whether a proposed compromise or settlement is in the best
19 interests of the estate, a bankruptcy court is directed to consider four factors:

- 20 (a) The probability of success in the litigation; (b) the difficulties, if any, to be
21 encountered in the matter of collection; (c) the complexity of the litigation
22 involved, and the expense, inconvenience and delay necessarily attending it; (d)
the paramount interest of the creditors and a proper deference to their reasonable
views in the premises.

23 Martin v. Kane (In re A&C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986), quoting In re Flight
24 Transportation Corporation Securities Litigation, 730 F.2d 1128, 1135 (8th Cir. 1984), cert.
25 denied, 469 U.S. 1207 (1985) (“A&C Factors”). See Tieni v. Mastan (In re Bondanelli), 2020
26 WL 1304140, at *2 (B.A.P. 9th Cir. Mar. 18, 2020).

27 **DISCUSSION**

1 As described in note 5, supra, the Moody Trust is the primary creditor scheduled in these
2 jointly administered Chapter 11 cases. It loaned funds to QL and the loan is secured by QL's
3 interest in NWC. The value of NWC is based on its real and personal property assets, including
4 operation of a winery and restaurant. As recited in the background portion of this order, the
5 Moody Trust has been the most active creditor in this Chapter 11 proceeding from the very start.

6 Minella and Luppi were not scheduled as creditors of either Chapter 11 debtor, but they
7 filed their unsecured POC-6 against NWC based on the confession of judgment they had
8 obtained against Trout and Magply. The amount of POC-6 is \$4,900,034.59. If allowed, POC-6
9 would be the largest unsecured claim against NWC. Although POC-6 is signed under penalty of
10 perjury, the attached confession of judgment is against Trout and Magply, rather than NWC.
11 Instead, POC-6 is based on the claimants' legal theory that NWC is an "alter ego" of Trout and
12 therefore liable for the judgment. In other words, POC-6 is not based on personal knowledge of
13 its validity.

14 By their Settlement Motion, Debtors seek peace with the Moody Trust by stipulating to
15 an allowed claim in the amount of \$6,091,000, secured by the assets of both Debtors.
16 Satisfaction of the allowed claim is proposed through two alternatives: (1) paying \$6,091,000 to
17 the Moody Trust⁵ in full satisfaction of its claim⁶ within 60 days of settlement approval⁷, or (2)

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19 ⁵ The Moody Trust POC in the QL proceeding is filed in the secured amount of
20 \$8,602,810.32, secured by QL's interest in NWC. Under Section 506(a), the allowed amount of
21 Moody Trust's secured claim is the value of QL's interest in NWC. If the value of QL's interest
22 in NWC exceeds \$8,602,810.32, then Moody Trust's claim is oversecured and the excess value
23 may be available to payment of unsecured claims. If the value of the interest is less than
24 \$8,602,810.32, then the allowed class is limited to that value and there is no excess value in
25 NWC that would be available for distribution to unsecured creditors. Neither the Debtors nor
26 any other parties in interest have objected to the Moody Trust POC. Neither the Debtors nor any
27 other parties in interest have offered any evidence that the value of QL's interest in NWC is less
28 than \$6,091,000. Allowance of a claim in the amount of \$6,091,000 in favor of the Moody Trust
rather than \$8,602,810.32, arguably represents a significant discount in the amount of the claim
without initiation of a claims objection process, or a valuation hearing.

⁶ Payment of the Moody Claim under the first alternative also would include a release of
all claims between the parties.

⁷ The 60 days runs from entry of an order approving the settlement.

1 selling substantially all of the assets of NWC⁸ to the Moody Trust through the proposed Chapter
2 11 plan.⁹ In exchange for the assets, the Moody Trust will pay cash in the amount of \$250,000
3 and shall contribute its \$6,091,000 claim. As part of the second alternative, the Moody Trust
4 essentially will assume and pay all secured claims of NWC not exceeding \$115,000, obtain new
5 liquor licenses, offer up to six months employment to NWC employees, and pay \$450,000 to
6 JEH to pay the allowed administrative expenses of the QL bankruptcy estate. If the settlement is
7 approved, the Moody Trust agrees to withdraw any pending objections raised in the case, support
8 approval of the Settlement Motion, and to support confirmation of a joint Chapter 11 plan. If the
9 joint Chapter 11 plan is not confirmed, the settlement terms would not be binding and the
10 Debtors and the Moody Trust return to their status as of August 15, 2022. In other words, the
11 proposed settlement suspends further litigation between the Debtors and their primary creditor,
12 with the possibility of final peace through the two alternatives.

13 Having considered the written and oral arguments of the parties, including the objections
14 by Minella and Luppi, the court concludes that the Settlement Motion should be granted under
15 the A&C Factors.

16 1. **Probability of Success in Litigation.**

17 The Moody Trust agrees to withdraw its opposition to the employment and terms of
18 retention of the Debtors' proposed bankruptcy counsel, to withdraw its opposition to Disclosure
19 Statement approval, and to refrain from opposing plan confirmation.¹⁰ Moreover, the Moody
20 Trust agrees to support confirmation of a joint Chapter 11 plan that includes the second
21 alternative encompassed by the Settlement Agreement.

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24 ⁸ The assets would include any potential claims that the Debtors have against the Moody
25 Trust. Excluded from the sale are an electric vehicle, various awards received by the winery, and
any personal causes of action that Hobbs and Trout may have against various parties.

26 ⁹ The proposed joint Chapter 11 plan would include a provision for the subject assets to
27 be sold to the Moody Trust under Section 363.

28 ¹⁰ The Moody Trust previously expressed that it would oppose confirmation of a joint
Chapter 11 plan. See Dismissal Order at 15:25-26.

1 In connection with the Dismissal Motion and the Exclusivity Motion, the court found that
2 the Debtors had a reasonable possibility of confirming a joint Chapter 11 plan of reorganization,
3 but had not demonstrated a reasonable likelihood of confirming a plan. See Dismissal Order at
4 15:9-14; Exclusivity Order at 11:14-20 & n.20. Under any circumstance, the Debtors'
5 probability of success in confirming a joint Chapter 11 plan is uncertain in the face of the
6 certainty that the Debtors' primary creditor, and the only creditor secured by QL's interest in
7 NWC, would object to plan confirmation. The proposed settlement obviates the certainty of that
8 plan confirmation objection being asserted.

9 Additionally, under both alternatives encompassed by the Settlement Motion, the
10 "potential claims" against the Moody Trust scheduled by NWC are addressed. Those potential
11 claims are merely listed in Schedule "A/B" but no civil actions to establish the validity or value
12 of the potential claims currently exist. The outcome of such claims are uncertain at best.

13 **2. Collection Difficulties.**

14 The Moody Trust has filed its proof of claim in the QL proceeding for which there is no
15 pending objection. QL's real and personal property Schedule "A/B" lists no claim against the
16 Moody Trust to which a setoff might be asserted, but NWC's Schedule "A/B" lists "potential
17 claims and causes of action" against the Moody Trust in an unknown amount.

18 Debtors and the Moody Trust have agreed to an allowed secured claim in the amount of
19 \$6,091,000, rather than the Moody POC amount of \$8,602,810.32. Under both alternatives, the
20 parties have agreed to a method by which the Moody Trust would receive the full allowed
21 amount of its claim. Whether the Moody Trust could ever obtain payment of the entire POC
22 amount is uncertain at best. The first alternative allows repayment at the discounted amount as
23 long as the payment is made within 60 days. The second alternative requires Chapter 11 plan
24 confirmation that includes a sale of the assets to the Moody Trust by contribution of \$700,000 in
25 cash plus the allowed claim amount. If either alternative fails, then the Moody Trust can
26 continue to assert the full amount of its POC.¹¹

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28 ¹¹ In the event the second alternative fails, the Moody Trust likely would renew its motion to dismiss, or seek relief from stay against QL to foreclose on its interest in NWC.

1 In contrast, NWC's potential claims against the Moody Trust does not appear to raise any
2 collection difficulties given the comparative resources suggested by the parties. But not even the
3 Debtors suggest what those potential claims are worth.

4 From the Debtors' perspective, any alleged difficulties in collecting from the Moody
5 Trust are dependent on whether NWC can successfully litigate its potential claims. From the
6 Moody Trust's perspective, the agreement to allow its claim in a discounted amount
7 accommodates the risks that it will not be successful in collecting the full amount of its claim.

8 3. **Complexity, Expense, Inconvenience and Delay.**

9 As the background of these jointly administered Chapter 11 proceedings reflect, the
10 complexity and expense of this matter is attributed almost entirely to the disputes between the
11 Debtors and the Moody Trust. This is not unexpected given the significance of the latter's claim
12 in these proceedings and the improvident manner in which the parties' obligation was structured.
13 Absent a settlement, substantial additional delays in completing this joint Chapter 11 proceeding
14 are foreseeable, with significant and mounting legal expenses amassed by all parties. Although
15 the settlement of any disputed matter obviously reduces the inconveniences inherent in the
16 litigation process, the demonstrated history of this Chapter 11 proceeding amply illustrate the
17 benefit of settling the differences between these particular parties.

18 Approval of the proposed settlement, of course, does not assure a successful outcome.
19 The first alternative still requires the Debtors to obtain sufficient funds to satisfy the allowed
20 secured claim. The second alternative still requires the Debtors to satisfy the requirements of
21 Section 1129(a), and possibly Section 1129(b), to confirm a joint Chapter 11 plan regardless of
22 the support of the Moody Trust. But either alternative is preferable to the current direction of
23 these Chapter 11 proceedings.

24 4. **Paramount Interest of Creditors.**

25 The Moody Trust is the primary creditor of the Debtors and certainly favors the
26 proposed Settlement Agreement. Minella and Luppi oppose the settlement based on their POC-
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28

1 6, and assert a variety of arguments¹² based on a legal theory that has not been adjudicated.¹³
2 RNG supports the settlement based on its POC -5, which is accompanied by a 2018 agreement
3 executed by NWC to purchase grapes. No other creditors of the Debtors have objected to the
4 proposed settlement.

5 As previously mentioned, the POC-6 Claim Objection is scheduled for a three-day
6 evidentiary hearing to commence on February 27, 2023. Also as previously mentioned, POC-6
7 is based entirely on an alter ego theory of liability that is merely alleged and never adjudicated.
8 By contrast, POC-5 is not the subject of an objection and is based on a written agreement
9 establishing a basis for liability. Under these circumstances, the court gives greater deference to
10 the views of RNG in support of the proposed settlement than the purely speculative views of
11 Minella and Luppi.

12 In this instance, the record before the court supports the Debtors' agreement to an
13 allowed secured claim of \$6,091,000 in favor of the Moody Trust. The proposed settlement
14 provides for alternative means of satisfying the amount for which further court approval will be
15 required. The proposed settlement is reasonable and beneficial to the bankruptcy estate.
16 Approval of the settlement does not prejudice a determination of the validity, if any, of POC-6,
17 nor its allowed amount, if any.

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21 ¹² Minella and Luppi attached three documents to their Opposition marked as Exhibits A,
22 B and C. Exhibit A consists of their document request in connection with the POC-6 Claim
23 Objection. Exhibit B consists of a copy of a June 29, 2020 affidavit filed by Trout in a liquor
24 license action in Nye County, Nevada. Exhibit C consists of a copy of an August 31, 2022 letter
25 that their counsel transmitted to the Office of the United States Trustee ("UST") alleging
26 criminal fraud in connection with Payroll Protection Loans obtained by the Debtors in May
27 2020. Although Minella and Luppi have provided no declaration or affidavit authenticating any
28 of the exhibits, the court has considered all of them for their full probative value in connection
with settlement approval. Even considering those documents, the court concludes that the
preponderance of the evidence before the court supports approval of the proposed settlement
under the A&C Factors.

¹³ Minella and Luppi make no suggestion that the value of QL's interest in NWC is less
than the allowed amount of \$6,091,000.

1 Based on the foregoing, the court concludes that the Debtors have met their burden of
2 proof and that the settlement is in the best interests of the jointly administered bankruptcy
3 estates.

4 **IT IS THEREFORE ORDERED** that the Motion to Approve Settlement with the
5 Ernest W. Moody Revocable Trust Pursuant to Federal Rule of Bankruptcy Procedure 9019,
6 brought by the above-captioned debtors in possession, Docket No. 359, be, and the same hereby
7 is, **GRANTED**.

8
9 Copies sent via CM/ECF ELECTRONIC FILING

10 Copy sent via BNC to:
11 QUICKER LIQUOR LLC
12 NEVADA WINE CELLARS, INC.
13 ATTN: OFFICER OR MANAGING AGENT
14 7582 LAS VEGAS BLVD., STE. 484
15 LAS VEGAS, NV 89123

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