

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

In re:)	
)	Chapter 11
OGGUSA, Inc., ¹)	
)	Case No. 20-50133-grs
Debtors.)	
)	(Jointly Administered)
)	
)	Honorable Gregory R. Schaaf
)	
)	

**THE DEBTORS' MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND
RELEASE WITH NETAFIM IRRIGATION, INC. UNDER BANKRUPTCY RULE 9019**

OGGUSA, Inc. f/k/a GenCanna Global USA, Inc. and its affiliate debtors and debtors' in possession in the above-captioned cases (collectively, the "Debtors") hereby move (the "Motion") for entry of an order: (i) authorizing the Debtors to enter into the *Settlement Agreement and Release* attached hereto as **Exhibit A** (the "Settlement Agreement")², and (ii) approving the terms of the settlement with Netafim Irrigation, Inc. (the "Settlement") set forth therein, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure. In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): OGGUSA, Inc. (0251); OGG, Inc. (N/A); and Kentucky Hemp, LLC (0816).

² Capitalized terms used but not defined herein have the meanings ascribed to them in the Settlement Agreement.

BACKGROUND

A. General Background

2. On January 24, 2020, an involuntary chapter 11 petition was filed against GenCanna in the above-captioned court (the “Court”). GenCanna subsequently consented to the petition, and an order for relief was entered with respect to GenCanna on February 6, 2020. On February 5, 2020, the other two Debtors filed voluntary chapter 11 petitions, as well, and the Debtors’ cases are being jointly administered for procedural purposes.

3. On May 28, 2020, the Debtors sent a demand letter to Netafim Irrigation, Inc. (“Netafim”) demanding the return of \$22,104.00.

B. Summary of the Settlement

4. As of July 23, 2020, the Debtors and Netafim have executed the Settlement Agreement, subject to approval by this Court.

5. By and through the Settlement Agreement, the Parties agree as follows:³

- a. Netafim shall pay the sum of \$12,000.
- b. The Parties will exchange mutual releases and, specifically, Netafim agrees to “release, acquit, and forever discharge the [Estate Related Parties] from any and all claims, actions, causes of action, charges, demands, losses, fees, and any other damages of every kind, nature and description whatsoever that [Netafim] ever had, now has, or may have in the future, whether known or unknown, against the Estate Released Parties, including but not limited to all prepetition or postpetition claims and claims under 11 U.S.C. § 502(h)”.

RELIEF REQUESTED

6. The Debtors seek entry of an order under Bankruptcy Rule 9019 authorizing the Settlement as reflected in the Settlement Agreement.

³ This summary is subject in its entirety to the terms of the Settlement Agreement. In the event of any inconsistency between this summary and the terms of the Settlement Agreement, the Settlement Agreement shall control.

ARGUMENT

7. Bankruptcy Rule 9019 provides that “[o]n motion by the trustee and after notice after a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. P. 9019.

8. In reviewing any proposed settlement under Bankruptcy Rule 9019, courts will approve the settlement if it is “fair and equitable” and in the best interest of the debtors’ bankruptcy estate. *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). Compromises are favored in bankruptcy in order to minimize the costs of litigation to the estate and expedite its administration. *In re McInerney*, 528 B.R. 684, 687 (Bankr. E.D. Mich. 2014). Bankruptcy courts have broad discretion to approve or reject a proposed settlement. *In re Levine*, 287 B.R. 683, 689 (Bankr. E.D. Mich. 2002) (citations omitted).

9. Here the Settlement reflected in the Settlement Agreement is fair, reasonable, and equitable. *Nellis v. Shgrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994) (holding that the question is not whether a better result is possible, but whether the settlement is within range of reasonableness).

10. Under the Settlement Agreement, Netafim will give the Debtors’ estates full and complete releases, and pay \$12,000.00 of the amount owed. In return, Netafim will receive a full and complete release from the Debtors. Exhibit A at ¶¶ 1, 4-5.

11. Additionally, absent this Settlement, the Parties would proceed to litigate the Debtors’ claim in an adversary proceeding that would create a distraction and drain on resources as the Debtors seek to confirm a plan of liquidation. Because the Debtors are avoiding these negative results, the Debtors believe that the Settlement reflected in the Settlement Agreement is a sound exercise of their business judgment.

12. For these reasons, the bankruptcy estate will be receiving substantial benefits and the proposed Settlement Agreement is in the best interests of the Debtors' estates and creditors. Accordingly, the Settlement Agreement should be approved.

NOTICE

PLEASE TAKE NOTICE that parties in interest shall have twenty-one (21) days from the date of this *Motion for Approval of Settlement Agreement and Mutual Release with Netafim Irrigation, Inc. Under Bankruptcy Rule 9019* to file an objection to the Motion and request a hearing on such objection. If no objection is timely filed, an Order may be entered without a hearing on the Motion. This notice complies with the twenty-one (21) day notice requirement for proposed settlements imposed by Bankruptcy Rule 2002(a)(3). The Debtors will file a separate certificate of service for this Motion as they have done with pleadings in these Chapter 11 Cases, however, the Debtors are ensuring that all parties on their creditor matrices are being served with the Motion as also required by Bankruptcy Rule 2002(a)(3).

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter an order approving the Settlement Agreement attached hereto as **Exhibit A**, granting the relief requested in the Motion, and granting such other and further relief as may be just and proper.

Dated: August 27, 2020

Respectfully submitted,

/s/ James R. Irving
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Counsel for the Debtors

EXHIBIT A

(Settlement Agreement)

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT AND RELEASE (this "Agreement") dated as of the 23rd day of July, 2020, is entered into between and among (i) GenCanna Global USA, Inc., GenCanna Global, Inc. and Hemp Kentucky, LLC (collectively, the "Debtors"); and (ii) Netafim Irrigation, Inc. (the "Demand Recipient"). The Debtors and Demand Recipient are referred to herein collectively as the "Parties".

RECITALS

WHEREAS, on January 24, 2020, an involuntary petition under chapter 11 of the United States Code (the "Bankruptcy Code") was filed against GenCanna Global USA, Inc.;

WHEREAS, on February 5, 2020, GenCanna Global USA, Inc. consented to the involuntary petition and on February 6, 2020 the other Debtors filed their own voluntary chapter 11 petitions under the Bankruptcy Code, which cases are being jointly administered under Case No. 20-50133-grs (the "Bankruptcy Cases") in the United States Bankruptcy Court for the Eastern District of Kentucky ("the Bankruptcy Court");

WHEREAS, on May 28, 2020, the Debtors sent a demand letter to the Demand Recipient demanding the return of certain avoidable transfer(s) in the amount of \$22,104.00 (the "Demand"); and

WHEREAS, the Demand Recipient believes that it has certain defenses to the Demand; and

WHEREAS, the Parties now wish to enter into this Agreement, without intending to admit any wrongdoing or liability, in an effort to avoid further protracted litigation and expense;

NOW, THEREFORE, in consideration for the foregoing and the mutual promises, covenants and understandings herein, and for valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follow:

1. **Settlement Payment**. The Demand Recipient shall pay the sum of \$12,000.00 (the "Settlement Payment") via certified check made payable to "Benesch, Friedlander, Coplan & Aronoff LLP" ("Benesch"). The Settlement Payment shall be delivered to Jennifer R. Hoover, Esquire, 1313 N. Market St., Wilmington, DE 19801. Benesch shall hold the Settlement Payment in escrow until the Settlement Effective Date (as defined below in ¶ 3). The Demand Recipient shall deliver the Settlement Payment to the aforementioned address simultaneously with execution of this Agreement.

2. **Bankruptcy Court Approval**. This Agreement is binding upon the Parties, but is subject to Court approval pursuant to Bankruptcy Rule 9019(b). After clearance of the Settlement Payment, counsel for the Debtors shall file a motion seeking entry of an order by the Court approving the Agreement pursuant to Bankruptcy Rule 9019 (an "Approval Order"). If an objection is made to the 9019 motion, and the Court denies entry of an order approving the

Agreement, this Agreement shall be null and void, and the Debtors shall immediately refund the Settlement Payment to the Demand Recipient.

3. **Settlement Effective Date.** This Agreement shall become effective on the last of the following to occur: (a) it has been duly executed by both Parties; (b) counsel for the Debtors has received the full amount of the Settlement Payment; and (c) the Court enters an Approval Order for the 9019 motion (such date, the "Settlement Effective Date").

4. **Releases by the Estate.** For and in consideration of the terms of this Agreement and other good and valuable consideration, the Debtors do hereby release, acquit and forever discharge the Demand Recipient and its successors, parents, predecessors, divisions, affiliated companies, and subsidiaries as well as its heirs, agents, insurers, officers, directors, employees, administrators, attorneys and assigns (collectively, the "Demand Recipient Released Parties") from any and all claims, actions, causes of action, charges, demands, losses, fees and any other damages of every kind, nature and description whatsoever that the Debtors and the Debtors' bankruptcy estates ever had, now has, or may have in the future, whether known or unknown, against the Demand Recipient Released Parties related to the Demand.

5. **Releases by the Demand Recipient.** For and in consideration of the terms of this Agreement, and other good and valuable consideration, the Demand Recipient does hereby release, acquit and forever discharge the Debtors, their bankruptcy estates, and their respective successors, parents, predecessors, divisions, affiliated companies and subsidiaries, as well as their agents, insurers, officers, directors, employees, administrators, attorneys and assigns (collectively, the "Estate Released Parties") from any and all claims, actions, causes of action, charges, demands, losses, fees and any other damages of every kind, nature and description whatsoever that the Demand Recipient ever had, now has, or may have in the future, whether known or unknown, against the Estate Released Parties, including but not limited to all prepetition or postpetition claims and claims under 11 U.S.C. § 502(h).

6. **Compromise Not An Admission.** The Parties agree and acknowledge that this Agreement is being entered into only for the purpose of avoiding the burdens, inconveniences and expenses of further disputes and litigation between the Parties as it relates to the Demand at issue and is not and shall not be construed or deemed to be an admission or concession by any party as to the merits of any claim or defense of the Parties.

7. **Governing Law.** This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with the laws of the State of Kentucky.

8. **Counterparts.** This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

9. **Severability.** The Parties agree that if any term of this Agreement is deemed to be invalid for any reason, the remaining terms and provisions shall retain their full force and effect.

10. **No Waiver of Right to Enforce Terms of Agreement.** By signing this Agreement, the Parties do not waive any right or claim to enforce the terms of this Agreement, but rather the Parties specifically reserve their rights to bring an action in a court of competent jurisdiction to enforce the terms of this Agreement.

11. **No Assignment.** The Parties covenant and agree that each has not assigned, transferred or conveyed in any manner all or any part of their legal claims or legal rights in connection with the matters described above.

12. **Successors In Interest.** This Agreement shall be binding upon the Parties and each of their respective heirs, predecessors, successors, assigns, affiliates, agents, insurers, employees, legal representatives and any other persons or entities acting on their behalf or claiming through or under them or any of them, and shall inure to the benefit of all the Parties, as well as each of their respective heirs, predecessors, successors, assigns, affiliates, agents, insurers, employees, legal representatives and any other persons or entities acting on their behalf or claiming through or under them or any of them.

13. **Entire Agreement.** No promise or agreement other than those recited above has been made as consideration for the releases and discharges effected by this Agreement, and the Parties enter into this Agreement for the sole consideration recited herein. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior proposals, negotiations, understandings, representations and agreements relating to such subject matter.

14. **All Amendments Must Be In Writing.** The terms of this Agreement may not be changed, modified, waived, discharged or terminated in any manner, except by written instrument signed by all of the Parties.

15. **Costs and Fees.** The Parties agree that they shall pay their own costs and attorneys' fees associated with the negotiation and execution of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered on the date first written above.

**GenCanna Global, Inc., GenCanna
USA, Inc. and Hemp Kentucky,
LLC**

By: _____



Printed Name: Gary M. Broadbent
Chief Wind-Down Officer, General
Date: Counsel, and Secretary
July 23, 2020

Netafim Irrigation, Inc.

By: _____



Printed Name: Anvar Tulyag

Date: July 23, 2020

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

In re:

OGGUSA, Inc.,¹

Debtors.

)
) Chapter 11
)
) Case No. 20-50133-grs
)
) (Jointly Administered)
)
) Honorable Gregory R. Schaaf
)
)
)

**ORDER GRANTING THE DEBTORS'
MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND
RELEASE WITH NETAFIM IRRIGATION, INC. UNDER BANKRUPTCY RULE 9019**

Upon *The Debtors' Motion for Approval of Settlement Agreement and Mutual Release with Netafim Irrigation, Inc. Greenhouse Under Bankruptcy Rule 9019* (the "Motion") of OGGUSA, Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (the "Debtors"), for entry of an order approving the Settlement Agreement, the Court having reviewed the Motion and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED.

¹ The Debtors in these Chapter 11 cases are (with the last four digits of their federal tax identification numbers in parentheses): OGGUSA, Inc. (0251); OGG, Inc. (N/A); and Kentucky Hemp, LLC (0816).

2. The Debtors are authorized to enter into the Settlement Agreement and may execute and deliver any document or instrument, and take any other action, necessary or appropriate to effectuate the terms of the agreement described therein.

3. The Court retains jurisdiction to hear and determine all matters arising from or related to the implemented or interpretation of this Order.

Tendered by:

/s/ James R. Irving
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