

**THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:)	
	)	Chapter 11
GROEB FARMS, INC.	)	Case No. 13-58200
)	
Debtor.	)	Honorable Walter Shapero

**EX PARTE MOTION FOR ENTRY OF AN ORDER (A) SCHEDULING AN
EXPEDITED HEARING ON FIRST DAY MOTIONS, (B) LIMITING NOTICE
OF HEARING, AND (C) APPROVING FORM AND MANNER OF NOTICE**

The Debtor, by and through its proposed counsel, Foley & Lardner LLP, hereby submits this *Ex Parte* Motion For Entry of an Order (A) Scheduling an Expedited Hearing on First Day Motions, (B) Limiting Notice of Hearing, and (C) Approving Form and Manner of Notice; and (the “Motion”), pursuant to Rules 9006(c)(1) and 9007 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”) and Rule 9006-1(b) of the Local Rules of the Bankruptcy Court for the Eastern District of Michigan (the “Local Rules”), for the entry of an *ex parte* order scheduling an expedited hearing on certain first day motions. In support of this Motion, the Debtor relies on the Declaration of Jack Irvin, Jr., Chief Financial Officer of the Debtor in Support of Chapter 11 Petitions and First Day Orders (the “Irvin Declaration”)¹. In further support of this Motion, the Debtor represents as follows:

JURISDICTION

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2). Venue of this proceeding and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them as set forth in the Irvin Declaration.



The bases for the relief requested herein are Bankruptcy Rules 9006(c)(1) and 9007, and 9006-1(b) of the Local Rules.

BACKGROUND

2. On the date hereof (the "Petition Date"), the Debtor filed a petition for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of Michigan. The Debtor intends to continue in possession of its property and to manage its business as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed and no committees have been appointed or designated in the Debtor's chapter 11 case.

3. The Debtor was formed in 1981 and is the country's leading processor and packager of honey for food manufacturers and food service companies.

4. The Debtor is headquartered in Onsted, Michigan. The Debtor also operates a honey processing facility in Colton, California, and maintains a testing lab in Belleview, Florida.

5. The Debtor has approximately 76 full time employees, 8 contractors hired through staffing services, and 4 part time employees. Approximately 47 of the employees are in Michigan, 25 are in California, 2 are in Georgia, and 2 are in Florida. For the fiscal year ended December 31, 2012 the Debtor had net sales from continuing operations of approximately \$137.8 million.

6. Additional factual background relating to the Debtor, including its corporate structure, business operations, the circumstances leading to the filing of the chapter 11 case, the Restructuring Agreement and the Debtor's existing indebtedness, is set forth in detail in the Irvin Declaration, filed concurrently herewith and fully incorporated herein by reference.

RELIEF REQUESTED

7. By this Motion, the Debtor seeks the *ex parte* entry of an order of the Court: (a) scheduling an expedited hearing (the “Initial Hearing”) to be held on October 1, 2013, or as soon thereafter as the Court’s schedule will permit, on certain critical motions filed by the Debtor (collectively, the “First Day Motions”); (b) limiting notice of the Initial Hearing; and (c) approving the form and manner of the notice of the First Day Motions and the Initial Hearing.

8. The First Day Motions consist of the following motions filed on September 30, 2013:

- Motion For Entry of an Order Pursuant To Sections 105(a), 363(b), and 507(a) of the Bankruptcy Code Authorizing: (i) Payment of Wages, Compensation, And Employee Benefits; (ii) Continuation of Employee Benefit Programs; and (iii) Financial Institutions To Honor and Process Checks and Transfers Related Thereto (the “Employee Wage Motion”);
- Motion For Order Pursuant To Bankruptcy Code Sections 105(A), 363, 364 And 503(B)(1) Authorizing (I) Continued Maintenance Of Existing Bank Accounts, (III) Continued Use Of Existing Business Forms, (III) Continued Use Of Existing Cash Management System; And (IV) Waiver Of Certain Operating Guidelines Relating To Bank Accounts (the “Cash Management Motion”);
- Motion For Entry of an Order Pursuant To 11 U.S.C. 363(c) and 105(a) Authorizing The Debtor To Honor Prepetition Obligations To Customers And Otherwise Continue Customer Programs In The Ordinary Course of Business (the “Customer Programs Motion”);
- Motion For Order Pursuant To Sections 366 And 105 Of The Bankruptcy Code (I) Prohibiting Utilities From Altering, Refusing, Or Discontinuing Service To The Debtor And (II) Establishing Certain Procedures To Determine Requests For Adequate Assurance Of Payment (the “Utilities Motion”);
- Motion Pursuant To Sections 105(A), 363(B), 503(B)(1) And 503(B)(9) Of The Bankruptcy Code, For An Order (I) Authorizing But Not Obligating The Debtor To Pay 503(B)(9) Claims On An Immediate Basis And (II) Confirming Administrative Expense Priority For Goods Delivered Post-Petition (the “503(b)(9) Motion”);
- Motion Pursuant To Sections 105(A), 363(B) And 364(B) Of The Bankruptcy Code, For An Order Authorizing It To Pay The Prepetition Claims Of Certain Potential Lienholders (the “Lienholders Motion”);

- Interim, but not Final, Relief under the Application To Employ Foley & Lardner LLP As General Bankruptcy Counsel Pursuant To 11 U.S.C. §§ 327(A), 328(A), 329 & 1107, Rules 2014(A) & 2016(B) Of The Federal Rules Of Bankruptcy Procedure And Local Bankruptcy Rule 2014-1, Or In The Alternative, Special Counsel Pursuant To 11 U.S.C. §§ 327(E), 328(A), 329 & 1107, Rules 2014(A) & 2016(B) Of The Federal Rules Of Bankruptcy Procedure And Local Bankruptcy Rule 2014-1 (the “Foley Employment Application”);
- Debtor’s First Day Motion For An Order Establishing Bar Date For Filing Proofs Of Claim, Including 503(B)(9) Claims, And Approving Form And Manner Of Notice Thereof (the “Bar Date Motion”);
- Interim, but not Final, Relief under the Motion Of The Debtor Pursuant To Sections 105(A), 361, 362, 363, 364, 507 And 552 Of The Bankruptcy Code And Bankruptcy Rule 4001(B) For Entry Of Interim And Final Orders (A) Authorizing Post-Petition Financing; (B) Authorizing Use of Cash Collateral; (C) Granting Adequate Protection; and (D) Scheduling a Final Hearing on the Motion (the “DIP Financing Motion”); and
- Debtor’s First Day Motion for Entry of an Order Pursuant to 28 U.S.C. § 156(c) and Bankruptcy Rule 2002 Authorizing Employment and Retention of Kurtzman Carson Consultants LLC as Claims, Noticing and Balloting Agent *Nunc Pro Tunc* to the Petition Date (the “KCC Motion”).

BASIS FOR RELIEF

9. Bankruptcy Rule 9006(c)(1) provides that “when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of the court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.” Fed. R. Bankr. P. 9006(c)(1). Local Rule 9006-1(b) further provides that “a party may file a motion for an *ex parte* order reducing or enlarging the time for a party to take any action or file any paper.” E.D. Mich. LBR 9006-1(b).

10. In addition, pursuant to Bankruptcy Rule 9007, “[w]hen notice is to be given under the [Bankruptcy Rules], the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given.” Fed. R. Bankr. P. 9007.

11. Together, these rules provide the Court with the authority to (a) enter an *ex parte* order scheduling the Initial Hearing on shortened notice, and (b) approve the manner of notice of such Initial Hearing.

12. As described in the First Day Motions and the Irvin Declaration, the First Day Motions seek Court authority the Debtor requires to ensure an orderly transition into chapter 11, minimize losses of value and protect the Debtor's ability to reorganize and pursue its proposed chapter 11 plan process during this crucial initial phase of this case. The relief sought in the First Day Motions includes requests for authority to (a) obtain necessary financing and use of cash collateral on an interim basis to ensure continued operation of the Debtor's business; (b) pay certain prepetition wages and other compensation and continue employee benefit programs; (c) continue the Debtor's cash management system and maintain its business forms to avoid disruption of the Debtor's operations; (d) continue programs the Debtor has in place with its customers and to maintain valuable relationships with the businesses that purchase the Debtor's products; (e) pay holders of 503(b)(9) claims in the Debtor's discretion to ensure the Debtor does not lose access to goods the Debtor requires to operate its business; (f) provide adequate assurance to pay future utility services; (g) obtain necessary general bankruptcy counsel and claims and noticing assistance which is essential as the Debtor commences its chapter 11 and executes to achieve its plan; and (h) establish a claims bar date on a timetable that comports with the Debtor's proposed chapter 11 plan filed on the date of this Motion.

13. The Debtor believes that an expedited hearing on the First Day Motions is in the best interest of the Debtor, its creditors and all parties in interest in this chapter 11 case because the relief requested in the First Day Motions is necessary to facilitate the Debtor's reorganization, and in many instances to prevent immediate and irreparable harm to the estate.

14. In addition, Bankruptcy Rule 6003 provides that to the extent “relief is necessary to avoid immediate and irreparable harm,” a Bankruptcy Court may approve a motion to “pay all or part of a claim that arose before the filing of the petition” or “an application under Rule 2014” prior to 21 days after the Petition Date. The Debtor seeks this Court’s consideration and approval of the Employee Wages Motion, the Customer Programs Motion, the Motion to Pay 503(b)(9) Claims, the Lienholders’ Motion, and interim approval of the Foley Employment Application within in the first 21 days of the case pursuant to Bankruptcy Rule 6003, to avoid immediate and irreparable harm to the Debtor and its estate. As more fully discussed in each of foregoing, the relief sought in these motions is essential to the Debtor’s business.

15. Absent an order granting the relief requested in the Employee Wage Motion on an expedited basis, the Debtor’s workforce will suffer undue hardship and, in many instances, serious financial difficulties. Without the requested relief, the stability of the Debtor will be irreparably undermined because otherwise loyal personnel will seek employment alternatives. Furthermore, Onsted, Michigan, where one of the Debtor’s facilities is located, is a small town and finding replacement employees would be very difficult, causing further harm to the Debtor. The Debtor’s inability to promptly honor its obligations would risk the immediate loss of employees and customer relationships and severely impair the Debtor’s ability to reorganize.

16. In addition, as described in the Customer Programs Motion, the Debtor’s programs with its customers are necessary to ensure continued good relationships with the customers who are the lifeblood of the Debtor’s business. The Debtor’s inability to continue Customer Programs at the outset of this case would risk the immediate loss of customers and thus irreparable harm to the Debtor. Similarly, as set forth in the Lienholder Motion, the Debtor’s inability to pay shippers, warehousemen and other entities with a potential lien on its

goods in transit would jeopardize the supply of the Debtor's goods and could result in immediate irreparable harm to the Debtor's customer relationships.

17. The Debtor also requires uninterrupted access to its necessary supplies in order to produce products it sells. Absent the relief sought in the Motion to Pay 503(b)(9) Claims, the Debtor believes it may lose the immediate cessation of its production capacity, which would significantly harm its reorganization.

18. The Debtor is also seeking at a first day hearing the Court's interim, but not final, approval of its application to employ Foley & Lardner LLP ("Foley") as general bankruptcy counsel within the first 21 days of the case pursuant to Bankruptcy Rule 6003. As more fully described in the Foley Employment Application, the Debtor requires clarity on an expedited basis as to whether its general bankruptcy counsel will be approved, or whether it will be forced to hire alternate general bankruptcy counsel at significant expense, particularly given the short deadlines under the pre-negotiated plan and restructuring support agreements which call for the Debtor's chapter 11 plan to become effective approximately 102 days after the Petition Date. The Debtor would suffer immediate and irreparable harm absent obtaining the clarity sought through the interim relief requested under the Foley Employment Application on an expedited basis. If Foley cannot be retained as general bankruptcy counsel, the Debtor needs to be able to select alternative counsel as expeditiously as possible in order to meet the timelines set forth in the plan and restructuring support agreements.

19. For these reasons, the Debtor submits that cause exists to schedule the Initial Hearing on shortened notice, and respectfully requests that the Court enter an order scheduling the Initial Hearing as soon as reasonably practicable (the "Initial Hearing Order").

20. The Debtor also requests that the Court approve the form and notice of the First Day Motions and the Initial Hearing (the “Notice”). Immediately after the entry of the Initial Hearing Order, the Debtor proposes to serve via email, fax, or overnight delivery, the Notice and a copy of each of the First Day Motions on the following parties (or counsel to these parties where known): (a) the Office of the U.S. Trustee for the Eastern District of Michigan, (b) the twenty largest unsecured creditors, and (c) the Debtor’s secured lenders (collectively, the “Initial Notice Parties”). Upon completion of such service, the Debtor or its noticing agent will file a certificate of service.

21. As set forth above, the Court has authority to regulate the timing and extent of notices provided to parties in interest. Here, the Debtor seeks Court approval that service of the Notice on the Initial Notice Parties is adequate and appropriate under the circumstances.

22. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order (A) Scheduling an Expedited Hearing on Certain First Day Motions, (B) Limiting Notice of Hearing, and (C) Approving Form and Manner of Notice, substantially in the form attached hereto as **Exhibit 1**.

Dated: October 1, 2013
Detroit, Michigan

FOLEY & LARDNER LLP

/s/ Judy A. O'Neill

Judy A. O'Neill (P32142)

John A. Simon (P61866)

Tamar N. Dolcourt (P73425)

One Detroit Center

500 Woodward Ave., Suite 2700

Detroit, MI 48226-3489

(313) 234-7100 (Telephone)

(313) 234-2800 (Facsimile)

*Proposed Counsel for the Debtor and Debtor in
Possession*

EXHIBIT 1

Proposed Form of Order

**THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:)	
	)	Chapter 11
GROEB FARMS, INC.)	
	)	Case No. 13-58200
Debtor.)	
	)	Honorable Walter Shapero

**EX PARTE ORDER (A) SCHEDULING AN EXPEDITED HEARING ON CERTAIN
INITIAL MOTIONS FILED BY THE DEBTOR, (B) LIMITING NOTICE OF HEARING,
AND (C) APPROVING FORM AND MANNER OF NOTICE**

Upon the Debtor's *Ex Parte* Motion For Entry of an Order (A) Scheduling an Expedited Hearing on First Day Motions, (B) Limiting Notice of Hearing, and (C) Approving Form and Manner of Notice (the "Motion"), pursuant to Bankruptcy Rules 9006(c)(1) and 9007 and Rule 9006-1(b) of the Local Rules, filed by the Debtor; the Court having reviewed the Motion and the Declaration of Jack Irvin, Jr.; and the Court having jurisdiction pursuant to sections 157 and 1334 of title 28 of the United States Code to consider the Motion and the relief requested therein; and venue being proper in this Court pursuant to sections 1408 and 1409 of title 28 of the United States Code; and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its creditors, and all parties in interest and necessary to prevent immediate and irreparable harm to the Debtor; and the Court having heard the evidence and statements of counsel regarding the Motion and having determined that the legal and factual bases set forth in the Motion and establish just cause for the relief granted herein, it is therefore;

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Court shall conduct a hearing on the First Day Motions on October ____, 2013 at ____ am/pm, in Courtroom ____ at the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division, 211 W. Fort Street, Detroit, Michigan 48226; and it is further

ORDERED that the form of notice attached as **Exhibit 2** to the Motion (the “Notice”) is hereby approved. Under the circumstances, service of the Notice and the First Day Motions on the Initial Notice Parties by email, fax, or overnight delivery is adequate and appropriate notice of the First Day Motions and the Initial Hearing; and it is further

ORDERED that notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rules 4001(d) and 6004(a) are waived; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, enforcement or interpretation of this Order.

EXHIBIT 2

Notice of Expedited Hearing

4847-8900-6102.1

**THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

_____)	
In re:	)	Chapter 11
)	
GROEB FARMS, INC.	)	Case No. 13-58200
)	
Debtor.	)	Honorable Walter Shapero
_____)	

NOTICE OF EXPEDITED HEARING ON FIRST DAY MOTIONS

TO THE PARTIES RECEIVING THIS NOTICE:

1. On October 1, 2013 (the “Petition Date”), Groeb Farms, Inc. (the “Debtor”), commenced a case under chapter 11 (the “Chapter 11 Case”) of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division (the “Bankruptcy Court”). The Chapter 11 Case is pending before Honorable Walter Shapero, United States Bankruptcy Judge.

2. On October 1, 2013, the Debtor filed a motion (Dkt. No. [____]) (the “Expedited Hearing Motion”) seeking an expedited hearing on certain motions filed on the Petition Date (collectively, the “First Day Motions”).

3. On [____], 2013, the Court entered an order (Dkt. No. [____]) approving the relief requested in the Expedited Hearing Motion. By the Expedited Hearing Order, the Court scheduled a hearing on the First Day Motions for _____, 2013 at ____ am/pm, in Courtroom ____ at the Bankruptcy Court, 211 W. Fort Street, Detroit, Michigan 48226 (the “Initial Hearing”). A copy of the Expedited Hearing Order is attached hereto as Exhibit A.

4. The First Day Motions consist of the following:

- Motion For Entry of an Order Pursuant To Sections 105(a), 363(b), and 507(a) of the Bankruptcy Code Authorizing: (i) Payment of Wages, Compensation, And Employee Benefits; (ii) Continuation of Employee Benefit Programs; and (iii) Financial Institutions To Honor and Process Checks and Transfers Related Thereto (the “Employee Wage Motion”);
- Motion For Order Pursuant To Bankruptcy Code Sections 105(A), 363, 364 And 503(B)(1) Authorizing (I) Continued Maintenance Of Existing Bank Accounts, (III) Continued Use Of Existing Business Forms, (III) Continued Use Of Existing Cash Management System; And (IV) Waiver Of Certain Operating Guidelines Relating To Bank Accounts (the “Cash Management Motion”);
- Motion For Entry of an Order Pursuant To 11 U.S.C. 363(c) and 105(a) Authorizing The Debtor To Honor Prepetition Obligations To Customers And Otherwise Continue Customer Programs In The Ordinary Course of Business (the “Customer Programs Motion”);
- Motion For Order Pursuant To Sections 366 And 105 Of The Bankruptcy Code (I) Prohibiting Utilities From Altering, Refusing, Or Discontinuing Service To The Debtor And (II) Establishing Certain Procedures To Determine Requests For Adequate Assurance Of Payment (the “Utilities Motion”);
- Motion Pursuant To Sections 105(A), 363(B), 503(B)(1) And 503(B)(9) Of The Bankruptcy Code, For An Order (I) Authorizing But Not Obligating The Debtor To Pay 503(B)(9) Claims On An Immediate Basis And (II) Confirming Administrative Expense Priority For Goods Delivered Post-Petition (the “503(b)(9) Motion”);
- Motion Pursuant To Sections 105(A), 363(B) And 364(B) Of The Bankruptcy Code, For An Order Authorizing It To Pay The Prepetition Claims Of Certain Potential Lienholders (the “Lienholders Motion”);
- Interim, but not Final, Relief under the Application To Employ Foley & Lardner LLP As General Bankruptcy Counsel Pursuant To 11 U.S.C. §§ 327(A), 328(A), 329 & 1107, Rules 2014(A) & 2016(B) Of The Federal Rules Of Bankruptcy Procedure And Local Bankruptcy Rule 2014-1, Or In The Alternative, Special Counsel Pursuant To 11 U.S.C. §§ 327(E), 328(A), 329 & 1107, Rules 2014(A) & 2016(B) Of The Federal Rules Of Bankruptcy Procedure And Local Bankruptcy Rule 2014-1 (the “Foley Employment Application”);
- Debtor’s First Day Motion For An Order Establishing Bar Date For Filing Proofs Of Claim, Including 503(B)(9) Claims, And Approving Form And Manner Of Notice Thereof (the “Bar Date Motion”);
- Interim, but not Final, Relief under the Motion Of The Debtor Pursuant To Sections 105(A), 361, 362, 363, 364, 507 And 552 Of The Bankruptcy Code And Bankruptcy

Rule 4001(B) For Entry Of Interim And Final Orders (A) Authorizing Post-Petition Financing; (B) Authorizing Use of Cash Collateral; (C) Granting Adequate Protection; and (D) Scheduling a Final Hearing on the Motion (the “DIP Financing Motion”); and

- Debtor’s First Day Motion for Entry of an Order Pursuant to 28 U.S.C. § 156(c) and Bankruptcy Rule 2002 Authorizing Employment and Retention of Kurtzman Carson Consultants LLC as Claims, Noticing and Balloting Agent *Nunc Pro Tunc* to the Petition Date (the “KCC Motion”).

IF YOU WISH TO BE HEARD WITH RESPECT TO THE RELIEF REQUESTED BY THE DEBTOR IN ANY OF THE FIRST DAY MOTIONS, THEN YOU MUST APPEAR AT THE INITIAL HEARING, EITHER IN PERSON OR TELEPHONICALLY PURSUANT TO THE BANKRUPTCY COURT’S PROCEDURES FOR TELEPHONIC PARTICIPATION AT HEARINGS.

5. Copies of the First Day Motions are being served on you and are available, along with all other documents filed in this case, free of charge at the Debtor’s restructuring website at www.kccllc.net or, on a paid subscription basis, through the Bankruptcy Court’s PACER system at www.ecf.mieb.uscourts.gov.

6. If you wish to receive further notices in this Chapter 11 Case, you are encouraged to appear formally and file with the Bankruptcy Court a written request for service of papers pursuant to the Federal Rules of Bankruptcy Procedure.

BY ORDER OF THE COURT

EXHIBIT 3

Brief

Not Applicable

EXHIBIT 4

Certificate of Service

**THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

_____)	
In re:	)	Chapter 11
)	
GROEB FARMS, INC.	)	Case No. 13-58200
)	
Debtor.	)	Honorable Walter Shapero
_____)	

CERTIFICATE OF SERVICE

The Debtor has engaged a Noticing Agent, which will serve this Motion and file a subsequent Proof of Service after it has performed the service.

Dated: October 1, 2013
Detroit, Michigan

FOLEY & LARDNER LLP

/s/ Judy A. O'Neill
Judy A. O'Neill (P32142)
John A. Simon (P61866)
Tamar N. Dolcourt (P73425)
One Detroit Center
500 Woodward Ave., Suite 2700
Detroit, MI 48226-3489
(313) 234-7100 (Telephone)
(313) 234-2800 (Facsimile)

Proposed Counsel for the Debtor and Debtor in Possession

EXHIBIT 5

Affidavit

Not Applicable

EXHIBIT 6

Documentary Exhibits

Not Applicable