

**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

**DEBTOR'S FIRST DAY MOTION FOR ENTRY OF AN ORDER PURSUANT TO 11  
U.S.C. 105(A) AND 363(C) AUTHORIZING THE DEBTOR TO HONOR PREPETITION  
OBLIGATIONS TO CUSTOMERS AND OTHERWISE CONTINUE CUSTOMER  
PROGRAMS IN THE ORDINARY COURSE OF BUSINESS**

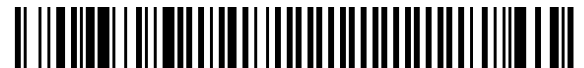
The Debtor, by and through its proposed counsel, Foley & Lardner LLP, hereby submits this Motion For Entry of an Order Pursuant To 11 U.S.C. 105(a) and 363(c) Authorizing The Debtor To Honor Prepetition Obligations To Customers And Otherwise Continue Customer Programs in The Ordinary Course of Business (the "Motion"). In support of this Motion, the Debtor relies on the Declaration of Jack Irvin, Jr. the Chief Financial Officer of the Debtor in Support of Chapter 11 Petitions and First Day Orders filed contemporaneously herewith (the "Irvin Declaration")<sup>1</sup>. In further support of this Motion, the Debtor represents as follows:

**Jurisdiction**

1. This Court has jurisdiction to hear the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code") authorize the relief requested in this Motion.

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



## **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, food service companies and retail customers.

4. The Debtor is headquartered in Onsted, Michigan. The Debtor also operates a honey processing facility in San Bernardino, 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. In 2001, the Government imposed anti-dumping duties on honey imported from China. After the institution of these duties, the honey industry increasingly imported honey whose country of origin was identified to the buyers as Asian nations such as Vietnam, Malaysia, and Indonesia. When imports identified with a Chinese country of origin fell, the Government began to investigate the honey industry and the possibility that honey was being transshipped

(i.e. shipped through a second country to conceal its origins) and/or mislabeled to avoid the anti-dumping duties. Beginning in 2007, the U.S. Department of Justice (“DOJ”) brought the first of several cases in different districts alleging that U.S. honey packers had imported transshipped honey. In 2008, the Debtor received a grand jury subpoena seeking information relating to the investigation of its industry.

7. Following an extensive DOJ investigation, in February 2013, the Debtor entered into a deferred prosecution agreement (the “DPA”) with the DOJ as a global resolution for the Debtor. The agreement required the Debtor to: (1) accept and acknowledge responsibility for historical purchases of transshipped honey; (2) continue cooperating with the government’s ongoing investigation for two years; (3) pay a \$2 million fine; (4) dispose of any and all Chinese-origin honey in its possession which entered the country in contradiction to the duty requirements and (5) cease selling any of its finished goods containing such Chinese honey. The agreement further required the Debtor to continue ongoing compliance programs and remediation measures. The DPA acknowledged that two former, unnamed executives had misled the Debtor’s board, the Debtor’s customers and the public.

8. Both before and after execution of the DPA, the Debtor took a number of steps to remediate issues regarding potentially transshipped honey. In January 2012, the Debtor retained Foley & Lardner LLP to conduct an internal investigation. In January 2012, the Debtor also began revising its policies and procedures relating to the procurement of honey overseas. In February 2012, the Debtor named a new interim president and relieved its then-current CEO from his operating responsibilities. In June 2012, the Debtor agreed to a separation agreement with such CEO and stripped the then-current vice president of operations of all purchasing responsibility and subsequently terminated him. The Debtor hired a new full time president and

CEO, Rolf Richter, effective June 27, 2012. The Debtor also licensed software to facilitate verification of container numbers and countries of origin for the honey that the Debtor purchases. The Debtor continues to carry BRC certification at each of its plants, which is a globally recognized food safety, quality and audit program subject to stringent audit testing by third parties. The Debtor also has strengthened its supplier audit program and reinvigorated lab testing procedures at its state-of-the-art lab testing facility in Florida. In October 2012, the Debtor hired John Wolf as its Vice President of Supply Chain and Management, to further enhance supply management and compliance. Mr. Wolf has a long history of experience in the food industry, including 24 years with Kellogg's.

9. As a result of the foregoing measures, the Debtor has robust policies and procedures in place relating to the purchase of honey to avoid international duty issues in the future. The Debtor also provides compliance training to all of its employees.

10. The Debtor had hoped that the DPA would enable the Debtor to have a fresh start with new executives and a new compliance program. However, in April 2013, just two months after the DPA was finalized, two civil putative class action lawsuits were filed against the Debtor in the United States District Court for the Northern District of Illinois by producers, packers and/or distributors of honey. In *Adee Honey Farms, et al v. Groeb Farms, et al.*, Case No. 1:13-cv-02922 (the "Adee Lawsuit"), the putative class alleges violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") and Lanham Act. In *Moore's Honey Farm, et al. v. Groeb Farms, Inc., et al.*, Case No. 1:13-cv-02905 (the "Moore Lawsuit"), and collectively with the Adee Lawsuit, the "Putative Class Actions", the putative class alleges violations of RICO and common law fraud, negligent misrepresentations, conspiracy, and clandestine wrongful importation without paying the anti-dumping duties. On June 24, 2013, the Putative Class

Actions were consolidated (hereinafter, the “Putative Class Action”) by Order of the Court handling the Moore Lawsuit (the “Consolidation Order”). An Amended Complaint must be filed pursuant to the Consolidation Order on or before October 21, 2013. The Putative Class Action is based on the factual statements contained in the DPA and claims the class members were harmed by the Debtor and other defendants’ purchases of transshipped honey. While none of the claims make a specific demand, RICO and Lanham Act cases carry a potential for treble damages and attorneys’ fees.

11. As a result of the DPA, and the costs associated with it, including: (1) the \$2,000,000 fine; (2) the legal fees; (3) the costs of the compliance programs; and (4) the costs incurred in recruiting and hiring new, experienced executives, the Debtor has incurred significant unanticipated expenses.

12. Although the Debtor has significant defenses to the allegations in the Putative Class Action, the fine, the attorneys’ fees and litigation and other expenses have severely strained, and would continue to severely strain, the Debtor’s liquidity. In addition, despite the fact that the putative classes have not been certified, the mere existence of these lawsuits negatively affects the value of the Debtor outside of a bankruptcy proceeding and impedes potential buyers from purchasing the company at a maximized value to resolve the Debtor’s financial issues.

13. In addition, increased prices in the honey market and supply shortages have had a negative impact on the Debtor. In late 2010, the Debtor had contracts with certain suppliers to purchase substantial amounts of honey at agreed-upon prices, while the honey market was experiencing significant price increases. However, these suppliers failed to deliver the product to the Debtor. As a result, the Debtor was forced to re-enter the honey market to buy

replacement product at a time when, on a global basis, prices were increasing and the supply of honey was decreasing. The Debtor has initiated legal action against certain suppliers in order to receive the contracted honey. These issues have put further pressure on the Debtor's financial condition.

14. As a result of the foregoing and various other factors, the Debtor defaulted under its Credit Agreement with Wells Fargo Bank, N.A. ("Wells"). As a result, Wells began to exercise its rights and remedies, including without limitation: (a) imposing a \$750,000 reserve in borrowing on July 23, 2013; and (b) reducing or limiting the Debtor's available credit. These actions significantly reduced the Debtor's available cash, rendering it unable to buy necessary raw honey needed in the operation of its business.

15. On or about July 24, 2013, the Debtor hired Houlihan Lokey Capital, Inc. ("Houlihan") to assist with the assessment and implementation of strategic alternatives. Thereafter, Houlihan undertook an extensive marketing effort, including reaching out to 165 potentially interested parties, including strategic and financial buyers and capital providers. Houlihan secured Confidentiality Agreements from 75 parties and submitted a Confidential Information Memorandum to those parties. As part of the marketing process, Houlihan requested the submission of Indications of Interest ("IOIs") on or before September 18, 2013.

16. The Debtor received eight written IOIs, including a proposal from Honey Financing Company, LLC ("Honey Financing"), an affiliate of Peak Rock Capital, to restructure the obligations of the Debtor and acquire the equity of the reorganized Debtor pursuant to the chapter 11 Plan of Reorganization (the "Plan") filed contemporaneously herewith. After reviewing the IOIs, the Debtor determined that the proposal from Honey Financing was the best overall offer based on the following factors, among others: (1) the Debtor's financing needs and

lending arrangements; (2) the speed and certainty of closing the transaction; and (3) the total overall value to be provided to all stakeholders as a result of the transaction. Therefore, the Debtor elected to pursue the transaction with Honey Financing. The Debtor entered into the Restructuring Support Agreement in connection with the offer (the “Honey Financing RSA”).

17. Also on September 18, 2013, HC Capital Holdings 0909A (“HC”), an affiliate of Honey Financing, purchased the Wells debt, and became the Debtor’s senior secured lender.

18. In order to further bolster its restructuring efforts, the Debtor executed a Restructuring Support Agreement with its senior subordinated debt holders, Argosy Investment Partners II, L.P., and Marquette Capital Fund I, LP (the “Senior Subordinated Debt RSA”).

19. The Debtor has also entered into a Restructuring Support Agreement with the interim class action co-lead counsel in the Putative Class Action (the “Putative Class Action RSA” and collectively with the Honey Financing RSA and the Senior Subordinated Debt RSA, the “RSAs”).

20. The Debtor filed this chapter 11 case in order to affect the restructuring transaction as defined in the RSAs.

21. 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.

### **The Customer Programs**

22. Prior to the Petition Date, the Debtor, in the ordinary course of its business, engaged in a variety of programs (the “Customer Programs”) with its customers (the “Customers”). The Customer Programs are crucial to the Debtor’s development and

maintenance of positive relationships with its customers. The common goal of the Customer Programs is to meet competitive pressures, ensure customer satisfaction and generate goodwill for the Debtor, thereby retaining current customers, attracting new ones and ultimately enhancing revenue, margins and profitability. The Debtor's business relies in great part upon the loyalty and confidence of its customers. This is particularly true where the Debtor provides products that are replaceable in the marketplace. In fact, many of the Debtor's customers source goods from the Debtor and its competitors to ensure they will always have ample supply. Accordingly, and as described more fully below, the Debtor and its estate will be irreparably harmed if the Debtor is not permitted to honor the Customer Programs.

23. The Customer Programs consist of various marketing initiatives with the Customers, including but not limited to rebates, allowances and volume discounts based on pre-negotiated terms. These terms are ordinary course commercial terms for customers in the food service, industrial food and retail industries. The rebate offered to certain of the Debtor's customers is based on pounds of product sold by the Debtor relative to final selling prices paid by the Customer. Allowances and discounts are based on net sales prices to the Customer and are commonly included in the industry for a Customer to recover marketing expenses or recognize purchasing power discounts. Historically, the Debtor estimates that the Customer Programs in total account for roughly 15% of its gross sales. As of the Petition Date, the Debtor has allocated and accrued approximately \$170,000 to satisfy its obligations under the Customer Programs. The Customer Programs allow the Debtor to be flexible on pricing when its customers sell more of its products or sell them at a higher price) and incentivize its best customers with reduced costs.



24. The Debtor believes that failure to honor its obligations under the Customer Programs would upset customers who have relied on the various programs in planning their purchases of the Debtor's products, or have expended money on various means of advertising the Debtor's products in reliance on the terms of the Customer Programs. In addition, if customers lose their incentive to order increased amounts of the Debtor's products or advertise the Debtor's products, sales will be negatively affected. Therefore, the Debtor submits that the cost of honoring its obligations under the Customer Programs is far less than the harm that could be caused by not paying such amounts. This is especially true given that no money will be paid by the Debtor's estates for the Customer Programs, but rather the Debtor will simply provide customers a credit on future invoices based on the amounts owed to them under the Customer Programs, as was the Debtor's ordinary business practice prior to the Petition Date.

#### **Relief Requested**

25. By this Motion, pursuant to sections 105(a) and 363(c) of the Bankruptcy Code, the Debtor requests the entry of an order authorizing, but not directing, the Debtor: (i) to honor its prepetition obligations to its customers under Customer Programs as the Debtor, in its sole discretion, deems advisable; and (ii) to continue, renew, replace, implement, modify and/or terminate those Customer Programs as it sees fit, in the ordinary course of its business and without further application to the Court.

26. The obligations the Debtor seeks authority to honor under the Customer Programs will be satisfied through credits rather than cash payments by the Debtor. No money will be paid by the Debtor. Instead the Debtor will simply adjust customer accounts based on credits due under the various Customer Programs. This will not have the same effect on the Debtor estate as if cash payments were made. Indeed, all of the Debtor's financial projections have been calculated net of expected credits.

### **Basis For Relief Requested**

27. The Debtor's business is dependent upon the loyalty and confidence of their customers. The continued support of its customers is essential to the Debtor's ability to preserve and maximize the value of their businesses for the benefit of their stakeholders. Absent the relief requested by this Motion, the Debtor believes that the concern regarding the chapter 11 filing could negatively influence customers' attitudes and behavior towards the Debtor's products. In particular, the Debtor's goodwill and ongoing business relationships likely would suffer if their customers perceive that the Debtor would be unable or unwilling to fulfill the pre-petition promises that they have made through the Customer Programs.

28. The Debtor believes that the Customer Programs benefit customer development and retention, solidify customer relationships and bolster product sales. Potential purchasers of the Debtor's products have numerous options in the marketplace and will be less likely to purchase the Debtor's products if there is an interruption in any of the Customer Programs. In fact, many of these customers already have relationships with the Debtor's competitors and could easily replace the honey received from the Debtor. Without the continued support of their customers, the Debtor's business could suffer significant harm. The Debtor intends to satisfy the vast majority of their obligations under the Customer Programs by issuing credits rather than payments to customers which will help preserve the value of the estate.

29. The Debtor, operating its business as Debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries "holding the bankruptcy estate[s] and operating the business for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor-in-possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.*

30. Courts have noted that there are instances in which a debtor-in-possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* Inasmuch as the Debtor cannot operate as a going concern absent the support of their customers, the Debtor should be allowed to honor their prepetition obligations under the Customer Programs, and to continue the Customer Programs following the Petition Date.

31. The Court also may authorize the Debtor to honor and continue the Customer Programs under section 363(b) of the Bankruptcy Code. Section 363 provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under section 363, a court may authorize a debtor to pay certain prepetition claims. *See, e.g., FV Steel and Wire Co.*, Case No. 04-22421 (Bankr. E.D. Wis. 2004) (authorizing the continuation of customer programs and the payment of prepetition claims under section 363 of the Bankruptcy Code); *In re UAL Corp.*, Case No. 02-48191, 91-93 (Bankr. N.D. Ill. 2002) (authorizing payment of prepetition claims under section 363 of the Bankruptcy Code as an out-of-the-ordinary-course transaction). To obtain relief under section 363(b) of the Bankruptcy Code, “the debtor must articulate some business justification, other than the mere appeasement of major creditors.” *In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). As discussed above, the continued support of the Debtor’s major customers is critical to the Debtor’s efforts to reorganize. As discussed above, many of the Debtor’s customers can easily replace the Debtor’s honey with that of a competitor. As such, the continuance of the Customer Programs is necessary to ensure that these customers continue to

buy goods from the Debtor. The relief requested herein is necessary to maintain the value of the Debtor's estate for the benefit of all creditors, and therefore should be granted.

32. The relief requested herein also is authorized under the Court's general equitable powers, which are codified in section 105(a) of the Bankruptcy Code. Under section 105(a), the court "may issue any order, process, or judgment that is necessary to appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 *Collier on Bankruptcy* ¶105.01, at 105-6 (15<sup>th</sup> ed. rev. 2004). Under section 105(a), the Court "can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the Debtor." *In re NVR, L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) ("to invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is 'critical to the debtor's reorganization'"). Indeed, numerous courts have used their section 105(a) equitable powers under the "necessity of payment" doctrine to authorize payment of a Debtor's prepetition obligations where, as here, such payment was necessary to effectuate the "paramount purpose" of chapter 11 reorganization, which is to prevent the debtor from going into liquidation and preserve the debtor's potential for rehabilitation.<sup>2</sup> *See, e.g., In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that "if payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during reorganization, payment may be authorized even if it is made out of [the] corpus");

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<sup>2</sup> The "necessity of payment" doctrine was first articulated by the United States Supreme Court in *Miltenberger v. Logansport Ry.*, 106 U.S. 286, 311-12 (1882), recognizes the existence of judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.

*Ionosphere Clubs*, 98 B.R. at 175 (observing that a bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept"); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 394-95 (S.D.N.Y. 1983) (upholding the bankruptcy court's order authorizing the debtor to make postpetition payment of prepetition claims in the ordinary course without notice and a hearing).

33. Pre-petition customer claims, such as those arising under the Customer Programs, meet the requirements for post-petition satisfaction because, without satisfaction of these claims, customers may choose to stop purchasing the Debtor's goods. Such an action would significantly harm the Debtor's ability to reorganize. *In re CoServ*, 273 B.R. at 497. The continuation of the Customer Programs is crucial to the Debtor's ability to maintain profitability and going concern value to the benefit of all its constituencies. In addition, as described above, the damage to the Debtor's going concern value if it no longer could honor the Customer Programs is disproportionate to the relatively small cost of maintaining the Customer Programs, particularly where the Debtor is not paying cash for these costs.

34. Retaining loyalty and patronage of customers is critical to successful chapter 11 cases, and courts have routinely granted relief similar to that requested here. *See, e.g., In re Collins & Aikman Corporation*, Case No. 05-55927 (Bankr. E.D. Mich. May 17, 2005) (SWR); *In re LodgeNet Interactive Corporation*, Case No. 13-10238 (Bankr. S.D. N.Y. January 29, 2013) (SCC); *In re Otelco Inc.*, Case No. 13-10593 (Bankr. D. Del. March 26, 2013) (MFW); *In re Meridian Auto. Sys.-Comp. Op., Inc.*, Case No. 05-11168 (Bankr. D. Del. April 27, 2005) (MFW); *In re Ultimate Elec., Inc., et al.*, Case No. 05-10104 (Bankr. D. Del. Jan. 13, 2005)

(PJW). Accordingly, the Debtor submits that there is significant legal basis for the granting of the relief requested herein.

35. 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” prior to 21 days after the Petition Date. As described in this Motion, the Customer Programs are essential to the Debtor’s business operations. The Debtor’s inability to continue Customer Programs would risk the immediate loss of customers and severely impair the Debtor’s ability to reorganize. Therefore, the relief requested herein is necessary to avoid immediate and irreparable harm and the requirements of Bankruptcy Rule 6003 for expedited relief are satisfied.

36. Nothing contained herein is intended or should be construed as: (i) an admission as to the validity of any claim against the Debtor; (ii) a waiver of the Debtor’s rights to dispute any claim on any grounds; (iii) a promise or requirement to pay any claim; (iv) an implication or admission that any particular claim is of a type specified or defined hereunder; or (v) a request to assume any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code.

### **Notice**

37. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Eastern District of Michigan; (b) the secured creditors of the debtor and their counsel; and (c) the twenty (20) largest unsecured creditors of the Debtor. The Debtor submits that in light of the nature of the relief requested, no further notice is required. This Motion has been submitted on an expedited basis because of the numerous matters to be considered by the Court during the initial period of this case regarding the administration and the postpetition operations of the Debtor.

38. No previous request for the relief sought in this Motion has been made by the Debtor to this or any other court.

**Conclusion**

WHEREFORE, the Debtor respectfully requests entry of an order, the form of which is attached to this Motion as **Exhibit 1**, granting the relief requested herein and granting the Debtor such other and further relief as may be just and proper.

Dated: October 1, 2013  
Detroit, Michigan

FOLEY & LARDNER LLP

/s/ Judy A. O'Neill  
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*Proposed Counsel for the Debtor and Debtor in Possession*

**EXHIBIT 1**

**Proposed 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
	)	

**FIRST DAY ORDER PURSUANT TO 11 U.S.C. 105(A) AND 363(C)  
AUTHORIZING THE DEBTOR TO HONOR PREPETITION OBLIGATIONS  
TO CUSTOMERS AND OTHERWISE CONTINUE CUSTOMER PROGRAMS  
IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “Motion”) of the Debtor and Debtor-in-possession in the above captioned case (collectively, the “Debtor”), pursuant to sections 105(a) and 363(c) of title 11 of the United States Code (the “Bankruptcy Code”), for an order authorizing, but not directing, the Debtor to (i) honor their prepetition obligations to their customers under existing customer programs (collectively, the “Customer Programs”) as they, in their sole discretion, deem advisable; and (ii) continue, renew, replace, implement, modify and/or terminate those Customer Programs as they see fit, in the ordinary course of their business and without further application to the Court, and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtor and its estate, as contemplated by Bankruptcy Rule 6003; and it appearing that the relief requested by this Motion is in the best interests of the estate, the creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Debtor is authorized, but not obligated, to honor all prepetition obligations relating to the Customer Programs as set forth in the Motion, in the ordinary course of its business, in the same manner and on the same basis as the Debtor honored such obligations prior to commencement of this chapter 11 case; and it is further

ORDERED that pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtor is authorized, but not obligated, to continue its Customer Programs in the ordinary course of business in the same manner and on the same basis as the Debtor implemented and maintained prior to the commencement of this chapter 11 case; and it is further

ORDERED that nothing in this Order or the Motion shall be construed as prejudicing any rights the Debtor may have to contest the amount or basis of any prepetition or postpetition obligations relating to the Customer Programs; and it is further

ORDERED that the relief granted herein shall not constitute an approval, assumption, or rejection of any Customer Program or related agreement or policy pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that entry of this Order is necessary to avoid immediate and irreparable harm and the requirements under Bankruptcy Rule 6003 have been satisfied; and it is further

ORDERED that notwithstanding the relief granted in this Order, any payment made by the Debtor pursuant to the authority granted herein shall be subject to the orders approving entry into the Debtor-in-Possession Financing and Authorizing Continued Use of Cash Collateral; and it is further

ORDERED that notwithstanding any applicability of Bankruptcy Rules 6004(h) or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that 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.

ORDERED that this Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

**EXHIBIT 2**

**Notice of Motion and Opportunity to Object**

**Not Applicable**

**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  
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John A. Simon (P61866)  
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*Proposed Counsel for the Debtor and Debtor in Possession*

**EXHIBIT 5**

**Affidavit**

**Not Applicable**



**EXHIBIT 6**

**Documentary Exhibits**

**Not Applicable**