

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.

Relief Requested

22. Pursuant to sections 105(a), 363(b), 503(b)(1), and 503(b)(9) of the Bankruptcy Code, the Debtor hereby seeks the entry of an order: (a) authorizing the Debtor in its sole discretion, to pay the prepetition unsecured claims of certain parties which arise under section 503(b)(9) for goods delivered to the Debtor within 20 days prior to the Petition Date (collectively, the “503(b)(9) Claims”); and (b) confirming the administrative expense priority of goods delivered post-petition.

Basis for Relief Requested

23. In the operation of its business, the Debtor relies on its vendors to provide raw honey, molasses, peanut butter, and other products. However the Debtor does not have long-term supply contracts with these vendors. Rather, it makes spot buys for many of its raw materials, including materials for which it has only a single source. Furthermore, honey, the primary raw material the Debtor uses in its business, is a fungible commodity that many potential customers compete to purchase.

24. Due to these arrangements, the Debtor is justifiably concerned that some or all of its vendors will choose to sell their honey or other raw materials to other purchasers if they do not believe the Debtor will pay them. If the vendors choose not to sell to the Debtor, the Debtor will not be able to meet its obligations to its customers.

25. The preservation and maximization of the going concern value of the Debtor's business, including the preservation of key business relationships, are among management's primary goals as the Debtor transitions into chapter 11. Providing seamless service to customers is key to meeting those goals. For these reasons, the Debtor seek to minimize the adverse business effects, as well as the cash flow impact, of its chapter 11 filing to the fullest extent possible by obtaining authority to pay those parties in a position to disrupt the Debtor's business operations.

26. The Debtor has two domestic processing facilities, one in California and one in Michigan that process and produce honey, food ingredients, industrial sweeteners and food service products. Debtor also maintains a testing lab in Belleview, Florida. Due to the locations of the Debtor's facilities and the location of its vendors, many of the goods are shipped significant distances. The Debtor is concerned that absent the relief sought in this Motion, the vendors may direct their carriers to not deliver the goods to the Debtor once they learn of the bankruptcy filing. The Debtor estimates that approximately \$2,571,804.80 of claims arising under 503(b)(9) may be outstanding as of the Petition Date.

27. Many of the Debtor's customers are food processors and manufacturers who use the Debtor's honey and other products in the production of their own goods. Other customers are retailers for whom the Debtor provides private label products. All of these customers require deliveries of the Debtor's honey and other products in a timely manner. Even a small delay in

delivery may render the customers unable to fulfill their own manufacturing and/or sales needs, as well as causing significant harm to the Debtor and jeopardizing the reorganization.

28. As such, the Debtor must be able to rely on its vendors to deliver the raw materials it needs to fulfill its customer contracts in a timely manner.

Authority to Pay 503(b)(9) Claims

29. Based on the foregoing, the Debtor seeks the authority, but not the obligation, to pay the 503(b)(9) Claims as it determines appropriate to ensure a stable flow of raw materials to keep its operations running during the pendency of the chapter 11 case.

30. The 503(b)(9) Claims are limited to amounts owed for goods received by the Debtor in the ordinary course of its business in the 20 days prior to the Petition Date. The 503(b)(9) Claims are pre-petition claims, but are paid as administrative expenses under sections 503(b)(9) and 507(a)(2). The Debtor's proposed Plan filed contemporaneously herewith, if confirmed, will pay the 503(b)(9) Claims in full on the Effective Date (approximately 90 days after the Petition Date). As such, the relief sought herein does not prejudice any creditors who do not hold 503(b)(9) Claims because their claims are already subordinated to the full payment of the 503(b)(9) Claims. Rather, this Motion simply authorizes the Debtor to pay the 503(b)(9) Claims before the Effective Date in its discretion.

31. The timing of payment of claims which arise under Section 503(b)(9) is not specified in the Bankruptcy Code and therefore, is left to the discretion of the Court. *In re Plastech Engineered Products, Inc.*, 394 B.R. 147, 152 (Bankr. E.D. Mich. 2008). Courts look to the same three-factor test used to determine the timing of payment of other administrative expenses when determining the timing of payment of 503(b)(9) claims: (1) the prejudice to the debtor; (2) the hardship to the creditor; and (3) the potential detriment to other parties in the case.

Id. (citing *In re Global Home Products, LLC*, 2006 Bankr. LEXIS 3608, *4-5 (Bankr. D. Del. Dec. 21, 2006)).

32. The *Global Home* test is most often applied where a creditor seeks immediate payment of a claim under 503(b)(9) and that request is opposed by the debtor or another stakeholder in the case, as opposed to the here where the Debtor is affirmatively seeking authority to pay the 503(b)(9) Claims. For example, in *Global Home*, a creditor sought immediate payment of over \$206,000.00 for its 503(b)(9) claim. This request was opposed by the debtor and the DIP Lender. The court ruled against the creditor, finding that (a) the debtor would be prejudiced where it did not have the authorization from the DIP Lender or the funds available to pay such claims; (b) the creditor was a large global manufacturer that would not be harmed by its payment being delayed. *Global Home*, 2006 Bankr. LEXIS 3608 at *15; *see also In re Bookbinder's Restaurant, Inc.*, 2006 Bankr. LEXIS 3749, *23 (Bankr. E.D. Pa. Dec. 28, 2006) (denying a creditor's request for immediate payment of a 503(b)(9) when such request was opposed by the debtor and the creditors' committee).

33. In this case, however, where the Debtor is seeking to pay the 503(b)(9) Claims in order to preserve the value of the estate, this Court should authorize such payments. Indeed, there is nothing in the Bankruptcy Code which bars a debtor who has the ability to pay these creditors during the case from doing so before confirmation because the claims are administrative expenses. *See Id.* at *11. Here, unlike *Global Home*, the Debtor is able to pay the 503(b)(9) Claims and doing so is in the best interest of the estate.

34. Furthermore, the well-recognized "necessity of payment" doctrine is applicable here. Courts have consistently applied the necessity of payments doctrine when the failure to pay prepetition obligations poses a real, significant threat to a debtor's estate. *See e.g., In re Penn Central Transp. Co.*, 467 F.2d 100 (3d Cir. 1972); *see also In re Just for Feet, Inc.*, 242

B.R. 821, 824 (D. Del. 1999) (“courts have used their equitable power under Section 105(a) . . . to authorize payment of prepetition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization”); *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (reasoning that because the debtor-in-possession has fiduciary duties it must meet, it is logical that the bankruptcy court may “authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate” under Section 105(a)); *In re Eagle-Picher Industries, Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (holding that a per se ban on any prepetition payments is too inflexible to serve the rehabilitative purposes of the Bankruptcy Code).

35. The bankruptcy court’s exercise of its authority under the “doctrine of necessity” is appropriate to carry out specific statutory provisions of chapter 11, specifically, Sections 1107(a), 1108 and 363(b)(1), which authorize a debtor-in-possession to maintain and operate the debtor’s business and use estate property out of the ordinary course of business. Indeed, a debtor-in-possession operating a business under Section 1108 of the Bankruptcy Code has a fiduciary duty to protect and preserve the estate, including the going concern value of an operating business. See *In re CoServ, L.L.C.*, 273 B.R. at 497 (“There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a prepetition claim.”). A bankruptcy court’s exercise of its authority under Section 105(a) is also necessary to carry out two central policies underlying chapter 11: (a) permitting the successful rehabilitation of the debtor, *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 527 (1984), and (b) preserving going concern value and maximizing the property available for distribution to creditors. *Bank of Am. Nat’l Trust & Sav. Ass’n v. 203 N. La Salle St. P’ship*, 526 U.S. 434, 453 (1999). Granting the relief requested in the Motion will enhance the likelihood of the Debtor’s successful rehabilitation and will help maximize the value of the estate’s assets and, ultimately, the return to creditors.

36. Even if this Court were to apply the *Global Home* test to the Debtor's affirmative motion for authority to pay the 503(b)(9) Claims, it would weigh in favor of the Debtor's request. Here, there is no prejudice to the Debtor in paying the 503(b)(9) Claims before confirmation. Pursuant to the Plan, the 503(b)(9) Claims will have to be paid in full within 90 days of the Petition Date (the projected Effective Date under the Plan and Restructuring Support Agreement¹), and the funds exist to make these payments. Furthermore, certain of the creditors holding 503(b)(9) Claims will be prejudiced by waiting even the 90 days for payment because they are small operations who rely on timely payment from their customers to continue their own operations. In addition, many of the honey creditors use working capital to obtain honey from international supply sources. If these creditors are forced to wait 90 days for payment, the Debtor's supply from them could be disrupted, adversely affecting the Debtor's operations. Finally, there is no detriment to creditors holding other unsecured claims because the 503(b)(9) Claims must be paid in full before they are entitled to any distribution on their own claims. As such, the Debtor requests this Court enter an order granting it the authority, but not the obligation, to pay 503(b)(9) claims in its discretion, in order to ensure it will continue to receive raw materials during this case.

Conditions on Payment of 503(b)(9) Claims

37. In an effort to ensure that the prompt payment of the 503(b)(9) Claims provides the Debtor with the maximum benefit to the estate, the Debtor proposes that each recipient of a payment of a 503(b)(9) Claim (a "503(b)(9) Payment") may be required, to the extent applicable, to: continue to extend normalized trade credit and provide other business terms on a post-petition basis (consistent with past practices), including with respect to any applicable credit limits, the

¹ Capitalized terms not defined herein have the meaning ascribed to them in the Declaration of Jack Irvin, Jr., filed contemporaneously herewith.

pricing of goods and services, and the provision of equivalent levels of goods, on terms at least as favorable as those extended prepetition, including at a minimum 20 days payment terms, or on such other terms that are acceptable to the Debtor in its business judgment, until the Debtor emerges from chapter 11 (collectively, the “Trade Terms”).

38. If the holder of a 503(b)(9) Claim accepts a 503(b)(9) Payment and fails to provide the Debtor with the requisite Trade Terms, then (a) any 503(b)(9) Payment received by the creditor will be deemed an unauthorized post-petition transfer under section 549 of the Bankruptcy Code that the Debtor may either (i) recover from the creditor in cash or goods or (ii) at the Debtor’s option, apply against any outstanding administrative claim held by such creditor; (b) upon recovery of any 503(b)(9) Payment, the corresponding prepetition claim of the creditor will be reinstated in the amount recovered by the Debtor, less the Debtor’s costs to recover such amounts, including attorneys’ fees; (c) the Debtor shall have all rights to challenge the validity, priority or extent of the creditor’s interest and the validity and amount of the related claim.

39. The Debtor shall implement and provide notice of the conditions set forth in paragraph 33 above through the following procedures:

- The Debtor may require a creditor holding a 503(b)(9) Claim to execute an agreement (a “Trade Agreement”) prior to its receipt of a 503(b)(9) Payment that (a) confirms that the creditor agrees to be bound by the terms set forth above, (b) confirms that the creditor has received and agrees to be bound by the order granting this Motion and (c) contains such other terms and conditions as the Debtor believes proper, including confidentiality provisions.
- Any check pursuant to which a 503(b)(9) Payment is made will be accompanied by (a) a letter from the Debtor explaining that acceptance of the check by the creditor constitutes its agreement to provide the Trade Terms and explaining the consequences of its failure to comply with such agreement and (b) a copy of the order granting this Motion (collectively, the “503(b)(9) Claim Information”).

- If the Debtor makes 503(b)(9) Payments by wire transfer or automated clearinghouse transaction, the 503(b)(9) Claim Information will be sent by the Debtor, and received and agreed upon by the Lienholder, prior to the payment.
- The Trade Terms may be applied to any creditor who accepts a 503(b)(9) Payment, without the execution of a Trade Agreement or notification of the 503(b)(9) Claim Information.
- To the extent a holder of a 503(b)(9) Claim also asserts a reclamation claim against the Debtor, any 503(b)(9) Payment provided to that creditor may also be used to settle the value of such reclamation claim.

**Request for Authority for Banks to Honor and
Pay Checks and Fund Transfers Related to the 503(b)(9) Claims**

40. In addition, by this Motion, the Debtor requests that all Banks be authorized and directed, when requested by the Debtor in the Debtor's sole discretion, to receive, process, honor and pay any and all checks presented for payment of, and to honor all fund transfer requests made by the Debtor related to 503(b)(9) Claims, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

41. The Debtor represents that these checks are drawn on identifiable disbursement accounts and can be readily identified as relating directly to the authorized payment of 503(b)(9) Claims. Accordingly, the Debtor believes that checks other than those relating to authorized payments will not be honored inadvertently.

42. The Debtor further represents that it has anticipated access to sufficient debtor in possession financing to pay the 503(b)(9) Claims it determines to be appropriate, to the extent described herein, as such amounts become due in the ordinary course of its business.

**Authorization to Pay for Goods Delivered to
Debtor Post-Petition As Administrative Expense**

43. As described above, the Debtor is concerned that vendors will stop selling goods to it in the wake of this bankruptcy filing without some assurance that they will be paid. The Debtor is particularly concerned that vendors who have shipped goods to the Debtor which have not yet been received as of the Petition Date will order their carriers to halt shipment and delivery of such goods. The Debtor is relying on timely delivery of these goods to fulfill its obligations to its own customers. The Debtor's inability to fulfill its customer contracts will be detrimental to all stakeholders in this case. As such, the Debtor requests that this Court enter an order pursuant to Sections 105(a) and 503(b), authorizing the Debtor to pay for all such goods delivered to the Debtor post-petition as administrative expenses.

44. The Sixth Circuit has adopted a two part test to determine if an expense is entitled to administrative priority: (1) it must be a transaction with the bankruptcy estate; and (2) it must directly and substantially benefit the estate. *In re Sunarhauserman*, 126 F.3d 811, 816 (6th Cir. 1997).

45. Though the Debtor has ordered the goods in question before the Petition Date, it is not obligated to pay for them until the time that title of such goods transfers upon the Debtor's receipt (which in some instances includes receipt by the Debtor's warehousemen or transporter). As such, the transaction is a post-petition transaction with the bankruptcy estate where the liability for such amount owed to the vendor will not arise until after the Petition Date when the goods are delivered. *Id.* at 817 ("As our opinion today makes clear, it is an absolute requirement for administrative expense priority that the liability at issue arise post-petition.").

46. Furthermore, the estate is directly and substantially benefitted when it receives raw materials. Once the materials are received, the Debtor processes them into finished goods

which are sold to customers, increasing the value of the estate. Thus, these transactions meet the test for payment as administrative expenses.

47. Additionally, as discussed in more detail above, the necessity of payment doctrine is also applicable here. If the Debtor is not able to convince its vendors to deliver goods already in transit, there will be a significant threat to the estate. The Debtor is relying on shipments in transit to fulfill its customer obligations. The Debtor's continued ability to maintain its business operations will be threatened without the continued flow of raw materials to its facilities. Any failure to fulfill its customer contracts will significantly harm the Debtor and the estate. As such, the Debtor seeks an order from this Court confirming the administrative expense priority of goods received by the Debtor post-petition, regardless of when such goods were ordered.

48. 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 Debtor's ability to obtain the raw materials it needs to produce its products is essential to the Debtor's business operations. Absent the relief sought in this Motion, the Debtor risks the immediate cessation of its production capacity and the severe impairment of its 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.

Request for Waiver of Stay

49. The Debtor further seeks a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Rule 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), "[an] order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court

orders otherwise.” As set forth above, the immediate payment of the 503(b)(9) Claims is essential to prevent irreparable damage to the Debtor’s operations, value and ability to reorganize. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the ten-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

Reservation of Rights

50. Nothing contained herein is intended or should be construed as: (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor’s right to dispute any claim on any grounds; (c) a promise to pay any claim, including any 503(b)(9) Claim; or (d) a request to assume any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code.

Notice

51. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Eastern District of Michigan; (b) the Debtor’s secured creditors and their counsel; (c) the twenty (20) largest creditors of the Debtor; and (d) all of the creditors potentially holding 503(b)(9) Claims who are identified on **Exhibit 6** of the Motion. In light of the circumstances of this Motion, the Debtor submits that no other or further notice need be provided.

No Prior Request

52. No prior request for the relief sought in this Motion has been made to this or any other Court.

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 appropriate under the circumstances.

Dated: October 1, 2013
Detroit, Michigan

FOLEY & LARDNER LLP

/s/ John A. Simon

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*Proposed Counsel for the Debtor and
Debtor in Possession*

EXHIBIT 1

Proposed Order

4832-9688-2198.1

**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

**FIRST DAY ORDER 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**

Upon the Debtor's Motion for Order 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 "Motion"),¹ the Court having jurisdiction over this matter; and it appearing that notice of the Motion has been provided which the Court finds sufficient and 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 further appearing that the relief requested in the Motion is in the best interest of the Debtor, its estate and creditors; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion be, and hereby is, granted; and it is further

¹ Capitalized terms not otherwise defined shall have the definition assigned to them in the Motion.

ORDERED that the Debtor is authorized, but not obligated, to pay 503(b)(9) Claims and implement the Trade Terms in its discretion; and it is further

ORDERED that the Debtor shall be authorized to pay for goods it receives post-petition as administrative expenses, regardless of when such goods were ordered; and it is further

ORDERED that nothing contained in this Order or the Motion is intended or should be construed as: (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's right to dispute any claim on any grounds; (c) a promise to pay any claim, including any 503(b)(9) Claim; (d) a request to assume any executory contract or unexpired lease, pursuant to section 365 of the Bankruptcy Code; or (e) an exception from any creditor's obligation to file a proof of claim; and it 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 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 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.

EXHIBIT 2

Notice of Motion and Opportunity to Object

Not Applicable

4832-9688-2198.1

EXHIBIT 3

Brief

Not Applicable

4832-9688-2198.1

EXHIBIT 4

Certificate of Service

4832-9688-2198.1

**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

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 this service.

Dated: October 1, 2013
Detroit, Michigan

FOLEY & LARDNER LLP

/s/ John A. Simon

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Possession*

4832-9688-2198.1

EXHIBIT 5

Affidavit

Not Applicable

4832-9688-2198.1

EXHIBIT 6

List of 503(b)(9) Claimants

A Packaging	Industrial Container-Ca
AE Fleming	Keller Apiaries
Andfel Corp	King Plastics
Arvco	Lamex
Batory Foods	Landsberg
Beelogic	LTI
Bees Brothers	MG Pallets
Berlin Packaging	Midtown Pallet
Bomatic	Natural Honey Importers
Bridgewell	Nichols
Buoye Honey	Package Global
Cintas	Raley
Cintas Fas	Rhino Container
Citrofrut	Sarahimpex
C.M. Goettsche	Select Equipment Sales
Delta	Sociedad Cooperative
Diagraph	Sonoco Products
Exelpac	Specialty
Flaherty	Starrhbees
Gastronomia	Sweetener
Goldenboy	Tricorbraun
Grainger	Vpet USA
Greger	Western Shield
Greif	
Home Depot	
Industrial	

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