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 MEMORANDUM OF LAW (I) IN SUPPORT OF CONFIRMATION OF THE SECOND AMENDED PLAN OF REORGANIZATION OF GROEB FARMS, INC. PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE DATED NOVEMBER 8, 2013, AND (II) IN RESPONSE TO OBJECTIONS THERETO

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I. PRELIMINARY STATEMENT

Groeb Farms, Inc. (the "Debtor"), the debtor and debtor-in-possession in the above-captioned case, respectfully submits this memorandum of law in support of confirmation of the Debtor's *Second Amended Plan of Reorganization of Groeb Farms, Inc., Pursuant to Chapter 11 of the Bankruptcy Code Dated November 8, 2013*, as amended (the "Plan"),[1] and in response to objections filed to the Plan. The Debtor has made monumental strides in reaching confirmation in less than 90 days from the petition date. In accordance with the purposes of chapter 11, the Debtor has obtained the support of all of the core constituents and has resolved all objections to confirmation of its Plan.

II. BACKGROUND

On October 1, 2013 (the "Petition Date"), the Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code commencing this chapter 11 case. The Debtor continues in possession of its property and manages its business as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. On October 9, 2013, the Office of the United States Trustee (the "U.S. Trustee") appointed a committee of unsecured creditors in the case (the "Committee"). No trustee or examiner has been appointed.

The Debtor's Plan is a plan of reorganization that will enable the Debtor to remain in business, saving its employees' jobs and a valuable source of revenue for suppliers. The Debtor filed its original Plan on the Petition Date filed, and it was subsequently amended to account for negotiations with the Committee and other constituents.[2]

[1] Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Plan.

[2] Prior versions of the Plan are as follows: the *Plan of Reorganization of Groeb Farms, Inc., Pursuant to Chapter 11 of the Bankruptcy Code Dated October 1, 2013* (Doc. 23-1), and the *First Amended Plan of Reorganization of Groeb Farms, Inc., Pursuant to Chapter 11 of the Bankruptcy Code* (Doc. 181-1).

Prior to filing its bankruptcy petition, the Debtor entered into the following three restructuring support agreements: (i) a Restructuring Support Agreement between the Debtor, the Senior Lender Affiliate, and the Senior Lender (the "Honey Financing RSA"); (ii) the Restructuring Support Agreement between the Debtor, the Senior Lender Affiliate, the Senior Lender and certain holders of the Senior Subordinated Notes (the "Senior Subordinated Debt RSA"); and (iii) the Restructuring Support Agreement between the Debtor and the Interim CA Counsel (on behalf of the Class Action Claim Holders[3] as defined in the Disclosure Statement) (the "Putative Class Action RSA" and together with the Honey Financing RSA and the Senior Subordinated Debt RSA, collectively, the "Restructuring Support Agreements"). The Restructuring Support Agreements were the product of lengthy negotiations made in good faith between the Debtor and the Senior Lender Affiliate, the Senior Lender, certain holders of the Senior Subordinated Notes and the Interim CA Counsel (on behalf of the Class Action Claim Holders), and embodied a number of hard-fought compromises between the parties. While the settlement contemplated in the Putative Class Action RSA was never approved by the Insurer, as defined therein, negotiations to resolve in a manner that should result in Insurer approval are ongoing.

On December 17, 2013, the Debtor, the Committee, the Senior Lender, and Adee Honey Farms, Bill Rhodes Honey Company LLC and Hackenberg Apiaries, the proposed class representatives of potentially more than 300 Class Action Claim Holders, on behalf of the Class Action Claim Holders, through the Interim CA Counsel ("PCRs"), entered into a stipulation (the "Class Action Stipulation"), resolving the PCR's objections to confirmation of the plan and enabling the PCRs to vote in favor of the Plan. The PCRs filed claims totaling approximately

[3] As discussed in the Disclosure Statement, the Class Action Claim Holders initiated the Putative Class Action (as defined therein), and at this time the class is not certified under Rule 23(b)(3) of the Federal Rules of Civil Procedure.

$189,200,000.00. In the Class Action Stipulation, the parties agreed, in pertinent part: (i) to allowance of the PCR's claims for the Class Action Claim Holders (as defined in the Class Action Stipulation, the "PCR Claims") for voting purposes only (while preserving all parties' rights with respect to liability, distribution and any other purpose of such claim), (ii) to carve back the release and injunction provisions of the Plan in respect of holders of the PCR Claims, (iii) that the United States District Court for the Northern District of Illinois would maintain jurisdiction over the PCR Claims and (iv) that the PCRs would vote in favor of the Plan and have no objections to the Plan. The holders of the PCR Claims agreed to accept the Plan and withdraw any objection to the Plan upon entry of an order approving the Class Action Stipulation. The Court entered an order approving the Class Action Stipulation on December 18, 2013.

On December 17, 2013 the Debtor, the Committee and 14 producers and/or packers of honey products that had filed motions in the aforementioned class action litigation for leave to assert their claims as non-class action individual claims (the "Producer/Packer Claimants")[4] and proofs of claim for a total amount of $26,770,303, entered into a stipulation (the "First Producer/Packer Stipulation"), resolving the Producer/Packer Claimants' motion filed on December 6, 2013 for temporary allowance of their claims (the "Producer/Packer Claims"). In the First Producer/Packer Stipulation, the parties agreed, in pertinent part, to allowance of the Producer/Packer Claims for voting purposes only (while preserving all parties' rights with respect to liability, distribution and any other purpose of such claim). On December 18, 2013, the Debtor, the Committee, and the Producer/Packer Claimants entered into a further stipulation

[4] The Producer/Packer Claimants are: Ruby's Apiaries, Inc., Kallas Honey Farm, Inc., Wind River Honey Company, William H. Perry, Heaven's Honey, Inc. d/b/a Bennett's Honey Farm, Blake Shook, Heaven's Honey, Inc., d/b/a Chip's Bees, Cox Honey of Utah, LLC, Kelvin Adee d/b/a Adee Honey Farms, Bernard Casavan, Brett Adee d/b/a Adee Honey Farms, Chris Moore, Bauer Honey, Inc., and Dan's Honey Co.

(the "Second Producer/Packer Stipulation"), pursuant to which the parties agreed (i) to carve back the release and injunction provisions of the Plan in respect of holders of the Producer/Packer Claims, (ii) that the United States District Court for the Northern District of Illinois would maintain jurisdiction over the Producer/Packer Claims subject to the terms of the Second Producer/Packer Stipulation; (iii) that the United States District Court for the Northern District of Illinois would maintain jurisdiction over the Producer/Packer Claims and (iv) that the votes of the Producer/Packer Claimants who had voted would be deemed to be votes in favor of the Plan and that the Producer/Packer Claimants have no objections to the Plan. The Court entered orders approving the First Producer/Packer Stipulation and the Second Producer/Packer Stipulation on December 18, 2013.

The Debtor asserted potential claims, such as breach of fiduciary claims, among others, against certain of its officers and directors, including Ernest L. Groeb, Jr. ("E. Groeb") and Troy Groeb ("T. Groeb" and together with E. Groeb, the "Groebs"), in connection with claims arising from and related to facts, which are disputed, as set forth in the Deferred Prosecution Agreement and all attachments and exhibits thereto filed on February 20, 2013, in case number 13-CR-137 in the United States District Court for the Northern District of Illinois, in connection with proceedings involving the Department of Justice (the "DOJ"). To resolve these potential claims, and various other claims, on December 16, 2013, the Debtors, the Committee, and various parties including the Groebs, E. Jeanne Groeb, Groeb Farms, LLC, the Groeb Family Partnership, the E. Jeanne Groeb Living Trust, the Insurer, the Ernest L. Groeb Jr. Living Trust, Thomas Jenkins ("Jenkins"), Robert Feerick ("Feerick"), Michael Bailey, Marquette Capital Fund I, LP, Argosy Investment Partners III LP, Horizon Partners, Ltd. and Horizon Capital Partners III ("Horizon Capital") (collectively, the "Groeb Settlement Parties") entered into a

settlement agreement the "Groeb Creditors Settlement Agreement"). In exchange for the release of certain claims and for the consideration to be paid, the Debtor agreed to allowance of the Groeb parties' claim as a general unsecured claim in the amount of $1.46 million, the Insurer agreed to pay $1.5 million from the D&O Policy to the General Unsecured Claims Litigation Trust, and the Groeb parties agreed to provide a release to the Debtor of certain claims held as well as to resolve their objections to the Plan and to affirmatively vote in favor of the Plan, in accordance with the terms of the Groeb Creditors Settlement Agreement. In addition to the foregoing, the Committee agreed to withdraw its complaint for equitable subordination of certain claims filed by the Groeb parties. On December 16, 2013, the Debtor filed a motion to approve the Groeb Creditors Settlement Agreement and the hearing is scheduled for January 7, 2014.

As indicated by the votes of a substantial majority of the Debtor's creditors, and the support of the Committee and the Senior Lender, and the Class Action representatives, the Plan results in the best outcome for creditors. Furthermore, the Plan complies with all applicable provisions of the Bankruptcy Code and the Bankruptcy Rules necessary for confirmation. The Debtor resolved all objections to confirmation of the Plan. The Debtor respectfully requests that the Court confirm the Plan.

III. VOTING RESULTS

9. The results of the voting upon the Plan are set forth in the Certification of P. Joseph Morrow IV With Respect to the Tabulation of Votes on the Debtor's Second Amended Plan of Reorganization of Groeb Farms, Inc. Pursuant to Chapter 11 of the Bankruptcy Code (the "Voting Report"). Under the Plan, Classes 1, 2 and 5C are deemed to have accepted the Plan. Class 6 does not affect the voting because there are no parties in Class 6. Class 7 is equity that is not receiving any distribution or retaining property and thus is deemed to reject the Plan. Classes 3, 4, 5A and 5B are entitled to vote under the Plan.

10. Based on the Voting Report, set forth below is a summary of the voting results with respect to the Voting Classes tabulated on a consolidated basis:

Total Ballots Received			
Accept		**Reject**	
Number	**Amount**	**Number**	**Amount**
Class 3 – Senior Loan Claims			
1 (100.00%)	$ 16,570,949.08 (100.00%)	0 (0.00%)	$0.00 (0.00%)
Class 4 – Senior Subordinated Note Claims			
4 (100.00%)	$8,722,956.24 (100.00%)	0 (0.00%)	$0.00 (0.00%)
Class 5A – Trade Claims			
31 (86.11%)	$8,898,070.38 (98.94%)	5 (13.89%)	$95,362.79 (1.06%)
Class 5B – Other General Unsecured Claims			
18 (100.00%)	$201,848,971.17 (100.00%)	0 (0.00%)	$0.00 (0.00%)

IV. ARGUMENT

A. Overview

The Debtor submits that the Plan complies with all relevant sections of the Bankruptcy Code, the Bankruptcy Rules and applicable non-bankruptcy law. In particular, the Plan fully complies with all of the requirements of sections 1122, 1123 and 1129 of the Bankruptcy Code. Therefore, the Plan should be confirmed.

B. The Plan Complies with Section 1129(a)(1) of the Bankruptcy Code

Section 1129(a)(1) of the Bankruptcy Code requires that a plan comply with the applicable provisions of chapter 11 of the Bankruptcy Code. Although broadly drafted, the legislative history and the case law make clear that this provision is directed at compliance with sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and interests and the contents of a plan, respectively. As established below, the Plan satisfies sections 1122 and 1123 and thus, complies with section 1129(a)(1).

1. **The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code**

Section 1122 requires that claims placed in the same class be substantially similar. According to Section 1122(a), "[e]xcept as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). The Plan complies with section 1122, as each Class contains substantially similar Claims and each Class of Claims and Existing Equity Interests differs from each other Class in either a legal or factual nature such that classification has not been used for gerrymandering purposes.

Here, the Plan's classification structure is straightforward and complies with section 1122(a) of the Bankruptcy Code. Each Secured Claim is separately classified: Class 3 consists of the Senior Loan Claims, Class 4 consists of the Senior Subordinated Note Claims and Class 2 consists of the Other Secured Claims (which the Debtor estimates to be zero). The Plan also separately classifies four unsecured creditor groups based on their distinct legal and factual nature: Class 5A (Trade Claims), Class 5B (Other General Unsecured Claims), Class 5C (Unsecured Convenience Class Claims) and Class 6 (Section 510(b) Claims) (which the Debtor estimates to be zero). The Plan separately classifies the Debtor's Existing Equity Interests in Class 7 (Existing Equity Interests).

Bankruptcy courts have broad discretion to determine classifications. In the Sixth Circuit, classification of unsecured claims is measured by a flexible standard. See In re U.S. Truck Co., Inc., 800 F.2d 581, 586-87 (6th Cir. 1986). In fact, it is well recognized that "[s]ection 1122(a) does not demand that all similar claims be in the same class." In re Dow Corning Corp., 280 F.3d 648, 661 (6th Cir. 2002). Similar classes may be classified separately for section 1122(a) purposes so long as the debtor has a business justification for the separate

classification. See In re Chateaugay Corp., 89 F.3d 942, 949 (2d Cir. 1996) (permitting separate classification of similar claims for business reasons, finding that "classification is constrained by two straight-forward rules: Dissimilar claims may not be classified together; similar claims may be classified separately only for a legitimate reason."). Indeed, this Court has interpreted *U.S. Truck* to broadly permit such a separate classification, including where a mere "sound business justification" exists for doing so. In re Graphic Communications, Inc., 200 B.R. 143, 146-147 (Bankr. E.D. Mich 2000) (SWR).

As required by *U.S. Truck*, the Claims in each Class described above are substantially similar in nature to the other Claims in that Class, and only certain similar claims (such as the various Classes of unsecured claims) were classified separately for legitimate reasons. The Debtor separately classified the Class 5A Trade Claims from other Unsecured Claims due to the distinct legal and factual nature of these Claims. A Trade Claim is a General Unsecured Claim that "arises on account of products or services provided to the Debtor on an ongoing basis with which the Debtor will continue to conduct business with during the Chapter 11 Case and after the Effective Date."[5] Plan, Article I.A.136. The Debtor continues to do business with the holders of Trade Claims, and the Debtor cannot operate its business without such trade vendors providing such products (such as honey) or services to the Debtor.

Due to the liquidity issues and disruption of supply issues resulting from the Department of Justice investigation on transshipping, prior to the Petition Date, the Debtor was required to cease using and abandon certain inventory that was transshipped, and the Debtor could not adequately recover from this due to liquidity issues. In the months leading up to the Debtor's

[5] Note: the definition of Trade Claims is being modified in the Confirmation Order to provide as follows: "Trade Claim" means a General Unsecured Claim of a holder that arises on account of products or services provided to the Debtor on an ongoing basis with which the Debtor will continue to conduct business during the chapter 11 Case and/or after the Effective Date."

Petition Date, the Debtor's liquidity was limited to the point that the Debtor's vendors were concerned about the ability to receive payment for previously delivered goods and services. As a result, the Debtor experienced considerable difficulty procuring additional product deliveries and where it could obtain additional deliveries it did so at significantly increased costs.

Certain vendors required the Debtor to pay old invoices as well as cash-on-delivery for new deliveries, further exacerbating the Debtor's liquidity issues. The Debtor's inventory was also strained by the competition for the limited supply of honey in the marketplace. Vendors have multiple avenues for sale of their product, and due to the Debtor's limited ability to pay for product, vendors could have chosen, and did choose, not to sell to the Debtor when there were other willing customers. Therefore, the most critical threat to the Debtor's survival was inadequate inventory. Additionally, due to seasonal and risk issues, the Debtor was paying what it believed to be above market prices to replenish inventory. The most important factor in the Debtor's survival was obtaining more inventory. Therefore, the Plan takes this into account and incentivizes the Debtor's vendors to supply inventory through a "New Trade Agreement," which requires most favored nation pricing, seeks immediate shipments to the Debtor and incorporates improved credit terms. The trade vendors' concessions are critical and required for the Debtor's continued operations and restructuring. Without them, no restructuring would be possible and the Debtor would liquidate providing recoveries only to the DIP Lender/Senior Lender. Therefore the decision to classify them separately clearly constitutes a valid and reasonable exercise of the Debtor's business judgment.

The Debtor also separately classified the Class 5C Allowed Unsecured Convenience Class Claims, which are Allowed General Unsecured Claims other than certain Trade Claims, that are $7,500 or less. This classification is expressly permitted by the Bankruptcy Code.

Section 1122(b) provides that "[a] plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience." There are approximately 160 Unsecured Convenience Class Claims, all of which are in an amount of $7,500 or less. Under Article III.C.7 of the Plan, each holder of an Allowed Unsecured Convenience Class Clam shall receive on the Effective Date payment in full in Cash (unless the holder of such Claim agrees to less favorable treatment), up to a total distribution of $250,000. All Other General Unsecured Claims are in Class 5B.

Accordingly, the classification structure embodied in the Plan complies with section 1122 of the Bankruptcy Code.

2. **The Plan Satisfies the Seven Mandatory Plan Requirements of Sections 1123(a)(1) – (a)(7) of the Bankruptcy Code**

Specifically, sections 1123(a)(1)-(7) require that a plan:

i. designate classes of claims and interests, with certain exceptions;

ii. specify unimpaired classes of claims and interests;

iii. specify the treatment of impaired classes of claims and interests;

iv. provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim agrees to a less favorable treatment of its particular claim or interest;

v. provide adequate means for the plan's implementation;

vi. provide for the prohibition in the charter of issuance of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and

vii. contain only provisions that are consistent with the interests of the creditors and equity security holders and with public policy with respect to the manner of selection of the reorganized company's officers and directors.

The Plan meets the seven mandatory requirements of section 1123(a).

a. The Plan Designates Classes of Claims and Interests (Section 1123(a)(1))

Section 1123(a)(1) requires that a plan "designate . . . classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative claims], 507(a)(3) ["gap" claims in involuntary cases], or 507(a)(8) [priority tax claims] of this title, and classes of interests." 11 U.S.C. § 1123(a)(1). The Plan complies with section 1123(a)(1) because the Plan designates classes of Claims and a class of Existing Equity Interests. In addition, in accordance with section 1123(a)(1), the Plan does not classify administrative claims or priority tax claims.

b. The Plan Specifies Unimpaired Classes of Claims and Interests (Section 1123(a)(2))

Section 1123(a)(2) provides that a Plan must "specify any class of claims or interests that is not impaired under the plan." 11 U.S.C. § 1123(a)(2). The Plan clearly states that Classes 1, 2 and 5C are unimpaired under the Plan. Thus, the Plan complies with Section 1123(a)(2).

c. The Plan Specifies the Treatment of Impaired Classes of Claims and Interests (Section 1123(a)(3))

Under section 1123(a)(3), a Plan must "specify the treatment of any class of claims or interests that is impaired under the plan." 11 U.S.C. § 1123(a)(3). The Plan designates Classes 3, 4, 5A, 5B, 6 and 7 as impaired. Article III.C.3 of the Plan clearly specifies the treatment of Class 3 (Senior Loan Claims). Article III.C.4 of the Plan clearly specifies the treatment of Class 4 (Senior Subordinated Note Claims). Article III.C.5 of the Plan clearly specifies the treatment of Class 5A (Trade Claims). Article III.C.6 of the Plan clearly specifies the treatment of Class 5B (Other General Unsecured Claims). Article III.C.8 of the Plan clearly specifies the treatment of Class 6 (Section 510(b) Claims). Article III.C.9 of the Plan clearly specifies the treatment of Class 7 (Existing Equity Interests). Therefore, the Plan complies with section 1123(a)(3) in that

Article III of the Plan specifies the treatment of Claims and Existing Equity Interests in impaired classes.

d. The Plan Provides the Same Treatment for Each Claim or Interest in a Particular Class (Section 1123(a)(4))

A plan is required to "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). The Plan satisfies section 1123(a)(4) of the Bankruptcy Code because the Plan provides the same treatment for each Claim and Existing Equity Interest within a particular Class, including the holders of Claims in Class 5A who *each* have the option of entering into a New Trade Agreement with the Debtor (and having its Allowed Trade Claim paid pursuant to the treatment described in Article III.C.5.(b)(i) of the Plan), or having its Allowed Trade Claim paid by receiving its pro rata share of the proceeds of the General Unsecured Claims Litigation Trust in accordance with the General Unsecured Claims Litigation Trust Waterfall. See In re Dow Corning Corp., 255 B.R. 445, 497 (E.D. Mich. 2000) (finding that, in that case, the primary treatment under the plan was the same for each tort claimant--to enter the "Litigation Facility," or alternatively accept the settlement offer of the "Settlement Facility"; ruling that the Court did not err in holding that a claimant who elects to settle under the plan agrees to a less favorable treatment than the litigation option, and that this agreement complies with the second clause of § 1123(a)(4)). By choosing to not enter into a New Trade Agreement, the holders of Trade Claims who receive the treatment under Article III.C.5.(b)(i) of the Plan, has agreed to less favorable treatment under the Plan.

e. The Plan Provides Adequate Means for Its Implementation (Section 1123(a)(5))

Section 1123(a)(5) requires that a plan "provide adequate means for the plan's implementation" and lists several examples of what may constitute "adequate means." 11 U.S.C.

§ 1123(a)(5)(A)-(J). Article V of the Plan and various other provisions specifically provide adequate means for the Plan's implementation. Those include, without limitation: (i) the funding of the distributions under the Plan through the Exit Facility or the Debtor's other Cash on hand; (ii) the issuance of New Equity to holders of DIP Facility Claims and Senior Loan Claims; (iii) the issuance of New Subordinated Notes and New Warrants; (iv) the creation of the General Unsecured Claims Litigation Trust; (v) the continued existence of the Reorganized Debtor after the Effective Date; and (vi) as of the Effective Date, the term of the current members of the board of directors of the Debtor shall expire and the initial boards of directors, including the New Board, as well as the officers of the Reorganized Debtor, shall be appointed.

f. The Plan Prohibits the Issuance of Nonvoting Equity Securities (Section 1123(a)(6))

Section 1123(a)(6) requires that the Debtor is prohibited from issuing nonvoting equity securities. This section is satisfied pursuant to the Certificate of Incorporation and the Bylaws attached as a portion of Exhibit 1 of the *First Supplement to the Second Amended Plan of Reorganization of Groeb Farms, Inc.* (Doc. No. 311) (the "Plan Supplement").

g. The Plan's Provisions for Selecting Directors and Officers are Consistent with Stakeholders' Interests and Public Policy (Section 1123(a)(7))

Section 1123(a)(7) states that a plan shall "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee." 11 U.S.C. § 1123(a)(7). The New Equity holders selected the directors and officers to serve the Debtor after the Effective Date in accordance with underlying corporate law. Therefore, the Plan satisfies Section 1123(a)(7).

C. The Debtor has Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2))

Section 1129(a)(2) requires that the proponent of a plan comply with the applicable provisions of title 11. The legislative history to section 1129(a)(2) indicates that the principal purpose of this section is to ensure compliance with the disclosure and solicitation requirements set forth in sections 1125 and 1126 of the Bankruptcy Code. See In re WorldCom, Inc., 2003 Bankr. LEXIS 1401, *144 (Bankr. S.D.N.Y. October 31, 2003).

1. The Debtor Complied with the Disclosure and Solicitation Requirements of Section 1125

On November 12, 2013, the Court entered the *Order (I) Approving Second Amended Disclosure Statement; (II) Approving Form and Manner of Notice of Confirmation Hearing; (III) Establishing Procedures for Filing Objections to Confirmation of Debtor's Plan; (IV) Approving Balloting Agent; (V) Approving Solicitation Package and Related Procedures; (VI) Setting Voting Record Date; (VII) Approving Forms of Ballots; (VIII) Establishing Voting Deadline; (IX) Approving Procedures for Vote Tabulation; (X) Establishing Deadline and Procedures for Temporary Allowance of Claims; and (XI) Approving Certain Other Related Matters* [Docket No. 220] (the "Solicitation Procedures Order"). On December 3, 2013, the Debtor's claims, noticing and solicitation agent, Kurtzman Carson Consultants, LLC ("KCC"), filed a Certificate of Service reflecting its service of the Solicitation Packages (as defined therein) (Dkt. No. 290) (the "Solicitation Certificate of Service").

Section 1125(a) requires that a disclosure statement include "adequate information." The Debtor's Disclosure Statement contains "adequate information" relevant to voting for or against the Plan, including: (1) descriptions of the Debtor and a history of its businesses; (2) a summary of the Plan, including expected distributions to creditors; (3) a discussion of the requirements for confirming the Plan; (4) identification of certain risk factors; (5) the tax consequences of confirming the Plan; (6) a liquidation analysis; and (7) financial projections of the Debtor. As set forth in the Solicitation Certificate of Service, KCC served, on behalf of the Debtor, the

Disclosure Statement, the Plan and solicitation materials on all creditors and other parties entitled to receive service of those documents under the Bankruptcy Rules and the Solicitation Procedures Order.

2. The Debtor Complied with the Plan Acceptance Requirements of Section 1126

Section 1126 of the Bankruptcy Code provides that only holders of allowed claims and equity interests in impaired classes that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject a plan. As set forth in the Plan, the Disclosure Statement, the Solicitation Certificate of Service and the Voting Report, in accordance with section 1126 of the Bankruptcy Code, the Debtors solicited acceptances and rejections of the Plan from the holders of all Allowed Claims in each Impaired Class under the Plan (Classes 3, 4, 5A, and 5B) (collectively, the "Voting Classes"). Classes 1, 2, and 5C are Unimpaired under the Plan. Thus, pursuant to section 1126(f) of the Bankruptcy Code, holders of Claims in Classes 1, 2 and 5C are not entitled to vote on the Plan and are conclusively deemed to have accepted the Plan. Class 6 (Section 510(b) Claims) contains no claims and therefore is not relevant in the voting process. (Even if it was, and was deemed to reject, the requirements of cram-down have been met.) Class 7 is impaired under the Plan and will not receive any distributions or retain any property under the Plan. Accordingly, pursuant to section 1126(g) of the Bankruptcy Code, holders of Existing Equity Interests in Class 7 are not entitled to vote on the Plan and are deemed to have rejected the Plan.

With respect to the Voting Classes, section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a plan:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of [section 1126], that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under

> subsection (e) of [section 1126], that have accepted or rejected the plan.

11 U.S.C. § 1126(c).

The Voting Report details the results of the voting process in accordance with section 1126 of the Bankruptcy Code. As detailed above, Classes 3, 4, 5A and 5B have voted to accept the Plan, and Classes 1, 2 and 5C are deemed to have accepted the Plan.

Accordingly, the Debtor respectfully submits that it has complied with the provisions of the Bankruptcy Code and, in particular, the provisions of sections 1125 and 1126, and therefore has satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

D. The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law (Section 1129(a)(3))

Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). Good faith "is generally interpreted to mean that there exists 'a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" In re Madison Hotel Assocs., 749 F.2d 410, 425 (7th Cir. 1984) (quoting In re Nite Lite Inns, 17 B.R. 367, 370 (Bankr. S.D. Cal. 1982)); see also In re Stolrow's, Inc., 84 B.R. 167, 172 (9th Cir. B.A.P. 1988) (stating that good faith in proposing a plan "also requires a fundamental fairness in dealing with one's creditors").

A review of the Plan and the process leading to its proposal demonstrates the Debtor's good faith. First, consistent with the purposes of chapter 11 of the Bankruptcy Code, the Plan is a plan of reorganization and continues the business of the Debtor. Through the Plan, the Debtor provides for distributions to holders of Other Priority Claims, Other Secured Claims, Senior Loan Claims, Senior Subordinated Note Claims, Trade Claims, Other General Unsecured Claims, and Unsecured Convenience Class Claims, in an effort to provide value to all creditor

constituencies. Generally, the Plan (i) satisfies in full the Other Priority Claims and the Other Secured Claims; (ii) satisfies the Senior Loan Claims in full, with interest and fees, in cash and by receiving New Equity in the Reorganized Debtor and proceeds of the Exit Facility; (iii) satisfies the holders of the Senior Subordinated Note Claims with new notes and warrants; (iv) pays certain Trade Claims from the cash flow of the Debtor or through the proceeds of the General Unsecured Claims Litigation Trust pursuant to the General Unsecured Claims Litigation Trust Waterfall; (v) distributes to the holders of Other General Unsecured Claims the assets of the General Unsecured Claims Litigation Trust, which include the General Unsecured Claims Litigation Trust Payment, the proceeds under the D&O Policy, if any, and the proceeds of the Debtor's Causes of Action and Avoidance Actions pursuant to the General Unsecured Claims Litigation Trust Waterfall; and (vii) cancels prior Existing Equity Interests and distributes all of the equity in the Reorganized Debtor to both the Debtor's Senior Lender and the Debtor's DIP Lender. The Trustee of the General Unsecured Claims Litigation Trust will, among other things, pursue the Debtor's Causes of Action and Avoidance Actions to maximize the recoveries to the holders of Allowed General Unsecured Claims and Trade Deficiency Claims. Additionally, the Plan is supported by the the Committee, the Groeb parties, the PCRs for the Class Action, the Producer/Packer Claimants, the Senior Lender and DIP Lender. Therefore, the Plan satisfies the "good faith" requirement of section 1129(a)(3).

E. The Plan Provides for Bankruptcy Court Approval of Certain Administrative Payments (Section 1129(a)(4))

Section 1129(a)(4) of the Bankruptcy Code requires that:

> Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

11 U.S.C. § 1129(a)(4). This provision requires that any fees promised or received in connection with or in contemplation of a chapter 11 case by professionals in their representation of the estate of a debtor must be disclosed and subject to the court's review. See In re Chapel Gate Apartments, Ltd., 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986).

In the instant case, any payments made by the Debtor to professionals will be disclosed to the Court and subject to the Court's approval pursuant to section 330 of the Bankruptcy Code. See Plan, Article II.B. More specifically, Article 11.B of the Plan requires that the Court will determine any Allowed amounts of Fee Claims for Professionals after notice and a hearing and in accordance with the procedures established by the Bankruptcy Code and prior Court orders. Further, the Court's *Order Pursuant to Sections 331 and 105(a) of the Bankruptcy Code, Bankruptcy Rule 2016(a) and Local Rule 2016-3 Establishing Procedures for Interim Monthly Compensation and Reimbursement of Professions* (Doc. No. 207) (the "Interim Compensation Procedures Order") requires, among other things, that (i) all Retained Professionals (as defined therein) file with the Court at approximately four month intervals all applications for interim Court approval and allowance of the compensation and reimbursement of expenses, and that (ii) the Debtor must disclose all payments to Retained Professionals on its monthly operating reports. Accordingly, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

F. The Plan Discloses All Information Regarding the Post-Effective Date Directors and Officers (Section 1129(a)(5))

Section 1129(a)(5)(A)(i) of the Bankruptcy Code requires the proponent of a plan to disclose the identity of certain individuals who will hold positions with the debtor or its successor after confirmation of the plan. Section 1129(a)(5)(A)(ii) requires that the service of

such individuals be "consistent with the interests of creditors and equity security holders and with public policy." In re Apex Oil Co., 118 B.R. 683, 704-05 (Bankr. E.D. Mo. 1990).

Article V.K of the Plan requires the Debtor to disclose in advance of the Confirmation Hearing the identify and affiliations of any person proposed to serve on the New Board and those persons that will serve as officers of the Reorganized Debtor. Exhibit 7 to the Plan Supplement discloses the identities of the members of the New Board and the officers of the Reorganized Debtor who have been identified as of the date thereof. Finally, according to Exhibit 7 to the Plan Supplement, if any proposed director or officer is an insider under the Bankruptcy Code, then the nature of any compensation to be paid will be paid in a subsequent amendment to the Plan Supplement. This subsequent amendment was filed on December 18, 2013, as Exhibit 2 to the Second Supplement to the Plan. Therefore, the Plan satisfies the requirements of Section 1129(a)(5) of the Bankruptcy Code.

G. The Plan Does Not Require Governmental Regulatory Approval (Section 1129(a)(6))

Section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that will have jurisdiction over the debtor after confirmation has approved any rate change provided for in the plan. See 11 U.S.C. § 1129(a)(6). The foregoing provision is inapplicable in this case. No regulatory commission has any jurisdiction over rate changes by the Debtor. Further, the Plan does not provide for rate changes by the Debtor. Therefore, the Plan satisfies the requirements of section 1129(a)(6) of the Bankruptcy Code.

H. The Plan is in the Best Interests of Creditors and Interest Holders (Section 1129(a)(7))

Section 1129(a)(7) of the Bankruptcy Code - the "best interests of creditors test" - requires that, with respect to each impaired class of claims or interests, each holder of a claim or interest of such class:

> 1. has accepted the plan; or
>
> 2. will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date.

11 U.S.C. § 1129(a)(7)(A). The best interests test applies only to individual dissenting creditors rather than classes of claims and is generally satisfied through a liquidation and recovery analysis. See, e.g., Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434 (1999); In re A.G. Consultants Grain Div., Inc., 77 B.R. 665 (Bankr. N.D. Ind. 1987); In re Jartran, Inc., 44 B.R. 331, 389-93 (Bankr. N.D. Ill. 1984) (best interests test satisfied by showing that, upon liquidation, the cash received would be insufficient to pay priority claims and secured creditors and that unsecured creditors and shareholders would receive nothing). As section 1129(a)(7) makes clear, the best interests test applies only to non-accepting impaired claims or equity interests.

The Debtor has performed a comparison of the proposed payout pursuant to the Plan and through a Chapter 7 liquidation, and it is attached to the Disclosure Statement as Exhibit C (the "Liquidation Analysis"). As discussed in the Debtor's liquidation analysis, not only will creditors receive "not less than the amount that such holder would so receive or retain if the [D]ebtor were liquidated under chapter 7 of this title," they will receive more through the Plan than they would under a Chapter 7 liquidation. The Debtor's Liquidation Analysis calculates the gross amount of Cash that would be available for satisfaction of Claims as the sum of the proceeds resulting from the disposition of the unencumbered assets and properties of the Debtor, including any unencumbered Cash, to the extent it exits. Then, such gross amount is reduced by the costs and expenses of the chapter 7 liquidation itself and by such additional administrative and priority Claims that are projected to result from the liquidation of the Debtor under a

hypothetical chapter 7 case. The Debtor's costs of liquidation under chapter 7 would include the fees payable to a trustee in bankruptcy, as well as those fees that might be payable to attorneys and other Professionals that the trustee might engage for purposes of liquidating the Debtor. Other liquidation costs include the expenses incurred during the Chapter 11 Case and allowed in the chapter 7 case, such as compensation for attorneys, financial advisors, appraisers, accountants, and other Professionals for the Debtor, as well as other compensation Claims. Any remaining net Cash would be allocated to creditors and stockholders in strict payment priority in accordance with section 726 of the Bankruptcy Code. In the liquidation analysis, the Debtor compared the present value of those allocations (taking into account the time necessary to accomplish the liquidation) to the value of the property proposed to be distributed under the Plan on the Effective Date.

Based on the Liquidation Analysis, the Debtor believes that holders of Impaired Claims in each Impaired Class under the Plan are receiving more than what each holder of a Claim in such Class would receive under a chapter 7 liquidation. Indeed, the Debtor believes such Claims would receive less because the Debtor would be less likely to recover the full amount of its account receivables and other receivables, its inventory, and net property, plant and equipment under a chapter 7 liquidation scenario. Therefore, under a chapter 7 liquidation, the Senior Lender would be impaired by approximately 18% and *no other* Classes of Claims would recognize any recovery, other than the proceeds of Avoidance Actions and Causes of Action. As previously discussed above in Article IV.D., the holders of Other Priority Claims, Other Secured Claims, Senior Loan Claims, Senior Subordinated Note Claims, Trade Claims, Other General Unsecured Claims, and Unsecured Convenience Class Claims are all receiving distributions under the Plan. Further, under the Plan the Senior Subordinated Note Claims are

satisfied in full through the issuance of new notes and warrants, and certain Allowed Trade Claims are paid in full from the cash flow of the Debtor. Accordingly, the interests of the creditors are best served by confirming the Plan and allowing the Debtor to continue in possession to reorganize pursuant to the terms of the Plan, which the Debtor believes would result in the maximize the return to creditors.

Based on the foregoing analysis, no dissenting holder of an Impaired Claim will receive less under the Plan that it would receive in a chapter 7 liquidation. The Plan thus satisfies the "best interests of creditors" test under section 1129(a)(7) of the Bankruptcy Code.

I. The Acceptance of the Plan by an Impaired Class (Section 1129(a)(8))

Section 1129(a)(8) requires that each class of claims either has accepted the Plan or is not impaired under the Plan. A class of claims accepts a plan if the holders of at least two-thirds of the dollar value and a majority of claims in the class vote to accept, counting only those claims whose holders actually vote. See 11 U.S.C. § 1126(c).

Here, Classes 1, 2 and 5C are not impaired under the Plan and, therefore, are deemed to have accepted the Plan. See 11 U.S.C. § 1126(f). As set forth in the Voting Report, all voting classes, namely Classes 3, 4, 5A, and 5B, have voted to accept the Plan. Moreover, Class 5C is deemed to have accepted the Plan. There are no claims in Class 6 and therefore it is not counted in the voting. However, because holders of Existing Equity Interests in Class 7 will receive no distributions under the Plan, that class is deemed to have rejected the Plan. See 11 U.S.C. § 1126(g).

J. The Plan Complies with Statutorily Mandated Treatment of Administrative and Priority Tax Claims (Section 1129(a)(9)).

Unless the Holder of a claim entitled to priority under section 507(a) of the Bankruptcy Code agrees to a different treatment with respect to such claim, section 1129(a)(9) of the Bankruptcy Code requires a plan to provide as follows:

> with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
>
> with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6) or 507(a)(7) of this title, each holder of a claim of such class will receive:
>
> > if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
> >
> > if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;
>
> with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim regular installment payments in cash –
>
> > (i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;
> >
> > (ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and
> >
> > (iii) in a manner not less favorable than the most favored nonprority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)) . . .

11 U.S.C. § 1129(a)(9)(A)-(C).

Article II.A. of the Plan provides that each Allowed Administrative Claim (except for Fee Claims) shall receive Cash equal to the unpaid portion of its Allowed Administrative Claim, to be paid on the latest of (a) the Effective Date, or as soon as reasonably practicable thereafter, if such Administrative Claim is Allowed as of the Effective Date; (b) the date such Administrative

Claim is Allowed, or as soon as reasonably practicable thereafter; (c) the date such Allowed Administrative Claim becomes due and payable, or as soon as reasonably practicable thereafter; provided, however, that Allowed Administrative Claims that arise in the ordinary course of the Debtor's businesses shall be paid in the ordinary course of business, in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions; or (d) such other date as may be agreed upon between the holder of such claim. This provision satisfies the requirements of section 1129(a)(9)(A) of the Bankruptcy Code.

Article II.D. of the Plan provides that unless the holder of a Priority Tax Claim and the Debtor agree to a different treatment, holders of Priority Tax Claims shall be paid, to the extent such Claims are Allowed, in the ordinary course of the Debtor's business, consistent with past practice; provided, however, that in the event the balance of any such Claim becomes due during the pendency of the Chapter 11 Case and remains unpaid as of the Effective Date, the holder of such Claim shall be paid in full in Cash on the Effective Date. In the event an Allowed Priority Tax Claim also is Secured, such Claim shall, to the extent it is Allowed, be treated as an Other Secured Claim if such Claim is not otherwise paid in full. This provision satisfies the requirements of section 1129(a)(9)(C) of the Bankruptcy Code.

Article III.C.1. of the Plan provides that except to the extent that a holder of an Allowed Other Priority Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Priority Claim, each such holder shall be paid, to the extent such claim has not already been paid during the Chapter 11 Case, in full in Cash in the ordinary course of business by the Debtor or the Reorganized Debtor, as applicable, on or as soon as reasonably practicable after (i) the Effective Date, or as soon

thereafter as reasonably practicable, (ii) the date on which such Other Priority Claim against the Debtor becomes Allowed, or (iii) such other date as may be ordered by the Court. This provision satisfies the requirements of section 1129(a)(9)(B) of the Bankruptcy Code.

K. At Least One Impaired Class of Claims Has Accepted the Plan Excluding the Acceptances of Insiders (Section 1129(a)(10))

Section 1129(a)(10) of the Bankruptcy Code provides that at least one impaired class of claims must accept the plan, excluding acceptance by any insider. As described above and as set forth in the Voting Report, all of the Impaired Classes entitled to vote, Classes 3, 4, 5A and 5B, have voted to accept the Plan even when the votes of insiders are excluded from the vote tally. Moreover, Class 5C is deemed to have accepted the Plan. Therefore, the Plan satisfies the requirements of section 1129(a)(10).

L. The Plan is Feasible (Section 1129(a)(11))

Section 1129(a)(11) of the Bankruptcy Code sets forth the feasibility requirement of section 1129. In particular, when applicable, the Court must determine that:

> [c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

11 U.S.C. § 1129(a)(11). When necessary, a debtor must prove a chapter 11 plan's feasibility by a preponderance of the evidence. See In re Briscoe Enters., Ltd. II, 994 F.2d 1160, 1165 (5th Cir. 1993) (rejecting "clear and convincing" as the applicable standard). The threshold of proof necessary to satisfy the requirement is relatively low. See In re Sea Garden Motel and Apartments, 195 B.R. 294, 304 (Bankr. D. N.J. 1996) (quotations omitted).

In fact, "the [d]ebtor need not establish at confirmation that all of the proposed payments to creditors will, in fact, be received. The [d]ebtor need only establish by a preponderance of the evidence that there is a reasonable probability that it can make the required payments pursuant to

the terms of its Plan." In re Patrician St. Joseph Partners Ltd. Partnership, 169 B.R. 669, 682 (Bankr. D. Ariz. 1994); see also In re Applied Safety, Inc., 200 B.R. 576, 584 (Bankr. E.D. Pa. 1996) (holding that while the plan must be feasible, it is not necessary for the plan's success to be guaranteed and that the feasibility standard is not a "rigorous" one); In re Coventry Commons Associates, 149 B.R. 109, 112 (Bankr. E.D. Mich. 1992) (noting that the debtor is not required to prove the success of its plan with certainty). In such circumstances, courts have even gone so far as to confirm plans that called for a balloon payment of the principal amount owed to the secured creditor several years after confirmation of the plan. See In re Guilford Telecasters, Inc., 128 B.R. 622, 628 (Bankr. M.D.N.C. 1991) (confirming plan that provided for balloon payment after seven years).

For the purposes of determining whether the Plan satisfies the feasibility standards, the Debtor analyzed its ability to meet its obligations under the Plan. The Debtor's financial projections, attached as Exhibit D to the Disclosure Statement (the "Financial Projections"), indicate that, after confirming the Plan, the Debtor is reasonably assured to (a) be able to meet its obligations under the Plan as they become due, and (b) not be left with unreasonably small capital with which to operate its business as a result of the Plan or any transaction contemplated by the Plan. All payments under the Plan are funded by the Debtor's cash flow from ongoing operations, the DIP Facility, the Exit Facility and the proceeds of the Debtor's Causes of Actions and Avoidance Actions.

Therefore, the Plan satisfies the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

M. The Plan Provides for the Payment of all Fees under 28 U.S.C. 1930 (Section 1129(a)(12))

Section 1129(a)(12) of the Bankruptcy Code requires a plan to provide that all fees payable under 28 U.S.C. § 1930 (consisting primarily of the quarterly fee to the United States Trustee) will be paid on the effective date of the plan. According to Article XIII.C. of the Plan, all fees payable pursuant to 28 U.S.C. 1930(a) shall be paid by the Debtor (prior to or on the Effective Date) or the Reorganized Debtor (if after the Effective Date) for each quarter until the Chapter 11 Case is converted, dismissed or closed, whatever occurs first. The Plan therefore complies with section 1129(a)(12) of the Bankruptcy Code.

N. The Plan Complies with Section 1129(a)(13) of the Bankruptcy Code

Section 1129(a)(13) requires that a plan provide for the continued payment of certain retiree benefits "for the duration of the period the debtor has obligated itself to provide such benefits." 11 U.S.C. § 1129(a)(13). The Plan satisfies 1129(a)(13) as the Debtor will have no obligation to provide retiree benefits after the Effective Date of the Plan.

O. The Plan Satisfies the Cramdown Requirements

1. Standard for a Cramdown Under 11 U.S.C. 1129(b)

As previously discussed, Class **7** (the "Rejecting Class") is deemed to reject the Plan pursuant to 1126(g) of the Bankruptcy Code. Nevertheless, the Court may still confirm the Plan because the Plan satisfies the "cram-down" requirements of section 1129(b) of the Bankruptcy Code.

Specifically, section 1129(b)(1) provides:

> Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1). Thus, in the event that any impaired class of claims or equity interests does not accept the plan, the Court may still confirm the plan at the request of the debtors if, as to each impaired class of claims or equity interests that has not accepted the plan, the plan (a) is "fair and equitable" and (b) "does not discriminate unfairly." 11 U.S.C. § 1129(b)(1). Here, the Plan satisfies these requirements with respect to the Rejecting Class.

1. **The Plan provides Fair and Equitable Treatment for the Rejecting Class of Equity.**

The condition that a plan be "fair and equitable" with respect to a non-accepting class of equity interests (such as the Rejecting Class) includes the requirements that either: (a) the plan provide that each holder of an equity interest in such class receive or retain under the plan, on account of such equity interest, property of a value, as of the Effective Date, equal to the greater of (i) the allowed amount of any fixed liquidation preference to which such holder is entitled, (ii) any fixed redemption price to which such holder is entitled or (iii) the value of such interest; or (b) if the class does not receive such an amount as required under (a), no class of equity interests junior to the non-accepting class receives a distribution under the plan. 11 U.S.C. §1129(b)(2)(C). Here, Class 7 includes holders of Existing Equity Interests. Although holders in Class 7 will receive no distribution under the Plan, no junior Claim or Equity Existing Interest will receive any distribution under the Plan. Therefore, the Plan meets the condition that it be "fair and equitable."

2. **Even if there Was a Dissenting Class of Unsecured Claims, the Plan Provides Fair and Equitable Treatment**

The condition that a plan be "fair and equitable" with respect to a non-accepting class of unsecured claims, includes the requirement that either: (a) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value as of the effective date of the plan equal to the allowed amount of such claim; or (b) the holder of any

claim or equity interest that is junior to the claims of such class will not receive or retain any property under the plan on account of such junior claim or equity interest. 11 U.S.C. §1129(b)(2)(B). Although Holders in those Classes will not receive a distribution equal to the Allowed amount of their Claims, no junior Claim or Existing Equity Interest will receive any distribution under the Plan. Therefore, the Plan is fair and equitable with respect to Classes 5A and 5B.

3. **The Plan Does Not Discriminate Unfairly**

A dissenting claimholder that asserts it was unfairly classified is protected by the "unfair discrimination" test and the other requirements of Section 1129(b). In re Rivers End Apartments, Ltd., 167 B.R. 470, 478 (Bankr. S.D. Ohio 1994)). The Plan does not discriminate unfairly and thus is confirmable under the cram-down requirement in section 1129(b)(1). Whether a plan "discriminates unfairly" against an impaired dissenting class focuses on the treatment of the dissenting class relative to other classes consisting of similar legal rights. See H.R. Rep. No. 95-595, at 416, reprinted in 1978 U.S.C.C.A.N. at 6372 ("The plan may be confirmed . . . if the class is not unfairly discriminated against with respect to equal classes and if junior classes will receive nothing under the plan."). In this case, the Plan treats all members of the deemed Rejecting Class equity the same – equity receives no distribution and retains no property, and no junior classes retain anything. Therefore, there is no discrimination.

V. ALL OBJECTIONS TO CONFIRMATION OF THE PLAN HAVE BEEN RESOLVED

The Debtor received 3 objections to the confirmation of the Plan and objection to final approval of the Disclosure Statement. All of the objections to the Plan's confirmation have been resolved or addressed through the proposed immaterial Plan amendments contained in the Proposed Confirmation Order.

A. Resolved Objections

The following objections to the Plan were resolved:

1. Limited Objection of Proposed Class Representatives to Debtor's Second Amended Plan of Reorganization.

As discussed above, the PCRs filed their limited objection to the Plan on December 13, 2013 (the "Class Action Limited Objection"). In connection with and subject to the terms of the Class Action Voting Stipulation, the PCRs agreed to vote in favor of and support the Plan and withdraw the Class Action Limited Objection, provided that if their agreed language in the confirmation order is modified then their rights are reserved with respect to the Class Action Limited Objection.

2. Producer/Packer Claimant's Objection to Confirmation of Debtor's Proposed Second Amended Plan of Reorganization.

On December 13, 2013, the Producer/Packer Claimants filed an objection to confirmation of the Plan (the "Producer/Packer Objection"). The Producer/Packer Claimants are 14 producers and/or packers of honey products that had filed motions in the Class Action Litigation for leave to assert their claims as non-class action individual claims. In connection with the Second Producer/Packer Stipulation, the Producer/Packer Claimants agreed that their votes would be deemed to accept the Plan and to support the Plan.

3. Objection Of Ernest L. Groeb, Troy L. Groeb and the E.Jeanne Living Trust to Disclosure Statement Filed by Groeb Farms, Inc. (Dkt. No. 178).

On November 6, 2013, Ernest L. Groeb, Troy L. Groeb and E. Jeanne Living Trust (the "Groeb Creditors") filed objections to the Disclosure Statement Filed by Groeb Farms, Inc. (Dkt. No. 178) (the "Groeb Creditors' Objection"), which although titled as objections to the Disclosure Statement, could have been viewed as an Objection to the Debtor's Plan. The Groeb

Creditors agreed in the Groeb Creditors Settlement Agreement to support the Plan and any objections they have to the Plan have been resolved.

VI. CONCLUSION

For the reasons set forth herein, and as will be further demonstrated as necessary at the Confirmation Hearing, the Debtor submits that the Plan satisfies all of the applicable requirements of the Bankruptcy Code and the Bankruptcy Rules. Accordingly, the Debtor respectfully requests that this Court enter an order confirming the Plan.

Respectfully submitted,

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Detroit, Michigan

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