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Attorneys for Defendant CoBank, ACB

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re

NORPAC Foods, Inc., Hermiston Foods,  
LLC, and Quincy Foods, LLC,

Debtors.

Official Committee of Unsecured Creditors  
of NORPAC Foods, Inc., *et al.*,

Plaintiffs,

v.

CoBank, ACB,

Defendant.

Case No. 19-62584-pcm11

**LEAD CASE**

(Jointly Administered with Case Nos.  
19-33102-pcm11 and 19-33103-pcm11)

Adversary Proceeding Case No. 19-06076-pcm

**MOTION FOR EXTENSION OF TIME TO  
FILE RESPONSIVE PLEADING**



Defendant CoBank, ACB, (“CoBank”), hereby moves the Court for an order extending the time CoBank has to file a responsive pleading in this adversary proceeding. This motion is based on the following representations:

1. On August 22, 2019, the Debtors Norpac Foods, Inc., Hermiston Foods, LLC, and Quincy Foods, LLC (the “Debtors”), filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

2. On December 13, 2019, the Official Committee of Unsecured Creditors (the “Committee”) filed this adversary proceeding against CoBank to determine the extent, validity, priority, and perfection of certain liens and security interests of CoBank in the following assets:

- (a) Real Property – 12494 Dieckman Lane SE, Aumsville, Oregon, Marion County Tax Lot 091W20 00200;
- (b) 21 Foreign Trademarks owned by the Debtors;
- (c) 135 Vehicles owned by the Debtors;
- (d) the Debtors’ commercial tort claims, including any potential claims against the Debtors’ directors, officers and/or insiders;
- (e) 21 Life insurance policies and/or annuities owned by the Debtors;
- (f) Prepayments and deposits made for the benefit of third parties, including for utilities, insurance policies, consultants/counsel, city, county and state taxes;
- (g) Capital credits relating to the Debtors’ investment in CoBank; and
- (h) Net operating losses relating to federal, state, county and city taxes.

Collectively, these are the “Lien Challenge Assets.”

3. According to the summons, a responsive pleading is due to be filed with the Court on or before January 12, 2020.

4. On December 18, 2019, the Debtors closed the sale with purchaser PNW Veg Co., LLC, an affiliate and assignee of Oregon Potato Company. At closing, \$87,097,500.77 was paid to CoBank, as a partial payment on the balance owed by Debtors to CoBank.<sup>1</sup>

5. On December 19, 2019, the Debtors filed their Notice of Intent to Sell Real or Personal Property, Compensate Real Estate Broker, and/or Pay any Secured Creditor's Fees and Costs; Motion for Authority to Sell Property Free and Clear of Liens; and Notice of Hearing (the "Lineage Sale Motion"),<sup>2</sup> and their Notice of Filing of Asset Purchase Agreement with Lineage Master RE, LLC (the "Lineage APA").<sup>3</sup>

6. Pursuant to the Lineage Sale Motion and the Lineage APA, the Debtors have proposed to sell assets to Lineage or a higher bidder for \$49 million.<sup>4</sup> It is anticipated that the closing date will be in January or early February 2020.<sup>5</sup>

7. CoBank believes that if the proposed sale to Lineage or a higher bidder closes as anticipated, then CoBank will be paid in full, without regard to whether CoBank has a lien in the Lien Challenge Assets or not. If this occurs, then this Complaint will be moot.

8. Given the imminent potential sale, it makes sense to provide for a short delay in the response time to the Complaint, to determine whether the Complaint will be moot or not. It would save the Court's resources if the Court were not required to spend time on a matter that may likely never need to be decided.

9. It would also save the estate resources if the Court provides CoBank with additional time to prepare a response to the Complaint. Under CoBank's loan documents, the

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<sup>1</sup> See Report of Sale, *In re Norpac Foods, Inc., et al.*, 19-62584-pcm11, ECF 522, p.2.

<sup>2</sup> *In re Norpac Foods, Inc., et al.*, 19-62584-pcm11, ECF 506.

<sup>3</sup> *In re Norpac Foods, Inc., et al.*, 19-62584-pcm11, ECF 510.

<sup>4</sup> Lineage APA §2.04, *In re Norpac Foods, Inc., et al.*, 19-62584-pcm11, ECF 510, p. 3 of the document (p. 5 of the pdf).

<sup>5</sup> Lineage APA §3.01, *In re Norpac Foods, Inc., et al.*, 19-62584-pcm11, ECF 510, p. 8 of the document (p. 10 of the pdf).

Debtors have to pay CoBank's attorney fees and costs in connection with any action relating to the loan documents and CoBank's collateral. That would include any attorney fees and costs that CoBank incurs to prepare a response to the Complaint. It would be cost-effective for CoBank not to be required to prepare and file a response to the Complaint until after it becomes clear whether it is necessary for CoBank to do so. If the proposed sale closes and CoBank is paid in full, then the Committee can simply dismiss the Complaint, and CoBank need incur no further expense in responding.

10. The undersigned has spoken with Tim Solomon, attorney for the Committee and plaintiff in the adversary proceeding. Mr. Solomon consents to an extension of time through and including February 28, 2020, for CoBank to file a responsive pleading.

WHEREFORE, CoBank requests that the Court enter an order extending through and including February 28, 2020, the time it has to file a responsive pleading in this adversary proceeding, without prejudice to any further requests for extension of time. A proposed order is attached hereto as Exhibit 1.

DATED this 7th day of January, 2020.

MILLER NASH GRAHAM & DUNN LLP

*/s/ Teresa H. Pearson*

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Attorneys for Creditor CoBank, ACB, as Administrative Agent and Lender

UNITED STATES BANKRUPTCY COURT  
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(Jointly Administered with Case Nos.  
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Adversary Proceeding Case No. 19-06076-pcm

**ORDER GRANTING MOTION FOR  
EXTENSION OF TIME TO FILE  
RESPONSIVE PLEADING**

This matter came before the Court on the Motion for Extension of Time to File Responsive Pleading (ECF \_\_\_\_, the “Motion”) filed by CoBank, ACB (“CoBank”). Based upon the arguments of counsel in the Motion and the record of this case, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Motion is granted. The time for CoBank to file a responsive pleading in this adversary proceeding is extended through and including February 28, 2020, without prejudice to any further requests for extension of time.

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Presented by:

MILLER NASH GRAHAM & DUNN LLP

/s/ Teresa H. Pearson

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Attorneys for Defendant CoBank, ACB

I hereby certify that I served the foregoing *Motion for Extension of Time to File Responsive Pleading* on:

TIMOTHY A SOLOMON    tsolomon@llg-llc.com, justin-leonard-leonard-law-group-llc-5265@ecf.pacerpro.com

by transmitting full, true, and correct copies thereof to those attorneys or parties through the court's **Cm/ECF system** on the date set forth below.

DATED this 7th day of January, 2020.

/s/ Teresa H. Pearson

Teresa H. Pearson, OSB No. 953750  
Of Attorneys for Creditor CoBank, ACB, as  
Administrative Agent and Lender