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19 American Huntsman, LLC

20 UNITED STATES DISTRICT COURT

21 EASTERN DISTRICT OF CALIFORNIA

22 In re
23 ZACKY FARMS, LLC,
24 Debtor,
25 RICHARD ZACKY, ET AL.,
26 Appellants.

CASE No. 2:13-CV-00455 JAM
Bankruptcy Court Case No. 12-37961

**FURTHER STIPULATION TO ENLARGE
TIME TO FILE APPELLANTS'
OPENING BRIEF; ORDER**

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28 1377669v2 / 18027.0004

FURTHER STIPULATION TO ENLARGE TIME TO FILE APPELLANTS' OPENING BRIEF; and
[PROPOSED] ORDER

This Further Stipulation to Enlarge Time to File Appellants' Opening Brief ("Stipulation") is entered into by and between appellants Richard Zacky (individually and in his capacity as trustee of the Richard N. Zacky Irrevocable Trust dated 11/25/07, the Survivor's Trust of Albert and Beverly Zacky Trust Dated 2/10/88, and the Barbara Jean Zacky Irrevocable Trust Dated 12/30/06), ZF Enterprises, LLC, Integrated Grain & Milling, Inc., American Huntsman, LLC, Big Feather Ranch, LLC, and Lucky Wishbone Ranch, LLC (collectively, "Appellants"), the Official Committee of Unsecured Creditors ("Creditors' Committee"), and Zacky Farms, LLC ("Debtor"), by and through their respective attorneys of record.

RECITALS

A. On May 9, 2013, the Clerk of Court for the United States District Court, Eastern District of California ("District Court") filed its Briefing Schedule in Bankruptcy Appeal ("Briefing Schedule"). A previous Stipulation to Enlarge Time to File Appellants' Opening Brief was timely filed by the parties to this Stipulation on May 22, 2013. The Court granted the stipulation on May 23, 2013, and ordered that Appellants' opening brief be filed by July 8, 2013.

B. On July 2, 2013, the parties timely filed a Further Stipulation to Enlarge Time to File Appellants' Opening Brief ("Second Stipulation"). The Second Stipulation sought a further twenty-one (21) day enlargement of time for Appellants to file their opening brief. On July 3, 2013, the Court granted the Second Stipulation and ordered that Appellants' opening brief be filed by July 29, 2013.

C. On July 26, 2013, the parties timely filed a Further Stipulation to Enlarge Time to File Appellants' Opening Brief ("Third Stipulation"). The Third Stipulation sought a further thirty (30) day enlargement of time for Appellants to file their opening brief. On July 26, 2013, the Court granted the Third Stipulation and ordered that Appellants' opening brief be filed by August 28, 2013.

D. On August 27, 2013, the parties timely filed a Further Stipulation to Enlarge Time to File Appellants' Opening Brief ("Fourth Stipulation"). The Fourth Stipulation sought a further thirty (30) day enlargement of time for Appellants to file their opening brief. On August

1 28, 2013, the Court granted the Fourth Stipulation and ordered that Appellants' opening brief be
2 filed by September 27, 2013.

3 E. As previously reported to the Court, Appellants, the Creditors' Committee
4 and the Debtor (collectively, "Parties") have reached a tentative settlement of this matter. Since
5 the filing of the Second Stipulation, a change in management had occurred at Integrated Grain &
6 Milling, Inc. ("IGM") and IGM's new management needed additional time to evaluate the tentative
7 settlement. The Parties are still working toward final settlement and continue to believe that a
8 final settlement will be forthcoming at which time a suitable, written settlement agreement among
9 the Parties will be finalized, and the Parties will seek U.S. Bankruptcy Court approval of the
10 settlement. Upon approval by the U.S. Bankruptcy Court, Appellants will dismiss the appeal.

11 F. The Parties desire to again further enlarge the time within which Appellants
12 may file their opening brief. As with the prior enlargements, the requested enlargement will serve
13 to avoid unnecessary expense and effort on the part of the Parties in prosecuting and defending the
14 appeal, and the unnecessary expenditure of judicial resources in hearing and deciding the Appeal
15 in the event a final settlement is approved by the U.S. Bankruptcy Court. Accordingly, the Parties
16 have entered into this further Stipulation.

17 G. The Committee is willing to stipulate to Appellants' request for a further
18 enlargement of time within which to file Appellant's opening brief but the Committee does not
19 stipulate to other assertions made in this Stipulation.

20 **STIPULATION**

21 **IT IS HEREBY STIPULATED** as follows:

- 22 1. The Parties fully incorporate herein the Recitals set forth above.
- 23 2. The Parties acknowledge that Federal Rules of Bankruptcy Procedure, Rule
- 24 9006(b)(1) provides, in relevant part:

25 ...[W]hen an act is required or allowed to be done at
26 or within a specified period by these rules or by a
27 notice given thereunder or by order of court, the court
28 for cause shown may at any time in its discretion (1)
with or without motion or notice order the period
enlarged if the request therefor is made before the

1 expiration of the period originally prescribed or as
2 extended by a previous order....

3 3. The Parties acknowledge that good cause exists for a further enlargement of
4 time within which Appellants may file their opening brief . Appellants assert that a further
5 enlargement of time, as requested, will continue to allow the Parties time to finalize a settlement
6 and a suitable, written settlement agreement for presentment to the U.S. Bankruptcy Court for its
7 approval without having to incur the added and potentially unnecessary expense of prosecuting or
8 defending the appeal. Appellants assert that a further enlargement of time will also result in the
9 economical use of judicial resources in that the District Court will be able to avoid hearing and
10 deciding the appeal in the event a final settlement is approved by the U.S. Bankruptcy Court.

11 4. The Parties are requesting that the time to file Appellants' opening brief be
12 further enlarged by 31 days.

13 5. Accordingly, the Parties agree, subject to the District Court's approval, that
14 Appellants' opening brief shall be due no sooner than October 28, 2013.

15 DATED: September 25, 2013.

BAKER MANOCK & JENSEN, PC

17 By: /s/ Peter G. Fashing

18 Joseph M. Marchini

19 Carl R. Refuerzo

Peter G. Fashing

20 Attorneys for Richard Zacky, individually and in his
21 capacity as trustee of the Richard N. Zacky Irrevocable
22 Trust dated 11/25/07, the Survivor's Trust of Albert and
Beverly Zacky Trust Dated 2/10/88, and the Barbara
Jean Zacky Irrevocable Trust Dated 12/30/06, and ZF
Enterprises, LLC,

23 *[Signatures continued on next page.]*

1 DATED: September 25, 2013.

BOUTIN JONES, INC.

2
3 By: /s/ Mark Gorton

4 Mark Gorton

Attorneys for Intergrated Grain & Milling, Inc.

5 DATED: September 25, 2013.

THE LAW OFFICES OF THOMAS H.
ARMSTRONG

6
7 By: /s/ Thomas H. Armstrong

8 Thomas H. Armstrong

9 Attorneys for Big Feather Ranch, LLC, Lucky

Wishbone Ranch, LLC and American Huntsman, LLC

10
11 DATED: September 25, 2013.

FELDERSTEIN FITZGERALD WILLOUGHBY &
PASCUZZI, LLP

12
13 By: /s/ Thomas A. Willoughby

14 Thomas A. Willoughby

15 Attorneys for Zacky Farms, LLC

16 DATED: September 25, 2013.

LOWENSTEIN SANDLER LLP

17
18 By: /s/ Wojciech F. Jung

19 Wojciech F. Jung

20 Attorneys for the Official Committee of Unsecured
21 Creditors

ORDER

22 Having read the Stipulation of the Parties, and good cause appearing, **IT IS**

23 **HEREBY ORDERED:**

- 24 1. Appellants' opening brief shall be due on October 28, 2013.
- 25 2. The appellee's opening brief shall be due within fourteen (14) days after
- 26 service of Appellants' opening brief.

3. Appellants may file a reply brief with the District Court, within fourteen (14) days after service of appellee's opening brief.

4. Once all briefs have been submitted, the Appellants are to notify the court in writing, within fourteen (14) days after service of Appellants' reply brief, that the appeal is ready for oral argument.

DATED: 9/26/2013

/s/ John A. Mendez
United States District Court Judge