

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

Bky No. 04-60106 DDO

In re:

Daniel S. Miller,

Debtor.

Daniel S. Miller,

Plaintiff,

Adv. No. \_\_\_\_\_

vs.

Daniel Altepeter, Darral Altepeter, John Altepeter, Peter Anderson, Roger Anderson, Doug Barth, Chuck Bina, Bremer Bank National Association, Monte Casavan, Gregory Driscoll, Dubuque Farming Association, Emmert Farms, Farmers Coop Grain & Seed, Kyle Haake, Roger Hagen, Russ Halverson, Gary Hoper, J & J Gust Farms, J.O. Thorson Farm, Inc., JETN Farms, Gorman Johnson, Loren Johnson, Walter Johnson, Dan Juneau, Joe Juneau, Charles Kaml, Key West Farms, KO-R Farms, Inc., K-Team, Gary Larson, Matco, Inc., David McCollum, McWalter Farms, Inc., James A. Narum, Bradley Nelson, Doyle Nelson, Jeremy J. Nelson, Patrick Noll, Erik Nymann, Joseph Ose, Burl Peckman, Gary Peckman, Pederson Brothers, Peterson Farms, PM Farming, Inc., Hans Reinhardt, Darrold Rodahl, Larry Roisland, Gary Salentiny, Dennis Salentiny, Richard Salentiny, Andrew Spaeth, John Spina, Howard Steinmetz, Matt Thorson, Ronald Thorson, Tri-Mack Potato, Inc., United Grain & Livestock, Erwin Vanek, Dan Wichterman, Steve Wollin and Greg Wollin.

Defendants.

COMES NOW, Daniel S. Miller, by and through his undersigned attorney, as and for his Complaint against the various defendants, states and alleges as follows:

**PARTIES**

1.

Daniel S. Miller is a resident of the State of Minnesota and resides at Highway 2 East, Box 421, East Grand Forks, Minnesota 56721.

2.

Defendants are individuals or entities that have served claims of ownership for various amounts and types of grain with Debtor's undersigned counsel.

**JURISDICTION AND VENUE**

3.

This adversary proceeding is brought pursuant to Bankruptcy Rule 7001 and arises under 11 U.S.C. § 541, 542. This Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 7001(2) and Local Rule 7004.

4.

This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157.

5.

Venue is appropriate in this jurisdiction pursuant to 28 U.S.C. § 1409.

**PROCEDURAL BACKGROUND**

6.

M & M Farms, Larry L. Tack and Brian R. Erickson filed an involuntary Chapter 7 petition against Debtor on February 3, 2004. On February 19, 2004, Debtor filed for conversion of this action to a Chapter 11 proceeding.

7.

On March 15, 2004, Debtor made a motion for an expedited determination of interest in and disposition of grain assets and to create a procedure for those alleging interests in Debtor's grain to submit claim forms to Debtor's undersigned counsel ("Interested Party's Claim").

8.

The Court granted the motion on March 29, 2004. The Court's Order instructed all entities asserting ownership interest in Debtor's Grain to prepare an Interested Party's Claim and serve on Debtor's undersigned counsel within 15 days of the Court's order (April 13, 2004).

9.

On May 20, 2004, Debtor moved the Court to extend the period for final determination of interest in and disposition of grain assets. On June 3, 2004, the Court granted the motion and set the deadline for October 15, 2004.

10.

Debtor proceeded to liquidate all grain according to the Court's March 29, 2004 Order, except approximately nine (9) loads remain to be delivered to market.

11.

Debtor has received approximately Three Hundred Ninety-Five Thousand, Four Hundred Forty-Seven and 01/100 Dollars (\$395,447.01) from the liquidation of grain pursuant to the Court's March 29, 2004 Order. These monies are being held in the Gislason & Hunter LLP Trust Account.

12.

In addition, Debtor had Eighty-Six Thousand, Nine Hundred Forty-Nine and 35/100 Dollars (\$86,949.35) in grain proceeds on hand at the time of filing. These proceeds are also being held in the Gislason & Hunter LLP Trust Account.

13.

Debtor awaits payment from the delivery of approximately five (5) loads of grain to West Central Ag, four (4) loads to the North Dakota Mill. In addition, the Taft Elevator owes Debtor approximately Fifty Thousand and no/100 Dollars (\$50,000.00) from grain delivered and sold.

#### **GENERAL FACTUAL BACKGROUND**

14.

Debtor was engaged in business as and held himself out to be a grain buyer.

15.

Debtor maintained a grain buyer's bond pursuant to Minn. Stat. § 223.17, subs. 1(c) and 4.

16.

Debtor was not engaged in the business of grain storage and did not hold himself out to be in the business of storing grain.

17.

Debtor did not maintain a grain storage bond pursuant to Minnesota Grain Storage Act—Minn. Stat. §§ 232.20-.25—or any other statute.

18.

Defendants entered into various and independent contracts with Debtor to sell grain to Debtor.

19.

Title to the grain vested in Debtor at the time Debtor took possession of the grain from Defendants.

20.

Defendants did not enter into grain storage contracts with Debtor.

21.

Debtor entered into voluntary extension of credit contracts with Defendants, meaning pricing and/or payment of the grain delivered to Debtor would be determined at a later date.

22.

Many of the Defendants entering into voluntary extension of credit contracts with Debtor have not been paid all or some of the agreed upon price with Debtor.

23.

Defendants delivered on these contracts and Debtor took possession of the grain.

24.

At the time of filing, many Defendants had yet to set the voluntary extension of credit contract price on the grain already delivered to Debtor.

25.

Debtor rented various facilities around northwestern Minnesota where he held the grain while marketing it to other buyers or end users.

26.

Debtor and Defendants did not reach any type of explicit agreement delaying the transfer of title to the grain beyond delivery to Debtor.

27.

Debtor did not have agreements with Defendants such that the grain would be returned to Defendants in the future.

28.

Debtor did not issue storage receipts for the grain delivered to and accepted by Debtor.

29.

Defendants did not pay and Debtor did not accept grain storage payment fees as Debtor did not operate a public or private grain warehouse as these terms are defined.

30.

At the time of filing, Debtor had in his possession, approximately 80,000 bushels of wheat, 35,200 bushels of barley, 7,800 bushels of winter wheat, 24,000 bushels of durum wheat and 9,831.07 bushels of corn for a total value of approximately Four Hundred Sixty Thousand, Sixty-Two and 46/100 Dollars (\$460,062.46).

31.

Debtor had no soybeans or canola on hand at the time of filing.

32.

The Minnesota Department of Agriculture published notice of claims filed against Debtor's grain buyers bond on February 4 and February 6, 2004, in the *Crookston Daily Times* in Crookston Minnesota. The notice included the following language:

Persons who have sold grain to this firm prior to January 23, 2004 and have not been paid should contact the Minnesota Department of Agriculture at 651-297-2157 so that forms on which to file an Interested Party's Claim against the grain buyers bond of this firm may be sent to them.

Possible claimants have until July 21, 2004 to file claim forms. Claim forms should be sent to [sic] Minnesota Department of Agriculture, Agricultural Marketing Services Division/Grain Licensing and Auditing, 90 West Plato Boulevard, Saint Paul, Minnesota 55107.

33.

Defendant Daniel Altepeter filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 3,093.07 bushels of soybeans.

34.

Defendant Darral Altepeter filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 19,152.37 bushels of soybeans and 8,727.72 bushels of wheat.

35.

Defendant John Altepeter filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 731.03 bushels of soybeans.

36.

Defendant Peter Anderson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 24,700 bushels of barley.

37.

Defendant Roger Anderson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 5,850 bushels of barley. Defendant Roger Anderson also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant Roger Anderson, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

38.

Defendant Doug Barth filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 2,213.45 bushels of soybeans. Defendant Doug Barth also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

39.

Defendant Chuck Bina filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 2,751.07 bushels of soybeans, 1,740.22 bushels of wheat and 982.84 bushels of barley. Defendant Chuck Bina also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant Chuck Bina, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

40.

Defendant Bremer Bank National Association filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 29,721.24 bushels of spring wheat and 18,106.60 bushels of soybeans.

41.

Defendant Monte Casavan filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 3,720.17 bushels of soybeans. Defendant Monte Casavan also filed a claim with the Minnesota Department of Agriculture admitting the transactions with

Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant Monte Casavan, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

42.

Driscoll & Driscoll filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 32,882 bushels of spring wheat. However, on May 13, 2004, Driscoll & Driscoll waived their alleged interest in the grain. Driscoll & Driscoll also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant Driscoll & Driscoll, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

43.

Defendant Gregory Driscoll filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 3,922.84 bushels of soybeans.

44.

Defendant Dubuque Farming Association filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 19,818.20 bushels of corn. Defendant Dubuque Farming Association also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's

Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

45.

Defendant Emmert Farms filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 5,321.33 bushels of spring wheat.

46.

Brian R. Erickson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 26,302.22 bushels of spring wheat. However, on May 12, 2004, Brian R. Erickson waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Brian R. Erickson also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Brian R. Erickson, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

47.

Defendant Farmers Coop Grain & Seed filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 1,821 bushels of soybeans and 53,200 bushels of canola. Defendant Farmers Coop Grain & Seed also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant Farmers Coop Grain & Seed, under oath and penalty of perjury, filed a proof of claim in

connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

48.

Garske Elevator Company filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 3,172.92 bushels of barley. However, on May 26, 2004, Garske Elevator Company waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel.

49.

Michael Gasper filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 41,583 bushels of spring wheat. However, on May 10, 2004, Michael Gasper waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Michael Gasper also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant Michael Gasper, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

50.

GBM Farm J.V. filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 9,917.08 bushels of wheat. However, on May 27, 2004, GBM Farm J.V. waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel.

51.

Bryan Grove filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 1,254.29 bushels of barley. However, on May 10, 2004, Bryan Grove waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Bryan Grove also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

52.

Verdeen Grove filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 5,709.32 bushels of barley. However, on May 12, 2004, Verdeen Grove waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Verdeen Grove also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

53.

Defendant Kyle Haake filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 992.66 bushels of soybeans. Defendant Kyle Haake also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

54.

Defendant Roger Hagen filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 6,659 bushels of wheat. Defendant Roger Hagen also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

55.

Defendant Russ Halverson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 12,561.03 bushels of wheat.

56.

Defendant Gary Hoper filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 4,616.31 bushels of wheat. Defendant Gary Hoper also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

57.

Defendant J & J Gust Farms filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 254,119 bushels of canola. Defendant J & J Gust Farms also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant J & J Gust Farms, under oath and penalty of perjury, filed a proof of claim in

connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

58.

Defendant J. O. Thorson Farm, Inc., filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 7,524.71 bushels of wheat and 93.29 bushels of soybeans. Finally, Defendant J. O. Thorson Farm, Inc. , under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

59.

Defendant JETN Farms filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 3,303.18 bushels of soybeans.

60.

Defendant Gorman Johnson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 4,472.93 bushels of soybeans.

61.

Defendant Loren Johnson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 6,664.42 bushels of soybeans. Defendant Loren Johnson also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

62.

Myron J. Johnson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 10,000.03 bushels of wheat. However, on May 12, 2004, Myron J. Johnson waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Myron J. Johnson also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

63.

Defendant Walter Johnson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 10,000 bushels of wheat.

64.

Defendant Dan Juneau filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 10,000 bushels of spring wheat.

65.

Defendant Joe Juneau filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 9,812.79 bushels of spring wheat.

66.

Defendant Charles Kaml filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of one-quarter share of 7,107.5 bushels of barley. Defendant Charles Kaml also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond

maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

67.

Verlyn Kaml filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 1,560.09 bushels of barley. However, on May 14, 2004, Verlyn Kaml waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Verlyn Kaml also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

68.

Defendant Key West Farms filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 33,530.49 bushels of soybeans and 53,266.83 bushels of wheat.

69.

Defendant KO-R Farms, Inc., filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 4,818.125 bushels of soybeans. Defendant KO-R Farms, Inc. also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant KO-R Farms, Inc., under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

70.

Randy Kroeplin filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 13,060.43 bushels of soybeans. However, on May 10, 2004, Randy Kroeplin waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Randy Kroeplin also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

71.

Defendant K-Team filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 11,000 bushels of soybeans. In addition, Defendant K-Team, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

72.

Defendant Gary Larson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 1,914.65 bushels of corn.

73.

Defendant Lonesome Land filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 8,609.63 bushels of soybeans.

74.

Defendant Matco, Inc., filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 10,168 bushels of wheat and 4,500 bushels of barley.

75.

Defendant David McCollum filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 4,391.88 bushels of wheat and 9,072.37 bushels of corn.

Defendant David McCollum also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant David McCollum, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

76.

Defendant McWalter Farms, Inc., filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 14,264.43 bushels of soybeans. Defendant McWalter Farms, Inc. also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant McWalter Farms, Inc., under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

77.

Defendant James A. Narum filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 1,534 bushels of corn. Defendant James A. Narum also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and

administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

Finally, Defendant James A. Narum, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

78.

Defendant Bradley Nelson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 3,491.62 bushels of spring wheat. In addition, Defendant Bradley Nelson, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

79.

Brian Nelson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 4,516.58 bushels of wheat and 976.47 bushels of soybeans. However, on May 13, 2004, Brian Nelson waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. In addition, Brian Nelson, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

80.

Defendant Doyle Nelson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 885.36 bushels of soybeans. Defendant Doyle Nelson also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

81.

Defendant Jeremy J. Nelson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 2,859.75 bushels of soybeans. Defendant Jeremy J. Nelson also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

82.

Defendant Patrick Noll filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 17,374.66 bushels of corn. In addition, Defendant Patrick Noll, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

83.

Garrett Novak filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 9,493.28 bushels of soybeans and 8,878.38 bushels of wheat. However, on May 10, 2004, Garrett Novak waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Garrett Novak also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

84.

Gary and Arlene Novak filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 47,667.91 bushels of soybeans and 79,248.65 bushels of wheat.

However, on May 10, 2004, Gary and Arlene Novak waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Gary and Arlene Novak also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

85.

Darrin Olson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 15,827.20 bushels of soybeans. However, on May 10, 2004, Darrin Olson waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel.

86.

Defendant Joseph Ose filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 570.33 bushels of wheat. Defendant Joseph Ose also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

87.

Darrell Payment filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 21,805 bushels of barley. However, on May 17, 2004, Darrell Payment waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Darrell Payment also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief

pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

88.

Defendant Burl Peckman filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 3,233.82 bushels of soybeans. Defendant Burl Peckman also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

89.

Defendant Gary Payment filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 912.46 bushels of soybeans. Defendant Gary Payment also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

90.

Defendant Pederson Brothers filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 1,978.9 bushels of corn and 1,851.88 bushels of wheat.

91.

Defendant Peterson Farms filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 160,793.49 bushels of wheat and 257,981.62 bushels of soybeans.

92.

Joe Philipp filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 25,017.34 bushels of wheat and 1,078.68 bushels of barley. However, on May 10,

2004, Joe Philipp waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Joe Philipp also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

93.

Defendant PM Farming, Inc., filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 28,612.37 bushels of wheat and 17,876.74 bushels of soybeans.

94.

Defendant Hans Reinhardt filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 4,012.77 bushels of wheat and 9,915.37 bushels of spring wheat. Defendant Hans Reinhardt also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant Hans Reinhardt, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

95.

Defendant Darrold Rodahl filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 890 bushels of wheat. Defendant Darrold Rodahl also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

96.

Defendant Larry Roisland filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 1,175.06 bushels of wheat. In addition, Defendant Larry Roisland, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

97.

Ron Salentine filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 16,857.09 bushels of wheat. However, on May 10, 2004, Ron Salentine waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel.

98.

Defendants Gary and Dennis Salentiny filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 926 bushels of soybeans and 1,657 bushels of wheat. Defendants Gary and Dennis Salentiny also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendants Gary and Dennis Salentiny, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

99.

Defendant Richard Salentiny filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 7,611 bushels of soybeans. Defendant Richard Salentiny also filed a claim with the Minnesota Department of Agriculture admitting the transactions with

Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant Richard Salentiny, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

100.

Defendant Andrew Spaeth filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of an undisclosed number of bushels of corn and barley. Defendant Andrew Spaeth also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant Andrew Spaeth, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

101.

Defendant John Spina filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 28,111.12 bushels of wheat. Defendant John Spina also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

102.

Defendant Howard Steinmetz filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 9,692.92 bushels of wheat. Defendant Howard

Steinmetz also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant Howard Steinmetz, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

103.

Dan Stroot filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 5,475.72 bushels of wheat. However, on June 9, 2004, Dan Stroot waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Dan Stroot also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

104.

Joseph Stroot, Jr., filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 5,088.96 bushels of spring wheat. However, on June 9, 2004, Joseph Stroot, Jr., waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Joseph Stroot, Jr. also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

105.

Larry L. Tack filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 3,235.42 bushels of wheat. However, on May 6, 2004, Larry L. Tack waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Larry L. Tack also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

106.

TDA, Inc., filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 7,955.47 bushels of wheat. However, on May 12, 2004, TDA, Inc., waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. TDA, Inc. also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

107.

Clay Thompson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 7,651 bushels of wheat. However, on May 10, 2004, Clay Thompson waived any alleged interest in Debtor's grain by filing a waiver of interest with Debtor's undersigned counsel. Clay Thompson also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief

pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

108.

Defendant Matt Thorson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 1,845.68 bushels of soybeans. Defendant Matt Thorson also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant Matt Thorson, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

109.

Defendant Ronald Thorson filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 6,941.63 bushels of wheat and 2,915.86 bushels of soybeans. Defendant Ronald Thorson also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant Ronald Thorson, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

110.

Defendant Tri-Mack Potato, Inc., filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 2,853.29 bushels of wheat. In addition, Defendant

Tri-Mack Potato, Inc. delivered 14,612.71 bushels of wheat (“Tri-Mack Grain”) to Debtor. The Tri-Mack Grain has been liquidated and proceeds in the approximate amount of \$44,750.00 released to the CCC with the excess proceeds sent to the Gislason & Hunter LLP Trust Account pursuant to the Court’s June 11, 2004 Order. The order provided that determination of ownership interests in the Tri-Mack Grain would be determined in any adversary proceeding filed by Debtor for determination of interest and disposition of grain assets.

111.

Defendant United Grain & Livestock filed an Interested Party’s Claim with Debtor’s undersigned counsel alleging ownership of 3,944.01 bushels of wheat. Defendant United Grain & Livestock also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer’s Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

112.

Defendant Erwin Vanek filed an Interested Party’s Claim with Debtor’s undersigned counsel alleging ownership of 29,932.34 bushels of corn. Defendant Erwin Vanek also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer’s Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

113.

Wald Farms filed an Interested Party’s Claim with Debtor’s undersigned counsel alleging ownership of 9,415.09 bushels of spring wheat. However, on May 7, 2004, Wald Farms waived any alleged interest in Debtor’s grain by filing a waiver of interest with Debtor’s undersigned

counsel. Wald Farms also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

114.

Defendant Dan Wichterman filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 2,696.14 bushels of soybeans. Defendant Dan Wichterman also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17. Finally, Defendant Dan Wichterman, under oath and penalty of perjury, filed a proof of claim in connection with this matter admitting and acknowledging that the transactions with Debtor were grain sales.

115.

Defendants Steve and Greg Wollin filed an Interested Party's Claim with Debtor's undersigned counsel alleging ownership of 334,426 bushels of canola. Defendants Steve and Greg Wollin also filed a claim with the Minnesota Department of Agriculture admitting the transactions with Debtor were sales and seeking pro-rata relief pursuant to the Grain Buyer's Bond maintained by Debtor and administered by the Minnesota Department of Agriculture pursuant to Minn. Stat. § 223.17.

### **COUNT I DECLARATION**

Plaintiff restates the allegations in paragraphs 1-115 above, inclusive, as though fully set forth below.

116.

Defendants have no ownership right, title or interest in and/or to the grain they delivered to the Debtor.

117.

Title to the grain passed from Defendants to Debtor at the time Defendant's delivered the grain to Debtor.

118.

Debtor's contracts with Defendants for the purchase of grain were cash sales or voluntary extension of credit contracts and not storage contracts.

119.

Debtor is not and has not operated as a warehouse for the storage of grain.

120.

Debtor is not a bailee of the Defendants' grain.

121.

Defendants have no bailment rights to the grain they delivered to the Debtor.

122.

Defendants' sole remedy against Debtor is pursuant to their claims against the grain buyer's bond or as an unsecured creditor.

WHEREFORE, Daniel S. Miller prays for an Order of the Court as follows:

- a. Determining that Defendants have no ownership claims or rights to the grain delivered to and accepted by Debtor;
- b. Declaring that Defendants have no bailment claim to the grain delivered to and accepted by Debtor;

- c. Determining that title to the grain passed to Debtor at the time of delivery and acceptance of the grain by Debtor;
- d. Entering judgment against Defendants and in favor of Debtor for Debtor's attorney fees, costs and disbursements incurred in connection with this matter; and
- e. For such other relief as the Court deems just and equitable.

Dated this 17<sup>th</sup> day of June, 2004.



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