UNITED STATES BANKRUPTCTY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: EXPRESS GRAIN TERMINALS, LLC CASE NO. 21–11832

RICELAND FOODS, INC.'S OBJECTIONS TO CONFIRMATION OF DEBTOR'S PLAN OF LIQUIDATION

COMES Riceland Foods, Inc. ("Riceland"), a creditor of the above-captioned Debtor, Express Grain Terminals, LLC ("Express Grain"), and for its Objections to the Confirmation of Express Grain's Plan of Liquidation, respectfully states as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)–(B), (L), and (O).

3. Venue is appropriate in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. FACTUAL BACKGROUND

4. Express Grain filed its Plan of Liquidation (the "Plan") on August 15, 2022. (Docs. 2932 & 3079).

5. "The Plan divides the claims against and interests in [Express Grain] into various classes pursuant to Bankruptcy Code Section 1122[,]" including the following:

Class 1	Administrative Claims
Class 10	Unsecured Convenience Creditors
Class 11	General Unsecured Creditors

(Doc. 3079, pp. 1–2).

6. Riceland has two Class 1 administrative claims totaling $257,332.44. (Claim 131-2). This Court entered an Agreed Order allowing these "administrative priority claims" on May

24, 2022. (Doc. 2835).

7. According to Express Grain's Plan, "[c]urrently, there is not enough cash to pay for the [Class 1] administrative expense claims in full." (Doc. 3079, p. 3). The Plan also states that future "[p]ayment in full of those claims . . . is not yet firm or a sure thing" because (A) "substantial cash held by counsel for [Express Grain] has been carved out and earmarked only for payment of certain claims"; and (B) "there are likely a number of administrative expense claims which have not yet been filed and which are not yet known[.]" (Id.).

8. These carveouts likely pertain to the interim compensation granted to Express Grain's legal counsel and its Chief Restructuring Officer (CRO). Specifically, this Court has entered (A) six Orders allowing interim compensation to Express Grain's counsel totaling $680,293.25, in addition to expense reimbursements of $16,310.48; (B) seven Orders allowing interim compensation to Express Grain's CRO totaling $1,490,284, in addition to expense reimbursements of $114,539.92; and (C) an additional order awarding the CRO $355,846.33 for both "fees and expenses." (Docs. 1602, 2822-23, 2833, 2877, 2894-95, 3082, 3020-22, 3050, 3084-85). These Orders state that the sums approved are—similar to Riceland's claims for $257,332.44—"priority administrative expense[s] as set forth in in 11 U.S.C. §§ 503(b)(2) and 507(a)(2)[.]" (Id.).

9. Express Grain's CRO also has two additional outstanding applications for $120,130.33 in compensation and $800 in expenses. (Docs. 3049, 3051).

10. In addition to administrative claims, Riceland also has a Class 11 general unsecured claim of $199,262.61. (Claim 131-2). According to Express Grain's Plan, Class 11 creditors "will receive upon the final distribution in this case, all remaining cash which has not been used to pay [the] prior [ten] Classes." (Doc. 3079, p. 5).

11. Notably, Class 11 is not the Plan's only grouping of unsecured creditors. As a tactic to gerrymander the approval of its Plan, Express Grain has also created Class 10, which consists of "[u]nsecured convenience creditors" with "claims totaling less than $2,500." (Id., p. 5). The Plan states that these Class 10 claims "will be paid in full, in cash, upon the Effective Date at the rate of 15% of the allowed amount of those claims." (Id.).

12. The Claims Register in this case appears to list only four Class 10 claims totaling a mere $5374.37. (Claim Nos. 2, 10, 14, & 31). In contrast, by Riceland's count, there are forty-three Class 11 claims totaling $19,302,394. (Claim Nos. 3, 5–9, 11, 13, 15–16, 18–19, 21–29, 33–41, 58, 60, 83, 87, 91, 94, 131, 148, 186–87, 192–94).

13. On March 2, 2023, Riceland submitted its ballots rejecting the Plan with respect to both its Class 1 and Class 11 claims.

III. LAW AND ARGUMENT

14. For the reasons set forth herein, Riceland (A) objects to Express Grain's Plan because it fails to pay Riceland's administrative claims in full; (B) moves for disgorgement of the interim compensation paid to Express Grain's counsel and the CRO to ensure a pro rata distribution between administrative claimants; (C) objects to the Plan because it unlawfully creates two separate classes of unsecured creditors; and (D) further objects to the Plan because it improperly purports to grant Express Grain a discharge and release not available to a liquidating debtor.

A. The Plan Fails to Pay Riceland's Administrative Claims in Full.

15. "[A]dministrative expenses are given priority over all other unsecured claims other than domestic support obligations and certain trust expenses not relevant in this case." *In re Am. Coastal Energy, Inc.*, 399 B.R. 805, 808 (Bankr. S.D. Tex. 2009) (citing 11 U.S.C. § 507(a)).

16. Pursuant to 11 U.S.C. § 1129(a)(9)(A), "administrative expenses [must] be paid [in] cash equal to the amount of the claim on the effective date of the plan[.]" *In re Superior Boat*

Works, Inc., No. 09-15836-NPO, 2012 WL 5879149, at *2 (Bank. N.D. Miss. Nov. 21, 2012); *see also In re Scopac*, 624 F.3d 274, 280-81 (5th Cir. 2010) ("[T[he payment of administrative priority claims must be made in cash, in full to confirm a reorganization plan (unless the parties agree otherwise)"); *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009) ("[T]he administrative expense must be paid in cash at the time of confirmation.").[1]

17. Because the Bankruptcy Code's "confirmation scheme elevates administrative priority claims to [such] a dominant priority[,]" "a plan cannot be confirmed without full payment of those claims even if there are no estate assets to pay them[.]" *Scott Cable Comm's., Inc.*, 227 B.R. 596, 599-600 (Bankr. D. Conn. 1998); *accord Vega v. Rexene Corp.*, 59 F.3d 1242 (5th Cir. 1995) ("[T]he plan of reorganization cannot be confirmed under § 1129(a)(9)(A) unless the plan provides for the payment in cash and in full of persons holding 'claims' for administrative expenses under §§ 503 and 507.").

18. Here, Express Grain's Plan fails on its face to pay Riceland's administrative claims in full on the Effective Date, stating that "there is [currently] not enough cash" and also that future "[p]ayment in full of those claims . . . is not yet firm or a sure thing" because of unknown additional claims and earmarked funds for Express Grain's counsel and CRO. (See Doc. 3079, p. 3). Therefore, Riceland objects to the Plan and requests that the Court deny its confirmation.

[1] *See* 11 U.S.C. § 1129(a)(9)(A) ("The court shall confirm a plan only if . . . the plan provides that . . . with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, on the effective date of the plan, the holder of such claim will receive on amount of such claim cash equal to the allowed amount of such claim" ("[e]xcept to the extent that the holder of a particular claim has agreed to a different treatment of such claim")).

B. The Disgorgement of the Interim Payments Made to Express Grain's Legal Counsel and Chief Restructuring Officer Is Warranted to Accomplish a Pro Rata Distribution Between All Administrative Claimants.

19. "Professional persons who performed services during the Chapter 11 case are on a parity with other Chapter 11 administrative claimants and must share pro rata among the remaining funds." *In re IML Freight, Inc.*, 52 B.R. 124, 140 (D. Utah 1985); *see also* 11 U.S.C. § 726(b) ("Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), or (8) of section 507(a) of this title . . . shall be made pro rata among claims of the kind specified in each such particular paragraph . . ."); *Specker Motor Sales Co. v. Eisen*, 393 F.3d 659, 662 (2004) ("The use of the word 'shall' with the pro rata requirement in § 726(b) indicates that [pro rata] distribution [among creditors in the same statutory class] is not discretionary.").

20. "The difficulty, expense, and delay of making a determination of all allowable Chapter 11 administrative expense claims does not justify subordinating such claims to those of professional persons." *IML Freight*, *supra*, at 139.

21. "[A]ny compensation approved or paid to a professional while a bankruptcy remains pending is considered 'interim' compensation." *In re Fernandez*, 441 B.R. 84, 98 (Bankr. S.D. Tex. 2010). "[I]nterim compensation is never anything but an administrative expense." *Specker*, *supra*, at 664.

22. "[O]rders granting interim compensation 'are not final orders and are subject to reexamination and adjustment during the course of the case.'" *U.S. Trustee v. Johnston*, 189 B.R. 676, 677 (N.D. Miss. 1995) (quoting *In re Kearing*, 170 B.R. 1, 7 (Bankr. D.C.C. 1994)); *see also In re Evangeline Ref. Co.*, 890 F.2d 1312, 1321 (5th Cir. 1989) ("Interim fee awards are not final determinations intended to put a matter to rest."; "[r]ather, they are interlocutory and reviewable, and are intended only to provide some interim relief from the economic hardships of subsidizing litigation."); *Fernandez*, *supra* ("The Court first notes that it has the absolute right to reexamine

[counsel's] fee requests as applications for interim compensation, irrespective of Rule 60 of the Federal Rules of Civil Procedure."); *Kearing*, *supra* ("[T]he absence of conditional language in the orders granting interim compensation in this case does not change the interlocutory nature of the orders.").

23. "A court therefore has 'the power to order the disgorgement of professional fees paid pursuant to orders granting interim compensation under section 331, in order to carry out the provisions of section 726(b) . . . .'" *Johnston*, *supra* (quoting *Kearing*, *supra*); *see also Kearing*, *supra*, at 2 ("[T]he trustee may recover interim compensation paid to [the debtors' former counsel] in order to effectuate a pro rata distribution among Chapter 11 administrative claimants"); *Specker*, *supra*, at 664 (ordering disgorgement of interim compensation where other administrative expenses remained unpaid); *In re Lochmiller Indus., Inc.*, 178 B.R. 241, 251 (Bankr. S.D. Cal. 1995) ("[T]his Court has discovered no cases in which a court held, or even stated, that the fees paid a professional were not subject to disgorgement."); 11 U.S.C. § 105(a) (allowing courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title").

24. While "courts ha[ve] recognized the apparent harshness of this conclusion[,]" they have "nevertheless found that '[p]rofessionals seeking compensation from the bankruptcy estate do so at the risk that the estate will not have sufficient funds to satisfy their claims.'" *Johnston*, *supra* (quoting *Kearing*, *supra*, at 7-8) (citing *In re Metropolitan Elec. Supply Corp.*, 185 B.R. 505 (Bankr. E.D. Va. 1995); *Lochmiller*, *supra*)); *see also Fernandez*, *supra*, at 99 (noting the "speculative nature of interim fee awards"); *Specker*, *supra*, at 664 ("'[C]ounsel is a gambler in [bankruptcy] proceedings like every other administrative creditor.'").

25. According to the U.S. District Court for the Northern District of Mississippi, "[t]o hold otherwise would be to ignore the plain language of § 726(b) and to unjustly award certain administrative claims of professionals 'superpriority' status that is not mandated by the Code.'" *Johnston*, *supra* (citing *Kearing*, *supra*, at 7-8); *see also Matter of Lockwood Corp.*, 216 B.R. 628, 636 (Bankr. D. Neb. 1997) ("A bankruptcy court's authorization to distribute interim compensation to a professional, based on his administrative claim, does not create in that professional a greater priority right based merely on the fact that the professional has been allowed to receive the compensation.").

26. Thus, "if disgorgement is necessary in order to achieve the result of having all or some proper group of administrative creditors treated the same, then disgorgement is an appropriate remedy." *In re World Waste Servs., Inc.*, 345 B.R. 810, 815 (2006) (citing *Specker*, *supra*); *see also In re Kingston Turf Farms*, 176 B.R. 308, 310 (Bankr. D.R.I. 1995) ("[D]isgorgement is required as a matter of law, just to adhere to the mandatory payment scheme of the Code, i.e., to ensure that all creditors of the same class share pro-rata in the available pool of funds.").

27. Here, Riceland objects to Express Grain's Plan because it fails on its face to share pro rata the remaining funds among all administrative claimants. (See Doc. 3079, p. 3). The law is clear that Riceland is on parity with both Express Grain's legal counsel and the CRO. Nevertheless, Riceland has received nothing on its allowed administrative claims of $257,332.44, whereas the CRO and Express Grain's counsel have collectively received almost $3 million in interim payments.

28. To remedy the unequal treatment of Riceland, this Court must disgorge the interim fees and expenses paid to Express Grain's counsel and the CRO. "Failure to order disgorgement

[would give[] [the] interim compensation [paid to counsel and the CRO] superpriority[,]" and [t]here is no statutory basis for such a super-category." *Specker*, *supra*, 664. Thus, without disgorgement, the "[e]quality of distribution"—which is one of the themes of bankruptcy—"would be vitiated" by allowing equally situated administrative claimants to receive more than their *pro rata* share. *See id.*; *Nathanson v. N.L.R.B.*, 344 U.S. 25, 29 (1952).

C. <u>The Plan Improperly Creates Two Separate Classes of Unsecured Claims.</u>

29. "'Before the Court can confirm a plan, the requirements of Chapter 11 must be met. Probably the most important provisions of Chapter 11, outside of the requirements of the confirmation section of the Code, which must be met, are those relating to classification.'" *In re S & W Enterprises*, 37 B.R. 153, 157 n.17 (Bankr. N.D. Ill. 1984) (quoting 3 NORTON BANKR. L. & PRAC. § 63.06 (1981)).

30. "Chapter 11 requires classification of claims against a debtor for two reasons." *Matter of Greystone III Joint Venture*, 995 F.2d 1274, 1277 (5th Cir. 1991). First, "[p]roper classification is essential to ensure that creditors with claims of similar priority against the debtor's assets are treated similarly." *Id.*

31. The second reason is that "the classes must separately vote whether to approve a debtor's plan of reorganization." *Id.* (citing 11 U.S.C. § 1129(a)(8), (10)). "A plan may not be confirmed unless either (1) it is approved by two-thirds in amount and more than one-half in number of each "impaired" class, 11 U.S.C. §§ 1126(c), 1129(a)(8)"; or "(2) at least one impaired class approves the plan, § 1129(a)(10), and the debtor fulfills the cramdown requirements of § 1129(b) to enable confirmation notwithstanding the plan's rejection by one or more impaired classes." *Id.* "Classification of claims thus affects the integrity of the voting process, for, if claims could be arbitrarily placed in separate classes, it would almost always be possible for the debtor to manipulate 'acceptance' by artful classification." *Id.*

32. 11 U.S.C. § 1122 "prescribes classification of claims" as follows:

> (a) Except as provided in subsection (b) or 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 claims.
>
> (b) 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.

Greystone, *supra*, at 1278 (quoting 11 U.S.C. § 1122).

33. As noted by the U.S. Court of Appeals for the Fifth Circuit, Section 1122 "must contemplate some limits on classification of claims of similar priority." *Greystone*, *supra*, at 1278. Indeed, "[a] fair reading of both subsections suggests that ordinarily 'substantially similar claims,' those which share common priority and rights against the debtor's estate, should be placed in the same class." *Id.*; *see also Matters of Treasury Bay Corp.*, 212 B.R. 520, 539 (Bankr. S.D. Miss. 1997) (same).

34. "'General unsecured claims are all alike, whether they are disputed or not, whether over or under $20,000,'" as size "does not amount to a distinguishable dissimilarity." *In re Waterways Bridge P'ship*, 104 B.R. 776, 778, 785 (Bankr. N.D. Miss. 1989) (quoting *In re Mastercraft Record Plating, Inc.*, 32 B.R. 106, 108 (Bankr. S.D.N.Y. 1983)); *see also In re S & W Enterprises*, 37 B.R. 153, 159 (Bankr. N.D. Ill. 1984) ("Th[is] finding is supported by the comments of Judge Norton in his treatise that . . . '[u]nsecured claims will, generally speaking, comprise one class, whether trade, tort, publicly held debt or a deficiency of a secured creditor.'" (quoting 3 NORTON BANKR. L. & PRAC. § 60.05 (1981))).

35. Subsection 1122(b) "expressly creates one exception to this rule by permitting small unsecured claims to be classified separately from their larger counterparts if the court so approves for administrative convenience." *Greystone*, *supra*, at 1278-79. In order for this

exception to apply, the Court must "approve[] such a scheme as being [both] reasonable and necessary for such purpose." *In re S & W Enterprises*, *supra*, at 158.

36. "[T]he intent of [Subsection 1122(b)] is . . . to weed out numerous claims and thereby avoid administrative cost." *S & W Enterprises*, *supra*, at 159 (emphasis omitted) (quoting Norton, *supra*).

37. "[T]he one clear rule that emerges from otherwise muddled caselaw on § 1122 claims classification" is this: "[T]hou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan." *Greystone*, *supra*, at 1279; *see also In re Vill. at Camp Bowie I*, *L.P.*, 710 F.3d 239, 247 (5th Cir. 2013) (""[M]any circuits—including th[e] [Fifth] Circuit—have held that such gerrymandering is prohibited by the classification rules of § 1122."); *In re S & W*, *supra*, at 161 ("[T]he manipulation of unsecured claims, interests, or classes for the sole purpose of complying with the voting requirement of Section 1129(a)(10) shall not be tolerated."); *In re Pine Lake Village Apartment Co.*, 19 B.R. 819, 831 (Bankr. S.D.N.Y. 1982) ("'The creation of separate classes of unsecured and unsubordinated claims in order to allow gamesmanship in vote getting is not condoned under the Code."); *In re Mastercraft*, *supra*, at 108 ("Classification cannot be used to divide like claims into multiple classes in order to create a consenting class so as to permit confirmation.").

38. Thus, "[t]he plan proponent must prove there is a valid justification for its classification scheme and that the classification is not motivated by the purpose of gerrymandering an affirmative vote of an impaired class." *Greystone*, *supra*, at 1279–80. If the debtor's "proffered 'reasons' for separately classifying [the unsecured creditors] simply mask the intent to gerrymander the voting process, that classification scheme should not . . . be[] approved." *In re*

Greystone, *supra*, at 1279; *see also In re S & W*, *supra*, at 158 n.14 ("The improper designation of a class under Section 1122(b) . . . giv[es] rise to a failure of the Plan under Section 1129(a)(1).").

39. The Fifth Circuit has cited *In re Waterways Bridge P'Ship*, 104 B.R. 776 (Bankr. N.D. Miss. 1989), as offering a "good discussion" of the relevant issues. *Greystone*, *supra*, at 1279. In *Waterways*, *supra*, at 779, Class III of the subject plan contained the unsecured claim of the U.S. Department of Transportation, Maritime Administration (MARAD), "i.e., the deficiency claim exceeding the amount of the allowed secured claim specified in Class II." *Id.* Class IV "contain[ed] the claims of three unsecured prepetition creditors[.]" *Id.* "MARAD's rejecting unsecured claim approximate[d] $5,000,000.00, while the claims of the two unsecured creditors who voted to accept the plan total[ed] only $13,000.00." *Id.* at 785-86.

40. The U.S. Bankruptcy Court for the Northern District of Mississippi concluded in *Waterways* that "it [was] patently obvious that the only reason that the debtor . . . separately classified the unsecured claims in Class III and Class IV [was] to create a favorable class that will vote to accept the plan to meet the test of § 1129(a)(10)." *Id.* at 785. According to the Court, this "manipulative approach" "permit[ting] the[] two creditors to enjoy the same voting powers as MARAD defie[d] the concepts of fairness and equity." *Id.* at 785-86. Because the Court could "find no justifiable reasons for permitting separate classification[,]" "confirmation of the debtor's plan of reorganization [was] denied for its failure to satisfy the test of § 1129(a)(10)." *Id.* at 786.

41. Many other courts have reached similar conclusions as this Court did in *Waterways*. *See, e.g.*, *Greystone*, *supra*, at 1281 (holding that "[t]he lower courts erred in approving" a plan that "effectively disenfranchised" a creditor's unsecured deficiency claim of approximately $3.5 million by creating a separate class for unsecured trade creditors with claims totaling less than $10,000 who voted to accept the plan); *Matters of Treasury Bay Corp.*, *supra*, at 540 ("[S]eparating

the Noteholders' unsecured deficiency claim from the other unsecured creditors would itself be gerrymandering and was exactly the type of gerrymandering disapproved of by the Fifth Circuit in *Greystone*."); *In re Pine Lake Village Apartments Co.*, 19 B.R. 819, 831 (Bankr. S.D.N.Y. 1982) ("Manifestly such treatment of unsecured claims is unfairly discriminatory within the meaning of 11 U.S.C. § 1129(b)(1).'").

42. One case cited in *Waterways*—i.e., *In re S & W Enterprises*, 37 B.R. 153 (Bankr. N.D. Ill. 1984)—is worth examining more closely. In *S & W Enterprises*, *supra*, at 156, the subject plan proposed to create two separate classes from three unsecured claims. "The first of these classes [was] comprised of [two] non-priority, unsecured creditors whose claims [were] $1000 or less." *Id.* The second unsecured class consisted of a bank's unsecured claim of $454,940. *Id.* Under the plan, "[t]he two sub-$1000 unsecured creditors would be paid in full within 30 days of confirmation, while the class made up of [the bank's] unsecured claim would be paid only if and when [the bank's] secured claim was fully paid and, even in that event, over an extended period of time." *Id.* Naturally, the sub-$1000 class was the only class which voted to accept the plan. *Id.*

43. "Of particular note" in *S & W Enterprises* was "the impropriety of engaging in such manipulation under the guise of promoting administrative convenience under Section 1122(b)." *S & W Enterprises*, *supra*, at 161. According to the Court, this "bec[a]me critical when [applying] the 'reasonable and necessary' standard of that statute. *Id.* at 156.

44. As explained in *S & W Enterprises*, *supra*, at 162, "'necessary' in the context of Section 1122(b) means something more than just tending to ease the administrative burden." "Treating the unsecured claims as members of the same class must be truly burdensome before a

bankruptcy court should consider deviating from the general rule and classifying them separately." *Id.*

45. Furthermore, "[e]ven in a case where a bankruptcy court finds that separating unsecured claims into separate classes is to some extent necessary," the Court must still determine whether the proposed classification is a 'reasonable' means of achieving the goal of promoting administrative convenience." *Id.* at 162. "A balancing is required between the administrative benefits achievable under the proposed unsecured creditor classification scheme and the negative effects the scheme renders upon other entities and Code policies." *Id.*

46. Applying these principles, the *S & W Enterprises* Court found "that a negligible administrative burden, and thus no necessity, exist[ed]" for the debtor's classification scheme. *Id.* at 162. "There [were], after all, only three unsecured claimants, two of which comprise[d] only $850 in claims." *Id.* According to the Court, "[t]he complexity of dealing with these claims [was] not exactly mind-boggling." *Id.*

47. Likewise, the *S & W Enterprises* Court found that the separation of claims fell "decisively short of being 'reasonable.'" *Id.* According to the Court, "[t]o hold otherwise would be to make worthless Code provisions such as Section 1129(a)(10) and to render meaningless the placing by Congress of the terms 'reasonable' and 'necessary' in Section 1122(b)." *Id.* Thus, the Court denied the plan because "[i]n short, the Debtor's creation of separate unsecured classes [was] a fiction born of the necessity to satisfy Section 1129(a)(10)." *Id.*

48. Here, Express Grain's creation of separate classes of unsecured claims is likewise a fiction born of Express Grain's desire to confirm the Plan. Class 10 of Express Grain's Plan consists of only four "[u]nsecured convenience creditors" with claims totaling a mere $5374.37. (Claim Nos. 2, 10, 14, & 31). Thus, there is no need to "weed out" numerous claims. Moreover,

the complexity of dealing with this handful of small claims is certainly not mind-boggling. Thus, in sum, Express Grain's s classification scheme is neither reasonable nor necessary.

49. Indeed, it is patently obvious that Express Grain is merely trying to manipulate the acceptance of its Plan through the artful classification of substantially similar claims. Moreover, allowing Class 10 creditors to enjoy the same voting rights as Class 11 creditors—who hold approximately $19 million in claims—would defy the concepts of fairness and equity. For these reasons, this Court must reject Express Grain's classification scheme as pure gamesmanship and deny confirmation of the Plan.

D. Express Grain is Liquidating and Not Entitled to a Discharge or a Release of Third Parties.

50. Finally, Riceland objects to all provisions in the Plan that purport to grant Express Grain a discharge or a release to any third party. Riceland joins in the legal arguments against these provisions in the Plan as set forth in the objections filed by the Disclaiming Farmers (Doc. 3094), the US Trustee (Doc. 3093), and the Mississippi Development Authority (Doc. 3095). Without limitation, Riceland was granted relief to exercise a setoff against Express Grain (Doc. 2715), and any provision of the Plan which purports to discharge or impair that right is improper.

WHEREFORE, for the reasons set forth herein, Riceland Foods, Inc., objects to Express Grain Terminals, LLC's Plan of Liquidation and requests all other relief to which it is entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was served via the Court's CM/ECF system on all parties receiving notice in the case on March 7, 2023.

/s/ Sam Waddell
Samuel T. Waddell