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SO ORDERED,



A handwritten signature in black ink that reads "Selene D. Maddox".

Judge Selene D. Maddox

United States Bankruptcy Judge

The Order of the Court is set forth below. The case docket reflects the date entered.

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IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: EXPRESS GRAIN TERMINALS, LLC<sup>1</sup>  
Debtor

CHAPTER 11  
CASE NO. 21-11832-SDM

**AGREED ORDER CONFIRMING PLAN OF LIQUIDATION**

THIS CAUSE came on to be heard at a hearing on confirmation on March 14, 2023, of the *Plan of Liquidation* (the “Plan”) [DK #2932] filed herein by Express Grain Terminals, LLC, and upon the Objection [DK #3093] filed by the United States Trustee (the “UST”), the Limited Objection and Reservation of Rights [DK #3094] filed by the Disclaiming Farmers (as defined in this Court’s Memorandum Opinion and Order Approving Joint Application to Compromise Controversy [DK #2785]), the Objection [DK #3095] filed by the Mississippi Development Authority (the “MDA”), the Response and Reservation of Rights [DK #3096] filed by UMB Bank, N.A. (“UMB”), the Objection [DK #3097] filed by the Mississippi Department of Revenue (the “MDOR”), and the Objection [DK #3099] filed by Riceland Foods, Inc. (“Riceland”), the Court incorporates herein its bench opinion rendered in open court on March 14, 2023, and hereby finds, orders and adjudicates as follows, to-wit:

1. The Plan was duly noticed to the holders of claims and to all creditors and parties-in-interest in accord with the applicable provisions of the Bankruptcy Code.

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<sup>1</sup>Jointly administered with *In re Express Biodiesel, LLC*, Case No. 21-11834-SDM and *In re Express Processing, LLC*, Case No. 21-11835-SDM.

2. The classification of claims in the Plan is based upon a substantial similarity of all claims in each such class, is reasonable and was made in good faith, and was not made for the purpose of affecting the vote in such class or for any improper purpose.

3. The solicitation for acceptances of the Plan was conducted in good faith and in a thorough manner, pursuant to this Court's prior order, was made of all creditors, gave all such creditors a fair and adequate opportunity to accept the Plan and was in compliance with Section 1129 of the Bankruptcy Code. As previously determined by this Court, the First Amended Disclosure Statement which was submitted by the proponent of the Plan to all creditors contained adequate information as required by Section 1125 of the Bankruptcy Code.

4. The credible evidence embraced all the facts relevant to the Plan and addressed all the prerequisites to confirmation imposed by Section 1129(a) of the Bankruptcy Code. The Plan was eventually accepted by all classes which submitted Ballots for the Plan by the requisite number of creditors voting and by the requisite number of claim amounts that voted, and Debtor's counsel shall file an Amended Certificate reflecting the ultimate Ballots after amendments.

5. The Plan, as modified herein, complies with the applicable provisions of 11 U.S.C. § 1129 in that:

- (a) The Plan, as modified herein, complies with the applicable provisions of Title 11 of the United States Code;
- (b) The proponent has complied with all applicable provisions of Title 11 of the United States Code;
- (c) The Plan has been proposed in good faith and not by any means forbidden by law;

- (d) All payments to be made by the Debtor or any other party provided for in Section 1129(a)(4) of the Bankruptcy Code for services, or for costs and expenses and/or in connection with this case either have been approved, or are subject to the approval, by this Court as reasonable;
- (e) The proponents have disclosed the identity of any insiders who would be employed or retained by the Debtor and their compensation;
- (f) Each holder of an impaired claim would receive under the Plan on account of such claim, property of a value that is not less than the amount each holder would receive if the Debtor was liquidated under Chapter 7 of Title 11 of the United States Code;
- (g) All allowed expenses of administration, unless deferred or waived, will be paid in cash upon the Effective Date of the Plan, under the Plan when due, or as allowed and directed by the subsequent order(s) of the Court and/or this Agreed Order of Confirmation;
- (h) The Plan does not discriminate unfairly among creditors or classes, and the designation of classes under the Plan is reasonable, based upon the fact that each claim in any class of the Plan is substantially similar; and
- (i) The Plan complies with the requirements of 11 U.S.C. § 1129(a), as well as 11 U.S.C. § 1129(b).

6. The Plan is feasible and is based on the valid business judgment of the Debtor, and confirmation of the Plan is not likely to be followed by liquidation, other than that required by the Plan, or the need for further financial reorganization of the Debtor, other than that specified in the Plan itself.

7. Heather Williams is appointed as the Liquidating Trustee, as of the Effective Date. The Debtor and Ms. Williams are authorized to establish the Liquidating Trust of the Debtor as contemplated in the approved First Amended Disclosure Statement [DK #3001].

8. The Limited Objection and Reservation of Rights of the Disclaiming Farmers has been resolved by the entry of an Agreed Order [DK #3101] which is incorporated herein by reference. The following language from that Agreed Order [DK #3101] is incorporated into this Agreed Order:

No provision of (a) the Plan, including, but not limited to, Articles V.D., V.G., VII, and VIII, or (b) this Order, shall affect or limit any rights or claims that any of the “Disclaiming Farmers” (as defined in the Settlement Order) obtained or preserved under the Settlement Order.

9. The Objection of the MDA is resolved in this paragraph. The Debtor is not entitled to a discharge since this is a liquidating plan under Chapter 11 and any reference to the Debtor being entitled to a discharge in the Plan is stricken. Further, in the event a creditor or party-in-interest deems the Plan is not being carried out pursuant to the terms thereof, or for other good cause, notwithstanding the injunction provisions of the Plan, and notwithstanding the free and clear transfer of assets in the Plan, that creditor may bring such issue before the Bankruptcy Court in a manner it deems appropriate for such further action as the Court sees fit after notice and a hearing. The elimination of the discharge, and the limiting language with respect to the injunction contained in the Plan, and in this Agreed Order, also resolve those features of the Objection filed by the UST. Accordingly, the MDA’s vote to reject the Plan is amended and modified to change its vote of rejection to one of acceptance, in Class 11, the General Unsecured Creditor class.

10. The Response and Reservation of Rights of UMB is resolved by the following agreements:

- (a) The treatment of the Secured Claims of UMB under Class 9 of the Plan is amended to add the following language: To the extent there are any remaining assets in which UMB asserts a lien or security interest, the Liquidating Trustee shall obtain either a court order or consent from UMB prior to any sale of UMB's collateral or use of resulting cash collateral. UMB's deficiency claim shall be included in Class 11 as an unsecured claim.
- (b) Article V., Section G. is amended to add the following language: For the avoidance of doubt, the injunction provided for in this paragraph does not extend to Debtor's officers or directors.
- (c) In the event the Liquidating Trustee reaches a settlement or compromise resulting in a payment of over \$100,000, the Liquidating Trustee shall seek court approval of such settlement.
- (d) Unless expressly identified and modified by the Plan, nothing in the Plan supersedes the *Memorandum Opinion and Order Approving Joint Application to Compromise Controversy [DK #2785]* (the “557 Compromise Order”) or any orders (the “Sale Orders”) approving the sale of assets, including without limitation the *Order Granting Motion to Sell Substantially All of the Assets Owned by Express Grain Terminals, LLC, Free and Clear of Liens, Claims and Interests, with Liens Attaching to Proceeds of Sale, Outside the Ordinary Course of Business [DK #2708]*.
- (e) The Court shall retain jurisdiction to interpret, enforce, or otherwise resolve issues related to the 557 Compromise Order or the Sale Orders.

- (f) Nothing in the Plan, or a party's acceptance or acquiesce to the Plan, affects, modifies, or impacts the debts, liabilities, or obligations owed to a non-debtor entity under applicable law by another non-debtor entity or entities.

11. The Objection of the MDOR is resolved by the Debtor's agreement that any administrative expense claim owed to the MDOR shall be paid on or before the Effective Date of the Plan. The Reorganized Debtor/Liquidating Trustee shall timely submit returns and remit payment, including allowable penalties and interest, for all taxes due or coming due, as required under applicable Mississippi state law and any allowed and unpaid taxes, penalties and interest on unfiled returns shall be paid and filed timely. Should the Reorganized Debtor/Liquidating Trustee fail to so timely file and pay, MDOR may proceed with Mississippi state law remedies for collection in the amounts due and/or seek such relief as may be available from the Court, subject to the default language contained in the remainder of this agreement. Neither the Plan, nor the order confirming it, inhibit MDOR's ability under its statutory authority to transfer the liability for unpaid trust fund taxes to or to collect those taxes from non-debtor third parties. For that reason, neither the Plan nor the Chapter 11 case shall have any effect on MDOR's statutory rights against any non-debtor third parties. Further, in the event the Debtor defaults with respect to payment of any administrative, priority or post-confirmation obligation to the MDOR, upon notice to the Debtor (or the Liquidating Trustee) of the default, and the Debtor's/Liquidating Trustee's inability to cure the default after 14 days notice thereof, the MDOR is free to engage in collection activity with respect to the claim it asserts unless Debtor has interposed a good faith objection to claim filed with the Clerk of the Court in this case.

12. The Objection of Riceland is resolved as follows:

- (a) The Debtor (or the Liquidating Trustee) shall pay the sum of \$200,000 to Riceland, on or before the Effective Date, in full satisfaction of all administrative expense/reclamation claims of Riceland and in full satisfaction of that certain Agreed Order [DK #2835] previously entered in this case;
- (b) The Debtor releases all avoidance claims, claims under Chapter 5 of the Bankruptcy Code, and any and all other claims it may have against Riceland and such release is binding upon the Liquidating Trust and Liquidating Trustee;
- (c) The difference in the allowed amount of the Riceland claim in the Agreed Order [DK #2835] of \$257,332.44, and the payment to Riceland of \$200,000 shall be an allowed, additional unsecured claim in the sum of \$57,332.44, to be added to the Riceland general, unsecured claim in Class 11: General Unsecured Creditors;
- (d) The Debtor waives any and all objections to Riceland's unsecured claim, as amended, and upon receipt of the \$200,000 payment provided herein, Riceland shall be deemed to have an allowed unsecured claim in the amount of \$256,959.05; and
- (e) The Plan may not go effective, despite any language to the contrary in the Plan or this Agreed Order, unless and until Riceland has been paid its \$200,000 settlement amount. Accordingly, Riceland amends its vote of rejection of the Plan as a Class 1 and Class 11 claimant, and is deemed to have voted to accept the Plan for its Class 1 vote and its Class 11 vote.

13. The Objection of the UST is resolved by the agreement of the Debtor referenced in Paragraph 9 with respect to the Debtor not receiving a discharge of any debts or claims against it, and with respect to the language regarding the injunction set forth therein and incorporated here by reference. Further, the Debtor agrees that all monthly operating reports will be filed on or before the Effective Date and all fees due to the office of the UST that are owed, shall be paid on or before the Effective Date.

It is, therefore,

ORDERED, ADJUDGED AND DECREED, that the Plan is confirmed. It is, further,

ORDERED, ADJUDGED AND DECREED that the Court's bench opinion rendered in open court on March 14, 2023, and the Court's findings in Paragraphs 1 through 13 above of this Agreed Order are incorporated by reference herein as a part of the Court's rulings and, to the extent resolution of the objections of the UST, the Disclaiming Farmers, the MDA, UMB, the MDOR and Riceland require amendments to the Plan, then the Plan is so amended pursuant to this paragraph, consistent with provisions throughout this Agreed Order. It is, further,

ORDERED, ADJUDGED AND DECREED, that the Debtor shall timely pay to the UST any and all post-confirmation quarterly fees as required by 28 U.S.C. § 1930(a)(6) until such time as this case is converted, dismissed or closed by the Court. Additionally, the Debtor shall timely submit to the UST post-confirmation reports in the format prescribed by the UST until such time as this case is converted, dismissed or closed by the Court. It is, further,

ORDERED, ADJUDGED AND DECREED, any modifications of the Plan must comply with 11 U.S.C. § 1127. It is, further,

ORDERED, ADJUDGED AND DECREED, that the provisions of the Plan and this Agreed Order shall bind the Debtor, the Liquidating Trust, Liquidating Trustee, and each and every creditor,



whether or not the claim is impaired under the Plan or whether or not the holder of the claim has accepted the Plan. It is, further,

ORDERED, ADJUDGED AND DECREED, that as of the date hereof all of the property of the Debtor shall be free and clear of all claims and interests of creditors of the Debtor, except for the obligations that are imposed or continued in the Plan or this Agreed Order, subject to the provisions of Paragraph 11, *supra*, with respect to the settlement of the Objection of the MDOR as well as settlement of the objections of the UST with respect to the injunction in the Plan and the free and clear language of the Plan and of this Agreed Order. It is, further,

ORDERED, ADJUDGED AND DECREED, that all claims recoverable under §§ 547, 548 and 550 of the Bankruptcy Code, including, but not limited to, those claims specifically enumerated in the First Amended Disclosure Statement [DK #3001] (and limiting orders approving the same) as being reserved, and all of the claims owed to or in favor of the Debtor that are not settled pursuant to the Plan, not specifically waived, or not specifically settled pursuant to an agreement referred to and incorporated therein or an agreed order of this Court, are preserved and retained for enforcement by the post-confirmation Debtor, and/or the Liquidating Trustee, as their interests may appear, subsequent to the entry of this Agreed Order and the Effective Date of the Plan, including, but not limited to, any pending civil actions or adversary proceedings initiated by the Debtor; *provided, however*, as set forth herein, all claims against Riceland have been released and are not preserved or retained for enforcement by the Debtor and/or the Liquidating Trustee. It is, further,

ORDERED, ADJUDGED AND DECREED, that distributions to creditors under the Plan shall be made in accordance with the Plan, as modified by this Agreed Order. It is, further,

ORDERED, ADJUDGED AND DECREED, that all individuals and entities holding claims in all classes of the Plan or otherwise who held claims secured by property of the Debtor or liens

against property of the Debtor are hereby directed to cooperate with the proponent in implementing the terms of the Plan and, in connection therewith, to sign such documents as the Debtor-in-Possession may reasonably require in implementing the terms of the Plan. It is, further,

ORDERED, ADJUDGED AND DECREED, that any judgment at any time obtained is void to the extent that the judgment is a determination of the liability of the Debtor, and the commencement or continuation of any action, the employment or process, or any act, to collect, recover or offset any such judgement is enjoined. It is, further,

ORDERED, ADJUDGED AND DECREED, that all individuals and entities seeking, pursuant to Sections 503, 507 or other provisions of the Bankruptcy Code, payment of accounts, debts, fees or reimbursement of expenses from the Debtor, on an administrative or priority basis, make application to the Court for award of payment of such claims within thirty-five (35) days of the date this Agreed Order is served, by Debtor's counsel, upon all creditors and parties-in-interest, or shall be forever barred. It is, further,

ORDERED, ADJUDGED AND DECREED, that any objection to the allowability of a claim and/or for any rejection damages shall be filed within forty-five (45) days of the date of this Agreed Order, or shall be forever barred. It is, further,

ORDERED, ADJUDGED AND DECREED, that subsequent to the entry of this Agreed Order, the Court shall retain jurisdiction relating to this case as provided under the Plan including, without limitation, jurisdiction over all disputes arising out of the Plan. In addition, the Court shall retain jurisdiction for the administration and adjudication of objections to claims and the allowance of claims during the course of the Chapter 11 proceeding, including any and all claims against the Debtor that arose prior to and during the course of this Chapter 11 proceeding herein in accordance

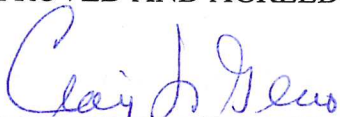
with the terms and provisions of the Plan and this Agreed Order Confirming Plan of Liquidation.

It is, further,

ORDERED, ADJUDGED AND DECREED, that counsel for the Debtor-in-Possession is directed to serve a copy of this Agreed Order Confirming Plan of Liquidation upon all creditors and parties-in-interest within fourteen (14) days after entry hereof, and to provide an accompanying certificate of service, regarding service of this Agreed Order, to the Clerk of the Court.

## END OF ORDER ##

APPROVED AND AGREED:



Craig M. Geno  
Craig M. Geno  
Counsel for the Debtor

/s/ Eric L. Johnson [WITH PERMISSION]  
Eric L. Johnson  
Counsel for UMB Bank, N.A.

/s/ Abigail M. Marbury [WITH PERMISSION]  
Abigail M. Marbury  
Trial Attorney for the United States Trustee

/s/ Sylvie D. Robinson [WITH PERMISSION]  
Sylvie D. Robinson  
Counsel for the Mississippi Department of Revenue

/s/ Michael P. O'Neil [WITH PERMISSION]  
Michael P. O'Neil  
Counsel for the Disclaiming Farmers

/s/ Samuel T. Waddell [WITH PERMISSION]  
Samuel T. Waddell, Esq.  
Counsel for Riceland Foods, Inc.

/s/ William H. Leech [WITH PERMISSION]  
William H. Leech  
Counsel for the Mississippi Development Authority

SUBMITTED BY:

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