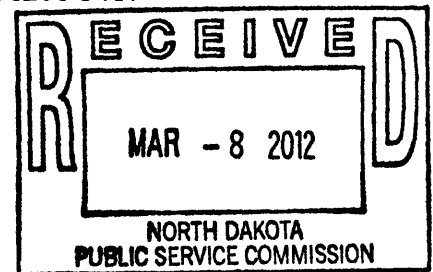


March 7, 2012

David L. Johnson
Michael D. McNair
McNAIR, LARSON, CARLSON, LTD.
51 Broadway, Suite 600
P.O. Box 2189
Fargo, ND 58108-2189

Tracy A. Kennedy
ZIMNEY FOSTER P.C.
3100 South Columbia Road, Suite 200
P. O. Box 13417
Grand Forks, ND 58208-3417

Illona A. Jeffcoat-Sacco
Special Assistant Attorney General
State Capitol — 12th Floor
600 East Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480



Re: Don Ackerson, et. al v. Mitchell Feeds, Inc. and Mitchell Farms, Inc.
Court File No.: 54-CV-11-112

Dear Counsel:

Enclosed are the following documents for the above-referenced matter:

- Notice of Motion and Motion for Declaratory Judgment;
- Memorandum in Support of Motion for Declaratory Judgment; and
- Certificate of Service.

Sincerely,

A handwritten signature in cursive script, appearing to read "Debbie Miller".

Debbie Miller
Legal Assistant

DM:dim

Enclosures

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission,)	
)	
Plaintiff,)	Civil No. 08-2011-CV-917
v.)	PSC Case No. GE-11-051
)	
Mitchell Feeds, Inc. and Western Surety)	
Company,)	
)	
Respondents,)	
)	
Micheal Aasen, Donald Ackerson, Sheldon)	NOTICE OF MOTION AND MOTION FOR DECLARATORY JUDGMENT
Ackerson, Lana Anderson d/b/a Northland)	
Farms, B & D Farms, Inc., Busch Farms, Inc.,)	
David Deslauriers, Scott Lazorenko, Manna)	
Farms, Inc., Nathan Neameyer, Steven)	
Neameyer, Mitch Preskey, Paul Rohde, James)	
Routledge, Bart Savelkoul d/b/a Savelkoul)	
Farms, Mike Schollmeyer, David Steeves,)	
Robert Steeves, Paul Trout, Wurgler Farms,)	
and Kelly Wurgler,)	
)	
and)	
)	
American Federal Bank,)	
)	
Intervenors.)	
)	

NOTICE OF MOTION

PLEASE TAKE NOTICE that Intervenors and Claimants Micheal Aasen, Donald Ackerson, Sheldon Ackerson, Lana Anderson d/b/a Northland Farms, B & D Farms, Inc., Busch Farms, Inc., David Deslauriers, Scott Lazorenko, Manna Farms, Inc., Nathan Neameyer, Steven Neameyer, Mitch Preskey, Paul Rohde, James Routledge, Bart Savelkoul d/b/a Savelkoul Farms, Mike Schollmeyer, David Steeves, Robert Steeves, Paul Trout, Wurgler Farms, and Kelly

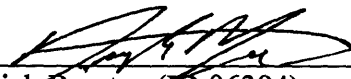
Wurgler ("Claimants") will bring their Motion for Declaratory Judgment pursuant to N.D.C.C. ch. 32-23 for a decision on the briefs filed by the parties to the above-captioned action unless oral argument is timely requested.

MOTION

Plaintiffs hereby move the Court for an order pursuant to N.D.C.C. ch. 32-23 declaring that the sunflower inventory and proceeds therefrom being held at Frandsen Bank and Trust located in Ada, MN, under order of the Minnesota District Court, County of Norman in Case No. 54-C-11-112 are part of the trust fund established by the North Dakota Public Service Commission pursuant to N.D.C.C. § 60-02.1-30(1), and that the statutory trust fund cannot be defeated or diminished by American Federal Bank's purported security interest as identified in American Federal Bank's Motion for Rule 24 Intervention and the Affidavit of Mark Vining attached thereto.

Signed this 7th day of March, 2012.

BAUMSTARK BRAATEN LAW PARTNERS
Attorneys for Intervenor Claimants
222 North 4th Street
Bismarck, ND 58501-4004
Phone: 701-221-2911
Fax: 701-221-5842



Derrick Braaten (ID 06394)
Lindsey Nieuwsma (ID 06857)

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission,)	
)	
Plaintiff,)	Civil No. 08-2011-CV-917
)	
v.)	PSC Case No. GE-11-051
)	
Mitchell Feeds, Inc. and Western Surety)	
Company,)	
)	
Respondents,)	
)	
Micheal Aasen, Donald Ackerson, Sheldon)	MEMORANDUM IN SUPPORT OF
Ackerson, Lana Anderson d/b/a Northland)	MOTION FOR DECLARATORY
Farms, B & D Farms, Inc., Busch Farms, Inc.,)	JUDGMENT
David Deslauriers, Scott Lazorenko, Manna)	
Farms, Inc., Nathan Neameyer, Steven)	
Neameyer, Mitch Preskey, Paul Rohde, James)	
Routledge, Bart Savelkoul d/b/a Savelkoul)	
Farms, Mike Schollmeyer, David Steeves,)	
Robert Steeves, Paul Trout, Wurgler Farms,)	
and Kelly Wurgler,)	
)	
and)	
)	
American Federal Bank,)	
)	
Intervenors.)	
)	

I. BACKGROUND

This action was initiated by the North Dakota Public Service Commission (“Commission” or “PSC”). On April 15, 2011, the Commission filed its Application for Appointment as Trustee and Motion to Join Surety as Party pursuant to N.D.C.C. ch. 60-02.1. This action is the result of the insolvency of Mitchell Feeds, Inc., which was operating in North Dakota as a roving grain buyer, and was licensed by the Commission pursuant to N.D.C.C. ch.

60-02.1. This motion is brought by Intervenor and Claimants Michael Aasen, Donald Ackerson, Sheldon Ackerson, Lana Anderson d/b/a Northland Farms, B & D Farms, Inc., Busch Farms, Inc., David Deslauriers, Scott Lazorenko, Manna Farms, Inc., Nathan Neameyer, Steven Neameyer, Mitch Preskey, Paul Rohde, James Routledge, Bart Savelkoul d/b/a Savelkoul Farms, Mike Schollmeyer, David Steeves, Robert Steeves, Paul Trout, Wurgler Farms, and Kelly Wurgler (“Claimants”). Claimants have intervened in this action in order to protect their rights and interests, and are unpaid receipt holders of Mitchell Feeds, Inc (“Mitchell Feeds”).

On June 23, 2011, American Federal Bank filed a Motion for Rule 24 Intervention, which was subsequently granted. American Federal Bank (“Bank”) claims that it “has an interest relating to the property that the PSC is seeking to marshal, specifically, in so much as [the PSC] may seek to establish a priority claim in the grain for claimants.” See Bank’s Motion for Rule 24 Intervention of Right and Memorandum in Support (Docket No. 25). The Bank claims to have a first priority security interest in the property which is the subject of the Commission’s action. Id.

The property referred to in the Bank’s claim is approximately 2,000,000 lbs. of sunflower seeds purchased from Claimants in North Dakota by Mitchell Feeds, which was operating pursuant to a roving grain buyer license issued by the Commission. On information and belief, after purchase of the sunflowers from Claimants, some or all of the sunflowers were eventually transported to be stored at a facility in Hendrum, MN. See, e.g., Exhibit A, Supplemental Affidavit of David Steeves.

Under the contracts with Mitchell Feeds, payment for the sunflowers was to be made ten days after delivery and grading. See Exhibit B (Sampling of Contracts with Claimants). Most of the sunflowers were picked up or delivered in and around August, 2009. See Exhibit C (Sampling of Receipts from Claimants). Claimants are all individuals who have filed claims

with the Commission stating that they have not been paid for sunflowers sold to Mitchell Feeds. Thus, Mitchell Feeds was insolvent by sometime in September 2010. See N.D.C.C. § 60-02.1-28 (“A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper demand to make payment for grain purchased....”).

The Commission began receiving claims in February, 2011. See Affidavit of Susan K. Richter (Docket No. 2). In early April of 2011, a number of Claimants filed an action in the Minnesota District Court, County of Norman (“Minnesota action”), based on information that Mitchell Feeds and its agents intended to move and sell the sunflowers to unknown buyers. See Exhibit D (Complaint in Minnesota action and Affidavits filed in the same action). Claimants moved for and obtained a temporary restraining order and preliminary injunction preventing Mitchell Feeds from moving, transporting, secreting or selling any of the grain held in storage by Mitchell Feeds. See Exhibit E (Order from Norman County District Court in Minnesota action granting Claimant’s motion for a restraining order and preliminary injunction). Due to concerns over the declining quality of the sunflowers and its impact on the value of the grain, the parties agreed that the sunflowers should be liquidated, and the Minnesota court ordered that the sunflowers held in storage by Mitchell Feeds be sold in a commercially reasonable manner and that the proceeds be deposited in an interest bearing account. See Exhibit F (Order from Norman County District Court in Minnesota ordering sale of sunflowers held in storage).

Claimants are bringing this motion to request that this court enter judgment declaring that the sunflowers are part of the trust corpus established by N.D.C.C. § 60-02.1-30(1) and that the Bank’s lien does not defeat Claimants rights as beneficiaries of the statutorily created trust.

II. ARGUMENT

As beneficiaries of the statutory trust fund administered by the North Dakota Public Service Commission, Claimants are entitled to a judgment declaring that the sunflower inventory which were stored by Mitchell Feeds, and proceeds therefrom are part of the trust fund established by the North Dakota Public Service Commission pursuant to N.D.C.C. § 60-02.1-30(1), and that the statutory trust fund cannot be defeated or diminished by American Federal Bank's purported security interest as identified in American Federal Bank's Motion for Rule 24 Intervention and the Affidavit of Mark Vining attached thereto.

A. Declaratory Relief Is Appropriate.

Pursuant to N.D.C.C. § 32-23-01, "[a] court of record within its jurisdiction shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed."

The requisite precedent facts or conditions which the courts generally hold must exist in order that declaratory relief may be obtained may be summarized as follows: (1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectible interest; and (4) the issue involved in the controversy must be ripe for judicial determination.

Medcenter One, Inc. v. N.D. State Bd. of Pharmacy, 1997 ND 54, ¶ 10, 561 N.W.2d 634 ("Medcenter One"). "The declaratory judgment act, NDCC Ch. 32-23, is remedial and is to be liberally construed to settle uncertainty concerning rights, statuses, and other legal relations." Id. at ¶ 9.

1. The Bank Has Asserted a Claim Against the Trust Created by N.D.C.C. § 60-02.1-30 Contrary to Claimants' Rights.

The Bank's claims that it "has an interest relating to the property that the PSC is seeking to marshal, specifically, in so much as [the PSC] may seek to establish a priority claim in the grain for claimants." See Bank's Motion for Rule 24 Intervention of Right and Memorandum in Support (Docket No. 25). The property referenced by the Bank is the grain being held in storage by Mitchell Feeds. This grain is properly part of the trust fund established for Claimants pursuant to N.D.C.C. § 60-02.1-30. "The trust fund must consist of...[n]onwarehouse receipt grain of the insolvent licensee held in storage...." N.D.C.C. § 60-02.1-30(1) (emphasis added). Thus, there is a justiciable controversy meeting the first requirement as set forth in Medcenter One.

2. The Bank's Claim is Adverse to the Commission and to Claimants.

As stated above, the grain held in storage and the proceeds therefrom are properly part of the trust fund established by N.D.C.C. § 60-02.1-30. The Bank appears to be claiming that its security interest trumps these trust provisions. Therefore, the Bank's claim is adverse to Claimants as beneficiaries of that trust, which meets the second requirement of Medcenter One.

3. Claimants' Have a Legally Protectible Interest.

Claimants are all "noncredit-sale receiptholders" of Mitchell Feeds. N.D.C.C. § 60-02.1-01; N.D.C.C. § 60-02.1-30. Pursuant to N.D.C.C. § 60-02.1-30, the trust fund is established "for the benefit of noncredit-sale receiptholders and to pay the costs incurred by the commission in the administration of the insolvency." Therefore, Claimants have asserted a legally protectible interest and satisfy the third requirement of Medcenter One.

4. Claimants' Request Is Ripe for Determination.

In order for the Commission to complete its report as required by N.D.C.C. § 60-02.1-37, it is necessary to obtain a declaratory judgment that the grain held in storage by Mitchell Feeds and proceeds therefrom are properly a part of the trust fund created by N.D.C.C. § 60-02.1-30 and that a security interest held by the Bank does not defeat that trust. Claimants are seeking a declaratory judgment to this effect, which would also resolve the Bank's claim to the trust assets based on its security interest in the inventory of Mitchell Feeds and BJM Land, Inc. Therefore, this issue is ripe for judicial determination and meets the final requirement of Medcenter One.

B. The Grain Held in Storage by Mitchell Feeds and Proceeds Therefrom Are Part of the Trust Fund Established by N.D.C.C. § 60-02.1-30.

The plain language of N.D.C.C. § 60-02.1-30 establishes that the sunflower inventory are properly a part of the trust fund established for the benefit of Claimants.

Upon the insolvency of any licensee, a trust fund must be established for the benefit of noncredit-sale receipt holders and to pay the costs incurred by the commission in the administration of the insolvency. The trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.

N.D.C.C. § 60-02.1-30 (emphasis added). Mitchell Feeds is an insolvent licensee. See Affidavit of Susan K. Richter (Docket No. 2). The sunflower inventory is “[n]onwarehouse receipt grain of the insolvent licensee held in storage.”

C. American Federal Bank's Purported Lien Does Not Defeat the Trust Provisions of N.D.C.C. § 60-02.1-30.

Although the Bank does not disagree that the “PSC may be within its power to establish a trust on behalf of receipt holders of a roving grain buyer,” it nonetheless claims that those receipt

holders “do not have priority over secured creditors.” See Exhibit G (Letter from Attorney for American Federal Bank Tracy Kennedy to North Dakota PSC). Based on its letter to the Commission, it appears that the Bank believes its security interest in the inventory of Mitchell Feeds defeats the trust provisions of N.D.C.C. § 60-02.1-30. The Bank is mistaken, and this issue has already been resolved in prior insolvency actions.

In its letter to the Commission, the Bank asserts that “[w]hile Chapter 60-02 gives receipt holders a priority claim over all secured creditors, it only applies to receipt holders of warehouses and warehousemen.” See Exhibit G. The Bank’s argument fails to recognize that N.D.C.C. § 60-02-25.1, relating to a receipt holder’s lien, was simply a codification of an implied lien, which is and always has been a part of the trust provisions of the insolvency statutes.

In N.D. Pub. Serv. Comm’n v. Valley Farmers Bean Ass’n (“Valley Farmers Bean”), the Supreme Court of North Dakota addressed a very similar situation. First, the Court recognized that under the laws related to warehousemen, a bank or other secured creditor could have no claim to grain held for storage.

The Banks have no claim to that portion of VFBA's inventory which represents beans held for storage. When a public warehouseman accepts grain for storage, “such delivery shall be a bailment and not a sale of the grain so delivered,” and “[i]n no case shall the grain so stored be liable to seizure upon process of any court in any action against such bailee, except in an action by an owner of such warehouse receipt to enforce the terms thereof.”

N.D. Pub. Serv. Comm’n v. Valley Farmers Bean Ass’n, 365 N.W.2d 528, 539 (N.D. 1985). As the Court in Valley Farmers Bean noted, however: “A much closer question arises with regard to the competing interests of the Banks and the unpaid sellers of beans in the remaining inventory of VFBA.” Id. at 539. It is crucial to recognize that this case was decided while

N.D.C.C. § 60-02-25.1 was being considered by North Dakota's Forty-ninth Legislative Assembly (and therefore was not enacted law at the time Valley Farmers Bean was decided).

The Court in Valley Farmers Bean relied upon *the insolvency statutes*, and the trust funds created by those statutes, to decide the issue of whether a secured creditor could defeat the trust provisions of North Dakota insolvency statutes. The Court specifically did *not* rely on N.D.C.C. § 60-02-25.1.

As the Court stated in Valley Farmers Bean, “[u]pon the insolvency of a grain warehouseman, a trust fund consisting of ‘[a]ll the grain in said warehouse’ is established for the redemption of outstanding receipts.... [B]ecause the purpose of the trust fund is to insure that farmers storing or selling grain in an insolvent warehouse receive payment for that grain to the fullest extent possible, assets of the insolvent warehouseman should be considered ‘grain’ includable in the trust fund ‘whenever reasonable.’” Valley Farmers Bean, 365 N.W.2d at 539. Significantly, the language relied on here is that found at N.D.C.C. § 60-04-03.1. The full language of this provision is as follows:

Upon the insolvency of any warehouseman, a trust fund shall be established for the benefit of noncredit-sale receipt holders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. The trust fund must consist of the following:

1. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain.

N.D.C.C. § 60-04-03.1. Because the Court was relying on this language, and doing so *prior* to enactment of N.D.C.C. § 60-02-25.1, it is important to compare this language to the trust provisions contained in the insolvency provisions for roving grain buyers. Those provisions are as follows:

Upon the insolvency of any licensee, a trust fund must be established for the benefit of noncredit-sale receipt holders and to

pay the costs incurred by the commission in the administration of the insolvency. The trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.

N.D.C.C. § 60-02.1-30. The reasoning of the court in Valley Farmers Bean was based upon the trust provisions of the laws pertinent to grain warehousemen. The trust provisions pertinent to roving grain buyers are almost identical, and the purpose of these provisions is the same: "The law was intended for the benefit of the claimants, and must be construed with sufficient liberality to effectuate its purpose without doing injury to those who are liable." State v. Hoover Grain Co., 248 N.W. 275, 278 (N.D. 1933).

As referenced in Valley Farmers Bean, the Fifth Circuit Court of Appeals analyzed a similar situation in In re Gotham Provision Co., Inc., 669 F.2d 1000 (5th Cir. 1982) ("Gotham"). The Gotham case related to the provisions of the Packers and Stockyards Act of 1921, 7 U.S.C. § 181 *et seq.*

In [the Gotham case], a bank entered into a financing arrangement with Gotham whereby the bank would advance funds and take as collateral a security interest in Gotham's inventories, accounts receivable, and proceeds from the sale of meat. Gotham filed for bankruptcy, leaving a substantial loan balance due to the bank. Several livestock producers who had made cash sales to Gotham had not been paid. An escrow fund was created for the collection of Gotham's accounts receivable. The livestock producers claimed that their interest in the escrow fund was superior to that of the bank.

N.D. Pub. Serv. Comm'n v. Valley Farmers Bean Ass'n, 365 N.W.2d 528, 539-40 (N.D. 1985) (citing Gotham). The court in Gotham noted that "[t]he second major argument advanced by the Bank is that even if the appellees are cash sellers, the trust provisions of the Packers and Stockyards Act should not be construed to give the cash sellers a superior interest in Gotham's

accounts receivable as against the Bank.” Gotham, 669 F.2d at 1008. The Gotham court found the statements of the principal sponsor of the 1976 amendments to the Packers and Stockyards Act very elucidating. Id. at 1009. Rep. Thone, during the House debates, explained:

What are the arguments for the trust? First we have the simple answer of equitable treatment. How can one argue that a packer should be able to commit property as collateral for a loan, in this particular case livestock, for which he has not paid and does not actually own, to a third party, and then allow the third party to stand ahead of the producers if the packer fails?

Again some would argue that by having the bond and the prompt pay and the solvency test, why do we need this trust provision? The answer is that the trust provision will help prevent a packer from giving a priority to subsequent secured creditors, over the livestock producer who has not been paid. The trust is the only provision here that gives any help to the farmer.

Gotham, 669 F.2d at 1009 (citing 122 Cong.Rec. 12864 (May 6, 1976)). The Gotham court agreed with Rep. Thone, stating,

we believe that if a lender could defeat the s 206 trust merely by taking a security interest in inventories and receivables, the clear intention of Congress would be thwarted and the trust provision of the Act would be reduced to a nullity.... Where the packer has given a lender a security interest in inventories or receivables that are subject to the s 206 trust, the unpaid cash sellers have priority over those assets and may recover the proceeds of those receivables to the extent of the outstanding balance on the cash sales. In this case, the appellees are entitled to the collections of the receivables held in escrow, and the Bank must return to the appellees from the payments on the accounts receivable....

In re Gotham Provision Co., Inc., 669 F.2d 1000, 1009-10 (5th Cir. 1982).

It is crucial to note that the court in Gotham had no need to resort to any explicit statutorily created liens to rule as it did. The fact the Congress had created a trust with the intent of protecting cash sellers from the insolvency of the facilities that bought the producers’ product was sufficient for the court to find that a lender taking a security interest in the inventory of such a facility cannot defeat the trust by claiming a priority interest.

The Supreme Court of North Dakota agreed with the analysis in Gotham, stating “we do not believe the Legislature intended that the trust provisions of § 60-04-02, N.D.C.C., could be defeated by a lender taking a security interest in an insolvent grain warehouseman's inventory. The purpose of Chapter 60-04, N.D.C.C., is to aid receipt holders in redeeming their receipts for as close to their full value as possible. Construing this legislation ‘with a view to effecting its objects and to promoting justice’ [§ 1-02-01, N.D.C.C.], we conclude that the valid receipt holders had priority over the Banks to VFBA's inventory.” Valley Farmers Bean, 365 N.W.2d 528, 540 (N.D. 1985).

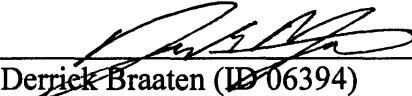
Again, the Court was referring not to the later enacted explicit lien found at N.D.C.C. § 60-02-25.1, but to *the trust provisions found in the insolvency statutes* at N.D.C.C. § 60-04-03.1 and N.D.C.C. § 60-02.1-30. The trust provisions are virtually the same, so the analysis of the Court in Valley Farmers Bean is equally applicable to the trust provisions for roving grain buyers. In other words, the presence of a provision granting an explicit lien in N.D.C.C. § 60-02-25.1 does nothing to negate the fact that the Legislature set up a trust for insolvent grain buyers, and that the claims of noncredit-sale receipt holders cannot be thwarted by a lender taking a security interest in the grain inventory being held in storage by an insolvent licensee.

III. CONCLUSION

For the reasons discussed above, Claimants respectfully request that this court enter judgment declaring that the sunflowers are part of the trust corpus established by N.D.C.C. § 60-02.1-30(1) and that the Bank's lien does not defeat Claimants rights as beneficiaries of the statutorily created trust.

Signed this 7th day of March, 2012.

BAUMSTARK BRAATEN LAW PARTNERS
Attorneys for Intervenor Claimants
222 North 4th Street
Bismarck, ND 58501-4004
Phone: 701-221-2911
Fax: 701-221-5842



Derrick Braaten (ID 06394)
Lindsey Nieuwsma (ID 06857)

Mitchell Feeds Inc.

March 24, 2008

154 Hwy 75 S
PO Box 128
Hendrum MN 58047

218-861-6262 (Elevator)
701-261-4125 (Cell)

PURCHASE CONTRACT NUMBER: MFI 014

Purchased From:

David Steeves
4690 County Rd 2
Sherwood ND 58782

Commodity and Grade: Nusun Sunflowers Moisture 10% / Test Weight 27 lbs bu

Quantity: ^{DAS 300} -200 Acres Full Production

Price: \$0.30 /lbs Price Protection

Premium/Discount Scale: Moisture 2% dockage per 1% Moisture

Payment Terms: Payments Due 10 days after Delivery & Grading

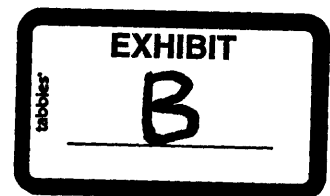
Delivery Basis: Per Agreement with Farmer *Picked up - IF Haul add .0154*

Shipment Period: Fall 08 thru Spring 09

Weights to Govern: Destination

Inspection to Govern: NDGI Grades

Remarks:



SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS

In respects not specified herein this contract is subject to Grain & Feed Dealers National Association Trade Rules.
Receipt of this contract by the Seller, without written notice to us of objection or error within 10 days is an acknowledgement of the acceptance of all conditions hereof.

Print Name David E. Steeves

Mitchell Feeds Inc.

By *[Signature]*
Customer Signature

4-2-08
Date

By *[Signature]*
Robert Mitchell

PURCHASE TERMS

1. **RULES:** The Rules of the Association listed on the face of this Contract shall govern. All disputes arising out of this transaction, including any issues relating to contract formation, shall be resolved by arbitration in accordance with the rules of such Association. The decision and award determined by such arbitration shall be final and binding upon both parties. Seller represents and warrants to Buyer that Seller is a MERCHANT (as that term is used in the Uniform Commercial Code) with respect to the goods sold under this Contract.

2. **QUALITY:** Seller warrants to Buyer that all commodities sold and delivered hereunder will be of good, sound, dry and MERCHANTABLE quality in accordance with the specified grade and will comply with all applicable federal, state, and local laws and regulations and will not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, nor be a commodity which may not, under the provisions of Section 404 or 405 of the Act, be introduced into interstate commerce. SELLER ALSO WARRANTS THAT NO WATER HAS BEEN ADDED TO THE COMMODITIES TO BE DELIVERED HEREUNDER, AT ANY TIME OR FOR ANY PURPOSE, EXCEPT AS A CARRIER FOR INSECTICIDES APPLIED AT MANUFACTURERS RECOMMENDED LEVELS. THIS GUARANTEE MAY BE RELIED UPON BY THE BUYER IN THE RESALE OF THESE COMMODITIES.

3. **WEIGHTS/GRADES TO GOVERN:** Unofficial unloaded weights and grades at place of delivery to govern, unless official weights and grades are specified on the face hereof.

4. **TITLE/RISK OF LOSS:** Title and risk of loss shall pass to Buyer only as said commodities or any part thereof is delivered to and accepted by Buyer, and then only as to so much of said commodities as is so delivered and accepted. Seller warrants that Seller has good and marketable title to the commodities and that the commodities will be delivered free and clear of all liens or other encumbrances.

5. **EXTENSIONS:** If Buyer's elevator or other storage facilities at delivery point are for any reason unable to receive said commodities on the delivery date or if Seller is unable to make delivery of said commodities for any reason on the delivery date, said date may be extended, either orally or in writing, at Buyer's option.

6. **CONTRACT ADVANCES:** If the cash value of this Contract falls below the level of any cash advances received by the Seller, at any time during the pricing period, the Buyer at its' discretion may request a portion of the advance to be returned.

7. **DEFAULT:** Seller agrees to pay to Buyer as minimum damages for default in delivery hereunder the difference between the specified Contract price and the highest market price at the place of delivery for the same kind and grade of the commodity on the day of default. In addition, Seller shall be strictly liable to Buyer for all direct, consequential, incidental and specific damages and all costs and fees incurred by Buyer as a result of Seller's breach of any of Seller's representations of warranties herein or the default by Seller in the performance of any of Seller's obligations hereunder. Acceptance of any delivery of commodities by Buyer after breach of the provisions of this Contract by Seller shall not waive any rights or remedies accruing to Buyer as a result of such prior breach or any subsequent breach.

8. **ALTERATION OF TERMS:** None of the terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered except with the written consent of an authorized representative of Buyer.

9. **SUCCESSORS:** This contract shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

10. **QUANTITY:** Seller warrants that the quantity sold is the bushel quantity specified on the front of the Contract and not the production of any specific acreage.

11. **BUYER IS AN EQUAL OPPORTUNITY EMPLOYER,** and is a government contractor. Therefore this contract is subject to the rules and regulations imposed upon contractors and subcontractors pursuant to 41 C.F.R. Chapter 60 and 61. Unless this contract is exempt by regulations issued by the Secretary of labor, there is incorporated herein by reference the following: (a) the Equal Employment Opportunity clause contained in 41 C.F.R. Section 60-1.4; (b) the Affirmative Action clauses contained in 41 C.F.R. Sections 60-250.5 and 61-250.10 both relating to the employment of Disabled Veterans and Veterans of the Vietnam Era; and (c) the Affirmative Action clause contained in 41 C.F.R. Section 60-741.5 relating to Equal Opportunity for Workers with Disabilities.

12. **CONTRACT LIQUIDATION:** Buyer expressly reserves the right to cause the liquidation of the Contract because of (a) the insolvency or financial condition of the Seller, (b) the commencement of a case under 11 U.S.C. §§101-151326, (c) the appointment of or taking of possession by a trustee in a case under 11 U.S.C. §§101-151326 or by a custodian before such commencement, (d) any and all other defaults of the terms and conditions specified herein either directly or by reference thereof.

13. **SET-OFF:** It is expressly agreed that this contract is subject to the Buyer's right to set off any mutual claims or debts against Seller, including any persons or entities affiliated with Seller, under or in connection with this Contract or any and all other commodity contracts and forward contracts between the parties as provided in 11 U.S.C. §362.

Mitchell Feeds Inc.

April 5, 2008

154 Hwy 75 S
PO Box 128
Hendrum MN 56044
56550

218-861-6262 (Elevator)
701-261-4125 (Cell)

PURCHASE CONTRACT NUMBER: MFI 037

Purchased From:

60% 40% David Deslauriers <i>Marsha</i> 4915 Co Rd 2 Sherwood ND 58782
--

Commodity and Grade: Nusun Sunflowers Moisture 10% / Test Weight 27 lbs bu

Quantity: 750 Acres Full Production / Price Protection

Price: \$0.30 /lb

Premium/Discount Scale: Moisture 2% dockage per 1% Moisture

Payment Terms: Payments Due 10 days after Delivery & Grading

Delivery Basis: Per Agreement with Farmer

Shipment Period: Fall 08 thru Spring 09

Weights to Govern: Destination

Inspection to Govern: NDGI Grades

Remarks:

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS

In respects not specified herein this contract is subject to Grain & Feed Dealers National Association Trade Rules.
Receipt of this contract by the Seller, without written notice to us of objection or error within 10 days is an acknowledgement of the acceptance of all conditions hereof.

Print
Name _____

By _____
Customer Signature Date

Mitchell Feeds Inc.
By 

Rep of Mitchell

PURCHASE TERMS

1. **RULES:** The Rules of the Association listed on the face of this Contract shall govern. All disputes arising out of this transaction, including any issues relating to contract formation, shall be resolved by arbitration in accordance with the rules of such Association. The decision and award determined by such arbitration shall be final and binding upon both parties. Seller represents and warrants to Buyer that Seller is a MERCHANT (as that term is used in the Uniform Commercial Code) with respect to the goods sold under this Contract.

2. **QUALITY:** Seller warrants to Buyer that all commodities sold and delivered hereunder will be of good, sound, dry and MERCHANTABLE quality in accordance with the specified grade and will comply with all applicable federal, state, and local laws and regulations and will not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, nor be a commodity which may not, under the provisions of Section 404 or 405 of the Act, be introduced into interstate commerce. SELLER ALSO WARRANTS THAT NO WATER HAS BEEN ADDED TO THE COMMODITIES TO BE DELIVERED HEREUNDER, AT ANY TIME OR FOR ANY PURPOSE, EXCEPT AS A CARRIER FOR INSECTICIDES APPLIED AT MANUFACTURERS RECOMMENDED LEVELS. THIS GUARANTEE MAY BE RELIED UPON BY THE BUYER IN THE RESALE OF THESE COMMODITIES.

3. **WEIGHTS/GRADES TO GOVERN:** Unofficial unloaded weights and grades at place of delivery to govern, unless official weights and grades are specified on the face hereof.

4. **TITLE/RISK OF LOSS:** Title and risk of loss shall pass to Buyer only as said commodities or any part thereof is delivered to and accepted by Buyer, and then only as to so much of said commodities as is so delivered and accepted. Seller warrants that Seller has good and marketable title to the commodities and that the commodities will be delivered free and clear of all liens or other encumbrances.

5. **EXTENSIONS:** If Buyer's elevator or other storage facilities at delivery point are for any reason unable to receive said commodities on the delivery date or if Seller is unable to make delivery of said commodities for any reason on the delivery date, said date may be extended, either orally or in writing, at Buyer's option.

6. **CONTRACT ADVANCES:** If the cash value of this Contract falls below the level of any cash advances received by the Seller, at any time during the pricing period, the Buyer at its' discretion may request a portion of the advance to be returned.

7. **DEFAULT:** Seller agrees to pay to Buyer as minimum damages for default in delivery hereunder the difference between the specified Contract price and the highest market price at the place of delivery for the same kind and grade of the commodity on the day of default. In addition, Seller shall be strictly liable to Buyer for all direct, consequential, incidental and specific damages and all costs and fees incurred by Buyer as a result of Seller's breach of any of Seller's representations of warranties herein or the default by Seller in the performance of any of Seller's obligations hereunder. Acceptance of any delivery of commodities by Buyer after breach of the provisions of this Contract by Seller shall not waive any rights or remedies accruing to Buyer as a result of such prior breach or any subsequent breach.

8. **ALTERATION OF TERMS:** None of the terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered except with the written consent of an authorized representative of Buyer.

9. **SUCCESSORS:** This contract shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

10. **QUANTITY:** Seller warrants that the quantity sold is the bushel quantity specified on the front of the Contract and not the production of any specific acreage.

11. **BUYER IS AN EQUAL OPPORTUNITY EMPLOYER,** and is a government contractor. Therefore this contract is subject to the rules and regulations imposed upon contractors and subcontractors pursuant to 41 C.F.R. Chapter 60 and 61. Unless this contract is exempt by regulations issued by the Secretary of labor, there is incorporated herein by reference the following: (a) the Equal Employment Opportunity clause contained in 41 C.F.R. Section 60-1.4; (b) the Affirmative Action clauses contained in 41 C.F.R. Sections 60-250.5 and 61-250.10 both relating to the employment of Disabled Veterans and Veterans of the Vietnam Era; and (c) the Affirmative Action clause contained in 41 C.F.R. Section 60-741.5 relating to Equal Opportunity for Workers with Disabilities.

12. **CONTRACT LIQUIDATION:** Buyer expressly reserves the right to cause the liquidation of the Contract because of (a) the insolvency or financial condition of the Seller, (b) the commencement of a case under 11 U.S.C. §§101-151326, (c) the appointment of or taking of possession by a trustee in a case under 11 U.S.C. §§101-151326 or by a custodian before such commencement, (d) any and all other defaults of the terms and conditions specified herein either directly or by reference thereof.

13. **SET-OFF:** It is expressly agreed that this contract is subject to the Buyer's right to set off any mutual claims or debts against Seller, including any persons or entities affiliated with Seller, under or in connection with this Contract or any and all other commodity contracts and forward contracts between the parties as provided in 11 U.S.C. §362.

Mitchell Feeds Inc.

March 24, 2008

154 Hwy 75 S
PO Box 128
Hendrum MN 56047
56550

218-861-6262 (Elevator)
701-261-4125 (Cell)

PURCHASE CONTRACT NUMBER: MFI 027

Purchased From:

Mike Schollmeyer
549 101st Ave SW
Dunn Center, ND 58626

Commodity and Grade: Con-Oils Moisture 10% / Test Weight 25 lbs bu

Quantity: 600 Acres Full Production

Price: \$0.265 /lbs

Premium/Discount Scale: Moisture 2% dockage per 1% Moisture

Payment Terms: Payments Due 10 days after Delivery & Grading

Delivery Basis: Per Agreement with Farmer

Shipment Period: Fall 08 thru Spring 09

Weights to Govern: Destination

Inspection to Govern: NDGI Grades

Remarks:

1
Sent 4-2-08

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS

In respects not specified herein this contract is subject to Grain & Feed Dealers National Association Trade Rules.
Receipt of this contract by the Seller, without written notice to us of objection or error within 10 days is an acknowledgement of the acceptance of all conditions hereof.

Print Name _____

By Mike Schollmeyer
Customer Signature

Mitchell Feeds Inc.

By Robert Mitchell
Date

SHIPPER'S NO.
TRUCK LICENSE NO. FEW 140
TRAILER LICENSE NO.
DATE 8-11-09



MITCHELL FEEDS, INC.

P.O. Box 9112
 Fargo, North Dakota 58106-9112
 (701) 588-9279 Home • (701) 261-4125 Cell

LADING NO. No 8231
FREIGHT BILL
DATE 8-11-09
SCALE TICKET NO.
DESTINATION WGT. 52,340
FREIGHT CHARGES

SOLD David Steeves		APPLY ON CONTRACT NO.	SCALE TICKET NO.	
GRAIN SUNFLOWER NUB		<input type="checkbox"/> SELL ON ARRIVAL <input type="checkbox"/> STORAGE	SHIPPERS WEIGHT	
DESTINATION ELEVATOR		DELIVER ON OR BEFORE		GROSS POUNDS 86,280
LOCATION (CITY & STATE)		FREIGHT TO BE PAID BY <input checked="" type="checkbox"/> MITCHELL FARMS		TARE POUNDS 33,940
COMMENTS le Axls Plus Freight		FREIGHT RATE		NET POUNDS 52,340
		BU.	GROSS BUSHELS	
		GWT.	NET BUSHELS	

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
 The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER **David Steeves**

ORIGIN ELEVATOR _____

ADDRESS _____

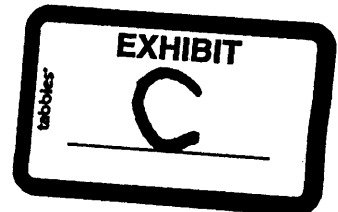
BY *[Signature]*

CARRIER **Same**

ADDRESS _____

BY _____

CHAUFFER LICENSE NO. _____



MITCHELL FEEDS, INC.

P.O. Box 9112
Fargo, North Dakota 58106-9112
(701) 588-9279 Home • (701) 261-4125 Cell



SHIPPER'S NO.
TRUCK LICENSE NO. FEW-140ND
TRAILER LICENSE NO.
DATE 8-13-09

LADING NO. No 8241

SOLD TO: David Steeves Sherwood ND
--

APPLY ON CONTRACT NO.
<input type="checkbox"/> SELL ON ARRIVAL <input type="checkbox"/> STORAGE

SCALE TICKET NO.
GROSS POUNDS 85,940
TARE POUNDS 33,660
NET POUNDS 52,280
GROSS BUSHELS
NET BUSHELS

FREIGHT BILL
DATE 8-13-09
SCALE TICKET NO.
DESTINATION WGT. 52,280
FREIGHT CHARGES

GRAIN Sulfur N350	GRADE & FACTORS N350
DESTINATION ELEVATOR	DELIVER ON OR BEFORE
LOCATION (CITY & STATE)	FREIGHT TO BE PAID BY <input checked="" type="checkbox"/> MITCHELL FARMS
COMMENTS: 6 Ax Plus Freight	FREIGHT RATE
	BU. CWT.

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER <u>David Steeves</u>
ORIGIN ELEVATOR _____
ADDRESS _____
BY _____

CARRIER <u>Same</u>
ADDRESS _____
BY _____
CHAUFFER LICENSE NO. _____

SHIPPER'S NO.
TRUCK LICENSE NO. FET 600
TRAILER LICENSE NO.
DATE 7-28-09



MITCHELL FEEDS, INC.

P.O. Box 9112
 Fargo, North Dakota 58106-9112
 (701) 588-9279 Home • (701) 261-4125 Cell

LADING NO. 3187
FREIGHT BILL
DATE 7-28-09
SCALE TICKET NO.
DESTINATION WGT. 52,900
FREIGHT CHARGES

SOLD TO: David Des Lauriers		APPLY OR CONTRACT NO.	SCALE TICKET NO.
GRAIN SunFlow NDSun		<input type="checkbox"/> SELL ON ARRIVAL <input type="checkbox"/> STORAGE	SHIPPER'S WEIGHT GROSS POUNDS 81,860 TARE POUNDS 28,780 NET POUNDS 52,900 GROSS BUSHELS NET BUSHELS
GRADE & FACTORS NDSun		DELIVER ON OR BEFORE	
DESTINATION ELEVATOR		FREIGHT TO BE PAID BY <input checked="" type="checkbox"/> MITCHELL FARMS	
LOCATION (CITY & STATE)		FREIGHT RATE	
COMMENTS: Plus Freight		BU. CWT.	

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
 The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER Same

ORIGIN ELEVATOR _____

ADDRESS _____

BY _____

CARRIER David Des Lauriers

ADDRESS Sherwood ND

BY _____

CHAUFFER LICENSE NO. _____

SHIPPER'S NO.
TRUCK LICENSE NO. FET 600
TRAILER LICENSE NO.
DATE 8-14-09



MITCHELL FEEDS, INC.

P.O. Box 9112
 Fargo, North Dakota 58106-9112
 (701) 588-8279 Home • (701) 281-4125 Cell

LADING NO. 8245
FREIGHT BILL
DATE 8-14-09
SCALE TICKET NO.
DESTINATION WGT. 52440
FREIGHT CHARGES

SOLD TO: David DeShawnes		APPLY ON CONTRACT NO.	SCALE TICKET NO.
<input type="checkbox"/> SELL ON ARRIVAL <input type="checkbox"/> STORAGE		SHIPPER'S WEIGHT	GROSS POUNDS 81.080
GRAIN: Sun Flow GRADE & FACTORS: NU SUN			TARE POUNDS 28640
DESTINATION ELEVATOR			NET POUNDS 52440
LOCATION (CITY & STATE)			GROSS BUSHELS 1
COMMENTS: SAXL Plus Freight		DELIVER ON OR BEFORE	NET BUSHELS 1
FREIGHT TO BE PAID BY <input checked="" type="checkbox"/> MITCHELL FARMS		FREIGHT RATE	BU.
		BU.	CWT.

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
 The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER David DeShawnes

ORIGIN ELEVATOR _____

ADDRESS _____

BY David Rowe

CARRIER Same

ADDRESS _____

BY _____

CHAUFFER LICENSE NO. _____

SHIPPER'S NO.
 TRUCK LICENSE NO. **FEZ 141ND**
 TRAILER LICENSE NO.
 DATE **7-29-09**

MITCHELL FEEDS, INC.

P.O. Box 9112
 Fargo, North Dakota 58106-9112
 (701) 688-9279 Home • (701) 261-4125 Cell

LADING NO. **NJ 8195**
 FREIGHT BILL
 DATE **7-29-09**
 SCALE TICKET NO.
 DESTINATION WGT. **40.440**
 FREIGHT CHARGES

SHIPPER'S NAME Mike Schollmeyer		CONTRACT NO.		SCALE TICKET NO.	
ELEVATOR E Bank		<input type="checkbox"/> SELL ON ARRIVAL <input type="checkbox"/> STORAGE		SHIPPER'S WEIGHT GROSS POUNDS 70120 TARE POUNDS 29.680 NET POUNDS 40.440 GROSS BUSHELS NET BUSHELS	
ORIGIN Suction Elevator		CHECK OR BEFORE			
DESTINATION ELEVATOR		METHOD TO BE PAID BY <input checked="" type="checkbox"/> MITCHELL FARMS			
LOCATION (CITY & STATE)		FREIGHT RATE			
COMMENTS S Axles Plus Freight		BU.		CWT.	

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
 The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER **Mike Schollmeyer** CARRIER **Sams**
 ORIGIN ELEVATOR **E Bank** ADDRESS _____
 ADDRESS _____
 BY *[Signature]* CHAUFFEUR LICENSE NO. _____

SHIPPER'S NO.
 TRUCK LICENSE NO.
 TRAILER LICENSE NO.
 203274ND
 DATE
 7-29-09

MITCHELL FEEDS, INC.

PO BOX 2112
 FARMINGTON, MISSISSIPPI 38706-9112
 (701) 261-4125 Home * (701) 261-4125 Cell

LADING NO. N.I. 8196
 FREIGHT BILL
 DATE 7-29-09
 SCALE TICKET NO.
 DESTINATION WGT. 48.740
 FREIGHT CHARGES

TO: Mike Schallmeyer		SCALE TICKET NO.	
E Bank		<input type="checkbox"/> SELL ON ARRIVAL	GROSS POUNDS 82.460
		<input type="checkbox"/> STORAGE	TARE POUNDS 33.720
GRAIN Sun Flow Corn-oil	DELIVER ON OR BEFORE		NET POUNDS 48.740
DESTINATION ELEVATOR	FREIGHT TO BE PAID BY		GROSS BUSHELS
LOCATION CITY & STATE	<input type="checkbox"/> MITCHELL FARMS		NET BUSHELS
COMMENTS: Plus Freight	FREIGHT RATE	BU.	
		CWT.	
	SHIPPER'S WEIGHT		

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCURRING SUCH LOSS. The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER Mike Schallmeyer
 ORIGIN/ELEVATOR E Bank
 ADDRESS [Signature]
 BY [Signature]

CARRIER Same
 ADDRESS _____
 BY _____
 CHAFFER LICENSE NO. _____

STATE OF MINNESOTA
COUNTY OF NORMAN

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

Court File No.: _____

Don Ackerson, Lana Anderson d/b/a
Northland Farms, Mike Aasen, David
Deslauriers, Jeff Kling, Scott Lazorenko,
Nathan Neameyer, Steven Neameyer, Ron
Pelton, Mitch Preskey, James Routledge, Bart
Savelkoul, Mike Schollmeyer, Shane Sickler,
David Steeves, Paul Trout, Wurgler Farms,
and Kelly Wurgler,

Plaintiffs,

v.

Mitchell Feeds, Inc. and Mitchell Farms, Inc.,

Defendants.

COMPLAINT

I. PARTIES

1. Plaintiff Don Ackerson is a farmer and resident of North Dakota, and his address is 5175 106th St NW Sherwood, ND 58782.
2. Plaintiff Lana Anderson, d/b/a Northland Farms, is a farmer and resident of North Dakota, and her address is 10845 53rd Ave NW Sherwood, ND 58782.
3. Plaintiff Mike Aasen is a farmer and resident of North Dakota, and his address is 4465 Co Rd 2 Sherwood, ND 58782.
4. Plaintiff David Deslauriers is a farmer and resident of North Dakota, and his address is 4915 Co Rd 2 Sherwood, ND 58782.
5. Plaintiff Jeff Kling is a farmer and resident of North Dakota, and his address is 9440 7th St SW Halliday, ND 58636.



6. Plaintiff Scott Lazorenko is a farmer and resident of North Dakota, and his address is 899 Brew St. Killdeer, ND 58640.
7. Plaintiff Nathan Neameyer is a farmer and resident of North Dakota, and his address is 614 9th Ave NE Rolla, ND 58367.
8. Plaintiff Steven Neameyer is a farmer and resident of North Dakota, and his address is HC1 Box 44 Mylo, ND 58353.
9. Plaintiff Ron Pelton is a farmer and resident of North Dakota, and his address is 140th 92nd Ave NW Halliday, ND 58636.
10. Plaintiff Mitch Preskey is a farmer and resident of North Dakota, and his address is 2485 Glenburn Rd Glenburn, ND 58740.
11. Plaintiff James Routledge is a farmer and resident of North Dakota, and his address is 603 Bavaria Dr Minot, ND 58703.
12. Plaintiff Bart Savelkoul is a farmer and resident of North Dakota, and his address is 8221 30th Ave NW Lansford, ND 58750.
13. Plaintiff Mike Schollmeyer is a farmer and resident of North Dakota, and his address is 549 101st Ave SW Dunn Center, ND 58626.
14. Plaintiff Shane Sickler is a farmer and resident of North Dakota, and his address is 2410 98th Ave SW Gladstone, ND 58630.
15. Plaintiff David Steeves is a farmer and resident of North Dakota, and his address is 4690 Cty Rd 2 Sherwood, ND 58782.
16. Plaintiff Paul Trout is a farmer and resident of North Dakota, and his address is 10285 Hwy 28 Sherwood, ND 58782.

17. Plaintiff Wurgler Farms is a farming partnership and its address is 1600 Parkside Drive Minot, ND 58701.
18. Plaintiff Kelly Wurgler is a farmer and resident of North Dakota, and his address is 1600 Parkside Dr. Minot, ND 58701.
19. Defendant Mitchell Feeds, Inc. is a Minnesota corporation created on January 10, 2006 and with an address of 154 Hwy 75 S Hendrum, MN 56550. Robert Mitchell is the registered agent.
20. Defendant Mitchell Feeds, Inc. was also registered as a foreign corporation in North Dakota on September 21, 2009. Defendant Mitchell Feeds, Inc. is a buyer of sunflowers and grain products with its principal office located at 154 Hwy 75 S Hendrum, MN 56550. Its registered agent for North Dakota is Jackie Mitchell with an address of 4905 County 81 S Horace, ND 58047.
21. Defendant Mitchell Farms, Inc. is a Minnesota corporation created on January 10, 2006 and with an address of 154 Hwy 75 S Hendrum, MN 56550. Robert Mitchell is the registered agent.
22. Defendant Mitchell Farms, Inc was also registered as a domestic farm corporation in North Dakota on February 15, 1995. Defendant Mitchell Farms, Inc. is named as a farming operation. Its registered agent for North Dakota is Scott Mitchell with an address of 1920 146 R Ave SE Erie, ND 58029, which is also the location of its principal office.

II. BACKGROUND

23. Plaintiffs are farmers who produce sunflowers.

24. Plaintiffs, individually, contracted with Defendant Mitchell Feeds, Inc. for the purchase of their sunflower crop in 2008 and/or 2009.
25. Upon information and belief, Plaintiffs' contract prices ranged from \$.26 to \$.33 per pound.
26. Defendant Mitchell Feeds, Inc. entered into the contracts through Robert Mitchell.
27. Robert Mitchell indicated to Plaintiffs on multiple occasions, both in groups and individually, that he intended to pay their contracts in full, but was unable to do so.
28. On approximately March 26, 2011, Robert Mitchell indicated to Plaintiff David Steeves that he was not able to make any payments.
29. Plaintiffs received no payment or partial payment on their contracts to sell their sunflower crops to Defendant Mitchell Feeds, Inc.
30. Plaintiffs did not agree to accept partial payment on their sunflower contracts as full satisfaction for the contract.
31. Plaintiff Don Ackerson has not been paid for approximately 314,778 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
32. Plaintiff Lana Anderson d/b/a Northland Farms has not been paid for approximately 106,359 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
33. Plaintiff Mike Aasen has not been paid for approximately 50,605 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
34. Plaintiff David Deslauriers has not been paid for approximately 407,035 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
35. Plaintiff Jeff Kling has not been paid for approximately 39,805 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.

36. Plaintiff Scott Lazorenko has not been paid for approximately 43,254 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
37. Plaintiff Ron Pelton has not been paid for approximately 50,726 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
38. Plaintiff Mitch Preskey has not been paid for approximately 49,648 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
39. Plaintiff James Routledge has not been paid for approximately 367,253 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
40. Plaintiff Bart Savelkoul has not been paid for approximately 257,301 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
41. Plaintiff Mike Schollmeyer has not been paid for approximately 200,726 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
42. Plaintiff Shane Sickler has not been paid for approximately 95,901 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
43. Plaintiff David Steeves has not been paid for approximately 104,620 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
44. Plaintiff Paul Trout has not been paid for approximately 49,023 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
45. Plaintiff Wurgler Farms has not been paid for approximately 248,874 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.
46. Plaintiff Kelly Wurgler has not been paid for approximately 49,761 pounds of sunflowers purchased by Defendant Mitchell Feeds, Inc.

47. Collectively, Defendant Mitchell Feeds, Inc. has failed to pay for approximately 2,872,006 pounds of sunflowers or more, amounting to approximately \$800,000 - \$1 million.
48. Several plaintiffs have received only partial payment on their sunflower contracts. Collectively, the sum of partial payments that remain outstanding on Plaintiffs' contracts is approximately \$1 million.
49. For some Plaintiffs, Defendant Mitchell Feeds, Inc. has failed to pick up or deliver the sunflowers as agreed upon in the contract.
50. Defendant Mitchell Farms, Inc. is designated as the party responsible for paying freight costs on some of Plaintiff's sales tickets.
51. Defendant Mitchell Farms, Inc. has failed to pay the freight costs on several of Plaintiffs' contracts.
52. Defendant Mitchell Farms, Inc. picked up and transported several loads of Plaintiffs' sunflowers to Defendants' storage bins for which neither the freight costs nor contract price was paid.
53. Defendants utilized the elevator in Hendrum, Minnesota to store several, if not all, of Plaintiffs' sunflowers.
54. Plaintiffs believe that many of the sunflowers that have not been paid for are currently stored at the Hendrum elevator.
55. Plaintiffs believe that Robert Mitchell is planning to move and sell the sunflowers based on information provided by a former employee.

56. Upon information and belief, Plaintiffs ability to recover their sunflowers that have not been paid for or the amounts owed to them under their respective contracts will be jeopardized if the sunflowers stored at the Hendrum elevator are moved and/or sold.

III. FIRST CAUSE OF ACTION: BREACH OF CONTRACT

57. For their first cause of action, Plaintiffs reallege each and every prior allegation of this Complaint.

58. Defendant Mitchell Feeds, Inc. breached its obligations under Plaintiffs' contracts by failing to pay in full the stated contract price.

59. Plaintiffs suffered significant damages from Defendant's failure to fulfill its obligations under their respective contracts and are entitled to a remedy.

IV. SECOND CAUSE OF ACTION: REPLEVIN

60. For their second cause of action, Plaintiffs reallege each and every prior allegation of this Complaint.

61. Defendants Mitchell Feeds, Inc. and Mitchell Farms, Inc. picked up and transported Plaintiffs' sunflowers to its storage facilities without paying Plaintiffs for such goods as specified by the contract terms.

62. Defendants Mitchell Feeds, Inc. and Mitchell Farms, Inc. wrongfully detained and withheld Plaintiffs' sunflowers.

63. Plaintiffs suffered significant damages from the wrongful detention of their property and are entitled to the return of the property.

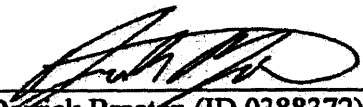
V. PRAYER FOR RELIEF

WHEREFORE, the Court should enter judgment in favor of Plaintiffs and against Defendants and issue an Order:

64. Enjoining Defendants and their agents, employees, and representatives from selling, transferring, bargaining, conveying, encumbering, disposing, or secreting from Plaintiffs any sunflowers in the possession of Defendants or their agents, including the sunflowers stored at the Hendrum elevator;
65. Directing Defendants to return to Plaintiffs any sunflowers in Defendants' possession, and damages for the taking and withholding of Plaintiffs' property;
66. Alternatively, directing Defendants to pay the contract prices in full, and freight costs where applicable, including interest to date on amounts owed and any damages from the wrongful detention of Plaintiffs' property; and
67. Directing that Plaintiffs have such other general relief as may be just, together with costs and disbursements.

Signed this 6th day of April, 2011.

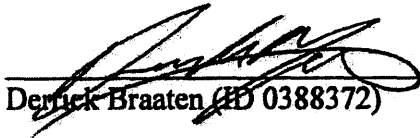
SARAH VOGEL LAW PARTNERS
Attorneys for Plaintiffs
222 North 4th Street
Bismarck, ND 58501-4004
Phone: 701-221-2911
Fax: 701-221-5842



Derrick Braaten (ID 0388372)
Lindsey Nieuwsma (ID 0390964)

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, to the parties against whom the allegations in the Summons and Complaint are asserted.


Derrick Braaten (ID 0388372)

STATE OF MINNESOTA
COUNTY OF NORMAN

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

Court File No.: _____

Don Ackerson, Lana Anderson d/b/a
Northland Farms, Mike Aasen, David
Deslauriers, Jeff Kling, Scott Lazorenko,
Nathan Neameyer, Steven Neameyer, Ron
Pelton, Mitch Preskey, James Routledge, Bart
Savelkoul, Mike Schollmeyer, Shane Sickler,
David Steeves, Paul Trout, Wurgler Farms,
and Kelly Wurgler,

Plaintiffs,

v.

Mitchell Feeds, Inc. and Mitchell Farms, Inc.,

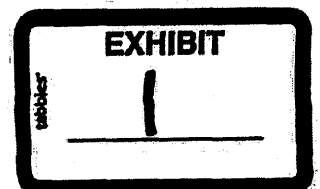
Defendants.

AFFIDAVIT OF DAVID DESLAURIERS

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

David Deslauriers, being duly sworn, states and attests as follows:

1. I am a farmer and farm land near Sherwood, North Dakota.
2. On April 5, 2008, I entered into a contract with Robert Mitchell of Mitchell Feeds Inc. for the sale of 750 acres of NuSun Sunflowers for a price of \$.30 per pound. See Exhibit A attached hereto.
3. Robert Mitchell also operates Mitchell Farms, Inc, which is indicated as the party responsible for freight costs on some of my sales tickets. See Exhibit B attached hereto.
4. Approximately 745,320 pounds total, were picked up by or delivered to Mitchell Feeds; I was not paid for the full contract price of those sunflowers.
5. Only 109,640 pounds of sunflowers were paid in full. The remaining 635,680 pounds



were only partially paid for, or not at all.

6. The amount owed to me by Mitchell Feeds for the sunflowers that were picked up or delivered under the contract but not paid for is approximately \$157,347.
7. I sold 147,000 pounds that were not picked up by or delivered to Defendants for a price of \$.13 per pound to a third party. I am still owed \$27,048 on those sunflowers for the difference from the contract price of \$.17 per pound and a freight amount of \$2,058.
8. The total unpaid balance owed to me by Mitchell Feeds is approximately \$184,395.
9. I did not agree to accept partial payment as satisfaction for the contract price of \$.30 per pound.
10. As a result of his failure to pay, I have been unable to pay off my operating loan and have had to pay additional interest on the loan.
11. Although I fulfilled my obligations under the contract, Robert Mitchell has indicated on multiple occasions that he is unable to pay the remaining amount due under the contract. Recently, he refuses to answer or return telephone calls and does not respond to demands for payment.
12. My hired hand has hauled my sunflowers to an elevator in Hendrum, Minnesota previously, and I believe that some of the sunflowers that I have not been paid for are stored at the Hendrum elevator.
13. It is my belief that if the sunflowers from the Hendrum elevator are moved and sold, I and others who have not been paid on their contracts with Defendants will be unable to recover the outstanding payments due to us.
14. I verify that Paragraphs 27, 29, 49, 53, 54, 56 of the Complaint are true and correct to the best of my knowledge and belief.

Attachment A

Mitchell Feeds Inc.

April 5, 2008

154 Hwy 75 S
PO Box 128
Hendrum MN 56044
56550

218-861-6262 (Elevator)
701-261-4125 (Cell)

PURCHASE CONTRACT NUMBER: MFI 037

Purchased From:

609
David Deslauriers *429*
Marsha
4915 Co Rd 2
Sherwood ND 58782

Commodity and Grader: Nusun Sunflowers Moisture 10% / Test Weight 27 lbs bu

Quantity: 750 Acres Full Production / Price Protection

Price: \$0.30 /lb

Premium/Discount Scale: Moisture 2% dockage per 1% Moisture

Payment Terms: Payments Due 10 days after Delivery & Grading

Delivery Basis: Per Agreement with Farmer

Shipment Period: Fall 08 thru Spring 09

Weights to Govern: Destination

Inspection to Govern: NDGI Grades

Remarks:

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS

In respects not specified herein this contract is subject to Grain & Feed Dealers National Association Trade Rules.
Receipt of this contract by the Seller, without written notice to us of objection or error within 10 days is an acknowledgement of the acceptance of all conditions hereof.

Print Name _____

By _____ Date _____
Customer Signature

Mitchell Feeds Inc.

By *[Signature]*
Robert Mitchell

EXHIBIT
1-A

Attachment A

PURCHASE TERMS

1. **RULES:** The Rules of the Association listed on the face of this Contract shall govern. All disputes arising out of this transaction, including any issues relating to contract formation, shall be resolved by arbitration in accordance with the rules of such Association. The decision and award determined by such arbitration shall be final and binding upon both parties. Seller represents and warrants to Buyer that Seller is a MERCHANT (as that term is used in the Uniform Commercial Code) with respect to the goods sold under this Contract.

2. **QUALITY:** Seller warrants to Buyer that all commodities sold and delivered hereunder will be of good, sound, dry and MERCHANTABLE quality in accordance with the specified grade and will comply with all applicable federal, state, and local laws and regulations and will not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, nor be a commodity which may not, under the provisions of Section 404 or 405 of the Act, be introduced into interstate commerce. SELLER ALSO WARRANTS THAT NO WATER HAS BEEN ADDED TO THE COMMODITIES TO BE DELIVERED HEREUNDER, AT ANY TIME OR FOR ANY PURPOSE, EXCEPT AS A CARRIER FOR INSECTICIDES APPLIED AT MANUFACTURERS RECOMMENDED LEVELS. THIS GUARANTEE MAY BE RELIED UPON BY THE BUYER IN THE RESALE OF THESE COMMODITIES.

3. **WEIGHTS/GRADES TO GOVERN:** Unofficial unloaded weights and grades at place of delivery to govern, unless official weights and grades are specified on the face hereof.

4. **TITLE/RISK OF LOSS:** Title and risk of loss shall pass to Buyer only as said commodities or any part thereof is delivered to and accepted by Buyer, and then only as to so much of said commodities as is so delivered and accepted. Seller warrants that Seller has good and marketable title to the commodities and that the commodities will be delivered free and clear of all liens or other encumbrances.

5. **EXTENSIONS:** If Buyer's elevator or other storage facilities at delivery point are for any reason unable to receive said commodities on the delivery date or if Seller is unable to make delivery of said commodities for any reason on the delivery date, said date may be extended, either orally or in writing, at Buyer's option.

6. **CONTRACT ADVANCES:** If the cash value of this Contract falls below the level of any cash advances received by the Seller, at any time during the pricing period, the Buyer at its' discretion may request a portion of the advance to be returned.

7. **DEFAULT:** Seller agrees to pay to Buyer as minimum damages for default in delivery hereunder the difference between the specified Contract price and the highest market price at the place of delivery for the same kind and grade of the commodity on the day of default. In addition, Seller shall be strictly liable to Buyer for all direct, consequential, incidental and specific damages and all costs and fees incurred by Buyer as a result of Seller's breach of any of Seller's representations of warranties herein or the default by Seller in the performance of any of Seller's obligations hereunder. Acceptance of any delivery of commodities by Buyer after breach of the provisions of this Contract by Seller shall not waive any rights or remedies accruing to Buyer as a result of such prior breach or any subsequent breach.

8. **ALTERATION OF TERMS:** None of the terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered except with the written consent of an authorized representative of Buyer.

9. **SUCCESSORS:** This contract shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

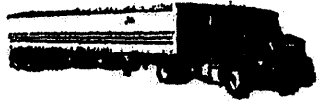
10. **QUANTITY:** Seller warrants that the quantity sold is the bushel quantity specified on the front of the Contract and not the production of any specific acreage.

11. **BUYER IS AN EQUAL OPPORTUNITY EMPLOYER,** and is a government contractor. Therefore this contract is subject to the rules and regulations imposed upon contractors and subcontractors pursuant to 41 C.F.R. Chapter 60 and 61. Unless this contract is exempt by regulations issued by the Secretary of labor, there is incorporated herein by reference the following: (a) the Equal Employment Opportunity clause contained in 41 C.F.R. Section 60-1.4; (b) the Affirmative Action clauses contained in 41 C.F.R. Sections 60-250.5 and 61-250.10 both relating to the employment of Disabled Veterans and Veterans of the Vietnam Era; and (c) the Affirmative Action clause contained in 41 C.F.R. Section 60-741.5 relating to Equal Opportunity for Workers with Disabilities.

12. **CONTRACT LIQUIDATION:** Buyer expressly reserves the right to cause the liquidation of the Contract because of (a) the insolvency or financial condition of the Seller, (b) the commencement of a case under 11 U.S.C. §§101-151326, (c) the appointment of or taking of possession by a trustee in a case under 11 U.S.C. §§101-151326 or by a custodian before such commencement, (d) any and all other defaults of the terms and conditions specified herein either directly or by reference thereof.

13. **SET-OFF:** It is expressly agreed that this contract is subject to the Buyer's right to set off any mutual claims or debts against Seller, including any persons or entities affiliated with Seller, under or in connection with this Contract or any and all other commodity contracts and forward contracts between the parties as provided in 11 U.S.C. §362.

SHIPPER'S NO.
TRUCK LICENSE NO. FET 600
TRAILER LICENSE NO.
DATE 7-28-09



MITCHELL FEEDS, INC.
 P.O. Box 9112
 Fargo, North Dakota 58106-9112
 (701) 588-9279 Home • (701) 261-4125 Cell

LADING NO. 3187
FREIGHT BILL
DATE 7-28-09
SCALE TICKET NO.
DESTINATION WGT. 52.900
FREIGHT CHARGES

SOLD TO: David Des Lauriers		APPLY OR CONTRACT NO.	SCALE TICKET NO.
GRAIN SunFlowe NDSun		<input type="checkbox"/> SELL ON ARRIVAL <input type="checkbox"/> STORAGE	SHIPPERS WEIGHT GROSS POUNDS 81,860 TARE POUNDS 28,980 NET POUNDS 52,900 GROSS BUSHELS 1 NET BUSHELS 1
GRADE & FACTORS		DELIVER ON OR BEFORE	
DESTINATION ELEVATOR		FREIGHT TO BE PAID BY <input checked="" type="checkbox"/> MITCHELL FARMS	
LOCATION (CITY & STATE)		FREIGHT RATE BU. CWT.	
COMMENTS: Plus Freight			

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
 The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER <u>Same</u>	CARRIER <u>David Des Lauriers</u>
ORIGIN ELEVATOR _____	ADDRESS <u>Sherwood ND</u>
ADDRESS _____	BY _____
BY _____	CHAUFFEUR LICENSE NO. _____

EXHIBIT
1-B

STATE OF MINNESOTA
COUNTY OF NORMAN

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

Court File No.: _____

Don Ackerson, Lana Anderson d/b/a
Northland Farms, Mike Aasen, David
Deslauriers, Jeff Kling, Scott Lazorenko,
Nathan Neameyer, Steven Neameyer, Ron
Pelton, Mitch Preskey, James Routledge, Bart
Savelkoul, Mike Schollmeyer, Shane Sickler,
David Steeves, Paul Trout, Wurgler Farms,
and Kelly Wurgler,

Plaintiffs,

v.

Mitchell Feeds, Inc. and Mitchell Farms, Inc.,

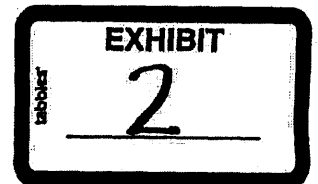
Defendants.

AFFIDAVIT OF DAVID STEEVES

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

David Steeves, being duly sworn, states and attests as follows:

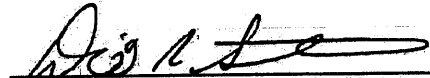
1. I am a farmer and farm land near Sherwood, North Dakota.
2. On March 24, 2008, I entered into a contract with Robert Mitchell of Mitchell Feeds Inc. for the sale of 300 acres of NuSun Sunflowers for a price of \$.30 per pound. See Exhibit A attached hereto.
3. Robert Mitchell also operates Mitchell Farms, Inc, which is indicated as the party responsible for freight costs on my sales tickets. See Exhibit B attached hereto.



4. Although all of the contracted sunflowers were picked up by or delivered to Mitchell Feeds, I was not paid for the full contract price.
5. A total of 324,940 pounds were partially paid at a price of \$.14 and 104,620 pounds remain completely unpaid.
6. The total amount owed to me by Mitchell Feeds for the 2008 sunflower contract is approximately \$83,376, plus the cost of freight.
7. I did not agree to accept partial payment of \$.14 per pound as satisfaction for the contract price of \$.30 per pound.
8. As a result of his failure to pay, I have been unable to pay off my operating loan and have had to pay additional interest on the loan.
9. Although I fulfilled my obligations under the contract, Robert Mitchell has indicated on multiple occasions that he is unable to pay the remaining amount due under the contract. Recently, he refuses to answer or return telephone calls and does not respond to demands for payment.
10. A former employee of the elevator informed me that approximately 75,000 bushels, or 2.1 million pounds, of sunflowers are located at an elevator in Hendrum, Minnesota.
11. I have hauled my sunflowers to this elevator previously, and I believe that some of the sunflowers that I have not been paid for are stored at the Hendrum elevator.
12. It is my belief based on my conversation with the former employee that Defendants are planning to move the sunflowers that are located at the Hendrum elevator and sell them.
13. An employee of the elevator in Ada, Minnesota informed me that Robert Mitchell moved all of the sunflowers stored at their elevator in August 2010.

14. During a telephone conversation on or about March 26, 2011, Robert Mitchell said that he needed to get grain moved to pay his bills. He has also indicated that he has financial difficulties and that he is selling what he can.
15. I have also been informed by a former employee that a truck owned by Defendants was sent to Hendrum on April 4, 2011 and that it likely moved a load of sunflowers from the Hendrum elevator to be sold.
16. The former employee also stated that there was an auger in one of the bins that was likely being used to fill trucks to move the sunflowers from the elevator to be sold.
17. I have spoken to at least twenty-four people who have done business with Robert Mitchell and Mitchell Feeds who have not been paid in full for their sunflower contracts.
18. It is my belief that if the sunflowers from the Hendrum elevator are moved and sold, I and others who have not been paid on their contracts with Defendants will be unable to recover the outstanding payments due to us.


Dated this 5th day of April, 2011.


David Steeves

STATE OF NORTH DAKOTA)
)ss.
COUNTY OF BURLEIGH)

On this 5th day of April, 2011, before me personally appeared David Steeves, known to me to be the same person who is described in and who executed the within document, and acknowledged to me that he executed the same.

DERRICK BRAATEN
Notary Public
State of North Dakota
My Commission Expires July 23, 2014


Notary Public

Mitchell Feeds Inc.

March 24, 2008

154 Hwy 75 S
PO Box 128
Hendrum MN 58047

218-861-6262 (Elevator)
701-261-4125 (Cell)

PURCHASE CONTRACT NUMBER: MFI 014

Purchased From:

David Steeves
4690 County Rd 2
Sherwood ND 58782

Commodity and Grade: Nusun Sunflowers Moisture 10% / Test Weight 27 lbs bu

Quantity: 0.25 300
-200 Acres Full Production

Price: \$0.30 /lbs Price Protection

Premium/Discount Scale: Moisture 2% dockage per 1% Moisture

Payment Terms: Payments Due 10 days after Delivery & Grading

Delivery Basis: Per Agreement with Farmer Picked up FF Head add .0154

Shipment Period: Fall 08 thru Spring 09

Weights to Govern: Destination

Inspection to Govern: NDGI Grades

Remarks:

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS

In respects not specified herein this contract is subject to Grain & Feed Dealers National Association Trade Rules.
Receipt of this contract by the Seller, without written notice to us of objection or error within 10 days is an acknowledgment of the acceptance of all conditions hereof.

Print Name David R. Steeves

Mitchell Feeds Inc.

By [Signature]
Customer Signature

4-2-08
Date

By [Signature]
Robert Mitchell

EXHIBIT
tabbiter
2-A

PURCHASE TERMS

1. **RULES:** The Rules of the Association listed on the face of this Contract shall govern. All disputes arising out of this transaction, including any issues relating to contract formation, shall be resolved by arbitration in accordance with the rules of such Association. The decision and award determined by such arbitration shall be final and binding upon both parties. Seller represents and warrants to Buyer that Seller is a **MERCHANT** (as that term is used in the Uniform Commercial Code) with respect to the goods sold under this Contract.
2. **QUALITY:** Seller warrants to Buyer that all commodities sold and delivered hereunder will be of good, sound, dry and **MERCHANTABLE** quality in accordance with the specified grade and will comply with all applicable federal, state, and local laws and regulations and will not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, nor be a commodity which may not, under the provisions of Section 404 or 405 of the Act, be introduced into interstate commerce. **SELLER ALSO WARRANTS THAT NO WATER HAS BEEN ADDED TO THE COMMODITIES TO BE DELIVERED HEREUNDER, AT ANY TIME OR FOR ANY PURPOSE, EXCEPT AS A CARRIER FOR INSECTICIDES APPLIED AT MANUFACTURERS RECOMMENDED LEVELS. THIS GUARANTEE MAY BE RELIED UPON BY THE BUYER IN THE RESALE OF THESE COMMODITIES.**
3. **WEIGHTS/GRADES TO GOVERN:** Unofficial unloaded weights and grades at place of delivery to govern, unless official weights and grades are specified on the face hereof.
4. **TITLE/RISK OF LOSS:** Title and risk of loss shall pass to Buyer only as said commodities or any part thereof is delivered to and accepted by Buyer, and then only as to so much of said commodities as is so delivered and accepted. Seller warrants that Seller has good and marketable title to the commodities and that the commodities will be delivered free and clear of all liens or other encumbrances.
5. **EXTENSIONS:** If Buyer's elevator or other storage facilities at delivery point are for any reason unable to receive said commodities on the delivery date or if Seller is unable to make delivery of said commodities for any reason on the delivery date, said date may be extended, either orally or in writing, at Buyer's option.
6. **CONTRACT ADVANCES:** If the cash value of this Contract falls below the level of any cash advances received by the Seller, at any time during the pricing period, the Buyer at its' discretion may request a portion of the advance to be returned.
7. **DEFAULT:** Seller agrees to pay to Buyer as minimum damages for default in delivery hereunder the difference between the specified Contract price and the highest market price at the place of delivery for the same kind and grade of the commodity on the day of default. In addition, Seller shall be strictly liable to Buyer for all direct, consequential, incidental and specific damages and all costs and fees incurred by Buyer as a result of Seller's breach of any of Seller's representations or warranties herein or the default by Seller in the performance of any of Seller's obligations hereunder. Acceptance of any delivery of commodities by Buyer after breach of the provisions of this Contract by Seller shall not waive any rights or remedies accruing to Buyer as a result of such prior breach or any subsequent breach.
8. **ALTERATION OF TERMS:** None of the terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered except with the written consent of an authorized representative of Buyer.
9. **SUCCESSORS:** This contract shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.
10. **QUANTITY:** Seller warrants that the quantity sold is the bushel quantity specified on the front of the Contract and not the production of any specific acreage.
11. **BUYER IS AN EQUAL OPPORTUNITY EMPLOYER, and in a government contract.** Therefore this contract is subject to the rules and regulations imposed upon contractors and subcontractors pursuant to 41 C.F.R. Chapter 60 and 61. Unless this contract is exempt by regulations issued by the Secretary of labor, there is incorporated herein by reference the following: (a) the Equal Employment Opportunity clause contained in 41 C.F.R. Section 60-1.4; (b) the Affirmative Action clauses contained in 41 C.F.R. Sections 60-250.5 and 61-250.10 both relating to the employment of Disabled Veterans and Veterans of the Vietnam Era; and (c) the Affirmative Action clause contained in 41 C.F.R. Section 60-741.5 relating to Equal Opportunity for Workers with Disabilities.
12. **CONTRACT LIQUIDATION:** Buyer expressly reserves the right to cause the liquidation of the Contract because of (a) the insolvency or financial condition of the Seller, (b) the commencement of a case under 11 U.S.C. §§101-151326, (c) the appointment of or taking of possession by a trustee in a case under 11 U.S.C. §§101-151326 or by a custodian before such commencement, (d) any and all other defaults of the terms and conditions specified herein either directly or by reference thereof.
13. **SET-OFF:** It is expressly agreed that this contract is subject to the Buyer's right to set off any mutual claims or debts against Seller, including any persons or entities affiliated with Seller, under or in connection with this Contract or any and all other commodity contracts and forward contracts between the parties as provided in 11 U.S.C. §362.

SHIPPER'S NO.
TRUCK LICENSE NO. FEW-140 ND
TRAILER LICENSE NO.
DATE 8-13-09



MITCHELL FEEDS, INC.

P.O. Box 9112
 Fargo, North Dakota 58106-9112
 (701) 588-9279 Home • (701) 261-4125 Cell

LADING NO. No 8241
FREIGHT BILL
DATE 8-13-09
SCALE TICKET NO.
DESTINATION WGT. 52,280
FREIGHT CHARGES

SOLD TO: David Steeves Sherwood ND		APPLY ON CONTRACT NO.	SCALE TICKET NO.
GRAIN Suf Flour N3500		<input type="checkbox"/> SELL ON ARRIVAL <input type="checkbox"/> STORAGE	GROSS POUNDS 85,940
GRADE & FACTORS N3500			TARE POUNDS 33,660
DESTINATION ELEVATOR	DELIVER ON OR BEFORE	SHIPPER'S WEIGHT NET POUNDS 52,280	NET POUNDS 52,280
LOCATION (CITY & STATE)	FREIGHT TO BE PAID BY <input checked="" type="checkbox"/> MITCHELL FARMS		GROSS BUSHELS
COMMENTS: 6 Ax Plus Freight	FREIGHT RATE		NET BUSHELS
		BU.	
		CWT.	

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
 The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER David Steeves

ORIGIN ELEVATOR _____

ADDRESS [Signature]

BY _____

CARRIER Same

ADDRESS _____

BY _____

CHAUFFER LICENSE NO. _____

EXHIBIT
2-B

MITCHELL FEEDS, INC.

P.O. Box 9112
 Fargo, North Dakota 58106-9112
 (701) 588-9279 Home • (701) 261-4125 Cell



SHIPPER'S NO.
TRUCK LICENSE NO. FEW 140
TRAILER LICENSE NO.
DATE 8-11-09

LADING NO. No 8231
FREIGHT BILL
DATE 8-11-09
SCALE TICKET NO.
DESTINATION WGHT. 52,340
FREIGHT CHARGES

SOLD TO David Steeves		APPLY ON CONTRACT NO.	SCALE TICKET NO.
		<input type="checkbox"/> SELL ON ARRIVAL	SHIPPERS WEIGHT
		<input type="checkbox"/> STORAGE	
GRAIN Sunflower Meal	GRADE & FACTORS		GROSS POUNDS 86,280
DESTINATION ELEVATOR		DELIVER ON OR BEFORE	TARE POUNDS 33,940
LOCATION (CITY & STATE)		FREIGHT TO BE PAID BY <input checked="" type="checkbox"/> MITCHELL FARMS	NET POUNDS 52,340
COMMENTS: 6 dx hrs plus Freight		FREIGHT RATE	GROSS BUSHELS
		BU.	NET BUSHELS
		CWT.	

CARRIER TO BE FULLY RESPONSIBLE AND ABSOLUTELY LIABLE FOR ANY LOSS OR DAMAGE TO THIS DESCRIBED CARGO REGARDLESS OF THE CIRCUMSTANCES OCCASIONING SUCH LOSS.
 The carrier acknowledges receipt of and the shipper acknowledges delivery to carrier of kind, grade and quality described which carrier shall deliver to destination shown.

SHIPPER David Steeves	CARRIER Same
ORIGIN ELEVATOR	ADDRESS
ADDRESS	BY
BY	CHAUFFEUR LICENSE NO.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Mitchell Feeds, Inc.
Ex Parte Cease & Desist

Case No. GE-11-103

AFFIDAVIT OF SUSAN K. RICHTER

STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

Susan K. Richter, being first duly sworn, deposes and states:

That she is the Director of the Public Service Commission's Licensing Division.

That on February 1, 2011, the Commission received a letter with attachments from James Burckhard of Towner, North Dakota, alleging he had not been paid for sunflower seeds sold to Mitchell Feeds, Inc.

That on March 30, 2011, the Commission received a letter with attachments from David Steeves of Sherwood, North Dakota, alleging he had not been paid for sunflower seeds sold to Mitchell Feeds, Inc.

That on April 4, 2011, the Commission received a letter with attachments from Gene E. Allen, attorney representing David Deslauriers of Sherwood, North Dakota, alleging David Deslauriers had not been paid for sunflower seeds sold to Mitchell Feeds, Inc.

That on April 5, 2011, the Commission received letters with attachments from Paul A. Rohde of Halliday, North Dakota, Don Ackerson of Sherwood, North Dakota, and Steven Neameyer of Mylo, North Dakota, each alleging he had not been paid for sunflower seeds sold to Mitchell Feeds, Inc.

That during the week of March 28, 2011, the Licensing Division received numerous phone calls from additional North Dakota producers, all alleging they had not been paid for sunflower seeds sold to Mitchell Feeds, Inc.

That Mitchell Feeds, Inc. is licensed as a roving grain buyer since October 28, 2009. As required by North Dakota Century Code § 60-02.1-08 and North Dakota



1

GE-11-103 Filed: 4/6/2011
Affidavit of Susan K. Richter

Pages: 2

Public Service Commission

Administrative Code § 69-07-02-02.1, Mitchell Feeds, Inc. has a \$70,000 bond on file with the Public Service Commission.

That Mitchell Feeds, Inc. provided information to the Public Service Commission showing a significant amount of grain was received from producers in 2009 and 2010 for which payment has not been made.

That the Licensing Division is preparing and will be asking the Commission to file documents with District Court, asking that Mitchell Feeds, Inc. be declared insolvent, the Commission be appointed trustee, and the surety be joined as a party to the insolvency proceeding.

That it appears the bond on file with the Public Service Commission will not be sufficient to cover the total amount owed to producers for the sunflower seeds sold to Mitchell Feeds, Inc.

North Dakota Century Code § 60-02.1-39 provides the Commission with authority to issue a cease and desist order without prior notice against an entity that engages in an activity or practice that is contrary to the provisions of Chapter 60-02.1 or related rules.

Mitchell Feeds, Inc. has violated North Dakota Century Code § 60-02.1-08 (4)(a) by failing to faithfully perform the licensee's duties as a roving grain buyer and North Dakota Century Code § 60-02.1-28 by refusing, neglecting, or being unable upon proper demand to make payment for grain purchased or make redelivery.

Affiant believes that good cause exists requiring ex parte action by the Commission because additional sellers of grain may suffer immediate economic loss, damage or injury if Mitchell Feeds, Inc. continues purchasing grain as a licensed roving grain buyer in North Dakota.

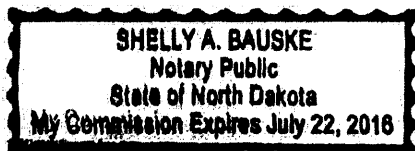
Affiant requests that the Commission issue an Ex parte Cease and Desist Order against Mitchell Feeds, Inc. as authorized by North Dakota Century Code § 60-02.1-39, ordering that Mitchell Feeds, Inc. cease and desist from purchasing grain in North Dakota.

Susan A. Richter

Subscribed and sworn to before me this 6th day of April, 2011.

Shelly A. Bauske

Notary Public



STATE OF MINNESOTA
COUNTY OF NORMAN

FILED
MAY 18 2011
NORMAN COUNTY
DISTRICT COURT

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

FILE NO.: 54-CV-11-112

**Don Ackerson, Lana Anderson d/b/a
Northland Farms, Mike Aasen, David
Deslauriers, Jeff Kling, Scott Lazorenko,
Nathan Neameyer, Steve Neameyer,
Ron Pelton, Mitch Preskey, James Routledge,
Bart Savelkoul, Mike Schollmeyer, Shane Sickler,
David Steeves, Paul Trout, Wurgler Farms, and
Kelly Wurgler,**

RECEIVED
MAY 19 2011

BY:.....

Plaintiffs,

ORDER

vs.

Mitchell Feeds, Inc. and Mitchell Farms, Inc.,

Defendants,

vs.

American Federal Bank,

Intervenor.

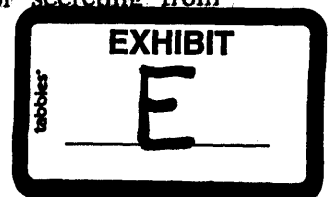
The above-mentioned matter came on before the undersigned, a Judge of the District Court, on the 4th day of May, 2011, in the District Courtrooms at the Norman County Courthouse, Ada, Minnesota, for a hearing relative to Plaintiff's request for a preliminary injunction.

Various of the named Plaintiffs appeared personally and by and through their attorney, Mr. Derrick Braaten, Attorney at Law, Bismarck, North Dakota. Defendant Mitchell Feeds, Inc. and Mitchell Farms, Inc. appeared by and through their attorney, Mr. David L. Johnson, Attorney at Law, Fargo, North Dakota.

The matter, having come on before this Court on Plaintiff's motion, memorandum and supporting affidavits, and having heard the oral arguments of the parties at the May 4th hearing, the Court now issues the following:

IT IS HEREBY, THE ORDER OF THE COURT:

1. That pursuant to Minn. Rule of Civil Procedure 65.02, Defendants are enjoined from selling, transferring, bartering, conveying, encumbering, disposing, or secreting from



Plaintiffs any sunflowers in possession of Defendants or Defendant's agents until resolution of the case or until otherwise ordered by the Court.

2. That a copy this order shall be served upon all of the appropriate parties.
3. That the memorandum attached is incorporated by reference herein.

Dated: May 17, 2011.

BY THE COURT:



MICHAEL J. KRAKER
Judge of District Court

RECEIVED
MAY 19 2011

MEMORANDUM

BY:.....

A request for a temporary injunction is evaluated based on the following five factors:

1. The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.
2. The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial.
3. The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.
4. The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.
5. The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Dahlberg Bros., Inc. v. Ford Motor Co., 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22, (Minn. 1965). The complex nature of the present action and relationships among the multiple parties and entities expressing an interest in the sunflowers weighs in favor of preserving the status quo. The harm to be suffered by the Plaintiffs as compared to that inflicted upon the Defendants also weighs in favor of granting the injunction. With regard to likelihood of success on the merits, it is likely that American Federal Bank, the North Dakota Public Service Commission or Plaintiffs has an interest in the sunflowers superior to Defendants'; until the proper custodian of the commodities can be determined, the status quo must be preserved. The interests of public policy and the minimal amount of administrative burden that imposition of the injunction will require also weight in favor of granting the injunction. Having considered the submissions by the parties, and the application of the *Dahlberg* factors, the court finds that issuance of a temporary injunction is proper under the circumstances.

MJK

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF NORMAN

NINTH JUDICIAL DISTRICT

Don Ackerson, Lana Anderson d/b/a)
Northland Farms, Mike Aasen, David)
Deslauriers, Jeff Kling, Scott Lazorenko,)
Nathan Neameyer, Steven Neameyer, Ron)
Pelton, Mitch Preskey, James Routledge, Bart)
Savelkoul, Mike Schollmeyer, Shane Sickler,)
David Steeves, Paul Trout, Wurgler Farms,)
and Kelly Wurgler,)

Plaintiffs,)

vs.)

Mitchell Feeds, Inc. and Mitchell Farms, Inc.,)

Defendants.)

vs.)

American Federal Bank,)

Intervenor,)

FILED
SEP 27 2011
NORMAN COUNTY
DISTRICT COURT

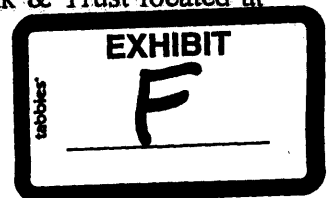
RECEIVED
SEP 29 2011

Civil No. CV 11-112 BY:.....

**ORDER TO SELL SUNFLOWER
INVENTORY**

PURSUANT TO THE hearing held on September 19, 2011 at 10 o'clock a.m. on Intervenor's motion for partial summary judgment, and request of the Intervenor that the sunflower inventory of the Defendants be sold to preserve the value of the sunflower inventory,

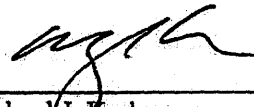
IT IS HEREBY ORDERED that the sunflower inventory held in the possession of the Defendants be sold by American Federal Bank, with the assistance of the Defendants and the supervision of the Plaintiffs, in a commercially reasonable manner, and the entire proceeds of said sale shall be deposited in an interest bearing account at Frandsen Bank & Trust located at



410 2nd Street West, P.O. Box 187, Ada, Minnesota 56510 . The sale proceeds shall remain in the interest bearing account until further order by this Court.

DATED THIS 27th day of September, 2011.

BY THE DISTRICT COURT



Michael J. Kraker
Judge of the District Court



Bremer Financial Center – Suite 200
3100 South Columbia Road
PO Box 13417
Grand Forks, ND 58208-3417

Telephone: (701) 772-8111
Facsimile: (701) 772-7328

E-mail Address:
firm@northdakotalaw.net

Website: www.northdakotalaw.net

John S. Foster
Carol E. Johnson*
Sandra B. Dittus*
Allen J. Flaten*
Scott J. Landa
Tracy A. Kennedy*
Warren J. Roehl*
Bradley W. Parrish*
Sara R. Behrens*

*Also licensed in Minnesota

Thomas L. Zimney
Retired

June 8, 2011

North Dakota Public Service Commission
600 E. Boulevard, Dept 408
Bismarck, ND 58505-0480

Re: **Mitchell Feeds, Inc.**
Our Client: American Federal Bank



Good Morning:

American Federal Bank is a first priority lien holder in the grain inventory of Mitchell Feeds, Inc.

On or about February 24, 2010, American Federal entered into a Security Agreement (the "Security Agreement") with Mitchell Feeds, Inc. and BJM Land, Inc. A true and correct copy of the Security Agreement (together with any collateral agreements) is attached hereto as Exhibit "A". The Security Agreement was given to secure payment of Promissory Notes given by Mitchell Feeds, Inc. and BJM Land, Inc. in favor of American Federal. A true and correct copy of the Promissory Notes are attached hereto as Exhibits "B" and "C".

American Federal perfected its security interest in the Mitchell Feeds, Inc. grain inventory when it filed its UCC-1 Financing Statement on Mitchell Feeds, Inc. with the Minnesota Secretary of State's Office on March 1, 2010. A true and correct copy of the filed Financing Statement is attached hereto as Exhibit "D".

Because Mitchell Feeds, Inc. is licensed to do business in the State of North Dakota as a roving grain buyer under Chapter 60-02.1 of the North Dakota Century Code, Mitchell Feeds, Inc. does not have receipt holders who would have priority status in the grain of Mitchell Feeds, Inc.

The PSC may be within its power to establish a trust on behalf of receipt holders of a roving grain buyer, however, receipt holders of grain sold to roving grain buyers do not have priority status over secured creditors. Chapter 60-02.1 dealing with grain buyers does not afford receipt holders priority status.



51 GE-11-51 Filed: 6/10/2011 Pages: 19
Letter re priority status in grain inventory

American Federal Bank
Tracy A. Kennedy

While Chapter 60-02 gives receipt holders a priority claim over all secured creditors, it only applies to receipt holders of warehouses and warehousemen.

"Receipts" as defined by Chapter 60-02 mean grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except when such memoranda was received as a result of a credit-sale contract.

A "public warehouseman" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing, buying, selling, shipping, or processing for compensation. Provided, however, that nothing in this chapter shall be construed to require a processor to receive, store, or purchase any lot or kind of grain at said facility.

Mitchell Feeds, Inc. is licensed in the State of North Dakota as a "roving grain buyer" meaning a grain buyer who does not operate a facility where the grain is received.

A "grain buyer" is any person other than a public warehouseman as defined in Chapter 60-02, who purchases or otherwise merchandises grain for compensation.

Roving grain buyers receipts do not have priority status.

The Mitchell Feeds, Inc. grain inventory is encumbered with the first priority lien of American Federal Bank. I know the parties interested in the grain have discussed stipulating to sell the grain and to put the proceeds in an escrow account, but American Federal strongly believes it is correct in its first priority position. Please advise as to what the PSC will be claiming as an interest in the Mitchell Feeds, Inc. grain. American Federal Bank would like to repossess its grain inventory collateral and believes that Mitchell Feeds, Inc. will likely surrender its grain inventory upon request.

Time is of the essence and I would greatly appreciate a decision within the next week. Thank you for your consideration in this matter.

Sincerely,



Tracy A. Kennedy
TAK:brdp

Cc: American Federal Bank

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Public Service Commission,

Plaintiff,

v.

Mitchell Feeds, Inc. and Western Surety
Company,

Respondents,

Micheal Aasen, Donald Ackerson, Sheldon
Ackerson, Lana Anderson d/b/a Northland
Farms, B & D Farms, Inc., Busch Farms, Inc.,
David Deslauriers, Scott Lazorenko, Manna
Farms, Inc., Nathan Neameyer, Steven
Neameyer, Mitch Preskey, Paul Rohde, James
Routledge, Bart Savelkoul d/b/a Savelkoul
Farms, Mike Schollmeyer, David Steeves,
Robert Steeves, Paul Trout, Wurgler Farms,
and Kelly Wurgler,

and

American Federal Bank,

Intervenors.

Civil No. 08-2011-CV-917

PSC Case No. GE-11-051

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing

- **NOTICE OF MOTION and MOTION FOR DECLARATORY JUDGMENT; and**
- **MEMORANDUM IN SUPPORT OF MOTION FOR DECLARATORY JUDGMENT with Exhibits**

were on March 7, 2012, filed with the court and mailed to the following:

Illona A. Jeffcoat-Sacco
Special Assistant Attorney General
State Capitol — 12th Floor
600 East Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480

David L. Johnson
McNair, Larson & Carlson, Ltd
51 Broad Way, Ste 600
PO Box 2189
Fargo, ND 58108

Tracy A. Kennedy
Zimney Foster P.C.
3100 South Columbia Road, Suite 200
PO Box 13417
Grand Forks, ND 58208-3417


Derriek Braaten