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Subject: Notification of Service for Case No. 18-2015-CV-00240 (Public Service Commission, et al. vs. Grand Forks Bean Company, Inc.)

This is a service filing for Case No. 18-2015-CV-00240, Public Service Commission, et al. vs. Grand Forks Bean Company, Inc..

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Filing Code: Exhibit

Filing Desc: Exhibit 1 to Bremer Bank's Rule 3.2 Notice & Motion to Intervene - Bremer Bank's Application for Appointment as Trustee, Counterclaim and Crossclaim

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Notification of service – Exhibit 1

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IN DISTRICT COURT, GRAND FORKS COUNTY, STATE OF NORTH DAKOTA

Public Service Commission,)
)
 Petitioner,)
)
 vs.)
)
 Grand Forks Bean Company, Inc.,)
 Auto-Owner Insurance Company, and)
 Bremer Bank, National Association,)
)
 Respondents.)
 _____)
 Bremer Bank, National Association,)
)
 Cross-Claimant,)
)
 vs.)
)
 Grand Forks Bean Company, Inc.,)
)
 Cross-Defendant.)
 _____)
 PSC Case No. GE-15-36)

Civil No. 18-2015-CV-00240

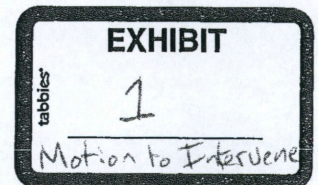
BREMER BANK, NATIONAL ASSOCIATION'S ANSWER TO APPLICATION FOR APPOINTMENT AS TRUSTEE, COUNTERCLAIM, AND CROSSCLAIM



ANSWER TO APPLICATION FOR APPOINTMENT AS TRUSTEE

COMES NOW, Respondent Bremer Bank, National Association, by and through its Attorneys Tracy A. Kennedy and John D. Schroeder, for and as its Answer to the Petitioner's *Application for Appointment as Trustee*, alleges and states as follows:

¶1. Respondent Bremer Bank, National Association (hereafter "Bremer") generally denies the allegations and claims made by Petitioner Public Service Commission (hereafter "Commission" or "PSC") in its *Application for Appointment as Trustee* (hereafter "Petition"), unless otherwise admitted or qualified herein. All allegations not specifically



admitted herein are denied.

¶2. Bremer admits the allegations of the following paragraphs of the Petition: 1, 2, 11, 13, 18, and 19.

¶3. Bremer specifically denies the allegations of the following paragraphs of the Petition, and puts the Commission on its burden of proof:

¶4. Bremer is without sufficient knowledge or information to form a belief as to the truth of the following paragraphs of the Petition, and therefore denies the same, and puts the Commission on its burden of proof: 3, 4, 5, 6, 7, 8, 9, 10, 12, 20, 21, 22, 23, 24, and 25.

¶5. Bremer admits the allegations of paragraph 14 of the Petition that it engaged in negotiations regarding the sale of Grand Forks Bean Company, Inc.'s (hereafter "Grand Forks Bean") dry edible pinto bean inventory but denies all other allegations as to the content or characterization of those negotiations.

¶6. Bremer admits the allegations of paragraph 15 of the Petition that it asserts it has a perfected security interest in the grain inventory and other assets of Grand Forks Bean that may become a part of the trust in any insolvency proceeding, but denies the allegation that Bremer first filed a claim to that effect with the Commission on January 28, 2015, and is without sufficient knowledge or information to form a belief as to the truth as to the remainder of this paragraph and therefore denies the same.

¶7. Bremer admits the allegations of paragraph 15 of the Petition that bids were entertained, including from Central Valley Bean Cooperative, but is without sufficient knowledge or information to form a belief as to the truth as to the remainder of this paragraph and therefore denies the same.

¶8. Bremer admits the allegations of paragraph 16 of the Petition as to Central Valley

Bean Cooperative's bid, but is without sufficient knowledge or information to form a belief as to the truth as to the remainder of this paragraph and therefore denies the same.

¶9. Bremer is without sufficient knowledge or information to form a belief as to the truth the allegations of paragraph 26 of the Petition in that there has been no allegation or assertion of any proper demand for any payment or re-delivery for any grain purchased, marketed, or stored by Grand Forks Bean Company, Inc.

¶10. Bremer states that the allegations of paragraph 27 of the Petition states a legal conclusion as to which no response is required.

¶11. Bremer states that the allegations of paragraph 28 of the Petition states a legal conclusion as to which no response is required.

¶12. Bremer is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 29 of the Petitioner as to whether bond proceeds will be needed to redeem outstanding receipts issued by Grand Forks Bean Company and states that the remainder of the allegations of paragraph 29 of the Petition state a legal conclusion as to which no response is required.

¶13. Bremer admits the allegation of paragraph 30 of the Petition that the Commission is not requesting the bonding company be joined at this time, but Bremer is without sufficient knowledge or information to form a belief as to the truth of the allegations in the remainder of the paragraph.

¶14. Bremer admits the allegation of paragraph 31 of the Petition that Credit-Sale Contract Indemnity Fund proceeds may be needed if Grand Forks Bean is determined to be insolvent, but Bremer states that the remainder of the allegations of paragraph 31 of the Petition state a legal conclusion as to which no response is required.

¶15. Bremer states that paragraphs 32 to 36 of the Petition state legal conclusions and/or prayers for relief as to which no response is required.

Affirmative Defenses to Petition

¶16. The Petition fails to state a claim upon which relief can be granted.

¶17. The Respondent Grand Forks Bean Company, Inc. is able to meet its repayment and redelivery obligations upon a proper demand for payment or redelivery.

¶18. The claims in the Petition are barred by the doctrine of estoppel.

¶19. The claims of various producers/growers as alleged in the Petition are subject to setoff in favor of Bremer, as the perfected secured party of Grand Forks Bean Company Inc.'s accounts and inventory and proceeds therefrom.

¶20. The claims of the producers/growers are subordinate to and subject to Bremer's perfected security interest in all grain inventory and proceeds of that inventory.

¶21. The claims of the producers/growers may be barred in whole or part by the statute of frauds if any statements not in a signed writing are being relied upon by said grower/producer.

¶22. The claims of the producers/growers may be barred in whole or part by an applicable statute of limitations or statute of repose.

¶23. The claims of the producers/growers may be barred in whole or part by laches.

¶24. WHEREFORE, Bremer prays for judgment on its Answer as follows:

- a. Dismissing the Application;
- b. Denying the Commission's request for appointment as Trustee under N.D.C.C. ch. 60-04;
- c. Ordering that any grain inventory or proceeds thereof be turned over to Bremer and

Grand Forks Bean Company, Inc., in accordance with Bremer's Crossclaim;

- d. For Bremer's Costs and Disbursements incurred herein; and
- e. For such other and further relief determined to be just and equitable.

COUNTERCLAIM

COMES NOW, Respondent Bremer Bank, National Association, by and through its Attorneys Tracy A. Kennedy and John D. Schroeder, for and as its Counterclaim against the North Dakota Public Service Commission Petitioner alleges and states as follows:

COMMON COUNT - FACTUAL ASSERTIONS

¶25. Grand Forks Bean Company, Inc. ("Grand Forks Bean") is a corporation formed under the laws of North Dakota with its principal place of business at 2120 North Washington Street, Grand Forks, North Dakota.

¶26. Bremer Bank, National Association ("Bremer") is a bank formed under the National Banking Act, with its principal place of business at 3100 S. Columbia Rd. Grand Forks, North Dakota. Bremer Bank is authorized to do business in North Dakota.

¶27. The North Dakota Public Service Commission ("PSC" or "Commission") is an agency of the State of North Dakota formed under N.D. Const. Art. V, § 2, and N.D.C.C. ch. 49-01.

¶28. Grand Forks Bean took out loans from Bremer. The amount owed by Grand Forks Bean to Bremer is principal in the amount of \$641,471.06, accrued interest at the variable rate of 4.25% per annum as stated in the loan documents through September 3, 2015, of \$22,844.00, and interest per day of \$75.7292224 after that date.

¶29. As part of that financing, Grand Forks Bean pledged to Bremer certain of its personal property assets including all "inventory" to Bremer to secure the loans, among other

categories of collateral. Attached hereto, and incorporated herein by reference, as Exhibit A to D, are security agreements executed by Grand Forks Bean Company, Inc. describing the property pledged to Bremer, dated October 20, 2011, September 12, 2012, November 9, 2012, and October 14, 2013. The categories of collateral pledged include “inventory”, “accounts”, “equipment”, “general intangibles”, and “chattel paper”, as well as other collateral attached to or traceable to these categories.

¶30. Bremer has perfected its security interest through filings of UCC-1 Financing Statements with the North Dakota Secretary of State’s office. Attached hereto, and incorporated herein by reference, as Exhibit E is the filed UCC financing statement in favor of Alerus Financial dated September 30, 2005; Exhibit F is the filed UCC financing statement assignment from Alerus Financial to Bremer dated October 3, 2011; Exhibit G is another filed UCC financing statement in favor of Bremer dated January 6, 2012.

¶31. Grand Forks Bean was in default under the terms of the security agreements and other loan documents with Bremer. Recognizing this default, Bremer and Grand Forks Bean entered into a Loan Workout Agreement, dated January 7, 2015, a copy of which is attached hereto and incorporated herein by reference as Exhibit H. Due to the institution of this insolvency proceeding against Grand Forks Bean, it is now in default of the Loan Workout Agreement.

¶32. The Commission and any growers or producers have not filed with the North Dakota Secretary of State’s office any type of financing statement or lien statement against Grand Forks Bean. On information and belief, there is no security agreement between either the Commission or any growers/producers and Grand Forks Bean.

¶33. Bremer’s perfected security interest has a first priority lien to all of the inventory and

other categories of collateral of Grand Forks Bean described in any security agreement and financing statement, and all proceeds therefrom as and against any claims of either the Commission or any growers/producers.

COUNT ONE – DECLARATORY JUDGMENT – PRIORITY

¶34. The allegations of paragraphs 25 to 33 of the Counterclaim are incorporated herein by reference.

¶35. The Commission seeks to gain control of, and disperse proceeds realized from the sale of Grand Forks Bean's inventory which has been pledged as collateral to Bremer and is subject to Bremer's first priority lien.

¶36. The Commission's control or attempted control and disbursement of Grand Forks Bean's grain inventory or its proceeds may be in violation of Bremer's rights under its perfected first priority security interest in the inventory and other collateral of Grand Forks Bean pledged to Bremer.

¶37. There is a real and present controversy over the relative rights of the Commission and Bremer to Grand Forks Bean's grain inventory or its proceeds.

¶38. Bremer desires the court declare, pursuant to N.D.C.C. ch. 32-23, and determine that Bremer holds a first priority lien in the inventory and other collateral of Grand Forks Bean pledged to Bremer which the Commission seeks to possess and dispose of, as trustee under N.D.C.C. ch. 60-04 or otherwise, and any distribution or claim of the Commission or the growers/producers are subordinate to Bremer in the assets of Grand Forks Bean that have been pledged to Bremer.

¶39. WHEREFORE, Bremer prays the court grant the following relief:

- a. Declare Bremer has a perfected lien on the inventory and other assets described in

any security agreement between Grand Forks Bean and Bremer and financing statement superior to the rights of the Commission or any other person;

- b. Declare that any distribution out of any assets controlled or administered by the Commission traceable to collateral pledged to Bremer be first distributed to Bremer to satisfy the outstanding loan to Grand Forks Bean before being distributed to the Commission or any other person;
- c. An award of Bremer's costs and expenses incurred in this action; and
- d. For such further relief determined to be just and equitable.

CROSSCLAIM

COMES NOW, Respondent Bremer Bank, National Association, by and through its Attorneys Tracy A. Kennedy and John D. Schroeder, for and as its Crossclaim against Grand Forks Bean Company, Inc. Respondent alleges and states as follows:

COMMON COUNT - FACTUAL ASSERTIONS

¶40. Grand Forks Bean Company, Inc. ("Grand Forks Bean") is a corporation formed under the laws of North Dakota with its principal place of business at 2120 North Washington Street, Grand Forks, North Dakota.

¶41. Bremer Bank, National Association ("Bremer") is a bank formed under the National Banking Act, with its principal place of business at 3100 S. Columbia Rd. Grand Forks, North Dakota. Bremer Bank is authorized to do business in North Dakota.

¶42. The North Dakota Public Service Commission ("PSC" or "Commission") is an agency of the State of North Dakota formed under N.D. Const. Art. V, § 2, and N.D.C.C. ch. 49-01.

¶43. Grand Forks Bean took out loans from Bremer. The amount owed by Grand Forks

Bean to Bremer is principal in the amount of \$641,471.06, accrued interest at the variable rate of 4.25% per annum as stated in the loan documents through September 3, 2015, of \$22,844.00, and interest per day of \$75.7292224 after that date.

¶44. As part of that financing, Grand Forks Bean pledged to Bremer certain of its personal property assets including all “inventory” to Bremer to secure the loans, among other categories of collateral. Attached hereto, and incorporated herein by reference, as Exhibit A to D, are security agreements executed by Grand Forks Bean Company, Inc. describing the property pledged to Bremer, dated October 20, 2011, September 12, 2012, November 9, 2012, and October 14, 2013. The categories of collateral pledged include “inventory”, “accounts”, “equipment”, “general intangibles”, and “chattel paper”, as well as other collateral attached to or traceable to these categories.

¶45. Bremer has perfected its security interest through filings of UCC-1 Financing Statements with the North Dakota Secretary of State’s office. Attached hereto, and incorporated herein by reference, as Exhibit Exhibit E is the filed UCC financing statement in favor of Alerus Financial dated September 30, 2005; Exhibit F is the filed UCC financing statement assignment from Alerus Financial to Bremer dated October 3, 2011; Exhibit G is another filed UCC financing statement in favor of Bremer dated January 6, 2012.

¶46. Grand Forks Bean was in default under the terms of the security agreements and other loan documents with Bremer. Recognizing this default, Bremer and Grand Forks Bean entered into a Loan Workout Agreement, dated January 7, 2015, a copy of which is attached hereto and incorporated herein by reference as Exhibit H. Due to the institution of this insolvency proceeding against Grand Forks Bean, it is now in default of the Loan Workout Agreement.

COUNT ONE – ACTION ON SECURITY AGREEMENT AND
LOAN WORKOUT AGREEMENT

¶47. The allegations of paragraphs 40 to 46 of the Crossclaim are incorporated herein by reference.

¶48. Grand Forks Bean is in default on the loan due to failure to make payment when due, Bremer reasonably deems itself to be insecure, the institution of an insolvency proceeding against Grand Forks Bean, failure of Grand Forks Bean to remain an ongoing business, and other terms of default as defined in the loan documents between Bremer and Grand Forks Bean.

¶49. Due to the default by Grand Forks Bean, Bremer is entitled to liquidate collateral pledged for the loan and apply to the loan the net proceeds realized from the collateral, after deducting reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral.

¶50. Due to the default by Grand Forks Bean, under the terms of any security agreement between Grand Forks Bean and Bremer, Bremer has all of the rights of a secured creditor under the Uniform Commercial Code, N.D.C.C. tit. 41, and, in addition, Bremer is entitled to the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and to attorney's fees and legal expenses, unless prohibited by law, incurred in collection.

COUNT TWO – ACTION ON PROMISSORY NOTE AND
LOAN WORKOUT AGREEMENT

¶51. The allegations of paragraphs 40 to 50 of the Crossclaim are incorporated herein by

reference.

¶52. Grand Forks Bean is in default on the loan due to failure to make payment when due, Bremer reasonably deems itself to be insecure, the institution of an insolvency proceeding against Grand Forks Bean, failure of Grand Forks Bean to remain an ongoing business, and other terms of default as defined in the loan documents between Bremer and Grand Forks Bean.

¶53. Due to the default by Grand Forks Bean, Bremer is entitled to a money judgment against Grand Forks Bean for the amount of the indebtedness.

¶54. WHEREFORE, Bremer prays the court grant the following relief:

- a. That Bremer's security interest in all assets of Grand Forks Bean described in any security agreement between Bremer and Grand Forks Bean be foreclosed and that the collateral be sold subject to Court supervision and the proceeds applied to the outstanding debt of Grand Forks Bean with Bremer;
- b. For entry of a money judgment in favor of Bremer Bank, National Association against Grand Forks Bean, Inc. in the amount of \$641,471.06, accrued interest at the variable rate of 4.25% per annum as stated in the loan documents through September 3, 2015, of \$22,844.00, and interest per day of \$75.7292224 after that date prior to entry of judgment and after judgment is entered the highest rate of interest permitted by law upon judgments.
- c. An award of Bremer's costs and expenses incurred in this action; and
- d. For such further relief determined to be just and equitable.

Dated this ____ day of _____, 2015.

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