

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF IOWA**

In re:	)	Case No. 14-02689-als11
)	
FOODS, INC. d/b/a DAHL’S FOODS	)	Chapter 11
)	
Debtor and Debtor in Possession	)	Hon. Anita L. Shodeen
)	
PO Box 1218	)	FIRST AMENDMENT TO DEBTOR’S
Johnston, IA 50131	)	SECOND AMENDED COMBINED
	)	PLAN OF REORGANIZATION AND
EIN: 42-0803702	)	DISCLOSURE STATEMENT DATED
	)	AUGUST 17, 2015
)	
	)	Date: October 9, 2015
	)	Time: 9:00 a.m.
	)	Courtroom 1

COMES NOW Foods, Inc. d/b/a Dahl’s Foods, the debtor and debtor-in-possession herein (“Dahl’s” or the “Debtor”), by and through its duly-employed General Reorganization Counsel, Jeffrey D. Goetz, Esq., of the law firm of Bradshaw, Fowler, Proctor & Fairgrave, P.C., and hereby respectfully files the instant First Amendment to the Debtor’s Second Amended Plan of Reorganization and Disclosure Statement dated August 17, 2015 (the “Plan”), and would show this Honorable Court as follows:

1. Article III, Section B, is modified as follows:

The Effective Date of this Plan shall be fourteen (14) days after the Confirmation Date. ~~Order becoming a final, non-appealable order, unless extended by an Order of the Bankruptcy Court. If a stay of the Confirmation Order is in effect on that date, the Effective Date will be the first Business Day after that date on which no stay of the Confirmation Order is in effect, unless the Confirmation Order has been vacated.~~

2. Article III, Section C(1), is modified as follows:

Administrative expenses are costs or expenses of administering the Debtor’s Chapter 11 case which are allowed under Code § 507(a)(2). Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days

before the Petition Date for which a Code § 503(b)(9) Claim has been filed and allowed. The Code requires that each Administrative Expense Claim be paid on the Effective Date of the Plan, unless the holder of the Claim agrees to different and/or less favorable treatment.

On December 4, 2014, the Debtor filed with the Court a Motion Pursuant to Bankruptcy Code Sections 503 and 105(a) for Approval of Procedures for the Treatment of Claims Asserted Under Bankruptcy Code Section 503(b)(9) (Docket Item 166). The Court granted the Debtor's Motion on December 8, 2014 (Docket Item 172). Pursuant to the 503(b)(9) procedures, the Debtor filed its Bankruptcy Code Section 503(b)(9) Report with the Court on January 28, 2015 (Docket Items 293 & 294). Following good faith settlement negotiations with Creditors holding 503(b)(9) Claims, the Debtor filed an Amended Bankruptcy Code Section 503(b)(9) Report on February 11, 2015 (Docket Item 333) and a Second Amended Bankruptcy Code Section 503(b)(9) Report on February 26, 2015 (Docket Item 349). The Debtor's Second Amended 503(b)(9) Report was approved by the Court on March 20, 2015 (Docket Item 392). Attached hereto as Exhibit "H" is a listing of all allowed 503(b)(9) Claims.

Further, following a hearing on motions for administrative expenses and objections thereto, the Court entered an Order granting such motions for administrative expenses on March 20, 2015 (Docket Item 393).

All Allowed Administrative Expense Claims will be paid Pro Rata. If there are insufficient funds on hand to pay the Allowed Administrative Expense Claims in full, the balance owed shall be paid by the Trust as additional funds are collected and received by the Trust. The Debtor believes there will be sufficient Cash on hand to pay all Allowed Administrative Expense Claims in full on the Effective Date

The following chart lists the Debtor's estimated administrative expenses and their treatment under this Plan:

Type	Estimated Amount Owed	Proposed Treatment
Allowed Bankruptcy Code Sec. 503(b)(9) Claims	\$1,077,493.00 <u>\$1,079,729</u>	Paid in full on or before the Effective Date of the Plan, or according to such different and/or less favorable terms by agreement.
Post-Petition Ordinary Course of Business Claims	\$255,000.00 <u>\$280,000</u>	Paid in full on or before the Effective Date of the Plan, or according to such different and/or less favorable terms by agreement.
Allowed Executory Contract and Unexpired Lease Assumption Cure Claim	\$71,432.00 <u>\$88,126</u>	Paid in full on or before the Effective Date of the Plan, or according to such different and/or less favorable terms by agreement.
Professional Fees, as approved by the Court (estimated)	\$140,000.00	Allowed Professional Fees will be paid 100% of what is allowed by the Court on the Effective Date of the

		Plan or the entry of a Final Order approving such Claim, Any amounts subsequently approved by the Court shall be paid within 14 days of the Court's approval.
Office of the U.S. Trustee Fees	\$1,625.00 <u>\$10,000</u>	Paid in full on the Effective Date of the Plan
TOTAL	\$1,545,550.00 <u>\$1,597,855</u>	

3. Article III, Section C(2), is modified as follows:

2. Priority ~~Tax~~ Claims

“Priority ESOP Claims” are the asserted priority claims of John Michael Maier, Professional Fiduciary Services, LLC, as trustee for the Dahl’s Employee Stock Ownership Plan and Trust, on behalf of the beneficiaries of the Dahl’s Employee Stock Ownership Plan (the “ESOP Trustee”), which are asserted under Code § 507(a)(5). The Trustee shall establish a segregated account containing \$154,868 (the “Priority ESOP Claim Escrow”) that shall not be distributed until further order of the Court with respect to the resolution of the treatment of Holders of Allowed Priority ESOP Claims. Holders of Allowed Priority ESOP Claims shall receive either: (i) the Priority ESOP Claim Escrow; or (ii) the identical treatment of Allowed Class 4 Claims.

Priority Tax Claims are secured real estate property taxes and unsecured sales and use taxes described by Code § 507(a)(8). Unless the holder of such a § 507(a)(8) Priority Tax Claim agrees to different and/or less favorable treatment, it must receive the present value of such Claim, in regular installments paid over a period not exceeding five (5) years from the order of relief.

There are no known § 507(a)(8) Priority Tax Claims. The Iowa Department of Revenue filed a priority tax claim in the amount of \$89,018.65 (Claim No. 124). The amount of this priority tax claim will be paid in full on the Effective Date of the Plan.

4. Article III, Section D, is modified as follows:

Class 4 – Subordinated General Unsecured ESOP Contribution Claims	Impaired	<u>The Trustee shall establish a segregated account containing \$904,119 (the “Class 4 Escrow”) that shall not be distributed until further order of the Court with respect to the resolution of the treatment of Allowed Class 4 Claims. Allowed Class 4 Claims will either: (i) receive the identical treatment as Allowed Class 3 Claims; or (ii) be paid a Pro Rata dividend, if any and only to the extent Allowed Class 3 Claims are paid in full, from the net proceeds of the assets of the Liquidating Trust which includes, without limitation, Cash on hand, any recoveries</u>
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		made on avoidance of preference payments and fraudulent transfers and Directors & Officers and Insurance Policies, and from the sale, liquidation or other disposition of the remaining non-real estate and non-operational assets of the Reorganized Debtor on the Effective Date, depending on the results and resolution of any disputes. Pursuit of said recoveries and resolution of any disputes with Creditors and the sale, liquidation or other disposition of the non-real estate and non-operational assets shall be administered by the Trustee of the Liquidating Trust. The Debtor estimates that the Class 4 Claim is approximately \$1,058,987.00.
Class 5 – Equity Interest Holders	Impaired	All Class 5 Interests shall be cancelled on the Effective Date of the Plan. Allowed Class 5 Equity Interests will be paid a Pro Rata dividend, if any, and only to the extent Allowed Class 3 and Class 4 Claims are paid in full, from the net proceeds of the assets of the Liquidating Trust which includes, without limitation, Cash on hand, Directors & Officers and Insurance Policies, and from the sale, liquidation or other disposition of the remaining non-real estate and non-operational assets of the Reorganized Debtor on the Effective Date, depending on the results and resolution of any disputes. Pursuit of said recoveries and resolution of any disputes with Creditors and the sale, liquidation or other disposition of the non-real estate and non-operational assets shall be administered by the Trustee of the Liquidating Trust.

5. Article VI, Section A, is modified as follows:

Substantially all of the Debtor’s real estate and operational assets have been sold, transferred or otherwise liquidated during the pendency of this case and prior to the filing of this Plan, either in the ordinary course of business or pursuant to orders of this Court.

~~Upon confirmation of the Plan, the~~The Reorganized Debtor will make payment in full to all unclassified claims and payments in full to Classes 1C and 2 on the Effective Date of the Plan; provided, however, that Priority ESOP Claims shall be paid as provided in Article III, Section C(2) of this Plan. The Reorganized Debtor will make an initial distribution on all Allowed Class 3 Claims in an amount to be determined prior to Confirmation by the Debtor in consultation with the Official Committee.

The net proceeds from the sale of substantially all of the Debtor’s real estate and operational assets that were not distributed in the ordinary course of business or in accordance with orders of the Court will be held in a trust account pending confirmation of this Plan, and disbursed by the Debtor pursuant to the Plan and Confirmation Order on the Effective Date of

the Plan. Any Cash, non-real estate and non-operational assets of the Debtor held by the Debtor or Reorganized Debtor on the Effective Date, including, without limitation, any rights, titles, Claims, Causes of Action under Chapter 5 of the Code, or otherwise (the "Litigation Claims"), and all Assets of the Debtor on the Effective Date (collectively, the "Liquidating Trust Assets"), will be irrevocably transferred to the Trustee of the Liquidating Trust on the Effective Date, which will sell, liquidate and/or otherwise dispose of said assets after the Effective Date for the benefit of Creditors, and distributed pursuant to the Plan and the Liquidating Trust Agreement. The deeding of any real property, if any, to the Liquidating Trustee shall be exempt from document stamps pursuant to Code Section 1146(a).

6. Article VI, Section M, is modified as follows:

M. ~~Termination of the~~The Dahl's Employee Stock Ownership Plan and Trust

The Debtor currently sponsors the Dahl's Employee Stock Ownership Plan and Trust (the "ESOP"). The ESOP was originally adopted on September 26, 1975 and was last amended and restated on January 22, 2013. The custodian of the assets of the ESOP is The ~~Principal ESOP Trustee~~. Prior to the Petition Date, the Debtor, as employer, matched contributions made by employees who contributed to the Dahl's 401(k) Plan 100%, up to 4% of the employees earnings. The ESOP also allowed for discretionary contributions from the employer.

~~The Debtor has ceased contributions to the ESOP and will terminate the ESOP through the ESOP's Third Party Administrator, The Principal, who will assist the ESOP participants in "rolling over" and/or distributing their vested account balances, if any.~~

As the Debtor's Plan provides for liquidation of substantially all of the Debtor's assets, and the Debtor has ceased all business operations, the Debtor shall ~~terminate be deemed to have rejected~~ the ESOP as of the Effective Date. Any Allowed Claim against the Debtor arising from such ~~termination rejection~~ shall be ~~subordinate to the Claims of the Allowed Class 3 Claims pursuant to section 510(b) of the Bankruptcy Code and shall be~~ classified as a Class 4 Claim and treated accordingly. Notwithstanding such rejection, (i) nothing contained in the Plan shall be deemed to terminate the ESOP or impair the ESOP Trustee's rights or standing with respect to defending or objecting to the treatment of the Priority ESOP Claims or the Class 4 Claims; and (ii) the ESOP shall remain in effect until the Bankruptcy Case is closed or the ESOP has fully administered all assets and controversies in which it is involved, in the sole discretion of the ESOP Trustee. The Liquidating Trustee and the Debtor will not exercise its right to remove the ESOP Trustee pursuant to Section 10.12 of the ESOP except for cause. Cause is defined as a breach of a fiduciary duty, intentional wrongful act, gross negligence, fraud or such other action that has or could cause material harm to the ESOP or its beneficiaries.

Since the Petition Date, the Debtor has not engaged any actuary or other accounting professional to determine the amount of the Debtor's unfunded liability, either as of the Petition Date, or the Effective Date. As of the filing of this Plan, the Department of Labor has filed a proof of Claim. The Claims Bar Date for Governmental Units, including the ESOP, shall be sixty (60) days after the Effective Date. Notice of the Bar Date for Administrative Expense

Claims shall be included in the Confirmation Order mailed to all Creditors and interested parties in the case.

The ESOP Trustee may have causes of action on behalf of the ESOP that do not constitute property of the Debtor's bankruptcy estate. To the extent such causes of action exist, nothing in this Plan affects the ESOP Trustee's rights. The ESOP Trustee may decide to have the causes of action investigated or pursued by the Liquidating Trustee or his counsel on terms the parties may agree.

7. Article VI, Section Q, is modified as follows:

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ON AND AFTER THE EFFECTIVE DATE, EXCEPT AS OTHERWISE SET FORTH IN THE PLAN, ALL PERSONS AND ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD LIENS, CLAIMS OR INTERESTS IN OR AGAINST THE DEBTOR OR REORGANIZED DEBTOR ARE, WITH RESPECT TO OR ON ACCOUNT OF ANY SUCH LIENS, CLAIMS OR INTERESTS, PERMANENTLY ENJOINED FROM: (I) COMMENCING, CONDUCTING OR CONTINUING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY SUIT, ACTION OR OTHER PROCEEDING OF ANY KIND (INCLUDING, WITHOUT LIMITATION, ANY PROCEEDING IN A JUDICIAL, ARBITRAL, ADMINISTRATIVE OR OTHER FORUM) AGAINST OR AFFECTING THE DEBTOR OR REORGANIZED DEBTOR, THE OFFICIAL COMMITTEE, OR THE LIQUIDATING TRUST OR ANY OF THEIR RESPECTIVE PROPERTY, DIRECT OR INDIRECT TRANSFEREES, DIRECT OR INDIRECT SUCCESSORS IN INTEREST, REPRESENTATIVES, AGENTS, OR PROFESSIONALS (EXCLUDING THE DEBTOR'S INSIDERS); (II) ENFORCING AGAINST, LEVYING UPON OR ATTACHING (INCLUDING, WITHOUT LIMITATION, ANY PRE-JUDGMENT ATTACHMENT) THE DEBTOR OR REORGANIZED DEBTOR, THE OFFICIAL COMMITTEE, OR THE LIQUIDATING TRUST OR ANY OF THEIR RESPECTIVE PROPERTY, DIRECT OR INDIRECT TRANSFEREES, DIRECT OR INDIRECT SUCCESSORS IN INTEREST, REPRESENTATIVES, AGENTS, OR PROFESSIONALS (EXCLUDING THE DEBTOR'S INSIDERS); (III) ENFORCING, LEVYING, ATTACHING (INCLUDING, WITHOUT LIMITATION, ANY PRE-JUDGMENT ATTACHMENT), COLLECTING OR OTHERWISE RECOVERING BY ANY MANNER OR MEANS WHETHER DIRECTLY OR INDIRECTLY, OF ANY JUDGMENT, AWARD, DECREE, CLAIM OR ORDER AGAINST THE DEBTOR OR REORGANIZED DEBTOR, THE OFFICIAL COMMITTEE, OR THE LIQUIDATING TRUST OR ANY OF THEIR RESPECTIVE PROPERTY, DIRECT OR INDIRECT TRANSFEREES, DIRECT OR INDIRECT SUCCESSORS IN INTEREST, REPRESENTATIVES, AGENTS, OR PROFESSIONALS (EXCLUDING THE DEBTOR'S INSIDERS); (IV) CREATING, PERFECTING OR OTHERWISE ENFORCING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY LIENS, CLAIMS OR INTERESTS OF ANY KIND AGAINST OR IN THE DEBTOR OR REORGANIZED DEBTOR, THE OFFICIAL COMMITTEE, OR THE LIQUIDATING TRUST OR ANY OF THEIR RESPECTIVE PROPERTY, DIRECT OR INDIRECT TRANSFEREES, DIRECT OR INDIRECT SUCCESSORS IN INTEREST, REPRESENTATIVES, AGENTS, OR PROFESSIONALS

(EXCLUDING THE DEBTOR'S INSIDERS); ~~AND (V) OTHER THAN AS OTHERWISE EXPRESSLY PROVIDED FOR IN THE PLAN, ASSERTING ANY RIGHT OF SETOFF, SUBORDINATION OR RECOUPMENT OF ANY KIND, DIRECTLY OR INDIRECTLY, AGAINST ANY OBLIGATION DUE THE DEBTOR OR REORGANIZED DEBTOR, THE OFFICIAL COMMITTEE, OR THE LIQUIDATING TRUST OR ANY OF THEIR RESPECTIVE PROPERTY, DIRECT OR INDIRECT TRANSFEREES, DIRECT OR INDIRECT SUCCESSORS IN INTEREST, REPRESENTATIVES, AGENTS, OR PROFESSIONALS (EXCLUDING THE DEBTOR'S INSIDERS); AND (VI)~~ TAKING ANY ACTIONS IN ANY PLACE AND IN ANY MANNER WHATSOEVER THAT DO NOT CONFORM TO OR COMPLY WITH THE PROVISIONS OF THE PLAN. FOR THE AVOIDANCE OF DOUBT, NOTHING IN THIS SECTION SHALL BE INTENDED TO, OR BE DEEMED TO, RELEASE, ENJOIN, DISCHARGE OR OTHERWISE IMPACT ANY CLAIMS, CAUSES OF ACTION, OR RIGHTS OF ANY PARTY AGAINST THE INSIDERS OF THE DEBTOR.

All injunctions or stays provided for in the Bankruptcy Case under section 105 or 362 of the Code, or otherwise, and in existence on the Effective Date, will remain in full force and effect through the imposition of the injunction set forth in the Plan.

8. Appendix 1 – Definitions, Paragraph 32, is modified as follows:

Plan: The Debtor's ~~First~~Second Amended Plan of Reorganization dated August 7, 2015, and any exhibits and schedules attached thereto and any documents incorporated by reference, either in its present form or as it may be altered, amended or modified from time to time to the extent permitted herein or by the Bankruptcy Code.

Dated: October 8, 2015

Respectfully submitted,

By: /s/ Dean Longnecker

Dean Longnecker, Chief Executive
Officer & Chief Restructuring Officer
Foods, Inc.

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CERTIFICATE OF SERVICE

This document was served electronically on parties who receive electronic notice through CM/ECF as listed on CM/ECF's notice of electronic filing.

/s/ Barbara Warner