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FILED

APR 02 2015

PEGGY A. SEMPRIMOZNIK
LINCOLN COUNTY CLERK

SUPERIOR COURT OF WASHINGTON IN AND FOR LINCOLN COUNTY

WOLFKILL FEED & FERTILIZER
CORPORATION, a Washington corporation,

Plaintiff,

NO. 15 - 2 00023 - 4

COMPLAINT

v.

TRANSMESSIS COLUMBIA PLATEAU,
LLC, a Delaware limited liability company;
DAMON PISTULKA, an individual; LOUIS
SOMAS, an individual; JOSEPH ROZELLE;
an individual; CHRISTOPHER EFIRD; an
individual; and JANE AND JOHN DOES 1-10,

Defendants.

COMES NOW the Plaintiff, Wolfkill Feed & Fertilizer Corporation ("Wolfkill"), by
and through its counsel of record, Lukins & Annis, P.S., and hereby claims and alleges the
following:

I. PARTIES

1.1 Wolfkill is a Washington corporation that transacts business in Lincoln County,
Washington.

1.2 Defendant Transmessis Columbia Plateau, LLC ("TCP") is a Delaware limited
liability company that transacts business in Lincoln County, Washington.

COMPLAINT: 1

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LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
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1 4.2 Pursuant to the Credit Application and the related documents or agreements,
2 Wolfkill and TCP have a contractual relationship giving rise to express contractual covenants
3 and obligations owed by TCP to Wolfkill, as well as the implied duty to act in good faith and in
4 accord with fair dealing.

5 4.3 TCP is in breach of contract and has violated and continues to violate the Credit
6 Application and related covenants, obligations or agreements with Wolfkill by, among other
7 things, failing to pay for canola seed ordered, delivered and accepted by TCP.

8 4.4 In addition to the breach of express contractual covenants, obligations and duties
9 set forth in the Application, TCP is in breach of the implied covenant of good faith and fair
10 dealing by failing to perform its contractual obligations in good faith.

11 4.5 As a direct and proximate cause of TCP's breaches of contract and violations of
12 the covenant of good faith and fair dealing, Wolfkill has suffered damages in an amount to be
13 proven at trial.

14 4.6 The individual defendants are vicariously liable for the liability of TCP.
15 Defendants Pistulka, Rozelle, Efird and Soumas did not maintain separate personalities at the
16 time the TCP was accepting and not paying for Wolfkill canola seed deliveries. As a result,
17 Defendants Pistulka, Rozelle, Efird, Soumas and potentially others should not be shielded by
18 the corporate veil of TCP.

19 4.7 At times pertinent to this action, TCP was undercapitalized and its debts and
20 liability greatly exceeded its assets and any attempt to collect a judgment against TCP would be
21 futile.

22 4.8 If the foregoing allegations, acts and omissions of TCP and the individual
23 defendants were treated solely as those of TCP and not attributed to the personal liability of the
24 individual defendants, an inequitable result will result.

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COMPLAINT: 4

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1 **SECOND CAUSE OF ACTION – NEGLIGENT / INTENTIONAL**
2 **MISREPRESENTATION**

3 4.9 Wolfkill reincorporates the preceding paragraphs and allegations as if fully set
4 forth herein.

5 4.10 Defendants made material misrepresentations and/or omissions of existing facts
6 to Wolfkill, concerning, among other things, TCP's financial status and credit worthiness,
7 which were done negligently and/or with the intent to deceive and defraud Wolfkill.

8 4.11 Defendants intended that Wolfkill rely on the material misrepresentations or
9 omissions, which Wolfkill did rely upon to its detriment. Further, Defendants knew or should
10 have known that Wolfkill would rely on the material misrepresentations or omissions and
11 would suffer damages as a result.

12 4.12 As a direct and proximate cause of Defendants' negligent or intentional
13 misrepresentations or omissions, Wolfkill has suffered damages in an amount to be proven at
14 trial.

15 **THIRD CAUSE OF ACTION – DECLARATORY RELIEF**

16 4.13 Wolfkill realleges the preceding paragraphs and allegations as if each was fully
17 set forth herein and further alleges as follows:

18 4.14 There is a justiciable controversy between the parties and a judgment declaring
19 the rights, status or legal relationships of the parties will terminate the controversy.

20 4.15 This Court should issue a judgment declaring that the individual defendants,
21 above-named, are personally and vicariously liable for the debts and obligations owed to
22 Wolfkill by TCP.

23 **V. PRAYER FOR RELIEF**

24 WHEREFORE, Wolfkill prays for judgment against Defendants, jointly and severally,
25 as follows:

COMPLAINT: 5

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- 1 1. For an award for damages in an amount to be proven at trial;
- 2 2. For an award of pre- and post-judgment interest;
- 3 3. For a judgment declaring that the corporate veil of TCP be disregarded and that
- 4 the individual defendants as above-named or as subsequently added into this lawsuit are
- 5 personally and vicariously liable for the debts and obligations of TCP.
- 6 4. For an award of reasonable attorneys' fees and costs pursuant to applicable
- 7 statutes, the parties' agreement, common law, and pursuant to the Court's equitable powers;
- 8 and
- 9 5. For such other and further relief as may be just and equitable.

10 DATED this 24th day of September, 2014.

11 LUKINS & ANNIS, P.S.

12

13 By  _____

14 MICHAEL O. FRANKLIN

15 WSBA #34213

16 Attorneys for Plaintiff

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COMPLAINT: 6