Dated: September 22, 2020
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re

JOHN H. SMITH,	**Case No. 19-10939**
Debtor.	**Chapter 7**

MEMORANDUM OPINION RE: (1) FARM CREDIT SERVICES OF AMERICA, PCA'S MOTION FOR RELIEF FROM ORDER GRANTING DEBTOR AUTHORITY TO SELL ASSET FREE AND CLEAR OF LIEN, CLAIM, AND ENCUMBERANCE, AND REQUEST FOR CORRECTION OF PRIORITY AND ENTITLEMENT TO PROCEEDS FROM SALE TO PAUL HERBERT (ECF NO. 215) AND (2) IBERIABANK'S OBJECTION THERETO (ECF NO. 224)

Farm Credit Services of America, PCA d/b/a AgDirect ("AgDirect"), seeks to set aside two orders of this Court and recover proceeds from the sale of a piece of farm equipment in which AgDirect claims a first priority security interest. IberiaBank objects to the requested relief and asserts that it held the first priority lien at the time of the sale. Resolution of this matter requires the Court to determine what effect, if any, termination

statements as to AgDirect's Original UCC-1 had on the priority of the security interests in this matter and on the orders approving the sale of the collateral.

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K). This Court has subject matter jurisdiction over core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This Court also has constitutional authority to hear and finally resolve this matter. *Black Diamond Commercial Fin., L.L.C., v. Murray Energy Corp.* (*In re Murray Energy Holdings Co.*), 616 B.R. 84, 87 (Bankr. S.D. Ohio 2020). Thus, the Court may enter a final order in this matter. This memorandum opinion shall serve as the Court's finding of facts and conclusions of law. Fed. R. Bankr. P. 7052 and 9014.

I. Facts

The parties in this matter filed a Joint Stipulation of Undisputed Facts on July 30, 2020, which are reproduced here, verbatim, (footnotes in original).

1. On or about October 27, 2014, AgDirect financed John H. Smith's (the "Debtor") purchase of a certain Geringhoff NS 1230F Corn Head, bearing Serial Nos. 1011206151230F and 10435 (the "Corn Head") through a retail installment contract and security agreement (the "Security Agreement") [Doc. 215-1, ¶4 (Affidavit of Mike Spence)].

2. On October 29, 2014, the Debtor purchased the Corn Head from JL Farm Equipment Company, Inc., and AgDirect filed a UCC-1 (Doc. #422331499) with the Tennessee Secretary of State (AgDirect's "Original UCC-1") [Doc. 215-1, ¶¶5-6].

3. Two years later, on September 22, 2016, the Debtor refinanced his credit facility. Part of the new credit facility was an equipment loan from IberiaBank in the amount of $1,607,750.00 (the "Equipment Loan") [Doc. 224, ¶3].

4. In order to secure the Equipment Loan, the Debtor executed an Equipment Security Agreement in which he granted a security interest to IberiaBank in his farm equipment. One of the pieces of farm equipment in which a security interest was given is the Corn Head which was specifically described in the Equipment Security Agreement as a Gering Hoff 12-Row Corn Header (Serial No. 10435). [Doc. 224, ¶4].

5. On September 26, 2016, IberiaBank filed a UCC-1 (Doc. 425699843) with the Tennessee Secretary of State as to the security interest which it was granted in the Corn Head and other farm equipment under the Equipment Security Agreement.

6. On October 3, 2016 (ten days after the Equipment Loan was funded), an individual named Walter Smith filed a termination statement as to AgDirect's Original UCC-1. This termination statement states that it was filed on behalf "Farm Credit Services of Mid-America, PCA" and the termination statement further contains the following language:

   > Send Acknowledgment to (name and address)
   >
   > Farm Credit Services of America, PCA
   > PO Box 2409 Omaha, NE 88103

   This is the same address listed for AgDirect shown [on] AgDirect's Original UCC-1 [Doc. 224, ¶6].

7. AgDirect is a separate and distinct legal entity from Farm Credit Services of Mid-America, PCA and from successor entities Farm Credit Mid-America, FLCA and Farm Credit Mid-America, PCA, which are subsidiaries of Farm Credit Mid-America, ACA. Each of these entities are distinct and separate legal entities from AgDirect, and none have authority or power to act on behalf of AgDirect or to authorize termination of AgDirect's UCC-1 financing statements.

8. Walter Smith was never an employee or agent of AgDirect, and AgDirect did not authorize or have knowledge of this termination statement filed by Walter Smith [Doc. 215-1, ¶20, 22].

9. During its investigation, AgDirect learned that Walter Smith was a former employee of Farm Credit Mid-America [Doc. 215-1, ¶20]. Farm Credit Mid-America, PCA was previously known as Farm Credit Services of Mid-America, PCA.

10. AgDirect did not discover the termination statement filed by Walter Smith until it initiated its investigation after learning of this bankruptcy [Doc. 215-1, ¶ 23].

11. AgDirect never received a request to terminate its Original UCC-1, and AgDirect has never received any payments for termination of its Original UCC-1 [Doc. 215-1, ¶24].

12. On August 2, 2018, after defaults on the credit facility, IberiaBank obtained a Temporary Restraining Order from the Henry County

Chancery Court which precluded the Debtor from misappropriating or improperly disposing of collateral securing its loans [Doc. 224, ¶8].

13. On August 14, 2018, the Debtor filed his first Chapter 11 Petition in the Western Division (Memphis) of the U.S. Bankruptcy Court for the Western District of Tennessee (Case no. 2:18-bk-26817) (the "First Chapter 11 Proceeding") [Doc. 224, ¶9].

14. The Schedules to the First Chapter 11 Petition show the following:

    a. The Debtor owns the Corn Head which has a value of $45,000.00 (Schedule A/B);
    b. IberiaBank is the secured creditor with the paramount lien on the Corn Head (Schedule D-2.6);
    c. Murray Bank has a junior lien on the Corn Head (Schedule D-2.67); and
    d. AgDirect is not listed as a creditor of the Debtor (Schedule E/F).

    [Doc. 224, ¶10(a)-(d)].

15. On October 3, 2018, the First chapter 11 Proceeding was dismissed [pursuant to 11 U.S.C. § 1112(b)].

16. On October 5, 2018, IberiaBank filed an Amended Complaint in the Henry County Chancery Court. Marianna "Molly" Williams was appointed as receiver and began to collect and liquidate the assets of the Debtor [Doc. 224, ¶12].

17. Molly Williams was the Court appointed receiver from October 5, 2018, until the filing of the Second Chapter 11 Proceeding on April 26, 2019. Molly Williams never made a payment to AgDirect.

18. In December 2018, AgDirect received two payments from John Smith in the total amount of $12,521.33. The first payment was by a check dated December 10, 2018, from John H. Smith and Sherry R. Smith (bearing no. 121018) in the amount of $6,000.00. The second payment was by a check dated December 26, 2018, from John H. Smith and Sherry R. Smith (bearing no. 122618) in the amount of $6,521.33.

19. In order to stop a pending foreclosure of the deed(s) of trust securing the Real Estate Loan, on April 26, 2019, the Debtor filed a second Chapter 11 Petition, this time in the Eastern Division (Jackson) of the U.S. Bankruptcy Court for the Western District of Tennessee (Case no. 2:19-bk-10939) (the "Second Chapter 11 Proceeding") [Doc. 224, ¶13].

20. The Schedules to the Second Chapter 11 Petition show the following:

    a. The Debtor owned the Corn Head with value of $45,000.00 (the

"Geringhoff") (Schedule A/B);
b. IberiaBank was the secured creditor with the paramount lien on the Corn Head and all of the Farm Equipment (Schedule D-2.6); and
c. AgDirect was not listed as a creditor of the Debtor (Schedule E/F).

21. AgDirect was not listed in the creditor matrix as to either Petition, and therefore did not receive notice of the Debtor's First Chapter 11 Petition or Second Chapter 11 Petition, nor did AgDirect have contemporaneous knowledge of the filing of either proceeding [Doc. 215-1, ¶13].[1]

22. On June 6, 2019, IberiaBank filed a Motion for Relief from the Automatic Stay and to Excuse Turnover (the "Motion for Stay Relief"). The Motion specifically covered the Equipment listed in the Equipment Security Agreement including the Corn Head [Doc. 224, ¶ 15].

23. On June 19, 2019, AgDirect's filing service filed a continuation statement as to its Original UCC-1 (Doc. 430608343) (AgDirect's "Continued UCC-1") [Doc. 215-1, ¶8; Doc. 224, ¶16].

24. On August 21, 2019, the Debtor and IberiaBank entered into an Agreed Order as to the Motion for Stay Relief (the "Agreed Stay Relief Order"). In the Agreed Stay Relief Order, the Court lifted the Automatic Stay and granted IberiaBank the right to sell the Equipment including the Corn Head [Doc. 224, ¶17].

25. In paragraph 4 of the Agreed Stay Relief Order, the Court, however, granted to the Debtor a right of first refusal (the "Right of First Refusal") during a twenty-one (21) day period following the entry of the Agreed Order in which to purchase any or all of the Equipment from the Estate at the "orderly liquidation" value listed in the Equipment Appraisal [Doc. 224, ¶18].

26. The Debtor elected to exercise this Right of First Refusal and, on September 13, 2019, filed a Motion for Authority to Sell Assets pursuant to 11 U.S.C. § 363 Free and Clear of Liens, Claims and Encumbrances (the "363 Motion"). In the 363 Motion, the Debtor proposed selling certain equipment listed in Exhibit A to the 363 Motion to Paul Herbert for $399,500.00. Lot No. 30 on Exhibit A is the Corn Head with a sales price of $32,500.00 [Doc. 224, ¶¶19-20].

27. On September 20, 2019, a termination statement was filed as to AgDirect's Continued UCC-1 by Jane Garvin with the law firm Martin,

[1] AgDirect was first added to the Debtor's schedules on January 13, 2020, after the case was converted to a Chapter 7 proceeding [Doc. 161].

Tate, Morrow, & Marston, P.C., which was counsel of record for IberiaBank in these proceedings at that time [Doc. 215-1, ¶21].

28. This termination statement filed by IberiaBank's prior counsel of record states in the body of the document that it was authorized by "Farm Credit Services of America, PCA", but AgDirect did not authorize or have knowledge of this termination statement. Further, AgDirect would not have received any acknowledgment (written, electronic, or otherwise) of the filing of the termination statement filed by Jane Garvin as AgDirect is not shown as the recipient of the acknowledgment [Doc. 215-1, ¶¶21-22].

29. AgDirect lacked knowledge of the termination statement filed by Jane Garvin and, in fact, did not receive any notice of that filing at any time prior to AgDirect's discovery of the termination statement in the course of its investigation initiated after learning of this bankruptcy [Doc. 215-1, ¶ 23].

30. AgDirect never received a request to terminate its Continued UCC-1, and AgDirect has never received any payments for the termination of its Continued UCC-1 [Doc. 215-1, ¶24].

31. On October 10, 2019, the Court granted the 363 Motion and entered an Order Granting Motion to Sell Assets pursuant to 11 U.S.C. § 363 Free and Clear of Liens, Claims, and Encumbrances (the "363 Order"). Pursuant to the 363 Order, the Debtor was authorized to sell the Corn Head to Paul Herbert for $32,500.00 [Doc. 224, ¶21].

32. In paragraph 2 of the 363 Order, the Court held that "the Debtor is authorized to immediately sell, convey, transfer, assign and/or deliver to Paul Herbert or his assignee ("Herbert") all of the personal property listed on Exhibit A to the Motion (the "Herbert Purchased Assets") in exchange for $399,500.00, which amount is presently held in the Debtor's counsel's escrow account. The sale of the Herbert Purchased Assets shall be free and clear of all liens, claims and encumbrances pursuant to 11 U.S.C. § 363, and the Debtor's counsel shall release the aforesaid funds as soon as practically possible following entry of this Order by wire transfer to IberiaBank ("Iberia") and/or its counsel which sum shall be credited toward the secured claim of Iberia in this cause, the Court having found that Iberia holds a first-priority security interest in the proceeds from Herbert Purchased Assets" [Doc. 224, ¶22].

33. In paragraph 9 of the 363 Order, the Court stated that "notwithstanding anything to the contrary in 11 U.S.C. § 349, any subsequent dismissal or closure of this case shall not vacate this Order, re-vest any of the purchased assets referenced herein, reinstate any lien held by any

creditor against any of the purchased assets described herein, nor require Iberia to return any of the funds received for the sales allowed hereby. The Court finds that Herbert, R. Smith, S. Smith, and Copeland are purchasers in good faith under 11 U.S.C. § 363(m)" [Doc. 224, ¶23].

34. In paragraph 11 of the 363 Order, the Court held that it "retains jurisdiction to enforce the terms of this Order or to determine any disputes regarding this Order" [Doc. 224, ¶24].

35. On November 7, 2019 (nunc pro tunc), the Court entered an Amended Order Granting Motion to Sell Assets pursuant to 11 U.S.C. § 363 Free and Clear of Liens, Claims, and Encumbrances (the "Amended 363 Order"). The Amended 363 Order corrected typographical errors as to Exhibits B & C, but did not change the treatment of sale of the Corn Head to Paul Herbert [Doc. 224, ¶25].

36. On November 14, 2019, IberiaBank sold via an auction the remaining Equipment not sold pursuant to the 363 Sale. (The Corn Head was not sold in the Auction.) [Doc. 224, ¶26].

37. AgDirect did not receive notice of, nor did it have contemporaneous knowledge of, any of these pleadings, proceedings, motions, or orders occurring between June 6, 2019 and November 14, 2019, including but not limited to the Motion for Relief from Stay, Agreed Stay Relief Order, Right of First Refusal, 363 Motion, 363 Order, or the Amended 363 Order [Doc. 215-1, ¶ 16].

38. On December 19, 2019, this Court converted the instant bankruptcy case to a Chapter 7 proceeding [Doc. 224, ¶28].

39. The first payment that the Debtor failed to make to AgDirect under the Security Agreement was in November of 2019, in response to which AgDirect attempted to contact the Debtor by telephone for the purpose of checking on the status of that payment [Doc. 215-1, ¶9].

40. Payments from the Debtor to AgDirect under the Security Agreement were due once annually in November of each year, and the Debtor made each of these annual payments to AgDirect for the years of 2014, 2015, 2016, 2017, and 2018 [Doc. 215-1, ¶7; Doc. 299-1, ¶¶6-8].

41. AgDirect was eventually able to speak with the Debtor by telephone on or about December 18, 2019, at which point he told AgDirect about this bankruptcy and provided AgDirect with contact information for his counsel. This conversation was the first time that AgDirect was informed or had knowledge of a bankruptcy being filed on behalf of the Debtor [Doc. 215-1, ¶10].

42. After learning of the bankruptcy, AgDirect engaged counsel to investigate matters related to the location of the Corn Head and to represent AgDirect's interests [Doc. 215-1, ¶11].

43. During its investigation, AgDirect learned for the very first time that the Debtor had filed a prior bankruptcy in 2018 [Case No. 18-26817], which was dismissed and that the current bankruptcy had been converted to a Chapter 7 proceeding [Doc. 215-1, ¶12].

44. During its investigation, AgDirect learned for the very first time about the Motion for Relief from Stay, Agreed Stay Relief Order, Right of First Refusal, 363 Motion, 363 Order, or the Amended 363 Order [Doc. 215-1, ¶16].

45. During its investigation, AgDirect learned for the very first time about the termination statements filed by Walter Smith and Jane Garvin, both of which were filed without notice to or the knowledge, consent, or authorization of AgDirect [Doc. 215-1, ¶¶19, 23].

46. During its investigation, AgDirect also discovered and learned for the very first time that the Corn Head against which it claimed a security interest had been sold to Paul Herbert "free and clear of all liens, claims, and encumbrances", that proceeds in the amount of $32,500.00 were received from Paul Herbert pursuant [to] the 363 Sale; and that IberiaBank was deemed in the Orders to hold a first priority lien in the collateral sold to Paul Herbert and thus also to be entitled to a first priority lien as against the proceeds derived therefrom [Doc. 215-1, ¶15].

47. This Corn Head sold pursuant to the 363 Order is the same Corn Head which the Debtor purchased form JL Farm Equipment Company, Inc in 2014, and against which AgDirect previously held its security interests as a result of its UCC-1 filings [Doc. 215-1, ¶17-18].

48. AgDirect did not receive notice, nor did it have knowledge, of either of the Debtor's bankruptcy proceedings at any point in time prior to December 18, 2019 [Doc. 215-1, ¶13].

49. On January 22, 2020, AgDirect filed a proof of claim in the amount of $35,787.16 which it claims is secured by with a first priority lien against the Corn Head [Doc. 215-1, at ¶14].

50. On March 19, 2020, AgDirect demanded that IberiaBank pay $42,184.47 to it for improperly selling the Corn Head and converting the proceeds thereof.

51. On April 7, 2020, IberiaBank rejected the demand because it did not sell the Corn Head, and because it received the proceeds of $32,500.00 pursuant to the orders of the Court.

52. On April 21, 2020, AgDirect filed its Motion [Doc. 215] and an affidavit of Mike Spence in support of the same [Doc. 215-1]. On May 19, 2020, IberiaBank filed its Objection to the Motion [Doc. 224]. On May 21, 2020, IberiaBank filed a Declaration of Brett A. Schubert [Doc. 225]. On May 24, 2020, IberiaBank filed a Declaration of Marianna Williams [Doc. 226]. On June 16, 2020, AgDirect filed a supplemental affidavit of Mike Spence [Doc. 229-1].

(Joint Stipulation of Undisputed Facts, ECF No. 230.)

After reviewing the pleadings in this matter, the Court makes the following additional findings of fact. The UCC-1 Financing Statement filed by AgDirect on October 29, 2014, lists the secured party of record as "Farm Credit Services of America, PCA," with a mailing address of "PO Box 2409, Omaha, NE 68103." (ECF No. 215-1 at 24.) The UCC-3 Financing Statement Amendment filed by Walter Smith on October 3, 2016, provides that "Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of Secured Party Authorizing this Termination Statement." (ECF No. 215-1 at 43, Item 2.) Walter Smith identified the "Name of Secured Party of Record Authorizing this Amendment" as "Farm Credit Services of Mid-America, PCA." (*Id.* at Item 9.) Walter Smith asked the Secretary of State to send acknowledgement of the termination statement to "Farm Credit Services of America, PCA" at "PO Box 2409, Omaha, NE 68103." (*Id.* at C.)

On May 21, 2020, IberiaBank filed a "Declaration of Brett A. Schubert, Esq." (ECF No. 225.) Schubert is an attorney with the firm Martin Tate Morrow & Marston, P.C., which represented IberiaBank in this proceeding prior to April 1, 2020. In a footnote, Schubert discussed the termination statements filed in this case.

> … On September 19, 2019, the undersigned sent a letter to Stephen Hughes, Esq., counsel for Farm Credit Mid-America, FLCA, requesting authority to terminate certain financing statements, including, for clarity of title, the errantly continued and previously terminated subject financing statement and received authority to do so. Martin Tate did, on September 20, 2019, in an abundance of caution, file a re-termination of the subject financing statement at Doc. # 431296683. Thereafter, counsel for Farm Credit Services of America, PCA d/b/a Ag Direct contacted the undersigned

> and informed that there was a distinction between the two Farm Credit entities. The undersigned acknowledged that the second termination was made in good faith and upon mutual mistake and has offered to acknowledge, assuming that the two entities are different, that said filing was ineffective. These facts are disclosed in good faith, as previously disclosed to counsel for Farm Credit Services of America, PCA d/b/a Ag Direct but do not change the position that a financing statement, once terminated, cannot be resuscitated (during the pendency of an automatic stay no less) by filing a continuation. Therefore, the undersigned, assmes the secondary release was innocuous.

(*Id.* at 3, n.1.)

The Court conducted a hearing on AgDirect's Motion for Relief from Orders and IberiaBank's Objection thereto on August 6, 2020.

II. Conclusions of Law

AgDirect asks this Court to grant it relief from the October 10, 2019 "Order Granting Motion to Sell Assets Pursuant to 11 U.S.C. § 363 Free of Liens, Claims, and Encumbrances" and the November 7, 2019 "Amended Order Granting Motion to Sell Assets Pursuant to 11 U.S.C. § 363 Free and Clear of Liens, Claims and Encumbrances" pursuant to Federal Rule of Civil Procedure 60(b)(4) and (6). AgDirect asserts that it is entitled to relief from these orders based on a lack of due process resulting from failure to be served with notice of both the Debtor's motion to sell the Corn Head pursuant to 11 U.S.C. § 363 and the Debtor's underlying bankruptcy proceeding. AgDirect asks the Court to vacate the orders to the extent they declare IberiaBank first priority lienholder as to the Corn Head and the $32,000 in proceeds received in exchange for the Corn Head. AgDirect also asks the Court to determine that AgDirect, not IberiaBank or any other creditor, was the first priority lienholder as to the Corn Head and that AgDirect is entitled to the proceeds from the sale of the Corn Head. As grounds for this relief, AgDirect asserts that the termination statements filed with respect to its original UCC-1 and its continued UCC-1 were unauthorized and, therefore, ineffective to terminate its security interest.

IberiaBank objects to the relief requested by AgDirect and asserts that the termination statement filed by Walter Smith on October 3, 2016, terminated AgDirect's interest in the Corn Head even though it was unauthorized. Thus, IberiaBank argues that

AgDirect was not entitled to notice of the § 363 Sale, is not entitled to seek relief from the order approving that sale under Federal Rule of Civil Procedure 60(b) and is not entitled to the proceeds from the sale.

The validity and extent of a creditor's security interest is determined by reference to state law. *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918 (1979). Accordingly, the Court must look to Tennessee law to determine what effect, if any, the termination statements had on AgDirect's security interest in the Corn Head.

The Tennessee Uniform Commercial Code ("UCC") is codified at Tennessee Code Annotated ("TCA") §§ 47-9-101 through 47-9-809. Section 47-9-513 states that "[e]xcept as otherwise provided in § 47-9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective." Tenn. Code Ann. § 47-9-513(d)(1). Section 47-9-510 provides that "[a] filed record is effective only to the extent that it was filed by a person that may file it under § 47-9-509." Tenn. Code Ann. § 47-5-510(a). Section 47-9-509 states that a "person may file an amendment … only if (1) the secured party of record authorizes the filing[.]"[2] Tenn. Code Ann. § 47-9-509(d). Section 47-9-511 defines "secured party of record" as "a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed." Tenn. Code Ann. § 47-9-511(a).

Surprisingly, there are no reported decisions from Tennessee state or federal courts that address TCA §§ 47-9-509(d), 47-9-510(a), 47-9-511(a), or 47-9-513(d). There are also no reported Tennessee state or federal decisions that address the effectiveness of an unauthorized termination statement under the Tennessee UCC. Because of this, the Court must review decisions from outside the state that address these issues under similar provisions of the UCC.

The court will begin its analysis with the main case relied on by IberiaBank, *Roswell Capital Partners, LLC, v. Alternative Constructions Technologies,* No. 08 Civ. 10647(DLC), 2010 WL 3452378 (S.D.N.Y. Sept. 1, 2010). In that case, the court was

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[2] A termination statement is an "amendment" for purposes of § 47-9-509. Tenn. Code Ann. § 47-9-102(a)(80).

called upon to decide a priority dispute under the Florida UCC. The main issue in the case was whether the conversion of debt into equity terminated a creditors' security interest. As a secondary issue, the court was asked to determine the effect of an unauthorized termination statement. On a motion for summary judgment, the district court ruled that the debt to equity conversion terminated the security interest and the objecting creditor did not have "any enforceable security interest" in the collateral, let alone one that had priority. *Id.* at *6.

Although it had already decided the merits of the case, the *Roswell* court also discussed the efficacy of unauthorized termination statements under the Florida UCC. The court stated that an unauthorized termination statement "releases the secured creditor's lien against the debtor's property[.]" *Id.* at 7 (citation and internal quotation marks omitted). The court noted that the remedy for an unauthorized termination was to seek damages under § 625 of the Florida UCC. Although this analysis supports IberiaBank's argument, that portion of the *Roswell* opinion was dicta. The court's conclusion that the conversion of the debt into equity terminated the security interest fully resolved the matter. As such, the court's discussion of the efficacy of the subsequent UCC-3 termination statement was superfluous, and in any event, is not binding precedent on this Court.

On appeal, the Second Circuit affirmed the district court's conclusion that conversion of the debt into equity terminated the security interest. *Roswell Capital Partners, LLC v. Beshara*, 436 F. App'x 34, at *35-36 (2011). Because the case could be affirmed on that conclusion alone, the Court of Appeals did not review the district court's discussion of unauthorized termination statements.

Four years after issuance of *Roswell*, the Second Circuit addressed the effectiveness of termination statements under the UCC in *Official Committee of Unsecured Creditors v. JP Morgan Chase Bank, N.A.* (*In re Motors Liquidation Co.*), 777 F.3d 100 (2015). At issue in the case was whether a UCC-3 termination statement that referenced the wrong financing statement effectively terminated that security interest under the Delaware UCC. The creditor asserted that it did not. The bankruptcy court agreed. 486 B.R. 596 (Bankr. S.D.N.Y. 2013). In so doing, however, the bankruptcy

court noted that "there is no controlling decision by the Second Circuit (or any Circuit), the Delaware Supreme Court, the New York Court of Appeals, or the highest court of any other state." *Id.* at 646-47. For that reason, the court certified the matter for a direct appeal to the Second Circuit. 755 F.3d 78, 82 (2d Cir. 2014).

On appeal, the Second Circuit stated that resolution of the case required a court to analyze two distinct issues. "[F]irst, what it is that a secured lender must authorize," in order for a termination statement to be effective under Delaware's UCC provisions. *Id.* at 84. Second, did the person filing the UCC-3 have authority to file the termination statement. "Because the first question is an issue of first impression in the interpretation of Delaware UCC Article 9 and may be determinative of the appeal," the Second Circuit certified the following question to the Supreme Court of Delaware:

> Under UCC Article 9, as adopted into Delaware law by Del. Code Ann. tit. 6, art. 9, for a UCC–3 termination statement to effectively extinguish the perfected nature of a UCC–1 financing statement, is it enough that the secured lender review and knowingly approve for filing a UCC–3 purporting to extinguish the perfected security interest, or must the secured lender intend to terminate the particular security interest that is listed on the UCC–3?

Id. at 84, 86.

Upon certification, the Delaware Supreme Court held that in order to qualify as an "authorization" under the Delaware UCC, "it [is] enough that the secured lender review and knowingly approve for filing a UCC–3 purporting to extinguish the perfected security interest." *Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A.,* 103 A.3d 1010, 1011–12 (Del. 2014) (internal quotation marks and citation omitted). In so doing, the court reviewed §§ 9-509, 9-510, and 9-513 of the Delaware UCC, which are identical to the corresponding Tennessee provisions, and concluded that these statutes unambiguously make clear that "for a termination statement to have the effect specified under § 9–513 of the Delaware UCC, it is enough that the secured party authorizes the filing." *Id.* at 1014. Although the secured party in the case argued that "a filing is only effective if the authorizing party understands the filing's substantive terms and intends their effect," the Supreme Court held that "the Delaware UCC contains no requirement that a secured party that authorizes a filing subjectively

intends or otherwise understands the effect of the plain terms of its own filing." *Id.* at 1014, 1018.

Following receipt of the Delaware Supreme Court's answer to the certified question, the Second Circuit resumed its analysis of the issue. The court recognized that the key determination was whether the creditor had "authorize[d] the filing of the UCC-3 termination statement that mistakenly identified for termination" the wrong financing statement. 777 F.3d 100, 104. The creditor argued that "it never instructed anyone to file the UCC–3 in question, and the termination statement was therefore unauthorized and ineffective." *Id.* However, because the creditor and its counsel had reviewed the erroneous UCC-3 prior to filing, the Second Circuit concluded that the termination statement was effective.

> [A]lthough JPMorgan never intended to terminate the [third] UCC-1, it authorized the filing of a UCC–3 termination statement that had that effect. "Actual authority ... is created by a principal's manifestation to an agent that, as reasonably understood by the agent, expresses the principal's assent that the agent take action on the principal's behalf."

Id. at 105 (quoting Restatement (Third) of Agency § 3.01 (2006); *Demarco v. Edens,* 390 F.2d 836, 844 (2d Cir.1968)).

Other courts around the country have confronted the same issue the Second Circuit did in *Motors Liquidation*: whether filing the termination statement was within the scope of the filer's authority. In these cases, this has been the dispositive issue. *Lange v. Mutual of Omaha Bank* (*In re Negus-Sons, Inc.*), 460 B.R. 754, 758 (B.A.P. 8th Cir. 2011), *aff'd,* 701 F.3d 534 (8th Cir. 2012) (concluding that termination statement filed in error was authorized, and thus effective, because secured party of record had reviewed the documents which stated "all" security interests would be terminated); *Crop Prod. Servs. v. Wheeler (In re Wheeler)*, 580 B.R. 719, 724 (Bankr. W.D. Ky. 2017) (concluding that erroneously filed termination statement was effective because "authorization relates to the act of filing, not necessarily the effect of that act. As long as the usual person handling such statements filed it, authorization exists." (citation omitted)); *Ward v. Bank of Granite* (*In re Hickory Printing Grp., Inc.*), 479 B.R. 388, 396 (Bankr. S.D.N.Y. 2012) (concluding that termination statement filed in error was effective because it had been

filed by employee who regularly filed termination statements on behalf of creditor); *Paccor Fin'l Corp. v. Benton Trucking Service, Inc.* (*In re Benton Trucking Service, Inc.*), 21 B.R. 574, 576 (Bankr. E.D. Mich. 1982) (holding that a forged termination statement cannot be effective because it is, by its very nature, unauthorized). The relevant UCC provisions these courts have interpreted are similar, if not identical, to Tennessee's.

The decisions in *Motors Liquidation* and other similar cases are inapposite to the case at bar. The issue before the Court is not whether the termination statement was mistakenly filed by an authorized entity. The parties have stipulated that neither Walter Smith nor Jane Garvin had authority to file termination statements on behalf of AgDirect and that AgDirect did not have any knowledge of the termination statements prior to their filing. (*See* Joint Stipulation of Undisputed Facts, ECF No. 230 at ¶¶ 7, 8, 10 & 28.) Rather, the issue in the case at bar is whether an unauthorized termination statement is effective. This is an entirely different issue from whether an authorized termination statement that was mistakenly filed has any effect on a security interest.

The majority of courts that have addressed unauthorized termination statements have concluded they are ineffective and do not terminate the underlying security interest. *Int'l Home Prods., Inc. v. First Bank of Puerto Rico, Inc.*, 495 B.R. 152, 162 (D.P.R. 2013); *Primerock Real Estate Fund, LP v. RAG East, LP* (*In re RAG East, LP*), Bankr. No. 12-22328-CMB, Adv. No. 12-2454-CMB, 2013 WL 796616, *11 (Bankr. W.D. Penn. March 4, 2013); AEG *Liquidation Trust v. Toobro N.Y. LLC*, No. 650680/10, 2011 WL 253035, *9 (N.Y. Sup. Ct. June 24, 2011).[3] These courts base their decisions on the plain language of the relevant UCC provisions. *E.g., In re RAG East, LP*, 2013 WL 796616 at *12. In so doing, they also reject the analysis set forth in *Roswell*'s dicta. *In re Int'l. Home Prods., Inc.*, 495 B.R. at 162 ("The Court subscribes to the reasoning, however, that *Roswell's* analysis is misguided" based on the plain language of the UCC) (citations omitted)); *Toobro*, 2011 WL 253035 at *9, n.1 (noting that the cases relied upon by the

[3] Although one court in the Sixth Circuit has determined that an unauthorized termination statement was effective to terminate the security interest, it did so in the context of liability under Ky. Rev. Stat. Ann. § 355.9-625(2), not the issue of priority. *People's Bank of Ky., Inc. v. U.S. Bank, N.A.* (*In re S.J. Cox Enters., Inc.*), Bankr. No. 07-50705, Adv. No. 08-5066, 2009 WL 939573, *6 (Bankr. E.D. Ky. March 4, 2009) (Tennessee has the identical UCC provision at TCA § 47-9-625).

district court in *Roswell* "trace back to out-of-state cases citing and interpreting earlier versions of Article 9."); *see also In re Negus-Sons, Inc., 460 B.R. at 757, n.10 ("Roswell's* holding appears to be contrary to the plain language of the Uniform Commercial Code").

As noted by the court in *Toobro*, the *Roswell* "analysis runs against the 'notice filing' system adopted by the UCC. *See* UCC § 9–502, cmt. 2." *Toobro*, 2011 WL 253035 at *9, n.1.

> Under this system, "[w]hat is required to be filed is not, as under pre-UCC chattel mortgage and conditional sales acts, the security agreement itself, but only a simple record providing a limited amount of information (financing statement).... The notice itself indicates merely that a person ***may have a security interest*** in the collateral indicated. ***Further inquiry from the parties concerned will be necessary to disclose the complete state of affairs.*** Section 9–210 provides a statutory procedure under which the secured party, at the debtor's request, may be required to make disclosure." [emphasis supplied] *Id.*
>
> In *Roswell Capital,* the SDNY court considered but distinguished the "notice filing" comment of UCC § 9–502 stating that it "refer[s] only to financing statements,' and not to termination statements." *See* 2010 WL 3452378 at 7, 2010 LEXIS 90695 *24, n. 14. This distinction is inconsistent with the definitions of "financing statement" and "termination statement" under Article 9. *See* UCC §§ 9–102(39), (79). "Financing statement' means a record or records composed of an initial financing statement ***and any filed record relating to the initial financing statement.***" [emphasis supplied] UCC § 9–102(39). "Termination statement' means an amendment of a financing statement which:(A) identifies, by its file number, ***the initial financing statement to which it relates;*** and (B) indicates either that it is a termination statement or that the identified financing statement is no longer effective." [emphasis supplied] UCC § 9–102(79). Since a termination statement is a record "relating to the initial financing statement," it is part of a "financing statement" as this term is defined by the UCC. *See* UCC § 9–102(39). Consequently, the "notice filing" comment of UCC § 9–502 applies to termination statements.

Toobro, 2011 WL 253035 at *9, n.1. The Court agrees with this criticism of *Roswell*. Thus, even if *Roswell*'s discussion of unauthorized termination statements was not dicta, the Court finds it unpersuasive.

Further support for this rejection of *Roswell* can be found in TCA § 47-9-518, entitled "Claim concerning inaccurate or wrongfully filed record." Subsection (c) provides that

> [a] person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under § 47-9-509(d).

Tenn. Code Ann. § 47-9-518(c). The UCC Comments that accompany § 47-9-518 state:

> Sometimes a person files a termination statement or other record relating to a filed financing statement without being entitled to do so. A secured party of record with respect to the financing statement who believes that such a record has been filed may, but need not, file an information statement indicating that the person that filed the record was not entitled to do so. See subsection (c). An information statement has no legal effect. Its sole purpose is to provide some limited public notice that the efficacy of a filed record is disputed. *If the person that filed the record was not entitled to do so, the filed record is ineffective, regardless of whether the secured party of record files an information statement.* Likewise, if the person that filed the record was entitled to do so, the filed record is effective, even if the secured party of record files an information statement. See Section 9-510(a), 9-518(e). Because an information statement filed under subsection (c) has no legal effect, a secured party of record--even one who is aware of the unauthorized filing of a record--has no duty to file one. *Just as searchers bear the burden of determining whether the filing of initial financing statement was authorized, searchers bear the burden of determining whether the filing of every subsequent record was authorized.*

Tenn. Code Ann. § 47-9-518, UCC Comment 2 (emphasis added). This comment makes it abundantly clear that an unauthorized termination statement does not effectively terminate a security interest. Even if the secured creditor is aware of the unauthorized UCC-3, the comments to TCA § 47-9-518 explicitly state that a "secured party of record … *may*, *but need not*, file an information statement indicating that the person that filed the record was not entitled to do so." *Id*. (emphasis added). The secured creditor need not take any additional steps to protect its interest and the original financing statement remains in full force and effect.

This Court agrees with the majority position on the issue and holds that, pursuant to TCA §§ 47-9-509(d), 47-9-510(a), 47-9-511(a) and 47-9-513(d), an unauthorized UCC-3 termination statement does not terminate the underlying security interest. Therefore, the termination statements filed in this case were ineffective to terminate AgDirect's secured interest in the Corn Head. In addition, the continuation statement AgDirect filed on June 19, 2019, sufficiently preserved its secured interest through

October 2024.[4] *See* Tenn. Code Ann. § 47-9-515(e). Putting aside the fact that the UCC is a notice filing system, the fact that the termination statement filed by Walter Smith listed the "Secured Party of Record" as an entity other than AgDirect should have put IberiaBank on notice that further inquiry was necessary.

Having concluded that that termination statements filed by Walter Smith and Jane Garvin did not terminate AgDirect's security interest, the Court must now analyze AgDirect's request that the Court vacate the original and amended § 363 Orders "to the extent that they declare IberiaBank first priority lienholder as to the Corn Head or otherwise entitled to a first-priority lien against the $32,500.00 proceeds received in exchange for the Corn Head." Mot. for Relief from Orders, ECF No. 215 at 2.

"In the absence of an appeal of a final sale order, the only manner in which a sale order may be challenged is through Rule 60(b)." *TransUnion Risk & Alt. Data Sols., Inc. v. The Best One, Inc.* (*In re TLFO, LLC*), 572 B.R. 391, 430 (Bankr. S.D. Fla. 2016) (citation omitted); *United States v. Fortier* (*In re Fortier*), 315 B.R. 829, 833 W.D. Mich. 2004), *aff'd*, 161 F. App'x 514 (6th Cir. 2005); *Pidcock v. Goddard* (*In re SII Liquidation Co.*), No. 10-60702, 2014 WL 5325930 at *14 (Bankr. N.D. Ohio Oct. 17, 2014) (citations omitted)). Federal Rule of Civil Procedure 60(b), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9024, is entitled "Grounds for Relief from a Final Judgment, Order or Proceeding." Rule 60(b) "allows a party to seek relief from a final judgment … under a limited set of circumstances." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 269, 130 S. Ct. 1367 (2010).

Rule 60(b)(4) provides that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: …(4) the judgment is void[.]"[5] Fed. R. Civ. Pro. 60(b)(4). "Rule

[4] Although AgDirect's June 19, 2019 continuation statement was filed after commencement of the case at bar, said filing did not violate the automatic stay. 11 U.S.C. § 362(b)(3); *see also Mostoller v. Citicapital Comm. Corp.* (*In re Stetson & Assocs., Inc.*), 330 B.R. 613, 623 (Bankr. E.D.Tenn. 2005).

[5] In its motion for relief from the sale order, AgDirect also cites Rule 60(b)(6), but does not address it in any substantive way. The entirety of its argument with respect to relief under Rule 60(b) is based on subsection (b)(4). As such, the Court will limit its analysis of the matter to Rule 60(b)(4). Additionally, because the Court concludes that AgDirect is entitled to relief under Rule 60(b)(4), it is unnecessary to address entitlement to relief under Rule 60(b)(6). *Smith v. Sec'y of Health & Human Servs.*, 776 F.2d 1330, 1333

60(b)(4) strikes a balance between the need for finality of judgments and the importance of ensuring that litigants have a full and fair opportunity to litigate a dispute." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 269, 130 S. Ct. 1367, 1376 (2010). "Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." *Id.* at 271 (citations omitted). Lack of notice and sufficient service of process leading ultimately to lack of due process properly renders a judgment void within the meaning of Rule 60(b)(4). *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 108 (6th Cir. 1995) (citation omitted). If due process was lacking, "it would be a *per se* abuse of discretion to deny the movant's motion to vacate." *Ruehle v. Educ. Credit Mgmt. Corp.* (*In re Ruehle*), 307 B.R. 28, 33 (B.A.P. 6th Cir. 2004), *aff'd*, 412 F.3d 679 (6th Cir. 2005) (citations and internal quotation marks omitted). A court may grant relief under Rule 60(b)(4) by vacating the challenged order or by modifying it to redress the due process issues. *Kohut v. United Healthcare Ins. Co.* (*In re LSC Liquidation, Inc.*), 699 F. App'x 503, 508 (6th Cir. 2017).

Federal Rule of Bankruptcy Procedure 2002(a)(2) requires a court to give "all creditors" at least 21 days' notice of a motion to sell property pursuant to 11 U.S.C. § 363. *See also* Fed. R. Bankr. P. 6004(a). When a motion to sell seeks "authority to sell property free and clear of liens or other interests," Bankruptcy Rule 6004(c) requires said motion be "served on the parties who have liens or other interests in the property to be sold." Fed. R. Bankr. P. 6004(c); *see also* Fed. R. Bankr. P. 7004 & 9014.

In the case at bar, the parties stipulated that AgDirect financed the Debtor's purchase of the Corn Head. Thus, AgDirect held a purchase-money security interest ("PMSI") in the Corn Head. Tenn. Code Ann. § 47-9-103(a) & (b); *see also John Deere Co. v. Prod. Credit Ass'n of Murfreesboro*, 686 S.W.2d. 904, 906 (1985). AgDirect perfected its PMSI by filing a financing statement with the secretary of state in accordance with Tenn. Code Ann. § 47-9-310(a) on October 29, 2014. Section 47-9-515(a) of the

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(6th Cir. 1985 ("[A] Rule 60(b)(6) motion must be based upon some reason other than those stated in clauses (1)–(5).") (citations and internal quotation marks omitted).

Tennessee UCC provides that "a filed financing statement is effective for a period of five (5) years after the date of filing." Thus, AgDirect's purchase money security interest was effective at the time the Debtor filed the instant case on April 16, 2019. After the sale of the Corn Head, AgDirect's security interest attached to the sale proceeds. Tenn. Code Ann. § 47-9-315(a)(1) & (2). Pursuant to TCA § 47-9-324(a), AgDirect's purchase-money security interest in the Corn Head and in the proceeds thereof had priority over IberiaBank's interest.[6]

The parties stipulated that AgDirect was not included on the creditor matrix in either of the Debtor's chapter 11 cases and that AgDirect did not have "contemporaneous knowledge of the filing of either proceeding[.]" (Joint Stipulation of Facts, ECF No. 230 at ¶ 21.). The parties also stipulated that AgDirect

> did not receive notice of, nor did it have contemporaneous knowledge of, any of these pleadings, proceedings, motions, or orders occurring between June 6, 2019 and November 14, 2019, including but not limited to the Motion for Relief from Stay, Agreed Stay Relief Order, Right of First Refusal, 363 Motion, 363 Order, or the Amended 363 Order [Doc. 215-1, ¶ 16].

Id. at ¶ 37. Pursuant to Rules 2002, 6004, 7004 and 9014, AgDirect was entitled to notice of the cases and of the motions that concerned the Corn Head. This failure to serve AgDirect resulted in a deprivation of due process which renders portions of the § 363 Order and the Amended § 363 Order void under Rule 60(b)(4).

III. Conclusion

Because the termination statements in this case did not effectively terminate AgDirect's security interest, AgDirect was, at all relevant times, the priority lienholder in the Corn Head. Additionally, because it held a valid, superior lien on the Corn Head at the time of the sale, AgDirect was entitled to notice of the Debtor's bankruptcy filings and all motions related to the Corn Head. Pursuant to Federal Rule of Civil Procedure 60(b)(4), the Court must vacate those portions of the § 363 Order and the Amended § 363

[6] Even if AgDirect's interest was not a purchase money security interest, its interest in the Corn Head and the sale proceeds would still have priority over IberiaBank because Tennessee is a first-to-file state. Tenn. Code Ann. § 47-9-322(a)(1) & (b)(1).

Order that declare IberiaBank first priority lienholder as to the Corn Head and the $32,000 in proceeds received in exchange for the Corn Head.

An Order will be entered in accordance herewith.

Mailing List

Debtor
Justin T. Campbell, attorney for Debtor
Phillip G. Young, Jr., attorney for Debtor
Lynda F. Teems, Chapter 7 Trustee
U.S. Trustee
M. Ruthie Hagan, attorney for IberiaBank
Michael Patton, attorney for IberiaBank
James F. Parker, attorney for AgDirect
IberiaBank c/o CT Corporation System, 300 Montvue Rd., Knoxville, TN
Stephen Hughes, attorney for Farm Credit Mid-America, FLCA
Farm Credit Mid-America, FLCA, attn: Bill Johnson, President, P.O. Box 34390, Louisville, KY 40232
Farm Credit Mid-America, FLCA, attn: Bill Johnson, President, 1601 UPS Drive, Louisville, KY 40223
Charles C. Exum, attorney for The Murray Bank
The Murray Bank, Attn: Bryan Anderson, Vice-President, 405 South 12th St. Murray, KY 42071
Monica Simmons Jones, AUSA
Paul Herbert, 8905 Colins Barre Cove, Germantown, TN 38139
matrix

Dated: September 22, 2020
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re

JOHN H. SMITH,	**Case No. 19-10939**
Debtor.	**Chapter 7**

ORDER RE: (1) FARM CREDIT SERVICES OF AMERICA, PCA'S MOTION FOR RELIEF FROM ORDER GRANTING DEBTOR AUTHORITY TO SELL ASSET FREE AND CLEAR OF LIEN, CLAIM, AND ENCUMBERANCE, AND REQUEST FOR CORRECTION OF PRIORITY AND ENTITLEMENT TO PROCEEDS FROM SALE TO PAUL HERBERT (ECF NO. 215) AND (2) IBERIABANK'S OBJECTION THERETO (ECF NO. 224)

For the reasons set forth in the Memorandum Opinion entered in accordance herewith, the Court **GRANTS** AgDirect's Motion for Relief from Order Granting Debtor Authority to Sell Asset Free and Clear of Lien, Claim and Encumbrance, and Request for Correction of Priority and Entitlement to Proceeds from Sale to Paul Herbert **AS FOLLOWS:**

1. AgDirect was, at all times prior to the 11 U.S.C. § 363 of the Gerringhoff NS 1230F Corn Head, Serial Nos. 101120615123OF and/or 10435 ("Corn Head"),

the holder of a purchase money security interest and perfected first priority lien against the Corn Head sold to Paul Herbert by the Debtor "free and clear of all liens, claims, or encumbrances" for $32,500.00 on November 14, 2019;

2. As the first priority lienholder in the Corn Head, AgDirect was entitled to receive notice of the Debtor's bankruptcy filings and all pleadings related to the Corn Head, including the September 13, 2019 § 363 motion to sell the Corn Head (ECF No. 93), the October 10, 2019 order granting the motion to sell (ECF No. 112), and the November 7, 2019 amended order granting the motion to sell (ECF No. 125);
3. Because AgDirect was the first priority lienholder in the Corn Head, failure to serve AgDirect with notice of the motion to sell and the orders related thereto resulted in a lack of due process which entitles AgDirect to relief under Federal Rule of Civil Procedure 60(b)(4);
4. As the first priority lienholder in the Corn Head, AgDirect is entitled to the proceeds from the sale of the Corn Head in the amount of $32,500.00;
5. To the extent that the October 10, 2019 order granting the motion to sell and the November 7, 2019 amended order granting the motion to sell declare any entity other than AgDirect the priority lienholder in the Corn Head, those orders are vacated; and
6. The party that is currently in possession of the $32,500.00 in proceeds from the sale of the Corn Head is **HEREBY ORDERED** to remit those proceeds to AgDirect as the secured creditor which was rightfully entitled thereto.

The Court also **OVERRULES** IberiaBank's objection to AgDirect's Motion for Relief from Order Granting Debtor Authority to Sell Asset Free and Clear of Lien, Claim and Encumbrance, and Request for Correction of Priority and Entitlement to Proceeds from Sale to Paul Herbert.

IT IS SO ORDERED.

Mailing List

Debtor
Justin T. Campbell, attorney for Debtor
Phillip G. Young, Jr., attorney for Debtor
Lynda F. Teems, Chapter 7 Trustee

U.S. Trustee
M. Ruthie Hagan, attorney for IberiaBank
Michael Patton, attorney for IberiaBank
James F. Parker, attorney for AgDirect
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