

1 Gordon M. Park, # 072190
 Dana B. Denno, # 227971
 2 McCormick, Barstow, Sheppard,
 Wayte & Carruth LLP
 3 P.O. Box 28912
 5 River Park Place East
 4 Fresno, CA 93720-1501
 Telephone: (559) 433-1300
 5 Facsimile: (559) 433-2300

(SPACE BELOW FOR FILING STAMP ONLY)

6 Attorneys for Plaintiff
 AMCO INSURANCE COMPANY

8 UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA

11 AMCO INSURANCE COMPANY, a
 Corporation,
 12
 Plaintiff,
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 v.
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 15 ABBY FARMS, INC., dba MERCADO
 DEL VALLE, a California Corporation,,
 16
 Defendant.

Case No. 01-08-cv-01684-LJO-GSA

**STIPULATION AND ORDER TO DISMISS
 SECOND CAUSE OF ACTION OF
 COUNTERCLAIM WITHOUT
 PREJUDICE**

17
 18 ABBY FARMS, INC., a California
 Corporation,
 19
 Counterclaimant,
 20
 v.
 21
 22 AMCO INSURANCE COMPANY, a
 Corporation, ROES 1-20,
 23
 Counterdefendant.

24 IT IS HEREBY STIPULATED AND AGREED by and between the Parties, through their
 25 respective counsel of record, as follows:

- 26 1. That Defendant/Counterclaimant Abby Farms, Inc. will dismiss, without prejudice,
 27 its Second Cause of Action of the Counterclaim for Breach of The Covenant of Good Faith and
 28 Fair Dealing;

1 2. That, in the event that Defendant/Counterclaimant Abby Farms, Inc. is determined
2 to be the prevailing party on its First Cause of Action for Breach of Contract and/or Plaintiff's
3 Complaint, Plaintiff and Counterdefendant, AMCO INSURANCE COMPANY stipulates that
4 Defendant/Counterclaimant Abby Farms, Inc. may amend its counterclaim to renew its Second
5 Cause Of Action of the Counterclaim for Breach of the Covenant of Good Faith and Fair Dealing
6 as part of these proceedings, or Abby may proceed on such cause of action in such other court as
7 Abby may elect, subject to AMCO's rights of defense, including those relating to jurisdiction and
8 venue. AMCO retains any and all rights to challenge and defend against same, none of which are
9 hereby waived. The parties further stipulate that the statute of limitations for the Second Cause of
10 Action of the Counterclaim for Breach of the Covenant of Good Faith and Fair Dealing is tolled
11 from the date of execution of this stipulation until the date the instant proceedings are resolved by
12 way of settlement and dismissal, summary disposition, or judgment on jury verdict.

13 3. Accordingly, pre-trial discovery and matters admitted to the Court in advance of
14 and at the November 8, 2010 trial pursuant to the July 6, 2009 Scheduling Conference Order,
15 subject to motions in limine and evidentiary rulings at trial, shall be limited to matters relating
16 only to Plaintiff's claims for declaratory relief and Defendant/Counterclaimants' claims for
17 breach of contract.

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19
20 Dated: September 22, 2009

JAMES C. HOLLAND
ATTORNEY AT LAW

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23 By: /s/ James C. Holland
24 James C. Holland
25 Attorneys for Defendant and Counterclaimant,
26 ABBY FARMS, INC., dba MERCADO DEL
27 VALLE
28

1 Dated: September 22, 2009

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

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3
4 By: /s/ Gordon M. Park

Gordon M. Park
Dana B. Denno
Attorneys for Plaintiff and Counterdefendant,
AMCO INSURANCE COMPANY

5
6 **AMCO v. ABBY FARMS**
7 **Case No. 01-08-cv-01684-LJO-GSA**

8
9 **ORDER**

10 The Court, having considered the stipulation of the parties, and for good cause shown,

11 IT IS HEREBY ORDERED that:

12 1. The Second Cause of Action of the Counterclaim for Breach of the Covenant of
13 Good Faith and Fair Dealing is dismissed, without prejudice;

14 2. That, in the event Defendant/Counterclaimant Abby Farms, Inc. is determined to
15 be the prevailing party on its First Cause of Action for Breach of Contract and/or Plaintiff's
16 Complaint, Defendant/Counterclaimant Abby Farms, Inc. will be granted leave to amend its
17 Counterclaim to renew its Second Cause of Action of the Counterclaim for Breach of the
18 Covenant of Good Faith and Fair Dealing as part of these proceedings or Abby may proceed on
19 such cause of action in such other court as Abby may elect, subject to AMCO's rights of defense,
20 including those relating to jurisdiction and venue. AMCO retains any and all rights to challenge
21 and defend against same, none of which are hereby waived. The statute of limitations for the
22 Second Cause of Action of the Counterclaim for Breach of the Covenant of Good Faith and Fair
23 Dealing is tolled until final resolution of this matter, either by way of settlement and dismissal,
24 summary disposition, or judgment on jury verdict.

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3. Pre-trial discovery and matters admitted to the Court in advance of and at the November 8, 2010 trial pursuant to the July 6, 2009 Scheduling Conference Order, subject to motions in limine and evidentiary rulings at trial, shall be limited to matters relating only to Plaintiff's claims for declaratory relief and Defendant/Counterclaimants' claims for breach of contract.

Dated: September 23, 2009

/s/ Lawrence J. O'Neill
United States District Court