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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

KINGSBURG APPLE PACKERS INC.)
D/B/A KINGSBURG ORCHARDS, et. al.)

Plaintiff,)

v.)

BALLANTINE PRODUCE Co., Inc., et. al.,)

Defendants.)

NO. 1:09-CV-901-AWI-SMS

ORDER GRANTING JOINT MOTION
TO AMEND PARAGRAPH 39 OF
THE CONSENT INJUNCTION
ORDER

(Doc. No. 115)

On October 27, 2009, the Kingsburg Group, Comercial Group, LoBue Bros., Inc., RJO Produce Marking, Inc., Wagon Wheel Farms, Inc., and Bank of the West filed a joint motion to amend Paragraph 39 of the June 18, 2009 Consent Injunction and Order Establishing PACA Claims Procedures.¹ Paragraph 39 currently requires all the parties who are unable to resolve their objections to file a separate motion with the court requesting a hearing to determine the validity of their PACA claims no later than October 28, 2009. The proposed amendment to Paragraph 39 would only require four parties: Gestion De Exportaciones Fruticolas, S.A. (“Gestion”), Tuniche Fruits, S.A., (“Tuniche”), Wagon Wheel Farms, Inc. (“Wagon Wheel”) and

¹The court notes that the movants filed and served their motion on the eve of a deadline. The parties are forewarned that any future last-minute filings will not be well received by the court.

1 DiBuduo Land Management, Inc. (“DiBuduo Land”) to file their motions by October 28, 2009.
2 The remaining claimants would not have to file their motions until 60 days after the date of the
3 Court’s order on the validity of Gestion, Tuniche, Wagon Wheel, and DiBuduo Lands’ PACA
4 claims. All of the interested parties, with the exception of DiBuduo Land, have consented to the
5 proposed amendment. The moving parties do not provide an explanation as to why DiBuduo
6 Land has not consented. The movants represent that whether the parties are able to reach a
7 settlement on the distribution of the PACA trust funds depends upon this Court’s rulings on the
8 objections to the claims of Gestion, Tuniche, Wagon Wheel, and DiBuduo Land. The moving
9 parties indicate that amending Paragraph 39 would avoid the costs of further litigation of their
10 claims at this time.

11 After reviewing the proposed amendment, the court finds no prejudice to DiBuduo Land
12 that would outweigh the potential benefit to the case as a whole. In addition, regardless of the
13 amendment, DiBuduo Land would be required to file a motion by October 28, 2009. Thus, the
14 amendment preserves the status quo for DiBuduo Land.

15 Accordingly, the Court will grant the motion and Paragraph 39 is amended as follows:

16 In the event that Gestion De Exportaciones Fruticolas, S.A.,
17 Tuniche Fruits, S.A., Wagon Wheel Farms, Inc., DiBuduo Land
18 Management, Inc. and the objecting parties are unable to resolve
19 the dispute, or the dispute is not withdrawn, on or before “Deadline
20 to File Motion to Determine Validity of Claim” of Wednesday,
21 October 28, 2009, Gestion De Exportaciones Fruticolas, S.A.,
22 Tuniche Fruits, S.A., Wagon Wheel Farms, Inc. and DiBuduo Land
23 Management, Inc. must file with the Clerk of the Court and
24 counsel for the objecting parties, a separate motion to determine
25 the validity, priority or amount of its alleged PACA Claim. Once
26 this Court issues a ruling on the validity of the claims of Gestion
27 De Exportaciones Fruticolas, S.A., Tuniche Fruits, S.A., Wagon
28 Wheel Farms, Inc., and DiBuduo Land Management, Inc. (the
“Court’s Order”), all other claimants have 45 days² from the date
of the Court’s Order to file their Motion to Determine Validity of
Claim.

26 ²The moving parties’ original proposed amendment to Paragraph 39 provided for 60 days.
27 However, the court finds that 45 days allows the remaining claimants sufficient time to file their
28 motions.

1 IT IS SO ORDERED.

2 **Dated:** October 28, 2009

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE

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