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 11 and Martin J. Zaninovich

12 **UNITED STATES DISTRICT COURT**

13 **EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION**

14 ONIONS, ETC., INC. and DUDA FARM
 15 FRESH FOODS, INC.,

16 Plaintiff,

17 vs.

18 Z&S FRESH, INC. fdba Z&S
 19 DISTRIBUTING CO., INC., MARTIN J.
 20 ZANINOVICH, LOREN SCHOENBURG,
 21 AND MARGARET aka MARGE
 22 SCHOENBURG,

23 Defendants

CASE NO. 1:09-CV-00906-OWW-SMS

**STIPULATION AND ORDER REGARDING
 AGREEMENT AND RESOLUTION OF
 PACA CLAIM AMOUNTS OF PACA
 CLAIMANT/ INTERVENING PLAINTIFF
 DEL MONTE FRESH PRODUCE, N.A.**

Date: December 4, 2009
 Time: 1:00 p.m.
 Dept: 3

Complaint Filed: May 22, 2009
 Trial Date: To Be Assigned

AND INTERVENING ACTIONS

Defendants Z&S Fresh, Inc., fdba Z&S Distributing Co., Inc. and Martin J. Zaninovich (“Defendants”), and PACA Claimant/Intervening Plaintiff Del Monte Fresh Produce, N.A. (the “PACA Claimant”)(collectively the “Parties”) herein agree and stipulate regarding resolution of objection to the PACA Claimant’s accepted PACA Claim amounts as follows:

1. A hearing on a Motion to Determine Validity of Claim filed by PACA Claimant is presently scheduled to be heard by this Court on December 4, 2009, at 1:00 p.m. The Parties have met and conferred to discuss resolution to the Objections to the PACA Claim of PACA Claimant/Intervening Plaintiff Del Monte Fresh Produce, N.A. which is the subject of the December 4, 2009, hearing.

2. On November 18, 2009, various PACA claimants and Defendants Z&S

1 Fresh, Inc. and Martin Zaninovich participated in a Court ordered mediation before
2 Magistrate Judge Sandra Snyder.

3 3. Pursuant to a written agreement executed by the Parties (the
4 "Agreement"), the Parties have agreed that Del Monte Fresh Produce, N.A. shall have a
5 PACA Claim in the amount of Thirty Thousand Eight Hundred Seventy-Six Dollars and
6 Seventy-One Cents (\$30,876.71).

7 4. The PACA Claimant stipulates that Defendant Martin Zaninovich may
8 utilize the proceeds from his 401(k) account and/or IRA account. PACA Claimant has
9 been advised of the current approximate balance of each account, and Defendant
10 Martin Zaninovich has agreed to provide PACA Claimant with documentation showing
11 the approximate current balance in each account. PACA Claimant agrees to not make
12 any demand upon the 401(k) and/or IRA account proceeds, and further agree not to
13 seek disgorgement from the recipients of any proceeds from such accounts. PACA
14 Claimant further agrees to waive any claim against such 401(k) and/or IRA proceeds.
15 PACA Claimant and Defendants agree that the agreement contained in this paragraph
16 is conditioned upon (1) Defendant Martin Zaninovich providing documentation showing
17 the approximate balance in each account; and (2) the aggregate balance of such
18 accounts not exceeding the sum of Three Hundred Five Thousand Dollars
19 (\$305,000.00).

20 5. Defendants and PACA Claimant agree and further stipulates that this
21 Stipulation shall not be deemed to constitute a waiver of any defense, argument,
22 position, or rights of Defendants; whether the same be currently known or subsequently
23 discovered against Defendants, other than that which is specifically set forth herein.

24 6. Intervening Plaintiff Frank A. Logoluso Farms joins in this Stipulation.

25 7. Counsel for PACA Claimant represents that it has all necessary approvals
26 and/or authorizations from PACA Claimant, and that this Agreement is binding and final
27 upon PACA Claimant.

28 8. Each party shall bear its own attorneys' fees and costs related to the
Action and the execution of the Agreement.

1 9. The Agreement shall bind and inure to the benefit of all successors,
2 assigns, and heirs of the Parties.

3 10. The Agreement states the entire agreement among the parties and
4 supersedes their prior agreements, negotiations or understandings. Each of these
5 parties acknowledges and agrees that no other party, agent nor attorney of any of the
6 parties has made any promises, representation and/or warranty – express or implied –
7 that is not set forth in this Agreement. This Agreement may not be altered, amended or
8 modified, except in writing executed by duly authorized representatives of the parties.

9 11. Having resolved the objections to the PACA Claimant's PACA Claim, the
10 Parties have agreed to withdraw the PACA Claimant's Motion and the Defendants
11 Objection presently scheduled to be heard by the Court on December 4, 2009 at 1:00
12 p.m.

13 12. The Parties agree that this Stipulation may be executed in Counterparts.

14 Dated: December 4, 2009

WALTER & WILHELM LAW GROUP,
a Professional Corporation

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17 By: /s/ Norman D. Morrison IV
Norman D. Morrison IV
18 Attorneys for Defendants, Z&S Fresh,
Inc. and Martin J. Zaninovich

19 Dated: December 4, 2009

MARTYN AND ASSOCIATES

20
21 By: /s/ Devin J. Oddo
Devin J. Oddo,
22 Attorneys for Intervening Plaintiffs Del
Monte Fresh Produce, N.A. ///

23 ///

24 Dated: December 4, 2009

PERKINS, MANN & EVERETT,
A PROFESSIONAL CORPORATION

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27 By: /s/ Jan T. Perkins
Jan T. Perkins, Attorneys for Intervening
28 Plaintiff Frank A. Logoluso Farms

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ORDER

Having read the above Stipulation, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation is approved in its entirety and that the PACA Claimant is deemed to have a valid PACA Claims in the amount identified in the Stipulation. As a result of the agreement of the Parties and the Stipulation executed by the Parties, the hearing on the motion filed by PACA Claimant/Intervening Plaintiff to determine validity is hereby rendered moot, and the hearing on PACA Claimant/Intervening Plaintiff's motion to determine validity is hereby vacated.

IT IS SO ORDERED.

Dated: December 4, 2009

/s/ OLIVER W. WANGER
Hon. OLIVER W. WANGER, Judge
United States District Court