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12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

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

16 Plaintiffs,

17 v.

18 **Z & S FRESH, INC., a California corporation;**
19 **Z & S DISTRIBUTING COMPANY, INC., a**
20 **California corporation; MARTIN J.**
21 **ZANINOVICH, an individual; LOREN**
22 **SCHOENBURG, an individual; MARGE**
23 **SCHOENBURG, an individual,**

24 Defendants.

25 **AND ALL RELATED ACTIONS**

Case No.: 1:09-cv-00906-OWW-MJS

STIPULATION AND ORDER TO
ESTABLISH A PACA CLAIMS
PROCEDURE TO ALLOW FRESNO-
MADERA FEDERAL LAND BANK
ASSOCIATION, FLCA, TO OBJECT TO
CERTAIN PACA TRUST CLAIMS

26 This stipulation and order to establish a PACA claims procedure to allow
27 Fresno-Madera Federal Land Bank Association, FLCA, to object to certain PACA trust claims
28 is entered into by and between Plaintiff in Intervention Terence J. Long, Trustee Pursuant to
Court Order (the “**Trustee**”) and Fresno-Madera Federal Land Bank Association, FLCA (the
“**Bank**”), and their attorneys of record, as follows:

RECITALS

WHEREAS, the Trustee set a hearing on March 28, 2011, at 10:00 a.m., for his
noticed motion for an order establishing a procedure to allow the Bank to object to certain

1 claims of trust benefits under the Perishable Agricultural Commodities Act of 1930, as
2 amended, 7 U.S.C. §499a, et seq. (“**PACA**”);

3 WHEREAS, the Bank was the only party to oppose the motion;

4 WHEREAS, the Court, on March 28, 2011, continued the hearing on the motion
5 to April 11, 2011;

6 WHEREAS, the Trustee and the Bank resolved any disputes they had regarding
7 the motion and the order on the motion proposed by the Trustee;

8 WHEREAS, the Bank has indicated that it has objections, attached hereto as
9 Exhibit A, to certain of the PACA trust claims (each, a “**Claim Objectable to Bank**”) that
10 were filed pursuant to the earlier order establishing a PACA claims procedure (Doc. No. 48),
11 dated June 24, 2009 (the “**June 2009 Order**”); and

12 WHEREAS, as to the PACA claims *other* than the Claims Objectable to
13 Bank (each, a “**Non-Objectable Claim**”), the Bank has no objection to the determinations
14 of validity and amounts of the Non-Objectable Claims as stated under the column “Claim
15 Amount Net of Invalid PACA Claims” in Trustee Terence J. Long’s Revised Second PACA
16 Trust Chart Calculations Filed Pursuant to the Court’s Order, dated December 24, 2009,
17 Document No. 407 (the “**Trustee’s Prior Chart**”);

18 The Trustee and the Bank hereby stipulate and propose an order as follows:

19 **STIPULATION**

20 1. For purposes of this order (the “**April 2011 Order**”), the PACA proof of
21 claim of each claimant with a Claim Objectable to Bank shall be deemed to be the PACA
22 proof of claim filed by the claimant pursuant to the June 2009 Order.

23 2. On or before April 15, 2011, objections, as identified in Exhibit A, to the
24 Claims Objectable to Bank may be made by the Bank only, and the Bank shall file and serve
25 the objections. Each objection must set forth in detail the legal and factual basis for the
26 objection to each Claim Objectable to Bank and any supporting document subject to the
27 objection and attach any documents on which the objection is based.

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1 3. Any amount, either in part or in whole, of a Claim Objectable to Bank
2 to which the Bank does not file and serve an objection by the objection date, shall be deemed a
3 valid PACA claim for purposes of this April 2011 Order.

4 4. On or before April 29, 2011, a claimant whose Claim Objectable to
5 Bank the Bank has objected to as provided in paragraph 2 above may file and serve a detailed
6 response to the Bank's objection; said claimant may rely upon any documents or evidence to
7 rebut an objection by the Bank to a Claim Objectable to Bank.

8 5. Any Claim Objectable to Bank to which the Bank filed and served an
9 objection as provided in paragraph 2 above, and no timely response was filed and served, shall
10 be disallowed to the extent of the objection filed by the Bank.

11 6. On or before May 13, 2011, the Trustee shall file and serve a chart,
12 which shall set forth the following listed items, each in a separate column:

- 13 a. The name of each claimant with a Claim Objectable to Bank;
14 b. The amount of each Claim Objectable to Bank;
15 c. The amount of each Claim Objectable to Bank that is subject
16 to an objection by the Bank;
17 d. The amount of each Claim Objectable to Bank that is deemed
18 valid due to the Bank not filing and serving an objection; and
19 e. The amount of each Claim Objectable to Bank that is
20 disallowed due to the claimant failing to file and serve a response to an objection by the Bank.

21 7. The claimants with claims to which the Bank has filed and served
22 objections as provided in paragraph 2 and the Bank shall exercise their best efforts to resolve
23 any of the Bank's objections. In the event said parties are unable to resolve any objections, on
24 or before May 27, 2011, the claimants, as applicable, shall file with the Court a separate motion
25 to determine the validity or amount of the Claims Objectable to Bank to which the parties
26 were unable to resolve objections.

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1 8. After resolution of all objections, either as a result of agreement between
2 parties or a motion, as provided in paragraph 7, the Trustee shall timely file a final chart that
3 will set forth the following listed items, each in a separate column:

4 a. The names of all claimants, including the names of both those
5 with Claims Objectionable to Bank and those with Non-Objectionable Claims;

6 b. The amounts of each claim, representing, as applicable, either the
7 amount of each Claim Objectionable to Bank as finally determined by the procedures set forth
8 herein or the amount of each Non-Objectionable Claim as set forth in the Trustee's Prior Chart.

9 9. The total maximum amount of the PACA claim to which the Trustee
10 alleges the Bank's secured interest to be subject shall be calculated as follows: the total amount
11 of the claims set forth in 8.b above *minus* the total amount of all prior distributions to any
12 claimants. Any subsequent distributions to any PACA claimants not accounted for in the
13 previous sentence shall reduce said maximum amount of the PACA claim to which the Trustee
14 alleges the Bank's secured interest to be subject.

15 Dated: April 8, 2011

PERKINS, MANN & EVERETT, APC

17 By: /s/ Jan T. Perkins.
18 Jan T. Perkins, attorneys for
19 TERENCE J. LONG, TRUSTEE

20 Dated: April 8, 2011

LANG, RICHERT & PATCH, APC

22 By: /s/ Scott J. Ivy.
23 Scott J. Ivy, attorneys for
24 FRESNO-MADERA FEDERAL LAND
25 BANK ASSOCIATION, FLCA

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ORDER

The Stipulation above shall be the order of this Court.

Dated: April 11, 2011

/s/ OLIVER W. WANGER
UNITED STATES DISTRICT JUDGE