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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KOPHAMER FARMS, INC., a  
California corporation,  
  
Plaintiff,  
  
v.  
SELECT ONION, LLC, an Oregon  
limited liability company;  
FARRELL LARSON, an individual;  
and DOES 1 through 20,  
inclusive,  
  
Defendants.

) 1:10-cv-0162 OWW DLB  
)  
) SCHEDULING CONFERENCE ORDER  
)  
) Discovery Cut-Off: 9/20/10  
)  
) Non-Dispositive Motion  
) Filing Deadline: 10/21/10  
)  
) Non-Dispositive Motion  
) Hearing Date: 11/26/10  
) 9:00 Ctrm. 8  
)  
) Dispositive Motion Filing  
) Deadline: 12/2/10  
)  
) Dispositive Motion Hearing  
) Date: 1/3/11 10:00 Ctrm. 3  
)  
) Settlement Conference Date:  
) 9/22/10 10:00 Ctrm. 8  
)  
) Pre-Trial Conference Date:  
) 2/7/11 11:00 Ctrm. 3  
)  
) Trial Date: 3/22/11 9:00  
) Ctrm. 3 (JT-2 days)

I. Date of Scheduling Conference.  
May 19, 2010.  
II. Appearances Of Counsel.  
Johnson & Moncrief, PLC by Dennis Lewis, Esq., appeared on  
behalf of Plaintiff.

1 Rynn & Janowsky, LLP by Bart M. Botta, Esq., appeared on  
2 behalf of Defendant.

3 III. Summary of Pleadings.

4 A. Plaintiff's Factual and Legal Contentions.

5 1. Plaintiff Kophamer Farms, Inc. ("Plaintiff") is an  
6 onion grower and is licensed as a produce dealer under the  
7 Perishable Agricultural Commodities Act, 7 U.S.C. § 499a et seq.,  
8 (the "PACA"). Defendant Select Onion, LLC ("Select Onion") is in  
9 the business of buying wholesale quantities of produce and is  
10 also a licensed PACA Dealer. Defendant Farrell Larson is the  
11 President and CEO of Select Onion.

12 2. Plaintiff alleges that between June 9, 2009 and  
13 September 28, 2009 Plaintiff supplied Defendant Select Onion LLC,  
14 at Select Onion's insistence and request, 50 shipments of onions  
15 for which Select Onion agreed to pay the principal sum of  
16 \$185,445.00. Plaintiff promptly invoiced Select Onion for each  
17 shipment delivered, and each invoice states that "the perishable  
18 agricultural commodities listed on this invoice are sold subject  
19 of the statutory authorized by Section 5(c) of the PACA, 1930 (7  
20 U.S.C. § 499e(e))." Each invoice also contains an attorney's  
21 fees provision providing that the buyer agrees to pay the  
22 seller's attorney's fees if a collection action is necessary.

23 3. Plaintiff contends that upon Select Onion's  
24 receipt of the produce supplied by Select Onion, Plaintiff became  
25 a PACA beneficiary of a floating, non-segregated trust over all  
26 of Select Onion's produce, products derived from the produce, and  
27 all proceeds derived from the sale of the Select Onion's produce  
28 and produce related products.

1           4.     Furthermore, Plaintiff asserts that six invoices  
2 remain due and unpaid, despite Plaintiff's repeated demands  
3 (Invoice Nos. MH 10, MH 11, MH 12, MH 13, MH 14 and MH 15), in  
4 the total principal amount of \$33,716.44. These invoices are  
5 almost 10 months overdue.

6           5.     As such, Plaintiff has brought suit for *inter*  
7 *alia*, Breach of Contract and Enforcement of the Statutory Trust  
8 Provisions of the PACA. Plaintiff has brought action against Mr.  
9 Larson, because under Ninth Circuit case law, individuals who are  
10 in positions to control PACA trust assets and fail to do so are  
11 personally liable under the PACA. Because Mr. Larson is the  
12 President and CEO of Select Onion, Plaintiffs allege that Mr.  
13 Larson was in a position to control the PACA trust assets that  
14 are the subject of this Complaint. Thus, Plaintiff seeks from  
15 Defendants damages of \$33,716.44, interest, contractual  
16 attorney's fees, and court costs.

17           B.     Defendant's Factual and Legal Contentions.

18           1.     Select Onion did agree to purchase onions from  
19 Plaintiff. However, as is customary with onion sales, and as was  
20 the course of dealing between the parties here, and as was the  
21 agreement of the parties, tare was deducted from the total weight  
22 purchased. Tare is the dirt, rocks, and other foreign debris  
23 that must be deducted from the gross weight of the onions  
24 purchased. After deducting the tare amount for the shipments at  
25 issue in the present complaint, there is nothing further due and  
26 owing to Plaintiff as Select has paid in full all required  
27 amounts.

28     ///

1 IV. Orders Re Amendments To Pleadings.

2 1. The parties contemplate that the pleadings may need to  
3 be amended and agree that they must be filed on or before October  
4 4, 2010, without the necessity of a motion.

5 V. Factual Summary.

6 A. Admitted Facts Which Are Deemed Proven Without Further  
7 Proceedings.

8 1. Select Onion is a limited liability company  
9 validly formed and existing under the laws of the State of  
10 Oregon.

11 2. During the period on or about June 9, 2009 to on  
12 or about September 28, 2009 Plaintiff shipped onions in an amount  
13 to be determined.

14 3. There is a dispute over the right to payment and  
15 amount.

16 4. Each shipment is represented by a written invoice.

17 5. Plaintiff claims a PACA trust and seeks  
18 enforcement in this case.

19 6. Dispute over the total weight of onions purchased  
20 exists.

21 7. Defendant asserts the tare amount for shipments  
22 was not deducted.

23 8. Whether a PACA trust should be imposed.

24 9. Whether Defendant is indebted to Plaintiff in any  
25 amount for onions shipped and delivered.

26 B. Contested Facts.

27 1. All remaining facts are disputed.

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1 VI. Legal Issues.

2 A. Uncontested.

3 1. Jurisdiction exists under 28 U.S.C. § 1331 and the  
4 Perishable Agricultural Commodities Act.

5 2. Venue is proper under 28 U.S.C. § 1391.

6 3. The substantive law of the State of California  
7 provides the rule of decision for supplemental claims.

8 B. Contested.

9 1. Is Plaintiff a PACA creditor of Select Onion in  
10 the amount of \$33,716.44 plus interest, attorney's fees, and  
11 collection costs?

12 2. Did Plaintiff and Select Onion enter into a  
13 contract whereby Select Onion promised to pay Plaintiff for  
14 onions sold and delivered between June 2009 and September 2009?  
15 If so, did Select Onion breach the contract by failing to pay for  
16 \$33,716.44 worth of produce?

17 3. If Plaintiffs can establish the existence of a  
18 PACA trust, was Mr. Larson in a position to control the PACA  
19 trust assets?

20 VII. Consent to Magistrate Judge Jurisdiction.

21 1. The parties have not consented to transfer the  
22 case to the Magistrate Judge for all purposes, including trial.

23 VIII. Corporate Identification Statement.

24 1. Any nongovernmental corporate party to any action in  
25 this court shall file a statement identifying all its parent  
26 corporations and listing any entity that owns 10% or more of the  
27 party's equity securities. A party shall file the statement with  
28 its initial pleading filed in this court and shall supplement the

1 statement within a reasonable time of any change in the  
2 information.

3 IX. Discovery Plan and Cut-Off Date.

4 1. The parties agree that initial disclosures shall be  
5 filed on or before June 4, 2010.

6 2. The parties are ordered to complete all discovery on or  
7 before September 20, 2010.

8 3. The parties are directed to disclose all expert  
9 witnesses, in writing, on or before July 6, 2010. Any rebuttal  
10 or supplemental expert disclosures will be made on or before  
11 August 6, 2010. The parties will comply with the provisions of  
12 Federal Rule of Civil Procedure 26(a)(2) regarding their expert  
13 designations. Local Rule 16-240(a) notwithstanding, the written  
14 designation of experts shall be made pursuant to F. R. Civ. P.  
15 Rule 26(a)(2), (A) and (B) and shall include all information  
16 required thereunder. Failure to designate experts in compliance  
17 with this order may result in the Court excluding the testimony  
18 or other evidence offered through such experts that are not  
19 disclosed pursuant to this order.

20 4. The provisions of F. R. Civ. P. 26(b)(4) shall  
21 apply to all discovery relating to experts and their opinions.  
22 Experts may be fully prepared to be examined on all subjects and  
23 opinions included in the designation. Failure to comply will  
24 result in the imposition of sanctions.

25 X. Pre-Trial Motion Schedule.

26 1. All Non-Dispositive Pre-Trial Motions, including any  
27 discovery motions, will be filed on or before October 21, 2010,  
28 and heard on November 26, 2010, at 9:00 a.m. before Magistrate

1 Judge Sheila K. Oberto in Courtroom 8.

2 2. In scheduling such motions, the Magistrate  
3 Judge may grant applications for an order shortening time  
4 pursuant to Local Rule 142(d). However, if counsel does not  
5 obtain an order shortening time, the notice of motion must comply  
6 with Local Rule 251.

7 3. All Dispositive Pre-Trial Motions are to be  
8 filed no later than December 2, 2010, and will be heard on  
9 January 3, 2011, at 10:00 a.m. before the Honorable Oliver W.  
10 Wanger, United States District Judge, in Courtroom 3, 7th Floor.  
11 In scheduling such motions, counsel shall comply with Local Rule  
12 230.

13 XI. Pre-Trial Conference Date.

14 1. February 7, 2011, at 11:00 a.m. in Courtroom 3, 7th  
15 Floor, before the Honorable Oliver W. Wanger, United States  
16 District Judge.

17 2. The parties are ordered to file a Joint Pre-  
18 Trial Statement pursuant to Local Rule 281(a)(2).

19 3. Counsel's attention is directed to Rules 281  
20 and 282 of the Local Rules of Practice for the Eastern District  
21 of California, as to the obligations of counsel in preparing for  
22 the pre-trial conference. The Court will insist upon strict  
23 compliance with those rules.

24 XII. Motions - Hard Copy.

25 1. The parties shall submit one (1) courtesy paper copy to  
26 the Court of any motions filed. Exhibits shall be marked with  
27 protruding numbered or lettered tabs so that the Court can easily  
28 identify such exhibits.

1 XIII. Trial Date.

2 1. March 22, 2011, at the hour of 9:00 a.m. in Courtroom  
3 3, 7th Floor, before the Honorable Oliver W. Wanger, United  
4 States District Judge.

5 2. This is a jury trial.

6 3. Counsels' Estimate Of Trial Time:

7 a. Two days.

8 4. Counsels' attention is directed to Local Rules  
9 of Practice for the Eastern District of California, Rule 285.

10 XIV. Settlement Conference.

11 1. A Settlement Conference is scheduled for September 22,  
12 2010, at 10:00 a.m. in Courtroom 8 before the Honorable Sheila K.  
13 Oberto, United States Magistrate Judge.

14 2. Unless otherwise permitted in advance by the  
15 Court, the attorneys who will try the case shall appear at the  
16 Settlement Conference with the parties and the person or persons  
17 having full authority to negotiate and settle the case on any  
18 terms at the conference.

19 3. Permission for a party [not attorney] to attend  
20 by telephone may be granted upon request, by letter, with a copy  
21 to the other parties, if the party [not attorney] lives and works  
22 outside the Eastern District of California, and attendance in  
23 person would constitute a hardship. If telephone attendance is  
24 allowed, the party must be immediately available throughout the  
25 conference until excused regardless of time zone differences.  
26 Any other special arrangements desired in cases where settlement  
27 authority rests with a governing body, shall also be proposed in  
28 advance by letter copied to all other parties.



1           4.    Confidential Settlement Conference Statement.

2 At least five (5) days prior to the Settlement Conference the  
3 parties shall submit, directly to the Magistrate Judge's  
4 chambers, a confidential settlement conference statement. The  
5 statement should not be filed with the Clerk of the Court nor  
6 served on any other party. Each statement shall be clearly  
7 marked "confidential" with the date and time of the Settlement  
8 Conference indicated prominently thereon. Counsel are urged to  
9 request the return of their statements if settlement is not  
10 achieved and if such a request is not made the Court will dispose  
11 of the statement.

12           5.    The Confidential Settlement Conference

13 Statement shall include the following:

14           a.    A brief statement of the facts of the  
15 case.

16           b.    A brief statement of the claims and  
17 defenses, i.e., statutory or other grounds upon which the claims  
18 are founded; a forthright evaluation of the parties' likelihood  
19 of prevailing on the claims and defenses; and a description of  
20 the major issues in dispute.

21           c.    A summary of the proceedings to date.

22           d.    An estimate of the cost and time to be  
23 expended for further discovery, pre-trial and trial.

24           e.    The relief sought.

25           f.    The parties' position on settlement,  
26 including present demands and offers and a history of past  
27 settlement discussions, offers and demands.

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1 XV. Request For Bifurcation, Appointment Of Special Master,  
2 Or Other Techniques To Shorten Trial.

3 1. None.

4 XVI. Related Matters Pending.

5 1. There are no related matters.

6 XVII. Compliance With Federal Procedure.

7 1. The Court requires compliance with the Federal  
8 Rules of Civil Procedure and the Local Rules of Practice for the  
9 Eastern District of California. To aid the court in the  
10 efficient administration of this case, all counsel are directed  
11 to familiarize themselves with the Federal Rules of Civil  
12 Procedure and the Local Rules of Practice of the Eastern District  
13 of California, and keep abreast of any amendments thereto.

14 XVIII. Effect Of This Order.

15 1. The foregoing order represents the best  
16 estimate of the court and counsel as to the agenda most suitable  
17 to bring this case to resolution. The trial date reserved is  
18 specifically reserved for this case. If the parties determine at  
19 any time that the schedule outlined in this order cannot be met,  
20 counsel are ordered to notify the court immediately of that fact  
21 so that adjustments may be made, either by stipulation or by  
22 subsequent scheduling conference.

23 2. Stipulations extending the deadlines contained  
24 herein will not be considered unless they are accompanied by  
25 affidavits or declarations, and where appropriate attached  
26 exhibits, which establish good cause for granting the relief  
27 requested.

28 3. Failure to comply with this order may result in

1 the imposition of sanctions.

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3 IT IS SO ORDERED.

4 Dated: May 19, 2010

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

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