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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 **ALLIED WORLD NATIONAL AS-**) **Case No. 1:10-cv-01262-OWW-JLT**
11 **SURANCE COMPANY, a New Hamp-**)
12 **shire corporation, et al.,**) **VOLUNTARY DISMISSAL OF COUN-**
13 **Plaintiffs,**) **TERCLAIM WITHOUT PREJUDICE,**
14 **v.**) **STIPULATION FOR LEAVE TO REFILE,**
15 **SK PM CORP., a California corpora-**) **AND ORDER THEREON**
16 **tion, et al.**)
17 **Defendants.**)
18 **AND RELATED COUNTERCLAIMS**)

1 Continuation Page A

2 List of parties represented by Chiarelli & Mollica LLP

- 3 1. Frederick Scott Salyer;
- 4 2. SK PM Corp., a California corporation aka "S.K. Foods PM Corp.";
- 5 3. Blackstone Ranch, a California corporation aka "Blackstone Ranch Calif 'S' Corp";
- 6 4. Scott Salyer, Trustee for the Scott Salyer Revocable Trust, a trust, erroneously sued
as "The Scott Salyer Revocable Trust";
- 7 5. Robert Pruett, Trustee for the Caroline Gazelle Salyer 1999 Irrevocable Trust, a
8 trust, erroneously sued as "The Caroline Gazelle Salyer Irrevocable Trust";
- 9 6. Robert Pruett, Trustee for the Caroline Gazelle Salyer 2007 Irrevocable Trust, a
trust, erroneously sued as "The Caroline Gazelle Salyer Irrevocable Trust";
- 10 7. Robert Pruett, Trustee for the Stefanie Ann Salyer 1999 Irrevocable Trust, a trust,
11 erroneously sued as "The Stefanie Ann Salyer Irrevocable Trust";
- 12 8. Robert Pruett, Trustee for The Stefanie Ann Salyer 2007 Irrevocable Trust, a trust,
erroneously sued as "The Stefanie Ann Salyer Irrevocable Trust";
- 13 9. SS Farms, LLC, a California limited liability company;
- 14 10. SARS, LLC, a California limited liability company;
- 15 11. CSSS LP, a California limited partnership d/b/a Central Valley Shippers;
- 16 12. SK Foods LLC, a Nevada limited liability company;
- 17 13. S.K. Foods PM Corp., an entity or a d/b/a of unknown legal capacity;
- 18 14. SKF Aviation, LLC, a California limited liability company;
- 19 15. SSC Farming LLC, a California limited liability company;
- 20 16. SSC Farms I, LLC, a California limited liability company;
- 21 17. SSC Farms II, LLC, a California limited liability company;
- 22 18. SSC Farms III, LLC, a California limited liability company;
- 23 19. SK Farm Services, LLC, a California limited liability company;
- 24 20. SK Frozen Foods, LLC, a California limited liability company;
- 25 21. Carmel Wine Merchants LLC;
- 26 22. Salyer American Fresh Foods
- 27 23. Salyer American Cooling, Inc.
- 28 24. Salyer Western Cooling
25. Yuma American Cooling, Inc.
26. Sawtooth American Cooling

1 WHEREAS, on July 14, 2010 Plaintiffs Allied World National Assurance Company
2 and Allied World Assurance Company (U.S.) Inc. (collectively "Plaintiffs") filed a Complaint
3 in the above captioned matter against parties, including the defendants listed on the at-
4 tached Continuation Page A (the "Salyer Defendants"); and

5 WHEREAS, on September 17, 2010 the Salyer Defendants filed an Answer and
6 Counterclaims against Plaintiffs; and

7 WHEREAS, on October 22, 2010 Plaintiffs filed and served a Motion to Dismiss the
8 Salyer Defendants' Counterclaims, Docket No. 30, (the "MTD"), which MTD is currently set
9 for hearing on February 7, 2011; and

10 WHEREAS, the Salyer Defendants have agreed to voluntarily dismiss the Counter-
11 claims, *without* prejudice, subject to Plaintiffs' advance and irrevocable stipulation herein
12 for leave to refile the Counterclaims up 90 calendar days before the close of discovery; and

13 WHEREBY, the Parties acknowledge that that there is no discovery cutoff or trial
14 date set as of the date of this Stipulation and Order;

15 WHEREAS, the Parties acknowledge that any trial date or pre-trial deadlines sub-
16 sequently set at the Initial Scheduling Conference may need to be reevaluated in the event
17 that the Salyer Defendants, or any of them, refile their Counterclaims at a later date;

18 NOW THEREFORE, Plaintiffs and the Salyer Defendants, through counsel, hereby
19 agree and stipulate:

20 1. The Salyer Defendants hereby dismiss their Counterclaims, without preju-
21 dice, effective on the date that this Court approves this Stipulation by signing the below
22 Order;

23 2. Plaintiffs hereby stipulate and agree that the Salyer Defendants may refile
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1 their Counterclaims against Plaintiff at any time up to and including 90 days before any
2 originally set party-related discovery cutoff, not including any time limited to expert re-
3 lated discovery;

4 3. No prerequisites to the refiling of the Counterclaims shall be required, and
5 this Stipulation and Order shall constitute advance and irrevocable consent and leave of
6 Court for the refiling of the Counterclaims;
7

8 3. This Order shall be admissible as evidence in any motion or proceeding re-
9 lated to the timeliness of the filing of the Counterclaims;

10 4. In the event that Counterclaims *are* refiled, for purposes of any statutes of
11 limitations said Counterclaims shall relate back to the date of the filing of the first Coun-
12 terclaim, September 17, 2010, and shall be deemed an original Counterclaim and not an
13 Amended Counterclaim as set forth in FRCP 15. All other rules applicable to original
14 pleadings set forth in FRCP 12, 13 and 15 shall apply;
15

16 5. The Motion to Dismiss the Salyer Defendants Counterclaims (Docket No.
17 30) currently set for hearing on February 7, 2011 is hereby withdrawn, and the hearing
18 date shall be taken off the Court's calendar. This stipulation does not withdraw Plaintiffs'
19 motion to dismiss the counterclaim filed by Bradley D. Sharp, Chapter 11 Trustee for SK
20 Foods, LP and RHM Industrial/Specialty Foods, Inc. (Docket No. 31), which is also current-
21 ly set for hearing on February 7, 2011.
22

23 6. Counsel for the Salyer Defendants is hereby authorized to file this Stipula-
24 tion on behalf of counsel for Plaintiffs.
25

26 SO STIPULATED
27
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