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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 **ETCHEGARAY FARMS, LLC, a**
9 **California limited liability company,**

10 **Plaintiff**

11 **v.**

12 **LEHR BROTHERS, INC., a California**
13 **corporation d/b/a Big L Packers, et al.,**

14 **Defendant**

CASE NO. 1:17-CV-1449 AWI JLT

ORDER VACATING THE FEBRUARY
12, 2018 HEARING ON THE MOTION
TO CONSOLIDATE AND ORDER
CONSOLIDATING CASES

(Doc. No. 12)

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16 This is a Perishable Agricultural Commodities Act (“PACA”) (7 U.S.C. § 499a et seq.)
17 case based on the sale and distribution of organic lemons. Currently before the Court is Plaintiff
18 Etchegaray Farm’s (“Etchegaray”) motion to consolidate this case, 1:17-CV-1449 AWI JLT
19 (“1449 Case”), with *Lehr Bros., Inc. v. Etchegaray Farms, LLC*, 1:17-CV-1762 AWI JLT (“1762
20 Case”). This motion is currently set for hearing on February 12, 2018. Pursuant to Local Rule
21 230(g), Defendants had until January 29, 2018 in which to file an opposition. To date, no
22 opposition or response of any kind has been filed by Defendants. For the reasons that follow, the
23 Court will vacate the February 12, 2018 hearing date on the motion to consolidate and grant the
24 motion.

25 *Plaintiff’s Argument*

26 Etchegaray contends that consolidation for all purposes under Rule 42(a) is appropriate
27 because: (1) both cases involve common parties (Etchegaray Farms, Lehr Brothers, and California
28 Potato Sales; (2) both cases involve common issues of law (in the 1449 Case, Etchegaray Farms

1 seeks damages based on breach of contract and statute, whereas in the 1762 Case, Lehr Bros. and
2 California Potato Sales seek “set offs” based on affirmative defenses); (3) both cases involve
3 common facts (the contracts at issue for the 2013 through 2017 growing seasons); (4)
4 consolidation will eliminate the risk of prejudice to both parties if one case is decided before the
5 other, as both cases are within 90 days of their respective filing dates and no discovery has
6 occurred; and (5) since the actions involve the same set of facts, the same questions of law, and the
7 same parties, consolidation will aid in the efficient and economic disposition of one joint action
8 and conserve judicial resources by not requiring separate duplicative litigation.

9 Legal Standard

10 Federal Rule of Civil Procedure 42(a) provides: “If actions before the court involve a
11 common question of law or fact, the court may: (1) join for hearing or trial any or all matters at
12 issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary
13 cost or delay.” A district court has broad discretion to determine whether and to what extent
14 consolidation is appropriate. See Garity v. APWU Nat’l Labor Org., 828 F.3d 848, 855-56 (9th
15 Cir. 2016); Investors Research Co. v. U.S. Dist. Ct. for the Cent. Dist. of Cal., 877 F.2d 777, 777
16 (9th Cir. 1989). In deciding whether to consolidate, a court should balance the interest of judicial
17 convenience against “any inconvenience, delay, or expense that it would cause.” Huene v. United
18 States, 743 F.2d 703, 704 (9th Cir. 1984); Single Chip Sys. Corp. v. Intermec IP Corp., 495
19 F.Supp.2d 1052, 1057 (S.D. Cal. 2007). “[T]he law is clear that an act of consolidation does not
20 affect any of the substantive rights of the parties.” J.G. Link & Co. v. Continental Cas. Co., 470
21 F.2d 1133, 1138 (9th Cir. 1972); see also Schnabel v. Lui, 302 F.3d 1023, 1034-35 (9th Cir.
22 2002).

23 Discussion

24 There is no dispute that the two cases involve common parties, issues of fact, and issues of
25 law:¹ both cases revolve around the packing and disposition of organic lemons between the
26 parties between 2013 and 2017. Consolidating these related cases would conserve judicial

27 ¹ The Court notes that Plaintiff has stated the claims in the 1762 Case are essentially claims of “set off” or affirmative
28 defenses. The claims alleged in the 1762 Case are open book, money lent, rescission, reformation, and declaratory
relief. The Court makes no determination whether these five claims are merely for “set off” as argued by Etchegaray.

1 resources and appear to be more convenient for the parties. Moreover, there is no apparent
2 inconvenience, delay, or expense that would result from consolidation. In the absence of an
3 opposition, there is no good reason not to consolidate these actions for all purposes. Under these
4 circumstances, consolidating and merging these cases for all purposes into one case would be
5 efficient. See Davis v. Roane Cnty., 2014 U.S. Dist. LEXIS 164309 *6-*7 (E.D. Tenn. Nov. 21,
6 2014); Intertex, Inc. v. Dri-Eaz Prods., 2013 U.S. Dist. LEXIS 82917, *9-*11 (W.D. Wash. June
7 11, 2013); Bejarano v. Allison, 2011 U.S. Dist. LEXIS 96459, *2-*3 (E.D. Cal. Apr. 29, 2011).
8 Therefore, the Court will grant Etchegaray's motion.

9
10 **ORDER**

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The February 12, 2018 hearing on the motion to consolidate is VACATED;
- 13 2. The motion to consolidate (Doc. No. 12) is GRANTED;
- 14 3. The Clerk shall consolidate *Etchegaray Farms, LLC v. Lehr Bros., Inc., et al.*, 1:17-CV-
15 1449 AWI JLT with *Lehr Bros., Inc., et al. v. Etchegaray Farms, LLC*, 1:17-CV-1762 AWI
16 JLT for all purposes;
- 17 4. All future filings and correspondences shall use case number 1:17-CV-1449 AWI JLT;
- 18 5. The Clerk shall move Doc. Nos. 1, 5, 6, 7, 8, 9, 10, 11, 12, and 13 from the docket of 1:17-
19 CV-1762 AWI JLT over to the docket of 1:17-CV-1449 AWI JLT;
- 20 6. The Clerk shall administratively close *Lehr Bros., Inc., et al. v. Etchegaray Farms,*
21 *LLC*, 1:17-CV-1762 AWI JLT;² and
- 22 7. The Clerk shall file a copy of this order in Case No. 1: 17-CV-1762 AWI JLT.

23 IT IS SO ORDERED.

24 Dated: February 7, 2018

25 
26 SENIOR DISTRICT JUDGE

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² The Court notes that administratively closing this case has no impact whatsoever on the merits.