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7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA

9 NATHEL INTERNATIONAL, INC.,

10 Plaintiff,

11 v.

12 VINCENT B. ZANINOVICH & SONS, INC.,

13 Defendant.  
14

Case No. 1:18-cv-00729-LJO-SAB

ORDER ADOPTING IN PART FINDINGS  
AND RECOMMENDATIONS

(ECF Nos. 8, 14, 15, 16, 18)

15 On May 29, 2018, Plaintiff Nathel International, Inc. filed this action for breach of  
16 contract and under the Perishable Agricultural Commodities Act (“PACA”), 7 U.S.C. § 499 *et*  
17 *seq.*, against Defendant Vincent B. Zaninovich & Sons, Inc. seeking declaratory judgment. (ECF  
18 No. 1.) On July 17, 2018, Defendant filed a motion to dismiss which was referred to a United  
19 States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. (ECF No. 9.)

20 On September 18, 2018, the magistrate judge filed findings and recommendations  
21 (“F&Rs”). The F&Rs recommended Defendant’s motion to dismiss be granted in part and  
22 denied in part. Among other things, the F&Rs also recommended that the case be stayed  
23 pending resolution of parallel USDA proceedings. The F&Rs were served on the parties and  
24 contained notice that any objections were to be filed within fourteen (14) days from the date of  
25 service. The period for filing objections has passed and no objections have been filed.

26 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted  
27 a *de novo* review of this case. Having carefully reviewed the entire file, the Court adopts only  
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1 certain aspects of the F&Rs. The Court agrees with the analysis at pages 18-22 of the F&Rs,  
2 wherein the magistrate judge recommends: (1) imposition of a discretionary stay in consideration  
3 of the pending USDA proceedings, even though, technically, the present action is the first filed;  
4 and (2) denial of Plaintiff's request for discovery during the pendency of the stay. As for the  
5 other recommendations contained in the F&Rs pertaining to the motion to dismiss, the Court  
6 declines to adopt those recommendations. Among other things, at least one of the alternative  
7 jurisdictional analyses appears to be an issue of first impression. In light of the stay, the Court  
8 finds no reason to rule on the motion to dismiss. Imposition of a stay is justified in part based on  
9 judicial efficiency. That efficiency would not be served by ruling on the motion to dismiss at  
10 this time.

11 Accordingly, IT IS HEREBY ORDERED that

- 12 1. Defendant's motion to stay this action to allow resolution of the pending USDA  
13 proceedings is GRANTED;
- 14 2. This action is STAYED;
- 15 3. The parties shall file a joint report on the status of the USDA proceedings within  
16 180 days or within 30 days of the conclusion of the USDA proceedings,  
17 whichever is sooner;
- 18 4. Plaintiff's motion for the Court to allow discovery during the stay of the  
19 proceedings is DENIED; and
- 20 5. The motion to dismiss is DENIED WITHOUT PREJUDICE to its renewal, as  
21 appropriate, when the stay is lifted.

22 IT IS SO ORDERED.  
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24 Dated: October 26, 2018

/s/ Lawrence J. O'Neill  
25 UNITED STATES CHIEF DISTRICT JUDGE  
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