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7 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA
 8 **(SACRAMENTO DIVISION)**

9 Taylor Farms California, et al.,
 10 Plaintiffs,
 v.
 11 JC Produce, LLC,
 12 Defendant.

Case No.: 08-CV-02657-MCE-EFB

**ORDER ESTABLISHING PACA TRUST
 AND DISBURSEMENT
 AUTHORIZATION PROCEDURE**

13 LJ Distributors, Inc.,
 14 Intervening Plaintiff,
 15 v.
 16 JC Produce, LLC,
 17 Defendant.

18 Monterey Mushrooms, Inc.; Henry Avocado
 Corporation; Maui Fresh International, LLC;
 19 Frieda's, Inc.; and Amber Foods, Inc.,
 20 Intervening Plaintiffs,
 v.
 21 JC Produce, LLC,
 22 Defendant.

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1 The Stipulation filed by JC Produce, LLC (“JC Produce”) and Plaintiffs Taylor Farms
2 California, Inc., et al., and Intervening Plaintiff LJ Distributors, Inc. (hereinafter collectively
3 “Plaintiffs”) to Establish PACA Trust Claims Procedure and Disbursement Authorization
4 Procedures was filed with the Court on January 13, 2009. Upon review of the Stipulation,
5 supporting declaration, points and authorities, and good cause appearing;

6 **IT IS ORDERED THAT** JC Produce shall deposit all payments from JC Produce’s
7 Accounts Receivable into the Bank of America PACA Trust Account. JC Produce may continue
8 to receive payments by electronic transfer directly into its account at Bank of the West, and shall
9 be further ordered to transfer any such payments to the Bank of America PACA Trust Account
10 as soon as any hold placed on the deposited PACA Payment is released by Bank of the West.

11 **IT IS FURTHER ORDERED THAT** JC Produce shall send the following to the
12 potential PACA Claimants listed on the PACA Trust Claims List, which is attached as **Exhibit**
13 **“A”** to the Stipulation, and any other person requesting such a list or who notifies JC Produce in
14 writing that such person is asserting a Claim to any monies in the PACA Trust:

- 15 1. A copy of this Order;
- 16 2. The PACA Trust Claims List;
- 17 3. The PACA Claim Amount Dispute Form, which is attached as **Exhibit “F”**
18 to the Stipulation; and
- 19 4. The Notice, which is attached as **Exhibit “G”** to the Stipulation.

20 **IT IS FURTHER ORDERED THAT,** in the event that a PACA Trust Claimant
21 disputes the sums that JC Produce has determined is protected by the PACA trust and should be
22 allowed, as stated on the PACA Trust Claims List, it must deliver – on or before 5:00 p.m. on
23 January 27, 2009 – a completed PACA Claim Amount Dispute Form to JC Produce’s attorneys,
24 provided in the Notice (**Exhibit “G”** to the Stipulation). Upon receipt of a timely delivered

1 PACA Claim Dispute Form, the dispute shall be handled as follows:

- 2 1. JC Produce’s agent shall provide a copy of the PACA Claim Amount
3 Dispute Form to counsel of record for the Plaintiffs (and to other
4 interested parties, if so requested);
- 5 2. If the amount of the dispute is not more than the greater of 115% of the
6 amount listed on the PACA Trust Claims List or \$1,000, JC Produce may
7 attempt to resolve the difference with the disputing PACA Trust Claimant,
8 and if so resolved JC Produce may amend the amount on the PACA Trust
9 Claims List and make the disbursements from the PACA Trust based upon
10 the amended amount, without further order of the Court.
- 11 3. If the amount in dispute is more than 115% of the amount stated by JC
12 Produce on the PACA Trust Claims List and in excess of \$1,000, JC
13 Produce may attempt to resolve the dispute and reduce such amount in
14 dispute so that it may be resolved as provided in the immediately
15 preceding subparagraph “2” above of this Order. If the disputed amount
16 cannot be resolved as provided in the immediately preceding subparagraph
17 2 above, JC Produce shall use the amount asserted as owed by the
18 disputing PACA Claimant as the amount for purposes of computing the
19 pro rata disbursement sum, shall pay a pro-rata distribution on the
20 undisputed sum, and shall retain the disputed pro rata disbursement share
21 for the disputing PACA Claimant pending further order of this court.

22 **IT IS FURTHER ORDERED THAT** for any PACA Claims which are the subject of a
23 timely delivered PACA Claim Amount Dispute Form and are not resolved as provided above, JC
24 Produce shall file either a separate Motion for each such unresolved disputed claim to establish

1 the dispute resolution proceeding for such PACA Claim or a Stipulation between the PACA
2 Claimant and JC Produce for court approval of the resolution thereof. If JC Produce files a
3 Motion, it shall summarize the issues in dispute, the attempts to resolve the dispute, the
4 anticipated evidence and witnesses to resolve the dispute, and whether it believes that the nature
5 of the dispute lends itself to resolution through a law and motion proceeding, third-party
6 arbitration, or a supplemental civil case before this Court.

7 **IT IS FURTHER ORDERED THAT** service of the Stipulation or Motion shall be
8 made by mail on any interested person who files such a request with the Court and automatically
9 via ECF to those persons listed in this case for ECF service. If any other PACA Claimant
10 objects to a Stipulation, the objection must be filed within 10 days of the filing of the Stipulation,
11 and if no such objection is received by the Court, the Court may immediately approve the
12 settlement.

13 **IT IS FURTHER ORDERED THAT** all notices and documents required to be served
14 by JC Produce under the Claims process pursuant to this Order shall be sent by United States
15 Postal Service, First Class Postage Prepaid.

16 **IT IS FURTHER ORDERED THAT** if a completed PACA Claim Amount Dispute
17 Form is not timely received by JC Produce's attorneys from a PACA Claimant, then the amount
18 set forth on the JC Produce's PACA Trust Claims List transmitted to the potential PACA
19 Claimants by JC Produce shall be deemed be final and allowed in the amount set forth in the
20 PACA Trust Claims List. The PACA Claims List and all obligations stated therein shall
21 constitute an account stated between JC Produce and each PACA Claimant listed therein, and JC
22 Produce and all of the PACA Claimants receiving distributions may reasonably rely upon the
23 failure of any PACA Claimant to dispute the amount stated therein, and in such reliance JC
24 Produce shall proceed with disbursing monies to the PACA Claimants.

1 **IT IS FURTHER ORDERED THAT** JC Produce is authorized pursuant to this order
2 and shall make periodic payments from the Bank of America PACA Trust Account to the PACA
3 Trust Claimants as such funds are available in the Bank of America PACA Trust Account and
4 such monies may be disbursed in a commercially reasonable manner. JC Produce shall
5 commence making disbursements to the PACA Claimants by February 5, 2009. The payments
6 shall be made on a pro rata basis based upon the amounts in the PACA Trust Claim List, if
7 undisputed (or, if partially disputed by JC Produce, the distribution shall be made based upon the
8 undisputed sum), such corrected amount as agreed to by the Parties and the disputing PACA
9 Claimant as allowed by this Claims Process, or as ordered by the Court.

10 **IT IS FURTHER ORDERED THAT,** within 30 days from the entry of this Order, JC
11 Produce shall file a report (“PACA Claim Report”) with the Court, and serve on counsel for the
12 parties in this action, that lists the undisputed PACA Claims, the disputed PACA Claims which
13 JC Produce resolved and the final amount of such claims, and the disputed PACA Claims that JC
14 Produce could not resolve and for which Motions are being filed with the Court pursuant to the
15 approved procedure.

16 Dated: January 26, 2009

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18 MORRISON C. ENGLAND, JR.
19 UNITED STATES DISTRICT JUDGE
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