

1 Bingham McCutchen LLP  
 2 STEPHEN ZOVICKIAN (SBN 78697)  
 3 stephen.zovickian@bingham.com  
 4 HAYWOOD S. GILLIAM, JR. (SBN 172732)  
 5 haywood.gilliam@bingham.com  
 6 RIANNE E. ROCCA (SBN 221640)  
 7 rianne.rocca@bingham.com  
 8 KYLE ZIPES (SBN 251814)  
 9 kyle.zipes@bingham.com  
 10 ABIGAIL SLONECKER (SBN 252452)  
 11 abby.slonecker@bingham.com  
 12 Three Embarcadero Center  
 13 San Francisco, CA 94111-4067  
 14 Telephone: 415.393.2000  
 15 Facsimile: 415.393.2286

16 Attorneys for Defendant  
 17 Ingomar Packing Company

18 **UNITED STATES DISTRICT COURT**  
 19 **EASTERN DISTRICT OF CALIFORNIA**

20 FOUR IN ONE COMPANY, INC., on behalf of  
 21 itself and all others similarly situated,

22 Plaintiff,

23 v.

24 SK FOODS, L.P., INGOMAR PACKING  
 25 COMPANY, LOS GATOS TOMATO  
 26 PRODUCTS, RANDALL RAHAL,  
 27 INTRAMARK USA, INC.,

28 Defendants.

CASE NO.: 2:08-cv-03017-MCE-EFB

**STIPULATION REGARDING  
 RESPONSE TO COMPLAINT  
 PENDING CONSOLIDATION OF  
 RELATED CASES**

Plaintiff Four in One Company, Inc. (“Plaintiff”) and Defendant Ingomar Packing Company (“Defendant”), by and through their counsel of record, hereby submit this Stipulation Regarding Response To Complaint Pending Consolidation of Related Cases.

WHEREAS Plaintiff filed a Complaint in the above-captioned case on or about December 12, 2008;

1           WHEREAS Plaintiff alleges price fixing of processed tomato products sold in the United  
2 States;

3           WHEREAS this is the first extension requested by Plaintiff and Defendant in this action;

4           WHEREAS other private plaintiffs have filed other complaints in the Eastern District of  
5 California based on the same or similar allegations and naming some or all of the same  
6 defendants (collectively “the Tomato Antitrust Cases”);

7           WHEREAS a motion has been filed to consolidate all of the Tomato Antitrust Cases  
8 pursuant to Federal Rule of Civil Procedure 42(a);

9           WHEREAS the parties anticipate that the cases will be consolidated, and there will be a  
10 single master consolidated amended complaint;

11           WHEREAS the parties have agreed that an orderly schedule for any response to the  
12 pleadings, allowing for the consolidation of cases, would be more efficient for the parties and for  
13 the Court;

14           WHEREAS Plaintiff agrees that the deadline for Defendant to respond to the Complaint  
15 should be extended until the earlier of the following two dates: (1) thirty days (30) after the  
16 filing of a Consolidated Amended Complaint in the Tomato Antitrust Cases; or (2) thirty days  
17 (30) after Plaintiff provides written notice to Defendant that it does not intend to file a  
18 Consolidated Amended Complaint;

19           WHEREAS Defendant agrees that the defense counsel identified below will accept  
20 service on behalf of its client of all complaints in this matter, including any amended or  
21 consolidated complaints, and that Defendant shall not contest the sufficiency of process or  
22 service of process; provided, however, that this Stipulation does not constitute a waiver of any  
23 other defense, including but not limited to the defense of lack of personal or subject matter  
24 jurisdiction or improper venue; and

25           WHEREAS Plaintiff and Defendant agree that notwithstanding the above paragraphs,  
26 should Defendant respond to a complaint in another of the Tomato Antitrust Cases prior to the  
27 date contemplated by this Stipulation, then Defendant shall make a simultaneous response to the  
28

1 complaint in the above-captioned matter and, should Defendant respond or undertake to respond  
2 to discovery or otherwise engage in facilitation of case management in another of the Tomato  
3 Antitrust Cases prior to the date contemplated by this Stipulation, then Defendant shall engage in  
4 similar discovery or case management activity in this case.

5           THEREFORE, PLAINTIFF AND DEFENDANT, BY AND THROUGH THEIR  
6 RESPECTIVE COUNSEL OF RECORD, HEREBY STIPULATE AS FOLLOWS:

7           1.       The deadline for Defendant to respond to the Complaint shall be extended until  
8 the earlier of the following two dates: (1) thirty days (30) after the filing of a Consolidated  
9 Amended Complaint in the Tomato Antitrust Cases; or (2) thirty days (30) after Plaintiff  
10 provides written notice to Defendant that it does not intend to file a Consolidated Amended  
11 Complaint.

12           2.       The defense counsel identified below shall accept service on behalf of its client of  
13 all complaints in this matter, including any amended or consolidated complaints, and Defendant  
14 shall not contest the sufficiency of process or service of process; provided, however, that by  
15 entering into this Stipulation Defendant does not waive any other defense, including but not  
16 limited to the defense of lack of personal or subject matter jurisdiction or improper venue.

17           3.       Plaintiff and Defendant agree that notwithstanding the above paragraphs, should  
18 Defendant respond to a complaint in another of the Tomato Antitrust Cases prior to the date  
19 contemplated by this Stipulation, then Defendant shall make a simultaneous response to the  
20 complaint in the above-captioned matter and, should Defendant respond or undertake to respond  
21 to discovery or otherwise engage in facilitation of case management in another of the Tomato  
22 Antitrust Cases prior to the date contemplated by this Stipulation, then Defendant shall engage in  
23 similar discovery or case management activity in this case.

24           ///  
25

26           ///  
27

28           ///  
29

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS SO STIPULATED.

DATED: January 26, 2009

Quinn Emanuel Urquhart Oliver & Hedges, LLP

By: /s/ J.D. Horton (as authorized on 1/26/09)  
J.D. Horton, Esq.

Attorneys for Plaintiff  
FOUR IN ONE COMPANY, INC., on behalf  
of itself and all others similarly situated

DATED: January 26, 2009

Bingham McCutchen LLP

By: /s/ Steve Zovickian  
Steve Zovickian, Esq.

Attorneys for Defendant  
INGOMAR PACKING COMPANY

**ORDER**

IT IS SO ORDERED.

Dated: January 27, 2009

  
\_\_\_\_\_  
MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE