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24 *Attorneys for Plaintiff Bruce Foods Corporation and the proposed Class*

25 UNITED STATES DISTRICT COURT
26 EASTERN DISTRICT OF CALIFORNIA

27 BRUCE FOODS CORPORATION, on
28 behalf of itself and all others similarly
situated,

Plaintiff,

v.

SK FOODS, L.P., INGOMAR PACKING
COMPANY, LLC, LOS GATOS TOMATO
PRODUCTS, RANDALL LEE RAHAL,
and INTRAMARK USA, INC.,

Defendants.

CASE NO.: 09-CV-00027-MCE-EFB

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

1 Plaintiff Bruce Foods Corporation (“Plaintiff”) and Defendants SK FOODS, L.P.,
2 INGOMAR PACKING COMPANY, LLC, LOS GATOS TOMATO PRODUCTS,
3 RANDALL LEE RAHAL, and INTRAMARK USA, INC., (“Defendants”), by and through
4 their counsel of record, hereby submit this Stipulation Regarding Response To Complaint
5 Pending Consolidation of Related Cases.

6 WHEREAS Plaintiff filed a Complaint in the above-captioned case on or about
7 January 5, 2009;

8 WHEREAS Plaintiff alleges price fixing of processed tomato products sold in the
9 United States;

10 WHEREAS this is the first extension requested by Plaintiff and Defendants in this
11 action;

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

15 WHEREAS the Plaintiff has filed a motion to consolidate all of the Tomato Antitrust
16 Cases pursuant to Federal Rule of Civil Procedure 42(a);

17 WHEREAS the parties anticipate that the cases will be consolidated, and that with
18 respect to the putative class actions, there will be a single master consolidated amended
19 complaint;

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

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

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1 WHEREAS Defendants agrees that the defense counsel identified below will accept
2 service on behalf of its client of all complaints in this matter, including any amended or
3 consolidated complaints, and that Defendants shall not contest the sufficiency of process or
4 service of process; provided, however, that this Stipulation does not constitute a waiver of
5 any other defense, including but not limited to the defense of lack of personal or subject
6 matter jurisdiction or improper venue; and

7 WHEREAS Plaintiff and Defendants agree that notwithstanding the above paragraphs,
8 should any of the Defendants respond to a complaint in another of the Tomato Antitrust
9 Cases prior to the date contemplated by this Stipulation, then Defendants shall make a
10 simultaneous response to the complaint in the above-captioned matter and, should any of the
11 Defendants respond or undertake to respond to discovery or otherwise engage in facilitation
12 of case management in another of the Tomato Antitrust Cases prior to the date contemplated
13 by this Stipulation, then Defendants shall engage in similar discovery or case management
14 activity in this case.

15 THEREFORE, PLAINTIFF AND DEFENDANTS, BY AND THROUGH THEIR
16 RESPECTIVE COUNSEL OF RECORD, HEREBY STIPULATE AS FOLLOWS:

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

22 2. The defense counsel identified below shall accept service on behalf of their
23 respective clients of all complaints in this matter, including any amended or consolidated
24 complaints, and Defendants shall not contest the sufficiency of process or service of process;
25 provided, however, that by entering into this Stipulation Defendants do not waive any other
26 defense, including but not limited to the defense of lack of personal or subject matter
27 jurisdiction or improper venue.

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1 DATED: January 29, 2009

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3 By: /s/ Brian P. Maschler (as authorized 1/29/09)
4 BRIAN P. MASCHLER (SBN 111824)
5 **GORDON & REES, LLP**

6 *Attorneys for Defendant SK Foods L.P.*

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8 DATED: January 29, 2009

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10 By: /s/ George A. Nicoud III (as authorized 1/28/09)
11 JOEL S. SANDERS (SBN 107234)
12 GEORGE A. NICOUD III (SBN 106111)
13 **GIBSON, DUNN & CRUTCHER, LLP**

14 *Attorneys for Defendant Los Gatos Tomato*
15 *Products*

16 DATED: January 28, 2009

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18 By: /s/ Stephen Zovickian (as authorized 1/28/09)
19 STEPHEN ZOVICKIAN (SBN 78697)
20 **BINGHAM MCCUTCHEN**

21 *Attorneys for Defendant Ingomar Packing Co., Inc.*

1 DATED: January 28, 2009

2
3 By: /s/ Rebekah R. Conroy (as authorized 1/28/09)
4 REBEKAH R. CONROY (pro hac vice –pending)
5 **WALDER, HAYDEN & BROGAN, P.A.**

6 *Attorneys for Defendants Randall Lee Rahal and*
7 *Intramark USA, Inc.*

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9 IT IS SO ORDERED.

10 DATED: February 6, 2009

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13 MORRISON C. ENGLAND, JR.
14 UNITED STATES DISTRICT JUDGE
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