

1 Dale C. Campbell, State Bar No. 99173
 James Kachmar, State Bar No. 216781
 2 **WEINTRAUB TOBIN CHEDIAK COLEMAN GRODIN**
 Law Corporation
 3 400 Capitol Mall, 11th Floor
 Sacramento, California 95814
 4 (916) 558-6000 – Main
 (916) 446-1611 – Facsimile
 5 Email: dcampbell@weintraub.com
 Email: jkachmar@weintraub.com

6 Attorneys for Plaintiffs The Morning Star Packing Company,
 7 Liberty Packing Company, LLC, California Fruit & Tomato
 Kitchens, LLC, and The Morning Star Company
 8

9
 10 UNITED STATES DISTRICT COURT
 11 EASTERN DISTRICT OF CALIFORNIA
 12

13 THE MORNING STAR PACKING COMPANY,)
 a California limited partnership; LIBERTY)
 14 PACKING COMPANY, LLC, a California)
 limited liability company; CALIFORNIA)
 15 FRUIT & TOMATO KITCHENS, LLC, a)
 California limited liability company; and THE)
 16 MORNING STAR COMPANY, a California)
 corporation,)

17 Plaintiffs,)

18 vs.)

19 SK FOODS, L.P., a California limited)
 20 partnership; SK PM CORPORATION, a)
 California corporation; SCOTT SALYER, an)
 21 individual; RANDALL RAHAL, an individual;)
 INTRAMARK USA, INC., a New Jersey)
 22 corporation; INGOMAR PACKING)
 COMPANY, LLC, a California limited liability)
 23 company; GREG PRUETT, an individual; LOS)
 GATOS TOMATO PRODUCTS; STUART)
 24 WOOLF, an individual; ALAN HUEY, an)
 individual; and DOES 1 through 50,)
 25 inclusive,)

26 Defendants.)

Case No. 2:09-CV-00208 KJM-EFB

**NOTICE OF STIPULATED REQUEST FOR
 DISMISSAL WITH PREJUDICE AS TO ONLY
 DEFENDANTS SK FOODS L.P. AND SK PM
 CORPORATION**

AND ORDER

Complaint Filed: January 22, 2009
 Trial Date: No trial date set

27 ///
 28 ///

weintraub tobin chediak coleman grodin
law corporation

1 Plaintiffs The Morning Star Packing Company, Liberty Packing Company, LLC,
2 California Fruit & Tomato Kitchens, LLC, and The Morning Star Company (collectively,
3 "Plaintiffs"), and defendants SK Foods, LLP and SK PM Corporation, (collectively
4 "SK Defendants"), by and through Bradley D. Sharp ("Trustee"), the duly appointed and acting
5 chapter 11 trustee for substantively consolidated debtors SK Foods, L.P., and RHM
6 Industrial/Specialty Foods, Inc., which consolidation includes defendant SK PM Corporation ,
7 by and through their attorneys of record, file this stipulation and proposed order of dismissal
8 with prejudice of SK Foods, LLP and SK PM Corporation pursuant to Federal Rules of Civil
9 Procedure, rule 41(a)(2).

10 Plaintiffs filed their Complaint on January 22, 2009, naming SK Foods and others as
11 defendants [Dkt. 1]. On January 29, 2010, Plaintiffs filed a First Amended Complaint adding
12 SK PM Corporation and others as a defendants [Dkt. 100]. On December 6, 2010, Plaintiffs
13 filed a Second Amended Complaint [Dkt. 116].

14 The action against the SK Defendants was automatically stayed because of the filing of
15 the Notice by Defendant SK Foods, L.P. of Pendency of Chapter 11 Case filed in this matter on
16 May 11, 2009 [Dkt. 75].

17 Plaintiffs and the Trustee entered into an Amended Agreement for Allowance of Claims
18 by which Plaintiffs and the SK Foods Defendants compromised all claims raised by Plaintiffs
19 in this action against the SK Foods Defendants. Plaintiffs and the Trustee filed a motion to
20 approve the compromise and specifically filed a Notice of Filing Amended Agreement for
21 Allowance of Claims filed in the United States Bankruptcy Court for the Eastern District of
22 California, Sacramento Division, Case No. 09-29162-D-11 and Case No. 09-29161-D-11
23 ("Bankruptcy Court"), which attached a copy of the Amended Agreement for Allowance of
24 Claims ("Compromise"), a true and correct copy of which is attached hereto as **Exhibit "A."** On
25 January 27, 2011, the Bankruptcy Court issued a Memorandum of Decision approving the
26 Compromise as fair and equitable. A true and correct copy of the Memorandum of Decision
27 is attached hereto as **Exhibit "B."** That same date, the Bankruptcy Court issued its Order
28 granting

1 ///

2 the motion to approve the Compromise between Plaintiffs and the Trustee. A true and correct
3 copy of the Order is attached hereto as **Exhibit "C."**

4 In order to fully effectuate the terms of the Compromise, Plaintiffs and Trustee hereby
5 stipulate and request that the claims against the SK Defendants be dismissed with prejudice
6 in the above-entitled action pursuant to rule 41(a)(2) of the Federal Rules of Civil Procedure
7 on the terms that the Amended Agreement for Allowance of Claims approved by Order of
8 the Bankruptcy Court dated January 27, 2011, is not affected by the dismissal and remains in
9 full force and effect. Plaintiffs and Trustee further stipulate that each side shall bear its own
10 attorneys' fees and costs.

11 IT IS SO STIPULATED.

12 Respectfully submitted,

13 Dated: April 19, 2019

WEINTRAUB TOBIN CHEDIAK COLEMAN GRODIN
Law Corporation

14

15 By: /s/ Dale C. Campbell
16 Dale C. Campbell, SBN 99173

17 Company, Attorneys for Plaintiffs The Morning Star Packing
18 Liberty Packing Company, LLC, California Fruit & Tomato
Kitchens, LLC, and The Morning Star Company

19

20 Dated: April 19, 2019

NUTI HART LLP

21 By: /s/ Kevin Coleman
22 Kevin Coleman, SBN 168538

23 Attorneys for Bradley D. Sharp, Chapter 11 Trustee

24

25

26

27

28

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

ORDER

Having reviewed the above Stipulated Request for Dismissal with Prejudice by Plaintiffs The Morning Star Packing Company, Liberty Packing Company, LLC, California Fruit & Tomato Kitchens, LLC, and The Morning Star Company (collectively, "Plaintiffs") and defendants SK Foods, LP and SK PM Corporation, by and through Bradley D. Sharp, Chapter 11 Trustee, and good cause appearing therefor,

IT IS HEREBY ORDERED that Plaintiffs' action as to defendants SK Foods, LP and SK PM Corporation only is dismissed with prejudice and that the Amended Agreement for Allowance of Claims approved by Order of the Bankruptcy Court dated January 27, 2011 is not affected by this dismissal and remains in full force and effect . Each side shall bear its own attorneys' fees and costs.

IT IS SO ORDERED.

Dated: April 29, 2019.


UNITED STATES DISTRICT JUDGE