

1 Dale C. Campbell, State Bar No. 99173
 James Kachmar, State Bar No. 216781
 2 W. Scott Cameron, State Bar No. 229828
WEINTRAUB GENSHLEA CHEDIAK
 3 Law Corporation
 400 Capitol Mall, 11th Floor
 4 Sacramento, California 95814
 (916) 558-6000 – Main
 5 (916) 446-1611 – Facsimile

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

9
 10 UNITED STATES DISTRICT COURT
 11 EASTERN DISTRICT OF CALIFORNIA

12
 13 THE MORNING STAR PACKING)
 COMPANY, a California limited)
 14 partnership; LIBERTY PACKING)
 COMPANY, LLC, a California limited)
 15 liability company; CALIFORNIA FRUIT &)
 TOMATO KITCHENS, LLC, a California)
 16 limited liability company; and THE)
 MORNING STAR COMPANY, a)
 17 California corporation,)

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

**STIPULATION AND ORDER VACATING
 THE HEARING DATE OF DEFENDANT
 SCOTT SALYER’S MOTION TO DISMISS
 AND EXTENSION OF TIME TO RESPOND
 TO AMENDED COMPLAINT**

18 Plaintiffs,

19 vs.

20 SK FOODS, L.P., a California limited)
 partnership; SCOTT SALYER, an)
 21 individual; RANDALL RAHAL, an)
 individual; INTRAMARK USA, INC., a)
 22 New Jersey corporation; and DOES 1)
 through 50, inclusive,)

23 Defendants.
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LAW CORPORATION

1 Plaintiffs The Morning Star Packing Company, Liberty Packing Company,
2 LLC, California Fruit and Tomato Kitchens, LLC and The Morning Star Company
3 (collectively, "Plaintiffs") and defendant Scott Salyer ("Salyer"), by and through
4 their counsel of record, hereby submit the following stipulation and proposed
5 order to vacate the hearing on Salyer's motion to dismiss and to extend the time
6 for Salyer to respond to Plaintiffs' amended complaint.

7 WHEREAS, Plaintiffs filed a complaint in the above-captioned case on
8 January 22, 2009.

9 WHEREAS, an involuntary bankruptcy proceeding was filed against
10 defendant SK Foods, LP ("SK Foods") on May 5, 2009 (United States Bankruptcy
11 Court, Eastern District of California, Case No. 09-28956-D-11). SK Foods filed a
12 voluntary bankruptcy petition on May 7, 2009 (United States Bankruptcy Court,
13 Eastern District of California, Case No. 09-29162-D-11). Notice of the automatic
14 stay was filed in this Court on May 11, 2009.

15 WHEREAS, prior to filing bankruptcy, SK Foods and Salyer had filed a motion
16 to dismiss on April 8, 2009, the hearing of which was continued by the Court in
17 granting the parties' Stipulation on June 11, 2009 to September 24, 2009.

18 WHEREAS, the Court, on June 11, 2009, also stayed all discovery in this
19 action;

20 WHEREAS, the automatic stay provisions has caused some uncertainty
21 regarding Plaintiffs' ability to file an opposition to SK Foods' motion to dismiss as
22 well as to cure any defects by the filing of an amended complaint. The parties
23 stipulated on September 17, 2009 to continue the hearing on defendants SK
24 Foods' and Salyer's motion to dismiss for an additional 90 days.

25 WHEREAS, on September 23, 2009, the Court issued its Minute Order
26 denying defendants' motions to dismiss without prejudice to their being re-filed
27 and set for hearing on December 17, 2009 or such later time as the parties may
28 agree.

1 WHEREAS, Salyer re-filed his motion to dismiss complaint on November 11,
2 2009 and set his motion for hearing on December 17, 2009.

3 WHEREAS, on November 13, 2009, the Court *sua sponte* vacated the
4 hearing on Salyer's motion to dismiss and advanced the hearing to December
5 10, 2009.

6 WHEREAS, Plaintiffs and Salyer have agreed to vacate the hearing of
7 Salyer's motion to dismiss currently scheduled for December 10, 2009 so that
8 Plaintiffs may file an amended complaint as is permitted as a matter of course
9 under Rule 15(a)(1)(A) of the Federal Rules of Civil Procedure and thereby render
10 Salyer's motion to dismiss moot.

11 WHEREAS, Salyer has agreed to vacate the hearing of his motion to dismiss
12 in exchange for Plaintiffs agreeing to extend the time for him to answer or
13 otherwise respond to the amended complaint, which Plaintiffs have agreed to
14 do.

15 THEREFORE, Plaintiffs and Salyer, by and through their counsel of record,
16 hereby stipulate as follows:

17 1. The hearing on Salyer's motion to dismiss currently set for December
18 10, 2009 is vacated;

19 2. Plaintiffs shall have until December 31, 2009 in which to file an
20 amended complaint; and

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3. Salyer shall have until February 5, 2010 in which to answer or otherwise respond to Plaintiffs' amended complaint.

IT IS SO STIPULATED.

Dated: November 24, 2009

WEINTRAUB GENSHLEA CHEDIAK
Law Corporation

By: /s/ James Kachmar
James Kachmar
Attorneys for Plaintiffs
The Morning Star Packing Company,
Liberty Packing Company, LLC,
California
Fruit & Tomato Kitchens, LLC, and
The Morning Star Company

Dated: November 24, 2009


SEGAL & KIRBY LLP

By: /s/ Malcolm S. Segal
Malcolm S. Segal
Attorneys for Defendant Scott Salyer

ORDER

IT IS SO ORDERED.

DATED: December 8, 2009


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE