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9 INTERNATIONAL FOODSOURCE, LLC,  
10 a New Jersey Limited Liability Company

11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

13 GROWER DIRECT NUT CO., INC.,

Case No. 2:17-CV-00151-KJM-AC

14 Plaintiff,

15 v.

Judge: Hon. Kimberly J. Mueller

16 INTERNATIONAL FOODSOURCE, LLC,

17 Defendant.

18 **JOINT APPLICATION AND STIPULATION FOR DISMISSAL OF ACTION**  
19 **WITH PREJUDICE AND VACATUR OF ARBITRATION AWARD;**  
20 **ORDER THEREON**

21 The parties to this action, acting through counsel, and pursuant to Federal Rule of Civil  
22 Procedure 41(a)(1)(A)(ii) hereby jointly apply for and request, in consideration of a negotiated  
23 settlement executed by them, for the Court to: (1) dismiss this action with prejudice; and (2) order a  
24 stipulated vacatur of the November 16, 2016 Arbitration Award Entered by the DFA of California in  
25 the Arbitration captioned Grower Direct Nut Co., Inc. v. International Foodsource, LLC, DFA No.  
26 423 (the "Arbitration Award") with prejudice, with each party to bear its own attorneys' fees and  
27 costs.

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Joint Application and Stipulation for Dismissal  
of Action with Prejudice and Vacatur of Arbitration Award  
and Order

1 The purpose of this Joint Application and Stipulation is to place the parties in the same  
2 position they would be if the Court granted International Foodsource, LLC's ("IFS") motion to vacate  
3 the Arbitration Award (ECF Document No. 9), all in accordance with and in furtherance of a  
4 Settlement Agreement between the parties and consistent with the interest of justice.

5 In support of this Joint Application and Stipulation, the Parties state:

- 6 1. In December, 2015, Grower Direct Nut Co., Inc. ("Grower Direct") filed a Demand For  
7 Arbitration with the DFA of California (the "DFA") wherein Grower Direct alleged that  
8 IFS breached contracts numbered 14922 and 14923 with Grower Direct by failing to  
9 purchase walnuts within the time provided under the contracts (the "Arbitration");
- 10 2. On or about May 2, 2016, IFS filed a Complaint in the Superior Court of New Jersey,  
11 Morris County, captioned International Foodsource, LLC v. Grower Direct Nut Co., Inc.,  
12 which action was removed to the United States District Court for the District of New  
13 Jersey and assigned docket number 16-cv-3140 (the "New Jersey Action"). IFS alleged in  
14 the New Jersey Action that the arbitration clause was unenforceable and that Grower  
15 Direct made certain misrepresentations to IFS;
- 16 3. IFS filed an application to stay the Arbitration and Grower Direct filed a motion to compel  
17 Arbitration, and by Order dated August 3, 2016, the United States District Court for the  
18 District of New Jersey stayed the New Jersey Action and ordered the parties to proceed to  
19 Arbitration;
- 20 4. On November 16, 2016, the Arbitration Award was entered in favor of Grower Direct  
21 against IFS;
- 22 5. Grower Direct filed this Action to confirm the Arbitration Award and IFS moved in this  
23 Action to vacate the Arbitration Award on the grounds, among other things, that the  
24 Arbitration Award was entered in violation of the Federal Arbitration Act because, among  
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Joint Application and Stipulation for Dismissal  
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and Order

1 other things: (a) the DFA failed to conduct a hearing; (b) the DFA entered its Arbitration  
2 Award at least in part based on *ex parte* evidence, arguments, and communications; and  
3 (c) the DFA Panel was composed entirely of DFA members (where Grower Direct is a  
4 DFA member, but IFS is not);

- 5  
6 6. The Parties participated in a mediation before Dana Welch, Esq. on April 19, 2017;  
7 wherein they reached a settlement in principle, and executed a confidential Settlement  
8 Agreement on May 15, 2017;
- 9 7. The Parties agree that the vacatur of the Arbitration Award will place the parties in the  
10 same position they would be if IFS's motion to vacate were granted in accordance with  
11 and in furtherance of the Settlement Agreement of the parties;
- 12 8. The Parties agree that the Arbitration Award should be vacated and should not be  
13 construed to have any *res judicata* or collateral estoppel effect;
- 14 9. Vacatur of the Arbitration Award pursuant to this Joint Application and Stipulation will  
15 obviate any additional briefing by the parties and conserve judicial resources;
- 16 10. No non-parties nor the public will be adversely affected by the vacatur of the Arbitration  
17 Award; and
- 18 11. The relief sought is consistent with applicable principles of California law.

19  
20 This Joint Application is made in connection with the settlement between the parties and for  
21 the purposes set forth above. The Parties are willing to furnish the Court additional briefing, analysis,  
22 or information (including the provision of the Confidential Settlement Agreement for *in camera*  
23 review) as the Court may request in order to satisfy itself that the requested vacatur of the Arbitration  
24 Award is in the interest of justice and consistent with governing principles of California law.  
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SO STIPULATED:

DATED: May 23, 2017

WILKE, FLEURY, HOFFELT,  
GOULD & BIRNEY, LLP

By: /s/ Matthew W. Powell  
MATTHEW W. POWELL  
Attorneys for Defendant  
INTERNATIONAL FOODSOURCE, LLC

LAW OFFICES OF PATRICK  
D. RIDDLE, P.C.

By: /s/ Patrick D. Riddle  
PATRICK D. RIDDLE  
Attorneys for Plaintiff  
GROWER DIRECT NUT CO., INC

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**ORDER**

The parties hereto having filed a “Joint Application and Stipulation for Dismissal of Action with Prejudice and Vacatur of Arbitration Award”; the Court having had the opportunity to review the merits of the application; and finding that the interests of non-parties or the public will not be adversely affected by the vacatur of the Arbitration Award; and that the reasons of the parties for requesting vacatur of the Arbitration Award are consistent with the interests of justice and governing principles of California law; it is therefore ordered that: (i) the entire action is hereby dismissed with prejudice and without costs; and (ii) the November 16, 2016 Arbitration Award entered by the DFA of California in the Arbitration captioned Grower Direct Nut Co., Inc. v. International Foodsource, LLC, DFA No. 423 is hereby vacated with prejudice and without costs.

IT IS SO ORDERED.

DATED: August 29, 2017.

  
UNITED STATES DISTRICT JUDGE