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Claimants MARIO RAMIREZ, CAMILO RAMIREZ,
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PRINTING & PACKAGING CORP., and NAFTAUNITED.COM
8

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

11 INNOVATION VENTURES, LLC and
LIVING ESSENTIALS, LLC,

12 Plaintiffs,

13 v.

14 PITTSBURGH WHOLESALE GROCERS,
15 INC. d/b/a/ PITCO FOODS, ET AL.,

16 Defendants.

CASE NO. 12-CV-5523-WHA

STIPULATION PURSUANT TO RULE
41(a)(2) TO DISMISS CERTAIN
THIRD-PARTY CLAIMS AND
CERTAIN CROSS-CLAIMS

[Filed concurrently with [Proposed] Order
Dismissing Certain Third-Party Claims And
Cross-Claims]

Trial Date: January 13, 2014
Complaint Filed: October 26, 2012

17 AND ALL RELATED CROSS-ACTIONS.
18
19

20 **TO THIS HONORABLE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS**
21 **OF RECORD:**

22 PLEASE TAKE NOTICE that pursuant to Rule 41(a)(2) of the Federal Rules of Civil
23 Procedure, DAN-DEE COMPANY, INC., FADI ATTIQ, and KEVIN ATTIQ (collectively,
24 “Dan-Dee Parties”); WALID JAMIL, RAID (“BRIAN”) JAMIL, JUSTIN SHAYOTA,
25 MIDWEST WHOLESALE DISTRIBUTORS, INC., J.T. WHOLESALE, INC., TRIMEXICO,
26 INC. (collectively referred to herein as the “Midwest Parties”); JOSEPH SHAYOTA,
27 ADRIANA SHAYOTA, TRADEWAY INT’L, INC., dba BAJA EXPORTING (collectively
28 referred to herein as the “Baja Parties”); MARIO RAMIREZ, CAMILO RAMIREZ, MCR

1 INNOVATIONS AND PACKAGING, INC., MCR PRINTING & PACKAGING CORP., and
2 NAFTAUNITED.COM (collectively referred to herein as the “MCR Parties”); and JORGE
3 NAVARRO and ONE STOP LABEL COPORATION (collectively referred to herein as the
4 “Navarro Parties”), by and through their respective counsel of record, hereby stipulate and agree
5 as follows:

6 WHEREAS, on or about January 23, 2013, Dan-Dee Company, Inc. (“Dan-Dee”) filed a
7 First Amended Third-Party Complaint (Docket # 162) against the Midwest Parties, the Baja
8 Parties, the MCR Parties, and the Navarro Parties, among others,¹ alleging claims for Intentional
9 Misrepresentation, Breach of Contract, Tortious Interference (Contracts), Tortious Interference
10 (Future Relations); False Labeling under the Lanham Act, False Advertising under the Lanham
11 Act, Violations of California’s Unfair Competition Laws (“UCL”), Equitable Indemnity and
12 Equitable Contribution.

13 Whereas, on January 23, 2013, Kevin Attiq and Fadi Attiq filed a cross-claim for
14 contribution and indemnity against the same parties whom Dan-Dee had named in their First
15 Amended Third-Party Complaint. (Docket # 161.)

16 WHEREAS, on or about March 22, 2013, the Baja Parties filed an Answer to the First
17 Amended Third-Party Complaint of Dan-Dee and asserted Cross-Claims against Dan-Dee, Kevin
18 Attiq, the MCR Parties (except Camilo Ramirez) and the Midwest Parties for Violation of
19 California Unfair Competition Law (“UCL”), Equitable Indemnity and Contribution. (Docket #
20 272.)

21 WHEREAS, on April 10, 2013, the Midwest Parties answered the cross-claims of the
22 Baja Parties and filed cross-claims as follows: (1) Midwest Wholesale Distributors Inc., Walid

23 _____
24 ¹ Dan-Dee’s First Amended Third-Party Complaint was also against third-party defendants Leslie
25 Roman, Donna Roman, Flexopack, however they filed for Chapter 7 Bankruptcy on July 22,
26 2013, Case No. 6:13-bk-22482-MH pending in the United State Bankruptcy Court for the
27 Central District of California, and therefore these third-party defendants cannot sign the
28 stipulation. In addition, Default was entered as to the remaining third party defendants Juan
Romero Gutierrez, Nutrition Private Label Inc. and Advanced Nutraceutical Manufacturing Inc.
on May 1, 2013, so these third party defendants also cannot sign the stipulation. (Court
Document No. 326.) In addition, Dan-Dee Company, Inc. named “Baja Exporting LLC” as a
party; Baja Exporting LLC is a defunct entity and as a result has not participated in this
litigation.

1 Jamil and Justin Shayota filed claims for Fraudulent Misrepresentation and Innocent
2 Misrepresentation against Tradeway Int'l Inc. dba Baja Exporting ("Baja Exporting") and Joseph
3 Shayota, (2) Midwest Wholesale Distributors, Inc., Walid Jamil and Justin Shayota filed a claim
4 for Silent Fraud against the Baja Parties and Baja Exporting LLC (a defunct entity); and (3) the
5 Midwest Parties filed claims for Indemnification and Contribution against the Baja Parties and
6 Baja Exporting LLC. (Docket # 307.)

7 WHEREAS, on or about May 28, 2013, the Midwest Parties filed a First Amended Cross
8 Claim (Docket # 343) against One Stop Label Corporation, among others,² alleging claims for
9 Fraudulent Misrepresentation, Innocent Misrepresentation, Silent Fraud, Indemnification and
10 Contribution.

11 WHEREAS, the parties to this Stipulation agree to dismiss all claims against each other
12 except for claims of Indemnity and Contribution, and in exchange, all parties named in any claim
13 that is dismissed agree to waive any claim for costs or attorney fees based upon the prosecution
14 or dismissal of such claims. All dismissals shall be with prejudice except Midwest's claims
15 against the Baja Defendants and One Stop Label Corporation, as Midwest is pursuing essentially
16 the same claims in the case of *Innovation Ventures, LLC, et al v. Ultimate One Distributing*
17 *Corp., et al*, Case No. 12 Civ. 5354 (KAM), which is pending in the Eastern District of New
18 York before Judge Kiyoo Matsumoto (the "EDNY Action"), and therefore such claims will be
19 dismissed without prejudice. Therefore, (1) Dan-Dee agrees to dismiss with prejudice its claims
20 for Intentional Misrepresentation, Breach of Contract, Tortious Interference (Contracts), Tortious
21 Interference (Future Relations); False Labeling under the Lanham Act, False Advertising under
22 the Lanham Act, and Violations of California's Unfair Competition Laws ("UCL") against the
23 Midwest Parties, the MCR Parties, the Navarro Parties and the Baja Parties, in exchange for the
24 Midwest Parties, the Baja Parties, the MCR Parties and the Navarro Parties agreeing to dismiss
25 any claims other than claims for Contribution or Indemnity they have against the Dan-Dee

26 _____
27 ² The Midwest Parties' First Amended Cross Claim was also filed against cross defendant Leslie
28 Roman, however he filed for Chapter 7 Bankruptcy on July 22, 2013, Case No. 6:13-bk-22482-
MH pending in the United State Bankruptcy Court for the Central District of California, and
therefore he cannot sign the stipulation.

1 Parties, and for a waiver of costs and limited release as to any potential claim for costs or
2 attorneys' fees related to such dismissals, as set forth below; (2) the Baja Parties agree to dismiss
3 with prejudice their claim for UCL against the MCR Parties (except Camilo Ramirez against
4 whom the UCL claim was not asserted), the Dan-Dee Parties and the Midwest Parties and for a
5 waiver of costs and limited release related to any potential claim for costs or attorneys' fees
6 related to such dismissals, as set forth below; and (3) Midwest Wholesale Distributors, Inc.,
7 Walid Jamil, and Justin Shayota agree to dismiss without prejudice their claims for Fraudulent
8 Misrepresentation and Innocent Misrepresentation against Baja Exporting and Joseph Shayota,
9 and their claim for Silent Fraud against the Baja Parties, and the Midwest Parties agree to
10 dismiss their claims for Fraudulent Misrepresentation, Innocent Misrepresentation and Silent
11 Fraud against One Stop Label Corporation, and for a waiver of costs and limited release related
12 to any potential claim for costs or attorneys' fees related to such dismissals, as set forth below

13 WHEREAS, all claims against the entity "Baja Exporting LLC" shall be dismissed
14 without prejudice, because such entity is defunct.

15 WHEREAS, it is the intention of some of the parties to pursue claims for indemnity or
16 contribution, to the extent already asserted in this action, against other parties in the EDNY
17 Action. To that end, if necessary, and to the extent permitted by law, the parties intend to sign a
18 reasonable stipulation in the EDNY Action to provide leave to any such party to assert cross-
19 claims for indemnity and contribution in the EDNY Action. The parties to this stipulation
20 understand that any cross-claims for indemnity or contribution may be transferred to the EDNY
21 Action. Nothing herein shall be deemed a waiver of any party's right to contest another party's
22 claims for indemnity and/or contribution.

23 WHEREAS, the parties agree that stipulating to pursue any indemnity or contribution
24 claims in the EDNY Action shall have no effect on whether or not California Code of Civil
25 Procedure section 877 and 877.6 (concerning the effect of a good-faith settlement on indemnity
26 and contribution claims) is applicable to any party's indemnity and contribution claims.

27
28 NOW THEREFORE IT IS HEREBY STIPULATED by the Dan-Dee Parties, the

1 Midwest Parties, the Baja Parties, the MCR Parties and the Navarro Parties that:

2 1. Dan-Dee's First Cause of Action for Intentional Misrepresentation, Second Cause
3 of Action for Breach of Contract, Third Cause of Action for Tortious Interference (Contracts),
4 Fourth Cause of Action for Tortious Interference (Future Relations), Fifth Cause of Action for
5 False Labeling under the Lanham Act, Sixth Cause of Action for False Advertising under the
6 Lanham Act and Seventh Cause of Action for UCL set forth in Dan-Dee's First Amended Third-
7 Party Complaint filed January 23, 2013 (Docket # 162) shall be dismissed with prejudice as to
8 the Midwest Parties, the Baja Parties, the MCR Parties, and the Navarro Parties;

9 2. The Baja Defendants' Third Cause of Action under the UCL set forth in their
10 March 22, 2013 Answer and Cross-Claim (Docket # 272) shall be dismissed with prejudice as to
11 the Dan-Dee Parties, MCR parties (except Camilo Ramirez) and the Midwest Parties;

12 3. Midwest Wholesale Distributors, Walid Jamil, and Justin Shayota's First and
13 Second Causes of Action for Fraudulent Misrepresentation and Innocent Misrepresentation in
14 their April 10, 2013 Cross Claim (Docket # 307) against Baja Exporting and Joseph Shayota and
15 their Third Cause of Action for Silent Fraud against the Baja Parties shall be dismissed without
16 prejudice;

17 4. The Midwest Parties First Cause of Action for Fraudulent Misrepresentation,
18 Second Cause of Action for Innocent Misrepresentation, and Third Cause of Action for Silent
19 Fraud in their First Amended Cross Claim (Docket # 343) against One Stop Label Corporation
20 shall be dismissed without prejudice;

21 5. The Dan-Dee Parties, the Midwest Parties, the Baja Parties, the MCR Parties and
22 the Navarro Parties agree to release and waive any and all rights or claims they may have against
23 each other based upon or related to the dismissal of any claims or causes of action being
24 dismissed pursuant to this Stipulation, including any claims for: (1) attorney's fees, (2) costs of
25 suit, and/or (3) any other loss of any kind allegedly occasioned by the filing or prosecution of
26 any of the claims dismissed pursuant to Paragraphs 1-4 above, but this limited release and waiver
27 shall have no effect on these parties' respective claims against one another for equitable
28 indemnity or contribution, or the claims that are dismissed without prejudice; this limited release

1 is strictly and solely in order to release and waive any claims for costs, attorneys fees or other
2 purported damages arising out of the dismissing parties' prosecution of the claims being
3 dismissed pursuant to this Stipulation.

4 6. To the extent permitted by law, all claims asserted by the Dan Dee Parties,
5 Midwest Parties, Baja Parties, MCR Parties, and Navarro Parties for indemnity and contribution
6 shall be transferred to the EDNY Action. To the extent permitted by law, the parties also agree
7 to sign any stipulation in the EDNY Action to allow the parties to pursue any claims for
8 indemnity or contribution in the EDNY Action without waiving any rights any party may have to
9 contest such claims.

10 7. Any claims against Baja Exporting LLC shall be deemed dismissed without
11 prejudice since Baja Exporting LLC is a defunct entity.

12
13 PURSUANT TO STIPULATION, IT IS SO ORDERED

14 DATED: November 13, 2013

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17 United States District Court Judge William Alsup
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DATED: November 12, 2013

GORDON & REES LLP

By: /s/ Aaron P. Rudin
AARON P. RUDIN
Attorneys for Third-Party Defendants, Cross-Defendants and Cross-Claimants, MARIO RAMIREZ, CAMILO RAMIREZ, MCR INNOVATIONS AND PACKAGING, INC., MCR PRINTING & PACKAGING CORP., and NAFTAUNITED.COM

DATED: November 12, 2013

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DATED: November 12, 2013

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DATED: November 12, 2013

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DATED: November 12, 2013

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