

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DG BERRY, Inc. a California corporation

Plaintiff(s),

vs.

DRISCOLL STRAWBERRY ASSOCIATES,
INC., a California corporation
Defendant(s).

Case Number: CV 13-1236 EMC

JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED] ORDER

ORDEE

Date: June 27, 2013

Time: 9:00 a.m.

Courtroom: 5

The parties to the above-entitled action submit this JOINT CASE MANAGEMENT
STATEMENT & PROPOSED ORDER pursuant to Civil Local Rule 16-9.

The parties jointly apply for a continuation of the Case Management Conference to a date
after the mediation that the parties have set for July 9, 2013.

1. Jurisdiction & Service

Jurisdiction is based on Section 5(c)(5) of the Perishable Agricultural Commodities Act, 7 USC
§499e, et seq. and 28 U.S.C. §1331. All parties have been served. Venue is proper in the
Northern District. Although the Complaint was initially filed in the San Jose Division of this
Court, since the Defendants are located in Santa Cruz County, the case was transferred by the
Court sua sponte to the San Francisco Division. The parties jointly request an intra-district transfer to
the San Jose Division, for the convenience of the parties, their attorneys and the witnesses. The

1 parties are located in Santa Cruz County and Santa Barbara County, as are potential witnesses,
2 and counsel for both parties are located in Monterey County.

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4 **2. Facts**

5 The dispute arises from 3 years of contracts between Plaintiff DG Berry, Inc. ("DG
6 Berry"), who grew, harvested and financed a portion of the strawberry crops, and Defendant
7 Driscoll Strawberry Associates, Inc. ("Driscoll Strawberry Associates"), who owned the
8 proprietary strawberry plant materials and strawberries at all times, financed a portion of the
9 strawberry crops, and provided cooling, marketing and sales for the strawberry crops. DG Berry
10 claims that Driscoll Strawberry Associates failed to account for and pay all the money that was
11 due to DG Berry for the strawberry crops and for harvest costs under several Grower Services
12 Agreements and Fee Advance Agreements. DG Berry also claims damages from the alleged
13 breach of a contract to provide proprietary strawberry plants for growing and harvest in the
14 2011/2012 strawberry season. Plaintiff's claims turn primarily on contract interpretation and
15 accounting issues.

16 Defendant Driscoll Strawberry Associates claims that it "trued up" its accountings under
17 the Fee Advance Agreements. After Plaintiff complained to Driscoll Strawberry Associates
18 about money still owed to it, Defendant offered to pay DG Berry an additional sum of
19 \$12,486.89 under the Fee Advance Agreements as well as \$32,004.01 under the Grower Services
20 Agreement for strawberries sent for juice and freezer processors, as a final settlement, in
21 exchange for a release of all of DG Berry's claims. Those offers were rejected by DG Berry. In
22 response to the allegation that it breached its contract to provide proprietary strawberry plants for
23

1 the 2011/2012 season, Driscoll Strawberry Associates alleges that DG Berry canceled its order
2 when Driscoll Strawberry Associates exercised its contractual right to select different varieties of
3 strawberries than those that were ordered by the Plaintiff, and further that the contract expressly
4 rules out all forms of consequential damages.

5 Plaintiff filed this action after a series of negotiations between the parties concerning the
6 accountings under the agreements in question failed to resolve the disputes between the parties.

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8 **3. Legal Issues**

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10 The disputed points of law are the interpretations of the Grower Services Agreements, the
11 Fee Advance Agreements and the letter agreement for the provision of proprietary strawberry
12 plants. Plaintiff's claims under PACA and the California Food and Agriculture Code Sections
13 56302 and 56603 are based on its breach of contract claims.

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16 **4. Motions**

17 There are no pending motions. The parties may jointly move for an intra-district transfer
18 to the San Jose Division. Discovery and dispositive motions may be filed as the case develops.

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21 **5. Amendment of Pleadings**

22 The parties have not yet commenced discovery. The parties propose a deadline of
23 October 15, 2013 to amend their respective pleadings.

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3 **6. Evidence Preservation**

4 The parties have each reviewed the ESI Guidelines and have had initial discussions
5 concerning the preservation of relevant electronically stored evidence.
6

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8 **7. Disclosures**

9 The parties have not commenced discovery. In their meet and confer discussions, the
10 parties have agreed to postpone initial discovery until after their mediation scheduled for July 9,
11 2013.
12

13 **8. Discovery**

14 No discovery has been conducted to date.

15 The parties agree to complete non-expert discovery by March 15, 2014. The parties
16 agree that all depositions may be taken in Salinas, California.

17 The parties agree to a limit of 25 Rule 26(b) interrogatories, including the use of the
18 California Judicial Council form interrogatories for which subparts will not be counted as
19 additional interrogatories
20

21 **9. Class Actions**

22 Not applicable.
23

24 **10. Related Cases**

25 Not applicable
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27

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2 11. Relief

3 Plaintiff seeks relief as follows; at least \$255,016.53 under the Grower Services
4 Agreements, at least \$185,609.11 under the Fee Advance Agreements; and damages to be proved
5 at trial for breach of the agreement to provide proprietary strawberry plants.

6 Defendant contends that the correct accounting is based on the interpretation of each
7 agreement and the data gathered from the pool sales, the growers reported costs and other data
8 specified in the contracts.
9

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11 12. Settlement and ADR

12 The parties have agreed to conduct a mediation with Ret. Judge Richard Silver on July 9,
13 2013. Before litigation, the parties conducted negotiations based on the agreements and
14 accountings, but the discussions did not reach resolution.
15

16 13. Consent to Magistrate Judge For All Purposes

17 Not all parties have consented to the Magistrate Judge for all purposes.
18

19 14. Other References

20 The parties agree that no reference is suitable before the mediation is conducted.
21

22 15. Narrowing of Issues

23 The issues of contract interpretation are suitable for agreement or motions. The data
24 upon which the accountings are based is suitable for stipulated facts.
25
26
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1 16. Expedited Trial Procedure

2 The parties do not agree to the Expedited Trial Procedure of General Order 64.

3 17. Scheduling.

4 The parties propose the following schedule:

5 Designation of experts by April 1, 2014

6 Discovery cutoff by June 15, 2014

7 Hearing of dispositive motions by September 15, 2014

8 Pretrial conference on October 15, 2014

9 Trial commencing on November 4, 2014

10 18. Trial

11 The parties request a bench trial. The parties estimate that trial will last 5 court days.

12 19. Disclosure of Non-party Interested Entities or Persons

13 Each party has certified that as of this date, other than the named parties of record, there is
14 no such interest to report.

15 20. Other

16 None

17 Dated: 6/20/13

18 
Counsel for plaintiff

19 Dated: 6/20/13

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Counsel for defendant

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2 CASE MANAGEMENT ORDER

3 The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is
4 approved as the Case Management Order for this case and all parties shall comply with its
5 provisions. [In addition, the Court makes the further orders stated below:]
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7 The Case Management Conference currently scheduled for June 27, 2013 is hereby continued to:

8 Date: 7/25/13

9 Time: 9:00 a.m.

10 Courtroom: 5

11 IT IS SO ORDERED.

12 Dated: 6/26/13

13 UNITED STATES DISTRICT COURT JUDGE

