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5 Attorneys for Plaintiffs
 Dobler & Sons, LLC, SLO County Organics, LLC,
 6 ASA Farms, Inc., and Braga Ranch, Inc.

7 UNITED STATES DISTRICT COURT
 8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 9 SAN JOSE DIVISION

10 DOBLER & SONS, LLC; SLO COUNTY
 ORGANICS, LLC; ASA FARMS, INC.; and
 11 BRAGA RANCH, INC.,

12 Plaintiffs,

13 v.

14 CALIFORNIA ORGANICS, LLC; GEOFF
 MOUSSEAU; MICHAEL BARNES; DAN
 15 FANTZ; CALIFORNIA FARMS, INC.;
 16 MANJAR, INC.; CALIFORNIA FARMS
 INVESTORS, LLC; and AMERICA'S
 17 FACTORS, INC.,

18 Defendants.

Case No. C 10-04092 LHK

**STIPULATION CONSENTING TO THE
 FILING OF PLAINTIFFS' THIRD
 AMENDED COMPLAINT**

19 Pursuant to Federal Rules of Civil Procedure 15(a)(2), Defendants California Organics,
 20 LLC, Geoff Mousseau, Michael Barnes, Dan Fantz, California Farms, Inc., Manjar, Inc.,
 21 California Farms Investors, LLC, and America's Factors, Inc. (collectively "Defendants")
 22 stipulate and consent to allow Plaintiffs to file a Third Amended Complaint [attached as Exhibit
 23 1 to this Stipulation is a marked up copy of Plaintiffs' Second Amended Complaint (ECF No.
 24 72), which shows all changes and differences between Plaintiffs' Second Amended Complaint

1 and its Third Amended Complaint). The principal and only substantive change is that Plaintiffs
2 have added two new individual Defendants – James Roberts and Greg O’Neill.

3 In addition, because many of the Defendants have previously filed Answers to Plaintiffs’
4 Complaints (original, First Amended, or Second Amended), Plaintiffs and Defendants request
5 that, as to those Defendants who previously filed Answers only to one of these Complaints, the
6 Court not require that they respond to the Third Amended Complaint. Rather, Plaintiffs and
7 Defendants request that all denials, responses, and affirmative defenses to Plaintiffs’ Complaint,
8 First Amended Complaint, or Second Amended Complaint contained in Defendants’ Answers
9 that are now on file shall be deemed responsive to the Third Amended Complaint, and any new
10 allegations shall be deemed denied. Of course, Defendants and Plaintiffs also stipulate that
11 Defendants who currently have an Answer on file be allowed, if they choose to do so, to file a
12 response to the Third Amended Complaint; however, if a responsive pleading is not filed by the
13 previously answering Defendants within 21 days of the filing and service of the Third Amended
14 Complaint, then their prior answers currently on file shall be deemed responsive to the Third
15 Amended Complaint.

16 Date: September 28, 2011

RYNN & JANOWSKY, LLP

17
18 By: /s/ Marion I. Quesenbery
Marion I. Quesenbery
Attorneys for Plaintiffs Dobler & Sons, LLC
19 and SLO County Organics, LLC

20 Date: October 3, 2011

LAW OFFICE OF CLYDE C. PEARCE

21 By: /s/ Clyde C. Pearce
Clyde C. Pearce
22 Attorney for Defendants Michael Barnes and
California Farms Investors, LLC

23
24 I, Marion I. Quesenbery, attest that today, October 3, 2011, Clyde C. Pearce authorized
me to affix his signature to this Stipulation Consenting To The Filing Of Plaintiffs’ Third
Amended Complaint. /s/ Marion I. Quesenbery

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Date: September __, 2011

GEORGE F. BRAUN, Attorney at Law

By: _____

George F. Braun
Attorney for Defendants California Organics, LLC
Geoff Mousseau, California Farms, Inc., and Dan
Fantz

Date: September __, 2011

PATANE GUMBERG, LLP

By: _____

Andrea C. Avila
Jennifer Owens
Attorneys for Defendant Manjar, Inc.

Date: September 30 2011

MCCORMICK BARSTOW LLP

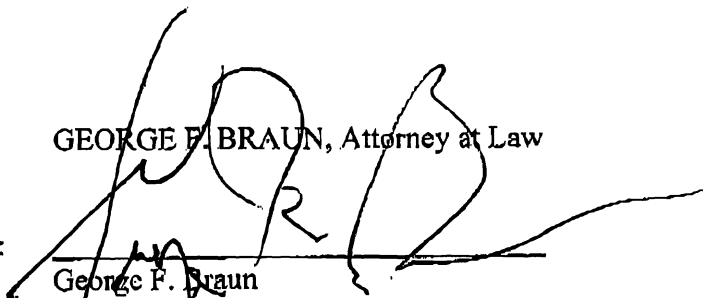
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Christopher S. Hall
Kathleen Cerniglia
Attorneys for Defendant America's Factors, Inc.

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Date: September 30, 2011

GEORGE F. BRAUN, Attorney at Law

By: 
George F. Braun
Attorney for Defendants California Organics, LLC
Geoff Mousseau, California Farms, Inc., and Dan
Fantz

Date: September __, 2011

PATANE GUMBERG, LLP

By: _____
Andrea C. Avila
Jennifer Owens
Attorneys for Defendant Manjar, Inc.

Date: September __, 2011

MCCORMICK BARSTOW LLP

By: _____
Christopher S. Hall
Kathleen Cerniglia
Attorneys for Defendant America's Factors, Inc.

1 Date: September __, 2011

GEORGE F. BRAUN, Attorney at Law

2

By: _____

3

George F. Braun
Attorney for Defendants California Organics, LLC
Geoff Mousseau, California Farms, Inc., and Dan
Fantz

4

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Date: September 29, 2011

PATANE GUMBERG, LLP

6

By: _____

7

Andrea C. Avila
Jennifer Owens
Attorneys for Defendant Manjar, Inc.

8

9

Date: September __, 2011

MCCORMICK BARSTOW LLP

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By: _____

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Christopher S. Hall
Kathleen Cerniglia
Attorneys for Defendant America's Factors, Inc.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DOBLER & SONS LLC, ET AL.,)	Case No.: 10-CV-4092-LHK
)	
Plaintiffs,)	ORDER
v.)	
)	
CALIFORNIA ORGANICS, LLC, ET AL.,)	
)	
Defendants.)	
)	

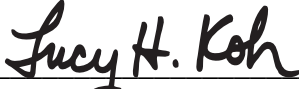
Pursuant to the Stipulation of the parties, Plaintiffs may file a clean copy of the Third Amended Complaint, which is attached (in marked up form) to the Stipulation as Exhibit 1, provided they do so by October 8, 2011. In addition, in regard to Defendants who previously filed Answers, they are not required to answer the Third Amended Complaint. Rather, as to these Defendants only, all denials, responses, and affirmative defenses to the First Amended Complaint, which are contained in these Defendants' Answers to Plaintiffs' Complaint, First Amended Complaint, or Second Amended Complaint that are now on file shall be deemed responsive to the Third Amended Complaint, and any new allegations shall be deemed denied. Defendants who currently have an Answer on file may, if they choose to do so, file a response to the Third Amended Complaint; however, if a responsive pleading is not filed by the previously answering Defendants within 21 days of the filing and service of the Third Amended Complaint, then their prior answers currently on file shall be deemed responsive to the Third Amended Complaint.

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In light of the parties' stipulation, Plaintiffs' Motion for Leave to Amend Plaintiffs' Second Amended Complaint is DENIED as moot.

IT IS SO ORDERED.

Dated: October 7, 2011



LUCY H. KOH
United States District Judge

EXHIBIT B

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8 Attorneys for Plaintiffs
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10 ASA Farms, Inc., and Braga Ranch, Inc.

11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 DOBLER & SONS, LLC; SLO COUNTY
14 ORGANICS, LLC; ASA FARMS, INC.; and
15 BRAGA RANCH, INC.,

16 Plaintiffs,

17 v.

18 CALIFORNIA ORGANICS, LLC; GEOFF
19 MOUSSEAU; MICHAEL BARNES; DAN
20 FANTZ; CALIFORNIA FARMS, INC.;
21 MANJAR, INC.; CALIFORNIA FARMS
22 INVESTORS, LLC; AMERICA'S
23 FACTORS, INC., JAMES ROBERTS, and
24 GREG O'NEILL,

Defendants.

Case No. C 10-04092 LHK

**THIRD AMENDED COMPLAINT FOR
VIOLATIONS OF THE PERISHABLE
AGRICULTURAL COMMODITIES
ACT ("PACA") [7 U.S.C. §499a, et seq.]
AND OF THE CALIFORNIA FOOD &
AGRICULTURAL CODE**

1. ENFORCEMENT OF PACA TRUST PROVISIONS;
2. BREACH OF FIDUCIARY DUTY;
3. BREACH OF CONTRACT
4. VIOLATION OF PACA (Failure to Perform, Pay Promptly, and Maintain PACA trust) & THE CALIFORNIA FOOD & AGRICULTURAL CODE [§§ 56302, 56603 (Failure to Make Timely Payment)];
5. INJUNCTIVE RELIEF AND/OR TEMPORARY RESTRAINING ORDER;
6. UNJUST ENRICHMENT;
7. CONVERSION.

Plaintiffs Dobler & Sons, LLC ("Dobler"), SLO County Organics, LLC ("SLO"), ASA Farms, Inc. ("ASA Farms"), and Braga Ranch, Inc. ("Braga Ranch")(collectively "Plaintiffs")

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1 complain and allege against Defendants California Organics, LLC (“California Organics”),
2 Geoff Mousseau (“Mousseau”), Michael Barnes (“Barnes”), Dan Fantz (“Fantz”), California
3 Farms, Inc. (“California Farms”), Manjar, Inc. (“Manjar”), California Farms Investors, LLC
4 (“California Farms Investors”), ~~America’s Factors, Inc. (“America’s Factors”), James Roberts~~
5 ~~(“Roberts”), and Greg O’Neill (“O’Neill”)~~(collectively “Defendants”), as follows:

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6 **I.**

7 **JURISDICTION AND VENUE**

8 1. This Court has jurisdiction of this case pursuant to the Perishable Agricultural
9 Commodities Act [7 U.S.C. § 499e(c)(5)] (“PACA”) and pursuant to 28 U.S.C. § 1331. This
10 Court also has supplemental jurisdiction over all other claims, as they form part of the same case
11 or controversy. 28 U.S.C. § 1367(a).

12 2. Plaintiff Dobler is and was, during all times material, a limited liability company
13 organized to do and doing business under the laws of the State of California, with its principal
14 place of business located in Moss Landing, California. Dobler is and since 1951 has been a
15 family run grower and producer of fresh produce, which it sells to buyers, such as Defendant
16 California Organics.

17 3. Plaintiff SLO is and was, during all times material, a limited liability company
18 organized to do and doing business under the laws of the State of California, with its principal
19 place of business located in Paso Robles, California. SLO is a family operated specialty grower
20 and producer of USDA certified organic vegetables, which it sells to buyers, such as Defendant
21 California Organics.

22 4. Plaintiff ASA Farms is and was, during all times material, a California
23 corporation, with its principal place of business located in Soledad, California. ASA Farms is a
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1 grower and shipper of USDA certified organic vegetables, including lettuce and spinach, which
2 it sells to buyers, such as Defendant California Organics.

3 5. Plaintiff Braga Ranch is and was, during all times material, a California
4 corporation, with its principal place of business located in Soledad, California. Braga Ranch
5 grows and ships fresh vegetables, including spinach, which it sells to buyers, such as Defendant
6 California Organics.

7 6. Plaintiffs are informed and believe and thereon allege that Defendant California
8 Organics is and was during all material times a California limited liability company with its
9 principal place of business in San Benito County, California. California Organics buys and sells
10 perishable agricultural commodities throughout the United States and is subject to licensure by
11 the United States Department of Agriculture (“USDA”) as a broker, commission merchant
12 and/or dealer of perishable agricultural commodities. In addition, California Organics is a
13 California dealer of farm products, and it is subject to licensure by the California Department of
14 Food & Agriculture.

15 7. Plaintiffs are informed and believe and thereon allege that Geoff Mousseau and
16 Dan Fantz are individuals who, during all times herein mentioned, maintained a residence within
17 the jurisdictional boundaries of this Court.

18 8. Plaintiffs are informed and believe and thereon allege that Michael Barnes, James
19 Roberts, and Greg O’Neill conduct business within the jurisdictional boundaries of this Court;
20 they also are informed and believe that Barnes, Roberts, and O’Neill maintain residences in Los
21 Angeles County, California. In addition, Plaintiffs allege that O’Neill was, at all relevant times,
22 a secured lender to California Organics and was repaid in part by California Organics with full
23 knowledge that California Organics had breached its PACA trust obligations to Plaintiffs and
24 was dissipating the PACA trust assets by paying down his loan.

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1 9. Plaintiffs are informed and believe and thereon allege that Defendant California
2 Farms, Inc. is and was, during all material times, a California corporation having its principal
3 place of business within the jurisdictional boundaries of this Court.

4 10. Plaintiffs are informed and believe and thereon allege that Defendant Manjar, Inc.
5 is and was, during all material times, a California corporation having its principal place of
6 business within the jurisdictional boundaries of this Court.

7 11. Plaintiffs are informed and believe and thereon allege that Defendant California
8 Farms Investors, LLC is and was, during all material times, a Delaware limited liability company
9 having its principal place of business within the jurisdictional boundaries of this Court.

10 12. Plaintiffs are informed and believe and thereon allege that Defendant America’s
11 Factors is and was, during all material times, a California corporation with its principal place of
12 business in the County of Los Angeles, California. In addition, Plaintiffs allege that America’s
13 Factors was, at all relevant times, a secured lender to California Organics, who was repaid by
14 seizing California Organics’ accounts receivable.

15 **II.**

16 **INTRADISTRICT ASSIGNMENT**

17 13. This action arose in San Benito County, California. Defendant California
18 Organics’ principal place of business is in San Benito County, California, where its assets were
19 and are located and where it transacted business. Plaintiffs allege in this [Third](#) Amended
20 Complaint that Defendants owe or must disgorge to Plaintiff Dobler \$309,485.92, Plaintiff SLO
21 \$69,337.26, Plaintiff ASA Farms \$157,890.10, and Plaintiff Braga Ranch \$14,874.24 for fresh
22 produce that Plaintiffs sold and shipped to Defendant California Organics in Hollister,
23 California, pursuant to the contracts of sale between Plaintiffs and Defendant California
24 Organics. These contracts were entered into in Hollister, California.

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III.
FIRST CLAIM FOR RELIEF
**(Enforcement Of The PACA Trust Provisions;
Disgorgement Of PACA Trust Assets)
Against All Defendants**

14. Plaintiffs reallege and incorporate by reference paragraphs 1 through 13 of this Third Amended Complaint as though fully set forth in this paragraph 14.

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15. Defendant California Organics is and was at all relevant times a dealer of perishable agricultural commodities throughout the United States. Specifically, it is and was at all relevant times engaged in the business of buying and selling perishable agricultural commodities – as defined by the Perishable Agricultural Commodities Act, 7 U.S.C. §§ 499a *et seq.* (“PACA”) – throughout the United States, and it is currently and was at all relevant times subject to licensure by the USDA as a commission merchant, dealer, and/or broker of perishable agricultural commodities. As such, it is and was at all relevant times regulated by and subject to PACA.

16. Plaintiffs are and were at all relevant times licensed by the USDA as commission merchants, dealers, and/or brokers of fresh produce (Dobler – license # 20070872; SLO – license # 20080322; ASA Farms – license # 20080134; and Braga Ranch – license # 20080135).

17. From May 2010 through July 2010, Plaintiff Dobler sold and shipped perishable agricultural commodities (e.g., spinach, lettuce) to Defendant California Organics at California Organics’ request. Defendant California Organics agreed to pay Dobler \$570,003.97 for this fresh produce; however, of this sum, California Organics still owes Dobler \$309,485.92, which is significantly past due and unpaid by Defendant California Organics. Payment was due “PACA prompt” (i.e., within 10 days of acceptance by Defendant of the fresh produce) from Defendant California Organics. 7 C.F.R. § 46.2(aa)(5).

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1 18. From January 2010 through July 2010, Plaintiff SLO sold and shipped perishable
2 agricultural commodities (e.g., spinach, lettuce) to Defendant California Organics at California
3 Organics' request. Defendant California Organics agreed to pay SLO \$304,742.84 for this fresh
4 produce; however, of this sum California Organics still owes SLO \$69,337.26, all of which
5 remains significantly past due and unpaid by Defendant California Organics. Payment was due
6 from Defendant California Organics within 21 days of acceptance of the fresh produce by
7 Defendant.

8 19. From July 27, 2010 through November 13, 2010, Plaintiff ASA Farms sold and
9 shipped perishable agricultural commodities (e.g., spinach, lettuce) to Defendant California
10 Organics at California Organics' request. Defendant California Organics agreed to pay ASA
11 Farms \$157,890.10 for this fresh produce, which is significantly past due and unpaid by
12 Defendant California Organics. Payment was due within 30 days from shipment from Defendant
13 California Organics.

14 20. On July 27, 2010 and October 9, 2010, Plaintiff Braga Ranch sold and shipped
15 perishable agricultural commodities (i.e., spinach) to Defendant California Organics at California
16 Organics' request. Defendant California Organics agreed to pay Braga Ranch \$14,874.24 for
17 this fresh produce; however, this sum is significantly past due and unpaid by Defendant
18 California Organics. Payment was due within 30 days from shipment from Defendant California
19 Organics.

20 21. Pursuant to the PACA trust provisions, 7 U.S.C. § 499e(c), upon receipt by
21 California Organics of Plaintiffs' fresh produce, Plaintiffs became the beneficiaries of a floating,
22 non-segregated statutory trust on "all [of California Organics'] inventories of food or other
23 products derived from perishable agricultural commodities, and any receivables or proceeds from
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1 the sale of such commodities or products . . . [and all assets purchased or maintained with PACA
2 trust assets] until full payment of the sums owing” is made to Plaintiffs.

3 22. At or about the date of each sale of the perishable agricultural commodities to
4 Defendant California Organics, Plaintiffs sent invoices to California Organics. Each invoice set
5 forth information in sufficient detail to identify the transaction and the sum owed by California
6 Organics to each Plaintiff for the perishable agricultural commodities purchased by Defendant
7 California Organics. Each invoice also included the language required by the PACA, 7 U.S.C.
8 §499e(c)(4), to preserve Plaintiffs’ PACA trust rights for the total sum owed under the invoices.

9 23. Plaintiffs have performed and fulfilled all duties required of them to preserve their
10 PACA trust rights. As a result, Plaintiffs hold and held, at all relevant times, a perfected interest
11 as statutory trust beneficiaries in California Organics’ PACA trust assets. Indeed, the PACA
12 trust assets never became the property of California Organics. Rather, as the beneficiaries of the
13 PACA trust, Plaintiffs hold and, at all relevant times, held equitable title to California Organics’
14 PACA trust assets, which include (and included) but are not limited to all inventory of perishable
15 agricultural commodities, all proceeds and receivables from the sale of perishable agricultural
16 commodities, and all assets purchased with or maintained by the proceeds from the sale of
17 perishable agricultural commodities.

18 24. The PACA trust requires and required Defendant California Organics to hold and
19 preserve all perishable agricultural commodities, proceeds, and receivables in trust for the benefit
20 of Plaintiffs, until full payment is made by California Organics to Plaintiffs. Plaintiffs are
21 informed and believe and on that basis allege that Defendant California Organics has failed to
22 maintain the trust assets and to keep them freely available to satisfy Defendant California
23 Organics’ obligations to Plaintiffs.

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1 25. Plaintiffs are informed and believe and on that basis allege that Defendant
2 California Organics improperly dissipated Plaintiffs' interest in the trust assets by granting
3 security interests in the trust assets, by failing to maintain the trust, and by using the trust assets
4 for purposes other than for paying Plaintiffs, all in violation of the PACA. 7 U.S.C. §§ 499b(4)
5 & 499e(c).

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6 26. Plaintiffs are informed and believe and on that basis allege that California
7 Organics' PACA trust assets were transferred to or seized by Defendants Mousseau, Barnes,
8 Fantz, California Farms, Manjar, California Farms Investors, America's Factors, Roberts, and
9 O'Neill in violation of PACA.

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10 27. As a direct and proximate result of the wrongful acts and omissions of
11 Defendants, Plaintiff Dobler has been damaged in the sum of \$309,485.92, plus contractual pre
12 and post judgment interest (@18% per year) and costs and attorneys' fees, all of which qualifies
13 for protection under the PACA trust provisions.

14 28. As a direct and proximate result of the wrongful acts and omissions of
15 Defendants, Plaintiff SLO has been damaged in the sum of \$69,337.26, plus pre and post
16 judgment statutory interest (@ the California statutory contractual rate of 10% per year) and
17 contractual attorneys' fees and costs, all of which qualifies for protection under the PACA trust
18 provisions.

19 29. As a direct and proximate result of the wrongful acts and omissions of
20 Defendants, Plaintiff ASA Farms has been damaged in the sum of \$157,890.10, plus contractual
21 pre and post judgment interest (@18% per year) and attorneys' fees and costs, all of which
22 qualifies for protection under the PACA trust provisions.

23 30. As a direct and proximate result of the wrongful acts and omissions of
24 Defendants, Plaintiff Braga Ranch has been damaged in the sum of \$14,874.24, plus contractual

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1 pre and post judgment interest (@18% per year) and attorneys' fees and costs, all of which
2 qualifies for protection under the PACA trust provisions.

3 31. In addition, because Plaintiffs have and had a superior interest in California
4 Organics' PACA trust assets, Defendants should account for all of California Organics' PACA
5 trust assets that are currently in their possession, that were previously held by California
6 Organics, and/or that were transferred to or seized by them. Defendants also should disgorge to
7 Plaintiffs, until Plaintiffs have been paid in full, all PACA trust assets now in their possession or
8 in the possession of third parties controlled by them and all California Organics' PACA trust
9 assets that were transferred to, seized by, or sold by Defendants.

10 **IV.**

11 **SECOND CLAIM FOR RELIEF**
12 **(Breach Of Fiduciary Duty By PACA Trust Trustees)**
13 ***Against Defendants California Organics, Mousseau, Barnes, Fantz,***
14 ***California Farms, Manjar, California Farms Investors, and Roberts***

15 32. Plaintiffs reallege and incorporate by reference paragraphs 1 through 31 of this
16 Third Amended Complaint as though fully set forth in this paragraph 32.

17 33. Plaintiffs are informed and believe and thereon allege that Defendants California
18 Organics, Mousseau, Barnes, Fantz, California Farms, Manjar, California Farms Investors, and
19 Roberts (collectively "Responsibly Connected Defendants") had actual and constructive
20 knowledge of the PACA trust and who were, at all relevant times, owners, members, managers,
21 and/or persons or entities who controlled and continue to control the day-to-day operations,
22 financial affairs, and PACA trust assets of California Organics. As such, "Responsibly
23 Connected Defendants" are and were at all relevant times statutory trustees of the PACA trust
24 assets held by Defendant California Organics for the benefit of Plaintiffs and other PACA trust
creditors. As trustees, Responsibly Connected Defendants were and are required to maintain the
PACA trust assets in a manner that insures and insured that they would be readily available to

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Deleted: Defendants California Organics, Mousseau, Barnes, Fantz, California Farms, Manjar, and California Farms Investors (collectively

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1 satisfy California Organics' outstanding debt to Plaintiffs and other similarly situated PACA
2 trust beneficiaries.

3 34. Responsibly Connected Defendants breached their fiduciary duty by failing to
4 maintain the PACA trust assets in a manner so as to insure payment to California Organics'
5 suppliers of perishable agricultural commodities, by dissipating the PACA trust assets, and by
6 failing to account for the PACA trust assets.

7 35. As a direct and proximate result of Responsibly Connected Defendants' breach of
8 their fiduciary duty, Plaintiffs has been damaged in the cumulative sum of \$551,587.52, plus pre
9 and post judgment interest, costs, and attorneys' fees.

10 **V.**

11 **THIRD CLAIM FOR RELIEF**
12 **(Breach Of Contract)**
Against Defendant California Organics

13 36. Plaintiffs reallege and incorporate by reference paragraphs 1 through 35 of this
14 Third Amended Complaint as though fully set forth in this paragraph 36.

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15 37. Plaintiffs have fulfilled all of their obligations under the contracts with Defendant
16 California Organics; however, California Organics has failed to pay Plaintiffs the sums that it
17 agreed to pay Plaintiffs for the perishable agricultural commodities that Plaintiffs sold and
18 shipped to California Organics.

19 38. Plaintiffs have repeatedly demanded that Defendant California Organics pay the
20 cumulative total of \$551,587.52, plus interest and attorneys' fees.

21 39. As a direct and proximate result of Defendant California Organics' breach of the
22 contracts with Plaintiffs, Plaintiffs have been damaged in the cumulative sum of \$551,587.52,
23 plus interest and attorneys' fees. In addition, "any delinquent payment of money . . . shall
24 include a late charge of 5 percent per month of the unpaid balance calculated on a daily basis for

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1 the period of the delinquency for the first month and an additional 1 percent per month of the
2 unpaid balance calculated on a daily basis for the remaining period of the delinquency.” Cal.
3 Food & Agric. Code §56620.

4 **VI.**

5 **FOURTH CLAIM FOR RELIEF**
6 **(Violations of PACA and the California Food & Agricultural Code)**
7 ***Against Defendant California Organics***

8 40. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 of this
9 Third Amended Complaint as though fully set forth in this paragraph 40.

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10 41. Although the agreed time for payment for Plaintiffs’ fresh produce is long past
11 due, California Organics has unlawfully failed and continues to fail to make full payment
12 promptly for these commodities, as required by 7 U.S.C. § 499b(4).

13 42. In addition, California Organics has failed to properly maintain the PACA trust
14 assets so as to have sufficient funds freely available to pay Plaintiffs in full for the fresh produce
15 that California Organics purchased from Plaintiffs, which is also a violation of 7 U.S.C. §
16 499b(4).

17 43. Defendant California Organics’ breach of contract is also a violation of PACA, 7
18 U.S.C. § 499b(4), as it is a failure “to perform any specification or duty, express or implied,
19 arising out of any undertaking in connection with” its transactions with Plaintiffs.

20 44. Finally, California Organics’ failure to pay for the farm product that it purchased
21 from Plaintiffs at the time and in the manner specified in the contracts with them, or within 30
22 days from delivery, is a violation of California Food and Agricultural Code §56302.

23 45. As a direct and proximate result of Defendant California Organics’ violations of
24 both federal and state laws, Plaintiffs have been damaged in the cumulative sum of \$551,587.52 ,
plus pre and post judgment interest and attorneys’ fees. In addition, Plaintiffs are entitled to
penalties under the California Food and Agricultural Code §56620.

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VII.

FIFTH CLAIM FOR RELIEF
(For Injunctive Relief and/or Temporary Restraining Order)
Against All Defendants

46. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 45 of this Third Amended Complaint as though fully set forth in this paragraph 46.

47. Pursuant to the provisions of the PACA, specifically 7 U.S.C. § 499e(c), perishable agricultural commodities received by a commission merchant, broker or dealer in all transactions and all inventories or other products derived from these products are held in trust by the receiver for the benefit of unpaid suppliers until such suppliers receive full payment of sums owed in connection with such transactions.

48. On numerous occasions Plaintiffs have demanded that Defendants pay the balances due to Plaintiffs in the amounts alleged in this Third Amended Complaint, but Defendants have failed and refused, and continue to fail and refuse, to remit payment to Plaintiffs for the perishable agricultural commodities that Defendant California Organics received.

49. Plaintiffs believe and thereon allege that Defendant California Organics is failing to pay its undisputed debts, including Plaintiffs' PACA trust debt, as those debts become due. Plaintiffs are further informed and believe, and thereon allege, that as a result of this failure, the PACA trust assets are dissipating and will continue to dissipate unless Defendants are restrained from further dissipation by order of this Court.

50. Pursuant to the terms of the PACA trust, and pursuant to Defendants' fiduciary duty owed to Plaintiffs, both under federal and California law, Defendants owed a duty to transfer to Plaintiffs sums owed to Plaintiffs for the produce shipments which are the subject of this Third Amended Complaint.

51. Plaintiffs are informed and believe and thereon allege that Defendants have dissipated, diverted and will continue to dissipate and divert assets, which are due and owing to Plaintiffs, either to themselves or to third parties, or will dissipate, conceal or otherwise make

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1 such assets unavailable if a noticed hearing seeking injunctive relief is required.

2 52. If such diversion of assets is allowed to continue, Plaintiffs will suffer great and
3 irreparable harm in that the PACA trust assets will not be preserved, and Plaintiffs will have
4 difficulty or be unable to pay their own creditors. Moreover, Plaintiffs and other creditors of
5 Plaintiffs, *a substantial number of which* are PACA trust creditors (like Plaintiffs), will suffer
6 great and irreparable harm if all PACA trust assets held by Defendants for the benefit of
7 Plaintiffs, and other similarly situated PACA trust creditors, are dissipated and are forever lost to
8 such creditors.

9 53. Therefore, Plaintiffs will request that this Court enter an *ex parte* order for
10 injunctive relief to compel Defendants to immediately account to the Court and to Plaintiffs for
11 all assets of the PACA trust from commencement of Defendant California Organics' business
12 through the date of the order and to compel Defendants to turnover sufficient PACA trust assets
13 until all PACA trust creditors are paid in full. In the alternative, Plaintiffs request that this Court
14 enter a temporary restraining order directing that Defendants, Defendants' officers, directors,
15 shareholders, members, managers, bankers, attorneys, agents, or any other person acting on
16 Defendants' behalf not disburse, transfer or otherwise dissipate the PACA trust assets, that they
17 provide a complete accounting pending a hearing on the Plaintiffs' Application for Injunctive
18 Relief, and that they comply with PACA and the California Food & Agricultural Code.

19 54. Plaintiffs are informed and believe and thereon allege that Defendants will not be
20 damaged or injured in any way by the requested relief because the assets they hold are statutorily
21 required to be held *in trust* by Defendants for the benefit of Plaintiffs, and other similarly
22 situated PACA trust creditors, until they receive full payment. Thus, to the extent that
23 Defendants' assets are secured by the PACA trust, such assets rightfully belong to Plaintiffs and
24 must be paid immediately to Plaintiffs.

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VIII.

SIXTH CLAIM FOR RELIEF
(Unjust Enrichment)
Against All Defendants

55. Plaintiffs allege and incorporate by reference paragraphs 1 through 54 inclusive, of this [Third](#) Amended Complaint as though fully set forth in this paragraph 55.

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56. Plaintiffs are informed and believe that Defendants converted, or are now in the process of converting, to their own use and benefit, the proceeds from the sale of Plaintiffs' fresh produce.

57. If Defendants are allowed to continue to convert and/or use these proceeds, they will be unjustly enriched to the detriment of Plaintiffs.

58. As a direct and proximate result of Defendant California Organics' unlawful actions, Plaintiffs have been damaged in the cumulative sum of \$551,587.52, plus pre and post judgment interest.

XI.

SEVENTH CLAIM FOR RELIEF
(Conversion)
Against All Defendants

59. Plaintiffs allege and incorporate by reference paragraphs 1 through 58, inclusive, of this [Third](#) Amended Complaint as though fully set forth in this paragraph 59.

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60. At all times relevant, Plaintiffs were and currently are entitled to possession of the perishable agricultural commodities that they sold to Defendant California Organics and/or to the sums that were derived from the sale of Plaintiffs' fresh produce.

61. Plaintiffs have repeatedly demanded the immediate turnover of the sums that Defendant California Organics received from the sale of Plaintiffs' fresh produce, but Defendants have failed and refused and continue to fail and refuse to turn over such sums of

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1 money to Plaintiffs. Rather, the fresh produce and/or the proceeds from the sale of the fresh
2 produce have been converted to Defendants' own use.

3 62. Defendants' actions have been willful, wanton, malicious, and oppressive and
4 were done with the intent to defraud Plaintiffs. Such acts justify an award of punitive damages
5 in an amount to be proven at the time of trial.

6 **WHEREFORE**, Plaintiffs respectfully request judgment against Defendants, joint and
7 severally, as follows:

8 **FIRST CLAIM FOR RELIEF**
9 **(Enforcement Of The PACA Trust Provisions;**
10 **Disgorgement Of PACA Trust Assets)**
11 ***Against All Defendants***

12 A. For an order requiring Defendants to immediately account for and pay and/or disgorge to
13 Plaintiffs all PACA trust assets held by or under the control of California Organics, until
14 Plaintiffs cumulative total of \$551,587.52 [Dobler – \$309,485.92; SLO – \$69,337.26;
15 ASA Farms – \$157,890.10; Braga Ranch – \$14,874.24], plus pre and post judgment
16 interest (@ the contractual rate of 18% per year to Dobler, ASA Farms, and Braga Ranch,
17 and @ the California statutory contract rate of 10% per year to SLO) and contractual
18 attorneys' fees and ; and

19 B. For such other and further relief as the Court may deem just and proper.

20 **SECOND CLAIM FOR RELIEF**
21 **(Breach Of Fiduciary Duty By PACA Trust Trustees)**
22 ***Against Defendants California Organics, Mousseau, Barnes, Fantz,***
23 ***California Farms, Manjar, California Farms Investors, and Roberts***

24 C. For an order requiring Defendants to immediately account for and pay and/or disgorge to
25 Plaintiffs all PACA trust assets held by or under the control of California Organics, until
26 Plaintiffs cumulative total of \$551,587.52 [Dobler – \$309,485.92; SLO – \$69,337.26;
27 ASA Farms – \$157,890.10; Braga Ranch – \$14,874.24], plus pre and post judgment

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1 interest (@ the contractual rate of 18% per year to Dobler, ASA Farms, and Braga Ranch,
2 and @ the California statutory contract rate of 10% per year to SLO) and contractual
3 attorneys' fees; and

4 D. For such other and further relief as the Court may deem just and proper.

5 **THIRD CLAIM FOR RELIEF**
6 **(Breach Of Contract)**
7 ***Against Defendant California Organics***

8 E. For an order requiring Defendant California Organics to pay Plaintiffs the cumulative
9 total of \$551,587.52 [Dobler – \$309,485.92; SLO – \$69,337.26; ASA Farms –
10 \$157,890.10; Braga Ranch – \$14,874.24], plus pre and post judgment interest (@ the
11 contractual rate of 18% per year to Dobler, ASA Farms, and Braga Ranch, and @ the
12 California statutory contract rate of 10% per year to SLO) and contractual attorneys' fees;

13 F. For statutory late fees of “5 percent per month of the unpaid balance calculated on a daily
14 basis for the period of the delinquency for the first month and an additional 1 percent per
15 month of the unpaid balance calculated on a daily basis for the remaining period of the
16 delinquency.” Cal. Food & Agric. Code §56620; and

17 G. For such other and further relief as the Court may deem just and proper.

18 **FOURTH CLAIM FOR RELIEF**
19 **(Violations of PACA and the California Food & Agricultural Code)**
20 ***Against Defendant California Organics***

21 H. For an order requiring Defendant California Organics to pay Plaintiffs the cumulative
22 total of \$551,587.52 [Dobler – \$309,485.92; SLO – \$69,337.26; ASA Farms –
23 \$157,890.10; Braga Ranch – \$14,874.24], plus pre and post judgment interest (@ the
24 contractual rate of 18% per year to Dobler, ASA Farms, and Braga Ranch, and @ the
California statutory contract rate of 10% per year to SLO) and contractual attorneys' fees;

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1 I. For statutory late fees of “5 percent per month of the unpaid balance calculated on a daily
2 basis for the period of the delinquency for the first month and an additional 1 percent per
3 month of the unpaid balance calculated on a daily basis for the remaining period of the
4 delinquency.” Cal. Food & Agric. Code §56620; and

5 J. For such other and further relief as the Court may deem just and proper.

6 **FIFTH CLAIM FOR RELIEF**
7 **(For Injunctive Relief and/or Temporary Restraining Order)**
8 ***Against All Defendants***

9 K. For an order compelling Defendants to turnover to Plaintiffs sufficient PACA trust assets
10 to pay Plaintiffs’ the sums owed to them and protected by the PACA trust in the
11 cumulative sum of \$551,587.52 [Dobler – \$309,485.92; SLO – \$69,337.26; ASA Farms –
12 \$157,890.10; Braga Ranch – \$14,874.24], plus pre and post judgment interest (@ the
13 contractual rate of 18% per year to Dobler, ASA Farms, and Braga Ranch, and @ the
14 California statutory contract rate of 10% per year to SLO) and contractual attorneys’ fees
15 and to deposit into a trust account sufficient PACA trust assets to pay all other PACA
16 trust creditors in full;

17 L. For an order compelling Defendants to immediately account to the Court and to Plaintiffs
18 for all assets of the PACA trust from commencement of Defendant California Organics’
19 business through the date of the order;

20 M. For an order compelling Defendants to fully comply with PACA and the California Food
21 & Agricultural Code; or

22 N. In the alternative, Plaintiffs request that this Court enter a temporary restraining order
23 directing that Defendants, Defendants’ officers, directors, shareholders, bankers,
24 attorneys, agents, or any other person acting on Defendants’ behalf not disburse, transfer
or otherwise dissipate the PACA trust assets in Defendants’ possession or control
pending a hearing on the Plaintiffs’ Application for Injunctive Relief and ordering

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1 Defendants to account for all PACA trust assets in their possession or previously in their
2 possession.

3 **SIXTH CLAIM FOR RELIEF**
4 **(Unjust Enrichment)**
5 ***Against All Defendants***

- 6 O. For an order requiring Defendants to pay Plaintiffs the cumulative total of \$551,587.52
7 [Dobler – \$309,485.92; SLO – \$69,337.26; ASA Farms – \$157,890.10; Braga Ranch –
8 \$14,874.24], plus pre and post judgment interest (@ the contractual rate of 18% per year
9 to Dobler, ASA Farms, and Braga Ranch, and @ the California statutory contract rate of
10 10% per year to SLO); and
11 P. For such other and further relief as the Court may deem just and proper.

12 **SEVENTH CLAIM FOR RELIEF**
13 **(Conversion)**
14 ***Against All Defendants***

- 15 Q. For the value of the monies converted in the sum of \$551,587.52 [Dobler – \$309,485.92;
16 SLO – \$69,337.26; ASA Farms – \$157,890.10; Braga Ranch – \$14,874.24], plus pre and
17 post judgment interest (@ the contractual rate of 18% per year to Dobler, ASA Farms,
18 and Braga Ranch, and @ the California statutory contract rate of 10% per year to SLO);
19 R. For punitive damages in an amount to be proven at the time of trial; and
20 S. For such other and further relief as the Court may deem just and proper.

21 Date: September 28, 2011 RYNN & JANOWSKY, LLP

22 By: /s/ Marion I. Quesenbery
23 MARION I. QUESENBERY
24 Attorneys for Plaintiffs
Dobler & Sons, LLC, SLO County Organics, LLC,
ASA Farms, Inc., and Braga Ranch, Inc.

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