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 6 *David E. Moore, Monroe Howser, and Lewis M. Lettunich*

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 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN JOSE DIVISION**

11 PATTERSON VEGETABLE COMPANY, LLC
 12 Plaintiff,
 13 vs.
 14 SUPERIOR FOODS, INC. *et al.*
 15 Defendants.

Case No. 5:12-CV-05286-LHK

**STIPULATION FOR DEPOSIT OF FUNDS
 INTO THE REGISTRY OF THE COURT,
 TO WITHDRAW PLAINTIFF'S MOTION
 FOR ISSUANCE OF PRELIMINARY
 INJUNCTION, AND DISMISSAL OF
 CERTAIN DEFENDANTS**

CHAMBERS COPY

17 **COME NOW**, Plaintiff Patterson Vegetable Company, LLC ("Patterson") and
 18 Defendants Superior Foods, Inc. ("Superior"), David E. Moore, Monroe Howser, and Lewis M.
 19 Lettunich, and stipulate and agree, as follows.

20 1. On October 12, 2012, Patterson filed this action against Defendants Superior, David E.
 21 Moore, Monroe Howser, and Lewis M. Lettunich alleging violation of the trust provisions of the
 22 Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. § 499e(c)(5), among other claims,
 23 for alleged non-payment of produce valued at \$106,692.84. *See* Complaint [Doc. 1].

24 2. On November 2, 2012, Patterson moved for issuance of an *ex parte* Temporary
 25 Restraining Order ("Motion for TRO") and for issuance of a Preliminary Injunction ("Motion for
 26 PI"), and for consolidation of the hearing on the Motion for Preliminary Injunction with a
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1 hearing on the merits. [Docs. 8-17]. The Court denied the *ex parte* Motion for Temporary
2 Restraining Order and the request for consolidation of the hearing on preliminary injunction with
3 a trial on the merits on November 6, 2012. Order Denying Ex Parte Temporary Restraining
4 Order, p. 6. [Doc. 20].

5 3. To resolve the Motion for PI, Superior will voluntarily deposit \$115,000.00(the
6 “Registry Funds”) into the registry of the Court to demonstrate that there is no danger of
7 dissipation of alleged trust assets and that injunctive relief is not warranted. This deposit is made
8 in lieu of a bond; in the event a final judgment is entered in favor of Patterson and against
9 Superior, these funds shall be paid over to Patterson to the extent of the judgment amount
10 awarded, subject to Superior’s right to appeal entry of final judgment and deposit additional
11 funds or post a bond, if appropriate. Superior does not admit liability and reserves any and all
12 counterclaims, setoffs, and defenses.

13 4. Patterson and Superior agree that the Registry Funds should be held by the Clerk in the
14 Registry of the Court pending further Orders of this Court.

15 5. Patterson shall dismiss Defendants David E. Moore, Monroe Howser, and Lewis M.
16 Lettunich from this action without prejudice, each party to bear its own costs at this time. Patterson
17 reserves the right to re-name said individuals as parties hereto and/or to seek recovery against them
18 as provided under PACA including, without limitation, recovery of fees and costs in the event that
19 there is a judgment in favor of Patterson in excess of the deposited amount and Superior fails to pay
20 the judgment in full.

21 6. Patterson hereby withdraws its Motion for PI and requests that the motion be removed
22 from the Court’s calendar and the hearing set for December 13, 2012 at 1:30 p.m. be vacated.

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1 **IT IS HEREBY STIPULATED AND AGREED:**

2 Dated: November 20, 2012.

3 GILMORE, WOOD, VINNARD &
4 MAGNESS

BOSSO WILLIAMS, A PROFESSIONAL
LAW CORPORATION

5 By: /s/ David M. Gilmore

By: /s/ Robert E. Bosso

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PATTERSON VEGETABLE COMPANY, LLC
Plaintiff,
vs.
SUPERIOR FOODS, INC. *et al.*
Defendants.

Case No. 5:12-CV-05286-LHK

**ORDER APPROVING STIPULATION
FOR DEPOSIT OF FUNDS INTO THE
REGISTRY OF THE COURT, TO
WITHDRAW PLAINTIFF'S MOTION
FOR ISSUANCE OF PRELIMINARY
INJUNCTION, AND DISMISSAL OF
CERTAIN DEFENDANTS**

UPON CONSIDERATION, of the Stipulation for Deposit of Funds into the Registry of the Court, to Withdraw Plaintiff's Motion for Issuance of Preliminary Injunction, and for Dismissal of Certain Defendants filed by Plaintiff Patterson Vegetable Company, LLC ("Patterson") and Defendant Superior Foods, Inc. ("Superior"), it is hereby

ORDERED that the Stipulation for Deposit of Funds into the Registry of the Court, to Withdraw Plaintiff's Motion for Issuance of Preliminary Injunction, and for Dismissal of Certain Defendants is hereby approved in its entirety; and it is further

ORDERED that Defendant Superior Foods, Inc. is authorized to transfer and pay over to the Clerk of the U.S. District Court for the Northern District of California, San Jose Division, the

ORDER APPROVING STIPULATION FOR DEPOSIT OF FUNDS INTO THE REGISTRY OF THE COURT, TO WITHDRAW PLAINTIFF'S MOTION FOR ISSUANCE OF PRELIMINARY INJUNCTION, AND FOR DISMISSAL OF CERTAIN DEFENDANTS

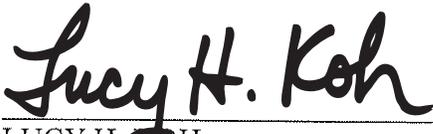
1 sum of \$115,000.00 to be held by the Clerk in the Registry of the Court pending further orders of
2 this Court; and it is further

3 **ORDERED** that Defendants David E. Moore, Monroe Howser, and Lewis M. Lettunich
4 are dismissed from this action without prejudice, each party to bear its own costs at this time; and it
5 is further

6 **ORDERED** that the Motion for Issuance of Preliminary Injunction [Doc. 9] filed by
7 Patterson is withdrawn and the hearing set for December 13, 2012 at 1:30 p.m. is vacated.

8 **IT IS SO ORDERED.**

9 Dated: November 21, 2012



LUCY H. KOH
United States District Judge

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**ORDER APPROVING STIPULATION FOR DEPOSIT OF FUNDS INTO THE REGISTRY OF THE COURT, TO WITHDRAW
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DEFENDANTS**