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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ONIONS DIRECT, LLC; GENE WHEELER FARMS INC; and RCF PRODUCE, INC.,

Plaintiffs,

v.

JOSEPH DECCIO and JANE DOE DECCIO, individually and the marital community comprised thereof; MICHAEL KLICKER and JANE DOE KLICKER, individually and the marital community comprised thereof; NICK J. TARUSCIO and JANE DOE TARUSCIO, individually and the marital community comprised thereof; PAUL CASTOLDI and JANE DOE CASTOLDI, individually and the marital community comprised thereof; NATHAN CASTOLDI and JANE DOE CASTOLDI, individually and the marital community comprised thereof; BRYON F. MAGNAGHI and JANE DOE MAGNAGHI, individually and the marital community comprised thereof,; and AMERICANWEST BANK, INC.,

Defendants.

No. CV-12-5159-EFS

ORDER GRANTING THE JOINT MOTION TO SUBSTITUE AMERICANWEST BANK AS PLAINTIFF AND DISMISS AMERICANWEST BANK AS DEFENDANT

Before the Court, without oral argument, is the Motion to Substitute AmericanWest Bank as Plaintiff and Dismiss AmericanWest Bank as Defendant, filed jointly by Plaintiffs and Defendant AmericanWest Bank, Inc. ECF No. 68. This motion is based on Plaintiffs and AmericanWest Bank's settlement agreement whereby they

1 agreed: 1) Plaintiffs will assign their Perishable Agricultural
2 Commodities Act (PACA) claims against the remaining Defendants to
3 AmericanWest Bank, and AmericanWest Bank will be substituted as the
4 plaintiff, and 2) Plaintiffs will dismiss their claims against
5 AmericanWest Bank. ECF No. 71. Defendants Joseph Deccio, Michael
6 Klicker, Nick J. Taruscio, Paul Castoldi, and Nathan Castoldi oppose
7 the motion, concerned that AmericanWest's substitution as plaintiff
8 will hinder their ability to argue that AmericanWest Bank is the
9 responsible party for any PACA violations or breach of the PACA trust.
10 ECF No. 72. Based on the current record, the Court finds no basis to
11 deny the motion. Pursuant to Federal Rule of Civil Procedure 25(c),
12 the Court permits AmericanWest to be substituted in as Plaintiff in
13 this lawsuit given Plaintiffs' assignment of their rights as to the
14 remaining Defendants to AmericanWest Bank. As there are no pled
15 counterclaims against Plaintiffs or any cross-claims against
16 AmericanWest by the remaining Defendants, the Court dismisses
17 AmericanWest Bank as a defendant pursuant to Rule 41(a). These
18 rulings do not affect the remaining Defendants' ability to seek leave
19 of Court to file counterclaims or affirmative defenses against
20 AmericanWest Bank.

21 Accordingly, **IT IS HEREBY ORDERED:**

22 1. The Motion to Substitute AmericanWest Bank as Plaintiff and
23 Dismiss AmericanWest Bank as Defendant, **ECF No. 68**, is
24 **GRANTED**.

25 2. AmericanWest Bank is **DISMISSED** as a defendant, and is
26 **SUBSTITUTED** as the Plaintiff in this lawsuit.

1 3. The case caption is to be **AMENDED** as follows:

2 AMERICANWEST BANK,

3 Plaintiff,

4 v.

5 JOSEPH DECCIO and JANE DOE DECCIO, individually and the
6 marital community comprised thereof; MICHAEL KLICKER and
7 JANE DOE KLICKER, individually and the marital community
8 comprised thereof; NICK J. TARUSCIO and JANE DOE TARUSCIO,
9 individually and the marital community comprised thereof;
10 PAUL CASTOLDI and JANE DOE CASTOLDI, individually and the
11 marital community comprised thereof; NATHAN CASTOLDI and
12 JANE DOE CASTOLDI, individually and the marital community
13 comprised thereof; BRYON F. MAGNAGHI and JANE DOE MAGNAGHI,
14 individually and the marital community comprised thereof,

15 Defendants.

16 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
17 Order and provide copies to all counsel.

18 **DATED** this 7th day of February 2014.

19 s/Edward F. Shea

20 EDWARD F. SHEA

21 Senior United States District Judge