

MAR. 4. 2010 12:06PM

COASTLINE PRODUCE

NO. 5835 P. 2

03-08-2010

U.S. DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

Form PTO-1594 (Rev. 01-09)
OMB Collection 0951-0027 (exp. 02/28/12)



MED 2-23-10

103590973

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies):

Salzer American Fresh Foods

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation- State: California
- Other

Citizenship (see guidelines)

Additional names of conveying parties attached? Yes No

3. Nature of conveyance / Execution Date(s) :

Execution Date(s) February 18, 2010

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: Sunridge Farms, Inc. d. b. a. Coastline

Internal

Address:

Street Address: 1113 Harkin Road, Suite C

City: Salinas

State: CA

Country: USA

Zip: 93901

- Association Citizenship
- General Partnership Citizenship
- Limited Partnership Citizenship
- Corporation Citizenship California
- Other Citizenship

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment!)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1517372; 1446692; 3029130; 3128802; 1441382; 1668937; 3205018; 1482602

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

Brook; Blue Chip; Blue Chip and Design; American Classic; American Classic and Design; American Pride; American Pride and Design

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: Office Anastassiou

Internal Address:

Street Address: 242 Capitol Street

City: Salinas

State: CA Zip: 93901

Phone Number: 831-754-2501

Fax Number: 831-754-0621

Email Address: office@salinasglaw.com

6. Total number of applications and registrations involved:

8

7. Total fee (37 CFR 2.8(b)(6) & 3.41) \$215.00

- Authorized to be charged to credit card
- Enclosed

8. Payment Information:

Deposit Account Number

03/08/2010 LMUELLER 00000028 1517372

Authorized User Name

01 FC:8521

02 FC:8522

March 4, 2010

Date

9. Signature:

Steve Henderson

Signature

Steve Henderson, President, Sunridge Farms, Inc.

Name of Person Signing

Total number of pages including cover sheet, attachments, and document:

20

Documents to be recorded (including cover sheet) should be faxed to (671) 273-0140, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1460, Alexandria, VA 22313-1460

TRADEMARK

REEL: 004162 FRAME: 0719

TRADEMARK ASSIGNMENT

WHEREAS, Salyer American Fresh Foods, a California Corporation ("Salyer"), has adopted and used the trademarks (the "Marks") which are registered in the United States Patent and Trademark Office and which are identified in the attached Schedule A; and

WHEREAS, pursuant to a Receivership Order issued on May 8, 2009, in *Bank of the West v. Salyer American Fresh Foods, et al.*, Monterey County Superior Court, case no. M98573, a copy of which is attached hereto and incorporated herein by this reference, certain assets of Salyer, including Salyer's rights, title and interest in the Marks are now in the possession of Steve Franson, Receiver ("Receiver") therein ("Assignor"), who is acting as the duly appointed Receiver for Salyer for the purpose of liquidating and disposing of such assets and acts herein as Assignor based upon the powers conferred in the Receivership Order and specifically to that order of February 9, 2010, expressly authorizing execution of this Trademark Assignment; and

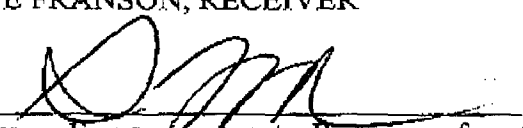
WHEREAS, Sunridge Farms, Inc., a California Corporation doing business as Coastline ("Assignee"), located and doing business at 1166 Growers Street, Salinas, CA 93901, has acquired all Salyer's and Assignor's rights, title and interest in and to the Marks and registrations thereof, pursuant to that certain Trademark Assignment Agreement between Assignor and Assignee dated as of December 18, 2009 (the "Agreement"); and

WHEREAS, Assignor and Assignee desire that the transfer of the Marks and the registrations and all other rights relating to the Marks be evidenced by this written assignment of the Marks from Assignor to Assignee.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Assignor does hereby assign, effective as of February 18, 2010, unto Assignee, and its successors and assigns, all Salyer's and Assignor's rights, title and interest in the Marks throughout the world, whether common law, statutory or otherwise, and any and all registrations, and applications for registration thereof, whether existing or expired or canceled, in the United States, in any state, territory or possession of the United States, in any foreign country or elsewhere with the goodwill of the business symbolized thereby.

Dated: February 18, 2010

STEVE FRANSON, RECEIVER

By: 
Steve Franson, Asset Receiver for Salyer American Fresh Foods, Inc., A California corporation, pursuant to the Order entered May 8, 2009, by the Monterey County Superior Court

[Notary Acknowledgment Follows]

Schedule A
(the "Marks")

Unites States Registration

Trademark	Registration or Application Number	Date of First Use	Registration Date
Brook	1517372	December 13, 1986	December 20, 1988
Blue Chip	1446692	October 20, 1986	July 7, 1987
Blue Chip	3029130	October 20, 1986	December 13, 2005
American Classic	3128802	October 18, 1986	August 15, 2006
American Classic	1441382	October 3, 1986	June 2, 1987
American Classic	1868937	May 24, 1994	December 20, 1994
American Pride	3205018	October 03, 1986	February 6, 2007
American Pride	1482602	October 3, 1986	March 29, 1988

8266.DOC

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On 2/18/10 before me, Melanie M. Chacon Notary Public

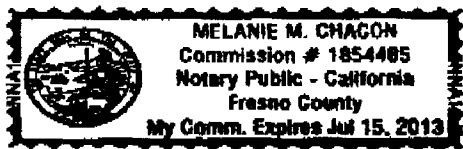
personally appeared Steve Dranson

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Trademark Assignment

Document Date: 2/19/10 Number of Pages: 2

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

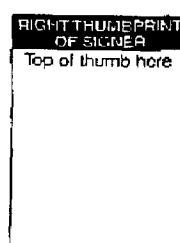
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney In Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer is Representing: _____

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CONNIE MAZZEI
CLERK OF THE SUPERIOR COURT
J. NICHOLSON DEPUTY

1 COX, CASTLE & NICHOLSON LLP
2 RANDY P. ORLIK (STATE BAR NO. 88025)
3 SUSAN S. DAVIS (STATE BAR NO. 123854)
4 2049 Century Park East, 28th Floor
5 Los Angeles, CA 90067-3284
6 Telephone: (310) 277-4222
7 Facsimile: (310) 277-7889
8 E-mails: rorlik@coxcastle.com; sdavis@coxcastle.com

9 Attorneys for Plaintiff
10 BANK OF THE WEST, as Administrative Agent for itself,
11 AgStar Financial Services, PCA/FLCA, and FCS Financial,
12 PCA

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF MONTEREY**

15 BANK OF THE WEST, a California banking
16 corporation, as Administrative Agent for itself,
17 AgStar Financial Services, PCA/FLCA, and FCS
18 Financial, PCA

19 Plaintiff,

20 vs.

21 SALYER AMERICAN FRESH FOODS, a
22 California corporation, SALYER AMERICAN
23 COOLING, a California general partnership, and
24 DOES 1 through 50, inclusive,

25 Defendants.

CASE NO. M98573 FILED BY FACSIMILE

[PROPOSED] ORDER RE:

- (1) **EX PARTE APPOINTMENT OF RECEIVER;**
- (2) **ORDER TO SHOW CAUSE RE CONFIRMATION OF RECEIVER;**
- (3) **TEMPORARY RESTRAINING ORDER;**
- (4) **ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT BE GRANTED**

DATE ACTION FILED: APRIL 29, 2009

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LOS ANGELES

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[PROPOSED] ORDER ON PLAINTIFF'S EX PARTE APPLICATION FOR APPOINTMENT OF RECEIVER AND FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER

1 The Court, after considering (a) the Ex Parte Application of Plaintiff BANK OF THE
 2 WEST, a California banking corporation ("Plaintiff"), as Administrative Agent for itself, AgStar
 3 Financial Services, PCA/FLCA, and FCS Financial, PCA, for an order (1) appointing a receiver and
 4 issuing a temporary restraining order, or in the alternative, (2) setting an order to show cause for the
 5 appointment of a receiver and issuance of a temporary restraining order pending the hearing on the
 6 order to show cause and (b) the other pleadings filed by the parties in this case, and good cause
 7 appearing therefor, now orders as follows:

8 **ORDER TO SHOW CAUSE RE RECEIVER AND**
 9 **ISSUANCE OF PRELIMINARY INJUNCTION**

10 IT IS HEREBY ORDERED that defendant Salyer American Fresh Foods
 11 ("Borrower") appear on JUL 5 at 9:15 .m. in Department TBD of
 12 the above-entitled Court, located at 1200 Aguajito Rd., Monterey, CA 93940, to show cause why this
 13 Order Appointing Receiver should not be confirmed and why a preliminary injunction should not be
 14 granted.

15
 16 **ORDER APPOINTING RECEIVER**

17 IT IS HEREBY ORDERED that STEVEN FRANSON (the "Receiver") shall be
 18 appointed as Receiver to take possession, custody and control of the property as described below.
 19 Such appointment shall be effective upon the filing of (1) the Oath of Receiver, and (2) Receiver's
 20 Bond in the penal sum of \$50,000.

21 **IT IS FURTHER ORDERED that:**

22 1. The Receiver shall take possession of all of the personal property of Borrower in which
 23 Plaintiff (as set forth in Plaintiff's Complaint) has an interest as a secured creditor, wherever located,
 24 including without limitation, the following ("Receivership Estate"):

25 A. All accounts receivable and all rights to the payment of money and all rights in
 26 any merchandise, inventory, or goods, now existing or hereafter arising,
 27 whether due or to become due, and whether or not earned by performance,
 28 including, but not limited to, accounts receivable, leases, bailments, conditional

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1 sale contracts, contract rights, contracts, chattel paper, instruments, documents
2 and general intangibles, together with all right, title, security, guarantees and all
3 security interests, liens, and pledges, whether voluntary or involuntary with
4 respect to each of the foregoing including any right to stoppage in transit (the
5 "Accounts");

6 B. All inventory, in all of its forms, wherever located, now owned or hereafter
7 acquired by Borrower, including, but not limited to, (i) all goods (wherever
8 located and whether in possession of Borrower or a bailee or other corporation,
9 partnership, individual, association or other entity ("Person") for storage, transit
10 or otherwise) held for sale or lease or furnished under any contract of service
11 and raw materials and work in process therefor, finished goods thereof, and
12 materials used or consumed in Borrowers business; (ii) goods in which
13 Borrower has an interest in a mass or a joint or other interest or right of any
14 kind; and (iii) goods which are returned to or repossessed by Borrower, and all
15 accessories thereto and products thereof and documents therefor, including any
16 documents of title representing any of the above (collectively, the "Inventory");

17 C. All crops growing or to be grown (the "Crops");

18 D. All trademarks, trade names, trade styles, trade secrets, patents, copyrights,
19 registrations, licenses, customer lists and computer source and object codes;

20 E. All machinery, equipment, furniture, fixtures and other equipment of every type
21 now owned or hereafter acquired by Borrower;

22 F. All cash, bank deposits, deposit accounts, checks, certificates of deposit,
23 checking and savings accounts, bankers' acceptances, letters of credit, United
24 States obligations, state and municipal obligations, obligations of foreign
25 governments and subdivisions thereof, commercial paper, notes, instruments,
26 (whether negotiable or non-negotiable), drafts, bonds, debentures (excluding
27 debentures convertible into shares of capital stock and other equity securities)
28 of and claims against corporations, joint ventures, persons, partnerships,

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[PROPOSED] ORDER ON PLAINTIFF'S EX PARTE APPLICATION FOR APPOINTMENT
OF RECEIVER AND FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER

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whether limited or general, and other entities of every description, and other instruments and the like;

G. Any interest in any personal property from which any of the properties, assets, and rights described above arise, including, but not limited to, repossessed and returned goods and goods covered by chattel paper;

H. All general intangibles, choses in action or causes of action, including, particularly, any right of indemnity or other right that Borrower may have or hereafter acquire against any Person arising under or with respect to any judgment, statute, or rule and all other properties, assets, and rights of every kind and nature, including, but not limited to, rights to refunds, tax refunds, claims for tax refunds, rights of indemnification, books and records (including, without limitation, corporate and other business records, customer lists, credit files, computer programs, print-outs and other computer material and records), designs, inventions, whether or not patentable;

I. All equitable rights and interests of whatever kind or nature;

J. All rights and claims in or under any policy of insurance, including, but not limited to, insurance for fire, damage, loss, and casualty, whether covering personal property, real property, agricultural crops (including hail insurance), tangible rights or intangible rights, and all liability, life, key man, and business interruption insurance, together with the proceeds, products, renewals, and replacements thereof, including prepaid and unearned premiums;

K. All instruments, documents, and documents of title, including, but not limited to, bills of lading, warehouse receipts and the like, trust receipts and the like, documents for participation in any government agricultural farm program, including, without limitation, rights under any government or other loan, reserve disaster, diversion, deficiency, soil conservation, or other production control or price support program, and the proceeds therefrom;

L. All documents of title of the Borrower covering any of the foregoing collateral.

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(PROPOSED) ORDER ON PLAINTIFF'S EX PARTE APPLICATION FOR APPOINTMENT OF RECEIVER AND FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER

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now owned or hereafter acquired;

M. Without in any way limiting the foregoing, all products, proceeds of and substitutions for any of the foregoing, whether derived from voluntary or involuntary disposition, products of the foregoing, and all renewals, replacements, substitutions, additions, accessions, rents, issue, royalties, and profits of any of the foregoing, whether now owned, existing or hereafter acquired or arising.

N. To the extent not otherwise included, all payments under insurance, or any indemnity warranty or guaranty, payable to the Borrower by reason of loss or damage to or otherwise with respect to any of the foregoing collateral; and

O. With respect to the foregoing collateral, all rights Borrower may now have or acquire in the future with respect to any statutory or common law lien, including, without limitation, any warehouseman's liens, grower's liens, producer's liens, or the products or proceeds therefrom.

2. The Receiver shall collect, sell, manage, preserve or maintain the Receivership Estate pending further order of this Court. The Receiver shall decide how to liquidate and dispose of the Receivership Estate in order to maximize the net proceeds generating thereby. The Receiver is authorized to operate Borrower's business if the Receiver decides that operating Borrower's business will maximize the net proceeds generated thereby. In no event, however, shall the Receiver plant any Crops that will be harvested after August 31, 2009, or enter into any contracts that require performance by the Borrower or the Receivership Estate after September 1, 2009. In exercising the foregoing functions, the Receiver shall have the following powers in addition to those specified by law:

A. To take possession of all the books and records pertaining to the property of Borrower, wherever located, as the Receiver deems necessary for the proper administration, management and/or control of the Receivership Estate, but the books and records shall be made available to Defendants as is reasonably necessary;

B. To execute and prepare all documents and to perform all acts, either in the name

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1 of Borrower or in the Receiver's own name, which are necessary or incidental to
 2 preserving, protecting, managing and/or controlling the property of the
 3 Receivership Estate, including the endorsement and deposit of checks and
 4 money orders made payable to Borrower or each of them;

5 C. To employ agents, servants, employees, guards, clerks, accountants, on-site
 6 managers and management consultants to administer the Receivership Estate,
 7 manage the property and keep the same insured, if the Receiver shall deem the
 8 same necessary, and to pay the reasonable value of those services out of the
 9 proceeds received;

10 D. To enter on and gain access to all of the business premises of Borrower;

11 B. Subject to further order of this Court, to maintain and/or manage the
 12 Receivership Estate in the ordinary and usual course of business, and to do all
 13 things and incur the risks and obligations ordinarily incurred by owners and/or
 14 managers of property similar to the Receivership Estate;

15 E. To demand, collect and receive the proceeds of the Receivership Estate from all
 16 accounts receivable debtors and/or other persons or entities who are or may
 17 become indebted to Borrower. The Receiver shall issue a receipt for all
 18 proceeds collected, and the receipt shall discharge said persons or entities for all
 19 obligations described in the receipt;

20 G. To establish bank accounts for the deposit of monies and funds collected and
 21 received in connection with the administration of the Receivership Estate, at
 22 any financial institution the Receiver deems appropriate, provided that any
 23 funds on deposit at the financial institution are fully insured by an agency of the
 24 United States government;

25 H. To collect rents, issues, and profits from the Receivership Estate;

26 I. To make any mortgage, lease or rent payments and otherwise pay any taxes,
 27 assessments, fees or charges as they become due during the period of the
 28 Receivership as ordered herein;

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[PROPOSED] ORDER ON PLAINTIFF'S EX PARTE APPLICATION FOR APPOINTMENT
 OF RECEIVER AND FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER

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1 J. To institute ancillary proceedings in this state or other states and countries as
 2 are necessary to preserve and protect the Receivership Estate, and the Receiver
 3 may engage the services of legal counsel, if necessary, upon further application
 4 to the Court. The Receiver may pay for such services from the funds of the
 5 Receivership Estate;

6 K. To notify all local, state and federal authorities, governmental agencies,
 7 vendors, suppliers, account debtors and others of his appointment as Receiver
 8 as is reasonably necessary to the administration of the Receivership Estate;

9 L. To borrow money for the operation of the Receivership Estate and to issue
 10 Receiver's Certificates to evidence such borrowings, which certificates shall
 11 have a first priority lien on the Receivership Estate; and

12 M. To have and use all of the powers and authority of receivers provided by
 13 California law.

14 3. To the extent feasible, the Receiver shall, within thirty (30) days of his or her
 15 qualification hereunder, file in this action an inventory of all property of which he shall have taken
 16 possession pursuant to this Order and shall conduct periodic accountings thereafter;

17 4. The Receiver shall not be bound by any executory contracts not of his making and shall
 18 have the right to assume, reject, and/or abandon any such executory contracts as the Receiver shall
 19 determine in writing or as instructed by the Court. The Receiver shall have the right to investigate and
 20 to partially perform any executory contract without assuming the contract prior to making a
 21 determination to assume, reject, and/or abandon the contract. Neither partial performance of an
 22 executory contract nor the passage of time shall constitute an assumption, rejection, and/or
 23 abandonment of the contract by the Receiver.

24 5. The Receiver shall prepare monthly interim statements reflecting revenue received by
 25 the Receiver and the Receiver's fees and administrative costs and expenses incurred for said period in
 26 the operation and administration of the Receivership Estate. The Receiver shall not pay such fees and
 27 administrative costs and expenses incurred during the relevant month until the completed interim
 28 statement has been mailed to the parties and/or the respective attorneys of record or any other

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(PROPOSED) ORDER ON PLAINTIFF'S EX PARTE APPLICATION FOR APPOINTMENT
 OF RECEIVER AND FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER

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1 designated person or agent, and said parties have had ten (10) court days in which to object to the fees,
2 costs and expenses set forth in the relevant interim statement. Upon receipt of said interim statement,
3 the parties, their respective attorneys, or any other designated person or agent shall have ten (10) days
4 to object to the fees, administrative costs and expenses set forth in the interim statement. In the event
5 that objection is made to a particular fee, administrative cost, and/or expense, the interim statement
6 shall be submitted to the Court for its approval and confirmation;

7 6. The Receiver shall do all things and incur the risks and obligations the Receiver deems
8 necessary for the proper administration, management, and/or control of the Receivership Estate; and
9 no risks or obligations so incurred shall be at the personal risk or obligation of the Receiver, but shall
10 be a risk or obligation of the Receivership Estate;

11 7. Any sums coming into the possession of the Receiver pursuant to his operation,
12 maintenance, sale, or other disposition of the Receivership Estate which are not expended for any of
13 the purposes herein authorized shall be held by the Receiver for the payment of the Borrower's
14 obligation to Plaintiff sued upon in the Complaint, subject to such orders as this Court may hereinafter
15 issue as to the disposition of such sums;

16 8. Borrower shall notify the Receiver upon the Receiver's taking possession of the
17 Receivership Estate whether or not there is sufficient insurance coverage thereon. If sufficient
18 insurance coverage does exist, Borrower shall be responsible for naming, and are hereby ordered to
19 name, the Receiver as an additional insured on the insurance policy or policies for the period that the
20 Receiver shall be in possession of the Receivership Estate. If there is insufficient insurance coverage,
21 it is hereby ordered that the Receiver shall have thirty (30) working days to procure insurance on the
22 Receivership Estate, providing that the Receiver has funds available to do so, and during that period
23 the Receiver shall not be personally responsible for claims arising or for the procurement of insurance;
24 and

25 9. The Receiver shall have no duty to prepare or file any federal, state or local income tax
26 returns. The responsibility for filing such returns will remain exclusively with Borrower. The
27 Receiver shall cooperate with Borrower in its preparation of their tax returns by providing reasonable
28 access to the books and records of the Receivership Estate.

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[PROPOSED] ORDER ON PLAINTIFF'S EX PARTE APPLICATION FOR APPOINTMENT
OF RECEIVER AND FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER

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1 10. The aforementioned powers shall remain effective pending termination and/or final
2 resolution of Plaintiff's Complaint on file in this matter and satisfaction of any judgment awarded
3 thereunder or until further order of this Court.

4 **IT IS FURTHER ORDERED** that the Borrower and all persons and entities now in
5 possession of any part of the Receivership Estate, shall forthwith surrender their possession thereof to
6 the Receiver, and that all third parties in possession of any part of the Receivership Estate, are hereby
7 directed, until further order of this Court, to pay over to the Receiver all proceeds of the Receivership
8 Estate now due and unpaid or that may hereafter become due, and all persons and entities liable for
9 such proceeds are hereby enjoined and restrained from paying any payables or proceeds for the
10 Receivership Estate to the Defendants, its agents, servants or attorneys. Violation of this Order by
11 payment of any payables or proceeds of the Receivership Estate to the Borrower, its agents, servants
12 or attorneys shall not operate to discharge the debt of the person or entity that makes such payment in
13 violation of this Order.

14 **TEMPORARY RESTRAINING ORDER**

15 **IT IS ORDERED** that Borrower and its agents, servants, employees, partners and
16 officers, each of them, **ARE HEREBY RESTRAINED AND ENJOINED** from:

- 17 (a) Selling, transferring, encumbering, hypothecating or in any other
18 manner disposing of the Receivership Estate, or any of the collateral
19 described in the Complaint and the Exhibits attached thereto;
- 20 (b) Interfering with the court appointed Receiver's operation of the
21 Receivership Estate;
- 22 (c) Dispersing, removing or secreting the inventory, including, but
23 not limited to (i) contacting any payor of any accounts receivable for
24 any purpose whatsoever, (ii) demanding payment from any payor of any
25 accounts receivable, (iii) cashing any check or other instrument used in
26 paying any accounts receivable, (iv) removing any funds from any bank
27 account located at any financial institution which constitutes collections
28 of accounts receivable, and (v) refusing to allow or prohibiting, either

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[PROPOSED] ORDER ON PLAINTIFF'S EX PARTE APPLICATION FOR APPOINTMENT
OF RECEIVER AND FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER

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1 directly or indirectly, Plaintiff access to all books and records of
2 Borrower; and.

3 (d) Doing any act which will, or which will tend to impair, defeat,
4 divert, prevent or prejudice the preservation of the Receivership Estate,
5 including the accounts receivable, or the preservation of Plaintiff's
6 interest in the collateral.

7 IT IS FURTHER ORDERED that, Borrower and its agents, servants, employees,
8 partners and officers, each of them, and each of them, SHALL HEREBY turn over their books and
9 records and the assets which constitute the Plaintiff's collateral to the Receiver, including, but not
10 limited to, any crop proceeds collected to date.

11 IT IS HEREBY FURTHER ORDERED that, in the event of a bankruptcy filing, the
12 following shall apply:

13 11. In the event that a bankruptcy case is filed by any defendant during the
14 pendency of this Receivership, Plaintiff must give notice of same to this Court, to all parties, and to
15 the Receiver, within 24 hours of Plaintiff's receipt of notice of the bankruptcy filing.

16 12. Upon receipt of notice that a bankruptcy has been filed which includes as part
17 of the bankruptcy estate any property which is the subject of this Order, the Receiver shall do the
18 following:

19 A. The Receiver shall immediately contact Plaintiff and determine whether
20 that party intends to move in the Bankruptcy Court for an order for both: (a) relief from
21 the automatic stay, and (b) relief from the Receiver's obligation to turn over the
22 Receivership Estate [11 U.S.C. § 543]. If Plaintiff indicates no intention to make such
23 a motion, then the Receiver shall immediately turn over the Receivership Estate to the
24 appropriate entity [either the trustee in bankruptcy, if one has been appointed or, if not,
25 then to the debtor in possession], and otherwise comply with 11 U.S.C. § 543.

26 B. If Plaintiff expresses an intention to immediately seek relief from both
27 the automatic stay and the Receiver's obligation to turn over the Receivership Estate,
28 then the Receiver is authorized to remain in possession and preserve the Receivership

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[PROPOSED] ORDER ON PLAINTIFF'S EX PARTE APPLICATION FOR APPOINTMENT
OF RECEIVER AND FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER

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1 Estate pending the outcome of those motions [11 U.S.C. § 543(a)]. The Receiver's
 2 authority to preserve the Receivership Estate is limited as follows: The Receiver may
 3 continue to operate the business and take all actions required/permitted under this
 4 Order. The Receiver may make disbursements, but only those that are necessary to
 5 preserve and protect the Receivership Estate. The Receiver shall not execute any new
 6 leases or other long term contracts. The Receiver shall do nothing which would effect
 7 a material change in circumstances of the Receivership Estate.

8 C. Notwithstanding the above, if Plaintiff fails to file a motion within 10
 9 court days after their receipt of notice of the bankruptcy filing, then the Receiver shall
 10 immediately turn over the Receivership Estate to the appropriate entity (either the
 11 trustee in bankruptcy if one has been appointed or, if not, to the debtor in possession)
 12 and otherwise comply with 11 U.S.C. § 543.

13 13. The Receiver is authorized to retain legal counsel to assist the Receiver with the
 14 bankruptcy proceedings.

15 14. A Receiver who fails to turn over the Property and other items of the
 16 Receivership Estate in accordance with this Order will not be paid for their time and expenses after the
 17 date they should have turned over the Receivership Estate.

18 IT IS HEREBY FURTHER ORDERED that the following provisions shall also
 19 apply to this receivership:

20 15. Receiver's Final Report and Account: Not later than sixty (60) days after the
 21 receivership terminates, the Receiver shall file, serve, and set for hearing in this Department his Final
 22 Report and Account. Notice must be given to all persons of whom the Receiver is aware who have
 23 potential claims against the Receivership Estate. The motion to approve the final report and
 24 accounting, and for discharge of the Receiver, shall contain the following:

- 25 A. A declaration under penalty of perjury by the Receiver.
- 26 B. A summary of receivership accounting, which shall include the total
- 27 revenues received, the total expenditures identified and enumerated by major
- 28 categories, the net amount of any surplus or deficit, together with evidence of necessary

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 HENNINGSON LLP
 LOS ANGELES

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1 supporting facts.

2 C. A declaration under penalty of perjury from the Plaintiff, containing
3 evidence of the basis for the termination of the receivership (e.g., trustee sale including
4 a copy of the Trustee's Deed judicial foreclosure, settlement, or reinstatement, and
5 admissible evidence to support an order for the distribution of any surplus, or payment
6 of any deficit, in the Receivership Estate.

7 16. Expenses Incurred Prior to Appointment of Receiver: In no event shall the
8 Receiver be responsible for paying any expenses of defendants or other payables owed to third parties
9 which payables were due and owing prior to the appointment of the Receiver.

10 17. Further Instructions: The parties hereto or the Receiver may at any time apply
11 to this Court for further or other instructions and for further powers necessary to enable the Receiver
12 to perform his duties properly.

13 18. Service and Briefing Schedule:

14 A. The Summons and Complaint, Memorandum of Points and Authorities,
15 this order, and all declarations and supporting papers are to be personally served on
16 each defendant no later than May 7, 2009 *Mo. Co. Superior Court / Monterey Division*

17 B. All Proofs of Service must be filed in Department no later than
18 3:05 p.m. five (5) court days prior to the hearing on the Order to Show Cause.

19 C. Any opposition to this Order to Show Cause is to be served personally
20 or by fax on Plaintiff's counsel, and filed in Department no later than
21 3:05 p.m. on May 25, 2009 *Mo. Co. Superior Court / Monterey Division*

22 D. Any reply is to be served personally or by fax on Defendant/Defendant's
23 counsel, and filed in Department no later than 4:00 p.m. on
24 May 29, 2009 *Mo. Co. Superior Court / Monterey Division*

25
26
27 DATED: May 6, 2009


JUDGE OF THE SUPERIOR COURT
LYDIA M. VILLARREAL

LAW OFFICE OF
CCK, CASTLE &
NICHOLSON LLP
100 AVENUE

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[PROPOSED] ORDER ON PLAINTIFF'S EX PARTE APPLICATION FOR APPOINTMENT
OF RECEIVER AND FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER

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PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2049 Century Park East, 20th Floor, Los Angeles, California 90067-3284.

(FOR MESSENGER) My business address is Nationalwide Legal, 316 West 2nd Street, Suite 705, Los Angeles, CA 90012.

On May 1, 2009, I served the foregoing document(s) described as [PROPOSED] ORDER RE: (1) APPOINTMENT OF RECEIVER; (2) ISSUANCE OF PRELIMINARY INJUNCTION on ALL INTERESTED PARTIES in this action by placing the original a true copy thereof enclosed in a sealed envelope addressed as follows:

Salyer American Fresh Foods
200 Sky Park Drive
Monterey, California 93940

Donald J. Puttaman, Esq.
Keeowitz, Bensen, Torres & Friedman LLP
101 California Street, Suite 2050
San Francisco, California 94111

Henry B. Niles, III
340 Soquel Avenue, Suite 105
Santa Cruz, California 95062

On the above date:

(BY U.S. MAIL/ EXPRESS MAIL) The sealed envelope with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing set forth in this declaration. I am readily familiar with Cox, Castle & Nicholson LLP's practice for collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

(BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized center or driver authorized by the express carrier to receive documents.

(BY FACSIMILE TRANSMISSION) On May _____, 2009, at _____ a.m./p.m. at Los Angeles, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2.906 of the California Rules of Court. The telephone number of the sending facsimile machine was _____, and the telephone number of the receiving facsimile machine was _____. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

(BY E-MAIL OR ELECTRONIC TRANSMISSION) - On _____, at _____ a.m./p.m. at Los Angeles, California, I served the above-referenced document by electronic mail to the e-mail address of the addressee(s) pursuant to Rule 2.260 of the California Rules of Court. The transmission was complete and without error and I did not receive, within a reasonable time after the transmission, any electronic message or other notification that the transmission was unsuccessful.

(BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

(FEDERAL ONLY) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I hereby certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 1, 2009, at Los Angeles, California.


Tishara E. Johnson

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FILED

JUL 27 2009

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MONTEREY**

CONNIE MAZZE
CLERK OF THE SUPERIOR COURT
~~CHRISTIE SITTERLY~~ DEPUTY
CHRISTIE SITTERLY

BANK OF THE WEST, etc.,

Plaintiff,

Case No. M98573

v.

RULING

**SALYER AMERICAN FRESH FOODS,
et al.,**

Defendants.

RELATED CROSS-ACTION

The Order to Show Cause Re Confirmation of Receiver hearing was initially held on June 5, 2009 and continued to July 21, 2009. After oral argument on July 21st, the court took the matter under submission. The court has reviewed and considered the arguments, papers and evidence submitted by the parties and now rules as follows:

"The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver, to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize." (Code of Civil Procedure section 568.) The court also has the power to remove or discharge a receiver at any stage of the litigation. (*Hozz v. Varga* (1958) 166 Cal.App.2d 539, 544.) The primary purpose of an Order to Show Cause re confirmation of receiver, appears, however, to be for the court to evaluate the necessity of a receivership, not necessarily the conduct of the court-appointed receiver.

The statutes and cases governing receiverships in the state of California do allow for the adverse party to make motions for instructions to the court and motions to vacate and also provide opportunities to challenge the receiver's final account.

Defendants did not oppose appointment of the receiver. They now contend, however, that the receiver should not be confirmed because of his purported mistakes and misconduct during the time between appointment and confirmation. Defendants' primary complaints stem from the Receiver's use of a Bank of the West account, and his failure to abide by the California and Federal Worker Adjustment and Restraining Notification Acts ("WARN Acts").

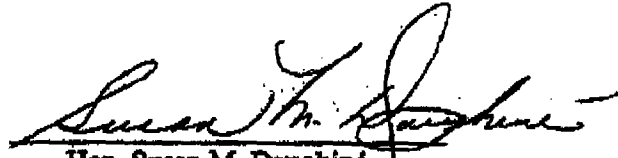
Based on the evidence before the court, it does not appear to the court that the receiver, Steve Franson, acted in bad faith in establishing the "funding mechanism" and utilizing the lockbox account at Bank of the West. Franson states he did so for the benefit of the Receivership Estate in order to fund the harvest and market of crops in which Salyer American Fresh Foods ("SAFF") had already invested. He has admitted his mistake in maintaining that account in apparent violation of CCP section 569. The money has been returned and is being held in an account at a different financial institution. Thus, the Receivership Estate does not appear to have suffered any injury as a result of this conduct. Pursuant to CCP 569(b), if any Bank of the West account for the Receivership Estate remains open, the court orders it closed forthwith.

With reference to the alleged failure to comply with the WARN Acts, it is unclear at this stage whether the receiver, under the circumstances of this case, was required to abide by those statutes. There is evidence that - prior to Franson's appointment - SAFF management was aware of the possible application of the WARN Act; had publicly announced it would be shutting down operations by the end of August; and had already begun laying off employees. (See Declaration of Eric Schwartz.) While the court's order appointing Franson states he has the power to "maintain and/or manage the Receivership Estate in the ordinary and usual course of business, and to do all things and incur the risks and obligations ordinarily incurred by owners and/or managers of property similar to the Receivership Estate," it is unclear, whether Franson actually assumed or exercised that power. Consequently, the court cannot conclude, on the evidence now before it, that the receiver acted in bad faith in not giving notices pursuant to the WARN Acts.

Based on the record before the court, it appears that there is a continued need for a receivership in this case and the evidence is insufficient to support a finding of bad faith requiring removal of Franson as receiver. Accordingly, the court confirms appointment of the receiver.

Date:

7/27/09



Hon. Susan M. Dauphiné
Judge of the Superior Court