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E-FILED
9/6/2019 8:00 AM
Superior Court of California
County of Fresno
By: J. Nelson, Deputy

7 Attorney for: Plaintiffs Assemi Brothers, LLC; 104 Pistachios, LLC; ACDF, LLC; Cantua
8 Orchards, LLC; Derrick Pistachios, LLC; Gradon Farms, LLC; Granville Farms,
9 LLC; Kamm Pistachios, LLC; Lincoln Grantor Farms, LLC; Panoche Pistachios,
10 LLC; Sommerville Farms, LLC; Three Rocks Pistachios, LLC; Tuscan Farms,
11 LLC; and Waterford Farms, LLC

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF FRESNO, UNLIMITED CIVIL DIVISION

14 ASSEMI BROTHERS, LLC; 104)
15 PISTACHIOS, LLC; ACDF, LLC; CANTUA)
16 ORCHARDS, LLC; DERRICK)
17 PISTACHIOS, LLC; GRADON FARMS,)
18 LLC; GRANVILLE FARMS, LLC; KAMM)
19 PISTACHIOS, LLC; LINCOLN GRANTOR)
20 FARMS, LLC; PANOCHÉ PISTACHIOS,)
21 LLC; SOMMERVILLE FARMS, LLC;)
22 THREE ROCKS PISTACHIOS, LLC;)
23 TUSCAN FARMS, LLC; WATERFORD)
24 FARMS, LLC ; KAMM SOUTH, LLC; AND)
25 MANNING AVENUE PISTACHIOS, LLC)

26 Plaintiffs,

27 v.

28 WONDERFUL PISTACHIOS &)
ALMONDS, LLC , WONDERFUL)
GROWERS COOPERATIVE, INC.,)
PARAMOUNT FARMS)
INTERNATIONAL, LLC, INDEPENDENT)
FINANCING SERVICES, LLC and DOES 1)
through 50, inclusive,)

Defendants.

Case No. 19CECG03249

**COMPLAINT FOR BREACH OF
CONTRACT; BREACH OF THE
IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING; AND
DECLARATORY RELIEF; JURY TRIAL
DEMAND**

1 PLAINTIFFS ASSEMI BROTHERS, LLC; 104 PISTACHIOS, LLC; ACDF, LLC;
2 CANTUA ORCHARDS, LLC; DERRICK PISTACHIOS, LLC; GRADON FARMS, LLC;
3 GRANVILLE FARMS, LLC; KAMM PISTACHIOS, LLC; LINCOLN GRANTOR FARMS, LLC;
4 PANOCHÉ PISTACHIOS, LLC; SOMMERVILLE FARMS, LLC; THREE ROCKS PISTACHIOS,
5 LLC; TUSCAN FARMS, LLC; and WATERFORD FARMS, LLC (“Plaintiffs”), hereby allege:

6 I.

7 **PARTIES AND JURISDICTION.**

8 1. Plaintiff Assemi Brothers, LLC (“Assemi Brothers”) is a California
9 limited liability company which, at all times, has done business in the County of Fresno. Assemi
10 Brothers is owned by Farid Assemi, Farshid Assemi and Darius Assemi (collectively referred to
11 as the “Assemi Family”).

12 2. Plaintiff 104 Pistachios, LLC is a California limited liability company
13 which, at all relevant times, has done business in the County of Fresno.

14 3. Plaintiff ACDF, LLC is a California limited liability company which, at all
15 relevant times, has done business in the County of Fresno.

16 4. Plaintiff Cantua Orchards, LLC is a California limited liability company
17 which, at all relevant times, has done business in the County of Fresno.

18 5. Plaintiff Derrick Pistachios, LLC is a California limited liability company
19 which, at all relevant times, has done business in the County of Fresno.

20 6. Plaintiff Granville Farms, LLC is a California limited liability company
21 which, at all relevant times, has done business in the County of Fresno.

22 7. Plaintiff Kamm Pistachios, LLC is a California limited liability company
23 which, at all relevant times, has done business in the County of Fresno.

24 8. Plaintiff Panoche Pistachios, LLC is a California limited liability company
25 which, at all relevant times, has done business in the County of Fresno.

26 9. Plaintiff Sommerville Farms, LLC is a California limited liability
27 company which, at all relevant times, has done business in the County of Fresno.

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1 10. Plaintiff Three Rocks Pistachios, LLC is a California limited liability
2 company which, at all relevant times, has done business in the County of Fresno.

3 11. Plaintiff Tuscan Farms, LLC is a California limited liability company
4 which, at all relevant times, has done business in the County of Fresno.

5 12. Plaintiff Waterford Farms, LLC is a California limited liability company
6 which, at all relevant times, has done business in the County of Fresno.

7 13. Plaintiff Lincoln Grantor Farms, LLC is a California limited liability
8 company which, at all relevant times, has done business in the County of Fresno.

9 14. Plaintiff Gradon Farms, LLC is a California limited liability company
10 which, at all relevant times, has done business in the County of Fresno.

11 15. Plaintiff Kamm South, LLC is a California limited liability company
12 which, at all relevant times, has done business in the County of Fresno.

13 16. Plaintiff Manning Avenue Pistachios, LLC is a California limited liability
14 company which, at all relevant times, has done business in the County of Fresno.

15 17. All of Plaintiffs are owned entirely or in part by the Assemi Family.

16 18. Plaintiffs 104 Pistachios, LLC; ACDF, LLC; Cantua Orchards, LLC;
17 Derrick Pistachios, LLC; Gradon Farms, LLC; Granville Farms, LLC; Kamm Pistachios, LLC;
18 Panoche Pistachios, LLC; Sommerville Farms, LLC; Three Rocks Pistachios, LLC; Tuscan
19 Farms, LLC; and Waterford Farms, LLC (“the Co-Op Assemi Plaintiffs”) are now, and at all
20 relevant times, have been members of Defendant Wonderful Growers Cooperative, Inc.
21 (“WGC”).

22 19. Plaintiffs Lincoln Grantor Farms, LLC and Gradon Farms, LLC (the
23 “Non-Co-Op Assemi Plaintiffs”) are not members of WGC but have had contracts to deliver
24 their pistachio crops to Wonderful Pistachios, including the 2019 crop.

25 20. Defendant Wonderful Pistachios, LLC is a California limited liability
26 company which, at all relevant times, has done business in the County of Fresno.

27 21. Defendant WGC is a California farm cooperative organized under the laws
28 of the State of California and doing business in the County of Fresno.

1 of dealing between the Co-Op Assemi Plaintiffs and Defendants. Pursuant to Civil Code Section
2 1642, several contracts relating to the same matters and made as parts of substantially the same
3 transactions are to be taken together. That is the case here. Plaintiffs' ability to borrow funds at
4 a favorable rate from Defendant IFS is, for example, tied to the Co-Op Assemi Plaintiffs having
5 delivered prior pistachio crops to WGC.

6 27. The Non-Co-Op Assemi Plaintiffs are governed by the same memoranda
7 of understanding and by standard grower agreements entered into between the Non-Co-Op
8 Assemi Plaintiffs and Wonderful Pistachios. Among other things, the Agreements obligate
9 Wonderful Pistachios to pay the Non-Co-Op Assemi Plaintiffs the stated price per pound by way
10 of periodic payments, including a mandatory final installment payment in the form of a Grower
11 Partner Bonus.

12 28. Since crop year 2004 through the present, the Assemi Family and their
13 affiliated farming entities have delivered their pistachio crops to Wonderful/Paramount and their
14 affiliated entities. At all times, a fundamental term of the agreements between the Co-Op
15 Assemi Plaintiffs and the Non-Co-Op Assemi Plaintiffs, on the one hand, and Defendants, on the
16 other hand, has always been that said Plaintiffs would be entitled to receive for their pistachio
17 crops the same total price per pound received by other WGC member-growers and by other
18 Wonderful Pistachio "Partner Growers," as the case may be. During nearly 15 years of the
19 business relationship between Plaintiffs and Defendants, it has never been a term of the
20 contractual arrangement that installment payments, whether denoted installments or "bonuses"
21 were discretionary. On the contrary, Defendants and their agents have repeatedly assured
22 Plaintiffs verbally and in writing, and by their course of conduct over 15 years, that Plaintiffs are
23 contractually entitled to receive the same price per pound as other similarly-situated WGC
24 member growers and non-member growers, regardless of whether payment came in the form of
25 crop installments or bonuses. Moreover, there has never been as part of the contractual business
26 relationship between the parties a term that permits Defendants, or any of them, to reduce or
27 eliminate any part of the total price paid to Plaintiffs or to other growers for crops that have
28 already been delivered.

1 29. In 2018, the Assemi Family decided to establish their own pistachio
2 processing plant and began making plans for the construction of that facility. The Assemi
3 Family’s plans to operate their own pistachio processing plant became known by many people in
4 the pistachio industry. On January 22, 2019, Kevin Assemi, the Chief Executive Officer of
5 Maricopa Orchards, LLC, the entity that manages Plaintiffs’ farming operations, had a face-to-
6 face meeting with Stewart Resnick, the owner of Wonderful Pistachios, to discuss the parties’
7 business relationship. In that meeting, Mr. Resnick told Kevin Assemi that, “I am going to war
8 with you and I am going to do stuff to you that I would not do to other competitors because I
9 have to make sure you are not successful with your plant.” Mr. Resnick also said, “I am going to
10 destroy you and make sure you fail so that no grower ever leaves and tries to make it on their
11 own processing and marketing.”

12 30. The Assemi Family’s plan to establish their own pistachio processing plant
13 was the subject of some discussion among pistachio growers who congregated at a meeting of
14 Wonderful Pistachio Growers that took place in Visalia on March 15, 2019. At that meeting,
15 Stewart Resnick announced to hundreds of persons gathered at the meeting that one of his
16 growers, the Assemis, were going to leave and build their own processing plant and that he was
17 going to “fuck them.”

18 31. On August 27, 2018, less than one week before the pistachio harvest was
19 scheduled to begin, Andrew Anzaldo, the senior vice-president of grower relations for
20 Defendants, announced in an e-mail to Kevin Assemi that the final payment for the 2018
21 pistachio crop that had already been delivered a year before - - customarily characterized by
22 Defendants as “a Grower Partner Bonus” - - was a discretionary payment that would only be paid
23 if growers signed up for contract extensions to deliver their pistachios for the following crop
24 year. In effect, Defendants were announcing a retroactive reduction in the price to be paid for
25 pistachios already delivered by Plaintiffs the year before. This was never a term of the contract
26 between the Co-Op Assemi Plaintiffs and Defendants or the Non-Co-Op Assemi Plaintiffs and
27 Defendants. Moreover, one of the MOUs entered into between the parties on March 31, 2014
28 specifically provides that: “In the event that Paramount offers a non-Paramount affiliated

1 pistachio member of a Paramount Co-Op a bonus in respect of the five consecutive crop years
2 starting on September 1, 2014 and ending on August 31, 2020, then Assemi will be eligible for
3 any such bonus and the applicable Paramount Co-Op shall pay such bonus to Assemi promptly
4 after the amount is determined by Paramount.”¹

5 32. On August 31, 2019, Andrew Anzaldo sent an e-mail to Keith Thomsen
6 and Jon Reiter, principals of Assemi-related growers, Avenue Pistachios, LLC and McConnell
7 Farms, LLC, respectively. A true and correct copy of that e-mail dated August 31, 2019 is
8 attached as Exhibit “A.” Among other things, Mr. Anzaldo states: “If any of these growers don’t
9 deliver their crop to Wonderful in crop year 2019, then we would consider that to be a breach and
10 we will not pay them a 2018 grower partner bonus.” The “Grower Partner Bonus” typically
11 constitutes approximately 30% of the price that is customarily paid o Defendants’ growers.

12 33. With this e-mail, it became very evident that Defendants had decided to
13 change the terms of the long-standing contractual arrangement with Plaintiffs mid-stream to
14 position themselves to avoid paying up to 30% of the purchase price for an estimated 30,000,000
15 pounds of pistachios in the 2019 crop that Plaintiffs were about to deliver to Defendants. This
16 threatened unilateral change in the terms of the existing agreements between the parties caused
17 Plaintiffs to have a justifiable concern that Defendants would not abide by the terms of the
18 existing agreements Plaintiffs had with Defendants.

19 34. In response, and on behalf of all of the Plaintiffs, Kevin Assemi e-mailed
20 to Mr. Anzaldo, with copies to Stewart Resnick and Craig Cooper, the Wonderful Company
21 general counsel, a demand for assurance of performance under the parties’ existing agreements.
22 A true and correct copy of that demand letter is attached as Exhibit “B.” In the September 2,
23 2019 letter, Plaintiffs gave Defendants until 5:00 p.m. on Wednesday, September 4, 2019,
24 approximately 48 hours later, for them to affirm their commitment to abide by the existing
25 agreements between the parties and to confirm that they would pay fully for the 2019 pistachio
26

27 ¹The Paramount name was utilized for the various Wonderful entities before the name was
28 changed to Wonderful.

1 crop that Plaintiffs were about to deliver to Defendants. Late in the day on Wednesday,
2 September 4, 2019, Mr. Anzaldo, responding on behalf of Defendants, failed to provide any
3 reasonable assurance that Defendants would abide by the terms of the agreements. He merely
4 stated: "I wanted to confirm the receipt of your e-mails and we will respond to all e-mails by this
5 Friday, September 6."

6 35. Mr. Anzaldo and all other persons affiliated with Defendants know that
7 time is of the essence because Plaintiffs' pistachio crop, which is worth an estimated
8 \$50,000,000, must be harvested now. Each day that Defendants delay threatens to cause the crop
9 significant harm in the form of shell staining, which will greatly diminish the market value of the
10 crop.

11 36. Kevin Assemi immediately responded to Mr. Anzaldo with a letter dated
12 September 4, 2019. A true and correct copy of the letter is attached as Exhibit "C." In the letter,
13 Mr. Assemi informs Mr. Anzaldo (and Mr. Resnick and Mr. Cooper, who received copies) that
14 Defendants' failure to supply sufficient assurance of their performance was being treated as a
15 breach under California Commercial Code Section 2609. In the letter, Mr. Assemi afforded
16 Defendants an opportunity to cure the breach. Because timing is so critical and the crop on the
17 trees is in jeopardy, the offer to cure the breach was left open until 5:00 p.m. on September 5,
18 2019. That time has come and gone and Defendants have not supplied Plaintiffs with adequate
19 assurance that they will fully perform under the parties' agreements by paying Plaintiffs' price
20 per pound that they are entitled to receive under the agreements. Defendants have, therefore,
21 anticipatorily breached agreements with Plaintiffs.

22 **FIRST CAUSE OF ACTION.**

23 **(Breach of Contract - Plaintiff 104 Pistachios, LLC v. Defendant WGC.)**

24 37. Plaintiff incorporates by reference each and every allegation contained in
25 paragraphs 1 through 36, above.

26 38. Under the circumstances that were presented in the first week of
27 September 2019, Plaintiff was justified in demanding from Defendant WGC prompt and
28 reasonable assurance that WGC would abide by the terms of the contract and fully pay Plaintiff.

1 39. Defendant WGC breached the contract between the parties by failing to
2 supply adequate assurance to Plaintiff, which has forced Plaintiff to seek out and deliver the crop
3 to another processor.

4 40. Plaintiff has suffered and will continue to suffer compensatory damages in
5 an amount according to proof, as a consequence of Defendant WGC's breach of the pistachio
6 contract between the parties.

7 41. Under the terms of the Third Amended and Restated Revolving
8 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
9 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
10 entitled to recover its attorney's fees in this action.

11 **SECOND CAUSE OF ACTION.**

12 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff 104 Pistachios,**

13 **LLC v. Defendant WGC.)**

14 42. Plaintiff incorporates by reference each and every allegation contained in
15 paragraphs 1 through 36, above.

16 43. Implied in every contract, including in the agreement between Plaintiff and
17 WGC, there is a covenant of good faith and fair dealing requiring that the parties do everything
18 reasonably in their power to ensure that the other contracting party enjoys the benefits of the
19 contract.

20 44. Defendant WGC breached the covenant of good faith and fair dealing by
21 failing to provide Plaintiff with adequate assurance that it would be fully paid for its 2019 crop
22 before that crop was delivered.

23 45. Defendant WGC's breach of the implied covenant of good faith and fair
24 dealing has caused Plaintiff to suffer consequential damages, in an amount according to proof.

25 **THIRD CAUSE OF ACTION.**

26 **(Breach of Contract - Plaintiff ACDF, LLC v. Defendant WGC.)**

27 46. Plaintiff incorporates by reference each and every allegation contained in
28 paragraphs 1 through 36, above.

1 **(Breach of Contract - Plaintiff Cantua Orchards, LLC v. Defendant WGC.)**

2 55. Plaintiff incorporates by reference each and every allegation contained in
3 paragraphs 1 through 36, above.

4 56. Under the circumstances that were presented in the first week of
5 September 2019, Plaintiff was justified in demanding from Defendant WGC prompt and
6 reasonable assurance that WGC would abide by the terms of the contract and fully pay Plaintiff.

7 57. Defendant WGC breached the contract between the parties by failing to
8 supply adequate assurance to Plaintiff, which has forced Plaintiff to seek out and deliver the crop
9 to another processor.

10 58. Plaintiff has suffered and will continue to suffer compensatory damages in
11 an amount according to proof, as a consequence of Defendant WGC's breach of the pistachio
12 contract between the parties.

13 59. Under the terms of the Third Amended and Restated Revolving
14 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
15 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
16 entitled to recover its attorney's fees in this action

17 **SIXTH CAUSE OF ACTION.**

18 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff Cantua**
19 **Orchards, LLC v. Defendant WGC.)**

20 60. Plaintiff incorporates by reference each and every allegation contained in
21 paragraphs 1 through 36, above.

22 61. Implied in every contract, including in the agreement between Plaintiff and
23 WGC, there is a covenant of good faith and fair dealing requiring that the parties do everything
24 reasonably in their power to ensure that the other contracting party enjoys the benefits of the
25 contract.

26 62. Defendant WGC breached the covenant of good faith and fair dealing by
27 failing to provide Plaintiff with adequate assurance that it would be fully paid for its 2019 crop
28 before that crop was delivered.

1 63. Defendant WGC's breach of the implied covenant of good faith and fair
2 dealing has caused Plaintiff to suffer consequential damages, in an amount according to proof.

3 **SEVENTH CAUSE OF ACTION.**

4 **(Breach of Contract - Plaintiff Derrick Pistachios, LLC v. Defendant WGC.)**

5 64. Plaintiff incorporates by reference each and every allegation contained in
6 paragraphs 1 through 36, above.

7 65. Under the circumstances that were presented in the first week of
8 September 2019, Plaintiff was justified in demanding from Defendant WGC prompt and
9 reasonable assurance that WGC would abide by the terms of the contract and fully pay Plaintiff.

10 66. Defendant WGC breached the contract between the parties by failing to
11 supply adequate assurance to Plaintiff, which has forced Plaintiff to seek out and deliver the crop
12 to another processor.

13 67. Plaintiff has suffered and will continue to suffer compensatory damages in
14 an amount according to proof, as a consequence of Defendant WGC's breach of the pistachio
15 contract between the parties.

16 68. Under the terms of the Third Amended and Restated Revolving
17 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
18 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
19 entitled to recover its attorney's fees in this action

20 **EIGHTH CAUSE OF ACTION.**

21 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff Derrick**

22 **Pistachios, LLC v. Defendant WGC.)**

23 69. Plaintiff incorporates by reference each and every allegation contained in
24 paragraphs 1 through 36, above.

25 70. Implied in every contract, including in the agreement between Plaintiff and
26 WGC, there is a covenant of good faith and fair dealing requiring that the parties do everything
27 reasonably in their power to ensure that the other contracting party enjoys the benefits of the
28 contract.

1 71. Defendant WGC breached the covenant of good faith and fair dealing by
2 failing to provide Plaintiff with adequate assurance that it would be fully paid for its 2019 crop
3 before that crop was delivered.

4 72. Defendant WGC's breach of the implied covenant of good faith and fair
5 dealing has caused Plaintiff to suffer consequential damages, in an amount according to proof.

6 **NINTH CAUSE OF ACTION.**

7 **(Breach of Contract - Plaintiff Granville Farms, LLC v. Defendant WGC.)**

8 73. Plaintiff incorporates by reference each and every allegation contained in
9 paragraphs 1 through 36, above.

10 74. Under the circumstances that were presented in the first week of
11 September 2019, Plaintiff was justified in demanding from Defendant WGC prompt and
12 reasonable assurance that WGC would abide by the terms of the contract and fully pay Plaintiff.

13 75. Defendant WGC breached the contract between the parties by failing to
14 supply adequate assurance to Plaintiff, which has forced Plaintiff to seek out and deliver the crop
15 to another processor.

16 76. Plaintiff has suffered and will continue to suffer compensatory damages in
17 an amount according to proof, as a consequence of Defendant WGC's breach of the pistachio
18 contract between the parties.

19 77. Under the terms of the Third Amended and Restated Revolving
20 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
21 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
22 entitled to recover its attorney's fees in this action

23 **TENTH CAUSE OF ACTION.**

24 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff Granville**
25 **Farms, LLC v. Defendant WGC.)**

26 78. Plaintiff incorporates by reference each and every allegation contained in
27 paragraphs 1 through 36, above.

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1 79. Implied in every contract, including in the agreement between Plaintiff and
2 WGC, there is a covenant of good faith and fair dealing requiring that the parties do everything
3 reasonably in their power to ensure that the other contracting party enjoys the benefits of the
4 contract.

5 80. Defendant WGC breached the covenant of good faith and fair dealing by
6 failing to provide Plaintiff with adequate assurance that it would be fully paid for its 2019 crop
7 before that crop was delivered.

8 81. Defendant WGC's breach of the implied covenant of good faith and fair
9 dealing has caused Plaintiff to suffer consequential damages, in an amount according to proof.

10 **ELEVENTH CAUSE OF ACTION.**

11 **(Breach of Contract - Plaintiff Kamm Pistachios, LLC v. Defendant WGC.)**

12 82. Plaintiff incorporates by reference each and every allegation contained in
13 paragraphs 1 through 36, above.

14 83. Under the circumstances that were presented in the first week of
15 September 2019, Plaintiff was justified in demanding from Defendant WGC prompt and
16 reasonable assurance that WGC would abide by the terms of the contract and fully pay Plaintiff.

17 84. Defendant WGC breached the contract between the parties by failing to
18 supply adequate assurance to Plaintiff, which has forced Plaintiff to seek out and deliver the crop
19 to another processor.

20 85. Plaintiff has suffered and will continue to suffer compensatory damages in
21 an amount according to proof, as a consequence of Defendant WGC's breach of the pistachio
22 contract between the parties.

23 86. Under the terms of the Third Amended and Restated Revolving
24 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
25 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
26 entitled to recover its attorney's fees in this action.

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1 TWELFTH CAUSE OF ACTION.

2 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff Kamm**
3 **Pistachios, LLC v. Defendant WGC.)**

4 87. Plaintiff incorporates by reference each and every allegation contained in
5 paragraphs 1 through 36, above.

6 88. Implied in every contract, including in the agreement between Plaintiff and
7 WGC, there is a covenant of good faith and fair dealing requiring that the parties do everything
8 reasonably in their power to ensure that the other contracting party enjoys the benefits of the
9 contract.

10 89. Defendant WGC breached the covenant of good faith and fair dealing by
11 failing to provide Plaintiff with adequate assurance that it would be fully paid for its 2019 crop
12 before that crop was delivered.

13 90. Defendant WGC's breach of the implied covenant of good faith and fair
14 dealing has caused Plaintiff to suffer consequential damages, in an amount according to proof.

15 THIRTEENTH CAUSE OF ACTION.

16 **(Breach of Contract - Plaintiff Panoche Pistachios, LLC v. Defendant WGC.)**

17 91. Plaintiff incorporates by reference each and every allegation contained in
18 paragraphs 1 through 36, above.

19 92. Under the circumstances that were presented in the first week of
20 September 2019, Plaintiff was justified in demanding from Defendant WGC prompt and
21 reasonable assurance that WGC would abide by the terms of the contract and fully pay Plaintiff.

22 93. Defendant WGC breached the contract between the parties by failing to
23 supply adequate assurance to Plaintiff, which has forced Plaintiff to seek out and deliver the crop
24 to another processor.

25 94. Plaintiff has suffered and will continue to suffer compensatory damages in
26 an amount according to proof, as a consequence of Defendant WGC's breach of the pistachio
27 contract between the parties.

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1 95. Under the terms of the Third Amended and Restated Revolving
2 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
3 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
4 entitled to recover its attorney's fees in this action

5 **FOURTEENTH CAUSE OF ACTION.**

6 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff Panoche**
7 **Pistachios, LLC v. Defendant WGC.)**

8 96. Plaintiff incorporates by reference each and every allegation contained in
9 paragraphs 1 through 36, above.

10 97. Implied in every contract, including in the agreement between Plaintiff and
11 WGC, there is a covenant of good faith and fair dealing requiring that the parties do everything
12 reasonably in their power to ensure that the other contracting party enjoys the benefits of the
13 contract.

14 98. Defendant WGC breached the covenant of good faith and fair dealing by
15 failing to provide Plaintiff with adequate assurance that it would be fully paid for its 2019 crop
16 before that crop was delivered.

17 99. Defendant WGC's breach of the implied covenant of good faith and fair
18 dealing has caused Plaintiff to suffer consequential damages, in an amount according to proof.

19 **FIFTEENTH CAUSE OF ACTION.**

20 **(Breach of Contract - Plaintiff Sommerville Farms, LLC v. Defendant WGC.)**

21 100. Plaintiff incorporates by reference each and every allegation contained in
22 paragraphs 1 through 36, above.

23 101. Under the circumstances that were presented in the first week of
24 September 2019, Plaintiff was justified in demanding from Defendant WGC prompt and
25 reasonable assurance that WGC would abide by the terms of the contract and fully pay Plaintiff.

26 102. Defendant WGC breached the contract between the parties by failing to
27 supply adequate assurance to Plaintiff, which has forced Plaintiff to seek out and deliver the crop
28 to another processor.

1 103. Plaintiff has suffered and will continue to suffer compensatory damages in
2 an amount according to proof, as a consequence of Defendant WGC's breach of the pistachio
3 contract between the parties.

4 104. Under the terms of the Third Amended and Restated Revolving
5 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
6 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
7 entitled to recover its attorney's fees in this action.

8 **SIXTEENTH CAUSE OF ACTION.**

9 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff Sommerville**
10 **Farms, LLC v. Defendant WGC.)**

11 105. Plaintiff incorporates by reference each and every allegation contained in
12 paragraphs 1 through 36, above.

13 106. Implied in every contract, including in the agreement between Plaintiff and
14 WGC, there is a covenant of good faith and fair dealing requiring that the parties do everything
15 reasonably in their power to ensure that the other contracting party enjoys the benefits of the
16 contract.

17 107. Defendant WGC breached the covenant of good faith and fair dealing by
18 failing to provide Plaintiff with adequate assurance that it would be fully paid for its 2019 crop
19 before that crop was delivered.

20 108. Defendant WGC's breach of the implied covenant of good faith and fair
21 dealing has caused Plaintiff to suffer consequential damages, in an amount according to proof.

22 **SEVENTEENTH CAUSE OF ACTION.**

23 **(Breach of Contract - Plaintiff Three Rocks Pistachios, LLC v. Defendant WGC.)**

24 109. Plaintiff incorporates by reference each and every allegation contained in
25 paragraphs 1 through 36, above.

26 110. Under the circumstances that were presented in the first week of
27 September 2019, Plaintiff was justified in demanding from Defendant WGC prompt and
28 reasonable assurance that WGC would abide by the terms of the contract and fully pay Plaintiff.

1 111. Defendant WGC breached the contract between the parties by failing to
2 supply adequate assurance to Plaintiff, which has forced Plaintiff to seek out and deliver the crop
3 to another processor.

4 112. Plaintiff has suffered and will continue to suffer compensatory damages in
5 an amount according to proof, as a consequence of Defendant WGC's breach of the pistachio
6 contract between the parties.

7 113. Under the terms of the Third Amended and Restated Revolving
8 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
9 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
10 entitled to recover its attorney's fees in this action.

11 **EIGHTEENTH CAUSE OF ACTION.**

12 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff Three Rocks**
13 **Pistachios, LLC v. Defendant WGC.)**

14 114. Plaintiff incorporates by reference each and every allegation contained in
15 paragraphs 1 through 36, above.

16 115. Implied in every contract, including in the agreement between Plaintiff and
17 WGC, there is a covenant of good faith and fair dealing requiring that the parties do everything
18 reasonably in their power to ensure that the other contracting party enjoys the benefits of the
19 contract.

20 116. Defendant WGC breached the covenant of good faith and fair dealing by
21 failing to provide Plaintiff with adequate assurance that it would be fully paid for its 2019 crop
22 before that crop was delivered.

23 117. Defendant WGC's breach of the implied covenant of good faith and fair
24 dealing has caused Plaintiff to suffer consequential damages, in an amount according to proof.

25 **NINETEENTH CAUSE OF ACTION.**

26 **(Breach of Contract - Plaintiff Tuscan Farms, LLC v. Defendant WGC.)**

27 118. Plaintiff incorporates by reference each and every allegation contained in
28 paragraphs 1 through 36, above.

1 119. Under the circumstances that were presented in the first week of
2 September 2019, Plaintiff was justified in demanding from Defendant WGC prompt and
3 reasonable assurance that WGC would abide by the terms of the contract and fully pay Plaintiff.

4 120. Defendant WGC breached the contract between the parties by failing to
5 supply adequate assurance to Plaintiff, which has forced Plaintiff to seek out and deliver the crop
6 to another processor.

7 121. Plaintiff has suffered and will continue to suffer compensatory damages in
8 an amount according to proof, as a consequence of Defendant WGC's breach of the pistachio
9 contract between the parties.

10 122. Under the terms of the Third Amended and Restated Revolving
11 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
12 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
13 entitled to recover its attorney's fees in this action.

14 **TWENTIETH CAUSE OF ACTION.**

15 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff Tuscan Farms,**
16 **LLC v. Defendant WGC.)**

17 123. Plaintiff incorporates by reference each and every allegation contained in
18 paragraphs 1 through 36, above.

19 124. Implied in every contract, including in the agreement between Plaintiff and
20 WGC, there is a covenant of good faith and fair dealing requiring that the parties do everything
21 reasonably in their power to ensure that the other contracting party enjoys the benefits of the
22 contract.

23 125. Defendant WGC breached the covenant of good faith and fair dealing by
24 failing to provide Plaintiff with adequate assurance that it would be fully paid for its 2019 crop
25 before that crop was delivered.

26 126. Defendant WGC's breach of the implied covenant of good faith and fair
27 dealing has caused Plaintiff to suffer consequential damages, in an amount according to proof.

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TWENTY-FIRST CAUSE OF ACTION.

(Breach of Contract - Plaintiff Waterford Farms, LLC v. Defendant WGC.)

127. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 36, above.

128. Under the circumstances that were presented in the first week of September 2019, Plaintiff was justified in demanding from Defendant WGC prompt and reasonable assurance that WGC would abide by the terms of the contract and fully pay Plaintiff.

129. Defendant WGC breached the contract between the parties by failing to supply adequate assurance to Plaintiff, which has forced Plaintiff to seek out and deliver the crop to another processor.

130. Plaintiff has suffered and will continue to suffer compensatory damages in an amount according to proof, as a consequence of Defendant WGC's breach of the pistachio contract between the parties.

131. Under the terms of the Third Amended and Restated Revolving Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is entitled to recover its attorney's fees in this action.

TWENTY-SECOND CAUSE OF ACTION.

(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff Waterford Farms, LLC v. Defendant WGC.)

132. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 36, above.

133. Implied in every contract, including in the agreement between Plaintiff and WGC, there is a covenant of good faith and fair dealing requiring that the parties do everything reasonably in their power to ensure that the other contracting party enjoys the benefits of the contract.

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1 134. Defendant WGC breached the covenant of good faith and fair dealing by
2 failing to provide Plaintiff with adequate assurance that it would be fully paid for its 2019 crop
3 before that crop was delivered.

4 135. Defendant WGC's breach of the implied covenant of good faith and fair
5 dealing has caused Plaintiff to suffer consequential damages, in an amount according to proof.

6 **TWENTY-THIRD CAUSE OF ACTION.**

7 **(Breach of Contract - Plaintiff Gradon Farms, LLC v. Defendant Wonderful Pistachios.)**

8 136. Plaintiff incorporates by reference each and every allegation contained in
9 paragraphs 1 through 36, above.

10 137. Under the circumstances that were presented in the first week of
11 September 2019, Plaintiff was justified in demanding from Defendant Wonderful Pistachios
12 prompt and reasonable assurance that Wonderful Pistachios would abide by the terms of the
13 contract and fully pay Plaintiff.

14 138. Defendant Wonderful Pistachios breached the contract between the parties
15 by failing to supply adequate assurance to Plaintiff, which has forced Plaintiff to seek out and
16 deliver the crop to another processor.

17 139. Plaintiff has suffered and will continue to suffer compensatory damages in
18 an amount according to proof, as a consequence of Defendant Wonderful Pistachios's breach of
19 the pistachio contract between the parties.

20 140. Under the terms of the Third Amended and Restated Revolving
21 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
22 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
23 entitled to recover its attorney's fees in this action.

24 **TWENTY-FOURTH CAUSE OF ACTION.**

25 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff Gradon**
26 **Farms, LLC v. Defendant Wonderful Pistachios.)**

27 141. Plaintiff incorporates by reference each and every allegation contained in
28 paragraphs 1 through 36, above.

1 142. Implied in every contract, including in the agreement between Plaintiff and
2 Wonderful Pistachios, there is a covenant of good faith and fair dealing requiring that the parties
3 do everything reasonably in their power to ensure that the other contracting party enjoys the
4 benefits of the contract.

5 143. Defendant Wonderful Pistachios breached the covenant of good faith and
6 fair dealing by failing to provide Plaintiff with adequate assurance that it would be fully paid for
7 its 2019 crop before that crop was delivered.

8 144. Defendant Wonderful Pistachios's breach of the implied covenant of good
9 faith and fair dealing has caused Plaintiff to suffer consequential damages, in an amount
10 according to proof.

11 **TWENTY-FIFTH CAUSE OF ACTION.**

12 **(Breach of Contract - Plaintiff Lincoln Grantor Farms, LLC v. Defendant Wonderful**
13 **Pistachios.)**

14 145. Under the circumstances that were presented in the first week of
15 September 2019, Plaintiff was justified in demanding from Defendant Wonderful Pistachios
16 prompt and reasonable assurance that Wonderful Pistachios would abide by the terms of the
17 contract and fully pay Plaintiff.

18 146. Defendant Wonderful Pistachios breached the contract between the parties
19 by failing to supply adequate assurance to Plaintiff, which has forced Plaintiff to seek out and
20 deliver the crop to another processor.

21 147. Plaintiff has suffered and will continue to suffer compensatory damages in
22 an amount according to proof, as a consequence of Defendant Wonderful Pistachios's breach of
23 the pistachio contract between the parties.

24 148. Under the terms of the Third Amended and Restated Revolving
25 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
26 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
27 entitled to recover its attorney's fees in this action.

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1 TWENTY-SIXTH CAUSE OF ACTION.

2 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff Lincoln**
3 **Grantor Farms, LLC v. Defendant Wonderful Pistachios.)**

4 149. Plaintiff incorporates by reference each and every allegation contained in
5 paragraphs 1 through 36, above.

6 150. Implied in every contract, including in the agreement between Plaintiff and
7 Wonderful Pistachios, there is a covenant of good faith and fair dealing requiring that the parties
8 do everything reasonably in their power to ensure that the other contracting party enjoys the
9 benefits of the contract.

10 151. Defendant Wonderful Pistachios breached the covenant of good faith and
11 fair dealing by failing to provide Plaintiff with adequate assurance that it would be fully paid for
12 its 2019 crop before that crop was delivered.

13 152. Defendant Wonderful Pistachios's breach of the implied covenant of good
14 faith and fair dealing has caused Plaintiff to suffer consequential damages, in an amount
15 according to proof.

16 153. Under the terms of the Third Amended and Restated Revolving
17 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
18 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
19 entitled to recover its attorney's fees in this action.

20 TWENTY-SEVENTH CAUSE OF ACTION.

21 **(Breach of Contract - Plaintiff Kamm South, LLC v. Defendant Wonderful Pistachios.)**

22 154. Plaintiff incorporates by reference each and every allegation contained in
23 paragraphs 1 through 36, above.

24 155. Under the agreements, Kamm South, LLC is not obligated to deliver its
25 2019 crop to Defendants. Defendants have insisted that Kamm South, LLC deliver its 2019 crop
26 to them and that, if the 2019 crop is not delivered, the 2018 Grower Partner Bonus that Kamm
27 South is entitled to receive will not be paid.

28 156. Defendant Wonderful Pistachios' refusal to pay to Kamm South the 2018

1 bonus to which it is entitled under the agreements is a breach of contract.

2 157. As a result of Defendants' breach of contract, Kamm South has suffered
3 and will suffer significant compensatory damages in an amount according to proof.

4 158. Under the terms of the Third Amended and Restated Revolving
5 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
6 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
7 entitled to recover its attorney's fees in this action.

8 **TWENTY-EIGHTH CAUSE OF ACTION.**

9 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff Kamm South,**
10 **LLC v. Defendant Wonderful Pistachios.)**

11 159. Plaintiff incorporates by reference each and every allegation contained in
12 paragraphs 1 through 36, above.

13 160. Implied in every contract, including in the agreement between Plaintiff and
14 Wonderful Pistachios, there is a covenant of good faith and fair dealing requiring that the parties
15 do everything reasonably in their power to ensure that the other contracting party enjoys the
16 benefits of the contract.

17 161. Defendant Wonderful Pistachios breached the covenant of good faith and
18 fair dealing by asserting, in bad faith, a term of the agreement that does not exist.

19 162. Defendant Wonderful Pistachios's breach of the implied covenant of good
20 faith and fair dealing has caused Plaintiff to suffer consequential damages, in an amount
21 according to proof.

22 163. Under the terms of the Third Amended and Restated Revolving
23 Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's
24 fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is
25 entitled to recover its attorney's fees in this action.

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TWENTY-NINTH CAUSE OF ACTION.

(Breach of Contract - Plaintiff Manning Avenue Pistachios, LLC v. Defendant Wonderful Pistachios.)

164. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 36, above.

165. Under the agreements, Manning Avenue Pistachios, LLC is not obligated to deliver its 2019 crop to Defendants. Defendants have insisted that Manning Avenue Pistachios, LLC deliver its 2019 crop to them and that, if the 2019 crop is not delivered, the 2018 Grower Partner Bonus that Manning Avenue Pistachios, LLC is entitled to receive will not be paid.

166. Defendant Wonderful Pistachios' refusal to pay to Manning Avenue Pistachios, LLC the 2018 bonus to which it is entitled under the agreements is a breach of contract.

167. As a result of Defendants' breach of contract, Manning Avenue Pistachios, LLC has suffered and will suffer significant compensatory damages in an amount according to proof.

168. Under the terms of the Third Amended and Restated Revolving Promissory Note, paragraph 10.2, the Noteholder is entitled to recover its reasonable attorney's fees. This provision is made reciprocal under Civil Code Section 1717, such that Plaintiff is entitled to recover its attorney's fees in this action.

THIRTIETH CAUSE OF ACTION.

(Breach of the Implied Covenant of Good Faith and Fair Dealing - Plaintiff Manning Avenue Pistachios, LLC v. Defendant Wonderful Pistachios.)

169. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1 through 36, above.

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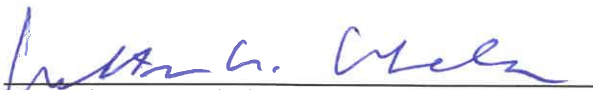
1 departing grower after that grower has delivered his crop expecting full payment. In short,
2 Plaintiffs are entitled to be paid fully for their pistachio crops that they have already delivered to
3 Defendants in past years going back to 2016.

4 WHEREFORE, Plaintiffs pray for judgement against Defendants, and each of
5 them, as follows:

- 6 1. For a declaration that if a crop is delivered by a departing grower,
7 Defendants do not have the right to reduce the total price paid per pound paid to that grower; and
- 8 2. For compensatory damages in an amount according to proof;
- 9 3. For attorney's fees, to the extent they are recoverable under the law;
- 10 4. For reasonable costs of suit; and
- 11 5. For all other relief as the Court deems appropriate.

12 Dated: September 3, 2019

WHELAN LAW GROUP,
A Professional Corporation,



by Walter W. Whelan
Attorney for Plaintiffs Assemi Brothers, LLC; 104
Pistachios, LLC; ACDF, LLC; Cantua Orchards,
16 LLC; Derrick Pistachios, LLC; Gradon Farms, LLC;
17 Granville Farms, LLC; Kamm Pistachios, LLC;
18 Lincoln Grantor Farms, LLC; Panoche Pistachios,
19 Pistachios, LLC; Sommerville Farms, LLC; Three Rocks
Waterford Farms, LLC

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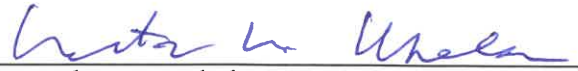
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JURY TRIAL DEMAND

Plaintiff demands trial by jury on all issues presented by this Complaint.

Dated: September 3, 2019

WHELAN LAW GROUP,
A Professional Corporation,



by Walter W. Whelan
Attorney for Plaintiffs Assemi Brothers, LLC; 104
Pistachios, LLC; ACDF, LLC; Cantua Orchards,
LLC; Derrick Pistachios, LLC; Gradon Farms, LLC;
Granville Farms, LLC; Kamm Pistachios, LLC;
Lincoln Grantor Farms, LLC; Panoche Pistachios,
LLC; Sommerville Farms, LLC; Three Rocks
Pistachios, LLC; Tuscan Farms, LLC; and
Waterford Farms, LLC

EXHIBIT “A”

From: "Anzaldo, Andy" <andy.anzaldo@wonderful.com<mailto:andy.anzaldo@wonderful.com>>

Date: August 31, 2019 at 9:03:59 AM PDT

To: "kthom10364@aol.com<mailto:kthom10364@aol.com>" <kthom10364@aol.com<mailto:kthom10364@aol.com>>>, "joreiter@yahoo.com<mailto:joreiter@yahoo.com>" <joreiter@yahoo.com<mailto:joreiter@yahoo.com>>>

Cc: "kassemi@gvhomes.com<mailto:kassemi@gvhomes.com>" <kassemi@gvhomes.com<mailto:kassemi@gvhomes.com>>>

Subject: Assemi-Affiliated Entities

Keith and Jon,

Thanks for reaching out to us. We have discussed this situation internally and want to formally respond to your concerns. Our position is that Gradon Farms; Kamm South; Lincoln Grantor Farms, LLC; Manning Farms, LLC; McConnell Farms, LLC; and Sommerville Farms ("Assemi-Affiliated Growers") have an agreement to deliver to Wonderful through the 2019 crop year. If any of these growers don't deliver their crop to Wonderful in Crop Year 2019 then we would consider that to be a breach and we will not pay them a 2018 Grower Partner Bonus.

@Kevin: Please share this notice with Kamm South or any other Assemi-affiliated entity listed above that don't plan on delivering their crop to Wonderful in Crop Year 2019.

We hope and expect that all of these growers will deliver their 2019 crop to us and regarding their 2018 grower bonus they will be treated like every other grower who delivers their 2019 crop to Wonderful.

Andy Anzaldo
(661) 203-5882

EXHIBIT “B”

September 2, 2019

VIA E-MAIL

AND CERTIFIED MAIL

Andrew Anzaldo

Wonderful Growers Cooperative

Wonderful Pistachios, LLC

13646 CA-33

Lost Hills, CA 93249

andy.anzaldo@wonderful.com

Re: The Amended and Restated Membership and Marketing Agreement between Wonderful Growers Cooperative and Assemi Member Growers and the Grower Agreements with Non-member Assemi Entities

Dear Mr. Anzaldo:

This letter is sent on behalf of the following entities which are members of the Wonderful Growers Cooperative ("Wonderful"): 104 Pistachios, LLC; ACDF, LLC; Cantua Orchards, LLC; Derrick Pistachios, LLC; Granville Farms, LLC; Kamm Pistachios, LLC; Panoche Pistachios, LLC; Sommerville Farms, LLC; Three Rocks Pistachios, LLC; Tuscan Farms, LLC; and Waterford Farms, LLC ("the Co-Op Assemi Entities"). This letter is also sent on behalf of Gradon Farms, LLC and Lincoln Grantor Farms, LLC ("the Non-Co-Op Assemi Entities") which are not members of Wonderful but which have contracts to deliver their 2019 pistachio crop to Wonderful Pistachios, LLC ("Wonderful Pistachios").

Under the Amended Restated Membership and Marketing Agreement ("the Agreement") in which the Co-Op Assemi Entities participate as members of Wonderful and under the contracts between Gradon Farms, LLC, and Lincoln Grantor Farms, LLC, on the one hand, and Wonderful Pistachios, on the other hand ("the Wonderful Pistachios Agreements"), we wish to affirm our intent to deliver to Wonderful and Wonderful Pistachios our 2019 pistachio crop and to abide fully by our contractual obligations under those agreements. However, based on the August 31, 2019 e-mail that was sent by you to Keith Thomsen and Jon Reiter and on recent conversations we have had with you and with Craig Cooper, we have heard for the first time that Wonderful Pistachios now takes the position that the 30% Grower Partner Bonus that has been traditionally paid by Wonderful Pistachios to its growers is merely a discretionary bonus that can be withheld if a grower decides to take his pistachios to another processor the following year.

It is not a term of the Agreements that Wonderful and/or Wonderful Pistachios are permitted to opt out of paying the Co-Op Assemi Entities and/or the Non-Co-Op Assemi Entities any portion of the total price that other Wonderful member growers and Wonderful Pistachios growers receive for their 2019 crop. In other words, payment of the entire price to the Co-Op Assemi Entities and the Non-Co-Op Assemi Entities is mandatory and no portion is discretionary. Among other things, this conclusion follows from language that appears in the March 31, 2014 Memorandum of Understanding signed by Craig Cooper:

1(b) "Assemi may terminate the pistachio agreement(s) and exit a Paramount Coop to which it contributes pistachios (i) upon the occurrence of a change of control (i.e., ownership or management) or an estate event (i.e., death or permanent incapacity), or (ii) if, in any year, Paramount provides Assemi with a return per pound of pistachios that is

5% or 10 cents (whichever is lesser) lower than the 3 year average return paid to other pistachio growers by the next 2 largest pistachio processors.

...

(d) In the event that Paramount offers a non-Paramount affiliated pistachio member of a Paramount Coop a bonus in respect of the 5 consecutive crop years starting on September 1, 2014 and ending on August 31, 2020, then Assemi will be eligible for any such bonus, and the applicable Paramount Coop shall pay such bonus to Assemi promptly after the amount is determined by Paramount.”

Having an assurance that Wonderful and Wonderful Pistachios will pay us fully for our 2018 and 2019 pistachio crops if we deliver our 2019 pistachio crop as we plan to do in the coming days is critically important to us before the crop is actually delivered. **We demand written assurance from Wonderful and Wonderful Pistachios by 5:00 p.m. Wednesday, September 4, 2019 that the Co-Op Assemi Entities and the Non-Co-Op Assemi Entities will be paid the same total price that other Wonderful member growers and Wonderful Pistachio growers are paid for their 2019 crop, as required under the Agreements, regardless of whether they deliver their 2020 crop to Wonderful and/or Wonderful Pistachios and we do not. If you do not supply us immediately with such a written assurance, we will treat your refusal to do so as a breach of the Agreements and will not deliver our 2019 pistachio crop to Wonderful and Wonderful Pistachios.**

If you base your new position on your interpretation of the Agreements, please identify what terms in the Agreements give Wonderful and/or Wonderful Pistachios the discretion to discriminate as to what price is paid for the 2019 crop for growers who deliver to you only their 2019 crop in contrast to growers who deliver to Wonderful and/or Wonderful Pistachios both their 2019 and 2020 crops.

Very truly yours,



Kevin Assemi
Chief Executive Officer
Maricopa Orchards, LLC
(acting on behalf of the Assemi Entities)

cc: **VIA E-MAIL**
AND CERTIFIED MAIL
Stewart Resnick; Craig Cooper
The Wonderful Company, LLC
11444 W. Olympic Blvd.
Los Angeles, CA 90064-1544
Stewart.Resnick@wonderful.com;
Craig.Cooper@wonderful.com

EXHIBIT “C”

September 4, 2019

VIA E-MAIL

Andrew Anzaldo

Wonderful Growers Cooperative

Wonderful Pistachios, LLC

andy.anzaldo@wonderful.com

Re: The Amended and Restated Membership and Marketing Agreement between Wonderful Growers Cooperative and Assemi Member Growers and the Grower Agreements with Non-member Assemi Entities

Dear Mr. Anzaldo:

Your response fails to give us adequate assurance that you intend to pay for our 2019 pistachio crop what we have customarily been paid by you for our prior crops and, more importantly, what we are entitled to receive under our existing Agreements. Therefore, under California Commercial Code § 2609, you are in breach of our Agreements for failing to give us adequate assurance. We will give you until 5:00 p.m. tomorrow, September 5, 2019 for you to cure the breach. Yes answers (and only yes answers) from you to both of the following two questions would be treated by us as a cure of your breach:

1. Do you agree, if we deliver our 2019 pistachio crop to you but do not deliver our 2020 pistachio crop to you, that (a) we will still receive the same total price per lb. for our 2019 pistachio crop that we would receive if we also delivered our 2020 pistachio crop to you and (b) we will still receive the same total price per lb. for our 2019 pistachio crop that you pay to other similarly situated co-op and non-co-op Wonderful growers, as the case may be (and at the same time and in the same manner that they are paid), who deliver their 2019 and 2020 crops to you?
2. Do you agree that, if we deliver our 2019 pistachio crop to you but do not deliver our 2020 pistachio crop to you, we will be fully and timely paid at the same price per lb. and in the same manner that other similarly situated co-op and non-co-op Wonderful growers are paid for any remaining balances owed to us for the 2016, 2017, and 2018 crops regardless of whether we, unlike the co-op and non-co-op members to whom we are compared, choose not to deliver our 2020 crop to you?

Time is of the essence. Each day that we delay harvest risks deterioration of the quality of our crop which will likely cause a significant loss to us. Please respond with an email to me by no later than 5:00 p.m. tomorrow, September 5, 2019.

Very truly yours,



Kevin Assemi
Chief Executive Officer
Maricopa Orchards, LLC
(acting on behalf of the Assemi Entities)

cc: **VIA E-MAIL**
Stewart Resnick; Craig Cooper
The Wonderful Company, LLC
Stewart.Resnick@wonderful.com;
Craig.Cooper@wonderful.com