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7 *Attorneys for Plaintiffs Price, Wilson and Esposito*

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10
11 IN RE SPROUTS FARMERS MARKET, | MDL Docket No. 16-2731-PHX-DLR
12 INC., LIABILITY LITIGATION, | This Document Relates to All Actions
13

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15 **JOINT RESPONSE TO ORDER SETTING INITIAL CASE MANAGEMENT**
16 **CONFERENCE**
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19 On October 21, 2016, this Court issued its Order Setting Initial Case Management
20 Conference (“Order”). (Doc. 7). That Order directed the parties to address certain issues
21 and accomplish certain tasks by November 2, 2016. This Joint Response is filed by the
22 parties in compliance with the Court’s referenced Order.
23

24 By signature hereon undersigned counsel represents that he is authorized to file
25 this Joint Response on behalf of counsel described herein. Further, undersigned counsel
26

1
2 represents that he is authorized to submit to the Court for its consideration on behalf of all
3 counsel for all parties in all MDL 2731 transferred cases the (Proposed) Case
4 Management Order No. 1, attached as Exhibit 1.
5

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7 The following counsel will appear in person before the Court at the Initial Case
8 Management Conference on November 22, 2016 in the above Court: (Proposed) Lead
9 Counsel and Plaintiffs' Steering Committee member for Plaintiffs—David H. Miller, of
10 the Sawaya & Miller Law Firm, Denver, Colorado; (Proposed) Liaison Counsel and
11 Steering Committee member for Plaintiffs—Scott B. Cooper, of The Cooper Law Firm,
12 P.C., Irvine, California; (Proposed) Lead Counsel for Defendant, Paul G. Karlsgodt, of
13 Baker & Hostetler, LLP, Denver, Colorado.
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16 Other Plaintiffs' counsel in all MDL 2731 transferred cases may appear
17 telephonically, pursuant to the Court's Order. At this time the parties are not aware of any
18 other cases that exist or counsel who should be notified of the above Conference.
19

20 All of the counsel for all of the parties in the MDL 2731 transferred cases have
21 conferred as directed and addressed the matters contained in the Court's Order (Doc. 7)
22 and particularly in the "Agenda and Discussion of Issues" section of the Court's Order.
23 Their joint response and submission is set out as follows:
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26 a. Are there categories of cases that raise different common do all of
27 the cases raise all of the common issues?
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Response: While the different MDL 2731 cases state different claims for relief, all of the claims arise out of the same common nucleus of facts.

- b. Should a document depository of some sort be created?

Response: The parties do not believe that at this time there is a need for the creation of a document depository.

- c. Have the parties established an ESI protocol that is some or all of the cases?

Response: The parties have agreed to work to agree on an ESI protocol in the future.

- d. Have the parties agreed upon protective orders and Rule 502 orders that are being used in some or all of the cases?

Response: The parties have discussed these issues and expect to be able to come to an agreement on such orders.

- e. Will some of the cases raise jurisdictional or remand to be addressed early?
If so, what are those issues and are affected?

Response: Defendants anticipate filing a motion to compel arbitration. Plaintiffs will raise the issue of a stay pending from an unresolved motion filed in the Colorado MDL 2731 case (Doc. 15, 23).

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2 f. Are there similar state court cases pending? If so, where number? Has there
3 been any coordination with state court far?
4

5 Response: Counsel believe that all known state cases have been subject to the
6 MDL 2731 transfer order to this Court.
7

8 g. Should a master complaint be filed for organizational to supersede pending
9 complaints in individual cases)?

10 Response: Yes. Such a master complaint could be filed no later than 45 days
11 from the November 22, 2016, Case Management Conference.
12

13 h. What discovery plan should be adopted in this case?

14 Response: The parties believe that some discovery with respect to issues
15 relating to arbitration should be permitted.
16

17 i. Should the case include alternatives to traditional written such as fact sheets
18 to be completed under oath by parties?

19 Response: This issue is under discussion by the parties.
20

21 j. Are there particular issues which, if resolved early, will advance the litigation?

22 Response: The parties agree that the early resolution of the arbitration and stay
23 issues would advance the litigation.
24

25 k. Should the Court set a firm date by which cases will be transferor districts?

26 Response: Not at this time.
27
28

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2 1. The parties should review the undersigned's Case Management Order
3 on the District website to get a sense undersigned usually manages cases.
4

5 Response: The parties have reviewed the Court's Case Management Order and
6 will be prepared to address it with the Court. Additionally, the parties submit
7 for the Court's consideration a proposed structural and procedural Case
8 Management Order No. 1 to address other matters that may be at issue such as
9 the questions of Lead and Liaison Counsel.
10

11 Respectfully submitted this 2nd day of November, 2016.
12

13 Plaintiffs' (Proposed) Lead Counsel and member of Plaintiffs' Steering
14 Committee:
15

16 *s/David H. Miller*

17 David H. Miller

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27 Plaintiffs' (Proposed) Liaison Counsel and member of Steering Committee,
and for all California Counsel in all MDL 2731 cases
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Defendant's (Proposed) Lead Counsel

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Certificate of Service

I hereby certify that on the 2nd day of November, 2016, I electronically transmitted the within **JOINT RESPONSE TO ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE** and attached (Proposed) Case Management Order No. 1 to the Clerk's Office using the CM/ECF system for filing and transmittal of Notice of Electronic Filing to the following CM/ECF registrants:

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