statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement; and

d. any claim under the Equal Access to Justice Act.

6. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This Agreement is for settlement purposes only and does not constitute an admission by the proposed respondents that the law has been violated as alleged in the draft of the complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

8. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to terminate certain agreements entered into between Del Monte and PCP and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this Agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and

no agreement, understanding,

representation, or interpretation not

contained in the order or the Agreement may be used to vary or contradict the terms of the order.

9. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file verified written reports showing they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

## Order

T

It is ordered that, as used in this order, the following definitions shall apply.

A. "Del Monte Corporation" means Del Monte Corporation, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Del Monte Corporation, and their respective directors, officers, employees, agents, and their respective successors and assigns.

B. "Del Monte" means Del Monte Foods Company, its predecessors, subsidiaries (including Del Monte Corporation), divisions, groups and affiliates controlled by Del Monte Foods Company, and their respective directors, officers, employees, agents, and their respective successors and assigns.

C. "PCP" means Pacific Coast Producers, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Pacific Coast Producers, and their respective directors, officers, employees, members, agents, and their respective successors and assigns.

D. "Respondents" means PCP and Del Monte (including Del Monte Corporation).

E. "Commission" means the Federal Trade Commission.

F. "Canned Fruit" means peaches, pears, fruit cocktail, and fruit mix, which consists primarily of diced peaches and diced pears, that are processed and canned.

G. "Option Agreement" means the Option Agreement between Del Monte Corporation and Pacific Coast Producers entered into on May 4, 1992, pursuant to which Del Monte acquired and PCP conveyed an exclusive and irrevocable option to purchase certain rights in, and title to, certain assets of PCP, including long term contracts with growers.

H. "Supply Agreement" means the Supply Agreement between Del Monte Corporation and Pacific Coast Producers entered into on May 4, 1992, pursuant to which Del Monte agreed to purchase virtually all of PCP's output of Canned Fruit, canned tomatoes, and canned apricots.

I. "Spot Market" means *ad hoc* intercanner transactions for Canned Fruit placed on an irregular basis where all Canned Fruit ordered under such an arrangement is delivered within nine weeks of placing the order.

J. "Tri Valley Growers" means Tri Valley Growers, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Tri Valley Growers, and their respective directors, officers, employees, members, agents, and their respective successors and assigns.

II

It is further ordered that:

A. Within three (3) days after the date this order becomes final, Respondents shall terminate the Option Agreement;

B. Within three (3) days after the date this order becomes final, Respondents shall declare null and void the following paragraphs of the Supply Agreement: Paragraph 2, subparagraphs (b), (c), (e), and (f), Paragraph 23, Paragraph 24, and Paragraph 25 as it relates to the budget for canning after June 30, 1995; and

C. On or before June 30, 1995, Respondents shall absolutely and in good faith terminate the Supply Agreement.

II

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Del Monte shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged, at the time of such acquisition or within the two years preceding such acquisition, in the manufacture of any type of Canned Fruit in the United States; provided, however, that an acquisition shall be exempt from the requirements of this paragraph if it is solely for the purpose of investment and Del Monte will not hold more than one percent of the shares of any publicly traded class of security; or

B. Acquire any assets, other than in the ordinary course of business, used for or used anytime within the two years preceding such acquisition for (and still suitable for use for) the manufacture of any type of Canned Fruit in the United States; provided, however, that an acquisition of assets will be exempt from the requirements of this paragraph