

JAN 13 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JACKSON & PERKINS WHOLESALE,
INC., a Delaware corporation,

Plaintiff - Appellee,

v.

SMITH ROSE NURSERY, INC., a
Florida corporation; CALVIN J. SMITH;
and MELVIN W. SMITH,

Defendants - Appellants.

No. 07-35504

D.C. No. CV-03-03091-OMP
District of Oregon,
Medford

ORDER AMENDING
MEMORANDUM AND
DENYING PETITION FOR
REHEARING

Before: O'SCANNLAIN, GRABER, and BYBEE, Circuit Judges.

The memorandum disposition filed on December 15, 2008, is amended as follows:

On page 3, paragraph "2." is now numbered paragraph "3." and the following new paragraph "2." is inserted on line 3: "2. The district court did not err in drafting and formulating the verdict form in the first instance."

With this amendment, the petition for panel rehearing is DENIED. No further petitions shall be entertained.