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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

SALINAS VALLEY PRODUCE, INC.,
Plaintiff,
v.
GOLDEN RULE PRODUCE, INC., et al.,
Defendants.

Case No. 19-cv-02692-BLF

**ORDER GRANTING PLAINTIFF’S EX
PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
WITHOUT NOTICE; ISSUING ORDER
TO SHOW CAUSE FOR
PRELIMINARY INJUNCTION**

[Re: ECF 9]

Before the Court is Plaintiff’s *Ex Parte* Application for Temporary Restraining Order Without Notice (“Application for TRO”). ECF 9. Also pending before the Court is Plaintiff’s Motion for Preliminary Injunction. ECF 10. The Court finds the Application for TRO suitable for submission without oral argument. For the reasons that follow, Plaintiff’s Application for TRO is GRANTED, and Defendants are hereby ORDERED TO SHOW CAUSE why a preliminary injunction should not issue.

I. BACKGROUND

On May 17, 2019, Plaintiff Salinas Valley Produce, Inc. filed suit against Defendants Golden Rule Produce, Inc. and Dimitrios Tsigaris, alleging violation of the Perishable Agricultural Commodities Act (7 U.S.C. §§ 499a *et seq.*) (“PACA”), failure to pay PACA trust assets, breach of contract, breach of fiduciary duty, and conversion and unlawful retention of PACA trust assets. *See generally* Compl., ECF 1. Plaintiff holds a PACA license and sells wholesale quantities of perishable agricultural commodities in interstate commerce. *See* Compl. ¶ 2. Defendant Golden Rule Produce is also licensed under PACA and is a wholesale distributor of produce. *See id.* ¶ 3. Defendant Tsigaris is a principal of Defendant Golden Rule Produce. *See id.*

Plaintiff alleges that it sold \$275,178.00 worth of fresh produce to Defendants between October 16, 2017, and March 19, 2019. *See* Compl. ¶ 6. Plaintiff further alleges that Defendants

1 have failed to pay for this produce despite repeated demands, and that under PACA Plaintiff “is a
2 beneficiary of a statutory trust *res* designated as a fund from which it can be assured payment.”
3 *See id.* ¶ 8. Plaintiff asserts that the trust became effective at the time Defendants began accepting
4 shipments of produce. *Id.*

5 **II. LEGAL STANDARD**

6 Under Federal Rule of Civil Procedure 65(b), a court may grant a temporary restraining
7 order without notice to the adverse party if:

- 8 (1) specific facts in an affidavit or a verified complaint clearly show that immediate and
9 irreparable injury, loss, or damage will result to the movant before the adversary party
10 can be heard in opposition; and
11 (2) the movant’s attorney certifies in writing any efforts made to give notice and the
12 reasons why it should not be required.

13 Fed. R. Civ. P. 65(b).

14 The substantive standard for issuing a temporary restraining order is identical to the
15 standard for issuing a preliminary injunction. *See Stuhlberg Int’l Sales Co., Inc. v. John D. Brush*
16 *& Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001); *Lockheed Missile & Space Co. v. Hughes Aircraft*,
17 887 F. Supp. 1320, 1323 (N.D. Cal. 1995). An injunction is a matter of equitable discretion and is
18 “an extraordinary remedy that may only be awarded upon a clear showing that the [moving party]
19 is entitled to such relief.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22
(2008).

20 A party seeking preliminary injunctive relief must establish “[1] that he is likely to succeed
21 on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief,
22 [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.”
23 *Winter*, 555 U.S. at 20. Alternatively, an injunction can issue where “the likelihood of success is
24 such that serious questions going to the merits were raised and the balance of hardships tips
25 sharply in [the moving party’s] favor,” provided that the moving party can also demonstrate the
26 other *Winter* factors. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.
27 2011) (citation and internal quotation marks omitted). Showing “serious questions going to the
28 merits” requires more than establishing that “success is more likely than not;” rather, it requires
the moving party to demonstrate a “substantial case for relief on the merits.” *Leiva–Perez v.*

1 *Holder*, 640 F.3d 962, 967 (9th Cir. 2011). Under either standard, the moving party bears the
2 burden of making a clear showing on these elements and on entitlement to this extraordinary
3 remedy. *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010).

4 **III. DISCUSSION**

5 Plaintiff’s Application for TRO “seeks to enjoin Golden Rule and its officers, agents,
6 servants, employees, successors, banking institutions, attorneys, and all other persons in active
7 concert or participation with them (including defendant, Dimitrios Tsigaris), from using,
8 consuming or otherwise dissipating trust assets under PACA, or making payment of any PACA
9 trust asset to any creditor, person, or entity until full payment of \$275,128.00, plus interest, costs,
10 and attorneys’ fees to [Plaintiff], further order of this Court or [Plaintiff’s] agreement.” *See*
11 Application for TRO at 1–2. Plaintiff argues that absent this relief, “[Plaintiff] will suffer
12 immediate and irreparable injury, loss, and damage due to Golden Rule’s continued dissipation of
13 [Plaintiff’s] interest in the statutory trust until judgment can be granted on the merits.” *See id.* at
14 2. In support, Plaintiff submits a Memorandum of Points and Authorities (ECF 9-4), the
15 Declaration of Alejandro Aguilar (ECF 9-1), the Declaration of Kaipo Young (ECF 9-2), and an
16 Attorney Certification Why Notice Should Not Be Required (ECF 9-3). As discussed below, the
17 Court GRANTS Plaintiff’s Application for TRO.

18 **A. Likelihood of Success on the Merits**

19 Plaintiff has demonstrated a likelihood of success on the merits because Plaintiff submits
20 evidence that Defendants have not paid for the produce they received from Plaintiff and sets forth
21 that PACA provides for the relief requested. Specifically, Plaintiff’s declarations demonstrate that
22 (1) Plaintiff is a licensed dealer under PACA; (2) Golden Rule is licensed under PACA;
23 (3) between October 16, 2017, and March 19, 2019, Plaintiff sold and delivered \$275,128.00
24 worth of fresh produce to Defendants; (4) Golden Rule received and accepted the produce without
25 objection; (5) each shipment was invoiced according to PACA requirements; and (6) Golden Rule
26 failed to pay the invoices within the agreed payment terms and the cumulative amount of
27 \$275,128.00 remains overdue and unpaid. *See* Aguilar Decl. ¶¶ 5–9, 11–18; Young Decl. ¶¶ 16,
28 17; *see also* Ex.’s A–D to Aguilar Decl.; Ex.’s A–C to Young Decl. Accordingly, Plaintiff has

1 shown a strong likelihood of success on the merits.

2 **B. Irreparable Harm**

3 Plaintiff asserts that Golden Rule (1) is in severe financial jeopardy; (2) has either
4 dissipated or threatened to dissipate the trust assets subject to PACA, 7 U.S.C. § 499e(c)(2); and
5 (3) is not or may not be in a position to pay Plaintiff's PACA trust claim. *See* Memorandum
6 at 7–8, ECF 9-4. Plaintiff submits evidence that multiple checks from Golden Rule to Plaintiff
7 were returned by the bank for insufficient funds. *See* Aguilar Decl. ¶ 15; *see also* Ex. C to Aguilar
8 Decl. In March 2019, Plaintiff received two additional checks from Golden Rule but did not
9 attempt to cash them because Plaintiff was informed that the Golden Rule bank account contained
10 insufficient funds. *See* Aguilar Decl. ¶ 16. Plaintiff has continued to demand payment from
11 Defendants, to no avail. *See id.* ¶¶ 13–14, 18. In the meantime, Defendants have made payments
12 to other creditors or owe significant sums to other creditors that jeopardize Plaintiff's ability to
13 recover. *See* Young Decl. ¶¶ 6–10, 12–13. Based upon the pleadings, declarations, and other
14 submissions Plaintiff has filed in this action, the Court concludes that Plaintiff will suffer
15 immediate and irreparable injury due to Golden Rule's dissipation of Plaintiff's beneficial interest
16 in the statutory trust created under PACA, 7 U.S.C. §499e(c), and that this dissipation will
17 continue in the absence of injunctive relief.

18 **C. Remaining *Winter* Factors**

19 The Court finds that the balance of equities tips in Plaintiff's favor, and Congress has
20 found that the public interest is served by the enforcement of these trusts. *See* 7 U.S.C.
21 § 499e(c)(1). Thus, the remaining *Winter* factors are in Plaintiff's favor.

22 **D. Notice**

23 The Court concludes that if notice is given to Golden Rule during the pendency of
24 Plaintiff's Application for TRO, trust assets under PACA, 7 U.S.C. §499e(c), will be further
25 threatened with dissipation before the Application for TRO is heard. As noted in the legislative
26 history of PACA, once dissipation has occurred, recovery of trust assets is all but impossible. *See*
27 H.R. Rep. No. 543, 98th Cong., 2d Sess. 4 (1983), reprinted in 1984 U.S. Code Cong. & Admin.
28 News 405, 411; *see also Chula Brand CA, Corp. v. Martinez*, 2017 WL 107672, at *3 (S.D. Cal.

1 Jan. 11, 2017). Entry of the instant order without notice assures retention of the trust assets under
2 the control of this Court, which is specifically vested with jurisdiction over the trust. 7 U.S.C.
3 § 499e(c)(5). In accord with Rule 65(b)(1), Plaintiff’s attorney has certified why notice should not
4 be required. *See* Attorney Certification Why Notice Should Not Be Required, ECF 9-3.

5 **E. Bond**

6 Plaintiff requests that no bond be required. *See* Application for TRO at 10. The Court
7 agrees. It would appear that Defendants already possess \$275,178.00 worth of trust assets from
8 Plaintiff as security for the issuance of injunctive relief.

9 **F. Conclusion**

10 In conclusion, the Court hereby GRANTS Plaintiff’s Application for TRO.

11 **IV. ORDER**

12 For the foregoing reasons, the Court finds that Plaintiff will suffer immediate and
13 irreparable injury in the form of a loss of trust assets unless the instant order is granted without
14 notice. Accordingly, IT IS HEREBY ORDERED that:

- 15 1. This Temporary Restraining Order is entered this 20th day of June, 2019.
- 16 2. Pending hearing on the Order to Show Cause scheduled below, Defendant Golden Rule
17 Produce, Inc. and its officers, agents, servants, employees, attorneys, subsidiaries,
18 assigns, banking and financial institutions, and all persons in active concert or
19 participation with Golden Rule Produce, Inc. (including Defendant Dimitrios Tsigaris)
20 are enjoined and restrained from dissipating, paying, transferring, encumbering,
21 assigning or selling any and all assets covered by or subject to the PACA trust
22 provisions until further order of the Court.
- 23 3. Under PACA, 7 U.S.C. §499e(c)(2), the assets subject to this order include all of
24 Golden Rule Produce, Inc.’s assets, unless it or a third party can prove to this Court
25 that a particular asset is not derived from perishable agricultural commodities,
26 inventories of food, other products derived from perishable agricultural commodities,
27 receivables or proceeds from the sale of such commodities or products, or purchased
28 with funds from a comingled account containing proceeds from the sale of such

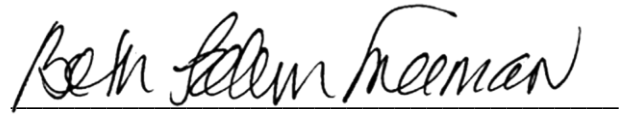
- 1 commodities or products. However, Golden Rule Produce, Inc. may sell perishable
2 agricultural commodities or products derived from perishable agricultural commodities
3 for fair compensation, without right of set-off, on the condition that Golden Rule
4 Produce, Inc. accounts for and maintain the proceeds of any sale subject to this Order.
- 5 4. Plaintiff shall serve Defendants, or their registered agent, or their counsel, with a copy
6 of this Order no later than June 24, 2019.
- 7 5. Golden Rule Produce, Inc. shall serve a copy of this Order on all banking or financial
8 institutions with which it conducts business, or any person or entity who may be
9 holding assets for or on its behalf.
- 10 6. This Order is binding upon the parties to this action, banking and financial institutions,
11 and all other persons or entities receiving actual notice of this Order by personal
12 service, including email, facsimile transmission, priority mail, or Federal Express.
- 13 7. The \$275,178.00 in PACA trust assets allegedly belonging to Plaintiff and in Golden
14 Rule Produce, Inc.'s possession will serve as Plaintiff's security for this injunction as
15 required by FRCP 65(c).
- 16 8. A hearing on Plaintiff's Motion for Preliminary Injunction (ECF 10) is set for June 27,
17 2019, at 9:00 A.M., in Courtroom 3, 5th Floor, U.S. District Court, 280 South 1st
18 Street, San Jose, CA 95113.
- 19 9. Defendants are ORDERED TO SHOW CAUSE why a preliminary injunction should
20 not issue enjoining them from distributing PACA trust funds as set out in Plaintiff's
21 Motion for Preliminary Injunction. Defendants' opposition shall be filed no later than
22 June 25, 2019.
- 23 10. Defendants may apply to the court for modification or dissolution of this Temporary
24 Restraining Order on two days' notice, or such shorter notice as the court may allow.
25 *See Fed. R. Civ. P. 65(b).*
- 26 11. The parties may stipulate to a later hearing date on the Motion for Preliminary
27 Injunction upon agreement that this TRO will remain in effect until the hearing date.
28 Motions are heard on Thursdays at 9:00 A.M. Due to the Court's unavailability, no

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motions will be heard from June 28 to July 15, 2019.

IT IS SO ORDERED.

Dated: June 20, 2019



BETH LABSON FREEMAN
United States District Judge