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NOTE: CHANGES MADE BY THE COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

DAVALAN SALES, INC, a corporation,  
dba DAVALAN FRESH; CHOUMAS  
PRODUCE CO., INC., a corporation;  
EXCELL PROD, INC., a corporation;  
  
Plaintiffs,  
  
v.  
  
NORTHERN PRODUCE/MUSHROOMS,  
INC., a corporation; MARCIA N. WEISS,  
an individual; JOEL H. WEISS, an  
individual, aka JOEY WEISS; BARRY  
WEISS, an individual,  
  
Defendants.

CASE NO. 2:15-cv-04379-AB-AJW

**[PROPOSED] TEMPORARY  
RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE RE  
PRELIMINARY INJUNCTION  
AND PRELIMINARY  
INJUNCTION**

**[FRCP Rule 65]**

Upon review of the Complaint of Plaintiffs DAVALAN SALES, INC. dba DAVALAN FRESH, CHOUMAS PRODUCE CO., INC., and EXCELL PROD, INC. (collectively "Plaintiffs"), on file in the above-captioned action, and the declarations, exhibits and Memorandum of Points and Authorities in support of Plaintiffs' Application for a Temporary Restraining Order and/or Preliminary Injunction submitted therewith,

1 and it appearing to the satisfaction of the Court that this is a proper case for granting a  
2 Temporary Restraining Order and Order to Show Cause.

3 IT IS HEREBY ORDERED that Defendant NORTHERN  
4 PRODUCE/MUSHROOMS, INC., a corporation (“Northern Produce”) appear in  
5 Courtroom 4 of the U.S. District Court for the Central District of California, Western  
6 Division, **312 N. Spring St.**, Los Angeles, CA 90012 on **August 3, 2015**, at **10:00 a.m.**,  
7 or as soon thereafter as the matter may be heard, then and there to show cause, if any it  
8 has, why it, its agents, bankers, subsidiaries, successors, assignees, principals, employees,  
9 officers, directors, shareholders, attorneys, and representatives should not be restrained  
10 and preliminarily enjoined during the pendency of this action, pursuant to Rule 65 of the  
11 Federal Rules of Civil Procedure, from engaging in, committing, or performing directly  
12 and indirectly, any and all of the following acts:

13 A. Removing, withdrawing, transferring, assigning or selling to any other  
14 person or entity, the proceeds from the sales of any or all existing or future inventories of  
15 food or other products derived from perishable (including frozen) agricultural  
16 commodities, and/or receipts of payment for products sold prior to the date of this order  
17 and/or otherwise disposing of assets, books or funds;

18 B. Taking any other action whatsoever which causes, has the effect of causing,  
19 or which otherwise dissipates Plaintiffs’ beneficiary interests in trust assets of the  
20 Perishable Agricultural Commodities Act (“PACA”) [7 U.S.C. §499e *et seq.*];

21 C. Taking any other action whatsoever which violates 7 U.S.C. §499e(c)(1)  
22 through (4), inclusive, and 7 U.S.C. §499b(4) [§2 of PACA].

23 IT IS FURTHER ORDERED that Defendant Northern Produce and its owners,  
24 officers, directors, shareholders, employees, agents, subsidiaries, successors, assignees,  
25 principals, assignors, attorneys and persons acting in concert with them, appear at the  
26 same time and place to show cause, if any they have, why they should not be commanded  
27 by order of this Court and required to distribute PACA trust assets in the amount of at  
28 least \$47,366.04, which includes \$39,678.80 in PACA Trust principal owing to Plaintiffs,

1 plus finance charges accrued through June 9, 2015, in the amount of \$3,764.24, plus  
2 reasonable attorney's fees in the amount of \$3,523.00, plus filing fees of \$400.00 as of  
3 the date hereof.

4 IT IS FURTHER ORDERED that pending the hearing and determination of the  
5 foregoing Order to Show Cause, Defendant Northern Produce and its officers, directors,  
6 shareholders, employees, agents, bankers, subsidiaries, successors, assignees, principals,  
7 attorneys, and persons acting in concert with them shall be and hereby are prevented from  
8 transferring, withdrawing or in any other manner removing Perishable Agricultural  
9 Commodities Act [7 U.S.C. §499e *et seq.*] trust assets, including funds on deposit in  
10 banking accounts held by or on behalf of Defendant Northern Produce, from Defendant's  
11 banking accounts, including but not limited to Defendant Northern Produce's accounts  
12 held at City National Bank, located at 400 N Roxbury Drive, Beverly Hills, CA 90212,  
13 account number XXX-XX0076, or its centralized designated branch for service of  
14 process located at 555 South Flower Street, Los Angeles, CA 90071, or any other  
15 banking account standing in Northern's name or for its benefit.

16 IT IS FURTHER ORDERED that pending the hearing and determination of the  
17 foregoing Order to Show Cause, and continuing thereafter, Defendant Northern Produce  
18 and its owners, officers, directors, shareholders, employees, agents, subsidiaries,  
19 successors, assignees, principals, assignors, attorneys and persons acting in concert with  
20 them, shall be preliminarily enjoined from engaging in, committing, or performing  
21 directly and indirectly, any and all of the following acts:

22 D. Removing, withdrawing, transferring, assigning or selling to any other  
23 person or entity, the proceeds from the sales of any or all existing or future inventories of  
24 food or other products derived from perishable agricultural commodities, and/or receipts  
25 of payment for products or crops sold prior to the date of this order and/or otherwise  
26 disposing of assets, books or funds;

27 E. Taking any other action whatsoever which causes, has the effect of causing,  
28 or which otherwise dissipates Plaintiffs' beneficiary interests in the trust assets;

1 F. Taking any other action whatsoever which violates 7 U.S.C. §499e(c)(1)  
2 through (4), inclusive, and 7 U.S.C. §499b(4) [§2 of Perishable Agricultural  
3 Commodities Act (“PACA”)].

4 IT IS FURTHER ORDERED that in the event Defendant Northern Produce lacks  
5 sufficient funds to promptly deposit the sums described above, Defendants shall be and  
6 hereby are required and ordered to:

7 G. Immediately account to the Court and Plaintiffs for all assets of the PACA  
8 trust from commencement of Defendants’ business through the date of this Order.

9 H. Endorse any checks made, endorsed or paid, to Defendants which are trust  
10 assets and which are in their possession or obtainable by Defendants at the time of the  
11 entry of this Order, or which Defendants obtain or which become obtainable by  
12 Defendants after the entry of this Order, including but not limited to checks representing  
13 payment for sales of inventory, and shall deliver said assets within 48 hours of  
14 Defendants’ receipt of them to Plaintiffs’ counsel as set forth above. Likewise,  
15 Defendants shall deliver any cash assets of the PACA trust which are in its possession or  
16 are obtainable by Defendants at the time of the entry of this order, or which Defendants  
17 obtain or which become obtainable by Defendants after entry of this Order, within 48  
18 hours of Defendants’ receipt of them to Plaintiffs’ counsel.

19 I. File weekly with this Court satisfactory evidence of compliance with the  
20 terms of this Order.

21 IT IS FURTHER ORDERED that pending the hearing and determination of the  
22 foregoing Order to Show Cause, and continuing thereafter, Plaintiffs and their counsel,  
23 agents, or representatives, shall have full and complete and continuing access to all of  
24 Defendants’ books and records, which shall include but not necessarily be limited to,  
25 Defendants’ accounts receivable and payable ledgers, invoices, ledgers, computer runs,  
26 bank statements and canceled checks, relating to Defendants’ business and personal  
27 financial status from commencement of Defendants’ business activities forward for the  
28 purpose of verifying Defendants’ accountings required by this Order and for enforcement

1 of this Order. Defendants shall, upon 48 hours notice by Plaintiffs' counsel, allow  
2 inspection and copying of the books and records of said Defendants by Plaintiffs or its  
3 representatives at Defendants' place of business.

4 IT IS FURTHER ORDERED that pending the hearing and determination of the  
5 foregoing Order to Show Cause, and continuing thereafter, Plaintiffs shall be entitled to  
6 depose, under oath, at reasonable times and places, upon at least ~~48~~ 72 hours notice,  
7 Defendant Northern Produce and/or Defendant's other principals, owners, directors,  
8 officers, shareholders, employees, agents and accountants concerning any matter  
9 pertaining to any accounting due pursuant to this Order, any books or records which  
10 Plaintiffs are entitled to inspect under this Order, the trust assets or any of Defendants'  
11 business assets, and/or Defendants' business practices, procedures or operations from  
12 commencement of Defendants' business activities.

13 IT IS FURTHER ORDERED that City National Bank release information to  
14 Plaintiffs' counsel about the above-described accounts, including the amounts contained  
15 in the accounts, in confidence and only to the extent necessary to verify compliance with  
16 the terms of this Order.

17 IT IS FURTHER ORDERED that no bond shall be required to be posted by  
18 Plaintiffs before the Temporary Restraining Order is effective.

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1 IT IS FURTHER ORDERED that Plaintiffs shall serve Defendants with copies of  
2 this Order and all pleadings and other papers in support of the Order on or before **June**  
3 **29, 2015**, ~~by Federal Express with verification of receipt~~ **pursuant to Federal Rule of**  
4 **Civil Procedure 4**. Defendants shall file an Opposition, if any, to the Order to Show  
5 Cause on or before **4:30 p.m.** on **July 13**, 2015, and shall personally serve Plaintiffs'  
6 counsel with a copy of said Opposition by said deadline. Plaintiffs shall file and serve a  
7 Reply to Defendants' Opposition, if any, on or before **4:30 p.m.** on **July 20**, 2015.

8 **This temporary restraining order shall take effect as of 5:00 p.m. Pacific**  
9 **Daylight Time on June 11, 2015.**

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11 DATED: June 11, 2015



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ANDRÉ BIROTTE JR.  
U.S. DISTRICT COURT JUDGE