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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

INN FOODS, INC.,)	1:12-CV-00602 AWI DLB
)	
Plaintiff,)	ORDER GRANTING
)	PLAINTIFF’S EX PARTE
v.)	APPLICATION FOR
)	TEMPORARY RESTRAINING
WHITE OAK FROZEN FOODS, LLC;)	ORDER
DANFORTH R. WILKINSON;)	
HAROLD L. ARCHIBALD; PATRICK)	(Doc. No. 7)
CERUTTI; and CERUTTI BROS., INC.,)	
)	
Defendants.)	
_____)	

Before this Court is Inn Foods, Inc.’s Ex Parte Motion for Temporary Restraining Order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure.

Pursuant to Rule 65(b), a temporary restraining order may be granted without notice to the adverse party only if: (1) it clearly appears from specific facts shown by declaration or verified complaint that immediate and irreparable injury, loss or damage will result before the adverse party can be heard in opposition, and (2) the applicant's attorney certifies the reasons that notice should not be required.

In this case, it clearly appears from the Declaration of Ronald E. Marker, Chief Financial Officer of Inn Foods, Inc. (“Inn Foods”), that Inn Foods is a produce supplier and trust creditor of Defendant, White Oak Frozen Foods LLC, under Section 5(c) of the Perishable Agricultural

1 Commodities Act (“PACA”), 7 U.S.C. §499e(c), and has not been paid, as required by PACA, for
2 produce in the total amount of \$60,828.48 supplied to said Defendant. It is also clear from the same
3 Declaration and the certification of counsel that White Oak Frozen Foods LLC is in severe financial
4 jeopardy and the PACA trust assets are being dissipated or threatened with dissipation and that said
5 Defendant is not or may not be in a position to pay Inn Foods’ claim, thereby warranting the relief
6 requested by Inn Foods. See Frio Ice, S.A. v. Sunfruit, Inc., 918 F.2d 154 (11th Cir. 1990); JSG
7 Trading Corp. v. Tray-Wrap, Inc., 917 F.2d 75 (2d Cir. 1990).

9 On the basis of the pleadings, Declaration, and other submissions Inn Foods has filed in this
10 matter, Inn Foods will suffer immediate and irreparable injury due to said Defendant’s dissipation
11 of Inn Foods’ beneficial interest in the statutory trust created pursuant to 7 U.S.C. §499e(c), and that
12 such dissipation will continue in the absence of injunctive relief. Therefore, the Court is of the
13 opinion that a Temporary Restraining Order should be issued.

14 If notice is given to Defendants of the pendency of this motion, PACA trust assets will be
15 further threatened with dissipation before the motion is heard. As noted in the legislative history of
16 PACA, once dissipation has occurred, recovery of trust assets is all but impossible. See H.R. Rep.
17 No. 543, 98th Cong., 2d Sess. 4 (1983), reprinted in 1984 U.S. Code & Admin. News 405, 411; see
18 also J.R. Brooks & Son, Inc. v. Norman's Country Market, Inc., 98 B.R. 47 (Bkrtcy. N.D.Fla. 1989).
19 Entry of this Order without notice assures retention of the PACA trust assets under the control of this
20 Court, which is specifically vested with jurisdiction over the trust. See 7 U.S.C. §499e(c)(5). In
21 accord with Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure, Inn Foods’ attorney has
22 certified why notice should not be required.
23

24 Based on the foregoing, the Court finds that Inn Foods will suffer immediate irreparable
25 injury in the form of loss of PACA trust assets unless this order is granted without notice.
26

1 7. Defendants shall file and serve an Opposition, if any, to Plaintiff's Motion for
2 Preliminary Injunction on or before April 26, 2012, at 9:00 AM (PDT). Plaintiff shall file and
3 serve a Reply to Defendants' Opposition, if any, on or before April 30, 2012, at 1:00 PM (PDT).
4

5 IT IS SO ORDERED.

6 Dated: April 18, 2012

7 
8 CHIEF UNITED STATES DISTRICT JUDGE