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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HEALTHY HARVEST BERRIES, INC.,

Case No. 1:14-cv-0218 LJO SKO

Plaintiff,

ORDER ON PLAINTIFF’S REQUEST FOR  
A PRELIMINARY INJUNCTION

v.

RAFAEL RODRIGUEZ, et al.,

Defendants.

\_\_\_\_\_ /

Now before the Court is Plaintiff Healthy Harvest Berries, Inc.’s (“Healthy Harvest Berries”) request for a preliminary injunction against Defendants Rafael Rodriguez (“Mr. Rodriguez”) and his business entity Richgrove Produce (“Richgrove”)<sup>1</sup> under the Perishable Agricultural Commodities Act (“PACA”), 7 U.S.C. § 499a *et seq.* The Court has carefully reviewed the parties’ submissions on this issue, and for the reasons set forth below GRANTS IN PART and DENIES IN PART Healthy Harvest Berries’ request for a preliminary injunction.

**I. BACKGROUND**

Healthy Harvest Berries asserts the following facts. Healthy Harvest Berries grows and sells strawberries in Royal Oaks, California. (Doc. 7, Decl. of Humberto Gonzales, ¶ 31.) In October 2012,

<sup>1</sup> Dandrea Produce, Inc. (“Dandrea”) is also a defendant in this case but is not a subject of the request for preliminary injunctive relief.

1 Healthy Harvest Berries reached an agreement with Mr. Rodriguez to supply strawberries to Dandrea  
2 for sale under Dandrea’s own label. (See id. at ¶¶ 18-20.) Under the arrangement, Mr. Rodriguez was  
3 to serve as the point of contact between Healthy Harvest Berries and Dandrea, and all invoices were to  
4 be sent to Mr. Rodriguez and Richgrove. (See id. ¶¶ 17, 20.)

5 Healthy Harvest Berries made its first shipment of strawberries to Dandrea in April 2013. (Id.  
6 ¶ 20.) Sometime in early August 2013, Healthy Harvest Berries discovered that Dandrea had not paid  
7 for shipments of strawberries made in June, July, and August 2013. (Id. ¶ 21.) The missing payments  
8 amounted to \$516,038.90 in sales. (Id. ¶ 9.) When Healthy Harvest Berries questioned Dandrea about  
9 the overdue balance, Dandrea maintained that it had made the payments to Mr. Rodriguez. (Id. ¶ 23.)  
10 Mr. Rodriguez, in turn, claimed that he was unable to find the money and needed to check his records.  
11 (Id. ¶¶ 23-24.) Mr. Rodriguez then claimed that he was due a commission and would not forward any  
12 of the proceeds to Healthy Harvest Berries, despite Dandrea’s assertion that the proceeds far exceeded  
13 any commission that could have been owed. (Id. ¶ 25.) Healthy Harvest Berries attempted to contact  
14 Mr. Rodriguez on multiple occasions thereafter in an effort to resolve the issue and collect the amount  
15 due, but Mr. Rodriguez did not return any of the calls. (Id. ¶ 26.)

16 Consequently, on February 19, 2014, Healthy Harvest Berries filed suit against Mr. Rodriguez,  
17 Richgrove, and Dandrea for, among other things, breach of contract and unjust enrichment. Healthy  
18 Harvest Berries also moved for a temporary restraining order against Mr. Rodriguez and Richgrove to  
19 prevent the dissipation of money owed to Healthy Harvest Berries. On February 20, 2014, the Court  
20 granted Healthy Harvest Berries’ application for a temporary restraining order and ordered the parties  
21 to file briefing on the issue of whether a preliminary injunction should be issued. Mr. Rodriguez and  
22 Richgrove filed a timely response on February 28, 2014, and Healthy Harvest Berries filed a timely  
23 reply on March 4, 2014.

## 24 **II. LEGAL STANDARD**

25 A court may grant a preliminary injunction pursuant to Federal Rule of Civil Procedure 65(a).  
26 The purpose of a preliminary injunction is to preserve the status quo and the rights of the parties until  
27 a final judgment on the merits can be rendered. U.S. Philips Corp. v. KBC Bank N.V., 590 F.3d 1091,  
28 1094 (9th Cir. 2010). A preliminary injunction, however, “is an extraordinary remedy never awarded

1 as of right.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). The moving party must  
2 demonstrate that (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the  
3 absence of preliminary relief; (3) the balance of the equities tips in its favor; and (4) an injunction is in  
4 the public interest. Id. at 20.

5 The Ninth Circuit follows a “sliding scale” approach to preliminary injunctions. See Alliance  
6 for The Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011). Under this approach, a weaker  
7 showing as to the likelihood of success on the merits may be offset by a stronger showing with respect  
8 to the balance of the equities. Id. at 1131-32. For example, if the moving party is unable to establish a  
9 likelihood of success on the merits, preliminary injunctive relief may still be had if the party can show  
10 that (1) there are at least “serious questions” going to the merits; (2) the balance of the hardships tips  
11 “sharply” in its favor; and (3) the other factors listed in Winter (i.e., irreparable harm and in the public  
12 interest) are satisfied. Id. at 1135. “Serious questions” in the context of preliminary injunctive relief  
13 are those that are “substantial, difficult, and doubtful, as to make them a fair ground for litigation and  
14 thus for more deliberative investigation.” Republic of Philippines v. Marcos, 862 F.2d 1355, 1362 (9th  
15 Cir. 1988) (citation and internal quotation marks omitted). They do not need to “promise a certainty  
16 of success, nor even present a probability of success, but must involve a fair chance of success on the  
17 merits.” Id. (citation and internal quotation marks omitted).

### 18 **III. DISCUSSION**

#### 19 **A. Preliminary Injunction**

##### 20 **1. Likelihood of Success on the Merits**

21 PACA was “designed in part to assure that farmers are paid for their produce.” Perfectly Fresh  
22 Farms, Inc. v. United States Dep’t of Agric., 692 F.3d 960, 962 (9th Cir. 2012). To this end, PACA  
23 provides a statutory trust “in which a produce dealer holds produce-related assets as a fiduciary until  
24 full payment is made to the produce seller.” Bowlin & Son, Inc. v. San Joaquin Food Serv., Inc. (In re  
25 San Joaquin Food Serv., Inc.), 958 F.2d 938, 939 (9th Cir. 1992). See 7 U.S.C. § 499e(c). “The trust  
26 automatically arises in favor of a produce seller upon delivery of produce and is for the benefit of all  
27 unpaid suppliers or sellers involved in the transaction until full payment of the sums owing has been  
28 received.” C&E Enters., Inc. v. Milton Poulos, Inc. (In re Milton Poulos, Inc.), 947 F.2d 1351, 1352

1 (9th Cir. 1991). The produce seller must then take certain steps to preserve the benefits of the PACA  
2 created trust. See 7 U.S.C. § 499e(c)(3)-(4).

3 Generally, to recover the proceeds from a PACA created trust, a plaintiff must demonstrate: (1)  
4 the commodities sold were perishable agricultural commodities under PACA; (2) the purchaser of the  
5 perishable agricultural commodities was a commission merchant, dealer or broker; (3) the transaction  
6 occurred in either interstate or foreign commerce; (4) the plaintiff has not received full payment on the  
7 transaction; and (5) the plaintiff preserved its trust rights. A&J Produce Corp. v. Chang, 385 F. Supp.  
8 2d 354, 358 (S.D.N.Y. 2005). The majority of these elements are not contested at this time. There is  
9 no dispute over whether Healthy Harvest Berries’ sales of strawberries qualify as sales of “perishable  
10 agricultural commodities” under PACA. See 7 U.S.C. § 499a(4)(A) (defining “perishable agricultural  
11 commodity” as “Fresh fruits . . . of every kind and character”). There is also no dispute as to whether  
12 Defendants are “dealers” engaged in interstate commerce. (See Doc. 10, TRO, at 4.) Nor do the parties  
13 dispute whether Healthy Harvest Berries preserved its trust rights.<sup>2</sup>

14 What the parties dispute is the amount owed to Healthy Harvest Berries. This dispute stems  
15 from the parties’ disagreement over the nature of the agreement between Healthy Harvest Berries, Mr.  
16 Rodriguez, and Richgrove. According to Healthy Harvest Berries, it agreed to make *final sales* to Mr.  
17 Rodriguez and Richgrove at negotiated prices. Mr. Rodriguez and Richgrove, on the other hand, insist  
18 that the parties agreed to a *consignment* arrangement in which Defendants agreed to sell strawberries  
19 for Healthy Harvest Berries and to remit the proceeds of those sales back to Healthy Harvest Berries.  
20 In exchange, Dandrea was to receive a 10% commission, while Mr. Rodriguez and Richgrove were to  
21 earn a commission of \$0.50 per box of strawberries.

22 The parties’ positions are supported by competing declarations. For its part, Healthy Harvest  
23 Berries asserts that the idea of a consignment arrangement was *never* raised in the parties’ discussions.  
24 (See Doc. 16, Decl. of Mr. Gonzalez, ¶ 4.) According to Healthy Harvest Berries, the parties agreed to  
25 *sales* of strawberries, which were made by Mr. Rodriguez as follows. Mr. Rodriguez would first text

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27 <sup>2</sup> As will be discussed below, Mr. Rodriguez and Richgrove argue that the amount of any preliminary  
28 injunction should not exceed \$93,755.40. If the Court disagrees with this position, Mr. Rodriguez and  
Richgrove request expedited discovery on whether Healthy Harvest Berries properly preserved its trust  
rights. (Doc. 14 at 4.)

1 or call-in purchase orders to Healthy Harvest Berries. (Id. ¶ 6.) Healthy Harvest Berries would then  
2 call Mr. Rodriguez to confirm the purchase order and to negotiate a price for the shipment. (Id. ¶ 11.)  
3 Finally, following delivery, Healthy Harvest Berries would send Mr. Rodriguez an invoice confirming  
4 the transaction and requesting full payment. (Id.) Healthy Harvest Berries has produced \$516,038.90  
5 worth of such invoices, which it maintains Mr. Rodriguez and Richgrove have not yet paid. (See Doc.  
6 7 ¶ 9 & Ex. 2.)

7 Mr. Rodriguez, meanwhile, asserts that the parties' initial discussions in October 2012 plainly  
8 contemplated a consignment arrangement between Healthy Harvest Berries and Dandrea. (Doc. 14-1,  
9 Decl. of Mr. Rodriguez, at 1-2.) This is confirmed by Frank Dandrea, the only other person present at  
10 these discussions. (See Doc. 14-2, Decl. of Frank Dandrea, ¶ 4.) Mr. Rodriguez further asserts that in  
11 March 2013, he spoke with Humberto Gonzalez ("Mr. Gonzalez"), a senior sales manager for Healthy  
12 Harvest Berries. (Doc. 14-1 at 2.) Mr. Rodriguez maintains that during this conversation he reiterated  
13 that the parties' agreement entailed a consignment arrangement between Healthy Harvest Berries and  
14 Dandrea in which he and Richgrove would earn a certain commission for serving as the parties' point  
15 of contact. (Id.)

16 Mr. Rodriguez acknowledges that Healthy Harvest Berries sent him invoices for shipments of  
17 strawberries, but he disputes their significance. According to Mr. Rodriguez, Healthy Harvest Berries  
18 told him that the invoices were merely for "[its] records only." (Id. at 3.) Mr. Rodriguez stresses that  
19 the invoices were sometimes sent to him several weeks late, in sudden batches, or not at all. (Id.) He  
20 also maintains that he never made a payment to Healthy Harvest Berries based on an invoice. (Id.) A  
21 review of Mr. Rodriguez's schedule of payments to Healthy Harvest Berries seems to confirm this last  
22 point. (Cf. Doc. 14-1, Ex 1; Doc. 7-2.)

23 Finally, Mr. Rodriguez asserts that the parties' consignment arrangement lasted until late July  
24 or early August 2013, at which point the parties decided that Healthy Harvest Berries would just deal  
25 directly with Dandrea. (See Doc. 14-1 at 3-4.) Despite no longer being involved, Mr. Rodriguez and  
26 Richgrove concede that they still owe Healthy Harvest Berries \$93,755.40. (Id. at 4.) Mr. Rodriguez  
27 explains that this amount represents the difference between (a) consignment proceeds that he received

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1 while still acting as the parties' point of contact (\$209,308.96); and (b) the commission that he is still  
2 owed (\$111,553.50). (Id. at 4-5.)

3 The parties' sharply conflicting version of the events are, for the most part, equally plausible.  
4 There is, however, one detail that nudges the scales in favor of Healthy Harvest Berries. As Healthy  
5 Harvest Berries points out, Mr. Rodriguez and Richgrove have not offered any documentary evidence  
6 of the consignment agreement. This is particularly notable since, under PACA's regulations, the terms  
7 and conditions of the consignment agreement should have been reduced to writing. See 7 C.F.R. §  
8 46.30(b) (indicating that a consignee is considered a "grower's agent"); 7 C.F.R. § 46.32(a) (indicating  
9 that the terms and conditions of a grower's agent's responsibilities should be set forth in writing). In  
10 addition, a consignee owes several duties to the grower, including issuing receipts to the grower for all  
11 produce received. See 7 C.F.R. § 46.32(b). Mr. Rodriguez and Richgrove, however, have not offered  
12 anything that resembles consignment receipts. The only documentary evidence currently in the record  
13 are the invoices that Healthy Harvest Berries sent to Mr. Rodriguez, and these appear to be legitimate  
14 *sales* receipts.

15 Based on the evidence presented, the Court concludes that Healthy Harvest Berries has made a  
16 sufficient showing regarding its likelihood of success on the merits. First, it is clear that Mr. Rodriguez  
17 and Richgrove owe Healthy Harvest Berries at least \$93,755.40. Even if, as Mr. Rodriguez argues, the  
18 parties' agreement was one involving consignment, Mr. Rodriguez and Richgrove admit that they owe  
19 Healthy Harvest Berries \$93,755.40 in proceeds. Second, there are "serious questions" as to whether  
20 Mr. Rodriguez and Richgrove owe Healthy Harvest Berries as much as \$566,455.65. While success is  
21 far from certain and will depend largely on credibility determinations, there is at least a "fair chance"  
22 that Healthy Harvest Berries will be able to prove that its shipments of strawberries to Mr. Rodriguez  
23 and Richgrove were final sales, not consignments. Marcos, 862 F.2d at 1362. If so, Healthy Harvest  
24 Berries likely could recover \$516,038.90 in unpaid invoices and \$50,416.75 in interest and reasonable  
25 attorney's fees. See Middle Mountain Land and Produce, Inc., v. Sound Commodities, Inc., 307 F.3d  
26 1220, 1222-25 (9th Cir. 2002) (holding that contractual rights to interest and attorney's fees that are  
27 "in connection with" produce transactions may be subsumed in a PACA trust claim); accord County  
28 Best v. Christopher Ranch, LLC, 361 F.3d 629 (11th Cir. 2004).



1 omitted). In contrast, since Mr. Rodriguez and Richgrove readily admit that they owe Healthy Harvest  
2 Berries \$93,755.40 in produce-related transactions, no injury would be inflicted on Mr. Rodriguez and  
3 Richgrove’s legitimate interests if the Court enjoins them from withdrawing, transferring, or otherwise  
4 removing \$93,755.40 in PACA trust assets. The balance of the equities therefore tips overwhelmingly  
5 in favor of a preliminary injunction preserving \$93,755.40 in trust assets.

6 The more difficult question is whether a preliminary injunction should be imposed to preserve  
7 up to \$566,455.65 in trust assets. This is the amount that Healthy Harvest Berries maintains it is owed  
8 under the parties’ sales agreements. Since the Court has determined that there are “serious questions”  
9 on the merits of this issue, (see supra Section III.A.1), the balance of the equities must tip “sharply” in  
10 Healthy Harvest Berries’ favor before the Court may grant this preliminary injunctive relief. Alliance  
11 for The Wild Rockies, 632 F.3d at 1131.

12 Mr. Rodriguez and Richgrove do not offer any firm evidence or detailed explanation regarding  
13 the possible harm that they would suffer if a preliminary injunction is imposed. Mr. Rodriguez simply  
14 states, in conclusory fashion, that the current temporary restraining order is “ruining his business and  
15 causing *him* irreparable harm.” (Doc. 14 at 3) (emphasis altered). Nevertheless, it is not too difficult  
16 to envision the possibility of *some* harm if a preliminary injunction is imposed on Mr. Rodriguez and  
17 Richgrove. A PACA trust is a non-segregated floating trust that permits commingling of all produce-  
18 related trust assets. Endico Potatoes v. CIT Group/Factoring, 67 F.3d 1063, 1067 (2d Cir. 1995). The  
19 single trust exists for the benefit of *all* the produce buyer’s suppliers, and continues in existence until  
20 *all* the outstanding beneficiaries have been paid in full. See Tom Lange Co. v. Kornblum & Co. (In re  
21 Kornblum & Co.), 81 F.3d 280, 286 (2d Cir. 1996). Thus, freezing PACA trust assets for the benefit  
22 of Healthy Harvest Berries impairs the ability of Mr. Rodriguez and Richgrove to satisfy the claims of  
23 other PACA-protected clients, especially since the amount requested to be frozen here, \$566,455.65, is  
24 substantial. This would harm the business.

25 With this in mind, the Court concludes that the balance of the hardships does not tip sharply in  
26 favor of issuing a preliminary injunction to preserve the full amount of \$566,455.65. Rather, the Court  
27 finds that the balance of the equities favors the protection of an additional \$115,553.50 in trust assets,  
28 for a total of \$209,308.90. This amount (\$115,553.50) represents the commission that Mr. Rodriguez



1 claims he earned. Healthy Harvest Berries has a greater likelihood of prevailing on the merits of this  
2 issue, as compared to the larger issue of whether the parties' transactions were final sales as opposed  
3 to consignments.

#### 4 **4. Public Interest**

5 A preliminary injunction issued for the purpose of protecting PACA trust rights is in the public  
6 interest. See 7 U.S.C. § 499e(c)(1); see also Tanimura, 222 F.3d at 140 (recognizing that PACA trusts  
7 “explicitly encapsulate[]” the public interest).

#### 8 **B. Expedited Discovery**

9 As noted above, in the event the Court issues a preliminary injunction for an amount exceeding  
10 \$93,755.40, Mr. Rodriguez and Richgrove request expedited discovery as to whether Healthy Harvest  
11 Berries properly preserved its trust rights. A court may permit expedited discovery upon a showing of  
12 good cause. See Fed. R. Civ. P. 26(d)(2); Semitool, Inc. v. Tokyo Electron America, Inc., 208 F.R.D.  
13 273 (N.D. Cal. 2002). Good cause exists “where the need for expedited discovery, in consideration of  
14 the administration of justice, outweighs the prejudice to the responding party.” Semitool, at 276. To  
15 make this determination, courts often consider factors such as (1) whether a preliminary injunction is  
16 pending; (2) the purpose of the discovery request; (3) the breadth of the discovery request; and (4) the  
17 burden on the non-moving parties. See American LegalNet, Inc. v. Davis, 673 F. Supp. 2d 1063, 1067  
18 (C.D. Cal. 2009).

19 The Court will permit expedited discovery, but will confine it to the issue of whether Healthy  
20 Harvest Berries failed to preserve its PACA trust rights by sending its invoices in an untimely fashion.  
21 This is a discrete matter, on which discovery should be easy to obtain. Moreover, resolving this issue  
22 in favor of Mr. Rodriguez and Richgrove likely would be fatal to the preliminary injunction. See, e.g.,  
23 DiMare Homestead, Inc. v. Alphas of New York, Inc., Case No. 09 Civ. 6644 (PKC), 2012 U.S. Dist.  
24 LEXIS 48546, at \*35-36 (S.D.N.Y. April 5, 2012). Finally, Healthy Harvest Berries does not oppose  
25 expedited discovery.

#### 26 **IV. CONCLUSION**

27 Accordingly, for the reasons set forth above, the Court:

- 28 1. GRANTS Healthy Harvest Berries a preliminary injunction for \$209,308.90.

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2. GRANTS Mr. Rodriguez and Richgrove’s request for expedited discovery on the issue of whether Healthy Harvest Berries failed to preserve its PACA trust rights by sending its invoices in an untimely fashion. This case shall otherwise proceed normally.
3. ORDERS Healthy Harvest Berries, Mr. Rodriguez, and Richgrove to file, by no later than **noon on March 13, 2014**, a joint proposed preliminary injunction order.

IT IS SO ORDERED.

Dated: March 10, 2014

/s/ Lawrence J. O’Neill  
UNITED STATES DISTRICT JUDGE