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NORTHERN DISTRICT OF CALIFORNIA

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
S.F. 94105

EMC

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10
11 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 SEQUOIA SALES, INC.

13 Plaintiff

14 v.

15 P.Y. PRODUCE, L.L.C, et al

16 Defendants

CV 10 5757

Civil Action No: _____

TEMPORARY RESTRAINING
ORDER

17 This matter is before the Court upon plaintiff's Application for Temporary Restraining
18 Order Without Notice pursuant to Rule 65 of the Federal Rules of Civil Procedure.

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

24 ~~Proposed~~ Temporary Restraining Order

1 In this case, it appears from the declaration of plaintiff's representative that plaintiff is
2 produce creditor of defendants under Section 5(c) of the Perishable Agricultural Commodities
3 Act (PACA), 7 U.S.C. §499e(c), and has not been paid for produce in the amount of
4 \$141,661.79 supplied to defendants, as required by the PACA. It also clear that defendants are
5 having financial difficulties and have tendered a check to plaintiff in partial payment for the
6 produce supplied by plaintiff, which was returned by the bank due to insufficient funds. As a
7 result, it appears that the PACA trust assets are threatened with dissipation. *Frio Ice, S.A. v.*
8 *Sunfruit, Inc.*, 918 F.2d 154 (11th Cir. 1990); *Taminura & Antle, Inc. v. Packed Fresh Produce,*
9 *Inc.*, 222 F.3d 132 (3rd Cir. 2000).

10 If notice is given to defendants of the pendency of this motion, trust assets may be
11 further dissipated before the motion is heard. Once dissipation has occurred, recovery of trust
12 assets is all but impossible. H.R. Rep. No. 543, 98th Cong., 2d Sess. 4 (1983), reprinted in
13 1984 U.S. Code & Admin. News 405, 411. *J.R. Brooks & Son, Inc. v. Norman's Country*
14 *Market, Inc.*, 98 B.R. 47 (Bkrcty. N.D. Fla. 1989); *Taminura & Antle, Inc. v. Packed Fresh*
15 *Produce, Inc.*, *supra*. Entry of this Order without notice assures retention of the trust assets
16 under the control of the Court, which is specifically vested with jurisdiction over the trust. 7
17 U.S.C. §499e(c)(5).

18 In accord with Rule 65(b)(2), the applicants' attorney has certified why notice should
19 not be required.

20 Based on the foregoing, the Court finds that plaintiff will suffer immediate irreparable
21 injury in the form of a loss of trust assets unless this order is granted without notice.

22 Therefore, it is by the United States District Court for the Northern District of
23 California,

24 ~~Proposed~~ Temporary Restraining Order

1
2 **ORDERED, ADJUDGED AND DECREED** that defendants, their customers, agents,
3 officers, subsidiaries, assigns, and banking institutions, shall not alienate, dissipate, pay over or
4 assign any assets of P.Y. Produce, L.L.C, or its subsidiaries or related companies, except for
5 payment to plaintiff until further order of this Court or until defendants pay plaintiff the sum of
6 \$141,661.79 by cashiers' check or certified check, at which times this Order is dissolved; and it
7 is further

8 **ORDERED, ADJUDGED AND DECREED** that in the event defendants fail to pay
9 plaintiff \$141,661.79 by cashiers or certified check within two (2) business days of service of
10 this Order, then the defendants shall file with this Court with a copy to plaintiff's counsel an
11 accounting which identifies all of their assets, liabilities and each account receivable of P.Y.
12 Produce, L.L.C signed under penalty of perjury; and that defendants shall also supply to
13 plaintiff's attorney, within five (5) days of the date of this Order, any and all documents in
14 connection with the assets and liabilities of P.Y. Produce, L.L.C and their related and
15 subsidiary companies, including, but not limited to, the most recent balance sheets, profit/loss
16 statements, accounts receivable reports, accounts payable reports, accounts paid records and
17 income tax returns.

18 Bond shall be waived in view of the fact that defendants now hold \$141,661.79 worth
19 of plaintiff's assets.

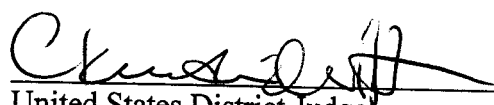
20 This Temporary Restraining Order is entered this 17th day of Dec,
21 2010, at 2 p.m. A hearing on plaintiff's application for preliminary injunction is set for
22 the 23rd day of Dec, 2010, at 2 p.m. Any opposition on the motion for
23 preliminary injunction shall be filed and served by overnight mail on or before
24

[Proposed] Temporary Restraining Order

1 Dec 21, 2010. Any reply shall be filed and served by overnight mail on or before
2 Dec 22, 2010. Plaintiff shall forthwith serve defendants with a copy of this Order.

3 **DEC 17 2010**

4 Dated: _____

5 
United States District Judge

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