

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

SEQUOIA SALES, INC.,  
Plaintiff,  
v.  
P.Y. PRODUCE, LLC, et al.,  
Defendants.

No. C 10-5757 CW  
ORDER DENYING  
WITHOUT PREJUDICE  
PLAINTIFF'S  
MOTION TO SHORTEN  
TIME ON ITS  
MOTION TO AMEND  
THE PRELIMINARY  
INJUNCTION  
(Docket No. 35)

United States District Court  
For the Northern District of California

On December 17, 2010, Plaintiff Sequoia Sales, Inc., filed this lawsuit to recover \$141,661.79 from Defendants P.Y. Produce, LLC, and Jose Gomez. Plaintiff alleges that this amount is for produce it sold and delivered to Defendants and is subject to the statutory trust provisions of the Perishable Agricultural Commodities Act (PACA). That day, Plaintiff sought and obtained a temporary restraining order (TRO) from the Court, requiring Defendants to pay \$141,661.79 to Plaintiff and to supply to Plaintiff's counsel any all documents related to the assets and liabilities of P.Y. Produce. A hearing on Plaintiff's request for a preliminary injunction was set for December 23, 2010. Defendants did not appear at the hearing or otherwise oppose Plaintiff's request for a preliminary injunction. Thus, finding the requirements of Federal Rule of Civil Procedure 65(a) satisfied, the Court issued a preliminary injunction on December 29, 2010.

On January 19, 2011, Plaintiff sought an order to show cause why an order of civil contempt should not be issued against

1 Defendants.<sup>1</sup> Plaintiffs claimed that Defendants had not complied  
2 with the Court's preliminary injunction. The Court has issued such  
3 an order, requiring Defendants to appear on February 3, 2011 at  
4 2:00 p.m.

5 On January 21, 2011, Plaintiff filed an amended complaint,  
6 naming Chopper's Produce, LLC, as a Defendant. Plaintiff alleges  
7 that P.Y. Produce transferred to Chopper's Produce the PACA trust  
8 assets to which Plaintiff is entitled. The same day, Plaintiff  
9 moved to amend the Court's preliminary injunction so that Chopper's  
10 Produce is subject to it. In support of its motion to amend,  
11 Plaintiff filed declarations by individuals who purchased produce  
12 from "Jose ('Chuy') Gomez" at a business located at the address for  
13 P.Y. Produce; these individuals received invoices bearing the name  
14 "Chopper's Produce, LLC." Soldatos Decl. ¶¶ 3-6; Vargas Decl.  
15 ¶¶ 3-6. Plaintiff now moves ex parte to shorten time on its motion  
16 to amend, asking the Court to hear the motion as soon as possible.

17 Although styled as a motion to amend, Plaintiff's request  
18 essentially asks the Court to issue a preliminary injunction  
19 against Chopper's Produce. Such relief may be granted "only on  
20 notice to the adverse party." Fed. R. Civ. P. 65(a)(1). Plaintiff  
21 offers no proof that it has served Chopper's Produce with a  
22 summons, its amended complaint and its motion to amend. Although  
23 Plaintiff suggests that Chopper's Produce is a "sham business  
24 entity" that succeeded P.Y. Produce, Mot. to Shorten Time 2, there  
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26 <sup>1</sup> The Court denied without prejudice Plaintiff's original  
27 request for an order to show cause based on Plaintiff's failure to  
28 provide adequate supporting documentation.

1 is insufficient evidence to support this legal conclusion.

2 Absent notice, Plaintiff could have sought a TRO against  
3 Chopper's Produce. However, Plaintiff has not satisfied the  
4 requirements of Rule 65(b)(1), which provides that a TRO will issue  
5 only if:

6 (A) specific facts in an affidavit or a verified  
7 complaint clearly show that immediate and irreparable  
8 injury, loss, or damage will result to the movant before  
9 the adverse party can be heard in opposition; and

10 (B) the movant's attorney certifies in writing any  
11 efforts made to give notice and the reasons why it should  
12 not be required

13 Fed. R. Civ. P. 65(b)(1). Although Plaintiff provided such  
14 documents to support its request for a TRO against P.Y. Produce and  
15 Gomez, it has not done so to support a TRO against Chopper's  
16 Produce.

17 Accordingly, the Court DENIES without prejudice Plaintiff's  
18 motion to shorten time on its motion to amend the preliminary  
19 injunction. (Docket No. 35.) Plaintiff may renew its motion after  
20 tendering proof that it has served Chopper's Produce with a  
21 summons, its amended complaint and its motion to amend the  
22 preliminary injunction. Alternatively, Plaintiff may seek a TRO  
23 against Chopper's Produce, so long as it satisfies the requirements  
24 set forth under Federal Rule of Civil Procedure 65(b)(1).

25 IT IS SO ORDERED.

26 Dated: 1/24/2011

27   
28 CLAUDIA WILKEN  
United States District Judge