

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

3  
 4 SEQUOIA SALES, INC.,  
 5                                    Plaintiff,  
 6                                    v.  
 7 P.Y. PRODUCE, LLC, et al.,  
 8                                    Defendants.

No. C 10-5757 CW  
 ORDER GRANTING  
 PLAINTIFF'S  
 MOTION TO AMEND  
 PRELIMINARY  
 INJUNCTION  
 ENTERED DECEMBER  
 29, 2010  
 (Docket No. 32)

9  
 10                                    Plaintiff Sequoia Sales, Inc., moves to amend the preliminary  
 11 injunction, entered December 29, 2010, to include Defendant  
 12 Chopper's Produce, LLC. Chopper's Produce has accepted service of  
 13 the motion and, therefore, has notice of it. (Docket No. 49.)  
 14 Chopper's Produce did not respond to the motion.

15                                    To obtain a preliminary injunction, the moving party must  
 16 "establish that he is likely to succeed on the merits, that he is  
 17 likely to suffer irreparable harm in the absence of preliminary  
 18 relief, that the balance of equities tips in his favor, and that an  
 19 injunction is in the public interest." Winter v. Natural Res. Def.  
 20 Council, Inc., \_\_\_ U.S. \_\_\_, 129 S. Ct. 365, 374 (2008).

21                                    Plaintiff has satisfied its burden. Plaintiff offers evidence  
 22 that Sara Alvarez, who operates Chopper's Produce,<sup>1</sup> cashed a  
 23 February 18, 2011 check made out to P.Y. Produce. (Docket No. 51.)  
 24 That Alvarez may endorse checks made out to P.Y. Produce suggests  
 25 that she has some authority over P.Y. Produce's assets or is an  
 26

27                                    <sup>1</sup> Counsel for Chopper's Produce represented at the February 3,  
 28 2011 hearing that Sara Alvarez operates Chopper's Produce and is  
 Defendant Jose Gomez's daughter.

1 agent of P.Y. Produce, or both. Further, Alvarez's conduct  
2 suggests that Chopper's Produce may have proceeds related to the  
3 Perishable Agricultural Commodities Act trust from which Plaintiff  
4 seeks to collect. Because these trust assets may be dissipated,  
5 Plaintiff has sufficiently demonstrated a likelihood of irreparable  
6 harm. The balance of equities tips in Plaintiff's favor and a  
7 preliminary injunction is in the public interest.

8 Accordingly, Plaintiff's motion to amend the preliminary  
9 injunction is GRANTED. (Docket No. 32.) At the March 10, 2011  
10 hearing, Plaintiff indicated that it would file a more narrowly  
11 tailored proposed preliminary injunction that accounted for the  
12 Court's concerns about the scope of the current preliminary  
13 injunction as it would apply to Chopper's Produce. Plaintiff has  
14 not done so. Within three days of the date of this Order,  
15 Plaintiff shall file a proposed preliminary injunction via ECF and  
16 send the proposed preliminary injunction, in Microsoft Word or  
17 WordPerfect format, to cwpo@cand.uscourts.gov.

18 In its case management statement, Plaintiff indicates that it  
19 intends to seek entry of default and move for default judgment  
20 against P.Y. Produce and Chopper's Produce. Accordingly, the Court  
21 continues the case management conference, scheduled for April 5,  
22 2011, to July 12, 2011 at 2:00 p.m.

23 Within four days of the date of this Order, Plaintiff shall  
24 ask the Clerk to enter default against P.Y. Produce and Chopper's  
25 Produce. Within thirty days of the date of the Clerk's entry of  
26 default, Plaintiff shall file a motion for default judgment, and  
27 upon its filing of a motion for default judgment, said motion will  
28

1 be referred to a Magistrate Judge, pursuant to Civil L.R. 72-1, to  
2 be heard and considered at the convenience of his/her calendar.  
3 The Magistrate Judge shall prepare findings and a report and  
4 recommendation on the motion.

5 IT IS SO ORDERED.

6  
7 Dated: April 5, 2011



8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

---

CLAUDIA WILKEN  
United States District Judge