

E-Filed 4/11/2007

1 BART M. BOTTA, State Bar No. 167051
2 R. JASON READ, State Bar No. 117561
3 RYNN & JANOWSKY, LLP
4 4100 Newport Place Drive, Suite 700
Newport Beach, CA 92660-2423
Telephone: (949) 752-2911

5 Attorneys for Plaintiffs
6 PACIFIC INTERNATIONAL VEGETABLE MARKETING, INC.
7 dba PACIFIC INTERNATIONAL MARKETING

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

11
12 PACIFIC INTERNATIONAL
13 VEGETABLE MARKETING, INC., a
14 corporation, dba PACIFIC
INTERNATIONAL MARKETING,

15
16 Plaintiff,

17
18 v.

19
20 TIMOTHY DONLON, individually and dba
21 FRESH WEST EXCHANGE,

22 Defendant.

CASE NO. 07-01997 JF (HRL)

**~~PROPOSED~~ TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE RE
PRELIMINARY
INJUNCTION AND PROPOSED
PRELIMINARY INJUNCTION**

LAW OFFICES
RYNN & JANOWSKY
4100 NEWPORT PLACE DRIVE
SUITE 700
NEWPORT BEACH, CALIFORNIA 92660-2423
(949) 752-2911
FAX (949) 752-0953

23
24 Upon review of the Complaint of Plaintiff PACIFIC INTERNATIONAL
25 VEGETABLE MARKETING, INC. dba PACIFIC INTERNATIONAL MARKETING
26 ("Plaintiff" or "Pacific"), on file in the above-captioned action, and the declarations,
27 exhibits and Memorandum of Points and Authorities in support of Plaintiff's Motion for a
28 Temporary Restraining Order and/or Preliminary Injunction submitted therewith, and all

1 documents provided by Defendant TIMOTHY DONLON, individually and dba FRESH
2 WEST EXCHANGE, in opposition thereto, if any, and it appearing to the satisfaction of
3 the Court that this is a proper case for granting a Temporary Restraining Order and Order
4 to Show Cause,

5 IT IS HEREBY ORDERED that Defendant appear in Courtroom 3 of the U.S.
6 District Court for the Northern District of California, San Jose Division, 2112 Robert F.
7 Peckham Federal Building, 280 South First Street, San Jose, California 95113, on
8 April 20_____, 2007, at 9.00 a.m., or as soon thereafter as the matter may be heard,
9 then and there to show cause, if any they have, why they, their agents, bankers,
10 subsidiaries, successors, assignees, principals, employees, attorneys, and representatives
11 should not be restrained and preliminarily enjoined during the pendency of this action,
12 pursuant to Rule 65 of the Federal Rules of Civil Procedure, from engaging in,
13 committing, or performing directly and indirectly, any and all of the following acts:

14 A. Removing, withdrawing, transferring, assigning or selling to any other
15 person or entity, the proceeds from the sales of any or all existing or future inventories of
16 food or other products derived from perishable agricultural commodities, and/or receipts
17 of payment for products sold prior to the date of this order and/or otherwise disposing of
18 assets, books or funds;

19 B. Taking any other action whatsoever which causes, has the effect of causing,
20 or which otherwise dissipates Plaintiff's beneficiary interests in trust assets of the
21 Perishable Agricultural Commodities Act ("PACA") [7 U.S.C. §499e *et seq.*];

22 C. Taking any other action whatsoever which violates 7 U.S.C. §499e(c)(1)
23 through (4), inclusive, and 7 U.S.C. §499b(4) [§2 of PACA].

24 IT IS FURTHER ORDERED that Defendant, their officers, directors, bankers,
25 agents, subsidiaries, successors, assignees, principals, assignors, attorneys and persons
26 acting in concert with them, appear at the same time and place to show cause, if any they
27 have, why they should not be commanded by order of this Court and required to
28 distribute PACA Trust assets in the amount of at least \$36,139.52, which includes the

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1 principal of \$30,952.05, plus \$1,934.97 in finance charges through April 10, 2007, plus
2 \$3,902.50 as reasonable attorneys' fee as well as costs of \$350.00, the cumulative amount
3 of the PACA Trust claims of Plaintiff.

4 IT IS FURTHER ORDERED that pending the hearing and determination of the
5 foregoing Order to Show Cause, Defendant, their agents, bankers, subsidiaries,
6 successors, assignees, principals, attorneys, and persons acting in concert with them shall
7 be and hereby are prevented from transferring, withdrawing or in any other manner
8 removing Perishable Agricultural Commodities Act [7 U.S.C. §499e *et seq.*] trust assets,
9 including funds on deposit in banking accounts held by or on behalf of Defendant, from
10 Defendant's banking accounts, including but not limited to Defendant's accounts at
11 Rabobank, N.A., account number 069062168 at Rabobank, N.A., or any other banking
12 account subsequently determined to be standing in Defendant's names, or any one of
13 them.

14 IT IS FURTHER ORDERED that pending the hearing and determination of the
15 foregoing Order to Show Cause, ~~and continuing thereafter~~, Defendant and their counsel,
16 agents, or representatives, shall be preliminarily enjoined from engaging in, committing,
17 or performing directly and indirectly, any and all of the following acts:

18 D. Removing, withdrawing, transferring, assigning or selling to any other
19 person or entity, the proceeds from the sales of any or all existing or future inventories of
20 food or other products derived from perishable agricultural commodities, and/or receipts
21 of payment for products or crops sold prior to the date of this order and/or otherwise
22 disposing of assets, books or funds;

23 E. Taking any other action whatsoever which causes, has the effect of causing,
24 or which otherwise dissipates Plaintiff's beneficiary interests in the trust assets;

25 F. Taking any other action whatsoever which violates 7 U.S.C. §499e(c)(1)
26 through (4), inclusive, and 7 U.S.C. §499b(4) [§2 of Perishable Agricultural
27 Commodities Act ("PACA")].
28

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1 ~~IT IS FURTHER ORDERED~~ that in the event Defendant lacks sufficient funds to
2 promptly deposit the sums described above, Defendant shall be and hereby are required
3 and ordered to:

4 G. Immediately account to the Court and Plaintiff for all assets of the PACA
5 trust from commencement of Defendant's business through the date of this Order.

6 H. Immediately assign Defendant's produce related receivables to Plaintiff for
7 collection until Plaintiff is fully paid, and deposit and/or deliver complete accounts,
8 records, and information of all of said receivables to Plaintiff's counsel without charge to
9 the trust, and subject to Plaintiff's counsel making a weekly accounting for all receivables
10 received or collected by Plaintiff's counsel in that regard. Plaintiff's counsel shall act as
11 trustee in connection with its duties of collection of the accounts receivable and shall
12 deposit any cash assets of the trust which are collected under this order in a trust account.

13 I. Endorse any checks made, endorsed or paid, to Defendant which are trust
14 assets and which are in their possession or obtainable by Defendant at the time of the
15 entry of this Order, or which Defendant obtains or which become obtainable by
16 Defendant after the entry of this Order, including but not limited to checks representing
17 payment for sales of growing crops, and shall deliver said assets within 48 hours of
18 Defendant's receipt of them to Plaintiff's counsel as set forth above. Likewise,
19 Defendant shall deliver any cash assets of the PACA trust which are in its possession or
20 are obtainable by Defendant at the time of the entry of this order, or which Defendant
21 obtains or which become obtainable by Defendant after entry of this Order, within 48
22 hours of Defendant's receipt of them to Plaintiff's counsel.

23 J. File weekly with this Court satisfactory evidence of compliance with the
24 terms of this Order.

25 ~~IT IS FURTHER ORDERED~~ that pending the hearing and determination of the
26 foregoing Order to Show Cause, and continuing thereafter, Plaintiff and their counsel,
27 agents, or representatives, shall have full and complete and continuing access to all of
28 Defendant's books and records, which shall include but not necessarily be limited to,

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1 Defendant's accounts receivable and payable ledgers, invoices, ledgers, computer runs,
2 bank statements and canceled checks, relating to Defendant's business and personal
3 financial status from commencement of Defendant's business activities forward for the
4 purpose of verifying Defendant's accountings required by this Order and for enforcement
5 of this Order. Defendant shall, upon two (2) business days notice by Plaintiff's counsel,
6 allow inspection and copying of the books and records of said Defendant by Plaintiff or
7 their representatives at Defendant's place of business.

8 ~~IT IS FURTHER ORDERED~~ that pending the hearing and determination of the
9 foregoing Order to Show Cause, and continuing thereafter, Plaintiff shall be entitled to
10 depose, under oath, at reasonable times and places, upon at least two (2) business days
11 notice, Defendant and/or Defendant's other principals, owners, directors, officers,
12 shareholders, employees, agents and accountants concerning any matter pertaining to any
13 accounting due pursuant to this Order, any books or records which Plaintiff is entitled to
14 inspect under this Order, the trust assets or any of Defendant's business assets, and/or
15 Defendant's business practices, procedures or operations from commencement of
16 Defendant's business activities.

17 IT IS FURTHER ORDERED that Plaintiff is to serve copies of this Order and all
18 pleadings and other papers in support of the Order on or before April 12, 2007.
19 Defendant shall file an Opposition, if any, to the Order to Show Cause on or before
20 _____ p.m. on April 18, 2007 and shall personally serve Plaintiff's counsel
21 with a copy of said opposition by the same deadline. ~~Plaintiff shall file and serve on~~
22 ~~Defendant a Reply to Defendant's Opposition on or before _____ m. on~~
23 ~~_____, 2007.~~

24 IT IS FURTHER ORDERED that no bond shall be required to be posted by
25 Plaintiff before the Temporary Restraining Order is effective.

26
27 DATED: April 11, 2007


Jeremy Fogel, U.S. DISTRICT COURT JUDGE