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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALAN WEEKS, an individual doing
business as K&W SALES; and KING
FRESH PRODUCE, LLC,

Plaintiffs,

v.

Fresh-Pic PRODUCE COMPANY, INC.,
a California corporation; FRANK AVILA,
an individual; KARINA SAUCEDO, an
individual; FRESH CUT PRODUCE
COMPANY, a corporation; ROBERTO
SALINAS, an individual; MICHAEL A.
ALMANZA, individual and doing business
as PURA VIDA,

Defendants.

Case No. 08cv02058 BTM (WVG)

**ORDER DENYING EX PARTE
MOTION FOR ORDER STAYING
EXECUTION OF JUDGMENT**

Pending before the Court is the ex parte motion for an order staying the enforcement of the Court's May 17, 2012 judgment, filed by Defendants Frank Avila, Michael A. Almanza, and Karina Saucedo (collectively, "Defendants").

Federal Rule of Civil Procedure 62(b) states: "On appropriate terms for the opposing party's security, the court may stay the execution of a judgment . . . pending disposition of any of the following motions: . . . (3) under Rule 59, for a new trial or to alter or amend a judgment; or (4) under Rule 60, for relief from a judgment or order." The factors regulating the issuance of a stay are:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured

1 absent a stay; (3) whether issuance of the stay will substantially injure the
2 other parties interested in the proceeding; and (4) where the public interest
lies.

3 Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

4 Applying the Hilton factors, the Court finds *first* that Defendants have not shown a
5 likelihood of success on the merits. Although they seek to challenge liability, they have not
6 made a strong showing either that the Court should grant the motion for reconsideration, or
7 that they would prevail on their liability defenses if the Court did reconsider the judgment.
8 See McDowell v. Calderon, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (“Reconsideration of a
9 judgment after its entry is an extraordinary remedy which should be used sparingly.” (citation
10 and quotation marks omitted)). *Second*, the Defendants have not shown irreparable injury,
11 because, as set forth below, any amounts collected pursuant to the judgment entered in this
12 case shall be placed into the registry of the Court, pending the resolution of the motion for
13 reconsideration. To the extent Defendants assert irreparable injury based on potential loss
14 of “other property through levy along with damage to their credit rating” (Doc. 81-1 at 5),
15 Defendants have not introduced any evidence to support the threat of such loss, and
16 damage to a credit rating is not, in any event, irreparable. *Third*, a stay in this case would
17 injure other parties interested in the proceedings, namely Plaintiffs, because it would
18 interfere with their ability to collect on the judgment. *Fourth*, there is public interest in
19 preserving the rights of sellers of agricultural commodities to the establishment of a PACA
20 trust--rights that would be frustrated by an order staying judgment in this case.

21 Accordingly, the Court DENIES Defendants’ ex parte motion for an order staying
22 execution of judgment. However, in the interest of Defendants’ security should they
23 ultimately prevail, the Court ORDERS that any amounts recovered by Plaintiffs on the May
24 17, 2012 judgment be placed on deposit in the registry of the Court, for the benefit of
25 Plaintiffs. The Clerk shall place all such payments made pursuant to this Order in an
26 interest-bearing money market account. The Clerk shall assess a charge for the handling
27 of the funds in accordance with the fee schedule issued by the Director of the Administrative
28 Office of the U.S. Courts.

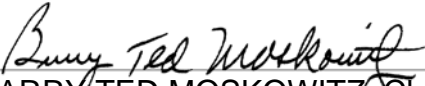
1 Pursuant to Civ. L.R. 67.1(d), the Court further ORDERS that Plaintiff's counsel
2 personally serve a copy of this Order on the Clerk or the Chief Deputy. Absent the aforesaid
3 service, the Clerk is hereby relieved of any personal liability relative to compliance with this
4 order.

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6 **IT IS SO ORDERED.**

7 DATED: July 25, 2012

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BARRY TED MOSKOWITZ, Chief Judge
United States District Court

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