

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION**

JACK TUCHTEN WHOLESALE PRODUCE,	:	
INC., and STRUBE CELERY & VEGETABLE CO.,	:	
et al.,	:	
	:	
Plaintiffs	:	
	:	
v.	:	Case No. <u>1:17cv03065</u>
	:	Judge: Hon. Elaine E. Bucklo
ROCKFORD WHOLESALE PRODUCE, INC.,	:	Magistrate Judge Maria Valdez
ELAINE SOLURI, and SAM D'AMATO,	:	
	:	
Defendants	:	

UNOPPOSED MOTION FOR ENTRY OF CONSENT ORDER AND JUDGMENT

COME NOW Plaintiffs, Jack Tuchten Wholesale Produce, Inc. and Strube Celery & Vegetable Co., and Intervening Plaintiffs, Anthony Marano Company (“Marano”), La Galera Produce, LLC, and Mandolini Co. Inc. (collectively, “Intervenor Plaintiffs”), and Defendants Rockford Wholesale Produce, Inc., Elaine Soluri and Sam D’Amato, by and through their respective counsel, and hereby move this Honorable Court for the entry of the attached Consent Order and Judgment. In support of this Motion, Plaintiffs state as follows:

1. On May 4, 2017, this Honorable Court entered an Agreed Order Establishing PACA Trust Claims Procedure (hereinafter, “the PACA Claims Order”). See Doc. #23.
2. All Parties had until May 24, 2017 to file their PACA Proof of Claim in order to participate in a *pro rata* distribution of any of the recovered PACA trust assets in this case. See Doc. #23, ¶7. A total of \$137,369.98 in PACA Claims were filed.
3. No objections were asserted to any of the filed PACA Claims, and the trust claims

were deemed valid pursuant to the terms of the PACA Claims Order. See Doc. #23, ¶13. A First Interim Distribution PACA Trust Chart was filed on June 21, 2017 [Doc. #38], and *pro rata* distributions made pursuant to the Chart on July 5, 2017 of seventy-five percent (75%) of the PACA Trust *res*, or \$32,413.22, with the remaining twenty-five percent (25%) held back to satisfy any approved common fund fee applications.

3. An Unopposed Motion to Approve Second PACA Trust Chart, Including Common Fund Fees Incurred for Benefit of All Claimants, and for Second and Final Distribution in Accordance With PACA Trust Chart was filed on July 19, 2017 [Doc. 40], and is pending before the Court, which distributes the remaining \$10,804.41 in funds on deposit in the McCarron & Diess Client Trust Account for the benefit of Rockford PACA trust claimants.

4. There is a shortfall in trust assets to satisfy the undisputed PACA claims of those claimants who filed Complaints or Complaints in Intervention,¹ and Defendants Rockford Wholesale Produce, Inc., Elaine Soluri, and Sam D'Amato, Jr., have consented to the entry of judgment in favor of Plaintiffs, Jack Tuchten Wholesale Produce, Inc. and Strube Celery & Vegetable Co., and Intervening Plaintiffs, Anthony Marano Company, La Galera Produce, LLC, and Mandolini Co. Inc., and against Defendants, jointly and severally, for the shortfall amount. The proposed Consent Order and Judgment is being filed herewith.

FOR THESE REASONS, Plaintiffs respectfully request that this Honorable Court grant Plaintiffs' Unopposed Motion for Entry of Consent Order and Judgment, and for such other and further relief as this Honorable Court deems appropriate upon consideration of the matter.

¹ Intervening Plaintiffs Coosemans Chicago Inc. and Dietz & Kolodenko Co. did not file Complaints in Intervention in this proceeding.

July 19, 2017

Respectfully submitted,

/s/Mary Jean Fassett

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, together with any and all exhibits referenced therein, was served upon all counsel of record via the Court's CM/ECF system, this 19th day of July, 2017.

/s Mary Jean Fassett

Mary Jean Fassett