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12 **UNITED STATES DISTRICT COURT**
 13 **DISTRICT OF NEVADA**

14 A.S.A. PRODUCE CO., INC.,

15 Plaintiff,

16 vs.

17 SUPERMERCADO DEL PUEBLO, t/a
 18 MERCADO DEL PUEBLO; and ARACELICA
 19 PAREDES,

20 Defendants.
 21

CASE NO. 2:10-CV-00456-PMP-LRL

**ORDER EXTENDING TEMPORARY
 RESTRAINING ORDER AND ORDER TO
 SHOW CAUSE RE: PRELIMINARY
 INJUNCTION**

22 This matter originally came before the Court on April 5, 2010, upon Plaintiff A.S.A.
 23 Produce, Inc.'s ("Plaintiff") Ex Parte Application for Temporary Restraining Order and for an
 24 Order to Show Cause Re Preliminary Injunction (the "Application") pursuant to Rule 65 of the
 25 Federal Rules of Civil Procedure ("FRCP"). Pursuant to FRCP 65(b), a temporary restraining
 26 order may be granted without notice to the adverse party only if: 1) it clearly appears from
 27 specific facts shown by affidavit or verified complaint that immediate and irreparable injury, loss
 28 or damage will result before the adverse party can be heard in opposition, and 2) the applicant's

1 attorney certifies the reasons that notice should not be required.

2 In this case, it appeared to the Court, upon review of the papers and pleadings submitted
3 to the Court, including the declaration of Plaintiff's representative, that Plaintiff is a produce
4 creditor of Defendants under Section 5(c) of the Perishable Agricultural Commodities Act
5 (PACA), 7 U.S.C. §499e(c), and had not been paid for produce in the amount of \$155,481.43
6 supplied to Defendants, as required by the PACA. It also appeared that Defendants are in severe
7 financial jeopardy and are dissipating PACA trust assets, as evidenced by Defendants'
8 notification to Plaintiff that Defendants do not have sufficient funds to pay Plaintiff, which is in
9 direct violation of the PACA. As a result, it appeared that the PACA trust assets are threatened
10 with dissipation. *See Frio Ice, S.A. v. Sunfruit, Inc.*, 918 F.2d 154 (11th Cir. 1990); *Taminura &*
11 *Antle, Inc. v. Packed Fresh Produce, Inc.*, 222 F.3d 132 (3rd Cir. 2000).

12 If notice had been given to Defendants of the pendency of the Application, trust assets
13 belonging to Plaintiff could have been further dissipated before the Application was ruled-upon.
14 Once dissipation has occurred, recovery of trust assets is all but impossible. H.R. Rep. No. 543,
15 98th Cong., 2d Sess. 4 (1983), reprinted in 1984 U.S. Code & Admin. News 405, 411. *J.R.*
16 *Brooks & Son, Inc. v. Norman's Country Market, Inc.*, 98 B.R. 47 (Bkrtcy. N.D. Fla. 1989);
17 *Taminura & Antle, Inc. v. Packed Fresh Produce, Inc.*, *supra*. Entry of the April 5, 2010 Order
18 without notice assured retention of the PACA trust assets under the control of the Court, which is
19 specifically vested with jurisdiction over the trust. 7 U.S.C. §499e(c)(5). In accordance with
20 Rule 65(b)(2), the Plaintiff's attorney has certified why notice should not have been required.
21

22 As a result of the Court's consideration of the Application and the supporting documents,
23 the Court granted the ex parte request for a temporary restraining order, ordered service of all
24 papers and pleadings on the Defendants by 4:00 p.m. April 6, 2010, and further ordered that a
25 hearing regarding the temporary restraining order occur at 4:00 p.m. on April 7, 2010, whereby
26 the Temporary Restraining Order would either expire or be extended.
27
28

1 Defendants, through no fault of Plaintiff, were not served with the papers and pleadings
2 in this case until approximately 12:09 p.m. today, April 7, 2010. Thus, given the lateness of
3 service, the Court considers the extension of the Temporary Restraining Order under the criteria
4 for issuance of ex parte orders under the authorities cited.

5 The Court finds and concludes that the rationale for granting the original Temporary
6 Restraining Order on April 5, 2010 continues to apply, thereby warranting the extension of the
7 Temporary Restraining Order past today's date.

8 Based on the foregoing, the Court finds that Plaintiff will suffer immediate irreparable
9 injury in the form of a loss of trust assets unless extension of the Temporary Restraining Order is
10 granted. Therefore, it is, pursuant to Rule 65(b), by the United States District Court for the
11 District of Nevada,

12 **ORDERED**, that the Temporary Restraining Order issued and entered by the Court on
13 April 5, 2010 (Doc. No. 14) is hereby extended and shall be in full effect until it shall expire on
14 April 15, 2010. Nonetheless, pursuant to Rule 65(b)(4), Defendants may, at any time prior to
15 April 15, 2010, file an emergency motion to dissolve the Temporary Restraining Order on two
16 (2) days' notice to Plaintiff—or on shorter notice as set by the Court;

17 **IT IS FURTHER ORDERED** that the above-named Defendants appear in Courtroom
18 _7C of the U.S. District Court for the District of Nevada, 333 Las Vegas Blvd. South, Las
19 Vegas, Nevada on __ April 15, 2010, at 9:30 a.m. , to show cause why an order
20 should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure restraining and
21 enjoining the Defendants, their customers, agents, officers, factors, subsidiaries, assigns, and
22 banking institutions, during the pendency of this action, from alienating, dissipating, paying over
23 or assigning any assets of Defendant Supermercado Del Pueblo, t/a Mercado Del Pueblo or its
24 subsidiaries or related companies except for payment to Plaintiff until further order of this Court,
25 or until Defendants pay to Plaintiff the sum of \$155,481.43 by cashiers' check or certified check,
26 at which time this Order is dissolved;

27 ...
28

