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07-CV-05301-ORD

9 Attorneys for Plaintiff

10 **UNITED STATES DISTRICT COURT**  
 11 **WESTERN DISTRICT OF WASHINGTON**  
**TACOMA DIVISION**

12 **EVANS FRUIT COMPANY, INC.,**  
 13 **a Washington corporation,**

Case No.

**07 5301**

14 **Plaintiff,**

15 **vs.**

16 **KDLO ENTERPRISES, INC.**  
 17 **D/B/A PACIFIC HARBOR**  
**TRADING, a Washington**  
 18 **corporation, KEVIN M.**  
**PEDERSON, an individual, and**  
 19 **DONNA MAE PEDERSON, an**  
**individual**

20 **Defendants.**

21 **TEMPORARY RESTRAINING ORDER**

22 This matter is before the Court upon Plaintiff's Ex-Parte Motion for  
 23 Temporary Restraining Order pursuant to Rule 65(b) of the Federal Rules  
 24 of Civil Procedure. Pursuant to Rule 65(b), a Temporary Restraining Order  
 25 may be granted without notice to the adverse party only if: (1) it clearly  
 26 appears from specific facts shown by Declaration or verified complaint that  
 27

1 immediate and irreparable injury, loss or damage will result before the  
2 adverse party can be heard in opposition, and (2) the applicant's attorney  
3 certifies the reasons that notice should not be required.

4 In this case, it clearly appears from the Declaration of Jeannette Evans  
5 that Plaintiff, Evans Fruit Company, Inc., is a produce dealer and trust  
6 creditor of Defendant, KDLO Enterprises, Inc. d/b/a Pacific Harbor  
7 Trading, under Section 5(c) of the Perishable Agricultural Commodities Act  
8 (PACA), 7 U.S.C. §499e(c), and has not been paid for produce in the total  
9 amount of \$295,556.00 supplied to said Defendant as required by the  
10 PACA. It is also clear from the same Declaration and the Certification of  
11 Counsel that said Defendant is in severe financial jeopardy and the PACA  
12 trust assets are being dissipated or threatened with dissipation (Frio Ice,  
13 S.A. v. Sunfruit, Inc., 918 F.2d 154 (11th Cir. 1990)) and that said Defendant  
14 is not or may not be in a position to pay the claims of Evans Fruit  
15 Company, Inc. (JSG Trading Corp. v. Tray-Wrap, Inc., 917 F.2d 75 (2d Cir.  
16 1990)), thereby warranting the relief requested by Plaintiff. On the basis of  
17 the pleadings, Declaration and other submissions Plaintiff has filed in this  
18 matter, it appears Plaintiff will suffer immediate and irreparable injury due  
19 to said Defendant's dissipation of Plaintiff's beneficial interest in the  
20 statutory trust created pursuant to 7 U.S.C. §499e(c) and that such  
21 dissipation will continue in the absence of injunctive relief. Therefore, the  
22 Court is of the opinion that a Temporary Restraining Order should be  
23 issued.

24 If notice is given to Defendant of the pendency of this motion, trust  
25 assets will be further threatened with dissipation before the motion is  
26 heard. As noted in the legislative history of PACA, once dissipation has  
27 occurred, recovery of trust assets is all but impossible. H.R. Rep. No. 543,

1 98th Cong., 2d Sess. 4 (1983), reprinted in 1984 U.S. Code & Admin. News  
2 405, 411. I.R. Brooks & Son, Inc. v. Norman's Country Market, Inc., 98 B.R.  
3 47 (Bkrtcy. N.D.Fla. 1989). Entry of this Order without notice assures  
4 retention of the trust assets under the control of this Court, which is  
5 specifically vested with jurisdiction over the trust. 7 U.S.C. §499e(c)(5). In  
6 accord with Rule 65(b)(2), Plaintiff's attorney has certified why notice  
7 should not be required.

8 Based on the foregoing, this Court finds that Plaintiff will suffer  
9 immediate irreparable injury in the form of a loss of trust assets unless this  
10 order is granted without notice.

11 Therefore, it is by the United States District Court for the Western  
12 District of Washington, **ORDERED:**

13 1. Defendant, KDLO Enterprises, Inc. d/b/a Pacific Harbor  
14 Trading, its agents, officers, subsidiaries, assigns, banking and financial  
15 institutions, and all persons in active concert or participation with said  
16 Defendant, including Kevin M. Pederson and Donna Mae Pederson, are  
17 enjoined and restrained from dissipating, paying, transferring, assigning or  
18 selling any and all assets covered by or subject to the trust provisions of the  
19 PACA without agreement of Plaintiff, or until further order of this Court.

20 2. Under §499e(c)(2) of PACA, the assets subject to this order  
21 include all of the assets of KDLO Enterprises, Inc. d/b/a Pacific Harbor  
22 Trading, unless KDLO Enterprises, Inc. d/b/a Pacific Harbor Trading can  
23 prove to this Court that a particular asset is not derived from perishable  
24 agricultural commodities, inventories of food or other products derived  
25 from perishable agricultural commodities or receivables or proceeds from  
26 the sale of such commodities or products. Provided however, KDLO  
27 Enterprises, Inc. d/b/a Pacific Harbor Trading may sell perishable

1 agricultural commodities or products derived from perishable agricultural  
2 commodities for fair compensation, without right of set-off, on the  
3 condition that KDLO Enterprises, Inc. d/b/a Pacific Harbor Trading  
4 maintains the proceeds of such sale subject to this Order.

5 3. This Order shall be binding upon the parties to this action and  
6 all other persons or entities who receive actual notice of this Order by  
7 personal service or otherwise.

8 4. The \$295,556.00 in PACA trust assets belonging to Plaintiff and  
9 in the possession of the Defendant will serve as Plaintiff's security for this  
10 injunction as required by Rule 65(c) of the Federal Rules of Civil Procedure.

11 5. This Temporary Restraining Order is entered this 18<sup>th</sup> day of  
12 June, 2007, at 10:15  a.m.  p.m. —

13 6. A hearing on Plaintiff's Motion for Preliminary Injunction is set  
14 for the 28<sup>th</sup> day of June, 2007, at 9:00  a.m.  p.m.

15 7. Plaintiff shall serve a copy of this Order by personal service,  
16 including by facsimile transmission or federal express, on or before the  
17 19<sup>th</sup> day of June, 2007. Such service shall be deemed good and  
18 sufficient.

19 8. Plaintiff shall serve Defendants, or their resident agent, or their  
20 counsel, with a copy of this Order.

21 9. Defendants shall file any and all responsive papers to Plaintiff's  
22 Motion on or before June 24<sup>th</sup>, 2007 at 12:00  a.m.  p.m.

23 **DONE and ORDERED**, this 18<sup>th</sup> day of June, 2007 at  
24 Tacoma, Washington.

25   
26 **United States District Judge**  
27 **Western District of Washington**