

**IN THE UNITED STATES
BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:

TX. C. C., INC. , et al.¹

Debtors.

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Case No. 17-40297
(Chapter 11)
(Jointly)

**ORDER GRANTING
PACA CREDITORS' MOTION TO SET ASIDE PACA TRUST ASSETS
AND PROHIBIT USE OF CASH COLLATERAL**

On the 18th day of April, 2017 came on for consideration the *PACA Creditors' Motion to Set Aside PACA Trust Asset and Prohibit Use of Cash Collateral* (the "Motion") filed herein on March 28, 2017 by Brothers Produce, Inc., Brothers Produce of Austin, Inc., Brothers Produce of Dallas, Inc., Dohme Produce, Inc. d/b/a Central Illinois Produce Co., Dixie Produce, Inc., Frontier Produce, Inc., P J K Food Service Corp d/b/a Keany Produce Co., LaGrasso Bros., Inc., Joe Lasita & Sons, Inc., Liberty Fruit Cor., Inc., River City Produce Company, Inc., Senn Brothers, Inc., Sirm & Sons, Inc., and Vermilion Valley Produce Co., Inc. (collectively, the "PACA Creditors"). Robert Yaquinto, Jr., counsel for the PACA Creditors, appeared and Jeff Carruth, counsel for Debtors, appeared. Having reviewed the Motion and all matters brought to the Court's attention at the hearing on April 18, 2017, and after due deliberation and consideration, the Court finds that notice was appropriate under the circumstances, and no further notice is necessary, and that cause exists to grant the relief requested in the Motion to the extent set forth below.

IT IS THEREFORE ORDERED THAT:

1. The Motion is granted as set forth herein.

2. Debtors are hereby authorized to use the cash collateral, sales proceeds, and/or funds on deposit in their possession or on deposit in their existing bank accounts that may be subject to the PACA trust (and not property of the Debtors or their estates) to pay the Debtors' operating and overhead expenses, provided that the following adequate protection is provided to PACA Creditors and similarly situated trust beneficiaries.
3. Not later than Monday, April 24, 2017, the Debtors shall establish an interest-bearing escrow account (the "PACA Escrow") for the exclusive benefit of allowed claims of PACA Creditors and similarly situated trust beneficiaries, as determined by the Court, and by April 24, 2017 shall make an initial deposit of \$100,000.00 into the PACA Escrow. In the event Debtors are unable to establish an interest-bearing PACA Escrow account for the exclusive benefit of PACA Creditors and similarly situated trust beneficiaries, PACA Creditors shall establish the PACA Escrow and Debtors shall transfer any payments previously made and escrowed by Debtors for the benefit of PACA Creditors and similarly situated trust beneficiaries to the PACA Escrow.
 - a. Thereafter, Debtors shall make a weekly deposit of \$10,000.00 into the PACA Escrow through May 17, 2017.
 - b. Not later than May 26, 2017, Debtors shall make another deposit of \$100,000.00 into the PACA Escrow.
 - c. Thereafter, Debtors shall make a weekly deposit of \$10,000.00 into the PACA Escrow through July 2, 2017 or until the total sum of \$300,000.00 has been deposited into the PACA Escrow.
 - d. Debtors shall provide proof every week of each deposit made into the PACA Escrow to counsel for PACA Creditors, as well as provide a weekly update on the balance on deposit in the PACA Escrow.
4. In the event of a default in making a deposit which is not cured within three (3) calendar days of receipt of written notice served on Debtors' counsel, Debtors' right to continue to use the cash collateral, sales proceeds, and/or funds on deposit in their possession or on deposit in their existing bank accounts shall immediately terminate (without prejudice to the Debtors seeking further relief of the Court).
 - a. Notice of default will be made in writing and shall be considered given if such notice is faxed to Debtors' counsel at (866) 666-5322, or sent via overnight delivery to Debtors' counsel at Weycer, Kaplan, Pulaski & Zuber, P.C., Attn: Jeff Carruth, 3030 Matlock Road, Ste. 201, Arlington, Texas 76105 with such notice to be effective upon delivery.
 - b. The right to cure any default shall be limited to two (2) occurrences.
5. All allowed PACA trust claims shall participate *pro rata* in the ownership of the PACA Escrow and any distributions therefrom shall be made pursuant to the *Order Granting Expedited Motion of Debtors for an Order Pursuant to 11 U.S.C. 105(A) to*

Establish Exclusive Procedures to Determine and Set Claims Under the PACA and Providing Notice of PACA Claims Procedure, and further order of this Court.

- a. The PACA Escrow shall continue to be operated as a fiduciary account for the benefit of all allowed claims under PACA.
 - b. The PACA Escrow shall not be subject to execution, levy or attachment by any creditor without further order of this Court.
 - c. The PACA Creditors and similarly situated trust beneficiaries, as determined by the Court, are granted a reservation of rights to seek an increase in the amount of the escrow in order to satisfy allowed PACA trust claims against the Debtors.
 - d. The establishment of the PACA Escrow does not limit the rights of any of the PACA Creditors to seek relief from any Debtor or from any asset of any Debtor, or from any third party.
6. Notwithstanding anything to the contrary herein, the Debtors' right to use the cash collateral, sales proceeds, and/or funds on deposit in their possession or on deposit in their existing bank accounts as set forth herein shall expire on the occurrence of one or more of the following Termination Events:
 - (a) Entry of an order converting the Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code;
 - (b) Entry of an order dismissing or suspending the Chapter 11 cases; or
 - (c) The Debtors default without curing same or breach or otherwise fail to abide by any of the terms or provisions of this Order.
7. This Order shall take effect immediately upon execution hereof; *provided however*, that this Order shall be without prejudice to the rights of all creditors, including the PACA Creditors, and the Debtors to make legal arguments or contest factual matters in any future proceedings, contested matters, adversary proceeding or other disputes. All of the Debtors' rights, and the rights of the U.S. Trustee, to challenge any creditor's claims are fully reserved, including, without limitation, the Debtors' rights to challenge the existence of the PACA trust and the claims of the PACA Creditors.
8. Notwithstanding anything in the Motion or this Order to the contrary, the post-petition trust fund sales taxes collected by the Debtors on behalf of the Texas Comptroller of Public Accounts (the "Comptroller") shall continue to be held in segregated bank accounts and remitted as required in the Cash Management Order [Doc. No. 48]. The PACA Creditors and the Debtors agree that the Comptroller's post-petition trust fund sales taxes shall not be utilized by the Debtors to satisfy any amount set-aside for the benefit of the PACA Creditors or utilized by the Debtors to make any payments to the PACA Creditors.

9. This Court shall maintain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Signed on 5/5/2017

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HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE

Agreed and Approved as to Form and Content

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

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PROPOSED ATTORNEYS FOR TX. C. C., INC.,
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