

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

CHAPTER 11

OTB HOLDING LLC, *et al.*,

Case No.: 25-52415-SMS

Debtors.

(Jointly Administered)

NOTICE OF HEARING

PLEASE TAKE NOTICE that Liberty Fruit Company, Inc. has filed a *Motion for Order Compelling Payment of Prepetition PACA Trust Claim, Relief from Stay, Abandonment, Turnover and Supporting Memorandum of Law* (the “**Motion**”) and related papers with the Court.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Motion at **10:00 a.m. on August 20, 2025, in Courtroom 1201, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303**, which may be attended in person or via the Court’s Virtual Hearing Room. You may join the Virtual Hearing Room through the “Dial-in and Virtual Bankruptcy Hearing Information” link at the top of the homepage of the Court’s website, www.ganb.uscourts.gov, or the link on the judge’s webpage, which can also be found on the Court’s website. Please also review the “Hearing Information” tab on the judge’s webpage for further information about the hearing. You should be prepared to appear at the hearing via video, but you may leave your camera in the off position until the Court instructs otherwise. Unrepresented persons who do not have video capability may use the telephone dial-in information on the judge’s webpage.

Your rights may be affected by the court’s ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk before the



2552415250805000000000003

hearing. The address of the Clerk's Office is Clerk, U. S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, Atlanta Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the Motion cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty days of filing the Motion and agrees to a hearing on the earliest possible date. Movant consents to the automatic stay remaining in effect until the Court orders otherwise.

This 5th day of August, 2025.

JONES & WALDEN LLC

/s/ Leslie M. Pineyro

Leslie M. Pineyro

Georgia Bar No. 969800

699 Piedmont Avenue NE

Atlanta, GA 30308

(404) 564-9300

lpineyro@joneswalden.com

Counsel for Liberty Fruit Company, Inc.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

**OTB HOLDING LLC, et al.,

Debtors**

CHAPTER 11

**Case No.: 25-52415-SMS

(Jointly Administered)**

**PACA CREDITOR LIBERTY FRUIT COMPANY, INC.'S MOTION FOR
ORDER COMPELLING PAYMENT OF PREPETITION PACA TRUST
CLAIM, RELIEF FROM STAY, ABANDONMENT, TURNOVER AND
SUPPORTING MEMORANDUM OF LAW**

JONES & WALDEN, LLC

Leslie Pineyro
Georgia Bar No. 969800
699 Piedmont Ave NE
Atlanta, GA 30308
Telephone: (404) 564 9300
Facsimile: (404) 564 9301
lpineyro@joneswalden.com
*Counsel for Liberty Fruit Company,
Inc.*

ESQUIVEL LAW, CHARTERED

Katy Koestner Esquivel
Admitted Pro Hac Vice
Florida Bar No. 0159484
Moorings Professional Building
2335 Tamiami Trail North, Suite 301
Naples, FL 34103-4457
Telephone: (239)206-3731
Facsimile: (239)431-3942
kke@esquivel-law.com
service@esquivel-law.com
Counsel for Liberty Fruit Company, Inc.

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
I. FACTUAL HISTORY	1
II. ARGUMENT	3
A. Statutory Analysis and the Rights of PACA Trust Beneficiaries	3
1. PACA Creates a Statutory Trust for the Benefit of Produce Sellers.....	3
2. Scope of the PACA Statutory Trust.....	5
3. Nonpayment is Unlawful	7
B. Motion to Compel Payment.....	8
C. Turnover of Non-Estate Assets	9
1. Authority of this Court to Order Turnover	9
2. PACA Trust Assets Are Not Part of the Debtor’ Estate and Must Be Protected for Distribution to the PACA Trust Beneficiaries.	10
3. The Need for Immediate Relief in this Case is Clear.....	14
D. Relief from Stay Warranted Under 11 U.S.C. § 362.....	15
E. Abandonment of Non-Estate Assets	17
F. Liberty Fruit’s PACA Trust Claim Includes Interest, Costs and Attorneys’ Fees.....	17
IV. CONCLUSION.....	18

TABLE OF AUTHORITIES

US SUPREME COURT CASES

<i>Bank of Marin v. Eng.</i> , 385 U.S. 99 (1966)	9
<i>Katchen v. Landy</i> , 382 U.S. 323 (1966)	9
<i>United States v. Kras</i> , 409 U.S. 434 (1973)	9

FEDERAL CASES

<i>A & J Produce Corp. v. CIT Grp./Factoring, Inc.</i> , 829 F. Supp. 651 (S.D.N.Y. 1993)	14
<i>Am. Banana Co. v. Republic Nat'l Bank of N.Y., N.A.</i> , 362 F.2d 33, 36 (2nd Cir. 2004)	3
<i>Braddy v. Randolph</i> , 352 F.2d 80 (4th Cir. 1965)	9
<i>Brockington v. Scott</i> , 381 F.2d 792 (4th Cir. 1967)	9
<i>C.H. Robinson Co. v. Trust Co. Bank, N.A.</i> , 952 F.2d 1311 (11th Cir. 1992)	12, 14
<i>Coosemans Specialties, Inc. Coosemans Specialties, Inc. v. Gargiulo</i> , 485 F.3d 701 (2d Cir. 2007).....	17
<i>Country Best v. Christopher Ranch, LLC</i> , 361 F.3d 629 (11th Cir. 2004)	17
<i>Dole Fresh Fruit Co. v. United Banana Co.</i> , 821 F.2d 106 (2d Cir. 1987).....	8

<i>E. Armata, Inc. v. Platinum Funding Corp.</i> , 887 F. Supp. 590 (S.D.N.Y., 1995)	14
<i>Frio Ice, S.A. v. Sun Fruit Inc.</i> , 918 F.2d 154 (11th Cir. 1990)	4, 5, 8, 13, 14
<i>Hull Company v. Hauser Foods, Inc.</i> , 924 F.2d 777 (8th Cir. 1991)	4
<i>Idahoan Fresh v. Advantage Produce, Inc.</i> , 157 F.3d 197 (3d Cir. 1998).....	4, 5
<i>In re An Unknown Grp. of Cases Seeking to Be Filed</i> , 79 B.R. 651 (Bankr. E.D. Va. 1987).....	9
<i>In re Asinelli, Inc.</i> , 93 B.R. 433 (M.D.N.C. 1988).....	11, 12
<i>In re Atlantic Tropical Market Corp.</i> , 118 B.R. 139 (Bankr. S.D. Fla. 1990)	5, 6
<i>In re Carolina Produce Distributors, Inc.</i> , 110 B.R. 207 (W.D.N.C. 1990)	11, 12
<i>In re Fresh Approach, Inc.</i> , 51 B.R. 412 (Bankr. N.D. Tex. 1985).....	8, 11, 12, 14
<i>In re Kelly Food Products, Inc.</i> , 204 B.R. 18 (Bankr. C.D. Ill. 1997).....	11, 13, 14
<i>In re Kornblum & Co.</i> , 81 F.3d 280, 284 (2d Cir. 1996).....	4, 5, 6, 16
<i>In re Long John Silver's Restaurants, Inc.</i> , 230 B.R. 29 (Bankr. D. Del. 1999)	10, 16
<i>In re Milton Poulos, Inc.</i> , 107 B.R. 715 (9th Cir. B.A.P. 1989).....	5, 11, 12
<i>In re Monterey House, Inc.</i> , 71 B.R. 244, 247 (S.D. Tex. 1986)	8, 11, 12, 13

<i>In re N. Merberg & Sons,</i> 166 B.R. 567 (Bankr. S.D.N.Y. 1994)	11
<i>In re O'Connor,</i> 808 F.2d 1393 (10th Cir. 1987)	16
<i>In re Southland & Keystone,</i> 132 B.R. 632, 639-40 (9th Cir. B.A.P. 1991)	11, 12
<i>In re Super Spud, Inc.,</i> 77 B.R. 930 (Bankr. M.D. Fla. 1987)	6, 8, 11, 12
<i>In re Swedeland Dev. Group, Inc.,</i> 16 F.3d 552, 564 (3d Cir. 1994).....	16
<i>In re W.L. Bradley Company, Inc.,</i> 75 B.R. 505 (Bankr. E.D. Pa. 1987)	1, 8, 11, 13, 18
<i>Middle Mountain Land and Produce Inc.,</i> 307 F.3d 1224	13
<i>Miller v Farmers Home Admin. (In re Miller),</i> 16 F.3d 240 (8th Cir. 1994)	9
<i>Morris Okun, Inc. vs. Harry Zimmerman, Inc.,</i> 814 F. Supp. 346 (S.D.N.Y. 1993)	11, 12
<i>Sanzone-Palmisano Co. v. M. Seaman Enterprises, Inc.,</i> 986 F.2d 1010 (6th Cir. 1993)	4, 5, 7
<i>Sunkist Growers v. Fisher,</i> 104 F.3d 280 (9th Cir. 1997)	5
<i>Sysco Food Services of Seattle, Inc. v. Country Harvest Buffet Restaurants,</i> <i>Inc.,</i> 245 B.R. 650 (9th Cir. B.A.P. 2000).....	11
<i>Sysco Food Services of Seattle, Inc.,</i> 245 B.R. 650, 652 (9th Cir. B.A.P. 1999).....	13

<i>United States v. Porter</i> , 986 F.2d 1014 (6th Cir. 1993)	6
---	---

FEDERAL STATUTES

7 U.S.C.	
§ 499a	2
§ 499e	2, 4
§ 499b(4)	7
§ 499e(c)	4
§ 499e(c)(2)	5, 17
11 U.S.C.	
§ 105	9
§ 362	1, 3, 15, 17, 19
§ 541(d)	11, 12
§ 554	1, 17, 19
§ 725	1, 10

FEDERAL REGULATIONS

Title 7 C.F.R.	
§ 46.46(a)(2)	13
§ 46.46(d)(1)	7

OTHER AUTHORITIES

49 Fed. Reg. 45735, 45738	12
H. Rep. No. 543, 98th Cong., 1st Sess. (1983)	5

**PACA CREDITOR LIBERTY FRUIT COMPANY, INC.’S MOTION FOR
ORDER COMPELLING PAYMENT OF PREPETITION PACA TRUST
CLAIM, RELIEF FROM STAY, ABANDONMENT, TURNOVER AND
SUPPORTING MEMORANDUM OF LAW**

MOVANT Liberty Fruit Company, Inc. (“Liberty Fruit”), a produce seller and creditor of the Debtor, by counsel and under 11 U.S.C. §§ 362, 11 U.S.C. § 554 and 11 U.S.C. § 725, and files this, its Motion For An Order Compelling Payment of Prepetition PACA Claim, For Relief From Stay, Abandonment, Turnover and Supporting Memorandum of Law:

I. FACTUAL HISTORY

1. Between October 28, 2023 and February 4, 2025, Liberty Fruit supplied the Debtor OTB Acquisition, LLC (hereinafter “OTB” or the “Debtor”), with \$172,686.25 of wholesale quantities of fresh fruits and vegetables (“Produce”), all of which remains unpaid.

2. The table below summarizes Liberty Fruit’s sales to the various OTB locations:

Location	Principal	Interest¹	Total
#0215	\$19,004.44	\$2,100.88	\$21,105.32
#116 Oak Park	\$21,200.32	\$2,239.70	\$23,455.83
#0187 Loveland	\$17,431.89	\$1,882.00	\$19,313.89
#170 W Wichita	\$21,829.34	\$2,238.40	\$24,071.42
#36 N Rock Road	\$29,274.81	\$3,066.97	\$32,341.78
#0021	\$12,330.69	\$1,346.10	\$13,702.99
#0024 Highland	\$13,563.64	\$1,462.66	\$15,026.30

¹ Through May 25, 2025 Proof of Claim Deadline

Location	Principal	Interest ¹	Total
#0112	\$19,026.94	\$2,133.58	\$21,160.52
#0177 Smoky Hill	\$19,024.18	\$2,165.95	\$21,190.13
Totals	\$172,686.25	\$18,636.24	\$191,368.18

See also Liberty Fruit's undisputed claim filed in this case.

3. Liberty Fruit preserved its rights as beneficiary of the statutory trust established by the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a *et seq.* ("PACA") by placing the statutory language on its invoices as provided by § 499e(c)(4) of PACA.

4. As discussed in §II.A.2., *infra.*, the res of the PACA trust includes OTB's Produce-related assets, including the Produce itself, any and all receivables or proceeds from the sale of the Produce, and any assets purchased using such proceeds. Indeed, commingling is expected and does not defeat the PACA trust.

5. Moreover, the PACA trust arises upon the debtor's first Produce purchase, and remains in existence until all Produce sellers like Liberty Fruit are paid.

6. PACA requires OTB to pay promptly for Produce, and to maintain sufficient assets in trust until full payment is made to its PACA trust beneficiaries, such as Liberty Fruit.

7. OTB has not fulfilled its statutory duties.

8. On or about March 4, 2025, the Debtor petitioned for relief under

Chapter 11 of the Bankruptcy Code, thereby imposing the automatic stay under **11 U.S.C. § 362(a)**.

9. On March 7, 2025, this Court entered an Order authorizing the Debtor to pay prepetition PACA claims. It states:

The Debtors are authorized, but not directed, in their sole discretion, to pay or otherwise satisfy all valid PACA Claims in the ordinary course of business in an aggregate amount not to exceed \$950,000.

DE 60.

10. Upon information and belief, Liberty Fruit is the only PACA trust creditor of the Debtor. It seeks payment in accordance with the March 4 Order, or in the alternative, an order granting it relief from stay, directing the debtor to abandon and turn over to Liberty Fruit PACA Trust Assets in an amount sufficient to satisfy its claim, which includes the Produce sold, in addition to interest, costs and attorney's fees.

II. ARGUMENT

A. Statutory Analysis and the Rights of PACA Trust Beneficiaries

1. PACA Creates a Statutory Trust for the Benefit of Produce Sellers

PACA is a remedial statute designed to protect sellers of perishable commodities who, without the statute, would lack any way to protect themselves from slow paying and non-paying customers. H.R. REP. NO. 98-543, at 3 (1983), reprinted in 1984 U.S.C.C.A.N. 405, 406. *Am. Banana Co. v.*

Republic Nat'l Bank of N.Y., N.A., 362 F.2d 33, 36. As a remedial statute, PACA "should be given a liberal construction to effectuate its statutory purpose." *Hull Company v. Hauser Foods, Inc.*, 924 F.2d 777, 782 (8th Cir. 1991).

The trust provisions impose fiduciary duties on a Produce buyer such as OTB including the duty to hold in trust its Produce-related assets (including the Produce itself, Products derived therefrom, and receivables or proceeds from the sale thereof), until full payment is made to the seller. 7 U.S.C. § 499e(c)(2) *Idahoan Fresh v. Advantage Produce, Inc.*, 157 F.3d 197 (3d Cir. 1998); *In re Kornblum & Co.*, 81 F.3d 280 (2d Cir. 1996); *Sanzone-Palmisano Co. v. M. Seaman Enterprises, Inc.*, 986 F.2d 1010 (6th Cir. 1993) (noting that assets and proceeds from Produce should be held in trust until payment in full); *Frio Ice, S.A. v. Sun Fruit Inc.*, 918 F.2d 154, 156 (11th Cir. 1990). The PACA statutory trust is an unequivocal declaration that Produce-derived assets are distinct and must be used to pay Produce suppliers.

In the early 1980s, "Congress determined that the increase in nonpayment and delinquent payment by produce dealers threatened the financial stability of produce growers." *Frio Ice, S.A. v. Sunfruit, Inc.*, 918 F.2d 154, 156 (11th Cir. 1990). To remedy this problem, Congress amended PACA in 1984 by creating a statutory trust in 7 U.S.C. § 499e to "increase the legal protection for unpaid sellers and suppliers of perishable

agricultural commodities until full payment of sums due have been received by them." H. Rep. No. 543, 98th Cong., 1st Sess. (1983), reprinted in 1984 U.S.C.C.A.N. 405, 406.

2. Scope of the PACA Statutory Trust.

Section § 499e(c)(2) defines the corpus of the PACA trust as all Produce, all inventories of food or other Products derived from Produce ("Products"), and receivables or proceeds from the sale of Produce or its Products. The PACA trust also extends to all inventory which the Debtor purchased with the funds from a commingled account. *Sanzone-Palmisano Company v. M. Seaman Enters., Inc.*, 986 F.2d 1010 (6th Cir. 1993); *In re Kornblum & Co., Inc.*, 81 F.3d 280 (2d Cir. 1996); *In re Atlantic Tropical Market Corp.*, 118 B.R. 139 (Bankr. S.D. Fla. 1990).

The PACA trust requires the buyer to maintain sufficient PACA Trust Assets in a manner that is freely available to pay creditors such as Liberty Fruit until full payment is made to the seller. 7 U.S.C. § 499e(c)(2); *Idahoan Fresh v. Advantage Produce, Inc.*, 157 F.3d 197 (3d Cir. 1998); *In re Kornblum & Co.*, 81 F.3d 280 (2d Cir. 1996); *Sanzone-Palmisano Co. v. M. Seaman Enters., Inc.*, 986 F.2d 1010 (6th Cir. 1993); *In re Milton Poulos, Inc.*, 947 F.2d 1351 (9th Cir. 1991); *Frio Ice, S.A. v. Sunfruit, Inc.*, 918 F.2d 154, 156 (11th Cir. 1990). In short, the buyer – Debtor in this case – “must conduct itself as trustee of its assets until the [PACA creditors are] paid in full.” *Sunkist Growers v.*

Fisher, 104 F.3d 280, 282 (9th Cir. 1997).

The PACA statute provides in the bankruptcy context, Debtor has a very difficult burden of establishing which, if any, assets are not subject to the PACA trust. *United States v. Porter*, 986 F.2d 1014, 1014 (6th Cir. 1993); *In re Atl. Tropical Mkt. Corp.*, 118 B.R. 139, 142 (Bankr. S.D. Fla. 1990); *In re Super Spud, Inc.*, 77 B.R. 930 (Bankr. M.D. Fla. 1987) (PACA creditors are entitled to absolute priority, even ahead of the trustee, administrative expense claims and secured creditors; their floating lien must be paid ahead of all others, as part of the PACA statutory trust). A PACA debtor must prove that either: (1) no PACA trust existed when the asset was acquired; or (2) although a PACA trust existed at the time, the asset was not acquired with trust assets; or (3) although a PACA trust existed when the asset was acquired, and it was acquired with PACA Trust Assets, all unpaid sellers of Produce were paid in full before the transactions involving the unpaid PACA trust creditors at issue. *In re Kornblum & Co.*, 81 F.3d 280, 287 (2d Cir. 1996).

The Sixth Circuit characterized this burden as nearly impossible to carry once PACA Trust Assets have been commingled with non-trust assets:

We hold that a purchaser, or PACA debtor, has the burden of showing that disputed assets were not acquired with proceeds from the sale of produce or Produce-related assets.... [I]n the conventional case, where the produce was sold at a gross profit, the proceeds were commingled in a general fund, and the general fund was used

to buy more inventory, the PACA debtor will be unable to meet its burden, and the produce supplier will prevail. We believe that this is the outcome that Congress intended.

Sanzone-Palmisano Co. v. M. Seaman Enters., Inc., 986 F.2d 1010, 1014 (6th Cir. 1993). There is no dispute that the Debtor was a dealer of Produce. This is not only admitted in the Voluntary Petition, but is also supported by the invoices issued by Liberty Fruit which demonstrate that the debtor was purchasing wholesale and jobbing quantities of Produce. Upon information and belief, the Debtor commingled PACA Trust Assets with non-PACA assets, and used PACA Trust Assets for the acquisition, maintenance, and repair of real and personal property. Liberty Fruit submits that the Debtor will be unable to satisfy the burden of proving that any of its assets are not impressed with the PACA trust.

3. *Nonpayment is Unlawful*

Under PACA, the failure of the debtor to maintain the trust and make full payment promptly to the trust beneficiary is unlawful. 7 U.S.C. § 499(b)(4). Agricultural merchants, dealers and brokers, “are required to maintain trust assets in a manner that such assets are freely available to satisfy outstanding obligations to sellers of perishable agricultural commodities[,]” and any act or omission inconsistent with this responsibility, including dissipation of trust assets, is proscribed. 7 C.F.R. § 46.46(d)(1).

B. Motion to Compel Payment

23. Unpaid Produce suppliers are entitled to immediate relief either by immediate payment. *In re W.L. Bradley Co., Inc.*, 75 B.R. 505 (Bankr. E.D.Pa. 1987); *In re Super Spud, Inc.*, 77 B.R. 930 (Bankr. M.D. Fla. 1987); or by the segregation of trust assets with an immediate procedure put in place to obtain payment in the near future. *Frio Ice, S.A.*, 918 F.2d at 156; *Dole Fresh Fruit Co. v. United Banana Co.*, 821 F.2d 106 (2d Cir. 1987).

The Debtor cannot delay payment of PACA claims by shunting them off to a plan of reorganization. *In re W.L. Bradley Company, Inc.*, 75 B.R. at 514; *In re Fresh Approach, Inc.*, 51 B.R. 412 (Bankr. N.D. Tex. 1985); *In re Monterey House, Inc.*, 71 B.R. 244 (Bankr. S.D. Tex. 1986). In *Bradley*, the Court explained its decision by recalling Congress' intent in enacting the PACA: It must be remembered that PACA was not enacted to protect those in Debtor's shoes, but rather to prevent the chaos and disruption in the flow of perishable agricultural commodities sure to result from an industry-wide proliferation of unpaid obligations. In isolation, this may seem a harsh course to follow, in the macroeconomic sense, PACA serves to ensure continuity of payment and therefore survival of the industry. Congress has plainly decided it would be less disastrous to risk the liquidation of a single purchaser than to threaten the entire Produce supply chain with insolvency.

In re W.L. Bradley Company, Inc., 75 B.R. at 514.

C. Turnover of Non-Estate Assets

1. Authority of this Court to Order Turnover

The Bankruptcy Court is a court of equity; it can do what needs to be done as long as there is not an abuse of that power. *An Unknown Grp. of Cases Seeking to Be Filed*, 79 B.R. 651 (Bankr. E.D. Va. 1987) (citing *Katchen v. Landy*, 382 U.S. 323 (1966)); *Bank of Marin v. Eng.*, 385 U.S. 99 (1966); *Braddy v. Randolph*, 352 F.2d 80 (4th Cir. 1965); *Brockington v. Scott*, 381 F.2d 792 (4th Cir. 1967). Broad authority is provided to the Court by 11 U.S.C. § 105 to grant such relief as is necessary to effectuate the provisions of the Bankruptcy Code. *Miller v Farmers Home Admin. (In re Miller)*, 16 F.3d 240 (8th Cir. 1994); *In re An Unknown Grp. of Cases Seeking to Be Filed*, 79 B.R. at 651.. 11 U.S.C. § 105(a) provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Liberal interpretation of this Section is bolstered by the premise that bankruptcy is a privilege, not a right, of the Debtor. *In re Unknown Group*, 79 B.R. at 653 (E.D. Va. 1987), citing *United States v. Kras*, 409 U.S. 434 (1973).

Liberty Fruit submits that § 105 provides this Court with discretion to order the Debtor to turn over non-estate PACA Trust Assets to Liberty Fruit, and any other valid PACA trust beneficiaries of the Debtor.

In liquidation cases, the Chapter 7 Trustee is required to dispose of property in which an entity, other than the estate, has an interest under § 725, which provides:

After the commencement of a case under this chapter, before final distribution of property of the estate under section 726 of this title, the trustee, after notice and a hearing, shall dispose of any property in which an entity other than the estate has an interest, such as a lien, and that has not been disposed of under another section of this title.

11 U.S.C. § 725. The purpose of this section is to give the Court appropriate authority to ensure that non-estate assets are returned to the proper creditor by giving the court flexibility, under the unique circumstances of each case, to dispose of property subject to a co-ownership interest.

2. PACA Trust Assets Are Not Part of the Debtor's Estate and Must Be Protected for Distribution to the PACA Trust Beneficiaries.

Since the Debtor holds legal, not equitable, title to the PACA Trust Assets in its possession, Courts have unanimously found that PACA Trust Assets *are not property* of the Debtor's estate, and must be set aside for distribution to trust beneficiaries. *In re Long John Silver's Restaurants, Inc.*,

230 B.R. 29, 32 (Bankr. D. Del. 1999); *In re Kelly Food Products, Inc.*, 204 B.R. 18 (Bankr. C.D. Ill. 1997); *In re Southland & Keystone*, 132 B.R. 632, 639 (9th Cir. B.A.P. 1991)(“The assets that make up the trust are not property of the merchant, dealer or broker’s bankruptcy estate.”); *Sysco Food Services of Seattle, Inc. v. Country Harvest Buffet Restaurants, Inc.*, 245 B.R. 650, 652 (9th Cir. B.A.P. 2000)(“the res of a PACA trust does not become property of a bankruptcy estate until all eligible suppliers are paid in full”); *In re Asinelli, Inc.*, 93 B.R. 433 (M.D.N.C. 1988); *In re Carolina Produce Distributors, Inc.*, 110 B.R. 207 (W.D.N.C. 1990); *Morris Okun, Inc. vs. Harry Zimmerman, Inc.*, 814 F. Supp. 346, 348 (S.D.N.Y. 1993); *In re Milton Poulos, Inc.*, 107 B.R. 715 (9th Cir. B.A.P. 1989); *In re N. Merberg & Sons*, 166 B.R. 567, 570 (Bankr. S.D.N.Y. 1994); *In re Super Spud, Inc.*, 77 B.R. 930 (Bankr. M.D. Fla. 1987); *In re W.L. Bradley Co.*, 75 B.R. 505 (Bankr. E.D. Pa. 1987); *In re Monterey House*, 71 B.R. 244 (Bankr. S.D. Tex. 1986); *In re Fresh Approach*, 51 B.R. 512 (Bankr. N.D. Tex. 1985).

In the seminal case on this issue, *In re Fresh Approach*, 51 B.R. at 412, the Court based its view on the following language found in § 541(d) of the Code, which states in part:

Property in which the debtor, holds, as of the commencement of the case, only legal title and not an equitable interest,... becomes property of the estate...only to the extent of the debtor’s legal title to such property but not to the extent

of any equitable interest in such property that the debtor does not hold.

(emphasis added); *In re Fresh Approach*, 51 B.R. at 418-419 (further finding “[t]hat the corpus of a trust is not property of the estate is so widely accepted as to be beyond dispute”). When a Produce buyer files for bankruptcy protection, the PACA Trust Assets are not property of the debtor's estate. 11 U.S.C. § 541(d); 49 Fed. Reg. 45735, 45738; *C.H. Robinson Company v. Alanco Corp.*, 239 F.3d 483, 487 (2d Cir. 2001); *C.H. Robinson*, 952 F.2d at note 3, citing *In re Super Spud, Inc.*, 77 B.R. 930, 931-32 (Bankr. M.D.Fla. 1987); *Morris Okun, Inc. v. Harry Zimmerman, Inc.*, 814 F.Supp. 346, 348 (S.D.N.Y. 1993); *In re Southland & Keystone*, 132 B.R. 632, 639-40 (9th Cir. B.A.P. 1991); *In re Carolina Produce Distributors, Inc.*, 110 B.R. 207 (W.D.N.C. 1990); *In re Monterey House, Inc.*, 71 B.R. 244, 247 (S.D. Tex. 1986); *In re Asinelli, Inc.*, 93 B.R. 433 (M.D.N.C. 1988); *In re Milton Poulos, Inc.*, 94 B.R. 648 (Bankr. C.D. Cal. 1988) and *In re Fresh Approach*, 512 B.R. 412 (Bankr. N.D.Tex. 1985). “That the corpus of a trust is not property of the estate is so widely accepted as to be beyond dispute.” *In re Fresh Approach, Inc.*, 51 B.R. at 419. In the language of the Bankruptcy Code, this Debtor holds no equitable interest in PACA Trust Assets. 11 U.S.C. § 541(d).

These cases, and many others with identical holdings, are consistent with the purpose of PACA:

If a buyer or receiver declares bankruptcy..., trust assets are not to be considered part of the estate to be distributed to other creditors or sold unless all trust beneficiaries have been paid.

49 Fed. Reg. at 45738 (emphasis added). Moreover, PACA trust creditors “are granted statutory priority in repayment, even senior to secured creditors.” *Sysco Food Services of Seattle, Inc.*, 245 B.R. 650, 652; *Middle Mountain Land and Produce Inc.*, 307 F.3d at 1224 (“Thus, the enactment of the PACA amendment elevated the claims of unpaid perishable agricultural commodities suppliers over all other creditors of the bankrupt estate with regard to funds in the PACA trust.”).

Due to the obvious dissipation of PACA Trust Assets, as that term is defined by 7 C.F.R. § 46.46(a)(2), Liberty Fruit is entitled to adequate protection in the form of immediate segregation and accounting of PACA Trust Assets as set forth further herein. *Frio Ice, S.A.*, 918 F.2d at 159 (If the trust is being dissipated or threatened with dissipation, the PACA debtor must separate and maintain Produce-related assets for the benefit of all unpaid sellers); *In re Kelly Food Products, Inc.*, *supra* (debtor ordered by Bankruptcy Court to immediately pay PACA Trust Assets to PACA trust creditors); *In re W.L. Bradley Co., Inc.*, 75 B.R. 505 (Bankr. E.D. Pa. 1987) (automatic stay lifted and immediate payment of trust proceeds required to the PACA trust beneficiaries); *In re Monterey House, Inc.*, 71 B.R. 244, 249 (S.D. Tex. 1986)

(PACA defendant ordered to disburse unpaid amounts held in trust, and retain remainder in segregated, interest-bearing account to be used to pay the PACA Trust beneficiaries' interest and attorneys' fees); *In re Fresh Approach*, 51 B.R. 412 (Bankr. N.D. Tex. 1985).

3. *The Need for Immediate Relief in this Case is Clear.*

The Debtor owes \$172,686.25, plus interest, costs, and attorney's fees to Liberty Fruit for the sale of Produce at the time this case began. The Debtor has not paid for the Produce, and by this case, has admitted it does not have sufficient funds to pay Liberty Fruit. There is also the risk that the Debtor may use proceeds from the sale of Produce to pay non-PACA related expenses such as taxes, secured lenders, payroll and overhead. This directly contravenes § 499e(c)(1), and the holdings of the several cases addressing this issue, including *C.H. Robinson Co. v. Trust Co. Bank, N.A.*, 952 F.2d 1311 (11th Cir., 1992), *E. Armata, Inc. v. Platinum Funding Corp.*, 887 F. Supp. 590 (S.D.N.Y., 1995), and *A & J Produce Corp. v. CIT Grp./Factoring, Inc.*, 829 F. Supp. 651 (S.D.N.Y. 1993). The dissipation and continuing threat of dissipation requires adequate protection of the PACA Trust Assets by a segregation and an immediate accounting of all PACA Trust Assets. *See Frio Ice, S.A. v. Sunfruit, Inc., supra*. Alternatively, the Court should lift the stay imposed by 11 U.S.C. § 362 and, order immediate payment to the PACA trust beneficiaries. *See In re Kelly Food Products, Inc., supra*.

Until Liberty Fruit and other similarly situated PACA Trust beneficiaries are paid, or sufficient funds are segregated to satisfy those PACA trust claims, this Court must enter an order prohibiting diversion of PACA Trust Assets. Otherwise, the statute has no force and the rights of the PACA trust beneficiaries are hollow.

D. Relief from Stay Warranted Under 11 U.S.C. § 362

Liberty Fruit also seeks relief from stay under 11 U.S.C. § 362(d), which provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if

(A) The debtor does not have an equity in such property; and

(B) Such property is not necessary to an effective reorganization;

11 U.S.C. § 362. The Court may grant relief from stay based on the lack of adequate protection. Additional authority to grant relief from stay is set forth in § 362(d)(2)(A), which permits relief from stay with respect actions against property which the debtor lacks an interest in.

As noted by the Third Circuit Court of Appeal, “the whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained pre-bankruptcy.” *In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (quoting *In re O’Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987)). As shown above, Liberty Fruit has at all times operated according to the terms of PACA, and has preserved their PACA trust rights. These steps have ensured that its “bargain” with the Debtor, specifically its right to payment from a floating trust over the Debtor’s receivables, will not be disrupted by any securitization device, any diversion of trust assets, or any bankruptcy proceeding. *In re Long John Silver’s Restaurants, Inc.*, 230 B.R. 29, 32 (Bankr. D. Del. 1999) (“[A] perfected PACA trust beneficiary is entitled to payment in full from the trust assets before payment to any other creditors, whether secured or unsecured.”) (emphasis added) (citing *In re Kornblum & Co.*, 81 F.3d 280, 284 (2d Cir. 1996)).

Yet the Debtor has confounded the rights of Liberty Fruit by diverting and continuing to divert receivables, cash and other assets. As noted by the Court in *In re Long John Silver’s*, “[t]hese [produce] suppliers are usually the least able to survive the delays and losses attendant to a bankruptcy filing by their buyers.” *In re Long John Silver’s*, 230 B.R. at 32.

Moreover, while Liberty Fruit is deprived of its rights, other creditors benefit from the payment of their prepetition claims. In short, the status quo

provides no benefit or protection to Liberty Fruit. Liberty Fruit is entitled adequate protection, and in the alternative to the other relief requested herein, submits that relief from stay is appropriate under § 362 (d)(2)(A).

E. Abandonment of Non-Estate Assets

Section 554(a) of the Code provides the Debtor-in-possession with authority to abandon property Debtor that is of inconsequential value and benefit to the estate. This is the case here as PACA Trust Assets are not assets of the estate, and provide no benefit to it, and should be abandoned by the Trustee.

F. Liberty Fruit's PACA Trust Claim Includes Interest, Costs and Attorneys' Fees

In the context of PACA, courts have determined that if there is an enforceable agreement between the buyer and seller of Produce, then attorney's fees and prejudgment interest should be awarded as "*sums owing in connection with*" the trust transactions. 7 U.S.C. § 499e(c)(2) (emphasis added); *Country Best v. Christopher Ranch, LLC*, 361 F.3d 629, 632 (11th Cir. 2004) ("...related expenses include attorney fees and interest that buyers and sellers have bargained for in their contracts.") *Coosemans Specialties, Inc. v. Gargiulo*, 485 F.3d 701, 709 (2d Cir. 2007) (awarding interest and attorneys' fees as "sums owing in connection" when included on invoices).

Here, an enforceable agreement exists between the Debtor and Liberty Fruit providing for attorney's fees. Liberty Fruit's invoices included other terms and conditions, contractually entitling it to reimbursement of its attorney's fees and costs associated with the collection of the amount due. They state:

Invoices over terms are past due. 2% interest per month will be charged on all accounts over 30 days. (24% per annum). Customer will assume all collection costs, including attorney's fees.

For this reason, Liberty Fruit's attorney's fees and costs are "sums owing in connection with" the underlying transactions. Liberty Fruit requests an award of contractual attorney's fees, costs and prejudgment interest in an amount to be determined by this Court.

IV. CONCLUSION

While the requested relief may, at first glance, seem extreme, the rights of Liberty Fruit as a PACA trust beneficiaries must be preserved, even at the risk of disrupting the normal administration of the Debtor's estate. *In re W.L Bradley Company, Inc.*, 75 B.R. 505, 514 (Bankr. E.D. Penn. 1987).

For the foregoing reasons, Liberty Fruit respectfully requests that this Court enter an Order:

1. Directing the Debtor to immediately pay \$172,686.25 owed to Liberty Fruit;

2. Directing the Debtor to immediately set aside the full \$172,686.25, plus interest, costs, and attorney's fees owed to Liberty Fruit in a segregated account to replace the PACA trust;

3. Granting relief from stay under 11 U.S.C. § 362;

4. Directing the Debtor to abandon the PACA Trust Assets in the amount of \$172,686.25, plus interest, costs and attorney's fees under § 554 to Liberty Fruit;

5. Pursuant to the equitable powers set forth in § 105, requiring the Debtor to promptly turnover to Liberty Fruit, the PACA Trust Assets in the Debtor's possession in the amount of \$172,686.25, plus interest, costs and attorney's fees; and

6. Such other and further relief as this Court deems just in these premises.

Respectfully submitted on August 5, 2025.

JONES & WALDEN LLC

/s/ Leslie M. Pineyro

Leslie M. Pineyro
Georgia Bar No. 969800
699 Piedmont Avenue NE
Atlanta, GA 30308
Telephone: (404) 564 9300
Facsimile: (404) 564 9301
lpineyro@joneswalden.com
*Local Counsel for Liberty Fruit
Company, Inc.*

ESQUIVEL LAW, CHARTERED

/s/ Katy Koestner Esquivel

Katy Koestner Esquivel
Admitted Pro Hac Vice
Florida Bar No. 0159484
Moorings Professional Building
2335 Tamiami Trail North, Suite 301
Naples, FL 34103-4457
Telephone: (239)206-3731
Facsimile: (239)431-3942
kke@esquivel-law.com
service@esquivel-law.com
Counsel for Liberty Fruit Company, Inc.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

OTB HOLDING LLC, *et al.*,

Debtors.

CHAPTER 11

Case No.: 25-52415-SMS

(Jointly Administered)

CERTIFICATE OF SERVICE

This is to certify that on the date indicated below, the foregoing *Notice of Hearing* ("Notice") and *Motion for Order Compelling Payment of Prepetition PACA Trust Claim, Relief from Stay, Abandonment, Turnover and Supporting Memorandum of Law* ("Motion") were electronically filed using the Bankruptcy Court's Electronic Case Filing program which sends a notice of and an accompanying link to the Notice and Motion to the following parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program:

- **Paul M. Alexander** Paul.Alexander@millermartin.com, paul.alexander@millermartin.com, lynne.nichols@millermartin.com, lisa.brown@millermartin.com
- **Kristen Amond** kristen@amondlaw.com
- **Joseph H Baldiga** jbaldiga@miricklaw.com
- **Jeffrey Bast** jbast@bastamron.com, amedina@bastamron.com; jmiranda@bastamron.com
- **Brooke Bean** bbean@kslaw.com, brooke-bean-2300@ecf.pacerpro.com
- **Dustin P. Branch** branchd@ballardspahr.com, carolod@ballardspahr.com; zarnighiann@ballardspahr.com
- **David L. Bury** dbury@stoneandbaxter.com, lchapman@stoneandbaxter.com; 7732720420@filings.docketbird.com; amoses@stoneandbaxter.com
- **John Francis Cartwright** cartwright@khlawfirm.com
- **Jessica Gabel Cino** cino@khlawfirm.com, patina@khlawfirm.com; daniella@khlawfirm.com
- **Jonathan D Clements** jclements@kecklegal.com
- **Shannah L Colbert** scolbert@miricklaw.com
- **Keisha O. Coleman** colemank@ballardspahr.com
- **Alysia Cordova** amabkr@pbfc.com, acordova@pbfc.com
- **Tate Crymes** tcrymes@stoneandbaxter.com, lchapman@stoneandbaxter.com; amoses@stoneandbaxter.com
- **Stephanie D Curtis** scurtis@curtislaw.net
- **Anthony J D'Artiglio** adartiglio@ansell.law, courtfilings@ansellgrimm.com

- **Nathaniel DeLoatch** nathanieldeloatch@eversheds-sutherland.us
- **Jeff Dutson** jdutson@kslaw.com
- **John D. Elrod** elrodj@gtlaw.com, fieldss@gtlaw.com, allison.mcgregor@gtlaw.com
- **Eric M. English** eenglish@porterhedges.com
- **Katy Koestner Esquivel** kke@esquivel-law.com, 7175526420@filings.docketbird.com;SERVICE@ESQUIVEL-LAW.COM
- **Ian M. Falcone** legalassistant@falconefirm.com
- **Jordan Bradley Forman** jforman@foxrothschild.com
- **Moe Freedman** freedmanM1@michigan.gov, mcdavism@michigan.gov
- **Jacob S. Frumkin** jfrumkin@coleschotz.com
- **Mark Gensburg** mgensburg@joneswalden.com
- **Andrew D. Gleason** agleason@lrglaw.com
- **Leslie C. Heilman** HeilmanL@ballardspahr.com, vesperm@ballardspahr.com; weidmanb@ballardspahr.com
- **Alan Hinderleider** Alan.Hinderleider@usdoj.gov
- **C. Joseph Hoffman** jhoffman@rhphllp.com, sschuler@rhphllp.com
- **Jon David W. Huffman** jondavid@poolehuffman.com, ecf@poolehuffman.com
- **M Shane Johnson** sjohnson@porterhedges.com
- **Sameer Kapoor** skapoor@phrd.com, elyttle@phrd.com
- **James A. Keefe** jkeefe@porterhedges.com
- **Sean C. Kulka** sean.kulka@agg.com
- **Jeffrey Kurtzman** kurtzman@kurtzmansteady.com
- **William Dale Matthews** wmatthews@rlkglaw.com, wmatthews@ecf.courtdrive.com; 2836@notices.nextchapterbk.com; 6717577420@filings.docketbird.com;emiller@rlkglaw.com;swenger@rlkglaw.com;emillerrlkg@ecf.courtdrive.com
- **Todd C Meyers** toddmeyers@eversheds-sutherland.com
- **Trey A. Monsour** tmonsour@foxrothschild.com, dandreacchi@foxrothschild.com
- **Philip Montgomery** montgomery@legacylawhs.com, cj@legacylawhs.com
- **Julie Anne Parsons** jparsons@mvalaw.com, theresa.king@mvalaw.com
- **Kristen N. Pate** bk@bpretail.com, kristen.pate@brookfieldpropertiesretail.com
- **Ryan Samuel Robinson** rrobinson@evict.net, ryan.s.robinson.esq@gmail.com
- **Dylan Franklin Rogers** drogers@evict.net
- **Paul M. Rosenblatt** prosenblatt@kilpatricktownsend.com, ecfnofices@ktslaw.com; moroberts@ktslaw.com
- **Philip L. Rubin** prubin@lrglaw.com
- **Diane Sanders** diane.sanders@lgbs.com, austin.bankruptcy@lgbs.com
- **Andres H. Sandoval** andres.sandoval@usdoj.gov, CaseView.ECF@usdoj.gov; deanna.lancaster@usdoj.gov

- **Edward Berk Sauls** berk@poolehuffman.com
- **Daniel T Seelos** dseelos@rhphllp.com, sschuler@rhphllp.com
- **Sara Shahbazi** shahbazis@ballardspahr.com
- **Brian L. Shaw** bshaw@cozen.com
- **Eric J Silver** esilver@stearnsweaver.com, mfernandez@stearnsweaver.com; fsanchez@stearnsweaver.com
- **Ruel William Smith** rsmith@hinshawlaw.com, dphangsang@hinshawlaw.com; TAMDocket@hinshawlaw.com
- **Tomasz A. Sobieraj** tsobieraj@satclaw.com
- **Alice Kyung Won Song** asong@kslaw.com
- **Kyle Spurgeon** kspurgeon@clarkhill.com, ecfnotifications@clarkhill.com; kwebster@clarkhill.com
- **Frederick D Stehlik** fstehlik@gwmclaw.com, hmessner@gwmclaw.com
- **Shayna M. Steinfeld** shayna@steinfeldlaw.com, paralegalnotices@gmail.com
- **Graham H. Stieglitz** gstiegli@burr.com, brobinson@burr.com
- **Joseph J. Swartz** ra-occbankruptcy2@state.pa.us, joseswartz@pa.gov
- **John A. Thomson** john.thomson@arlaw.com, lianna.sarasola@arlaw.com; vanessa.hargrow@arlaw.com
- **Ronald M Tucker** rtucker@simon.com, bankruptcy@simon.com
- **John Kendrick Turner** john.turner@lgbs.com
- **Samantha Tzoberi** sam@kbclegal.com
- **Margaret A. Vesper** vesperm@ballardspahr.com
- **Talia B. Wagner** talia.wagner@btlaw.com
- **Thomas R. Walker** thomas.walker@pierferd.com
- **David S. Weidenbaum** david.s.weidenbaum@usdoj.gov
- **Robert Patrick White** patrick.white@kershawwhite.com, susan.white@kershawwhite.com; sarah.schellhase@kershawwhite.com
- **Elizabeth Wiehle** ewiehle@pbfc.com
- **John J. Wiles** jjwiles@evict.net, bankruptcy@evict.net
- **Keyashia M. Willis** kwillis@barclaydamon.com, dmiller@barclaydamon.com
- **Stuart Freeman Wilson-Patton** agbankgeorgia@ag.tn.gov, Stuart.Wilson-Patton@ag.tn.gov
- **Harris Winsberg** hwinsberg@phrd.com
- **Samuel C. Wisotzkey** swisotzkey@kmksc.com, kmksc@kmksc.com
- **Joshua W. Wolfshohl** jwolfshohl@porterhedges.com
- **Lisa Wolgast** lisa.wolgast@btlaw.com, talia.wagner@btlaw.com, marisa.howell@btlaw.com, LOFarrell@btlaw.com

I further certify that on the date indicated below, I caused true and correct copies of the Notice and Motion to be served upon the parties listed on the *Limited Service List as of July 9, 2025* (Doc. No. 506) via U.S. First Class Mail, postage prepaid.

This 5th day of August, 2025.

JONES & WALDEN LLC

/s/ Leslie M. Pineyro

Leslie M. Pineyro

Georgia Bar No. 969800

699 Piedmont Avenue NE

Atlanta, GA 30308

(404) 564-9300

lpineyro@joneswalden.com

Counsel for Liberty Fruit Company, Inc.