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United States District Court  
Central District of California

DMB PACKING CORP.,  
Plaintiff,  
v.  
ELIBORIO RAMIREZ,  
Defendant.

Case No 2:20-cv-09013-ODW (AGRx)

**ORDER GRANTING IN PART AND  
DENYING IN PART RENEWED  
MOTION FOR ENTRY OF  
DEFAULT JUDGMENT [30]**

**I. INTRODUCTION**

Plaintiff DMB Packing Corp. filed this action to enforce its rights under the Perishable Agricultural Commodities Act (“PACA”), 7 U.S.C. § 499a-499t, as against Defendant Eliborio Ramirez. (Compl., ECF No. 1.) DMB now moves for entry of default judgment. (Renewed Mot. Default J. (“Motion” or “Mot.”), ECF No. 30.) For the following reasons, the Motion is **GRANTED IN PART** and **DENIED IN PART**.<sup>1</sup>

**II. BACKGROUND**

“The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true.” *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987) (per curiam)

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<sup>1</sup> Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 (citing *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977)). The  
2 well-pleaded factual allegations in DMB’s Complaint are as follows.

3 DMB sells and ships produce, and it is subject to and licensed under PACA.  
4 (Compl. ¶ 17.) Nonparty Poblano Fresh Produce Corp. buys and sells produce, and,  
5 like DMB, it is subject to and licensed under PACA. (*Id.* ¶¶ 9, 11.) Ramirez was an  
6 officer or director of Poblano. (*Id.* ¶ 6.)

7 Between October 9, 2019, and November 20, 2019, DMB sold Poblano a series  
8 of shipments of fresh produce. (*Id.* ¶ 12.) Poblano agreed to pay DMB a total principal  
9 amount of \$230,918.00 for the shipments. (*Id.*) DMB issued invoices with each  
10 shipment, and each invoice contained notice of DMB’s intent to preserve its statutory  
11 trust rights under PACA. (*Id.* ¶ 21, Ex. 1 (“Invoices”).) DMB alleges Poblano failed  
12 to pay DMB for the produce it purchased. (*Id.* ¶ 13.)

13 Based on these facts, DMB asserts that Ramirez breached his duties as a PACA  
14 trustee both by failing to pay for the produce, (*id.* ¶¶ 24–25), and by failing to preserve  
15 and maintain sufficient PACA trust assets to pay DMB for the produce, (*id.* ¶¶ 28–31,  
16 39–42). Accordingly, DMB sues Ramirez for violations of PACA, breach of fiduciary  
17 duty, unjust enrichment, conversion, and declaratory judgment.<sup>2</sup> (*See* Compl.)

18 On December 15, 2020, DMB served the Complaint by substitute service on  
19 Ramirez. (*See* Proof Service, ECF No. 9.) Ramirez failed to answer or otherwise  
20 respond to the Complaint, and on January 15, 2021, DMB requested entry of Ramirez’s  
21 default. (Req. Entry Default, ECF No. 11.) On January 19, 2021, the Clerk entered  
22 Ramirez’s default. (Entry Default, ECF No. 12.) On February 5, 2021, DMB filed its  
23 initial motion for default judgment. (1st Mot. Default J., ECF No. 14.)

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26 \_\_\_\_\_  
27 <sup>2</sup> DMB explains it did not join Poblano as a defendant because Poblano filed a Voluntary Petition  
28 under Chapter 7 in U.S. Bankruptcy Court for the Central District of California, Case No. 2:20-bk-  
11861-BR. (Compl. ¶ 7.) Therefore, including Poblano would have resulted in an automatic stay of  
this proceeding under 11 U.S.C. § 362. (*Id.*)

1 About one year prior, on February 20, 2020, Poblano initiated Chapter 7  
2 bankruptcy proceedings. (Pl.’s Mem. P. & A. (“Mem.”) 4, ECF No. 30-3.) Upon  
3 receiving notice of Poblano’s bankruptcy filing and giving parties the chance to respond,  
4 on August 3, 2021, the Court stayed this action pending the resolution of Poblano’s  
5 bankruptcy proceedings, holding DMB’s initial default judgment motion in abeyance.  
6 (Min. Order 3, ECF No. 21.) The bankruptcy court ultimately approved a single and  
7 final distribution of \$15,438.65 to DMB, and on January 13, 2022, Poblano’s  
8 bankruptcy trustee paid DMB this amount. (Mem. 4.) After receiving a final status  
9 report from DMB, on May 9, 2022, the Court lifted the stay in these proceedings. (Min.  
10 Order, ECF No. 29.) DMB now renews its Motion for Default Judgment.

### 11 III. LEGAL STANDARD

12 Plaintiffs seeking default judgment must meet the procedural requirements set  
13 forth in Federal Rule of Civil Procedure (“FRCP”) 55 and Local Rule 55-1. Local  
14 Rule 55-1 requires that motions for default judgment include a declaration identifying:  
15 (1) when and against which party default was entered; (2) the pleading to which default  
16 was entered; (3) whether the defaulting party is a minor, incompetent person, or active  
17 service member; (4) that the Servicemembers Civil Relief Act does not apply; and  
18 (5) that the defaulting party was properly served with notice, if required under  
19 FRCP 55(b)(2). C.D. Cal. L.R. 55-1.

20 Once the procedural requirements are satisfied, “[t]he district court’s decision  
21 whether to enter a default judgment is a discretionary one.” *Aldabe v. Aldabe*, 616 F.2d  
22 1089, 1092 (9th Cir. 1980). Generally, a defendant’s liability is conclusively  
23 established upon entry of default, and well-pleaded factual allegations in the complaint  
24 are accepted as true, except those pertaining to the amount of damages. *See TeleVideo*,  
25 826 F.2d at 917–18.

26 Still, “[a] defendant’s default does not automatically entitle the plaintiff to a  
27 court-ordered judgment.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1174  
28 (C.D. Cal. 2002). Rather, courts consider seven factors—the “*Eitel*” factors—in

1 deciding whether to grant default judgment: (1) the possibility of prejudice to the  
2 plaintiff; (2) the merits of the plaintiff’s substantive claim; (3) the sufficiency of the  
3 complaint; (4) the sum of money at stake; (5) the possibility of a dispute concerning  
4 material facts; (6) whether the defendant’s default was due to excusable neglect; and  
5 (7) the strong policy favoring decision on the merits. *Eitel v. McCool*, 782 F.2d 1470,  
6 1471–72 (9th Cir. 1986).

#### 7 IV. DISCUSSION

8 The Court considers, in turn, (A) whether DMB meets the procedural  
9 requirements for default judgment, (B) whether the *Eitel* factors support entry of default  
10 judgment, and (C) whether the relief requested, including the amount sought, is  
11 warranted.

##### 12 A. Procedural Requirements

13 As an initial matter, DMB satisfies the procedural requirements for entry of  
14 default judgment. DMB submits a declaration confirming that (1) on January 19, 2021,  
15 the Clerk entered default against Ramirez, (Decl. June Monroe (“Monroe Decl.”) ¶ 4,  
16 ECF No. 30-1), (2) the Clerk entered default based on DMB’s initial Complaint, (*id.*),  
17 (3) Ramirez is not a minor, incompetent, or in military service, (*id.* ¶ 19), and (4) the  
18 Servicemembers Civil Relief Act does not apply, (*id.*). Finally, FRCP 55(b)(2) does not  
19 require that DMB serve the Motion upon Ramirez.

##### 20 B. *Eitel* Factors

21 Considering the *Eitel* factors, the Court concludes that entering default judgment  
22 is appropriate here.

###### 23 1. *Prejudice to Plaintiff*

24 The Court first considers potential prejudice to the plaintiff if the Court denies  
25 default judgment. *Eitel*, 782 F.2d at 1471. Denial of default judgment engenders  
26 prejudice when it leaves a plaintiff without remedy or recourse. *Landstar Ranger, Inc.*  
27 *v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal. 2010) (finding prejudice  
28 where denying default judgment “would leave Landstar without a proper remedy”);

1 *PepsiCo*, 238 F. Supp. 2d at 1177. Here, Ramirez elected not to participate in this  
2 action, despite proper service. (See Monroe Decl. ¶ 4.) Absent a default judgment,  
3 DMB will have no recourse to recover for Ramirez’s nonpayment and PACA trust  
4 violations. This factor weighs heavily in favor of default judgment.

5 2. *Merits of Plaintiff’s Claims & Sufficiency of Complaint*

6 The second and third *Eitel* factors “require that a plaintiff state a claim on which  
7 the [plaintiff] may recover.” *Philip Morris USA, Inc. v. Castworld Prods., Inc.*,  
8 219 F.R.D. 494, 499 (C.D. Cal. 2003) (citing *PepsiCo*, 238 F. Supp. 2d at 1175).  
9 Although well-pleaded allegations in the complaint are admitted by the defendant’s  
10 failure to respond, “necessary facts not contained in the pleadings, and claims which  
11 are legally insufficient, are not established by default.” *Cripps v. Life Ins. Co. of N.*  
12 *Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992).

13 Here, DMB sets forth three claims for PACA violations, along with claims for  
14 breach of fiduciary duty, unjust enrichment, conversion, and declaratory relief. (See  
15 *generally* Compl.) The Court first considers the non-PACA-based claims, followed by  
16 the claims for PACA violations.

17 a. Non-PACA Claims

18 In its Motion, DMB entirely neglects to address its claims for breach of fiduciary  
19 duty, unjust enrichment, conversion, and declaratory judgment. (See *generally* Mem.)  
20 When a party moving for default judgment “does not address” claims asserted in the  
21 complaint, it is unclear whether the movant “intends to proceed” on or “withdraw those  
22 claims.” *Fernandez-Peralta v. Gamez*, No. CV 19-03749-CJC (MRWx), 2019 WL  
23 9240983, at \*3 (C.D. Cal. Nov. 7, 2019). Failure to discuss a claim renders a motion  
24 for default judgment “deficient” as to that claim “because it ignores key legal questions  
25 and therefore fails to properly address the second and third *Eitel* factors.” See *id.* Thus,  
26 this Court will not enter default judgment against Ramirez based on DMB’s  
27 unaddressed claims for unjust enrichment, breach of fiduciary duty, conversion, and  
28

1 declaratory judgment. Instead, as DMB appears to have abandoned these claims, the  
2 Court dismisses these claims with prejudice.

3 b. Enforcement of Statutory Trust Provisions of PACA

4 DMB brings its first claim against Ramirez to enforce the trust provisions of  
5 PACA contained in 7 U.S.C. § 499e(c). Under PACA, “a buyer’s produce, products  
6 derived from that produce, and the proceeds gained therefrom are held in a non-  
7 segregated, floating trust for the benefit of the unpaid suppliers who have met the  
8 applicable statutory requirements.” *King v. Hartford Packing Co., Inc.*, 189 F. Supp.  
9 2d 917, 925 (N.D. Ind. 2002). Thus, “PACA provides certain unpaid sellers of produce  
10 an interest in the trust assets superior to that of a perfected, secured creditor.” *Id.*

11 To enforce a trust under PACA, a seller must demonstrate that (1) it sold  
12 perishable agricultural commodities in interstate commerce, (2) the purchaser of the  
13 perishable agricultural commodities was a commission merchant, dealer, or broker,  
14 (3) the seller has not received full payment on the transaction, and (4) the seller  
15 preserved its trust rights by giving written notice to the purchaser within the time  
16 provided by the law. 7 U.S.C. § 499e(c)(3)–(4); 7 C.F.R. §§ 46.2(z)–(aa), 46.46(c), (f).

17 In its Complaint, DMB sufficiently alleges the first three elements. (*See* Compl.  
18 ¶¶ 9–13.) Moreover, in satisfaction of element four, DMB’s Complaint incorporates  
19 invoices reflecting the produce DMB sold to Poblano, and the invoices contain the  
20 written notice required by PACA to preserve DMB’s statutory trust rights. (*See*  
21 *Invoices.*)

22 Further, DMB alleges in its Complaint that Ramirez was “an officer, director,  
23 and/or shareholder of Poblano” who controlled its “operations and financial dealings,  
24 including those involving the PACA Trust Assets.” (Compl. ¶¶ 6, 41.) DMB  
25 substantiates this allegation by showing that the USDA’s database of PACA licensees  
26 lists Ramirez as Poblano’s sole principal. (Monroe Decl. Ex. 3 (“PACA Search”), ECF  
27 No. 30-1.) As such, Ramirez may be held personally liable under PACA. *See Sunkist*  
28 *Growers, Inc. v. Fisher*, 104 F.3d 280, 283 (9th Cir. 1997) (“[I]ndividual shareholders,

1 officers, or directors of a corporation who are in a position to control PACA trust assets,  
2 and who breach their fiduciary duty to preserve those assets, may be held personally  
3 liable under the Act.”).

4 For these reasons, the Court finds that DMB’s first cause of action is sufficiently  
5 alleged and substantively meritorious.

6 c. Failure to Maintain PACA Trust Assets

7 DMB brings its second claim against Ramirez for failure to maintain PACA trust  
8 assets. A PACA trustee is “required to maintain trust assets in a manner so that the trust  
9 assets are freely available to satisfy outstanding obligations to sellers of perishable  
10 agricultural commodities. Any act or omission which is inconsistent with this  
11 responsibility . . . is unlawful and in violation of” PACA. 7 C.F.R. § 46.46(d)(1); 7  
12 U.S.C. § 499b(4).

13 DMB also sufficiently pleads this cause of action. DMB sold produce to Poblano  
14 and sent an invoice for payment, preserving DMB’s trust rights under PACA. Thus,  
15 Poblano “had an obligation under PACA to maintain trust assets in a manner that could  
16 satisfy its debt to [Poblano].” *Produce Pay, Inc. v. Amore Produce, LLC*, No. 7:20-cv-  
17 00293, 2021 WL 5155712, at \*6 (S.D. Tex. May 14, 2021). Moreover, while “PACA  
18 liability attaches first to the licensed seller,” “[i]f the seller’s assets are insufficient to  
19 satisfy the liability, others may be found secondarily liable if they had some role in  
20 causing the corporate trustee to commit the breach of trust.” *Sunkist Growers*, 104 F.3d  
21 at 283; *see Morris Okun, Inc. v. Harry Zimmerman, Inc.*, 814 F. Supp. 346, 348  
22 (S.D.N.Y. 1993) (“[A] PACA trust in effect imposes liability on a trustee, whether a  
23 corporation or a controlling person of that corporation, who uses the trust assets for any  
24 purpose other than repayment of the supplier.”). DMB alleges that instead of  
25 maintaining the trust assets, Ramirez “transferred or diverted the trust assets . . . to  
26 Ramirez[’s] own use and/or to an unknown third party or parties.” (Compl. ¶ 30.)  
27 Moreover, DMB substantiates this allegation by attesting that the corporate trustee,  
28 Poblano, has insufficient assets to compensate DMB for its loss and that Ramirez is

1 responsible for the breach of trust. (See Monroe Decl. ¶ 20.) The Court finds that  
2 DMB’s second cause of action is sufficiently alleged and substantively meritorious.

3 d. Failure to Account and Pay Promptly

4 Under PACA, it is unlawful for any “commission merchant, dealer, or broker” to  
5 fail to “make full payment promptly” to sellers of produce. 7 U.S.C. § 499b(4).  
6 Generally, “prompt” payment means payment within ten days. 7 C.F.R. § 46.2(aa).  
7 However, the “buyer and seller may agree to extend the time for payment, as long as  
8 the aggregate time for payment does not exceed thirty days after the buyer receives and  
9 accepts the commodities.” *Produce Pay*, 2021 WL 5155712, at \*6 (citing 7 C.F.R.  
10 §46.46(1), (2)).

11 Here, DMB alleges that despite repeated demands, Ramirez has “failed and  
12 refused to truly, correctly and accurately account for and make full payment.” (Compl.  
13 ¶ 35.) Because it has been well over thirty days since the Poblano received and accepted  
14 the produce, the Court finds that DMB’s third cause of action is sufficiently alleged and  
15 substantively meritorious.

16 3. *Sum of Money at Stake*

17 The fourth *Eitel* factor balances “the amount of money at stake in relation to the  
18 seriousness of [the] Defendant’s conduct.” *PepsiCo*, 238 F. Supp. 2d at 1176; *Eitel*,  
19 782 F.2d at 1471. The amount at stake must be proportionate to the harm alleged.  
20 *Landstar*, 725 F. Supp. 2d at 921.

21 At root, DMB seeks no more and no less than the damages that arise directly from  
22 Poblano’s nonpayment, and so the amount of money at stake in this action is  
23 axiomatically proportionate to the harm DMB incurred. DMB requests a principal  
24 amount of \$230,918.00, prejudgment interest at the contracted rate, court costs, and  
25 postjudgment interest from the date of judgment to the date judgment is satisfied.  
26 (Mem. 9.) DMB therefore requests compensatory damages equal in measure to the  
27 harm it incurred due to Ramirez’s failure to timely pay DMB. Accordingly, this factor  
28 weighs strongly in favor of entry of default judgment.



1           4.     *Remaining Factors*

2           The remaining *Eitel* factors all favor default judgment. The fifth *Eitel* factor  
3 relates to the possibility of a dispute over material facts, and nothing in the record  
4 suggests Poblano paid for the produce DMB shipped. *PepsiCo*, 238 F. Supp. 2d  
5 at 1177. The disposition of the bankruptcy proceedings further confirms that there is  
6 no dispute over Poblano and Ramirez’s nonpayment.

7           Under the sixth *Eitel* factor, courts consider whether defendant’s default is the  
8 result of excusable neglect, and there are no facts before the Court suggesting such  
9 neglect. *Eitel*, 782 F.2d at 1472; (Monroe Decl. ¶ 4). The seventh and final  
10 consideration under *Eitel* is that “default judgments are ordinarily disfavored. Cases  
11 should be decided on their merits whenever reasonably possible.” *Eitel*, 782 F.2d  
12 at 1472. However, because Ramirez has not responded to the Summons or Complaint,  
13 rendering a decision on the merits is not possible. *See PepsiCo*, 238 F. Supp. 2d at 1117  
14 (finding that where a defendant fails to answer a complaint, “a decision on the merits  
15 [is] impractical, if not impossible”).

16           In summary, after considering the *Eitel* factors, the Court finds it appropriate to  
17 enter default judgment against Ramirez.

18     **C.     Requested Relief**

19           DMB requests an award of (1) principal in the cumulative amount of  
20 \$230,918.00, (2) prejudgment interest on the principal balance to DMB through and  
21 including June 27, 2022, in the amount of \$109,682.64, (3) court costs to DMB in the  
22 amount of \$596.50, and (4) postjudgment interest on the principal balance at the rate of  
23 18% per annum until fully paid. (Mem. 8–9; Compl., Prayer for Relief; Monroe Decl.  
24 ¶ 16.)

25           1.     *Principal*

26           First, DMB’s request to be repaid the \$230,918.00 of the principal is justified.  
27 DMB supplies invoices establishing that this is the total amount Poblano agreed to pay  
28

1 but did not pay. (See Invoices; Compl. ¶ 13.) Therefore, the Court grants an award of  
2 principal damages of \$230,918.00.

3           2.     *Prejudgment Interest*

4           Next, DMB seeks \$109,682.64 in prejudgment interest on the principal balance  
5 that accrued through and including June 27, 2022. (Mem. 9.) DMB seeks prejudgment  
6 interest at the rate of 18%, based on language in the invoices indicating that “1.5% per  
7 month will be charged on all past due accounts (18% annual percentage rate).” (See  
8 Invoices.)

9           “Prejudgment interest is an element of compensation, not a penalty.” *Dishman*  
10 *v. UNUM Life Ins. Co. of Am.*, 269 F.3d 974, 988 (9th Cir. 2001). In cases involving  
11 PACA trust enforcements, courts may properly award prejudgment interest if supported  
12 by a contractual right. *Middle Mountain Land & Produce Inc. v. Sound Commodities*  
13 *Inc.*, 307 F.3d 1220, 1223 (9th Cir. 2002). In such cases, courts typically defer to the  
14 contracted interest rate. See, e.g., *W. Veg-Produce, Inc. v. Lexy Grp.*, No. 2:18-cv-  
15 00180-ODW (AGRx), 2018 WL 1804689, at \*7 (C.D. Cal. Apr. 16, 2018) (awarding  
16 prejudgment interest at the contracted rate of 18% per year in a PACA case); *Fam. Tree*  
17 *Produce, Inc. v. Bautista*, No. SA CV 13-00364-DOC (MLGx), 2013 WL 6733576,  
18 at \*5 (C.D. Cal. Dec. 13, 2013) (same, upon motion for default judgment).  
19 Prejudgment interest stops accruing, and postjudgment interest begins accruing, at the  
20 “final, appealable judgment.” *Dishman*, 296 F.3d at 991.

21           Here, DMB’s request for \$109,682.64 in prejudgment interest appears erroneous  
22 because it does not account for the distribution from the bankruptcy trustee. DMB  
23 submits an Interest Spreadsheet containing an Amortization Schedule that sets forth the  
24 interest accrued since October 2019. (Monroe Decl. Ex. 2 (“Interest Spreadsheet”),  
25 ECF No. 30-1.) Each of the first fourteen lines, labeled “Loan,” represents a single  
26 unpaid invoice and shows, in the first two columns, (1) the date that invoice became  
27 due and (2) the amount owed under that the invoice. The other figures on each line  
28 show accrued amounts (paid and payable) as of that particular date. The line labeled

1 “1,” near the bottom, represents the \$15,438.65 bankruptcy distribution, which DMB  
2 received on January 13, 2022, and applied to the interest. After payment of that amount,  
3 the interest due as of January 13, 2022, was \$75,454.22.

4 No further payments were made after that point. The next line, labeled “2,”  
5 shows the state of the account as of June 27, 2022. That line shows that, between  
6 January 13, 2022, and June 27, 2022, an additional \$18,789.77 in interest accrued,  
7 bringing the total interest owed at that point to  $\$75,454.22 + \$18,789.77 = \underline{\$94,243.99}$ .  
8 This is the figure that appears to the Court to be the amount of prejudgment interest that  
9 Ramirez owed as of June 27, 2022, and thus it appears to be the proper amount of  
10 prejudgment interest to award.

11 DMB’s erroneous request for \$109,682.64 appears twice on the “Grand Totals”  
12 line, once under “Interest Accrued” and once under “Interest Paid.” (*Id.*) DMB’s error  
13 is that both these figures represent *all* the prejudgment interest, paid and unpaid, that  
14 accrued up to June 27, 2022; the bankruptcy distribution is not deducted. Subtracting  
15 the bankruptcy distribution of \$15,438.65 from the total “Interest Accrued”/“Interest  
16 Paid” figure results in \$94,243.99, which verifies that this is the correct amount of  
17 prejudgment interest to award. (*Id.*) As DMB apparently requested an amount that does  
18 not account for the bankruptcy distribution, the Court awards prejudgment interest in  
19 the adjusted amount of \$94,243.99.

### 20 3. *Costs*

21 In addition, DMB seeks reimbursement of court costs in the amount of \$596.50.  
22 Filing fees and fees for service of process are recoverable under PACA. *See e.g., W.*  
23 *Veg-Produce*, 2018 WL 1804689, at \*8 (awarding filing and service costs to the  
24 prevailing party in a PACA default judgment); *Fam. Tree Produce*, 2013 WL 6733576,  
25 at \*6 (same). The Court’s docket reflects payment of the \$400 filing fee, and DMB  
26 submits a receipt for service of process showing a fee of \$196.50. (*See Decl. Jason*  
27 *Read Ex. 2 (“Process Invoice”), ECF No. 14-1.*) Accordingly, the requested costs are  
28 supported by the record, and the Court grants DMB’s costs in the amount of \$596.50.

1           4.     *Postjudgment Interest*

2           Finally, DMB seeks postjudgment interest on the principal balance at the rate of  
3 18% per year until fully paid. (Mot. 9.) Pursuant to 28 U.S.C. § 1961(a), postjudgment  
4 interest is appropriate on any money judgment in a civil case recovered in a district  
5 court. *See Trs. of Operating Eng'rs Pension v. Joel Silverman & Assocs., Inc.*, No. CV  
6 08-5410 GAF (CTx), 2009 WL 10670632, at \*6 (C.D. Cal. Jan. 30, 2009). However,  
7 “[p]ost-judgment interest is generally governed by 28 U.S.C. § 1961, which mandates  
8 the awarding of postjudgment interest according to the federal rate.” *Progressive*  
9 *Produce Corp. v. Wild W. Produce, LLC*, No. CV 13-0665-RSWL (PJWx), 2013 WL  
10 1935921, at \*2 (C.D. Cal. May 9, 2013). The federal postjudgment interest rate is  
11 “calculated from the date of the entry of the judgment, at a rate equal to the weekly  
12 average 1-year constant maturity Treasury yield, as published by the Board of  
13 Governors of the Federal Reserve System, for the calendar week preceding the date of  
14 the judgment.” 28 U.S.C. § 1961(a).

15           The cases that DMB cites in support of its argument for an 18% interest rate are  
16 either nonbinding or inapposite. The Ninth Circuit in *Citicorp Real Estate, Inc. v. Smith*,  
17 155 F.3d 1097, 1108 (9th Cir. 1998), awarded postjudgment interest at a rate of 18%  
18 after an arbitrator had awarded 18% interest “until judgment or paid in full.” No such  
19 arbitration has taken place in the instant action. Indeed, the court in *Citicorp Real Estate*  
20 noted that postjudgment interest is “governed by federal law.” *Id.* at 1107–08 (citing  
21 *AT&T Co. v. United Comput. Sys., Inc.*, 98 F.3d 1206, 1209 (9th Cir. 1996)).

22           Here, DMB fails in its burden of demonstrating that the parties “contractually  
23 waived their right to have post-judgment interest calculated at the federal statutory rate,”  
24 *id.* at 1108, or that the contracts otherwise call for postjudgment interest at an 18% rate.  
25 Instead, the Court awards DMB postjudgment interest at the statutory rate. *See*  
26 *Progressive Produce*, 2013 WL 1935921, at \*2 (“Because Plaintiff has not set forth  
27 sufficient evidence to support its request for postjudgment interest at the rate of 18%  
28 per annum, Plaintiff is only entitled to postjudgment interest calculated at the federal

1 rate pursuant to Section 1961.”); *Fam. Tree Produce*, 2013 WL 6733576, at \*7  
2 (awarding postjudgment interest at federal statutory rate and noting that “Plaintiff does  
3 not have a contractual right to postjudgment finance charges”). The Court grants DMB  
4 postjudgment interest at the rate set forth in 28 U.S.C. § 1961(a).

5 **V. CONCLUSION**


6 For the reasons stated above, the Court **GRANTS IN PART** and **DENIES IN**  
7 **PART** DMB’s Motion for Default Judgment. (ECF No. 30.) As to Defendant Eliborio  
8 Ramirez, the court hereby:

- 9 • **GRANTS** default judgment in the amount of **\$325,758.49** on DMB’s  
10 Claims One, Two, and Three for PACA violations, comprising a principal  
11 balance in the amount of \$230,918.00, prejudgment interest in the amount  
12 of \$94,243.99; and costs in the amount of \$596.50;  
13 • **AWARDS** DMB postjudgment interest at the rate established by  
14 28 U.S.C. § 1961; and  
15 • **DISMISSES** DMB’s Claims Four, Five, Six, and Seven **WITH**  
16 **PREJUDICE**.

17  
18 The Court will issue Judgment.

19  
20 **IT IS SO ORDERED.**

21  
22 July 25, 2022

23  
24   
25 **OTIS D. WRIGHT, II**  
26 **UNITED STATES DISTRICT JUDGE**