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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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6 **CHOUMAS PRODUCE CO., INC.,**
7 **Plaintiff,**
8 **v.**
9 **ACADEMY FRUIT SALES, LLC, et al.,**
10 **Defendants.**
11

1:18-cv-457-LJO-SKO

**MEMORANDUM DECISION AND
ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF'S EX PARTE
APPLICATION FOR IMMEDIATE
ORDER APPROVING SETTLEMENT
AGREEMENT AND ENTRY OF
JUDGMENT (ECF No. 4)**

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13 This case concerns agricultural commodities transactions governed by the Perishable
14 Agricultural Commodities Act ("PACA"), 7 U.S.C. § 499e. The Complaint, filed today, alleges that
15 Defendants owe Plaintiff close to \$500,000.00 as a result of a series of such transactions. ECF No. 1.
16 Before the Court for decision is Plaintiff Choumas Produce Company, Inc.'s *ex parte* application for
17 entry of an order approving a stipulated settlement agreement between it and the Defendants in this case.
18 ECF No. 4. According to the *ex parte* application, the terms of the stipulation required Defendants to
19 make payments to Plaintiff at specified times and in specified amounts. *Id.* at ¶ 1. Also according to the
20 *ex parte* application, Defendants have defaulted on the terms of the stipulation by not timely remitting
21 one or more payments. *Id.* at ¶ 4. Under the terms of the stipulation as presented to the Court, "judgment
22 may be entered on an *ex parte* basis, predicated solely on the Stipulation and the fact that Defendants
23 have defaulted by failing to abide by the terms of the Stipulation, subject only to the Defendants' right to
24 challenge (a) whether a default has, in fact, occurred, or (b) whether there is any dispute about the
25 amounts received by Plaintiff or net balance due to Plaintiffs." *Id.* at ¶ 5.

1 First, according to Plaintiff's own filings, there is no basis for this to proceed on an ex parte
2 basis, as the stipulation permits Defendants an opportunity to object on various grounds. Second,
3 although nothing in the papers explicitly requests emergency treatment of the motion, that request is
4 implied by the circumstances, namely the filing of this motion on an ex parte basis before proofs of
5 service of the Complaint have been returned, and the terms of the stipulation, which provide for
6 immediate entry of judgment upon default. However, movant has presented absolutely no basis upon
7 which to find that there is an emergency here. Temporary Restraining Orders are available in PACA
8 cases under certain circumstances, e.g., threatened dissipation of PACA trust assets, *see T.Q.M. Food*
9 *Serv., Inc. v. Santanas Grill, Inc.*, No. 12CV1254-IEG(MDD), 2012 WL 12872452, at *2 (S.D. Cal.
10 June 6, 2012) (finding grounds for ex parte TRO in PACA case where Defendants were "presently
11 engaged in dissipating the assets they are required to keep in trust under PACA"). While the Complaint
12 in this case contains generic allegations that trust assets are being dissipated, ECF No. 1 at ¶ 27, Plaintiff
13 has submitted no evidence (either in the form of a declaration or a verified complaint) to demonstrate
14 that trust assets are actually threatened with dissipation in this case. Under Rule 65(b), a temporary
15 restraining order may be granted without notice to the adverse party only if: (1) it clearly appears from
16 specific facts shown by affidavit or verified complaint that immediate and irreparable injury, loss, or
17 damage will result before the adverse party can be heard in opposition, and (2) the applicant's attorney
18 certifies the reasons that notice should not be required. Rule 65(b)'s requirements are "stringent," and
19 temporary restraining orders that are granted ex parte are to be "restricted to serving their underlying
20 purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold
21 a hearing, and no longer." *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 438-
22 39 (1974); *Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1130-31 (9th Cir. 2006).

23 This is among the busiest district courts in the United States. The Court has rules about ex parte
24 motions and about emergency motions both to protect the due process rights of the parties and to protect
25 the ability of the Court to handle its existing, crushing caseload in an orderly and timely manner.

1 Movants have presented no authority to support the insupportable proposition that the parties can
2 contract around this Court's rules. The motion is therefore **DENIED WITHOUT PREJUDICE** to its
3 renewal if supported by appropriate evidentiary showings required by Rule 65 and Local Rule 231.

4 Otherwise, Plaintiffs must file and serve on Defendants a properly noticed motion.

5 IT IS SO ORDERED.

6 Dated: April 4, 2018

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE

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