

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREENGATE FRESH, LLLP, *et al.*,

 Plaintiffs,

 v.

TRINITY FRESH PROCUREMENT,
LLC, *et al.*,

 Defendants.

Case No. 2:18-cv-03161-JAM-JDP

FINDINGS AND RECOMMENDATIONS
THAT INTERVENOR’S MOTION FOR
DEFAULT JUDGMENT BE GRANTED

OBJECTIONS DUE IN 14 DAYS

ECF No. 17

Consolidated plaintiffs are creditors and beneficiaries under the trust provisions of the Perishable Agriculture Commodities Act (“PACA”), 7 U.S.C. § 499e(c)(2). *See* ECF No. 1. On February 28, 2019, the court issued a preliminary injunction to preserve PACA trust assets and allow plaintiffs to collect payment. *See* ECF No. 47. Plaintiffs then served intervenor Produce Pay, Inc., with a demand for payment and discovery requests. *See* ECF No. 76 at 10. On April 22, 2019, intervenor filed a Complaint in Intervention for Declaratory Judgment under 28 U.S.C. § 2201(a), seeking to clarify the rights and legal relations between intervenor and the three defendants: Trinity Fresh Procurement, LLC; Trinity Fresh Management, LLC; and Trinity Fresh Distribution, LLC. *Id.* at 2-3. In particular, intervenor seeks to establish that the accounts receivable purchased by intervenor do not qualify as PACA trust res. *See id.* at 5-6.

On October 27, 2019, defendants’ authorized agent was served with a copy of the summons and intervenor complaint by a process server, and defendants were mailed copies. ECF Nos. 144, 145, 146. Defendants did not timely answer the intervenor complaint. On March 3, 2020, the clerk of the court entered defendants’ default. ECF No. 151. On March 1, 2021,

1 intervenor moved for default judgment against defendants, seeking entry of a declaratory
2 judgment. ECF No. 159 at 2. The motion was scheduled for a hearing on April 1, 2020.
3 Defendants did not appear.¹

4 I recommend that the court grant intervenor’s motion for default judgment, ECF No. 159,
5 and enter a declaratory judgment establishing that: (1) the factoring agreement between
6 intervenor and defendants constituted a true sale of specified produce-related accounts receivable,
7 (2) intervenor’s payment of the agreed-upon purchase price to defendants extinguished any and
8 all PACA trust rights or obligations that may have been impressed on the produce-related
9 accounts receivable, and (3) the agreed-upon purchase price for each produce-related account
10 receivable was commercially reasonable.

11 I. DISCUSSION

12 “When a party against whom a judgment for affirmative relief is sought has failed to plead
13 or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the
14 party’s default.” Fed. R. Civ. P. 55(a). Federal Rule of Civil Procedure 55(b)(2) allows a court to
15 enter judgment against a party that has defaulted. The decision to do so is “discretionary,”
16 *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980), but guided by several factors. As a
17 preliminary matter, courts must assess the adequacy of service on the party against whom the
18 default judgment would be entered. *See Cranick v. Niagara Credit Recovery, Inc.*, No. 1:13-CV-
19 671-LJO-GSA, 2014 WL 325321, at *1 (E.D. Cal. Jan. 28, 2014); *see also Omni Capital Int’l.,*
20 *Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987) (“[B]efore a federal court may exercise
21 personal jurisdiction over a defendant, the procedural requirement of service of summons must be
22 satisfied.”).

23 Service on defendants was appropriate, and the clerk properly entered their default on
24 March 3, 2020. *See* ECF No. 151. Federal Rule of Civil Procedure 4(h) allows service on a
25 corporation to occur by “by delivering a copy of the summons and of the complaint to an officer,
26 a managing or general agent, or any other agent authorized by appointment or by law to receive

27 ¹ Plaintiffs’ counsel appeared on April 1, 2020, in order to inform the magistrate court that
28 plaintiffs do not object to the court granting intervenor’s motion for default judgment.

1 service of process and—if the agent is one authorized by statute and the statute so requires—by
2 also mailing a copy of each to the defendant.” Here, the summons and complaint were served
3 personally on an authorized agent and mailed to defendants on October 27, 2019. ECF Nos. 144,
4 145, 146. Since being served, defendants have filed no pleadings and have not otherwise shown
5 an intent to contest intervenor’s claims. Therefore, when defendants failed to respond, they
6 defaulted.

7 Defendants’ default does not by itself entitle intervenor to a court-ordered judgment. I
8 must consider discretionary factors before rendering a decision, including: (1) possible prejudice
9 to the intervenor, (2) the merits of intervenor’s claim, (3) the sufficiency of the complaint, (4) the
10 sum of money at stake, (5) the possibility of a factual dispute, (6) whether the default was
11 potentially due to excusable neglect, and (7) the general policy that cases be decided on the
12 merits.² See *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). In considering these
13 factors, “the factual allegations of the complaint, except those relating to the amount of damages,
14 will be taken as true.” *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). I
15 consider the *Eitel* factors in turn:

16 **a. Prejudice**

17 Intervenor seeks declaratory relief to clarify legal rights and obligations between the
18 parties, but defendants have not filed any responsive pleadings. As argued by intervenor, if
19 questions about the parties’ rights and obligations were to remain unresolved, it could cause
20 “uncertainty in factoring transactions with future potential produce dealers who wish to factor
21 their produce-related accounts receivable, which could needlessly deter produce dealers from
22 doing business with [intervenor] in the future.” ECF No. 159 at 15. Entry of default judgment
23 would prevent this possible prejudice to intervenor. See *Eitel*, 782 F.2d at 1471-72.

24 **b. Merits and Sufficiency of Allegations**

25 As for factors two and three, intervenor sufficiently pled factual allegations that—

26 _____
27 ² The court’s analysis of the *Eitel* factors is not impacted by the fact that intervenor seeks
28 declaratory relief. See, e.g., *Maxum Indem. Co. v. Kaur*, No. 1:17-CV-01467-LJO-JLT, 2019 WL
7605677, at *1-2 (E.D. Cal. Jan. 9, 2019); *JPMorgan Chase Bank, N.A. v. Yamasse Tribal
Nation*, No. 1:17-CV-00759-LJO-EPG, 2018 WL 3629940, at *4 (E.D. Cal. July 30, 2018).

1 accepted as true—entitle intervenor to the declaratory judgment sought. “[I]n a case of actual
2 controversy within its jurisdiction,” a court may “declare the rights . . . of any interested party
3 seeking such declaration.” 28 U.S.C. § 2201(a); *see also McGraw-Edison Co. v. Performed Line*
4 *Prod. Co.*, 362 F.2d 339, 342 (9th Cir. 1966) (“The purpose of the Declaratory Judgment Act is to
5 afford an added remedy to one who is uncertain of his rights and who desires an early
6 adjudication thereof without having to wait until his adversary should decide to bring suit, and to
7 act at his peril in the interim.”). A “case of actual controversy” exists when there is a “substantial
8 controversy, between parties having adverse legal interests, of sufficient immediacy and reality to
9 warrant the issuance of a declaratory judgment,” and the controversy relates to a claim upon
10 which relief can be granted. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007). The
11 case or controversy requirement is satisfied when a plaintiff has “a real and reasonable
12 apprehension that he will be subject to liability.” *Societe de Conditionement en Aluminium v.*
13 *Hunter Eng’g Co.*, 655 F.2d 938, 944 (9th Cir. 1981).

14 Intervenor requests a declaratory judgment that would clarify PACA rights and
15 obligations. ECF No. 76 at 6-10. PACA “creates a statutory trust for unpaid sellers [or suppliers]
16 of perishable agricultural commodities and provides that all such commodities, as well as
17 accounts receivable from the sale of such commodities, ‘shall be held by . . . [the produce dealer]
18 in trust for the benefit of all unpaid suppliers or sellers of such commodities . . . until full payment
19 . . . has been received.’” *Gargiulo v. G. M. Sales*, 131 F.3d 995, 999 (11th Cir. 1997) (quoting 7
20 U.S.C. § 499e(c)(2)). The trust thereby grants produce suppliers priority in the assets of accounts
21 receivable over an insolvent produce dealer’s other creditors. Due to the ongoing obligation
22 owed to trust beneficiaries, a trustee of a PACA trust must not act in a way that would impair the
23 ability of produce suppliers to recover owed money. *See* 7 C.F.R. § 46.46. A commercially
24 reasonable sale of accounts receivable does not impair the ability of produce suppliers to recover
25 owed money, but rather converts the assets into cash that is more readily available to suppliers.
26 *See S & H Packing & Sales Co. v. Tanimura Distrib., Inc.*, 883 F.3d 797, 803 (9th Cir.
27 2018). Hence, when a factoring agreement effects a commercially reasonable sale, the agreement
28 removes the accounts receivable from the PACA trust. *Id.* at 813. In determining commercial

1 reasonability, courts must first conduct a threshold true sale inquiry that distinguishes between
2 sales and other arrangements. *Id.* at 801. The primary factor in determining whether a true sale
3 has occurred is transfer of risk. *Id.* at 813.

4 Intervenor’s factual assertions sufficiently establish the basis for granting a declaratory
5 judgment. On October 17, 2018, intervenor entered into a factoring agreement with defendants
6 for certain produce-related accounts receivable. ECF No. 76 at 6. As part of the agreement,
7 defendants fully transferred all rights, titles, and interests in these accounts. *Id.* at 7. The sale of
8 each account receivable was memorialized through a bill of sale. *Id.* The factoring agreement
9 required no collateralization or securitization—as might be expected in an arrangement other than
10 a sale, such as a loan. *Id.* at 9. Intervenor assumed all risk of non-payment. *Id.* at 6-8. Since the
11 primary factor in determining whether a true sale has occurred is risk factor, the factoring
12 agreement was a true sale. *See S & H Packing*, 883 F.3d at 813. As for whether the agreed-upon
13 purchase price was commercially reasonable, I consider the discount received by intervenor—
14 which, in this case, was a 20% reduction from the accounts’ face value. ECF No. 76 at 7.
15 Although every case is different, “a factoring discount of 20% was never shown to be
16 commercially unreasonable.” *Boulder Fruit Exp. & Heger Organic Farm Sales v. Transportation*
17 *Factoring, Inc.*, 251 F.3d 1268, 1272 (9th Cir. 2001), overruled on other grounds by *S & H*
18 *Packing*, 883 F.3d at 801-02. I find the discount to have been reasonable in this case, considering
19 the effort and time that intervenor was expected to invest in collecting on the accounts.

20 I therefore find that the factoring agreement formalized a commercially reasonable, true
21 sale, and that the PACA trustee did not breach its duties in entering into the agreement. *See S &*
22 *H Packing*, 883 F.3d at 803. The factoring agreement thus removed the accounts receivable from
23 the trust. *See id.* at 813.

24 **c. Remaining Eitel Factors**

25 Based on intervenor’s well-pleaded complaint, defendants’ failure to appear and contest
26 the allegations contained therein, and the absence of any objection from plaintiffs, the possibility
27 of a factual dispute is remote. *See Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th
28 Cir. 1992). Additionally, given the length of time since service of the summons and complaint,

1 there is no evidence that defendants' failure to appear resulted from excusable neglect. *Cf.*
2 *Shanghai Automation Instrument Co. v. Kuei*, 194 F. Supp. 2d 995, 1005 (N.D. Cal. 2001).

3 As for the final *Eitel* factor, while there is a strong preference in favor of judgment on the
4 merits, default judgment is appropriate where a failure to appear renders judgment on the merits
5 impracticable. *See Craigslist, Inc., v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1061 (C.D. Cal.
6 2010). Notwithstanding proper service, defendants have failed to appear in these proceedings.
7 Therefore, entry of default judgment is appropriate.

8 **II. FINDINGS AND RECOMMENDATIONS**

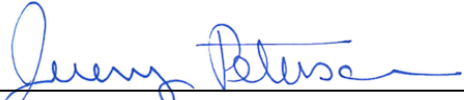
9 Since defendants have failed to appear and judgment on the merits would be
10 impracticable, intervenor has sufficiently pled allegations entitling it to declaratory relief, and
11 plaintiffs have not objected to such relief, I recommend that intervenor's motion for default
12 judgment, ECF No. 159, be granted. I recommend that the court enter a declaratory judgment
13 that: (1) the factoring agreement between Produce Pay, Inc., and Trinity Fresh Procurement, LLC,
14 Trinity Fresh Management, LLC, and Trinity Fresh Distribution, LLC, constituted a true sale of
15 specified produce-related accounts receivable; (2) Produce Pay, Inc.'s payment of the agreed-
16 upon purchase price to Trinity Fresh Procurement, LLC, Trinity Fresh Management, LLC, and
17 Trinity Fresh Distribution, LLC, extinguished any and all PACA trust rights or obligations that
18 may have been impressed on the produce-related accounts receivable; and (3) the agreed-upon
19 purchase price for each produce-related account receivable in the factoring agreement was
20 commercially reasonable.

21 These recommendations will be submitted to the U.S. district judge presiding over the
22 case under 28 U.S.C. § 636(b)(1)(B) and Local Rule 304. Within 14 days of the service of the
23 findings and recommendations, the parties may file written objections to the findings and
24 recommendations with the court and serve a copy on all parties. That document must be
25 captioned "Objections to Magistrate Judge's Findings and Recommendations." The presiding
26 district judge will then review the findings and recommendations under 28 U.S.C. § 636(b)(1)(C).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: May 4, 2021



JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE