

United States District Court
For the Northern District of California

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E-Filed on: 11/5/2008

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FITZ FRESH, INCORPORATED,

Plaintiff,

v.

VICTOR MONDRAGON, and DOES 1
through 20, inclusive,

Defendants.

No. C-08-02407 RMW

ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT

[Re Docket No. 10]

Plaintiff Fitz Fresh, Inc. moves for default judgment against defendant, Victor Mondragon. Mr. Mondragon has not appeared in this action. The court has considered the papers submitted in support of the motion, and for the reasons set forth below, the court grants Fitz Fresh's motion for default judgment.

I. BACKGROUND

Fitz Fresh, Inc. grows and sells mushrooms in Freedom, California. Compl. ¶ 2. In January 2008, Mondragon entered into an agreement to buy mushrooms from Fitz Fresh. *Id.* ¶ 7. In late February and through the middle of March, Mondragon purchased numerous shipments of mushrooms worth over \$15,000. *Id.* Mondragon, however, has not yet paid in full. *Id.* The following table reflects the invoice number, shipment date, invoice date, total due, and the amounts

1 still outstanding. *Id.*

Invoice No.	Shipment Date	Invoice Date	Total Due	Amount Outstanding
15158	2/22/2008	2/25/2008	\$620.00	\$137.50
15254	2/28/2008	2/29/2008	\$1,313.00	\$830.00
15271	2/29/2008	3/3/2008	\$879.00	\$879.00
15303	3/2/2008	3/3/2008	\$705.00	\$705.00
15326	3/3/2008	3/4/2008	\$370.00	\$370.00
15332	3/4/2008	3/5/2008	\$1,135.00	\$1,135.00
15364	3/5/2008	3/6/2008	\$650.00	\$650.00
15383	3/6/2008	3/7/2008	\$1,145.00	\$1,145.00
15403	3/7/2008	3/10/2008	\$319.00	\$319.00
15415	3/9/2008	3/10/2008	\$1,575.00	\$1,575.00
15448	3/10/2008	3/11/2008	\$1,325.00	\$1,325.00
15466	3/11/2008	3/12/2008	\$750.00	\$750.00
15496	3/13/2008	3/14/2008	\$950.00	\$950.00
15519	3/14/2008	3/17/2008	\$775.00	\$775.00
15545	3/16/2008	3/17/2008	\$885.00	\$885.00
15083	3/19/2008	3/21/2008	\$7???.00	\$253.50
15108	2/20/2008	2/21/2008	\$1,067.00	\$1,067.00
15130	2/21/2008	2/22/2008	\$1,452.00	\$1,452.00
Total Amount Outstanding:				\$15,203.00

20 Payment was due within ten days following the invoice. Despite repeated demands by Fitz Fresh,
21 Mondragon has failed to pay the outstanding balance on the mushroom shipments. *Id.* ¶ 12.

22 As reflected by the invoices, the shipments were sent to Mondragon in Rialto, California.
23 Mondragon. It follows that Mondragon does business in California. *See* Compl. ¶ 2. Fitz Fresh is
24 not, however, aware of Mondragon's PACA license number. *Id.* ¶ 5.

25 II. ANALYSIS

26 Fitz Fresh moves for default judgment on its claims for, among other things, breach of
27 contract. Fitz Fresh seeks judgment in the amount of \$15,203.00 and prejudgment interest on that
28

1 sum. Though Fitz Fresh's complaint prayed for equitable relief, its motion for default judgment
2 seeks only money damages.

3 Rule 55(b)(2) allows a plaintiff to move for the court to exercise its discretion to enter
4 default judgment. *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986). In exercising that
5 discretion, the court may consider a number of factors, including (1) whether denial will prejudice
6 the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of the complaint;
7 (4) the sum of money at stake; (5) the possibility of a factual dispute; (6) whether the default was
8 due to excusable neglect; and (7) the "strong policy" in favor of decisions on the merits. *Eitel v.*
9 *McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

10 These considerations weigh in favor of entering default judgment. A denial of Fitz Fresh's
11 motion for default judgment will be prejudicial because it will delay or prevent Fitz Fresh from
12 getting paid for its mushrooms. The invoices requested payment within 10 days; over 180 days have
13 passed since the payments were due. Fitz Fresh's claim is straightforward, and though its complaint
14 is brief, it is sufficient to establish its claim for breach of contract. The sum of money at stake also
15 justifies an entry of default judgment because further delay will cause the cost of litigation to
16 consume the entire value of any future judgment on the invoices. Though it is impossible to know
17 what factual disputes might arise, the partial payment of some of the invoices suggests that
18 Mondragon recognizes that he owes Fitz Fresh money and that he received the mushrooms. It is
19 also impossible to know if Mondragon's default was due to excusable neglect, but there is no basis
20 apparent in the record to explain Mondragon's failure to appear.¹ Taken together, these interests
21 trump the only factor counseling against entering default judgment – the "strong policy" favoring
22 decisions on the merits. In conducting this weighing, the court takes special note of the amount of
23 money at stake. Denying entry of default judgment to provide more procedure in the search for the
24 truth here would do more harm than good. *Cf. Mathews v. Eldridge*, 424 U.S. 319, 332-35 (1976)

25 _____
26 ¹ The only "warning flag" in the papers is that the invoices were sent to Mondragon at 2593 N.
27 Fitzsimmons Avenue, Rialto, CA but he was served at 722 Mateo Street, Los Angeles, CA.
28 *Compare* Compl. with Docket Nos. 4 (certificate of service). Mail sent to Mondragon at the address
where he was served has since been returned as undeliverable. *See* Docket No. 11 (mail returned as
undeliverable). If this discrepancy is material, Mondragon may be able to set aside his default.

1 (noting the flexibility of due process and considering the "probable value, if any, of additional or
2 substitute procedural safeguards").

3 Fitz Fresh also seeks prejudgment interest of 10% per year pursuant to California law.²
4 California law permits court to award prejudgment interest on contract claims. Cal. Civ. Code §
5 3287. Where the contract specifies the amount and the date the amount was due, a plaintiff is
6 entitled to prejudgment interest and the interest accrues from the date the money was owed. *Id.* §
7 3287(a). On the other hand, "unliquidated" contract damages accrue prejudgment interest from the
8 date of the filing of the complaint – at the earliest – and its award is left to the discretion of the
9 court. *Id.* § 3287(b). Here, each invoice specified the amount due and the date by which payment
10 was required, bringing Fitz Fresh's claims within section 3287(a). *Accord Ryland v. Heney*, 130 Cal.
11 426, 429-30 (1900); *Pacific Mut. Life Ins. Co. v. Fisher*, 106 Cal. 224, 233-34 (1895).

12 Where a contract does not stipulate an interest rate, California law imposes a 10% "per
13 annum" prejudgment interest rate.³ Cal. Civ. Code § 3289(b). Fitz Fresh does not propose what
14 amount of interest results from applying that rate to the amounts owed by Mondragon.

15 Surprisingly, no authority clearly explains how to calculate this amount of interest. To
16 begin, the interest charged is simple interest absent an explicit agreement by the parties to use
17 compound interest. *Ninety Five Ten v. Crain*, 231 Cal. App.3d 36, 39-40 (1991); Rest. 2d Contracts
18 § 354, cmt. a; 25 Williston on Contracts § 66:117 (4th ed.); *see also Westbrook v. Fairchild*, 7 Cal.
19 App. 4th 889, 893-97 (1992) (vacating award of compound post-judgment interest). The next
20 question is whether 10% "per annum" accrues only at the end of a year, or whether a court can
21 award "per annum" interest for a fraction of a year. The court cannot find any authority explicitly

22 ² Prejudgment interest on a state law claim, like Fitz Fresh's breach of contract claim, is
23 determined by state law. *In re Banks*, 225 B.R. 738, 750 (Bankr. C.D. Cal. 1998) (explaining *Unies*
24 *v. Kroll & Linstrom*, 957 F.2d 707, 714 (9th Cir.1992)).

25 ³ Fitz Fresh's invoices include terms suggesting that the balance is subject to a monthly interest
26 rate of 1.5%. Nearly identical provisions have been enforced to impose higher prejudgment interest
27 rates. *See, e.g., C.H. Robinson Co. v. Marina Produce Co., Inc.*, 2007 WL 39311, *4 (N.D. Cal. Jan.
28 4, 2007) (Alsup, J.) (collecting cases); *Rey Rey Produce SFO, Inc. v. M & M Produce and Food*
Service Supplies, Inc., 2006 WL 1867633, *4 (N.D. Cal. Jul. 5, 2006) (Zimmerman, M.J.).
Nevertheless, Fitz Fresh requested only 10% in its application for default judgment.

1 holding on this point, but it appears that the court can award interest accrued over a fraction of a
2 year. In *Long v. Cuttle Construction Co.*, the judgment debtors wrote a check for the size of the
3 judgment, but because the amount was so large, the bank placed a five-day hold on the check before
4 cashing it. 60 Cal. App.4th 834, 836 (1999). The judgment creditors therefore sought post-judgment
5 interest (over \$5,000) for the five-day period. The opinion turns on the question of whether delivery
6 of the check or clearance of the check discharged the judgment, suggesting that a five-day fraction
7 of a "per annum" interest rate can be imposed, though the opinion makes no explicit holding in this
8 respect. *See id.* at 837-38. This accords, however, with instructions by California appellate courts
9 to award interest from a specific date to another specific date. *See, e.g., Reidy v. Miller*, 85 Cal.
10 App. 764, 768 (1927).⁴

11 With those principles in mind, the court calculates prejudgment interest as follows. First, the
12 court adds ten days to the invoice date to determine the date on which payments was due. The court
13 then calculates the number of days that have elapsed between that date and the date of judgment to
14 determine the number of days the payment on the mushroom shipment has been overdue. The court
15 then divides that number by 365.25⁵ and multiplies that quotient by 0.1 (the 10% "per annum" rate
16 imposed by the California Civil Code). With that fractional interest rate calculated for each invoice
17 date, the court multiplies each amount outstanding by its invoice's fractional interest rate to
18 determine the interest owed on each shipment. This amounts to prejudgment interest of \$973.25.

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21 ⁴ Counseling in the opposite direction is the plain meaning of the words "per annum." "Per
22 annum" interest on a debt is not due until the end of the year. Where the lender wishes to receive
23 interest more frequently, it does so, for example, by lending at a rate "per annum monthly." *Fuller*
24 *v. White*, 33 Cal. 2d 236, 240 (1949). In *Fuller*, the California Supreme Court held that the "per
25 annum monthly" interest provision "call[ed] for simple interest only." It then applied a statute of
26 limitations such that "the interest was due monthly and . . . the action is barred insofar as concerns
27 instalments of interest which accrued prior to the applicable limitation period." *Id.* While
28 interpreting the phrase "per annum" to impose a simple interest payment only at the end of a
complete year accords most closely with the text, it produces an absurd result. For example, in this
case, the time between the debt and judgment is less than a year. A strict interpretation of "per
annum" would imply that Fitz Fresh should recover no prejudgment interest. This would incentivize
plaintiffs to, for example, hold back from requesting entry of judgment after a mere 364 days had
elapsed since the debt was incurred, but to clamor for it after 365 days.

⁵ To accommodate for leap years, bearing in mind that 2008 was a leap year.

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III. ORDER

For the foregoing reasons, the court grants Fitz Fresh's motion for default judgment. Judgment shall be entered in favor of Fitz Fresh, Inc. in the amount of \$16,176.25 against Victor Mondragon.

DATED: 11/5/2008



RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been sent to:**

2 **Counsel for Plaintiff:**

3 Lester Paul Hart PaulHart@JohnsonMoncrief.com

4 **Defendant:**

5 (no appearance)

6

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10 **Dated:** 11/5/2008

TSF
Chambers of Judge Whyte

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