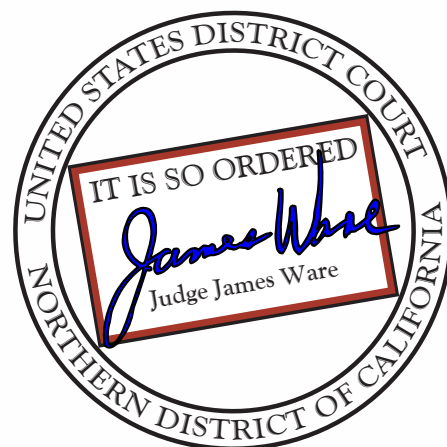


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7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN OF CALIFORNIA
 10 SAN JOSE DIVISION

11 CHONG'S PRODUCE, INC.

12
 13 Plaintiff,

14 v.

15 THE PRODUCE COMPANY, INC. dba
 16 WESTSIDE PRODUCE, a California
 Corporation; CHARLES M. O'NEIL,
 17 individually, and DOES 1 to 10,

18 Defendants.

Case No. C09 00693 JW RS

19
 20 (PROPOSED) JUDGMENT UNDER THE
 21 PERISHABLE AGRICULTURAL
 22 COMMODITIES ACT (7 U.S.C. §499E)

23 A Complaint was filed by Plaintiff Chong's Produce, Inc. against Defendants The Produce
 24 Company, Inc. dba Westside Produce and Charles M. O'Neil on February 17, 2009. On February
 25 18, 2009, this Court issued a Temporary Restraining Order against The Produce Company.

26 A hearing on Plaintiff's motion for Preliminary Injunction and Motion to Consolidate the
 27 Trial on the Merits was heard on January 23, 2009 at 9:00 a.m. Susan E. Bishop appeared as
 28 counsel for Plaintiff. Defendant did not appear.

Accordingly, **IT IS HEREBY ORDERED:**

A. Chong's Produce is a valid trust beneficiary of The Produce Company, Inc.
 pursuant to Section 5(c) of the PACA, 7 U.S.C. §499e(c), in the aggregate amount of \$60,360.28,


1 exclusive of interest and attorneys' fees and costs for violation of PACA by failing to maintain
2 PACA trust assets and failing to pay Chong's Produce promptly under 7 U.S.C. §§499b(4) and
3 (e)(c)(2).

4 B. Starting in August 2008, Plaintiff began selling Produce to Westside Produce in
5 interstate commerce, and Westside Produce purchased from Plaintiff produce in the amount of
6 \$60,360.28. Plaintiff delivered the Produce to Westside Produce and Westside Produce accepted
7 the Produce from Plaintiff but Westside Produce failed to pay the invoices related to those orders.
8 As of February 13, 2009, Westside Produce has failed to pay the principal balance due of
9 \$60,360.28.

10 C. Charles O'Neil, as the President of Westside Produce, O'Neil had a duty to ensure
11 that Westside Produce fulfilled its duties as a PACA trustee, and maintained PACA Trust Assets in
12 such a manner so as to ensure there were, at all times, sufficient Trust Assets available to satisfy all
13 outstanding PACA trust obligations, such as that owed to Plaintiff, as they became due. O'Neil
14 breached his fiduciary duty to direct Westside Produce to fulfill its duty as a PACA trustee to
15 preserve and maintain sufficient PACA Trust Assets to pay Plaintiff for the Produce supplied by it
16 to Westside Produce. As a direct result of O'Neil's breach of fiduciary duty, Plaintiff has incurred
17 damages in the amount of \$60,360.28, plus interest from the date each invoice became past due,
18 costs and attorneys' fees. O'Neil is personally liable to Plaintiff for the breach of their fiduciary
19 duty in dissipating the PACA trust.

20 D. Judgment is hereby entered in favor of Plaintiff Chong's Produce Inc. and against
21 The Produce Company, Inc. and Charles O'Neil, jointly and severally in the amount of \$60,360.28,
22 plus interest, costs and reasonable attorneys.

23 **IT IS SO ORDERED** in Chambers at San Jose, California this 18 day of March 2009.
24 The Clerk shall close this file.

25
26 
27 Honorable Judge James Ware
28 United States District Court Judge