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8 Attorneys for Plaintiff
9 CHONG'S PRODUCE, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN OF CALIFORNIA
12 SAN JOSE DIVISION

13 CHONG'S PRODUCE, INC.

14 Plaintiff,

15 v.

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

20 Defendants.

Case No. C09 00693 JW RS

~~PROPOSED~~ AMENDED JUDGMENT
UNDER THE PERISHABLE
AGRICULTURAL COMMODITIES ACT
(7 U.S.C. §499E)

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

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

27 Accordingly, **IT IS HEREBY ORDERED:**

28 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. After this Court issued its initial judgment, Plaintiff filed a motion for attorneys' fees
21 and costs. On May 12, 2009, the Court granted Plaintiff's motion and ordered Defendants to pay
22 attorneys' fees and costs in total amount of \$4,925.00 within 30 days.

23 E. An Amended Judgment is hereby entered in favor of Plaintiff Chong's Produce Inc.
24 and against The Produce Company, Inc. and Charles O'Neil, jointly and severally in the amount of
25 \$65,285.28.

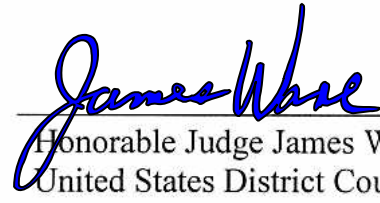
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IT IS SO ORDERED in Chambers at San Jose, California this 26 day of May 2009.



Honorable Judge James Ware
United States District Court Judge

1 **CASE NAME:** Chong's Produce v. The Produce Co., Inc et al.- **Case Number:** CV09-00693 JW

2 **PROOF OF SERVICE**

3 I am a citizen of the United States. My business address is The PruneYard Tower I, 1901
4 South Bascom Avenue, Ste. 350, Campbell, CA 95008. I am employed in the county of Santa
5 Clara where this service occurs. I am over the age of 18 years and not a party to the within cause.

6 On May 13, 2009, I served the following document described as:

7 **(PROPOSED) AMENDED JUDGMENT UNDER THE PERISHABLE AGRICULTURAL
8 COMMODITIES ACT (7 U.S.C. §499E)**

- 9 **BY MAIL:** I am readily familiar with my employer's normal business practice
10 of collection and processing of correspondence for mailing. Under that practice,
11 correspondence is deposited with the U.S. Postal Service that same day in a
12 sealed envelope(s) with postage thereon fully prepaid at Campbell, California, in
13 the ordinary course of business.
- 14 **BY FAX:** I served said document(s) by transmitting via facsimile from facsimile
15 number (408) 297-2774 to the facsimile number(s) set forth below, or as stated on
16 the attached service list, on this date after 5:00 p.m. A statement that this
17 document was successfully transmitted without error is hereby attached to the
18 Proof of Service.
- 19 **BY PERSONAL SERVICE:** I caused such documents to be delivered by hand
20 to the offices of
- 21 **BY OVERNIGHT DELIVERY:** I caused such envelope(s) to be delivered on
22 the same day to an authorized courier or driver or to a regular box or other facility
23 regularly maintained by **FEDERAL EXPRESS** with delivery fees provided for,
24 addressed to the person(s) on whom it is to be served.

25 on the interested party(ies) in this action addressed as follows:

26 CHARLES M. O'NEIL 27 1481 Picadilly Pl. 28 Campbell, CA 95008	Authorized Agent for Defendants THE PRODUCE COMPANY, INC., dba WESTSIDE PRODUCE, a California Corporation.
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- 29 **STATE:** I declare under penalty of perjury under the laws of the State of
30 California that the above is true and correct.
- 31 **FEDERAL:** I declare that I am employed in the office of a member of the bar of
32 this Court whose direction of the service was made. I declare under penalty of
33 perjury under the laws of the United States of America that the foregoing is true
34 and correct.

35 Executed on May 13, 2009 at Campbell, California.

36 /s/ Emily A. Khasin
37 Emily A. Khasin