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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TOM VER LLC,
Plaintiff,
v.
ORGANIC ALLIANCE, INC, et al.,
Defendants.

Case No. 13-CV-03506-LHK

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR DEFAULT JUDGMENT

Re: Dkt. No. 151

Before the Court is Plaintiff Tom Ver LLC’s motion for default judgment against Defendants Organic Alliance, Inc., Parker Booth, and Christopher White. Having considered Plaintiff’s motion, the relevant law, and the record in this case, the Court hereby GRANTS IN PART and DENIES IN PART Plaintiff’s motion.

I. BACKGROUND

A. Factual Background

Tom Ver LLC d/b/a MexFresh Produce (“Plaintiff”) brings this case for violation of the Perishable Agricultural Commodities Act (“PACA”), 7 U.S.C. § 499a *et seq.*, and for breach of contract.

Plaintiff is a Texas limited liability corporation in the business of selling wholesale

1 quantities of produce. Compl., ECF No. 1, ¶¶ 1-2. Plaintiff operates its business under a valid
2 Perishable Agricultural Commodities Act (“PACA”) license issued by the United States
3 Department of Agriculture. *Id.* ¶ 2. Defendant Organic Alliance, Inc. is a Nevada corporation
4 doing business in Salinas, California. *Id.* ¶ 3(a). Plaintiff alleges that Defendants Booth and
5 White were officers, directors, or shareholders in a position to control Organic Alliance at all
6 times relevant to this action. *Id.* ¶ 3(b), (e).

7 Plaintiff alleges that all of the Defendants “were engaged, directly or indirectly, in the
8 business of purchasing and/or selling Produce in wholesale or jobbing quantities” and “of
9 negotiating sales and purchases of Produce in interstate or foreign commerce for or on behalf of a
10 vendor or purchaser, respectively.” *Id.* ¶¶ 4-5. Therefore, Plaintiff alleges that Defendants are
11 “dealers” and “brokers” of produce as defined by PACA.

12 Plaintiff alleges that over the course of March and April 2013, Plaintiff entered into six
13 contracts with Organic Alliance in which Plaintiff agreed to sell produce to Organic Alliance. *Id.*
14 ¶ 9, Ex. A. Plaintiff shipped produce to Organic Alliance in California six times and sent
15 Defendants invoices reflecting a total invoice amount of \$43,937.25. *Id.* ¶¶ 10-13, Ex. A.
16 Plaintiff alleges that the parties agreed that “[i]nterest shall accrue on any past due account balance
17 at the rate of 1.5% per month (18% APR).” *Id.* ¶ 15, Ex. A. Plaintiff further alleges that the
18 parties agreed that “[i]n the event a collection action or other legal proceedings become necessary
19 for the seller to enforce any rights hereunder, buyer agrees to pay all costs of collection or other
20 legal proceedings, including attorney’s fees and costs.” *Id.* ¶ 18, Ex. A. Each invoice sent by
21 Plaintiff to Defendants includes the above language about the accrual of interest and Defendants’
22 liability for attorney’s fees and costs. *Id.* ¶¶ 15, 18, Ex. A. Defendants accepted each shipment of
23 produce without objecting to any of the contract language in the invoices. *Id.* ¶¶ 11-12, 19.
24 Defendants did not timely pay Plaintiff for any of the produce in the six shipments. *Id.* ¶¶ 21-22.¹

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¹ Plaintiff’s spreadsheets showing the amount owed to Plaintiff indicate that sometime between July 30, 2013 and August 24, 2015, Defendants paid \$3,000 to Plaintiff for part of the first shipment. *See* ECF No. 151, Ex. A-1 (showing \$3,000 payment).

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B. Procedural History

Plaintiff filed this PACA action against Defendants Organic Alliance, Inc., Parker Booth, Mark Klein, Michael Rosenthal, Christopher White, and Barry Brookstein on July 30, 2013. ECF No. 1. Plaintiff filed an ex parte application for a temporary restraining order against all Defendants on August 2, 2013. ECF Nos. 6, 7. The Court granted Plaintiff's ex parte application as to Defendants Organic Alliance and Booth on August 8, 2013. ECF No. 11. On August 26, 2013, the Court granted a preliminary injunction only as to Organic Alliance. ECF No. 19. Plaintiff had not effected adequate service as to any other Defendant. *Id.* at 2.

On September 5, 2013, Plaintiff moved for entry of default against Defendants Organic Alliance and Brookstein. ECF No. 22. The Clerk of the Court entered default against Defendants Organic Alliance and Brookstein on September 16, 2013. ECF No. 30.

Defendant Brookstein answered Plaintiff's complaint on September 12, 2013, ECF No. 28, and the Court granted the parties' stipulation to set aside default as to Defendant Brookstein on December 3, 2013. ECF No. 36.

On September 6, 2013, Plaintiff filed a motion to enforce the temporary restraining order against Rabobank and to hold Rabobank in contempt. ECF No. 23. On December 27, 2014, Plaintiff moved for sanctions against Rabobank. ECF No. 43. The Court denied the motion for sanctions against Rabobank and denied as moot the motion to enforce the temporary restraining order and to hold Rabobank in contempt on February 7, 2014. ECF Nos. 53.

Defendant Rosenthal answered Plaintiff's Complaint on February 7, 2014. ECF No. 55. Defendant Booth answered Plaintiff's Complaint on May 14, 2014. ECF No. 78.

Plaintiff moved for entry of default against Defendant White on March 21, 2014. No. 72. The Clerk of the Court entered default against Defendant White on March 27, 2014. ECF No. 74.

On June 12, 2014, Plaintiff filed motions for default judgment by the Clerk against Defendants Organic Alliance and White. ECF Nos. 79, 80. The Clerk of the Court denied Plaintiff's motions without prejudice on June 30, 2014 for lack of "documentation in support of damages, costs and accrual of interest." ECF No. 82.

1 Plaintiff filed amended motions for default judgment against Defendants Organic Alliance
2 and White on September 3, 2014. ECF Nos. 86, 87. On December 15, 2014, the Court denied
3 Plaintiff's motion, once more without prejudice, because Plaintiff's motions failed to comply with
4 Civil Local Rules 7-2(b) and 7-4(a) and failed "to provide any argument or pertinent legal
5 authority in support of its motions." ECF No. 98. More specifically, Plaintiff's motion "failed to
6 cite a single case or make any argument concerning why default judgment would be appropriate,
7 and did not weigh the controlling factors for default judgment under *Eitel v. McKool*, 782 F.2d
8 1470 (9th Cir. 1986)." See ECF No. 146 (order on motions for default judgment describing the
9 deficiencies in Plaintiff's September 2014 motion for default judgment).

10 Defendants Brookstein and Rosenthal filed a joint motion for summary judgment on
11 March 19, 2015. ECF No. 107. Plaintiff filed an opposition on April 16, 2015, ECF No. 110, and
12 Defendants filed their reply on May 4, 2015. The Court granted Defendants Brookstein's and
13 Rosenthal's motion for summary judgment on May 20, 2015, ECF No. 126, and entered judgment
14 in their favor on May 21, 2015, ECF No. 127.

15 Plaintiff filed a third motion for default judgment against Defendant Organic Alliance and
16 Defendant White on May 28, 2015. ECF No. 134. Plaintiff once more failed "to cite any legal
17 authority or provide any legal analysis for why an entry of default judgment against Defendants
18 Organic Alliance and Christopher White is appropriate in the instant case." ECF No. 35 (order
19 denying May 2015 motion for default judgment). In addition to failing to comply with the Court's
20 order and the Civil Local Rules, "Plaintiff's deficient submissions left the Court with no basis to
21 determine whether the Court could properly exercise personal or subject-matter jurisdiction and
22 whether Plaintiff had shown the basic elements of Plaintiff's claims against Defendants Organic
23 Alliance and White." See ECF No. 143 (pretrial conference order detailing the deficiencies with
24 Plaintiff's default judgment motions). On June 17, 2015, the Court denied Plaintiff's motions for
25 default judgment with prejudice. ECF No. 135.

26 The Court held a pretrial conference on July 30, 2015. ECF No. 143. At the pretrial
27 conference, Plaintiff requested that the Court consider allowing Plaintiff to file a fourth set of
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1 motions for default judgment against Defendants Organic Alliance and White, or allowing
2 Plaintiff to go to trial against these absent Defendants. As Plaintiff had not made such a request in
3 its pretrial statement and was unprepared to cite any authority to the Court in support of its
4 request, the Court took a more than two hour recess to allow Plaintiff's counsel to find pertinent
5 legal authority.

6 Following that recess on the same day, Plaintiff submitted arguments to the Court and
7 requested leave to file briefing in support of its request that the Court allow Plaintiff to seek
8 judgment against Defendants Organic Alliance and White, either at trial or by default. The Court
9 gave Plaintiff leave to file briefing on whether the Court should permit Plaintiff to file a fourth
10 motion for default judgment against Defendants Organic Alliance and White. ECF No. 143
11 (pretrial conference order giving Plaintiff leave to file briefing). Plaintiff filed briefing on whether
12 the Court should permit Plaintiff to file a fourth default judgment motion on August 3, 2015. ECF
13 No. 145. On August 4, 2015, the Court granted Plaintiff leave to file a fourth motion for default
14 judgment against Defendants Organic Alliance and White. ECF No. 146.

15 On August 17, 2015, the Court held a bench trial against Defendant Booth. ECF No. 149.
16 Booth did not appear for the bench trial. *Id.* Based on the long history of this case, Booth's
17 willful failure to appear at trial, and Booth's inexcusable failure to participate or otherwise defend
18 himself in this action since May 2014, the Court found that Booth's failure to appear for trial
19 warranted the striking of his answer and the entry of default against him. *Id.* Accordingly, the
20 Court exercised its discretion and inherent authority to strike Booth's answer containing
21 affirmative defenses for failure to appear and defend at trial. *Id.* The Court directed the Clerk of
22 Court to enter default against Booth for failure to otherwise defend this action under Federal Rule
23 of Civil Procedure 55. *Id.* The Clerk entered default against Booth on August 17, 2015. ECF No.
24 150.

25 Plaintiff filed the instant motion for default judgment against Defendants Organic Alliance,
26 Booth, and White on August 24, 2015. ECF No. 151. No opposition was filed.

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1 **II. LEGAL STANDARD**

2 Pursuant to Rule 55(b)(2), the court may enter a default judgment when the clerk, under
3 Rule 55(a), has previously entered the party’s default. Fed. R. Civ. P. 55(b). “The district court’s
4 decision whether to enter a default judgment is a discretionary one.” *Aldabe v. Aldabe*, 616 F.2d
5 1089, 1092 (9th Cir. 1980). Once the Clerk of Court enters default, all well-pleaded allegations
6 regarding liability are taken as true, except with respect to damages. *See Fair Hous. of Marin v.*
7 *Combs*, 285 F.3d 899, 906 (9th Cir. 2002); *TeleVideo Sys. v. Heidenthal*, 826 F.2d 915, 917–18
8 (9th Cir. 1987); *Philip Morris USA v. Castworld Prods.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003)
9 (“[B]y defaulting, Defendant is deemed to have admitted the truth of Plaintiff’s averments.”). “In
10 applying this discretionary standard, default judgments are more often granted than denied.”
11 *Philip Morris*, 219 F.R.D. at 498.

12 “Factors which may be considered by courts in exercising discretion as to the entry of a
13 default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of
14 plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in
15 the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was
16 due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil
17 Procedure favoring decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir.
18 1986).

19 **III. DISCUSSION**

20 **A. Jurisdiction**

21 “When entry of judgment is sought against a party who has failed to plead or otherwise
22 defend, a district court has an affirmative duty to look into its jurisdiction over both the subject
23 matter and the parties. A judgment entered without personal jurisdiction over the parties is void.”
24 *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999) (citations omitted). The Court thus begins by
25 evaluating subject matter jurisdiction and personal jurisdiction.

26 **1. Subject Matter Jurisdiction**

27 The Court finds the exercise of subject matter jurisdiction over this case is proper. “[A]

1 federal court may exercise federal-question jurisdiction if a federal right or immunity is an
 2 element, and an essential one, of the plaintiff’s cause of action.” *Provincial Gov’t of Marinduque*
 3 *v Placer Dome, Inc.*, 582 F.3d 1083, 1086 (9th Cir. 2009) (citation omitted); *see also* 28 U.S.C.
 4 § 1331. Plaintiff asserts claims under PACA and California contract law. *See* Compl. ¶¶ 24-61.
 5 As the PACA causes of action raise federal questions, the Court may properly exercise subject
 6 matter jurisdiction over the PACA causes of action. Because the state law claim arises out of the
 7 same factual allegations as the PACA causes of action, the Court exercises supplemental
 8 jurisdiction over that claim. *See* 28 U.S.C. § 1367(a).

9 **2. Personal Jurisdiction**

10 To determine the propriety of asserting personal jurisdiction over a nonresident defendant,
 11 the Court examines whether such jurisdiction is permitted by the applicable state’s long-arm
 12 statute and comports with the demands of federal due process. *Harris Rutsky & Co. Ins. Servs.,*
 13 *Inc. v. Bell & Clements, Ltd.*, 328 F.3d 1122, 1128–29 (9th Cir. 2003). Because California’s long-
 14 arm statute, Cal. Civ. Proc. Code § 410.10, is coextensive with federal due process requirements,
 15 the jurisdictional analyses under state law and federal due process are the same. *See* Cal. Civ.
 16 Proc. Code § 410.10 (“[A] court of this state may exercise jurisdiction on any basis not
 17 inconsistent with the Constitution of this state or of the United States.”); *Mavrix Photo, Inc. v.*
 18 *Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011). For a court to exercise personal
 19 jurisdiction over a nonresident defendant consistent with due process, that defendant must have
 20 “certain minimum contacts” with the relevant forum “such that the maintenance of the suit does
 21 not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*,
 22 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). In addition, “the
 23 defendant’s ‘conduct and connection with the forum State’ must be such that the defendant
 24 ‘should reasonably anticipate being haled into court there.’” *Sher v. Johnson*, 911 F.2d 1357,
 25 1361 (9th Cir. 1990) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297
 26 (1980)).

27 A court may exercise either general or specific jurisdiction over a nonresident defendant.

1 *Ziegler v. Indian River Cnty.*, 64 F.3d 470, 473 (9th Cir. 1995). General jurisdiction exists where
2 a nonresident defendant’s activities in the state are “continuous and systematic” such that said
3 contacts approximate physical presence in the forum state. *See Schwarzenegger v. Fred Martin*
4 *Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (citation omitted). Where general jurisdiction is
5 inappropriate, a court may still exercise specific jurisdiction where the nonresident defendant’s
6 “contacts with the forum give rise to the cause of action before the court.” *Doe v. Unocal Corp.*,
7 248 F.3d 915, 923 (9th Cir. 2001).

8 Additionally, for the Court to exercise personal jurisdiction over a defendant, the defendant
9 must have been served in accordance with Federal Rule of Civil Procedure 4. *See Jackson v.*
10 *Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 1982) (“Defendants must be served in accordance with
11 Rule 4(d) of the Federal Rules of Civil Procedure, or there is no personal jurisdiction.” (footnote
12 omitted)).

13 **a. Organic Alliance**

14 As to Defendant Organic Alliance, the Court concludes that the exercise of general
15 jurisdiction is appropriate. Plaintiff has alleged that Organic Alliance maintains a physical office
16 in Salinas, California. Compl. ¶ 3. Plaintiff further alleges that it delivered the produce at issue to
17 Defendant Organic Alliance in California. Compl. Ex. A. Organic Alliance not only “[did]
18 business with California,” but in fact “[did] business in California.” *Bancroft & Masters, Inc. v.*
19 *Augusta Nat. Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000) (contacts approximating physical presence
20 in California, such as doing business in California, support the exercise of general jurisdiction).

21 As such, Organic Alliance has “substantial” and “continuous and systematic” contacts with
22 California as well as a “physical presence” in California that support the Court’s exercise of
23 general jurisdiction. *See Schwarzgenner*, 374 F.3d at 801 (general jurisdiction exists where a
24 defendant has “continuous and systematic general business contacts . . . that approximate physical
25 presence in the forum state” (citations omitted)). Additionally, Plaintiff effected service of
26 process upon Organic Alliance by having the summons and the complaint served upon Organic
27 Alliance’s registered agent. *See* ECF No. 13 (affidavit of service upon the registered agent for

1 Organic Alliance); Fed. R. Civ. P. 4(h)(1)(B) (permitting service on a corporation by delivering a
2 copy of the summons and of the complaint to an agent authorized to receive service of process).
3 There is no indication in the record that this service was improper.

4 **a. Parker Booth**

5 As to Defendant Booth, the Court concludes that the exercise of personal jurisdiction is
6 appropriate. Booth filed an answer in this case on May 14, 2014. ECF No. 78. In his answer,
7 Booth did not challenge the Court's exercise of personal jurisdiction over Booth. *See id.* Thus,
8 Booth has waived any challenge to defects in the Court's exercise of personal jurisdiction over
9 Booth. *See Jackson*, 682 F.2d at 1347 ("Defendants can waive the defect of lack of personal
10 jurisdiction by appearing generally without first challenging the defect in a preliminary motion or
11 in a responsive pleading." (citations omitted)).

12 **b. Christopher White**

13 As to Defendant White, although the Clerk of the Court entered default against White in
14 March of 2014, ECF No. 74, Plaintiff did not make any arguments supporting the exercise of
15 personal jurisdiction over White in any of Plaintiff's three previous motions for default judgment
16 against White. *See* ECF No. 143 (pretrial conference order noting that Plaintiff's previous default
17 judgment orders failed to argue that personal jurisdiction was appropriate). Plaintiff's instant
18 motion for default judgment does argue that personal jurisdiction over White is appropriate.
19 However, the Court concludes that Plaintiff has failed to allege sufficient facts showing that
20 exercise of personal jurisdiction over Defendant White is appropriate.

21 First, the Complaint fails to make any allegations whatsoever with respect to White's
22 connections to the state of California. Although Plaintiff argues that White maintains a residence
23 in Berkeley, California, ECF No. 151 at 9, this assertion does not appear anywhere in the
24 Complaint.

25 Second, Plaintiff has not properly served Defendant White in this case. Federal Rule of
26 Civil Procedure 4 provides the following methods for serving an individual within a judicial
27 district of the United States:

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Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

- (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
- (2) doing any of the following:
 - (A) delivering a copy of the summons and of the complaint to the individual personally;
 - (B) leaving a copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
 - (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.”

Fed. R. Civ. P. 4(e).

California Code of Civil Procedure section 415.20 authorizes substitute service of process in lieu of personal delivery. Section 415.20 provides in relevant part that:

If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served . . . a summons may be served by leaving a copy of the summons and complaint at the person’s dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left.

Cal. Code Civ. P. § 415.20(b). California permits service by mail, but service by mail to California residents is not deemed complete until “the date a written acknowledgement of receipt of summons is executed.” Cal. Code Civ. P. § 415.30. If the person to be served fails to complete and return the written acknowledgement of receipt of summons, there has been no effective service and the serving party must attempt service by another method. *Id.*; *see also Thierfeldt v. Marin Hosp. Dist.*, 35 Cal. App. 3d 186, 199 (1973) (holding that if the party to whom a summons and complaint are mailed fails to execute and return an acknowledgement of service, “there is no

1 effective service”). California permits service by posting the summons and complaint only in
2 actions for unlawful detainer of real property. Cal. Code Civ. P. § 415.45.

3 The first affidavit of service for Defendant White states that the process server attempted
4 personal service four times at an address in Berkeley, California, but that White never answered.
5 See ECF No. 52 (first affidavit of service upon White). After the fourth attempt, the process
6 server posted the summons and complaint “to a conspicuous place on the property.” *Id.* Plaintiff
7 then sent a copy of the summons and complaint to White’s address by certified mail. ECF No. 61
8 (second affidavit of service upon White). There is no indication in the record that White ever
9 executed and returned a written acknowledgment of service.

10 The actions taken to serve White were insufficient to effect service of process. There is no
11 indication that White was personally served, nor that the summons and the complaint were left
12 “with someone of suitable age and discretion” at White’s usual place of abode, nor that the
13 summons and the complaint were delivered to White’s agent for service of process. Thus, service
14 of process was not effected under Federal Rule of Civil Procedure 4(e)(2).

15 Instead, Plaintiff argues that White was served by substituted service under California law,
16 as permitted by Federal Rule of Civil Procedure 4(e)(1). See ECF No. 151 at 6 ¶18. California
17 Code of Civil Procedure section 415.20 requires the summons and the complaint to be left “in the
18 presence of a competent member of the household or a person apparently in charge” of the
19 location where the summons and complaint are left. The first affidavit of service for White does
20 not indicate that the summons and the complaint were left with any such individual, see ECF No.
21 52, so service of process was not effected under section 415.20. Instead, the first affidavit of
22 service states that the summons and the complaint were posted at White’s address in Berkeley.
23 ECF No. 52. However, service by posting the summons and complaint is not available in this case
24 because this is not an unlawful detainer action. See Cal. Code Civ. P. 415.45. Finally, the second
25 affidavit of service for White states that the summons and the complaint were mailed to White in
26 California, but the record does not indicate that White ever executed and returned a written
27 acknowledgment of service. Without a written acknowledgment of service executed and returned

1 by White, mailing the summons and the complaint to White’s residence in California does not
2 effect service of process. *See* Cal. Code Civ. P. § 415.30; *Thierfeldt*, 35 Cal. App. 3d at 199.
3 Therefore, White has not been served pursuant to California law.

4 Because White has not been properly served with process in this case, the Court may not
5 exercise personal jurisdiction over White. Therefore, the Court DENIES Plaintiff’s motion for
6 default judgment as to Defendant White.

7 The Court proceeds to discuss whether default judgment is proper only as to Defendants
8 Organic Alliance and Booth.

9 **B. Whether Default Judgment is Proper**

10 Having determined that the exercise of subject matter jurisdiction and personal jurisdiction
11 over Defendants Organic Alliance and Booth is appropriate, the Court now turns to the *Eitel*
12 factors to determine whether entry of default judgment against Organic Alliance and Booth is
13 warranted.

14 **1. First *Eitel* Factor: Possibility of Prejudice**

15 Under the first *Eitel* factor, the Court considers the possibility of prejudice to a plaintiff if
16 default judgment is not entered against a defendant. Absent a default judgment, Plaintiff in this
17 case will not obtain payment to which it is entitled for produce Plaintiff has already provided to
18 Defendants. Thus, the first factor weighs in favor of granting default judgment.

19 **2. Second and Third *Eitel* Factors: Merits of Plaintiff’s Substantive Claims and
20 the Sufficiency of the Complaint**

21 The second and third *Eitel* factors address the merits and sufficiency of Plaintiff’s claims
22 as pleaded in the Complaint. These two factors are often analyzed together. *See Dr. JKL Ltd. v.*
23 *HPC IT Educ. Ctr.*, 749 F. Supp. 2d 1038, 1048 (N.D. Cal. 2010). In its analysis of the second
24 and third *Eitel* factors, the Court will accept as true all well-pleaded allegations regarding liability.
25 *See Fair Hous. of Marin*, 285 F.3d at 906. The Court will therefore consider the merits of
26 Plaintiff’s claims and the sufficiency of the Complaint together.

27 Plaintiff brings four claims arising out of PACA and one claim for breach of contract. The

1 Court first addresses the merits and sufficiency of Plaintiff’s PACA claims and then turns to the
2 merits and sufficiency of the breach of contract claim.

3 **a. PACA Claims**

4 Counts 1, 2, 4, and 5 in the Complaint bring causes of action arising under PACA. Count
5 1 is a claim against all Defendants for enforcement of the PACA trust to require Defendants to
6 turn over all assets in the PACA trust for the benefit of all unpaid trust beneficiaries. Compl.
7 ¶¶ 24-30. Count 2 is a claim against all Defendants for failure under PACA to pay Plaintiff
8 promptly. *Id.* ¶¶ 31-35. Count 4 is a claim against the Defendants who are alleged to be officers,
9 directors, or shareholders of Organic Alliance (the Individual Defendants) for breach of fiduciary
10 duty with regard to assets in the PACA trust. *Id.* ¶¶ 42-52. Count 5 is a claim against the
11 Individual Defendants for interference with PACA trust assets. *Id.* ¶¶ 53-61.

12 PACA protects sellers of perishable agricultural goods by requiring a merchant, dealer, or
13 retailer of perishable produce to hold in trust proceeds from the sale of the perishable produce, and
14 food derived from that produce, for the benefit of all unpaid suppliers. 7 U.S.C. § 499e(c)(2);
15 *Royal Foods Co. v. RJR Holdings, Inc.*, 252 F.3d 1102, 1104-05 (9th Cir. 2001). Under PACA, “a
16 produce dealer holds produce-related assets as a fiduciary” in the statutory trust “until full
17 payment is made to the produce seller.” *In re San Joaquin Food Serv., Inc.*, 958 F.2d 938, 939
18 (9th Cir. 1992). “The trust automatically arises in favor of a produce seller upon delivery of
19 produce and is for the benefit of all unpaid suppliers or sellers involved in the transaction until full
20 payment of the sums owing has been received.” *Id.*; *see also* 7 U.S.C. § 499e(c)(2).

21 There are five elements to a PACA cause of action:

- 22 (1) the commodities sold were perishable agricultural commodities,
23 (2) the purchaser was a commission merchant, dealer, or broker, (3)
24 the transaction occurred in contemplation of interstate or foreign
25 commerce, (4) the seller has not received full payment on the
transaction, and (5) the seller preserved its trust rights by including
statutory language referencing the trust on its invoices.

26 *Beachside Produce, LLC v. Flemming Enters., LLC*, No. C-06-04957 JW, 2007 WL 1655554, at
27 *2 (N.D. Cal. June 6, 2007) (citing 7 U.S.C. § 499e(c)(3), (4); 7 C.F.R. § 46.46(c), (f)).

1 Plaintiff satisfies the first element because Plaintiff alleges that it sold perishable
2 agricultural commodities to Defendants. Compl. ¶¶ 2, 10.

3 For the second element, PACA defines a “dealer” as “any person engaged in the business
4 of buying or selling in wholesale or jobbing quantities . . . any perishable agricultural commodity
5 in interstate or foreign commerce.” 7 U.S.C. § 499a(b)(6). Furthermore, “individuals associated
6 with corporate defendants may be liable under a PACA trust theory.” *Sunkist Growers, Inc. v.*
7 *Fisher*, 104 F.3d 280, 282 (9th Cir. 1997). “[I]ndividual shareholders, officers, or directors of a
8 corporation who are in a position to control PACA trust assets . . . may be held personally liable
9 under the Act.” *Id.* at 283. “If deemed a PACA ‘dealer,’ an individual is liable for his own acts,
10 omissions, or failures while acting for or employed by any other dealer.” *Id.* (citing 7 U.S.C.
11 § 499e(a)).

12 Plaintiff satisfies the second element as to Defendants Organic Alliance and Booth.
13 Plaintiff alleges that both Defendant Organic Alliance and Defendant Booth were dealers under
14 PACA because “[a]t all times relevant hereto, each of the Defendants were engaged, directly or
15 indirectly, in the business of purchasing and/or selling Produce in wholesale or jobbing
16 quantities.” Compl. ¶ 4. Specifically as to Organic Alliance, Plaintiff alleges that Organic
17 Alliance purchased produce from Plaintiff. Compl. ¶ 10. This is sufficient to allege that Organic
18 Alliance was a dealer under PACA. As to Booth, Plaintiff alleges that Booth was in a position to
19 control Organic Alliance at the time that Organic Alliance purchased produce from Plaintiff. *Id.*
20 ¶ 3. Plaintiff additionally attaches as an exhibit to the motion for default judgment an affidavit
21 executed by Booth stating that he joined Organic Alliance “as its president, chief executive officer
22 and director in November, [sic] 2008 and ha[s] continued in that capacity since then.” ECF No.
23 151, Ex. B ¶ 1. Plaintiff also attaches as an exhibit an affidavit from the former office manager for
24 Organic Alliance stating that Booth directed the office manager “to pay certain bills and not pay
25 other bills.” *Id.*, Ex. D ¶ 2. These affidavits are sufficient to establish that Booth exercised control
26 over Organic Alliance and it’s assets, such that Booth may be held personally liable for the PACA
27 violations. *See Sunkist Growers*, 104 F.3d at 283 (“[I]ndividual shareholders, officers, or directors

1 of a corporation who are in a position to control PACA trust assets . . . may be held personally
2 liable under the Act.”).

3 For the third element, courts have held that this element is satisfied where “the
4 commodities involved are the type typically sold in interstate commerce” and where the seller
5 involved is “the type that Congress intended to protect by implementing PACA.” *Greenfield*
6 *Fresh, Inc. v. Berti Produce-Oakland, Inc.*, No. 14-cv-01096-JSC, 2014 WL 5700695, at *3 (N.D.
7 Cal. Nov. 3, 2014) (quoting *Oregon Potato Co. v. Seven Stars Fruit Co., LLC*, No. C12-0931JLR,
8 2013 WL 230984, at *5 (W.D. Wash. Jan. 22, 2013)). Plaintiff alleges that it sells its produce in
9 interstate commerce. Compl. ¶ 2. This is sufficient to satisfy the third element. *See id.* (allegation
10 that plaintiff sold produce in interstate commerce sufficient to satisfy the interstate commerce
11 element of a PACA claim).

12 Plaintiff alleges that Plaintiff did not receive prompt and full payment from Defendants for
13 the produce sold to Defendants, Compl. ¶¶ 10-12, 22, thus satisfying the fourth element of a
14 PACA cause of action. Plaintiff additionally attaches to the Complaint and the motion for default
15 judgment the invoices Plaintiff sent to Defendants. *See* Compl., Ex. A; ECF No. 151, Ex. A.
16 These invoices include the statutory language regarding the PACA trust, *see id.*, thus satisfying the
17 fifth element.

18 Furthermore, all four of Plaintiff’s PACA causes of action are cognizable claims under
19 PACA. PACA permits persons injured by a PACA violation committed by a merchant, dealer, or
20 broker to bring suit for damages arising from that violation. 7 U.S.C. § 499e(a)-(b). Plaintiff’s
21 Count 1, which alleges that Defendants have not maintained the PACA trust seeks enforcement of
22 the trust, seeks redress for Defendant’s failure “to maintain the trust as required,” in violation of 7
23 U.S.C. § 499b(4). Count 2, which alleges that Defendants failed to pay Plaintiff promptly, is
24 permissible because “[d]ealers violate PACA if they do not pay promptly and in full for any
25 perishable commodity in interstate commerce.” *Sunkist Growers*, 104 F.3d at 282 (citing 7 U.S.C.
26 § 499b(4)). Count 4 and Count 5 allege that Defendant Booth breached his fiduciary duty to
27 Plaintiff and interfered with the PACA trust assets, respectively. These claims are cognizable

1 because “[a]n individual who is in the position to control the trust assets and who does not
2 preserve them for the beneficiaries has breached a fiduciary duty, and is personally liable for that
3 tortious act.” *Sunkist Growers*, 104 F.3d at 283. Thus, a PACA trust “imposes liability on a
4 trustee, whether a corporation or a controlling person of that corporation, who uses the trust assets
5 for any purpose other than repayment of the supplier.” *Id.*

6 Because Plaintiff has sufficiently alleged the elements for Plaintiff’s four PACA causes of
7 action, the Court concludes that Plaintiff has sufficiently stated claims against Defendants Organic
8 Alliance and Booth for enforcement of the PACA trust and for violation of PACA by failing to
9 pay promptly, and against Defendant Booth for PACA violations for breach of fiduciary duty to
10 the PACA trust beneficiary and for interference with PACA trust assets.

11 **b. Breach of Contract**

12 Count 3 of the Complaint is for breach of contract against Organic Alliance. Compl.
13 ¶¶ 36-41. The elements of breach of contract under California law are: “(1) the contract, (2)
14 plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting
15 damages to plaintiff.” *Reichert v. Gen’l Ins. Co. of Am.*, 68 Cal. 2d 822, 830 (1968). Plaintiff
16 alleges that Plaintiff had multiple contracts with Organic Alliance for the purchase of produce, that
17 Plaintiff performed by delivering the produce to Organic Alliance, that Organic Alliance breached
18 the contracts by not paying for the produce, and that Plaintiff has been damaged by Organic
19 Alliance’s failure to pay. Compl. ¶¶ 9-12, 22. This is sufficient to state a claim for breach of
20 contract.

21 Because Plaintiff has sufficiently stated claims for violations of PACA and for breach of
22 contract, the second and third *Eitel* factors weigh in favor default judgment.

23 **3. Fourth Eitel Factor**

24 Under the fourth *Eitel* factor, “the court must consider the amount of money at stake in
25 relation to the seriousness of Defendant’s conduct.” *PepsiCo Inc. v. Cal. Sec. Cans*, 238 F. Supp.
26 2d 1172, 1176 (C.D. Cal. 2002); *see also Eitel*, 782 F.2d at 1471-72. “The Court considers
27 Plaintiff’s declarations, calculations, and other documentation of damages in determining if the

1 amount at stake is reasonable.” *Truong Giang Corp. v. Twinstar Tea Corp.*, No. 06-CV-03594-
2 JSW, 2007 U.S. Dist. LEXIS 100237, at *33 (N.D. Cal. Mar. 22, 2007), *adopted by* 2007 WL
3 1545173 (N.D. Cal. May 29, 2007). Default judgment is disfavored when a large amount of
4 money is involved or unreasonable in light of the potential loss caused by the defendant’s actions.
5 *See id.*

6 Plaintiff seeks to recover \$40,937.25 for unpaid produce, \$21,240.29 in interest, and
7 \$106,166.78 in attorney’s fees and costs. Although not insubstantial sums, the amount that
8 Plaintiff requests is reasonable in light of the fact that Plaintiff shipped produce to Defendants
9 more than two and a half years ago for which Plaintiff still has not received full payment.

10 **4. Fifth and Sixth *Eitel* Factors: Potential Disputes of Material Fact and**
11 **Excusable Neglect**

12 The fifth *Eitel* factor considers the possibility of disputes as to any material facts in the
13 case. Defendant Organic Alliance has failed to make an appearance in this case, and the Court has
14 stricken Defendant Booth’s answer. The Court therefore takes the allegations in the complaint as
15 true. *Fair Hous.*, 285 F.3d at 906. Given that posture, the Court finds that disputes of material
16 facts are unlikely.

17 The sixth *Eitel* factor considers whether failure to appear was the result of excusable
18 neglect. A summons was issued to Organic Alliance on July 30, 2013, ECF No. 4, and returned
19 executed on August 16, 2013, ECF No. 13. Nothing in the record before the Court indicates that
20 the service as to Organic Alliance was improper. Organic Alliance, however, has not appeared in
21 this case. Nothing before the Court suggests that Organic Alliance’s failure to appear was the
22 result of excusable neglect.

23 Defendant Booth did file an answer in this case on May 14, 2014. ECF No. 78. However,
24 since filing his answer, Booth has not made any further appearances in this case. Booth failed to
25 appear at the September 3, 2014 case management conference, ECF No. 90; the March 11, 2015
26 case management conference, ECF No. 105; the May 21, 2015 case management conference, ECF
27 No. 128; the pretrial conference on July 30, 2015, ECF No. 143; and the bench trial on August 17,

1 2015, ECF No. 149. Booth also failed to comply with the Court’s June 17, 2015 order directing
2 the parties to file a joint pretrial statement, despite being contacted numerous times by Plaintiff.
3 *See* ECF Nos. 135, 137. Booth also failed to confirm his participation in Magistrate Judge
4 Nathanael Cousins’s July 28, 2015 settlement conference, despite a court order to do so. ECF No.
5 140. The Court had referred the parties to a settlement conference with Magistrate Judge Cousins,
6 and Defendant Booth failed to respond to the Court’s referral to a settlement conference and failed
7 to appear at and participate in the settlement conference. Booth’s failure to participate or
8 otherwise defend himself in this action since May 2014 was willful and inexcusable, not the result
9 of excusable neglect.

10 The fifth and sixth *Eitel* factors thus favor entry of default judgment.

11 **5. Seventh *Eitel* Factor: Policy Favoring Decision on the Merits**

12 While the policy favoring decision on the merits generally weighs strongly against
13 awarding default judgment, district courts have regularly held that this policy, standing alone, is
14 not dispositive, especially where a defendant fails to appear or defend itself. *See, e.g., Craigslist,*
15 *Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1061 (N.D. Cal. 2010); *Hernandez v. Martinez,*
16 No. 12-CV-06133-LHK, 2014 WL 3962647, at *9 (N.D. Cal. Aug. 13, 2014). Although
17 Defendant Organic Alliance was served over two years ago, Organic Alliance has never made an
18 appearance nor challenged the entry of default against it. Defendant Booth has made no
19 appearance in this case in the past 18 months and willfully failed to appear at trial. ECF No. 149.
20 The likelihood of the case proceeding to a resolution on the merits is unlikely. The Court finds
21 that the seventh *Eitel* factor is outweighed by the other six factors that favor default judgment. *See*
22 *Hernandez v. Martinez*, No. 12-CV-06133-LHK, 2014 WL 3962647, at *9 (N.D. Cal. Aug. 13,
23 2014) (seventh *Eitel* factor outweighed by remaining six factors where defendants failed to appear
24 for over a year and a half prior to the default judgment). The Court therefore finds that default
25 judgment is appropriate in this case.

26 **C. Damages**

27 A plaintiff seeking default judgment “must also prove all damages sought in the

1 complaint.” *Dr. JKL Ltd.*, 749 F. Supp. 2d at 1046 (citing *Philip Morris USA, Inc. v. Castworld*
2 *Prods., Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003)). Federal Rule of Civil Procedure 55 does not
3 require the Court to conduct a hearing on damages, as long as it ensures that there is an evidentiary
4 basis for the damages awarded in the default judgment. *See Action SA v. Marc Rich & Co.*, 951
5 F.2d 504, 508 (2d Cir. 1991), *abrogated on other grounds as recognized by Day Spring Enters.,*
6 *Inc. v. LMC Intern., Inc.*, No. 98-CV-0658A(F), 2004 WL 2191568 (W.D.N.Y. Sept. 24, 2004).
7 Plaintiff has provided a supporting declaration and a spreadsheet detailing Plaintiff’s requested
8 damages, along with invoices showing the original amounts due for the produce shipped by
9 Plaintiff. *See* ECF No. 151-1. Plaintiff has provided additional declarations and timesheets
10 supporting Plaintiff’s request for attorney’s fees and costs. *See* ECF Nos. 151-5, -6.

11 Plaintiff requests damages for the invoice value of the unpaid produce, interest on the
12 invoice value of the unpaid produce, and attorney’s fees and costs.

13 **1. Unpaid Produce**

14 Under PACA, a dealer who violates its provisions “shall be liable to the person or persons
15 injured thereby for the full amount of damages . . . sustained in consequence of such violation.” 7
16 U.S.C. § 499e(a). Plaintiff has submitted invoices showing that Plaintiff shipped produce with an
17 invoice value of \$43,937.25 to Organic Alliance and that as of August 24, 2015, Plaintiff has
18 received only \$3,000 in payments. ECF No. 151, Ex. A; *see also* Compl. ¶ 22, Ex. A. The Court
19 finds that Plaintiff’s invoices are sufficient to establish Plaintiff’s entitlement to \$40,937.25 for the
20 remaining invoice value of the unpaid produce.

21 **2. Interest, Attorney’s Fees, and Costs**

22 The Ninth Circuit has held that, in addition to the invoice value of unpaid produce, PACA
23 permits a plaintiff to recover prejudgment interest as well as attorney’s fees and costs if the
24 contract between the plaintiff and the defendant stated that the defendant would be liable for
25 interest, attorney’s fees, and costs. *Middle Mountain Land & Produce Inc. v. Sound Commodities*
26 *Inc.*, 307 F.3d 1220, 1224-25 (9th Cir. 2002); *see also Greenfield Fresh*, 2014 WL 5700695, at *4-
27 5 (holding that a PACA plaintiff was entitled to prejudgment interest, attorney’s fees, and costs

1 based on the contract between the plaintiff and the defendant).

2 In this case, Plaintiff alleges that its contract with Defendants provided that Defendants
3 would be liable for interest at 18% APR on any overdue payments as well as for attorney's fees
4 and costs associated with recovering any overdue payments. To support Plaintiff's allegation,
5 Plaintiff points to the invoices Plaintiff sent to Defendants, all of which include the following
6 language:

7 Interest shall accrue on any past due account balance at the rate of
8 1.5% per month (18% APR). In the event a collection action or
9 other legal proceedings becomes necessary for the seller to enforce
any rights hereunder, buyer agrees to pay all costs of collection or
other legal proceedings, including attorney's fees and costs.

10 Compl., Ex. A. The Ninth Circuit in *Middle Mountain* declined to reach the issue of whether
11 invoices were sufficient to establish a contractual right to interest, attorney's fees, and costs and
12 instead remanded the issue to the district court. *See* 307 F.3d at 1225. In other contexts, however,
13 the Ninth Circuit has held that terms in an invoice for the sale of goods are included in the parties'
14 contract. *See United States ex rel. Hawaiian Rock Prods. Corp. v. A.E. Lopez Enters.*, 74 F.3d
15 972, 976 (9th Cir. 1996) (awarding concrete suppliers prejudgment interest based on the terms in
16 the supplier's invoices). Other courts in this District have determined that contractual language on
17 invoices is sufficient in PACA cases to establish contractual obligations, including obligations to
18 pay prejudgment interest, attorney's fees, and costs. *See, e.g., Greenfield Fresh*, 2014 WL
19 5700695, at *4-5 (language on invoices sufficient to establish contractual right to collect
20 prejudgment interest, attorney's fees, and costs); *C.H. Robinson Co.*, 2007 WL 39311, at *4
21 (same). The Court concludes that Plaintiff's invoices are sufficient to establish that Plaintiff is
22 entitled to collect prejudgment interest, attorney's fees, and costs from Defendants.

23 **a. Interest**

24 Plaintiff requests \$21,240.29 in prejudgment interest. In support of this request, Plaintiff
25 provides a spreadsheet calculating interest at 1.5% per month (18% APR) as provided for in
26 Plaintiff's invoices. *See* ECF No. 151, Ex. A-1. This spreadsheet shows accrued interest of
27 \$21,240.29. The Court finds that Plaintiff's calculations are sufficient to establish Plaintiff's

1 entitlement to \$21,240.29 for interest on the invoice value of the unpaid produce.

2 **b. Attorney’s Fees and Costs**

3 As previously discussed, Plaintiff has a contractual right to recover attorney’s fees from
4 Defendants. Where a plaintiff has a contractual right to attorney’s fees, the plaintiff has a right
5 under PACA to enforce the right to attorney’s fees as part of the perishable agricultural
6 commodities contract. *Middle Mountain Land*, 307 F.3d at 1224-25. The Court stated in its
7 August 4, 2015 Order permitting Plaintiff to bring a fourth motion for default judgment against
8 Defendants Organic Alliance and White that it would not entertain any request for attorney’s fees
9 that includes Plaintiff’s fees incurred for (1) the three previous, deficient motions for default
10 judgment; (2) research regarding case law to allow Plaintiff to try its case against, or file a fourth
11 motion for default judgment against, Defendants White and Organic Alliance; or (3) the briefing
12 requesting permission to file a fourth motion for default judgment against, or to try Plaintiff’s case
13 against Defendants White and Organic Alliance. ECF No. 149.

14 Courts in the Ninth Circuit calculate attorney’s fees using the lodestar method, whereby a
15 court multiplies “the number of hours the prevailing party reasonably expended on the litigation
16 by a reasonable hourly rate.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008)
17 (citation omitted). A party seeking attorney’s fees bears the burden of demonstrating that the rates
18 requested are “in line with the prevailing market rate of the relevant community.” *Carson v.*
19 *Billings Police Dep’t*, 470 F.3d 889, 891 (9th Cir. 2006) (citation omitted). Generally, “the
20 relevant community is the forum in which the district court sits.” *Camacho*, 523 F.3d at 979
21 (citing *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997)). Typically, “[a]ffidavits of the
22 plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate
23 determinations in other cases . . . are satisfactory evidence of the prevailing market rate.” *U.*
24 *Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

25 Here, Plaintiff submitted declarations and timesheets from Plaintiff’s lead counsel, Jason
26 Klinowski, and from Plaintiff’s local counsel, Kathryn Diemer. ECF No. 151, Exs. E-F. The
27 timesheets submitted by Klinowski include hours worked by other attorneys and paralegals at his

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1 current law firm Wallace, Jordan, Ratliff & Brandt, LLC (“WJRB”), and from his former law firm
 2 Freeborn & Peters, LLC (“F&P”). *Id.* Ex. F. The hourly rate billed by attorneys at WJRB and
 3 F&P in this matter ranged from \$225 per hour to \$350 per hour. The hourly rate billed by
 4 paralegals in this matter ranged from \$125 per hour to \$225 per hour. *Id.* The timesheets
 5 submitted by Diemer include hours worked by other attorneys at her law firm Diemer, Whitman &
 6 Cardosi, LLP (“DWC”). *Id.* Ex. E. The hourly rate billed by attorneys at DWC ranged from \$310
 7 per hour to \$400 per hour. *Id.* Plaintiff’s attorneys have averred that these rates are “competitive
 8 in the narrow field of PACA trust enforcement.” *Id.* Exs. E-F. Klinowski additionally states in his
 9 declaration that the “current customary rate charged by similar firms practicing in the area of
 10 PACA trust enforcement is often as high as \$395 per hour.” *Id.* Ex. F.

11 Courts have held that rates of \$250 per hour to \$370 per hour were reasonable for
 12 attorney’s fees in similar PACA cases. *See Greenfield Fresh*, 2015 WL 1160584, at *4 (N.D. Cal.
 13 March 13, 2015) (finding that attorney’s fees ranging from \$275 per hour to \$370 per hour were
 14 reasonable in a PACA case); *C.H. Robinson Co. v. Marina Produce Co.*, No. C 05-04032-WHA,
 15 2007 WL 39311, at *4 (N.D. Cal. Jan. 4, 2007) (finding that \$250 per hour was reasonable for
 16 attorney’s fees in a PACA case); *Sequoia Sales, Inc. v. P.Y. Produce, LLC*, No. CV 10-575 CW
 17 (NJV), 2011 WL 3607242, at *9 (N.D. Cal. July 29, 2011) (finding attorney’s fees of \$285 per
 18 hour to \$350 per hour were reasonable in a PACA case). In breach of contract cases, courts in this
 19 District have approved hourly rates of \$500 or more. *See, e.g., Cataphora Inc. v. Parker*, 848 F.
 20 Supp. 2d 1064, 1069 (N.D. Cal. 2012) (finding an hourly rate of \$500 per hour reasonable in a
 21 breach of contract case). In light of these cases and the declarations submitted by Klinowski and
 22 Diemer, the Court concludes that Plaintiff’s requested rates for the attorneys at WJRB, F&P, and
 23 DWC are reasonable.

24 The Court has reviewed counsel’s declarations and timesheets, which contain descriptions
 25 of each activity performed and lists time worked in increments of hundredths of an hour, and finds
 26 them adequately detailed and related to the work required for this litigation over the past two and a
 27 half years. However, the Court notes three discrepancies. First, the timesheet submitted for F&P

1 for February 2014 is missing page 3. F&P claims fees of \$1088.50 for the month of February
2 2014 but only submitted time sheets accounting for \$886 of fees for 3.3 hours of work. As the
3 Court has no record of the hours corresponding to the additional \$202.50 for February 2014, the
4 Court reduces the fee award to F&P by \$202.50. Second, there is an arithmetic error in the
5 handwritten corrections to the WJRB invoice for July 2015 to subtract fees associated with the
6 default judgment motions. Counsel should have reduced the fees for July 2015 by \$5760 but only
7 reduced the fees by \$4702.50. Accordingly, the Court reduces the fee award to WJRB by
8 \$1057.50. Third, DWC submitted duplicate timesheets for September 2013. Taking account of
9 the duplicate entries and omitting all hours spent on the prior default judgment motions, the Court
10 calculates that DWC's timesheets sum to only 109.2 hours, corresponding to \$41,383.50 in fees.

11 As to total hours, counsel submitted itemized billing records that show, after accounting
12 for the above corrections, totals of 109.2 billed hours for DWC, 56.6 hours billed for WJRB, and
13 82.5 hours billed for F&P. *See* ECF No. 151, Exs. E-F. Counsel described in detail the work
14 corresponding to each timesheet entry. *Id.* Klinowski, who calculated the final total for attorney's
15 fees, stated in his declaration that "none of counsel's time submitted as part of the request for
16 attorney's fees includes time spent and fees incurred for the previous default judgment motions
17 filed in this action, research on the question of allowing Mexfresh to try its case against, or bring a
18 fourth motion for default judgment against, Defendants Organic Alliance and White, or the
19 briefing relating to that issue," and the Court has verified that these exclusions have been made.
20 *Id.* Ex. F ¶ 11. Therefore, the Court awards Plaintiff a total of \$80,777.50, corresponding to
21 \$39,394 for lead counsel time and \$41,383.50 for local counsel time.

22 Plaintiff additionally requests attorney's fees for estimated unbilled fees for August 2015,
23 but no supporting documentation has been provided regarding the hours worked in August 2015.
24 *See* ECF No. 151, Ex. F. Plaintiff does not even state whether counsel actually worked the
25 estimated hours in August 2015. Without supporting documentation for August 2015, the Court
26 cannot assess what hours were worked, let alone whether the hours were reasonable, so the Court
27 awards no attorney's fees for counsel's estimate of fees incurred in August 2015.

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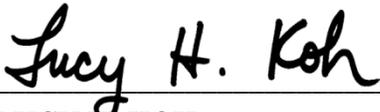
Plaintiff also requests costs of \$4,151.87 invoiced by lead counsel, \$1,261.17 invoiced by local counsel, and \$2,173.74 in actually incurred but unbilled costs for August 2015 for a total of \$7,586.78 in costs. *See* ECF No. 151, Ex. F. The Court finds these costs reasonable and therefore awards \$7,586.78 in costs.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiff’s motion for default judgment as to Defendant Organic Alliance and Defendant Parker Booth. The Court DENIES Plaintiff’s motion for default judgment as to Defendant Christopher White. The Court enters judgment against Defendants Organic Alliance and Parker Booth for \$150,541.82, corresponding to \$40,937.25 for the unpaid invoice value of the produce, \$21,240.29 in interest, \$80,777.50 in attorney’s fees, and \$7,586.78 in costs.

IT IS SO ORDERED.

Dated: November 11, 2015



LUCY H. KOH
United States District Judge