

EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

EARTHMIX FRUIT & VEGETABLE CO.)
Plaintiff)
v.)
Case No. 16-cv-9243
NATIONAL PRODUCE SALES, INC.;)
DAVID M. EL-ABOUDI, individually; and)
MICHAEL HUGHES.)
Judge: Hon. Marvin E. Aspin
Defendants.)
)

**DECLARATION OF DAVID A. ADELMAN IN SUPPORT OF JOINT MOTION FOR
ENTRY OF CONSENT JUDGMENT**

David A. Adelman, the attorney for plaintiff Earthmix Fruit & Vegetable Co. (“Plaintiff”), submits the following declaration in support of the parties’ Joint Motion for Entry of Consent Judgment (“Motion”):

1. I represent Plaintiff in this matter with regards to the enforcement of the statutory trust created pursuant to the Perishable Agricultural Commodities Act (“PACA”), 7 U.S.C. § 499a-t, the breach of contract, and the breach of fiduciary duties to Plaintiff as a beneficiary of the PACA trust, with a request for relief that includes pre-judgment interest and pre-judgment collection costs such as attorneys’ fees.

2. Mary E. Gardner is the attorney representing the National Produce Sales, Inc., David M. El-Aboudi and Michael Hughes (collectively, the “Defendants”) in the present case.

3. The parties, through their respective attorneys, reached a settlement and each of the parties, either directly or through authorized representatives, signed a Settlement Agreement and Mutual Release of All Claims (“Settlement Agreement”), attached hereto as Exhibit A-1 and fully incorporated as if set forth herein.

4. As part of the Settlement Agreement, Defendants were to make an initial down payment of \$4,830.50 on 11/28/16 and five (5) weekly installments in the amount of \$7,634.48 each beginning Monday, 12/5/16 and payable each Monday thereafter.

5. As part of the Settlement Agreement, the parties, either directly or through their authorized agents, executed a Consent Judgment and a Joint Motion for Entry of Consent Judgment, which are incorporated by reference, to be held in escrow unless Defendants defaulted under the agreement.

6. Defendants have only made two payments under the Settlement Agreement, namely one payment for \$4,830.50 and a second payment of \$7,634.48 for a total payment of \$12,464.98.

7. Defendants failed to make their \$7,634.48 payment, which was due on December 12, 2016. Plaintiff gave Defendants an extra day to December 13, 2016 but Defendants did not make the payment and have not paid.

8. Pursuant to the terms of the Settlement Agreement, as counsel for Plaintiff, I sent to Mary E. Gardner, counsel for Defendants, on December 15, 2016 a Notice of Default by fax and email giving Defendants two (2) days to cure. A copy of the Notice of Default and delivery confirmation are attached hereto as Exhibit A-2. Over a week has elapsed since the Notice of Default and Defendants still have not cured the default.

9. Pursuant to terms of the Settlement Agreement, Plaintiff request entry of a consent judgment in the amount of \$37,776.27, which consists of the agreed default judgment amount of \$47,506.52 (which consists of \$39,991.10 for Produce, \$4,515.42 in interest as of 9/13/16 at the contractual rate of 2% per month, plus \$3,000 for collection costs & attorney's fees as sought in the Complaint), less \$12,464.98 paid, plus additional interest per the parties

contract of \$2,734.73 as set forth in Exhibit A-3, plus post-judgment interest pursuant to 28 U.S.C. §1961.

I declare under penalty of perjury, in accordance with 28 U.S.C. § 1746(2), the foregoing statements are true and correct.

Dated: December 26, 2016

s/ David A. Adelman

Attorney for Plaintiff

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