

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Desch Fresh Produce Company, LLC,

Plaintiff,

-v-

5:10-CV-596 (NAM/ATB)

**Empire Fresh Cuts, LLC, James R. Zappala, and
Samuel A. Zappala**

Defendants.

First Choice Produce, Inc.,

Intervenor Plaintiff

-v-

**Empire Fresh Cuts, LLC, James R. Zappala, and
Samuel A. Zappala**

Defendants.

APPEARANCES:

Sugarman Law Firm LLP
Paul V. Mullin, Esq., of counsel
211 West Jefferson Street
Syracuse, New York 13202
Attorney for Plaintiff

Goldberg Segalla LLP
Molly M. Ryan, Esq., of counsel
5789 Widewaters Parkway
Syracuse, New York 13214
and
Keaton & Associates, PC
James M. Joyce, Esq., of counsel
1278 West Northwest Highway, Suite 903
Palatine, Illinois 60067
Attorneys for Intervenor Plaintiff

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Empire Fresh Cuts, LLC
8033 State Route 104
Oswego, New York 13126
Defendant

James R. Zappala
11404 Shuler Road
Cato, New York 13033
Defendant

Samuel A. Zappala
8033 State Route 104
Oswego, New York 13126
Defendant

Hon. Norman A. Mordue, Chief U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff moves (Dkt. No. 34) for default judgment in this action based on the Perishable Agricultural Commodities Act (“PACA”), 7 U.S.C. §§ 499a *et seq.* The Court has set forth the background of the case in its previous decisions in this matter (Dkt. Nos. 21, 28) and does not repeat it here. In support of its motion for judgment, plaintiff relies on previously-submitted affidavits from plaintiff’s managing member Bernard Desch setting forth the history of the transactions, the efforts to collect the funds, and the actions of Samuel Zappala and James Zappala as licensed PACA representatives on behalf of defendants. Between July 1, 2009 and August 1, 2009, plaintiff sold and shipped to defendants perishable agricultural commodities in a series of transactions. On or about the date of each transaction, plaintiff forwarded an invoice setting forth the amount due, containing the appropriate PACA language, and requiring payment within 21 days of receipt of the goods. Defendants have failed to pay the sums due, which total \$228,606.85. At no time have defendants disputed the amount due or their default in payment.

On November 3, 2010, plaintiff obtained an entry of default from the Clerk of the

Northern District of New York (Dkt. No. 29). Plaintiff has adduced competent evidence demonstrating its entitlement to recover \$228,606.85 plus costs, plus interest from September 1, 2009. This award of judgment to plaintiff does not dispose of the claim of the intervenor plaintiff.

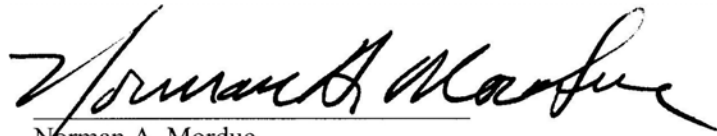
It is therefore

ORDERED that plaintiff's motion (Dkt. No. 34) for default judgment is granted; and it is further

ORDERED that plaintiff recover judgment against defendants for \$228,606.85 plus costs, plus interest from September 1, 2009.

IT IS SO ORDERED.

Date: July 5, 2011
Syracuse, New York



Norman A. Mordue
Chief United States District Court Judge