

**Simpex Pharmachem Inc. v Pharbest Pharms. Inc.**

2026 NY Slip Op 32029(U)

May 11, 2026

Supreme Court, New York County

Docket Number: Index No. 650344/2019

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

-----X

SIMPEX PHARMACHEM INC.

Plaintiff,

- v -

PHARBEST PHARMACEUTICALS INC.,

Defendant.

-----X

INDEX NO. 650344/2019

MOTION DATE 02/17/2026

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Plaintiff's motion for summary judgment is granted as described below.

**Background**

Plaintiff supplies raw pharmaceuticals to drug manufacturers and claims that defendant ordered but never paid for shipments of two different pharmaceutical chemicals – phenazopyridine (“phenazo”), a chemical compound used to treat urinary tract infections, and ferrous sulfate, the active ingredient in iron supplements. Plaintiff brings claims for breach of contract, account stated, and unjust enrichment.

Here, plaintiff moves for summary judgment, seeking \$733,194.09 as of December 1, 2025, plus contractually proscribed interest of 2% a month until the date of payment. Plaintiff also moves the Court to schedule the application for collection costs including attorneys’ fees and court costs in accordance with the parties’ contracts.

At issue are three shipments of phenazo and one shipment of ferrous sulfate. Plaintiff contends that defendant refused to pay the invoices for products specifically manufactured for

defendants' specifications unless plaintiff reduced the price of another product, dextromethorphan ("dextro"). At the center of the dispute are five different documents: purchase order 2829 ("PO 2829"), invoice 17PHP102, invoice 17PHP103, invoice 18PHP102, and invoice 18PHP103.

On or around January 17, 2017, Defendant submitted PO 2829 to plaintiff for two separate shipments of 1,500 kilograms of phenazo at a 68% concentration (NYSCEF Doc. No. 31). Plaintiff issued invoices 17PHP102 and 17PHP103 to memorialize the purchase of these two shipments of phenazo. Invoice 17PHP102 is dated April 3, 2017 and shows a total of 1,800 kgs of phenazo – 300 kilograms more than what was reflected in the purchase order (NYSCEF Doc. No. 32). Invoice 17PHP103 is dated May 30, 2017 and shows a total of 1,600 kgs of phenazo – 100 kilograms more than what was reflected in the purchase order (NYSCEF Doc. No. 33).

Plaintiff contends that defendant verbally ordered a further 1,400 kgs of phenazo and 16,000 kgs of ferrous sulfate which is reflected in invoices 18PHP102 and 18PHP103, both dated January 31, 2018 (NYSCEF Doc. Nos. 36 and 37). Plaintiff contends that it stored the products for defendant's disposition, that defendant refused to accept them, and that plaintiff was unable to sell or return the products due to the unique concentrations which were manufactured at defendant's request.

Plaintiff notes that all of the invoices included the following terms:

"The merchandise is sold and delivered subject to: buyer is to inspect and test the merchandise prior to its use. All claims in connection with this invoice must be made within 5 days of the delivery and in no event may any claim exceed the purchase price. To receive any refund, material must be returned in full quantity and condition as it was at the time of sale. Buyer accepts to pay 2% monthly interest for all delayed payment past due date. Buyer is responsible for all expenses in the event of outstanding collections" (*see e.g.* NYSCEF Doc. No. 59).

Besides the language above, the invoices contained the term “Net 30,” meaning that payment was due 30 days after issuance of the invoice. Plaintiff contends that all of these terms have been standard in the industry for decades and that they were incorporated into the contract by defendant’s silence.

Plaintiff details that defendant paid \$50,000 which was applied to invoice 17PHP102, but that it is still owed a combined \$243,795 in principal and, at the time plaintiff submitted its papers for this motion, \$491,920.40 in interest, accruing at 2% monthly. Plaintiff details that defendant never timely objected to any of the invoices, so, to the extent that the Court does not find that plaintiff can succeed on a breach of contract action, plaintiff should prevail on account stated. Plaintiff also details that at one point, defendant complained about the quality of 482 kgs of phenazo, that plaintiff offered to pick up the allegedly defective product, but that defendant then withdrew its request to return the product.

Defendant opposes and argues that there are simply too many questions of fact regarding the alleged sales contracts for phenazo and ferrous sulfate, the alleged additional verbal orders, and plaintiff’s purported acceptance of defendant’s offers. Defendant argues that the product referenced in invoices 17PHP102 and 17PHP103 had quality issues for which it is entitled to offset and that the amount ordered did not match the amount received. For invoices 18PHP102 and 18PHP103, defendant argues that there was no verbal agreement, and these invoices are purely fictitious. Defendant notes that it never received these products and disputes that the chemical compounds were specifically tailored to its needs; defendant says that the chemicals complied with industry standards which undercuts plaintiff’s argument that there were no other potential purchasers for the 68% phenazo product and the ferrous sulfate.

Defendant also argues that its refusal to pay is permissible, because plaintiff had supplied defendant with shoddy product in the past, defendant had to spend its own resources testing the product, and plaintiff refused to lower the price of a third chemical – dextro. Defendants argue that plaintiff’s claims surrounding invoice 18PHP102, for the 16,000 kgs of ferrous sulfate are particularly suspect, as the material was never delivered to defendant, and the invoice is missing a purchase order reference.

Defendant argues that plaintiff has not met its burden of showing that silence operated as acceptance of the default terms in plaintiff’s invoices and that plaintiff’s terms simply do not make sense in this transaction. Defendant takes issue with the term that required it to notify plaintiff of any claim within 5 days of delivery, as testing could only take place after the raw materials were transformed into tablets, a process which takes two to three weeks after delivery; defendant continues that plaintiff has not proven that 5 days’ notice is industry standard. Defendant further argues that mandating payment of an invoice 30 days after its issuance and adding 2% monthly interest if payment is not timely, left no time to test the product and object to its quality before interest began to accrue.

Defendant then details that it showed its willingness to pay the first two invoices less the 482 kgs on August 4, 2017, that a reminder was sent to plaintiff on August 8, 2017, but that no response was received from plaintiff until August 21, 2017. Defendant contends that in the interim – between August 8 and August 21 – it “had no choice other than to sort, test, and re-test by way of engaging third-party testing and incurred tremendous costs to supply per deadlines, but at the same time not compromise on quality. Defendant thus had to use raw materials after sorting and the confirmation of proper dissolution of the tablets was achieved” (NYSCEF Doc.

No. 58 at ¶ 22). Because of the alleged quality issues and extra testing expenses, defendant argues that its payment of \$50,000 was “actually full or nearly full payment.”

Defendant additionally contends that there is a question of fact as to whether defendant has a right to offset for plaintiff’s failure to reduce the price of dextro based upon plaintiff’s alleged history of lack of transparency and delivery of nonconforming goods. Defendant ends by arguing that plaintiff is not entitled to summary judgment on its account stated claim, and there is no basis to claim that defendant did not protest to the invoices within a reasonable amount of time.

In reply, plaintiff details the issue with the 482 kgs and points to the email chain reproduced at NYSCEF Doc. No. 66. The emails show that on August 2, 2017, defendant’s representative requested that plaintiff pick up 482 kgs of “unused/bad” material and sent a table detailing what it owed plaintiff, which included a deduction for wasted material (*id.*). In an email dated August 21, 2017, plaintiff’s representative responded and said that payment was now 90 days overdue, that plaintiff would have to start charging 2% interest per month from the Net 30 date, and that plaintiff would take back the 482 kgs of material in question (*id.*). Defendant’s representative responded on August 29, 2017 saying that they no longer had any material to return as they “used all material with some waste to avoid return” (*id.*). Plaintiff argues that defendant is not entitled to an offset; defendant could have returned the material but instead used the material.

As to the invoices not exactly matching the amount of chemicals that defendant ordered, plaintiff claims that this is normal and consistent with the first two orders for phenazo at issue here; defendant asked for two shipments of 1,500 kgs each, yet it received one shipment of 1,800 kgs and one shipment of 1,600 kgs. Plaintiff says this is because the supplier delivered

approximate batches which exceeded the amounts defendant ordered, and plaintiff simply delivered the excess to defendant. Plaintiff contends that it ordered and made available all of the goods referenced in invoices 18PHP102 and 18PHP103 and notes that both invoices state that the product has been stocked and that the defendant needs to pick it up immediately. Plaintiff calls defendant's refusal to pay the invoices unless it got a discount a future order of dextromethorphan a "transparent commercial extortion attempt" that should not be allowed.

### Discussion

"A party moving for summary judgment must demonstrate that the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in the moving party's favor. Thus, the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. This burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party. If the moving party meets this burden, the burden then shifts to the non-moving party to establish the existence of material issues of fact which require a trial of the action" (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833, 988 NYS2d 86 [2014] [internal quotations and citations omitted]).

"[A] defendant's receipt and retention of invoices seeking payment for goods or services rendered, without objection within a reasonable time, gives rise to an actionable claim for account stated (*TH Fashion Ltd. v Vince Holding Corp.*, 230 AD3d 1079, 1080 [1st Dept 2024]).

For the reasons discussed below, the Court finds that plaintiff has met its burden of demonstrating an absence of any material issues of fact as to its account stated claim. Defendant,

when confronted with the invoices, agreed it would pay the invoices and did not object to the clearly delineated terms, including the 2% monthly interest.

Invoices 17PHP102 and 17PHP103

Regarding these first two invoices, there is no question that there was an agreement that defendant received the product that it ordered, and that defendant did not pay for the total amount of goods it received. There was a purchase order, and defendant paid \$50,000 on invoice 17PHP102. There is also no question that defendant received and used the materials that were provided on those invoices. While defendant, at one point, asked to return 482 kgs of phenazo from these shipments, it subsequently withdrew its request and confirmed that it used the material.

While in its papers, defendant contends that the \$50,000 it paid represented the full or nearly full payment for the materials, its communications with plaintiff suggest otherwise. Defendant, by its own calculations, owed plaintiff money on these invoices. Defendant's exhibit 13 is a table created by defendant which shows that it owed plaintiff \$108,907.75 (NYSCEF Doc. No. 71). Defendant's exhibit 14 is a revised table created by defendant showing that it owes plaintiff only \$88,540.75 – with deductions for the 482 kgs of phenazo that it claimed was defective (NYSCEF Doc. No. 72).

On August 2, 2017, defendant's representative wrote to plaintiff's representative, attached the revised table, and said, "Here is the review of all loss, waste to be returned Phenazo Material for the attached 2 invoices. Confirm the deduction in order to send payment for first invoice by Friday. Please schedule pickup of 482 Kgs unused/bad material at the time of delivering 1200 Kgs this week" (NYSCEF Doc. No. 76).

Plaintiff responded on August 21, 2017 stating that the payments were now 90 days overdue, that plaintiff would start charging 2% monthly interest from the Net 30 date, and that it would take back the 482 kgs of Phenazo; plaintiff urged defendant to pay the outstanding balance immediately (*id.*). Defendant responded on August 29, 2017 stating “We do not have any material to return as we have used all material with some waste to avoid return” (*id.*). Defendant then stated that it had to spend \$35,000 for third party testing and finishes by saying “Please confirm the acceptance of the attached review in order to mail out payment soon” (*id.*).

Then, on January 11, 2018 plaintiff emailed defendant detailing what was owed on the first two invoices, as well as for the alleged verbal orders for additional phenazo and ferrous sulfate (NYSCEF Doc. No. 34). Plaintiff calculated that defendant owed it \$233,234.45 immediately, and this figure clearly included the 2% interest per month (*id.*). In response, defendant responded the next day saying, “What will be the best pricing for Dextromethorphan HBr? We will review it and will take care [of] open invoices accordingly” (*id.*). Plaintiff responded saying the dextro was \$180 per kilogram (*id.*). Defendant then responded, “We were looking for \$160-165/ kg price based on our last year phone discussion. If you can adjust price at that price, we will issue blanket PO for 1000 Kgs of Dextromethorphan HBr. Hopefully this price will help us to offset the loss and testing cost associated with Phenazo material to some extent and will be able to clear up open invoices as it is soon” (*id.*).

#### Invoices 18PHP102 and 18PHP103

Defendant claims that there simply never were any verbal agreements regarding the additional 1,400 kgs of phenazo and 16,000 kgs of ferrous sulfate represented in these invoices. In support of this position, defendant points to the fact that there is no purchase order referenced on the invoice, and to the fact that the product was never delivered to defendant.

Defendant's position just does not add up. The fact that the invoice lacks a purchase order is easily explained by the fact that this was an oral agreement, as is written on invoice 18PHP103. This is also reiterated in plaintiff's email summary to defendant, "Total Inventory Stocked for Ferrus Sulphate based on verbal confirmation 16,000Kgs X #1.90 = \$30,400" (NYSCEF Doc. No. 67). With regards to the 1,400 kgs of phenazo, there is written proof that defendant was expecting a shipment of 1,200 kgs of phenazo in the emails at NYSCEF Doc. No. 63. While defendant may contend that the 200 kg difference is material to the contract, it is easily explained by the course of dealing. The earlier shipments also contained excess amounts of the product that were then passed along to defendant. And anyway, if defendant received 1,400 kgs instead of 1,200 kgs, it could have simply refused or returned the excess.

Defendant had ample opportunity to refute these bills, but instead, defendant, when confronted with these invoices, stated that it would "mail out payment soon" that it would "take care [of] open invoices," and that it "will be able to clear up open invoices...soon." Defendant did not refute the invoices nor did it take issue with the Net 30 terms or the 2% monthly interest. Accordingly, the Court grants plaintiff's motion for summary judgment on its account stated claim as described below.

Neither party substantively addressed defendant's counterclaims, so the case shall proceed as to those. The presence of these counterclaims also compels the Court to grant summary judgment as to liability only rather than permit the entry of multiple judgments—this Court prefers that there be only one judgment per case.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is granted as to liability on its account stated claim; and it is further

ORDERED that all other relief sought in plaintiff's motion is denied.



5/11/2026

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE