

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

EULER HERMES NORTH AMERICA
INSURANCE COMPANY,

Plaintiff,

CASE NO: _____

vs.

QUALITY FOODS PRODUCE, INC.
AND JOSE PEREZ,

Defendants.
_____ /

VERIFIED COMPLAINT

Plaintiff, Euler Hermes North America Insurance Company (“Euler Hermes”), complains of Defendants, Quality Foods Produce, Inc. (“Quality Foods”) and Jose Perez (collectively, “Defendants”), as follows:

I. THE PARTIES

1. Euler Hermes is a Maryland corporation with its principal place of business located at 800 Red Brook Boulevard, Owings Mills, Maryland 21117-1008.

2. Euler Hermes provides commodity insurance for the sellers of wholesale quantities of perishable agricultural commodities (hereinafter “Produce”) in both interstate and foreign commerce.

3. Euler Hermes’ insureds, specifically Produce Team, LLC and La Casa Del Aguacate, LLC (hereinafter “Assignors”), trade in fresh fruit and vegetable commodities the United States Department of Agriculture (“USDA”) expressly recognizes as commodities covered under the provisions of the Perishable Agricultural Commodities Act, 1930, as amended, 7 U.S.C. §§ 499a-499t (2019) (“PACA”).

4. Quality Foods, a buyer of Produce, ordered, received, and accepted Produce from Assignors, but ultimately failed to pay the invoices therefor. As described in more detail below, Euler Hermes is the assignee and is subrogated to the rights of Assignors to collect the amounts due for those unpaid invoices.

5. At all times relevant hereto, the Assignors were engaged, directly or indirectly, in the business of purchasing and/or selling Produce in wholesale or jobbing quantities and, therefore, are “dealers” of Produce as defined by PACA.

6. At all times relevant hereto, the Assignors operated their business under valid USDA-issued PACA Licenses, which the USDA has identified as License Nos.: 20200399 and 20201332, respectively.

7. Quality Foods is a Florida corporation with its principal place of business located at 5550 NW 185th St., Miami Gardens, Florida 33056. The registered agent of Quality Foods is Jose Perez who may be served with process at 5550 NW 185th St., Miami Gardens, Florida 33056, or wherever he may be found. At all times relevant to this action, Quality Foods:

- a. operated, conducted, and otherwise was engaged in or carried on the business of buying, and selling Produce in interstate or foreign commerce;
- b. is the holder of PACA license number 20211177, which the USDA issued to Quality Foods on or about September 7, 2021 and was active throughout Quality Foods’ dealings with the Assignors;¹ and
- c. specifically, Quality Foods purchased or received Produce, namely tomatoes, lettuce, carrots, potatoes, and avocados.

¹ A true and correct copy of Quality Foods’ PACA license, as maintained by the USDA and made publicly available online, is attached hereto as Exhibit A.

8. Defendant Jose Perez (“Perez” or the “Principal” and, collectively with Quality Foods, “Defendants”) is a resident of Texas, is or was an employee,² officer, director, or member of Quality Foods, and was in a position to exercise dominion and control over Quality Foods at all times relevant to this action and otherwise participated in the tortious conduct or other wrongs set forth herein. Perez may be served at 5550 NW 185th St., Miami Gardens, Florida 33056, or wherever he may be found. Perez holds himself out as the General Manager and the Officer and/or Director of Quality Foods and his position as such is listed on Quality Foods’ corporate documents filed with the Texas Secretary of State and credit applications submitted to Assignors.³ Perez is also listed as a Principal on Quality Foods’ PACA license.⁴

II. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this civil action arising under 7 U.S.C. § 499e(b)(2) (“liability may be enforced by ... suit in any court of competent jurisdiction....”) and 7 U.S.C. § 499e(c)(5) (“the several district courts of the United States are vested with jurisdiction specifically to entertain (i) actions by trust beneficiaries to enforce payment from the trust”) of the PACA, pursuant to 28 U.S.C. § 1331 and because this matter involves the interpretation of a federal statute.

10. This Court also has subject matter jurisdiction over this civil action pursuant to 28 U.S.C. § 1337 because PACA qualifies as an “Act of Congress regulating commerce” and several of Euler Hermes’ claims herein arise under 7 U.S.C. § 499e(b)(2) and 7 U.S.C. § 499e(c)(5).

11. This Court has supplemental jurisdiction over Euler Hermes’ other claims pursuant to 28 U.S.C. § 1367(a).

² “Employed,” “employ,” or “employment” means “any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment.” See 7 C.F.R. § 46.2(ee).

³ See a true and correct copy of Quality Foods’ corporate documents attached hereto as Exhibit B.

⁴ See Exhibit A.

12. This Court has *in rem* jurisdiction over Euler Hermes' claims pursuant to, *inter alia*, 28 U.S.C. § 1655.

13. Venue in this district is based on 28 U.S.C. § 1391(b)(2) and (3) because (i) Defendants reside in this district and (ii) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated in this district.

III. NATURE OF THE CASE

14. This is a civil action for monetary and injunctive relief, pursuant to which Euler Hermes seeks to enforce its rights against Defendants under both PACA's Unfair Conduct provisions and further seeks to enforce its rights under state law (*e.g.*, breach of contract, alter ego liability, tortious interference with receipt of trust assets, civil conspiracy, and aiding and abetting).

15. As set forth in detail herein, Defendants have committed willful, repeated, and flagrant violations of Section 2 of PACA (*i.e.*, Unfair Conduct provisions) and, as a direct result of said violations. Euler Hermes, as assignor and subrogee of Assignors' unpaid invoices, has incurred damages of not less than \$124,241.00, plus contractually due costs of collection, including attorney's fees, as sums owing in connection with the unpaid Produce transactions between Quality Foods and Assignors.

IV. EXHIBITS

16. True and correct copies of the following documents are attached hereto and are incorporated herein by this reference::

- | | |
|---|--------------------|
| a. Quality Foods' PACA License | <u>Exhibit A</u> |
| b. Quality Foods' Corporate Documents | <u>Exhibit B</u> |
| c. Produce Team Declaration | <u>Exhibit C</u> |
| d. Quality Foods' Credit Application with Produce Team | <u>Exhibit C-1</u> |
| e. Produce Team's Unpaid Invoices to Quality Foods | <u>Exhibit C-2</u> |
| f. Assignment Agreement from Produce Team to Euler Hermes | <u>Exhibit C-3</u> |
| g. La Casa Declaration | <u>Exhibit D</u> |
| h. Quality Foods' Credit Application with La Casa | <u>Exhibit D-1</u> |
| i. La Casa's Unpaid Invoices to Quality Foods | <u>Exhibit D-2</u> |
| j. Assignment Agreement from La Casa to Euler Hermes | <u>Exhibit D-3</u> |
| k. Euler Hermes Declaration | <u>Exhibit E</u> |

V. FACTUAL ALLEGATIONS

A. Assignors' Assignment of Accounts Receivables to Euler Hermes.

2. Euler Hermes entered into written Agreements with the Assignors wherein the Assignors agreed to sell, and Euler Hermes agreed to purchase, certain of its Produce related accounts receivable.⁵ Each of the Agreements were entered into as a condition to receiving loss payments under the various trade credit policies issued to the Assignors to reimburse for non-payment of goods supplied, so that Euler Hermes could recover for its losses

⁵ A true and correct copy of the Agreements are attached hereto and incorporated herein by this reference as Exhibits C-3 and D-3.

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