

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KOCH MEAT CO., INC., d/b/a KOCH)	
FOODS OF CHICAGO, KOCH FOODS)	
OF CINCINNATI, LLC, and KOCH FOODS)	
OF MISSISSIPPI, LLC,)	
)	
Plaintiffs,)	
)	
v.)	No.
)	
MAINES PAPER & FOOD SERVICE INC.,)	
)	
Defendant.)	

COMPLAINT

Plaintiffs Koch Meat Co., Inc., d/b/a Koch Foods of Chicago, Koch Foods of Cincinnati, LLC, and Koch Foods of Mississippi, LLC (collectively, “Koch”), by and through their undersigned counsel, as and for their Complaint against Defendant Maines Paper & Food Service Inc. (“Maines”), allege as follows.

INTRODUCTION

1. This action arises out of Maines’ failure and refusal to pay to Koch \$2,571,941, plus interest, for specialty chicken products that Koch sold and delivered to Maines in March and April 2020.
2. Koch is one of the largest privately held poultry producers and processors in the United States. It provides large volumes of specialty chicken products to restaurant chains and other end-users nationwide. Maines is in the food distribution business, essentially acting as the “middleman” between food producers, such as Koch, and end-users, such as the restaurant chains and other customers that Koch serves.

3. For over five years, Koch has had contractual arrangements with the owners of several major restaurant chains to provide them with specialty chicken products on a regular basis. During that time, Maines served as the designated distributor of Koch's products to several of these restaurant chains. Koch's customers would place an order for Koch's products with Maines, which would then request those products from Koch. Upon Maines' delivery of the products to Koch's customers, those customers would pay Maines an amount sufficient for Maines to pay Koch in full and to pay Maines for its distribution services.

4. Pursuant to this long-standing arrangement, in March and April 2020 Koch received a series of purchase orders for specialty chicken products to be delivered to Maines. Koch delivered the products, which Maines accepted, and Koch invoiced Maines for those products. Maines then delivered those products to Koch's customers. Maines collected millions of dollars from Koch's customers for those products. But Maines did not use those proceeds to pay Koch. Rather, it stiffed Koch, hoarding the cash it collected from Koch's customers for its own improper use.

5. As a result of Maines' conduct, Koch has incurred over \$2.5 million in damages, plus applicable contractual and/or statutory interest, which continues to accrue.

PARTIES

6. Koch Meat Co., Inc. ("Koch Meat") is an Illinois corporation with its principal place of business in Park Ridge, Illinois. Koch Meat does business as Koch Foods of Chicago ("Koch Chicago").

7. Koch Foods of Cincinnati, LLC ("Koch Cincinnati") is an Ohio limited liability corporation with its principal place of business in Fairfield, Ohio.

8. Koch Foods of Mississippi, LLC ("Koch Mississippi") is a Mississippi limited liability corporation with its principal place of business in Flowood, Mississippi.

9. Non-party Koch Foods Incorporated, a Delaware corporation with its principal place of business in Park Ridge, Illinois, is the sole stockholder of Koch Meat, and the sole member of Koch Cincinnati and Koch Mississippi.

10. Maines is a New York corporation with its principal place of business in Conklin, New York.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action under 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, exclusive of interests and costs, and diversity of citizenship exists between Koch and Maines.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this action occurred in the Northern District of Illinois. Alternatively, venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(3) because Maines is subject to personal jurisdiction in Illinois.

FACTUAL BACKGROUND

13. Koch maintains business relationships with the owners of restaurant chains to which it sells large volumes of chicken products on a regular basis. Relevant here, Koch's customers include Dine Brands Global, Inc., Brinker International, Inc., and Restaurant Brands International, Inc., among others (the "Koch Customers" and "Koch's Customers").

14. Until recently, the Koch Customers designated Maines as their chosen food distributor with respect to Koch's products. For years, the arrangement between Koch, Maines and the Koch Customers operated in the ordinary course as follows. Koch's Customers ordered Koch's products from Maines, which then requested those products from Koch via purchase order. Koch delivered the requested products to Maines at the designated Maines location, and then

invoiced Maines for the delivered products. Maines then delivered Koch's products to the Koch Customers, and the Koch Customers would pay Maines an amount equal to: (a) Koch's invoices to Maines; plus (b) Maines' shipping fee. Maines then used those funds to pay Koch's invoices, retaining its fee.

15. Koch's invoices to Maines stated, among other things: (a) the amount that Maines owed to Koch for the products; (b) that payment was due in "net 7 days"; and (c) that any amounts not timely paid would accrue interest at 1.5% per month until paid. By ordering and accepting Koch's products, Maines agreed to all terms contained in Koch's invoices, thereby creating a valid and enforceable contractual relationship with Koch with respect to each order and corresponding invoice.

16. By early 2020, Maines had ordered millions of dollars in chicken from Koch. On information and belief, Maines made substantial profits each year by selling and delivering Koch's specialized chicken products to the Koch Customers.

17. Between March 2 and March 17, 2020, Koch Chicago delivered chicken products to Maines pursuant to ten (10) purchase orders. Koch Chicago issued invoices for the delivered product to Maines (the "Koch Chicago Invoices"). (The Koch Chicago Invoices are attached hereto as Group Exhibit A.) Together, the Koch Chicago Invoices total \$563,440. Maines accepted all such products without complaint. Each of the Koch Chicago Invoices required Maines to make full payment to Koch Chicago within seven (7) days. The latest of the invoices was due to be paid on March 24, 2020. Maines has not made any payment to Koch, despite repeated demands.

18. Between March 4 and April 7, 2020, Koch Cincinnati delivered chicken products to Maines pursuant to twenty-six (26) purchase orders, and Koch Cincinnati issued invoices for

the delivered product to Maines (the “Koch Cincinnati Invoices”). Together, the Koch Cincinnati Invoices total \$1,391,434. (The Koch Cincinnati Invoices are attached hereto as Group Exhibit B.) Maines accepted all such products without complaint. Each of the above-referenced invoices required Maines to make full payment within seven (7) days. The latest of the invoices was due to be paid on April 14, 2020. Maines has not made any payment to Koch, despite repeated demands.

19. Between March 4 and March 19, 2020, Koch Mississippi delivered chicken products to Maines pursuant to fourteen (14) purchase orders, and Koch Mississippi issued invoices for the delivered product to Maines (the “Koch Mississippi Invoices”). (The Koch Mississippi Invoices are attached hereto as Group Exhibit C; the Koch Chicago, Koch Cincinnati, and Koch Mississippi Invoices are referred to herein, collectively, as the “Koch Invoices”.) Together, the Koch Mississippi Invoices total \$598,879. This total is net of credits Koch Mississippi received for the return of products that certain of the Koch Customers could not use because of the COVID-19 pandemic and others reasons unrelated to the quality of the products.

20. Maines accepted all of Koch Mississippi’s goods without complaint. Each of the above-referenced invoices required Maines to make full payment within seven (7) days. The latest of the invoices was due to be paid on March 31, 2020. Maines has not made any payment to Koch, despite repeated demands.

21. Not only has Maines wrongfully failed and refused to pay Koch, but it has reaped an undeserved windfall from its misconduct. On information and belief, Maines has delivered over 90% of Koch’s products to the Koch Customers, who then paid Maines in an amount sufficient to cover both the Koch Invoices and Maines’ shipping fee. Because Maines received payment for Koch’s products, Maines indisputably had the cash available to pay Koch in full, but

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