

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

COOLAB FOODS, LLC.,

Plaintiff,

v.

CREAMALICIOUS, INC.,
ELIZABETH ROGERS, RICHARD WHITE,
and ROGER CUNNINGHAM,

Defendants.

COMPLAINT

Plaintiff CooLab Foods, LLC, for its Complaint against defendants Creamalicious, Inc., Elizabeth Rogers, Richard White, and Roger Cunningham states as follows:

PARTIES

1. Plaintiff CooLab Foods, LLC (“CooLab”) is a Delaware limited liability company with its principal place of business located at 3220 Manheim Road, Franklin Park, IL 60131.

2. The sole member of CooLab is Western Skies Food Holdings LLC, (“Western Skies”). The members of Western Skies are Nicholas Kuneman, Michael Kenefick, and Cody Miller. Nicholas Kuneman is a citizen of the state of Colorado. Michael Kenefick is a citizen of the state of Florida. Cody Miller is a citizen of the state of Kentucky.

3. For purposes of diversity, CooLab is a citizen of the states of Colorado, Florida, and Kentucky.

4. Defendant Creamalicious, Inc. (“Creamalicious”) is a Delaware Corporation with its principal place of business at 6953 Tarrago CT, Liberty Township, Ohio 45011.

5. For purposes of diversity, Creamalicious is a citizen of the states of Delaware and Ohio.

6. Defendant Elizabeth Rogers is a principal of Creamalicious and is a citizen of the state of Ohio.

7. Defendant Richard White is a principal of Creamalicious and is a citizen of the state of Hawaii.

8. Defendant Roger Cunningham is a principal of Creamalicious and is a citizen of the state of Vancouver, British Columbia, Canada.

JURISDICTION AND VENUE

9. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332 as the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000.

10. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391 as a substantial portion of the events or omissions giving rise to this action occurred in this district.

FACTUAL BACKGROUND

11. Coolab collaborates with its customers to co-manufacture frozen desserts.

12. Creamalicious is a brand of artisan ice cream.

13. Creamalicious was in need of assistance with the manufacturing of its ice cream.

14. In the spring of 2022, Coolab and Creamalicious entered into an agreement, whereby Coolab would purchase supplies and manufacture Creamalicious's ice cream.

15. Creamalicious agreed to pay Coolab for the goods and services provided.

16. Coolab fulfilled its obligations under the agreement by providing the goods and services.

17. Coolab issued invoices to Creamalicious for the goods and services rendered.

18. Until the end of May 2022, Creamalicious paid the invoices issued by Coolab.

19. On May 26, 2022, CooLab issued Invoice # 1660 for goods and services provided to Creamalicious in the amount of \$69,552.00. (A true and correct copy is attached hereto as Exhibit 1.)

20. On May 31, 2022, CooLab issued Invoice # 1665 for goods and services provided to Creamalicious in the amount of \$25,149.10. (A true and correct copy is attached hereto as Exhibit 2.)

21. On June 1, 2022, CooLab issued Invoice # 1675 for goods and services provided to Creamalicious in the amount of \$3,859.31. (A true and correct copy is attached hereto as Exhibit 3.)

22. On June 3, 2022, CooLab issued Invoice # 1684 for goods and services provided to Creamalicious in the amount of \$510.94. (A true and correct copy is attached hereto as Exhibit 4.)

23. On June 3, 2022, CooLab also issued Invoice # 1692 for goods and services provided to Creamalicious in the amount of \$1,225.00. (A true and correct copy is attached hereto as Exhibit 5.)

24. On June 13, 2022, CooLab issued Invoice # 1703 for goods and services provided to Creamalicious in the amount of \$19,678.90. (A true and correct copy is attached hereto as Exhibit 6.)

25. On June 13, 2022, CooLab also issued Invoice # 1707 for goods and services provided to Creamalicious in the amount of \$1,858.83. (A true and correct copy is attached hereto as Exhibit 7.)

26. On June 14, 2022, CooLab issued Invoice # 1706 for goods and services provided to Creamalicious in the amount of \$28,980.00. (A true and correct copy is attached hereto as Exhibit 8.)

27. Creamalicious failed to fulfill its obligation under the agreement by refusing to pay for the goods and services set forth in Invoice # 1660, Invoice # 1665, Invoice # 1675, Invoice # 1684, Invoice # 1692, Invoice #1703, Invoice # 1707, and Invoice # 1706.

28. Creamalicious has also failed to fulfill its obligation under the agreement by refusing to pay for approximately \$10,000 in finished products that remain in Coolab freezers and approximately \$800 of FedEx shipping costs.

29. To address Creamalicious's failure to pay the amounts owed to Coolab, Coolab and Creamalicious began negotiating a settlement pursuant to which Creamalicious would pay the outstanding amounts owed to Coolab and Coolab would release the goods, packaging, and ingredients that Coolab had prepared and procured for defendants.

30. On June 10, 2022, Coolab and Creamalicious entered into a Settlement Agreement and Release of Claim (the "Settlement Agreement"). (A true and correct copy is attached hereto as Exhibit 9.)

31. The Settlement Agreement provided that,

the parties have agreed that the amount of One Hundred Forty Nine Thousand Three Hundred Eighty Three and 75/100 Dollars (\$149,383.75) representing invoice numbers 1660, 1665, 1675, 1694 [sic] and 1692, un-invoiced amounts of \$23,184 for finished goods to be verified with a bill of lading provided to Elizabeth Rogers, \$28,980.00 for ice cream mix, \$1,858.53 for third party testing fees, and \$800 for fedex charges are owed by Creamalicious, Inc. to Coolab Foods, LLC.

(Ex. 9 at 1.)

32. The Settlement Agreement also provided that,

The parties mutually agree as follows (a) Creamalicious, Inc. shall cause to be paid to Coolab Foods, LLC the following: (1) Fifty Seven Thousand and Five Hundred and 00/100 Dollars (\$57,500.00) on 06/10/2022; and (2) the balance owing as in three equal payments of Thirty Thousand Six Hundred Twenty Seven Dollars and 92/100 (\$30,627.92) on 06/24/2022, on 07/01/2022, and a final payment on 07/08/2022, as full and final settlement

of this matter (the “settlement payment”). Payments will be made via ACH. Any outstanding amounts owed at the time of a failure to make a payment in accordance with this agreement will be subject to a default interest of eight percent (8%) per annum. In the event of a default in payment which has not been remedied within three (3) business days, Creamalicious, Inc. will also be responsible for Coolab Foods, LLC reasonable legal costs associated with enforcing this agreement . . . (c) Coolab Foods LLC will release the finished goods, packaging and ingredients for pickup, the same day as receipt of wire confirmation of the first settlement payment of Fifty Seven Thousand and Five Hundred and 00/100 Dollars (\$57,500.00). These items will be documented on a bill of lading provided to Elizabeth Rogers.

(*Id.* ¶ 2.)

33. The following additional terms were also included in the Settlement Agreement:

- a. Coolab’s release of Creamalicious was “conditioned upon Creamalicious, Inc. [sic] making all of the settlement payments to Coolab Foods, LLC. If Creamalicious, Inc. fails to make all of the settlement payments, Coolab Foods LLC is free to avail themselves of all legal remedies available to them including, but not limited to, a lawsuit to enforce this agreement.” (*Id.* ¶ 3(c).)
- b. “If this agreement is breached, the breaching party will indemnify and hold the other harmless from any resulting claims, including attorney fees and costs.” (*Id.* ¶ 5(a).)
- c. “The party representatives executing this agreement warrant that they are the duly authorized representatives of the respective entities designated below and are fully empowered to execute this agreement on behalf of the respective parties.” (*Id.* ¶ 5(e).)
- d. “This agreement must be construed in accordance with the laws of the State of Illinois.” (*Id.* ¶ 5(g).)
- e. Creamalicious, Inc., shall at Coolab Foods, LLC’s option, be in default under this Agreement upon the happening of any of the following events or conditions (each, an “**Event of Default**”): (a) a failure to pay any amount due under the Note or this Agreement the date the same is due; (b) the failure by Creamalicious, Inc. to perform any of its other obligations under this Agreement within ten (10) days of notice from Coolab Foods, LLC of the same;” (*Id.* ¶ 6.)

34. On June 9, 2022, the day before the Settlement Agreement was executed, Richard

White sent an email to Coolab in which he provided the schedule for the trucks that would arrive

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