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Myra Gordon, Vincent Pacifico, Andrew Roy and
Nigel J. Coelho as Trustees of the United Teamster
Fund*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DANIEL KANE JR., CHARLES MACHADIO, LEO
SERVEDIO, ANTHONY ROSA, MYRA GORDON,
VINCENT PACIFICO, ANDREW ROY and
NIGEL COELHO as TRUSTEES OF THE
UNITED TEAMSTER FUND,

Case No.:

Plaintiffs,

COMPLAINT
ECF ACTION

- against -

MENDEZ INTERNATIONAL TROPICAL
FOODS, INC.

Defendants.

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Plaintiffs, DANIEL KANE JR., CHARLES MACHADIO, LEO SERVEDIO, ANTHONY
ROSA, MYRA GORDON, VINCENT PACIFICO, ANDREW ROY and NIGEL COELHO as
TRUSTEES OF THE UNITED TEAMSTER FUND (collectively, the “Plaintiffs” and/or the
“Trustees”) by their attorneys, Dealy Silberstein & Braverman, LLP, complaining of Defendant
Mendez International Tropical Foods, Inc. (“Mendez”), hereby allege as follows:

NATURE OF THE ACTION AND JURISDICTION

1. This is a civil action brought against the Defendant pursuant to the Employee Retirement

Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. §§ 1132(a)(3), 1132(e)(1), 1132(f), 1145; and the Labor Management Relations Act of 1947, as amended (“LMRA”), 29 U.S.C. § 185(a), by a multiemployer welfare fund.

2. This action seeks to recover, inter alia, delinquent health and welfare contributions which are owed to the Welfare Fund by Defendant Mendez on behalf of former Mendez employee Pedro Luis Ramirez Gil for the month of October 2021 in the amount of \$1,324.96; interest on the unpaid contributions; liquidated damages at the rate of interest on the unpaid contributions, or twenty (20%) percent of all of the unpaid contributions, whichever is greater; reasonable attorneys’ fees; and the costs of this action.
3. Jurisdiction of this Court is invoked under the following statutes:
 - a) ERISA, in sections codified as 29 U.S.C. §§ 1104(a)(1), 1109(a), 1132(e)(1), 1132(f) and 1145;
 - b) LMRA, in section codified as 29 U.S.C. § 185(a);
 - c) 28 U.S.C. § 1331 (federal question); and
 - d) 28 U.S.C. § 1337 (civil actions arising under Act of Congress regulating commerce).

VENUE

4. Venue properly lies in this district pursuant to Section 502(e)(2) of ERISA (29 U.S.C. § 1132(e)(2)). Service of process may be made on Defendant Mendez in any other district in which it may be found, pursuant to Section 502(e)(2) of ERISA (29 U.S.C. § 1132(e)(2)).

THE PARTIES

5. At all relevant times, Plaintiffs, the Trustees, have administered the United Teamster Fund

(the “Welfare Fund”).

6. The Welfare Fund was established pursuant to collective bargaining agreements in 1949 by Declarations of Trust, which have been amended from time to time (the “Trust Agreements”).
7. The Welfare Fund is an “employee benefit plan” established pursuant to Section 302(c)(5) of the LMRA, 29 U.S.C. § 186(c)(5), within the meanings of Sections 3(1), 3(2), and 3(3), and 502(d)(1) of ERISA, 29 U.S.C. §§ 1002(1), 1002(2), 1002(3) and 1132(d)(1) and is a multi-employer plan within the meaning of sections 3(37) and 515 of ERISA (29 U.S.C. §§ 1002(37) and 1145).
8. The Welfare Fund is administered at 2137-2147 Utica Avenue, Brooklyn, New York, 11234.
9. The purpose of the Welfare Fund is to provide various fringe benefits to eligible employees on whose behalf employers contribute to the Welfare Fund, pursuant to collective bargaining agreements between employers in the food and produce industry and Local 202, International Brotherhood of Teamsters, AFL-CIO, (the “Union”). The Welfare Fund receives contributions from, inter alia, employers who are parties to collective bargaining agreements with the Union, invest and maintain those monies, and distribute health and welfare benefits to employees and to beneficiaries eligible to receive them pursuant to the Welfare Fund’s plan.
10. The Union is a local labor organization composed of approximately 3,000 active members representing, inter alia, fruit and produce employees in and around the Greater New York City area.

11. Upon information and belief, Defendant Mendez is a corporation duly organized under the laws of the State of New York, with its principal place of business located at 161 New York City Terminal Market, Bronx, New York 10474.

FACTS

12. At all relevant times, Defendant Mendez has been a party to a collective bargaining agreement with the Union (the “CBA”) which covers, inter alia, the wages, fringe benefits, terms, and conditions of employment for its employees who are working in covered employment.
13. Pursuant to the CBA, at all relevant times, Defendant Mendez was obligated to remit monthly health and welfare contributions and reports to the Welfare Fund on behalf of all its employees working in covered employment on or before the tenth (10th) day of each month, for all employees covered by the CBA.
14. Pursuant to the CBA, at all relevant times, Defendant Mendez was similarly obligated to submit monthly contribution reports to the Welfare Fund describing the hours and days worked by each of its employees working in covered employment.
15. Defendant Mendez has failed and refused to remit its required contributions and reports to the Welfare Fund for the month of October 2021.
16. By letter dated March 23, 2022, the Welfare Fund, through counsel, demanded that Defendant Mendez remit to the Welfare Fund its delinquent contributions and reports for the month of October 2022.
17. Thereafter, having failed to cure its default, the Welfare Fund, through counsel, sent a follow up letter dated May 10, 2022 demanding that Mendez remit to the Welfare Fund its

delinquent contributions and reports for the month of October 2021.

18. No response to the March 23, 2022 or the May 10, 2022 letter was received by the Welfare Fund or its counsel.
19. Accordingly, Defendant Mendez has willfully failed to remit the required health and welfare contributions to the Welfare Fund on behalf of former Mendez employee Pedro Luis Ramirez Gil for the month of October 2021 in the amount of \$1,324.96.
20. By willfully failing to remit the health and welfare contributions and reports to the Welfare Fund, Defendant Mendez has violated the terms of the CBA, the Trust Agreements and ERISA.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT MENDEZ -
VIOLATIONS OF CBA, TRUST AGREEMENTS,
AND PROVISIONS OF ERISA**

21. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 20 of the Complaint, as if fully set forth herein.
22. Defendant Mendez has failed and refused to remit its required contributions and reports to the Welfare Fund on behalf of former Mendez employee Pedro Luis Ramirez Gil for the month of October 2021 in the amount of \$1,324.96.
23. Said failure and refusal by Defendant Mendez to report and make contributions for its employees constitutes a violation of Defendant Mendez's obligations pursuant to the CBA and the Trust Agreements, and constitutes a violation of the provisions of ERISA and the LMRA. Plaintiffs seek enforcement of those provisions pursuant to Sections 502(a)(3)(b)(ii) and 515 of ERISA, 29 U.S.C. § 1132(a)(3)(b)(ii) and 29 U.S.C. § 1145, and Section 301(a) of the LMRA, 29 U.S.C. § 185(a).

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