

**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF NEW YORK**

PERDUE FARMS INC.

Civil Action No. 3:20-CV-552[MAD/ML]

Plaintiff,

COMPLAINT

-against-

MAINES PAPER & FOOD SERVICES,
INC.,

Defendant.

Plaintiff Perdue Farms Inc. (“Perdue” or “Plaintiff”), by and through its undersigned counsel, Cole Schotz P.C., as and for its Complaint against Maines Paper & Food Services, Inc. (“Maines” or “Defendant”), alleges and states as follows:

THE PARTIES

1. Perdue is a corporation organized under the laws of the State of Maryland, with its principal place of business located at 31149 Old Ocean City Road, Salisbury, Maryland 21804.

2. Upon information and belief, Maines is a corporation organized under the laws of the State of New York, with its principal place of business located at 101 Broome Corporate Parkway, Conklin, New York 13748.

JURISDICTION AND VENUE

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1332(a)(1), as Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds the \$75,000 threshold.

4. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b)(1), as Defendant’s principal place of business is located in the Court’s judicial district.

FACTUAL BACKGROUND

5. Perdue is a family-owned company that was founded in 1920 and has operated in the agriculture and food-supply industries ever since. One aspect, among many others, of Perdue's business includes raising, processing, and selling poultry and other products from its many locations across the eastern United States to certain grocery and restaurant chains.

6. For more than ten (10) years, Perdue has provided certain poultry products to Maines, for ultimate delivery to Burger King and Wendy's restaurants. As part of this process, Maines purchased the required poultry products directly from Perdue, before delivering them to Burger King or Wendy's pursuant to Maines' respective agreements with each restaurant.

7. Under this arrangement, Maines submitted purchase orders to Perdue, specifying the type and quantity of poultry products requested, and Perdue generated and submitted to Maines an invoice for each purchase order. Each invoice provided to Maines is substantially identical to the sample invoice attached hereto as **Exhibit A**, except for the amounts owed, which varies by order.

8. Additionally, each invoice expressly incorporates in conspicuous type the terms and conditions located at www.perduefoodsterms.com, a true and accurate copy of which is attached hereto as **Exhibit B**.

9. The terms and conditions require Maines to give written notice to Perdue of a dispute concerning the accuracy of any invoice within five (5) days of the date of receipt. **Exhibit B**, ¶ 5. However, Maines never provided such notice or otherwise disputed any invoices and has therefore waived its right to do so.

10. Pursuant to the terms and conditions, Maines is also required to pay any charges, including attorneys' fees, incurred by Perdue in enforcing its right to payment. *Id.*, ¶¶ 7 and 19.

Furthermore, Perdue is entitled to recover the maximum interest allowable by law on all non-conforming (i.e., late) payments made by Maines. Id., ¶ 4.

11. As to the payment terms, each invoice provided to Maines includes the following information, to which Maines has historically adhered:

Invoice terms:
Net 26 Days EFT¹
Funds Transfer By xx/xx/yyyy

12. Unfortunately, however, Maines has failed to remit payment to Perdue in exchange for most of the poultry products delivered to Maines since late February 2020, with 29 outstanding and past-due invoices totaling \$1,462,936.95 as of the date of this filing. The outstanding and past-due invoices are detailed on a spreadsheet attached hereto as **Exhibit C**.

13. Perdue has fulfilled all of its obligations under the purchase orders placed by Maines and the invoices generated therefor, including timely delivery to Maines of the goods in question. Maines accepted delivery of the goods in question, but has failed to remit full, or even partial, payment for them.

14. On May 4, 2020, counsel for Perdue sent a formal demand letter to Maines, demanding payment of the amounts past due, and providing seven (7) days from the date of the letter to either provide payment in full, or to provide certain requested financial information along with a reasonable payment plan. The demand letter further warned that Perdue would be forced to pursue its legal remedies if Maines did not comply. A true and accurate copy of the demand letter is attached hereto as **Exhibit D**.

¹ “Net 26” provides Maines with 26 days from the date of the invoice to remit payment to Perdue. “EFT” stands for “Electronic Funds Transfer.”

15. As of the date of this filing, Maines has neither remitted payment for the past due amounts, nor provided the requested financial information or any proposal for a reasonable payment plan.

16. Instead, upon information and belief, Maines has decided to cease operating the portion of its business relevant to this Complaint. However, as of the date of this filing, Maines has not notified Perdue of this decision or addressed the past-due amounts or any ongoing business between Maines and Perdue.

17. Accordingly, Perdue has filed this Complaint to pursue its legal remedies.

FIRST CAUSE OF ACTION
(Breach of Contract—Amounts Past Due)

18. Perdue repeats, realleges, and restates all allegations contained in the paragraphs numbered “1” through “17” above, as though fully set forth here.

19. Each unpaid purchase order and corresponding invoice discussed above constitutes a valid, enforceable contract for the sale of goods, properly consisting of an offer and acceptance (the purchase order and invoice) and agreed-upon consideration (the invoice price), the terms of which are expressly identified at the bottom of each invoice, reproduced here as Exhibit B.

20. Perdue has performed all actions required by these contracts and has fulfilled all of its obligations thereunder, including timely delivery to Maines of the goods in question.

21. Maines accepted delivery of such goods, but has not remitted payment for them.

22. Pursuant to the contracts’ terms, Maines owes Perdue \$1,462,936.95 in connection with the 29 outstanding and past-due invoices documented on Exhibit C.

23. Perdue has demanded payment in full of all amounts past due by the demand letter dated May 4, 2020 sent to Maines by counsel for Perdue, attached hereto as Exhibit D.

24. Maines has failed or refused to pay Perdue the amounts outstanding and past due under each of the aforementioned contracts, which constitutes a material breach of each such contract.

25. As a direct and proximate result of Maines' breach of contract, Perdue has suffered damages in an amount not less than \$1,462,936.95, plus interest, attorneys' fees and costs incurred by Perdue in pursuing collection of the amounts owed.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

26. Perdue repeats, realleges, and restates all allegations contained in the paragraphs numbered "1" through "25" above, as though fully set forth here.

27. Maines placed orders for the purchase of goods from Perdue.

28. Perdue delivered to Maines the goods in question.

29. Maines knew that the goods delivered by Perdue had reasonable value.

30. Maines knew that Perdue expected to be paid for the goods provided.

31. Despite Perdue's demands for payment, Maines has failed or refused to pay Perdue for the valuable goods provided.

32. By virtue of its failure to pay for the goods provided by Perdue, Maines has been unjustly enriched in the amount of \$1,462,936.95.

33. As a direct and proximate result of Maines' actions, Perdue has suffered damages in an amount not less than \$1,462,936.95, plus interest, attorneys' fees and costs incurred by Perdue in pursuing collection of the amounts owed.

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