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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **EASTERN DIVISION**

13 **DIVERSIFIED DISTRIBUTORS,**
14 **INC., a California corporation,**

15 **Plaintiff,**

16 **vs.**

17 **VALLEY GIRL SALES AND**
18 **MARKETING, INC., a California**
19 **corporation; YOLANDA**
20 **RAMIREZ, an individual;**
21 **MARITZA OLSON, an individual**
22 **also known as MARITZA RUIZ;**
23 **and JODY MITCHELL, an**
24 **individual,**

25 **Defendants.**

Case No:

Count I: Breach of Contract (Valley Girl - Produce Transactions)

Count II: Declaratory Relief (Valley Girl)

Count III: Failure to Promptly Pay (Valley Girl)

Count IV: Declaratory Relief Validating PACA Trust Claim (Defendants)

Count V: Creation of Common Fund, Enforcement of Payment From PACA Trust Assets, and Failure to Maintain PACA Trust (Valley Girl)

Count VI: Breach of Fiduciary Duty to PACA Trust Beneficiaries (Rodriguez)

Count VII: Unlawful Retention of PACA Trust Assets (Rodriguez)

Count VIII: Breach of Fiduciary Duty to PACA Trust Beneficiaries (Olson)

Count IX: Unlawful Retention of PACA Trust Assets (Olson)

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- Count X: Breach of Fiduciary Duty to PACA Trust Beneficiaries (Mitchell)**
- Count XI: Unlawful Retention of PACA Trust Assets (Mitchell)**
- Count XII: Breach of Contract (Valley Girl - Storage)**
- Count XIII: Breach of Personal Guaranty (Olson)**

COMPLAINT

Defendant, Valley Girl Sales and Marketing, Inc., failed to pay for the perishable agricultural commodities it purchased from Plaintiff, Diversified Distributors, Inc. As a result, Diversified Distributors, Inc. commences this lawsuit (a) to enforce its rights against Defendants under the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §§499a-t (“PACA”), the statutory trust established under PACA, 7 U.S.C. §499e(c) (the “PACA Trust”), federal common law, and state law and (b) recover damages from Defendants.

PARTIES

1. Plaintiff is Diversified Distributors, Inc. (“Diversified”), a California corporation with its principal business location in Redlands, California.
2. Defendants are:
 - (a) Valley Girl Sales and Marketing, Inc. (“Valley Girl”), a California corporation with its principal business location in Santa Maria, California during the relevant transactions and, now, in Fayetteville, Arkansas,
 - (b) Yolanda Ramirez (“Ramirez”), an individual who, upon information and belief, resides in this district,

1 (c) Maritza Olson, an individual also known as Maritza Ruiz
2 (“Olson”) and who, upon information and belief, resides in
3 Bentonville, Arkansas, and

4 (d) Jody Mitchell (“Mitchell”), an individual who, upon information
5 and belief, resides in Fayetteville, Arkansas.

6 **JURISDICTION**

7 3. Under 28 U.S.C. §1331, the Court has jurisdiction because
8 Diversified’s claims arise under PACA, 7 U.S.C. §499e(b)(2) and 7 U.S.C.
9 §499e(c)(5).

10 4. Under 28 U.S.C. §1367(a), the Court has supplemental jurisdiction over
11 Diversified’s non-PACA claims against Defendants.

12 **VENUE**

13 5. Under 28 U.S.C. §1391(b), venue in this District is the proper because
14 (a) Valley Girl entered into the contract here, (b) a substantial part of the events and
15 omissions underlying Diversified’s claims occurred here, and (c) the location for the
16 relevant property is here.

17 **PRODUCE SALES - GENERAL ALLEGATIONS**

18 6. Between June 2020 and February 2021, Diversified and Valley Girl
19 entered into valid and enforceable contracts under which Diversified agreed to sell
20 to Valley Girl and Valley Girl agreed to purchase from Diversified 25 shipments of
21 peppers, tomatillos, and other fresh vegetables (the “Vegetables”), in interstate and
22 foreign commerce, in the aggregate amount of \$110,822 (the “Transactions”).

23 7. The Vegetables were shipped from producers in Mexico to Valley
24 Girl’s customers throughout California

25 8. Valley Girl received and accepted the Vegetables at the contract
26 destinations from Diversified without objections.

1 9. Diversified issued and sent invoices to Valley Girl reflecting the agreed
2 upon quantities of Vegetables and amounts owed by Valley Girl.

3 10. Diversified's invoices to Valley Girl included additional terms and
4 conditions for Valley Girl to pay attorneys' fees, costs, and pre-judgment interest
5 accruing at the rate of 18% per annum.

6 11. Valley Girl failed to pay for the Vegetables it purchased from
7 Diversified.

8 **CLAIMS FOR RELIEF**

9 **COUNT I: VALLEY GIRL**

10 **BREACH OF CONTRACT (PRODUCE)**

11 ***Cal. Com. Code Ann. §§2701-2725***

12 12. Diversified re-alleges ¶¶1 – 11.

13 13. As detailed in ¶¶6 and 7, Diversified and Valley Girl entered into
14 contracts for (a) Diversified to sell to Valley Girl, in interstate and foreign
15 commerce, Vegetables, and (b) Valley Girl to pay Diversified \$110,822 for the
16 Vegetables.

17 14. Valley Girl failed to pay for the Vegetables.

18 15. Diversified fully performed all conditions precedent to the agreed
19 contracts.

20 16. Because Valley Girl breached the parties' contracts, Diversified
21 suffered damages totaling \$110,822, plus interest at 18% per year from the date each
22 invoice became past due, costs, and attorneys' fees.

23 For these reasons, Diversified seeks a Judgment in its favor and against Valley
24 Girl in an amount equal to \$110,822, plus interest at 18% per year from the date each
25 invoice became past due, costs, and attorneys' fees.

1 **COUNT II: VALLEY GIRL**
2 **DECLARATORY RELIEF**

3 17. Diversified alleges ¶¶1 - 16.

4 18. Under PACA, “perishable agricultural commodity” means “fresh fruits
5 and vegetables of every kind and character,” including frozen and packed in ice
6 (“Produce”). 7 U.S.C. §499a(b)(4).

7 19. Under PACA, a “dealer” is defined as “any person engaged in the
8 business of buying or selling Produce in wholesale or jobbing quantities in
9 commerce.” 7 U.S.C. § 499a(b)(6); 7 C.F.R. § 46.2(m).

10 20. Under PACA, “wholesale or jobbing quantities” of Produce is
11 “aggregate quantities of all types of produce totaling one ton (2,000 pounds) or more
12 in weight in any day shipped, received, or contracted to be shipped or received.” 7
13 C.F.R. § 46.2(x).

14 21. Here, the Vegetables Diversified sold to Valley Girl consisted of
15 various varieties of fresh peppers and tomatillos, which are perishable agricultural
16 commodities as defined by PACA. 7 U.S.C. § 499a(b)(4).

17 22. Each Transaction consisted of a lot of Vegetables with a total weight of
18 more than 2,000 pounds and were received in a single day.

19 23. Under PACA, interstate or foreign commerce means commerce
20 between any state or territory and anyplace outside of it, 7 U.S.C. § 499a(b)(3).

21 24. Each Transaction was shipped from Mexico to one of Valley Girl’s
22 customers located in California.

23 25. When Valley Girl accepted the Vegetables in each Transaction, under
24 PACA 7 U.S.C. § 499a(b)(6) and 7 C.F.R. § 46.2(m), Valley Girl was engaged in
25 the business of a “dealer” subject to PACA because it purchased Produce in
26 wholesale or jobbing quantities in foreign and interstate commerce.

1 For this reason, Diversified seeks an Order declaring that Valley Girl qualifies
2 as a produce dealer subject to PACA.

3 **COUNT III: VALLEY GIRL**
4 **FAILURE TO PAY PROMPTLY**

5 *7 U.S.C. §499b(4)*

6 26. Diversified re-alleges ¶¶1 - 25.

7 27. During the relevant transactions, Valley Girl qualified as a produce
8 dealer under PACA.

9 28. Valley Girl must tender full payment promptly to its unpaid produce
10 suppliers and sellers.

11 29. As detailed in ¶6, Diversified sold Vegetables totaling \$110,822 to
12 Valley Girl in interstate commerce between June 2020 and February 2021.

13 30. Valley Girl failed to pay for the Vegetables it purchased from
14 Diversified within the payment terms for each transaction.

15 31. Because Valley Girl failed to pay promptly for the Vegetables,
16 Diversified has incurred damages totaling \$110,822, plus interest at 18% per year
17 from the date each invoice became past due, costs, and attorneys' fees.

18 For these reasons, Diversified seeks an Order directing Valley Girl to
19 immediately pay Diversified \$110,822, plus interest at 18% per year from the date
20 each invoice became past due, costs, and attorneys' fees.

21 **COUNT IV: DEFENDANTS**
22 **DECLARATORY RELIEF VALIDATING PACA TRUST CLAIM**

23 *7 U.S.C. §499e(c)*

24 32. Diversified re-alleges ¶¶1 - 16 and 17 - 25.

25 33. As detailed in ¶6, Diversified and Valley Girl entered into contracts for
26 Diversified to sell Vegetables to Valley Girl in interstate and foreign commerce.

1 34. During the Transactions, Diversified (a) was a dealer subject to PACA
2 and (b) held a valid PACA license (20040988) issued by the United States
3 Department of Agriculture (“USDA”).

4 35. During the relevant transactions, Valley Girl qualified as a produce
5 dealer under PACA.

6 36. As detailed in ¶6, Diversified sold Vegetables totaling \$110,822 to
7 Valley Girl in interstate commerce between June 2020 and February 2021.

8 37. When Valley Girl received the Vegetables, (a) it became a trustee under
9 the PACA Trust and (b) Diversified became eligible to participate in the PACA
10 Trust.

11 38. By holding a valid PACA license, Diversified preserved its rights as a
12 PACA Trust beneficiary of Valley Girl by including the required statutory statement
13 on the face of each invoice it timely sent to Valley Girl.

14 39. Valley Girl failed to pay for the Vegetables it purchased from
15 Diversified.

16 40. Diversified is an unpaid produce supplier and seller and is entitled to
17 PACA Trust protection and payment from Valley Girl’s assets that are subject to the
18 PACA Trust.

19 For these reasons, Diversified seeks an Order declaring that it holds a valid
20 PACA Trust claim in an amount equal to \$110,822 against Valley Girl, and that its
21 valid PACA Trust claim includes interest at 18% per year from the date each invoice
22 became past due, costs, and attorneys’ fees.

1 invoice became past due, costs, and attorneys' fees, together with
2 other relief this Court deems appropriate;

3 (ii) Creating a common fund from which all PACA Trust
4 beneficiaries may receive payment;

5 (iii) Directing Valley Girl to maintain PACA Trust Assets in an
6 amount no less than \$110,822, plus the claims of all other unpaid
7 produce sellers and suppliers that properly preserved their PACA
8 Trust claims;

9 (iv) Enjoining Valley Girl from dissipating PACA Trust Assets;

10 (v) Directing Valley Girl to replenish the PACA Trust to a level
11 sufficient to satisfy all qualified PACA Trust claims; and

12 (vi) Proving other relief this Court deems appropriate.

13 **COUNT VI: RAMIREZ**

14 **BREACH OF FIDUCIARY DUTY TO PACA TRUST BENEFICIARIES**

15 48. Diversified re-alleges ¶¶ 1 - 11, 17 - 25, 33 - 40, and 42 - 47.

16 49. During the relevant transactions, Ramirez was an officer and director
17 of Valley Girl.

18 50. In these capacities, Ramirez controlled, or was in a position to control,
19 Valley Girl's PACA Trust Assets.

20 51. Ramirez knew about and had full responsibility for Valley Girl's
21 operations and financial dealings.

22 52. As trustee of the PACA Trust, Valley Girl failed to fulfill its duties as
23 trustee of the PACA Trust, specifically, to maintain sufficient PACA Trust Assets
24 to pay all PACA Trust beneficiaries as their claims became due.

25 53. Ramirez had fiduciary duties to ensure that Valley Girl fulfill its duties
26 as PACA trustee.

1 78. Diversified seeks an Order:

2 (i) Directing Olson to hold any PACA Trust Assets in her
3 possession or control in constructive trust for Diversified's
4 benefit;

5 (ii) Directing Olson to pay an amount totaling the PACA Trust
6 Assets she received up to \$110,822 to Diversified; and

7 (iii) Entering Judgment against Olson in an amount totaling the
8 PACA Trust Assets she received up to \$110,822, p plus interest
9 at 18% per year from the date each invoice became past due,
10 attorneys' fees, and costs, but less any PACA Trust Assets
11 Diversified recovers from Valley Girl.

12 **COUNT X: MITCHELL**

13 **BREACH OF FIDUCIARY DUTY TO PACA TRUST BENEFICIARIES**

14 79. Diversified re-alleges ¶¶1 - 11, 17 - 25, 33 - 40, and 42 - 47.

15 80. After the relevant transactions, Mitchell purchased Valley Girl from
16 Ramirez and became the company's officer and director.

17 81. In these capacities, Mitchell controlled, or was in a position to control,
18 Valley Girl's PACA Trust Assets.

19 82. Mitchell knew about and had full responsibility for Valley Girl's
20 operations and financial dealings.

21 83. As trustee of the PACA Trust, Valley Girl failed to fulfill its duties as
22 trustee of the PACA Trust, specifically, to maintain sufficient PACA Trust Assets
23 to pay all PACA Trust beneficiaries as their claims became due.

24 84. Mitchell had fiduciary duties to ensure that Valley Girl fulfill its duties
25 as PACA trustee.

26 85. Valley Girl breached its fiduciary duty as PACA trustee by failing to
27 maintain sufficient PACA Trust Assets.

1 86. Mitchell breached her fiduciary duties by failing to ensure that Valley
2 Girl fulfill its duties as PACA trustee.

3 87. Because Mitchell breached her fiduciary duties, Diversified suffered
4 damages totaling \$110,822, plus interest at 18% per year from the date each invoice
5 became past due, costs, and attorneys' fees.

6 For these reasons, Diversified seeks a judgment in its favor and against
7 Mitchell in an amount equal to \$110,822, plus interest at 18% per year from the date
8 each invoice became past due, attorneys' fees, and costs, less any PACA Trust
9 Assets Diversified receives directly from Valley Girl.

10 **COUNT XI: MITCHELL**

11 **UNLAWFUL RETENTION OF PACA TRUST ASSETS**

12 88. Diversified re-alleges ¶¶1 - 11, 17 - 25, 33 - 40, 42 - 47, and 80 - 87.

13 89. Upon information and belief, Valley Girl transferred PACA Trust
14 Assets to Mitchell.

15 90. By transferring PACA Trust Assets to Mitchell, Valley Girl breached
16 the PACA Trust, as these assets belong to Diversified and similarly situated PACA
17 Trust beneficiaries of Valley Girl.

18 91. Mitchell has received PACA Trust Assets subject to Diversified's
19 PACA Trust claims for no value and with actual or constructive knowledge of
20 Diversified's PACA Trust rights.

21 92. Because Mitchell unlawfully retained PACA Trust Assets, Diversified
22 has incurred damages in an amount totaling the value of the PACA Trust Assets she
23 received up to \$110,822, plus interest at 18% per year from the date each invoice
24 became past due, attorneys' fees, and costs, but less any PACA Trust Assets
25 Diversified recovers from Valley Girl.

26 93. Diversified seeks an Order:
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- 1 (i) Directing Mitchell to hold any PACA Trust Assets in her
2 possession or control in constructive trust for Diversified’s
3 benefit;
- 4 (ii) Directing Mitchell to pay an amount totaling the PACA Trust
5 Assets she received up to \$110,822 to Diversified; and
- 6 (iii) Entering Judgment against Mitchell in an amount totaling the
7 PACA Trust Assets she received up to \$110,822, plus interest at
8 18% per year from the date each invoice became past due,
9 attorneys’ fees, and costs, but less any PACA Trust Assets
10 Diversified recovers from Valley Girl.

11 **COUNT XII: VALLEY GIRL**

12 **BREACH OF CONTRACT (STORAGE)**

13 94. Diversified re-alleges ¶¶1 - 5.

14 95. During July 2020 and August 2020, Diversified and Valley Girl
15 entered into contracts for (a) Diversified to store Valley Girl’s Vegetables and (b)
16 Valley Girl to pay Diversified \$4,950 in storage charges.

17 96. Diversified stored Valley Girl’s Vegetables, and submitted an invoice
18 to Valley Girl for the storage charges.

19 97. Valley Girl failed to pay Diversified for the storage charges.

20 98. Diversified fully performed all conditions precedent to the agreed
21 contracts.

22 99. Because Valley Girl breached the parties’ contracts, Diversified
23 suffered damages totaling \$4,950, plus interest at 18% per year from the date each
24 invoice became past due, costs, and attorneys’ fees.

25 For these reasons, Diversified seeks a Judgment in its favor and against
26 Valley Girl in an amount equal to \$4,950, plus interest at 18% per year from the
27 date each invoice became past due, costs, and attorneys’ fees.

1 **COUNT XIII: OLSON**

2 **BREACH OF PERSONAL GUARANTY**

3 100. Diversified re-alleges ¶¶1 – 16 and 95 - 99.

4 101. On July 6, 2020, Valley Girl completed Diversified’s Credit
5 Application.

6 102. On Valley Girl’s behalf, Olson signed Diversified’s Credit Application
7 as Chief Operating Officer.

8 103. By signing the Credit Application, Olson personally guaranteed Valley
9 Girl’s obligations to Diversified and agreed to pay Diversified’s incurred attorneys’
10 fees and costs.

11 104. Valley Girl breached its contracts with Diversified by failing to pay for
12 the Vegetables it purchased from Diversified and Diversified’s storage charges.

13 105. Because Valley Girl breached the parties’ contracts, Diversified
14 suffered damages totaling \$115,772, plus interest at 18% per year from the date each
15 invoice became past due, costs, and attorneys’ fees.

16 106. Olson has to pay Diversified the \$115,772 Valley Girl owes
17 Diversified.

18 107. Because Olson breached the personal guaranty, Diversified suffered
19 damages totaling \$115,772, plus interest at 18% per year from the date each invoice
20 became past due, costs, and attorneys’ fees.

21 For these reasons, Diversified seeks a Judgment in its favor and against Olson
22 in an amount equal to \$115,772, plus interest from the date each invoice became
23 past due, costs, and attorneys’ fees.

