

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

WENG FARMS INC., a Georgia
corporation,

Plaintiff,

v.

CASE NO.:

MAYA FRUIT CORPORATION INC., a
Florida corporation; RICHARD VEGA, SR., an
individual;

Defendants.

COMPLAINT

Plaintiff, Weng Farms Inc., hereby sues the Defendants, Maya Fruit Corporation Inc., a Florida corporation, and Richard Vega, Sr. and alleges as follows:

Jurisdiction And Venue

1. This Court has subject matter jurisdiction of this civil action as presenting a federal question under 28 U.S.C. § 1331. The Plaintiff is bringing claims under and seeks relief provided by the Perishable Agricultural Commodities Act, 7 U.S.C. § 499e(c) and the implementing regulations of the U.S. Department of Agriculture (“USDA”), 7 C.F.R. §§ 46.33, 46.46 (the “PACA”).

2. This Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1). This is an action between citizens of different states. The Plaintiff’s principal place of business is in Georgia. The individual Defendant is a citizen of the State of Florida. The corporate Defendant is a citizen of the State of Florida and has

its principal place of business in Florida. The amount in controversy exceeds \$75,000 exclusive of interest, costs, and attorneys' fees.

3. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over all the Plaintiff's state law claims as they are so related to the Federal PACA claims as forming part of the same case or controversy.

4. This action is appropriately brought in this venue under 28 U.S.C. § 1391(b) because a substantial portion of the events or omissions giving rise to Weng Farms' claims occurred in this District and the Defendants also are domiciled and/or do business here.

The Parties

5. The Plaintiff, Weng Farms Inc. ("Weng Farms") is a corporation organized under the laws of Georgia. Weng Farms has its principal place of business in Savannah, Georgia.

6. Weng Farms is in the business of buying and selling perishable agricultural commodities ("Produce") and regularly trades in truck load quantities of Produce exceeding 2,000 pounds, with those loads regularly shipped in interstate commerce. Weng Farms is a "dealer" as that term is defined by the PACA.

7. Weng Farms holds a valid PACA license number 20160457 issued by the USDA as required for Produce businesses under the PACA and has held that license since 2016.

8. The Defendant, Maya Fruit Corporation Inc. ("Maya Fruit") is a Florida corporation with offices and its principal place of business in Miami,

Florida.

9. Maya Fruit is engaged in the business of buying and selling perishable agricultural commodities (“Produce”) and regularly trades in truck load quantities of Produce exceeding 2,000 pounds and shipped in foreign and/or interstate commerce. Maya Fruit is a “dealer,” as that term is defined by the PACA.

10. Maya Fruit holds a valid PACA license number 20180021 issued by the USDA as required for Produce businesses under the PACA and has held that license since 2017.

11. The Defendant, Richard Vega (“Vega”) is an individual who has his residence and domicile in Miami-Dade County, Florida and, therefore, is a citizen of this County and this State.

12. Vega is believed to be one of the shareholders, or the sole shareholder, of Maya Fruit.

13. Vega is a principal of Maya Fruit, as reported by the company on its USDA PACA license.

14. Weng Farms has had communications with Vega discussing Maya Fruit’s purchase of Produce from Weng Farms and also Maya Fruit’s failure to promptly pay in full for all Produce sold to Maya Fruit.

15. Vega is a person in control of the PACA Trust Assets of Maya Fruit.

General Factual Allegations

16. Between January 2018 and March 2018, inclusive, Weng Farms sold truckloads of Produce to Maya Fruit.

17. The Produce that Weng Farms sold to Maya Fruit was onions, perishable agricultural commodities, as defined by the PACA.

18. The Produce that Weng Farms, a Georgia company, sold to Maya Fruit, a Florida company, comprised over 2,000 pounds per load and originated from the following U.S. states and international locations, and moved in the stream of interstate commerce to Maya Fruit in Florida:

<u>Weng Farms Invoice Number</u>	<u>Origin</u>
303-W	Idaho
325-W	Georgia
329-AW	Georgia
329-A	Oregon
330-C	Georgia
330-AW	Oregon
330-W	Oregon
333-W	Oregon
334-W	Oregon
335-W	Oregon
336-W	Oregon
336-AW	Oregon
337-W	Oregon
338-W	Oregon
339-W	Oregon
340-W	Oregon
341-W	Oregon
342-W	Oregon
343-W	Oregon
344-W	Idaho
346-W	Idaho
347-W	Idaho
348-W	Idaho
352-W	Texas
353-W	Idaho
354-W	Idaho
355-W	Idaho
360-W	Idaho
361-W	Idaho
371-W	Texas

371-AW	Texas
375-W	Oregon
3777-W	Texas
3776-W	Texas
380-W	Texas
380-W	Texas
381-W	Texas
388-W	Oregon

19. Maya Fruit received, and accepted, all of the above-referenced Produce sold to it by from Weng Farms.

20. By virtue of Weng Farms' sale and delivery of wholesale and jobbing quantities of Produce to Maya Fruit, a PACA dealer and subject to the PACA Trust, on less than thirty-day payment terms in interstate commerce, Weng Farms is a beneficiary of a floating, non-segregated statutory trust on and in all of Maya Fruit's assets including all perishable agricultural commodities it is holding, all inventories of food or other products derived from such perishable agricultural commodities, and all receivables and proceeds from the sale of such perishable agricultural commodities, products and assets derived therefrom, pursuant to 7 U.S.C. §§ 499e(c)(1) - (2); 7 C.F.R. § 46.46(b). The PACA Trust Assets also include any other assets in which PACA Trust Assets were commingled or used to acquire, maintain, or improve any other assets.

21. Weng Farms perfected its PACA Trust rights by including the required notice on its invoices. 7 C.F.R. § 46.46(f)(3)(i).

22. Maya Fruit is a statutory PACA trustee as a PACA-licensed dealer. As such, it is obligated by the PACA and the USDA's PACA regulations to maintain all

PACA Trust Assets for the benefit of all beneficiaries of the PACA Trust until all unpaid Produce suppliers are paid in full, and prior to any other creditor or agent of Maya Fruit receiving payment. 7 U.S.C. §§ 499e(c)(2); 7 C.F.R. § 46.46(d)(1).

23. The Defendant Vega is a natural person in a position to control Maya Fruit's PACA Trust Assets to assure that Maya Fruit complies with the PACA by only paying unpaid Produce suppliers, and no other employee or creditor of Maya Fruit, until the suppliers are first paid in full, as is required by the PACA.

24. After each sale, Weng Farms generated and sent an invoice to Maya Fruit. True copies of the Weng Farms invoices evidencing the current outstanding amount due which were sent to, and received by, Maya Fruit are hereby attached as Composite Exhibit 1.

25. Weng Farms' invoices to Maya Fresh include the following notice of Weng Farms' PACA Trust rights, as required by the USDA's PACA regulation, 7 C.F.R. § 42.42(f)(3)(i), pursuant to the invoice method allowed to be used by PACA licensees, such as Weng Farms:

The Perishable Agricultural Commodities listed on this invoice are sold subject to the statutory trust authorized by the (sic) section 5(c) of the Perishable Agricultural Commodities Act. 1930 (7 U.S.A. 499e) The seller of these commodities retains a trust Claim over these Commodities. All inventory of food or other products derived from these commodities, and any receivables Or (sic) proceeds from the Sale of these Commodities until full payment is received.

26. Weng Farms' invoices stated in writing that its payment terms were net 10 days, which is within the maximum 30 days to be considered prompt payment under the PACA for the sale to be eligible for PACA Trust protection.

27. Maya Fruit never objected to any terms of the invoices nor ever claimed that the invoices did not reflect the sales agreement between the parties.

28. As of October 12, 2018, Maya Fruit owes, and has not paid, Weng Farms the principal sum of \$385,919.00, representing the unpaid price on Produce purchases by Maya Fruit (and excluding interest, costs of this suit, and attorneys' fees).

29. Maya Fruit did not timely pay Weng Farms within 10 days of the amounts billed to it by Weng Farms in the invoices attached hereto as Exhibit 1. All of Weng Farms' invoices to Maya Fruit in Exhibit 1 are outstanding for more than ninety (90) days with some of the invoices outstanding for over nine (9) months.

30. Attached hereto as Exhibit 2 is an accounts receivable report showing the dollar amount of each unpaid invoice and showing the aging of the receivables based upon the failure of Maya Fruit to timely pay as of October 15, 2018.

31. Attached hereto as Exhibit 3 is a PACA Trust Chart that shows the total amount of \$385,919.00 owed by Maya Fruit to Weng Farms for unpaid Produce and sums owing in connection with the sales of Produce to Maya Fruit.

32. Maya Fruit has failed to preserve sufficient assets to satisfy its PACA Trust liabilities. The remaining assets of Maya Fruit not already converted and dissipated by the Defendants are insufficient to satisfy and pay all unpaid Produce suppliers to Maya Fruit, such as Maya Fruit, who have eligible and perfected PACA Trust claims.

33. Weng Farms has performed all obligations related to the sale of the

Produce to Maya Fruit and has also satisfied all conditions precedent to the commencement and maintenance of this suit, including but not limited to demand, and/or all such conditions have been waived or otherwise excused.

COUNT I
COMPENSATORY DAMAGES FOR VIOLATION OF THE PACA'S
REQUIREMENT OF PROMPT PAYMENT IN FULL –
(Against Maya Fruit and Vega)

34. Weng Farms incorporates all allegations in Paragraphs 1 through 33 as though fully set forth herein.

35. The Defendants are each statutory PACA trustees in a position to control the PACA Trust Assets of Maya Fruit.

36. The PACA, 7 U.S.C. § 499b(4), mandates all PACA trustees “make full payment promptly” for all Produce purchases.

37. The Defendants have failed to pay \$385,919.00 to Maya Fruit for Produce sales to Weng Farms.

38. The invoices owed by Maya Fruit to Weng Farms have been outstanding for over ninety days, well after the 10-day payment terms provided in Weng Farms’ invoice to Maya Fruit. Hence, the foregoing named Defendants have not paid Weng Farms promptly for Produce sold to Maya Fruit.

39. As a direct cause and result of the Defendants’ unfair conduct prohibited by the PACA, Weng Farms has incurred compensatory damages.

WHEREFORE, the Plaintiff, Weng Farms, demands a Judgment against the Defendants, Maya Fruit and Vega, jointly and severally, for compensatory damages of \$385,919.00, an award of pre- and post-judgment interest provided under Georgia

law, and such other and further relief as the Court deems just and proper.

COUNT II
COMPENSATORY DAMAGES FOR FAILURE TO MAINTAIN THE PACA TRUST AND CONVERSION OF THE PACA TRUST ASSETS
(Against Maya Fruit and Vega)

40. Weng Farms incorporates all allegations in Paragraphs 1 through 33 as though fully set forth herein.

41. Weng Farms was, and currently is, entitled to possession of the specific sum of \$385,919.00 owed to Weng Farms on the sale of Produce to Maya Fruit and which amount is secured by the PACA Trust Assets.

42. Weng Farms has demanded full and prompt payment, but the Defendants have failed and refused to turn over such sums of money from the PACA Trust Assets.

43. While it is not paying promptly and in full for Produce purchases, Maya Fruit, and the statutory trustee, Vega, continue to operate their Produce business and convert PACA Trust Assets to their own use and benefit and/or for the benefit of third parties not entitled to receive the PACA Trust assets.

44. As a direct cause and result of the Defendants' conversion of PACA Trust Assets, Weng Farms has incurred compensatory damages.

WHEREFORE, the Plaintiff, Weng Farms, demands a Judgment against the Defendants, Maya Fruit and Vega, jointly and severally, for compensatory damages of \$385,919.00, an award of pre- and post-judgment interest provided under Georgia law, and such other and further relief as the Court deems just and proper.

COUNT III

**Compensatory Damages for Common Law Breach of Written Contract
(Against Maya Fruit)**

45. Weng Farms incorporates all allegations in Paragraphs 1 through 33 as though fully set forth herein.

46. Weng Farms entered into multiple agreements to sell Produce to Maya Fruit on terms in Weng Farms' invoices attached hereto as Exhibit 1.

47. Weng Farms fully performed its agreements by supplying Produce to Maya Fruit of the type, quality, and condition agreed to with Maya Fruit.

48. Maya Fruit breached the parties' agreements by failing to pay Weng Farms the sum of \$385,919.00 reflected in Weng Farms' outstanding invoices.

49. As a direct and natural result and cause of Maya Fruit's failure to pay Weng Farms' invoices, Weng Farms has incurred compensatory damages.

WHEREFORE, the Plaintiff, Weng Farms, demands Judgment against the Defendant Maya Fruit for compensatory damages of \$385,919.00, an award of pre- and post-judgment interest provided under Georgia law, and such other and further relief as the Court deems just and proper.

COUNT IV

**Common Law Intentional Breach of Fiduciary Duty
(Against Maya Fruit and Vega)**

50. Weng Farms incorporates all allegations set forth in Paragraphs 1 through 33 as if fully set forth herein.

51. Weng Farms reposed trust in the Defendants, as PACA statutory

trustees, to make full and prompt payment for all produce sold and also to preserve and maintain the assets of the PACA Trust for the benefit of unpaid sellers of Produce such as Weng Farms. By virtue of their purchase of perishable agricultural commodities in interstate commerce, and their receipt and acceptance of such produce, the Defendants assumed the position as trustees of Maya Fruit's PACA Trust Assets.

52. The Defendants intentionally diverted, transferred, and/or have concealed payments of monies and/or proceeds of the PACA Trust Assets.

53. Defendants have intentionally not paid over to Weng Farms the PACA Trust Assets and, instead, have converted same and dissipated the PACA Trust Assets, as the *res* of the trust.

54. In so acting, the Defendants intentionally violated their fiduciary duties as trustees who were and are in a position to control the assets of the trust.

55. As a direct, natural, and proximate cause of the Defendants' breaches of fiduciary duty, Weng Farms has incurred compensatory damages.

56. Inasmuch as the Defendants acted intentionally and/or with reckless and callous disregard for Weng Farms' rights as a benefit of the trust, an award of punitive damages is proper and appropriate to both punish the Defendants and set an example for other participants in the produce industry to deter such misconduct.

WHEREFORE, the Plaintiff, Weng Farms, demands Judgment against Maya Fruit and Vega, jointly and severally, for compensatory damages of \$385,919.00, an award of punitive damages, an award of pre- and post-judgment

interest provided under Georgia law, and such other and further relief as the Court deems just and proper.

COUNT V
Equitable Accounting
(Against Maya Fruit and Vega)

57. Weng Farms realleges Paragraphs 1 through 33, 35 through 39, and 41 through 44, as though fully set forth herein.

58. The Defendants, Maya Fruit and Vega, are all PACA Trustees as persons in a position to control the PACA Trust Assets of Maya Fruit. As trustees of a trust, these Defendants owe a fiduciary duty to account to the beneficiaries of the PACA Trust, including Weng Farms, as to the existence, nature, location, and value of the PACA Trust Assets, including all such assets they have converted, dissipated, and commingled with any other asset or transferred to any third party.

59. The beneficiaries of the PACA Trust, including Weng Farms, are not aware of the present disposition of the PACA Trust Assets because of the failure of these Defendants to maintain the assets freely available to pay for all Produce purchases by Maya Fruit.

60. Weng Farms has no remedy at law as adequate and complete as an equitable accounting of the PACA Trust Assets of Maya Fruit by these Defendants who were involved with, participated in, and\or have knowledge of the present disposition of the PACA Trust Assets needed to pay the unpaid Produce suppliers, including Weng Farms.

WHEREFORE, the Plaintiff, Weng Farms, demands entry of a Judgment

against the Defendants, Maya Fruit and Vega, finding that Weng Farms is entitled to an equitable accounting and requiring these Defendants to provide an immediate and complete accounting of the PACA Trust Assets, including as to the commingling of all such assets in any other property, and such other and further relief as the Court deems, just, equitable, and proper.

Respectfully submitted,

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