

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION**

THIRD WAVE FARMS, LLC)	Civil No.
a Kentucky limited liability company)	
)	
Plaintiff,)	
)	
v.)	COMPLAINT FOR DECLARATORY JUDGMENT
)	
PURE VALLEY SOLUTIONS, LLC)	
an Oregon limited liability company,)	
)	
Defendant.)	

The Plaintiff alleges as follows:

I. INTRODUCTION

1. Plaintiff seeks a declaratory judgment of rescission or termination of a contract between two parties. It involves a business agreement regarding the processing and production of winterized CBD oil (the “Product”). Plaintiff, Third Wave Farms LLC, believed that they were acting as a broker for Defendant, Pure Valley Solutions LLC, who processed industrial hemp from local Oregon farmers and produced the final Product. Defendant presented Plaintiff with a \$9 million invoice for the sale of its Product and Plaintiff rejected it timely. This lawsuit seeks determination of the parties’ legal positions, termination or rescission of the contract and/or other appropriate relief.

II. JURISDICTION & VENUE

A. Jurisdiction

2. Pursuant to Title 28 of the United States Code, §1338, this Court possesses original jurisdiction based on diversity because the action involves a controversy between

citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

B. Venue

3. Venue is proper pursuant to 28 U.S.C. § 1391(c)(2) because Plaintiff maintains its principal place of business in the district at 29 Browning Cemetery Road, Mount Vernon, Rockcastle County, Kentucky 40456.

III. FACTS COMMON TO ALL CLAIMS

A. Parties

4. Plaintiff, Third Wave Farms, LLC (“TWF”), is a Kentucky limited liability company with its principal place of business located at 29 Browning Cemetery Road, Mount Vernon, Rockcastle County, Kentucky 40456.

5. Defendant, Pure Valle Solutions, LLC (“Pure Valley”), is an Oregon limited liability company with its principal place of business located at 29975 South Barlow Road, Canby, OR 97013.

B. Background Facts

6. In or around May 2019, the Parties signed a letter of intent to enter into a project concerning the processing of industrial hemp into CBD oil.

7. On or about May 20, 2019, the Parties executed an Agreement (the “Agreement”) regarding the processing and sale of CBD oil. A copy of the agreement is attached as **Exhibit 1**.

8. TWF believed that they would be acting as a broker for Pure Valley to assist in the sale of the Product.

9 Pursuant to Section 1.2 of the Agreement, TWF was obligated to sell all of the Product that met the Specifications and other terms of the Agreement, up to 5,000 liters.

10. On information and belief, Pure Valley did not, and still does not, have the capacity to produce the amount of Product contemplated in Section 1.2 of the Agreement.

11. On information and belief, the Product that Pure Valley did produce, did not meet the Specifications as required by the Agreement.

12. Pursuant to Section 2.3.1 of the Agreement, TWF raising capital was a condition precedent to the Agreement. Section 2.3.1 reads as follows:

Prepayment. TWF is currently raising it [sic] final \$2M in capital to this end. TWF shall prepay Pure Valley a nonrefundable \$75,000 prepayment on or before June 30, 2019, \$75,000 by July 15th, \$100,000 by July 30th. If TWF completed the raise prior to these dates the total sum of \$250K will be paid in full to Pure Valley. If TWF *fails* to complete the full \$2M raise or raises only a portion of this TWF *shall not be considered in default* of the agreement and will not forfeit any money previously paid. The amount of funds paid will be prorated towards (Pre-Payment Credit) on the amounts paid to Pure Valley. (*Emphasis added*).

13. TWF was unable to raise the final \$2M in capital it needed pursuant to Section 2.3.1 of the Agreement.

14. On information and belief, TWF believed that the Agreement was no longer in effect pursuant to the facts alleged in paragraphs 9 to 13 above.

15. On or about February 21, 2020, TWF received a demand letter from counsel for Pure Valley demanding payment of \$9,000,000 together with interest at the rate of 9% from the date of the letter and storage fees in the amount of \$9,450.00 per day from November 13, 2019 until the Product was shipped as provided in the Agreement. A copy of the demand letter is attached as **Exhibit 2**.

16. The demand letter included the copy of a draft Complaint that counsel for Pure Valley represented would be filed in the District Court of Oregon against TWF if they

refused to make payment or agree to mediation on Pure Valley's terms within 30 days. A copy of the draft Complaint is attached as **Exhibit 3**.

IV. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

17. Paragraphs 1 to 16 are hereby incorporated by reference as if set forth in full herein.

18. Pursuant to 28 U.S.C. § 2201(a) “[i]n a case of actual controversy within its jurisdiction, . . . , any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.”

19. As stated above in Paragraphs 15 and 16, Pure Valley has threatened litigation against TWF in the amount of \$9,000,000 plus interest and storage fees.

20. TWF requests that the Court declare the rights and obligations of the parties under the Agreement. The Agreement is ambiguous in its construction as to what the terms of the Agreement are and there was no meeting of the minds as to the specific terms, rights, and obligations thereunder.

21. TWF requests that the Court declare that the raising of the additional \$2M pursuant to Section 2.3.1 was a condition precedent to the Agreement and that the Agreement was or should be appropriately terminated and/or rescinded.

22. TWF requests that the Court declare that Pure Value did not have the capacity to produce the amount of Product contemplated by the Agreement and that the Agreement was or should be appropriately terminated and/or rescinded.

23. TWF requests that the Court declare that the Product did not comply with the Specifications as contemplated by the Agreement.

24. TWF requests that the Court declare that the Agreement is not enforceable or should be appropriately terminated and/or rescinded pursuant to Section 4.3 Force Majeure of the Agreement in light of the spread of the coronavirus and the state of emergency declared in Kentucky by Governor Andy Beshear's executive Order 2020-215 dated March 6, 2020, attached hereto as **Exhibit 4**, and under similarly applicable executive order(s) by the governor in the state of Oregon.

25. Plaintiff seeks indemnification of any and all costs, fees and expenses, including reasonable attorney fees, or the reimbursement thereof, for the filing and prosecution of this Complaint.

V. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for relief as follows on their claim:

1) On their Plaintiff's First Cause of Action a declaratory judgment declaring the rights and obligations of the parties under the Agreement, the raising of the additional \$2M pursuant to Section 2.3.1 was a condition precedent to the Agreement, Pure Valley did not have the capacity to produce the amount of Product contemplated by the Agreement, the Product did not comply with the Specifications as contemplated by the Agreement, and that the Force Majeure clause of the Agreement is in effect as a result of the spread of the coronavirus and the states of emergency issued in Kentucky and Oregon, and

2) Award all costs, fees and expenses, including reasonable attorney fees, pursuant to Section 5.1 of the Agreement, and any and all other relief the Court deems equitable and just.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury on all issues presented herein and triable as a right by jury.

Respectfully submitted,

BUNCH & BROCK, PSC

Dated: March 20, 2020

BY: /s/ Matthew B. Bunch
Matthew B. Bunch, Esq.
Bunch & Brock, PSC
271 West Short Street, Suite 805
Lexington, Kentucky 40507
(859) 254-5522
matt@bunchlaw.com

ATTORNEYS FOR PLAINTIFF