

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

VAQUERIA TRES MONJITAS, INC.
AND SUIZA DAIRY, INC.

Plaintiffs

Vs.

JOSE O. FABRE LABOY, in his
official capacity, as the
Secretary of the Department
of Agriculture for the
Commonwealth of Puerto Rico,
and JUAN R. PEDRO GORDIAN, in
his official capacity, as
Administrator of the Office
of the Milk Industry
Regulatory Administration for
the Commonwealth of Puerto
Rico.

Defendants

CASE NUMBER: 04-1840 (DRD)

RE: INJUNCTIVE AND DECLARATORY
RELIEF

**OPPOSITION TO MOTION FOR STAY
OF ENTRY OF JUDGEMENT**

TO THE HONORABLE COURT:

COMES NOW Co-Plaintiff **VAQUERIA TRES MONJITAS, INC. ('VTM')**
represented by its undersigned attorneys and respectfully states
and prays:

1. At DKT 2327 dated October 30, 2013, this Honorable Court
ordered Suiza Dairy, Inc. ('Suiza') and Vaquería Tres Monjitas,
Inc., to express their positions as of today October 31, 2013, at
4:00 p.m. regarding the Motion Requesting Stay of Entry of Judgment
filed by intervenor party Puerto Rico Dairy Farmers Association

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('PRDFA') at DKT 2324.¹ That Order was subsequently amended and also addressed to the Secretary of Agriculture, the Administrator of ORIL or his successor and the Secretary of Justice and the time limit extended to 6:00 p.m. (DKT 2330)

2. PRDFA's motion prays that this Honorable Court hold in abeyance the entry of final judgement adopting the "Final Settlement Agreement and Memorandum of Understanding" between the parties (the 'Final Settlement Agreement', at DKT 2322) to allow it time for the proper scrutiny of the administrative Regulation and Price Order that was put into effect pursuant to the terms of the Final Settlement Agreement executed by Suiza, VTM and Defendants (DKT 2322). It is to be noted that the prayer of PRDFA only addresses the issues of Regulation 12 and the Price Order and not specifically the terms of the Final Settlement Agreement per se.

3. First of all it must be clearly established that, although PRDFA is an intervenor party to this case, PRDFA has also filed a separate injunctive relief Complaint, Civil Case 08-02291, which VTM believes has been scheduled by this Honorable Court for hearing for January, 2014. In said Complaint several remedies are

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Intervenor Industrias Lecheras de Puerto Rico, Inc. (INDULAC), at DKT 2328, also filed a motion requesting an extension of time to brief this Honorable Court as to the reasons why the adoption of the Final Settlement Agreement of October 29, 2013, DKT 2322, should be rejected and/or modified. Although the instant motion arguments are also applicable to Indulac's motion, in the event this Honorable Court grants the extension requested by Indulac, VTM requests that a reasonable amount of time be granted to reply to Indulac's brief.

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requested by PRDFA (DKT 1, pages 24-25) which are closely related, if not identical, to the remedies requested at DKT 2324 in the captioned case.

4. It is a matter of record that PRDFA joined this case as an intervenor party authorized by this Honorable Court by Order dated March 23, 2005 (DKT 95), and thereafter has participated in the prosecution of this case to the point that PRDFA filed at DKT 485 an appeal of the Amended Opinion and Order granting Preliminary Injunction (the Injunction Order) issued by this Honorable Court (DKT 480) on July 13, 2007. It then withdrew its appeal². As it is well documented in numerous docket entries, the Injunction Order was confirmed by the First Circuit Court of Appeals and Certiorari denied by the Supreme Court of the United States and was never modified or amended.

5. The next relevant step in the prosecution of this case, as it also has been well documented and affirmed several times by this Honorable Court, is the Experts Agreement, DKT 1003, dated August 27, 2008, executed by the experts engaged by each party to this case. This Honorable Court has repeatedly upheld the obligations constituted by the expert of each party included in said Experts Agreement, particularly as to the stipulations regarding the calculation of the regulatory accrual and the

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On August 22, 2008, PRDFA filed for voluntary dismissal of Appeal No. 07-2242.

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unsystematic (Puerto Rico risk), which are an essential component of the Final Settlement Agreement payment calculation.

6. In essence, what now has been filed as a Final Settlement Agreement between the parties to this case, including Regulation 12 and the Price Order, is a consequence of the Injunction Order, the Experts Agreements and the Opinion and Order of September 22, 2013, which constitute the obligations of Defendants. The payments that Defendants have assumed the obligation to make to Suiza and VTM are a final settlement of the payment obligations provided for in the Injunction Order, the Experts Agreement and the Opinion and Order of this Honorable Court of September 22, 2013 (DKT 2289). In other words, the Final Settlement Agreement payments are directly related to the obligations set forth in the three previous identified orders of this Honorable Court by way of settlement which Defendants, up to the date of the Final Settlement Agreement, refused to make. The sources of those settlement payments have been structured by Defendants, as to their timetable and as to the sources of payment. VTM did not and has not argued in favor or against any particular payment source and accepted the proposal made by Defendants.

7. Regulation 12, as adopted in the Final Settlement Agreement, by its own terms, has to comply with the procedure established by Law Number 170 of August 12, 1998 ("Uniform Law of Administrative Proceedings of the Commonwealth of Puerto Rico"). On

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the other hand, Defendants scheduled and held a hearing on October 21, 2013, as per public notices published on October 10, 2013 (See Exhibit 1). The Price Order adopted in Exhibit 2 of the Final Settlement Agreement, dated October 29, 2013, by its own terms, is a consequence of the proceedings conducted by ORIL. (Exhibit 2, page 2, DKT 2322).

WHEREFORE, it is requested from this Honorable Court that, according to the terms of the Final Settlement Agreement executed by Plaintiffs and Defendants, to enter judgement adopting the Final Settlement Agreement and deny PRDFA's motion for stay.

WE HEREBY CERTIFY that on this same date we electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System which will send notification of such filing to all attorneys of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this October 31, 2013.

ATTORNEYS FOR VAQUERIA TRES MONJITAS, INC.

ENRIQUE NASSAR RIZEK LAW OFFICES
PO BOX 191017
SAN JUAN PR 00919-1017
TEL. (787) 754-1313
FAX: (787) 754-8760

s/Enrique Nassar Rizek
Enrique Nassar Rizek & Assoc.
Bar Number: 114612
e-mail: enassar@enrassociates.com

LAW OFFICES OF JOSÉ R. LÁZARO PAOLI
PO BOX 19295
SAN JUAN, PR 00910-1295
TEL. (787) 620-2223
FAX (787) 620-8288

s/José R. Lázaró Paoli
José R. Lázaró Paoli
BAR NUMBER: 110505
e-mail: jlp@lazaropaoli.com