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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

C&G FARMS, et al.,)	1:09cv0032 LJO SKO
)	
)	
Plaintiffs,)	ORDER GRANTING PLAINTIFFS’
)	MOTION TO COMPEL IN PART
v.)	(Document 37)
)	
LINDSAY FOODS INTERNATIONAL,)	
et al.,)	
)	
Defendants.)	

Plaintiffs C&G Farms and Amaral Ranches (“Plaintiffs”) filed the instant motion to compel on March 3, 2010. The matter was heard on April 16, 2010, before the Honorable Dennis L. Beck, United States Magistrate Judge.¹ Dennis Lewis appeared on behalf of Plaintiffs. Tara Cooper appeared on behalf of Defendant Capstone Business Credit, LLC (“Capstone”).

BACKGROUND

Plaintiffs filed the instant breach of contract action on January 6, 2009, against Defendants Lindsay Foods International, Tulare Frozen Foods, LLC, and Capstone Business Credit, LLC. Plaintiffs filed a First Amended Complaint as of right on April 23, 2009, removing Lindsay Foods as a Defendant. On July 9, 2009, the Court dismissed Tulare Frozen Foods, LLC pursuant to Plaintiffs’ notice of voluntary dismissal.

¹ Due to the recent appointment of Magistrate Judge Sheila K. Oberto, the case was reassigned to Judge Oberto on April 13, 2010.

1 On March 17, 2010, after receiving leave of Court, Plaintiffs filed a Second Amended
2 Complaint (“SAC”). The SAC adds Capstone Capital Group I, LLC, John R. Rice, Joseph F.
3 Ingrassia, Capstone Group, Inc., and The Capstone Group, LLC as Defendants.

4 Plaintiffs seek to recover amounts due for produce sold to Lindsay Foods in 2006 and
5 2007. Plaintiff contend that the sale of the produce was subject to the Perishable Agricultural
6 Commodities Act, [7 U.S.C. § 499e\(c\)](#) (“PACA”).

7 Plaintiffs further allege that Capstone began lending money to Lindsay Foods and took a
8 security interest in assets of Lindsay Foods, including real property, inventory, accounts
9 receivable, equipment and other assets. Between February 2007 and May 2008, Capstone, its
10 managing members John R. Rice and Joseph F. Ingrassia, and Capstone Capital Group had
11 substantial control over the assets of Lindsay Foods and controlled decisions as to which
12 creditors would be paid and in what amount. Plaintiffs allege that they elected to pay themselves
13 and other non-PACA creditors.

14 Plaintiffs contend that they are beneficiaries of a PACA-created trust over all of Lindsay
15 Foods’ perishable agricultural commodities, all inventories of food or other products derived
16 from the sale of the produce and all proceeds derived from the sale of the products. Plaintiffs
17 further contend that Capstone and Capstone Capital Group knew or should have known that
18 Lindsay Foods owed money and that its assets were subject to a floating PACA trust in favor of
19 Plaintiffs.

20 Based on these allegations, each Plaintiff alleges causes of action for (1) breach of
21 contract, (2) declaratory judgment, (3) unlawful receipt and retention of PACA trust assets, (4)
22 violation of PACA by direct contract and (5) violation of PACA by controlling and directing
23 payments of Lindsay Foods’ assets.

24 Plaintiffs filed the instant motion to compel against Capstone on March 3, 2010.
25 Plaintiffs seek to compel responses to Request for Interrogatories and Request for Production of
26 Documents. Plaintiffs also seek sanctions in the amount of \$4,412.00.

27 The parties filed their joint statement on April 9, 2010.
28

1 **DISCUSSION**

2 Federal Rule of Civil Procedure 26(b)(1) provides that a party “may obtain discovery
3 regarding any matter, not privileged, that is relevant to the claim or defense of any party,
4 including the existence, description, nature, custody, condition, and location of any books,
5 documents, or other tangible things and the identity and location of persons having knowledge of
6 any discoverable matter.”

7 Plaintiffs move to compel responses to Interrogatories numbers 5, 6, 7, 8, 9, 10, 12, 13
8 and 14, and document production for Requests numbers 2-21. As indicated in the joint statement
9 and confirmed at the hearing, Capstone intends to provide supplemental responses to all
10 interrogatories. Capstone also intends to provide supplemental responses to all requests for
11 production, except for numbers 3, 12, 13 and 19, which remain at issue.

12 A. Request for Production Numbers 3, 12 and 13

13 Request numbers 3, 12 and 13 seek documents that relate or refer to communications
14 and/or documents exchanged between Capstone and “third parties.” Capstone objects to the term
15 “third parties” as vague, arguing that there are a countless number of third parties that would
16 come into contact with the loan agreements, under circumstances and in situations that would
17 have no relevance to Plaintiffs’ claims.

18 The term “third parties” is sufficiently broad so as to include documents that are not
19 likely relevant to this litigation. However, it is possible for the requests to be narrowed by
20 providing a more precise description of the documents and/or communications sought. For
21 example, based on the allegations in Plaintiffs’ complaint, Plaintiffs most likely seek documents
22 or communications that reveal information relating to Capstone’s affect on, or control over,
23 Lindsay’s assets. With this in mind, the parties have agreed to work together in narrowing the
24 definition of the documents and/or communications sought.

25 B. Request Number 19

26 Request Number 19 seeks “Any and all DOCUMENTS which RELATE OR REFER TO
27 any product grown by PLAINTIFFS, and or delivered by PLAINTIFFS, for YOU or LINDSAY
28 between January 1, 2006 and present.”

1 Capstone argues that the request is vague and ambiguous because it does not know what
2 products were grown and/or delivered by Plaintiffs to Lindsay. Capstone acts in a traditional
3 lender role with regard to Lindsay, and therefore argues that it does not have the requisite
4 predicate knowledge regarding the information sought.

5 Despite Capstone's argument, the request is not ambiguous because it sufficiently
6 identifies the documents sought. The request seeks documents related to the deliveries at issue
7 in this action, and as discussed at the hearing, Capstone is either in possession of such documents
8 or it is not. Capstone indicated that it is unaware of the location of Lindsay's documents but
9 agreed to answer the request.

10 **ORDER**

11 Plaintiffs' motion to compel is therefore GRANTED IN PART as to Requests for
12 Production numbers 3, 12, 13 and 19. The motion is DENIED AS MOOT as to the remaining
13 requests.

14 Capstone SHALL provide supplemental responses within twenty (20) days of the date of
15 service of this order. If Capstone needs more time for document production, it may discuss such
16 a request with Plaintiffs. Within thirty (30) days, however, Plaintiffs must inform the Court
17 whether the supplemental production was sufficient. The Court will defer ruling on Plaintiffs'
18 request for sanctions until after the supplemental responses are received.

19 *IT IS SO ORDERED.*

20 ***Dated: April 19, 2010***

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE