


FILED

NORTH CAROLINA  
VANCE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION NM 8-42  
09 CVS

VANCE CO., C.S.C.

BY 

VARIETY WHOLESALERS, INC., )  
)  
Plaintiff, )  
)  
v. )  
)  
SALEM LOGISTICS TRAFFIC )  
SERVICES, LLC, )  
)  
Defendant. )

COMPLAINT  
(JURY TRIAL REQUESTED)

Plaintiff Variety Wholesalers, Inc. ("Plaintiff" or "Variety Wholesalers"), complaining of Defendant Salem Logistics Traffic Services, LLC ("Defendant" or "Salem Logistics") hereby alleges and says:

**ALLEGATIONS RELATED TO THE PARTIES**

1. Plaintiff Variety Wholesalers is a corporation organized and existing under the laws of the State of North Carolina.
2. Upon information and belief, Defendant Salem Logistics is a North Carolina limited liability corporation, maintaining its registered office and principal place of business in Winston-Salem, Forsyth County, North Carolina. Upon information and belief, Defendant was converted to a limited liability corporation on or about September 30, 2007, and was formerly known as Salem Logistics, Inc.
3. This Court has jurisdiction over the subject matter of and the parties to this action.

4. Venue in this action is proper in Vance County Superior Court pursuant to N.C. Gen. Stat. §§ 1-79 and 1-82.
5. All conditions precedent to the filing of this action have been satisfied and/or occurred.

### FACTS

6. By a Freight Bill Payment and Audit Agreement dated May 15, 2007 (“the Agreement”), Defendant Salem Logistics agreed to provide motor carrier freight bill payment and audit services to Plaintiff Variety Wholesalers. A true and correct copy of the Agreement (with Schedules A and B) is attached hereto as Exhibit “A” and incorporated herein by reference.
7. Pursuant to the Agreement, invoices from motor carriers providing freight services to Plaintiff Variety Wholesalers were to be reviewed and approved by Defendant Salem Logistics. Upon receiving notification of approved invoices, Plaintiff Variety Wholesalers made payment into an account under the control and direction of Defendant Salem Logistics, which payments were to, then, be forwarded to the involved carrier or carriers pursuant to the Agreement. Pursuant to Paragraph 9 of Schedule A to the Agreement, Defendant Salem Logistics was to distribute the payments to the involved carriers or carriers “immediately.”
8. In or about September, 2008 through to in or about December, 2008, Plaintiff Variety Wholesalers forwarded sums to an account controlled by Defendant Salem Logistics totaling \$702,161.99, for Defendant to pay to motor carriers for invoices approved pursuant to the Agreement, including invoices from Ad Pyle, All Points,

AmStar, BAH, Beacon, Caldwell, C&C Trucking, Dayton Freight, GPM, J.B. Hunt, KM Pulley, MGM, Schneider, SEFL, UPS Freight and Yellow (collectively, the "Involved Motor Carriers"). The payments that were to be forwarded to these carriers are detailed in the Affidavit of Timothy Hedgepeth, attached hereto as Exhibit "B" and incorporated herein by reference.

9. Upon information and belief, Defendant Salem Logistics has failed to forward the \$702,161.99 paid by Plaintiff Variety Wholesalers into the account controlled by Defendant Salem Logistics to the Involved Motor Carriers, as required under the Agreement and Schedule A to the Agreement.
10. Upon information and belief, Defendant Salem Logistics has falsely indicated, on Defendant Salem Logistics' website, that some or all of the above-referenced funds have been paid to the Involved Motor Carriers. Defendant's misrepresentations in this regard are as reflected in the Affidavit of Timothy Hedgepeth, attached hereto as Exhibit "B". Plaintiff continued to forward funds to the account controlled by Defendant in part in reliance on these misrepresentations.
11. Upon information and belief, Defendant Salem Logistics has used the funds received from Plaintiff Variety Wholesalers for Defendant's own benefit.
12. Representatives of Plaintiff Variety Wholesalers have contacted Defendant Salem Logistics, in an effort to resolve the issues surrounding Defendant's failure to forward Plaintiff's funds to the Involved Motor Carriers, in breach of the Agreement. To date, Defendant's representatives have failed and refused to respond to Plaintiff's demands, that Defendant address Defendant's breaches of the Agreement.

13. In or about November, 2008, Plaintiff Variety Wholesalers had contacted Defendant Salem Logistics by certified mail, return receipt requested, providing Defendant Salem Logistics thirty days' notice that Plaintiff Variety Wholesalers was terminating the Agreement, consistent with the terms of the Agreement. Upon information and belief, Defendant Salem Logistics' failure to forward Plaintiff Variety Wholesalers' funds to the Involved Motor Carriers related to Plaintiff's termination of the Agreement with Defendant.
14. Certain of the Involved Motor Carriers have begun to contact Plaintiff Variety Wholesalers demanding payment of the invoices for which Plaintiff Variety Wholesalers sent funds to an account controlled by Defendant Salem Logistics, and, in some cases, have refused to provide service to Plaintiff Variety Wholesalers because of the non-payment of the carriers' invoices.
15. Plaintiff Variety Wholesalers is still investigating the full extent of Defendant Salem Logistics' activities. Defendant Salem Logistics has not repaid any of the amounts misappropriated from Plaintiff Variety Wholesalers' funds.

**FIRST CLAIM FOR RELIEF**  
**Breach of Contract**

16. Paragraphs 1 through 15 are re-alleged and incorporated by reference as if fully set forth herein.
17. Defendant's actions are in breach of the Defendant's Agreement with Plaintiff.
18. Plaintiff has suffered damages as a direct and proximate result of Defendant's breach of the Agreement, including but not limited to the non-payment of the Involved Motor Carriers, in an amount to be proved at trial.

**SECOND CLAIM FOR RELIEF**  
**Embezzlement/Conversion**

19. Paragraphs 1 through 18 are re-alleged and incorporated by reference as if fully set forth herein.
20. Defendant Salem Logistics was and is in a fiduciary relationship with Plaintiff Variety Wholesalers with respect to the use of Plaintiff's funds to pay invoices from the Involved Motor Carriers approved pursuant to the Agreement.
21. The actions of Defendant Salem Logistics constitute embezzlement and conversion and are punishable under N.C. Gen. Stat. §§ 14-90 and 14-1681, as a result of which Defendant Salem Logistics is liable for civil damages to Variety Wholesalers pursuant to N.C. Gen. Stat. § 1-538.2
22. Pursuant to N.C. Gen. State. § 1-538.2, Plaintiff Variety Wholesalers is entitled to recover the amount of money lost by reason of Defendant Salem Logistics' embezzlement and conversion, which is in excess of \$10,000, as well as any consequential damages and punitive damages, together with reasonable attorney's fees, the amount of said damages to be proved at trial.
23. Pursuant to N.C. Gen. State. § 1-538.2(c), the consequential damages incurred by Plaintiff as a result of Defendant's acts of embezzlement and conversion include, but are not limited to, the salary paid to employees from investigating, reporting, testifying or any other time related to the investigation or prosecution of Defendant's acts of embezzlement.

**THIRD CLAIM FOR REFLIEF**  
**Larceny**

24. Paragraphs 1 through 23 above are re-alleged and incorporated by reference as if fully set forth herein.
25. The actions of Defendant Salem Logistics constitute larceny and are punishable under N.C. Gen. Stat. § 14-72, as a result of which Defendant is liable for civil damages to Plaintiff Variety Wholesalers pursuant to N.C. Gen. Stat. § 1-538.2.
26. Pursuant to N.C. Gen. Stat. §1-538.2, Variety Wholesalers is entitled to recover the amount of money lost as reason by Defendant's larceny, which is in excess of \$10,000, as well as any consequential damages and punitive damages, together with reasonable attorney's fees, the amount of damages said to be proved at trial.
27. Pursuant to N.C. Gen. Stat. §1-538.2(c), the consequential damages incurred by Plaintiff as a result of Defendant's acts of larceny include, but are not limited to, the salary paid to employees for investigating, reporting, testifying or for other time related to the investigation or prosecution of Defendant's acts of larceny.

**FOURTH CLAIM FOR RELIEF**  
**False Pretenses**

28. Paragraphs 1 through 27 above are re-alleged and incorporated by reference as if fully set forth herein.
29. Defendant Salem Logistics knowingly and designedly, by means of false pretenses, obtained money belonging to Plaintiff Variety Wholesalers with the intent to cheat and/or defraud Plaintiff Variety Wholesalers of said funds.
30. The actions of Defendant Salem Logistics constitute false pretenses and are punishable under N.C. Gen. Stat. § 14-100, as a result of which Defendant Salem

Logistics is liable for civil damages to Plaintiff Variety Wholesalers pursuant to N.C. Gen. Stat. § 1-538.2.

31. Pursuant to N.C. Gen. Stat. § 1-538.2, Plaintiff Variety Wholesalers is entitled to recover the amount of money lost by reason of Defendant's false pretenses, which is in excess of \$10,000, as well as any consequential or punitive damages together with reasonable attorney's fees, the amount of said damages to be proved at trial.
32. Pursuant N.C. Gen. Stat. § 1-538.2(c), the consequential damages incurred by Plaintiff Variety Wholesalers as a result of Defendant's acts of false pretenses include, but are not limited to, the salary paid to employees for investigating, reporting, testifying or for any other time related to the investigation or prosecution of Defendant's acts of false pretenses.

#### **FIFTH CLAIM FOR RELIEF**

##### **Fraud**

33. Paragraphs 1 through 32 are re-alleged and incorporated by reference as if fully set forth herein.
34. Defendant Salem Logistics, through Defendant's actions as alleged in this Complaint, made false representations to and/or concealed material facts regarding Defendant's activities from Plaintiff Variety Wholesalers.
35. Defendant's false representations and/or concealment of material facts, as alleged in this Complaint, were reasonably calculated to deceive Plaintiff Variety Wholesalers, were done with the intent to deceive Variety Wholesalers and Variety Wholesalers was in fact deceived by Defendant's false representations and/or concealment of material facts.

36. Plaintiff's reliance upon the representations of Defendant Salem Logistics, in Salem Logistics' capacity as a fiduciary and under the terms of the Agreement, was reasonable under the facts and circumstances of this case.
37. As a direct and approximate result of Defendant's material misrepresentations and/or concealment of material facts, as alleged in this Complaint, Plaintiff Variety Wholesalers has been damaged in excess of \$10,000, the exact amount of damages to be proved at trial.
38. The fraudulent acts of the Defendant were undertaken with a willful disregard for Variety Wholesalers' rights, as a result of which Plaintiff is entitled to recover punitive damages.

**SIXTH CLAIM FOR RELIEF**  
**Unfair and Deceptive Trade Practices**

39. Paragraphs 1 through 38 are re-alleged and incorporated by reference as if fully set forth herein.
40. Defendant's actions, as alleged in this Complaint, were unfair and/or deceptive within the meaning of N.C. Gen. Stat. § 75-1.1.
41. Defendant's actions, as alleged in this Complaint, were in or affecting commerce within the meaning of N.C. Gen. Stat. § 75-1.1.
42. Defendant willfully engaged in the activities which violated N.C. Gen. Stat. § 75-1.1, within the meaning of N.C. Gen. Stat. § 75-16.1.
43. Plaintiff Variety Wholesalers as been and will be damaged by Defendant's unfair and deceptive actions in violation of N.C. Gen. Stat. § 75-1.1 and within the



meaning of N.C. Gen. Stat. § 75-16, in an amount of excess of \$10,000, the exact amount to be proved at trial.

44. Plaintiff Variety Wholesalers is entitled to judgment against Defendant for triple the amount of damages fixed by the jury pursuant to N.C. Gen. Stat. § 75-16.
45. Plaintiff is entitled to recover Plaintiff's reasonable attorney's fees from Defendant pursuant to N.C. Gen. Stat. § 75-16.1.

#### **SEVENTH CLAIM FOR RELIEF**

#### **Petition for Attachment Pursuant to N.C. Gen. Stat. §§ 1-440 et. seq.**

46. Paragraphs 1 through 45 are re-alleged and incorporated by reference as if fully set forth herein.
47. Upon information and belief, Defendant has, with the intent to defraud Defendant's creditors, removed, or is about to remove, property within this State within the meaning of N.C. Gen. Stat. § 1-440.3(5)a, and/or has assigned, disposed of or secreted, or is about to assign, dispose of, or secrete, property within the meaning of N.C. Gen. Stat. § 1-440.3(5)b. This is an action to secure a judgment for money within the meaning of N.C. Gen. Stat. § 1-660.11, in the amount of Plaintiff's damages as proved at trial.
48. Plaintiff Variety Wholesalers prays the Court for an order attaching Defendant's real and personal property in this State, pending the resolution of Plaintiff's claims herein.

#### **EIGHTH CLAIM FOR RELIEF** **Constructive/Implied Trust**

49. Paragraphs 1 through 48 are re-alleged and incorporated by reference as if fully set forth herein.
50. The funds paid by Plaintiff Variety Wholesalers into the account controlled by Defendant remain Plaintiff's funds. Further, Defendant's actions, as alleged above, justify the imposition to a constructive and/or implied trust, for Plaintiff's benefit, in Defendant's bank accounts and other assets.
51. Plaintiff Variety Wholesalers prays the Court for entry of an Order imposing a constructive and/or implied trust, to Plaintiff's benefit, on Defendant's bank accounts and other assets, in the amounts forwarded by Plaintiff and Plaintiff's other damages, as determined at trial.

**NINTH CLAIM FOR RELEIF**  
**Research/Fiduciary Duty/Accounts**

52. Paragraphs 1 through 51 are re-alleged and incorporated by reference as if fully set forth herein.
53. The funds Plaintiff paid into the account controlled by Defendant, pursuant to the Agreement, remain the Plaintiff's funds and Defendant owed Plaintiff fiduciary duties with respect to the funds
54. Defendant's acts are in breach of the fiduciary duties owed Plaintiff.
55. As a direct and proximate result of Defendant's breaches of fiduciary duty, as alleged in this Complaint, Plaintiff Variety Wholesalers has been damaged in excess of \$10,000, the exact amount of damages to be proved at trial.
56. Plaintiff prays the Court for an Order requiring that Defendant provide an

accounting for the funds Plaintiff advanced to the account controlled by Defendant pursuant to the Agreement.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Variety Wholesalers respectively prays the Court for the following relief:

1. That the Court accept this verified Complaint as an Affidavit in support of Plaintiff's Claims for Relief and the Petition for Attachment;
2. That the Court award Plaintiff Variety Wholesalers actual damages on Plaintiff's claims for relief as alleged herein and as proved at trial;
3. That the Court award Plaintiff Variety Wholesalers punitive damages for the outrageous and aggravated conduct of Defendant, as alleged herein;
4. That the Court treble Plaintiff's damages arising from Defendant's unfair and deceptive trade practices pursuant to N.C. Gen. Stat. § 75-16;
5. That the Court enter orders of attachment preventing Defendant from disposing of Defendant's assets;
6. That the Court find a constructive trust, in the bank accounts and other assets of Defendant, in the amounts paid to accounts within Defendant's control pursuant to the Agreement, and Plaintiff's other damages, as proved at trial;
7. That the Court enter and Order requiring Defendant to provide an accounting of the sums advanced to the order of Defendant, pursuant to the Agreement;
8. That all costs of this action, including but not limited to reasonable attorney's fees, be charged to Defendant pursuant to N.C. Gen. Stat. § 1-538.2 and/or N.C. Gen. Stat. § 75-16.1;

9. For a trial by jury of all issues so triable; and
10. For such other and further relief to Plaintiff Variety Wholesalers as this Court may deem just and proper.

This the 6<sup>th</sup> day of January, 2009.

WYRICK ROBBINS YATES & PONTON LLP

By: 

Grady L. Shields  
N.C. Bar No. 13101  
Post Office Drawer 17803  
Raleigh, North Carolina 27619  
Telephone: (919) 781-4000  
Facsimile: (919) 781-4865

COUNSEL FOR PLAINTIFF VARIETY  
WHOLESALEERS, INC.

VERIFICATION

The undersigned, being first duly sworn, hereby deposes and says that he is over eighteen years of age; has not been declared incompetent, is Senior Vice President and General Counsel of the plaintiff; is authorized to make affidavits and verifications on behalf of the plaintiff; has read the foregoing verified complaint; and that he knows the contents thereof to be true of his own knowledge or based upon records in the possession and custody of the plaintiff and, therefore, within his knowledge, and as to those instances in which allegations are made upon information and belief, are true to the best of his knowledge, information, and belief.

This the 5 day of January, 2009.

  
G. Templeton Blackburn, II

STATE OF NORTH CAROLINA

VANCE COUNTY

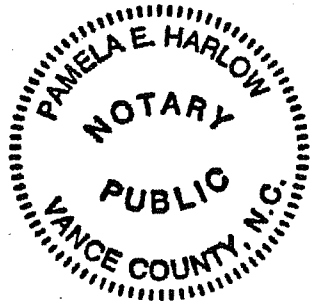
Sworn to and subscribed before me this day by G. Templeton Blackburn, II.

Date: Jan. 5, 2009

Pamela E. Harlow  
Official Signature of Notary Public

Pamela E. Harlow  
Name of Notary (Printed or Typed)

(OFFICIAL SEAL)



My Commission Expires: Nov. 25, 2010

*Design Repay met*

## Freight Bill Payment and Audit Agreement

This Agreement (the "Agreement") is made this 15<sup>th</sup> day of May, 2007, between Salem Logistics, Inc., a North Carolina corporation, with its corporate headquarters located at 310 North Main Street, Suite 2600, Winston-Salem, North Carolina 27101 (hereinafter referred to as "Contractor"), and Variety Wholesalers, Inc., with its corporate office located at 10521000 Facet Road, Henderson, North Carolina 27536 (hereinafter referred to as "Client").

NOW, THEREFORE, the parties agree as follows:

1. **Services Provided** Contractor will perform certain logistics services as more particularly described in the attached Schedule A (hereinafter "Services.")

2. **Contract Period.**

(a) This agreement will be in effect for a term of twelve months (12) which will be referred to as the "Standard Contract Period". Changes may be made on the mutual agreement between Client and Contractor with 30 days written notice from either party.

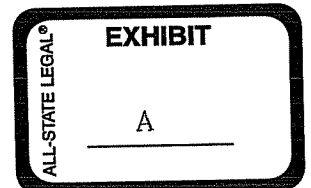
(b) This Agreement shall automatically be renewed from year to year after the Standard Contract Period, unless written notice is given to the other party of its intent to terminate this Agreement at least ninety (90) days prior to the expiration of the term of this Agreement, or any extended period.

3. **Termination.**

Either party may terminate this Agreement upon written notice to the other if the other party fails to perform in any material respect any material obligations hereunder and such failure continues for more than 30 days after the defaulting party receives written notice of such failure. Upon termination of this Agreement, Client shall pay Contractor for Services rendered through the date of termination.

4. **Fees and Payment.**

The fees and rates for the services contemplated in this Agreement shall be as set forth in the attached Schedule B, ("Rates and Charges"), Contractor shall invoice Client for all rates due and Client shall remit payment for all undisputed invoices within ten (10) days of receipt of invoice.



5. **Independent Contractor**

It is understood and agreed that Contractor is entering into this Agreement as an independent contractor and that Contractor's personnel engaged in work to be done under the terms of this Agreement are employees of Contractor and under no circumstances shall they be construed or considered to be employees of Client.

6. **Compliance with Laws, Ordinances, Rules and Regulations.**

The parties shall comply with all laws, ordinances, rules and regulations of Federal, State, municipal and other governmental authorities and the like relating to this Agreement.

7. **Notices.**

All notices given pursuant to this Agreement shall be in writing and shall be deemed given when personally delivered or when deposited in the mails and sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at the following addresses or at such other address as a party may designate by like notice:

- (a) If to Client:  
Variety Wholesalers, Inc.  
1000 Facet Road  
PO Drawer 947  
Henderson, NC 27536  
Attention: Jim Wyatt
  
- (b) If to Contractor:  
Salem Logistics, Inc.  
Suite 2600  
301 N. Main Street  
Winston-Salem, NC 27101  
Attention: David F. Eshelman

8. **Governing Law.**

This Agreement and the relationship among the parties shall be governed by the laws of the State of North Carolina without regard to the conflict of laws and rules thereof. In the event any provision of this Agreement shall be held invalid by a court with jurisdiction over the parties to this Agreement, such provision shall be deleted from the Agreement or modified by such court to render such provision valid, and any such invalidity or unenforceability of one or more provisions of this Agreement shall in no way affect or impair the validity, legality or enforceability of the remaining provisions hereof, which shall remain in full force and effect.

## SCHEDULE A

### SERVICES PROVIDED

Contractor will provide to Client the following freight bill payment and audit services:

Review shipments for correct application of rates and charges to the extent that they are paid by or obligated to be paid by Client. This audit will be for accuracy, applicability and correctness of the rates and charges as compared to agreements covering transportation rates and charges applicable to Client shipments.

Contractor will reduce the charges on behalf of client on the applicable freight bill or invoice and report such reductions and reasons therefore to Client.

Contractor will in a timely manner forward all audited bills and invoices to client.

Contractor will provide any evidence and support required in the event of an audit dispute with the transportation provider.

Contractor may provide Less Than Truckload services when and where such service can be provided at the same price or at a price less than existing services received by client. When such LTL services are provided by Contractor, Contractor will utilize only those carriers having auto liability insurance with a minimum of two million dollars in coverage and cargo insurance of no less one hundred thousand dollars in coverage per trailer. Such cargo coverage is subject to standard LTL carrier limitations of liability.

The process utilized to perform the services covered by this agreement is as follows:

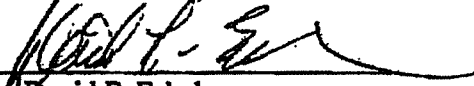
1. Carrier notified of "Bill To" Salem Logistics
2. Freight bills are received by Salem Logistics Traffic Services
3. Freight bills are audited for correct rates and charges against carrier pricing
4. Freight bills are confirmed for correct paying party
5. Freight bills are coded by customer accounting code
6. The freight bill information is put in a database to support reporting
7. A master invoice is prepared once a week and submitted to Client in electronic or hard copy format (or both)
8. Payment is received from client.
9. Monies are immediately distributed to carriers
10. Monthly reports provide to customer as to cost per carrier, per location, audit, savings and other agreed upon formats.

Note: →



IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in duplicate counterparts the day and year first above written.

SALEM LOGISTICS, INC.


By: 

Name: David F. Eshelman

Title: President

Date: 7/11/07

VARIETY WHOLESALERS, INC.

By: 

Name: Jim Wyatt

Title: Top Mgr. Ops

Date: 7/11/07

**Schedule B**  
**Contractor Rates and Charges**

**Effective Date: 05/15/07**

The Rates and Charges shown in this Schedule will be in effect for 12 months from the date shown above. Schedule B can be amended at any time after the twelve (12) month period has expired by mutual consent, in writing, between Client and Contractor.

The rates and charges are as follows:

Paper freight bills	\$ .68 each
Electronic freight bills	\$ .38 each
Small package	\$ .18 per tracking number
Set up charge	\$0
Reports charge	\$0
Audit recovery charge	\$0

Client will notify Contractor immediately of any changes in rates and charges with Contractor transportation providers(s).

CARRIER	FUNDED	NOT FUNDED	TOTAL OWED
AD PYLE	\$ 12,880.91	\$ 4,944.59	\$ 17,825.50
ALL POINTS	\$ 6,196.25	\$ -	\$ 6,196.25
AMSTAR	\$ 10,533.62	\$ 166.81	\$ 10,700.43
BAH	\$ 16,425.65	\$ 2,806.51	\$ 19,232.16
BEACON	\$ 25,211.47	\$ -	\$ 25,211.47
CALDWELL	\$ 44,764.84	\$ -	\$ 44,764.84
C&C TRUCKING	\$ 11,279.64	\$ 28,285.32	\$ 39,564.96
DAYTON FREIGHT	\$ 31,440.71	\$ 4,138.52	\$ 35,579.23
GPM	\$ 25,656.49	\$ 2,654.28	\$ 28,310.77
JB HUNT	\$ 113,709.11	\$ 10,332.28	\$ 124,041.39
KM PULLEY	\$ 21,895.12	\$ -	\$ 21,895.12
MGM	\$ 58,960.24	\$ 3,220.28	\$ 62,180.52
SCHNEIDER	\$ 150,037.80	\$ 12,711.45	\$ 162,749.25
SEFL	\$ 29,936.36	\$ 1,133.49	\$ 31,069.85
UPS FREIGHT	\$ 127,131.78	\$ 2,887.40	\$ 130,019.18
YELLOW	\$ 16,102.00	\$ 3,419.07	\$ 19,521.07
	<b>\$ 702,161.99</b>	<b>\$ 76,700.00</b>	<b>\$ 778,861.99</b>

16

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

VANCE COUNTY

09 CVS \_\_\_\_\_

VARIETY WHOLESALERS, INC., )

Plaintiff, )

SALEM LOGISTICS TRAFFIC )  
SERVICES, LLC, )

Defendant. )

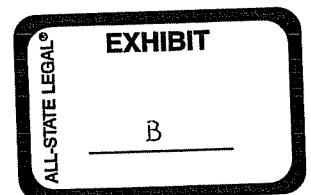
**AFFIDAVIT OF  
TIMOTHY HEDGEPEETH**

TIMOTHY HEDGEPEETH, first being duly sworn, deposes and says:

I am the Inbound Logistics Manager of Plaintiff of Variety Wholesalers, Inc. ("Variety Wholesalers" or "the Company") in the above-captioned action, and am authorized to make this Affidavit.

1. From September 2008 through to December 2008, the Company forwarded payments totalling the following to a Bank of America account, #2000028734699, routing/ABA 063000021, which payments were to be forwarded by Salem Logistics Traffic Services, LLC, to the motor carriers listed below:

Carrier	Amount
AD PYLE	\$12,880.91
ALL POINTS	\$6,196.25
AMSTAR	\$10,533.62
BAH	\$16,425.65
BEACON	\$25,211.47



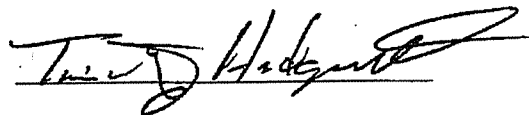
CALDWELL	\$44,764.84
C&C TRUCKING	\$11,279.64
DAYTON FREIGHT	\$31,440.71
GPM	\$25,656.49
JB HUNT	\$113,709.11
KM PULLEY	\$21,895.12
MGM	\$58,960.24
SCHNEIDER	\$150,037.80
SEFL	\$29,936.36
UPS FREIGHT	\$127,131.78
YELLOW	\$16,102.00
	<b>\$702,161.99</b>

2. In or about December 2008, the Company began to receive inquiries from certain of the motor carriers listed above, indicating that these carriers had not received payment from Defendant Salem Logistics Traffic Services, LLC. By accessing an area of Salem Logistic Traffic Services' website, Plaintiff and Defendant's other clients can access details of the payments allegedly made to motor carriers on behalf on Variety Wholesalers.

3. As shown on the attached Salem Logistics shipment details included collectively as Exhibit "A", Defendant's website showed a November 5, 2008 payment on behalf of Variety Wholesalers to MGM in the amount of \$694.63. My contact at MGM, Marna Ford, indicates that no such payment was received. Similarly, the Salem Logistics Traffic Services, LLC, website showed a November 21, 2008 payment to SEFL

products, on behalf of Variety Wholesalers, in the amount of \$631.73. My contact at SEFL products, Hal Goodwin, indicates that no such payment was received. The Salem Logistics Traffic Services, LLC, website shows a September 9, 2008 payment to UPS Freight on behalf of Variety Wholesalers in the amount of \$1,308.20. My contact at UPS Freight, John Downs, indicates that no such payment was received. The Salem Logistics Traffic Services, LLC, website shows a November 7, 2008 payment to KM Pulley on behalf of Variety Wholesalers, in the amount of \$1,076.50. My contact at KM Pulley indicates that no such payment was received. Last, the Salem Logistics Traffic Services, LLC website shows a November 7, 2008 payment to Schneider, on behalf of Variety Wholesalers, in the amount of \$3,455.99. My contact at Schneider, Carol Helmle, indicates that no such payment was received.

FURTHER the Affiant sayeth not.



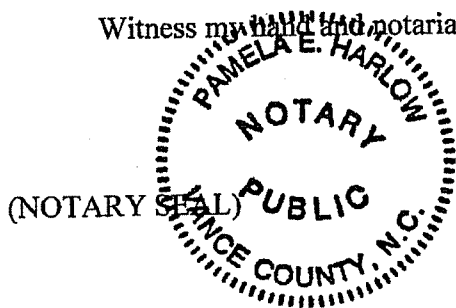
Timothy Hedgepeth

STATE OF NORTH CAROLINA

COUNTY OF Vance

I, Pamela E. Harlow, a Notary Public of Vance County, North Carolina, do hereby certify that Timothy Hedgepeth personally appeared before me this day and acknowledged that he is the Inbound Logistics Manager of Variety Wholesalers, Inc., a North Carolina corporation, and that he, being authorized to do so, executed the foregoing Affidavit on behalf of the corporation.

Witness my hand and notarial seal this 5 day of January, 2009.



Pamela E. Harlow  
Notary Public Pamela E. Harlow

My Commission Expires: Nov. 25, 2010

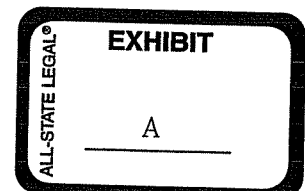
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Shipment Information For NDX # - 13888 PO # -	
Shipper: AMSTAR TRUCKING SO HACKENSACK AVE SOUTH KEARNY NJ 07032 Contact: -	Pieces:    Cartons:    Pallets:
Consign: VARIETY WHOLESALERS 1000 FACET RD HENDERSON NC 27536	Cube:
Product:	Total Weight: 32000    NDX Weight: 32000
Call In Date/Time: 10/7/2008 1:40:39 PM	Carrier Billed: \$694.63    Salem Paid: \$694.63
Actual Ship Date: 9/25/2008	Carrier: MGM Pro: 0139000353    Inv Date: 9/25/2008
Actual Divry Date:	Load: VAN    Type: VAN    RTD: Y
Notes:	Freight Ready Date: 9/25/2008
	Est Divry Date:
	Divry Appr:
	Salem Inv#: 081010LTL    Invoice Date: 10/10/2008
	Salem Chk#: 21265    Chk Date: 11/5/2008
	Check Mailed:    Check Cleared:

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 CH# 21265



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Shipment Information For NDX # - 12782 PO # - 280657	
Shipper: REMWOOD PRODUCTS 4649 S 83RD E AVE TULSA OK 74145 Contact: -	Pieces:   Cartons:   Pallets: 3  Cube:
Consign: VARIETY WHOLESALERS 1000 FACET RD HENDERSON NC 27536	Total Weight: 5871   NDX Weight: 5871  Carrier Billed: \$631.74   Salem Paid: \$631.73
Product:	Carrier: SEFL Pro: 806316870   Inv Date: 8/8/2008
Call In Date/Time: 8/28/2008 8:21:34 AM	Load: LTL Type: LTL RTD: Y
Actual Ship Date: 8/8/2008	Freight Ready Date: 8/8/2008
Actual Dlvry Date:	Est Dlvry Date:
	Dlvry Appt:
	Salem Inv#: 080829LTL   Invoice Date: 8/29/2008
	Salem Chk#: 21412   Chk Date: 11/21/2008
	Check Mailed:   Check Cleared:
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PER HAL GOODWIND



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Shipment Information For NDX# - 12510 PO# - 276611	
Shipper: CHILDRENS APPAREL 1391 S VINTAGE AVE ONTARIO CA 91761 Contact: -	Pieces: Cartons: 200 Pallets:  Cube:
Consign: VARIETY WHOLESALERS 1000 FACET RD HENDERSON NC 27536	Total Weight: 2800 NDX Weight: 2800  Carrier Billed: \$1,308.20 Salem Paid: \$1,308.20
Product:	Carrier: UPPG Pro: 297246191 Inv Date: 7/22/2008
Call In Date/Time: 8/18/2008 2:08:52 PM	Load: LTL Type: LTL RTD: Y
Actual Ship Date: 7/22/2008	Freight Ready Date: 7/22/2008
Actual Dlvry Date: 7/27/2008	Est Dlvry Date:
	Dlvry Appt:
	Salem Inv#: 080822LTL Invoice Date: 8/22/2008
	Salem Chk#: 20842 Chk Date: 9/9/2008
	Check Mailed: Check Cleared:
Notes:	

*NEVER RECEIVED CHECK  
# 20842  
PER John Jones  
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Shipment Information For NDX # - 14116 PO # - 291748	
Shipper: CEM-GLOBAL 6950 NW 77TH CT MIAMI FL 33166 Contact: -	Pieces: Cartons: Pallets: Cube:
Consign: VARIETY WHOLESALERS 1000 FACET RD HENDERSON NC 27536	Total Weight: 21372 NDX Weight: 21372 Carrier Billed: \$1,076.50 Salem Paid: \$1,076.50
Product: Call In Date/Time: 10/15/2008 1:31:55 PM Actual Ship Date: 10/10/2008 Actual Divry Date:	Carrier: KM Pulley Pro: 79636 Inv Date: 10/10/2008 Load: VAN Type: VAN RTD: Y Freight Ready Date: 10/10/2008 Est Divry Date: Divry Appt: Salem Inv#: 081017LTL Invoice Date: 10/17/2008 Salem Chk#: 21299 Chk Date: 11/7/2008 Check Mailed: Check Cleared:
Notes:	

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 PER SHARINSTON  
 KM Pulley  
 # 21299

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Shipment Information For NDX # - 14054 PO # - 246484	
<b>Shipper:</b> F N S 18301 BROADWICK RANCHO DOMINGUEZ CA 90220 <b>Contact:</b> -	<b>Pieces:</b> <b>Cartons:</b> <b>Pallets:</b>  <b>Cube:</b>
<b>Consign:</b> VARIETY WHOLESALERS 1000 FACET RD HENDERSON NC 27536	<b>Total Weight:</b> 30000 <b>NDX Weight:</b> 30000  <b>Carrier Billed:</b> \$3,455.99 <b>Salem Paid:</b> \$3,455.99
<b>Product:</b> <b>Call In Date/Time:</b> 10/13/2008 8:38:03 AM <b>Actual Ship Date:</b> 9/27/2008 <b>Actual Dlvry Date:</b>	<b>Carrier:</b> SCHNEIDER <b>Pro:</b> YH7189901 <b>Inv Date:</b> 9/27/2008 <b>Load:</b> VAN <b>Type:</b> VAN <b>RTD:</b> Y <b>Freight Ready Date:</b> 9/27/2008 <b>Est Dlvry Date:</b> <b>Dlvry Appt:</b> <b>Salem Inv#:</b> 081017LTL <b>Invoice Date:</b> 10/17/2008
<b>Notes:</b>	<b>Salem Chk#:</b> 21301 <b>Chk Date:</b> 11/7/2008 <b>Check Mailed:</b> <b>Check Cleared:</b>

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 PER CAROL HELMLE  
 CHECK# 21301