

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-21682-CV-KING-BANDSTRA

VALIDSA, INC. d/b/a DEXTON VALIDSA  
and DEXTON, S.A., a Florida corporation,

Plaintiff,

vs.

PDVSA SERVICES INC., a Delaware  
corporation, and BARIVEN S.A., an agency or  
instrumentality of a foreign state,

Defendants.

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**AMENDED COMPLAINT**

Plaintiff, Validsa, Inc. d/b/a Dexton Validsa and Dexton, S.A. (“Dexton Validsa” or “Plaintiff”), pursuant to Fed. R. Civ. P. 15(a)(1)(A), respectfully files this Amended Complaint against Defendants PDVSA Services, Inc. (“PDVSA Services”) and Bariven S.A. (“Bariven”) (collectively, “Defendants”) and alleges as follows:

**PRELIMINARY STATEMENT**

1. This is an action for breach of contract based on five purchase orders for food commodities. The purchase orders were issued by Bariven and PDVSA Services to Dexton Validsa in Miami, Miami-Dade County, Florida. Dexton Validsa acknowledged the purchase orders, completely performed under three of the agreements, and was in the process of performing under the remaining two, when Defendants withheld payment for certain shipments delivered, anticipatorily repudiated the agreements, and therefore materially breached the agreements, causing substantial injury to Dexton Validsa.

### **THE PARTIES**

2. Plaintiff Dexton Validsa was and is a corporation organized and existing under the laws of the State of Florida and maintains its principal place of business at 8401 N.W. 53<sup>rd</sup> Terrace, Suite 209, Miami, Florida 33166.

3. Defendant PDVSA Services was and is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 1293 Eldridge Parkway, Houston, Texas 77077.

4. Defendant Bariven was and is an agency or instrumentality of a foreign state as defined in 28 U.S.C. § 1603 (b); specifically, Bariven was and is a separate legal person in the form of a corporation ("sociedad anónima") organized and existing by virtue of the laws of the Bolivarian Republic of Venezuela, and functions as an organ of the Venezuelan Government and/or a majority of its ownership interest is owned by the Government of Venezuela or a political subdivision thereof, and maintains its principal place of business at Torre Pequiven, Pisos 10 y 11, Av Francisco de Miranda, Caracas DF, Venezuela. Bariven is not a citizen of any State of the United States, nor is it created under the laws of any third country, but transacts substantial business in the United States, by contracting with parties in the United States, including the State of Florida, through its general agent, PDVSA Services.

### **JURISDICTION AND VENUE**

5. This is a matter within the subject matter jurisdiction of this Court in accordance with 28 U.S.C. § 1332, in that it is a dispute between a Florida corporation and citizens of a different State or foreign state for an amount in controversy exceeding the sum of \$75,000, exclusive of interest and costs.

6. In addition, this Court has original subject matter jurisdiction under 28 U.S.C. § 1330, in that this action involves a dispute against Defendant Bariven, an agency or instrumentality of a foreign state as defined in 28 U.S.C. § 1603 (b), which under 28 U.S.C. § 1605 (a)(2) is not immune from the jurisdiction of courts of the United States, or of the States as this action is based upon a commercial activity carried on in the United States or upon an act performed in the United States in connection with a commercial activity outside of the United States, or upon an act outside the United States that was taken in connection with a commercial activity outside of the United States that caused a direct effect in the United States.

7. This Court has personal jurisdiction over Defendants pursuant to Sections 48.193 (1)(a), (g), and (2), Florida Statutes. In particular, Plaintiff's claims arise from: (1) Defendants operating, conducting, engaging in, or carrying on a business or business venture in Florida; (2) Defendants breaching a contract in Florida by failing to perform acts required by the contract in Florida, and (3) Defendants engaging in substantial and not isolated activities in Florida. In addition, this Court has personal jurisdiction over Bariven pursuant to 28 U.S.C. § 1330(b). Defendants PDVSA Services and Bariven have established sufficient minimum contacts with the State of Florida so that constitutional due process requirements are not raised. Defendants voluntarily entered into various contracts requiring performance in Florida. Based on the conduct of Defendants, it was foreseeable that they could reasonably expect to be sued in a Florida court

8. Venue in this Honorable Court is appropriate under 28 U.S.C. § 1391(b), (c), (f)(1) and (3).

## **FACTUAL BACKGROUND**

9. Dexton Validsa is an international food commodities trader that buys and sells food commodities such as bovine beef, ground beef, pork, chickens, black beans, flour, eggs, etc.

10. Bariven is an affiliate of Petróleos de Venezuela, S.A., the state-owned oil company of Venezuela. Bariven is the commercial procuring arm of the executive branch of the Venezuelan Government and of Petróleos de Venezuela, S.A. and is primarily responsible for procuring materials and equipment outside of Venezuela, including the United States, needed to support the importation requirements of the Government of Venezuela and of Petróleos de Venezuela, S.A.'s exploration, production and refining activities within Venezuela. Beginning in 2007, Bariven also began purchasing food commodities in the international markets for consumption in Venezuela. Bariven has a long history of doing substantial business in the United States, where its annual purchases are in the hundreds of millions of U.S. Dollars.

11. PDVSA Services is the international purchasing agent for Bariven and is owned and controlled by Bariven.

12. In the last quarter of 2007, the Venezuelan government tasked Bariven and PDVSA Services to negotiate for and purchase basic food commodities on the international markets, including the United States, in order to address a food shortage crisis that Venezuela was experiencing. In this respect, Bariven and PDVSA Services began dealing in food commodities with private parties outside of Venezuela, including the United States and the State of Florida.

13. In late-2007, PDVSA Services issued a call for bids to select international food commodities traders.

14. Dexton Validsa responded to the bid and was selected by Defendants as an approved food commodities trader.

15. In November 2007, Defendants began submitting purchase orders for food commodities to Dexton Validsa in Miami, Miami-Dade County, Florida. At all times, Defendants Bariven and PDVSA Services acted together for the purchase of these products from Dexton Validsa and were obligated to Dexton Validsa under the purchase orders.

16. Upon receiving, a purchase order from Defendants in Miami, Florida, Dexton Validsa would issue an acknowledgement of acceptance that would state the time to complete the multiple shipments required to fill the quantities covered by each purchase order in question, and would simultaneously or promptly thereafter enter into contracts for the purchase of the required food commodities from its suppliers throughout the world.

17. The purchase orders presented by Defendants were often for significant quantities of metric tons of a food item and would range from an order for 300 metric tons of ground beef to an order for 100,000 metric tons of refined sugar. Upon acceptance of the purchase order based on the procedure described above, Bariven and PDVSA Services would remit a partial payment to Dexton Validsa in Miami, Florida, to cover a portion of the shipment. The amount of the partial payment depended on the terms of the purchase order.

18. Upon receiving each partial shipment of the food commodity covered by the purchase order in Venezuela, Bariven and PDVSA Services would, or were required to, remit the remaining balance of the payment to Dexton Validsa's bank account in Miami-Dade County, Florida.

19. Over the course of their relationship, Bariven and PDVSA Services entered into and completed various agreements with Dexton Validsa and a course of dealing was established

between the parties where Bariven and PDVSA would routinely communicate with Dexon Validsa representatives in Miami, Florida over the pending shipments covered by the purchase order.

20. The commercial relationship between Dexon Validsa and Bariven and PDVSA Services continued from 2007 until March of 2008 without major incident until following a meeting held in Miami-Dade County between the directors of Dexon Validsa and Juan Carlos Chourio, who represented himself as an emissary and acting on the instructions of Georges Kabboul, Bariven's President, and Luis Hernandez, Bariven's representative in Brazil.

21. Thereafter, on April 15, 2008, Dexon Validsa received in Miami, Florida, a very alarming email from Paola Rivas, a PDVSA Services employee. The email attached a string of emails, including an April 8, 2008 email from Rafael Rosales, an in-house attorney with Bariven, that is addressed to several PDVSA Services employees and states (in Spanish): "***on the instructions of Mr. Georges Kabboul [President of Bariven] please proceed to and cancel purchase order No. 5100061757 for 24000 metric tons of bovine beef placed with Dexon company . . . likewise, you are instructed to suspend any payments due this Company [Dexon Validsa].***" A copy of the email chain is attached as Exhibit "A", and a translation of same attached as Exhibit "B" (emphasis added).

22. On April 17, 2008 and again on May 9, 2008, Dexon Validsa asked Defendants for an explanation of the April 8, 2008 email, requesting a retraction and demanding adequate assurances that payment would be received for the multiple shipments that had been delivered under various purchase orders as well as confirmation that Bariven and PDVSA Services would honor their commitment for the remaining purchase orders that Dexon Validsa had already contracted to fill.

23. In the face of the demands for adequate assurances, Bariven and PDVSA remained absolutely silent for an extraordinary long-period, causing severe strains on Dexton Validsa's relationship with its suppliers in the face of mounting uncertainty over whether the pending purchase orders were going to be filled, and if filled, honored by Bariven and PDVSA Services.

24. On May 16, 2008, PDVSA Services finally responded to Dexton Validsa's request for adequate assurances by a writing seeking to unilaterally and materially alter the terms of the accepted agreements by, among other things, conditioning payment on the removal of Bariven as an obligated party under the agreements (leaving only PDVSA Services as the sole Buyer responsible to Dexton Validsa), requiring the posting of letters of credit where no such obligation ever existed under the agreements covered by purchase orders, and requiring Dexton Validsa to cancel its requests for adequate assurances and instead grant a release of Bariven and PDVSA Services for their past breaches and agree to submit to the exclusive jurisdiction of the courts of Houston, Texas, for any future disputes. A copy of this writing is attached as Exhibit "C", and a translation of same is attached as Exhibit "D." This unilateral attempt to materially alter the established terms of the agreements was completely rejected by Dexton Validsa.

25. The foregoing actions by Defendants constitute a repudiation of the agreements, which are more specifically noted below, with respect to performances due from Bariven and PDVSA Services, which substantially impair the value of the agreements to Dexton Validsa, which may as a result of such repudiation, suspend its own performance and resort to any available remedy for breach.

## The Agreements

### **Contract 326**

26. On November 16, 2007, Defendants submitted Purchase Order No. 5100058326, for 5,000 metric tons of bovine beef at a unit price of \$4,928.58 per metric ton for a total value of \$24,642,900.00. A copy of Purchase Order No. 5100058326 is attached as Exhibit "E."

27. Dexton Validsa submitted an acknowledgment of the purchase order on November 18, 2007, confirming certain terms of the order, and forming an agreement between Defendants and Dexton Validsa (hereinafter "Contract 326").

28. Contract 326 obligates Defendants to pay fifty percent (50%) of the purchase order amount upon Dexton Validsa's acceptance of the purchase order, with the remaining fifty percent (50%) due upon the presentment of the Bills of Lading for the shipments made under the contract.

29. Dexton Validsa has fully performed under Contract 326 and complied with all its obligations under the contract.

30. To date, despite Dexton Validsa's repeated demands, the amount of **\$1,599,923.77** remains due and outstanding on fifteen (15) past due invoices under Contract 326. Defendants did not pay (and have not paid) Dexton Validsa the amounts owed after Defendants received and accepted the shipments of bovine beef.

### **Contract 368**

31. On November 16, 2007, Defendants submitted Purchase Order No. 5100058368, for 9,480 metric tons of whole chicken at a unit price of \$2,257.15 per metric ton for a total value of \$21,397,782.00. A copy of Purchase Order No. 5100058368 is attached as Exhibit "F."

32. Dexton Validsa submitted an acknowledgment of the purchase order on November 17, 2007, confirming certain terms of the order, and forming an agreement between Defendants and Dexton Validsa (hereinafter "Contract 368").

33. Contract 368 obligates Defendants to pay fifty percent (50%) of the purchase amount upon Dexton Validsa's acceptance of the purchase order, with the remaining fifty percent (50%) due upon the presentment of the Bills of Lading for the shipments made under the contract.

34. Dexton Validsa has fully performed under Contract 368 and complied with all its obligations under the contract.

35. To date, despite Dexton Validsa's repeated demands, after applying a credit note in the amount of \$4,031,250 provided by Defendants in favor of Dexton Validsa, the amount of **\$4,157,021.73** remains due and outstanding for partial shipments made under Contract 368. Defendants did not pay (and have not paid) Dexton Validsa the amounts owed after Defendants received and accepted the shipments of whole chicken.

**Contract 405**

36. On November 19, 2007, Defendants submitted Purchase Order No. 5100058405, for 300 metric tons of ground beef at a unit price of \$4,999.75 per metric ton for a total value of \$1,499,925.00. A copy of Purchase Order No. 5100058405 is attached as Exhibit "G."

37. Dexton Validsa submitted an acknowledgment of the purchase order on November 21, 2007, confirming certain terms of the order, and forming an agreement between Defendants and Dexton Validsa (hereinafter "Contract 405").

38. Contract 405 obligates Defendants to pay fifty percent (50%) of the purchase order amount upon Dexton Validsa's acceptance of the purchase order, with the remaining fifty

percent (50%) due upon the presentment of the Bills of Lading for the shipments made under the contract.

39. Dexton Validsa fully performed under Contract 405 and complied with all its obligations under the contract.

40. To date, despite Dexton Validsa's repeated demands, the amount of **\$62,487.96** remains due and outstanding for the last 25 metric tons of ground beef delivered to complete Contract 405.

41. This amount was due and payable at the time of delivery and, despite Dexton Validsa's repeated demands, Defendants have not paid Dexton Validsa the outstanding balance due under Contract 405.

**Contract 632**

42. On March 4, 2008, Defendants submitted Purchase Order No. 5100061632, for 100,000 metric tons of refined sugar at a unit price of \$446.92 per metric ton for a total value of \$44,692,000.00. A copy of Purchase Order No. 5100061632 is attached as Exhibit "H."

43. Dexton Validsa submitted an acknowledgment of the purchase order on March 18, 2008, confirming certain terms of the order, and forming an agreement between Defendants and Dexton Validsa (hereinafter "Contract 632").

44. Contract 632 obligates Defendants to pay thirty percent (30%) of the purchase order amount upon Dexton Validsa's acceptance of the purchase order, with the remaining seventy percent (70%) due upon the presentment of the Bills of Lading for the shipments made under the contract.

45. Before Dexton Validsa delivered any shipments under Contract 632, but after Dexton Validsa entered into contracts with a supplier to fulfill its obligations under Contract 632,

Dexton Validsa received the April 15, 2008 email from PDVSA Services, which forwarded the instructions from Bariven to suspend any payments due Dexton Validsa and to unilaterally cancel the agreement covered by "purchase order No. 5100061757 for 24000 metric tons of bovine beef placed with Dexton company."

46. In its demand for adequate assurances issued thereafter, Dexton Validsa advised Defendants that unless Defendants provided adequate assurance that they would honor the outstanding purchase orders, which included Contract 632, on their agreed terms, Dexton Validsa would treat Defendants' actions as an anticipatory repudiation of the outstanding purchase orders, including Contract 632. Finally, Dexton Validsa advised Defendants that it had already contractually committed sums of multiple millions of US dollars in acquiring refined sugar to fill the orders covered under Contract 632, and that Defendants would be responsible for these amounts if they did not retract their anticipatory repudiation of Contract 632 and provide adequate assurance that they would honor Contract 632.

47. Notably, to date, Bariven and PDVSA Services have not provided Dexton Validsa with the requested adequate assurances and they have not retracted their anticipatory repudiation of Contract 632 or the other outstanding purchase orders. Accordingly, Dexton Validsa has suspended its shipments under Contract 632.

48. Moreover, because Defendants have anticipatorily repudiated Contract 632, Dexton Validsa has been forced to renegotiate with its supplier regarding the contracts that it obtained to fill the orders under Contract 632, causing injury to Dexton Validsa's business relationships with its supplier, and injury to Dexton Validsa's business reputation and goodwill.

49. In addition, because Defendants anticipatorily repudiated Contract 632 after Dexton Validsa had already entered into contracts with a supplier to fulfill its obligations under

Contract 632, Dexton Validsa was required to pay the supplier a settlement fee in the amount of **\$221,250.00** for cancelling the shipment of 75,000 metric tons of the 100,000 metric tons covered by Contract 632. Notwithstanding such settlement, Dexton Validsa has tied up the sum of **\$7,821,100.00** in a dispute with Dexton Validsa's sugar supplier for the first 25,000 metric ton shipment that was to be made under Contract 632.

50. Finally, because Defendants anticipatorily repudiated Contract 632, Dexton Validsa will not enjoy the benefit of its bargain with Defendants and will suffer approximately **\$15,192,000.00** in lost profits that it would have earned had Defendants performed under Contract 632.

**Contract 757**

51. On March 7, 2008, Defendants submitted Purchase Order No. 5100061757, for 24,000 metric tons of bovine beef at a unit price of \$4,329.58 per metric ton for a total value of \$103,909,920.00. A copy of Purchase Order No. 5100061757 is attached as Exhibit "I."

52. Dexton Validsa submitted an acknowledgment of the purchase order on March 18, 2008, confirming certain terms of the order, and forming an agreement between Defendants and Dexton Validsa (hereinafter "Contract 757").

53. Contract 757 obligates Defendants to pay thirty percent (30%) of the purchase order amount upon Dexton Validsa's acceptance of the purchase order, with the remaining seventy percent (70%) due upon the presentment of the Bills of Lading for the shipments made under the contract.

54. Dexton Validsa has made partial shipments under Contract 757 for which **\$1,298,821.11** is presently due and payable by Defendants.

55. Moreover, prior to receiving the email chain containing the April 8, 2008 email indicating that Bariven's President ordered the cancellation of Contract 757, Dexton Validsa had already contractually committed to purchasing the remaining required quantities of bovine beef covered by Contract 757 from its beef supplier, Quatro Marcos Ltda. ("Quatro Marcos").

56. In response to the letters sent by Dexton Validsa on April 17, 2008 and May 9, 2008 (see above), PDVSA Services unilaterally attempted to impose additional obligations on Dexton Validsa in order for Dexton Validsa to receive payments from PDVSA Services under Contract 757 and the other outstanding purchase orders. *See* Exhibits "C" and "D".

57. Despite Dexton Validsa's repeated requests, Defendants have refused to provide Dexton Validsa with the requested adequate assurances that they will honor their obligations under Contract 757 and the other outstanding purchase orders, on their agreed terms, and have refused to retract their anticipatory repudiation of Contract 757 and the other outstanding purchase orders. Accordingly, Dexton Validsa has suspended shipments under Contract 757.

58. Because Defendants anticipatorily repudiated Contract 757, Dexton Validsa was forced to renegotiate with Quatro Marcos regarding the contract to fill the orders under Contract 757, causing injury to Dexton Validsa's business relationship with Quatro Marcos, and injury to Dexton Validsa's business reputation and goodwill.

59. Indeed, because Defendants breached Contract 757 after Dexton Validsa had already contracted with Quatro Marcos for the purchase of 24,000 metric tons of bovine beef covered by Contract 757, Dexton Validsa was forced to cancel (and breach) its contract with Quatro Marcos for the beef. As a result of the cancellation, Quatro Marcos revoked Dexton Validsa's standing as Quatro Marcos' exclusive distributor of beef in Venezuela and has reserved its rights to sue Dexton Validsa for monetary damages. *See* Quatro Marcos letters attached as

Exhibit "J", and a translation of same as Exhibit "K". Prior to entering into Contract 757, Defendants were aware that Dexton Validsa was Quatro Marcos' exclusive distributor of beef in Venezuela. Because Defendants materially breached Contract 757, causing Quatro Marcos to revoke Dexton Validsa's standing as the exclusive beef distributor in Venezuela, Dexton Validsa has suffered, or will suffer, damages in the form of lost business and profits, estimated to be in excess of \$113,562,600 (based on historical performance prior to the breach), in addition to monetary exposure to Quatro Marcos.

60. In addition, because Defendants anticipatorily repudiated Contract 757, Dexton Validsa will not enjoy the benefit of its bargain with Defendants and will suffer approximately **\$16,309,920.00** in lost profits that it would have earned had Defendants performed under Contract 757.

61. All conditions precedent to the filing of this action have been performed, waived, or excused.

62. Dexton Validsa has engaged the undersigned counsel to represent it in this action and has agreed to pay counsel reasonable attorney's fees.

**COUNT I**  
**(Breach of Contract 326)**

63. Dexton Validsa repeats and realleges each and every allegation set forth in paragraphs 1-62 hereof with the same force and effect as if fully set forth herein.

64. Dexton Validsa and Defendants are parties to Contract 326, a valid and enforceable contract, the terms of which required Defendants to pay fifty percent (50%) of the purchase amount for each shipment made under Contract 326 upon presentment of Bills of Lading for the shipment.

65. Defendants materially breached Contract 326 by failing to pay Dexton Validsa the amount of fifty percent (50%) of the purchase amount for fifteen (15) partial shipments made under Contract 326.

66. As a result of Defendants' material breach of Contract 326, Dexton Validsa has suffered actual damages in the amount of \$1,599,923.77, excluding interest, costs and attorneys' fees, constituting the amount owed to Dexton Validsa by Defendants under Contract 326.

WHEREFORE, Dexton Validsa requests the Court to enter judgment in its favor and against Bariven and PDVSA Services, jointly and severally, for compensatory damages in the amount of \$1,599,923.77, prejudgment and post judgment interest, costs, attorneys' fees, and any other relief deemed appropriate by the Court.

**COUNT II**  
**(Breach of Contract 368)**

67. Dexton Validsa repeats and realleges each and every allegation set forth in paragraphs 1-62 hereof with the same force and effect as if fully set forth herein.

68. Dexton Validsa and Defendants are parties to Contract 368, a valid and enforceable contract, the terms of which required Defendants to pay fifty percent (50%) of the purchase amount for each shipment made under Contract 368 upon presentment of Bills of Lading for the shipment.

69. Defendants materially breached Contract 368 by failing to pay Dexton Validsa the amount of fifty percent (50%) of the purchase amount for partial shipments made under Contract 368.

70. As a result of Defendants' material breach of Contract 368, Dexton Validsa has suffered actual damages in the amount of \$4,157,021.73, excluding interest, costs and attorneys' fees, constituting amounts owed to Dexton Validsa by Defendants under Contract 368.

WHEREFORE, Dexton Validsa requests the Court to enter judgment in its favor and against Bariven and PDVSA Services, jointly and severally, for compensatory damages in the amount of \$4,157,021.73, prejudgment and post judgment interest, costs, attorneys' fees, and any other relief deemed appropriate by the Court.

**COUNT III**  
**(Breach of Contract 405)**

71. Dexton Validsa repeats and realleges each and every allegation set forth in paragraphs 1-62 hereof with the same force and effect as if fully set forth herein.

72. Dexton Validsa and Defendants are parties to Contract 405, a valid and enforceable contract, the terms of which required Defendants to pay fifty percent (50%) of the purchase amount for each shipment made under Contract 405 upon presentment of Bills of Lading for the shipment.

73. Defendants materially breached Contract 405 by failing to pay Dexton Validsa the amount of fifty percent (50%) of the purchase amount for the final 25 metric tons of product delivered in partial shipments to Defendants under Contract 405.

74. As a result of Defendants' material breach of Contract 405, Dexton Validsa has suffered actual damages in the amount of \$62,487.96, excluding interest, costs and attorneys' fees, constituting the amount owed to Dexton Validsa by Defendants under Contract 405.

WHEREFORE, Dexton Validsa requests the Court to enter judgment in its favor and against Bariven and PDVSA Services, jointly and severally, for compensatory damages in the amount of \$62,487.96, prejudgment and post judgment interest, costs, attorneys' fees, and any other relief deemed appropriate by the Court.

**COUNT IV**  
**(Breach of Contract 632)**

75. Dexton Validsa repeats and realleges each and every allegation set forth in paragraphs 1-62 hereof with the same force and effect as if fully set forth herein.

76. Dexton Validsa and Defendants are parties to Contract 632, a valid and enforceable contract, the terms of which required Defendants to pay seventy percent (70%) of the purchase amount for each shipment made under Contract 632 upon presentment of Bills of Lading for the shipment.

77. Defendants anticipatorily repudiated Contract 632 and therefore materially breached the contract by ordering the suspension of all payments to Dexton Validsa under Contract 632 and subsequently failing to provide adequate assurance to Dexton Validsa that they would honor Contract 632 on its agreed terms.

78. As a result of Defendants' material breach of Contract 632, Dexton Validsa has suffered damages in the amount of \$221,250.00 in the form of a settlement payment that Dexton Validsa had to make to its supplier for cancelling the contracts that it entered into with the supplier to fulfill its obligations under Contract 632. Moreover, because the supplier refused to cancel payment for approximately one-fourth of the order for 100,000 metric tons of refined sugar, Dexton Validsa has suffered damages in the additional amount off \$7,821,100.00.

79. In addition, as a result of Defendants' material breach of Contract 632, Dexton Validsa has suffered lost profits in the amount of \$15,192,000.00, excluding interest, costs and attorneys' fees, for Defendants' failure to perform under the contract.

80. Finally, as a result of Defendants' material breach of Contract 632, Dexton Validsa has suffered damages of a yet to be determined amount, in the form of injury to its business relationship with its supplier and injury to its business reputation and goodwill.

WHEREFORE, Dexton Validsa requests the Court to enter judgment in its favor and against Bariven and PDVSA Services, jointly and severally, for compensatory damages in the approximate amount of \$23,234,250.00, consequential and incidental damages in an amount to be determined, prejudgment and post judgment interest, costs, attorneys' fees, and any other relief deemed appropriate by the Court.

**COUNT V**  
**(Breach of Contract 757)**

81. Dexton Validsa repeats and realleges each and every allegation set forth in paragraphs 1-62 hereof with the same force and effect as if fully set forth herein.

82. Dexton Validsa and Defendants are parties to Contract 757, a valid and enforceable contract, the terms of which required Defendants to pay seventy percent (70%) of the purchase amount for each shipment made under Contract 757 upon presentment of Bills of Lading for the shipment.

83. Defendants anticipatorily repudiated Contract 757 and therefore materially breached the contract by ordering the cancellation of, and the suspension of all payments under, Contract 757, and by subsequently failing to provide adequate assurance to Dexton Validsa that they would honor Contract 757 on its agreed terms.

84. As a result of Defendants' material breach of Contract 757, Dexton Validsa has presently suffered actual damages in the amount of \$1,298,821.11, excluding interest, costs and attorneys' fees, constituting the amount owed to Dexton Validsa by Defendants under Contract 757.

85. In addition, as a result of Defendants' material breach of Contract 757, Dexton Validsa has suffered lost profits in the approximate amount of \$16,309,920.00, excluding interest, costs and attorneys' fees, for Defendants' failure to perform under the contract.

86. Moreover, as a result of Defendants' material breach of Contract 757, Dexton Validsa lost its standing as Quatro Marcos' exclusive beef distributor in Venezuela, and has suffered, or will suffer, damages in the form of lost business and profits, estimated to be in excess of \$113,562,600 (based on historical performance prior to the breach), as a consequence of the revocation of this exclusivity.

87. Finally, as a result of Defendants' material breach of Contract 757, Dexton Validsa has suffered damages of a yet to be determined amount, in the form of injury to its business relationship with Quatro Marcos, potential monetary exposure to Quatro Marcos, and injury to its business reputation and goodwill.

WHEREFORE, Dexton Validsa requests the Court to enter judgment in its favor and against Bariven and PDVSA Services, jointly and severally, for compensatory damages in the approximate amount of \$17,608,741.11, consequential damages in an amount to be determined, but in excess of \$113,562,600, prejudgment and post judgment interest, costs, attorneys' fees, and any other relief deemed appropriate by the Court.

RESPECTFULLY SUBMITTED, in Miami, Florida, this 3rd day of July, 2008.

s/George Mencio  
George Mencio (FBN 335861)  
s/Adolfo E. Jiménez  
Adolfo E. Jiménez (FBN 869295)  
s/Brian A. Briz  
Brian A. Briz (FBN 657557)  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 3, 2008, I electronically filed the foregoing documents with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Adolfo E. Jiménez

**SERVICE LIST**

<p>Mark V. Silverio, Esq. <a href="mailto:msilverio@silveriohall.com">msilverio@silveriohall.com</a> Brian M. Silverio, Esq. <a href="mailto:bsilverio@silveriohall.com">bsilverio@silveriohall.com</a> SILVERIO &amp; HALL, P.A. Museum Tower 150 West Flagler Street, Penthouse Miami, FL 33130 Telephone: (305) 371-2756 Facsimile: (305) 372-2744 <b><i>Attorney for Defendants PDVSA Services Inc. and Bariven S.A.</i></b> Service via transmission of Notices of Electronic Filing generated by CM/ECF</p>	<p>Ronald E.M. Goodman, Esq. <a href="mailto:rgoodman@foleyhoag.com">rgoodman@foleyhoag.com</a> Janis H. Brennan, Esq. <a href="mailto:jhbrennan@foleyhoag.com">jhbrennan@foleyhoag.com</a> Neil Austin, Esq. <a href="mailto:naustin@foleyhoag.com">naustin@foleyhoag.com</a> FOLEY HOAG LLP 1875 K Street NW Washington, D.C. 20006-1238 Telephone: (202) 223-1200 Facsimile: (202) 467-9672 <b><i>Attorney for Defendant PDVSA Services Inc. and Bariven S.A.</i></b> Service via E-Mail</p>
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