

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

DSS A.S.,

Plaintiff,

v.

PACEM DEFENSE LLC, d/b/a PACEM  
DEFENSE/ALS,

Defendant.

Civil No. 1:24-cv-01331-MSN-LRV

**FIRST AMENDED COMPLAINT**

Plaintiff DSS a.s. (“DSS”), by counsel, files this First Amended Complaint against Defendant PACEM Defense LLC, doing business as PACEM Defense/ALS (“PACEM”). DSS’s claims arise from PACEM’s fraudulent inducement; PACEM’s breach of the Agreement; PACEM’s unjust enrichment to the detriment of DSS; and PACEM’s other wrongful conduct, as set forth below. DSS seeks damages, specific performance, and other relief arising from PACEM’s unlawful conduct.

**INTRODUCTION**

1. In early 2022, Russia launched an invasion of Ukraine. Since that time, Ukraine has defended itself against Russian aggression, and in doing so, has needed the assistance of—and has relied upon—weapons and ammunition provided by foreign entities, such as DSS.

2. DSS’s Ukrainian customer asked DSS to supply small arms that could be used to support the Ukrainian warfighting efforts.

3. In November 2023, PACEM (a Virginia-based manufacturer of munitions) and DSS began communicating about a possible arrangement through which PACEM would provide

40-millimeter grenades to DSS, for delivery to DSS's Ukrainian customer.

4. Ultimately, DSS and PACEM signed a Sale & Purchase of Goods Agreement (No.: DSS23-004) dated December 18, 2023 ("Agreement"), in which PACEM agreed to manufacture and export [REDACTED] 40-millimeter grenades (the "Grenades").

5. However, PACEM never intended to perform pursuant to the Agreement.

6. Instead, PACEM was facing significant financial trouble, and it sought to use funds received for the Grenades to facilitate its performance under a separate, more-lucrative contract with a different customer.

7. Before the Agreement was signed, PACEM made numerous misrepresentations to DSS regarding the availability of certain 40-millimeter grenades as well as PACEM's intent to perform as it had represented.

8. These misrepresentations fraudulently induced DSS to execute the Agreement and to provide advance payment of [REDACTED].

9. As of the filing of this First Amended Complaint, PACEM still has never delivered [REDACTED] Grenades as required by the Agreement.

10. As of the filing of this First Amended Complaint, PACEM has never provided the basic information requested months ago by DSS such as the status of the Grenades or what has happened to the funds deposited.

11. All the while, PACEM has retained over [REDACTED] advanced for the manufacture and delivery of the Grenades.

#### **PARTIES**

12. Plaintiff DSS is a joint stock company under the laws of the Czech Republic with

a registered office at Kloboucnicka 1735/35, 140 00, Prague, Czech Republic. DSS is in the business of procuring defense goods and services to assist, for example, the country of Ukraine as it defends its cities and towns from Russian invasion.

13. Defendant PACEM is a limited liability company organized and existing under the laws of Virginia, having a principal place of business at 2941 Fairview Park Drive, Suite 350, Falls Church, VA 22042. PACEM is in the business of manufacturing, exporting, and coordinating the sale of munitions, and is interrelated and provides overlapping services with an entity called PACEM Solutions International LLC (“PACEM Solutions”).

### **JURISDICTION**

14. This Court has personal jurisdiction over PACEM because PACEM is incorporated under the laws of Virginia and has a principal place of business in Virginia. In addition, PACEM’s sole member has a principal place of business in Virginia.

15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. There is complete diversity between the parties, and the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs.

16. Venue is appropriate in this District under 28 U.S.C. § 1391(b) because PACEM resides in this District and a substantial part of the events or omissions giving rise to the claims alleged below occurred in this District.

### **FACTUAL ALLEGATIONS**

#### **A. PACEM Makes Multiple Misrepresentations to DSS to Induce DSS to Enter into the Agreement.**

17. Commencing in early November 2023—over a month before the Agreement was finalized on December 18, 2023—PACEM made numerous misrepresentations to DSS regarding the availability and delivery of the Grenades to induce DSS to enter into the Agreement and to

provide advance funds in the [REDACTED]. Pacem knew that DSS was in urgent need of Grenades to deliver to the Ukraine.

18. On or about November 14, 2023, Brian Crouch of PACEM sent two emails to Josef Rot of DSS attaching photos of the “shipment 2” and “shipment 3” pallets of Grenades purportedly available for DSS. PACEM included serial numbers of the Grenades contained in the pallets. These emails and their attachments represented that the specific Grenades identified were produced and available for shipment to DSS. And based on these representations, DSS understood that, should a contract be reached, PACEM would ship the Grenades in shipments 2 and 3 to DSS.

19. On or about December 5, 2023, Mr. Crouch indicated to Mr. Rot via email that production of “shipment 4” was complete and that the shipment was available for delivery to DSS. Multiple attachments list the serial numbers associated with the Grenades to be shipped to DSS. Based on these representations, DSS understood that, should a contract be reached, PACEM would ship the Grenades in shipment 4 to DSS.

20. Likewise, on or about December 5, 2023, Mr. Crouch represented to Ondřej Štěpánek of DSS via email that production of the Grenades contained in “delivery 5” would be complete the following week. Attached to the same email, he provided a production schedule. This email, and its attachments, indicated that the specific, previously identified Grenades were complete and available for shipment, and indicated that PACEM would complete production by February 16, 2024. They also conveyed that PACEM intended to perform pursuant to a future contract with DSS for the Grenades.

21. On or about December 16, 2023—just two days before the Agreement was signed—Mr. Crouch represented to Mr. Štěpánek via text message that “shipments 2-5” were “all completed.”

22. Similarly, on or about December 18, 2023, and before the Agreement was finalized, Mr. Crouch informed Mr. Štěpánek and Mr. Rot via email that production of “shipment 5” was complete. This email also included several attachments purporting to support that representation, including multiple attachments listing serial numbers associated with the Grenades in “shipment 5.” The email and its attachments indicated that the specific Grenades associated with “shipment 5” were produced and available for shipment. They also conveyed that PACEM intended to perform pursuant to the Agreement with DSS for the Grenades. Based on these representations, DSS understood that, should a contract be reached, PACEM would ship the Grenades in shipment 5 to DSS.

23. In addition, in telephone conversations before the Agreement was signed, Mr. Crouch represented to Mr. Štěpánek that DSS would receive Grenades with specific serial numbers, that PACEM had [REDACTED] Grenades “in stock” for immediate delivery to DSS upon an approved DSP-5, and that all of the Grenades would be delivered no later than February 16, 2024.

24. In reliance on PACEM’s representations regarding the availability and shipment of the Grenades, DSS was induced by PACEM to make an additional deposit of [REDACTED] to ensure prompt delivery of the Grenades.

25. These representations regarding the availability of specific Grenades for delivery to DSS by February 16, 2024, were false. In fact, the Grenades were never available for delivery to DSS, and as explained below, have never been made available to DSS in the year since the contract was executed despite repeated requests from DSS.

26. And PACEM’s misrepresentations worked. DSS entered into the Agreement and provided [REDACTED] in advance payments to PACEM because it believed that the Grenades, including specific Grenades identified by PACEM via serial numbers, were ready and available

for immediate shipment on February 16, 2024, and because PACEM's communications conveyed that PACEM purportedly intended to perform as represented.

27. If PACEM had not made these representations, or if DSS had known that PACEM was misrepresenting this information, it would not have entered into the Agreement and provided advance payment.

**B. PACEM Fraudulently Fails to Disclose Multiple Material Facts to Induce DSS to Enter into the Agreement.**

28. In addition to making multiple affirmative misrepresentations to induce DSS to enter into the Agreement, PACEM fraudulently withheld multiple material facts to ensure that DSS would enter into the Agreement.

29. First, PACEM did not inform DSS prior to entering into the Agreement that it intended to ship available Grenades pursuant to a more lucrative arrangement for a different, unrelated entity in Ukraine: Spetstechnoexport. In fact, as described further below, DSS only became aware of the Spetstechnoexport contract when PACEM mistakenly emailed to DSS the DSP-5 for that contract.

30. Pursuant to its contract with Spetstechnoexport, PACEM would receive a higher price for the Grenades than it would receive under the terms of the Agreement.

31. PACEM chose to perform under the more-lucrative Spetstechnoexport contract, and it sought to induce DSS to enter into the Agreement in order to secure the funds needed for its performance under its contract with Spetstechnoexport.

32. Had DSS known about the Spetstechnoexport contract and PACEM's intent to ship the available Grenades to that entity, it would not have entered into the Agreement.

33. Second, PACEM did not disclose to DSS prior to entering into the Agreement that it was facing significant financial pressure during the time leading up to, and at the time of, the Agreement's execution.

34. Indeed, at the same time that PACEM was inducing DSS to enter into the Agreement and deposit money for the Grenades, PACEM Solutions, an interrelated entity performing overlapping services, was filing a lawsuit in this Court against the United States Small Business Administration ("SBA") and its officials. DSS only became aware of the lawsuit after the filing of its initial complaint.

35. In that lawsuit, PACEM Solutions alleged that as a result of the SBA's continuing failure to provide PACEM Solutions with the full benefit of its rights, PACEM Solutions would suffer irreparable harm including financial loss and business ruination. *See* Compl. ¶ 36, *PACEM Sols. Int'l, LLC v. U.S. SBA*, Case No. 1:23-cv-01702-LMB-IDD (E.D. Va. Dec. 13, 2023) ("PACEM SBA Compl.").

36. Defendant PACEM and PACEM Solutions effectively operate as a single entity. To start, both entities were founded by the same individual. In addition, their websites refer to each other and are configured in similar ways, including using some of the same graphics and images.<sup>1</sup> Per the Florida Division of Corporations record system, both entities are licensed to do

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<sup>1</sup> For example, the PACEM Solutions website touts its business of "Defense Products & Services," and in so doing, directs website visitors to PACEM Defense—Defendant. *Home*, PACEM Solutions, <https://www.pacem-solutions.com/> (last visited Nov. 13, 2024). PACEM and PACEM Solutions's websites both list the same individuals—in the same positions—on the pages of the websites discussing the "Executive Leadership Team." *See* *ELT*, PACEM Defense, <https://www.pacem-defense.com/elt> (last visited Nov. 13, 2024); *ELT*, PACEM Solutions, <https://www.pacem-solutions.com/elt> (last visited Nov. 13, 2024). And the home pages of both websites include the same video, and the video indicates that on the Florida PACEM property, PACEM operates a production facility and PACEM Solutions operates a training center. *See* *Home*, PACEM Defense, <https://www.pacem-defense.com/> (last visited Nov. 13, 2024); *Home*, PACEM Solutions, <https://www.pacem-solutions.com/> (last visited Nov. 13, 2024).

business in Florida, both entities list Andrew Knaggs as the “Title Manager” and Tarun Handa as the “Title CFO,” and both entities use the same registered agent: “Registered Agents Inc.” *See PACEM Defense LLC*, Sunbiz.org, <https://tinyurl.com/hv3atk6c> (last visited Nov. 13, 2024); *PACEM Solution International, LLC*, Sunbiz.org, <https://tinyurl.com/56k6pauy> (last visited Nov. 13, 2024). And in their applications to transact business in Florida, both entities have listed the same CEO/manager. *See PACEM Defense LLC Application by Foreign Limited Liability Company for Authorization to Transact Business in Florida*, Sunbiz.org (May 21, 2018), <https://tinyurl.com/2pupa8rz>; *PACEM Solution International LLC Application by Foreign Limited Liability Company for Authorization to Transact Business in Florida*, Sunbiz.org (May 21, 2018), <https://tinyurl.com/4xw8vu57>. Further, per Virginia State Corporation Commission records, both PACEM entities list 2941 Fairview Park Drive, Suite 350, Falls Church, VA 22042, as their principal business address, and PACEM Solution International LLC is the registered agent of PACEM.

37. Multiple documents received by DSS from PACEM list both entities on the document, and they appear to operate as one entity.

38. Indeed, in response to DSS’s original Complaint, PACEM cited to the PACEM Solutions website to identify a member of its leadership team. *See* Def. PACEM Def. LLC’s Mem. Supp. Partial Mot. Dismiss 3 n.2, ECF No. 15.

39. PACEM’s poor financial condition was a material fact that PACEM fraudulently failed to disclose to DSS. PACEM knew about its poor financial condition, but nevertheless induced DSS to enter into a contract and provide funds to PACEM.

40. If DSS had known that PACEM was in such financial straits, DSS would not have entered into the Agreement.

41. This likely explains why, after the Agreement was signed, PACEM refused to respond to repeated inquiries from DSS as to the status of the [REDACTED] received from the Grenades, further concealing the fraud.

42. To this day, a year after the Agreement was signed, PACEM refuses to account for the [REDACTED] it received.

**C. DSS Enters into the Agreement, and PACEM Confirms the Deposit of More Than [REDACTED] for Grenades.**

43. On December 18, 2023, as a result of PACEM's misrepresentations and fraudulent omissions, DSS entered into the Agreement with PACEM, attached hereto as Ex. 1.

44. In the Agreement, PACEM agreed to deliver to DSS a total of [REDACTED] Grenades "per the Delivery Schedule set forth in Exhibit C" to the Agreement. Ex. 1, § 2(a).

45. Delivery would commence upon State Department approval to export the Grenades via a State Department DSP-5 export license. See Ex. 1, § 2(c).

46. Exhibit C to the Agreement provides the following delivery schedule that PACEM provided DSS ("Delivery Schedule"):

**EXHIBIT C: DELIVERY SCHEDULE (WITH PRODUCTION AND DEPOSIT SCHEDULE)**

| Shipment # | Quantity   | Date Production Completes | Balance Payment Due Date | 50% Balance Due | Date of Estimated US Departure |
|------------|------------|---------------------------|--------------------------|-----------------|--------------------------------|
| 1          | [REDACTED] | Available from Stock      |                          | [REDACTED]      | With Approved DSP-5            |
| 2          |            | Available from Stock      |                          |                 |                                |
| 3          |            | Available from Stock      |                          |                 |                                |
| 4          |            | Available from Stock      |                          |                 |                                |
| 5          |            | 12/15/2023                | 12/20/2023               | [REDACTED]      | TBD                            |
| 6          |            | 1/19/2024                 | 1/24/2024                |                 | TBD                            |
| 7          |            | 2/2/2024                  | 2/7/2024                 |                 | TBD                            |
| 8          |            | 2/16/2024                 | 2/21/2024                |                 | TBD                            |

Total  
Quantity [REDACTED]

Ex. 1, at 17.

47. Pursuant to a contract with its Ukrainian customer, after receiving the Grenades from PACEM, DSS would then ensure delivery of the Grenades to the customer.

48. Just prior to the Agreement's execution, on or about December 14, 2023, PACEM had acknowledged the receipt of:

- a. the "50% deposit in accordance with the procedure described in" the Agreement; and
- b. "full payment (100%) for Shipment number 1 of 8, containing [REDACTED] rounds of [the Grenades]".

*See Acknowledgement, attached hereto as Ex. 2.*

49. PACEM received over [REDACTED] deposited for the manufacture and export of the Grenades as advance payment.

50. After receipt of the deposit, section 2(a) of the Agreement further requires PACEM to provide "a firm schedule" for delivery. *See Ex. 1, § 2(a).*

51. At no time did DSS receive a revised Delivery Schedule from PACEM.

52. Either the Delivery Schedule set forth in Exhibit C represents the firm Delivery Schedule, or PACEM failed to comply with the Agreement when it failed to supply a "firm schedule" upon receipt of the deposit.

**D. The State Department Issues a Valid DSP-5 Export License for the Grenades, But PACEM Did Not Ship the Grenades.**

53. On or about January 22, 2024, the State Department approved the DSP-5 export license for the Grenades. The DSP-5 is attached hereto as Ex. 3.

54. As set forth in the Agreement, upon the issuance of an "approved DSP-5" (*see Ex. 1, at 17*), PACEM was required to export the Grenades.

55. As of the date of issuance of the DSP-5, no additional licenses or approvals were

needed for PACEM to export the Grenades.

56. Under the Agreement, upon issuance of the DSP-5, PACEM understood it was to commence delivery of the Grenades.

57. However, after the issuance of the DSP-5, PACEM did not ship the Grenades required under the Agreement, nor did PACEM attempt to schedule a shipment or delivery.

58. Indeed, although PACEM had represented before the Agreement's execution that it would complete delivery of the [REDACTED] contracted-for Grenades by February 16, 2024, PACEM followed through on its lack of intent to perform and failed to complete delivery of the Grenades.

59. DSS continued to seek compliance by PACEM to no avail.

60. PACEM vaguely claimed that it had incurred costs to perform under the contract, yet to this day, PACEM has refused to explain how it had incurred the costs when it received over [REDACTED] and had not delivered the Grenades.

61. In fact, when performance was due, PACEM could not perform because it did not have the Grenades it promised to DSS. PACEM attempted to delay DSS's inspection of the Grenades for many weeks, and ultimately, when PACEM permitted a limited inspection months later in April 2024, DSS confirmed that PACEM did not possess the Grenades PACEM previously represented were "in stock."

62. At no time between the date the DSP-5 was approved by the State Department (on or about January 22, 2024) and the expiration of that DSP-5 (on or about July 22, 2024) did the State Department terminate or withdraw the DSP-5 and PACEM's authority to export the Grenades.

63. In other words, the Agreement did not permit PACEM to unilaterally decide to excuse itself from performance or liability when it failed to deliver the Grenades.

64. Rather than deliver the Grenades, PACEM allowed the DSP-5 to expire.

65. Having failed to deliver the Grenades during the pendency of a valid DSP-5, PACEM breached the Agreement.

**E. DSS Receives Documentation Indicating That PACEM Delivered Grenades to Spetstechnoexport for a Higher Price.**

66. In or about March 2024, after DSS began investigating why PACEM was not performing as required, it became clear to DSS that it had been deceived from the beginning. First, in response to a request for a copy of the DSP-5 for the Agreement, PACEM inadvertently emailed DSS a copy of the DSP-5 export license for its contract with Spetstechnoexport for grenades identical to those contracted for in the Agreement (the “Spetstechnoexport DSP-5”). The Spetstechnoexport DSP-5 shows PACEM’s delivery of a substantial quantity of the same grenades to Spetstechnoexport. The Spetstechnoexport DSP-5 is attached hereto as Ex. 4.

67. That license, purportedly created before the DSS Agreement was signed, also shows that PACEM received the export license necessary to export the grenades to Spetstechnoexport for a price higher than the price contracted for in PACEM’s Agreement with DSS. *See* Ex. 4.

68. This was the first time DSS became aware of the Spetstechnoexport contract.

69. When DSS informed PACEM that PACEM had sent the wrong DSP-5 license, PACEM provided the proper DSP-5 (*see* Ex. 3), but PACEM failed to ship the remaining Grenades to DSS.

70. When confronted by DSS that it appeared that PACEM had taken DSS’s payments and used them to supply the more-lucrative Spetstechnoexport contract, PACEM refused to explain the Spetstechnoexport contract. PACEM also failed to provide information to DSS regarding the status of the Grenades or an accounting of the funds received.

71. Upon information and belief, PACEM increased its profit by over [REDACTED] while not supplying the Grenades to DSS.

**F. To This Day, PACEM Refuses to Provide DSS with Information Regarding the Status of the Grenades or the Funds Paid by DSS.**

72. DSS's follow-up requests for information regarding the status of the Agreement further demonstrated that it had been deceived. In March and April 2024, DSS contacted PACEM multiple times requesting information regarding delay in shipment, a timetable indicating when those Grenades would be delivered, and information about the status of the funds DSS provided to PACEM and how they had been or would be used.

73. DSS sought information such as details as to the dedicated components purportedly in PACEM's possession for the Grenades, when and how those dedicated components were delivered to PACEM, the status of the Grenades' builds, the costs incurred by PACEM to date for the Grenades, and an accounting of the funds sent to PACEM.

74. But PACEM did not provide the requested information, including any information regarding the status of the funds DSS provided to PACEM.

**G. DSS Demanded Inspection of the Grenades, Which Confirmed that PACEM Did Not Possess the [REDACTED] Grenades as PACEM Misrepresented, and PACEM Even Refused to Deliver the Small Number of Grenades That Were Inspected.**

75. As early as March 8, 2024, DSS asked for an inspection of the Grenades PACEM had promised were "in stock." DSS made this request for inspection pursuant to the Agreement, which states that DSS has a right to inspect the Grenades. *See* Ex. 1, § 6(a).

76. But PACEM refused to allow DSS to inspect the Grenades. Indeed, DSS made multiple requests for an inspection, but time after time, PACEM rejected these requests despite DSS's right to inspect the Grenades. *See id.*

77. PACEM's rejections of DSS's requests indicate that PACEM's prior representations regarding the availability of the Grenades were false and never intended to perform, using the deposited funds to deliver the Grenades to another customer.

78. Only after DSS was forced to engage counsel and make a legal demand, PACEM finally scheduled an inspection on April 25, 2024 (more than two months after the February 16, 2024 completion date for all [REDACTED] Grenades as set forth in Exhibit C to the Agreement).

79. Prior to the inspection, PACEM not only sought to unilaterally impose certain "pre-conditions" on DSS's inspection, but also PACEM still refused to provide basic information to DSS before DSS's inspector arrived at PACEM's facility, including the number of Grenades ready to inspect and ship and the serial and lot numbers.

80. DSS, a customer which had over [REDACTED] deposited at PACEM, also asked PACEM to provide PACEM's position on the purchase price attributable to the Grenades PACEM had manufactured and the remaining amount on deposit. PACEM, despite its fiduciary duties with respect to over [REDACTED] on deposit, withheld the requested information.

81. At the inspection on April 25, 2024, DSS learned for the first time that PACEM only had [REDACTED] Grenades available for inspection. This contradicted PACEM's prior communications stating that the Grenades required to be manufactured under the Agreement were available for inspection.

82. Further, the serial numbers of the Grenades available for inspection did not match the serial numbers PACEM provided to DSS to induce DSS to enter into the Agreement and provide advance payment, for which PACEM had acknowledged a full deposit.

83. Thus, the inspection confirmed that PACEM did not have the specific Grenades that PACEM represented it had before execution of the Agreement, much less the rest of the

Grenades (up to [REDACTED]) that were required to be available for inspection according to the Delivery Schedule timeline (by February 16, 2024).

84. At no time has PACEM permitted an inspection of the [REDACTED] Grenades that were represented as being “in stock” before and as of December 18, 2023.

85. At no time has PACEM permitted an inspection of the additional Grenades that PACEM represented would be completed by February 16, 2024.

86. PACEM was not permitted to sell the DSS Grenades to a third party once the deposit had been made,<sup>2</sup> regardless of whether PACEM had intended to do so even before entering into the Agreement or did so at a higher price.

87. DSS is now aware of PACEM’s dire financial situation, which provides an explanation for its conduct:

a. PACEM was in significant financial trouble, and without additional funds, it would have been unable to perform under its lucrative contract with Spetstechnoexport.

b. PACEM sought to induce DSS to enter into the Agreement to prompt DSS to provide cash to PACEM. The cash provided by DSS would enable PACEM to perform pursuant to its contract with Spetstechnoexport.

c. PACEM never intended to perform pursuant to the Agreement. Moreover, as a result of its contract with Spetstechnoexport—and its performance pursuant to that contract—it would be unable to provide the Grenades contracted for in the Agreement.

d. PACEM used the Grenades due to DSS to complete at least one other order—its order from Spetstechnoexport—after receiving the Agreement deposits.

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<sup>2</sup> See, e.g., Ex. 1, § 6(h) (once a deposit is received by the Seller, the Goods are “reserved for the benefit of the Buyer”).

e. PACEM refused to provide information to DSS regarding the status of the funds received pursuant to the Agreement because doing so would expose its dire financial condition and unlawful conduct.

**H. PACEM Failed to Deliver All of the Grenades as Required by the Agreement.**

88. PACEM did not comply with the “Delivery Schedule set forth in Exhibit C” to the Agreement. Ex. 1, § 2(a). Specifically, it did not deliver the Grenades as set forth in Exhibit C after obtaining a valid DSP-5 export license. *See* Ex. 1, at 17.

89. Indeed, as of the filing of this First Amended Complaint, PACEM has not delivered Grenades pursuant to the Agreement.

90. As of the filing of this First Amended Complaint, PACEM has not provided information requested by DSS regarding the status of the remaining Grenades or what PACEM has done with the money it received.

91. Accordingly, PACEM has breached the Agreement.

92. DSS is concerned that PACEM used all or a portion of the funds deposited for other purposes (e.g., to fulfill its contract with Spetstechnoexport), particularly when PACEM refuses to confirm what happened to the specific Grenades that PACEM previously indicated were produced and available for shipment.

**I. PACEM Has Been Unjustly Enriched.**

93. PACEM has retained the over [REDACTED] it received for the Grenades without providing the Grenades pursuant to the Agreement.

94. That is, PACEM has been unjustly enriched because it received money for the Grenades but did not provide them in return, instead generating a larger profit on sales of the same grenades to another customer.

**COUNT ONE**  
**Fraud in the Inducement**

95. DSS incorporates and realleges paragraphs 1–94 above by reference, as if fully set forth herein.

96. Prior to execution of the Agreement, PACEM made multiple representations to DSS regarding the availability of the Grenades to be delivered to DSS and PACEM's intent to perform pursuant to the Agreement to induce DSS to enter into the Agreement and provide advance payment for the Grenades.

97. The representations included, among other things, email communications describing and depicting specific shipments of Grenades that had been produced, along with text message communications stating that specific shipments of the Grenades were ready. These communications also made statements regarding the serial numbers of the Grenades to be provided to DSS.

98. Through these representations, PACEM represented to DSS that it had [REDACTED] Grenades "in stock" and the remaining [REDACTED] Grenades would be completed by February 16, 2024.

99. However, these representations were false.

100. The misrepresentations were material to DSS's decision to enter into the Agreement and provide advance payment for the Grenades. If PACEM had not made these misrepresentations, or if DSS had known that they were false, DSS would not have entered into the Agreement and provided advance payment.

101. Also prior to the execution of the Agreement, PACEM represented that it would deliver and export the Grenades according to the Delivery Schedule if DSS agreed to submit a further deposit of [REDACTED] to PACEM.

102. However, this representation was also false.

103. This misrepresentation was material to DSS's decision to enter into the Agreement and submit the additional [REDACTED] deposit. If PACEM had not made this misrepresentation, or if DSS had known that it was false, DSS would not have entered into the Agreement and submitted the additional deposit.

104. PACEM also fraudulently omitted at least two material facts before the Agreement's execution: (1) the existence of PACEM's pre-existing contract with Spetstechnoexport, and (2) the significant financial trouble PACEM was facing at the time it was accepting cash from DSS and making commitments to perform pursuant to the Agreement.

105. These are actionable omissions of material facts. PACEM knew that DSS was acting on the assumption that these facts did not exist, and PACEM intentionally did not disclose these material facts to DSS.

106. If DSS had known these facts, it would not have entered into the Agreement or provided advance payment.

107. As more fully set forth herein, PACEM never intended to perform pursuant to the Agreement.

108. In reliance on PACEM's misrepresentations and omissions, and without knowledge of material facts concealed by PACEM, DSS executed the Agreement and provided advance payment with the expectation that PACEM could perform and had an intention to perform.

109. PACEM's misrepresentations regarding the availability of the Grenades and its intent to perform, along with its concealment of its pre-existing contract with Spetstechnoexport and its dire financial condition, induced DSS to execute the Agreement and provide advance payment.

110. As a result of PACEM's fraud, DSS has suffered and continues to suffer significant harm, and consequently, DSS is entitled to seek rescission and/or damages.

**COUNT TWO**  
**Breach of Contract**

111. DSS incorporates and realleges paragraphs 1–94 above by reference, as if fully set forth herein.

112. The Agreement is a valid and enforceable contract between DSS and PACEM.

113. Pursuant to the Agreement, PACEM was required to deliver the Grenades to DSS “per the Delivery Schedule set forth in Exhibit C” to the Agreement. Ex. 1, § 2(a).

114. Either the Delivery Schedule set forth in Exhibit C represents the firm Delivery Schedule, or PACEM failed to comply with the Agreement when it failed to supply a “firm schedule” upon receipt of the deposit.

115. Moreover, the Agreement provides that delivery would commence upon State Department approval to export the Grenades via a State Department DSP-5 export license. *See* Ex. 1, § 2(c).

116. On or about January 22, 2024, the State Department approved the DSP-5 export license for the Grenades. Per the Agreement, PACEM was then required to commence delivery of the Grenades.

117. PACEM did not deliver the Grenades as required by the Agreement. It even allowed the DSP-5 to expire six months after it was issued, without completing delivery of the Grenades.

118. DSS has at all times fulfilled its obligations under the Agreement, and PACEM has received over [REDACTED] for the Grenades.

119. PACEM breached the Agreement by failing to deliver all of the Grenades to DSS,

as required by the Agreement's Delivery Schedule, and indeed PACEM has failed to deliver all of the Grenades to DSS at any time prior to the filing of this First Amended Complaint.

120. As a proximate result of PACEM's breach of the Agreement, DSS has suffered damages in an amount to be determined at trial.

**COUNT THREE**  
**Specific Performance**

121. DSS incorporates and realleges paragraphs 1–94 above by reference, as if fully set forth herein.

122. For the reasons alleged herein, PACEM has not performed its obligations under a definite contract signed by the parties, and it has breached the Agreement.

123. Despite DSS's requests, PACEM has not delivered the Grenades, nor has it permitted the inspection of all Grenades or disclosed the status of the funds it received as a deposit for the Grenades.

124. DSS performed the obligations required of it under the Agreement and has been otherwise ready and willing to perform.

125. Any conditions precedent have been fulfilled.

126. Pleading in the alternative, DSS does not have an adequate remedy at law.

127. DSS is thus entitled to entry of an order requiring PACEM to specifically perform and satisfy its obligations under the Agreement, and entry of judgment against PACEM.

**COUNT FOUR**  
**Unjust Enrichment**

128. DSS incorporates and realleges paragraphs 1–94 above by reference, as if fully set forth herein.

129. DSS conferred benefits upon PACEM when funds provided pursuant to the Agreement were used by PACEM to manufacture goods never delivered to DSS and/or delivered to a third party for profit and PACEM failed to return funds to DSS with interest and/or the profits obtained by PACEM from third party sales of goods.

130. PACEM knew that DSS had conferred these benefits upon PACEM.

131. PACEM accepted and has retained these benefits.

132. It is inequitable for PACEM to retain the benefits it received.

133. PACEM has thus been unjustly enriched at DSS's expense.

**PRAYER FOR RELIEF**

WHEREFORE, as a result of the foregoing, Plaintiff prays for the following relief:

- A. Recovery of monetary damages from Defendant to Plaintiff as established at trial;
- B. Rescission and return of monies deposited with Defendant, plus interest from the date Defendant received the funds, and/or items of value purchased with the funds;
- C. Disgorgement of all profits Defendant received from sales of grenades that should have been delivered to Plaintiff, plus interest;
- D. Specific performance of Defendant's obligations under the contract;
- E. An award of punitive damages to the extent permitted by law;
- F. An award of reasonable attorneys' fees, costs, expenses, and pre-judgment and post-judgment interest to the extent permitted by law or contract; and
- G. Such other and further relief as the Court deems just and proper.

Dated: December 13, 2024

By: /s/ Attison L. Barnes, III  
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