

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIVIL DIVISION**

TRADE LINK CAPITAL, INC., and
TASTE TRACKERS, INC.,

Plaintiffs,

Case No.: 2019-037303-CA-01

v.

TOTAL QUALITY LOGISTICS, LLC,

Defendant.

NOTICE OF APPEAL OF NON-FINAL ORDERS

NOTICE IS GIVEN that Defendant, TOTAL QUALITY LOGISTICS, LLC, appeals to the Third District Court of Appeal the Orders on Defendant's Motion to Strike, or in the Alternative to Dismiss, Plaintiff's Second Amended Complaint, and Plaintiff's Motion to Vacate and for Sanctions, (collectively, the "Orders") rendered on October 31, 2023. The nature of the Orders is nonfinal concerning venue, which are appealable under Florida Rule of Appellate Procedure 9.130(a)(3)(A). Conformed copies of the Orders are attached here as **Composite Exhibit A**.

Dated: November 30, 2023

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC**

By: /s/ Eve A. Cann

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STATE OF FLORIDA, COUNTY OF MIAMI-DADE
I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN THIS OFFICE 12-1 AD 20 23
JUAN FERNANDEZ-BARQUIN, Clerk of the Court and Comptroller, Miami-Dade County
Deputy Clerk [Signature] 17662



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*Counsel for Defendant Total Quality
Logistics, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 30, 2023, a true and correct copy of the foregoing document has been filed with the Clerk of the Court via the Florida E-Portal, which will send electronic notification to:

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By: /s/ Eve A. Cann
Eve A. Cann

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2019-037303-CA-01

SECTION: CA21

JUDGE: David C. Miller

Trade Link Capital, Inc. et al

Plaintiff(s)

vs.

Total Quality Logistics, LLC

Defendant(s)

**ORDER ON DEFENDANT'S MOTION TO STRIKE, OR IN THE ALTERNATIVE TO
DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT**

THIS CAUSE having come before the Court on Defendant, Total Quality Logistics, LLC's ("TQL" or "Defendant"), Motion To Strike, or in the Alternative to Dismiss Plaintiffs, Trade Link Capital, Inc., and Taste Trackers, Inc.'s (hereinafter collectively referred to as "Plaintiffs") Verified Second Amended Complaint (the "Motion"), and the Court, having considered the Motion, having heard argument of counsel, and being otherwise duly informed in the premises, it is hereby,

ORDERED AND ADJUDGED that:

1. Defendant's Motion to Strike, or in the Alternative to Dismiss Plaintiff's Second Amended Complaint is **DENIED**.
2. Plaintiff's nunc pro tunc request for leave to file its Verified Second Amended Complaint is hereby granted as the requisites of Rule 1.190, Florida Rules of Civil Procedure have been met, to wit:
 - a. Justice requires the granting of such leave;
 - b. The causes of action set forth in the amended pleading is based on the same conduct, transactions and occurrences upon which the original claim was brought.
 - c. The Third District Court of Appeals Opinion and Mandate required a dismissal without prejudice of the First Amended Complaint; same has been dismissed by

operation of law and procedure. Said Opinion and Mandate did not state that no further amendments would be allowed.

- d. The verified nature of the Second Amended Complaint mandated that in order to sustain a motion to dismiss based upon a forum selection clause, the Defendant was required to come forward with admissible evidence by way of declaration to rebut the factual assertions proffered by the Plaintiff.
 - e. The Affidavit of Marc Bostwick, executed on May 22nd, 2023, and submitted and filed with the Defendant's Motion to Strike/Dismiss also on May 22, 2023 merely served to authenticate the business records of the Movant Defendant, namely the 2011 and 2013 account applications. Said Affidavit failed to rebut any of the salient facts that mandated the denial of TQL's motions. Specifically, the Affidavit failed to address or otherwise dispute or rebut TQL's undertaking and obligations both as a Carmack Carrier and to procure insurance for Plaintiff and otherwise advise Plaintiff with respect to its insurance needs and that TQL breached those obligations. TQL further failed to rebut, dispute or provide contra evidence in the form of an Affidavit or otherwise with respect to the loss of the cargo, the locus of the loss of the cargo, TQL's specific undertakings relative to Plaintiff; and the modification and novation of the 2011 and 2013 agreements which comprised new agreements both with respect to Carmack obligations and the undertaking of insurance services.
 - f. In fact, as set forth in the Verified Second Amended Complaint, there was additional and sufficient consideration to support new Agreements which did not contain any provisions regarding forum selection, based upon the unopposed and verified allegations regarding additional discussions, agreements, emails, telephone calls and other communications that importantly occurred *after* August of 2013.
3. Accordingly, no evidentiary hearing was required as there were no salient facts in dispute.
 4. TQL shall file its answer and affirmative defenses to the Second Amended Complaint within 30 days of the date of this Order.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 31st day of October, 2023.


2019-037303-CA-01 10-31-2023 12:51 P

2019-037303-CA-01 10-31-2023 12:51 PM

Hon. David C. Miller

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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Physically Served:

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2019-037303-CA-01

SECTION: CA21

JUDGE: David C. Miller

Trade Link Capital, Inc. et al

Plaintiff(s)

vs.

Total Quality Logistics, LLC

Defendant(s)

ORDER GRANTING PLAINTIFF'S MOTION TO VACATE AND FOR SANCTIONS

THIS CAUSE having come before the Court on Plaintiff Trade Link Capital, Inc. ("Tradelink") and Taste Trackers, Inc. ("Taste Trackers") Motion to Vacate and for Sanctions, and the Court, having considered the Motion, having heard argument of counsel, and being otherwise duly informed in the premises, it is hereby,

ORDERED AND ADJUDGED that:

1. Plaintiffs' Motion is **Granted**.
2. The Order previously submitted and uploaded by Defendant on Defendant's Motion to Strike, or in the Alternative to Dismiss Plaintiffs' Second Amended Complaint, and entered on October 23, 2023 is hereby stricken and vacated and Motion to Dismiss Plaintiff's nunc pro tunc request for leave to file its Verified Second Amended Complaint is hereby granted as the requisites of Rule 1.190, Florida Rules of Civil Procedure have been met, to wit:
3. The draft Order submitted by Plaintiffs as Exhibit "B" to the Plaintiffs' Motion to Vacate and for Sanctions accurately reflects the basis and rationale for the Court's September 26th ruling that both of Defendant's Motions should be denied and formed the sum and substance of the Court's ruling. (A copy of this draft Order is annexed hereto as Exhibit "A").
4. The Parties are directed to submit and upload **today** Exhibit "A" hereto for entry and execution by the Court.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 31st day of October, 2023.


2019-037303-CA-01 10-31-2023 12:51 P

2019-037303-CA-01 10-31-2023 12:51 PM

Hon. David C. Miller

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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