

NO. \_\_\_\_\_

STATE OF TEXAS,  
Plaintiff

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IN THE DISTRICT COURT OF

VS.

EL PASO COUNTY, T E X A S

MILKY WAY TRADERS, INC., and  
YVON BELLIARD, individually,  
Defendants

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS, Plaintiff, on behalf of the Commissioner of Health, acting by and through Attorney General GREG ABBOTT, and files Plaintiff’s Original Petition alleging that MILKY WAY TRADERS, INC., and YVON BELLIARD, individually, Defendants (“Defendants”), acting without proper licensing from the State of Texas, purchase product invoiced to Defendants as animal feed, then blend and repackage product under filthy conditions in El Paso, Texas, and resell the product labeled as food products to food manufacturers in Mexico for use in infant formula and other food products.

**I. DISCOVERY CONTROL PLAN**

1. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.

**II. JURISDICTION**

2. This suit is brought by Attorney General GREG ABBOTT through his Consumer Protection and Public Health Division (“the Consumer Protection Division”) in the name of the STATE OF TEXAS and of the Commissioner of Health and in the public interest under the authority

granted to him by §431.047(a) and (b) and §431.0585 of the Texas Food, Drug and Cosmetic Act (“TFDCA”), TEX. HEALTH AND SAFETY CODE ANN. §§ 431.001 *et seq.* (Vernon 1992 & Supp. 2004) upon the grounds that authorized agents of the Commissioner of Health find that Defendants have violated and are currently violating provisions of §431.021 of the TFDCA.

3. This action is also brought by Attorney General GREG ABBOTT, through his Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest under the authority granted him by §17.47 of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (“DTPA”), upon the grounds that Defendants have engaged in false, misleading or deceptive acts or practices in the course of trade and commerce as defined in, and declared unlawful by §§17.46(a) and (b) of the DTPA.

### **III. PARTY DEFENDANTS**

4. Defendant MILKY WAY TRADERS, INC., (“MILKY WAY”) is a Texas corporation whose principal place of business is located at 115 and 130 Montoya Road, El Paso, Texas 79922, in El Paso County, and may be served with process by serving its president, YVON BELLIARD, at the same address.

5. Defendant YVON BELLIARD is an individual who is a resident of Texas and may be served with process at his place of employment located at 115 and 130 Montoya Road, El Paso, Texas 79922 in El Paso County.

### **IV. VENUE**

6. Venue of this action lies in El Paso County pursuant to § 431.047(c) of the TFDCA and §17.56 of the DTPA. Specifically, the violations of the TFDCA and DTPA occurred and are continuing to occur in El Paso County where Defendants’ principal place of business is located.

## **V. PUBLIC INTEREST**

7. By reason of the institution and operation of the unlawful practices set forth herein, Defendants have and will cause irreparable injury, loss and damage to the STATE OF TEXAS, and will also cause adverse effects to legitimate business enterprises which conduct trade and commerce in a lawful manner in this State. Therefore, these proceedings are in the public interest.

## **VI. ACTS OF AGENTS**

8. Whenever in this petition it is alleged that Defendants did any act or thing, it is meant that Defendants performed or participated in such act or thing or that such act was performed by the officers, agents or employees of said Defendants, and in each instance, the officers, agents or employees of said Defendants that were then authorized to and did in fact act on behalf of Defendants or otherwise acted under the guidance and direction of the Defendants.

9. Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by section 17.45(6) of the DTPA.

10. The Consumer Protection Division did not notify Defendants prior to filing suit because there is good cause to believe that Defendants would evade service of process and/or destroy relevant records if prior contact were made and an emergency exists in that immediate and irreparable injury, loss, or damage would occur as a result of such delay in obtaining a temporary restraining order.

## **VII. NATURE OF DEFENDANTS’ CONDUCT**

11. Defendants MILKY WAY TRADERS, INC. and YVON BELLIARD, individually, operate an unlicensed food manufacturing, warehousing and distributing business in El Paso, Texas. Defendants purchase dried dairy products and other ingredients sold by the original manufacturers or distributors as animal feed only, mix and package the products under filthy conditions and then sell some of their product to Mexican food manufacturers mislabeled as food product. The State

alleges that the product manufactured and sold by Defendants contains materials that the original manufacturer or distributor designated as unfit for human consumption.

12. Defendant YVON BELLIARD owns and operates MILKY WAY TRADERS, INC. and serves as its president. As such, Defendant YVON BELLIARD has the responsibility for the overall management and oversight of the company, including compliance with all state and federal statutes regulating food manufacturing, warehouse and distribution establishments. He also has the responsibility of supervising other officers, directors, and employees of the corporation. As a result, Defendant YVON BELLIARD directs and has personal knowledge of the day-to-day activities of the company.

13. On October 8, 2004, DSHS inspected Defendants' facilities at 115 and 130 Montoya Road in El Paso, Texas, and observed unsanitary conditions and other prohibited acts in Defendants' facilities, reflected in the October 12, 2004, inspection report as follows:

1. The firm is not licensed as a Food Manufacturer with the Texas Department of State Health Services at both locations.
2. Observed adulterated and misbranded food products being introduced into commerce.
3. Observed unsanitary conditions throughout the facilities.
4. Failure to maintain production records for manufactured products.
5. Improper and unsanitary manufacturing practices were observed being performed by employees while conducting manufacturing operations.

14. On October 8, 2004, immediately after their inspection, DSHS inspectors issued Notices of Detention to MILKY WAY TRADERS, INC., and Defendant YVON BELLIARD, indicating that the entire contents of the building were being detained. Defendant BELLIARD signed the notices of detention.

15. Detained goods may not be sold or moved from the location of their detention without

the written permission of the DSHS pursuant to Section 431.048 of the TFDCa.

16. On October 28, 2004, DSHS revisited the Defendants' place of business and observed that some of the detained product had been moved from its previous location and have reason to believe that large quantities of the product are being removed from Defendants' premises, in violation of the detention order.

### **VIII. VIOLATIONS OF THE TEXAS FOOD, DRUG AND COSMETIC ACT**

17. Based on the conduct alleged above, Defendants MILKY WAY TRADERS, INC, and YVON BELLIARD individually, have engaged in the operation of an unlicensed food manufacturer and adulterated and misbranded foods as follows:

- A. The foods held, stored, transported, packed and/or repacked by Defendants are deemed adulterated within the meaning of section 431.081(a), of the TFDCa because they have been produced, prepared, packed or held under unsanitary conditions whereby they may have become contaminated with filth, or whereby they may have been rendered diseased, unwholesome, or injurious to health in violation of section 431.081(a)(4) of the TFDCa.
- B. The foods produced by Defendants are deemed adulterated within the meaning of section 431.081(a)(1), of the TFDCa because they contain deleterious substances which may render it injurious to health.
- C. The foods produced by Defendants are deemed adulterated within the meaning of § 431.081(a)(3) because they consist of diseased, contaminated, filthy, putrid or decomposed substance, or are otherwise unfit for foods.
- D. Foods held, stored, transported, packed and/or repacked by Defendants are deemed misbranded within the meaning of §§ 431.082(a) and (g) of the TFDCa because the labeling is false or misleading and fails to prominently display information and statements required by regulations promulgated under the authority of the TFDCa in such a manner to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- E. The Defendants are engaged in the manufacturing, warehousing and distribution of food products without any form of license from the Texas Department of State Health Services, in violation of § 431.222.

**IX. PROHIBITED ACTS UNDER THE TEXAS  
FOOD, DRUG AND COSMETIC ACT**

18. Defendants MILKY WAY TRADERS, INC., and YVON BELLIARD, individually, have committed or caused to be committed the following acts prohibited and declared to be unlawful by § 431.021 of the TFDCA:

- A. Introducing into commerce food that is adulterated, in violation of §431.021(a) of the TFDCA;
- B. Introducing into commerce food that is misbranded, in violation of §431.021(a) of the TFDCA;
- C. Manufacturing within this state of food that is adulterated or misbranded in violation of 431.021.(h) of the TFDCA;
- D. Using, removing or disposing of a detained article in violation of 431.021(j); and
- E. Engaging in the manufacture of food in this state or operating as a warehouse operator in this state without having a license, in violation of 431.021(y).

**X. VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**

19. Based on the conduct alleged above, Defendants MILKY WAY TRADERS, INC. and YVON BELLIARD, individually, in the course and conduct of trade and commerce, have engaged in false, misleading, and deceptive acts and practices. By labeling their product as a food product, Defendants misrepresented that their products are fit for human consumption when they are not.

**XI. PROHIBITED ACTS UNDER THE TEXAS DECEPTIVE  
TRADE PRACTICES ACT**

20. Defendants MILKY WAY TRADERS, INC., and YVON BELLIARD, individually, have committed or caused to be committed the following acts prohibited and declared to be unlawful by the DTPA:

- A. Engaging in false, misleading, or deceptive acts or practices in the conduct of any trade or commerce in violation of § 17.46(a); and

- B. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have in violation of §17.46(b)(5).

## **XII. INJUNCTIONS**

21. The STATE OF TEXAS alleges that Defendants are in violation of the laws of the STATE OF TEXAS and that Defendants' continued offering for sale and selling of food products which are adulterated and misbranded threatens immediate and irreparable injury to consumers and the general public.

22. In addition, the records of Defendants relating to offering for sale and selling of food products should be conserved and preserved during the pendency of these legal proceedings. Unless the injunctive relief is granted, the offering for sale and selling of food products which are contaminated, adulterated, and misbranded will continue by Defendants and said records of Defendants may be dissipated, lost, altered, removed or materially injured. The interests of the STATE OF TEXAS require a temporary and permanent injunction in light of the harmful activities of Defendants.

23. The State alleges that by reason of the foregoing, Defendants should not continue to sell or distribute any food products in or from Texas which are contaminated, adulterated, or misbranded; and that unless the requested injunctive relief is granted, Defendants will continue to violate the laws of the STATE OF TEXAS to irreparable injury of the general public. The interests of the STATE OF TEXAS require a temporary injunction and a permanent injunction to prohibit Defendants from selling foods which are contaminated, adulterated, or misbranded.

24. Section 431.047 of the TFDCA and provide that a district court may grant any warranted injunctive relief if the court finds that a person has violated, is violating, or threatening to violate the TFDCA. § 17.47 of the DTPA also authorizes the granting of a temporary or

permanent injunction to restrain violations of the DTPA.

25. By reason of the institution and continued operation of the acts and practices described hereinabove, Defendants have violated and will continue to violate the laws as alleged above. Defendants, unless restrained by this Honorable Court, will continue violating the laws of the STATE OF TEXAS and injury, loss and damage will result to the STATE OF TEXAS and to the general public.

### **XIII. PRAYER**

26. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants MILKY WAY TRADERS, INC., and YVON BELLIARD, individually, be cited according to law to appear and answer herein; that a TEMPORARY RESTRAINING ORDER be issued; that upon hearing, a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, their successors, assigns, officers, agents, servants, employees, and representatives from making representations, doing the acts, and engaging in the practices set out in the proceeding paragraphs as well as from making the following representations and doing the following acts and engaging in the following practices and conduct of trade or commerce within the STATE OF TEXAS as follows:

- A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to business of Defendant currently or hereafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause;
- B. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any bank, savings association, credit union or other financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, sports memorabilia, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by such Defendant without further order of this court; Introducing into commerce food that is adulterated;

- C. Introducing into commerce food that is misbranded;
- D. The adulteration of any food in commerce;
- E. The misbranding of any food in commerce;
- F. Failing to maintain and retain adequate written records of merchandise;
- G. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have; and
- H. Engaging in the manufacturing, warehousing or distribution of food in this state without the appropriate license.

27 Plaintiff further prays that this court upon final hearing order Defendants MILKY WAY TRADERS, INC, and YVON BELLIARD individually, to pay civil penalties in favor of the STATE OF TEXAS in the amount of \$25,000.00 per day per violation of § 431.021 of the TFDCA.

28. Plaintiff further prays, that upon final hearing, this Court order Defendants MILKY WAY TRADERS, INC., and YVON BELLIARD, individually, to pay civil penalties of \$20,000.00 per violation, as provided in DTPA §17.47(c)(1).

29. Plaintiff further prays that upon final hearing that this Court order Defendants to pay to the STATE OF TEXAS attorney fees and costs of court pursuant to the TEX. GOVT. CODE § 402.006(c).

30. Plaintiff further prays that upon final hearing that this court order Defendants to pay to the Office of the Attorney General and to the Texas Commissioner of Health their reasonable expenses incurred in obtaining injunctive relief under §431.047 of the TFDCA, including investigative costs, court costs, reasonable attorneys' fees, witness fees, and deposition expenses pursuant to § 431.047(d) of the TFDCA.

31. Plaintiff further prays that the court set this matter for trial and upon final hearing issue a permanent injunction against Defendants.

32. Plaintiff further prays that upon final hearing that this Court grant all other relief to which the STATE OF TEXAS may be justly entitled.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

BARRY R. McBEE  
First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

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**VERIFICATION**

**STATE OF TEXAS**

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**COUNTY OF HARRIS**

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Before me, the undersigned Notary Public, on this day personally appeared Sherry Jackson, who, after being duly sworn, stated under oath that she is an investigator for this action, that she has read the above petition, and that every statement contained in the petition is true and correct and within the personal knowledge of affiant and those persons providing information to affiant.

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AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME, on the \_\_\_th day of October, 2004, to certify which witness my hand and official seal.

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NOTARY PUBLIC  
State of Texas