

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

STATE OF TEXAS,  
Plaintiff

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IN THE DISTRICT COURT OF

v.

WEI-CHUAN USA, INC., and  
STEPHEN CHEN, INDIVIDUALLY  
Defendants

HARRIS COUNTY, TEXAS

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

**PLAINTIFF’S ORIGINAL PETITION AND APPLICATION FOR  
TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS, Plaintiff, acting by and through Attorney General GREG ABBOTT, complaining of and against WEI-CHUAN USA, INC., a Texas corporation, and STEPHEN CHEN, Individually, (hereafter “Defendants”), and would respectfully show the court the following:

**I. DISCOVERY**

1.1 Discovery shall be conducted under LEVEL 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

**II. AUTHORITY**

2.1 This action is brought by Attorney General GREG ABBOTT, through his Consumer Protection and Public Health Division, at the behest of the Commissioner of State Health Services, in the name of the STATE OF TEXAS, and in the public interest under the authority granted him by sections 431.047 and 431.0585 of the TEXAS FOOD, DRUG AND COSMETIC ACT. *See* TEX. HEALTH & SAFETY CODE ANN. § 431.001 *et seq.* (“TFDCA”). In addition, TFDCA § 431.047 authorizes the Attorney General to seek injunctive relief under certain circumstances and recover any costs and fees incurred in obtaining such relief.

### **III. DEFENDANTS**

3.1 WEI-CHUAN USA, INC., located at 7439 Langtry Street, Houston, Texas, 77040, is a Texas corporation whose registered agent, SHENG-YEN CHEN, may be served with process at 7439 Langtry Street, Houston, Texas 77040.

3.2 STEPHEN CHEN is an individual residing in Harris County, Texas and may be served with process at 7439 Langtry Street, Houston, Texas 77040.

### **IV. JURISDICTION**

4.1 This Court has jurisdiction over this action pursuant to TFDCA §§ 431.047 and 431.0585.

### **V. VENUE**

5.1 Venue for this action lies in Harris County, Texas for the following reasons:

- A. The violations occurred in Harris County, Texas. *See* TFDCA §§ 431.047(c) and 431.0585(d); and
- B. Harris County, Texas is the place where all or a substantial part of the events or omissions giving rise to the claim occurred. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.002 (a)(1)-(3).

### **VI. ACTS OF AGENTS**

6.1 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 Defendants and in each instance, the officers, agents or employees of Defendants were then authorized to and did in fact act on behalf of Defendants, or otherwise acted under the guidance and direction of Defendants.

## VII. NATURE OF DEFENDANTS' CONDUCT

7.1 Defendants operate a wholesale food warehouse and distribution business in Houston, Texas. Defendants warehouse, sell, and distribute approximately 900 varieties of Asian specialty foods, including frozen seafood and meats, refrigerated pork sausage and tofu, and dry goods (i.e. rice, canned foods, dried milk, and beverages). Suppliers for Defendants are located in California, Texas, and Illinois. Items held and distributed also include dry goods, frozen seafood, Asian seasonings and food, White Rabbit Candy, cooking oils and wines, noodle products, and dried teas. The business distributes food products to supermarkets (mainly Asian) in Texas, Louisiana, Arkansas, and Mississippi.

7.2 On October 3, 2008, the TDSHS inspectors observed a total of 80 violations including, but not limited to, the following:

- A. rodent droppings on and around food product;
- B. rodent droppings on and around pallets;
- C. rodent droppings on the floors;
- D. numerous instances of gnawed cases and bags;
- E. gnat-like insects and live flies;
- F. doors left open allowing access of vermin;
- G. ice condensation on the walk-in freezer; and
- H. cased products in walk-in freezer observed as disorganized, damaged, and on the floor.

The conditions observed during the inspection at Defendants' warehouse were so severe and so unsanitary that an Emergency Order was issued, detaining the entire warehouse and all its contents

to protect the public health.

7.3 On or about October 9, 2008, the Emergency Order was rescinded pursuant to a follow-up inspection that showed the Respondents had substantially corrected the violations.

7.4 An inspection conducted on or about October 31, 2008, revealed that the Defendants had simply moved product to a second location, which was an area of the facility's warehouse that was not accessible during previous inspections. A review of the information and photographs collected during this inspection revealed another severe rodent infestation. Consequently, the TDSHS detained the entire warehouse and all its contents to protect the public health.

7.5 A referral was made by the TDSHS to the Attorney General to obtain any appropriate relief, including temporary and permanent injunction, and/or civil penalties for Defendants' repeated, continuing, and flagrant violations of the law in operating its wholesale food distribution business.

**VIII. FAILURES TO COMPLY WITH THE TEXAS  
ADMINISTRATIVE CODE**

8.1 WEI-CHUAN USA, INC. and STEPHEN CHEN sold adulterated food, specifically by failing to hold and store foods in compliance with Title 25 of the Texas Administrative Code by:

- A. Failing to take the proper precautions to reduce the potential for contamination of food, food-contact surfaces, or food-packaging materials with micro-organisms, chemicals, filth, or other extraneous material, in violation of 25 TAC § 229.215(b)(2);
- B. Failing to construct their facility in such a manner that floors, walls, and ceilings may be adequately cleaned and kept clean and kept in good repair; and that aisles or working spaces are provided between equipment and walls and are adequately unobstructed and of adequate width to permit employees to perform their duties and

to protect against contaminating food or food-contact surfaces with clothing or personal contact, in violation of 25 TAC § 229.215(b)(4);

- C. Failing to provide, where necessary, screening or other protection against pests, in violation of 25 TAC § 229.215(b)(7);
- D. Failing to maintain buildings, fixtures, and other physical facilities of the plant in a sanitary condition and keeping it in repair so that food does not become adulterated, in violation of 25 TAC § 229.216(a);
- E. Failing to store and transport foods under conditions that will protect food against physical, chemical, and microbial contamination, as well as against deterioration of the food and the container, in violation of 25 TAC § 229.221(a)(1);
- F. Failing to keep food storage facilities properly maintained and constructed by failing to keep all walls, ceilings, and floors intact to preclude entry of vermin and environmental contaminants, in violation of 25 TAC § 229.221(a)(2);
- G. Failing to keep doors and loading docks tight-fitting and closed when not in use or adequately screened during normal operating hours to prevent entry of rodents, birds, or other pests, in violation of 25 TAC § 229.221(a)(3);
- H. Failing to keep all foods, including refrigerated and frozen foods, stored off the floor and away from the walls to prevent contamination by moisture and vermin, such as rodents and insects, and to facilitate cleaning and inspection, in violation of 25 TAC § 229.221(c)(1);
- I. Failing to keep food storage facilities free of rodents, insects, birds, and other pests which may contaminate food, as demonstrated by evidence of pest activity in food

storage areas, in violation of 25 TAC § 229.221(c)(2)(B);

- J. Failing to keep food storage facilities free of rodents, insects, birds, and other pests which may contaminate food, as demonstrated by evidence of pest activity in or on food products or food packing, in violation of 25 TAC § 229.221(c)(2)(C); and
- K. Failing to keep food storage facilities under the control of the licensee clean and free of excessive dust, dirt, spillage, and other debris, including excess moisture, in violation of 25 TAC § 229.221(c)(7).

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

9.1. Defendants, WEI-CHUAN USA, INC. and STEPHEN CHEN, have committed, or caused to be committed, the following acts prohibited and declared to be unlawful by TFDCA § 431.001 *et seq.*:

- A. Introducing into commerce a food that is adulterated, in violation of TFDCA § 431.021(a);
- B. Delivering for introduction into commerce a food that is adulterated, in violation of TFDCA § 431.021(a);
- C. Adulterating a food in commerce, in violation of TFDCA § 431.021(b);
- D. Adulterating food by allowing it to bear or contain deleterious substances which may render it injurious to health, pursuant to TFDCA § 431.081(a)(1) and in violation of TFDCA § 431.021(b);
- E. Adulterating food by allowing it to consist, in whole or in part, of diseased, contaminated, filthy, putrid, or decomposed substances, as demonstrated by TFDCA § 431.081(a)(3) and in violation of TFDCA § 431.021(b); and

F. Allowing food to become adulterated by producing, preparing, packing or holding it under unsanitary conditions whereby the food products may have become contaminated with filth, or whereby food products may have been rendered diseased, unwholesome, or injurious to health, as demonstrated by TFDCA § 431.081(a)(4) and in violation of TFDCA § 431.021(b).

**X. APPLICATION FOR TEMPORARY INJUNCTION  
AND PERMANENT INJUNCTION**

10.1 The State asserts that Defendants should not be permitted to continue to operate a food warehousing/distribution business in violation of the laws of the State of Texas, as demonstrated *supra*. Furthermore, the State asserts that Defendants will continue to violate the laws of the State of Texas, thereby causing irreparable injury to the general public unless injunctive relief is granted. The interests of the State of Texas require a temporary injunction and a permanent injunction to prohibit Defendants from continuing to operate a food warehousing and distribution establishment should they refuse or be unable to comply with the health standards required by the TDSHS. This action is pursuant to the authority granted under TFDCA § 431.047. The State requests that the injunction remain in effect until the TDSHS inspectors deem the warehouse free of violations of the TFDCA.

10.2 Unless immediately restrained by this honorable Court, Defendants will continue to violate the laws of the State of Texas and cause immediate and irreparable injury, loss, and damage to the State of Texas and to the general public. Therefore, Plaintiff requests a Temporary Injunction and Permanent Injunction as indicated below.

**XI. PRAYER**

11.1 THEREFORE, premises considered, Plaintiff prays that Defendants WEI-CHUAN USA,

INC. and STEPHEN CHEN be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and that upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' successors, assigns, officers, agents, servants, employees, and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

- A. Introducing into commerce a food that is adulterated;
- B. Delivering for introduction into commerce a food that is adulterated;
- C. Adulterating food by allowing it to consist, in whole or in part, of diseased, contaminated, filthy, putrid, or decomposed substances including, but not limited to, live and dead mice;
- D. Allowing food to become adulterated by producing, preparing, packing or holding the food under unsanitary conditions whereby the food products may have become contaminated with filth, or whereby food products may have been rendered diseased, unwholesome, or injurious to health;
- E. Failing to take the proper precautions to reduce the potential for contamination of food, food contact surfaces, or food-packaging materials with microorganisms, chemicals, filth or other extraneous material including, but not limited to, gnaw holes on boxes of food products; and rodent droppings on products;
- F. Failing to construct and maintain their facility in such a manner that floors, walls, and ceilings may be adequately cleaned and kept clean and in good repair; that drip or condensate from fixtures, ducts and pipes does not contaminate food, food-contact surfaces, or food packaging materials;

- G. Failing to provide, where necessary, screening or other protection against pests such as birds and insects flying in the warehouse;
- H. Failing to properly maintain food storage facilities by keeping all walls, ceilings, and floors intact to preclude the entry of vermin;
- I. Failing to keep food storage facilities clean and free of excessive dust, dirt, spillage and other debris;
- J. Failing to keep food that has been torn, opened, dented, spilled, damaged or adulterated segregated in a separate “morgue area”;
- K. Failing to conduct cleaning operations in a manner which prevents contamination of food products and merchandise; and
- L. Operating a wholesale food distribution warehouse unless and until the TDSHS inspectors determine that the warehouse is free of violations of the TFDCA.

11.2 Plaintiff further prays that, upon final hearing, this Court order Defendants WEI-CHUAN USA, INC. and STEPHEN CHEN to pay civil penalties in favor of the STATE OF TEXAS in the amount of \$25,000 per day per violation<sup>1</sup>, pursuant to TFDCA § 431.0585.

11.3 Plaintiff further prays that, upon final hearing, this Court order Defendants WEI-CHUAN USA, INC. and STEPHEN CHEN to pay to the STATE OF TEXAS attorney fees and costs of court pursuant to the TEX. GOVT. CODE § 402.006(c).

11.4 Plaintiff further prays that, upon final hearing, this Court order Defendants WEI-CHUAN USA, INC. and STEPHEN CHEN to pay to the Office of the Attorney General and to the Texas Commissioner of Health their reasonable expenses incurred in obtaining injunctive relief, including

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<sup>1</sup> TFDCA § 431.0585(b) specifically provides that each day of violation constitutes a separate violation for purposes of the penalty assessment.

investigative costs, court costs, reasonable attorneys' fees, witness fees, and deposition expenses, pursuant to the TFDCA § 431.047(d).

11.5 Plaintiff further prays that, upon final hearing, this Court grant all other relief to which the STATE OF TEXAS may show itself entitled.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

C. ANDREW WEBER  
First Assistant Attorney General

JEFF L. ROSE  
Deputy First Assistant Attorney for Litigation

PAUL D. CARMONA  
Chief, Consumer Protection & Public Health  
Division



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ROBERT A. LEMUS  
State Bar No. 24052225  
ROSEMARIE M. DONNELLY  
State Bar No. 05983020  
Assistant Attorneys General  
Consumer Protection & Public Health Division  
808 Travis, Suite 300  
Houston, Texas 77002  
(713) 223-5886  
FAX (713) 223-5821  
**SPIN NO. 99999928**  
**ATTORNEYS FOR THE STATE OF TEXAS**