

NO. _____

**STATE OF TEXAS,
Plaintiff**

§

IN THE DISTRICT COURT OF

§

§

v.

§

§

HARRIS COUNTY, TEXAS

§

**DISHAKA GOURMET IMPORTS, LLC.,
and KAWAL OBEROI**

§

Defendants

§

_____ **JUDICIAL DISTRICT**

PLAINTIFF’S ORIGINAL PETITION

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 DISHAKA GOURMET IMPORTS, LLC., a Texas corporation, and KAWAL OBEROI, (hereafter “Defendants”), and would respectfully show the court the following:

DISCOVERY

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

JURISDICTION

2. This action is 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 §431.060 and §431.047 of the Texas Food, Drug and Cosmetic Act. TEX. HEALTH & SAFETY CODE ANN. §431.001 *et seq.* (“TFDCA”). Section 431.060 of the act specifically provides that the Attorney General shall initiate and prosecute appropriate proceedings when the Commissioner of the Texas Department of Health reports a violation of the act.

DEFENDANTS

3. DISHAKA GOURMET IMPORTS, LLC., located at 11306 S. Sam Houston Parkway, Houston, Texas 77089, is a Texas corporation whose registered agent, Kawal Oberoi, may be served with process at 11306 S. Sam Houston Parkway, Houston, Texas 77089.

4. KAWAL OBEROI, is an individual residing in Harris County, Texas and can be served with process at 11306 S. Sam Houston Parkway, Houston, Texas 77089.

VENUE

5. Venue for this action lies in Harris County under the statutory authority of §§431.0585(d) and 431.047(c) of the TFDCA because the violations occurred in Harris County, Texas. Venue for this action also lies in Harris County pursuant to §17.47(b) of the DTPA because Defendants reside and have their principal place of business in Harris County, Texas. Venue also lies in Harris County, Texas pursuant to §15.002 (a)(1)-(3) TEX. CIV. PRACT. & REM. CODE because Harris County is the place where all or a substantial part of the events or omissions giving rise to the claim occurred, and because both the individual Defendants' residence and the Corporate Defendant's principal office were situated in Harris County at the time this cause of action accrued.

PUBLIC INTEREST

6. Because Plaintiff STATE OF TEXAS has reason to believe that Defendants DISHAKA GOURMET IMPORTS, LLC. and KAWAL OBEROI have engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe that Defendants DISHAKA GOURMET IMPORTS, LLC. and KAWAL OBEROI have caused and will cause immediate and irreparable injury, loss and damage to the STATE OF TEXAS, and its citizens, and will also cause adverse effects to legitimate business enterprises which conduct their trade and commerce in a lawful manner in this State. Therefore, the Attorney General of the STATE OF TEXAS believes and is of the opinion that these proceedings are in the public interest.

ACTS OF AGENTS

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

TRADE AND COMMERCE

8. Defendants DISHAKA GOURMET IMPORTS, LLC. and KAWAL OBEROI, have, at all times described below, engaged in conduct which constitutes “trade” and “commerce.”

BACKGROUND AND NATURE OF DEFENDANTS’ CONDUCT

9. Defendants operate a warehouse storing and distribution business in Houston, Texas. The firm sells and distributes a wide variety of South Asian, Middle Eastern and British foods. The firm imports goods such as flour, rice, beans, nuts, dry fruits, grains and spices from various countries and repackages them for resale. Defendants’ customers include retailers and Indian stores nationwide. Products are distributed to restaurants and grocers in all major cities across the United States.

10. Defendants have had a history of inspections over the past several years by the Texas Department of Health (TDH) including the following dates: January 16, 1998; March 4, 10, and 12, 1998; April 23, 1998, February 15, 2000, July 17, 2000 and November 1, 2000. At each inspection, TDH inspectors observed numerous violations which progressively worsened over time.

Some of the violations included, but were not limited to:

- A. Birds flying in the facility and perching on food products;
- B. Birds entering and leaving the warehouse through a gap between the ceiling and the wall;
- C. Bird droppings on various food products and warehouse areas, including, but not limited to the floors of the warehouse and on top of cartons and cases of food items;
- D. Pieces of insulation pecked out of the wall by birds, which left gaps in the wall;
- E. Peck holes in the food products and wall insulation;
- F. Tears in the food packaging;
- G. Food spillage on the storage floor;
- H. Holes in the sheet rock between different parts of the warehouse;
- I. Improper labeling on repackaged items which did not contain the name of the product in English;
- J. Mislabeled spice products which did not list all of the ingredients;
- K. Inoperative sinks in the repackaging room;
- L. Ceiling corners missing in a room in the warehouse;
- M. Food products placed against the walls and on the floor, which prevented walkway access;
- N. Uncapped empty bleach bottles placed on top of a case of drink mix;
- O. Uncapped cleaning products adjacent to, or on top of, food products;
- P. Filth, debris, food spillage, and old product accumulation on the storage room floor;
- Q. A bird carcass/skeleton on the warehouse floor;
- R. 200 dead insects on the warehouse floor along the baseboards; and
- S. Insect infestation in damaged and open bags of food products;

11. During the March 12, 1998 inspection, the conditions at the Defendants' warehouse facility remained filthy, improperly maintained, and presented such a danger to the public health that some of the Defendants' product had to be destroyed.

12. Defendants were notified of the violations both at the time of each inspection and in subsequent warning letters which were sent after each inspection. Few, if any of these violations were ever corrected.

13. TDH inspectors once again visited Defendants' warehouse on November 13, 2001, and discovered conditions so severe and unsanitary that over the course of 5 days, all food in the

warehouse was detained. A team of inspectors were called in and the entire contents of the warehouse were separated between items that were adulterated and those that were not. During those five days, Defendants brought in dumpsters which were repeatedly filled and emptied as food product was destroyed and denatured by having bleach poured over the product. During this inspection, TDH found over 90 violations in Defendant's warehouse which included, but were not limited to the following:

- A. Numerous live mice, nests with newborn mice, and dead mice found inside various food products;
- B. Food products with labels eaten by mice and other rodents;
- C. Mice carcasses, gnaw holes, and rodent droppings found on boxes of various food products;
- D. Numerous rodent droppings, rodent urine, and gnaw holes on various boxes of food products throughout the warehouse;
- E. Roaches and rodent droppings in the boxes of canned and bottled products;
- F. Approximately 185 live mice caught on glue boards in the warehouse on the morning of November 16, 2001;
- G. Condensation dripping directly onto the boxes of food products in the cold room;
- H. Dead mice found on the glue boards at the wall/floor junctions and on the food pallets in the warehouse;
- I. Damaged walls with sizable holes opening to the outdoors in the warehouse;
- J. Sixty (60) boxes of faggi flour with weevil-like insects and gnaw holes with numerous rodent droppings in the northwest area of the warehouse;
- K. No hot water at the hand wash sink in the repackaging room;
- L. Unprotected burlap bags of flour stored on the floor of the repackaging room;
- M. Insects inside torn bags of food products in the warehouse;
- N. Open or torn food bags with rodent droppings mixed with the food;
- O. Broken jars of food products with the food spilling onto nearby seed bags;
- P. A gap in the bottom seal of an overhead bay door; and
- Q. Live mice observed emerging from food products.

14. On December 3, 2001, TDH inspectors went back to Defendants' warehouse and released the warehouse so that it could conduct business again.

15. On March 7, 2002, the Texas Department of Health contacted the Attorney General of the State of Texas requesting a lawsuit be filed against the Defendants to enforce the Texas Food, Drug

and Cosmetic Act.

16. On or about June 5, 2002, an action was filed against Dishaka Gourmet Imports, L.L.C., Kawal Overoi, Dhiraj Oberoi, Sudhir Oberoi, and Kiran Oberoi in Cause No.2002-28415, in the 129th Judicial District Court of Harris County, Texas. Said action resulted in an Agreed Final Judgment and Permanent Injunction on February 24, 2004.

17. Subsequent inspections of Defendants' facility were conducted by TDH inspectors on August 11, 2006, December 12 and 13, 2006 and June 20 and 21, 2007.

18. On August 11, 2006 the TDH inspectors found severe rodent activity (including dead rodents); dry and fresh rodent droppings; live and dead insects were observed throughout the warehouse, re-packing and production areas. Structural damage to the facility was observed which included holes in the walls in the warehouse area that appeared to be rodent exit/entry holes. Other violations included poor employee practices and poor hygiene practices such as no hand towels and/or soap at the hand wash sinks.

19. Turonda Jackson was one of the TDH inspectors who conducted the August 11, 2006 inspection of Defendants' facility. The Affidavit of Turonda Jackson, attesting to the foregoing facts, is attached as State's Exhibit "A" and incorporated herein by reference.

20. On December 12 and 13, 2006 the inspectors found the following violations:

- A. Cases of spices in storage racks were infested with live small beetles.
- B. Live small beetle infestation inside bags of flour and hundreds of small beetles found on the floor under the pallets.
- C. A full pallet of raisins with live larva infestation in the raisins.
- D. Live small beetle infestation inside bags of Val Dal.
- E. Live moths in loose sesame seeds,
- F. Whole dried spice with live larva and moth inside plastic tote bins.
- G. Plastic tote bin of flour with live small beetles inside bin.
- H. Rodent droppings on pallet of cases of snack foods and on rear of pallet board next to cases of Jelly mix.
- I. Rodent droppings on pallet board next to cases of salt.

- J. One dead rodent found up against the wall
- K. Potential rodent harborage area at the bottom of air conditioning intake vent. There is a small hole into the wall with bits of insulation around entry indicating potentially a nest inside the wall.
- L. Several exposed bait blocks were noted. These should be housed in bait boxes to avoid the spreading around of the poison.
- M. Sticky food residue found on cases of food product and food residue left on packing equipment which attracts vermin.
- N. There was no effective product rotation system for insuring “first in, first out” on inventory items. Several cases of spices were stored past the packers “Best Before” date.
- O. Numerous dead bugs found on the outside of cases of product throughout the facility.

21. On June 20 and June 21, 2007, the inspectors found the following violations: bags of spices infested with small grain beetles; several cases of spices were stored for years past the packer’s expiration date and past the “Best Before” date; dried dates with moth infestation, rodent droppings live moths and live beetles were observed in several areas of the warehouse, use of undeclared soybean oil to use in the fryer; and several 22-pound bags of red chili peppers were found to be heavily molded. Additionally, the firm had packaged small bags of sugar coated fennel seeds without any ingredient statement declaring the colors, sweetener or any other ingredients.

22. During the June 2007 inspection, the conditions at the Defendants’ warehouse facility remained filthy, improperly maintained, and presented such a danger to the public health that some of the Defendants’ product had to be destroyed as it was unfit for human consumption.

23. Fred Atwood, investigator with the Department of State Health Services, conducted the inspections in December 2006 and June 2007. Fred Atwood’s affidavit attesting to the foregoing facts, is attached as State’s Exhibit “B” and incorporated herein by reference.

24. This case was once again referred by the Texas Department of State Health Services to the Attorney General for civil fines and penalties pursuant to the Texas Health and Safety Code Chapter 431, based upon these additional violations found by the inspectors on the subsequent

inspections.

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

25. DISHAKA GOURMET IMPORTS, LLC. and KAWAL OBEROI, have committed or caused to be committed the following acts prohibited and declared to be unlawful by §431.001 *et seq.* of the TFDCA:

- A. Introducing into commerce a food that is adulterated, in violation of §431.021(a) of the TFDCA ;
- B. Delivering for introduction into commerce a food that is adulterated, in violation of §431.021(a) of the TFDCA;
- C. Adulterating or misbranding a food in commerce, in violation of §431.021(b) of the TFDCA;
- D. Receiving in commerce a food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise, in violation of §431.021© of the TFDCA;
- E. Manufacturing within this state a food that is adulterated or misbranded, in violation of §431.021(h) of the TFDCA;
- F. Adulterating food by allowing it to consist in whole or in part of diseased, contaminated, filthy, putrid, or decomposed substances in violation of §431.081(a)(3)of the TFDCA;
- G. 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 in violation of §431.081(a)(4) of the TFDCA;
- H. Misbranding food by allowing the label to be false or misleading in any particular or by failing to conform to the requirements of §431.181 of the TFDCA in violation of §431.082 of the TFDCA; and
 - J. Misbranding products in that they fail to possess a word, statement, or other information required by the law to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use, in violation of §431.082(g) of the TFDCA.

VIOLATIONS OF THE TEXAS ADMINISTRATIVE CODE

26. DISHAKA GOURMET IMPORTS, LLC. and KAWAL OBEROI, failed to manufacture and warehouse foods in facilities which are in compliance with Title 25 of the Texas Administrative Code by failing to:

- A. Confine drinking beverages to areas other than where food may be exposed or where equipment or utensils are washed in violation of 25 TAC §229.213(h);
- B. 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 25 TAC §229.215(b)(2);
- 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 keep toxic cleaning compounds, sanitizing agents, and pesticide chemicals identified, held, and stored in a manner that protects against contamination of food, food-contact surfaces, or food-packaging materials in violation of 25 TAC §229.216©;
 - F. Failing to use effective measures to exclude pests from the processing areas and failing to protect against the contamination of food on the premises by pests in violation of 25 TAC §229.216(d);
 - G. Failing to keep hand- washing facilities at locations in the plant where good sanitary practices require employees to wash their hands in violation of 25 TAC §229.217(5)(a);
 - H. Failing to keep sanitary towel service or suitable drying devices in violation of 25 TAC §229.217(5)©;
 - I. Failing to keep food-contact surfaces maintained in such a way as to protect food from being contaminated by any source, including unlawful indirect food additives in violation of 25 TAC §229.218(a);
 - J. Failing to take all reasonable precautions to ensure that production procedures do not contribute contamination from any source in violation of 25 TAC §229.219;
 - K. Failing to hold liquid or dry raw materials and other ingredients received and stored in bulk form in a manner that protects against contamination in violation of 25 TAC §229.219(1)(g);
 - L. 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);

- M. 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);
- N. Failing to keep doors and loading docks tight-fitting and closed at all times 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);
- O. Failing to keep hand-washing and toilet facilities maintained with single-service towels as deemed appropriate by the regulatory authority for the types of foods handled by the licensee in violation of 25 TAC §229.221(b)(1);
- P. Failing to keep all foods, including refrigerated and frozen foods, stored off the floor and away from the walls to help prevent contamination by vermin (rodents and insects for example) and moisture, and to facilitate cleaning and inspection in violation of 25 TAC §229.221(c)(1); and
- Q. Failing to keep food storage facilities free of rodents, insects, birds, and other pests which may contaminate food in violation of 25 TAC §229.221(c)(2).

VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

27. Defendants DISHAKA GOURMET IMPORTS, LLC. and KAWAL OBEROI, as alleged above, has in the course of trade and commerce, directly and indirectly engaged in false, misleading, deceptive and unconscionable acts and practices declared unlawful by Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41, *et seq.* (Vernon's

1987 and Supp 2006), including but not limited to:

- A. Misbranding food by allowing the label to be false or misleading;
- B. Failing to have an ingredient statement on food products; and
- C. Failing to disclose that certain products contain color additives.

28. Moreover, the Consumer Protection Division has reason to believe that the above actions specifically violate § 17.46(a) and the following provisions of § 17.46(b) of the DTPA:

- A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services in violation of §17.46(b)(2);
- B. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have in violation of §17.46(b)(5);
- C. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another in violation of §17.46(b)(7);

INJURY TO CONSUMERS

29. Defendants have, by means of these unlawful acts and practices, obtained money or other property from identifiable persons to whom such money or property should be restored or who, in the alternative, are entitled to an award of damages.

PRAYER

30. WHEREFORE, Plaintiff prays that Defendants DISHAKA GOURMET IMPORTS, LLC. and KAWAL OBEROI be cited according to law to appear and answer herein; that upon final hearing Defendants DISHAKA GOURMET IMPORTS, LLC. and KAWAL OBEROI be ordered to pay civil penalties in favor of the STATE OF TEXAS in the amount of \$25,000 per day per violation¹ of §431.021 of the TFDCA.²

31. Plaintiff further prays for judgment against Defendants in favor of Plaintiff, STATE of TEXAS, in the amount of \$20,000 per violation of the DTPA.

32. Plaintiff further prays that upon final hearing that this Court order Defendants DISHAKA GOURMET IMPORTS, LLC. and KAWAL OBEROI to pay to the STATE OF TEXAS attorney fees and costs of court pursuant to the TEX. GOVT. CODE §402.006(c).

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

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

² §431.0585(c) specifically provides that the court shall consider the person's history of any previous violations of Section 431.021(1) in determining the amount of the penalty.

Respectfully submitted,

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