

STATE OF MICHIGAN
CIRCUIT COURT FOR THE THIRD JUDICIAL CIRCUIT
WAYNE COUNTY

MICHIGAN DEPARTMENT OF
AGRICULTURE AND RURAL
DEVELOPMENT,

Plaintiff,

No. 2022-

-CZ

HON.

v

THE MOORISH SCIENCE TEMPLE, THE
DIVINE AND NATIONAL MOVEMENT OF
NORTH AMERICA, INCORPORATED, NO.
13, d/b/a MOOR HERBS,

Defendant.

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There is no other pending or resolved civil action arising
out of the transaction or occurrence alleged in the
complaint. MCR 2.113(A); MCR 1.109(D)(2)(a)(i).

COMPLAINT

Plaintiff Michigan Department of Agriculture and Rural Development
(MDARD), by its attorney, Megen E. Miller, Assistant Attorney General, says:

NATURE OF THE CASE

1. This lawsuit is about Defendant's continued production and sale of food products that it cannot demonstrate meet applicable standards under the law that demonstrate that the products are safe for public consumption and its blatant disregard for state regulatory orders targeted at protecting the public safety and welfare. By continuing to sell these highly questionable food products and failing to comply with the law, Defendant is putting the public health at risk for its own economic gain. This civil action is being brought pursuant to the Food Law, 2000 PA 92, MCL 289.1101 *et seq.*, for condemnation of adulterated and misbranded food that is in violation of the Food Law and has been seized by MDARD. Pursuant to MCL 289.2105(3), MDARD is seeking a declaration that the seized food is condemned and must be destroyed at the expense of Defendant under MDARD's supervision. MDARD is further seeking a permanent injunction pursuant to MCL 289.5111 to prevent the Defendant's unlicensed manufacturing, preparation, and sale of food, unregistered dispensing of water, and selling or offering for sale misbranded and/or adulterated food in violation of the Food Law.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to MCL 289.2105(3) and MCL 289.5111.

3. This Court has personal jurisdiction over the Defendant pursuant to MCL 600.711(3).

4. Venue is proper in this Court pursuant to MCL 289.2105(3) and MCL 600.1621(a).

5. Plaintiff, MDARD, is the state agency with authority to implement and enforce the Food Law, MCL 289.1101 *et seq.*

6. Defendant, The Moorish Science Temple, The Divine and National Movement of North America, Incorporated, No. 13, d/b/a Moor Herbs (Moor Herbs) is a foreign profit corporation incorporated under the laws of the State of Maryland with its resident agent and storefront located at 16140 W. 7 Mile Road, Detroit, Michigan 48235.

7. Moor Herbs is a “person” within the meaning of the Food Law, MCL 289.1109(u).

BACKGROUND

8. Until recently, Moor Herbs operated both a physical storefront and an online business. This business sold multiple food items, including, but not limited to, made to order shakes on site; herbal blends and products; Angel Formula, a product intended for consumption by infants; and meals, snacks, drinks, herbal remedies, dried produce items, seaweed, oils, extracts, syrups, vegan protein, soups, and baked goods; and dispensed water that it claims to be “alkaline”¹ water.

¹ Defendant alleges the water to be alkaline, but this has not been verified.

9. On December 24, 2021, Moor Herbs announced via its Facebook page that it would be “officially closing our store front and going back to being a homebased business.” It indicated it would continue selling some of its products online and for local pick-up. Many of its products, including herbal blends and products, remain available for sale at moorherbs.com, and its DoorDash page indicates Moor Herbs is still selling herbal blends, Angel Formula, and other foods from a location at 20112 San Juan Drive, Detroit, Michigan 48221.² As of the filing of this Complaint, the DoorDash website says the store is “Temporarily closed.” Additionally, as of the date of this Complaint, the moorherbs.com website is temporarily closed. According to a Facebook post by Moor Herbs, it is “steadily adding all of our store items to our website” and is shut down briefly to do this.

10. In a post on January 18, 2022, Moor Herbs shows that it is continuing to ship products to consumers.

11. Based on this information it appears that Moor Herbs continues to sell food products and will soon reopen its online sales.

12. Each step during the production, manufacture, and sale of food must follow specific steps, including identifying the source for each ingredient of a product, to ensure that the product that is sold is safe for consumers.

² <https://www.doordash.com/store/moor-herbs-detroit-2241342/> (accessed February 8, 2022).

13. Prepared foods such as soups, entrees, and juices made from raw fruits and vegetables are inherently at high risk of microbial contamination. Due to the nature of the growing conditions, produce can become contaminated by water exposure, insects and birds, and unsanitary harvesting and handling. Failure to properly process raw fruits and vegetables and placing them into sealed containers leading to anaerobic conditions can be hazardous to human health and/or potentially lethal.³

14. Michigan has adopted statutes that regulate the production, processing, and sale of food, and the dispensing of bottled water.

15. The Food Law regulates the “manufacture, production, processing, packing, exposure, offer, possession, and holding of any food for sale; and the sale, dispensing and giving of food, serving, and the supplying of food in the conduct of any food establishment.” MCL 289.1103.

16. The Food Law defines “food” as “articles used for food or drink for humans or other animals, chewing gum, and articles used for components of any such article.”

³ U.S. Food & Drug Administration, *Potential for Infiltration, Survival, and Growth of Human Pathogens within Fruits and Vegetables* <<https://www.fda.gov/food/hazard-analysis-critical-control-point-haccp/potential-infiltration-survival-and-growth-human-pathogens-within-fruits-and-vegetables>> (accessed February 8, 2022).

17. Additionally, the Food Law adopts by reference the Federal Food Code, which contains specific requirements for keeping, handling, processing, and selling food. MCL 289.6101(1).

18. Further, Michigan has adopted by reference certain federal regulations, i.e., 21 CFR part 1, 70, 73, 74, 81, 82, and 100 to 199. MCL 289.7112(1). Among these provisions are requirements for dietary supplements. See 21 CFR Parts 101, 111, 119, and 190. These sections do not define “dietary supplement,” but the authorizing statute for these rules, the Federal Food, Drug, and Cosmetic Act, defines “dietary supplements” as “food.” 21 USC 321(ff). “Dietary supplements” are further defined at 21 USC 321(ff) and can generally be described as a product that bears the label “supplement” and that is taken by mouth that contains a dietary ingredient intended to supplement the diet.

Requirements for the sale of food.

19. In order to produce or sell food in Michigan, a person must obtain a license from MDARD. MCL 289.4101.

20. Additionally, state law requires food processors and food warehouses to comply with 21 CFR Part 117, Current Good Manufacturing Practice, Hazard Analysis and Risk-Based Preventive Controls for Human Food, which establishes facility and operation requirements for food processors and food warehouses, such as building design; cleaning and sanitation practices; employee health and handwashing; exclusion of disease; well construction and sewage disposal; equipment design; processes and controls to assure food safety; safe handling of raw

and finished products; and warehousing and distribution, including recall procedures. MCL 289.7101.

21. The Federal Food Code further requires that all food offered for sale must be obtained from sources that comply with the law, FFC 3-201.11(A), and must be safe and unadulterated. FFC 3-101.11.

22. The Federal Food Code defines “law” to mean “applicable local, state, and federal statutes, regulations, and ordinances.” FFC 1-201.10(B).

23. The Federal Food Code defines “unadulterated” consistent with the Federal Food, Drug, and Cosmetic Act, § 402, 21 USC § 342, which generally requires that food not bear or contain any poisonous or deleterious substance which may render it injurious to health. FFC 1-201.10(B).

24. Section 8101 of the Food Law further requires that “[p]ackaged food shall be labeled as specified in 21 C.F.R. part 101, 9 C.F.R. part 317, and subpart N of part 381 of title 9 of the Code of Federal Regulations, and as specified under sections 3-202.17 and 3-202.18 of the food code.” MCL 289.8101; see also MCL 289.7112(1) (adopting by reference the food labeling requirements in the Code of Federal Regulations, 21 CFR Part 101).

25. Infant formula (21 CFR Parts 106 and 107), aseptic food (21 CFR Part 113), and dietary supplements (21 CFR Parts 101, 111, 119, and 190) all have additional requirements that must be met in order for them to be legally offered for

sale due to the vulnerable nature of those consuming these kinds of products and the highly technical requirements for making them safely.⁴

Cottage Food Law

26. Under Michigan law, a person may sell without a food establishment license certain “cottage food products,” which are foods that are not potentially hazardous, that are produced or packaged in the kitchen of the person’s primary domestic residence. MCL 289.1105(j), (k), .4102. Cottage food products must be stored only in the person’s primary domestic residence. MCL 289.4102(6).

27. Beverages are not a “cottage food product” subject to the cottage food law exemption under the Food Law. MCL 289.1105(k)

28. Cottage food products must be sold directly to the consumer and cannot be sold by internet or mail order. MCL 289.4102(4).

29. To be eligible for this exemption, the gross sales of cottage food products by a cottage food operation cannot exceed \$25,000 annually. MCL 289.4102(5).

30. The exemption from licensing does not include an “exemption from the adulteration and other standards imposed in this section or under [the Food Law], or both, and does not limit the ability of the department to take appropriate enforcement action for applicable violations as described in section 5101.” MCL

⁴ See below Paragraphs 41 through 63.

289.4102(1). Cottage food products also must meet certain labeling requirements, including that “[i]f any nutritional claim is made, [the label must include] appropriate labeling as specified by federal labeling requirements.”

MCL 289.4102(3)(f).

Bottled water registration.

31. A water bottler or water dispensing machine owner is required annually to register with MDARD prior to the sale or offering for sale of water.

MCL 289.4115(1) and (2).

32. Bottled drinking water must also meet the requirements for processing, including changing the alkalinity, and bottling of bottled drinking water set forth at 21 CFR Part 129. MCL 289.7112(1).

33. Bottled water is not a “cottage food product” subject to the cottage food law exemption under the Food Law. MCL 289.1105(k).

Misbranded food.

34. The Food Law further prohibits the sale or offering for sale of “misbranded” food, MCL 289.5101(1)(a), and the violation of a provision of the Food Law, MCL 289.5101(1)(r), which includes the labeling requirements set forth in MCL 289.8101 and 21 CFR Part 101.

35. The Food law defines food as “misbranded” if any of the following apply to a food:

(i) Its labeling is false or misleading in any particular.

...

(v) It is in package form, unless it bears a label containing both the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count subject to reasonable variations permitted and exemptions for small packages established by rules.

(vi) Any word, statement, date, or other labeling required by this act is not placed on the label or labeling prominently, conspicuously, 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.

(vii) It purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations promulgated under the federal act or by rules, unless it conforms to the definition and standard and its label bears the name of the food specified in the definition and standard, and, insofar as may be required by the regulations or rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in the food.

(viii) It purports to be or is represented to be either of the following:

(A) A food for which a standard of quality has been prescribed by this act or rules if its quality falls below the standard unless its label bears, in the manner and form that the rules specify, a statement that it falls below the standard.

...

(ix) It does not bear labeling clearly giving the common or usual name of the food, if one exists, and if fabricated from 2 or more ingredients, the common or usual name of each ingredient except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each and except under other circumstances as

established by rules regarding exemptions based upon practicality, potential deception, or unfair competition.

...

(xi) If a food intended for human consumption and offered for sale, its label and labeling do not bear the nutrition information required under section 343(q) of the federal act, 21 USC 343.

(xii) It is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded.

36. Dietary supplements have specific labeling requirements under 21 CFR 101.36 and 101.93, which are adopted by reference and discussed in more detail below at Paragraphs 58 to 61. MCL 289.7112(1); 289.8101.

Adulterated food.

37. The Food Law prohibits the sale or offering for sale of “adulterated” food. MCL 289.1105(1)(a).

38. The Food Law regulates not just the end product, but also the ingredients that go into food and the process by which food is made. Food, including food ingredients, must come from sources that are approved and comply with the law, or it is suspected to be adulterated. See FFC 2-103.11(E); 3-201.11(A). It is important that food be produced from safe ingredients and in a way that produces a safe and wholesome product. Food offered for sale must be wholesome and free of adulteration.

39. The Food Law defines food as “adulterated” if any of the following apply to the food:

(i) It bears or contains any poisonous or deleterious substance that may render it injurious to health unless the substance is not an added substance and the quantity of that substance in the food does not ordinarily render it injurious to health.

(ii) It bears or contains any added poisonous or added deleterious substance, other than a substance that is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive considered unsafe within the meaning of subsection (2).

...

(vi) It consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or it is otherwise unfit for food.

(vii) It has been produced, prepared, packed, or held under unsanitary conditions in which it may have become contaminated with filth or in which it may have been rendered diseased, unwholesome, or injurious to health.

[MCL 289.1109(p).]

40. Federal law, which the Food Law has adopted by reference, also defines certain products as adulterated if they do not comply with certain requirements. See, e.g., 21 CFR 106.1(a) (defining infant formula as adulterated if it does not meet federal standards for production).

Infant formula.

41. As mentioned, Michigan law adopts by reference the federal regulations regarding infant formula, 21 CFR Parts 106 and 107. MCL 289.7112(1).

42. The federal regulations extensively regulate the production, manufacture, and sale of infant formula. 21 CFR Part 106 and 107.

43. Each step of production, manufacture, and sale of infant formula is pervasively regulated and vitally important to follow because of the vulnerability of

infants to potential pathogens in food and the need for inclusion of specific ingredients and nutrients at the right level in the formula—neither too low nor too high—to prevent severe nutritional imbalances.⁵

44. “Infant formula” is not defined in 21 CFR Part 106 or 107, but the authorizing statute for these regulations defines “infant formula” as “a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.” 21 USC 321(z).

45. Infant formula must be manufactured as set forth in subparts B, C, and D of Part 106 or it is considered adulterated. 21 CFR 106.1(a).

46. Infant formula must meet the requirements for quality factors set forth in subpart E of Part 106 or it is considered adulterated. 21 CFR 106.1(b).

47. Infant formula must meet the recording requirements set forth in subpart F of Part 106 or it is considered adulterated. 21 CFR 106.1(c).

⁵ FDA, *Guidance for Industry: Frequently Asked Questions about FDA’s Regulation of Infant Formula*, March 2006 <[fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-frequently-asked-questions-about-fdas-regulation-infant-formula](https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-frequently-asked-questions-about-fdas-regulation-infant-formula)> (accessed February 8, 2022); FDA, *Questions & Answers for Consumers Concerning Infant Formula* <<https://www.fda.gov/food/people-risk-foodborne-illness/questions-answers-consumers-concerning-infant-formula>> (accessed February 8, 2022); see Centers for Disease Control and Prevention, *Cronobacter Infection and Infants* <<https://www.cdc.gov/cronobacter/infection-and-infants.html>> (accessed February 8, 2022); FoodSafety.gov, *People at Risk: Children Under Five* <<https://www.foodsafety.gov/people-at-risk/children-under-five>> (accessed February 8, 2022).

48. Infant formula must meet all registration, submission, and notification requirements as set forth in subpart G of Part 106 or it is considered adulterated. 21 CFR 106.1(d).

49. Infant formula must meet all labeling requirements as set forth in subpart B of Part 107 or it is considered misbranded. 21 CFR 107.1(a).

50. Infant formula must meet all nutrient requirements as set forth in subpart D of Part 107 or it is considered adulterated. 21 CFR 107.1(d).

51. Like other food, infant formula that is adulterated or misbranded cannot be manufactured, sold, delivered, held, or offered for sale; and cannot be received in commerce for delivery. MCL 289.5101(1)(a) and (c).

52. Pursuant to MCL 289.4102(1) and 4102(3)(f), cottage food products sold as infant formula must meet federal requirements, including labeling requirements.

Aseptic food.

53. Michigan has also adopted by reference the requirements for the aseptic packaging of food, referred to by regulation as “thermally processed low-acid foods packaged in hermetically sealed containers,” 21 CFR Part 113. MCL 289.7112(1).

54. In plain language, aseptic packaging of food, when done properly, is food produced in such manner that the food and the interior of the package are rendered commercially sterile and are securely packaged free of microorganisms to

prevent the entry of any air or oxygen in a manner that precludes the development of toxins, including botulinum toxin.

55. The federal regulations require specific equipment, training, documentation, testing, and processes designed by a competent process authority, to allow these foods to be safe for consumption. 21 CFR Part 113.

56. Food in hermetically sealed packaging that does not follow these guidelines is at high risk of allowing *Clostridium botulinum* and other similar pathogens to grow and produce botulinum or other toxins. Botulinum toxin is extremely toxic and is frequently lethal. This is especially a problem in packaging where neither the food product nor the inside of the package is seen before consumption, such as a juice or fruit puree pouch. Because children under five are especially vulnerable to pathogens,⁶ food in hermetically sealed packaging targeted toward children is of special concern to MDARD.

57. Food that is not processed in accordance with these regulations is considered suspected of adulteration due to the likelihood that the improper packaging may have rendered it diseased, unwholesome, and injurious to health. See MCL 289.1105(a)(vi) and (vii).

⁶ *FoodSafety.gov*, *supra* footnote 4.

Dietary supplements.

58. Dietary supplements are regulated as food not drugs. 21 USC 321(f) and (g). A food item must be labeled as a dietary supplement to be regulated as a dietary supplement. 21 USC 321(ff). If a food item is not labeled as a dietary supplement, it is regulated as a conventional food item. *See id.*

59. While certain health claims can be made on both conventional foods and dietary supplements, it is not legal for conventional food or dietary supplements to make claims about the diagnosis, cure, mitigation, or treatment of disease.⁷ 21 CFR § 101.93; see 21 USC 321(g)(1) (defining “drug” to includes “articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals”).

60. The federal regulations adopted by Michigan set forth a strict set of requirements for dietary supplements. 21 CFR Parts 101, 111, 119, and 190. These provisions include specific requirements for food labeling for dietary supplements; current good manufacturing practice in manufacturing, packaging, labeling, or holding operations for dietary supplements; dietary supplements that present a significant unreasonable risk; and new dietary ingredient notification. 21 CFR Parts 101, 111, 119, and 190.

⁷ FDA, *FDA 101: Dietary Supplements* <<https://www.fda.gov/consumers/consumer-updates/fda-101-dietary-supplements>> (accessed February 8, 2022).

61. A dietary supplement must include nutrition labeling, which includes, among other things, a supplement facts panel, a net weight statement of the ingredients, and serving size. 21 CFR 101.36.

62. In addition to the general definition of “adulterated” in the Michigan Food Law, the Federal Food, Cosmetics, and Drugs Act defines what it means for dietary supplements specifically to be “adulterated.”⁸ 21 USC 343(f) and (g). A dietary supplement is adulterated if, among other things which may render it adulterated, it presents a significant or unreasonable risk of illness or injury, or “it has been prepared, packed, or held under conditions that do not meet current good manufacturing practice regulations, including regulations requiring, when necessary, expiration date labeling.” 21 USC 342(f)(1) and (g)(1).

63. Pursuant to MCL 289.4102(1) and 4102(3)(f), cottage food products sold as supplements must meet federal requirements, including labeling requirements.

GENERAL ALLEGATIONS

64. Until recently, Moor Herbs operated a storefront at 16140 W. 7 Mile Road, Detroit, Michigan 48235. Moor Herbs currently operates an online website at

⁸ Recall, the Federal Food Code, adopted by reference in the Michigan Food Law further requires that all food offered for sale must be obtained from sources that comply with the law, FFC 3-201.11(A), and must be safe and unadulterated. FFC 3-101.11. The Federal Food Code defines “unadulterated” consistent with the Federal Food, Drug, and Cosmetic Act, § 402, 21 USC § 342.

moorherbs.com, which includes products both for individual sale and wholesale, and, though “temporarily closed,” offers products for pick-up and delivery through DoorDash. Upon information and belief, MDARD believes Moor Herbs may still be storing some of its products at the storefront location. On its website, moorherbs.com, Moor Herbs appears to have removed some of the food items that it offered, but, when not temporarily closed, still has multiple food items up for sale. Through DoorDash, Moor Herbs sells both packaged foods and ready to eat foods, such as prepared salads, drinks, customized meal plans, Angel Formula, and many other food items.

65. Moor Herbs held a food establishment license starting in June of 2017 but failed to keep this license current starting in May 2021.

66. Moor Herbs additionally has registered three water dispensing machines in its food establishment but failed to keep these registrations current starting in registration year 2020 to 2021.

67. Evaluation of Moor Herbs’ in-person store by MDARD inspectors also revealed multiple additional violations of the Food Law.

July 27, 2021 food establishment evaluation.

68. On July 27, 2021, MDARD staff completed an unannounced evaluation of Moor Herbs’ storefront at 16140 W. 7 Mile Road, Detroit, Michigan 48235. Ms.

Maria LeMay-Bey was the person in charge for Moor Herbs present during this evaluation.

69. Moor Herbs did not have a food license but was observed operating by the MDARD inspector. The MDARD inspector provided Moor Herbs with a food establishment license renewal form during the inspection and a copy of the late fee letter.

70. The MDARD inspector observed Moor Herbs offering for retail sale food suspected of adulteration, specifically 39 sea moss shakes and 9 “sea moss breakfast[s]” made in-house, due to the firm being unable to provide documentation that the sea moss used in their products was safe for human consumption and received from an approved source. Moor Herbs voluntarily removed the noted items from the retail display cooler and placed them in a box in the back of the display freezer during the inspection. The MDARD inspector placed a seizure tag on the noted items. The MDARD inspector further instructed Moor Herbs that it cannot offer its sea moss in made to order smoothies. The evaluation form indicated that Moor Herbs must provide documentation that its sea moss is safe for human consumption in order to manufacture, sell, deliver, hold, or offer food products containing the sea moss.

71. Additionally, the MDARD inspector observed Moor Herbs offering for sale approximately 225 packages of 75 varieties of misbranded in-house blended and packaged herbal products that were labeled with health claims which would mislead a consumer due to the claims promoting treatment, prevention, or cure for

specific diseases or conditions. Moor Herbs voluntarily removed from the retail shelf and placed in a box the noted items during the inspection. The MDARD inspector taped a seizure tag on the box.

72. These in-house blended and packaged products included naming such as, “tumor release”, “anti-viral”, “unvax”, and “autism buster.” An example of a health claim made on such products that unlawfully markets the product for the diagnosis, cure, mitigation, treatment, or prevention of disease, is specifically for the “tumor release” herbal tea, which states that the herbal tea

is a safe, sane, and effective plant-based anti-neoplastic formulae that is helpful in natural, noninvasive, benign and malignant tumor dissolution. The formula is useful for all tumor and cyst formations in the body, including uterine and ovarian cysts/tumors. Good for both internal and external tumors.

The noted herbal blends do not contain a disclaimer that the product is not intended to diagnose, treat, cure, or prevent any disease, as required by 21 CFR 101.93(c)(1). Further, it makes health claims that are prohibited by law for food items, including supplements. 21 CFR § 101.93; see 21 USC 321(g)(1).

73. The MDARD inspector additionally issued violations for ongoing issues that had not been corrected from a previous evaluation:

- Moor Herbs made products marketed as “health drinks” made to order without a certified food manager certificate. Food Code, 2-102.11(B).
- Moor Herbs did not have a food probe thermometer to measure the cooking and cooling temperatures of food. Food Code, 4-302.12(A).

- Moor Herbs offered for sale various foods, including salads and a bread-like item, without necessary labeling information, such as ingredients, net weight, and responsible party information. Food Code, 3-602.11(B).

74. MDARD staff also observed additional violations that were not corrected while MDARD staff was present:

- Moor Herbs was not ensuring a last date of sale is indicated on perishable food products, including but not limited to prepackaged salads, a bread-like item, turmeric rice, and pre-packaged smoothies and juices. Perishable food products must have a last date of sale. MCL 289.8107.
- Moor Herbs was advertising for sale hot soup and smoothies made to order, but did not have a managerial employee identified as a certified food safety manager. MCL 289.2129.

75. These violations are not mere technical violations. Lack of trained personnel is a leading cause of handwashing and sanitation deficiencies, improper cooking and cooling procedures, contaminated food equipment, and inadequate storage conditions, which can all lead to unsafe food production and food borne illness. Utilizing an accurately calibrated probe thermometer is the only way to ensure foods are cooked, cooled, and maintained at safe temperatures. And lack of labeling, specifically allergen labeling, can contribute to anaphylactic allergic reactions, which can be life threatening.

76. Moor Herbs received a copy of the evaluation form noting all violations, their bases, and indicating dates by which each violation must be addressed.

77. Moor Herbs was also instructed that it shall not move, sell, or discard the items under seizure without an inspector from MDARD present and it shall not manufacture, sell, deliver, hold, or offer food products that are misbranded or adulterated.

August 4, 2021 purchase.

78. On August 4, 2021, Moor Herbs still did not have a food establishment license or bottled water registration.

79. At around 2:30 p.m. on August 4, 2021, an MDARD supervisor entered Moor Herbs storefront to complete an undercover buy as a customer.

80. The supervisor observed customers purchasing prepared foods or smoothies.

81. Mr. Isaiah Orton-Bey was present and assisted customers at the register.

82. Though there were no herbal products on the retail shelves at the time of the supervisor's visit, when the MDARD supervisor asked Mr. Orton-Bey for certain items that were of the type that had been seized by MDARD previously, namely Tumor Release, Angel Formula, and Autism Buster, Mr. Orton-Bey retrieved them from the back of the store in what appeared to be a storage room. Moor Herbs then sold these items to the supervisor. Angel Formula is a product marketed as infant formula.

August 12, 2021 cease and desist order, and violation notice and administrative fine.

83. On August 12, 2021, Moor Herbs still did not have a food establishment license or bottled water registration.

84. On that day MDARD issued a cease and desist order, requiring Moor Herbs to cease and desist immediately from:

- Operating as a food establishment, including the production, sale, holding, and storage of all food, including dietary supplements, without a current food establishment license, and
- Offering for sale dietary supplement or other foods that have been placed under seizure.

85. MDARD determined that Moor Herbs is suspected of being an imminent threat or substantial hazard to the public by exposing certain products for sale as evidenced by:

- Offering for sale approximately 225 packages of 75 varieties of misbranded in-house blended and packaged herbal products and other dietary supplements that were labeled with health claims that mislead the consumer.
- Products claiming to cure or treat a medical condition.
- Products intended for infants that are not in compliance with the requirements for such foods.
- Products prepared in violation of the Michigan Modified Food Code, 21 CFR 111 Dietary Supplements, and the Michigan Food Law.

- Violation of the seizure issued on July 27, 2021, by selling embargoed product to Supervisor Venus Harris on August 4, 2021.
- Operating a food establishment without a current food establishment license.

Moor Herbs continues to sell food in violation of the cease and desist order.

86. Despite the cease and desist order, on August 16, 2021, an MDARD inspector completed another undercover buy. The inspector purchased products called Paradise Sea Moss Shake, Bright Eyes, and Joint Relief, all of which were products of the type that had been seized by MDARD.

87. Moor Herbs has indicated on its Facebook page that it is no longer operating a storefront as of December 24, 2021, and is operating out of someone's home.

88. As of the date of filing of this Complaint, Moor Herbs offers for sale online, though "temporarily closed," through its website moorherbs.com and through DoorDash conventional food and dietary supplements, including, but not limited to beverages; sea moss; Angel Formula, which is marketed as baby formula;

and Miracle Baby,⁹ an aseptically packaged baby food product; “Tumor Release” tea and capsules; and “Anti-Viral” tea and capsules.¹⁰

89. While a cottage food operation may operate out of a person’s residence without a license, a cottage food operation cannot offer food for sale online. MCL 289.4102(4). Further, only certain products can be offered for sale as cottage food products, which does not include beverages or products that must be temperature controlled for safety. MCL 289.1105(k).

90. Additionally, cottage food must not be adulterated and must meet certain federal standards even when sold as cottage food products. MCL 289.4102(1), (3)(f).

91. Moor Herbs does not have documentation of where, under what conditions, or by whom all these products are being processed and packaged, but upon information and belief, MDARD believes Moor Herbs staff package and prepare some of the food on storefront premises or in their homes. If the food is being packaged onsite, Moor Herbs must document that it is processing and packaging the products in accordance with the Michigan Food Law. Though cottage food products that meet the cottage food law requirements may be sold directly to

⁹ Note that prior to the temporary closing of the moorherbs.com website, the website had a listing for this product, but was labeled out of stock.

¹⁰ These products can be found by using the search function on moorherbs.com when the website is open.

consumers, under the FFC 3-201.11(B), “[food] prepared in a private home may not be used or offered for human consumption in a [food establishment].”

92. Based on information that was available on Moor Herbs’ website prior to its temporary closing, it was also offering various products for sale that it has received from sources that are not licensed and, therefore, are unapproved sources under the FFC 3-201.11(A): Sol EcoKitchen, Mag Created It, Balance Raw Juices, and Paradise Juice, LLC. Upon information and belief, MDARD believes these products will be offered for sale in the future.

93. Certain products that Moor Herbs offers are labeled as supplements, but fail to include the proper nutrition labeling, which includes, among other things, a supplement facts panel, a net weight statement of the ingredients, and serving size. 21 CFR 101.36. This includes products labeled “High Science Formulae Potassium Blend” and “High Science Formula Magnesium Blend,” and on information and belief, other products that Moor Herbs is marketing and offering for sale. The Potassium Blend product also makes claims marketing it for the diagnosis, cure, mitigation, treatment of prevention of diseases in violation of law.

94. Other products that Moor Herbs offers for sale are not labeled as supplements but fail to include the proper labeling requirements and make claims marketing them for the diagnosis, cure, mitigation, treatment of prevention of diseases in violation of law. This includes products labeled “Health Beauty Angel Formula” and “Autism Buster,” and on information and belief, other products that Moor Herbs is marketing and offering for sale.

95. These products are misbranded under MCL 289.1109(p)(vi) for failure to be properly labeled in accordance with law. These products are also misbranded under MCL 289.1109(p)(i) as false and misleading for making therapeutic claims that they are intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases.

United States Food & Drug Administration (FDA) Alert and Recall

96. On December 23, 2021, the FDA issued “FDA Alert on ‘Healthy Beauty’ Angel Formula Intended for Infants and Children by Moor Herbs.”¹¹

97. This notice advises parents and caregivers to stop using and buying Angel Formula because, after testing, it was determined it does not meet specific nutrition and labeling requirements for infant formula. Specifically:

When the product was tested, the iron, sodium, and potassium content were well over the maximum allowed, which could potentially lead to iron overload and/or electrolyte imbalances. In addition, the product did not have vitamin D, and a vitamin D deficiency can potentially lead to rickets, a softening and weakening of bones.

98. According to the Alert, FDA is working with Moor Herbs to voluntarily recall the product.

¹¹ FDA, *FDA Alert on “Healthy Beauty” Angel Formula Intended for Infants and Children by Moor Herbs*, December 23, 2021 <<https://www.fda.gov/food/alerts-advisories-safety-information/fda-alert-healthy-beauty-angel-formula-intended-infants-and-children-moor-herbs>> (accessed February 8, 2022).

99. Despite this Alert and the recall, Angel Formula remains available for purchase on Moor Herbs' DoorDash page, though the store is "temporarily closed," and is listed on its website moorherbs.com when the site is up, though it is out of stock on the moorherbs.com site.

COUNT I – CONDEMNATION OF SEIZED FOODS

100. Paragraphs 1 through 99 of this Complaint are re-alleged and incorporated herein by reference.

101. On July 27, 2021, MDARD seized food products in place at Moor Herbs' property pursuant to MCL 289.2105(1).

102. The products seized were being offered for sale without a retail food license in violation of MCL 289.5101(1)(d); were being offered for sale without a bottled water registration in violation of MCL 289.4115(1); were misbranded in violation of MCL 289.1109(p) and MCL 289.5101(1)(a), (b), or (c); were adulterated in violation of MCL 289.1105(a); were not from regulated or approved sources in violation of MCL 289.5101(1)(r); and were not from sources that comply with all federal, state, and local laws in violation of Federal Food Code 3-201.11(A).

103. The Food Law establishes a process for the disposition of seized food:

(3) If food seized or embargoed under subsection (1) or (2) is determined by the director to be adulterated or misbranded, he or she *shall* cause a petition to be filed in circuit court in whose jurisdiction the food is seized or embargoed for a complaint for condemnation of the food. Seized or embargoed food shall be destroyed at the expense of the claimant of the food, under the supervision of the director, and the court may order the payment of the costs and fees and storage and other proper expenses by

the claimant of the food or his or her agents. . . .
[MCL 289.2105(3) (emphasis added).]

104. The food seized by MDARD is suspected of adulteration because it is unknown where and under what conditions it was produced, prepared, and packaged, and by whom; and it does not include the proper labeling and source identification required by law, and therefore it could be contaminated or rendered diseased, unwholesome, or injurious to health.

105. The food seized by MDARD is misbranded because the food is labeled with health claims which would mislead a consumer due to the claims promoting treatment, prevention, or cure for specific diseases or conditions; and it fails to include all the statements and labels required by law. MCL 289.1109(p)(i), (vi).

106. In particular, Moor Herbs sold and offers for sale Angel Formula, a product marketed as infant formula, which is adulterated and misbranded because it fails to comply with the requires set forth in federal law that have been adopted by reference in the Michigan Food Law.

107. MDARD requests that this Court find that food products seized from Moor Herbs are misbranded and/or adulterated and issue an order requiring the food to be destroyed at Moor Herbs' expense and under MDARD's supervision.

COUNT II – INJUNCTIVE RELIEF

108. Paragraphs 1 through 107 of this Complaint are re-alleged and incorporated herein by reference.

109. The Food Law defines “food” as “articles used for food or drink for humans or other animals, chewing gum, and articles used for components of any such article.” MCL 289.1107(m). Dietary supplements are considered food. MCL 289.7112(1) (adopting federal regulations); 21 CFR Parts 101, 111, 119 (federal regulations regarding dietary supplements), and 190; and 21 USC 321(ff) (defining dietary supplement as food).

110. Angel Formula, herbal capsules and teas, beverages, and the other items offered for sale by Moor Herbs fall under the Food Law’s definition of food.

111. The Food Law defines “food establishment” as “an operation where food is processed, packed, canned, preserved, frozen, fabricated, stored, prepared, served, sold, or offered for sale. Food establishment includes, but is not limited to, a food processor, a food warehouse, a food service establishment, and a retail grocery. . . .” MCL 289.1107(p).

112. Moor Herbs is storing, selling, and offering food for sale; and is selling and offering for sale water from a water dispensing machine, and, therefore, is a food establishment as defined by the Food Law. Moor Herbs may also be processing, packing, and preparing food.

113. The Food Law provides that a person cannot operate a food establishment unless licensed by MDARD, MCL 289.4101(1), and cannot sell or offer for sale water from a water dispensing machine unless it is registered with MDARD. MCL 289.4115(1).

114. Moor Herbs does not qualify as a cottage food operation exempt from licensure because it offers food for sale online, offers food that is not a cottage food product as defined in the Food Law, and upon information and belief, does not prepare and store all food offered for sale in the primary domestic residence of the person who produces and packages the products.

115. Moor Herbs is not licensed under the Food Law and does not have a bottled water registration.

116. The Food Law prohibits the operation of a food establishment without a license:

(1) A person shall not do or cause to be done any of the following:

...

(d) Sell, deliver for sale, hold for sale, or offer for sale food unless that person holds a license issued under chapter IV.

...

(q) Operate without a license, registration, permit, or endorsement.

(r) Violate a provision of this act or a rule.
[MCL 289.5101(1).]

117. As set forth above, Moor Herbs has violated the Food Law by engaging in the sale of food without a license and by engaging in the sale of water from a dispensing machine without a registration.

118. Additionally, Moor Herbs has violated specific substantive provisions of the food law, which threaten the health of the public.

119. The Food law prohibits sale of adulterated or misbranded food; dissemination of false advertising; and failing to maintain records; and generally failing to comply with any provision of the Food Law:

(1) A person shall not do or cause to be done any of the following:

(a) Manufacture, sell, deliver, hold, or offer for sale adulterated or misbranded food.

(b) Adulterate or misbrand food.

(c) Receive in commerce food that is adulterated or misbranded and deliver or proffer the delivery of that food for pay or otherwise.

...

(e) Disseminate a false advertisement concerning food or a food establishment.

...

(m) Fail to establish or maintain any record or make any report required under this act or the federal act, or refuse to permit access to or verification or copying of any such required record.

...

(r) Violate a provision of this act or a rule.
[MCL 289.5101(1).]

120. As set forth above, Moor Herbs has violated the Food Law by manufacturing, selling, delivering, holding, and offering for sale adulterated or misbranded food; adulterated or misbranded food; and received in commerce food that is adulterated or misbranded or delivered or proffered the delivery of that food for pay or otherwise.

121. As set forth above, Moor Herbs has violated the Food Law by disseminating a false advertisement concerning food or a food establishment.

122. As set forth above, Moor Herbs has violated the Food Law by failing to establish or maintain any record or make any report required under this act or the federal act by failing to follow the recording and reporting requirements for infant formula, aseptic packaging, and dietary supplements.

123. As detailed above, Moor Herbs has violated the Food Law by failing to follow the requirements for infant formula, aseptic packing of food, and dietary supplements.

124. As detailed above, Moor Herbs has violated the Food Law by not ensuring a last date of sale is indicated on perishable food products, MCL 289.8107; offering for sale food made to order without having a managerial employee identified as a certified food safety manager, MCL 289.2129; Food Code, 2-102.11(B); and not having a food probe thermometer to measure the cooking and cooling temperatures of food. Food Code, 4-302.12(A).

125. Further, the Federal Food Code allows a person to sell only food that is obtained from a source that complies with all federal, state, and local laws. FFC 3-201.11.

126. Moor Herbs offers for sale certain food from sources that are known not to be approved sources. Additionally, due to Moor Herbs failing to follow the documentation and labeling requirements for its food, the other food is suspected to be obtained from source(s) that do not comply with all federal, state, and local laws.

Moor Herbs violated MCL 289.5101(1)(r) by selling food obtained from sources that did not comply with federal, state, and local laws.

127. The Food Law provides that:

In addition to the remedies provided for in this act, the department may apply to the circuit court for, and the court shall have jurisdiction upon hearing and for cause shown, a temporary or permanent injunction restraining any person from violating any provision of this act or rules promulgated under this act irrespective of whether or not there exists an adequate remedy at law. [MCL 289.5111.]

128. MDARD requests that this Court issue a permanent injunction prohibiting Defendants from:

A. Holding, selling, or offering food for sale without a license contrary to MCL 289.5101(1)(d) and (q), or registration contrary to MCL 289.4115(1);

B. Selling food that was obtained from a source that did not comply with federal, state, and local laws, contrary to MCL 289.5101(1)(r);

C. Manufacturing, selling, delivering, holding, or offering for sale adulterated or misbranded food contrary to MCL 289.5101(1)(a);

D. Manufacturing, selling, delivering, holding, or offering for sale any food that has not been made in accordance with the Food Law, including any requirements incorporated by reference, contrary to MCL 289.5101(1)(r).

REQUEST FOR RELIEF

Plaintiff MDARD respectfully requests that this Court grant the following relief:

A. Declare that food products seized from Moor Herbs are misbranded and/or adulterated;

B. Issue an order that the food seized from Moor Herbs be destroyed at Moor Herbs' expense and under MDARD's supervision;

C. Enter an order permanently enjoining Moor Herbs and its members, employees, agents, and officers from:

1. Holding, selling, or offering food for sale without a license contrary to MCL 289.5101(1)(d) and (q), or registration contrary to MCL 289.4115(1);

2. Selling food that was obtained from a source that does not comply with federal, state, and local laws, contrary to MCL 289.5101(1)(r);

3. Manufacturing, selling, delivering, holding, or offering for sale adulterated or misbranded food contrary to MCL 289.5101(1)(a); and

4. Manufacturing, selling, delivering, holding, or offering for sale any food that has not been made in accordance with the Food Law, including any requirements incorporated by reference, contrary to MCL 289.5101(1)(r);

5. Offering for sale food that, in violation of the law, includes claims that it is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; and

D. Grant MDARD further relief as the Court finds just and appropriate.

Respectfully submitted,

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LF: Moor Herbs/Pappas Remedy Garden (EGLE)/AG #2021-0327093-A/Complaint 2022-02-11