

NO. _____

THE STATE OF TEXAS, Plaintiff	§	IN THE DISTRICT COURT
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
CESAR GONZALEZ AND LA VILLITA	§	
MEAT MARKET, INC. D/B/A LA VILLITA	§	
MEAT MARKET, and ROLANDO C.	§	
GONZALEZ and TEXAS INTERNATIONAL	§	
SALES INC. D/B/A LA VILLITA MEAT	§	
MARKET AND DISTRIBUTORS D/B/A	§	
L & V MEAT DIST., Defendants	§	_____ JUDICIAL DISTRICT

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

TO THE HONORABLE COURT:

The State of Texas, acting through its Attorney General Greg Abbott, and at the request of the Commissioner of the Texas Department of State Health Services, files this Original Petition and Application for Permanent Injunction complaining of Defendants Cesar Gonzalez (Gonzalez) and La Villita Meat Market, Inc. d/b/a La Villita Meat Market, and Rolando C. Gonzalez (R. Gonzalez) and Texas International Sales Inc. d/b/a La Villita Meat Market and Distributors d/b/a L & V Meat Dist. and shows:

Discovery Control Plan

1. Pursuant to Rule 190.1, TEX. RULES OF CIVIL PROCEDURE, the State submits that this suit should be governed by Rule 190.3, (Level 2 discovery).

Plaintiff

2.1 This suit is brought by Attorney General Greg Abbott, pursuant to TEX. HEALTH & SAFETY CODE §§433.099 because Defendants have or are violating the Texas Meat and Poultry Inspection Act.

2.2. This suit is also brought at the request of the Commissioner of the Texas Department of State Health Services as authorized by TEX. HEALTH & SAFETY CODE §§433.099 .

2.3. 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 TEX. BUS. & COM. CODE ANN. §17.47 *et seq.* (DTPA) on the ground that

Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§17.46(a) and (b) of the DTPA.

Defendants

3.1. LA VILLITA MEAT MARKET, INC. (LVMMI) d/b/a LA VILLITA MEAT MARKET is a Texas profit corporation doing business in Texas as alleged below and may be served with process by serving its **registered agent, Cesar Gonzalez, at 375 W. Robertson, San Benito, Cameron County, Texas.**

3.2. Defendant CESAR GONZALEZ (C. GONZALEZ) is an individual doing business in Texas and may be served with process **at his home at 451 S. Travis, San Benito, Cameron County, Texas, or at his place of business at 375 W. Robertson, San Benito, Cameron County, Texas.**

3.3. TEXAS INTERNATIONAL SALES INC. d/b/a LA VILLITA MEAT MARKET AND DISTRIBUTORS d/b/a L & V MEAT DIST. (TIS) is a Texas profit corporation doing business in Texas as alleged below and may be served with process by serving its **registered agent, Corporation Service Company, at 701 Brazos Street, Ste. 1050, Austin, Travis County, Texas.**

3.4. Defendant ROLANDO C. GONZALEZ (R. GONZALEZ) is an individual doing business in Texas and may be served with process at **his place of business at 375 W. Robertson, San Benito, Cameron County, Texas.**

3.5. LVMMI and C. GONZALEZ, did business as, and now TIS and R. GONZALEZ, presently do business, from the plant known as LA VILLITA MEAT MARKET.

Authority

4. This Court has jurisdiction of this action pursuant to TEX. HEALTH & SAFETY CODE §§433.082 and the authority granted to the Attorney General of Texas under the Constitution and laws of the State of Texas.

Venue

5. Venue of this suit lies in Travis County, Texas for the following reasons:

A) Under TEX. HEALTH & SAFETY CODE §433.099 (b), venue is proper in Travis County, Texas because Plaintiff seeks injunctive relief regarding a business which is regulated by the Texas Meat and Poultry Inspection Act.

Public Interest

6. The consumer protection division of the Office of the Attorney General has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in the unlawful practices set forth below and that proceedings would be in the public interest.

Trade and Commerce

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

Acts of Agents

8. Whenever in this Petition it is alleged that Defendants did any act, it is meant that:

A) Defendants performed or participated in the act, or

B) Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

Notice Before Suit

9. The Consumer Protection Division informed Defendants in general of the alleged unlawful conduct described below, at least seven days before filing suit, pursuant to §17.47(a) of the DTPA.

Definitions

For purposes of this lawsuit, the following terms are defined as follows:

10.1 "Adulterated" means that a carcass, part of a carcass, meat, or a meat food product has been prepared, packed, or held under unsanitary conditions that may have caused it to become contaminated with filth or rendered injurious to health, as set out in TEX. HEALTH AND SAFETY CODE §433.004 (West 2001).

10.2. "Grant of Inspection" means an authorization from the department to engage in a meat business subject to inspection under the Texas Meat and Poultry Inspection Act and for which an application must be filed and approved pursuant to the requirements set out in 25 TAC 221.12(c). It is akin to a license except that no fees are paid for it; however, a business owner seeking to acquire a Grant of Inspection must meet a long list of requirements before the Department of State Health Services will grant such an authorization to engage in this business.

10.3. "Labeling" means a label or other written, printed, or graphic material on an article or any container or wrapper of an article, or accompanying an article, as set out in TEX. HEALTH AND

SAFETY CODE §433.003(10)(West 2001).

10.4. “Meat food product” means a product that is capable of use as human food and that is made in whole or part from meat or other portion of the carcass of livestock, as set out in TEX. HEALTH AND SAFETY CODE §433.003(13)(West 2001).

10.5. “Misbranded” means that livestock or poultry has been packaged in such a way that it does not bear on itself or its container the inspection legend and establishment number of the establishment in which the product was prepared, as set out in TEX. HEALTH AND SAFETY CODE §433.005(a)(12)(West 2001).

Nature of Defendants' Operations

11.1. Defendants are meat wholesalers. Livestock slaughter houses provide livestock carcasses to meat distributors that butcher and repackage the carcasses into forty pound packages. The meat distributors sell quarter carcasses or the forty pound packages to meat wholesalers. At one time, Defendants purchased parts of livestock carcasses but now purchase only the forty pound packages from the meat distributors. Defendants, as wholesalers, break open these forty pound packages and repackage this meat to sell custom meat orders at wholesale to restaurants. Defendants also sell retail to walk in customers from their plant, known as LA VILLITA MEAT MARKET, at 375 West Robertson, in San Benito, Cameron County, Texas.

11.2 TIS is the successor to LVMMI and operates the same business, with the same name, from the same premises. R. GONZALEZ is the son of C. GONZALEZ and the owner of TIS and purchased the business from his father in January, 2006.

11.3. Defendants have been preparing and selling meat without a Grant of Inspection. Defendants have been selling unlabeled meat bearing no marks of inspection. LA VILLITA MEAT MARKET advertised itself as a “state inspected” plant when in fact, it had not been inspected by state inspectors.

Specific Factual Allegations

12.1. The Administrator of the Federal Safety and Inspection Service (FSIS) sets the maximum dollar value of meat or meat products intended for commerce that can be sold per year by an operator who does not possess a Grant of Inspection. FSIS set this maximum dollar value for calendar year 2002 at \$47,000.00, for calendar year 2003 at \$47,000.00, and for calendar years 2006 and 2007 at \$55,100.

12.2. LVMMI and CESAR GONZALEZ prepared and sold approximately \$295,151.84 worth of meat and meat products in calendar year 2002 and \$224,115.65 in calendar year 2003 to consumers who were not household consumers. LVMMI was not at any pertinent time operating under a Grant of Inspection to prepare meat or meat products intended for wholesale commerce.

12.3. Inspectors for the Texas Department of State Health Services (DSHS) had previously explained to CESAR GONZALEZ and LVMMI the requirement to either obtain a Grant of Inspection or to sell less than the maximum amount set by the FSIS to wholesale accounts. CESAR GONZALEZ signed Statements of Intent on behalf of LVMMI acknowledging these explanations and confirming he understood the requirements.

12.4. Prior to 2002, LVMMI had a Grant of Inspection, which allowed LVMMI to prepare meat or meat products intended for wholesale commerce, further showing Defendants' knowledge of the requirements.

12.5. In 2004, LVMMI sold unlabeled meat or meat products that bore no marks of inspections, to a local establishment for human food; this product was therefore mislabeled.

12.6. In 2004, LVMMI advertised in a newspaper that it was a "State Inspected Plant" when in fact, it had not been inspected by state inspectors.

12.7. TIS and ROLANDO GONZALES sold over \$100,000.00 worth of meat and meat products in calendar year 2006 and 2007 to consumers who were not household consumers.

12.8. TIS was not at any pertinent time operating under a Grant of Inspection to prepare meat or meat products intended for wholesale commerce.

12.9. The LA VILLITA MEAT MARKET had not been inspected by state inspectors since 1999. Because it had not been inspected in the previous eight years as of the filing of this lawsuit, Defendants had, *inter alia*, allowed the plant to deteriorate so that the following conditions could be found: (a) there were pieces of equipment that were dirty or rusty, (b) stagnant water had accumulated under loading docks, (c) wooden equipment was subject to splintering, (d) improperly disposed trash was causing an accumulation of flies, (e) ceilings were not sealed to prevent the falling of foam insulation onto the products, (f) lights were left unprotected subjecting meat to the risk of having broken bulbs or bulb covers fall on it, (g) wholesale and retail product were left unlabeled and commingled in a retail freezer, (h) a wholesale freezer had been allowed to become inoperative. These and other conditions in the plant as a whole subjected the product being prepared

in the plant to unsanitary conditions which subjected the product to contamination from filth and to being rendered injurious to human consumption.

Texas Meat and Poultry Inspection Act Violations

13. As alleged more specifically in paragraphs 12.1 through 12.9 above and in the course of trade and commerce, Defendants have violated the Texas Meat and Poultry Inspection Act, TEX. HEALTH & SAFETY CODE § 433.001 *et seq.*, as follows:

A) C. GONZALEZ and LVMMI stored and processed meat food products under conditions that caused the products to be adulterated, in violation of TEX. HEALTH & SAFETY CODE §§433.052(2), 433.004.

B) C. GONZALEZ and LVMMI sold meat products that were adulterated, in violation of TEX. HEALTH & SAFETY CODE §§433.052(1)(A).

C) C. GONZALEZ and LVMMI packaged meat food products without the proper labeling and inspection legend thereby causing these products to be misbranded, in violation of TEX. HEALTH & SAFETY CODE §§433.052(2), 433.005(12).

D) C. GONZALEZ and LVMMI sold meat food products that were misbranded, in violation of TEX. HEALTH & SAFETY CODE §§433.052(1)(A).

E) C. GONZALEZ and LVMMI misrepresented in its advertisements that La Villita Meat Market was a “state inspected plant,” when it was not so inspected, in violation of TEX. HEALTH & SAFETY CODE §433.045(7);

F) C. GONZALEZ and LVMMI sold unlabeled meat product that bore no mark of inspection to a retail establishment for human consumption, in violation of TEX. HEALTH & SAFETY CODE Chapter §433.052(1)(A);

G) C. GONZALEZ and LVMMI prepared and sold approximately \$295,151.84 worth of meat and meat products in calendar year 2002 to consumers who were not household consumers, though neither C. GONZALEZ or LVMMI held a Grant of Inspection during that period to prepare and sell meat or meat products intended for wholesale commerce, in violation of TEX. HEALTH & SAFETY CODE §§433.052(1)(B), 433.025(a);

H) C. GONZALEZ and LVMMI prepared and sold approximately \$224,115.65 worth of meat and meat products in calendar year 2003 to consumers who were not household consumers,

though neither C. GONZALEZ or LVMMI held a Grant of Inspection during that period to prepare and sell meat or meat products intended for wholesale commerce, in violation of TEX. HEALTH & SAFETY CODE §§433.052(1)(B), 433.025(a);

I) R. GONZALEZ and TIS prepared and sold over \$100,000.00 worth of meat and meat products in calendar year 2006 to consumers who were not household consumers, though neither held a Grant of Inspection during that period to prepare and sell meat or meat products intended for wholesale commerce, in violation of TEX. HEALTH & SAFETY CODE §§433.052(1)(B), 433.025(a).

J) R. GONZALEZ and TIS prepared and sold over \$100,000.00 worth of meat and meat products in calendar year 2007 to consumers who were not household consumers, though neither held a Grant of Inspection during that period to prepare and sell meat or meat products intended for wholesale commerce, in violation of TEX. HEALTH & SAFETY CODE §§433.052(1)(B), 433.025(a).

False, Misleading or Deceptive Acts

14. As alleged more specifically in paragraphs 12.1 through 12.9 above and in the course of trade and commerce, Defendants have engaged in false, misleading and deceptive acts and practices declared unlawful in §§17.46(a) and (b) of the DTPA as follows:

A) by selling meat food products by representing in newspaper advertising that La Villita Meat Market was a state inspected plant when it was not, Defendants caused confusion or misunderstanding as to the source sponsorship, approval, or certification of goods or services, in violation of §17.46(b)(2) of the DTPA;

B) by selling meat food products by representing in newspaper advertising that La Villita Meat Market was a state inspected plant when it was not, Defendants caused confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of §17.46(b)(3) of the DTPA;

C) by selling meat food products by representing in newspaper advertising that La Villita Meat Market was a state inspected plant when it was not, Defendants represented 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) of the DTPA;

D) by selling meat food products by representing in newspaper advertising that La Villita Meat Market was a state inspected plant when it was not, Defendants represented 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) of the DTPA;

E) by selling meat food products while failing to disclose that La Villita Meat Market had not been inspected and was not legally operating under a Grant of Inspection, Defendants failed to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of §17.46(b)(23) of the DTPA; or

F) by engaging in the practices as set out above, Defendants engaged in false, misleading or deceptive acts or practices in the conduct of trade or commerce, in violation of §17.46(a) of the DTPA.

Injury to Consumers

15. 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.

Application for Temporary Injunction

16. Plaintiff requests that the Court temporarily enjoin Defendants from continuing the conduct described in this petition. Defendants will continue to engage in the sale and marketing of product in violation of the Texas Meat and Poultry Inspection Act and in violation of the Texas Deceptive Trade Practices Act. Unless restrained by this Court, Defendants will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public.

Application for Permanent Injunction

17. Plaintiff requests that the Court permanently enjoin Defendants from continuing the conduct described in this petition. Defendants will continue to engage in the sale and marketing of product in violation of the Texas Meat and Poultry Inspection Act and in violation of the Texas Deceptive Trade Practices Act.

Prayer

18.1. For these reasons, the State requests that the Court, upon notice and hearing, issue a temporary injunction and upon trial, issue a permanent injunction enjoining Defendants, their

officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging, directly or indirectly, in the following acts or practices:

A) preparing or selling meat food products without a valid and current Grant of Inspection duly issued by the Department of State Health Services;

B) adulterating meat food products in any way, specifically but not limited to: preparing meat food products under conditions which constitute unsanitary conditions that may cause it to become contaminated with filth or rendered injurious to health;

C) misbranding meat food products in any way, specifically but not limited to: failing to attach on the product or its container the inspection legend and establishment number of the establishment; failing to properly label product in freezers in such a way that retail product is commingled and indistinguishable from wholesale product;

D) selling, distributing, delivering, or introducing adulterated meat food products into trade and commerce;

E) selling, distributing, delivering, or introducing misbranded meat food products into trade and commerce;

F) representing, directly or by implication, that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, specifically but not limited to: representing in any way that meat food products have approval from the United States Food and Drug Administration or any other federal or state agency if it does not have such approval; representing in any way that La Villita Meat Market has been inspected if it does not have a valid current inspection in effect and under which meat food product is sold;

G) representing, directly or by implication, that this court or the Attorney General has approved any good or service sold or offered for sale by Defendants, or have approved any of Defendants business practices;

H) interfering with, preventing, or in any way obstructing agents of the Texas Department of State Health Services from reasonably inspecting, copying, or photographing all business records and business premises of Defendants and all product found there, pursuant to TEX. HEALTH & SAFETY CODE Chapter 433;

I) selling more than the maximum dollar value limit of meat food product set by the Administrator of the Federal Safety and Inspection Service (FSIS) for meat food product intended

for commerce that can be sold per year if Defendants should fail, for any reason, to obtain a duly issued Grant of Inspection for the year in which the meat food product is sold by Defendants;

J) transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to the business of Defendants, currently or hereafter in their possession, custody or control except in response to further orders or subpoenas in this cause;

K) transferring, spending, hypothecating, concealing, encumbering or removing from the jurisdiction of this Court any money, stocks, bonds, assets, 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 possession of, or claimed by Defendants, insofar as such property relates to, arises out of or is derived from the business operation of Defendants within the State of Texas.

18.2 In addition, Plaintiff requests that this Court:

A) adjudge against Defendants, jointly and severally, civil penalties in favor of Plaintiff in an amount of not more than \$20,000.00 per violation of the DTPA.

B) order Defendants to refund to all persons who purchased the product and who request a refund of the purchase price plus any sales tax and postage or handling charges paid on account of such purchase. These refunds shall also be made to all persons who have paid for but not received the product.

C) order Defendants, jointly and severally, to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative award judgment for damages to compensate for such losses.

D) order Defendants, jointly and severally, to pay Plaintiff's attorney fees, costs of court and expenses pursuant to TEX. GOVT. CODE, §402.006(c) and TEX. BUS. & COMM. CODE § 433.099(c).

E) order Defendants, jointly and severally, to pay reasonable expenses incurred by the Department of State Health Services in obtaining any injunctive relief including investigation and court costs, witness fees and other expenses and costs pursuant to TEX. BUS. & COMM. CODE § 433.099(c).

F) order Defendants, jointly and severally, to pay pre-judgment interest on all awards of restitution, damages or civil penalties, as provided by law.

G) grant all other relief to which Plaintiff STATE OF TEXAS may show itself entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
Chief, Consumer Protection Division

RAÚL NORIEGA
Assistant Attorney General
Consumer Protection & Public Health Division
115 E. Travis, Suite 925
San Antonio, Texas 78205-1615
Telephone 210-225-4191 ext. 1110
Facsimile 210-225-1075
SBN 15078400