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-ATTORNEY GENERAL OFFICE -

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ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

CHRIS KOSTER  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

October 22, 2010

FILED VIA FACSIMILIE: 417-256-4650

Howell County Circuit Clerk  
P.O. Box 967  
West Plains, MO 65775

**RE: *State ex rel. Koster v. Morningland of the Ozarks, LLC, d/b/a Morningland Diary***

Dear Clerk:

Please find attached an original of Plaintiff's *Petition for Injunctive Relief* and an *Application for Preliminary Injunction* to be filed in the above-referenced matter. The attorney for Morningland of the Ozarks has agreed to accept service on behalf of his clients. These documents were delivered to Mr. Cox via the United States Postal Service. Please forward return a file-stamped copy of the *Petition* and *Application* to me.

Thank you for your attention and should you have any questions, please feel free to call.

Sincerely yours,

**CHRIS KOSTER**  
Attorney General

LAURA BAILEY BROWN  
Assistant Attorney General  
(573) 751-8795

LBB:mg

Enclosures

c: Don Falls, Dept. of Agriculture  
Gary Cox



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P.O. Box 967  
West Plains, MO 65775

***RE: State ex rel. Koster v. Morningland of the Ozarks, LLC, d/b/a Morningland  
Diary***

Dear Clerk:

Please find attached an original of Plaintiff's *Petition for Injunctive Relief* and an *Application for Preliminary Injunction* to be filed in the above-referenced matter. The attorney for Morningland of the Ozarks has agreed to accept service on behalf of his clients. These documents were delivered to Mr. Cox via the United States Postal Service. Please forward return a file-stamped copy of the Petition and Application to me.

Thank you for your attention and should you have any questions, please feel free to call.

Sincerely yours,

**CHRIS KOSTER**

Attorney General

A handwritten signature in black ink that reads "Laura Bailey Brown".

LAURA BAILEY BROWN

Assistant Attorney General

(573) 751-8795

LBB:mg

Enclosures

c: Don Falls, Dept. of Agriculture  
Gary Cox

**CONFIDENTIAL CASE FILING INFORMATION SHEET – NON-DOMESTIC RELATIONS**

**INSTRUCTIONS:**

- ✓ Complete this form for all parties known at the time of filing. Provide the most appropriate Case Type and Party Type codes and descriptions. (Found on the Case Types List and Party Types List at [www.courts.mo.gov](http://www.courts.mo.gov) on the Court Forms/Filing Information page.)
- ✓ If additional space is needed, complete additional Confidential Case Filing Information Sheets.

**NOTE:** The full Social Security Number (SSN) is **required** pursuant to Missouri Supreme Court Operating Rule 4 if the party is a person; exception can only be granted if the information is not reasonably available. **This is a confidential record due to the SSN and possible confidential addresses. However, this information is used to open a case in the Missouri State Courts Automated Case Management System. Cases deemed public under Missouri Revised Statutes can be accessed through Case.net. The day and month of birth, SSN, and confidential addresses are NOT provided to the public through Case.net access.**

Filing Date: \_\_\_\_\_ County/City of St. Louis: Howell County

Style of Case: State ex rel. Koster v. Morningland of the Ozarks, LLC, d/b/a Morningland Dairy  
(i.e., In the Estate of; In the Matter of; Petitioner v. Respondent.)

Case Type Code: X1 Case Type Description: Other Miscellaneous Actions

Party Type Code: <u>PLT</u> Party Type Description: <u>Plaintiff</u> Name (if a person): (Last) _____ (First) _____ (Middle) _____ Organization (if non-person): <u>State of Missouri-Missouri Attorney General's Office</u> Address: <u>P.O. Box 899</u> City: <u>Jefferson City</u> State: <u>MO</u> Zip: <u>65102</u> DOB/DOD: _____ Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female SSN: _____ Attorney Name (if represented by counsel): <u>John K. McManus</u> Bar ID: <u>59486</u> Party Type Code: _____
Party Type Code: <u>DFT</u> Party Type Description: <u>Defendant</u> Name (if person): (Last) <u>Dixon</u> (First) <u>Joseph and Denise</u> (Middle) _____ Organization (if non-person): <u>Morningland of the Ozarks, LLC d/b/a Morningland Dairy</u> Address: <u>6248 Country Road 2980</u> City: <u>Mountain View</u> State: <u>MO</u> Zip: <u>65548</u> DOB/DOD: _____ Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female SSN: _____ Attorney Name (if represented by counsel): <u>David G. Cox</u> Bar ID: _____ Party Type Code: _____
Party Type Code: _____ Party Type Description: _____ Name (if person): (Last) _____ (First) _____ (Middle) _____ Organization (if non-person): _____ Address: _____ City: _____ State: _____ Zip: _____ DOB/DOD: _____ Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female SSN: _____ Attorney Name (if represented by counsel): _____ Bar ID: _____ Party Type Code: _____

Submitted by: John K. McManus Bar ID (required if attorney): 59486

Address (if not shown above): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: 573-751-8370 Email Address: jack.mcmanus@ago.mo.gov

**\*IMPORTANT: It is the parties' responsibility to keep the court informed of any change of address or employment.\***

**IN THE CIRCUIT COURT OF HOWELL COUNTY  
STATE OF MISSOURI**

STATE OF MISSOURI ex rel.	)	
CHRIS KOSTER, Attorney General	)	
the MISSOURI DEPARTMENT OF	)	
AGRICULTURE, and the	)	
MISSOURI STATE MILK BOARD	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. _____
	)	
MORNINGLAND OF THE OZARKS, LLC,	)	
d/b/a MORNINGLAND DAIRY,	)	
	)	
Defendant.	)	

**PETITION FOR INJUNCTIVE RELIEF**

Plaintiff, State of Missouri, at the relation of Attorney General Chris Koster, the Missouri Department of Agriculture, and the Missouri State Milk Board, for its Petition for Injunctive Relief filed pursuant to Missouri Court Rule 92.02, states as follows:

**Parties**

1. Chris Koster is the duly elected, qualified, and acting Attorney General of Missouri. The Attorney General is authorized to institute, in the name and on behalf of the state, all civil proceedings at law or in equity necessary to protect the rights and interests of the state under § 27.060, RSMo (2000).
2. The Missouri Department of Agriculture (“Department”) is a duly authorized state agency created under § 261.023, RSMo.
3. The Missouri State Milk Board (“State Milk Board”) is a duly authorized state agency created under § 196.941, RSMo, and it is the State Milk Board’s duty to administer the Missouri Dairy Law, to encourage orderly and sanitary production, transportation, processing,

and grading of manufactured milk and its products, and to assure wholesome, stable, and high-quality dairy products.

4. Morningland of the Ozarks, LLC (“Defendant”), is a Missouri limited liability company in good standing doing business as Morningland Dairy, an entity that makes and sells cheese products. Defendant’s principal place of business is located at 6248 County Road 2980, Mountain View, Howell County, Missouri.

#### **Venue and Jurisdiction**

5. Venue is proper in this Court because the actions of Defendant giving rise to this cause took place in Howell County and Defendant’s principal place of business is located in Howell County. This Court has jurisdiction over all parties.

#### **General Allegations**

6. Defendant produces cheese products and sells these products nationwide via mail order, retail stores, crop sharing associations, and direct delivery.

7. In August 2010, the State Milk Board was notified by the California Department of Food and Agriculture that samples of Defendant’s cheese products collected in the state of California tested positive for *Listeria Monocytogenes* and *Staphylococcus Aureus*. These pathogens can cause severe illness and/or death.

8. On or about August 26, 2010, the State Milk Board initiated an investigation into the cheese products produced by Defendant.

9. Defendant voluntarily recalled all cheese products that it produced during the time period spanning from January 1, 2010, through August 26, 2010.

10. Under § 196.565, RSMo, the State Milk Board is authorized, for the purpose of examination or testing for the enforcement of the Missouri Dairy Law, to procure samples of

milk or its products, whether produced within this state or shipped into and offered, exposed for sale, or sold in the state.

11. Defendant volunteered to submit samples of its cheese products to a private laboratory for the purpose of testing the products for pathogenic contaminants.

12. A representative from the State Milk Board supervised Defendant's collection of fourteen samples of Defendant's cheese product and submitted the samples to Microbe Inotech Laboratories, Inc., in St. Louis, Missouri, for testing.

13. Six of the fourteen cheese product samples tested positive for *Listeria Monocytogenes*, and all fourteen of the samples tested positive for *Staphylococcus Aureus*.

#### **COUNT 1: Unlawful Sale of Dairy Products**

14. The preceding paragraphs are incorporated into this count as though fully set forth herein.

15. Under § 196.545, RSMo, it is "unlawful to sell, offer or expose for sale, or deliver . . . any dairy products made from manufacturing milk" that are "adulterated by the addition of any unauthorized substance including water or other material foreign to milk" or that are "produced in unhealthy or unsanitary surroundings or held in unclean or unsanitary containers."

16. Defendant's cheese products are made from manufacturing milk as defined in § 196.525(11), RSMo, and the products contain unauthorized substances and/or material foreign to milk consisting of the pathogens *Listeria Monocytogenes* and *Staphylococcus Aureus*.

17. Defendant's manufacturing milk cheese products were produced in unhealthy or unsanitary surroundings or were held in unclean or unsanitary containers.

18. Defendant unlawfully sold, offered or exposed for sale, or delivered manufacturing milk dairy products that were adulterated or produced in unhealthy or unsanitary surroundings or were held in unclean or unsanitary containers in violation of § 196.545, RSMo.

19. No adequate remedy can be afforded by an action for damages, and Defendant is therefore subject to injunctive relief in accordance with § 526.030, RSMo, and Rules 92.01 and 92.02.

**COUNT 2: Failure to Comply with Destruction Order**

20. The preceding paragraphs are incorporated into this count as though fully set forth herein.

21. Under § 196.570, RSMo, the State Milk Board is authorized to condemn any “illegal manufactured dairy product as defined in § 196.545, which is offered, exposed for sale, or sold for human food purposes,” and the State Milk Board is required to “identify the same as an unlawful product.”

22. As defined in §§ 196.545.3 and 196.545.5, RSMo, illegal manufactured dairy products include “any dairy products made from manufacturing milk that are adulterated by the addition of any unauthorized substance including water or other material foreign to milk” and “any dairy products made from manufacturing milk that are produced in unhealthy or unsanitary surroundings or held in unclean or unsanitary containers.”

23. Defendant’s cheese products are made from manufacturing milk as defined in § 196.525(11), RSMo, and the products contain unauthorized substances and/or material foreign to milk consisting of the pathogens *Listeria Monocytogenes* and *Staphylococcus Aureus*.

24. Defendant’s manufacturing milk cheese products were produced in unhealthy or unsanitary surroundings or were held in unclean or unsanitary containers.

25. On or about October 1, 2010, the State Milk Board, pursuant to its authority under §§ 196.570 and 196.580, RSMo, ordered that the cheese products that Defendant produced and processed during the period spanning from January 1, 2010, through August 26, 2010, be condemned as unlawful products, and the State Milk Board ordered Defendant to schedule a date for the destruction of the cheese products within three business days from the issuance of the order.

26. Under § 195.580, RSMo, condemned products shall be released to the owner only upon assurance that such products will not be used for human food, or upon their destruction by the owner under the supervision of the Director of the Department of Agriculture.

27. Defendant maintains control over the condemned cheese product, but has given no assurance that the products will not be used for human food, nor has Defendant destroyed the product.

28. There is no beneficial, alternative use for the condemned products, so they must be destroyed in keeping with § 195.580, RSMo.

29. Immediate and irreparable injury, loss, or damage will result if the condemned cheese products are not destroyed.

30. No adequate remedy can be afforded by an action for damages, and Defendant is therefore subject to injunctive relief in accordance with § 526.030, RSMo, and Rules 92.01 and 92.02.

**COUNT 3: Unlawful Interference with Milk Board Duties**

31. The preceding paragraphs are incorporated into this count as though fully set forth herein.



32. Under § 196.585, RSMo, it is unlawful to “hinder, obstruct, or in any manner interfere with the State Milk Board in the performance of . . . any . . . duty under §§ 196.520 to 196.610.”

33. Under § 196.527, RSMo, the State Milk Board is charged with the duty of assuring “wholesome, stable, and high-quality dairy products.”

34. In order to assure “wholesome, stable, and high-quality dairy products,” the State Milk Board condemned Defendant’s cheese product and ordered the product’s destruction.

35. Defendant’s noncompliance with the State Milk Board’s order is hindering, obstructing, or interfering with the State Milk Board’s duties in violation of § 196.585, RSMo.

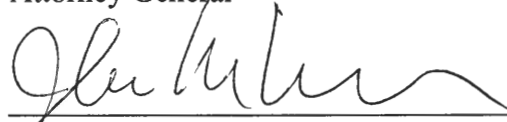
36. No adequate remedy can be afforded by an action for damages, and Defendant is therefore subject to injunctive relief in accordance with § 526.030, RSMo, and Rules 92.01 and 92.02.

**WHEREFORE**, Plaintiff asks this Court for a Judgment granting the following relief:

- A. Issuing a preliminary and permanent injunction ordering Defendant to destroy the condemned cheese product and prohibiting Defendant from any further violations of the Missouri Dairy Law;
- B. Assessing costs of these proceedings against Defendants; and
- C. Granting such other relief as may be just and proper.

Respectfully submitted,

CHRIS KOSTER  
Attorney General



JOHN K. McMANUS  
Missouri Bar No. 59486  
Chief Counsel  
Agriculture and Environment Division  
jack.mcmanus@ago.mo.gov  
PO Box 899  
Jefferson City, Missouri 65102  
Phone: (573) 751-1800  
Fax: (573) 751-0774

LAURA BAILEY BROWN  
Assistant Attorney General  
Missouri Bar No. 62732

ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was delivered via email and first class mail, postage prepaid, this 22<sup>ND</sup> day of October, 2010, to:

Mr. Gary Cox  
The Law Office of David G. Cox  
4240 Kendale Road  
Columbia, Ohio 43220

Attorney for Defendant



JOHN K. McMANUS  
Attorney for Plaintiff

**IN THE CIRCUIT COURT OF HOWELL COUNTY  
STATE OF MISSOURI**

STATE OF MISSOURI ex rel.	)	
CHRIS KOSTER,	)	
the MISSOURI DEPARTMENT OF	)	
AGRICULTURE, and the	)	
MISSOURI STATE MILK BOARD	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. _____
	)	
MORNINGLAND OF THE OZARKS, LLC,	)	
d/b/a MORNINGLAND DAIRY	)	
	)	
Defendant.	)	

**APPLICATION FOR PRELIMINARY INJUNCTION**

Plaintiff, State of Missouri, for its Application for Preliminary Injunction filed pursuant to Rule 92.02, states as follows:

1. Plaintiff filed its Petition for Injunctive Relief in this matter alleging violations of the Missouri Dairy Law, §§ 196.520 through 196.614, RSMo.
2. Plaintiff’s Petition seeks injunctive relief to prevent continuing and future violations of the Missouri Dairy Law.
3. Under § 526.030, RSMo, injunctive relief is available to “prevent the doing of any legal wrong whatever, whenever in the opinion of the Court an adequate remedy cannot be afforded by an action for damages.”
4. Morningland of the Ozarks, LLC (“Defendant”), is a Missouri limited liability company in good standing doing business as Morningland Dairy, an entity that makes and sell cheese products, located at 6248 County Road 2980, Mountain View, Howell County, Missouri.

6. In August 2010, the State Milk Board was notified by the California Department of Food and Agriculture that samples of Defendant's cheese products collected in state of California tested positive for *Listeria Monocytogenes* and *Staphylococcus Aureus*. These pathogens can cause severe illness and/or death. Subsequently, the State Milk Board initiated an investigation into the cheese products produced by Defendant.

7. Defendant voluntarily recalled all cheese products that it produced during the time period spanning from January 1, 2010, though August 26, 2010.

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9. A representative from the State Milk Board supervised Defendant's collection of fourteen samples of Defendant's cheese product and submitted the samples to Microbe Inotech Laboratories, Inc., in St. Louis, Missouri, for testing.

10. All fourteen of the cheese product samples tested positive for *Staphylococcus Aureus*, and six of the fourteen samples tested positive for *Listeria Monocytogenes*.

11. The State Milk Board is authorized under § 196.570, RSMo, to condemn any "illegal manufactured dairy product as defined in § 196.545, which is offered, exposed for sale, or sold for human food purposes, and shall identify same as an unlawful product."

12. As defined in § 196.545.3, RSMo, illegal manufactured dairy products include "any dairy products made from manufacturing milk that are adulterated by the addition of any unauthorized substance including water or other material foreign to milk."

13. Defendant's cheese products are made from manufacturing milk as defined in § 196.525(11), and the products contain unauthorized substances and/or material foreign to milk consisting of the pathogens *Listeria Monocytogenes* and *Staphylococcus Aureus*.

14. On or about October 1, 2010, the State Milk Board, pursuant to its authority under § 196.570, RSMo, ordered that the cheese products that Defendant produced and processed during the period spanning from January 1, 2010, through August 26, 2010, be condemned as an unlawful product and that the products be destroyed.

15. Under § 195.580, RSMo, condemned products shall be released to the owner only upon assurance that such products will not be used for human food, or upon their destruction by the owner under the supervision of the Director of the Department of Agriculture.

16. Defendant maintains control over the condemned cheese product but has given no assurance that the products will not be used for human food, nor has Defendant destroyed the product.

17. There is no beneficial, alternative use for the condemned products, so they must be destroyed in keeping with § 195.580, RSMo.

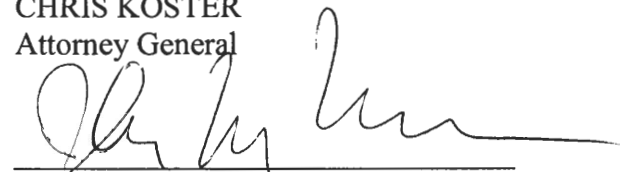
18. Due to the serious nature of the risks to the public associated with the pathogens found in the condemned cheese products, Plaintiff will suffer irreparable injury, loss, or damage if Defendant is not ordered to destroy the condemned products, and there is no adequate remedy in an action for damages.

19. All allegations of the Plaintiff's Petition in this matter are incorporated herein by reference.

**WHEREFORE**, Plaintiff respectfully requests that this Court issue a Preliminary Injunction ordering Defendant to destroy the condemned product and imposing such conditions as are necessary to assure the safe and lawful operation of Defendant's cheese production facility.

Respectfully submitted,

CHRIS KOSTER  
Attorney General



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JOHN K. McMANUS  
Missouri Bar No. 59486  
Chief Counsel  
Agriculture and Environment Division  
jack.mcmanus@ago.mo.gov  
PO Box 899  
Jefferson City, Missouri 65102  
Phone: (573) 751-1800  
Fax: (573) 751-0774

LAURA BAILEY BROWN  
Assistant Attorney General  
Missouri Bar No. 62732

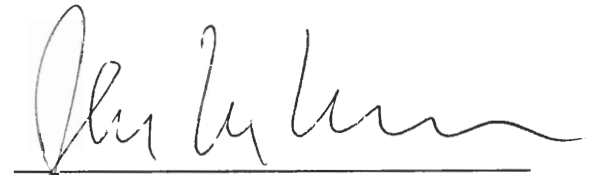
ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was delivered via e-mail and first class mail, postage prepaid, this 22<sup>ND</sup> day of October, 2010, to:

Mr. Gary Cox  
The Law Office of David G. Cox  
4240 Kendale Road  
Columbia, Ohio 43220

Attorney for Defendant



---

JOHN K. McMANUS  
Attorney for Plaintiff