

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.)
)
MORNINGLAND OF THE OZARKS, LLC,)
d/b/a MORNINGLAND DAIRY)
)
Defendant.)

Case No. 10 AL-CC00135

Please serve: Joseph Dixon
Registered Agent, Morningland of the Ozarks, LLC
6248 County Road 2980
Mountain View, MO 65548

VERIFIED SECOND AMENDED APPLICATION FOR ORDER TO SHOW CAUSE

Plaintiff, State of Missouri, at the relation of Chris Koster, Attorney General, the Missouri Department of Agriculture, and the Missouri State Milk Board, respectfully moves this Court for an order directing Defendant to show cause why it should not be held in contempt of this Court's Final Order of Permanent Injunction entered on February 23, 2011. A proposed Order granting the motion is attached. In support of its motion, Plaintiff states as follows:

Factual Background

1. On February 23, 2011, this Court entered its Final Order of Permanent Injunction ("Final Order"), which enjoined Defendant to, among other things, give the Missouri State Milk Board "authority to enter any facility covered by this Order at all reasonable times and without notice, including all times in which production other than ripening is occurring, for the purposes

of monitoring the progress of activity required by this Order, for taking inventory of Defendant's products, and for obtaining samples." Final Order, ¶ 11.

2. The Court's Final Order also enjoined Defendant to comply with several standard sanitation, good manufacturing, and bacteriological testing practices prior to resuming production, sale, and shipment of raw milk cheese and thereafter. Final Order, ¶¶ 8, 9, 10.

3. The Court further enjoined Defendant to "destroy all of its cheese products condemned by the Missouri State Milk Board on August 26, 2010. . . , save and except for eleven blocks said to have been imported from Wisconsin. . . ." Final Order, ¶ 7.

4. The cheese condemned by the Missouri State Milk Board, and therefore subject to the Court's Final Order, was cheese manufactured during the period spanning from January 1, 2010, through August 26, 2010.

5. On March 4, 2011, Defendant filed a *Petition to Stay Execution of the Court's February 23 Judgment*, and Defendant therefore has knowledge of the Court's Final Order and the requirements set forth therein.

6. On March 8, 2011, a hearing on Defendant's petition to stay execution was held. Defendant appeared by counsel and corporate representatives Joseph and Denise Dixon. During the hearing, Plaintiff expressed its concern that Defendant would not comply with the Court's Final Order and would sell the condemned cheese product that this Court ordered be destroyed. Joseph and Denise Dixon testified that the condemned cheese had not been and would not be sold unless they are successful in appealing the Court's judgment. The Court required Defendant to post a \$2,000.00 cash or surety bond to ensure that the cheese would not be sold, which Defendant posted immediately after the hearing.

7. On March 9, 2011, the Court stayed execution of its mandatory injunction to destroy Defendant's contaminated cheese product inventory pending appeal of Defendant's claim. However, the Court declined to stay execution of the Court's prohibitory injunction. Accordingly, as of February 23, 2011, Defendant's have been enjoined to comply with the terms set forth in the Court's Final Order.

8. The preceding paragraphs are incorporated into each of the following counts as though fully set forth therein.¹

COUNT I: Failure to Allow Inspection

9. On Wednesday, April 13, 2011, at approximately 1:00 p.m., Missouri State Milk Board Inspectors Don Falls and Roger Neill attempted to conduct a compliance inspection of Defendant's facility, pursuant to paragraph 11 of the Court's Final Order.

10. While at the facility, Mr. Falls and Mr. Neill were able to see into the cheese packaging room on their way to inspect the inventory of condemned cheese.

11. Mr. Falls and Mr. Neill observed Styrofoam debris on the floor next to Defendant's cooler containing the inventory of condemned cheese. Defendant normally uses the materials observed for packaging and shipping consumer-ready raw milk cheese products.

12. While at the facility, Mr. Falls and Mr. Neill observed that Defendant had a new, industrial cooler. The new cooler was turned on and running continuously, suggesting that Defendant was using the cooler to store cheese products.

13. When Mr. Falls and Mr. Neill approached the cheese making plant for the compliance inspection, Defendant denied Mr. Falls and Mr. Neill access to inspect the plant, in violation of paragraph 11 of the Court's Final Order.

¹ For purposes of clarity, Plaintiff has separated each violation of the Court's Final Order into a separate count.

14. Defendant's failure to comply with the Court's Final Order constitutes a violation of the rights of Plaintiff and is calculated to defeat the rights and remedies of the State of Missouri.

COUNT II: Failure to Implement Required Practices

15. On Tuesday, April 19, 2011, Mr. Neill visited Clover's Natural Foods ("Clover's"), a retail food market located at 2100 Chapel Plaza Court, Columbia, Boone County, Missouri, and discovered approximately fifteen packages of Morningland Dairy raw cow's milk cheddar cheese of different varieties for sale in the display cooler.

16. Mr. Neill purchased one package of Defendant's raw milk cheddar cheese.

17. The label on Defendant's cheese listed the address for the dairy as "Mountain View, MO, Ph. 417-469-3817."

18. The label on Defendant's cheese reads, "Made on the farm from Grade A, hormone-free milk."

19. Defendant obtained its Grade A permit for the production of Grade A raw milk on September 29, 2010.

20. The package of cheese was produced from cheese made on "A201," which, according to testimony describing Defendant's labeling and dating process given by Denise Dixon and Jedadiah York during the trial held on January 11-12, 2011, means that the cheese was made on January 20, 2011.

21. Raw milk cheddar cheese must be aged sixty days, which means Defendant should not have cut the cheese purchased by Mr. Neill until at least March 21, 2011.

22. On April 21, 2011, Mr. Falls purchased three packages of Morningland Dairy's raw milk cheddar cheese of different code dates from Clover's Natural Foods.

23. The three packages of cheese were made on “K100,” “K190,” and “L10,” which is Defendant’s code for November 10, 2010, November 19, 2010, and December 1, 2010, respectively.

24. To qualify for sale, raw milk cheddar cheese must be aged sixty days, which means Defendant should not have cut the cheese purchased by Mr. Falls until at least January 11, 2011, January 20, 2011, and February 2, 2011, respectively.

25. This Court’s Final Order went into effect on February 23, 2011.

26. Clover’s labeled Defendant’s cheese for resale on April 15, 2011.

27. The four packages of cheese collected by Mr. Neill and Mr. Falls on April 19 and 21, 2011, were sent for bacteriological testing, and the cheese tested positive for *Staphylococcus aureus*. The test results are attached hereto as Exhibit A.

28. These test results indicate that Defendant has not performed the bacteriological tests required by paragraph 8 of the Court’s Final Order in violation of the Order.

29. These test results further indicate that Defendant has not adopted the other various sanitation and good manufacturing practices required by this Court’s Final Order in violation of the Order.

30. Defendant has repeatedly assured this Court and Plaintiff that it is not producing, selling, or shipping cheese, and therefore, Defendant does not need to comply with the Court’s Final Order. According to Defendant, this makes it unnecessary for Plaintiff to inspect its facility and for Defendant to prove to Plaintiff that Defendant is, in fact, complying with the Court’s Final Order.

31. Defendant has indicated on numerous occasions that it believes itself to be outside of the jurisdiction of this Court and the laws of the state of Missouri. *See, e.g., Request for*

Judicial Notice, filed by Joseph Dixon (Feb. 23, 2011) (attached hereto as Exhibit B); *Letter to Howell County Circuit Court from Denise Dixon* (Jan. 19, 2011) (attached hereto as Exhibit C); *Letter to Morningland Customers from Joseph Dixon, Denise Dixon, and Jedadiah York* (Jan. 2011) (attached hereto as Exhibit D).

32. Defendant's failure to comply with the Court's Final Order constitutes a violation of the rights of Plaintiff and is calculated to defeat the rights and remedies of the State of Missouri.

COUNT III: Unlawful Sale of Embargoed Cheese Product

33. On May 13, 2011, Roger Neill visited Clover's Natural Foods, located at 2100 Chapel Plaza Court, Columbia, Boone County, Missouri, and discovered approximately twelve packages of Morningland Dairy raw cow's milk cheese and nineteen packages of goat's milk cheese for sale in the display cooler.

34. In an attempt to eliminate Plaintiff's ability to trace the cheese back to Defendant's facility, the plant identification number was cut from the bottom of each of the labels. However, the labels still establish that the cheese is from Defendant's dairy.

35. The labels on the goat's milk cheese provide that the cheese was made on "F180," which, in keeping with Ms. Dixon's and Mr. York's trial testimony, means that the cheese was produced on February 18, 2010. A photograph of this cheese is attached hereto as Exhibit E.

36. The goat's milk label further reads "Ozark Hill Farms," which is the name that Morningland Dairy uses to sell its goat milk cheese products.

37. On March 11, 2011, Clover's Natural Foods labeled these packages of Defendant's goat milk cheese for resale. This resale label was placed on the back of the cheese package, and a photograph of the label is attached hereto as Exhibit F.

38. Defendant's cheese that was made on February 18, 2010, and that was labeled for resale by Clover's Natural Foods on March 11, 2011, is cheese that was condemned by the Missouri State Milk Board and subsequently ordered to be destroyed under paragraph 7 of this Court's Final Order.

39. This Court's Final Order of Permanent Injunction was entered on February 23, 2011, and was effective immediately upon entry.

40. Defendant sold cheese that was ordered to be destroyed by this Court's Final Order in violation of the Order.

41. Defendant's failure to comply with the Court's Final Order constitutes a violation of the rights of Plaintiff and is calculated to defeat the rights and remedies of the State of Missouri.

WHEREFORE, Plaintiff respectfully requests that this Court issue its Order to Show Cause directed to Defendant Morningland of the Ozarks, LLC, requiring Defendant to appear and show cause why it should not be adjudged in contempt of Court.

Plaintiff asks the Court to find Defendant in contempt of court, assess appropriate civil penalties and/or per diem fines against Defendant, and enter such Judgment of Contempt as to ensure compliance with the terms of the Final Order of Permanent Injunction, entered February 23, 2011. Plaintiff also asks that if the Court chooses to enter a Judgment of Contempt against Defendant, that the Court order the parties to appear thirty (30) days thereafter for a determination of compliance and associated hearing, if required.

Respectfully submitted,

CHRIS KOSTER
Attorney General



JESSICA L. BLOME, MBE No. 59710
LAURA BAILEY BROWN, MBE No. 62732
Assistant Attorneys General
jessica.blome@ago.mo.gov
laura.brown@ago.mo.gov
P.O. Box 899
Jefferson City, Missouri 65102
Phone: (573) 751-3640
Fax: (573) 751-8796
ATTORNEYS FOR PLAINTIFF

VERIFICATION OF ROGER NEILL

STATE OF MISSOURI)
) SS
COUNTY OF COLE)

Roger Neill, being duly sworn upon oath, deposes and states as follows:

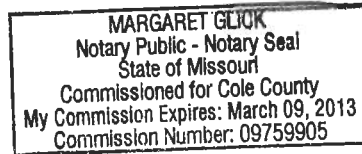
1. I am an Environmental Specialist II for the Missouri State Milk Board.
2. I have read the foregoing petition, and I know the contents thereof.
3. The statements and matters alleged therein are true of my own personal knowledge, except as to those matters stated upon information and belief and, as to such matters, I believe them to be true.

DATED this 23rd day of May, 2011.

Roger Neill
 Roger Neill
 Environmental Specialist II
 Missouri State Milk Board

Subscribed and sworn to before me this 23rd day of May, 2011.

Margaret Glick
Notary Public



My Commission expires:

VERIFICATION OF DON FALLS

STATE OF MISSOURI)
) SS
COUNTY OF COLE)

Don Falls, being duly sworn upon oath, deposes and states as follows:

1. I am an Environmental Public Health Specialist V for the Missouri State Milk Board.

2. I have read the foregoing petition, and I know the contents thereof.

3. The statements and matters alleged therein are true of my own personal knowledge, except as to those matters stated upon information and belief and, as to such matters, I believe them to be true.

DATED this 23 day of May, 2011.

Don Falls

Don Falls
Environmental Public Health Specialist V
Missouri State Milk Board

Subscribed and sworn to before me this 23rd day of May, 2011.

Margaret Glick
Notary Public

My Commission expires:



Microbe Inotech Laboratories, Inc.
Summary Report of Analysis
[MILB – 7911A]

Don Falls
State Milk Board - MO
1616 Missouri Blvd.
Jefferson City, MO 65101
Phone: 573-751-3830
Fax: 573-751-2527

May 2, 2011

Description and Chain of Custody Record Information:

- Wednesday, April 27, 2011 – 1:16PM: Received by Client Courier four (4) solid food samples for *Staphylococcus* and *Listeria* detection. One (1) of the samples will also be checked for pH.
- MiL, Inc. REPORT and Invoice No.: MILB-7911A

Processing:

Within 20 minutes of reception an aliquot from each sample is checked for weight or volume and serially diluted. The dilutions are aseptically transferred in a laminar flow biological cabinet and plated in the following manner(s):

- *Staphylococcus aureus*: Baird Parker method, incubated at 30°C for 24 and 48 hours. Results reported as Total Colony Forming Units (of *Staphylococcus aureus* bacteria) per 1 milliliter or 1 gram of solution or solid (CFU/mL or CFU/g). Positive samples on Baird Parker medium are streaked to Mannitol Salt Agar (MSA) media for confirmation of *Staphylococcus aureus* presence and growth. Additional identifications (if requested) are made by VITEK 2 compact® to verify the presence of *Staphylococcus aureus* colonies in the sample.

***Listeria* species Processing (AFNOR No: BIO-12/2-06/94):**

- **Enrichment processing:** The sample dilution is transferred to a 10mL tube of half-Fraser broth. The tubes are incubated at 30°C for 20-26 hours. After this time the tubes are vortexed again and 1mL is transferred to a 10mL tube of Fraser broth. The tubes are incubated at 30°C for 20-26 hours. The Fraser enrichment is used to perform the VIDAS assay.
- ***Listeria* species processing:** VIDAS® *Listeria* (LIS) Immunoassay for *Listeria* detection is designed to provide convenient and rapid *in vitro* detection of motile and non-motile *Listeria* spp. VIDAS *Listeria* detects *Listeria* antigens using the Enzyme Linked Fluorescent Assay. The test consists of a solid phase receptacle (SPR), which is coated with anti-*Listeria* antibodies and also acts as the pipette, and a reagent strip that contains all the reagents necessary for the assay. The absorbance of the samples is read using the VIDAS instrument.

For the *Listeria* test to be valid:

- the positive control must have a test value of 0.1 or greater and . . .
- the negative control must have a test value of less than 0.1.

A sample is considered **NEGATIVE** when the test is valid and the sample well has a test value of less than 0.1. A sample is considered **POSITIVE** when the test is valid and the sample well has a test value greater than or equal to 0.1.

Results reported as Presence (Positive) or Absence (Negative) of Listeria spp. bacteria.

Results:

Staphylococcus aureus testing results reported as: Colony Forming Unit per milliliter or gram (CFU/mL or CFU/g)

MiL Sample Number	Sample	48hr BP Count Results	MSA Results
7911A-1	Morningland Cheddar K100 Collected 4/21/11	9.75 x 10 ³	Positive
7911A-2	Morningland Cheddar K140 Collected 4/21/11	2.21 x 10 ⁴	Positive
7911A-3	Morningland Cheddar L10 Collected 4/21/11	1.09 x 10 ⁴	Positive
7911A-4	Morningland HPCheddar A201 Collected 4/19/11	2.80 x 10 ³	Positive

Disclaimer: the MiL, Inc. is not a human clinical diagnostic laboratory and makes no warranty to the fitness of this data for such purposes.

MiL Sample Number	Sample	<i>Listeria</i> species by ELISA method
7911A-1	Morningland Cheddar K100 Collected 4/21/11	Absence/Negative
7911A-2	Morningland Cheddar K140 Collected 4/21/11	Absence/Negative
7911A-3	Morningland Cheddar L10 Collected 4/21/11	Absence/Negative
7911A-4	Morningland HPCheddar A201 Collected 4/19/11	Absence/Negative

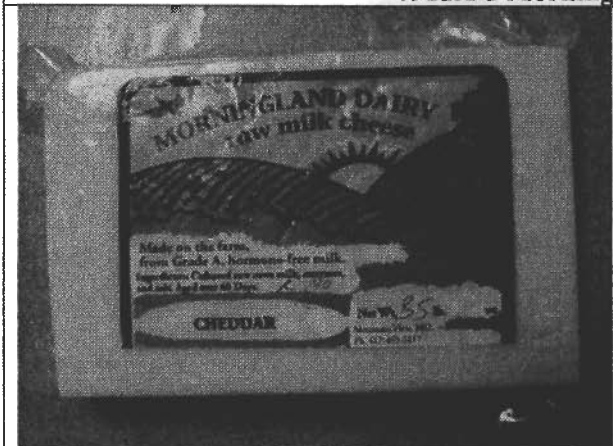
Disclaimer: the MiL, Inc. is not a human clinical diagnostic laboratory and makes no warranty to the fitness of this data for such purposes.

MiL Sample Number	Sample	pH (Average of 5 readings)
7911A-1	Morningland Cheddar K100 Collected 4/21/11	5.06

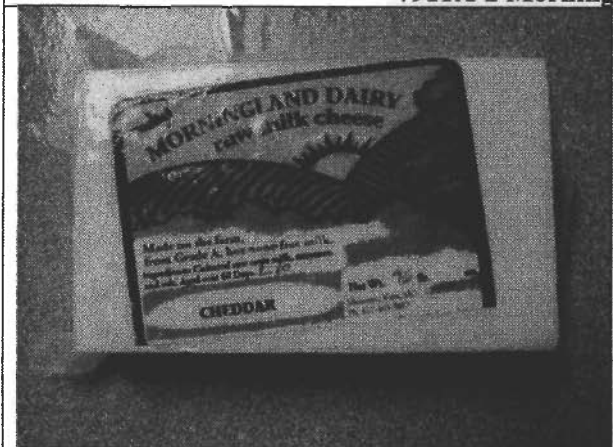
Sample Photos: Front and Back of Sample Packages as received 4/27/2011



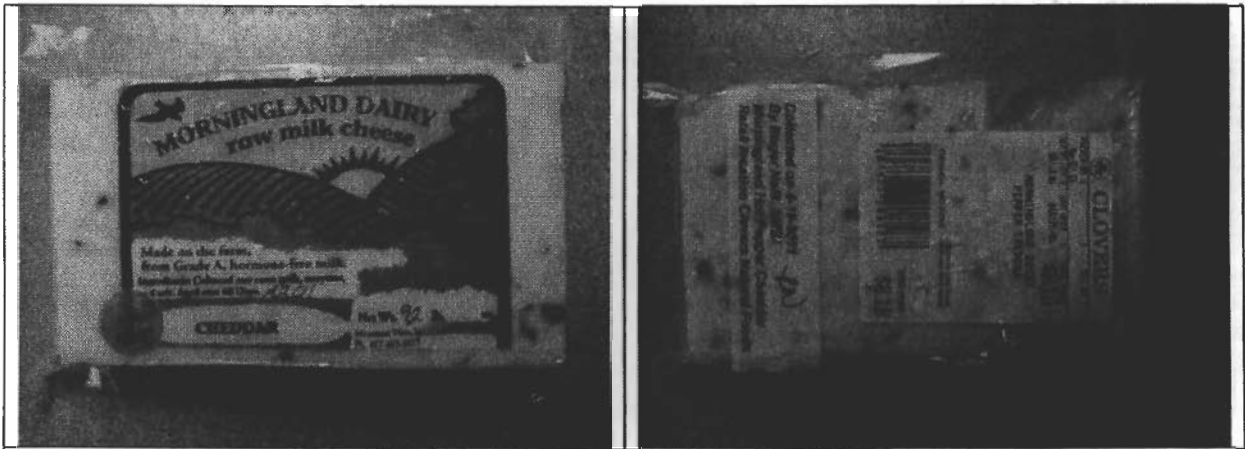
7911A-1 Morningland Cheddar K100



7911A-2 Morningland Cheddar K140

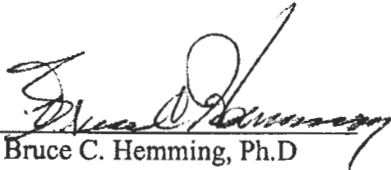


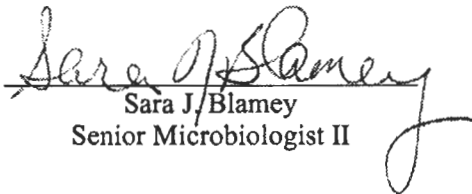
7911A-3 Morningland Cheddar L10



7911A-4 Morningland HPCheddar A201

Thank you from the staff on project:


Bruce C. Hemming, Ph.D
President and CEO


Sara J. Blamey
Senior Microbiologist II



the **MiL, inc.** ATTENTION: Don Falls Fax: 573-751-2527

Sample Receipt Confirmation Form

This notice is to confirm receipt of samples at Microbe Inotech Laboratories, Inc.,
 at 7259 Lansdowne Avenue Suite 200, St. Louis, MO 63119-3421
 Telephone: 1-800-688-9144 Fax: 1-314-645-2544
 Reach Us Online At: www.microbeinotech.com

Client Information:

the MiL, inc. Information:

Contact: Don Falls
 Firm: State Milk Board
 Phone Number: 573-751-3830
 Project Name: _____
 Project Number: PO # 359-1019

Receiving Staff Member: RJH
 Assigned MiL Project Number: MILB- 7911A
 Client Fax (if Different From Above): _____
 Shipment Carrier: Client Courier
 Shipment Tracking Number: _____

Sample Information:

Total Number of Sample Containers: 4 Representing Total Number of Samples: 4

ELECTRONIC DATE & TIME STAMP

Collection by [Signature]
 OR Arrived on: Wednesday 03/05/08 10:00am. AM
Day of Week Month/Day/Year Time of Day

List of Samples Received		Condition Upon Receipt	Analysis Requested	Collection Date
1	Morningland Cheddar K100	Intact	Staph Aureus, Listeria, pH	4/21/11
2	Morningland Cheddar K140	Intact	Staph Aureus, Listeria	4/21/11
3	Morningland Cheddar L10	Intact	Staph Aureus, Listeria	4/21/11
4	Morningland HPCheddar A201	Intact	Staph Aureus, Listeria	4/21/11
5				/ /
6				/ /
7				/ /
8				/ /
9				/ /
10				/ /

Continued On Additional Page (If Checked):

Comments or Further Requested Information:

Thank You, [Signature]
Signature of Sender

+ Copy given to client 4/27/11 RJH

the **MiL, inc.** 7259 Lansdowne Avenue Suite 200, St. Louis, MO 63119-3421
 PHONE: (800) 688-9144 FAX: (314) 645-2544

Microbe Inotech Labs, Inc.

Send Report to: Attn: <u>Don Falls</u> Company: <u>State Milk Board</u> Address: <u>1616 Missouri Blvd.</u> <u>Jefferson City, MO</u> <u>65101</u> <hr/> Phone: <u>573-751-3830</u> Fax: <u>573-751-2527</u> <hr/> Authorized Signature: <u>[Signature]</u> Date: <u>4-25-11</u>	Send Invoice to: Attn: <u>Amy Luke</u> Company: <u>State Milk Board</u> Address: <u>1616 Missouri Blvd.</u> <u>Jefferson City, MO</u> <u>65101</u> <hr/> PO Number: <u>359-1019</u> Project Number: _____ Project Name: _____ <hr/> Terms: Net 30 Days Finance charges of 1.5% will be added to all overdue invoices
Signature and/or sample submission indicated acceptance of MiL, Inc.'s standard terms and conditions	

Food or Consumer Grade Samples

Test Numbers

	SAMPLE NAME	DATE COLLECTED	TESTING DESIRED (Test number or other)
1. Total Plate Count	<u>Morningland Cheddar K 100</u>	<u>4-21-11</u>	<u>5, 6, 9</u>
2. Total Coliforms	<u>Morningland Cheddar K 140</u>	<u>4-21-11</u>	<u>5, 6,</u>
3. Yeast and Mold	<u>Morningland Cheddar L 10</u>	<u>4-21-11</u>	<u>5, 6,</u>
4. Salmonella	<u>Morningland HPC Cheddar</u>	<u>4-19-11</u>	<u>5, 6</u>
5. Staph. Aureus			
6. Listeria			
7. E.Coli 0157:H7			
8. Fecal Coliforms			
9. pH			
10. Identification of strains			
Other tests available upon request.			

Check one:

- Results to be sent overnight - extra shipping charge
- Summary to be faxed, data sent by regular mail
- Summary to be faxed, data sent overnight - shipping charge
- Report to be e-mailed as attached file

E-mail address: Don.Falls@MDA.MO.GOV

Preferred File Format & platform: _____

Send samples to :

MICROBE INOTECH LABORATORIES, INC. • 7259 LANSDOWNE AVENUE, SUITE 200 ST. LOUIS MO 63119-3421
 800-688-9144 • FAX: 314-645-2544 • info@microbeinotech.com

Rec'd 4/27/11
 1:16 pm
 R. Hoffman

Chain of Custody Form *State Milk Board*

Chain of Custody: Persons relinquishing and receiving samples: Provide signature, organization, and date/time to document transfers. (Start with Box Number 1 below.)

Sample Name/Concentration: <i>Morningland Dairy</i>	Description: <i>Raw milk Cheddar Cheese</i>
Lot/Batch #: <i>Balbs A 201, K100, R140, L 10</i>	Container: <i>Consumer wrapped plastic</i>
Prepared By:	Date of Preparation: <i>4-19-11, 4-21-11</i>
Notes/Miscellaneous: <i>4 packages of Morningland Dairy Raw Milk Cheese purchased at Clover Food Store Columbia, MO 4-19, 4-21-11</i>	

Relinquished By	Organization	Date/Time	Received By	Organization	Date/Time
1. <i>Don Falk</i>	<i>State Milk Board</i>		2.		
3.			4.		
5.			6.		
7.			8.		
9.			10.		
11.			12.		
13.			14.		

Rec'd 4/27/11

1:16 pm

Dr. Affman

Microbe Inotech Laboratories, Inc.
VIDAS Report

Listeria (LIS - OE) - DSVID R4.3.0 DSPTC R6.1

VIDAS : 1 - section(s) 512
Technician : admin
Lot number : 110809-0

Completed :
Apr 30 2011 11:24:25 AM

Standard used for this analysis :
Completed : Apr 30 2011 11:24:26 AM
S1 RFV : 3312

Negative < 0.10

Positive >= 0.10

Position	Sample ID	Test		Test Value	Interpretation
		BKG	RFV		
A-1	S1	130	3321		Standard
A-2	S1	129	3304		Standard
A-3	C1	131	3425	1.03	Positive
A-4	C2	135	23	0.00	Negative

Microbe Inotech Laboratories, Inc.
VIDAS Report

Listeria (LIS - OE) - DSVID R4.3.0 DSPTC R6.1

VIDAS : 1 - section(s) 513
Technician : admin
Lot number : 110809-0

Completed :
Apr 30 2011 11:24:55 AM

Standard used for this analysis :
Completed : Apr 30 2011 11:24:26 AM
S1 RFV : 3312

Negative < 0.10

Positive >= 0.10

Position	Sample ID	Test BKG	Test RFV	Test Value	Interpretation
Specimen Name : smb					
B-1	7911A-1	130	24	0.00	Negative
Specimen Name : smb					
B-2	7911A-2	134	41	0.01	Negative
Specimen Name : smb					
B-3	7911A-3	134	42	0.01	Negative
Specimen Name : smb					
B-4	7911A-4	135	39	0.01	Negative

Denise L. Dixon
Morningland Dairy
6248 County Road 2980
Mountain View, Missouri
65548

Copy

Howell County Clerk
Howell Co. Circuit Courthouse
225 Courthouse
West Plains, Missouri 65775
Re: Case No. 10AL-CC00135

February 22, 2011

Dear Clerk,

Enclosed please find a letter of judicial notice pertaining to Howell County Court Case No. 10AL-CC00135. Please stamp both and file the original in the court records. I have enclosed a stamped, self-addressed envelope for the stamped copy to be mailed to me.

Thank you,

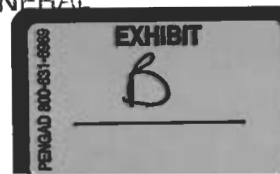
Denise L. Dixon

Denise L. Dixon, Defendant

RECEIVED

FEB 24 2011

MO. ATTORNEY GENERAL



**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.)
)
MORNINGLAND OF THE OZARKS, LLC,)
d/b/a MORNINGLAND DAIRY,)
)
Defendant.)

Case No. 10AL-CC00135

copy

REQUEST FOR JUDICIAL NOTICE

Comes now, Defendants Joseph and Denise Dixon, with a request for judicial notice of the following item, to wit:

(1) There are several things of which courts are required to take judicial notice, with one being all State and Federal laws. We wish to point specifically to Public Law 97-280 which was approved by the United States Congress on October 4, 1982. It is the firmly held religious belief of the defendants that not only was Congress correct in their findings, but that we, the owners of Morningland Dairy, follow the teachings and precepts of scripture as the absolute and final authority in heaven and upon the earth.

(2) As an information source for this court, and to preserve our beliefs upon the face of the record, defendants recite the following:

I, Joseph Alan Dixon, of the house of Israel, do come before Yahweh, the God of Abraham, Isaac, and Jacob, and do bring with me for judgment all of us, from me and my family and businesses, to the state milk board, the attorney general office people, the state milk board people, the state of Missouri government, the FDA people, and all federal government agencies and the U.S. federal government for judgment under Yahweh's Law.

We, at Morningland Dairy, have looked fervently and have found no one that has been harmed in any way by our cheese!

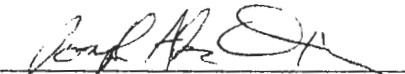
The state agencies and government and federal agencies and government have looked fervently and have found no one that has been harmed in any way by our cheese!

We ask for judgment between them and us from the God of Abraham, Isaac, and Jacob on this matter.

II Chronicles 7:14 - If my people, which are called by my name, shall humble themselves, and pray, and seek my face, and turn from their wicked ways; then will I hear from heaven, and will forgive their sin, and will heal their land.

Respectfully submitted,

Dated this 22nd day of February, 2011



Joseph Alan Dixon
Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of February, 2011, I served the foregoing by depositing in the United States mail with sufficient postage affixed thereto copies of the foregoing "Request For Judicial Notice" to the following:

Jessica Blome
Agriculture and Environment Division
Office of the Attorney General of Missouri
P.O. Box 899
Jefferson City, Missouri 65102
Counsel for Plaintiff

Morningland of the Ozarks, L.L.C.
6248 County Road 2980
Mountain View, Missouri 65548
(417) 469-3817

RECEIVED

JAN 19 2011

CIRCUIT JUDGE
37th JUDICIAL CIRCUIT

January 11, 2011

The Honorable David Dunlap
Howell County Circuit Courthouse
225 Courthouse
West Plains, Missouri 65775

VIA HAND-DELIVERY

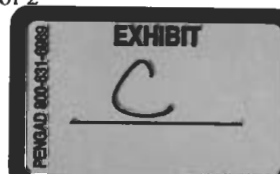
Re: Rescission of Activities and Practices Involving Production, Sale and Marketing
of Raw Milk Products

Dear Judge Dunlap:

This letter is written to inform your agency that any and all manufacturing and sale of our products to the public is hereby terminated. We now understand that your agency has a mandate from Congress to protect the public. We also understand and respect that principle, and we will assume that a cease and desist order had been issued by your agency without any further action on your part.

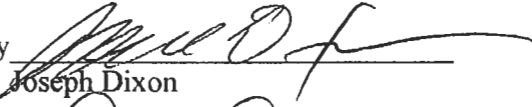
Be it known that we will fully comply with FDA and Missouri State statutes, regulations and orders in the future. We are also aware that your jurisdiction and authority is limited to the public domain, except for clear and present dangers of substantive evil per U.S. Supreme Court decisions. We also understand that we may operate our new First and Fourteenth Amendment Private Raw Milk Membership Association in the Private Domain outside your jurisdiction and authority unless you have legal proper objections within ten (10) days of the receipt of this letter.

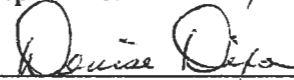
We also apologize for the expense, time and effort your agency has expended thus far and hope you realize that we never had any intent to violate the law in the past or future. We acted upon information and understandings of our research and various other persons and organizations. Apparently, some of that research and information was incorrect which has caused some concern and an investigation on your part. Please inform us as to anything we can do to redeem and mitigate ourselves from any civil and or/criminal sanctions by your agency. We believe that our only fault is a good faith mistaken understanding of the law.



Sincerely,

Morningland of the Ozarks, L.L.C.

by 
Joseph Dixon

by 
Denise Dixon

**Morningland Dairy
(A Private Unpasteurized Whole Milk Membership Association)
6248 County Road 2980
Mountain View, Missouri 65548
(417) 469-3817**

RECEIVED

JAN 19 2011

**CIRCUIT JUDGE
37th JUDICIAL CIRCUIT**

January 18, 2011

The Honorable David Dunlap
Howell County Circuit Courthouse
225 Courthouse
West Plains, Missouri 65775

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Re: Notice of Morningland Dairy to Market Products to Private Members Only in the Private Domain; Case no. 10-AL-CC00135

Dear Judge Dunlap:

This letter is our official notice to your agency concerning our First and Fourteenth Amendment Private Health Membership Association. This association will be marketing products to our private members only in the private domain. The U.S. Supreme Court has mandated and ruled in numerous cases that there exists a public domain and a private domain in the United States. Again, our private association and members have decided to operate also in the private domain only under the liberty clause of the right to due process of law under the Fifth Amendment of the U.S. Constitution.

As in N.A.A.C.P. v. Button, 371 U.S. 415 at 421, in the public domain, a person who advises another that his legal rights have been infringed and refers him to a particular attorney has committed a *mala prohibita* felony crime in the State of Virginia. But in the private domain of a First Amendment legal membership association, the state,

“...in the domain of these indispensable liberties, whether of...association, the decisions of this Court recognize that abridgment of such rights.” N.A.A.C.P. v. Button, supra at 421. The “modes of...association protected by the First and Fourteenth (are modes) which Virginia may not prohibit.” N.A.A.C.P. v. Button, supra at 415. In other words, a private mode or domain is protected and is a different domain than a public domain. What was a *mala prohibita* felony criminal act in the public domain became a legally protected act in the private domain or private association. A *mala in se* crime is not legally protected in the private domain or private association.

Also, the private domain is referred to as a “sanctuary from unjustified interference by the State” in Pierce v. Society of Sisters, 268 U.S. 510 at 534-535. And as a “constitutional shelter” in Roberts v. United States, 82 L.Ed.2d 462 at 472. And again as a “shield” in Roberts v. United States, supra at 474.

In addition, the U.S. Supreme Court in Thomas v. Collins, 323 U.S. 516 at 531, specifically refers to the “Domains set apart...for free assembly.” The First Amendment right to association creates a “preserve” in Baird v. Arizona, 401 U.S. 1.

The private domain of an association is a sanctuary, constitutional shelter, shield, and domain set apart and a preserve according to a number of U.S. Supreme Court decisions.

Please be informed that Morningland Dairy is a 1st and 14th Amendment private unpasteurized whole milk membership association that only has private contract members and does not involve public persons in any manner. Your Agency and others do not have jurisdiction or authority to even investigate our private unpasteurized whole milk association unless you have some reasonable suspicion or evidence that our private

members are being subjected to a clear and present danger of substantive evil within our private association. We assure you that our private members are not being harmed in any manner. Your mandate from the Federal legislature is only to protect the public, not private members. Our right to set up a 1st and 14th Amendment private unpasteurized whole milk association and the public member's right to change himself or herself into a legal private contract member of our associations has been upheld by numerous U.S. Supreme Court decisions. Also, you are hereby put on notice that any interference with our private association activities may result in a Federal Civil and Constitutional Rights lawsuit under Title 42 U.S.C. § 1983 by suing the persons involved in their "individual capacities" under Hafer v. Melo, 502 U.S. 25.

If your agency decides to defy the Supreme Law of the Land and U.S. Supreme Court as was done in the case of Cooper v. Aaron, 358 U.S. 1, please review Cooper v. Aaron, supra. The U.S. Supreme Court stated that,

'It follows that the interpretation of the Fourteenth Amendment enunciated by this Court...is the supreme law of the land and Art. 6 of the Constitution makes it of binding effect on the States "anything in the Constitution or Laws of any State to the contrary notwithstanding."

"Every state legislator and executive and judicial officer is solemnly committed by oath pursuant to Art. 6, cl. 3 to support this Constitution."

"No state legislator or executive or judicial officer can war against the Constitution without violating his (or her) undertaking to support it."
The same principles also apply to federal.

Again, the U.S. Supreme Court has upheld First and Fourteenth Amendment association rights.

'This Court has repeatedly held that rights of association are within the ambit of the constitutional protections afforded by the First and Fourteenth Amendments. NAACP v. Alabama, 357 U.S. 449, 2 L.Ed2d 1488, 78 S.Ct. 1163; Bates v. Little Rock, 361 U.S. 516, 4 L.Ed.2d 480, 80 S.Ct.

412; Shelton v. Tucker, 364 U.S. 479, 5 L.Ed.2d 231, 81 S.Ct. 247; NAACP v. Button, 371 U.S. 415, 9 L.Ed.2d 405, 83 S.Ct. 328. The respondent Committee does not contend otherwise, nor could it, for, as was said in NAACP v. Alabama (US) supra, “It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” 357 U.S., at 460. Gibson v. Florida Investigation Committee, 9 L.Ed.2d 929.

Although most of these U.S. Supreme cases dealt with private legal membership associations, we know that this principle applies to private other membership associations. In United Mine Workers v. Illinois State Bar Assoc., 389 U.S. 217, a private association case, the court stated that,

“And the rights of free speech and a free press are not confined to any field of human interest.” Thomas v. Collins, 323 U.S. 516 at 531, 65 S.Ct. 315, 89 L.Ed. at 441.”

‘It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the “liberty” assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.’ 357 U.S. at 460. Gibson v. Florida Investigation Committee, supra.

‘The First and Fourteenth Amendment rights of free speech and free association are fundamental and highly prized, and “need breathing space to survive.” NAACP v. Button, 371 U.S. 415, 433, 9 L.Ed.2d 405, 418, 83 S.Ct. 328. Gibson v. Florida Investigation Committee, supra.

“It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, cf. De Jonge v. Oregon, 299 U.S. 353, 364, 81 L.Ed. 278, 282, 57 S.Ct. 255, and therefore are united in the First Article’s assurance. Cf. 1 Annals of Congress, 759, 760. Thomas v. Collins, supra.

It is evident that free speech and association rights are similarly treated as the same. If your agency allows free speech, then it must allow freedom of association concerning this field of human interest.

Our intent is to operate under our First and Fourteenth Amendment private membership association to private members only unless you furnish us legal and valid objections to same within ten (ten) days from the receipt of this letter.

Morningland Dairy
*A Private Unpasteurized Whole Milk
Membership Association*

By 
Joseph Dixon, Trustee

By 
Denise Dixon, Trustee

January 2011

Dear Morningland Customer,

Thank you for your prayers and support during this time of trouble as we continue trying to bring you a high quality unpasteurized (raw) whole milk cheese. (It is the same process as before, the wording just helps define between milk meant for pasteurization, and non pasteurization.)

We are awaiting a ruling from the Judge on the first part of our trial (whether or not the embargo and destruction "order" was legal), for which the closing arguments will be presented on January 28, 2011. If we win this first one, we will then probably go to a jury trial for the second portion, which deals with damages sustained by Morningland of the Ozarks LLC.

As of January 10, 2011 Morningland of the Ozarks LLC, d.b.a. Morningland Dairy, decided to leave the public sector (regulated by the FDA, USDA, and others, etc.) and become Morningland Dairy (A Private Unpasteurized (raw) Whole Milk Membership Association). This association is founded on the 1st and 14th Amendments of the U.S. Constitution. In light of this development we need a signed membership agreement in order to ship cheese to anyone which includes a 1 (one) time fee of \$10.00 for a lifetime membership in said association, which will be applied towards your first order as a member.

Enclosed you will find a Morningland Dairy membership form; Please take the time to read and fill this out. If you have access to a scanner and email, please return the completed form via email or fax. (Please see information at bottom of page)

Also enclosed you will find our current order sheet, which is limited in variety of cheese while we continue to fight for the cheese in our embargoed cooler and make plans to resume production of our own cheese later this year as it becomes financially viable.

"The LORD bless thee, and keep thee: The LORD make his face shine upon thee, and be gracious unto thee: The LORD lift up his countenance upon thee, and give thee peace." Numbers 6:24-26 KJV

Best Regards,

Joseph, Denise, Jedadiah, and

Morningland Families!

morningland@centurytel.net

(417)469-3817 Fax (417)469-5086



MEMORANDUM OF UNDERSTANDING

I understand that the fellow members of the Association that provide products and services, do so in the capacity of a fellow member and not in the capacity as a licensed wholesaler, retailer or provider. I further understand that within the association no wholesaler/retailer-customer relationship exists but only a contract member-member Association relationship. In addition, I have freely chosen to change my legal status as a public consumer/customer to a private member of the Association. I further understand that it is entirely my own responsibility to consider the recommendations and products offered to me by my fellow members and to educate myself as to the efficacy, risks, and desirability of same and the acceptance of the offered or recommended products and is my own carefully considered decision. Any request by me to a fellow member to assist me or provide me with the aforementioned recommendations or products is my own free decision in an exercise of my rights and made by me for my benefit, and I agree to hold the Trustee(s), staff and other worker members and the Association harmless from any unintentional liability for the results of such recommendations and products, except for harm that results from instances of a clear and present danger of substantive evil as determined by the Association, as stated and defined by the United States Supreme Court.

The Trustees and members have chosen Joseph and Denise Dixon as the persons best qualified to perform services to members of the Association and entrust them to select other members to assist them in carrying out that service.

In addition, I understand that, since the Association is protected by the First and Fourteenth Amendments to the U.S. Constitution, it is outside the jurisdiction and authority of Federal and State Agencies and Authorities concerning any and all complaints or grievances against the Association, any Trustee(s), members or other staff persons. All rights of complaints or grievances will be settled by an Association Committee and will be waived by the member for the benefit of the Association and its members. Because the privacy and security of membership records maintained within the Association, which have been held to be inviolate by the U.S. Supreme Court, the undersigned member waives complaint process. Any customer/consumer records kept by the association will be strictly protected and only released upon written request of the member. I agree that violation of any waivers in this membership contract will result in a no contest legal proceeding against me. In addition, the Association does not participate in any insurance plans.

I agree to join the Association, a private membership association under common law, whose members seek to help each other achieve better health and live longer with good quality products.

I understand that the providers who are fellow members of the Association are offering me products, services and benefits that do not necessarily conform to conventional products on the market.

As a member, I accept the goals of helping my body function better and choosing food products that are very safe, realizing that no product testing is foolproof. Other aspects of informed consent will take place in my discussions with the providers and my fellow members of the Association.

My activities within the Association are a private matter that I refuse to share with State Medical Board(s), the FDA, FTC, StateMilk Board(s), USDA, Agricultural Board(s) and any other governmental agency without my expressed specific permission. All records and documents remain as property of the Association, even if I receive a copy of them. I fully agree not to file a liability lawsuit against a fellow member of the Association, unless that member has exposed me to a clear and present danger of substantive evil. I acknowledge that the members of the Association do not carry liability insurance.

OZARK HILL FARMS

GOAT MILK CHEESE
RAW MILK CHEDDAR

INGREDIENTS:

Cultured raw goats milk
vegetable rennet & salt.

AGED OVER 60 DAYS

NET WT: 9.5



REVISED 800-631-8985

EXHIBIT

E

CLOVERS

PACKED ON

SELL BY

May 11, 11

NET WT. (CT)

UNIT PRICE \$11.59/lb

TOTAL PRICE

\$11.36

0.98 lb

GOAT MILK CHEDDAR

Columbia, MO 65201

(872) 448-1000 North
(872) 448-0900 South



TOTAL PRICE

\$11.36

Collected on 5-13-2011

By Roger Neill SMB

Ozark Hills Farms Raw Milk Cheddar (goat)

Retail location Clovers Natural Foods

PENGAD 600-631-0000

EXHIBIT

F