

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CIV 10-1184 RLP-ACT

Undetermined Quantities of Articles of Food, Consisting of Chili Pods, Ground Chili, and Crushed Chili, Including In-process and Finished Products, of Any Lot Number, Packaged or Unpackaged, in Any Size or Type of Container, Labeled or Un-labeled, that are Determined by Their Labeling or Otherwise To Consist in Whole or in Part of Ingredients That Have Originated From Outside The State of New Mexico, and That Are Located Anywhere in the Food Warehouse of Duran and Sons, L.L.C., Highway 187, Derry, New Mexico, or Elsewhere Within the Jurisdiction of This Court,

Defendants.

AMENDED COMPLAINT FOR FORFEITURE

The United States of America, Plaintiff in this matter, shows the Court the following in support of this Amended Complaint for Forfeiture:

NATURE OF THE ACTION

1. The United States of America requests seizure and condemnation of certain articles of food, as described in the caption, in accordance with the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. § 301, et seq.

2. This court has subject matter jurisdiction under 28 U.S.C. §§ 1345 and 21 U.S.C. § 334.

3. That there are at Derry, New Mexico, in the possession of Duran and Sons, L.L.C. (d/b/a Duran Chili), Highway 187, or elsewhere within the jurisdiction of this Court, articles of food, as described in the caption, which consist in whole or in part of ingredients that were shipped in interstate commerce from outside the State of New Mexico.

JURISDICTION AND VENUE

4. Plaintiff brings this action *in rem* in its own right to condemn and forfeit the articles. This Court has jurisdiction over an action commenced by the United States under 21 U.S.C. § 1345 and 21 U.S.C. § 334.

5. This Court has *in rem* jurisdiction over the articles because they are located in the District of New Mexico. Pursuant to Supplemental Rule G(3)(b), the plaintiff requests that the Court issue an arrest warrant upon filing this complaint, which the plaintiff will execute upon the property, pursuant to Supplemental Rule G(3).

PARTIES AND ENTITIES

6. Plaintiff is the United States of America ("plaintiff" or the "government").

7. The defendants are all articles of food that are located in the food warehouse of Duran and Sons, L.L.C., Highway 187, Derry, New Mexico, which are determined to have originated outside the State of New Mexico. Pursuant to its investigation, the United States Food and Drug Administration (FDA) determined these articles of food originated in Mexico.

BASIS FOR FORFEITURE

8. That the articles of food are adulterated while held for sale after shipment of one or more of their components in interstate commerce, within the meaning of the Act, 21

U.S.C. § 342(a)(4), in that they are held under insanitary conditions whereby they may have become contaminated with filth.

9. That by reason of the foregoing, the articles are held illegally within the jurisdiction of this Court and are liable to seizure and condemnation pursuant to 21 U.S.C. § 334.

FACTS

10. United States Food and Drug Administration (FDA) investigators conducted an inspection of Duran and Sons, L.L.C., on November 15-22, 2010. FDA investigators observed evidence of an active and widespread insect and rodent infestation in the food warehouse. During the inspection, investigators observed and photographed rodent nesting material on finished product, numerous rodent excreta pellets on and around food product, several rodent gnawed containers of food, and fluorescing stains indicative of rodent urine. Additionally, they observed a live cat, live birds, apparent bird nesting, bird droppings, rodent nesting, rodent excreta pellets, animal feces, animal urine, live and dead insects, and insect larvae, and moth-like insects throughout the entire product warehouse where finished dried whole chili pods, ground red pepper, and in-process whole chili pods are stored. Numerous harborage areas and potential entryways for vermin and birds were observed throughout the building.

11. FDA laboratory analysis of investigational samples collected during the current inspection confirmed the presence of rodent excreta pellets and rodent gnawed material.

12. By reason of the foregoing, the articles are held illegally within the jurisdiction of this Court and are liable to seizure and condemnation pursuant to 21 U.S.C. § 334.

13. On November 17, 2010, the New Mexico Environment Department placed an embargo on all articles in the food warehouse of Duran and Sons, L.L.C.

WHEREFORE, plaintiff United States of America prays that:

(a) a warrant of arrest issue for all articles of food that are located in the food warehouse of Duran and Sons, L.L.C., Highway 187, Derry, New Mexico, as described in the caption;

(b) condemnation and judgment be entered declaring the defendant articles of food be forfeited to the United States of America and grant plaintiff the costs of this proceeding against the claimant of the articles;

(c) defendant articles be disposed of pursuant to the provisions of the Act;

(d) the United States of America be granted such other and further relief that the Court deems just and proper.

Respectfully submitted,

KENNETH J. GONZALES
United States Attorney

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VERIFICATION

I, THOMAS R. BERRY, hereby declare that:

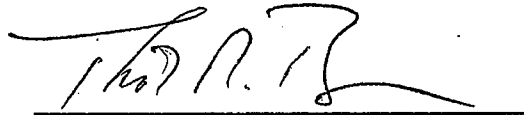
1. I am a Compliance Officer with the Food and Drug Administration, United State Department of Health and Human Services. I am the lead Compliance Officer regarding this case.

2. I have read the above Complaint and know its contents.

3. Based on information and belief, the allegations in the Complaint are true.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13th day of December, 2010, in Denver, Colorado.



THOMAS R. BERRY