

NOTICE OF CLAIM AND CLAIM PURSUANT TO WIS. STAT. § 893.80(1d)

To: Beth Hagen, Town Clerk
Town of Gibraltar
4097 State Highway 42
P.O. Box 850
Fish Creek, WI 54212

Introduction

1. Pursuant to Wis. Stat. § 893.80(1d)(a), Wisconsin companies White Cottage Red Door, LLC and Cherry Creek Investments, LLC (“Claimants”) hereby give notice to the Town of Gibraltar, via its agent the Town Clerk, that the Town has injured them through its prohibition on vending goods from vehicles. This prohibition both violates Article I, Section 1 of the Wisconsin Constitution, which guarantees Claimants the right to earn an honest living free from arbitrary regulations, and is preempted by Wisconsin law.

2. White Cottage Red Door, LLC, whose four members are Lisa Howard, Kevin Howard, Jessica Hadraba, and Christopher Hadraba, is the official corporate form for a business named White Cottage Red Door.

3. Cherry Creek Investments, LLC, whose two members are Lisa Howard and Kevin Howard, owns a parcel of real property located in Fish Creek, Wisconsin at 8813 State Highway 42, which is where White Cottage Red Door operates.

4. White Cottage Red Door includes a brick-and-mortar store that sells specialty foods like jams and salsas, along with baked goods prepared in its state-inspected and state-licensed commercial kitchen.

5. In order to expand White Cottage Red Door’s menu and offer sandwiches and other goods, Claimants would like to operate White Cottage Red Door’s mobile restaurant, colloquially known as a “food truck,” next to White Cottage Red Door’s brick-and-mortar store,

on Cherry Creek Investments, LLC property at 8813 State Highway 42. The mobile restaurant has authorization to operate there through a zoning permit issued by the Door County Planning Department. Moreover, having passed a health-and-safety inspection by Wisconsin's Department of Agriculture, Trade and Consumer Protection, that mobile restaurant is licensed by the state as a "retail food establishment," as defined by Wis. Stat. § 97.30.

6. Christopher Hadraba first began operating White Cottage Red Door's mobile restaurant on August 26, 2017. On that same day, the Town of Gibraltar's constable appeared at 8813 State Highway 42 and told him to stop vending. Upon seeing the mobile restaurant's permits to operate, the constable left. Later that day, Town Chairman Richard Skare also came to 8813 State Highway 42 to investigate, and also left after seeing the mobile restaurant's permits.

7. Without notifying Claimants, the Gibraltar Town Board discussed a ban on White Cottage Red Door's mobile restaurant at multiple meetings. And on September 19, 2017, the Board sent the Door County Planning Department a letter demanding that it retract the mobile restaurant's zoning permit, incorrectly stating that the mobile restaurant violated a 1982 Town of Gibraltar ordinance. On October 2, 2017, the Door County Planning Department responded to the Town of Gibraltar's demand by confirming that White Cottage Red Door's mobile restaurant was legal and refusing to rescind the mobile restaurant's zoning permit.

8. Stymied in this demand to stop White Cottage Red Door's mobile restaurant, the Town of Gibraltar's next step was to prohibit mobile vending entirely. On January 13, 2018, the Town of Gibraltar published its "Amended and Restated Ordinance No. 1982-05," which replaced its 1982 vending ordinance. Amended and Restated Ordinance No. 1982-05 (the "Vending Ban") provides that:

It shall be unlawful for any person to vend, sell or offer for sale any goods, products, merchandise, wares, tokens, food (including without limitation popcorn, hot-dogs, ice cream, desserts, pizza, sandwiches and tacos) or any other thing (collectively, "Goods") from a vehicle, truck, trailer, cart, pushcart or handcart at any place whatsoever in the Town of Gibraltar.

The Vending Ban also authorizes fines of up to \$500 per day.

9. The Vending Ban is a total ban on mobile restaurants. It applies to all goods, even safe and healthy ones. It applies to all vendors, even state-licensed ones. And it applies to all locations, even private property.

10. The Vending Ban violates Claimants' right to earn an honest living guaranteed by the Wisconsin Constitution. Its sole (and illegitimate) purpose is to protect brick-and-mortar restaurants from competition. Indeed, the town's chairman Dick Skare owns a brick-and-mortar restaurant in Fish Creek. The board member who formally moved the town's board to revoke White Cottage Red Door's zoning permit for its mobile restaurant—Brian Hackbarth—works for a brick-and-mortar restaurant. And a third board member—Steve Sohns—has publicly said that restaurants "should be up in arms" over food-truck competition.

11. The Vending Ban is also preempted by Wisconsin law. Wisconsin has a comprehensive scheme for regulating and licensing mobile restaurants, which White Cottage Red Door's mobile restaurant has satisfied. Because the Town of Gibraltar's Vending Ban frustrates that comprehensive scheme by prohibiting what the State of Wisconsin has licensed, it is invalid.

Event Giving Rise to this Claim

12. The Vending Ban itself is an ongoing injury to Claimants. Because of the ban, White Cottage Red Door's mobile restaurant is currently closed. Were it not for the ban, White Cottage Red Door, LLC, and its member Christopher Hadraba, would operate a mobile

restaurant, and Cherry Creek Investments, LLC would allow White Cottage Red Door's mobile restaurant to operate on its property.

13. On February 2, 2018, Claimants' attorney Randall Nesbitt inquired whether the Vending Ban encompassed White Cottage Red Door's mobile restaurant given that it was legal before the Vending Ban's enactment

14. On February 13, 2018, an attorney representing the Town of Gibraltar informed Mr. Nesbitt that the Vending Ban included White Cottage Red Door's mobile restaurant.

15. This Notice of Claim and Claim is filed within 120 days of the ongoing injury caused by the Vending Ban and the above-described statement of the Town of Gibraltar attorney made on February 13, 2018. This Notice of Claim therefore conforms with Wis. Stat. § 893.80(1d)(a).

Itemized Statement of Relief Sought

16. Pursuant to Wis. Stat. § 893.80(1d)(b), Claimants demand that the Town of Gibraltar repeal the Vending Ban, and allow vendors who satisfy applicable county-level and state-level laws and regulations, including White Cottage Red Door, LLC, to sell goods in the Town of Gibraltar from mobile vehicles, including on property owned by Cherry Creek Investments, LLC. If the Town of Gibraltar fails to do so, Claimants will seek declaratory and injunctive relief, as well as attorneys' fees, in a court of competent jurisdiction.

17. Claimants also demand nominal damages in the amount of one dollar.

Name and Address of Claimants

18. Pursuant to Wis. Stat. § 893.80(1d)(b) the Town of Gibraltar is hereby notified that the names and addresses of the Claimants are:

White Cottage Red Door, LLC
8813 State Highway 42
Fish Creek, WI 54212-9721

Cherry Creek Investments, LLC
8813 State Highway 42
Fish Creek, WI 54212-9721

Dated: May 9, 2018

Respectfully submitted by Attorneys for Claimants,



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