

CAUSE NO. CV-2016-00485

GLAZIER FOODS COMPANY,
PLAINTIFF,

vs.

MOM'S PLACE, LLC,
DEFENDANT.

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IN THE COUNTY COURT

AT LAW NO. 2

DENTON COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW, **GLAZIER FOODS COMPANY** (also referred to as "Plaintiff"), complaining of **MOM'S PLACE, LLC** (also referred to as "Defendant"), and files this its Original Petition and for cause of action will respectfully show the Court the following:

1. *Discovery Level.* Discovery is intended to be conducted under Level 1, as provided by Rule 190.2, Texas Rules of Civil Procedure.

2. *Parties.* Plaintiff is **GLAZIER FOODS COMPANY**, whose address is in care of Barnett & Garcia, PLLC, 3821 Juniper Trace, Suite 108, Austin, Texas 78738.

Defendant, **MOM'S PLACE, LLC**, is a Texas Limited Liability Company that can be served by delivering a citation and a copy of this petition to its registered agent, **Haughton Law Group, P.C.**, or its president or any vice-president, at **5099 U.S. Highway 377, Aubrey, Texas 76227**.

3. *Amount in Controversy.* Plaintiff seeks from Defendant only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees. The damages sought are within the jurisdictional limits of the court.

4. *Sworn Account.* Plaintiff sold to Defendant one or more items of goods, wares, merchandise or services as shown on the attached statement of account in the usual course of business. Defendant became bound to pay Plaintiff the designated price, which is a reasonable, usual, and customary price for such an item. Plaintiff's affidavit and statement of account are attached hereto as Exhibit "A" and are incorporated herein by reference as if set out word for word. This verified account represents a transaction or series of transactions for which a systematic record has been kept.

5. *Contract.* In the alternative, Defendant contracted for goods, wares, merchandise and/or services from Plaintiff at the special instance and request of Defendant in the

regular course of Plaintiff's business. Plaintiff has fully complied with the agreement. Defendant accepted the goods, wares, merchandise and/or services and agreed and became bound to pay Plaintiff's designated charges, which are reasonable, usual, and customary for such items.

6. *Default, Debt and Breach.* Despite demand, Defendant has refused and failed to pay the balance of the account, with a balance remaining due to Plaintiff in the sum of \$54,043.51, plus accrued interest. There are no further offsets, credits, or payments existing in favor of Defendant.

7. *Quantum Meruit and Unjust Enrichment.* In the alternative, Plaintiff pleads for recovery under the doctrine of quantum meruit. Plaintiff rendered valuable services for or furnished goods to Defendant under circumstances as reasonably notified Defendant that Plaintiff expected to be paid by Defendant. Defendant accepted, used, and enjoyed the services and/or goods provided by Plaintiff, but has not paid Plaintiff for them. As a result, Defendant has been unjustly enriched.

8. *Conditions Precedent.* All conditions precedent have been performed or have occurred.

9. *Attorney's Fees.* Defendant's default has made it necessary for Plaintiff to employ the undersigned attorney to file suit. Plaintiff is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code § 38.001. Plaintiff retained counsel and presented Plaintiff's claim to Defendant in compliance with Texas Civil Practice & Remedies Code § 38.002, but the amount remains unpaid.

10. *Prayer.* WHEREFORE, Plaintiff prays that

- a. Defendant be cited to appear and answer herein;
- b. Plaintiff be granted judgment for \$54,043.51 as the principal amount due on this account;
- c. Plaintiff be granted judgment for accrued and unpaid interest on the debt before maturity;
- d. Plaintiff be granted judgment for pre-judgment and post-judgment interest on the matured, unpaid debt at the highest legal or contractual rate allowed by law;
- e. Plaintiff be granted judgment for reasonable attorney's fees;
- f. Plaintiff be granted judgment for all costs of court; and
- g. Plaintiff be granted judgment for other and further relief to which Plaintiff is justly entitled.

Respectfully submitted,

BARNETT & GARCIA

A Professional Limited Liability Company

3821 Juniper Trace, Suite 108

Austin, Texas 78738

TELEPHONE: (512) 266-8830

FACSIMILE: (512) 266-8803



Ian A. McCarthy

State Bar No. 24078960

Ian@barnettgarcia.com

Don M. Barnett

State Bar No. 01780000

Matias Eduardo Garcia

State Bar No. 24012675

Sean S.V. Homrig

State Bar No. 24062789

Lawrence J. Falli

State Bar No. 24068702

ATTORNEYS FOR PLAINTIFF

EXHIBIT “A”

AFFIDAVIT

STATE OF MICHIGAN §
 §
COUNTY OF KENT §

BEFORE ME, the undersigned authority, on this day personally appeared Dawn Rouse, who swore on oath that the following facts are true:

“My name is Dawn Rouse. I am of sound mind, I am capable of making this affidavit, and I have personal knowledge of the facts stated herein.


“I am a custodian of the records of Glazier Foods Company, a Texas corporation, hereinafter referred to as the “Creditor”. Attached hereto are records from the Creditor. These records are kept by the Creditor in the regular course of business, and it was the regular course of business of the Creditor for an employee or representative of the Creditor with knowledge of the act, event, condition, or opinion recorded to make the record or to transmit information thereof to be included in the record, and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

“The attached records and the account included therein, in favor of **the Creditor** and against **Mom's Place, LLC, a Texas limited liability company** for the principal sum of **\$54,043.51**, as reflected in those records, is just, true, and due. All just and lawful offsets, payments, and credits have been allowed.”



Affiant

Sworn and subscribed before me by Dawn Rouse on February 11, 2016.



Notary Public Nina Veneklas

My Commission Expires on:

NINA C VENEKLASE
Notary Public, State of Michigan
County of Kent
My Commission Expires Feb. 23, 2018
Acting in the County of

MOM'S PLACE
 Acct # 100129275

Transaction Number	Transaction Date	Transaction Type	Reference Number	Original Amount	Balance Due	Due Date
164738243 ✓	8/11/2015	Invoice		3,725.95	3,725.95	8/18/2015
165051663 ✓	8/28/2015	Invoice		3,829.60	3,829.60	9/4/2015
165102860 ✓	9/1/2015	Invoice		3,858.65	3,858.65	9/8/2015
1534	9/9/2015	Ar Payment		(6,500.00)	(1,756.83)	9/9/2015
165299039 ✓	9/11/2015	Invoice		3,467.51	3,467.51	9/18/2015
165355927 ✓	9/15/2015	Invoice		2,738.09	2,738.09	9/22/2015
165429311 ✓	9/18/2015	Invoice		3,643.15	3,643.15	9/25/2015
RM-0112417	9/25/2015	Nsf Check	1553 ✓	3,030.00	3,030.00	9/26/2015
RM-0112496	9/29/2015	Nsf Check	1534 ✓	6,530.00	6,530.00	9/30/2015
FC-0967517	9/30/2015	Finance Charge		242.15	242.15	9/30/2015
RM-0112729	10/9/2015	Nsf Check	(100115)	6,885.28	6,885.28	10/10/2015
RM-0112790	10/14/2015	Nsf Check	100615 ✓	2,965.54	2,965.54	10/15/2015
RM-0112869	10/19/2015	Nsf Check	100915 ✓	3,528.84	3,528.84	10/20/2015
RM-0112934	10/21/2015	Nsf Check	101415 ✓	3,835.48	3,835.48	10/22/2015
RM-0112983	10/23/2015	Nsf Check	101615 ✓	2,622.83	2,622.83	10/24/2015
RM-0113037	10/27/2015	Nsf Check	102015 ✓	5,379.42	5,379.42	10/28/2015
FC-0973189	10/31/2015	Finance Charge		583.75	583.75	10/31/2015

Total

55,109.41

FOR OFFICE USE ONLY

678660



11303 ANTOINE DRIVE • PO BOX 2724 • HOUSTON TEXAS 77252 • (713) 657-6411

NEW ACCOUNT FORM

SHIP TO

Moms Place LLC
204 S. MAEN
Aubrey TX 76227

BILL TO

[Signature]

BUSINESS INFORMATION

Proprietorship Corporation Subsidiary of Corporation Partnership
LLC LLP

Does Operator Own Premises? YES NO

Length of Time at Present Location yrs 10 yrs

Estimate Monthly Purchases \$ 28,000

MORTGAGER

Shirley & Ken MURRAY
204 Mulberry
Aubrey TX 76227

LESSOR

LIST ALL PRESENT AND/OR PREVIOUS BUSINESS NAMES AND ADDRESSES:

1. MOMS ON MAEN LLC

COMPLETE THE FOLLOWING INFORMATION FOR ALL CORPORATE OFFICERS, PARTNERS, OR AN INDIVIDUAL PROPRIETOR.

KRYSTAL MURRAY
204 S. MAEN
Aubrey TX 76227

SELVIE MURRAY
204 S. MAEN
Aubrey TX 76227

BANKING INFORMATION

Northstar Bank

Pelot PT. TEXAS

Brett Kuhn 177907
940-686-5023

TRADE REFERENCES

	Name	Acct #	Address	Phone Number
1.	U.S. Foods	24039265		
2.				
3.				
4.				

PARTIES HEREBY AGREE THAT ALL PURCHASES MADE ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- The undersigned purchaser hereby agrees that all amounts due for goods and services purchased from Glazier Foods Company ("Glazier") shall be paid by the undersigned at P.O. Box 274, Mansfield, Texas, County, Texas 77652.
- The undersigned purchaser hereby agrees that all amounts due Glazier Foods Company are payable within 10 days by the 15th of the month following the date of purchase. If weekly deliveries are made, the due date is the 15th of the month following the purchase week. If net 14, fourteen days from date of purchase. Any amount due Glazier Foods Company is not paid within said period a delinquent charge and interest to the maximum allowed by law shall be added to the sum due.
- The undersigned also agrees to pay, in the event the indebtedness becomes delinquent and a delinquent charge or interest, collection, reasonable attorney's fees and/or collection and court costs.
- The undersigned agrees to notify Glazier Foods Company by certified mail of any pending change of ownership of the customer and further agrees to be liable for all purchases should the undersigned fail to comply with said notification.
- All disputes between Glazier Foods Company and the undersigned shall be subject to the prevailing National Mercantile Law of the Texas Penal Code.
- The undersigned hereby grants to Glazier a purchase money security interest in all goods hereafter purchased from Glazier including, without limitation, inventory, equipment, and fixtures used in connection with such goods are manufactured, processed or assembled and Glazier shall have all the rights and obligations of a secured party and the undersigned shall have all of the rights and obligations of a debtor under the Texas Uniform Commercial Code, no renewal or extension of any credit, no release or substitution of any of the collateral securing such credit, and no delay in enforcement of any of the rights of Glazier shall constitute any waiver of rights by Glazier.

- The undersigned warrants to Glazier Foods Company that all information furnished by the customer to it for the purpose of obtaining credit is true, correct, and complete in all material respects, and the undersigned does hereby authorize Glazier Foods Company to utilize all references furnished by the customer and/or business or consumer credit reporting agencies pertaining to the credit and financial responsibility of the customer and/or the undersigned.
- The undersigned agrees that the New Account Form may be used as a credit account. The undersigned hereby gives consent(s) to Glazier Foods Company's use of a non-business consumer credit report on the undersigned, Company and individual in order to further evaluate the credit worthiness of the undersigned as principal, proprietor(s), individual(s), and/or guarantor(s) in connection with the extension of business credit as contemplated by the credit application. The undersigned hereby authorizes Glazier Foods Company to utilize a consumer credit report on the undersigned from time to time in connection with the extension or continuation of the business credit represented by this credit application. The undersigned as [an] individual(s) hereby knowingly consents to use of such credit report consistent with the Federal Fair Credit Reporting Act as contained in 15 U.S.C. § 1681 et seq.

Aaron Fish
Ac F
 2/16/15
 Date

Sharon Murray
Agent/Manager
 2/16/15
 Date

PERSONAL GUARANTY

The undersigned person or persons, hereinafter called guarantors, whether one or more, for and in consideration of your agreement to extend credit to the customer, does hereby personally, jointly and unconditionally guarantee to Glazier Foods Company the customer's indebtedness to you, its obligation to pay to you the indebtedness, payable in Mansfield, Texas, County, Texas, and the guarantors agree to hold them jointly and severally liable for the indebtedness and to pay the same if the customer shall fail to pay the same. It is understood that the guarantors, jointly and severally, and individually, guarantee to such indebtedness of the customer. The guarantors do hereby waive notice of default, non-payment and right to set off and discount any right to set off or right of the indebtedness guaranteed hereby.

The guarantors do agree to pay, in the event the indebtedness becomes delinquent and is referred for collection, reasonable attorney's fees and/or collection and court costs, and interest on delinquent payments at the maximum rate allowed by law.

The guarantors do agree to waive any instrument that its name appears on or any voids as guarantor and agrees to be, as a personal guarantor. The guarantors specifically agree to waive, if necessary or required, all of the guarantors shall not be entitled to require that you, as a secured creditor, proceed to obtain an assignment for personal judgment against the customer for said indebtedness or make any effort at collection of said indebtedness from the customer or make any effort at collection of the indebtedness from any other party or exercise or assert any other right or remedy to which Glazier Foods Company is or may be entitled in connection with the indebtedness before or as a condition to waiving the liability of the guarantors pursuant to this guaranty agreement. The guarantors expressly waive all rights and remedies of a surety creditor and guarantor and agrees to be bound by any obligation of notice or demand on the seer, and the guarantors do hereby waive any indulgence granted by you with respect to the indebtedness and agrees that you may grant any such indulgence with respect thereto without notice to or further approval by the guarantors at any time or times.

In the event that the customer is a corporation, or is hereafter incorporated, the guarantors agree that if the indebtedness of said corporation is not enforceable because the act of creating the indebtedness is ultra vires, or because the officers creating same acted without authority, or said corporation is not liable for any other reason, or in the event said indebtedness cannot be enforced against the corporation, then, and in any such event, such facts shall in no manner affect the liability of the guarantors hereunder but the guarantors shall be and remain liable hereunder notwithstanding that said corporation is not liable for such indebtedness to the extent that the guarantors would have been liable if the indebtedness of said corporation had been enforceable against it.

The guarantors agree to notify Glazier Foods Company by certified mail of any pending change of ownership of the customer and further agrees to be liable for all purchases should the guarantors fail to comply with said notification.

We, the undersigned guarantors, have carefully read the above and understand its provisions and the obligations created hereunder and agree that it shall be binding on us and our heirs, executors, administrators, successors, and assigns, and shall inure to the benefit of the successors and assigns of Glazier Foods Company.

The guarantors represent that it is the owner of a direct or indirect interest in the customer and that guarantors will receive a direct and material benefit from the proceeds of the indebtedness.

We, the undersigned guarantors, warrant to Glazier Foods Company that all information furnished by the customer to it for the purpose of obtaining credit is true, correct, and complete in all material respects, and the guarantors do hereby authorize Glazier Foods Company to investigate all references furnished by the customer pertaining to the credit and financial responsibility of the customer and/or the guarantors.

The undersigned hereby give consent(s) to Glazier Foods Company's use of a non-business consumer credit report on the undersigned (Company and individual in order to further evaluate the credit worthiness of the undersigned as principal(s), proprietor(s), individual(s), and/or guarantor(s) in connection with the extension of business credit as contemplated by this credit application. The undersigned hereby authorizes Glazier Foods Company to utilize a consumer credit report on the undersigned from time to time in connection with the extension or continuation of the business credit represented by this credit application. The undersigned as [an] individual(s) hereby knowingly consent to the use of such credit report consistent with the Federal Fair Credit Reporting Act as contained in 15 U.S.C. § 1681 et seq.

Name of Guarantor (Please Type or Print) _____
 Signature of Guarantor _____ Date _____
 Home Address _____
 Social Security Number _____ Driver's License Number _____
 LOCAL P.O. BOX _____

Name of Guarantor (Please Type or Print) _____
 Signature of Guarantor _____ Date _____
 Home Address _____
 Social Security Number _____ Driver's License Number _____

PARTIES HEREBY AGREE THAT ALL PURCHASES MADE ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. The undersigned purchaser hereby agrees that all amounts due for goods and services purchased from Glazier Foods Company ("Glazier") will be paid by the undersigned at P. O. Box 2724, Houston, Harris County, Texas 77262.
2. The undersigned purchaser hereby agrees that all amounts due Glazier Foods Company are payable, if monthly account, by the 10th of the month following the date of purchase, if weekly account, by the end of the week following the purchase week, if net 14, fourteen days from date of purchase. If any amount due Glazier Foods Company is not paid within said period a delinquency charge in an amount equal to the maximum allowed by law shall be added to the sum due.
3. The undersigned also agrees to pay, in the event the indebtedness becomes delinquent and is referred to an attorney for collection, reasonable attorney's fees under all collection and court costs.
4. The undersigned agrees to notify Glazier Foods Company by certified mail of any pending change of ownership of the customer and further agrees to be liable for all purchases should the undersigned fail to comply with said notification.
5. Any checks returned to Glazier Foods Company for any reason will be subject to the prevailing fee in accordance with the Texas Penal Code.
6. The undersigned hereby grants to Glazier a purchase money security interest in all goods hereafter purchased from Glazier including, without limitation, inventory, equipment, and fixtures and any product into which such goods are manufactured, processed or assembled and Glazier

shall have all of the rights and obligations of a secured party, and the undersigned shall have all of the rights and obligations of a debtor, under the Texas Uniform Commercial Code. No renewal or extension of any credit, no release or surrender of any of the collateral securing such credit and no delay in enforcement of any of the rights of Glazier shall constitute any waiver of rights by Glazier.

7. The undersigned warrants to Glazier Foods Company that all information furnished by the customer to it for the purpose of obtaining credit is true, correct, and complete in all material respects, and the undersigned does hereby authorize Glazier Foods Company to investigate all references furnished by the customer and/or business/consumer credit reporting agencies pertaining to the credit and financial responsibility of the customer and/or the undersigned.
8. The undersigned agrees that this New Account Form may also be used as a credit application. The undersigned hereby give consent(s) to Glazier Foods Company's use of a non-business consumer credit report on the undersigned (Company and Individual) in order to further evaluate the credit worthiness of the undersigned as principal(s), proprietor(s), individually, and/or guarantor(s) in connection with the extension of business credit as contemplated by this credit application. The undersigned hereby authorize(s) Glazier Foods Company to utilize a consumer credit report on the undersigned from time to time in connection with the extension or continuation of the business credit represented by this credit application. The undersigned as [an] individual(s) hereby knowingly consent to the use of such credit report consistent with the Federal Fair Credit Reporting Act as contained in 15 U.S.C. §1681 et seq.

Seller Identification (Please Print)

Signature

Date

Signature

Date

PERSONAL GUARANTY

The undersigned person or persons (hereinafter called guarantors, whether one or more), for and in consideration of your agreement to extend credit to the prompt, punctual, and full payment of all sums of money now or hereafter owing by the customer to you (the "indebtedness"), payable in Houston, Harris County, Texas, and the guarantors hereby agree to bind themselves to pay you on demand any such sum which may become due to you by the customer whenever the customer shall fail to pay the same. It is understood that this guaranty shall be a continuing, absolute, and irrevocable guaranty for such indebtedness of the customer. The guarantors do hereby waive notice of default, non-payment and notice thereof, and consent to any modification or renewal of the indebtedness guaranteed hereby.

The guarantors also agree to pay, in the event the indebtedness becomes delinquent and is referred for collection, reasonable attorney's fees and/or all collection and court costs, and interest on delinquent payments in an amount equal to the maximum allowed by law.

The guarantors also agree to waive the requirement that its name appear on any invoices as guarantor and agrees to be liable personally therefor. The guarantors specifically agree that it shall not be necessary or required, and that the guarantors shall not be entitled to require, that you file suit or proceed to obtain or assert a claim for personal judgment against the customer for said indebtedness or make any effort at collection of said indebtedness from the customer or make any effort at collection of the indebtedness from any other party or exercise or assert any other right or remedy to which Glazier Foods Company is or may be entitled in connection with the indebtedness before or as a condition of enforcing the liability of the guarantors pursuant to this guaranty agreement. The guarantors expressly waive all rights and remedies of a surety endorser, and guarantor arising by law which may impose any obligation of notice or demand on the seller, and the guarantors do hereby waive any indulgence granted by you with respect to the indebtedness and agree that you may grant any such indulgence with respect thereto without notice to or further consent by the guarantors at any time or times.

In the event that the customer is a corporation, or is hereafter incorporated, the guarantors agree that if the indebtedness of said corporation is not enforceable because the act of creating the indebtedness is ultra vires, or because the officers creating same acted without authority, or said corporation is not liable for any other reason, or in the event said indebtedness cannot be enforced against the corporation, then, and in any such event, such facts shall in no manner affect the liability of the guarantors hereunder but the guarantors shall be and remain liable hereunder notwithstanding that said corporation is not liable for such indebtedness to the extent that the guarantors would have been liable if the indebtedness of said corporation had been enforceable against it.

The guarantors agree to notify Glazier Foods Company by certified mail of any pending change of ownership of the customer and further agree to be liable for all purchases should the guarantors fail to comply with said notification.

We, the undersigned guarantors, have carefully read the above and understand its provisions and the obligations created hereunder, and agree that it shall be binding on us and our heirs, executors, administrators, successors, and assigns, and shall inure to the benefit of the successors and assigns of Glazier Foods Company.

The guarantors represent that it is the owner of a direct or indirect interest in the customer and that guarantors will receive a direct and material benefit from the proceeds of the indebtedness.

We, the undersigned guarantors, warrant to Glazier Foods Company that all information furnished by the customer to it for the purpose of obtaining credit is true, correct, and complete in all material respects, and the guarantors do hereby authorize Glazier Foods Company to investigate all references furnished by the customer pertaining to the credit and financial responsibility of the customer and/or the guarantors.

The undersigned hereby give consent(s) to Glazier Foods Company's use of a non-business consumer credit report on the undersigned (Company and Individual) in order to further evaluate the credit worthiness of the undersigned as principal(s), proprietor(s), individually, and/or guarantor(s) in connection with the extension of business credit as contemplated by this credit application. The undersigned hereby authorize(s) Glazier Foods Company to utilize a consumer credit report on the undersigned from time to time in connection with the extension or continuation of the business credit represented by this credit application. The undersigned as [an] individual(s) hereby knowingly consent to the use of such credit report consistent with the Federal Fair Credit Reporting Act as contained in 15 U.S.C. §1681 et seq.

Name of Guarantor

Signature of Guarantor

Name Address

Phone Number

Home Address