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 SUNRISE FOODS INTERNATIONAL INC.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

SUNRISE FOODS INTERNATIONAL INC.,) Case No.: 2:18-cv-00688-JAM-EFB
 a Canadian corporation,)
) Assigned to Judge John A. Mendez
)
 Plaintiff,)
)
 vs.) **DECLARATION OF MICHAEL**
) **CORBETT IN SUPPORT OF**
) **PLAINTIFF’S EX PARTE MOTION**
 SONNY PERDUE, Secretary of the U.S.) **FOR:**
 Department of Agriculture; U.S. Department) **(1) TEMPORARY RESTRAINING**
 of Agriculture; KEVIN SHEA, Administrator) **ORDER;**
 of the U.S. Department of Agriculture’s) **(2) ORDER TO SHOW CAUSE RE:**
 Animal and Plant Health Inspection Service;) **PRELIMINARY INJUNCTION; AND**
 U.S. Department of Agriculture Animal and) **(3) EXPEDITED DISCOVERY**
 Plant Health Inspection Service; KEVIN K.)
 MCALEENAN, Commissioner of U.S.)
 Customs and Border Protection; U.S.)
 Customs and Border Protection,)
)
 Defendants.)

DECLARATION OF MICHAEL CORBETT

I, Michael Corbett, declare and state as follows:

1. I am the Vice President of Supply Chain and Infrastructure of Sunrise Foods International (U.S.A.) Inc., the U.S. subsidiary of the Canadian corporation Sunrise Foods International Inc. (“Sunrise”) located at 306 Queen Street Suite 200, Saskatoon, SK S7K 0M2, Canada. I am over the age of eighteen and competent to make this Declaration in support of Sunrise’s *Ex Parte* Motion for a Temporary Restraining Order, Order to Show Cause re: Preliminary Injunction, and Expedited Discovery, filed in this action. I have personal knowledge of the matters set forth herein and if called upon and sworn to do so, I could and would testify truthfully about its contents.

2. I graduated from Indiana University, the Kelley School of Business in 2006 with a Bachelor of Science in Business. I specialize in matters involving Shipping and International Supply Chain issues. Prior to my current position, I was a Grain Trader with the parent company, Sunrise. In that position, I marketed grain to international markets and was responsible for managing Sunrise’s international supply chain.

3. As the Vice President of Supply Chain and Infrastructure, I am responsible for coordinating and procuring international grain supply, developing supply chain and pricing models, and managing import volumes, which includes infrastructure, import compliance and logistics coordination.

4. Prior to Sunrise’s importing of cracked corn into the United States, in December 2017, Sunrise instructed me to visit several ports of entry to confirm the applicable import regulations and inspection procedures that applied to cracked corn. This was to ensure that Sunrise’s cracked corn shipments fully complied with all laws and regulations.

5. In furtherance of this effort, on October 18, 2017, I met Ralph Tramontano, CBP Agriculture Specialist at the Port of Morehead City, North Carolina, to review the import of our first shipment of organic soybeans into Morehead City. During this meeting, we discussed the import regulations and procedures of cracked corn. Mr. Tramontano informed me that cracked corn and whole corn shipments are subject to different APHIS regulations and inspection procedures.

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1 6. During this conversation, Mr. Tramontano informed me that any shipment that meets
2 the Federal Grain Inspection Service's ("FGIS") 50 percent cackage standard for cracked corn is
3 sufficiently cracked.

4 7. On October 25, 2017, I met with Dickins Chun, Chief CBP Agriculture Specialist,
5 and Omar Sultan, Supervisory CBP Agriculture Specialist, at the Port of San Francisco to discuss
6 an upcoming import of cracked corn. During this meeting we discussed the products, classification,
7 document requirements, sampling requirements and general handling procedures for cracked corn
8 shipments. A true and correct copy of the sampling requirements provided to me by Mr. Sultan
9 during this meeting, including his handwritten notes, is attached as **Exhibit A**.

10 8. In January 2018, I called Mr. Tramontano prior to importing shipments of cracked
11 corn into Morehead City, North Carolina, to further discuss the import requirements for cracked
12 corn. He confirmed that because cracked corn's pre-harvest country of origin is irrelevant to CBP's
13 import inspection under the APHIS manual, the raw corn product could be harvested from any
14 country.

15 9. As a result of these exchanges with CBP and my knowledge of CBP and APHIS
16 inspection procedures and guidelines for cracked corn, I was charged with the responsibility of
17 coordinating the import inspection and discharge of Sunrise's cracked corn shipments into the U.S.
18 Accordingly, I coordinated the inspection and discharge of twelve cracked corn shipments into the
19 U.S. as follows:

- 20
- 21 a) Master Bill of Lading: TAGSASTON05
22 Entry: 31502627
23 CBP Clearance Jurisdiction: San Francisco, CA
24 Port of Discharge: Stockton, CA
25 Date and Time of Clearance: 12/29/17; 18:33
- 26 b) Master Bill of Lading: TAGSASTON04
27 Entry: 31502395
28 CBP Clearance Jurisdiction: San Francisco, CA
 Port of Discharge: Stockton, CA
 Date and Time of Clearance: 12/29/17; 18:23
- c) Master Bill of Lading: TAGSATVEN05
 Entry: 31506248

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- CBP Clearance Jurisdiction: Morehead City-Beaufort, NC
Port of Discharge: Morehead City, NC
Date and Time of Clearance: 1/14/18; 14:40

- d) Master Bill of Lading: TAGSATVEN01
Entry: 31506438
CBP Clearance Jurisdiction: Morehead City-Beaufort, NC
Port of Discharge: Morehead City, NC
Date and Time of Clearance: 1/14/18; 14:38

- e) Master Bill of Lading: TAGSATVEN02
Entry: 31507808
CBP Clearance Jurisdiction: Wilmington, DE
Port of Discharge: Wilmington, DE
Date and Time of Clearance: 1/25/18; 08:33

- f) Master Bill of Lading: TAGSATVEN04
Entry: 31507857
CBP Clearance Jurisdiction: Wilmington, DE
Port of Discharge: Wilmington, DE
Date and Time of Clearance: 1/25/18; 08:33

- g) Master Bill of Lading: TAGSATVEN03
Entry: 31507865
CBP Clearance Jurisdiction: Wilmington, DE
Port of Discharge: Wilmington, DE
Date and Time of Clearance: 1/25/18; 08:33

- h) Master Bill of Lading: TAGSALKYN003
Entry: 31515603
CBP Clearance Jurisdiction: Morehead City-Beaufort, NC
Port of Discharge: Morehead City, NC
Date and Time of Clearance: 3/1/18; 17:30

- i) Master Bill of Lading: TAGSALKYN004
Entry: 31515595
CBP Clearance Jurisdiction: Morehead City-Beaufort, NC
Port of Discharge: Morehead City, NC
Date and Time of Clearance: 3/1/18; 17:37

- j) Master Bill of Lading: TAGSALKYN005
Entry: 31515587
CBP Clearance Jurisdiction: Morehead City-Beaufort, NC
Port of Discharge: Morehead City, NC
Date and Time of Clearance: 3/1/18; 17:34

- k) Master Bill of Lading: TAGSALKYN009
Entry: 31515579

1 CBP Clearance Jurisdiction: Morehead City-Beaufort, NC
2 Port of Discharge: Morehead City, NC
3 Date and Time of Clearance: 3/1/18; 17:36

- 4 l) Master Bill of Lading: TAGSALKYN006
5 Entry: 31517195
6 CBP Clearance Jurisdiction: New Orleans, LA
7 Port of Discharge: New Orleans, LA
8 Date and Time of Clearance: 3/7/18; 08:27

9 10. CBP cleared a total of twelve imports at four separate CBP clearance jurisdictions:
10 six imports in Morehead City-Beaufort, NC, three imports in Wilmington, DE, two imports in San
11 Francisco, CA, and one import in New Orleans, LA. These shipments were discharged without
12 issue. True and correct copies of these clearances are reflected in emails transmitting Automated
13 Commercial Environment (“ACE”) Cargo Release Status Responses, which are attached as **Exhibit**
14 **B.**

15 11. Sunrise successfully cleared CBP inspection of several shipments of cracked corn on
16 January 14, 2018 in Morehead City, North Carolina. Mr. Tramontano emailed Sunrise confirming
17 clearance the following day. A true and correct copy of this email is attached as **Exhibit C.**

18 12. In late February 2018, Sunrise’s cracked corn shipments onboard the merchant
19 vessel Alkyon headed to the Port of Morehead City. Sunrise reached out to CBP, as required, to
20 initiate the clearance inspection process for the shipments. As part of this process, Mr. Tramontano
21 simply asked to inspect a sample of the cracked corn, stating that, “[t]he corn is listed as cracked so
22 if that’s the case I just need to check the samples, one from each hold for the 4 BOLs [Bills of
23 Lading] listed.” In doing so, Mr. Tramontano implicitly confirmed yet again that an inquiry into the
24 shipment’s country of harvest was irrelevant. A true and correct copy of this email is attached as
25 **Exhibit D.**

26 13. As requested, Mr. Tramontano was provided with a sample of Sunrise’s organic
27 cracked corn from the vessel Alkyon. Mr. Tramontano cleared the shipments on March 1, 2018.

28 14. Previously, on December 20, 2017, in advance of Sunrise’s import of cracked corn
shipments onboard the merchant vessel Asturcon, I emailed shipping documents, which included
the Bill of Lading, Commercial Invoice, and Cargo Manifest to Mr. Chun and Mr. Sultan in an

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1 abundance of caution to confirm that our forthcoming shipments complied with APHIS regulations.
2 As part of CBP’s inspection process, Mr. Sultan simply asked to inspect a sample of the cracked
3 corn and did not inquire into its country of harvest. A true and correct copy of this email is attached
4 as **Exhibit E**.

5 15. This first shipment arrived at the Port of San Francisco on December 26, 2017, and
6 was cleared on December 29, 2017.

7 16. On December 18, 2017, I met with Zachary Pillarelli, CBP Supervisory Agriculture
8 Specialist in the Port of Wilmington, Delaware. I brought a sample of cracked corn from the same
9 Turkish supplier we intended to import and reviewed the inspection guidelines for cracked corn as
10 described in APHIS’s *Miscellaneous and Processed Products Import Manual*. We also discussed
11 FGIS’s standard for cracked corn. Subsequently, Sunrise imported cracked corn shipments into the
12 Port of Wilmington, Delaware, as discussed, and the shipments cleared without any questions or
13 concerns from Mr. Pillarelli or CBP. In fact, when I emailed Mr. Pillarelli on January 17, 2018
14 concerning an arrival of a vessel containing shipments of cracked corn and pearled wheat, Mr.
15 Pillarelli only inquired as to the pearled wheat and did not raise any questions or even comment on
16 the cracked corn shipment. A true and correct copy of this email is attached as **Exhibit F**.

17 17. I was also responsible for, and remain responsible for, coordinating the CBP import
18 inspection and discharge of four cracked corn shipments on the merchant vessel Mountpark when it
19 arrived at the Port of San Francisco on February 26, 2018 (the “Mountpark Shipments”).

20 18. The Mountpark Shipments amount to approximately 27,558 U.S. tons. True and
21 correct copies of the import and shipping documentation for the Mountpark cracked corn shipments
22 are attached as **Exhibit G**. These shipping documents were materially similar to the shipment
23 documents for the prior twelve shipments that were cleared without issue.

24 19. The Mountpark Shipments were intended to fulfill a purchase order with a grain feed
25 wholesaler. Once delivered, these shipments were to be milled by organic feed companies prior to
26 delivery to farmers to be used as organic livestock feed for chickens and cows.

27 20. On March 2, 2018, CBP’s Mr. Sultan informed me the Mountpark Shipments were
28 sampled on February 28, 2018 by a third-party on behalf of CBP.

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1 21. I was CBP's main point of contact for Sunrise during this inspection process.

2 22. On March 7, 2018, CBP cleared the Mountpark Shipments for entry advising Sunrise
3 that the product was acceptable. True and correct copies of these clearances as reflected in emailed
4 ACE Cargo Release Status Responses are attached as **Exhibit H**.

5 23. Following CBP's clearance of these shipments, Mountpark waited for a terminal to
6 become available at the Port of Stockton to discharge the shipments for delivery to Eastern
7 California. Mountpark began heading towards the Port of Stockton on March 12, 2018 at 5:44 a.m.
8 But for this delay in terminal availability, Sunrise would have discharged these shipments well
9 before USDA overrode this clearance.

10 24. Up until this point, no one from CBP ever suggested or indicated to me that there
11 were concerns or problems with these and prior shipments.

12 25. On March 12, 2018 at 2:39 p.m., Mr. Sultan notified me by email that the shipments
13 were back on hold. Mr. Sultan called me minutes later at about 2:45 p.m. informing me that the
14 shipments were now rejected. Mr. Sultan explained that USDA Headquarters rejected the
15 shipments based on a review of the shipping documents and a photograph of a cracked corn sample.

16 26. Based on my subsequent conversations with CBP and USDA, I believe that Sunrise
17 was the only agricultural importer rejected entry based on an "inspection" conducted by reviewing a
18 photograph of a sample of cracked corn.

19 27. Mountpark was en route to the Port of Stockton at the time I received this news. A
20 true and correct copy of this email communication is attached as **Exhibit I**.

21 28. On March 12, 2018, CBP and APHIS emailed four Emergency Action Notifications
22 ("EANs") to me notifying Sunrise that each of the four holds of cracked corn in the Mountpark
23 Shipments were prohibited because "[t]he commodity does not meet the requirements for cracked
24 corn" because the raw material originated from Russia, Moldova and Kazakhstan, countries
25 prohibited by 7 CFR 319.24 and 7 CFR 319.41. True and correct copies of the four EANs and the
26 email transmitting these documents are attached hereto as **Exhibit J**.

27 29. At the time I received the EANs, Mountpark was en route or had just arrived to the
28 Port of Stockton.

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1 30. The EANs instructed Sunrise to re-export or destroy the shipment within 24 hours
2 and referred Sunrise to speak with an Agriculture Officer to discuss options. No further explanation
3 was provided as how the corn failed to meet the requirements for “cracked corn.”

4 31. The following day, on March 13, 2018, I emailed Dickins Chun, Chief CBP
5 Agriculture Specialist, and Omar Sultan the following day to notify them that the EANs were issued
6 in error because the shipments of cracked corn did comply with APHIS’s definition of a processed
7 product. A true and correct copy of this correspondence is attached hereto as **Exhibit K**.

8 32. In my experience, photographs of cracked corn misrepresent the proportion of whole
9 kernels in a sample of cracked corn, particularly because smaller pieces of cracked corn sink to the
10 bottom of a sample, leaving the top layer with larger pieces of cracked corn and whole kernels.
11 This understanding is based on my experience handling cracked corn samples in Sunrise’s in-house
12 laboratory. I explained this information to Mr. Chun and Mr. Sultan in an email and urged them to
13 sample test the shipments instead of relying on a photograph to reject the shipments.

14 33. I also explained the methodology Sunrise relied on to ensure compliance with the
15 APHIS regulations prior to import based on its prior discussions with CBP and APHIS. I explained
16 that the proper definition of “cracked corn” is a “processed seed that has been subject to any degree
17 of alteration beyond harvesting” under the applicable APHIS inspection guideline for imported
18 cracked corn, i.e., *Miscellaneous and Processed Products Import Manual*.

19 34. Mr. Chun responded to my email the same day and informed me that CBP relayed
20 my concerns and explanations to the USDA for consideration. A true and correct copy of this email
21 is attached hereto as **Exhibit L**.

22 35. Thereafter, I engaged in multiple telephone and email communications with Mr.
23 Chun and Mr. Sultan of CBP, and APHIS local representative Phil Johnson. During these
24 discussions, I explained the process that our supplier, Tiryaki uses to crack corn. I continued urging
25 CBP and APHIS to test samples of the shipments instead of relying on a photograph to reject the
26 shipments.

27 36. On March 14, 2018, Mr. Sultan called me letting me know that CBP would not
28 rescind their EANs because the shipments did not meet the APHIS definition of cracked corn

1 because it was “contaminated” by with whole, uncracked corn kernels. During this call, I informed
2 Mr. Sultan that our shipments met APHIS’s definition, and even the FGIS definition of cracked
3 corn.

4 37. This was the first time that I was notified or made aware that APHIS was applying a
5 definition other than APHIS’s own definition of cracked corn, *i.e.*, “processed seed” under APHIS’s
6 manuals, to inspect shipments of cracked corn. During this conversation, Mr. Sultan acknowledged
7 that the shipments were processed. Mr. Sultan offered to revisit the issue with USDA Headquarters
8 and suggested the possibility of treating the corn at Penny-Newman, a nearby unload facility
9 approved to treat pests and pathogens.

10 38. On March 15, 2018, Mr. Sultan called me to explain that USDA would not permit
11 Sunrise to treat the corn at Penny-Newman because USDA now considered the shipments
12 “unprocessed” and that the corn needed to be processed at the origin to be admitted for entry. I
13 explained again that the cracked corn was indeed processed because the raw corn is cleaned,
14 cracked, and sprayed with organic sunflower oil. I again urged CBP to sample test the shipments
15 instead of relying on a photograph to reject the shipments.

16 39. On March 15, 2018, I spoke with Mr. Chun and we discussed CBP’s inspection of
17 the shipments. Mr. Chun explained to me that CBP inspected the shipments using their typical
18 inspection process and did not have any concerns or issues with the shipments at the local level,
19 meaning that there were no concerns that the shipments carried pests or any pathogens during their
20 inspection. He told me that, after CBP had cleared the shipments, USDA subsequently rejected the
21 shipment on account of it “not being processed”. He explained that this decision was made using a
22 photograph of the cracked corn sample.

23 40. In this same conversation, I asked Mr. Chun how importers like Sunrise and
24 enforcers like CBP are able to perform their jobs if decisions are made that contradict established
25 APHIS manuals and procedures. Mr. Chun did not have an answer and told me that he would speak
26 with APHIS.

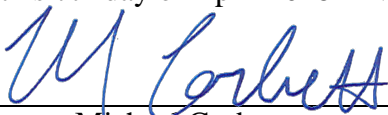
27 41. On March 16, 2018, I received an email from Matt Nicoletti at Penny-Newman,
28 which forwarded an email chain between Penny-Newman employees, including Mr. Nicoletti, and

1 Norman Mullaly, the State Operations Coordinator at APHIS. This communication discusses
2 APHIS's inquiry into Penny-Newman's grinding capabilities onsite and Penny-Newman's
3 anticipated timeframe to grind the shipments. A true and correct copy of this email communication
4 is attached hereto as **Exhibit M**.

5 42. In the same email chain, Mr. Mullaly stated that the "issue with the corn has been
6 resolved, at least from USDA perspective . . . It's prohibited from entry. Unprocessed raw corn
7 grain of Russia, Kazakhstan, and Moldova production origin is prohibited entry into the U.S. The
8 product conveyed via M/V Mountpark is therefore not compliant with 7 CFR 319.24 and 7 CFR
9 319.41. In order to be enterable, the entire shipment would have needed to be processed (cracked).
10 There can be NO WHOLE KERNELS [*sic*]. We do not allow processing after the fact. This
11 shipment is at least 50% whole kernels, so although it may meet the FGIS definition of 'cracked
12 corn' it does NOT meet USDA requirements for entry. Since it also did not meet the APHIS entry
13 requirements for 'processed product' at the time of importation, the corn is not enterable into the
14 U.S."

15 43. Notably, this email is incorrect on both the percentage of the cracked corn in the
16 shipments as well as the purported FGIS specifications. I was surprised to learned about APHIS's
17 position on cracked corn standards because it was entirely new to me and do not recall coming
18 across this one hundred percent definition despite my efforts to learn about APHIS and CBP import
19 inspection regulations and my various conversations with CBP-AG officials over the past six
20 months concerning cracked corn imports.

21 I declare under penalty of perjury under the laws of the United States of America that the
22 foregoing is true and correct. Executed this 7th day of April 2018 in Westlake Village, California.

23 
24 _____
25 Michael Corbett