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12 Attorneys for Plaintiff
13 SUNRISE FOODS INTERNATIONAL INC.

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA
16 SACRAMENTO DIVISION

17 SUNRISE FOODS INTERNATIONAL INC.,)
18 a Canadian corporation,)

19 Plaintiff,

20 vs.

21 SONNY PERDUE, Secretary of the U.S.)
22 Department of Agriculture; U.S. Department)
23 of Agriculture; KEVIN SHEA, Administrator)
24 of the U.S. Department of Agriculture's)
25 Animal and Plant Health Inspection Service;)
26 U.S. Department of Agriculture Animal and)
27 Plant Health Inspection Service; KEVIN K.)
28 MCALEENAN, Commissioner of U.S.)
Customs and Border Protection; U.S. Customs)
and Border Protection,)

Defendants.)

) Case No.: 2:18-cv-00688-JAM-EFB
)
) Assigned to Judge John A. Mendez
)
) **DECLARATION OF RONALD**
) **OLEYNIK IN SUPPORT OF**
)
) **PLAINTIFF'S *EX PARTE* MOTION**
) **FOR:**
) **(1) TEMPORARY RESTRAINING**
) **ORDER;**
) **(2) ORDER TO SHOW CAUSE RE:**
) **PRELIMINARY INJUNCTION; AND**
) **(3) EXPEDITED DISCOVERY**

DECLARATION OF RONALD OLEYNIK

I, Ronald Oleynik, declare as follows:

1. I am over the age of 18 and have personal knowledge of the matters stated herein. I am an attorney at law, duly admitted to practice before this Court. I am a partner in the Washington D.C. office of Holland & Knight LLP and am counsel for Plaintiff SUNRISE FOODS INTERNATIONAL INC. (“Plaintiff” or “Sunrise”). I have personal knowledge of the facts set forth below, and if called and sworn as a witness, I could and would testify competently thereto. I make this Declaration in support of Sunrise’s *Ex Parte* Application for a Temporary Restraining Order, Order to Show Cause re: Preliminary Injunction, and Expedited Discovery, as filed in this action on April 6th, 2018.

2. On March 19, 2018, I communicated with Matt Farmer, Assistant Director of Quarantine Policy, Analysis, and Support (“QPAS”) at APHIS, to discuss the U.S. Department of Agriculture (“USDA”) Headquarter’s decision to reject Sunrise’s Mountpark shipments of cracked corn. During this telephone conversation, Mr. Farmer conceded that the shipment may qualify as cracked corn under the Grain Inspection, Packers and Stockyards Administration (“GIPSA”) regulations but still must be examined for contaminants. However, he stated that the shipment should not be evaluated under Tables 2-8 and 2-10 of the *Seeds Not for Planting* Manual.

3. On March 23, 2018, I communicated with Mr. Farmer to discuss the USDA Headquarter’s decision to reject Sunrise’s Mountpark shipments of cracked corn. During this telephone conversation, Mr. Farmer discussed APHIS’s analysis of the shipment but could not clearly articulate the path through APHIS’s own procedures in order to explain why the shipment was prohibited. Mr. Farmer also stated that he was not aware that the cracked corn was to be further processed after importation.

4. On March 26, 2018, I communicated with Marie Martine, Trade Director at APHIS, and Mr. Farmer to discuss the USDA Headquarter’s decision to reject Sunrise’s Mountpark shipments of cracked corn. During this telephone conversation, Ms. Martin and Mr. Farmer first noted that they had “some concerns” that the cracked corn was not processed under

1 proper phytosanitary conditions. Then, Ms. Martin stated that if a shipment of cracked corn
2 contained “even one piece of whole corn kernel” the shipment would not be considered cracked
3 corn. Finally, Ms. Martin and Mr. Farmer conceded that the whole corn should be considered a
4 contaminant and the shipment should be evaluated under Tables 2-8 and 2-10 of the *Seeds Not*
5 *for Planting* Manual. However, they argued that although Table 2-10 allows the release of
6 shipments contaminated with whole corn kernels if the shipment undergoes further processing,
7 APHIS would not permit it because they could not “apply safeguarding measures.”

8 5. Throughout the conversations described above, APHIS officials continued to shift
9 the justification for refusing entry for the Mountpark shipments, variously attributing its decision
10 to the origin of the raw corn product, the processing of the whole kernels, and the ratio of
11 cracked corn to whole kernels in the shipment.

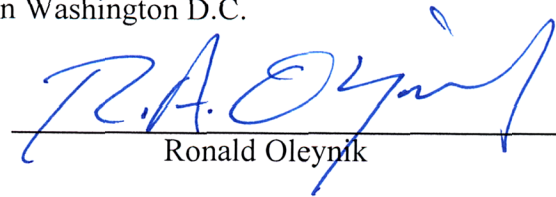
12 6. During these conversations, APHIS acknowledged that any whole kernels should
13 be treated as contaminants. However, APHIS could not articulate why the entire shipment must
14 be rejected and could not be treated at the APHIS-approved Penny-Newman grain processing
15 facility other than to state that APHIS was relying on CBP’s representation that the shipments
16 could not be treated at Penny-Newman.

17 7. I have not received any consistent explanation from the CBP, APHIS, or USDA
18 regarding the refusal to follow the guidelines of Tables 2-8 and 2-10 of the *Seeds Not for*
19 *Planting* Manual, and therefore to allow the shipment to be treated at the APHIS-approved
20 Penny-Newman grain-processing facility.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 6th day of April 2018 in Washington D.C.



Ronald Oleynik