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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

SUNRISE FOODS INTERNATIONAL)
INC.,)
)
Plaintiff,)
)
v.)
SONNY PERDUE, in his official capacity)
as Secretary of Agriculture, *et al.*,)
Defendants.)

Case No. 2:18-cv-00688-JAM-EFB
**DECLARATION OF MARIE MARTIN IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER**

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DECLARATION OF MARIE MARTIN

I, Marie Martin, under 28 U.S.C. § 1746 declare as follows:

1. I am an Agriculturist with Quarantine Policy, Analysis & Support (QPAS), Plant Protection and Quarantine (PPQ), Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA). PPQ safeguards U.S. agriculture and natural resources against the entry, establishment, and spread of economically and environmentally significant pests, and facilitates the safe trade of agricultural products. Among other duties, QPAS provides technical advice and assistance for agricultural cargo inspections at U.S. ports of entry. I have been employed by USDA-APHIS-PPQ since December 1988, and have been in my current position since January 2017. I currently work at PPQ-Headquarters, located at the USDA at Riverside offices in Riverdale, Maryland.

2. I make this declaration in support of USDA, APHIS, one of the defendants in this action, in opposition to Plaintiff's motion for a temporary restraining order.

3. This declaration is based upon my personal knowledge and experience, as well as information provided to me in my official capacity.

Regulations and Manuals for Importing Corn

4. The importation of corn seed into the U.S. is regulated by 7 CFR § 319.24 and 7 CFR § 319.41, APHIS regulations promulgated pursuant to the statutory authority of the Plant Protection Act, 7 U.S.C. § 7701 *et seq.* As relevant here, 7 CFR § 319.41 contains a general prohibition on the importation of all raw or unmanufactured plant parts of corn (*Zea mays*), due to the risk of dissemination of a plant pest, European corn borer (*Ostrinia nubilalis* Hubn.), as well as "other dangerous insects, as well as plant diseases, not heretofore widely distributed in the United States." The terms *raw* and *unmanufactured* are not defined within the regulations.

5. 7 CFR §§ 319.41-1 through 319.41-3 collectively provide that a permit must be obtained for the importation of any raw corn seed into the United States, unless the seed is from New Zealand. Permits issued pursuant to these sections restrict importation of raw corn seed for purposes other than planting to the following countries: Argentina, Paraguay, Romania, Turkey, Uruguay, and Canada. Raw corn seed from all other countries is prohibited importation into the United States.

1 6. Raw corn seed—that is, corn seed that is not so thoroughly processed that all
2 pests and pathogens would have been destroyed—is regulated in the Seeds Not For Planting
3 Manual (SNFPM). Corn (*Zea mays*) is located in the SNFPM, on Page 3-18; Table 3-11; Russia,
4 Moldova, and Kazakhstan are Prohibited Entry under the authority of 7 C.F.R. § 319.24 and 7
5 C.F.R. § 319.41. A true and correct copy of the relevant portions of the SNFPM are attached as
6 Exhibit 9.

7 7. The SNFPM also provides regulatory inspection guidance for corn as a
8 contaminant. on Page 2-16, Table 2-8 ‘Take Appropriate Regulatory Action Based on
9 Contamination of Plants or Plant Parts’, Corn seed that is likely to be released into the
10 environment (such as animal feed) that cannot be cleaned or treated and that lacks a Controlled
11 Import Permit (PPQ Permit 588) is Prohibited Entry (Table 2-10, on Page 2-18). A true and
12 correct copy of the relevant portions of the SNFPM are attached as Exhibit 10.

13 8. Regulatory inspection guidance of processed corn seed is covered in the
14 Miscellaneous and Processed Products Import Manual (MPPIM). The MPPIM Index, Page 4,
15 Corn, processed seeds, refers to Page 3-126, Table 3-153, ‘Seeds (other than nuts) that are
16 processed or manufactured’; “Corn must be so thoroughly processed that all pests and pathogens
17 would have been destroyed”; otherwise, “See entry for specific commodity in Seeds Not For
18 Planting Manual”. Note, ‘processed’ and ‘processed seed’ are both defined in the MPPIM
19 Glossary, on page 13. The ‘processed seed’ definition: “seed subjected to any degree of
20 alteration beyond harvesting (e.g., cracked corn is considered processed)”. Regulatory guidance
21 of corn products and by-products is also found on Page 3-28, in Table 3-36, ‘Grains locator’,
22 corn products and by-products of grain milling (e.g. corn meal, cracked corn, grits, oil, samp, and
23 starch) are subject to inspection and release if commodity meets such condition at the time of
24 importation into the U.S. Footnote 2 of Table 3-36, states that corn and closely related plants
25 are regulated to prevent the entry of several exotic down mildews, physoderma diseases and
26 other harmful corn pathogens. A true and correct copy of the relevant portions of the MPPIM
27 are attached as Exhibit 8.

28 9. Foreign agricultural commodities imported into the United States are inspected at
29 international ports-of-entry using these manuals. CBP Agriculture Specialists (CBPAS) at the
30 international ports-of-entry are responsible for conducting these inspections and regulatory
31 enforcement of agriculture commodities. As a condition of employment, CBPAS are trained and

1 proficiency-tested on the correct use and application of the PPQ regulatory manuals. These
2 manuals provide the regulatory guidance and the regulatory enforcement authority for the
3 agriculture inspections.

4 **Plaintiff's Shipment of Corn for Import**

5 10. On April 27, 2015, Sunrise Foods International, Inc., submitted to USDA,
6 APHIS, PPQ Permit Services, an Application for Permit to Import Plant and Plant Products (PPQ
7 Form 387), requesting authorization to import Corn (*Zea mays*) seed from Argentina, Paraguay,
8 Romania, Turkey, Uruguay, and Canada for miscellaneous intended use. A true and correct copy
9 of the permit application is attached as Exhibit 1.

10 11. On May 21, 2015, USDA, APHIS, PPQ issued to Sunrise Foods International,
11 Inc., an Import Permit (P41-15-00105) providing authorization for the importation of corn (*Zea*
12 *mays*) seed for purposes other than planting, only from the following approved countries:
13 Argentina, Paraguay, Romania, Turkey, Uruguay, and Canada. The permit is valid until May 21,
14 2018, and states the specific authorized conditions and also cites the specific countries from
15 which corn seed is prohibited. In particular, P41-15-00105 expressly specifies that "Corn seed is
16 PROHIBITED from the following countries," followed by a list of countries that includes
17 Russia, Kazakhstan, and Moldova. The permit further states: "THIS PERMIT DOES NOT
18 AUTHORIZE THE IMPORTATION OF CORN SEED FROM ANY OF THESE
19 COUNTRIES." A true and correct copy of the permit is attached as Exhibit 2.

20 12. On March 7, 2018, Nidhi Singla, the Branch Chief for Customs and Border
21 Protection (CBP) Agriculture Programs and Trade Liaison (APTL), Headquarters, contacted
22 Quarantine Policy, Analysis & Support (QPAS)—the relevant component of USDA-APHIS-PPQ
23 that provides technical support for agricultural cargo inspections at U.S. ports of entry—to
24 inquire about the Mountpark shipment. Specifically, Branch Chief Singla contacted Matt
25 Farmer, QPAS Asst. Director, and me, requesting to be advised if USDA could confirm the
26 country of origin for this shipment. CBP provided USDA with the commercial invoices,
27 Certificates of Origin, Bills of Lading, and cargo manifest for four bulk consignments of
28 'certified organic cracked corn'. The Certificates of Origin cite Turkey as the Country of Origin.
CBP also provided photographs of corn; one was a close-up shot, and the other from a distance,
showing the corn in an examination pan. True and correct copies of the entry documents, the
certificates of origin, and the photographs, are attached as Exhibits 3 and 4 respectively.

1 13. On March 8, 2018, I informed CBP that QPAS had requested the farm production
2 origin information from the USDA's National Organic Program (NOP), a USDA regulatory
3 program housed within the Agriculture Marketing Service (AMS) that holds responsibilities for
4 developing national standards for organically-produced agricultural products. In this capacity,
5 NOP may obtain certificates of organic operation for foreign commodities that identify the
6 commodities' country of origin and verify that the operation is organic. I advised that NOP
7 would likely engage with their offshore authorized certifier for verification, which could take a
8 couple of days, and that QPAS would forward to CBP-APTL the information when received.

9 14. On March 8, 2018, I sent a request to USDA-AMS-NOP to be provided the
10 production Farm Code and Production Origin for the four (4) sets of Commercial Invoice and
11 Bill of Lading cited below, manifested as bulk Organic Cracked Corn, recently conveyed from
12 Turkey, via M/V MOUNTPARK:
13 Stockton, CA –DIASUB FZE (shipper) to DIASUB FZE (Consignee), SUNRISE FOODS
14 INTERNATIONAL (Importer).

- 15 • Diasub Commercial Invoice: 100154; B/L: TAGSMOPAR01 – 5,079,8000 KG
- 16 • Diasub Commercial Invoice: 100155; B/L: TAGSMOPAR02 – 7,352,280 KG
- 17 • Diasub Commercial Invoice: 100156; B/L: TAGSMOPAR03 – 7,188,540 KG
- 18 • Diasub Commercial Invoice: 100157; B/L: TAGSMOPAR04 – 5,379,380 KG

19 These documents identify EcoCert SA as the relevant NOP Organic Certifier. True and correct
20 copies of the transaction certificates of products from organic production are attached as Exhibit
21 5.

22 15. USDA-AMS-NOP submitted the request to the offshore certifier, EcoCert SA, on
23 March 8, 2018, and on March 12, 2018, the NOP Organic Certifier provided a response with
24 documents, 'Certificate of Organic Operation', identifying Russia, Moldova, and Kazakhstan as
25 the farm production origins. True and correct copies of the Certificates of Organic Operation are
26 attached as Exhibit 6. The permit does not authorize the importation of corn seed from these
27 countries. The documents were then forwarded to CBP-APTL.

1 16. On March 12, 2018, CBP Branch Chief Singla contacted QPAS again requesting
2 that we please verify the port's concern regarding whether or not the corn can qualify as
3 'cracked'.

4 17. On March 12, 2018, I replied that the APHIS requirement for cracked corn is for
5 risk mitigation of quarantine significant pathogens in the pathway. By APHIS definition for
6 processed product, 'cracked corn' is the product from commercial grain milling so that the end
7 product is of a fairly uniform cracked consistency. Based on that, the corn in the provided photos
8 does not appear to meet that description.

9 18. Branch Chief Singla replied to inform QPAS that CBP-APTL had advised CBP
10 Agriculture Inspections (AI), the CBP component charged with inspecting imports of foreign
11 commodities, to communicate these regulatory activities to the local PPQ officials for their
12 awareness.

13 19. On March 12, 2018, CBP's agricultural inspectors at the SFO POE, issued four
14 Emergency Action Notifications (EAN's) for the four bulk holds of 'organic cracked corn', on
15 M/V Mountpark, as 'Prohibited Product'. An Emergency Action Notification (EAN) is issued to
16 notify an importer when specific remedial actions are required for phytosanitary risk mitigation
17 of pest(s), noxious weeds, or articles (as so specified in Block 12 of the EAN), in the manner
18 satisfactory to and under the supervision of a CBP Agriculture Officer, under the terms of the
19 action required and identified in Block 16 of the EAN. The EAN's explain: "The commodity
20 does not meet the requirements for cracked corn. The raw material is determined to originate
21 from Russia, Moldova, and Kazakhstan. Corn is prohibited from these countries per 7 C.F.R.
22 §319.24 and 7 C.F.R. § 319.41." True and correct copies of the Emergency Action Notifications
23 are attached as Exhibit 7.

24 20. When an EAN is issued denying entry on the basis that the commodity is a
25 prohibited product, CBP requires that the shipment be re-exported or destroyed, as the prohibited
26 product may not enter the country.

27 **USDA's Decision to Deny Entry**

28 21. In sum, these EAN's were issued on the basis of APHIS phytosanitary
safeguarding for corn and closely related *Poaceae* species plants and grains, which are regulated
to prevent the entry into the United States of several exotic downy mildews, physoderma
diseases and other harmful corn pathogens. Regarding cracked corn grain, milling processing is

1 the necessary entry requirement, “corn products and by-products of grain milling (e.g. corn meal,
2 cracked corn, grits)”, as the condition of entry. The processing requirement is to ensure
3 complete pest risk mitigation, whereby all pests and pathogens of the pathway would have been
4 destroyed. Corn grain that does not meet such criteria is considered as unprocessed, and is
5 regulated as seeds not for planting (i.e. raw grain) under 7 C.F.R. § 319.24 and 7 C.F.R. § 319.41.
6 All foreign shipments, as a condition of entry, are subject to inspection by CBP at the port of first
7 arrival, in order to prevent the dissemination into the United States of plant pests. Inspectors
8 employ procedures necessary to prevent dissemination. Importers therefore need to ensure that
9 the imported products meet entry requirements and are clean of considered contaminants that
10 include quarantine pests of consideration by the U.S.

11 22. The commodity at issue in this litigation was manifested as ‘Certified Organic
12 Cracked Corn’, which is processed corn seed. As discussed, regulatory inspection guidance of
13 processed corn seed is covered by one of the two relevant manuals: the MPPIM. Raw corn seed,
14 on the other hand, is regulated in the other relevant manual: the SNFPM. Applying the
15 regulatory inspection guidance in these manuals, PPQ concluded that this shipment consisted of
16 a significant volume of raw, unprocessed corn seed that is prohibited entry under USDA
17 regulations. Accordingly, consistent with the guidance in both the MPPIM and the SNFPM,
18 PPQ concluded that this shipment was properly prohibited entry.

19 **Plaintiff’s Request for Domestic Processing**

20 23. On March 15, 2018, CBP-APTL advised QPAS that Plaintiff wanted to know if
21 the commodity could be sent to a domestic grinder in Stockton, Penny Newman, so that the
22 prohibited commodity would become an enterable commodity. CBP advised that Penny
23 Newman has a compliance agreement with USDA for grinding of foreign grain contaminated
24 with Federal Noxious Weed seed considered to be of potential quarantine significant risk to U.S.
25 agriculture and the U.S. environment.

26 24. In response to this inquiry, PPQ—the APHIS component of which QPAS is a
27 part—concluded that, although the Penny Newman Company has the ability to grind grain under
28 authorization of a valid PPQ compliance agreement, the compliance agreement was not intended
and should not be used to facilitate the processing of prohibited corn. As discussed, corn is
prohibited by regulation, and that prohibition is rooted in pest risk, not just risk of noxious
weed—and Penny Newman’s compliance agreement is to provide for grinding of foreign grain

1 contaminated with noxious weed. While grinding might be an option for Federal Noxious Weed
2 contaminants, it is not an option for prohibited corn lacking a Controlled Import Permit (PPQ
3 Permit 588).

4 25. On March 15, 2018, I informed CBP that it is the understanding and expectation
5 of PPQ that the terms of the EAN's are followed, since unprocessed corn grain of Russia,
6 Kazakhstan, and Moldova production origin are prohibited entry into the U.S. I further informed
7 CBP that the product conveyed via M/V Mountpark is not compliant with 7 C.F.R. § 319.24 and
8 7 C.F.R. § 319.41. Since it also did not meet the entry requirements for 'processed product' at
9 the time of importation, the corn is not enterable into the U.S.

10 26. On March 16, 2018, I spoke with Plaintiff about the status of the corn. I
11 explained to Plaintiff the timeline process of the events with PPQ's involvement and decision-
12 making. Plaintiff expressed interest in speaking also with Matt Farmer, Asst. Director of QPAS.

13 27. On March 16, 2018, PPQ officials again conferred with Plaintiff to communicate
14 the decision to refuse entry on the corn consignments, based on non-compliance with APHIS
15 regulations. PPQ maintained its position that the corn is prohibited by regulation and must be re-
16 exported or destroyed under 7 C.F.R. § 319.24, 7 C.F.R. § 319.41 and the Plant Protection Act.

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

19 Executed on the 11th day of April, 2018.



20 Marie Martin
21 Agriculturist
22 Quarantine Policy, Analysis & Support
23 Plant Protection and Quarantine
24 Animal and Plant Health Inspection Service
25 United States Department of Agriculture
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28