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SUNRISE FOODS INTERNATIONAL INC.

8
9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **SACRAMENTO DIVISION**

12 SUNRISE FOODS INTERNATIONAL INC.,) Case No.: 2:18-cv-00688-JAM-EFB
13 a Canadian corporation,)
14) Assigned to Judge John A. Mendez
15 Plaintiff,) **DECLARATION OF JACOB NEUFELD**
16 vs.) **IN SUPPORT OF**
17) **PLAINTIFF'S EX PARTE MOTION**
18 SONNY PERDUE, Secretary of the U.S.) **FOR:**
19 Department of Agriculture; U.S. Department) **(1) TEMPORARY RESTRAINING**
of Agriculture; KEVIN SHEA, Administrator) **ORDER;**
20 of the U.S. Department of Agriculture's) **(2) ORDER TO SHOW CAUSE RE:**
Animal and Plant Health Inspection Service;) **PRELIMINARY INJUNCTION; AND**
21 U.S. Department of Agriculture Animal and) **(3) EXPEDITED DISCOVERY**
Plant Health Inspection Service; KEVIN K.)
22 MCALEENAN, Commissioner of U.S.)
Customs and Border Protection; U.S.)
23 Customs and Border Protection,)
24 Defendants.)
25)
26)
27)
28)

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DECLARATION OF JACOB NEUFELD

I, Jacob Neufeld, declare and state as follows:

1. I am the Chief Executive Officer (“CEO”) of Sunrise Foods International Inc. (“Sunrise”), a Canadian corporation 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 have been employed with Sunrise since 2006, holding various positions before being promoted to CEO in 2012. In my capacity as CEO, I am familiar with the products that Sunrise imports to the United States, including certified organic cracked corn.

3. Cracked corn is typically used as a high-energy feed for livestock. Cracked corn is corn that is processed into smaller corn particles by running the grain through a roller mill after harvest. This processing method exposes the seed coat, increasing access to the interior starch and nutrients.

4. Sunrise is one of the largest wholesalers of organic agri-food commodities in the world, specializing in certified organic feed and food ingredients. Based in Saskatoon, Saskatchewan, Canada, Sunrise sources high-quality grains from an extensive network of producers and suppliers and delivers them to customers in the United States and worldwide. Sunrise trades over 500,000 metric tons of products including cereal grains, feed grains, oil seeds, and pulses a year.

5. Sunrise is a regular importer of certified organic cracked corn to the United States and procures organic cracked corn from the organic division of its Turkish supplier, Tiryaki Agro Food Industry and Trade Inc. (“Tiryaki”)

6. Tiryaki produces cracked corn by shipping harvested corn to Turkey. In my capacity as CEO of Sunrise, I am familiar with Tiryaki’s process and have been on-site to observe the

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1 process. Most recently in January 2018, I visited the Tiryaki processing facility in Turkey and
2 observed Tiryaki's current cracked corn process.

3 7. The product is first processed through a Ruberg RSV 300 Cleaning & Exhauster
4 System as part of a four-step cleaning system to eliminate any potential pests and foreign materials
5 such as weeds, leaf, soil, sand, shell, immature seeds, etc. Once cleaned, the product is then
6 processed through a roller-mill crushing system where the corn is subject to cracking, cutting and
7 pressing forces that crack the corn. The cracked corn is then cleaned, sprayed with organic
8 sunflower oil, and polished. Coating the cracked corn with organic sunflower seed oil prevents
9 dust, extends storage life, and prevents insect contamination. As a final step, Tiryaki conducts
10 quality control of the product by inspecting the processed corn to ensure that the processed corn is
11 sufficiently "cracked" to meet the agreed-upon threshold standard for purchase. A true and correct
12 copy of Tiryaki's cracked corn process is attached as **Exhibit A**.

13 8. Diasub uses a third-party shipper to load the product from Turkey and deliver it by
14 way of a merchant vessel to the destination. Once unloaded in the United States, Sunrise distributes
15 the cracked corn to various customers, who then further processes it to produce animal feed,
16 typically poultry and dairy feed. Cracked corn is generally ground and mixed with other
17 ingredients (*e.g.*, ground soybean and nutritive additives) and turned into pellets, or it is heated and
18 steamed through a roller mill to create a "pancake" type feed.

19 9. Sunrise imports shipments of cracked corn to the United States through various ports
20 of entry. Since December 2017, Sunrise has successfully imported twelve shipments of cracked
21 corn, each processed in the manner detailed above, to various U.S. destinations, as further described
22 in the Declaration of Michael Corbett. These entry points were Wilmington, Delaware; Morehead
23 City, North Carolina; New Orleans, Louisiana; and San Francisco, California.

24 10. Prior to importing these shipments of cracked corn, in the fall of 2017, Michael
25 Corbett, Vice President of Supply Chain and Infrastructure of Sunrise's U.S. subsidiary, Sunrise
26 Foods International (U.S.A.), Inc., personally met with the Customs and Border Protection ("CBP")
27 and Animal and Plant Health Inspection Service ("APHIS") officials at each of these CBP locations
28 to discuss import requirements for cracked corn to ensure compliance with import regulations,

1 including CBP and APHIS regulations. Mr. Corbett, at my instruction, provided samples of
2 cracked corn processed at Tiryaki to CBP at Wilmington, Delaware.

3 11. On October 20, 2017, I spoke with CBP Agricultural Specialist (“CBP-AG”) at
4 Morehead City, Ralph Tramontano, by telephone regarding the application regulations and
5 definition for cracked corn. During this call, Mr. Tramontano acknowledged that cracked corn is
6 made up of cracked and whole corn kernels and explained that cracked corn is considered a
7 “processed” product. As a processed or manufactured product, cracked corn, he explained to me, is
8 governed by the *Miscellaneous and Process Products* import manual and that, as such, the country
9 of origin does not matter.

10 12. During this same conversation, we generally discussed cackage requirements
11 regarding the proportion of cracked to uncracked corn within a shipment. Although Mr.
12 Tramontano did not identify any specific APHIS requirement, we discussed Federal Grain
13 Inspection Service’s (“FGIS”) definition of “cracked corn.” Based on our conversation, I
14 understood that CBP would consider any shipment that satisfied FGIS’s definition of cracked corn
15 as cracked corn for purposes of import inspection and regulation.

16 13. I was involved in developing Sunrise’s compliance program and am familiar with its
17 compliance protocols. Sunrise developed a compliance process to ensure that cracked corn
18 shipments were imported consistent with APHIS regulations and manuals, as instructed by CBP,
19 and further met the FGIS definition of cracked corn. In preparing this compliance program, Sunrise
20 substantially relied on these past representations made by CBP and APHIS, as well as the published
21 APHIS regulations and manuals, to prepare sixteen cargo holds of cracked corn, twelve of which
22 were cleared by CBP and APHIS. The remaining four are the shipments aboard the vessel
23 Mountpark at issue in this case (the “Mountpark Shipments”).

24 14. The Mountpark Shipments at issue in this case were procured from Tiryaki and
25 prepared in accordance with this compliance program prior to import.

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1 15. Bureau Veritas, an international certification agency, performed a quality control
2 inspection of one of these shipments prior to shipping, and confirmed that the shipment satisfied the
3 FGIS standard for cracked corn. A true and correct copy of this certification is attached as **Exhibit**
4 **B.**

5 16. On February 26, 2018, the Mountpark Shipments arrived at the Port of San
6 Francisco.

7 17. After the product was sampled and inspected, CBP cleared the shipments for entry
8 on March 7, 2018.

9 18. On March 12, 2018, CBP/APHIS subsequently issued four Emergency Action
10 Notifications (“EANs”) declaring that “[t]he commodity does not meet the requirements for cracked
11 corn” because the raw material originated from Russia, Moldova and Kazakhstan, countries
12 prohibited by 7 CFR 319.24 and 7 CFR 319.41. These EANs are attached as Exhibit J to the
13 Declaration of Michael Corbett.

14 19. In the following days, I, as well as Mr. Corbett, made numerous attempts to appeal
15 the decision, asking CBP, APHIS, and USDA to reconsider its decision and repeatedly asked for
16 clarification on their decision.

17 20. On March 19, 2018, CBP notified me that USDA rejected Sunrise’s request to test
18 samples of the cracked corn from the Mountpark Shipments and Sunrise’s request to “treat” the
19 alleged “contaminants” at a nearby APHIS-approved treatment facility. CBP informed me that
20 USDA’s rejection of the shipments was a final decision and refused to offer me any recourse to
21 “treat” the whole processed kernels.

22 21. I was informed by USDA, CBP and APHIS that there are no other actions Sunrise
23 can take to appeal or contest the USDA’s final decision.

24 22. The Mountpark Shipments contain a total of 25,000,000 kilograms of cracked corn
25 (approximately 27,558 U.S. tons).

26 23. The total value of the Mountpark Shipments is \$8,422,000. True and correct copies
27 of the shipping documents, which including commercial invoices, are attached as Exhibit G to the
28 Declaration of Michael Corbett.

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1 24. The Mountpark Shipments remain on the vessel Mountpark at the cost of \$11,500
2 per day for daily hire fees. Until a few days ago, Sunrise was paying \$23,500 per day for daily hire
3 fees and dockage fees, in addition to other costs. As of the signing of this Declaration, Sunrise has
4 been charged and is expected to pay a total of \$ 255,560.00 in total fees for daily hire, fuel, and
5 dockage for directly related to this rejection.

6 25. Sunrise continues to make substantial efforts to mitigate its significant damages
7 pending resolution of this matter. Sunrise recently undocked the vessel Mountpark from the Port of
8 Stockton and anchored it in the Port of San Francisco to mitigate its precipitously accumulating
9 costs. This change saves \$12,000 a day on dockage fees.

10 26. The Mountpark Shipments are also at risk of product deterioration with the
11 continuing delays pending resolution of this dispute.

12 27. The Mountpark Shipments were intended to fulfill purchase orders with a wholesale
13 feed supplier with a contracted delivery date of March 7, 2018. Any delays in delivery or Sunrise's
14 failure to deliver the cargo will result in irreparable harm to Sunrise's business relationships with its
15 agricultural customers.

16 28. The total cost of re-exporting and replacing the Mountpark Shipments is
17 approximately \$2,462,186.39. Re-exporting the shipments to Turkey costs approximately
18 \$1,124,828.94 in return shipping and handling fees. It would take 6 to 9 weeks to re-mill the
19 existing shipments and deliver the shipments back to Stockton, California. It would cost
20 approximately \$ 235,000 to re-mill the shipments, and \$1,062,357.45 to handle and deliver the
21 shipments from Turkey by merchant vessel back to Stockton, California.

22 29. Destruction of the Mountpark Shipments will cause a total loss of \$8,422,000 (the
23 value of approximately 27,500 U.S. tons of cracked corn) plus the cost of destruction. Shipping and
24 handling fees to deliver replacement shipments of cracked corn from Turkey back to Stockton,
25 California would cost approximately \$1,062,357.45 and take an additional 6 to 9 weeks for
26 processing and delivery.

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