

1 CHAD A. READLER
 2 Acting Assistant Attorney General
 MCGREGOR W. SCOTT
 3 United States Attorney
 ERIC R. WOMACK
 4 Assistant Branch Director, Federal Programs Branch
 DANIEL HALAINEN
 5 Trial Attorney (MA Bar No.694582)
 6 U.S. Department of Justice
 Civil Division, Federal Programs Branch
 7 20 Massachusetts Avenue, NW
 8 Washington, DC 20530
 Tel.: (202) 616-8101
 9 Fax: (202) 616-8470
 Email: daniel.j.halainen@usdoj.gov
 10

11 *Attorneys for Defendants*

12 **UNITED STATES DISTRICT COURT**
 13 **EASTERN DISTRICT OF CALIFORNIA**
 14 **SACRAMENTO DIVISION**

14 SUNRISE FOODS INTERNATIONAL)
 15 INC.,)

16 Plaintiff,)

17 v.)

18)
 19 SONNY PERDUE, in his official capacity)
 as Secretary of Agriculture, *et al.*,)

20 Defendants.)
 21)
 22)
 23)
 24)
 25)

Case No. 2:18-cv-00688-JAM-EFB

**DECLARATION OF OMAR SULTAN IN
 SUPPORT OF DEFENDANTS'
 OPPOSITION TO PLAINTIFF'S
 MOTION FOR TEMPORARY
 RESTRAINING ORDER**

DECLARATION OF OMAR SULTAN

I, Omar Sultan, under 28 U.S.C. declare as follows:

1. I am a Supervisory Agriculture Specialist with the Area Port of San Francisco, Office of Field Operations (OFO), U.S. Customs and Border Protection (CBP), United States Department of Homeland Security (DHS). CBP is responsible for certain agricultural import and entry inspection functions. I have been employed by DHS-CBP-OFO since February 2012 and have been in my current position since August 2016. I currently work in Alameda, California for the San Francisco, California Port of Entry.

2. I make this declaration in support of CBP, one of the defendants in this lawsuit.

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

4. When commodities are imported, a sampling is conducted prior to entry into the United States to ensure that they comply with United States law. CBP and USDA work collaboratively to ensure that agricultural imports are safe and legal to allow into the country.

5. On February 22, 2018 Plaintiff advised me that the cargo aboard the vessel MV Mountpark will be sampled at anchorage in the San Francisco Bay and that this procedure would be completed by the surveyor OMIC (OMIC U.S.A., Inc., 1984 Del Paso Road, Sacramento, California 95834).

6. On February 22, 2018, the master bills of lading associated with the corn aboard the MV Mountpark were placed on hold for physical exam by CBP through the Automated Targeting System (ATS).

7. On February 22, 2018, I received bills of lading for the five cargo holds aboard the MV Mountpark from Transmarine Navigation Corporation, the vessel agency service for the MV Mountpark. The documents provided listed the following bills of lading, cargo hold number, gross weights, and cargo descriptions:

TAGSMOPAR01, hold no. 1, 5,079.800 MT certified organic cracked corn

TAGSMOPAR02, hold no. 2, 7,352.280 MT certified organic cracked corn

TAGSMOPAR03, hold no. 3, 7,188.540 MT certified organic cracked corn

TAGSMOPAR04, hold no. 5, 5,379.380 MT certified organic cracked corn

TAGSMOPAR05, hold no. 4, 6,500.000 MT certified organic soybean meal

8. According to Transmarine Navigation Corporation, the MV Mountpark arrived on February 26, 2018 to San Francisco Anchorage E-5. Cargo surveyors came on board on February 28, 2018 and commenced cargo sampling, which was completed later that day.

9. Cargo samples were delivered to Bobac Centralized Examination Station (CES) (300 A Ave., Alameda, CA 94501) on or about February 28, 2018. A CES is a privately operated facility contracted by CBP where imported or exported cargo is made available for inspection.

10. On March 1, 2018 four CBP Agriculture Specialists commenced an examination of the samples of the corn that were delivered to Bobac CES. After completing the examination, the CBP Agriculture Specialists advised me the samples that were examined had a significant quantity of whole kernels of corn. At approximately 1115 I visited Bobac CES with two Agriculture Specialists to visually examine a portion of the corn. Two photographs were taken of the corn in one cargo hold. The Agriculture Specialists advised me that their exam of all the cargo holds containing corn were similar in appearance to the one photographed.

11. On March 1, 2018 I returned to the office and reviewed the entry documents provided to CBP, which contained a facsimile of commercial invoice from Diasub FZE, certificate of origin from Turkey, bill of lading, and cargo manifest. No import permit or additional documentation was presented.

12. Our port has a previous history with a different importer that attempted to import whole corn kernels from a prohibited country (Kazakhstan) using the supplier Diasub FZE. The documents presented in the previous shipment also included commercial invoices from Diasub FZE and certificate of origin from Turkey.

13. On March 1, 2018 I contacted Agriculture Operations Manager Neftali Rivera at the CBP San Francisco Field Office and notified him of the condition of the corn, the invoices, and the certificate of origin. I provided Mr. Rivera the four entry document sets referenced

above as well as USDA-APHIS import permit P41-15-00105 and the two photos of the corn that were previously taken in the day, to provide to CBP's Agriculture Programs and Trade Liaison (APTL) for review by USDA.

14. On March 7, 2018 the CBP holds on master bills of lading associated with the corn aboard the MV Mountpark were released, permitting the vessel to move pending a response from APTL.

15. On March 8, 2018, Mr. Rivera advised me and Chief Supervisory CBP Agriculture Specialist Dickins Chun that obtaining information regarding the shipment would require a couple of days. He also advised that it was his understanding that we were allowing the MV Mountpark to proceed to Stockton. He also advised that we would be able to explore available enforcement options if any detrimental information became available.

16. On March 12, 2018, Mr. Rivera advised that the corn appeared to have originated in Russia, Moldova, and Kazakhstan based on information provided by USDA-APHIS-QPAS. I responded by providing the two previous photos of the commodity inquiring if USDA considered the commodity to be sufficiently processed as "cracked corn".


17. On March 12, 2018 Mr. Rivera responded with information from USDA that based on the images supplied, the corn did not appear to meet the APHIS definition for "cracked corn".

18. On March 12, 2018 at approximately 1340, the bills of lading associated with the corn aboard the Mountpark were placed back on hold by CBP.

19. On March 12, 2018 at 1550 hours Emergency Action Notification (EAN) numbers 81399, 81405, 81409, and 81411 were sent to Plaintiff. The EANs noted that the commodity did not meet the requirements for cracked corn. The EANs also noted the raw material was determined to originate from Russia, Moldova, and/or Kazakhstan and was prohibited per 7 CFR 319.24 and 7 CFR 319.41.

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

Executed on the 6th day of April, 2018.



Omar Sultan
Supervisory Agriculture Specialist
Area Port of San Francisco, Maritime Operations
Office of Field Operations
U.S. Customs of Border Protection
United States Department of Homeland Security