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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. )

Civil Case No.:

**COMPLAINT FOR  
DECLARATORY, INJUNCTIVE,  
AND MANDAMUS RELIEF**

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1 Plaintiff SUNRISE FOODS INTERNATIONAL INC. (“Sunrise”) alleges as follows:

2 **PARTIES**

3 1. Plaintiff Sunrise is a Canadian corporation, with its principal place of business at 306  
4 Queen Street Suite 200, Saskatoon, SK S7K 0M2, Canada.

5 2. Defendant Sonny Perdue is the Secretary of Defendant U.S. Department of  
6 Agriculture (“USDA”), which is an executive department of the United States that is responsible for  
7 the administration and enforcement of the Plant Protection Act (7 U.S.C. §7701 *et seq.*). He is sued  
8 in his official capacity.

9 3. The USDA is the agency charged with, among other things, protecting the nation’s  
10 agriculture from dangerous foreign animal and plant pests and diseases.

11 4. Defendant Kevin Shea is the Administrator of Defendant USDA’s Animal and Plant  
12 Health Inspection Service (“APHIS”), the federal agency that administers the USDA’s statutory  
13 functions related to animal and plant protection. He is sued in his official capacity.

14 5. Defendant Kevin K. McAleenan is the Commissioner of Defendant U.S. Customs  
15 and Border Protection (“CBP”), a federal agency within the U.S. Department of Homeland  
16 Security. He is sued in his official capacity.

17 **JURISDICTION AND VENUE**

18 6. This Complaint concerns an unlawful, final federal agency action for which there is  
19 no other adequate remedy. Thus, this Court has jurisdiction over this action under 28 U.S.C. § 1331  
20 (Federal Question), § 1346 (United States as Defendant), § 1346 (Writ of Mandamus) 5 U.S.C. §§  
21 702-704 (Administrative Procedure Act), and 28 U.S.C. §§ 2201-02 (Declaratory Judgment).

22 7. This Court also has jurisdiction under the Plant Protection Act, which vests the  
23 United States district courts with jurisdiction in all cases arising under the PPA, Title 7, U.S.C.  
24 §7736. Any action arising under the PPA may be brought, and process may be served, in the  
25 judicial district where a violation or interference occurred or is about to occur, or where the person  
26 charged with the violation, interference, impending violation, impending interference, or failure to  
27 pay resides, is found, transacts business, is licensed to do business, or is incorporated.

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1 *Miscellaneous and Processed Products Import*. The former provides context and APHIS’s  
2 operative definition for cracked corn, and identifies the *Miscellaneous and Processed Products*  
3 *Import* manual as the instructive guide for cracked corn.

4 15. APHIS’s *Seeds Not for Planting* manual (“*Seeds Not for Planting*”) provides  
5 information and procedures for regulating unprocessed whole seeds that are imported for purpose  
6 other than planting or growing, and for protecting endangered plants. The latest version of this  
7 manual is dated December 2017. The Introduction section provides information about the purpose,  
8 scope, application, and directions for using the manual. The Procedures section provides  
9 prerequisites and directions for sampling, inspecting, and regulating these seeds. *See* USDA’s  
10 APHIS website, *Seeds Not for Planting*,  
11 [https://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/seeds\\_not\\_for\\_planting](https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/seeds_not_for_planting.pdf)  
12 [.pdf](https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/seeds_not_for_planting.pdf) (last accessed on March 26, 2018).

13 16. Pages 1-3 and 1-4 of the Introduction of the *Seeds Not for Planting* states that it  
14 covers only “seeds **not** processed beyond harvesting,” but not “seeds processed beyond harvesting.”  
15 Instead, “seeds processed beyond harvesting,” is covered by APHIS’s *Miscellaneous and Processed*  
16 *Products Import* manual (“*Miscellaneous and Processed Products*”). *See* USDA’s APHIS website,  
17 *Miscellaneous and Processed Products*,  
18 [https://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/miscellaneous.pdf](https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/miscellaneous.pdf) (last  
19 accessed March 26, 2018).

20 17. For avoidance of doubt, page 4 of the Glossary in *Seeds Not for Planting* defines  
21 “processed seed” as “[t]hat which has been subjected to any degree of alteration beyond harvesting,  
22 e.g. cracked corn.”

23 18. APHIS’s *Miscellaneous and Processed Products* provides information and  
24 procedures for regulating imported processed plant and nonplant sources. The Introduction section  
25 provides information about the purpose, scope, application, and directions for using the manual.  
26 The Procedures section provides prerequisites and directions for sampling, inspecting, and  
27 regulating the processed plant and nonplant sources.

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1 19. Pages 1-3 to 1-4 of the Introduction discusses the scope of the *Miscellaneous and*  
 2 *Processed Products*. The Introduction provides that this manual covers “[p]roducts that result from  
 3 the harvesting and milling of field crops—principally corn, cotton, rice, sugarcane, and wheat” and  
 4 that “processed” means the plant or plant part was prepared, treated, or converted by being  
 5 subjected to some physical or chemical procedure beyond harvesting. Parallel to the *Seeds Not for*  
 6 *Planting*, page 13 of the Glossary also defines “processed seed” as “seed subjected to any degree of  
 7 alteration beyond harvesting (e.g., cracked corn is considered processed).”

8 20. The general inspection process for products governed by Figure 2-1 is described in  
 9 *Miscellaneous and Processed Products*, as follows:

- 10 **Step 1: Determine the makeup of the shipment**

11 **Step 2: Determine the admissibility of and restrictions on the contents**  
 12 **of the shipment**


13 **Step 3: Determine whether pests, prohibited packaging, or**  
 14 **contaminants are associated with the shipment**

15 **Step 4: Act upon the shipment based on pest findings and the**  
 16 **regulatory authority**

17 **Figure 2-1 Inspection process**

18 21. Table 3-36 of *Miscellaneous and Processed Products* describes a two-step procedure  
 19 for inspecting cracked corn: (1) inspect; and (2) release, as shown below:

20 **Table 3-36 Grains locator<sup>1</sup>**

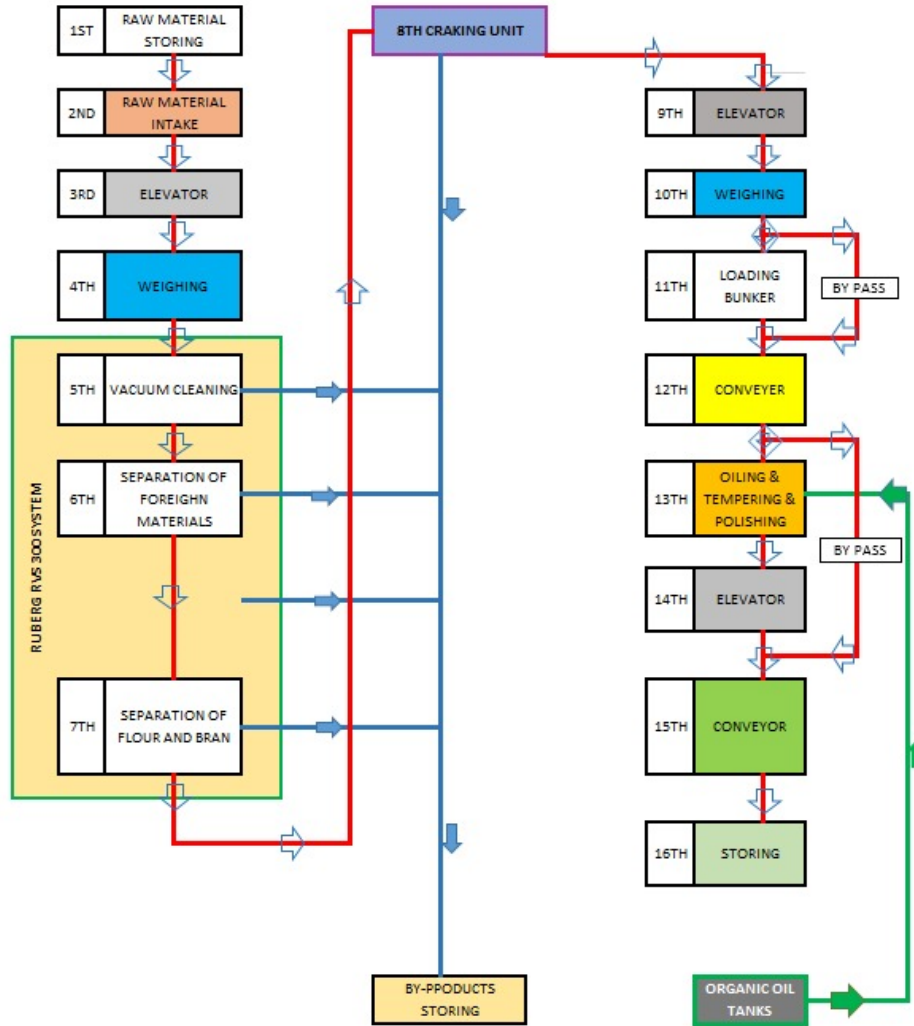
If:	And is:	Then:
Beans, peas, and lentils		SEE <a href="#">Table 3-131</a>
Corn <sup>2</sup>	Fodder, silage, or stover (stems and leaves) harvested in Canada	SEE <a href="#">Table 3-37</a>
	Fodder, silage, or stover harvested in a country <b>other than</b> Canada	SEE <a href="#">Table 3-38</a>
	Ears of corn, shucked or unshucked	SEE <a href="#">Table 3-39</a>
	Corn products and by-products of grain milling (e.g., commeal, cracked corn, grits, oil, samp, and starch)	INSPECT and RELEASE <sup>3</sup>

27 ///

28



1 contamination. As a final step, Tiryaki conducts quality control of the product by inspecting the  
 2 processed corn to ensure that the processed corn is sufficiently “cracked” to meet the agreed-upon  
 3 threshold standard for purchase. The figure below depicts a flowchart of this process.



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21 28. Diasub uses a third-party shipper to load the product from Turkey and deliver it by  
 22 way of a merchant vessel to the destination.

23 29. Once unloaded in the United States, Sunrise distributes the cracked corn to various  
 24 customers who further process it into animal feed. In general, the cracked corn is used for both  
 25 poultry and dairy feed. The cracked corn would either be ground and mixed with other ingredients  
 26 (e.g., ground soybean and nutritive additives) and turned into pellets, or would be heated and  
 27 steamed through a roller mill to create a “pancake” type feed.  
 28



1           30.     Within the past six months, Sunrise imported sixteen cargo holds of cracked corn  
2 (“shipment”) to various U.S. destinations in the manner detailed above. Each of these shipments  
3 were cleared for entry at four different CBP entry points after undergoing an inspection and sample-  
4 testing process. These entry points were Wilmington, Delaware; Morehead City, North Carolina;  
5 New Orleans, Louisiana; and San Francisco, California (the same jurisdiction which rejected the  
6 shipment that is the subject of this action).

7           31.     In advance of each of these four prior imports of sixteen total shipments, Sunrise met  
8 with the CBP/USDA at each of these CBP locations to review import requirements for cracked  
9 corn. Sunrise provided samples of the cracked corn product for testing in some cases, such as to the  
10 CBP in Wilmington, Delaware. Notably, during a meeting at Morehead City, North Carolina, the  
11 CBP agreed that the shipment was processed. Pursuant to *Miscellaneous and Processed Products*,  
12 the operative definition of “cracked corn” is “processed seed that has been subject to any degree of  
13 alteration beyond harvesting.”

14   **The Mountpark Shipments**

15           32.     On or about February 26, 2018, the merchant vessel Mountpark arrived at the Port of  
16 San Francisco containing several shipments of Sunrise’s organic cracked corn. These shipments  
17 were intended ultimately to fulfill purchase orders placed by Californian agricultural customers for  
18 livestock feed manufacturing. As with prior shipments, after undocking in San Francisco, the  
19 cracked corn was to be further processed (*i.e.*, milled) in the United States.

20           33.     On February 28, 2018, these shipments were sampled by a third-party on behalf of  
21 CBP.

22           34.     On March 7, 2018, CBP cleared the shipments for entry, advising Sunrise that the  
23 product was acceptable.

24           35.     Following CBP’s clearance of the shipments, Mountpark began heading towards the  
25 Port of Stockton to unload the shipments for delivery to Eastern California.

26           36.     Upon information and belief, sometime after March 7, 2018, CBP received  
27 information regarding the country of origin of the raw materials from another governmental agency  
28



1 and did not make any efforts to inquire or verify any information regarding the cargo directly with  
2 Sunrise.

3 37. On or about 2:39 p.m. on March 12, 2018, Omar Sultan, Supervisory CBP  
4 Agriculture Specialist notified Sunrise by email that the shipments were back on hold. Mr. Sultan  
5 called Sunrise minutes later, on or about 2:45 p.m., to inform Sunrise that the shipments were now  
6 rejected.

7 38. On or about March 12, 2018, CBP/APHIS issued four Emergency Action  
8 Notifications (“EAN”) notifying Sunrise that each of the four holds of cracked corn in the  
9 Mountpark shipments were prohibited because “[t]he commodity does not meet the requirements  
10 for cracked corn” because the raw material originated from Russia, Moldova and Kazakhstan,  
11 countries prohibited by 7 CFR 319.24 and 7 CFR 319.41. True and correct copies of the four EANs  
12 are attached hereto as **Exhibit A**.

13 39. Mountpark was on en route or had just arrived to the Port of Stockton at or around  
14 the time CBP/APHIS issued the EANs.

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

18 41. Sunrise responded to the EANs the following day. On March 13, 2018, Sunrise  
19 contacted Dickins Chun, Chief CBP Agriculture Specialist, and Omar Sultan, to notify them that the  
20 EANs were issued in error and that the shipments of cracked corn complied with the APHIS’s  
21 definition of a processed product. CBP informed Sunrise that they had reviewed a photograph of  
22 the shipment and determined that it contained prohibited product.

23 42. Sunrise explained that photographs of cracked corn misrepresent the proportion of  
24 whole kernels in a sample of cracked corn, particularly because smaller pieces of cracked corn sink  
25 to the bottom of a sample, leaving the top layer with larger pieces of cracked corn and whole  
26 kernels.

27 43. Sunrise also explained the methodology it relied on to ensure compliance with the  
28 USDA regulations prior to import based on its prior discussions with CBP and APHIS. Sunrise

1 explained that the proper definition of “cracked corn” is a “processed seed that has been subject to  
2 any degree of alteration beyond harvesting” under the applicable APHIS inspection guideline for  
3 imported cracked corn, *i.e.*, *Miscellaneous and Processed Products*.

4 44. On March 13, 2018, Mr. Chun informed Sunrise that CBP forwarded Sunrise’s  
5 concerns and explanations to the USDA for consideration.

6 45. Since then, Sunrise has continued to engage in multiple telephone and email  
7 communications with Mr. Chun and Mr. Sultan of CBP, and APHIS local representative Phil  
8 Johnson. During these discussions, Sunrise thoroughly explained the cracking process.

9 46. On or about March 14, 2018, Mr. Sultan contacted Sunrise to inform them that CBP  
10 would not rescind their EANs because the product did not meet the *APHIS* definition of cracked  
11 corn and that there were contamination risks.

12 47. This was the first time that Sunrise was notified or made aware that APHIS was  
13 applying a definition of cracked corn not based on the Federal Grain Inspection Service’s (“FGIS”)   
14 definition of cracked corn in the context of an import inspection by CBP. The FGIS is an agency  
15 within the USDA’s Agricultural Marketing Service that is wholly separate from the APHIS. FGIS  
16 provides oversight on the marketing of agricultural products by establishing grain grading standards  
17 and testing methodologies to measure grain quality, which are incorporated by domestic sellers and  
18 buyers to communicate the type and quality of grain bought and sold. This oversight is limited to  
19 permissive inspections of domestic shipments and mandatory inspections of exported goods.

20 48. Mr. Sultan offered to revisit the issue with USDA Headquarters and suggested the  
21 possibility of treating the corn at Penny-Newman, an unload facility in Stockton, California,  
22 approved to treat pests and pathogens.

23 49. Upon information and belief, in a subsequent communication, APHIS admitted that  
24 the shipment satisfied the FGIS definition of cracked corn, but insisted that it still did not meet the  
25 APHIS definition.

26 50. On or about March 15, 2018, Mr. Sultan followed up with Sunrise, explaining that  
27 USDA Headquarters would not permit Sunrise to treat the corn at Penny-Newman because USDA  
28

1 considered the corn “unprocessed” (due to the existence of some whole kernels) and requires  
2 processing be completed prior to import.

3 51. On or about March 15, 2018, Sunrise spoke with Mr. Chun to discuss the process the  
4 USDA used to inspect Sunrise’s cracked corn. Mr. Chun explained that the products passed the  
5 CBP’s typical inspection process but that after CBP concluded its inspection, USDA Headquarters  
6 requested a further review of the shipment. Mr. Chun sent USDA Headquarters the shipping  
7 paperwork as well as a photograph of the cracked corn sample, which USDA Headquarters relied  
8 on in issuing the EANs.

9 52. On or about March 16, 2018, a commodities trader at Penny-Newman informed  
10 Sunrise that the State Operations Coordinator for APHIS had reconsidered the shipment, and  
11 determined that it was still prohibited from entry. APHIS provided the following inconsistent,  
12 implausible and untenable reasons for that prohibition in an email exchange on or about March 16,  
13 2018.

14 53. First, APHIS stated in this email that “unprocessed raw corn grain of Russia,  
15 Kazakhstan, and Moldova production origin is prohibited entry into the U.S.” pursuant to 7 CFR  
16 319.24 and 7 CFR 319.41.” Processed corn and raw corn, however, are governed by separate  
17 standards by the APHIS and are reviewed and inspected according to different guidelines and  
18 manuals established by the APHIS. Sunrise’s products were produced or processed in Turkey, as  
19 described above, and not in Russia, Kazakhstan or Moldova. To the extent APHIS now contends  
20 that corn originating from Russia, Kazakhstan, and Moldova is prohibited from import, regardless  
21 of whether the corn has been processed (as cracked corn), APHIS’s decision is contrary to APHIS  
22 guidelines. *Miscellaneous and Processed Products* does not identify these restrictions, and simply  
23 requires CBP and agricultural import inspectors to inspect the product for pests and pathogens, and  
24 release.

25 54. Prior to importing, Sunrise had discussed APHIS standards for cracked corn with  
26 CBP and APHIS at a number of ports of entry to ensure that Sunrise’s product met the agricultural  
27 import inspection standard prior to import, which it did. Sunrise substantially relied on these past  
28 representations made by CBP and APHIS, and the published APHIS regulations and manuals to

1 prepare sixteen cargo holds of cracked corn, all of which were cleared by CBP and APHIS. The  
2 current Mountpark shipment that is the subject of this action was prepared in the same way prior to  
3 import.

4 55. Upon information and belief, Sunrise is the only agricultural importer of cracked  
5 corn subject to APHIS’s arbitrary and capricious new “origin” standard for cracked corn and  
6 Sunrise was not subject to this new definition on prior shipments of cracked corn.

7 56. Second, APHIS next suggested in the same email that “[i]n order to be enterable, the  
8 entire shipment would have needed to be processed (cracked). There can be NO WHOLE  
9 KERNELS.” However, this new definition for cracked corn flatly contradicts USDA’s own  
10 existing and widely published definition of cracked corn. It was also the first time Sunrise was  
11 presented with this definition. As stated above, APHIS rules define cracked corn as a “processed  
12 seed” which is defined as “[t]hat which has been subjected to any degree of alteration beyond  
13 harvesting, e.g. cracked corn” and is subject to *Miscellaneous and Processed Products*. Moreover,  
14 and significantly, this is an impossible standard. No industry standard exists that requires the  
15 cracking of every single corn kernel, and no processing plant can, as a practical matter, ensure or  
16 meet this standard. Upon information and belief, Sunrise is the only agricultural importer of  
17 cracked corn that is subject to APHIS’s arbitrary and capricious new “one hundred percent cracked  
18 kernel” definition of cracked corn.

19 57. Lastly, APHIS contradicted its earlier position by changing course and  
20 acknowledging that some unspecified USDA definition, not FGIS’s definition, of cracked corn  
21 applies. The APHIS stated, again in the same email, that “although it [the shipment] may meet the  
22 FGIS definition of “cracked corn,” it does NOT meet USDA requirements for entry.” But as  
23 discussed above, APHIS rules define cracked corn as a “processed seed” which is defined as “[t]hat  
24 which has been subjected to any degree of alteration beyond harvesting, e.g. cracked corn” and is  
25 subject to *Miscellaneous and Processed Products*. Upon information and belief, Sunrise is the only  
26 agricultural importer of cracked corn that is subject to APHIS’s vacillating and unfounded  
27 definitions of cracked corn standards.

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1           58.     However, even if, as APHIS suggests, the whole kernels present in the shipments of  
2 cracked corn are considered “contaminants,” APHIS does not automatically require denial of entry.  
3 Instead, APHIS set clear guidelines on the appropriate actions that must be undertaken to treat or  
4 handle the contaminant before release. *See Seeds Not for Planting*. CBP is directed to take  
5 different actions based on the level of contamination and the potential disposition of the shipment.  
6 If the corn will be subject to further processing, as is the case here, CBP is required to simply  
7 “inspect and release” the product. Entry is denied only if the corn is likely to be “released into the  
8 environment” and cannot be further processed, cleaned, or treated.

9           59.     Sunrise continued to engage with APHIS and CBP, requesting an explanation of the  
10 inspection process and attempting to seek clarification on the process they used in concluding that  
11 Sunrise’s shipment was prohibited, even though a similar shipment of cracked corn by Sunrise had  
12 cleared import only weeks earlier.

13           60.     Upon information and belief, Sunrise is the only agricultural importer that was  
14 subject to an unapproved method of inspection, *i.e.*, by way photograph. Despite Sunrise’s repeated  
15 efforts to persuade CBP, APHIS, and USDA to sample test and inspect the cracked corn as they are  
16 required to do, they refused to do so.

17           61.     On or about March 18, 2018, CBP informed Sunrise that the determination to issue  
18 the EANs was based on the review of a single photograph of cracked corn. When questioned as to  
19 whether there were any concerns about pathogen or pest risks with this shipment, CBP admitted  
20 that there were no such concerns. Sunrise urged CBP yet again to reconsider its decision and  
21 sample test the product.

22           62.     On March 19, 2018, CBP notified Sunrise that USDA Headquarters denied Sunrise’s  
23 request to sample test the cracked corn. CBP informed Sunrise that USDA Headquarters’ decision  
24 that the shipment contained prohibited products was final.

25           63.     In response to CBP’s notification, Sunrise (through its counsel) had series of  
26 discussions with officials at APHIS headquarters on or about March 20, March 21, March 22,  
27 March 23, March 26, and March 27. During these discussions, APHIS officials continued to shift  
28 the justification for refusing entry for the Mountpark shipments, variously attributing its decision to,

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1 *inter alia*, the origin of the raw corn product, the processing of the whole kernels, and the ratio of  
2 cracked corn to whole kernels in the shipment. Even after acknowledging that any whole kernels  
3 should be treated as a contaminant, APHIS could not articulate why the entire shipment could not  
4 be treated and instead must be entirely rejected. At one point, APHIS even stated, contrary to Mr.  
5 Sultan’s prior email, that they were relying on CBP who had determined that treatment at the  
6 Penny-Newman facility was not feasible.

7 64. As demonstrated above, Sunrise has exhausted all available administrative remedies.  
8 There are no further procedures to appeal or otherwise contest the decision communicated to  
9 Sunrise on March 19, 2018.

10 65. To date, CBP, APHIS, and USDA have failed, and continue to fail, to provide  
11 Sunrise with any explanation grounded in existing law for issuing the EANs, despite Sunrise’s  
12 efforts. Sunrise has received conflicting information from CBP, APHIS, and USDA on the  
13 standards they used to define “cracked corn” in evaluating Sunrise’s product, and at least one  
14 agency suggested that Sunrise’s cracked corn is prohibited because the raw corn was harvested  
15 from a prohibited country even though the cited regulations, 7 CFR 319.24 and 7 CFR 319.41, do  
16 not support this conclusion. Most recently, CBP and APHIS alleged that whole processed kernels  
17 identified in the shipment were considered “contaminants,” and refused to offer Sunrise any  
18 recourse to “treat” the whole processed corns at a nearby APHIS-approved treatment facility.  
19 Instead, Sunrise must re-export or destroy the entire shipment to comply with the EANs, at the loss  
20 of millions of dollars in goods.

21 **Threat of Irreparable Injury to Sunrise and Need for Injunctive Relief**

22 66. Sunrise has suffered and continues to suffer substantial economic harm due to  
23 Defendants’ unlawful actions. Sunrise’s cargos are currently in Stockton, California. Sunrise has  
24 incurred and continues to incur approximately \$23,500 per day, risking product deterioration as the  
25 cargo continues to be docked in the Port of Stockton awaiting resolution of this matter. Re-  
26 exporting the shipment to Turkey or destroying the shipment, as suggested by Defendants, are not  
27 viable options and would result in well over several million dollars in losses. Further delays in  
28

1 delivery or Sunrise’s failure to deliver the cargo will result in irreparable harm to Sunrise’s business  
2 relationships with its agricultural customers.

3 67. Moreover, Defendants’ arbitrary and disparate application of APHIS’s import  
4 regulations and guidance has far-reaching implications that threatens the entire agricultural industry  
5 and impacts consumers. Uncertainty with respect to the applicable import regulations will cause  
6 significant delays in shipments to the end purchaser of the products, resulting in substantial loss in  
7 revenue for U.S. importers and farmers, and higher costs to consumers.

8 68. Upon information and belief, Sunrise is the only agricultural importer subjected to  
9 CBP, APHIS, and USDA’s arbitrary and capricious standards and applications for cracked corn.  
10 This disparate treatment is a clear abuse of discretion by CBP, APHIS, and USDA and such actions  
11 violate the law.

12 **CLAIMS FOR RELIEF**

13 **CLAIM ONE**

14 **APA 5 U.S.C. 706(2)(A)**

15 **[Against All Defendants]**

16 69. Sunrise incorporates by reference paragraphs 1 through 68 as if set forth fully herein.

17 70. The APA requires a court to “hold unlawful and set aside agency actions, findings,  
18 and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in  
19 accordance with law.” 5 U.S.C. § 706(2).

20 71. An agency acts in a way that is arbitrary, capricious, an abuse of discretion, or  
21 otherwise not in accordance with law when it fails to apply criteria for its action contained in  
22 relevant statutes, applies criteria for its decision not authorized by its statutory authority, fails to  
23 consider relevant information, fails adequately to explain the basis for its action or to respond to  
24 important public comments, acts inconsistent with the purpose and intent of the statutes granting it  
25 authority, or takes action that is not supported by the administrative record for that action.

26 72. Defendants abused their discretion and acted in an arbitrary and capricious manner  
27 by refusing to follow APHIS regulations and guidelines, by relying on unapproved non-APHIS  
28 definitions of cracked corn, by failing to comply with inspection testing standards and utilizing an



1 unapproved testing method (i.e. photograph), determining that Sunrise’s products were prohibited,  
2 issuing EANs to Sunrise, and subjecting Sunrise to disparate treatment.

3 73. For these reasons, Defendants’ actions, determination that Sunrise’s product was  
4 prohibited, and subsequent decision to issue EANs to Sunrise were arbitrary and capricious,  
5 completely unsupported by the existing guidelines and regulations promulgated by APHIS.

6 **CLAIM TWO**

7 **APA 5 U.S.C. 706(2)(C)**

8 **[Against All Defendants]**

9 74. Sunrise incorporates by reference paragraphs 1 through 73 as if set forth fully herein.

10 75. The APA requires a court to “hold unlawful and set aside agency actions, findings,  
11 and conclusions found to be ...(C) in excess of statutory jurisdiction, authority, or limitations, or  
12 short of statutory right...” 5 U.S.C. § 706(2).

13 76. An agency acts in a way that is arbitrary, capricious, an abuse of discretion, or  
14 otherwise not in accordance with law when it fails to apply criteria for its action contained in  
15 relevant statutes, applies criteria for its decision not authorized by its statutory authority, fails to  
16 consider relevant information, fails adequately to explain the basis for its action or to respond to  
17 important public comments, acts inconsistent with the purpose and intent of the statutes granting it  
18 authority, or takes action that is not supported by the administrative record for that action.

19 77. Defendants acted beyond the scope of their authority and statutory right by violating  
20 clearly established regulations, guidelines and procedures of inspecting agricultural products,  
21 specifically cracked corn, promulgated or otherwise established by APHIS. Defendants refused to  
22 apply the APHIS definition of cracked corn, and instead substituted and applied varying and ill-  
23 contrived definitions for cracked corn to Sunrise’s products. Defendants refused to follow the  
24 established protocol for inspecting cracked corn products, which required sample testing, and  
25 instead relied on a photograph, an unaccepted means of inspection. Defendants refused to adhere to  
26 APHIS’s own established guidelines for treatments of seed contaminants in shipments.

27 78. For these reasons, Defendants acted beyond their authority and jurisdiction, in  
28 violation of the APHIS guidelines and regulations.

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**CLAIM THREE**

**APA 5 U.S.C. 706(2)(D)**

**[Against All Defendants]**

79. Sunrise incorporates by reference paragraphs 1 through 78 as if set forth fully herein.

80. Under the APA, this Court must “hold unlawful and set aside agency actions, findings, and conclusions found to be...(D) without observance of procedure required by law.” 5 U.S.C. § 706(2).

81. APHIS regulates the import of cracked corn and other agricultural products pursuant to the Plant Protection Act. 7 U.S.C. §§ 7701–7786. As part of its rulemaking authority, the APHIS published manuals to guide import inspections of processed plants and defined cracked corn as a “processed seed” as “[t]hat which has been subjected to any degree of alteration beyond harvesting, e.g. cracked corn” within such manuals.

82. Defendants violated existing APHIS regulations by adopting an arbitrary and, at times, contradictory, definition of cracked corn and refusing to comply with the standard procedures for inspecting cracked corn as provided for in APHIS’s *Miscellaneous and Processed Products Import* manual.

83. Defendants unlawfully failed to observe existing procedures established by the APHIS on the evaluation and inspection of cracked corn. Defendants refused to apply the APHIS definition of cracked corn, and instead substituted and applied varying and ill-contrived definitions for cracked corn to Sunrise’s products. Defendants refused to follow the established protocol for inspecting cracked corn products, which required sample testing, and instead relied on unaccepted means of inspection by photographing the product.

**CLAIM FOUR**

**Declaratory Relief, 28 U.S.C. § 2201(a)**

**[Against All Defendants]**

84. Sunrise incorporates by reference paragraphs 1 through 83 as if set forth fully herein.

85. A present and continuing controversy exists between Sunrise and Defendants with respect to a determination of whether Defendants appropriately and lawfully rejected Sunrise’s

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1 shipment of cracked corn based on a determination that the shipment contained a prohibited  
2 commodity. This controversy is likely to continue. Consequently, Sunrise requests a judicial  
3 determination of the respective rights and obligations of the interested parties as to Defendants.  
4 Such a declaration is necessary and appropriate at this time because the immediate and irreparable  
5 harm suffered by Sunrise as a result of Defendants' actions.

6 86. Sunrise is entitled to judgment declaring that Defendants' decision to reject Sunrise's  
7 shipment was an abuse of discretion and violated applicable law, and therefore, that Sunrise's  
8 shipment is entitled to be cleared for entry into the United States.

9 87. Sunrise is further entitled to preliminary and permanent equitable and injunctive  
10 relief to enjoin Defendants from enforcing the EANs because Defendants' unlawful actions have  
11 caused and will continue to cause Sunrise to suffer irreparable harm for which it has no adequate  
12 remedy at law. Such equitable and injunctive relief would further the public's interest and the  
13 balance of equities tips in favor of such an order.

14 88. Sunrise is also entitled to a speedy hearing of this declaratory judgment action  
15 pursuant to Federal Rule of Civil Procedure 57.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Sunrise respectfully requests that the Court:

- 18 1. Issue an order to Defendants to rescind all four EANs;
- 19 2. Issue a declaratory judgment, as set out above and/or as otherwise consistent with  
20 the relief sought herein;
- 21 3. For a writ of mandate commanding Defendants to apply APHIS's definition of  
22 cracked corn and follow inspection guidelines for cracked corn as set forth in APHIS's  
23 *Miscellaneous and Processed Products Import* manual, which requires release after an inspection  
24 determining no risk of pathogen or pests;
- 25 4. Enter appropriate injunctive relief to ensure that Defendants fulfill their legal  
26 obligations under the PPA by complying with standard APHIS agricultural import inspection  
27 procedures and approving Sunrise's shipment for clearance to avoid irreparable harm;

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- 5. Award Sunrise costs and reasonable attorney's fees, to the extent permitted by law;
- and
- 6. Grant such other relief as the Court deems just and proper.

Dated: March 29, 2018

HOLLAND & KNIGHT LLP

By:  /s/ Stacey H. Wang

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