

#### **GOVERNMENT ACCOUNTABILITY PROJECT**

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February 19, 2015

U.S. Department of Labor Occupational Safety & Health Administration 61 Forsyth Street, SW Room 6T50 Atlanta, GA 30303

Re: Craig Watts -- Notice of Whistleblower Complaint

Dear Sir/Madam:

Complainant Craig Watts ("Complainant"), through the undersigned counsel, files this brief letter to supplement his Complaint alleging violations of the employee protection provisions of the Food Safety Modernization Act, 21 U.S.C. § 399d, by Respondent Perdue Farms, Incorporated ("Respondent"). Complainant's protected activity concerns Respondent's holding of live chickens intended for slaughter and sale as food, and Respondent's labeling of finished poultry products. To facilitate the processing of his Complaint, this letter is intended to clarify the scope of the FDA's jurisdiction and the applicability of the relevant provisions of the Food, Drug, and Cosmetic Act to those articles.

Complainant engaged in protected activity when he invited individuals from Compassion in World Farming ("CIWF") to take and publish footage depicting the poor conditions under which chickens are raised for Respondent. Complainant believed that these conditions were the result of practices and conduct by Respondent that increased the chickens' risk of contamination or infection with salmonella, e-coli, and other bacteria, thereby rendering them a threat to consumers who purchase and eat them. For example, in recent years, Complainant has observed an increase in the number of chicks placed on his farm carrying bacterial infections. As a result, Complainant believes that Respondent has not adequately controlled sanitation in its hatcheries to prevent birds from developing infections while at the hatchery, and is not culling sick birds from flocks at the hatchery with sufficient care to prevent the introduction and spread of diseases among the flocks placed on his farm. Additionally, Complainant believes that because Respondent crowds too many birds into each house, the birds do not have adequate room to move around freely, causing them trample each other to access water and food, which in turn leads to scratches and increased risk of infection. Moreover, Respondent prohibits Complainant from administering antibiotics and other medications to sick birds, and Respondent has refused to administer drugs to the birds when Complainant has sought help dealing with apparent outbreaks of disease among flocks placed on his farm.

The Food, Drug, and Cosmetic Act in fact prohibits the delivery or receipt in interstate commerce of "food" that is "adulterated." 21 U.S.C. § 331(c). Under the Act, food is

considered to be adulterated if it is "held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health." 21 U.S.C. § 342(a)(4). As explained below, the term "food" includes live animals that, like Respondent's chickens raised by Complainant, are intended for slaughter and sale as food. Similarly, the phrase "held under insanitary conditions" encompasses Respondent's practices and conduct that Complainant believed increased the chickens' risk of contamination or infection with salmonella or other harmful bacteria.

The Food, Drug, and Cosmetic Act defines the term "food" to include any "articles used for food or drink by man or other animals." 21 U.S.C. § 321(f). OSHA's interim regulations implementing FSMA's employee protection provision adopt this same definition. See 29 C.F.R. § 1987.101. The FDA exercises jurisdiction over live animals, interpreting the term "food" broadly to include live animals intended for food. This interpretation has received approval from the courts. *See United States v. Tuente Livestock*, 888 F.Supp. 1416, 1424 (D. Ohio 1995) (upholding FDA's interpretation of the term "food" to include live animals intended to be slaughtered for food, and denying motion to dismiss enforcement action brought by FDA to enjoin hog buyers from purchasing and selling to slaughterhouses animals that FDA found to be adulterated).

As noted above, food is deemed to be "adulterated" if it is "held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health." 21 U.S.C. § 342(a)(4). While this provision refers specifically to "insanitary" conditions, the phrase "held under insanitary conditions" has been interpreted broadly to encompass any actions or failures to act with respect to the holding of food that may render it harmful to the health of consumers. For example, the FDA has found livestock animals to be adulterated where farmers failed to implement adequate recordkeeping practices sufficient to prevent the administration of drugs to animals during mandatory pre-slaughter withdrawal periods. See United States v. Rhody Dairy, LLC, 812 F.Supp.2d 1239, 1243 (W.D. Wash. 2011) (affirming FDA's broad interpretation of 21 U.S.C. § 342(a)(4) to encompass dairy farmers' administration of drugs to livestock animals without adequate control measures to prevent the accretion of unsafe tissue residue levels). Similarly, the FDA has found food to be adulterated where manufacturers have not developed a written plan identifying and implementing steps to minimize potential food safety hazards. See FDA Warning Letter CIN-DO 14-440363-06 (Nov. 5, 2014)<sup>1</sup>. As explained above, Complainant believed that Respondent's practices and conduct caused the birds to be raised under conditions that elevated their risk of contamination with salmonella, e-coli, or other harmful bacteria, in turn threatening the health of consumers who purchase and eat them.

Complainant's decision to invite the individuals from CIWF to take and publish footage depicting the conditions under which chickens are raised for Respondent was also prompted by his belief that Respondent's use of the phrase "Humanely Raised" on the labeling of its poultry products was misleading to consumers. The Food, Drug, and Cosmetic Act in fact prohibits the delivery or receipt in interstate commerce of "food" that is "misbranded." 21 U.S.C. § 331(c). Food is deemed to be "misbranded" if its labeling is "false or misleading in any particular." 21 U.S.C. § 343(a)(2). As explained in his Complaint, Complainant believed that Respondent's

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<sup>&</sup>lt;sup>1</sup> Retrieved at: <a href="http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2014/ucm421875.htm">http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2014/ucm421875.htm</a>

labeling was misleading because he did not believe that a typical consumer, if made aware of the conditions under which Respondent's chickens are raised, would believe that Respondent's use of that label was warranted.

Respondent's "Humanely Raised" claim appears on its labeling of finished poultry products. Under the Food, Drug, and Cosmetic Act, such products are exempt from the Act's prohibitions "to the extent of the application or the extension thereto of the Meat Inspection Act," which was passed in 1906. 21 U.S.C. § 392. The FDA has interpreted this to mean that the Food, Drug, and Cosmetic Act's prohibitions on commerce in adulterated and misbranded food do not apply to meat and poultry products while those products are within a USDA inspected plant, at which time the USDA has exclusive jurisdiction under the Meat Inspection Act. See Compliance Policy Guide Sec. 565.100<sup>2</sup>. In 1967, Congress passed the Wholesome Meat Act, which extended USDA's jurisdiction over meat and poultry products beyond the point when such products leave a USDA inspected establishment. Section 409(8) of the Wholesome Meat Act, however, stated that the Act was not intended to derogate from any authority conferred by the Food, Drug, and Cosmetic Act prior to its enactment. The FDA has interpreted this provision to mean that the Wholesome Meat Act did not disturb the FDA's jurisdiction over such products once they have left a USDA inspected establishment, so that the FDA and USDA exercise concurrent jurisdiction over such products. See Id.

Respectfully submitted,

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http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuideanceManual/ucm074588.htm

Retrieved at:

# UNITED STATES DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

| CRAIG WATTS,        | ) |          |
|---------------------|---|----------|
| Complainant,        | ) |          |
| v.                  | ) | Case No. |
| PERDUE FARMS, INC., | ) |          |
| Respondent.         | ) |          |

## NOTICE OF WHISTLEBLOWER COMPLAINT

Complainant Craig Watts, through his counsel, files this Complaint alleging violations of the employee protection provisions of the Food Safety Modernization Act, 21 U.S.C. § 399d.

## I. INTRODUCTION

*In the Matter of* 

1. This is an action arising under the employee protection provisions of the Food Safety Modernization Act, 21 U.S.C. § 399d, by Complainant, Mr. Craig Watts, against Perdue Farms, Incorporated (hereafter "Respondent"). This action arises from and concerns adverse employment actions taken against Complainant by Respondent in December 2014, and January 2015, in retaliation for activity protected under 21 U.S.C. § 399d.

## II. JURISDICTION

2. This Complaint having been timely filed within 180 days of the adverse actions complained of, OSHA has jurisdiction to investigate the allegations contained herein, and to issue findings and enter a recommended decision and preliminary order granting the relief requested below.

### III. PARTIES

- 3. Complainant Craig Watts owns and operates C&A Farms in Fairmont, North Carolina, where he raises chickens for Respondent under a written contract between the parties. Under this contract, Respondent delivers flocks of chicks to Complainant, who houses and tends to each flock in accordance with standards set by Respondent. Complainant feeds, waters, and cares for those flocks using feed, medications, and other supplies provided by Respondent.
- 4. Respondent retains title of each flock at all times, and an agent of Respondent typically visits Complainant's farm approximately once per week to check on each flock throughout its growth cycle, which lasts approximately six weeks.
- 5. At the end of flock's growth cycle, Respondent compensates Complainant for his services in accordance with a payment schedule.
- 6. The foregoing facts demonstrate that Complainant is an "employee" of Respondent within the meaning of 21 U.S.C. § 399d(a) and 29 C.F.R. § 1987.101(e).
- 7. At the end of their growth cycle, Respondent's agents pick up the flocks for transport to slaughter and processing facilities owned and operated by Respondent. Respondent transports chickens and turkeys from over two thousand farms to slaughter and processing facilities in over a dozen states.
- 8. At these facilities, Respondent slaughters, processes and packages chickens and turkeys for sale to consumers. Respondent is one of the largest producers of poultry products in the United States, and sells whole birds and various other poultry products to retail food outlets and foodservice customers throughout the United States and abroad.
- 9. Respondent also imports, exports, receives and stores grains and other raw agricultural commodities, which Respondent processes for use in animal feed and pet food.

10. The foregoing facts demonstrate that Respondent is an "entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food" within the meaning of 21 U.S.C. § 399d(a).

## IV. FACTUAL ALLEGATIONS

- A. Complainant's Job, Duties, and Performance
- 11. Complainant began raising chickens for Respondent in 1992. In 1998, Complainant ended his contract with Respondent and began raising chickens for another poultry producer, Mountaire Farms, but was asked to sign a new contract with Respondent in 1999, and has been raising chickens for Respondent continuously since then. Complainant currently raises approximately 720,000 chickens per year for Respondent.
- 12. Complainant is required to house and tend the flocks placed on his farm by Respondent in accordance with standards set by Respondent. These standards impose numerous requirements on the structure, outfitting, and maintenance of Complainant's facilities. These standards also set forth various tasks required to be performed on each day of the flocks' growth cycles, and additional tasks to be performed on particular key dates during and in between the flocks' cycles.
- 13. An employee of Respondent regularly visits Complainant's farm to ensure that Complainant is maintaining his facilities and tending to flocks in accordance with Respondent's standards. Typically, these visits occur approximately once per week during the flocks' growth cycles. Complainant is known by Ms. Price, Respondent's Growout Supervisor for the region surrounding Complainant's farm, to be one of Respondent's most successful and conscientious farmers.

- 14. At the end of their growth cycles, Respondent rates flocks in what is referred to as Respondent's "tournament system." Complainant's compensation for each cycle is based in part upon these ratings. Under this system, farmers' performance is measured by assessing the quality of each flock, and each flock is placed in a group and given a rating based upon a comparison to other farmers' flocks in the group. Complainant's flocks consistently receive high ratings, and Complainant has been rated the top producer in his group numerous times.
- 15. Prior to the adverse actions discussed below, Respondent had never admonished or otherwise taken any adverse action against Complainant, and Complainant had never received any complaints about his performance.

## B. Background Facts Relevant to Protected Activity

- 16. Several years ago, Respondent began affixing the phrase "Humanely Raised" on the labeling of certain of its poultry products, including those raised by Complainant. In June 2012, while staying in a motel room in Brookings, South Dakota, Complainant saw a commercial released by Respondent advertising its "Humanely Raised" poultry. The commercial depicted Perdue's Chairman walking through what he purports to be a Perdue chicken farm while extolling the virtues of Perdue's humane treatment of chickens and Perdue "doing the right thing." Perdue's Chairman noted in the commercial that consumers are much more interested in knowing how chickens are raised and treated. Perdue's "Humanely Raised" label was intentionally designed by Perdue to solicit more business from these consumers.
- 17. Complainant noted that the condition of the flock depicted in the commercial did not match the condition of the flocks raised on his farm or other farms on which Respondent's chickens were raised. Perdue alone sets the guidelines for Watts and their other chicken farmers

to follow that dictate what the chickens are fed, in what space the flock is to be contained, and what brand and type of equipment Complainant is to use.

- 18. For example, while the flocks depicted in Respondent's commercial appeared to have ample space to roam around freely, the flocks in Complainant's facilities were typically so crowded that birds would step on each other to access food and water, leading to scratches, sores and increased risk of infection. Following Respondent's specifications, the chicken houses contain around 30,000 chickens packed into a tight space with barely any room to move.
- 19. Additionally, while the flocks depicted in Respondent's commercial appeared to be healthy, active, and content, the birds in Complainant's facilities often appeared discontented and unhealthy. For example, many birds arrive at Complainant's farm carrying infections, and die of apparent illness shortly after placement, sometimes at the pans where the birds eat and drink. Many others have leg deformities, impairing their ability to move about freely and comfortably. Following Perdue's specifications, which require the chickens to be raised to grow unnaturally large and fast, the birds in Complainant's facility rapidly grow heavy and lethargic, so that within weeks after placement they spend the vast majority of their time lying down on top of their litter, causing them to lose feathers and develop large patches of red, irritated flesh across their breasts. The high growth rate makes it difficult for the flock to breathe and walk.
- 20. In light of the condition of the flocks at his facility and at other facilities where Respondent's birds are raised, Complainant believed that use of the phrase "Humanely Raised" on their labeling was not truthful. As a result, Complainant believed that Respondent's use of that phrase on its labeling was misleading to consumers, most of whom are wholly unaware of the actual conditions in which Respondent's chickens are raised, and most of whom Complainant believed would, if made aware, agree that the labeling was unjustified.

- 21. The conditions described above in paragraphs 17-20 were the result of Respondent's practices and other factors within Respondent's control.
- 22. For example, Respondent controls the size of the flocks placed on Complainant's farm, which Respondent adjusts to achieve a target density of pounds of poultry per square foot of floor space in each chicken house, referred to as the flock density. Respondent crowds too many chickens into each house, impairing the birds' ability to move around freely and access food and water without trampling each other. The flock density of flocks placed by Respondent on Complainant's farm has, at times, even exceeded the National Chicken Council's animal welfare guidelines.
- 23. A few years ago, Respondent stopped using antibiotics in its North Carolina hatcheries. Respondent has not improved sanitation and other conditions in its hatcheries since it stopped using antibiotics, causing more birds to develop infections while in the hatchery.
- 24. In recent years, Complainant has observed an increase in the number of chicks placed on his farm carrying bacterial infections and genetic deformities. Respondent is not culling sick and deformed birds from flocks at the hatchery with a level of care sufficient to minimize suffering and prevent the introduction and spread of diseases among the flocks placed on Complainant's farm.
- 25. Respondent's breeding of chickens has resulted in birds that gain weight too rapidly and that have a high rate of leg deformities. Within weeks after placement, these birds grow heavy and lethargic, and spend most of their time laying around on their litter, causing the birds to develop sores and large patches of red, irritated flesh on their breasts.
- 26. Several years ago, Respondent changed its facility standards to require that birds be kept in houses with solid walls devoid of any windows or other openings, prohibiting farmers

from opening windows to allow access to sunlight and fresh air. This lack of sunlight and fresh air has impaired the birds' quality of life, causing overheating, increased stress and reduced levels of activity.

27. Respondent prohibits Complainant from administering any antibiotics or other medications to sick birds, and Respondent has refused to administer medication when Complainant has sought help dealing with apparent outbreaks of disease among flocks placed on his farm.

## C. Protected Activity

- 28. Complainant objected to Respondent's use of the phrase "Humanely Raised" on its labeling and to its practices and conduct described in paragraphs 22-27 above, which Complainant believed compromised the birds' welfare and increased their risk of becoming contaminated with and developing infections from salmonella, e-coli, and other harmful bacteria, in turn threatening the health of consumers.
- 29. In furtherance of an effort to oppose those practices and Respondent's use of the phrase "Humanely Raised" on its labeling, Complainant invited Leah Garces, the Director of an animal welfare organization called Compassion in World Farming ("CIWF"), to visit his farm and shoot audiovisual footage of the chickens in his four chicken houses. CIWF campaigns on a global level to end cruel factory farming practices, often relying on undercover investigations. In the US, chicken factory farms are notoriously inaccessible to anyone outside of the industry, yet they account for ninety-five percent of all factory-farmed animals (or nearly 9 billion animals). Director Garces reported during this investigation into Perdue that it was the first time she had been invited to observe by such a contract farmer.

- 30. On or about May 22, 2014, CIWF Director Garces and videographer Raegan Hodge visited Complainant's farm and began videotaping the flock, which had recently been placed. Both individuals returned several weeks later to film more footage of the flock, which was then nearing the end of its growth cycle.
- 31. CIWF condensed the footage it had filmed into a short video, which Complainant agreed to allow CIWF to publish at a later date. Complainant expected that Respondent would view the video, and hoped and believed that the video's publication would prompt the public to join him in opposing Respondent's labeling and problematic animal husbandry practices.

  Complainant also hoped and believed that the video's publication would prompt an investigation or other action by government officials. This video and interview with Complainant remains a key piece of advocacy material publicly available and maintained on CIWF's website, "Why one Perdue factory famer speaks out" <a href="http://action.ciwf.com/ea-action/action?ea.client.id=1872&ea.campaign.id=32809&ea.tracking.id=homepage&ga=1.7779">http://action.ciwf.com/ea-action/action?ea.client.id=1872&ea.campaign.id=32809&ea.tracking.id=homepage&ga=1.7779</a>
  3172.1269961080.1424111353> (See Attachment A). In his interview, Complainant explains he is disclosing his complaints because the Perdue chicken is not "as advertised"; because the consumers are being "hoodwinked"; and because the chickens are not "happy" or "healthy."
- 32. Late at night on December 3, 2014, columnist Nicholas Kristoff published an article in the New York Times concerning the condition of the chickens on Complainant's farm. The column criticizes the apparent poor health of the birds, and suggests that Respondent's use of the phrase "Humanely Raised" to describe these birds is inappropriate. An excerpt of the video produced by CIWF using footage from Complainant's farm was embedded within the web version of the article, publicly available here:

http://www.nytimes.com/2014/12/04/opinion/nicholas-kristof-abusing-chickens-we-eat.html (See Attachment B).

- 33. This video depicts birds crowded wall-to-wall in one of Complainant's chicken houses, panting and trampling each other to move around. The footage shows many laying in their own litter and feces, unable to move, with large red, irritated patches of flesh across their breasts. Some of the birds shown are dead or apparently ill, and many others have apparent leg deformities.
- 34. The video's narrator describes the condition of the birds depicted as unnatural and inhumane, noting that many of the birds are barely able to move, and that many die due to illness and genetic issues. The narrator attributes these problems to genetic deformities, rapid weight gain, poor health among the birds placed by Respondent on Complainant's farm, and the fact that Respondent prohibits Complainant from giving the birds access to sunlight and fresh air.
- 35. The article notes that Respondent was contacted for comment before the article's publication, and many users of Twitter sent links to the video to Respondent following its publication. Forbes, The Huffington Post, Wired, and the Washington Post, among others, also reported on Complainant's interview and the video.

### V. ADVERSE ACTIONS

36. On December 4, 2014, Respondent sent two of its employees, Phil Bare and Rick Sharpton, to inspect Complainant's farm. These inspections continued, occurring almost daily until the flock Complainant was then raising reached the end of its growth cycle and was removed on December 22, 2014.

- 37. On December 29, 2014, a week after Respondent picked up the flocks from his farm, Complainant received, via hand delivery, a two page letter from Respondent. The letter stated that Respondent was "implementing a Performance Improvement Plan for poultry welfare and biosecurity" on Complainant's farm.
- 38. The December 29, 2014 letter stated that prior to placing another flock at Complainant's farm, Respondent would be auditing Complainant's chicken houses and requiring Complainant to be "retrained on biosecurity and poultry welfare," and that Respondent would send agents to perform frequent, unannounced checks following placement of the next flock.
- 39. Complainant was informed that he would not receive another flock placement until he completed a training session concerning proper animal welfare and biosecurity practices.
- 40. A training session was planned for January 8, 2014. Two days prior to the training session, Mr. Watts was informed that his assistant would be required to attend the training session with him.
- 41. As a result of these actions, Respondent did not place a new flock on Complainant's farm until January 15, 2014, approximately 9 days after he would have typically received a new flock.
- 42. Complainant lost approximately \$4,500 in earnings due to Respondent's delayed flock placement.
- 43. Respondent has continued to subject Complainant to intensive scrutiny, sending auditors to visit and inspect Complainant's farm almost daily since January 15, 2015.

### VI. NEXUS/CONTRIBUTING FACTOR

- 44. As noted above, Respondent was aware of the video footage taken by CIWF at the time of its publication, having been reached for comment by columnist Nicholas Kristoff, and having received messages including links to the video from users of Twitter.
- 45. Respondent began conducting daily inspections of Complainant's farm on December 4, 2014, just hours after the video's publication.
- 46. The letter placing Complainant under a Performance Improvement Plan was issued by Respondent just over three weeks later, on December 29, 2014.
- 47. In the letter placing Complainant under a Performance Improvement Plan, Respondent attributes its decision to audit Complainant's farm and place Complainant under a Performance Improvement Plan to the conditions depicted in the video published by CIWF, emphasizing that it found his "willingness to portray conditions that are inconsistent ... with Perdue standards" particularly concerning.
- 48. In the letter, Respondent suggests that it did not find any problematic conditions during its recent inspections of Complainant's farm, and describes the conditions depicted in the video as inconsistent with its past observations of Complainant's performance.
- 49. In fact, the flock depicted in the video was rated the second best by Respondent in Respondent's tournament system, and the conditions depicted in the video were neither unusual nor inconsistent with those seen by Respondent's agents during their regular inspections of Complainant's farm.
- 50. As noted above, prior to the video's publication, Respondent had never expressed any concerns regarding Complainant's operation, and in fact considered Complainant to be one of its top producers.

51. The foregoing facts demonstrate that Complainant's protected activity was a contributing factor in Respondent's decision to place him under a Performance Improvement Plan and subject his farm to increased scrutiny, and that Respondent would not have taken those actions regardless of Complainant's protected activity.

### VII. CLAIM FOR RELIEF

- Act's employee protection provision when he facilitated the production and publication of video footage depicting the condition of birds placed on his farm by Respondent and criticizing Respondent's practices. As noted above, Complainant believed that the condition of the birds raised on his farm was the result of Respondent's practices and conduct described in paragraphs 22-27 that compromised the welfare of the animals and increased their risk of becoming contaminated with or developing infections from salmonella, e-coli, and other harmful bacteria, threatening the health of consumers. Additionally, as noted above, the Respondent's use of the phrase "Humanely Raised" was misleading in light of the condition of the birds raised on Complainant's farm.
- 53. Complainant also caused to be provided information that he reasonably believed to be a violation of the Food, Drug and Cosmetic Act to the federal government. As a result of the conditions exposed by Complainant and CIWF in early December 2014, Senators Feinstein and Booker began taking action to have the USDA stop this misleading practice. This resulted in a letter dated January 7, 2105 where the Senators wrote to USDA Secretary Vilsack demanding intervention into this ongoing practice of mislabeling poultry as "humanely raised." The Senators noted:

We write today to express our serious concern that the Food Safety and Inspection Service (FSIS) is approving false and misleading labels with animal welfare claims for meat and poultry products, such as "humanely raised" or "cage free." ... As you are aware, it is a violation of the Federal Meat Inspection Act and Poultry Products Inspection Act to label a product in a manner that is misleading or false.... It is our view that claims like "humanely raised" should only be approved by FSIS, or verified through the Process Verified Program, when there is evidence that animal welfare standards set by an independent third party, and which significantly exceed standard industry practice, are being met.

- 54. The Food, Drug, and Cosmetic Act prohibits the delivery or receipt in interstate commerce of food that is "adulterated or misbranded." 21 U.S.C. § 331(c). Under the Food, Drug, and Cosmetic Act, food is deemed to be "misbranded" where its labeling is "false or misleading in any particular." 21 U.S.C. § 343(a)(2). Further, under the Food, Drug, and Cosmetic Act, food is deemed to be adulterated if it has been "held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health." 21 U.S.C. § 342(a)(4). 56. Respondent had knowledge of Complainant's protected activity, and Complainant's protected activity was a contributing factor in Respondent's decisions to place Complainant under a Performance Improvement Plan and to subject Complainant's farm to increased scrutiny. Respondent would not have taken those adverse actions regardless of Complainant's protected activity.
- 57. The foregoing facts demonstrate that Respondent violated the Food Safety Modernization Act's employee protection provision when it placed Complainant under a Performance Improvement Plan and subjected his farm to increased scrutiny.

## VII. PRAYER FOR RELIEF

58. Complainant seeks compensatory damages for lost earnings resulting from the delayed placement of his most recent flock by Respondent, and for wages paid to his employee

as a result of his employee's mandatory attendance at the training session held on January 8, 2014.

- 59. Complainant seeks expungement of the December 29, 2014 letter placing him under a Performance Improvement Plan.
- 60. Complainant seeks an order prohibiting Respondent from continuing to subject his facility to retaliatory increased inspections.
- 61. Complainant seeks reasonable costs and attorney's fees, together with all other relief available at law and equity, including the costs of any expert witness fees.

Respectfully submitted,

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