

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	NO. 19-CV-1435
v.	:	
	:	
MILLER’S ORGANIC FARM and	:	
AMOS MILLER,	:	
	:	
Defendants.	:	

ORDER TO SHOW CAUSE

AND NOW, this day of June, 2021, upon consideration of plaintiff United States’ Motion for an Order to Show Cause Why Defendants Should Not Be Held in Contempt, and the supporting exhibits, it is **ORDERED** as follows:

1. Defendants Amos Miller and Miller’s Organic Farm **SHALL APPEAR** before the United States District Court for the Eastern District of Pennsylvania at the U.S. Courthouse, The Holmes Building, 4th Floor, 101 Larry Holmes Drive, Easton, Pennsylvania 18042, on **Wednesday, June 16, 2021, at 10:00 a.m., AND SHOW CAUSE** why an Order should not be entered holding defendants in contempt of the Court’s November 19, 2019 Permanent Injunction Order (Dkt. Entry No. 44) and April 16, 2020 Consent Decree (Dkt. Entry No. 67) in this action.

2. Defendants’ counsel, Steven Lafuente, Esquire, shall promptly serve a copy of this Order upon defendants.

BY THE COURT:

EDWARD G. SMITH, J.
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	NO. 19-CV-1435
v.	:	
	:	
MILLER’S ORGANIC FARM and	:	
AMOS MILLER,	:	
	:	
Defendants.	:	

**UNITED STATES’ MOTION FOR AN ORDER TO SHOW CAUSE
WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT**

At the center of this action is defendant Amos Miller, a farm business owner who, by virtue of his singular, historic willingness to flout democratically enacted federal food safety laws of general applicability, was—until enjoined in this action, and according to some of his customers—the only known United States-based source of the sorts of illegal meat and poultry products that those customers have sought to purchase. Unfortunately, Mr. Miller has continued to attempt to supply his customers with such illegal products.

Plaintiff United States of America now therefore moves the Court for an order directing Mr. Miller (who is the alter ego of co-defendant Miller’s Organic Farm) to appear before this Court on June 16, 2021, at 10:00 a.m. (which is the date that the parties agreed to during a status call with the Court on June 2, 2021) and then and there to show cause, if there be any, why his farm and he should not be held in contempt and sanctioned for failing and refusing to comply with the Court’s Permanent Injunction Order (Docket Entry No. 44) and April 16, 2020 Consent Decree (Docket Entry No. 67). The United States further moves the Court for a judgment for all of its reasonable costs, expenses, and attorneys’ fees incurred in bringing this motion.

GROUND FOR RELIEF

In support of this motion, the United States avers as follows:

1. Exactly five years ago, in June 2016 in EDPA Civil Action No. 16-cv-2732 (“the subpoena enforcement action”), this Court enforced a subpoena of the U.S. Department of Agriculture’s Food Safety and Inspection Service (“FSIS”) and ordered defendants Amos Miller and Miller’s Organic Farm (“Miller’s”) to cease denying FSIS inspection access to Miller’s meat-and-poultry-related facilities and records.

2. In two 2017 letters, FSIS warned these defendants that they were violating federal inspection, labeling, and FSIS right-of-access requirements in the Federal Meat Inspection Act, 21 U.S.C. § 601, *et seq.* (“FMIA” or “the Meat Act”), and the Poultry Products Inspection Act, 21 U.S.C. § 451, *et seq.* (“PPIA” or “the Poultry Act”) (collectively, “the Acts”).

3. In April 2019, the United States, on behalf of FSIS, filed a Complaint against these defendants in this action (EDPA No. 19-cv-1435) (“the permanent injunction action”) seeking permanent injunctive relief under the Acts (Dkt. Entry No. 1).

The Permanent Injunction Order (Nov. 19, 2019)

4. On November 19, 2019 in this action, the Court granted summary judgment in favor of the United States and entered the requested permanent injunctive relief, enjoining defendants from committing continuing violations of the Acts (Dkt. Entry No. 44) (“Injunction Order”).

5. In the Injunction Order, and at summary judgment, Mr. Miller and his farm conceded facts that are now established in this action, and the Court made several findings, all of which now bind the parties. *See generally, e.g., United States v. Amabile*, No. 11-cv-6591, 2012

WL 2421481, at *5 (E.D. Pa. June 26, 2012) (“A contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed[.]”). These established facts include that:

- Mr. Miller and his wife solely own Miller’s Organic Farm, which is Mr. Miller’s alter ego and files its tax returns under Mr. Miller’s name. *Compare* USA’s Statement of Undisputed Material Facts in Support of Summary Judgment (SUMF), Dkt. Entry No. 35-1, at ¶¶ 3 and 4, *with* Defendants[’] Response to [SUMF], Dkt. Entry No. 36-1, at ¶¶ 3 and 4 (conceding these facts). *See also* Injunction Order at p. 1 ¶ 3.
- Miller’s “private membership association” is a buyer’s club: (1) whose members do not share in the farm’s profits or have voting rights in decisions about the farm’s business; (2) that has a decision-making “board” comprising only Mr. Miller and his wife; (3) that conditions membership solely on an individual’s signing a membership contract and paying a small one-time fee; and (4) that does not screen members based on their views or beliefs. *Compare* SUMF ¶ 5 *with* Defendants’ Response to SUMF, at ¶ 5.
- As of late 2019 before entry of the Injunction Order, Miller’s owned the livestock and poultry that it slaughtered and processed at its farm location, with the only exception being limited poultry that five or fewer neighbors took to Miller’s each year for slaughtering and processing using Miller’s equipment. *Compare* SUMF ¶ 8 *with* Defendants’ Response to SUMF, at ¶ 8. Moreover, at its farm site as of late 2019, before the Injunction Order, Miller’s prepared, stored, and distributed such Miller’s-slaughtered/processed livestock and poultry. Injunction Order at p. 2 ¶ 5.
- At least until the Injunction Order, Miller’s sold its meat and poultry products only to Miller’s private membership association members, including to food Co-operatives that participated or were otherwise members in Miller’s private membership association. Miller’s fulfilled telephone, email, and internet orders by itself transporting, or by arranging delivery services to transport, purchased products. *Compare* SUMF ¶ 13 *with* Defendants’ Response to SUMF, at ¶ 13.
- At least until the Injunction Order, Miller’s sold its meat and poultry products that are subject to the Acts (known as “amenable products”) for commercial purposes and for human consumption to consumers in Pennsylvania and throughout the United States. Injunction Order at p. 2 ¶ 5.
- Federal inspection is required at an establishment that slaughters livestock or poultry, and then prepares or processes amenable meat, meat food products, or

poultry products that are capable of use as human food for interstate or foreign commerce, unless the establishment qualifies for an exemption from federal inspection. *Id.* at p. 2 ¶ 6.

- By as early as June 2019 Amos Miller had written to Miller’s members and presented them with his views on why providing federally inspected products was not in Miller’s or its members’ interests. *Compare* SUMF ¶ 11 *with* Defendants’ Response to SUMF, at ¶ 11 (conceding these facts).
- As of the date of the injunction order, Miller’s was operating its meat and poultry business without a USDA-FSIS Federal Grant of Inspection and (with rare exception) without taking its livestock and poultry for slaughter and processing to any federally inspected facility. Injunction Order at p. 2 ¶ 7.
- As of the date of the injunction order, the defendants had not changed Miller’s business model to attempt to qualify for an exemption from federal inspection under the [Meat and Poultry] Acts for any part of their operations. *Id.* at p. 2 ¶ 8.
- For meat, meat food products, and poultry products that it had sold to consumers until the date of the Injunction Order, Miller’s had included only the following labeling language, apart from the product name, “packed on” date, weight, and price: (i) “Miller’s Organic Farm/Private Membership Association”; (ii) “NOT FOR PUBLIC SALE”; and/or (iii) “NOT FOR PUBLIC SALE/Private Membership Association.” *Id.* at pp. 2 ¶ 9.
- As of the Injunction Order date, Amos Miller and Miller’s Organic Farm “ha[d] been engaging in conduct . . . that violates both the [Meat Act] and the [Poultry Act],” including: (a) “through slaughtering, preparing, processing, offering for sale, selling, offering for transport, and/or transporting, in commerce, meat, meat food products, and poultry products that the Acts require be federally inspected but that have not been federally inspected”; (b) “through selling, transporting, offering for sale or transportation, or receiving for transportation, in commerce, meat, meat food products, and poultry products that are capable of use as human food but that are misbranded”; and (c) “through refusing to provide FSIS’ authorized representatives with necessary access to Miller’s meat-and-poultry-related facilities, inventory, and records[.]” *Id.* at p. 3 ¶ 4.
- “The United States’ and the public’s interests in food safety (as expressed in congressional findings and the Acts) will be irreparably injured absent permanent injunctive relief, and the defendants’ interests do not countervail those interests.” *Id.* at p. 4 ¶ 5.

- “There is a cognizable danger that, based on [Amos Miller’s and Miller’s Organic Farm’s] past and continuing conduct, they will, unless restrained by order of this court, continue to violate the Acts.” *Id.* at p. 4 ¶ 6 (interpolation added).

6. In granting permanent injunctive relief against defendants Miller’s Organic Farm and Amos Miller on November 19, 2019, the Court ordered, in part, that:

- Defendants “are **permanently enjoined . . . from slaughtering** livestock or poultry, **and then preparing, processing,** selling, transporting, and/or offering for sale or transport any meat, meat food products, or poultry products that are required to be USDA-inspected and USDA-passed **unless they have been so inspected and passed,**” *see* Injunction Order, at p. 4 ¶ 7(a) and at p. 5 ¶ 8 (“[defendants] will not slaughter livestock or poultry, and then prepare or process meat, meat food products, or poultry products, until FSIS issues a Federal Grant of Inspection”) (bold added);
- Defendants “are **permanently enjoined . . . affirmatively to keep such records as will fully and correctly disclose** all of defendants’ meat-and-poultry-related business transactions as may be necessary for USDA FSIS to enforce the Acts effectively and as required under 21 U.S.C. §§ 460(b) and 642 and 9 C.F.R. §§ 320.1 and 381.175,” *see* Injunction Order at p. 4 ¶ 7(b) and p. 10 ¶ 11 (such records were to include those showing: “(a) the names and addresses of persons and entities to whom products are sold or distributed; (b) the dates of sale or distribution; (c) the product types; and (d) the amounts or quantities,” as well as at least one copy of “(a) all label(s) affixed to the products; (b) all labeling affixed to shipping containers; and (c) all labeling, brochures, website pages, and other materials used to promote, describe, or refer to the products”) (bold added);
- Defendants are “**permanently enjoined . . . from failing:** (i) upon request of any authorized representative of the Secretary of Agriculture, and at all reasonable times, **to afford to representatives of USDA FSIS full and immediate access** to Miller’s meat and/or poultry-related facilities, inventory, **and records,** including to allow such representatives to copy such records and to take reasonable samples of defendants’ inventory upon payment of fair market value; (ii) to cooperate and not interfere with that access; and (iii) to refrain from harassing or intimidating FSIS representatives conducting reviews as required by 21 U.S.C. §§ 460(b), 461(c), 642, and 675,” *see* Injunction Order at p. 4 ¶ 7(c) and pp. 10-11 ¶ 12 (bold added);
- Defendants are “permanently enjoined . . . from failing to comply with all requirements of the FMIA, PPIA, and their implementing regulations that apply to slaughtering livestock or poultry, and/or then preparing, processing, selling, transporting, or distributing meat, meat food products, or poultry production.

These implementing regulations include, but are not limited to, those imposing requirements for: (i) inspection; (ii) labeling; (iii) sanitation (including sanitation performance standards and standard operating procedures); (iv) Hazard Analysis and Critical Control Point (HACCP) systems; and (v) *Listeria monocytogenes* and/or other pathogen sampling, testing, and other program obligations, as provided under 9 C.F.R. § 302.1 and 9 C.F.R. Parts 310, 317, 381, 412, 416, 417, 418, and 430,” *see* Injunction Order at p. 5 ¶ 7(d).

- Defendants must not conduct any slaughter, processing, or preparation under a “custom” exemption without first obtaining USDA FSIS and/or judicial approval of an “Exempt Plan” for such operations, *see* Injunction Order at pp. 6-10 ¶ 10;
- Only if defendants were to take *all* of Miller’s amenable livestock and poultry that are intended for human consumption and not otherwise exempt to a federally inspected facility or facilities for slaughter and processing would defendants be permitted to forgo applying for a USDA Federal Grant of Inspection, but even if such a federally inspected facility were to slaughter and process all such livestock and poultry, any further processing by defendants of such federally inspected products must be done “as an exempt retail store in accordance with 9 C.F.R. §§ 303.1(d) or 381.10(d),” which include the requirement, among others, that Miller’s be subject to Commonwealth of Pennsylvania and local licensing requirements and applicable food codes, *see* Injunction Order at pp. 5-6, ¶ 9; and
- USDA FSIS may (in accordance with law) detain and seek judicial seizure of any non-federally-inspected, adulterated, misbranded, or not-exempt-from-inspection meat, meat food product, or poultry product observed at Miller’s that is in violation of the Acts, *see* Injunction Order at p. 11 ¶ 13.

7. The Injunction Order provided the following penalties, costs, and expenses for non-compliance:

- **Penalties for sale, transport, etc. of non-federally-inspected product:** “[I]f the defendants sell, transport, or offer for sale or transport any non-federally-inspected meat, meat food product, or poultry product in violation of [the Injunction] Order, . . . the defendants shall, **upon the first occasion of such violation, pay to the United States the sum of five hundred dollars for each pound, or portion thereof, of non-federally-inspected, misbranded meat, meat food product, or poultry product. For any subsequent violations, the defendants shall pay to the United States the sum of one thousand dollars for each pound, or portion thereof, of non-federally-inspected, misbranded meat, meat food product, or poultry product,**” *see* Injunction Order at p. 12 ¶ 16 (bold added);

- **Penalties for recordkeeping violations:** “If the defendants, in violation of [the Injunction] Order, fail to keep such records as will fully and correctly disclose the purchase, receipt, offer for sale, sale, transport, and/or any other transaction regarding non-federally-inspected, adulterated, or misbranded meat, meat food product, or poultry product involved in their business, the defendants shall **upon the first occasion** of such violation pay to the United States . . . the sum of **five hundred dollars for each pound, or portion thereof, of adulterated or misbranded meat, meat food product, or poultry product for which no record or an inadequate record was maintained. For any subsequent violations**, the defendants shall pay to the United States the sum of **one thousand dollars for each pound, or portion thereof**, of non-federally-inspected meat, meat food product, or poultry product for which no record or an inadequate record was maintained,” *see* Injunction Order at pp. 12-13 ¶ 17 (bold added);
- **Penalties for restricting access:** “If the defendants in violation of [the Injunction] Order[] fail to provide USDA FSIS with access to their meat or poultry facilities, inventory, or records that USDA FSIS requires to assess compliance, the defendants shall, upon the **first occasion** of such violation, pay to the United States . . . the sum of **two thousand, five hundred dollars** for such violation. For **each subsequent violation**, the defendants shall pay . . . the sum of **five thousand dollars**,” *see* Injunction Order at p. 13 ¶ 18 (bold added);
- **Costs and expenses related to enforcement:** “Should enforcement proceedings beyond [the Injunction] Order be necessary, the defendants agree that the United States shall be entitled to recover from the defendants all court costs and expenses incurred by FSIS in such proceedings, including investigation and preparation time and attorneys’ fees for the USDA and the United States Attorney’s Office,” *see* Injunction Order, at p. 13 ¶ 19 and p. 14 ¶ 20 (providing that FSIS’ expenses “include . . . investigation and preparation time, at the rate of \$45.00 per hour per USDA employee”).

8. The Court also ordered that: “In accordance with Federal Rule of Civil Procedure 65(d)(2), this [Injunction] Order binds the parties and Amos Miller’s and Miller’s Organic Farm’s officers, agents, servants, and employees, as well as other persons who are in active concert or participation with them.” *See* Injunction Order at p. 16 ¶ 25.

9. In granting permanent injunctive relief, the Court retained jurisdiction to issue further decrees and orders that might be necessary to construe, carry out, modify, or enforce compliance with the Injunction Order. *See* Injunction Order at p. 16 ¶ 32.

10. On information and belief, defendants, at all relevant times, even after entry of the Injunction Order, have sold their farm's meat and poultry products that are intended for human consumption only to members of their nationwide buyers' club.

The Consent Decree (April 16, 2020) and the Condemnation Action

11. The following post-Injunction-Order facts are also established by way of the parties' recitals in their April 16, 2020 Consent Decree:

- “FSIS investigators visited Miller’s in December 2019 and January 2020 and found the following (and other) material violations of the Injunction Order: (1) twice, Amos Miller hindered and denied FSIS access to his facilities and records; (2) in December [2019], Miller’s slaughtered and processed ‘amenable’ animals without federal inspection (Miller’s disposed of the resulting parts after FSIS ‘detained’ them—that is, after FSIS had applied a ‘U.S. Detained’ tag to them); [and] (3) in January [2020], Miller’s slaughtered additional beef animals without federal inspection (resulting in approximately 2,100 pounds of beef carcasses), and custom-slaughtered a hog without a required custom-exempt plan (FSIS detained the resulting beef and hog carcasses, but later released the hog carcass for the owner’s personal use),” *see* Consent Decree, Dkt. No. 67, at pp. 4-5;
- “More specifically, on January 22, 2020, when FSIS investigators went to Miller’s to determine whether defendants were complying with the Injunction Order, the investigators observed approximately 2,100 pounds of refrigerated, freshly-cut-up beef carcasses that were initially unlabeled, were capable of use as human food, were slaughtered or prepared without required USDA FSIS federal inspection, and which, the investigators believed, were being offered or intended for sale, so the investigators detained the articles and affixed U.S. Detained tags to them,” *id.* at p. 5;
- “On February 10, 2020, the United States filed *United States of America v. 2,100 Pounds, More or Less, of Meat Carcasses, Parts of Carcasses, and Meat Food Products, and 34,062 Pounds, More or Less, of Meat Food Products and Poultry Products*, an in rem civil action docketed at EDPA No. 20-757 (the “Condemnation Action”),” *see id.* at p. 6;
- “In the Condemnation Action, on February 20, 2020, the U.S. Marshals Service arrested/seized the defendant articles,” including “approximately 2,100 pounds of meat carcasses and parts that FSIS investigators observed and detained at Miller’s

in January 2020,” “but left the articles in place (frozen and stored) at Miller’s pending a condemnation hearing,” *see id.* at p. 6;

- “In the Condemnation Action, the United States allege[d] that the defendant meat and poultry articles were subject to the Acts, were capable of use as human food, were slaughtered, processed, and/or prepared in violation of the Acts because without federal inspection, and were therefore prohibited from sale, offer for sale or transportation, or receipt for transportation in commerce,” *see id.*

12. The April 16, 2020 Consent Decree ordered, adjudged, and decreed in part

that:

- Defendants had “engaged in conduct” as stated in the parties’ recitals “that violates the Acts and the Injunction Order,” *see* Consent Decree at p. 8 ¶ 2;
- Defendants were required to pay \$2,500 to the United States for failing to provide access to Miller’s facilities, inventory, and records on January 24, 2020,” *see id.* at p. 8 ¶ 3;
- Defendants were required to “**cease and desist all meat-and-poultry-related slaughtering, processing, custom-exempt operations, and retail-exempt operations** (including retail-exempt operations conducted under 9 C.F.R. §§ 303.1(d) and 381.10(d)) **unless and until defendants can demonstrate to FSIS compliance with applicable federal and State laws, including Commonwealth of Pennsylvania licensing requirements, as required by the Injunction Order,**” *see id.* at p. 8 ¶ 4 (bold added);
- “Defendants must and shall remove from their websites and from their agents’ websites (including but not limited to Miller’s Facebook page, the Amos Miller Organic Farm website, and the Miller’s Organic Farm website) all references to the availability of ‘fresh’ or ‘non-frozen’ meat, meat food products, poultry, and poultry products, until such time, and except to the extent, that Miller’s is in compliance with applicable federal and State laws, including Commonwealth of Pennsylvania retail licensing requirements,” *see id.* at p. 8 ¶ 5.

13. Paragraph 7 of the Consent Decree allowed defendants a period to dispose of the 2,100 pounds of beef carcasses that defendants slaughtered on or about January 22, 2020, in violation of the Injunction Order. *See* Consent Decree at p. 12 ¶ 7. Those products were later, by August 2020, distributed or disposed of under USDA-FSIS’ oversight and with the consent of

the interested parties, thereby mooting the need for a condemnation hearing and further proceedings in the Condemnation Action. *See* Order, Docket Entry No. 12 in the Condemnation Action, at p. 4.

Denial of Miller’s Food Coalition, U.A.’s Intervention Motion (April 28, 2020)

14. Meanwhile, on April 28, 2020, the Court denied the motion of Miller’s Food Coalition U.A.—an unincorporated Wisconsin nonprofit association whose “members access food from [Miller’s Organic Farm], either directly or through private buying clubs”—seeking to intervene in this permanent injunction action. *See* Docket Entry No. 69. In so ruling, the Court noted that “[t]he Coalition seems to be arguing for a nebulous right to access and consume illegal food products produced by the Farm. However, no such food access rights exist under federal law, let alone as a cognizable legal interest. Such an interest in illegal food products is not protectable under law[.]” *Id.* at p. 3 n.1 (citation omitted).

The Consent Order (Sept. 28, 2020)

15. In a September 28, 2020 Consent Order in this action (Docket Entry No. 80), the Court emphasized: “The Court expects defendants Amos Miller and Miller’s Organic Farm to cooperate fully with USDA-FSIS in its enforcement of the Court’s Orders in this case, including this Order.” *See* Consent Order at p. 4 ¶ 1.

October 15, 2020 Notice of Warning

16. On October 15, 2020, FSIS sent a Notice of Warning to Mr. Miller relating to FSIS’ findings of violations at Miller’s between June 2020 and September 2020. *See* Declaration of Paul Flanagan (“Flanagan Decl.”), Exhibit “1” hereto at ¶ 7 and Exhibit “B” thereto (Oct. 2020 notice of warning).

February 16, 2021 Notice of Warning

17. During a November 17, 2020 visit to Miller's, FSIS investigators detained approximately 123 pounds of non-federally-inspected pork and beef hot dog products from an unknown outside source that Miller's apparently intended to resell to its customers. FSIS closed its related detention action on November 25, 2020 after FSIS Investigators approved and observed Miller's disposition of the products. *See* Flanagan Decl., ¶ 8.

18. In a related February 16, 2021 Notice of Warning, FSIS warned Mr. Miller that:

a. Miller's offering of uninspected, improperly labeled meat products for sale to consumers on November 17, 2020 and on other dates violated the FMIA and Paragraphs 7 and 9 of the Injunction Order, *see* Flanagan Declaration at ¶ 9 and Exhibit "C" thereto (Feb. 2021 Notice of Warning) at p. 2;

b. Miller's had "failed to maintain records that fully and correctly disclose transactions involving the meat products in question, including, but not limited to, maintaining the name and address of individual(s) who made/supplied the products, receiving papers, and bills of sale, in violation of 21 U.S.C. 642, 9 C.F.R. 320.1, and Paragraphs 7, 9, and 11 of the Injunction Order," *see id.*; and

c. "Future violations could result in regulatory action, detention or judicial seizure of violative product, referral to the U.S. Attorney's Office for initiation of criminal or civil enforcement action or contempt proceedings, or other legal action, including imposition of substantial monetary penalties for violations of the Injunction Order." *Id.* (Notice of Warning) at pp. 2-3.

The May and June 2021 Continuing Violations

19. Defendants' violations of the Injunction Order, the Consent Decree, and the Acts have nonetheless continued.

20. As of May 2021, defendants have ceased taking their livestock and poultry to a federally inspected facility for slaughter. *See* Flanagan Decl. at ¶¶ 10-11, 13, 30.

21. On May 25, 2021, Amos Miller acknowledged to FSIS investigators that he has been slaughtering livestock and poultry at Miller's and that his employees were in the process of slaughtering chickens, which the investigators then observed. *Id.* at ¶¶ 14, 18, 21 (noting that Miller's continued to slaughter hundreds of chickens for an additional seven hours after the investigators arrived on May 25, despite an investigator's warning that Mr. Miller was in violation of the Court's orders).

22. On that occasion, FSIS investigators observed and placed under U.S. detention (by affixing U.S. Detained Tag Numbers 129054 through 129062, and 530783) the following products that appeared recently slaughtered and that were void of any USDA inspection legend: (a) approximately 1,851 pounds of poultry carcasses (394 whole chickens), feet, heads, livers, gizzards, and trimmings; (b) approximately 650 pounds of beef carcasses and beef heads; and (c) approximately 600 pounds of whole hog carcasses. *Id.* at ¶¶ 18, 19, 25, 26.

23. None of those observed products had any tags attached to them identifying the animals' owners or indicating that the carcasses were "not for sale." *Id.* at ¶ 19.

24. During the FSIS investigators' May 25, 2021 visit, Mr. Miller warned one of them: "I would not want to be you"; and "you need to be careful." When the investigator asked Mr. Miller to clarify what he meant, he stated: "I am telling my members to call you, and they

are not going to be happy when I tell them you are taking their food away from them.” Mr. Miller also stated that his “members are not happy that the USDA is preventing them from getting their food,” and “this food is their medicine and you will be responsible if they become sick.” Flanagan Decl. at ¶¶ 23, 28.

25. Also on May 25, 2021, Mr. Miller told the FSIS investigators that: (a) he did not have any records related to purchase of the livestock and poultry that FSIS detained that day; (b) he did not have any records (including any sales invoices) relating to the purchase or sale of Miller’s livestock and poultry products more generally; and (c) the beef carcass belonging to a detained beef head had “probably” been further processed, cut up, and sold to his customers. *See id.* at ¶ 27.

26. When on that occasion an FSIS investigator asked Mr. Miller if he would be continuing to slaughter livestock and poultry at Miller’s the following day without a Federal Grant of Inspection or an approved custom slaughter plan, he responded: “I will continue to slaughter if I am allowed or if it is what my members want. It is up to my members.” *See id.* at ¶ 29.

27. During a follow-up FSIS visit to Miller’s on June 4, 2021, Mr. Miller stated that he did not know the whereabouts of certain materials from the beef livestock whose heads FSIS had detained, or the whereabouts of related records, even though if a meat food product intended for human consumption contains those “Specified Risk Materials” (SRMs), it is adulterated and cannot be sold, transported, offered for sale or transportation, or received for transportation in commerce. *See id.* at ¶¶ 32-38, 40.

28. Mr. Miller further stated on June 4, 2021 that he did not believe that there were any available records related to the birth dates, vaccination dates, castration dates, or any official health certificates, for the cattle associated with the beef head. *See* Flanagan Decl. at ¶ 37.

29. In conflict with his statements to FSIS investigators on May 25, 2021, Mr. Miller stated, on June 4, 2021, that one of the carcasses associated with one of the detained beef heads had been ground into pet food that was located in his freezer. When asked whether there was any way to identify the pet food as coming from the missing beef carcass, he stated: “there is no way to tell where it came from.” *See id.* at ¶ 39.

REQUEST FOR A SHOW CAUSE HEARING

30. Defendant Amos Miller, the alter ego of defendant Miller’s Organic Farm, has had knowledge of the Court’s Injunction Order and Consent Decree but has persistently disobeyed those orders: (a) in ways that are not merely technical or inadvertent; (b) despite compliance with the orders being both required and feasible; and (c) despite FSIS continually offering to assist him in coming into compliance.

31. Defendants’ continuing failures and refusals to comply with this Court’s Injunction Order, the Consent Decree, and the Acts have flouted this Court’s authority and the rule of law and have impaired and will continue to impair the USDA’s and FSIS’ ability to fulfill their public health missions.

32. Defendants’ continuing failures and refusals to comply with this Court’s Injunction Order, the Consent Decree, and the Acts have needlessly caused FSIS investigators to return multiple times to Miller’s Organic Farm in unsuccessful efforts to bring defendants into compliance, and have caused FSIS and USDA to incur related, unnecessary costs.

33. The United States here gives notice to defendants that it will seek civil contempt sanctions against them at the show cause hearing in this matter, including: (a) penalties as allowed under the Injunction Order; (b) enforcement costs and fees; and (c) such other relief as the Court deems appropriate and necessary to effect defendants' compliance with the Injunction Order, the Consent Decree, and the Acts.

WHEREFORE, the United States of America respectfully requests the Court to enter an Order requiring defendants Amos Miller and Miller's Organic Farm: (1) to appear on June 16, 2021 at 10:00 a.m. and to show cause why they should not be held in contempt of this Court; and (2) to reimburse the United States its costs incident to and arising out of the Order to Show Cause, including reasonable attorneys' fees.

JENNIFER ARBITTIER WILLIAMS
ACTING UNITED STATES ATTORNEY

/s/ Charlene Keller Fullmer, for
GREGORY B. DAVID
Assistant United States Attorney
Chief, Civil Division

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CERTIFICATE OF SERVICE

I certify that today, June 7, 2021, I served the defendants in this case with a copy of the foregoing “United States’ Motion for an Order to Show Cause Why Defendants Should Not Be Held in Contempt,” along with the United States’ proposed Order and accompanying Exhibits, by email addressed to counsel for the defendants as follows:

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At the request of counsel for defendants, I am also serving a copy of these papers by FedEx (standard delivery) upon defendant Miller at the following address:

Amos Miller
Miller’s Organic Farm
648 Millcreek School Road
Bird-in-Hand, PA 17505

**GERALD
SULLIVAN**

Digitally signed by
GERALD SULLIVAN
Date: 2021.06.07 16:49:43
-04'00'

GERALD B. SULLIVAN
Assistant United States Attorney