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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

GEORGE MEAT MARKET, INC., KWOK
SIN NG, and ALICE YAN FUNG NG,

Defendants.

No. 18 Civ. 6861

COMPLAINT

Plaintiff the United States of America (the “United States”), by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, acting on behalf of the United States Department of Agriculture (“USDA”), brings this civil action under the Poultry Products Inspection Act (“PPIA”), 21 U.S.C. § 451 *et seq.*, and alleges upon information and belief as follows:

INTRODUCTION

1. The Poultry Products Inspection Act protects the public health by imposing a set of inspections, labeling, and packaging requirements for poultry. At key points between the poultry farm and the kitchen table, the PPIA requires inspections to prevent unwholesome or adulterated poultry from being sold to the public. Subsequent to these inspections, strict labeling and packing requirements allow purchasers to have confidence in the safety of their

poultry products. In the event that food safety issues are discovered, the labeling and packaging requirements allow public health officials to trace problems to their source.

2. From 2009 to the present, defendants George Meat Market, Inc., Kwok Sin Ng, and Alice Yan Fung Ng (collectively, “Defendants”) have repeatedly violated the PPIA by selling uninspected and misbranded roast ducks—totaling almost 500 pounds discovered through USDA inspections—to wholesalers and retailers throughout New York City. USDA has repeatedly urged Defendants to cease their violations, with no success. Defendants’ ongoing conduct creates risks to the public health and undermines the PPIA’s protective scheme.

3. Accordingly, the United States brings this civil action against Defendants to enjoin Defendants from committing further violations of the PPIA.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 21 U.S.C. § 467c and 28 U.S.C. §§ 1331 and 1345.

5. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events or omissions giving rise to the claim occurred in this district, and Defendants’ principal place of business is located in this district.

PARTIES

6. Plaintiff is the United States of America.

7. Defendant George Meat Market, Inc. (“George Meat Market”), is a corporation organized under the laws of New York. Its principal place of business is located at 288 Grand Street, New York, New York 10002. George Meat Market sells and supplies poultry products to the public in the State of New York.

8. Mr. Kwok Sin Ng (“Kwok Ng”) is the President of George Meat Market.

9. Ms. Alice Yan Fung Ng (“Alice Ng”) is the Vice President of George Meat Market.

10. Kwok Ng and Alice Ng control George Meat Market’s operations, including as they related to the sale of roast duck.

STATUTORY BACKGROUND

11. The PPIA grants the Secretary of Agriculture (the “Secretary”) the power to regulate and inspect poultry and poultry products distributed in interstate or foreign commerce. *See* 21 U.S.C. §§ 451-455, 467.

12. In passing the PPIA, Congress found that “[i]t is essential in the public interest that the health and welfare of consumers be protected by assuring that poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged.” 21 U.S.C. § 451. Congress further found that “[u]nwholesome, adulterated, or misbranded poultry products impair the effective regulation of poultry products in interstate or foreign commerce, are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged poultry products, and result in sundry losses to poultry producers and processors of poultry and poultry products, as well as injury to consumers.” *Id.* The PPIA prohibits any person from processing any poultry products which are capable of use as human food at any establishment processing any such articles for commerce, except in compliance with the requirements of the PPIA. 21 U.S.C. § 458(a)(1).

13. The PPIA prohibits any person from selling, transporting, or offering for sale or transportation, in commerce, any poultry products which are capable of use as human food and are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation. 21 U.S.C. § 458(a)(2)(A).

14. New York has been designated by the Secretary as a state in which relevant requirements of the PPIA apply to poultry-related operations wholly within the state, in addition to those in interstate commerce. *See* 21 U.S.C. § 454(c)(1) and 9 C.F.R. § 381.221 (designating New York for intrastate application of 21 U.S.C. §§ 451-453, 455-459, 461-467d as of April 10, 1977); 21 U.S.C. § 460(e) and 9 C.F.R. § 381.224 (designating New York for exercise of 21 U.S.C. § 460(b)-(c) for those persons engaging specified kinds of business not in or for interstate commerce as of July 23, 1973).

15. The PPIA requires that entities “processing poultry products for commerce . . . be operated in accordance with such sanitary practices, as are required by regulations promulgated by the Secretary for the purpose of preventing the entry into or flow or movement in [interstate] commerce or burdensome effect upon commerce, of poultry products which are adulterated.” 21 U.S.C. § 456(a). “Adulterated” is defined to include, among other things, a poultry product that “has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.” *Id.* § 453(g)(4). The Secretary must refuse inspection to any establishment failing to meet such requirements. *Id.* § 456(b).

16. The PPIA requires that “no article subject to this Act shall be sold or offered for sale by any person in commerce, under any name or other marking or labeling which is false or misleading.” 21 U.S.C. § 457(c); 9 C.F.R. § 381.129(a). According to the PPIA, a poultry product is “misbranded” if, among other things, “its labeling is false or misleading in any particular.” 21 U.S.C. § 453(h)(1).

17. The PPIA prohibits any person from selling, transporting, offering for sale or transportation, in interstate commerce, any poultry products required to be inspected under the PPIA unless they have been so inspected and passed. 21 U.S.C. § 458(a)(2)(B).

18. The PPIA requires federal inspection of the poultry processing operations of persons selling poultry in a “store or restaurant or similar retail-type establishment” if such poultry products are offered for sale or sold to non-consumers, *i.e.*, for the purpose of further resale. 21 U.S.C. §§ 454(c)(2), 464(a)(1); 9 C.F.R. § 381.10.

19. The PPIA requires federal inspection of the poultry processing operations of persons selling poultry in a “store or restaurant or similar retail-type establishment” if sales to consumers are made in excess of normal retail quantities, defined as an aggregate amount not to exceed 75 pounds to household consumers, and 150 pounds to other than household consumers per sale transaction. 21 U.S.C. §§ 454(c)(2), 464(a)(1); 9 C.F.R. § 381.10.

20. The PPIA provides that any person engaged in the business of buying or selling (as poultry products brokers, wholesalers or otherwise) or transporting in commerce, any carcasses, or parts, or products of carcasses, of any poultry shall “keep such records as are properly necessary for the effective enforcement of [the PPIA] in order to insure against adulterated or misbranded poultry products for the American consumer.” *See* 21 U.S.C. § 460(b)(2).

DEFENDANTS’ VIOLATIONS OF THE PPIA

21. Defendants operate a retail facility operating under the name George Meat Market at 288 Grand Street, New York, New York 10002. George Meat Market was incorporated under New York law in June 2006.

22. Because George Meat Market is a retail facility, the PPIA authorizes certain processing of poultry at this location to be exempt from USDA inspection, as long as the poultry products are not adulterated or misbranded, and are sold to consumers in normal retail quantities. 21 U.S.C. §§ 454(c)(2), 464(a)(1); 9 C.F.R. § 381.10.

23. Defendants do not operate under a grant of federal inspection to process poultry products under the PPIA.

24. On or about August 9, 2017, Defendants offered for sale and transportation, and sold approximately 64 pounds of non-federally inspected and misbranded whole roast duck that were capable of use as human food in violation of the PPIA. *See* 21 U.S.C. § 458(a)(2). These poultry products were not otherwise exempt from inspection.

25. On or about August 9, 2017, Defendants failed to maintain records that fully and correctly disclosed all business transactions regarding the sale of the 64 pounds of non-federally inspected and misbranded poultry product, in violation of the PPIA. *See* 21 U.S.C. § 460(b)(2).

26. Members of the USDA's Food Safety and Inspection Service ("FSIS") discussed these violations with Alice Ng, acting on behalf of George Meat Market, on August 15, 2017. During this meeting, Alice Ng signed a written statement in which she acknowledged that George Meat Market had prepared, offered for sale, and sold the poultry product in question to a retailer. Alice Ng also acknowledged that George Meat Market repackaged the roast ducks in the same containers that the raw ducks had been packaged in when George Meat Market purchased them, after removing all labeling information and marks of inspection from the containers.

27. Defendants previously violated the PPIA four times that resulted in "Notices of Warning" from the FSIS prior to August 9, 2017:

- a. On August 14, 2015, Defendants prepared and sold approximately 37.5 pounds of non-federally inspected whole roast duck to a retailer for resale, in violation of 21 U.S.C. § 458(a)(2). These poultry products were not otherwise exempt from inspection. Defendants were cited for this violation on February 8, 2016.
- b. On November 12, 2014, Defendants prepared and sold approximately 60 pounds of non-federally inspected and misbranded whole roast duck to a retailer for resale, in violation of 21 U.S.C. § 458(a)(2). These poultry products were not otherwise exempt from inspection. Defendants were cited for this violation on February 2, 2015.
- c. On October 25, 2011, Defendants prepared, sold, and caused to become misbranded approximately 195 pounds of non-federally inspected and misbranded poultry products in violation of 21 U.S.C. § 458(a)(2) and 458(c)(2). These poultry products were not otherwise exempt from inspection. Defendants were cited for this violation on December 16, 2011.
- d. On November 13, 2009, Defendants processed and sold approximately 120 pounds of non-federally inspected whole roast duck to a retailer for resale, in violation of 21 U.S.C. § 458(a)(2). These poultry products were not otherwise exempt from inspection. Defendants were cited for this violation on December 22, 2009.

28. On October 5, 2017, FSIS issued a Notice of Alleged Violation to Defendants concerning the PPIA violations on August 9, 2017, which was sent to Defendants by U.S.

certified mail. The Notice also cited the Notices of Warning issued in February 2015 and February 2016.

29. In the Notice of Alleged Violation, the FSIS explained the violations found by FSIS and provided Defendants an opportunity to present additional evidence for the agency to consider prior to taking any legal action. The FSIS received no response from Defendants.

30. Despite USDA's four Notices of Warning and the Notice of Alleged Violation issued to Defendants, in addition to USDA's meetings with Defendants, upon information and belief, Defendants continue to violate the PPIA by processing, offering for sale, and selling uninspected and misbranded poultry products.

31. The U.S. Attorney's Office contacted Defendants in mid-July 2018 to notify them of the United States' intent to file suit to enjoin Defendants from continuing to violate the PPIA, and to provide Defendants an opportunity for a pre-litigation resolution.

32. In response, Alice Ng stated, in sum and substance, that George Meat Market's lease would end on July 31, 2018, and that the market would be "out of business" as of August 1, 2018.

33. However, when an inspector from FSIS visited George Meat Market on July 31, 2018, he found that the market appeared to be operating as usual. George Meat Market remained stocked with poultry products, and it appeared to be continuing its poultry processing business. There was no visible indication that George Meat Market was going out of business as of August 1, 2018.

34. Additionally, the FSIS inspector was informed by Alice Ng, in sum and substance, that a relative of Kwok Ng and Alice Ng would take control of George Meat Market in the near future, but that Kwok Ng and Alice Ng would remain involved in operations.

**CLAIM FOR RELIEF:
PERMANENT INJUNCTION PURSUANT TO 21 U.S.C. § 467c**

35. The allegations set out in paragraphs 1 through 34 are incorporated by reference as through set forth fully in this paragraph.

36. The PPIA provides that “[t]he United States district courts . . . are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, [the PPIA], and shall have jurisdiction in all other kinds of cases arising under [the PPIA], except as provided in section 457(d) or 467 of this title.” 21 U.S.C. § 467c.

37. Defendants are in violation of 21 U.S.C. §§ 458(a)(1), (a)(2)(A), (a)(2)(B), and 460(b)(2), and the regulations promulgated thereunder.

38. Accordingly, Plaintiff the United States of America is entitled to a permanent injunction to enforce the PPIA, and to prevent and restrain Defendants’ continuing violations of the PPIA.

RELIEF REQUESTED

WHEREFORE, Plaintiff the United States of America respectfully requests the entry of an order granting the following relief:

(a) a permanent injunction compelling Defendants, and all of their directors, officers, agents, servants, representatives, employees, successors, or assigns, and any and all persons in active concert or participation with them, directly or indirectly, to comply with all applicable requirements of the PPIA, as well as the regulations promulgated thereunder, including but not limited to those requirements and regulations:


i. prohibiting the processing, offering for sale, and sale of uninspected poultry and poultry products required to be inspected and passed by the USDA;

- ii. prohibiting the processing, offering for sale, and sale of misbranded poultry and poultry products; and
 - iii. requiring certain recordkeeping as required by law; and
- (b) such further relief in favor of the United States as the Court may deem just and proper, including an award of costs.

Dated: July 31, 2018
New York, New York

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