

Message

From: Ashley Peterson [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A8F1CD85B9034BC292B0AD10BF6CEE71-APETERSON]
Sent: 8/27/2020 1:18:05 PM
To: Zarlenga, Carmine R. [CZarlenga@mayerbrown.com]
CC: Robert O'Connor [REDACTED]; 'Randall C. Boyce [REDACTED]@fosterfarms.com)' [REDACTED]@fosterfarms.com]; Huber, Dan [REDACTED]@fosterfarms.com]
Subject: RE: USDA/Merced County DPH

Good morning Carmine –

Yes, I remember working with you in the past and good morning. I am not an attorney but believe that the drafted communication to Dr. Sandoval is well-written. I will call you shortly to provide an update on USDA's activities and we can discuss timing.

Thank you,
Ashley

Ashley B. Peterson, Ph.D. | Senior Vice President, Scientific and Regulatory Affairs

NATIONAL CHICKEN COUNCIL

1152 Fifteenth Street, NW Suite 430 | Washington, DC 20005

C: [REDACTED]

D: [REDACTED]

www.nationalchickencouncil.org | www.ChickenCheck.In

[Sign up for NCC News](#) | [Chicken's Sustainability Story](#)

From: Zarlenga, Carmine R. <CZarlenga@mayerbrown.com>
Sent: Thursday, August 27, 2020 9:01 AM
To: Ashley Peterson [REDACTED]@chickenusa.org>
Cc: Robert O'Connor [REDACTED]; 'Randall C. Boyce ([REDACTED]@fosterfarms.com)' [REDACTED]@fosterfarms.com>; Huber, Dan <[REDACTED]@fosterfarms.com>
Subject: FW: USDA/Merced County DPH

Ashley:

We have met before and as you may recall I represent Foster Farms in Litigation matters. I am charged with pursuing relief from the Merced County DPH Order in federal court today. I prepared the below draft to send to Merced DPH but I am also sensitive to your early a.m. message to Bob O'Connor below. Any update on USDA action would be appreciated as well as input on timing to send the below communication. Feel free to call me at my office number below, which will ring through to my cell as well. Thanks, CZ

--DRAFT--

Dr. Sandoval:

As you know, this law firm represents Foster Poultry Farms in legal matters relating to Merced County Department of Public Health ("MDPH") actions such as those referenced in the enclosed. Unfortunately, MDPH issued the enclosed purported "Order" seeking to impose drastic measures including the indefinite closure of one of the largest federally regulated poultry processing facilities in the United States (the Livingston Plant). The purported Order was issued without a hearing and without sufficient advance notice (12 hours between 8:41 pm last night and 8:41 am PDT this morning) equating to zero due process protection. Perhaps not surprisingly given the lack of due process, the order is based on deeply flawed and inaccurate statements as well as critical omissions of actual facts – most significantly the results of recent testing of the entire active workforce at the Livingston plant thus far revealing a tiny 0.7% COVID infection rate. In

contrast, test results in Merced County have returned a 19% positive COVID infection rate, leading to the inescapable conclusion that Foster Farms workers are much safer inside the Livingston Plant than outside of it in greater Merced County.

Worse yet, MDPH made no effort whatsoever to coordinate its activities with the United States Department of Agriculture, which as we informed you directly on Tuesday August 25 is charged under the federal Defense Production Act with maintaining critical food supply infrastructure such as the Livingston Plant and ensuring that Foster Farms and other "poultry processors *continue operations* consistent with the guidance for their operations jointly issued by the CDC and OSHA." Executive Order No. 13917, 85 Fed. Reg. 26313 (April 28, 2020); 50 U.S.C. sec. 4501 *et seq.* Of course Foster Farms has fully complied with CDC and OSHA Guidance at all of its poultry processing operations including the Livingston Plant and the enclosed Order does not indicate or even suggest otherwise. As a consequence, Foster Farms is obligated under federal law to maintain production at its Livingston Plant and your purported Order is in direct conflict with governing federal law. Your recent actions have placed Foster Farms in the impossible position of portraying its compliance with federal law mandates as somehow in violation of one local county health agency's conflicting guidance.

As a consequence, Foster Farms will be filing a lawsuit in the United States District Court for the Eastern District of California today to seek relief from the purported Order and to have it declared invalid. I am writing you now pursuant to Local Rule 231 and the associated TRO Checklist of that Court of our intention to seek an immediate Temporary Restraining Order. Please contact me or have your legal representative contact me as soon as possible at the office number below to discuss: (i) alternatives to a TRO hearing; and/or (ii) a brief temporary delay in the implementation of the Order to facilitate an orderly and appropriate judicial review by the federal Court to take place *before* it goes into effect.

While we have been in limited discussions and communications with representatives of Merced DPH and legal counsel the California Department of Justice during the last two days, it was never made clear whether counsel from Cal. DOJ is representing Merced DPH or their own interests. In any event, I cc Cal. DOJ counsel here and ask again that you or your legal representative contact me to discuss the issues referenced above as soon as possible.

Carmine R. Zarlenga
Partner

Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
Tel: +1-202-263-3227
Fax: +1-202-263-5227
czarlenga@mayerbrown.com
www.mayerbrown.com

From: O'Connor, Robert Dr. <[REDACTED]@fosterfarms.com>

Sent: Thursday, August 27, 2020 7:01 AM

To: Mattos- private ([REDACTED]@yahoo.com) <[REDACTED]@yahoo.com>; Bower, Tom <[REDACTED]@fosterfarms.com>; Boyce, Randy <[REDACTED]@fosterfarms.com>; Brill, Ira <[REDACTED]@fosterfarms.com>; Carter, Chris <[REDACTED]@fosterfarms.com>; Ferrell, James E. <[REDACTED]@fosterfarms.com>; Fish, Marcia <[REDACTED]@fosterfarms.com>; Hansen, David <[REDACTED]@fosterfarms.com>; Huber, Dan <[REDACTED]@fosterfarms.com>; Kirkham, Brett <[REDACTED]@fosterfarms.com>; Kurtz, Helen <[REDACTED]@fosterfarms.com>; Weinmeister, Dave <[REDACTED]@fosterfarms.com>

Cc: Recht, Philip R. <[REDACTED]@mayerbrown.com>; Zarlenga, Carmine R. <CZarlenga@mayerbrown.com>

Subject:

****EXTERNAL SENDER****

Note: Dr. Breshears, USDA, received document and is working with Secretary of AG

From: Ashley Peterson <[REDACTED]@chickenusa.org>

Sent: Thursday, August 27, 2020 3:29 AM

To: O'Connor, Robert Dr. <[REDACTED]@fosterfarms.com>

Subject: Update

EXTERNAL

The Under Secretary has received a copy of the order. She is engaging the Secretary and will be working this under the Defense Production Act. I highlighted both the scope of the order and the urgency - she knows the clock is ticking. Political officials from the state have also been engaged - from the Federal level. As soon as I have a readout on their engagement I will follow up.

Hold tight. We will get through this together. She hasn't lost a battle for us and your compromise is more than fair.

Ashley

Ashley Peterson
National Chicken Council

On Aug 26, 2020, at 11:47 PM, O'Connor, Robert Dr. <[REDACTED]@fosterfarms.com> wrote:

Get [Outlook for iOS \[aka.ms\]](#)

Confidentiality Notice: The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and is non-public in nature and should be considered confidential. If any reader of this communication is not the intended recipient, unauthorized use, disclosure, dissemination or copying is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system and promptly destroy any copies made of this electronic message.
<Foster Farms Health Order FINAL 8.26.2020.pdf>

Confidentiality Notice: The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and is non-public in nature and should be considered confidential. If any reader of this communication is not the intended recipient, unauthorized use, disclosure, dissemination or copying is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system and promptly destroy any copies made of this electronic message.

This email and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. If you are not the named addressee you should not disseminate, distribute or copy this e-mail.

Mayer Brown is a global services provider comprising an association of legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Taulil & Chequer Advogados (a Brazilian partnership).

Information about how we handle personal information is available in our [Privacy Notice](#).