

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

NOLECHEK’S MEATS, INC.,
a Wisconsin corporation, WE’RE
THE WURST, INC., an Oregon
corporation, and GOLDEN CITY
LLC, a Missouri company,

Plaintiffs,

v.

THOMAS J. VILSACK, in his
official capacity as United States
Secretary of Agriculture;
U.S. DEPARTMENT OF
AGRICULTURE; and FOOD
SAFETY AND INSPECTION
SERVICE,

Defendants.

No. 3:21-cv-762

**DECLARATION OF MATTHEW FIDLER IN SUPPORT OF
WE’RE THE WURST INCORPORATED**

Pursuant to 28 U.S.C. § 1746, I, Matthew Fidler, declare as follows:

1. I am over 18 years of age. I have personal knowledge of the statements herein and, if called to testify at deposition or trial, I would testify as follows.
2. I reside in Deschutes County in the state of Oregon.

3. I am the President and primary shareholder and owner of We're the Wurst Incorporated ("We're the Wurst"), an Oregon corporation that is a party to this lawsuit, and I am authorized to speak on the company's behalf.

4. We're the Wurst is a small, family company that produces scratch-made premium sausages.

5. Our menu runs the gamut from our original Bratwurst to traditional British Bangers, to Andouille and Chorizo.

6. I started We're the Wurst in 2016 with a small personal loan to outfit a food cart.

7. In 2019, We're the Wurst began the process to acquire the USDA Mark of Inspection, in order to expand our business beyond the simple food cart, and in late 2019 achieved our Federal Grant of Conditional Inspection.

8. In 2020, We're the Wurst completed the extensive process to obtain our full FSIS Grant of Inspection. This process included developing written Sanitation Standard Operating Procedures, conducting a hazard analysis, developing and validating a Hazard Analysis Critical Control Point (HACCP) plan, and implementing these procedures in accordance with regulatory requirements.

9. We're the Wurst's USDA Mark of Inspection number is 46769.

10. Becoming an FSIS-inspected establishment opened up a much larger market for We're the Wurst products by allowing us to wholesale our products within Oregon and out-of-state. Growth was exponential, with We're the Wurst purchased new equipment, signed up numerous new accounts, and ultimately changed production facilities three different times to keep up with constantly expanding demand for our scratch-made premium sausages.

11. We're the Wurst's current facility is capable of producing as much as 16,000 pounds of sausage per day, equivalent to about \$84,000 per day in gross sales.

12. FSIS inspectors and fellow meat product specialists alike have repeatedly praised We're the Wurst's HAACP program. For me as We're the Wurst's owner, the HAACP program demonstrates our commitment to food safety and helps educate its customers.

13. As the owner of We're the Wurst, I consider the quality and safety of our products to be a cornerstone of our business. Just prior to the events involved here, we voluntarily decided to dispose of thousands of pounds of product because we discovered bone fragments in the source meat that USDA inspectors had missed. We're the Wurst went above and beyond its legal responsibilities in promptly taking the offending meat out of production and notifying USDA of the oversight.

14. During the global pandemic, We're the Wurst implemented a COVID-19 safety policy for its employees, which entails monitoring for COVID-19 symptoms, quarantining of symptomatic employees, and detailed guidance on appropriate mask-wearing.

15. Consistent with We're the Wurst owner's commitment to honoring people's personal morals, values, autonomy, and convictions, We're the Wurst leaves the decision to wear masks to each employee's individual discretion.

16. Following the first notice by FSIS, I informed the inspector of We're the Wurst's COVID-19 and Mask-Wearing Policy and provided the inspector with a copy of the policy.

17. On August 24, FSIS sent We're the Worst an email to confirm our decision regarding the FSIS mask mandate. In response, I informed FSIS that yes, we did not intend to adhere to FSIS's unlawful mask mandate.

18. On August 25, a FSIS inspector stopped by We're the Worst, determined that its employees were not wearing masks, and left, subsequently filing MOI # SNN1115083325G attached to the first amended complaint as Exhibit F.

19. FSIS then issued We're the Worst its Notice to Withhold the Marks of Inspection attached to the first amended complaint as Exhibit G.

20. The Withholding Action immediately prevented We're the Worst from selling its products wholesale within Oregon or out of state. Further, because withholding actions are only issued for serious breaches of regulations such as inadequate sanitary conditions and failure to adequately control pathogens, the Withholding Action seriously harmed our reputation and standing in the community and throughout Oregon and the country.

21. Despite these challenges, We're the Worst has continued to maintain that the FSIS policy is illegal and beyond FSIS' legal authority.

22. Despite our objection to FSIS's Withholding of We're the Worst's Mark, we have abided by the law in not participating in Oregon wholesale or out of state business, as we believe that this is the responsible action to take under the circumstances.

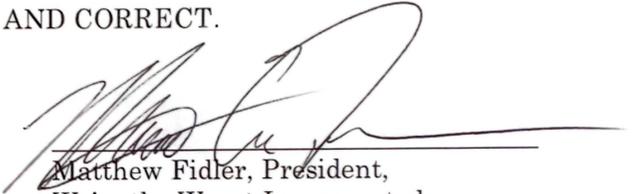
23. On September 16, 2021, We're the Worst cooperated with an FSIS inspection of our inventory, the purpose of which was to ensure that we were not selling product without the necessary Mark. The inspection demonstrated that

Case: 3:21-cv-00762-jdp Document #: 16-1 Filed: 02/02/22 Page 5 of 5
We're the Wurst is complying with the restrictions imposed by the denial of their
Mark.

24. The denial and withholding of We're the Wurst's Mark have already
costs us hundreds of thousands of dollars in lost business, in the course of just a few
months.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING
IS TRUE AND CORRECT.

Executed on January 24, 2022.


Matthew Fidler, President,
We're the Wurst Incorporated