

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

NOLECHEK’S MEATS, INC.,
a Wisconsin corporation; et al.,

Plaintiffs,

v.

THOMAS J. VILSACK, in his
official capacity as United States
Secretary of Agriculture; et al.,

Defendants.

No. 3:21-cv-762

**PLAINTIFFS’ STATEMENT OF PROPOSED FACTS IN
SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to local rule II.A.1.b, plaintiffs We’re the Wurst Incorporated and Golden City Meats, LLC, hereby submit the following Statement of Proposed Facts in Support of their motion for a preliminary injunction.¹

We’re the Wurst Incorporated and Golden City Meats, LLC rely upon the supporting declarations of Robert Long (“Long Decl.”) and Matthew Fidler (“Fidler Decl.”) filed contemporaneously and cited below as follows:

¹ https://www.wiwd.uscourts.gov/sites/default/files/Injunctive_Relief.pdf.

GOLDEN CITY MEATS, LLC

1. Robert Long is over 18 years of age and has personal knowledge of the statements contained in his supporting declaration. Long Decl., ¶ 1.

2. Mr. Long resides in Lawrence County in the state of Missouri. Long Decl., ¶ 2.

3. Mr. Long is the primary member of Golden City Meats, LLC (“Golden City”), a Missouri limited liability company with its principal place of business located in Barton County, Missouri. Golden City is a party to this lawsuit pursuant to the first amended complaint, and Mr. Long is authorized to speak on its behalf. Long Decl., ¶ 3.

4. Golden City is a family-run slaughterhouse and premium meat establishment located in Golden City, Missouri, and its slaughterhouse operations offer full-service capabilities to a number of family farmers and ranchers located in Missouri, Arkansas, Oklahoma, and Kansas. Including its owners and employee team members, Golden City has fewer than 100 employees. Long Decl., ¶ 4.

5. Golden City has been in continuous operation since 1972, and Mr. Long is the current owner and member and has been overseeing Golden City's operations since 2008. Long Decl., ¶ 5.

6. In 1972, Golden City received its Federal Grant of Inspection and command-and-control authority; in 1999 it completed its HACCP plan; and in 2008 the Federal Grant of Inspection was changed to reflect Golden City's current business structure and my ownership interest. The process to earn the Federal Grant of Inspection included developing written Sanitation Standard Operating Procedures, conducting a hazard analysis, developing and validating an HACCP plan, and implementing these procedures in accordance with federal regulatory requirements. Long Decl., ¶ 6.

7. Golden City's USDA Mark of Inspection numbers are 8725 and P8725 (poultry). Long Decl., ¶ 7.

8. Becoming an FSIS-inspected establishment opened up a much larger market for Golden City's products by allowing it to provide full-service slaughtering inspection services to family farmers and ranchers within Missouri and out-of-state. Since 2008, Golden City has

expanded its in-state and out-of-state slaughtering inspection operations into a significant component of its business. Long Decl., ¶ 8.

9. FSIS inspectors and fellow meat product specialists alike have repeatedly praised Golden City's HACCP program. Golden City's HACCP program demonstrates its commitment to food safety and helps educate its customers. Long Decl., ¶ 9.

10. During the global pandemic, Golden City practiced social distancing and followed all FSIS-required procedures with the exception of mandatory masking for its employees. To assist its employees with not having to be exposed to the virus while out in public, Golden City further elected to voluntarily provide free lunch to its employees on site. Long Decl., ¶ 10.

11. On August 5, 2021, Golden City received a copy of FSIS' initial notice informing of the impending mask policy. Long Decl., ¶ 11.

12. On August 18, 2021, Golden City participated in a conference call with representatives from USDA to discuss the masking policy. Long Decl., ¶ 12.

13. On August 23, 2021, Golden City officially received copies of Notices 34-21 and 30-21 from their assigned FSIS inspector. Long Decl., ¶ 13.

14. On August 26, 2021, FSIS inspectors arrived at Golden City's facility but refused to perform the necessary inspection due to Golden City's employees not being masked and left without performing an inspection. Long Decl., ¶ 14.

15. This refusal by FSIS to perform the inspection harmed Golden City, as it had 8 live beef cattle and 20 live hogs in pens on the slaughterhouse floor waiting to be processed and inspected by FSIS, and Golden City could not proceed without FSIS performing its inspection. Long Decl., ¶ 15.

16. On August 26, 2021, FSIS issued Golden City its Notice to Withhold the Marks of Inspection. The Notice to Withhold the Marks of Inspection letter is attached to the first amended complaint as Exhibit H. Long Decl., ¶ 16.

17. On September 10, 2021, Golden City participated in a Zoom video conference with USDA officials organized by the United States Cattleman's Association, in which Golden City officials relayed their

concerns to USDA regarding Notice 34-21, but to no avail. Long Decl., ¶ 17.

18. Between August 26 and November 8, 2021, and despite Golden City's repeated requests to perform inspection services in accordance with its Federal Grant of Inspection, FSIS declined to perform inspection services on Golden City's premises. Long Decl., ¶ 18.

19. On November 8, 2021, an official from FSIS met with Golden City at their facility and informed them that, because at that time Barton County, MO, had levels of community transmission below the "moderate" threshold set by the CDC, Notice 34-21 did not apply and they would be inspected, but the Notice would apply in the future if levels of community transmission increased. The USDA official filed an official report to this effect the following day. Long Decl., ¶ 19.

20. On November 12, 2021, the CDC downgraded Barton County, MO because of increased measurement of community transmission, and FSIS again refused to inspect Golden City's facility. Long Decl., ¶ 20.

21. The Withholding Action previously issued by FSIS on August 26, 2021, immediately prevented Golden City from selling its products within Missouri or out of state and prevented Golden City from providing

its slaughterhouse inspection services to a significant number of family farmers and ranchers in the Midwest. Long Decl., ¶ 21.

22. 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 Golden City's reputation and standing in the community, particularly with Midwest family farmers and ranchers and throughout Missouri and the country. Long Decl., ¶ 22.

23. Despite these challenges, Golden City has continued to maintain that the FSIS policy is illegal and beyond the agency's legal authority. Long Decl., ¶ 23.

24. Despite our objection to FSIS's withdrawal of Golden City's Mark, Golden City has abided by the law in not participating in selling products in or out of state and not providing USDA-inspected slaughterhouse services to our family farmer clients and customers, as we believe this is the responsible action to take under the circumstances. Long Decl., ¶ 24.

25. In the course of just a few months, FSIS' withholding of Golden City's USDA Mark and its refusal to perform inspections, has

already cost Golden City tens of thousands of dollars in lost business revenue, reduced production of at least 250,000 pounds of meat not being inspected and then sold in the open market, and in the forced restructuring of its labor force and business procedures. Long Decl., ¶ 25.

WE'RE THE WURST INCORPORATED

26. Matthew Fidler is over 18 years of age, and he has personal knowledge of the statements contained in his supporting declaration. Fidler Decl., ¶ 1.

27. Mr. Fidler resides in Deschutes County in the state of Oregon. Fidler Decl., ¶ 2.

28. Mr. Fidler is 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 he is authorized to speak on the company's behalf. Fidler Decl., ¶ 3.

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

30. Its menu runs the gamut from original Bratwurst to traditional British Bangers, to Andouille and Chorizo. Fidler Decl., ¶ 5.

31. Mr. Fidler started We're the Wurst in 2016 with a small personal loan to outfit a food cart. Fidler Decl., ¶ 6.

32. In 2019, We're the Wurst began the process to acquire the USDA Mark of Inspection, in order to expand its business beyond the simple foot cart, and in late 2019 achieved its Federal Grant of Conditional Inspection. Fidler Decl., ¶ 7.

33. In 2020, We're the Wurst completed the extensive process to obtain its 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. Fidler Decl., ¶ 8.

34. We're the Wurst's USDA Mark of Inspection number is 46769. Fidler Decl., ¶ 9.

35. Becoming an FSIS-inspected establishment opened up a much larger market for We're the Wurst products by allowing it to wholesale its 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 its scratch-made premium sausages. Fidler Decl., ¶ 10.

36. 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. Fidler Decl., ¶ 11.

37. FSIS inspectors and fellow meat product specialists alike have repeatedly praised We're the Wurst's HACCP program. For Mr. Fidler as We're the Wurst's owner, the HACCP program demonstrates its commitment to food safety and helps educate its customers. Fidler Decl., ¶ 12.

38. As the owner of We're the Wurst, Mr. Fidler considers the quality and safety of its products to be a cornerstone of its business. Just prior to the events involved here, it voluntarily decided to dispose of thousands of pounds of product because it 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.

Fidler Decl., ¶ 13.

39. During the global pandemic, We're the Worst 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. Fidler Decl., ¶ 14.

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

41. Following the first notice by FSIS, Mr. Fidler informed the inspector of We're the Worst's COVID-19 and Mask-Wearing Policy and provided the inspector with a copy of the policy. Fidler Decl., ¶ 16.

42. On August 24, FSIS sent We're the Worst an email to confirm its decision regarding the FSIS mask mandate. In response, Mr. Fidler informed FSIS that yes, it did not intend to adhere to FSIS's unlawful mask mandate. Fidler Decl., ¶ 17.

43. 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. Fidler Decl., ¶ 18.

44. FSIS then issued We're the Worst it's Notice to Withhold the Marks of Inspection attached to the first amended complaint as Exhibit G. Fidler Decl., ¶ 19.

45. 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 its reputation and standing in the community and throughout Oregon and the country. Fidler Decl., ¶ 20.

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

47. Despite its objection to FSIS's Withholding of We're the Worst's Mark, it has abided by the law in not participating in Oregon wholesale or out of state business, as it believes that this is the responsible action to take under the circumstances. Fidler Decl., ¶ 22.

48. On September 16, 2021, We're the Wurst cooperated with an FSIS inspection of its inventory, the purpose of which was to ensure that it was not selling product without the necessary Mark. The inspection demonstrated that We're the Wurst is complying with the restrictions imposed by the denial of its Mark. Fidler Decl., ¶ 23.

49. The denial and withholding of We're the Wurst's Mark has already cost it hundreds of thousands of dollars in lost business, in the course of just a few months. Fidler Decl., ¶ 24.

FOOD SAFETY INSPECTION SERVICE

50. The Food Safety Inspection Service (FSIS) is an agency of the U.S. Department of Agriculture (USDA).

51. The FSIS is responsible for ensuring the safety of America's food supply, including meat and poultry. *See* <https://www.fsis.usda.gov/about-fsis>.²

52. On August 20, 2021, the FSIS issued Notice 34-21, attached to the First Amended Complaint as Exhibit A and available at <https://www.fsis.usda.gov/policy/fsis-notice/34-21>.

² It is appropriate to take judicial notice of information on official websites. *W. States Envelope Co. v. Midwest Envelopes I, Inc.*, No. 12-CV-561, 2013 U.S. Dist. LEXIS 145326, at *16 (E.D. Wis. Oct. 8, 2013); *Chesapeake Life Ins. Co. v. Parker*, No. 18-C-643, 2018 U.S. Dist. LEXIS 149571, at *8 (E.D. Wis. Aug. 31, 2018).

53. Notice 34-21 replaced Notice 30-21, issued on August 4, 2021, available at <https://www.fsis.usda.gov/policy/fsis-notice/30-21>.

Dated: February 2, 2022

Respectfully Submitted,

**NOLECHEK'S MEATS, INC.
WE'RE THE WURST,
INCORPORATED, AND
GOLDEN CITY MEATS, LLC**

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