

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

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

[UNITED STATES’ PROPOSED] ORDER

WHEREAS, on June 9, 2021, the Court, on plaintiff United States of America’s motion, ordered defendants Amos Miller and Miller’s Organic Farm (“Miller’s”) to show cause why they should not be held in contempt of the Court’s November 19, 2019 Injunction Order (“Injunction Order,” ECF No. 44) and April 16, 2020 Consent Decree (“Consent Decree,” ECF No. 67) in this action;

WHEREAS, on June 16, 2021, the Court found defendants in contempt of the Injunction Order and Consent Decree following an in-person show cause hearing at which defendants stipulated that the United States had carried its burden of establishing by clear and convincing evidence that the Injunction Order and Consent Decree are valid Court orders, that Amos Miller had knowledge of those orders and their contents, and that he disobeyed the orders;

WHEREAS, at the June 16, 2021 hearing, defendants presented three witnesses in an effort to carry their burden of showing that they were unable to comply or had substantially complied with the Injunction Order and Consent Decree, and in response the United States presented the testimony of Food Safety and Inspection Service Compliance Investigator Paul

Flanagan, whose supporting declaration (“First Flanagan Declaration”) and three attached notices of warning the Court admitted into evidence;

WHEREAS, on June 23, 2021, the Court held a further hearing at which the United States and defendants presented testimony in support of their positions regarding an appropriate sanction for defendants’ civil contempt of the Court’s orders; and

WHEREAS, on June 28, 2021, the United States moved to supplement the record with: (1) a second declaration of Investigator Flanagan (“Second Flanagan Declaration”) stating his findings following a June 22, 2021 site visit to Miller’s Organic Farm (ECF No. 94-1); and (2) a declaration from Scott Safian, who is an FSIS Director of Enforcement Operations, regarding FSIS’s recent enforcement costs for this matter (ECF No. 94-2);

NOW, THEREFORE, on this day of July, 2021:

The Court GRANTS the United States’ motion to supplement the record. The Second Flanagan Declaration and the Declaration of Scott Safian are admitted as part of the contempt record.

Further, under Federal Rule of Civil Procedure 52(a), the Court makes the following FINDINGS OF FACT, states the following CONCLUSIONS OF LAW, and ORDERS CONTEMPT SANCTIONS as follows:¹

FINDINGS OF FACT

Facts Established before the June 2021 Hearings

1. Five years ago, 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

¹ See, e.g., *ABI Jaoudi and Azar Trading Corp. v. Cigna Worldwide INS. Co.*, No. 91-cv-6785, 2016 WL 3959078, at *1 (E.D. Pa. July 22, 2016) (findings of fact and conclusions of law in connection with civil contempt are made under Rule 52).

Food Safety and Inspection Service (“FSIS” or “USDA FSIS”) and ordered Amos Miller and Miller’s Organic Farm to cease denying FSIS inspection access to Miller’s meat-and-poultry-related facilities and records.

2. Later, in two 2017 letters, FSIS warned these defendants that they were still 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. Because defendants failed to cease those continuing violations, the United States, on behalf of FSIS, commenced this action (EDPA No. 19-cv-1435, or “the permanent injunction action”) against Amos Miller and Miller’s by filing an April 2019 Complaint seeking permanent injunctive relief against them under the Acts (ECF No. 1).

4. On November 19, 2019, in the Injunction Order, 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.

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 continue to bind the parties.

6. In the Injunction Order, for example, the Court found that, at least as of November 19, 2019: (a) Amos Miller and his wife owned and operated Miller’s, an unincorporated business located at 648 Mill Creek School Road, Bird-in-Hand, Pennsylvania; (b) at its farm site, Miller’s had been slaughtering livestock or poultry, and then preparing, processing, storing, and/or distributing meat, meat food products, and poultry products; (c) Miller’s sold its meat, meat food products, 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; (d) federal inspection is required at such 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; (e) Miller’s had been 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; and (f) defendants had not yet changed Miller’s business model to attempt to qualify for an exemption from federal inspection under the Acts for any part of their operations. (Injunction Order, at pp. 1-2 ¶¶ 3-9).

7. The following facts were also established, largely through defendants’ concessions at summary judgment:

a. Miller’s Organic Farm 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], ECF No. 35-1, at ¶¶ 3 and 4, *with* Defendants[’] Response to [SUMF], ECF No. 36-1, at ¶¶ 3 and 4 [conceding these facts]. *See also* Injunction Order at p. 1 ¶ 3.)

b. Miller’s “private membership association” is a buyer’s club whose members do not share in the farm’s profits or have voting rights in decisions about the farm’s business and that: (a) has a decision-making “board” comprising only Mr. Miller and his wife; (b) conditions membership solely on an individual’s signing a membership contract and paying a small one-time fee; and (c) does not screen members based on their views or beliefs. (*Compare* SUMF ¶ 5 *with* Defendants’ Response to SUMF, at ¶ 5.)

c. 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, fax, 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.)

8. In the Injunction Order, the Court ruled that, by conducting their meat and poultry business without federal inspection, and by refusing to provide FSIS’s authorized representatives with necessary access to Miller’s meat-and-poultry-related facilities, inventory, and records, defendants had been violating the Acts’: (a) federal inspection requirements; (b) prohibitions against offering for sale, selling, and distributing non-federally-inspected and misbranded meat, meat food products, and poultry products; and (c) access and inspection provisions. (Injunction Order, at p. 3 ¶ 4).

9. The Court stressed that: (a) “The United States’ and the public’s interests in food safety (as expressed in congressional findings and the Acts)” would be “irreparably injured absent permanent injunctive relief, and the defendants’ interests do not countervail those interests”; and (b) there was “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.” (Injunction Order, at p. 4 ¶¶ 5, 6 [interpolation added].)

10. In granting permanent injunctive relief against defendants Miller’s 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.

11. 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’s expenses “include . . . investigation and preparation time, at the rate of \$45.00 per hour per USDA employee”).

12. 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.” (Injunction Order, at p. 16 ¶ 25.)

13. 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. (Injunction Order, at p. 16 ¶ 32.)

14. After defendants violated the Injunction Order through illegal slaughtering and other activities, the parties entered into the Consent Decree, which the Court “ordered, adjudged, and decreed” on April 16, 2020.

15. Through the parties’ recitals and agreements in the Consent Decree, the following further facts were established and are consequently undisputed in this case:

- “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, 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; and

- “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.*

16. In the Consent Decree, the Court ordered, adjudged, and decreed in part that:

a. 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;

b. 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;

c. 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); and

d. “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.)

17. 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 beef articles were later, by August 2020, distributed or disposed of under USDA-FSIS’ oversight and with the consent of the interested parties, thereby mooted 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.)

Pre-April 2021 Facts Established at the June 2021 Contempt Hearings

18. On October 15, 2020, FSIS sent a Notice of Warning to Mr. Miller relating to FSIS’s findings of still-further violations at Miller’s between June 2020 and September 2020. (First Flanagan Declaration, ECF 89-1, at ¶ 7 and Exhibit “B” thereto [Oct. 2020 notice of warning].)

19. 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. (First Flanagan Declaration, at ¶ 8.)

20. 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* First 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.)

Post-April 2021 Facts Established at the June 2021 Hearings and in Related Submissions

21. Miller's receives "about 50 percent" of its live animals from non-Miller's farmers. (Testimony of Amos Miller [June 16, 2021], Transcript at)²

22. Belmont Meats, LLC ("Belmont Meats") is a federally inspected meat and poultry slaughter and processing establishment located in close proximity to Miller's. (First Flanagan Declaration, at ¶ 10.)

23. By May 18, 2021, Amos Miller had decided to stop taking Miller's livestock and poultry to Belmont Meats for slaughtering or processing. (First Flanagan Declaration, at ¶¶ 13, 30.)

² The United States has ordered, but not yet received, transcripts of the June 16, 2021 and June 23, 2021 contempt and contempt sanction hearings. Once the United States receives those transcripts, it will submit a revised version of this document with page and line citations to the transcripts.

24. The last date in May 2021 that Belmont Meats received any animal from Miller's for slaughtering was May 3, 2021. (Second Flanagan Declaration, at ¶ 11.)

25. None of Miller's amenable animals was slaughtered at Belmont Meats between on or about May 3, 2021 and on or about June 8, 2021—a period of 36 days. (First Flanagan Declaration, at ¶ 11; Flanagan Testimony [June 23, 2021], Tr. at . . .; Second Flanagan Declaration, at ¶¶ 12-13.)

26. The shelf life for fresh, non-frozen meat and meat food products is between approximately ten and 14 days. (Second Flanagan Declaration, at ¶ 13.) In May 2021, Miller's amenable meat products that Belmont Meats had slaughtered would therefore probably not have been fresh after May 17, 2021, which is the day before Miller's slaughtered two beef cattle at its Bird-in-Hand farm site.

27. Amos Miller's self-justification for ceasing to use Belmont Meats for slaughtering his animals in May 2021 was that Belmont Meats was no longer willing to use Miller's citric acid blend as an antimicrobial when Belmont Meats slaughtered Miller's animals. (Testimony of Amos Miller [June 16, 2021], Tr. at)

28. Belmont Meats's manager, Daniel Zook, testified that he was no longer willing to use Miller's citric acid because Belmont Meats: (a) is trying to become a fully licensed federally inspected establishment (it currently has only a temporary grant of inspection, or what is formally known as a "conditional grant of inspection"); and (b) believes that the non-citric-acid antimicrobial it has been using since last year (Paracetic Acid, or "PAA") is optimal for controlling pathogens under Belmont Meats's current circumstances. (Testimony of D. Zook [June 16, 2021], Tr. at)

29. Unwilling to take his animals to Belmont Meats under such circumstances, Mr. Miller decided to slaughter his livestock and poultry (and poultry he purchased from other farmers) at Miller's Organic Farm, beginning on or after May 3, 2021. Mr. Miller based that decision on his own "conscience" and did not consult or seek permission from the Court, USDA FSIS, the U.S. Attorney's Office, or even his own counsel. (First Flanagan Declaration, at ¶ 16; Testimony of Amos Miller [June 16, 2021], Tr. at ["My conscience just couldn't take" Belmont using its antimicrobial agent].)

30. Miller's illegally slaughtered two beef livestock at its farm site on May 18, 2021. (Second Flanagan Declaration, at ¶ 10.)

31. The next day, May 19, 2021, Miller's accepted an order for a UPS shipment to Virginia of Miller's "fresh beef thyroid 8 oz.," "8 oz. fresh beef adrenals," and "2 lb gr beef/organ fresh." These products were later paid for on June 1, 2021. (Second Flanagan Declaration, at ¶¶ 14, 19 [stating professional belief that these products came from one of the beef carcasses slaughtered without federal inspection at Miller's on May 18, 2021, and noting that Mr. Miller testified in 2019 that his members who place orders over the internet pay for their orders *after* receiving delivery of products].)

32. Miller's illegally slaughtered three pigs at its farm site on May 21, 2021. (Second Flanagan Declaration, at ¶ 10.)

33. On May 25, 2021, seven days after Miller's illegally slaughtered two beef livestock at its farm site, Miller's:

a. accepted an order for a FedEx ground shipment to New York of "1 pk fresh sirloin" and "1 pk fresh NY steak" (these products were later paid for on June 8, 2021), *see*

Second Flanagan Declaration, at ¶¶ 15, 19 (stating belief that these products came from one of the beef carcasses slaughtered without federal inspection at Miller's on May 18, 2021);

b. accepted an order for a FedEx ground shipment to New Jersey of "1 lb. beef tenderloin fresh (this product was later paid for on June 11, 2021), *see* Second Flanagan Declaration, at ¶¶ 17, 19 (stating belief that this product came from one of the beef carcasses slaughtered without federal inspection at Miller's on May 18, 2021); and

c. accepted an order for a FedEx overnight shipment to Ohio of "7 Beef Tenderloin Fresh," which were later paid for on June 1, 2021. (Second Flanagan Declaration, at ¶¶ 18, 19 [stating belief that these products came from one of the beef carcasses slaughtered without federal inspection at Miller's on May 18, 2021].)

34. On May 25, 2021, Amos Miller acknowledged to FSIS investigators that he had been slaughtering livestock and poultry at Miller's and that his employees were in the process of slaughtering chickens, which the investigators then observed at Miller's. (First Flanagan Declaration, at ¶¶ 14, 18.)

35. On that occasion, Miller's continued to slaughter hundreds of chickens for an additional seven hours after the investigators arrived, despite an investigator's warning Mr. Miller that he was in violation of the Court's orders. (First Flanagan Declaration, at ¶ 21.)

36. Also on that occasion Mr. Miller told an FSIS investigator that he was slaughtering at Miller's because he needed the meat and poultry products for his members, who did not want chemicals or citric acid in their products. The investigator then explained to Mr. Miller, as he had in the past, that there are several different methods that can be implemented as antimicrobial interventions for pathogens and that applying citric acid is not the only option that is acceptable to FSIS. (First Flanagan Declaration, at ¶ 15.)

37. On that date, May 25, 2021, FSIS investigators 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 or tags identifying the animals' owners or indicating that the articles were "not for sale":

(a) approximately 1,851 pounds of poultry carcasses (394 whole chickens), feet, heads, livers, gizzards, and trimmings; (b) approximately 650 pounds of a beef carcass and two beef heads; and (c) approximately 600 pounds of whole hog carcasses. (First Flanagan Declaration at ¶¶ 18, 19, 25, 26.)

38. The United States has since filed an *in rem* civil action seeking to seize and condemn those detained articles. That action is captioned in this Court as *United States of America v. (1) 1,576 Lbs., More or Less, of Poultry Carcasses; (2) 274 Lbs., More or Less, of Chicken Feet, Heads, Livers, Gizzards, and Carcass Trimmings; (3) 650 Lbs., More or Less, of a Beef Carcass and 2 Beef Heads; and (4) 600 Lbs., More or Less, of Hog Carcasses*, which appears at Docket No. 21-cv-2638 ("The Second Condemnation Action").

39. On June 24, 2021, in the Second Condemnation Action, the United States Marshals Service arrested the detained articles (hereafter referred to as "the seized articles") but left them "in place" in freezers at Miller's. (Second Condemnation Action, ECF No. 3.)

40. On May 25, 2021, in a large, walk-in freezer at Miller's, FSIS investigators observed (in addition to the "fresh" seized articles) numerous boxes containing frozen meat and poultry products (hereafter referred to as "the frozen products"), only some of which stated that they contained product identified as "Buffalo" (which is non-amenable, *i.e.*, not subject to the FMIA and PPIA), and none of which bore reference to the: (a) types of contained products (*e.g.*, "steak," "chop," "ground"); (b) the numbers of contained packages; or (c) any name or address

of any facility at which the articles were slaughtered and/or processed. None of the boxes or articles were identified as for Miller's "personal use." (First Flanagan Declaration, at ¶ 20; Testimony of Amos Miller [June 23, 2021], Tr. at . . . [stating that only approximately 50 percent of these contained buffalo products].)

41. On May 25, 2021, Mr. Miller told FSIS investigators that: (a) he did not have any records related to purchases of the fresh livestock and poultry articles that FSIS detained that day; (b) he did not have any records (including any sales invoices) relating to the purchases or sales of Miller's livestock and poultry products more generally; and (c) the missing beef carcass belonging to a detained beef head had "probably" been further processed, cut up, and sold to his customers. (First Flanagan Declaration, at ¶ 27.)

42. Records that Miller's later produced, on June 22, 2021, state that Miller's slaughtered 408 broilers (chickens) on May 25, 2021. (Second Flanagan Declaration, at ¶ 10.)

43. According to Mr. Miller, it is not uncommon for Miller's staff to complete meat-and-poultry-related records from memory days after the events being recorded. (Testimony of Amos Miller [June 16, 2021], Tr. at . . .)

44. On May 25, 2021, when an FSIS investigator asked Mr. Miller if he would be continuing to slaughter livestock and poultry at Miller's the following day (May 26) 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." (First Flanagan Declaration, at ¶ 29.)

45. On May 26, 2021, which was eight days after Miller's illegally slaughtered two beef livestock at its farm site, Miller's accepted an order for a FedEx ground delivery to Virginia of "2 lb. g. beef fresh." That product was later paid for on June 8, 2021. (Second Flanagan

Declaration, at ¶¶ 16, 19 [stating belief that this product came from one of the beef carcasses slaughtered without federal inspection at Miller's on May 18, 2021].)

46. Also on May 26, 2021, which was the day after FSIS had detained the seized articles, 104 live chickens were shipped to Miller's. (Second Flanagan Declaration, at ¶ 21.)

47. On May 28, 2021, FSIS investigators returned to Miller's and oversaw the freezing (to avoid spoiling) of the seized articles. On that date, Miller's employees told FSIS that they did not maintain slaughter records for the recently slaughtered livestock and poultry. (First Flanagan Declaration, at ¶ 31.)

48. Invoices dated May 29, 2021 and May 31, 2021 reflect further shipments to Miller's of 104 live chickens (567 pounds dressed weight) and 198 live chickens (1,160 pounds dressed weight), respectively. (Second Flanagan Declaration, at ¶ 21.)

49. On June 4, 2021, an FSIS investigator and two FSIS veterinarians visited Miller's for the purposes of determining: (a) the ages of the two beef heads that FSIS investigators had detained on May 25, 2021; and (b) whether Specified Risk Materials (SRMs) had been removed from the associated carcasses. (First Flanagan Declaration, at ¶ 32.)

50. It is critical that such SRMs be removed from cattle carcasses. Over 18 years ago, on January 12, 2004, FSIS concluded that the following cattle materials are unfit for human food: (a) from cattle 30 months of age and older, the brain, skull, eyes, trigeminal ganglia, dorsal root ganglia, spinal cord, and vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the spinal sacrum); and (b) from all cattle, the tonsils and distal ileum of the small intestine. (First Flanagan Declaration, at ¶ 33.)

51. FSIS therefore designated those materials to be SRMs, declared them inedible, and (under FSIS's authority to promulgate regulations necessary to carry out the FMIA)

prohibited their use for human food. (First Flanagan Declaration, at ¶ 34, *citing* 9 C.F.R. Part 310.22.)

52. If a meat food product intended for human consumption contains such SRMs, it is adulterated because it is unfit for human food. (First Flanagan Declaration, at ¶ 35, *citing* 21 U.S.C. § 601(m)(3) [meat food product is adulterated under FMIA if, among other things, it is unsound, unhealthful, unwholesome, or unfit for human food].)

53. The FMIA prohibits anyone from selling, transporting, offering for sale or transportation, or receiving for transportation in commerce any adulterated meat food product. (First Flanagan Declaration, *citing* 21 U.S.C. § 610.)

54. On June 4, 2021, the FSIS veterinarians examined the detained beef heads and determined that: (a) one head was over 30 months old; (b) the other was under 30 months old; and (c) there was no way to determine which head (if either) belonged to the beef carcass being detained in Miller's cooler. (First Flanagan Declaration, at ¶ 36.)

55. On that date, Mr. Miller told FSIS that he: (a) did not know the whereabouts either of certain SRMs from the beef livestock whose heads FSIS had detained, or of related records; and (b) did not believe that there were any available records related to the animals' birth dates, vaccination dates, castration dates, or any official health certificates. (First Flanagan Declaration, at ¶¶ 32-38, 40.)

56. 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 Miller's 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." (First Flanagan Declaration, at ¶ 39.)

57. An FSIS Northeast Regional Director and two FSIS investigators visited Miller's on June 22, 2021 for the purpose of reviewing and making copies of certain of Miller's meat-and-poultry-related records for the period April 15, 2021 to June 15, 2021. (Second Flanagan Declaration, at ¶ 8.)

58. During FSIS's June 22, 2021 record review, Miller's was unable to produce any records regarding the slaughter, processing, and receipt of products from ducks, veal, lamb, and goats, which are all "amenable species"—that is, they are all subject to the Meat Act or the Poultry Act. (Second Flanagan Declaration, at ¶ 9.)

59. On that date, Mr. Miller told FSIS that he does not keep grinding logs for ground beef. He also confirmed both that he had no records showing the ages of the beef cattle that Miller's slaughtered on or about May 18, 2021 and that he has no records regarding: (a) the removal or non-removal of SRMs from cattle (including from the beef carcass and heads that FSIS detained on May 25, 2021); (b) how Miller's disposes of SRMs; or (c) Miller's pet food production. (Second Flanagan Declaration, at ¶ 22.)

60. Also on that date, Mr. Miller showed FSIS two containers of frozen beef brains that he said were from the beef carcasses that he slaughtered at Miller's on or about May 18, 2021 (including the carcass that FSIS detained on May 25, 2021). Both containers were labeled (with a price) for retail sale. (Second Flanagan Declaration, at ¶ 20.)

61. The following meat and poultry articles were not slaughtered or processed for Mr. Miller's or his family's personal use, but instead were intended for sale to Miller's private associations members for human consumption: (a) the articles resulting from Miller's slaughtering of poultry that FSIS observed or found beginning on May 25, 2021; and (b) at least some of the articles resulting from Miller's slaughtering of beef and hogs in May 2021.

Supporting evidence includes that: (a) Miller’s employees (not Mr. Miller) did the slaughtering; (b) the amount of resulting articles/products was significantly more than the allowable standard poundage for personal use; (c) none of the resulting articles was tagged or otherwise identified as “not for sale”; and (d) Miller’s did not produce to FSIS (despite its request for records) any records that would be required for custom slaughter/processing. (Testimony of Paul Flanagan [June 23, 2021], Tr. at)

62. Although the Injunction Order bound not just Amos Miller and Miller’s but also their “officers, agents, servants, and employees, as well as other persons who are in active concert or participation with them”—and although the Consent Decree required Mr. Miller and Miller’s to remove from their websites and their agents’ websites “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”—Miller’s has continued to advertise on the internet a large variety of amenable meat and poultry products for sale for human consumption, including “fresh” meat and poultry products. (Testimony of Paul Flanagan [June 23, 2021], Tr. at)

63. Miller’s continues to operate a retail store (open Monday through Saturday) at its main farm location, where it sells amenable meat and poultry products. (Testimony of Paul Flanagan [June 23, 2021], Tr. at)

64. To date, Mr. Miller has chosen not to apply to USDA FSIS for Miller’s to be a federally inspected establishment, even though he could make such an application and has been educated by FSIS on the application process.

65. To date, Mr. Miller has chosen not to continue to pursue with FSIS a plan for custom-exempt operations as permitted under Paragraph 10 of the Injunction Order. FSIS has spent substantial time and energy working with Miller's to review and provide feedback on Miller's draft custom exempt plans, which appear to FSIS to have since been abandoned by Miller's. (Testimony of Scott Safian [June 23, 2021], Tr. at)

66. Mr. Miller and Miller's do not have a required license from the Commonwealth of Pennsylvania to operate a retail store selling meat or poultry products, and also do not have a required license from the Commonwealth to manufacture pet food. (Testimony of Amos Miller [June 16, 2021, Tr. at; Testimony of Paul Flanagan [June 23, 2021], Tr. at)

67. FSIS has not singled out Miller's or denied it any accommodation that FSIS has extended to similarly situated farmers. (Testimony of Scott Safian [June 23, 2021], Tr. at . . . ; Testimony of Paul Flanagan [June 16, 2021], Tr. at)

68. Other Pennsylvania Amish/Mennonite meat and poultry farmers and sellers routinely submit to FSIS inspection and other statutory and regulatory requirements, including: (a) Belmont Meats, which is Amish-run: and (b) Miller's Bio Diversity Farm, which is an Amish/Mennonite-run retail operation and is unaffiliated with defendant Miller's Organic Farm. Both Belmont Meats and Miller's Bio Diversity Farm are located near Miller's Organic Farm. FSIS has worked with those individuals and businesses (just as it has sought to do with Miller's) to come up with best-suited, least-burdensome ways to comply with the Acts. These establishments invest time, effort, and money: (a) to have USDA FSIS inspectors verify their compliance; (b) in testing and sampling products to ensure they are free from pathogens; and (c) in maintaining required records. (Testimony of Scott Safian [June 23, 2021], Tr. at)

69. Part of FSIS's statutory mission is to ensure that unwholesome, adulterated, mislabeled, or deceptively packaged meat and poultry products (including non-federally-inspected products that should be inspected) do not compete unfairly with wholesome, not adulterated, and properly labeled and packaged products. (Testimony of Scott Safian [June 23, 2021], Tr. at . . .; *see also* 21 U.S.C. §§ 451, 602.)

70. As recently as October 2020, FSIS officials and Pennsylvania Department of Agriculture officials traveled to Lancaster, Pennsylvania to meet with Mr. Miller to educate him again (during the pandemic) about FSIS and Pennsylvania laws, how to obtain a grant of inspection, and how to obtain exemptions from inspection requirements, among other matters. (Testimony of Scott Safian [June 23, 2021], Tr. at)

71. Although Mr. Miller has been repeatedly educated and warned by FSIS about recordkeeping requirements under the Acts, Miller's has chosen not to invest in the sorts of recordkeeping practices that the Acts require, that other comparable establishments have in place, and that are a part of good business practice. In violation of the Acts, Miller's does not maintain timely, detailed records that fully and correctly document Miller's meat-and-poultry-related business transactions. (Testimony of Scott Safian [June 23, 2021], Tr. at; *see generally* 21 U.S.C. §§ 460(b), 642; 9 C.F.R. §§ 320.1, 381.175.)

72. During the 2016 subpoena enforcement action, when the possibility of further civil or criminal enforcement against Miller's arose, the Court stated its hope that the federal government would work with Mr. Miller in an effort to bring his operations into compliance.

73. The federal government has shown that it took that stated hope seriously and has made good faith efforts to seek to bring Mr. Miller into compliance. FSIS has exercised considerable enforcement discretion in the hope that such restraint would aid Miller's

compliance. Indeed, when in late 2019 and early 2020 Miller was found in violation of the Injunction Order's prohibitions on slaughtering and denying FSIS access, and the Order's recordkeeping requirements, FSIS (as a part of the April 2020 Consent Decree) sought far less from defendants than it could have pursued for the violations under the Injunction Order's penalty provisions. It sought only a \$2,500 penalty for only one of Miller's denials of access. Even so, Mr. Miller—as reported to the Court during status calls in 2020—was several months late in making that payment.

74. Miller's is not a small-scale operation and has had and continues to have significant intrastate and interstate sales of meat, poultry, and other food products.

75. In addition to his original Bird-in-Hand, Pennsylvania farm, Mr. Miller owns an adjoining farm that he purchased for \$1.45 million in September 2020, during the height of the COVID-19 pandemic. Mr. Miller testified that he financed \$1.4 million of the purchase price. He thus apparently put down \$500,000 at the time of purchase last year. (Testimony of Amos Miller [June 23, 2021], Tr. at)

76. Mr. Miller is also the 50 percent co-owner of Burke's Garden Farms in Tazewell, Virginia. The farm was purchased in 2015 for \$2.5 million. (Testimony of Amos Miller [June 23, 2021], Tr. at)

77. Mr. Miller currently has a \$200,000 line of credit. (Testimony of Amos Miller [June 23, 2021], Tr. at)

78. Mr. Miller is currently making a significant capital improvement to his main farm. He is building a large outbuilding for his two daughters' upcoming weddings. He estimates the building costs for the structure to be between \$100,000 and \$200,000. (Testimony of Amos Miller [June 23, 2021], Tr. at)

79. FSIS's costs total \$14,436.26 for its: (a) visits to Miller's on May 25, May 28, June 4, and June 22, 2021; (b) participation in conference calls with the Court and counsel in May and June 2021; (c) participation in hearings in June 2021; and (d) reasonable preparation time. (Safian Declaration, at ¶¶)

CONCLUSIONS OF LAW

80. The Court has continuing subject-matter jurisdiction over enforcement of the Injunction Order and continuing personal jurisdiction over all of the parties. (Injunction Order, at ¶ 32 [“The court retains jurisdiction to issue further decrees and orders[.]”].)

81. Defendants Amos Miller and Miller's Organic Farm have engaged in conduct, as set forth in the findings above, that violates the Meat Act, the Poultry Act, the Injunction Order, and the Consent Decree.

82. In violation of the Acts, the Injunction Order, and the Consent Decree—on at least May 18, 2021, May 21, 2021, and May 25, 2021—Miller's slaughtered and at least partially processed, without federal inspection, amenable beef livestock, hogs, and chickens that were capable of use as human food, for the purpose of selling and offering for sale resulting meat food and poultry products in commerce to Miller's buyers' club members.

83. At least a portion of those illegally slaughtered products that were beef products were adulterated, in violation of the Meat Act, because the products contained Specified Risk Materials (SRMs) that Miller's had not removed.

84. Miller's illegal slaughtering activity continued—in violation of the Acts, the Injunction Order, and the Consent Decree—even after FSIS told Amos Miller, during a May 25, 2021 site visit, that his slaughtering activity was illegal. Indeed, Mr. Miller thereafter continued

to purchase and accept from other locations live amenable animals for slaughter and sale or offer of sale.

85. In violation of the Acts and the Injunction Order, Miller's does not maintain timely, detailed records that fully and correctly disclose and document, for amenable animals and resulting products: (a) animal purchases; (b) animal slaughter dates; and (c) other meat-and-poultry-related business transactions, including the sales of Miller's amenable meat and poultry products. For amenable livestock, Miller's, in violation of the Acts, does not maintain required ground beef grinding logs or records documenting the ages of slaughtered cattle, the removal of SRMs, or the disposal of SRMs.

86. 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 and, in fact, meeting with him in late 2020 in Lancaster, Pennsylvania to respond to his questions about legal requirements.

87. Mr. Miller has continued illegally to co-opt FSIS's role and to seek to act as a law unto himself.

88. 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's ability to fulfill their public health missions.

89. 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.

90. “Sanctions for civil contempt are ‘penalties designed to compel future compliance with a court order, are considered to be coercive and avoidable through obedience, and thus may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard[.]’”

Beautyman v. Laurent, No. 17-cv-5804, 2021 WL 1238717, at *3 (E.D. Pa. Apr. 2, 2021), *citing Int’l Union, United Mine Workers v. Bagwell*, 512 U.S. 821, 827 (1994).

91. Civil contempt sanctions: (a) “may include fines, incarceration or a reimbursement of costs incurred while seeking to obtain compliance”; and (b) may also be used “to compensate for losses sustained by the disobedience,” which can include putting the moving party, such as USDA FSIS here, in the “position it would have been in had” Miller’s “done what the Court ordered him to do.” *Beautyman*, 2021 WL 1238717, at *3-4, *citing Robin Woods Inc. v. Woods*, 28 F.3d 396, 400 (3d Cir. 1994).

92. On June 9, 2021, the Court ordered defendants to show cause why they should not be held in contempt, and the Court held a hearing on June 16, 2021 allowing defendants to respond. After the Court found defendants in contempt following that hearing—a finding and conclusion that the Court reiterates here—the Court held another hearing on June 23, 2021 allowing defendants to be heard on the scope of an appropriate contempt sanction. The Court also gave defendants an opportunity to respond to the United States’ proposed findings of fact, conclusions of law, and sanction order, and the Court further held oral argument on an appropriate sanction.

93. Upon consideration of the parties' evidence and arguments, the following sanctions are necessary to deter defendants' future violations and to attempt to bring them into compliance with the Court's orders.

THE ORDERED CONTEMPT SANCTIONS

\$250,000 Fine

94. In addition to defendants' previous post-Injunction-Order slaughtering activity in early 2020, defendants, at the very least, slaughtered for human consumption and commercial sales, and without required federal inspection: (a) amenable beef livestock on May 18, 2021; (b) amenable hogs on May 21, 2021; and (c) amenable chickens on May 25, 2021 and later dates.

95. Although the Injunction Order's penalty provisions and procedures do not bind the Court when determining an appropriate civil contempt sanction, the Court looks to those provisions for guidance.

96. The approximate weight of the missing amenable beef carcass associated with one of the beef heads that FSIS detained on May 25, 2021 is 600 pounds. Under Injunction Order Paragraph 16, even if the Court were to view the illegal slaughter of the animal that resulted in that carcass as a "first occasion of such violation," the penalty amount would be 600 pounds times \$500, or \$300,000. (The amount would be doubled if the Court were to view this, as it could, as a second such occasion.)

97. The approximate weight of the other amenable beef livestock, poultry, and hog articles that FSIS detained on May 25, 2021 is 3,100 pounds. Under Injunction Order Paragraph 16, even if the Court were to view the slaughter of the beef livestock, chickens, and hogs resulting in these articles as first occasions of such violations, the penalty amount would be

3,100 pounds times \$500, or \$1,550,000. (Again, this amount would be doubled if the Court were to view this, as it could, as a second such occasion.)

98. Regarding defendants' recordkeeping violations, even if the Court were narrowly to look only at defendants' failures to maintain required records for removal of SRMs connected to the two amenable beef livestock slaughtered at Miller's without federal inspection on May 18, 2021, and even if the Court were to consider only the missing beef carcass and not the detained beef heads, the penalty amount under Injunction Order Paragraph 17 for a first violation would be the weight of the missing carcass (600 pounds) times \$500, or a total of \$300,000. (Again, this amount would be doubled if the Court were to view this, as it could, as a second such occasion.)

99. In order to effect defendants' future compliance, by making them aware of the seriousness of their violations and the consequences for future violations, defendants are ORDERED TO PAY to the United States, within 30 days of the date of entry of this Order—and pursuant to written instructions that the United States will provide to defendants—a fine of \$250,000, or face further monetary and other penalties, possibly including imprisonment of Amos Miller.

Reimbursement of FSIS's May and June 2021 Enforcement Costs

100. Although under the Injunction Order and the Consent Decree the government could seek reimbursement of the United States Attorney's Office's recent enforcement costs and USDA's Office of the General Counsel's recent enforcement costs in connection with this civil contempt proceeding, the United States is seeking only FSIS's May and June 2021 enforcement costs, which as found above total \$14,436.26.

101. In order to effect defendants' future compliance, defendants are ORDERED TO PAY to the United States, within 30 days—and pursuant to written instructions that the United States will provide to defendants—the sum of \$14,436.26 to reimburse FSIS's enforcement costs, or face further monetary and other penalties, possibly including imprisonment of Amos Miller. (This required payment is in addition to the \$250,000 fine amount ordered above.)

Required Completion of Independent Inventory Within 30 Days

102. Within 10 calendar days of the entry date of this Order, defendants must submit to FSIS, for review and concurrence, the name and credentials of a qualified, independent third party whom defendants intend to retain to conduct a detailed, written inventory of all meat and poultry (defined as all carcasses, parts, and products, whether or not packaged) that are located at Miller's facilities.

103. Within 20 days of the entry date of this Order, defendants must contract with such an FSIS-approved, qualified, independent third party to conduct such an inventory, and Miller's shall require that, within 30 days of the date of this Order, such an inventory be completed and submitted to FSIS for review.

104. At a minimum, that inventory must: (a) account for each article by both species and product type (*e.g.*, "beef broth," "chicken livers," "pork and beef hot dogs," "chicken pie," "lamb roast," beef jerky," "hog carcass," etc.); (b) specify each article's weight; (c) for any article stored in a box or other container, specify the total number of boxes/containers containing the type of article (*e.g.*, 4 totes, 3 ½ boxes, ¼ barrel, 14 packages, etc.); and (d) specify if any such article has been or will be set aside for personal use by Amos Miller or his family and, if it is to be so set aside, also specify the amount and weight being set aside.

105. Should defendants fail to submit to FSIS within 10 days of the date of this Order the name and credentials of such a qualified, independent third party, or should defendants fail to contract with an FSIS-approved, qualified, independent third party within 20 days of the date of this Order, or should defendants fail to submit such a completed inventory to FSIS within 30 days of the date of this Order, defendants shall pay a per-day fine of \$2,500 until they are in compliance with these requirements.

106. All articles at Miller's that are set aside for Amos Miller's or his family's personal use must be so identified (*i.e.*, marked with a corresponding family member's name and "not for sale") and must be separated from all other inventory.

107. Immediately upon an FSIS-approved third party's completion of the written inventory, Miller's must: (a) clearly identify in some manner (*e.g.*, with signage, stickers, or other identifiers) all articles accounted for in the inventory, so that they can be distinguished from any articles that Miller's adds in the future; and (b) segregate the inventory by species and cut (*e.g.*, beef must be stored separately from pork, ground beef must be stored separately from whole muscle beef, non-amenable species/products must be stored separately from amenable species/products, etc.).

108. Defendants must cooperate with FSIS's efforts to verify the third party's written inventory. If required by FSIS, defendants must move and/or stage meat and poultry articles for ease of FSIS's access and viewing of them.

Liquidation of Existing Inventory

109. Miller's may, within 60 days of the entry date of this Order, liquidate its existing inventory of consumer-packed, non-seized, frozen amenable meat and poultry products. (These

frozen articles are separate from the seized articles that are the subject of the Second Condemnation Action.)

110. Liquidation of the non-seized frozen inventory shall be by direct sales to individual Miller's private membership association members, for their personal consumption (not for further sale or distribution), not to exceed, per transaction, regulatory limits of 300 pounds of amenable beef products, 37.5 pounds of amenable calf products, 27.5 pounds of amenable sheep products, 100 pounds of amenable swine products, 25 pounds of amenable goat products, and 75 pounds of amenable poultry products.

111. Such shipments shall be delivered or shipped directly from Miller's to the individual purchaser and may not be resold or redelivered.

112. Miller's must create and/or maintain—and make immediately available to FSIS upon request—contemporaneous records documenting all such liquidation sale transactions and distributions, including, but not limited to: (a) bills of sale; (b) invoices; (c) receiving and shipping papers; and (d) FedEx, UPS, and other commercial carrier transaction records.

113. Once FSIS has verified that Miller's has liquidated all existing amenable, non-seized, frozen inventory, Miller's may then resume taking or sending its amenable animals for slaughtering or processing to Belmont Meats, LLC or any other federally inspected establishment, but only on condition that Miller's maintains related records and otherwise complies with the FMIA, the PPIA, FSIS regulations, the Injunction Order, and the Consent Decree.

114. If Miller's does not liquidate all existing amenable, non-seized, frozen inventory within 60 days of the entry date of this Order, so that the inventory is completely sold and

distributed in accordance with this Order and is no longer on-site at Miller's or held at one of his business associates' sites, the inventory shall be promptly destroyed under FSIS oversight.

115. If defendants violate the preceding paragraphs relating to liquidation of their existing inventory, they shall be ordered to pay a daily fine of \$2,500 for each day that they are out of compliance with the liquidation requirements.

Cessation of Slaughtering Operations and Deliveries, or Face \$25,000 Per-day Fine

116. Defendants Amos Miller and Miller's Organic Farm are ORDERED not to slaughter any amenable animals in violation of the Injunction Order, the Consent Decree, or the Acts.

117. Defendants are further ORDERED not to conduct any exempt slaughter operations, including custom exempt operations, until such time as: (a) there is an Exempt Plan that FSIS has approved in accordance with Paragraph 10 of the Injunction Order; and (b) existing inventory is liquidated or destroyed in accordance with the preceding paragraphs.

118. Defendants are further ORDERED not to take, send, or have sent or delivered for slaughter any amenable animals to Belmont Meats, LLC or any other federally inspected or non-federally-inspected establishment, unless and until FSIS verifies that Miller's has first liquidated all of its existing amenable meat and poultry inventory.

119. If defendants violate any of the three preceding paragraphs regarding slaughter and custom slaughter, they shall be ordered to pay immediately thereafter a fine of \$25,000: (a) for each day that such slaughtering occurs at Miller's; and (b) for each delivery of amenable animals to an establishment for slaughter. Defendants may face additional penalties for such violations, possibly including imprisonment of Amos Miller.

Requirement to Cease and Desist Retail Operations Pending Compliance

120. In accordance with the terms of the Injunction Order and Consent Decree, Miller's must cease and desist all amenable meat-and-poultry-related retail-exempt operations conducted under 9 C.F.R. §§ 303.1(d) and 381.10(d)—except as provided above regarding liquidation of existing inventory—unless and until Miller's can demonstrate compliance with federal and Commonwealth of Pennsylvania law, including laws specifying recordkeeping requirements for retail operations, and also including Commonwealth of Pennsylvania licensing requirements.

121. For *each day* that Miller's conducts such retail operations in violation of law, and without a Commonwealth of Pennsylvania license, defendants shall be ordered to pay a fine of \$2,500.

Miller's Public Statement

122. By no later than seven days after the entry date of this Order, Miller's or Miller's agent(s) must post on the main page of Miller's and Miller's associates' websites on which Miller's amenable meat and poultry products are advertised (www.millersorganicfarm.com and <https://amosmillerorganicfarm.com>), and on Miller's Facebook page, a written statement, which FSIS must pre-approve, explaining to Miller's members and customers that: (a) the Court has ruled that Miller's has violated the Court's Injunction Order and Consent Decree; and (b) "fresh" or "not-frozen" (*i.e.*, newly slaughtered) amenable meat, meat food products, poultry, and poultry products will not be available for sale or purchase unless and until Miller's Organic Farm liquidates its existing amenable, non-seized, frozen meat and poultry inventory and complies with other requirements of this Order and the Court's other orders.

123. For *each day* after seven days following the entry date of this Order—and until FSIS verifies that Miller’s has liquidated its existing inventory of amenable products—that such a statement does not appear on Miller’s websites, its associates’ websites, and Miller’s Facebook page, defendants shall be ordered to pay a fine of \$2,500.

* * *

124. This Order does not affect the pendency of the Second Condemnation Action and does not include provisions regarding the disposition of the seized articles that FSIS detained on May 25, 2021 and that the U.S. Marshals Service arrested on June 24, 2021.

125. Defendants Amos Miller and Miller’s Organic Farm are ORDERED to comply with the November 2019 Injunction Order and April 2020 Consent Decree, which remain in effect, and to cooperate fully and completely with FSIS’s investigations, inquiries, review, and compliance examinations.

BY THE COURT:

HONORABLE EDWARD G. SMITH
Judge, United States District Court