

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

MARTIN J. WALSH,)	
SECRETARY OF LABOR,)	FILE NO.
UNITED STATES DEPARTMENT OF LABOR,)	
)	
Petitioner,)	
)	
v.)	
)	
FOUNDATION FOOD GROUP, INC.,)	
B.J. SVAIGL, CRAIG PUNTERVOLD, ZACH)	
HOOVER, RYAN COOK, and CHRISTIAN)	
FAUR,)	<u>EXPEDITED PROCEDURE</u>
)	<u>REQUESTED</u>
Respondents.)	

**THE SECRETARY OF LABOR’S PETITION TO ENFORCE
ADMINISTRATIVE SUBPOENAS AD TESTIFICANDUM ISSUED BY THE
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION**

COMES NOW Petitioner Martin J. Walsh, the Secretary of Labor, United States Department of Labor (“the Secretary”), and petitions the Court to enter an Order requiring Respondents to Show Cause why they should not be required to appear and provide testimony as required by the Secretary’s Administrative Subpoenas *Ad Testificandum*, and granting the Secretary such other and further relief as may be necessary and appropriate. In support of the Petition, the Secretary asserts the following:

JURISDICTION

1. This Petition is brought to compel Respondents to comply with Administrative Subpoenas *Ad Testificandum* (the “Subpoenas”) issued by the Atlanta East Area Office of the Occupational Safety and Health Administration (“OSHA”) of the United States Department of Labor, to five managers of Foundation Food Group, Inc. (“FFG”), located at 2076 Memorial Park Drive, Gainesville, Georgia. Attorney for FFG, Dane L. Steffenson, agreed to accept service on behalf of managers Zach Hoover, B.J. Svaigl, Craig Puntervold, and Ryan Cook. Attorney Matthew Cook represents Christian Faur and agreed to accept service on Mr. Faur’s behalf.

2. Jurisdiction to issue the order prayed for herein is conferred upon this Court by 28 U.S.C. § 1345 and the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*, (the “Act”), specifically, Section 8(b) of the Act, 29 U.S.C. § 657(b) and 28 U.S.C. §§ 1331 and 1345.

VENUE

3. Respondent FFG and the individual named Respondents conduct their business throughout the United States, including in Gainesville, Georgia. The Subpoenas seek testimony related to the chicken processing plant owned and operated by Respondent FFG at 2076 Memorial Park Drive, Gainesville, Georgia. This business location is within the jurisdiction of the court.

4. Venue lies in the United States District Court for the Northern District of Georgia pursuant to Section 8(b) of the Act, 29 U.S.C. § 657(b), as Respondents have and continue to conduct business in this judicial district.

5. The testimony sought by the Subpoenas is from managers who work predominantly at Respondent's place of business in Gainesville, Georgia. Given that the Subpoenas seek testimony related to work performed in Gainesville, Georgia, and the witnesses responsive to the Subpoenas are located in Gainesville, Georgia, this case should be assigned to the United States District Court for the Northern District of Georgia, Gainesville Division.

THE INVESTIGATION AND SUBPOENAS

6. Respondent FFG owns and operates a poultry processing plant located at 2076 Memorial Park Drive ("the Plant"). The Plant processes raw poultry into various marinated and/or breaded poultry products that are then frozen. Machinery within the Plant includes blenders, mixers, ovens, grills and freezers. Chemicals known to be in use at the Plant include liquid nitrogen and ammonia.

7. The Secretary, through the Atlanta East Area Office of OSHA, began conducting an investigation when it received an oral complaint on Thursday, March 11, 2021, from an FFG employee representative, alleging that at approximately 9:30 that morning there had been a strong smell of ammonia at the Plant, and that employees had been evacuated. This representative also filed a written complaint on

March 12, 2021, reiterating that employees had left the worksite because the smell of ammonia was so strong, and further alleging that no alarm was activated and that employees are regularly “exposed to noise levels about 85 decibels and do not receive annual hearing exams.” Thereafter, on March 29, 2021, a FFG employee representative filed another written complaint with OSHA, alleging an imminent danger at the Plant. This second complaint reiterates that there was an ammonia leak at the Plant on March 11, 2021, and also alleges that FFG has not conducted a process safety analysis for the use of ammonia, has inadequate ventilation on a cooking line, does not have an effective emergency action plan, and that the Plant has inadequate egress/emergency exits.

8. FFG refused to allow OSHA to enter the Plant when it attempted to conduct an inspection. Accordingly, in April of 2021, OSHA applied for and obtained a warrant to inspect the premises of the Plant. Before OSHA had a chance to complete the execution of the warrant, FFG filed three motions with this Court: to stay execution of an OSHA inspection warrant, to unseal the warrant application, and to quash the warrant. [*See* Case 2:21-cv-00124-RWS-JCF]. The magistrate judge denied FFG’s motion to stay and the motion to unseal, and issued a report and recommendation to deny the motion to quash. FFG filed objections to the order denying the motion to stay. The District Court denied the objections on June 8, 2021. Shortly after that ruling, OSHA resumed its inspection at the FFG plant. No further

interruptions occurred. OSHA completed its on-site inspection, and returned the underlying warrants to the Court.

9. As part of this complaint-inspection, OSHA determined that it would interview the following FFG managers: Environmental Health and Safety/Wastewater Manager Ryan Cook, Maintenance Manager Prepared Foods Christian Faur, Director Prepared Foods Operations Zach Hoover, Corporate Maintenance Manager Craig Puntervold, and Senior Vice President of Operations B.J. Svaigl.¹ OSHA served the Subpoenas requiring Mr. Hoover, Mr. Svaigl, Mr. Puntervold, and Mr. Cook's testimony on FFG's attorney Dane Steffenson via electronic mail on June 21, 2021. The Subpoena requires these management-level employees of FFG to appear and be interviewed as part of OSHA's investigation on July 15, 2021 and July 16, 2021. Mr. Steffenson indicated he was authorized to accept service of the Subpoenas for these individuals, and he confirmed his receipt thereof.

10. Attorney Matthew Cook represents Christian Faur in his personal capacity, and accepted service of the Subpoena for Mr. Faur.

11. On July 15th and July 16th, the named Respondents did not appear and provide testimony, as required by their Subpoenas. Upon information and belief, in

¹ OSHA also subpoenaed three other managers to testify. These managers did appear and provided testimony as required.

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