

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JANE DOES I, II, III and FRIENDS OF
FARMWORKERS, INC. D/B/A
JUSTICE AT WORK IN ITS
CAPACITY AS EMPLOYEE
REPRESENTATIVE,

Plaintiffs,

EUGENE SCALIA, IN HIS OFFICIAL
CAPACITY AS UNITED STATES
SECRETARY OF LABOR;
OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION,
UNITED STATES notice
DEPARTMENT OF LABOR,

Defendants.

Case No.: 3:20-cv-01260

**RESPONSE TO LETTER
FROM OCCUPATIONAL
HEALTH AND SAFETY
ADMINISTRATION**

On December 2, 2020, Respondent Occupational Safety and Health Administration (OSHA) wrote to the Court to inform it that the agency was declining to cite Maid-Rite Specialty Foods, LLC. ECF Doc. 51. OSHA’s “hazard letter” reaffirms that Maid-Rite ignores physical distancing requirements, but that OSHA is unwilling to take action to protect Maid-Rite’s workers from the imminent danger that conduct creates. ECF Doc. 51-2, at 1 (merely “bring[ing] [Maid-Rite’s] attention to [the hazard of COVID-19] and some methods that have been used to address it”). *Id.* at 1. Plaintiffs have requested OSHA engage in an “informal review” of this determination. *See* Ex. 1.

As documented in the attached declarations, the dangerous conditions at Maid-Rite remain substantially unchanged. Ex. 2, Jane Doe I Decl. at ¶¶ 4-8; Ex. 3, Worker Decl. at ¶¶ 3-9. Most importantly, workers at the facility continue to work shoulder to shoulder for hours every day, which has been the cause of multiple deadly outbreaks of the virus at meat processing plants around the country. *See* ECF Doc. 43 at 9 (citing Sioux Falls Epi Aid). Recently, the CDC updated its guidance to minimize the spread of COVID-19 and reemphasized the critical importance of physical distancing to protect the public health.¹ OSHA’s conduct in this case reflects that the Agency is willing to ignore that guidance and the science—subjecting workers at Maid-Rite to workplace conditions “reasonably expected to cause death or serious physical harm,” 29 U.S.C. § 662(a)—because the Agency is unwilling to require Maid-Rite to make basic and simple changes to its production practices. This Court’s intervention to require OSHA to protect these workers from the risk of COVID-19 remains essential. *See* 29 U.S.C. § 662(d).

¹ CDC, Summary of Guidance for Public Health Strategies to Address High Levels of Community Transmission of SARS-CoV-2 and Related Deaths, December 2020, Dec. 4, 2020, https://www.cdc.gov/mmwr/volumes/69/wr/mm6949e2.htm?s_cid=mm6949e2_w.

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s/ David H. Seligman

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CERTIFICATE OF SERVICE

I hereby certify that I caused this brief to be filed in ECF, which caused a copy to be served on counsel for all parties.

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