

April 24, 2014

Teresa Harrison, Deputy Regional Administrator  
U.S. Department of Labor  
Occupational Safety and Health Administration  
Atlanta Federal Center  
61 Forsyth St. SW  
[REDACTED]  
Atlanta, GA 30303

Via email to [REDACTED]

**RE: Complaint of Health and Safety Hazards at Wayne Farms, LLC, poultry plant in Enterprise, Alabama**

Dear Deputy Regional Administrator Harrison:

The SPLC writes this letter on behalf of several workers wishing to report health and safety hazards at Wayne Farms, 1020 County Road 114, Jack, AL, 36346, which employs approximately 1,250 workers. The majority of complainant workers are jointly employed by Wayne Farms and Employer Solutions Staffing Group II (also known as East Coast Labor Solutions, as Labor Solutions of Alabama, LLC, and as Lane Transportation), which recruited the workers from Puerto Rico, deducts money from their paychecks, and assumes status as the workers' nominal employer, though their working conditions are primarily controlled by Wayne Farms. This letter supplements the information stated on the attached Notice of Alleged Safety or Health Hazards.

OSHA has jurisdiction over this Complaint and to inspect the worksite pursuant to 29 U.S.C. § 657 and 29 C.F.R. § 1903.3(a). This Complaint is filed on behalf of:

1. Beatriz Navedo,<sup>1</sup>
2. Cristoffel González-López,<sup>2</sup>
3. [REDACTED]<sup>3</sup>
4. [REDACTED]

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<sup>1</sup> She is concurrently filing a Notice of Whistleblower Complaint and is willing to have her name revealed to her employer.

<sup>2</sup> He is concurrently filing a Notice of Whistleblower Complaint and is willing to have his name revealed to his employer.

<sup>3</sup> She is concurrently filing a Notice of Whistleblower Complaint and is willing to have her name revealed to her employer.

5. [REDACTED]
6. [REDACTED]
7. [REDACTED]<sup>4</sup>
8. [REDACTED]<sup>5</sup>
9. [REDACTED] and
10. their co-workers who are jointly employed by Wayne Farms and Employer Solutions Staffing Group II and either continue working at Wayne Farms or were terminated in retaliation for attempting to exercise their rights to a safe workplace.<sup>6</sup>

The Wayne Farms Workers, with the exception of those who are concurrently filing Notices of Whistleblower Complaints as noted above, request that OSHA keep their names and identities confidential pursuant to 29 C.F.R. § 1903.11(a). See attached signed Notice of Alleged Safety or Health Hazards. If disclosure of employees' names or identities is necessary to obtain a warrant to enter the employers' properties or for any other reason, please contact the undersigned representatives of complainant employees.

Wayne Farms, LLC, employs about 9,800 people in its twelve poultry slaughtering and processing plants, and is believed to apply similar policies and practices in each plant. It employs approximately 1,250 workers in its Enterprise/Jack plant. Employer Solutions Staffing Group has recruited hundreds of people for employment in poultry plants operated by Wayne Farms, Pilgrim's Pride, and other corporations, since at least 2011. Both corporations are employers within the definition of 29 U.S.C. § 652(5), and the complainant workers are employees within the definition of 29 U.S.C. § 652(6).

The Southern Poverty Law Center's Immigrant Justice Project is the authorized legal representative of the above-listed workers for purposes of this Complaint. The workers may be contacted through the SPLC, and they request to be interviewed outside of the work site, either in person or by telephone. All of the above workers speak Spanish as their primary language, as do many other employees of Wayne Farms and Employer Solutions Staffing Group II. Therefore, complainant employees request to be interviewed in Spanish and request that other employees interviewed by OSHA during its investigation be conducted in those employees' primary languages.

### **Description of Known Hazards and Violations**

The Wayne Farms Workers have brought all of the below hazards to the attention of their supervisors with Wayne Farms or with Employer Solutions Staffing Group II. This description includes only violations presently known and may not be exhaustive. Complainants are able, upon request, to provide copies of documents explaining many of the medical diagnoses

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<sup>4</sup> Works only for Wayne Farms and not for Employer Solutions Staffing Group.

<sup>5</sup> Works only for Wayne Farms and not for Employer Solutions Staffing Group.

<sup>6</sup> The Wayne Farms workers who were recruited through Employer Solutions Staffing Group II (and its other business entities) were not permitted by their employers to join the Retail, Wholesale, and Department Stores Union, which is the collective bargaining representative of other non-supervisory employees at this worksite. Wayne Farms nominally denies it is the employer of these employees, even though it has full control of all of their working conditions and requires them to follow all of its own policies and rules.

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referenced below, and one Complainant is able to provide, upon request, photographs of her badly swollen hand and wrist. The workers allege violations of the Occupational Safety and Health Act (“OSH Act”) and of OSHA general industry standards including, but not limited to, the following:

**A. Failure to Protect from Dangerously Fast Work Speeds in Violation of 29 U.S.C. § 654(a) (“General Duty Clause”)**

Workers are exposed to serious ergonomic hazards through repetitive motions required by the job, as well as the line speed of the processing plant, violating Section 5(a)(1) of the OSH Act, at 29 U.S.C. 654, referred to as the General Duty Clause (GDC). Pursuant to the GDC, Wayne Farms is obligated to “furnish to each of [their] employees employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to [their] employees.” Workers frequently suffer work-related injuries, including repetitive motion injuries, cuts and amputations, and other serious injuries on the job, because of the repetitive, forceful motions Wayne Farms requires employers to perform. Wayne Farms is failing to prevent such injuries through implementation of basic ergonomic standards for Poultry Processing Plants, or through other preventative measures, violating the GDC. OSHA’s Guidelines for Poultry Processing, first published in 2004 and recently updated and re-published in 2014, recognize that musculoskeletal and repetitive motion injuries are common and serious hazards in poultry processing plants. Yet Wayne Farms continues to subject workers to these hazards.

Fast work speeds in several positions, including as a result of understaffing when workers are out sick, is causing workers serious hand and arm injuries. The Wayne Farms workers who submit this complaint provide the following limited sample of examples of this hazard:

1. On one of [REDACTED]’s work stations, on a deboning line, there were supposed to be two to three employees at the station to ensure that all pieces could be processed. However, when any worker is out sick, the remaining employees, such as [REDACTED], are required to work alone at their deboning station. This increases the burden on their hands, wrists, and other musculoskeletal systems. In addition to suffering from pain and swelling, [REDACTED]’s hands go to sleep at night, which is a prominent symptom of carpal tunnel syndrome.
1. [REDACTED] is required to process 40 birds per minute on the debone line and suffers from serious pain as a result. When she is stationed cutting chicken wings, she must cut the wings off of every one of the 40 chickens passing each minute. When stationed performing other deboning tasks, such as cutting or pulling breast meat, she must handle every other chicken. When stationed at still other deboning tasks, such as tenders, she must process every third chicken of the 40 passing each minute. Supervisors often yell at her to work faster, saying, for example, “Go, go!” She was written up for stopping the line so that she could retrieve her knife, which she had dropped because she was working so fast to keep up with the line. Company protocol calls for employees to stop the line if they drop their knives, but she was disciplined for doing so anyway. [REDACTED] often wakes up with swollen hands and wrists, and the backs of her hands hurt, especially her middle and ring fingers.

2. [REDACTED] now working as a rehanger, has to hang between 38 to 40 birds per minute. Supervisors mock workers who struggle to keep up with this speed and call them vulgar names. He is suffering serious hand and wrist pain as a result of this pace and the force required to perform his job tasks.
3. [REDACTED]'s fingernails were harmed by his efforts to keep up with dangerously fast work speeds. His blood vessels have burst inside of his fingernails. He also suffers from serious pain in his hands and wrists. He has worked on deboning lines as well as in rehanging.
4. [REDACTED] has worked in debone on lines 1,2,6,7, and 8. Line 1 went 20 birds per minute. Line 2 went about 30 birds per minute. Lines 6, 7, and 8 went 40 birds per minute, but sometimes the plant sped up the lines to 50 birds per minute. Working at these stations caused him serious hand, wrist, back, and leg pain.
5. [REDACTED] was required to process 40 birds per minute on the debone line and suffers from serious pain as a result. The plant often runs the line even faster, up to 45 birds per minute. When she was stationed cutting chicken wings, she had to cut the wings off of every one of the 40 chickens passing each minute. When stationed performing other deboning tasks, such as cutting or pulling breast meat, she had to process pieces at similarly fast rates of speed. For example, when cutting chicken breast meat, she had to pick up the cold meat with one hand, and cut it with scissors in her other hand. This action was always painful. Her hands hurt, fall asleep, and are often swollen.
6. [REDACTED] started to have hand problems in January, 2014 when Wayne Farms had her working double shifts on a line where she had to weigh 40 pound boxes. She went to the company nurse, who put her hand in warm water and sent her back to work. Later, a doctor diagnosed her with tendonitis and with wrist synovitis. He gave her a wrist splint/brace and anti-inflammatory pills. She was temporarily switched to a position where she picked up chicken and other objects off the floor. That position still hurt her hand because people would bump into her. The pain continued. She went back to the doctor about once a month. On or about April 8th, the plant put her back on the processing line where she currently works, labeling boxes, putting tops on boxes, and doing other work. A plant manager, [REDACTED] told her that she could no longer wear her wrist splint/brace. He ordered her to remove it and threatened to send her home if she disobeyed. She has not worn the brace since April 9th even though her hand hurts badly. On or around April 15th, she was labeling boxes on the processing line. Because of the fast speed of the line, her hand got pinched between heavy boxes. She screamed in pain. Her hand swelled up and she went to the nurse who gave her a Motrin and told her to go back to the line. Her hand has at times turned purple and has been severely swollen, and she does not have the strength to close her fist. She is sometimes in so much pain that her husband has to help her dress herself.

**B. Failure to Adequately Address and Record Reports of Injuries in Violation of 29 U.S.C. § 654(a)**

Wayne Farms is failing to adequately remedy and address injuries reported by its workers. Workers are discouraged from reporting injuries, as they know that such complaints will not be redressed, they will not receive adequate medical treatment, and they will face

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retaliation for reporting their injuries. Upon information and belief, Wayne Farms is underreporting injuries on the OSHA Form 300 Log.

Furthermore, Wayne Farms is not providing adequate medical treatment and attention to its employees when they report such injuries. Workers reporting injuries and illnesses are often given a painkiller, no matter how serious the injury, then told to resume work under the same conditions that originally contributed to their injury or illness.

The Wayne Farms workers who submit this complaint provide the following limited sample of examples of this hazard:

1. [REDACTED] reported injuries on several occasions and was not treated. Most egregiously, when her doctor fitted her with a wrist splint to reduce her pain and prevent aggravation of her wrist and hand injury, a plant manager, named [REDACTED], told her that she could not use the wrist splint and demanded that she remove it, even though it helped her work. She has been asking [REDACTED], [REDACTED] for the plant, for her medical records since February and he has not given them to her.
2. [REDACTED] was not given workers' compensation information when she was struck by a table that opened up a hernia in her stomach. She was also denied such information when her hernia was subsequently aggravated from overwork, such as from lifting heavy boxes in the plant. She has been issued medical bills in excess of \$16,000 for treatment for these work-related injuries, yet Wayne Farms and Employer Solutions Staffing Group II deny her even the opportunity to purchase medical insurance.
3. [REDACTED] was told by the plant nurse that Wayne Farms was not keeping records of her visits to the nurse's station when she reported hand and wrist pain.

**C. Denial of Adequate Medical Treatment and Access to Adequate Medical Personnel in Violation of 29 C.F.R. § 1910.151 and 29 U.S.C. § 654(a)**

Wayne Farms employees are exposed to the serious hazard of medical under-diagnosis by company nurses, who routinely fail to adequately examine and diagnose injuries presented by complaining workers. Wayne Farms' consistent failure to properly evaluate injuries reported by workers suggests that under-diagnosis may be resulting in inaccuracies in the OSHA 300 logs that do not reflect the actual number of work-related, recordable injuries and illnesses.

In order to effectively investigate this hazard, OSHA inspectors should interview the plant's medical personnel; review resumes and other training of the plant's medical personnel; request information from Wayne Farms on all workers' compensation claims filed by employees; investigate whether discrepancies exist between the OSHA 300 logs and the number of medical incidents actually occurring, and take other measures available to investigate under-diagnoses and denials of adequate medical treatment. Workers suffering from cumulative trauma disorders are especially harmed by denial of adequate medical diagnoses and treatment, as their injuries can worsen due to further repetition and strain.

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The Wayne Farms workers who submit this complaint provide the following limited sample of examples of this hazard:

1. At one time when [REDACTED] was in pain and was suffering symptoms of a possible cumulative trauma disorder, she went to the nurse's station. She was sent back to work from the nurse's station and told she needed written permission from her supervisor to seek medical treatment, and her supervisor refused to authorize her to visit the nurse's station.
2. When [REDACTED] was struck by a table near the end of her shift, the next day her arm was purple in the place where the table hit her. She went to the plant nurse and she did nothing to help [REDACTED] and told her to go back to work.
3. When [REDACTED] suffered a heart attack on the line where she was working, the line was moving very fast and she started getting dizzy. Her chest was hurting so she went to the plant nurse. The nurse just gave her an aspirin. The plant nurse would not even call the hospital for [REDACTED] nor would Wayne Farms bring her to the hospital. [REDACTED] [REDACTED] also worked at the plant and she left her shift early to take [REDACTED] to the hospital, where she was diagnosed with a heart attack.
4. When [REDACTED] slipped on a chicken breast on the floor and fell and hurt her foot near the end of her shift, her supervisor refused to allow her to see the nurse because her shift was ending.
5. [REDACTED] wakes up with swollen hands and wrists, and the backs of her hands hurt, especially her middle and ring fingers. Yet when she has requested assistance from Wayne Farms, they have offered ice, which does not help her, and sent her back to the same job as before.
6. [REDACTED] was denied medical treatment by the nurse when he cut his finger on a saw. He went to the nurse's station, where they put warm and cold water on his finger. The next day his finger was swollen and he could not work.
7. In or around September, 2013, [REDACTED] saw a worker suffering from chest pains who asked to be let off his shift early to go to the hospital. His request was denied, and he died later that night of a heart attack.
8. When [REDACTED] has gone to the plant nurse's office to seek treatment for his painful, swollen hands, plant staff have only massaged his hand and sent him back to work under the same conditions that were causing him pain. He was diagnosed with tendonitis at the hospital, but the plant nurse has not treated it.
9. [REDACTED] saw another worker fall with electrical shock. The plant would not call the hospital to help the worker and called the plant nurse instead. The plant nurse finally called the hospital. The worker was fired the next day.
10. [REDACTED] had her repetitive motion injury in her hand aggravated when her hand was pinched between heavy boxes. She screamed in pain. Her hand swelled up and she went to the nurse who gave her a Motrin and told her to go back to the line. She spoke with [REDACTED]. She told him that she needed to see a doctor but he refused to send her to the doctor. Her husband drove her to the doctor. Her doctor said to her, "How can they just give you a pill and send you back to the line? That's crazy." At some point today, her doctor's office called [REDACTED] to get information about the injury since it occurred at work. [REDACTED] hung up on the doctor's office and would not speak with them.

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This hazard has been exacerbated because Wayne Farms and Employers Solutions Staffing Group II have denied employees health insurance. Employer Solutions Staffing Group II sometimes tells workers that they will be eligible to buy health insurance only after completing a full year of employment at the plant. Yet when at least one employee attempted to separately purchase health insurance through the exchanges established under the Affordable Care Act, she was not able to because her employers would not provide documentation confirming that they did not offer health insurance.

This prevents workers from accessing appropriate medical treatment and from obtaining reasonable medical advice and consultation to diagnose or prevent serious injuries and illnesses. For example, [REDACTED], [REDACTED], and other employees cannot afford medication prescribed by doctors because they do not have health insurance. Wayne Farms tells them that it does not have to provide health insurance because they were hired through Employer Solutions Staffing Group II.

**D. Requirement that Employees Pay Their Employer for Personal Protective Equipment in Violation of 29 C.F.R. § 1910.132(h)(1), (h)(5), and 29 U.S.C. § 654(a)**

Applicable OSHA standards require that workers be provided with necessary Personal Protective Equipment (PPE) free of charge. This includes PPE provided to replace broken, torn, or damaged PPE as well as PPE provided at the beginning of employment.

However, Wayne Farms charges employees for some or all of their PPE by deducting money from their paychecks, sometimes labelled as “Supplies.” For example:

1. Workers are charged about \$35 for boots with strong tread, and about \$14 for boots with weak tread.
2. Workers are charged for replacing torn or damaged aprons/smocks.
3. Workers are provided with gloves and earplugs each week at the plant. If this equipment breaks, tears, or needs replacement during the week, money is deducted from their pay for replacement PPE. These charges are individually small but accumulate quickly into substantial pay deductions.

Workers’ gloves frequently tear due to contact with knives, scissors, chicken bones, and other hard objects. Yet workers whose gloves or other PPE tear or break are required to continue working using broken PPE until a supervisor verifies that their PPE is broken and gives them written authorization to go to the supply room to obtain replacements.

**E. Provision of Defective Personal Protective Equipment in Violation of 29 C.F.R. § 1910.132(e)**

Wayne Farms has provided ear plugs that were dirty and caused employees to develop infections in violation of 29 C.F.R. § 1910.132(e). For example, in February and March, 2014, [REDACTED] developed an ear infection from her ear plugs provided by the plant. [REDACTED] similarly developed ear infections in 2014 due to defective or inadequate ear plugs

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provided by Wayne Farms. [REDACTED] has also developed ear infections from wearing ear plugs provided by Wayne Farms.

Wayne Farms has also provided boots that do not prevent the hazard of slipping and falling on surfaces. [REDACTED] often feels that she is at risk of slipping, but she has not fallen to the ground because of her experience skating.

**F. Failure to Provide Reasonable Access to Toilet Facilities in Violation of 29 C.F.R. § 1910.141(c) and 29 U.S.C. § 654(a)**

Wayne Farms exposes workers to the serious hazard of a lack of timely access to toilet facilities. This problem is particularly acute for line workers, who are often required to wait 30 minutes or longer, even in cases of emergency, after requesting a break to use the restroom. Workers are usually not permitted to go to the bathroom in between the scheduled breaks, which means that they often go 2.5 hours or longer without an opportunity to use the restroom. Even the scheduled breaks are often insufficiently long to permit workers to access toilet facilities. For example, meal periods last about 25 minutes, during which time employees must remove gear, which takes about two minutes, and then heat up their food, eat, and put their gear back on. This leaves little to no time for restroom use.

Line leaders or supervisors are supposed to relieve employees to allow them breaks to use the restroom. However, line leaders and supervisors with this responsibility often leave the floor for hours at a time – often leaving employees on the line without opportunities to go to the restroom. Without access to bathrooms in shorter intervals, workers are exposed to health risks.

[REDACTED], along with other workers, has been denied bathroom breaks when she needed them. [REDACTED] similarly has been denied bathroom breaks. On one occasion, when she was not permitted to use the bathroom when she needed to and had waited for over 30 minutes, she asked a co-worker to relieve her station so that she could go to the restroom, but she was reprimanded for doing so. On another occasion, on or around April 22, 2014, there was only one line leader for both Lines 5 and 6, when there is normally one line leader per line. On this occasion, this one line leader was the only person available to relieve employees so that they could use the restroom, but the two lines together have 34 employees.

Workers have been written up for taking an emergency break after requesting permission from a supervisor and waiting more than 30 minutes without being permitted to use the restroom. Workers have even been written up for returning one minute late when given five minutes in which to use the bathroom. Failing to allow proper and legally-required access to bathroom facilities causes serious health consequences, particularly to women workers.<sup>7</sup>

Many employees have had to urinate on themselves while working on the line. Upon information and belief, another Wayne Farms/East Coast Labor Solutions worker named [REDACTED]

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<sup>7</sup> See U.S. Department of Labor's April 6, 1998 Memorandum Interpreting 29 C.F.R. § 1910.141; Memorandum dated August 11, 2000, clarifying continued applicability of the 1998 Memorandum; Letter from OSHA to Professor Linder dated April 23, 2003, further interpreting this standard.



asked to go to the bathroom for 3 hours. He ended up having to urinate on himself and was subsequently fired.<sup>8</sup>

**G. Failure to Provide a Reasonably Sanitary Work Site in Violation of 29 C.F.R. § 1910.141(a) and 29 U.S.C. § 654(a)**

██████████ and other workers developed rashes, skin infections, and stomach infections from exposure to bacteria in the plant. ██████████ became physically ill after ingesting water that splashed off raw chicken carcasses into his mouth while working on the debone line. ██████████ had to see a doctor and buy medication at his own expense because Wayne Farms and Employer Solutions Staffing Group II deny him the opportunity to buy health insurance and are unwilling to cover employees' medical expenses for work-related injuries and illnesses. He continues to suffer from an infection from exposure to bacteria at Wayne Farms. Other employees have similarly been exposed to water splashing off of raw chicken carcasses onto their skin and into their eyes, noses, and mouths.

Some employees have also developed respiratory problems due to exposure to chemical fumes in the plant. For example, ██████████ suffered respiratory problems from breathing fumes from dry ice.

**H. Failure to Provide Adequate Training in Violation of 29 C.F.R. § 1910.147(c)(7)**

Wayne Farms workers often receive their training on the job or receive no training. For example, ██████████ received no training at all, neither on how to avoid injury and illness at work nor on how to properly remove contaminated or unsafe chicken from the line when she worked on the scanner. ██████████, when first hired, began training on the debone line, but during his three-day training period during which speeds are increased periodically as workers learn how to make different cuts, Wayne Farms moved him to another job in the marination department. Wayne Farms then put him back on the debone line. When he went back to debone, the speed was much faster than when he had been taken off of the training line, and he could not keep up. The failure to provide sufficient training in the operation of and duties creates an unreasonable risk of serious harm to workers.

**I. Retaliation for Exercising Rights under the OSH Act and Deterrence from Reporting Injuries and Asking for Safer Conditions in Violation of 29 U.S.C. § 660(c)(1) and 29 C.F.R. § 1903.11(d)**

Workers are strongly discouraged from seeking medical treatment for health problems they develop as a result of their job at the plant. If they do seek medical treatment – even in emergency situations – the plant retaliates against them including giving the points that often result in the workers' termination.

Wayne Farms has a company-wide attendance policy that applies to all hourly employees. Under this policy, individuals who receive ten or more points (or “occurrences” under the company policy) due to absences are automatically terminated. Employees receive one

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<sup>8</sup> He is believed to still live in Enterprise and Complainants may be able to put OSHA in touch with him.

point for missing a day of work, no matter the reason. Employees receive one-half point for arriving late or leaving early, no matter the reason. Employees who miss work because of an injury or disability, including in order to seek medical treatment for an injury or disability, receive points for this time, even if they present a medical excuse note from a physician. Many employees receive ten points under this policy due to absences based in significant part on a work-related injury or disability and its symptoms and on their need for medical treatment of their disability or injury. Being disciplined for reporting an injury by receiving disciplinary points towards termination is unlawful retaliation. The points system is an unlawful deterrent to reporting injuries.

Wayne Farms unlawfully penalized the Complainants for reporting to the company that they missed work to access medical treatment related to work-related injuries and illnesses. Wayne Farms fired [REDACTED] and [REDACTED] when they reached ten points. Complainant [REDACTED] was constructively discharged because she had no choice other than to quit when it became clear that she would imminently be fired for following her physician's orders. Wayne Farms assigned the Complainants points for missing work even when they presented a medical excuse note from a physician.

[REDACTED]  
[REDACTED] fell ill after ingesting water that splashed off raw chicken carcasses into his mouth while working on the debone line. He could not work for several days and informed plant representatives that he was ill. He was given points for his absences. Still ill, he returned to work in order to avoid accumulating more points. He fainted in the plant and his physician instructed him to rest for a week and a half. When he returned to work, he turned in a medical excuse note from his physician. Wayne Farms gave him two points regardless of the medical excuse. [REDACTED]'s stomach illness lasted for months. On several occasions, he received points for leaving work early after becoming physically ill. On or around March 27, 2013, [REDACTED] missed work to seek treatment for leg pains caused by standing on his feet for extended periods of time at work. Even though he presented a medical excuse from his physician, Wayne Farms gave him a point. [REDACTED] was informed that he had been fired on or around March 31, 2014 after reaching ten points.

[REDACTED]:  
On various occasions, [REDACTED] had to miss work to seek medical treatment. In November 2013, she suffered a heart attack while working at the plant. [REDACTED]; Complainant [REDACTED], drove her to the hospital since the company refused to take her. When [REDACTED] returned to the plant, she gave a medical excuse note to one of the plant administrators. The administrator warned her against submitting the medical excuse, explaining that the company may fire her if they knew she was sick. [REDACTED] turned in the medical excuse anyways and received a point for her absence. Wayne Farms also gave [REDACTED] a point for leaving her shift early to drive [REDACTED] to the hospital.

[REDACTED] also experienced severe abdominal pain while working at the plant. Prior to her employment at Wayne Farms, [REDACTED] underwent an abdominal operation in Puerto Rico. In October 2013, [REDACTED] suffered a stomach injury when another plant employee knocked into [REDACTED] while she was working on the processing line. [REDACTED]'s

abdominal pain worsened when she was transferred to a position that required her to lift heavy boxes. On or around March 30, [REDACTED]'s physician diagnosed her with a hernia caused by overexertion and referred her to a surgeon. On or around April 1, [REDACTED] had to miss work to attend her medical appointment with the surgeon. That day, an administrative employee at Wayne Farms called [REDACTED] and spoke with her [REDACTED]. The administrator told her [REDACTED] that [REDACTED] had reached ten points and was fired. The next day, [REDACTED] went to the plant to turn in her medical excuse from her appointment with the surgeon. The company confirmed that [REDACTED] had been fired regardless of her medical excuse.

[REDACTED] also received points when she was unable to work due to pain she suffered in her hands, wrists and back caused by her work on the processing line. On each occasion, she informed plant representatives that she had to miss work due to her health problems, but was given a point anyway. [REDACTED]'s termination was also retaliation for her attempts to tell plant representatives about health and safety hazards in the plant.

[REDACTED] suffered from sinusitis while working at Wayne Farms, a condition related to the cold temperatures inside the plant. When she missed work to seek medical treatment at a hospital for her sinusitis, she was given a point for her absence even though she turned in a medical excuse note. A plant nurse told [REDACTED] that the Wayne Farms did not even keep a file of the medical excuses she turned in nor of her visits to the nurse's office to report work-related health problems. On another occasion, [REDACTED] received a point for leaving her shift early to drive [REDACTED] to the hospital when she suffered a heart attack in the plant. [REDACTED] also experienced hand and wrist pain due to the repetitive motions she performed on the processing line. On several occasions, she had to miss work because of the pain and swelling in her hands. She notified plant representatives that she had to stay home due for a medical reason but was given points regardless.

On or around March 27, [REDACTED] again sought treatment from her physician for her ongoing sinusitis infection and was prescribed a medication that causes drowsiness. The physician advised her that it would be dangerous to perform her job while taking the medication since she worked with knives on the debone line and could injure herself or others. At this point, [REDACTED] already had 7.5 or 8 points, many of them due to medical absences. She knew that if she missed work for another week, as her physician prescribed, she would exceed 10 points and be fired. Rather than waiting a few days for the plant to fire her, [REDACTED] turned in her employee badge at Wayne Farms on or around April 1, 2014. [REDACTED] was constructively discharged since she was forced to leave in order to comply with her doctor's orders.

#### **Other Employees:**

Similarly, other workers face imminent termination because they have reported injuries and sought medical treatment. [REDACTED] has received the majority of her 8 points because of work-related injuries and illnesses, including at least one point received for going to the hospital for an MRI on her back, which was in pain from working, and other points for medical visits. [REDACTED] has always brought in medical excuses after seeking treatment, but she has received points anyway. She also received one point for staying home sick one day when she did not also see a doctor. She fears that the next time she reports an

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injury and seeks medical treatment for it, she will be fired. [REDACTED] also received a point for leaving work to drive his injured wife to the doctor.

Wayne Farms also administers drug tests upon reports of injuries. For example, when his finger was cut by a saw, [REDACTED] was given a drug test before receiving medical treatment for his injury. [REDACTED] was given a drug test prior to medical treatment when her arm was purple from being struck by a table. She was also drug tested, and not provided with medical treatment, when she cut her finger on a lock in the Wayne Farms restroom. Not only does this practice put workers at risk of unnecessary delays in treatment, but it also may unlawfully deter workers from reporting injuries and illnesses.

Wayne Farms also retaliates against workers who report injuries and ask to work under safer conditions. For example, [REDACTED] reported her hand problems, and asked to be switched to the bone scanner, which she believed would cause her hand less pain and harm. Instead of transferring her to that assignment or to another job assignment that would reduce her risk of aggravating her injury, Wayne Farms transferred her to a faster line. Similarly, after her heart attack [REDACTED] was sent to a faster line, was required to lift heavy objects, and was stationed at the scanner alone when there should have been at least two to three employees operating it, all of which put her at increased risk of serious injury. Complainants also observed another worker who suffered from a slipped disc in his back. He went to the hospital and showed Wayne Farms the papers he received at the hospital, and Wayne Farms then fired him for missing work.

### **Protections under the Memorandum of Understanding between the U.S. Departments of Labor and Homeland Security**

Per the Revised Memorandum of Understanding of December 7, 2011, between the U.S. Departments of Homeland Security and Department Labor Concerning Enforcement Activities at Worksites (hereinafter, "DHS-DOL MOU"), the undersigned requests that this Notice and Complaint be shared with the appropriate office within the Departments of Labor and Immigration and Customs Enforcement (ICE) to ensure that ICE refrains from engaging in worksite enforcement activities at all worksites where Wayne Farms and Employer Solutions Staffing Group II employees are working or have worked during the pendency of the U.S. Department of Labor investigation and any related proceeding. See § IV(A) of the DHS-DOL MOU (Dec. 7, 2011), available at <http://www.dol.gov/asp/media/reports/DHS-DOL-MOU.pdf>.

### **Relief Requested**

The Wayne Farms workers have brought these violations to the attention of various supervisors and Human Resources employees of Wayne Farms, but they have not been remedied. The violations have not yet been raised with any other government agency. For these reasons, the Wayne Farms workers respectfully ask OSHA to take the following measures to ensure that their employer comes into compliance with the law and to ensure that the hazards in their worksite are properly and promptly abated:

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#### **A. Walk-Around Inspection and Confidential Off-Site Employee Interviews**

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The Wayne Farms workers request an onsite investigation into these allegations, in the presence of the undersigned as well as at least one employee designated by the undersigned to accompany any Compliance Safety and Health Officer during the physical inspection of the workplace. 29 C.F.R. § 1903.8(a). Advance notice of the inspection should not be given to the employer. 29 C.F.R. § 1903.6.

OSHA representatives must interview workers to complete an accurate assessment of health and safety conditions at Wayne Farms. The Wayne Farms workers request that OSHA representatives interview workers outside of the worksite and that their names and identities not be released to Wayne Farms or Employer Solutions Staffing Group II, except as necessary to seek reinstatement for unlawfully terminated whistleblowers.

Recognizing that fear of retaliation may taint responses of any other workers interviewed at the worksite, Wayne Farms workers request that the OSHA representatives consult with all other workers in a manner that protects them from retaliation by their employer. To obtain accurate information, investigators must be prepared to conduct worker interviews in their primary language. This is particularly important because fear of retaliation and vulnerability to workplace abuse is more pronounced among workers who are linguistically isolated and unfamiliar with the role of government regulators. All of the complainant workers, as well as many other employees at their worksite, are monolingual Spanish speakers. Our office can facilitate interviews with workers in Spanish, if necessary.

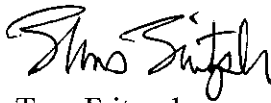
- B. Investigation of the employers' payroll records for the last three years, see 29 C.F.R. § 1903.3(a);**
- C. Investigation of any employer policies pertaining to payroll deductions and/or employer requirements related to protective or safety equipment, or medical examinations, *Id.*;**
- D. Accounting of any amounts that employees were illegally required to pay for protective or safety equipment or for medical examinations;**
- E. Citation or other order finding that Wayne Farms and Employer Solutions Staffing Group II violated applicable OSHA regulations, and requiring that the offending practices cease immediately;**
- F. Assessment of fines in an amount sufficient to deter future violations and that fully accounts for (1) the large number of employees who have been victims of OSHA violations in light of the size of Wayne Farms and the high rate of turnover of its employees; (2) the absence of the Wayne Farms' good faith to abide by regulations as delineated through the employer's willful attempt to evade responsibility as the nominal employer of all employees whose working conditions it controls; and (3) the employers' history of previous alleged violations, see 29 C.F.R. § 1903.15(b);**

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- G. Issuance of per-employee citations** (separate penalties and fines for each violation affecting each employee who has not been provided proper PPE or medical treatment), 29 C.F.R. § 1910.132(h);
- H. Restitution to all employees** for all amounts the joint employers illegally required the workers to pay and for all amounts employees have had to pay for their own medical expenses due to the joint employers' denial of medical treatment and of opportunities to purchase medical insurance;
- I. Publication and Disclosure;** and
- J. Any and all other remedies allowable by law.**

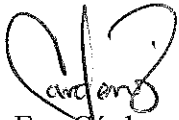
Finally, the Complainants request that the results of any and all investigations be communicated to them through their attorneys, including any appeals of citations by Wayne Farms or Employer Solutions Staffing Group II. If either joint employer requests informal conferences regarding citations, Wayne Farms Workers request to be informed through their representatives so that they may participate.

Please contact us if you have any questions or to set up an interview with any of the above-listed Wayne Farms workers at [REDACTED] or [REDACTED]

Respectfully,



Tom Fritzsche  
Staff Attorney



Eva Cárdenas  
Outreach Paralegal



Kristin Donovan  
Outreach Paralegal