UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION, **100 F Street, N.E.** **Washington, DC 20549** **Plaintiff,** **v.** **TYSON FOODS, INC.,** **2200 Don Tyson Parkway** **Springdale, AR 72762** **Defendant.**	:	**C.A. No.**

COMPLAINT

Plaintiff, Securities and Exchange Commission ("the Commission") alleges:

NATURE OF THE ACTION

1. The Commission brings this action based on violations by Tyson Foods, Inc. ("Tyson Foods") of the anti-bribery, books and records and internal controls provisions of the Foreign Corrupt Practices Act ("FCPA"). During fiscal years 2004 through 2006, Tyson de Mexico, a wholly-owned subsidiary of Tyson Foods, made corrupt payments of more than $100,000 to two Mexican-state veterinarians. Tyson de Mexico made the payments to the veterinarians in order to obtain or retain business by influencing the decisions of the veterinarians responsible for certifying Tyson de Mexico products for export under the Tipo de Inspeccion Federal ("TIF") Inspection Program, an inspection program for meat-processing facilities administered by Mexico's federal government. As a result of the payments, Tyson

Foods realized net profits of more than $880,000 from export sales from its Tyson de Mexico facilities in fiscal years 2004, 2005 and 2006.

2. Tyson de Mexico's improper payments to the veterinarians were concealed by Tyson de Mexico in the form of "salaries" paid to the wives of the veterinarians, even though the wives did not perform any services for Tyson de Mexico, and through payments made pursuant to invoices submitted by one of the veterinarians. Tyson Foods violated the anti-bribery provisions of the FCPA because the veterinarians were Mexican government officials during the relevant time period, Tyson Foods authorized Tyson de Mexico's illicit activities, and the improper payments were made for the purpose of obtaining or retaining business.

3. In connection with these improper payments, Tyson Foods failed to keep accurate books and records and failed to have effective internal controls, as the true nature of the payments were concealed through salary payments to phantom employees and through service invoices submitted by one of the veterinarians. The improper payments were improperly recorded as legitimate expenses in Tyson de Mexico's books and records and included in Tyson de Mexico's reported financial results for fiscal years 2004, 2005 and 2006. Tyson de Mexico's financial results were, in turn, a component of Tyson Foods' consolidated financial statements filed with the Commission for those years.

4. Plaintiff brings this action to enjoin such acts and practices, which violate Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78dd-1, 78m(b)(2)(A) and 78m(b)(2)(B)].

5. The defendant may, unless restrained and enjoined, continue to engage in the acts and practices set forth in this Complaint and in acts and practices of similar purport and object.

JURISDICTION

6. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. The Defendant made use of the means or instrumentalities of interstate commerce, of the mails, or the facilities of a national securities exchange in connection with the acts, transactions, practices, and courses of business alleged herein.

DEFENDANT

7. Tyson Foods, including its subsidiaries, is, and was during the relevant time period, a global multi-industry company engaged in the production of various meat proteins and the second-largest food production company in the Fortune 500. The Company's operations are conducted in four segments: Chicken, Beef, Pork and Prepared Foods. The Company has approximately 117,000 employees at more than 400 facilities and offices in the United States and abroad. Ninety-three percent of its employees are based in the United States. The Company's Chicken segment, which includes Tyson de Mexico, is primarily involved in the processing of live chickens into fresh, frozen and value-added chicken products. The team within Tyson Foods referred to as Tyson International sells certain products in foreign markets—primarily Canada, Central America, China, the European Union, Japan, Mexico, Russia, South Korea, and Taiwan. Tyson Foods' export sales from the United States totaled $2.1 billion for each of fiscal 2004, 2005, and 2006. The principal executive offices of Tyson Foods are located in Springdale, Arkansas. During the relevant time period, Tyson Foods' common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was listed on the New York Stock Exchange. Thus, during the relevant time period, Tyson Foods was an "issuer" as that term is defined in Section 3(a)(8) of the Exchange Act [15 U.S.C. § 78(c)(a)(8)].

FACTS

Background

8. Tyson Foods provides products and services to customers throughout the United States and more than 90 countries.

9. Tyson de Mexico is a wholly-owned subsidiary of Tyson Foods. It is headquartered in Gomez Palacio, Mexico and consists of three processing facilities—La Citra; El Porvenir; and La Popular. Tyson de Mexico produces protein-based and prepared food products that comprise approximately 1% of Tyson Foods' total net sales. Tyson de Mexico no longer exports products from Mexico. Tyson Foods had consolidated revenues of $26.4 billion in fiscal year 2004, $26 billion in fiscal year 2005 and $25.6 billion in fiscal year 2006, which included Tyson de Mexico's revenues of approximately $287 million in fiscal year 2004, $322 million in fiscal year 2005 and $315 million in fiscal year 2006.

Illicit Payments to Mexican-State Veterinarians

10. In order to export products, meat-processing facilities in Mexico must obtain certification by the TIF Program—an inspection program for meat-processing facilities administered by Mexico's federal government that is supervised by an office in the Mexican Department of Agriculture. Pursuant to the export protocols of the TIF Program, processing facilities in Mexico are required to use state-of-the-art technologies and must adhere to the highest sanitary standards and most advanced technological processing levels. Plant services covered by the TIF Program include slaughtering, carcass handling, packaging, refrigerated storage, and preparation of processed products for exports.

11. During the period of fiscal 2004 through 2006, Tyson de Mexico participated in the official TIF Program in order to export goods to Japan and other countries. In addition, some

of Tyson de Mexico's domestic customers asked that the company have its products TIF-certified.

12. During the relevant time period, the two veterinarians who received improper payments served as the official TIF veterinarians at Tyson de Mexico's El Porvenir and La Citra facilities. As official TIF veterinarians, their salaries were paid by the Mexican government. Tyson de Mexico, however, made additional, improper payments of approximately $100,311 to the veterinarians during fiscal years 2004 through 2006 on a monthly or semi-monthly basis. The payments were made primarily to influence the decisions of the veterinarians responsible for certifying Tyson de Mexico products for export under the TIF Program in order to obtain or retain business for Tyson de Mexico. Some of these improper payments were concealed by Tyson de Mexico in the form of "salaries" paid to the wives of the veterinarians for no-show jobs; i.e., the wives were included on Tyson de Mexico's payroll, yet they provided no services to the company. Other payments were reflected in invoices submitted to Tyson de Mexico by one of the veterinarians for "services."

<u>Tyson Foods Learns of Tyson de Mexico's Payments But Payments Continue</u>

13. A Tyson de Mexico plant manager discovered the wives on the payroll in June 2004 and informed a Tyson Foods accountant of the situation.

14. On July 2, 2004, certain Tyson Foods and Tyson International officials met in Springdale, Arkansas to discuss problems with an ongoing audit of Tyson de Mexico involving issues unrelated to the TIF veterinarians. At that meeting, a Tyson Foods accountant informed the attendees of the improper payments to the veterinarians. At a second meeting held a few days later, additional senior officials of Tyson Foods and Tyson International learned of the payments to the veterinarians and their wives.

15. During a July 7, 2004 meeting held in Springdale, Arkansas, senior management of Tyson Foods and Tyson International agreed that Tyson de Mexico should cease making the payroll payments to the wives. At this meeting, senior management of Tyson Foods and Tyson International also discussed whether and how the companies could continue paying the veterinarians legally. Three participants were tasked with looking into the matter more closely.

16. In mid July of 2004, a Tyson International official communicated with a senior officer of Tyson Foods concerning the improper payments to the TIF veterinarians.

17. On or around July 29, 2004, two officers of Tyson International and others met in Mexico to discuss the payments to the TIF veterinarians. In the meeting, the participants discussed replacing the payroll payments to the veterinarians' wives with invoice payments to one of the veterinarians. An executive of Tyson International approved this approach.

18. The wives remained on Tyson de Mexico's payroll through August 2004 when an executive of Tyson International instructed a manager at Tyson de Mexico's facilities to remove the wives from the payroll. Accordingly, on or around August 27, 2004, a Tyson de Mexico employee in human resources sent an email to an accountant at Tyson de Mexico with an attachment stating, in part, "2.-TIF-BOTH PERSONS WILL BE PULLED OUT OF THE PAYROLL ON AUGUST 31. EQUIVALENT PAYMENT WILL BE ADDED TO THE INVOICE OF ONE OF THEM ISSUE [sic] EVERY MONTH. THE NEW PAYMENT WITH INVOICE WILL BE THE ONLY ONE AND WILL BE $30,700 PS/MTH."

19. In or around August 2004, consistent with the August 27, 2004 e-mail, the amount of the service invoices submitted by one of the veterinarians increased dramatically, from approximately $1,200 per month to $2,700 per month. The Tyson de Mexico general manager

indicated that the increase in invoice payments was the sum of the wives' salary and the money they would need to buy health insurance.

20. Tyson de Mexico continued to pay the service invoices in order to obtain or retain business by influencing the decisions of the veterinarians responsible for certifying Tyson de Mexico products for export under the TIF Program. Finally, two years later in the fall of 2006, counsel for Tyson Foods instructed Tyson de Mexico to cease making the invoice payments to the veterinarian.

21. Tyson Foods violated the anti-bribery provisions of the FCPA because the veterinarians were Mexican government officials during the relevant time period and Tyson Foods authorized Tyson de Mexico's illicit activities. These improper payments were made for the purpose of obtaining or retaining business. In connection with these improper payments, Tyson Foods failed to keep accurate books and records and failed to have effective internal controls, as the true nature of the payments were concealed through salary payments to the veterinarian's wives and through service invoices submitted by one of the veterinarians. These corrupting payments were improperly recorded as legitimate expenses in Tyson de Mexico's books and records and included in Tyson de Mexico's reported financial results for fiscal years 2004, 2005 and 2006. Tyson de Mexico's financial results were, in turn, a component of Tyson Foods' consolidated financial statements filed with the Commission for those years.

FIRST CLAIM FOR RELIEF

Violations of Section 30A of the Exchange Act

22. Paragraphs 1 through 21 above are realleged and incorporated by reference herein.

23. As set forth more fully above, Tyson Foods violated the anti-bribery provisions of the FCPA when it authorized illicit payments by its subsidiary which corruptly made payments to foreign officials for the purpose of influencing their acts or decisions in their official capacity, inducing them to do or omit to do actions in violation of their lawful duties, securing an improper advantage, or inducing such foreign officials to use their influence with a foreign government or instrumentality thereof to assist Tyson Foods in obtaining or retaining business.

24. As a result of the foregoing, Tyson Foods violated Section 30A of the Exchange Act [15 U.S.C. § 78dd-1].

SECOND CLAIM FOR RELIEF

Violations of Section 13(b)(2)(A) of the Exchange Act

25. Paragraphs 1 through 21 above are realleged and incorporated by reference herein.

26. As set forth more fully above, Tyson Foods failed to make and keep books, records, or accounts that, in reasonable detail, accurately and fairly reflected the transactions and disposition of its assets.

27. As a result of the foregoing, Tyson Foods violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

THIRD CLAIM FOR RELIEF

Violations of Section 13(b)(2)(B) of the Exchange Act

28. Paragraphs 1 through 21 above are realleged and incorporated by reference herein.

29. As set forth more fully above, Tyson Foods failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) payments

were recorded to permit preparation of financial statements in conformity with generally accepted accounting principles; and (ii) payments were recorded as necessary to maintain accountability for its assets.

30. As a result of the foregoing, Tyson Foods violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

PRAYERS FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

(a) permanently restraining and enjoining defendant Tyson Foods, its officers, agents, employees, assigns, attorneys, and those persons in active concert or participation with them who receive actual notice of the Final Judgment, and each of them, from violating Section 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78dd-1, 78m(b)(2)(A) and 78m(b)(2)(B)];

(b) ordering defendant Tyson Foods to disgorge profits derived from Mexican export sales resulting from its inappropriate payments to the veterinarians during fiscal years 2004 through 2006 and pay prejudgment interest on those amounts; and

(c) granting such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: February 10, 2011
Washington, D.C.

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