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MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

TRIPLE D GAME FARM, INC. a/k/a TRIPLE D WILDLIFE, a Montana Corporation, LORNEY "JAY" DEIST, as an individual, and KIMBERLY DEIST, as an individual, Plaintiffs, vs. HEATHER LYNN KEEPERS, as an individual, JUSTINE HAYES GLASMAN, as an individual, JEANETTE TARTAGLINO, as an individual, MELISSA GROO, as an individual, JOHN DOES 1-4, and CORPORATIONS A-D. Defendants.	Cause No.: DV-15-2022-87 **DEFENDANTS KEEPERS, HAYES AND TARTAGLINO'S BRIEF IN SUPPORT OF MOTION TO DISMISS COUNTS 1, 2, 3 AND 5**

Defendants Heather Keepers, Justine Hayes Glasman and Jeanette Tartaglino, by and through their counsel of record, hereby respectfully submit their Motion to Dismiss Counts 1-3 and 5, pursuant to Mont. R. Civ. P. 12(b)(1).

I. Background – Plaintiffs SLAPP Lawsuit to Silence Former Employees

1. Plaintiffs operate the Triple D Game Farm. Last year, the USDA filed a complaint against Triple D Game Farm alleging animal neglect. *See* Ex. A, USDA Complaint. Plaintiffs subsequently admitted to the findings of fact and entered into a consent decision with the USDA, paying a $5,000 fine. *See* Ex. B, USDA Consent Decision and Order.

2. Defendants Keepers, Hayes, and Tartaglino are former employees who decried the terrible animal care practices and employment environment at Triple D. This mostly involved reporting to United States Department of Agriculture and the United States Fish and Wildlife Service. Additionally, Defendants have discussed the employment harms attendant to such negligent practices, as well as Plaintiffs' general mistreatment of employees.

3. In response to Defendants' whistleblowing, Plaintiffs instituted this retaliatory lawsuit seeking millions of dollars of damages. At the heart of Plaintiffs' claims is a nondisclosure agreement signed by the employees. However, as raised during litigation of a permanent protective order and discussed below, the overly broad nondisclosure agreement runs afoul of the National Labor Relations Act ("NLRA" or "Act").

4. Defendant Tartaglino filed an unfair labor practice charge with the National Labor Relations Board ("NLRB" or "Board") which seeks to have NLRB determine, among other things, the validity of the Defendants' three nondisclosure agreements and whether the present lawsuit is pre-empted by the NLRB. *See* Ex. C, NLRB Charge 19-CA-354828. The charge reaches most of Plaintiffs' claims here – Counts 1 (breach of contract), Counts 2-3 (tortious interference with a

contract), and Count 5 (malice).

5. Under Supreme Court precedent, "when an activity is arguably subject to [Section] 7 or [Section] 8 of the [NLRA], the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board." *San Diego Building Trades Council, Millmen's Union, Local 2020 v. Garmon*, 359 U.S. 236, 245 (1959).

6. Under *Garmon*, "[i]f the court determines that the party has met its burden to show that 'there is an arguable case for pre-emption,' it generally must grant the party's preemption defense and await the Board's resolution of the legal status of the relevant conduct. After that, 'only if the Board decides that the conduct is not protected or prohibited [by the NLRA] may the court entertain the litigation.'" *Glacier Northwest, Inc. v. International Brotherhood of Teamsters Local Union No. 174*, 143 S. Ct. 1404, 1411 (2023) (quoting *Davis*, 476 U.S. at 397 (1986)).

II. Unfair Labor Practices

1. Section 7 of the National Labor Relations Act provides that "employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157. The NLRA protects these Section 7 rights by making it an "unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section [7]" and by empowering the National Labor Relations Board "to prevent any person from engaging in any unfair labor practice." 29 U.S.C. § 158(a)(1) (NLRA Section 8(a)(1)); 29 U.S.C. § 160(a) (NLRA Section 10(a)).

2. The protections of Section 7 do not just apply to unionized workplaces or collective bargaining. They also apply to "other concerted activities for the purpose of … other mutual aid

or protection." 29 U.S.C. § 157. Indeed, "labor's cause often is advanced on fronts other than collective bargaining and grievance settlement within the immediate employment context" and Congress "recognized this fact by choosing, as the language of [Section] 7 makes clear, to protect concerted activities for the somewhat broader purpose of 'mutual aid or protection' as well as for the narrower purposes of 'self-organization' and 'collective bargaining.'" *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978).

3. The NLRA does not provide an exhaustive list of unfair labor practices. Instead, the NLRA authorizes the NLRB to continually develop the meaning of "unfair labor practice" within these broad statutory parameters based on its expertise and understanding of current labor relations. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 798 (1945) ("the [NLRA] did not undertake the impossible task of specifying in precise and unmistakable language each incident which would constitute an unfair labor practice. On the contrary that Act left to the Board the work of applying the Act's general prohibitory language in the light of the infinite combinations of events which might be charged as violative of its terms."); *Eastex, Inc. v. NLRB*, 437 U.S. at 568 (1978) (delineating "the boundaries of the 'mutual aid and protection' clause" is a task "for the Board to perform in the first instance as it considers the wide variety of cases that come before it.").

4. The Board's process for preventing unfair labor practices begins when an individual files a charge alleging that an unfair labor practice has occurred "with the Regional Director for the Region in which the alleged violations have occurred or are occurring." 29 C.F.R. § 101.2. Once the charge is filed, the charging party promptly provides evidence in support of the charge and a member of the Region's field staff is assigned to investigate the charge. 29 C.F.R. § 101.4. If, after investigation, the Regional Director determines that the charge has merit, the Regional Director typically "institutes formal action by issuance of a complaint and notice of hearing." 29

C.F.R. § 101.8. After a complaint is issued, an administrative law judge ("ALJ") holds a hearing where the ALJ listens to evidence and testimony relevant to the complaint and then subsequently issues a decision and recommended order in the case. 29 C.F.R. §§ 101.10-101.11. The parties may file "exceptions" to the ALJ's decision and recommended order to the Board. 29 C.F.R. § 101.12. If a party files exceptions, then the Board hears those exceptions prior to issuing its own decision and order in the case. 29 C.F.R. § 101.12(a). If a party does not file exceptions, then the ALJ's decision and recommended order "automatically become the decision and order of the Board." 29 C.F.R. § 101.12(b).

III. Garmon Preemption

1. After the NLRA was enacted, the Board's sweeping power to prevent unfair labor practices "inevitably gave rise to difficult problems of federal-state relations." *Garmon*, 359 U.S. at 239. All kinds of state regulation came into conflict with the Board's application of the NLRA, often in idiosyncratic and unanticipated ways, generating frequent litigation about how to resolve these conflicts. *Id.* at 240-241.

2. The Supreme Court resolved this problem in *Garmon* by declaring that "when an activity is arguably subject to [Section] 7 or [Section] 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board." *Id.* at 245.

3. In order to establish that *Garmon* preemption applies, "a party asserting pre-emption must advance an interpretation of the [NLRA] that is not plainly contrary to its language and that has not been 'authoritatively rejected' by the courts or the Board" and must then "put forth enough evidence to enable the court to find that the Board reasonably could uphold a claim based on such an interpretation." *Glacier Northwest*, 143 S. Ct. at 1411 (2023) (quoting *International Longshoremen's Association, AFL-CIO v. Davis*, 476 U.S. 380, 395 (1986)).

4. "If the court determines that the party has met its burden to show that 'there is an arguable case for pre-emption,' it generally must grant the party's preemption defense and await the Board's resolution of the legal status of the relevant conduct. After that, 'only if the Board decides that the conduct is not protected or prohibited [by the NLRA] may the court entertain the litigation.'" *Id.* (quoting *Davis*, 476 U.S. at 397 (1986)).

5. There are two exceptions to the *Garmon* preemption doctrine: (1) "where the activity regulated [is] a merely peripheral concern to the NLRA" and (2) "where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to act." *Garmon*, 359 U.S. at 244 (1959).

6. By conduct that touches interests "deeply rooted in local feeling and responsibility," the Supreme Court had in mind "**conduct marked by violence and imminent threats to the public order**." *Garmon* 359 U.S. at 247 (emphasis added) (citing *United Construction Workers, Affiliated with United Mine Workers of America v. Laburnum Construction Corp.*, 347 U.S. 656, 664 (1954) (a "state still may exercise its historic powers over such traditionally local matters as public safety and order and the use of streets and highways")).

7. The Supreme Court has explicitly rejected the argument that a "deep and abiding interest in protecting its citizens' contractual rights" constitutes an exception to *Garmon* preemption. *Local 926, International Union of Operating Engineers, AFL-CIO v. Jones*, 460 U.S. 669, 674 (1983).

8. Preventing the enforcement of private contract terms that violate the NLRA is also not a merely peripheral concern to the NLRA. *J.I. Case Co. v. NLRB*, 321 U.S. 332, 337 (1944) ("Wherever private contracts conflict with [the NLRA's] functions, they obviously must yield or

the Act would be reduced to a futility."); *National Licorice Co. v. NLRB*, 309 U.S. 350, 361 (1940) ("Board was free by its order to direct that the [employer] should take no benefit from the contracts" that "stipulated for the renunciation by the employees of rights guaranteed by the Act, and were a continuing means of thwarting the policy of the Act.")

9. The purpose of *Garmon* preemption is not merely to ensure that state law is not applied in ways that contradict the NLRA. It is also to ensure that individuals can use the very specific administrative process that Congress provided for handling disputes over unfair labor practices. *Garner v. Teamsters Union,* 346 U.S. 485, 490-491 (1953) ("Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order."); *Garmon*, 359 U.S. at 243 (1959) ("Administration is more than a means of regulation; administration is regulation. We have been concerned with conflict in its broadest sense; conflict with a complex and interrelated federal scheme of law, remedy, and administration.").

IV. Coercive Rules

1. For the last 80 years, the Board has held that the mere maintenance of certain work rules violates Section 8(a)(1) of the NLRA. *Republic Aviation Corp.*, 51 NLRB 1186, 1187 (1943), affd. 324 U.S. 793, 798 (1945) (employer's general rule prohibiting all personal solicitation violated the NLRA because it interfered with worker organizing). The precise legal standard for determining whether a particular work rule violates the NLRA has evolved multiple times during this period. *See, e.g., Lutheran Heritage Village-Livonia,* 343 NLRB 646 (2004); *Boeing Co.*, 365

NLRB No. 154 (2017); *Stericycle*, 372 NLRB No. 113 (2023).

2. In 2023, the NLRB established the current two-step approach to assessing the legality of rules that could be reasonably interpreted as prohibiting Section 7 activity. *Stericycle*, 372 NLRB No. 113 (2023).

3. In the first step, the General Counsel must demonstrate that "an employee could reasonably interpret the rule to have a coercive meaning … even if a contrary, noncoercive interpretation of the rule is also reasonable." *Id*. at 3. "If the General Counsel carries her burden, the rule is presumptively unlawful." *Id.* In the second step, "the employer may rebut that presumption by proving that the rule advances a legitimate and substantial business interest and that the employer is unable to advance that interest with a more narrowly tailored rule." *Id.* "If the employer proves its defense, then the work rule will be found lawful to maintain." *Id.*

4. *Stericycle* has been repeatedly applied to invalidate overbroad employee confidentiality agreements. *See e.g., Pro Residential Services, Inc.*, 373 NLRB No. 100, 2024 WL 4330031 (Sept. 25, 2024); *Advanced Marine Concepts, LLC D/B/A Atlas Docks*, No. JD-69-24 (Nov. 8, 2024); *Starbucks Corporation*, JD(SF)-22-24 (July 23, 2024); *ExxonMobil Global Services Company*, JD-15-24 (March 15, 2024); *General Motors Components Holding, LLC*, JD 05-24, (Jan. 24, 2024); *United Wholesale Mortgage, LLC*, JD-04-24 (Jan. 11, 2024); *Big Green*, JD(SF)-40-23 (Dec. 20, 2023); *United Electrical Contractors, Inc. D/B/A United Electrical Contractors*, JD-74-23 (Nov. 9, 2023); *3 Corners, LLC*, JD(SF)-26-23, (Sept. 25, 2023); *cf. Mclaren Macomb*, 372 NLRB 58 (Feb. 21, 2023) (invaliding a non-disclosure clause in a severance agreement, pre-*Stericyle*).

5. Additionally, when an employer applies any work rule against Section 7 activity, regardless of whether the rule facially violates the NLRA, the employer violates Section 8(a)(1)

of the NLRA. *AT&T Mobility*. 370 NLRB No. 121, slip op. at 7 (2021) (employer violated the NLRA when applying a no-recording rule that was facially legal under *Boeing* against protected activity); See also *Valley Hospital Medical Center*, 351 NLRB 1250, 1254 (2007) ("employees engaged in [protected] activity generally do not lose the protection of the Act simply because their activity contravenes an employer's rule or policies.").

6. Section 7 activity includes employee communication to "third parties in circumstances where the communication is related to an ongoing labor dispute." *McLaren Macomb*, 372 NLRB No. 58, slip op. at 6 (2023). This includes communications made to "**newspapers, the media, social media, and communications to the public**." *Id.* (Internal footnotes omitted. Emphasis added.)

7. Section 7 activity includes urging consumer boycotts by potential customers. *Ashford TRS Nickel*, 366 NLRB No. 6, slip op. at 5 (2018).

V. Illegal Lawsuits

1. A lawsuit violates the NLRA if it is (1) objectively baseless and retaliatory, (2) seeks an illegal objective, or (3) is subject to federal-law preemption. *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 737 fn. 5 (1983). *BE & K Construction Co. v. NLRB*, 536 U.S. 516 (2002).

2. A lawsuit that "seeks to enforce an unlawful policy or contractual provision" seeks an illegal objective and thus violates the NLRA. *Anheuser-Busch, LLC*, 367 NLRB No. 132, slip op. at 4 (2019).

3. A lawsuit that is based on and targets protected activity is subject to federal-law preemption. *Ashford TRS Nickel*, 366 NLRB No. 6, slip op. at 4 (2018) (The employer's "tortious interference allegations were preempted because they were based on, and targeted, the Union's

consumer boycott of the hotel."); *Pain Relief Centers, P.A*, 371 NLRB No. 143, slip op. at 2 (2022) (*"Garmon* preemption is clearly established" when employer brings a "breach of contract claim" against protected activity.)

VI. Count One Is Subject to Garmon Preemption

1. In Count One of its Amended Complaint, Plaintiffs allege Defendants violated a confidentiality rule. *See* Complaint, Ex. 2, Non-Disclosure Agreements. The rule prohibits disclosure of "confidential information," defined as "information of material that is commercially valuable to Triple D and not generally known or readily ascertainable by the industry." The non-disclosure agreement provides a non-exhaustive list of purportedly confidential information that includes:

a. information concerning Triple D's services, including training, organization, know-how, formulas, processes, projects and development, and correspondence;

b. information concerning Triple D's business, including **cost information**, profits, sales information, accounting and **unpublished financial information**, business plans, markets and marketing methods, customer lists and customer information, purchasing techniques, supplier lists and supplier information and advertising, strategies;

c. information concerning **Triple D's employees, including salaries**, strengths, weaknesses and skills;

d. information submitted by Triple D's customers, suppliers, employees, consultants or partners with Triple D for study, evaluation or use; and

e. **any other information not generally known to the public which**, if misused or disclosed, could reasonably be expected to adversely affect Triple D's business.

2. A confidentiality rule that an employee could reasonably interpret as prohibiting them from engaging in Section 7 activity violates Section 8(a)(1) of the NLRA. *See e.g., Pro Residential Services, Inc.*, 373 NLRB No. 100, 2024 WL 4330031 (Sept. 25, 2024); *Advanced Marine Concepts, LLC D/B/A Atlas Docks*, No. JD-69-24 (Nov. 8, 2024); *Starbucks Corporation*, JD(SF)-22-24 (July 23, 2024); *ExxonMobil Global Services Company*, JD-15-24 (March 15, 2024); *General Motors Components Holding, LLC*, JD 05-24, (Jan. 24, 2024); *United Wholesale Mortgage, LLC*, JD-04-24 (Jan. 11, 2024); *Big Green*, JD(SF)-40-23 (Dec. 20, 2023); *United Electrical Contractors, Inc. D/B/A United Electrical Contractors*, JD-74-23 (Nov. 9, 2023); *3 Corners, LLC*, JD(SF)-26-23, (Sept. 25, 2023).

3. Plaintiffs allege Defendants breached this rule by "making public statements" and communicating to Rolling Stone Magazine about the working conditions at Triple D. *See* Amended Complaint, ¶¶ 127-128. These actions are protected activities under Section 7 of the NLRA. *McLaren Macomb*, 372 NLRB No. 58, slip op. at 6 (2023).

4. Defendant Tartaglino filed a charge with the NLRB alleging that this confidentiality rule, contained in all three of Defendants' employment agreements at issue, facially violates Section 8(a)(1) and that the Plaintiffs, by filing this lawsuit, has attempted to apply this rule against activity that is protected by Section 7. The NLRB charge and any resulting decision will apply equally to Tartaglino, Keepers and Hayes, whose interests are aligned.

5. Based on the authorities cited above, it is clear that the Plaintiffs' confidentiality rule arguably violates Section 8(a)(1) on its face and that Plaintiffs' lawsuit is seeking to enforce the rule against activity arguably protected by Section 7. *Garmon*, 359 U.S. at 245. Defendants' interpretation of the NLRA in this regard is "not plainly contrary to its language" and has not been "authoritatively rejected by the courts or the Board." *Glacier Northwest, Inc.*, 143 S. Ct. at 1411.

Further, Defendants have "put forth enough evidence to enable the court to find that the Board reasonably could uphold a claim based on such an interpretation." *Id.* Accordingly, *Garmon* preemption applies, and Plaintiffs' claims based on the confidentiality rule should be dismissed.

VII. Counts Two and Three Are Subject to Garmon Preemption

1. In Counts Two and Three of its Amended Complaint, Plaintiffs allege Defendants engaged in tortious interference with contractual relations and prospective economic advantage by communicating with Plaintiffs' existing and prospective customers.

2. Communicating with customers about working conditions and other labor disputes is protected activity under Section 7 of the NLRA. A lawsuit that alleges tortious interference claims against individuals for engaging in that activity violates Section 8(a)(1) of the NLRA and is preempted. *Ashford TRS Nickel*, 366 NLRB No. 6, slip op. at 4 (2018).

3. Defendant Tartaglino filed a charge with the NLRB alleging that these tortious interference counts are targeting protected activity and violate Section 8(a)(1) of the NLRA. The NLRB charge and any resulting decision will apply equally to Tartaglino, Keepers and Hayes, whose interests are aligned.

4. Based on the authorities cited above, it is clear that Plaintiffs' tortious interference counts arguably violate Section 8(a)(1) and are targeted at activity that is arguably protected by Section 7. *Garmon*, 359 U.S. at 245. Defendants' interpretation of the NLRA in this regard is "not plainly contrary to its language" and has not been "authoritatively rejected by the courts or the Board." *Glacier Northwest, Inc.*, 143 S. Ct. at 1411. Further, Defendants have "put forth enough evidence to enable the court to find that the Board reasonably could uphold a claim based on such an interpretation." *Id*. Accordingly, *Garmon* preemption applies, and Plaintiffs' tortious interference counts should be dismissed.

VIII. Count Five Is Subject to Garmon Preemption

1. In Count Five of its Amended Complaint, Plaintiffs allege Defendants acted with actual malice "in their efforts to destroy the Triple D" by acting with a "conscious or intentional disregard of the high probability of injury to Jay and Kim Deist and the Triple D" and by "intentionally disregard[ing] facts that created a high probability of injury to Jay and Kim Deist and the Triple D."

2. From its pleading, it is unclear what Plaintiffs are alleging constituted actual malice. But insofar as this is merely a cumulative count targeting Defendants' communications to the public, the media, and consumers, this actual malice count is targeting activity protected by Section 7 and therefore violates Section 8(a)(1) of the NLRA in the same way as Counts One, Two, and Three do.

3. Defendant Tartaglino filed a charge with the NLRB alleging that this actual malice count is based on and targeting protected activity and violates Section 8(a)(1) of the NLRA. The NLRB charge and any resulting decision will apply equally to Tartaglino, Keepers and Hayes, whose interests are aligned.

4. Based on the authorities cited above, it is clear that the Plaintiffs' actual malice count at least arguably violates Section 8(a)(1). *Garmon*, 359 U.S. at 245. Defendants' interpretation of the NLRA in this regard is "not plainly contrary to its language" and has not been "authoritatively rejected by the courts or the Board." *Glacier Northwest, Inc.*, 143 S. Ct. at 1411. Further, Defendants have "put forth enough evidence to enable the court to find that the Board reasonably could uphold a claim based on such an interpretation." *Id*. Accordingly, *Garmon* preemption applies, and the Plaintiffs' actual malice count should be dismissed.

IX. Conclusion

1. Based on the foregoing, the low bar for the application of *Garmon* preemption has been satisfied with respect to Plaintiffs' breach of contract, tortious interference, and actual malice counts. Beyond these specific legal arguments, it is important for the court to understand why the Defendants are seeking a dismissal of these claims on *Garmon* preemption grounds.

2. Plaintiffs allege Defendants engaged in a variety of illegal conduct. Defendants have a variety of defenses under the NLRA, including that their conduct is protected activity under the NLRA, that the confidentiality rule sought to be enforced by Plaintiffs is an unfair labor practice under the NLRA, and that much of the Plaintiffs' lawsuit is itself an unfair labor practice under the NLRA. But these legal issues and defenses cannot be made in a federal or state trial court because, by statute, only the NLRB can decide whether an unfair labor practice has occurred. 29 U.S.C. § 160(a).

3. This is why "if the court determines that the party has met its burden to show that 'there is an arguable case for pre-emption,' it generally must grant the party's preemption defense and await the Board's resolution of the legal status of the relevant conduct. After that, 'only if the Board decides that the conduct is not protected or prohibited [by the NLRA] may the court entertain the litigation.'" *Glacier Northwest, Inc.*, 143 S. Ct. at 1411 (2023) (quoting *Davis*, 476 U.S. at 397 (1986)).

4. Failure to appropriately apply *Garmon* in this case would effectively make it impossible for Defendants to raise their NLRA defenses and runs the very real risk of enforcing a contract rule and state laws in a way that the NLRB subsequently decides is illegal. Preventing these kinds of parallel and contradictory legal proceedings over the same activity is what the *Garmon* preemption doctrine was designed to accomplish.

5. Moreover, Defendants would be substantially prejudiced by not adhering to *Garmon* preemption. They have already spent thousands defending this lawsuit, with future expenses for attorneys' fees, expert consultation, mediation, depositions, etc. forthcoming. Discovery is currently ongoing, and Plaintiffs have sought thousands of pages of private communications from the Defendants – many of which involve communications between Defendants and other past and current employees. Similarly, Plaintiffs are seeking all communications from Defendants with government officials (information they were *not entitled* to obtain through Freedom of Information Act requests) and with journalists (communications that are privileged under MT ST 26-1-902 *et. seq.*). Indeed, a vast majority of the *thousands* of pages of discovery provided (and thousands more being sought) would be wholly irrelevant but for Plaintiffs' claims that are preempted by *Garmon*.

6. Notwithstanding these material harms that Defendants have already suffered and will continue to suffer through litigation – which very well may have, and likely intended to have, a chilling effect on other employees from engaging in protected activity – *Garmon* requires dismissal.

Accordingly, the Defendants Heather Keepers, Justine Hayes Glasman and Jeanette Tartaglino request the Court dismiss Counts 1, 2, 3 and 5 against them.

DATED this 19th day of November, 2024.

/s/ Chris Carraway
Chris Carraway
admitted *pro hac vice*

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D- USDA/OALJ/HCO
2023 NOV 3 2:33 PM

In re:	AWA Docket No. 24-J-0013
TRIPLE D GAME FARM, INC., a Domestic Profit Corporation within the state of Montana, Respondent.	COMPLAINT

There is reason to believe that the Respondent named herein has violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq*.) (AWA or Act), and the regulations (9 C.F.R. Part 2) (Regulations) and standards issued thereunder (9 C.F.R. Part 3) (Standards). Therefore, the Administrator of the Animal and Plant Health Inspection Service (APHIS) issues this complaint alleging the following:

JURISDICTIONAL ALLEGATIONS

1. Respondent, Triple D Game Farm, Inc., is a Domestic Profit Corporation within the state of Montana and whose business mailing address is P.O. Box 5072, Kalispell, MT 59903.

2. Respondent's registered agent is Lorney J. Deist whose mailing address is 190 Drake Drive, Kalispell, MT 59903.

3. At all times material herein, the Respondent was operating as a Class C - Exhibitor as that term is defined in the Act and the Regulations and held AWA Certificate Number 81-C-0016.

ALLEGED VIOLATIONS

1. On or about January 7, 2019, the Respondent violated the Regulations (9 C.F.R. § 2.131(b)(1)) as follows: a silver fox kit escaped the perimeter fencing and was never recaptured.

2. On or about September 23, 2019, the Respondent violated the Regulations (9 C.F.R. § 2.131(b)(1)) as follows: a North American river otter was found deceased approximately one week after failed attempts were made by trainers to re-crate the animal.

3. On or about May 12, 2020, the Respondent violated the Regulations (9 C.F.R. § 3.133), by failing to meet the Standards, as follows: a female Arctic wolf was found deceased after being left unsupervised overnight with a male wolf that was removed from a separate enclosure due to compatibility concerns with another female Arctic wolf the day before.

4. On or about November 12, 2020, the Respondent violated the Regulations (9 C.F.R. § 3.125(a)), by failing to meet the Standards, as follows: a pine marten was found decapitated in a fox pen after escaping its enclosure.

5. On or about December 2, 2021, the Respondent violated the Regulations (9 C.F.R. § 2.131(b)(1)) as follows: two-thirds of a snow leopard's tail was discovered in an adjacent enclosure after contact was made with another snow leopard during routine shifting of cats.

WHEREFORE, it is hereby ordered that for the purpose of determining whether the Respondent has in fact violated the Act and the Regulations and Standards issued thereunder, this complaint shall be served upon the Respondent. Respondent shall file an answer with the Office of the Hearing Clerk, Room 1031-South Building, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-162.13). Failure to file an answer shall constitute an admission of all the material allegations of this complaint. APHIS requests that this matter proceed in accordance with the Rules of Practice governing proceedings under the Act, and that such order or orders be issued as are authorized by the Act (7 U.S.C. § 2149) and warranted under the circumstances.

Done at Washington DC
this____ day of_____2023

MICHAEL WATSON

Digitally signed by MICHAEL WATSON
Date: 2023.11.03 07:53:47 -04'00'

Dr. Michael Watson, Acting Administrator
Animal and Plant Health Inspection Service

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO
2024 AUG 14 3:09 PM

In re:	AWA Docket No. 24-J-0013
TRIPLE D GAME FARM, INC., a Domestic Profit Corporation within the state of Montana,	**Consent Decision and Order**
Respondent.	

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) ("Act" or "AWA"), by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service ("Complainant"), alleging that the Respondent Triple D Game Farm, Inc. ("Respondent") violated the Act, the regulations (9 C.F.R. § 2.131(b)(1); § 3.133; and § 3.125(a)) ("Regulations") and Standards (9 C.F.R. Part 3) ("Standards") promulgated thereunder. Complainant and Respondent have agreed that this proceeding should be terminated by the entry of this Consent Decision and Order ("Consent Decision"), pursuant to section 1.138 of the Rules of Practice (7 C.F.R. § 138), and have thereby agreed to the following stipulations:

Respondent admits the findings of fact, as set forth herein, and specifically admits that the Secretary has jurisdiction in this matter. Respondent neither admits nor denies the remaining allegations in the complaint. The parties agree to the issuance of the following Consent Decision and Order without further procedure or hearing. Respondent specifically waives its right to any further process or procedure in this proceeding. Respondent further waives all rights to seek judicial review or otherwise challenge or contest the validity of this decision, including waiving challenges to the Administrative Law Judge's authority to enter this decision under the Administrative Procedure Act and the Constitution of the United States; and waives any action against the United States Department of Agriculture ("USDA") under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504), for fees and other expenses incurred by Respondent in connection with this proceeding or any action against any USDA employee in their individual capacity.

The parties consent and agree to the entry of this Consent Decision for the purpose of settling this proceeding. This Consent Decision is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R § 1.130 et seq.) (Rules of Practice) applicable to this proceeding (7 C.F.R § 1.138).

FINDINGS OF FACT

1. Respondent is a Domestic Profit Corporation within the State of Montana and whose business mailing address is P.O. Box 5072, Kalispell, MT 59903.

2. At all times material herein, the Respondent was operating as a Class C – Exhibitor as the term is defined in the Act and the Regulations and held AWA Certificate Number 81-C-0016.

EXHIBIT
B

CONCLUSIONS OF LAW

Respondent Triple D Game Farm, Inc. having admitted the findings of fact set forth herein, and the parties having agreed to the entry of this decision, such decision will be entered.

ORDER

Respondent Triple D Game Farm Inc. is assessed a civil penalty of five thousand dollars ($5,000), which shall be paid within 60 days of the entry of this Consent Decision and Order by check made payable to the U.S. Treasury, indicating that the payment is in reference to AWA Docket No. 24-J-0013, and sent to:

USDA, APHIS, Miscellaneous

PO Box 979043

St. Louis, Missouri 63197-9000

The provisions of this order shall become final and effective as of the date this Consent Decision and Order is issued.

Copies of this decision shall be served upon the parties.

By: [redacted]

Lorney "Jay" Deist

Triple D Game Farm, Inc.

The Respondent

By: [redacted]

Kris A. McLean

Attorney for the Respondent

[redacted]

Ashley L. Boles

Attorney for the Complainant

[redacted]

Jill S. Clifton
Administrative Law Judge

Hearing Clerk
U.S. Department of Agriculture
Stop 9203 South Building Room 1031-S
400 Independence Ave SW Washington DC 20250-9203
Phone: 1-202-720-4443
Fax: 1-844-325-6940
SM.OHA.HearingClerks@usda.gov

FORM NLRB-501
(3-21)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Triple D Wildlife		b. Tel. No. 406.396.9367
		c. Cell No.
		f. Fax. No.
d. Address *(Street, city, state, and ZIP code)* 190 Drake Drive, Kalispell, MT 59901	e. Employer Representative Kris A. McLean	g. e-mail kris@krismcleanlaw.com
		h. Number of workers employed
i. Type of Establishment *(factory, mine, wholesaler, etc.)* Zoo	j. Identify principal product or service Animal encounters	

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

Employer maintains an overbroad confidentiality rule in three employment agreements.
Employer maintains a preempted, baseless, and retaliatory lawsuit that seeks an illegal objective against three former employees.
Employer engaged in unlawful interrogation and surveillance by seeking to obtain information about protected activity using the tools of judicial discovery against three former employees.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*

Jeanette Noel Tartaglino

4a. Address *(Street and number, city, state, and ZIP code)* 56 Raydon Rd Ext York ME 03909	4b. Tel. No.
	4c. Cell No. 732.763.7061
	4d. Fax No.
	4e. e-mail jennyt1287@gmail.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. s/ Matt Bruenig — *(signature of representative or person making charge)* Matt Bruenig — *(Print/type name and title or office, if any)* Address 124 4th St, Stamford, CT 06905 Date 11/11/2024	Tel. No. 857.540.1205
	Office, if any, Cell No.
	Fax No.
	e-mail matthewbruenig@gmail.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

EXHIBIT
C