

**U.S. DEPARTMENT OF LABOR**

Occupational Safety and Health Administration  
525 S. Griffin Street  
Room 602  
Dallas, TX 75202  
Tel: (972) 850-4148  
[www.whistleblowers.gov](http://www.whistleblowers.gov)



VIA EMAIL: [REDACTED]

July 30, 2024

[REDACTED]  
Mark Murphy  
Jackson Spencer  
Three Forest Plaza  
12221 Merit Drive, Suite 160  
Dallas, Texas 75251

Re: LSP Operations, LLC [REDACTED] /301024310

Dear Mr. Murphy:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by your client, [REDACTED] (Complainant) against LSP Operations, LLC (Respondent) on September 29, 2023, under Section 11(c) of the OSH Act, 29 U.S.C. §660.<sup>1</sup> and the FDA Food Safety Modernization Act (FSMA), 21 U.S.C. § 399d. In brief, your client alleged [REDACTED] was discharged in retaliation for complaining to management about excessive heat in the kitchen area which caused food to spoil and mold; reporting suffering and allergic reactions after cleaning up spilled milk; and after participating in an inspection conducted by the Texas Department of Health and Human Services. Complainant was fired 30 minutes after the inspection was completed.

Following an investigation by a duly-authorized investigator, the Secretary of Labor, acting through his agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region VI, finds there is reasonable cause to believe Respondent violated the FDA Food Safety Modernization Act (FSMA), 21 U.S.C. § 399d and issues the following findings:

**Secretary's Findings**

***Coverage***

Respondent is a person within the meaning of 29 U.S.C. §652(4) and Complainant is an employee within the meaning of 29 U.S.C. §652(6).

Respondent is an entity engaged in the processing, distribution, reception, holding, of food, within the meaning of 21 U.S.C. § 399d(a).

Complainant is an employee within the meaning of 21 U.S.C. § 399d(a).

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<sup>1</sup> These findings only address the FSMA complaint. The 11(c) portion of the complaint will be deferred to the FSMA findings.

### ***Timeliness of complaint***

Complainant's employment was terminated on August 30, 2023. Complainant filed a FSMA and Section 11(c) whistle blower retaliation complaint with OSHA on September 29, 2023.

As the complaint was filed within 180 days of the adverse employment action, it is timely under FSMA.

As the complaint was filed within 30 days of the adverse employment action, it is timely filed under Section 11(c).

### ***Findings of the investigation***

On May 22, 2023, Complainant notified Tia Jones, Center Director, that the kitchen was not cleaned when [REDACTED] reported to work at 6:00 am.

On June 12, 2023, when [REDACTED] reported to work at 6:00 am, Complainant notified Ms. Jones via text, that there was spilled milk on the floor. Complainant also reported experiencing a severe rash while cleaning the milk. Complainant later learned, after a doctor's visit, that [REDACTED] is allergic to milk.

On July 25, 2023, Complainant raised concerns with Amber Theobald, Human Resource Coordinator, about excess heat in the kitchen area which was causing food to spoil quickly.

On August 7, 2023, Amber Theobald followed up with Complainant regarding the newly installed portable air conditioner and provided instructions on how to use the unit. Complainant reiterated [REDACTED] concerns that the one portable unit would not be enough to stop food from spoiling.

On August 29, 2023, Complainant filed a complaint with the Texas Health and Human Services Department concerning moldy food and unsanitary conditions at the jobsite.

On August 30, 2023, an inspector from Texas Health and Human Services Department conducted an unannounced inspection of the facility. The inspector was kept at facility's door while management conducted a quick inspection prior to allowing [REDACTED] inside. The Texas Health and Human Services Department found violations during the inspection. The inspector completed the inspection at around 1:30pm, and approximately 30 minutes later, Complainant's employment was terminated.

### ***Respondent's Defense***

Respondent asserts that Complainant's poor performance was the reason for [REDACTED] termination and relies on verbal warnings, as well as on notes documenting [REDACTED] poor performance made by a supervisor in a notebook. Respondent also claimed that they had no knowledge it was Complainant who filed the anonymous complaint with the Texas Health and Human Services.

### ***Analysis and Conclusion:***

OSHA finds there is evidence to substantiate that Complainant engaged in FSMA protected activity by filing a complaint with the Texas Health and Human Services, which led to an onsite inspection. Approximately 30 minutes after the inspection was concluded Complainant's employment was terminated. The temporal proximity between the inspection and Complainant's termination of employment warrants a strong inference of a causal connection between [REDACTED] protected activity and the adverse employment action, and there is reasonable cause to believe that [REDACTED] FSMA protected activity was a contributing factor in [REDACTED] termination of employment. Respondent has not shown by clear and

convincing evidence that it would have terminated Complainant absent [REDACTED] protected activity of making a complaint with the Texas Health and Human Services.

Accordingly, Complainant is entitled to relief under FSMA. Complainant is entitled to preliminary reinstatement, back pay with interest, pecuniary damages and attorney’s fees.

**PRELIMINARY ORDER**

1. Upon receipt of this Secretary’s Findings and Preliminary Order, Respondent shall immediately reinstate Complainant. Such reinstatement shall include all rights, seniority, and benefits that Complainant would have enjoyed had [REDACTED] not been discharged. Such reinstatement is not stayed by an objection to this order.
2. Respondent shall pay Complainant back pay, minus interim earnings, in the amount of \$43,295 in back wages with interest and pecuniary damages. Backpay will continue to accrue until Respondent makes a bona fide offer of reinstatement as set forth above.
3. Respondent shall submit appropriate documentation to the Social Security Administration allocating back pay to the appropriate calendar quarters.
4. Respondent shall pay Complainant’s reasonable attorney’s fees.
5. Respondent shall expunge Complainant’s employment records of any reference to the exercise of his rights under FSMA.
6. Respondent shall not retaliate against Complainant in any manner for instituting or causing to be instituted any proceeding under or related to FSMA.

**Appeal Rights Under Section 11(c)**

This case will be closed unless Complainant files an appeal by sending a letter to:

with a copy to:

Directorate of Whistleblower Protection Programs  
 U.S. Department of Labor-OSHA  
 200 Constitution Avenue, N.W.  
 Room N-4618  
 Washington, D.C. 20210

Regional Administrator  
 U.S. Department of Labor-OSHA  
 525 S. Griffin Street  
 Room 602  
 Dallas, TX 75202

To be considered, an appeal must be postmarked within 15 days of receipt of this letter. The request may be mailed or emailed to ([RFR@dol.gov](mailto:RFR@dol.gov) and [R6.11c.OSHA@dol.gov](mailto:R6.11c.OSHA@dol.gov)). If this finding is appealed, then the Directorate of Whistleblower Protection Programs may review the case file in order to ascertain whether the investigation adequately dealt with all factual issues and the investigation was conducted fairly, and in accordance with applicable laws.

**Appeal Rights Under FSMA**

Respondent has 30 days from the receipt of these Findings to file objections and to request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will become final and not subject to court review. Objections must be filed in writing with the Office of Administrative Law Judges:

- Primary method - via email to: [OALJ-F-whistleblower@dol.gov](mailto:OALJ-F-whistleblower@dol.gov)
- Secondary method (if unable to file via email) - via hard copy submission to:

Chief Administrative Law Judge - Office of Administrative Law Judges  
U.S. Department of Labor  
200 Constitution Ave. NW  
Room S-4325  
Washington, D.C. 20210  
Telephone: (202) 693-7300; Fax: (202) 693-7365

With copies to:

Primary method - via email to: R6.11c.OSHA@dol.gov  
Secondary method (if unable to file via email) - via hard copy submission to:  
Regional Administrator  
U.S. Department of Labor-OSHA  
525 S. Griffin Street  
Room 602  
Dallas, TX 75202

All parties to this complaint:

In addition, please be advised that the U.S. Department of Labor generally does not represent any party in the hearing; rather, each party presents his or her own case. The hearing is an adversarial proceeding before an Administrative Law Judge (ALJ) in which the parties are allowed an opportunity to present their evidence de novo for the record. The ALJ who conducts the hearing will issue a decision based on the evidence, arguments, and testimony presented by the parties. Review of the ALJ's decision may be sought from the Administrative Review Board, to which the Secretary of Labor has delegated responsibility for issuing final agency decisions under FSMA. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of your complaint. The rules and procedures for the handling of FSMA cases can be found in Title 29, Code of Federal Regulations Part 1987 and may be obtained at [www.whistleblowers.gov](http://www.whistleblowers.gov).

Sincerely,

LUIS

ACEVEDO

Luis Acevedo

Acting Assistant Regional Administrator

Whistleblower Protection Program

Digitally signed by  
LUIS ACEVEDO  
Date: 2024.07.30  
14:10:20 -05'00'

cc: Chief Administrative Law Judge, USDOL

OSHA DWPP

FDA

Brett Roubal, Chief executive Officer, LSP Operations, LLC., via email [brettr@littlesunshine.com](mailto:brettr@littlesunshine.com)

Jason Smith, Respondents Attorney, via email [jcsmith@spencerfane.com](mailto:jcsmith@spencerfane.com)

