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*PRACTICE WITHIN THE DISTRICT OF COLUMBIA
IS LIMITED TO MATTERS AND PROCEEDINGS
BEFORE FEDERAL COURTS AND AGENCIES

BY ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Robert Shelquist
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100 Washington Avenue, South
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Minneapolis, MN 55401

Re: Third Party Subpoena To Association of American Feed Control Officials in *Christina Grimm, et al. v. APN, Inc., et al.*, Civ. No. 8:17-cv-356; First Production of Documents

Dear Rob:

We enclose documents numbered AAFCO_00001 to AAFCO_08178 pursuant to the Subpoena addressed to the American Association of Feed Control Officials ("AAFCO") on November 8, 2017 in the above-captioned matter (hereinafter "Subpoena"). Our firm serves as outside counsel to AAFCO in this matter. All documents on the enclosed disk are identified as having been produced pursuant to the compulsory process of this Subpoena. We also enclose a bill for \$435.02 from our vendor for expenses for this part of the production. We ask for proof that you have remitted payment to our vendor as soon as possible. Note that the bill increases to \$480.45 after February 8, 2018.

AAFCO is a voluntary, non-profit § 503(c)(5) membership association made up of local, state, and federal agencies charged by law to regulate the sale and distribution of animal feeds and animal drug remedies. AAFCO has *no* regulatory authority and no permanent staff. AAFCO provides a forum for government regulators and industry representatives to, among other things, develop national, uniform laws, regulations, standards, definitions and enforcement

policies for state officials to use in regulating the manufacture, labeling, distribution, and sale of animal feeds.

It is, and has been, AAFCO's intention to cooperate in responding to the Subpoena. We appreciate your efforts to limit the burden and to extend the return date. However, to reiterate our previous statements, this is and has been an enormously costly and difficult process for a non-profit trade association comprised of government officials, particularly when so much of the information you seek is publicly available for review, for free, or for relatively nominal cost, on the AAFCO website. AAFCO has had to bear legal fees and costs that could have been eliminated entirely, or reduced, with a more carefully constructed Subpoena served *after* review of the information already available.

We continue and reassert our previously submitted objections of November 21, 2017. At AAFCO's direction and in the interest of controlling costs, we err on the side of over-inclusion and have identified and produced records that may not be responsive to the Subpoena. However, production of any such record is not a waiver of AAFCO's rights, privileges, and objections as to that record, is not an admission that such record is responsive, relevant, or admissible, and does not constitute a waiver of any applicable right, objection, or privilege as to any other record, regardless of whether that document record was produced.

We further object to the electronic production of the AAFCO *Official Publication*. As we have stated repeatedly, this is a copyrighted book that is available for purchase. Your continuing efforts to "copy" an 800 page copyrighted book, produced annually, from 2010 to the present, or otherwise demand that AAFCO produce it, rather than just purchasing it yourselves, are unduly burdensome and unfairly shift burdens and costs to AAFCO that the plaintiff should bear. The *Official Publication* is unique, an extremely important source of revenue for AAFCO and is, indeed, one of the primary reasons for AAFCO's existence. AAFCO tightly controls the *Official Publication's* use and distribution to prevent unauthorized, unlawful, and infringing uses.

Our serious objections and misgivings notwithstanding, electronic versions of the *Official Publication* for years 2012-2018 are included in this production. At the conclusion of this litigation, we demand that all copies, including electronic copies of the *Official Publication* in your possession, be returned or destroyed. Further, we demand that all uses of the *Official Publication*, and pages thereof, be limited solely to this litigation and for no other purposes. AAFCO specifically reserves its right to pursue copyright infringement actions against you, the plaintiff, and your agents, experts, and any others acting under your direction should there be use of the *Official Publication* for any use other than this litigation. We will deem such unauthorized uses to be copyright infringement and AAFCO will pursue its full rights under the law.

As previously agreed, you may review hard copies of the 2010 and 2011 *Official Publication* at the offices of the Federation of Animal Science Societies (FASS), 1800 S Oak St., Ste 100, Champaign, IL 61820.

Pursuant to our previous agreement, we have conducted an electronic search of records in AAFCO's custody and control using the following search parameters:

1. Search: Vitamin OR mineral OR synthetic OR chemical AND natural

Records were then reviewed to determine if any communications were between:

- AAFCO and the California Department of Public Health concerning pet food labeling or natural foods for pets (Subpoena requests 1 and 2);
- Communications between AAFCO and anyone else concerning the California proposed rule-making on pet food labeling or natural foods for pets (Subpoena requests 7 and 8);
- Communications from any member of the Pet Food Industry to AAFCO concerning pet food labeling (Subpoena request 3); and
- Communications from any Pet Food Industry trade association to AAFCO concerning pet food labeling (Subpoena request 4).

We have identified records responsive to these requests and produce them herein. We have erred on the side of over-inclusion in the interest of reducing costs to AAFCO and, as such, some produced records are not responsive to the Subpoena. As asserted above, production of any non-responsive record is not a waiver of AAFCO's rights, privileges, and objections as to that record or any other record, whether or not that record was produced.

2. Search: Grimm

We have identified no records regarding this action other than records and communications regarding responding to this Subpoena. We object to providing these records on grounds of privilege. We have had nominal email communications with counsel for the defendants in this action in order to, as you requested, apprise counsel of this Subpoena and the status of AAFCO's response. We object to producing these records.

3. Search: APN OR Ainsworth Pet Nutrition OR K&L Gates OR Ellen Darling OR Caitlan Blanche OR Andrew Gahan OR Nutrish OR Rachel Ray

Records were reviewed to determine if any were communications between AAFCO and any of these entities or persons (Subpoena request 6). We have identified records responsive to these requests and produce them herein. We decline to produce, as both non-responsive and

highly burdensome, any internal AAFCO records that merely include the name of one of the above identified entities but do not constitute an actual communication between that entity and AAFCO. For example, we decline to produce spreadsheets of addresses that include an address for Ainsworth Pet Nutrition.

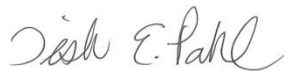
* * *

With a few exceptions, we are unable to produce email and other electronic records from 2010 and 2011. In early 2012, AAFCO altered its recordkeeping processes. Though pre-2012 records exist, they are in huge, badly corrupted text files that, due to formatting and embedded codes transferred to text format, are comprised of thousands of pages of random letters and numbers with occasional, mostly unintelligible communications. As an example, one archived email text file is 9.8 KB – over 4,000 pages if copied from Notepad into Word. On the grounds of burden, we object to bearing the cost of attempting production of these records.

* * *

Please contact me if you have any questions and when you intend to schedule a review of the other 2010 and 2011 *Official Publication*.

Sincerely,



Tish E. Pahl, Esq.

Encl by Overnight Delivery: Disk, AAFCO Subpoena Production #1, AAFCO_00001-08178

Cc (with enclosure):
Caitlin C. Blanche, Esq.
K&L Gates LLP