

EXHIBIT 2

Declaration of Alia Al-Khatib

1. I am over 18 years old and legally competent to testify.
2. I am an attorney with Friends of Farmworkers d/b/a Justice at Work in Philadelphia, Pennsylvania.
3. On May 19, 2020, Justice at Work submitted an imminent danger complaint as representatives of Maid-Rite workers who wished to remain anonymous. Attached as Exhibit A is a true and correct copy of the May 19, 2020 complaint.
4. The next day, a paralegal from our office confirmed that the imminent danger complaint was received by the OSHA Wilkes-Barre area office. I reviewed the paralegal's notes documenting this phone call.
5. On May 27, 2020, my office faxed a follow-up letter to the OSHA Wilkes-Barre office, after we had not received a response from OSHA. Attached as Exhibit C is a true and correct copy of the May 27, 2020 letter.
6. In that letter, we expressed concern that OSHA was not taking immediate steps to address our imminent danger complaint.
7. On May 28, 2020, Assistant Area Director Susan Giguere called me in response to Justice at Work's May 27, 2020 letter. Ms. Giguere stated that OSHA sent our office a letter in response to our complaint and that such complaints are handled the day they are received. Ms. Giguere stated that the complaint was being considered as a "non-formal" complaint and that OSHA was taking steps to handle the inquiry. She did not provide information about specific steps that OSHA was taking to address the complaint.
8. Later that same day, our office received the letter sent via regular mail from OSHA Area Director Mark Stelmack dated May 21, 2020 in which Mr. Stelmack stated OSHA was treating our complaint as a "non-formal complaint." The letter stated that OSHA had contacted the employer in writing and the employer had been given 5 days to correct the hazards documented in the complaint. It further stated, "Please notify me if no correction has been made by May 28, 2020." Mr. Stelmack also attached a letter that OSHA sent to Maid-Rite. Attached as Exhibit B is a true and correct copy of the May 21, 2020 correspondence.
9. On June 1, 2020, I called Assistant Area Director Giguere to inform her that our clients told us that Maid-Rite had made no changes to workplace conditions since the imminent danger complaint was filed.
10. Ms. Giguere told me that the company sent OSHA a response, but that she would not send the response to me to review. Ms. Giguere stated that the next step would involve either an onsite inspection or further inquiry with the company.


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11. When I asked Ms. Giguere why the complaint was treated as “non-formal,” she explained it was because all complaints in counties under red zone orders were being treated as non-formal so that OSHA would not have to perform on-site inspections. In April, Pennsylvania’s Governor had issued a three-tiered COVID-19 reopening plan for the state that designated counties as being in the red, yellow, or green phase. A “red phase” designation meant that the county had a high number of COVID-19 cases, and most business operations were severely restricted. During this same conversation, Ms. Giguere also told me that the May 19, 2020 complaint could not be treated as an imminent danger complaint because then OSHA would have to treat all COVID-related complaints as imminent danger complaints.
12. On June 2, 2020, our office faxed another letter to Mr. Stelmack in which we requested a copy of Maid-Rite’s response to OSHA and referenced OSHA’s Field Operations Manual, Chapter 9, Section (I)(I)(6), which states that procedures for an inquiry require sharing the employer’s response with the complainant. Attached as Exhibit D is a true and correct copy of the June 2, 2020 letter.
13. Ms. Giguere called me in response to the June 2, 2020 letter to explain that we were not entitled to the response because the inquiry had not been finalized.
14. During that call, Ms. Giguere informed me that an inspection had begun and that it could take up to six months to complete. She said that once the inspection was completed, our office could submit a FOIA request for the response.
15. I asked Ms. Giguere whether representatives from our office could be present for an inspection of the Maid-Rite facility. Ms. Giguere stated that only union representatives can be present during inspections. Our office was not provided a date of the onsite inspection nor given any other indication of immediate action to resolve the workers’ imminent danger complaint.
16. On June 3, 2020, Ms. Giguere emailed me to request to interview by telephone at least two of the employees who Justice at Work represents.
17. I responded to Ms. Giguere’s email that same day to provide the workers’ general availability, to confirm that representatives from our office could participate in our clients’ phone interviews, and to confirm that OSHA would maintain confidentiality of workers’ names, as workers expressed serious concerns of retaliation.
18. Ms. Giguere responded on June 4, 2020 via email and stated that the workers’ names would not be revealed to the employer.
19. Because our clients expressed great concern about having their identities revealed and fear of retaliation by the employer, I asked Ms. Giguere further about confidentiality related to workers’ identities in an email sent on June 5, 2020.

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20. On June 8, 2020, Ms. Giguere called me in response to my email to state that OSHA would not proceed with interviews if the workers wished to remain anonymous. Ms. Giguere stated that the OSHA investigator would be conducting interviews with a random selection of Maid-Rite workers. Should our clients proceed with interviews, they would be required to share their names and other identifying information. She explained that OSHA would keep our clients' names confidential to the extent permitted by law. However, if the administrative process reached the point of hearing, the workers would be called to testify.
21. Our clients repeatedly expressed fears that the company would retaliate against them if they shared their names.
22. On June 11, 2020, I emailed Ms. Giguere again to ask whether OSHA had conducted an onsite inspection, as the OSHA webpage that details information about inspections indicated that a "closing conference" was conducted on June 2, 2020. I told Ms. Giguere again that our clients stated that no changes have been made at the facility since the imminent danger complaint was submitted.
23. In her email in response, Ms. Giguere stated, "On the day that an inspection is opened, an opening and closing conference is typically held. This inspection is in progress, and a response will be provided to you regarding its outcome at the conclusion of the inspection."
24. I called and left a message on June 12, 2020 to seek clarification of whether these conferences meant an onsite inspection was held.
25. On June 25, 2020, Ms. Giguere contacted me via email to ask further about our clients' reports that nothing has changed at the facility.
26. On June 29, 2020, our office submitted three signed and redacted declarations from our clients that detail the ongoing hazards that pose an imminent danger. Attached as Exhibit E is a true and correct copy of the June 29, 2020 letter. Attached as Exhibits F, G, and H are true and correct copies of each of the signed and redacted worker declarations.
27. As of the date of signing of this declaration, I have not had any other communications with the OSHA Wilkes Barre office.

I, Alia Al-Khatib, declare under penalty of perjury that the above statement is true and correct.



Signature

July 21, 2020

Date