IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA Plaintiff, vs. QUALITY EGG, LLC, (d/b/a/ Wright County Egg and Environ), AUSTIN DECOSTER (a/k/a/ Jack DeCoster), and PETER DECOSTER Defendants.	Case No. 14-CR-3024 MWB **UNDER SEAL**

MEMORANDUM IN SUPPORT OF DEFENDANT AUSTIN ("JACK") DECOSTER'S MOTION THAT A SENTENCE OF INCARCERATION OR CONFINEMENT IS UNCONSTITUTIONAL

Austin ("Jack") DeCoster has pled guilty to a misdemeanor offense for which no proof of knowledge or intent is required. In fact, Mr. DeCoster had no knowledge of the violation and no knowledge of the conduct underlying the offense. Instead, the plea is based upon his status as a corporate officer at the relevant time.

The parties agree on the essential facts. Both parties acknowledge that Mr. DeCoster had no "knowledge, during the time frame from January 2010 through August 12, 2010, that eggs sold by Quality Egg were, in fact, contaminated with *Salmonella Enteriditis*," but that Mr. DeCoster occupied a position of "authority" at Quality Egg. (Plea Agreement, ¶ 7(b)-(c) (Document #16-1)). That is enough to support the strict liability misdemeanor at issue.

The strict liability offense is a rarity in the criminal justice system. Although courts have sanctioned criminal convictions in the absence of *mens rea*, they have only been found permissible where "the penalty is relatively small." *Holdridge v. United States*, 282 F.2d 302, 310 (8th Cir. 1960) (Blackmun, J.). Indeed, in the history of the Food, Drug, and Cosmetic Act,

no court has imposed a sentence of incarceration for a responsible corporate officer offense without a showing of *mens rea*. The Supreme Court has recognized that "the small penalties attached to such offenses logically complement[] the absence of a *mens rea* requirement: In a system that generally requires a 'vicious will' to establish a crime, . . . imposing severe punishments for offenses that require no *mens rea* would seem incongruous." *Staples v. United States*, 511 U.S. 600, 616-17 (1994) (quoting 4 William Blackstone, Commentaries, *21).

For such a strict liability offense, a sentence of incarceration, including intermittent, community, or home confinement, or other restriction on liberty other than probation, would be unconstitutional. Clarifying this issue in advance of the sentencing hearing will assist the parties in narrowing the disputed issues and facilitating an efficient use of judicial resources. As indicated in papers filed concurrently by Mr. DeCoster (*see* Defendants Quality Egg LLC's and Austin ("Jack") DeCoster's Consolidated Memorandum in Opposition to the Government's Motion for Partial Consolidation of Sentencing Hearings and in Support of Defendant's Motion for a Proffer (Oct. 6, 2014)), the government has suggested that it intends to expend a week or more of this Court's time to address numerous issues not related to Mr. DeCoster's offense conduct. *See* Government's Memo. in Support of Motion for Partial Consolidation of Sentencing Hearings, at 2-3 (Sept. 26, 2014) (Docket # 57-1).

As the Probation Office's Presentence Investigative Report ("PSR") indicates, Mr. DeCoster's offense level is 4 and his Criminal History Category is I. PSR ¶¶ 93, 98 (Oct. 2, 2014) (Doc. #60). With these offense characteristics, the Federal Sentencing Guidelines Manual permits a term of probation for up to three years. *Id.* ¶ 127; USSG § 5B1.1(a) (permitting sentence of probation because the applicable guideline range is in Zone A of the Sentencing Table). To further narrow the scope of contested issues, Mr. DeCoster respectfully requests this

Court to find that a sentence of incarceration or other confinement in light of the Sentencing Guidelines and his offense level would be unconstitutional.

ARGUMENT

A sentence of incarceration, including intermittent, community, or home confinement or other restriction on liberty other than probation, would violate Mr. DeCoster's constitutional right to due process. Given the constitutional uncertainty of strict liability criminal offenses, the responsible corporate officer doctrine has been carefully applied. In the absence of *mens rea*, the only appropriate sentence in this case is a fine and/or term of probation.

Proof of *mens rea* is central to the criminal justice system. "The contention that an injury can amount to a crime only when inflicted by intention is . . . as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." *Morisette v. United States*, 342 U.S. 246, 250 (1952); *Dennis v. United States*, 341 U.S. 494, 500 (1951) ("The existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence."). Though courts have recognized some strict liability offenses, they are "generally disfavored." *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 438 (1978).

The responsible corporate officer offense under the Food, Drug, and Cosmetic Act guts the requirement of *mens rea*. In doing so, the statute allows the imposition of criminal liability on the wholly innocent and unknowing. As the Supreme Court recognized, the statute "might operate too harshly by sweeping within its condemnation any person however remotely entangled." *United States v. Dotterweich*, 320 U.S. 277, 284-85 (1943). As such, it should be applied with circumspection. To temper the application of strict liability offenses, the Supreme Court has held that penalties imposed must be "small" and not give rise to "grave damage to an

offender's reputation." *Staples*, 511 U.S. at 616-17 ("the small penalties attached to such offenses logically complement[] the absence of a *mens rea* requirement"); *Morisette*, 342 U.S. at 256. The "wise guidance of trial judges" is relied upon to impose only small penalties so that the constitutionality of this strict liability offense may be preserved. *Dotterweich*, 320 U.S. at 284-85.

The long history of the application of the responsible corporate officer offense underscores this view. In the two Supreme Court cases upholding the constitutionality of the Food, Drug, and Cosmetic Act offense, the penalties were a $250 fine and a $500 fine and 60-day probation. *United States v. Park*, 421 U.S. 658, 666 (1975) (affirming a $250 fine); *Dotterweich*, 320 U.S. at 277 (affirming a $500 fine and 60-day probation). The penalties in these cases were "light," recognized Justice Stewart in dissent, but the imposition of "imprisonment for a year" for a strict liability offense would be "wholly alien to fundamental principles of our law." *Park*, 421 U.S. at 682-83 (Stewart, J., dissenting).

The Courts of Appeals, including the Eighth Circuit, have adopted this approach. In *Holdridge v. United States*, then-Judge Blackmun, writing for the majority, held that for the elimination of an intent requirement not to offend due process, it must be the case that "the penalty is relatively small" and the "conviction does not gravely besmirch." 282 F.2d at 310; *see also United States v. Unser*, 165 F.3d 755,762-64 (l0th Cir. 1999); *Tart v. Massachusetts*, 949 F.2d 490, 502-03 (1st Cir. 1991); *United States v. Wulff*, 758 F.2d 1121, 1125 (6th Cir. 1985). To determine whether a term of imprisonment is constitutionally permissible, a court must look to the severity of the penalty and its reputational impact. *See United States v. Heller*, 579 F.2d 990, 994 (6th Cir. 1978) ("if Congress attempted to define a *Malum prohibitum* offense that

placed an onerous stigma on an offender's reputation and that carried a severe penalty, the Constitution would be offended.").

In conformity with this constitutional litmus test, district courts have, in the absence of *mens rea*, imposed only "light" penalties.[1] For example, the Western District of Virginia held that "prison sentences are not appropriate" in "the absence of government proof of knowledge by the individual defendants of the wrongdoing." *United States v. Purdue Frederick Co.*, 495 F. Supp. 2d 569, 576 (W.D. Vir. 2007).[2] In fact, the Department of Justice acknowledged in that case that "a sentence of incarceration based on a strict liability offense, a Sentencing Guidelines' total offense level of 6 or less, and a Criminal History of Category I would be unusual." *Purdue Frederick*, No. 07-cr-29, at 12 (W.D. Va. Jun. 6, 2007 (sentencing memo.).

The exact same is true here. As confirmed by the U.S. Probation Office, Mr. DeCoster's Sentencing Guidelines' total offense level is 4, and his Criminal History Category is I. PSR ¶¶ 93, 98; USSG § 5B1.1(a) (permitting sentence of probation for this offense). As such, a

[1] Counsel found only two cases in the thirty-five-plus years since *Park*, 421 U.S. 658, where terms of imprisonment were imposed by a district court. In each, the court acknowledged defendants' direct involvement in the offense that supported findings of *mens rea*. In the first, the court found "[t]his case stands alone." *United States v. Higgins*, No. 09-403-4, 2011 WL 6088576, at *10 (E.D. Pa. Dec. 7, 2011) (sentencing defendants to 5 to 9 months' imprisonment). "We have not been able to locate a single case that involves such carefully constructed, meticulously implemented, and patently illegal, clinical trials," stated the court. *Id*. In the second, the court found that the defendant participated in the offense by mislabeling morphine drugs. *United States v. Hermelin*, No. 4:11-cr-85 (E.D. Mo. Mar. 24, 2011) (sentencing defendant to 17 days' imprisonment).

[2] In the thirteen published opinions since the *Park* decision, there is no indication that a term of imprisonment was imposed. *United States v. Acosta*, 17 F.3d 538 (2d Cir. 1994); *United States v. Haga*, 821 F.2d 1036 (5th Cir. 1987); *United States v. Gel Spice Co., Inc.*, 773 F.2d 427 (2d Cir. 1985); *United States v. Starr*, 535 F.2d 512 (9th Cir. 1976); *United States v. Y. Hata & Co.*, 535 F.2d 508 (9th Cir. 1976); *United States v. Purdue Frederick Co.*, 495 F. Supp. 2d 569 (W.D. Va. 2007); *United States v. Coleman*, 370 F. Supp. 2d 661 (S.D. Ohio 2005); *United States v. General Nutrition, Inc.*, 638 F. Supp. 556 (W.D.N.Y. 1986); *United States v. Torigian Labs., Inc.*, 577 F. Supp. 1514 (E.D.N.Y. 1984); *United States v. J. Treffiletti & Sons*, 496 F. Supp. 53 (E.D.N.Y. 1980); *United States v. New England Grocers Supply Co.*, 488 F. Supp. 230 (D. Mass. 1980); *United States v. Acri Whole Grocery Co.*, 409 F. Supp. 529 (S.D. Iowa 1976).

sentence of incarceration, including intermittent, community, or home confinement or other restriction on liberty other than probation, would be inappropriate. Indeed, a term of incarceration or confinement—with the attendant reputational impact—simply is not the type of "small penalty" which can be upheld in the absence of *mens rea*.

CONCLUSION

For the foregoing reasons, this Court should rule that a sentence of incarceration or home confinement in this case would be unconstitutional.

Respectfully submitted,

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Dated: October 8, 2014

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2014, I caused MEMORANDUM IN SUPPORT OF DEFENDANT AUSTIN ("JACK") DECOSTER'S MOTION THAT A SENTENCE OF INCARCERATION OR CONFINEMENT IS UNCONSTITUTIONAL to be served on the counsel listed below by certified postal mail:

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