

STEARNS COUNTY

MAR 20 2012

State of Minnesota

COURT ADMINISTRATION  
FILED ON  
County of Stearns  
Complaint

District Court

2012 MAR 19 PM 3 54

DOMESTIC ASSAULT  
AMENDED COMPLAINT  
TAB CHARGE PREVIOUSLY FILED  
BY: \_\_\_\_\_ DEPUTY

| DATE FILED | PROSECUTOR FILE NO. | COURT FILE NO. |
|------------|---------------------|----------------|
| 3-20-12    | CR-2011-1787        | 13-CR-12-28410 |

STATE OF MINNESOTA,

PLAINTIFF,

SUMMONS

MISDEMEANOR

VS.

NAME: First, Middle, Last  
**Alvin Alfred Schlangen**  
 33236 Oakland Road  
 Freeport, MN 56331

DEFENDANT

Date of Birth  
 10/02/1957

WSM/bjb 3/15/12 dc

| Ct | Statute Type      | Offense Date             | Statute Number & Description   | Offense Level | MOC   | GOC | Controlling Agencies | Control Numbers |
|----|-------------------|--------------------------|--|---------------|-------|-----|----------------------|-----------------|
| 1  | Charge<br>Penalty | 6/23/10                  | 28A.04 Subd. 1(a) Food handler- License required<br>28A.12 Food Handler - Penalty for violations of section 28A.01 to 28A.15 or rules - Misdemeanor  | M             | M5512 | N   | MND0A0200            | 12007301        |
| 2  | Charge<br>Penalty | 6/23/10                  | 29.23 Subd. 3 Eggs - Fail to maintain temperature requirements<br>29.28 Poultry and Eggs - Penalty for Violation - Misdemeanor   | M             | M5512 | N   | MND0A0200            | 12007301        |
| 3  | Charge<br>Penalty | 6/23/10                  | 31.02 Subd. (a) Food-manufacture, sale, or delivery, holding, offering for sale-adulterated or misbranded<br>31.032 Subd. 1 Food-Prohibited Acts- Penalty  | M             | M5511 | N   | MND0A0200            | 12007301        |
| 4  | Charge<br>Penalty | 6/23/10<br>to<br>12/3/10 | 31.02 Subd. (i) Food-removal or disposal of embargoed article<br>31.032 Subd. 1 Food-Prohibited Acts- Penalty  | M             | M5512 | N   | MND0A0200            | 12007301        |
| 5  | Charge<br>Penalty | 6/23/10                  | 31A.10 Subd. (4) Meat and Poultry - Sell, offer for sale, possess w/ intent to sell meat from custom processing<br>31A.26 Subd. 1 Meat and Poultry - Misdemeanor- Chapter 31A violations not otherwise specified | M             | M5512 | N   | MND0A0200            | 12007301        |
| 6  | Charge<br>Penalty | 6/23/10                  | 32.393 Subd. 1 Milk and Milk Products - Sale prohibited unless pasteurized<br>32.90 Dairy, Milk and Milk Products - Penalty for Violation - Misdemeanor  | M             | M5512 | N   | MND0A0200            | 12007301        |

counters 10/1/12

### Complaint

Complainant, James Roettger, is a Compliance Officer for the Minnesota Department of Agriculture, and makes this Complaint and states that there is probable cause to believe that the Defendant committed the following offense(s). The Complainant states that the following facts establish PROBABLE CAUSE:

In April, 2009, Jennifer Stepes, Supervisor for the Minnesota Department of Agriculture (MDA), received information that an individual identified as Alvin Schlangen, subsequently fully identified as Alvin Alfred Schlangen, DOB 10/02/1957, hereinafter defendant, was selling products at farmers' markets which were not all products of his farm, and that some of the meat and poultry products were multi-ingredient. Supervisor Stepes also was advised that defendant was selling raw (unpasteurized) milk that came from a farm near the Schlangen farm. Supervisor Stepes learned that defendant was not required to comply with the USDA Shell Egg Surveillance in that he claimed to have less than 3000 laying hens. A search of the Internet found a site entitled "mnorganiceggs.com" which was linked to a five acre parcel described as the Schlangen Family Farm and Delivery Service. In addition to the above foods, the site offered beef, bison, chicken, fruits, vegetables, butter, and other products for sale at the farm located near Freeport at 33236 Oakland Rd., Oak Township, Stearns County, Minnesota, and through delivery to numerous locations in the Twin Cities area.

Complainant notes that the Minnesota Constitution, Article 13, § 7 provides that: *Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefore.* However, neither the Minnesota Constitution nor Minn. Stat. § 28A.15 exempt a person from licensure pursuant to Minn. Stat. § 28A.04 when selling or offering for sale products of somebody else's farm. MDA determined that neither Alvin Schlangen nor Schlangen Family Farms held a food handler's license with the MDA or any of its delegated agencies.

Additional investigation by MDA staff revealed that in addition to food sales offered on the Internet, the defendant was operating from an unlicensed warehouse in Minneapolis and used a white Dodge delivery van for selling food at various farmers' markets and drop-off sites around the state. On May 22, 2010, MDA Compliance Officers observed the defendant and his van set up and selling food items at the Minneapolis Midtown Farmers' Market.

On June 15, 2010, during an inspection of defendant's Minneapolis warehouse Compliance Officers determined the facility was unlicensed and selling various products not of the farm including raw milk. At this time defendant was advised to obtain a license, discontinue misbranding of food products, discontinue selling various homemade food products, meat labeled "Not for Sale," uninspected meat, home canned products, raw milk, and unpasteurized yogurt. Defendant was further ordered to maintain food coolers at 41°F or less (coolers containing eggs were noted at 50°F). Defendant was ordered to maintain his coolers in a clean condition after mold buildup was noted in several of them. Some moldy and out of date products were embargoed by the MDA. Samples taken of what appeared to be milk, yogurt, butter, and cream, all tested positive for phosphatase, indicating the products contained raw (unpasteurized) dairy product. Although MDA staff discussed the above compliance orders with the defendant, the defendant appeared resistive of coming into compliance with the food safety laws.

On June 23, 2010, Compliance Officers from MDA visited defendant's Schlangen's Family Farm near the City of Freeport, Stearns County, Minnesota. Compliance Officers observed that the farm had laying chickens in a barn facility and that eggs from this flock were cleaned and packed on site and stored until distribution. Defendant advised he had approximately 1400 laying hens at the time. Compliance Officers did not observe any facilities for raising beef, dairy cattle, bison or salmon. Compliance Officers did not observe any growing orange, banana, or fruit trees, or growing vegetables of a quantity sufficient to support the frozen vegetables defendant held out for sale. Defendant did not have any approved facilities for bottling milk, breaking eggs, or processing food of any nature.

During the inspection, Compliance Officers noted and embargoed products not of the farm including unlabeled butter, unlabeled frozen chicken, fish, Sno-pack peas, Stony Creek butter, Larry Schultz frozen chicken products of various kinds, meat labeled "Not for Sale," fresh asparagus, gallon and half-gallon containers of unlabeled product appearing to be milk, unbranded containers labeled yogurt, unlabeled frozen liquid eggs, pizza, and Lucky Pig Cuts. The temperature in a number of the coolers containing product was found to be in excess of the 45°F legal limit. (coolers containing eggs were noted at 52°F). A subsequent analysis of the milk, yogurt, and butter held for sale by defendant indicated the presence of phosphatase, indicating the product was unpasteurized.

Compliance Officers obtained copies of a number of receipts indicating that defendant was selling significant quantities of products not of the farm to others both for personal consumption and for resale. Compliance Officers also obtained copies of invoices for milk defendant obtained from Molitor Organic Farms and Waldorf Dairy Farm. Additional receipts were obtained showing purchases by defendant from Tivoli Distributing Co. for frozen fruits and vegetables, Alaska Wild Fish Company for cod, salmon, and wild rice, Larry Schultz Organic Farm for various chicken and processed products containing chicken, Gourmet Parlor Pizza for pizza, Texas Organic LLC, and Stony Creek Dairy, for the purchase of chicken, meat, and food products for resale by defendant.

On July 7, 2010, Compliance Officer Mitterholzer spoke to Ronald Waldorf, the operator of Waldorf Dairy in Albany, Stearns County, Minnesota. Mr. Waldorf advised that with regard to several invoices, he had sold respectively 142.5 gallons of raw milk and 97.5 gallons of raw milk in April and May of 2010 to defendant. Mr. Waldorf advised the defendant bought the milk in bulk form and hauled it in 5 gallon food grade pails with lids. Waldorf stated he was under the impression that defendant was feeding the milk as pet food to his chickens, but was otherwise not aware of what the defendant did with the milk once he bought it, or where he went with it other than his farm.

On July 12, 2010, MDA Compliance Officers gave defendant Notice of Administrative Meeting to be held July 27, 2010, to discuss the findings of the June 23, 2010 visit. Defendant and his attorney appeared at the Administrative Meeting and presented a document entitled "Agency Agreement." Defendant and his attorney asked questions and made comments pertaining to the distribution of raw milk off the farm. Defendant never addressed whether or not he would apply for licensing, and did not address concerns for the release of embargoed products at his farm or at the Minneapolis warehouse.

On August 5, 2010, defendant made a request for the release of product embargoed by the MDA on June 23, 2010. Thereafter MDA released some but not all of the embargoed product. On December 3, 2010, Compliance Officers from the MDA conducted an investigation to determine the disposition of the still embargoed food held at defendant's Freeport property. The investigation revealed that defendant had removed the embargoed foods from the coolers and freezers without authorization from MDA. What defendant did with the embargoed product is unknown.

On March 9, 2011, MDA Compliance Officers visited defendant's delivery van at a location in St. Paul, Ramsey County, Minnesota. Compliance Officers again found defendant selling unpasteurized milk, butter, yogurt, and cheese, as well as custom processed meats labeled "Not for Sale," inspected meats, frozen vegetables, shell eggs that were labeled "organic" in previously used egg cartons, and unknown meat and vegetable mixtures. Cartons of eggs and milk were found in the van without proper refrigeration. A cooler in the van was noted to contain a putrid-smelling liquid in the bottom.

On March 9, 2011, Compliance Officers also visited defendant's Minneapolis warehouse and again found unpasteurized dairy products, items lacking proper labeling or no labeling, custom processed meat labeled "Not for Sale," improperly refrigerated eggs and milk, and moldy fruit. MDA again offered defendant the opportunity to purchase a food handler's license and defendant refused.

On May 19, 2011, MDA held an Administrative Meeting to give defendant an opportunity to explain his position before MDA decided what enforcement action was needed. The defendant presented his position that he was not subject to government regulation and oversight, and that he was allowed to sell food in any way he saw fit despite what the law states. Defendant stated that he would continue to violate the law as it is written and that there was no middle ground.

Complainant has reason to believe and does believe that all of the above information is true and correct.

The above facts constitute Complainant's basis for believing that the above-named defendant, on or after June 23, 2010, in the Township of Oak, County of Stearns, State of Minnesota, committed the below described offenses:

**Count 1**

**Charge: Food handler-License required**  
**In Violation of: 28A.04 Subd. 1(a)**  
**Penalty: 90 days imprisonment and/or \$1000 fine**

That the defendant, Alvin Alfred Schlangen, then and there being, did wrongfully and unlawfully engage in the business of manufacturing, processing, selling, handling, or storing food without first having obtained from the Commissioner a license for doing such business.

**Count 2**

**Charge: Eggs - Fail to maintain temperature requirements**  
**In Violation of: 29.23 Subd. 3**  
**Penalty: 90 days imprisonment and/or \$1000 fine**

That the defendant, Alvin Alfred Schlangen, then and there being, did wrongfully and unlawfully hold eggs at a temperature exceeding 45°F.

**Count 3**

**Charge: Food-manufacture, sale, or delivery, holding, offering for sale-adulterated or misbranded**  
**In Violation of: 31.02 Subd. (a)**  
**Penalty: 90 days imprisonment and/or \$1000 fine**

That the defendant, Alvin Alfred Schlangen, then and there being, did wrongfully and unlawfully hold or offer for sale any food that is adulterated or misbranded.

Count 4

**Charge:** Food-removal or disposal of embargoed article  
**In Violation of:** 31.02 Subd. (i)  
**Penalty:** 90 days imprisonment and/or \$1000 fine

That the defendant, Alvin Alfred Schlangen, then and there being, did wrongfully and unlawfully remove or dispose of a detained or embargoed article in violation of section 31.05, without permission from the Commissioner.

Count 5

**Charge:** Meat and Poultry - Sell, offer for sale, possess w/ intent to sell meat from custom processing  
**In Violation of:** 31A.10 Subd. (4)  
**Penalty:** 90 days imprisonment and/or \$1000 fine

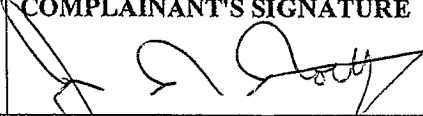
That the defendant, Alvin Alfred Schlangen, then and there being, did wrongfully and unlawfully offer for sale, or possess with intent to sell meat derived from custom processing.

Count 6


**Charge:** Milk and Milk Products - Sale prohibited unless pasteurized  
**In Violation of:** 32.393 Subd. 1  
**Penalty:** 90 days imprisonment and/or \$1000 fine

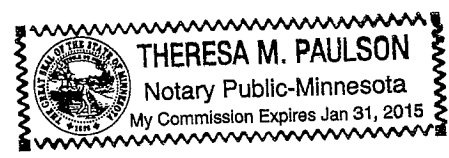
That the defendant, Alvin Alfred Schlangen, then and there being, did wrongfully and unlawfully advertise, offer or expose for sale or hold in possession for sale for the purpose of human consumption in fluid form in this state, milk which had not been pasteurized and properly cooled as defined in section 32.391.

THEREFORE, Complainant requests that said Defendant, subject to bail or conditioned of release be:  
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or  
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

|  |  |
|--|--|
| <b>COMPLAINANT'S NAME:</b><br>James R. Roettger<br>Minnesota Department of Agriculture | <b>COMPLAINANT'S SIGNATURE</b><br> |
|--|--|

This COMPLAINT was subscribed and sworn to before the undersigned this \_\_\_ day of \_\_\_\_\_, 20\_\_.

|   |   |
|---|---|
| <b>NAME:</b> Theresa Paulson<br><b>Title:</b> Notary Public | <b>Signature:</b><br> |
|---|---|



Being duly authorized to prosecute the offense(s) charged, I hereby approve this Complaint

DATE:

March 15, 2012

PROSECUTING ATTORNEY'S SIGNATURE

*William S. MacPhail*

PROSECUTING ATTORNEY:

NAME/TITLE

William S. MacPhail  
Assistant County Attorney  
Attorney Registration #: 0066151

PROSECUTING ATTORNEY:

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