



Issue Date: 08 March 2016

Case No. 2016-FDA-00001

In the Matter of:

MANUEL MARTINEZ
Complainant

v.

PACMOORE PRODUCTS, INC.
Respondent

ORDER OF DISMISSAL

This proceeding arises under the employee protection provisions of the Food Safety Modernization Act (“Act”).¹ It is not currently scheduled for hearing.² On January 13, 2016, Complainant notified the Court of his intent to file an original action at law in the United States District Court and withdrew his request for an administrative hearing.³ At that time it appeared that an action had not been filed. Accordingly, on January 15, 2016, I issued an Order holding the case in abeyance pending notification of filing by Complainant.⁴ On March 8, 2016, Complainant indicated that he had filed a complaint with the United States District Court for the Northern District of Indiana on February 29, 2016.⁵ Therefore, in light of the foregoing, it is hereby **ORDERED** that Complainant’s request for hearing is hereby **DISMISSED**.

SO ORDERED.

STEPHEN R. HENLEY
Chief Administrative Law Judge

¹ 21 U.S.C. § 399d

² On June 22, 2015, Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging he was laid off on February 12, 2015 for raising concerns about food safety. On November 30, 2015, OSHA dismissed the complaint finding no violation of the Act. Complainant appealed, requesting a hearing before this office on December 25, 2015.

³ If the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. 21 U.S.C. § 399d(b)(4)(A).

⁴ A United States District Court does not assume jurisdiction until a complaint is filed. *See, e.g., Stone v. Duke Energy Corp.*, 432 F.3d 320 (4th Cir. 2005) (Sarbanes-Oxley case).

⁵ *Martinez v. PacMoore Products, Inc.*, No. 2:16 CV 75 (N.D. Ind. 2016).