Shared Economy Tales of Woe

Outbreaks and Legal Issues

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S3 Conference
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Shared Economy Tales of Woe

Presentation Overview

209 Food Spot Case

Hurdles for Enforcement

Potential Fixes

Home Kitchens
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209 Food Spot Case Review

- Complaints received - 2014

<table>
<thead>
<tr>
<th>Record ID</th>
<th>Received Date</th>
<th>Site Location</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CO0034382</td>
<td>12/5/2011</td>
<td>WEBSITE BASED COMPLAINT-FACEBOOK</td>
<td>(C) STATED THE RESPONSIBLE PARTY IS ADVERTISING TO SELL ON FACEBOOK UNDER LOCAL CAKE SHOPS / BUSINESS, CLAIMING SHE MAKES CAKE POPS FROM HER HOME IN LODI. SEE ATTACHED. ***NOTE: SCANNED IN QUESTYS AT &quot;UNKNOWN ADDRESS / NO ADDRESS,&quot; ***</td>
</tr>
<tr>
<td>CO0038266</td>
<td>7/22/2014</td>
<td>209 FOOD SPOT</td>
<td>SELLING LUMPIA (BEEF AND CHICKEN) ON FACEBOOK. ALSO PANCI. <em><strong>NORTH STOCKTON</strong></em></td>
</tr>
<tr>
<td>CO0038478</td>
<td>9/5/2014</td>
<td>209 FOOD SPOT</td>
<td>PERSON IS SELLING HOME QUESO FRESCO AND SELLING VIA FACEBOOK</td>
</tr>
<tr>
<td>CO0038526</td>
<td>9/12/2014</td>
<td>209 FOOD SPOT (GROUP ON FACEBOOK)</td>
<td>(C) HAS NEIGHBOR WHO PURCHASED A HAMBURGER FROM FACEBOOK (209 FOOD SPOT) AND BECAME SICK.</td>
</tr>
<tr>
<td>CO0038578</td>
<td>9/24/2014</td>
<td>209 FOOD SPOT (FACEBOOK)</td>
<td>SELLING FOOD VIA FACEBOOK.</td>
</tr>
<tr>
<td>CO0038666</td>
<td>10/7/2014</td>
<td>209 FOOD SPOT</td>
<td>FOOD IS BEING PREPARED AND ADVERTISED FOR SALE ON FACEBOOK WITHOUT A VALID HEALTH PERMIT FROM THE SJC EHD.</td>
</tr>
<tr>
<td>CO0038730</td>
<td>10/20/2014</td>
<td>209 FOOD SPOT</td>
<td>SOMEONE SELLING VIETNAMESE SHRIMP SPRING ROLLS ON FACEBOOK. 209 FOOD SPOT PAGE USING NAME - CYNFULLY DELISH.</td>
</tr>
<tr>
<td>CO0039027</td>
<td>12/29/2014</td>
<td>209 FOOD SPOT</td>
<td>FACE BOOK PAGE ENABLING THE SALES OF FOOD FROM UNAPPROVED SOURCES, AND BUSINESSES WITHOUT HEALTH PERMITS.</td>
</tr>
<tr>
<td>CO0039111</td>
<td>1/16/2015</td>
<td>209 FOOD SPOT</td>
<td>SOFIA DELAROSA SELLING FOOD ON FACEBOOK ADVERTISING CATERING BUSINESS. SEE ATTACHED E-MAIL AND ADDRESS VIA E-MAIL FROM FROM (C).</td>
</tr>
</tbody>
</table>

- Foodborne illness and unfair business practices alleged
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209 Food Spot Case Review

- Facebook group – open to public
- Selling Potentially Hazardous Food from private homes
### Shared Economy Tales of Woe

- Chicken Adobo
- Lumpia
- Ceviche
- Chicken Stir Fry
- Enchiladas
- Chile Verde
- Strawberries/Whipped Cream
- Home-made Sausage
- Philly Steak
- Pulled Pork
- Pretzel Dogs
- Chili Fries
- Nachos
- Fruit Trays
- Cheesecake
- Shrimp Spring Rolls
- Tortillas
- Empanadas
- Flautas
- Meat/Cheese/Egg Trays
- Chicken/Beef Dinners
- Burritos
- Hash Browns
- Bread Bowls/Soup
- Potatoes with Sour Cream
- Chicken Parmesian
- Apple Dumplings
- Shredded Beef Burritos
- Indian Food
- Stromboli
- Turkey-Stuffed Peppers
- Fried Chicken
- Home-made Ice Cream
- Egg Rolls
- Chicken/Beef Sticks
- Texas BBQ
- Sauce Infused with Tequila
- Steak Sandwiches
- Bacon Fries
- Crab Puffs
- Chamoy Apples
- Pepinos Locos
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Homemade mole sauce over boneless chicken breast
$8 — East Stockton off Waterloo pick up only

I have 2 no shows/no call so they are available.. I’ll be cleaning up soon so I can’t wait too long.

Includes rice & homemade Refried beans. (avocados & sour cream not included)

Mini chicken tortas & 10 layered dip! Wed Sept 2nd
$7 — East Stockton off Waterloo pick up only

Ok so I've been getting many requests for my chicken tortas so I'm giving you a week's notice because many say I didn't post with enough time for them to see they were about to be available. So put your preorders in because these always fill up.

These are my mini Tortas (not so mini I've heard lol) still a big portion.

$7 for torta with chips
$7 for 7” pan 10 layered dip with tostadas.
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Spicy Roll Special & California Sushi Rolls
$12.00

**SOLD OUT**

**PLEASE READ ENTIRE POST BEFORE COMMENTING**

TAKING PRE ORDERS FOR SUNDAY OCTOBER 4TH.
PICK UP TIMES WILL BE 2PM-5PM

**PLEASE READ ENTIRE POST AS ALL INFO WILL BE LISTED**

Pick up Orders For MONDAY Oct 12th. Pick up Only Between 5-7pm.
Each Meal Will Include 1 Sandwich, A Side Of Macaroni Salad & A Dessert Of My Choice.

Any Additional Sandwiches Are $6.

**Side Note** If Anyone Has Ever Tried Any Of My Food Than You Know I Rarely Ever Post Recipes And Cook From The Heart. This Dish Is No Different So Just To Give A Heads Up It's Not Your Traditional Philly Cheese Steak Sandwich.
**SOLD** First Set Of BBQ Chicken Roll Plates Going Out. If I Have 4 More Rolls. No Sides. $2.50 ea. Pick Up Only. N. Stockton Off West Lane Near Winco.

**SOLD** Made Some Baked BBQ Chicken & Shrimp Buns w. Homemad BBQ For Late Night Dinner. I Leave A Few Extra If Anyone Would Like. $4ea w. A Small Side Of BBQ Sauce For Dipping Optional. N. Stockton Off Pershing & March Lane

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Queso Fresco –referred to CA Department of Food and Agriculture
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- Very difficult to identify sellers—many use aliases
- Very difficult to locate addresses of sellers
- Focused on the highest volume sellers—about 40
- Required assistance from DA’s Office from the start
- DA Investigators
  - Researched addresses
  - Made undercover purchases
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- Sent Notices to Abate to all sellers with identified addresses

- Cited H&S Code for operating without a permit
  - Section 114381 for Food Facility
  - Section for 114365 for Cottage Food

- Ordered to stop all food sales

- Continued violations to be referred to DA’s Office

- Notified Facebook of illegal sales
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- Six people continued to sell food and were charged with H&SC 114381(a) – A food facility shall not be open for business without a valid permit.
- Five plead guilty and received 1 year plea in abeyance or informal probation, obey all laws, no same or similar offenses, 40-80 hours of community service, $235 court fine
- One (Facebook group administrator) plead not guilty and case set for trial – Public Defender assigned to case
- Defendant went to media with her story
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Story Picked Up By Media-Most Slanted to Defendant’s Perspective

- **The Washington Post** - *Undercover sting nabs California mother selling ceviche through Facebook group*
- **Time** - *California Woman Faces Jail Time for Selling Ceviche on Facebook: 'It's Just Crazy'*
- **KTLA 5 News** - *Stockton Mother Faces Jail Time After Joining Facebook Food*
- **KCRA** - *NorCal mom faces jail time after selling ceviche on Facebook*
- **abc7.com** - *NorCal mom faces jail time after selling ceviche on Facebook*
- **fox59.com** - *Mother faces jail time after joining Facebook food group*
- **fox40.com** - *Single Mom Faces Jail Time After Participating in Facebook*
- **thesun.co.uk/news** - *Woman facing jail time after homemade fish salad*
- **sanfrancisco.cbslocal.com** - *Stockton Mom Faces Trial For Selling Homemade Ceviche*
- **abc13.com** - *Mom could face jail time for selling ceviche*
- Many other media outlets
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DA’s Office Case

- Hundreds of pages from Facebook showing large volume of food sales-including many from Defendant
- Food sold directly to DA Investigators
- Statement from one person who got sick from the ceviche
- Press Conference-focus on food safety
- Received hate calls/ Protestors
- Public concern over DA resources being directed away from prosecuting violent crimes
- Many people sympathetic to defendant
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Issues Facing Trial Continued

- Jury may be sympathetic to defendant
- Are these illegal Food Facilities or illegal CFOs?
- Can violation charged be proven?
  - H&SC 114381- A Food Facility shall not be open for business without a valid permit?
  - Private home is not a Food Facility-by definition
  - CFO is not a Food Facility-by definition
- Can other violations be used?
  - H&SC 114365 – CFO shall not be open for business unless it is registered/permitted?
  - Preparing potentially hazardous foods in home kitchen is not a CFO
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Issues facing Trial

- **H&SC 114285 – Premises**
  - (a) States that a private home shall not be used for conducting food facility operations
  - (b) private home can be used for Restricted Food Facility
  - No direct mention of CFO

- **H&SC 114365.2 – CFO Operational Requirements**
  - CFO shall be considered a Restricted Food Facility for purposes of and subject to: Sections 113953.3, 114259.5, 114285, 114286, 113967, 113973, 113980, 114405, 114407, 114409, 114411, 114413 – Hard for jury to follow – Easy for Public Defender to confuse jury – create doubt
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January 2017 – Case to be dismissed in January of 2018 if Defendant:

- Serves 80 hours of community service
- Obey all laws
- Does not commit same or similar offenses
- Does not operate or participate in the operation of a food facility without proper permits
- Does not take actions, administrate or post on social media regarding illegal food sales, trading or bartering of food, unless done with proper permits
- Waives search and seizure of her person and vehicle for evidence of food sales
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Hurdles to Enforcement

• Public perception
  • Media
  • Anti-government, small government sentiments
  • Anti- innovation, -business
  • Local food movement
  • What’s the harm-buyer beware

• Food safety system not fully understood
  • By public
  • By media
  • By DA, Public Defenders
  • By judges
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Hurdles to Enforcement

- No permit to revoke – DA only other enforcement tool
- Noticing is difficult without physical locations
- Lack of resources – EH and District Attorney
  - Takes time to investigate and build a case
  - DA Investigators helpful
- May not win in court – then what?
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Hurdles to Enforcement

- **CalCode language**
  - Potentially hazardous food out of a private home
    - Not a food facility
    - Not a Cottage Food Operation
  - Not clear, confusing to the lay person
  - Violations not explicitly written for all types of operations
  - Must refer to several different sections to fully understand how a Cottage Food Operation is regulated
  - No language addressing internet-based food sales
  - No specific language prohibiting the promotion of illegal food sales—may be violating truth in advertising laws?
Potential Fixes

- **Update CalCode**
  - To include clearer, more straightforward violation language
    - It is unlawful to...is prohibited...is a violation...for each type of operation in enforcement sections
  - Ability to cite one violation section for each type of operation without having to review other sections by reference
  - Pending legislation AB 626 (Garcia) - home-based micro kitchens – legalize - Can it be done safely…
  - Add administrative enforcement remedies to CalCode to reduce stress on DA’s Office resources
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Home Kitchens

Can potentially hazardous food be safely cooked out of a home kitchen?

• Volume of food produced based on capacity of kitchen and equipment
  • Storage, hot and cold holding, potable water, sewage capacity, grease disposal, prep capacity, deep frying?
• Direct sales to customers only
• Food safety training
• Address role of third party promoters - websites
• Ability to permit, inspect, investigate complaints, take enforcement action, recover costs
• Ability to regulate locally: land use, zoning, fire
• Incubator only-business growth with move to commercial kitchen
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Home Kitchens

Is there an expectation from the public that the food they buy is:

Safe?

Unadulterated?

Prepared in a clean environment?

Honestly presented?

San Joaquin County received over 640 food-related complaints in 2016 - Complaints increasing by at least 10% every year
Home Kitchens

CDC estimates that each year roughly 48 million people (1 in 6 Americans) gets sick from a foodborne illness, 128,000 are hospitalized, and 3,000 die.

The U.S. Department of Agriculture (USDA) estimates that foodborne illnesses cost $15.6 billion each year.

Food Safety System – a system of prevention and overlapping safeguards designed to minimize foodborne illness, ensure employee health, demonstrate manager knowledge, ensure safe food, specify nontoxic and cleanable equipment, and delineate acceptable levels of sanitation for food facility premises.
Pending Case-Cooking Food from a Private Home
Pending Case-Cooking Food from a Private Home
Pending Case: Cooking Food from a Private Home
Pending Case-Cooking Food from a Private Home
Pending Case-Cooking Food from a Private Home
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Pending Case-Cooking Food from a Private Home
Our Food Safety System... Is it worth defending?

or

Is it buyer beware?