

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	}	Docket No. 13-0078
	}	
	}	
Camacho's Food Processing	}	
Mr. Oscar Camacho Sr.	}	
	}	Consent Decision and Order
Respondents	}	

This is a proceeding under Title I of the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601 et seq.) ("FMIA"), the Poultry Products Inspection Act, as amended (21 U.S.C. §§ 451 et seq.) ("PPIA"), and the applicable rules of practice (7 C.F.R. §§ 1.130 et seq. and 9 C.F.R. § 500.1 et seq.), to withdraw Federal inspection services from Camacho's Food Processing, (hereinafter referred to as Respondents). This proceeding was commenced by a complaint filed on November 9, 2012, by the Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA). The parties have agreed that this proceeding should be terminated by entry of the Consent Decision and Order set forth below pursuant to the consent decision provisions of the Rules of Practice (7 C.F.R. § 1.138).

For the purpose of this Consent Decision, Respondents specifically admit that the Secretary has jurisdiction in this matter. Respondents neither admit nor deny the remaining allegations, waives oral hearing and further procedure, and waive any action against the complainant under the Equal Access to Justice Act of 1980 (5 U.S.C. section 504 et seq.). Respondents consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Camacho Food Processing is now and at all times material herein was, a company located at 1311 Payton Street, Suite E, Salinas, California.

2. Camacho Food Processing was and has been granted Federal Meat and Poultry inspection services, pursuant to the FMIA and PPIA, at the above named establishment that was and has been designated as Official Establishment Number 34241/P-34241.

3. Respondent Oscar Camacho Sr. is an individual with a mailing address of 343 N. Madeira Avenue, Salinas, California 93905.

4. Respondent Oscar Camacho Sr. is now, and was at all times material herein, president, and manager of, and is responsibly connected to, Respondent Camacho Food Processing.

5. On March 8, 2012, in the United States District Court, Northern District of California, Respondent Camacho and owner of Respondent Business, pled guilty to two misdemeanor counts of preparing pork products, capable for use as human food, after FSIS suspended inspection for food safety violations, in violation of 21 U.S.C. § 610(a). Judgment was entered against Respondent Camacho on March 9, 2012.

Conclusion

Because the parties have agreed to the provisions set forth in the following Consent Decision and Order in disposition of this proceeding, the following Order will be issued.

Order

1. Federal meat and poultry inspection services under Title I of the FMIA and the PPIA are withdrawn from Respondents, its owners, including officers, directors, partners, affiliates, successors and assigns, directly or indirectly through any corporate device, and Mr. Oscar

Camacho Sr. for a period of three (3) years, beginning on the effective date of this Consent Decision and Order. However, the withdrawal of Federal meat and poultry inspection services for a three (3) year period shall be held in abeyance, and Federal meat and poultry inspection services shall be provided to the Respondents so long as all of the terms and conditions of this Consent Decision and Order set forth below, in addition to all other requirements to maintain meat and poultry inspection services under the FMIA and PPIA are properly and fully complied with and met for the duration of this Consent Decision and Order.

Establishment Management and Personnel

2. Upon the effective date of this Order and, FSIS will recognize Mr. Orlando Camacho as the new Owner and Manager of Respondent Camacho's Food Processing. Mr. Orlando Camacho will be a signatory to this Order and will ensure oversight of all major decisions regulated by the FMIA and PPIA affecting the operation of Respondent Camacho's Food Processing. As owner and manager of Respondent Camacho's Food Processing, Mr. Orlando Camacho will be responsible for, among other things:

(a) overall management and implementation, coordination, monitoring, verification, validation, reassessment, pre-shipment review, record keeping, review and maintenance of the establishment's sanitation, SSOP, HACCP, and other process controls, sampling and testing programs, systems, and plans, as required by and consistent with the FMIA, PPIA, the meat and poultry regulations, and the requirements of this Order;

(b) communicating directly with FSIS personnel at all levels and make oral and written responses to noncompliance records and appeal the findings of FSIS program personnel;

(c) taking positive control of any manufactured or stored product which is believed to be adulterated, misbranded or otherwise unsafe;

(d) making decisions concerning product disposition, including product destruction; and

(e) recalling any potentially adulterated or misbranded product that has reached any distribution channel.

3. Mr. Oscar Camacho, Sr. may remain employed at Respondent Camacho's Food Processing Federal establishment in a non-managerial capacity. As an employee, he may receive product and customer orders, negotiate with customers and deliver meat and poultry products. Provided however, that his responsibilities shall not interfere with or circumvent the assigned responsibilities and authorities of Mr. Orlando Camacho, Owner/Manager of Respondent Camacho's Food Processing.

4. Mr. Oscar Camacho, Sr. may not provide direction to or exercise operational control of or have supervisory or management responsibilities over matters regulated by the FMIA and PPIA. Mr. Oscar Camacho, Sr. may be given limited additional non-managerial duties, subject to the written concurrence of the Director, EED Evaluation and Enforcement Division, Office of Program Evaluation, Enforcement and Review (OPEER) (hereinafter "Director, EED"), FSIS, USDA.

5. Any other current employees of Respondent Camacho's Food Processing may not be employed in a managerial capacity and may not provide direction to or exercise operational control of or have supervisory management responsibilities over matters regulated by the FMIA and PPIA if they have been convicted, in any Federal, state, or territorial court, of any felony, or of more than one misdemeanor based upon the acquiring, handling, or distributing of unwholesome, mislabeled or deceptively packaged food, or based upon fraud in connection with transactions in food.

6. Within twenty (20) calendar days of the effective date of this Order Respondents shall submit a new Application for Inspection (FSIS Form 5220-2) reflecting the personnel changes outlined in paragraphs 2-4, including any additional partners, officers, directors, holders, or owners of 10 per cent or more of its voting stock or employed in a managerial or executive capacity at the establishment, as well as, any State, or Federal convictions by any individual listed on the application.

7. Within thirty (30) calendar days from the effective date of this Order, and subject to verification by FSIS, Respondents shall submit to the Director, EED written documentation verifying compliance with all the provisions and terms of paragraphs 1 through 5 of this Order.

Compliance Provisions

8. Upon the effective date of this Order, and for the duration of this Order and subject to verification by FSIS, Respondents shall comply with the Sanitation Performance Standards (SPS), Sanitation Standard Operating Procedures (SSOP) and a Hazard Analysis and Critical Control Point (HAACP) system in accordance with regulatory requirements specified in Title 9, Code of Federal Regulations, Part 416 and 417, as applicable.

9. Respondents shall, within sixty (60) calendar days from the effective date of this Order and subject to the verification of FSIS, develop and implement a compliance program to ensure that all inspected meat and poultry products do not become adulterated, contaminated, or misbranded. This compliance program shall include at a minimum, provisions to ensure:

(a) that all meat and poultry products are produced or processed in accordance with product specifications and formulations and recordkeeping, as required by 9 C.F.R. § 318.6, §319, and §381 subpart P;

(b) documentation of all findings, corrective actions taken, and preventative measures implemented, when any non-compliances are found;

(c) written recall procedures are in place to effectively notify FSIS District Office within 24 hours of potentially adulterated or misbranded products produced or processed when found within distribution channels as required by 9 C.F.R § 418. The recall procedures shall also include records documenting recall procedures and notification.

(d) Respondents do not conduct any operation requiring Federal inspection outside respondent's official hours of operations without first submitting a written request to, and receiving written approval from the FSIS assigned person.

Respondents shall submit their proposed compliance program to the Director, EED for review and concurrence, prior to its implementation.

10. Respondents shall designate one full-time and one alternate employee to be responsible for oversight of all aspects of the compliance program. Provided, however that Mr. Oscar Camacho, Sr. shall not serve as a designee. The designated employee or alternate shall have authority to hold up production, stop production, remove product from production, or take positive control of any products produced, processed, packed, or stored at the establishment which are, or believed to be, adulterated or misbranded, when facility sanitation, or production deficiencies are observed. The designated employee or alternate shall be present at all times when operations requiring Federal inspection are conducted.

Ethics Training and Corporate Code of Conduct

11. Within ninety (90) days of the effective date of this Order, Orlando Camacho and Oscar Camacho, Sr., shall participate in and successfully complete a training program or educational course encompassing ethical business practices. Prior to participating in this course,

Respondent shall submit a detailed description of the proposed training course for concurrence by the Director, EED, or designee. Respondents shall maintain for the duration of this Order records documenting the successful completion of such training and shall make those records available upon request by any authorized representative of the Secretary.

12. Within sixty (60) days of the effective date of this Order and subject to verification by FSIS, Respondents shall develop and submit for review and concurrence by the Director, EED, a code or policy statement of business conduct and ethics to ensure food safety and regulatory compliance in business practices (hereinafter "Corporate Code") applicable to all business entities and individuals within or employed by the Respondents. The Corporate Code, at a minimum, shall include:

- (a) a statement of corporate policy addressing business ethics and the public trust;
- (b) a statement of respondents' commitment to comply with all applicable Federal and State food safety and other laws in the conduct of their business;
- (c) guidelines for respondents' employees to follow with respect to food safety and ethics issues; and
- (d) assurances to preclude any acts of intimidation, assault, or interference of USDA program employees.

The Corporate Code shall be permanently displayed in a prominent location in the respondent's federal establishment and shall be discussed with all current and new employees.

Record Keeping Provisions

13. Respondents shall record and maintain complete and accurate written records of (a) all records required to be maintained by the FMIA, PPIA, and the regulations; (b) all records required to be maintained under applicable Federal, State, and local statutes; and (c) all SPS,

SSOP, HACCP, and other systems, plans and records required by the FMIA, PPIA, and the requirements of this Order.

14. Respondents shall immediately notify FSIS program personnel of any changes, revisions, or modifications to its SSOP, HACCP or other systems, programs, and all associated recordkeeping forms.

15. Respondents shall make all records regarding its federally inspected establishment or other regulated business or business activities at said establishment available to FSIS personnel for review and/or copying immediately upon such request by FSIS.

Corporate Reporting to FSIS

16. Mr. Orlando Camacho, or designee, shall prepare a report identifying respondents' compliance with all terms and conditions of this Order. The report shall be submitted to the Director, EED, on an annual basis, the first due no later than March 3, 2014; the second due no later than March 2, 2015; and the third due no later than March 1, 2016.

General Provisions

17. Respondents and any partners, employees, agents or affiliates, shall not:

(a) violate any section of the FMIA, PPIA or regulations promulgated thereunder, any state or local statute involving the preparation, sale, transportation, or attempted distribution of any adulterated, non inspected, misbranded or deceptively packaged meat, or poultry food products;

(b) commit any felony or fraudulent act or other criminal act involving fraud, conspiracy, bribery, or any other act or circumstances indicating a lack of integrity needed for the conduct of operations affecting public health;

(c) willfully make or cause to be made any false entry into any accounts, records, reports, or memoranda kept by Respondents in compliance with Federal, State or local statutes or regulations or this Order; and or, neglect or fail to make full, true, and correct entries in such accounts, records, reports or memoranda; or fail to keep such accounts, records, reports, or memoranda, that fully and correctly disclose all transactions in respondent's business;

(d) assault, intimidate, impede, threaten, or interfere with any program employee in the performance of his or her official duties under the FMIA, PPIA, or regulations promulgated thereunder.

18. Respondents shall not knowingly hire or add any new individual who has been convicted, in any Federal, state, or territorial court, of any felony, or of more than one misdemeanor based upon the acquiring, handling, or distributing of unwholesome, mislabeled or deceptively packaged food, or based upon fraud in connection with transactions in food. To the extent permitted by State and Federal law, respondent shall immediately terminate their connection with any such individual when that individual's conviction becomes known to respondent.

19. Respondents shall fully and completely cooperate with any FSIS investigation, inquiry, review, or examination of respondent's compliance with the FMIA, PPIA, or this Order.

Enforcement Provisions

20. The Administrator, FSIS, shall have the right to summarily withdraw inspection services upon a determination by the Director, EED, or his or her designee, that one or more conditions set forth in paragraphs 1 through 18 of this Order have been violated. It is acknowledged that respondent retains the right to request an expedited hearing pursuant to the Rules of Practice, 9 C.F.R Part 500, concerning any violation alleged as the basis for a summary

withdrawal of inspection services. This does not affect complainant's right to suspend operations in accordance with Rules of Practice, 9 C.F.R. Part 500. Nothing in this Order shall preclude the referral of any violation of law to the U.S. Department of Justice for possible criminal or civil proceedings, or preclude the Administrator from taking other appropriate administrative action under the FMIA, PPIA, EPIA, and the regulations promulgated thereunder.

21. If any provision of this Order is declared invalid, such declaration shall not affect the validity of any other provision herein.

22. The provisions of this Order shall be applicable for a period of three (3) years from the effective date of this Order.

23. This Consent Decision and Order shall become effective upon issuance by the Administrative Law Judge.

CAMACHO'S FOOD PROCESSING. (CAMACHOS)
Respondent

BY: _____
Oscar Camacho Sr.
Camacho's Food Processing

Orlando Camacho, Owner
Camacho's Food Processing

Scott C. Safian, Director
Evaluation and Enforcement Division
Food Safety and Inspection Service
U.S. Department of Agriculture

Lisa Jabally
Attorney for Complainant
U.S. Department of Agriculture
Office of the General Counsel

Issued this ____ day of _____ 2013
at Washington, D.C.

Administrative Law Judge