

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE ADMINISTRATOR  
FOOD SAFETY AND INSPECTION SERVICE

|                                   |   |                   |
|-----------------------------------|---|-------------------|
| In re:                            | ) |                   |
|                                   | ) |                   |
| Mufid Sawaid, and                 | ) |                   |
| El Badia Halal Live Poultry, Inc. | ) | STIPULATION AND   |
|                                   | ) | CONSENT AGREEMENT |
|                                   | ) |                   |
| Respondents                       | ) |                   |

The Food Safety Inspection Service (FSIS), U.S. Department of Agriculture (USDA), hereinafter “Complainant,” commenced this administrative action on or about November 20, 2015, when FSIS personnel hand delivered a Notice of Ineligibility for custom exempt and small enterprise Status (NOI) to Mr. Mufid Sawaid and El Badia Halal Live Poultry, Inc., hereinafter “Respondents,” notifying them that they were no longer eligible for custom exempt and small enterprise under the Federal Meat Inspection Act (FMIA) (21 U.S.C. § 601 et seq.), the Poultry Products Inspection Act (PPIA) (21 U.S.C. § 451 et seq.), and the regulations promulgated thereunder, due to Respondents’ alleged failure to maintain their facility in a sanitary manner. The NOI, which was effective upon receipt, was issued in accordance with Section 23(c)(2) of the FMIA (21 U.S.C. § 623(c)(2)), Section 15(f) of the PPIA (21 U.S.C. 464(f)), and Parts 303 and 381 of the Federal Meat and Poultry Inspection Regulations (9 C.F.R. §§ 303.1, and 381.10).

The Parties have agreed that this administrative proceeding should be terminated by entry of this Consent Agreement, hereinafter “Agreement,” set forth below and have agreed to the following stipulations:

1. For the purpose of settling this proceeding and for such purpose only, Respondents

admit the jurisdictional allegations of the above-mentioned NOI and both parties waive:

- (a) any further procedural steps in this proceeding;
- (b) any requirement that this Agreement contain findings and conclusions with respect to fact or law, as well as to reason or basis thereof; and
- (c) all rights to seek further judicial review or to otherwise challenge or contest the validity of this Agreement.

2. This Agreement is for settlement purposes in this proceeding only, and does not otherwise constitute an admission or denial by Respondents that they have violated any Federal regulation or statute.

3. Respondents waive any action against USDA under the Equal Access to Justice Act of 1980 (5 U.S.C. 504 et seq.) for fees or other expenses incurred in connection with this proceeding, and any other action against USDA and its employees in connection with this proceeding and the facts and events that gave rise to this proceeding.

#### FINDINGS OF FACT

1. El Badia Halal Live Poultry, Inc., at all times material herein, operated as a custom exempt and small enterprise facility at 4113 2<sup>nd</sup> Avenue, Brooklyn, New York 11232.

2. Mr. Mufid Sawaid is now, and at all times material herein was, the owner and operator of El Badia Halal Live Poultry, Inc.

3. El Badia Halal Live Poultry, Inc., and Mr. Mufid Sawaid, operated under the custom exempt and small enterprise eligibility, pursuant to Section 23(a) of the FMIA (21 U.S.C. § 623(a)), Section 15(c) of the PPIA (21 U.S.C. § 464(c)), and applicable federal meat and poultry regulations (9 C.F.R. §§ 303.1 and 381.10).

4. In an NOI letter delivered on November 20, 2015, Respondents were notified that

they were no longer eligible to operate under the custom exempt and small enterprise provisions of the FMIA and PPIA because of alleged violations of sanitation, facility, and other regulations, as required by 9 C.F.R. §§ 303.1, 381.10, and 416.

#### CONCLUSION

In as much as the parties have agreed to the provisions set forth in the following Agreement in disposition of this proceeding, this Agreement will be entered.

#### AGREEMENT

Custom exempt livestock slaughter and meat processing privileges as provided under section 23 of the FMIA (21 U.S.C. §623) and 9 C.F.R. Part 303.1, and poultry exempt privileges as provided under section 15 of the Poultry Products Inspection Act (PPIA) (21 U.S.C. § 464) and 9 C.F.R. Part 381.10, are terminated from El Badia Halal Live Poultry, Inc., and its owners, officers, directors, partners, successors, affiliates, or assigns, directly or through any corporate device, for a period of three (3) years. This termination of exemption privileges shall be held in abeyance and exemption privileges shall be provided to Respondents, pursuant to Section 23 (a) of the FMIA, Section 15 (c) of the PPIA, and 9 C.F.R. Parts 303.1, 381.10, and 416, provided all statutory and regulatory requirements and the additional conditions set forth in this Agreement are met.

#### CONDITIONS

1. Upon resumption of operations under this Agreement, El Badia Halal Live Poultry, Inc. will operate as a custom exempt (meat) and retail store exempt (poultry) facility. For the duration of this Agreement, any change to El Badia Halal Live Poultry, Inc.'s exempt status will require notification to FSIS and must be done in accordance with statutory and regulatory requirements.



2. Prior to the resumption of operations under this Agreement, and subject to verification and a satisfactory determination by FSIS, Respondents shall demonstrate compliance with the FSIS statutory and regulatory requirements including, but not limited to, 9 C.F.R. Parts 303.1, 381.10, and 416. FSIS will base their determination of satisfaction upon a review and examination of: (a) Respondents' written operational procedures and other programs and (b) the physical and sanitary conditions of Respondent's facility.

3. Prior to the resumption of operations under this Agreement, and subject to verification by FSIS, Respondents shall address and repair any premises, facility and/or equipment issues identified by FSIS at the time of the facility review conducted pursuant to paragraph 2 of this Agreement.

4. Prior to the resumption of operations under this Agreement, and subject to verification by FSIS, Respondents' facility shall receive an "acceptable" rating in every category of FSIS' "Exempt Establishment Review Report," FSIS Form 5930-1.

**Sanitation Performance Standards (SPS)**

5. Prior to the resumption of operations under this Agreement, and subject to verification by FSIS, Respondents shall:

(a) develop written procedures for monitoring and identifying non-compliance issues, taking corrective and preventive actions, and maintaining proper recordkeeping, which Respondents will implement, conduct, and maintain in order to operate and maintain their premises, facilities, equipment, and outside premises in a manner sufficient to prevent the creation of insanitary conditions and practices;

(b) comply with the requirements of the Sanitation Performance Standards (SPS) regulations (9 C.F.R. Parts 416.1 to 416.6);

(c) ensure that meat, meat food products, poultry, and poultry products, that are prepared, packed, and stored on their premises are not contaminated or adulterated; and

(d) address and repair non-compliance issues previously identified by FSIS with respect to the premises, facility, and/or equipment.

6. Upon the resumption of operations under this Agreement, and subject to verification by FSIS, Respondents shall comply with the requirements of the SPS regulations (9 C.F.R. 416.1 to 416.6).

#### **Sanitation Standard Operating Procedures (SSOP)**

7. Prior to the resumption of operations under this Agreement, and subject to verification by FSIS, Respondents shall develop written Sanitation Standard Operating Procedures (SSOP) to describe the monitoring activities, record keeping, and other procedures that Respondents will implement, conduct, and maintain on a daily and on-going basis, before, during and after operations, in accordance with 9 C.F.R. Parts 416.11 to 416.16, to ensure sanitary conditions and prevent product adulteration.

8. Upon the resumption of operations under this Agreement, and subject to verification of FSIS, Respondents shall:

(a) implement, conduct, and maintain on a daily and on-going basis their SSOP system in accordance with 9 C.F.R. § 416 to ensure sanitary conditions and prevent product adulteration; and

(b) implement, conduct, and maintain corrective and preventative actions, in accordance with 9 C.F.R. § 416.15.

### **Planned Improvement Program (PIP)**

9. Prior to the resumption of operations under this Agreement, and subject to verification by FSIS, Respondents shall develop a written Planned Improvement Program (PIP) designed to identify and correct non-compliance and to ensure that the entire structure of the facility, including its rooms and compartments, is of sound construction and that all equipment is maintained in proper working order and kept in good repair.

10. Upon the resumption of operations under this Agreement, and subject to verification by FSIS, Respondents shall implement, conduct, and maintain their PIP as required in this Agreement, and document any findings of, and corrective actions taken to address, needed structural and/or mechanical repairs and/or improvements to their facility and make these records available to FSIS for review and/or copying upon request.

### **Pest Management Program**

11. Prior to the resumption of operations under this Agreement, and subject to verification by FSIS, Respondents shall develop a written pest management program, to be implemented and maintained by Respondents, to prevent the harborage and breeding of pests within the facility and on its grounds consistent with 9 C.F.R. § 416.2 (a) and (b) to ensure that:

(a) Respondents review and service the facility and grounds at least daily for any signs of rodent and insect presence and activity; and

(b) Respondents provide written reports detailing their findings, corrective actions and recommendations based on their review and service of the facility and grounds for any signs of rodent and insect presence and activity.

12. Upon the resumption of operations under this Agreement, and subject to verification of FSIS, Respondents shall implement and maintain their pest control program in a manner sufficient to prevent the creation of insanitary conditions and practices, to prevent the harborage and breeding of pests, and to ensure that meat and poultry products prepared, packed, and stored at Respondents' facility are not contaminated or adulterated.

**Custom Exemption Requirements**

13. Respondents shall ensure that the following custom slaughter and processing exemption requirements in 21 U.S.C. § 623 and 9 C.F.R. § 303.1 are met:

- (a) product does not become adulterated during processing, handling, storage, loading and unloading, or during transportation;
- (b) all slaughtered and processed animal carcasses and further processed meat products, are properly marked, labeled, and packaged;
- (c) custom prepared products are plainly marked "Not for Sale" and kept separate and apart from any meat or poultry products held for sale, and
- (d) records are maintained as required by 9 C.F.R. Part 303.

14. Respondents shall notify FSIS if they change their meat exempt status. If changes are made, Respondents shall operate in compliance with the FMIA and the regulations promulgated thereunder.

**Poultry Exemption Requirements**

15. Respondents shall ensure that the following retail store poultry exemption requirements in 21 U.S.C. 9 C.F.R. § 464 and 9 C.F.R. § 381.10 are met:

- (a) slaughter and processing of poultry and poultry products is conducted in sanitary conditions whereby products will not become adulterated or misbranded;



(b) slaughter of live poultry purchased by the consumer<sup>1</sup> at the market and processed by the consumer's instructions;

(c) processing of poultry products from Federal or New York State inspected, or exempted poultry operations;

(d) processing of poultry products is only done with traditional and usual operations except canning;

(e) sales are in normal retail quantities only and not in excess;

(f) no more than 75 pounds can be purchased by a household consumer and 150 pounds can be purchased by a hotel, restaurant, or similar institution (HRI);

(g) sales of poultry products is made to consumers only;

(h) at least 75% of total sales of product are to household consumers, and the total dollar value of sales to HRIs does not exceed the dollar limitation per calendar year provided by the Administrator;

(i) shipping container of slaughtered and dressed or processed poultry products must bear all features of an inspected product, except that the product was inspected and passed;

(j) poultry and poultry products is distributed intrastate only; and

(k) only one poultry exemption is claimed during a calendar year.

16. Respondents shall notify FSIS if they change their poultry exempt status. If changes are made, Respondents shall operate in compliance with the PPIA and the regulations promulgated thereunder.

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<sup>1</sup> As per 9 C.F.R. 381.10(d)(2)(iv) a consumer is defined as "any household consumer, hotel, or restaurant, or similar institution."



### **Recordkeeping Provisions**

17. Respondents shall maintain full, complete, and accurate written records of all business activities applicable to Section 202 of the FMIA and Section 11(b) of the PPIA, as specified in 9 C.F.R. Parts 303.1(b)(3), 320, and 381.175. Respondents shall make all such records available for review and copying upon request of any authorized representative of the Secretary of Agriculture. Respondents shall maintain such records for a period of two years after December 31 of the year in which the record was made, in accordance with 9 C.F.R. Parts 320.3 and 381.177.

### **Specified Risk Materials (SRM)**

18. Prior to the resumption of custom exemption privileges, and subject to verification by FSIS, Respondents shall develop a written specified risk material (SRM) control program, to include daily records sufficient to document procedures for the removal, segregation, and disposition of SRM, to ensure the control of SRM, and regulatory compliance with 9 C.F.R. Parts 309, 310, 311. This program shall include procedures indicating the handling and removal of non-ambulatory disabled cattle (downer) at their facility.

19. Upon the resumption of custom exemption privileges, and subject to verification by FSIS, Respondents shall implement and maintain, on a daily basis, their written SRM control program.

### **Inedible Material Control**

20. Respondents shall ensure that inedible material is maintained and handled in a manner that prevents the diversion of such material into human food, as specified in 9 C.F.R. Parts 303.1(a)(2)(i), 303.1(b)(4), 381.10(a)(7), 416.2(b)(4) and 416.3(c).

### **Humane Handling and Slaughter**

21. Respondents shall ensure that any cattle, sheep, swine, or goats slaughtered or handled in connection with slaughter at their facility comply with the Humane Methods of Slaughter Act (HMSA) of August 27, 1958 (7 U.S.C. §§ 1901-1906), 9 C.F.R. Part 313, and any Federal, state, or local laws regarding the humane treatment of animals.

### **Personnel and Training**

22. Prior to the resumption of custom exempt and retail store privileges, and subject to verification by FSIS, all of Respondents' officers, managers, and employees shall complete training in sanitation and sanitary dressing procedures and all programs required to be maintained under this Agreement.

23. Respondents shall train and educate any new employee(s), consistent with the requirements of this Order, within thirty (30) calendar days of employment.

24. Respondents shall conduct annual training for all officers, managers, and employees, current and new, who are involved in the slaughter of livestock and poultry and the preparation of meat and poultry food products, consistent with the regulatory requirements set forth in 9 C.F.R. §§ 303.1, and 416, and the requirements of this Agreement.

25. Respondents shall document all training and education of their personnel conducted in accordance with paragraphs 22 through 24 of this Agreement, maintain training records and retain copies of all training and educational materials, and make these records and materials available to FSIS personnel for review and/or copying immediately upon request.

### **Establishment Management**

26. Respondents shall designate one full-time and one alternate employee to be responsible for oversight of all programs required by this Agreement, and the FMIA, PPIA,

and applicable federal meat and poultry regulations. 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 procedures, processed, packed, or stored at the firm 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 concerning exempt meat and poultry are conducted.

### **General Provisions**

27. Respondents shall not:

- (a) commit any felony or fraudulent act;
- (b) violate any section of the FMIA, PPIA, and Federal, State, or local statutes or regulations involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated or misbranded meat or poultry product; or
- (c) assault, intimidate, impede, or interfere with, or threaten to assault, intimidate, impede, or interfere with any representative or designee of the Secretary of Agriculture.

28. Respondents shall make all records required to be maintained by the FMIA, PPIA, or regulations issued thereunder or this Agreement available to FSIS personnel for review and/or copying immediately upon request.

29. Respondents shall fully and completely cooperate with any USDA or FSIS investigation, inquiry, review or examination of Respondents' (a) facility, products, inventory or records, (b) compliance with the FMIA, PPIA, or the regulations issued thereunder, or (c) compliance with this Agreement.

30. The Administrator, FSIS, may summarily terminate exempt privileges from Respondents upon a determination by the Director, Enforcement and Litigation Division,

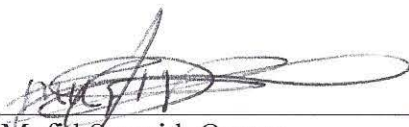



Office of Investigation Enforcement and Audit, FSIS, that Respondents have failed to comply with 9 C.F.R. Parts 303.1, 381.10, and/or 416, or any requirement of this Agreement. It is acknowledged that Respondents retain the right to request an expedited hearing pursuant to the Adopted Rules of Practice concerning any violation alleged as the basis for a summary termination of exempt privileges.

31. The provisions of this Agreement shall be applicable for three (3) years and become effective when signed by all parties and upon the reinstatement of custom exempt and retail store privileges.

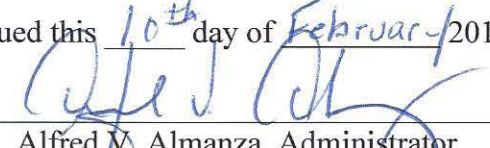
32. Nothing in this Agreement shall preclude any regulatory or administrative actions or the referral of any matter to any agency for possible criminal, civil, or administrative proceedings.

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

  
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Mufid Sawaid, Owner  
El Badia Halal Live Poultry, Inc.

  
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Scott C. Safian, Director  
Enforcement and Litigation Division  
OIEA, FSIS, USDA

  
\_\_\_\_\_  
Tracy Manoff  
Office of the General Counsel  
Attorney for Complainant

Issued this 10<sup>th</sup> day of February 2016  
  
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Alfred V. Almanza, Administrator  
Food Safety and Inspection Service