IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. BEK CATERING, LLC, d/b/a FLOPPERS FOODS, a limited liability company, and BILLY B. STEMBRIDGE, JR. and KYLE D. HUXEN, individuals, Defendants.	)	Civil Action No. 16-0348-CG-N

CONSENT DECREE OF PERMANENT INJUNCTION

Plaintiff, the United States of America, by its undersigned counsel, having filed a Complaint for Permanent Injunction against BEK Catering, LLC., doing business as Floppers Foods, a limited liability company, and Billy B. Stembridge, Jr., and Kyle D. Huxen, individuals (collectively, "Defendants"), and Defendants having appeared and consented to entry of this Decree without contest and before any testimony has been taken, and the United States of America having consented to this Decree.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject matter and all parties to this action.

2. The Complaint states a cause of action against Defendants under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.* (the "Act").

3. Defendants violate 21 U.S.C. § 331(k) by causing articles of food within the meaning of 21 U.S.C. § 321(f), namely fish and fishery products, that are held for sale after shipment of one or more components in interstate commerce to become adulterated under 21

U.S.C. § 342(a)(4) in that they have been prepared, packed, or held under insanitary conditions whereby they may have been rendered injurious to health.

4. Defendants violate 21 U.S.C. § 331(k) by causing articles of food within the meaning of 21 U.S.C. § 321(f), namely fish and fishery products that are held for sale after shipment of one or more components in interstate commerce to become misbranded under 21 U.S.C.:

A. § 343(w) in that they contain a major food allergen (crustacean shellfish, milk or wheat) that is not declared on the product label;

B. § 343(i)(2) in that their label does not bear the common or usual name of each ingredient in accordance with 21 C.F.R. § 101.4;

C. § 343(q) in that the product labeling does not bear nutrition information that provides a declaration of trans fat content in the manner required by 21 C.F.R. § 101.9(2)(2)(ii);

D. § 343(i)(1) in that their label does not bear the common or usual name of the food or an appropriately descriptive term, in accordance with 21 C.F.R. § 101.3; and

E. § 343(e)(1) in that the product, in package form, bears a label that does not contain the place of business (city, state, ZIP) of the manufacturer, packer, or distributor.

5. Defendants represent to the Court that, as of June 1, 2016, they are not engaged in processing, packing, or holding (except for activities incidental to finished product transport and delivery) fish and fishery products at or from any location.

6. If Defendants intend to resume processing, packing, or holding (i.e., operations that are beyond the scope of activities incidental to finished product transport and delivery) fish and fishery products at or from any facility at any time in the future, they must first notify the

United States Food and Drug Administration ("FDA") in writing at least ninety (90) calendar days in advance of resuming operations and comply with paragraphs 7(A) – (G) and (I) of this Decree. Defendants' notice to FDA notice shall identify the type(s) of food Defendants intend to prepare, process, pack, or hold at or from any facility. Defendants shall not resume operations until FDA has inspected the facility(ies) and operations pursuant to paragraph 7(H), Defendants have paid the costs of such inspections as required by paragraph 7(I), and Defendants have received written notice from FDA, as required by paragraph 7(J), and shall resume operations only to the extent authorized in FDA's written notice.

7. Upon entry of this Decree, Defendants and each and all of their directors, officers, agents, representatives, employees, attorneys, successors and assigns, and any and all persons or entities in active concert or participation with any of them (including individuals, partnerships, corporations, subsidiaries, affiliates, franchisees, and "doing business as" entities) (hereinafter, collectively referred to as "Associated Persons"), who have received actual notice of this Decree by personal service or otherwise, are permanently restrained and enjoined under 21 U.S.C. § 332(a), and the inherent equitable authority of this Court, from directly or indirectly receiving, preparing, processing, packing, labeling, holding, and/or distributing any article of food at or from 28396 Highway 181, Suite A, Daphne, Alabama 36526, or any other location(s) at which Defendants now or in the future directly or indirectly receive, prepare, process, pack, label, hold, and/or distribute articles of food (referred to as "Defendants' Facility" or "the Facility") unless and until:

A. Defendants retain, at Defendants' expense, an independent person (the "HACCP Expert") who is without any personal or financial ties (other than a retention agreement) to Defendants or their families, and who, by reason of background, education,

training, or experience, is qualified to determine whether Defendants' methods, processes, and controls are operated and administered in conformity with regulations for fish and fishery products, including seafood hazard analysis critical control point (HACCP) requirements, set forth at 21 C.F.R. Part 123, and current good manufacturing practice (cGMP) requirements for food, set forth at 21 C.F.R. Part 110. Defendants shall notify the United States Food and Drug Administration (FDA) in writing of the identity and qualifications of the HACCP Expert within three (3) business days of retaining such expert;

B. The HACCP Expert reviews all FDA inspectional observations of deficiencies at Defendants' Facility from September 2011 to the present and, in conjunction with Defendants:

(1) Conducts hazard analyses and develops, to FDA's satisfaction, an adequate written HACCP plan, as required by 21 C.F.R. 123.6, for each type of fish or fishery product received, prepared, processed, packed, labeled, held, and/or distributed by Defendants. Each HACCP plan shall, at a minimum, effectively control food safety hazards including but not limited to those associated with *Clostridium botulinum*, *Clostridium perfringens*, *Listeria monocytogenes* (*L. mono.*), and major food allergens;

(2) Develops and conducts, to FDA's satisfaction, scientific validation studies of the adequacy of the critical limits listed in Defendants' HACCP plans. Such studies shall, at a minimum, confirm that the critical limits established for time and temperature at the critical control point (CCP) for the cook step for Defendants' products are sufficient to control for *L. mono.*;

(3) Develops, to FDA's satisfaction, written corrective action plans as part of Defendants' HACCP plans to be taken whenever there is a deviation from a critical limit, as described in 21 C.F.R. 123.7(b);

(4) Develops, to FDA's satisfaction, written verification procedures as part of Defendants' HACCP plans, as described in 21 C.F.R. 123.8;

(5) Develops, to FDA's satisfaction, written sanitation standard operating procedures (SSOPs) specific to Defendants' Facility and operations and that shall conform with the procedures set forth at 21 C.F.R. § 123.11, and shall ensure that Defendants' operations comply with the Act and 21 C.F.R. Part 110;

(6) Develops and conducts, to FDA's satisfaction, an employee training program (in English and any other language necessary to convey the substance of the training) on the seafood HACCP and cGMP regulations, and FDA-approved HACCP plans and SSOPs, and documents that Defendants and their officers, employees, and all other people who perform duties at Defendants' Facility have received such training; and

(7) Submits to FDA the written HACCP plans and all associated records (including monitoring records), validation studies, SSOPs, and employee training program developed pursuant to paragraph 7(B)(6); and documentation demonstrating that the HACCP Expert has trained Defendants and their officers, employees, and all other people who perform duties at Defendants' Facility;

C. FDA has approved, in writing, the HACCP plans, validation studies, SSOPs, and employee training program developed by the Expert;

D. Defendants:

(1) Assign continuing responsibility for implementing and monitoring the FDA-approved SSOPs to a person who, by reason of background, education, training, or experience, is qualified to maintain Defendants' Facility in a sanitary condition and implement any necessary corrective action, and Defendants provide such person with the authority to achieve any necessary corrective action;

(2) Make the FDA-approved HACCP plans and SSOPs available and accessible (in English and any other language necessary to convey the substance of such documents) to their officers, employees, and all other people who perform duties at Defendants' Facility;

(3) Successfully complete the FDA-approved employee training program;

(4) At their expense, clean and sanitize their Facility and equipment therein and make improvements to render the Facility and equipment suitable for receiving, preparing, processing, packing, holding, labeling, and distributing articles of food in accordance with this Decree, the Act, and its implementing regulations, and Defendants ensure that the Facility and equipment therein will be continuously maintained in a sanitary condition; and

(5) Destroy, under FDA's supervision, and in accordance with the procedures provided in paragraph 8, all fish or fishery products in Defendants' custody, control, or possession as of the date this Decree is signed by the parties;

E. The HACCP Expert conducts a comprehensive inspection of Defendants' Facility and the methods and controls used to receive, prepare, process, pack, label, hold, and distribute articles of food to determine whether Defendants are operating in compliance with this Decree, the Act, and its implementing regulations. The HACCP Expert shall verify, with

supporting documentation, that (1) Defendants have corrected all of the seafood HACCP and cGMP deficiencies observed by FDA during all prior FDA inspections, specifying each FDA observation and Defendants' corrections thereof, and (2) Defendants' Facility and the methods and controls used to receive, prepare, process, pack, label, hold, and distribute articles of food are, in the HACCP Expert's opinion, in compliance with this Decree, the Act, and its implementing regulations. The HACCP Expert shall submit, in writing, all findings and supporting documentation to Defendants and FDA concurrently, within ten (10) business days after completion of the inspection;

F. Defendants retain, at Defendants' expense, an independent person (the "Labeling Expert") who is without any personal or financial ties (other than a retention agreement) to Defendants or their families, except that this person may be the same as the HACCP Expert, and who, by reason of background, training, education, or experience, is qualified to review Defendants' product labeling to determine whether the labeling complies with 21 U.S.C. §§ 342(c) and 343 and all applicable regulations. Defendants shall notify FDA in writing of the identity and qualifications of the Labeling Expert within three (3) business days of retaining such expert;

G. The Labeling Expert performs a comprehensive review of Defendants' product labeling and certifies in writing to FDA that (1) he or she has reviewed Defendants' product labeling, (2) all deviations from 21 U.S.C. §§ 342(c) and 343 and applicable regulations that have been brought to Defendants' attention by FDA, the Labeling Expert, and any other source, have been corrected, and (3) Defendants' product labeling is, in the Labeling Expert's opinion, in compliance with this Decree, the Act, and its implementing regulations. The Labeling Expert's written certification shall contain a detailed report of the Labeling Expert's

review and shall include, but not be limited to, a determination that Defendants have implemented procedures that are adequate to ensure that their labeling complies with 21 U.S.C. §§ 342(c) and 343 and all applicable regulations.

H. FDA, as it deems necessary to evaluate Defendants' compliance with the terms of this Decree, the Act, and its implementing regulations, conducts inspections of Defendants' Facility, including the buildings, sanitation-related systems, equipment, utensils, labeling, and all articles of food and relevant records contained therein;

I. Defendants have paid all costs of inspection, analysis, review, investigation, examination, and supervision for FDA's oversight with respect to paragraph 7, at the rates set forth in paragraph 16; and

J. FDA has notified Defendants in writing that Defendants appear to be in compliance with the requirements set forth in paragraphs 7(A)—(G) and (I) of this Decree, the Act, and its implementing regulations. In no circumstance shall FDA's silence be construed as a substitution for written notification.

8. Within fifteen (15) business days after entry of this Decree, Defendants shall, under FDA's supervision and pursuant to a written destruction plan approved in writing by FDA prior to implementation, destroy all fish or fishery products in Defendants' custody, control, or possession as of the date this Decree is signed by the parties. Defendants shall bear the costs of destruction and the costs of FDA's supervision incurred under this paragraph. Defendants shall not dispose of any products in a manner contrary to the provisions of the Act, any other federal law, or the laws or any State or Territory, as defined in the Act, in which the products are disposed.

9. Upon resuming operations after complying with paragraph 7, and receiving FDA's written notification pursuant to paragraph 7(J), Defendants shall meet the following requirements:

A. Defendants shall continuously implement the written HACCP plans and SSOPs approved by FDA pursuant to paragraph 7(C);

B. Defendants shall not receive, prepare, process, pack, hold, label, or distribute any fish or fishery product not identified in a written HACCP plan approved by FDA pursuant to paragraph 7(C) until Defendants submit for FDA's review a written HACCP plan for such fish or fishery product and receive FDA's written approval. In no circumstance shall FDA's silence be construed as a substitution for written notification; and

C. Defendants shall retain an independent person or persons (the "Auditor") who shall meet the criteria for, and may be the same person(s) as, the HACCP Expert and Labeling Expert described in paragraphs 7(A) and 7(F), to conduct audit inspections of the Facility and the methods, processes, and controls used to receive, prepare, process, pack, hold, label, or distribute articles of food, and of Defendants' product labeling, as follows:

(1) Within thirty (30) calendar days after Defendants resume their operations after completing the requirements of paragraph 7, the Auditor shall conduct an audit of Defendants' Facility and the methods and controls used to receive, prepare, process, pack, label, hold, and distribute articles of food, and of Defendants' product labeling, to determine whether Defendants are operating in compliance with this Decree, the Act, and its implementing regulations, and to identify any deviations from such requirements. The Auditor shall submit an Audit Report documenting all findings to Defendants and FDA concurrently, within seven (7) business days after completing the audit. As a part of every Audit Report (except the first one),

the Auditor shall assess the adequacy of actions taken by Defendants to correct all previous audit observations indicating that Defendants are not in compliance with this Decree, the Act, or its implementing regulations. If the Audit Report contains any audit observations indicating that Defendants are not in compliance with this Decree, the Act, or its implementing regulations, Defendants shall make all necessary corrections within ten (10) business days after receipt of the Audit Report, unless FDA notifies Defendants in writing that a shorter time period is necessary; and

(2) Thereafter, the Auditor shall conduct audits no less frequently than once every three (3) months for a period of no less than one (1) year, and then at least once every six (6) months for the next two (2) years. Beginning in the fourth year after Defendants resume their operations after completing the requirements of paragraph 7, the Auditor shall conduct audits at least annually unless FDA informs Defendants in writing that more frequent audit inspections and reporting are required.

10. Paragraph 7 of this Decree shall not preclude Defendants from distributing fish and fishery products, namely seafood soups (the "finished seafood soups"), that comply with the Act and all applicable regulations and that are supplied to Defendants by a third party, so long as Defendants have received written notification from FDA pursuant to paragraph 10(F) and the following conditions are met:

A. Defendants do not process, prepare, pack, or hold (except for activities incidental to finished product transport and delivery) the finished seafood soups and act only as a distributor of such products (hereafter referred to as Defendants' "distribution operations");

B. The third parties that process, prepare, pack, label, hold, and/or supply the finished seafood soups to Defendants (the "Third Parties") are not directly or indirectly owned,

controlled, or operated by, Defendants or any of Defendants' directors, officers, agents, representative, employees, or attorneys, and are without any personal or financial ties (other than a retention agreement) to Defendants or their families;

C. Defendants:

(1) Provide to FDA written notice that includes the name(s) and address(es) of the Third Parties and a copy of the written retention agreement;

(2) Provide to each Third Party a copy of this Decree, in accordance with the terms of paragraphs 19 and 20;

(3) Report to FDA in writing the actions Defendants have taken to ensure that the methods and controls for their distribution operations are adequate to protect food against microbial contamination during receipt, transport, and delivery, and at a minimum (a) keep food at temperatures that do not support the growth of pathogenic bacteria, and (b) keep equipment clean, sanitized, and suitable for receiving, transporting, and delivering food;

(4) Retain, at Defendants' expense, an independent person (the "Labeling Expert") who is without any personal or financial ties (other than a retention agreement) to Defendants or their families, and who, by reason of background, training, education, or experience, is qualified to review Defendants' product labeling to determine whether the labeling complies with 21 U.S.C. §§ 342(c) and 343 and all applicable regulations. Defendants shall notify FDA in writing of the identity and qualifications of the Labeling Expert within three (3) business days of retaining such expert. The Labeling Expert shall perform a comprehensive review of Defendants' product labeling and certify in writing to FDA that he or she has reviewed Defendants' product labeling; that all deviations from 21 U.S.C. §§ 342(c) and 343 and applicable regulations that have been brought to Defendants' attention by FDA, the

Labeling Expert, and any other source, have been corrected; and that Defendants' product labeling is, in the Labeling Expert's opinion, in compliance with this Decree, the Act, and its implementing regulations. The Labeling Expert's written certification shall contain a detailed report of the Labeling Expert's review and shall include, but not be limited to, a determination that Defendants have implemented procedures that are adequate to ensure that their labeling continuously complies with 21 U.S.C. §§ 342(c) and 343 and all applicable regulations. Such procedures shall, at a minimum, require that:

(a) The Third Party that processes and/or prepares the finished seafood soups provides written notification, contemporaneously to Defendants and to the Third Party supplying the product labeling, of any ingredient substitutions or formulation changes;

(b) Defendants ' Labeling Expert or Auditor (described in paragraph 10(G)(3)) determines whether, as a result of any ingredient substitution or formulation change, Defendants' product labeling must be revised to maintain compliance with 21 U.S.C. §§ 342(c) and 343 and all applicable regulations; and

(c) Defendants' Labeling Expert or Auditor certifies in writing to FDA that he or she has reviewed Defendants' product labeling to determine whether Defendants' product labeling must be revised as a result of any ingredient substitution or formulation change to comply with 21 U.S.C. §§ 342(c) and 343 and all applicable regulations; and that Defendants' product labeling (or revised product labeling if revisions have been made) is, in the Labeling Expert's opinion, in compliance with this Decree, the Act, and its implementing regulations; and,

(5) Destroy, under FDA's supervision, and in accordance with the procedures provided in paragraph 8, all fish or fishery products in Defendants' custody, control, or possession as of the date this Decree is signed by the parties;

D. FDA, as it deems necessary to evaluate Defendants' compliance with the terms of this Decree, the Act, and its implementing regulations, conducts inspections of Defendants' distribution operations and/or Defendants' facilities, including the buildings, sanitation-related systems, equipment, utensils, labeling, and all articles of food and relevant records contained therein;

E. Defendants have paid all costs of inspection, analysis, review, investigation, examination, and supervision for FDA's oversight with respect to paragraph 10, at the rates set forth in paragraph 16;

F. FDA has notified Defendants in writing that Defendants appear to be in compliance with the requirements set forth in paragraphs 10(A)—(C) and (E) of this Decree. In no circumstance shall FDA's silence be construed as a substitution for written notification; and

G. Upon resuming distribution operations after complying with paragraph 10(A)—(C) and (E), and receiving FDA's written notification pursuant to paragraph 10(F), Defendants shall meet the following requirements:

(1) Defendants shall continuously implement the methods and controls described in paragraph 10(C)(3) and procedures described in paragraph 10(C)(4);

(2) Defendants shall provide to FDA written notice, at least thirty (30) days prior to commencing distribution of the finished seafood soups from and/or for any new Third Parties, that includes the names(s) and address(es) of the Third Parties and a copy of the written retention agreement; and

(3) Defendants retain an independent person or persons (the "Auditor") who shall meet the criteria for, and may be the same person(s) as, the Labeling Expert described in paragraph 10(C)(4), to conduct audit inspections of Defendants' product labeling, as follows:

(a) The Auditor shall conduct an audit of Defendants' product labeling to determine whether their labeling complies with this Decree, the Act, and its implementing regulations, and to identify any deviations from such requirements. The Auditor shall submit an Audit Report documenting all findings to Defendants and FDA concurrently, within seven (7) business days after completing the audit, and shall include a copy of Defendants' product labeling. As a part of every Audit Report (except the first one), the Auditor shall assess the adequacy of actions taken by Defendants to correct all previous audit observations indicating that Defendants' labeling is not in compliance with this Decree, the Act, or its implementing regulations. If the Audit Report contains any audit observations indicating that Defendants' labeling is not in compliance with this Decree, the Act, or its implementing regulations, Defendants shall make all necessary corrections within ten (10) business days after receipt of the Audit Report, unless FDA notifies Defendants in writing that a shorter time period is necessary; and

(b) The Auditor shall conduct the first audit within six (6) months after Defendants resume their distribution operations after completing the requirements of paragraph 10(A)—(C) and (E), and thereafter at least once every six months for a period of no less than three years, and then at least annually, unless FDA informs Defendants in writing that more frequent audits and reporting are required.

11. Defendants and their Associated Persons are permanently restrained and enjoined under 21 U.S.C. § 332(a) from directly or indirectly doing or causing to be done any of the following acts:

A. Violating 21 U.S.C. § 331(k), by causing articles of food that are held for sale after shipment of one or more components in interstate commerce to become adulterated within the meaning of 21 U.S.C. § 342(a)(4) or U.S.C. § 342(c);

B. Violating 21 U.S.C. § 331(k), by causing articles of food that are held for sale after shipment of one or more components in interstate commerce to become misbranded within the meaning of 21 U.S.C. § 343; and

C. Failing to implement and continuously maintain the requirements of this Decree.

12. If, at any time after entry of this Decree, FDA determines, based on the results of an inspection, the analysis of a sample, a report, or data prepared or submitted by Defendants, the HACCP Expert, Labeling Expert, Auditor, or any other information, that Defendants have failed to comply with any provision of this Decree, Defendants have violated the Act or its implementing regulations, or additional corrective actions are necessary to achieve compliance with this Decree, the Act, or its implementing regulations, FDA may, as and when it deems necessary, notify Defendants in writing of the noncompliance and order Defendants to take appropriate corrective action, including, but not limited to, ordering Defendants to immediately take one or more of the following actions:

A. Cease receiving, preparing, processing, packing, labeling, holding, or distributing any and all articles of food;

B. Recall, at Defendants' expense, all articles of food that have been distributed and/or are under the custody and control of Defendants' agents, distributors, customers, or consumers;

C. Revise, modify, expand, or continue to submit any reports, plans, procedures, or other records prepared pursuant to this Decree;

D. Submit additional reports or information to FDA as requested;

E. Submit samples to a qualified laboratory for analysis;

F. Institute or reimplement any of the requirements set forth in this Decree;

G. Issue a safety alert; and/or

H. Take any other corrective actions as FDA, in its discretion, deems necessary to protect the public health or bring Defendants into compliance with this Decree, the Act, or its implementing regulations.

This remedy shall be separate and apart from, and in addition to, any other remedy available to the United States under this Decree or under the law. Defendants shall pay all costs of recalls and other corrective actions, including the costs of FDA's inspections, investigations, supervision, analyses, examinations, sampling, testing, reviews, document preparation, travel, and subsistence expenses to implement and monitor the remedies set forth in paragraph 12, at the rates specified in paragraph 16.

13. Upon receipt of any order issued by FDA pursuant to paragraph 12, Defendants shall immediately and fully comply with the terms of the order. Any cessation of operations or other action described in paragraph 12 shall continue until Defendants receive written notification from FDA that Defendants appear to be in compliance with this Decree, the Act, and its implementing regulations, and that Defendants may resume operations. After a cessation of

operations, and while determining whether Defendants appear to be in compliance with the Decree, the Act, and its implementing regulations, FDA may require Defendants to re-institute or re-implement any of the requirements of this Decree.

14. Representatives of FDA shall be permitted, without prior notice and as and when FDA deems necessary, to inspect Defendants' operations and take any other measures necessary to monitor and ensure continuing compliance with the terms of this Decree, the Act, and its implementing regulations. During such inspections, FDA representatives shall be permitted to: have immediate access to Defendants' places of business including, but not limited to all buildings, equipment, raw ingredients, in-process materials, finished products, containers, packaging material, labeling, and other material therein; take photographs and make video recordings; take samples of Defendants' raw ingredients, in-process materials, finished products, containers, packaging material, labeling, and other material; and examine and copy all records relating to the receipt, preparing, processing, packing, labeling, holding, and distribution of any and all of Defendants' products and their components. The inspections shall be permitted upon presentation of a copy of this Decree and appropriate credentials. The inspection authority granted by this Decree is separate from, and in addition to, the authority to make inspections under the Act, 21 U.S.C. § 374.

15. Defendants shall immediately provide any information or records to FDA upon request regarding the receipt, preparing, processing, packing, labeling, holding, and distribution of Defendants' products. Defendants shall maintain copies of their HACCP plans, along with copies of all records required by such plans, 21 C.F.R. Part 123, or this Decree, at the Facility, and any other location(s) at or from which Defendants receive, prepare, process, pack, label, hold, and/or distribute articles of food, in a location where the records are readily available for

reference and inspection by FDA. Defendants shall retain all records referred to in this paragraph for at least three (3) years after the date the records are prepared.

16. Defendants shall pay all costs of FDA's inspections, investigations, supervision, analyses, examinations, sampling, testing, and reviews that FDA deems necessary to evaluate Defendants' compliance with any part of this Decree at the standard rates prevailing at the time the costs are incurred. Defendants shall make payment in full to FDA within twenty (20) business days of receiving written notification from FDA of the costs. As of the date that this Decree is signed by the parties, these rates are: $90.65 per hour or fraction thereof per representative for inspection and investigative work; $108.63 per hour or fraction thereof per representative for analytical or review work; $0.54 per mile for travel expenses by automobile; government rate or the equivalent for travel by air or other means; and the published government per diem rate for subsistence expenses where necessary. In the event that the standard rates applicable to FDA supervision of court-ordered compliance are modified, these rates shall be increased or decreased without further order of the Court.

17. Within five (5) business days after entry of this Decree, Defendants shall prominently post a copy of this Decree (in English and any other language necessary to convey the substance of the Decree) in a conspicuous location in an employee common area at Defendants' Facility and shall ensure that the Decree remains posted for as long as the Decree remains in effect. Within ten (10) business days after entry of this Decree, Defendants shall provide to FDA an affidavit, from a person with personal knowledge of the facts stated therein, stating the fact and manner of compliance with this paragraph.

18. Within ten (10) business days after entry of this Decree, Defendants shall hold a general meeting or series of smaller meetings for all Associated Persons, at which they shall

describe the terms and obligations of this Decree (in English and any other language necessary to convey the substance of the Decree). Within fifteen (15) business days after entry of this Decree, Defendants shall provide to FDA an affidavit, from a person with personal knowledge of the facts stated therein, stating the fact and manner of compliance with this paragraph and a copy of the agenda, list of attendees, and meeting minutes from the meeting(s) held pursuant to this paragraph.

19. Within ten (10) business days after entry of this Decree, Defendants shall provide a copy of the Decree by personal service or certified mail (return receipt requested) to each and all of their Associated Persons. Within twenty (20) business days after entry of this Decree, Defendants shall provide to FDA an affidavit, from a person with personal knowledge of the facts stated therein, stating the fact and manner of compliance with this paragraph, identifying the names, addresses, and positions of all Associated Persons who have received a copy of this Decree, and attaching a copy of the executed certified mail return receipts.

20. In the event that any of the Defendants becomes associated with any additional Associated Person(s) at any time after entry of this Decree, Defendants shall immediately provide a copy of this Decree, by personal service or certified mail (return receipt requested) to such Associated Person(s). Within five (5) business days of each time that any of the Defendants becomes associated with any additional Associated Person, Defendants shall provide to FDA an affidavit, from a person with personal knowledge of the facts stated therein, stating the fact and manner of compliance with this paragraph, identifying the names, addresses, and positions of all Associated Persons who received a copy of this Decree pursuant to this paragraph, and attaching a copy of the executed certified mail return receipts.

21. Defendants shall notify FDA in writing at least ten (10) business days before any change in ownership, name, or character of their business that occurs after entry of this Decree, including an incorporation, reorganization, creation of a subsidiary, relocation, dissolution, bankruptcy, assignment, lease, sale, or any other change in the structure or identity of BEK Catering, LLC, or Floppers Foods, or the assignment, lease, or sale of any business assets, such as buildings, equipment, or inventory, that may affect obligations arising out of this Decree. Defendants shall provide a copy of this Decree to any prospective successor or assign at least twenty (20) business days prior to any sale or assignment. Defendants shall furnish FDA with an affidavit of compliance with this paragraph no later than ten (10) business days prior to such assignment or change in ownership.

22. If any Defendant fails to comply with any provision of this Decree, the Act, or its implementing regulations, including any time frame imposed by this Decree, then Defendants shall pay to the United States of America: five thousand dollars ($5,000) in liquidated damages for each day such violation continues; an additional sum of four thousand dollars ($4,000) in liquidated damages per day per violation, for each violation of this Decree, the Act, or its implementing regulations; and an additional sum in liquidated damages equal to twice the retail value of any product distributed in violation of this Decree, the Act, or its implementing regulations. Defendants understand and agree that the liquidated damages specified in this paragraph are not punitive in nature and their imposition does not in any way limit the ability of the United States to seek, or the Court to impose, additional civil or criminal penalties to be paid by Defendants, or remedies based on conduct that may also be the basis for payment of liquidated damages pursuant to this paragraph.

23. Should the United States bring and prevail in a contempt action to enforce the terms of this Decree, Defendants shall, in addition to other remedies, reimburse the United States for its attorneys' fees (including overhead), expert witness fees, travel expenses incurred by attorneys and witnesses, investigational and analytical expenses, administrative and court costs, and any other costs or fees relating to such contempt proceedings.

24. Defendants shall abide by the decisions of FDA, and FDA's decisions shall be final. All decisions conferred upon FDA in this Decree shall be vested in FDA's discretion and, to the extent that these decisions are subject to review, shall be reviewed by the Court under the arbitrary and capricious standard set forth in 5 U.S.C. § 706(2)(A). Review by the Court of any FDA decision rendered pursuant to this Decree shall be based exclusively on the written record before FDA at the time the decision was made. No discovery shall be taken by either party.

25. All notifications, correspondence, and communications to FDA required by the terms of this Decree shall be prominently marked "Decree Correspondence" and addressed to the District Director, New Orleans District Office, 404 BNA Drive, Building 200, Suite 500, Nashville, Tennessee 37217, and shall reference this civil action by case name and civil action number.

26. Except as provided in the foregoing provisions of this Decree, the parties shall bear their own costs and attorneys' fees in this action.

27. This Court retains jurisdiction over this action and the parties thereto for the purpose of enforcing and modifying this Decree and for the purpose of granting such additional relief as may be necessary or appropriate.

DONE and ORDERED this 5th day of July, 2016.

/s/ Callie V. S. Granade
SENIOR UNITED STATES DISTRICT JUDGE

Entry consented to:

For Defendants

BILLY B. STEMBRIDGE, JR.
Individually and on behalf of BEK Catering, LLC, d/b/a Floppers Foods

KYLE D. HUXEN
Individually and on behalf of BEK Catering, LLC, d/b/a Floppers Foods

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