



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
LABOR BUREAU

PLEA AGREEMENT

1. This is the plea agreement between the New York State Office of the Attorney General (“OAG”) and defendant BMY Foods Inc. (“Defendant”).
2. This memorandum constitutes the entire agreement between the Defendant and OAG. This agreement supersedes any prior promises, agreements or conditions between the parties. No promises, agreements or conditions have been entered into other than those set forth in this agreement. No modification, deletion or addition to this agreement will be valid or binding on a party unless put into writing and signed by the parties. This agreement will become effective immediately when signed by all the signatories listed below and approved by the Court.
3. **The Plea and Related Terms:**
 - a. Defendant acknowledges that Defendant and co-Defendant Abdul Jamil Khokhar (“co-Defendant”) jointly owned and/or operated nine (9) Papa John’s franchise locations in the Bronx at varying times between January 2012 and August 2014. These Papa John’s franchise locations are or were located at: 1979 Jerome Ave., Bronx, NY 10453; 868 E. Tremont Ave., Bronx, NY 10460; 1520 Westchester Ave., Bronx, NY 10472; 11 E. 183rd St., Bronx, NY, 10453; 3746 3rd Ave., Bronx, NY 10456; 1010 Southern Blvd., Bronx, NY 10459; 475 Willis Ave., Bronx, NY 10455; 362 E. 204th St., Bronx, NY 10467; and 2733 White Plains Road, Bronx, NY 10467 (“Khokhar Papa John’s Franchises”).
 - b. Defendant understands that the OAG has conducted an investigation into the Khokhar Papa John’s Franchises which could result in the following crimes being charged against Defendant and co-Defendant: 52 counts of Offering a False Instrument for Filing in the First Degree, under Penal Law § 175.35(1) (an “E” Felony); 52 counts of Falsifying Business Records in the First Degree, under Penal Law § 175.10 (an “E” Felony); nine counts of Failure to Pay Wages, under Labor Law § 198-a(1) (an unclassified misdemeanor); and, 52 counts of Willful Failure to Pay Unemployment Insurance Contributions, under Labor Law § 633 (an unclassified misdemeanor).
 - c. On a date determined by the OAG, Defendant shall appear upon a felony complaint charging it with one count of Offering a False Instrument for Filing in the First Degree, under Penal Law § 175.35(1) (an “E” Felony), one count of Falsifying Business Records in the First Degree, under Penal Law § 175.10 (an “E” Felony), and one count of Failure to Pay Wages, under Labor Law § 198-a(1) (an unclassified misdemeanor), and it shall be arraigned in the Criminal Court of the County of the Bronx. At arraignment on the felony complaint, Defendant shall waive speedy trial and shall agree to adjourn the case for disposition.

d. On the first appearance or first adjourn date in a Criminal Term of the Supreme Court of the County of the Bronx, Defendant agrees to waive prosecution by indictment and to plead guilty to a superior court information charging one count of the crime of Falsifying Business Records in the First Degree, under Penal Law § 175.10 (an "E" Felony) and to one count of the crime of Offering a False Instrument for Filing in the First Degree, under Penal Law § 175.3(1) (an "E" Felony). This plea shall be in full satisfaction of any crimes that could be charged in connection with the employment of workers at the Khokhar Papa John's Franchises, including violations of the Labor Law or the Penal Law, between January 2012 and August 2014.

e. This agreement, which the parties shall request the Criminal Term of the Supreme Court of the County of the Bronx to approve, will become effective only upon the Court's approval. Upon the Court's approval, Defendant will plead guilty as set forth above in paragraph 3(c). At the time of its plea, Defendant will waive all defenses and all rights of appeal.

f. Defendant is represented by its attorneys, Ford & Harrison LLP and BahnMulter LLP. Defendant agrees that it has been advised of, and understands, the nature of the charges against it, the elements of the offenses with which it is charged, and the range of permissible sentences for the charges in the felony complaint, including a fine of not less than \$500.00 nor more than \$20,000.00, a fine of \$10,000.00 or double the amount of Defendant's gain from the commission of the crime, a conditional discharge, restitution and reparation, a surcharge payable to the court, and a crime victim's assistance fee.

g. By pleading guilty, Defendant is giving up the following rights, which it has discussed with its attorneys:

- 1) Defendant understands that by pleading guilty it is giving up its right to have the People produce witnesses to testify against it.
- 2) Defendant understands that by pleading guilty it is giving up its right to have its attorneys cross-examine any witnesses who may testify against it.
- 3) Defendant understands that by pleading guilty it is giving up its right to have its attorneys produce witnesses to testify for it.
- 4) Defendant understands that by pleading guilty it is giving up its right to remain silent and the right to either testify or not testify at trial.
- 5) Defendant understands that by pleading guilty it is giving up its right to have the People prove its guilt beyond a reasonable doubt.
- 6) Defendant understands that by pleading guilty its plea will operate just like a conviction of guilty after a jury trial.
- 7) Defendant understands that by pleading guilty, if it has a defense to the charges, it is giving up the right to present that defense at trial.

8) Defendant understands that by pleading guilty it is giving up its right to claim that the OAG or representatives of the United States Department of Labor did anything illegal in regard to the charges, and its right to a hearing to determine if the conduct of the OAG, or representatives of the United States Department of Labor was, in fact, illegal.

9) Further, in consideration for and as part of the plea agreement in this matter, Defendant hereby waives and relinquishes its right to appeal from any judgment of conviction, and from any proceedings herein that may result from this prosecution. Defendant has been advised of the right to appeal, and the right to be represented by an attorney on appeal. It is Defendant's understanding and intention that this agreement will be a complete and final disposition of the matter. Defendant makes this waiver knowingly and voluntarily after having been fully advised of its rights by the Court and having had a full and fair opportunity to discuss these matters with its attorneys. At the time of its plea, Defendant shall execute a written waiver of appeal relinquishing these rights.

10) Defendant waives any and all rights to any claim of defective jurisdiction under Article 20 of the Criminal Procedure Law, any claim of speedy trial under Criminal Procedure Law §§ 30.20 and 30.30, as well as any claim under the period of limitations pursuant to Criminal Procedure Law § 30.10 that are applicable to the felony and misdemeanor charges in the charging instrument.

11) Defendant understands and has discussed with its attorneys the potential disciplinary consequences of its guilty plea pertaining to any licenses it may have with the New York State Department of Health, the New York City Department of Health, and any other license, permit and professional permission it holds. Defendant has been advised that its guilty plea may subject it to revocation or suspension of its licenses, among other possible collateral consequences, including but not limited to the revocation and loss of its Papa John's Franchise Agreement at all Khokhar Papa John's Franchises. Defendant understands that the potential disciplinary consequences of its plea may be imposed in a separate proceeding. Defendant wishes to plead guilty to the crime of Falsifying Business Records in the First Degree regardless of any potential disciplinary consequences of its guilty plea, even if its guilty plea will cause any consequences to its licenses to operate a restaurant and/or pizzeria in New York or elsewhere. Defendant understands that it is bound by its guilty plea regardless of any potential disciplinary consequences of the plea. Accordingly, Defendant waives any and all challenges to its guilty plea and sentence based on any potential disciplinary consequences, and agrees not to seek to withdraw its guilty plea, or to file a direct appeal or any kind of collateral attack challenging its guilty plea, conviction, or sentence, based on any licensure or other professional consequences of its guilty plea.

12) Defendant has been advised and acknowledges that its failure to appear at any required court appearance is a violation of this agreement and the case will move forward in its absence and it may be sentenced to a fine of \$10,000.00 or double the amount of Defendant's gain from the commission of the crime as authorized by law.

13) Defendant hereby agrees to enter a plea of guilty in accordance with the terms of the plea offer that has been made, having consulted with its attorneys and having been advised of all of the rights listed above.

h. Defendant is represented by its attorneys, Ford & Harrison LLP and BahnMulter LLP. Defendant acknowledges that its attorneys are simultaneously representing co-Defendant Abdul Jamil Khokhar. Defendant further acknowledges that it has been informed that its constitutional right to the assistance of counsel may be substantially impaired if its lawyers are jointly representing it and co-Defendant. Defendant acknowledges that it has been informed by counsel that there is a possible conflict of interest in such joint representation; for example, it and co-Defendant may have individual defenses to the crimes charged and covered by this agreement that are contradictory or are inconsistent. In addition, Defendant further understands that it is entering into a plea agreement that is conditioned on co-Defendant entering into a plea agreement simultaneously, and that because they may have different levels of guilt, understands that a joint plea in such circumstances may rise to a potential conflict of interest. Defendant acknowledges that its decision to proceed with the same attorneys is an informed exercise of its right to retain counsel of its own choice. Defendant further acknowledges that it has chosen to not retain separate counsel, and that its consent to continued representation by Ford & Harrison LLP and BahnMulter LLP is being made voluntarily and intelligently and that it is in the best interest of the Defendant.

i. Upon entering its guilty plea Defendant will allocute under oath concerning the following facts:

Between January 2012 and August 2014, Defendant was, and still is, a corporation organized under the laws of the State of New York with a central office location at 11 E. 183rd St., Bronx NY 10453 prior to July 2014 and at 1979 Jerome Ave., Bronx, NY 10453 since July 2014. At varying times during this time period, Defendant and co-Defendant Abdul Jamil Khokhar employed numerous workers at the Papa John's franchises located at: 1979 Jerome Ave., Bronx, NY 10453; 868 E. Tremont Ave., Bronx, NY 10460; 1520 Westchester Ave., Bronx, NY 10472; 11 E. 183rd St., Bronx, NY, 10453; 3746 3rd Ave., Bronx, NY 10456; 1010 Southern Blvd., Bronx, NY 10459; 475 Willis Ave., Bronx, NY 10455; 362 E. 204th St., Bronx, NY 10467; and 2733 White Plains Road, Bronx, NY 10467. Defendant and co-Defendant Abdul Jamil Khokhar failed to pay all employees proper wages earned within seven calendar days after the end of the week in which said wages were earned. Specifically, the Defendant and co-Defendant Abdul Jamil Khokhar failed to pay some employees minimum wage for all hours worked and failed to pay some employees one and one-half times their regular rate for hours worked in excess of forty per workweek, instead paying some employees at just their regular rate for hours worked in excess of forty per workweek. Between August 2013 and December 2014, Defendant and co-Defendant Abdul Jamil Khokhar had some employees use fictitious second names in order to hide overtime hours worked in the restaurants' timekeeping system. In particular, some employees had to log in under their real names for their first forty hours of work per week and then had to log in under false names for their hours over forty per week. Defendant and co-Defendant Abdul Jamil

Khokhar paid these employees by check for the hours worked under the real names and paid them in cash at sub-overtime rates for the hours worked over 40 per week under fictitious names. Between January 2012 and August 2014, the failure of Defendant and co-Defendant Abdul Jamil Khokhar to pay at least minimum wage and overtime for all hours worked at the nine Papa John's franchise locations resulted in underpayments to workers of \$230,000.00.

On or about June 30, 2014, Defendant and co-Defendant Abdul Jamil Khokhar created business records reflecting cash wages paid to employees under fictitious names. The fictitious names were created so that the employees would record hours worked over 40 hours in any given week under the fictitious in order to permit the Defendant and co-Defendant Abdul Jamil Khokhar to avoid paying overtime at the rate of time-and-one-half of the employees hourly rate. Defendant and co-Defendant Abdul Jamil Khokhar created and maintained these business records at the central office located at 1979 Jerome Ave., Bronx, NY 1045.

On or about July 31, 2014, Defendant and co-Defendant Abdul Jamil Khokhar filed or caused to be filed a New York State Department of Taxation and Finance Form NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns with the State of New York and the Defendant and co-Defendant Abdul Jamil Khokhar failed to record all of the remuneration and wages paid to all their employees for the 2nd Quarter of 2014 with the intention of concealing the commission of the crime of the Failure to Pay Wages under Labor Law § 198-a(1). In particular, Defendant and co-Defendant Abdul Jamil Khokhar reported the wages paid to employees by check under the real names but concealed the wages paid to employees by cash under fictitious names. The New York State Department of Taxation and Finance Form NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns that Defendant and co-Defendant filed with the State of New York constituted business records of Defendant and its co-Defendant.

4. Within 90 days of the date of its guilty plea, Defendant shall file amended New York State Department of Taxation and Finance Form NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns for the Khokhar Papa John's Franchises covering the period from January 2012 to December 2014 with the State of New York. Defendant shall provide copies of such amended returns to OAG, shall accurately report all wages paid to employees during this time period, and shall be liable for any monies due to the State of New York as a result of the filing of such amended returns. Additionally, for a period of three years from the date that Defendant is sentenced, Defendant shall provide copies to the OAG of all New York State Department of Taxation and Finance NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns that Defendant files with the State of New York for the Khokhar Papa John's Franchises. The copies shall be mailed to the Office of the Attorney General, c/o Assistant Attorney General Benjamin Holt, 120 Broadway, New York, NY 10271.


5. It is a violation of this agreement if:

- a. Defendant fails to file amended New York State Department of Taxation and Finance Form NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns as set forth in paragraph 4; or
 - b. Defendant violates the Labor Law or any term of this agreement or commits any other crime contained in either the Labor or Penal Laws of the State of New York before sentencing.
6. If the OAG, in its sole discretion, determines that the Defendant has fully complied with this agreement:
 - a. The OAG will recommend that the Court sentence Defendant to a conditional discharge for a period of three (3) years. The Court may impose a mandatory surcharge and the crime victims' assistance fee as well as any fine permissible under the Penal Law.
 - b. Defendant understands that the Court has the authority to impose any lawful sentence pursuant to the pleas of guilty. The maximum permissible sentence for the crime of Falsifying Business Records in the First Degree under Penal Law § 175.10 is a conditional discharge for a period of three (3) years, a fine of \$10,000.00 or double the amount of Defendant's gain from the commission of the crime, restitution and reparation, a surcharge payable to the Court, and a crime victim's assistance fee.
7. If Defendant does not comply with this agreement in any respect, then the OAG reserves the right to recommend that the Court sentence the Defendant to a conditional discharge for a period of three (3) years, payment of restitution and reparation in the amount of \$230,000.00, and payment of double the amount of Defendant's gain from the commission of the crime in the amount of \$460,000.00.
8. It is further understood that acceptance of the plea and sentence specified in this agreement is subject to approval of the Court. In the event the Court does not approve the plea or sentence, the parties may agree to revise the terms in writing, such that it is acceptable to the Court, or either party, in writing, may terminate this agreement.
9. This agreement is limited to the New York State Office of the Attorney General and cannot bind other government agencies.
10. The OAG and Defendant reserve all rights under the law to make statements or submissions to the Court in connection with sentencing, not inconsistent with the provisions of this agreement.

11. This agreement consists of 7 pages including the signatory pages.

Dated: New York, New York
July 15, 2015


ERIC T. SCHNEIDERMAN
Attorney General of
the State of New York

By: 
Benjamin Holt
Assistant Attorney General

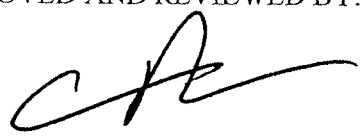
I, Abdul Jamil Khokhar, as president and sole owner of BMY Foods Inc., have read the entire agreement and certify that the statements made in it are true to the best of my knowledge. I understand all of its terms after fully and carefully consulting with BMY Foods Inc.'s attorneys. BMY Foods Inc.'s plea of guilty is given freely, voluntarily, knowingly, and without coercion of any kind. No threats or promises, other than the promises contained in this agreement, have been made to BMY Foods Inc. to induce BMY Foods Inc. to plead guilty. I am not under the influence of alcohol, drugs, or medication, nor is there any other mental or physical impairment, which prevents me from understanding these proceedings as my mind is clear and of sound judgment. BMY Foods Inc. is entering into the plea contained in this agreement knowingly, intelligently and voluntarily, and has signed it in the presence of its counsel.

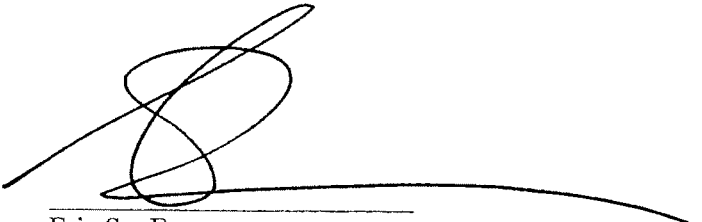
Dated: New York, New York
July 14, 2015

DANIELLE J MOSS
NOTARY PUBLIC, State of New York
No. 02406267606
Qualified in Kings County
Commission Expires August 20, 2016


By: Abdul Jamil Khokhar, President
BMY Foods Inc.

APPROVED AND REVIEWED BY:


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