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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	) FMIA Docket No. 08-
	) PPIA Docket No. 08- 0112
Atlantis Foods, Inc.	)
and Timothy P. DeLong,	)
	)
	)
Respondents.	) CONSENT DECISION and ORDER

This proceeding was instituted under the Federal Meat Inspection Act, as amended (21 U.S.C. section 601 et seq.) ("FMIA") and under the Poultry Products Inspection Act, as amended (21 U.S.C. section 451 et seq.) ("PPIA") and the applicable Rules of Practice (7 C.F.R. section 1.130 et seq. and 9 C.F.R. section 500.1 et seq.), to withdraw Federal meat and poultry inspection services from Atlantis Foods, Inc. f/k/a Culinary Designs d/b/a Atlantis Foods ("Atlantis Foods") and Timothy P. DeLong, hereinafter referred to as Respondents. This proceeding was commenced by a complaint filed 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 provisions of the Rules of Practice (7 C.F.R. section 1.138).

Respondents admit the allegations in paragraphs I and II of the complaint and specifically admit that the Secretary has jurisdiction in this matter.

Respondents neither admit nor deny the remaining allegations, waive 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.) or

any other action against the USDA and its employees in connection with the facts and circumstances that gave rise to this proceeding. 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. Atlantis Foods, Inc., Respondent corporation, is now, and was at all times material herein, a corporation which operates a small meat and poultry processing plant located at 420 Whitney Avenue, Lantana, Florida 33462.

2. Respondent corporation is now, and was at all times material herein, a recipient of meat inspection services under Title I of the FMIA at its place of business in Lantana, Florida (Establishment 22044).

3. Respondent corporation is now, and was at all times material herein, a recipient of poultry inspection services under the PPIA at its place of business in Lantana, Florida (Establishment P-22044).

4. On May 20, 2002, respondent corporation was granted Federal inspection services pursuant to the FMIA and PPIA at the business establishment located at 420 Whitney Avenue, Lantana, Florida 33462.

5. Respondent Timothy P. DeLong is now, and at all times material herein, was the President of respondent corporation and is an individual responsibly connected thereto.

6. On November 9, 2007, in the United States District Court, Southern District of Florida, Timothy P. DeLong was convicted of one (1) felony count of engaging in a scheme to defraud customers by selling adulterated poultry

products in violation of 18 U.S.C. 1341, and one (1) felony count of introducing misbranded food products into commerce in violation of 21 U.S.C. 331(a), 333(a)(2), and 343(a).

### Conclusion

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

### Order

1. Federal inspection services under the FMIA and PPIA are withdrawn from Respondent corporation, its owners, officers, directors, partners, affiliates, successors, and assigns, for a period of three (3) years beginning on the effective date of this Order. Provided, however, the withdrawal of inspection services shall be held in abeyance, and inspection services shall be provided to Respondent corporation for so long as the conditions set forth below, in addition to all other applicable requirements for inspections are met.

### Establishment Management and Personnel

2. Prior to the effective date of this Order, and subject to verification by FSIS, Respondent shall modify its responsible establishment personnel as follows:

(a) Designate in writing, subject to the concurrence of the Director, Evaluation and Enforcement Division (EED), FSIS and/or designees, a HACCP Manager/Food Safety person who shall be responsible for: (i) 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 sanitation, process control, and plans, as required by and consistent with the FMIA, PPIA, regulations, and the requirements of this Order; (ii) communicate directly with FSIS personnel at all levels; (iii) make oral and written responses to noncompliance records and appeal the findings of FSIS program personnel; (iv) slow, hold-up or stop production; (v) remove product from production; (vi) take positive control of any manufactured or stored product which is believed to be adulterated, misbranded or otherwise unsafe; (vii) make decisions concerning product disposition, including product destruction; (viii) recall any potentially adulterated or misbranded product that has reached any distribution channel; (ix) make decisions concerning product labeling; (x) conduct or supervise the preparation of records, monitoring, verification or other production and regulatory procedures; (xi) oversee the effective implementation and execution of the HACCP system, including determinations for pre-shipment review; and, (xii) take corrective action, as defined in FSIS regulations, for any deviation or noncompliance related to the plant's sanitation and food safety programs.

(b) Mr. Timothy P. DeLong may retain his position as President of Respondent corporation, provided however, that his responsibilities as President shall not interfere with or circumvent the assigned responsibilities and authorities of the HACCP Manager/Food Safety person as outlined in paragraph (a).

3. Prior to the effective date of this Order, and subject to verification by FSIS, Respondent shall submit all documentation, including job descriptions for the HACCP Manager/Food Safety person and Timothy DeLong covering the

duties and responsibilities of their positions as limited by paragraph 2 for approval by the Director, EED.

4. Within thirty (30) days of the effective date of this Order, and subject to the concurrence of the Director, EED, Respondent shall designate, in writing, an alternate responsible for conducting the functions and duties of the HACCP Manager/Food Safety Person in that person's absence.

5. Within thirty (30) days of the effective date of this Order, and subject to the concurrence of the Director, EED, Respondent shall designate in writing an alternate responsible for conducting the functions and duties of the President in his absence. As of the date of entry of this Consent Decision, the USDA has no objection to Hope DeLang serving in this position.

6. Prior to the effective date of this Order, Respondent shall take all actions necessary to ensure that the HACCP Manager/Food Safety person has (i) completed a course of instruction and received certification in HACCP consistent with 9 C.F.R. 417.7; (ii) has completed training in regulatory requirements regarding SPS and SSOP; and, (iii) provide documentation regarding compliance with this paragraph to the Director, EED. Any alternate of the HACCP Manager must have completed this training prior to assuming said duties.

Corporate Ethics and Compliance Officer

7. Prior to the effective date of this Order, Respondent corporation shall appoint or hire, with the concurrence of the EED Director, an individual (other than Timothy P. DeLong) to the position of Corporate Ethics and Compliance Officer (hereinafter "CECO"). The CECO shall have

responsibility for: (a) supervising and monitoring Respondent corporation's compliance with this Order; (b) implementing the Corporate Code of Conduct and Ethics established under paragraph 9 of the Order; (c) assuring that all employees are trained in food safety principles and ethics in accordance with this Order; (d) maintaining records and reports required by this Order; and (e) reporting to FSIS, in accordance with paragraphs 15 and 16 herein, on Respondent corporation's compliance with the Order. The CECO may not hold any other managerial position in Respondent corporation. During the term of this Order, Respondent corporation may only replace the CECO with the prior written concurrence of the EED Director.

#### Corporate Code of Conduct and Ethics

8. Prior to the effective date of this Order, Respondent shall submit to the EED Director a Corporate code or policy statement of conduct and compliance and ethics in business practices (hereinafter "Corporate Code"). The Corporate Code shall be applicable to all business entities and individuals within or employed by Respondent corporation, and shall include: (a) a statement of company policy addressing business ethics and the public trust; (b) a statement of Respondent corporation's commitment to comply with all applicable laws and regulations in the conduct of its business; (c) guidelines for Respondent corporation's employees to follow with respect to food safety and ethics issues; (d) acceptable corrective and preventive assurances to preclude any acts of assault, intimidation, or interference of any program employee; and (e) a requirement that employees report to the Corporate Ethics and Compliance Officer established under paragraph 7 of this Order any impropriety of which

they have knowledge.

9. The Corporate Code shall be permanently displayed in a prominent location in the Respondent corporation's Federal establishment for the duration of the Order. The Corporate Code shall be discussed with all current and future employees.

### **Ethics Training**

10. Within one hundred and eighty (180) days of the effective date of this Order, all responsibly connected individuals and managers of Respondent corporation, to include the Corporate Ethics and Compliance Officer, shall participate in a training program or educational course encompassing ethics in business practices. Prior to participation in the course, Respondent shall submit a detailed description of the proposed training course for approval by the EED Director.

11. Upon completion of the course by each of the individuals specified in paragraph 10, Respondent shall provide proof of completion to the EED Director.

12. Respondent corporation shall maintain records documenting the completion of such training by all employees. The records shall be made available upon request by an authorized representative of the Secretary of Agriculture.

### **Food Safety and Compliance**

13. Respondents shall comply with the Sanitation Performance Standards (SPS), Sanitation Standard Operating Procedure (SSOP), Hazard Analysis and Critical Control Point (HACCP), and *Listeria Monocytogenes* (Lm)

sampling and testing regulatory requirements specified in Title 9, Code of Federal Regulations, Parts 416, 417 and 430, as applicable.

### **Recordkeeping**

14. Respondent corporation shall maintain full, complete and accurate written records of all business activities applicable to the FMIA, PPIA and make these records available upon request to any authorized representative of the Secretary of Agriculture.

15. Respondent corporation, on or before the expiration of 120 days from the effective date of this Order, shall develop and submit for approval to the District Manager and upon final approval, carry out enforcement procedures at its

federally inspected establishment for:

(a) reviewing and monitoring on a daily basis all processes, operations, facilities, and equipment including, but not limited to, the review and monitoring of the wholesomeness of products, the labeling of finished products, and the sanitation conditions of equipment and facilities;

(b) recalling adulterated and misbranded product that has reached distribution channels;

(c) notifying the on-site USDA inspector of any adulteration and misbranding problem, of any deviations and deficiencies, and of any corrective actions and preventative measures taken during a daily review of the establishment's processes, operations, facilities, and equipment.

### **Corporate Reporting to FSIS**

16. During the first year of this Order, a report shall be prepared outlining the Respondent corporation's compliance with the terms of this Order.



The reports shall be signed and approved by the Corporate Ethics and Compliance Officer and Respondent Delong. The reports shall be submitted to the EED Director on a quarterly basis, beginning with the first report submitted within 90 days from the effective date of this Order and every 90 days thereafter. During the remaining period of this Order, the reports shall be prepared and submitted to the EED Director on a semi-annual basis.

### General Provisions

17. Respondent, Respondent corporation, and any of its officers, partners, employees, agents, or affiliates shall not:

(a) be convicted of any felony or fraudulent act; (b) violate any section of the FMIA or PPIA; (c) violate any Federal, State or local statute involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated or misbranded meat, meat food product, poultry, or poultry product; (d) assault, intimidate, impede, threaten, or interfere with, or threaten to assault, intimidate, impede, or interfere with any USDA or FSIS employee(s) in the performance of his/her official duties under the FMIA or PPIA; or, (e) conduct any operations requiring federal inspection outside the official hours of operation without obtaining prior written approval from FSIS.

18. Respondent, Respondent corporation, or its officers, partners, employees, agents or affiliates shall:

(a) ensure that all manufactured and/or stored raw or processed meat or meat food products and poultry or poultry food products are properly marked, labeled, and packaged; and,

(b) fully and completely cooperate with any USDA or FSIS investigation, inquiry, review or examination of (i) Respondent's establishment, product or business records, (ii) Respondent's compliance with the FMIA and PPIA and the regulations promulgated thereunder, or (iii) Respondent's compliance with this Order.

### Enforcement Procedures

19. The Administrator, FSIS, may summarily withdraw federal inspection services from Respondent corporation upon a determination by the Administrator that Respondent has committed an act in violation of or failed to comply with any requirement of paragraphs 13, 15, 17, or 18 of this Order.

20. Respondent shall retain the right, after any summary withdrawal of inspection services, to request an expedited hearing, pursuant to the applicable rules of practice (7 C.F.R. Part 1, subpart H and 9 C.F.R. Part 500).

21. The provisions of this Order shall be applicable to any processing or other operations conducted under the FMIA and PPIA, as appropriate.

Nothing in this Order shall preclude (a) any future criminal, civil, regulatory or administrative action authorized by law, regulation or otherwise, including, but not limited to any action under the FSIS Rules of Practice (9 C.F.R. Part 500) or (b) the referral of any matter to any agency for possible criminal, civil, or administrative proceedings.

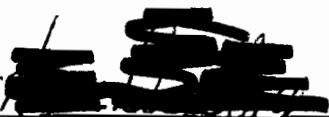
If any provision of this Order is declared invalid, such declaration shall not affect the validity of any other provisions herein.

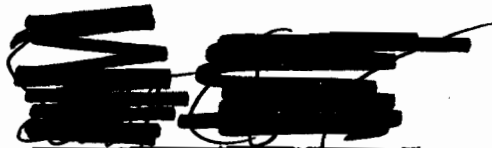
The provisions of this Order shall be applicable for a period of three (3) years from the effective date of this Order.

Respondents reserve the right to request a modification of this Consent Decision and Order. However, any modification would be subject to Complainant's approval and would require the entry of an Amended Consent Decision and Order.

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


1/14/08

  
 ATLANTIS FOODS, INC.  
 Respondent  
 By: Hope DeLong  
 Vice-President of Atlantis Foods, Inc.



SCOTT C. SAFIAN  
 Director, Evaluation and  
 Enforcement Division, OPEER,  
 FSIS, USDA  
 For the COMPLAINANT

1/14/08

  
 TIMOTHY P. DELONG  
 Respondent, in his individual capacity

  
 KRISHNA RAMARAJU, ESQ.  
 Attorney for COMPLAINANT

1/15/08

  
 BRUCE A. ZIMET, ESQ.  
 Attorney for Respondents

Issued this 2nd day of May, 2008

at Washington, D.C.

~~Administrative Law Judge~~  
ADMINISTRATIVE LAW JUDGE

## AFFIDAVIT

Bruce A. Zimet hereby states the following:

1. I am a member of the Florida Bar and have been practicing as an attorney in Florida since 1976.
2. I have been representing Atlantis Foods, Inc. in connection with an investigation in the Southern District of Florida.
3. Pursuant to negotiations with the government the parties agreed to execute a “consent decision and order”.
4. Attached to this affidavit is a copy of said consent decision and order which was executed by Atlantis Foods, Inc. (By Hope DeLong, V.P.), Timothy DeLong on January 14, 2008 and by undersigned on January 15, 2008.
5. The original signed affidavit together with the attached cover letter was mailed to the United States on January 15, 2008.
6. On February 1, 2008 after being informed that the United States had not received the January 15, 2008 mailing, this office mailed the executed agreement a second time to the United States and faxed the executed agreement to the government (see fax confirmation sheet attached).
7. Bruce Zimet states under oath the following:
  - a. The attached consent decision and order is an exact copy of the original documents executed by Atlantis Foods, Inc. (By Hope DeLong), Timothy DeLong and Bruce Zimet;
  - b. The signatures of Hope DeLong, Timothy DeLong and Bruce Zimet are the exact signatures that appear on the original consent decision and order.

8. All of the previous documents were sent by certified mail to the United States on April 1, 2008.

Bruce A. Zimet hereby swears and affirms that the contents of this affidavit and true, correct and accurate.

4/23/08

DATE

[Redacted Signature]  
BRUCE A. ZIMET, ESQ.

STATE OF FLORIDA        )  
  SS  
COUNTY OF BROWARD    )

I HEREBY CERTIFY that on this date, before me, an officer duly authorized in the State aforesaid and in the County aforesaid, to take acknowledgments, personally appeared BRUCE A. ZIMET, and that he/she is known to be the person described herein and that he/she acknowledged before me that he/she executed the same and thereby produced proper identification, and did take an oath swearing that the statement above is true and correct.

WITNESS my hand and official seal in the County and State last aforesaid this 23<sup>rd</sup> day of April, 2008.

[Redacted Signature]

NOTARY PUBLIC,  
STATE OF FLORIDA  
MY COMMISSION EXPIRES:

NOTARY PUBLIC-STATE OF FLORIDA  
Dee Soli Hall  
Commission # DD723816  
Expires: JUNE 05, 2010  
BONDED THRU ATLANTIC BONDING CO., INC.