



U.S. Department of Justice

United States Attorney
District of Arizona

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August 30, 2013

Gregg Tucek
Vice President of Legal Affairs
Bashas Inc.
P.O. Box 488
Chandler, AZ 85244

Re: **Non-Prosecution Agreement With Bashas' Inc.**

Dear Mr. Tucek:

I. Preface To Non-Prosecution Agreement.

The purpose of this letter is to memorialize a non-prosecution agreement (“NPA”) between the United States Attorney’s Office for the District of Arizona (the “USAO”) and Bashas’ Inc. and its affiliates and associates (“Bashas”), an Arizona corporation that operates over 100 grocery stores in Arizona, California, and New Mexico, including a line of stores known as AJ’s Fine Foods (“AJ’s”).

This NPA arises from an investigation that was conducted by the United States Department of Agriculture (“USDA”). Through this investigation, the USDA has determined that, between 2010 and 2012, employees within the meat departments of multiple AJ’s locations in Arizona followed a practice of mislabeling two particular meat products—“Prime” tenderloin steaks and Kobe-style ground beef—without upper management’s knowledge or approval. Specifically, the investigation showed that the “Prime” tenderloins being sold at certain AJ’s locations were actually “Choice” tenderloins (a mislabeling practice that resulted in customers being overcharged) and that certain AJ’s locations also mixed expensive but non-Kobe cuts of meat into the ground beef that was being labeled and sold, inaccurately, as Kobe-style ground beef. The USDA has further determined that Bashas’ generated \$1,472,487.20 in total sales through its sale of these mislabeled meat products. The results of the USDA’s investigation are set forth in additional detail in Attachment A to this letter.

Bashas’ fully cooperated with the USDA’s investigation and has agreed to admit, accept, and acknowledge corporate responsibility for the conduct of some meat department managers that is set forth in Attachment A. In addition, Bashas’ has conducted a thorough internal investigation related to the same misconduct, has voluntarily undertaken a variety of

remedial measures (which are set forth in Attachment B)—including disciplining and/or terminating culpable employees and adopting a comprehensive compliance program to be overseen by a Chief Compliance Officer—in an effort to prevent such misconduct from ever recurring, and has agreed to provide \$1,472,487.20 to the Tucson Community Food Bank, St. Mary’s Food Bank, United Food Bank, the Salvation Army, St. Vincent de Paul Food Bank, and the Association of Arizona Food Banks in order to provide complete restitution for the misconduct of some of its employees.

For these reasons (which include the acceptance of responsibility for its employees’ misconduct), and subject to the terms and conditions set forth below, the USAO has agreed not to criminally prosecute Bashas’ for any crimes (except for criminal tax violations, as to which the USAO cannot and therefore does not make any agreement) arising from the misconduct described in Attachment A.

II. Terms And Conditions of Non-Prosecution Agreement.

A. Non-Prosecution for Criminal Liability.

1. In consideration for Bashas’ agreement to enter into this NPA, to accept corporate responsibility for the conduct described in Attachment A, to pay \$1,472,487.20 in restitution to the Tucson Community Food Bank, St. Mary’s Food Bank, United Food Bank, the Salvation Army, St. Vincent de Paul Food Bank, and the Association of Arizona Food Banks, to institute the remedial measures set forth in Attachment B, and to otherwise comply with the terms of this NPA, the USAO agrees not to prosecute Bashas’ for the conduct described in Attachment A or for any other related conduct that was known to the USAO or the USDA as of the date of this NPA. (This Paragraph does not provide any protection against prosecution for illegal activities, if any, committed in the future by Bashas’ or for past illegal conduct not described in this Paragraph.)

B. Breach of Agreement.

2. It is understood that if, in the two years following execution of this NPA, the USAO determines in the reasonable exercise of its sole discretion that Bashas’ or members of its upper management (a) deliberately gave false, incomplete, or misleading testimony or information during the investigation that led to this NPA, (b) has committed any knowing and intentional criminal conduct relating to the misbranding of meat products after the date of this NPA, or (c) has otherwise deliberately violated any provision of this NPA, Bashas’ shall, in the sole discretion of the USAO, be subject to prosecution for any federal criminal violation of which the USAO has knowledge, including a prosecution based upon the conduct specified in Attachment A. Conduct by a Bashas’ employee who is not an officer

or director will not constitute a breach of this NPA unless that employee acted in the course and scope of his or her employment and intended to benefit the company.

3. Bashas' agrees that it is within the sole discretion of the USAO to determine whether there has been a violation of this NPA. Bashas' understands and agrees that the exercise of discretion by the USAO under this NPA is not reviewable by any court. In the event the USAO preliminarily determines that Bashas' has violated this NPA, the USAO shall provide written notice to Bashas' of that preliminary determination sufficient to notify Bashas' of the conduct that constitutes the breach and shall provide Bashas' with thirty (30) calendar days from the date of that written notice in which to make a presentation to the USAO to demonstrate that no breach has occurred, that the breach has been cured, and/or that the USAO should, in any event, decline to revoke the NPA or prosecute Bashas' in spite of the breach. The USAO shall thereafter provide written notice to Bashas' of its final determination regarding whether a breach has occurred, whether the breach has been cured, and/or and whether the USAO will revoke the NPA in light of the breach.

4. Bashas' further understands and agrees that any prosecution following such determination may be premised on any information provided by Bashas' and its employees, officers, and directors to the USAO and any leads derived therefrom. Bashas' agrees that, in any such proceeding, it will not seek to suppress the use of any such information, or any leads derived therefrom, under the United States Constitution, Federal Rules of Evidence 408 and 410, Federal Rule of Criminal Procedure 11(f), or any other rule; that it will not contradict in any such proceeding the facts described in Attachment A; and that it will stipulate to the admissibility of Attachment A. Bashas' further agrees that it shall not contest the authenticity of documents and materials provided to the USAO by Bashas' and/or Bashas' subsidiaries in the course of the USAO's investigation, but Bashas' otherwise may challenge the admissibility of any such materials in any prosecution of Bashas'.

C. Tolling of the Statute of Limitations.

5. Bashas' agrees that any and all periods of limitation, including those enumerated in 18 U.S.C. §§ 3282 and 3293 and 26 U.S.C. § 6531, are and shall be suspended, tolled, and waived from operating as a bar or defense to the prosecution of Bashas', for any of the conduct set forth in Attachment A, for two years from the date of execution of this NPA.

D. Acceptance of Responsibility.

6. Bashas' accepts and acknowledges responsibility for the acts of its present and former employees who engaged in misconduct as set forth in Attachment A. Bashas' further agrees that the factual statements set forth in Attachment A are accurate. Bashas' condemns and does not approve the conduct set forth in Attachment A and has taken steps to prevent such conduct from occurring in the future, including the remedial measures described in Attachment B.

E. Restitution Payment.

7. Bashas' agrees to pay a total of \$1,472,487.20 in restitution as a result of the conduct described in Attachment A. Such restitution will be paid, in the form of certified check and/or bank cashier's check, to the Tucson Community Food Bank, St. Mary's Food Bank, United Food Bank, the Salvation Army, St. Vincent de Paul Food Bank, and the Association of Arizona Food Banks. (Bashas' shall be responsible for determining how to allocate the total restitution figure of \$1,472,487.20 between these recipients.) Bashas' shall complete its distribution of \$1,472,487.20 in restitution to these recipients by no later than March 31, 2014. The total amount paid is a final payment and shall not be refunded should the USAO later determine that Bashas' has breached this NPA and therefore commence a prosecution against Bashas'. Further, nothing in this NPA shall be deemed an agreement by the USAO that this amount is the maximum criminal fine, forfeiture, or restitution payment that may be imposed in any such prosecution. Thus, the USAO shall not be precluded in such a prosecution from arguing that the Court should impose a higher fine, forfeiture, or restitution payment. The USAO agrees, however, that in the event of a subsequent breach and prosecution, it will recommend to the Court that the amount paid pursuant to this NPA be offset against whatever restitution the Court might impose as part of its judgment. Bashas' understands that such a recommendation will not be binding on the Court. Bashas' also acknowledges that no tax deduction or insurance claim may be sought in connection with such payments.

F. Remedial Measures.

8. Bashas' agrees to complete implementing the remedial measures set forth in Attachment B within thirty (30) days of the date of execution of this NPA. Bashas' agrees that it will maintain these measures at least through the term of this NPA.

G. Basis for Agreement.

9. The USAO enters into this NPA based upon the following facts and circumstances: (a) Bashas' full and ongoing cooperation with the USAO and the USDA; (b) Bashas' willingness to accept full corporate responsibility for the misconduct of its present and former employees who engaged in misconduct; (c) Bashas' willingness and agreement to undertake significant remedial measures to ensure that such misconduct will not recur; (d) Bashas' agreement to disgorge all of the sales it derived from its misconduct, in the form of restitution payments to certain organizations (the Tucson Community Food Bank, St. Mary's Food Bank, United Food Bank, the Salvation Army, St. Vincent de Paul Food Bank, and the Association of Arizona Food Banks) that exist to provide services to the same class of individuals (*i.e.*, Arizona food consumers) who were harmed by the misconduct described in Attachment A; (e) the absence of prior instances of misconduct associated with Bashas'; (f) the absence of proof that Bashas' upper management was aware of, or ratified, the misconduct described in Attachment A; and (g) the USDA's conclusion that the specified misconduct by some of Bashas' employees did not create any public health risk.

H. Statements to the Media and Public.

10. Bashas' and the USAO agree that this NPA will be disclosed to the public.

11. Bashas' agrees that it will not make any public statement contradicting Attachment A. If the USAO notifies Bashas' that it has preliminarily determined, in its sole discretion, that Bashas' has made any such contradictory statement, Bashas' may avoid a finding of breach of this NPA by repudiating such statement within 48 hours after receipt of notice from the USAO. Such a repudiation must be made in a manner satisfactory to the USAO and must be conveyed both to the recipient(s) of the contradictory statement and to the USAO. Bashas' consents to the public release by the USAO of any such repudiation. Consistent with the above, Bashas' may avail itself of any legal or factual arguments available to it in any litigation, investigation, or proceeding (not involving the USAO), so long as doing so does not otherwise violate any term of this NPA.

I. Term of Agreement.

12. This NPA shall be in effect for a period of two years from the date of its execution. Bashas' may petition the USAO to shorten the term of the NPA after one year. The USAO has sole discretion to determine whether a shorter term is warranted.

J. Corporate Authority.

13. Bashas' hereby warrants and represents that it is authorized to enter into this Agreement on behalf of itself and any subsidiaries and that the person signing on behalf of Bashas' has been granted authority by the Bashas' Board of Directors to bind Bashas' and any subsidiaries.

K. Binding Nature of the Agreement.

14. It is understood that this Agreement is binding on Bashas' and the United States Attorney's Office for the District of Arizona. In contrast, this Agreement is not binding on any other United States Attorney's Office, on any other federal agencies, or on any state or local enforcement or regulatory agencies.

L. Successor Liability.

15. Bashas' agrees that if it sells, merges, or transfers all or substantially all of its business operations as they exist during the term of this NPA, whether such sale is structured as a stock or asset sale, merger, or transfer, it shall include in any contract for sale, merger, or transfer provisions binding the purchaser or any successor-in-interest thereto to the obligations described in this NPA. Bashas' expressly understands that the protections provided under this NPA shall not apply to any acquirer or successor entities unless and until such acquirer or successor formally adopts and accepts this NPA.

M. Notice.

16. Any notice to Bashas' under this NPA shall be given by personal delivery, overnight delivery by a recognized courier service, or registered or certified mail, addressed to Gregg Tucek, Vice President of Legal Affairs, Bashas' Inc., P.O. Box 488, Chandler, AZ 85244.

N. Required Signatures and Authorization.

17. By signing this Agreement, Bashas' duly-authorized representative acknowledges that the terms set forth above accurately reflect the parties' understanding of the Non-Prosecution Agreement between Bashas' and the USAO.

18. Two original copies of this NPA shall be executed, one of which shall be delivered to Gregg Tucek, Bashas' Vice President of Legal Affairs, and one of which shall be delivered to Dominic Lanza, Assistant United States Attorney, District of Arizona.

O. Complete Agreement.

19. This Agreement sets forth the terms of the Non-Prosecution Agreement between Bashas' and the USAO. No promises, agreements, or conditions have been entered into other than those set forth in this NPA. This NPA supersedes prior understandings, if any, of the parties, whether written or oral.

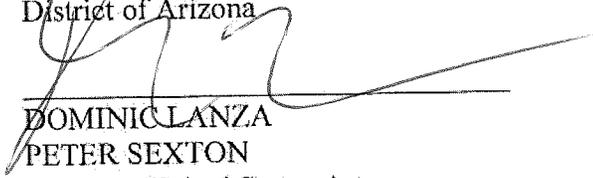
20. No amendment or modification to this NPA shall be valid unless it is in writing and signed by a duly-authorized representative of Bashas' and a duly-authorized representative of the USAO.

FOR THE USAO:

DATED:

Aug. 30, 2013

JOHN S. LEONARDO
United States Attorney
District of Arizona



DOMINIC LANZA
PETER SEXTON
Assistant United States Attorneys

FOR Bashas':

DATED:



Gregg Tucek
Vice President of Legal Affairs
Bashas' Inc.

Attachment A

AGREED STATEMENT OF FACTS

A. Background.

1. Bashas' Inc. ("Bashas'") is an Arizona corporation that operates over 100 grocery stores in Arizona, California, and New Mexico, including stores known as Bashas', Bashas' Dine, Food City, and AJ's Fine Foods ("AJ's").
2. Between 2010 and 2012, there were 12 AJ's locations in the Phoenix metropolitan area and an additional location in Tucson. AJ's is an upscale market that sells gourmet and speciality foods along with raw beef, fish, and poultry. The stores average approximately 20,000 square feet of retail space.
3. In general, each AJ's location employs a "meat manager" who is responsible for overseeing that location's receipt and sale of raw beef, fish, and poultry. During the 2010-12 time period, each AJ's meat manager was, in turn, supervised by one person, AJ's Meat Specialist. This individual also was responsible—due to Bashas' filing of Chapter 11 bankruptcy in July 2009 and the resulting downsizing of its administrative support teams—for purchasing meat for other divisions of the Bashas' organization.
4. As explained below, Bashas' decision to consolidate numerous administrative responsibilities under one position was a poor one. This arrangement failed to provide adequate corporate oversight over the operations of individual AJ's locations. As a result, some AJ's meat managers were able to implement fraudulent and deceptive meat-labeling practices without the knowledge of Bashas' upper management.

B. The Investigation.

5. In November 2011, investigators from the United States Department of Agriculture ("USDA") received a tip that an AJ's location was selling mislabeled beef tenderloin steaks. Based on this tip, the USDA initiated an investigation. Some of the techniques employed by the USDA during this investigation included surreptitious meat purchases, spot inspections of AJ's locations, and interviews of AJ's employees.
6. Bashas' upper management became aware of the USDA's investigation as it was ongoing. Once acquiring this awareness, Bashas' upper management cooperated fully with investigators, made internal records available for inspection, made employees available for interviews, and also launched its own internal investigation.
7. The USDA's investigation showed that, between January 2010 and February 2012, employees within the meat departments of some AJ's locations followed a practice of taking beef tenderloin steaks that had been graded as "Choice" under the USDA's meat grading system, mislabeling those steaks as "Prime" (a higher grade), and then selling the mislabeled steaks to customers. Because "Prime" steak is typically much more expensive than "Choice" steak—AJ's typically sold "Prime" steak for \$35.99/pound and sold "Choice" steak for

\$25.99/pound during the relevant time period—the result of these mislabeling practices was that customers were being overcharged by as much as \$10/pound.

8. During interviews with USDA investigators, several AJ's meat managers admitted they had intermittently engaged in, or authorized other meat employees to engage in, the aforementioned mislabeling practices. These managers offered a variety of explanations for their conduct. Some stated they felt entitled to “upgrade” the tenderloins because they disagreed with the initial “Choice” grade assigned by the USDA. Others stated they believed it was appropriate to label and sell certain tenderloins as “Prime,” even if those tenderloins had been delivered in a “Choice” box, as long as the individual tenderloins met “Prime” grading requirements. Others stated they would engage in mislabeling whenever the AJ's distribution center would run out of “Prime” tenderloins—in this circumstance, they explained, they didn't want to disappoint customers who expected that a full range of products would be available. And others stated they engaged in mislabeling because they felt pressure to satisfy their store's profit-margin target (even though AJ's did not provide additional compensation to managers who met such targets or impose discipline against managers who failed to meet such targets).

9. Although the USDA's investigation initially focused only on AJ's practices related to beef tenderloin steaks, the USDA later came to determine that some AJ's locations also were engaging in fraudulent and deceptive labeling practices concerning American-style “Kobe” ground beef, a special breed of beef that was typically sold for \$5.99/pound. Specifically, the USDA found that these AJ's locations followed a practice of adding trimmings from non-“Kobe” meat products (including “Choice” and “Prime” steaks, cuts of meat that typically sell for much more than \$5.99/pound) to the “Kobe” ground beef mixture in an effort to improve the consistency of the grind. As result, the product being sold by these AJ's locations as “Kobe” ground beef was not, in fact, composed solely of “Kobe” ground beef.

10. In total, the USDA determined that the offending AJ's locations sold approximately 17,636 pounds of mislabeled “Prime” tenderloin steaks and 139,861 pounds of mislabeled “Kobe” ground beef to customers between January 2010 and February 2012 and generated approximately \$1,472,487.20 in total sales therefrom.

C. **The Remedial Measures.**

11. As noted above, Bashas' upper management was unaware of, and did not authorize, the misconduct of the AJ's meat managers who'd mislabeled the "Prime" steaks and "Kobe" ground beef. After becoming aware of this misconduct, Bashas' upper management conducted an internal investigation and then voluntarily chose to institute a series of remedial measures in an effort to prevent such misconduct from ever recurring. Those remedial measures are set forth in additional detail in Attachment B.

Attachment B

REMEDIAL MEASURES

I. List of Remedial Measures.

1. Pursuant to the non-prosecution agreement (“NPA”) between the United States Attorney’s Office for the District of Arizona (the “USAO”) and Bashas’ Inc. and its affiliates and associates (“Bashas”), Bashas’ hereby certifies that it already has implemented, or will implement within thirty (30) days of the signing of the NPA, all of the following remedial measures, which are intended to prevent the misconduct detailed in Attachment A from ever recurring:

- A. Impose discipline (ranging from suspension to termination, depending on severity of misconduct) against every meat manager who engaged in misconduct related to the mislabeling of “Kobe” ground beef.
- B. Impose discipline (ranging from suspension to termination, depending on severity of misconduct) against every meat manager who engaged in misconduct related to the mislabeling of “Prime” beef tenderloin steaks.
- C. Institute new grind policy, applicable to all AJ’s locations, with detailed instructions on process and product, including appropriate warehouse order numbers.
- D. Require semi-annual grind training for all AJ’s meat department employees.
- E. Institute supply chain review procedures that will be applicable to all AJ’s locations.
- F. Implement nomenclature standardization (e.g., “DC in,” “DC out,” “Scale,” “Front-end,” “Receipt”) in all AJ’s meat departments to ensure accuracy.
- G. Administratively prepare a monthly movement report—which will identify the amount of each product delivered to the store and sold through the front end of the store—and require AJ’s Director of Operations and AJ’s Assistant Director of Operations to review those reports on a monthly basis.
- H. Require each AJ’s location’s meat manager to participate, on a monthly basis, in a review of the location’s grind policy.
- I. Require each AJ’s location’s meat manager to conduct periodic “grind fat testing” and disclose the results to the location’s store director.
- J. Reissue to each AJ’s location, on a semi-annual basis, the “grind and COOL” policy.
- K. Require strict adherence to the USDA’s grade assignments.

- L. Appoint a member of Bashas' upper management to serve as Chief Compliance Officer ("CCO"). This individual will be responsible for overseeing Bashas' compliance with the NPA and implementation of the remedial measures identified above.

II. **Documentation Available for Inspection.**

2. The CCO shall ensure that all documentation related to the implementation of the aforementioned remedial measures will be maintained by Bashas' and available for inspection by a representative of the USAO or United States Department of Agriculture ("USDA").

III. **Self-Enforcement.**

3. Bashas' further agrees that it will undertake and implement the necessary procedures to ensure that the aforementioned remedial measures are diligently implemented and/or complied with by all employees and managers during the term of the NPA.