



U.S. DEPARTMENT OF JUSTICE

*United States Attorney
Eastern District of California*

*Phillip A. Talbert
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July 15, 2016

VIA ELECTRONIC MAIL

Neal Stephens
Jones Day
1755 Embarcadero Road
Palo Alto, CA 94303

Grant Fondo
Goodwin Protcer LLP
135 Commonwealth Drive
Menlo Park, CA 94025

Re: *Mary's Gone Crackers, Inc.*

Dear Messrs Stephens and Fondo:

1. On the understandings specified below, the United States Attorney's Office for the Eastern District of California (the "Office"), will not criminally prosecute Mary's Gone Crackers, Inc. (the "Company"), a corporation organized under the laws of Delaware, qualified to do business in California and headquartered in the Eastern District of California, for any crimes (except for criminal tax violations, as to which the Office does not make any agreement) relating to any of the conduct described in the Statement of Facts attached hereto as Attachment A. The Office enters into this Non-Prosecution Agreement based on the individual facts and circumstances presented by this case and the Company. Among the facts considered were the following: (a) the Company's cooperation, including conducting an extensive internal investigation, voluntarily making employees available for interviews, and collecting, analyzing, and organizing evidence and information for the Office; (b) the Company's receipt of certain legal advice from other counsel during the events in question; (c) collateral consequences of a prosecution, including to employees and third parties not proven personally culpable; (d) the Company has engaged in remediation, including terminating employees and enhancing its measures for complying with United States immigration laws, including Title 8, United States Code, Sections 1324 and 1324a; (e) the Company has committed to continue to enhance its compliance program and internal controls, including ensuring that its compliance program satisfies the minimum elements set forth in Attachment B to this Agreement; and (f) the Company has agreed to continue to cooperate with the Office in any ongoing investigation of the conduct of the Company and its officers, directors, employees, agents, and consultants relating to potential violations of Title 8 of the United States Code.

2. The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as set forth in the Statement of Facts attached hereto as Attachment A and incorporated by reference into this Agreement, and that the facts described in Attachment A are true and accurate. The parties agree that nothing in this Agreement or any other documents filed herein is, or should be in any way construed as, an acknowledgment or knowledge of any conduct resulting civil liability or criminal culpability on the part of the Company or any of its officers, directors, employees, and agents. The Company expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Company make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Company set forth in the Statement of Facts attached hereto as Attachment A. The Company agrees that if it or its parent company, or any direct or indirect subsidiaries or affiliates over which it exercises majority control, issues a press release or holds any press conference in connection with this Agreement, the Company shall first consult the Office to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the Office and the Company; and (b) whether the Office has any objection to the release.

3. The Company's obligations under this Agreement shall have a term of two (2) years from the date on which the Agreement is executed, except as specified in Paragraph 4 below.

4. The Company shall cooperate fully with the Office in any and all matters relating to the conduct described in this Agreement and Attachment A, subject to applicable law and regulations, until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the term specified in Paragraph 3 above. At the request of the Office, the Company shall also cooperate fully with law enforcement and regulatory authorities and agencies in any investigation of the Company, its parent company, any direct or indirect subsidiaries or affiliates over which it exercises majority control, or any of its present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to this Agreement and Attachment A. The Company agrees that its cooperation shall include, but not be limited to, the following:

- a. The Company shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or work product doctrine with respect to its activities, those of its parent company and any direct or indirect subsidiaries or affiliates over which it exercises majority control, and those of its present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which the Company has any knowledge or about which the Office may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Company to provide to the Office, upon request, any document, record or other tangible evidence about which the Office may inquire of the Company.

- b. Upon request of the Office, the Company shall designate employees, agents or attorneys with knowledge to provide to the Office the information and materials described above on behalf of the Company. It is further understood that the Company must at all times provide complete, truthful, and accurate information.
- c. The Company shall use its best efforts to make available for interviews or testimony, as requested by the Office, present or former officers, directors, employees, agents and consultants of the Company. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with law enforcement and regulatory authorities. Cooperation shall include identification of witnesses who, to the knowledge of the Company, may have material information regarding the matters under investigation.
- d. With respect to any information, testimony, documents, records or other tangible evidence provided to the Office pursuant to this Agreement, the Company consents to any and all disclosures, subject to applicable law and regulations, to other governmental authorities of such materials as the Office, in its sole discretion, shall deem appropriate.

5. In addition, during the term of the Agreement, should the Company learn of credible evidence or allegations of violation of United States immigration laws or other violations of United States federal law, the Company shall promptly report such evidence or allegations to the Office. No later than thirty (30) days after the expiration of the term of this Agreement, the Company, by the Chief Executive Officer of the Company, will certify to the Department that the Company has made a diligent effort in good faith to satisfy its disclosure obligations pursuant to this Agreement.

6. The Company represents that it has implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of Title 8 of the United States Code throughout its operations, including those of any of its direct or indirect subsidiaries or affiliates over which it exercises majority control, including, but not limited to, the minimum elements set forth in Attachment B, which is incorporated by reference into this Agreement. In addition, the Company agrees that it will report to the Office annually during the term of the Agreement regarding remediation and implementation of the compliance measures described in Attachment B. These reports will be prepared in accordance with Attachment C.

7. The Company agrees to pay a forfeiture monetary penalty in the amount of \$1,500,000. The Company agrees to deliver the payment via a certified check made payable to the United States Customs and Border Protection within thirty (30) days of the execution of this Agreement. The Company agrees to execute a stipulation for consent judgment that the funds are subject to forfeiture under 18 U.S.C. § 982(a)(6) and 8 U.S.C. 1324(b) and agrees to forfeit the funds to the United States. The Company acknowledges that no United States tax deduction may be sought in connection with the payment of any part of this \$1,500,000 forfeiture. The

Company also agrees to pay \$3,000 to [REDACTED] within ten (10) business days from the execution of the Agreement for the reasons set forth in Attachment A.

8. The Office agrees, except as provided herein, that it will not bring any criminal or civil case against the Company relating to any of the conduct described in the Statement of Facts, attached hereto as Attachment A. Should the Office determine that the Company has deliberately given materially false or misleading information to the Office during the investigation or negotiation of this agreement on or after January 31, 2013, then the Company may be subject to prosecution for perjury, obstruction of justice or for making a false statement. This Agreement does not provide any protection against prosecution for any future conduct by the Company. In addition, this Agreement does not provide any protection against prosecution of any present or former officer, director, employee, shareholder, agent, consultant, contractor, or subcontractor of the Company for any violations committed by them.

9. If, during the term of this Agreement, the Company (a) commits any felony under U.S. federal law; (b) provides in connection with this Agreement deliberately false, incomplete, or misleading information; (c) fails to cooperate as set forth in this Agreement; (d) fails to implement a compliance program as set forth in this Agreement and Attachment C; or (e) otherwise fails specifically to perform or to fulfill completely each of the Company's obligations under the Agreement, regardless of whether the Office becomes aware of such a breach after the Term of the Agreement is complete, the Company shall thereafter be subject to prosecution for any federal criminal violation of which the Office has knowledge, including, but not limited to, the conduct described in the attached Statement of Facts, which may be pursued by the Office in the U.S. District Court for the Eastern District of California or any other appropriate venue. Determination of whether the Company has breached the Agreement and whether to pursue prosecution of the Company shall be in the Office's sole discretion. Any such prosecution may be premised on information provided by the Company. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Office prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Company, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the term plus one year. In addition, the Company agrees that the statute of limitations as to any violation of Title 8 of the United States Code that occurs during the term of this Agreement will be tolled from the date upon which the violation occurs until the date upon which the Office is made aware of the violation.

10. In the event the Office determines that the Company has breached this Agreement, the Office agrees to provide the Company with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, the Company shall have the opportunity to respond to the Office in writing to explain the nature and circumstances of such breach, as well as the actions the Company has taken to address and remediate the situation, which explanation the Office shall consider in determining whether to pursue prosecution of the Company.

11. In the event that the Office determines that the Company has breached this Agreement and the Office decides to pursue prosecution of the Company: (a) all statements made by or on behalf of the Company to the Office or to the Court, including the attached Statement of Facts, and any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Office against the Company; and (b) the Company shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Company prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, the Company, will be imputed to the Company for the purpose of determining whether the Company has violated any provision of this Agreement shall be in the sole discretion of the Office.

12. Except as may otherwise be agreed by the parties in connection with a particular transaction, the Company agrees that in the event that, during the Term of the Agreement, it undertakes any change in corporate form, including if it sells, merges, or transfers a substantial portion of its business operations as they exist as of the date of this Agreement, whether such sale is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The Company shall obtain approval from the Office at least thirty (30) days prior to undertaking any such sale, merger, transfer, or other change in corporate form, including dissolution, in order to give the Office an opportunity to determine if such change in corporate form would impact the terms or obligations of the Agreement.

13. This Agreement is binding on the Company and the Office but specifically does not bind any other federal agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities, although the Office will bring the cooperation of the Company and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by the Company.

14. It is further understood that the Company and the Office may disclose this Agreement to the public.

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15. This Agreement sets forth all the terms of the agreement between the Company and the Office. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Office, the attorneys for the Company, and a duly authorized representative of the Company.

Sincerely,

PHILLIP A. TALBERT
Acting United States Attorney
Eastern District of California

Date: July 15, 2016

BY: 
CHRISTOPHER S. HALES
Assistant United States Attorney

AGREED AND CONSENTED TO:

Mary's Gone Crackers, Inc.

Date: _____

BY: _____
RON KESSELMAN
Chief Executive Officer
Mary's Gone Crackers, Inc.

Date: _____

BY: _____
NEAL STEPHENS
Jones Day
Counsel for Mary's Gone Crackers

Date: _____

BY: _____
GRANT FONDO
Goodwin Procter
Counsel for Mary's Gone Crackers

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Sincerely,

PHILLIP A. TALBERT
Acting United States Attorney
Eastern District of California

Date: July 15, 2016

BY: 
CHRISTOPHER S. HALES
Assistant United States Attorney

AGREED AND CONSENTED TO:

Mary's Gone Crackers, Inc.

Date: 7/15/2016

BY: 
RON KESSELMAN
Chief Executive Officer
Mary's Gone Crackers, Inc.

Date: _____

BY: _____
NEAL STEPHENS
Jones Day
Counsel for Mary's Gone Crackers

Date: _____

BY: _____
GRANT FONDO
Goodwin Procter
Counsel for Mary's Gone Crackers

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Sincerely,

PHILLIP A. TALBERT
Acting United States Attorney
Eastern District of California

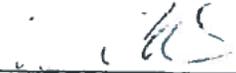
Date: July 15, 2016

BY: 
CHRISTOPHER S. HALES
Assistant United States Attorney

AGREED AND CONSENTED TO:

Mary's Gone Crackers, Inc.

Date: 7/14/2016

BY: 
RON KESSELMAN
Chief Executive Officer
Mary's Gone Crackers, Inc.

Date: 7/21/16

BY: 
NEAL STEPHENS
~~Jones Day~~
Counsel for Mary's Gone Crackers

Date: 7/21/16

BY: 
GRANT FONDO
Goodwin Procter
Counsel for Mary's Gone Crackers

ATTACHMENT A

STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the non-prosecution agreement (the "Agreement") between the United States Attorney's Office for the Eastern District of California (the "Office") and Mary's Gone Crackers, Inc. ("MGC" or the "Company"). The Company hereby agrees and stipulates that the following information is true and accurate. The Company admits, accepts, and acknowledges that it is responsible for the acts of its officers, directors, employees, and agents as set forth below. The parties also agree that nothing in this Agreement or any other documents filed herein is, or should be in any way construed as, an acknowledgment or knowledge of any conduct resulting civil liability or criminal culpability on the part of the Company or any of its directors, officers, management or other employees.

MGC is a food industry company that makes gluten-free cookies and crackers. MGC is based in Gridley, California and has its baking facility there. On or about December 31, 2012, after the conduct described below, MGC was acquired by an unrelated entity and is now a wholly owned subsidiary of that entity.

On March 29, 2012, United States Immigration and Customs Enforcement ("ICE") notified MGC that ICE would be conducting an audit of MGC's I-9 forms by delivering a notice of inspection letter to MGC in Gridley. ICE provided MGC notice that ICE representatives would return on April 3, 2012 to collect MGC's I-9 forms for review.

On May 4, 2012, ICE sent MGC a "Notice of Suspect Documents" letter notifying MGC that the right-to-work documentation provided by 49 of its employees did not satisfy the Form I-9 eligibility verification requirements, and that those 49 individuals appeared not to be authorized to work in the United States. One employee of the 49 provided corrected documentation. On Friday, May 18, 2012, MGC informed ICE that the other 48 employees had either been terminated or resigned.

One of the 48 employees supposedly terminated or resigned never stopped working for MGC at all in May 2012. That employee, an operations supervisor, continued working at MGC under a new assumed name. Several MGC employees knew this employee was not eligible to work in the United States. MGC subsequently started paying that individual as an independent contractor, rather than under MGC's ordinary payroll. Approximately five months later, on or about September 30, 2012, that employee was terminated by MGC for other reasons.

Between June 1 and June 5, 2012, MGC rehired 12 more people who it had previously represented to ICE had been terminated or resigned, all of them under new names. Most of these individuals were production shift supervisors. In total, MGC employed at least 13 people under new names following the I-9 audit.

During the course of the I-9 audit and rehiring of individuals, MGC at times consulted with an outside counsel from the Chico area.

On January 31, 2013, a search warrant was executed by federal law enforcement at MGC's facility in Gridley, California. At that time, at least 12 individuals rehired under new names were still working at MGC. After the execution of the search warrant, MGC substantially revised its immigration compliance procedures.

MGC has cooperated with the government in its investigation into any wrongdoing by MGC. MGC has also taken substantial remedial measures, including: (1) terminating employees and stopping use of the outside counsel involved; (2) adopting an Employment Eligibility Verification Plan that utilizes E-Verify and the Social Security Verification Service; (3) sending a Human Resources manager to an IMAGE Forum and Training session in Los Angeles; (4) providing specific formal training on I-9 procedures to key company employees; (5) establishing an anonymous tip line via telephone and email so that employees can report any potential I-9 issues; (6) retaining an HR compliance expert to assess its I-9 compliance program, and (7) retaining a new law firm as outside counsel for human resources issues, to include immigration issues.

██████████ is not associated with MGC but discovered that an employee at MGC had been using her son's social security number. On January 30, 2013, ██████████ contacted MGC to complain. ██████████ ultimately had to pay approximately \$3,000 of her own funds to resolve debts resulting from the use of her son's social security number by an MGC employee.

ATTACHMENT B

CORPORATE COMPLIANCE PROGRAM

Mary's Gone Crackers, Inc. ("MGC" or the "Company") agrees to verify the Social Security numbers of its existing workforce utilizing the Social Security Number Verification System and to submit to an I-9 Form audit by the U.S. Immigration and Customs Enforcement, Homeland Security Investigations ("HSI") directorate, with annual audits by HSI occurring every year thereafter during the term of this Agreement. MGC further agrees to:

- a. Use the U.S. Citizenship and Immigration Services ("USCIS") "E-Verify" system for all hiring;
- b. Establish within 30 days of the execution of this Agreement, after receiving instruction from HSI, an internal training program to instruct employees on how to: properly and legally complete I-9 Forms (Employee Eligibility Verification Forms); detect fraudulent use of documents in the I-9 Form process; and use the E-Verify system;
- c. Require the I-9 Form and E-Verify system process be conducted only by individuals who have received training pursuant to subparagraph (b);
- d. Establish within 30 days of the execution of this Agreement a self-reporting procedure for reporting to HSI, within 24 hours, the discovery or allegations of violations of immigration laws or regulations, provided that the United States will not seek to criminally prosecute MGC for any acts or conduct disclosed by MGC to HSI pursuant to this Agreement if MGC voluntarily, truthfully, completely and timely discloses all information and knowledge that MGC has with regard to such discoveries or allegations of violations of immigration laws or regulations.
- e. Within 30 days of the execution of this Agreement, designate an employee to serve as Compliance Officer to ensure that employment practices are in accordance with the terms of the USCIS's Handbook for Employers, MGC's internal training program, and this Agreement.
- f. Establish and maintain safeguards against use of the verification process for unlawful discrimination;
- g. Upon the execution of this Agreement, begin making copies of identification document(s) required by Form I-9 and submitted by applicants for employment, and retaining such copies during the pendency of this Agreement, irrespective of whether the applicant is ultimately employed by MGC, and bringing potentially false or fraudulent identification documents to the attention of HSI pursuant to subparagraph d.

ATTACHMENT C

CORPORATE COMPLIANCE REPORTING

Mary's Gone Crackers, Inc. (the "Company") agrees that it will report to the United States Attorney's Office for the Eastern District of California (the "Office") periodically, at no less than eight-month intervals during a two-year term, regarding remediation and implementation of the compliance program and internal controls, policies, and procedures described in Attachment B. Should the Company discover credible evidence, not already reported to the Office, that any violations of federal immigration law have been committed, the Company shall promptly report such conduct to the Department. During this two-year period, the Company shall: (1) conduct an initial review and submit an initial report, and (2) conduct and prepare at least two (2) follow-up reviews and reports, as described below:

- a. By no later than eight months from the date this Agreement is executed, the Company shall submit to the Office a written report setting forth a complete description of its remediation efforts to date, its proposals reasonably designed to improve the Company's internal controls, policies, and procedures for ensuring compliance with federal immigration laws, and the proposed scope of the subsequent reviews. The report shall be transmitted to Assistant United States Attorney Christopher S. Hales, U.S. Attorney's Office, 501 I Street, Suite 10-100, Sacramento, CA 95814.
- b. The Company shall undertake at least two (2) follow-up reviews, incorporating the Office's views on the Company's prior reviews and reports, to further monitor and assess whether the Company's policies and procedures are reasonably designed to detect and prevent violations of federal immigration laws.
- c. The first follow-up review and report shall be completed by no later than eight months after the initial review. The second and final follow-up review and report shall be completed no later than thirty (30) days before the end of the Term.
- d. The reports will likely include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the reports could discourage cooperation, impede pending or potential government investigations and thus undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or except to the extent that the Office determines in its sole discretion that disclosure would be in furtherance of the Office's discharge of its duties and responsibilities or is otherwise required by law.
- e. The Company may extend the time period for submission of any of the follow-up reports with prior written approval of the Office.