

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

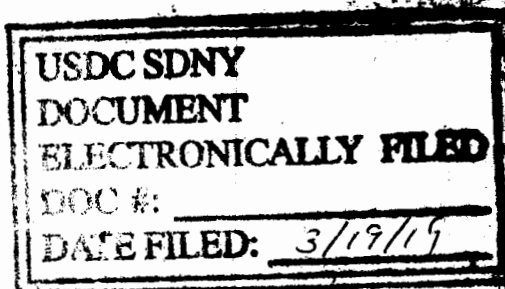
UNITED STATES OF AMERICA,

Plaintiff,

v.

GEORGE MEAT MARKET, INC., KWOK
SIN NG, and ALICE YAN FUNG NG,

Defendants.



No. 18 Civ. 6861 (JLC)

CONSENT DECREE

WHEREAS, on July 31, 2018, Plaintiff the United States of America (the “United States”), acting on behalf of the United States Department of Agriculture (“USDA”), filed a complaint for injunctive relief (the “Complaint”), Dkt. No. 1, against Defendants George Meat Market, Inc. (“George Meat Market”), Kwok Sin Ng (“Kwok Ng”), and Alice Yan Fung Ng (“Alice Ng”; collectively, with George Meat Market and Kwok Ng, “Defendants”), alleging that Defendants have violated, and threaten to violate in the future, the Poultry Products Inspection Act (“PPIA”), 21 U.S.C. § 451 *et seq.*;

WHEREAS Kwok Ng and Alice Ng answered the Complaint and admitted the violations of the PPIA alleged in the Complaint, while also claiming that George Meat Market ceased operations at the end of July 2018, Dkt. Nos. 14-15;

WHEREAS the operations of George Meat Market at 288 Grand Street have continued since the beginning of August 2018 under the name of a new entity, Ben Meat Market, Inc. (“Ben Meat Market”), which entity is controlled by Benson Ng;

WHEREAS Ben Meat Market and Benson Ng agree to join this Consent Decree as settling parties;

WHEREAS the United States, George Meat Market, Kwok Ng, Alice Ng, Ben Meat Market, and Benson Ng (collectively, the “Parties”) agree that entry of this Consent Decree is the most appropriate means of resolving the claims asserted by the United States under the PPIA as specifically set forth in the Complaint; and

WHEREAS, the Court finds that this Consent Decree is a fair and reasonable settlement of the claims asserted by the United States under the PPIA as specifically set forth in the Complaint, and that this Consent Decree is fair, reasonable, and consistent with the public interest;

NOW, THEREFORE, with the consent of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 21 U.S.C. § 467c and 28 U.S.C. §§ 1331 and 1345, and personal jurisdiction over all the parties to this action.

2. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c).

3. For purposes of this Consent Decree, or any action or proceeding to enforce this Consent Decree, George Meat Market, Alice Ng, Kwok Ng, Ben Meat Market, and Benson Ng (the “Settling Parties”) consent to venue in the Southern District of New York and to this Court’s jurisdiction over this Consent Decree, over any such action or proceeding, and over the Settling Parties.

4. For purposes of this Consent Decree, the Settling Parties agree that the Complaint states a claim upon which relief may be granted.

II. ADMISSIONS

5. George Meat Market, Alice Ng, Kwok Ng, Ben Meat Market, and Benson Ng admit, acknowledge, and accept responsibility for the following:

- a. George Meat Market sells and supplies poultry products to the public from a facility located at 288 Grand Street, New York, New York 10002.
- b. Kwok Ng is the President of George Meat Market.
- c. Alice Ng is the Vice President of George Meat Market.
- d. Defendants George Meat Market, Kwok Ng, and Alice Ng have repeatedly sold non-federally inspected and misbranded whole roast duck and other poultry products to retailers for resale, in violation of the PPIA. Among other instances, in August 2017, George Meat Market, Kwok Ng, and Alice Ng sold for resale non-federally inspected and misbranded whole roast duck.
- e. George Meat Market, Kwok Ng, and Alice Ng have also failed to keep records that fully and correctly disclosed all business transactions respecting such poultry products.
- f. By letter dated July 16, 2018, the United States notified Defendants of its intent to file suit under the PPIA.
- g. On or about July 24, 2018, Benson Ng incorporated Ben Meat Market, Inc., a New York corporation with the same address as George Meat Market, 288 Grand Street, New York, New York.
- h. Benson Ng controls the entity called Ben Meat Market, Inc.
- i. On or about August 1, 2018, Alice Ng and Kwok Ng purported to transfer business operations from George Meat Market to Ben Meat Market.

j. Alice Ng, Kwok Ng, and Benson Ng continued to operate the business under the name Ben Meat Market from August 2018 through the entry of this Consent Decree.

III. APPLICABILITY

6. The obligations of this Consent Decree apply to and are binding upon the United States and upon the Settling Parties, and any successors, assigns, or other entities or persons otherwise bound by law.

7. No transfer of ownership or operation of George Meat Market or Ben Meat Market, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the Settling Parties of their obligation to ensure that the terms of the Consent Decree are implemented, unless the Settling Parties demonstrate to the United States' satisfaction that such transfer constitutes a *bona fide*, arm's-length transaction, and the United States consents to relieve the Settling Parties of such obligation. A transfer of ownership or operation includes but is not limited to any change or cessation in ownership or character of their business, such as assignment or sale resulting in the creation or emergence of a successor corporation or business entity, the creation or dissolution of subsidiaries, change or alteration of the business form or name, or any other change in their business structure that may have an effect upon the Settling Parties' compliance with the terms of this Consent Decree. At least thirty (30) days prior to such transfer, the Settling Parties shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written transfer agreement, to the United States Attorney for the Southern District of New York, and the USDA, in accordance with Paragraph 26 ("Service"),

below. Any attempt to transfer ownership or operation of George Meat Market or Ben Meat Market without complying with this Paragraph constitutes a violation of this Consent Decree.

8. The Settling Parties shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor or subcontractor retained to perform work related to this Consent Decree. The Settling Parties shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

9. In any action to enforce this Consent Decree, the Settling Parties shall not raise as a defense the failure by any of their officers, directors, employees, agents, contractors or subcontractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. INJUNCTIVE RELIEF

10. ***Compliance with PPIA.*** The Settling Parties and each and all of their directors, officers, agents, servants, representatives, employees, successors, or assigns, and any and all persons in active concert or participation with them, directly or indirectly, who received actual notice of this Consent Decree by personal service or otherwise, are hereby permanently restrained and enjoined from:

a. selling, transporting, offering for sale or transportation, or receiving for transportation, any poultry products required to be inspected and passed by USDA that have not been inspected and passed by USDA federal inspectors;

b. preparing or processing poultry and poultry products in unsanitary conditions;

c. not keeping such records as will fully and correctly disclose the purchase, receipt, offer for sale, sale, transport, and any other transaction regarding any poultry of poultry products involved in their business; and

d. engaging in any other conduct that would violate the PPIA and/or the regulations promulgated thereunder.

11. **Recordkeeping.** The Settling Parties must prepare and maintain, whether operating pursuant to any exemption to the requirement of obtaining a federal grant of inspection under the PPIA (a “PPIA Inspection Exemption”), 9 C.F.R. Part 381, Subpart C, or pursuant to a grant of federal inspection under the PPIA, business records of all transactions involving poultry or poultry products. The business records required to be maintained shall include, but are not limited to, documents showing the amounts of poultry and poultry product purchased by the Settling Parties and receipts for such purchases, and the amounts of poultry and poultry product sold by the Settling Parties to customers and receipts for such sales, and as otherwise set out at 9 C.F.R. § 381.175(b). The Settling Parties must maintain each record for a period of not less than three (3) years from the date of origination of such record. These records must be maintained at the Settling Parties’ establishment or facility.

12. **Federal Grant of Inspection.** In the event that the Settling Parties perform or intend to perform operations which require a federal grant of inspection under the PPIA, in order to be issued a grant of federal inspection and commencing operations under such grant, including slaughtering, preparing, processing, selling, transporting, offering for sale or transportation, or receiving for transportation poultry or poultry products, the Settling Parties must demonstrate, subject to review and verification by the USDA’s Food Safety and Inspection Service (“FSIS”), compliance with all FSIS statutory and regulatory requirements, including but not limited to 9

C.F.R. Parts 381, 416, 417, and 418. FSIS's review and verification will include an examination of the Settling Parties' establishment, facilities, operations, and equipment, as well as the Settling Parties' written Hazard Analysis and Critical Control Point program, Sanitation Performance Standards, Sanitation Standard Operating Procedures, and other food safety programs required by FSIS regulation.

13. **Mandatory Training.** Within sixty (60) days of the date of the entry of this Consent Decree by the Court, the Settling Parties and all of their employees must complete training and education in the PPIA statutes and regulations, labeling, sanitation, food safety, and product handling. The Settling Parties must submit a written description of the training and educational program they propose to implement no later than two weeks prior to conducting such training and instruction to the FSIS's Enforcement and Litigation Division ("ELD") Director for review and approval. The Settling Parties must implement this training for all new employee(s) within five (5) working days of commencing employment. The Settling Parties and their employees must also undergo training and education in the PPIA statutes and regulations, labeling, sanitation, food safety, and product handling procedures on an annual basis, and must ensure that adequate records of such training and educational programs are available to FSIS personnel for review and/or copying immediately upon request.

14. **Access; Seizure.** The Settling Parties must, at all reasonable times, afford duly authorized representatives of the USDA full access to the Settling Parties' establishment, if operating pursuant to a federal grant of inspection, or to their facility, if operating pursuant to a PPIA Inspection Exemption. "Full access" includes full and unimpeded opportunity to inspect and examine the Settling Parties' establishment or facility, operations, equipment, inventory, and records; to copy all such records; and to take reasonable samples of inventory. "All reasonable

times” means any hours during which the Settling Parties are doing business at the Settling Parties’ establishment or facility, including hours before dawn where applicable. Additionally, authorized representatives of the USDA shall have the right to seize and destroy any and all misbranded or uninspected poultry or poultry products in accordance with applicable laws, regulations and USDA FSIS directives.

15. ***Compliance with Regulations.*** The Settling Parties agree to comply at all times with all applicable requirements of 9 C.F.R. § 381.10 and Title 1, Part 271 of the Official Compilation of Codes, Rules & Regulations of the State of New York.

16. ***Violation of Sales Requirements.*** If the USDA determines that the Settling Parties have failed to comply with the applicable sales restrictions of Paragraph 10(a) of this Consent Decree, the Settling Parties agree to the following relief:

a. for the first violation, the Settling Parties agree to pay to the United States a civil penalty of \$500.00 per pound, or portion thereof, of poultry or poultry products sold; and

b. for every violation thereafter, the Settling Parties agree to pay to the United States a civil penalty of \$1,000.00 per pound, or portion thereof, of poultry or poultry products sold.

17. ***Violation of Other Requirements.*** If the USDA determines that the Settling Parties have failed to comply with any applicable requirement of the PPIA and its regulations or with the requirements of this Consent Decree other than violations of the sales restrictions under Paragraph 10(a)—including violations of Paragraph 10(b)-(c) and Paragraph 11— the Settling Parties agree to the following relief:

a. for the first violation, the Settling Parties agree to pay to the United States a civil penalty of \$500.00;

b. for the second violation, the Settling Parties agree to pay to the United States a civil penalty of \$1,000.00; and

c. for every violation thereafter, the Settling Parties agree to pay to the United States a civil penalty of \$2,500.00.

18. ***Serious or Repeat Violations.*** The amounts set forth in Paragraphs 16 and 17 shall be separate and apart from any other remedy that the United States may pursue for violations of this Consent Decree. Should enforcement proceedings beyond this Consent Decree be necessary, the Settling Parties agree that the United States shall be entitled to recover from the Settling Parties all court costs and expenses incurred by the FSIS in such proceedings, including investigation time, preparation time, and attorneys' fees. If the USDA determines that the Settling Parties have committed any serious violations of the PPIA or its regulations, or have committed four or more violations of a similar type of the PPIA or its regulations concerning (a) preparing, processing, or otherwise operating under unsanitary conditions; (b) selling, transporting, offering for sale or transportation, or receiving for transportation adulterated poultry or poultry products, and/or misbranded poultry or poultry products; (c) processing any poultry or poultry products, capable of use as human food, except in compliance with the PPIA; or (d) selling, transporting, offering for sale or transportation, or receiving for transportation non-federally inspected poultry, when the PPIA requires inspection of such poultry; then USDA may summarily terminate the Settling Parties' exempt status pursuant to 21 U.S.C. § 464 and 9 C.F.R. §§ 381.10, 381.13, or summarily withdraw the grant of federal inspection pursuant to 21 U.S.C. § 467 and 9 C.F.R. Part 500, as applicable.

V. OTHER PROVISIONS

19. **Judicial Review.** If the Settling Parties disagree with a determination made by USDA pursuant to Paragraphs 16 to 18 of this Consent Decree, they may petition the Court for an independent review of USDA's determination(s). Any such petition must be filed within thirty (30) days of USDA's determination(s) for which review is sought. In reviewing USDA's determination(s), the Court will apply the same standard of review applicable to review of final agency action under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* Review shall be based exclusively on the written record before the USDA at the time the decision was made. No discovery shall be taken by either party. In the absence of a timely petition for review, USDA's determination(s) will become final and unreviewable. The Settling Parties shall be liable for such relief as the Court deems appropriate in a proceeding brought to remedy any failure to comply with any terms of this Consent Decree.

20. **Other Rights and Remedies.** This Consent Decree does not limit any rights or remedies available to the United States for any violation of the PPIA and its associated regulations, or any rights or remedies available to the United States for any criminal violations. The Settling Parties hereby waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to violations of this Consent Decree that may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment to the Constitution, the Excessive Fines Clause of the Eighth Amendment to the Constitution, any statute of limitations, or the doctrine of laches, this Consent Decree bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Consent Decree constitutes an agreement by the United States

concerning the characterization of payments from the Settling Parties to the United States for purposes of the Internal Revenue laws, Title 26 of the United States Code.

21. ***Future Regulatory or Administrative Actions.*** The Parties agree that nothing in this Consent Decree shall preclude any future regulatory or administrative action authorized by law, regulation or otherwise, including, but not limited to the referral of any matter to any agency for possible criminal, civil, or administrative proceedings.

22. ***Contempt.*** Should the United States bring and prevail in a contempt action to enforce the terms of this Consent Decree, the Settling Parties shall, in addition to other remedies, reimburse the United States for its attorneys' fees, travel expenses incurred by attorneys and witnesses, expert witness fees, administrative and court costs, investigation and analytical expenses incurred in bringing the contempt action, and any other costs or fees related to the contempt proceedings.

23. ***Termination.*** After the Settling Parties have maintained continuous satisfactory compliance with all requirements of this Consent Decree, as well as all applicable provisions of the PPIA, for a period of five (5) years following the entry of the Consent Decree, the Settling Parties may serve upon the United States a request for termination of the Consent Decree ("Request for Termination"), explaining how the Settling Parties have satisfactorily complied with all such requirements, together with all necessary supporting documents. The Parties shall thereafter confer informally concerning the Request for Termination and any disagreement that the Parties may have as to whether the Settling Parties have satisfactorily complied with the requirements for termination of the Consent Decree. If the United States agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree. If the United States does not agree that the Consent Decree

may be terminated, the Settling Parties may file a motion with this Court seeking relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, provided, however, that the Settling Parties will not file any such motion until sixty (60) days after service of the Request for Termination on the United States. The Settling Parties must bear the burden of demonstrating to the Court that they have satisfactorily complied with all requirements of the Consent Decree and applicable provisions of the PPIA, and that there is good cause to terminate the Consent Decree under Rule 60(b).

24. ***Provision of Copies; Declaration of Compliance.*** The Settling Parties must provide a copy of this Consent Decree to each of their officers, directors, and employees within ten (10) days of the date of entry of this Consent Decree by the Court and must, within thirty (30) days of the date of entry of this Consent Decree, provide undersigned counsel for the United States with a sworn declaration of compliance that contains the information set forth below. The sworn declaration must set forth the fact and manner of compliance with this Paragraph and must identify the name and position of each person provided with a copy of this Consent Decree. If the person does not have a formal title, the sworn declaration must set forth after such person's name the function that such person performs. The Settling Parties must also provide a separate sworn declaration attesting that the required training has been provided to each employee within sixty (60) days after the entry of the Consent Decree by the Court.

25. ***Fees and Costs.*** Each party shall bear its own costs and attorneys' fees, except that the United States shall be entitled to collect the costs and attorneys' fees incurred as set out above in Paragraphs 18 ("Serious and Repeat Violations") and 22 ("Contempt").

26. ***Service.*** For purposes of this Consent Decree, service upon USDA (in particular the ELD Director), and the United States must be accomplished by either hand delivery or by

overnight delivery using a private carrier, *e.g.*, Federal Express, and shall be made to the following addresses:

For USDA:

United States Department of Agriculture
Food Safety and Inspection Service
Office of Investigation, Enforcement and Audit
Attention: Director, Enforcement and Litigation Division
Patriot Plaza III, 9th Floor, Cubicle 9-235A
355 E Street SW
Washington, DC 20024-3221

For the United States:

United States Attorney's Office
Southern District of New York
Attn: Assistant U.S. Attorney Samuel Dolinger
86 Chambers Street, 3rd Floor
New York, NY 10007

27. ***Payments.*** If the Settling Parties are required to make any payment pursuant to this Consent Decree, the Settling Parties will make such payment by electronic funds transfer pursuant to written instructions to be provided by the United States.

28. ***Effective Date.*** The provisions of this Consent Decree shall become effective immediately as to all Parties upon execution thereby.

29. ***Retention of Jurisdiction.*** The Court retains jurisdiction to issue further decrees and orders as may be necessary to construe, carry out, modify, or enforce compliance with this Consent Decree.

30. ***Integration.*** This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties acknowledge that there are no

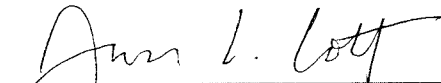
representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

31. ***Counterparts.*** This Consent Decree may be signed in counterparts, which, together, shall be deemed to form one document. The Consent Decree's validity shall not be challenged on that basis.

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32. *Final Judgment.* Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and the Settling Parties.

SO ORDERED:



HON. JAMES L. COTT
United States Magistrate Judge

Dated: March 19, 2019
New York, New York

FOR THE UNITED STATES OF AMERICA:

Dated: ~~February~~ ^{March} 18, 2019
New York, New York

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

By:

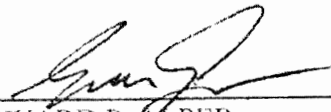


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E-mail: samuel.dolinger@usdoj.gov

FOR THE SETTLING PARTIES:

Dated: March 11, 2019
New York, New York

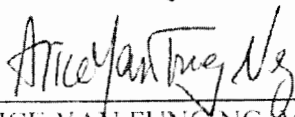
LAW OFFICES OF EDWARD ALPER
Attorney for the Settling Parties

By: 
EDWARD P. ALPER
75 Maiden Lane, Suite 214
New York, New York 10038
Tel.: (212) 379-6454
E-mail: ealper@alperlawfirm.com


Dated: February ____, 2019
New York, New York

GEORGE MEAT MARKET, INC.

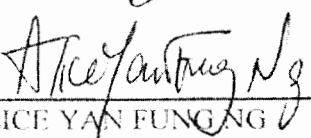
By: 
KWOK SIN NG, President

By: 
ALICE YAN FUNG NG, Vice President

Dated: February ____, 2019
New York, New York

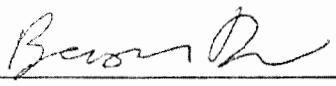

KWOK SIN NG

Dated: February ____, 2019
New York, New York

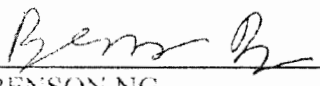

ALICE YAN FUNG NG

Dated: February ____, 2019
New York, New York

BEN MEAT MARKET, INC.

By: 
BENSON NG, Incorporator

Dated: February ____, 2019
New York, New York


BENSON NG