

STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL

IN THE MATTER OF:

Casual Cracker, Incorporated,
d/b/a Casual Clam,

Case No. L06-3-1167

Respondent.
_____ /

CORRECTED ASSURANCE OF VOLUNTARY COMPLIANCE

PURSUANT TO the provisions of Chapter 501, Part II, Florida Statutes, the Florida Deceptive and Unfair Trade Practices Act, the State of Florida, Department of Legal Affairs, Office of the Attorney General (hereinafter referred to as the “Department”) caused an investigation to be made into certain business practices of Casual Cracker, Incorporated, d/b/a Casual Clam (hereinafter referred to as “Respondent”), doing business in the State of Florida, and whose principal place of business is located at 3336 North Ninth Street, St. Petersburg, FL 33704.

IT APPEARS THAT the Respondent is prepared to enter into this Assurance of Voluntary Compliance (hereinafter referred to as “AVC”) without an admission that Respondent violated the law and for the purpose of resolution of this matter with the Department, and the Department, by and through the undersigned, being agreeable, does in this matter accept this AVC in termination of this investigation, pursuant to Section 501.207(6), Florida Statutes, and by virtue of the authority vested in the Department by said statute.

I. STIPULATED FACTS

_____ Initials

1.1 **IT IS HEREBY AGREED** by the parties that on October 3, 2006, Respondent owned and operated Casual Cracker, Incorporated, d/b/a Casual Clam, a restaurant holding a Permanent Food Service license issued by the Department of Business and Professional Regulation, at the location cited above.

1.2 **IT IS FURTHER AGREED THAT**

A. On October 3, 2006, Respondent offered for sale at the business cited above a menu item identified as “Grouper Sandwich (Red).”

B. On October 3, 2006, a representative of the Department purchased a serving of the “Grouper Sandwich (Red)” menu item at Respondent’s place of business.

C. A sample of the “Grouper Sandwich (Red)” menu item purchased as described above was provided to the Whitney Laboratory for Marine Bioscience. The Whitney Laboratory for Marine Bioscience tested the sample and determined that the sample was not grouper.

1.3 **IT IS FURTHER AGREED** that the Department investigated the foregoing alleged violation of Chapter 501, Part II, Florida Statutes. Respondent and the Department desire to resolve the issues raised during the course of this investigation.

1.4 **IT IS HEREBY AGREED** by the parties that this AVC is based upon the stipulated facts set forth in Paragraphs 1.1 through 1.3, above. The Department shall not be estopped from taking further action in this matter should the facts described herein be shown to be incorrect in any material way, or this AVC not be complied with, in full, no later than March 12, 2007.

II. PRACTICES ENJOINED AND PROHIBITED

2.1 **IT IS HEREBY AGREED** by the parties that the Respondent, whether acting directly or indirectly through agents, employees, representatives, successors, assigns, or any other person who acts under, by, through, or on behalf of Respondent, is permanently enjoined, restrained, and prohibited from engaging in any unconscionable, deceptive, or unfair practice relating to Respondent's restaurant business practices as prohibited by Florida Statutes. Specifically, Respondent is enjoined, restrained, and prohibited from:

- A. Offering for sale and consumption by the general public, grouper and or grouper products, without exercising diligence to verify the authenticity of the product.
- B. Portraying frozen and or imported fish and or fish products on Respondent's menu as "fresh" and or "Gulf" products.

III. COMPLIANCE

3.1 **IT IS HEREBY AGREED** by the parties that Respondent, whether acting directly or indirectly through agents, employees, representatives, successors, assigns, or any other person who acts under, by, through, or on behalf of Respondent, or through any corporate or other device, shall comply with and have actual knowledge of Chapter 501, Part II, Florida Statutes, the Florida Deceptive and Unfair Trade Practices Act.

3.2 **IT IS FURTHER AGREED** by the parties that Respondent shall make the terms and conditions of this AVC known to all employees, representatives, agents, successors, assigns, or any other person who acts under, by, through, or on behalf of Respondent, engaged in Respondent's business.

3.3 **IT IS FURTHER AGREED** by the parties that Respondent shall not effect any

change in any form of doing business or organizational identity as a method of avoiding the terms and conditions of this AVC.

IV. STIPULATED PAYMENT

4.1 **IT IS HEREBY AGREED** by the parties that Respondent will pay TWO THOUSAND DOLLARS (\$2,000.00) as costs and fees to the Department of Legal Affairs Revolving Trust Fund. Payment will be made by certified funds payable to The Department of Legal Affairs Revolving Trust Fund at the time this AVC is executed. This payment amount shall be deposited in the Department of Legal Affairs' Revolving Trust Fund, in accordance with Section 501.2101(1), Florida Statutes.

4.2 **IT IS FURTHER AGREED** by the parties that Respondent will donate FIVE HUNDRED DOLLARS (\$500) to the Whitney Laboratory for Marine Bioscience for the costs of fish sample testing and documentation, which has been incurred by the laboratory. Payment will be made by certified funds payable to UF Foundation, Incorporated for Laboratory Fund # 003567 at the time this AVC is executed.

4.3 Payment of the above costs and fees and donation shall be by certified funds made payable as described above and will be delivered along with this executed AVC to: Office of The Attorney General, ATTN: Robert Follis, Assistant Attorney General, 3507 East Frontage Road, Suite 325, Tampa, FL 33607.

V. FUTURE VIOLATIONS

IT IS HEREBY AGREED by the parties that any subsequent failure to comply with the terms and conditions of this AVC is by statute prima facie evidence of a violation of Chapter 501, Part II, Florida Statutes, and will subject Respondent to any and all civil penalties and sanctions

authorized by law, including attorney's fees and costs.

VI. ACCEPTANCE

IT IS HEREBY AGREED by the parties that this AVC shall become effective upon its acceptance by the Department, who may refuse to accept it at its discretion. The receipt of or deposit by the Department of any monies pursuant to this AVC does not constitute acceptance by said Department, and monies received will be returned if this AVC is not accepted.

IN WITNESS WHEREOF, Respondent has caused this AVC to be executed by an authorized representative, as a true act and deed, in the County and State listed below, as of the date affixed thereon.

BY MY SIGNATURE I hereby affirm that I am acting in my capacity and within my authority as a corporate officer of Respondent's business, and that by my signature I am binding Respondent's business to the terms and conditions of this AVC.

Casual Cracker, Incorporated, d/b/a Casual Clam

Larry Jackson, President

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, personally appeared Larry Jackson, who acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this ____ day of _____, 2007.

Sworn to and subscribed before me this ____ day of _____, 2007.

Notary Public
State of Florida

Type of identification produced: Florida driver license # _____

FOR THE OFFICE OF THE ATTORNEY GENERAL

ROBERT J. FOLLIS
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
3507 East Frontage Road, Suite 325
Tampa, FL 33607
(813) 287-7950

Accepted this _____ day of _____, 2007.

MARY LEONTAKIANAKOS
Director, Economic Crimes Division
Department of Legal Affairs
OFFICE OF THE ATTORNEY GENERAL
The Capitol
Tallahassee, FL 32399-1050
(850) 245-0140