

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS

SUPERIOR COURT  
C.A. NO: 06-1963-B

\_\_\_\_\_  
WHITE CITY SHOPPING CENTER, LP,  
Plaintiff,  
v.  
PR RESTAURANTS, LLC. d/b/a BREAD PANERA,  
Defendant.  
\_\_\_\_\_

**AFFIDAVIT OF JUDITH A. QUICK**

I, Judith A. Quick, hereby depose and say as follows:

1. I have worked in the food safety, labeling, science and technology industry for over thirty years. Since August, 1990 and continuing through the present, I have served as the President of Judith Quick & Associates, a consulting firm specializing in food labeling and regulatory issues for the food industry. Prior thereto, from November, 1979 through July, 1990, I held various positions at the Food Safety and Inspection Service ("FSIS") at the U.S. Department of Agriculture ("USDA"), including serving as Deputy Director of the Standards and Labeling Division, Branch Chief for the Standards Branch of the Standards and Labeling Division, Food Technologist for the Labeling Branch and the Nutrition Branch of the Food Ingredient Assessment Division. Over the years, I have received numerous awards from the USDA and I have published several articles in industry handbooks. My qualifications are more fully set forth in my Curriculum Vitae, a true and accurate copy of which is attached hereto as Exhibit A.

2. Based on my thirty years of experience in this industry, I am expertly familiar

with USDA regulations, policies and practices, including the USDA's food standards and labeling policies.

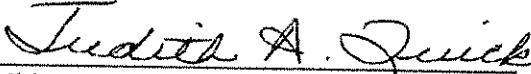
3. The USDA views a sandwich as a separate and distinct food product from a burrito or taco.

4. According to the USDA definition, an ordinary closed sandwich consists of two distinct pieces of bread (or the top and bottom sections of a sliced roll or bun) with some kind of filling that contains meat or poultry. A true and accurate excerpt of the USDA's Food Standards and Labeling Policy Book listing the definition for "Sandwich" is attached hereto as Exhibit B. Ordinary closed sandwiches are exempt from USDA regulation on the grounds that they are not viewed by consumers as products of the meat food industry or poultry food industry.

5. When a meat or poultry filling is placed within other bread-type components, e.g., tortilla, the USDA does not consider the resulting product to be an ordinary sandwich and thus asserts its regulatory authority over these products.

6. Burritos, tacos, tamales and enchiladas are not considered sandwiches by the USDA and have always been subject to the USDA's regulatory jurisdiction.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 20<sup>th</sup> DAY OF  
OCTOBER, 2006.

  
Judith A. Quick

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the  
above document was served upon the  
attorney of record for each other party  
by mail hand on 10/30/06  
e-mail LGG

# EXHIBIT A

## Judith A. Quick

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**EDUCATION:** B.S. in Nutrition from Purdue University, December, 1974.  
M.S. in Experimental Foods from University of Maryland, May, 1985.

**EXPERIENCE:** August, 1990 to present – **President** of Judith Quick & Associates, a consulting firm specializing in food labeling and regulatory issues for the food industry. Client firms include all segments of the food industry, from small, "mom and pop" operations to industry giants, firms regulated by the U.S. Food and Drug Administration as well as the U.S. Department of Agriculture. Duties include providing consultation services; expert witness testimony, review of proposed labeling for compliance with Federal regulations, preparation of regulatory petitions, quality control programs, regulatory assessments, assisting with appeals of regulatory decisions; preparation of nutrition labels for food products through the use of data base calculations, and conducting training workshops and seminars.

January, 1989 through July, 1990 – **Deputy Director**, Standards and Labeling Division, Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture. With the Director, I played an equal role in managing a staff of 40 employees and a budget of \$1.5 million. I had full authority for the division's management from administrative functions to technical policy development and enforcement. The division 1) conducts the prior label approval program for the meat and poultry industries, 2) develops one-third of the new regulations in FSIS, 3) determines whether specific products can be exempt from FSIS inspection, 4) maintains a computer data base of all approved labels, and 5) develops and documents policies for product standards and labeling. Coordination of policies with other regulatory agencies was usually done at my level, as well as most public speaking responsibilities and interaction with the press.

January, 1987 through December 1988 – **Branch Chief**, Standards Branch, Standards and Labeling Division, FSIS. Managed a staff of 6 employees who 1) advised label reviewers on specific issues, 2) developed policies for food additive use, product standards, culinary style definitions, use of game meat, exemptions from FSIS inspection, and names for novel products, 3) maintained the division Policy Book and FSIS test kitchen, and 4) developed one-third of the new regulations in FSIS. I provided supervision for this branch and was responsible for the adequacy and reasonableness of all policies developed. In addition, because this branch was responsible for food additive approvals in meat and poultry products, I coordinated policies with the Food and Drug Administration.

**EXPERIENCE:**  
(cont.)

August, 1984 through December, 1986 – **Food Technologist**, Labeling Branch, Standards and Labeling Division, FSIS. I developed policies for product labeling, particularly in the areas of nutrition labeling and special claims, imitation and substitute products, and irradiated products. I prepared regulations and FSIS testimony on labeling for Congressional hearings, as well as approving specific claims on labels.

November, 1979 to August, 1984 – **Food Technologist**, Nutrition Branch, Food Ingredient Assessment Division, FSIS. I conducted reviews of the scientific literature and prepared reports to be used in policy development by other divisions (mainly the Standards and Labeling Division) within FSIS. My areas of expertise included food fortification, effects of processing on nutrients, protein quality, and sensory evaluation. I served on the Tri-Agency (USDA, FDA, FTC) Sugars Labeling Task Force and was detailed to the Office of International Cooperation and Development to prepare a food fortification handbook for their foreign service nutritionists.

August, 1976 to November, 1979 – **Biological Laboratory Technician (Biochemistry)** – Meat Science Research Laboratory, Agricultural Research Service. I served as part of a research team conducting studies on the effects of various post-slaughter treatments, cooking methods, and food additives on the organoleptic properties of meat. My duties included 1) sample collection on the slaughter floor, 2) performing proximate analyses, rancidity analyses, collagen (hydroxyproline) determinations, and water activity determinations, 3) training, conducting, and participating in sensory evaluations panels, and 4) performing various instrument tests on textural attributes of meat products, e.g., Instron, Warner-Bratzler, etc.

April, 1976 to August, 1976 – **Food Technologist**, Consumer Nutrition Center, Human Nutrition Information Service. I surveyed the scientific literature on nutrient composition of foods and assisted in the updating of the National Nutrient Composition Data Bank used by dietitians and nutrition researchers to plan diets.

Prior to April, 1976 – I held various positions that were not oriented toward my career.

**PUBLICATIONS:** USDA Handbook #598 "Fortification of Foods", "The Nutrition Labeling Workbook," and "Labeling of Low and Reduced Fat/Salt Products" in *Healthy Production and Processing of Meat, Poultry and Fish Products*.

**AWARDS:** USDA Departmental Superior Service Award, 1980  
USDA Certificates of Merit, 1981 & 1983

# **EXHIBIT B**



UNITED STATES DEPARTMENT OF  
**AGRICULTURE**

Food Safety  
And Inspection  
Service

Office of Policy, Program and  
Employee Development

August 2005

# **Food Standards and Labeling Policy Book**

Revised for Web Publication August 2005

Replaces Publication Dated May 2003 and Removal of Publication Dated 1996

White or yellow sandalwood extract may be labeled as "sandalwood extract" or "flavoring."

**SANDWICH - CLOSED:**

Product must contain at least 35 percent cooked meat and no more than 50 percent bread. Sandwiches are not amenable to inspection. If inspection is requested for this product, it may be granted under reimbursable Food Inspection Service.

Typical "closed-faced" sandwiches consisting of two slices of bread or the top and bottom sections of a sliced bun that enclose meat or poultry, are not amenable to the Federal meat and poultry inspection laws. Therefore, they are not required to be inspected nor bear the marks of inspection when distributed in interstate commerce.

**SANDWICH - OPEN:**

Must contain at least 50 percent cooked meat. Sandwiches are amenable only if they are open faced sandwiches. Product must show a true product name, e.g., "Sliced Roast Beef on Bread."

This regulatory policy in no way alters the Department's present policy with respect to caterers who include meat sandwiches in their dinners.

**SANDWICHES (MEAT OR POULTRY AS COMPONENTS OF "DINNER PRODUCTS"):**

Dinners containing a sandwich type product, e.g., a frankfurter, hamburger, or sliced poultry meat with a bun, are amenable and subject to inspection.

**SANTA FE STYLE:**

Acceptable for products that contain chilies with corn or beans and one of the following ingredients: Cheese (jack, cheddar, Mexican Style or fresh goat), bell pepper, onion, garlic, tomatoes, tomatillos, curmin, oregano or cilantro. The beans should be either black, kidney, navy, pink, pinto, red, or white beans or an indigenous variety.

**SARNO:**

A dry smoked sausage that is air dried. The label must show a true product name, e.g., "Smoked Sausage." Coarsely chopped beef, pork, and garlic are not permitted.

**SATAY:**

This term refers more to a preparation method than to the nature of a finished product. Satay can be made from chicken, beef, lamb, pork, and other food items, and prepared in two ways: