

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review Branch**

**La Vaquita Meat Market,**

**Appellant,**

**v.**

**Case Number: C0204569**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of La Vaquita Meat Market (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against La Vaquita Meat Market.

**AUTHORITY**

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

**SUMMARY OF CHARGES**

The Appellant was charged with trafficking and subsequently permanently disqualified based on an analysis of EBT transaction data from May 2017 through October 2017. This involved the following transaction patterns which are common trafficking indicators:

- There were an unusual number of transactions ending in a same cents value.
- There were multiple transactions made from individual household benefit accounts within unusually short timeframes.
- Excessively large purchase transactions were made from recipient accounts.

## CASE CHRONOLOGY

The agency's record shows that FNS initially authorized La Vaquita Meat Market for SNAP participation as a small grocery store on May 18, 2005. On April 19, 2010, the firm was disqualified from SNAP participation for a period of six months due to program violations, including the sale of ineligible non-food items in exchange for SNAP benefits. The firm's SNAP authorization was reinstated on December 22, 2010.

In a letter dated December 20, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of May 2017 and October 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

On December 28, 2017, the Appellant responded to the charge letter and explained that the firm was not engaged in trafficking, but rather had been extending credit to SNAP customers. The customers would obtain food items on credit and then pay the store back with SNAP benefits at a later time. The Appellant further explained that the firm had long been owned by both husband and wife, but on April 27, 2017, the husband passed away, leaving all ownership responsibilities to the wife, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), who was unfamiliar with many aspects of the business, including finances and paperwork. This lack of understanding extended to the firm's SNAP authorization and she continued to extend credit to SNAP customers, just as her husband had.

In response to the Appellant's claim that it allowed credit accounts at the store, the Retailer Operations Division sent the firm a letter dated January 3, 2018. In this letter, the Appellant was asked to provide documentation to support its claim of credit accounts. The letter stated that the documentation must identify specific accounts along with corresponding dates and amounts. It should be noted that the practice of allowing SNAP households to purchase food items on credit is prohibited by regulation. If a firm is found to have committed credit account violations instead of trafficking, the firm would be subject to a one-year disqualification from SNAP in accordance with regulations at 7 CFR § 278.2(f).

On January 12, 2018, the Appellant contacted the Retailer Operations Division by telephone and explained that the firm kept hand-written ledgers of credit amounts owed, but once the balances were paid, the ledgers were discarded. As a result, the Appellant did not have any documentation to prove that credit activity had taken place at the store.

On January 16, 2018, Appellant's counsel contacted the Retailer Operations Division and asked about the timeframe for requesting a civil money penalty in lieu of permanent disqualification, but was informed that the time for making such a request had passed. On that same date, Appellant's counsel submitted a faxed letter along with a written declaration signed by

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).** In the declaration, the owner repeated her claims that the unusual transaction patterns were due to credit accounts rather than trafficking, and reiterated that she did not maintain the handwritten records once the accounts were paid off. She also stated that many of the credit transactions were rounded to even-dollar amounts, and stated that sometimes a customer would pay off a credit account and then make a separate purchase of items on the same day. While the Appellant owner knew what could and could not be purchased with SNAP benefits, she stated that she was not aware that credit accounts were a violation of regulations. The owner stated that it was never her intention to commit violations. Instead, she was only trying to help the firm's longtime customers and keep things as simple as possible while she learned the financial side of the business.

After considering the Appellant's arguments and further reviewing the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated January 24, 2018. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate in this case because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked January 31, 2018, the Appellant appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted. It is noted that in a letter postmarked February 5, 2018, Appellant's counsel followed up with a second request for review but provided no additional contentions or documentation.

### **STANDARD OF REVIEW**

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

### **CONTROLLING LAW AND REGULATIONS**

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

...[A] disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store...if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, [or] evidence obtained through a transaction report under an electronic benefit transfer system....

7 CFR § 278.6(e)(1)(i) states:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, in part:

Trafficking means: The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption...

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, in part:

Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence... that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification

in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

7 CFR § 278.6(b)(2)(iii) states:

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking...if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program...

### **APPELLANT'S CONTENTIONS**

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- Appellant never intended to violate the regulations.
- Appellant owner understands that she made a mistake by giving credit to customers, but asks that FNS consider the fact that her late husband was the one who did all of the paperwork and financial stuff.
- Appellant owner did not think that allowing credit would affect her since customers eventually paid what they owed.
- Customers were only sold groceries, such as milk, vegetables, and grains.
- Appellant was never taught about SNAP by her husband, but she is slowly learning the process.
- Appellant has always had an outstanding record and would never do anything that would be a violation of the rules. The credit accounts were an honest mistake which it admits to.
- If allowed to continue accepting SNAP, Appellant would ensure that it is up-to-date with all rules and regulations.
- Appellant needs the program so that the business can continue to prosper. The store is the only source of income for the Appellant owner, who has an eight-year-old son to care for.
- Appellant requests another chance to remain authorized.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically summarized or explicitly referenced herein.

### **ANALYSIS AND FINDINGS**

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division,

through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

### **Contractor Store Visit**

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from a November 20, 2017, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- La Vaquita Meat Market is a small Hispanic grocery store, approximately 1,500 square feet in size, operating in Port Hueneme, Ventura County, California.
- At the time of the contractor's visit, the firm had no shopping carts for customer use, but did have one handheld shopping basket, which is not uncommon for stores of this size. Customers shopping in such stores generally do not purchase more food than they can carry in their arms.
- The store visit photographs show one cash register and agency records reflect the use of one EBT point-of-sale device.
- The store does not appear to use optical scanners to process transactions.
- The store's staple food stock is moderate in each of the four staple food categories, but there also appears to be a number of empty or sparsely-stocked shelves and coolers.
- The store appears to sell fresh meat and cheese by the pound. The report also indicates that the store sells SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, snacks, candy, and condiments.
- The store also sells hot food for immediate consumption. Such items are not eligible for purchase with SNAP benefits. Additionally, the store sells ineligible nonfood items, including alcoholic beverages, tobacco products, and miscellaneous household merchandise.
- The checkout area consists of a very small, cluttered countertop, perhaps 12 inches by 15 inches in size. The constricted checkout area is not suitable for conducting large or rapid transactions as there is very little space on the counter to place more than one or two small items at a time and little room for customers to maneuver with large amounts of groceries.
- There is no indication from the store visit report that the firm has a special pricing structure, although most items appear to end in 9, such as \$1.99, \$3.49, etc.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be typical of a small grocery store, where households normally purchase a limited number of items. There was no indication that SNAP households would be inclined to regularly visit La Vaquita Meat Market to purchase large quantities of groceries, especially considering the absence of shopping carts, the limited inventory, the extremely constricted checkout area, and the availability of larger grocery stores in the area.

Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed significantly from those of nearby, similar-sized competitors.

### **SNAP Transaction Analysis**

**Charge Letter Attachment 1:** There were an unusual number of transactions ending in a same cents value. This attachment lists 197 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits. 5 U.S.C. § 552 (b)(7)(E).

In its reply to the charge letter, the Appellant claimed that many of the same-cents transactions were due to credit activity that was taking place at the store. The Appellant stated that customers would often pay most, but not all, of their credit balance. Other times, the Appellant would round the total amount down to an even dollar amount.

Unfortunately, this claim is not supported by any kind of evidence. Anecdotal explanations without supporting documentation do little to convince this review that the transactions in Attachment 1 were legitimate purchases of eligible food. Without some kind of evidence from the Appellant, this review has little option but to conclude that the transactions listed in Attachment 1 were likely due to trafficking violations.

**Charge Letter Attachment 2:** Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 12 sets of transactions (26 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Considering the amount of food it would take to add up to these transaction totals, and considering that the firm has no shopping carts, it seems very unlikely that these are legitimate transactions. Such transactions are highly unusual and are strongly suggestive of trafficking.

In its response to the charge letter, the Appellant argued that households would sometimes pay off a credit balance and then see that they still had money in their account and purchase additional items. Unfortunately, this argument makes little sense. Using the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) example above, while it is possible that the first transaction in the set was to pay down a credit balance, the subsequent transactions for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are much too large and too fast for a scenario in which a customer realizes that he has more money to spend and decides to make additional purchases.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). There is very little about these transactions that suggest that they are related to credit accounts. If the customer wanted to pay 5 U.S.C. § 552 (b)(6) & (b)(7)(C) toward a debt, why pay 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a time and why wait 5 U.S.C. § 552 (b)(6) & (b)(7)(C) between transactions?

Unfortunately, the Appellant has offered no evidence, such as itemized cash register receipts, to prove that the transactions listed in the charge letter were legitimate purchases of eligible food. Without such evidence, it is reasonable for this review to conclude that that the questionable transactions were the result of trafficking violations.

**Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts.** This attachment lists 121 SNAP transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a small grocery store in the state of California. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a small grocery store in California was \$14.48. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Given that the Appellant firm does have a moderate inventory of staple foods and other eligible foods, it is probable that there would be an occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, there may be some legitimate SNAP transactions sprinkled among the transactions listed in Attachment 3. However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ significantly from similar-sized competitors, especially considering the absence of shopping carts and the severely constricted checkout area. The substantial number of high-dollar transactions in a six-month period calls into question the legitimacy of these transactions.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Considering how many low-priced items it would take to add up to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or more, and considering the store's characteristics, this review finds it probable that trafficking violations were occurring at the Appellant store.

The Appellant has argued that the firm extended credit to some of its SNAP customers, and the transactions listed in the charge letter are reflective of this practice. Unfortunately, the Appellant has offered no evidence to support this claim, nor has it offered any explanation as to why so many supposed credit payoffs were for either 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Such repetitive amounts are highly unusual, even in those situations where credit activity was actually occurring.

The transactions identified in the charge letter are highly unusual and substantially different from comparable stores in the area. As noted earlier, in an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur.

Unfortunately the Appellant has not offered a single piece of evidence, such as itemized cash register receipts, inventory records, or other accounting documentation to verify that the specific transactions listed in the charge letter were legitimate purchases of eligible food. Without such evidence, it is reasonable for this review to conclude that the transactions listed in the charge letter were, more likely than not, the result of trafficking violations committed by the Appellant.

Based on the above analysis, it is the determination of this review that La Vaquita Meat Market likely trafficked in SNAP benefits during the review period. The attachments furnished with the



charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place. Conversely, the Appellant has failed to provide a rational explanation to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

### **Credit Accounts**

The chief contention offered by the Appellant as an explanation for the unusual transaction patterns is a claim that the firm has a practice of allowing its customers to shop on credit and then pay the store back with SNAP benefits at a later time. The Appellant also claims that all of its credit account evidence has been discarded. The Appellant owner stated that once a credit balance was paid off, the ledger documenting the activity was destroyed.

Unfortunately, this explanation is inadequate to prove that credit accounts were actually occurring or that they had any kind of impact on the firm's transaction patterns. When a retailer claims that credit accounts are a reason for the irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser one-year disqualification penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive and credible evidence such as the dates credit was extended, to whom, for what amount, and for what items. Such proof should also correspond with the transactions identified in the letter of charges.

The claim that all credit evidence has been discarded is not credible. This argument assumes that by the time the firm received the charge letter in December 2017, all delinquent accounts were paid in full and that all credit activity had ceased. However, according to the Appellant, the owner did not realize that such transactions were a violation of SNAP regulations. If the Appellant was not aware that credit accounts were prohibited, it stands to reason that the firm would have continued to allow them up through the time that the charge letter was issued. In such a scenario, the Appellant should have had at least a few unpaid balances along with the accompanying credit ledgers.

The fact that no credit evidence exists suggests that the unusual transactions listed in the charge letter were not the result of credit activity, but rather were due to trafficking. It is certainly possible that credit accounts were occurring at the Appellant firm to some degree. But the Appellant's unsubstantiated claims are not adequate enough for this review to eliminate trafficking as the primary reason for the unusual transaction patterns identified in the charge letter.

### **Appellant Owner Not Adequately Trained**

The Appellant owner has argued that her late husband took care of all the financial and paperwork side of the business and that when he passed away just before the beginning of the review period, she was left in the difficult position of trying to figure all of that out on her own. She contends that the credit account violations were an honest mistake and that she did the best she could in his absence and has slowly been learning about SNAP and other parts of the business that she was not previously involved with.

While this review sympathizes with the Appellant owner for the loss of her husband, this contention does not provide a valid basis for reversing the disqualification determination or for reducing the penalty in any way. Following its first disqualification in 2010, the Appellant submitted a new SNAP application on November 2, 2010, with the purpose of being reinstated into the Program. The record shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) is the person who signed this application. By signing the application, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) agreed to accept responsibility on behalf of the firm for compliance with all statutory and regulatory requirements associated with participation in SNAP. The record clearly establishes that the Appellant owner agreed to abide by program rules, including taking responsibility for violations committed by any of the firm's employees, whether paid or unpaid, new, full-time or part-time. Such violations include trafficking; accepting SNAP benefits as payment for ineligible items; and accepting SNAP benefits as payment on credit accounts.

The record indicates that the Appellant owner was aware or should have been aware that credit accounts and trafficking are program violations. The ownership of the firm is ultimately responsible for the proper training of staff and the monitoring and handling of SNAP benefit transactions. Therefore, a claim of ignorance regarding SNAP regulations is not credible, nor does it provide a valid basis for modifying the disqualification penalty in any way.

### **Remedial Actions Will Be Taken**

The Appellant has stated that if allowed to continue to accept SNAP, it would ensure that it is up-to-date with all rules and regulations.

With regard to this contention, it must be noted that the purpose of this review is to either validate or invalidate the earlier determination of the Retailer Operations Division. This review is limited to the circumstances that existed at the time the violations were committed. It is not the authority of this review to consider any subsequent remedial actions that may have been taken or will take place so that a store may enhance or begin to comply with program requirements. In addition, there are no provisions in the SNAP regulations for a waiver or reduction of an administrative penalty on the basis of alleged or planned corrective actions implemented subsequent to findings of program violations.

Therefore, the Appellant's contention that corrective action has taken place or that further remedial actions are planned does not provide a valid basis for dismissing the charges or for modifying the penalty imposed.

### **Hardship to Appellant**

The Appellant argues that it needs to remain authorized in SNAP so that the business can continue to prosper. The Appellant claims that the store is the only source of income for the Appellant owner, who 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

With regard to this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no

provision in the SNAP regulations for waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from administrative penalties based on a purported economic hardship to the store's ownership or to the firm itself would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with Program regulations, but also to those retailers who have been disqualified from the Program in the past for similar violations.

Therefore, the Appellant's insinuation that the owner or firm may incur financial hardship as a result of permanent disqualification does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

### **Civil Money Penalty**

As noted earlier, the Retailer Operations Division determined that the Appellant firm was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate documentation within designated timeframes. The case record shows that the Appellant did not request a civil money penalty when it replied to the charge letter and there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or training program of any kind.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

### **CONCLUSION**

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify La Vaquita Meat Market from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against the Appellant, La Vaquita Meat Market, under the ownership of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), is sustained.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. If a judicial review is desired, the complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

JON YORGASON  
Administrative Review Officer

July 31, 2018