



CRIMINAL COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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PEOPLE OF THE STATE OF NEW YORK,

-AGAINST-

FELONY COMPLAINT  
NYS Office of the Attorney General

ABDUL JAMIL KHOLKHAR and BMY FOODS  
INC.,

Docket No. \_\_\_\_\_

DEFENDANTS.

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Investigator EDWARD ORTIZ, shield # 2321, of the NEW YORK STATE OFFICE OF ATTORNEY GENERAL ("OAG"), being duly sworn, deposes and states that:

On or about and between January 1, 2012 and August 31, 2014 in the County of the Bronx, State of New York, and elsewhere,

**THE DEFENDANTS, ACTING IN CONCERT, COMMITTED THE OFFENSES OF:**

- Penal Law § 175.35(1) Offering a False Instrument for Filing in the First Degree ("E" felony) (1 count)
- Penal Law § 175.10 Falsifying Business Records in the First Degree ("E" felony) (1 count)
- Labor Law § 198-a(1) Failure To Pay Wages (unclassified misdemeanor) (1 count)

**IN THAT DEFENDANTS DID:**

Commit the crime of offering a false instrument for filing in the first degree when the defendants, knowing that a written instrument contained a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, the defendants offered or presented it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it would be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation;

Commit the crime of falsifying business records in the first degree when, with intent to defraud, the defendants made or caused a false entry in the business records of an enterprise and their intent to defraud included an intent to commit another crime or to aid or conceal the commission thereof, to wit the crime of Failure to Pay Wages (Labor Law § 198-a(1)); and

Commit the crime of failure to pay wages when the defendants failed to pay manual workers weekly and not later than seven calendar days after the end of the week in which the wages were earned as required by Labor Law Section 191(1)(a)(i).

**THE GROUNDS FOR DEPONENT'S BELIEF ARE AS FOLLOWS:**

1. This felony complaint is based upon my personal knowledge and information and belief, the sources of which include: my familiarity with Article 6 (Payment of Wages), Article 18 (Unemployment Insurance Law), and Article 19 (Minimum Wage Act) of the New York State Labor Law; my review of business records of the defendants, including computer and paper generated payroll records and cash payroll records seized from the defendants pursuant to a search warrant executed by OAG; my interviews of seven witnesses known to OAG and employed by defendant **BMY Food Inc.** and related Papa Johns franchise entities owned and operated by defendant **Abdul Jamil Khokhar** ("Employees 1-7"); my review of bank records of the defendants; my review of certified records of the New York State Departments of State; my review of documents and information maintained and provided to me by the New York State Insurance Fund; and my review of a wage underpayment calculation prepared by Investigator Susan Rivera of the United States Department of Labor, Wage and Hour Division and Senior Trial Attorney Daniel Hennefeld of the United States Department of Labor, Solicitor's Office, calculating the underpayment of wages to Employees 1-7 and all other employees of defendant **BMY Food Inc.** and related Papa Johns franchise entities owned and operated by defendant **Abdul Jamil Khokhar** ("USDOL Audit")

2. I have reviewed certified records of the New York State Department of State, which show that the defendant **BMY Foods Inc.** is a domestic business corporation created under the laws of the State of New York, incorporated on or about January 17, 2003.

3. I have reviewed certified bank records of defendant **BMY Foods Inc.** from J.P. Morgan Chase Bank and these records show that defendant **Abdul Jamil Khokhar** is an authorized signatory for defendant **BMY Foods Inc.**'s corporate account and state that defendant **Abdul Jamil Khokhar** is the president of defendant **BMY Foods Inc.**

4. I am informed by Walter Wynne that he is an Underwriter I in the Safety Group at the New York State Insurance Fund and that he is a custodian of records for the New York State Insurance Fund. I am further informed by Mr. Wynne that he has reviewed workers' compensation records maintained by the New York State Insurance Fund for defendant **BMY Foods Inc.** and that these records show that on or about December 21, 2011 defendant **BMY Foods Inc.** applied for workers' compensation coverage with the New York State Insurance Fund and that the application submitted by defendant **BMY Foods Inc.** stated that defendant **Abdul Jamil Khokhar** was the president and 100% owner of defendant **BMY Foods Inc.**

5. Based upon my familiarity with the New York Labor Law, I know that employers are required to pay workers at least the applicable state minimum wage for all hours worked and at

the rate of one and one-half times their regular rate of pay for hours worked in excess of 40 in any given workweek. I also know that manual workers must be paid within seven calendar days after the end of the workweek in which all of the wages earned. Additionally, an employer must report all remuneration earned by its employees and must make contributions to the Unemployment Insurance Fund based upon the reported remunerations on a quarterly basis.

### Failure To Pay Wages

6. I am informed by Employees 1-7 that they were hired to work for defendant **Abdul Jamil Khokhar's** Papa John's franchise restaurants and that they worked for defendant **Abdul Jamil Khokhar** as follows:

- a. I am informed by Employee 1: that he was employed as an in-store worker in defendant **Abdul Jamil Khokhar's** Papa John's restaurants located in the Bronx at 3746 3rd Avenue and 868 E. Tremont Avenue between January 1, 2012 and August 31, 2014; that he worked approximately 50-60 or more hours per week; that he was paid approximately \$8.00-11.00 per hour for all hours worked per week; that he was paid the same hourly rate for hours worked under 40 and for hours worked over 40 in the same workweek; that he was instructed by defendant **Abdul Jamil Khokhar** to use his real name in the restaurant's computerized timekeeping system for approximately the first 35-40 hours worked per week and to use a fictitious name in the restaurant's computerized timekeeping system for any hours worked exceeding approximately 35-40 hours per week.
- b. I am informed by Employee 2: that he was employed as an in-store worker in defendant **Abdul Jamil Khokhar's** Papa John's restaurants located in the Bronx at 1520 Westchester Avenue, 1010 Southern Boulevard, 2733 White Plains Road, 868 E. Tremont Avenue, and 1979 Jerome Avenue between January 1, 2012 and August 31, 2014; that he worked approximately 60-70 or more hours per week; that he was paid approximately \$6.50-8.00 per hour for all hours worked per week; that he was paid the same hourly rate for hours worked under 40 and for hours worked over 40 in the same workweek; that he was instructed by those he regarded as managerial-level employees of defendant **Abdul Jamil Khokhar** to use his real name in the restaurant's computerized timekeeping system for approximately the first 35-40 hours worked per week and to use a fictitious name in the restaurant's computerized timekeeping system for any hours worked exceeding approximately 35-40 hours per week.
- c. I am informed by Employee 3: that he was employed as an in-store worker in defendant **Abdul Jamil Khokhar's** Papa John's restaurants located in the Bronx at 1520 Westchester Avenue, 3746 3rd Avenue, and 868 E. Tremont Avenue between in or about June 2013 and August 31, 2014; that he worked approximately 50-60 or more hours per week; that he was paid approximately \$7.50-8.50 per hour for all hours worked per week; that he was paid the same hourly rate for hours worked under

40 and for hours worked over 40 in the same workweek; that he was instructed by those he regarded as managerial-level employees of defendant **Abdul Jamil Khokhar** to use his real name in the restaurant's computerized timekeeping system for approximately the first 35-40 hours worked per week and to use a fictitious name in the restaurant's computerized timekeeping system for any hours worked exceeding approximately 35-40 hours per week.

- d. I am informed by Employee 4: that she was employed as an in-store worker in defendant **Abdul Jamil Khokhar's** Papa Johns restaurant located in the Bronx at 1520 Westchester Avenue between in or about June 2013 and August 31, 2014; that she worked approximately 50-60 or more hours per week; that she was paid approximately \$7.50-8.00 per hour for all hours worked per week; that she was paid the same hourly rate for hours worked under 40 and for hours worked over 40 in the same workweek; that she was instructed by those she regarded as managerial-level employees of defendant **Abdul Jamil Khokhar** to use her real name in the restaurant's computerized timekeeping system for approximately the first 35-40 hours worked per week and to use a fictitious name in the restaurant's computerized timekeeping system for any hours worked exceeding approximately 35-40 hours per week.
- e. I am informed by Employee 5: that he was employed as a delivery worker in defendant **Abdul Jamil Khokhar's** Papa Johns restaurant located in the Bronx at 1520 Westchester Avenue between January 1, 2012 and August 31, 2014; that he worked approximately 50-60 or more hours per week; that he was paid approximately \$6.00 per hour for all hours worked per week; that he was paid the same hourly rate for hours worked under 40 and for hours worked over 40 in the same workweek; that he was instructed by those he regarded as managerial-level employees of defendant **Abdul Jamil Khokhar** to use his real name in the restaurant's computerized timekeeping system for approximately the first 35-40 hours worked per week and to use a fictitious name in the restaurant's computerized timekeeping system for any hours worked exceeding approximately 35-40 hours per week.
- f. I am informed by Employee 6: that he was employed as a delivery worker in defendant **Abdul Jamil Khokhar's** Papa Johns restaurants located in the Bronx at 1520 Westchester Avenue, 3746 3rd Avenue, and 868 E. Tremont Avenue between January 1, 2012 and August 31, 2014; that he worked approximately 60-70 or more hours per week; that he was paid approximately \$6.00 per hour for all hours worked per week; that he was paid the same hourly rate for hours worked under 40 and for hours worked over 40 in the same workweek; that he was instructed by those he regarded as managerial-level employees of defendant **Abdul Jamil Khokhar** to use his real name in the restaurant's computerized timekeeping system for approximately the first 35-40 hours worked per week and to use a fictitious name in the restaurant's computerized timekeeping system for any hours worked exceeding approximately 35-40 hours per week.

p. I am informed by Employee 7; that he was employed as a delivery worker in defendant **Abdul Jamil Khokhar's** Papa Johns restaurants located in the Bronx at 11 E. 183rd Street and 868 E. Tremont Avenue between January 1, 2012 and August 31, 2014; that he worked approximately 50-60 or more hours per week; that he was paid approximately \$6.00 per hour for all hours worked per week; that he was paid the same hourly rate for hours worked under 40 and for hours worked over 40 in the same workweek; that he was instructed by those he regarded as managerial-level employees of defendant **Abdul Jamil Khokhar** to use his real name in the restaurant's computerized timekeeping system for approximately the first 35-40 hours worked per week and to use a fictitious name in the restaurant's computerized timekeeping system for any hours worked exceeding approximately 35-40 hours per week.

7. I have reviewed the USDOL Audit calculating the amount of minimum and overtime wages that defendants **Abdul Jamil Khokhar** and **BMV Foods Inc.** failed to pay to employees at their Papa Johns franchise locations at: 1979 Jerome Ave., Bronx, NY 10453; 868 E. Tremont Ave., Bronx, NY 10460; 1520 Westchester Ave., Bronx, NY 10472; 11 E. 183rd St., Bronx, NY, 10453; 3716 3rd Ave., Bronx, NY 10456; 1010 Southern Blvd., Bronx, NY 10459; 475 Willis Ave., Bronx, NY 10455; 362 E. 204th St., Bronx, NY 10467; and 2733 White Plains Road, Bronx, NY 10467. The USDOL Audit was based upon business records of the defendants, including payroll and timekeeping records provided by the defendants to USDOL and payroll and timekeeping records seized from the defendants pursuant to a search warrant executed by OAG, to reconstruct the approximate hours worked by and wages paid to defendants' employees at their Papa John's franchise locations between January 1, 2012 and August 31, 2014. Specifically, the USDOL Audit calculated the hourly rates actually paid to employees, overtime hours actually worked by employees, and workweeks during which employees actually worked overtime or were paid below the applicable minimum wage. Based on the reconstructed hours and wages using the business records of the defendants, the USDOL Audit identified which employees were underpaid minimum and/or overtime wages by defendants and calculated the minimum and/or overtime wages due to defendants' employees. The USDOL Audit calculated that defendants **Abdul Jamil Khokhar** and **BMV Foods Inc.** failed to pay a total of \$230,000.00 in minimum and overtime wages to employees at their Papa Johns franchise locations.

8. The USDOL Audit indicates that, at varying times between January 1, 2012 and August 31, 2014, each of Employees 1-7 were underpaid overtime wages in excess of \$3,000.00.

### **Falsifying Business Records**

9. I am informed by Employees 1-7 that they were paid wages by check for the hours they worked under their real names and that the checks they received were accompanied by paystubs reflecting only the hours worked under their real names and the wages they were receiving by check. I am further informed by Employees 1-7 that they were paid by cash for the hours they worked under the required fictitious names, they received no documentation at all relating to the

wages they were paid by cash, and neither the cash wages nor the hours worked under required fictitious names were reflected in the paystubs they received.

10. I am informed by Employees 1-7 that they were required either by defendant **Abdul Jamil Khokhar**, or by managerial-level employees of defendant **Abdul Jamil Khokhar**, to sign two sheets each week when they were paid: one which contained their real name and indicated the wages they were paid by check for hours under 40 and another which contained the fictitious name given to them and indicated the wages they were paid by cash. I am further informed by Employees 1-7 that defendant **Abdul Jamil Khokhar**, or managerial-level employees of defendant **Abdul Jamil Khokhar**, retained the paper sheets that they were required to sign relating to both the check and cash wages.

11. I am informed by Susan Rivera that she is an investigator with the United States Department of Labor, Wage and Hour Division ("USDOL"). I am further informed by Ms. Rivera that she was assigned to a USDOL investigation of defendant **Abdul Jamil Khokhar's** Papa John's franchise restaurants on or about April 23, 2013 and that she conducted the first site inspection of one of the defendants' Papa John's franchise locations on or about April 30, 2013.

12. I am informed by Employees 1-7 that, prior to the summer of 2013 they were not required to use fictitious names in defendants' timekeeping system for hours worked over 35-40 per workweek. I am further informed by Employees 1-7 that, after the USDOL conducted a site inspection of defendants' Papa John's franchise locations on or about the summer of 2013, they were required to use fictitious names in defendants' timekeeping system for hours worked over 35-40 per workweek and they were required to sign the sheets indicating cash payments made to them under the fictitious names.

13. I am informed by Ms. Rivera that on or about August 29, 2014, the USDOL served a subpoena on defendants requesting that they provide, among other things, documents reflecting any cash payments to workers. I am further informed by Ms. Rivera that in response to the subpoena, defendants did not provide to the USDOL any documents reflecting cash payments to workers.

14. On or about January 9, 2015, OAG executed a search warrant of defendants' office location at 1979 Jerome Ave., Bronx, NY 10453 and seized, among other things, cash payment sheets maintained by defendant **Abdul Jamil Khokhar** and defendant **BMY Foods Inc.** and which reflect cash payments made to workers under fictitious names.

15. I have reviewed the cash payment sheets maintained by defendant **Abdul Jamil Khokhar** and defendant **BMY Foods Inc.** which were seized pursuant to a search warrant and which reflect cash wages paid to employees under fictitious names. In particular, I have reviewed the cash payment sheets maintained by defendant **Abdul Jamil Khokhar** and defendant **BMY Foods Inc.** for the workweek of June 23, 2014 to June 29, 2014 and which reflect cash payments to Employees 1-7 under the fictitious names that Employees 1-7 were required to use.

16. I am informed by Employee 1-7 that they each worked more than 40 hours during the workweek of June 23, 2014 to June 29, 2014 and that they were paid in cash at their regular hourly rates for hours worked over 40 during this workweek.

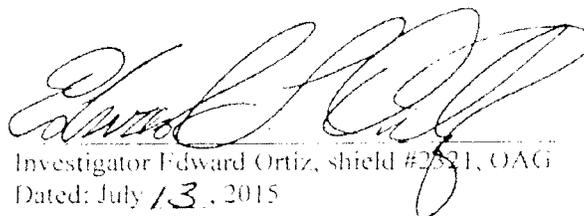
#### **Offering a False Instrument for Filing**

17. Based upon my experience as a law enforcement officer and prior investigations, I am familiar with New York Tax Law § 674, which requires that employers file New York State Department of Taxation and Finance ("Department of Taxation and Finance") NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns with the Department of Taxation and Finance for each calendar quarter in which they employ and pay wages to employees and thereby report accurately all wages paid to employees during each such quarter. These quarterly returns are additionally required to be submitted to the New York State Department of Labor for the purpose of calculating the liability of employers for contributions to the Unemployment Insurance Fund.

18. I have reviewed business records provided to OAG by the New York State Department of Labor. These business records include the New York State Department of Taxation and Finance NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns for the third quarter of 2014 that was filed with the New York State Department of Taxation and Finance, as required of employers by New York Tax Law § 674, by defendant **BMY Foods Inc.**, and that bears the signature of defendant **Abdul Jamil Khokhar** as president of defendant **BMY Foods Inc.** ("BMY NYS-45 Quarterly Return").

19. The BMY NYS-45 Quarterly Return purports to report remuneration paid to employees for the indicated quarterly period. While the BMY NYS-45 Quarterly Return filed on July 31, 2014 (for the period from April 1, 2014 to June 30, 2014) contains the real names of and check wages paid to Employees 1-6, it does not include the cash wages paid cash wages paid to Employees 1-6 under fictitious names. Defendants **Abdul Jamil Khokhar** and **BMY Foods Inc.** thereby did not report accurately to the Department of Taxation and Finance State Unemployment Insurance Fund the true wages paid to Employees 1-6 for this quarterly period.

**ANY FALSE STATEMENT MADE HEREIN IS PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW**

  
Investigator Edward Ortiz, shield #2551, OAG  
Dated: July 13, 2015