

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA : 1:06-cr-00011-WHP-ALL

v. : Filed: [January 5, 2006](#)

VINCENT J. HEINTZ; : Violations: 18 U.S.C. § 1349
NANETTE B. MELERA; : 18 U.S.C. §§ 1341, 1346
JOSEPH J. DERUSSO; and : 18 U.S.C. § 371
MICHAEL J. O'SHAUGHNESSY, : 18 U.S.C. § 1001
 : 18 U.S.C. § 1519
Defendants. : 26 U.S.C. § 7201

-----X

INDICTMENT

The Grand Jury charges:

COUNT ONE -- CONSPIRACY TO DEFRAUD

1. Vincent J. Heintz, Nanette B. Melera, Joseph J. DeRusso, and Michael J. O'Shaughnessy are hereby indicted and made defendants on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Defendant Vincent J. Heintz ("Heintz") resided in Briarcliff Manor, New York. From 1992 until March 2004, Heintz was employed as general manager by Institutional Commodity Services, Inc. ("ICS"), the central purchasing agent of the Archdiocese of New York. Heintz was ICS's chief executive and was responsible for overseeing all aspects of ICS's day-to-day operation, including supervision of the office

services, accounting, purchasing, child nutrition, and cafeteria departments. Heintz reported to ICS's Board of Directors.

3. Defendant Nanette B. Melera ("Melera") resided in Briarcliff Manor, New York. Melera was employed by ICS as the food service director. Melera was married to defendant Heintz.

4. Defendant Joseph J. DeRusso ("DeRusso") resided in Florham Park, New Jersey. DeRusso was a consultant for ICS, with responsibility for developing ICS's sales opportunities and suitable sources of supply. He was provided with a desk and telephone at ICS's offices and business cards identifying him as a representative of ICS.

5. Defendant Michael J. O'Shaughnessy ("O'Shaughnessy") resided in Queens, New York. Defendant O'Shaughnessy was a consultant for ICS, with the title of operations manager. O'Shaughnessy had responsibility at ICS for procuring automobiles and natural gas and fuel. He was provided with a desk and telephone at ICS's offices and business cards identifying him as a representative of ICS.

6. The Archdiocese of New York (the "Archdiocese"), which was established in 1808, was the area over which the Archbishop of New York administered legislative, executive and judicial authority, pursuant to the ecclesiastical law of the Roman Catholic Church. A separate civil law entity also known as the Archdiocese was incorporated in New York in 1981. As used in this information, the term "Archdiocese" refers to both the religious and civil law entities. The area administered by the Archdiocese comprised New

York, Bronx, Richmond, Westchester, Ulster, Rockland, Orange, Sullivan, Putnam, and Dutchess counties.

7. ICS, a not-for-profit corporation, was located at a building known as the Catholic Center maintained by the Archdiocese at 1011 First Avenue, New York, New York. ICS's Board of Directors consisted of the Cardinal, the Chancellor, and the Vicar-General of the Archdiocese.

8. ICS carried out its purchasing function in two ways. First, ICS bought various goods and services from a variety of vendors, which it then sold, at a markup, to the constituent entities of the Archdiocese, including more than 1,000 churches, schools, hospitals, nursing homes, and other Catholic institutions. Second, ICS developed a list of approved vendors, which it circulated within the Archdiocese. These vendors sold various goods and services directly to the constituent entities of the Archdiocese and then remitted a portion of the sales price, as a rebate, to ICS. The goods and services procured, directly or indirectly, by ICS included automobiles, cleaning supplies, computers, food and beverages, vestments, cassocks, clerical clothing and altar linen, sacramental wine, furniture, natural gas and fuel oil, paper goods, religious articles and supplies, school supplies, televisions and electronics, and major appliances. The constituent entities of the Archdiocese had the option of purchasing from ICS or its approved vendors, but were not required to do so.

9. Defendant Heintz, with the assistance of defendants DeRusso and O'Shaughnessy, controlled the selection of vendors doing business, directly or indirectly,

with ICS, negotiated prices with those vendors, and determined the amounts of the rebates to be paid, usually a percentage of sales.

10. The Archdiocese maintained numerous parish elementary and high schools, whose day-to-day operation was supervised by its Department of Education (“DOE”). The DOE was a separate not-for-profit corporation whose Board of Directors consisted of the Cardinal, the Vicar-General, and the DOE’s Secretary of Education.

11. The Child Nutrition and Food Management Service of the DOE was responsible for providing approximately 24,500 lunches and 5,800 breakfasts every day at approximately 84 Archdiocesan schools. DOE received a substantial amount of funding for the food it provided through the Child Nutrition Program administered by the United States Department of Agriculture (“USDA”). From approximately 1992 through March 2004, DOE paid ICS a per child/per meal fee for arranging for the purchase of food for the schools participating in the DOE’s school food program. ICS, in turn, contracted with vendors to supply the full range of food and related products, such as plastic cutlery, aluminum foil, and paper products, consumed by the children in the DOE’s school food program.

12. As a condition of funding through the Child Nutrition Program, the USDA required funding recipients to make purchases in a manner that provided maximum open and free competition. As the purchasing agent for the Archdiocese, ICS was obliged to comply with this USDA requirement and, on occasion, solicited bids from potential vendors of

goods and services, including food and related items. ICS was subject to an annual audit by an outside accounting firm which, among other things, filed a certification attesting to compliance with USDA procedures in connection with the Child Nutrition Program. From time to time, the outside auditors reviewed bids that ICS had received for the supply of food and related items.

13. In fiscal year 2003, ICS reported income from direct sales of approximately \$9 million, on which it made a gross profit of approximately \$1.4 million, and received rebates of approximately \$583,000. In general, the money ICS received from the DOE accounted for approximately one-half of ICS's direct sales in each year since the early 1990s.

14. Various other persons and entities, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

II. DESCRIPTION OF THE OFFENSE

15. From at least as early as mid-1996 until at least March 2004, the exact dates being unknown to the Grand Jury, in the Southern District of New York and elsewhere, defendants Heintz, DeRusso, Melera, and O'Shaughnessy and co-conspirators unlawfully, willfully, and knowingly combined, conspired, confederated, and agreed together and with

each other to commit an offense against the United States, to wit, to violate Title 18, United States Code, Sections 1341 and 1346.

16. It was a part and an object of the conspiracy that defendants Heintz, DeRusso, Melera, and O'Shaughnessy and co-conspirators, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud ICS and the Archdiocese, to obtain money and property from ICS and the Archdiocese by means of false and fraudulent pretenses, representations, and promises, and to deprive ICS of its intangible right to the honest services of certain of its employees, for the purpose of executing such scheme and artifice, and attempting to do so, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United States Code, Sections 1341 and 1346.

III. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

17. Beginning at least as early as mid-1996, the defendants embarked on a series of related self-dealing schemes in order to divert at least \$2 million from the Archdiocese and ICS for their personal use. These schemes included:

(a) Requiring numerous vendors to pay money -- ostensibly as commissions -- to defendant DeRusso or to an entity he owned and controlled, and requiring at least one vendor to pay money to an entity owned and controlled by defendant O'Shaughnessy, which money DeRusso and O'Shaughnessy secretly shared with the other defendants; and

(b) Causing ICS to purchase goods and services from Associated Buying Service, Inc., International Food Traders, LLP, Management Concepts, and Kerry Enterprises, co-conspirator entities that were secretly controlled by one or more of the defendants and whose profits were secretly divided among the defendants.

DeRusso and DeRusso Associates

18. Beginning at least as early as 1995, defendant Heintz arranged for vendors to the Archdiocese or ICS, including vendors of food, fuel oil, paper goods and janitorial supplies, to pay money to defendant DeRusso, ostensibly as commissions. Some of these vendors had been doing business with the Archdiocese or ICS for many years prior to DeRusso's becoming affiliated with ICS. Heintz told some of the vendors that the purpose of the payments was to compensate DeRusso for his activity in encouraging constituent entities within the Archdiocese to use ICS for purchasing. Initially, at least three vendors paid \$125 per week to DeRusso or to DeRusso Associates, an entity he owned and

controlled. Later those vendors, and others, paid DeRusso or DeRusso Associates a percentage of their sales to the Archdiocese or ICS. Between 1997 and 2004, at least 20 vendors made payments to DeRusso or DeRusso Associates.

19. Most of the vendors paid defendant DeRusso or DeRusso Associates by check, usually after they had received payment from the Archdiocese or ICS. However, at least two vendors gave DeRusso cash. DeRusso deposited the checks into various bank accounts he maintained by himself or jointly with his wife.

20. At least as early as mid-1996, defendant DeRusso started giving defendant Heintz a share of the payments made by the vendors to himself or DeRusso Associates. Most of the payments to Heintz were made by issuing checks to Management Concepts, an entity Heintz owned and controlled. Subsequently, DeRusso also paid a share of the payments made by the vendors to himself and DeRusso Associates to defendants O'Shaughnessy and Melera.

21. Between mid-1996 and March 2004, defendant DeRusso and DeRusso Associates received checks totaling at least \$975,000 from vendors doing business with the Archdiocese or ICS. In addition, during the same period, one vendor paid DeRusso approximately \$250,000 in cash and approximately another \$25,000 in cash in connection with sales to ICS.

22. Vendors added the cost of both the payments to defendant DeRusso and

DeRusso Associates and the rebates paid to ICS to the prices they otherwise would have charged the Archdiocese or ICS. These vendors included the food distributor that supplied most of the food purchased by ICS for the DOE's school food program, and the two primary suppliers of milk and juice for the school food program. The food distributor paid DeRusso or DeRusso Associates approximately \$33,000 in 1997, \$86,000 in 1998, \$100,000 in 1999, and \$50,000 in 2000. As discussed below in Paragraph 39, this food distributor also paid Kerry Enterprises, an entity controlled by defendant O'Shaughnessy, a percentage of its sales to ICS.

23. In order to create the appearance that the two milk and juice vendors were selected, and their prices determined, through competitive bidding, and that ICS was complying with the relevant USDA requirements, defendant Heintz instructed the two milk and juice vendors to submit annual price quotations or bids that were the same, or almost the same, for each of the approximately ten items that they sold. For a period of time, the two vendors quoted the same, or nearly the same prices, and each received a portion of ICS's business.

24. The Board of Directors of ICS was unaware that vendors paid money to DeRusso or DeRusso Associates and that defendant DeRusso was paying a portion of this money to defendants Heintz, Melera, and O' Shaughnessy, or to entities they controlled.

Associated Buying Service, Inc.

25. In approximately August 1998, certain of the defendants caused a bank account

to be opened in the name of Associated Buying Service, Inc. (“Associated”) at Valley National Bank in Clifton, New Jersey. In the account opening documents, defendant DeRusso’s home in Florham Park, New Jersey was identified as Associated’s business location. Defendants Heintz, DeRusso, and O’Shaughnessy signed the signature card to establish that they were authorized signers of Associated’s checks. On the signature card, DeRusso was listed as the president, Heintz the vice-president, and O’Shaughnessy the secretary of Associated. A fictitious person named “Kevin M. Abbott” was listed as the treasurer of Associated. Abbott purportedly authored correspondence between Associated and ICS and signed the checks issued by Associated so as to conceal the true ownership and control of Associated. In fact, the checks were signed by means of a stamp, which was maintained in Heintz’s possession in his office at ICS.

26. For example, in July 2001, a letter from Associated to ICS, purportedly signed by Abbott, claimed that Associated was “a wholesaler which normally sells to distributors” and stated that the company had “20,000 sq. feet of warehouse space available at prices well below market value.”

27. Certain of the defendants caused ICS to purchase food and related products from Associated for the DOE’s school food program. Associated made a substantial profit on these sales. Initially, the products Associated bought were shipped directly to a warehouse maintained by the food distributor that supplied the majority of the food and related products purchased by ICS, where they were stored and then delivered to the schools

by the distributor.

28. Beginning in approximately August 2001, certain of the defendants caused ICS to pay \$8050 per month for the lease of warehouse space in Kearny, New Jersey to store food and related products purchased by ICS for the DOE's school food program. ICS initially paid this money directly to the warehouse company; subsequently ICS paid the money to Associated, which then paid the warehouse company. At defendant Heintz's direction, the warehouse company paid DeRusso or DeRusso Associates \$1800 per month as a commission, which DeRusso then shared with defendants Heintz and O'Shaughnessy. From approximately January 2003 until at least March 2004, Associated reduced the amount of space it was leasing and its payment to the warehouse company dropped to \$2500 per month. At that time, the warehouse company stopped paying a commission to DeRusso or DeRusso Associates. However, the monthly payment of \$8050 from ICS to Associated for the lease of warehouse space remained unchanged, and the defendants thereafter shared the \$5550 monthly profit from this arrangement.

29. Beginning in approximately September 2000 and continuing every few months thereafter, certain of the defendants caused Associated to issue checks to defendants Heintz, DeRusso, and O'Shaughnessy that were categorized in the company's books and records as salary or distributions of the company's profits. These payments were usually equal and usually occurred at about the same time. Beginning in March 2002, Associated issued a fourth, similarly categorized check to defendant Melera at about the same time and in the

same amount as the checks to the other defendants.

30. From September 1998 through March 9, 2004, ICS paid Associated approximately \$3.2 million. In that period, Associated distributed at least \$514,000 in profits to the four defendants.

31. The Board of Directors of ICS did not know that Associated was owned and controlled by certain of the defendants or that Associated's profits were divided among the defendants.

International Food Traders, LLP

32. From approximately March 2002 until June 5, 2002, certain of the defendants maintained a bank account in the name of International Food Brokers at Valley National Bank in Clifton, New Jersey. Thereafter, in approximately June 2002, the defendants opened a bank account for an entity named International Food Traders, LLP ("IFT") at the same bank. In connection with the IFT account, defendant DeRusso identified his home address in Florham Park, New Jersey as IFT's business location. All four defendants signed the bank signature card to establish that they were authorized signers of IFT's checks. In addition, K.M. Abbott purportedly signed the account opening documents so that he, too, could sign IFT's checks. Thereafter the four defendants caused ICS to purchase substantial quantities of food and related products from IFT for consumption in the DOE's school food program and also caused Associated to purchase substantial quantities of food and related products from IFT for the same program.

33. The prices charged by Associated and IFT to ICS, which was their only actual customer, included a substantial markup. These prices were not determined through competitive bidding. Examples of these prices, per unit, are set forth below:

Commodity	Invoice Date	Unit Cost To Associated	Unit Price To ICS	Associated Profit %
Waffles	03/12/02	\$ 9.00	\$ 13.60	51%
Pancakes	02/22/02	\$ 8.48	\$ 13.47	59%
Beef Franks	04/30/02	\$ 13.00	\$ 19.56	50%
Sporks	04/11/02	\$ 16.50	\$ 24.95	51%
6 " Plates	04/11/02	\$ 7.42	\$ 10.95	48%
Bananas (petite)	04/15/02	\$ 14.50	\$ 22.50	55%
3 way Salad mix	04/15/02	\$ 24.00	\$ 39.00	63%
Lettuce, shredded	03/19/02	\$ 18.20	\$ 39.00	114%
Sporks (school kit)	02/11/04	\$ 13.29	\$ 31.68	138%
9" Compartment plates	02/26/04	\$ 13.00	\$ 20.75	60%
Liquid Detergent	02/26/04	\$ 12.10	\$ 31.80	163%
Frozen Apple Juice	02/23/04	\$ 6.78	\$ 13.07	93%
Frozen Orange Juice	02/23/04	\$ 7.75	\$ 13.95	80%
Pancakes	02/09/04	\$ 8.48	\$ 17.60	108%
Malt-O-Meal Apple Zingers	01/29/04	\$ 14.00	\$ 25.95	85%

34. From May 2002 until March 2004, IFT received approximately \$595,000 from Associated and approximately \$1.2 million from ICS. Beginning in September 2002 and continuing approximately every month thereafter until March 2004, IFT issued checks in equal amounts to each of the four defendants. These checks, which represented distributions of the company's profits and were occasionally categorized in the company's books and records as dividends, totaled approximately \$596,000.

35. The Board of Directors of ICS did not know that IFT was owned and controlled by the defendants or that IFT's profits were divided among the defendants.

Management Concepts

36. Beginning in 1999, certain of the defendants arranged to receive a personal financial benefit from ICS's purchase of computer services. Specifically, defendant Heintz arranged for a contractor who had been providing computer services directly to ICS, to instead bill Management Concepts, which was owned and controlled by Heintz, for those services. The contractor was a friend of defendant O'Shaughnessy. Management Concepts, in turn, billed ICS for those same services, but at a substantially higher price. None of the defendants assisted in performing these computer services. ICS paid Management Concepts at least \$125,000 between June 1999 and March 2004. Heintz shared with O'Shaughnessy the profits earned by Management Concepts from the sale of computer services to ICS.

37. The Board of Directors of ICS was not aware that Heintz owned and controlled Management Concepts or that Heintz or O'Shaughnessy received a personal financial benefit from ICS's purchases of computer services.

Kerry Enterprises

38. Defendant O'Shaughnessy controlled an entity named Kerry Enterprises ("Kerry"). In February 1997, O'Shaughnessy certified that he was conducting or transacting business under that name in a business certificate that was notarized by his wife and filed with the State of New York. In September 1997, O'Shaughnessy caused Kerry to open a bank account at Citibank in Manhattan. According to the account opening documents, Kerry

had only one employee and its business address was O'Shaughnessy's residence in Queens, New York, but its telephone number was the general number for the Archdiocese in Manhattan. Both O'Shaughnessy and his wife signed the signature card.

39. As noted above in Paragraph 22, from at least as early as 1997, certain of the defendants caused the food distributor that sold ICS most of the food for the DOE's school food program to pay money to Kerry. These payments, calculated as a percentage of sales, totaled approximately \$33,000 in 1997, \$86,000 in 1998, \$100,000 in 1999, and \$50,000 in 2000. Beginning in 1997, defendant O'Shaughnessy shared the money received from this distributor with defendant Heintz by causing Kerry to issue checks to Management Concepts.

40. Beginning at least as early as June 2000, certain of the defendants arranged to receive a personal financial benefit from ICS's purchase of graphic design services. Specifically, defendant Heintz arranged for one of his daughters to provide graphic design services to ICS, but to bill Kerry for those services. Kerry, in turn, billed ICS for those same services, but at a substantially higher price. Between June 2000 and December 2003, ICS paid Kerry at least \$42,000 for graphic design services, while Kerry paid Heintz's daughter approximately \$29,000 for those same services. Defendant O'Shaughnessy shared with defendants Heintz and DeRusso the profits earned by Kerry from the sale of graphic services to ICS. None of the defendants assisted in performing these graphic design services.

41. Beginning at least as early as 1999, certain of the defendants arranged to receive

a personal financial benefit from ICS's purchase of interior design services. Specifically, defendant Heintz arranged with a friend who was an interior designer to provide interior design services to ICS, but to bill Kerry for those services. Kerry, in turn, billed ICS for those same services, but at a substantially higher price. For example, in one transaction in 1999, Kerry billed ICS \$1200 for interior design services, and paid the interior designer only \$755. In total, between 1999 and 2004, ICS paid Kerry a total of at least \$20,000 for interior design services. Kerry paid the designer by checks sent through the mails. Defendant O'Shaughnessy shared with defendants Heintz and DeRusso the profits earned by Kerry from the sale of interior design services to ICS. None of the defendants assisted in performing these interior design services.

42. The Board of Directors of ICS was not aware that defendant O'Shaughnessy controlled Kerry, that O'Shaughnessy shared Kerry's profits with defendants Heintz and DeRusso, or that Kerry's graphics design contracts were actually performed by one of Heintz's daughters.

IV. OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts were committed in the Southern District of New York, and elsewhere:

43. The conspirators caused ICS to issue purchase orders and corresponding payments to Associated, IFT, Management Concepts and Kerry, and those companies to issue

purchase orders and corresponding payments to vendors, which documents were sent through the United States mails.

44. On or about July 2001, certain of the defendants caused a letter, purportedly written by Kevin M. Abbott as a representative of Associated, to be delivered to ICS, in which Associated offered to lease warehouse space to ICS.

(Title 18, United States Code, Section 1349)

COUNT TWO -- SCHEME TO DEFRAUD THE ARCHDIOCESE AND ICS

The Grand Jury further charges:

45. Vincent J. Heintz, Nanette B. Melera, Joseph J. DeRusso, and Michael J. O'Shaughnessy are hereby indicted and made defendants on the charge stated below.

46. Paragraphs 1 through 13 of Count One of this Indictment are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

V. DESCRIPTION OF THE OFFENSE

47. From at least as early as mid-1996 until approximately March 2004, in the Southern District of New York and elsewhere, defendants Heintz, DeRusso, Melera, and O'Shaughnessy and other persons known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud the Archdiocese and ICS, and to obtain money and property from the Archdiocese and ICS by means of false and fraudulent pretenses, representations, and promises, and to deprive ICS of its intangible right

to the honest services of certain of its employees, for the purpose of executing such scheme and artifice, and attempting to do so, did place or cause to be placed in post offices or authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit or cause to be deposited matters and things to be sent and delivered by private or commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, to wit, the defendants by causing the use of the mails and commercial interstate carriers fraudulently diverted at least \$2 million from the Archdiocese and ICS into personal accounts controlled by the defendants. The use of the mails in furtherance of this scheme included the following: on approximately January 19, 2004, the defendants knowingly caused to be delivered by United States mail from a vendor located in Cincinnati, Ohio an invoice for \$5594.40 addressed to ICS at 1011 1st Avenue, New York, NY, which invoice was paid by Associated and then re invoiced to ICS for \$7946.75.

(Title 18, United States Code, Sections 1341 and 1346)

COUNT THREE -- TAX CONSPIRACY

The Grand Jury further charges:

48. Vincent J. Heintz and Joseph J. DeRusso are hereby indicted and made

defendants on the charge stated below.

49. Paragraphs 2, 4, and 6 through 8 of Count One of this Indictment are repeated, realleged, and incorporated in Count Three as if fully set forth in this Count.

50. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. These included executives of a vendor to ICS of milk and juice for schools participating in the Archdiocese's school food program (the "milk and juice vendor").

VI. DESCRIPTION OF THE OFFENSE

51. From at least as early as April 1998 until approximately March 2004, the exact dates being unknown to the Grand Jury, in the Southern District of New York and elsewhere, defendants Heintz and DeRusso, and co-conspirators, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to defraud the United States of America and an agency thereof, to wit, the Internal Revenue Service ("IRS") of the United States Department of the Treasury, and to commit offenses against the United States, to wit, violations of Section 7201 of Title 26, United States Code, all in violation of Title 18, United States Code, Section 371.

52. It was a part and object of the conspiracy that defendants Heintz and DeRusso, and co-conspirators, would and did defraud the United States of America and the IRS by impeding, impairing, obstructing, and defeating the lawful government functions of the IRS in

the ascertainment, computation, assessment, and collection of income taxes due and owing from DeRusso.

53. It was further a part and object of the conspiracy that defendants Heintz and DeRusso, and co-conspirators, would and did willfully attempt to evade and defeat substantial parts of the income taxes due and owing from defendant DeRusso.

54. It was further a part and object of the conspiracy that defendant DeRusso did willfully attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America, by various means, including, among others, concealing and attempting to conceal income from the IRS by receiving, in the Southern District of New York and elsewhere, substantial amounts of cash for his personal benefit from one or more vendors to ICS and then preparing and causing to be prepared, signing and causing to be signed, and filing and causing to be filed, false and fraudulent U.S. Individual Income Tax Returns, Form 1040, for the tax years 1998, 1999, 2000, 2001, and 2002, wherein he and his spouse failed to report as income his receipt of such cash, in violation of Title 26, United States Code, Section 7201.

VII. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

55. From at least as early as April 1998 until approximately March 2004, the milk

and juice vendor paid defendant DeRusso a commission in cash in connection with its sales to ICS. This vendor initially sold milk and juice to ICS for the DOE's school food program, as well as for the cafeteria at the Catholic Center. It later also sold bread and provided warehousing and distribution services for ICS in connection with the DOE school food program. The amounts the milk and juice vendor paid to DeRusso were, in part, determined by Heintz and were calculated as a percentage of sales. The commission rate rose over time from 5% to 10%. The milk and juice vendor initially paid DeRusso's commissions by check, but began paying cash after conversations with DeRusso. These cash payments totaled at least \$250,000.

56. For a period of time, a sales representative of the milk and juice vendor met with defendants Heintz and DeRusso in Heintz's office at ICS, typically once a month, and handed Heintz an envelope containing DeRusso's commissions in cash, usually in defendant DeRusso's presence. At the same time, the sales representative also gave Heintz his company's monthly rebate check issued to ICS. On some occasions, the sales representative gave DeRusso the cash directly, in Heintz's presence. In about August 2003, a senior executive of the milk and juice vendor asked Heintz if his company could pay DeRusso his commissions by check rather than in cash. Heintz told the senior executive that the decision was DeRusso's but within a few days told the sales representative that he did not want to deal with the senior executive again. The sales representative continued making the payments to

DeRusso in cash. Later, after Heintz told the milk and juice vendor that he did not want to receive DeRusso's commissions in the ICS offices, the sales representative made arrangements to meet DeRusso in the lobby of the Catholic Center and make the cash payments there.

57. Defendant DeRusso failed to account for the value of any of the cash payments from the milk and juice vendor on the income tax returns filed by him and his spouse.

VIII. OVERT ACTS

58. In furtherance of the conspiracy and to effect the illegal objects thereof, on numerous occasions between April 1998 and March 2004, in the Southern District of New York, defendants Heintz and DeRusso received DeRusso's commissions in cash from the milk and juice vendor, and then, on approximately April 12, 1999, April 9, 2000, April 12, 2001, April 10, 2002 and April 12, 2003, DeRusso concealed that income by preparing and causing to be prepared, signing and causing to be signed, and filing and causing to be filed, false and fraudulent U.S. Income Tax Returns, Forms 1040, for 1998, 1999, 2000, 2001, and 2002, respectively, wherein he and his spouse failed to report such cash as income, thereby substantially understating their correct tax due and owing.

(Title 18, United States Code, Section 371)

COUNT FOUR -- INCOME TAX EVASION

The Grand Jury further charges:

59. On or about April 9, 2000, in the Southern District of New York and elsewhere, Joseph J. DeRusso, a resident of Florham Park, New Jersey, unlawfully, willfully, and knowingly, did attempt to evade and defeat a substantial part of the income tax due and owing by him and his spouse to the United States of America for the tax year 1999, by various means, including, among others, preparing and causing to be prepared, signing and causing to be signed, and filing and causing to be filed, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, wherein he and his spouse failed to report as income substantial amounts of cash that he received, in the Southern District of New York and elsewhere, for his personal benefit from at least two vendors to Institutional Commodity Services, Inc., and wherein he stated that his and his spouse's taxable income was \$83,994 and that the amount of tax due and owing thereon was \$25,198; whereas, as defendant DeRusso then and there well knew and believed, their income for tax year 1999 was substantially in excess of the specific sum reported, upon which additional taxable income there was due and owing to the United States of America substantial additional income tax.

(Title 26, United States Code, Section 7201)

COUNT FIVE -- INCOME TAX EVASION

The Grand Jury further charges:

60. On or about April 12, 2001, in the Southern District of New York and elsewhere, Joseph J. DeRusso, a resident of Florham Park, New Jersey, unlawfully, willfully,

and knowingly, did attempt to evade and defeat a substantial part of the income tax due and owing by him and his spouse to the United States of America for the tax year 2000, by various means, including, among others, preparing and causing to be prepared, signing and causing to be signed, and filing and causing to be filed, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, wherein he and his spouse failed to report as income substantial amounts of cash that he received, in the Southern District of New York and elsewhere, for his personal benefit from at least two vendors to Institutional Commodity Services, Inc., and wherein he stated that his and his spouse's taxable income was \$104,017 and that the amount of tax due and owing thereon was \$28,064; whereas, as defendant DeRusso then and there well knew and believed, their income for tax year 2000 was substantially in excess of the specific sum reported, upon which additional taxable income there was due and owing to the United States of America substantial additional income tax.

(Title 26, United States Code, Section 7201)

COUNT SIX -- INCOME TAX EVASION

The Grand Jury further charges:

61. On or about April 10, 2002, in the Southern District of New York and elsewhere, Joseph J. DeRusso, a resident of Florham Park, New Jersey, unlawfully, willfully, and knowingly, did attempt to evade and defeat a substantial part of the income tax due and owing by him and his spouse to the United States of America for the tax year 2001, by various

means, including, among others, preparing and causing to be prepared, signing and causing to be signed, and filing and causing to be filed, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, wherein he and his spouse failed to report as income substantial amounts of cash that he received, in the Southern District of New York and elsewhere, for his personal benefit from at least two vendors to Institutional Commodity Services, Inc., and wherein he stated that his and his spouse's taxable income was \$156,894 and that the amount of tax due and owing thereon was \$42,291; whereas, as defendant DeRusso then and there well knew and believed, their income for tax year 2001 was substantially in excess of the specific sum reported, upon which additional taxable income there was due and owing to the United States of America substantial additional income tax.

(Title 26, United States Code, Section 7201)

COUNT SEVEN -- INCOME TAX EVASION

The Grand Jury further charges:

62. On or about April 12, 2003, in the Southern District of New York and elsewhere, Joseph J. DeRusso, a resident of Florham Park, New Jersey, unlawfully, willfully, and knowingly, did attempt to evade and defeat a substantial part of the income tax due and owing by him and his spouse to the United States of America for the tax year 2002, by various means, including, among others, preparing and causing to be prepared, signing and causing to be signed, and filing and causing to be filed, a false and fraudulent U.S. Individual Income

Tax Return, Form 1040, wherein he and his spouse failed to report as income substantial amounts of cash that he received, in the Southern District of New York and elsewhere, for his personal benefit from at least two vendors to Institutional Commodity Services, Inc., and wherein he stated that his and his spouse's taxable income was \$115,763 and that the amount of tax due and owing thereon was \$30,624; whereas, as defendant DeRusso then and there well knew and believed, their income for tax year 2002 was substantially in excess of the specific sum reported, upon which additional taxable income there was due and owing to the United States of America substantial additional income tax.

(Title 26, United States Code, Section 7201)

COUNT EIGHT -- FALSIFICATION OF RECORDS IN A FEDERAL INVESTIGATION

The Grand Jury further charges:

63. Joseph J. DeRusso ("DeRusso") is hereby indicted and made a defendant on the charge stated below.

64. DeRusso was a consultant for Institutional Commodity Services, Inc. ("ICS"), the central purchasing agent of the Archdiocese of New York. He had responsibility for developing ICS's sales opportunities and suitable sources of supply. From at least as early as April 1998 until approximately March 2004, a milk and juice vendor to ICS ("the milk and juice vendor") paid commissions totaling at least \$250,000 in cash to DeRusso in connection

with its sales to ICS. The amounts the milk and juice vendor paid to DeRusso as commissions were calculated as a percentage of sales to ICS. The commission rate rose over time from 5% to 10%. The milk and juice vendor initially paid DeRusso's commissions by check, but began paying the commissions in cash after conversations between DeRusso and one of its sales representatives. A sales representative of the milk and juice vendor typically paid the commissions to DeRusso once a month, either in the offices of ICS's general manager or in the lobby of the building where ICS was located.

IX. DESCRIPTION OF THE OFFENSE

65. In approximately March 2004, defendant DeRusso, in the Southern District of New York, unlawfully, willfully, and knowingly, altered, falsified or made a false entry in a record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of a matter within the jurisdiction of any department or agency of the United States, or in relation to or contemplation of any such matter or case.

66. Specifically, in about March 2004, after he had been interviewed by an agent of the Federal Bureau of Investigation, defendant DeRusso contacted a sales representative of the milk and juice vendor, and, referring to an investigation by the Federal Bureau of Investigation, requested a meeting with the sales representative. The sales representative of the milk and juice vendor agreed to meet with defendant DeRusso and at a subsequent meeting, defendant DeRusso gave the sales representative of the milk and juice vendor a

fictitious “Brokerage Agreement” between DeRusso Associates and the milk and juice vendor. The document, which DeRusso signed and backdated to February 19, 2002, stated that the milk and juice vendor appointed DeRusso Associates as its authorized agent to solicit orders with the Archdiocese and specified that DeRusso Associates shall be paid \$1000 per month. This representation was false and fictitious because, in fact, from approximately March 1998 through February 2004, the monthly payments from the milk and juice vendor to DeRusso substantially exceeded \$1000. DeRusso created this document to disguise the true nature of his arrangement with the milk and juice vendor in the event that it or its representatives were contacted by government agents.

67. At that time and place, the Federal Bureau of Investigation was conducting an investigation to determine, among other things, if any representatives of ICS had defrauded the Archdiocese or ICS by receiving kickbacks from vendors, or had defrauded the Internal Revenue Service by failing to report any such kickbacks as income, in violation of 18 U.S.C. Sections 371, 1341, 1346, 1349, or other federal criminal laws, in the Southern District of New York and elsewhere.

(Title 18, United States Code, Section 1519)

COUNT NINE -- FALSE STATEMENTS BY HEINTZ

The Grand Jury further charges:

68. Vincent J. Heintz (“Heintz”) is hereby indicted and made a defendant on the

charge stated below.

69. Paragraph 2 of Count One of this Indictment is repeated, realleged and incorporated in Count Nine as if fully set forth in this Count.

70. Joseph J. DeRusso (“DeRusso”) was a consultant for ICS, with responsibility for developing ICS’s sales opportunities and suitable sources of supply. From at least as early as April 1998 until approximately March 2004, a milk and juice vendor to ICS (“the milk and juice vendor”) paid commissions totaling at least \$250,000 in cash to DeRusso in connection with its sales to ICS. The commissions to DeRusso were paid in the following manner. For a substantial period, a sales representative of the milk and juice vendor met with DeRusso and defendant Heintz in Heintz’s office at ICS, typically once a month, and handed Heintz an envelope containing DeRusso’s commissions in cash, usually in DeRusso’s presence. On some occasions, the sales representative gave DeRusso the cash directly, in Heintz’s presence. In about August 2003, a senior executive of the milk and juice vendor asked Heintz if his company could pay DeRusso his commissions by check rather than in cash. Heintz told the senior executive that the decision was DeRusso’s but within a few days told the sales representative that he did not want to deal with the senior executive again. The sales representative continued making the payments to DeRusso in cash. Later, after Heintz told the milk and juice vendor that he did not want to receive DeRusso’s commissions in the ICS offices, the sales representative made arrangements to meet DeRusso in the lobby of the

building where ICS was located and make the cash payments there.

71. On July 21, 2004, in the Southern District of New York, defendant Heintz unlawfully, willfully, and knowingly, in a matter within the jurisdiction of the executive branch of the Government of the United States, falsified, concealed, and covered up by trick, scheme, and device a material fact, and made materially false, fictitious, and fraudulent statements and representations, to wit, in connection with an investigation by the New York Field Office of the Antitrust Division, United States Department of Justice (“Antitrust Division”), Heintz was interviewed, at his request, by agents of the FBI and the IRS and

representatives of the Antitrust Division, during which he falsely claimed that he was not aware that any vendor to ICS gave cash to DeRusso.

(Title 18, United States Code, Section 1001(a)(1) and (2))

Dated:

A True Bill

/s/ _____
Foreperson

/s/ _____
THOMAS O. BARNETT
Acting Assistant Attorney General

/s/ _____
RALPH T. GIORDANO
Chief, New York Office

/s/ _____
SCOTT D. HAMMOND
Deputy Assistant Attorney General

/s/ _____
REBECCA MEIKLEJOHN

/s/ _____
MARC SIEGEL
Director of Criminal Enforcement

/s/ _____
ELIZABETH PREWITT

Antitrust Division
U.S. Department of Justice

Attorneys, Antitrust Division
U.S. Department of Justice
26 Federal Plaza, Room 3630
New York, New York 10278
(212) 264-0654

/s/ _____
MICHAEL J. GARCIA
United States Attorney
Southern District of New York