



## U. S. Department of Justice

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Northern District of Illinois

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FOR IMMEDIATE RELEASE  
THURSDAY APRIL 19, 2012  
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### **FOUR DEFENDANTS INDICTED IN ALLEGED 2007 CONSPIRACY TO DISTRIBUTE 110,000 POUNDS OF ADULTERATED MEXICAN CHEESE THROUGHOUT THE U.S.**

CHICAGO — Four individuals who were involved in shipping more than 110,000 pounds of Mexican cheese in 2007 were indicted on federal charges for allegedly conspiring to distribute the cheese throughout the United States despite Food and Drug Administration orders that it be held for inspections, which later determined that samples were adulterated with salmonella, e. coli and other illness-causing bacteria. One defendant owned the Illinois company that imported the dried Mexican cheese to the U.S., and another defendant owned a Wisconsin company that had a facility in suburban Elmhurst and distributed the cheese to customers nationwide. All four defendants were charged with conspiring to illegally distribute the cheese, to “wash” cheese returned by dissatisfied customers by scrapping off mold and fungus so that it could be resold, and to cover up their distribution of the cheese by lying to an FDA inspector and by creating and sending a false document to the food safety agency, federal law enforcement officials announced today.

The six-count indictment returned by a federal grand jury yesterday does not allege any instances of illness or other public health consequences attributed to distribution of the cheese, noted Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois.

The Wisconsin company that distributed the cheese to retail stores in Illinois, Indiana, Michigan, Georgia, and Texas, under the brand name Queso Cincho De Guerrero, issued a recall in September 2007 for the dry, hard Mexican cheese that was sold in 35- and 40-pound wheels.

The defendants and their roles as described in the indictment are as follows:

**Guadalupe Zurita**, also known as “Jose Zurita,” 42, of Villahermosa, Mexico, who owned and operated “Company C,” an Illinois corporation that dissolved in February 2007 but continued to operate, and which imported Mexican specialty cheese and dried Mexican peppers from a plant in Villahermosa. A warrant will be issued in the U.S. for Zurita, who lives in Mexico;

**Miguel Leal**, 47, of Monroe, Wis., who was president and owner of “Company A,” which produced cheese at a plant in Darlington, Wis., that was shipped to customers in other states and which also had a facility in Elmhurst from April 2007 to October 2008. Leal owned Company A until it was sold in July 2007 to Company B, a Mexican corporation;

**Cynthia Gutierrez**, 37, of Cicero, who was Company A’s finance and operations manager before it was sold to Company B, and who worked at the Elmhurst facility from April 2007 until October 2008; and

**Baldemar Zurita**, also known as “Tony Zurita,” 39, of Chicago, who is Guadalupe Zurita’s brother and who was employed by Company C between at least March and September 2007.

Baldemar Zurita was arrested this morning and is scheduled to be arraigned at 3 p.m. today before U.S. Magistrate Judge Geraldine Soat Brown in U.S. District Court. Leal and Gutierrez were not arrested and will arraigned at a later date in Federal Court.

All four defendants were charged with conspiracy to violate the federal Food, Drug, and Cosmetic Act by introducing adulterated cheese into interstate commerce and three counts of violating the food safety law. Leal, Gutierrez and Guadalupe Zurita were charged with obstructing the FDA for allegedly concealing the sale and distribution of 311 boxes of dried Mexican cheese, and Gutierrez and Guadalupe Zurita were also charged with obstructing the FDA for allegedly

making a false bill of lading referencing the 311 boxes and submitting the document to an FDA inspector.

Daniel L. Henson, Special Agent-in-Charge of the FDA's Office of Criminal Investigations in Chicago, said the criminal investigation into the alleged illegal distribution of adulterated cheese began after an alert from the FDA's Office of Regulatory Affairs when officials believed they were lied to.

"Working with our partners on the FDA regulatory side is critical to the Office of Criminal Investigations' mission. This case is an example of the dedication shown by both the regulatory and criminal investigative branches of the FDA," Mr. Henson said.

Mr. Fitzgerald added: "While there is no evidence in this case that anyone was harmed by the cheese at issue, it is imperative that the FDA enforce food safety laws for the protection of the health of consumers. We will continue to partner with them to do so vigorously."

According to the indictment, Company C shipped 33,924 pounds of dried Mexican cheese to Company A's Elmhurst facility in April 2007, an additional 37,772 pounds in May, and 39,290 pounds in June, for a total of 110,986 pounds of dried Mexican cheese during the three consecutive months. On April 15, 2007, the FDA placed a hold on the first shipment and on April 20, 2007, an FDA inspector attempted to inspect and sample the shipment at the Elmhurst facility but found that some of the cheese was missing. Leal and Gutierrez allegedly distributed 311 cartons of cheese from the April shipment prior to the April 20 inspection and sampling.

Baldemar Zurita and Gutierrez falsely told the inspector that the 311 cartons of cheese were not sold and distributed but were, instead, in Company A's Darlington, Wis., plant, the indictment alleges. On April 23, 2007, Guadalupe Zurita and Leal allegedly arranged to place 311 boxes of

stand-in cheese in Company A's Darlington plant with no labels in case the FDA inspector arrived there to look for the cheese that had already been sold by Company A.

In April and May 2007, Leal and Gutierrez allegedly distributed the remainder of the April shipment despite the FDA's hold order. The FDA subsequently changed the hold on the April shipment to "detained" because the cheese was found to contain salmonella, e. coli, and staphylococcus, all of which are bacteria that can cause illness.

The FDA initially placed hold orders on the May and June shipments as well and, following inspections, detained both shipments. Subsequently, the FDA changed the status of the April and May shipments to "refused," ordering that they be destroyed or exported from the country under supervision. Despite the hold orders then in effect, between May and September 2007, Leal and Gutierrez allegedly distributed the May and June shipments to Company A's customers through the United States.

The indictment alleges that between June and September 2007, Baldemar Zurita "washed" cheese that Company A's customers returned from all three shipments in an attempt to remove mold and fungus so Company A could resell the cheese to its customers. He allegedly washed the cheese under the direction of his brother and at the request of Leal and Gutierrez.

The conspiracy count and one of the FDA obstruction counts carry a maximum prison term of five years, while each count of violating the Food, Drug and Cosmetic Act carries a maximum of three years in prison. The FDA obstruction count against Gutierrez and Guadalupe Zurita carries a maximum of 20 years in prison, and all six counts in the indictment carry a maximum fine of \$250,000. If convicted, the Court must impose a reasonable sentence under federal statutes and the advisory United States Sentencing Guidelines.

The government is being represented by Assistant U.S. Attorney Renato Mariotti.

The public is reminded that an indictment contains only charges and is not evidence of guilt. The defendants are presumed innocent and are entitled to a fair trial at which the government has the burden of proving guilt beyond a reasonable doubt.

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