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**FILED**

DEC 16 2008

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BY \_\_\_\_\_  
DEPUTY CLERK

15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE EASTERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA, )  
18 )  
Plaintiff, )  
19 )  
v. )  
20 )  
RANDALL LEE RAHAL, )  
21 )  
Defendant. )  
22 )

No. Cr. S-08-566 LKK

PLEA and COOPERATION AGREEMENT

23  
24 I.

25 INTRODUCTION

26 A. **Scope of Agreement:** The Information to be filed in this  
27 case charges the defendant, Randall Lee Rahal ("Rahal"), with  
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1 conspiring to conduct the affairs of an enterprise through a pattern  
2 of racketeering activity in violation of 18 U.S.C. § 1962(d); money  
3 laundering in violation of 18 U.S.C. § 1957; and participating in,  
4 and aiding and abetting a conspiracy to suppress and eliminate  
5 competition by allocating contracts, fixing prices, and rigging bids  
6 in unreasonable restraint of interstate trade and commerce, in  
7 violation of the Sherman Act, 15 U.S.C. § 1, and 18 U.S.C. § 2.

9 This document contains the complete Plea and Cooperation Agreement  
10 between the United States Attorney's Office for the Eastern District  
11 of California and the United States Department of Justice, Antitrust  
12 Division (the "government"), and the defendant regarding this case.

13 This Plea and Cooperation Agreement is limited to the United States  
14 Attorney's Office for the Eastern District of California and the  
15 United States Department of Justice, Antitrust Division, and cannot  
16 bind any other federal, state, or local prosecuting, administrative,  
17 or regulatory authorities.

19 **B. Court Not a Party:** The Court is not a party to this Plea  
20 and Cooperation Agreement. Sentencing is a matter solely within the  
21 discretion of the Court, the Court is under no obligation to accept  
22 any recommendations made by the government, and the Court may in its  
23 discretion impose any sentence it deems appropriate up to and  
24 including the statutory maximum stated in this Plea and Cooperation  
25 Agreement. If the Court should impose any sentence up to the  
26 maximum established by the statute, the defendant cannot, for that  
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1 reason alone, withdraw his guilty plea, and he will remain bound to  
2 fulfill all of the obligations under this Plea and Cooperation  
3 Agreement. The defendant understands that neither the prosecutor,  
4 defense counsel, nor the Court can make a binding prediction or  
5 promise regarding the sentence he will receive.  
6

7 **II.**

8 **DEFENDANT'S OBLIGATIONS**

9 **A. Waiver of Indictment and Guilty Plea:** The defendant will  
10 waive indictment by grand jury, waive venue, and plead guilty to a  
11 three-count Information, substantially in the form attached hereto  
12 as Exhibit B, charging him with conspiring to conduct the affairs of  
13 an enterprise through a pattern of racketeering activity in  
14 violation of 18 U.S.C. § 1962(d); money laundering in violation of  
15 18 U.S.C. § 1957; and price fixing in violation of 15 U.S.C. § 1.  
16 The defendant agrees that he is in fact guilty of those charges and  
17 that the facts set forth in the Factual Basis attached hereto as  
18 Exhibit A are true and accurate.  
19

20 **B. Restitution:** The Mandatory Victim Restitution Act requires  
21 the Court to order restitution to the victims of certain offenses.  
22 If such restitution is ordered, payment should be by cashier's or  
23 certified check made payable to the Clerk of the Court. The  
24 defendant understands that this Plea and Cooperation Agreement is  
25 voidable by the government if he fails to pay the restitution as  
26 ordered by the Court. Defendant further agrees that he will not  
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1 seek to discharge any restitution obligation or any part of such  
2 obligation in any bankruptcy proceeding.

3       **C. Special Assessment:** The defendant agrees to pay a special  
4 assessment of \$300 at the time of sentencing by delivering a check  
5 or money order payable to the United States District Court to the  
6 United States Probation Office immediately before the sentencing  
7 hearing.  
8

9       **D. Agreement to Cooperate:** The defendant agrees to cooperate  
10 fully with the government and any other federal, state, or local law  
11 enforcement agency, as directed by the government. As used in this  
12 Agreement, "cooperation" requires the defendant: (1) to respond  
13 truthfully and completely to all questions, whether in interviews,  
14 in correspondence, telephone conversations, before a grand jury, or  
15 at any trial or other court proceeding; (2) to attend all meetings,  
16 grand jury sessions, trials, and other proceedings at which the  
17 defendant's presence is requested by the government or compelled by  
18 subpoena or court order; (3) to produce voluntarily any and all  
19 documents, records, or other tangible evidence requested by the  
20 government; (4) not to participate in any criminal activity while  
21 cooperating with the government; and (5) to disclose to the  
22 government the existence and status of all money, property, or  
23 assets, of any kind, derived from or acquired as a result of, or  
24 used to facilitate the commission of, the defendant's illegal  
25 activities or the illegal activities of any conspirators.  
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1           If the defendant commits any crimes or if any of the  
2 defendant's statements or testimony prove to be knowingly false,  
3 misleading, or materially incomplete, or if the defendant otherwise  
4 violates this Plea and Cooperation Agreement in any way, the  
5 government will no longer be bound by its representations to the  
6 defendant concerning the limits on criminal prosecution and  
7 sentencing as set forth herein. The determination whether the  
8 defendant has violated the Plea and Cooperation Agreement will be  
9 under a preponderance of the evidence standard. If the defendant  
10 violates the Plea and Cooperation Agreement, he shall thereafter be  
11 subject to prosecution for any federal criminal violation of which  
12 the government has knowledge, including but not limited to perjury,  
13 false statements, and obstruction of justice. Because disclosures  
14 pursuant to this Agreement will constitute a waiver of the Fifth  
15 Amendment privilege against compulsory self-incrimination, any such  
16 prosecution may be premised on statements and/or information  
17 provided by the defendant. Moreover, any prosecutions that are not  
18 time-barred by the applicable statute of limitations as of the date  
19 of this Agreement may be commenced in accordance with this  
20 paragraph, notwithstanding the expiration of the statute of  
21 limitations between the signing of this Agreement and the  
22 commencement of any such prosecutions. The defendant agrees to  
23 waive all defenses based on the statute of limitations or delay of  
24 prosecution with respect to any prosecutions that are not time-

1 barred as of the date of this Agreement.

2       If it is determined that the defendant has violated any  
3 provision of this Agreement or if the defendant successfully moves  
4 to withdraw his plea: (1) all statements made by the defendant to  
5 the government or other designated law enforcement agents, or any  
6 testimony given by the defendant before a grand jury or other  
7 tribunal, whether before or after this Agreement, shall be  
8 admissible in evidence in any criminal, civil, or administrative  
9 proceedings hereafter brought against the defendant; and (2) the  
10 defendant shall assert no claim under the United States  
11 Constitution, any statute, Rule 11(f) of the Federal Rules of  
12 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or  
13 any other federal rule, that statements made by the defendant before  
14 or after this Agreement, or any leads derived therefrom, should be  
15 suppressed. By signing this Agreement, the defendant waives any and  
16 all rights in the foregoing respects.  
17

18  
19       **E. Civil Forfeiture:** The defendant agrees to sign a  
20 Stipulation for Final Judgment of Forfeiture in the pending civil  
21 action, U.S. v. Approximately \$415,000.00 in U.S. Currency seized  
22 from Sun National Bank, et al., 2:08-CV-01899-GEB-GGH, forfeiting to  
23 the United States all of his and Intramark USA, Inc.'s ("Intramark")  
24 right, title, and interest in the defendant funds. This stipulation  
25 must be signed at least seven days prior to sentencing.  
26

27       **F. Payment of Fine:** The defendant agrees to pay a criminal  
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1 fine if so ordered. The government's recommendation with respect to  
2 any such criminal fine is set forth in Section III.D of this Plea  
3 and Cooperation Agreement.

4 **III.**

5 **THE GOVERNMENT'S OBLIGATIONS**

6  
7 **A. Incarceration Range:** The government will recommend that  
8 the defendant be sentenced to the bottom of the applicable guideline  
9 range for his offense as determined by the United States Probation  
10 Office.

11 **B. Acceptance of Responsibility:** The government agrees that a  
12 three-level reduction in defendant's offense level for his full and  
13 clear demonstration of acceptance of responsibility is appropriate  
14 under U.S.S.G. § 3E1.1, will not oppose such a reduction and will so  
15 move under § 3E1.1(b), so long as the defendant pleads guilty, meets  
16 with and assists the probation officer in the preparation of the  
17 pre-sentence report, is truthful and candid with the probation  
18 officer and the Court, and does not otherwise engage in conduct that  
19 constitutes obstruction of justice within the meaning of U.S.S.G. §  
20 3C1.1, either in the preparation of the pre-sentence report or  
21 during the sentencing proceeding.

22  
23 **C. Reduction of Sentence for Cooperation:** The government  
24 agrees to recommend at the time of sentencing that the defendant's  
25 sentence of imprisonment be reduced to reflect his substantial  
26 assistance to the government in the investigation and prosecution of  
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1 others, pursuant to U.S.S.G. § 5K1.1. The defendant understands  
2 that he must comply with paragraph II(D) of this Plea and  
3 Cooperation Agreement. The defendant understands that the  
4 government's recommended reduction in his sentence will depend upon  
5 the level of assistance the government determines that the defendant  
6 has provided. The defendant further understands that a motion  
7 pursuant to U.S.S.G. § 5K1.1 is only a recommendation and is not  
8 binding on the Court.  
9

10 Other than as set forth above, the government agrees that any  
11 incriminating information provided by the defendant during his  
12 cooperation will not be used in determining the applicable guideline  
13 range in his case, pursuant to U.S.S.G. § 1B1.8.  
14

15 **D. Fine:** The government agrees to recommend that any criminal  
16 fine imposed on the defendant be no higher than the midpoint of the  
17 applicable fine range, given the defendant's offense level and  
18 sentencing range.

19 **E. Other Considerations:** To the extent the defendant enters a  
20 guilty plea and is sentenced on Counts One, Two and Three of the  
21 Information to be filed in this matter, the government, to include  
22 the United States Attorney's Office for the District of New Jersey,  
23 will not initiate any further criminal charges against the defendant  
24 arising out of the same facts and circumstances as the instant  
25 charges.  
26

27 / / / /  
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1 IV.

2 **ELEMENTS OF THE OFFENSE**

3 With respect to Count One of the Information to be filed in  
4 this matter, which charges the defendant with conspiring to conduct  
5 the affairs of an enterprise through a pattern of racketeering  
6 activity in violation of 18 U.S.C. § 1962(d), at trial the  
7 government would have to prove beyond a reasonable doubt the  
8 following elements:  
9

10 First, that certain leaders, employees and associates of SK  
11 Foods, L.P., and its related corporate entities ("SK Foods"), a  
12 manufacturer and marketer of bulk tomato and other food products  
13 with principal places of business in Monterey, Williams, Ripon, and  
14 Lemoore, California, constituted an enterprise, that is, a legal  
15 entity, a partnership or group of individuals associated in fact;  
16

17 Second, that SK Foods was engaged in interstate commerce;

18 Third, that no later than January 2004 and continuing through  
19 at least April 2008, there was an agreement between two or more  
20 persons employed by or associated with SK Foods to conduct SK Foods'  
21 affairs through a "pattern of racketeering activity" as defined by  
22 Title 18, United States Code, Section 1961(a) & (5), namely,  
23 multiple acts indictable under Title 18, United States Code,  
24 Sections 1341, 1343 and 1346; N.J. STAT. ANN. § 2C:21-10 (2008); CAL.  
25 PENAL CODE § 641.3 (2008); and TEX. PENAL CODE § 32.43 (2008), the last  
26 of which was to occur within ten years after the commission of a  
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1 prior such act;

2 Fourth, the defendant was employed by or associated with SK  
3 Foods; and

4 Fifth, the defendant joined in the illegal agreement referenced  
5 above, knowing of its object and intending to help accomplish it.

6  
7 With respect to Count Two of the Information to be filed in  
8 this matter, which charges the defendant with money laundering in  
9 violation of 18 U.S.C. § 1957, at trial the government would have to  
10 prove beyond a reasonable doubt the following elements:

11 First, that the defendant knowingly engaged in a monetary  
12 transaction;

13 Second, that the defendant knew the transaction involved  
14 criminally derived property;

15 Third, that the property had a value greater than \$10,000;

16 Fourth, that the property was, in fact, derived from specific  
17 acts otherwise indictable under Title 18, United States Code,  
18 Sections 1341, 1343 and 1346; N.J. STAT. ANN. § 2C:21-10 (2008); CAL.  
19 PENAL CODE § 641.3 (2008); and TEX. PENAL CODE § 32.43 (2008); and  
20

21 Fifth, that the transaction occurred in the United States.

22 With respect to Count Three of the Information to be filed in  
23 this matter, which charges the defendant with price fixing in  
24 violation of 15 U.S.C. § 1 and aiding and abetting in violation of  
25 18 U.S.C. § 2, at trial the government would have to prove beyond a  
26 reasonable doubt the following elements:  
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1 First, that the defendant entered into or aided and abetted a  
2 conspiracy;

3 Second, that the conspiracy was an unreasonable restraint of  
4 trade; and

5 Third, that the conspiracy was in or affected interstate  
6 commerce in the United States.  
7

8 V.

9 **MAXIMUM SENTENCE**

10 **A. Maximum Penalty:** With respect to Count One of the  
11 Information to be filed in this matter, which charges the defendant  
12 with conspiring to conduct the affairs of an enterprise through a  
13 pattern of racketeering activity in violation of 18 U.S.C. §  
14 1962(d), the maximum sentence that the Court can impose is twenty  
15 years of incarceration; a fine of \$250,000 or twice the gross gain  
16 or gross loss resulting from the offense, whichever is greatest; a  
17 three-year period of supervised release; and a special assessment of  
18 \$100.  
19

20 With respect to Count Two of the Information to be filed in  
21 this matter which charges the defendant with money laundering in  
22 violation of 18 U.S.C. § 1957, the maximum sentence that the Court  
23 can impose is ten years of incarceration, a fine of \$250,000 or  
24 twice the amount of the criminally derived property involved in the  
25 transaction, a three-year period of supervised release, and a  
26 special assessment of \$100.  
27  
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1 With respect to Count Three of the Information to be filed in  
2 this matter, which charges the defendant with price fixing in  
3 violation of 15 U.S.C. § 1 and aiding and abetting in violation of  
4 18 U.S.C. § 2, the maximum sentence the Court can impose is ten  
5 years incarceration; a fine in an amount equal to the greatest of  
6 (1) \$1,000,000, (2) twice the gross pecuniary gain the conspirators  
7 derived from the crime, or (3) twice the gross pecuniary loss caused  
8 to the victims of the crime by the conspirators; a three-year period  
9 of supervised release; and a special assessment of \$100.

11 **B. Violations of Supervised Release:** The defendant  
12 understands that if he violates a condition of supervised release at  
13 any time during the term of supervised release, the Court may revoke  
14 the term of supervised release and require the defendant to serve up  
15 to two additional years of imprisonment.

17 VI.

18 **SENTENCING DETERMINATION**

19 **A. Statutory Authority:** The defendant understands that the  
20 Court must consult the Federal Sentencing Guidelines (as promulgated  
21 by the Sentencing Commission pursuant to the Sentencing Reform Act  
22 of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as  
23 modified by United States v. Booker and United States v. Fanfan,  
24 543 U.S. 220, 125 S.Ct. 738 (2005)) and must take them into account  
25 when determining a final sentence. The defendant understands that  
26 the Court will determine a non-binding and advisory guideline  
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1 sentencing range for this case pursuant to the Sentencing  
2 Guidelines. The defendant further understands that the Court will  
3 consider whether there is a basis for departure from the guideline  
4 sentencing range (either above or below the guideline sentencing  
5 range) because there exists an aggravating or mitigating  
6 circumstance of a kind, or to a degree, not adequately taken into  
7 consideration by the Sentencing Commission in formulating the  
8 Guidelines. The defendant further understands that the Court, after  
9 consultation and consideration of the Sentencing Guidelines, must  
10 impose a sentence that is reasonable in light of the factors set  
11 forth in 18 U.S.C. § 3553(a).  
12

13           **B. Stipulations Affecting Guidelines Calculations:** The  
14 government and the defendant agree that there is no material dispute  
15 as to the following sentencing guidelines variables and therefore  
16 stipulate and agree to the following:  
17

18           **1. Offense Level for Racketeering Conspiracy Count:**

19           **a. Applicable Guidelines Section:** With respect to  
20 the charge of conspiring to conduct the affairs of an enterprise  
21 through a pattern of racketeering activity in violation of 18 U.S.C.  
22 § 1962(d), pursuant to U.S.S.G. § 2E1.1 the defendant's base offense  
23 level is the greater of 19 or the offense level applicable to the  
24 underlying racketeering activity. In this instance, the guidelines  
25 sections applicable to the underlying racketeering activity  
26 committed by the defendant are U.S.S.G. §§ 2B4.1 and 2B1.1. Because  
27  
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1 the guidelines section resulting in the highest offense level is §  
2 2B4.1, and loss amounts under §§ 2B4.1 and 2B1.1 group, the offense  
3 level for the underlying racketeering activity is determined under §  
4 2B4.1.

5  
6 **b. Offense Level Under § 2B4.1:** The offense level  
7 applicable to the underlying racketeering activity related to the  
8 defendant's commercial bribery and honest services fraud, and mail  
9 fraud is calculated as follows:

10 • **Base Offense Level Under § 2B4.1:** Pursuant  
11 to § 2B4.1, the base offense level is 8.

12 • **Specific Offense Characteristics:** Pursuant  
13 to § 2B4.1(b)(1), the parties agree that at an evidentiary hearing  
14 the government is currently in a position to prove that the amount  
15 of loss attributable to the commercial bribery and honest services  
16 fraud committed by the defendant, and relevant conduct, and the loss  
17 attributable to the mail fraud, is greater than \$400,000, but less  
18 than \$1,000,000. Consequently, the base offense level is increased  
19 by 14.  
20

21 • **Adjusted Offense Level Under § 2B4.1:** As a  
22 result of the foregoing stipulations, the adjusted offense level  
23 applicable to the underlying racketeering activity related to the  
24 defendant's commercial bribery and honest services fraud, and mail  
25 fraud is 22.  
26

27 **c. Racketeering Conspiracy Count Offense Level:** As  
28

1 a result of the foregoing stipulations, the adjusted offense level  
2 for the racketeering conspiracy count is a level 22.

3           **2. Offense Level for Money Laundering Count:**

4           **a. Base Offense Level:** Pursuant to U.S.S.G. §  
5 2S1.1(a) (1) the defendant's base offense level with respect to the  
6 money laundering charge is 22, since that is the offense level for  
7 the underlying offense from which the laundered funds were derived.

8           **b. Specific Offense Characteristics:** Pursuant to  
9 U.S.S.G. § 2S1.1(b) (2) (A), because the defendant is pleading guilty  
10 to conduct criminalized by 18 U.S.C. § 1957, the base offense level  
11 is increased by 1 level.  
12

13           **c. Money Laundering Count Offense Level:** As a result  
14 of the foregoing stipulations, the adjusted offense level for the  
15 money laundering count is 23.  
16

17           **3. Offense Level for Violations of the Sherman Act:**

18           **a. Base Offense Level:** Pursuant to U.S.S.G. §  
19 2R1.1(a) the defendant's base offense level with respect to Count  
20 Three is 12.  
21

22           **b. Specific Offense Characteristics:** Because the  
23 defendant's conduct involved participation in an agreement to submit  
24 non-competitive bids, the base offense level is increased by 1 level  
25 pursuant to U.S.S.G. § 2R1.1(b) (1). Pursuant to U.S.S.G. §  
26 2R1.1(b) (2), because the volume of commerce attributable to the  
27 defendant is greater than \$10,000,000, but less than \$40,000,000,  
28

1 the base offense level is increased by an additional 4 levels.

2           **c. Sherman Act Count Offense Level:** As a result of  
3 the foregoing stipulations, the adjusted offense level with respect  
4 to Count Three is 17.

5           **4. Application of Multiple Count Rules in Chapter Three:**  
6 Pursuant to U.S.S.G. § 3D1.2(d), the offenses covered in Counts One  
7 through Three of the Information to be filed in this case merge for  
8 grouping purposes, resulting in an offense level of 23.

9  
10           **5. Aggravating Role in Offense:** Because the defendant  
11 served as a manager or supervisor with respect to the criminal  
12 activity charged, and that activity involved five or more  
13 participants and was otherwise extensive, defendant's offense level  
14 is increased by 3 levels.

15  
16           **6. Total Offense Level:** Pursuant to the foregoing  
17 stipulations, defendant's total offense level is 26.

18           **7. Acceptance of Responsibility:** Pursuant to § 3E1.1 and  
19 as described in more detail in paragraph III(B) above, the  
20 defendant's total offense level is decreased by three levels because  
21 of his acceptance of responsibility. The Adjusted Total Offense  
22 Level is therefore 23.

23  
24           **8. Criminal History:** The parties agree that the  
25 defendant's criminal history is to be determined by United States  
26 Probation.

27           **9. Departures or Other Enhancements or Reductions:** The  
28



1 parties stipulate and agree that they will not seek or argue in  
2 support of any other specific offense characteristics, Chapter Three  
3 adjustments or cross-references, other than those contemplated in  
4 the foregoing stipulations. Both parties stipulate and agree not to  
5 move for, or argue in support of, any departure from the Sentencing  
6 Guidelines, or any deviance or variance from the Sentencing  
7 Guidelines under United States v. Booker, 543 U.S. 220, 125 S.Ct.  
8 738 (2005), except: (1) pursuant to U.S.S.G. § 5K1.1; and (2) to  
9 account for the defendant's health condition at the time of  
10 sentencing. If either party breaches this provision, the other  
11 party shall be relieved of all of its obligations under this Plea  
12 and Cooperation Agreement.  
13

#### 14 VII.

#### 15 WAIVERS

16  
17 **A. Waiver of Constitutional Rights:** The defendant understands  
18 that by pleading guilty he is waiving the following constitutional  
19 rights: (a) to plead not guilty and to persist in that plea if  
20 already made; (b) to be tried by a jury; (c) to be assisted at trial  
21 by an attorney, who would be appointed if necessary; (d) to subpoena  
22 witnesses to testify on his behalf; (e) to confront and cross-  
23 examine witnesses against him; and (f) not to be compelled to  
24 incriminate himself.  
25

26 **B. Waiver of Appeal and Collateral Attack:** The defendant  
27 understands that the law gives him a right to appeal his conviction  
28

1 and sentence. He agrees as part of his plea, however, to give up  
2 the right to appeal the conviction and the right to appeal any  
3 aspect of the sentence imposed in this case so long as his sentence  
4 is no longer than the top of the Sentencing Guidelines range  
5 determined by the Court consistent with the stipulations set forth  
6 above about the Sentencing Guidelines variables.  
7

8       Regardless of the sentence he receives, the defendant also  
9 gives up any right he may have to bring a post-appeal attack on his  
10 conviction or his sentence. He specifically agrees not to file a  
11 motion under 28 U.S.C. § 2255 or § 2241 attacking his conviction or  
12 sentence.  
13

14       If the defendant ever attempts to vacate his plea, dismiss the  
15 underlying charges, or reduce or set aside his sentence on any of  
16 the counts to which he is pleading guilty, the government shall have  
17 the right (1) to prosecute the defendant on any of the counts to  
18 which he pleaded guilty; (2) to reinstate any counts that may be  
19 dismissed pursuant to this Plea and Cooperation Agreement; and (3)  
20 to file any new charges that would otherwise be barred by this Plea  
21 and Cooperation Agreement. The decision to pursue any or all of  
22 these options is solely in the discretion of the United States  
23 Attorney's Office. By signing this Plea and Cooperation Agreement,  
24 the defendant agrees to waive any objections, motions, and defenses  
25 he might have to the government's decision. In particular, he  
26 agrees not to raise any objections based on the passage of time with  
27  
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1 respect to such counts including, but not limited to, any statutes  
2 of limitation or any objections based on the Speedy Trial Act or the  
3 Speedy Trial Clause of the Sixth Amendment.

4 **C. Waiver of Attorneys' Fees and Costs:** The defendant agrees  
5 to waive all rights under the "Hyde Amendment," Section 617, P.L.  
6 105-119 (Nov. 26, 1997), to recover attorneys' fees or other  
7 litigation expenses in connection with the investigation and  
8 prosecution of all charges in the above-captioned matter and of any  
9 related allegations.  
10

11 **VIII.**

12 **ENTIRE PLEA AND COOPERATION AGREEMENT**

13 Other than this Plea and Cooperation Agreement, no agreement,  
14 understanding, promise, or condition between the government and the  
15 defendant exists, nor will such agreement, understanding, promise,  
16 or condition exist unless it is committed to writing and signed by  
17 the defendant, counsel for the defendant, and counsel for the United  
18 States.  
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IX.

APPROVALS AND SIGNATURES

A. **Defense Counsel:** I have read this Plea and Cooperation Agreement and have discussed it fully with my client. The Plea and Cooperation Agreement accurately and completely sets forth the entirety of the agreement, and I have no reason to believe that my client's plea of guilty should not be entered.

DATED: 12/9/08   
CHRISTOPHER D. ADAMS  
ALAN SILBER  
DAVID W. DRATMAN  
Attorneys for Defendant

B. **Defendant:** I have read this Plea and Cooperation Agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this Plea and Cooperation Agreement. In addition, no one has threatened or forced me in any way to enter into this Plea and Cooperation Agreement. Finally, I am satisfied with the representation of my attorney in this case.

DATED: 12/9/08   
RANDALL LEE RAHAL, Defendant

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C. Attorney for United States: I accept and agree to this  
Plea and Cooperation Agreement on behalf of the government.

DATED: 12/16/08

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Antitrust Division

**EXHIBIT "A"**  
**Factual Basis for Plea**

At trial, the government would prove the following facts beyond a reasonable doubt:

Since 1990, Randall Rahal ("Rahal") has served as the president of Intramark USA, Inc. ("Intramark"), a New Jersey based company that holds itself out as a wholesaler of food ingredients, including tomato products, and an importer of juice concentrates. Since at least 1993 until April 2008, Rahal was an agent of, a partner of, or was associated with SK Foods, L.P., a limited partnership with principal places of business in Monterey, California, and Williams, Ripon, and Lemoore, California, in the Eastern District of California. SK Foods, L.P., and its related corporate entities ("SK Foods") is a grower and processor of tomato products and other food products, for sale to food product manufacturers, food service distributors and marketers, and retail outlets. Rahal acted as a kind of advisor and supervisor for SK Foods, giving direction to and receiving periodic reports regarding various aspects of SK Foods' business from SK Foods employees. Since at least 2004 until April 2008, Rahal formally served on SK Foods' board of directors. SK Foods, including Rahal and other of its leaders, employees and associates, constituted an enterprise as defined in Title 18, United States Code, Section 1961(4), that is a legal entity that was engaged in, and whose activities affected, interstate and foreign commerce.

Through Intramark, Rahal served as a broker for SK Foods. In that capacity, Rahal oversaw among other things the negotiation of contracts between SK Foods and many of its customers, such as Kraft Foods, Inc. ("Kraft"), ConAgra Foods, Inc. ("ConAgra"), B&G Foods, Inc. ("B&G") and Frito-Lay, Inc. ("Frito-Lay").

**The Racketeering Conspiracy**

Beginning no later than January 2004 and continuing until at least April 2008, there was an agreement between Rahal and other leaders, employees and associates of SK Foods to conduct SK Foods' business and affairs through a pattern of racketeering activity in the Eastern District of California and elsewhere. Specifically, Rahal, on behalf of SK Foods, routinely paid bribes to the purchasing agents of many of SK Foods' customers in order to ensure that those customers purchased tomato-based products, and other products, from SK Foods rather than from its competitors. In other instances, Rahal paid bribes to purchasing agents so that those agents would provide bidding and other proprietary information from SK Foods' competitors. Between January 2004 and April 2008, Rahal,

1 with the knowledge, and in some instances at the direction of  
2 certain leaders of SK Foods, paid bribes in this fashion to certain  
3 purchasing agents of, among others, Kraft, B&G and Frito-Lay, in  
4 violation of applicable state bribery laws, and 18 U.S.C. §§ 1341,  
5 1343 and 1346.

6 In addition to the bribery of its customers' purchasing agents,  
7 between January 2004 and April 2008, SK Foods, with the assistance  
8 of Rahal, constructed and transmitted to its customers fraudulent  
9 financial and business information with the goal of inducing those  
10 customers to do business with, and release funds to SK Foods. For  
11 example, as part of a scheme to defraud ConAgra in June 2007, Rahal  
12 arranged for SK Foods to fabricate and backdate an invoice between  
13 SK Foods and Hatch Foods ("Hatch"), a ConAgra competitor (without  
14 Hatch's knowledge), which reflected a false and inflated price paid  
15 by Hatch for tomato product from SK Foods. The fraudulent invoice,  
16 which falsely reflected that SK Foods was charging Hatch for canned  
17 tomato product at a rate 39% higher than it actually was, was  
18 transmitted to ConAgra in an effort to ensure ConAgra signed a  
19 three-year contract for tomato paste with SK Foods, at a price of  
20 approximately \$74,570,000.

21 Furthermore, between 2004 and April 2008, SK Foods, with the  
22 assistance of Rahal, knowingly and routinely sold processed tomato  
23 product to customers that did not meet customer specifications and  
24 falsified both internal documentation, and customer-bound product  
25 labels, quality control documents, bills of lading, and  
26 "Certificates of Analysis" ("COA"), in order to make it appear as if  
27 the processed tomato product shipped to customers was compliant with  
28 contract requirements. SK Foods' falsification of documentation  
involved various misstatements to its customers concerning both the  
quality and content of the product. This practice of providing  
customers with noncompliant and mis-marked product was done with  
knowledge and at the direction of Rahal and other leaders of SK  
Foods, and was in violation of 18 U.S.C. § 1341.

Rahal and his co-conspirators at SK Foods conspired, among  
other things, to commit the following predicate offenses:

**Racketeering Act #1: Honest Services Mail Fraud and Commercial  
Bribery with Respect to B&G Foods, Inc.**

B&G is a multinational manufacturer, seller and distributor of  
various food products with a principal place of business in  
Parsippany, New Jersey. B&G is a regular customer of SK Foods with  
respect to tomato-based products, and other products. Between  
January 2004 and April 2008, Bribe Recipient #1 served as a  
purchasing manager at B&G, working out of the company's Parsippany,

1 New Jersey headquarters. In that capacity, Bribe Recipient #1 was  
2 vested with the authority to negotiate and enter into contracts,  
3 with the approval of his employer, for the purchase of certain food  
4 products from processors, such as SK Foods. In performing these  
5 functions, Bribe Recipient #1 owed a duty of honest services to B&G.

6 In May 2007, SK Foods and B&G entered into a "cost-plus"  
7 contract whereby SK Foods agreed to sell B&G 13,000,000 pounds of  
8 chile and jalapeno peppers at a price of \$0.22 per pound.  
9 Subsequent to entering into the agreement, and at the direction of  
10 another leader of SK Foods, Rahal and Bribe Recipient #1 agreed to  
11 increase the price per pound that B&G would pay SK Foods under the  
12 agreement. Rahal and another leader of SK Foods further agreed that  
13 they would provide Bribe Recipient #1 with a fictitious  
14 justification for the increased contract price, namely that SK Foods  
15 was experiencing increased agricultural costs in connection with the  
16 peppers, and that Bribe Recipient #1 would provide this  
17 justification to his employers.

18 As a result of Rahal, the other leader of SK Foods, and Bribe  
19 Recipient #1's actions, the contract price for the sale of the first  
20 6,500,000 pounds of peppers to B&G was increased to \$0.25 per pound.  
21 The contract price for the remaining 6,500,000 pounds of peppers was  
22 increased to \$0.285 per pound.

23 In exchange for his efforts in helping to secure the pepper  
24 contract between SK Foods and B&G, as well as its price, Rahal  
25 promised Bribe Recipient #1 a personal bribe payment in the  
26 approximate amount of \$65,000 - equating to \$.005 per pound on the  
27 entire contract. On July 12, 2007, in an intercepted wire  
28 communication, Rahal confirmed the amount of the bribe payment with  
Bribe Recipient #1.

On or about December 12, 2007, Rahal directed a check in the  
amount of \$9,689.80 from Intramark's Sun National Bank account  
number XXXXXX5624 to Bribe Recipient #1's wife, via United States  
mail, in partial satisfaction of the agreed to bribe payment.  
Between January 2004 and April 2008, Bribe Recipient #1 received at  
least \$14,698.80 in bribe payments from Rahal. One such additional  
bribe payment occurred on or about July 11, 2007. On that date,  
Rahal directed a check in the amount of \$2,000 from Intramark's Sun  
National Bank account number XXXXXX5624 to Bribe Recipient #1's  
wife, via United States mail. Assisted by Rahal, Bribe Recipient  
#1's actions violated a duty of fidelity owed to B&G, which is  
outlined in Section 2 of B&G Foods, Inc.'s Code of Business Conduct  
and Ethics. Such conduct violated 18 U.S.C. §§ 1341 and 1346, and  
N.J. STAT. ANN. § 2C:21-10.



1 Racketeering Act #2: Honest Services Mail Fraud with Respect to  
2 Kraft Foods

3 Kraft is a multinational food company with a principal place of  
4 business in Northfield, Illinois. Kraft is a regular customer of SK  
5 Foods with respect to tomato paste and other tomato-based products.  
6 From at least January 2004 until April 2008, Bribe Recipient #2  
7 served as a purchasing manager for Kraft, working out of the  
8 company's Northfield, Illinois headquarters. In that capacity,  
9 Bribe Recipient #2 was vested with the authority to negotiate and  
enter into contracts, with the approval of his employer, for the  
purchase of certain food products from various processors, such as  
SK Foods. In performing these functions, Bribe Recipient #2 owed a  
duty of honest services to Kraft.

10 In the normal course, Kraft and Bribe Recipient #2 received  
11 bids for the sale of tomato-based products from processors to Kraft  
12 by way of what was intended to be a secret and competitive bidding  
13 process. As part of a scheme to defraud Kraft of its right to Bribe  
14 Recipient #2's honest services and to secure contracts with Kraft  
for the sale of tomato products at elevated prices, beginning in  
2004 Rahal began making bribe payments to Bribe Recipient #2 on  
behalf of SK Foods.

15 As part of the scheme to defraud Kraft, between January 2004  
16 and April 2008, Rahal paid Bribe Recipient #2 approximately \$158,000  
17 in bribes on behalf of SK Foods in order secure Kraft's business,  
18 and to induce Bribe Recipient #2 to provide SK Foods with certain  
19 proprietary information of SK Foods' competitors. These bribe  
20 payments were made with the knowledge and encouragement of other  
21 leaders and employees of SK Foods. For example, in a recorded  
22 telephone conversation on April 14, 2008, another leader of SK Foods  
and Rahal discussed how Rahal had just made personal bribe payments  
to Bribe Recipient #2 totaling \$24,000. Later in that same  
conversation, the other leader of SK Foods expressed concern to  
Rahal that SK Foods was not getting a maximum value for its bribes  
to Bribe Recipient #2.

23 One such payment occurred on or about January 19, 2006. On  
24 that date, Rahal directed a check in the amount of \$10,000.00 from  
25 Intramark's Sun National Bank account number XXXXXX5624 to Bribe  
26 Recipient #2 in Wheeling, Illinois, via United States mail. On July  
27 25, 2007, Rahal subsequently directed a second check in the amount  
of \$17,252.78 from Intramark's Sun National Bank account number  
XXXXXX5624 to Bribe Recipient #2, via United States mail.

28 As a result of Rahal's bribe payments to Bribe Recipient #2,

1 between 2004 and 2008 SK Foods was able to secure contracts for the  
2 sale of approximately 230 million pounds of tomato product to Kraft  
at elevated prices, causing a substantial loss to Kraft Foods.

3       Rahal and Bribe Recipient #2's actions were in direct  
4 contravention of the conflict of interest policies set forth in  
5 Kraft Foods Code of Conduct for Compliance and Integrity, and were  
6 intended to, and did deprive Kraft of its right to Bribe Recipient  
#2's honest services. Such conduct violated 18 U.S.C. §§ 1341 and  
1346.

7 **Racketeering Act #3: Honest Services Mail Fraud with Respect to**  
8 **Frito-Lay**

9       Frito-Lay is a multinational food company with a principal  
10 place of business in Plano, Texas. Frito-Lay is a regular customer  
11 of SK Foods with respect to tomato-based products, and various other  
12 food products. From at least January 2004 until April 2008, Bribe  
13 Recipient #3 served as a purchasing manager for Frito-Lay, working  
14 out of the company's Plano, Texas headquarters. In that capacity,  
15 Bribe Recipient #3 was vested with the authority to negotiate and  
enter into contracts, with the approval of his employer, for the  
purchase of certain food products from various processors, such as  
SK Foods. In performing these functions, Bribe Recipient #3 owed a  
duty of honest services to Frito-Lay.

16       In the normal course, Frito-Lay and Bribe Recipient #3 received  
17 bids for the sale of tomato-based products from processors to Frito-  
18 Lay by way of what was intended to be a competitive bidding process.  
19 As part of a scheme to defraud Frito-Lay of its right to Bribe  
20 Recipient #3's honest services and to secure contracts with Frito-  
Lay for the sale of tomato products at elevated prices, beginning in  
1998, Rahal began making bribe payments to Bribe Recipient #3 on  
behalf of SK Foods.

21       As part of the scheme to defraud Frito-Lay, between January  
22 2004 and April 2008, Rahal with the knowledge and encouragement of  
23 other leaders and employees of SK Foods, paid approximately \$81,000  
24 in bribes on behalf of SK Foods in order secure Frito-Lay's  
25 business. One such payment occurred on or about September 7, 2006.  
26 On that date Rahal directed a check in the amount of \$4,000.00 from  
27 Intramark's Sun National Bank account number XXXXXX5624 to Bribe  
Recipient #3 in Dallas, Texas, via United States mail. On March 26,  
2008, Rahal subsequently directed a check in the amount of \$5,722.94  
from Intramark's Sun National Bank account number XXXXXX5624 to  
Bribe Recipient #3 in Dallas, Texas, via United States mail.

28       As a result of Rahal's bribe payments to Bribe Recipient #3,

1 between 2004 and 2008, SK Foods was able to secure contracts for the  
2 sale of tomato and other food products to Frito-Lay at elevated  
prices, causing a substantial loss to Frito-Lay.

3         Rahal and Bribe Recipient #3's actions were in direct  
4 contravention of the conflict of interest policies set forth in  
5 Frito-Lay's Code of Conduct, and were intended to, and did deprive  
6 Frito-Lay of its right to Bribe Recipient #3's honest services.  
Such conduct violated 18 U.S.C. §§ 1341 and 1346, and TEX. PENAL CODE  
§ 32.43.

7 **Racketeering Act #4: Mail Fraud (Mislabelled Product) with Respect**  
8 **to Kraft Foods**

9         The market price of processed tomato product is based in large  
10 part on the percentage of Natural Tomato Soluble Solids (NTSS) that  
11 the product contains. In the normal course, processed tomato  
12 product with a higher concentration of tomato solids costs more on  
13 the open market than tomato product with a lesser concentration.  
14 Customers frequently specify an NTSS concentration in their  
contracts with manufacturers such as SK Foods. Customers will also  
often specify acceptable levels of other tomato product  
characteristics such as the product's pH, mold content, acidity and  
viscosity.

15         During 2007, SK Foods experienced a period during which it was  
16 unable to produce an adequate supply of processed tomato paste  
17 containing 31% NTSS (Natural Tomato Soluble Solids) in order to meet  
18 its contractual obligations to certain customers, including Kraft.  
19 In an attempt to alleviate the shortage, a leader of SK Foods  
20 contacted a competing manufacturer of processed tomato products in  
February 2007, and arranged to purchase approximately 3,400,000  
pounds of processed tomato product containing lower NTSS  
concentrations of 26% and 28%.

21         As the product purchased from the competitor did not meet the  
22 specifications contained in certain of SK Foods' existing contracts,  
23 in order to conceal the inferior quality of the product, and as part  
24 of a scheme to defraud Kraft, Rahal and another leader of SK Foods  
25 directed certain SK Foods employees to falsify both internal and  
26 customer-bound documentation so that it incorrectly reflected the  
27 product as containing 31% NTSS tomato paste. The same documentation  
28 was also altered so that it reflected a significantly lower mold  
content than what the product actually contained. The processed  
tomato product and the accompanying altered documentation were  
ultimately shipped, during the spring of 2007, via interstate  
carrier from SK Foods' facilities in the Eastern District of  
California to Kraft's facilities in other states. One such shipment

1 occurred on or about April 12, 2007. On that date, SK Foods shipped  
2 tomato product, accompanied by among other things, a bill of lading,  
3 which falsely identified the shipment as containing 31% NTSS tomato  
4 paste, from its facilities in the Eastern District of California to  
5 Kraft in Darien, Wisconsin. A copy of the falsified bill of lading  
6 was also transmitted on or about April 12, 2007, via United States  
7 mail, to a separate Kraft address in San Antonio, Texas. Copies of  
8 the altered documentation were provided to Rahal and Intramark, via  
9 facsimile, in the District of New Jersey. At the time it was  
10 shipped, Rahal and executives at SK Foods knew the documentation was  
11 false with respect to the processed tomato product's NTSS level, a  
12 fact that was material to Kraft's decision to pay SK Foods for the  
13 product.

14 As a result of SK Foods' scheme to defraud, Kraft unknowingly  
15 paid approximately 11% and 12% above market rate for the 28% and 26%  
16 NTSS processed tomato product, respectively, causing a loss to Kraft  
17 in the approximate amount of \$136,020.

#### 18 Money Laundering

19 On or about April 16, 2007, Rahal transmitted check number  
20 7760 in the amount of \$12,896.00 from Intramark's Sun National Bank  
21 account number XXXXXX5624 to Bribe Recipient #2 in Wheeling,  
22 Illinois, which was received, via United States mail. As Rahal well  
23 knew at the time of its transmission, the check represented the  
24 proceeds of acts otherwise indictable under Title 18, United States  
25 Code, Sections 1341 and 1346, specifically Rahal's and SK Foods'  
26 scheme to defraud Kraft of its right to Bribe Recipient #2's honest  
27 services with respect to the awarding of contracts for the purchase  
28 of tomato-based products. The issuance of the check on Intramark's  
Sun National Bank account constituted a violation of 18 U.S.C. §  
1957.

#### 20 Violations of the Sherman Act

21 Beginning at least as early as February 2006 and continuing  
22 until approximately April 2008, Rahal participated in and aided and  
23 abetted a conspiracy to fix prices, allocate contracts, and rig bids  
24 for processed tomato products, including tomato paste and diced  
25 tomatoes. The primary purpose of this conspiracy was to eliminate  
26 competition and fix the price of processed tomato products sold in  
27 the United States. During the relevant time, Rahal was the owner  
28 and president of Intramark USA Inc., a broker selling processed  
tomato products for itself and on behalf of others. Rahal and his  
co-conspirators reached agreement to fix the prices to be charged to  
customers in the United States for processed tomato products in the  
Eastern District of California and elsewhere. To carry out their

1 agreements, Rahal and his co-conspirators submitted artificially  
2 inflated bids and price quotations. Rahal also acted to assist in  
3 enforcing the agreements, by obtaining and distributing information  
4 about prices offered by co-conspirators and competitors to the  
5 subject customers. In at least one instance, a co-conspirator  
6 withdrew a quote that did not comply with agreed-to prices after  
7 being confronted with information obtained by Rahal from the  
8 customer.

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During the relevant period, processed tomato products sold by  
one or more of the conspirators, as well as payment for such  
products, traveled in interstate commerce. The business activities  
of the defendant and co-conspirators were within the flow of, and  
substantially affected, interstate trade and commerce.