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

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12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE EASTERN DISTRICT OF CALIFORNIA
 14

15 UNITED STATES OF AMERICA,
 16
 Plaintiff,
 17
 v.
 18
 19 FREDERICK SCOTT SALYER,
 20
 Defendant.

No. 2:10-CR-0061-LKK
 VIOLATIONS: 18 U.S.C. § 1962(c) -
 Conducting the Affairs of an
 Enterprise Through a Pattern of
 Racketeering Activity; 18 U.S.C.
 § 1962(d) - Conspiring to Conduct
 the Affairs of an Enterprise
 Through a Pattern of Racketeering
 Activity; 18 U.S.C. § 1343 - Wire
 Fraud (4 Counts); 18 U.S.C. §
 1519 - Destruction, Alteration,
 or Falsification of Records in a
 Federal Investigation; 15 U.S.C.
 § 1 - Conspiracy in Restraint of
 Trade (5 Counts); 18 U.S.C. §
 1963 - Forfeiture; 18 U.S.C. §
 981(a) (1) (C), 28 U.S.C. §
 2461(c), and 21 U.S.C. § 853 -
 Forfeiture

S U P E R S E D I N G I N D I C T M E N T

1
2 COUNT ONE: [18 U.S.C. § 1962(c) - Conducting the Affairs of an
3 Enterprise Through a Pattern of Racketeering Activity]

4 The Grand Jury charges:

5 FREDERICK SCOTT SALYER,

6 defendant herein, as follows:

7 The Racketeering Enterprise

8 1. At all times relevant to this Superseding Indictment, SK
9 Foods, L.P. was a limited partnership, with principal places of
10 business in Monterey, California, and in Williams, Ripon, and
11 Lemoore, in the State and Eastern District of California. SK Foods,
12 L.P., including its related corporate entities involved in the
13 business of producing tomato products in the State of California
14 ("SK Foods"), was a grower and processor of tomato products and
15 other food products for sale to food product manufacturers, food
16 service distributors and marketers, and retail outlets. For
17 purposes of this Superseding Indictment, "processed tomato products"
18 include, among other things, bulk tomato paste and diced tomatoes.
19
20

21 2. At all times relevant to this Superseding Indictment, SK
22 Foods, including its leaders, employees and associates, constituted
23 an "enterprise" as defined in Title 18, United States Code, Section
24 1961(4) (hereinafter "the enterprise"), that is, a legal entity that
25 was engaged in, and whose activities affected, interstate and
26 foreign commerce.
27

28 3. At all times relevant to this Superseding Indictment,

1 defendant FREDERICK SCOTT SALYER ("SALYER") was an owner of, and
2 served as Chief Executive Officer of, SK Foods. In that capacity,
3 defendant SALYER served as SK Foods' primary leader and decision
4 maker, giving direction to and receiving regular reports regarding
5 all manner of SK Foods' business from SK Foods' leadership and
6 employees.
7

8 4. At all times relevant to this Superseding Indictment,
9 Intramark USA, Inc. ("Intramark"), was a New Jersey-based company
10 holding itself out as a wholesaler of food ingredients, including
11 processed tomato products, and an importer of juice concentrates.
12 In that capacity, Intramark acted on behalf of itself and others in
13 selling processed tomato products to customers.
14

15 5. At all times relevant to this Superseding Indictment,
16 Intramark was owned and operated by Randall Lee Rahal ("Rahal"), who
17 is charged elsewhere. Through Intramark, Rahal worked on behalf of
18 SK Foods as a sales broker. In that capacity, and with defendant
19 SALYER's knowledge and direction, Rahal oversaw the negotiation and
20 execution of contracts between SK Foods and many of its customer
21 companies, among other things. Through Intramark, Rahal also acted
22 as an advisor and director of SK Foods, giving direction to and
23 receiving periodic reports regarding various aspects of SK Foods'
24 business from SK Foods' leaders, associates and employees.
25

26 6. At all times relevant to this Superseding Indictment, Alan
27 Scott Huey ("Huey"), who is charged elsewhere, served in a variety
28 of positions, and most recently as Senior Vice President for Sales

1 and Marketing for SK Foods, working in Lemoore, California, in the
2 Eastern District of California, and out of the company's Monterey,
3 California, headquarters. In that capacity, Huey served as a senior
4 officer of SK Foods reporting directly to defendant SALYER. Among
5 other responsibilities, as Senior Vice President for Sales and
6 Marketing, Huey oversaw and managed SK Foods' inventory of processed
7 tomato products and other food products, to include the shipment of
8 those food products to SK Foods' customers across the United States.

10 7. Between 2004 and 2008, Jeffrey Sherman Beasley ("Beasley"),
11 who is charged elsewhere, served as Vice President for Industrial
12 Sales for SK Foods, working in Ripon, California, in the Eastern
13 District of California, and out of the company's Monterey,
14 California, headquarters. In that capacity, Beasley served as a
15 senior officer of SK Foods, reporting directly to defendant SALYER
16 and Huey. Among other responsibilities, as Vice President for
17 Industrial Sales, Beasley, along with other SK Foods leaders, helped
18 oversee and manage the pricing of SK Foods' processed tomato
19 products, as well as the ultimate sale of those products to certain
20 customers.
21

22 8. At all times relevant to this Superseding Indictment,
23 Jennifer Lou Dahlman ("Dahlman"), who is charged elsewhere, was
24 employed by SK Foods in a variety of positions, most recently
25 serving as a Reports and Business Analyst. Working out of SK Foods'
26 Lemoore, California, facility in the Eastern District of California,
27 Dahlman assisted in managing SK Foods' inventory of processed tomato
28

1 and other food products, and assisted in arranging for the shipment
2 of those food products to SK Foods' customers across the United
3 States.

4 9. At various times relevant to this Superseding Indictment,
5 defendant SALYER, and others known to the Grand Jury, were leaders,
6 employees and associates of SK Foods, an enterprise whose leaders,
7 employees and associates engaged in acts of mail fraud, wire fraud
8 and bribery, and which operated principally in the Eastern District
9 of California, the Northern District of California, and the District
10 of New Jersey.
11

12 Other Parties

13 10. At all times relevant to this Superseding Indictment,
14 Frito-Lay, Inc. ("Frito-Lay") was a multinational food products
15 company with a principal place of business in Plano, Texas. Frito-
16 Lay was a regular customer of SK Foods with respect to processed
17 tomato products and other food products.
18

19 11. At all times relevant to this Superseding Indictment,
20 James Richard Wahl, Jr. ("Wahl"), who is charged elsewhere, resided
21 in the Northern District of Texas and served as, among other
22 positions, Senior Group Manager for Ingredients Purchasing for
23 Frito-Lay, working out of the company's Plano, Texas, headquarters.
24

25 12. At all times relevant to this Superseding Indictment, B&G
26 Foods, Inc. ("B&G") was a multinational manufacturer, seller and
27 distributor of various food products with a principal place of
28

1 business in Parsippany, New Jersey. B&G was a regular customer of
2 SK Foods with respect to processed tomato products and other food
3 products.

4 13. At certain times relevant to this Superseding Indictment,
5 Robert C. Turner, Jr. ("Turner"), who is charged elsewhere, resided
6 in the District of New Jersey and served as a corporate purchasing
7 manager for B&G, working out of the company's Parsippany, New
8 Jersey, headquarters. Between in or about 2007 and in or about
9 April 2008, Turner was Director of Purchasing for B&G.
10

11 14. At all times relevant to this Superseding Indictment,
12 Kraft Foods, Inc. ("Kraft") was a multinational food products
13 company with a principal place of business in Northfield, Illinois.
14 Kraft was a regular customer of SK Foods with respect to processed
15 tomato products and other food products.
16

17 15. At certain times relevant to this Superseding Indictment,
18 Robert Watson ("Watson"), who is charged elsewhere, resided in the
19 Southern District of New York and the Northern District of Illinois,
20 and served as Purchasing Manager for Kraft, working out of the
21 company's Northfield, Illinois, headquarters.
22

23 16. At all times relevant to this Superseding Indictment, H.J.
24 Heinz Company, Inc. ("Heinz") was a multinational manufacturer,
25 seller and distributor of various food products with a principal
26 place of business in Pittsburgh, Pennsylvania. Heinz was a regular
27 customer of SK Foods with respect to processed tomato products and
28 other food products.

1 17. At all times relevant to this Superseding Indictment,
2 Morning Star Packing Company ("Morning Star") was a California
3 limited partnership, with its principal places of business in Los
4 Banos, California, and Williams, California. Morning Star is a
5 manufacturer and marketer of bulk tomato products and distributes
6 those products in both national and international markets.
7

8 18. At all times relevant to this Superseding Indictment,
9 Safeway, Inc. ("Safeway") was a multinational food products company
10 with a principal place of business in Pleasanton, California.
11 Safeway was a regular customer of SK Foods with respect to processed
12 tomato products and other food products.
13

14 19. At certain times relevant to this Superseding Indictment,
15 Michael Chavez ("Chavez"), who is charged elsewhere, resided in the
16 Northern District of California and served as a purchasing manager
17 for Safeway, working out of the company's Pleasanton, California,
18 headquarters.
19

20 20. At all times relevant to this Superseding Indictment, Land
21 O'Lakes, Inc. ("Land O'Lakes") was a multinational food products
22 company and a leading marketer of dairy-based food products for
23 consumers, food service professionals, and food manufactures with a
24 principal place of business in St. Paul, Minnesota. Land O'Lakes
25 was a regular customer of SK Foods with respect to processed tomato
26 products.
27

28 21. At certain times relevant to this Superseding Indictment,
Antis Foods Products, Inc. ("Antis") was a miscellaneous food

1 wholesaler with a principal place of business in Lancaster,
2 Pennsylvania. Antis was a regular customer of SK Foods with respect
3 to processed tomato products.

4 22. At all times relevant to this Superseding Indictment,
5 Nestle USA ("Nestle") was a multinational manufacturer, seller and
6 distributor of various food products with a principal place of
7 business in Glendale, California. Nestle was a regular customer of
8 SK Foods with respect to processed tomato products.

10 23. At certain times relevant to this Superseding Indictment,
11 San Antonio Farms ("San Antonio Farms") was a producer of sauces and
12 other food products in the domestic market, and was a subsidiary of
13 TreeHouse Foods, Inc., with a principal place of business in
14 Westchester, Illinois. San Antonio Farms was a regular customer of
15 SK Foods with respect to processed tomato products and other food
16 products.

18 24. At certain times relevant to this Superseding Indictment,
19 Barilla America, Inc. ("Barilla") was a multinational food products
20 company with a principal place of business in Bannockburn, Illinois.
21 Barilla was a regular customer of SK Foods with respect to processed
22 tomato products and other food products.

23 25. At certain times relevant to this Superseding Indictment,
24 Chelten House Products, Inc. ("Chelten House"), was a national food
25 products company with a principal place of business in Bridgeport,
26 New Jersey. Chelten House was a regular customer of SK Foods with
27 respect to processed tomato products.
28

1 26. At all times relevant to this Superseding Indictment,
2 ConAgra Foods, Inc. ("ConAgra") was a multinational manufacturer,
3 seller and distributor of various food products with a principal
4 place of business in Omaha, Nebraska. ConAgra was a regular
5 customer of SK Foods with respect to processed tomato products and
6 other food products.
7

8 27. At certain times relevant to this Superseding Indictment,
9 General Mills Operations, Inc. ("General Mills") was a multinational
10 manufacturer, seller and distributor of various food products with a
11 principal place of business in Minneapolis, Minnesota. General
12 Mills was a regular customer of SK Foods with respect to processed
13 tomato products and other food products.
14

15 28. At certain times relevant to this Superseding Indictment,
16 Tyson Foods, Inc. ("Tyson") was a multinational food products
17 company with a principal place of business in Springdale, Arkansas.
18 Tyson was a regular customer of SK Foods with respect to processed
19 tomato products.
20

21 29. At certain times relevant to this Superseding Indictment,
22 Gerber Products Company ("Gerber") was a national purveyor of baby
23 food and baby food products with a principal place of business in
24 Fremont, Michigan. Gerber was a regular customer of SK Foods with
25 respect to processed tomato products.

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Purposes of the Defendant

1
2 30. The purposes of the defendant and other leaders, employees
3 and associates of the enterprise included the following:

4 a. providing SK Foods and its leaders, employees, and
5 associates with an expanding base of corporate customers for
6 processed tomato products and other food products;

7
8 b. preserving, protecting, and enhancing SK Foods'
9 profits and customer base through acts of mail fraud, wire fraud,
10 and bribery;

11 c. causing purchasing agents and others employed by SK
12 Foods' customers to act in contravention of the customers'
13 interests, and to otherwise cause purchasing agents to breach a duty
14 of loyalty and fidelity which they owed to their respective
15 employers;

16
17 d. increasing SK Foods' profits by fraudulently inducing
18 certain of SK Foods' customers to pay for adulterated and misbranded
19 processed tomato products by causing the falsification of mold
20 counts and other grading factors and data contained on the quality
21 control documents that accompanied customer-bound shipments of
22 processed tomato products that were produced, purchased, and sold by
23 SK Foods, and by actually shipping the adulterated and misbranded
24 tomato products to customers along with the altered documentation;

25
26 e. promoting and enhancing the enterprise and its
27 leaders, employees and associates' activities;

28

1 f. enriching the leaders, employees and associates of the
2 enterprise; and

3 g. concealing the illegal activity and otherwise
4 protecting the participants from detection and prosecution.
5

6 **Means and Methods of the Defendant**

7 31. Among the means and methods by which the defendant and
8 other leaders, employees, and associates of the enterprise conducted
9 and participated in the conduct of the affairs of the enterprise
10 were the following:

11 a. Defendant SALYER and other leaders, employees and
12 associates of the enterprise engaged in a scheme to defraud various
13 SK Foods customers through acts involving mail fraud, wire fraud and
14 bribery, which were intended to: (1) ensure that those customers
15 purchased processed tomato products and other products from SK Foods
16 rather than from certain of its competitors; (2) ensure that those
17 customers paid an inflated price for such products; (3) induce the
18 customers' purchasing agents to disclose bidding and other
19 proprietary information of certain of SK Foods' competitors; and
20 (4) ensure that SK Foods could control certain customers' purchasing
21 agents' decisions as to when to accept and not accept product from
22 SK Foods.
23

24 b. Defendant SALYER directed that bribery payments be
25 made to the purchasing agents of SK Foods' customers. Those same
26 bribery payments were also made with the knowledge and consent of
27
28

1 other SK Foods' leaders, employees, and associates.

2 c. Defendant SALYER, assisted by other leaders, employees
3 and associates of the enterprise, constructed and transmitted
4 fraudulent financial and business information to SK Foods' customers
5 to induce those customers to do business with, and release funds to,
6 the enterprise.
7

8 d. Defendant SALYER caused the falsification of, and
9 directed other SK Foods' leaders, employees and associates to
10 falsify, various grading factors and data contained on Certificates
11 of Analysis ("COAs") and other quality control documents that
12 accompanied customer bound shipments of processed tomato product
13 that was produced, purchased and sold by SK Foods. Defendant SALYER
14 caused and directed, in many instances, the falsification of these
15 documents so that they reflected mold count levels in SK Foods'
16 tomato product as being below the applicable Food Defect Action
17 Level set forth in federal regulations, when, in fact, those levels
18 were significantly above the federal threshold.
19

20 e. In other instances, defendant SALYER caused the
21 falsification of, and directed other SK Foods' leaders, employees
22 and associates to falsify, certain SK Foods quality control
23 documents so that they reflected Natural Tomato Soluble Solids
24 ("NTSS") levels that were higher than what the processed tomato
25 product actually contained. Such documents also reflected altered
26 pH, color, viscosity, date of production, and classification
27 (organic versus conventional) values. These falsifications were
28

1 made in order to deceive customers into believing that the processed
2 tomato product that they were receiving from SK Foods was in
3 compliance with contractual specifications when, in fact, it was
4 not.

5
6 f. Defendant SALYER and other SK Foods leaders, employees
7 and associates subsequently caused the distribution of such product,
8 along with the falsified quality control documents, to certain of SK
9 Foods' customers through interstate commerce. Defendant SALYER's
10 conduct, and the conduct of other SK Foods' leaders, employees and
11 associates in this regard, was undertaken with the intent to defraud
12 and mislead. As a result, certain of SK Foods' customers were
13 fraudulently induced to pay for inferior processed tomato product.
14

15 **The Racketeering Violation**

16 32. Beginning in or about January 1998, and continuing through
17 in or about April 2008, within the Eastern District of California
18 and elsewhere, defendant FREDERICK SCOTT SALYER, together with
19 others known to the Grand Jury, being persons employed by and
20 associated with SK Foods, an enterprise which engaged in, and the
21 activities of which affected, interstate and foreign commerce,
22 unlawfully, knowingly and intentionally conducted and participated,
23 directly and indirectly, in the conduct of the affairs of that
24 enterprise through a pattern of racketeering activity, that is,
25 through the commission of Racketeering Acts One through Twenty as
26 set forth in paragraphs thirty four through eighty one below.
27
28

1 processed tomato products and other food products from processors to
2 Frito-Lay by way of what was intended to be a competitive bidding
3 process.

4 37. Beginning no later than in or about January 1998, Rahal
5 began making personal bribe payments to Wahl on behalf of SK Foods.
6 Such bribery payments were made with the knowledge, and, in many
7 instances, at the direction of defendant SALYER. In return for the
8 personal bribe payments, Wahl agreed to and did ensure that Frito-
9 Lay purchased processed tomato products and other food products from
10 SK Foods rather than from certain of SK Foods' competitors. In
11 addition, in return for the bribe payments, Wahl provided SK Foods
12 with certain data, including the proprietary bid information of
13 certain of SK Foods' competitors in the tomato processing industry,
14 which allowed SK Foods to sell certain food products to Frito-Lay at
15 inflated prices.
16
17

18 38. Defendant SALYER's direction to Rahal in this regard was,
19 in part, conducted by way of interstate telephone communications.
20 By way of example, on or about April 11, 2008, defendant SALYER and
21 Rahal engaged in a recorded interstate telephone conversation during
22 which the two discussed that so long as Wahl remained employed by
23 Frito-Lay as Senior Group Manager for Ingredients Purchasing, SK
24 Foods' competitor, Morning Star, would not be approved to supply
25 processed tomato product to Frito-Lay. Later in that same
26 conversation, defendant SALYER directed Rahal to speak with Wahl,
27 and to direct Wahl on how to allocate Frito-Lay's tomato product
28

1 purchases between SK Foods and another SK Foods' competitor.

2 39. Additionally, on or about April 7, 2008, in return for
3 personal bribe payments made by defendant SALYER, Rahal and SK
4 Foods, Wahl transmitted to Rahal, via email from the Northern
5 District of Texas to the District of New Jersey, a Morning Star
6 proposal for a three-year contract for the sale of processed tomato
7 products to Frito-Lay. That same day, Rahal transmitted the
8 surreptitiously obtained proposal to defendant SALYER and other
9 senior leaders of SK Foods, via email, from the District of New
10 Jersey to the Eastern and Northern Districts of California.
11

12 40. Between in or about 1998 and in or about April 2008, Wahl
13 received approximately \$160,000 in personal bribe payments from
14 defendant SALYER, Rahal and SK Foods in this manner. As a result of
15 these bribe payments, between in or about 1998 and in or about 2008,
16 Wahl secured contracts between SK Foods and Frito-Lay for the sale
17 of certain food products at elevated prices, causing a substantial
18 loss to Frito-Lay.
19

20 41. On or about the dates set forth below, and for the purpose
21 of executing and attempting to execute the aforementioned scheme and
22 artifice to defraud, defendant SALYER, in the Eastern and Northern
23 Districts of California and the District of New Jersey, did
24 knowingly transmit, and cause to be transmitted by means of wire
25 communications in interstate or foreign commerce, the writings,
26 signs, signals and communications described below, any one of which
27 alone constitutes the commission of Racketeering Act One:
28

RACKETEERING ACT	DATE	WIRE COMMUNICATION
1A	4/7/2008	Email correspondence from Rahal in the District of New Jersey to defendant SALYER and other SK Foods leaders in the Eastern and Northern Districts of California enclosing Morning Star bid proposal to Frito-Lay
IB	4/11/2008	Telephone conversation between defendant SALYER in the Northern District of California and Rahal in the District of New Jersey discussing Wahl's participation in the scheme to defraud Frito-Lay

42. Furthermore, on or about the dates set forth below, in the Northern District of California, the District of New Jersey, and the Northern District of Texas, for the purpose of executing and attempting to execute the aforementioned scheme and artifice to defraud, defendant SALYER did knowingly cause to be delivered by mail and private and commercial carrier, and Wahl did knowingly take and receive from authorized depositories for mail and other matter sent or delivered by the United States Postal Service, and private and commercial carrier, the items listed below, any one of which alone constitutes the commission of Racketeering Act One:

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- 24 / / / /
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- 27 / / / /
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RACKETEERING ACT	DATE	SENDER	ITEM INCLUDED IN MAILING
1C	9/7/2006	Rahal	Check in the amount of \$4,000 from Intramark's Sun National Bank account number XXXXXX5624, payable to James Wahl in the Northern District of Texas
1D	3/19/2008	Rahal	Check in the amount of \$1,203.10 from Intramark's Sun National Bank account number XXXXXX5624, payable to James Wahl, in the Northern District of Texas
IE	3/26/2008	Rahal	Check in the amount of \$5,722.94 from Intramark's Sun National Bank account number XXXXXX5624, payable to James Wahl, in the Northern District of Texas

All in violation of Title 18, United States Code, Sections 2, 1341 and 1343.

**Racketeering Act Two - Wire and Mail Fraud with Respect to Kraft
Foods, Inc.**

43. Beginning in or about January 2004, and continuing until in or about April 2008, in the Eastern District of California, the Northern District of California, the Northern District of Illinois, the District of New Jersey, and elsewhere, defendant SALYER, and others known and unknown to the Grand Jury, did knowingly devise and intend to devise a scheme and artifice to defraud Kraft, and to obtain money and property from it by means of materially false and fraudulent pretenses, representations and promises, to use the mails and private commercial carriers and interstate wire communications to execute said scheme, and to conceal said scheme.

1 44. The manner and means by which the wire and mail fraud
2 scheme was accomplished were as follows:

3 45. In his capacity as Purchasing Manager for Kraft, Watson
4 was vested with authority to negotiate and enter into contracts,
5 with the approval of his employer, for the purchase of tomato and
6 other food products from various processors, including SK Foods. In
7 the normal course, Kraft and Watson received bids for the sale of
8 processed tomato products from processors to Kraft by way of what
9 was intended to be a secret and competitive bidding process.

11 46. Beginning no later than in or about January 2004, Rahal
12 began making personal bribe payments to Watson on behalf of SK
13 Foods. Such bribery payments were made with the knowledge and, in
14 many instances, at the direction of defendant SALYER. In return for
15 the personal bribe payments, Watson agreed to and did ensure that
16 Kraft purchased processed tomato products and other food products
17 from SK Foods rather than from certain of SK Foods' competitors. In
18 addition, in return for the bribe payments, Watson provided SK Foods
19 with certain data, including the proprietary bid information of
20 certain of SK Foods' competitors in the tomato processing industry,
21 which allowed SK Foods to sell processed tomato products to Kraft at
22 inflated prices.

25 47. Defendant SALYER's direction to Rahal in this regard was,
26 in part, conducted by way of interstate telephone communications.
27 By way of example, on or about April 14, 2008, defendant SALYER and
28 Rahal engaged in a recorded interstate telephone conversation during

1 which the two discussed how Rahal had recently made personal bribe
2 payments to Watson totaling \$24,000. Later in that same
3 conversation, defendant SALYER expressed his concern to Rahal that
4 SK Foods was not getting the maximum value for its bribes to Watson.
5

6 48. Between in or about January 2004 and in or about April
7 2008, Watson received approximately \$158,000 in personal bribe
8 payments from defendant SALYER, Rahal and SK Foods in this manner.
9 As a result of these bribe payments, between 2004 and 2008, Watson
10 secured contracts between SK Foods and Kraft for the sale of
11 approximately 230 million pounds of processed tomato product at
12 elevated prices, causing a substantial loss to Kraft.

13 49. On or about the dates set forth below, and for the purpose
14 of executing and attempting to execute the aforementioned scheme and
15 artifice to defraud, defendant SALYER, in the Northern District of
16 California, the District of New Jersey and the Northern District of
17 Illinois, did knowingly transmit, and cause to be transmitted by
18 means of wire communications in interstate or foreign commerce, the
19 writings, signs, signals and communications described below, any one
20 of which alone constitutes the commission of Racketeering Act Two:
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RACKETEERING ACT	DATE	WIRE COMMUNICATION
2A	2/13/2004	Email correspondence between SALYER in the Northern District of California and Rahal in the District of New Jersey in which defendant SALYER recognized that Watson would be amenable to bribe payments because he experienced increased costs commuting between Illinois and New York
2B	4/14/2008	Telephone conversation between defendant SALYER in the Northern District of California and Rahal in the District of New Jersey discussing personal bribe payments made to Watson
2C	4/8/2008	Facsimile from Watson in the Northern District of Illinois to Rahal in the District of New Jersey enclosing Morning Star contract proposal to Kraft

50. Furthermore, on or about the dates set forth below, in the Northern District of California, the District of New Jersey, and the Northern District of Illinois, for the purpose of executing and attempting to execute the aforementioned scheme and artifice to defraud, defendant SALYER did knowingly cause to be delivered by mail and private and commercial carrier, and Watson did knowingly take and receive from authorized depositories for mail and other matter sent or delivered by the United States Postal Service, and private and commercial carrier, the items listed below, any one of which alone constitutes the commission of Racketeering Act Two:

/ / / /
/ / / /
/ / / /

RACKETEERING ACT	DATE	SENDER	ITEM INCLUDED IN MAILING
2D	1/19/2006	Rahal	Check in the amount of \$10,000 from Intramark's Sun National Bank account number XXXXXX5624, payable to Robert Watson in Wheeling, Illinois
2E	7/25/2007	Rahal	Check in the amount of \$17,252.78 from Intramark's Sun National Bank account number XXXXXX5624, payable to Robert Watson, in Wheeling, Illinois

All in violation of Title 18, United States Code, Sections 2, 1341 and 1343.

**Racketeering Act Three - Wire and Mail Fraud with Respect to B&G
Foods, Inc.**

51. Beginning no later than in or about September 2004, and continuing until in or about April 2008, in the Eastern District of California, the Northern District of California, the District of New Jersey and elsewhere, defendant SALYER, and others known and unknown to the Grand Jury, did knowingly devise and intend to devise a scheme and artifice to defraud B&G, and to obtain money and property from it by means of materially false and fraudulent pretenses, representations and promises, to use the mails and private commercial carriers and interstate wire communications to execute said scheme, and to conceal said scheme.

52. The manner and means by which the wire and mail fraud scheme was accomplished were as follows:

/ / / /

1 53. In his capacity as a corporate purchasing manager and
2 Director of Purchasing for B&G, Turner was vested with authority to
3 negotiate and enter into contracts, with the approval of his
4 employer, for the purchase of processed tomato products and other
5 food products from various processors, including SK Foods. In the
6 normal course, B&G and Turner received bids for the sale of
7 processed tomato products and other food products from processors to
8 B&G by way of what was intended to be a competitive bidding process.

10 54. Beginning no later than in or about September 2004, Rahal
11 began making personal bribe payments to Turner on behalf of SK
12 Foods. Such bribery payments were made with the knowledge, and, in
13 many instances, at the direction of defendant SALYER. In return for
14 the personal bribe payments, Turner agreed to and did ensure that
15 B&G purchased processed tomato products and other food products from
16 SK Foods rather than from certain of SK Foods' competitors. In
17 addition, in return for the bribe payments, Turner secured contracts
18 between B&G and SK Foods, which allowed SK Foods to sell certain
19 food products to B&G at elevated prices.

21 55. Defendant SALYER's direction to Rahal in this regard was,
22 in part, conducted by way of interstate telephone communications.
23 By way of example, on or about June 12, 2007, defendant SALYER and
24 Rahal engaged in a recorded interstate telephone conversation during
25 which the two discussed how Rahal had just secured a cost-plus
26 contract with B&G for the purchase of jalapeno and chile peppers
27 from SK Foods. During the call, Rahal relayed to defendant SALYER
28

1 that he had promised Turner a personal bribe payment in order secure
2 the contract.

3 56. Subsequently, on or about June 21, 2007, defendant SALYER
4 and Rahal engaged in a recorded interstate telephone conversation
5 during which defendant SALYER instructed Rahal to increase the price
6 per pound that B&G would pay SK Foods under the pepper contract. In
7 this regard, defendant SALYER further directed Rahal to provide
8 Turner and B&G with a fictitious justification for the increased
9 contract price, namely that SK Foods was experiencing increased
10 agricultural costs in connection with the peppers.

12 57. Between in or about September 2004 and in or about April
13 2008, Turner received approximately \$14,698 in personal bribe
14 payments from defendant SALYER, Rahal and SK Foods in this manner.
15 As a result of these bribe payments, between in or about September
16 2004 and in or about April 2008, Turner secured contracts between SK
17 Foods and B&G for the sale of certain food products at elevated
18 prices, causing a substantial loss to B&G.

20 58. On or about the dates set forth below, and for the purpose
21 of executing and attempting to execute the aforementioned scheme and
22 artifice to defraud, defendant SALYER, in the Northern District of
23 California and the District of New Jersey, did knowingly transmit,
24 and cause to be transmitted by means of wire communications in
25 interstate or foreign commerce, the writings, signs, signals and
26 communications described below, any one of which alone constitutes
27 the commission of Racketeering Act Three:
28

RACKETEERING ACT	DATE	WIRE COMMUNICATION
3A	6/12/2007	Telephone conversation between defendant SALYER in the Northern District of California and Rahal in the District of New Jersey discussing personal bribe payments to Turner
3B	6/21/2007	Telephone conversation between defendant SALYER in the Northern District of California and Rahal in the District of New Jersey discussing the provision of a fictitious justification for a price increase to a contract between B&G and SK Foods

59. Furthermore, on or about the dates set forth below, in the Northern District of California and the District of New Jersey, for the purpose of executing and attempting to execute the aforementioned scheme and artifice to defraud, defendant SALYER did knowingly cause to be delivered by mail and private and commercial carrier, and Turner did knowingly take and receive from authorized depositories for mail and other matter sent or delivered by the United States Postal Service, and private and commercial carrier, the items listed below, any one of which alone constitutes the commission of Racketeering Act Three:

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RACKETEERING ACT	DATE	SENDER	ITEM INCLUDED IN MAILING
3C	5/17/2006	Rahal	Check in the amount of \$1,000.00 from Intramark's Sun National Bank account number XXXXXX5624, payable to Turner's wife in the District of New Jersey
3D	7/11/2007	Rahal	Check in the amount of \$2,000.00 from Intramark's Sun National Bank account number XXXXXX5624, payable to Turner's wife in the District of New Jersey
3E	12/12/2007	Rahal	Check in the amount of \$9,698.80 from Intramark's Sun National Bank account number XXXXXX5624, payable to Turner's wife in the District of New Jersey

All in violation of Title 18, United States Code, Sections 2, 1341 and 1343.

**Racketeering Act Four - State Commercial Bribery with Respect to
Safeway, Inc.**

60. On or about July 19, 2007, in the Northern District of California, defendant SALYER, and others known to the Grand Jury, did corruptly offer and give Chavez, an employee of Safeway, money in an amount exceeding \$1,000, without the knowledge and consent of Safeway, in order that Chavez would use and agree to use his position at Safeway for the benefit of SALYER, SK Foods, and others known to the grand jury, all in violation of California Penal Code, Section 641.3 .

1 **Racketeering Acts Five Through Twenty - Mail and Wire Fraud with**
2 **Respect to the Shipment to Customers of Adulterated and Misbranded**
3 **Processed Tomato Products**

4 Introduction

5 61. During all times relevant to this Superseding Indictment,
6 and in the normal course, the market price of processed tomato
7 products fluctuated based on the percentage of NTSS that the product
8 contained (also known as the product's "Brix value"). SK Foods'
9 customers frequently specified a required NTSS concentration in
10 their contracts with SK Foods. Customers also often specified
11 acceptable levels of other processed tomato product characteristics
12 such as the product's pH, mold content, color, acidity, and
13 viscosity (sometimes referred to as "Bostwick"), depending on the
14 customer's intended finished product (i.e., ketchup, salsa, barbeque
15 sauce, etc.).
16

17 62. In addition to the characteristics described above, SK
18 Foods' customers typically specified the acceptable shelf life of
19 the processed tomato products they were purchasing from SK Foods.
20 For example, most SK Foods' customers contractually required that SK
21 Foods provide processed tomato products that were twenty-four months
22 old or less. In addition, internal SK Foods "Quality Management
23 Systems Product Specification" documents represented that the
24 maximum shelf life of SK Foods' aseptic tomato paste product was
25 twenty-four months from the actual date of production.
26

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1 63. At all times relevant to this Superseding Indictment, SK
2 Foods was a registered seller of organic products in the State of
3 California. As such, it was subject to the regulations promulgated
4 by the National Organic Program ("NOP") (Section 6517 of the federal
5 Organic Foods Production Act of 1990 (7 U.S.C. § 6501 et seq.)) .
6 The NOP states that no product shall be labeled and sold as
7 "organic" unless it is produced specifically according to certain
8 NOP regulations.
9

10 64. At all times relevant to this Superseding Indictment, SK
11 Foods was also subject to the United States Standards for grades of
12 tomato paste and puree as established by the United States
13 Department of Agriculture ("USDA") . SK Foods was further subject to
14 Title 21, Code of Federal Regulations, Section 110.110, through
15 which the United States Food and Drug Administration ("FDA") has
16 established maximum limits of natural or unavoidable defects in
17 foods sold within the United States, which present no health hazard.
18 The limits are set out as Food Defect Action Levels. The limits
19 prescribed by the Food Defect Action Levels represent thresholds
20 above which FDA will take enforcement action for the food products
21 being "adulterated" pursuant to 21 U.S.C. § 342(a)(3). For example,
22 FDA has set a Food Defect Action Level for mold in tomato paste; if
23 the mold count (as measured using the Howard mold count method) of
24 all of the subsamples of a lot of tomato paste are higher than 40%,
25 the FDA considers that product adulterated and unfit for sale within
26 the United States.
27
28

1 65. To that end, during the relevant period, SK Foods was
2 required to subject its processed tomato products to laboratory-
3 testing to ensure it complied both with applicable laws and
4 regulations, and with customer specifications. In the normal
5 course, SK Foods' employees initially recorded the raw results of
6 this testing process on handwritten lab result registers. The data
7 was subsequently entered into a proprietary computer system owned
8 and operated by SK Foods. When processed tomato products were
9 shipped to customers, they were usually accompanied by a COA, which
10 identified the particular grading factors (i.e., pH, mold count,
11 color, viscosity and NTSS) derived from the SK Foods' laboratory
12 testing of the product. Additionally, SK Foods routinely affixed
13 labels to the actual storage containers holding the processed tomato
14 product destined for its customers. These container labels, along
15 with the bills of lading and invoices that accompanied a customer-
16 bound shipment, typically identified the date of production and NTSS
17 level of the processed tomato paste. Often times, duplicate copies
18 of the documents described above also were faxed or mailed to SK
19 Foods' customers at the time of product shipment.

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1 Racketeering Acts Five Through Twenty - Mail and Wire Fraud With
2 Respect to Land O' Lakes, Inc.; Antis Food Products, Inc.; Gerber
3 Products Company; Nestle USA; San Antonio Farms; Barilla America,
4 Inc.; Chelten House Products, Inc.; Kraft Foods, Inc.; ConAgra
5 Frozen Foods; B&G Foods, Inc.; General Mills Operations, Inc.; Heinz
6 USA; and Tyson Foods, Inc.

7 66. Beginning no later than in or about February 2001, and
8 continuing until in or about April 2008, in the Eastern District of
9 California, the Northern District of California, and elsewhere,
10 defendant SALYER, and others known and unknown to the Grand Jury,
11 did devise and intend to devise a scheme and artifice to defraud
12 certain customers of SK Foods, and to obtain money and property from
13 those customer companies by means of materially false and fraudulent
14 pretenses, representations and promises, to use the mails and
15 private commercial carriers and interstate wire communications to
16 execute said scheme, and to conceal said scheme.

17 67. The manner and means by which the wire and mail fraud
18 scheme was accomplished are set out below:

19 68. Defendant SALYER directed Huey, Dahlman, and certain other
20 SK Foods' employees to cause the falsification of the various
21 grading factors and data contained on the COAs, bills of lading,
22 invoices and bin labels (hereinafter, "quality control documents")
23 that accompanied customer-bound shipments of tomato products, which
24 were produced, purchased, and sold by SK Foods. Specifically,
25 SALYER, in many instances, directed Huey, Dahlman and certain other
26 SK Foods' employees to falsify these documents so that they
27 reflected mold count levels in SK Foods' processed tomato products
28

1 as being below the applicable Food Defect Action Level when, in
2 fact, those levels were significantly above the federal threshold
3 and therefore could not legally be sold in the United States under
4 applicable regulations administered by the FDA.

5 69. In other instances, defendant SALTER directed Huey,
6 Dahlman and other SK Foods' employees to falsify quality control
7 documents so that they reflected NTSS levels that were higher than
8 what the tomato product actually contained, as well as altered pH,
9 color, viscosity values, dates of production, and classification
10 (organic versus conventional) to meet customers' contractual
11 specifications, when, in fact, the product did not meet such
12 customers' specifications.
13

14 70. Defendant SALYER subsequently directed that these
15 processed tomato products be distributed, along with the falsified
16 quality control documents, to certain of SK Foods' customers in
17 interstate commerce.
18

19 71. As a result of defendant SALYER's conduct, and the conduct
20 of other SK Foods' leaders, employees and associates, adulterated
21 and misbranded processed tomato products were frequently introduced
22 into interstate commerce, and SK Foods' customers were fraudulently
23 induced to pay for such products, or to overpay for such products.
24 SK Foods made such material misrepresentations to more than fifty-
25 five customers, causing a substantial loss to those entities.
26

27 72. On or about the dates set forth below, and for the purpose
28 of executing and attempting to execute the aforementioned scheme and

1 artifice to defraud, defendant SALYER, in the Eastern District of
 2 California and the Northern District of California, did knowingly
 3 transmit, and cause to be transmitted by means of wire
 4 communications in interstate or foreign commerce, the writings,
 5 signs, signals and communications described below, any one of which
 6 alone constitutes the commission of Racketeering Act Five:
 7

8 RACKETEERING ACT	9 DATE	10 WIRE COMMUNICATION
11 5A	12 1/23/07	13 Email correspondence between Beasley in 14 the Eastern District of California, and 15 defendant SALYER, Huey and other SK 16 Foods' employees in the Northern 17 District of California and elsewhere, in 18 which the parties discussed the 19 misbranding of approximately 18 million pounds of processed tomato products to meet SK Foods' contractual requirements to customers
20 5B	21 6/11/07	22 Telephone conversation between defendant 23 SALYER in the Northern District of 24 California and Rahal in the District of 25 New Jersey, during which the two 26 discussed the value of certain SK Foods' 27 employees who routinely falsified COAs 28 and quality control data

21 73. Furthermore, on or about the dates set forth below, in the
 22 Eastern and Northern Districts of California, for the purpose of
 23 executing and attempting to execute the aforementioned scheme and
 24 artifice to defraud, defendant SALYER did knowingly cause to be
 25 delivered by mail and private and commercial carrier, the items
 26 listed below:
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RACKETEERING ACT	DATE	SENDER	ITEM INCLUDED IN MAILING	ASSOCIATED FALSIFICATION
6	2/20/01	Dahlman	Invoice sent from SK Foods' Lemoore, CA facility to Intramark USA in Westwood, New Jersey, via United States Mail, with respect to customer Land O'Lakes	Production date for 16,251 pounds of tomato paste falsified from 9/25/98 to 7/24/99
7	7/10/03	Dahlman	Invoice sent from SK Foods' Lemoore, CA facility to Gerber Products in Michigan, via United States Mail	Production date for 13,475 pounds of tomato paste falsified from 8/4/00 to 7/7/02
8	7/18/03	Dahlman	Invoice sent from SK Foods' Lemoore, CA facility to Antis Food Products, Inc. in Pennsylvania, via United States Mail	Classification for 9,217 pounds of tomato paste falsified from conventional to organic
9	7/23/03	Dahlman	Invoice sent from SK Foods' Lemoore, CA facility to Heinz USA in California, via United States Mail	Classification for 37,721 pounds of tomato paste falsified from conventional to organic

1	10	3/1/05	Dahlman	Invoice sent from SK Foods' Lemoore, CA facility to Nestle USA in Ohio, via United States Mail	Mold count for 26,050 pounds of tomato paste falsified from 56% to 40%
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6	11	3/7/05	Dahlman	Invoice sent from SK Foods' Lemoore, CA facility to San Antonio Farms in Texas, via United States Mail	Production date for 40,032 pounds of tomato paste falsified from 9/23/02 and 9/24/02 to 9/17/03 and 9/18/03
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12	12	1/4/07	Dahlman	Invoice sent from SK Foods' Lemoore, CA facility to Barilla America, Inc. in Illinois, via United States Mail	Mold count for 54,160 pounds of tomato paste falsified from 58% to 36%
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16	13	4/17/07	Dahlman	Invoice sent from SK Foods' Lemoore, CA facility to Intramark USA in Westwood, New Jersey, via United States Mail, with respect to customer Chelten House	Mold counts for 137,070 pounds of tomato paste falsified from 48-86% to 36-40%
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22	14	5/1/07	Dahlman	Invoice sent from SK Foods' Lemoore, CA facility to Kraft Foods, Inc. in Texas, via United States Mail	Mold counts for 137,066 pounds of tomato paste falsified from 48-86% to 34-40%
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1	15	6/22/07	Dahlman	Invoice sent from SK Foods' Lemoore, CA facility to Con Agra in Nebraska, via United States Mail	Mold count for 5,988 pounds of tomato paste falsified from 74% to 40%
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5	16	12/5/07	Dahlman	Invoice sent from SK Foods' Lemoore, CA facility to B&G Foods in Maryland, via United States Mail	Mold count for 11,347 pounds of tomato paste falsified from 62% to 40%
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10	17	12/18/07	Dahlman	Invoice sent from SK Foods' Williams, CA facility to General Mills Operations, Inc. in Minnesota, via United States Mail	Mold count for 19,564 pounds of tomato paste falsified from 53% to 40%
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14					
15	18	2/4/08	Dahlman	Invoice sent from SK Foods' Lemoore, CA facility to Heinz USA in California, via United States Mail	Mold count for 4,811 pounds of tomato paste falsified from 76% to 40%
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19	19	3/20/08	Dahlman	Invoice sent from SK Foods' Lemoore, CA facility to Tyson Foods, Inc. in Arkansas, via United States Mail	Mold count for 2,889 pounds of tomato paste falsified from 60% to 20%
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24 All in violation of Title 18, United States Code, Sections 2,
 25 1341 and 1343.

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1 Racketeering Act Twenty - Wire Fraud With Respect to Kraft Foods,
2 Inc.

3 74. Paragraphs sixty-one through seventy-one of Count One are
4 realleged and incorporated herein as if fully set forth.

5 75. Beginning no later than in or about January 2007, and
6 continuing until in or about April 2008, in the Eastern District of
7 California, the Northern District of California and elsewhere,
8 defendant SALYER, and others known to the Grand Jury, did knowingly
9 devise and intend to devise a scheme and artifice to defraud Kraft,
10 and to obtain money and property from Kraft by means of materially
11 false and fraudulent pretenses, representations and promises, to use
12 interstate wire communications to execute said scheme, and to
13 conceal said scheme.
14

15 76. The manner and means by which the wire fraud scheme was
16 accomplished are set out below:
17

18 77. During 2007, SK Foods experienced a period during which it
19 was unable to provide an adequate supply of processed tomato paste
20 containing 31% NTSS in order to meet its contractual obligations to
21 certain customers, including Kraft. In an attempt to alleviate the
22 shortage, defendant SALYER contacted a competing manufacturer of
23 processed tomato products, via email, on January 10, 2007, and
24 arranged to purchase approximately 3,400,000 pounds of processed
25 tomato products containing lower NTSS concentrations of 26% and 28%.
26 SALYER knew that the product to be purchased from the competitor was
27 also classified as "high mold," and uniformly contained mold counts
28

1 significantly in excess of the applicable FDA Food Defect Action
2 Level.

3 78. The product purchased from the competitor did not meet the
4 specifications contained in certain of SK Foods' existing contracts,
5 and was adulterated and unsaleable in the United States due to its
6 excessive mold content. In order to conceal its inferior quality,
7 defendant SALYER directed Huey and other SK Foods employees to
8 misbrand the product by causing the falsification of certain
9 customer-bound quality control documents so that they incorrectly
10 reflected the product as uniformly containing 31% NTSS tomato paste
11 and a mold count at or below 40%. One example of defendant SALYER's
12 direction in this regard came in the form of a January 22, 2007,
13 email in which SALYER directed Huey to misbrand the adulterated,
14 high mold paste and to allocate the high mold paste to domestic SK
15 Foods' customers.
16

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18 79. Furthermore, at defendant SALYER's direction, Huey and
19 other SK Foods employees subsequently caused the adulterated and
20 misbranded tomato products, and the accompanying falsified quality
21 control documents, to be shipped during the spring of 2007, via
22 interstate carrier, from SK Foods' facilities in the Eastern
23 District of California to Kraft's facilities in other states. One
24 such shipment occurred on or about April 12, 2007. On that date, SK
25 Foods shipped tomato product, accompanied by, among other things, a
26 bill of lading, which falsely represented the contents of the
27 shipment, from its facilities in the Eastern District of California
28

1 to Kraft in Darien, Wisconsin.

2 80. In many instances, the misbranded and adulterated tomato
 3 products were accompanied by certain quality control documents,
 4 which defendant SALYER ordered falsified so that they misrepresented
 5 the NTSS content and mold count of the tomato products in the
 6 shipment. SALYER's actions in this regard were made with the
 7 specific intent to defraud and mislead Kraft. As a result, Kraft
 8 was unknowingly induced to pay for the adulterated and misbranded
 9 tomato paste.
 10

11 81. On or about the dates set forth below, for the purpose of
 12 executing and attempting to execute the aforementioned scheme and
 13 artifice to defraud, defendant SALYER, in the Northern District of
 14 California, did knowingly transmit, and cause to be transmitted by
 15 means of wire communications in interstate or foreign commerce, the
 16 writings, signs, signals and communications described below, any one
 17 of which alone constitutes the commission of Racketeering Act
 18
 19 Twenty:

RACKETEERING ACT	DATE	WIRE COMMUNICATION
20A	1/22/07	Email correspondence from defendant SALYER in the Northern District of California to Huey and Rahal in the District of New Jersey, directing Huey to misbrand approximately 3,400,000 pounds of high mold tomato paste, and to allocate that high mold tomato paste to domestic SK Foods customers

1	20B	4/12/07	Facsimile from SK Foods' facility in Lemoore, in the Eastern District of California, to Intramark USA in the District of New Jersey containing falsified quality control documents sent to Kraft.
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6 All in violation of Title 18, United States Code, Sections 2
7 and 1343.

8 All of the above in violation of Title 18, United States Code,
9 Section 1962(c).

10 COUNT TWO: [18 U.S.C. § 1962(d) - Conspiring to Conduct the Affairs
11 of an Enterprise Through a Pattern of Racketeering
12 Activity]

13 The Grand Jury further charges:

14 FREDERICK SCOTT SALYER,
15 defendant herein, as follows:

16 1. Paragraphs one through thirty one of Count One are
17 realleged and incorporated herein as if fully set forth.

18 **The Racketeering Conspiracy**

19 2. Beginning in or about January 1998, and continuing through
20 in or about April 2008, within the Eastern District of California
21 and elsewhere, defendant FREDERICK SCOTT SALYER, together with
22 others known to the Grand Jury, being persons employed by and
23 associated with SK Foods, an enterprise, which engaged in, and the
24 activities of which affected, interstate and foreign commerce,
25 knowingly and intentionally conspired to violate Title 18, United
26 States Code, Section 1962 (c), that is, to conduct and participate,
27
28

1 directly and indirectly, in the conduct of the affairs of SK Foods
2 through a pattern of racketeering activity, as that term is defined
3 in Sections 1961(1) and 1961(5) of Title 18, United States Code,
4 consisting of multiple acts indictable under the following
5 provisions of federal law: 18 U.S.C. § 1341 (mail fraud); 18 U.S.C.
6 § 1343 (wire fraud); and multiple acts involving bribery chargeable
7 under the following provisions of state law: N.J. Stat. Ann. §
8 2C: 21-10; Cal. Penal Code § 641.3; and Tex. Penal Code § 32.43.
9

10 3. It was a further part of the conspiracy that defendant
11 SALYER agreed that a conspirator would commit at least two acts of
12 racketeering activity in the conduct of the affairs of the
13 enterprise.

14 All in violation of Title 18, United States Code, Section
15 1962(d).

16
17 COUNT THREE: [18 U.S.C. § 1343 - Wire Fraud]

18 The Grand Jury further charges:

19 FREDERICK SCOTT SALYER,

20 defendant herein, as follows:

21 1. Paragraphs one through seven, nine through eleven, and
22 seventeen of Count One are realleged and incorporated herein, as if
23 fully set forth.
24

25 **THE SCHEME TO DEFRAUD**

26 2. Beginning no later than in or about January 1998, and
27 continuing until in or about April 2008, in the Eastern District of
28 California, the Northern District of California, the Northern

1 District of Texas, the District of New Jersey, and elsewhere,
2 defendant SALYER and others known and unknown to the Grand Jury, did
3 knowingly devise and intend to devise a scheme and artifice to
4 defraud Frito-Lay, and to obtain money and property from it by means
5 of materially false and fraudulent pretenses, representations and
6 promises, and to conceal said scheme.
7

8 **II. MANNER AND MEANS**

9 The manner and means by which the wire fraud scheme was
10 accomplished were as follows:

11 3. In his capacity as Senior Group Manager for Ingredients
12 Purchasing for Frito-Lay, Wahl was vested with authority to
13 negotiate and enter into contracts, with the approval of his
14 employer, for the purchase of processed tomato products and other
15 food products from various processors, such as SK Foods. In the
16 normal course, Frito-Lay and Wahl received bids for the sale of
17 processed tomato products and other food products from processors to
18 Frito-Lay by way of what was intended to be a competitive bidding
19 process.
20

21 4. Beginning no later than in or about January 1998, Rahal
22 began making personal bribe payments to Wahl on behalf of SK Foods.
23 Such bribery payments were made with the knowledge, and, in many
24 instances, at the direction of defendant SALYER. In return for the
25 personal bribe payments, Wahl agreed to, and did, ensure that Frito-
26 Lay purchased processed tomato products and other food products from
27 SK Foods rather than from certain of SK Foods' competitors. In
28

1 addition, in return for the bribe payments, Wahl provided SK Foods
2 with certain data, to include the proprietary bid information of
3 certain of SK Foods' competitors in the tomato processing industry,
4 which allowed SK Foods to sell certain food products to Frito-Lay at
5 inflated prices.

6
7 5. Defendant SALYER's direction to Rahal in this regard was,
8 in part, conducted by way of interstate telephone communications.
9 By way of example, on or about April 11, 2008, defendant SALYER and
10 Rahal engaged in a recorded interstate telephone conversation during
11 which the two discussed that so long as Wahl remained employed by
12 Frito-Lay as Senior Group Manager for Ingredients Purchasing, SK
13 Foods' competitor, Morning Star, would not be approved to supply
14 processed tomato product to Frito-Lay. Later in that same
15 conversation, SALYER directed Rahal to speak with Wahl, and to
16 direct Wahl on how to allocate Frito-Lay's tomato product purchases
17 between SK Foods and another SK Foods competitor.
18

19 6. Additionally, on or about April 7, 2008, in return for
20 personal bribe payments made by defendant SALYER, Rahal and SK
21 Foods, Wahl transmitted to Rahal, via email from the Northern
22 District of Texas to the District of New Jersey, a Morning Star
23 proposal for a three-year contract for the sale of processed tomato
24 products to Frito-Lay. That same day, Rahal transmitted the
25 surreptitiously obtained proposal to defendant SALYER and other
26 senior leaders of SK Foods, via email, from the District of New
27 Jersey to the Eastern and Northern Districts of California.
28

1 7. Between in or about 1998, and in or about April 2008, Wahl
2 received approximately \$160,000 in personal bribe payments from
3 defendant SALYER, Rahal and SK Foods in this manner. As a result of
4 these bribe payments, between in or about 1998 and in or about 2008,
5 Wahl secured contracts between SK Foods and Frito-Lay for the sale
6 of certain food products at elevated prices, causing a substantial
7 loss to Frito-Lay.
8

9 **III. THE INTERSTATE WIRE COMMUNICATION**

10 8. On or about April 7, 2008, and for the purpose of executing
11 and attempting to execute the aforementioned scheme and artifice to
12 defraud, defendant SALYER did knowingly transmit, and cause to be
13 transmitted by means of wire communications in interstate or foreign
14 commerce, certain writings, signs, signals and communications,
15 namely an email communication from Rahal in the District of New
16 Jersey to SALYER and other SK Foods' leaders in the Eastern and
17 Northern Districts of California enclosing a Morning Star bid
18 proposal to Frito-Lay.
19

20 All in violation of Title 18, United States Code, Sections 2
21 and 1343.

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1 COUNTS FOUR AND FIVE: [18 U.S.C. § 1343 - Wire Fraud]

2 The Grand Jury further charges:

3 FREDERICK SCOTT SALYER,

4 defendant herein, as follows:

5 1. Paragraphs one through seven, nine, fourteen, fifteen, and
6 seventeen of Count One are realleged and incorporated herein, as if
7 fully set forth.
8

9 I. THE SCHEME TO DEFRAUD

10 2. Beginning in or about January 2004, and continuing until in
11 or about April 2008, in the Eastern District of California, the
12 Northern District of California, the Northern District of Illinois,
13 the District of New Jersey, and elsewhere, defendant SALYER, and
14 others known and unknown to the Grand Jury, did knowingly devise and
15 intend to devise a scheme and artifice to defraud Kraft, and to
16 obtain money and property from it by means of materially false and
17 fraudulent pretenses, representations and promises, and to conceal
18 said scheme.
19

20 II. MANNER AND MEANS

21 The manner and means by which the wire fraud scheme was
22 accomplished were as follows:

23 3. In his capacity as Purchasing Manager for Kraft, Watson was
24 vested with authority to negotiate and enter into contracts, with
25 the approval of his employer, for the purchase of tomato and other
26 food products from various processors, such as SK Foods. In the
27 normal course, Kraft and Watson received bids for the sale of
28

1 processed tomato products from processors to Kraft by way of what
2 was intended to be a secret and competitive bidding process.

3 4. Beginning no later than in or about January 2004, Rahal
4 began making personal bribe payments to Watson on behalf of SK
5 Foods. Such bribery payments were made with the knowledge, and, in
6 many instances, at the direction of defendant SALYER. In return for
7 the personal bribe payments, Watson agreed to, and did, ensure that
8 Kraft purchased processed tomato products and other food products
9 from SK Foods rather than from certain of SK Foods' competitors. In
10 addition, in return for the bribe payments, Watson provided SK Foods
11 with certain data, to include the proprietary bid information of
12 certain of SK Foods' competitors in the tomato processing industry,
13 which allowed SK Foods to sell processed tomato products to Kraft at
14 inflated prices.
15

16 5. Defendant SALYER's direction to Rahal in this regard was,
17 in part, conducted by way of interstate telephone communications.
18 By way of example, on or about April 14, 2008, defendant SALYER and
19 Rahal engaged in a recorded interstate telephone conversation during
20 which the two discussed how Rahal had recently made personal bribe
21 payments to Watson totaling \$24,000. Later in that same
22 conversation, defendant SALYER expressed his concern to Rahal that
23 SK Foods was not getting the maximum value for its bribes to Watson.
24

25 6. Between in or about January 2004 and in or about April
26 2008, Watson received approximately \$158,000 in personal bribe
27 payments from defendant SALYER, Rahal and SK Foods in this manner.
28

1 As a result of these bribe payments, between 2004 and 2008, Watson
 2 secured contracts between SK Foods and Kraft for the sale of
 3 approximately 230 million pounds of processed tomato product at
 4 elevated prices, causing a substantial loss to Kraft.

5 **III. THE INTERSTATE WIRE COMMUNICATIONS**

6 7. On or about the dates set forth below, and for the purpose
 7 of executing and attempting to execute the aforementioned scheme and
 8 artifice to defraud, defendant SALYER did knowingly transmit, and
 9 cause to be transmitted by means of wire communications in
 10 interstate or foreign commerce, the writings, signs, signals and
 11 communications described below:
 12

13

COUNT	DATE	WIRE COMMUNICATION
FOUR	7/11/2007	Telephone conversation between Rahal in the District of New Jersey and Beasley in the Eastern District of California discussing personal bribe payments made to numerous customer purchasing managers
FIVE	4/8/2008	Email from Rahal in the District of New Jersey to Huey and Beasley in the Northern and Eastern Districts of California enclosing a Morning Star contract proposal to Kraft

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 22 All in violation of Title 18, United States Code, Sections 2
 23 and 1343.

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1 COUNT SIX: [18 U.S.C. § 1343 - Wire Fraud]

2 The Grand Jury further charges:

3 FREDERICK SCOTT SALYER,

4 defendant herein, as follows:

5 1. Paragraphs one through seven, nine, twelve, and thirteen of
6 Count One are realleged and incorporated herein, as if fully set
7 forth.
8

9 I. THE SCHEME TO DEFRAUD

10 2. Beginning no later than in or about September 2004, and
11 continuing until in or about April 2008, in the Eastern District of
12 California, the Northern District of California, the District of New
13 Jersey and elsewhere, defendant SALYER, and others known and unknown
14 to the Grand Jury, did knowingly devise and intend to devise a
15 scheme and artifice to defraud B&G, and to obtain money and property
16 from it by means of materially false and fraudulent pretenses,
17 representations and promises, and to conceal said scheme.
18

19 II. MANNER AND MEANS

20 The manner and means by which the wire fraud scheme was
21 accomplished were as follows:

22 3. In his capacity as a corporate purchasing manager and
23 Director of Purchasing for B&G, Turner was vested with authority to
24 negotiate and enter into contracts, with the approval of his
25 employer, for the purchase of processed tomato products and other
26 food products from various processors, such as SK Foods. In the
27 normal course, B&G and Turner received bids for the sale of
28

1 processed tomato products and other food products from processors to
2 B&G by way of what was intended to be a competitive bidding process.

3 4. Beginning no later than in or about September 2004, Rahal
4 began making personal bribe payments to Turner on behalf of SK
5 Foods. Such bribery payments were made with the knowledge, and, in
6 many instances, at the direction of defendant SALYER. In return for
7 the personal bribe payments, Turner agreed to, and did, ensure that
8 B&G purchased processed tomato products and other food products from
9 SK Foods rather than from certain of SK Foods' competitors. In
10 addition, in return for the bribe payments, Turner secured contracts
11 between B&G and SK Foods, which allowed SK Foods to sell certain
12 food products to B&G at elevated prices.
13

14 5. Defendant SALYER's direction to Rahal in this regard was,
15 in part, conducted by way of interstate telephone communications.
16 By way of example, on or about June 12, 2007, defendant SALYER and
17 Rahal engaged in a recorded interstate telephone conversation during
18 which the two discussed how Rahal had just secured a cost-plus
19 contract with B&G for the purchase of jalapeno and chile peppers
20 from SK Foods. During the call, Rahal relayed to defendant SALYER
21 that he had promised Turner a personal bribe payment in order secure
22 the contract.
23

24 6. Subsequently, on or about June 21, 2007, defendant SALYER
25 and Rahal engaged in a recorded interstate telephone conversation
26 during which defendant SALYER instructed Rahal to increase the price
27 per pound that B&G would pay SK Foods under the pepper contract. In
28

1 this regard, defendant SALYER further directed Rahal to provide
2 Turner and B&G with a fictitious justification for the increased
3 contract price, namely that SK Foods was experiencing increased
4 agricultural costs in connection with the peppers.

5 7. Between in or about September 2004 and in or about April
6 2008, Turner received approximately \$14,698 in personal bribe
7 payments from defendant SALYER, Rahal and SK Foods in this manner.
8 As a result of these bribe payments, between in or about September
9 2004 and in or about April 2008 Turner secured contracts between SK
10 Foods and B&G for the sale of certain food products at elevated
11 prices, causing a substantial loss to B&G.
12

13 **III. THE INTERSTATE WIRE COMMUNICATION**

14 8. On or about June 13, 2007, and for the purpose of executing
15 and attempting to execute the aforementioned scheme and artifice to
16 defraud, defendant SALYER did knowingly transmit, and cause to be
17 transmitted by means of wire communications in interstate or foreign
18 commerce, certain writings, signs, signals and communications,
19 namely an email communication from an SK Foods leader in the Eastern
20 District of California to Rahal in the District of New Jersey, which
21 contained a pricing agreement for a pepper contract between B&G and
22 SK Foods.
23

24 All in violation of Title 18, United States Code, Sections 2
25 and 1343.

26 // // // //

27 // // // //

1 COUNT SEVEN: [18 U.S.C. § 1519 - Destruction, Alteration, or
2 Falsification of Records in a Federal Investigation]

3 The Grand Jury further charges:

4 FREDERICK SCOTT SALYER,
5 defendant herein, as follows:

6 1. Paragraphs one through five and nine of Count One are
7 realleged and incorporated herein, as if fully set forth.

8 2. On or about April 16, 2008, agents of the Federal Bureau of
9 Investigation and the Internal Revenue Service, Criminal
10 Investigation executed judicially authorized search warrants at SK
11 Foods' facilities in the Eastern and Northern Districts of
12 California, and at Intramark's offices in the District of New Jersey
13 seeking evidence relating to, among other crimes, various acts of
14 bribery and fraud committed by defendant SALYER, Rahal, and other
15 leaders, employees and associates of SK Foods. Defendant SALYER
16 became aware of the federal investigation in this matter on or about
17 April 16, 2008. Subsequently, on or about December 16, 2008, Rahal
18 pleaded guilty in the Eastern District of California to a three-
19 count Information charging him with violations of 18 U.S.C. §§
20 1962(d) and 1957, and 15 U.S.C. § 1. By way of his publicly-filed
21 plea agreement, Rahal agreed to cooperate in the government's
22 ongoing investigation of defendant SALYER, SK Foods and other
23 individuals and entities in the tomato processing industry. The
24 factual basis for Rahal's guilty plea indicated that from 2004 to
25 2008, Rahal formally served on SK Foods' Board of Directors, and
26
27
28

1 that Rahal routinely paid bribes to the purchasing managers of many
2 of SK Foods customers with the knowledge and "at the direction of
3 certain leaders of SK Foods." Consequently, defendant SALYER became
4 aware that Rahal was actively cooperating in the government's
5 investigation on or about December 16, 2008.

6
7 3. On or about December 31, 2008, in the Eastern District of
8 California, and elsewhere, defendant FREDERICK SCOTT SALYER
9 knowingly altered and falsified, and caused others to alter and
10 falsify a document, namely the minutes of a Board of Directors'
11 meeting for the "SK Foods Entities," which was dated December 14,
12 20 07, so that it omitted reference to "Randy Rahal" as a "Director &
13 Officer" of "the SK Foods company including all SK Foods entities."
14 In truth and in fact, as defendant SALYER then well knew, the
15 original minutes of the December 14, 2007 Board of Directors'
16 meeting listed "Randy Rahal" as a "Director & Officer" of "the SK
17 Foods company including all SK Foods entities." Defendant SALYER
18 altered and falsified the aforementioned document, and caused others
19 to alter and falsify the document, with the intent to impede,
20 obstruct, and influence an investigation within the jurisdiction of
21 the Federal Bureau of Investigation.
22

23 All in violation of Title 18, United States Code, Sections 2
24 and 1519.

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1 COUNT EIGHT: [15 U.S.C. § 1 - Price Fixing]

2 The Grand Jury further charges:

3 FREDERICK SCOTT SALYER,

4 defendant herein, as follows:

5 1. Paragraphs one and three of Count One are realleged and
6 incorporated herein, as if fully set forth.

7
8 2. Beginning in or about January 2006, and continuing until
9 in or about June 2007, the exact dates being unknown to the Grand
10 Jury, in the Eastern District of California and elsewhere, defendant
11 SALYER and others known and unknown to the Grand Jury entered into
12 and engaged in a combination and conspiracy to suppress and
13 eliminate competition by raising and fixing prices of tomato paste
14 to be sold in the United States. The combination and conspiracy
15 engaged in by defendant SALYER and co-conspirators was in
16 unreasonable restraint of interstate trade and commerce in violation
17 of Section 1 of the Sherman Act (15 U.S.C. § 1).

18
19 3. The charged combination and conspiracy consisted of a
20 continuing agreement, understanding, and concert of action among
21 defendant SALYER and co-conspirators, the substantial terms of which
22 were:

23 a. to fix prices for the sale of tomato paste sold to
24 McCain Foods, USA, Inc. ("McCain"); and

25 b. to provide product and receive payment from McCain at
26 the fixed prices.

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1 I . MEANS AND METHODS OF CONSPIRACY

2 4. For the purpose of forming and carrying out the charged
3 combination and conspiracy, defendant SALYER and co-conspirators did
4 those things that they combined and conspired to do, including,
5 among other things:

6 a. participating in meetings, conversations, and
7 communications to discuss the prices of tomato paste;

8 b. agreeing, during those meetings, conversations, and
9 communications, to fix prices of tomato paste to McCain for use at
10 its facilities located in the United States; and

11 c. issuing price quotations to McCain in accordance with
12 the agreement reached.
13

14 II. TRADE AND COMMERCE

15 5. During the period covered by this Count, defendant SALYER
16 and co-conspirators sold and distributed processed tomato products
17 from processing facilities located in the State of California in a
18 continuous and uninterrupted flow of interstate trade and commerce
19 to customers located outside the State of California.
20

21 6. The business activities of defendant SALYER and co-
22 conspirators that are the subject of this Count were within the flow
23 of, and substantially affected, interstate trade and commerce.
24

25 III. VENUE

26 7. The combination and conspiracy charged in this Count was
27 carried out, in part, in the Eastern District of California, within
28 the five years preceding the filing of this Superseding Indictment.

1 **IV. CO-CONSPIRATORS**

2 8. Various corporations and individuals, not made defendants
3 in this Count, participated as co-conspirators in the offense
4 charged in this Count and performed acts and made statements in
5 furtherance of it.

6 All in violation of Title 15, United States Code, Section 1.

7 COUNT NINE: [15 U.S.C. § 1 - Price Fixing]

8
9 The Grand Jury further charges:

10 FREDERICK SCOTT SALYER,

11 defendant herein, as follows:

12 1. Paragraphs one and three of Count One and paragraphs five
13 through eight of Count Eight are realleged and incorporated herein,
14 as if fully set forth.

15 2. Beginning in or about January 2006, and continuing until
16 in or about June 2007, the exact dates being unknown to the Grand
17 Jury, in the Eastern District of California and elsewhere, defendant
18 SALYER and others known and unknown to the Grand Jury entered into
19 and engaged in a combination and conspiracy to suppress and
20 eliminate competition by increasing and fixing prices of processed
21 tomato products to be sold in the United States. The combination
22 and conspiracy engaged in by defendant SALYER and co-conspirators
23 was in unreasonable restraint of interstate trade and commerce in
24 violation of Section 1 of the Sherman Act (15 U.S.C. § 1).
25
26

27 The charged combination and conspiracy consisted of a
28 continuing agreement, understanding, and concert of action among

1 defendant SALYER and co-conspirators, the substantial terms of which
2 were:

3 a. to fix prices for the sale of processed tomato
4 products to ConAgra; and

5 b. to provide product and receive payment from ConAgra as
6 a result of the fixed prices.
7

8 I . MEANS AND METHODS OF THE CONSPIRACY

9 For the purpose of forming and carrying out the charged
10 combination and conspiracy, defendant SALYER and co-conspirators did
11 those things that they combined and conspired to do, including,
12 among other things:

13 a. participating in meetings, conversations, and
14 communications to discuss the prices of processed tomato products;

15 b. agreeing, during those meetings, conversations, and
16 communications, to increase and fix the prices of processed tomato
17 products to be sold to ConAgra, for use by ConAgra at facilities
18 located in the United States;

19 c. issuing price quotations to, and receiving payment
20 from, ConAgra in accordance with the agreements reached.
21

22 All in violation of Title 15, United States Code, Section 1.

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1 COUNT TEN: [15 U.S.C. § 1 - Price Fixing and Bid Rigging]

2 The Grand Jury further charges:

3 FREDERICK SCOTT SALYER,

4 defendant herein, as follows:

5 1. Paragraphs one and three of Count One and paragraphs five
6 through eight of Count Eight are realleged and incorporated herein,
7 as if fully set forth.
8

9 2. Beginning in or about January 2007, and continuing until
10 in or about April 2008, the exact dates being unknown to the Grand
11 Jury, in the Eastern District of California and elsewhere, defendant
12 SALYER and others known and unknown to the Grand Jury entered into
13 and engaged in a combination and conspiracy to suppress and
14 eliminate competition by fixing prices and rigging bids for the sale
15 of tomato paste to be sold in the United States. The combination
16 and conspiracy engaged in by defendant SALYER and co-conspirators
17 was in unreasonable restraint of interstate trade and commerce in
18 violation of Section 1 of the Sherman Act (15 U.S.C. § 1).
19

20 3. The charged combination and conspiracy consisted of a
21 continuing agreement, understanding, and concert of action among
22 defendant SALYER and co-conspirators, the substantial terms of which
23 were:

24 a. to allocate among defendant SALYER and co-conspirators
25 contracts for the sale of tomato paste to Kraft;

26 b. to fix prices for, and submit collusive,
27 noncompetitive, and rigged bids for contracts for the sale of tomato
28

1 paste to Kraft; and

2 c. to provide product and receive payment from Kraft as a
3 result of the price fixing and collusive bidding.

4 I. MEANS AND METHODS OF THE CONSPIRACY

5 4. For the purpose of forming and carrying out the charged
6 combination and conspiracy, defendant SALYER and co-conspirators did
7 those things that they combined and conspired to do, including,
8 among other things:
9

10 a. participating in meetings, conversations, and
11 communications to discuss the prices of processed tomato products
12 sold to Kraft;

13 b. agreeing, during those meetings, conversations, and
14 communications, to fix prices and submit collusive, noncompetitive,
15 and rigged bids for the sale of tomato paste to Kraft for use in
16 Kraft facilities located in the United States;

17 c. issuing bid quotations to, and receiving payment from,
18 Kraft in accordance with the agreements reached; and

19 d. bribing a purchasing agent for Kraft to obtain
20 confidential bid information in order to monitor compliance with the
21 agreements reached.
22

23 All in violation of Title 15, United States Code, Section 1.

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1 COUNT ELEVEN: [15 U.S.C. § 1 - Price Fixing]

2 The Grand Jury further charges:

3 FREDERICK SCOTT SALYER,

4 defendant herein, as follows:

5 1. Paragraphs one and three of Count One and paragraphs five
6 through eight of Count Eight are realleged and incorporated herein,
7 as if fully set forth.
8

9 2. Beginning in or about August 2005, and continuing until in
10 or about April 2008, the exact dates being unknown to the Grand
11 Jury, in the Eastern District of California and elsewhere, defendant
12 SALYER and others known and unknown to the Grand Jury entered into
13 and engaged in a combination and conspiracy to suppress and
14 eliminate competition by fixing prices of processed tomato products
15 to be sold in the United States. The combination and conspiracy
16 engaged in by defendant SALYER and co-conspirators was in
17 unreasonable restraint of interstate trade and commerce in violation
18 of Section 1 of the Sherman Act (15 U.S.C. § 1).
19

20 3. The charged combination and conspiracy consisted of a
21 continuing agreement, understanding, and concert of action among
22 defendant SALYER and co-conspirators, the substantial terms of which
23 were:

24 a. to fix prices by including certain charges in
25 contracts for the sale of processed tomato products; and
26

27 b. to provide product and receive payment from customers
28 as a result of the price fixing.

I . MEANS AND METHODS OF THE CONSPIRACY

1
2 4. For the purpose of forming and carrying out the charged
3 combination and conspiracy, defendant SALYER and co-conspirators did
4 those things that they combined and conspired to do, including,
5 among other things:

6 a. participating in meetings, conversations, and
7 communications to discuss adding a gas adjuster charge in contracts
8 for the sale of processed tomato products;
9

10 b. agreeing, during those meetings, conversations, and
11 communications, to include a gas adjuster charge as part of the
12 offer price to customers for processed tomato products to be
13 utilized by those customers at facilities located in the United
14 (States; and
15

16 c. entering into contracts in accordance with the
17 agreements reached.

18 All in violation of Title 15, United States Code, Section 1.

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1 COUNT TWELVE: [15 U.S.C. § 1 - Price Fixing]

2 The Grand Jury further charges:

3 FREDERICK SCOTT SALYER,

4 defendant herein, as follows:

5 1. Paragraphs one and three of Count One and paragraphs five
6 through eight of Count Eight are realleged and incorporated herein,
7 as if fully set forth.
8

9 2. Beginning in or about the fall of 2006, and continuing
10 until in or about April 2008, the exact dates being unknown to the
11 Grand Jury, in the Eastern District of California and elsewhere,
12 defendant SALYER and others known and unknown to the Grand Jury
13 entered into and engaged in a combination and conspiracy to suppress
14 and eliminate competition by fixing prices of processed tomato
15 products to be sold in the United States. The combination and
16 conspiracy engaged in by defendant SALYER and co-conspirators was in
17 unreasonable restraint of interstate trade and commerce in violation
18 of Section 1 of the Sherman Act (15 U.S.C. § 1).
19

20 3. The charged combination and conspiracy consisted of a
21 continuing agreement, understanding, and concert of action among
22 defendant SALYER and co-conspirators, the substantial terms of which
23 were:

24 a. to raise and fix prices for bin deposits in contracts
25 for the sale of processed tomato products; and
26

27 b. to provide product and receive payment from customers
28 as a result of the price fixing.

1 I . MEANS AND METHODS OF THE CONSPIRACY

2 4. For the purpose of forming and carrying out the charged
3 combination and conspiracy, defendant SALYER and coconspirators did
4 those things that they combined and conspired to do, including,
5 among other things:

6 a. participating in meetings, conversations, and
7 communications to discuss the prices of bin deposits for processed
8 tomato products;
9

10 b. agreeing, during those meetings, conversations, and
11 communications, to raise and fix prices of bin deposits at \$90 for
12 processed tomato products sold to customers in bins for use by those
13 customers at facilities located in the United States; and

14 c. issuing price quotations and receiving payment in
15 accordance with the agreements reached.
16

17 All in violation of Title 15, United States Code, Section 1.

18 FORFEITURE ALLEGATION: [Racketeering Forfeiture - 18 U.S.C. § 1963]

19 The Grand Jury further charges:

20 FREDERICK SCOTT SALYER,
21 defendant herein, as follows:

22 1. The allegations contained in Counts One and Two of this
23 Superseding Indictment are hereby repeated, realleged and
24 incorporated by reference herein, as though fully set forth at
25 length for the purpose of alleging forfeiture pursuant to Title 18,
26 United States Code, Section 1963, and Title 28, United States Code,
27 Section 2461 (c) .
28

1 2. Pursuant to Rule 32.2(a), Fed. R. Crim. P., defendant
2 SALYER is hereby notified that, upon conviction of either of the
3 violations of Title 18, United States Code, Section 1962, as charged
4 in Counts One and Two of this Superseding Indictment, the defendant
5 shall forfeit, pursuant to Title 18, United States Code, Section
6 1963:

7
8 a) all interests acquired and maintained in violation of
9 Title 18, United States Code, Section 1962;

10 b) all interests in, securities of, claims against, and
11 property and contractual rights of any kind affording a
12 source of influence over, the enterprise named and
13 described herein which the defendant established,
14 operated, controlled, conducted, and participated in the
15 conduct of, in violation of Title 18, United States Code,
16 Section 1962; and

17
18 c) all property constituting and derived from proceeds
19 obtained, directly and indirectly, from racketeering
20 activity in violation of Title 18, United States Code,
21 Section 1962.

22 The property subject to forfeiture to the United States
23 pursuant to Title 18, United States Code, Section 1963(a)(1),

24 (a) (2), and (a) (3), includes, but is not limited to, at least
25 \$8,800,000, said amount being the total of the interests acquired
26 and the gross proceeds obtained through the violations of Title 18,
27 United States Code, Section 1962.
28

1 3. Pursuant to Title 18, United States Code, Section 1963(m)
2 and Title 21, United States Code, Section 853(p), as incorporated by
3 28 U.S.C. § 2461(c), defendant shall forfeit substitute property up
4 to the value of the property described in the previous paragraph if
5 that property, as a result of any act or omission of the defendant:

- 6 a) cannot be located upon the exercise of due diligence;
7
8 b) has been transferred or sold to, or deposited with, a
9 third party;
10 c) has been placed beyond the jurisdiction of the Court;
11 d) has been substantially diminished in value; or
12 e) has been commingled with other property which cannot be
13 subdivided without difficulty.

14 All pursuant to Title 18, United States Code, Section 1963;
15 Title 28, United States Code, Section 2461(c); and Rule 32.2(a) of
16 the Federal Rules of Criminal Procedure.

17 FORFEITURE ALLEGATION: [Forfeiture - 18 U.S.C. § 981(a) (1) (C), 28
18 U.S.C. § 2461(c), 21 U.S.C. § 853]
19

20 The Grand Jury further charges:

21 FREDERICK SCOTT SALYER,
22 defendant herein, as follows:

23 1. The allegations contained in Counts Three Through Six of
24 this Superseding Indictment are hereby realleged and incorporated by
25 reference, as if fully set forth herein, for the purpose of alleging
26 forfeiture pursuant to Title 18, United States Code, Section
27 981(a) (1) (C), Title 28, United States Code, Section 2461(c), and
28

1 Title 21, United States Code, Section 853.

2 2. From in or about January 1998, continuously thereafter, up
3 to and including in or about April 2008, in the Eastern District of
4 California, the Northern District of California, and elsewhere,
5 defendant SALYER violated Title 18, United States Code, Section
6 1343, as alleged in Counts Three Through Six, respectively. Upon
7 conviction of any of Counts Three through Six, SALYER shall forfeit
8 to the United States pursuant to Title 18, United States Code,
9 Section 981(a)(1)(C), Title 28, United States Code, Section 2461(c),
10 and Title 21, United States Code, Section 853, the following:

12 a. All right, title, and interest in any and all
13 property, real or personal, which constitutes or is derived from
14 proceeds traceable to such offenses;

15 b. A sum of money equal to the total amount of proceeds
16 derived from each such offense for which defendant is convicted.

17 3. Pursuant to Title 21, United States Code, Section 853(p),
18 as incorporated by Title 28, United States Code, Section 2461(c),
19 defendant SALYER, if so convicted, shall forfeit substitute
20 property, up to the total value of the property described in
21 paragraph 2 (a) if, by any act or omission of the defendant, the
22 property described in paragraph 2 (a), or any portion thereof, (a)
23 cannot be located upon the exercise of due diligence; (b) has been
24 transferred or sold to, or deposited with, a third party; (c) has
25 been placed beyond the jurisdiction of the court; (d) has been
26 substantially diminished in value; or (e) has been commingled with
27
28

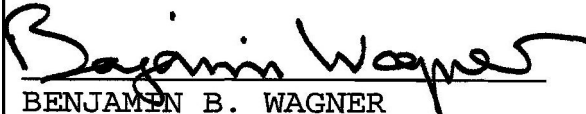
1 other property that cannot be divided without difficulty.

2 All pursuant to Title 18, United States Code, Section
3 981(a) (1) (C), Title 28, United States Code, Section 2461 (c), and
4 Title 21, United States Code, Section 853.
5

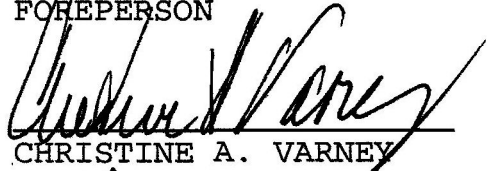
6
7 A TRUE BILL.

8 **/s/ Signature on file w/AUSA**

9 FOREPERSON

10 

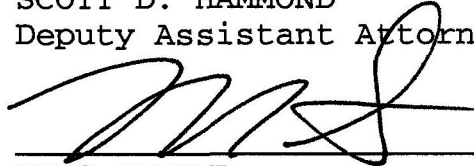
11 BENJAMIN B. WAGNER
12 United States Attorney

13 

14 CHRISTINE A. VARNEY
15 Assistant Attorney General

16 

17 SCOTT D. HAMMOND
18 Deputy Assistant Attorney General

19 

20 MARC SIEGEL
21 Director of Criminal Enforcement

22 

23 BARBARA J. NELSON
24 Trial Attorney
25 Antitrust Division
26
27
28