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United States of America

v.

Daniel Kilgore, defendant

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U.S. District Court
Middle District of Georgia

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA	:	CASE NO. 1:13-CR-7-WLS
	:	
v.	:	VIOLATIONS:
	:	21 U.S.C. §§ 331(a) & 333(a)(2)
DANIEL KILGORE,	:	18 U.S.C. § 1349
	:	18 U.S.C. § 1343
Defendant.	:	18 U.S.C. § 1341
	:	18 U.S.C. § 371
	:	18 U.S.C. § 2

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

GENERAL ALLEGATIONS

At times relevant to this Information:

1. Peanut Corporation of America ("PCA") was a business incorporated in the State of Georgia that maintained places of business in Lynchburg, Virginia ("PCA Lynchburg"); Blakely, Georgia ("PCA Blakely"), which is located in the Albany Division of the Middle District of Georgia; Plainview, Texas ("PCA Plainview"); and Suffolk, Virginia ("PCA Suffolk").

2. On or about February 15, 2001, a peanut production facility doing business as Casey's Food Products, Inc. in Blakely, Georgia, changed its name to Peanut Corporation of America, a business incorporated in Georgia, and PERSON #1 of Lynchburg, Virginia, became an

owner and President of PCA. PCA, a peanut processor and manufacturer, was in the business of producing blanched peanuts, roasted peanuts, granulated (*i.e.*, chopped) peanuts, peanut butter and peanut paste (collectively “peanut products”) for sale to food product manufacturers, pet food manufacturers, food service distributors and marketers and retail outlets. The food production was done at PCA Blakely, which produced roasted peanuts, granulated peanuts, peanut butter, and peanut paste; PCA Plainview, which produced roasted peanuts and granulated peanuts; and PCA Suffolk, which produced blanched peanuts. PCA Lynchburg was the company’s headquarters, with offices operating out of the home of PERSON #1. PCA was a legal entity that was engaged in, and whose activities affected, interstate and foreign commerce. In the last full fiscal year in which PCA did business (October 2007 through September 2008), gross sales generated by PCA Blakely, PCA Suffolk, and PCA Plainview totaled approximately \$30 million.

3. P.P. Sales, Inc. (“P.P. Sales”) was a Lynchburg, Virginia, based business incorporated in Virginia in or about May 2001, that provided the services of a food broker to producers, manufacturers, and purchasers of food. Food brokers are independent sales agents who negotiate sales for producers, manufacturers, and purchasers of food.

4. PERSON #1 was an owner and President of PCA and served as PCA’s primary leader and decision maker. PERSON #1 traveled to PCA Blakely, PCA Plainview and PCA Suffolk to meet with plant management and employees and to supervise food production. PERSON #1 was familiar with all aspects of PCA’s food production, including blanching peanuts, roasting peanuts, granulating peanuts, and producing peanut butter and peanut paste at all three PCA food production facilities. PERSON #1 was a supervisor, advisor and director of PCA, giving direction to, and receiving reports regarding PCA’s food production, manufacturing,

microbiological testing and transportation, both directly and indirectly, from others, including the Defendant, **DANIEL KILGORE**.

5. PERSON #2 was the Vice President and principal decision maker of P.P. Sales. PERSON #2, the brother of PERSON #1, worked on behalf of PCA as a food broker. PERSON #2 oversaw the negotiation and execution of contracts for the purchase of peanut products from PCA, including contracts for the purchase of PCA peanut paste by Customer #1. PERSON #2 was a supervisor, advisor and director of PCA, giving direction to and receiving reports regarding PCA's production, manufacturing, microbiological testing and transportation of peanut paste from others, including the Defendant, **DANIEL KILGORE**. PERSON #2 was frequently present at PCA Blakely, where Customer #1's peanut paste was produced and manufactured, managing and supervising the peanut paste production and the shipping by commercial carrier of the peanut paste to Customer #1's production facility in Cary, North Carolina.

6. Defendant **DANIEL KILGORE** was the PCA Blakely Operations Manager from in or about June 2002 through May 2008. **DANIEL KILGORE** was responsible for PCA Blakely plant operations, and he reported directly to and was directly supervised by PERSON #1. **DANIEL KILGORE** supervised personnel and managed the production, microbiological testing, packaging and transportation of food produced at PCA Blakely.

7. PERSON #3 was the PCA Blakely Operations Manager from on or about July 2008 through February 2009. PERSON #3 was responsible for PCA Blakely plant operations, and he reported directly to and was directly supervised by PERSON #1. PERSON #3 supervised personnel and managed the production, microbiological testing, packaging and transportation of food produced at PCA Blakely.

8. PERSON #4 was employed in various capacities at PCA Blakely from in or about April 2002 through February 2009. PERSON #4 began work at PCA Blakely as a receptionist. She was eventually promoted to Office Manager, and later promoted to Quality Assurance Manager, in or about March 2008. As Quality Assurance Manager, she was responsible for managing and overseeing the quality assurance operations at PCA Blakely.

9. PERSON #5 was the PCA Blakely Quality Assurance Manager from on or about May 2003 through November 2007. As Quality Assurance Manager, he was responsible for managing and overseeing the quality assurance operations at PCA Blakely.

10. PERSON #6 was the PCA National Sales Manager, based out of the PCA Lynchburg office, from in or about May 2005 through December 2008. Prior to May 2005, PERSON #6 worked for PCA intermittently, assisting as needed from as early as May 2003. As National Sales Manager, he was responsible for the selling, planning, ordering, merchandising and distribution of PCA food products from all PCA food production facilities.

11. PERSON #7 was the PCA Blakely Production Manager or interim Operations Manager from in or about February 2001 through November 2008. As Production Manager, PERSON #7 was responsible for PCA Blakely food production operations and he reported directly to and was supervised by the Operations Manager. During June and July of 2008, PERSON #7 was the interim Operations Manager, where he was responsible for PCA Blakely plant operations, and he reported directly to and was directly supervised by PERSON #1.

12. PERSON #8 was the PCA Plainview Operations Manager from on or about May 2007 through February 2009. He was responsible for PCA Plainview plant operations and he reported directly to and was directly supervised by PERSON #1.

Customers

13. PCA sold peanut products to hundreds of customers. Those customers ranged in size from small, family-owned businesses, to global, multibillion-dollar food companies. Among those customers were the following:

- a) Customer #1 was a multinational food products company with its principal place of business in Battle Creek, Michigan. Customer #1 purchased peanut paste from PCA. PCA Blakely shipped peanut paste to Customer #1's production facility located in Cary, North Carolina.
- b) Customer #2 was a multinational manufacturer, seller and distributor of food products containing peanuts with its principal place of business in Solon, Ohio. Customer #2 purchased peanut products from PCA. PCA Blakely shipped peanut products to Customer #2's production facility located in Solon, Ohio.
- c) Customer #3 was a national manufacturer, seller and distributor of dairy food products containing peanuts with its principal place of business in Lexington, Kentucky. Customer #3 purchased peanut products from PCA. PCA Blakely shipped peanut products to Customer #3's production facility located in Greensboro, Alabama.
- d) Customer #4 was a national wholesale food distributor specializing in nuts, dried fruits, candy, chocolate, and snack mixes with its principal place of business in Hollywood, Florida. Customer #4 purchased peanut products from PCA. PCA Blakely shipped peanut products to Customer #4's production facility located in Hollywood, Florida.

- e) Customer #5 was a national manufacturer, seller and distributor of dairy food products containing peanuts with its principal place of business in Dunkirk, New York. Customer #5 purchased peanut products from PCA. PCA Blakely shipped peanut products to Customer #5's production facility located in Dunkirk, New York.
- f) Customer #6 was a national manufacturer, seller and distributor of food products containing peanuts with its principal place of business in Cincinnati, Ohio. Customer #6 purchased peanut products from PCA. PCA Blakely shipped peanut products to Customer #6's production facility located in Murray, Kentucky.
- g) Customer #7 was a national wholesale and retail food distributor specializing in nut products, with its principal place of business in Cambridge, Massachusetts. Customer #7 purchased peanut products from PCA. PCA Blakely shipped peanut products to Customer #7's production facility located Cambridge, Massachusetts.
- h) Customer #8 was a national manufacturer of baked cookies containing peanuts with its principal place of business in Downers Grove, Illinois. Customer #8 purchased peanut products from PCA. PCA Blakely shipped peanut products to Customer #8's production facility located in Ogden, Utah and South Beloit, Illinois.
- i) Customer #9 was a national food redistributor of food products, including peanuts, with its principal place of business in Mt. Sterling, Illinois. Customer

#9 purchased peanut products from PCA. PCA Blakely shipped peanut products to Customer #9's production facility located in Mt. Sterling, Illinois.

j) Customer #10 was a national producer of peanut-coated caramel apples with its principal place of business in Washington, Missouri. Customer #10 purchased peanut products from PCA. PCA Blakely shipped peanut products to Customer #10's production facility located in Washington, Missouri.

k) Customer #11 was a national producer of specialty pet food containing peanut paste with its principal place of business in Battle Creek, Michigan. Customer #11 purchased peanut paste from PCA. PCA Blakely shipped peanut paste to Customer #11's production facility located in Ogden, Utah.

14. As a result of receiving from PCA adulterated and misbranded product and fraudulent paperwork associated with such product, PCA's customers incurred monetary losses.

Peanut types

15. There are four basic types of peanuts: Virginia, Runner, Spanish and Valencia. All four types of peanuts are grown in the United States. Various types of peanuts are also grown in countries worldwide, including China, Mexico and Argentina. The prices for peanuts are based on a variety of factors, including peanut size and type. Peanuts, although commonly considered a "nut," are actually a legume, a type of bean plant. Unlike a true nut, which grows on trees, peanut plants produce a pod that grows on or in the ground. Within the pod is the "nut" that people commonly associate with peanuts.

Peanut processing and production

16. Peanut blanching is the process whereby the peanut skin is removed, leaving the

raw peanut for further processing, such as oil roasting or dry roasting. Because peanuts are grown on or in the ground, raw peanuts (*i.e.*, peanuts that have not been roasted) may contain pathogenic bacteria, including salmonella. Proper roasting of raw peanuts at an adequate temperature and for an adequate amount of time is a critical stage in peanut processing. The sustained heat from the roaster operates as a “kill step” necessary to eradicate salmonella and other pathogenic bacteria that may be present on the peanuts. Dry roasting of peanuts is a process in which the raw peanuts are placed in an oven, usually on a conveyer belt that travels through the oven, for a specific time at a specific temperature sufficient to cook the peanuts. Oil roasting of peanuts is a process in which the raw peanuts are placed in a container of hot oil for a specific time at a specific temperature sufficient to cook the peanuts.

17. A peanut blanching facility, such as PCA Suffolk, will blanch the peanuts and then send the blanched raw peanuts to peanut roasting facilities. At peanut roasting facilities, such as PCA Blakely and PCA Plainview, the raw peanuts are roasted by either oil or dry roasting. After roasting, the peanuts may be left whole, or they may be processed into chopped peanuts of various sizes. The smallest size of chopped peanuts is called peanut meal, which is finely ground, roasted peanuts. To manufacture peanut paste, the roasted peanut meal is ground even further, until it forms a paste. Peanut paste can be further processed into peanut butter by adding other ingredients, such as oil and salt (to make typical store-bought peanut butter) or chopped nuts (to make crunchy peanut butter). When no additional ingredients are added to peanut paste, it is sometimes referred to as creamy natural peanut butter. The peanut products are processed in batches described as “lots,” with an assigned number.

Sanitary Peanut Product Production and Salmonella

18. The safe production and manufacture of peanut products requires peanut producers and manufacturers, such as PCA, to follow appropriate practices to ensure their production facilities are sanitary and to prevent contamination by foodborne pathogens. Salmonella is one type of foodborne pathogen that peanut processors and manufacturers must prevent from being present in their peanut products. Some such appropriate practices include, but are not limited to:

- a) No outside water, such as rain, which can transport salmonella and other pathogens, should enter the facility;
- b) The peanut roasting process must be validated to ensure that the time and temperature combination will result in an adequate and predictable reduction of target microorganisms, such as salmonella;
- c) Within the production facility, airflow should be controlled so that salmonella and other pathogenic bacteria are not carried from raw peanut storage areas into areas containing roasted peanuts;
- d) Rodents and insects, which can transport salmonella and other pathogens, should be prevented from entering and remaining in the facility;
- e) A regular schedule for cleaning and sanitation should be implemented to prevent the growth of salmonella and other bacterial pathogens in all areas of the facility; and
- f) The regular testing of surface areas in the production facilities (commonly described as “environmental testing”) by wiping the surface areas with swabs

and testing the swabs for the presence pathogens, including salmonella, should be conducted.

19. Salmonella is a bacterium that can be present in, and introduced from, many sources, including water, soil, animals, animal feces, and insects. People typically ingest salmonella through food. When ingested, salmonella can cause a disease called salmonellosis. Salmonellosis is a bacterial infection of the intestinal tract, the symptoms of which include diarrhea, abdominal cramps, fever, chills, headache, nausea, and vomiting. Salmonella infections can be life-threatening, especially for infants and young children, pregnant women and their unborn babies, older adults, and other persons with weakened immune systems.

Testing for Foodborne Pathogens

20. Peanut processors and manufacturers can have their peanut products tested for the presence of foodborne pathogens, such as salmonella, in an effort to determine if their peanut products are safe for consumption by people.

21. PCA officials represented to their customers that they tested their peanut products for salmonella and other foodborne pathogens. PCA peanut product samples were sent to Laboratory #1, with a principal place of business in Albany, Georgia, and Laboratory #2, with a principal place of business in Lincolnshire, Illinois, for laboratory testing for the presence of foodborne pathogens.

22. Laboratories test finished product samples for salmonella in the following manner: Upon receipt of a product sample from a peanut producer or manufacturer, the laboratory conducts testing of the sample and, within approximately 48 hours of receipt of the sample, the laboratory reports to the peanut producer or manufacturer a result of either negative (*i.e.*, testing failed to

detect salmonella) or “presumptive positive.” A presumptive positive result means that there is a possibility that salmonella is present in the sample, and further testing is required to confirm or refute the initial result. The laboratory then conducts confirmational testing on the same sample, which takes two days longer. The laboratory reports the confirmed result to the peanut producer or manufacturer. If the laboratory testing results are a confirmed positive for salmonella, the peanut producer or manufacturer should then take corrective actions to determine the source of the salmonella and to eliminate it. If the peanut product has already been shipped to the customer when the salmonella confirmed positive test results are received, the peanut producer or manufacturer must inform the customer in order to prevent salmonella contamination of the food supply and sickening people who consume the affected peanut products.

23. A negative test result does not guarantee that the entire lot of product from which the sample was taken is free of salmonella, only that the portion of the sample tested is free of salmonella. Testing screens only a small sampling of the total product manufactured. Because salmonella is not homogeneous or pervasive throughout a food product, a sample taken from an uncontaminated portion of a production lot would not detect pockets of salmonella in the other portions of the same production.

24. In addition to testing for salmonella, the laboratories also test for the presence of coliforms. Coliforms are a type of bacteria commonly used as a bacterial indicator of the sanitary quality of foods. While coliforms themselves are not normally the cause of serious illness, their presence is used to gauge whether other pathogenic organisms of fecal origin may be present. Fecal pathogens include bacteria, viruses, protozoa and many multicellular parasites. A test

result showing high levels of coliforms is an indication that insanitary conditions may be present in the production facility.

Customers' Product Specifications

25. Many PCA customers required that the products they purchased meet certain product specifications (commonly referred to as "specs"). These specifications stated the acceptance criteria for the microbiological properties of the products they received. For example, some customers' specifications required that coliforms measured at less than 10 cfu/g¹. Such microbiological specifications required that the products tested negative for salmonella. The specifications also addressed other requirements, such as the type and size of peanut to be used in the production of the products, the manner in which the products must be manufactured, labeled and packaged, and the chemical and physical properties of the products. PCA routinely issued Certificates of Analysis ("COAs") to its customers. These COAs certified that the products met the customer's specified requirements. For those customers that did not have written specifications, PCA maintained its own specifications for the products it manufactured and sold, and PCA represented to those customers that the products conformed to PCA's specifications.

Guarantees of Food Quality

26. PCA's customers relied on various representations by PCA about the purity of its product. Some customers required COAs from PCA that reported the results of microbiological testing of PCA's peanut products; these COAs certified that the particular production lot of peanut products had tested, among other things, negative for salmonella and within acceptable limits for coliforms. Customers were not given the actual test report that PCA received from the laboratory. Instead, PCA received the test results from Laboratories #1 and #2 and transferred the test results

¹ Colony-forming units per gram.

to a COA with PCA's letterhead. PCA provided its COA to the customer by one of two methods: (1) including the COA with the peanut product bill of lading, which accompanied the shipment; or (2) sending the COA by fax or email. Some customers required a Continuing Pure Food Guarantee, in which PCA certified that "any articles shipped [to the customer] . . . were manufactured in accordance with good manufacturing practice . . . and were free of any foreign materials, or any substances which are poisonous, pathogenic, unlawful, toxic or in any way injurious." Apart from any written guarantees, all customers expected that PCA would provide safe peanut products fit for consumption by people, and that it would not ship salmonella-contaminated product or withhold information about salmonella contamination or high coliform levels.

FDA Inspection of PCA Blakely

27. In or about November 2008, various State Departments of Health, the United States Centers for Disease Control and Prevention ("CDC"), and the United States Food and Drug Administration ("FDA") began an investigation based on findings that peanut products in several locations throughout the United States were contaminated with salmonella. During the investigation, it was determined that PCA Blakely was the likely source of salmonella contamination in the peanut products. On January 9, 2009, FDA inspectors arrived at PCA Blakely to conduct an inspection of the premises, review documents, and interview PCA employees, including PERSON #1, PERSON #3, and PERSON #4, as authorized by the Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. § 301 et. seq.

COUNT 1
(Conspiracy: 18 U.S.C. § 1349)

Paragraphs 1-27 of this Information are hereby realleged and incorporated by reference as if set forth in full herein. Beginning on or about a date prior to June 2003, the exact date being unknown to the United States Attorney, and continuing through on or about February 2009, in the Albany Division of the Middle District of Georgia, and elsewhere within the jurisdiction of the Court, the defendant,

DANIEL KILGORE,

did knowingly and willfully combine, conspire, confederate and agree with others both known and unknown to the United States Attorney, to commit offenses against the United States, that is:

- a. to knowingly and willfully devise a scheme to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing and attempting to execute that scheme, deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, in violation of Title 18, United States Code, Section 1341; and
- b. to knowingly and willfully devise a scheme to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing that scheme, transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, in violation of Title 18, United States Code, Section 1343.

OBJECT OF THE CONSPIRACY

The object of the conspiracy was to defraud PCA's customers and to obtain money by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS OF THE CONSPIRACY

Among the manner and means by which the defendant and others conducted, participated, and assisted in the affairs of the business and the schemes to defraud were the following:

28. It was part of the conspiracy that the defendant and others shipped and caused to be shipped peanut products before receiving the results of microbiological testing performed on said products. Upon receipt of the results of said testing indicating that the products were confirmed positive for, and therefore contaminated and adulterated by, salmonella, or that the products otherwise were not within acceptable microbiological specifications, the defendant and others deceived their customers by failing to inform their customers of the test results, leading their customers to believe that the products they received were safe and within specifications, when in fact they were not.

29. It was further part of the conspiracy that the defendant and others shipped and caused to be shipped peanut products after having received the results of microbiological testing performed on said products indicating that the products were confirmed positive for, and therefore contaminated and adulterated by, salmonella, or that the products otherwise were not within acceptable microbiological specifications. The defendant and others deceived their customers by shipping said products with knowledge of said test results, and by failing to inform those customers of said test results, leading their customers to believe that the products they received were safe and within specifications, when in fact they were not.

30. It was further part of the conspiracy that the defendant and others, when shipping and causing to be shipped peanut products before receiving the results of microbiological testing performed on said products, sent and caused to be sent to their customers false and misleading COAs. Said COAs were false and misleading in that they contained microbiological test results from previously manufactured lots of peanut products, contained incomplete test results, or were otherwise false and fictitious. The defendant and others deceived their customers by leading them to believe that the results on the COA were from testing conducted on the products they received, when in fact they were not. The defendant and others deceived their customers by leading them to believe that the products they received were safe and within specifications, when in fact it had not yet been determined whether the products were safe and within specifications. Upon receipt of the results of the actual testing indicating that the products were confirmed positive for and therefore contaminated and adulterated by salmonella, or that the products otherwise were not within acceptable microbiological specifications, the defendant and others further deceived their customers by failing to inform their customers of the test results.

31. It was further part of the conspiracy that the defendant and others shipped and caused to be shipped peanut products without ever submitting a sample from said lot for microbiological testing by a laboratory, despite customers' specifications requiring such testing. The defendant and others sent and caused to be sent to their customers false and misleading COAs. Said COAs were false and misleading in that they contained microbiological test results from previously manufactured lots of peanut products or were otherwise false and fictitious. The defendant and others deceived their customers by leading them to believe that the results on the COA were complete results from testing conducted on the products they received, when in fact the

products they received had never been, and never were, tested at all. The defendant and others further deceived their customers by leading them to believe that the products they received were safe and within microbiological specifications, when in fact it was unknown whether the products were safe and within microbiological specifications.

32. It was further part of the conspiracy that the defendant and others, upon learning that a particular lot of peanut products had tested confirmed positive for salmonella or was otherwise not within microbiological specifications, directed that the lot be retested, either by the same or a different laboratory. If the lot retested negative for salmonella and was otherwise within specifications, the defendant and others sent and caused to be sent to their customers COAs containing the results of the retest only. The defendant and others deceived their customers by failing to inform them that the lot had previously tested confirmed positive for salmonella. In explaining delays to their customers, the defendant and others provided a variety of misleading reasons. On at least one occasion a customer was informed that a delay in testing was caused by an “inconclusive” test result, when in truth and fact, the defendant and others knew that PCA had received a conclusive test result indicating that the lot was confirmed positive for salmonella.

33. It was further part of the conspiracy that the defendant and others made false statements to their customers about the presence of salmonella in the PCA Blakely plant environment and in the products manufactured at the PCA Blakely plant, claiming that there had never been even a trace of a salmonella problem, when, in truth and fact, salmonella had previously been detected in the plant, and salmonella had been detected in the products manufactured there on numerous occasions every year dating back to 2003.

34. It was further a part of the conspiracy that the defendant and others shipped and

caused to be shipped peanut products to their customers, falsely representing to their customers that the products had been manufactured at the plant from which they were shipped, when in fact the products had been manufactured at a plant which had not been approved by the customers to be a supplier of said products.

35. It was further a part of the conspiracy that the defendant and others, without their customers' knowledge and consent, shipped and caused to be shipped peanut products different from the peanut products ordered or specified by the customers, or which otherwise did not meet the customer's specifications. For example, a customer whose specifications required that its product be made from peanuts grown in America received substituted product made from peanuts grown in a foreign country.

36. It was further a part of the conspiracy that the defendant and others, without their customers' knowledge and consent, shipped and caused to be shipped peanut products which had previously been rejected because they did not meet the customers' specifications or were otherwise of substandard quality.

37. It was further part of the conspiracy that the defendant and others represented PCA in a company brochure to be "The Processor of the World's Finest Peanut Products," with "a remarkable Food-Safety record, developed in an environment committed to continuous training and state-of-the-art Food Safety techniques"; however, the defendant and others produced and caused to be produced peanut products under the following insanitary conditions, which they knew were conducive to salmonella contamination, including, but not limited to, the following:

- a) Roof leaks were not adequately repaired;
- b) Roasting conditions were never properly validated to ensure that the time and

temperature combination was adequate to perform the necessary kill step for foodborne pathogens;

- c) Adequate measures were not taken to prevent rodent and insect infestation;
- d) Adequate measures were not taken to prevent possible cross contamination between raw and finished product after the roasting process;
- e) Environmental testing (swabbing selected areas of the plant and submitting the swabs for microbiological testing) was rarely performed; and
- f) Proper cleaning and sanitation procedures were not followed.

Despite warnings from industry experts, the defendant and others continued to produce and caused to be produced peanut products under the above conditions. The numerous tests which were confirmed positive for salmonella were consistent with these manufacturing conditions, but the defendant and others concealed those results from their customers, failed to correct the causes of the salmonella contamination, and continued manufacturing and selling their products under the same conditions.

38. It was further part of the conspiracy that the defendant and others, with respect to Customer #1, purposefully devised and implemented product testing procedures which, when fully implemented, the defendant and others knew would result in: (i) every shipment of product to Customer #1 being accompanied by a false and misleading COA; and (ii) the majority of the product shipped to Customer #1 never being submitted for microbiological testing at all.

- a) The primary product purchased by Customer #1 was peanut paste, which is ground roasted peanuts produced in bulk quantity with no additives, also known as creamy natural peanut butter when produced in smaller quantities. Customer #1 used the paste as

an ingredient in peanut butter crackers. The paste was shipped to Customer #1 in specialized tanker trucks owned by P.P. Sales. A tanker truck had a holding capacity of approximately 44,000 pounds of paste. PCA Blakely shipped to Customer #1 approximately two to three tanker truckloads of paste per week.

b) Customer #1 required that its paste meet certain microbiological specifications. Therefore, each lot of paste received by Customer #1 had to include a COA from PCA containing the results of the testing performed on that lot, and those results had to be within Customer #1's specifications or the lot would be rejected and sent back to PCA Blakely. Proper testing procedure required PCA to take a sample from the finished lot of paste, identify the sample by its lot number, and send that sample to a laboratory for the required testing, which took approximately two days to complete. Upon completion of testing, the lab issued a report containing the test results and the identifying sample number. If the test results were within specifications, proper procedure required that PCA transfer the results from the lab report to its own COA, and then ship the tanker truckload of paste to Customer #1 accompanied by the COA.

c) However, instead of following the procedure described in paragraph (b), above, the defendant and others, soon after acquiring Customer #1's business for peanut paste, shipped and caused to be shipped the peanut paste to Customer #1 as soon as it had been produced. In order to meet the production demands of Customer #1, the defendant and others shipped and caused to be shipped the loads of paste, either before the test results had been received, or without even testing the loads at all, and each shipment included a false COA containing the test results from a previously manufactured lot of paste.

d) The scheme also included taking several samples from the same lot of paste. However, these samples were not identified by the lot number of the load of paste from which they were taken and which was actually being shipped to Customer #1. Instead, the samples were assigned numbers to correspond with lots to be produced in the near future. For example, four samples were taken from lot number 8028, which was shipped to Customer #1 on January 26, 2008. These samples were sent to the lab identified as sample numbers 8032, 8036, 8037, and 8038. A separate lab report was generated for each sample number. Sample numbers 8032, 8037, and 8038 tested within specifications. Therefore, there were three “clean” reports already in hand from which to generate COAs for three upcoming lots of paste to be produced in the near future. Truckloads of peanut paste with those assigned lot numbers were in fact shipped to Customer #1 on January 31, February 4, and February 6, 2008. In this manner, if anyone ever questioned the validity or accuracy of the COA issued to Customer #1, there would be a fraudulent corresponding laboratory report that could be produced to support it. Sample number 8036 did not test within specifications. It tested confirmed positive for salmonella. Therefore, the defendant and others simply did not assign that number to a future lot. They skipped that number in production. However, the actual lot from which the sample was taken, 8028, which was contaminated with salmonella, had already been shipped to Customer #1. Defendant and others did not inform Customer #1 that the product it had received was contaminated with salmonella.

e) Sending several samples from the same lot increased the chances that at least one of those samples would test within specifications. Also, because one lot could

generate several “clean” reports, many lots were never tested at all. Of the approximately 118 lots of peanut paste shipped to Customer #1 in 2008 and 2009, approximately 74, or 63%, were never tested.

f) It was further part of the conspiracy that the defendant and others shipped and caused to be shipped substituted product to Customer #1, without Customer #1’s knowledge and consent. Customer #1’s ingredient specifications required that the peanut paste be produced from peanuts grown in the United States. PCA had provided a written certification to Customer #1 which stated: “Peanut Corporation of America certifies that all products produced at this facility are grown in the USA unless customers require peanuts that have been produced from a different origin.” Despite this requirement, the defendant and others bought Mexican peanut paste in bulk quantities from a company in Mexico. This company was not an approved manufacturing facility for Customer #1. The Mexican paste was blended into Customer #1’s paste, which was manufactured at PCA Blakely, often times at a ratio of approximately 50%. Also, the defendant and others often used peanuts grown in Argentina to produce peanut paste for Customer #1. Of the approximately 118 lots of peanut paste shipped to Customer #1 during 2008 and 2009, approximately 81, or 69%, contained Mexican paste or paste made from Argentine peanuts.

All in violation of Title 18, United States Code, Sections 1349 and 2.

COUNT 2
(Conspiracy: 18 U.S.C. § 371)

Paragraphs 1-27 of the General Allegations to this Information are hereby realleged and incorporated by reference as if set forth in full herein. Beginning on or about a date prior to June 2003, the exact date being unknown to the United States Attorney, and continuing through on or about February 2009, in the Albany Division of the Middle District of Georgia, and elsewhere within the jurisdiction of the Court, the defendant,

DANIEL KILGORE,

did knowingly and willfully combine, conspire, confederate and agree with others both known and unknown to the United States Attorney, to commit offenses against the United States, that is, to introduce and deliver for introduction into interstate commerce, with intent to defraud and mislead, food that was adulterated and misbranded, in violation of Title 21, United States Code, Sections 331(a) and 333(a)(2).

OBJECT OF THE CONSPIRACY

The object of the conspiracy was to defraud PCA's customers and to obtain money by means of false and fraudulent pretenses, representations and promises.

The manner and means of said conspiracy are alleged in paragraphs 28-38 above and are hereby realleged and incorporated herein by reference as if set forth in full herein.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects of the conspiracy, the following overt acts, among others, were committed:

1. On or about June 19, 2003, PERSON #6, without the knowledge and consent of the

customer², via fax, instructed **DANIEL KILGORE** that “when shipping [to the customer], please substitute from now on . . . Chinese Extra Large in place of Blanched Jumbo Runners.”

PERSON #6 noted on the fax that his instructions were “per [PERSON #1].”

2. On or about September 15, 2004, PERSON #1 and **DANIEL KILGORE** shipped and caused to be shipped peanut products to Customer #10 before receiving the results of microbiological laboratory testing conducted on said products. On September 20, 2004, PCA received the results of said laboratory testing which indicated that the products were confirmed positive for salmonella. Neither PERSON #1, **DANIEL KILGORE**, nor others notified Customer #10 that the products it had received had tested confirmed positive for salmonella.

3. On or about June 29, 2005, PERSON #1 and **DANIEL KILGORE** shipped and caused to be shipped peanut products to Customer #9 before receiving the results of microbiological laboratory testing conducted on said products. On July 5, 2005, PCA received the results of said laboratory testing which indicated that the products were confirmed positive for salmonella. Neither PERSON #1, **DANIEL KILGORE**, nor others notified Customer #9 that the products it had received had tested confirmed positive for salmonella.

4. On or about July 8, 2005, PERSON #1 and **DANIEL KILGORE** shipped and caused to be shipped peanut products to Customer #9 after having been notified on July 5, 2005, that said products had tested confirmed positive for salmonella, and without notifying Customer #9 of said test results.

5. On or about July 15, 2005, PERSON #1 and **DANIEL KILGORE** shipped and caused to be shipped peanut products to Customer #9 after having been notified on July 5, 2005 that said products had tested confirmed positive for salmonella, and without notifying Customer

² References to customers without a specific identifying number are customers of PCA other than those specifically identified as Customers #1-11 above.

#9 of said test results.

6. On or about August 12, 2005, PERSON #1 and DANIEL KILGORE shipped and caused to be shipped peanut products to Customer #9 before receiving the results of microbiological laboratory testing conducted on said products. On August 13, 2005, PCA received the results of said laboratory testing which indicated that the products were positive for salmonella. Neither PERSON #1, DANIEL KILGORE, nor others notified Customer #9 that the products it had received had tested confirmed positive for salmonella.

7. On or about a date prior to August 14, 2006, the exact date being unknown to the United States Attorney, PERSON #1 instructed the operations manager of PCA Plainview to fill a customer's order for 44,000 pounds of organic Valencia peanuts with 50% Valencia peanuts and 50% Spanish Peanuts.

8. On or about September 7, 2006, PERSON #1 and DANIEL KILGORE shipped and caused to be shipped peanut products to a customer before receiving the results of microbiological laboratory testing conducted on said products. Said shipment was accompanied by a false COA which contained microbiological test results from a previously manufactured lot of peanut products.

9. On or about September 18, 2006, PERSON #1 and DANIEL KILGORE shipped and caused to be shipped peanut products to Customer #2 before receiving the results of microbiological laboratory testing conducted on said products. On September 21, 2006, PCA received the results of said laboratory testing which indicated that the products were confirmed positive for salmonella. Neither PERSON #1, DANIEL KILGORE, nor others notified Customer #2 that the products it had received had tested confirmed positive for salmonella.

10. On or about September 20, 2006, PERSON #1 and DANIEL KILGORE shipped and caused to be shipped peanut products to Customer #2 before receiving the results of microbiological laboratory testing conducted on said products. On September 21, 2006, PCA received the results of said laboratory testing which indicated that the products were confirmed positive for salmonella. Neither PERSON #1, DANIEL KILGORE, nor others notified Customer #2 that the products it had received had tested confirmed positive for salmonella.

11. On October 5, 2006, after having been notified by a customer that the products it had received from PCA (from the September 7, 2006, shipment referenced in paragraph 8, above) had tested confirmed positive for salmonella, PERSON #1 falsely stated to said customer, via email: "I am dumbfounded by what you have found. It is the first time in my over 26 years in the peanut business that I have ever seen any instance of this. We run Certificates of Analysis EVERY DAY with tests for Salmonella and have not found any instances of **any**, even traces, of a Salmonella problem." (emphasis in original).

12. On November 16, 2006, in response to a question from PERSON #1 about another company's practices regarding issuing COAs to customers, PERSON #2 stated that PCA could provide fictitious COAs to its customers. Via email to PERSON #1, PERSON #2 stated: "Truthfully if a customer called and needed one [a COA] that was for say 2 pallets or so they [the company] would create one. Most of the time smaller people will accept one produced with your company heading on it that looked professionally done. The girl in TX was very good at white-out." On or about November 16, 2006, PERSON #1 forwarded said email to DANIEL KILGORE and instructed him "to track our COA costing over the next couple of months..."

13. On or about March 2-3, 2007, PERSON #2 recommended and DANIEL

KILGORE directed that the operations manager of PCA Plainview “rebox” forty cases of product, which had been manufactured in Blakely, in packaging and labeling to make it appear to the customer that the product had been manufactured in Plainview. **PERSON #2** stated, via email: “I would recommend having Plainview rebox the product with a production label of Monday and a COA that shows the lot number that matches. The COA would need to be dated on Tuesday or whatever to make sure everything shows Monday as a production date.” **DANIEL KILGORE** forwarded said email to the operations manager of PCA Plainview, with the following instructions: “The product, forty cases, should be to you on Tuesday and will need to be ‘re-boxed’ in your packaging with your labels.”

14. On or about March 8, 2007, via email to a customer, **PERSON #1** falsely stated: “We still have in our possession retained samples of that lot [the lot of peanut products shipped on September 7, 2006, referenced in paragraph 8, above, which had tested confirmed positive for salmonella during testing performed after delivery of the product to the customer] that we have run countless tests and show absolutely no evidence of Salmonella. As well our Pathogen monitoring and ‘Swab Testing’ in our plant has shown no evidence of any place Salmonella could have been introduced into our product.” In truth and fact, testing of returned and retained samples of said product indicated that the product was in fact confirmed positive for salmonella, and an environmental swab sample from inside PCA’s plant had tested confirmed positive for salmonella.

15. On or about March 14, 2007, via email to a customer, **PERSON #1** falsely stated: “We have done and always have done very, very thorough testing on all peanuts, especially Organic, that we process for any customer of ours. Every peanut that we have shipped has only left our facility upon successful negative testing for Salmonella and many other various micro

testing procedures. As well, we swab test our entire processing lines on a regular basis and this is audited by an outside . . . laboratory. We can find absolutely no evidence of instances of Salmonella. I have been in the peanut business for almost 30 years and as such have seen issues with Salmonella on raw peanuts but never, never in my experience have had a problem with this in a cooked peanut.” (emphasis in original).

16. On or about March 21, 2007, upon being told that salmonella testing results were not yet available and that shipment of a portion of a customer’s product would therefore be delayed, **PERSON #1** stated, via email: “shit, just ship it. I cannot afford to loose [sic] another customer.”

17. On or about March 22, 2007, via email to a customer, **PERSON #1** falsely stated: “We have done an extensive complete environmental swabbing as well as testing of all our retained samples and as well absolutely EVERY product that leaves our facility is sampled by an extensive sampling procedure formulated by [Laboratory 1]. We have not found ANY instance of ANY micro issues in our facility or products at the point they leave our facility. We continue to monitor this constantly.”

18. On or about April 5, 2007, upon being told that salmonella testing results were not yet available and that shipment of a portion of a customer’s order would therefore be delayed, and upon being asked whether “to short ship them again and wait for results or just ship,” **PERSON #1** instructed **DANIEL KILGORE**, via email: “SHIP.”

19. On or about April 12, 2007, via email to **PERSON #6**, a PCA official suggested that totes of peanut meal at PCA Plainview be used to fill an order, noting that “[t]hey need to air hose the top off though because they are covered in dust and rat crap.” **PERSON #6** forwarded said

email to PERSON #1, who responded: "Clean em all up and ship them . . ." A PCA official then instructed PCA Plainview employees, via email: "PLEASE, PLEASE make sure someone air hoses off the totes before they are loaded on the truck. They are filthy on top."

20. On or about April 23, 2007, PERSON #6, via email sent to PCA Plainview employees and copied to PERSON #1, "recommend[ed]" that PCA Plainview employees "[u]se the MEDIUM VA'S for ALL outstanding JUMBO RUNNER orders in Plainview." The operations manager of PCA Plainview later in the email exchange responded that "VA Meds can't be sub'ed for JU Runners."

21. On or about June 7, 2007, PERSON #1 and **DANIEL KILGORE** shipped and caused to be shipped peanut products to Customer #9 before receiving the results of microbiological laboratory testing conducted on said products. On June 13, 2007, PCA received the results of said laboratory testing which indicated that the products were confirmed positive for salmonella. Neither PERSON #1, **DANIEL KILGORE**, nor others notified Customer #9 that the products it had received had tested confirmed positive for salmonella.

22. On or about June 8, 2007, PERSON #1 and PERSON #8 issued and caused to be issued to a customer a false and misleading COA containing microbiological test results from a particular lot of peanut products manufactured prior to the lot of peanut products shipped to the customer. (The raw peanuts used in the production of the products shipped to this customer had not yet been received at PCA Plainview on the date the laboratory issued the report upon which the false COA was based.).

23. On or about June 13, 2007, PERSON #1 and PERSON #8 issued and caused to be issued to a customer a false and misleading COA containing microbiological test results from a

particular lot of peanut products manufactured prior to the lot of peanut products shipped to the customer.

24. On or about June 22, 2007, PERSON #1 and PERSON #8 issued and caused to be issued to a customer a false and misleading COA containing microbiological test results from a particular lot of peanut products manufactured prior to the lot of peanut products shipped to the customer.

25. On or about July 12, 2007, PERSON #1 and DANIEL KILGORE shipped and caused to be shipped peanut products to Customer #6 before receiving the results of microbiological laboratory testing conducted on said products. On July 16, 2007, PCA received the results of said testing from Laboratory #1, which indicated that the products were confirmed positive for salmonella. A second sample from the same lot was tested by Laboratory #1 and again tested confirmed positive for salmonella on July 18, 2007. DANIEL KILGORE and PERSON #5 submitted and caused to be submitted a third sample from said lot to Laboratory #1 and a fourth sample from said lot to Laboratory #2. On July 20, 2007, PCA was notified that the fourth sample tested negative for salmonella (final results on the third sample had not yet been received). Neither PERSON #1, DANIEL KILGORE, nor others notified Customer #6 that the products it had received had twice tested confirmed positive for salmonella.

26. On or about July 31, 2007, PERSON #8, via email, informed a PCA Plainview employee that a customer needed a COA for a prior order, and PERSON #8 did inquire of said employee: "Do we have anything we can use?"

27. On or about August 16, 2007, PERSON #1 did inform PERSON #2, DANIEL KILGORE and PERSON #6 that PERSON #2 should have added oil to a customer's product

without the customer's consent, because the customer likely would have refused consent but would have been unlikely to notice the change. PERSON #1 stated, via email: "I would have just done that without asking and priced him accordingly. Their Q.C. [quality control] will never figure that out...or allow that...it would change the 'taste profile'."

28. On or about August 16, 2007, in discussing the possibility of PCA obtaining its own laboratory testing equipment, PERSON #1, via email, stated to **DANIEL KILGORE**, PERSON #5, and PERSON #6: "these lab tests and COA's are fucking breaking me / us."

29. On or about September 12, 2007, PERSON #1, PERSON #2, and **DANIEL KILGORE** shipped and caused to be shipped a particular lot of peanut paste to Customer #1 without ever having submitted a sample from said lot for microbiological testing by a laboratory. Said shipment was accompanied by a false COA which contained microbiological test results from a previously manufactured lot of peanut paste.

30. On September 26, 2007, PERSON #5, via email, provided PERSON #2 with an incomplete COA which he knew PERSON #2 would falsify, stating in said email: "[PERSON #2], Here is the COA you need to fill out for Thursday's Load. I won't get back the results in time." On or about September 29, 2007, **DANIEL KILGORE** forwarded that same email to PERSON #2. On or about September 29, 2007, PERSON #1, PERSON #2, and **DANIEL KILGORE** shipped and caused to be shipped to Customer #1 a particular lot of peanut paste for which PCA had not yet received the results of microbiological testing. On or about September 29, 2007, PERSON #2 issued and caused to be issued to Customer #1 a COA for said lot of peanut paste that contained false and fictitious microbiological test results.

31. On or about October 3, 2007, PERSON #5, via email, provided PERSON #2 with

an incomplete COA which he knew PERSON #2 would falsify, stating in said email: “[PERSON #2], Please fill out. Thanks. Are you going to send???” On or about October 3, 2007, PERSON #1, PERSON #2, and DANIEL KILGORE shipped and caused to be shipped to Customer #1 a particular lot of peanut paste before receiving the results of microbiological testing on said lot. On or about October 3, 2007, PERSON #2 issued and caused to be issued to Customer #1 a COA for said lot of peanut paste that contained false and fictitious microbiological test results. Test results subsequently received by PCA indicated that the lot was not within Customer #1’s specifications, as it was high in coliforms. Neither PERSON #1, PERSON #2, DANIEL KILGORE, nor others informed Customer #1 that the product it had received did not meet their specifications.

32. On or about October 24, 2007, PERSON #1, PERSON #2, and DANIEL KILGORE shipped and caused to be shipped a particular lot of peanut paste to Customer #1 without ever having submitted a sample from said lot to a laboratory for microbiological testing. Said shipment was accompanied by a false COA which contained microbiological test results from a previously manufactured lot of peanut paste.

33. On or about January 26, 2008, PERSON #1, PERSON #2, and DANIEL KILGORE shipped and caused to be shipped to Customer #1 a particular lot of peanut paste before receiving the results of microbiological testing on said lot. Said shipment was accompanied by a false COA which contained microbiological test results from a previously manufactured lot of peanut paste. PCA subsequently received the results of microbiological testing on the lot shipped to the customer, which indicated that the lot was confirmed positive for salmonella. Neither PERSON #1, PERSON #2, DANIEL KILGORE, nor any other PCA

official informed Customer #1 that the product it had received had tested confirmed positive for salmonella.

34. On or about February 4, 2008, PERSON #1, PERSON #2, and DANIEL KILGORE shipped and caused to be shipped to Customer #1 a particular lot of peanut paste before receiving the results of microbiological testing on said lot. Said shipment was accompanied by a false COA which contained microbiological test results from a previously manufactured lot of peanut paste. Test results subsequently received by PCA indicated that the lot was not within Customer #1's specifications, as it was high in coliforms. Neither PERSON #1, PERSON #2, DANIEL KILGORE, nor any other PCA official informed Customer #1 that the product it had received did not meet its specifications. Said lot also contained, without the knowledge and consent of Customer #1, peanut paste which had been manufactured from over 32,000 pounds of peanuts which were grown in Argentina.

35. On or about February 4, 2008, after referring to 1374 pounds of peanut products left over from production as "waste," PERSON #1 did state, via email to PCA employees, including DANIEL KILGORE, PERSON #4, PERSON #6, and PERSON #7, the following: "[T]hese are not peanuts you are throwing away every day..IT IS MONEY.....IT IS MONEY,....IT IS MONEY...IT IS GOD DAMN MONEY THAT WE DO NOT HAVE BECAUSE OF HOW LONG I HAVE ALLOWED you, your crew and everyone down there to let THIS GO ON..... The idea is Not to have to rework it.....NOT TO HAUL IT NEXT DOOR, PAY STORAGE, PAY TO REWORK IT AND THEN GIVE IT AWAY.. The idea is to STOP THE MONEY FROM BEING CARRIED OUT THE BACK DOOR IN THE FORM OF WILDLIFE/Oil Stock/CHARITY..... STOP THE MONEY FROM EVER GETTING

OUT OF THE PRODUCTION FLOW.....!!!!!!!!!!” (emphasis and punctuation in original; font size reduced from original).

36. On or about March 3, 2008, via email, PERSON #2 advised that PCA to send a customer a “generic” COA or a COA which had previously been sent to Customer #1.

37. On or about May 8, 2008, PERSON #1, DANIEL KILGORE, and PERSON #6 did discuss and agree, via email, to give false information to the FDA regarding the reason PCA’s product had been rejected by a customer. In said email exchange, they planned to falsely state to FDA officials that the product had been rejected because of size issues when in fact it had been rejected because it contained metal fragments. DANIEL KILGORE did state: “We all need to have our stories straight if and when we are questioned by the FDA. I’m afraid that conflicting stories would only delay release and raise questions.” In response, PERSON #1 instructed that the explanation to be given to the FDA be “SIZE ISSUES OF THE CUT.” PERSON #1 further stated: “I don’t want to mention metal” PERSON #6 did prepare and circulate via email a letter on PCA letterhead stating that the product was rejected due to “improper size.”

38. On or about June 14, 2008, PERSON #1, PERSON #2, and PERSON #7 shipped and caused to be shipped to Customer #1 a particular lot of peanut paste before receiving the results of microbiological testing on said lot. Said shipment was accompanied by a false COA which contained microbiological test results from a previously manufactured lot of peanut paste. The lot was rejected by Customer #1 because it was not of proper viscosity (*i.e.*, consistency), and the lot was returned to PCA Blakely. On or about June 16, 2008, after adding oil to the paste, PERSON #1, PERSON #2, and PERSON #7 did ship and cause to be shipped to Customer #1 the same lot of paste which had been rejected by Customer #1, with a new lot number assigned and

with another false COA, which contained microbiological test results from a previously manufactured lot of peanut paste.

39. On or about June 18, 2008, PERSON #1, PERSON #2, and PERSON #7 shipped and caused to be shipped to Customer #1 a particular lot of peanut paste without ever having submitted a sample from said lot to a laboratory for microbiological testing. Said shipment was accompanied by a false COA which contained microbiological test results from a previously manufactured lot of peanut paste. Said lot also contained, without the knowledge and consent of Customer #1, over 20,000 pounds of peanut paste which had been manufactured in Mexico. Neither PERSON #1, PERSON #2, PERSON #4, PERSON #7, nor any other PCA official informed Customer #1 that the product was never tested, nor did they inform Customer #1 that the product contained Mexican peanut paste.

40. On or about June 30, 2008, PERSON #4 did, via email, state to PERSON #8 that “we have a problem with the granulation line and salmonella at least every other week if not every week, but when retested by a different lab it comes back ok.”

41. On or about July 10, 2008, PERSON #4 did advise PERSON #3, via email, regarding PCA’s practice of retesting, stating that “[PERSON #5] and [DANIEL KILGORE] had always said to send Friday samples to [Laboratory #2]. They are the fall back lab when we do retest??? If the result from [Laboratory #1] came back to [sic] high we would pull another sample and send to [Laboratory #2] to compare the results and take the best between the two???”

42. On or about July 21, 2008, in response to an inquiry from PERSON #6 about a customer’s request for a COA, PERSON #4 stated, via email: “Waiting on retest! [The product] was out on Coliforms?????” PERSON #6 responded to PERSON #4, via email, stating: “Where

do you think all this coliform positives are coming from? Would you say it is the negative air pressure in the plant bringing in airborne pathogens? Like over that rancid peanut butter along the fence?" PERSON #4 responded to PERSON #6, stating: "MICE!"

43. On or about August 7, 2008, PERSON #1, PERSON #2, and PERSON #3 shipped and caused to be shipped to Customer #1 a particular lot of peanut paste before receiving the results of microbiological testing on said lot. Said shipment was accompanied by a false COA which contained microbiological test results from a previously manufactured lot of peanut paste. Test results subsequently received by PCA indicated that the lot was not within Customer #1's specifications, as it was high in coliforms. Said lot also contained, without the knowledge and consent of Customer #1, over 20,000 pounds of peanut paste which had been manufactured in Mexico. Neither PERSON #1, PERSON #2, PERSON #3, PERSON #4, nor any other PCA official informed Customer #1 that the product it had received did not meet its specifications.

44. On or about August 21, 2008, upon being notified that product which had previously tested confirmed positive for salmonella had tested negative on a retest, PERSON #1 instructed PERSON #3 to release said product. PERSON #1 stated, via email: "okay, let's turn them loose then..."

45. On August 25, 2008, PERSON #6, via email, advised brokers for a customer that shipment of its product would be delayed due to retesting at the laboratory because the initial test "was not conclusive" when in fact PCA had received conclusive test results indicating that the product did not meet the customer's specifications because it was high in coliforms.

46. On August 26, 2008, PERSON #6, via email, advised a broker for Customer #2 that shipment of its product would be delayed due to retesting at the laboratory because "[f]or some

reason one of the tests came back as inconclusive . . .” when in fact PCA had received conclusive test results indicating that the product did not meet the customer’s specifications because it was high in coliforms.

47. On August 26, 2008, PERSON #6, via email, stated to PERSON #3: “Let [the broker referenced in paragraph (45) above] know one of the results from the COA on Customer #2 was ‘inconclusive’ and it would be Thursday on the earliest ship date...” (internal quotations in original).

48. On September 29, 2008, PERSON #6, via email, advised a broker for Customer #5 to place a hold on product which PCA had shipped, informing him that “[we] have received an inconclusive test result from the lab that we are confirming and getting retested” and that “[m]ore definite results” would be expected later in the week, when in fact PCA had received conclusive test results indicating that the product was confirmed positive for salmonella.

49. On September 29, 2008, PERSON #6, via email, advised a broker for another customer to place a hold on product which PCA had shipped, informing her that “[we] have received an inconclusive test result from the lab that we are confirming and getting retested” and that “[m]ore definite results” would be expected later in the week, when in fact PCA had received conclusive test results indicating that the product was confirmed positive for salmonella.

50. On or about September 29, 2008, UC No. 2, via email, stated to PERSON #1 and PERSON #3: “Both customers [the customers referenced in paragraphs (46) and (47)] have been advised of the ‘inconclusive’ micro test and the pending retest to come back Thursday of this week.” (internal quotation marks in original).

51. On or about November 24, 2008, PERSON #1, PERSON #2, and PERSON #3

shipped and caused to be shipped to Customer #1 a particular lot of peanut paste before receiving the results of microbiological testing on said lot. Said shipment was accompanied by a false COA which contained microbiological test results from a previously manufactured lot of peanut paste. Test results subsequently received by PCA indicated that the lot was not within Customer #1's specifications, as it was high in coliforms. Said lot also contained, without the knowledge and consent of Customer #1, approximately 1700 pounds of peanut paste which had been manufactured in Mexico. Neither PERSON #1, PERSON #2, PERSON #3, PERSON #4, nor any other PCA official informed Customer #1 that the product it had received did not meet its specifications.

52. On or about December 10, 2008, PERSON #1, PERSON #2, and PERSON #3 shipped and caused to be shipped to Customer #1 a particular lot of peanut paste without ever having submitted a sample from said lot to a laboratory for microbiological testing. Said shipment was accompanied by a false COA which contained microbiological test results from a previously manufactured lot of peanut paste. During the production of said lot, PERSON #4 signed a "Bulk Tanker Peanut Butter Daily QA Worksheet," acknowledging that she had been advised by a PCA employee that rainwater was getting into the tank containing the product. Neither PERSON #1, PERSON #2, PERSON #3, PERSON #4, nor any other PCA official informed Customer #1 that the product was never tested.

53. On or about December 31, 2008, PERSON #4 stated that dividing the plant into two separate areas to obtain two separate inspection audits would enable PCA to conceal problems from their customers, stating to PERSON #1 and PERSON #3, via email: "Separating the Peanut Butter Room from the rest of the plant would give us a better chance at passing at least one or the

other. Hoping to pass both. . . . Having it separate was a good idea for peanut butter customer or roasting customers that require having a copy of our scores for their records. And if they wanted a full report and there happen to be a problem with the plant area our butter customers wouldn't have to know that. Especially [Customer #1].”

All in violation of Title 18, United States Code, Sections 371 and 2.

COUNTS 3-10
(Introduction of Adulterated Food into
Interstate Commerce with Intent to Defraud or Mislead;
21 U.S.C. §§ 331(a) and 333(a)(2))

Paragraphs 1-38(General Allegations and Manner and Means) and paragraphs 1-53 (Overt Acts) of this Information are hereby realleged and shall be incorporated by reference into each succeeding count of this Information as if set forth in full therein.

On or about the dates listed below, within the Albany Division of the Middle District of Georgia, and elsewhere within the jurisdiction of this Court, the defendant,

DANIEL KILGORE,

aided and abetted by other persons known and unknown to the United States Attorney, with intent to defraud and mislead, did introduce and cause to be introduced into interstate commerce food, that is, peanut products, that was adulterated.

Said food was adulterated within the meaning of Title 21, United States Code, Section 342(a)(1) and (4) in that: (1) it contained a poisonous and deleterious substance, that is, salmonella, that may have rendered it injurious to health; and (2) it was prepared, packed and held

under insanitary conditions whereby it may have become contaminated with filth and may have been rendered injurious to health.

Ct.	Date	Lot #	Customer
3	02/19/08	8044	1
4	02/22/08	8024B	3
5	02/27/08	8024B	4
6	03/05/08	8049	1
7	03/28/08	8088	1
8	04/22/08	8099	1
9	05/21/08	8129	1
10	05/27/08	8130	1

All in violation of Title 21, United States Code, Sections 331(a) and 333(a)(2), and Title 18, United States Code, Section 2.

COUNTS 11-16
(Introduction of Misbranded Food into
Interstate Commerce with Intent to Defraud or Mislead;
21 U.S.C. §§ 331(a) and 333(a)(2))

Paragraphs 1-38(General Allegations and Manner and Means) and paragraphs 1-53 (Overt Acts) of this Information are hereby realleged and shall be incorporated by reference into each succeeding count of this Information as if set forth in full therein.

On or about the dates listed below, within the Albany Division of the Middle District of Georgia, and elsewhere within the jurisdiction of this Court, the defendant,

DANIEL KILGORE,

aided and abetted by other persons known and unknown to the United States Attorney, with intent

to defraud and mislead, did introduce and cause to be introduced into interstate commerce food, that is, peanut products, that was misbranded. Said food was misbranded within the meaning of Title 21, United States Code, Section 343(a)(1) in that it was accompanied by a false and misleading certificate of analysis.

Ct.	Date	Lot #	Customer
11	02/19/08	8044	1
12	03/05/08	8049	1
13	03/28/08	8088	1
14	04/22/08	8099	1
15	05/21/08	8129	1
16	05/27/08	8130	1

All in violation of Title 21, United States Code, Sections 331(a) and 333(a)(2), and Title 18, United States Code, Section 2.

COUNTS 17-24
(Interstate Shipments Fraud: 18 U.S.C. § 1341)

Paragraphs 1-38(General Allegations and Manner and Means) and paragraphs 1-53 (Overt Acts) of this Information are hereby realleged and shall be incorporated by reference into each succeeding count of this Information as if set forth in full therein.

On or about the dates listed below, within the Albany Division of the Middle District of Georgia, and elsewhere within the jurisdiction of this Court, for the purpose of executing and attempting to execute the scheme to defraud, as more fully set forth above, the defendant,

DANIEL KILGORE,

aided and abetted by other persons known and unknown to the United States Attorney, did deposit and cause to be deposited matters and things, to wit, bills of lading, COAs, and peanut products associated with the below lot numbers, to be sent and delivered by private and commercial interstate carrier:

Ct	Date	Lot no.	Customer
17	02/19/08	8044	1
18	02/22/08	8024B	3
19	02/27/08	8024B	4
20	03/05/08	8049	1
21	03/28/08	8088	1
22	04/22/08	8099	1
23	05/21/08	8129	1
24	05/27/08	8130	1

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

COUNTS 25-29
(Wire Fraud: 18 U.S.C. § 1343)

Paragraphs 1-38(General Allegations and Manner and Means) and paragraphs 1-53 (Overt Acts) of this Information are hereby realleged and shall be incorporated by reference into each succeeding count of this Information as if set forth in full therein.

On or about the dates listed below, within the Albany Division of the Middle District of Georgia, and elsewhere within the jurisdiction of this Court, for the purpose of executing the scheme to defraud, as more fully set forth above, the defendant,

DANIEL KILGORE,

aided and abetted by other persons known and unknown to the United States Attorney, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, that is, email communications via the Internet between Georgia and other states, as set forth below:

Ct	Date	Description
25	03/06/08	Email exchange attaching COA for previous load of peanut paste, in which KILGORE advises PERSON #2 : "please notice the lot numbers don't match.....if YOU want to change them, then please do so and then forward to [Customer #1]." .
26	03/06/08	Email in which KILGORE suggests to PERSON #1 that PCA remain current on payments for Mexican peanut paste, as PCA was "averaging 2-3 loads a week to [Customer #1] and mixing [Mexican] paste in at 50%."
27	03/07/08	Email exchange in which KILGORE advises PERSON #2 : "You have the COA I sent the other day.....Please fill out what you want and sent [sic] back."
28	03/26/08	Email exchange discussing costs of laboratory testing for peanut paste sold to [Customer #1], in which KILGORE suggests to PERSON #1 and PERSON #2 that PCA could use a smaller sample size "and hope they don't ever catch it," and recommends that PCA no longer request expedited testing, which was "pointless because the samples don't ever match the loads anyway."
29	05/08/08	Email exchange in which KILGORE suggests to PERSON #1 and PERSON #6 that PCA officials should falsely state to FDA that PCA's product had been rejected by a customer because of size issues when in fact the product had been rejected because it contained metal fragments, stating: "We all need to have our stories straight if and when we are questioned by the FDA."

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

Forfeiture: 18 U.S.C § 982(a)(4) and 28 U.S.C § 2461(c)

Paragraphs 1-38(General Allegations and Manner and Means) and paragraphs 1-53 (Overt Acts) of this Information are hereby realleged and shall be incorporated by reference into each succeeding count of this Information as if set forth in full therein.

The allegations contained in Counts 1 through 29 of this Information are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 982(a)(4) and Title 28, United States Code, Section 2461(c).

Pursuant to Title 18, United States Code, Section 982(a)(4) and Title 28, United States Code, Section 2461(c), upon conviction of a conspiracy to violate Title 18, United States Code, Sections 1341 and 1343, in violation of Title 18, United States Code, Section 1349 set forth in Count 1; conviction of the offenses in violation of Title 18, United States Code, Section 1341 set forth in Counts 17 through 24; or conviction of the offenses in violation Title 18, United States Code, Section 1343 set forth in Counts 25 through 29 of this Information, the defendant,

DANIEL KILGORE,

shall forfeit to the United States of America, any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses.

3. If any of the forfeitable property, real or personal, as a result of any act or omission of the defendant:

- a) cannot be located upon the exercise of due diligence;
- b) has been transferred or sold to, or deposited with, a third party;
- c) has been placed beyond the jurisdiction of the court;

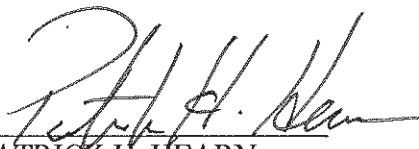
- d) has been substantially diminished in value; or
- e) has been commingled with other property which cannot be divided without difficulty, the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).


All pursuant to 18 U.S.C. § 982(a)(4) and 28 U.S.C. § 2461(c).


ON BEHALF OF THE UNITED STATES, this 11 day of February, 2013:

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Consumer Protection Branch
United States Department of Justice

MICHAEL J. MOORE,
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Middle District of Georgia

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