

1 kickback for the price increase.

2 Rahal reported his activities to Salyer for the purpose of
3 planning and promoting SK Foods's business. In an intercepted
4 telephone conversation on June 22, 2007, Rahal explained to Salyer
5 that he had gotten Turner to commit B&G to paying extra in exchange
6 for the bribe. Salyer acknowledged the arrangement with B&G and the
7 bribe payment to Turner, and planned SK Foods's business affairs
8 accordingly.

9 On July 11, 2007, Rahal made a concealed bribe to Turner by
10 mailing a \$2,000 check to Turner's wife. This transaction is charged
11 as Racketeering Act 3D.

12 At Salyer's direction, beginning no later than 2003, and
13 continuing until April 2008, SK Foods routinely materially falsified
14 the values of the various grading factors and data contained on the
15 certificates of analysis, bills of lading, invoices and bin labels
16 that SK Foods sent to its customers. Former employees Alan Huey and
17 Jennifer Dahlman falsified and directed other SK Foods employees to
18 falsify these documents to appear to meet customer specifications
19 and/or regulatory requirements concerning the percentage of natural
20 tomato soluble solids, mold count, screen size, production date,
21 viscosity, and whether the tomato paste qualified as "organic." SK
22 Foods falsified this data for the purpose of inducing its customers to
23 accept product that the customers may otherwise have rejected. In his
24 position as CEO and owner of SK Foods, Salyer ordered his subordinates
25 to falsify grading factors.

26 In a transaction charged as Racketeering Act 8, on July 18, 2003,
27 SK Foods, in Lemoore, California, mailed an invoice for 9,217 pounds
28 of tomato paste to a customer in Pennsylvania. Consistent with
Salyer's instructions to falsify information to match customers'
contractual specifications, the tomato paste classification was
falsified from conventional to organic. If the customer had known
that the paste was not organic under FDA regulations, the customer
would not have accepted it or paid for it.

29 Count Eight

30 Beginning at least as early as January 2006 and continuing until
31 approximately June 2007, in the Eastern District of California and
32 elsewhere, Salyer participated in a conspiracy to fix prices of tomato
33 paste sold to McCain Foods, USA, Inc. ("McCain"). The primary purpose
34 of this conspiracy was to fix the price of tomato paste sold to McCain
35 in the United States. During the relevant time, Salyer was the Chief
36 Executive Officer of SK Foods and had ultimate authority to make
37 pricing decisions.

38 In or about January 2007, McCain solicited bids for approximately
2.5 million pounds of tomato paste to be used in making Elio's Pizza,
which is sold only in the United States. Rahal, on behalf of SK
Foods, submitted a bid at 34 cents per pound.

Around the same time, Salyer and his co-conspirators discussed

1 setting a target price of 34 cents per pound for tomato paste sold to
2 certain customers, including McCain.

3 Sometime later, one of Salyer's co-conspirators submitted a bid
4 to McCain for 33 cents per pound. When Salyer learned that the
5 co-conspirator had offered less than 34 cents per pound, he confronted
6 that co-conspirator. After further discussions with Salyer and
7 others, the coconspirator withdrew the 33-cent per pound offer to
8 McCain.

9 During the relevant period, tomato paste sold to McCain by one or
10 more of the conspirators, as well as payment for such tomato paste,
11 traveled from facilities located in the Eastern District of California
12 to customers located outside California. The business activities of
13 the defendant and co-conspirators were within the flow of, and
14 substantially affected, interstate trade and commerce.

15 The foregoing would be proven by recorded conversations, emails,
16 SK Foods's own test results as compared to the representations that it
17 made to its customers, financial records, and the testimony of
18 witnesses including Rahal, Wahl, Huey, Dahlman, and representatives of
19 former customers of SK Foods.
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