

**FILED**

FEB 18 2010

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY mm DEPUTY CLERK

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5  
6  
7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA  
9

10 UNITED STATES OF AMERICA, )  
11 Plaintiff, )  
12 v. )  
13 STEVEN JAMES KING, )  
14 Defendant. )

No. **210-DR-0059** LKK

PLEA AND COOPERATION AGREEMENT

15  
16  
17 I.

18 INTRODUCTION

19 A. **Scope of Agreement:** The Information to be filed in this  
20 case charges the defendant, Steven James King ("King"), with causing  
21 the introduction or delivery for introduction of adulterated and  
22 misbranded food into interstate commerce with the intent to defraud  
23 and mislead in violation of 21 U.S.C. §§ 331(a) and 333(a)(2). This  
24 document contains the complete plea and cooperation agreement  
25 between the United States Attorney's Office for the Eastern District  
26 of California (the "government"), and the defendant regarding this  
27 case. This plea and cooperation agreement is limited to the United  
28 States Attorney's Office for the Eastern District of California, and

1 cannot bind any other federal, state, or local prosecuting,  
2 administrative, or regulatory authorities.

3         **B. Court Not a Party:** The Court is not a party to this plea  
4 and cooperation agreement. Sentencing is a matter solely within the  
5 discretion of the Court, the Court is under no obligation to accept  
6 any recommendations made by the government, and the Court may in its  
7 discretion impose any sentence it deems appropriate up to and  
8 including the statutory maximum stated in this plea and cooperation  
9 agreement. If the Court should impose any sentence up to the  
10 maximum established by the statute, the defendant cannot, for that  
11 reason alone, withdraw his guilty plea, and he will remain bound to  
12 fulfill all of the obligations under this plea and cooperation  
13 agreement. The defendant understands that neither the prosecutor,  
14 defense counsel, nor the Court can make a binding prediction or  
15 promise regarding the sentence he will receive.

16                                 **II.**

17                                 **DEFENDANT'S OBLIGATIONS**

18         **A. Waiver of Indictment and Guilty Plea:** The defendant will  
19 waive indictment by grand jury, and plead guilty to a one-count  
20 Information, substantially in the form attached hereto as Exhibit B,  
21 charging him with causing the introduction or delivery for  
22 introduction of adulterated and misbranded food into interstate  
23 commerce with the intent to defraud and mislead in violation of 21  
24 U.S.C. §§ 331(a) and 333(a)(2). The defendant agrees that he is in  
25 fact guilty of that charge and that the facts set forth in the  
26 Factual Basis attached hereto as Exhibit A are true and accurate.

27         **B. Restitution:** The Mandatory Victim Restitution Act requires  
28 the Court to order restitution to the victims of certain offenses.

1 The parties recognize that United States Probation will make a  
2 determination regarding the defendant's restitution obligation in  
3 this matter, however, the parties reserve the right to present  
4 evidence and arguments at the time of sentencing concerning the  
5 applicability or amount of any court ordered restitution obligation.  
6 If such restitution is ordered, payment should be by cashier's or  
7 certified check made payable to the Clerk of the Court. The  
8 defendant understands that this plea and cooperation agreement is  
9 voidable by the government if he fails to pay the restitution as  
10 ordered by the Court. Defendant further agrees that he will not  
11 seek to discharge any restitution obligation or any part of such  
12 obligation in any bankruptcy proceeding.

13 **C. Special Assessment:** The defendant agrees to pay a special  
14 assessment of \$100 at the time of sentencing by delivering a check  
15 or money order payable to the United States District Court to the  
16 United States Probation Office immediately before the sentencing  
17 hearing.

18 **D. Agreement to Cooperate:** The defendant agrees to cooperate  
19 fully with the government and any other federal, state, or local law  
20 enforcement agency, as directed by the government. As used in this  
21 plea and cooperation agreement, "cooperation" requires the  
22 defendant: (1) to respond truthfully and completely to all  
23 questions, whether in interviews, in correspondence, telephone  
24 conversations, before a grand jury, or at any trial or other court  
25 proceeding; (2) to attend all meetings, grand jury sessions, trials,  
26 and other proceedings at which the defendant's presence is requested  
27 by the government or compelled by subpoena or court order; (3) to  
28 produce voluntarily any and all documents, records, or other

1 tangible evidence requested by the government; (4) not to  
2 participate in any criminal activity while cooperating with the  
3 government; and (5) to disclose to the government the existence and  
4 status of all money, property, or assets, of any kind, derived from  
5 or acquired as a result of, or used to facilitate the commission of,  
6 the defendant's illegal activities or the illegal activities of any  
7 conspirators.

8       If the defendant commits any crimes or if any of the  
9 defendant's statements or testimony prove to be knowingly false,  
10 misleading, or materially incomplete, or if the defendant otherwise  
11 violates this plea and cooperation agreement in any way, the  
12 government will no longer be bound by its representations to the  
13 defendant concerning the limits on criminal prosecution and  
14 sentencing as set forth herein. The determination whether the  
15 defendant has violated the plea and cooperation agreement will be  
16 under a probable cause standard. If the defendant violates the plea  
17 and cooperation agreement, he shall thereafter be subject to  
18 prosecution for any federal criminal violation of which the  
19 government has knowledge, including but not limited to perjury,  
20 false statements, and obstruction of justice. Because disclosures  
21 pursuant to this plea and cooperation agreement will constitute a  
22 waiver of the Fifth Amendment privilege against compulsory self-  
23 incrimination, any such prosecution may be premised on statements  
24 and/or information provided by the defendant. Moreover, any  
25 prosecutions that are not time-barred by the applicable statute of  
26 limitations as of the date of this plea and cooperation agreement  
27 may be commenced in accordance with this paragraph, notwithstanding  
28 the expiration of the statute of limitations between the signing of

1 this plea and cooperation agreement and the commencement of any such  
2 prosecutions. The defendant agrees to waive all defenses based on  
3 the statute of limitations or delay of prosecution with respect to  
4 any prosecutions that are not time-barred as of the date of this  
5 plea and cooperation agreement.

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

22 **III.**

23 **THE GOVERNMENT'S OBLIGATIONS**

24 **A. Incarceration Range:** The government will recommend that  
25 the defendant be sentenced to the bottom of the applicable  
26 Guidelines range for his offense as determined by the United States  
27 Probation Office.

28 **B. Acceptance of Responsibility:** If the United States

1 Probation Office determines that a three level reduction in  
2 defendant's offense level for his full and clear demonstration of  
3 acceptance of responsibility is appropriate under U.S.S.G. § 3E1.1,  
4 the government will not oppose such a reduction and will so move  
5 under § 3E1.1(b), so long as the defendant pleads guilty, meets with  
6 and assists the probation officer in the preparation of the pre-  
7 sentence report, is truthful and candid with the probation officer  
8 and the Court, and does not otherwise engage in conduct that  
9 constitutes obstruction of justice within the meaning of U.S.S.G. §  
10 3C1.1, either in the preparation of the pre-sentence report or  
11 during the sentencing proceeding.

12 **C. Reduction of Sentence for Cooperation:** The government  
13 agrees to recommend at the time of sentencing that the defendant's  
14 sentence of imprisonment be reduced by up to 50% if he provides  
15 substantial assistance to the government, pursuant to U.S.S.G. §  
16 5K1.1. The defendant understands that he must comply with paragraph  
17 II(D) of this plea agreement. The defendant understands that it is  
18 within the sole and exclusive discretion of the government to  
19 determine whether the defendant has provided substantial assistance.  
20 The defendant understands that the government may recommend a  
21 reduction in his sentence of less than 50% or no reduction at all,  
22 depending on the level of assistance the government determines that  
23 the defendant has provided. The defendant further understands that  
24 a motion pursuant to U.S.S.G. § 5K1.1 is only a recommendation and  
25 is not binding on the Court, that this plea agreement confers no  
26 right upon the defendant to require that the government make a §  
27 5K1.1 motion, and that this plea agreement confers no remedy upon  
28 the defendant in the event the government declines to make a § 5K1.1

1 motion. In particular, the defendant agrees not to try to file a  
2 motion to withdraw his plea based on the fact that the government  
3 decides not to recommend a sentence reduction or recommends a  
4 sentence reduction less than the defendant thinks is appropriate.

5 If the government determines that the defendant has provided  
6 further cooperation within one year following sentencing, the  
7 government may move for a further reduction of his sentence pursuant  
8 to Rule 35 of the Federal Rules of Criminal Procedure.

9 **D. Limitation on Use of Information for Sentencing:** Other  
10 than as set forth above, the government agrees that any  
11 incriminating information provided by the defendant during his  
12 cooperation will not be used in determining the applicable  
13 Guidelines range in his case, pursuant to U.S.S.G. § 1B1.8.

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

#### 18 IV.

#### 19 ELEMENTS OF THE OFFENSE

20 With respect to the sole count of the Information to be filed  
21 in this matter, which charges the defendant with causing the  
22 introduction or delivery for introduction of adulterated and  
23 misbranded food into interstate commerce with the intent to defraud  
24 and mislead in violation of 21 U.S.C. §§ 331(a) and 333(a)(2), at  
25 trial the government would have to prove beyond a reasonable doubt  
26 the following elements:

27 First, the defendant caused food to be introduced or delivered  
28 for introduction into interstate commerce;

1 Second, the food was adulterated or misbranded; and

2 Third, the defendant acted with the intent to defraud or  
3 mislead.

4 V.

5 **MAXIMUM SENTENCE**

6 **A. Maximum Penalty:** With respect to the sole count of the  
7 Information to be filed in this matter, which charges the defendant  
8 with causing the introduction or delivery for introduction of  
9 adulterated and misbranded food into interstate commerce with the  
10 intent to defraud and mislead in violation of 21 U.S.C. §§ 331(a)  
11 and 333(a)(2), the maximum sentence that the Court can impose is  
12 three years incarceration, a fine of \$10,000, a one-year period of  
13 supervised release, and a special assessment of \$100.

14 **B. Violations of Supervised Release:** The defendant  
15 understands that if he violates a condition of supervised release at  
16 any time during the term of supervised release, the Court may revoke  
17 the term of supervised release and require the defendant to serve up  
18 to one additional year of imprisonment.

19 VI.

20 **SENTENCING DETERMINATION**

21 **A. Statutory Authority:** The defendant understands that the  
22 Court must consult the Federal Sentencing Guidelines (as promulgated  
23 by the Sentencing Commission pursuant to the Sentencing Reform Act  
24 of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as  
25 modified by United States v. Booker and United States v. Fanfan,  
26 543 U.S. 220, 125 S.Ct. 738 (2005)) and must take them into account  
27 when determining a final sentence. The defendant understands that  
28 the Court will determine a non-binding and advisory Guidelines



1 sentencing range for this case pursuant to the Sentencing  
2 Guidelines. The defendant further understands that the Court will  
3 consider whether there is a basis for departure from the Guidelines  
4 sentencing range (either above or below the Guidelines sentencing  
5 range) because there exists an aggravating or mitigating  
6 circumstance of a kind, or to a degree, not adequately taken into  
7 consideration by the Sentencing Commission in formulating the  
8 Guidelines. The defendant further understands that the Court, after  
9 consultation and consideration of the Sentencing Guidelines, must  
10 impose a sentence that is reasonable in light of the factors set  
11 forth in 18 U.S.C. § 3553(a).

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

16 **1. Applicable Guidelines Section:** With respect to the  
17 charge of causing the introduction or delivery for introduction of  
18 adulterated and misbranded food into interstate commerce with the  
19 intent to defraud and mislead, the applicable Guidelines section is  
20 U.S.S.G. § 2N2.1. Because the defendant's causing the introduction  
21 or delivery for introduction of adulterated and misbranded food into  
22 interstate commerce was intended to defraud others, however, §  
23 2N2.1(c)(1) requires the application of U.S.S.G. § 2B1.1 to the  
24 offense conduct.

25 **2. Base Offense Level:** Pursuant to both U.S.S.G. §§  
26 2N2.1(a) and § 2B1.1, the defendant's base offense level is 6.

27 **3. Specific Offense Characteristic:** Pursuant to U.S.S.G.  
28 § 2B1.1(b)(1)(G), the parties agree that at an evidentiary hearing

1 the government is currently in a position to prove, from evidence  
2 independent of that provided by the defendant, that the amount of  
3 loss attributable to the defendant's introduction of adulterated and  
4 misbranded food, and relevant conduct, is greater than \$200,000, but  
5 less than \$400,000. Consequently, the base offense level is  
6 increased by 12.

7 **4. Acceptance of Responsibility:** See paragraph III(B)  
8 above.

9 **5. Total Offense Level:** Pursuant to the foregoing  
10 stipulations, and assuming the defendant accepts responsibility for  
11 his conduct under U.S.S.G. § 3E1.1, the defendant's total adjusted  
12 offense level is 15.

13 **6. Criminal History:** The parties agree that the  
14 defendant's criminal history is to be determined by United States  
15 Probation.

16 **7. Departures or Other Enhancements or Reductions:** The  
17 parties stipulate and agree that they will not seek or argue in  
18 support of any other specific offense characteristics, Chapter Three  
19 adjustments or cross-references, other than those contemplated in  
20 the foregoing stipulations.

21 **VII.**

22 **WAIVERS**

23 **A. Waiver of Constitutional Rights:** The defendant understands  
24 that by pleading guilty he is waiving the following constitutional  
25 rights: (a) to plead not guilty and to persist in that plea if  
26 already made; (b) to be tried by a jury; (c) to be assisted at trial  
27 by an attorney, who would be appointed if necessary; (d) to subpoena  
28 witnesses to testify on his behalf; (e) to confront and cross-

1 examine witnesses against him; and (f) not to be compelled to  
2 incriminate himself.

3       **B. Waiver of Appeal and Collateral Attack:** The defendant  
4 understands that the law gives him a right to appeal his conviction  
5 and sentence. He agrees as part of his plea, however, to give up  
6 the right to appeal the conviction and the right to appeal any  
7 aspect of the sentence imposed in this case so long as his sentence  
8 is no longer than the top of the Sentencing Guidelines range  
9 determined by the Court consistent with the stipulations set forth  
10 above about the Sentencing Guidelines variables.

11       With the same limitations that may apply to any appeal, the  
12 defendant also gives up any right he may have to bring a post-appeal  
13 attack on his conviction or his sentence. He specifically agrees  
14 not to file a motion under 28 U.S.C. § 2255 or § 2241 attacking his  
15 conviction or sentence so long as the Court imposes a sentence no  
16 higher than the top of the Guidelines range determined by the Court  
17 consistent with the stipulations set forth above about the  
18 Sentencing Guidelines variables.

19       If the defendant ever attempts to vacate his plea, dismiss the  
20 underlying charges, or reduce or set aside his sentence on any of  
21 the counts to which he is pleading guilty, other than as set forth  
22 above in this section, the government shall have the right (1) to  
23 prosecute the defendant on any of the counts to which he pleaded  
24 guilty; (2) to reinstate any counts that may be dismissed pursuant  
25 to this plea and cooperation agreement; and (3) to file any new  
26 charges that would otherwise be barred by this plea and cooperation  
27 agreement. The decision to pursue any or all of these options is  
28 solely in the discretion of the United States Attorney's Office. By

1 signing this plea and cooperation agreement, the defendant agrees to  
2 waive any objections, motions, and defenses he might have to the  
3 government's decision. In particular, he agrees not to raise any  
4 objections based on the passage of time with respect to such counts  
5 including, but not limited to, any statutes of limitation or any  
6 objections based on the Speedy Trial Act or the Speedy Trial Clause  
7 of the Sixth Amendment.

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

14 **VIII.**

15 **ENTIRE PLEA AND COOPERATION AGREEMENT**

16 Other than this plea and cooperation agreement, no agreement,  
17 understanding, promise, or condition between the government and the  
18 defendant exists, nor will such agreement, understanding, promise,  
19 or condition exist unless it is committed to writing and signed by  
20 the defendant, counsel for the defendant, and counsel for the United  
21 States.

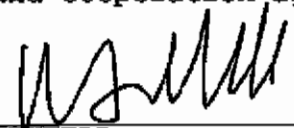
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**IX.**

**APPROVALS AND SIGNATURES**

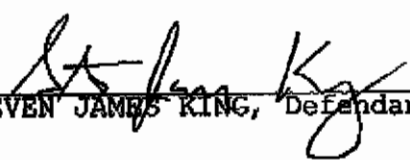
**A. Defense Counsel:** I have read this plea and cooperation agreement and have discussed it fully with my client. The plea and cooperation agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea and cooperation agreement.

DATED: February 17, 2010

  
\_\_\_\_\_  
ROGER NUTTALL  
Attorney for Defendant

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

DATED: February 17, 2010

  
\_\_\_\_\_  
STEVEN JAMES KING, Defendant

1 C. Attorney for United States: I accept and agree to this  
2 plea and cooperation agreement on behalf of the government.

3  
4 DATED: February 17, 2010

BENJAMIN B. WAGNER  
United States Attorney

5  
6 By: Sean C. Flynn  
7 SEAN C. FLYNN  
8 Assistant U.S. Attorney  
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**EXHIBIT "A"**  
**Factual Basis for Plea**

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

Between 1994 and 2009, Steven James King ("King") was employed in a variety of positions, and most recently as Vice President for Operations, by SK Foods, L.P., a limited partnership with principal places of business in Monterey, California, and Williams, Ripon and Lemoore, California, in the Eastern District of California. SK Foods, L.P., and its related corporate entities ("SK Foods") was a grower and processor of tomato products and other food products, for sale to food product manufacturers, and food service distributors and marketers. During his tenure, King worked out of SK Foods' Lemoore, California facility in the Eastern District of California. As Vice President for Operations, King reported directly to SK Foods' owner and chief executive officer. In that position, King was responsible for overseeing and managing the operation of SK Foods' production facilities in Williams and Lemoore, California. During various periods King also assisted in overseeing and managing SK Foods' inventory of processed tomato and other food products, and arranging for the shipment of those food products to SK Foods' customers across the United States.

In the normal course, the market price of processed tomato products fluctuates based on the percentage of Natural Tomato Soluble Solids ("NTSS") that the product contains (also known as the product's "Brix value"). Customers frequently specify a required NTSS concentration in their contracts with manufacturers such as SK Foods. Customers will also often specify acceptable levels of other processed tomato product characteristics such as the product's pH, mold content, color, acidity and viscosity (sometimes referred to as "Bostwick"), depending on the customer's intended finished product (i.e., ketchup, salsa, barbeque sauce, etc.).

Additionally, during the relevant period SK Foods was subject to the United States Standards for grades of tomato paste and puree as established by the United States Department of Agriculture ("USDA"). SK Foods was further subject to Title 21, Code of Federal Regulations, Section 110.110 through which the United States Food and Drug Administration ("FDA") has established maximum limits of natural or unavoidable defects in foods sold within the United States, which present no health hazard. The limits are set out as Food Defect Action Levels. The limits prescribed by the Food Defect Action Levels represent thresholds above which FDA will take enforcement action for the food products being "adulterated" pursuant to 21 U.S.C. § 342(a)(3). For example, FDA has set a Food Defect Action Level for mold in tomato paste; if the mold count (as measured using the Howard mold count method) of all of the subsamples of a lot of tomato paste are higher than 40%, the FDA considers that product adulterated and unfit for sale within the United States.

To that end, during the relevant period SK Foods was required

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

19 Beginning in at least 2004, and continuing until April 2008, it  
20 was a regular practice for senior leaders and directors of SK Foods  
21 to knowingly cause the falsification of the various grading factors  
22 and data contained on the COAs, bills of lading, invoices and bin  
23 labels (hereinafter, "quality control documents") that accompanied  
24 customer-bound shipments of tomato product, which was produced,  
25 purchased and sold by SK Foods. As Vice President for Operations,  
26 King falsified and directed other SK Foods employees to falsify  
27 these documents so that they reflected mold count levels in SK  
28 Foods' tomato product as being below the applicable Food Defect  
Action Level in many instances when, in fact, those levels were  
significantly above the federal threshold. In other instances, King  
falsified and directed other SK Foods employees falsify these  
documents so that they reflected inflated NTSS levels that were  
higher than what the tomato product actually contained, as well as  
altered pH, color, and viscosity values. One SK Foods employee that  
defendant King directed in this fashion was Jennifer Dahlman  
("Dahlman"), a Reports and Business Analyst who, until February 18,  
2009, worked in SK Foods' Lemoore facility in the Eastern District  
of California. King subsequently distributed and directed Dahlman  
and others to distribute such product, along with the falsified  
quality control documents, to certain of SK Foods' customers in  
interstate commerce.

King's actions described above were conducted at the express  
instruction, direction and with the assistance of other senior  
leaders and directors of SK Foods, and were intended to make it  
appear to SK Foods' customers as if particular shipments of  
processed tomato product were compliant with USDA and FDA standards,  
and with customer specifications, when in fact they were not.  
King's conduct, and the conduct of certain leaders and directors of  
SK Foods, was undertaken with the intent to defraud and mislead SK  
Foods' customers. As a result of such conduct, adulterated and  
misbranded processed tomato product was introduced into interstate  
commerce, and SK Foods' customers were fraudulently induced to pay  
for such product.



1 For example, during 2007, SK Foods experienced a period during  
2 which it was unable to provide an adequate supply of processed  
3 tomato paste containing 31% NTSS in order to meet its contractual  
4 obligations to certain customers. On January 3, 2007, SK Foods'  
5 former Vice President for Sales and Marketing Alan Huey, sent an  
6 email to various SK Foods executives, including King, which  
7 addressed product projections indicating that SK Foods' inventory of  
8 processed tomato product containing an NTSS level of 31% was  
9 significantly short, and that the company would be unable to meet  
10 its contractual obligations to many of its customers, including  
11 Kraft and McCormick and Company, Inc. ("McCormick"). A senior  
12 leader of SK Foods further suggested to others, including King, that  
13 the company falsify the quality control documents accompanying  
14 millions of pounds of processed tomato product containing lower NTSS  
15 levels of 25% and 28%, and ship those inferior products to satisfy  
16 SK Foods' outstanding obligations to customers for product  
17 containing 31% NTSS. At the direction of King and other senior  
18 leaders of SK Foods, Dahlman ultimately caused misbranded tomato  
19 product, and the accompanying falsified documentation, to be shipped  
20 during the spring and summer of 2007, via interstate carrier, from  
21 SK Foods' facilities in the Eastern District of California to  
22 McCormick and Kraft facilities in other states.

23 One such shipment occurred on or about May 18, 2007. On or  
24 about that date, Dahlman informed King that SK Foods did not possess  
25 processed tomato product containing 31% NTSS in order to meet its  
26 contractual obligations to McCormick. King subsequently directed  
27 Dahlman to misbrand tomato paste containing a lower NTSS level of  
28 28%, and to ship that misbranded tomato product from its facilities  
in the Eastern District of California to a McCormick facility in  
South Bend, Indiana. The product was accompanied by certain quality  
control documents, which were falsified so that they misrepresented  
the tomato product as containing an NTSS level of 31%, when in fact  
it actually contained an NTSS level of 28%.

Defendant King's actions in this regard were conducted with the  
specific intent to defraud and mislead McCormick. As a result,  
McCormick unknowingly paid approximately 10.7% above market rate for  
the 28% NTSS processed tomato product, causing a loss to McCormick.  
Additional shipments of misbranded processed tomato product were  
sent to Kraft and McCormick during the spring and summer of 2007,  
with defendant King's knowledge, ultimately causing a loss to those  
companies in the approximate amount of \$247,782.

King's conduct and the conduct of certain of his co-  
conspirators, as outlined above, violated 21 U.S.C. §§ 331(a) and  
333(a)(2).