No.

In the Supreme Court of the United States

MARY WILKERSON
PETITIONER
v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEALS

APPENDIX I

PETITION FOR A WRIT OF CERTIORARI OF MARY WILKERSON, PETITIONER

APPENDIX

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Appendix A:

Eleventh Circuit Court of Appeals Opinion,
January 23, 2018

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 15-14400

D.C. Docket No. 1:13-cr-00012-WLS-TQL-2

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEWART PARNELL,
MICHAEL PARNELL,
MARY WILKERSON,

Defendants-Appellants.

Appeals from the United States District Court
for the Middle District of Georgia

(January 23, 2018)

Before TJOFLAT, MARTIN, and ANDERSON, Circuit Judges.

PER CURIAM:

We have had the benefit of oral argument and carefully reviewed the parties' briefs and the record. For the reasons discussed below, we conclude that the

judgment of the district court should be affirmed. Because this opinion applies only established law to these facts, it is written only for the benefit of the parties, who are familiar with the extensive facts of this case. Thus, we include only a brief summary of the facts below.

I. BACKGROUND

Defendant-Appellant Stewart Parnell is the former president of the Peanut Corporation of America ("PCA"). Defendant-Appellant Michael Parnell, Stewart's brother, managed PCA's sale of peanut paste to the Kellogg Company ("Kellogg's"). Defendant-Appellant Mary Wilkerson worked as PCA's quality assurance ("QA") director at its production plant in Blakely, Georgia from June 2008 through 2009. Until 2009, PCA made and sold peanut products to food producers across the United States. In 2009, federal authorities identified PCA's production plant in Blakely, Georgia as the source of a nationwide salmonella outbreak. The Food and Drug Administration ("FDA") initiated an inspection of PCA's Blakely facility. Following a four year investigation, Appellants were indicted for their conduct regarding food safety at PCA and during the FDA's investigation.

During a seven-week jury trial, the Government presented evidence that Stewart and Michael conspired with senior management at PCA to defraud its customers regarding the safety of its products. Generally, to ensure that products

are safe for human consumption, peanut manufacturers like PCA send samples from a specific lot of product for microbiological testing before the lot is shipped. Many PCA customers required PCA to attach a Certificate of Analysis ("COA") to each lot of product, certifying that the lot tested negative for bacteria. At Stewart's direction, PCA retested product that tested positive for salmonella until it obtained a negative result, shipped product before receiving the test results for the product, and even shipped product after receiving confirmed positive test results.

The Government also presented evidence regarding a scheme that Stewart, Michael, and other senior management designed to help PCA meet production demands for the Kellogg's account. Specifically, in September 2007, PCA began assigning future lot numbers to samples of peanut paste that it sent for testing. It used those test results to create COAs for new lots of peanut paste that it shipped to Kellogg's. Thus beginning in September 2007, the COAs for Kellogg's orders contained test results for a sample pulled from a previous lot. The lot being shipped had not been tested. PCA took samples from the new lot, assigned future lot numbers to those samples, and sent them for testing to keep the practice going. PCA did not inform Kellogg's if test results for a lot that had already been shipped came back positive. Eventually, PCA assigned multiple future lot numbers to product from the same lot in order to decrease the number of lots that it tested.

Between January 2008 and January 2009, more than 60% of paste lots for Kellogg's did not undergo any microbiological testing.

All Appellants knew that PCA had received positive salmonella test results before the salmonella outbreak. But they were not forthcoming with the FDA during its investigation. FDA Agent Janet Gray testified that she asked Stewart "if he had any knowledge of other positives in 2008 [other than the four positive test results of which Agent Gray was already aware], and he said this is not something that happens very often and I think I would remember something positive. He said he had no knowledge of any others, but if there was positive results [sic] then certainly somebody at the plant would have knowledge of this." [Doc. 559 at 141.] Agent Gray testified that when she interviewed Wilkerson, she asked Wilkerson, "if there were any other positives in 2008, and she told me she was not working in QA beginning of the year and she was not aware of any positives." [Doc. 559 at 142.]

The jury found Stewart and Michael guilty of several counts of fraudulently introducing misbranded food into interstate commerce, interstate shipment and wire fraud, and conspiring to commit these offenses. The jury also found Stewart guilty of fraudulently introducing adulterated food into interstate commerce. The jury found Stewart and Wilkerson guilty of obstruction of justice. The district court sentenced Stewart to 336 months in prison, to be followed by three years of

supervised release; sentenced Michael to 240 months in prison, to be followed by three years of supervised release; and sentenced Wilkerson to 60 months in prison, to be followed by two years of supervised release. Appellants challenge their convictions and sentences. We address the multitude of issues raised by Appellants in turn below.

II. DISCUSSION

A. All Appellants' Argument Based on Juror Exposure to Extrinsic Evidence

Prior to trial, Appellants moved to exclude evidence that the salmonella outbreak caused nine deaths and over seven hundred illnesses under Federal Rule of Evidence 403. At a hearing on the motion, the Government agreed not to present evidence of deaths, and the district court denied Appellants' motion with regards to evidence of illnesses. The jury heard evidence that the salmonella outbreak caused at least 700 illnesses at trial. The Government did not present any evidence that the salmonella outbreak caused deaths. After trial, Appellants filed a motion for new trial, claiming that the jury was exposed to extrinsic evidence about deaths. Appellants attached an affidavit from Juror 34, in which Juror 34 said that "several jurors mentioned that they had done their own research into the facts of this matter," the jury had discussed that the salmonella outbreak had caused nine deaths, and Juror 35 told Juror 34 during jury selection that she believed all of the

defendants were guilty because they had caused nine deaths. [Doc. 308-1 ¶¶ 3–4, 14.]

The district court held two hearings regarding the allegations of juror exposure to extrinsic evidence. During the first hearing, the court questioned Juror 34. Juror 34 testified that she encountered Wilkerson shortly after the trial at Wilkerson's daughter's cross country meet. Juror 34 approached Wilkerson to tell her that she had "done as much as I could for her, you know, praying for her in the trial, and I just felt like that it was prejudged and I didn't know what to do." [Doc. 591 at 22–23.] Juror 34 admitted being "emotional" and "kind of upset" when she spoke to Wilkerson. Following this incident, Stewart's co-counsel contacted Juror 34 and obtained her affidavit. The district court questioned Juror 34 at length about the affidavit. Juror 34 reiterated that certain jurors made comments that all Appellants were guilty and that they had killed nine people.

The district court questioned the remaining jurors, including the six alternates, at a second sealed proceeding. Juror 35 denied expressing an opinion about the case or about the guilt or innocence of a defendant to any prospective juror, stating "[t]his is a case I did not know anything about." [Doc. 592 at 22.] Regarding Juror 34's statement that Juror 35 had said during jury selection that the defendants were guilty and that they caused nine deaths, Juror 35 replied, "I didn't know how many deaths was caused. No. I didn't tell 34 that." [Doc. 592 at 11–12.]

Out of the remaining jurors and alternates, four reported hearing comments about deaths during trial—Juror 37 and Juror 10 reported hearing about deaths before deliberations, and Juror 4 and Juror 12 said that deaths were mentioned at some point during the period of time the jury deliberating.

Appellants argue that they are entitled to a new trial based on the jury's alleged exposure to extrinsic evidence that people died as a result of the salmonella outbreak. The Court reviews the denial of a motion for a new trial based on the submission of extrinsic evidence to the jury for an abuse of discretion. United States v. Whatley, 719 F.3d 1206, 1214 (11th Cir. 2013). The Court reviews the district court's underlying factual findings for clear error. United States v. Siegelman, 640 F.3d 1159, 1181 n.31 (11th Cir. 2011) (per curiam).

"When jurors consider extrinsic evidence, a new trial is required if the evidence poses a reasonable possibility of prejudice to the defendant." Whatley, 719 F.3d at 1219 (quoting United States v. Dortch, 696 F.3d 1104, 1110 (11th Cir. 2012)). "A defendant who alleges denial of the right to an impartial jury resulting from juror exposure to extraneous information has the burden of making a colorable showing that the exposure has, in fact, occurred." Id. (quoting Dortch, 696 F.3d at 1110). "If the defendant does so, prejudice to the defendant is presumed and the burden shifts to the government to show that the jurors' consideration of extrinsic evidence was harmless to the defendant." Id. (quoting

Dortch, 696 F.3d at 1110). The Government must show that the exposure was harmless beyond a reasonable doubt.[1] To determine whether the district court abused its discretion by concluding that exposure to extrinsic evidence was harmless, the Court considers four factors: (1) the nature of the extrinsic evidence; (2) the manner in which the extrinsic evidence reached the jury; (3) the factual findings in the district court and the manner of the court's inquiry into the juror issues; and (4) the strength of the government's case against the defendant. Whatley, 719 F.3d at 1219.

Although the district court ruled that Appellants failed to demonstrate that the jury was exposed to the fact that there had been several deaths resulting from the salmonella outbreak, we recognize that several jurors testified that they were aware that the salmonella outbreak caused deaths. In light of the fact that there was no evidence of deaths presented during trial, we assume arguendo that at least several of the jurors who sat on the case were exposed to extrinsic evidence. Therefore, our discussion proceeds directly to the prejudice issue.

With regards to the first factor—the nature of the extrinsic evidence—we cannot conclude that jurors' exposure to extrinsic evidence that the salmonella

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[1] "There is little, if any, difference between our statement in Fahy v. State of Connecticut about 'whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction' and requiring the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 828 (1967) (quoting Fahy v. Connecticut, 375 U.S. 85, 86–87, 84 S. Ct. 229, 230 (1963)).

outbreak caused deaths is not prejudicial at all. However during trial, the jury heard evidence regarding the exceedingly serious nature of the salmonella outbreak. For example, a doctor from the Center for Disease Control ("CDC") testified that the outbreak caused 714 known illnesses, 166 of which required hospitalization. Based on the number of reported illnesses, the doctor estimated that there were over 20,000 illnesses across the United States. The jury also heard evidence regarding the symptoms associated with salmonella, such as fever, bloody diarrhea, and vomiting, from the CDC doctor and a salmonella victim. Finally, the indictment itself, which the trial court read to the jury, indicated that salmonella can be life threatening. In light of all of this evidence, we cannot conclude that the exposure of several jurors to the fact that several people also died from the outbreak was highly prejudicial.

Regarding the manner in which the extrinsic evidence reached the jury, the jurors' testimony indicates that their knowledge of deaths came from overhearing pieces of news reports, faint memories about the incident, or passing comments from family members, fellow jurors, or venire members, not detailed news reports about the salmonella outbreak. None of the jurors who recalled hearing about deaths during trial or deliberations were able to remember details about the statements. The jurors' vague recall of these statements indicates their lack of impact on the jurors. Furthermore, no juror indicated that any comment about

deaths led to a discussion among the jurors. In fact, the majority of the jurors did not report being exposed to extrinsic evidence at all. Given the jury's limited exposure, this factor weighs strongly in favor of the government, meaning it strongly indicates that the exposure of several jurors to the fact that deaths had occurred did not affect or contribute to the jury verdict.

Given the thoroughness of the district court's investigation, the third factor, the manner of the district court's inquiry into the juror issues and the findings of the district court, also strongly favors the Government. The district court conducted two hearings in which it questioned the jurors outside of the presence of other jurors. After observing each juror's demeanor during a seven-week trial and their post-trial testimony, the district court concluded that Juror 34 was biased in favor of Wilkerson and refused to consider her testimony. Given the district court's ability to observe Juror 34's demeanor and the fact that Juror 34 approached Wilkerson after trial to express her sympathy, the district court did not clearly err by finding that Juror 34 was not credible.[2]

The final factor—the strength of the evidence—also strongly favors the Government. With respect to both Stewart and Michael, the evidence of guilt was overwhelming. As for evidence that Wilkerson was guilty of obstruction, the

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[2] The Court recognizes that the district court did not acknowledge that some of the testimony of the other jurors provided minor corroboration for Juror 34. But we cannot conclude that the district court's credibility determination regarding Juror 34 is clearly erroneous for the reasons stated above.

Government offered the testimony of Agent Gray. Agent Gray stated, "I asked Ms. Mary Wilkerson if she knew any—if there were any other positives in 2008, and she told me she was not working in QA beginning of the year and she was not aware of any positives." [Doc. 559 at 142.] The Government also introduced two emails indicating that Wilkerson knew about positive salmonella results at PCA in 2008. Specifically, in June 2008, Wilkerson wrote an email instructing other PCA employees to put a shipment on hold because the lot had tested presumptively positive for salmonella. Later that month, Wilkerson wrote the following in an email to the manager of a different PCA facility: "I know you don't know this but 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." [Gov't Ex. 40-01.] Thus, the evidence that Wilkerson did know of positive salmonella results in 2008 was overwhelming. And while the obstruction of justice charge against Wilkerson was based on a single question and answer to Agent Gray during the investigation, the evidence is very clear that defendant Wilkerson lied to Agent Gray about not having knowledge of positive test results.[3]

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[3] Wilkerson's counsel attempted to portray to the jury that Agent Gray's question related only to January 2008. The problem with Wilkerson's argument is that there is no evidence at all to support her attorney's speculation that Agent Gray's question focused only on January 2008, rather than that entire year. Wilkerson's argument that Agent Gray asked Stewart, PCA operating manager Samuel Lightsey, and Wilkerson the same question is not to the contrary. According to an email that Agent Gray sent shortly after the investigation, she asked Lightsey about positives "going back to January of 2008." [Doc. 446-16.]

Given that three of the four factors weigh strongly in favor of the Government, consideration of the four factors indicates clearly that the extrinsic evidence did not influence or contribute to the jury verdict.

B. All Appellants' Argument Based on Kilgore's and Lightsey's Lay Opinion Testimony

Appellants argue that the district court plainly erred by allowing PCA-Blakely's former operating managers, Samuel Lightsey and Daniel Kilgore, to testify that certain PCA business records, such as COAs, were "false" and that PCA could not have known that the product it shipped was safe based on the documents. Appellants concede that they failed to object to this evidence at trial. As the former operating managers of PCA-Blakely, Kilgore and Lightsey had extensive experience with the plant's testing practices. Both were also intimately familiar with PCA's fraudulent practices with regards to Kellogg's. Thus, they had ample knowledge from which to conclude that the COAs that they testified were false were in fact false and that PCA could not have known that the product shipped with the false COAs was safe. There is no error and certainly no plain error in admitting this testimony.

C. Wilkerson's Challenge to the Sufficiency of the Evidence

The evidence discussed above makes clear that there was ample evidence to support the verdict of Wilkerson's guilt.

D. Brady Issues Raised by Wilkerson[4]

Wilkerson argues that the Government violated Brady because she could not access or search the documents produced by the Government and therefore could not find Brady material. Wilkerson also objects to the number of documents that the Government produced and the late date of some of the productions. Specifically, Wilkerson objects to the Government producing a large hard drive of documents in late June 2014 when the trial was set to begin on July 14. According to Wilkerson, this production was one of many untimely data dumps, where the Government produced hard drives containing hundreds of thousands of documents that Wilkerson and her counsel did not have the resources to review for Brady material before trial.

Although Wilkerson argues on appeal that the documents were not searchable, the district court made a finding of fact at a July 11, 2014 hearing that the documents produced by the Government were in fact searchable. Wilkerson never clearly argued to the district court that the documents were not searchable. Rather, Wilkerson's counsel indicated that he was able to search the documents after receiving the necessary software in October 2013. Additionally, the Government provided a Bates index for the documents no later than December 2013, over seven months before trial. And the district court found no evidence of

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[4] This section discusses Wilkerson's Brady and discovery issues.

prosecutorial misconduct. Finally, an IT consultant and paralegal helped Wilkerson and her counsel search and review the documents. Given that Wilkerson was able to search the documents, they were not suppressed for purposes of Brady.

Furthermore, Wilkerson has failed to identify, either to the district court during trial or even on appeal after having extensive additional time to search the documents, any materially exculpatory evidence within the Government's productions. Wilkerson claims on appeal that the following documents are exculpatory: (1) a February 1, 2009 email between Agent Gray and FDA Agent Richard Hartline discussing edits to Agent Gray's report of her investigation at PCA Blakely; (2) a March 15, 2009 email between Agent Gray and FDA Agent Robert Neligan regarding Agent Neligan editing Agent Gray's report about PCA-Blakely; (3) a February 3, 2009 email from Agent Gray to Erika Anderson regarding the timeline of when Agent Gray learned of the positive salmonella test results at PCA-Blakely; (4) the written report of Wilkerson's September 16, 2009 interview with Agent Hartline; and (5) a copy of Agent Gray's handwritten notes.

The three emails that Wilkerson cites show that Agent Gray consulted with other agents and departments regarding her report of the PCA-Blakely facility. The other agents suggested stylistic edits. Nothing in any of the emails suggests that Agent Gray or any other federal officer altered or fabricated the substantive facts in Agent Gray's report. Additionally, Stewart's counsel cross-examined Agent Gray

about one of these emails and the editing of her report at trial. Wilkerson fails to explain how her counsel's additional ability to cross-examine Agent Gray about the report would have altered the outcome at trial.

The written report of Wilkerson's statement to Agent Hartline denying that she told Agent Gray that she did not know of any positives in 2008 is arguably favorable to Wilkerson. But, as discussed below, Wilkerson could not have offered Agent Hartline's report of her statement to prove the truth of her statement at trial. Thus, this evidence could not have altered the jury's verdict. Finally, there is nothing exculpatory about Agent Gray's handwritten notes. The notes are consistent with Agent Gray's testimony that she asked Wilkerson if she knew of any positives in 2008 and Wilkerson answered in the negative.

E. Wilkerson's Severance Argument

Wilkerson's sole argument to the district court regarding severance related to her claim that she needed more time to review the Government's late production of documents. Because Wilkerson never presented to the district court any arguments which might support mandatory severance from the other two Appellants, we review the district court's failure to sever Wilkerson's trial for plain error. Although Wilkerson was only charged with obstruction of justice, evidence regarding the nature of the PCA conspiracy would have been admissible at a separate trial of Wilkerson. For example, the Government could have presented

evidence regarding PCA's misrepresentations to customers that the product had been tested when it had not in fact been tested and the fact that customers were not warned when previously shipped product tested positive for salmonella. In addition, all of the evidence regarding the seriousness of the salmonella outbreak would have been admissible. All of this evidence would have been admissible as evidence of Wilkerson's motive to lie.[5] Given the fact that all of this evidence would have been admissible in a separate trial against Wilkerson, the district court did not plainly err by failing to try Wilkerson separately.

F. Other Issues Raised by Wilkerson

There is no evidence to support Wilkerson's conclusory arguments that Agent Gray fabricated her report or her handwritten notes or that the Government deleted specific documents relevant to Wilkerson from the files produced to her counsel. Nor is there any error plain or otherwise caused by the prosecutor's statement that Wilkerson was an unindicted co-conspirator. The prosecutor was responding to Wilkerson's counsel's objection to the prosecutor's question to Lightsey about an email to him from Wilkerson. The prosecutor's assertion that Wilkerson was an unindicted co-conspirator was not only amply supported by the evidence before the jury, but also was an appropriate response to Wilkerson's counsel's hearsay objection. In other words, it was not hearsay because it was a co-

[5] It is only the volume of such evidence that perhaps could have been excluded in a separate trial of Wilkerson under Rule 403.

conspirator's statement in furtherance of the conspiracy. See Fed. R. Evid. 801(d)(2)(E).

Additionally, the prosecutor correctly told Wilkerson's counsel that there was no transcript of her interview with federal agents. Wilkerson's argument that this was a lie because her counsel misunderstood the statement is frivolous. And there was also no error in the district court's exclusion of Wilkerson's self-serving statement during her interview with Agent Hartline. Although Wilkerson's statement during that interview was a statement by a party, it was not admissible because it was offered by Wilkerson, not by a party opponent to Wilkerson. Finally, Wilkerson's argument on appeal that the district court erred in denying her post-trial request for transcripts is meritless. Notwithstanding the district court's repeated instructions that Wilkerson specify what part of the transcript was requested and the need therefore, Wilkerson's counsel failed to do so.[6]

G. Sentencing Issues

1. The Parnells' challenge to the Government's evidence of loss as not being sufficiently specific or reliable

The Parnells argue that the district court erred when it found Stewart responsible for a loss of $144.5 million and Michael responsible for a loss of $45.6

[6] Other arguments raised by Appellants regarding their convictions are without merit and warrant no discussion.

million. The Parnells argue that the evidence of loss presented by the Government was not sufficiently specific or reliable.

The Government chose to show loss by subpoenaing the 50 companies that purchased the most PCA products in 2008. The subpoena gave the companies the option of providing the documents that reflected the company's financial loss and costs that they and their insurance carriers incurred because of the recall or of submitting "a comprehensive summary setting forth the requested information, provided that the Custodian is prepared to testify as to the accuracy and completeness of each such statement." The subpoena also stated that the Government reserved the right to require the production of the documents underlying the spreadsheet and the provided statement of the document custodian warned that the submission of false or fraudulent information could lead to prosecution. An FBI agent then created a spreadsheet that compiled all of the information, and the Government introduced both the spreadsheet and the underlying documents at trial. In cross examination of the agent, the Defendants elicited the fact that she did not conduct an audit of the various submissions (although she did call a number of the victims), and the Defendants pointed out

that the agent did not understand some of the terminology used in some of the summaries submitted.[7]

The Government bears the burden of producing evidence that proves the loss by a preponderance of the evidence, which must be reliable and specific. United States v. Cobb, 842 F.3d 1213, 1219 (11th Cir. 2016). Actual loss is defined as "reasonably foreseeable pecuniary harm that resulted from the offense." U.S.S.G. § 2B1.1, comment. n.3(A)(i)-(ii). The district court need only make a reasonable estimate of the loss, and we will defer to that determination. Cobb, 842 F.3d at 1218-19.

Our careful review of the record leaves us confident that the district court has not committed reversible error. We agree with the district court that the circumstances surrounding the submissions provide considerable reliability. Each company was warned that submission of false or fraudulent information exposed them to potential prosecution. Although the Defendants successfully pointed to some errors in the submissions, our careful review of the record leaves us confident that any such errors fall far short of reducing the verifiable loss calculation below an amount which could possibly have affected the sentence of

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[7] For example, the agent had intended to exclude lost sales from the loss calculation but the Kellogg's summary included two items representing lost sales (totaling $9.8 million). We note that the $9.8 million in lost sales is not only a miniscule amount, as compared to the $146 million of loss included by the agent.

any defendant. For example, even considering only the Kellogg's submission, the summary chart provides evidence of well over the $20 million threshold for the 22-level enhancement applied to Michael. That Kellogg's chart revealed $10.4 million in the years 2008-09 of losses labeled "recalled NSV." That clearly refers to the net sales value of product actually recalled, which is clearly an appropriate loss for the loss calculation. Similarly, that Kellogg's chart reveals $10.3 million in inventory lost because of the salmonella outbreak, which is again a clearly appropriate loss. In addition, there were $4.1 million of "recall costs" in 2008-09, which again are clearly appropriate for the loss calculation. And finally, "clean-up costs" of $1 million in 2009 is also a clearly appropriate loss. That total of $25.8 million in losses easily exceeds the $20 million threshold which was the basis of the 22-level enhancement applied to Michael.

We note that that same $25.8 million of losses to Kellogg's are equally applicable and equally reliable as losses for which Stewart is responsible. With respect to Stewart, there is ample other evidence, in addition to the Kellogg's $25.8 million loss, that is equally verifiable and equally reliable, such that there is no possibility that a remand could produce a loss calculation which could reduce his sentence. For example, the loss figure submitted by Abbott Labs -- $13,624,612.15 – was supported by amply extensive and reliable documentation, and has not been questioned by Appellants either in the district court or on appeal.

In addition, the $12,750,000 loss calculation submitted by Hartford Insurance Company is undoubtedly reliable. The insurance proceeds from Hartford Insurance Company were administered in the bankruptcy of PCA, and distributed to individual victims. Appellants have not challenged the reliability of this $12,750,000 either in the district court or on appeal. Thus, the losses suffered by Kellogg's, Abbott Labs, and Hartford Ins. Co. total more than $50 million, and are not subject to any substantial criticism with respect to verifiability or reliability. Although the district court enhanced the offense level of Stewart by 26 levels, an enhancement of 22 levels, rather than 26 levels, would have created the same maximum Guideline range of life imprisonment. That 22-level enhancement is triggered by a threshold loss amount of $20 million, and, as noted above, a loss calculation of far more than $20 million is virtually assured in the event a remand in this case were ordered. Thus, we conclude that any remand would be futile, and any errors in the district court's calculation are harmless.

2. Defendant Michael's challenge to the 3-level increase in his offense level pursuant to Guideline section 3B1.1(b).

Section 3B1.1(b) provides a 3-level increase in the offense level "[i]f the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive."

U.S.S.G. § 3B1.1(b).[8] The Guidelines commentary further instructs that "[t]o qualify for an adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants." U.S.S.G. § 3B1.1 cmt. n.2.

Michael's argument on appeal is that there is insufficient evidence that he managed or supervised at least one participant in the conspiracy. We conclude that his argument is wholly without merit. Lightsey's testimony establishes that Michael managed or supervised at least Lightsey. The evidence in the record reveals ample evidence that the district court correctly concluded that Michael's conduct warranted manager status. For instance, he clearly exercised decision-making authority when he responded to Lightsey's urgent contact asking him about the scheme with respect to the Kellogg's account whereby false COAs accompanied shipments of product to Kellogg's. The fact that Lightsey called Michael, rather than Stewart, about what he considered to be wrongful activity is evidence that he considered Michael to be one who exercised control, and the fact that he acquiesced when Michael instructed him to continue with the wrongful

[8] Michael does not argue on appeal that the conspiracy involved fewer than five participants.

activity supports the district court's finding that Lightsey was in fact managed by defendant Michael.[9]

For the foregoing reasons, the judgment of the district court is AFFIRMED.

[9] Any other arguments raised by Appellants challenging their sentences are rejected without discussion.

Appendix B

Eleventh Circuit Court of Appeals Order
June 11, 2018

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 15-14400-GG

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICHAEL PARNELL,
MARY WILKERSON,
STEWART PARNELL,

Defendants - Appellants.

Appeal from the United States District Court
for the Middle District of Georgia

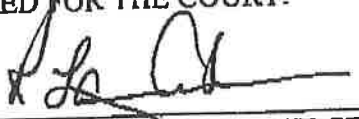
ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: TJOFLAT, MARTIN and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

ORD-42

Appendix C

U. S. District Court Judgment

September 30, 2015
(Doc. 502)

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Middle District of Georgia

UNITED STATES OF AMERICA
v.
MARY WILKERSON

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:13-CR-12-004

USM Number: 96283-020

THOMAS G. LEDFORD
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☒ was found guilty on count(s) 73 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1505	OBSTRUCTION OF JUSTICE	1/16/2009	73

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has been found not guilty on count(s) 76

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

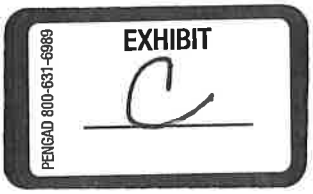
It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/21/2015
Date of Imposition of Judgment

W. Louis Sands
Signature of Judge

W. LOUIS SANDS, SENIOR U.S. DISTRICT JUDGE
Name and Title of Judge

9/29/15
Date



DEFENDANT: MARY WILKERSON
CASE NUMBER: 1::1-3C-00R12-004

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 60 months.

☒ The court makes the following recommendations to the Bureau of Prisons:
The Court recommends to the BOP that Wilkerson be housed as close to Edison, GA as possible.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☒ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MARY WILKERSON
CASE NUMBER: 1::1-3C-00R12-004

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 2 years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: MARY WILKERSON
CASE NUMBER: 1::1-3C-00R12-004

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$ _____	$ _____	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 5 — Schedule of Payments

DEFENDANT: MARY WILKERSON
CASE NUMBER: 1::1-3C-00R12-004

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D ☐ E, or ☐ F below; or

B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

Any criminal monetary penalty ordered by the court shall be due and payable in full immediately. Present and future Assets are subject to enforcement and may be included in the treasury offset program allowing qualified federal benefits to be applied to the balance of criminal monetary penalties.

Payment during the term of supervised release will commence within 60 days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time. (fine/restitution) payment shall be due during the period of imprisonment at the rate of not less than $25 per quarter and pursuant to the bureau of prisons' financial responsibility program. The value of any future assets may be applied to offset the balance of criminal monetary penalties. The defendant may be included in the treasury offset program, allowing qualified benefits to be applied to offset the balance of any criminal monetary penalties.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Appendix D

Indictment
(Doc. 1)

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

UNITED STATES OF AMERICA	:	**CASE NO. 1:13-CR-12- WLS**
	:	
v.	:	**VIOLATIONS:**
	:	**21 U.S.C. §§ 331(a) & 333(a)(2)**
STEWART PARNELL,	:	**18 U.S.C. § 1505**
MICHAEL PARNELL,	:	**18 U.S.C. § 1349**
SAMUEL LIGHTSEY, and	:	**18 U.S.C. § 1343**
MARY WILKERSON,	:	**18 U.S.C. § 1341**
Defendants.	:	**18 U.S.C. § 371**
	:	**18 U.S.C. § 2**
	:	

INDICTMENT

THE GRAND JURY CHARGES:

GENERAL ALLEGATIONS

At times relevant to this Indictment:

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 defendant **STEWART PARNELL** 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 **STEWART PARNELL**. 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.

Defendants

4. **STEWART PARNELL** was an owner and President of PCA and served as PCA's primary leader and decision maker. **STEWART PARNELL** traveled to PCA Blakely, PCA Plainview and PCA Suffolk to meet with plant management and employees and to supervise food production. **STEWART PARNELL** 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. **STEWART PARNELL** 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: Operations Manager Daniel Kilgore, Operations Manager **SAMUEL LIGHTSEY**, Office Manager/Quality Assurance Manager **MARY WILKERSON**, as well as other unindicted coconspirators (UCs), managers, and employees of PCA.

5. **MICHAEL PARNELL** was the Vice President and principal decision maker of P.P. Sales. **MICHAEL PARNELL**, the brother of **STEWART PARNELL**, worked on behalf of PCA as a food broker. **MICHAEL PARNELL** 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. **MICHAEL PARNELL** 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: **STEWART PARNELL**, **SAMUEL LIGHTSEY**, **MARY WILKERSON**, and Daniel Kilgore, as well as other unindicted coconspirators, managers, and employees of PCA. **MICHAEL PARNELL** 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. **SAMUEL LIGHTSEY** was the PCA Blakely Operations Manager from on or about July 2008 through February 2009. **SAMUEL LIGHTSEY** was responsible for PCA Blakely plant operations, and he reported directly to and was directly supervised by **STEWART**

PARNELL. SAMUEL LIGHTSEY supervised personnel and managed the production, microbiological testing, packaging and transportation of food produced at PCA Blakely.

7. **MARY WILKERSON** was employed in various capacities at PCA Blakely from in or about April 2002 through February 2009. **MARY WILKERSON** 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.

Others

8. Daniel Kilgore, not indicted herein, was the PCA Blakely Operations Manager from on 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 **STEWART PARNELL**. Daniel Kilgore supervised personnel and managed the production, microbiological testing, packaging and transportation of food produced at PCA Blakely.

9. Unindicted Coconspirator No. 1 ("UC #1") 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. Unindicted Coconspirator No. 2 ("UC #2") 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, UC #2 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. Unindicted Coconspirator No. 3 ("UC #3") was the PCA Blakely Production Manager or interim Operations Manager from in or about February 2001 through November 2008. As Production Manager, UC #3 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, UC #3 was the interim Operations Manager, where he was responsible for PCA Blakely plant operations, and he reported directly to and was directly supervised by **STEWART PARNELL.**

12. Unindicted Coconspirator No. 4 ("UC #4") 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 **STEWART PARNELL.**

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. Products purchased by Customer #1 were shipped from PCA Blakely to a 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.

Products purchased by Customer #2 were shipped from PCA Blakely to a 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. Products purchased by Customer #3 were shipped from PCA Blakely to a 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. Products purchased by Customer #4 were shipped from PCA Blakely to a 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. Products purchased by Customer #5 were shipped from PCA Blakely to a 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. Products purchased by Customer #6 were shipped from PCA Blakely to a 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. Products purchased by Customer #7 were shipped from PCA Blakely to a facility located in Cambridge, Massachusetts.

h) Customer #8 was a national manufacturer of baked cookies containing peanuts with its principal place of business in Downers Grove, Illinois. Products purchased by Customer #8 were shipped from PCA Blakely to a 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. Products purchased by Customer #9 were shipped from PCA Blakely to a 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. Products purchased by Customer #10 were shipped from PCA Blakely to a 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. Products purchased by Customer #11 were shipped from PCA Blakely to a 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; and

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.

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/g[1]. 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 testing 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 **STEWART PARNELL**, **SAMUEL LIGHTSEY**, and **MARY WILKERSON**, 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 Indictment 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 Grand Jury, 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 defendants,

STEWART PARNELL,
MICHAEL PARNELL,
and
SAMUEL LIGHTSEY,

did knowingly and willfully combine, conspire, confederate and agree with each other and with others both known and unknown to the Grand Jury, 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 defendants 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 defendants 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 defendants 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 defendants 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 defendants 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 defendants 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 defendants 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 defendants 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 defendants 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 defendants 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 defendants 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

defendants 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 defendants 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 defendants 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 defendants and others sent and caused to be sent to their customers COAs containing the results of the retest only. The defendants 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 defendants 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 defendants 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 defendants 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 defendants 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. PCA shipped and caused to be shipped such products from unapproved plants despite some of its customers' requirements that all manufacturing plants be approved prior to accepting product from the plant. These customers required such approval because they wanted to ensure the quality of the plant from which they were to receive product, and because they wanted to have the capability to trace the origins of their product, if needed.

35. It was further a part of the conspiracy that the defendants 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 United States received substituted product made from peanuts grown in a foreign country.

36. It was further a part of the conspiracy that the defendants 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 defendants 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 defendants 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; and

e) Proper cleaning and sanitation procedures were not followed.

Despite warnings from industry experts, the defendants 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 defendants 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 defendants and others, with respect to Customer #1, purposefully devised and implemented product testing procedures which, when fully

implemented, the defendants 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 identifying sample number and the test results for that 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 defendants 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 defendants 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 and to be identified as lot numbers 8032, 8037, and 8038. 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 defendants and unindicted coconspirators simply did not assign that number to a future lot. They skipped that number in production. However, the actual lot from which sample 8036 was taken, lot 8028, which was contaminated with salmonella, had already been shipped to Customer #1. Defendants 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 defendants 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 defendants 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 defendants 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 1-38 (General Allegations and Manner and Means) of this Indictment 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 Grand Jury, 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 defendants,

STEWART PARNELL,
MICHAEL PARNELL,
and
SAMUEL LIGHTSEY,

did knowingly and willfully combine, conspire, confederate and agree with each other and with others both known and unknown to the Grand Jury, 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);

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.

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.

OVERT ACTS

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

1. On or about June 19, 2003, UC # 2, without the knowledge and consent of the customer[2], 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." UC #2 noted on the fax that his instructions were "per Stewart."

2. On or about September 15, 2004, **STEWART PARNELL** 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 **STEWART PARNELL**, 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, **STEWART PARNELL** 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 **STEWART PARNELL**, Daniel Kilgore, nor others notified Customer #9 that the products it had received had tested confirmed positive for salmonella.

[2] Customers without an identifying number are customers of PCA other than those identified as Customers #1-11 above.

4. On or about July 8, 2005, **STEWART PARNELL** 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, **STEWART PARNELL** 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.

6. On or about August 12, 2005, **STEWART PARNELL** 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 **STEWART PARNELL**, 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 Grand Jury, **STEWART PARNELL** 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, **STEWART PARNELL** 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, **STEWART PARNELL** 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 **STEWART PARNELL**, 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, **STEWART PARNELL** 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 **STEWART PARNELL**, 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, **STEWART PARNELL** 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 **STEWART PARNELL** about another company's practices regarding issuing COAs to customers, **MICHAEL PARNELL** stated that PCA could provide fictitious COAs to its customers. Via email to **STEWART PARNELL**, **MICHAEL PARNELL** 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, **STEWART PARNELL** 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, **MICHAEL PARNELL** 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. **MICHAEL PARNELL** 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, **STEWART PARNELL** 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'[3] 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, **STEWART PARNELL** 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, **STEWART PARNELL** 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, **STEWART PARNELL** falsely stated: "We have done an extensive complete environmental swabbing as well as testing of

[3] "Swab testing," also referred to as "environmental testing," refers to the practice of wiping the surface areas in the production facility with swabs and testing the swabs for the presence of pathogens, including salmonella.

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," **STEWART PARNELL** instructed Daniel Kilgore, via email: "SHIP."

19. On or about April 12, 2007, via email to UC #2, 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." UC #2 forwarded said email to **STEWART PARNELL**, 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, UC #2, via email sent to PCA Plainview employees and copied to **STEWART PARNELL**, "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, **STEWART PARNELL** 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 **STEWART PARNELL**, 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, **STEWART PARNELL** and UC #4 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 peanut 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, **STEWART PARNELL** and UC #4 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 20, 2007, or sometime thereafter, **STEWART PARNELL** and UC #4 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 peanut 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.).

25. On or about July 12, 2007, **STEWART PARNELL** 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 UC #1 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 **STEWART PARNELL**, 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, UC #4, via email, informed a PCA Plainview employee that a customer needed a COA for a prior order, and UC #4 did inquire of said employee: "Do we have anything we can use?"

27. On or about August 16, 2007, **STEWART PARNELL** did inform **MICHAEL PARNELL**, Daniel Kilgore and UC #2 that **MICHAEL PARNELL** 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. **STEWART PARNELL** 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, **STEWART PARNELL**, via email, stated to Daniel Kilgore, UC #1, and UC # 2: "these lab tests and COA's are fucking breaking me / us."

29. On or about September 12, 2007, **STEWART PARNELL, MICHAEL PARNELL,** 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, UC #1, via email, provided **MICHAEL PARNELL** with an incomplete COA which he knew **MICHAEL PARNELL** would falsify, stating in said email: "Mike, 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 **MICHAEL PARNELL**. On or about September 29, 2007, **STEWART PARNELL, MICHAEL PARNELL,** 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, **MICHAEL PARNELL** 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, UC #1, via email, provided **MICHAEL PARNELL** with an incomplete COA which he knew **MICHAEL PARNELL** would falsify, stating in said email: "Mike, Please fill out. Thanks. Are you going to send???" On or about October 3, 2007, **STEWART PARNELL, MICHAEL PARNELL,** 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, **MICHAEL PARNELL** 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 **STEWART PARNELL**, **MICHAEL PARNELL**, Daniel Kilgore, nor others informed Customer #1 that the product it had received did not meet its specifications.

32. On or about October 24, 2007, **STEWART PARNELL**, **MICHAEL PARNELL**, 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, **STEWART PARNELL**, **MICHAEL PARNELL**, 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 **STEWART PARNELL**, **MICHAEL PARNELL**, 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, **STEWART PARNELL**, **MICHAEL PARNELL**, 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 **STEWART PARNELL, MICHAEL PARNELL,** 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," **STEWART PARNELL** did state, via email to PCA employees, including Daniel Kilgore, **MARY WILKERSON**, UC #2, and UC #3, the following: "I am not sure anyone down there quite understands how SERIOUS this is....these 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, **MICHAEL PARNELL** advised a PCA official needing a COA for a customer, "[w]e can then supply them with a generic COA or even a Customer #1 COA."

37. On or about May 8, 2008, **STEWART PARNELL**, Daniel Kilgore, and UC #2 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, **STEWART PARNELL** instructed that the explanation to be given to the FDA be "SIZE ISSUES OF THE CUT." **STEWART PARNELL** further stated: "I don't want to mention metal . . . ." UC #2 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, **STEWART PARNELL, MICHAEL PARNELL,** and UC #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. 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, **STEWART PARNELL, MICHAEL PARNELL**, and UC #3 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, **STEWART PARNELL, MICHAEL PARNELL,** and UC #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. 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 **STEWART PARNELL, MICHAEL PARNELL, MARY WILKERSON,** UC #3, 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, **MARY WILKERSON** did, via email, state to UC #4 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, **MARY WILKERSON** did advise **SAMUEL LIGHTSEY**, via email, regarding PCA's practice of retesting, stating that "[UC #1] 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 UC #2 about a customer's request for a COA, **MARY WILKERSON** stated, via email: "Waiting on retest! [The product] was out on Coliforms?????" UC #2 responded to **MARY WILKERSON**, 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?" **MARY WILKERSON** responded to UC #2, stating: "MICE!"

43. On or about August 7, 2008, **STEWART PARNELL, MICHAEL PARNELL,** and **SAMUEL LIGHTSEY** 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 **STEWART PARNELL, MICHAEL PARNELL, SAMUEL LIGHTSEY, MARY WILKERSON,** 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, **STEWART PARNELL** instructed **SAMUEL LIGHTSEY** to release said product. **STEWART PARNELL** stated, via email: "okay, let's turn them loose then...Stewart."

45. On August 25, 2008, UC #2, 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, UC #2, 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, UC #2, via email, stated to **SAMUEL LIGHTSEY**: "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, UC #2, 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, UC #2, 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 #2, via email, stated to **STEWART PARNELL** and **SAMUEL LIGHTSEY**: "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, **STEWART PARNELL, MICHAEL PARNELL**, and **SAMUEL LIGHTSEY** 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 **STEWART PARNELL, MICHAEL PARNELL, SAMUEL LIGHTSEY, MARY WILKERSON,** 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, **STEWART PARNELL, MICHAEL PARNELL,** and **SAMUEL LIGHTSEY** 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, **MARY WILKERSON** 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 **STEWART PARNELL, MICHAEL PARNELL, SAMUEL LIGHTSEY, MARY WILKERSON,** nor any other PCA official informed Customer #1 that the product was never tested.

53. On or about December 31, 2008, **MARY WILKERSON** 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 **STEWART PARNELL** and **SAMUEL LIGHTSEY,**

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 3-22
(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) of this Indictment are hereby realleged and shall be incorporated by reference into each succeeding count of this Indictment 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 named Defendants, aided and abetted by each other and by other persons known and unknown to the Grand Jury, 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	Defendants	Lot #	Carrier	Destination	Customer
3	02/19/08	**S. PARNELL M. PARNELL**	8044, Peanut Paste	SouthernAG	North Carolina	1
4	02/22/08	**S. PARNELL**	8024B, Peanuts	R & L	Alabama	3
5	02/27/08	**S. PARNELL**	8024B, Peanuts	R & L	Florida	4
6	03/05/08	**S. PARNELL M. PARNELL**	8049, Peanut Paste	SouthernAG	North Carolina	1
7	03/28/08	**S. PARNELL M. PARNELL**	8088, Peanut Paste	SouthernAG	North Carolina	1
8	04/22/08	**S. PARNELL M. PARNELL**	8099, Peanut Paste	SouthernAG	North Carolina	1
9	05/21/08	**S. PARNELL M. PARNELL**	8129, Peanut Paste	SouthernAG	North Carolina	1
10	05/27/08	**S. PARNELL M. PARNELL**	8130, Peanut Paste	SouthernAG	North Carolina	1
11	06/27/08	**S. PARNELL**	8168, Peanuts	DMX	New York	5
12	06/27/08	**S. PARNELL**	8168, Peanuts	Rudolph	Kentucky	6
13	07/02/08	**S. PARNELL**	8168, Peanuts	Roadway	Massachusetts	7
14	07/14/08	**S. PARNELL LIGHTSEY M. PARNELL**	8184, Peanut Paste	SouthernAG	North Carolina	1
15	08/20/08	**S. PARNELL LIGHTSEY M. PARNELL**	8220, Peanut Paste	SouthernAG	North Carolina	1
16	08/29/08	**S. PARNELL LIGHTSEY**	8226, Peanut Butter	CBX	Utah	8
17	09/25/08	**S. PARNELL LIGHTSEY M. PARNELL**	8263, Peanut Paste	SouthernAG	North Carolina	1

18	09/25/08	**S. PARNELL LIGHTSEY**	8268, Peanuts	Robert	New York	5
19	11/24/08	**S. PARNELL LIGHTSEY M. PARNELL**	8308, Peanut Paste	SouthernAG	North Carolina	1
20	12/03/08	**S. PARNELL LIGHTSEY M. PARNELL**	8310, Peanut Paste	SouthernAG	North Carolina	1
21	12/10/08	**S. PARNELL LIGHTSEY M. PARNELL**	8344, Peanut Paste	SouthernAG	North Carolina	1
22	1/06/09	**S. PARNELL LIGHTSEY**	8366, Peanut Paste	R & L	Utah	11

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 23-35
(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) of this Indictment are hereby realleged and shall be incorporated by reference into each succeeding count of this Indictment 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 named Defendants, aided and abetted by each other and by other persons known and unknown to the Grand Jury, 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	Defendants	Lot no.	Carrier	Destination	Customer
23	02/19/08	**S. PARNELL M. PARNELL**	8044, Peanut Paste	SouthernAG	North Carolina	1
24	03/05/08	**S. PARNELL M. PARNELL**	8049, Peanut Paste	SouthernAG	North Carolina	1
25	03/28/08	**S. PARNELL M. PARNELL**	8088, Peanut Paste	SouthernAG	North Carolina	1
26	04/22/08	**S. PARNELL M. PARNELL**	8099, Peanut Paste	SouthernAG	North Carolina	1
27	05/21/08	**S. PARNELL M. PARNELL**	8129, Peanut Paste	SouthernAG	North Carolina	1
28	05/27/08	**S. PARNELL M. PARNELL**	8130, Peanut Paste	SouthernAG	North Carolina	1
29	07/14/08	**S. PARNELL LIGHTSEY M. PARNELL**	8184, Peanut Paste	SouthernAG	North Carolina	1
30	08/20/08	**S. PARNELL LIGHTSEY M. PARNELL**	8220, Peanut Paste	SouthernAG	North Carolina	1
31	08/29/08	**S. PARNELL LIGHTSEY**	8226, Peanut Butter	CBX	Utah	8
32	09/25/08	**S. PARNELL LIGHTSEY M. PARNELL**	8263, Peanut Paste	SouthernAG	North Carolina	1
33	11/24/08	**S. PARNELL LIGHTSEY M. PARNELL**	8308, Peanut Paste	SouthernAG	North Carolina	1

34	12/03/08	**S. PARNELL LIGHTSEY M. PARNELL**	8310, Peanut Paste	SouthernAG	North Carolina	1
35	12/10/08	**S. PARNELL LIGHTSEY M. PARNELL**	8344, Peanut Paste	SouthernAG	North Carolina	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 36-55
(Interstate Shipments Fraud: 18 U.S.C. § 1341)

Paragraphs 1-38 (General Allegations and Manner and Means) of this Indictment are hereby realleged and shall be incorporated by reference into each succeeding count of this Indictment 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 named Defendants, aided and abetted by each other and by other persons known and unknown to the Grand Jury, 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	Defendants	Lot no.	Carrier	Destination	Customer
36	02/19/08	**S. PARNELL M. PARNELL**	8044, Peanut Paste	SouthernAG	North Carolina	1
37	02/22/08	**S. PARNELL**	8024B, Peanuts	R & L	Alabama	3
38	02/27/08	**S. PARNELL**	8024B, Peanuts	R & L	Florida	4

39	03/05/08	**S. PARNELL M. PARNELL**	8049, Peanut Paste	SouthernAG	North Carolina	1
40	03/28/08	**S. PARNELL M. PARNELL**	8088, Peanut Paste	SouthernAG	North Carolina	1
41	04/22/08	**S. PARNELL M. PARNELL**	8099, Peanut Paste	SouthernAG	North Carolina	1
42	05/21/08	**S. PARNELL M. PARNELL**	8129, Peanut Paste	SouthernAG	North Carolina	1
43	05/27/08	**S. PARNELL M. PARNELL**	8130, Peanut Paste	SouthernAG	North Carolina	1
44	06/27/08	**S. PARNELL**	8168, Peanuts	DMX	New York	5
45	06/27/08	**S. PARNELL**	8168, Peanuts	Rudolph	Kentucky	6
46	07/02/08	**S. PARNELL**	8168, Peanuts	Roadway	Massachusetts	7
47	07/14/08	**S. PARNELL LIGHTSEY M. PARNELL**	8184, Peanut Paste	SouthernAG	North Carolina	1
48	08/20/08	**S. PARNELL LIGHTSEY M. PARNELL**	8220, Peanut Paste	SouthernAG	North Carolina	1
49	08/29/08	**S. PARNELL LIGHTSEY**	8226, Peanut Butter	CBX	Utah	8
50	09/25/08	**S. PARNELL LIGHTSEY M. PARNELL**	8263, Peanut Paste	SouthernAG	North Carolina	1
51	09/25/08	**S. PARNELL LIGHTSEY**	8268, Peanuts	Robert	New York	5
52	11/24/08	**S. PARNELL LIGHTSEY M. PARNELL**	8308, Peanut Paste	SouthernAG	North Carolina	1
53	12/03/08	**S. PARNELL LIGHTSEY M. PARNELL**	8310, Peanut Paste	SouthernAG	North Carolina	1

54	12/10/08	**S. PARNELL LIGHTSEY M. PARNELL**	8344, Peanut Paste	SouthernAG	North Carolina	1
55	1/06/09	**S. PARNELL LIGHTSEY**	8366, Peanut Paste	R & L	Utah	11

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

COUNTS 56-67
(Wire Fraud: 18 U.S.C. § 1343)

Paragraphs 1-38 (General Allegations and Manner and Means) of this Indictment are hereby realleged and shall be incorporated by reference into each succeeding count of this Indictment 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 named Defendants, aided and abetted by each other and by other persons known and unknown to the Grand Jury, 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 interstate wire communications between Georgia and other states on or about the dates as set forth below:

Ct	Date	Defendant(s)	Description
56	03/06/08	**S. PARNELL M. PARNELL**	Email exchange via the Internet, between locations in Georgia and Virginia, attaching COA for previous load of peanut paste, in which Kilgore advises **M. PARNELL**: "please notice the lot numbers don't match.....if YOU want to change them, then please do so and then forward to [Customer #1]."

57	03/06/08	**S. PARNELL**	Email via the Internet, between locations in Georgia and Virginia, in which **KILGORE** suggests to **S. PARNELL** 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%."
58	03/07/08	**S. PARNELL** **M. PARNELL**	Email exchange via the Internet, between locations in Georgia and Virginia, in which **KILGORE** advises **M. PARNELL**: "You have the COA I sent the other day.....Please fill out what you want and sent [sic] back."
59	03/26/08	**S. PARNELL** **M. PARNELL**	Email exchange via the Internet, between locations in Georgia and Virginia, discussing costs of laboratory testing for peanut paste sold to [Customer #1], in which Kilgore suggests to **S. PARNELL** and **M. PARNELL** 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."
60	05/08/08	**S. PARNELL**	Email exchange via the Internet, between locations in Georgia and Virginia, in which Kilgore suggests **to S. PARNELL** and UC #2 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."
61	06/02/08	**M. PARNELL**	Email via the Internet, between locations in Georgia and Virginia, in which **M. PARNELL** suggests to a PCA employee in Blakely, Georgia, that PCA ship untested product with a COA from a different product.
62	06/06/08	**S. PARNELL**	Email exchange via the Internet, between locations in Georgia and Virginia, discussing retesting of product which had tested presumptive positive for salmonella, in which **S. PARNELL** states to PCA employees, including **WILKERSON**, UC#2, UC#3, and UC #4: "I go thru [sic] this about once a week...I will hold my breath.....again..."

63	06/30/08 through 07/02/08	**S. PARNELL**	Email exchange via the Internet, between locations in Georgia and Virginia, between **S. PARNELL, WILKERSON**, and UC #3, discussing the possibility of using peanut paste which "tastes like shit" to blend in with peanut paste sold to Customer #1.
64	08/19/08 through 08/21/08	**S. PARNELL LIGHTSEY**	Email exchange via the Internet, between locations in Georgia and Virginia, in which **S. PARNELL**, upon being advised that product, which had initially tested confirmed positive for salmonella, had subsequently retested negative, states to **LIGHTSEY**: "okay, let's turn them loose then."
65	09/02/08	**S. PARNELL LIGHTSEY**	Email exchange via the Internet, between locations in Georgia and Virginia, in which **S. PARNELL** authorizes **LIGHTSEY** to ship product which had not tested within acceptable microbiological specifications, because that customer did not require a COA.
66	09/29/08	**S. PARNELL LIGHTSEY**	Email exchange via the Internet, between locations in Georgia and Virginia, in which UC #2 informs **S. PARNELL** and **LIGHTSEY** that PCA "customers have been advised of the 'inconclusive' micro test and the pending retest to come back Thursday of this week," (internal quotation marks in original) when in fact PCA had received conclusive test results indicating that the products shipped to those customers were confirmed positive for salmonella.
67	10/21/08 through 10/22/08	**S. PARNELL LIGHTSEY M. PARNELL**	Email exchange via the Internet, between locations in Georgia and Virginia, in which **S. PARNELL** advises **LIGHTSEY, M. PARNELL**, and UC #2 that PCA should be able to change Mexican peanut paste specifications in order to match new color specifications for Customer #1.

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

Counts 68-76
(Obstruction of Justice; 18 U.S.C. § 1505)

Paragraphs 1-38 (General Allegations and Manner and Means) of this Indictment are hereby realleged and shall be incorporated by reference into each succeeding count of this Indictment 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 named Defendants, aided and abetted by each other and by other persons known and unknown to the Grand Jury, by the actions described below, corruptly obstructed, influenced and impeded, and endeavored to obstruct, influence and impede, the due and proper administration of the law under which a pending proceeding was being had before an agency of the United States, to wit, an inspection of the FDA of PCA's facility in Blakely, Georgia, pursuant to the FDA's statutory inspection authority set forth in Title 21, United States Code, Section 374;

Ct.	Date	Defendant(s)	Act of Obstruction
68	01/09/09	**LIGHTSEY** **S. PARNELL**	On the first day of the inspection, when asked by the FDA Inspector, if PCA had received any positive results for salmonella, **LIGHTSEY** did state to the FDA Inspector: "We had one presumptive positive for salmonella in 5 lb. Pails of [Customer #2] Peanut Butter under lot # 8330 tested by [Laboratory #2], but it was found negative when the tests were completed." **S. PARNELL** participated in this conversation by speaker phone and failed to correct **LIGHTSEY**'s statement.
69	01/09/09	**LIGHTSEY**	When asked by the FDA Inspector what products were tested for microbial analysis, **LIGHTSEY** stated the FDA Inspector that PCA collects a sample from all production lines to be tested for microbiological analysis.

70	01/09/09	**LIGHTSEY**	**LIGHTSEY** stated to the FDA Inspector that finished product is on hold at PCA until the test results are received from the private lab, which is usually about 4 days, and that once they have received results from the lab, the product is then shipped out.
71	01/12/09	**LIGHTSEY**	**LIGHTSEY** stated to the FDA Inspector that the procedure for testing peanut paste, collecting approximately 4-5 samples from the bulk tank spout at one time, was done because of the large volume of paste in the 20,000 lb. holding bin.
72	01/16/09	**S. PARNELL**	During a conversation in which **S. PARNELL** participated by speaker phone, after being asked by the FDA Inspector if he remembered any more positives during 2008, S. PARNELL stated: "This is not something that happens very often and I think I would remember something that came up positive." **S. PARNELL** further stated that he had no knowledge of any.
73	01/16/09	**WILKERSON**	After **S. PARNELL** told the inspector that if any samples had come up positive, **WILKERSON** would know, but he had no knowledge of any, the FDA Inspector asked **WILKERSON** if she had any knowledge of any positives. **WILKERSON** said to the FDA Inspector that earlier in the year she was not working in QA and that she was not aware of any positives.
74	01/16/09	**LIGHTSEY**	After being told by the FDA Inspector that the method of sample identification for peanut paste was confusing, **LIGHTSEY** stated to the FDA Inspector that in hindsight they realized that this was a poor system of designation.
75	01/20/09	**LIGHTSEY**	**LIGHTSEY** stated to the FDA Inspector that all products are tested for micro analysis except for the raw peanuts, and that they had not received a positive salmonella result for the roasted peanuts.
76	01/24/09	**LIGHTSEY** **WILKERSON**	**LIGHTSEY** and **WILKERSON** concealed and withheld from the FDA a record, that being a log entitled, "C.O.A. REQUESTS," which listed the sample numbers of all samples of peanuts products submitted for microbiological testing during calendar year 2008.

All in violation of Title 18, United States Code, Sections 1505 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 Indictment are hereby realleged and shall be incorporated by reference into each succeeding count of this Indictment as if set forth in full therein.

The allegations contained in Counts 1 through 76 of this Indictment 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 offense(s) in violation of Title 18, United States Code, Section 1341 set forth in Counts 36 through 55; conviction of the offense(s) in violation of Title 18, United States Code, Section 1343 set forth in Counts 56 through 67; the defendants, **STEWART PARNELL, MIKE PARNELL, DANIEL KILGORE, SAMUEL LIGHTSEY,** and **MARY WILKERSON** 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 defendants:

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).

A TRUE BILL.

/s/ Foreperson of the Grand Jury
FOREPERSON OF THE GRAND JURY

ON BEHALF OF THE UNITED STATES,

MICHAEL BLUME, Director
Consumer Protection Branch
United States Department of Justice

MICHAEL J. MOORE, United States Attorney
United States Attorney's Office
Middle District of Georgia

By: _____
PATRICK H. HEARN
Trial Attorney
Consumer Protection Branch
United States Department of Justice

By: _____
K. ALAN DASHER
Assistant United States Attorney
United States Attorney's Office
Middle District of Georgia

_____
MARY M. INGLEHART
Trial Attorney
Consumer Protection Branch
United States Department of Justice

Filed in open court this 15 day of February, 2013.

_____
Deputy Clerk

Appendix E

Motion to Sever
(Doc. 223)

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

UNITED STATES OF AMERICA	* CRIMINAL NO. 1:13-CR-00012-WLS-TQL-4 * VIOLATIONS: * 18 U.S.C. SECTIONS 1505 * 18 U.S.C. SECTIONS 1505
v.	*
MARY WILKERSON,	* MOTION TO DISMISS OR ALTERNATIVELY, * FOR CONTINUANCE AND SEVER, * AND COMPEL MEANINGFUL DISCOVERY
Defendant.	* FOR DEFENDANT, MARY WILKERSON

COMES NOW, the Defendant, MARY WILKERSON, by and through her attorney of record and moves this Honorable Court to enter an Order to Dismiss the case against the Defendant, Mary Wilkerson or Alternatively for a Continuance and Sever and Compel the Government to Provide Meaningful Discovery to the Defendant due to the following.

1.

The Defendant is charged with two counts of Obstruction of Justice, 18 U.S.C. § 1505, Count No. 73 and Count No. 76 in the above Indictment, each of which Count carries a fine and/or a sentence of up to five years imprisonment.

2.

The Defendant by and through her Counsel shows that since February 25, 2013 the Government has provided her with approximately 3-1/2 to 4-1/2 million documents contained on various detached hard drives and additional CD's throughout the past year and a half up until the latest on production of 100,000 files of unorganized Discovery on July 1, 2014, as well as, several

production releases in June 2014, all less than thirty days from when the Trial date was set to July 14, 2014.

3.

The Defendant shows that a Hearing before this Honorable Court was held on the Defendants' Motion to Dismiss due to the release of the 100,000 files less than two weeks before the scheduled Trial date of July 14, 2014 and the Trial was continued to July 28, 2014. The Government represented to the Court that the files were easily accessible with the Concordance Software using relevant search terms. The Defendant shows that this is not factual as the 100,000 files did not have databases already created and did not have identifiable Bates Numbers, thereby requiring a laborious and slow process of searching this recent data dump of Discovery and reading them manually page by page, which cannot possibly be done before the Trial date of July 28, 2014 since the Concordance Software will not search without the relevant terms and Bates Numbering.

4.

On July 14, 2014 the Defendant was served with another Discovery package from Josh Burke, Taint Attorney, Department of Justice, Washington, D.C, which required a password to access a portion of said Discovery which was not provided to the Defendant until July 17, 2014 by E-mail. (See attached Exhibit "A" and Exhibit "B"). In essence, the Defendant has been effectively prevented from searching what appears to be voluminous amount of documents as already cited.

5.

The Defendant shows that the providing of such a voluminous number of documents without any indexing of same or linking of the documents amounts to providing no Discovery at all since searching the vast number of documents is akin to hunting for a needle in a haystack.

6.

There has been much Discovery released in numerous batches well past the Discovery deadline of July 17, 2013 preventing preparation for Trial on July 14, 2014, July 28, 2014 or even in the foreseeable future.

7.

The providing of said documents by the Government in such volume without any indexing or organization combined with Defendant's inability to use the specialized Concordance software using relevant terms to access these latest Discovery releases less than 30 days before either Trial date results in Trial by Ambush and violates Due Process, which is clearly afforded to the Defendant by the 5th Amendment of the United States Constitution.

8.

The Defendant shows that the Government has had five years or more to obtain and analyze said evidence in this case and to prepare for Trial and for the Government to release Discovery to the Defendant in so many voluminous packages well past the deadline of July 17, 2013 throughout this past year and a half, up until Trial date is an aggregious abuse of Discovery and a *Brady* violation, as well, therefore the case against Defendant Wilkerson should be dismissed or at least she should be severed as a Defendant in this case for the upcoming Trial date of July 28, 2014 and her Trial be continued until such time as her Counsel has had adequate time to search

and view the latest files released by the Taint Attorney and the Government over the past few weeks.

8.

The Defendant has been forced to file many Discovery Motions since February 2013 in attempt to get meaningful Discovery from the Government that was not buried in millions of useless documents and the Government has continued to release documents in increments well past the deadline in such a way that the Defendant cannot locate the essential evidence or exculpatory information through an exercise of due diligence.

9.

The Defendant anticipates that the Government will still be producing Discovery up until the day of Trial and throughout the Trial.

WHEREFORE the Defendant prays that the Court will Dismiss the Case against the Defendant, Mary Wilkerson, due to the repetitive violations of the Fifth and Sixth Amendments, Rule 16 of the Federal Rules of Criminal Procedure and the Post *Stevens* Discovery Abuses as per Brady v. Maryland, 373 U.S. 83 (1963), United States v. Skilling, 554 F.3d 529, 576-77 (5th Cir. 2009) and Giglio v. United States, 405 U.S. 105 (1972) which continues up to the present date as the Trial date of July 28, 2014 approaches, or, in the event that Defendant's Motion to Dismiss is not granted Defendant Wilkerson prays for an Order granting a Continuance and Sever from Defendant, Stewart Parnell, and Defendant, Michael Parnell, as well as, an Order Compelling the Government to Provide Meaningful Discovery for the latest Discovery production as set out above.

This 18th day of July, 2014.

/s/ Thomas G. Ledford
Thomas G. Ledford
Attorney for Defendant,
Mary Wilkerson
State Bar No.: 443087

This document prepared by:
THE LEDFORD LAW FIRM, LLC

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

UNITED STATES OF AMERICA	* CRIMINAL NO. 1:13-CR-00012-WLS-TQL-4 * VIOLATIONS: * 18 U.S.C. SECTIONS 1505.F * 18 U.S.C. SECTIONS 1505.F * *
MARY WILKERSON,	* CERTIFICATE OF SERVICE *

I hereby certify that on July 18, 2014, I electronically filed the foregoing MOTION TO DISMISS BY DEFENDANT, MARY WILKERSON, with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the Honorable Kenneth Alan Dasher, Assistant United States Attorney and Honorable Patrick H. Hearn, Trial Attorney, U. S. Department of Justice.

This 18th day of July, 2014.

/s/ Thomas G. Ledford
Thomas G. Ledford
Attorney for Defendant,
Mary Wilkerson
State Bar No.: 443087

This document prepared by:
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U.S. Department of Justice
Consumer Protection Branch

Josh Burke
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July 10, 2014

VIA EMAIL AND
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Re: United States v. Stewart Parnell, et al., Case No. 13-CR-12-WLS

Dear Counsel,

In my role as taint attorney for the above-captioned case, I have received documents requested by the prosecution team from law firms that represented Peanut Corporation of America (PCA) as corporate counsel. As you know, on November 16, 2011, the Chapter 7 bankruptcy trustee for PCA executed an express waiver of claims of attorney-client privilege and work product protection ("the waiver"), including, among other categories, "any and all privileges (including but not limited to the attorney-client privilege and any work product

protection) which PCA might be entitled to assert with regard to any and all correspondence or communications that occurred, or documents or materials that were created, prior to February 13, 2009."

On June 6, 2014, the government sought documents from PCA's former corporate counsel covering the time period from June 2003 through February 12, 2009. Because the government only requested documents created prior to February 13, 2009, all of the requested documents are covered by the Chapter 7 trustee's waiver of any claims of privilege or work-product protection. By order dated June 26, 2014, the court denied defendant Stewart Parnell's motion to stay discovery of the attorney files sought by the prosecution team. The court stated that any documents produced by PCA's former corporate counsel to the government may be provided to me as the taint attorney. The court also stated that Stewart Parnell "may provide the taint-team attorney with a copy of his joint defense agreement, so that the same may be considered with other pertinent information."

On June 30, 2014, Mr. Bondurant's firm emailed to me a copy of a joint defense agreement dated February 11, 2009 ("the JDA"). The JDA is signed by corporate counsel for PCA; Stewart Parnell; counsel for Stewart Parnell; David Royster; and counsel for David Royster. Although there are signature lines for defendant Lightsey, defendant Wilkerson, and their respective counsel, all of those signature lines are blank.

To date, I have received documents from two law firms that served as corporate counsel for PCA: McGuire Woods and Hogan Lovells. McGuire Woods was not a signatory to the JDA. Thus, McGuire Woods' documents are subject to the waiver and are not covered by the provisions of the JDA. Hogan was a signatory to the JDA. Hogan's general counsel, Patricia Brannan, has provided hard copy and electronic documents. She has represented to me that Hogan has segregated and withheld any materials that may come under the JDA's definition of "Defense Materials." Thus, Hogan has only provided me with documents it has determined are not covered by the JDA.

I am enclosing copies of the documents provided by McGuire Woods and Hogan Lovells. For the reasons stated above, these documents are subject to the waiver executed by the bankruptcy trustee and are not covered by the JDA. I am providing copies of these documents to you for discovery purposes. I will provide them to the prosecution team on Monday, July 14, 2014.

Regards,

/s/ Josh Burke

Josh Burke
Trial Attorney
U.S. Department of Justice

Tom Ledford

From: Burke, Josh <Josh.Burke@usdoj.gov>
Sent: Thursday, July 17, 2014 3:25 PM
To: bondurant@gentrylocke.com; tom@theledfordlaw.com; parkman@parkmanlawfirm.com; etolley@mindspring.com; devinhsmith@yahoo.com
Subject: FW: Letter regarding PCA

Dear Counsel,

For the CD I provided labelled "Copy of CD provided by McGuire Woods LLP to DOJ taint team," the password is:

[redacted]

Regards,
Josh Burke

From: Burke, Josh
Sent: Thursday, July 10, 2014 9:53 PM
To: bondurant@gentrylocke.com; 'tom@theledfordlaw.com'; 'parkman@parkmanlawfirm.com'; 'etolley@mindspring.com'; 'devinhsmith@yahoo.com'
Subject: Letter regarding PCA

Dear Counsel,

Please see the attached letter. Hard copy and three discs should arrive to each of you by FedEx tomorrow.

Regards,

Josh Burke
Trial Attorney
Consumer Protection Branch
United States Department of Justice
tel: (202) 353-2001
fax: (202) 514-8742