

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

UNITED STATES OF AMERICA, ) No. 08 - \_\_\_\_\_  
)  
Plaintiff, )  
) COUNTS ONE thru THIRTEEN  
) Distribution of Adulterated Food  
v. ) 21 U.S.C. §§ 331(a) and 333(a)(1)  
)  
(1) SALLY MILLER, a/k/a ) NMT 1 Year Imprisonment  
SALLY Q. MILLER, a/k/a, ) NMT \$100,000 Fine (\$200,000 for corporation)  
SALLY QING MILLER, ) NMT 1 Year Supervised Release  
[DOB 04/19/1966], ) \$25 Special Assessment (\$125 for corporation)  
) Order of Restitution  
(2) STEPHEN S. MILLER, ) Class A Misdemeanor  
[DOB 08/12/1952], and )  
) COUNTS FOURTEEN thru TWENTY-SIX  
(3) CHEMNUTRA, INC., ) Distribution of Misbranded Food  
Defendants. ) 21 U.S.C. §§ 331(a) and 333(a)(1)  
)  
) NMT 1 Year Imprisonment  
) NMT \$100,000 Fine (\$200,000 for corporation)  
) NMT 1 Year Supervised Release  
) \$25 Special Assessment (\$125 for corporation)  
) Order of Restitution  
) Class A Misdemeanor  
)  
) COUNT TWENTY-SEVEN  
)  
) Conspiracy to Commit Wire Fraud  
) 18 U.S.C. § 371  
)  
) NMT 5 Years Imprisonment  
) NMT \$250,000 Fine (\$500,000 for corporation)  
) NMT 3 Years Supervised Release  
) \$100 Special Assessment (\$400 for corporation)  
) Order of Restitution  
) Class D felony

INDICTMENT

THE GRAND JURY CHARGES THAT:

At times material and relevant to this Indictment:

INTRODUCTION AND BACKGROUND

The Defendants

1. Defendant ChemNutra, Inc. (ChemNutra), was located in Las Vegas, Nevada. ChemNutra was engaged in the business of buying food and food components in China, importing those Chinese items into the United States, and then selling those items to companies in the United States. ChemNutra represented itself as “the China source experts” with respect to importing Chinese products into the United States. Defendant Sally Miller, a/k/a Sally Q. Miller, a/k/a Sally Qing Miller was the corporate President of ChemNutra and owned 51% of its stock. Defendant Stephen S. Miller was the Chief Executive Officer of ChemNutra and owned 49% of its stock. Sally Qing Miller and Stephen S. Miller were married to each other and were the sole owners of ChemNutra.

2. Defendant Sally Qing Miller was a Chinese national, had an engineering degree in food chemistry from Hangzhou University in China, and had more than 10 years’ work experience in China, most of which was in the role of a purchasing manager in China for United States companies. Sally Qing Miller represented herself to be certified in China as an ISO-9000 chief auditor. ISO stands for International Organization for Standardization. ISO-9000 is an international consensus on good quality management practices that provided a set of internationally recognized standardized requirements for a quality management system in any organization.

### The Chinese Business Entities and Individuals Responsible for Managing Them

3. Xuzhou Anying Biologic Technology Development Co., Ltd (XAC), was located in Pei County, Xuzhou City, Jiangsu Province, China. Selling products to companies in the United States was XAC's business and it did not sell products in the domestic Chinese market or sell its products to firms in countries other than the United States. Mao Linzhun (Linzhun) was the owner and manager of XAC. Linzhun was a Chinese national who is believed to currently reside in China.

4. Suzhou Textiles, Silk, Light Industrial Products, Arts and Crafts I/E Co., Ltd. (SSC), was located in Suzhou, China. SSC was registered as an export broker by the Chinese Ministry of Foreign Trade Bureau and the Chinese Department of Commerce and Industry. As such, SSC could export products for itself and on behalf of others. XAC used SSC to export products to the United States. Zhen Hao Chen, a/k/a Chen Zhen Hao (Hao) was the President of SSC. Hao was a Chinese national who is believed to currently reside in China.

### Chinese Government Agency Responsible for Safety of Exported Food

5. The General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ) was a government agency under the State Council of the People's Republic of China. AQSIQ was in charge of entry-exit commodity inspection, import-export safety, certification and accreditation, as well as administrative law enforcement. According to the Food Hygiene Law of the People's Republic of China and the law of the People's Republic of China on Import and Export Commodity Inspection, AQSIQ was responsible for inspecting, supervising and administering the safety, hygiene and quality of imported and exported foods. To perform the function of entry-exit inspection, AQSIQ established a total of 35 Entry-Exit

Inspection and Quarantine Bureaus (CIQ) in China's 31 provinces, with 300 branches and more than 200 local offices across the country.

#### The United States Food and Drug Administration

6. The United States Food and Drug Administration (FDA) was the agency of the United States government responsible for enforcing the provisions of the Federal Food, Drug, and Cosmetic Act (FDCA). The FDA's responsibilities included, among other things, regulating the distribution of food shipped, delivered, and received in interstate commerce, including articles offered for import into the United States.

#### The Federal Food, Drug, and Cosmetic Act

7. Under the FDCA, the term "food" meant articles used for food or drink for man or other animals and articles used for components of any such article. 21 U.S.C. § 321(f).

8. Under the FDCA, the term "interstate commerce" meant commerce between separate States in the United States and commerce between any State of the United States and any place outside thereof. 21 U.S.C. § 321(b).

9. The FDCA prohibited the introduction or delivery for introduction in interstate commerce, or the causing of such delivery or introduction, of any food that is adulterated. The FDCA defined "adulterated food" to include: food that contains any deleterious substance which may render it injurious to health, 21 U.S.C. § 342(a)(1); food that contains any unsafe food additive, 21 U.S.C. § 342(a)(2)(C)(i); food in which any substance has been substituted wholly or in part therefor, 21 U.S.C. § 342(b)(2); and food to which any substance has been added or mixed so as to make it appear the food is better or of greater value than it is, 21 U.S.C. § 342 (b)(4).

10. The FDCA prohibited the introduction or delivery for introduction in interstate commerce, or the causing of such delivery or introduction, of any food that is misbranded. The FDCA defined “misbranded food” to include: food whose labeling is false or misleading in any particular, 21 U.S.C. § 343(a)(1); and food that contains two or more ingredients but all the ingredients are not listed on the label, 21 U.S.C. § 343(i)(2).

The Scheme to Introduce, Deliver, and Sell Adulterated/Misbranded Food

11. Defendants Sally Qing Miller and Stephen S. Miller caused ChemNutra to enter into contracts and agreements with various pet food manufacturers in the United States for the purpose of supplying wheat gluten to the pet food manufacturers. Wheat gluten is the natural protein derived from wheat or wheat flour. In its freshly extracted wet form it is known as gum gluten which when dried yields a cream-to-tan-colored, free-flowing powder of high protein content and bland taste. When re-hydrated, it regains its original characteristics. So unique is the functionality of wheat gluten and so persistent is the structural integrity after cooking, that wheat gluten appears to have no functional competitor. Pet food manufacturers used wheat gluten as a binding agent in the manufacture of certain types of pet food. ChemNutra was required to supply the pet food manufacturers with food grade wheat gluten that contained a minimum protein content of 75%.

12. Defendants Sally Qing Miller and Stephen S. Miller caused ChemNutra to enter into an agreement with SSC to purchase the wheat gluten that ChemNutra intended to supply to pet food manufacturers in the United States. The agreement required SSC to supply food grade wheat gluten with a minimum protein content of 75%.

13. SSC contracted with XAC to manufacture and supply the wheat gluten SSC needed to fulfill its contract with ChemNutra.

14. SSC completed, on behalf of XAC, the FDA Food Facility Registration as required under United States law. There was no need to complete this registration unless the product being sold was food. By completing this form, SSC acknowledged and admitted that it intended to export food on behalf of XAC. Food products exported from China were subject to mandatory inspection by AQSIQ prior to leaving China.

15. Under Chinese law, a broker, such as SSC, that intended to export a food product out of China was required first to notify the AQSIQ and register the manufacturer with the AQSIQ. The AQSIQ would then conduct a site visit of the manufacturer and inspect the manufacturing facilities. If the manufacturer passed inspection by AQSIQ, a certificate was issued. When the manufacturer was ready to have its food product exported, a sample of the food was taken to the local CIQ office for testing. After the product was tested by the local CIQ and found satisfactory, a certificate was issued that allowed the food product to be exported. SSC did not complete any of these steps for the XAC-manufactured wheat gluten that SSC intended to export.

16. Between November 6, 2006, and February 21, 2007, XAC used SSC to export at least 13 shipments of XAC-manufactured wheat gluten to defendant ChemNutra in the United States, totaling more than 800 metric tons.

17. Wheat gluten was on the AQSIQ list of food products that were subject to mandatory inspection prior to being exported from China.

18. The World Customs Organization (WCO) developed the Harmonized Commodity Description and Coding Systems, generally referred to as “Harmonized System” (HS), as a multipurpose internationally recognized product nomenclature system. The United States and China both were members of the WCO and both used the HS, which was used by more than 200 countries

and economies as a basis for their Customs tariffs and for the collection of international trade statistics. Over 98% of the merchandise in international trade was classified in terms of the HS.

19. The HS was extensively used by governments, international organizations, and the private sector for many other purposes such as internal taxes, trade policies, monitoring of controlled goods, rules of origin, freight tariffs, transport statistics, price monitoring, quota controls, compilation of national accounts, and economic research and analysis. The HS was universally recognized and accepted as an economic language and code for goods, and as an indispensable tool for international trade.

20. The HS provided a logical structure within which over 1,200 headings are grouped into 96 chapters, and the chapters themselves are arranged in 21 sections. Each heading was identified by a four-digit code, the first two digits of which indicated the chapter wherein the heading appeared, while the latter two digits indicated the position of the heading in the chapter. Thus, for example, HS code 1109 meant the ninth heading of Chapter 11.

21. Many of the headings in the HS were further subdivided into two or more subheadings by the addition of a fifth and six digit. The absence of a subheading was indicated by a zero. Thus, for example, HS code 1109.0000 meant the ninth heading of Chapter 11 which has not been further subdivided.

22. Section II of the HS was entitled “Vegetable Products” and contained Chapters 6 through 14. Chapter 11 covered “Products of the milling industry; malt; starches; inulin; wheat gluten.” Wheat gluten was found in Chapter 11, heading 09. There were no further subdivisions. Thus, the internationally recognized HS code for wheat gluten was 1109.0000.

23. SSC prepared the documents used to export the above-described shipments of XAC-manufactured wheat gluten to the United States buyer, ChemNutra. SSC used HS code 3504.0090 when shipping the product.

24. Section VI of the HS was entitled “Products of the Chemical or Allied Industries” and contained Chapters 28 through 38. Chapter 35 covered “Albuminoidal substances; modified starches; glues; enzymes.” Heading 04 of Chapter 35 covered “Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed.” Heading 04 contained a separate subheading for “peptones” and another separate subheading for “other protein substances and their derivatives, not elsewhere specified.” Thus, the internationally recognized HS code for “peptones” was 3504.0010 and the internationally recognized HS code for “other protein substances and their derivatives, not elsewhere specified” was 3504.0090.

25. By using the 3504.0090 HS code for the XAC-manufactured wheat gluten, SSC falsely declared to the Chinese government that the product being exported was not subject to mandatory inspection by AQSIQ prior to leaving China. By using the 3504.0090 HS code for the XAC-manufactured wheat gluten, SSC, among other things, avoided triggering an AQSIQ inspection of the facilities XAC used for manufacturing wheat gluten.

26. SSC provided defendants ChemNutra, Sally Qing Miller, and Stephen S. Miller with the documents that used HS code 3504.0090 for the wheat gluten manufactured by XAC. Based on Sally Qing Miller’s training and experience, she knew that products exported from China and imported into the United States with HS code 3504.0090 would not be subjected to mandatory inspection by AQSIQ prior to leaving China whereas products exported from China and imported

into the United States with HS code 1109.0000 would be subjected to mandatory inspection by AQSIQ prior to leaving China.

27. Defendants ChemNutra, Sally Qing Miller, and Stephen S. Miller sold the XAC wheat gluten to customers in the United States. Defendants ChemNutra, Sally Qing Miller, and Stephen S. Miller knew that their customers would use the XAC wheat gluten to manufacture pet food.

28. Defendants ChemNutra, Sally Qing Miller, and Stephen S. Miller did not disclose to said customers the material fact that the XAC wheat gluten had been exported out of China and imported into the United States with the use of a code that avoided subjecting the product to mandatory inspection by AQSIQ prior to leaving China.

29. Throughout the United States, countless pets suffered serious illness and death after eating pet food manufactured with the above-described wheat gluten that XAC, SSC, Linzhun, and Hao, aided and abetted by defendants ChemNutra, Sally Qing Miller, and Stephen S. Miller, introduced and delivered, and caused to be introduced and delivered, into interstate commerce.

30. By March 29, 2007, the FDA's Forensic Chemistry Center had determined that melamine was present in the above-described wheat gluten that XAC, SSC, Linzhun, and Hao, aided and abetted by defendants ChemNutra, Sally Qing Miller, and Stephen S. Miller, introduced and delivered, and caused to be introduced and delivered, into interstate commerce.

31. Melamine had and has a number of commercial and industrial uses, and can be used, for example, to create products such as plastics, cleaning products, counter tops, glues, inks, and fertilizers. Melamine had and has no approved use as a food additive in the United States. Mixing melamine with wheat gluten made the wheat gluten appear to have a higher protein level than was

actually present. Some manufacturers added melamine to wheat gluten as a way to fraudulently create the appearance that the wheat gluten had a higher protein level than was actually present. Adding melamine to wheat gluten in this fashion was cheaper for the manufacturer than increasing the actual protein content. The presence of melamine in the XAC-manufactured wheat gluten contributed to serious illness in, and the deaths of, countless pets after they ate pet food manufactured with the above-described wheat gluten that XAC, SSC, Linzhun, and Hao, aided and abetted by defendants ChemNutra, Sally Qing Miller, and Stephen S. Miller, introduced and delivered, and caused to be introduced and delivered, into interstate commerce.

32. XAC added melamine to the wheat gluten production process in order to make it appear to meet the minimum 75% protein content requirement specified in the contract with ChemNutra. By exporting the XAC-manufactured wheat gluten under HS code 3504.0090, the XAC manufacturing facilities were not subjected to mandatory inspection by AQSIQ and, consequently, there was no opportunity to detect XAC's use of melamine in the production/manufacturing process.

33. When the XAC-manufactured wheat gluten was exported to the United States it was deliberately labeled and coded so that the product would not be subject to compulsory inspection by AQSIQ and so that AQSIQ would have no reason to inspect it.

34. XAC, SSC, Linzhun, and Hao, aided and abetted by defendants ChemNutra, Sally Qing Miller, and Stephen S. Miller, used and caused the use of a port of entry located in Kansas City, Jackson County, Missouri, within the Western District of Missouri, for the purpose of introducing and delivering the XAC-manufactured wheat gluten into interstate commerce.

35. After the XAC-manufactured wheat gluten entered the United States through a port of entry located in Kansas City, Jackson County, Missouri, within the Western District of Missouri, defendants ChemNutra, Sally Qing Miller, and Stephen S. Miller caused the XAC-manufactured wheat gluten to be shipped from the State of Missouri to locations in states other than Missouri.

COUNTS ONE thru THIRTEEN

(Introduction of Adulterated Food Into Interstate Commerce)

The factual allegations in Paragraphs One through Thirty-five of the Introduction and Background section of this indictment are incorporated herein by reference as if fully set forth herein.

The Charge

On or about the dates set forth below, in Kansas City, Jackson County, within the Western District of Missouri and elsewhere, the defendants, ChemNutra, Inc., Sally Miller, a/k/a Sally Q. Miller, a/k/a Sally Qing Miller, and Stephen S. Miller, introduced, delivered for introduction, and caused the introduction and delivery for introduction, into interstate commerce from China to Kansas City, Missouri, of a quantity of adulterated food, as the term food is defined in 21 U.S.C. § 321(f): specifically, said defendants caused wheat gluten to be adulterated pursuant to 21 U.S.C. § 342(a)(1), in that the wheat gluten contained melamine, a deleterious substance that rendered the wheat gluten injurious to health; pursuant to 21 U.S.C. § 342(a)(2)(C)(i), in that the wheat gluten contained melamine, an unsafe food additive; pursuant to 21 U.S.C. § 342(b)(2) in that melamine was substituted wholly or in part for the protein requirement of the wheat gluten; and pursuant to 21 U.S.C. § 342 (b)(4) in that melamine had been added to the wheat gluten and mixed therewith so as to make it appear the wheat gluten was better or of greater value than it was.

Count	Date	Number of Bags	Weight (metric tons)	Batch Number	Invoice Number	Invoice Amount
1	11/06/2006	880	22	20061006	SUG06G702-2	\$ 18,920.00
2	11/06/2006	2640	66	20061006	SUG06G702-3	\$ 56,760.00
3	11/06/2006	880	22	20061006	SUG06G702-1	\$ 18,920.00
4	11/19/2006	2640	66	20061027	SUG06G710	\$ 57,420.00
5	11/26/2006	2640	66	20061101	SUG06G770	\$ 57,420.00
6	12/01/2006	3176	79.4	20061108	SUG06G792	\$ 69,078.00
7	12/22/2006	4000	100	20061122 20061126	SUG06G711	\$ 101,250.00
8	12/30/2006	6400	160	20061201 20061202 20061203	SUG06G875	\$ 162,000.00
9	01/05/2007	4000	100	20061206	SUG06G891	\$ 101,250.00
10	02/02/2007	800	17	20070111	SUG07G056	\$ 20,250.00
11	02/09/2007	1600	40	20070116	SUG07G064	\$ 41,300.00
12	02/17/2007	2400	60	20070116	SUG07G079	\$ 61,950.00
13	02/21/2007	3200	80	20070126	SUG07G119	\$ 82,600.00

All in violation of 21 U.S.C. §§ 331(a) and 333(a)(1) and 18 U.S.C. § 2.

COUNTS FOURTEEN thru TWENTY-SIX

(Introduction of Misbranded Food Into Interstate Commerce)

The factual allegations in paragraphs One through Thirty-five of the Introduction and Background section of this indictment are incorporated herein by reference as if fully set forth herein.

The Charge

On or about the dates set forth below, in Kansas City, Jackson County, within the Western District of Missouri and elsewhere, the defendants, ChemNutra, Inc., Sally Miller, a/k/a Sally Q.

Miller, a/k/a Sally Qing Miller, and Stephen S. Miller, introduced, delivered for introduction, and caused the introduction and delivery for introduction, into interstate commerce from China to Kansas City, Missouri, of a quantity of misbranded food, as the term food is defined in 21 U.S.C. § 321(f): specifically, said defendants caused wheat gluten to be misbranded pursuant to 21 U.S.C. § 343(a)(1), in that the labeling of the wheat gluten was false and misleading because the wheat gluten was represented to have a minimum protein level of 75% when in fact it did not; and pursuant to 21 U.S.C. § 343(i)(2), in that the food labeled as wheat gluten contained two or more ingredients, including melamine, but melamine was not listed on the label.

Count	Date	Number of Bags	Weight (metric tons)	Batch Number	Invoice Number	Invoice Amount
14	11/06/2006	880	22	20061006	SUG06G702-2	\$ 18,920.00
15	11/06/2006	2640	66	20061006	SUG06G702-3	\$ 56,760.00
16	11/06/2006	880	22	20061006	SUG06G702-1	\$ 18,920.00
17	11/19/2006	2640	66	20061027	SUG06G710	\$ 57,420.00
18	11/26/2006	2640	66	20061101	SUG06G770	\$ 57,420.00
19	12/01/2006	3176	79.4	20061108	SUG06G792	\$ 69,078.00
20	12/22/2006	4000	100	20061122 20061126	SUG06G711	\$ 101,250.00
21	12/30/2006	6400	160	20061201 20061202 20061203	SUG06G875	\$ 162,000.00
22	01/05/2007	4000	100	20061206	SUG06G891	\$ 101,250.00
23	02/02/2007	800	17	20070111	SUG07G056	\$ 20,250.00
24	02/09/2007	1600	40	20070116	SUG07G064	\$ 41,300.00
25	02/17/2007	2400	60	20070116	SUG07G079	\$ 61,950.00
26	02/21/2007	3200	80	20070126	SUG07G119	\$ 82,600.00

All in violation of 21 U.S.C. §§ 331(a) and 333(a)(1) and 18 U.S.C. § 2.

COUNT TWENTY-SEVEN

(Conspiracy to Commit Wire Fraud)

The factual allegations in paragraphs One through Thirty-five of the Introduction and Background section of this indictment are incorporated herein by reference as if fully set forth herein.

The Conspiracy and Its Object

Beginning at a time unknown to the Grand Jury, but by no later than on or about April 2006, and continuing through and until at least on or about April 2007, in Kansas City, Jackson County, within the Western District of Missouri and elsewhere, defendants Sally Miller, a/k/a Sally Q. Miller, a/k/a Sally Qing Miller, and Stephen S. Miller, and ChemNutra, Inc., did unlawfully, willfully, and knowingly combine, conspire and agree with each other and with others known and unknown to the Grand Jury to commit an offense against the United States, that is, the crime of wire fraud in violation of 18 U.S.C. § 1343, in that said defendants combined, conspired, and agreed to engage in a fraudulent scheme and artifice to defraud and obtain money by means of false and fraudulent representations and the concealment of material facts: that is, with the use of wire communications in interstate and foreign commerce, said defendants engaged in a fraudulent scheme and artifice to defraud companies that purchased XAC-manufactured wheat gluten from the defendants by concealing from and failing to disclose to said purchasers material facts known to the defendants about the XAC-manufactured wheat gluten.

Manner and Means By Which The Conspiracy and  
Scheme and Artifice to Defraud Was Carried Out

The members of the conspiracy used various manners and means to effect the object of the conspiracy and to carry out the scheme and artifice to defraud including, but not limited to, the following:

1. It was part of the conspiracy and scheme and artifice to defraud that the defendants agreed to supply various pet food manufacturers in the United States with wheat gluten that would be used in the manufacture and production of pet food. The defendants knew and understood that the pet food manufacturers required wheat gluten that met certain specifications including, but not limited to, a requirement that it be food grade wheat gluten with a protein level of at least 75%.

2. It was further a part of the conspiracy and scheme and artifice to defraud that the defendants then obtained wheat gluten that had been manufactured by various companies in China and caused said Chinese wheat gluten to be exported out of China and imported into the United States.

3. It was further a part of the conspiracy and scheme and artifice to defraud that the defendants knew some of said Chinese manufactured wheat gluten was exported from China and imported into the United States with the use of HS code 1109.0000 which meant the product would be subjected to mandatory inspection by AQSIQ prior to leaving China.

4. It was further a part of the conspiracy and scheme and artifice to defraud that the defendants knew some of said Chinese manufactured wheat gluten was exported from China and imported into the United States with the use of HS code 3504.0090 which meant the product would not be subjected to mandatory inspection by AQSIQ prior to leaving China.

5. It was further a part of the conspiracy and scheme and artifice to defraud that the defendants did not disclose to the pet food manufacturers the material fact that some of the Chinese manufactured wheat gluten had been imported into the United States with the use of an HS code that avoided subjecting the product to mandatory inspection by AQSIQ prior to leaving China.

6. It was further a part of the conspiracy and scheme and artifice to defraud that the defendants falsely represented to the pet food manufacturers that the defendants were purchasing product from and working directly with XAC, the wheat gluten manufacturer, but the defendants instead were working directly with SSC.

7. It was further a part of the conspiracy and scheme and artifice to defraud that the defendants hired a customs broker in Kansas City, Missouri, to assist them in importing the Chinese manufactured wheat gluten into the United States and, when HS code 3504.0090 appeared on Chinese documents associated with the incoming Chinese wheat gluten, the defendants instructed the customs broker to use HS code 1109.0000 when completing the paperwork needed to import the Chinese wheat gluten into the United States.

8. It was further a part of the conspiracy and scheme and artifice to defraud that the defendants did not disclose to the pet food manufacturers the material fact that HS code 1109.0000 had been substituted for HS code 3504.0090.

#### Overt Acts

In furtherance of the conspiracy to commit wire fraud, and to accomplish the object of the conspiracy, one or more members of the conspiracy committed or caused to be committed various overt acts within the Western District of Missouri and elsewhere including, but not limited to, the following uses of wire communication in interstate and foreign commerce:

1. On or about April 19, 2006, defendant Sally Qing Miller received an e-mail from an individual at SSC stating that HS code 3504.0090 could be used to export collagen.

2. On or about April 20, 2006, defendant Stephen S. Miller sent an e-mail to a customs broker in Kansas City, Missouri, a copy of which was also sent to defendant Sally Qing Miller, in which defendant Stephen S. Miller stated that the HS code for wheat gluten in the United States is 1109.00.10.

3. On or about April 24, 2006, defendant Sally Qing Miller sent an e-mail to defendant Stephen S. Miller that stated 35040090 is the HS code for collagen.

4. On or about April 25, 2006, defendant Sally Qing Miller received an e-mail from an individual at SSC advising that HS code 3504.0090 would be used for customs purposes when collagen was exported from China.

5. On or about July 18, 2006, defendant Sally Qing Miller sent an e-mail to an individual in Canada which she stated that the applicable HS code for wheat gluten was 1109.00.10.

6. On or about August 7, 2006, defendant Sally Qing Miller received an e-mail from an individual in St. Louis, Missouri, which stated the following with respect to wheat gluten shipped from China:

[W]hen we get shipments from China, the Certificate of Origin is usually packed in with documents provided by the CIQ with the "Entry-Exit Inspection and Quarantine of the People's Republic of China." In all the shipments that I have received from China, the documents I get from the CIQ are Certificate of Weight, Certificate of Quality, and the Certificate of Origin issued by the CCPIT. The documents are blue in colour and have 1 original and 2 carbon copies.

7. On or about August 7, 2006, defendant Sally Qing Miller sent an e-mail to a customs broker in Kansas City, Missouri, in which she stated that the HS code for wheat gluten was 1109.00.10.

8. On or about August 7, 2006, in response to receipt of a certificate of origin from SSC that used 3504.0090 as the HS code for wheat gluten, defendant Sally Qing Miller sent an e-mail to an individual at SSC stating that the correct HS code for wheat gluten was 1109.00.10 and asking the individual at SSC to double check on the correct HS code for wheat gluten.

9. On or about August 7, 2006, defendant Sally Qing Miller received an e-mail from an individual at SSC which stated that SSC used HS code 3504.0090 for the purpose of clearing the wheat gluten through customs in China but that SSC could modify the wheat gluten certificates of origin by using HS code 1109.0010 if that was what Sally Qing Miller wanted SSC to do.

10. On or about August 8, 2006, defendant Sally Qing Miller received an e-mail from an individual at SSC which stated that SSC could not print HS code 1109.00.10 on a wheat gluten certificate of origin.

11. In response, on or about August 9, 2006, defendant Sally Qing Miller sent two e-mails to an individual at SSC, one of which instructed SSC to use HS code 1109.00.10 if possible and that ChemNutra would switch the B/L (bill of lading) here in the United States, and the second e-mail stated that it would be fine if SSC used HS code 1109.0000 for wheat gluten instead of 1109.00.10.

12. On or about August 9, 2006, defendant Sally Qing Miller received an e-mail from an individual at SSC which asked if HS code 1109 could be used.

13. In response, on or about August 10, 2006, defendant Sally Qing Miller sent an e-mail to an individual at SSC stating that HS code 1109 “should be OK.”

14. On or about August 14, 2006, defendant Sally Qing Miller sent an e-mail to ChemNutra employee that included as attachments two certificates of origin for wheat gluten that had been prepared by SSC and that used HS code 1109, and thereafter on August 16, 2006, defendant Sally Qing Miller sent an e-mail to an individual in St. Louis, Missouri, that included as attachments one of these certificates of origin along with documents entitled “certificate of analysis” on ChemNutra letterhead which disclosed the identity of the wheat gluten manufacturer.

15. Between on or about August 8 and August 16, 2006, defendant Sally Qing Miller sent an e-mail to a customs broker in Kansas City, Missouri, which stated that the HS code for wheat gluten was 1109.00.10.

16. On or about September 12, 2006, defendant Sally Qing Miller sent an e-mail to a business in China with the subject line “Gluten 75% from Xuzhou” and the body of the e-mail stated that defendant ChemNutra is an importer and distributor of food ingredients in the United States with customers that were big end users of gluten. The e-mail expressed an interest in establishing a long term relationship with Chinese gluten manufacturers because ChemNutra wanted to purchase between 3000 to 4000 metric tons of gluten per year.

17. On or about September 27, 2006, defendant Sally Qing Miller received an e-mail from a Chinese supplier of wheat gluten stating that the supplier would be unable to supply wheat gluten to ChemNutra between October and December 2006.

18. On or about October 24, 2006, defendant Sally Qing Miller sent an e-mail to a customs broker in Kansas City, Missouri, that included several attachments, one of which was a

certificate of origin for wheat gluten that had been prepared by SSC for wheat gluten manufactured by XAC and that used HS code 35040090. Also included as an attachment was a “test report of qualiyy (sic)” that did not identify the product as wheat gluten but instead described the product as “wheat protein (lotus gourmet powder).”

19. On or about November 3, 2006, defendant Sally Qing Miller sent an e-mail to a customs broker in Kansas City, Missouri, that included as attachments a certificate of origin for wheat gluten that used HS code 1109. This certificate of origin was prepared by a Chinese company other than SSC and was for wheat gluten manufactured by a Chinese company other than XAC.

20. On or about November 8, 2006, an employee of defendant ChemNutra sent an e-mail to a customs broker in Kansas City, Missouri, a copy of which was also sent to a pet food manufacturer doing business in the State of Kansas, and included as an attachment a “certificate of analysis” on ChemNutra letterhead which was used to verify that the product being sold to the pet food manufacturer was wheat gluten with a minimum protein level of 75%. The certificate of analysis failed to disclose that the wheat gluten had been manufactured by XAC and the defendants otherwise failed to disclose that the certificate of origin prepared by SSC for this wheat gluten used HS code 35040090. Based on testing conducted after March 2007, the FDA’s Forensic Chemistry Center confirmed that the wheat gluten identified in this certificate of analysis was adulterated with melamine.

21. On or about November 15, 2006, defendant Sally Qing Miller sent an e-mail to a customs broker in Kansas City, Missouri, a copy of which was also sent to a pet food manufacturer doing business in the State of Kansas, and included as an attachment a “certificate of analysis” on ChemNutra letterhead which was used to verify that the product being sold to the pet food

manufacturer was wheat gluten with a minimum protein level of 75%. The certificate of analysis failed to disclose that the wheat gluten had been manufactured by XAC and the defendants otherwise failed to disclose that the certificate of origin prepared by SSC for this wheat gluten used HS code 35040090. Based on testing conducted after March 2007, the FDA's Forensic Chemistry Center confirmed that the wheat gluten identified in this certificate of analysis was adulterated with melamine.

22. On or about November 19, 2006, defendant Sally Qing Miller sent an e-mail to a customs broker in Kansas City, Missouri, and included as an attachment a "certificate of analysis" on ChemNutra letterhead which was used to verify that the product being sold to the pet food manufacturer was wheat gluten with a minimum protein level of 75%. The certificate of analysis failed to disclose that the wheat gluten had been manufactured by XAC and the defendants otherwise failed to disclose that the certificate of origin prepared by SSC for this wheat gluten used HS code 35040090. Based on testing conducted after March 2007, the FDA's Forensic Chemistry Center confirmed that the wheat gluten identified in this certificate of analysis was adulterated with melamine.

23. On or about November 27, 2006, defendant Sally Qing Miller sent an e-mail to a pet food manufacturer, and included as an attachment a "certificate of analysis" on ChemNutra letterhead which was used to verify that the product being sold to the pet food manufacturer was wheat gluten with a minimum protein level of 75%. The certificate of analysis failed to disclose that the wheat gluten had been manufactured by XAC and the defendants otherwise failed to disclose that the certificate of origin prepared by SSC for this wheat gluten used HS code 35040090. Based on

testing conducted after March 2007, the FDA's Forensic Chemistry Center confirmed that the wheat gluten identified in this certificate of analysis was adulterated with melamine.

24. On or about November 27, 2006, defendant Sally Qing Miller sent an e-mail to a customs broker in Kansas City, Missouri, and included as an attachment a "certificate of analysis" on ChemNutra letterhead which was used to verify that the product being sold to the pet food manufacturer was wheat gluten with a minimum protein level of 75%. The certificate of analysis failed to disclose that the wheat gluten had been manufactured by XAC and the defendants otherwise failed to disclose that the certificate of origin prepared by SSC for this wheat gluten used HS code 35040090. Based on testing conducted after March 2007, the FDA's Forensic Chemistry Center confirmed that the wheat gluten identified in this certificate of analysis was adulterated with melamine.

25. On or about January 5, 2007, defendant Stephen S. Miller received an e-mail from a pet food manufacturer stating that wheat gluten the pet food manufacturer received from defendant ChemNutra had a moisture content that was greater than permitted by the contract between the pet food manufacturer and defendant ChemNutra.

26. In response, on or about January 5, 2007, defendant Stephen S. Miller sent an e-mail to the pet food manufacturer stating that "Sally is handling quality control with our manufacturer in China" which was a false and misleading representation because ChemNutra dealt exclusively with SSC and did not deal with XAC, the wheat gluten manufacturer.

27. In further response, on or about January 5, 2007, defendant Sally Qing Miller sent an e-mail to the pet food manufacturer stating that she would contact the manufacturer and request that the manufacturer make an adjustment. This was a false and misleading representation because

no such contact occurred with XAC, the wheat gluten manufacturer and, even though Sally Qing Miller represented herself to be certified in China as an ISO-9000 chief auditor, she never personally inspected or reviewed the physical premises used by XAC to manufacture wheat gluten but instead delegated that responsibility to persons at SSC.

28. On or about January 25, 2007, defendant Sally Qing Miller sent an e-mail to a customs broker in Kansas City, Missouri, and included as an attachment a “certificate of analysis” on ChemNutra letterhead which was used to verify that the product being sold to the pet food manufacturer was wheat gluten with a minimum protein level of 75%. The certificate of analysis failed to disclose that the wheat gluten had been manufactured by XAC and the defendants otherwise failed to disclose that the certificate of origin prepared by SSC for this wheat gluten used HS code 35040090. Based on testing conducted after March 2007, the FDA’s Forensic Chemistry Center confirmed that the wheat gluten identified in this certificate of analysis was adulterated with melamine.

29. On or about February 5, 2007, defendant Sally Qing Miller sent an e-mail to a pet food manufacturer, a copy of which was also sent to defendant Stephen S. Miller, that stated XAC was one of ChemNutra’s major suppliers of Chinese wheat gluten but that another Chinese company, the same one referred to in overt act 19, had better quality product and was the largest wheat gluten supplier in China.

30. On or about February 9, 2007, defendant Sally Qing Miller sent an e-mail to a customs broker in Kansas City, Missouri, a copy of which was also sent to a pet food manufacturer, and included as an attachment a “certificate of analysis” on ChemNutra letterhead which was used to verify that the product being sold to the pet food manufacturer was wheat gluten with a minimum

protein level of 75%. The certificate of analysis failed to disclose that the wheat gluten had been manufactured by XAC and the defendants otherwise failed to disclose that the certificate of origin prepared by SSC for this wheat gluten used HS code 35040090. Based on testing conducted after March 2007, the FDA's Forensic Chemistry Center confirmed that the wheat gluten identified in this certificate of analysis was adulterated with melamine.

31. On or about March 14, 2007, defendant Sally Qing Miller sent an e-mail to a pet food manufacturer, and included as an attachment a "certificate of analysis" on ChemNutra letterhead which was used to verify that the product being sold to the pet food manufacturer was wheat gluten with a minimum protein level of 75%. The certificate of analysis failed to disclose that the wheat gluten had been manufactured by XAC and the defendants otherwise failed to disclose that the certificate of origin prepared by SSC for this wheat gluten used HS code 35040090. Based on testing conducted after March 2007, the FDA's Forensic Chemistry Center confirmed that the wheat gluten identified in this certificate of analysis was adulterated with melamine.

32. Each of Counts 1 through 26 of this indictment are incorporated herein by reference as overt acts committed and caused to be committed in furtherance of the charged conspiracy and scheme and artifice to defraud and mislead.

33. Each of the wheat gluten shipments identified in Counts 1 through 26 are incorporated herein by reference as overt acts committed and caused to be committed in furtherance of the charged conspiracy and scheme and artifice to defraud and mislead in that each of said shipments were exported out of China with the use of HS code 35040090.

All in violation of Title 18, United States Code, Section 371.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

A TRUE BILL:

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FOREPERSON OF THE GRAND JURY

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Joseph Marquez  
Assistant United States Attorney

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Phillip Eugene Porter  
Chief, Fraud and Corruption Unit