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of the Federal Government and consists of seven program areas that report directly to the Secretary of Agriculture.

2. The common mission of all seven programs is "To enhance the quality of life for the American people by promoting a healthy, accessible, and affordable food supply; caring for agricultural, forest, and rangelands; supporting sound development of rural communities; providing economic opportunities; and expanding global markets for agricultural and forest products and services."

3. As part of this mission, the USDA administers and operates the United States Domestic Food Donation Programs (including the Child Nutrition Programs). The Child Nutrition Programs originated in the surplus removal efforts of the USDA in the 1930s. These programs are administered by the USDA Food and Consumer Service, which provides both cash and commodities to assist State and local governments in providing meals for children in public and nonprofit schools, child care institutions and summer recreation programs.

4. The Child Nutrition Programs include the National School Lunch and School Breakfast Programs. These programs are designed to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities. Some of the commodities distributed to the States for these programs are purchased by the USDA Agricultural Marketing Service (hereinafter referred to as "AMS") using funds appropriated to the Secretary of Agriculture to

1 encourage, in part, domestic consumption of agricultural
2 products.

3 5. In 1996, AMS received approximately \$460 million
4 pursuant to Congressional action directed at the purchase of
5 domestic products that would aid in ensuring the orderly
6 marketing and stable pricing of United States commodities. These
7 funds are authorized to be used for the purchase of domestic
8 agricultural commodities specifically for use in the National
9 School Lunch and School Breakfast Programs.

10 6. Prior to purchasing commodities for these programs, the
11 AMS Fruit and Vegetable Division, Economic Analysis Branch,
12 performs an analysis to determine whether it would benefit the
13 nation's farmers for the USDA to remove the surplus agricultural
14 products from the domestic market. Among other things, this
15 analysis recommends the volume of a particular food product that
16 must be purchased by AMS in order to reduce its supply -- thereby
17 assisting in stabilizing its price on the market.

18 7. AMS notifies the public of its intent to purchase a
19 particular agricultural product by issuing an invitation to bid
20 and purchase announcement. The announcement requires all
21 products delivered pursuant to the announcement to originate from
22 crops that have been 100% grown, processed, and packed in the
23 United States (including Puerto Rico). In addition, the
24 announcement requires each contractor to supply the USDA with a
25 written statement certifying that the products delivered have, in
26 fact, been 100% grown and packed in the United States. This
27 certification is required to ensure that the USDA is removing
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1 domestic agricultural products from the marketplace, thereby
2 encouraging the consumption of United States agricultural
3 products.

4 8. In March 1996, AMS issued Announcement FV-101, setting
5 forth the terms, conditions and specifications of bids for the
6 purchase of surplus frozen fruits, including frozen strawberries.
7 According to the announcement, the frozen fruit was to be
8 purchased by the USDA for use in Child Nutrition, Needy Family
9 and other related domestic programs -- including the School Lunch
10 Program (hereinafter referred to as the "Child Nutrition
11 Program").

12 9. The announcement specified that the processed frozen
13 fruit offered to the USDA must have "originated from crops that
14 have been 100% grown, processed and packed in the United States
15 (including Puerto Rico) in accordance with good commercial
16 practices"

17 10. The announcement further required contractors to "supply
18 the USDA with a written statement certifying that the products
19 delivered to USDA hereunder have been 100% grown and packed in
20 the United States." Moreover, the announcement directed
21 contractors who handle commodities from foreign sources to
22 segregate those products in order to be able to document that the
23 product supplied to the USDA was grown exclusively in the United
24 States.

25 11. On or about September 3, 1996, AMS issued Invitation No.
26 6, amending Announcement FV-101 (hereinafter referred to as the
27 "Invitation"). The Invitation was issued specifically for the
28

1 purchase of frozen strawberries and required prospective
2 suppliers to submit their offers to the "USDA not later than 1:00
3 p.m. at Washington, D.C., on September 24, 1996."

4 12. The Invitation reiterated the requirement that the
5 frozen strawberries be "100% grown and processed from the 1996 or
6 later United States Crop . . . pursuant to Announcement FV-101 as
7 amended."

8 13. At all times relevant herein, defendant ANDREW &
9 WILLIAMSON SALES, INC., 9940 Marconi Drive, San Diego, California
10 (hereinafter referred to as "A&W") was a broker and processor
11 engaged in the sale of fresh strawberries and other fresh fruit
12 and vegetables that were shipped to them on consignment.

13 14. At all times relevant herein, defendant A&W also
14 purchased strawberries for processing (freezing) at its plant
15 located at 810 Imperial Avenue, San Diego, California. In 1996,
16 more than 99% of the strawberries purchased by defendant A&W for
17 processing were grown in the Republic of Mexico. Less than 1% of
18 the strawberries purchased by defendant A&W for processing were
19 grown domestically.

20 15. At all times relevant herein, defendant FRED L.
21 WILLIAMSON was President of defendant A&W. Richard Henry Kershaw
22 (charged elsewhere) was employed by defendant A&W as head of
23 frozen (processed) strawberry sales. Thomas E. Martinez was
24 employed by defendant A&W as Plant Manager.

25 16. At all times relevant herein, JSO Associates, Inc., 17
26 Maple Drive, Great Neck, New York (hereinafter referred to as
27 "JSO") was a broker and sales agent that dealt with frozen fruit
28

1 and vegetables. The company's President and Customer Service
2 Representative were, respectively, Joel Ort and Thomas
3 Garbellotto.

4 17. At all times relevant herein, PacWest Foods Inc., 2293
5 Teller Road, Suite 103, Newbury Park, California (hereinafter
6 referred to as "PacWest") was a marketing company established to
7 broker juice, nuts and frozen fruit. The company's President and
8 owner was George Carroll.

9 18. At all times relevant herein, Kendall Frozen Fruits,
10 Inc., 16133 Ventura Boulevard, Suite 1135, Encino, California
11 (hereinafter referred to as "Kendall") was a wholesale produce
12 company established to broker frozen fruit. The company's owners
13 were Susan Kendall and Debra Olk.

14 Count 1

15 19. Beginning on or about September 3, 1996, and continuing
16 until April 1, 1997, within the Southern District of California
17 and elsewhere, defendants A&W and FRED L. WILLIAMSON did
18 knowingly conspire with others to defraud the United States by
19 impairing, impeding and frustrating the governmental functions of
20 the USDA, including the ability of the USDA to purchase products
21 100% grown in the United States -- thereby causing improper
22 claims totaling approximately \$902,116.98 to be submitted to the
23 USDA for approximately 1,742,280 lbs. of frozen strawberries.

24 Methods and Means

25 20. It was a method of the conspiracy that defendant A&W
26 would utilize JSO, PacWest and Kendall to bid on the USDA
27 Invitation for frozen strawberries.

28

1 21. It was a further method of the conspiracy that the
2 conspirators would utilize JSO, PacWest and Kendall in an attempt
3 to disguise the fact that the strawberries being sold to the USDA
4 were not grown domestically as required by the USDA Invitation.

5 22. It was a further method of the conspiracy that the
6 conspirators would send letters to JSO, PacWest and Kendall
7 falsely indicating that defendant A&W produced enough
8 strawberries in the United States (13% of its total production)
9 to cover the USDA contracts for frozen sliced strawberries.

10 23. It was a further method of the conspiracy that the
11 conspirators would conceal the true origin of defendant A&W's
12 strawberries from the USDA by submitting false certificates of
13 origin -- falsely stating that the strawberries were 100% grown
14 in the United States.

15 24. It was a further method of the conspiracy that the
16 conspirators would submit the false certificates of origin to the
17 USDA in order to induce the USDA to make payments totaling
18 approximately \$902,116.98 to Kendall Frozen Fruits, JSO
19 Associates and PacWest Foods, Inc.

20 25. It was a further method of the conspiracy that the
21 conspirators would cause to be submitted to the USDA claims for
22 approximately \$902,116.98 in payment for frozen strawberries
23 that were inaccurately certified as 100% grown in the United
24 States.

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OVERT ACTS

In furtherance of the conspiracy the following overt acts, among others, were committed in the Southern District of California and elsewhere:

1. In early September 1996, in San Diego, California, Richard Kershaw (on behalf of A&W) discussed submitting a bid for approximately 500,000 lbs. on the USDA frozen strawberry contract (Invitation No. 6) with JSO.
2. On or about September 10, 1996, in Thousand Oaks, California, Richard Kershaw (on behalf of A&W) discussed with George Carroll whether PacWest would submit a bid on the USDA frozen strawberry contract on behalf of A&W. The amount of the proposed bid was for approximately 18 truckloads of frozen sliced strawberries.
3. On or about September 13, 1996, in San Diego, California, Richard Kershaw (on behalf of A&W) discussed with Debra Olk whether Kendall would submit a bid on the USDA frozen strawberry contract on behalf of A&W.
4. On or about September 13, 1996, in San Diego, California, Richard Kershaw (on behalf of A&W) falsely stated to Debra Olk that A&W could supply enough domestic strawberries to fill the USDA contract.
5. On September 19, 1996, A&W caused George Carroll of PacWest, in Newbury Park, California, to submit a bid for 712,800 lbs. of frozen strawberries (listing the plant address as A&W) to the USDA for distribution in the Child Nutrition Program.

- 1 6. On September 20, 1996, A&W caused Debra Olk of Kendall,
2 in Encino, California, to submit a bid for 475,200 lbs.
3 of frozen strawberries (listing the plant address as
4 A&W) to the USDA for distribution in the Child Nutrition
5 Program.
- 6 7. On or about September 24, 1996, A&W caused Thomas
7 Garbellotto of JSO, in Great Neck, New York, to submit
8 a bid for 554,400 lbs. of frozen strawberries (listing
9 the plant address and processor as A&W) to the USDA for
10 distribution in the Child Nutrition Program.
- 11 8. On October 17, 1996, in San Diego, California, A&W
12 received from Kendall a facsimile indicating that
13 earlier that day, the USDA awarded Kendall Frozen Fruits
14 contract #120272059 to supply 15,840 cases (475,200
15 lbs.) of frozen sliced strawberries for \$243,856.80.
- 16 9. On October 17, 1996, at approximately 11:01 a.m., in San
17 Diego, California, A&W received from PacWest a facsimile
18 indicating that earlier that day the USDA had awarded
19 PacWest contract #120272058 to supply 23,760 (712,800
20 lbs.) cases of frozen sliced strawberries for
21 \$365,560.80.
- 22 10. On October 17, 1996, at approximately 1:12 p.m., in San
23 Diego, California, A&W received a facsimile from JSO
24 indicating that earlier that day the USDA had awarded
25 JSO contract #120272057 to supply 18,400 cases (554,400
26 lbs.) of frozen sliced strawberries for \$292,762.80.

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1 11. On October 21, 1996, at approximately 9:12 a.m., in San
2 Diego, California, Thomas Martinez of A&W heard from a
3 USDA employee that the strawberries they were supplying
4 for the School Lunch Program must have been 100% grown
5 in the United States. Martinez requested that the USDA
6 employee fax a portion of the USDA Announcement
7 detailing this requirement to him.

8 12. On October 21, 1996, at approximately 9:42 a.m., in San
9 Diego, California, the A&W processing plant received by
10 facsimile from the USDA page six (6) of Announcement FV-
11 101, detailing the product specifications, including the
12 requirement that all the strawberries must "have been
13 100% grown, processed, and packed in the United States."

14 13. On October 21, 1996, at approximately 10:38 a.m., in San
15 Diego, California, A&W's processing plant faxed page six
16 (6) of Announcement FV-101 to A&W's business office.

17 14. On or about October 21, 1996, in San Diego, California,
18 Richard Kershaw told Fred L. Williamson that the USDA
19 was requiring A&W to certify that all the strawberries
20 being sold to the School Lunch Program were 100% grown
21 in the United States.

22 15. On or about October 23, 1996, in San Diego, California,
23 Fred L. Williamson directed Richard Kershaw to prepare
24 letters to JSO, PacWest and Kendall stating that 97% of
25 A&W's 1996 strawberry crop was grown in Mexico.

26 16. On October 23, 1996, at approximately 11:30 a.m., in San
27 Diego, California, A&W faxed letters (signed by Fred L.
28

1 Williamson) to JSO, PacWest and Kendall stating that 97%
2 of A&W's 1996 strawberry crop was grown in Mexico.

3 17. On or about October 23, 1996, in San Diego, California,
4 Richard Kershaw falsely informed Debra Olk of Kendall
5 that A&W had enough domestic product to cover the USDA
6 bid.

7 18. On or about October 24, 1996, in San Diego, California,
8 Fred L. Williamson falsely informed Susan Kendall and
9 Debra Olk that A&W would supply them with 100% domestic
10 product in relation with the USDA bid.

11 19. On or about October 24, 1996, in San Diego, California,
12 Fred L. Williamson directed Richard Kershaw to prepare
13 letters to JSO, PacWest and Kendall falsely stating that
14 87% of A&W's 1996 strawberry crop was grown in Mexico.

15 20. On October 24, 1996, at approximately 11:30 a.m., in San
16 Diego, California, A&W faxed letters (signed by Fred L.
17 Williamson) to JSO, PacWest and Kendall falsely stating
18 that 87% of A&W's 1996 strawberry crop was grown in
19 Mexico.

20 21. On or about October 30, 1996, in San Diego, California,
21 Fred L. Williamson once again falsely informed Debra Olk
22 that A&W would supply Kendall with 100% domestic
23 product.

24 22. On or about October 30, 1996, in San Diego, California,
25 A&W received from Debra Olk a letter confirming that
26 Kendall would proceed with the USDA bid based on the
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1 recent representations and assurances received from Fred
2 L. Williamson.

3 23. On or about November 27, 1996, in San Diego, California,
4 Richard Kershaw (on behalf of A&W) prepared letters to
5 the USDA falsely certifying that the strawberries sold
6 by A&W to JSO, PacWest and Kendall (re: USDA BID FV-101,
7 Invitation 006) were 100% grown and packed in the United
8 States.

9 24. On or about December 2, 1996, in San Diego, California,
10 Fred L. Williamson on behalf of A&W signed the letters
11 sent to the USDA falsely certifying that the
12 strawberries sold by A&W to JSO, PacWest and Kendall
13 (re: USDA BID FV-101, Invitation 006) were 100% grown in
14 the United States.

15 25. On or about December 2, 1996, in San Diego, California,
16 A&W faxed letters to the USDA falsely certifying that
17 the strawberries sold by A&W to JSO, PacWest and Kendall
18 (re: USDA BID FV-101, Invitation 006) were 100% grown in
19 the United States.

20 26. On or before December 18, 1996, in San Diego,
21 California, A&W caused PacWest to submit to the USDA
22 claims for a total of approximately \$365,513.58 for
23 strawberries falsely represented to be 100% grown in the
24 United States.

25 27. On or before December 10, 1996, in San Diego,
26 California, A&W caused JSO to submit to the USDA claims
27 for a total of approximately \$292,746.60 for
28

1 strawberries falsely represented to be 100% grown in the
2 United States.

3 28. On or before January 7, 1997, in San Diego, California,
4 A&W caused Kendall to submit to the USDA claims for a
5 total of approximately \$243,856.80 for strawberries
6 falsely represented to be 100% grown in the United
7 States.

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

9 Counts 2 through 4

10 1. All of the Introductory Allegations, Means and Methods,
11 and Overt Acts contained in Count 1 are hereby realleged and
12 incorporated herein, as if set forth in full in this Count.

13 2. On or about December 2, 1996, in the Southern District
14 of California, Defendants A&W and FRED L. WILLIAMSON, in a matter
15 within the jurisdiction of the USDA, did knowingly and willfully
16 send a false document to the USDA as set forth below (Column "A"):

17 (Column A)
18 COUNT False Statement

19 2 A facsimile of a letter, dated November 27, 1996,
20 falsely stating that the California Chandler
21 Strawberries that were used to fulfill Contract
22 120272057 (with JSO) consisting of 18,480 pails of 30#
23 4+1 Sliced Strawberries were 100 percent grown in the
24 United States.

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(Column A)
False Statement

- 3 3 A facsimile of a letter, dated November 27, 1996, falsely stating that the California Chandler Strawberries that were used to fulfill Contract 120272058 (with PacWest) consisting of 23,760 pails of 30# 4+1 Sliced Strawberries were 100 percent grown in the United States.
- 4 4 A facsimile of a letter, dated November 27, 1996, falsely stating that the California Chandler Strawberries that were used to fulfill Contract 120272059 (with Kendall) consisting of 15,840 pails of 30# 4+1 Sliced Strawberries were 100 percent grown in the United States.

Whereas in truth and in fact, as defendants then and there well knew, these documents contained a materially false statement; all in violation of Title 18, United States Code, Sections 1001(a)(3) and 2.

Counts 5 through 47

1. All of the Introductory Allegations, Means and Methods, and Overt Acts contained in Count 1 are hereby realleged and incorporated herein, as if set forth in full in this Count.

2. On or about the dates set forth below (Column "A"), in the Southern District of California, Defendants A&W and FRED L. WILLIAMSON, did cause the below listed brokers (Column "B") to make and present a false claim (Column "C") in the below listed amount (Column "D") to the USDA:

<u>COUNT</u>	<u>(A) DATE</u>	<u>(B) BROKER</u>	<u>(C) INVOICE</u>	<u>(D) AMOUNT</u>
5	12/01/96	JSO	97950	\$21,367.80
6	12/02/96	JSO	97946	\$20,578.80
7	12/02/96	JSO	97948	\$20,235.60

1		(A)	(B)	(C)	(D)
2	<u>COUNT</u>	<u>DATE</u>	<u>BROKER</u>	<u>INVOICE</u>	<u>AMOUNT</u>
3	8	12/02/96	JSO	97949	\$20,790.00
4	9	12/02/96	JSO	97952	\$19,998.00
5	10	12/02/96	JSO	97953	\$20,196.00
6	11	12/02/96	JSO	97954	\$20,196.00
7	12	12/06/96	JSO	97997	\$21,463.20
8	13	12/06/96	JSO	98001	\$21,384.00
9	14	12/06/96	JSO	98003	\$21,172.80
10	15	12/09/96	PACWEST	697	\$20,235.60
11	16	12/09/96	PACWEST	698	\$20,499.60
12	17	12/09/96	PACWEST	699	\$20,552.40
13	18	12/09/96	PACWEST	700	\$20,552.40
14	19	12/09/96	PACWEST	701	\$20,729.58
15	20	12/09/96	PACWEST	702	\$20,869.20
16	21	12/09/96	PACWEST	703	\$20,090.40
17	22	12/09/96	PACWEST	704	\$20,301.60
18	23	12/09/96	PACWEST	705	\$20,486.40
19	24	12/09/96	PACWEST	706	\$20,473.20
20	25	12/10/96	JSO	98028	\$20,710.80
21	26	12/10/96	JSO	98029	\$21,568.80
22	27	12/10/96	JSO	98030	\$43,084.80
23	28	12/18/96	KENDALL	100	\$18,928.80
24	29	12/18/96	KENDALL	101	\$18,928.80
25	30	12/18/96	KENDALL	102	\$21,265.20
26	31	12/18/96	PACWEST	707	\$20,803.20
27	32	12/18/96	PACWEST	708	\$19,166.40
28	33	12/18/96	PACWEST	709	\$19,166.40

1		(A)	(B)	(C)	(D)
2	<u>COUNT</u>	<u>DATE</u>	<u>BROKER</u>	<u>INVOICE</u>	<u>AMOUNT</u>
3	34	12/18/96	PACWEST	710	\$18,942.00
4	35	12/18/96	PACWEST	711	\$18,942.00
5	36	12/18/96	PACWEST	712	\$21,344.40
6	37	12/18/96	PACWEST	713	\$21,093.60
7	38	12/18/96	PACWEST	714	\$21,265.20
8	39	12/19/96	KENDALL	103	\$18,928.80
9	40	12/31/96	KENDALL	109	\$18,942.00
10	41	01/03/97	KENDALL	105	\$21,700.80
11	42	01/03/97	KENDALL	106	\$22,096.80
12	43	01/03/97	KENDALL	107	\$21,502.80
13	44	01/03/97	KENDALL	108	\$22,096.80
14	45	01/03/97	KENDALL	110	\$18,928.80
15	46	01/03/97	KENDALL	112	\$18,928.80
16	47	01/07/97	KENDALL	104	\$21,608.40
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1 Whereas in truth and in fact, as defendants then and there well
2 knew, the claims were false, fraudulent and fictitious; all in
3 violation of Title 18, United States Code, Sections 287 and 2.

4 DATED: June 10, 1997.

5 A TRUE BILL:

6
7 Melanie Mazych
8 FOREPERSON

9 ALAN D. BERSIN
10 United States Attorney
11 Southern District of California

12 Phillip L.B. Halpern

13 By: PHILLIP L.B. HALPERN
14 Assistant U.S. Attorney

15 Melanie K. Pierson

16 MELANIE K. PIERSON
17 Assistant U.S. Attorney

18 MICHAEL H. DETTMER
19 United States Attorney
20 Western District of Michigan

21 By: Thomas J. Gezon by PLM

22 THOMAS J. GEZON
23 Assistant U.S. Attorney
24
25
26
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USDC SCAN INDEX SHEET



USA

ANDREW AND WILLIAMS

SLD 6/17/97 6:46

3:97-CR-01737

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23 United States (including Puerto Rico). In addition, the
24 announcement requires each contractor to supply the USDA with a
25 written statement certifying that the products delivered have, in
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27 certification is required to ensure that the USDA is removing
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1 domestic agricultural products from the marketplace, thereby
2 encouraging the consumption of United States agricultural
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4 8. In March 1996, AMS issued Announcement FV-101, setting
5 forth the terms, conditions and specifications of bids for the
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8 purchased by the USDA for use in Child Nutrition, Needy Family
9 and other related domestic programs -- including the School Lunch
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11 Program").

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13 fruit offered to the USDA must have "originated from crops that
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17 10. The announcement further required contractors to "supply
18 the USDA with a written statement certifying that the products
19 delivered to USDA hereunder have been 100% grown and packed in
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22 segregate those products in order to be able to document that the
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24 States.

25 11. On or about September 3, 1996, AMS issued Invitation No.
26 6, amending Announcement FV-101 (hereinafter referred to as the
27 "Invitation"). The Invitation was issued specifically for the
28

1 purchase of frozen strawberries and required prospective
2 suppliers to submit their offers to the "USDA not later than 1:00
3 p.m. at Washington, D.C., on September 24, 1996."

4 12. The Invitation reiterated the requirement that the
5 frozen strawberries be "100% grown and processed from the 1996 or
6 later United States Crop . . . pursuant to Announcement FV-101 as
7 amended."

8 13. At all times relevant herein, defendant ANDREW &
9 WILLIAMSON SALES, INC., 9940 Marconi Drive, San Diego, California
10 (hereinafter referred to as "A&W") was a broker and processor
11 engaged in the sale of fresh strawberries and other fresh fruit
12 and vegetables that were shipped to them on consignment.

13 14. At all times relevant herein, defendant A&W also
14 purchased strawberries for processing (freezing) at its plant
15 located at 810 Imperial Avenue, San Diego, California. In 1996,
16 more than 99% of the strawberries purchased by defendant A&W for
17 processing were grown in the Republic of Mexico. Less than 1% of
18 the strawberries purchased by defendant A&W for processing were
19 grown domestically.

20 15. At all times relevant herein, defendant FRED L.
21 WILLIAMSON was President of defendant A&W. Richard Henry Kershaw
22 (charged elsewhere) was employed by defendant A&W as head of
23 frozen (processed) strawberry sales. Thomas E. Martinez was
24 employed by defendant A&W as Plant Manager.

25 16. At all times relevant herein, JSO Associates, Inc., 17
26 Maple Drive, Great Neck, New York (hereinafter referred to as
27 "JSO") was a broker and sales agent that dealt with frozen fruit
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1 and vegetables. The company's President and Customer Service
2 Representative were, respectively, Joel Ort and Thomas
3 Garbellotto.

4 17. At all times relevant herein, PacWest Foods Inc., 2293
5 Teller Road, Suite 103, Newbury Park, California (hereinafter
6 referred to as "PacWest") was a marketing company established to
7 broker juice, nuts and frozen fruit. The company's President and
8 owner was George Carroll.

9 18. At all times relevant herein, Kendall Frozen Fruits,
10 Inc., 16133 Ventura Boulevard, Suite 1135, Encino, California
11 (hereinafter referred to as "Kendall") was a wholesale produce
12 company established to broker frozen fruit. The company's owners
13 were Susan Kendall and Debra Olk.

14 Count 1

15 19. Beginning on or about September 3, 1996, and continuing
16 until April 1, 1997, within the Southern District of California
17 and elsewhere, defendants A&W and FRED L. WILLIAMSON did
18 knowingly conspire with others to defraud the United States by
19 impairing, impeding and frustrating the governmental functions of
20 the USDA, including the ability of the USDA to purchase products
21 100% grown in the United States -- thereby causing improper
22 claims totaling approximately \$902,116.98 to be submitted to the
23 USDA for approximately 1,742,280 lbs. of frozen strawberries.

24 Methods and Means

25 20. It was a method of the conspiracy that defendant A&W
26 would utilize JSO, PacWest and Kendall to bid on the USDA
27 Invitation for frozen strawberries.

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1 21. It was a further method of the conspiracy that the
2 conspirators would utilize JSO, PacWest and Kendall in an attempt
3 to disguise the fact that the strawberries being sold to the USDA
4 were not grown domestically as required by the USDA Invitation.

5 22. It was a further method of the conspiracy that the
6 conspirators would send letters to JSO, PacWest and Kendall
7 falsely indicating that defendant A&W produced enough
8 strawberries in the United States (13% of its total production)
9 to cover the USDA contracts for frozen sliced strawberries.

10 23. It was a further method of the conspiracy that the
11 conspirators would conceal the true origin of defendant A&W's
12 strawberries from the USDA by submitting false certificates of
13 origin -- falsely stating that the strawberries were 100% grown
14 in the United States.

15 24. It was a further method of the conspiracy that the
16 conspirators would submit the false certificates of origin to the
17 USDA in order to induce the USDA to make payments totaling
18 approximately \$902,116.98 to Kendall Frozen Fruits, JSO
19 Associates and PacWest Foods, Inc.

20 25. It was a further method of the conspiracy that the
21 conspirators would cause to be submitted to the USDA claims for
22 approximately \$902,116.98 in payment for frozen strawberries
23 that were inaccurately certified as 100% grown in the United
24 States.

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OVERT ACTS

In furtherance of the conspiracy the following overt acts, among others, were committed in the Southern District of California and elsewhere:

1. In early September 1996, in San Diego, California, Richard Kershaw (on behalf of A&W) discussed submitting a bid for approximately 500,000 lbs. on the USDA frozen strawberry contract (Invitation No. 6) with JSO.
2. On or about September 10, 1996, in Thousand Oaks, California, Richard Kershaw (on behalf of A&W) discussed with George Carroll whether PacWest would submit a bid on the USDA frozen strawberry contract on behalf of A&W. The amount of the proposed bid was for approximately 18 truckloads of frozen sliced strawberries.
3. On or about September 13, 1996, in San Diego, California, Richard Kershaw (on behalf of A&W) discussed with Debra Olk whether Kendall would submit a bid on the USDA frozen strawberry contract on behalf of A&W.
4. On or about September 13, 1996, in San Diego, California, Richard Kershaw (on behalf of A&W) falsely stated to Debra Olk that A&W could supply enough domestic strawberries to fill the USDA contract.
5. On September 19, 1996, A&W caused George Carroll of PacWest, in Newbury Park, California, to submit a bid for 712,800 lbs. of frozen strawberries (listing the plant address as A&W) to the USDA for distribution in the Child Nutrition Program.

- 1 6. On September 20, 1996, A&W caused Debra Olk of Kendall,
2 in Encino, California, to submit a bid for 475,200 lbs.
3 of frozen strawberries (listing the plant address as
4 A&W) to the USDA for distribution in the Child Nutrition
5 Program.
- 6 7. On or about September 24, 1996, A&W caused Thomas
7 Garbellotto of JSO, in Great Neck, New York, to submit
8 a bid for 554,400 lbs. of frozen strawberries (listing
9 the plant address and processor as A&W) to the USDA for
10 distribution in the Child Nutrition Program.
- 11 8. On October 17, 1996, in San Diego, California, A&W
12 received from Kendall a facsimile indicating that
13 earlier that day, the USDA awarded Kendall Frozen Fruits
14 contract #120272059 to supply 15,840 cases (475,200
15 lbs.) of frozen sliced strawberries for \$243,856.80.
- 16 9. On October 17, 1996, at approximately 11:01 a.m., in San
17 Diego, California, A&W received from PacWest a facsimile
18 indicating that earlier that day the USDA had awarded
19 PacWest contract #120272058 to supply 23,760 (712,800
20 lbs.) cases of frozen sliced strawberries for
21 \$365,560.80.
- 22 10. On October 17, 1996, at approximately 1:12 p.m., in San
23 Diego, California, A&W received a facsimile from JSO
24 indicating that earlier that day the USDA had awarded
25 JSO contract #120272057 to supply 18,400 cases (554,400
26 lbs.) of frozen sliced strawberries for \$292,762.80.

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- 1 11. On October 21, 1996, at approximately 9:12 a.m., in San
2 Diego, California, Thomas Martinez of A&W heard from a
3 USDA employee that the strawberries they were supplying
4 for the School Lunch Program must have been 100% grown
5 in the United States. Martinez requested that the USDA
6 employee fax a portion of the USDA Announcement
7 detailing this requirement to him.
- 8 12. On October 21, 1996, at approximately 9:42 a.m., in San
9 Diego, California, the A&W processing plant received by
10 facsimile from the USDA page six (6) of Announcement FV-
11 101, detailing the product specifications, including the
12 requirement that all the strawberries must "have been
13 100% grown, processed, and packed in the United States."
- 14 13. On October 21, 1996, at approximately 10:38 a.m., in San
15 Diego, California, A&W's processing plant faxed page six
16 (6) of Announcement FV-101 to A&W's business office.
- 17 14. On or about October 21, 1996, in San Diego, California,
18 Richard Kershaw told Fred L. Williamson that the USDA
19 was requiring A&W to certify that all the strawberries
20 being sold to the School Lunch Program were 100% grown
21 in the United States.
- 22 15. On or about October 23, 1996, in San Diego, California,
23 Fred L. Williamson directed Richard Kershaw to prepare
24 letters to JSO, PacWest and Kendall stating that 97% of
25 A&W's 1996 strawberry crop was grown in Mexico.
- 26 16. On October 23, 1996, at approximately 11:30 a.m., in San
27 Diego, California, A&W faxed letters (signed by Fred L.
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1 Williamson) to JSO, PacWest and Kendall stating that 97%
2 of A&W's 1996 strawberry crop was grown in Mexico.

3 17. On or about October 23, 1996, in San Diego, California,
4 Richard Kershaw falsely informed Debra Olk of Kendall
5 that A&W had enough domestic product to cover the USDA
6 bid.

7 18. On or about October 24, 1996, in San Diego, California,
8 Fred L. Williamson falsely informed Susan Kendall and
9 Debra Olk that A&W would supply them with 100% domestic
10 product in relation with the USDA bid.

11 19. On or about October 24, 1996, in San Diego, California,
12 Fred L. Williamson directed Richard Kershaw to prepare
13 letters to JSO, PacWest and Kendall falsely stating that
14 87% of A&W's 1996 strawberry crop was grown in Mexico.

15 20. On October 24, 1996, at approximately 11:30 a.m., in San
16 Diego, California, A&W faxed letters (signed by Fred L.
17 Williamson) to JSO, PacWest and Kendall falsely stating
18 that 87% of A&W's 1996 strawberry crop was grown in
19 Mexico.

20 21. On or about October 30, 1996, in San Diego, California,
21 Fred L. Williamson once again falsely informed Debra Olk
22 that A&W would supply Kendall with 100% domestic
23 product.

24 22. On or about October 30, 1996, in San Diego, California,
25 A&W received from Debra Olk a letter confirming that
26 Kendall would proceed with the USDA bid based on the
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1 recent representations and assurances received from Fred
2 L. Williamson.

3 23. On or about November 27, 1996, in San Diego, California,
4 Richard Kershaw (on behalf of A&W) prepared letters to
5 the USDA falsely certifying that the strawberries sold
6 by A&W to JSO, PacWest and Kendall (re: USDA BID FV-101,
7 Invitation 006) were 100% grown and packed in the United
8 States.

9 24. On or about December 2, 1996, in San Diego, California,
10 Fred L. Williamson on behalf of A&W signed the letters
11 sent to the USDA falsely certifying that the
12 strawberries sold by A&W to JSO, PacWest and Kendall
13 (re: USDA BID FV-101, Invitation 006) were 100% grown in
14 the United States.

15 25. On or about December 2, 1996, in San Diego, California,
16 A&W faxed letters to the USDA falsely certifying that
17 the strawberries sold by A&W to JSO, PacWest and Kendall
18 (re: USDA BID FV-101, Invitation 006) were 100% grown in
19 the United States.

20 26. On or before December 18, 1996, in San Diego,
21 California, A&W caused PacWest to submit to the USDA
22 claims for a total of approximately \$365,513.58 for
23 strawberries falsely represented to be 100% grown in the
24 United States.

25 27. On or before December 10, 1996, in San Diego,
26 California, A&W caused JSO to submit to the USDA claims
27 for a total of approximately \$292,746.60 for
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1 strawberries falsely represented to be 100% grown in the
2 United States.

3 28. On or before January 7, 1997, in San Diego, California,
4 A&W caused Kendall to submit to the USDA claims for a
5 total of approximately \$243,856.80 for strawberries
6 falsely represented to be 100% grown in the United
7 States.

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

9 Counts 2 through 4

10 1. All of the Introductory Allegations, Means and Methods,
11 and Overt Acts contained in Count 1 are hereby realleged and
12 incorporated herein, as if set forth in full in this Count.

13 2. On or about December 2, 1996, in the Southern District
14 of California, Defendants A&W and FRED L. WILLIAMSON, in a matter
15 within the jurisdiction of the USDA, did knowingly and willfully
16 send a false document to the USDA as set forth below (Column "A"):

17 18	<u>COUNT</u>	<u>(Column A)</u> <u>False Statement</u>
19 20 21	2	A facsimile of a letter, dated November 27, 1996, falsely stating that the California Chandler Strawberries that were used to fulfill Contract 120272057 (with JSO) consisting of 18,480 pails of 30# 4+1 Sliced Strawberries were 100 percent grown in the United States.

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(Column A)
False Statement

- 3 3 A facsimile of a letter, dated November 27, 1996, falsely stating that the California Chandler Strawberries that were used to fulfill Contract 120272058 (with PacWest) consisting of 23,760 pails of 30# 4+1 Sliced Strawberries were 100 percent grown in the United States.
- 4 4 A facsimile of a letter, dated November 27, 1996, falsely stating that the California Chandler Strawberries that were used to fulfill Contract 120272059 (with Kendall) consisting of 15,840 pails of 30# 4+1 Sliced Strawberries were 100 percent grown in the United States.

Whereas in truth and in fact, as defendants then and there well knew, these documents contained a materially false statement; all in violation of Title 18, United States Code, Sections 1001(a)(3) and 2.

Counts 5 through 47

1. All of the Introductory Allegations, Means and Methods, and Overt Acts contained in Count 1 are hereby realleged and incorporated herein, as if set forth in full in this Count.

2. On or about the dates set forth below (Column "A"), in the Southern District of California, Defendants A&W and FRED L. WILLIAMSON, did cause the below listed brokers (Column "B") to make and present a false claim (Column "C") in the below listed amount (Column "D") to the USDA:

<u>COUNT</u>	<u>(A) DATE</u>	<u>(B) BROKER</u>	<u>(C) INVOICE</u>	<u>(D) AMOUNT</u>
5	12/01/96	JSO	97950	\$21,367.80
6	12/02/96	JSO	97946	\$20,578.80
7	12/02/96	JSO	97948	\$20,235.60

<u>1</u>		(A)	(B)	(C)	(D)
<u>2</u>	<u>COUNT</u>	<u>DATE</u>	<u>BROKER</u>	<u>INVOICE</u>	<u>AMOUNT</u>
<u>3</u>	8	12/02/96	JSO	97949	\$20,790.00
<u>4</u>	9	12/02/96	JSO	97952	\$19,998.00
<u>5</u>	10	12/02/96	JSO	97953	\$20,196.00
<u>6</u>	11	12/02/96	JSO	97954	\$20,196.00
<u>7</u>	12	12/06/96	JSO	97997	\$21,463.20
<u>8</u>	13	12/06/96	JSO	98001	\$21,384.00
<u>9</u>	14	12/06/96	JSO	98003	\$21,172.80
<u>10</u>	15	12/09/96	PACWEST	697	\$20,235.60
<u>11</u>	16	12/09/96	PACWEST	698	\$20,499.60
<u>12</u>	17	12/09/96	PACWEST	699	\$20,552.40
<u>13</u>	18	12/09/96	PACWEST	700	\$20,552.40
<u>14</u>	19	12/09/96	PACWEST	701	\$20,729.58
<u>15</u>	20	12/09/96	PACWEST	702	\$20,869.20
<u>16</u>	21	12/09/96	PACWEST	703	\$20,090.40
<u>17</u>	22	12/09/96	PACWEST	704	\$20,301.60
<u>18</u>	23	12/09/96	PACWEST	705	\$20,486.40
<u>19</u>	24	12/09/96	PACWEST	706	\$20,473.20
<u>20</u>	25	12/10/96	JSO	98028	\$20,710.80
<u>21</u>	26	12/10/96	JSO	98029	\$21,568.80
<u>22</u>	27	12/10/96	JSO	98030	\$43,084.80
<u>23</u>	28	12/18/96	KENDALL	100	\$18,928.80
<u>24</u>	29	12/18/96	KENDALL	101	\$18,928.80
<u>25</u>	30	12/18/96	KENDALL	102	\$21,265.20
<u>26</u>	31	12/18/96	PACWEST	707	\$20,803.20
<u>27</u>	32	12/18/96	PACWEST	708	\$19,166.40
<u>28</u>	33	12/18/96	PACWEST	709	\$19,166.40

1		(A)	(B)	(C)	(D)
2	<u>COUNT</u>	<u>DATE</u>	<u>BROKER</u>	<u>INVOICE</u>	<u>AMOUNT</u>
3	34	12/18/96	PACWEST	710	\$18,942.00
4	35	12/18/96	PACWEST	711	\$18,942.00
5	36	12/18/96	PACWEST	712	\$21,344.40
6	37	12/18/96	PACWEST	713	\$21,093.60
7	38	12/18/96	PACWEST	714	\$21,265.20
8	39	12/19/96	KENDALL	103	\$18,928.80
9	40	12/31/96	KENDALL	109	\$18,942.00
10	41	01/03/97	KENDALL	105	\$21,700.80
11	42	01/03/97	KENDALL	106	\$22,096.80
12	43	01/03/97	KENDALL	107	\$21,502.80
13	44	01/03/97	KENDALL	108	\$22,096.80
14	45	01/03/97	KENDALL	110	\$18,928.80
15	46	01/03/97	KENDALL	112	\$18,928.80
16	47	01/07/97	KENDALL	104	\$21,608.40
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1 Whereas in truth and in fact, as defendants then and there well
2 knew, the claims were false, fraudulent and fictitious; all in
3 violation of Title 18, United States Code, Sections 287 and 2.

4 DATED: June 10, 1997.

5 A TRUE BILL:

6
7 Melanie Mazych
8 FOREPERSON

9 ALAN D. BERSIN
10 United States Attorney
11 Southern District of California

12 By: [Signature]
13 PHILLIP L.B. HALPERN
14 Assistant U.S. Attorney

15 [Signature]
16 MELANIE K. PIERSON
17 Assistant U.S. Attorney

18 MICHAEL H. DETTMER
19 United States Attorney
20 Western District of Michigan

21 By: Thomas J. Gezon by PLM
22 THOMAS J. GEZON
23 Assistant U.S. Attorney
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