UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

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| UNITED STATES OF AMERICA | ) | CRIMINAL NO. 4-01-914 |
| *v.* | ) | 15 U.S.C. §§ 78dd-1(a), 78dd-2(a) (Foreign Corrupt Practices Act) |
| DAVID KAY, | ) | |
| *Defendant.* | ) | |

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

1. At all times material to this Indictment, the Foreign Corrupt Practices Act of 1977 (FCPA), as amended, 15 U.S.C. §§78dd-1, *et seq*., was enacted by Congress for the purpose of, among other things, making it unlawful for United States persons, businesses and residents to use the United States mails, or any means or instrumentality of interstate or foreign commerce in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose of obtaining or retaining business for, or directing business to, any person.

2. At all times material to this Indictment:

   a. American Rice, Inc. ("ARI") was a business incorporated under the laws of the State of Texas, and having its principal place of business in Houston, Texas. American Rice, Inc. had a class of securities registered pursuant to Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78o) and was required to file reports with the U.S. Securities & Exchange Commission under Section 12 of the Securities

Exchange Act (15 U.S.C. § 78*l*). As such, American Rice, Inc. was an "issuer" within the meaning of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1.

b. Rice Corporation of Haiti ("RCH") was a subsidiary of defendant American Rice, Inc. that was incorporated in the Republic of Haiti. RCH was formed to act as a "service corporation" to represent American Rice, Inc.'s interest in Haiti. At all times prior to September 1999, American Rice, Inc. controlled all of RCH's actions, paid all of RCH's expenses, employed all of RCH's management, retained title to all rice imported by RCH until sold to third parties and consolidated its financial statements with those of American Rice, Inc.

c. Defendant DAVID KAY was an American citizen and a vice-president for marketing of American Rice, Inc. who was responsible for supervising sales and marketing in Haiti. As such, KAY was an officer of an "issuer" and a "domestic concern" within the meaning of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, 78dd-2.

3. Beginning in or about 1995 and continuing to in or about August 1999, defendant KAY and other employees and officers of American Rice, Inc. paid bribes and authorized the payment of bribes to induce customs officials in the Republic of Haiti to accept bills of lading and other documents which intentionally understated the true amount of rice that ARI shipped to Haiti for import, thus reducing the customs duties owed by American Rice, Inc. and RCH to the Haitian government.

4. In addition, beginning in or about 1998 and continuing to in or about August 1999, defendant KAY and other employees and officers of American Rice, Inc. paid and authorized additional bribes to officials of other Haitian agencies to accept the false import documents and other

documents which understated the true amount of rice being imported into and sold in Haiti, thereby reducing the amount of sales taxes paid by RCH to the Haitian government.

5. In furtherance of these bribes, defendant KAY directed employees of American Rice, Inc. to prepare two sets of shipping documents for each shipment of rice to Haiti, one that accurately reflected and another that falsely represented the weight and value of the rice being exported to Haiti.

6. In furtherance of these bribes, defendant KAY, acting on his own behalf and as an agent of American Rice, Inc., agreed to pay and authorized the payment of bribes, calculated as a percentage of the value of the rice not reported on the false documents or in the form of a monthly retainer, to customs and tax officials of the Haitian government to induce these officials to accept the false documentation and to assess significantly lower customs duties and sales taxes than American Rice, Inc. would otherwise have been required to pay.

7. In furtherance of these bribes, defendant KAY authorized employees of American Rice, Inc. to withdraw funds from American Rice, Inc. bank accounts and to pay these funds to officials of the Haitian government, either directly or through intermediary brokers.

8. As a result of the bribes and the Haitian officials' acceptance of the false shipping documents, American Rice, Inc. reported only approximately 66% of the rice it actually imported into Haiti between January 1998 and August 1999 and thereby significantly reduced the amount of customs duties it was required to pay to the Haitian government.

9. As a further result of these bribes, American Rice, Inc., using official Haitian Customs documents reflecting the amounts reported on the false shipping documents, reported only

approximately 66% of the rice it sold in Haiti and thereby significantly reduced the amount of sales taxes it was required to pay to the Haitian government.

COUNTS ONE - TWELVE

FOREIGN CORRUPT PRACTICES ACT (15 U.S.C. §78dd-1))

10. The grand jury incorporates by reference the allegations set forth in paragraphs 1-9 above and charges that:

11. On or about the dates set forth below, in the Southern District of Texas and elsewhere, defendant DAVID KAY, a domestic concern and an officer of American Rice, Inc., an "issuer" within the meaning of the Foreign Corrupt Practices Act, did use and cause to be used instrumentalities of interstate and foreign commerce, to wit, an overnight express service, facsimile transmissions, and an ocean-going barge, which were used to transport and transmit false shipping documents, corruptly in furtherance of an offer, payment, promise to pay and authorization of the payment of money to foreign officials, to wit, customs officials of the Government of the Republic of Haiti, directly and through third persons, for purposes of influencing acts and decisions of such foreign officials in their official capacities, inducing such foreign officials to do and omit to do acts in violation of their lawful duty, and to obtain an improper advantage, in order to assist American Rice, Inc. in obtaining and retaining business for, and directing business to, American Rice, Inc. and Rice Corporation of Haiti.

| COUNT | DATE | BARGE |
|---|---|---|
| 1 | January 6, 1998 | *LaurieKristie* |
| 2 | February 20, 1998 | *Balsa 51* |

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|---|---|---|
| 3 | April 20, 1998 | *LaurieKristie* |
| 4 | June 4, 1998 | *LaurieKristie* |
| 5 | June 27, 1998 | *LaurieKristie* |
| 6 | October 7, 1998 | *LaurieKristie* |
| 7 | December 7, 1998 | *LaurieKristie* |
| 8 | February 16, 1999 | *LaurieKristie* |
| 9 | April 14, 1999 | *LaurieKristie* |
| 10 | May 27, 1999 | *LaurieKristie* |
| 11 | June 30, 1999 | *LaurieKristie* |
| 12 | August 3, 1999 | *Blumarlin* |

All in violation of Title 15, United States Code, Sections 78dd-1(a) and 78dd-2(a), and Title 18, United States Code, Section 2.

A TRUE BILL:

Date: Houston, Texas
December 12, 2001

/s/
Foreperson

GREGORY A. SERRES
United States Attorney
Southern District of Texas

JOSHUA R. HOCHBERG
Chief, Fraud Section
Criminal Division
United States Department of Justice

/s/
PETER B. CLARK
Deputy Chief

/s/
PHILIP UROFSKY
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/s/
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May 3, 2002 (2:22pm)