

UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
vs.)	No. _____
)	Violations: Title 18, United States Code,
GUADALUPE ZURITA)	Sections 371, 1505, and 1519 and Title
also known as "Jose Zurita,")	21, United States Code, Sections 331(a),
MIGUEL LEAL,)	333(a), and 342(a).
CYNTHIA GUTIERREZ, and)	
BALDEMAR ZURITA)	
also known as "Tony Zurita")	

COUNT ONE

The SPECIAL SEPTEMBER 2011 GRAND JURY charges:

1. At times material to this indictment:

a. The United States Food and Drug Administration ("FDA") was the federal agency charged with the responsibility of protecting the health and safety of the American Public by enforcing the Federal Food, Drug, and Cosmetic Act ("FD&C Act"). Among other responsibilities, FDA enforced laws and regulations ensuring the safety of food.

b. The FD&C Act prohibited causing the "introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded." 21 U.S.C. § 331(a).

c. A food was deemed to be adulterated if:

(1) it bore or contained any poisonous or deleterious substance which may render it injurious to health,

- (2) it consisted in whole or in part of any filthy, putrid, or decomposed substance, or it was otherwise unfit for food,
- (3) it had been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health.

21 U.S.C. § 342(a)(1), (a)(3), (a)(4).

d. When a shipment of food was imported into the United States, FDA issued a “hold order” which instructed the importer of the food that the food must be secured and held together pending FDA review and further FDA instructions. While under a hold order, FDA could examine the shipment for contamination, including testing samples of the food for the presence of harmful substances. The food was required to be held until FDA issued further orders, such as issuing a release order that allowed the food to be distributed or issuing a refusal order that refuses entry of contaminated goods into the country. Refused goods must then be either re-exported or destroyed under FDA supervision. The importer could not distribute the shipment into commerce in the United States unless and until the shipment was released by FDA.

e. Company A was a Wisconsin corporation that was sold to Company B, a Mexican corporation, on July 13, 2007. Company A had a plant that is located in Darlington, Wisconsin (the “Darlington plant”). At the Darlington plant, Company A produced cheese, which was primarily shipped to customers outside of Wisconsin. From at

least April 20, 2007, to on or about October 27, 2008, Company A had a facility located at 950 North Oaklawn Avenue, Elmhurst, Illinois (the “Elmhurst facility”).

f. Defendant MIGUEL LEAL was President and owner of Company A until its sale to Company B on July 13, 2007.

g. Defendant CYNTHIA GUTIERREZ was Company A's Finance and Operations Manager prior to its sale to Company B. From at least April 20, 2007, until on or about October 27, 2008, GUTIERREZ worked at the Elmhurst facility.

h. Company C was an Illinois corporation that dissolved in February 9, 2007, but continued to do business in the United States. Company C imported Mexican specialty cheese and dried Mexican peppers from a plant in Villahermosa, Mexico.

i. Defendant GUADALUPE ZURITA (a/k/a “Jose Zurita”) owned and operated Company C from at least March 2007 until at least September 2007.

h. Defendant BALDEMAR ZURITA (a/k/a “Tony Zurita”) was an employee of Company C from at least March 2007 until at least September 2007.

2. On or about April 15, 2007, Company C imported a shipment of approximately 33,924 pounds of dried Mexican cheese (“the April Shipment”) from Mexico to the United States and shipped the cheese to Company A’s Elmhurst facility.

3. On or about April 15, 2007, FDA issued a hold order for the April Shipment, and sent copies of the hold order to Company C’s import broker and to Company C.

4. On or about April 20, 2007, a FDA inspector attempted to inspect and sample the April Shipment at the Elmhurst facility, but found that some of the cheese in the April

Shipment was missing. The inspector sampled some of the cheese from the April Shipment at the Elmhurst facility.

5. On or about May 20, 2007, Company C imported a shipment of approximately 37,772 pounds of dried Mexican cheese (“the May Shipment”) from Mexico to the United States and shipped the cheese to Company A’s Elmhurst facility.

6. On or about May 20, 2007, FDA issued a hold order for the May Shipment, and sent copies of the hold order to Company C’s import broker and to Company C.

7. On or about May 24, 2007, a FDA inspector inspected and sampled cheese from the May Shipment at the Elmhurst facility.

8. On or about June 5, 2007, FDA changed the “hold” status of the April Shipment to “detained” because the cheese contained a violative presence of Salmonella, E. Coli, Alkaline Phosphatase, and Staphylococcus. FDA sent a notice of the “detained” status to Company C’s broker and to Company C.

9. Salmonella is a bacterium that causes food poisoning, gastrointestinal inflammation, typhoid fever, and septicemia. In certain human populations, including children, the elderly, and individuals with compromised immune systems, salmonella can cause severe illness.

10. E. coli is a bacterium (*Escherichia coli*) that is measured by public health authorities as an indicator of fecal pollution (as of water or food) and that occurs in various strains that may produce a toxin causing intestinal illness.

11. Alkaline Phosphatase is an enzyme that occurs naturally in milk, the presence of which indicates that milk was not pasteurized.

12. Staphylococcus is a bacterium that includes causative agents of various diseases as skin infections, food poisoning, and endocarditis.

13. On or about June 18, 2007, FDA changed the “hold” status of the May Shipment to “detained” because the cheese contained a violative presence of micro-biologic material and filth, due to FDA’s determination that the May Shipment contained E. Coli, Alkaline Phosphatase, and Staphylococcus. FDA sent a notice of the detention status to Company C’s broker and to Company C.

14. On or about June 25, 2007, Company C imported a shipment of approximately 39,290 pounds of dried Mexican cheese (“the June Shipment”) from Mexico to the United States and shipped the cheese to Company A’s Elmhurst facility.

15. On or about June 26, 2007, a FDA inspector sampled the June Shipment, issued a hold order for the June Shipment, and sent the hold order to Company C’s import broker and to Company C.

16. On or about July 9, 2007, FDA issued a Notice of FDA action regarding the May Shipment, changing its status to “refused,” and ordering that the shipment be destroyed or exported from the United States under the supervision of U.S. Customs and Border Protection. The notice was sent to Company C and Company C’s broker.

17. On or about July 26, 2007, FDA changed the “hold” status of the June Shipment to “detained” because the cheese contained a violative presence of Salmonella and

Staphylococcus. FDA sent a notice of the “hold” status to Company C’s broker and to Company C.

18. On or about August 6, 2007, FDA issued a Notice of FDA action regarding the April Shipment, changing its status to “refused,” and ordering that the shipment be destroyed or exported from the United States under the supervision of U.S. Customs and Border Protection. The notice was sent to Company C and Company C’s broker.

19. Beginning on or about April 2007, and continuing through on or about March 2009, at Elmhurst, in the Northern District of Illinois, Eastern Division, and elsewhere,

GUADALUPE ZURITA,
also known as “Jose Zurita,”
MIGUEL LEAL,
CYNTHIA GUTIERREZ, and
BALDEMAR ZURITA,
also known as “Tony Zurita,”

defendants herein, conspired and agreed with each other, and with others known and unknown to the Grand Jury, with intent to defraud and mislead, to introduce and cause to be introduced into interstate commerce adulterated food, in violation of Title 21, United States Code, Sections 331(a), 333(a)(2), 342(a)(1), 342(a)(3), and 342(a)(4).

20. It was part of the conspiracy that GUADALUPE ZURITA, MIGUEL LEAL, CYNTHIA GUTIERREZ, and BALDEMAR ZURITA agreed to distribute three shipments of Company C cheese, which shipments contained a total of approximately 100,986 pounds of adulterated cheese, throughout the United States despite FDA orders that the cheese not be distributed, to “wash” cheese returned by dissatisfied Company A customers by scraping

off mold and fungus so that it could be resold to Company A's customers, and to cover up their distribution of the cheese by lying to a FDA inspector and by creating and sending a false document to FDA.

21. It was further part of the conspiracy that in April 2007, defendant MIGUEL LEAL and defendant CYNTHIA GUTIERREZ knowingly distributed 311 cartons of cheese from the April Shipment to Company A's customers prior to the cheese's inspection and sampling by FDA on April 20, 2007.

22. It was further part of the conspiracy that, on or about April 19, 2007, defendant GUADALUPE ZURITA, defendant MIGUEL LEAL, and defendant CYNTHIA GUTIERREZ agreed not to show the FDA inspector all of the cheese in the April Shipment.

23. It was further part of the conspiracy that, on or about April 20, 2007, defendant BALDEMAR ZURITA and defendant CYNTHIA GUTIERREZ falsely told the FDA inspector that the 311 cartons of cheese were not sold and distributed to customers but were, in fact, in Company A's Darlington plant.

24. It was further part of the conspiracy that, on or about April 23, 2007, defendant GUADALUPE ZURITA and defendant MIGUEL LEAL agreed to place 311 boxes of phony stand-in cheese in Company A's Darlington plant with no labels in case the FDA inspector arrived at the plant looking for the 311 boxes from the April Shipment that had already been sold and distributed by Company A.

25. It was further part of the conspiracy that, on or about April 25, 2007, defendant GUADALUPE ZURITA and defendant CYNTHIA GUTIERREZ created a false bill of

lading which indicated that the 311 boxes of cheese that were already sold and distributed to customers were, in fact, in Company A's Darlington plant.

26. It was further part of the conspiracy that, on or about April 25, 2007, defendant CYNTHIA GUTIERREZ sent the false bill of lading to FDA.

27. It was further part of the conspiracy that in April and May 2007, defendants MIGUEL LEAL and CYNTHIA GUTIERREZ distributed the remainder of the April Shipment to Company A's customers while it was subject to a FDA hold order.

28. It was further part of the conspiracy that from no earlier than May 2007 to no later than September 2007, defendants MIGUEL LEAL and CYNTHIA GUTIERREZ distributed the May Shipment and June Shipment to Company A's customers while those shipments were subject to FDA hold orders.

29. It was further part of the conspiracy that, at the request of defendants MIGUEL LEAL and CYNTHIA GUTIERREZ, and under the direction of defendant GUADALUPE ZURITA, defendant BALDEMAR ZURITA "washed" cheese from the April Shipment, May Shipment, and June Shipment that was returned by Company A's customers, in an attempt to remove mold and fungus from the cheese so that Company A could resell the cheese to its customers.

OVERT ACTS

30. To effect the objects of the conspiracy, defendants GUADALUPE ZURITA, MIGUEL LEAL, CYNTHIA GUTIERREZ, and BALDEMAR ZURITA did commit the

following overt acts, among others, in the Northern District of Illinois, Eastern Division, and elsewhere:

a. In April 2007, defendants MIGUEL LEAL and CYNTHIA GUTIERREZ distributed 311 cartons of cheese from the April Shipment prior to its inspection and sampling on April 20, 2007.

b. On or about April 20, 2007, defendants BALDEMAR ZURITA and CYNTHIA GUTIERREZ falsely told the FDA inspector that the 311 cartons of cheese were not sold and distributed to customers but were, in fact, in Company A's Darlington plant.

c. On or about April 23, 2007, defendants GUADALUPE ZURITA and MIGUEL LEAL agreed to place and caused to be placed 311 boxes of stand-in cheese in Company A's Darlington plant with no labels in case the FDA inspector arrived at the plant looking for the 311 boxes from the April Shipment that had already been sold by Company A.

d. On or about April 25, 2007, defendants GUADALUPE ZURITA and CYNTHIA GUTIERREZ created a false bill of lading, which indicated that the 311 boxes of cheese that defendants already sold and distributed were, in fact, in Company A's Darlington plant.

e. On or about April 25, 2007, defendant CYNTHIA GUTIERREZ sent the false bill of lading to FDA.

f. In April and May 2007, defendants MIGUEL LEAL and CYNTHIA GUTIERREZ distributed the remainder of the April Shipment while it was subject to a FDA hold order.

g. From no earlier than May 2007 to no later than September 2007, defendants MIGUEL LEAL and CYNTHIA GUTIERREZ distributed the May Shipment and June Shipment to customers while those shipments were subject to FDA hold orders.

h. From no earlier than June 2007 to no later than September 2007, defendant BALDEMAR ZURITA “washed” cheese from the April Shipment, May Shipment, and June Shipment that was returned by Company A’s customers, in an attempt to remove mold and fungus from the cheese so that Company A could resell the cheese to its customers.

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

COUNT TWO

The SPECIAL SEPTEMBER 2011 GRAND JURY further charges:

1. The allegations in paragraphs 1 to 4, 8 to 12, and 18 of Count One are realleged and fully incorporated herein.

2. From on or about April 16, 2007 to no later than October 1, 2007, at Elmhurst, in the Northern District of Illinois, Eastern Division, and elsewhere,

GUADALUPE ZURITA,
also known as "Jose Zurita,"
MIGUEL LEAL,
CYNTHIA GUTIERREZ, and
BALDEMAR ZURITA,
also known as "Tony Zurita,"

defendants herein, acting with the intent to defraud and mislead, caused the introduction of an adulterated food into interstate commerce; specifically, these defendants caused the shipment into interstate commerce of the April Shipment, which bore and contained Salmonella and Staphylococcus, poisonous and deleterious substances which may have rendered the food injurious to health.

In violation of Title 21, United States Code, Sections 331(a), 333(a)(2), and 342(a)(1) and Title 18, United States Code, Section 2.

COUNT THREE

The SPECIAL SEPTEMBER 2011 GRAND JURY further charges:

1. The allegations in paragraphs 1, 5 to 7, 13, and 16 of Count One are realleged and fully incorporated herein.

2. From on or about May 20, 2007 to no later than October 1, 2007, at Elmhurst, in the Northern District of Illinois, Eastern Division, and elsewhere,

GUADALUPE ZURITA,
also known as "Jose Zurita,"
MIGUEL LEAL,
CYNTHIA GUTIERREZ, and
BALDEMAR ZURITA,
also known as "Tony Zurita,""

defendants herein, acting with the intent to defraud and mislead, caused the introduction of an adulterated food into interstate commerce; specifically, these defendants caused the shipment into interstate commerce of the May Shipment, which consisted in whole and part of any filthy, putrid, and decomposed substance and was otherwise unfit for food.

In violation of Title 21, United States Code, Sections 331(a), 333(a)(2), and 342(a)(3) and Title 18, United States Code, Section 2.

COUNT FOUR

The SPECIAL SEPTEMBER 2011 GRAND JURY further charges:

1. The allegations in paragraphs 1, 9, 12, 14, 15, and 17 of Count One are realleged and fully incorporated herein.

2. From on or about June 25, 2007 to no later than October 1, 2007, at Elmhurst, in the Northern District of Illinois, Eastern Division, and elsewhere,

GUADALUPE ZURITA,
also known as "Jose Zurita,"
MIGUEL LEAL,
CYNTHIA GUTIERREZ, and
BALDEMAR ZURITA,
also known as "Tony Zurita,"

defendants herein, acting with the intent to defraud and mislead, caused the introduction of an adulterated food into interstate commerce; specifically, these defendants caused the shipment into interstate commerce of the June Shipment, which bore and contained Salmonella and Staphylococcus aureus, poisonous and deleterious substances which may have rendered the food injurious to health.

In violation of Title 21, United States Code, Sections 331(a), 333(a)(2), and 342(a)(1), and Title 18, United States Code, Section 2.

COUNT FIVE

The SPECIAL SEPTEMBER 2011 GRAND JURY further charges:

1. The allegations in paragraphs 1 to 4, 8 to 12, and 18 of Count One are realleged and fully incorporated herein.

2. On or about April 23, 2007, at Elmhurst, in the Northern District of Illinois, Eastern Division, and elsewhere,

MIGUEL LEAL,
CYNTHIA GUTIERREZ, and
GUADALUPE ZURITA,
also known as "Jose Zurita,"

defendants herein, corruptly and knowingly endeavored to influence, obstruct and impede the due and proper administration of law under which a pending proceeding was being held before the FDA in that defendants concealed the sale and distribution of 311 boxes of dried Mexican cheese in violation of a FDA hold order.

In violation of Title 18, United States Code, Sections 1505 and 2.

COUNT SIX

The SPECIAL SEPTEMBER 2011 GRAND JURY further charges:

1. The allegations in paragraphs 1 to 4, 8 to 12, and 18 of Count One are realleged and fully incorporated herein.

2. On or about April 25, 2007, at Elmhurst, in the Northern District of Illinois, Eastern Division, and elsewhere,

CYNTHIA GUTIERREZ, and
GUADALUPE ZURITA,
also known as “Jose Zurita,”

defendants herein, knowingly and with the intent to impede, obstruct, and influence the FDA’s investigation and sampling of the April Shipment, and in relation and contemplation thereof, did falsify and make a false document, namely a bill of lading referencing 311 boxes of dried Mexican cheese, which was submitted to the FDA on or about April 25, 2007, in response to a request from a FDA inspector.

In violation of Title 18, United States Code, Sections 1519 and 2.

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY