
UNITED STATES DISTRICT COURT

for the

District of Colorado

United States of America)

v.)

JIMMIE LEE LITTLE,)

Case No. 20-mj-00149-SKC

Defendant

CRIMINAL COMPLAINT

I, LaNard Taylor, the complainant in this case, state that the following is true to the best of my knowledge and belief:

From at least as early as 2012 and continuing through at least early 2017, within the State and District of Colorado and elsewhere, JIMMIE LEE LITTLE together with co-conspirators known and unknown, entered into and engaged in a continuing combination and conspiracy to suppress and/or eliminate competition by rigging bids, fixing prices and other price-related terms, including discount levels, for broiler chicken products.

All in violation of Title 15, United States Code, Section 1.

Code Section

Offense Description

15 U.S.C. § 1

Conspiracy to Restrain Trade

This criminal complaint is based on these facts:

See Affidavit attached hereto and herein incorporated by reference.

X Continued on attached sheet.

s/ LaNard Taylor

Complainant's signature

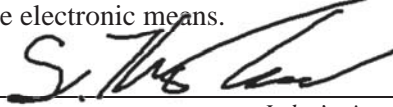
LaNard Taylor, FBI Special Agent

Printed name and title

Sworn to before me and: ☐ signed in my presence.

☒ submitted, attested to, and acknowledged by reliable electronic means.

Date: 09/23/2020



Judge's signature

City and state: Denver, Colorado

Hon. S. Kato Crews, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, LaNard Taylor, Special Agent with the Federal Bureau of Investigation (“FBI”), being duly sworn, deposes and states under penalty of perjury that the following is true to the best of my information, knowledge and belief.

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a criminal complaint alleging that JIMMIE LEE LITTLE (“LITTLE”), residing in Fort Worth, Texas, conspired with others known and unknown to restrain trade in violation of 15 U.S.C. § 1.

2. I am a Special Agent with the Federal Bureau of Investigation (“FBI”) and have been since June of 2016. I am presently assigned to the Washington Field Office’s International Corruption Squad, where I am responsible for investigating Antitrust, Foreign Corrupt Practices Act, and Kleptocracy violations. I was previously assigned to the FBI’s Los Angeles Field Office, where I was responsible for investigating public corruption, fraud against the government, violent crime, narcotics offenses, and a host of other violations of federal law. Prior to my employment with the FBI, I was a law enforcement officer in the State of Florida for four years, where I investigated crimes relating to fraud, narcotics, violent crimes, and a variety of other criminal acts.

3. Section 1 of the Sherman Act, 15 U.S.C. § 1, provides in relevant part that “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.” Specifically, the Sherman Act prohibits any conspiracy, agreement, understanding, plan or scheme, between two or more competitors to: (a) raise, lower, maintain, set a floor, or in any other way affect, prices; (b) rig bids (that is, an agreement among bidders, pursuant to which bids are submitted to, or withheld from, a third party); and (c) allocate or divide up customers or territories. Any such agreement is illegal, even if it is never carried out or is unsuccessful. The agreement itself is the crime. The elements of this crime are generally: (1) a conspiracy to rig bids, fix prices, or allocate customers existed; (2) the defendant knowingly engaged in the conspiracy; and (3) the conspiracy affected or occurred within the flow of interstate commerce.

4. I am one of the agents assigned to an ongoing investigation of a price-fixing and bid-rigging conspiracy among suppliers of broiler chickens being conducted by the FBI, United States Department of Commerce Office of Inspector General (“DOC-OIG”), United States Department of Agriculture Office of Inspector General, and Department of Justice Antitrust Division. Since I became involved in this investigation in the fall of 2019, I have conducted and participated in numerous interviews, written and reviewed reports, served subpoenas, executed warrants, and reviewed relevant documents, among other things.

5. As set forth in greater detail below, I submit there is probable cause to believe that from at least as early as 2012 and continuing through at least early 2017, LITTLE, together with co-conspirators known and unknown, entered into and engaged in a continuing combination and conspiracy to suppress and/or eliminate competition by rigging bids, fixing prices and other

price-related terms, including discount levels, for broiler chicken products in violation of 15 U.S.C. § 1.

6. The facts in this affidavit come from my review of the evidence, my personal observations, my training and experience, and information obtained from other agents and witnesses. Except as explicitly set forth below, I have not distinguished in this affidavit between facts I have personally observed and facts I have learned from others. This affidavit is intended to show simply that there is sufficient probable cause for the requested criminal complaint and does not set forth all of my knowledge about this matter.

**THERE IS PROBABLE CAUSE TO BELIEVE THAT LITTLE CONSPIRED TO FIX
PRICES AND RIG BIDS IN THE BROILER CHICKEN INDUSTRY**

Background

7. Broiler chickens are chickens raised to provide meat for human consumption. Several companies (“Suppliers”) produced broiler chicken products in the United States for sale either directly or indirectly (such as through a distributor and a distribution center) to restaurants, grocery retailers, and others.

8. Suppliers of broiler chicken products included:

- a. Supplier-1, a publicly traded corporation headquartered in Greeley, Colorado.
- b. Supplier-2, a privately held corporation headquartered in Claxton, Georgia.
- c. Supplier-3, a publicly traded corporation headquartered in Springdale, Arkansas.
- d. Supplier-4, a privately held corporation headquartered in Troutman, North Carolina.
- e. Supplier-5, a privately held corporation headquartered in Park Ridge, Illinois.
- f. Supplier-6, a privately held corporation headquartered in Springdale, Arkansas.
- g. Supplier-7, a privately held corporation headquartered in Gainesville, Georgia.

9. Restaurants, grocery retailers, and others who purchased large volumes of broiler chicken products generally received bids from or negotiated prices and other price-related terms, including discount levels, with Suppliers directly or, in the case of some fast-food restaurants, also known as quick-service restaurants, having many independent franchisees, through a

centralized buying cooperative. QSR-1 negotiates pricing through a centralized buying cooperative: Cooperative-1. QSR-4¹ negotiates pricing directly.

10. Some purchasers of broiler chicken products used a “cost-plus” pricing model for 8-piece bone-in broiler chicken products (alternatively called “8-piece COB” for 8-piece chicken-on-the-bone) that varied month-to-month or period-to-period depending on the price of chicken feed, which also provided suppliers with a per-pound margin.

11. Bidding and negotiations usually occurred annually toward the end of the calendar year and established prices and other price-related terms, including discount levels, for the following calendar year. In some instances, however, bidding and negotiation toward the end of the calendar year established prices and other price-related terms, including discount levels, for multiple calendar years. In yet other instances, bidding and negotiations occurred throughout the year and sometimes established prices and other price-related terms, including promotional discounts, for discrete periods of time.

Pending Charges

12. On or about June 2, 2020, a Federal Grand Jury in the District of Colorado returned an indictment in case number 1:20-cr-00152-PAB, charging JAYSON JEFFREY PENN (“PENN”), MIKELL REEVE FRIES (“FRIES”), SCOTT JAMES BRADY (“BRADY”), and ROGER BORN AUSTIN (“AUSTIN”) with conspiring to restrain trade in violation of the Sherman Act, 15 U.S.C. § 1. The indictment alleges that PENN, FRIES, BRADY, and AUSTIN, together with co-conspirators known and unknown, entered into and engaged in a continuing combination and conspiracy to suppress and eliminate competition by rigging bids, and fixing prices and other price-related terms for broiler chicken products sold in the United States. The indictment is attached and incorporated hereto as Exhibit 1.

Relevant Persons

13. PENN, AUSTIN, and LITTLE were employed by Supplier-1 during all or part of the period of the conspiracy. PENN was an executive vice president at Supplier-1 starting in approximately January 2012, and became the President and Chief Executive Officer of Supplier-1 in approximately March 2019. AUSTIN was a vice president at Supplier-1 starting in approximately February 2007. LITTLE was employed by Supplier-1 starting in approximately 2000 until his retirement in approximately 2016². PENN, AUSTIN, and LITTLE had sales functions at Supplier-1. LITTLE reported to AUSTIN and AUSTIN reported to PENN.

14. FRIES and BRADY were employed by Supplier-2 during all or part of the period of the conspiracy. FRIES was a sales manager at Supplier-2 starting in approximately 2004. In

¹ The reason this affidavit refers to QSR-1 and QSR-4, but not QSR-2 or QSR-3, is to avoid confusion with the entities labeled QSR-2 and QSR-3 in the Indictment attached as Exhibit 1.

² I have seen conflicting documentation as to whether LITTLE retired in 2016 or 2017. Whether he retired in 2016 or 2017 is immaterial to probable cause, so for simplicity I refer to his retirement date as 2016.

approximately 2012, FRIES was appointed to Supplier-2's board of directors. In approximately 2016, FRIES became the President of Supplier-2. BRADY was a vice president at Supplier-1 starting in approximately 1999, and a vice president at Supplier-2 starting in approximately August 2012. FRIES and BRADY had sales functions at Supplier-2. BRADY reported to FRIES.

15. Uncharged co-conspirators are identified in this affidavit by unique pseudonyms that indicate where they were employed, *e.g.*, Supplier-3-Employee-1, to maintain their anonymity.

Nature of the Conspiracy

16. LITTLE, PENN, AUSTIN, FRIES, and BRADY, together with their co-conspirators known and unknown, in the State and District of Colorado and elsewhere, participated in a continuing network of Suppliers and co-conspirators, an understood purpose of which was to suppress and eliminate competition through rigging bids and fixing prices and price-related terms for broiler chicken products sold in the United States.

17. They utilized that continuing network:

a. to reach agreements and understandings to submit aligned, though not necessarily identical, bids and to offer aligned, though not necessarily identical, prices, and price-related terms, including discount levels, for broiler chicken products sold in the United States;

b. to participate in conversations and communications relating to non-public information such as bids, prices, and price-related terms, including discount levels, for broiler chicken products sold in the United States with the shared understanding that the purpose of the conversations and communications was to rig bids, and to fix, maintain, stabilize, and raise prices and other price-related terms, including discount levels, for broiler chicken products sold in the United States; and

c. to monitor bids submitted by, and prices and price-related terms, including discount levels, offered by, Suppliers and co-conspirators for broiler chicken products sold in the United States.

LITTLE's Participation in the Conspiracy

18. Below I describe several episodes that were part of the conspiracy and in which LITTLE participated. As indicated above, however, my description of these episodes is not meant to describe the entirety of the conspiracy or the entirety of LITTLE's participation in the conspiracy.

QSR-4's 2013 Freezing Charge

19. In or around the Spring of 2013, QSR-4 began formulating a plan to require some of its distribution centers to maintain an inventory of frozen 8-piece and dark meat products on hand at all times to ensure continuity of supply during times of weather calamity, late delivery trucks, spikes in demand, etc. In or around that time, QSR-4 bought broiler chicken products from Supplier-1, Supplier-3, and Supplier-5, among other suppliers.

20. On or about May 31, 2013, at approximately 2:14 p.m., a QSR-4 employee emailed Supplier-3-Employee-1 asking for prices to supply frozen 8-piece COB and dark meat: “In terms of pricing, what are you thinking on both items? I assume that it will be a formula price based off of the cost plus. Please advise.”

21. The same day, the QSR-4 employee emailed LITTLE: “In terms of pricing, traditionally [Supplier-1] has based the frozen dark meat pricing the same as the fresh dark meat. Will that still be the case? Also, what are you thinking in terms of price for the frozen 8pc?”

22. Also on or about May 31, 2013, Supplier-3-Employee-1 called LITTLE at approximately 2:24 p.m. (EDT) and 2:40 p.m. (EDT). The respective durations of the calls were approximately 2 minutes and 8 minutes.

23. Within a minute after the termination of the 2:24 p.m. call, LITTLE told the QSR-4 employee: “Ill have pricing for you Monday. Their will need to be a freezing charge for both.” And at approximately 3:38 p.m. (EDT), Supplier-3-Employee-1 reported to his supervisor: “[Supplier-1] told me they would be around .025 to .03 on 8pc & dark meat.”

24. On or about June 4, 2013, Supplier-3-Employee-1 told the QSR-4 employee that there would be freezing charge \$0.03/lb. over the regular monthly cost-plus pricing.

QSR-4’s Quality Assurance Costs for 2014

25. In or around December 2013, a QSR-4 employee sent “new QA requirements for 2014” to various Suppliers.

26. On or about December 21, 2013, a Supplier-3 employee forwarded the requirements to Supplier-3-Employee-1 and said: “It would have been nice to have been forewarned. Wonder how the other suppliers will react?” Supplier-3-Employee-1 responded: “I would be surprised if they don’t say something. Might call a couple of them and ask.”

27. On or about December 23, 2013, at approximately 10:45 a.m. (EST) Supplier-3-Employee-1 called LITTLE. The duration of the call was approximately 5 minutes.

28. On or about December 24, 2013:

a. At approximately 12:57 p.m. (EST) LITTLE called Supplier-5-Employee-1. The call lasted for approximately 3 minutes.

b. At approximately 1:10 pm (EST), Supplier-5-Employee-1 emailed pricing for Supplier-1, Supplier-3, and Supplier-5 to another employee at Supplier-5 and said: “here’s why [Supplier-3] is so popular with [QSR-4].”

c. At approximately 1:32 pm (EST) LITTLE sent an email to two employees at Supplier-1 stating “FYI ... I did find out [Supplier-3’s] fob price is \$0.025 lower than ours in 2014!”

29. On or about December 26, 2013 Supplier-3-Employee-1 emailed colleagues at Supplier-1: “Talked to Jimmy Little and he said they were planning on adding to their cost to do this. They also didn’t like it just showing up also.”

30. In or about January 26, 2014, Supplier-3-Employee-1 sent Supplier-3’s February 2014 pricing to QSR-4 and included a quality assurance audit cost of \$0.0009/lb.

QSR-1’s 8-Piece COB Supply for 2015

31. For calendar year 2014, the Suppliers’ prices for 8-piece COB sold directly or indirectly to QSR-1 franchisees included the following margins:

Supplier	CY 2014 Margin
Supplier-1	\$.1175/lb.
Supplier-2	\$.0673/lb.
Supplier-3	\$.0750/lb.
Supplier-4	\$.1100/lb.
Supplier-5	\$.0900/lb.
Supplier-6	\$.0967/lb.
Supplier-7	\$.0900/lb.

32. On or about August 2014, a Cooperative-1 employee instructed Suppliers to submit a proposed cost-plus pricing model for calendar year 2015 by on or about August 19, 2014.

33. On or about August 18, 2014:

a. The following phone calls occurred:

Approx. Time (EDT)	Call Initiator	Call Recipient	Approx. Duration (min.)
9:41 a.m.	LITTLE	Supplier-5-Employee-1	7
10:34 a.m.	LITTLE	AUSTIN	6
12:04 p.m.	AUSTIN	BRADY	24
1:25 p.m.	LITTLE	AUSTIN	11

1:52 p.m.	AUSTIN	Supplier-6	2
2:03 p.m.	PENN	AUSTIN	6
2:41 p.m.	LITTLE	Supplier-3- Employee-1	11
2:58 p.m.	Supplier-1- Employee-6	BRADY	14
3:21 p.m.	AUSTIN	LITTLE	17
5:56 p.m.	Supplier-1- Employee-2	AUSTIN	2

b. At approximately 6:01 p.m. (EDT) Supplier-1-Employee-2 emailed a spreadsheet to PENN containing the following chart:

	<u>Current M</u>	<u>New Marg</u>
[Supplier-5]	0.09	0.22
[Supplier-4]	0.11	0.22
[Supplier-2]	0.0675	0.22
[Supplier-6]		.15-.18 inc
[Supplier-7]	0.1	0.23

c. At approximately 6:46 p.m. (EDT) Supplier-1-Employee-2 emailed PENN:

- i. Supplier-1-Employee-2 said “Roger did some checking around today and I included the below regarding the range of the total increases (margin and costs) folks are going in with,” and then reported the numbers to PENN: Supplier-2 at .14-.16/lb., Supplier-4 at .13-.15/lb., Supplier-5 at .14-.16/lb., Supplier-6 at .15-.17/lb., and Supplier-7 at .14-.16/lb.
- ii. Supplier-1-Employee-2 also said “Considering the numbers above and the fact that we wanted to be the leader this would put us in at .1616/lb increase (.06 in cost and .10 in margin) which would equate to about \$400k in additional revenue on equal volume from this year.”

34. On or about August 20, 2014, Suppliers submitted proposed cost-plus pricing models to Cooperative-1 with the following proposed margins or effective margins:

Supplier	CY 2014 Margin	Proposed Margin
Supplier-1	\$.1175/lb.	\$.2175/lb.
Supplier-2	\$.0673/lb.	\$.2200/lb.
Supplier-3	\$.0750/lb.	\$.1600/lb.
Supplier-4	\$.1100/lb.	--
Supplier-5	\$.0900/lb.	\$.2200/lb.
Supplier-6	\$.0967/lb.	\$.2070-\$.2174/lb.
Supplier-7	\$.0900/lb.	\$.2300/lb.

35. On or about August 20, 2014, the following email exchange occurred:

Email Initiator	Email Recipient	Content
Supplier-1- Employee-2	AUSTIN	“Any word from them on our proposal?”
AUSTIN	Supplier-1- Employee-2	“I heard they made a couple of calls and were surprised.”
Supplier-1- Employee-2	AUSTIN	“Surprised like how much higher everyone else was?”
AUSTIN	Supplier-1- Employee-2	“Yes”

36. In calendar year 2015, including as late as approximately December 26, 2015, Supplier-1 sold and accepted payment for 8-piece COB through a distributor to QSR-1 franchises in the United States at a margin of \$.2175.

Continuation of the Conspiracy Into At Least 2017

37. LITTLE retired from Supplier-1 in approximately 2016, but as further described in the Indictment, his co-conspirators continued to act in furtherance of the conspiracy into at least 2017.

QSR-1's Broiler Chicken Products for 2018

38. In or around January 2017, Cooperative-1 was negotiating with Suppliers for 2018 broiler chicken products. On or about Monday, January 16, 2017, between approximately 2:40 p.m. (EST) and approximately 4:51 p.m. (EST), there were at least 5 phone calls between BRADY and AUSTIN. The cumulative duration of the calls was approximately 15 minutes.

39. On or about Tuesday, January 17, 2017:

a. At approximately 10:11 a.m. (EST), AUSTIN called BRADY. The duration of the call was approximately 2 minutes.

b. At approximately 5:54 p.m. (EST) AUSTIN told Supplier-1-Employee-4, "[Supplier-2] meets with [Cooperative-1] in [sic] Thursday and i will get a blow by blow Friday morning. [Supplier-5] meets with [Cooperative-1] in [sic] Friday."

40. On or about Thursday, January 19, 2017, Supplier-2 met with Cooperative-1.

41. On or about Friday, January 20, 2017, at approximately 3:12 pm (EST), AUSTIN called BRADY. The duration of the call was approximately 7 minutes.

42. On or about January 27, 2017, Supplier-1 met with Cooperative-1.

STATEMENT OF PROBABLE CAUSE

For the reasons set forth above, I submit there is probable cause to believe that LITTLE together with co-conspirators known and unknown, entered into and engaged in a continuing combination and conspiracy to suppress and/or eliminate competition by rigging bids, fixing prices and other price-related terms, including discount levels, for broiler chicken products in violation of 15 U.S.C. § 1.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Respectfully Submitted,

/s/ LaNard Taylor _____
LaNard Taylor
Special Agent
Federal Bureau of Investigation

Sworn to before me this 23rd day of September 2020.



Hon. S. Kato Crews
United States Magistrate Judge

Reviewed and submitted by Michael Koenig and Heather Call, Trial Attorneys, Antitrust Division, United States Department of Justice

DEFENDANT: JIMMIE LEE LITTLE

YOB: 1949

ADDRESS (CITY/STATE): [REDACTED] Fort Worth, TX

OFFENSE(S): Conspiracy to Restrain Trade (15 U.S.C. § 1)

LOCATION OF OFFENSE (COUNTY/STATE): Larimer & Weld Counties, Colorado and elsewhere

PENALTY: NMT 10 years' imprisonment; NMT \$1,000,000 fine, or two time gain or loss, whichever is greater, or both imprisonment and a fine; NMT 3 years' supervised release; \$100 special assessment.

AGENT: FBI Special Agent LaNard Taylor
Commerce OIG Special Agent Matthew Koppenhaver
USDA OIG Special Agent Derek Repp

AUTHORIZED BY: Michael Koenig & Heather Call
Trial Attorneys, Antitrust Division

ESTIMATED TIME OF TRIAL:

_____ five days or less X over five days _____ other

THE GOVERNMENT

_____ will seek detention in this case X will **not** seek detention in this case

The statutory presumption of detention is or is not applicable to this defendant. **(Circle one)**

OCDETF CASE: _____ Yes X No

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Action No.: 20-cr-00152-PAB

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. JAYSON JEFFREY PENN,

2. MIKELL REEVE FRIES,

3. SCOTT JAMES BRADY,

4. ROGER BORN AUSTIN,

Defendants.

INDICTMENT

The Grand Jury charges that:

COUNT 1

(Conspiracy to Restrain Trade)

1. Beginning at least as early as 2012 and continuing through at least early 2017, the exact dates being unknown to the Grand Jury, in the State and District of Colorado and elsewhere, JAYSON PENN, MIKELL FRIES, SCOTT BRADY, and ROGER AUSTIN (“Defendants”), together with co-conspirators known and unknown to the Grand Jury, entered into and engaged in a continuing combination and conspiracy to suppress and eliminate competition by rigging bids and fixing prices and other price-related terms for broiler chicken products sold in the United States. The combination and conspiracy engaged in by the Defendants and co-conspirators was a *per se*

unlawful, and thus unreasonable, restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the Defendants and co-conspirators, the substantial terms of which were to rig bids and to fix, maintain, stabilize, and raise prices and other price-related terms for broiler chicken products sold in the United States.

I. BACKGROUND

3. Broiler chickens are chickens raised to provide meat for human consumption. Several companies (“Suppliers”) produced broiler chicken products in the United States for sale either directly or indirectly such as through a distributor and a distribution center (“DC”) to restaurants, grocery retailers, and others. During the time period of the conspiracy alleged in this Indictment, those Suppliers included, but were not limited to, Supplier-1, Supplier-2, Supplier-3, Supplier-4, Supplier-5, Supplier-6, and Supplier-7.

4. Restaurants, grocery retailers, and others who purchased large volumes of broiler chicken products generally received bids from or negotiated prices and other price-related terms, including discount levels, with Suppliers directly or, in the case of some fast-food restaurants, also known as quick-service restaurants (“QSRs”), having many independent franchisees, through a centralized buying cooperative.

5. Some purchasers of broiler chicken products used a “cost-plus” pricing model for 8-piece bone-in broiler chicken products (alternatively called “8-piece COB” for 8-piece chicken-on-the-bone) that varied month-to-month or period-to-period

depending on the price of chicken feed and that also provided Suppliers with a per-pound margin and an “adjustment” that was effectively an additional per-pound margin. 8-piece COB consisted of two breasts, two wings, two thighs, and two drumsticks.

6. The price of 8-piece COB often served as a base price for other broiler chicken products. Dark meat was often priced at a certain number of cents per pound less than, or “back” from, the price per pound of 8-piece COB. As a result, a smaller number of cents back translated into a higher price for dark meat compared to a greater number of cents back. For example, “30 back” was a higher price for dark meat than “31 back.”

7. Prices for broiler chicken products were sometimes tied to a market index, such as the Urner-Barry Index (“UB”), as an alternative. For example, cases of wings sold in bulk were sometimes priced at the UB per-pound price (“market”) and cases of pre-counted wings were sometimes priced at the UB per-pound price plus a specified number of cents per pound (“market plus”).

8. Bidding and negotiations usually occurred annually toward the end of the calendar year and established prices and other price-related terms, including discount levels, for the following calendar year. In some instances, however, bidding and negotiation toward the end of the calendar year established prices and other price-related terms, including discount levels, for multiple calendar years. In yet other instances, bidding and negotiations occurred throughout the year and sometimes established prices and other price-related terms, including promotional discounts, for discrete periods of time.

9. Bidding and negotiations often involved weekly volume commitments

between Suppliers and their respective customers. If, in a given week, a Supplier could not meet its volume commitment to a customer, the Supplier could often buy broiler chicken products from another Supplier to cover the shortfall. Alternatively, the Supplier could “short” the customer by not fulfilling its volume commitment that week.

II. DEFENDANTS AND OTHERS

10. JAYSON PENN was an executive vice president at Supplier-1—located in Greeley, Colorado—starting in approximately January 2012. PENN became the President and Chief Executive Officer of Supplier-1 in approximately March 2019.

11. ROGER AUSTIN was a vice president at Supplier-1 starting in approximately February 2007.

12. MIKELL FRIES was a sales manager at Supplier-2—which was headquartered in the State of Georgia— starting in approximately 2004. In approximately 2012, FRIES was appointed to Supplier-2’s board of directors. In approximately 2016, FRIES became the President of Supplier-2.

13. SCOTT BRADY was a vice president at Supplier-1 starting in approximately 1999, and a vice president at Supplier-2 starting in approximately August 2012.

14. Supplier-1-Employee-1 was Supplier-1’s President and Chief Executive Officer starting in approximately January 2011 until approximately March 2019. Supplier-1-Employee-1 supervised PENN.

15. Supplier-1-Employee-2 was a director and manager at Supplier-1 from approximately September 2012 until approximately May 2015, and a vice president at Supplier-1 from approximately March 2015 until approximately May 2016.

16. Supplier-1-Employee-3 was a director and manager at Supplier-1 starting in approximately March 2010.

17. Supplier-1-Employee-4 was an employee of Supplier-1 starting at least as early as approximately September 2012.

18. Supplier-3-Employee-1 was an employee of Supplier-3 starting in approximately January 1988.

19. Supplier-3-Employee-2 was a manager and director at Supplier-3 starting in approximately 2009.

20. Supplier-6-Employee-1 was an employee of Supplier-6.

21. QSR-1 was a nationwide restaurant franchise that negotiated with Suppliers through a centralized buying cooperative, Cooperative-1. Cooperative-1-Employee-1 was an employee of Cooperative-1 from approximately June 2008 until approximately May 2014. Cooperative-1-Employee-2 was an employee of Cooperative-1 from approximately August 2004 until approximately February 2017. Cooperative-1-Employee-3 was an employee of Cooperative-1 from approximately May 2014 until approximately December 2014. Cooperative-1-Employee-4 was an employee of Cooperative-1 in 2014.

22. QSR-2 was a nationwide restaurant franchise that negotiated with Suppliers through a centralized buying cooperative, Cooperative-2. Cooperative-2-Employee-1 was an employee of Cooperative-2 starting in approximately July 2008.

23. QSR-3 was a nationwide restaurant franchise that negotiated directly with Suppliers. QSR-3-Employee-1 was an employee of QSR-3 starting in approximately September 2001.

24. Grocer-1 was a nationwide grocery-store chain operating under various brand names in various geographical areas that negotiated directly with Suppliers. Grocer-1-Brand-1 was a grocery-store brand owned by Grocer-1. Grocer-1-Brand-1 operated multiple stores in the State and District of Colorado.

25. Grocer-2 was a nationwide grocery-store chain.

26. Others not made Defendants in this Indictment participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance of the conspiracy.

27. Whenever in this Indictment reference is made to any act, deed or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

III. MEANS AND METHODS OF THE CONSPIRACY

28. It was part of the conspiracy that PENN, FRIES, BRADY, and AUSTIN, together with their co-conspirators known and unknown to the Grand Jury, in the State and District of Colorado and elsewhere, participated in a continuing network of Suppliers and co-conspirators, an understood purpose of which was to suppress and eliminate competition through rigging bids and fixing prices and price-related terms for broiler chicken products sold in the United States.

29. It was further part of the conspiracy that PENN, FRIES, BRADY, and AUSTIN, together with their co-conspirators, in the State and District of Colorado and elsewhere, utilized that continuing network:

a. to reach agreements and understandings to submit aligned, though not necessarily identical, bids and to offer aligned, though not necessarily identical, prices, and price-related terms, including discount levels, for broiler chicken products sold in the United States;

b. to participate in conversations and communications relating to non-public information such as bids, prices, and price-related terms, including discount levels, for broiler chicken products sold in the United States with the shared understanding that the purpose of the conversations and communications was to rig bids, and to fix, maintain, stabilize, and raise prices and other price-related terms, including discount levels, for broiler chicken products sold in the United States;

c. to monitor bids submitted by, and prices and price-related terms, including discount levels, offered by, Suppliers and co-conspirators for broiler chicken products sold in the United States.

30. It was further part of the conspiracy that PENN, FRIES, BRADY, and AUSTIN, together with their co-conspirators, in the State and District of Colorado, and elsewhere, discussed protecting, and thereafter acted to protect, the purpose and effectiveness of the conspiracy.

31. It was further part of the conspiracy that PENN, FRIES, BRADY, and AUSTIN, together with their co-conspirators, in the State and District of Colorado, and elsewhere, sold and accepted payment for broiler chicken products that are the subject of the allegations in this Indictment in the United States through until at least approximately December 2015.

QSR-1's Dark Meat and Wings Supply for 2013

32. In approximately the autumn of 2012, Cooperative-1 was negotiating prices with Suppliers for dark meat and wings supply for calendar year 2013.

33. It was further part of the conspiracy that in or around October 10, 2012, AUSTIN submitted Supplier-1's bid to Cooperative-1 to supply QSR-1 with dark meat for calendar year 2013 at .30 back of the 8-piece price.

34. It was further part of the conspiracy that in or around October 2012, BRADY submitted Supplier-2's bid to Cooperative-1 to supply QSR-1 with dark meat for calendar year 2013 at .30 back.

35. It was further part of the conspiracy that, after, Cooperative-1-Employee-1 told AUSTIN on or about October 26, 2012, that because some Suppliers had bid dark meat at .30 back and other Suppliers had bid dark meat at .32 back, Cooperative-1-Employee-1 planned to ask all Suppliers to change their bids to .31 back:

a. On November 13, 2012, at approximately 4:17 p.m. (EST), Supplier-6-Employee-1 called BRADY. The duration of the call was approximately 5 minutes.

b. On November 13, 2012, at approximately 4:22 p.m. (EST), BRADY texted FRIES: "[Supplier-6] is .30 back on dark meat."

c. On November 13, 2012, at approximately 4:23 p.m. (EST), AUSTIN called BRADY. The duration of the call was approximately 13 minutes.

d. On November 13, 2012, at approximately 4:34 p.m. (EST), BRADY texted FRIES: "[Supplier-1] is .30 back and [Supplier-3] is 31 back," to which FRIES responded "OI [Cooperative-1-Employee-1]! He bluffing hard!"

e. On November 13, 2012, at approximately 4:37 p.m. (EST), BRADY texted FRIES: "I talked to roger [AUSTIN] and this month he is .03 higher than us on 8 piece."

f. On November 13, 2012, at approximately 4:45 p.m. (EST), BRADY texted FRIES: "he [AUSTIN] said to raise our prices, on wings he is market and market plus .10[.]" FRIES responded, "Tell him we are trying!" BRADY responded, "Will do[.]"

g. On November 13, 2012, at approximately 4:58 p.m. (EST), AUSTIN sent Supplier-1's second-round bid to Cooperative-1 with dark meat at .30 back, and bulk wings and pre-counted wings at "UB Mkt previous month average" and "UB Mkt previous month average + .10."

36. It was further part of the conspiracy that on or about November 14, 2012, BRADY submitted Supplier-2's second-round bid with dark meat at .30 back. In a cover email accompanying the second-round bid, BRADY stated, "[o]n the wings we would like to be at market for the bulk packed and market plus .10 on the precounted."

37. It was further part of the conspiracy that on or about November 30, 2012, PENN sent Supplier-1-Employee-1 a spreadsheet containing the 8-piece COB quotes that Supplier-2, Supplier-5, and Supplier-6 had proposed to Cooperative-1.

38. It was further part of the conspiracy that in or about December 2012, PENN and Cooperative-1-Employee-1 signed an agreement that the price for dark meat would be .30 back in calendar year 2013.

39. It was further part of the conspiracy that in or about December 2012, BRADY and Cooperative-1-Employee-1 signed an agreement that the price for dark meat would be .3050 back in calendar year 2013.

QSR-1's 2013 Request to Supply Reduced-Weight Product

40. On or about March 5, 2013, Cooperative-1-Employee-1 asked various Suppliers and co-conspirators to provide a quote to supply QSR-1 with a reduced-weight 8-piece COB product.

41. It was further part of the conspiracy that on or about March 8, 2013:

a. At approximately 2:45 p.m. (EST), AUSTIN called BRADY. The duration of the call was approximately 1 minute.

b. At approximately 2:48 p.m. (EST), BRADY called AUSTIN back. The duration of the call was approximately 8 minutes.

c. At approximately 3:44 p.m. (EST), BRADY told FRIES, "I talked to roger [AUSTIN] about the [QSR-1] sizes and he is in agreement with us."

QSR-1's Dark Meat Supply for 2014

42. In approximately autumn of 2013, Cooperative-1 was negotiating with Suppliers for dark meat supply for calendar year 2014.

43. It was further part of the conspiracy that in or about October 2013, AUSTIN submitted Supplier-1's bid to Cooperative-1 to supply QSR-1 dark meat for calendar year 2014 at .30 back.

44. It was further part of the conspiracy that in or about October 2013, BRADY submitted Supplier-2's bid to Cooperative-1 to supply QSR-1 with dark meat for calendar year 2014 at .305 back.

45. It was further part of the conspiracy that on or about November 19, 2013:

a. At approximately 1:27 p.m. (EST), BRADY called AUSTIN. The duration of the call was approximately 3 minutes.

b. At approximately 1:31 p.m. (EST), BRADY texted FRIES: “Just an FYI last year we were .32 back on dark meat and this year we are 3050 back.” FRIES responded, “K. Can do .31 if want.”

c. At approximately 1:31 p.m. (EST), BRADY texted FRIES: “Roger [AUSTIN] is at .30 back and not moving.” FRIES responded, “Stay .305 then[.]”

46. It was further part of the conspiracy that in or about December 2013, PENN and Cooperative-1-Employee-1 signed an agreement that the price for dark meat would be .305 back in calendar year 2014.

47. It was further part of the conspiracy that in or about December 2013, BRADY and Cooperative-1-Employee-1 signed an agreement that the price for dark meat would be .305 back in calendar year 2014.

QSR-1’s 8-Piece COB Supply for 2015

48. Beginning approximately in the summer of 2014, Cooperative-1 was negotiating with Suppliers for 8-piece COB prices to take effect in approximately 2015.

49. Supplier-1’s price for 8-piece COB sold directly or indirectly to QSR-1 franchisees in calendar year 2014 included a margin of \$.1175/lb.

50. Supplier-2’s price for 8-piece COB sold directly or indirectly to QSR-1 franchisees in calendar year 2014 included a margin of \$.0673/lb.

51. It was further part of the conspiracy that on or about August 18, 2014:

a. At approximately 12:04 p.m. (EDT) AUSTIN called BRADY. The duration of the call was approximately 24 minutes.

b. At approximately 6:46 p.m. (EDT) Supplier-1-Employee-2 told PENN that “Roger [AUSTIN] did some checking around today and I included the below

regarding the range of the total increases (margin and costs) folks are going in with,” and then reported the numbers to PENN: Supplier-2 at .14-.16/lb., Supplier-4 at .13-.15/lb., Supplier-5 at .14-.16/lb., Supplier-6 at .15-.17/lb., and Supplier-7 at .14-.16/lb.

c. Supplier-1-Employee-2 told PENN, “Considering the numbers above and the fact that we wanted to be the leader this would put us in at .1616/lb increase (.06 in cost and .10 in margin) which would equate to about \$400k in additional revenue on equal volume from this year.”

d. Supplier-1-Employee-2 emailed PENN a price proposal with a margin of \$.2175/lb. Supplier-1-Employee-2’s email included current 2014 margins and contemplated 2015 margins for Supplier-2, Supplier-4, Supplier-5, and Supplier-7.

52. It was further part of the conspiracy that on or about August 19, 2014, PENN responded to Supplier-1-Employee-2’s email from the previous day, asking “2.5 M lbs X. 16 = \$400k per week is the math?”

53. It was further part of the conspiracy that on or about August 26, 2014:

a. AUSTIN told PENN that Cooperative-1-Employee-2 asked if Supplier-1 would reduce its proposed increase. PENN told AUSTIN to hold firm.

b. At approximately 2:52 p.m. (EDT), AUSTIN called BRADY. The duration of the call was approximately 14 minutes.

c. At approximately 5:11 p.m. (EDT), BRADY texted FRIES: “I talked to roger [AUSTIN] about [QSR-1] and Greeley[, Colorado] told him not to come down on price. He called [Cooperative-1-Employee-3] today and told him.”

54. BRADY then texted FRIES: “[Supplier-5] is not moving either” to which FRIES replied that Supplier-7 was not “agreeing to anything today, just listening.”

55. It was further part of the conspiracy that on or about October 3, 2014, FRIES and Cooperative-1-Employee-4 signed an agreement that Supplier-2's effective margin for 8-piece COB would be \$.1940/lb. in calendar year 2015.

56. It was further part of the conspiracy that on or about October 31, 2014, AUSTIN and Cooperative-1-Employee-4 signed an agreement that Supplier-1's margin for 8-piece COB would be \$.2175/lb. in calendar year 2015.

57. It was further part of the conspiracy that in calendar year 2015, including as late as approximately December 26, 2015, Supplier-1 sold and accepted payment for 8-piece COB through a distributor to QSR-1 franchises in the United States at a margin of \$.2175.

QSR-3's 8-Piece COB Supply for 2015

58. In approximately the autumn of 2014, QSR-3 was negotiating with Suppliers for its 2015 8-piece COB pricing.

59. It was further part of the conspiracy that on or about October 17, 2014, the following text message exchange occurred between PENN and Supplier-1-Employee-3:

PENN	"Who is negotiating with [QSR-3]?"
Supplier-1-Employee-3	"[Supplier-1-Employee-4] and Roger [AUSTIN]"
PENN	"Ok. Thanks"
Supplier-1-Employee-3	"We know [Supplier-7], their biggest supplier is 0.02 higher than us and they are not going to negotiate."
PENN	"Good deal. Last time they did cave a cent or two with [QSR-1]"
Supplier-1-Employee-3	"They are listening to my direction"
PENN	"Who is they?"
PENN	"If they is illegal don't tell me"
Supplier-1-Employee-3	"Was referring to roger [AUSTIN] listening. Sorry, thought you were referring to roger [AUSTIN] caving. Got you on [Supplier-7] caving on [QSR-1]. [Supplier-7] might cave but I wouldn't think for our volume and their current."

PENN	"[Supplier-3] does the west. Hearing rumors out of them?"
Supplier-1-Employee-3	"Buyer said we were .07 high so that must be [Supplier-3's] price..."
PENN	"They are morons"
Supplier-1-Employee-3	".07 back is in line with where we have priced everybody else but they did not add anything for the cost of doing business with [QSR-3] like us and [Supplier-7] did"
PENN	"[Supplier-7] is a solid competitor."

60. It was further part of the conspiracy that on or about November 7, 2014, Supplier-1-Employee-3 told PENN: "[QSR-3] just called back...came up on price. Would net somewhere around 1.00 and we went in at 1.04/1.08."

61. It was further part of the conspiracy that on or about November 9, 2014, PENN told Supplier-1-Employee-1: "I raised [QSR-3] 15c per lb" and "[QSR-3-Employee-1] and his crew will pay market price plus the special A-Hole Premium."

62. It was further part of the conspiracy that on or about November 10, 2014, Supplier-1-Employee-3 emailed Supplier-1-Employee-4 and AUSTIN: "I do not really want to get into a pricing war with [Supplier-7] over those two DCs."

Protecting the Purpose and Effectiveness of the Conspiracy

63. It was further part of the conspiracy that on or about November 24, 2014, after Supplier-3 asked to purchase broiler chicken products from Supplier-1 to cover a shortfall to Grocer-1-Brand-1 for approximately \$.05/lb. more than the price Supplier-1 had negotiated with Grocer-1, PENN said in a series of emails to one or more co-conspirators employed by Supplier-1:

a. "[Supplier-3] should pay for being short. It costs money for them to fill orders for which they don't have the chickens. They have been adding market share and still trying to do – selling cheap chicken and being short. Doesn't make sense. We

are enabling the town drunk by giving him beer for Thanksgiving instead of walking him into an AA meeting.”

b. “[Supplier-3] is not shorting [Grocer-2]. Note [Supplier-3] just added market share and distribution to [Grocer-2]. They took our business on price. Should we allow [Supplier-3] to not pay for poor decision making?”

c. “They need to pay so they start acting appropriately. How do they pay? Their customers need to feel the pain. By not feeling the pain – [Supplier-3] keeps marching along and the customers to [sic] blindly with them.”

d. PENN forwarded his emails to Supplier-1-Employee-1 and said: “Thoughts on deli strategy to [Grocer-1-Brand-1]? We are covering [Supplier-3] shortages. Continue and let [Grocer-1-Brand-1] know we are helping or start have [Supplier-3] feel the pain across their system so they can start making decisions commensurate with a profitable venture and not a philanthropic organization?”

e. Supplier-1-Employee-1 responded: “No question in my mind. [Supplier-3] should have to live with the decision they made. We made ours and are dealing with it. Why should it be any different for them? We SHOULD NOT HELP THEM ONE MICRON.”

f. PENN responded: “I agree. We are just allowing our competitor to continue their idiotic ways.”

64. It was further part of the conspiracy that on or about November 26, 2014, PENN said in a series of emails to one or more co-conspirators employed by Supplier-1:

a. “Our competition is offering lower margins on this item. Our competition is also currently shorting [QSR-2], [Grocer-1], and [another customer]. All

of which we have been asked to cover this week in very slow markets. So in essence they are cheap and to add insult to injury are short product.”

b. “They are calling us – three times [sic] this week – to help them cover loads on small birds to their new customers – their new customers with whom they just increased distribution at cheap prices. So – for Thanksgiving should we give Otis a bottle of Crown (aka loads of chicken) or take him to AA (aka make him face the shortage music)?”

c. “We are straight up taking Otis to AA. No juice for Otis. Otis must face the music for his misguided actions. Selling cheap in a short market – no bailout for you.”

d. “In other words we are not covering the loads for which [Supplier-3] is asking for help.”

65. It was further part of the conspiracy that on or about December 22, 2014, PENN told Supplier-1-Employee-1: “[Supplier-3] took this strategy of not worrying about what the competition is doing and it led to the unraveling on a competitive advantage. Have to keep our enemies close and ensure that we are not zigging when the competition is successfully zagging.”

QSR-2's 2015 Bone-In Promotional Discount

66. On or about March 25, 2015, Cooperative-2-Employee-1 asked Suppliers if QSR-2 could get “some type of discount” for a promotion in approximately September 2015 “[d]ue to the increases we incurred this year.”

67. It was further part of the conspiracy that on or about March 26, 2015:

a. At approximately 1:41 p.m. (EDT), Supplier-3-Employee-1 called

BRADY. The duration of the call was approximately 2 minutes.

b. At approximately 1:43 p.m. (EDT), Supplier-3-Employee-1 called Supplier-6-Employee-1. The duration of the call was approximately 25 seconds.

c. At approximately 1:45 p.m. (EDT), Supplier-3-Employee-1 called Supplier-1-Employee-4. The duration of the call was approximately 33 seconds.

d. At approximately 8:22 p.m. (EDT), Supplier-3-Employee-1 told Supplier-3-Employee-2, "I have talked to a couple company's [sic] and they are thinking .02lb for September" and "Only bad thing is everyone else does it, it will be hard not to do it."

68. It was further part of the conspiracy that on or about March 27, 2015:

a. At approximately 10:30 a.m. (EDT), Supplier-3-Employee-2 told Supplier-3-Employee-1: "We discussed this morning, and we agree to offer the \$0.02/lb. for the month of September."

b. At approximately 10:40 a.m. (EDT), Supplier-3-Employee-1 sent a text message to BRADY.

c. At approximately 10:42 a.m. (EDT), Supplier-6-Employee-1 called Supplier-3-Employee-1. The duration of the call was approximately 3 minutes and 15 seconds.

69. It was further part of the conspiracy that on or about March 31, 2015, Supplier-1-Employee-3 told PENN: "[QSR-2] is looking to get a \$0.02/lb discount from all suppliers for a September promotion. [Supplier-3], [Supplier-5], [Supplier-4], [Supplier-7], [Supplier-6], and [Supplier-2] have already agreed to the discount."

70. It was further part of the conspiracy that on or about April 1, 2015, PENN

approved providing QSR-2 with a \$.0200/lb. discount.

QSR-1's Broiler Chicken Products for 2018

71. In or around January 2017, Cooperative-1 was negotiating with Suppliers for 2018 broiler chicken products.

72. It was further part of the conspiracy that, for example, on or about Monday, January 16, 2017, between approximately 2:40 p.m. (EST) and approximately 4:51 p.m. (EST), there were at least 5 phone calls between BRADY and AUSTIN. The cumulative duration of the calls was approximately 15 minutes.

73. It was further part of the conspiracy that on or about Tuesday, January 17, 2017:

a. At approximately 10:11 a.m. (EST), AUSTIN called BRADY. The duration of the call was approximately 2 minutes.

b. At approximately 5:54 p.m. (EST) AUSTIN told Supplier-1-Employee-4, “[Supplier-2] meets with [Cooperative-1] in [sic] Thursday and i will get a blow by blow Friday morning. [Supplier-5] meets with [Cooperative-1] in [sic] Friday.”

74. It was further part of the conspiracy that on or about Wednesday, January 18, 2017, at approximately 2:45 pm (EST), AUSTIN called BRADY. The duration of the call was approximately 1 minute.

75. It was further part of the conspiracy that on or about Thursday, January 19, 2017, Supplier-2 met with Cooperative-1.

76. It was further part of the conspiracy that on or about Friday, January 20, 2017, at approximately 3:12 pm (EST), AUSTIN called BRADY. The duration of the call was approximately 7 minutes.

77. It was further part of the conspiracy that on or about January 27, 2017, Supplier-1 met with Cooperative-1.

IV. TRADE AND COMMERCE

78. During the period covered by this Indictment, the Defendants and their co-conspirators shipped substantial quantities of broiler chicken products by truck in a continuous and uninterrupted flow of interstate trade and commerce to companies located in states outside the place of origin of the shipments.

79. During the period covered by this Indictment, the business activities of the Defendants and their co-conspirators in connection with the sale of broiler chicken products were within the flow of, and substantially affected, interstate trade and commerce.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

A TRUE BILL:

Ink signature on file in Clerk's Office
FOREPERSON



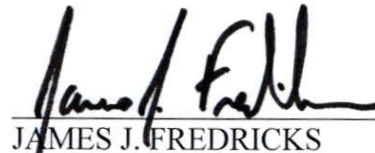
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