



UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	
)	FMIA Docket No. 19-J-0066
Southeastern Provision LLC,)	19-J-0067
James M. Brantley, Pamela K. Brantley,)	19-J-0068
and Kelsey Brantley,)	19-J-0069
)	
Respondents.)	Consent Decision and Order

This proceeding was instituted under the Federal Meat Inspection Act (FMIA), as amended, (21 U.S.C. § 601 et seq.) and the applicable rules of practice (7 C.F.R. § 1.130 et seq., 9 C.F.R. § 500.1 et seq.) to permanently withdraw Federal inspection services from Respondent Southeastern Provision LLC (“Southeastern Provision”) and Respondent James M. Brantley, the former majority owner of Southeastern Provision. Respondents Pamela K. Brantley and Kelsey Brantley are the current owners of Southeastern Provision. This proceeding was commenced by a Complaint filed by the Administrator of the Food Safety and Inspection Service (“FSIS”), United States Department of Agriculture (“USDA”), on April 2, 2019.

The parties have agreed that this proceeding should be terminated by entry of the Consent Decision and Order set forth below pursuant to the consent decision provisions of the Rules of Practice (7 C.F.R. § 1.138).

The Respondents admit the findings of fact, as set forth herein, and specifically admit that the Secretary has jurisdiction in this matter. The Respondents waive oral hearing and further procedure, and waive any rights to seek judicial review or otherwise challenge or contest the validity of this Consent Decision and Order, including waiving any challenges to the Administrative Law Judge’s authority to enter this Consent Decision and Order under the

Administrative Procedure Act and the Constitution of the United States. The Respondents waive any action under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.), and waive any other action against USDA or any USDA employees in connection with this proceeding and the facts and events that gave rise to this proceeding. The Respondents agree to the entry of this Consent Decision and Order.

Complainant agrees to the entry of this Consent Decision and Order.

Findings of Fact

1. Southeastern Provision is now, and at all times material herein was, a beef slaughter and processing plant, located at 1617 Helton Road, Bean Station, Tennessee 37708.
2. Southeastern Provision has received Federal inspection services pursuant to the FMIA since September 22, 1986, and has been designated as Official Establishment Number M8327.
3. Pursuant to the Second Articles of Amendment to the Additional Provisions of the Articles of Organization of Southeastern Provision dated December 27, 2018 (attached as Exhibit 1), Pamela K. Brantley is now the 80% Owner and Chief Manager of Southeastern Provision.
4. Pursuant to Exhibit 1, Kelsey Brantley is now the 20% Owner and Secretary of Southeastern Provision.
5. James M. Brantley is the former majority Owner and President of Southeastern Provision. Pursuant to Exhibit 1, effective December 27, 2018, James M. Brantley is no longer a member of, and has no ownership interest in, Southeastern Provision.
6. On August 16, 2018, a Plea Agreement (attached as Exhibit 2) was entered in Case No. 2:18-cr-118 pending in the United States District Court, Eastern District of Tennessee,

in which James M. Brantley agreed to plead guilty to two felony counts of willful failure to collect or pay over tax, one felony count of wire fraud, and one felony count of employment of unauthorized aliens.

7. Southeastern Provision admits there have been multiple enforcement actions within the past three years.

8. On June 27, 2016, FSIS issued a Notice of Intended Enforcement to Southeastern Provision as a result of a Comprehensive Food Safety Assessment that documented findings that the facility's HACCP system was inadequate.

9. On August 23, 2018 and September 19, 2018, FSIS withheld the marks of inspection and suspended the assignment of inspectors to Southeastern Provision's facility, because FSIS inspection personnel observed various sanitation and food safety violations at the facility on those dates. Each suspension of inspection services was subsequently held in abeyance following Southeastern Provision's submittal of acceptable corrective actions and preventive measures.

10. On November 19, 2018, FSIS issued a Reinstatement of Notice of Suspension to Southeastern Provision, pursuant to which FSIS withheld the marks of inspection and suspended the assignment of inspectors to the facility for continued insanitary conditions, continued failure to meet regulatory requirements and failure to implement and effectively execute proffered corrective actions and preventive measures.

Conclusion

11. Respondents having admitted jurisdiction and the findings of facts, and the parties having agreed to the entry of this Consent Decision and Order, the Consent Decision and Order will be entered.

Order

12. Federal inspection services under the FMIA are permanently withdrawn from Southeastern Provision and its owners, officers, directors, partners, successors, affiliates and assigns, directly or through any business or other device, for a period of three (3) years, beginning on the effective date of this Order; Provided, however, the permanent withdrawal of inspection services shall be held in abeyance, and inspection services shall be provided pursuant to a conditional grant of inspection, for so long as the conditions set forth below, in addition to all the statutory and regulatory requirements for inspection services under the FMIA, are met and maintained, in addition to all terms and conditions of this Order as set forth below.

13. Prior to the resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall demonstrate compliance with all applicable FSIS statutory and regulatory requirements, including, but not limited to, 9 C.F.R. Parts 416, 417, 418, 310, and 314, upon a review and examination of: (a) the establishment's Sanitation Performance Standards (SPS), Sanitation Standard Operating Procedures (SSOP), Hazard Analysis and Critical Control Point (HACCP) system, Sanitary Dressing Procedures, *E. coli*, *E. coli* O157:H7 and STECs sampling and Testing Programs, Specified Risk Materials (SRMs) Control Program, Recall of Meat Products Plan, Pest Management Program and any other written sanitation programs, and process controls; and (b) the physical and sanitary conditions of the establishment.

14. During the period of this Order, within its discretion, FSIS may conduct examination of records, sampling and testing, and other verification and monitoring activities to ensure Southeastern Provision's compliance with, implementation of, and the effectiveness of its SPS, SSOP, HACCP system, Sanitary Dressing Procedures, *E. coli*, *E. coli* O157:H7 and STECs

sampling and Testing Programs, SRMs Control Program, Recall of Meat Products Plan, Pest Management Program and any other written sanitation programs, and process controls, and other systems, plans, and records required by the FMIA, applicable regulations, and this Order.

Company Management and Personnel

15. Prior to the resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall modify its ownership, membership, officers, management, and responsibly connected personnel so that James M. Brantley shall be indefinitely divested, both operationally and financially, of any involvement of any kind in Southeastern Provision, its successors, affiliates, and assigns.

16. Southeastern Provision shall designate, in writing, and submit to the Director, Enforcement and Litigation Division, Office of Investigation, Enforcement and Audit, FSIS ("Director"), a person(s) other than Mr. James M. Brantley to act as Owner(s). The Owner(s) shall sign this Order and will be responsible for overseeing all major food safety decisions, overseeing all actions regulated by the FMIA and PPIA, effectuating the operation of the establishment, and ensuring compliance with this Order.

17. Southeastern Provision shall provide a written outline of the establishment's management structure, including the names of all management personnel, their assigned roles, and the specific duties and responsibilities associated with their roles. Southeastern Provision shall immediately notify the Director in writing of any changes in management personnel and/or their associated duties and responsibilities during the period of this Order.

18. Southeastern Provision shall submit a new updated application for Federal inspection (FSIS Form 5200-2) reflecting all required information. The application shall include updated applicant information, establishment information, types of operations (identifying all

HACCP categories and associated products intended to be slaughtered, processed, and otherwise produced), responsibly connected persons information (including any State or Federal felony convictions) for all owners, LLC members, officers, directors, holders of 10 percent or more voting interest, and all employees in a managerial or executive capacity.

Corporate Ethics and Compliance Officer

19. Prior to the resumption of Federal inspection services, and subject to concurrence of the Director, Southeastern Provision shall appoint or hire an individual for the role of Corporate Ethics and Compliance Officer (hereinafter "CECO"). The CECO shall be listed on the application for Federal inspection as a responsibly connected individual and must be someone other than Respondents Pamela K. Brantley, Kelsey Brantley or Southeastern Provision's Plant Manager. The CECO will be responsible, along with the Owner, for ensuring compliance with the Order. Any changes to the CECO shall be with concurrence of the Director. The CECO shall have responsibility for: (a) supervising and monitoring Southeastern Provision's compliance with the Order; (b) implementing the Standard of Conduct Policy and Program and the Ethics Training required by this Order; (c) assuring that all employees are trained in food safety principles and ethics in accordance with this Order; (d) maintaining records and reports required by this Order; and (e) reporting the establishment's compliance with the Order. The CECO may not hold any other managerial position with Southeastern Provision.

Plant Manager

20. Prior to the resumption of Federal inspection services, and subject to the concurrence of the Director, Southeastern Provision shall appoint or hire an individual to the position of Plant Manager. This person shall be listed on the application as a responsibly connected individual with their designated title, and must be someone other than the Owner(s),

Food Safety Coordinator, or the CECO. The Plant Manager shall have responsibility for the oversight of all day-to-day operations and authority regulated under the FMIA. The Plant Manager shall have completed, prior to resumption of inspection services, a course of instruction in the seven principles of HACCP and SSOP. Either the Owner(s) and/or the Plant Manager must be present during operations requiring inspection. The Owner(s) and/or the Plant Manager is/are to serve as the contact(s) with FSIS inspection program personnel for all matters related to Southeastern Provision, including responding to written documentation from inspection program personnel.

21. Southeastern Provision may hire or appoint an Alternate to perform the Plant Manager's duties in the absence of the Plant Manager. The Alternate shall act in the Plant Manager position for no more than ten (10) days per month and no more twenty (20) days per year of inspected operations. Southeastern Provision will provide the name of any Alternate in writing to the Director, with documentation of their education and work experience, at least two (2) business days prior to the first time that the Alternate serves as Plant Manager.

22. In the event that the Plant Manager vacates their assigned role during the period of this Order, Southeastern Provision is responsible for appointing a new Plant Manager within two (2) business days and notifying FSIS. Southeastern Provision may submit a request to the Director for an extension of time if it is unable to fill the role within the allotted time. The request for an extension of time will be granted provided it is demonstrated a legitimate search is being conducted.

Ethics Training and Standards of Conduct Policy and Program

23. Prior to the resumption of Federal inspection services, and subject to verification by FSIS, Respondents Pamela Brantley, Kelsey Brantley, the CECO and the Plant Manager,

shall participate in and successfully complete a training program(s) or educational course(s) encompassing ethical business practices and compliance with applicable State and Federal statutes and meat regulations. Prior to participating in this course, Respondents Pamela Brantley, Kelsey Brantley, the CECO, and the Plant Manager shall submit a detailed description of the proposed training course(s) for concurrence by the Director. Respondents Pamela Brantley, Kelsey Brantley, the CECO, and the Plant Manager shall document the successful completion of such training and shall make those records available upon request to any FSIS program personnel.

24. Prior to the resumption of Federal inspection services, Southeastern Provision shall develop and submit, for review and concurrence by the Director, an employee Standards of Conduct Policy and Program to include, at a minimum: (i) a statement of the commitment of the establishment, its officers, managers, and employees, to comply with all statutory and regulatory requirements, recordkeeping requirements, and all other applicable laws in the conduct of their business; (ii) the establishment's policy addressing ethics and public trust; (iii) a statement of the establishment's commitment to complying with Federal and State food safety and other laws in the conduct of their business, (iv) guidelines for the establishment's officers, managers, and employees to follow with respect to food safety and ethics issues; (v) procedures for the establishment's officers, managers, and employees to report alleged violations of food safety, compliance, or ethics issues, or violations of company policies, without fear of reprisal, and for the establishment to document and address reported allegations.

25. The Standards of Conduct Policy and Program shall permanently be displayed in a prominent location at the establishment and shall be provided to and discussed with all current

and future officers, managers, and employees, and shall require written acknowledgement by each individual of receipt, discussion, understanding and adherence to the policy and program.

Food Safety Coordinator

26. Prior to the resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall hire and appoint a Food Safety Coordinator who shall be responsible for the overall implementation, coordination, documentation, monitoring, recordkeeping, review, and maintenance of the food safety programs and other written programs as required by federal regulations and this Order. The Food Safety Coordinator: (a) shall have completed, prior to resumption of inspection services, a course of instruction in the seven principles of HACCP and SSOP and shall have at least two years of work experience in food safety, quality assurance, and the FSIS regulations; (b) will be present at all times when operations requiring inspection are conducted; and (c) shall not be an official who is, currently or was previously, in a management or supervisory position at Southeastern Provision, unless that person completes a new course of instruction in the seven principles of HACCP and SSOP prior to resumption of inspection services.

27. Southeastern Provision will hire or appoint at least one Alternate to perform the Food Safety Coordinator's duties in the absence of the Coordinator. The Alternate shall have completed a course of instruction in the seven principles of HACCP and SSOP. The Alternate shall act in the Coordinator position for no more than ten (10) days per month and twenty (20) days per year of inspected operations. Prior to the resumption of inspection services, Southeastern Provision will provide in writing to the Director, for review and concurrence, the names of the Food Safety Coordinator and the Alternate, and documentation of their education and work experience as detailed above.

28. Southeastern Provision shall not conduct any slaughter or processing operations in the absence of the abovementioned appointed Food Safety Coordinator or Alternate. The Coordinator and Alternate shall have the authority to hold up production, stop production, remove product from production, or take positive control of any product produced, processed, packed, or stored at the establishment that is or is believed to be adulterated or misbranded, or when facility sanitation or production deficiencies are observed.

29. Within five (5) calendar days of the Food Safety Coordinator and/or Alternate vacating their role, Southeastern Provision is responsible for appointing a new Coordinator and/or Alternate who meets all qualifications as detailed above and notifying FSIS of such appointment. If the Alternate is reassigned as the new Food Safety Coordinator, then a new Alternate is required to be designated. Southeastern Provision may submit a request to the Director for an extension of time if it is unable to fill the role(s) within the allotted time. The extension will be granted provided it is demonstrated a legitimate search is being conducted.

Sanitation Performance Standards (SPS)

30. Prior to the resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall:

a. develop written procedures, including monitoring, corrective action, and recordkeeping procedures that will be implemented to operate and maintain the establishment, including its premises, facilities, equipment, and outside premises, in a manner sufficient to: (i) prevent the creation of insanitary conditions and practices; (ii) comply with the requirements of SPS regulations (9 C.F.R. § 416.1 to § 416.5); and (iii) ensure that meat and meat food products that are prepared, packed, and stored at Southeastern Provision's facility are not adulterated or misbranded;

b. develop additional procedures for grounds and pest control, including monitoring, corrective action, and recordkeeping procedures, that Southeastern Provision will implement to prevent the harborage and breeding of pests on the grounds and within establishment facilities. Procedures shall include, at a minimum:

1. at least daily examination of the facilities and structure for potential pest entry ways, attractants, and evidence of harborage and breeding;
2. at least monthly service by an independent contracted pest control service to audit the facility and grounds and recommend corrective actions and preventive measures to be implemented by the establishment; and
3. the maintenance of records associated with program implementation, including the contracted pest service audits, findings, and reports and corrective actions taken by the establishment, to be available for review by FSIS.

Sanitation Standard Operating Procedures (SSOPs)

31. Prior to the resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall:

a. develop written SSOPs to describe the monitoring activities, recordkeeping, and other procedures that the establishment will implement, conduct, and maintain, on a daily and ongoing basis, before, during, and after operations, in accordance with this Order and regulatory requirements (9 C.F.R. § 416.11 to § 416.16) to ensure sanitary conditions and prevent adulteration; and

b. ensure that its SSOPs include specific, written instructions addressing, at a minimum, the following procedures: (i) cleaning and sanitizing of food contact surfaces of facilities, equipment and utensils; (ii) complex equipment use and methods of cleaning; (iii)

proper handling, storage, denaturing, and disposal of inedible products; (iv) re-conditioning of contaminated product; and (v) employee hygienic practices. These written instructions shall specify the frequency of each aforementioned procedure.

Hazard Analysis and Critical Control Points (HACCP) System

32. Prior to resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall:

a. Reassess its HACCP system and plans to describe each system of process controls and procedures that the establishment will implement, conduct, and maintain on a daily and ongoing basis to control and prevent the introduction of food safety hazards in its meat and meat food products. These plans shall address specific process controls and procedures within the establishment's HACCP system, including but not limited to, the following: (i) measures to identify biological, chemical, and physical food safety hazards reasonably likely to occur at each process step, and to eliminate or reduce such hazards or reduce them to undetectable levels; (ii) measures to address Sanitary Dressing Procedures to prevent contamination of carcasses specifically at live receiving/holding, sticking, hide removal, bunning, brisket opening, head removal, rodding the esophagus (weasand), evisceration, and carcass splitting steps in the slaughter process; (iii) *E. coli* O157:H7 and STECs and microbial outgrowth as hazards likely to occur in the process; and (iv) measures to eliminate or reduce and control the level of pathogens to prevent contamination of the establishment's finished product; and

b. Retain all decision-making documents for its HACCP system and plans, including its hazard analyses, validation protocols, and all parameters used in said protocols, and data to support the food safety systems.

Specified Risk Materials (SRMs) Control Program

33. Prior to resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall:

a. develop a written hazard control program for SRMs, including monitoring, verification, corrective and preventive actions, and recordkeeping that the establishment will implement and maintain, on a daily and on-going basis, to ensure proper removal, segregation, and disposition of SRMs and regulatory compliance with 9 C.F.R. Parts 310 and 314; and

b. address specific procedures within its SRM program, including the following:
(i) identification of carcasses and parts throughout slaughter process until removal of all SRMs;
(ii) determination of the age of cattle; (iii) removal, segregation and control of SRM material from cattle slaughtered at the establishment; (iv) prevention of cross-contamination with edible products; and (v) monitoring, verification, corrective and preventive actions and recordkeeping procedures.

E. coli, E. coli O157:H7 and STECs Sampling and Testing Program

34. Prior to resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall develop written *E. coli* Biotype I and *E. coli* O157:H7 sampling and testing programs to describe the procedures for sampling of products, sampling methodologies, frequencies, analyses, and recordkeeping that the establishment will conduct as part of its process control system.

Company Management and Personnel Training

35. Prior to resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall develop a training program for all current employees and

future hires involved in the preparation, processing, and/or production of meat and meat food products to ensure that employees are trained in all aspects of food safety measures and regulatory requirements, including the requirements of the SPS, SSOP, HACCP system, Sanitary Dressing Procedures, *E. coli*, *E. coli* O157:H7 and STECs sampling and Testing Programs, SRMs Control Program, Recall of Meat Products Plan, Pest Management Program and any other written sanitation programs, and process controls, and other systems, and recordkeeping procedures relevant to each employee's position. Southeastern Provision shall provide copies of all training materials to FSIS for review and evaluation prior to training employees.

36. Southeastern Provision shall, within thirty (30) days from the effective date of this Order, and subject to verification by FSIS, train all current employees consistent with the requirements of paragraphs 30 to 34 of this Order as relevant to each employee's position.

37. Southeastern Provision shall train and educate any new employee(s), consistent with the requirements of this Order, within thirty (30) calendar days of the first date (s) of employment.

38. Southeastern Provision shall conduct annual training for all employees and management personnel, current and new, involved in the preparation, processing, and/or production of meat and meat products consistent with all applicable FSIS statutory requirements and requirements of this Order.

39. Southeastern Provision shall document and maintain all training and education materials, certifications, training records, test results, and other materials for all training required by paragraphs 35 through 38 of this Order and make these records available to FSIS personnel for review and/or copying immediately upon request.

Sanitation Performance Standards (SPS)

40. Upon the resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall:

a. implement and maintain its SPS and pest control procedures as provided pursuant to paragraph 30 of this Order and regulatory requirements of 9 C.F.R. §416.1 to §416.5; and

b. routinely assess its written SPS and pest control procedures to evaluate their effectiveness, and make necessary improvements, corrections, and repairs to the establishment's buildings, structures, rooms, and compartments to ensure that they are kept in good repair and have sufficient size to allow for processing, handling, and storage of product in a manner to ensure and maintain sanitary conditions, and to preclude harborage and breeding of pests.

Sanitation Standard Operating Procedures (SSOPs)

41. Upon the resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall:

a. implement and maintain, on a daily and ongoing basis, its SSOP system as provided in paragraph 31 of this Order and the regulatory requirements of 9 C.F.R. § 416.11 through § 416.16 to ensure sanitary conditions and prevent product adulteration; and

b. implement and document all corrective and preventive actions, as required by 9 C.F.R. § 416.15; routinely evaluate the effectiveness of its SSOPs; and implement necessary modifications as required by 9 C.F.R. § 416.14 to ensure that regulatory requirements for the maintenance of sanitary conditions and the production and distribution of safe, wholesome, not adulterated, and properly labeled products in commerce are met.

Hazard Analysis and Critical Control Points (HACCP) System

42. Upon the resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall:

- a. implement, validate and maintain on a daily and ongoing basis the HACCP system and plans, in accordance with the regulatory requirements of 9 C.F.R. Part 417 and as provided in paragraph 32 of this Order;
- b. conduct initial in-plant validation during the first ninety (90) days of resumed operations, in accordance with 9 C.F.R. § 417.4;
- c. implement timely and appropriate corrective and preventive actions and reassess and modify its HACCP system and plans as necessary to ensure that the regulatory requirements for the control and prevention of pathogens and the production and distribution of wholesome, unadulterated, and properly labeled products in commerce are met, as required by and consistent with 9 C.F.R. Part 417;
- d. conduct ongoing assessments, validation, and testing of the adequacy of the critical control points, critical limits, monitoring, and record-keeping procedures, and corrective actions set forth in the HACCP system and plans, to ensure that the establishment's food safety systems remain validated over time, as required by 9 C.F.R. Part 417; and

Specified Risk Materials (SRMs) Control Program

43. Upon the resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall implement and maintain, on a daily and on-going basis, the written SRMs Control Program, as provided in paragraph 33.

E. coli, E. coli O157:H7 and STECs Sampling and Testing Program

44. Upon the resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision will:

a. implement and maintain, the *E. coli*, *E. coli* O157:H7 and STECs sampling and testing program, as provided in paragraph 34;

b. collect samples and test for *E. coli* Biotype I and record and analyze in accordance with 9 C.F.R. Part 310.25 and record and analyze sample results; and

c. collect and test *E. coli* O157:H7 and STECs and record and analyze sample results.

Company Management and Personnel Ongoing Training

45. Upon the resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision will:

a. train and educate any new manager, supervisor, and employee involved in the preparation, processing, and/or production of meat and meat products prior to starting work duties, consistent with the requirements paragraph 35 of this Order; and

b. conduct semi-annual training for all employees, current and new, consistent with the requirements of this Order.

46. Upon the resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision will make all training and education materials, training records, test results, and other materials and records of the initial and annual training of current and new employees and management personnel available to FSIS personnel for review and/or copying immediately upon such request by FSIS.

Reassessment of the Food Safety Programs

47. Upon resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision will ensure that the Food Safety Coordinator will reassess the Food Safety programs to determine the program's effectiveness in complying with this Order and the FSIS's statutory and regulatory requirements. This reassessment will be conducted and documented by the appointed Food Safety Coordinator every ninety (90) days from the effective date of this Order and prior to FSIS resuming inspection services after taking an action in accordance with 9 C.F.R. 500.3(b).

48. Each reassessment will include, at a minimum:

- a. an evaluation of all records associated with program implementation generated during the ninety (90) day period;
- b. a summary of any failures to implement the food safety program, as required by paragraphs 40 to 44 of this Order, NRs documented for 9 C.F.R. 416, 417, 310 and 314 violations, and actions taken by FSIS in accordance with 9 C.F.R. 500.3(b) documented during the ninety (90) day period;
- c. a summary of any corrective actions taken as a result of program deviations, NRs, and other FSIS actions during the ninety (90) day period;
- d. an assessment on the adequacy of the program and its effectiveness in maintaining compliance with the Order and the FSIS statutory and regulatory requirements; and
- e. a summary of any actions taken as a result of the reassessment, including changes to the written program, personnel, facilities, or equipment.

49. Upon resumption of inspection services, Southeastern Provision will submit records of each reassessment to the Director, for review, fifteen (15) days after the reassessment is conducted, and prior to FSIS resuming inspection services after taking an action in accordance with 9 C.F.R. 500.3(b).

Third Party Audits

50. Upon resumption of Federal inspection services, and subject to verification by FSIS, Southeastern Provision shall cause to be made, by an independent third party, who is certified by an accredited HACCP certifying organization, written audits of the effectiveness of its implementation, monitoring, and maintenance of its SPS, SSOP, HACCP system, Sanitary Dressing Procedures, *E. coli*, *E. coli* O157:H7 and STECs sampling and Testing Programs, SRMs Control Program, Recall of Meat Products Plan, Pest Management Program and any other written sanitation programs, and process controls corrective actions, and sampling or testing programs required by paragraphs 30 through 44 of this Order.

51. The initial audit shall be conducted no earlier than thirty (30) calendar days, but no later than sixty (60) calendar days, from the resumption of Federal inspection services; and subsequent audits shall be conducted every (180) calendar days during the first two years of this Order and annually thereafter for the duration of this Order.

52. Southeastern Provision shall prepare, for each audit conducted, a written response to the audit findings and recommendations. That written response shall identify:

- a. any modifications to the programs reviewed by the auditor;
- b. any corrective actions or any other actions implemented or planned in response to the audit findings and recommendations; and

c. supportable information and reasoning for any decision by the establishment to not implement any audit recommendation.

53. Southeastern Provision shall submit a copy of each third party audit, a copy of its written response, and any other documents related to the audit to the Director within thirty (30) calendar days after each audit is completed.

54. For the purposes of paragraphs 50 through 53, an independent third party shall be a person, entity, or corporation free from bias and absent from a conflict of interest with Southeastern Provision. Specifically, the person, entity or corporation conducting an audit shall not be a current or former officer, director, employee, affiliate, representative, or agent of Southeastern Provision. If the Director has good cause to believe that an audit was conducted by a person, entity, or corporation otherwise employed by or affiliated with the establishment, or with a present bias or a conflict of interest, any written audit and report of the audit shall be deemed disqualified for the purposes of complying with this Order. This person shall not be the person who conducted initial assessment or developed the food safety programs.

Recordkeeping

55. Southeastern Provision will keep and maintain full, complete and accurate copies of (a) all written records required by the FMIA, the regulations promulgated thereunder, all applicable State or local statutes, and all other written records required by this Order. The establishment will make all such records available to FSIS representatives for review and/or copying upon request, in a timeframe consistent with FSIS requirements.

56. Southeastern Provision will notify FSIS of any changes or modifications to its food safety programs, including changes and modifications to all related record keeping forms.

General Provisions

57. Southeastern Provision and any of its owners, members, officers, directors, partners, employees, agents, successors, affiliates, or assigns shall not:

a. violate any section of the FMIA, the regulations promulgated thereunder, or any Federal, State, or local statute or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated, non-inspected, misbranded or deceptively packaged meat, or meat food products;

b. commit any criminal act involving fraud, conspiracy, bribery, or false acts, any offense similar in nature to those that provided the legal basis for initiation of these proceedings, or any other act or circumstances indicating a lack of integrity needed for the conduct of operations affecting public health;

c. willfully make or cause to be made any false entry into any accounts, records, reports, or memoranda kept by the establishment in compliance with Federal, State or local statutes or regulations or this Order; neglect or fail to make full, true, and correct entries in such accounts, records, reports or memoranda; and fail to keep such accounts, records, reports, or memoranda that fully and correctly disclose all transactions in Southeastern Provision's business; or

d. assault, intimidate, impede, threaten or interfere with any inspection program employee in the performance of his or her official duties under the FMIA or regulations promulgated thereunder.

58. Southeastern Provision will maintain compliance with statutory and regulatory requirements for sanitation, food safety programs, process controls, and all other applicable requirements, including, but not limited to, Sanitation Performance Standards (SPS), Sanitary

Standard Operating Procedures (SSOP), Hazard Analysis and Critical Control Point (HACCP), and all other requirements as specified in 9 C.F.R. Parts 416, 417, 418, 319 and 314 as applicable.

59. Southeastern Provision will fully and completely cooperate with any FSIS investigation, inquiry, review, or examination of the establishment's compliance with the FMIA or this Order.

Enforcement Provisions

60. The FSIS Administrator will have the right to summarily withdraw inspection services upon a determination by the Director, or his or her designee, that one or more conditions set forth in paragraphs 12 through 59 of this Order have been violated. It is acknowledged that Southeastern Provision retains the right to request an expedited hearing pursuant to the Rules of Practice, 9 C.F.R. 500, concerning any violation alleged as the basis for a summary withdrawal of inspection services. This does not affect Complainant's right to suspend operations in accordance with Rules of Practice, 9 C.F.R. 500.


61. Nothing in this Order will preclude the referral of any violation of law to the U.S. Department of Justice for possible criminal or civil proceedings or preclude the Administrator from taking other appropriate administrative action under the FMIA and the regulations promulgated thereunder.

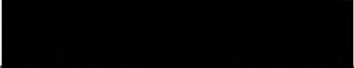
62. If any provision of this Order is declared invalid, such declaration will not affect the validity of any other provisions herein. This Order will be considered issued and effective on the date of signature by an Administrative Law Judge.


63. This Order will expire three (3) years from the date on which Southeastern Provision's Federal inspection services resume for all processes pursuant to the terms of this Order.

Copies of this Consent Decision and Order shall be served upon the parties.


Pamela K. Brantley, Chief Manager
Southeastern Provision LLC


Scott. C. Safian, Director
Enforcement and Litigation Division, OIEA
FSIS, USDA



Kelsey Brantley, Secretary
Southeastern Provision LLC


James M. Brantley

Jolyda Swaim
Attorney for Respondents


Tracy M. McGowan
Attorney for Complainant

Issued this 2d day of April, 2019


Chief Administrative Law Judge
Channing D. Strother

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Copies of this Consent Decision and Order shall be served upon the parties.

Pamela K. Brantley, Chief Manager
Southeastern Provision LLC

[Redacted]
Scott. C. Safran, Director
Enforcement and Litigation Division, OIEA
FSIS, USDA

Kelsey Brantley, Secretary
Southeastern Provision LLC

James M. Brantley

[Redacted]
Jolyda Swaim
Attorney for Respondents

[Redacted]
Tracy M. McGowan
Attorney for Complainant

Issued this 2d day of April, 2019

Chief Administrative Law Judge
Channing D. Strother
23

Exhibit 1

SECOND ARTICLES OF AMENDMENT

Re: Southeastern Provision, LLC
LLC Control Number: 0425473

Comes Southeastern Provision, LLC, a Tennessee Limited Liability Company, and files these Second Articles of Amendment pursuant to Tennessee Code Annotated Section 48-209-104, said amendments being as follows:

1. The name of the LLC is Southeastern Provision, LLC.

2. The list of members is amended to remove James H. Brantley and James M. Brantley as members of the LLC, as their membership interests in the LLC have been sold to Pamela K. Brantley and Kelsey Brantley, as set forth below. This amendment was adopted and became effective as of December 27, 2018. This amendment was duly adopted by a unanimous vote of the then existing members.

3. The number of members of the LLC is amended to show the correct number of two (2) members being in the LLC. This amendment was adopted and became effective as of December 27, 2018. This amendment was duly adopted by a unanimous vote of the then existing members.

4. The "Additional Provisions of Articles of Organization of Southeastern Provision, LLC" are hereby amended as follows:

1) Statement of Ownership Interests:

- a) Pamela K. Brantley - Owner of an 80% interest in the LLC, including an 80% right to vote in the LLC, 80% right to share in profits and losses, and an 80% right to share in any distribution of the LLC.
- b) Kelsey Brantley - Owner of a 20% interest in the LLC, including a 20% right to vote in the LLC, 20% right to share in profits and losses, and a 20% right to share in any distribution of the LLC.

2) Chief Manager and Secretary:

- a) Pamela K. Brantley is to be the Chief Manager of the LLC.
- b) Kelsey Brantley is to be the Secretary of the LLC.

3) Powers of the Chief Manager:

a) The Chief Manager of the LLC shall be empowered and authorized to make normal day to day business decisions concerning the LLC without the need for any further vote or approval. This provision is to ensure the smooth running of the LLC.

4) Voting Procedure:

a) Any matter requiring a vote concerning the LLC shall be decided by a majority interest of the percentages in the LLC. Members shall vote according to their membership/ownership interest percentages. Pamela K. Brantley currently holds an 80% voting interest and Kelsey Brantley currently holds a 20% voting interest.

5) Buying and Selling of Membership Interests:

a) Any current member of the LLC shall be entitled to sell a part of all of their membership/ownership interests at any time, PROVIDED, HOWEVER, that the remaining members shall have an absolute first option and a separate right of refusal to purchase any and all such interests.

b) The members may, by a majority vote of the percentages then existing, allow new members to enter into the LLC as members, in such percentages and upon such terms as may be approved by a majority vote of the percentages then existing.

6) The Articles of Organization of this LLC can be amended at any time by the vote of a majority of the interest percentages in the LLC then existing. Members shall vote according to their membership/ownership interest percentages.

This amendment of the "Additional Provision of Articles of Organization of Southeaster Provision, LLC" was adopted and became effective as of December 27, 2018. This amendment was adopted by a unanimous vote of the members then existing.

5. All provisions of the Articles of Organization, the "Additional Provision of Articles of Organization of Southeaster Provision, LLC" which are not specifically replaced, stricken, changed or modified by these Articles of Amendment are hereby reaffirmed in full and shall stay in full force and effect the same as if copied herein verbatim.

12/27/18
Date

[Redacted]
Pamela K. Brantley, Member and Chief Manager

12/27/18
Date

[Redacted]
Kelsey Brantley, Member and new Secretary

12/27/18

Date



James M. Brantley, Former Member and Former Secretary, who signs to transfer his membership and all interests to Pamela K. Brantley and Kelsey Brantley and to ratify the contents of this Amendment.

State of Tennessee



Department of State
Corporate Filings
312 Rosa L. Parks Ave,
6th Floor, William R. Snodgrass Tower
Nashville, TN 37243

For Office Use Only

ARTICLES OF AMENDMENT
TO ARTICLES OF ORGANIZATION
(LLC)

LIMITED LIABILITY COMPANY CONTROL NUMBER (IF KNOWN) 0425473

PURSUANT TO THE PROVISIONS OF §48-209-104 OF THE TENNESSEE LIMITED LIABILITY COMPANY ACT OR §48-249-204 OF THE TENNESSEE REVISED LIMITED LIABILITY COMPANY ACT, THE UNDERSIGNED ADOPTS THE FOLLOWING ARTICLES OF AMENDMENT TO ITS ARTICLES OF ORGANIZATION:

PLEASE MARK THE BLOCK THAT APPLIES:

- AMENDMENT IS TO BE EFFECTIVE WHEN FILED BY THE SECRETARY OF STATE.
- AMENDMENT IS TO BE EFFECTIVE _____ (DATE) _____ (TIME).

(NOT TO BE LATER THAN THE 90TH DAY AFTER THE DATE THIS DOCUMENT IS FILED.) IF NEITHER BLOCK IS CHECKED, THE AMENDMENT WILL BE EFFECTIVE AT THE TIME OF FILING.

1. PLEASE INSERT THE NAME OF THE LIMITED LIABILITY COMPANY AS IT APPEARS ON RECORD: Southeastern Provision, LLC

IF CHANGING THE NAME, INSERT THE NEW NAME ON THE LINE BELOW:

2. PLEASE INSERT ANY CHANGES THAT APPLY:

A. PRINCIPAL ADDRESS: _____ STREET ADDRESS

CITY STATE/COUNTY ZIP CODE

B. REGISTERED AGENT: Pamdt-K Branley

C. REGISTERED ADDRESS: 1617 Hinton Road

Bean Station	TN	37706	Grainger
CITY	STATE	ZIP CODE	COUNTY

D. OTHER CHANGES: Please see attached Second Articles of Amendment

3. THE AMENDMENT WAS DULY ADOPTED ON December 22nd 2008
MONTH DAY YEAR

(If the amendment is filed pursuant to the provision of §48-209-104 of the TN LLC Act, please also complete the following by checking one of the two boxes:) AND THE AMENDMENT WAS DULY ADOPTED BY THE

- BOARD OF GOVERNORS WITHOUT MEMBER APPROVAL AS SUCH WAS NOT REQUIRED.
- MEMBERS

Member and Mangier
SIGNER'S CAPACITY

SIGNATURE

Pamdt-K Bran-Hey
NAME OF SIGNER (TYPED OR PRINTED)

FILED

AUG 16 2018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

Clerk, U. S. District Court
Eastern District of Tennessee
At Greeneville.

UNITED STATES OF AMERICA)

v.)

JAMES BRANTLEY)

No. 2:18-cr-118

Judge: Greer

PLEA AGREEMENT

The United States of America, by the United States Attorney for the Eastern District of Tennessee, and the defendant, JAMES BRANTLEY, and the defendant's attorney, Norman McKellar, Esq., have agreed upon the following:

1. The defendant will waive indictment and arraignment and plead guilty to an information charging the defendant with the following offenses:

(a) Counts One and Two -- Willful Failure to Collect or Pay Over Tax: the defendant willfully failed to collect or truthfully account for and pay over any tax imposed by Title 26, in violation of 26 U.S.C. § 7202. The maximum punishment for this offense is as follows: five (5) years' imprisonment, a \$250,000 fine, three (3) years' supervised release, a \$100 mandatory assessment, and costs of prosecution.

(b) Count Three -- Wire Fraud: The defendant having devised any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmitted or caused to be transmitted by means of wire in interstate commerce, any writing, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, in violation of 18 U.S.C. § 1343. The maximum punishment for this offense is twenty (20) years' imprisonment, a \$250,000 fine, three (3) years' supervised release, and a \$100 mandatory assessment.

(c) ~~Count Four - Employment of Unauthorized Aliens~~: The defendant engaged in a pattern and practice of hiring for employment in the United States aliens knowing that each such alien was an unauthorized alien (as defined in 8 U.S.C. § 1324a(h)(3)), in violation of 8 U.S.C. § 1324a(a)(1)(A). The maximum punishment for this offense is as follows: not more than six (6) months' imprisonment, a fine of not more than \$3,000 per unauthorized alien, and a \$100 mandatory assessment.

2. In consideration of the defendant's guilty plea, the United States agrees not to further prosecute the defendant in the Eastern District of Tennessee for any other offenses committed by the defendant that are known in the United States Attorney's Office for the Eastern District of Tennessee at the time this plea agreement is signed by both parties.

3. The defendant has read the information, discussed the charges and possible defenses with defense counsel, and understands the crimes charged. Specifically, the elements of the offenses are as follows:

(a) ~~Counts One and Two - Willful Failure to Collect or Pay Over Tax~~ (26 U.S.C. § 7202): (i) The defendant had a duty to collect, account for, and pay over a tax; (ii) the defendant failed to collect, truthfully account for, or pay over the tax; and (iii) the defendant acted willfully.

(b) ~~Count Three - Wire Fraud~~ (18 U.S.C. § 1343): (i) the defendant knowingly participated in or devised a scheme to defraud in order to obtain money or property; (ii) the scheme included a material misrepresentation or concealment of a material fact; (iii) the defendant had the intent to defraud; and (iv) the defendant used wire, radio or television communications in interstate commerce in furtherance of the scheme.

(c) Court Four – Employment of Unauthorized Aliens (8 U.S.C. § 1324a(a)(1)(A)): (i) the defendant engaged in a pattern or practice of hiring persons for employment in the United States; (ii) the persons hired for employment were illegal aliens; and (iii) the defendant knew the persons hired for employment were not authorized to undertake employment in the United States.

4. In support of the defendant's guilty plea, the United States and the defendant agree and stipulate to the following facts, which satisfy the offense elements. These are the facts submitted for purposes of the defendant's guilty plea. They do not necessarily constitute all of the facts in the case. Other facts may be relevant to sentencing. Both the defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentence in this case.

(a) From on or about 1988 through the date of this plea agreement, the defendant was the majority owner and sole owner-operator of Southeastern Provision LLC ("Southeastern Provision"), a slaughterhouse and meatpacking plant located at 1617 Helton Road, Bean Station, Tennessee, in the Eastern District of Tennessee.

(b) Beginning on or about 1988 and continuing until on or about April 5, 2018, the defendant knowingly hired unauthorized aliens, or caused others within his employ to hire unauthorized aliens, to work as employees at Southeastern Provision.

(c) The defendant agrees that the "unauthorized aliens" described in this plea agreement satisfy the definition of that term as provided by 8 U.S.C. § 1324a(h)(3).

(d) The defendant hired two mid-level managers for Southeastern Provision. In particular, the defendant hired the first person as the Plant Supervisor ("Manager 1") and the

second person as the Kill Floor Supervisor ("Manager 2") more than 20 years ago. Both Manager 1 and Manager 2 worked 40 hours per week at Southeastern Provision.

(e) As the owner, the defendant gave both Manager 1 and Manager 2 authority to hire employees for Southeastern Provision. Beginning not later than 2013, the defendant authorized Manager 1 and Manager 2 to hire unauthorized aliens to fill vacancies within Southeastern Provision because the defendant knew that he could reduce his expenses by doing so. From that point forward, both Manager 1 and Manager 2 in fact hired unauthorized aliens to work as employees at Southeastern Provision. In particular, the defendant knew that by hiring unauthorized aliens, he could reduce the federal payroll and withholding tax obligations of Southeastern Provision, including the taxes imposed pursuant to 26 U.S.C. §§ 3101 and 3111 (that is, taxes pursuant to the Federal Insurance Contribution Act ("FICA")).

(f) The defendant also hired Manager 3 more than 20 years ago. Manager 3 is an unauthorized alien and became a supervisor for Southeastern Provision about 5-6 years ago. The defendant also gave Manager 3 authority to hire employees for Southeastern Provision, and Manager 3 exercised that authority during at least the past five years.

(g) From on or about 2008 through April 5, 2018, the defendant, or (after 2013) Manager 1 and Manager 2 acting with the defendant's authorization, hired not fewer than 150 unauthorized aliens to work as employees at Southeastern Provision. The defendant had actual knowledge that most of these employees were, in fact, unauthorized aliens. The defendant hired or caused these unauthorized aliens to be hired in part because doing so reduced Southeastern Provision's expenses, including its taxes, unemployment insurance premiums, and workers' compensation premiums as described below.

(h) In particular, the defendant hired unauthorized aliens to reduce his and Southeastern Provision's FICA tax obligations (as described in paragraphs 4(s) through 4(t)), his and Southeastern Provision's unemployment insurance premium obligations under state law (as described in paragraph 4), his and Southeastern Provision's unemployment tax obligations under federal law (as described in paragraph 4(u)), and his and Southeastern Provision's workers' compensation insurance premiums (as described in paragraph 4(v)).

(i) On April 5, 2018, law enforcement agents executed a search warrant at Southeastern Provision located at 1617 Helton Road, Bean Station, Tennessee. During the execution of the search warrant, agents discovered at least 104 unauthorized aliens employed at Southeastern Provision. The defendant had actual knowledge that at least 60 of those employees were unauthorized aliens (as evidenced in part by the fact that the defendant reported to the Internal Revenue Service ("IRS") on Form 941 that during the fourth quarter of 2017, Southeastern Provision had only 44 wage-earning employees, as discussed in paragraph 4(q)(ii)).

(j) The defendant hired, and authorized Manager 1 and Manager 2 to hire, most of these unauthorized aliens without requiring that such persons provide lawfully adequate documentation attesting to their identities or their authorization to work within the United States. In this manner, the defendant engaged in a pattern and practice of hiring and employing unauthorized aliens to work at Southeastern Provision. As part of this pattern and practice, the defendant hired or caused to be hired at Southeastern Provision the 10 unauthorized aliens that were prosecuted by the United States in docket numbers 2:18-CR-56, 2:18-CR-57, 2:18-CR-58, 2:18-CR-59, 2:18-CR-60, 2:18-CR-61, 2:18-CR-62, 2:18-CR-63, 2:18-CR-64, and 2:18-CR-65.

(k) Around the middle of 2017, the defendant caused Southeastern Provision to begin telling prospective employees that they needed to submit identification documents,

including a social security number. The defendant knew that his mid-level managers then told dozens of prospective employees (who were unauthorized aliens) that they needed only to submit a social security number, regardless of whether it was a valid number or actually assigned to them. The defendant then misused at least 19 social security numbers which were either invalid or not assigned to the named unauthorized alien by, among other things, submitting them on various government forms, including forms used to calculate unemployment insurance premiums.

(l) The defendant knew that Southeastern Provision did not use E-Verify. The defendant was responsible for ensuring that Southeastern Provision had policies and procedures in place to ensure that its employees were not unauthorized aliens. The defendant knew that Southeastern Provision had no policies, procedures, or mechanisms to ascertain the authorization of prospective employees to work lawfully in the United States.

(m) During the scheme, the defendant knew that, as the owner and operator of Southeastern Provision, he would be required to pay the unauthorized alien employees in cash because to do otherwise would create a documentary record of the fact of such unlawful activity. As such, not later than 2008, the defendant decided to withdraw large sums of cash from Southeastern Provision's bank accounts on a weekly basis. Approximately 60% to 70% of the cash withdrawn was used for the purpose of paying wages to Southeastern Provision employees who the defendant knew were unauthorized aliens.

(n) From on or about 2008 through April 5, 2018:

(i) The defendant, or persons acting at his direction, made weekly cash withdrawals totaling approximately \$25,000,000 from Southeastern Provision's bank account at [REDACTED]. These weekly cash withdrawals were made from [REDACTED].

branch locations in Morristown and Bean Station. Initially, the weekly cash withdrawals were relatively small, but soon increased to approximately \$100,000. Typically, the withdrawals were made on Wednesdays or Thursdays.

(ii) Each week, the defendant caused persons employed at Southeastern Provision, including Manager 1, Manager 2, and Manager 3, to pay most of the weekly cash withdrawals as wages to the unauthorized aliens employed by Southeastern Provision. Typically, these cash payments were paid to the unauthorized aliens on Fridays.

(iii) The defendant paid, or authorized Manager 1, Manager 2, and Manager 3 to pay, each unauthorized alien at a rate of approximately \$8 to \$10 per hour.

(iv) The defendant offered many of the unauthorized aliens the opportunity to work overtime hours in excess of the 40 hours they ordinarily worked each week. On many occasions, many unauthorized aliens availed themselves of this opportunity. The defendant paid these unauthorized aliens at their standard rate of \$8 to \$10 per hour, and did not pay them "time and a half" as required by the Fair Labor Standards Act for the overtime work they performed.

(e) Employers are required to file Form 941—Employer's Quarterly Federal Tax Return—on a quarterly basis and to report thereon: the number of employees who received wages during the indicated quarter, the total wages paid during the indicated quarter, taxable social security wages, and taxable Medicare wages, among other information. Employers are also required to sign Form 941. Immediately above the space designated for signing is the following disclaimer: "Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete."

(p) The defendant was at all times relevant to this plea agreement responsible for preparing, filing, and certifying the accuracy of federal tax forms filed on behalf of Southeastern Provision. In particular, the defendant was a "responsible person," that is, he had the corporate responsibility to collect, truthfully account for, and pay over to the IRS Southeastern Provision's payroll taxes. In this position, the defendant was responsible for the accuracy of Form 941 and for ensuring that it was filed promptly following the end of each calendar quarter and that it accurately set forth the total amount of wages subject to withholding, the total amount of income tax withheld, the total amount of social security and Medicare taxes due, and other information. The defendant was also responsible for collecting and paying over the correct amount of tax during each calendar quarter. The defendant in fact reviewed and certified by signature the Forms 941 filed on behalf of Southeastern Provision from the first quarter 2013 through the fourth quarter of 2017.

(q) In particular, the defendant reviewed and certified by signature the Forms 941 filed on behalf of Southeastern Provision for the third and fourth quarters of 2017. On those forms, the defendant made the following materially false and fraudulent representations:

(i) On or about October 11, 2017, the defendant knowingly and willfully filed or caused to be filed with the IRS a Form 941 "Employer's Quarter Federal Tax Return" for Southeastern Provision for the third quarter of 2017. The defendant represented and certified on this Form 941 that there were 44 wage-earning employees of Southeastern Provision, those employees earned wages totaling \$177,269, and the total FICA taxes owed on such wages after adjustments and credits was the sum of \$36,747. In fact, as he then and there knew, in the third quarter of 2017, Southeastern Provision employed approximately 104 wage-earning

employees who earned total wages of approximately \$705,635, upon which there was owing to the United States FICA taxes in the sum of \$80,840.

(ii) On or about January 9, 2018, the defendant knowingly and willfully filed or caused to be filed with the IRS a Form 941 "Employer's Quarter Federal Tax Return" for Southeastern Provision for the fourth quarter of 2017. The defendant represented and certified on this Form 941 that there were 44 wage-earning employees of Southeastern Provision, these employees earned wages totaling \$177,059, and the total FICA taxes owed on such wages after adjustments and credits was the sum of \$36,827. In fact, as he then and there knew, in the fourth quarter of 2017, Southeastern Provision employed approximately 104 wage-earning employees who earned total wages of approximately \$884,028, upon which there was owing to the United States FICA taxes in the sum of \$108,166.

(r) The net effect of the defendant's knowing and willful submission of these false and fraudulent Forms 941 (including the two described above and all others dating back to the first quarter of 2019) was the underpayment by the defendant and Southeastern Provision of FICA taxes in an amount of \$1,296,183.

(s) The parties agree that the total estimated tax loss resulting from the defendant's intentional failure to withhold and pay over the FICA taxes described in this plea agreement is \$1,296,183. This amount was calculated by comparing Southeastern Provision's weekly payroll data (as documented on a spreadsheet stored on a computer seized during the execution of the search warrant at Southeastern Provision) with the weekly cash withdrawals from Southeastern Provision's bank account (as documented on relevant bank records). This comparison revealed that the defendant used approximately 69% of the cash withdrawals to pay wages. 69% was then multiplied by the cash withdrawals made during each calendar quarter

from the first quarter of 2013 through the fourth quarter of 2017, yielding the amounts of cash used for wages depicted in the column entitled "Amount Used to Pay Wages" in the chart below. These amounts were then compared to the wages that the defendant actually reported to the IRS in respect of those calendar quarters, as depicted in the column entitled "Wages Reported on Form 941" in the chart below. The column entitled "Unreported Wages" reflects the difference between "Amount Used to Pay Wages" and "Wages Reported on Form 941." The column entitled "Unpaid FICA Tax" is equal to the "Unreported Wages" multiplied by 15.3%, which corresponds to the combined tax rate for social security (12.4%) and Medicare (2.9%) taxes (i.e., FICA taxes, see e.g. 26 U.S.C. §§ 3101 and 3111).

Quarter	Cash Withdrawals	Percent for Wages	Amount Used to Pay Wages	Wages Reported on Form 941	Unreported Wages	Unpaid FICA Tax
2013-Q1	\$537,201	69%	\$370,669	\$122,245	\$248,424	\$37,798
2013-Q2	\$462,779	69%	\$319,318	\$105,476	\$213,842	\$32,764
2013-Q3	\$496,880	69%	\$342,834	\$105,493	\$237,341	\$36,255
2013-Q4	\$543,000	69%	\$374,670	\$108,388	\$266,282	\$40,741
2014-Q1	\$551,608	69%	\$380,616	\$104,140	\$276,476	\$42,300
2014-Q2	\$790,368	69%	\$543,254	\$112,835	\$430,419	\$66,674
2014-Q3	\$668,288	69%	\$461,119	\$120,932	\$340,187	\$52,045
2014-Q4	\$794,016	69%	\$547,871	\$107,778	\$440,093	\$67,334
2015-Q1	\$629,500	69%	\$434,355	\$133,166	\$301,189	\$46,890
2015-Q2	\$774,860	69%	\$534,653	\$122,496	\$412,157	\$66,120
2015-Q3	\$766,850	69%	\$529,107	\$90,352	\$438,755	\$67,232
2015-Q4	\$807,000	69%	\$556,830	\$100,105	\$456,725	\$69,890
2016-Q1	\$792,200	69%	\$546,618	\$114,858	\$431,760	\$66,059
2016-Q2	\$894,500	69%	\$616,605	\$150,644	\$465,961	\$71,161
2016-Q3	\$865,374	69%	\$597,108	\$169,395	\$427,713	\$65,440
2016-Q4	\$1,039,000	69%	\$716,910	\$148,457	\$568,453	\$86,973
2017-Q1	\$1,069,000	69%	\$737,610	\$169,190	\$568,420	\$86,968
2017-Q2	\$1,024,920	69%	\$707,195	\$183,937	\$523,258	\$79,287
2017-Q3	\$1,022,660	69%	\$705,635	\$177,261	\$528,374	\$80,840

2017-Q1	\$1,381,200	69%	\$884,028	\$177,059	\$706,969	\$108,166
Total	\$16,019,863	-	\$11,053,707	\$2,681,910	\$8,471,797	\$1,286,183

(t) In addition to the above, the Tennessee Employment Security Law required the defendant to prepare and file a form called Wage Report (LB-0851) and a form called Premium Report (LB-0456) after the end of each calendar quarter for Southeastern Provision. These forms required that the defendant report the total number of employees and total wages paid (and from this, to calculate net taxable wages) by Southeastern Provision during each calendar quarter. The defendant systematically falsified the information contained on these forms that he completed and filed with the State of Tennessee. For example, the defendant caused to be reported to the State of Tennessee that Southeastern Provision paid wages in 2017 in the amounts set forth in the column entitled "Reported Wages" in the following chart:

Quarter	Reported Wages	Actual Wages	Unreported Wages
2017-Q1	\$169,190	\$737,610	\$568,420
2017-Q2	\$183,937	\$983,198	\$799,261
2017-Q3	\$177,269	\$705,635	\$528,366
2017-Q4	\$177,059	\$884,028	\$706,969
Total	\$707,455	\$3,310,471	\$2,603,016

When in fact, as the defendant knew, he caused Southeastern Provision to pay wages in the amounts set forth in the column entitled "Actual Wages" in the above chart. The defendant's falsification on these forms had the intended effect of reducing the state unemployment insurance premiums owed and paid by Southeastern Provision, and the defendant for 2017.

(u) Similarly, the Federal Unemployment Tax Act required the defendant to prepare and file Form 940 "Employer's Annual Federal Unemployment (FUTA) Tax Return" at the end of each calendar year for Southeastern Provision. This form required that the defendant report to the IRS total payments by Southeastern Provision to all employees as well as total FUTA tax after adjustments for unemployment tax payments made to the state of Tennessee.

The defendant systematically falsified the information contained on the Forms 940 that he completed and filed with the IRS after the end of each calendar year. For example, on or about January 26, 2017, the defendant completed Form 940 on behalf of Southeastern Provision for calendar year 2016. On that form, the defendant certified that Southeastern Provision made payments to employees totaling \$583,354 of which, the defendant certified, \$272,362 was taxable FUTA wages. In fact, as the defendant knew, Southeastern Provision paid not less than \$2,450,241 to its employees in 2016 and had total taxable FUTA wages of approximately \$770,000 (calculated as approximately 110 employees multiplied by \$7,000 in taxable FUTA wages per employee). The defendant's falsification on this Form 940 had the intended effect of reducing the federal unemployment taxes owed by Southeastern Provision and the defendant from approximately \$4,620 to \$1,634 (which was the amount he reported) for 2016.

(v) Moreover, the Tennessee Workers' Compensation Act required the defendant to maintain workers' compensation insurance in respect of the employees of Southeastern Provision. For the policy period 7/17/2016 through 7/17/2017, the defendant caused Southeastern Provision to obtain workers' compensation insurance from W.R. Berkley Corporation and its affiliates and subsidiaries ("W.R. Berkley"). Part Five, C of the policy provided in relevant part: "*[The premium] for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period.*" For this policy period, the defendant reported or caused to be reported that Southeastern Provision had only \$556,137 in remuneration paid to "packing house" employees. The applicable rate for "packing house" employees during this period was \$5.14 per \$100 of wages attributable to "packing house" employees. Thus, the final premium reported by the

defendant as attributable to "packing house" employees for Southeastern Provision for that policy period was \$28,585, calculated as the reported wages of \$556,197 multiplied by 5.14%. In fact, as the defendant knew, the actual total wages Southeastern Provision paid to packing house employees during the policy period was approximately \$3,034,826. Thus, the actual premiums Southeastern Provision owed to W.R. Berkley for that policy period was \$155,990, calculated as \$3,034,826 multiplied by 5.14%. The defendant's falsification had the intended effect of reducing the workers' compensation insurance premiums owed by Southeastern Provision and the defendant to W.R. Berkley. The defendant underpaid these premiums by approximately \$127,405 for this policy period. On or about June 15, 2013, in furtherance of the scheme to defraud W.R. Berkley, the defendant caused an application for insurance to be mailed in interstate commerce to an agent of W.R. Berkley on which was initially reported false information that led to the outcome described in this paragraph.

(w) On April 5, 2018, when law enforcement agents executed the search warrant at Southeastern Provision, they seized \$107,473.28 in United States currency. This currency was withdrawn two days earlier from Southeastern Provision's bank account at Citizen's Bank at the defendant's direction. The defendant intended that approximately 69% of these funds be used to pay wages to employees with respect to whom he did not intend to collect, truthfully account for, or pay over FICA taxes, did not pay state or federal unemployment taxes, and did not pay workers' compensation insurance premiums. These funds were also obtained in part due to the offenses described in this plea agreement.

(x) For the avoidance of doubt, the defendant agrees that on each Form 1065 "U.S. Return of Partnership Income" filed for Southeastern Provision in respect of calendar years 2008 through 2017, he deducted or caused to be deducted as expenses the full amount of wages

paid by Southeastern Provision, including all wages reported on the Forms 941 filed each quarter as well as all wages paid to unauthorized aliens that were not reported on Forms 941, even though such expenses were not always identified as "wages." The defendant further agrees that he has not underreported any other expense on any form filed with the IRS from 2008 through 2017 and is not owed any refund from the IRS in relation to the operations of Southeastern Provision during that time period.

3. The defendant is pleading guilty because the defendant is in fact guilty. The defendant understands that, by pleading guilty, the defendant is giving up several rights, including:

- (a) the right to be indicted by a grand jury for these crimes;
- (b) the right to plead not guilty;
- (c) the right to a speedy and public trial by jury;
- (d) the right to assistance of counsel at trial;
- (e) the right to be presumed innocent and to have the burden of proof placed on the United States to prove the defendant guilty beyond a reasonable doubt;
- (f) the right to confront and cross-examine witnesses against the defendant;
- (g) the right to testify on one's own behalf, to present evidence in opposition to the charges, and to compel the attendance of witnesses; and
- (h) the right not to testify and to have that choice not used against the defendant.

6. The parties agree that the appropriate disposition of this case would be the following as to each count:

(a) The Court may impose any lawful term of imprisonment, any lawful fines, and any lawful terms of supervised release up to the statutory maximums; provided that, for the purposes of determining the applicable offense level in accordance with U.S.S.G. §§ 2T1.1 and 2T4.1, the defendant and the United States agree, in accordance with Fed. R. Crim. P. 11(c)(1)(B), that the tax loss resulting from the defendant's violation of 26 U.S.C. § 7202 was more than \$550,000 but not more than \$1,500,000. In the event the Court declines to accept this agreement, either party will be free to withdraw from the plea agreement.

(b) The Court will impose special assessment fees as required by law; and

(c) The Court may order forfeiture as applicable and restitution as appropriate. No promises have been made by any representative of the United States to the defendant as to what the sentence will be in this case. Any estimates or predictions made to the defendant by defense counsel or any other person regarding any potential sentence in this case are not binding on the Court, and may not be used as a basis to rescind this agreement or withdraw the defendant's guilty plea. The defendant understands that the sentence in this case will be determined by the Court after it receives the presentence investigation report from the United States Probation Office and any information presented by the parties. The defendant acknowledges that the sentencing determination will be based upon the entire scope of the defendant's criminal conduct, the defendant's criminal history, and pursuant to other factors and guidelines as set forth in the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553.

7. Pursuant to Rule 11(c)(1)(C), the defendant and the United States agree that a particular provision of the Sentencing Guidelines, policy statement, or sentencing factor, does not apply to the defendant's sentence. Namely, the defendant and the United States agree that: (a) U.S.S.G. § 3C1.1 does not apply to the defendant's sentence; and (b) U.S.S.G. § 2B1.1(b)(11)

does not apply to the defendant's sentence. In the event the Court declines to accept this agreement, either party will be free to withdraw from the plea agreement.

8. If the Court orders the defendant to pay restitution to the IRS for the failure to pay tax, either directly as part of the sentence or as a condition of supervised release, the IRS will use the restitution order as the basis for a civil assessment. See 26 U.S.C. § 6201 (a)(4). The defendant does not have the right to challenge the amount of this assessment. See 26 U.S.C. § 6201(a)(4)(C). Neither the existence of a restitution payment schedule nor the defendant's timely payment of restitution according to that schedule will preclude the IRS from administrative collection of the restitution-based assessment, including levy and distraint under 26 U.S.C. § 6331.

9. Given the defendant's agreement to plead guilty, the United States will not oppose a two-level reduction for acceptance of responsibility under the provisions of § 3E1.1(a) of the Sentencing Guidelines. Further, if the defendant's offense level is 16 or greater, and the defendant is awarded the two-level reduction pursuant to § 3E1.1(a), the United States agrees, at or before the time of sentencing, to move the Court to decrease the offense level by one additional level pursuant to § 3E1.1(b) of the Sentencing Guidelines. Should the defendant engage in any conduct or make any statements that are inconsistent with accepting responsibility for the defendant's offense, including violations of conditions of release or the commission of any additional offense(s) prior to sentencing, the United States will be free to decline to make such motion, to withdraw that motion if already made, and to recommend to the Court that the defendant not receive any reduction for acceptance of responsibility under § 3E1.1 of the Sentencing Guidelines.

10. The defendant agrees to pay the special assessment in this case prior to sentencing.

11. Unless otherwise limited by an agreed preliminary order of forfeiture, the defendant agrees to forfeit to the United States immediately and voluntarily his interest in any property that was used and intended to be used in any manner or part to commit and to facilitate the commission of a violation of 18 U.S.C. 1343 and any and all assets and property, or portions thereof, subject to forfeiture as proceeds of the defendant's criminal activities. Property that is subject to forfeiture includes, but is not limited to \$107,473.28 in United States currency, seized from 1617 Helton Road, Bean Station, Tennessee. The defendant further agrees to assist the United States fully in the identification, recovery, and return to the United States of any other assets or portions thereof subject to forfeiture. The defendant further agrees to make a full and complete disclosure of all assets over which the defendant exercises control and those which are held or controlled by a nominee. The defendant agrees to forfeit all interests in the properties as described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and the signing of any other documents necessary to effectuate such transfers. The defendant agrees not to object to any civil, criminal or administrative forfeiture brought against these properties. The defendant agrees to take all such steps to locate such property and to pass title to the United States before the defendant's sentencing.

12. The defendant agrees that the Court shall order restitution, pursuant to any applicable provision of law, for the losses caused to the victims of the offenses set forth in the information relating to this agreement. Pursuant to 18 U.S.C. §§ 3663(a)(3) and 3663A, the

amount of restitution will be \$127,405 owing and payable to BerkleyNet on behalf of the W.R. Berkley and \$1,296,183 owing and payable to the IRS.

13. The defendant shall pay the full amount of restitution to BerkleyNet and the IRS, as set forth in paragraph 12, on or before the sentencing date as determined by the Court.

14. The defendant agrees to pay all fines and restitution imposed by the Court to the Clerk of Court. The defendant also agrees that the full fine and/or restitution amount(s) shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, the defendant agrees that the Bureau of Prisons and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The defendant further agrees to cooperate fully in efforts to collect any financial obligation imposed by the Court by set-off of federal payments, execution on non-exempt property, and any other means the United States deems appropriate. The defendant and counsel also agree that the defendant may be contacted post-judgment regarding the collection of any financial obligation imposed by the Court without notifying the defendant's counsel and outside the presence of the defendant's counsel. In order to facilitate the collection of financial obligations to be imposed with this prosecution, the defendant agrees to disclose fully all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party. In furtherance of this agreement, the defendant additionally agrees to the following specific terms and conditions:

(a) If so requested by the United States, the defendant will promptly submit a completed financial statement to the United States Attorney's Office, in a form it provides and as

it directs. The defendant promises that such financial statement and disclosures will be complete, accurate, and truthful.

(b) The defendant expressly authorizes the United States Attorney's Office to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

(c) If so requested by the United States, the defendant will promptly execute authorizations on forms provided by the United States Attorney's Office to permit the United States Attorney's Office to obtain financial and tax records of the defendant.

15. The defendant acknowledges that the principal benefits to the United States of this agreement include the conservation of limited government resources and bringing a certain end to the case. Accordingly, in consideration of the concessions made by the United States in this agreement and as a further demonstration of the defendant's acceptance of responsibility for the offense committed, the defendant voluntarily, knowingly, and intentionally agrees to the following:

(a) The defendant will not file a direct appeal of the defendant's conviction or sentence with one exception: The defendant retains the right to appeal a sentence imposed above the sentencing guideline range determined by the Court or above any mandatory minimum sentence deemed applicable by the Court, whichever is greater. The defendant also waives the right to appeal the Court's determination as to whether the defendant's sentence will be consecutive or partially concurrent to any other sentence.

(b) The defendant will not file any motions or pleadings pursuant to 28 U.S.C. § 2255 or otherwise collaterally attack the defendant's conviction or sentence, with two

exceptions: The defendant retains the right to file a § 2255 motion as to (i) prosecutorial misconduct and (ii) ineffective assistance of counsel.

(c) The defendant will not, whether directly or by a representative, request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

16. This plea agreement becomes effective once it is signed by the parties and is not contingent on the defendant's entry of a guilty plea. If the United States violates the terms of this agreement, the defendant will have the right to withdraw from this agreement. If the defendant violates the terms of this agreement in any way (including, without limitation, by failing to enter a guilty plea as agreed herein, moving to withdraw guilty plea after entry, or by violating any court order or any local, state, or federal law pending the resolution of this case), then the United States will have the right to void any or all parts of the agreement and may also enforce whatever parts of the agreement it chooses. In addition, the United States may prosecute the defendant for any and all federal crimes that the defendant committed related to this case, including any charges that were dismissed and any other charges that the United States agreed not to pursue. The defendant expressly waives any statute of limitations defense and any constitutional or speedy trial or double jeopardy defense to prosecution for the conduct contemplated by this agreement. The defendant also understands and agrees that a violation of this agreement by the defendant does not entitle the defendant to withdraw the defendant's guilty plea in this case.

17. The United States will file a supplement in this case, as required in every case by the Local Rules of the United States District Court for the Eastern District of Tennessee, even though there may or may not be any additional terms. If additional terms are included in the supplement, they are hereby fully incorporated herein.

18. This plea agreement and supplement constitute the full and complete agreement and understanding between the parties concerning the defendant's guilty plea to the above-referenced charges, and there are no other agreements, promises, undertakings, or understandings between the defendant and the United States. The parties understand and agree that the terms of this agreement can be modified only in writing signed by all of the parties and that any and all other promises, representations, and statements whether made before, contemporaneous with, or after this agreement, are null and void.

19. The terms of this agreement concerning restitution in no way limit the ability of the IRS to assess and collect taxes, in addition to the taxes set forth in this agreement, if determined to be due from the defendant.

(a) The defendant understands and agrees that he is liable for the civil fraud penalty imposed by 26 U.S.C. § 6663 on the understatements of tax for all calendar quarters from the first quarter of 2013 through the fourth quarter of 2017.

(b) The defendant shall file, prior to sentencing, complete and correct amended Forms 941 for the third and fourth quarters of 2017, and shall, upon the request of any representative of the IRS, provide information regarding these forms.

(c) The defendant shall not, subsequent to filing the amended forms contemplated by paragraph 19(b), file any claims for refund of taxes, penalties, or interest for amounts attributable to the amended forms filed incident to this agreement.

20. Notwithstanding any provision of this agreement to the contrary, the terms of this agreement are conditioned upon approval by the Department of Justice, Criminal Tax Division. This agreement shall not become enforceable against the United States until approval is provided by the Department of Justice, Criminal Tax Division. In the event such approval is not granted, this agreement shall be null and void and of no force or effect whatsoever.

J. Douglas Overbey
United States Attorney

8-9-2018
Date

By:

[Redacted]
Timothy C. Harter
Assistant United States Attorney

8/9/18
Date

By:

[Redacted]
Meghan Gomez
Assistant United States Attorney

8-7-18
Date

[Redacted]
James Brantley
Defendant

8-9-18
Date

[Redacted]
Norman McKellar
Attorney for the Defendant