

TABLE OF CONTENTS

I. ABSTRACT.....	3
II. EXECUTIVE SUMMARY.....	3
III. TIMELINE OF EVENTS.....	4
IV. FOODQUESTTQ LLC ALLEGES THAT THE US. GOVERNMENT IS ENGAGED IN A PURPOSEFUL SCHEME TO DEFRAUD THEM OF THEIR TECHNOLOGY.....	7
1. The U.S. Government identified FoodQuestTQ LLC’s research and suite of commercial food risk management tools as a matter of interest to the food safety mission of the FDA	7
2. The U.S. Government then circumvented a large and long-standing body of procurement law in order to duplicate, for U.S. Government purposes, the same and or similar food risk management tools originally developed for commercial sale by FoodQuestTQ LLC.....	8
3. The U.S. Government then turned to a group of “preferred” U.S. Government contracted agents to internally duplicate the food risk management tools originally developed for commercial sale by FoodQuestTQ LLC.....	10
4. When FoodQuestTQ LLC attempted to mediate the dispute the U.S. Government intentionally abandoned their duty of good faith and fair dealing and instead forced dispute resolution down the narrow legal pathway of an intellectual property lawsuit.....	10
5. The U.S. Government then used intimidation, coercion and extortion in an attempt to silence FoodQuestTQ LLC from reporting violations of Federal laws.....	11
6. The U.S. Government then obstructed justice by spoliating evidence and engaging in an unlawful investigation to prevent the release of evidence that demonstrates felonious criminal conduct by employees of the U.S. Government.....	13
V. SUMMARY OF ALLEGED VIOLATIONS OF FEDERAL LAW BY THE U.S. GOVERNMENT IN THE MATTER OF FOODQUESTTQ LLC.....	18
VI. THE VALUE OF THE FOODQUESTTQ LLC TECHNOLOGY.....	18
VII. HOW THE U.S. GOVERNMENT ACQUIRED THE KNOWLEDGE TO DUPLICATE FOODQUESTTQ LLC’s COMMERCIAL COMPUTER AUTOMATED FOOD RISK MANAGEMENT TECHNOLOGY.....	19
VIII. HOW THE U.S. GOVERNMENT VIOLATED FEDERAL PROCUREMENT LAW IN THE MATTER OF FOODQUESTTQ LLC.....	23
IX. HOW THE U.S. GOVERNMENT VIOLATED FEDERAL PROCUREMENT INTEGRITY LAW.....	24
X. HOW U.S. GOVERNMENT EMPLOYEES VIOLATED THE CODE OF ETHICS FOR GOVERNMENT SERVICE (P.L. 96 -303).....	25

XI. HOW THE U.S. GOVERNMENT ENGAGED IN RACKETEERING.....	26
XII. HOW THE U.S. GOVERNMENT AND THEIR REGULATED FOOD INDUSTRY ARE VIOLATING SHERMAN ANTITRUST.....	27
XIII. MISPRISION OF FELONY BY OFFICIALS OF THE U.S. GOVERNMENT.....	27
XIV. HOW THE U.S. GOVERNMENT MISAPPROPRIATED FOODQUESTQ LLC INTELLECTUAL PROPERTY.....	30
XV. THE CONSTITUTIONAL IMPLICATIONS OF THE FOODQUESTTQ LLC MATTER.....	32
XVI. INVESTIGATIVE TRIPWIRES PRESENTED CHRONOLOGICALLY.....	33
XVII. LIST OF FBI EXHIBITS.....	38
XVIII. U.S. GOVERNMENT AND CONTRACTOR PERSONNEL MOST DIRECTLY INVOLVED IN THE FOODQUESTTQ LLC MATTER.....	43
XIX. QUESTIONS TO GUIDE AN INVESTIGATION OF THE FOODQUESTTQ LLC MATTER.....	45
A. The U.S. Government identified FoodQuestTQ LLC’s research and suite of commercial food risk management tools as a matter of interest to the food safety mission of the FDA	45
B. The U.S. Government then circumvented a large and long-standing body of procurement law in order to duplicate, for U.S. Government purposes, the same and or similar food risk management tools originally developed for commercial sale by FoodQuestTQ LLC.....	46
C. The U.S. Government then turned to a group of “preferred” U.S. Government contracted agents to internally duplicate the food risk management tools originally developed for commercial sale by FoodQuestTQ LLC.....	56
D. When FoodQuestTQ LLC attempted to mediate the dispute, the U.S. Government intentionally abandoned their duty of good faith and fair dealing and instead forced dispute resolution down the narrow legal pathway of an intellectual property lawsuit.....	63
E. The U.S. Government then used intimidation, coercion and extortion in an attempt to silence FoodQuestTQ LLC from reporting violations of Federal laws.....	70
F. The U.S. Government then obstructed justice by spoliating evidence and engaging in an unlawful investigation to prevent the release of evidence that demonstrates felonious criminal conduct by employees of the U.S. Government	76

I. ABSTRACT

FoodQuestTQ LLC is a small company that builds risk management software to make the food we all eat safer. The Department of Health and Human Services (DHHS) and the Food and Drug Administration (FDA) are unlawfully competing with FoodQuestTQ LLC. **Since at least 2007**, the FDA has engaged in a purposeful scheme to defraud FoodQuestTQ LLC by misappropriating FoodQuestTQ LLC's research and duplicating the small company's commercial products. To implement their scheme, DHHS and FDA are violating numerous Federal laws.

II. EXECUTIVE SUMMARY

Over the period of at least **2006 to the present time** the U.S. Government has been engaged in direct competition with FoodQuestTQ LLC. These activities include violations of a large body of Federal law. FoodQuestTQ LLC alleges that the actions of the U.S. Government are willful and intentional and consist of a six step scheme to defraud the company of its food risk management technology.

The six-step scheme consists of: 1) identifying FoodQuestTQ LLC developed technology as important to the mission of the FDA; 2) intentionally circumventing a large and long-standing body of Federal procurement law to duplicate the company's commercial products; 3) turning to a group of "preferred" U.S. Government contracted agents to duplicate "in-house" FoodQuestTQ LLC products; 4) intentionally resisting mediation to force any resolution of the dispute down the narrow legal pathway of an expensive and protracted intellectual property lawsuit that FoodQuestTQ LLC could not afford; 5) the use of intimidation, coercion and extortion to silence FoodQuestTQ LLC, and 6) obstructing justice by preventing the release of and spoliating evidence that demonstrates felonious criminal conduct by employees of the U.S. Government.

Alleged violations of Federal law in the matter of FoodQuestTQ LLC include major fraud against the United States (*18 U.S. Code § 1031*); violations of Federal procurement integrity law (*5 CFR Part 2635*); violation of the Competition in Contracting Act (CICA) of 1984 (*41 U.S.C. 253*); violation of the Federal Acquisition Regulations as codified at (*Title 48, Chapter 1 of the United States Code of Federal Regulations*); breach of material and fundamental express and implied contract, as part of a purposeful scheme to defraud (*18 U.S. Code § 1031*); violations of the Code of Ethics for Government Service, as part of a purposeful scheme to defraud (*P. L. 96-303*); violation of the Racketeer Influenced and Corruption Organizations Act (RICO) as part of a purposeful scheme to defraud (*Title 18 U.S.C. §1961 et seq.*); violation of Sherman Antitrust law as part of a purposeful scheme to defraud (*Title 15 U.S.C. §§ 1-7 and Title 18 U.S. Code § 1031*); conspiracy to commit offense or to defraud United States (*18 U.S. Code § 371*); interference with commerce by threats or violence (*18 U.S. Code § 1951*); use of electronic means as part of a scheme to defraud (*18 U.S.C. § 1343*), and; the misappropriation of intellectual property (*18 U.S.C. § 654: US Code - Section 654: Officer or employee of United States converting property of another, 18 U.S.C. § 641: US Code - Section 641: Public money, property or records, and 18 U.S. Code § 1832 - Theft of trade secrets; Article I, clause 8, of the United States Constitution: the "patent and copyright" clause, and; Amendment V of the United States Constitution: the "takings" clause*). See [FBI Exhibit No. 35](#).

The FoodQuestTQ technology is based on award winning research. In 2004, the scientist who developed FoodQuestTQ LLC's technology received the Navigator Award for the research upon which the technology is based. The Potomac Foundation works closely with the Defense Advanced Research Projects Agency (DARPA) on the world's most cutting edge technologies. An independent evaluation of

the FoodQuestTQ LLC food risk management technology by the consulting firm Deloitte and Touche certified the FoodQuestTQ LLC technology as both functional and of value in protecting the food supply. A valuation model developed by an independent Certified Public Accountant of the FoodQuestTQ LLC food risk management technology estimated revenues over five years of at least \$183,000,000 across the food and agricultural industry vertical. Because the same technology can be applied across other industry verticals its total value across all U.S. critical infrastructures is conservatively estimated to be in the multiple billions of dollars. See [FBI Exhibit No. 36](#); [FBI Exhibit No. 37](#); [FBI Exhibit No. 67](#), and; [FBI Exhibit No. 68](#).

In addition to violations of: 1) Federal procurement and procurement integrity law to unlawfully duplicate FoodQuestTQ commercial products; 2) the code of ethics for U.S. Government employees; 3) racketeering laws, and; 4) the Sherman Antitrust Act, several senior U.S. Government employees, while serving in their official capacities committed; 5) misprision of felony by failing to act on their duty, obligation and direct authority to initiate a lawful criminal investigation of alleged felonious Federal crimes that were brought to their attention.

III. TIMELINE OF EVENTS

From **2002 through the summer of 2006**, one of the owners of FoodQuestTQ LLC conducted a major program of privately funded research at The George Washington University as part of his doctoral dissertation. The research identified a new way to think about risk management that included all critical infrastructures including the food supply. An addendum to the doctoral dissertation specifically addresses the food supply. A copy of the doctoral dissertation appears at [FBI Exhibit No. 1](#).

Over the period **2006 to 2012**, U.S. Government officials received a series of proprietary briefings concerning the development of food risk management tools based on the dissertation. Copies of these proprietary briefings appear at [FBI Exhibit No. 2](#).

In the **fall of 2012**, FoodQuestTQ LLC discovered that the FDA was duplicating the new commercial food risk management tools they were attempting to sell to the food industry. The FDA announcement of the release of Food Defense Plan Builder tool appears at [FBI Exhibit No. 3](#). When the FDA announced that they would give duplicate products to the food industry free of charge FoodQuestTQ LLC sales of their commercial products failed to materialize.

In **December 2012**, the FDA unexpectedly “disinvited” FoodQuestTQ LLC from an industry meeting where the FDA unveiled its duplicate versions of FoodQuestTQ LLC products. The company alleges that the FDA was concerned that FoodQuestTQ LLC would contest the U.S. Government’s unlawful actions in the presence of their food industry regulated partners. Copies of documents related to the **December 12, 2012**, meeting appear at [FBI Exhibit No. 4](#).

In **January 2013**, FoodQuestTQ LLC reported to the Office of Chief Counsel (OCC) of the Food and Drug Administration (FDA) that the agency was violating Federal law by directly competing with FoodQuestTQ LLC by duplicating their food risk management software that accomplished the same or similar purposes. FoodQuestTQ LLC alleges that the FDA Chief Counsel, Ms. Elizabeth Dickinson, refused to meet with them to mediate the dispute and turned the company’s request for a fair and impartial review of the matter into a legal defense of the actions taken by the U.S. Government to misappropriate the FoodQuestTQ technology. Copies of correspondence between FoodQuestTQ LLC and the OCC-FDA appear at [FBI Exhibit No. 5](#).

In **March 2013**, to break the impasse, FoodQuestTQ LLC filed a complaint with the National Ombudsman for Small Business (NOSB) of the Small Business Administration (SBA). A copy of the FoodQuestTQ LLC complaint to the NOSB-SBA appears at [FBI Exhibit No. 6](#). The matter was then elevated to the Office of General Counsel (OGC) of the Department of Health and Human Services (DHHS).

Over the period **April to October 2013**, FoodQuestTQ LLC wrote seven letters to then DHHS Secretary Kathleen Sebelius asking to meet with FDA officials to mediate the dispute. Secretary Sebelius never agreed to a meeting to mediate the dispute. Copies of these letters appear at [FBI Exhibit No. 12](#).

On **April 20, 2013**, FoodQuestTQ LLC wrote the first of several letters to Walter M. Shaub, the Director, Office of Government Ethics (OGE), reporting violations by U.S. Government employees of the Code of Ethics for Government Service (P.L. 96303) and procurement integrity regulations (5 CFR Part 2365). In one letter to Mr. Shaub FoodQuestTQ LLC requested a policy review of the ethics program at the DHHS and FDA. OGE subsequently advised by e-mail that dealing with ethical problems was not their responsibility. Copies of FoodQuestTQ LLC letters to Mr. Shaub at OGE, the e-mail reply and related correspondence appear at [FBI Exhibit No. 9](#).

On **April 26, 2013**, OGC-DHHS issued the results of their investigation stating that: 1) FoodQuestTQ LLC failed to cooperate in their investigation; 2) they could find no evidence of wrongdoing, and; 3) no laws were broken. A copy of the OGC-DHHS results of investigation appears at [FBI Exhibit No. 7](#).

FoodQuestTQ LLC alleges that the OGC-DHHS, like the FDA Office of Chief Counsel before them, abandoned their duty of good faith and fair dealing to mediate the dispute and instead mounted a legal defense of the FDA employees engaged in the wrongdoing. FoodQuestTQ LLC alleges that the OGC-DHHS refused to consider evidence offered to them by FoodQuestTQ LLC as they conducted their own investigation of the matter. Documents provided by FoodQuestTQ LLC that OGC-DHHS refused to consider as evidence as part of their investigation appear at [FBI Exhibit No. 8](#). When FoodQuestTQ LLC filed a Freedom of Information Act request for information about how the OGC-DHHS investigation could draw such conclusions, the documents were denied by FDA and DHHS based on lawyer-client privilege. A copy of the document denying the release of these records under Title 5 U.S.C. §552 (the Freedom of Information Act) appears at [FBI Exhibit No. 10](#).

In **May 2013**, in response to the DHHS investigation, FoodQuestTQ LLC published a detailed case study of the situation. The FoodQuestTQ LLC case study received wide distribution throughout much of the Executive Branch and Congress. A copy of the case study appears at [FBI Exhibit No. 11](#).

In **November 2013**, FoodQuestTQ LLC received a response to a request for an independent General Services Administration (GSA) explanation of the procurement safeguards in place to protect small businesses like FoodQuestTQ LLC from direct competition by the Federal Government. The GSA letter indicates that the FDA did not follow procurement law by competing with FoodQuestTQ LLC. A copy of the GSA letter is missing from FoodQuestTQ LLC files. The FoodQuestTQ response to the letter that requested additional information appears at [FBI Exhibit No. 64](#). The GSA did not respond to FoodQuestTQ LLC's second request for additional information.

In **November 2013**, the National Ombudsman of the Small Business Administration (NOSB-SBA), after repeated expressions of concern by FoodQuestTQ LLC of retaliation by the FDA and DHHS, referred the matter to the Office of Inspector General (OIG), DHHS for possible investigation. To the knowledge of

FoodQuestTQ LLC, no OIG-DHHS investigation of the matter was conducted. A copy of the letter of referral from the NOSB-SBA to the OIG-DHHS appears at [FBI Exhibit No. 13.](#)

From **January 2014 to the current time** FoodQuestTQ LLC filed numerous Freedom of Information Act requests. FoodQuestTQ LLC alleges that on at least six occasions the FDA and DHHS intentionally deceived FoodQuestTQ LLC to hide the existence of documents in order to prevent their release. These alleged incidents include the spoliation of electronic records in violation of the Federal Records Act of 1950 and Title 5 U.S.C. §552. A detailed computer library of FoodQuestTQ LLC interactions with DHHS and FDA relating to Title 5 U.S.C. §552 (Freedom of Information Act) appears at [FBI Exhibit No. 14.](#)

On **May 28, 2014**, FoodQuestTQ LLC wrote the first of five letters to Ms. Miriam Nisbet, Director, Office of Government Information Services of the National Archives reporting serious irregularities in the management of Title 5 U.S.C. §552 (the Freedom of information Act) by the DHHS and FDA in the matter of FoodQuestTQ LLC. Copies of these letters appear at [FBI Exhibit No. 15.](#)

In **June 2014**, DHHS revealed that a search for records under a Freedom of Information Act (FOIA) request by FoodQuestTQ LLC was tainted because the DHHS and the FDA allowed the same employees implicated in the matter to search their own computers for possible evidence of their own wrongdoing. As a result of the spoliation of evidence hundreds of documents cannot be found. A copy of the FDA letter stating that FDA employees were allowed to search their own e-mail records for possible evidence of their own criminal wrongdoing appears at [FBI Exhibit No. 16.](#)

On **June 25, 2014**, FoodQuestTQ LLC wrote a letter to the Federal Bureau of Investigation (FBI) alleging that Federal crimes were taking place involving U.S. Government employees and requesting that the FBI intervene to prevent the further destruction of potential evidence. A copy of this letter appears at [FBI Exhibit No. 17.](#)

In **July of 2014**, FoodQuestTQ LLC filed formal complaints with the Federal Trade Commission (FTC) and the Antitrust Division of the U.S. Department of Justice reporting the alleged violations of Federal law by the U.S. Government in the matter of FoodQuestTQ LLC. The FoodQuestTQ LLC letter of complaint to the Commissioner of the FTC with a copy to the Antitrust Division of the U.S Department of Justice appears at [FBI Exhibit No. 18.](#)

In **July 2014**, FoodQuestTQ LLC filed three antitrust complaints based on a report that the Global Food Safety Initiative (GFSI), SSAFE and their food industry partners were "blacklisting" FoodQuestTQ LLC in violation of Federal antitrust laws based on the company's dispute with FDA. Copies of these complaint letters appear at [FBI Exhibit No. 19.](#)

As of **August 14, 2014**, FoodQuestTQ LLC requested that the FBI, Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice conduct a criminal investigation of the FoodQuestTQ LLC matter. Copies of documents requesting investigations by the FBI and the Antitrust Division of the U.S. Department of Justice and related documents appear at [FBI Exhibit No. 20.](#)

On **September 12, 2014**, FoodQuestTQ LLC discovered that the on-line videotape where the FDA endorsed Tyco Integrated Security Systems was removed from public display.

As of **September 2014**, FDA and DHHS continue to provide duplicate versions of FoodQuestTQ LLC's food risk management software to the FDA regulated food industry free of charge. FoodQuestTQ LLC continues to allege that they have been "blacklisted" within the food industry as punishment for reporting FDA fraud, waste and abuse to the National Ombudsman for Small Business. Copies of two FoodQuestTQ LLC related letters to Ms. Sylvia Matthews Burwell, former Director of the Office of Management and Budget (OMB) and now the Secretary of the Department of Health and Human Services appear at [FBI Exhibit No. 21](#).

IV. FOODQUESTTQ LLC ALLEGES THAT THE U.S. GOVERNMENT IS ENGAGED IN A PURPOSEFUL SCHEME TO DEFRAUD THEM OF THEIR TECHNOLOGY

In the **fall of 2012**, FoodQuestTQ LLC learned that the Food and Drug Administration (FDA) was duplicating the food risk management software that FoodQuestTQ LLC had developed for building food defense plans. FoodQuestTQ LLC alleges that they were the victims of a purposeful scheme by the U.S. Government to unlawfully compete with them in order to defraud them of their technology. The fraudulent scheme involved the Food and Drug Administration (FDA), the Department of Health and Human Services (DHHS) and their contracted agents, collectively referred to hereinafter as the "U.S. Government." FoodQuestTQ LLC alleges that the purposeful scheme to defraud them of their technology consisted of the following six steps:

1. *The U.S. Government identified FoodQuestTQ LLC's research and suite of commercial food risk management tools as a matter of interest to the food safety mission of the FDA.*

The events of **September 11, 2001**, brought new focus to the possibility of intentional attacks against the food supply. In the aftermath of the al Qaeda attacks on the Twin Towers and the Pentagon, the President established the National Commission on Terrorist Attacks upon the United States (P.L. 107-306, November 27, 2002). Among the recommendations that were implemented based on the Commission's report included specific attention to the safety and security of the nation's critical infrastructures including food and agriculture. The Department of Health and Human Services (DHHS) and its subordinate Agency, the Food and Drug Administration (FDA), focused new attention on the possibility of terrorist attacks against the food supply. The FDA is responsible for overseeing approximately 80 percent of the U.S. food supply.

In **November 2007**, the FDA issued their national strategy for protecting the U.S. food supply, [The National Food Protection Plan](#). The report specifically calls for the creation and use of science and risk-based criteria to prevent and mitigate the consequences of food related emergencies. The report specifically calls for the development of automated computer risk management tools to enhance the safety of the U.S. food supply. A copy of the FDA [National Food Protection Plan](#) appears at [FBI Exhibit No. 22](#).

In **2011**, Congress passed the Food Safety Modernization Act of 2011 (P.L. 111-353, January 4, 2011) in response to chronic food safety weaknesses in the U.S. food supply and repeated food poisonings. The Food Safety Modernization Act (FSMA) represented the most sweeping reform of food safety laws in more than 70 years. The new FSMA law called for the wholesale revamping of the regulatory process. Delays in issuing the new regulations placed intense pressure on the FDA to take visible actions to enhance the safety of the food supply. Key to the FDA response was their wide public insistence that regulated food companies use science and

risk-based criteria to enhance the protection of the food supply and the use of advanced information technology.

To fulfill their new mandate of using science and risk-based criteria in combination with advanced information technology to prevent and mitigate the consequences of food related emergencies, the FDA required the use of FoodQuestTQ LLC's science and food risk management software to enable the FDA to scientifically determine, quantify and structure specific food incident prevention and risk-based mitigation strategies and criteria in a set of automated food risk management tools.

2. *The U.S. Government then circumvented a large and long-standing body of procurement law in order to duplicate, for U.S. Government purposes, the same and or similar food risk management tools originally developed for commercial sale by FoodQuestTQ LLC.*

The Competition in Contracting Act (CICA) of 1984 (41 U.S.C. 253), generally governs competition in federal procurement contracting. Any procurement contract not entered into through the use of procurement procedures expressly authorized by a particular statute is subject to CICA. CICA requires that contracts be entered into after "full and open competition through the use of competitive procedures" unless certain circumstances exist that would permit agencies to use noncompetitive procedures. Any contract entered into without full and open competition is noncompetitive, but noncompetitive contracts can still be in compliance with CICA when circumstances permitting other than full and open competition exist. CICA recognizes seven such circumstances, including: (1) single source for goods or services; (2) unusual and compelling urgency; (3) maintenance of the industrial base; (4) requirements of international agreements; (5) statutory authorization or acquisition of brand-name items for resale; (6) national security; and (7) contracts necessary in the public interest. To exercise any such an exemption requires a rigorous and documented approval process before a Federal contract can be let. FoodQuestTQ LLC alleges that the U.S. Government sought no such exemption in the case of FoodQuestTQ LLC.

The Federal Acquisition Streamlining Act (FASA) of 1994 establishes a "preference" for the procurement of commercial items, which are generally not subject to full and open competition under CICA. FASA was followed by the Federal Acquisition Reform Act (FARA) of 1996, which placed increasing emphasis on efficiency in agency operations by requiring that the Federal Acquisition Regulation (FAR) be amended to "ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government's requirements." FoodQuestTQ LLC alleges that open and fair competition for the computer automated food risk management tools desired by the Food and Drug Administration would not have negatively impacted the efficiency of the Agency's operations. FoodQuestTQ LLC also alleges that the pursuit of a sole source contract could have been accomplished quickly and efficiently. Thus, the non-competitive "pass through" contracts among the FDA and the Department of Defense, Battelle Memorial Institute and Valbrea Technologies were not necessary to efficiently fulfill the Government's requirements for food risk-based management software.

The Federal Activities Inventory Reform Act (FAIR), P.L. 105-270, and implementing Office of Management and Budget Circular A-76, define a governmental function as "inherently governmental" when it is so intimately related to the public interest as to mandate performance

only by Federal employees. The FoodQuestTQ LLC computer automated food risk management tools do not fall within this definition of an inherently governmental function. Nor do computer services, including automated food risk management tools, appear on the FDA's list of inherently governmental functions. As such, FoodQuestTQ LLC alleges that computer automated tools constitute "commercial goods and services," that must be openly procured from the private sector by the FDA. FoodQuestTQ LLC alleges that Federal procurement law requires open and fair competition for the procurement of commercial goods and services. Under the terms of U.S. Government contracts with Federally Funded Research and Development Centers (FFRDC) such as Battelle Memorial Institute, FFRDC's are required to develop detailed subcontracting plans that are used whenever the prime contractor lets subcontracts to outside entities to do work on behalf of the U.S. Government. See [FBI Exhibit No. 81](#). These subcontract rules must include specific process steps that the Federal prime contractor implements to assure that the letting of subcontracts are conducted in an open and fair manner. FoodQuestTQ LLC alleges these requirements were not followed when the FDA allowed Battelle Memorial Institute to initiate a "by-pass" contract to Valbrea Technologies to build the FDA Food Defense Plan Builder tool when the FDA was fully aware that a commercial alternative that accomplished the same or similar purposes was already available.

Thus, FoodQuestTQ LLC alleges that the FDA purposefully and intentionally bypassed fair and open competition by turning to Battelle Memorial Institute to initiate a "pass through" subcontract for Valbrea Technologies to duplicate the FoodQuestTQ LLC computer automated risk management tools that were already being commercially sold. FoodQuestTQ LLC further alleges that Battelle Memorial Institute did not assure that the awarding of a subcontract for U.S. Government work to Valbrea Technologies did not result in direct competition with FoodQuestTQ LLC. FoodQuestTQ LLC alleges that open and fair competition would have revealed that the FDA mission requirement could have only been satisfied by FoodQuestTQ LLC's patented technology. This would have resulted in the U.S. Government requirement to issue a sole source award to develop the FDA computer automated food risk assessment tools to FoodQuestTQ LLC.

The awarding of a sole source contract to FoodQuestTQ LLC, however, would have resulted in a license fee and would not have provided the FDA with Federal "march-in" rights. March-in rights refer to the ability of the U.S. Government to use for government purposes the inventions and patented ideas of others whenever the U.S. Government has financially supported the development or commercialization of the technology. In the case of the FoodQuestTQ LLC, no U.S. Government funding was used to develop or commercialize FoodQuestTQ LLC's intellectual property. Therefore, the U.S. Government was precluded from simply exercising march-in rights to use FoodQuestTQ LLC ideas and food risk management software.

FoodQuestTQ LLC also alleges that the FDA disregarded specific provisions of the Federal Acquisition Regulations (FARS) to implement their unlawful scheme to defraud FoodQuestTQ LLC of their technology. A detailed description of potential violations of the FARS in the matter of FoodQuestTQ LLC appears at [FBI Exhibit No. 35](#).

On **November 19, 2013**, FoodQuestTQ LLC received a response to a request for a General Services Administration (GSA) explanation of the procurement safeguards in place to protect small businesses from direct competition by the Federal Government. The GSA letter indicates that the FDA did not follow applicable procurement law in the matter of FoodQuestTQ LLC. The

letter from Ms. Jiyoung Park to FoodQuestTQ LLC is missing from FoodQuestTQ LLC files. A copy of the original letter from Ms. Park to FoodQuestTQ LLC dated November 13, 2013, should be available from the GSA. Other documents including the FoodQuestTQ LLC response to the GSA letter appears at [FBI Exhibit No. 64.](#)

3. *The U.S. Government then turned to a group of “preferred” U.S. Government contracted agents to internally duplicate the food risk management tools originally developed for commercial sale by FoodQuestTQ LLC.*

The “preferred” U.S. Government contractors known to be involved in the matter of FoodQuestTQ LLC are FDA prime contractor Battelle Memorial Institute, Leavitt Partners (now the Acheson Group), Valbrea Technologies and Tyco Integrated Security Systems.

The FDA prime contractor allegedly involved in the duplication of FoodQuestTQ LLC’s suite of food risk management software tools is Battelle Memorial Institute. FoodQuestTQ LLC alleges that it was Battelle Memorial Institute, under a Military Interagency Procurement Request (MIPR), that subcontracted Valbrea Technologies using a “by-pass” contract to avoid fair and open competition in order to duplicate FoodQuestTQ LLC’s food defense plan building software.

On **July 7, 2012**, FoodQuestTQ LLC entered into a business agreement with a company named Leavitt Partners to promote food risk management training, education and emergency response. FoodQuestTQ LLC reports that Leavitt Partners did not inform the company that they were a contracted agent of the FDA engaged in the duplication of FoodQuestTQ LLC’s suite of food risk software tools. Under the agreement, FoodQuestTQ LLC provided Leavitt Partners with proprietary FoodQuestTQ LLC intellectual property that appeared in the FDA Food Defense Plan Builder tool. A copy of the agreement between Leavitt Partners and FoodQuestTQ LLC appears at [FBI Exhibit No. 23.](#)

Valbrea Technologies is the software development firm that helped to develop the FDA Food Defense Plan Builder tool under a non-competitive “by-pass” subcontract from Battelle Memorial Institute. A copy of the U.S. Government contract document related to the procurement appears at [FBI Exhibit No. 24.](#)

Tyco Integrated Security Systems produces food defense software and products and, as such, is a direct competitor of FoodQuestTQ LLC. FoodQuestTQ LLC alleges that the FDA violated U.S. Office of Government Ethics laws, rules and procedures when it allowed Tyco Integrated Security Systems and Leavitt Partners to attend a **December 12, 2012**, FDA Food Defense Plan Builder workshop at the specific exclusion of FoodQuestTQ LLC. FoodQuestTQ LLC further alleges that the FDA publicly endorsed the brand name of Tyco Integrated Security Systems in violation of procurement integrity rules and regulations. Documents relating to the alleged unlawful endorsement of Tyco Integrated Security Systems by the FDA appear at [FBI Exhibit No. 25.](#)

On **September 12, 2014**, FoodQuestTQ LLC discovered that the on-line videotape where the FDA endorsed Tyco Integrated Security Systems was removed from public display. FoodQuestTQ LLC alleges that the removal of this videotape from public display is another action by the FDA in collusion with Tyco Integrated systems to prevent the public disclosure of violations of Federal procurement and procurement integrity law.

4. *When FoodQuestTQ LLC attempted to mediate the dispute, the U.S. Government intentionally abandoned their duty of good faith and fair dealing and instead forced dispute resolution down the narrow legal pathway of an intellectual property lawsuit.*

In **January 2013**, when they first approached the Office of Chief Counsel of the FDA, FoodQuestTQ LLC officials report that they were assured by Ms. Ariel Seeley, staff counsel in the Office of Chief Counsel, that the U.S. Government would conduct a fair and objective review of the FoodQuestTQ LLC matter. FoodQuestTQ LLC alleges that instead the Office of Chief Counsel embarked on a legal defense of the actions of the U.S. Government in the FoodQuestTQ LLC matter. FoodQuestTQ LLC alleges that for several weeks, the Office of Chief Counsel did not inform them that the FDA abandoned their duty of good faith and fair dealing to mediate the dispute in favor of a legal defense of the U.S. Government actions against FoodQuestTQ LLC. FoodQuestTQ LLC alleges that by so doing, the U.S. Government breached their implied contract of good faith and fair dealing to mediate a resolution to the dispute in order to defraud FoodQuestTQ LLC of their technology. Copies of correspondence between FoodQuestTQ LLC and the Office of Chief Counsel, FDA appear at [FBI Exhibit No. 5.](#)

In **March 2013**, FoodQuestTQ LLC filed a complaint with the National Ombudsman for Small Business (NOSB) of the U.S. Small Business Administration (SBA). The dispute between the FDA and FoodQuestTQ LLC was then elevated to the Office of General Counsel (OGC) of the Department of Health and Human Services (DHHS) for the conduct of an independent, objective and fair review.

Mr. Dale Berkley, of the OGC-DHHS was assigned as the U.S. Government's lead counsel in the matter. FoodQuestTQ LLC reports that the OGC-DHHS did not initially inform company officials that they had abandoned their duty of good faith and fair dealing to mediate the dispute in favor of a legal defense of the U.S. Government actions against FoodQuestTQ LLC. FoodQuestTQ LLC alleges that, by so doing, the U.S. Government breached an implied contract with them to mediate a resolution to the dispute in order to defraud FoodQuestTQ LLC of their technology.

The FDA was well aware that FoodQuestTQ LLC was a small start-up business that did not have the resources to support expensive and lengthy patent infringement litigation in the courts. FoodQuestTQ LLC alleges that it was for this reason, the Chief Counsel of the FDA and the lead OGC attorney in DHHS, Mr. Dale Berkley, breached their duty of good faith and fair dealing and instead forced the focus of the U.S. Government "investigation" on the defense of FDA's own actions and down the narrow legal pathway of patent infringement as the means of resolving the dispute. FoodQuestTQ LLC alleges that the U.S. Government did this fully aware that FoodQuestTQ LLC, as a small business, was unlikely to pursue redress against the U.S. Government because: 1) the high expense of intellectual property litigation; 2) fear of future reprisals by the U.S. Government in obtaining the future federal contracts, and; 3) fear of U.S. Government "blacklisting" within the FDA regulated food industry. The U.S. Government, by this time, was well aware that FoodQuestTQ LLC was destitute and could not afford costly and protracted intellectual property litigation. Copies of documents making FDA and DHHS aware that FoodQuestTQ LLC could not afford to pursue expensive and protracted intellectual property litigation and requesting a mediated solution to the matter appear at [FBI Exhibit No. 5.](#)

FoodQuestTQ LLC further alleges that the FDA was well aware that when such cases rise to the level of United States Court of Federal Claims that responsibility for defending the Agency's actions defers to the U.S. Department of Justice. In this way, DHHS and FDA could accomplish the misappropriation of FoodQuestTQ LLC's technology as *a fait accompli* by intentionally prolonging outcomes that would avoid swift and commensurate punishment for violating the law.

5. *The U.S. Government then used intimidation, coercion and extortion in an attempt to silence FoodQuestTQ LLC from reporting violations of Federal laws and to damage the company's reputation in the food industry.*

FoodQuestTQ LLC alleges that the U.S. Government used intimidation in an attempt to silence them from reporting fraud, waste and abuse. *Intimidation (also called cowing) is intentional behavior that "would cause a person of ordinary sensibilities" fear of injury or harm.*

FoodQuestTQ LLC alleges that they were intimidated in their dealings with the FDA because of the actions of the U.S. Government to: 1) force the dispute down the narrow legal pathway of an expensive and protracted lawsuit that the FDA knew FoodQuestTQ LLC could not afford; 2) denying FoodQuestTQ LLC further opportunities to work cooperatively with the Federal Government to commercialize their technology; 3) "blacklisting" FoodQuestTQ LLC by defaming the company's principals and their technology within the FDA regulated food industry. See for example [FBI Exhibit No. 5](#); [FBI Exhibit No. 8](#); [FBI Exhibit No. 27](#); *et. al.*

FoodQuestTQ LLC also alleges that Ms. Elizabeth Dickinson, Chief Counsel, FDA, her staff attorney Ms. Ariel Seeley, and Mr. Dale Berkley, lead OGC-DHHS counsel for the FoodQuestTQ LLC matter, intimidated FoodQuestTQ LLC by abandoning their duty of good faith and fair dealing to intentionally force the resolution of the dispute down the protracted and expensive legal pathway of a lawsuit against the U.S. Government. Over the period **May 18, 2013 to February 5, 2014**, FoodQuestTQ LLC wrote seven information memoranda to the food industry explaining the dispute with FDA and cautioning the food industry not to use FDA products that contained FoodQuestTQ LLC intellectual property. The issuance of these memoranda to the food industry represented a two edge sword for FoodQuestTQ LLC. On the one hand they were necessary for FoodQuestTQ LLC to publish in order to protect their intellectual property; on the other hand they served to isolate the company from freely interacting within the community of regulated food companies. Copies of these information memoranda appear at [FBI Exhibit No. 26](#).

FoodQuestTQ LLC reports that the U.S. Government used coercion in an attempt to silence them from reporting fraud, waste and abuse. *Coercion is the practice of forcing another party to act in an involuntary manner by use of intimidation or threats or some other form of pressure or force.* FoodQuestTQ LLC alleges that the U.S. Government coerced them by: 1) failing to mediate the dispute; 2) leaving them with no option but to air the problem with the food industry to protect their intellectual property rights, and; 3) blacklisting the small company in the food industry. See for example [FBI Exhibit No. 5](#); [FBI Exhibit No. 26](#); [FBI Exhibit No. 27](#); *et. al.* Coercion on the part of the U.S. Government also included violations of the Freedom of Information Act (*Title 5 U.S.C. §552*) by refusing to identify, withholding and spoliating evidence to prevent the release of information that would demonstrate the alleged DHHS and FDA wrongdoing.

FoodQuestTQ LLC alleges that the U.S. Government used extortion in an attempt to silence FoodQuestTQ LLC from reporting fraud, waste and abuse and to force them out of business. *Extortion (also called shakedown, outwresting, and exaction) is obtaining money, property, or services from a person, entity, or institution, through coercion.* FoodQuestTQ LLC reports that the U.S. Government in the matter of FoodQuestTQ LLC outwrested the company's technology from their possession by implementing a purposeful scheme to defraud the company.

FoodQuestTQ LLC alleges that by violating federal procurement law, ethical requirements, conducting an unlawful investigation, abandoning the U.S. Government's duty of good faith and fair dealing to mediate the dispute and by "blacklisting" the company within the regulated food industry, the U.S. government extorted the small business for the purpose of misappropriating their technology. Copies of documents demonstrating the use of extortion by the U.S.

Government appear at [FBI Exhibit No. 5](#); [FBI Exhibit No. 7](#); [FBI Exhibit No. 24](#); [FBI Exhibit No. 27](#); [FBI Exhibit 28](#); [FBI Exhibit 30](#); [FBI Exhibit 31](#); [FBI Exhibit 61](#); *et. al.*

The Office of National Ombudsman for Small Business (NOSB) of the Small Business Administration (SBA), as a matter of national policy and the distribution of public broadcasts of written statements to the effect, assures small businesses that they will not be retaliated against in any way for filing complaints against Federal agencies with the SBA. A copy of the NOSB-SBA policy appears at [FBI Exhibit No. 29](#).

FoodQuestTQ LLC alleges that the FDA embarked on a campaign to defame the reputation and good name of the company and its owners in retaliation for the official complaint they filed with the Small Business Administration (SBA). FoodQuestTQ LLC alleges that U.S. Government actions included the distribution of hundreds of e-mails and the conduct of at least one confirmed interview with Dr. David Acheson of Leavitt Partners to "blacklist" FoodQuestTQ LLC. See FBI [Exhibit No. 27](#) and [FBI Exhibit No. 28](#).

FoodQuestTQ LLC alleges that the National Ombudsman for Small Business (NOSB) of the Small Business Administration (SBA) aided and abetted the U.S. Government's use of intimidation, coercion and extortion to misappropriate FoodQuestTQ LLC's technology and silence the company for resisting the U.S. Government scheme to defraud them. FoodQuestTQ LLC alleges that the NOSB did this by violating an express contract with the company to prevent retaliation by Federal agencies against small businesses that file complaints with the SBA. A copy of the NOSB-SBA zero tolerance policy appears at [FBI Exhibit No. 29](#).

6. *The U.S. Government then obstructed justice by spoliating evidence and engaging in an unlawful investigation to prevent the release of evidence that demonstrates felonious criminal conduct by employees of the U.S. Government.*

FoodQuestTQ LLC alleges that the FDA and DHHS have obstructed justice by conducting an unlawful investigation of the FoodQuestTQ LLC matter and improperly extending lawyer-client privilege to prevent the exposure of evidence of criminal wrongdoing based on an unlawful investigation. A further description of the alleged unlawful investigation conducted by the U.S. Government appears at [FBI Exhibit No. 30](#). FoodQuestTQ LLC further alleges that the U.S. Government engaged in deceit, deception and the spoliation of evidence by allowing the same U.S. Government employees allegedly engaged in the criminal misconduct in the first place to search for and spoliage evidence of their own violations of Federal law. FoodQuestTQ LLC alleges the U.S. Government actions to obstruct justice also involve the violation of P.L. 89-554,

80 Stat. 378, 5 U.S.C. § 552 (Freedom of Information Act) to prevent the exposure of criminal misconduct. See [FBI Exhibit No. 16.](#)

In **March 2013**, FoodQuestTQ LLC filed a complaint with the National Ombudsman for Small Business (NOSB) of the Small Business Administration (SBA). The complaint expressed concerns that the FDA was engaging in fraud, waste and abuse and had abandoned their duty of good faith and fair dealing in the matter of FoodQuestTQ LLC. See [FBI Exhibit No. 6.](#) The matter was subsequently elevated to the Office of General Counsel (OGC) of the Department of Health and Human Services (DHHS) for a fair and objective review. FoodQuestTQ LLC alleges that the lead U.S. Government counsel assigned to the case immediately abandoned his duty of good faith and fair dealing by disregarding the evidence of wrongdoing offered to him by FoodQuestTQ LLC, resisting mediation of the dispute, forcing the resolution of the dispute down the narrow legal pathway of an expensive and protracted lawsuit against the U.S. Government and by entering into an actual conflict of interest to obstruct justice. See [FBI Exhibit No. 31.](#) FoodQuestTQ LLC alleges that the lead DHHS counsel was well aware that the prior actions of the FDA to duplicate FoodQuestTQ LLC's food risk management software had eliminated all commercial sales of the small company's products leaving the company destitute and unable to afford effective legal representation. See [FBI Exhibit No. 5.](#)

FoodQuestTQ LLC alleges that in **April 2013**, fully aware of the allegations of violations of Federal criminal laws made by FoodQuestTQ LLC, the OGC-DHHS lead counsel, Mr. Dale Berkley, abandoned his duty of good faith and fair dealing to engage in a direct and actual conflict of interest to conduct his own internal investigation of the FoodQuestTQ LLC matter as part of a legal defense of his own agency's alleged wrongdoing and the wrongdoing of the employees alleged to have engaged in the criminal misconduct. See [FBI Exhibit No. 30.](#) The lead OGC-DHHS counsel failed to recuse himself and refer the matter to the Office of Inspector General (OIG) of the Department of Health and Human Services (DHHS) for an independent criminal investigation in order to avoid a direct and actual conflict of interest as stipulated by the Office of Government Ethics (OGE) guidance. FoodQuestTQ LLC alleges that, by so doing, the OGC-DHHS lead counsel Mr. Dale Berkley, intentionally engaged in the obstruction of justice by attempting to befoul the proper investigation by law enforcement authorities of allegations of the commission of felonious Federal crimes. FoodQuestTQ LLC further alleges that the OGC-DHHS lead counsel, Mr. Dale Berkley, obstructed a criminal investigation of the matter by unlawfully extending lawyer-client privilege to the FDA employees alleged to have participated in the wrongdoing.

On **January 8, 2014**, FoodQuestTQ LLC filed a Freedom of Information Act (FOIA) request with the FDA to search the official U.S. Government e-mail accounts of the lead OGC-DHHS counsel handling the FoodQuestTQ LLC matter, Mr. Dale Berkley, and several FDA members of the Food Defense Team who were allegedly implicated in duplicating FoodQuestTQ LLC's suite of computer automated tools. In their FOIA request, FoodQuestTQ LLC explicitly asked for all e-mails and resulting e-mail strings initiated by the employees to determine if they contained derogatory information relating to FoodQuestTQ LLC. A copy of the Freedom of Information Act request can be found at [FBI Exhibit No. 14.](#) FoodQuestTQ LLC was then advised that the requested documents were being withheld from release based on lawyer client privilege. A copy of the DHHS Freedom of Information Act denial can be found at [FBI Exhibit No. 10.](#) FoodQuestTQ LLC alleges that by extending lawyer-client privilege to the FDA employees alleged to have engaged in the violation of Federal crimes the OGC-DHHS lead counsel, Mr. Dale

Berkley, intentionally engaged in the obstruction of justice to prevent the exposure of information that was properly releasable under Title 5 U.S.C. §552 (the Freedom of Information Act).

FoodQuestTQ LLC contends that the extension of the lawyer-client privilege to those allegedly involved in fraud, waste and abuse was not a legitimate reason to withhold the requested documents. This is because the allegations of fraud, waste and abuse were being made directly against the DHHS lead counsel and the members of the FDA Food Defense Team themselves thus creating a direct and actual conflict of interest. Office of Government Ethics regulations (5 C.F.R. Part 2635) specifically require that employees of the U.S. Government avoid the appearance of and actual conflicts of interest in the performance of their official duties. These same regulations stipulate that Mr. Berkley should have recused himself and referred the matter directly to Mr. Dan Levinson, the Inspector General (IG) of DHHS for a criminal investigation of the allegations being made by FoodQuestTQ LLC.

On **January 9, 2014**, in response to an official FOIA request, FoodQuestTQ LLC was advised by the FDA that they do not collect, maintain or require any type of sign-up for the use of the FDA computer software tools that duplicate FoodQuestTQ products. FoodQuestTQ LLC subsequently confronted FDA with computer “screenshots” taken directly from their official U.S. Government website demonstrating that the FDA does, in fact, collect such data and maintain computer sign in logs. Copies of these documents can be found at [FBI Exhibit No. 32](#). FoodQuestTQ LLC alleges that this was an obvious attempt to deceive in order to avoid the disclosure of releasable information pursuant to Title 5 U.S.C. §552. In numerous letters to the FDA and DHHS FoodQuestTQ LLC raised concerns that activities by the Center for Food Safety and Nutrition (CFSAN) and members of the FDA Food Defense Team in blocking the identification and release of information pursuant to P.L. 89–554, 80 Stat. 378, 5 U.S.C. § 552 may represent intentional obstruction of justice. Copies of these letters appear at [FBI Exhibit No. 33](#).

On **January 19, 2014**, FoodQuestTQ LLC filed an official FOIA request with the FDA asking the agency to respond to a series of questions. On **April 8, 2014**, FDA denied the request for responses citing the case law teachings of Rodriguez-Cervantes vs. HHS F. Supp. 2d 114, 116-17 (D.D.C. 2012). FoodQuestTQ LLC alleges that the case law teachings of Rodriguez v. Cervantes are irrelevant to the company’s **January 19, 2014**, FOIA request. Copies of these documents can be found at [FBI Exhibit No. 14](#). FoodQuestTQ LLC alleges that this is another example of an attempt to deceive in order to avoid the disclosure of releasable information pursuant to P.L. 89–554, 80 Stat. 378, 5 U.S.C. § 552.

On **March 17, 2014**, FoodQuestTQ LLC filed an official FOIA request with the FDA asking for any and all internal FDA and DHHS documents of any kind including notes, descriptions, memoranda, signed or initialed concurrence copies, e-mail or any other records relating to the patent or copyright of the FoodQuestTQ LLC computer software tools that were duplicated by the FDA Food Defense Team. On **March 31, 2014**, the FDA denied the request. The denial letter dismissed the FoodQuestTQ LLC request for FDA internal records stating that copies of issued U.S. Government patents and copyrights were available from the U.S. Patent and Trademarks Office. This precluded FoodQuestTQ LLC access to the internal records of FDA approval and concurrence that were originally requested. Copies of these documents can be found at [FBI Exhibit No. 14](#). FoodQuestTQ LLC alleges that this is another example of the FDA’s intentional

actions to block and forestall the disclosure of properly releasable information pursuant to P.L. 89-554, 80 Stat. 378, 5 U.S.C. § 552.

On **May 28, 2014**, FoodQuestTQ LLC wrote the first of several letters to Ms. Miriam Nesbit, Director of the Office of Government Information Services (OGIS) of the National Archives (NAR) reporting serious irregularities in the handling of FOIA requests by FDA and DHHS. The actions by the U.S. Government reported to Ms. Nesbit included deceit, deception and the spoliation of evidence by allowing FDA and DHHS employees allegedly engaged in criminal misconduct to search for requested records that may contain evidence of their own criminal misconduct. Copies of these documents can be found at [FBI Exhibit No. 15](#).

On **June 2, 2014**, Mr. William Hall, DHHS, denied FoodQuestTQ LLC's appeal for certain e-mail records of FDA employee Ms. Leanne Jackson. Ms. Jackson was identified by "Mail Chimp" commercial tracking software to have opened FoodQuestTQ LLC documents hundreds of times. FoodQuestTQ LLC alleges that e-mail strings originated by Ms. Jackson may have "blacklisted" FoodQuestTQ LLC. The DHHS denial of the requested records was based on six assertions. In their response to the DHHS refusal to release the requested records, FoodQuestTQ LLC specifically addressed each of assertions made by DHHS in denying their appeal as follows. Copies of these documents can be found at [FBI Exhibit No. 16](#). The complete FoodQuestTQ LLC response to the U.S. Government appears at [FBI Exhibit No. 34](#).

U.S. Government assertion No. 1: *The DHHS "plain language" assertion.*

The DHHS asserted that the "plain language" of the original FoodQuestTQ LLC FOIA request dated **September 18, 2013**, did not include e-mails that were merely opened by Ms. Jackson. FoodQuestTQ LLC alleges that this assertion is not correct.

In their original FOIA request of **September 18, 2013**, and again in their appeal letter dated **November 20, 2013**, FoodQuestTQ LLC specifically requested all electronic e-mail records related to the 351 times and dates that Ms. Jackson "opened, forwarded or commented" on a single FoodQuestTQ LLC e-document. The request included all related e-mail strings resulting from any communications initiated by the employee regarding the document as well as any "ccs" and "bcc's" for any e-mails that were responsive to the original request.

U.S. Government assertion No. 2: *The DHHS assertion that the e-mail tracking of Ms. Jackson's e-mail has no bearing on the matter.*

In denying the FoodQuestTQ LLC appeal, DHHS asserts that FoodQuestTQ LLC's use of a commercial tracking service has no bearing on the FoodQuestTQ LLC appeal. In their response to FoodQuestTQ LLC's original FOIA request the FDA represented that three e-mails released to FoodQuestTQ LLC at that time represented the entire e-mail record of the instances where Ms. Jackson "opened, forwarded or commented" on information related in any way to the FoodQuestTQ LLC matter. The electronic records provided to DHHS and the FDA by FoodQuestTQ LLC on **November 20, 2013**, directly contradict the DHHS assertion that the three e-mails initially released to FoodQuestTQ LLC represented the entire e-mail record of the instances where Ms. Jackson "opened, forwarded or commented" on information related to the FoodQuestTQ LLC matter.

U.S. Government assertion No. 3: *The FDA search revealed no instances where Ms. Jackson forwarded any e-mails relating to the matter of FoodQuestTQ LLC.*

FoodQuestTQ LLC contends that any test of reasonableness indicates that the same individual would not open the same electronic document 351 times over such a short period without making some use of the document. As of **June 16, 2014**, Ms. Jackson's number of recorded "Mail Chimp" openings of the same document exceeded 558 times. This leads to the conclusion that the methods of search being employed by DHHS and the FDA were unreasonable because they were relying on the very same individuals and organizational units within DHHS and the FDA to identify, produce and not destroy requested documents that would necessarily implicate the same individuals in criminal activities.

U.S. Government assertion No. 4: *The FDA has put forth a reasonably calculated search for records.*

FoodQuestTQ LLC alleges that the DHHS and FDA, by allowing the same U.S. Government employees alleged to be implicated in the wrongdoing in the first place to search their own computer records, did not put forth a reasonably calculated search for records as required under title 5 U.S.C. §552. FoodQuestTQ LLC contends that the only remaining possibilities for not having the requested electronic records are: 1) the "Mail Chimp" commercial e-mail tracking software is totally dysfunctional and dramatically inflating the number of times Ms. Jackson opened the document off of her computer, or; 2) the employee intentionally deleted electronic evidence that implicates the agency and its employees including Ms. Jackson herself in criminal misconduct.

U.S. Government assertion No. 5: *The DHHS assertion that "Mail chimp" commercial e-mail tracking systems are unreliable and inaccurate.*

FoodQuestTQ LLC contends that the assertion by DHHS and the FDA that the "Mail Chimp" commercial software product may be unreliable and inaccurate is not correct. In fact, the U.S. Government itself uses the services of "Mail Chimp." The accuracy and reliability of the "Mail Chimp" software package is demonstrated by the 24-7 maintenance of the system by over 250 employees and over six million satisfied users across the globe.

U.S. Government assertion No. 6: *The FDA acted reasonably in interpreting what the request sought.*

FoodQuestTQ LLC contends that the assertion that the FDA acted reasonably in interpreting the company's original FOIA request and subsequent appeal is not correct. FoodQuestTQ LLC alleges that any test of reasonableness indicates that the same individual would not open the same electronic document 351 times over such a short time period without making some use of the document.

On June **25, 2014**, FoodQuestTQ LLC wrote a letter to Mr. Stephen Vogt, Special Agent in Charge of the Baltimore Field Office of the Federal Bureau of Investigation (FBI) reporting the matter of FoodQuestTQ LLC and requesting a criminal investigation of the FoodQuestTQ LLC matter. A copy of the FoodQuestTQ LLC letter of the letter sent to the Frederick, Maryland, appears at [FBI Exhibit No. 17](#).

V. SUMMARY OF ALLEGED VIOLATIONS OF FEDERAL LAW BY THE U.S. GOVERNMENT IN THE MATTER OF FOODQUESTTQ LLC

1. Federal procurement fraud: *18 U.S. Code § 1031 - Major fraud against the United States; Competition in Contracting Act (CICA) of 1984 (41 U.S.C. 253); Federal Acquisition Regulations as codified at (Title 48, Chapter 1 of the United States Code of Federal Regulations).*
2. Conspiracy to defraud United States (*18 U.S. Code § 371*).
3. The violation of procurement integrity law. *5 C.F.R. Part 2635* applies.
4. Breach of material and fundamental express and implied contract, as part of a purposeful scheme to defraud. *18 U.S. Code § 1031 - Major fraud against the United States.*
5. Violation of the Code of Ethics for Government Service, as part of a purposeful scheme to defraud. *P. L. 96-303, July 3, 1980*, applies.
6. Violation of the *Racketeer Influenced and Corruption Organizations Act (RICO)* as part of a purposeful scheme to defraud. *Title 18 U.S.C. §1961 et seq.*
7. Violation of Sherman Antitrust law as part of a purposeful scheme to defraud. *Title 15 U.S.C. §§ 1-7 and Title 18 U.S. Code § 1031* apply.
8. The *Hobbs Act*- interference with commerce by threats or violence as codified at *18 U.S.C. § 1951*.
9. Mail and wire fraud as codified at *18 U.S.C. §§ 1341 and 1343*.
10. The misappropriation intellectual property. *18 U.S.C. § 654: US Code - Section 654: Officer or employee of United States converting property of another, 18 U.S.C. § 641: US Code - Section 641: Public money, property or records, and 18 U.S. Code § 1832 - Theft of trade secrets; Article I, clause 8, of the United States Constitution: the "patent and copyright" clause, and; Amendment V of the United States Constitution: the "takings" clause* apply.

A detailed compendium of the Federal statutes, laws and regulations violated by the U.S. Government in the matter of FoodQuestTQ LLC appears at [FBI Exhibit No. 35](#).

VI. THE VALUE OF THE FOODQUESTTQ LLC TECHNOLOGY

On **July 13, 2004**, the FoodQuestTQ LLC researcher won the Potomac Foundation's Navigator Award for his doctoral dissertation research. The Potomac Foundation works closely with the Defense Advanced Research Projects Agency (DARPA) to develop the world's most cutting edge technologies. [See FBI Exhibit No. 67](#).

In **2011**, FoodQuestTQ LLC expended \$200,000 under a contract with the consulting firm Deloitte and Touche to certify the functionality and utility of the FoodQuestTQ LLC researcher's patent and computer food risk management tools. On **June 16, 2011**, Deloitte and Touche completed their review and determined that the technology was effective. A copy of the final Deloitte and Touche report is attached at [FBI Exhibit No. 68](#).

Also in **2011**, an exhaustive market analysis of FoodQuestTQ LLC products across the food and agriculture vertical was conducted by a Certified Public Accountant. The analysis demonstrates that the total addressable market for the FoodQuestTQ LLC suite of food risk management tools in the United States was \$11,700,000,000 annually. Of this total addressable market, it was projected that FoodQuestTQ LLC would capture \$183,000,000 over the first five years of operation across the food and agriculture vertical alone. A copy of the fair market analysis appears at [FBI Exhibit No. 36](#).

The FoodQuestTQ LLC technology is a "platform" technology. This means that the same FoodQuestTQ LLC technology used for food risk management can be applied across other industry verticals. The technology is highly scalable. It is estimated that the full commercial deployment of the technology across all industry verticals held the potential for multi-billions of dollars in additional revenues. A listing of the different applications of the platform technology across different industry verticals appears at [FBI Exhibit No. 37](#).

VII. HOW THE U.S. GOVERNMENT ACQUIRED THE KNOWLEDGE TO DUPLICATE FOODQUESTTQ LLC'S COMMERCIAL COMPUTER AUTOMATED FOOD RISK MANAGEMENT TECHNOLOGY

A multi-year program of privately funded research was conducted by one of the owners of FoodQuestTQ LLC at The George Washington University between **2001 and 2006**. Early research under the program formed the basis for FoodQuestTQ LLC's suite of computer automated food risk management technology.

In **2003**, the FoodQuestTQ LLC researcher filed his first patent invention disclosure with the United States Patent and Trademarks Office (USPTO). The patent invention disclosure was published by USPTO. A copy of the invention disclosure can be found at [FBI Exhibit No. 38](#).

On **July 13, 2004**, the FoodQuestTQ LLC researcher won the Potomac Foundation's Navigator Award for his doctoral dissertation research. The Potomac Foundation works closely with the Defense Advanced Research Projects Agency (DARPA) to develop the world's most cutting edge technologies. The FoodQuestTQ LLC researcher was the first student recipient of the prestigious award. See FBI [Exhibit No. 67](#).

In **July 2007**, the researcher was granted a pending patent based on his research and a process and data transformation method to scientifically determine, quantify and structure specific critical infrastructure incident prevention and risk mitigation strategies and criteria. Because the inventor worked in prior positions of sensitivity to the national security, the patent was subjected to review by the Federal interagency community. The review took over two years and resulted in the widespread distribution of the research. Thus, the researcher's copyrighted research and patented ideas were available to the Federal interagency since at least **2003**. See [FBI Exhibit No. 54](#).

In **August 2006**, The George Washington University officially published the results of the research in the researcher's doctoral dissertation. The dissertation detailed a five year program of research to

scientifically determine, quantify and structure specific incident prevention and risk mitigation strategies and criteria. The dissertation describes the application of the research ideas across multiple critical infrastructures and specifically addresses the food supply system. The research dissertation was copyrighted and widely published by The George Washington University. A copy of the doctoral dissertation appears at [FBI Exhibit No. 1.](#)

Four months later, in **November 2007**, the FDA released the National Food Protection Plan that plagiarizes the copyrighted dissertation research published by The George Washington University in **August 2006** and the patented and unpatented ideas as contained in the official USPTO invention disclosures filed by the researcher in **2003** and **2007**. The researcher did not take action against the FDA based on the fear of reprisals and losing future opportunities to collaborate with the U.S. Government and the food industry in other applications of his technology. A copy of the plagiarism analysis conducted using the same standards used by the FDA's own Office of Research Integrity appears at [FBI Exhibit No. 39.](#)

On **March 25, 2009**, FoodQuestTQ LLC delivered an unsolicited proposal to Dr. Robert J. Buchanan, the head of the FDA's Joint Institute for Food Safety and Nutrition (JIFSAN). The unsolicited proposal contained the patented and unpatented ideas, trade secrets and copyrighted written expression of the researcher's patented and unpatented ideas and trade secrets. The document was clearly marked as containing FoodQuestTQ LLC proprietary information. A copy of this unsolicited proposal provided to the FDA appears at [FBI Exhibit No. 40.](#)

The presentation of the unsolicited proposal followed prior meetings with JIFSAN personnel and the presentation of two proprietary briefings that contained the patented and unpatented ideas, trade secrets and copyrighted written expressions of FoodQuestTQ LLC's patented and unpatented ideas and trade secrets. The presentation focused on the use of science and risk based methods to identify mitigating strategies that can prevent and improve responses to intentional food poisonings through the use of computer automated software platforms. The two briefings were attended by Drs. Julianna Ruzzante and Robert Buchanan of JIFSAN and Dr. John Hnatio, Dr. Barton Michelson and Mr. David Park of FoodQuestTQ LLC. The documents provided to the FDA were clearly marked as containing FoodQuestTQ LLC proprietary information. Copies of proprietary briefing materials presented to the FDA Joint Institute for Food Safety and Nutrition (JIFSAN) prior to submitting and following the rejection of the unsolicited proposal appear at [FBI Exhibit No. 41.](#) The unsolicited proposal appearing at [FBI Exhibit No. 40](#) was subsequently rejected by the FDA.

On **April 8, 2009**, FoodQuestTQ LLC presented a briefing to the FDA Food Defense Team that described their concept for building computer automated food risk assessment tools. The briefing materials were clearly marked as containing proprietary information. A copy of these briefing materials appear at [FBI Exhibit No. 66.](#)

In **2010**, several months after the **March 29, 2009**, briefing for JIFSAN personnel, the FDA copyrighted and publicly released a computer automated food risk management tool called iRisk. The new FDA tool contained the patented and unpatented ideas, trade secrets and copyrighted written expression of these patented and unpatented ideas and trade secrets that were presented in the FoodQuestTQ LLC unsolicited proposal that was previously submitted to the FDA JIFSAN organization in **March 2009**. The iRisk tool uses FoodQuestTQ LLC patented and unpatented ideas and trade secrets to scientifically determine, quantify and structure specific incident prevention and risk mitigation strategies and criteria

along the food supply chain. The researcher was unaware of the iRisk tool until 2012. An analysis demonstrating the use of FoodQuestTQ LLC intellectual property in the iRisk tool appears at [FBI Exhibit No. 42.](#)

In **April 2011**, the FDA released another computer automated food risk management tool called the Food Defense Mitigation Strategies Database. The new FDA tool contained the patented and unpatented ideas, trade secrets and copyrighted written expressions of the intellectual property that were presented to the Food and Drug Administration by FoodQuestTQ on **March 15, 2009**. The researcher was unaware of the Food Defense Mitigation Strategies Database tool until 2012. An analysis demonstrating the use of FoodQuestTQ LLC intellectual property in the Food Defense Mitigation Strategies Database tool appears at [FBI Exhibit No. 42.](#)

In **June 2011**, FoodQuestTQ LLC provided the FDA with a proprietary demonstration of their computer automated food risk management software that contained FoodQuestTQ LLC copyrighted research, patented and unpatented ideas and trade secrets. Special attention was focused on the ability to scientifically determine, quantify and structure specific incident prevention and risk mitigation strategies and criteria for the building of food defense plans utilizing the FoodQuestTQ LLC automated food risk management tool called Food DefenseTQ. The briefing was well attended by Mr. Jody Menikheim and other members of his immediate FDA staff and by Dr. John Hnatio, Dr. Barton Michelson and Mr. David Park of FoodQuestTQ. See [FBI Exhibit No. 43.](#)

Also in **June 2011**, the FDA released their Food Response Emergency Exercise Bundled or FREE-B tool. The new FDA tool contained the patented and unpatented ideas, trade secrets and copyrighted written expressions of the intellectual property contained in the FoodQuestTQ LLC researcher's **2003** invention disclosure; his **July 2007** pending patent (final patent granted in 2012); his **August 2006** dissertation and; the unsolicited proposal presented to FDA on **March 25, 2009**. The FoodQuestTQ LLC researcher did not become aware of the existence of the FDA FREE-B tool until the **fall of 2012**. An analysis demonstrating the use of FoodQuestTQ LLC intellectual property in the FDA FREE-B tool appears at [FBI Exhibit No. 42.](#)

In **February 2012**, FoodQuestTQ LLC provided the FDA with a proprietary demonstration of their computer automated food risk management software that contained FoodQuestTQ LLC copyrighted research, patented and unpatented ideas and trade secrets. The focus of the briefing was to update the FDA on the refinements to their FoodQuestTQ food defense plan builder tool and seek FDA inputs to assist them in conducting oversight of food companies using the Food DefenseTQ tool. The briefing was well attended by Mr. Jody Menikheim and members of his immediate FDA staff; Dr. Hnatio, Dr. Michelson and Mr. David Park of FoodQuestTQ LLC, and; FoodQuestTQ LLC consultant Mr. William Wright of MRIGlobal. The briefing documents provided to the FDA were clearly marked as containing FoodQuestTQ proprietary information. Copies of these proprietary briefing documents appear at [FBI Exhibit No. 44.](#)

In **June 2012**, FoodQuestTQ LLC entered into a partnering agreement with Leavitt Partners to collaborate in providing food defense training and emergency response support to the food industry. Dr. David Acheson and Dr. Jennifer McEntire served as the Leavitt Partners principals to manage the partnership. Under the terms of the agreement, FoodQuestTQ LLC shared the detailed proprietary workings of their food risk management tools with Dr. McEntire. A copy of the teaming agreement with Leavitt Partners appears at [FBI Exhibit No. 23.](#)

In **July 2012**, FoodQuestTQ LLC launched their official sales campaign for their food defense plan builder tools - Food DefenseTQ and Food Defense Architect. During this same time frame, the FDA announced plans to publish a U.S. Government version of a computer software tool for building food defense plans called Food Defense Plan Builder. Sales for FoodQuestTQ LLC's risk management tools failed to materialize because of the food industry's anticipation for a cost-free alternative issued by the same Federal agency responsible for regulating food companies.

On **October 2, 2012**, FoodQuestTQ LLC held a web-meeting with Mr. Jody Menikheim and other members of his immediate FDA staff. During the meeting, FoodQuestTQ LLC demonstrated their second generation food defense plan builder tool called Food Defense Architect. Dr. Hnatio and Mr. Becker of FoodQuestTQ LLC represented FoodQuestTQ LLC. Dr. Hnatio and Mr. Becker expressed their concerns to Mr. Menikheim that the FDA was competing directly with FoodQuestTQ LLC by duplicating the company's suite of computer food risk management tools. Mr. Menikheim dismissed FoodQuestTQ LLC's assertion stating that while the FDA Food Defense Plan Builder tool accomplished the same purpose as the FoodQuestTQ LLC computer software, the FDA duplicate tools were clearly not as sophisticated as those produced by FoodQuestTQ LLC.

In the same meeting, FoodQuestTQ LLC principals offered Mr. Menikheim and the FDA a \$1.00 per year license for FDA employees to use FoodQuestTQ LLC's suite of computer tools if the FDA stopped competing directly with FoodQuestTQ LLC. Mr. Menikheim stated that he would take the FoodQuestTQ LLC offer under advisement with his superiors. Mr. Menikheim and the FDA never responded to the FoodQuestTQ LLC offer. Copies of this non-proprietary briefing documents appear at [FBI Exhibit No. 45](#).

On **December 12, 2012**, the FDA held a food industry meeting at the Headquarters of the Grocery Manufacturer's Association (GMA) in Washington, D.C., to obtain inputs on their new Food Defense Plan Builder software tool. FoodQuestTQ LLC was scheduled to attend the meeting several weeks beforehand. On the evening before the meeting, the FDA abruptly disinvited FoodQuestTQ LLC from participating. The FDA advised GMA that only food processors would be allowed to attend the session. Copies of documents relating to the **December 12, 2012**, meeting at GMA appear at [FBI Exhibit No. 46](#). Later, FoodQuestTQ LLC principals saw the attendance sign in sheet for the meeting where they observed that non-food processors were allowed to attend the meeting. Among the participants at the FDA meeting included Dr. Jennifer McEntire of Leavitt Partners and Mr. Donald Hsieh of Tyco Integrated Security Systems, a direct competitor of FoodQuestTQ LLC. Prior to this time, FoodQuestTQ LLC was unaware that Leavitt Partners was supporting the FDA to duplicate FoodQuestTQ LLC's food risk management software. A copy of the sign in sheet is available directly from Mr. Warren Stone of the Grocery Manufacturer's Association (GMA). Mr. Stone's contact information appears at [FBI Exhibit No. 47](#).

Five months later, on **May 18, 2013**, FDA released their Food Defense Plan Builder software tool at their official U.S. Government website for industry use free of any charge. A screen by screen analysis of the original FoodQuestTQ LLC software and the FDA duplicate Food Defense Plan Builder can be found at [FBI Exhibit No. 48](#). The new FDA tool contained the patented and unpatented ideas, trade secrets and copyrighted written expressions of the intellectual property contained in the FoodQuestTQ LLC researcher's **2003** invention disclosure; his **July 2007** pending patent (final patent granted in 2012); his **August 2006** dissertation; the unsolicited proposal presented to FDA on **March 25, 2009**, and; the **June 2011, February 2011, and October 2012** FoodQuestTQ LLC demonstrations of their software tools to the FDA. A detailed analysis demonstrating the use of FoodQuestTQ LLC intellectual property in the FDA Food Defense Plan Builder tool can be found at [FBI Exhibit No. 42](#).

VIII. HOW THE U.S. GOVERNMENT VIOLATED FEDERAL PROCUREMENT LAW IN THE MATTER OF FOODQUESTTQ LLC

Under the Federal Activities Inventory Reform Act (FAIR), P.L. 105-270, and implementing Office of Management and Budget Circular A-76, the production of food risk management computer automated tools are not an inherently governmental function. As such, the FoodQuestTQ LLC suite of computer automated food risk management tools are considered by law as “commercial goods and services,” that must be openly procured from the private sector by the FDA.

The Competition in Contracting Act (CICA) of 1984 (41 U.S.C. 253) governs competition in Federal procurement contracting. Any procurement contract not entered into through the use of procurement procedures expressly authorized by a particular statute is subject to CICA. CICA requires that contracts be entered into after “full and open competition through the use of competitive procedures” unless certain circumstances exist that would permit agencies to use noncompetitive procedures. There exist seven such circumstances permitting other than full and open competition. To exercise any such an exemption requires a rigorous and documented approval process before a Federal non-competitive contract can be let. The U.S. Government sought no such exemption in the matter of FoodQuestTQ LLC.

The Federal Acquisition Streamlining Act (FASA) of 1994 establishes a “preference” for the procurement of commercial items, which are generally not subject to full and open competition under CICA. The Federal Acquisition Reform Act (FARA) of 1996 amended the Federal Acquisition Regulation (FAR) to “ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government’s requirements.” Open and fair competition for the computer automated food risk management tools desired by the FDA would not have negatively impacted the efficiency of the Agency’s operations. Moreover, in the case of FoodQuestTQ LLC, the pursuit of a sole source contract could have been accomplished quickly and efficiently. Thus, the non-competitive “pass through” contracts among the FDA, the Department of Defense, Battelle Memorial Institute and Valbrea Technologies were not necessary to efficiently fulfill the FDA’s mission requirements in the matter of FoodQuestTQ LLC.

Under the terms of Battelle Memorial Institute’s contract as a Federally Funded Research and Development Center (FFRDC) with the FDA they are required to develop a detailed subcontracting plan that is used whenever the prime contractor lets subcontracts to outside entities to do work on behalf of the U.S. Government. See [FBI Exhibit No. 67](#). As an FFRDC these subcontract rules must include specific process steps that the Federal prime contractor implements to assure that the letting of subcontracts do not represent unfair competition with small businesses. These requirements were not followed when the FDA allowed Battelle Memorial Institute to use Department of Defense funds and initiate a “by-pass” contract to Valbrea Technologies to build the FDA Food Defense Plan Builder tool even when the agency was fully aware that a commercial alternative was already available. By so doing, the FDA purposefully bypassed fair and open competition by turning to Battelle Memorial Institute to initiate a “pass through” subcontract for Valbrea Technologies to duplicate FoodQuestTQ LLC computer automated risk management tools even though the U.S. Government was fully aware that the same or similar products were already being commercially sold. Documents demonstrating that the FDA was fully aware that they were duplicating FoodQuestTQ LLC products that accomplished the same or similar purpose appear at [FBI Exhibit No. 49](#).

The FDA violated Federal procurement law and U.S. Office of Government Ethics laws, rules and procedures when it publicly endorsed the brand name and products of Tyco Integrated Security

Systems. Tyco Integrated Security Systems produces food defense software and products and, as such, is a direct competitor of FoodQuestTQ LLC. More information on the FDA endorsement of the products and services of Tyco Integrated Security Systems appears below and at [FBI Exhibit No. 25](#).

Note: On **September 12, 2014**, when checking the links to the on-line video where the FDA appeared in a Tyco Integrated Systems video on food defense, it was discovered that the on-line videotape was now marked as "Private" and thus no longer available for public viewing. FoodQuestTQ LLC alleges that the removal of this videotape from public access is another action by the FDA to prevent the public disclosure of violations of Federal procurement and procurement integrity law.

IX. HOW THE U.S. GOVERNMENT VIOLATED FEDERAL PROCUREMENT INTEGRITY LAW

5 C.F.R. Part 2635, Subpart E, requires that U.S. Government employees act in an impartial manner. In the matter of FoodQuestTQ LLC, FDA and DHHS officials placed the defense of their own U.S. Government Departments ahead of their duty of good faith and fair dealing thus compromising their impartiality. P.L. 96-303, Code of Ethics for Government Service, also requires that U.S. Government employees place their loyalty to the Constitution and the laws of the United States above their loyalty to their department. U.S. Government employees demonstrated their partiality in the matter of FoodQuestTQ LLC by participating in the violation of Federal procurement laws specifically as they relate to: 1) the fair and open competition provisions of The Competition in Contracting Act (CICA) of 1984 (41 U.S.C. 253); 2) the Federal Acquisition Streamlining Act (FASA) of 1994; 3) the Federal Acquisition Reform Act (FARA) of 1996, as amended; 4) Federal Activities Inventory Reform Act (FAIR), P.L. 105-270; 5) implementing Office of Management and Budget Circular A-76, and; 6) the Federal Acquisition Regulations (FARS).

5 C.F.R. Part 2635, Subpart G, requires that U.S. Government employees not misuse their positions of authority with the U.S. Government. FDA and DHHS employees misused their positions of authority by: engaging in criminal misconduct that includes violations of : 1) Federal procurement and procurement integrity law; 2) material and fundamental express and implied contracts with FoodQuestTQ LLC; 3) the Code of Ethics for Government Service, *P. L. 96-303*; 4) the *Racketeer Influenced and Corruption Organizations Act (RICO)* as codified at *Title 18 U.S.C. §1961 et seq.*; 5) Sherman Antitrust law as codified at *15 U.S.C. §§ 1-7 and Title 18 U.S. Code § 1031*, and; 6) a large body of law relating to the misappropriation of FoodQuestTQ LLC owned intellectual property.

5 C.F.R. Part 2635, sets forth the procedures that must be followed when a Federal agency endorses a private sector organization, products, or persons. The FDA violated these provisions by endorsing the services of Tyco Integrated Security Systems. The FDA in cooperation with Tyco Integrated Security Systems, a "preferred" contractor to the FDA and direct competitor of FoodQuestTQ LLC, produced and publicly released a food defense videotape in which an FDA official appears. By so doing, the FDA officials provided implicit endorsement of Tyco Integrated Security Systems as a "preferred" U.S. Government contractor to provide food defense services. Tyco Integrated Security Systems is a direct competitor of FoodQuestTQ LLC in the food defense market. Tyco Integrated Security Systems was one of the FDA "preferred" contractors that was allowed to attend, at the exclusion of FoodQuestTQ LLC, the **December 12, 2012**, FDA sponsored workshop on the agency's Food Defense Plan Builder tool. The FDA Food Defense Plan Builder tool duplicates the food defense products of FoodQuestTQ LLC. A copy of the Tyco Integrated Security Systems and FDA produced videotape can be accessed at [FBI Exhibit No. 25](#).

Note: On **September 12, 2014**, when checking the links to the on-line video where the FDA appeared in a Tyco Integrated Systems video on food defense, it was discovered that the on-line videotape was now marked as "Private" and thus no longer available for public viewing. FoodQuestTQ LLC alleges that the removal of this videotape from public access is another action by the FDA to prevent the public disclosure of violations of Federal procurement and procurement integrity law.

X. HOW U.S. GOVERNMENT EMPLOYEES VIOLATED THE CODE OF ETHICS FOR GOVERNMENT SERVICE
(P.L. 96-303)

P.L. 96-303 stipulates, among other requirements, that U.S. Government employees must: 1) put their loyalty to the highest moral principles and to country above loyalty to their U.S. Government department; 2) uphold the Constitution, laws, and regulations of the United States and never be a party to their evasion; 3) engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of their governmental duties; 4) never use any information gained confidentially in the performance of governmental duties as a means of making private profit; 5) expose corruption wherever discovered, and; 6) endeavor to uphold these principles, ever conscious that public office is a public trust. There is evidence that the FDA and DHHS employees directly involved in the matter of FoodQuestTQ LLC failed to uphold these principles.

U.S. Government employees placed their loyalty to their own departments, i.e., FDA and DHHS, above their loyalty to the highest moral principles and the Constitution and laws of the United States of America. They did this by knowingly competing directly with FoodQuestTQ LLC in violation of a large and long-standing body of Federal procurement and ethics statute, law and regulation; through the use of intimidation, coercion and extortion, and; by obstructing justice to prevent the exposure of their own criminal conduct.

U.S. Government employees failed to uphold the Constitution, laws, and regulations of the United States of America as they engaged in a purposeful scheme to evade Article I (patents and copyrights) and Amendment V (eminent domain) and the laws of the United States of America. These same U.S. Government employees engaged in activities that were directly and indirectly inconsistent with the conscientious performance of their official duties. They did these things by implementing a purposeful six step scheme to defraud FoodQuestTQ LLC that included intentional violations of federal procurement, ethics and intellectual property laws and regulations and by obstructing justice.

U.S. Government employees used FoodQuestTQ LLC information gained confidentially in the performance of their official U.S. Government duties as a means of making private profit. The confidential information provided by FoodQuestTQ LLC was used by the U.S. Government to duplicate the goods and services already available to the food industry by FoodQuestTQ LLC. Personal profit to the U.S. Government employees involved took the form of awards, bonuses, promotions and other forms of individual recognition for successfully meeting the FDA and DHHS missions by engaging in the duplication FoodQuestTQ LLC products.

U.S. Government employees failed to expose corruption. Even after they were specifically informed of violations of Federal statute, law and regulation in the matter of FoodQuestTQ LLC, employees of the U.S. Government continued to engage in the violation and evasion of Federal law. On **June 23, 2014**, FoodQuestTQ LLC wrote the most recent of seven letters to the Secretary of DHHS informing her of the fraud, waste and abuse taking place in FDA and DHHS. Copies of the letters sent to the Secretary DHHS

informing her of the violations of Federal statute, law and regulation in the matter of FoodQuestTQ LLC appear at [FBI Exhibit No. 12.](#)

The Chief Counsel of the FDA, Ms. Elizabeth Dickinson, was made aware of the serious allegations of criminal wrongdoing in the matter of FoodQuestTQ LLC. Copies of FoodQuestTQ LLC correspondence to Ms. Dickinson explicitly informing her of alleged felonious conduct in the FDA appears at [FBI Exhibit No. 5.](#) Ms. Dickinson and her staff counsel assigned to the matter of FoodQuestTQ LLC, Ms. Ariel Seeley, abandoned their duty of good faith and fair dealing to mediate a resolution to the dispute with FoodQuestTQ LLC in favor of protecting the actions of the FDA as the agency evaded the Constitution and laws of the United States of America.

Mr. Dale Berkley, the lead DHHS-OGC attorney assigned to the matter of FoodQuestTQ LLC, was made aware of the serious allegations of criminal wrongdoing in the matter of FoodQuestTQ LLC. A copy of the FoodQuestTQ LLC complaint to the Small Business Administration that was made available to Mr. Berkeley appears at [FBI Exhibit No. 6.](#) Copies of other FoodQuestTQ LLC correspondence that explicitly informed Mr. Berkley of alleged felonious conduct in the FDA appears at [FBI Exhibit No. 50.](#) Mr. Berkley, like Ms. Dickinson and Ms. Seeley before him, abandoned his duty of good faith and fair dealing to mediate the dispute in favor of protecting the DHHS and FDA as the agency evaded the Constitution and laws of the United States of America.

In lieu of recusing themselves from the matter and reporting allegations of fraud, waste and abuse within the FDA to the DHHS Office of Inspector General (OIG) for criminal investigation as suggested by the Code of Ethics for Government Service (P.L. 96-303), Ms. Dickinson, Ms. Seeley and Mr. Berkley conspired to engage in a direct and actual conflict of interest to investigate the FoodQuestTQ LLC matter on their own, and by so doing, violated 5 C.F.R. Part 2635, Subpart A, General Provisions, that specifically require employees of the U.S. Government to avoid appearances of, and never engage in, actual conflicts of interest.

XI. HOW THE U.S. GOVERNMENT ENGAGED IN RACKETEERING

Racketeering is a pattern of illegal activity carried out as part of an enterprise that is owned or controlled by those who are engaged in the illegal activity. The FDA and DHHS engaged in the violation of the *Racketeer Influenced and Corruption Organizations Act (RICO)* and *Title 18 U.S.C. §1961 et seq.* by implementing a six step scheme to defraud FoodQuestTQ LLC.

The six step scheme was implemented by the U.S. Government beginning in at least **2007** to the **current time** and, as such, represents a pattern of illegal activity carried out by the U.S. Government. The FDA is an enterprise that controls the regulation of approximately 80% of the nation's food supply and over 175,000 private food companies in the United States.

To implement the six step scheme to defraud FoodQuestTQ LLC of their technology, the U.S. Government used a combination of intimidation, coercion and extortion in attempts to silence FoodQuestTQ LLC. The U.S. Government also engaged in obstruction of justice by engaging in an actual conflict of interest to conduct an unlawful investigation, using deceit, deception and spoliation to avoid the public release of evidence under Title 5 U.S.C. §552 (the Freedom of Information Act) demonstrating that the U.S. Government was engaged in fraud, waste and abuse. How the U.S. Government used these techniques to implement their scheme to defraud FoodQuestTQ LLC has been more fully described on pages 7-17 of this report.

XII. HOW THE U.S. GOVERNMENT AND THEIR REGULATED FOOD INDUSTRY ARE VIOLATING SHERMAN ANTITRUST

Antitrust statutes are based on the notion that the U.S. Government, as a disinterested party, is in the position to serve as an honest broker in the administration of justice under antitrust law. In the matter of FoodQuestTQ LLC, the FDA and DHHS are no longer disinterested parties in the administration of justice under Sherman Antitrust. By competing directly with FoodQuestTQ LLC, the U.S. Government is an “entity engaged in commerce” as defined under Sherman Antitrust.

Under Sherman Antitrust, an unlawful monopoly exists when only one entity controls the market for a product or service, and it has obtained that market power, not because its product or service is superior to others, but by suppressing competition with anticompetitive conduct. In the matter of FoodQuestTQ LLC, the U.S. Government duplicated inferior products to accomplish the same or similar purposes as superior FoodQuestTQ LLC products that were already commercially available. The U.S. Government then took monopolistic control over the FoodQuestTQ LLC market for food risk management software tools by giving the duplicate and inferior products produced by the U.S. Government away to the food industry free of charge. This action served to drive FoodQuestTQ LLC and its superior products out of the marketplace causing damage to the consumer.

Regulatory capture is the process whereby regulatory agencies eventually come to be dominated by the very industries they are charged with regulating. Regulatory capture happens when a regulatory agency, formed to act in the public's interest, eventually acts in ways that benefit the industry it is supposed to be regulating, rather than the public.¹ In the matter of FoodQuestTQ LLC the FDA, and the food industry they regulate, are engaged in an actual and direct conflict of interest by colluding to establish inferior standards of food safety performance that are damaging to the health and safety of the consumer. This is evidenced by an FDA statement that the products duplicated by the U.S. Government are not as sophisticated as those produced by FoodQuestTQ LLC. Copies of record documents referring to this statement by an FDA official appear at [FBI Exhibit No. 51](#).

XIII. MISPRISION OF FELONY BY OFFICIALS OF THE U.S. GOVERNMENT

Misprision of felony is, “*the concealment of a felony committed by another person, but without such previous concert with, or subsequent assistance of the offender, as would make the concealer an accessory before or after the fact.*” Misprision of felony is traditionally reserved for U.S. Government officials who are acting in their official capacities as civil servants. [18 U.S.C. § 4]

In **January 2013**, written allegations of the commission of felonious crimes by various employees of the Food and Drug Administration (FDA) were provided directly to Ms. Elizabeth Dickinson, Chief Counsel of the FDA by FoodQuestTQ. See [FBI Exhibit No. 5](#).

FoodQuestTQ LLC alleges that, in lieu of a lawful inquiry based on their duty of good faith and fair dealing, Ms. Elizabeth Dickinson, Chief Counsel of the FDA and her staff counsel, Ms. Ariel Seeley in collusion with Mr. Dale Berkley, OGC-DHHS embarked on a legal defense of the actions of the U.S. Government in the FoodQuestTQ LLC matter. The Office of Chief Counsel did not inform FoodQuestTQ LLC principals that they had abandoned their duty of good faith and fair dealing to mediate the dispute in favor of a legal defense of the FDA's actions in the matter of FoodQuestTQ LLC. See [FBI Exhibit No. 5](#).

¹ <http://www.investopedia.com/terms/r/regulatory-capture.asp>

In **March 2013**, FoodQuestTQ LLC filed a complaint with the National Ombudsman for Small Business (NOSB) of the U.S. Small Business Administration (SBA). Written allegations of felonious crimes by various DHHS and FDA employees were provided directly to Ms. Yolanda Swift, Acting Ombudsman, and her replacement Mr. Brian Castro, the NOSB-SBA. See [FBI Exhibit No. 69](#).

In **March 2013**, written allegations of the commission of felonious crimes by various employees of the FDA were provided directly to Mr. Dale Berkley of the Office of General Counsel (OGC) DHHS by the NOSB-SBA. See [FBI Exhibit No. 5](#) and [FBI Exhibit No. 50](#).

It is further alleged that Mr. Berkley, fully aware of FoodQuestTQ LLC allegations of felonious conduct by employees of the FDA, knowingly, willfully and intentionally failed to refer the matter to the Inspector General (IG) DHHS to request the conduct of a lawful criminal investigation. See [FBI Exhibit No. 30](#).

FoodQuestTQ LLC alleges that Mr. Berkley knowingly, willfully and intentionally engaged in a direct conflict of interest by conducting an unlawful investigation that was intentionally prejudiced, not by his duty of good faith and fair dealing to mediate the dispute, but rather to conceal the commission of felonious crimes by employees of the U.S. Government. See [FBI Exhibit No. 30](#).

Mr. Berkley subsequently extended lawyer client privilege to the FDA employees involved in the wrongdoing in order to conceal the commission of felonious crimes by employees of the U.S. Government. See [FBI Exhibit No. 10](#). By so doing, Mr. Berkley knowingly, willfully and intentionally colluded with others in DHHS and FDA to prevent the disclosure of information that would indicate criminal wrongdoing by himself and other employees of the U.S. Government.

FoodQuestTQ LLC alleges that Mr. Brian Castro, NOSB-SBA knowingly, willfully and intentionally failed to act on the written allegations of felonious crimes by various employees of the FDA and DHHS until FoodQuestTQ LLC initiated a series of "e-mail blasts" to the Small Business Administration's (SBA) industry advisory board and small businesses cautioning that the SBA policy of zero tolerance for Federal agency retaliation against small business filing complaints was not true. Only then did Mr. Castro refer the matter to Mr. Dan Levinson, the Inspector General (IG) DHHS for official investigation. See [FBI Exhibit No. 13](#).

In **May 2013**, FoodQuestTQ LLC published a detailed case study in response to the **April 26, 2013**, legal defense brief signed by Mr. Dale Berkley, lead defense counsel for the U.S. Government in the matter of FoodQuestTQ LLC. The case study alleges in writing the commission of felonious crimes by various employees of the DHHS and the FDA. See [FBI Exhibit No. 11](#). Copies of the FoodQuestTQ case study were provided directly to: 1) the President of the United States; 2) the Administrator of the Small Business Administration; 3) the Director, Office of Management and Budget; 4) the Comptroller General of the United States; 5) the Director, Office of Government Ethics; 6) the Secretary, Department of Health and Human Services; 7) the Commissioner of the Food and Drug Administration; 8) all Federal Offices of Small and Disadvantaged Business Utilization; 9) the Senate Committee on Entrepreneurship and Small Business, and; 10) the House Committee on Small Business. See [FBI Exhibit No. 11](#). None of the addressees ever acted on their duty, obligation and within their authority to request the conduct of a lawful inquiry or investigation of FoodQuestTQ LLC allegations of the commission of felonious crimes by various employees of DHHS and the FDA.

From **November 2013 through April 2014** FoodQuestTQ LLC provided the Inspector General (IG) of the Department of Health and Human Services (DHHS) correspondence and e-mails alleging the commission of felonious crimes by various employees of the DHHS and FDA. FoodQuestTQ LLC assured that the IG-DHHS did, in fact, receive and was in possession of these documents. See [FBI Exhibit No. 70](#). To the best of FoodQuestTQ LLC's knowledge the IG-DHHS failed to act on his direct authority and obligation to initiate an investigation of the FoodQuestTQ matter.

From **January 2013 through February 2014**, the FoodQuestTQ LLC sent numerous pieces of correspondence to the most senior officials at the FDA and DHHS alleging in writing the commission of felonious crimes by U.S. Government employees. Senior officials of the U.S. Government failed to act on their duty and under their direct authority and obligation to initiate a lawful inquiry into the FoodQuestTQ LLC matter. These senior officials include but are not limited to the Director, Office of Management and Budget (OMB), Secretary DHHS, the Commissioner FDA, Mr. Dale Berkley of the Office of General Counsel (OGC) DHHS, the Chief Counsel FDA and the Director Office of Procurement and Grant Services of the FDA. See [FBI Exhibit No. 5](#) ; [FBI Exhibit No. 12](#), and; [FBI Exhibit No. 71](#).

Over the period **January 2013 to June 2014**, former Secretary of the Department of Health and Human Services (DHHS), Ms. Kathleen Sebelius, was repeatedly informed by correspondence from FoodQuestTQ LLC of the commission of felonious crimes by U.S. Government employees. See [FBI Exhibit No. 12](#). Ms. Sebelius failed to act on her duty, obligation and direct authority to properly investigate the commission of the felonious crimes by U.S. Government employees of the DHHS and FDA.

Over the period **January 2013 to the present time**, Dr. Margaret Hamburg, Commissioner FDA, was repeatedly informed by correspondence initiated by FoodQuestTQ LLC of the commission of felonious crimes by U.S. Government employees of the FDA. Dr. Hamburg failed to act within her duty, obligation and direct authority to initiate a lawful investigation of allegations that felonious crimes by U.S. Government employees were being committed. See [FBI Exhibit No. 12](#) for "ccs" of letters sent to FDA Commissioner Dr. Margaret Hamburg by FoodQuestTQ LLC. Also see [FBI Exhibit No. 72](#) for the FoodQuestTQ LLC letters that were sent directly to FDA Commissioner Hamburg informing her of the commission of felonious crimes by employees of the FDA.

Over the period **January 2013 to the present time**, Mr. Walter Shaub, Director of the Office of Government Ethics, was informed by FoodQuestTQ LLC of the commission of felonious crimes by U.S. Government employees of DHHS and FDA. Mr. Shaub failed to act within his duty, obligation and direct authority to refer the matter for the lawful investigation of the alleged commission of the felonious crimes by U.S. Government employees. See [FBI Exhibit No. 73](#).

In **January 2013**, written allegations of the commission of felonious crimes by various employees of the FDA were provided directly to Ms. Elizabeth Dickinson, Chief Counsel of the FDA. FoodQuestTQ LLC alleges that Ms. Dickinson and her staff counsel, Ms. Ariel Seeley, did, in fact, act to conceal the commission of felonies by FDA employees. Ms. Dickinson and Ms. Seeley abandoned their duty of good faith and fair dealing in order to mount a legal defense of the FDA officials alleged to be involved in felonious activities in the matter of FoodQuestTQ LLC. See [FBI Exhibit No. 5](#).

In **March 2013**, written allegations of the commission of felonious crimes by various employees of the FDA were provided directly to Mr. Dale Berkley. FoodQuestTQ LLC alleges that Mr. Berkley did, in fact, act to conceal the commission of felonies by FDA employees by abandoning his duty of good faith and

fair dealing in order to mount a legal defense of the Food and Drug Administration officials alleged to be involved in criminal activities in the matter of FoodQuestTQ LLC. See [FBI Exhibit No. 5.](#)

XIV. HOW THE U.S. GOVERNMENT MISAPPROPRIATED FOODQUESTTQ LLC INTELLECTUAL PROPERTY

The misappropriation of intellectual property by the U.S. Government in the matter of FoodQuestTQ LLC took three forms: 1) copyright infringement; 2) patent infringement, and; 3) theft of trade secrets. A complete listing of Federal intellectual property statute, law and regulation violated by the U.S. Government in the matter of FoodQuestTQ LLC appears at [FBI Exhibit No.35.](#)

The original invention disclosure upon which FoodQuestTQ LLC's food risk management software tools was based was published by the United States Patent and Trademarks Office (USPTO) in **2003**, and has been widely available to the U.S. interagency community since that time. A copy of the invention disclosure published by the USPTO appears at [FBI Exhibit No. 38.](#) In **August of 2006**, The George Washington University published the doctoral dissertation research upon which FoodQuestTQ LLC's food risk management tools were based. A copy of the doctoral dissertation published by The George Washington University appears at [FBI Exhibit No. 1.](#) In **July 2007**, the USPTO granted the final patent upon which FoodQuestTQ LLC's food risk management tools are based. A copy of the final patent was also published by USPTO and widely available to the U.S. Government. A copy of the final patent published by USPTO appears at [FBI Exhibit No. 52.](#) The FDA was well aware of the body of trade secrets developed by FoodQuestTQ LLC in reducing their invention to practice as the result of a series of proprietary briefings presented by FoodQuestTQ LLC to the FDA. Copies of these briefing materials appear at [FBI Exhibit No. 2.](#)

The U.S. Government had no immediate alternative to the FoodQuestTQ LLC intellectual property. The FDA and DHHS were aware that they did not possess "march-in" rights to the FoodQuestTQ LLC intellectual property because it was privately developed and owned with no involvement by the U.S. Government in its development or commercialization. Thus, FoodQuestTQ LLC alleges that the U.S. Government sponsored unlawful contracts and subcontracts with a group of "preferred" contractors to duplicate for the use by the U.S. Government and their regulated food industry the FoodQuestTQ LLC food risk management software that accomplished the same or similar purposes. By duplicating FoodQuestTQ LLC products, the FDA circumvented a large body of Federal intellectual property and procurement law. A detailed listing of Federal intellectual property and procurement law that was violated by the U.S. Government in the matter of FoodQuestTQ LLC appears at [FBI Exhibit No. 35.](#)

1. Copyright Infringement. *Copyright is a legal right that grants the creator of an original work exclusive rights to its use and distribution, for a limited time, with the intention of enabling the creator to receive compensation for their intellectual effort. Copyright is a form of intellectual property applicable to any expressible form of an idea or information that is substantive and discrete.*² In the matter of FoodQuestTQ LLC, the owners of the company created a large body of discrete and substantive expressions of their ideas and methods to structure and analyze information. These copyrighted expressions of FoodQuestTQ LLC's ideas and the structure and portrayal of information subsequently appeared in the food risk management software that was duplicated by the U.S. Government based on FoodQuestTQ LLC's previously copyrighted work.

² <http://en.wikipedia.org/wiki/Copyright>

The U.S. Government infringed on FoodQuestTQ LLC's body of copyrighted work by failing to conduct (or disregarding) the results of a due diligence copyright search. Copyright searches are conducted to avoid possible infringement on the prior copyrighted works of others.

In **2007**, the Center for Food Safety and Nutrition (CIFSAN), then headed by Dr. David Acheson (later of Leavitt Partners and now of the Acheson Group) plagiarized the copyrighted written expressions of the FoodQuestTQ LLC researcher's ideas, structure for use and portrayal of information as they appeared in his first **2003** invention disclosure, his **August 2006** doctoral dissertation and his **2007** patent. A copy of a plagiarism analysis that uses the same standards and criteria as the FDA's own Office of Research Integrity to determine plagiarism appears at [FBI Exhibit No. 39](#).

Over the period **2010** to **2013**, the FDA published four food risk management software tools that contained the prior copyrighted expressions of FoodQuestTQ LLC's ideas, structure for use and portrayal of information. A side-by-side screen shot analysis of the FDA duplicated software and the original FoodQuestTQ LLC food risk management software appears at [FBI Exhibit No. 48](#). FoodQuestTQ LLC alleges that on at least two occasions the FDA copyrighted the company's prior works as the property of the U.S. government. Copies of these FDA copyright claims appear at [FBI Exhibit No. 65](#).

2. Patent Infringement. *A patent is an intellectual property right granted by the Government of the United States of America to an inventor "to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States" for a limited time in exchange for public disclosure of the invention when the patent is granted.*³ Patent is a form of intellectual property applicable to only ideas not the expression of ideas. In the matter of FoodQuestTQ LLC, the owners of the company filed invention disclosures and were granted a utility patent in **2012** that protects the exclusivity of the use of their ideas by others for a period of 20 years from the date of the original grant of a pending patent in **2007** or until the year **2027**. The **2007** patent was a combination *data transformation* and *process methods* that seamlessly integrate data structured in specific ways with a computer driven analytical *process method* to identify and rank the significance of risk and risk countermeasures. A copy of the **2007** patent can be accessed at [FBI Exhibit No. 52](#).

The U.S. Government infringed on FoodQuestTQ LLC's patented ideas by failing to conduct (or disregarding) the results of a due diligence patent search. Patent searches are conducted to avoid possible infringement on the prior patented ideas of others.

Over the period **2010** to **2013**, the FDA published four food risk management software tools that contained the prior patented ideas of the FoodQuestTQ LLC researcher. The **2007** pending patent contained 20 seamlessly integrated claims and 101 specific objects of the invention. A detailed examination of the FoodQuestTQ LLC patented ideas that are contained in the four risk management software tools subsequently duplicated by the FDA appears at [FBI Exhibit No. 53](#).

3. Misappropriation of Trade Secrets. *A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers.*⁴ In reducing their invention to practice for application across the agricultural and food industry vertical

³ <http://www.uspto.gov/patents/>

⁴ http://en.wikipedia.org/wiki/Trade_secret

FoodQuestTQ LLC developed a body of trade secrets. FoodQuestTQ LLC's trade secrets were protected as proprietary to the company until the FDA widely published FoodQuestTQ LLC's trade secrets. Over the period **2010 to 2013**, the FDA published four food risk management software tools that contained the trade secrets of FoodQuestTQ LLC. A detailed examination of the FoodQuestTQ LLC trade secrets that are contained in the four risk management software tools duplicated by the FDA appears at [FBI Exhibit No. 42](#).

The FDA obtained access to FoodQuestTQ LLC trade secrets during several proprietary meetings that took place over the period **March 15, 2009, to February 12, 2012**. Copies of the proprietary information shared with the FDA at these meetings under promise of confidentiality appear at [FBI Exhibit No. 2](#).

XV. THE CONSTITUTIONAL IMPLICATIONS OF THE MATTER OF FOODQUESTTQ LLC

Article I, Clause 8 of the United States Constitution, known as the Copyright Clause, empowers the United States Congress: *"To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."*

In the matter of FoodQuestTQ LLC it is alleged that the Food and Drug Administration (FDA) has interfered with the FoodQuestTQ LLC researcher's exclusive right to lawfully exercise his "discoveries" as set forth in a patent granted by the United States Patent and Trademarks Office (USPTO). These discoveries include the specific systems and methods described therein to reduce the invention to practice across all industry verticals including the food industry vertical. See [FBI Exhibit No. 38](#); [FBI Exhibit No. 42](#); [FBI Exhibit No. 52](#), and; [FBI Exhibit No. 53](#).

In the matter of FoodQuestTQ LLC it is alleged that the FDA interfered with the FoodQuestTQ LLC researcher's, i.e., the original author's, right to lawfully exercise exclusive ownership of his copyrighted works that set forth expressions in writing of the results of his private research, patented and unpatented ideas and the trade secrets developed by the FoodQuestTQ LLC researcher as he reduced his invention to practice through the development of computer automated food risk management tools. See [FBI Exhibit No. 1](#); [FBI Exhibit No. 2](#); [FBI Exhibit No. 39](#); [FBI Exhibit No. 40](#); [FBI Exhibit No. 41](#); [FBI Exhibit No. 42](#); [FBI Exhibit No. 44](#); [FBI Exhibit No. 48](#); [FBI Exhibit No. 55](#), and; [FBI Exhibit No. 66](#). It is further alleged that the FDA copyrighted as the original works of the U.S. Government, the author's previously copyrighted works. See [FBI Exhibit No. 65](#).

It is also alleged that the FDA and DHHS acquired and then misappropriated the patented and unpatented ideas and proprietary trade secrets shared with the FDA in copyrighted FoodQuestTQ LLC materials that expressed in written form the FoodQuestTQ LLC researcher's patented and unpatented ideas and proprietary trade secrets including a formal written proposal, a series of verbal and visual briefings and in written documents over the three year period 2009 to 2012. See [FBI Exhibit No. 1](#); [FBI Exhibit No. 2](#); [FBI Exhibit No. 38](#); [FBI Exhibit No. 40](#); [FBI Exhibit No. 41](#); [FBI Exhibit No. 43](#); [FBI Exhibit No. 44](#); [FBI Exhibit No. 52](#), and; [FBI Exhibit No. 66](#).

The "takings" clause of the Fifth Amendment to the United States Constitution guides the U.S. Government exercise of the power of eminent domain by requiring that "just compensation" be paid if private property is taken for public use. The owner of the property that is taken by the U.S. Government must be justly compensated.

FoodQuestTQ LLC alleges that its privately funded research, patented and unpatented ideas and trade secrets as expressed in the FoodQuestTQ LLC researcher's proprietary and copyrighted information misappropriated by the Food and Drug Administration can be applied across all industry verticals not just the food vertical making the fair market value of plaintiff's research, patented and unpatented ideas and trade secrets quite substantial. See [FBI Exhibit No. 36](#); [FBI Exhibit No. 37](#), and [FBI Exhibit No. 67](#).

FoodQuestTQ LLC further alleges that the FDA misappropriated, used and then widely published on their official U.S. Government website the results of the FoodQuestTQ LLC researcher's privately funded research, patented and unpatented ideas and trade secrets. The publication of FoodQuestTQ LLC's proprietary and copyrighted trade secret information has compromised the future commercial potential of the FoodQuestTQ LLC researcher's privately funded research, patented and unpatented ideas and trade secrets across all industry verticals.

XVI. INVESTIGATIVE TRIPWIRES PRESENTED CHRONOLOGICALLY

1. **Original 2003 invention disclosure.** The first public description of the FoodQuestTQ LLC researcher's ideas was published by the United States Patent and Trademarks Office (USPTO). The invention disclosure contains information that later appears in the FDA National Food Protection Plan and the food risk management software duplicated by the FDA. A copy of the original invention disclosure can be accessed at [FBI Exhibit No. 38](#).

2. **2003 to 2007 interagency review.** Because the Chief Science Officer of FoodQuestTQ LLC held prior positions of sensitivity in the U.S. Government his invention disclosures and patent filings were subjected to a lengthy and exhaustive USPTO mandated review by the U.S. Federal Government interagency community. Exhaustive reviews of the patent were undertaken by the same elements of the Department of Defense (DOD) where the funding to duplicate FoodQuestTQ LLC food defense plan builder tools originated under a Military Interdepartmental Procurement Request (MIPR). A copy of the document showing the Federal agencies and dates of review appear at [FBI Exhibit No. 54](#).

3. **August 2006 doctoral dissertation.** The George Washington University published the copyrighted research of the FoodQuestTQ LLC Chief Science Officer. The research contained information that later appeared in the FDA National Food Protection Plan and the FoodQuestTQ LLC food risk management software duplicated by the FDA. An appendix to the dissertation specifically addresses the food supply. A copy of the doctoral dissertation appears at [FBI Exhibit No. 1](#). A plagiarism examination of the original research and the subsequent National Food Protection Plan appears at [FBI Exhibit No. 39](#).

4. **July 2007 USPTO pending patent.** In 2007, USPTO granted the status of pending patent to a new patent filing by the FoodQuestTQ LLC researcher that referenced his earlier 2003 invention disclosure. Information contained in the pending patent later appeared in the FDA National Food Protection Plan and the FoodQuestTQ LLC food risk management software duplicated by the FDA. A copy of the 2007 patent filing appears at [FBI Exhibit No. 52](#). An examination of the FoodQuestTQ LLC information that subsequently appeared in the FDA National Food Protection Plan and the food risk management software duplicated by the FDA appears at [FBI Exhibit No. 42](#).

5. **November 2007 FDA National Food Protection Plan.** FDA's Center for Food Safety and Nutrition (CFSAN) and its interim Director, Dr. David Acheson, published the FDA National Food Protection Plan. A plagiarism examination of the FoodQuestTQ LLC Chief Science Officer's research and the FDA's subsequent National Food Protection Plan using the same standards as the FDA's own Office of Research Integrity appears at [FBI Exhibit No. 39](#).

6. **November 2007 FDA software tool for food defense.** FDA's Center for Food Safety and Nutrition (CFSAN) and its interim Director, Dr. David Acheson, published a computer software questionnaire that contained FoodQuestTQ LLC's ideas to produce computer food risk management tools. A copy of the **November 2007** FDA food defense questionnaire can be accessed at [FBI Exhibit No. 55](#).

7. **March 2009 through October 2012, Demonstrations and Briefings to the FDA.** During this time period, FDA officials received four proprietary briefings of their research and ideas including demonstrations of FoodQuestTQ LLC food risk management tools. The ideas and information contained in these briefings later appeared in the FoodQuestTQ LLC food risk management software duplicated by the FDA. Copies of these proprietary FoodQuestTQ LLC briefings appear at [FBI Exhibit No. 2](#).

8. **March 15, 2009, unsolicited proposal.** On **March 15, 2009**, FoodQuestTQ LLC submitted an unsolicited proposal to the FDA's Joint Institute for Food Safety and Nutrition (JIFSAN). The unsolicited proposal was proprietary and contained ideas and expressions of those ideas that later appeared in the FoodQuestTQ LLC food risk management software duplicated by the FDA. A copy of the unsolicited proposal presented to the FDA appears at [FBI Exhibit No. 40](#).

9. **July 2012, FoodQuestTQ LLC and Leavitt Partners food group headed by Dr. David Acheson, a former FDA executive, sign a teaming agreement to jointly provide services to the food industry.** At the time this agreement was signed FoodQuestTQ LLC was not aware of any contract or subcontract relationships between Dr. Acheson and his Leavitt Partners colleague Dr. Jennifer McEntire with the FDA. At that time, FoodQuestTQ LLC was not aware that Dr. Acheson was responsible for preparing the **November 2007 National Food Protection Plan** while he served as the FDA Interim Director of the Center for Food Safety and Nutrition (CFSAN). A copy of the agreement between FoodQuestTQ LLC and Leavitt Partners appears at [FBI Exhibit No. 23](#).

10. **December 12, 2012, meeting at the Grocery Manufacturer's Association (GMA).** FoodQuestTQ LLC was disinvited from a food industry workshop to discuss the new FDA Food Defense Plan Builder tool. Prior to the meeting, FoodQuestTQ LLC principals advised the FDA that they were unlawfully competing with them by duplicating, for the same or similar purposes, FoodQuestTQ LLC commercial food risk management software. The FDA Food Defense Plan builder tool contains FoodQuestTQ LLC ideas. Additional information relating to the **December 12, 2012** meeting can be found at [FBI Exhibit No. 46](#).

11. **February 2013 through April 2013 FoodQuestTQ LLC interactions with the Office of Chief Counsel (OCC), FDA, the Office of the National Ombudsman (NOSB) of the Small Business Administration (SBA) and the Office of General Counsel (OGC) of the Department of Health and Human Services (DHHS).**

As more fully outlined below, during this three month period, FoodQuestTQ LLC unsuccessfully attempted to mediate the dispute with the U.S. Government.

a. **February 12, 2013**, FoodQuestTQ LLC wrote to Ms. Elizabeth Dickinson, Chief Counsel, FDA establishing contact. FoodQuestTQ LLC initially believed that the OCC-FDA intended to conduct a fair and objective review of the matter. A confirmatory FoodQuestTQ LLC letter that was sent to OCC-FDA Counsel Ms. Ariel Seeley appears at [FBI Exhibit No. 56](#).

b. **March 2, 2013**, FoodQuestTQ LLC wrote to Ms. Seeley, OCC-FDA Counsel offering to share the nuts and bolts of their technology if the FDA signed a proper Non-disclosure Agreement (NDA). A copy of the FoodQuestTQ LLC correspondence to this effect appears at [FBI Exhibit No. 5](#).

c. **March 13, 2013**, Ms. Seeley, OCC-FDA Counsel sent an e-mail to FoodQuestTQ LLC informing them that they are not interested in considering any information regarding FoodQuestTQ LLC ideas that were used by the FDA to duplicate FoodQuestTQ LLC's risk management software products. A copy of this e-mail appears at [FBI Exhibit No. 5](#).

d. **March 14, 2013**, FoodQuestTQ LLC wrote to Ms. Seeley, OCC-FDA Counsel raising serious questions about the FDA decision to refuse to consider information necessary to fairly resolve the dispute. The letter also agreed to an NDA with four requested modifications. A copy of the FoodQuestTQ LLC correspondence to this effect appears at [FBI Exhibit No. 5](#).

e. **March 18, 2013**, FoodQuestTQ LLC filed a complaint with the National Ombudsman for Small Business (NOSB) of the Small Business Administration (SBA). In their complaint to the NOSB-SBA FoodQuestTQ LLC requested the intervention of the NOSB-SBA to assure the conduct of a fair and objective review of the FoodQuestTQ LLC matter. A copy of the case summary and briefing presented by FoodQuestTQ LLC as part of their formal complaint to the NOSB-SBA appears at [FBI Exhibit No. 6](#).

f. **March 19, 2013**, FoodQuestTQ LLC wrote an e-mail to Ms. Ellie Zahirieh of the Office of National Ombudsman for Small Business (NOSB) of the Small Business Administration (SBA). The e-mail expressed serious concerns that the real intention of the FDA was to disregard FoodQuestTQ LLC concerns in favor of defending the agency's wrongdoing. A copy of this e-mail appears at [FBI Exhibit No. 57](#).

g. **March 22, 2013**, Ms. Seeley, OCC-FDA Counsel sends an e-mail to FoodQuestTQ LLC informing them that she and a colleague, Mr. Dale Berkley are attorneys representing DHHS and the FDA. FoodQuestTQ LLC believes that OCC-FDA has abandoned their duty of good faith and fair dealing to mediate the dispute in favor of a legal defense of the agency. A copy of this e-mail appears at [FBI Exhibit No. 5](#).

h. **March 27, 2013**, FoodQuestTQ LLC received a letter from Mr. Dale Berkley of the Office of General Counsel (OGC) of the Department of Health and Human Services (DHHS). In the letter Mr. Berkley takes "...exception to your characterization of Ms. Seeley's recent email to you as 'threatening,' and your suggestion that our agency does not intend to investigate your allegations of 'wrongdoing.'

Neither of your statements is true or the least bit accurate.” A copy of Mr. Berkley’s letter to FoodQuestTQ LLC and the company’s response appears at [FBI Exhibit No. 58](#).

i. **March 27 to April 26, 2013**, OGC-DHHS lead counsel, Mr. Dale Berkley, conducted an investigation of the FoodQuestTQ LLC matter with no further inputs from or interactions with FoodQuestTQ LLC principals. On **April 26, 2013**, Mr. Berkley OGC-DHHS sent FoodQuestTQ LLC a letter dismissing the matter stating that: 1) FoodQuestTQ LLC failed to cooperate in their investigation; 2) they could find no evidence of wrongdoing, and; 3) no laws were broken. A copy of this letter appears at [FBI Exhibit No. 7](#).

j. **April 16, 2013**, FoodQuestTQ LLC received a letter from Leavitt Partners terminating their teaming agreement with FoodQuestTQ LLC that was signed in **July 2012**. A copy of this letter and the FoodQuestTQ LLC response appear at [FBI Exhibit No. 59](#). At that time FoodQuestTQ LLC was unaware of the FDA interview of Dr. Acheson. A copy of the FDA memorandum describing their interview with Dr. Acheson appears at [FBI Exhibit No. 60](#).

12. **April 17, 2013**, FoodQuestTQ LLC filed a complaint with the Office of Government Ethics that the FDA and DHHS were violating Federal Law. The Office of Government Ethics (OGE) wrote FoodQuestTQ LLC an e-mail stating that ethics violations at the FDA and DHHS are not OGE’s responsibility. A copy of the FoodQuestTQ LLC complaint and the OGE response e-mail can be found at [FBI Exhibit No. 9](#).

13. **April 26, 2013**, FoodQuestTQ LLC received a letter from Mr. Dale Berkley of the OGC-DHHS reporting the results of his own investigation of the FoodQuestTQ LLC matter. The report dismisses the FoodQuestTQ LLC matter stating that: 1) FoodQuestTQ LLC failed to cooperate in their investigation; 2) they could find no evidence of wrongdoing, and; 3) no laws were broken. A copy of the OGC-DHHS results of investigation appears at [FBI Exhibit No. 7](#).

14. **April 29, 2013**, the FDA wrote a letter to the Office of the National Ombudsman for Small Business (NOSB) of the Small Business Administration (SBA) providing details of an FDA interview conducted with Dr. David Acheson of Leavitt Partners. The letter states that Ms. Laurie Lenkel, FDA Ombudsman for Small Business and Mr. Andrew Moss, Deputy Ombudsman, contacted Dr. Acheson to determine if FoodQuestTQ LLC was being “blacklisted” by FDA or the food industry. They reported that Dr. Acheson provided them with no evidence that FoodQuestTQ LLC was being blacklisted. FoodQuestTQ responded to the NOSB, SBA. A copy of this correspondence appears at [FBI Exhibit No. 60](#).

15. **May 2013**, FoodQuestTQ LLC published a technical paper that contains an extensive case study of the dispute between FoodQuestTQ LLC and the U.S. Government that responds to the DHHS dismissal of the FoodQuestTQ LLC matter. The case study received wide distribution throughout the Executive Branch and Congress. A copy of the case study appears at [FBI Exhibit No. 11](#).

16. **May 29, 2013**, FoodQuestTQ LLC writes another of several letters to Mr. Walter Shaub of the U.S. Office of Government Ethics (OGE) reporting criminal conduct at the FDA. FoodQuestTQ LLC principals request that OGE conduct a policy oversight review of alleged violations of U.S. Government ethics rules by FDA and DHHS. Copies of these letters appear at [FBI Exhibit No. 9](#).

17. In **November 2013**, the National Ombudsman of the Small Business Administration (NOSB-SBA), after repeated expressions of concern by FoodQuestTQ LLC of retaliation, referred the matter to the Office of Inspector General (OIG), DHHS for possible investigation. To the knowledge of FoodQuestTQ LLC, no OIG-DHHS investigation of the matter was conducted. A copy of the letter of referral from the NOSB-SBA to the OIG-DHHS appears at [FBI Exhibit No. 13.](#)

18. From **January 2014 to the current time** FoodQuestTQ LLC filed numerous Freedom of Information Act requests. On at least six occasions, the FDA and DHHS intentionally deceived FoodQuestTQ LLC to hide the existence of documents in order to prevent their release and spoliated evidence. A copy of a document that describes the actions of the FDA to prevent the release of information and spoliates evidence in violation of Title 5 U.S.C. §552 (the Freedom of Information Act) appears at [FBI Exhibit No. 61.](#) A detailed computer library of FoodQuestTQ LLC interactions with DHHS and FDA relating to Title 5 U.S.C. §552 appears at [FBI Exhibit No. 14.](#)

19. **May 20, 2014**, FoodQuestTQ LLC holds a go-to-meeting with Ms. Petra Wissenburg of the Danone food organization who was serving as the Chairwoman of the "GFSI Food Fraud Think Tank." Ms. Wissenburg informed FoodQuestTQ LLC principals that her food industry colleagues from SSAFE did not want to work with FoodQuestTQ LLC because of the company's dispute with the FDA. A memorandum to the record appears at [FBI Exhibit No. 62.](#)

20. **May 28, 2014**, FoodQuestTQ LLC wrote the first of five letters to Ms. Miriam Nisbet, Director, Office of Government Information Services of the National Archives reporting serious irregularities in the management of Title 5 U.S.C. §552 (the Freedom of information Act) by the DHHS and FDA in the matter of FoodQuestTQ LLC. (Federal Records Act of 1950). Copies of these letters appear at [FBI Exhibit No. 15.](#)

21. **June 2014**, DHHS revealed that the search for records under the FOIA was tainted because the DHHS and the FDA allowed the same employees implicated in the matter in the first place to search their own computers for possible evidence of their own wrongdoing. As a result of the spoliation of evidence hundreds of requested documents cannot be found. A copy of the letter indicating that FDA employees were allowed to search their own e-mail records for evidence of their own alleged criminal wrongdoing appears at [FBI Exhibit No. 63.](#)

22. **June 25, 2014**, FoodQuestTQ LLC wrote a letter to the Federal Bureau of Investigation (FBI) reporting their belief that federal crimes were taking place involving U.S. Government employees and requesting that the FBI intervene to prevent the further destruction of potential evidence. A copy of this letter appears at [FBI Exhibit No. 17.](#)

23. **June of 2014**, FoodQuestTQ LLC filed formal complaints with the Federal Trade Commission (FTC), the Antitrust Division of the U.S. Department of Justice, and; the Federal Bureau of Investigation, of the alleged violations of Federal law by the U.S. Government in the matter of FoodQuestTQ LLC. The FoodQuestTQ LLC letter requesting an FBI investigation appears at [FBI Exhibit No. 17.](#) The FoodQuestTQ LLC letter of complaint to the Commissioner of the FTC appears at [FBI Exhibit No. 18.](#)

24. July 2014, FoodQuestTQ LLC filed three antitrust complaints based on a report that the Global Food Safety Initiative (GFSI), SSAFE and their food industry partners were actively “blacklisting” FoodQuestTQ LLC in violation of federal antitrust laws based on the dispute with FDA. Copies of these complaint letters appear at [FBI Exhibit No. 19](#).

25. As of August 14, 2014, FoodQuestTQ LLC requested that the FBI, the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice conduct a criminal investigation of the FoodQuestTQ LLC matter. These investigations are pending. Copies of these requests for investigation appear at [FBI Exhibit No 18](#); [FBI Exhibit No. 19](#) and [FBI Exhibit 20](#).

26. On September 12, 2014, FoodQuestTQ LLC discovered that the on-line videotape where the FDA endorsed Tyco Integrated Security Systems was removed from public display. FoodQuestTQ LLC alleges that the removal of this videotape from public display is another action by the FDA in collusion with Tyco Integrated systems to prevent the public disclosure of violations of Federal procurement and procurement integrity law.

27. As of September 2014, FDA and HHS continue to provide duplicate versions of the small company’s food risk management software to the FDA regulated food industry free of charge thus driving FoodQuestTQ LLC out of business. FoodQuestTQ LLC has been “blacklisted” within the food industry as punishment for reporting FDA fraud, waste and abuse to the National Ombudsman for Small Business. Copies of related documents appear at [FBI Exhibit No. 21](#).

XVII. LIST OF FBI EXHIBITS

1. [Doctoral dissertation](#), The Complexity Systems Management Method, **August 2006**.
2. [Proprietary briefings](#) presented to the FDA by FoodQuestTQ LLC.
3. [FDA announcement](#) of the release of Food Defense Plan Builder.
4. [Documents](#) related to the **December 12, 2012**, meeting at the Grocery Manufacturer’s Association.
5. [Correspondence](#) between FoodQuestTQ LLC and the Office of Chief Counsel, FDA.
6. [FoodQuestTQ LLC complaint](#) to the National Ombudsman for Small Business, Small Business Administration
7. Office of General Counsel, Department of Health and Human Services, results of [investigation](#) dated **April 26, 2013**.
8. DHHS and FDA [refusal to consider evidence](#) offered by FoodQuestTQ LLC.
9. FoodQuestTQ LLC [letters to Mr. Straub](#), Office of Government Ethics, and related correspondence.

10. Title 5 U.S.C. §552 (Freedom of Information Act) [denial of FoodQuestTQ LLC request for records](#) relating to the DHHS investigation.
11. FoodQuestTQ LLC [case study](#) of dispute with FDA.
12. [Letters to the Secretary of Health and Human Services](#) asking to meet with FDA officials to mediate the dispute.
13. [Letter of referral](#) from the National Ombudsman for Small Business (NOSB), Small Business Administration (SBA) to the Inspector General (IG) Department of Health and Human Services (DHHS).
14. [Computer library](#) of FoodQuestTQ LLC interactions with DHHS and FDA relating to Title 5 U.S.C. §552 (the Freedom of Information Act).
15. [Letters to Ms. Miriam Nisbet](#), Director, Office of Government Information Services of the National Archives.
16. Department of Health and Human Services [letter](#) indicating that FDA employees were allowed to search their own e-mail records for evidence of their own alleged criminal wrongdoing.
17. FoodQuestTQ LLC [letter to the FBI](#) requesting an investigation.
18. FoodQuestTQ LLC [letter of complaint to the Commissioner of the FTC](#).
19. [Sherman Antitrust complaint letters](#) re: anticompetitive conduct against FoodQuestTQ LLC by FDA and the food industry.
20. FoodQuestTQ LLC request for the Antitrust Division of the U.S. Department of Justice to conduct a [criminal investigation](#) of the FoodQuestTQ LLC matter.
21. FoodQuestTQ LLC [letters to the Honorable Sylvia Mathews Burwell](#).
22. Food and Drug Administration (FDA) [National Food Protection Plan](#), **November 2007**.
23. [Teaming agreement](#) between Leavitt Partners and FoodQuestTQ LLC, **July 2012**.
24. [U.S. Government contract document](#) for the procurement of the FDA Food Defense Plan Builder tool.
25. [FDA endorsement](#) of Tyco Integrated Security Systems.
26. Use of [intimidation](#) by the U.S. Government against FoodQuestTQ LLC.

27. Use of [coercion](#) by the U.S. Government against FoodQuestTQ LLC.
28. Use of [extortion](#) by the U.S. Government against FoodQuestTQ LLC.
29. National Ombudsman for Small Business (NOSB), Small Business Administration (SBA) [zero tolerance policy](#) for retaliation.
30. [Unlawful FDA-DHHS investigation](#) of the FoodQuestTQ LLC matter.
31. FDA-DHHS [resist mediation of the dispute](#) to force the matter down the narrow legal pathway of an expensive and protracted lawsuit against the U.S. Government.
32. Screen shot examples of [industry computer sign in log](#) for the use of FDA food risk management tool.
33. FoodQuestTQ LLC [warnings that FDA employees were obstructing justice](#) by violating Title 5 U.S.C. §552 (Freedom of Information Act).
34. FoodQuestTQ LLC [response to the U.S. Government denial of Ms. Jackson's e-mails](#) as requested under Title 5 U.S.C. §552 (Freedom of Information Act).
35. [Federal statutes, laws and regulations violated by the U.S. Government](#) in the matter of FoodQuestTQ LLC.
36. [Certified Public Accountant \(CPA\) fair market analysis](#) of FoodQuestTQ LLC's food risk management technology as of 2011.
37. Listing of the [different applications of the platform technology](#) upon which FoodQuestTQ LLC tools rely across other industry verticals.
38. [First invention disclosure](#) by FoodQuestTQ LLC research scientist to USPTO in 2003.
39. [Plagiarism analysis](#) of doctoral dissertation and FDA [National Food Protection Plan](#).
40. [Unsolicited proposal](#) presented to the FDA Joint Institute for Food Safety and Nutrition (JIFSAN) on **March 25, 2009**.
41. [Proprietary briefing materials](#) presented to the FDA Joint Institute for Food Safety and Nutrition (JIFSAN) prior to submitting and following the rejection of the unsolicited proposal.
42. [Analysis of FoodQuestTQ LLC intellectual property](#) appearing in FDA duplicate food risk management tools.

43. FoodQuestTQ LLC [June 2011 demonstration](#) for the FDA Food Defense Team.
44. Proprietary FoodQuestTQ LLC briefing documents provided to the FDA as part of [February 2012 briefing](#).
45. Non-proprietary FoodQuestTQ LLC briefing documents provided to the FDA as part of [October 2, 2012 briefing](#).
46. [December 12, 2012, meeting](#) at the Grocery Manufacturer's Association (GMA).
47. [Contact information for Mr. Warren Stone](#) at the Grocery Manufacturer's Association (GMA).
48. [Screen by screen analysis](#) of the original FoodQuestTQ LLC software and the FDA duplicate Food Defense Plan Builder tool.
49. [The FDA was aware](#) that they were duplicating FoodQuestTQ LLC commercial products.
50. FoodQuestTQ LLC [correspondence](#) informing Mr. Berkley of alleged felonious conduct in the FDA.
51. [FDA statement](#) that the products duplicated by the U.S. Government are not as sophisticated as those produced by FoodQuestTQ LLC.
52. [Final FoodQuestTQ LLC patent](#) as published by USPTO in **July 2007**.
53. [FoodQuestTQ LLC patented ideas](#) that are contained in duplicate FDA products
54. [Federal interagency review](#) of FoodQuestTQ patent and copyrighted expressions of the patent.
55. **November 2007** [FDA computer automated food defense questionnaire](#).
56. [Confirmatory FoodQuestTQ LLC letter](#) sent to OCC-FDA Counsel Ms. Ariel Seeley.
57. [E-mail to Ms. Ellie Zahirieh](#) of the Office of National Ombudsman for Small Business (NOSB), Small Business Administration (SBA).
58. [Letter to FoodQuestTQ LLC from Mr. Dale Berkley](#) of the Office of General Counsel (OGC) of the Department of Health and Human Services (DHHS) and the FoodQuestTQ LLC response.
59. [Letter from Leavitt Partners](#) terminating their teaming agreement and the FoodQuestTQ LLC response.
60. [FDA interview with Dr. David Acheson](#), Leavitt Partners and FoodQuestTQ LLC response to NOSB, SBA.

61. FDA actions to prevent the release of information and [spoliate evidence](#) in violation of Title 5 U.S.C. §552 (the Freedom of Information Act).
62. [Memorandum for record](#) that Ms. Petra Wissenburg informed FoodQuestTQ LLC principals that her GFSI food industry colleagues did not want to work with FoodQuestTQ LLC because of the ongoing dispute with the FDA.
63. Letter indicating that [FDA employees were allowed to search their own e-mail records](#) for evidence of their own alleged criminal wrongdoing.
64. [General Services Administration \(GSA\)](#) explanation of the procurement safeguards in place to protect small businesses from direct Federal Government competition.
65. Screen shots of [FDA copyrights](#) of iRisk and the Food Defense Plan Builder tool.
66. [April 8, 2009, briefing materials](#) for meeting with the FDA Food Defense Team.
67. July 13, 2004, Potomac Foundation [Navigator Award](#).
68. June 16, 2011, [Deloitte and Touche technical analysis](#) of the functionality and effectiveness of the FoodQuestTQ LLC technology.
69. [Correspondence between FoodQuestTQ LLC and the NOSB-SBA](#).
70. FoodQuestTQ LLC assures the [OIG DHHS is in receipt of their allegations of felonious crimes](#) being committed by FDA and DHHS employees.
71. Alleged [misprision of felony](#) by Ms. Sylvia Mathews Burwell and Ms. Nancy Gunderson.
72. [FoodQuestTQ LLC letters](#) that were sent directly to FDA Commissioner Hamburg informing her of the commission of felonious crimes by the FDA.
73. [Mr. Walter Shaub](#), Director of the Office of Government Ethics, was informed by FoodQuestTQ LLC of the commission of felonious crimes by U.S. Government employees of DHHS and FDA.
74. [Violation of the confidentiality provisions of Title 18 U.S.C.](#)
75. [Regulatory capture of the FDA](#) by the U.S. food industry.
76. The [FoodQuestTQ LLC suite of specialized food risk management tools](#).
77. [FDA infringes on FoodQuestTQ LLC researcher's USPTO granted patent](#).
78. [FDA infringes on FoodQuestTQ LLC copyrighted works](#).

79. [FDA misappropriates FoodQuestTQ LLC trade secrets.](#)
80. [February 19, 2014, FoodQuestTQ LLC letter to the Inspector General \(IG\)](#) of the Department of Health and Human Services DHHS)
81. [Battelle Memorial Institute \(FFRDC\) description of subcontracting](#)

XVIII. U.S. GOVERNMENT AND CONTRACTOR PERSONNEL MOST DIRECTLY INVOLVED IN THE FOODQUESTTQ LLC MATTER

Name	Position	Role
Mr. Jody Menikheim	Head of the FDA Food Defense Team	Competes directly with FoodQuestTQ by duplicating tools
Ms. Leanne Jackson	Member of the FDA Food Defense Team	Blacklisting and spoliation of evidence
Mr. Colin Barthel		Former Battelle contractor to FDA Food Defense Team; after the duplication of FoodQuestTQ tools hired by Mr. Menikheim as an FDA employee
Ms. Elizabeth Dickinson	FDA Chief Counsel	Abandons her duty of good faith and fair dealing in favor of a legal defense of her agency; colludes in the conduct of an unlawful investigation
Ms. Ariel Seeley	FDA Staff Counsel	Abandons her duty of good faith and fair dealing in favor of a legal defense of her agency; colludes in the conduct of an unlawful investigation
Mr. Dale Berkley	Lead OGC-DHHS Counsel	Abandons his duty of good faith and fair dealing in favor of a legal defense of his agency; engages in actual conflict of interest; conducts an unlawful investigation to obstruct justice.
Ms. Nancy Gunderson	Deputy Assistant Secretary Office of Grants and Acquisition Policy and Accountability	Failure to oversee and legally implement procurement law; misprision of felony

Dr. David Acheson	Former Director of Food Safety at Leavitt Partners; currently head of the Acheson Group	Former interim Director of CIFSAN responsible for developing the FDA <u>National Food Protection Plan</u> that plagiarizes FoodQuestTQ research
Dr. Jennifer McEntire	Formerly a researcher at Leavitt Partners; currently Chief Science Officer at the Acheson Group	Assisted the FDA in the development of duplicate FoodQuestTQ tools; had access to FoodQuestTQ proprietary information; allowed to attend FDA December 12 th meeting at the exclusion of FoodQuestTQ
Mr. Donald Hsieh	Director of Commercial and Industrial Marketing	Direct competitor to FoodQuestTQ; developed food defense videotape in which FDA tacitly endorses Tyco Integrated Security Systems; allowed to attend FDA December 12 th meeting at the exclusion of FoodQuestTQ
Mr. Walter Shaub	Director U.S. Office of Government Ethics (OGE)	When FoodQuestTQ reports violations of procurement integrity and ethics laws Mr. Straub reports that investigating ethical violations is not his responsibility; he suggests that FoodQuestTQ contact the FBI; misprision of felony
Mr. Brian Castro	National Ombudsman for Small Business (NOSB, SBA)	Finally refers case to OIG-HHS after FoodQuestTQ issues e-mail blasts that NOSB cannot be trusted to protect small businesses from retaliation as they promise at their web site
Ms. Sylvia Mathews-Burwell	Former Director Office of Management and Budget and current Secretary DHHS	Made aware of DHHS-FDA actions in FoodQuestTQ while Director OMB and does not act; does not respond to FoodQuestTQ LLC letter in her new position as Secretary DHHS; misprision of felony
Ms. Kathleen Sebelius	Former Secretary DHHS	Receives but does not respond to seven letters from FoodQuestTQ requesting the opportunity for a meeting to mediate the dispute; misprision of felony
Dr. Margaret Hamburg	Current Commissioner of the FDA	FoodQuestTQ writes to Dr. Hamburg for a meeting but she never responds; misprision of felony

XIX. QUESTIONS TO GUIDE AN INVESTIGATION OF THE FOODQUESTTQ LLC MATTER

A. The U.S. Government identified FoodQuestTQ LLC's research and suite of commercial food risk management tools as a matter of interest to the food safety mission of the FDA.

1. Ms. Burwell, does the FDA have mission responsibilities for protecting the U.S. food supply?
 - a. Yes?
 - b. No?
2. Ms. Burwell, for FY 2013 what will FDA spend on food safety and food defense activities?
 - a. \$ _____
3. Ms. Burwell, what are the FDA's current statutory responsibilities (including those arising from Executive Orders) for food safety and food defense?
 - a. _____
4. Ms. Burwell, does the FDA build computer software tools to enhance the safety of the food supply as part of your Agency's mission as described in the National Food Protection Plan?
 - a. Yes?
 - b. No?
5. Ms. Burwell, how many FDA personnel are currently members of the Agency's Food Defense Team?
 - a. _____
6. Ms. Gunderson, did the FDA Center for Food Safety and Nutrition (CIFSAN) accept and review an unsolicited FoodQuestTQ LLC proposal in March 2009 for enhancing the safety of the food supply?
 - a. Yes?
 - b. No?
- 7) Ms. Burwell, how many briefings have FDA officials received from FoodQuestTQ LLC personnel over the period 2009 to the present time?
 - a. _____

B. The U.S. Government then circumvented a large and long-standing body of procurement law in order to duplicate, for U.S. Government purposes, the same and or similar food risk management tools originally developed for commercial sale by FoodQuestTQ LLC.

1) Mr. Menikheim, was the FDA Office of Procurement and Grant Services consulted before the FDA Food Defense Team began to build Food Defense Plan Builder?

- a. Yes?
- b. No?

2) Mr. Menikheim, did the FDA Office of Procurement and Grant Services (OAGS) concur on the decision to build the FDA Food Defense Plan Builder tool?

- a. Yes?
- b. No?

3) Mr. Menikheim, if so, could you please provide a copy of the signed or initialed concurrence copy for the investigative record?

a. _____

4) Mr. Menikheim, was the FDA aware that FoodQuestTQ LLC already had food defense plan building tools available for commercial sale at the time you published FDA Food Defense Plan Builder tool?

- a. Yes?
- b. No?

5) Mr. Menikheim, did FoodQuestTQ principals express their concerns to you that the FDA Food Defense Planner tool was duplicating their Food DefenseTQ and Food Defense Architect food risk management tools?

- a. Yes?
- b. No?

6) Mr. Menikheim, did you and other members of the FDA Food Defense Team meet with Dr. John Hnatio, Mr. David Park, Dr. Barton Michelson and Mr. Bruce Becker to receive briefings and demonstrations of the FoodQuestTQ LLC software tools including their Food DefenseTQ and Food Defense Architect food risk management tools?

- a. Yes?
- b. No?

7) Mr. Menikheim, can you please list the dates and attendees at all meetings you had with FoodQuestTQ LLC principals?

a. _____

8) Mr. Menikheim, were the FoodQuestTQ LLC briefing materials presented during these meetings marked as containing FoodQuestTQ LLC proprietary information?

- a. Yes?
- b. No?

9) Mr. Menikheim, did FoodQuestTQ LLC offer you and the FDA a \$1 a year license for FDA employees to use the company's food risk management technology?

- a. Yes?
- b. No?

10) Mr. Menikheim, did you discuss the FoodQuestTQ LLC offer with any other officials in the DHHS or the FDA?

- a. Yes?
- b. No?

11) Mr. Menikheim, please provide a complete list of all FDA and FDA contractor personnel with whom you discussed the FoodQuestTQ LLC offer of a \$1 a year license for FDA employees to use the company's food risk management tools?

a. _____

12) Mr. Menikheim, did you confer with any other FDA official or officials about the concerns expressed to you by FoodQuestTQ LLC that the FDA was competing with their small business?

- a. Yes?
- b. No?

13) Mr. Menikheim, please provide a complete list of all FDA and FDA contractor personnel with whom you discussed FoodQuestTQ LLC concerns that the FDA was directly competing with their small business.

a. _____

14) Mr. Menikheim, did you or your staff contact Mr. Warren Stone of the Grocery Manufacturer's Association (GMA) to exclude FoodQuestTQ LLC from attending a December 12, 2012, workshop on the FDA's Food Defense Planner tool?

- a. Yes?
- b. No?

15) Mr. Menikheim, did you later state that the reason for excluding FoodQuestTQ LLC was based on concerns that this would give FoodQuestTQ LLC an unfair competitive advantage over other companies?

- a. Yes?
- b. No?

16) Mr. Menikheim, did you allow other companies that were competitors of FoodQuestTQ LLC to attend the FDA December 12, 2012 workshop?

- a. Yes?
- b. No?

17) Mr. Menikheim, was Tyco Integrated Security Systems allowed to attend the December 12th workshop?

- a. Yes?
- b. No?

18) Mr. Menikheim, was Leavitt Partners allowed to attend the December 12th workshop?

- a. Yes?
- b. No?

19) Mr. Menikheim, could you please provide a complete list of FDA, GMA and all companies that were allowed to attend the December 12, 2012, Food Defense Plan Builder workshop.

a. _____

20) Mr. Menikheim, did you instruct your prime contractor Battelle Memorial Institute that only food processing companies would be allowed to attend the December 12th Food Defense Plan Builder workshop?

- a. Yes?
- b. No?

21) Mr. Menikheim, at the time of the December 12th workshop was Tyco Integrated Security Systems under any contract or subcontract with the FDA?

- a. Yes?
- b. No?

22) Mr. Menikheim, could you please provide a copy of any such contracts or subcontracts to include as part of the investigative record?

a. _____

23) Mr. Menikheim, at the time of the December 12th workshop was Leavitt Partners under any contract or subcontract with the FDA?

- a. Yes?
- b. No?

24) Mr. Menikheim, please provide a copy of any such contracts or subcontracts for review as part of the investigative record.

a. _____

25) Mr. Menikheim, is the Acheson Group currently under any contract or subcontract with the FDA?

- a. Yes?
- b. No?

26) Mr. Menikheim, please provide a copy of any such contracts or subcontracts for review as part of the investigative record.

a. _____

27) Mr. Menikheim, Mr. were you involved in any with the hiring of Mr. Colin Barthel from Battelle Memorial Institute to join the FDA Food Defense Team?

- a. Yes?
- b. No?

28) Mr. Menikheim, if so, could you please provide a brief written and signed statement explaining exactly what your role in the hiring of Mr. Barthel was?

a. _____

29) Mr. Menikheim, did you state in front of FDA and industry witnesses that the FDA Food Defense Plan Builder was not as sophisticated as the commercial FoodQuestTQ LLC alternative for building food defense plans?

- a. Yes?
- b. No?

30) Ms. Gunderson, does the FDA follow the Federal acquisition and procurement regulations in all of their contracting activities?

- a. Yes?
- b. No?

31) Ms. Gunderson, does the FDA Office of Acquisitions and Grants Services (OAGS) agree with the guiding principles of the Federal Acquisition Regulations (FARs) to use commercial products and services whenever possible to save and maximize the use of taxpayer dollars?

- a. Yes?
- b. No?

32) Ms. Gunderson, does the FDA Office of Acquisitions and Grants Services (OAGS) maintain awareness of the capabilities of the commercial marketplace to save and maximize the use of taxpayer dollars?

- a. Yes?
- b. No?

33) Ms. Gunderson, do federal procurement and acquisition rules require FDA cost comparisons based on the availability of the same or similar products from industry before Federal Agencies build products "in house"?

- a. Yes?
- b. No?

34) Ms. Gunderson, does the FDA make reasonable cost comparisons when deciding to build products "in house" when similar products are already commercially available?

- a. Yes?
- b. No?

35) Ms. Gunderson, is the FDA Office of Acquisitions and Grant Services (OAGS) responsible for overseeing the procurement and acquisition activities of the Agency's Food Defense Team?

- a. Yes?
- b. No?

36) Ms. Gunderson, could you please provide a copy of the cost determination judgment made by the FDA Office of Acquisitions and Grant Services (OAGS) used to justify the FDA decision to build Food Defense Plan Builder "in house" when the FDA was already aware that a commercial alternative was available?

- a. _____

37) Ms. Gunderson, could you please provide a copy of the FDA Office of Acquisitions and Grant Services (OAGS) justification made before allowing subordinate FDA offices to publicly endorse Tyco Integrated Security Systems?

a. _____

38) Ms. Gunderson, did the Office of Acquisitions and Grant Services (OAGS) concur on the FDA decision to copyright Food Defense Plan Builder?

- a. Yes?
- b. No?

39) Ms. Gunderson, could you please provide a copy of the above document signed or initialed by the Office of Acquisitions and Grant Services to include as part of the investigative record.

a. _____

40) Ms. Gunderson, please provide a complete list of the names and contact information for all consultants and contractor organizations used by the FDA to develop the National Food Protection Plan, Food Defense Plan Builder, iRisk, the Food Defense Mitigation Strategies Database and the FDA FREE-B tool.

a. _____

41) Ms. Gunderson, does Tyco Integrated Systems produce software used by the food industry?

- a. Yes?
- b. No?

42) Ms. Gunderson, is Tyco Integrated Systems a competitor of FoodQuestTQ LLC?

- a. Yes?
- b. No?

43) Ms. Gunderson, is Tyco Integrated Systems a food processor or manufacturer?

- a. Yes?
- b. No?

44) Ms. Gunderson, was Tyco Integrated Systems allowed to attend the FDA sponsored workshop held at the Grocery Manufacturer's Association on December 12, 2012?

- a. Yes?
- b. No?

45) Ms. Gunderson, is or has Tyco Integrated Systems ever been a contractor or subcontractor to the Food and Drug Administration?

- a. Yes?
- b. No?

46) Ms. Gunderson, please provide a comprehensive list of all private sector companies involved in any aspect of food safety and food defense that have received public endorsements from the FDA.

- a. _____

47) Ms. Gunderson, is Leavitt Partners a food processor or manufacturer?

- a. Yes?
- b. No?

48) Ms. Gunderson, was Leavitt Partners allowed to attend the FDA sponsored workshop held at the Grocery Manufacturer's Association (GMA) on December 12th 2012?

- a. Yes?
- b. No?

49) Ms. Gunderson, is or has Leavitt partners ever been a contractor or a subcontractor to the Food and Drug Administration?

- a. Yes?
- b. No?

50) Ms. Gunderson, do federal procurement and acquisition rules require that the FDA and HHS consider the consequences of going into direct competition with small businesses?

- a. Yes?
- b. No?

51) Ms. Gunderson, when did the FDA Office of Acquisitions and Grants Services (OAGS) FDA first become aware that similar products to the FDA produced Food Defense Plan Builder, iRisk, FREE-B and the Risk Mitigation Strategies Database were already developed and being commercially sold by industry?

- a. _____

52) Ms. Gunderson, did your office concur on the April 26, 2013, HHS OGC legal opinion stating that there is no relationship between the Federal Activities Inventory (FAIR) Act [P.L. 105-270], the implementing provisions of Office of Management and Budget (OMB) Circular A-76, and the Federal Acquisition Regulations (FAR) as it relates to Federal agencies duplicating the same or similar products that are already available from industry?

- a. Yes?
- b. No?

53) Ms. Gunderson, is the development of food risk management software an inherently governmental function?

- a. Yes?
- b. No?

54) Ms. Gunderson, as part of your oversight of the FDA prime contract with Battelle Memorial Institute did your office determine that the capability to build computer automated food risk management tools was widely available from the private sector at dramatically reduced cost to the taxpayer before allowing Battelle memorial Institute to subcontract the work to Valbrea Technologies?

- a. Yes
- b. No

55) Ms. Gunderson can you please provide a copy of the dated, signed and/or initialed FDA due diligence determination justifying the in-house development of food risk management tools when FDA was already aware of industry tools that achieve the same or similar purposes?

a. _____

56) Ms. Gunderson, can you please provide a list of the names and full contact information for the FDA's contract officer (CO) and his/her contracting officer's technical representative (COTR) who oversee the FDA's contract dealings with Battelle Memorial Institute.

a. _____

57) Ms. Gunderson, do the FAIR Act and OMB Circular A-76 call for the conduct of realistic and fair cost comparisons before a Federal agency makes a determination to build non-inherently governmental products in house?

- a. Yes?
- b. No?

58) Ms. Gunderson, does the FDA Office of Acquisitions and Grants Services (OAGS) currently allow for the procurement of computer development and support work from small businesses under the Competition in Contracting Act (CICA) of 1984 (41 U.S.C. 253)?

- a. Yes?
- b. No?

59) Ms. Gunderson, can you please provide a copy of the exemption prepared by the FDA under the requirements of CICA before you let a federal contract to develop and build the Food Defense Plan Builder tool?

- a. _____

60) Ms. Gunderson, can you please provide the FDA-approved subcontracting rules that are used by Battelle Memorial Institute as a Federally Funded Research and Development Center (FFRDC) in the letting of subcontracts to preclude direct competition with small businesses?

- a. _____

61) Ms. Gunderson, does the FDA Office of Acquisitions and Grants Services (OAGS) have mechanisms to conduct "sole source" procurements when a small company owns intellectual property that the Agency considers essential to its mission?

- a. Yes?
- b. No?

62) Ms. Gunderson, did the FDA Office of Acquisitions and Grants Services (OAGS) HHS/FDA ever request a "sole source" proposal from FoodQuestTQ LLC to use their intellectual property in furtherance of the FDA's critical food safety mission?

- a. Yes?
- b. No?

63) Mr. Hsieh, does Tyco Integrated Security Systems build integrated risk management solutions for the food industry including technology integration?

- a. Yes?
- b. No?

64) Mr. Hsieh, does FoodQuestTQ LLC also build integrated risk management solutions for the food industry including computer software to integrate technology such as the best use of CCTV, access control and loss prevention?

- a. Yes?
- b. No?

65) Mr. Hsieh, did you attend the FDA sponsored industry workshop at the Grocery Manufacturer's Association held on December 12, 2012?

- a. Yes?
- b. No?

66) Mr. Hsieh, did you represent Tyco Integrated Security Systems at the FDA sponsored workshop held on December 12, 2012?

- a. Yes?
- b. No?

67) Mr. Hsieh, is Tyco Integrated Security Systems a food processor?

- a. Yes?
- b. No?

68) Mr. Hsieh, are you the Director of Commercial and Industrial Marketing at Tyco Integrated Security?

- a. Yes?
- b. No?

69) Mr. Hsieh, did you appear in a promotional film on Food Defense? [See: http://www.foodmanufacturing.com/videos/2013/04/supply-chain-security?cmpid=related_content]

- a. Yes?
- b. No?

70) Mr. Hsieh, did Mr. George Hughes of the FDA appear in the video with you?

- a. Yes?
- b. No?

71) Mr. Barthel, prior to your current position you were an employee at Battelle Memorial Institute. Is that correct?

- a. Yes?
- b. No?

72) Mr. Barthel, in your position as a Task Leader you supported Department of Defense clients. Is that correct?

- a. Yes?
- b. No?

73) Mr. Barthel, did you play any role in directing, obtaining or managing the Military Interagency Procurement Request or MIPR that was used to fund the building of the FDA Food Defense Plan Builder Tool?

- a. Yes?
- b. No?

74) Mr. Barthel, did you play any role in directing, managing or supporting in any way FDA efforts to build the Food Defense Planner tool?

- a. Yes?
- b. No?

75) Mr. Barthel, do FoodQuestTQ LLC's Food DefenseTQ and FDA's Food Defense Plan Builder food risk management tools both help food companies to build food defense plans?

- a. Yes?
- b. No?

C. The U.S. Government then turned to a small group of "preferred" U.S. Government contracted agents to internally duplicate the food risk management tools originally developed for commercial sale by FoodQuestTQ LLC.

1) Ms. Gunderson, did Tyco Integrated Security Systems play any role in the development of the FDA Food Defense Planner Builder or any other food risk management tools developed by the FDA?

- a. Yes?
- b. No?

2) Ms. Gunderson, can you please provide the contracts/subcontracts with Tyco Integrated Security Systems and the specific tasks they may have accomplished to help develop or build food risk management software tools.

a. _____

3) Ms. Gunderson, did Dr. David Acheson or Dr. Jennifer McEntire, formerly of Leavitt Partners now of the Acheson Group, play any role in the development of the FDA Food Defense Planner Builder and any other food risk management tools developed by the FDA?

- a. Yes?
- b. No?

- 4) Ms. Gunderson, can you please provide the contracts/subcontracts with Leavitt Partners and/or the Acheson Group along with the specific tasks they may have accomplished to help develop or build food risk management software tools?
- a. _____
- 5) Did the FDA use a Military Interdepartmental Procurement Request to fund the development of the FDA Food Defense Plan Builder tool?
- a. Yes?
b. No?
- 6) Ms. Gunderson could you please specify from which branch of the U.S. military or component of the Department of Defense that the funding to develop and build the Food Defense Plan Builder tool originated?
- a. _____
- 7) Ms. Gunderson, did Battelle Memorial Institute, play any role in the development of the FDA Food Defense Planner Builder and any other food risk management tools developed by the FDA?
- a. Yes?
b. No?
- 8) Ms. Gunderson, can you please provide the contracts/subcontracts with Battelle Memorial Institute and the specific tasks they may have accomplished to help develop or build food risk management software tools.
- a. _____
- 9) Ms. Gunderson, did Valbrea Technologies, play any role in the development of the FDA Food Defense Planner Builder and any other food risk management tools developed by the FDA?
- a. Yes?
b. No?
- 10) Ms. Gunderson, can you please provide the contracts/subcontracts with Valbrea Technologies and the specific tasks they may have accomplished to help develop or build food risk management software tools.
- a. _____
- 11) Dr. Acheson, before you oversaw the writing of the FDA National Food Defense Plan in 2007 did you do a literature and copyright search to make sure that the ideas and expressions in the FDA National Food Protection Plan were not plagiarizing the work of others?
- a. Yes?
b. No?

- 12) Dr. Acheson, was Leavitt Partners a consultant or under a contract or subcontract to support the FDA in building Food Defense Plan Builder?
- a. Yes?
 - b. No?
- 13) Dr. Acheson, was Leavitt Partners a consultant or under a contract or subcontract to support the FDA in building the Food Defense Mitigation Strategies Database?
- a. Yes?
 - b. No?
- 14) Dr. Acheson, was Leavitt Partners a consultant under a contract or subcontract to support the FDA in building the FREE-B tool?
- a. Yes?
 - b. No?
- 15) Dr. Acheson, did FoodQuestTQ LLC share with Leavitt Partners and Dr. Jennifer McEntire their proprietary information on the workings of their computerized risk management tools?
- a. Yes?
 - b. No?
- 16) Dr. Acheson, did you participate in a telephone interview with Ms. Laurie Lenkel and Mr. Robert Moss of the Office Small and Disadvantaged Business Utilization?
- a. Yes?
 - b. No?
- 17) Dr. Acheson, did you write a letter terminating your business relationship with FoodQuestTQ?
- a. Yes?
 - b. No?
- 18) Dr. McEntire, were you a consultant under contract or subcontract to support the FDA in building Food Defense Plan Builder?
- a. Yes?
 - b. No?
- 19) Dr. McEntire, were you a consultant under contract or subcontract to support the FDA in building the Food Defense Mitigation Strategies Database?
- a. Yes?
 - b. No?

- 20) Dr. McEntire, were you a consultant under contract or subcontract to support the FDA in building FREE-B?
- a. Yes?
 - b. No?
- 21) Dr. McEntire, did FoodQuestTQ LLC share with Leavitt Partners and Dr. Jennifer McEntire their proprietary information on the workings of their computerized risk management tools?
- a. Yes?
 - b. No?
- 22) Mr. Castro, do you believe that federal agencies should be competing directly against small businesses for work that involves non-inherently governmental functions?
- a. Yes?
 - b. No?
- 23) Mr. Castro, are you familiar with the April 26, 2013, legal opinion of the HHS Office of General Counsel on the FQTQ matter?
- a. Yes?
 - b. No?
- 24) Mr. Castro, do you agree with the HHS Office of General Counsel that it is legal for the FDA to compete directly with small businesses in the matter of FoodQuestTQ LLC?
- a. Yes?
 - b. No?
- 25) Mr. Castro does your office have a zero tolerance policy for Federal agency retaliation against small businesses for filing a complaint with your office?
- a. Yes?
 - b. No?
- 26) Mr. Castro, did you ever follow-up on your letter to Inspector General Levinson requesting a criminal investigation of the FoodQuestTQ matter?
- a. Yes?
 - b. No?
- 27) Mr. Castro, in the event you had discussions with Mr. Levinson or any other member of the DHHS-OIG about the FoodQuestTQ matter, could you please provide a written and signed statement of exactly what was discussed?
- a. _____

28) Mr. Castro are you familiar with this FoodQuestTQ LLC case study concerning their dispute with the FDA?

- a. Yes?
- b. No?

29) Mr. Castro, were you ever contacted by Executive Office of the President, the Director, Office of Management and Budget, the Office of Government Ethics, the Inspector General DHHS, the Office of the Secretary DHHS, the Office of the Commissioner FDA or any other Executive Branch agencies of the Federal Government concerning the case study or any other aspect of the FoodQuestTQ matter?

- a. Yes?
- b. No?

30) Mr. Castro, could you please provide a listing of the names and titles of all Executive Branch officials with whom you may have discussed the FoodQuestTQ LLC case study or any other aspect of the FoodQuestTQ matter and an exact description of what was discussed?

- a. _____

31) Ms. Burwell, does Section 5, c. of OMB Circular A-76 state, *"The Federal Government shall rely on commercially available sources to provide commercial products and services. In accordance with the provisions of this Circular and its Supplement, the Government shall not start or carry on any activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source."* [See: <http://clinton4.nara.gov/textonly/OMB/circulars/a076/a076.html>]

- a. Yes?
- b. No?

32) Ms. Burwell, are Federal Government agencies required to seek exemptions under the Competition in Contracting Act (CICA) when they compete directly with small businesses for products and services that are not inherently governmental functions?

- a. Yes?
- b. No?

33) Ms. Burwell, do the Federal Acquisition Regulations, the FAIR Act and OMB Circular A-76, the Competition in Contracting Act (CIC) and other federal procurement statute, law and regulations contain processes that Federal agencies must follow to protect small businesses from unfair competition by federal agencies?

- a. Yes?
- b. No?

34) Ms. Burwell, when Federal agencies want to use the intellectual property owned by a small business to meet their missions do they have the authority to use a sole source procurement?

- a. Yes?
- b. No?

35) Ms. Burwell, when you were the Director, OMB, were procedures in place to require that Federal agencies conduct price comparisons and analysis to assure that the U.S. Government is not duplicating the same or similar commercial products "in-house" at much greater expense to the taxpayer?

- a. Yes?
- b. No?

36) Ms. Burwell, could you please provide a description of the procedures you used while Director, OMB, to assure that the U.S. Government was not duplicating the same or similar products "in-house" at much greater expense to the taxpayer?

- a. _____

37) Ms. Burwell, would the Department of Health and Human Services and the Food and Drug Administration be included on the list of Federal agencies that must follow OMB guidelines?

- a. Yes?
- b. No?

38) Ms. Burwell, can you think of any circumstances that would justify actions by a Federal agency of the U.S. Government to take without due process of law the ideas and intellectual property of a small business to duplicate products that achieve the same or similar purpose that the small business was already making commercially available to the public at a fraction of the cost?

- a. Yes?
- b. No?

39) Ms. Burwell, did OMB receive a copy of a case study prepared by a small business called FoodQuestTQ LLC that was sent to the President, you, members of your staff and to many other senior members of the Executive Branch?

- a. Yes?
- b. No?

40) Ms. Burwell, while you were the Director, OMB, did you ever discuss the matter of FoodQuestTQ LLC and their dispute with the FDA?

- a. Yes?
- b. No?

41) Ms. Burwell, did Mr. Dong nor Mr. Blum ever bring the FoodQuestTQ LLC case study or any other matter involving FoodQuestTQ LLC to your immediate attention?

- a. Yes?
- b. No?

42) Ms. Burwell, in the event you held such discussions could you please provide a listing of the names and titles of all Executive Branch officials with whom you may have discussed the FoodQuestTQ LLC case study or any other aspect of the FoodQuestTQ LLC matter with an exact description of what was said?

- a. _____

43) Mr. Shaub, does your official Office of Government Ethics website state that it is your responsibility to ensure that Executive Branch ethics programs are in compliance with laws and regulations? [See: <http://oge.gov/About/Mission-and-Responsibilities/Mission---Responsibilities/>]

- a. Yes?
- b. No?

44) Mr. Shaub, this would include 5 C.F.R. Part 2635, Subpart A: General Provisions-avoiding appearances of conflicts of interest; Subpart E: Impartiality in Performing Official Duties; Subpart G: Misuse of Position, and; Endorsing Organizations, Products, or Persons would it not?

- a. Yes?
- b. No?

45) Mr. Shaub, did OGE receive a copy of a case study prepared by a small business called FoodQuestTQ LLC that was sent to the President, you, members of your staff and to many other senior members of the Executive Branch?

- a. Yes?
- b. No?

46) Mr. Shaub, in your position as Director, OGE, did you ever discuss the matter of FoodQuestTQ LLC and their dispute with the FDA with anyone inside or outside of your office?

- a. Yes?
- b. No?

47) Mr. Shaub, if so could you please provide the names and titles of all people both inside and outside of OGE that you or any member of your staff discussed the FoodQuestTQ LLC matter?

- a. _____

48) Mr. Shaub, could you please provide the OGE written responses to the letters that FoodQuestTQ LLC sent to your office to include as part of our investigative record?

a. _____

D. When FoodQuestTQ LLC attempted to mediate the dispute, the U.S. Government intentionally abandoned their duty of good faith and fair dealing and instead forced dispute resolution down the narrow legal pathway of an intellectual property lawsuit.

1) Dr. Hamburg, have you seen the May 2013, case study prepared by FoodQuestTQ LLC concerning their dispute with the FDA?

a. Yes?

b. No?

2) Dr. Hamburg, have you ever discussed the case study or the FoodQuestTQ LLC matter with others inside or outside of the FDA?

a. Yes?

b. No?

3) Dr. Hamburg, if so, could you please provide a brief written, signed and dated statement describing the nature of the discussions, what was said and the names and titles of the individuals involved in any such discussion?

a. _____

4) Dr. Hamburg, did you respond to the FoodQuestTQ LLC request for a meeting to mediate the dispute? Did you ever agree to a meeting?

a. Yes?

b. No?

5) Ms. Sebelius, when you were the Secretary of DHHS did you see the May 2013, case study prepared by FoodQuestTQ LLC concerning their dispute with the FDA?

a. Yes?

b. No?

6) Ms. Sebelius, did you ever discuss the case study or the FoodQuestTQ LLC matter with others inside or outside of the DHHS?

a. Yes?

b. No?

7) Ms. Sebelius, if so, could you please provide a brief written, signed and dated statement describing the nature of the discussions, what was said and the names and titles of the individuals involved to assist in the investigation?

a. _____

8) Ms. Sebelius, you received numerous letters for FoodQuestTQ LLC asking for a meeting to mediate the dispute. Did you ever respond the FoodQuestTQ LLC requests to meet in order to mediate the dispute?

a. Yes?

b. No?

9) Ms. Seeley, did your review of the FoodQuestTQ LLC matter specifically include the other intellectual property that FoodQuestTQ LLC alleges is being used by HHS/FDA without permission?

a. Yes?

b. No?

10) Ms. Seeley, did FoodQuestTQ LLC give members of the FDA Food Defense Team a guided on-line tour of the National Food Protection Collaboratory™ web site?

a. Yes?

b. No?

11) Ms. Seeley, did FoodQuestTQ LLC specifically invite you and the entire FDA Office of Chief Counsel to visit their web-site known as the National Food Protection Collaboratory™?

a. Yes?

b. No?

12) Ms. Seeley, did you or anyone from the FDA Office of Chief Counsel or the HHS OGC ever visit the National Food Protection Collaboratory™ web site?

a. Yes?

b. No?

13) Ms. Seeley, did FoodQuestTQ LLC ever refuse to provide non-exclusive copies of the works they allege the HHS and FDA have used without their permission?

a. Yes?

b. No?

14) Ms. Seeley, would you please provide the letter, e-mail or other correspondence you received from FoodQuestTQ LLC in which they refused to provide non-exclusive copies of the works they allege the HHS and FDA have used without their permission?

a. _____

15) Ms. Seeley, are the FDA Food Protection Plan, the Food Defense Mitigation Strategies Database, Food Defense Plan Builder, iRisk and FREE-B tools copyrighted by the government or otherwise considered the intellectual property of the Food and Drug Administration?

a. Yes?

b. No?

16) Ms. Seeley, did the FDA deny FoodQuestTQ LLC access to the workings of the FDA Food Defense Mitigation Strategies Database, Food Defense Plan Builder, iRisk and FREE-B tools?

a. Yes?

b. No?

17) Ms. Seeley, can you please provide a list of the statutes, laws, HHS/FDA policies that were used by the HHS OGC to justify denying FoodQuestTQ LLC access to the public workings of the Food Defense Mitigation Strategies Database, Food Defense Plan Builder, iRisk and FREE-B tools?

a. _____

18) Ms. Seeley, did the FDA conduct a due diligence search, i.e., a patent and copyright search, of the intellectual property that FoodQuestTQ alleges is being used by the FDA without permission before the FDA developed the National Food Protection Plan and the Food Defense Mitigation Strategies Database, Food Defense Plan Builder, iRisk and FREE-B tools?

a. Yes?

b. No?

19) Ms. Seeley, can you please provide us with the dated FDA analysis of the history of both the patent and the other intellectual property FoodQuestTQ LLC alleges is being used by the FDA without permission?

a. _____

20) Ms. Seeley, did FoodQuestTQ LLC offer to sit down with you to mediate the dispute?

a. Yes?

b. No?

21) Ms. Seeley during the course of your review did the FDA take FoodQuestTQ LLC up on their offer to provide additional documents for review?

- a. Yes?
- b. No?

22) Ms. Seeley, did the FDA review, prior to the matter being elevated to Mr. Berkley, address the 25 specific examples of the intellectual property that FoodQuestTQ LLC alleges were misappropriated by the Food and Drug Administration?

- a. Yes?
- b. No?

23) Ms. Seeley, did you instruct FoodQuestTQ LLC not to provide any additional documents including the detailed FoodQuestTQ technical "crosswalk" demonstrating the alleged FDA infringement on the FoodQuestTQ patent?

- a. Yes?
- b. No?

24) Ms. Seeley, did FoodQuestTQ offer to demonstrate their tools to the FDA in return for a similar demonstration of FDA's tools?

- a. Yes?
- b. No?

25) Ms. Seeley, was FoodQuestTQ LLC's request for the FDA to consider, as part of a negotiated non-disclosure agreement, the possible violation of procurement law and the in-house FDA duplication of computer software for the same or similar purpose unreasonable?

- a. Yes?
- b. No?

26) Ms. Seeley, did you start consulting with Mr. Dale Berkley OGC-HHS on the handling of the FoodQuestTQ LLC matter before or after FoodQuestTQ LLC filed their complaint against the FDA with the National Ombudsman for Small Business?

- a. Yes?
- b. No?

27) Ms. Seeley, when FoodQuestTQ LLC made you aware of allegations of felonious criminal conduct did you refer the matter to Mr. Levinson the Inspector General of the Department of Health and Human Services?

- a. Yes?
- b. No?

- 28) Ms. Seeley, after FoodQuestTQ filed their complaint with the NOSB and the matter was elevated to the OGC-HHS did you send an e-mail to FoodQuestTQ LLC that you were an attorney representing the U.S. Government and recommending that FoodQuestTQ LLC obtain counsel to defend themselves?
- a. Yes?
 - b. No?
- 29) Mr. Berkley, were you in consultations with Office of Chief Counsel FDA including Ms. Seeley prior to FoodQuestTQ LLC's complaint to the NOSB?
- a. Yes?
 - b. No?
- 30) Mr. Berkley, were you in consultations with Ms. Elizabeth Dickinson, Chief Counsel of the FDA on the matter of FoodQuestTQ LLC?
- a. Yes?
 - b. No?
- 31) Mr. Berkley, did your investigation of the FoodQuestTQ LLC matter specifically include the other intellectual property that FoodQuestTQ LLC alleges is being used by HHS/FDA without permission?
- a. Yes?
 - b. No?
- 32) Mr. Berkley, did FoodQuestTQ LLC give members of the FDA Food Defense Team a guided on-line tour of the National Food Protection Collaboratory™ web site?
- a. Yes?
 - b. No?
- 33) Mr. Berkley, did FoodQuestTQ LLC specifically invite the FDA to visit their web-site known as the National Food Protection Collaboratory™?
- a. Yes?
 - b. No?
- 34) Mr. Berkley, did you or anyone from the FDA Office of Chief Counsel or the HHS OGC ever visit the National Food Protection Collaboratory™ web site?
- a. Yes?
 - b. No?

35) Mr. Berkley, did FoodQuestTQ LLC ever refuse to provide non-exclusive copies of the works they allege the HHS and FDA have used without their permission?

- a. Yes?
- b. No?

36) Mr. Berkley, would you please provide the letter, e-mail or other correspondence you received from FoodQuestTQ LLC in which they refused to provide non-exclusive copies of the works they allege the HHS and FDA have used without their permission?

a. _____

37) Mr. Berkley, are the FDA Food Protection Plan, the Food Defense Mitigation Strategies Database, Food Defense Plan Builder, iRisk and FREE-B tools copyrighted by the government or otherwise considered the intellectual property of the Food and Drug Administration?

- a. Yes?
- b. No?

38) Mr. Berkley, did the FDA deny FoodQuestTQ LLC access to the workings of the FDA Food Defense Mitigation Strategies Database, Food Defense Plan Builder, iRisk and FREE-B tools?

- a. Yes?
- b. No?

39) Mr. Berkley, can you please provide a list of the statutes, laws, HHS/FDA policies that were used by the HHS-OGC to justify denying FoodQuestTQ LLC access to the public workings of the Food Defense Mitigation Strategies Database, Food Defense Plan Builder, iRisk and FREE-B tools?

a. _____

40) Mr. Berkley, did the FDA conduct a due diligence search, i.e., a patent and copyright search, of the intellectual property that FoodQuestTQ alleges is being used by the FDA without permission before the FDA developed the National Food Protection Plan and the Food Defense Mitigation Strategies Database, Food Defense Plan Builder, iRisk and FREE-B tools?

- a. Yes?
- b. No?

41) Mr. Berkley, can you please provide us with the dated FDA analysis of the history of both the patent and the other intellectual property FoodQuestTQ LLC alleges is being used by the FDA without permission?

a. _____

- 42) Mr. Berkley, did FoodQuestTQ LLC offer to sit down with you, FDA and DHHS to mediate the dispute?
- a. Yes?
 - b. No?
- 43) Mr. Berkley, during the course of your review did you take FoodQuestTQ LLC up on their offer to provide additional documents for review?
- a. Yes?
 - b. No?
- 44) Mr. Berkley, did your investigation of the FoodQuestTQ matter address the 25 specific examples of the intellectual property that FoodQuestTQ LLC alleges were misappropriated by the Food and Drug Administration?
- a. Yes?
 - b. No?
- 45) Mr. Berkley, did you instruct Ms. Seeley of the Office of Chief Counsel FDA to tell FoodQuestTQ LLC not to provide any additional documents including the detailed FoodQuestTQ technical "crosswalk" demonstrating the alleged FDA infringement of the FoodQuestTQ patent?
- a. Yes?
 - b. No?
- 46) Mr. Berkley, did FoodQuestTQ offer to demonstrate their tools to the FDA in return for a similar demonstration of FDA's tools?
- a. Yes?
 - b. No?
- 47) Mr. Berkley, was FoodQuestTQ LLC's request for DHHS to consider, as part of a negotiated non-disclosure agreement, the possible violation of procurement law by the in-house FDA duplication of computer software for the same or similar purpose unreasonable?
- a. Yes?
 - b. No?
- 48) Mr. Berkley, did you start consulting with Ms. Seeley in the Office of Chief Counsel FDA on the handling of the FoodQuestTQ LLC matter before or after FoodQuestTQ LLC filed their complaint against the FDA with the National Ombudsman for Small Business?
- a. Yes?
 - b. No?

49) Mr. Berkley, when FoodQuestTQ LLC made you aware of allegations of felonious criminal conduct did you refer the matter to Mr. Levinson the Inspector General of the Department of Health and Human Services?

- a. Yes?
- b. No?

50) Mr. Berkley, are you a patent attorney?

- a. Yes?
- b. No?

51) Mr. Berkley, does your April 26, 2013, letter to Dr. Hnatio you state that your investigation determined that no laws were broken?

- a. Yes?
- b. No?

52) Mr. Berkley can you please provide us with the complete listing of law, statue and regulation you considered as part of your investigation to draw this conclusion?

a. _____

E. The U.S. Government then used intimidation, coercion and extortion in an attempt to silence FoodQuestTQ LLC from reporting violations of Federal laws and to damage the company's reputation with the food industry.

1) Ms. Dickinson, did you ever meet with FoodQuestTQ LLC to mediate the dispute as they requested?

- a. Yes?
- b. No?

2) Ms. Dickinson, did you receive a letter from FoodQuestTQ LLC informing you that the company was destitute and wanted to mediate the dispute because they could not afford legal counsel?

- a. Yes?
- b. No?

3) Ms. Dickinson, in your review of the FoodQuestTQ matter, did you consider the felonious nature of the allegations being made by FoodQuestTQ LLC?

- a. Yes?
- b. No?

- 4) Ms. Dickinson, did you recuse yourself from the FoodQuestTQ matter and refer the case to Inspector General Levinson for investigation?
- a. Yes?
 - b. No?
- 5) Ms. Dickinson, on April 26, 2013, the OGC-DHHS issued a legal opinion that no laws were violated in the FoodQuestTQ matter. Does the Office of Chief Counsel FDA, based on your own review of the matter, concur in that finding?
- a. Yes?
 - b. No?
- 6) Ms. Dickinson, can you please provide a complete list of the statute, law and regulation that was considered as part of the FDA review of the allegations made by FoodQuestTQ LLC?
- a. _____
- 7) Ms. Dickinson, were you aware that Ms. Seeley of your staff informed FoodQuestTQ LLC that they required an attorney to defend themselves?
- a. Yes?
 - b. No?
- 8) Ms. Dickinson, did you instruct Ms. Seeley to treat the matter of FoodQuestTQ LLC as an adversary legal proceeding?
- a. Yes?
 - b. No?
- 9) Ms. Seeley, were you instructed to inform FoodQuestTQ LLC that they required an attorney to defend themselves?
- a. Yes?
 - b. No?
- 10) Ms. Seeley, could you please provide us with the names of your superiors that instructed you to suspend efforts to mediate the dispute with FoodQuestTQ LLC in favor of a legal adversary proceeding?
- a. Yes?
 - b. No?
- 11) Mr. Berkley, did you ever meet with FoodQuestTQ LLC to mediate the dispute as they requested?
- a. Yes?
 - b. No?

12) Mr. Berkley, were you aware that FoodQuestTQ LLC was destitute and wanted to mediate the dispute because they could not afford legal counsel?

- a. Yes?
- b. No?

13) Mr. Berkley, in your review of the FoodQuestTQ matter, did you consider the felonious nature of the allegations being made by FoodQuestTQ LLC?

- a. Yes?
- b. No?

14) Mr. Berkley, did you recuse yourself from the FoodQuestTQ matter and refer the case to Inspector General Levinson for investigation?

- a. Yes?
- b. No?

15) Mr. Berkley, were you aware that Ms. Seeley of your staff informed FoodQuestTQ LLC that they required an attorney to defend themselves?

- a. Yes?
- b. No?

16) Mr. Berkley, did you instruct Ms. Seeley to treat the matter of FoodQuestTQ LLC as an adversary legal proceeding?

- c. Yes?
- d. No?

17) Ms. Berkley, were you instructed to inform FoodQuestTQ LLC that they required an attorney to defend themselves?

- a. Yes?
- b. No?

18) Mr. Berkley, could you please provide us with the names of your superiors that instructed you to suspend efforts to mediate the dispute with FoodQuestTQ LLC in favor of a legal adversary proceeding?

- a. Yes?
- b. No?

19) Mr. Berkley, in your investigation of the FoodQuestTQ matter did you find that any DHHS or FDA employee had engaged in any form of defamation or "blacklisting" of FoodQuestTQ LLC and/or the company's personnel within or with others outside the FDA?

- a. Yes?
- b. No?

20) Mr. Berkley, could you please provide us with the names and organizations that were contacted by the FDA employees that you subsequently grated lawyer-client privilege and any letters, e-mails or other communications in which FoodQuestTQ LLC or its personnel were defamed or "blacklisted" by employees of the U.S. Government?

a. _____

21) Ms. Jackson, have you at any time communicated by telephone, e-mail or other manner to others in FDA and DHHS, other agencies or members of the regulated food industry regarding the FoodQuestTQ LLC matter?

- a. Yes?
- b. No?

22) Ms. Jackson, could you please provide the names of the persons and organizations you contacted and the accompanying correspondence?

a. _____

23) Ms. Jackson, did you at any time access the "Mail Chimp" software to open and distribute information relating to FoodQuestTQ LLC?

- a. Yes?
- b. No?

24) Ms. Jackson, did you ever forward any of this information to anyone else inside or outside of the FDA?

- a. Yes?
- b. No?

25) Ms. Jackson, did you ever comment in any e-mails that you may have written when forwarding this information on the FoodQuestTQ matter to others within or outside the FDA?

- a. Yes?
- b. No?

26) Ms. Jackson are you aware of anyone in the FDA who has contacted anyone outside of the agency including any members of the food industry regarding the matter of FoodQuestTQ LLC?

- a. Yes?
- b. No?

27) Ms. Jackson, could you please provide the names of the persons and organizations you contacted and all accompanying correspondence?

a. _____

28) Ms. Jackson, were you instructed to conduct a search of your own computer e-mail archives for any e-mails in which you forwarded or may have commented on FoodQuestTQ LLC or its personnel?

- a. Yes?
- b. No?

29) Ms. Jackson, when you conducted that search did you delete any archived e-mails that relate in any way to the matter of FoodQuestTQ LLC?

- a. Yes?
- b. No?

30) Ms. Jackson, did anyone instruct or suggest to you that the e-mails should be deleted?

- a. Yes?
- b. No?

31) Ms. Jackson, could you please provide the names of any individuals that instructed or suggested to you that the e-mails should be deleted?

a. _____

32) Ms. Zahirieh, does the Office of National Ombudsman for Small Business have a zero tolerance policy for retaliation against small businesses for filing complaints with your office?

- a. Yes?
- b. No?

33) Ms. Zahirieh, does this policy appear at the official NOSB website?

- a. Yes?
- b. No?

34) Mr. Mendez, does the Office of National Ombudsman for Small Business have a zero tolerance policy for retaliation against small businesses for filing complaints with your office?

- a. Yes?
- b. No?

35) Mr. Mendez, does this policy appear at the official NOSB website?

- a. Yes?
- b. No?

36) Mr. Castro, does the Office of National Ombudsman for Small Business have a zero tolerance policy for retaliation against small businesses for filing complaints with your office?

- a. Yes?
- b. No?

37) Mr. Castro, does this policy appear at the official NOSB website?

- a. Yes?
- b. No?

38) Mr. Castro, did you refer the FoodQuestTQ LLC allegations of felonious criminal conduct to the Inspector General?

- a. Yes?
- b. No?

39) Mr. Castro, after you sent your initial letter requesting an investigation, did you ever follow-up with Mr. Levinson, IG-DHHS, to discuss the serious nature of the allegations being made by FoodQuestTQ LLC?

- a. Yes?
- b. No?

40) Mr. Castro, did your independent inquiry into the FoodQuestTQ LLC matter conclude that FoodQuestTQ: 1) failed to cooperate with DHHS; 2) no wrongdoing took place, and; 3) that no laws were broken?

- a. Yes?
- b. No?

41) Mr. Castro, can you please provide a complete list of the statute, law and regulation that was considered as part of the NOSB review of the allegations made by FoodQuestTQ LLC?

- a. _____

- 42) Mr. Castro, were you aware that the Ombudsman for Small Business and Ms. Laurie Lenkel and her deputy, Mr. Andrew Moss, conducted an interview of Mr. David Acheson to determine the veracity of FoodQuestTQ allegations?
- a. Yes?
b. No?
- 43) Mr. Castro, are you aware that Dr. Acheson was a former senior official in the FDA that FoodQuestTQ alleges was involved in the misappropriation and duplication of FoodQuestTQ LLC's technology?
- a. Yes?
b. No?
- 44) Mr. Castro, are you aware that the major company that Dr. Acheson worked for, Leavitt Partners, terminated their business relationship with FoodQuestTQ LLC after the dispute with the FDA arose?
- a. Yes?
b. No?
- F. The U.S. Government then obstructed justice by preventing the release of and spoliating evidence that demonstrates felonious criminal conduct by employees of the U.S. Government.
- 1) Ms. Jackson, are you familiar with Mail Chimp internet software and its ability to monitor the opening and distribution of messages?
- a. Yes?
b. No?
- 2) Ms. Jackson, have you opened FoodQuestTQ information placed on Mail Chimp in excess of 600 times as the record indicates?
- a. Yes?
b. No?
- 3) Ms. Jackson, did you distribute the FoodQuestTQ information on Mail Chimp to anyone else inside or outside of the U.S. Government?
- a. Yes?
b. No?
- 4) Ms. Jackson could you please provide a brief written, signed and dated statement of the individuals and organizations to which you distributed any FoodQuestTQ information appearing on Mail Chimp?
- a. _____

- 5) Ms. Jackson, have you ever made in front of witnesses any derogatory, defamatory or negative statement about FoodQuestTQ LLC or its personnel?
- a. Yes
 - b. No
- 6) Ms. Jackson, if so, could you please provide a brief written, signed and dated statement of what was stated and the individuals and organizations inside the FDA, other U.S. Government agencies and the food industry to whom the comments were made.
- a. _____
- 7) Ms. Jackson, when you searched your own computer archive for e-mails in response to the Freedom of Information Act request filed by FoodQuestTQ LLC in which they asked for all derogatory e-mails, did you delete any e-mails from your computer?
- a. Yes?
 - b. No?
- 8) Mr. Berkley, did you recuse yourself and report the matter to the OIG-DHHS to prevent the spoliation of criminal evidence by those alleged to have engaged in the wrongdoing?
- a. Yes?
 - b. No?
- 9) Mr. Berkley, did you recuse yourself and report the matter to the OIG-DHHS to prevent the befoulment of any subsequent criminal investigation by law enforcement?
- a. Yes?
 - b. No?
- 10) Mr. Berkley, did you extend lawyer-client privilege to the FDA employees allegedly involved in the crimes as alleged by FoodQuestTQ LLC?
- a. Yes?
 - b. No?
- 11) Mr. Berkley, could you please provide us with a complete list of statute, law and regulation you considered in concluding that no laws were violated in the matter of FoodQuestTQ LLC?
- a. _____
- 12) Mr. Berkley, are you a criminal lawyer?
- a. Yes?
 - b. No?

- 13) Mr. Berkley, are you a procurement attorney?
- a. Yes?
 - b. No?
- 14) Mr. Berkley are you an ethics attorney?
- a. Yes?
 - b. No?
- 15) Mr. Hall, did you state in an appeal letter to FoodQuestTQ LLC under Title 5 U.S.C. §552 (Freedom of Information Act), that you personally supervised the conduct of a diligent search that was reasonably calculated to uncover all relevant records requested by FoodQuestTQ LLC?
- a. Yes?
 - b. No?
- 16) Mr. Hall, were you aware of the allegations of criminal felonious conduct being made by FoodQuestTQ LLC that implicated Ms. Jackson in possible wrongdoing before you calculated the agency's strategy for conducting a reasonable search for the information requested by FoodQuestTQ LLC?
- a. Yes?
 - b. No?
- 17) Mr. Hall, did you allow Ms. Leanne Jackson to search her own archival record of e-mail records prior to requesting an independent forensic search of the record by the FDA Chief Information Officer?
- a. Yes?
 - b. No?
- 18) Mr. Hall, would it be possible for an employee searching their own archived e-mails to delete the archived e-mails requested by FoodQuestTQ LLC.
- a. Yes?
 - b. No?
- 19) Mr. Hall, has the Chief Information Officer indicated that the e-mail records requested by FoodQuestTQ LLC may still be retrievable in an FDA or DHHS back-up system?
- a. Yes?
 - b. No?
- 20) Mr. Hall, FoodQuestTQ LLC has made several other similar requests for the e-mail records of FDA employees alleged to have engaged in felonious Federal crimes. Have you taken any steps to assure that possible evidence of crimes has not been similarly spoliated by other FDA and DHHS employees?

- a. Yes?
- b. No?

21) Mr. Hall if you have taken any actions to preserve possible evidence in the FoodQuestTQ LLC matter from possible spoliation by U.S. Government employees could you please describe them in detail?

a. _____

22) Mr. Hall, FoodQuestTQ LLC has cited to the FBI at least six instances where FDA employees have allegedly obstructed the proper release of documents under Title 5 U.S.C. §552 (Freedom of information Act). Can you please advise if any investigation has been conducted of these allegations and, if so, who conducted them?

a. _____

23) Mr. Stone, were you asked by the FDA to host a December 12, 2012, workshop to obtain industry inputs on their Food Defense Plan Builder tool?

- a. Yes?
- b. No?

24) Mr. Stone, did Mr. Becker from FoodQuestTQ LLC make plans with you to attend the workshop many weeks beforehand?

- a. Yes?
- b. No?

25) Mr. Stone, the day before the workshop was held on December 12, 2013, did the FDA contact you and tell you that FoodQuestTQ would no longer be able to attend the industry workshop?

- a. Yes?
- b. No?

26) Mr. Stone, were Tyco Integrated Security Systems and Leavitt Partners allowed by the FDA to attend the workshop?

- a. Yes?
- b. No?

27) Mr. Stone, could you please provide the official sign in sheet for the meeting held at GMA on December 12, 2013?

a. _____

28) Mr. Stone, are Tyco Integrated Security Systems and Leavitt Partners food processors?

- a. Yes?
- b. No?

29) Mr. Stone, do you know if either Tyco Integrated Security Systems and/or Leavitt partners were under a consulting contract or subcontract to support the development of the FDA Food Defense Plan Builder?

- a. Yes?
- b. No?

30) Mr. Stone, could you please provide us with a brief written statement of your understanding of the role of Tyco Integrated Security Systems and Leavitt Partners was at the workshop?

- a. _____

31) Mr. Stone, was FoodQuestTQ LLC scheduled to demonstrate their commercial software for building food defense plans at the same workshop?

- a. Yes?
- b. No?