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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON, KENTUCKY

UNITED STATES OF AMERICA,) Lexington Criminal
) Action No. 15-87
Plaintiff,)
) At Lexington, Kentucky
-vs-)
) March 1, 2017
SAMUEL A. GIROD,) 8:55 a.m.
)
Defendant.) DAY 3

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE DANNY C. REEVES
UNITED STATES DISTRICT JUDGE

Appearances of Counsel:

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 (Whereupon, Day 3 of the Jury Trial proceedings
2 continued on Wednesday, March 1, 2017, at 8:55 a.m.,
3 on the record in open court, without the juror members
4 present, as follows.)

5 THE COURT: We'll -- we're waiting for all of
6 our jurors to arrive, so I wanted to take the opportunity
7 to address one matter that I'll be covering with the jury
8 this morning when we begin relating to what's referred to
9 other acts evidence under Rule 404(b) of the Federal
10 Rules of Evidence.

11 Yesterday during the testimony of one of the
12 witnesses, Mr. Mandrell, there was some evidence that was
13 admitted about ordering labels that would constitute
14 404(b) evidence, and I gave the jury a cautionary
15 instruction at that time; although, not requested to do
16 so. I did that out of an abundance of caution.

17 There was other evidence that was submitted,
18 primarily by the case agent, relating to other potential
19 sales outside those dates that are charged in the
20 indictment, which I believe would also constitute, or
21 could arguably constitute, 404(b) evidence.

22 And, therefore, what I intend to do is to give
23 the jury a further cautionary instruction this morning on
24 the use of such evidence.

25 I have drafted an instruction that will be

1 given in the final jury instructions, and I provided that
2 to the parties this morning. I would like to review that
3 briefly. I'm going to tailor the instruction I'm going
4 to give this morning on the final jury instruction on
5 404(b) evidence.

6 My question for the parties will relate
7 specifically to the United States' purposes as to what it
8 believes the evidence would be relevant to.

9 Yesterday I had referenced intent, knowledge,
10 and motive, I believe. In the 404(b) notice that the
11 government filed, it referenced in two different notices
12 intent and also preparation and plan.

13 The way the instruction, the final instruction,
14 reads, and the one I'll be using to advise the jury this
15 morning of the use of other acts, evidence, reads
16 essentially as following.

17 "You've heard testimony that the defendant
18 introduced or attempted to introduce allegedly misbranded
19 drugs on dates other than the ones charged in the
20 indictment.

21 "United States contends that evidence of other
22 sales occurring September 27th, 2013, through
23 January 10th, 2014, are probative of the defendant's
24 intent to defraud.

25 "The United States asserts that evidence that

1 the defendant placed orders for labels and brochures on
2 May 26th, 2016, paid and picked up on June 8th, 2016, and
3 in December 2015, which allegedly includes impermissible
4 claims about the products are also probative of the
5 defendant's intention to defraud, as well as his
6 preparation and plan to sell products in violation of the
7 law.

8 "If you find the defendant did those acts, you
9 may consider -- I'm sorry, you can consider the evidence
10 only as it relates to the government's claim of the
11 defendant's intent, plan, and preparation. You may not
12 consider it for any other purpose.

13 "Remember that the defendant is only on trial
14 for the misbranding counts in the indictment, not for the
15 other acts. Do not return a guilty verdict unless the
16 government proves the crimes charged in the indictment."

17 Ms. Smith, what is the United States' position
18 with respect to the purposes for which the other acts
19 evidence may be considered?

20 MS. SMITH: It is as set forth in the 404(b)
21 notice, to speak to the defendant's intent to defraud,
22 which is an element of Counts 3 through 11, both in
23 operating an establishment that engaged in the
24 manufacture of these products and doing so with the
25 intent to defraud, and then the specific counts where he

1 sold the products.

2 You know, intent to defraud can include
3 withholding material facts and the fact that he continued
4 to do that with the sale to Ms. Miller in July 2014, goes
5 to his intent in those other instances. And then his
6 continued preparation of labels -- ordering of labels and
7 product catalogs speaks to his -- his plan to keep
8 violating the law and his preparation to do so.

9 THE COURT: Would that be relevant to the
10 claims in this case --

11 MS. SMITH: Yes, Your Honor.

12 THE COURT: -- to further violate the law?

13 MS. SMITH: Yes. I think it shows in terms to
14 Count 3 continued to manufacture the product.

15 THE COURT: Is that another way of saying
16 motive?

17 MS. SMITH: Yes, Your Honor.

18 THE COURT: So it really is incorporated in
19 what I have instructed the jury, but in your opinion it's
20 more narrowly tailored if we say preparation and
21 planning?

22 MS. SMITH: Yes, Your Honor.

23 THE COURT: All right. So would you agree with
24 the instruction that I've prepared here this --

25 MS. SMITH: Yes, Your Honor.

1 THE COURT: -- for use this morning.

2 MS. SMITH: Yes, Your Honor.

3 THE COURT: All right. Mr. Girod, what is --
4 what is your position on this issue?

5 DEFENDANT GIROD: Your Honor, I did not intend
6 to defraud at any time.

7 THE COURT: All right.

8 DEFENDANT GIROD: That's the truth.

9 THE COURT: The purpose in giving this
10 instruction is to give the jury -- place a limitation on
11 the manner in which the jury can use this evidence, that
12 it can only be used for certain purposes, certain
13 elements of the offenses that are charged and matters
14 that are relevant to the offenses charged. But it can't
15 be used for other purposes. And so this is actually a
16 limitation on the jury's ability to use some of that
17 evidence, and that's why I would be giving it to the jury
18 this morning.

19 DEFENDANT GIROD: That's good, Your Honor.
20 Thank you.

21 THE COURT: All right. I believe we're still
22 waiting for two of our jurors to arrive if I'm not
23 mistaken. So what we'll do is as soon as the jury
24 arrives this morning, we'll go ahead and bring the jury
25 into their deliberation room. Whenever everyone is

1 settled in, if you want to go ahead and bring them out
2 and bring them out and you can come back and get me at
3 that time.

4 When we finished yesterday, the government, of
5 course, had closed its cases. And I had asked the
6 parties about expected length of the defendant's case,
7 and, Mr. Girod, I believe you told me maybe an hour or
8 so?

9 DEFENDANT GIROD: Something like that.

10 THE COURT: Is that still your belief?

11 DEFENDANT GIROD: Probably a little less, yes,
12 Your Honor.

13 THE COURT: All right. Well, if we hold true
14 to form then, if we start in just a few moments, that
15 will take us up until a little bit after 10:00.

16 We would then take a break, we would have our
17 instructions conference on all the instructions in the
18 case. Then I would make whatever changes or revisions
19 that would need to be made to the draft that was given to
20 you earlier. I made a few changes based upon testimony
21 in the case and some other typographical errors that I
22 found. So we'll go over all those, make those changes.

23 I always give the parties a copy of my
24 instructions that they can use in their arguments, so it
25 will take a few moments to get those instructions

1 finalized, maybe 30 minutes.

2 But then what we would do is bring the jury
3 back in, we'd proceed with the closing arguments, and
4 then I would give the instructions last, keep the jury in
5 for their deliberations today, and we will have lunch
6 brought in as necessary at the appropriate time.

7 But before we do recess, how much time do the
8 parties anticipate that they'll be requesting for their
9 closings?

10 MS. SMITH: Your Honor, the United States
11 anticipates needing approximately 45 minutes.

12 THE COURT: All right. Would you like to
13 divide that up?

14 MS. SMITH: I would like to reserve about five
15 minutes for rebuttal.

16 THE COURT: All right. So 40 and five.

17 Mr. Girod. You can speak to Mr. Fox.

18 (Whereupon, an off-the-record discussion was held
19 with Defendant Girod and standby counsel, Mr. Fox.)

20 DEFENDANT GIROD: Probably, 30 to 40 minutes
21 maybe.

22 THE COURT: All right. Well, I'll give you as
23 much time as I give the United States. So you can take
24 up to 45 minutes if you want to.

25 DEFENDANT GIROD: Thank you, Your Honor.

1 THE COURT: And I always remind the parties
2 just because you have 45 minutes or an hour, whatever it
3 may be, doesn't mean you have to use it all. So use as
4 much of that time as you wish.

5 But, Ms. Smith, I'll remind you when you get
6 close to the 40-minute period. If you want to go over,
7 of course, you can do that, but that cuts into your
8 rebuttal time --

9 MS. SMITH: Thank you, Your Honor.

10 THE COURT: -- if you choose to do that.

11 All right. If we don't have any other
12 questions or issues to take up, we will take a recess.

13 As soon as all the jurors arrive, we'll proceed
14 in the manner that we discussed this morning.

15 We'll be in recess.

16 (Whereupon, a recess was taken at 9:05 a.m., and
17 Day 3 of the Jury Trial proceedings continued at
18 9:15 a.m., on the record in open court, with the
19 juror members present, as follows.)

20 THE COURT: Thank you.

21 Good morning everybody.

22 The record will reflect that all members of the
23 jury are present.

24 The defendant and all counsel are also present
25 in the courtroom.

1 Ladies and gentlemen, I do want to give you a
2 further instruction before we proceed with the
3 defendant's presentation of proof, and it relates to an
4 instruction, a limiting instruction, I had given you
5 yesterday.

6 You've heard testimony that the defendant
7 introduced or attempted to introduce allegedly misbranded
8 drugs on dates other than the ones charged in the
9 indictment.

10 The United States contends that evidence of
11 other sales occurring September 27th, 2013, through
12 January 10th, 2014, are probative of the defendant's
13 intent to defraud.

14 The United States asserts that evidence that
15 the defendant placed orders for labels and brochures on
16 May 26th, 2016, paid and picked up on June 8th, 2016, and
17 in December 2015, which allegedly include impermissible
18 claims about the products are also probative of
19 the defendant's intention to defraud, as well as his
20 preparation and plan to sell those products, in violation
21 of the law.

22 If you find the defendant did those acts, you
23 can consider the evidence only as it relates to the
24 government's claim of the defendant's intent, plan, and
25 preparation. You may not consider it for any other

1 purpose.

2 Remember that the defendant is only on trial
3 for the misbranding counts in the indictment and the
4 other charges in the indictment and not for those other
5 acts.

6 Do not return a guilty verdict unless the
7 government proves the crimes charged in the indictment.

8 And you are so instructed.

9 Now, at this time, ladies and gentlemen, we
10 will proceed with the defendant's presentation of proof
11 in the case.

12 Mr. Girod, you may call your first witness.

13 DEFENDANT GIROD: Your Honor, I have a couple
14 just with my notes so I don't forget.

15 THE COURT: All right. Are these your
16 questions that you want your attorney to ask you?

17 DEFENDANT GIROD: Yes.

18 THE COURT: All right. Very well. You may
19 proceed.

20 THE CLERK: Raise your right hand, please.

21 Do you affirm that the testimony you're about
22 to give in this matter shall be the truth, the whole
23 truth, and nothing but the truth as you shall affirm,
24 subject to the penalty of perjury?

25 THE WITNESS: I affirm.

1 THE COURT: Thank you.

2 Mr. Fox, you'll be asking the questions that
3 the defendant wishes to respond to; correct?

4 MR. FOX: That's correct, Your Honor.

5 He has prepared the questions for me to ask,
6 more to facilitate his presentation of his case.

7 THE COURT: All right. Thank you.

8 MR. FOX: Thank you.

9 SAMUEL A. GIROD,
10 having been first duly placed under oath, was examined
11 and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FOX:

14 Q. Good morning, Sam.

15 A. Good morning everyone.

16 Q. Tell the jury your full name, please.

17 A. Samuel Girod.

18 Q. How do you spell your last name?

19 A. G-I-R-O-D.

20 Q. Samuel, where do you live?

21 A. Owingsville, Kentucky.

22 Q. And who do you live there with?

23 A. My wife, and there's still five boys at home.

24 Q. How many children do you have?

25 A. I have 12 children.

1 Q. How many grandchildren do you have?

2 A. I have 27.

3 Q. Do they all live near you?

4 A. They all live in Kentucky, not all in this
5 community, not quite. My oldest daughter lives in
6 Carroll County.

7 Q. All right. The jury has heard a lot of evidence in
8 the case so far about your work with products. Tell the
9 jury how you got started.

10 A. Well, back in '99, my mother -- I went to mom and
11 dad's every few days. I'd walk down about a quarter mile
12 from my place.

13 And she was boiling something on the stove, and I
14 asked her what is that? She said it's Chickweed. Okay,
15 so I said, really. She said, you ought to do something
16 with this, Sam. She knew I had a lot of interest in
17 nutrition, and I like nutrition, always cook something
18 with nutrition. And Chickweed you can eat that. I mean,
19 there's people that use it for salads. It's actually
20 good thing that way. So I said, okay.

21 So we -- I got to thinking about that. That was in
22 '99. And I finally did a little infusion by the sun,
23 just a gallon or something like that. And it actually --
24 I gave it away. I didn't plan to do no marketing with
25 this.

1 But I feel like, and I know that, okay, if I may say
2 that, God was in this because when I -- when I started
3 giving it away, I mean, people come back and said, you
4 know, I had this little skin rash or I had this little
5 thing or this little thing, and it all seemed to work
6 pretty good for them. I never had a complaint.

7 So then I went to the market, and I never knew I was
8 not going by regulations. I didn't know that there was
9 something in place I had to do.

10 And so that's how I got started, and the rest is
11 history. A lot of people use it so...

12 Q. Did the FDA ever come to your home to do an
13 inspection?

14 A. Yes. The first time the FDA actually came there was
15 back in Indiana, and they had one complaint on my label,
16 and that's that it said it's good for skin cancer. Well,
17 I didn't know I was violating something.

18 Honestly I'm not out there in the -- I'm not out
19 there that much. I had no idea.

20 And I asked this lady, I said, so is there anything
21 else on the label that you would want changed? She said,
22 I'm going to think about it for three weeks. Give me
23 three weeks, I should get back with you within three
24 weeks.

25 In three weeks I had a guy that, a good friend of

1 mine, he e-mailed her, never got an answer back. But we
2 took the skin cancer off, and that's all there was. That
3 was in 2003 or '04.

4 Then in 2012 they came to my house and wanted to do
5 an inspection. I said, well, we took them in and offered
6 them coffee, the guys that were -- that was Matt and
7 Nicholas, offered them coffee.

8 Well, they told me about the Chickweed and wanted to
9 see the facility. I said, you know, in my facility I
10 keep my buggy in there, and if I buy something at an
11 auction or something, I might put it in there, and it's
12 not fit today. I said I want to clean it up just a
13 little bit. I mean, we don't make salve that often, but
14 when we do we clean it up.

15 So I said, but I'll promise you something. If you
16 want to come back when I call you, and then that's what
17 we did.

18 But it was under the impression -- we talked about
19 photographs. I said, well, we don't do photographs, and
20 I prefer no photographs. They said, we can write things.
21 That's what was told to me that day.

22 Q. Did they ever come back for more inspections?

23 A. Yes. But as soon they were there the first time,
24 they took pictures. And I said, I reminded them that our
25 agreement is not to do pictures. And they said, let's

1 just be thorough about this and just do all of it. And
2 basically I can't say exact words, but that's the meaning
3 of this.

4 So based on that I said, well, because we didn't
5 have -- we couldn't keep our agreement the first time, I
6 don't want no more, and it still looks about the same as
7 it did. I mean, I haven't been in there since that they
8 seen me do that batch of Chickweed, I haven't been in
9 there.

10 Q. Did you or your family members ever carry sticks
11 during one of these inspections?

12 A. We wouldn't do something like that. What -- we
13 wouldn't carry a stick to intimidate, hurt, or hit
14 anybody. That's -- we're not that kind of person.

15 If there was somebody carrying a stick, they did it
16 because they come from chasing the cows back or the
17 horses or something. We don't do -- we don't do that
18 stuff.

19 I want you to know that I tell you the truth to the
20 best of my ability and best of my remembrance and what we
21 talked about.

22 Q. During these inspections did anyone ever cuss to the
23 inspectors?

24 A. No, not to my remembrance. We don't cuss so I
25 don't -- there's none of the boys. I never definitely

1 didn't cuss.

2 Q. There was some discussion and -- about Ms. Miller,
3 Ms. Mary Miller, came to testify. Did you intimidate or
4 try to intimidate Mary Miller?

5 A. I never intended to intimidate her whatsoever. She
6 has been a good customer, and we do -- I buy from her,
7 and she buys from us. There was nothing done to
8 intimidate Mary Miller. They're too good of people to
9 hurt them in that way.

10 Q. Did you get a letter from the Court about a status
11 hearing?

12 A. Yes, I did.

13 Q. Were you ordered to go to court?

14 A. Not the way I understood it. That's how I felt
15 exactly. I didn't understand me to appear in court. And
16 the reason was every time before and every time after -
17 we had one a couple weeks ago - my name or the defendant
18 or both was in the body of the letter. This case it
19 wasn't.

20 Plus, I had -- I had everything -- my whole matter
21 laid at the Sixth Circuit Appeals Court level from what I
22 understood, and I took it up there. And I had a manager
23 assigned there. And as far as I know, my understanding
24 was the jurisdiction is all at the Sixth Circuit, and
25 that was my understanding.

1 Q. Were there ever tests done on your formulas?

2 A. Yes, we did tests. My attorney after that -- that
3 this started cracking down on me, and I had no idea I'm
4 in regulation, violation, whatsoever at that point. But
5 he said we should do tests on them, still make sure
6 there's nobody can get hurt from these tests.

7 So we found an FDA approved lab, and I -- you can't
8 quote me on the state, but I think it was Mississippi.
9 Because we tried Florida. He looked around for an FDA
10 lab that would do that. Because most -- most places like
11 that does not really -- I don't think they deal with
12 herbs so much. So we did tests, and it come back, no
13 alkaloids in these tests.

14 And then the FDA did their own test in 2015 on all
15 our products, and they found no drugs or poisons, and
16 they said consistent -- these were consistent, like from
17 one tin to the other, they tested quite a few tins, they
18 were consistent in what was in them and all that.

19 Q. Was there ever a victim?

20 A. We never had one complaint.

21 MS. SMITH: Objection.

22 THE COURT: Sustained to the use of the term.

23 I'll sustain the objection.

24 BY MR. FOX:

25 Q. Well, did you ever have any complaints of injury or

1 harm?

2 A. No, not at all. I can explain what that was in --
3 am I allowed to?

4 Q. (Nods head)

5 A. Okay. Well, there was one guy I know told me he put
6 it on his leg, and it burned a little bit. But there's a
7 lot of things you put on leg that burns. But he said, I
8 used it for poison ivy on my chest, and it works well.
9 That's all that was -- that's the only complaint I ever
10 had.

11 Q. Are you aware of other companies or people doing
12 similar things that you're doing in terms of producing
13 these products?

14 MS. SMITH: Objection.

15 THE COURT: Sustained. It's not relevant.

16 THE WITNESS: Do I answer that, Your Honor?

17 THE COURT: No, you can't answer that.

18 THE WITNESS: Okay.

19 BY MR. FOX:

20 Q. Did the FDA ever approach you again about your
21 labels?

22 A. Yeah, they did. That was in 2003 and '04. They had
23 skin cancer, and I took it off. And then we took the
24 labels and actually finally made them where it said
25 nothing but the ingredients, and that's how we did that

1 for a good while.

2 But it seemed like, I don't know, it seemed like
3 nothing really made a change. I don't know. We just
4 kind of got caught up in it, and it just kind of hung in
5 there for five years now that we have been attacked.

6 Q. Is there anything else that you think is important
7 for the jury to hear about this case or the evidence
8 that's been presented against you?

9 A. Well, one thing that I want to make clear, I didn't
10 willfully or knowingly defraud anybody. I know the FDA
11 was after me for a while, but I didn't knowingly or
12 willingly defraud anyone. And that's basically probably
13 all I have at this point.

14 MR. FOX: That's all the questions I have here,
15 Your Honor.

16 THE COURT: All right. Thank you.

17 Ms. Smith, you may question Mr. Girod.

18 CROSS-EXAMINATION

19 BY MS. SMITH:

20 Q. Good morning, Mr. Girod.

21 A. Good morning, Ms. Smith.

22 Q. You just told this jury that you've never had any
23 complaints; isn't that right?

24 A. Yes, that's right.

25 Q. And then you clarified that you had had one

1 complaint about somebody using it on their leg.

2 A. But that's what I was trying to explain, yeah.

3 Q. But you said never, but you meant one complaint?

4 A. Well, I told him that.

5 Q. You were notified back in 2001 that the FDA had
6 received a complaint against your Chickweed, weren't you?

7 A. When they were there, they never mentioned a
8 complaint.

9 Q. You were notified that a Betty Napp tried the
10 Chickweed on her skin cancer, and it made it so much
11 worse, so much worse she had to go to a medical doctor
12 and have it removed?

13 A. I never got that complaint.

14 Q. Did you do business with someone with the last name
15 Napp?

16 A. No.

17 Q. So you never placed advertisements with someone
18 named Napp?

19 A. Oh, advertisement? He -- here's the deal. You want
20 to know what the deal is, Ms. Smith, on that?

21 Yes. He tried to advertise, and he never advertised
22 but charged me, and that's why that probably -- no, that
23 complaint never came to my attention.

24 Q. The FDA brought it to your attention, and you told
25 them the complainant was just trying to get you in

1 trouble with the FDA; isn't that right?

2 A. I don't remember none of that now. I did some
3 research on that stuff is there anybody complained, and
4 there's nobody complained that I know of.

5 Q. Back in 2001 the FDA investigator told you you could
6 not make skin cancer claims, didn't she?

7 A. Okay. Was -- well, was -- who was -- was she at my
8 house?

9 Q. I don't have to answer your questions, Mr. Girod.

10 A female FDA investigator told you you did not have
11 to make -- you could not make skin cancer claims back --

12 A. On my label --

13 Q. -- in 2001?

14 A. I took it off my label whenever that was.

15 Q. Someone told you you could not make skin cancer
16 claims about your products; isn't that right?

17 A. No. She only told me about the label.

18 Q. You also got a complaint from the State of Ohio in
19 2003, didn't you?

20 A. No, not that I know of.

21 Q. You received a letter from the Ohio Department of
22 Agriculture in 2003, didn't you?

23 A. Oh, yes. Well, when you refresh my mind, yeah, a
24 little bit, but it wasn't -- that wasn't nothing serious.
25 They took care of that pretty quick.

1 Q. The Ohio Department of Agriculture told you your
2 Chickweed product was misbranded, didn't they?

3 A. I wouldn't know what the complaint was, but I had
4 a -- there was somebody up there contacting me about.

5 Q. You received a letter from the Ohio Department of
6 Agriculture, did you not?

7 A. Yes. They contacted me before that even.

8 Q. They told you that because Chickweed was advertised
9 as curing skin disorders, skin cancer, cuts, burns,
10 draws, and poison ivy, it was misbranded under the law.
11 They told you that in 2003, didn't they?

12 A. I don't know to be honest with you.

13 Q. They told you that labeling includes the pamphlets
14 you distribute with your products?

15 A. No. I heard that recently.

16 Q. They told you that in a letter in 2003, didn't they?

17 A. They might have, but I must not have had the letter.
18 I don't know.

19 Q. You responded to the letter, didn't you, Mr. Girod?

20 A. I don't know if I did or not. That's back in 2003.
21 I am honest with you, I can't remember about that.

22 Q. Now, the FDA inspected your Indiana facility in
23 2004, didn't they?

24 A. They were at my house.

25 Q. That was September 22nd --

1 A. I wouldn't know.

2 Q. -- 2004. Jeffrey Summers, do you remember him?

3 A. I don't.

4 Q. You refused to give him some records during that
5 inspection, didn't you?

6 A. Probably, I don't know.

7 Q. You told that FDA investigator you sold over 30,000
8 tins of Chickweed Healing Salve; isn't that right?

9 A. I have no clue to be honest with you. I can't
10 remember them, my conversations.

11 Q. Between 2000 -- excuse me, you started making this
12 in 1999; is that right?

13 A. Yeah. I gave it away for probably close to a year.

14 Q. Okay. So you started selling it in 2000?

15 A. Probably around there.

16 Q. So between 2000 and 2004 you sold 30,000 tins of
17 Chickweed Healing Salve?

18 A. I don't know if that's accurate or not.

19 Q. You told the FDA investigator that, and that's --

20 A. But it was --

21 Q. -- what you told him.

22 A. -- just an estimate, and he knew that.

23 Q. How do you know what he knew?

24 A. What?

25 Q. You just said the FDA investigator knew that was an

1 estimate. How do you know what he knew?

2 A. Well, we -- ha?

3 Q. How do you know what that investigator knew?

4 A. Well, we talked. We sat on my porch and visited.

5 That was in 2004, you say? I think that's right. I had
6 some notes on that.

7 Q. Mr. Girod, you've also received complaints about the
8 Chickweed from diabetics; isn't that right?

9 A. No.

10 Q. So when you told --

11 A. One is all I know of, and they didn't complain.
12 They said we didn't use it on the -- the leg it burned
13 a little bit. So he said, we use it on chest for skin
14 for -- or like poison ivy and love it, said, I don't use
15 it on my leg, but I love it on my chest. That's what he
16 told me.

17 Q. You told --

18 A. That's all I know.

19 Q. You told Investigators Suedkamp and Paulin that
20 you've received complaints from diabetics, didn't you?

21 A. I told him about one.

22 Q. Was it a diabetic?

23 A. Well, I felt like it was, and I can't really prove
24 that exactly, because I don't even remember who he was.

25 Q. But you didn't --

1 A. They never wrote me. They just told me on the
2 street or something.

3 Q. You did not add any warnings for diabetics for those
4 promotional materials for your products, did you?

5 A. What's this now?

6 Q. You didn't add any warnings for diabetics to the
7 label of your product catalog?

8 A. There's a lot of diabetics used it.

9 Q. In fact, you added a testimonial from a diabetic to
10 your products catalog in 2015, didn't you?

11 A. I don't know, could be.

12 Q. The products catalog that we saw here yesterday you
13 ordered that from Mr. Mandrell, didn't you?

14 A. Yes.

15 Q. You've said before that all the products -- all the
16 ingredients of your product come from your garden,
17 haven't you said that, sir?

18 A. Well, most of them do, not all of them, probably
19 not.

20 Q. They don't all come from your garden, do they?

21 A. Well, I don't know I ever said that.

22 Q. You've ordered ingredients from New York State,
23 haven't you, sir?

24 A. Well, I get my beeswax from there.

25 Q. You've ordered ingredients from Indiana, isn't that

1 right?

2 A. Sometimes.

3 Q. You've even bought Chickweed from Oregon; isn't that
4 right?

5 A. Maybe.

6 Q. In 2014 didn't you order 50 pounds of Chickweed from
7 the --

8 A. It could be.

9 Q. -- State of Oregon?

10 A. It could be I did. I don't know.

11 Q. And when you make your products, you don't use
12 gloves, do you, sir?

13 A. Sometimes.

14 Q. You don't have the recipe written down for your
15 products?

16 A. Absolutely.

17 Q. You do have it written down?

18 A. Sure I do.

19 Q. You just refused to make it available to the FDA?

20 A. Yeah, I guess, I did, I don't know. I don't know
21 how that went.

22 Q. You've never registered your business with the FDA,
23 have you, sir?

24 A. No.

25 Q. You've never registered it with the State of

1 Kentucky?

2 A. No.

3 Q. Any other states?

4 A. No, I've never registered it. It's herbal, all
5 herbal.

6 Q. You knew there was a court appearance in
7 August 26 -- August 26th, 2016, didn't you?

8 A. I knew about the status hearing.

9 Q. You knew that hearing was scheduled for August 26th,
10 2016, didn't you?

11 A. I knew -- I had the letter.

12 Q. And you decided not to appear?

13 A. Well, I didn't -- I didn't understand me to appear.

14 Q. You decided this Court did not have jurisdiction,
15 didn't you, sir?

16 A. No. I -- actually, yes, in a way because I felt
17 like everything was at the Sixth Circuit, and my name or
18 the defendant was not named in the body of the letter.
19 Every other time it was. So I didn't know. I didn't
20 under -- I'm not a smart lawyer.

21 Q. Mr. Girod, the Judge told you you could not appeal
22 at that time; isn't that right?

23 A. He said with some exceptions.

24 Q. And you did not consult with a lawyer about whether
25 your interpretation of the law was right, did you?

1 A. We appealed. I had a manager assigned to me at the
2 Sixth Circuit.

3 Q. You didn't check with anyone in the court that you
4 did not have to appear at that hearing, did you?

5 A. No.

6 Q. You knew --

7 A. I see no reason.

8 Q. You knew the marshals came to your house to arrest
9 you that day, don't you?

10 A. I found out, yes.

11 Q. You knew they had an arrest warrant with your name
12 on it, didn't you, sir?

13 A. I can't prove that.

14 Q. Are you saying you did not know there was an arrest
15 warrant with your name on it?

16 A. The only thing that the boys said they seen -- they
17 showed a yellow piece of paper, but there was no -- they
18 didn't see no names.

19 Q. So between August 2016 and January of this year,
20 you're saying you did not know the marshals were trying
21 to arrest you? Is that your testimony here today, sir?

22 A. Well, they -- I knew they were out there, and I knew
23 they were -- they were looking for me at different times
24 I found out something. But, listen, this was devastating
25 for our family. I didn't -- I had no idea that I'm into

1 something like this.

2 Q. Mr. Girod, on your pamphlets, from the ones we've
3 seen here in court, you expressly say you're not
4 responsible for any adverse effects of those products.
5 Don't you say that?

6 A. Yes. It's on the pamphlet, right?

7 Q. You don't want to be responsible if something goes
8 wrong with your products, do you, sir?

9 A. I would be. But I put that for safety purposes that
10 people can't say, well, I'm making claims, because none
11 of them are my claims. They're just people that wrote me
12 letters and saying what it did for them. That's why I
13 did that.

14 Q. You ordered the pamphlets with those claims on them,
15 did you not, sir?

16 A. Yes.

17 Q. You distributed those pamphlets to people you were
18 selling your product to, did you not?

19 A. Yeah. I'll give you one too, if you want one.

20 MS. SMITH: Thank you, Mr. Girod.

21 THE WITNESS: You bet. Thank you.

22 THE COURT: See if there is any -- Mr. Fox, if
23 you need to consult with Mr. Girod, I'll let you explain
24 to him the purpose of redirect testimony to address
25 matters that were just brought up on cross-examination.

1 If you would like to consult him and if he has questions
2 that he would like to present.

3 MR. FOX: Okay.

4 THE COURT: We will do it in the same fashion.

5 MR. FOX: Yes, sir.

6 THE COURT: If you want, you can just come up
7 to the jury box. That's fine.

8 (Whereupon, an off-the-record discussion was had
9 with Defendant Girod and standby counsel, Mr. Fox.)

10 MR. FOX: Your Honor, I don't think Mr. Girod
11 wants me to ask anymore questions.

12 THE COURT: All right. That's fine.

13 DEFENDANT GIROD: Thank you.

14 THE COURT: Yes, sir.

15 Mr. Girod, at this time if you would like to
16 call any other witnesses, you can do that as well.

17 DEFENDANT GIROD: No, Your Honor, I will not.

18 THE COURT: All right.

19 DEFENDANT GIROD: Thank you.

20 THE COURT: All right. Thank you.

21 Does the United States have any rebuttal
22 testimony or evidence to present?

23 MS. SMITH: No, Your Honor.

24 THE COURT: So all the proof has been completed
25 in the case?

1 MS. SMITH: Yes, Your Honor.

2 THE COURT: All right. Thank you.

3 Ladies and gentlemen, at this time let me give
4 you just a brief summary of how we're going to proceed.

5 We're going to take a recess, and it will be a
6 lengthy recess this morning because I will need to
7 discuss the jury instructions with the parties.
8 Instructions are typically quite lengthy in federal
9 court. If you've sat on a federal jury before, you
10 understand the instructions are quite lengthy. So it
11 will take me a little while, a few minutes, to go through
12 the instructions with the parties, and then make any
13 appropriate modifications or changes to those
14 instructions.

15 When we come back, we will proceed with the
16 closing arguments, and then after the closing arguments,
17 I will instruct you. I will give you the instructions,
18 the final instructions, in the case.

19 After that you'll retire to deliberate on your
20 verdict on the charges that have been asserted in this
21 matter.

22 I don't know exactly what time we'll be
23 finishing, but I will tell you that as we get close to
24 the lunch hour, if you're back in the jury room, I'll
25 send you menus back, and so you can order your lunch.

1 It's raining today. I'm not going send you out in the
2 rain for your lunch. So we'll plan to have your lunch
3 here. It may be that it'll take place a little bit later
4 because I do want to complete as much as we can before
5 the lunch hour. So you'll be able -- hopefully if we get
6 to that point, you will be able to deliberate as you have
7 your lunch.

8 But you can't begin to deliberate now. You've
9 heard the proof in the case. You haven't heard the
10 instructions, and you can't begin your deliberations at
11 this point.

12 I'm going to apologize to you in advance
13 because it always takes me a little bit longer than I
14 hope to get these instructions finished, but I will call
15 you back just as soon as we can, and then we'll proceed
16 in the manner that I've outlined.

17 Please keep in mind the admonitions that you
18 were given previously. I'm not going to repeat all of
19 those to you at this time. I've given those to you
20 several times, but please don't discuss among -- the case
21 among yourselves while we are in recess.

22 We'll call you back just as soon as we can.

23 (Whereupon, the juror members leave the courtroom.)

24 THE COURT: Thank you, and please be seated.

25 Mr. Girod, at this time as a defendant you can

1 renew the motion for judgment of acquittal that was made
2 at the conclusion of the government's case based upon all
3 the proof being submitted in the matter.

4 Would you wish to renew that motion at this
5 time?

6 DEFENDANT GIROD: Yes, Your Honor, I would like
7 to dismiss the case. There's not -- nothing been proven
8 so far.

9 THE COURT: All right. And the United States'
10 position would be the same when the Court considers all
11 the testimony in evidence?

12 MS. SMITH: Yes, Your Honor, under that
13 standard, absolutely.

14 THE COURT: All right. Again, the standard
15 that is applied in determining whether to grant a motion
16 under Rule 29 would be whether there is sufficient
17 evidence for a reasonable juror to conclude that the
18 defendant has committed the offense charged. In this
19 case there are 13 counts, and when the Court considers
20 all of the evidence under that standard, the reasons that
21 were explained previously at the conclusion of the
22 government's case, the Court's determination would not
23 change. There is sufficient evidence for all of these
24 counts to be submitted to the jury.

25 So the motion has been renewed, but will be

1 denied at this time.

2 Now, what I'd like to do is I would like to
3 have our instruction conference. I'm going to go through
4 some changes to the draft that was provided to the
5 parties on Monday morning before we started trial. So
6 I'll go through the changes to that draft, and then I'll
7 entertain any arguments on additions, deletions, or any
8 other matters the parties wish to address on the
9 instructions.

10 So turning to the first page, of course, in the
11 caption the word "draft" will be taken out of the jury
12 instructions.

13 I've highlighted paragraph 4. I'll include the
14 defendant's position a little bit later, but that
15 highlighting obviously will come out.

16 And then turning to page 3, in paragraph 3
17 there's also some highlighting. Because these
18 instructions will be given after the parties have
19 presented their closing arguments, I may modify that
20 paragraph to include the parties either have talked about
21 the law, or now I've stated they may -- might talk about
22 the law, or might have talked about the law.

23 But if, in fact, the legal issues are
24 discussed, as I expect they will be, then I will change
25 that to, "The parties have talked about the law during

1 their arguments, but if what they say is different from
2 what I say, then you must follow what I say." So I'll
3 make that modification as necessary.

4 On instruction number 4, which is on page 6,
5 the parties did not enter into any stipulations, and the
6 Court did not take judicial notice of any facts, and so
7 paragraph 2 will read as follows.

8 "The evidence in this case includes only what
9 the witnesses said while they were testifying under oath
10 and the exhibits that I allowed into evidence." And then
11 there will be a period at the end of that sentence.

12 In paragraph 3, that highlighting will be taken
13 out. The second sentence of paragraph 3 will read, "The
14 parties' statements," and then comma, "other than
15 Mr. Girod's testimony given under oath," comma, "are not
16 evidence."

17 In paragraph 4, "During the trial I did not let
18 you hear the answers to some of the questions that the
19 lawyers or Mr. Girod asked." I sustained objections, I
20 believe, and we'll give the instruction in that -- in
21 that manner.

22 Then going over to instruction number 9, which
23 is on page 12, Mr. Girod did not make an opening
24 statement, he -- at the beginning of the case, and so
25 I'll take out the reference in paragraph 2 about opening

1 statement. That second sentence will read, "He made
2 closing argument," comma, "and asked questions of the
3 witnesses," comma, "made objections," comma, "and made
4 arguments to the Court." So I'll modify that sentence
5 appropriately.

6 On the next page, page 13, the highlighting
7 portion -- or highlighted portion will come out of
8 paragraph 2, and it will read, "The government and the
9 defendant objected to some of the things that were said
10 or done during the trial."

11 Another thing that I have done is I've included
12 specific dates for the instructions relating to Counts 1
13 through 13.

14 So when we go over to page 18, for example, for
15 Count 1, instruction number 15, paragraph 1 will read,
16 "In Count 1 the defendant is charged with conspiring to
17 impede an officer of the United States from discharging
18 his duties in violation of federal law."

19 Then I've added in the sentence, "It's alleged
20 that this action occurred on or about November 21st,
21 2013."

22 I'll make a similar addition for these other
23 counts as relevant, and I'll go through those with you,
24 but I wanted to highlight that I have added the specific
25 dates.

1 As you'll recall, the jury did have a question
2 during the course of the trial about specific dates that
3 were charged for the various counts, and so I believe to
4 make it as clear as possible I will include those, those
5 additions.

6 In -- for Count 2, which is instruction number
7 16, on page 21, I've included a similar insertion after
8 the first sentence in paragraph 1, and the insertion
9 would be, "It's alleged that this action occurred on or
10 about November 21st, 2013."

11 I'll also advise you that you'll get a clean
12 set of instructions with the authorities taken out. So
13 page numbers may be off a bit, but each side will get a
14 clean set of instructions before you begin your
15 arguments.

16 On page 23, which is instruction 3, I've
17 included the following sentence as the second sentence of
18 the first full paragraph, "It's alleged that this action
19 occurred on or about September 2013 and continuing
20 through on or about July 2015."

21 For instructions 4 through 11 on page 25, I've
22 included language after the first sentence that reads,
23 "The action charged in Count 4 is alleged to have
24 occurred September 27th, 2013."

25 And then I've included similar language for

1 Counts 5 and 6, which would be October 14th, 2013.

2 Counts 7, 8, 9, and 10, the date would be
3 November 13th, 2013.

4 And Count 11 would be January 10th, 2014, so
5 I've included those relevant dates from the indictment.

6 Jumping over to instruction number 25, which is
7 on page 36, I've included as a second sentence of the
8 first paragraph, "It's alleged that this action occurred
9 on or about December 15th, 2014."

10 And then on instruction 26, which is the next
11 page, I've included a sentence, "It's alleged that this
12 action occurred on or about August 26th, 2016." That's
13 for Count 13.

14 For instruction 27, which is the defense
15 theory -- and if the parties would like to address this
16 matter further, they can certainly do so in just a
17 moment. But the one change that I've made is to change
18 the word "crime" from singular to plural.

19 So at the end of the first sentence it becomes,
20 "That concludes the part of my instructions explaining
21 the elements of the crimes."

22 And then the very last sentence in paragraph 2,
23 the reference to crime would be changed to plural to
24 crimes.

25 Over in instruction 29, there were two versions

1 that were given to you originally because at the time
2 that these were prepared, of course, I did not know
3 whether the defendant would be testifying in the case,
4 and because he's elected to testify, the instruction that
5 now appears on what you have as page 41 will be given.
6 The word "alternate" in the caption will be taken out,
7 instruction number 29, defendant's testimony.

8 And then on instruction 31, and this is the
9 instruction that we had discussed this morning before we
10 proceeded with the jury. I've made one other change to
11 the draft that was given to you this morning, and it's to
12 the last paragraph. And it would read as follows,
13 "Remember that the defendant is only on trial for the
14 counts charged in the indictment," comma, "not for other
15 acts that are not specifically charged."

16 The way it was originally written it only
17 referred to misbranding counts, and there are other
18 counts other than misbranding. Misbranding, obviously
19 Counts 1 and 3 and 12 and 13.

20 So, again, it will read, "Remember that the
21 defendant is only on trial for the counts charged in the
22 indictment, not for other acts that are not specifically
23 charged."

24 And then finally, there's some highlighting
25 that appeared on instruction number 36, duty to

1 deliberate, which is on page 48. That very first line,
2 that highlighting will be taken out. The wording is
3 correct as it's written.

4 Based on the testimony that has been presented,
5 does the United States intend to ask for an instruction
6 on deliberate ignorance in this case?

7 MS. SMITH: Your Honor, I discussed that with
8 my co-counsel, and we are not seeking that.

9 THE COURT: You're not going to ask for that?

10 All right. Are there any other additions,
11 deletions, or corrections that you believe would be
12 appropriate to the draft that I was -- that I had given
13 you earlier, but that I've just revised with those
14 comments?

15 MS. SMITH: Just two very minor things. On
16 page 18 for instruction number 15, the sentence that is
17 at paragraph 2, capital D, the draft I received from the
18 Court has "the defendant knowingly joined the
19 conspiracy."

20 The pattern instruction from the Sixth Circuit
21 for 18 USC 371 has "The defendant knowingly and
22 voluntarily joined the conspiracy." I think
23 "voluntarily" is included later, but just to follow the
24 pattern instruction, I would recommend adding "and
25 voluntarily" after "knowingly" in paragraph 2.

1 THE COURT: All right. I think that would be
2 appropriate.

3 MS. SMITH: The second thing is on page 36,
4 instruction number 25, for Count 12, paragraph 3, I think
5 it should read "induced" not induct. You might have
6 already caught that. "The defendant acted with the
7 intent to fraudulently induce any person."

8 THE COURT: I did not catch that, but you're
9 correct.

10 MR. FOX: Which page?

11 MS. SMITH: 36.

12 THE COURT: All right.

13 MS. SMITH: That's everything.

14 THE COURT: All right. Thank you.

15 Mr. Fox, if you would like to take a moment to
16 go through those changes with Mr. Girod, I'll certainly
17 give you that time.

18 (Whereupon, an off-the-record discussion was had
19 with Defendant Girod and standby counsel, Mr. Fox.)

20 DEFENDANT GIROD: I have nothing, Your Honor.

21 THE COURT: All right. I will make these
22 changes. Some of these I've already made. The
23 typographical issues obviously I have made those changes.
24 We'll make these additional changes, and I'll send these
25 back out to you here in just a few moments, give you a

1 chance to check and make sure that I didn't miss some of
2 those items.

3 And after we've done that, we'll at that point
4 be ready to begin the arguments. I believe we will be
5 able to complete the arguments before the lunch break. I
6 don't know that we'll be able to finish the instructions.
7 It generally takes about -- well, these are -- the
8 substantive instructions will be about 50 pages. It will
9 take about 45 minutes to give these instructions, and
10 then I'll give the -- I'll explain the verdict form to
11 the jury. It takes a little while to go through the
12 verdict form. I'll probably do that before we take the
13 lunch break, but I'll have the clerk ready to give those
14 menus to the jury, and they can order their lunch, and
15 they can be deliberating while their lunch is being
16 placed.

17 MS. SMITH: Your Honor, for --

18 THE COURT: Yes.

19 MS. SMITH: -- the purpose of my closing, does
20 the indictment go back with the jury?

21 THE COURT: I do send a copy of the indictment
22 back with the grand juror's name, not the U.S. Attorney's
23 name, but the grand juror's name stricken from the copy
24 that will go back, with the clear admonition that the
25 indictment is not evidence in the case. And so I'll

1 instruct the jury that it's not evidence, but it will --
2 a copy will go back.

3 MS. SMITH: Thank you.

4 THE COURT: All right. We'll take just a short
5 recess to make these modifications. I'll send the
6 corrections out to you here in just a moment, and we'll
7 be ready to proceed as outlined.

8 (Whereupon, a recess was taken at 10:00 a.m.,
9 and Day 3 of the Jury Trial proceedings continued at
10 10:20 a.m., on the record in open court, without the
11 juror members present, as follows.)

12 THE COURT: Thank you.

13 If the parties are ready to proceed, we'll
14 bring the jury in at this time.

15 MS. SMITH: Yes, Your Honor.

16 THE COURT: All right. Thank you.

17 Bring the jury in, please.

18 (Whereupon, the juror members enter the courtroom.)

19 THE COURT: Thank you, and please be seated.

20 The record will again reflect that all members
21 of the jury are present.

22 Defendant and all counsel are present at this
23 time.

24 And, ladies and gentlemen, at this time we will
25 proceed with the closing arguments, to be followed by the

1 instructions in the case.

2 Ms. Smith, you may proceed.

3 MS. SMITH: Thank you, Your Honor.

4 THE COURT: And you're reserving a portion of
5 your time for rebuttal; correct?

6 MS. SMITH: Yes, Your Honor.

7 THE COURT: All right. Thank you.

8 MS. SMITH: I do have some slides if we could
9 use the audio/video. Are your screens on?

10 JUROR: Not yet. Now they are.

11 THE COURT: Thank you, and you may proceed.

12 MS. SMITH: Ladies and gentlemen, this case is
13 about obstructing justice. It's about ignoring Judge's
14 orders.

15 It's about being told to stop making and
16 selling these products, and the defendant deciding to do
17 it anyway.

18 It's about being told you have to appear in
19 federal court, and the defendant deciding he didn't have
20 to.

21 I said those same words to you on Monday, and
22 I'm saying them again now because you have now heard the
23 evidence that every one of those things happened. The
24 defendant cannot simply ignore the rules.

25 Now, this case came in in a short time, so the

1 evidence should be fairly fresh in your memory. I'm just
2 going to briefly walk back through what you've heard what
3 happened.

4 You heard how this case started with a civil
5 case in Missouri, how over a thousand containers of the
6 defendant's product were seized there, and that prompted
7 the FDA to start a civil lawsuit.

8 You heard the result of that civil lawsuit. It
9 was this injunction. Now, this injunction is in
10 evidence. It's Exhibit 3. I encourage you to look at
11 it, to look at what it tells the defendant to do, what it
12 requires of him.

13 Look at what the defendant did do after this
14 federal order came down. He went on a selling spree. He
15 ended up selling products that ended up in Wisconsin, in
16 Missouri, in Indiana, in Illinois, all within just a few
17 months of a Federal Judge telling him to stop selling the
18 product.

19 You heard from those customers. Most of whom
20 did not want to be here. For all of them they told you
21 that he didn't tell them about that court order. He
22 didn't tell them there was an injunction prohibiting
23 people from selling these products. He didn't tell them
24 that a Federal Judge had told him to stop making them.

25 What did the defendant do when he sold the

1 product to them? He gave one of them a good price for
2 buying over a thousand containers of the product, for
3 spending over \$6,000 on a product that was under a
4 federal injunction.

5 Here's the sequence of events. A timeline for
6 you. Now, these slides are not evidence. They're just
7 part of my argument. You won't get a copy of them, but
8 this timeline lays out the timing.

9 The order first came down in August 2013. It
10 was amended and reissued in September of 2013.

11 Ten days later, he sells \$6,000 of product of
12 the Chickweed Healing Salve to Cloverdale Warehouse. You
13 heard about that from Jeffrey Burkholder. That's the
14 basis of Count 4.

15 Then October 13th, he sells the Chickweed
16 Healing Salve and the TO-MOR-GONE to Herbs & More. You
17 heard about that from Bridget Sargent, and it's the basis
18 of Counts 5 and 6. You heard he had never sold product
19 to that store before, that that was their first time
20 buying it, and he showed up in person in Indiana.

21 Next is the November 13th series of sales in
22 Indiana to Miller's Dry Goods and Family Health Foods.
23 You heard about that from Mary J. Miller and
24 Kevin Miller. You heard that he sold the Chickweed
25 Healing Salve, the TO-MOR-GONE, and the R.E.P. to

1 Miller's Dry Goods. You heard he sold the TO-MOR-GONE to
2 Family Health Foods. Those are Counts 7 through 10.

3 And then you heard in January 2014 he sold
4 directly to Mr. Hollinger in Indiana. He mailed the
5 product to him then. That is the basis for Count 11.

6 Those are the misbranding counts.

7 Keep in mind what else was going along in this
8 time period. After he makes those sales in September,
9 October, November, the CSOs, the Food & Drug
10 Administration consumer safety officers, show up for a
11 court-ordered inspection. You heard about this from
12 Investigator Paulin and Investigator Suedkamp.

13 You also heard from Deputy Sheriff Jessie
14 Stewart who accompanied them there that day.

15 What did the defendant do when two officers
16 from the Food & Drug Administration showed up at his
17 property that day? You heard a lot about this. This is
18 the basis of Count 1 and Count 2. He did not let them
19 inspect. He was not going to let them inspect. He and
20 the others there created this situation, this
21 intimidating situation, that you heard about from the
22 people who were there. You heard about the group they
23 encountered when they arrived. You heard about the
24 yelling, you heard about the screaming. They told you
25 they asked the sheriff to accompany them because of their

1 prior concerns, because of their prior interactions with
2 the defendant.

3 They told you what an intimidating situation it
4 was. They told you it was unlike anything they'd ever
5 encountered before. They told you they were not able to
6 do their jobs that day because of the actions of the
7 defendant and the others with him. They were forced to
8 leave after the sheriff helped them clear a path to their
9 car.

10 Remember that day the defendant told those
11 consumer safety officers that he was still manufacturing,
12 but he wasn't selling outside of Kentucky to avoid FDA
13 jurisdiction. He testified to that here.

14 But he made that statement just eight days
15 after he'd been selling his product in Indiana.

16 And then two months later he sold a case of
17 Chickweed to somebody else in Indiana. And what did he
18 include in that package? He included three pamphlets for
19 the three products at issue in this case, the same
20 pamphlet that those Food and Drug investigators had told
21 him two years beforehand he had to stop distributing,
22 that four months beforehand a Federal Judge told him he
23 had to stop making and selling those products, and here
24 he was marketing them directly to a customer in another
25 state.

1 Those products and the pamphlets are in
2 evidence. Look through them. Look through the claims
3 that he was putting on the pamphlets he was distributing
4 with his product. That is part of the labeling. That is
5 part of his intended use for those products.

6 Now, what did he do next? He continued to
7 selling his product. You heard he sold to Mary Miller of
8 Grabill, Indiana, in June 2014. That sale is not charged
9 in the indictment, and the Judge instructed you it's just
10 offered to show his intent, his intent to keep violating
11 the law, his intent to keep violating the Judge's orders,
12 to keep violating what the FDA was telling him to do, and
13 his intent to not tell his customers about the order.

14 Then in 2014 the criminal case got rolling.
15 Dozens of grand jury subpoenas were issued, and he found
16 out about them, and he showed up at Mary Miller's store
17 over four hours from here. He asked to see the subpoena.

18 Now, Mary Miller when she testified here she
19 testified to something slightly different than what she
20 had told Agent Lamp before. She said he told her not to
21 respond at that time when they first talked about the
22 subpoena, and then she received the letter.

23 What did he say in that letter? I encourage
24 you to read it. It's Exhibit 32. He told Ms. Miller
25 that he never gave the FDA records, and it would be

1 against the law to do some of the stuff they asked for.

2 He wrote, "if you do nothing, I really don't
3 know if they would pursue it or not."

4 Now, Mark Wooten, who opened the letter, he
5 thought oh-oh, when he read that letter. Read the
6 letter and consider if he was trying to persuade
7 Ms. Miller to withhold documents from the grand jury.
8 This is Count 12. He doesn't have to have been
9 successful, and he was not. She produced the records.
10 But trying to persuade someone corruptly to withhold
11 documents from a grand jury proceeding is a crime.

12 What did the defendant do next in 2015? He
13 ordered over a hundred gallons of olive oil. He ordered
14 thousands more of his labels.

15 This brings us to the criminal case. He was
16 charged in October 2015. He was released on bond. Even
17 after facing criminal charges, he ordered more labels.
18 He ordered a product catalog with all three products that
19 were at issue in a federal injunction and now a federal
20 indictment making the same claims.

21 Then when he didn't like how the proceedings
22 were going, he decided not to show up. Even after a
23 Federal Judge had reminded him of his obligation to be
24 here.

25 And what was his excuse? What did he tell you?

1 He thought the case was somewhere else. He thought the
2 Sixth Circuit had jurisdiction.

3 But what did he base that on? He made up his
4 own mind without a lawyer, ignoring what the Court had
5 told him directly. A Judge had already told him he could
6 not appeal until a final judgment, but he appealed anyway
7 and was so sure of what he was doing, he returned the
8 mail he got from this Court.

9 Now, this returned mail is important. Nothing
10 is more indicative of his intent in that time frame than
11 returning this mail. He showed you exactly what he was
12 thinking when he decided not to appear in federal court.
13 He purposefully and knowingly decided not to appear.

14 That is an element of Count 13. Walk through
15 the elements in the instructions, and you will see that
16 every one of them is met. He clearly knew of the court
17 hearing. He knew of the arrest warrant. He knew the
18 marshals were looking for him. He cited all of those
19 things in his own legal brief, which is another exhibit,
20 but he decided that he did not have to be here.

21 That is not how this works. We don't get to
22 write our own rules. We live in a society of laws, not
23 men. Regardless of what anyone's religious cultural
24 beliefs are, we have to follow those rules. There are no
25 exceptions, and the defendant does not get to make up his

1 own rules. He does not get to decide which ones he's
2 going to follow and which ones he is not. The laws apply
3 to everyone.

4 Let's talk about those rules. You'll hear the
5 instructions from the Judge. They will be quite lengthy.
6 You will get to hear all of the elements of all of the
7 crimes. It's important because that's what you're here
8 to do. You're here to apply the evidence you've heard to
9 all of those elements.

10 Let's just walk through Counts 1 and 2. For
11 Count 1, you have to find that the defendant agreed with
12 others to prevent or induce federal officers from
13 discharging their duties or leaving the place where their
14 duties are required to be performed. You have to find
15 that he did this through intimidation.

16 The events of November 21, 2013, are the basis
17 of this charge.

18 Now, you've heard the two CSOs attempted their
19 FDA inspection. You heard that the defendant with others
20 created this intimidating situation. You heard they felt
21 threatened. You heard they felt intimidated. You heard
22 that those actions of the defendant and others caused
23 them to leave. It caused them to leave before they could
24 do their job, before they could do the inspection.

25 Those are also the basis of Count 2. The

1 elements are different. There the United States has to
2 prove there was a pending proceeding before the FDA, and
3 that was the court-ordered inspection. The defendant
4 knew of the inspection. The CSOs told him while they
5 were there. They read that canned statement that they
6 have to read pursuant to a court-ordered inspection.

7 The defendant you heard tried to influence,
8 obstruct, or stop the inspection, and he did so
9 corruptly, meaning with an improper purpose or through a
10 threatening communication. The CSOs told you they felt
11 threatened.

12 Think through what you heard about this scene.
13 Think through the description, the photograph --
14 photographs of the area, the map. Those are in evidence
15 under Exhibit 4.

16 Ask yourself did the defendant use intimidation
17 to keep these officers from doing their job? Did he have
18 an improper purpose to getting them not to inspect?

19 Now, let's talk about the FDCA offenses, the
20 Food Drug and Cosmetic offenses. Those are Count 3
21 through 11.

22 First of all, in Count 3 the defendant is
23 charged with failing to register with the FDA with the
24 intent to defraud. Now, he told you himself he did not
25 register with the FDA. You also heard that from the FDA

1 employee.

2 And you heard lots of evidence about his
3 manufacturing, how he continued to make and distribute
4 these products. And that's from September 2013 after the
5 injunction came down, all the way up until the summer of
6 2015 when he was first indicted.

7 You've heard about the claims that he made
8 about his products that make them drugs under the law.

9 You've heard how many times he was notified of
10 this.

11 And then you heard of all the ways in which he
12 tried to interfere with the FDA's process, trying to keep
13 them from doing their jobs.

14 You've also heard that this case did not come
15 out of nowhere. This is not a one-time occurrence where
16 the defendant accidentally sold a misbranded product.

17 You've now heard that he has been hearing these
18 same messages for over a decade.

19 You've heard about his systematic refusal to
20 listen to what people are telling him.

21 You heard how in January 2012 Investigator
22 Suedkamp and Paulin told him in the most basic terms stop
23 distributing these pamphlets, and you're going to fall to
24 the bottom of the FDA's priorities.

25 The defendant said he couldn't do that. He

1 said this is how he sells his products. This is how
2 people know what they are for.

3 He said that with his actions too when he
4 continued to sell and distribute these pamphlets less
5 than two months after the CSOs were there to do their
6 court-inspection.

7 I just want to review the misbranding counts
8 again. Count 4 is the \$6,000 sale to Jeffrey Burkholder
9 in September 2013.

10 Counts 5 and 6 are the Chickweed and
11 TO-MOR-GONE sales to Herbs & More in October 2013.

12 Count 7, 8, and 9 are the sale of the three
13 products to Miller's Dry Goods, November 13th, 2013.

14 Count 10 is the TO-MOR-GONE sale to
15 Kevin Miller at Family Health Foods, also in Indiana.

16 And then Count 11 is mailing the shipment to
17 Mr. Hollinger.

18 Now, all of these customers told you they would
19 have not bought the product if they'd known about the
20 court order, that the defendant did not tell them. He
21 withheld that fact.

22 They also told you how they gave the product to
23 Special Agent Lamp when they learned of the injunction
24 because they knew they could not sell it. You saw the
25 boxes piled up here. That was just from the customers

1 you heard from, how much product the defendant had sold
2 in the few months after the injunction.

3 Let's talk about the ways in which the products
4 were misbranded. Now, he's charged with failure to
5 register with the FDA. That is a way in which a product
6 can be misbranded.

7 Now, this is important. The FDA cannot keep
8 track of products if they don't know who's making them.
9 That's why they require registration.

10 In this case they just waited until they found
11 this shipment in Missouri. They didn't even know who was
12 making the product until the defendant himself
13 intervened.

14 The FDA can't ignore these products just
15 because they're made in a barn or the defendant's
16 kitchen. He doesn't get an exception because he makes
17 products in his barn. He's made them for over a decade.
18 He's made thousands and thousands of these products.
19 This was a real business selling products that make
20 claims, claims to cure cancer, psoriasis, diaper rash,
21 all of the things that you will see in the pamphlets.

22 Now, each product was misbranded in other ways.
23 The TO-MOR-GONE was misbranded, and that it was made in a
24 facility not registered with the FDA.

25 Now, it was misbranded in two other ways that

1 the other products were not, and you heard about that
2 from Dr. Liedtka, the dermatologist from the FDA. You
3 heard that bloodroot, that Black Salve are dangerous. I
4 think we're all going to book appointments with a
5 dermatologist once this over based on her testimony.

6 You heard that the labeling of TO-MOR-GONE
7 failed to contain adequate warnings where the use would
8 be dangerous.

9 You heard that the product was dangerous.
10 Those are two different ways in which a product can be
11 misbranded.

12 And then you heard it failed to contain
13 adequate instructions for use. That's sort of the
14 catchall of when products are making health claims that
15 are not verified and not appropriately vetted through the
16 FDA.

17 The Chickweed is alleged was misbranded in two
18 ways. First, that it was made in a facility not
19 registered with the FDA, and second that it failed to
20 contain adequate instructions for use.

21 And I'm walking through these because you have
22 to agree on the ways in which they're misbranded, and you
23 have to do so unanimously. So you'll see that on the
24 verdict form that for each of the products and for each
25 of the sales you have to decide whether they were

1 misbranded in the way the United States has alleged.

2 With the R.E.P. product, the sinus product, it
3 was misbranded in two ways. It was made in a facility
4 not registered with the FDA, and it did not list each
5 active ingredient, and you can see that on the exhibits
6 in evidence that it does not list what is in the product.
7 That's a very basic requirement. Manufacturers have to
8 tell consumers what is in their product.

9 Now, all of these, especially the adequate
10 instructions for use come back to the claims the
11 defendant was making about the products. This is the
12 pamphlet for the Chickweed Healing Salve that was
13 provided to Mr. Hollinger.

14 These are some of the testimonials on the
15 product that the defendant included. "I had skin cancer
16 removed two times from my face. The third time it came
17 back I decided to use Chickweed Healing Salve. Within
18 two weeks it was gone."

19 For TO-MOR-GONE look at the pamphlet in
20 evidence. "I had a growth on my nose the size of a bean.
21 Sam gave me a tin of TO-MOR-GONE and told me to apply it
22 to the growth, cover it with a Band-Aid, and change this
23 once a day."

24 This is how the defendant was marketing his
25 products.

1 With these Food Drug & Cosmetic Act offenses
2 keep in mind the purpose of the act. The public interest
3 in the purity of drugs, in the purity of products people
4 are buying to cure what ails them, it's so great that we
5 put the highest standard on the people who make those
6 products.

7 The defendant chose to make these products. He
8 chose to make these claims about them. He chose to sell
9 them in other states. He chose to order ingredients in
10 other states. He also chose to ignore Judge's orders.
11 We're here because of what the defendant did.

12 Now, one more thing about the Food Drug and
13 Cosmetic Act offenses, and you'll see this on the verdict
14 form that there is a lesser-included offense. It's a
15 strict liability crime. So if you find that the
16 defendant did these sales, sold these products on these
17 days in these states and didn't have the intent to
18 defraud, there is a lesser-included offense you'll have
19 to consider. You'll have to consider whether he did, in
20 fact, make those sales but without the intent to defraud.
21 It's something else you will see on the verdict form and
22 why it's a long, long verdict form.

23 Now, when you're thinking about the intent to
24 defraud, that's covered in the Judge's instructions, and
25 it can mean a number of different things. It can mean to

1 act with the intent to create a false impression by
2 misstating, omitting, or concealing material facts. You
3 don't even have to prove that anyone was, in fact,
4 misled, but it can be demonstrated that he took steps to
5 distribute the product and conceal material facts, from
6 either customers or from the federal government.

7 You can also find that he acted with the intent
8 to defraud or mislead if he acted with the intent to
9 deceive the FDA materially or other government agencies,
10 and to hinder their ability to carry out their
11 responsibilities.

12 Now, these store owners and managers and
13 customers you heard from, they didn't know about this.
14 The defendant did not tell them, and they all
15 unequivocally told you they wouldn't have bought the
16 product if they had known.

17 Why would the defendant put them in that
18 position? Why did he not tell them about the injunction?
19 Why did he keep selling to these people after all these
20 people told him to stop doing it, after a Federal Judge
21 ordered him to stop?

22 You heard why from Agent Lamp. You heard how
23 much money the defendant was making off of these three
24 products. You heard this first from the records in his
25 own bank account with his own bank, from the loan file,

1 his own accounting of how much money he made every year.

2 You heard in 2011 he made over \$188,000 just
3 from these three products.

4 2012 over \$117,000.

5 2013, estimating for that last month of the
6 year, over \$144,000.

7 You heard how much he would have made if he
8 kept making and distributing the products. That is why
9 he didn't want to tell anyone a Federal Judge had told
10 him to stop. That's why he didn't stop.

11 Now, you have heard the defendant testify, and
12 you're to consider his credibility like any other witness
13 that you heard from.

14 He was adamant that he never received any
15 complaints, and then said he had received one complaint.
16 He didn't count in that the notices he received from
17 regulatory authorities complaining about his products and
18 the claims they were making to him.

19 You heard he told the two investigators, Paulin
20 and Suedkamp, that he had received complaints from
21 diabetics, and then you saw that in 2015 when he ordered
22 his product catalog, he included a testimonial from a
23 diabetic.

24 You've also heard a few times that the
25 defendant wants to have things both ways. He has

1 insisted that his products are not drugs, but he refused
2 to give the FDA records citing HIPAA, a law that protects
3 patient information.

4 He told you he hasn't received any complaints,
5 but then he adds to his label he's not responsible for
6 adverse affects as a result of using this salve. He
7 doesn't want to be responsible if something goes wrong.

8 Now, we're not here simply because the FDA has
9 decided to harass someone. We're here because of these
10 products, we're here because of the way in which the
11 defendant advertises them, and we're here because of his
12 consistent refusal to listen to what people are telling
13 him and to follow the rules.

14 You heard that two consumer safety officers
15 told him about the products with his -- the issues with
16 his products.

17 You heard a compliance officer told him about
18 the issues with his products, Officer Umscheid.

19 You heard that a Federal Judge told him about
20 the issues with his product, and he continued to do what
21 he wanted.

22 This man thinks the rules don't apply to him.
23 He thinks that when a Federal Judge orders you to do
24 something, you don't have to do it.

25 He thinks that when a Federal Judge orders the

1 FDA to inspect your facility, you can just scare them
2 away.

3 He thinks that when a grand jury subpoenas
4 records, he can tell people they don't have to respond.

5 He thinks that when he signs his bond
6 conditions and promises to this Court that he will show
7 up, it doesn't really mean he has to show up every time,
8 it doesn't mean he has to show up if he decides he
9 doesn't have to be here.

10 He thinks that an arrest warrant doesn't mean
11 someone is looking for him.

12 He thinks he can do what he wants, follow his
13 own rules, and get away with it. He cannot.

14 You are here today to hold him accountable
15 because nothing else has gotten through to him.

16 There has been all these times along the way
17 that people have tried to explain things to him.

18 You have taken an oath to follow the law, and
19 he has violated the law.

20 You've heard that the evidence establishes
21 beyond a reasonable doubt that he did each of these
22 13 offenses that are accused against him.

23 Thank you for your patience with this process,
24 for your respect and careful consideration of the
25 witnesses and the evidence.

1 I ask that you find the defendant,
2 Mr. Sam Girod, guilty of all the charges.

3 THE COURT: Thank you, and you may reserve the
4 balance of your time, Ms. Smith.

5 MS. SMITH: Thank you.

6 THE COURT: Thank you.

7 Mr. Girod, you may present your closing
8 argument to the jury.

9 DEFENDANT GIROD: If I could have exhibits I
10 entered.

11 THE COURT: Yes, I believe it's Defendant's
12 Exhibit 1. It should be three pages. Make sure there
13 are three pages there.

14 THE CLERK: I have two pages.

15 THE COURT: Mr. Girod, there were three pages
16 that should have been in that exhibit. We talked about
17 that yesterday. The exhibit here has not included that
18 third page. I believe that either -- do you have the
19 copy with all three pages?

20 DEFENDANT GIROD: Yes, we can take this and
21 have this entered.

22 THE COURT: You can use -- you can use your
23 copy that you have.

24 DEFENDANT GIROD: Okay.

25 THE COURT: And then we'll make sure that that

1 other page is added to the exhibit that will go back to
2 the jury.

3 DEFENDANT GIROD: All right. Thank you very
4 much, Your Honor.

5 THE COURT: Yes, sir.

6 DEFENDANT GIROD: Good morning everyone.

7 I guess I'll do a brief preview of how I got
8 started.

9 I had, like I said, I shared a little bit a
10 little while ago about my mom and how she told me I
11 should do something with Chickweed. It's medicinal, and
12 we like Chickweed. So I started making it, and that's
13 kind of an overview, and how that we gave it away for so
14 long, probably eight months to a year, and how that
15 people loved it. I got very positive feedback, and I
16 didn't really plan no marketing here at all.

17 So -- but in the end I put it on the market. I
18 didn't know I was going against regulations whatsoever.

19 We live a pretty quiet life honestly. I have
20 over a hundred acres out there, and I've got a large
21 family, and so that's what we do.

22 And I always had interest in herbs for 38 years
23 almost.

24 And God's herbs are great, you know. I love --
25 we do a lot with herbs just in our own family even. And,

1 you know, we did that for a couple years.

2 And then -- she -- I guess Ms. Smith mentioned
3 it was in 2001. I couldn't tell you what year that an
4 FDA agent was at my place.

5 And all she had at that time was I had skin
6 cancer on the label. I said okay. I said is there
7 anything else I need to do with that? I said I buy
8 several thousand labels at a time, should I -- because I
9 get a better price. Is there anything else on the label
10 that I need to change? And he said you give me about
11 three weeks. I don't know that there is. That's the
12 answer I got.

13 And so I had a good friend of mine emailed her,
14 and we didn't get an answer back. But the only thing
15 that was really against it was skin cancer, so I removed
16 that.

17 And that was good until 2012. At one point
18 USDA took some product, but that got all resolved just in
19 a couple week's time. I guess -- I didn't even remember
20 that, but that was USDA, and that was all resolved, and
21 it's only in Ohio.

22 And, you know, then they -- the FDA I pretty
23 much covered that part in the opening as far as -- or in
24 the examination here as far as how I got started. And we
25 loved it. I had a lot of customers that liked it. We

1 refused selling for a good while here.

2 But, anyway, the FDA first came to the farm in
3 Indiana, and then this went on and everything.

4 Mary Miller is another point I want to make. I
5 talked to her, and I said don't -- make sure that you
6 don't get in trouble over my stuff. I don't want you in
7 trouble over that. I told her that. She'll testify to
8 that I'm convinced. But I said, you know, if you can
9 fill out a waiver. She said, man, I don't want to go to
10 Lexington. I said, well, if you can fill out a waiver to
11 not go, I think that might work, I don't know.

12 I wrote her a letter later and kind of
13 explained a few things.

14 In creation God made all the herbs, and he
15 called it all good. And everything -- in the Chickweed
16 you can actually eat some of it. I mean, I don't know
17 why you couldn't. We eat it. And there's nothing
18 harmful in the Chickweed.

19 There's two things we wanted when we started
20 doing it, even before we gave it away. We had half-ounce
21 containers. Before we ever gave it away I wanted
22 something that absolutely non-toxic, and I wanted
23 something that is very effective so that if a little baby
24 gets into it and gets it on him and so on, that it
25 wouldn't hurt. Well, we proved that point many times.

1 But we had -- a year or so later we had our
2 last child, and he sat in the middle of the room several
3 times and had Chickweed open and put on him, you know,
4 put it in his face and his hair. Mom got aggravated
5 because it got his hair matted up.

6 But, anyway, we know we pretty much got that,
7 and we didn't want nothing toxic, and so -- and very
8 effective, and we've achieved that pretty much.

9 And we never had a complaint in thousands of
10 containers of Chickweed. That one complaint that
11 Ms. Smith, I guess, referred to I'm not -- I never had a
12 written complaint ever.

13 Okay. I was told that this one guy had
14 diabetic issue, and he had skin he told me that on the
15 leg when we was talking one day. He said he doesn't use
16 it there, but he said I use it on for poison ivy, and it
17 works very wall.

18 We've changed the labels a few times. I took
19 the skin cancer off. I did more label changing.

20 There's, you know, I -- I never could gain it
21 seemed like. It was after 2012 it just kind of went
22 backwards, and we tried to -- tried to work with that.

23 I know this. There's no -- I should say this.
24 There's no counselor or tester better than God. And for
25 the people that walk in God's law, and I was led to this

1 Chickweed stuff right from the beginning. I -- there are
2 things happened in the formulation of that that I know
3 God was involved. That's how I feel. So I want to
4 listen to God's counsel, and I want to listen to what he
5 has to say for me and walk that line as close as I can.

6 It's just like a -- I'm getting just a little
7 sidetracked. But up in the jail he said, Sam, today is
8 probably -- when I got in there, he said it's probably
9 the first day that you really and truly have to depend on
10 God. I said I feel that. I believe that's true, you
11 know, with my large family and everybody at home.

12 Okay. And then we go to the -- there's --
13 there was never no injured party in this case, you know.
14 Neither in the injunction. So, therefore, there's no
15 valid injunction in place to keep me from selling herbs.
16 I never got a letter of complaint. I never had a letter
17 of complaint, and that's the truth. I would not lie to
18 anybody.

19 Okay. The thing about the diabetic, that was
20 face-to-face.

21 So if you go to -- if you go to instruction 17,
22 it will kind of explain a few things I'm talking about.
23 There was no -- see, there was no drugs, no -- okay. For
24 instance, in the -- I got to get to the page. I'm kind
25 of a little slow here.

1 Instruction 17, the first -- number one, it
2 says, in manufacture, for preparation, compounding,
3 processing of drug or drugs. Well, I'm not dealing with
4 drugs. No part of what I do is drugs. And -- and you
5 can -- that's real clear there. And there's testing in
6 exhibits -- okay, Exhibits 1 and 2, it will show and back
7 that up that I put in yesterday. The FDA did their own
8 testing. I did my testing with an attorney. An attorney
9 helped me find the place, and I sent stuff there for him
10 to test. Because I got -- I got to -- you know, it took
11 me a couple years, is there somebody got hurt here, and I
12 did a lot of research, a lot of research.

13 And so we had the -- we had this FDA approved
14 lab test, and they found no poisons in it. They didn't
15 find no alkaloids in it.

16 So the FDA did their own test in 2015. And if
17 you look at the exhibits, it will say there was no drugs
18 or poisons were identified under these experimental
19 conditions.

20 It will also say that they were consistent with
21 each other. Every one of the three products were
22 consistent with each other.

23 So this -- this goes on and goes on. And, you
24 know, it finally -- we got -- we become harassed five
25 years ago. It really set our world upside down. When

1 we -- in 2001 and '02, '03, '04, whatever, a couple times
2 that they were there, we visited and talked and got
3 things going. And all -- they told me what they want,
4 and I tried to comply with that. I tried hard to comply
5 with that, and that's the truth.

6 But it seemed like in 2012 it got carried away.
7 They took a lot of product away. I called it stealing,
8 because they didn't have anything. And they took it away
9 from a guy in Missouri, and he had three little girls.
10 He was an Amish guy, and him and his wife would -- they
11 have family other places. They'd go on weekends and sell
12 some Chickweed. It was just kind of hobby for them.

13 When they got hit, I said, you know, that's my
14 stuff. I actually -- he still owed me a lot of money on
15 it. And I said, you know, it's my stuff, and I don't
16 want you in trouble. And that's why I kind of -- I
17 pushed so that they would get the light on me. I did
18 that, and that's the truth. I actually assume full
19 responsibility.

20 But we want to remember compounding or
21 processing of drug or drugs, there's -- it's not --
22 that's not -- there's no drugs in it according to the FDA
23 analysis.

24 And nothing about -- it's all about herbs, it's
25 all herbs.

1 And I want to -- I want to make something real
2 clear. Yes, this went on for five years, but in the
3 beginning, for the first four years, I didn't even hardly
4 read the material I received. I gave it to the attorney,
5 and he responded. And I said, there's a lot of documents
6 I never read, never even seen.

7 I told him, I said, you go ahead and take care
8 of this however it needs to be taken care of.

9 And as far as I did not purposefully or
10 knowingly violate one law. I'm not that -- I don't do
11 that. That's not what I do.

12 I know it's painting a picture here, but I
13 don't purposefully and knowingly violate a law.

14 It just -- like we could cover -- okay, for
15 instance, appearing in court. You can go to Exhibit 43,
16 and you can see -- in all my orders this -- if this is a
17 mistake, it's an honest mistake, I can tell you that. My
18 name is not ordered. It said, ordered to status
19 conference. That's a status conference shall be held on
20 Friday, August 26th. Every other time that I got a
21 letter from this court my name or the defendant or both
22 was in that area.

23 So I talked to my boys and so on, and we knew
24 that we were established in the Sixth Circuit, I mean, so
25 those are two reasons I didn't do that.

1 I sold to Herbs & More. In 2013 is not the
2 first time I sold to Herbs & More. I sold to them since
3 2000 or 2001. The lady worked there since 2013.

4 Yelling and screaming, I don't yell and scream.
5 I -- I might raise my voice if I get provoked, which I'm
6 just a person like everyone else. I can't guarantee that
7 I don't raise my voice.

8 The sheriff himself pointed towards the road,
9 and he said, there's the road. After that we refused
10 them inspection. The reason we refused it is because we
11 had an agreement that there would be no -- no cameras.
12 In the Amish community we don't use cameras, so I
13 requested that, and they agreed, they can write, that's
14 what was said.

15 And when they got in there, they started taking
16 pictures. I said, well, I said, that's not the
17 agreement. Based on that they said, well, we want to
18 take everything, do everything while we're here.

19 And I never tried to persuade Mary Miller to go
20 one way or another except maybe fill out the waiver.

21 Most of all, I feel like if it's God's herbs,
22 and if I'm really wrong, I guess I need to be told. But
23 if it's God's herbs and everything in this stuff is God's
24 herbs that you could make and sell it out of Chickweed,
25 you know, whatever.

1 I think this is most of all it's taken some of
2 our freedom away.

3 I never made one cure claim. I don't do that.
4 When there's -- when there's promotional material, it's
5 just what somebody sent me that got on there.

6 I never -- I always watched out. After that
7 they told me about skin cancer on the label, I just did
8 not use cure nowhere.

9 The money that they showed on gross, that's
10 gross. The debits didn't show. And in the end it was
11 way off. You can take a look at my customers or contact
12 my customers.

13 I did the label. I changed the labels
14 different times, but I kept getting harassed by the FDA
15 it seemed like pretty badly. I felt like I was harassed.

16 Did I know there was an arrest warrant? I
17 found out there was one, but I didn't -- I was under the
18 full meaning, understanding, that my whole jurisdiction
19 is at the Sixth Circuit Appeals Court.

20 And, guys, that's about all I have to say, and
21 I thank you for being here, and I want you to make a fair
22 and honest decision on what you're doing today, because I
23 can tell you one thing that I'm not lying to you. I
24 wouldn't lie. I did not willfully, willingly, or with
25 any kind of -- I didn't realize I'm getting into fraud

1 here. I never -- never did any of that willingly.

2 Thank you all.

3 THE COURT: All right. Thank you, Mr. Girod.

4 Ms. Smith, you may use the balance of your time
5 for rebuttal.

6 MS. SMITH: I don't think I will use all the
7 time. I just want to go over a few points.

8 Mr. Girod talked about why he refused the
9 inspection in November 2013. He didn't mention that a
10 court order had just come down. That was why the FDA
11 officers were there. He had received the court order.
12 He knew that the FDA had a right to be there. He knew
13 that he was not allowed to keep making the product.

14 I submit the reason he didn't let them inspect
15 that day is because he had product on his property and
16 didn't want them to seize it, which they would have been
17 able to do under the order.

18 Now, for the events of that day, he doesn't
19 have to have physically threatened someone to be guilty
20 of those counts. It's enough that he corruptly or with
21 threats of force or threatening communications, and for
22 Count 1, even intimidation. That is enough, and that is
23 what happened that day.

24 This case is not about what the products
25 actually do. It's not about whether they're toxic or

1 non-toxic. And drugs, a drug is a legal definition.
2 It's included in instruction number 20 of your
3 instructions.

4 And you have heard ample evidence that the way
5 the defendant marketed this product made them drugs, and
6 you have heard that this was explained to him time and
7 time again.

8 Mr. Girod just argued that this was an honest
9 mistake and that he doesn't make curing claims. You see
10 that the claims that he was making in the pamphlets he
11 ordered. That's why we brought Mr. Mandrell here, the
12 man who worked at the print shop, and Mr. Girod would
13 come in and order those pamphlets.

14 You also heard that he included those pamphlets
15 when he made these sales. Those were the claims he was
16 making about his product. This is not simply an honest
17 mistake. This is an intentional series of actions,
18 choosing not to appear in Federal court, choosing not to
19 follow a Judge's orders, choosing to sell these products
20 to customers without telling them something that really
21 mattered to all of them.

22 Thank you for your time.

23 THE COURT: All right. Thank you, counsel.

24 Now, ladies and gentlemen, before I give you
25 the instructions, let me just tell you that you will get

1 a copy that I read from when you go back to deliberate on
2 the case, with the verdict form.

3 You'll also have all of the exhibits, but let
4 me just make one notation about the exhibits. There were
5 several boxes of product that was introduced. There will
6 be an exemplar, or a can or two cans, that will be taken
7 from those larger boxes that you'll get from those
8 exhibits. We're not going to send all of the boxes back
9 to you, but you will get those exemplars and perhaps
10 photographs of the remainder, but you will get portions.

11 If you want to look at the entire thing, you
12 can do that, but initially those will go back to you with
13 the instructions, also with the verdict form, and with a
14 copy of the indictment in the case.

15 Now, the indictment is not evidence. It's only
16 being given to you so you can follow the charges that
17 have been made as you consider the evidence that has been
18 presented.

19 Now, with that understanding, it is time for me
20 to instruct you about the law that you must follow in
21 deciding the case.

22 I will start by explaining your duties and the
23 general rules that apply in every criminal case.

24 And after that I will explain the elements, or
25 parts of the crimes, that the defendant is accused of

1 committing.

2 Then I'll explain the defendant's position.

3 Next, I'll explain some rules that you must use
4 in evaluating particular testimony in evidence.

5 And last, I'll explain the rules that you must
6 follow during your deliberations in the jury room, and
7 the possible verdicts that you may return.

8 Please listen carefully to all of these
9 instructions.

10 You have two main duties as jurors. The first
11 one is to decide what the facts are from the evidence
12 that you saw and heard here in court. Deciding what the
13 facts are is your job, and not mine, and nothing that I
14 have said or done during this trial is meant to influence
15 your decision about the facts in any way.

16 Your second duty is to take the law that I give
17 you, apply it to the facts, and decide if the government
18 has proved the defendant guilty beyond a reasonable
19 doubt.

20 It's my job to instruct you about the law, and
21 you're bound by the oath that you took at the beginning
22 of the trial to follow the instructions that I give you,
23 even if you personally disagree with them.

24 Now, this includes the instructions that I gave
25 you before and during the trial, and these instructions.

1 All of the instructions are important, and you should
2 consider them together as a whole.

3 The parties have talked about the law during
4 their arguments, but if what they said is different from
5 what I say, then you must follow what I say. What I say
6 about the law controls.

7 Perform these duties fairly. Do not let any
8 bias, sympathy, or prejudice that you may feel toward one
9 side or the other influence your decision in any way.

10 Now, as you know, the defendant has pleaded not
11 guilty to the crimes charged in the indictment. The
12 indictment is not any evidence at all of guilt. It's
13 just the formal way that the government tells the
14 defendant what crimes he's accused of committing. It
15 does not even raise any suspicion of guilt.

16 Instead, the defendant starts the trial with a
17 clean slate, with no evidence against him, and the law
18 presumes that he is innocent.

19 This presumption of innocence stays with him
20 unless the government presents evidence here in court
21 that overcomes the presumption, and convinces you beyond
22 a reasonable doubt that he's guilty.

23 This means that the defendant has no obligation
24 to present any evidence at all, or to prove to you in any
25 way that he's innocent. It's up to the government to

1 prove that he's guilty, and this burden stays on the
2 government from start to finish.

3 You must find the defendant not guilty unless
4 the government convinces you beyond a reasonable doubt
5 that he is guilty.

6 The government must prove every element of the
7 crimes charged beyond a reasonable doubt.

8 Proof beyond a reasonable doubt does not mean
9 proof beyond all possible doubts.

10 Possible doubts, or doubts based purely on
11 speculation, are not reasonable doubts. A reasonable
12 doubt is a doubt based on reason and common sense. It
13 may arise from the evidence, the lack of evidence, or the
14 nature of the evidence.

15 Now, proof beyond a reasonable doubt means
16 proof, which is so convincing, that you would not
17 hesitate to rely and act on it in making the most
18 important decisions in your own lives.

19 Now, if you are convinced that the government
20 has proved the defendant guilty beyond a reasonable
21 doubt, say so by returning a guilty verdict.

22 If you're not convinced, say so by returning a
23 not guilty verdict.

24 You must make your decision based only on the
25 evidence that you saw and heard here in court. Do not

1 let rumors, suspicions, or anything else that you may
2 have seen or heard outside of court influence your
3 decision in any way.

4 The evidence in this case includes only what
5 the witnesses said while they were testifying under oath
6 and the exhibits that I allowed into evidence.

7 Nothing else is evidence. The parties'
8 statements, other than Mr. Girod's testimony given under
9 oath, are not evidence. The parties' arguments,
10 questions, and objections are not evidence. And my legal
11 rulings are not evidence. My comments and questions are
12 not evidence.

13 During the trial I did not let you hear the
14 answers to some of the questions that the lawyers or
15 Mr. Girod asked. And sometimes I ordered you to
16 disregard things that you saw or heard, or I struck
17 things from the record. You must completely ignore all
18 of these things. Do not even think about them. Do not
19 speculate about what a witness might have said or what an
20 exhibit might have shown. These things are not evidence,
21 and you're bound by your oath not to let them influence
22 your decision in any way.

23 Make your decision based only on the evidence
24 as I've defined it here, and nothing else.

25 Now, you should use your common sense in

1 weighing the evidence. Consider it in light of your
2 everyday experience with people and events, and give it
3 whatever weight you believe it deserves. If your
4 experience tells you that certain evidence reasonably
5 leads to a conclusion, then you're free to reach that
6 conclusion.

7 Now, you've heard the terms direct evidence and
8 circumstantial evidence.

9 Direct evidence is simply evidence like the
10 testimony of an eyewitness, which if you believed it,
11 directly proves a fact.

12 If a witness testified that he saw it raining
13 outside, and you believed him, that would be direct
14 evidence that it was raining.

15 Circumstantial evidence is simply a chain of
16 circumstances that indirectly proves a fact. If someone
17 walked into the courtroom wearing a raincoat covered with
18 drops of water and carrying a wet umbrella, that would be
19 circumstantial evidence from which you could conclude
20 that it was raining.

21 Now, it's your job to decide how much weight to
22 give the direct and circumstantial evidence. The law
23 makes no distinction between the weight that you should
24 give to either one, or say that one is any better
25 evidence than the other.

1 You should consider all the evidence, in both
2 the direct and circumstantial, and give it whatever
3 weight you believe it deserves.

4 Another part of your job as jurors is to decide
5 how credible or believable each witness was. Now, that
6 is your job, and not mine.

7 It's up to you to decide if a witness's
8 testimony was believable, and how much weight you think
9 it deserves.

10 You're free to believe everything that a
11 witness said, or only part of it, or none of it at all.
12 But you should act reasonably and carefully in making
13 these decisions.

14 Let me suggest some things for you to consider
15 in evaluating each witness's testimony.

16 Ask yourself if the witness was able to clearly
17 see or hear the events. Sometimes even an honest witness
18 may not be able -- may not have been able to see or hear
19 what was happening, and may make a mistake.

20 Ask yourself how good the witness's memory
21 seemed to be. Did the witness seem able to accurately
22 remember what happened?

23 Ask yourself if there was anything else that
24 may have interfered with the witness's ability to
25 perceive or remember the events.

1 Ask yourself how the witness acted while
2 testifying. Did the witness appear honest? Or did the
3 witness appear to be lying?

4 Ask yourself if the witness had any
5 relationship to the government or the defendant, or
6 anything to gain or lose from the case, that might
7 influence the witness's testimony.

8 Ask yourself if the witness had any bias, or
9 prejudice, or reason for testifying that might cause the
10 witness to lie or slant the testimony in favor of one
11 side or the other.

12 Ask yourself if the witness testified
13 inconsistently while on the witness stand, or if the
14 witness said or did something, or failed to say or do
15 something, at any other time that is inconsistent with
16 what the witness said while testifying.

17 If you believe that the witness was
18 inconsistent, ask yourself if this makes the witness's
19 testimony less believable. Sometimes it may; other times
20 it may not.

21 Consider whether the inconsistency was about
22 something important, or about some unimportant detail.

23 Ask yourself if it seemed like an innocent
24 mistake, or if it seemed deliberate.

25 And ask yourself how believable the witness's

1 testimony was in light of all the other evidence. Was
2 the witness's testimony supported or contradicted by
3 other evidence that you found believable?

4 If you believe that a witness's testimony was
5 contradicted by other evidence, remember that people
6 sometimes forget things, and that even two honest people
7 who witness the same event may not describe it exactly
8 the same way.

9 Now, these are only some of the things that you
10 may consider in deciding how believable each witness was.

11 You may also consider other things that you
12 think sheds some light on the witness's believability.

13 Use your common sense and your everyday
14 experience in dealing with other people, and then decide
15 what testimony you believe and how much weight you think
16 it deserves.

17 Now, one more point about witnesses. Sometimes
18 jurors wonder if the number of witnesses who testified
19 makes any difference.

20 Do not make any decision based only on the
21 number of witnesses who testified. What is more
22 important is how believable the witnesses were, and how
23 much weight you think their testimony deserves.

24 Concentrate on that, not the numbers.

25 Now, Defendant Girod has represented himself in

1 this trial. He has a constitutional right to do that.

2 His decision to represent himself has no
3 bearing on whether he is guilty or not guilty, and it
4 must not affect your consideration in the case.

5 Because a defendant has decided to act as his
6 own lawyer, you've heard him speak at various times
7 during the trial. He made a closing argument, and he
8 asked questions of witnesses, made objections, and made
9 arguments to the Court.

10 I want to remind you that when the defendant
11 spoke in these parts of the trial, he was acting as a
12 lawyer in the case, and his words are not evidence.

13 The only evidence in the case comes from the
14 witnesses who testified under oath on the witness stand
15 and the exhibits that were -- that are admitted.

16 Now, there's one more general subject that I
17 want to talk with you about before I begin explaining the
18 elements of the crimes charged.

19 The government and the defendant have objected
20 to some of the things that were said or done during the
21 trial. Do not hold that against either side. The
22 parties object whenever they think that something is not
23 permitted by the rules of evidence. Those rules are
24 designed to make sure that both sides receive a fair
25 trial.

1 And do not interpret my rulings on the
2 objections as any indication of how I think the case
3 should be decided. My rulings were based upon the rules
4 of evidence, and not on how I feel about the case.

5 Remember that your decision must be based only
6 on the evidence that you saw and heard here in court.

7 Now, that concludes the part of my instructions
8 explaining the -- explaining your duties and the general
9 rules that apply in every criminal case.

10 In a moment, I will explain the elements of the
11 crimes that the defendant is accused of committing.

12 But before I do that, I want to emphasize that
13 the defendant is only on trial for the particular crimes
14 charged in the indictment.

15 Your job is limited to deciding whether the
16 government has proved the crimes charged.

17 Also keep in mind that whether anyone else
18 should be prosecuted and convicted for these crimes is
19 not a proper matter for you to consider.

20 The possible guilt of others is no defense to a
21 criminal charge.

22 Your job is to decide if the government has
23 proved the defendant -- this defendant guilty.

24 Do not let the possible guilt of others
25 influence your decision in any way.

1 Now, the defendant has been charged with
2 several crimes. The number of charges is no evidence of
3 guilt, and this should not influence your decision in any
4 way.

5 It is your duty to separately consider the
6 evidence that relates to each charge, and to return a
7 separate verdict for each one.

8 For each charge, you must decide whether the
9 government has presented proof beyond a reasonable doubt
10 that the defendant is guilty of that particular charge.

11 Your decision on one charge, whether it is
12 guilty or not guilty, should not influence your decision
13 on any of the other charges.

14 Now, next, I want to say a word about the dates
15 mentioned in the indictment.

16 The indictment charges that the crimes
17 happened, quote, on or about, closed quote, certain
18 dates. The government does not have to prove that the
19 crimes happened on those exact dates, but the government
20 must prove that the crimes happened reasonably close to
21 those dates.

22 And, next, I want to explain something about
23 proving a defendant's state of mind.

24 Ordinarily, there's no way that a defendant's
25 state of mind can be proved directly, because no one

1 person can read another person's mind and tell what that
2 person is thinking.

3 But a defendant's state of mind can be proved
4 indirectly from the surrounding circumstances. This
5 includes things like what the defendant said, what the
6 defendant did, how the defendant acted, and any other
7 facts and circumstances in evidence that show what was in
8 the defendant's mind.

9 You may also consider the natural and probable
10 results of any act that the defendant knowingly did or
11 did not do, and whether it's reasonable to conclude that
12 the defendant intended those results.

13 Now, this, of course, is all for you to decide.

14 Now let me turn to the specific counts.

15 In Count 1, the defendant is charged with
16 conspiring to impede an officer of the United States from
17 discharging his duties in violation of federal law.

18 It is alleged that this action occurred on or
19 about November 21st, 2013.

20 It's a crime for two or more people to
21 conspire, or agree, to commit a criminal act, even if
22 they never actually achieved their goal.

23 A conspiracy is a kind of criminal partnership.
24 For you to find the defendant guilty of the conspiracy
25 charge, the government must prove each and every one of

1 the following elements beyond a reasonable doubt.

2 The defendant agreed with one or more persons
3 to do one of the following. There are two.

4 To prevent by force, intimidation, or threat,
5 any officer of the United States from discharging his or
6 her duties of office.

7 Or a second way will be to induce by force,
8 intimidation, or threat any officer of the United States
9 to leave the place where his or her duties as an officer
10 are required to be performed.

11 And the second element is that the defendant
12 knowingly and voluntarily joined the conspiracy.

13 Now, I will give you some more detailed
14 instructions on some of these terms.

15 With regard to the first element, a criminal
16 agreement, the government must prove that two or more
17 persons conspired, or agreed, to cooperate with each
18 other to commit the crime of impeding an officer of the
19 United States.

20 Now, this does not require proof of any formal
21 agreement, written or spoken. Nor does this require
22 proof that everyone agreed on all the details. The proof
23 that people simply met together from time to time and
24 talked about common interest, or engaged in similar
25 conduct, is not enough to establish a criminal agreement.

1 These are things that you may consider in deciding
2 whether the government has proved an agreement. But
3 without more they're not enough.

4 What the government must prove is that there
5 was a mutual understanding, either spoken or unspoken,
6 between two or more people to cooperate with each other
7 to impede an officer of the United States. Now, this is
8 essential.

9 An agreement can be proved indirectly, by facts
10 and circumstances which lead to a conclusion that an
11 agreement existed. But it's up to the government to
12 convince you that such facts and circumstances existed in
13 this particular case.

14 With regard to the second element, the
15 defendant's connection to the conspiracy, the government
16 must prove that the defendant knowingly and voluntarily
17 joined the agreement.

18 The government must prove that the defendant
19 knew the conspiracy's main purpose and voluntarily joined
20 the conspiracy intending to help advance or achieve its
21 goals.

22 This does not require proof that the defendant
23 knew everything about the conspiracy, or everyone else
24 involved, or that he was a member of it from the very
25 beginning. Nor does it require proof that the defendant

1 played a major role in the conspiracy, or that his
2 connection to it was substantial. A slight role or
3 connection may be enough.

4 But proof that the defendant simply knew about
5 a conspiracy or was present at times, or associated with
6 members of the group is not enough, even if he approved
7 of what was happening or did not object to it.

8 Similarly, just because a defendant may have
9 done something that happened to help a conspiracy does
10 not necessarily make him a conspirator. These are all
11 things that you may consider in deciding whether the
12 government has proved the defendant joined a conspiracy.
13 But without more they're not enough.

14 A defendant's knowledge can be proved
15 indirectly by facts and circumstances which lead to a
16 conclusion that he knew the conspiracy's main purpose.
17 But it's up to the government to convince you that such
18 facts and circumstances existed in this particular case.

19 You must be convinced that the government has
20 proved all of these elements beyond a reasonable doubt in
21 order to find the defendant guilty of a conspiracy
22 charge.

23 Now, Count 2 of the indictment charges the
24 defendant with obstructing a proceeding before an agency
25 of the United States. It's alleged that this action

1 occurred on or about November 21st, 2013.

2 For you to find the defendant guilty, you must
3 find that the government has proved each of the following
4 elements beyond a reasonable doubt. And there are four
5 elements for this particular charge.

6 They are that on or about November 21st, 2013,
7 there was a proceeding pending before an agency of the
8 United States.

9 Next, that the defendant knew of the
10 proceeding.

11 Third, that the defendant endeavored to
12 influence, obstruct, or impede the proceedings.

13 And, fourth, the defendant did so corruptly, or
14 by threats or force, or by any threatening communication.

15 Now, an agency of the United States, as used in
16 Count 2, includes the United States Food & Drug
17 Administration, and a proceeding includes an inspection
18 by the Food & Drug Administration.

19 Corruptly means acting with an improper
20 purpose, personally or by influencing another.

21 Success of the endeavor is not an element of
22 this crime. Therefore, it's sufficient to satisfy this
23 element if you find that the defendant made an effort or
24 acted for the purpose of obstructing or impeding the
25 proceeding.

1 If you are convinced that the government has
2 proved all of these elements, say so by returning a
3 guilty verdict on this charge. If you have a reasonable
4 doubt about any one of these elements, then you must find
5 the defendant not guilty of this charge.

6 Count 3 of the indictment charges the defendant
7 with failing to register his establishment with the
8 Food & Drug Administration.

9 It's alleged that this action occurred from in
10 or about September 2013 and continuing through in or
11 about July 2015.

12 For you to find the defendant guilty, you must
13 find the government has proved each of the following
14 elements beyond a reasonable doubt.

15 There are three elements for this charge.
16 First, the defendant operated an establishment engaged in
17 the manufacture, or preparation, or compounding, or
18 processing of a drug or drugs.

19 Second, that the defendant failed to register
20 that establishment with the Food & Drug Administration.

21 And, third, the defendant acted with the intent
22 to defraud or mislead.

23 Now, here the word "drug" means any article,
24 except food, that is intended to affect the structure or
25 any function of a human body and/or it's intended for use

1 in the diagnosis, cure, mitigation, treatment or
2 prevention of human disease.

3 If an article is a drug, then any and all
4 substances or ingredients that are intended to be used as
5 a component of that article are also considered drugs.

6 Now, later I'll provide additional instructions
7 on how to determine whether an article is intended to
8 affect the structure or function of the human body, or to
9 diagnose, cure, mitigate, treat, or prevent human
10 disease.

11 If you are convinced that the government has
12 proved all of these elements, say so by returning a
13 guilty verdict on this charge.

14 You're further instructed that the defendant
15 could have violated the law, even if he did not act with
16 the intent to defraud or mislead.

17 If you find that the government proved the
18 first two elements beyond a reasonable doubt, but did not
19 prove the defendant acted with the intent to defraud,
20 then you should indicate that you find that he has
21 violated the law without the intent to defraud or
22 mislead.

23 If you find the government did not prove that
24 the defendant acted with the intent to defraud or
25 mislead, and you also have reasonable doubts about either

1 of the remaining elements, then you must find the
2 defendant guilty -- I'm sorry, you must find the
3 defendant not guilty of this charge.

4 Counts 4 through 11 of the indictment charge
5 the defendant with introducing misbranded drugs into
6 interstate commerce.

7 The action charged in Count 4 is alleged to
8 have occurred on or about September 27th, 2013.

9 The actions charged in Counts 5 and 6 are
10 alleged to have occurred on or about October 14th, 2013.

11 The actions charged in Counts 7, 8, 9, and 10
12 are alleged to have occurred on or about November 13th,
13 2013.

14 The action charged in Count 11 is alleged to
15 have occurred on or about January 10th, 2014.

16 For you to find the defendant guilty of these
17 charges, you must find that the government has proved
18 each of the following elements beyond a reasonable doubt.
19 There are four.

20 First, the defendant introduced or delivered,
21 or caused to be introduced or delivered, for introduction
22 into interstate commerce the product specified in the
23 count.

24 Second, the product was a drug.

25 Third, the drug was misbranded in at least one

1 way.

2 And, fourth, the defendant acted with the
3 intent to defraud or mislead.

4 You're further instructed that the defendant
5 could have violated the law, even if he did not act with
6 the intent to deceive or mis -- I'm sorry, to defraud or
7 mislead.

8 If you find that the government proved the
9 first three elements beyond a reasonable doubt, but did
10 not prove that the defendant acted with the intent to
11 defraud or mislead, you should indicate that you find
12 that was -- he has violated the law without the intent to
13 defraud or mislead.

14 If you find that the government did not prove
15 the defendant acted with the intent to defraud or
16 mislead, and you also have reasonable doubts about any of
17 the remaining elements, then you must find the defendant
18 not guilty of this charge.

19 I will provide some additional instructions on
20 some of these terms.

21 Now for Counts 4 through 11 of the indictment,
22 the phrase "interstate commerce" means commerce that
23 occurs between any state and anyplace outside that state.

24 If you find that Chickweed Healing Salve,
25 TO-MOR-GONE, or R.E.P. went from Kentucky to a place

1 outside of Kentucky, or that the defendant caused the
2 introduction of Chickweed Healing Salve, TO-MOR-GONE, or
3 R.E.P., or a component of those products from one state
4 to another, then you must find that the Chickweed Healing
5 Salve, TO-MOR-GONE, or R.E.P. identified in the specific
6 count was introduced into interstate commerce.

7 To determine whether an article is, quote,
8 intended to affect the structure or any function of the
9 human body, closed quote, you should consider the
10 product's intended use.

11 A product's intended use is what a reasonable
12 person would conclude the manufacturers, sellers, or
13 dispenser of the product intended the product to be used
14 for, based upon all relevant information.

15 To determine a product's intended use, you may
16 consider any and all testimony in evidence, including the
17 product's labeling, promotional materials, advertising,
18 and oral representations made about the product; the
19 circumstances surrounding the sale of the product to
20 customers; whether the product is offered to or used by
21 customers for a purpose that is not consistent with its
22 labeling with the knowledge of the manufacturer, seller,
23 or dispenser of the product.

24 You're not bound by any particular claim or --
25 claims or statements made by the manufacturer, seller, or

1 dispenser if there is other evidence concerning intended
2 use, and it conflicts -- or conflicts with the claims and
3 statements, the claims or the statements.

4 If there is no label, accompanying label,
5 promotional material, advertising, or oral
6 representations made about the product on a particular
7 occasion, you may still find that the product was
8 intended for use as a drug if other evidence establishes
9 its intended use, such as previous labeling, marketing,
10 or promotion of the product by the manufacturer, seller,
11 or dispenser.

12 Now, Counts 4 through 11 of the indictment
13 describe various ways a drug may be misbranded under the
14 law.

15 Not all counts allege that particular products
16 have been misbranded in the same ways, then you must
17 consider each count and each misbranding allegation
18 separately.

19 A drug is, quote, misbranded, closed quote, if
20 you find any of the following to be true beyond a
21 reasonable doubt.

22 The drug's labeling did not bear adequate
23 instructions for use.

24 The drug was manufactured, prepared,
25 propagated, compounded, or processed in an establishment

1 that was not registered with the FDA.

2 The drug's labeling did not contain a list of
3 each active ingredient.

4 The drug's label or labeling did not include
5 adequate health warnings against the drugs use where such
6 use might be dangerous to one's health, in such a manner
7 and form as were necessary for the protection of users of
8 the drug; or the drug was dangerous to health when used
9 in the dosage or manner, or with a frequency or duration
10 prescribed, recommended, or suggesting in the labeling
11 thereof.

12 Now, the phrase "adequate directions for use"
13 are directions under which a layperson could use a drug
14 safely and for the purpose for which the drug is
15 intended.

16 Now, for you to find the government has proved
17 that a particular product identified in a particular
18 count of the indictment was misbranded, you need not find
19 that the defendant's products were misbranded in all of
20 the ways alleged in the indictment. Rather, it would be
21 sufficient for a particular count to find, beyond a
22 reasonable doubt, that the product identified in that
23 count was misbranded in any one of the alleged ways.

24 However, you must unanimously agree on which
25 way the drug was misbranded for each count to find that

1 element satisfied for that count.

2 Now, for Counts 3 to 11 of the indictment, to
3 act with the, quote, intent to defraud or mislead, closed
4 quote, means to act with the specific intent to deceive
5 or cheat, ordinarily for the purpose of causing financial
6 loss to another or bringing about financial gain to the
7 defendant or another.

8 It is not necessary, however, to prove that
9 anyone was actually defrauded, as long as it is
10 established beyond a reasonable doubt that the defendant
11 acted with the intent to defraud.

12 To act with the, quote, intent to mislead,
13 closed quote, means to act with the intent to create a
14 false impression by misstating, omitting, or concealing
15 material facts. It's not necessary to prove that anyone
16 was actually misled, as long as it is proved beyond a
17 reasonable doubt that the defendant acted with the intent
18 to mislead.

19 Intention to defraud -- I'm sorry, intent to
20 defraud or mislead can be demonstrated through evidence
21 that a defendant took steps, in connection with the
22 acquisition or distribution of products, to conceal
23 material facts from federal or state authorities,
24 including the United States Food & Drug Administration,
25 or consumers of the defendant's products.

1 You should find that the defendant acted with
2 the intent to defraud or mislead if you find that he
3 acted with intent to materially deceive the FDA or other
4 government agencies, and thereby to hinder such agencies
5 in carrying out the regulatory responsibilities.

6 Now, the elements -- this element is written in
7 the disjunctive. Accordingly, you can find that the
8 defendant's actions were done either with the intent to
9 defraud or with the intent to mislead as long as you all
10 agree on which intent and to whom it was directed.

11 Now, the word "label" means any display of
12 written, printed, or graphic material upon the immediate
13 container of the article.

14 The word label -- or "labeling," excuse me,
15 means all labels and other written, printed, or graphic
16 material upon any article, or any of its containers or
17 wrappers, or accompanying such article.

18 Next, Count 12 of the indictment charges the
19 defendant with tampering with a witness. It's alleged
20 that this action occurred on or about December 15th,
21 2014.

22 For you to find the defendant guilty of this
23 charge, you must find that the government has proved each
24 of the following elements beyond a reasonable doubt.
25 There are three elements.

1 That the defendant threatened, attempted to
2 threaten, or attempted to corruptly persuade another
3 person, or engage in misleading conduct toward another
4 person.

5 Second, the defendant acted knowingly.

6 And, third, the defendant acted with the intent
7 to cause or induce any person to withhold records and
8 documents from an official proceeding.

9 A person acts corruptly if he or she acts with
10 the purpose of wrongfully impeding the due administration
11 of justice.

12 An official proceeding, as used in Count 12,
13 includes an investigation of a federal grand jury in the
14 Eastern District of Kentucky.

15 If you are convinced that the government has
16 proved all of these elements beyond a reasonable doubt,
17 say so by returning a guilty verdict on this count.

18 If you have a reasonable doubt about any of one
19 of these elements, then you must find the defendant not
20 guilty of this charge.

21 Count 13 of the indictment charges the
22 defendant with failure to appear.

23 It's alleged that this action occurred on or
24 about August 26th, 2016.

25 For you to find the defendant guilty of this

1 charge, you must find that the government has proved each
2 and every one of the following elements beyond a
3 reasonable doubt. There are four.

4 First, the defendant was previously charged
5 with tampering with a witness or victim in this court.

6 Second, the defendant was released on bond on
7 the condition that he appear in court as required.

8 Third, the defendant failed to appear as
9 required.

10 And, fourth, the defendant knew he was required
11 to appear on that day and purposefully and knowingly
12 failed to do so.

13 If you are convinced that the government has
14 proved all of these elements, say so by returning a
15 guilty verdict on this charge.

16 If you have a reasonable doubt about any of
17 these elements, then you must find the defendant not
18 guilty of this charge.

19 Now, that concludes the part of my instructions
20 explaining the elements of the crimes.

21 And next I'll explain the defendant's position.

22 It is the position of the defendant that the
23 government has not met its burden of proof to establish
24 the crimes charged in the indictment beyond a reasonable
25 doubt.

1 And, next, I'll explain some rules that you
2 must use in considering some of the testimony and
3 evidence.

4 You've heard the defendant testify. Earlier I
5 talked to you about the credibility or the believability
6 of the witnesses. And I suggested some things for you to
7 consider in evaluating each witness's testimony.

8 You should consider those same things in
9 evaluating the defendant's testimony.

10 You've heard the testimony of Dr. Jane Liedtka,
11 who testified as an opinion witness.

12 Now, you do not have to accept Dr. Liedtka's
13 opinion, but in deciding how much weight to give it, you
14 should consider the witness's qualifications and how she
15 reached her conclusions.

16 Also consider the other factors discussed in
17 these instructions for weighing the credibility of
18 witnesses.

19 Remember that you alone decide how much of a
20 witness's testimony to believe, and how much weight you
21 think it deserves.

22 You've heard testimony that the defendant
23 introduced or attempted to introduce allegedly misbranded
24 drugs on dates other than the ones charged in the
25 indictment.

1 The United States contends that evidence of
2 other sales occurring September 27th, 2013, through
3 January 10th, 2014, are probative of the defendant's
4 intent to defraud.

5 The United States asserts that the evidence
6 that the defendant placed orders for labels and brochures
7 on May 26th, 2016, paid and picked up on June 8th, 2016,
8 and also in December 2015, which allegedly includes
9 impermissible claims about the products, are also
10 probative of the defendant's intention to defraud, as
11 well as his preparation and plan to sell products in
12 violation of the law.

13 If you find that the defendant did those acts,
14 you can consider the evidence only as it relates to the
15 government's claim of the defendant's intent, plan, and
16 preparation. You must not consider it for any other
17 purpose.

18 Remember that the defendant is only on trial
19 for the counts in the indictment, not for the other acts
20 that are not specifically charged.

21 Do not return a guilty verdict unless the
22 government proves the crimes charged in the indictment.

23 And that concludes the parts of my instructions
24 explaining the rules for considering some of the
25 testimony in evidence.

1 Let me finish up by explaining some things
2 about your deliberations in the jury room and your
3 possible verdicts.

4 The first thing that you should do in the jury
5 room is choose someone to be your foreperson. This
6 person will help to guide your discussions, and will
7 speak for you here in court.

8 Once you start deliberating, do not talk to the
9 jury officer, or to me, or anyone else, except each other
10 about the case.

11 If you have any questions or messages, you must
12 write them down on a piece of paper, sign them, and give
13 them to the jury officer. The officer will give them to
14 me, and I will respond as soon as I can.

15 I may have to talk to the parties about what
16 you've asked, and so it may take me some time to get back
17 to you.

18 Any questions or messages normally should be
19 sent to me through your foreperson.

20 Now, the exhibits introduced during the trial
21 will be made available for your review, as I explained to
22 you earlier.

23 And, likewise, you will be given a copy of the
24 indictment filed in this case. However, you are again
25 cautioned that -- and warned that the indictment is not

1 evidence. It is being given to you only as a guide to
2 explain the charges that have been made in this case.

3 Finally, you will be given these jury
4 instructions.

5 One more thing about messages. Do not ever
6 write down or tell anyone, including me, how you stand on
7 your votes. For example, do not write down or tell
8 anyone that you're split 6-6 or 8-4, or whatever your
9 vote happens to be. That should stay secret until you're
10 finished.

11 Now, remember that you must make your decision
12 based only on the evidence that you saw and heard here in
13 court.

14 During your deliberations you must not
15 communicate with or provide any information to anyone by
16 any means about this case.

17 You may not use any electronic device or media,
18 such as a cell phone or computer, the Internet, any
19 Internet service, or any social media website, such as
20 Facebook or Twitter, to communicate to anyone any
21 information about this case, or to conduct any research
22 about the case until I accept your verdict.

23 In other words, you cannot talk with anyone on
24 the phone, correspond with anyone, or electronically
25 communicate with anyone about this case.

1 Your verdict, whether it is guilty or not
2 guilty, must be unanimous.

3 To find the defendant guilty, every one of you
4 must agree that the government has overcome the
5 presumption of innocence with evidence that proves his
6 guilt beyond a reasonable doubt.

7 To find him not guilty, every one of you must
8 agree that the government has failed to convince you
9 beyond a reasonable doubt.

10 Either way, as to each count, guilty or not
11 guilty, your verdict must be unanimous.

12 Now, one more point about the requirement that
13 your verdict must be unanimous. Count 1 of the
14 indictment accuses the defendant of committing the crime
15 of conspiracy to impede an officer in more than one
16 possible way.

17 The first is that he and others physically
18 surrounded the officers when they arrived to inspect his
19 establishment.

20 The second is that he and others obstructed the
21 officers' attempts to gather information about his
22 establishment.

23 The third is that he and others perceived --
24 prevented the officers from inspecting his establishment.

25 The government does not have to prove all these

1 for you to return a guilty verdict on this charge. Proof
2 beyond a reasonable doubt of any one of these is enough.

3 To return a guilty verdict, all 12 of you must
4 agree that at least one of these has been proven;
5 however, all of you need not agree that the same one has
6 been proven.

7 And now that all of the evidence is in and the
8 arguments are complete, you are free to talk about the
9 case in the jury room.

10 In fact, it's your duty to talk to each other
11 about the evidence and to make every reasonable effort
12 you can to reach unanimous verdict, or unanimous
13 agreement. Talk with each other, listen carefully and
14 respectfully to each other's views, and keep an open mind
15 as you listen to what your fellow jurors have to say.
16 Try your best to work out your differences, but do not
17 hesitate to change your mind if you're convinced that
18 other jurors are right and that your original position
19 was wrong.

20 But do not ever change your mind just because
21 other jurors see things differently, or just to get the
22 case over with.

23 In the end, your vote must be exactly that,
24 your own vote. It's important for you to reach unanimous
25 agreement, but only if you can do so honestly and in good

1 conscience.

2 No one will be allowed to hear your discussions
3 in the jury room, and no record will be made of what you
4 say, so you should all feel free to speak your minds.

5 Listen to what the other jurors have to say,
6 and then decide for yourself if the government has proved
7 the defendant guilty beyond a reasonable doubt.

8 If you decide the government has proved the
9 defendant guilty of one or more of the counts, then it
10 will be my job to decide what the appropriate punishment
11 should be.

12 Deciding what the punishment should be is my
13 job, and not yours. It would violate your oaths as
14 jurors to even consider the possible punishment in
15 deciding your verdict.

16 Your job is to look at the evidence and decide
17 if the government has proved the defendant guilty beyond
18 a reasonable doubt.

19 I have prepared a verdict form that you should
20 use to record your verdict.

21 If you decide that the government has proved
22 the charges -- or the charge against the defendant beyond
23 a reasonable doubt, say so by having your foreperson mark
24 the appropriate place on the form.

25 If you decide that the government has not

1 proved the charge against the defendant beyond a
2 reasonable doubt, then say so by having your foreperson
3 mark the appropriate place on the form.

4 Your foreperson should then sign the form, put
5 the date on it - today is March 1st - and return it to
6 me.

7 As I explained to you earlier, Count 3 contains
8 the lesser charge of misdemeanor, failure to register
9 with the FDA.

10 And Counts 4 through 11 contain the lesser
11 charge of misdemeanor misbranding.

12 If you find the defendant not guilty of
13 having -- of having the intent to mislead or defraud on
14 any of the counts, or if after making a reasonable --
15 every reasonable effort to reach unanimous verdict, you
16 cannot agree, then you must go on to consider whether the
17 government has proved the lesser charge of misdemeanor,
18 failure to register and misdemeanor misbranding. These
19 charges require no intent at all. The defendant does not
20 have to intend to violate the law, or know that he was
21 violating the law.

22 If you decide that the government has proved
23 the lesser charges beyond a reasonable doubt, then say so
24 by having your foreperson mark the appropriate place on
25 the verdict form.

1 If you decide that the government has not
2 proven the lesser charge beyond a reasonable doubt, then
3 say so by having your foreperson mark the appropriate
4 place on the verdict form.

5 Your foreperson should then -- should then sign
6 the form, put the date on it, and return it to me.

7 And let me finish up by repeating something
8 that I said to you earlier. Nothing that I've said or
9 done during this trial was meant to influence your
10 decision in any way.

11 You decide for yourselves if the government has
12 proved the defendant guilty beyond a reasonable doubt.

13 And, finally, remember that if you elected to
14 take notes during the trial, your notes should be used
15 only as memory aids. You should not give your notes any
16 greater weight than your own independent recollection of
17 the evidence. You should rely upon your own independent
18 recollection of the evidence, or lack of evidence, and
19 you should not be unduly influenced by the notes of other
20 jurors.

21 Notes are not entitled to any more weight than
22 the memory or impression of each juror.

23 Whether you took notes or not, each of you must
24 form and express your own opinion as to the facts of the
25 case.

1 The jury instructions are stapled, 49 pages.
2 I've just read those to you.

3 The verdict form will be attached. I'll clip
4 that to the back of the instructions.

5 And the verdict form consists of seven pages,
6 and I want to go through this with you. It relates to
7 each count, and you have several questions that you may
8 need to answer with respect to each count.

9 The verdict form is outlined with each of the
10 counts listed, 1, 2, 3, all the way through 13.

11 For Count 1 you're asked the following
12 question: "We, the jury, unanimously find the defendant,
13 Samuel A. Girod." and then there's a blank, and the blank
14 is to be filled in, as you will see in the parenthetical
15 afterwards, guilty or not guilty. So your foreperson
16 will need to actually write in the word guilty or not
17 guilty with respect to that particular count. So let me
18 read the whole thing.

19 "We, the jury, unanimously find the defendant,
20 Samuel A. Girod, either guilty or not guilty, of the
21 crime of conspiracy to impede an officer of the
22 United States as charged in Count 1 of the indictment."

23 So you'll see that I have paraphrased the
24 charge. I haven't included the date, but the date is
25 included for each particular charge in the jury

1 instructions.

2 Count 2, similarly reads, "We, the jury,
3 unanimously find the defendant, Samuel A. Girod, either
4 guilty or not guilty, of the crime of obstruction of a
5 proceeding before an agency as charged in Count 2 of the
6 indictment."

7 Count 3 reads, "We, the jury, unanimously find
8 the defendant, Samuel A. Girod, again, either guilty or
9 not guilty, of the crime of failing to register with the
10 FDA as charged in Count 3 of the indictment."

11 You're asked for Count 3 that if you respond
12 not guilty, then you're asked another question.

13 And it reads as follows, "If not guilty, we,
14 the jury, unanimously find the defendant, Samuel A.
15 Girod, either not -- either guilty or not guilty, of the
16 crime of failing to register with the FDA without the
17 intent to defraud or mislead."

18 That's the lesser included charge I just
19 described to you just a moment ago.

20 You have other options, or other questions,
21 that you'll need to answer with respect to many of the
22 remaining counts.

23 In Count 4 you're asked to respond to the
24 following question, "We, the jury, unanimously find the
25 defendant, Samuel A. Girod, either guilty or not guilty,

1 of the crime of causing misbranded drugs to be introduced
2 into interstate commerce as charged in Count 4 of the
3 indictment."

4 Then you have the following questions. Now,
5 two of these relate to misbranding issue. One would
6 relate to a lesser-included offense. So let me read
7 these options for you.

8 "If guilty, we, the jury, unanimously find that
9 Chickweed Healing Salve either was or was not misbranded
10 in that it was manufactured, prepared, propagated, or
11 processed in an establishment that was not registered
12 with the FDA."

13 The other option that you have, "If guilty, we,
14 the jury, unanimously find that Chickweed Healing Salve
15 was or was not misbranded in that it failed to bear
16 labeling containing adequate directions for use."

17 The jury may find -- if you determine that the
18 defendant is guilty, you may find that the product was
19 misbranded in both ways. But you're not required to do
20 so. You may also determine guilt if you find that it was
21 misbranded in one of the two ways that I've given you,
22 one of the two options I have given to you. But you will
23 need to respond for each that it either was or was not
24 misbranded if you do, in fact, find the defendant guilty.

25 Now, if you find the defendant not guilty of

1 the substantive charge, the first answer that you give,
2 if not guilty, "We, the jury, unanimously find the
3 defendant, Samuel A. Girod, guilty or not guilty, of the
4 crime of causing misbranded drugs to be introduced into
5 interstate commerce without the intent to deceive or
6 mis -- or mislead."

7 That is the misdemeanor charge that I've just
8 described to you earlier.

9 So if you have -- for Count 4 you determine
10 whether it's guilty or not guilty of the charge contained
11 in that count, if you find guilty, then you would need to
12 determine which of the ways that the product was, in
13 fact, misbranded. You may find both. You're not
14 required to do so, but you are required to answer as to
15 each of those possibilities.

16 If you find that it was not -- if you find that
17 it was done but without the intent to defraud or mislead,
18 then you're asked the last question about whether the
19 defendant would be guilty of the lesser included charges,
20 the misdemeanor charge, as I've just described.

21 Now, you have similar questions, and I'll go
22 through each of these for you.

23 With Count 5, "We, the jury, unanimously find
24 that -- find the defendant, Samuel Girod, either guilty
25 or not guilty, of the crime of causing misbranded drugs

1 to be introduced into interstate commerce, as charged in
2 Count 5."

3 Again, if you respond guilty, the next
4 questions are, "If guilty, we, the jury, unanimously find
5 that Chickweed Healing Salve, either was or was not,
6 misbranded, and that it was manufactured, prepared,
7 propagated, or processed in an establishment that was not
8 registered with the FDA."

9 Another option is, "If guilty, we, the jury,
10 unanimously find that Chickweed Healing Salve either was
11 or was not misbranded in that it failed to bear labeling
12 containing adequate directions for use."

13 And then finally, for this count, Count 5, "If
14 not guilty, we, the jury, unanimously find that
15 defendant, Samuel A. Girod, is either guilty or not
16 guilty of a crime of causing misbranded drugs to be
17 introduced into interstate commerce without the intent to
18 defraud or mislead." Again, the lesser included charge.

19 You have several questions that you'll be asked
20 for Count 6. So let me take a moment to go through this
21 with you.

22 Initially, you're asked to respond to the
23 following, "We, the jury, unanimously find the defendant,
24 Samuel A. Girod, either guilty or not guilty, of the
25 crime of causing misbranded drugs to be introduced into

1 interstate commerce as charged in Count 6 of the
2 indictment."

3 Now, this relates to the product TO-MOR-GONE.
4 "If guilty, we, the jury, unanimously find that
5 TO-MOR-GONE, was or was not, misbranded in that it was
6 manufactured, prepared, propagated, or processed in an
7 establishment that was not registered with the FDA."

8 Another option is, "If guilty, we, the jury,
9 unanimously find that TO-MOR-GONE, was or was not,
10 misbranded in that it failed to bear labeling containing
11 adequate directions for use."

12 If guilty, "We, the jury, unanimously find that
13 TO-MOR-GONE, was or was not, misbranded and that it
14 failed to bear labeling containing adequate warnings
15 against use, where its use may be dangerous to one's
16 health as necessary for the protection of the users."

17 Next, "If guilty, we, the jury, unanimously
18 find that TO-MOR-GONE, was or was not, misbranded, and
19 that it dangerous to one's health when used in the dosage
20 or manner suggested in the labeling."

21 So those are all options if you do find the
22 defendant guilty for Count 6.

23 If you find the defendant not guilty, then
24 you're asked the following question, "If not guilty, we,
25 the jury, unanimously find the defendant, Samuel A.

1 Girod, was either guilty or not guilty of the crime of
2 causing misbranded drugs to be introduced into commerce
3 without the intent to defraud or mislead." That's the
4 lesser included charge for that count.

5 Count 7, again, this count relates to Chickweed
6 Healing Salve, the allegation, "We, the jury, unanimously
7 find the defendant, Samuel A. Girod, guilty or not guilty
8 of the crime of causing misbranded drugs to be introduced
9 into interstate commerce as charged in Count 7 of the
10 indictment."

11 If guilty, then you're to respond to the
12 following two questions, "We, the jury, unanimously find
13 that Chickweed Healing Salve either was or was not
14 misbranded, and that it was manufactured, prepared
15 propitiated, or processed in an establishment that was
16 not registered with the FDA."

17 The other option is, "If guilty, we, the jury,
18 unanimously find that Chickweed Healing Salve was or was
19 not misbranded, and that it failed to bear labeling
20 containing adequate directions for use."

21 If you answer not guilty, you also have the
22 option of responding -- or you should respond to the
23 following -- excuse me, if you answer not guilty, "If not
24 guilty, we, the jury, unanimously find that defendant,
25 Samuel A. Girod, is either guilty or not guilty of the

1 crime of causing misbranded drugs to be introduced into
2 interstate commerce without the intent to defraud or
3 mislead."

4 Next, Count 8, and this relates to the product
5 TO-MOR-GONE. "We, the jury, unanimously find the
6 defendant, Samuel A. Girod, either guilty or not guilty,
7 of the crime of causing misbranded drugs to be introduced
8 into interstate commerce as charged in Count 8 of the
9 indictment."

10 If guilty, you have four options, and they're
11 similar to what I just read from the preceding count, but
12 let me go through these with you again. "If guilty, we,
13 the jury, unanimously find that TO-MOR-GONE was or was
14 not misbranded in that it was manufactured, prepared,
15 propagated, or processed in an establishment that was not
16 registered with the FDA."

17 Also, if guilty, you're to respond, "We, the
18 jury, unanimously find that TO-MOR-GONE was or was not
19 misbranded in that it failed to bear labeling containing
20 adequate directions for use."

21 Next, "If guilty, we, the jury, find
22 unanimously that TO-MOR-GONE was or was not misbranded in
23 that it failed to bear adequate warnings against use
24 where its use may be dangerous to one's health as
25 necessary for the protection of users."

1 If guilty, "We, the jury, unanimously find that
2 TO-MOR-GONE was or was not misbranded, and that it was
3 dangerous to one's health when used in the dosage or
4 manner as suggested in the labeling."

5 If you find the defendant not guilty, then
6 you're to respond to the following, "If not guilty, we,
7 the jury, unanimously find the defendant, Samuel A.
8 Girod, either guilty or not guilty of the crime of
9 causing misbranded drugs to be introduced into interstate
10 commerce without the intent to defraud or mislead."

11 Count 9 relates to the product R.E.P. You're
12 asked to respond to the following, "We, the jury,
13 unanimously find the defendant, Samuel A. Girod, either
14 guilty or not guilty of the crime of causing misbranded
15 drugs to be introduced into interstate commerce as
16 charged in Count 9 of the indictment."

17 You have two options if you find guilty.
18 You're asked to respond to the following, "If guilty, we,
19 the jury, unanimously find that R.E.P. was or was not
20 misbranded in that it was manufactured, prepared,
21 propagated, or processed in an establishment that was not
22 registered with the FDA."

23 The second question, if guilty, you're asked to
24 answer, "We, the jury, unanimously find that R.E.P.
25 either was or was not misbranded, and that it was -- and

1 that its labeling did not contain a listing of each
2 active ingredient."

3 If not guilty, then you're asked to respond,
4 "If not guilty, we, the jury, unanimously find the
5 defendant, Samuel A. Girod, either guilty or not guilty,
6 of the crime of causing misbranded drugs to be introduced
7 into interstate commerce without the intent to defraud or
8 mislead."

9 Count 10 also relates to the product
10 TO-MOR-GONE. So you're asked more questions with respect
11 to that product if you do find the defendant guilty of
12 the substantive charge of misbranding.

13 The first question is, "We, the jury,
14 unanimously find the defendant, Samuel A. Girod, either
15 guilty or not guilty of the crime of causing misbranded
16 drugs to be introduced into interstate commerce as
17 charged in Count 10 of the indictment."

18 If guilty, you're asked to answer four
19 questions. First, "We, the jury, unanimously find that
20 TO-MOR-GONE was or was not mislabeled, and that it was
21 manufactured, prepared, propagated, or processed in an
22 establishment that was not registered with the FDA."

23 The second question, with respect to
24 misbranding, if you find guilt, is misbranded in that it
25 failed to bear labeling containing adequate directions

1 for use.

2 Next, if guilty, was misbranded in that it
3 either was or was not misbranded -- excuse me, and it
4 failed to bear labels or labeling containing adequate
5 warnings against use, where its use may be dangerous to
6 one's health as necessary for the protection of users.

7 And then finally, the last sub-question is, if
8 guilty, do you unanimously find that TO-MOR-GONE was or
9 was not misbranded as asserted in this count, in that it
10 was dangerous to one's health when used in the dosage or
11 manner suggested in the labeling.

12 You also have the option that if do you find
13 the defendant not guilty, then you're asked to respond to
14 the following, "If not guilty, we, the jury, unanimously
15 find the defendant, Samuel A. Girod, either guilty or not
16 guilty, of the crime of causing misbranded drugs to be
17 introduced into interstate commerce without the intent to
18 defraud or mislead."

19 I'm almost finished.

20 Count 11. In Count 11 you're asked to respond
21 to the following, "We, the jury, unanimously find the
22 defendant, Samuel A. Girod, guilty or not guilty of the
23 crime of causing misbranded drugs to be introduced into
24 interstate commerce as charged in Count 11 of the
25 indictment."

1 If guilty, "We, the jury, unanimously find that
2 Chickweed Healing Salve either was or was not misbranded
3 in that it was manufactured, prepared, propagated, or
4 processed in an establishment that was not registered
5 with the FDA."

6 Or -- I'm sorry, excuse me. Also, if you
7 respond not guilty -- if you respond guilty, "If guilty,
8 we, the jury, unanimously find that Chickweed Healing
9 Salve was or was not misbranded in that it failed to" --
10 it should be "bear" labeling containing adequate
11 directions for use."

12 If not guilty, "We, the jury, unanimously find
13 that the -- find the defendant, Samuel A. Girod, either
14 guilty or not guilty of the crime of causing misbranded
15 drugs to be introduced into interstate commerce without
16 the intent to defraud or mislead."

17 Now, for Counts 12 and 13 you're not asked all
18 those sub-questions, but you are asked to respond to the
19 following.

20 Count 12, "We, the jury, unanimously find the
21 defendant, Samuel A. Girod, either guilty or not guilty,
22 of the crime of tampering with a witness as charged in
23 Count 12 of the indictment."

24 Finally, Count 13, "We, the jury, unanimously
25 find the defendant, Samuel A. Girod, guilty or not

1 guilty, of the crime of failure to appear as charged in
2 Count 13 of the indictment."

3 At the end of all of those questions on the
4 last page there is a place for the foreperson to write
5 his or her name with your juror number.

6 I will tell you that before this document is
7 filed into the record, the name is removed, and so the
8 only thing that appears in the official record is the
9 juror number.

10 You're also asked to include a date, and,
11 again, today is March 1st, 2017.

12 The verdict form will be attached to the end of
13 the jury instructions.

14 You will also be given the copy of the
15 indictment, and I have advised you, of course, this is
16 not evidence.

17 You will be given the exhibits in the manner
18 that I've described those for you. If you do want to
19 look at all of those containers, you just need to send a
20 note, and we will make those -- all of those materials
21 available to you, rather than just the single exemplar
22 cans that otherwise will be made available.

23 Now, when you go back to begin your
24 deliberations -- when you go back to begin your
25 deliberations, ladies and gentlemen, we're also going to

1 send menus back for you. It's 12 o'clock. It will take
2 about an hour to get the food over here once we get your
3 menus back and order the food. So if you would go ahead
4 and fill those menus out, you can give those to the
5 security officer, and we'll get those orders processed
6 just as soon as we can.

7 There is one exhibit that I want to make sure
8 we have all of the pages before we send that back. There
9 were three pages to the document. I want to make sure
10 that that's complete before we send that back. So it may
11 be just a moment before we get those exhibits back to
12 you.

13 Now, before I send you back, let me see if the
14 parties have any objection to the manner in which the
15 instructions were read to the jury.

16 Any objections?

17 MS. SMITH: No, Your Honor.

18 THE COURT: All right.

19 DEFENDANT GIROD: No, Your Honor.

20 THE COURT: All right. Thank you.

21 At this time, ladies and gentlemen, the
22 admonition that you were given previously not to discuss
23 the case will be removed.

24 I will remind you that if someone does take a
25 break, a bathroom break, or whatever, and is not able to

1 deliberate, you should stop your deliberations. Only
2 deliberate while all 12 jurors are present.

3 Now, we have two alternates in the case that
4 were selected, juror numbers 498 and 633. I'm going to
5 go ahead and excuse you at this time, but let me tell you
6 how we proceed with alternates. I'm not going to lift
7 the admonition for you just yet because if someone were
8 to become sick and couldn't continue, we may have to call
9 one of you or perhaps even both of you back in. We would
10 have to start the deliberations over. But I don't want
11 you to violate the admonition in the meantime. What we
12 do is if the jury does deliberate and reach a verdict, I
13 ask the clerk to advise our alternates that a verdict has
14 been reached, and at that point the admonition is lifted.
15 And if you want to discuss the case, you're free to do
16 so. You're never required to do so.

17 If anyone should ever approach you to discuss
18 the matter, of course, they certainly can't do that while
19 the jury is deliberating, but if anyone should ever
20 approach you to discuss the matter, and you choose not to
21 discuss the matter with that person, you only have to
22 report it to the Court. That's all you need to do is
23 report it to the Court, and allow the Court to deal with
24 that. And I will assure you that will certainly happen.

25 But at this time if you have any materials back

1 in the jury room, we'll let you get those materials; but,
2 otherwise, I'll go ahead and excuse you, and if for some
3 reason we were to need to call you back in, you would be
4 notified; but, otherwise, you will be notified when the
5 verdict has been reached in the case.

6 Do you-all have any questions about that?

7 (Negative response)

8 THE COURT: Thank you.

9 At this time you'll be excused to begin your
10 deliberations as soon as the alternates have been excused
11 from the courtroom.

12 Counsel, one typographical error. The case
13 number itself is 15-87, rather than 15-78, and I've made
14 that change, the handwritten change on --

15 MS. SMITH: Thank you.

16 THE COURT: -- the instructions and the verdict
17 form that will go back.

18 Thank you both.

19 JUROR: Thank you.

20 (Whereupon, the alternate juror members leave the
21 courtroom, and the juror members leave the courtroom to
22 begin their deliberations at 12:05 p.m.)

23 THE COURT: Before we recess, I will advise the
24 attorneys that they are not allowed to leave the building
25 while the jury is deliberating. We had a problem in the

1 last civil -- I'm sorry, last criminal trial with defense
2 counsel leaving the building, and it took 30 minutes once
3 the jury returned the verdict. So you can't leave the
4 building. There are places that you can go within the
5 building, but you need to be available. If the jury has
6 questions, or if the -- when they do become -- when we're
7 ready to return a verdict.

8 We'll be in recess.

9 (Whereupon, a recess was taken at 12:05 p.m.,
10 awaiting the jury's verdict, and Day 3 of the Jury Trial
11 proceedings continued at 4:10 p.m., on the record in open
12 court, without the juror members present, as follows.)

13 THE COURT: The jury has indicated that they
14 have reached a verdict in the case.

15 We'll call the jury back in at this time.

16 (Whereupon, the juror members enter the courtroom.)

17 THE COURT: Thank you, and please be seated.

18 The record will reflect that all members of the
19 jury are present at this time.

20 And, ladies and gentlemen of the jury, I have
21 been advised that you have reached a verdict.

22 Is that accurate?

23 JUROR FOREMAN: Yes.

24 THE COURT: If you could pass the verdict form
25 to me, please.

1 All right. I will announce the verdict of the
2 jury at this time.

3 As to Count 1, the jury finds the defendant
4 guilty of the crime of conspiracy to impede an officer of
5 the United States as charged in Count 1.

6 As to Count 2, the jury finds the defendant
7 guilty of the crime of obstruction of a proceeding before
8 an agency, as charged in Count 2.

9 As to Count 3, the jury finds the defendant
10 guilty of the crime of failing to register with the FDA,
11 as charged in Count 3.

12 With regard to Count 4, the jury finds the
13 defendant guilty of the crime of causing misbranded drugs
14 to be introduced in interstate commerce as charged in
15 that count.

16 The jury also finds with respect to misbranding
17 that the defendant misbranded by all of the two instances
18 indicated, misbranding by manufacturing, preparing,
19 propagating, or processing in an establishment that was
20 not registered with the FDA.

21 Also, that he misbranded in failing to -- and
22 that the product failed to bear labeling containing
23 adequate directions for use.

24 As to Count 5, the jury finds the defendant
25 guilty of the crime of causing misbranded drugs to be

1 introduced into interstate commerce, as charged in that
2 count.

3 The jury finds that the misbranding occurred,
4 in that the product was manufactured, prepared,
5 propagated, or processed in an establishment that was not
6 registered with the FDA.

7 And also misbranded in that it failed to bear
8 labeling containing adequate directions for use.

9 As to Count 6, the defendant is also found
10 guilty by the jury of causing misbranded drugs to be
11 introduced in interstate commerce as charged in that
12 count.

13 And the jury finds with respect to all of the
14 misbranded questions the defendant guilty, specifically
15 as to the substance TO-MORE-GONE, that it was misbranded,
16 in that it was manufactured, prepared, propagated, or
17 processed in an establishment not registered with the
18 FDA.

19 It was misbranded in that it failed to bear
20 labeling containing adequate directions for use.

21 Was not -- was misbranded in that it failed to
22 bear labeling containing adequate warnings against use,
23 where its use may be dangerous to one's health as
24 necessary for the protection of others.

25 And it was misbranded in that it was dangerous

1 to one's health when used in the dosage or the manner
2 suggested in the labeling.

3 As to Count 7, the jury finds the defendant
4 guilty of the crime of causing misbranded drugs to be
5 introduced into interstate commerce as charged in that
6 count.

7 And also finds that it was misbranded in the
8 two matters that are listed, specifically, it was
9 misbranded in that it was manufactured, prepared
10 propagated, or processed in an establishment that was not
11 registered with the FDA.

12 And that the substance was misbranded in that
13 it failed to bear labeling containing adequate directions
14 for use.

15 As to Count 8, the jury finds the defendant
16 guilty of the crime of causing misbranded drugs to be
17 introduced into interstate commerce, as charged in that
18 count.

19 And also finds then in each instance that the
20 substance was misbranded in that it was manufactured,
21 prepared, propagated, or processed in an establishment
22 that was not registered with the FDA.

23 It was misbranded in that it failed to bear
24 labeling containing adequate directions for use.

25 Was misbranded in that it failed to bear

1 adequate warnings against the use where its use may be
2 dangerous to one's health as necessary for the protection
3 of users.

4 And that it was misbranded in that it was
5 dangerous to one's health when used in the dosage or
6 manner suggested in the labeling.

7 As to Count 9, the jury finds the defendant
8 guilty of the crime of causing misbranded drugs to be
9 introduced into interstate commerce as charged in that
10 count.

11 And finds that the product was misbranded in
12 that it was manufactured, prepared, propagated, or
13 processed in an establishment that was not registered
14 with the FDA.

15 Also that it was misbranded in that the
16 labeling did not contain a listing of each active
17 ingredient.

18 As to Count 10, the jury finds the defendant
19 guilty of the crime of causing misbranded drugs to be
20 introduced into interstate commerce, as charged in that
21 count.

22 And finds that it was misbranded in the four
23 instances that are listed, specifically that it was
24 manufactured, prepared, propagated, or processed in an
25 establishment that was not registered with the FDA.

1 That it was misbranded in that it failed to
2 bear labeling containing adequate directions for use.

3 It was misbranded in that it failed to bear
4 labeling containing adequate warnings against use where
5 its use may be dangerous to one's health, as necessary
6 for the protection of users.

7 And it was misbranded in that it was dangerous
8 to one's health when used in the dosage or manner
9 suggested in the labeling.

10 As to Count 11, the jury finds the defendant
11 guilty of a crime of causing misbranded drugs to be
12 introduced into interstate commerce as charged in that
13 count, and also finds that the product was misbranded in
14 that it was manufactured, prepared, propagated, or
15 processed in an establishment that was not registered
16 with the FDA.

17 And was misbranded in that it failed to bear
18 labeling containing adequate directions for use.

19 As to Count 12, the jury finds the defendant
20 guilty of the charge of a crime with tampering with the
21 witnesses charged in Count 12 of the indictment.

22 And finally as to Count 13, the jury finds the
23 defendant guilty of the crime in failing to appear as
24 charged in Count 13 of the indictment.

25 In summary, the jury finds the defendant guilty

1 of all charges, and finds that the product was mislabeled
2 in each instance that has been outlined in the verdict
3 form.

4 Ladies and gentlemen, at this time I'll ask the
5 clerk to poll the jury.

6 Now, when the clerk polls the jury, she
7 essentially asks you if the verdict that I've announced
8 is, in fact, your verdict, and you'll need to respond,
9 yes, it is or, no, that it's not.

10 THE CLERK: Juror Number 1 -- or, I'm sorry,
11 476.

12 JUROR NUMBER 476: Yes.

13 THE CLERK: 619.

14 JUROR NUMBER 619: Yes.

15 THE CLERK: 531.

16 JUROR NUMBER 531: Yes.

17 THE CLERK: 625.

18 JUROR NUMBER 625: Yes.

19 THE CLERK: 640.

20 JUROR NUMBER 640: Yes.

21 THE CLERK: 635.

22 JUROR NUMBER 635: Yes.

23 THE CLERK: 643.

24 JUROR NUMBER 643: Yes.

25 THE CLERK: 645.

1 JUROR NUMBER 645: Yes.

2 THE CLERK: 494.

3 JUROR NUMBER 694: Yes.

4 THE CLERK: 524.

5 JUOR NUMBER 524: Yes.

6 THE CLERK: 627.

7 JUROR NUMBER 627: Yes.

8 THE CLERK: And 614.

9 JUROR NUMBER 614: Yes.

10 THE COURT: All answer in the affirmative.

11 Are there any issues to take up before the jury
12 is excused?

13 MS. SMITH: No, Your Honor.

14 THE COURT: Mr. Girod, any issues to take up?

15 DEFENDANT GIROD: No.

16 THE COURT: All right. Ladies and gentlemen,
17 at this time you will be excused from further
18 participation in this trial.

19 I will give you just a couple of instructions
20 before I do release you.

21 If you want to keep your notes, you're welcome
22 to do that. If you don't, if you leave your notebooks
23 here, they'll be collected by the clerk. Your notes will
24 be shredded if you leave those here. So they will not
25 remain in the record. But if you want to keep those for

1 any reason, of course, you're certainly entitled to do
2 that.

3 The admonition that was given to you previously
4 about not discussing the matter with anyone is lifted.
5 If you wish, you can discuss the matter with anyone of
6 your choice.

7 But as you heard me tell the alternate jurors
8 this morning, you're not required to do so. And if you
9 choose not to discuss the matter with anyone, if anyone
10 should ever contact you, or attempt to talk with you
11 about it, all you have to say is you've chosen not to
12 discuss the matter, and you can refer it to the Court if
13 that person or persons persist in asking you questions.

14 I do appreciate the participation in this case
15 by you and the careful attention that you have given to
16 the matter.

17 I know that this was a relatively brief trial.
18 This is our third day, but I do know that you paid very
19 close attention to this matter. And, of course, you took
20 this matter very seriously. The Court certainly does
21 appreciate that.

22 Now, you'll be released at this time. What
23 you'll be able to do if you would like to be escorted out
24 to your vehicles, we have security officers that can do
25 that. We'll take you at a different route. We'll take

1 you back through my chambers, through this direction over
2 here, so the security officers will accompany you out to
3 your vehicles if you wish that -- that accompaniment.

4 If you've left anything back in the jury room,
5 you can pick that up.

6 Do you have anything back in the jury room
7 anymore?

8 JUROR: Not here but over in --

9 THE COURT: Across the hallway?

10 JUROR: Right.

11 THE COURT: All right. The security officers
12 will make sure that you get your materials, will
13 accompany you over there before you leave this afternoon.

14 And, again, with the thanks of the Court,
15 ladies and gentlemen, you'll be excused at this time.

16 Thank you.

17 You can leave your badges there in the chairs.

18 (Whereupon, the juror members leave the courtroom.)

19 THE COURT: Thank you, and please be seated.

20 I will provide the note from the jury to the
21 clerk, together with the copy of the superseding
22 indictment that was submitted for the jury's use, and the
23 actual instructions that were read to the jury and then
24 provided to the jury.

25 An order was entered previously with regard to

1 exhibits in the matter, and I believe that the
2 United States maintains possession of many of those
3 items of product.

4 Is that accurate?

5 MS. SMITH: Yes, that's correct, Your Honor.

6 THE COURT: All right. And I assume that those
7 items would not be destroyed but will be maintained until
8 such time as any appeals have been exhausted in the case.

9 Is that accurate?

10 MS. SMITH: Yes, Your Honor.

11 THE COURT: All right. The verdict form that I
12 have read will be filed in the record.

13 And as the attorneys know, the procedure that's
14 followed is that the foreperson's name will be removed
15 from the copy that's actually filed in the record, but
16 the original form will be maintained under seal, because
17 it does have that signature on there. The verdict form
18 is signed by the foreperson, and it includes the
19 foreperson's number, and also today's date.

20 The defendant having been found guilty of every
21 count charged in the indictment, I will schedule the
22 sentencing hearing in this matter for here in Lexington
23 on Friday, June 16th, at 10:00 a.m.

24 And that, of course, is subject to intervening
25 orders of the Court.

1 And, Madam Clerk, I'll provide you with the
2 sentencing order to be filed in the matter.

3 Are there any other issues that I need to take
4 up before the matter is in recess?

5 MS. SMITH: No, Your Honor.

6 THE COURT: All right. Thank you.

7 Let me just remind everyone that, of course,
8 the attorneys are aware of this, but I will remind
9 parties and spectators that you're not allowed to have
10 any contact with the jurors in the case. You're not
11 allowed to have contact with the jurors, or with the
12 alternates, and that any attempt to contact any juror in
13 the case, or have conversations or communications with
14 witnesses, may be viewed as contempt of Court, and will
15 be punished accordingly if discovered.

16 Mr. Girod.

17 DEFENDANT GIROD: Your Honor, I would like for
18 you to consider me going home under conditions of some
19 kind.

20 THE COURT: Well, Mr. Girod, unfortunately you
21 violated the bond that you were under originally when you
22 gave your word that you would appear for all court
23 proceedings, and that's why you were -- an arrest warrant
24 was issued to place you in custody.

25 You then attempted to avoid being arrested for

1 a period of months, until January of this year. So you
2 have not demonstrated that you're likely to comply with
3 any condition of release that might be imposed in this
4 matter.

5 Likewise, you've had people in the community
6 that have apparently hidden you from the order, from
7 being arrested by the United States Marshal Service, and
8 you've also involved other individuals in the Bath County
9 sheriff's office.

10 And the jury has found that you have attempted
11 to influence the proceedings as outlined in Count 12, and
12 they've also found you guilty in Count 13.

13 So I don't see that there is any condition or
14 combination of conditions that could be imposed that
15 would guarantee your attendance at the time of the
16 sentencing hearing.

17 So your request will be considered but will be
18 denied at this time.

19 Mr. Fox.

20 MR. FOX: Yes, Your Honor. As the matter is
21 proceeding to the sentencing phase, I'd like for the
22 Court to give me some direction on this.

23 THE COURT: Yes, sir.

24 MR. FOX: What I can or should do.

25 THE COURT: You will still be standby counsel

1 in the case. Mr. Girod has indicated that he wishes to
2 continue to represent himself, and he has been advised of
3 the perils of doing that, primarily by the Magistrate
4 Judge on several occasions.

5 If that situation were to change, then, of
6 course, he can certainly notify the Court, and at this
7 stage of the proceeding the Court would be inclined to
8 appoint counsel to represent him in connection with any
9 sentencing proceeding.

10 But at this point he's made an affirmative
11 determination that he wants to represent himself. He's
12 made that clear on numerous occasions.

13 And so while you'll be standby counsel, you
14 would not be appointed in connection with the sentencing
15 proceeding other than the current capacity that you're
16 in.

17 MR. FOX: All right. Thank you, Judge.

18 THE COURT: All right. Let's see if we have
19 any other issues to take up in the case.

20 MS. SMITH: No, Your Honor.

21 THE COURT: All right. Thank you.

22 If there's nothing else to be taken up in this
23 matter, we will be in recess.

24 (Whereupon, Day 3 of the Jury Trial proceedings
25 concluded at 4:30 p.m.)

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C E R T I F I C A T E

I, Peggy W. Weber, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

June 1, 2017

DATE

s/Peggy W. Weber

PEGGY W. WEBER, RPR

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