

JURY INSTRUCTION NO. 1

Members of the Jury:

Now that you have heard all of the evidence to be received in this trial and each of the arguments of counsel it becomes my duty to give you the final instructions of the Court as to the law that is applicable to this case. You should use these instructions to guide you in your decisions.

All of the instructions of law given to you by the Court - those given to you at the beginning of the trial, those given to you during the trial, and these final instructions - must guide and govern your deliberations.

It is your duty as jurors to follow the law as stated in all of the instructions of the Court and to apply these rules of law to the facts as you find them from the evidence received during the trial.

Counsel have quite properly referred to some of the applicable rules of law in their closing arguments to you. If, however, any difference appears to you between the law as stated by counsel or a witness and that as stated by the Court in these instructions, you, of course, are to be governed by the instructions given to you by the Court. The law as given by the Court in these and other instructions constitutes the only law for your guidance.

You are not to single out any one instruction alone as stating the law, but must consider the instructions as a whole in reaching your decisions.

Neither are you to be concerned with the wisdom of any rule of law stated

by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base any part of your verdict upon any other view or opinion of the law than that given in these instructions of the Court just as it would be a violation of your sworn duty, as the judges of the facts, to base your verdict upon anything but the evidence received in the case.

You were chosen as jurors for this trial in order to evaluate all of the evidence received and to decide each of the factual questions presented by the allegations brought by the government in the indictment and the pleas of not guilty by the defendants.

In resolving the issues presented to you for decision in this trial you must not be persuaded by bias, prejudice, or sympathy for or against any of the parties to this case or by any public opinion.

Justice – through trial by jury – depends upon the willingness of each individual juror to seek the truth from the same evidence presented to all the jurors here in the courtroom and to arrive at a verdict by applying the same rules of law as now being given to each of you in these instructions of the Court.

JURY INSTRUCTION NO. 2

There is nothing particularly different in the way that a juror should consider the evidence in a trial from that in which any reasonable and careful person would deal with any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case. Use the evidence only for those purposes for which it has been received and give the evidence a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the defendant be proved guilty beyond a reasonable doubt, say so. If not proved guilty beyond a reasonable doubt, say so.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything other than the evidence received in the case and the instructions of the Court. Remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence because the burden of proving guilt beyond a reasonable doubt is always with the government.

JURY INSTRUCTION NO. 3

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them, all exhibits received in evidence, regardless of who may have produced them, all facts which may have been agreed to or stipulated; and all facts and events which may have been judicially noticed.

When the attorneys on both sides stipulate or agree as to the existence of a fact, you may accept the stipulation as evidence and regard that fact as proved. You are not required to do so, however, since you are the sole judge of the facts.

Any proposed testimony or proposed exhibit to which an objection was sustained by the Court and any testimony or exhibit ordered stricken by the Court, must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not proper evidence and must be entirely disregarded.

Questions, objections, statements, and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact.

You are to base your verdict only on the evidence received in the case. In your consideration of the evidence received, however, you are not limited to the bald statements of the witnesses or to the bald assertions in the exhibits. In other words, you are not limited solely to what you see and hear as the witnesses testify or as the exhibits are admitted. You are permitted to draw from the facts which you find have been proved such reasonable inferences as you feel are justified in

the light of your experience and common sense.

JURY INSTRUCTION NO. 4

There are two types of evidence which are generally presented during a trial - direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case.

JURY INSTRUCTION NO. 5

Inferences are simply deductions or conclusions which reason and common sense lead the jury to draw from the evidence received in the case.

JURY INSTRUCTION NO. 6

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or counsel.

You are the sole judges of the evidence received in this case.

JURY INSTRUCTION NO. 7

The questions asked by a lawyer for either party to this case are not evidence. If a lawyer asks a question of a witness which contains an assertion of fact, therefore, you may not consider the assertion by the lawyer as any evidence of that fact, unless, of course, the witness agrees with the assertion contained within the question. With this qualification, only the answers are evidence.

JURY INSTRUCTION NO. 8

The charges against Defendant Darrell Arden Griep have been removed from your consideration and are no longer before you for decision.

Do not concern yourself with this development and do not speculate about it.

The removal of this portion of the case must not influence your consideration of those portions of the case which you must decide.

JURY INSTRUCTION NO. 9

I instruct you that you must presume the defendants to be innocent of the crimes charged. Thus the defendants, although accused of crimes in the indictment, begin the trial with a “clean slate” - with no evidence against them. The indictment, as you already know, is not evidence of any kind. The defendants are, of course, not on trial for any act or crime not contained in the indictment. The law permits nothing but legal evidence presented before the jury in court to be considered in support of any charge against a defendant. The presumption of innocence alone therefore, is sufficient to acquit a defendant.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence, nor does the law impose upon a defendant the burden or duty to contact law enforcement. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense - the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely

and act upon it in the most important of his or her own affairs.

Unless the government proves, beyond a reasonable doubt, that a defendant has committed each and every element of the offense charged in the indictment, you must find that defendant not guilty of the offense. If the jury views the evidence in the case as reasonably permitting either of two conclusions - one of innocence, the other of guilt - the jury must, of course, adopt the conclusion of innocence.

JURY INSTRUCTION NO. 10

You are here to determine whether the government has proven the guilt of each of the defendants for the charges in the indictment beyond a reasonable doubt. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons.

So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of a defendant for the crime charged in the indictment, you should so find, even though you may believe that one or more other unindicted persons are also guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find that defendant not guilty.

JURY INSTRUCTION NO. 11

An indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the defendants. Each defendant is presumed to be innocent of the crimes charged. Even though this indictment has been returned against the defendants, the defendants begin this trial with absolutely no evidence against them.

The defendants have each pleaded "Not Guilty" to this indictment and, therefore, they deny that they are guilty of the charges.

JURY INSTRUCTION NO. 12

A separate crime is alleged against each of the defendants in each count of the indictment. Each alleged offense, and any evidence pertaining to it, should be considered separately by the jury. The fact that you find one defendant guilty or not guilty of one of the offenses charged should not control your verdict as to any other offense charged against that defendant or against any other defendant.

You must give separate and individual consideration to each charge against each defendant, except that with respect to Count 9, unless you find Defendant Smith guilty of Count 1, Count 2, Count 3, or Count 4, then by law he cannot be found guilty of Count 9.

JURY INSTRUCTION NO. 13

The indictment charges that the offenses alleged were committed “on or about” certain dates.

Although it is necessary for the government to prove beyond a reasonable doubt that the offenses were committed on dates reasonably near the dates alleged in the indictment, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged.

JURY INSTRUCTION NO. 14

The indictment alleges that an approximate amount of money was involved in certain aspects of the offense.

It is not necessary for the government to prove the exact or precise amount of money alleged in the indictment.

JURY INSTRUCTION NO. 15

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

JURY INSTRUCTION NO. 16

Charts or summaries have been prepared by the government, have been admitted into evidence, and have been shown to you during the trial for the purpose of explaining facts that are allegedly contained in books, records, or other documents which are in evidence in the case, or to serve as a demonstrative aid with respect to information that has been the subject of testimony. You may consider the charts and summaries that have been admitted into evidence as exhibits as you would any other evidence admitted during the trial and give them such weight or importance, if any, as you feel they deserve.

JURY INSTRUCTION NO. 17

Tape recordings of conversations have been received in evidence and have been played for you. Typewritten transcripts of these tape recorded conversations have been furnished to you solely for your convenience in assisting you in following the conversation or in identifying the speakers.

The tapes themselves, however, are evidence in the case and the typewritten transcripts are not evidence. What you hear on the tapes is evidence. What you read on the transcript is not. If you perceive any variation between the two, you will be guided solely by the tapes and not by the transcripts.

If you cannot, for example, determine from the tape recording that particular words were spoken or if you cannot determine from the tape recording who said a particular word or words, you must disregard the transcripts insofar as those words or that speaker are concerned.

JURY INSTRUCTION NO. 18

You are instructed that, with regard to the civil suit filed in California, there is no evidence that Xpress Pharmacy, Christopher Smith or any other defendant had anything to do with the alleged death. Indeed, you are not to speculate as to what happened to the deceased, nor why it occurred, and the evidence about the case is stricken and you are to disregard it. Because, in fact, there is no evidence the deceased ordered drugs from Xpress Pharmacy.

JURY INSTRUCTION NO. 19

The defendant is not on trial for any act or conduct not alleged in the indictment.

You have heard evidence concerning possible violations of state laws, medical regulations, pharmacy regulations and organizational policy violations.

As I have stated before, the defendants are not on trial for any act or any conduct not specifically charged in the indictment. You may not consider any evidence concerning possible violations or rules, boards and policies except in deciding if a defendant committed the crimes charged in the indictment.

JURY INSTRUCTION NO. 20

You heard recordings of conversations between Richard Faust and Defendant Lieberman. It is the statements of Defendant Lieberman that are evidence in this case. The statements on those recordings by Richard Faust are admitted for the purpose of putting Defendant Lieberman's statements in context.

JURY INSTRUCTION NO. 21

The testimony of a witness may be discredited or, as we sometimes say, impeached by showing that he or she previously made statements which are different than or inconsistent with his or her testimony here in court. The earlier inconsistent or contradictory statements are admissible only to discredit or impeach the credibility of the witness and not to establish the truth of these earlier statements made somewhere other than here during this trial. It is the province of the jury to determine the credibility of a witness who has made prior inconsistent or contradictory statements.

If a person is shown to have knowingly testified falsely concerning any important or material matter, you obviously have a right to distrust the testimony of such an individual concerning other matters. You may reject all of the testimony of that witness or give it such weight or credibility as you may think it deserves.

JURY INSTRUCTION NO. 22

You, as jurors, are the sole and exclusive judges of the credibility of each of the witnesses called to testify in this case and only you determine the importance or the weight that their testimony deserves. After making your assessment concerning the credibility of a witness, you may decide to believe all of that witness's testimony, only a portion of it, or none of it.

In making your assessment you should carefully scrutinize all of the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness, in your opinion, is worthy of belief. Consider each witness's intelligence, motive to falsify, state of mind, and appearance and manner while on the witness stand. Consider the witness's ability to observe the matters as to which he or she has testified and consider whether he or she impresses you as having an accurate memory or recollection of these matters. Consider also any relation a witness may bear to either side of the case, the manner in which each witness might be affected by your verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. Innocent misrecollection, like

failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, however, always consider whether it pertains to a matter of importance or an insignificant detail and consider whether the discrepancy results from innocent error or from intentional falsehood.

If you find that a witness has intentionally lied about a certain aspect of the case, you are free to find that his or her testimony should be disregarded in its entirety.

After making your own judgment or assessment concerning the believability of a witness, you can then attach such importance or weight to that testimony, if any, that you feel it deserves. You will then be in a position to decide whether the government has proven the charge beyond a reasonable doubt.

JURY INSTRUCTION NO. 23

You have heard evidence that Bernardette Hollis, Philip Mach, and Alton Poe have made plea agreements with the government. Their testimony was received in evidence and may be considered by you. You may give Bernardette Hollis's, Philip Mach's, and Alton Poe's testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by the plea agreements is for you to determine.

Bernardette Hollis's, Philip Mach's, and Alton Poe's guilty pleas cannot be considered by you as any evidence of any of the defendants' guilt. The witnesses' guilty pleas can be considered by you only for the purpose of determining how much, if at all, to rely upon the witnesses' testimony.

JURY INSTRUCTION NO. 24

The defendant in a criminal case has an absolute right under our Constitution not to testify.

The fact that a defendant did not testify must not be discussed or considered by the jury in any way when deliberating and in arriving at your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his privilege under the Constitution and did not testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or of producing any evidence.

JURY INSTRUCTION NO. 25

The testimony of a drug or alcohol abuser must be examined and weighed by the jury with greater care than the testimony of a witness who does not abuse drugs or alcohol.

The jury must determine whether the testimony of the drug or alcohol abuser has been affected by drug or alcohol use or the need for drugs or alcohol.

JURY INSTRUCTION NO. 26

A summary of the Third Superseding Indictment will be provided to you.

JURY INSTRUCTION NO. 27 (Count 1)

Count 1 of the indictment charges that beginning in or about January 2004, and continuing until at least June 24, 2005, the defendants conspired with each other and with other persons to distribute and dispense, and to cause to be distributed and dispensed, prescription drugs that are controlled substances, other than for a legitimate medical purpose and not in the usual course of professional practice, in violation of Title 21, United States Code, Section 846.

Title 21, United States Code, Section 846, provides in relevant part as follows:

Any person who . . . conspires to commit any offense defined in this subchapter shall be [guilty of an offense against the United States].

The indictment charges the defendants with conspiracy to violate Title 21, United States Code, Section 841(a)(1) of the Federal Controlled Substances Act and one of the regulations implemented under that act, Title 21, Code of Federal Regulations, Section 1306.04.

Title 21, United States Code, Section 841(a)(1), provides in relevant part as follows:

[I]t shall be unlawful for any person knowingly or intentionally—to . . . distribute, or dispense . . . a controlled substance.

Title 21, Code of Federal Regulations, Section 1306.04, provides in relevant part as follows:

A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription . . . and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

JURY INSTRUCTION NO. 28 (Count 1)

The crime of conspiracy to distribute or dispense controlled substances as charged in Count 1 of the indictment, has three essential elements, which are:

One, beginning in or about January 2004, until at least on or about June 24, 2005, two or more persons reached an agreement or came to an understanding to distribute or dispense, or to cause to be distributed and dispensed, prescription drugs that are controlled substances, namely, hydrocodone, other than for a legitimate medical purpose and not in the usual course of professional practice;

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and

Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

For you to find a defendant guilty of this crime, the government must prove all of these essential elements beyond a reasonable doubt as to that defendant; otherwise, you must find that defendant not guilty.

JURY INSTRUCTION NO. 29 (Counts 1-4)

Jury Instructions 30 through 34 apply equally to Count 1 (charging conspiracy to distribute or dispense controlled substances) and Counts 2-4 (charging unlawful distributing or dispensing of controlled substances).

JURY INSTRUCTION NO. 30 (Counts 1-4)

As indicated, the Federal Controlled Substances Act, Title 21, United States Code, Section 841(a)(1), combined with its implementing regulation found in Title 21, Code of Federal Regulations, Section 1306.04, make it a crime for any “person” to knowingly or intentionally distribute or dispense controlled substances other than for a legitimate medical purpose and in the usual course of professional practice.

The term “person,” as used in this statute, has the same meaning as the ordinary meaning of that term and does not just include licensed medical professionals, such as physicians or pharmacists, but also unlicensed persons who may violate this statute.

The Federal Controlled Substances Act is not violated if a person distributes or dispenses controlled substances pursuant to a lawful prescription issued for a legitimate medical purposes by an individual practitioner acting in the usual course of his or her professional practice. However, an order purporting to be a prescription that is issued without a legitimate medical purpose and issued outside the usual course of professional practice is not a prescription within the meaning of the Federal Controlled Substances Act. “Usual course of professional practice” means that the practitioner acted in accordance with a standard of medical practice generally recognized and accepted in the United States. In issuing prescriptions, practitioners are not free to disregard prevailing standards of

treatment.

JURY INSTRUCTION NO. 31 (Count 1-4)

You are instructed as a matter of law that hydrocodone is a Schedule III
Controlled Substance.

JURY INSTRUCTION NO. 32 (Count 1-4)

The term “fill” means to supply controlled substances or other drugs as directed by a prescription or purported prescription.

The term “practitioner” means a physician or pharmacy licensed or registered to distribute or dispense a controlled substance in the usual course of professional practice.

The term “distribute” means to deliver or to transfer possession or control of something from one person to another. The term “distribute” includes the sale of something by one person to another. Moreover, the term “distribute” includes the actual transfer, constructive transfer, or attempted transfer of a controlled substance.

With respect to the terms “constructive transfer,” as used in these instructions, you are instructed that a person who does not actually transfer a thing but who has both the power and the intention at a given time to cause the transfer of a thing, either directly or through another person or persons, has constructively transferred it.

The term “dispense” means to deliver a controlled substance to an ultimate user by, or pursuant to the order of, a practitioner. As with the term distribute, the term dispense can include a constructive transfer.

JURY INSTRUCTION NO. 33 (Counts 1-4)

The evidence received in this case need not prove the actual amount of the controlled substance that was part of the conspiracy alleged in Count 1 or part of the transactions alleged in Counts 2-4 of the indictment as distributed or dispensed by the defendant. For Counts 2-4, but not for Count 1, the government must prove beyond a reasonable doubt, however, that a measurable amount of the controlled substance was, in fact, knowingly and intentionally distributed or dispensed by the defendant.

JURY INSTRUCTION NO. 34 (Counts 1-4)

It is not necessary for the government to prove that the defendant knew the precise nature of the controlled substance that was part of the conspiracy to be distributed or dispensed (in Count 1) or that was distributed or dispensed (in Counts 2-4). The government must prove beyond a reasonable doubt, however, that the defendant did know that some type of controlled substance was part of the conspiracy to be distributed or dispensed (for Count 1) or that some type of controlled substance was distributed or dispensed (for Counts 2-4).

JURY INSTRUCTION NO. 35 (Count 1, Count 8)

The next several instructions pertain to conspiracy law and apply equally to Count 1 (charging conspiracy to distribute or dispense controlled substances) and Count 8 (charging conspiracy to commit money laundering).

JURY INSTRUCTION NO. 36 (Count 1 and Count 8)

A criminal conspiracy is an agreement or a mutual understanding knowingly made or knowingly entered into by at least two people to violate the law by some joint or common plan or course of action. A conspiracy is, in a very true sense, a partnership in crime.

A conspiracy or agreement to violate the law, like any other kind of agreement or understanding, need not be formal, written, or even expressed directly in every detail.

The government must prove that the defendant whom you are considering and at least one other person knowingly and deliberately arrived at an agreement or understanding that they, and perhaps others, would violate some law by means of some common plan or course of action as alleged in Count 1 and Count 8 of the indictment. It is proof of this conscious understanding and deliberate agreement by the alleged members that should be central to your consideration of the charge of conspiracy.

To prove the existence of a conspiracy or an illegal agreement, the government is not required to produce a written contract between the parties or even produce evidence of an express oral agreement spelling out all of the details of the understanding. To prove that a conspiracy existed, moreover, the government is not required to show that all of the people named in the indictment as members of the conspiracy were, in fact, parties to the agreement,

or that all of the members of the alleged conspiracy were named or charged, or that all of the people whom the evidence shows were actually members of a conspiracy agreed to all of the means or methods set out in the indictment.

Unless the government proves beyond a reasonable doubt that a conspiracy, as just explained, actually existed, then you must acquit the defendant whom you are considering on Count 1 or Count 8.

JURY INSTRUCTION NO. 37 (Count 1 and Count 8)

You may consider acts knowingly done and statements knowingly made by a defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant had joined the conspiracy, for a person who knowingly, voluntarily, and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

JURY INSTRUCTION NO. 38 (Count 1 and Count 8)

Before the jury may find that a defendant, or any other person, became a member of the conspiracy charged in Count 1 or the conspiracy charged in Count 8, the evidence in the case must show beyond a reasonable doubt that a defendant knew the purpose or goal of the agreement or understanding and deliberately entered into the agreement intending, in some way, to accomplish the goal or purpose by this common plan or joint action.

If the evidence establishes beyond a reasonable doubt that the defendant knowingly and deliberately entered into an agreement to distribute or dispense controlled substances other than for a legitimate medical purpose and not in the usual course of professional practice as charged in Count 1 of the indictment, or to commit money laundering as charged in Count 8 of the indictment, the fact that the defendant did not join the agreement at its beginning, or did not know all of the details of the agreement, or did not participate in each act of the agreement, or did not play a major role in accomplishing the unlawful goals is not important to your decision regarding membership in the conspiracy.

Merely associating with others and discussing common goals, mere similarity of conduct between or among such persons, merely being present at the place where a crime takes place or is discussed, or even knowing about criminal conduct does not, of itself, make someone a member of the conspiracy or a conspirator.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

JURY INSTRUCTION NO. 39

Whether there existed a single conspiracy, or many such agreements, or none at all, is a question of fact for you, the jury, to decide.

If you find that the conspiracy charged in the indictment did not exist, you cannot find any defendant guilty of a single conspiracy charged in the indictment.

Similarly, if you find that a particular defendant was a member of another conspiracy, and not the one charged in the indictment, then you must acquit the defendant of the conspiracy charged.

JURY INSTRUCTION NO. 40 (Count 1)

Count 1 of the indictment charges a conspiracy to commit two separate crimes or offenses; namely, (1) conspiracy to distribute controlled substances in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(D), and Title 21, Code of Federal Regulations, Section 1306.04, or (2) conspiracy to dispense controlled substances in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(D), and Title 21, Code of Federal Regulations, Section 1306.04.

It is not necessary for the government to prove a conspiracy to commit *both* of those offenses. It would be sufficient if the government proves, beyond a reasonable doubt, a conspiracy to commit *one* of those offenses; but, in that event, in order to return a verdict of guilty, you must unanimously agree upon *which* of the two offenses was the subject of the conspiracy. If you cannot agree in that manner, you must find the defendant whom you are considering not guilty.

JURY INSTRUCTION NO. 41 (Counts 2-4)

The crime of unlawful distributing or dispensing of a controlled substance, hydrocodone, as charged in Counts 2-4 of the indictment, has two essential elements, which are:

One, the defendant intentionally distributed or dispensed a controlled substance; and

Two, at the time of the distribution or dispensing, the defendant knew that he was distributing or dispensing a controlled substance other than for a legitimate medical purpose and not in the usual course of professional practice.

The terms “distributed” and “dispensed” are the same as the definitions set forth above.

If as to each Count 2-4, all of these essential elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Counts 2-4; otherwise you must find the defendant not guilty of this crime under Counts 2-4.

JURY INSTRUCTION NO. 42 (Counts 5-7)

Title 21, United States Code, Section 331(a) prohibits the introduction or causing the introduction into interstate commerce of a drug that is misbranded.

Title 21, United States Code, Section 353(b) provides that the act of dispensing a prescription drug without a prescription shall be deemed to be an act which results in the drug being misbranded.

Counts 5 through 7 require the government to prove that the prescription drugs at issue, whether they are controlled or non-controlled substances, were misbranded. A drug, whether it is a controlled or non-controlled substance, is misbranded if it is a prescription drug that is not dispensed pursuant to a prescription of a practitioner licensed by law to administer such drug.

Thus, for you to find a defendant guilty of the crimes alleged in Counts 5 through 7 of the indictment, with respect to each count you must be convinced beyond a reasonable doubt that the government has proved to you that on or about the date specified in the particular count:

- First: The defendant introduced or caused the introduction of Ambien or Alprazolam in interstate commerce;
- Second: That at the time the defendant introduced or caused the introduction of Ambien or Alprazolam in interstate commerce, that it was a drug;
- Third: That at the time the defendant introduced or caused its introduction into interstate commerce, Ambien or Alprazolam

was a prescription drug;

Fourth: That at the time the defendant introduced or caused the introduction into interstate commerce of Ambien or Alprazolam, there was no oral or written prescription by a practitioner licensed by law to administer it to the person who received it;

Fifth: That the defendant had knowledge that the Ambien or Alprazolam was misbranded;

Sixth: That the defendant committed the acts with the intent to mislead or defraud.

JURY INSTRUCTION NO. 43 (Counts 5-7)

As used in the Food, Drug and Cosmetic Act and in these instructions, a “drug” means any article (except foods and medical devices) intended for use in the cure, mitigation, treatment, or prevention of disease in humans or intended to affect the structure or any function of the human body.

The term “prescription drug” as used in the Food, Drug and Cosmetic Act and in these instructions means a drug intended for use by humans which, because of its toxicity or other potentiality for harmful effect or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or is limited by an approved application under 21 U.S.C. § 355 to use under the professional supervision of a practitioner licensed by law to administer such drug. Under federal law, prescription drugs shall be dispensed only: (1) upon a written prescription of a practitioner licensed by law to administer such drug; or (2) upon an oral prescription of such practitioner which prescription is reduced promptly to writing; or (3) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist.

A “prescription” as used in the Food, Drug and Cosmetic Act and in these instructions means only a valid prescription. A valid prescription means one issued in the usual course of professional practice and for a legitimate medical purpose, as explained earlier in the Instructions.

JURY INSTRUCTION NO. 44 (Counts 5-7)

Interstate commerce means commerce between any state and any place outside of that state. The defendant need not have introduced the drug in interstate commerce himself. It is enough that the defendant willfully did any act or failed to act with knowledge that, as a result of that act or omission, the drugs did, in the ordinary course of business, move in interstate commerce.

JURY INSTRUCTION NO. 45 (Counts 5-7)

To act with the intent to defraud or mislead means to act with the specific intent to mislead. The government does not have to prove that anyone was, in fact, influenced, only that the defendant intended to do so.

To act with an “intent to defraud” means to act knowingly and with the intention or the purpose to deceive or to cheat.

You must assess whether the defendant intended to defraud or mislead in connection with his introduction or acts causing the introduction of Ambien or Alprazolam into interstate commerce, that is, whether he accomplished his introduction of the prescription drugs into interstate commerce with that intention to deceive anyone.

Intent to defraud or mislead may or may not be shown by evidence that the defendant took affirmative steps to conceal or prevent the discovery of the truth.

JURY INSTRUCTION NO. 46 (Counts 2-7)

A person may violate the law even though he or she does not personally do each and every act constituting the offense if that person “aided and abetted” the commission of the offense.

Before the defendant may be held responsible for aiding and abetting others in the commission of a crime, it is necessary that the government prove beyond a reasonable doubt that the defendant knowingly and deliberately associated himself in some way with the crime charged and participated in it with the intent to commit the crime.

In order to be found guilty of aiding and abetting the commission of the crime charged in Counts 2-7 of the indictment, the government must prove beyond a reasonable doubt that a defendant:

One, knew that the crime charged was to be committed or was being committed,

Two, knowingly did some act for the purpose of aiding, commanding or encouraging the commission of that crime, and

Three, acted with the intention of causing the crime charged to be committed.

Before the defendant may be found guilty as an aider or an abettor to the crime, the government must also prove, beyond a reasonable doubt, that someone committed each of the essential elements of the offense of unlawful distribution or dispensing of controlled substances (as charged in Counts 2-4) or Introduction of

Misbranded Drugs Into Interstate Commerce (as charged in Counts 5-7), as detailed for you in previous instructions.

Merely being present at the scene of the crime or merely knowing that a crime is being committed or is about to be committed is not sufficient conduct for the jury to find that a defendant aided and abetted the commission of that crime.

The government must prove that a defendant knowingly and deliberately associated himself with the crime in some way as a participant – someone who wanted the crime to be committed – not as a mere spectator.

JURY INSTRUCTION NO. 47 (Count 8)

Count 8 of the indictment charges the crime of conspiracy to commit money laundering. As I previously instructed you, a criminal conspiracy is an agreement or a mutual understanding knowingly made or knowingly entered into by at least two people to violate the law by some joint or common plan or course of action. You should apply the same general principles of the law of conspiracy on which I have already instructed you.

The crime of conspiracy to commit money laundering as charged in Count 8 of the indictment, has three essential elements, which are:

One, beginning in or about September 2004 and continuing until at least on or about June 24, 2005, two or more persons reached an agreement or came to an understanding to violate 18 U.S.C. § 1956(a)(1)(A)(i) (promotional money laundering); or 18 U.S.C. § 1956(a)(1)(B)(i) (concealment money laundering); or 18 U.S.C. § 1957 (transactional money laundering);

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and

Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

If all of these essential elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count 8; otherwise you must find the defendant not guilty of this

crime under Count 8.

JURY INSTRUCTION NO. 48 (Count 8)

To assist you in determining whether there was an agreement or understanding to commit money laundering, you are advised as to the elements of 18 U.S.C. § 1956(a)(1)(A)(i) (promotional money laundering), 18 U.S.C. § 1956(a)(1)(B)(i) (concealment money laundering) and 18 U.S.C. § 1957 (transactional money laundering).

Keep in mind that the indictment charges a conspiracy to commit money laundering and not that any particular type of money laundering was committed.

JURY INSTRUCTION NO. 49 (Count 8)

The crime of promotional money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i), has four essential elements, which are:

One, the defendant conducted a financial transaction, that is, writing a check from a bank account, which in any way or degree affected interstate or foreign commerce;

Two, the defendant conducted the financial transaction with money or funds that involved the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances;

Three, at the time the defendant conducted the financial transaction, the defendant knew the money or funds represented the proceeds of some form of unlawful activity; and

Four, the defendant conducted the financial transaction with the intent to promote the carrying on of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances.

To prove the charge of promotional money laundering, it is not necessary to show that a defendant intended to commit the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances himself; it is sufficient that in conducting or attempting to conduct the financial transaction, a defendant himself intended to make the unlawful activity easier or less difficult.

JURY INSTRUCTION NO. 50 (Count 8)

The crime of concealment money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i), has four essential elements, which are:

One, the defendant conducted a financial transaction, that is, wiring money to or from a bank account and/or withdrawing cash from a bank account, which in any way or degree affected interstate or foreign commerce;

Two, the defendant conducted the financial transaction with funds or money that involved the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances;

Three, at the time the defendant conducted the financial transaction, the defendant knew the funds or money represented the proceeds of some form of unlawful activity; and

Four, the defendant conducted the financial transaction knowing that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances.

You may find that a defendant knew the purpose of the financial transaction was to conceal or disguise the nature, location, source, ownership or control of the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances if you find beyond a reasonable doubt that the defendant was aware of a high probability that the purpose of the financial transaction was to conceal or disguise the nature, location, source, ownership or

control of the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances and that he deliberately avoided learning the truth. The element of knowledge may be inferred if the defendant deliberately closed his eyes to what would otherwise have been obvious to him.

You may not find that the defendant knew that the purpose of the financial transaction was to conceal or disguise the nature, location, source, ownership or control of the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances, however, if you find that the defendant was simply careless. A showing of negligence, mistake, or carelessness is not sufficient to support a finding of knowledge.

JURY INSTRUCTION NO. 51 (Count 8)

The crime of transactional money laundering, in violation of 18 U.S.C. § 1957, has five essential elements, which are:

One, the defendant knowingly withdrew funds in the form of checks and/or wires from an account at Commerce Bank, US Bank or Crown Bank;

Two, the withdrawal was of a value greater than \$10,000 that was derived from the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances;

Three, the defendant then knew that bank account withdrawal involved proceeds of a criminal offense;

Four, the bank account withdrawal took place in New York and/or Minnesota; and

Five, the bank account withdrawal in some way or degree affected interstate commerce.

JURY INSTRUCTION NO. 52 (Count 8)

The term “conducted,” as used in these Instructions includes initiating, concluding or participating in initiating or concluding a transaction.

The phrase “financial transaction” as used in these Instructions means a transaction which in any way or degree affects interstate or foreign commerce involving the movement of funds by wire or other means or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree

The phrase “interstate commerce,” as used above, means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia.

The phrase “foreign commerce,” as used above, means commerce between any state, territory, or possession of the United States and a foreign country.

The term “commerce” includes, among other things, travel, trade, transportation, and communication.

It is not necessary for the government to show that the defendant actually intended or anticipated an effect on interstate or foreign commerce. All that is necessary is that interstate or foreign commerce was affected as a natural and probable consequence of the defendant’s actions.

It is not necessary for the government to show that the defendant’s transaction with a financial institution, that is with Commerce Bank, US Bank, or Crown Bank, itself affected interstate or foreign commerce. All that is necessary is

that at the time of the alleged offense, Commerce Bank, US Bank, or Crown Bank was engaged in or had other activities which affected interstate or foreign commerce in any way or degree.

The term "proceeds" means any property, or any interest in property, that someone acquires or retains as a result of the commission of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances. Proceeds can be any kind of property, not just money. It can include personal property, like a car or a piece of jewelry, or real property, like an interest in land. So, for example: If someone sells drugs for cash and uses the cash to buy a cashier's check, the cash received is proceeds and the cashier's check is still proceeds of the crime.

It does not matter whether or not the person who committed the underlying crime, and thereby acquired or retained the proceeds, was the defendant. It is a crime to conduct a financial transaction involving property that is the proceeds of a crime, even if that crime was committed by another person, as long as all of the elements of the offense are satisfied.

The government is not required to trace the property it alleges to be proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances to a particular underlying offense. It is sufficient if the government proves that the property was the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances, generally. For example, in a case involving alleged drug proceeds, the

government would not have to trace the money to a particular drug offense, but could satisfy the requirement by proving that the money was the proceeds of drug trafficking generally.

The government need not prove that all of the property involved in the transaction, transmission, or transfer was the proceeds of the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances. It is sufficient if the government proves that at least part of the property represents such proceeds.

The phrase “specified unlawful activity,” means any one of a large variety of offenses defined by statute. I instruct you as a matter of law that the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances falls within the definition. To assist you in determining whether someone committed the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances activity, you have previously been advised of the elements of those offenses, and you can rely on those instructions in this context.

The phrase “knew the funds or money represented the proceeds of some form of unlawful activity,” means that the defendant knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony offense under state or federal law. Thus, the government need not prove that the defendant specifically knew that the funds or money involved in the financial transaction represented the proceeds of

the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances or any other specific offense; it need only prove that he knew it represented the proceeds of some form, though not necessarily which form, of felony under state or federal law. I instruct you as a matter of law that the unlawful distribution or dispensing of, or conspiracy to distribute or dispense, controlled substances are felonies under federal law.

JURY INSTRUCTION NO. 53 (Count 8)

Count 8 of the indictment charges a conspiracy to commit three separate crimes or offenses; namely to (1) conspiracy to violate 18 U.S.C. § 1956(a)(1)(A)(i) (promotional money laundering); (2) conspiracy to violate 18 U.S.C. § 1956(a)(1)(B)(i) (concealment money laundering); or (3) conspiracy to violate 18 U.S.C. § 1957 (transactional money laundering).

It is not necessary for the government to prove a conspiracy to commit all of those offenses. It would be sufficient if the government proves, beyond a reasonable doubt, a conspiracy to commit *one* of those offenses; but, in that event, in order to return a verdict of guilty, you must unanimously agree upon *which* of the offenses was the subject of the conspiracy. If you cannot agree in that manner, you must find the defendant not guilty.

JURY INSTRUCTION NO. 54 (Count 9)

The crime of a continuing criminal enterprise as charged against Defendant Smith in Count Nine of the indictment has five essential elements, which are:

One, Defendant Smith violated the Controlled Substances Act, either by committing the offenses charged in Count 1, Count 2, Count 3, or Count 4 the indictment;

Two, the offense was part of a continuing series of three or more related felony violations of the federal controlled substance laws;

Three, such offenses were undertaken by Defendant Smith in concert with five or more other persons;

Four, Defendant Smith acted as organizer, supervisor or manager of those five or more other persons; and

Five, Defendant Smith obtained a substantial amount of income or resources from the series of violations.

To act "in concert" means to act pursuant to a common design or plan. The defendant must have organized, supervised or managed, either personally or through others, five or more persons with whom he was acting in concert while he committed the series of offenses. However, it is not necessary that the defendant have managed all five at once or that the five other persons have acted together at any time or in the same place.

Furthermore, it is not necessary that the defendant have been the only person who organized, managed or supervised the five or more other persons or

that he have exercised the same amount of control over each of the five or that he have had the highest rank of authority.

All money or property which passed through the defendant's hands as a result of illegal drug dealings and not just profit may be considered by you in determining whether the amount was substantial.

An organizer is a person who puts together a number of people engaged in separate activities and arranges them in these activities in one operation or enterprise. A supervisor is a person who manages or directs or oversees the activities of others.

The indictment charges that the violations charged in Counts 1, 2, 3, and 4 are part of the series of three or more violations. You must unanimously agree on which three violations constitute the series of three or more violations in order to find that essential element No. Two has been proved.

JURY INSTRUCTION NO. 55 (Count 9)

The first element that the government must prove beyond a reasonable doubt with respect to Count 9 is that Defendant Smith committed a felony violation of the federal controlled substances laws. That is, you must find the defendant guilty of one of the other charges in Count 1, Count 2, Count 3, or Count 4 of the indictment. Unless you find Defendant Smith guilty of one of these Counts, the requirements of which I have described to you, you cannot consider Defendant Smith's guilt under the continuing criminal enterprise law charged in Count 9 of the indictment.

JURY INSTRUCTION NO. 56 (Count 9)

The second element the government must prove beyond a reasonable doubt with respect to Count 9 is that this offense was part of a continuing series of violations of the federal controlled substances laws.

A continuing series of violations is three or more violations of the federal controlled substances laws committed over a definite period of time and related to each other in some way.

You must unanimously agree on which three acts constitute the continuing series of violations.

JURY INSTRUCTION NO. 57 (Count 9)

The third element which the government must prove beyond a reasonable doubt with respect to Count 9 is that Defendant Smith committed the continuing series of violations in concert with five or more persons.

These five or more persons do not have to be named in the indictment. They could be others who you find, beyond a reasonable doubt, were persons with whom the defendant committed the violations. You do not have to find that the five or more persons acted together at the same time, or that Defendant Smith personally dealt with them together. You also do not have to find that Defendant Smith had the same relationship with each of the five or more persons or even that he had personal contact with each of the five or more persons.

In relation to element three of the offense charged in Count 9, the five people the defendant acted "in concert" with cannot be innocent dupes. Rather, the five people must also be guilty of violating the federal controlled substances act.

An "innocent dupe" is a person whom the defendant may use to accomplish an unlawful scheme or act, but the person himself or herself does not possess the required criminal intent to be guilty of a crime.

JURY INSTRUCTION NO. 58 (Count 9)

The fourth element the government must prove beyond a reasonable doubt with respect to Count 9 is that Defendant Smith occupied the position of organizer, supervisor, or manager with respect to these five or more persons. In considering whether Defendant Smith occupied such positions, you should give the words “organizer, supervisor, or manager” their ordinary, everyday meaning. This element is established where the defendant exerted some type of influence over another individual as exemplified by that other individual’s compliance with the defendant’s directions, instructions, or terms.

The continuing criminal enterprises law distinguishes between what amounts to employees of the enterprise and those who conceive of and coordinate the enterprise’s activities. The government need not prove that Defendant Smith was the single ringleader of the enterprise. An enterprise may have more than one organizer or ringleader. The government meets its burden on this element if it proves beyond a reasonable doubt that Defendant Smith exercised organizational, supervisory, or managerial responsibilities over the five or more persons. As I have instructed you, the government need not prove the same type of superior-subordinate relationship existed between Defendant Smith and each of the people he allegedly organized, supervised, or controlled.

JURY INSTRUCTION NO. 59 (Count 9)

The fifth and final element the government must prove beyond a reasonable doubt with respect to Count 9 is that Defendant Smith derived substantial income or resources from this continuing series of federal drug law violations.

The statute does not prescribe the minimum amount of money required to constitute substantial income, but the statute clearly intends to exclude trivial amounts derived from occasional controlled substances sales. If you determine that Defendant Smith received only small sums of money or other insignificant gain from controlled substances-related activity, you must find him not guilty of Count 9.

In considering whether Defendant Smith derived substantial income or resources from the continuing series of federal controlled substances law violations, you may consider Defendant Smith's gross income and anticipated profits from these violations as well as the net profits he actually realized from them. You may also consider evidence from which you can infer a receipt of substantial income or resources, such as lavish spending with no visible, legitimate, source of income. Keep in mind, however, that the government must prove that Defendant Smith actually obtained substantial income from his controlled substances violations, and that, as with all other elements of the offense, the government must prove this element of the offense beyond a reasonable doubt.

JURY INSTRUCTION NO. 60 (all counts)

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done by that person and all other facts and circumstances received which may aid in your determination of that person's knowledge or intent.

You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

If there are two ways to consider evidence of the defendant's intent, one consistent with guilty and one consistent with non-guilt, you must, of course, accept the defendant's non-guilt.

JURY INSTRUCTION NO. 61 (all counts)

An act is done “knowingly” if a defendant is aware of the act and does not act or fail to act through ignorance, mistake, or accident. You may consider evidence of a defendant’s words, acts or omissions, along with all the other evidence, in deciding whether a defendant acted knowingly.

JURY INSTRUCTION NO. 62 (Counts 1-8)

The government may prove that the defendant acted “knowingly” by proving, beyond a reasonable doubt, that the defendant deliberately closed his eyes to what would have been obvious to him. No one can avoid responsibility for a crime by deliberately ignoring what is obvious. A finding beyond a reasonable doubt of an intent of the defendant to avoid knowledge or enlightenment would permit the jury to find knowledge. Stated another way, a person’s knowledge of a particular fact may be shown from a deliberate or intentional ignorance or deliberate or intentional blindness to the existence of that fact. It is, of course, entirely up to you as to whether you find any deliberate ignorance or deliberate closing of the eyes and any inferences to be drawn from any such evidence. You may not conclude that the defendant had knowledge, however, from proof of a mistake of law, negligence, carelessness, or a belief in an inaccurate proposition.

In particular, and on the one hand, if you find that, under the facts and circumstances known to the defendant, the defendant had every reason to believe that such purported prescriptions had not been issued for a legitimate medical purpose and were not within the usual course of professional practice, and that the defendant deliberately and consciously closed his eyes to what he had every reason to believe was the fact, such studied avoidance of positive knowledge is a circumstance from which you may reasonably draw the inference and find, in the light of the surrounding circumstances shown by the evidence in this case, that the defendant knew that such purported prescriptions had not been issued for a

legitimate medical purpose or within the usual course of professional practice.

JURY INSTRUCTION NO. 63 (Counts 1-9)

The defendants claim that they are not guilty of willful or deliberate wrongdoing as charged in Counts 1-9 of the indictment because they acted on the basis of advice from an attorney.

If before taking any action, a defendant while acting in good faith and for the purpose of securing advice on the lawfulness of his possible future conduct, sought and obtained the advice of an attorney whom he considered to be competent, and made a full and accurate report or disclosure to this attorney of all important and material facts of which he had knowledge or had the means of knowing, and then acted strictly in accordance with the advice his attorney gave following this full report or disclosure, then the defendant would not be willfully or deliberately doing wrong in performing some act the law forbids, as those terms are used in these instructions.

Whether the defendant acted in good faith for the purpose of truly seeking guidance as to questions about which he was in doubt, and whether he made a full and complete report or disclosure to his attorney, and whether he acted strictly in accordance with the advice received, are all questions for you to determine.

JURY INSTRUCTION NO. 64 (Counts 1-7)

Count 1 of the indictment alleges that the defendants, while working for an online pharmacy, conspired to illegally distribute or dispense controlled substances. Counts 2-4 of the indictment allege that the defendants illegally distributed or dispensed, or aided and abetted others in illegally distributing and dispensing controlled substances. Counts 5-7 of the indictment allege that the defendants introduced misbranded drugs into interstate commerce.

A person who works with or for a pharmacy or a physician may not be convicted when he or she distributes or dispenses controlled substances in good faith for a legitimate medical purpose and in the usual course of professional practice. Only the lawful acts of a pharmacist, physician, or those working with or for a pharmacist or physician, however, are exempted from prosecution under the law.

In order to sustain its burden of proof under Count 1, the government must prove beyond a reasonable doubt that the defendant conspired to distribute or dispense controlled substances and did so other than in good faith for a legitimate medical purpose and in the usual course of professional practice and in accordance with a standard of medical practice generally recognized and accepted in the United States. In order to sustain its burden of proof under Counts 2-4, the government must prove beyond a reasonable doubt that the defendant knowingly and deliberately distributed or dispensed controlled substances drugs and did so other than in good faith for a legitimate medical purpose and not in the usual

course of professional practice and in accordance with a standard of medical practice generally recognized and accepted in the United States. In order to sustain its burden of proof under Counts 5-7, the government must prove beyond a reasonable doubt, among other things, that the defendant knew that the drug was not subject to a valid prescription, that is, a prescription issued in the usual course of professional practice and for a legitimate medical purpose. A defendant may not be convicted if he made an honest effort to ensure that his or her patients were being treated in compliance with an accepted standard of medical practice.

A controlled substance is distributed or dispensed by a physician or pharmacist in the usual course of his or her professional practice and, therefore, lawfully, if the substance is distributed or dispensed by him or her in good faith in medically treating a patient.

When you consider the good faith defense, it is the defendant's belief that is important. It is the sincerity of his belief that determines if he acted in good faith.

If the defendant's belief is unreasonable, you may consider that in determining his sincerity of belief, but an unreasonable belief sincerely held is good faith.

Again, the burden is upon the government to prove, beyond a reasonable doubt, that the defendants did not act in good faith.

In determining whether or not a defendant acted in good faith in the course of a medical practice, you may consider all of the evidence in the case which relates

to that conduct.

Unless you find beyond a reasonable doubt that the conduct charged in Counts 1-7 of the indictment was not done in good faith in the course of a medical practice, you must acquit the defendant of those charges.

JURY INSTRUCTION NO. 65

It is the position of Defendant Christopher Smith that

(1) The business dealings of his total operation did not violate the federal law.

(2) That if he violated federal law he believed that all of the drugs dispensed were lawfully dispensed pursuant to valid prescriptions issued within the usual course of Dr. Mach's practice and therefore Mr. Smith did not have the required intent to commit a crime.

(3) That since all of the dollars earned by his businesses were lawfully earned, no illicit funds existed with which to violate the laws against money laundering in Count 8.

(4) That since all drugs were lawfully dispensed there is no existence of a Continuing Criminal Enterprise as defined in Count 9.

In short, Mr. Smith's position is that 21 C.F.R. § 1306.04 was never violated or if it was, Mr. Smith's intent was to operate within the law, not in violation of it.

JURY INSTRUCTION NO. 66

Mr. Lieberman denies he has committed the offenses in the indictment. He asserts that he acted in good faith in accepting the accounting contract, and continued to act in good faith in fulfilling his obligations. He asserts that he operated merchant accounts in good faith. He emphasizes that he was unaware of any impropriety in the issuance of prescriptions through Dr. Mach, and was told of none.

Further, he asserts that he was not served with the Preliminary Injunction until he received a copy on June 2, 2005. He asserts that he did not intend to start another on-line pharmacy. There were no sales after May 10, 2005.

JURY INSTRUCTION NO. 67

It is the position of Defendant Daniel Adkins that the government has failed to prove beyond a reasonable doubt that he was a member of the alleged conspiracy as charged in Count 1 of the indictment. As the Court has instructed you, in order to be a member of a conspiracy the government must prove beyond a reasonable doubt that the defendant intentionally and voluntarily joined an agreement, and at the time he joined the agreement he knew the purpose of the agreement, that is, to distribute hydrocodone other than for a legitimate medical purpose, and outside the usual course of a physician's professional practice.

Regarding these elements of the alleged conspiracy, it is Defendant Daniel Adkins' position that the direct and circumstantial evidence established his lack of knowledge of the purpose of the alleged agreement. For example, 1) the original September 2004 contracts between Xpress Pharmacy Direct and the pharmacies, which were not drafted by Defendant Adkins but read by him after he was retained, represent that Xpress Pharmacy Direct has physicians located in each of the 50 states, and that it has U.S. physicians conduct consultations with the patients; 2) no evidence direct or circumstantial was presented by the government to establish that Daniel Adkins had knowledge that there was only one doctor and not a network of doctors; and 3) the retainer agreements and time sheets of Defendant Daniel Adkins are strong evidence that the Defendant Daniel Adkins did not knowingly join a conspiracy to illegally distribute hydrocodone, but was merely representing a client and relying in good faith on the information supplied by that client.

Regarding Counts 2 through 7, Daniel Adkins is charged with aiding and abetting the unlawful distribution of drugs, and the introduction of misbranded drugs, in interstate commerce. As the Court has instructed you, among other things, in order to aid and abet the government must prove beyond a reasonable doubt that the Defendant knowingly and deliberately associated himself in some way with these alleged crimes, and participated in the crimes at the time they were allegedly committed with the intent to commit the crimes.

It is Defendant Daniel Adkins' position that for the same reasons set forth above regarding Count 1, the conspiracy count, the evidence, direct and circumstantial establishes that Daniel Adkins had no knowledge that by his legal representation of Christopher Smith and Online Payment Solutions, Inc. he was somehow aiding and abetting these alleged crimes. It is Daniel Adkins' position that he was merely representing a client, and relying in good faith on the information supplied by that client.

Remember, Daniel Adkins is presumed innocent, and the government has a burden of proof to prove beyond a reasonable doubt that the Defendant is guilty of the Counts that he is charged with.

JURY INSTRUCTION NO. 68

Upon retiring to your jury room to begin your deliberations, you will elect one of your members to act as your foreperson, The foreperson will preside over your deliberations and will be your spokesperson here in court.

Your verdict must represent the collective judgment of the jury. In order to return a verdict, it is necessary that each juror agree to it. Your verdict, in other words, must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with one another with a view towards reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for himself and herself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and to change your opinion if convinced it is erroneous. Do not surrender your honest conviction, however, solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges- judges of the facts of this case. Your sole interest is to seek the truth from the evidence received during the trial.

Your verdict must be based solely upon the evidence received in the case. Nothing you have seen or read outside of court may be considered. Nothing that I have said or done during the course of this trial is intended in any way, to somehow suggest to you what I think your verdict should be. Nothing said in these

instructions and nothing in any form of verdict prepared for your convenience is to suggest or convey to you in any way or manner any intimation as to what verdict I think you should return. What the verdict shall be is the exclusive duty and responsibility of the jury. As I have told you many times, you are the sole judges of the facts.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court and should never be considered by the jury in any way in arriving at an impartial verdict as to the offenses charged.

As mentioned, a form of verdict has been prepared for your convenience.

[Please read the form of verdict to the jury]

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson write your verdict, date and sign the form, and then return with your verdict to the courtroom.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note, signed by your foreperson or by one or more members of the jury, through the bailiff. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never communicate with any member of the jury on any subject touching the merits of the case other than in writing or orally here in open court.

You will note from the oath about to be taken by the bailiffs that they too, as

well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person - not even to the Court - how the jury stands, numerically or otherwise, on the question of whether or not the government has sustained its burden of proof until after you have reached a unanimous verdict.