

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

Criminal Action No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. THOMAS BADER,
2. KEVIN HENRY,
3. BRADLEY BLUM, and
4. COLLEGE PHARMACY, INC.,

Defendants.

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**INDICTMENT**

**18 U.S.C. §§ 2, 371, 545, 981(a)(1)(C) and (f), and 982(a)(2)(B), & 1341;  
21 U.S.C. §§ 333(e) and 853;  
and 28 U.S.C. § 2461**

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The Grand Jury charges:

At all times relevant to this Indictment:

**INTRODUCTION**

1. The United States Food and Drug Administration ("FDA") was the agency of the United States responsible for enforcing the provisions of the Federal Food, Drug, and Cosmetic Act (the "FDCA"). The FDA's responsibilities included regulating the manufacture, labeling, and distribution of drugs shipped or received in interstate commerce.

2. Under the FDCA, drugs were defined as, among other things, articles intended for use in the cure, mitigation, treatment or prevention of disease in people; articles intended to affect the structure or function of the human body; and articles intended for use as components of

drugs.

3. Under the FDCA, a "prescription drug" was, among other things, a drug intended for use by people which because of its toxicity or other potential for harmful effect, or the method of its use, or the collateral measures necessary to its use, was not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or a drug which was limited by a legally approved application (under 21 U.S.C. § 355) to use under the professional supervision of a practitioner licensed by law to administer such drug.

4. The FDCA prohibited the knowing distribution of, or possession with intent to distribute, human growth hormone ("hGH") for any use in humans other than the treatment of a disease or other recognized medical condition that has been authorized by the Secretary of Health and Human Services ("HHS") and that was pursuant to the order of a physician.

5. The term "human growth hormone" ("hGH") meant somatrem, somatropin, or an analogue of either somatrem or somatropin. It also included hGH derived from a recombinant DNA process, "r-hGH".

6. All human growth hormones ("hGH") were prescription drugs.

7. With limited exceptions, the only way FDA authorized the use of any drug, including any hGH for human use, was through the approval of a New Drug Application (NDA), an Abbreviated New Drug Application (ANDA), or a notice of claimed exemption for an Investigational New Drug (IND).

8. The FDA has never approved any hGH manufactured in or imported from China for lawful use in the United States.

## THE DEFENDANTS

9. THOMAS BADER was a licensed pharmacist in the State of Colorado, and conducted a pharmacy business as an officer of COLLEGE PHARMACY, INC. (sometimes herein referred to as “College Pharmacy”). He was engaged in the business of buying, labeling and distributing drugs, narcotics and controlled substances in interstate commerce. This business was conducted from Colorado Springs, Colorado, and also was conducted throughout the United States via Internet and common carrier.

10. THOMAS BADER was the owner, operator, and officer of COLLEGE PHARMACY, INC., and was active in and responsible for the daily operations of COLLEGE PHARMACY, INC., including directing its employees in the purchase of drugs and supplies, and then authorizing payment via accounts he controlled on behalf of the corporation.

11. KEVIN HENRY was an employee of COLLEGE PHARMACY, INC., and was directed by THOMAS BADER during his employment. KEVIN HENRY was a sales representative who was at various times responsible for finding sources of drugs, narcotics and controlled substances, including hGH, and also for selling and marketing products distributed by COLLEGE PHARMACY, INC.

12. Among the drugs distributed by THOMAS BADER through COLLEGE PHARMACY, INC. was hGH, also known as somatropin. COLLEGE PHARMACY, INC., through its officers and employees, including THOMAS BADER and KEVIN HENRY, bought hGH from companies that manufactured genetically derived hGH in China, including but not limited to Anke Biotechnology Co., Ltd. (sometimes referred to herein as “Anke Biotechnology”) and GeneScience Pharmaceuticals Co., Ltd. (sometimes referred to herein as

“Genescience”). After importation, THOMAS BADER directed employees of COLLEGE PHARMACY, INC. to repackage the Chinese hGH into vials labeled with COLLEGE PHARMACY, INC. boxes and information.

13. THOMAS BADER and KEVIN HENRY conducted business with BRADLEY BLUM in order to import hGH from GeneScience, BRADLEY BLUM’s Chinese source of hGH.

14. BRADLEY BLUM was acting as a sales representative for GeneScience, and operated on behalf of North America Genescience, LLC.

15. Between September 2004 and March 2007, THOMAS BADER advertised and marketed hGH and distributed the product by delivering, or causing to be delivered, product shipments via Federal Express, or by private or commercial interstate carrier.

**COUNT ONE**

**18 U.S.C. § 371**

**(Conspiracy to Facilitate the Sale of Smuggled Goods and Aiding and Abetting)**

**THE CONSPIRACY**

16. The allegations in paragraphs 1-15 are incorporated by reference as if fully rewritten herein.

17. On or about April 7, 2004 and continuing until on or about February 2, 2007, within the State and District of Colorado and elsewhere, the defendants,

- 1. Thomas Bader,**
- 2. Kevin Henry,**
- 3. Bradley Blum and**
- 4. College Pharmacy, Inc.,**

did conspire, confederate and agree with each other and others known and unknown to the Grand Jury to violate Title 18, United States Code, Sections 545 and 2, by knowingly facilitating the

sale of merchandise, hGH, after importation, knowing the same to have been imported into the United States contrary to Title 21, United States Code, Sections 331(a)(prohibiting the introduction into interstate commerce of a misbranded drug), 352(f)(1) (relating to causing the introduction into interstate commerce of a misbranded drug in that it failed to bear adequate directions for use), 331(d)(prohibiting the introduction into interstate commerce of an article that is in violation of Section 355), and 355(prohibiting the introduction into interstate commerce of a new drug without proper application and approval).

#### **MANNER AND MEANS**

18. The Defendants, COLLEGE PHARMACY, INC., THOMAS BADER and KEVIN HENRY would negotiate, buy, and receive Chinese manufactured hGH from companies and individuals, including defendant BRADLEY BLUM, who imported hGH from China. Once the hGH was in the United States, the defendants sold, repackaged, and distributed the hGH to others, including physicians and their patients. At all times, the defendants were aware that the Chinese manufactured hGH was misbranded and unapproved by the Secretary of the United States Department of Health and Human Services and the FDA.

#### **OVERT ACTS**

19. To effect the object of the conspiracy, the defendants and other co-conspirators performed overt acts, including but not limited to the following acts:

- (a) On or about April 7, 2004, KEVIN HENRY sent an electronic mail message to a representative for GeneScience, inquiring about the sale of GeneScience human growth hormone.
- (b) On or about April 7, 2004, KEVIN HENRY accessed and received an electronic

mail message from GeneScience informing him that their Chinese human growth hormone is not FDA approved, and there may be problems getting it through Customs.

(c) On or about April 26, 2004, KEVIN HENRY sent GeneScience an electronic mail message discussing the Chinese human growth hormone available for sale from GeneScience.

(d) On or about July 30, 2004, KEVIN HENRY sent an electronic mail message to Anke Biotechnology in China in response to an advertisement on the Internet for Chinese human growth hormone.

(e) On or about July 30, 2004, KEVIN HENRY accessed and received an electronic mail message from Anke Biotechnology sent in response to his inquiry about Anke Biotechnology's Chinese human growth hormone.

(f) On or about August 2, 2004, KEVIN HENRY sent an electronic mail message to Anke Biotechnology arranging for the purchase of Chinese human growth hormone from Anke Biotechnology to COLLEGE PHARMACY, INC.

(g) On or about August 5, 2004, KEVIN HENRY accessed and received an electronic mail message from Anke Biotechnology indicating "we don't have NDC numbers and documents to clear US Customs and deliver rHGH to you legally at present, but anyway we could manage to deliver items to your address in NC secretly, peacefully and successfully or shall we refund you."

(h) On or about August 3, 2004, KEVIN HENRY sent an electronic mail message to THOMAS BADER, owner of COLLEGE PHARMACY, INC. copying THOMAS BADER on the series of electronic mail messages between HENRY and a representative

of Anke Biotechnology.

(i) On or about November 16, 2004, COLLEGE PHARMACY, INC. submitted an International Outgoing Wire Transfer Form to a bank in order to wire funds in the amount of \$3,286.50 from a COLLEGE PHARMACY, INC. bank account to a Chinese bank account for Anke Biotechnology.

(j) On or about November 19, 2004, KEVIN HENRY accessed and received an electronic mail message from Anke Biotechnology confirming receipt of funds indicating "I am writing to let you know that I got the bank notice of your fund this afternoon, I shall have your orders dispatched next Wednesday."

(k) On or about December 27, 2004, COLLEGE PHARMACY, INC. submitted an International Outgoing Wire Transfer Form to a bank to wire funds in the amount of \$14,045.00 from a COLLEGE PHARMACY, INC. bank account to a Chinese bank account for Anke Biotechnology.

(l) On or about January 12, 2005, KEVIN HENRY received a package of Chinese human growth hormone labeled as "glassware samples".

(m) On or about January 20, 2005, COLLEGE PHARMACY, INC. received one gram of Chinese human growth hormone from BRADLEY BLUM at the cost of \$4,300.00.

(n) On or about February 28, 2005, COLLEGE PHARMACY, INC. issued a check in the amount of \$4,300.00 payable to BRADLEY BLUM for the purchase of one gram of Chinese human growth hormone.

(o) On or about March 9, 2005, BRADLEY BLUM sent KEVIN HENRY an electronic mail message indicating the conversion rate of one gram of raw material of

hGH to the powder weight.

(p) On or about May 4, 2005, KEVIN HENRY sent an electronic mail message to BRADLEY BLUM confirming the order of twenty grams of Chinese human growth hormone from GeneScience at a cost of \$4,500.00 per gram.

(q) On or about May 31, 2005, BRADLEY BLUM shipped via Federal Express and United Parcel Service four packages containing Chinese human growth hormone.

(r) In or about June 2005, BRADLEY BLUM sent an electronic mail message to KEVIN HENRY confirming shipment of Chinese human growth hormone in four packages via Federal Express and United Parcel Service.

(s) On or about August 15, 2005, BRADLEY BLUM sent an electronic mail message to KEVIN HENRY and an employee of COLLEGE PHARMACY, INC. demanding payment of \$90,000.00 for the purchase of the twenty grams of Chinese human growth hormone sold to COLLEGE PHARMACY, INC. in June 2005.

(t) On or about October 25, 2005, COLLEGE PHARMACY, INC. issued a check in the amount of \$90,000.00 from a COLLEGE PHARMACY, INC. bank account payable to North America GeneScience.

(u) On or about October 18, 2005, COLLEGE PHARMACY, INC. sent Chinese human growth hormone to Dr. Jeffrey Hamm in Lauderhill, Florida.

(v) In or about November 2005, KEVIN HENRY sent BRADLEY BLUM an electronic mail message reflecting the purchase of twenty grams of Chinese human growth hormone.

(w) On or about December 21, 2005, COLLEGE PHARMACY, INC. sent Chinese

human growth hormone to Dr. Geoffrey Jones in Oakbrook, Illinois.

(x) On or about January 13, 2006, BRADLEY BLUM faxed a notice to THOMAS BADER reflecting the purchase of twenty grams of Chinese human growth hormone at a cost of \$85,000.00.

(y) On or about February 13, 2006, COLLEGE PHARMACY, INC. received twenty grams of Chinese human growth hormone from North America Genescience, LLC.

(z) On or about March 28, 2006, THOMAS BADER purchased ten grams of Chinese human growth hormone from BRADLEY BLUM at a cost of \$42,500.00.

(aa) On or about March 28, 2006, COLLEGE PHARMACY, INC. issued a check in the amount \$42,500.00 for the purchase of ten grams of Chinese human growth hormone from BRADLEY BLUM.

(bb) On or about March 28, 2006, COLLEGE PHARMACY, INC. shipped via Federal Express a check in the amount of \$42,500.00 to BRADLEY BLUM.

(cc) In or about March 2006, COLLEGE PHARMACY, INC. received via Federal Express package containing Chinese human growth hormone.

(dd) In or about April 2006, THOMAS BADER displayed and advertised for the sale of somatropin at a trade show.

(ee) On or about November 29, 2006, COLLEGE PHARMACY, INC. sent Chinese human growth hormone to Dr. Jimmy Diaz in Kingsland, Georgia.

(ff) On or about January 2, 2007, COLLEGE PHARMACY, INC. sent Chinese human growth hormone to Dr. Jimmy Diaz in Kingsland, Georgia.

(gg) On or about February 22, 2007, COLLEGE PHARMACY, INC. sent Chinese

human growth hormone to Dr. Leonard Guyer in Indianapolis, Indiana.

All in violation of Title 18, United States Code, Section 371.

**COUNTS TWO through ELEVEN**  
**18 U.S.C. §§ 1341 and 2**  
**(Mail Fraud and Aiding and Abetting)**

20. The allegations in paragraphs 1-15 are incorporated by reference as if fully rewritten herein.

21. On or about August 3, 2004, and continuing thereafter to on or about April 3, 2007, in the State and District of Colorado and elsewhere,

1. Thomas Bader,
2. Kevin Henry, and
4. College Pharmacy, Inc.,

devised and intended to devise a scheme to defraud physicians to whom they marketed, sold and distributed a human growth hormone known as somatropin and the patients of those physicians to whom they sold and distributed somatropin and to obtain money from those physicians and patients by means of materially false and fraudulent pretenses and representations.

22. As part of said scheme, THOMAS BADER, KEVIN HENRY and COLLEGE PHARMACY, INC. purchased and caused to be purchased somatropin directly and indirectly from manufacturers in China, knowing that those manufacturers had not received approval from the Secretary of the United States Department of Health and Human Services or the United States Food and Drug Administration (FDA) to distribute somatropin in the United States.

23. As part of said scheme, THOMAS BADER, KEVIN HENRY and COLLEGE PHARMACY, INC. thereafter marketed, and caused to be marketed, the somatropin described in

paragraph 22, above, to physicians in the United States, without disclosing the hGH was manufactured in China and not FDA approved.

24. As part of said scheme, THOMAS BADER, KEVIN HENRY and COLLEGE PHARMACY, INC. sold, distributed and caused to be distributed the somatropin described in paragraph 22, above, to physicians, including but not limited to Dr. Leonard Guyer, Dr. Jeffrey Hamm, Dr. Jimmy Diaz, and Dr. Geoffrey Jones, without disclosing the hGH was manufactured in China and not FDA approved.

25. As part of said scheme, THOMAS BADER, KEVIN HENRY and COLLEGE PHARMACY, INC. sold, distributed and caused to be distributed the somatropin described in paragraph 22, above, to patients of those physicians, without disclosing the hGH was manufactured in China and not FDA approved.

26. As part of said scheme, THOMAS BADER, KEVIN HENRY and COLLEGE PHARMACY, INC. falsely represented that their sale and distribution of somatropin was lawful.

27. As part of said scheme, THOMAS BADER, KEVIN HENRY and COLLEGE PHARMACY, INC. falsely represented that because College Pharmacy was a “compounding pharmacy,” the regulations of the FDA regarding the manufacture and distribution of human growth hormones did not apply to their sale and distribution of somatropin.

28. As part of said scheme, THOMAS BADER, KEVIN HENRY and COLLEGE PHARMACY, INC. falsely represented that the somatropin that they sold and distributed was not subject to FDA approval because it was “compounded.”

29. As part of said scheme, THOMAS BADER, KEVIN HENRY and COLLEGE PHARMACY, INC. falsely represented that the somatropin that they sold and distributed was

not subject to FDA approval because it was from an “approved source.”

30. On or about the following dates, in the State and District of Colorado and elsewhere, THOMAS BADER, KEVIN HENRY and COLLEGE PHARMACY, INC., for the purpose of executing said scheme and attempting to do so, knowingly caused shipments of somatropin to be delivered by Federal Express Corporation, a private and commercial interstate carrier, according to the directions thereon, from Colorado Springs, Colorado, to the places listed below:

Count	Date	Recipient	Place Received
2	Oct. 10, 2005	Dr. Geoffrey Jones	Oak Brook, Illinois
3	Oct. 18, 2005	Dr. Jeffrey Hamm	Lauderhill, Florida
4	Oct. 24, 2005	Dr. Jeffrey Hamm	Lauderhill, Florida
5	Dec. 21, 2005	Dr. Geoffrey Jones	Oak Brook, Illinois
6	Mar. 06, 2006	Dr. Jimmy Diaz	Kingsland, Georgia
7	38859	Dr. Jimmy Diaz	Kingsland, Georgia
8	Nov. 29, 2006	Dr. Jimmy Diaz	Kingsland, Georgia
9	Jan. 2, 2007	Dr. Jimmy Diaz	Kingsland, Georgia
10	Feb. 26, 2007	Dr. Jeffrey Hamm	Ft. Lauderdale, FL
11	Feb. 22, 2007	Dr. Leonard Guyer	Indianapolis, Indiana

All in violation of Title 18, United States Code, Sections 1341 and 2.

**COUNT TWELVE**  
**21 U.S.C. § 333(e),**  
**and 18 U.S.C. § 2**  
**(Distribution of Human Growth Hormone)**

31. The allegations in paragraphs 1-15 are incorporated by reference as if fully rewritten herein.

32. On or about February 11, 2005, in the State and District of Colorado and elsewhere, the defendants,

- 1. Thomas Bader,**
- 2. Kevin Henry,**
- 3. Bradley Blum, and**
- 4. College Pharmacy, Inc.,**

did knowingly distribute and possess with the intent to distribute approximately one gram of hGH for a use in humans other than the treatment of a disease and other recognized medical condition that had been authorized by the Secretary of Health and Human Services, in that neither the Secretary of Health and Human Services nor the FDA had authorized any use of this particular hGH in humans pursuant to Title 21, United States Code, Section 355(prohibiting the introduction into interstate commerce of a new drug without proper application and approval), and did aid and abet same.

All in violation of Title 21, United States Code, Section 333(e); and Title 18, United States Code, Section 2.

**COUNT THIRTEEN**  
**21 U.S.C. § 333(e),**  
**and 18 U.S.C. § 2**  
**(Distribution of Human Growth Hormone)**

33. The allegations in paragraphs 1-15 are incorporated by reference as if fully rewritten herein.

34. On or about May 31, 2005, within the State and District of Colorado and elsewhere, the defendants,

- 1. Thomas Bader,**
- 2. Kevin Henry,**
- 3. Bradley Blum, and**
- 4. College Pharmacy, Inc.,**

did knowingly distribute and possess with the intent to distribute approximately 12 grams of hGH for a use in humans other than the treatment of a disease and other recognized medical condition

that had been authorized by the Secretary of Health and Human Services, in that neither the Secretary of Health and Human Services nor the FDA had authorized any use of this particular hGH in humans pursuant to Title 21, United States Code, Section 355(prohibiting the introduction into interstate commerce of a new drug without proper application and approval), and did aid and abet same.

All in violation of Title 21, United States Code, Section 333(e); and Title 18, United States Code, Section 2.

**COUNT FOURTEEN**  
**21 U.S.C. § 333(e),**  
**and 18 U.S.C. § 2**  
**(Distribution of Human Growth Hormone)**

35. The allegations in paragraphs 1-15 are incorporated by reference as if fully rewritten herein.

36. On or about February 10, 2006, within the State and District of Colorado and elsewhere, the defendants,

- 1. Thomas Bader,**
- 2. Kevin Henry,**
- 3. Bradley Blum, and**
- 4. College Pharmacy, Inc.,**

did knowingly distribute and possess with the intent to distribute approximately 10 grams of hGH for a use in humans other than the treatment of a disease and other recognized medical condition that had been authorized by the Secretary of Health and Human Services, in that neither the Secretary of Health and Human Services nor the FDA had authorized any use of this particular hGH in humans pursuant to Title 21, United States Code, Section 355(prohibiting the introduction into interstate commerce of a new drug without proper application and approval), and did aid and abet same.

All in violation of Title 21, United States Code, Section 333(e); and Title 18, United States Code, Section 2.

**COUNT FIFTEEN**  
**21 U.S.C. § 333(e),**  
**and 18 U.S.C. § 2**  
**(Distribution of Human Growth Hormone)**

37. The allegations in paragraphs 1-15 are incorporated by reference as if fully rewritten herein.

38. On or about March 14, 2006, within the State and District of Colorado and elsewhere, the defendants,

1. **Thomas Bader,**
2. **Kevin Henry,**
3. **Bradley Blum, and**
4. **College Pharmacy, Inc.,**

did knowingly distribute and possess with the intent to distribute approximately 20 grams of hGH for a use in humans other than the treatment of a disease and other recognized medical condition that had been authorized by the Secretary of Health and Human Services, in that neither the Secretary of Health and Human Services nor the FDA had authorized any use of this particular hGH in humans pursuant to Title 21, United States Code, Section 355(prohibiting the introduction into interstate commerce of a new drug without proper application and approval) and did aid and abet same.

All in violation of Title 21, United States Code, Section 333(e); and Title 18, United States Code, Section 2.

**COUNT SIXTEEN**  
**18 U.S.C. § 545**  
**18 U.S.C. § 2**  
**(Receiving Smuggled Goods and Aiding and Abetting)**

39. The allegations in paragraphs 1-15 are incorporated by reference as if fully rewritten herein.

40. On or about January 17, 2005, within the State and District of Colorado and elsewhere, the defendants,

- 1. Thomas Bader,**
- 2. Kevin Henry, and**
- 4. College Pharmacy, Inc.,**

did knowingly receive merchandise, hGH, knowing the same to have been imported into the United States contrary to law in violation of Title 18, United States Code, Section 542 (relating to the entry of merchandise by means of false statements), and in violation of Title 21, United States Code, Sections 331(a), 352(f)(1), 331(d), and 355, and did aid and abet same.

All in violation of Title 18, United States Code, Section 545; and Title 18, United States Code, Section 2.

**COUNT SEVENTEEN**

**18 U.S.C. § 545**

**18 U.S.C. § 2**

**(Facilitating the Sale of Smuggled Goods and Aiding and Abetting)**

41. The allegations in paragraphs 1-15 are incorporated by reference as if fully rewritten herein.

42. On or about April 4, 2006, within the State and District of Colorado and elsewhere, the defendants,

- 1. Thomas Bader,**
- 3. Bradley Blum and**
- 4. College Pharmacy, Inc.,**

did knowingly facilitate the sale of merchandise, hGH, knowing the same to have been imported into the United States contrary to law in violation of Title 21, United States Code, Sections

331(a), 352(f)(1), 331(d), and 355, and did aid and abet same.

All in violation of Title 18, United States Code, Section 545; and Title 18, United States Code, Section 2.

**COUNT EIGHTEEN**

**Forfeiture Allegation**

**18 U.S.C. §§§§ 981 (a)(1), 982 (a)(2)(B), 1956(c)(7), and 1961 (1),**

**18 U.S.C. §333(e)(3), 21 U.S.C. §853, and 28 U.S.C. §2461(c)**

43. Upon conviction of one or more of the offenses alleged in Counts One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Sixteen, and Seventeen of this Indictment, Defendants shall forfeit to the United States pursuant to Title 18 U.S.C. § 982 (a)(2)(B), Title 18 U.S.C. §§ 981 (a)(1), 1956 (c)(7), and 1961 (1), and Title 28 U.S.C. § 2461 (c), all property, real and personal, constituting, or derived directly or indirectly, from proceeds traceable to the commission of the offenses,

And, upon conviction of one or more of the offenses alleged in Counts Twelve, Thirteen, Fourteen, and Fifteen of this Indictment, Defendants shall forfeit to the United States pursuant to Title 18 United States Code § 333 (e)(3) and Title 21 U.S.C. § 853, any property constituting, or derived from, any proceeds Defendants obtained, directly or indirectly, as a result of such violations, and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of the offenses, in all such forfeitures, including but not limited to:

**Money Judgment**

(1) A sum of money equal to \$4,100,000 in United States Currency, representing the amount of proceeds obtained as a result of the offenses in Counts One through

Seventeen, for which Defendants are jointly and severally liable;

**Real Property**

(2) Real Property located at **3505 Austin Bluffs Parkway, Colorado Springs,**

**Colorado**, more fully described as:

All of Lot 1 and a portion of Lot 2 in Block 2 SHOPPERS WORLD SUBDIVISION NO. 1 IN THE CITY OF COLORADO SPRINGS, El Paso County, Colorado, as recorded in Plat Book U-2 at Page 19 in the records of said County and more particularly described as follows: Beginning at the most Northeasterly corner of said Lot 1, Block 2 in Shoppers World Subdivision No. 1; thence (1) South 88 degrees 10 minutes West on the Northerly line of said Lot 1, and Lot 2, Block 2 of Shoppers World Subdivision No. 1, 508.00 feet; (2) South 1 degree 50 minutes 00 seconds East, 276.75 feet; (3) North 89 degrees 54 minutes 00 seconds East on the Southerly line of said Lots 1 and 2, Block 2 in Shoppers World Subdivision No. 1, 508.23 feet; (4) North 1 degree 50 minutes 00 seconds West on the Easterly line of said Lot 1, Block 2 in Shoppers World Subdivision No. 1, 292.12 feet to the point of beginning, County of El Paso, State of Colorado;

(3) Real Property located at **4485 Monitor Rock Lane, Colorado Springs, Colorado**, more fully described as:

Lot 18, in CEDAR HEIGHTS FILING NO. 3, in the City of Colorado Springs, El Paso County, Colorado, according to the plat thereof recorded in Plat Book 0-3 at Page 81;

(4) Real Property located at **5 West Cypress Terrace, Key West, Florida**, more fully described as:

Lot Three (3), Block Four (4), KEY HAVEN - SECOND ADDITION, a subdivision and Part of Government Lot 1, Section 26, Township 67 S., Range 25 E., and adjacent submerged lands, Raccoon Key; Monroe County, Florida Public Records;

(5) Real Property located at **45 Cypress Avenue, Key West, Florida**, more fully described as:

Lot 17 and 18, Block 3 KEY HAVEN EIGHTH ADDITION, revealed in Plat Book 5, page 61, of the Public Records of Monroe County, Florida;

(6) Real Property located at **12574 Grandeeza Circle, Estero, Florida**, more

fully described as:

Lot 148, Grande Oak East, According to the plat thereof recorded in Plat Book 77, Pages 26-38, of the Public Records of Lee County, Florida;

(7) Real Property located at **907 Park Street, Dysart, Iowa**, more fully described as:

Lot Six (6), Westview Estates Addition to Dysart, Tama County, Iowa;

(8) Real Property located at **4217 South New Hope Road, Gastonia, North Carolina**, more fully described as:

Beginning at a nail in the centerline of South New Hope Road (Highway No. 279) (60' right of way) at the point of Intersection of the southeasterly line of the property conveyed to Barbara L. Murphy in Book 4051 at Page 1326 with said centerline, and proceeding thence with Murphy's line two (2) courses and distances as follows: (i) North 38-57-01 East 49.63 feet to an iron, and (ii) North 39-00-40 East 141.36 feet to an iron, a common corner with the property of Nettie Pope (see Book 776, Page 216); thence with Pope's line South 55-31-38 East (passing an iron at the northerlymost corner of a 15' easement referred to in Book 2801 at Page 826 after 157.35 feet) a total distance of 172.38 feet to an iron in the northwesterly line of the property conveyed to Susan M. Smith in Book 1478 at Page 828 (also being the easterlymost corner of the aforesaid 15' easement); thence with Smith's line (and the southeasterly line of the aforesaid 15' easement) South 37-59-00 West 182.14 feet to an iron near the northeasterly margin of the right of way of South New Hope Road (60' right of way) (also being the southerlymost corner of said 15' easement); thence North 59-44-00 West (passing an iron at the westerlymost corner of said 15' easement after 15.12 feet) a total distance of 51.15 feet to a nail within the right of way of South New Hope Road; thence South 38-26-00 West 20.35 feet to a nail in the centerline of South New Hope Road; and thence with the centerline of South New Hope Road North 48-24-42 West 124.83 feet to the BEGINNING; all as shown on that certain survey for College Pharmacy, dated April 20, 2005, and prepared by Forest H. Houser, Professional Land Surveyor.

Being also the same property conveyed to Joseph J. Haburjak, Trustee of the Joseph J. Huburjak Revocable Trust U/A/D February 27, 1998, by deed recorded in Book 2801 at Page 826; and conveyed to Joseph J. Haburjak, Trustee, to the Grantor by deed recorded prior to this deed.

44. By virtue of the commission, by the defendants, of one or more of the felony offenses charged in Counts One through Seventeen of this Indictment, any and all interest the defendants have in the above-described property is vested in the United States and hereby forfeited to the United States pursuant to Title 21, United States Code, Section 853(a)(1) and (a)(2), and Title 18 United States Code, Sections 545 and 981(a)(1)(C) and (f).

45. If the property described above as being subject to forfeiture as a result of any act or omission of the defendants -

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value, or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) and Title 18 United States Code, Sections 545, 981(a)(1)(C) and (f), and Title 28 United States Code Section 2461, to seek forfeiture of any other property of said defendants up to the value of said property listed above as being subject to forfeiture, including but not limited to the following:

**Substitute Assets**

- (1) Real Property located at **3505 Austin Bluffs Parkway, Colorado Springs, Colorado**, more fully described as:

All of Lot 1 and a portion of Lot 2 in Block 2 SHOPPERS WORLD SUBDIVISION NO. 1 IN THE CITY OF COLORADO SPRINGS, El Paso County, Colorado, as recorded in Plat Book U-2 at Page 19 in the records of said County and more particularly described as follows: Beginning at the most

Northeasterly corner of said Lot 1, Block 2 in Shoppers World Subdivision No. 1; thence (1) South 88 degrees 10 minutes West on the Northerly line of said Lot 1, and Lot 2, Block 2 of Shoppers World Subdivision No. 1, 508.00 feet; (2) South 1 degree 50 minutes 00 seconds East, 276.75 feet; (3) North 89 degrees 54 minutes 00 seconds East on the Southerly line of said Lots 1 and 2, Block 2 in Shoppers World Subdivision No. 1, 508.23 feet; (4) North 1 degree 50 minutes 00 seconds West on the Easterly line of said Lot 1, Block 2 in Shoppers World Subdivision No. 1, 292.12 feet to the point of beginning, County of El Paso, State of Colorado;

(2) Real Property located at **40 Sandra Lane, Manitou Springs, Colorado**, more fully described as:

Lot 25, in CRYSTAL HILLS ESTATES FILING NO. 3, El Paso County, Colorado, according to the plat thereof recorded in Plat Book H-3 at Page 46;

(3) Real Property located at **302 Cheyenne Road West, Colorado Springs, Colorado**, more fully described as:

THE EASTERLY HALF OF THE SOUTHERLY 138 FEET OF LOT 15, BLOCK 1, FENMOOR SUBDIVISION, EL PASO COUNTY, COLORADO;

(4) Real Property located at **532 Oakwood Drive, Building C, Castle Rock, Colorado**, more fully described as:

Condominium Units 101, 102, 103, 104, 105, 106, 107, 108, 201, 202, 203, 204, 205, 206, 207 and 208 Building C, together with the exclusive right to use Parking Spaces CP1 - 61 through CP1 - 68, CP2 - 69 through CP2 - 77, CP3 - 78 through CP3 - 81 and CP4 - 82 through CP4 - 91 The Stonecreek Park "C" Condominiums, according to the Condominium Map, recorded on April 2, 2001 at Reception #01026609 in the Records of the office of the Clerk and Recorder of the County of Douglas, Colorado, and as defined and described in the Condominium Declarations for The Stonecreek Park "C" Condominiums, recorded on April 2, 2001 at Reception #01026610 in said records, County of Douglas, State of Colorado;

(5) Real Property located at **921 Monroe Street West, Colorado Springs, Colorado Springs**, more fully described as:

Lot 4, except the East 50 feet and except the West 50 feet, and Lot 2, Block 27, Gahart's Subdivision of a portion of a Block 27 of Roswell City Addition to the City of Colorado Springs, County of El Paso, State of Colorado;

(6) Real Property located at **1433 Williams Street #PH6, Denver, Colorado**, more fully described as:

Condominium Unit PH6, together with the exclusive right to use parking space number(s) 50 & 51, The Towers at Cheesman Park Condominiums, according to the Condominium Map recorded on August 20, 1999 at Reception No. 9900147268 in the records of the office of the Clerk and Recorder of the County of Denver, Colorado, and as defined and described in the Condominium Declaration for The Towers at Cheesman Park Condominiums recorded on August 20, 1999 at Reception No. 9900147267 in said records, City and County of Denver, State of Colorado;

(7) Real Property located at **2023 North Wahsatch Avenue, Colorado Springs, Colorado**, more fully described as:

Lot 2, Block 1, Howells Addition 1, Colorado Springs, Colorado, El Paso County, Colorado;

(8) Real Property located at **2690 White Rock Lane, Colorado Springs, Colorado**, more fully described as:

Lot 13 in Cedar Heights Filing No. 4, in the City of Colorado Springs, County of El Paso, State of Colorado;

(9) Real Property located at **2710 Silent Rain Drive, Colorado Springs, Colorado**, more fully described as:

Lot 5, Oak Valley Ranch Filing No. 4 in the City of Colorado Springs, El Paso County, Colorado;

(10) Real Property located at **2750 Silent Rain Drive, Colorado Springs, Colorado**, more fully described as:

Lot 1, Oak Valley Ranch Filing No. 4 in the City of Colorado Springs, El Paso County, Colorado;

(11) Real Property located at **4485 Monitor Rock Lane, Colorado Springs, Colorado**, more fully described as:

Lot 18, in CEDAR HEIGHTS FILING NO. 3, in the City of Colorado Springs, El Paso County, Colorado, according to the plat thereof recorded in Plat Book 0-3 at Page 81;

(12) Real Property located at **7340 Julynn Road, Colorado Springs, Colorado**, more fully described as:

Lot 32, Oak Valley Ranch Filing No. 4 in the City of Colorado Springs, El Paso County, Colorado;

(13) Real Property located at **7360 Julynn Road, Colorado Springs, Colorado**, more fully described as:

Lot 34, Oak Valley Ranch Filing No. 4 in the City of Colorado Springs, El Paso County, Colorado;

(14) Real Property located at **7380 Julynn Road, Colorado Springs, Colorado**, more fully described as:

Lot 36, Oak Valley Ranch Filing No. 4 in the City of Colorado Springs, El Paso County, Colorado;

(15) Real Property located at **5 West Cypress Terrace, Key West, Florida**, more fully described as:

Lot Three (3), Block Four (4), KEY HAVEN - SECOND ADDITION, a subdivision and Part of Government Lot 1, Section 26, Township 67 S., Range 25 E., and adjacent submerged lands, Raccoon Key; Monroe County, Florida Public Records;

(16) Real Property located at **45 Cypress Avenue, Key West, Florida**, more fully described as:

Lot 17 and 18, Block 3 KEY HAVEN EIGHTH ADDITION, revealed in Plat Book 5, page 61, of the Public Records of Monroe County, Florida;

(17) Real Property located at **12574 Grandeeza Circle, Estero, Florida**, more fully described as:

Lot 148, Grande Oak East, According to the plat thereof recorded in Plat Book 77, Pages 26-38, of the Public Records of Lee County, Florida;

(18) Real Property located at **907 Park Street, Dysart, Iowa**, more fully described as:

Lot Six (6), Westview Estates Addition to Dysart, Tama County, Iowa.

(19) Real Property located at **110A Egret Landing, Surf City, North Carolina**, more fully describes as:

Being all of Lot 110A Egret Landing, as shown upon map recorded in Map Book 39 at Page 91 of the Pender County Registry, reference to which is hereby made for a more particular description, County of Pender, State of North Carolina.

(20) Real Property located at **4217 South New Hope, Gastonia, North Carolina**, more fully described as:

Beginning at a nail in the centerline of South New Hope Road (Highway No. 279) (60' right of way) at the point of Intersection of the southeasterly line of the property conveyed to Barbara L. Murphy in Book 4051 at Page 1326 with said centerline, and proceeding thence with Murphy's line two (2) courses and distances as follows: (i) North 38-57-01 East 49.63 feet to an iron, and (ii) North 39-00-40 East 141.36 feet to an iron, a common corner with the property of Nettie Pope (see Book 776, Page 216); thence with Pope's line South 55-31-38 (passing an iron at the northerlymost corner of a 15' easement referred to in Book 2801 at Page 826 after 157.35 feet) a total distance of 172.38 feet to an iron in the northwesterly line of the property conveyed to Susan M. Smith in Book 1478 at Page 828 (also being the easterlymost corner of the aforesaid 15' easement); thence with Smith's line (and the southeasterly line of the aforesaid 15' easement) South 37-59-00 West 182.14 feet to an iron near the northeasterly margin of the right of way of South New Hope Road (60' right of way) (also being the southerlymost corner of said 15' easement); thence North 59-44-00 West (passing an iron at the westerlymost corner of said 15' easement after 15.12 feet) a total distance of 51.15 feet to a nail within the right of way of South New Hope Road; thence South 38-26-00 West 20.35 feet to a nail in the centerline of South New Hope Road; and thence with the centerline of South New Hope Road North 48-24-42 West 124.83 feet to the BEGINNING; all as shown on that certain survey for College Pharmacy, dated April 20, 2005, and prepared by Forest H. Houser, Professional Land Surveyor.

Being also the same property conveyed to Joseph J. Haburjak, Trustee of the Joseph J. Huburjak Revocable Trust U/A/D February 27, 1998, by deed recorded in Book 2801 at Page 826; and conveyed to Joseph J. Haburjak, Trustee, to the Grantor by deed recorded prior to this deed.

A TRUE BILL:

s/Foreperson  
FOREPERSON

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TROY A. EID  
United States Attorney

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