

United States Penitentiary McCreary



⇔08795-023⇔

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United States

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Instructions

1. **Who Should Use This Form.** You should use this form if
- you are a federal prisoner and you wish to challenge the way your sentence is being carried out (*for example, you claim that the Bureau of Prisons miscalculated your sentence or failed to properly award good time credits*);
 - you are in federal or state custody because of something other than a judgment of conviction (*for example, you are in pretrial detention or are awaiting extradition*); or
 - you are alleging that you are illegally detained in immigration custody.

2. **Who Should Not Use This Form.** You should not use this form if
- you are challenging the validity of a federal judgment of conviction and sentence (*these challenges are generally raised in a motion under 28 U.S.C. § 2255*);
 - you are challenging the validity of a state judgment of conviction and sentence (*these challenges are generally raised in a petition under 28 U.S.C. § 2254*); or
 - you are challenging a final order of removal in an immigration case (*these challenges are generally raised in a petition for review directly with a United States Court of Appeals*).

3. **Preparing the Petition.** The petition must be typed or neatly written, and you must sign and date it under penalty of perjury. **A false statement may lead to prosecution.**

All questions must be answered clearly and concisely in the space on the form. If needed, you may attach additional pages or file a memorandum in support of the petition. If you attach additional pages, number the pages and identify which section of the petition is being continued. Note that some courts have page limitations. All filings must be submitted on paper sized 8½ by 11 inches. **Do not use the back of any page.**

4. **Supporting Documents.** In addition to your petition, you must send to the court a copy of the decisions you are challenging and a copy of any briefs or administrative remedy forms filed in your case.
5. **Required Filing Fee.** You must include the \$5 filing fee required by 28 U.S.C. § 1914(a). If you are unable to pay the filing fee, you must ask the court for permission to proceed in forma pauperis – that is, as a person who cannot pay the filing fee – by submitting the documents that the court requires.
6. **Submitting Documents to the Court.** Mail your petition and ____ copies to the clerk of the United States District Court for the district and division in which you are confined. For a list of districts and divisions, see 28 U.S.C. §§ 81-131. All copies must be identical to the original. Copies may be legibly handwritten.

If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

7. **Change of Address.** You must immediately notify the court in writing of any change of address. If you do not, the court may dismiss your case.

* David Roland Hinkson, Pro Se
Reg. No. 08795-023
USP McCreary
P.O. Box 3000
Pine Knot, Kentucky 42635

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF KENTUCKY

David Roland Hinkson
Petitioner

v.

C. Gomez, Acting Warden
Respondent
(name of warden or authorized person having custody of petitioner)

Case No. _____
(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: David Roland Hinkson

(b) Other names you have used: None

2. Place of confinement:

(a) Name of institution: United States Penitentiary McCreary

(b) Address: P.O. Box 3000, Pine Knot, Kentucky 42635

(c) Your identification number: 08795-023

3. Are you currently being held on orders by:

Federal authorities State authorities Other - explain:

4. Are you currently:

A pretrial detainee (waiting for trial on criminal charges)

Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

(a) Name and location of court that sentenced you: United States District

Court, District of Idaho

(b) Docket number of criminal case: 1:04-CR-00127-RCT

(c) Date of sentencing: June 3, 2005

Being held on an immigration charge

Other (explain): _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:

- How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)
- Pretrial detention
- Immigration detention
- Detainer
- The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- Disciplinary proceedings
- Other (explain): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: United States District Court, District of Idaho.

(b) Docket number, case number, or opinion number: 1:04-CR-00127_RCT

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

Petitioner is challenging the [unit] of prosecution for solicitation to commit a crime of violence, 18 USC § 373; Whether said crime [is] a "crime of violence," and whether the sentences should have ran concurrently.

(d) Date of the decision or action: June 3, 2005; June 13, 2005

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

- Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Ninth Circuit Court of Appeals

(2) Date of filing: June 8, 2005

(3) Docket number, case number, or opinion number: 05-30303

(4) Result: Appeal Granted but reversed en banc (change of standard)

(5) Date of result: May 30, 2008; En Banc Decision November 5, 2009

(6) Issues raised: Whether the district court abused its discretion in denying Hinkson's motion for a new trial under FRCP 33 where the Government's key witness had been shown to be a forger and a liar, and had committed these crimes on the witness stand in Hinkson's criminal jury trial for allegedly

soliciting the murder of three federal officials.

(b) If you answered "No," explain why you did not appeal: N/A

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Supreme Court of the United States

(2) Date of filing: November 10, 2010

(3) Docket number, case number, or opinion number: 10-869

(4) Result: Petition for writ of certiorari denied

(5) Date of result: April 18, 2011

(6) Issues raised: I. Does a defendant have a right to prove that the Government's chief witness has testified falsely and tendered forged documents on an issue critical to the Government's case. Here, whether the witness served his country in combat?
II. Did the divided en banc panel of the Ninth Circuit err in holding that a witness's perjury and fraud concerning his military record would be of "limited probative value" to jurors assessing that witness's credibility?

(b) If you answered "No," explain why you did not file a second appeal: N/A

9. **Third appeal** Supreme Court is Court of last resort in appeal process.

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: The Petition for a writ of certiorari is the last filing in the federal criminal direct appeal process, and the Supreme Court is the Court of last resort in this process.

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: U.S. District Court, District of Idaho

(2) Case number: 1:12-CV-00196-RCT

(3) Date of filing: April 13, 2012

(4) Result: Petition denied without evidentiary hearing

(5) Date of result: August 28, 2012

(6) Issues raised: Newly discovered evidence; judicial bias; Brady violation, Ineffective assistance of counsel; Lack of jurisdiction; Jury misconduct; Governmental misconduct; and Prosecutorial misconduct.

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____

11. Appeals of immigration proceedings N/A

Does this case concern immigration proceedings?

Yes No

If "Yes," provide:

(a) Date you were taken into immigration custody: _____

(b) Date of the removal or reinstatement order: _____

(c) Did you file an appeal with the Board of Immigration Appeals?

Yes No

If "Yes," provide:

(1) Date of filing: _____

(2) Case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Issues raised: _____

(d) Did you appeal the decision to the United States Court of Appeals?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

- (4) Result: _____
 - (5) Date of result: _____
 - (6) Issues raised: _____
- _____
- _____
- _____
- _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes No

If "Yes," provide:

- (a) Kind of petition, motion, or application: 28 USC § 2241
 - (b) Name of the authority, agency, or court: United States District Court, District of California, Eastern District
 - (c) Date of filing: 2013
 - (d) Docket number, case number; or opinion number: 1:13-CV-01571-AWI-JLT
 - (e) Result: Petition denied
 - (f) Date of result: June 3, 2014
 - (g) Issues raised: Hinkson presented several arguments relating to his actual innocence of the offenses of conviction (i.e., solicitation to commit a crime of violence, three counts, 18 USC § 373, murder for hire).
- _____
- _____
- _____
- _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Whether (1) Hinkson's prosecution for solicitation is one unit of prosecution; (2) Whether the solicitation counts are crimes of violence; and (3) Whether Hinkson's 30 year sentence should be reduced to 10 years and ran concurrent with case no. 02-CR-142-RCT.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Please see attached memorandum of law with attachments, for facts and law.

(b) Did you present Ground One in all appeals that were available to you?

Yes No

GROUND TWO:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Two in all appeals that were available to you?

Yes No

GROUND THREE:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Three in all appeals that were available to you?

Yes No

GROUND FOUR: _____

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Four in all appeals that were available to you?

Yes No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: merge the solicitation convictions and
sentences to a total sentence of 10 years as one unit of prosecution; (2)
hold that the solicitation offenses are not crimes of violence; and (3)
run the sentence in case no. 04-CR-127 concurrent with case no. 02-CR-142
for an aggregate sentence of 13 years, and order the Petitioner released
from further incarceration.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: _____

Signature of Petitioner

Signature of Attorney or other authorized person, if any

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

DAVID ROLAND HINKSON,
PETITIONER,

V.

Case No.

C. Gomez, Acting Warden,
USP McCreary,
RESPONDENT.

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

NOW COMES the Petitioner, David Roland Hinkson,
pro se and pursuant to 28 U.S.C. § 2241, and any and all
other applicable legal authority, hereby offers his
memorandum of law in support of his petition for writ
of habeas corpus, and would state and argue as follows.

JURISDICTION

Hinkson was convicted in the United States District Court for the District of Idaho, inter alia, three counts of solicitation to commit a crime of violence in case no. 1:04-CR-00127-RCT. He received a federal term of imprisonment for 30 years (10, 10, 10 consecutive), ran consecutive to a 13 year sentence imposed in case no. 3:02-CR-00142-RCT. He is currently incarcerated at United States Penitentiary, Pine Knot, Kentucky. See Attachment-A (Criminal Judgment).

28 U.S.C. § 2241(a) articulates:

Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdiction. See also § 2241(c)(1), (2), and (3).

Thus, this Court has jurisdiction of the instant § 2241 petition.

ISSUE PRESENTED

WHETHER HINKSON'S THREE CONVICTIONS FOR SOLICITATION TO COMMIT A CRIME OF VIOLENCE UNDER 18 U.S.C. § 373 ARE A SINGLE UNIT OF PROSECUTION REQUIRING THE CONVICTIONS AND/OR SENTENCES TO MERGE;

WHETHER THE SOLICITATION CRIMES ARE "CRIMES OF VIOLENCE"; AND

WHETHER THE SENTENCES FOR THE SOLICITATION COUNTS AND THE OTHER SENTENCES SHOULD HAVE RAN CONCURRENTLY.

RELEVANT STATEMENT OF FACTS

Hinkson would incorporate herein the statement of the case as outlined in his related § 2241 petition, and his history of filings.

Hinkson was convicted in the United States District Court for the District of Idaho in case no. 3:02-CR-142-RCT for, inter alia, willful failure to file tax return, willful failure to collect federal tax, misbranded drug, adulterated device, structuring transactions to avoid reporting requirements and aiding and abetting.

Hinkson was then charged and convicted in the United States District Court for the District of Idaho in case no. 1:04-CR-127-RCT for three counts of solicitation to commit a crime of violence (i.e., attempted murder for hire).

The sentencing court imposed a term of imprisonment as follows: (1) 10, 10, and 10 years consecutive for each solicitation count for an aggregate sentence of 30 years. The sentencing court also imposed a consecutive sentence of 10 years for case no. 02-CR-142 and an additional term of imprisonment for 3 years consecutive, for a total term of imprisonment for 43 years or 516 months.

Since Hinkson's direct appeal and time for filing a motion under 28 U.S.C. § 2255, the federal law has changed thereby rendering his solicitation counts non-crimes of violence, and rendering his unit of prosecution unjust as the solicitation counts should have been just one unit of

prosecution, and thus, merged into one conviction and/or sentence of 10 years instead of 30 years.

Additionally, Hinkson asks this Court to run his sentences in case nos. 02-CR-142 and 04-CR-127 concurrently because his offenses for solicitation are not "crimes of violence," and he is not a violent offender.

ARGUMENT AND AUTHORITIES

The Unit of Prosecution

On June 22, 2004, a federal grand jury sitting in the district of Idaho returned an eleven count indictment against Hinkson for, inter alia, solicitation to commit a "crime of violence," (i.e., murder for hire), in violation of Title 18 U.S.C. § 1114 and 18 U.S.C. § 373.

The introduction to the indictment outlined the alleged plots as follows:

At all times relevant to this indictment:

1. The defendant, David Roland Hinkson, was the owner and operator of the business Water Oz in Idaho County, Idaho;
2. Edward J. Lodge was a United States District Court Judge for the district of Idaho assigned as the principal judge hearing federal civil and criminal cases in the Northern and Central Divisions of the District of Idaho, in Moscow and Coeur d'Alene;
3. Nancy D. Cook was an Assistant United States Attorney (AUSA) for the District of Idaho assigned to the Coeur d'Alene branch office and specifically assigned to the grand jury investigation of and subsequent prosecution of defendant David Roland Hinkson on federal criminal charges arising out of his operation of the business Water Oz in the case titled United States of America v David Roland Hinkson, Cr. No. 02-142-C-EJL;
4. Steven M. Hines was the Internal Revenue Service, Criminal Investigation Division, Special Agent

assigned to the criminal investigation of defendant David Roland Hinkson and his business, Water Oz;

5. Beginning in approximately the summer of 2000, the Internal Revenue Service, Criminal Investigation Division, through Special Agent Steven M. Hines, initiated a criminal investigation into whether defendant David Roland Hinkson had failed to file income tax returns and to account for, collect and pay employment taxes for his Water Oz workers. In the summer of 2000, Special Agent Hines sent defendant David Roland Hinkson a letter informing him of the criminal investigation;

6. In July Of 2001, Assistant United States Attorney Nancy D. Cook caused grand jury subpoenas to be prepared and served on certain Water Oz employees for their appearance at the grand jury in Coeur d' Alene in September of 2001 in connection with the investigation into the defendant David Roland Hinkson's tax violations. The subpoenas bore AUSA Cook's name and were served by Special Agent Hines. At least one Water Oz employee discussed the requested grand jury appearance with defendant David Roland Hinkson;

7. On April 16, 2002, defendant David Roland Hinkson filed a civil suit against Special Agent Hines, AUSA Cook, and others in the United States District Court for the District of Idaho, Case No. CV-02-171-C. The case ultimately was assigned to Judge Lodge.

8. On July 17, 2002, a federal grand jury in Coeur d' Alene returned a 43 count indictment charging defendant David Roland Hinkson with three counts of failure to file an income tax return, thirteen counts of failure to account for, collect

and pay over employment taxes, four counts of introducing and causing to be delivered for introduction into interstate commerce a misbranded drug, four counts of introducing and causing to be delivered for introduction into interstate commerce an adulterated drug, one count of introducing and causing to be delivered for introduction into interstate commerce a misbranded device, one count of introducing and causing to be delivered for introduction into interstate commerce an adulterated device, sixteen counts of structuring financial transactions and one count of criminal forfeiture.

9. On November 21, 2002, the defendant, David Roland Hinkson, was arrested by Special Agent Hines and others and made his initial appearance on the charges contained in the July 17, 2002, indictment. The criminal case also was assigned to Judge Lodge.

10. On February 11, 2003, Judge Lodge dismissed the civil case in its entirety.

See Attachment B (6/22/04 Indictment).

The indictment then went on to charge Hinkson with multiple counts of violating 18 U.S.C. § 373 (counts 1-9) and two counts of violating 18 U.S.C. § 115 (counts 10-11).

Hinkson proceeded to a jury trial on the charges after pleading not guilty. At trial, the jury acquitted Hinkson on several counts, hung on others, and convicted him on counts 7, 8, and 9. Those counts charged as follows:

Count Seven

"Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

Between about December 2002 and February 2003, the precise date being unknown to the grand jury, in the district of Idaho, the defendant, David Roland Hinkson, with the intent that EJS (Elven Joe Swisher) engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade EJS to engage in such conduct, that is to murder United States District Court Judge Edward J. Lodge, an officer of the United States, in violation of Title 18 U.S.C. § 1114; in violation of Title 18 U.S.C. § 373." Attachment-B, P. 6.

Count Eight

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

Between about December 2002 and February 2003, the precise date being unknown to the grand jury, in

Count Seven

"Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

Between about December 2002 and February 2003, the precise date being unknown to the grand jury, in the district of Idaho, the defendant, David Roland Hinkson, with the intent that EJS (Elven Joe Swisher) engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade EJS to engage in such conduct, that is to murder United States District Court Judge Edward J. Lodge, an officer of the United States, in violation of Title 18 U.S.C. § 1114; in violation of Title 18 U.S.C. § 373." Attachment-B, P. 6.

Count Eight

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

Between about December 2002 and February 2003, the precise date being unknown to the grand jury, in

the District of Idaho, the defendant, David Roland Hinkson, with the intent that EJS engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade EJS to engage in such conduct, that is to murder Assistant United States Attorney Nancy D. Cook, an officer of the United States in violation of Title 18, U.S.C. § 1114; in violation of Title 18, U.S.C. § 373. Attachment-B, P. 7.

Count Nine

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

Between about December 2002 and February 2003, the precise date being unknown to the grand jury, in the District of Idaho, the defendant, David Roland Hinkson, with the intent that EJS engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that

intent, did solicit, command, induce and endeavor to persuade EJS to engage in such conduct, that is to murder Internal Revenue Service Special Agent Steven M. Hines, an officer of the United States, in violation of Title 18 U.S.C. § 1114; in violation of Title 18 U.S.C. § 373. See Attachment-B, P. 7-8.

After the jury trial, Hinkson was convicted only on the three Elven Joe Swisher counts (i.e., counts 7, 8 & 9).¹ And while the evidence shows that Swisher alleged that Hinkson attempted to solicit him to commit these offenses, Hinkson was charged, tried and convicted of three separate units of prosecution. Moreover, he was also sentenced to three separate units of prosecution (i.e., he received three 10-year sentences consecutive on each count 7, 8, and 9).

Under the law today, Hinkson would only be prosecuted and sentenced as one unit of prosecution. See *United States v Gordon*, 2017 U.S. App. Lexis 22249, No. 16-1896 (1st Cir. 2017). Specifically, in Gordon the defendant was charged with multiple counts of murder-for-hire, convicted, and sentenced to consecutive terms of imprisonment, as was Hinkson. On appeal, the Court of Appeals reversed holding that an indictment

1. During Hinkson's criminal trial and other proceedings including the grand jury proceedings, Elven Joe Swisher repeated committed perjury and committed crimes, some of which led to Swisher's own prosecution in case no. CR-07-182-S-BLW, U.S. District Court, Idaho & Montana.

containing five charges of murder-for-hire was multiplicitous and defendant was entitled to resentencing because the proper unit of prosecution under the murder-for-hire statute was a single plot. Congress did not intend to punish separately such crimes. Id.

The First went on to state that "in reaching the conclusion that the correct unit of prosecution is plot-centric, we echo the only other published circuit court decision squarely on point. The Sixth Circuit so held in United States v Wynn, 987 F.2d 354, 359 (6th Cir. 1993), ruling that the appropriate unit of prosecution under § 1958(a) is the number of [plots] to murder someone."

In the instant case, Hinkson was charged with plotting to murder three individuals. However, there was only one [plot] involved with the case, and one alleged hitman. Therefore, like in Gordon and Wynn, Hinkson should have only been convicted or sentenced for one conspiracy plot, not three, because while there was three alleged victims, there was only one alleged plot to murder-for-hire.

Additionally, in Alaimalo v United States, 636 F.3d 1092 (9th Cir. 2011) the court held that if a prisoner did not have an unobstructed chance to present his innocence claim in his first § 2255 motion, he could raise that claim in a 28 U.S.C. § 2241.

In the case at bar, Hinkson did not have an unobstructed chance to present the instant claim in any previous § 2255 or § 2241 petition, as Gordon was not

decided until November 7, 2017. And Gordon, while a First Circuit case, establishes that Hinkson's three charges to allegedly solicit Swisher to murder three persons, are multiplicitous. This ruling is a Circuit Court decision that, while not binding on the Ninth or Sixth Circuits, establishes that Hinkson's 30-year sentence should only be 10-years. Thus, such a significant increase in the prison term, presents a fundamental miscarriage of justice.

Moreover, the Supreme Court has recently recognized that prisoners can actually be innocent of the sentence imposed upon them. See *Johnson v United States*, 135 S. Ct. 2551 (2015). So whether the indictment is multiplicitous and should have only charged one conspiracy offense, and whether, as a result, the three ten year sentences should be ran concurrently, Hinkson believes that he is actually innocent of the two additional § 373 offenses, and thus, the additional 20 year sentence imposed.

In sum, Hinkson's three 18 U.S.C. § 373 convictions should merge and his 30 year sentence should be reduced to 10 years, because there was only [one plot] in the murder-for-hire indictment under counts 7, 8 and 9. As with Gordon, Congress did not intend to punish Hinkson three separate times for one conspiracy plot as alleged in the indictment. The indictment is duplicitous in the case at bar as well. Therefore, this case presents a clear fundamental miscarriage of justice sufficient to warrant habeas corpus relief.

Crime of Violence

Throughout this case, the offenses of conviction were labled "crimes of violence." See Attachments A & B (Indictment and Criminal Judgment). See also Presentence Investigation Report (PSR).²

Specifically, the indictment alleged that "David Roland Hinkson, with the intent that EJS engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of laws of the United States...." Attachment-B (counts 7, 8 and 9).

Additionally, the criminal judgment reflects that Hinkson was convicted for "solicitation to commit a crime of violence," under counts 7, 8 and 9. Attachment-A. However, federal courts are now holding that murder-for-hire is not a crime of violence. See United States v Cody Herr, 2016 U.S. Dist. Lexis 144201, No. 16-cr-10038-IT (Dist. Mass Oct. 18, 2016). See also United States v McCollum, 2018 BL 94296, 4th Cir., No. 17-4296 (March 20, 2018)(holding that conspiracy to commit murder is not a crime of violence).

Thus, counts 7, 8 and 9 are not crimes of violence, and therefore, Hinkson is entitle to habeas corpus relief

2. Please note that FBOP Policy prohibits federal prisoners from possessing their PSRs in prison.

to correct his sentence and judgment.

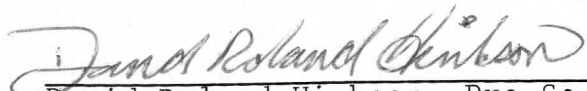
Concurrent Sentences

Because the three counts of solicitation to commit murder were considered and labeled "crimes of violence," the sentencing court ran Hinkson's sentences consecutive to each other and consecutive to case no. 02-cr-00142-TCT. Because the solicitation to commit murder offenses are not crimes of violence, Hinkson is entitled to resentencing.

CONCLUSION

For the foregoing reasons, Hinkson respectfully moves the Court to issue a writ of habeas corpus, and for any other relief deemed just and proper.

Respectfully submitted



David Roland Hinkson, Pro Se
Reg. No. 08795-023
USP McCreary
P.O. Box 3000
Pine Knot, KY 42635

ATTACHMENT A

A. Amended Judgment In a Criminal Case (re: David R. Hinkson)

RECEIVED UNITED STATES DISTRICT COURT

U.S. MARSHALS SERVICE District of

Idaho

UNITED STATES OF AMERICA

2005 JUN 13 PM 3:26

AMENDED JUDGMENT IN A CRIMINAL CASE

V.

BOISE, IDAHO

DAVID ROLAND HINKSON

Case Number: 3:02-CR-00142-RCT

1:04-CR-00127-RCT

USM Number: 08795-023

Curtis Smith, Steven Anderson

Defendant's Attorney

Date of Original Judgment: June 3, 2005

(Or Date of Last Amended Judgment)

Reason for Amendment:

- Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(e)(1))
Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(e)(2))
Direct Motion to District Court Pursuant to 28 U.S.C. § 2255 or 18 U.S.C. § 3559(e)(7)
Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

X pleaded guilty to count(s) 17 and 26 of the Indictment in Case #3:02-CR-00142-RCT

pleaded nolo contendere to count(s) which was accepted by the court.

X was found guilty on count(s) 1, 3, 4, 16, 31, 33, 38, 40, 42 of the Indictment in Case #3:02-CR-00142-RCT and counts 7, 8 and 9 of the Superseding Indictment in Case #1:04-CR-00127-RCT after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Table with 4 columns: Title & Section, Nature of Offense, Offense Ended, Count. Lists various offenses such as Willful Failure to File Tax Return, Willful Failure to Collect Federal Taxes, Misbranded Drug, etc.

The defendant is sentenced as provided in pages 2 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

X The defendant has been found not guilty on count(s) *4, 5, 6, 10 & #11 of the Superseding Indictment in Case #1:04-CR-00127-RCT. No verdict on counts 1, 2 & #3 of the Indictment in Case #1:04-CR-00127-RCT.

X Count(s) 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, is X are dismissed on the motion of the United States, 29, 30, 32, and 39 in Case #3:02-CR-00142-RCT and counts 1, 2 & 3 in Case #1:04-CR-00127-RCT.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

June 3, 2005

Date of Imposition of Judgment

Richard C. Tallman (Signature)

Signature of Judge

Richard C. Tallman, United States Circuit Judge

Name and Title of Judge

6/13/05 Date

Certified to be a true and correct copy of original filed in my office.

Cameron S. Burke, Clerk United States Courts, District of Idaho

By: Deputy Dated

DEFENDANT: DAVID RONALD HINKSON
CASE NUMBER: 3:02-CR-00142-RCT
1:04-CR-00127-RCT

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 516 months. The total term in Case # 3:02-CR-00142-RCT consists of: terms of 12 months each on counts 1-3, 17 & 26; terms of 60 months each on counts 4-16; and terms of 120 months each on counts 31, 33-38, 40-42. All such terms in Case # 3:02-CR-00142-RCT shall be served concurrently with each other but consecutive to the imprisonment imposed in Case # 1:04-CR-00127-RCT. The total term in Case # 1:04-CR-00127-RCT consists of terms of 120 months each on counts 7, 8 and 9, which shall run consecutively to one another and consecutively to the criminal Case # 3:02-CR-00142-RCT. An additional 36 months shall run consecutively to counts 7, 8 and 9 pursuant to 18 U.S.C. § 3147. The total imprisonment term of 396 months imposed in Case # 1:04-CR-00127-RCT shall not begin to run until the Defendant has completed service of the total imprisonment term of 120 months imposed in Case # 3:02-CR-00142-RCT.

X The court makes the following recommendations to the Bureau of Prisons:
That the defendant be credited with all time served, from the date of his arrest on April 4, 2003; and that the defendant be initially classified as a high risk inmate who refuses to comply with institutional security rules, who poses a continuing danger to witnesses and Federal officers, and who poses a risk of flight with access to money secreted in foreign bank accounts.
The defendant is to be placed in the maximum security facility at Florence, Colorado.

X The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

- at _____ a.m. p.m. on _____
- as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- before 2 p.m. on _____
- as notified by the United States Marshal.
- as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

_____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DAVID RONALD HINKSON
 CASE NUMBER: 3:02-CR-00142-RCT
 1:04-CR-00127-RCT

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

a term of 1 year supervised release on counts 1, 3, 17 & 26 in Case #3:02-CR-00142-RCT. 3 years supervised release on counts 4, 16, 31, 33-38, 40-42 in Case #3:02-CR-00142-RCT. All such terms of supervised release to be served concurrently with one another.
 3 years supervised release on counts 7, 8 and 9 in Case #1:04-CR-00127-RCT. All such terms of supervised release to be served concurrently with one another and concurrently with the three year term of supervised release in Case #3:02-CR-00142-RCT.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

Because this judgment imposes a fine and restitution, it is a condition of supervised release that the defendant pay it in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: DAVID RONALD HINKSON
CASE NUMBER: 3:02-CR-00142-RCT
1:04-CR-00127-RCT

SPECIAL CONDITIONS OF SUPERVISION

- 1) Defendant shall comply with the rules and regulations of the Probation Department.
- 2) Defendant shall not possess a firearm or other dangerous weapon.
- 3) Defendant shall provide the probation officer with access to any requested financial information.
- 4) Defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment payment schedule.
- 5) Defendant shall submit to a search of his person, place of residence, or automobile at the direction of the U.S. Probation Officer and submit to seizure of any contraband found therein.
- 6) The defendant shall cooperate with the IRS in paying his back taxes owed. Also, he shall file any and all tax returns required by law and maintain compliance with all applicable tax laws and provide the probation officer with verification of his compliance.
- 7) Defendant shall participate in mental health counseling as directed by the U.S. Probation Officer. The costs of such treatment shall be paid by both the defendant and government based upon the defendant's ability to pay for treatment.
- 8) Defendant shall pay the special assessment, fine and the restitution obligation that is imposed by this judgment and any monies that remain unpaid at the commencement of the term of supervised release shall be made payable to the Clerk of the U.S. District Court, 550 W. Fort Street, MSC 039, Boise, Idaho, 83724. The defendant shall complete all financial payments no later than September 6, 2005.
- 9) Defendant, his agents, managers, officers, and responsible persons operating defendant's sole proprietorship under the name WaterOz, shall cooperate with the Food and Drug Administration in maintaining and insuring compliance by WaterOz with all Food and Drug Act laws and regulations.

Special conditions of supervised release shall supersede any standard condition that is inconsistent with the special conditions.

DEFENDANT: DAVID RONALD HINKSON
 CASE NUMBER: 3:02-CR-00142-RCT
 1:04-CR-00127-RCT
CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 2,725.00	\$ 100,000.00	\$ 720.00

Special assessment \$2,425.00 is imposed on Case #3:02-CR-00142-RCT.
 Special assessment \$300.00, Fine \$100,000.00, Restitution \$720.00 is imposed on Case #1:04-CR-00127-RCT.

- The determination of restitution is deferred after such determination. An Amended Judgment in a Criminal Case (AO 245C) will be entered.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

The Court defers to the Internal Revenue Service Civil Division the collection of all back taxes, interest, and penalties owed by the defendant and his sole proprietorship WaterOz. Accordingly, the Court declines to order restitution of such losses in these criminal proceedings because the amounts owed are substantial and it would complicate and unduly prolong the sentencing process to fashion such an order where an alternative civil collection mechanism is readily available to the IRS. 18 U.S.C. § 3663(a)(1)(B)(ii).

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Steven Hines		\$720.00	100%

TOTALS \$ _____ \$ 720.00

- Restitution amount ordered pursuant to plea agreement: \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

DEFENDANT: DAVID RONALD HINKSON
CASE NUMBER: 3:02-CR-00142-RCT
1:04-CR-00127-RCT

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ \$100,000 due immediately, balance due
 - not later than September 6, 2005, or
 - in accordance C, D, E, or F below, or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
 \$2,725.00 special assessment and \$720.00 restitution are due immediately. Payments to be made to Clerk of the Court, District Idaho, 550 W. Fort St., MSC 039, Boise, ID 83724. Clerk shall disburse restitution payments to the victim, IRS Special Agent Steven Hines.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several
Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution of \$ 13,741.54, due on or before September 6, 2005.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:
 \$ 135,500.00 in U.S. currency as previously ordered by the Court on March 25, 2005, in Case Number 3:02-CR-00142-RCT.
 Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

ATTACHMENT B

B. Indictment in case no. 1:04-CR-127-RCT (Solicitation to Commit a Crime of Violence).

BARRY M. SABIN
ACTING UNITED STATES ATTORNEY

2004 JUN 22 PM 5:06

MICHAEL P. SULLIVAN
SPECIAL ASSISTANT UNITED STATES ATTORNEY

U.S. DISTRICT COURT
DISTRICT OF IDAHO

DENA DOUGLAS-PATTERSON
TRIAL ATTORNEY
UNITED STATES DEPARTMENT OF JUSTICE
601 D STREET, NW
WASHINGTON, DC 20005
TELEPHONE: (202) 353-3116

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID ROLAND HINKSON,)
)
 Defendant.)
 _____)

Cr. No. **CR 04-0127-C-BLW**
INDICTMENT

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this indictment:

1. The defendant, DAVID ROLAND HINKSON, was the owner and operator of the business Water Oz in Idaho County, Idaho;
2. Edward J. Lodge was a United States District Court Judge for the District of Idaho assigned as the principal judge hearing federal civil and criminal cases in the Northern and Central Divisions of the District of Idaho, in Moscow and Coeur d' Alene;

3. Nancy D. Cook was an Assistant United States Attorney (AUSA) for the District of Idaho assigned to the Coeur d'Alene branch office and specifically assigned to the grand jury investigation of and subsequent prosecution of defendant DAVID ROLAND HINKSON on federal criminal charges arising out of his operation of the business Water Oz in the case titled United States of America v. David Roland Hinkson, Cr. No. 02-142-C-EJL;

4. Steven M. Hines was the Internal Revenue Service, Criminal Investigation Division, Special Agent assigned to the criminal investigation of defendant DAVID ROLAND HINKSON and his business, Water Oz;

5. Beginning in approximately the summer of 2000, the Internal Revenue Service, Criminal Investigation Division, through Special Agent Steven M. Hines, initiated a criminal investigation into whether defendant DAVID ROLAND HINKSON had failed to file income tax returns and to account for, collect and pay employment taxes for his Water Oz workers. In the summer of 2000, Special Agent Hines sent defendant DAVID ROLAND HINKSON a letter informing him of the criminal investigation.

6. In July of 2001, Assistant United States Attorney Nancy D. Cook caused grand jury subpoenas to be prepared and served on certain Water Oz employees for their appearance at the grand jury in Coeur d'Alene in September of 2001 in connection with the investigation into defendant DAVID ROLAND HINKSON's tax violations. The subpoenas bore AUSA Cook's name and were served by Special Agent Hines. At least one Water Oz employee discussed the requested grand jury appearance with defendant DAVID ROLAND HINKSON.

7. On April 16, 2002, defendant DAVID ROLAND HINKSON filed a civil suit against Special Agent Hines, AUSA Cook, and others in the United States District Court for the District of Idaho, Case No. CV 02-171-C. The case ultimately was assigned to Judge Lodge.

3. Nancy D. Cook was an Assistant United States Attorney (AUSA) for the District of Idaho assigned to the Coeur d'Alene branch office and specifically assigned to the grand jury investigation of and subsequent prosecution of defendant DAVID ROLAND HINKSON on federal criminal charges arising out of his operation of the business Water Oz in the case titled United States of America v. David Roland Hinkson, Cr. No. 02-142-C-EJL;

4. Steven M. Hines was the Internal Revenue Service, Criminal Investigation Division, Special Agent assigned to the criminal investigation of defendant DAVID ROLAND HINKSON and his business, Water Oz;

5. Beginning in approximately the summer of 2000, the Internal Revenue Service, Criminal Investigation Division, through Special Agent Steven M. Hines, initiated a criminal investigation into whether defendant DAVID ROLAND HINKSON had failed to file income tax returns and to account for, collect and pay employment taxes for his Water Oz workers. In the summer of 2000, Special Agent Hines sent defendant DAVID ROLAND HINKSON a letter informing him of the criminal investigation.

6. In July of 2001, Assistant United States Attorney Nancy D. Cook caused grand jury subpoenas to be prepared and served on certain Water Oz employees for their appearance at the grand jury in Coeur d'Alene in September of 2001 in connection with the investigation into defendant DAVID ROLAND HINKSON's tax violations. The subpoenas bore AUSA Cook's name and were served by Special Agent Hines. At least one Water Oz employee discussed the requested grand jury appearance with defendant DAVID ROLAND HINKSON.

7. On April 16, 2002, defendant DAVID ROLAND HINKSON filed a civil suit against Special Agent Hines, AUSA Cook, and others in the United States District Court for the District of Idaho, Case No. CV 02-171-C. The case ultimately was assigned to Judge Lodge.

8. On July 17, 2002, a federal grand jury in Coeur d'Alene returned a 43 count indictment charging defendant DAVID ROLAND HINKSON with three counts of failure to file an income tax return, thirteen counts of failure to account for, collect and pay over employment taxes, four counts of introducing and causing to be delivered for introduction into interstate commerce a misbranded drug, four counts of introducing and causing to be delivered for introduction into interstate commerce an adulterated drug, one count of introducing and causing to be delivered for introduction into interstate commerce a misbranded device, one count of introducing and causing to be delivered for introduction into interstate commerce an adulterated device, sixteen counts of structuring financial transactions and one count of criminal forfeiture.

9. On November 21, 2002, the defendant, DAVID ROLAND HINKSON, was arrested by Special Agent Hines and others and made his initial appearance on the charges contained in the July 17, 2002, indictment. The criminal case also was assigned to Judge Lodge.

10. On February 11, 2003, Judge Lodge dismissed the civil case in its entirety.

COUNT ONE
(Violation 18 U.S.C. §373)

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

In or about January of 2003, the precise date being unknown to the grand jury, in the District of Idaho, the defendant, DAVID ROLAND HINKSON, with the intent that JH engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade JH to engage in such conduct, that is, to murder United States District Court Judge Edward J. Lodge, an officer of the United States, in

violation of Title 18, United States Code, Section 1114; in violation of Title 18, United States Code, Section 373.

COUNT TWO
(Violation 18 U.S.C. §373)

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

In or about January of 2003, the precise date being unknown to the grand jury, in the District of Idaho, the defendant, DAVID ROLAND HINKSON, with the intent that JH engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade JH to engage in such conduct, that is to murder Assistant United States Attorney Nancy D. Cook, an officer of the United States, in violation of Title 18, United States Code, Section 1114; in violation of Title 18, United States Code, Section 373.

COUNT THREE
(Violation 18 U.S.C. §373)

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

In or about January of 2003, the precise date being unknown to the grand jury, in the District of Idaho, the defendant, DAVID ROLAND HINKSON, with the intent that JH engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade JH to engage in such conduct, that is to murder Internal Revenue Service Special Agent Steven M. Hines, an officer of the United States,

in violation of Title 18, United States Code, Section 1114; in violation of Title 18, United States Code, Section 373.

COUNT FOUR
(Violation 18 U.S.C. §373)

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

On or about March 17, 2003, the precise date being unknown to the grand jury, in the District of Idaho, the defendant, DAVID ROLAND HINKSON, with the intent that JH engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade JH to engage in such conduct, that is to murder United States District Court Judge Edward J. Lodge, an officer of the United States in violation of Title 18, United States Code, Section 1114; in violation of Title 18, United States Code, Section 373.

COUNT FIVE
(Violation 18 U.S.C. §373)

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

On or about March 17, 2003, the precise date being unknown to the grand jury, in the District of Idaho, the defendant, DAVID ROLAND HINKSON, with the intent that JH engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade JH to engage in such conduct, that is to murder Assistant United States Attorney Nancy D. Cook, an officer of the United States, in

violation of Title 18, United States Code, Section 1114; in violation of Title 18, United States Code, Section 373.

COUNT SIX
(Violation 18 U.S.C. §373)

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

On or about March 17, 2003, the precise date being unknown to the grand jury, in the District of Idaho, the defendant, DAVID ROLAND HINKSON, with the intent that JH engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade JH to engage in such conduct, that is to murder Internal Revenue Service Special Agent Steven M. Hincs, an officer of the United States, in violation of Title 18, United States Code, Section 1114; in violation of Title 18, United States Code, Section 373.

COUNT SEVEN
(Violation 18 U.S.C. §373)

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

Between about December 2002 and February 2003, the precise date being unknown to the grand jury, in the District of Idaho, the defendant, DAVID ROLAND HINKSON, with the intent that EJS engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade EJS to engage in such conduct, that is to murder United States District Court Judge Edward J. Lodge, an officer of

the United States, in violation of Title 18, United States Code, Section 1114; in violation of Title 18, United States Code, Section 373.

COUNT EIGHT
(Violation 18 U.S.C. §373)

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

Between about December 2002 and February 2003, the precise date being unknown to the grand jury, in the District of Idaho, the defendant, DAVID ROLAND HINKSON, with the intent that EJS engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade EJS to engage in such conduct, that is to murder Assistant United States Attorney Nancy D. Cook, an officer of the United States in violation of Title 18, United States Code, Section 1114; in violation of Title 18, United States Code, Section 373.

COUNT NINE
(Violation 18 U.S.C. §373)

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

Between about December 2002 and February 2003, the precise date being unknown to the grand jury, in the District of Idaho, the defendant, DAVID ROLAND HINKSON, with the intent that EJS engage in conduct constituting a felony that has as an element the use of physical force against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, did solicit, command, induce and endeavor to persuade EJS to engage in such conduct, that is to murder Internal Revenue Service Special Agent Steven M. Hines, an

officer of the United States, in violation of Title 18, United States Code, Section 1114; in violation of Title 18, United States Code, Section 373.

COUNT TEN
(Violation 18 U.S.C. §115)

Paragraphs 1 through 10 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

Between about January 2003 and March 31, 2003, the precise date being unknown to the grand jury, in the District of Idaho, the defendant, DAVID ROLAND HINKSON, did unlawfully threaten to murder the children of Nancy D. Cook, Assistant United States Attorney, by stating to AB, a woman living in his house, that he wanted to kill AUSA Cook's children in front of AUSA Cook, with the intent to impede, intimidate, interfere with and retaliate against AUSA Cook on account of the performance of her official duties, in violation of Title 18, United States Code, Section 115(a)(1)(B).

COUNT ELEVEN
(Violation 18 U.S.C. §115)

Paragraphs 1 through 11 of this indictment are hereby realleged in their entirety and incorporated by reference herein.

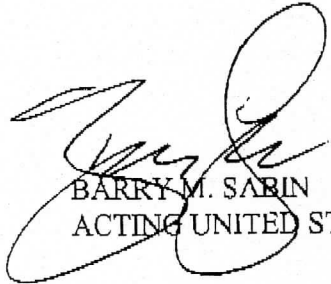
Between about January 2003 and March 31, 2003, the precise date being unknown to the grand jury, in the District of Idaho, the defendant, DAVID ROLAND HINKSON, willfully and unlawfully did threaten to murder the children of Steven M. Hines, Special Agent, Internal Revenue Service, by stating to AB, a woman living in his house, that he wanted to kill Special Agent Hines' children in front of Special Agent Hines, with the intent to impede, intimidate, interfere with and retaliate against Special Agent Hines on account of the performance of his official duties, in violation

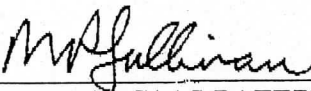
of Title 18, United States Code, Section 115(a)(1)(B).

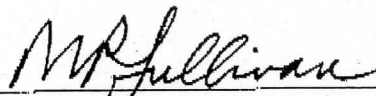
Dated this _____ day of June, 2004.

A TRUE BILL

Kristina J. Crawford,
FOREPERSON


BARRY M. SABIN
ACTING UNITED STATES ATTORNEY


for DENA DOUGLAS-PATTERSON
Trial Attorney
United States Department of Justice


MICHAEL P. SULLIVAN
Special Assistant United States Attorney

CRIMINAL COVERSHEET

DEFENDANT'S NAME: DAVID ROLAND HINKSON

Juvenile: No

DEFENSE ATTORNEY: Wesley Hoyt
 Address: HC 66 Box 313A
 Kooskia, Idaho 83539
 Telephone No.: (208) 926-7553

Service Type: Warrant/ Non-Secret

INVESTIGATING AGENCY & AGENT: William long
 FBI
 208/661-7266

Interpreter: No
 If yes, language:

CR 04-0127-C BLW

CASE INFORMATION: (List any miscellaneous, magistrate, CVB or other related defendants/case numbers.)
 CR No. 02-142-C-EJL; CV 02-171-C-EJL

CRIMINAL CHARGING INFORMATION

Complaint	<u>Yes</u> Indictment	Information	Superseding Indictment
<u>Yes</u> Felony	Class A Misdemeanor	Class B or C Misdemeanor (Petty Offense)	
County of Offense: Idaho		Estimated Trial Time: 15 days	

TITLE/SECTION	COUNTS	BRIEF DESCRIPTION	PENALTIES (Include Supervised Release and Special Assessments)
18 U.S.C. 373	1-9	Solicitation to Commit a Crime of Violence	Not more than 20 years imprisonment; \$125,000 fine; \$100 Special Assessment per count; Not more than 5 years supervised release.
18 U.S.C. 115-(a)(1)(B)	10-11	Influencing, Impeding or Retaliating Against a Federal Official by Threatening or Injuring a Family Member	Not more than 10 years imprisonment; \$250,000 fine; \$100 Special Assessment per count; Not more than 3 years supervised release.

Date: June 22, 2004

DOJ Trial Attorney: Dena Dougla-Patterson
 Telephone No.: (202) 353-3116
M. A. Sullivan

ATTACHMENT C

C. Indictment in case no. 3:02-CR-142-RCT (Structuring).

U.S. COURTS

2002 JUL 18 A 9 49

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COEUR D'ALENE, IDAHO

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ORIGINAL

9 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

10 UNITED STATES OF AMERICA,)

11 Plaintiff,)

12 vs.)

13 DAVID ROLAND HINKSON,)

14 Defendant.)

Criminal Case No.

INDICTMENT CR 02-0142 - C - EJD

FAILURE TO FILE TAX RETURNS (26 U.S.C. § 7203)

FAILURE TO COLLECT EMPLOYMENT TAXES (26 U.S.C. § 7202)

INTRODUCTION OF ADULTERATED AND MISBRANDED DRUGS AND DEVICES INTO INTERSTATE COMMERCE (21 U.S.C. § 331(a))

STRUCTURING TRANSACTIONS TO AVOID REPORTING REQUIREMENTS (31 U.S.C. § 5324(a)(3) & (c)(2), 18 U.S.C. § 2)

FORFEITURE (18 U.S.C. § 982(a)(1) & 31 U.S.C. § 5324(a))

21 The grand jury charges that:

22 INTRODUCTORY ALLEGATIONS

23 At all times relevant to this indictment:

- 24 1. Defendant DAVID ROLAND HINKSON was a resident of Idaho County, Idaho, in the
25 District of Idaho.
26

- 1 2. Defendant **DAVID ROLAND HINKSON** conducted a business as a sole proprietorship
 2 under the name WaterOz, with its principal place of business in Idaho County, Idaho, in
 3 the District of Idaho.
- 4 3. Defendant **DAVID ROLAND HINKSON** annually caused to be professionally prepared
 5 U.S. Individual Income Tax Returns, Forms 1040, which listed his income and tax liability
 6 figures as follows, and submitted said returns to lending institutions in order to secure
 7 loans and other financing, yet failed to file the returns with the Internal Revenue Service or
 8 the Idaho State Tax Commission.

Tax Year	WaterOz Gross Business Receipts	WaterOz Gross Income	WaterOz Net Profit	Defendant's Taxable Income	Defendant's Total Tax Due
1997	\$682,588	\$313,368	\$224,681	\$191,463	\$67,122
1998	\$639,229	\$270,753	\$208,450	\$170,127	\$58,939
1999	\$2,302,145	\$1,273,353	\$733,639	\$712,114	\$283,808
2000	\$4,368,423	\$2,586,496	\$739,233	\$717,259	\$285,949
2001	\$3,877,347	\$2,912,163	\$637,484	\$617,312	\$242,784

- 16
- 17 4. The Internal Revenue Code required employers to withhold employees' shares of Federal
 18 Insurance Contribution Act ("FICA") taxes, which represent social security and medicare
 19 taxes, and federal income taxes from the wages of their employees, and to pay the
 20 withheld amounts to the United States. The FICA and income taxes withheld from the
 21 wages of employees were required to be deposited with an authorized financial institution
 22 or Federal Reserve Bank, at intervals that depend on the amounts withheld. The
 23 employer was required to report the amount of withheld FICA and income taxes on an
 24 Employer's Quarterly Federal Tax Return, Form 941. The Form 941 was required to be
 25 filed quarterly, one month after the conclusion of each quarter.

1 5. Defendant **DAVID ROLAND HINKSON** was an employer, paid wages to employees,
2 and as such was required by law to collect from his employees, account for, and pay over
3 to the Internal Revenue Service federal income taxes and FICA taxes.

4 6. The defendant, **DAVID ROLAND HINKSON**, through WaterOz, manufactured and
5 introduced into interstate commerce various health-related products, including bottled
6 mineral water, sold as "lithium water," "selenium water," and "molybdenum water," as
7 well as "ozone generators" and "ozone body suits," to both wholesale and retail
8 customers, which were marketed to the public as being able to cure, mitigate or treat
9 human diseases, including AIDS, alcoholism, anthrax, cancer, gangrene, and manic
10 depression. The WaterOz manufacturing facility was not registered with the Secretary of
11 the Department of Health and Human Services as a drug or device manufacturer pursuant
12 to Title 21, United States Code, Section 360(c). Likewise, HINKSON, through WaterOz,
13 was engaged in the manufacture, promotion, use, and sale of ozone and ozone generators
14 to both wholesale and retail customers. HINKSON promoted and sold ozone generators
15 and ozone body suits to deliver ozone to the body to treat and mitigate medical conditions
16 of man.

17 7. The United States Food and Drug Administration (FDA) was the federal agency charged
18 with the responsibility of protecting the health and safety of the American public by
19 enforcing the Food, Drug and Cosmetic Act (FDCA). Among the purposes of the FDCA
20 was to ensure that drugs and devices sold for consumption or administration to humans,
21 or for other use by humans, were safe, effective, and bore labeling containing only true
22 and accurate information. The FDA's responsibilities under the FDCA included
23 regulating the manufacture, labeling and distribution of all drugs and devices shipped or
24 received in interstate commerce.

25 8. Under the FDCA, every person upon first engaging in the manufacture, preparation,
26 propagation, compounding or processing of drugs or devices in any establishment he
27

1 owned or operated was required to immediately register his name, places of business, and
2 all such establishments. Title 21, United States Code, Section 360(c). The terms
3 "manufacture, preparation, propagation, compounding or processing" included
4 repackaging or otherwise changing the container, wrapper, or labeling of any drug or
5 device from the original place of manufacture to the person who makes the final sale to
6 the ultimate consumer or user. Title 21, United States Code, Section 360(a)(1).

7 9. The term "labeling" was defined as all labels and other printed or graphic matter upon
8 any article, including drugs and devices, or any of its containers or wrappers, or
9 accompanying such articles. Title 21, United States Code, Section 321(m).

10 10. Under the FDCA, drugs were defined as articles intended for use in the cure, mitigation,
11 treatment or prevention of disease in man (Title 21, United States Code, Section
12 321(g)(1)(B)); articles intended to affect the structure or function of the body of man
13 (Title 21, United States Code, Section 321(g)(1)(C)); or articles intended for use as
14 components of other drugs (Title 21, United States Code, Section 321(g)(1)(D)).

15 11. A drug was misbranded if, among other things:

- 16 a. its labeling was false or misleading in any particular (Title 21, United States Code,
17 Section 352(a));
- 18 b. the labeling on the drug did not bear adequate directions for use (Title 21, United
19 States Code, Section 352 (f)(1));
- 20 c. the labeling on the drug did not bear such adequate warnings against use in those
21 pathological conditions, and by children where its use may be dangerous to health,
22 and against unsafe dosage and methods and duration of administration and
23 application, in such manner and form, as were necessary for the protection of
24 users (Title 21, United States Code, Section 352(f)(2));
- 25
26
27

- 1 d. the drug was dangerous to health when used in the dosage and manner and with
2 the frequency and duration prescribed, recommended, and suggested in the
3 labeling thereof (Title 21, United States Code, Section 352(j));
- 4 e. it was manufactured, prepared, propagated, compounded or processed in an
5 establishment in a state not duly registered with the Secretary of Health and
6 Human Services pursuant to Title 21, United States Code, Section 360. (Title 21,
7 United States Code, Section 352(o)); or
- 8 f. the drug was a prescription drug dispensed without a prescription (Title 21,
9 United States Code, Section 353(b)(1)).

10 12. A drug was adulterated if, among other things:

- 11 a. the methods used in, or the controls used for, its manufacture, processing,
12 packing or holding did not conform to or were not operated or administered in
13 conformity with current Good Manufacturing Practice ("GMP") to assure that
14 such drug met the requirements of the FDCA as to safety and had the identity,
15 strength, quality and purity characteristics which it purported or represented to
16 possess. Title 21, United States Code, Section 351(a)(2)(B);
- 17 b. its strength differed from, or its purity or quality fell below, that which it
18 purported or was represented to possess. Title 21, United States Code, Section
19 351 (c).

20 13. Under the FDCA, a "device" was defined, in relevant part, as "an instrument, apparatus,
21 implement, machine, contrivance . . . or other similar or related article, including any
22 component, part, or accessory, which is . . . intended for use in the diagnosis of disease or
23 other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or
24 other animals, or . . . intended to affect the structure or any function of the body of man or
25 other animals, and which does not achieve its primary intended purposes through
26 chemical action within or on the body of man or other animals and which is not

1 dependent upon being metabolized for the achievement of its primary intended purposes."
2 (Title 21, United States Code, Sections 321(h)(2) and (3)).

3 14. Pursuant to Title 21, United States Code, Section 360c(f)(1), any device that was not in
4 commercial distribution prior to May 28, 1976, was initially classified as a Class III
5 device unless it was shown to be substantially equivalent to a device marketed prior to
6 May 28, 1976.

7 15. Ozone generators were Class III devices within the meaning of Title 21, United States
8 Code, Section 360c.

9 16. Pursuant to Title 21, United States Code, Section 360e(a)(2), a device classified as a
10 Class III device pursuant to Title 21, United States Code, Section 360c(f)(1) was required
11 to have FDA approval of an application for premarket approval ("PMA"). If the
12 manufacturer or sponsor of the device believed their device was substantially equivalent
13 to an existing device marketed before May 28, 1976, they could submit a pre-market
14 notification, or "510(k) notification," pursuant to Title 21, United States Code, Section
15 360(k), instead of the PMA, and attempt to establish to the FDA's satisfaction that the
16 new device was substantially equivalent to the existing device. Pursuant to Title 21,
17 United States Code, Section 360j(g), if a firm wanted to use a device on humans on an
18 experimental basis to obtain the required information with which to file a PMA or 510(k)
19 notification, the firm was required to submit to the FDA an application for an
20 investigational device exemption ("IDE") for permission to use such device.

21 17. Under Title 21, United States Code, Section 360(c) of the FDCA, every person, upon
22 first engaging in the manufacture of a device, was required to immediately register with
23 the Secretary of Health and Human Services his or her name, place of business, and the
24 establishment where the device was manufactured.

25 18. A device was misbranded if, among other things:

1 dependent upon being metabolized for the achievement of its primary intended purposes."
2 (Title 21, United States Code, Sections 321(h)(2) and (3)).

3 14. Pursuant to Title 21, United States Code, Section 360c(f)(1), any device that was not in
4 commercial distribution prior to May 28, 1976, was initially classified as a Class III
5 device unless it was shown to be substantially equivalent to a device marketed prior to
6 May 28, 1976.

7 15. Ozone generators were Class III devices within the meaning of Title 21, United States
8 Code, Section 360c.

9 16. Pursuant to Title 21, United States Code, Section 360e(a)(2), a device classified as a
10 Class III device pursuant to Title 21, United States Code, Section 360c(f)(1) was required
11 to have FDA approval of an application for premarket approval ("PMA"). If the
12 manufacturer or sponsor of the device believed their device was substantially equivalent
13 to an existing device marketed before May 28, 1976, they could submit a pre-market
14 notification, or "510(k) notification," pursuant to Title 21, United States Code, Section
15 360(k), instead of the PMA, and attempt to establish to the FDA's satisfaction that the
16 new device was substantially equivalent to the existing device. Pursuant to Title 21,
17 United States Code, Section 360j(g), if a firm wanted to use a device on humans on an
18 experimental basis to obtain the required information with which to file a PMA or 510(k)
19 notification, the firm was required to submit to the FDA an application for an
20 investigational device exemption ("IDE") for permission to use such device.

21 17. Under Title 21, United States Code, Section 360(c) of the FDCA, every person, upon
22 first engaging in the manufacture of a device, was required to immediately register with
23 the Secretary of Health and Human Services his or her name, place of business, and the
24 establishment where the device was manufactured.

25 18. A device was misbranded if, among other things:

- 1 a. its labeling was false or misleading in any particular (Title 21, United States
2 Code, Section 352(a));
3 b. the labeling on the device did not bear adequate directions for use (Title 21,
4 United States Code, Section 352 (f)(1)); or
5 c. it was manufactured, prepared, propagated, compounded or processed in an
6 establishment, in a state, not duly registered with the Secretary of Health and
7 Human Services pursuant to Title 21, United States Code, Section 360. (Title 21,
8 United States Code, Section 352(o)).

9 19. A Class III device was deemed to be adulterated if, among other things, it was not the
10 subject of an approved application for premarket approval under Title 21, United States
11 Code, Section 360e(a) and was not exempt from FDA's premarket approval requirements
12 under Title 21, United States Code, Section 360j(g) (Title 21, United States Code,
13 Section 351(f)(1)(B)).

14 **COUNTS ONE THROUGH THREE**
15 **26 U.S.C. § 7203**
16 **Willful Failure to File Income Tax Return**

17 **COUNT ONE**

18 20. Paragraphs 1 through 3 are hereby realleged and incorporated by reference as if set forth
19 in full herein;

20 21. During the calendar year 1997, defendant **DAVID ROLAND HINKSON** received
21 sufficient gross income that he was required by law, following the close of the calendar
22 year 1997, and on or before April 15, 1998, to make an income tax return to the District
23 Director of the Internal Revenue Service for the Rocky Mountain District, at Denver,
24 Colorado, or the District Director's Representative, at Boise or Coeur d'Alene, in the
25 District of Idaho, or to the Director of the Internal Revenue Service Center, at Ogden,
26 Utah, or another proper officer of the United States, stating specifically the items of his
27 gross income and any deductions and credits to which he was entitled;

1 22. Well knowing all of the foregoing, defendant **DAVID ROLAND HINKSON**
2 did willfully fail to make said income tax return to the District Director of the Internal
3 Revenue Service, to the District Director's Representative to the Director of the Internal
4 Revenue Service Center, or to any other proper officer of the United States;
5 All in violation of Title 26, United States Code, Section 7203.

6 **COUNT TWO**

7 23. Paragraphs 1 through 3 are hereby realleged and incorporated by reference as if set forth
8 in full herein;

9 24. During the calendar year 1998, defendant **DAVID ROLAND HINKSON** received
10 sufficient gross income that he was required by law, following the close of the calendar
11 year 1998, and on or before April 15, 1999, to make an income tax return to the District
12 Director of the Internal Revenue Service for the Rocky Mountain District, at Denver,
13 Colorado, or the District Director's Representative, at Boise or Coeur d'Alene, in the
14 District of Idaho, or to the Director, Internal Revenue Service Center, at Ogden, Utah, or
15 other proper officer of the United States, stating specifically the items of his gross income
16 and any deductions and credits to which he was entitled;

17 25. Well knowing all of the foregoing, defendant **DAVID ROLAND HINKSON** did
18 willfully fail to make said income tax return to the District Director of the Internal
19 Revenue Service, to the District Director's Representative, to the Director of the Internal
20 Revenue Service Center, or to any other proper officer of the United States;
21 All in violation of Title 26, United States Code, Section 7203.

22 **COUNT THREE**

23 26. Paragraphs 1 through 3 are hereby realleged and incorporated by reference as if set forth
24 in full herein;

25 27. During the calendar year 1999, defendant **DAVID ROLAND HINKSON** received
26 sufficient gross income that he was required by law, following the close of the calendar
27

1 year 1999, and on or before April 17, 2000, to make an income tax return to the District
2 Director of the Internal Revenue Service for the Rocky Mountain District, at Denver,
3 Colorado, or the District Director's Representative, at Boise or Coeur d'Alene, in the
4 District of Idaho, or to the Director, Internal Revenue Service Center, at Ogden, Utah, or
5 other proper officer of the United States, stating specifically the items of his gross income
6 and any deductions and credits to which he was entitled;

7 28. Well knowing all of the foregoing, defendant **DAVID ROLAND HINKSON** did
8 willfully fail to make said income tax return to the District Director of the Internal
9 Revenue Service, to the District Director's Representative, to the Director of the Internal
10 Revenue Service Center, or to any other proper officer of the United States;
11 All in violation of Title 26, United States Code, Section 7203.

12 **COUNTS FOUR THROUGH SIXTEEN**
13 **26 U.S.C. § 7202**
Willful Failure to Collect Federal Taxes

14 **COUNT FOUR**

15 29. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
16 in full herein;

17 30. During the third quarter of 1997, in the District of Idaho, defendant **DAVID ROLAND**
18 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
19 required by law to collect federal income taxes and FICA taxes;

20 31. On or about October 31, 1997, in the District of Idaho, defendant **DAVID ROLAND**
21 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
22 Service the federal income taxes or FICA taxes due and owing to the United States of
23 America for the said quarter, ending September 30, 1997;

24 All in violation of Title 26, United States Code, Section 7202.

COUNT FIVE

1
2 32. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
3 in full herein;

4 33. During the fourth quarter of 1997, in the District of Idaho, defendant **DAVID ROLAND**
5 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
6 required by law to collect federal income taxes and FICA taxes;

7 34. On or about January 31, 1998, in the District of Idaho, defendant **DAVID ROLAND**
8 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
9 Service the federal income taxes or FICA taxes due and owing to the United States of
10 America for the said quarter, ending December 31, 1997;

11 All in violation of Title 26, United States Code, Section 7202.

COUNT SIX

12
13 35. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
14 in full herein;

15 36. During the first quarter of 1998, in the District of Idaho, defendant **DAVID ROLAND**
16 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
17 required by law to collect federal income taxes and FICA taxes;

18 37. On or about April 30, 1998, in the District of Idaho, defendant **DAVID ROLAND**
19 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
20 Service the federal income taxes or FICA taxes due and owing to the United States of
21 America for the said quarter, ending March 31, 1998;

22 All in violation of Title 26, United States Code, Section 7202.
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COUNT SEVEN

1
2 38. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
3 in full herein;

4 39. During the second quarter of 1998, in the District of Idaho, defendant **DAVID ROLAND**
5 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
6 required by law to collect federal income taxes and FICA taxes;

7 40. On or about July 31, 1998, in the District of Idaho, defendant **DAVID ROLAND**
8 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
9 Service the federal income taxes or FICA taxes due and owing to the United States of
10 America for the said quarter, ending June 30, 1998;

11 All in violation of Title 26, United States Code, Section 7202.

COUNT EIGHT

12
13 41. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
14 in full herein;

15 42. During the third quarter of 1998, in the District of Idaho, defendant **DAVID ROLAND**
16 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
17 required by law to collect federal income taxes and FICA taxes;

18 43. On or about October 31, 1998, in the District of Idaho, defendant **DAVID ROLAND**
19 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
20 Service the federal income taxes or FICA taxes due and owing to the United States of
21 America for the said quarter, ending September 30, 1998;

22 All in violation of Title 26, United States Code, Section 7202.

COUNT NINE

1
2 44. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
3 in full herein;

4 45. During the fourth quarter of 1998, in the District of Idaho, defendant **DAVID ROLAND**
5 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
6 required by law to collect federal income taxes and FICA taxes;

7 46. On or about January 31, 1999, in the District of Idaho, defendant **DAVID ROLAND**
8 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
9 Service the federal income taxes or FICA taxes due and owing to the United States of
10 America for the said quarter, ending December 31, 1998;

11 All in violation of Title 26, United States Code, Section 7202.

COUNT TEN

12
13 47. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
14 in full herein;

15 48. During the first quarter of 1999, in the District of Idaho, defendant **DAVID ROLAND**
16 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
17 required by law to collect federal income taxes and FICA taxes;

18 49. On or about April 30, 1999, in the District of Idaho, defendant **DAVID ROLAND**
19 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
20 Service the federal income taxes or FICA taxes due and owing to the United States of
21 America for the said quarter, ending March 31, 1999;

22 All in violation of Title 26, United States Code, Section 7202.

COUNT NINE

1
2 44. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
3 in full herein;

4 45. During the fourth quarter of 1998, in the District of Idaho, defendant **DAVID ROLAND**
5 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
6 required by law to collect federal income taxes and FICA taxes;

7 46. On or about January 31, 1999, in the District of Idaho, defendant **DAVID ROLAND**
8 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
9 Service the federal income taxes or FICA taxes due and owing to the United States of
10 America for the said quarter, ending December 31, 1998;

11 All in violation of Title 26, United States Code, Section 7202.

COUNT TEN

12
13 47. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
14 in full herein;

15 48. During the first quarter of 1999, in the District of Idaho, defendant **DAVID ROLAND**
16 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
17 required by law to collect federal income taxes and FICA taxes;

18 49. On or about April 30, 1999, in the District of Idaho, defendant **DAVID ROLAND**
19 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
20 Service the federal income taxes or FICA taxes due and owing to the United States of
21 America for the said quarter, ending March 31, 1999;

22 All in violation of Title 26, United States Code, Section 7202.

COUNT ELEVEN

1
2 50. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
3 in full herein;

4 51. During the second quarter of 1999, in the District of Idaho, defendant **DAVID ROLAND**
5 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
6 required by law to collect federal income taxes and FICA taxes;

7 52. On or about July 31, 1999, in the District of Idaho, defendant **DAVID ROLAND**
8 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
9 Service the federal income taxes or FICA taxes due and owing to the United States of
10 America for the said quarter, ending June 30, 1999;

11 All in violation of Title 26, United States Code, Section 7202.

COUNT TWELVE

12
13 53. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
14 in full herein;

15 54. During the third quarter of 1999, in the District of Idaho, defendant **DAVID ROLAND**
16 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
17 required by law to collect federal income taxes and FICA taxes;

18 55. On or about October 31, 1999, in the District of Idaho, defendant **DAVID ROLAND**
19 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
20 Service the federal income taxes or FICA taxes due and owing to the United States of
21 America for the said quarter, ending September 30, 1999;

22 All in violation of Title 26, United States Code, Section 7202.

COUNT THIRTEEN

1
2 56. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
3 in full herein;

4 57. During the fourth quarter of 1999, in the District of Idaho, defendant **DAVID ROLAND**
5 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
6 required by law to collect federal income taxes and FICA taxes;

7 58. On or about January 31, 2000, in the District of Idaho, defendant **DAVID ROLAND**
8 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
9 Service the federal income taxes or FICA taxes due and owing to the United States of
10 America for the said quarter, ending December 31, 1999;

11 All in violation of Title 26, United States Code, Section 7202.

12 **COUNT FOURTEEN**

13 59. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
14 in full herein;

15 60. During the first quarter of 2000, in the District of Idaho, defendant **DAVID ROLAND**
16 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
17 required by law to collect federal income taxes and FICA taxes;

18 61. On or about April 30, 2000, in the District of Idaho, defendant **DAVID ROLAND**
19 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
20 Service the federal income taxes or FICA taxes due and owing to the United States of
21 America for the said quarter, ending March 31, 2000;

22 All in violation of Title 26, United States Code, Section 7202.

COUNT FIFTEEN

1
2 62. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
3 in full herein;

4 63. During the second quarter of 2000, in the District of Idaho, defendant **DAVID ROLAND**
5 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
6 required by law to collect federal income taxes and FICA taxes;

7 64. On or about July 31, 2000, in the District of Idaho, defendant **DAVID ROLAND**
8 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
9 Service the federal income taxes or FICA taxes due and owing to the United States of
10 America for the said quarter, ending June 30, 2000;

11 All in violation of Title 26, United States Code, Section 7202.

COUNT SIXTEEN

12
13 65. Paragraphs 1, 2, 4, and 5 are hereby realleged and incorporated by reference as if set forth
14 in full herein;

15 66. During the third quarter of 2000, in the District of Idaho, defendant **DAVID ROLAND**
16 **HINKSON**, doing business as WaterOz, paid wages to employees, from which he was
17 required by law to collect federal income taxes and FICA taxes;

18 67. On or about October 31, 2000, in the District of Idaho, defendant **DAVID ROLAND**
19 **HINKSON** did willfully fail to collect, account for, and pay over to the Internal Revenue
20 Service the federal income taxes or FICA taxes due and owing to the United States of
21 America for the said quarter, ending September 30, 2000;

22 All in violation of Title 26, United States Code, Section 7202.
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COUNTS SEVENTEEN THROUGH TWENTY

**21 U.S.C. § 331(a)
Misbranded Drug**

COUNT SEVENTEEN

68. Paragraphs 2 and 6 through 12 are hereby realleged and incorporated by reference as if set forth in full herein;

69. On or about January 22, 2002, within the District of Idaho and elsewhere, defendant **DAVID ROLAND HINKSON** did introduce and cause to be delivered for introduction into interstate commerce, to Pinole, California, a bottle of WaterOz Lithium product, a drug within the meaning of Title 21, United States Code, Section 321(g)(1)(B), in that it was intended for use in treating, among other things, alcoholism, manic depression, and mental instability in man, which was misbranded in the following ways:

- a. within the meaning of Title 21, United States Code, Section 352(a), in that its labeling was false or misleading in any manner, in that the labeling claimed the product contained "30+/- parts per million" Lithium, when it actually contained approximately 2.5 parts per million of Lithium.
- b. within the meaning of Title 21, United States Code, Section 352(f)(1), in that the labeling on the drug did not bear adequate direction for use;
- c. within the meaning of Title 21, United States Code, Section 352(o), in that the drug was manufactured, prepared and processed in the WaterOz facility in Idaho County, Idaho, which was an establishment in a state not duly registered under Title 21, United States Code, Section 360.

All in violation of Title 21, United States Code, Sections 331(a) and 333(a)(1).

COUNT EIGHTEEN

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70. Paragraphs 2 and 6 through 12 are hereby realleged and incorporated by reference as if set forth in full herein;

71. On or about January 22, 2002, within the District of Idaho and elsewhere, defendant **DAVID ROLAND HINKSON** did introduce and cause to be delivered for introduction into interstate commerce, to Pinole, California, a bottle of WaterOz Molybdenum product, a drug within the meaning of Title 21, United States Code, Section 321(g)(1)(B) in that it was intended for use in treating cancer, AIDS, acne, allergies, asthma, Bell's Palsy, canker sores, colds and flu, Down's Syndrome, Eczema, Epstein Barr virus, gout, Gulf War Syndrome, Hepatitis C, Herpes Simplex, impotence, incontinence, insomnia, irritable bowel syndrome, cirrhosis, lupus, multiple sclerosis, parasites, phlebitis, prostate infections, ringworm, sinusitis, and varicose veins in man, which was misbranded in the following ways:

- a. within the meaning of Title 21, United States Code, Section 352(a), in that its labeling was false or misleading in any manner, in that the labeling claimed the product contained "50+/- parts per million" Molybdenum, when it actually contained approximately 6.2 parts per million of Molybdenum.
- b. within the meaning of Title 21, United States Code, Section 352(f)(1), in that the labeling on the drug did not bear adequate direction for use; and
- c. within the meaning of Title 21, United States Code, Section 352(o), in that the drug was manufactured, prepared and processed in the WaterOz facility in Idaho County, Idaho, which was an establishment in a state not duly registered under Title 21, United States Code, Section 360.

All in violation of Title 21, United States Code, Sections 331(a) and 333(a)(1).

COUNT NINETEEN

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2 72. Paragraphs 2 and 6 through 12 are hereby realleged and incorporated by reference as if
3 set forth in full herein;

4 73. On or about January 22, 2002, within the District of Idaho and elsewhere, defendant
5 **DAVID ROLAND HINKSON** did introduce and cause to be delivered for introduction
6 into interstate commerce, to Pinole, California, a bottle of WaterOz Tin product, a drug
7 within the meaning of Title 21, United States Code, Section 321(g)(1)(B) in that it was
8 intended for use in treating shingles, a disease of man, which was misbranded in the
9 following ways:

- 10 a. within the meaning of Title 21, United States Code, Section 352(a), in that its
11 labeling was false or misleading in any manner, in that the labeling claimed the
12 product contained "100+/- parts per million" Tin, when it actually contained
13 approximately 1 part per million of Tin.
- 14 b. within the meaning of Title 21, United States Code, Section 352(f)(1), in that the
15 labeling on the drug did not bear adequate direction for use; and
- 16 c. within the meaning of Title 21, United States Code, Section 352(o), in that the
17 drug was manufactured, prepared and processed in the WaterOz facility in Idaho
18 County, Idaho, which was an establishment in a state not duly registered under
19 Title 21, United States Code, Section 360.

20 All in violation of Title 21, United States Code, Sections 331(a) and 333(a)(1).

COUNT TWENTY

21
22 74. Paragraphs 2 and 6 through 12 are hereby realleged and incorporated by reference as if
23 set forth in full herein;

24 75. On or about January 22, 2002, within the District of Idaho and elsewhere, defendant
25 **DAVID ROLAND HINKSON** did introduce and cause to be delivered for introduction
26 into interstate commerce, to Pinole, California, a bottle of WaterOz Selenium product, a
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1 drug within the meaning of Title 21, United States Code, Section 321(g)(1)(B) in that it
2 was intended for use in treating cancer, AIDS, Attention Deficit Disorder ("ADD"),
3 Alzheimer's, appendicitis, Candidiasis, ovarian cysts, Down's Syndrome, emphysema,
4 glaucoma, heart arrhythmia and heart failure, hemorrhoids, Hepatitis C, high cholesterol,
5 infertility, cirrhosis, lupus, macular degeneration, multiple sclerosis, Parkinson's disease,
6 psoriasis, tremors and whooping cough in man, which was misbranded in the following
7 ways:

- 8 a. within the meaning of Title 21, United States Code, Section 352(a), in that its
9 labeling was false or misleading in any manner, in that the labeling claimed the
10 product contained "75+/- parts per million" Selenium, when it actually contained
11 approximately 26 parts per million of Selenium.
- 12 b. within the meaning of Title 21, United States Code, Section 352(f)(1), in that the
13 labeling on the drug did not bear adequate direction for use; and
- 14 c. within the meaning of Title 21, United States Code, Section 352(o), in that the
15 drug was manufactured, prepared and processed in the WaterOz facility in Idaho
16 County, Idaho, which was an establishment in a state not duly registered under
17 Title 21, United States Code, Section 360.

18 All in violation of Title 21, United States Code, Sections 331(a) and 333(a)(1).

19 COUNTS TWENTY-ONE THROUGH TWENTY-FOUR

20 21 U.S.C. § 331(a)
21 Adulterated Drug

22 COUNT TWENTY-ONE

23 76. Paragraphs 2 and 6 through 12 are hereby realleged and incorporated by reference as if
24 set forth in full herein;

25 77. On or about January 22, 2002, within the District of Idaho and elsewhere, defendant
26 **DAVID ROLAND HINKSON** did introduce and cause to be delivered for introduction
27 into interstate commerce, to Pinole, California, a bottle of WaterOz Lithium product, a

1 drug, which was adulterated as defined at Title 21, United States Code, Section 351(c),
2 in that its strength differed from, or its purity or quality fell below, that which it was
3 purported and represented to possess, to wit: the labeling for the WaterOz Lithium
4 product purported that it contained 30 +/- parts per million of Lithium, whereas it actually
5 only contained approximately 2.5 parts per million of Lithium, in violation of Title 21,
6 United States Code, Sections 331(a) and 333(a)(1).

7 **COUNT TWENTY-TWO**

8 78. Paragraphs 2 and 6 through 12 are hereby realleged and incorporated by reference as if
9 set forth in full herein;

10 79. On or about January 22, 2002, within the District of Idaho and elsewhere, defendant
11 **DAVID ROLAND HINKSON** did introduce and cause to be delivered for introduction
12 into interstate commerce, to Pinole, California, a bottle of WaterOz Molybdenum
13 product, a drug, which was adulterated as defined at Title 21, United States Code,
14 Section 351(c), in that its strength differed from, or its purity or quality fell below, that
15 which it was purported and represented to possess, to wit: the labeling for the WaterOz
16 Molybdenum product purported that it contained 50 +/- parts per million of Molybdenum,
17 whereas it actually only contained approximately 6.2 parts per million of Molybdenum, in
18 violation of Title 21, United States Code, Sections 331(a) and 333(a)(1).

19 **COUNT TWENTY-THREE**

20 80. Paragraphs 2 and 6 through 12 are hereby realleged and incorporated by reference as if
21 set forth in full herein;

22 81. On or about January 22, 2002, within the District of Idaho and elsewhere, defendant
23 **DAVID ROLAND HINKSON** did introduce and cause to be delivered for introduction
24 into interstate commerce, to Pinole, California, a bottle of WaterOz Tin product, a drug,
25 which was adulterated as defined at Title 21, United States Code, Section 351(c), in that
26 its strength differed from, or its purity or quality fell below, that which it was purported
27

1 drug, which was adulterated as defined at Title 21, United States Code, Section 351(c),
2 in that its strength differed from, or its purity or quality fell below, that which it was
3 purported and represented to possess, to wit: the labeling for the WaterOz Lithium
4 product purported that it contained 30 +/- parts per million of Lithium, whereas it actually
5 only contained approximately 2.5 parts per million of Lithium, in violation of Title 21,
6 United States Code, Sections 331(a) and 333(a)(1).

7 **COUNT TWENTY-TWO**

8 78. Paragraphs 2 and 6 through 12 are hereby realleged and incorporated by reference as if
9 set forth in full herein;

10 79. On or about January 22, 2002, within the District of Idaho and elsewhere, defendant
11 **DAVID ROLAND HINKSON** did introduce and cause to be delivered for introduction
12 into interstate commerce, to Pinole, California, a bottle of WaterOz Molybdenum
13 product, a drug, which was adulterated as defined at Title 21, United States Code,
14 Section 351(c), in that its strength differed from, or its purity or quality fell below, that
15 which it was purported and represented to possess, to wit: the labeling for the WaterOz
16 Molybdenum product purported that it contained 50 +/- parts per million of Molybdenum,
17 whereas it actually only contained approximately 6.2 parts per million of Molybdenum, in
18 violation of Title 21, United States Code, Sections 331(a) and 333(a)(1).

19 **COUNT TWENTY-THREE**

20 80. Paragraphs 2 and 6 through 12 are hereby realleged and incorporated by reference as if
21 set forth in full herein;

22 81. On or about January 22, 2002, within the District of Idaho and elsewhere, defendant
23 **DAVID ROLAND HINKSON** did introduce and cause to be delivered for introduction
24 into interstate commerce, to Pinole, California, a bottle of WaterOz Tin product, a drug,
25 which was adulterated as defined at Title 21, United States Code, Section 351(c), in that
26 its strength differed from, or its purity or quality fell below, that which it was purported
27

1 and represented to possess, to wit: the labeling for the WaterOz Tin product purported
2 that it contained 100 +/- parts per million of Tin, whereas it actually only contained
3 approximately 1 part per million of Tin, in violation of Title 21, United States Code,
4 Sections 331(a) and 333(a)(1).

5 **COUNT TWENTY-FOUR**

6 82. Paragraphs 2 and 6 through 12 are hereby realleged and incorporated by reference as if
7 set forth in full herein;

8 83. On or about January 22, 2002, within the District of Idaho and elsewhere, defendant
9 **DAVID ROLAND HINKSON** did introduce and cause to be delivered for introduction
10 into interstate commerce, to Pinole, California, a bottle of WaterOz Selenium product, a
11 drug, which was adulterated as defined at Title 21, United States Code, Section 351(c),
12 in that its strength differed from, or its purity or quality fell below, that which it was
13 purported and represented to possess, to wit: the labeling for the WaterOz Selenium
14 product purported that it contained 75 +/- parts per million of Selenium, whereas it
15 actually only contained approximately 26 parts per million of Selenium, in violation of
16 Title 21, United States Code, Sections 331(a) and 333(a)(1).

17 **COUNT TWENTY-FIVE**
18 **21 U.S.C. § 331(a)**
Misbranded Device

19 84. Paragraphs 2, 6 through 9, and 13 through 19 are hereby realleged and incorporated by
20 reference as if set forth in full herein;

21 85. The ozone generators manufactured by, and caused to be manufactured, sold, promoted,
22 and distributed by and on behalf of the defendant **DAVID ROLAND HINKSON**, were
23 devices within the meaning of Title 21, United States Code, Section 321(h), because
24 they were an instrument, apparatus, implement, machine, and contrivance intended for
25 use to treat cancer, gangrene, and other diseases in man, which did not achieve its primary
26 intended purposes through chemical action within or on the body of man or other animals
27

1 and which was not dependent upon being metabolized for the achievement of its primary
2 intended purposes.

3 86. The ozone generators manufactured, sold, promoted, and distributed by and on behalf of
4 the defendant were Class III devices within the meaning of Title 21, United States Code,
5 Section 360c, for which no approved application for premarket approval was in effect
6 pursuant to Title 21, United States Code, Section 360e and no investigational device
7 exemption was in effect pursuant to Title 21, United States Code, Section 360j(g).

8 87. On or about April 4, 2002, in the District of Idaho, defendant **DAVID ROLAND**
9 **HINKSON** did introduce and deliver for introduction into interstate commerce to Pinole,
10 California, a device, an ozone generator, which was misbranded in the following manner:

- 11 a. its labeling was false or misleading in any particular, in that the labeling purported
12 that the device would generate device 1 (one) gram of ozone per hour, when in
13 actuality it only produced 0.05 gram of ozone per hour of operation. This
14 corresponds to 5% of the amount claimed by HINKSON. (Title 21, United States
15 Code, Section 352(a));
- 16 b. the labeling on the drug did not bear adequate directions for use (Title 21, United
17 States Code, Section 352 (f)(1)); and
- 18 c. it was manufactured, prepared, propagated, compounded or processed in an
19 establishment in a state not duly registered with the Secretary of Health and
20 Human Services pursuant to Title 21, United States Code, Section 360. (Title 21,
21 United States Code, Section 352(o));

22 All in violation of Title 21, United States Code, Sections 331(a) and 333(a)(1).
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COUNT TWENTY-SIX
21 U.S.C. § 331(a)
Adulterated Device

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3 88. Paragraphs 2, 6 through 9, 13 through 19, and 85 and 86 are hereby realleged and
4 incorporated by reference as if set forth in full herein;

5 89. On or about April 4, 2002, in the District of Idaho, defendant **DAVID ROLAND**
6 **HINKSON** did introduce and deliver for introduction into interstate commerce, to
7 Oakland, California, a device, an ozone generator, which was adulterated within the
8 meaning of Title 21, United States Code, Section 351(f)(1)(B) in that it was a Class III
9 device pursuant to Title 21, United States Code, Section 360c(f)(1) and no approved
10 application for premarket approval was in effect pursuant to Title 21, United States Code,
11 Section 360e, and no investigational device exemption was in effect pursuant to Title 21,
12 United States Code, Section 360j(g);

13 All in violation of Title 21, United States Code, Sections 331(a) and 333(a)(1).

14 **COUNTS TWENTY-SEVEN THROUGH FORTY-TWO**
15 **31 U.S.C. §§ 5324(a)(3) and (c)(2) and 18 U.S.C. § 2**
Structuring Transactions and Aiding and Abetting

16 90. On or about the dates set forth below, in the District of Idaho, the defendant,

17 **DAVID ROLAND HINKSON,**

18 aided and abetted by those known and unknown to the grand jury, in Counts 27 through
19 42, did knowingly and for the purpose of evading the reporting requirements of section
20 5313(a) of Title 31, United States Code, and the regulations promulgated thereunder,
21 structured and assisted in structuring, and attempted to structure and assist in structuring,
22 the following transactions with a domestic financial institution, Kamiah Community
23 Credit Union, and did so while violating others laws of the United States, as further
24 described below:

<u>COUNT</u>	<u>DATE</u>	<u>AMOUNT OF CASH WITHDRAWN</u>	<u>CHECK NUMBER</u>
27	11/02/00	\$9,000.00	1173
	11/03/00	\$4,000.00	1266
28	11/09/00	\$9,000.00	1309
	11/09/00	\$5,000.00	1228
29	11/16/00	\$9,000.00	1328
	11/16/00	\$2,000.00	1364
30	11/22/00	\$9,000.00	1353
	11/22/00	\$4,000.00	1369
	11/22/00	\$4,000.00	1397
31	12/07/00	\$9,000.00	1526
	12/08/00	\$5,000.00	1540
32	12/13/00	\$9,000.00	1686
	12/14/00	\$3,900.00	1500
	12/14/00	\$3,900.00	1501
33	12/21/00	\$9,000.00	1699
	12/22/00	\$5,500.00	1700
34	12/28/00	\$9,000.00	1673
	12/28/00	\$2,500.00	1753
	12/29/00	\$2,000.00	1719
35	01/04/01	\$9,000.00	1730
	01/05/01	\$3,000.00	1674
36	01/11/01	\$9,000.00	1677
	01/12/01	\$5,000.00	2386
37	01/18/01	\$9,000.00	2404
	01/19/01	\$4,000.00	2409
	01/19/01	\$4,000.00	1880
38	01/25/01	\$9,000.00	2430
	01/26/01	\$4,000.00	2433
39	02/01/01	\$9,000.00	2439
	02/02/01	\$5,000.00	2444
40	02/08/01	\$9,000.00	2456
	02/09/01	\$5,000.00	2460
41	02/15/01	\$9,000.00	2472
	02/16/01	\$6,000.00	2476
INDICTMENT - 24			

<u>COUNT</u>	<u>DATE</u>	<u>AMOUNT OF CASH WITHDRAWN</u>	<u>CHECK NUMBER</u>
27	11/02/00	\$9,000.00	1173
	11/03/00	\$4,000.00	1266
28	11/09/00	\$9,000.00	1309
	11/09/00	\$5,000.00	1228
29	11/16/00	\$9,000.00	1328
	11/16/00	\$2,000.00	1364
30	11/22/00	\$9,000.00	1353
	11/22/00	\$4,000.00	1369
	11/22/00	\$4,000.00	1397
31	12/07/00	\$9,000.00	1526
	12/08/00	\$5,000.00	1540
32	12/13/00	\$9,000.00	1686
	12/14/00	\$3,900.00	1500
	12/14/00	\$3,900.00	1501
33	12/21/00	\$9,000.00	1699
	12/22/00	\$5,500.00	1700
34	12/28/00	\$9,000.00	1673
	12/28/00	\$2,500.00	1753
	12/29/00	\$2,000.00	1719
35	01/04/01	\$9,000.00	1730
	01/05/01	\$3,000.00	1674
36	01/11/01	\$9,000.00	1677
	01/12/01	\$5,000.00	2386
37	01/18/01	\$9,000.00	2404
	01/19/01	\$4,000.00	2409
	01/19/01	\$4,000.00	1880
38	01/25/01	\$9,000.00	2430
	01/26/01	\$4,000.00	2433
39	02/01/01	\$9,000.00	2439
	02/02/01	\$5,000.00	2444
40	02/08/01	\$9,000.00	2456
	02/09/01	\$5,000.00	2460
41	02/15/01	\$9,000.00	2472
	02/16/01	\$6,000.00	2476
INDICTMENT - 24			

<u>COUNT</u>	<u>DATE</u>	<u>AMOUNT OF CASH WITHDRAWN</u>	<u>CHECK NUMBER</u>
27	11/02/00	\$9,000.00	1173
	11/03/00	\$4,000.00	1266
28	11/09/00	\$9,000.00	1309
	11/09/00	\$5,000.00	1228
29	11/16/00	\$9,000.00	1328
	11/16/00	\$2,000.00	1364
30	11/22/00	\$9,000.00	1353
	11/22/00	\$4,000.00	1369
	11/22/00	\$4,000.00	1397
31	12/07/00	\$9,000.00	1526
	12/08/00	\$5,000.00	1540
32	12/13/00	\$9,000.00	1686
	12/14/00	\$3,900.00	1500
	12/14/00	\$3,900.00	1501
33	12/21/00	\$9,000.00	1699
	12/22/00	\$5,500.00	1700
34	12/28/00	\$9,000.00	1673
	12/28/00	\$2,500.00	1753
	12/29/00	\$2,000.00	1719
35	01/04/01	\$9,000.00	1730
	01/05/01	\$3,000.00	1674
36	01/11/01	\$9,000.00	1677
	01/12/01	\$5,000.00	2386
37	01/18/01	\$9,000.00	2404
	01/19/01	\$4,000.00	2409
	01/19/01	\$4,000.00	1880
38	01/25/01	\$9,000.00	2430
	01/26/01	\$4,000.00	2433
39	02/01/01	\$9,000.00	2439
	02/02/01	\$5,000.00	2444
40	02/08/01	\$9,000.00	2456
	02/09/01	\$5,000.00	2460
41	02/15/01	\$9,000.00	2472
	02/16/01	\$6,000.00	2476
INDICTMENT - 24			

1	42	02/22/01	\$9,000.00	2490
		02/23/01	\$6,000.00	2495

2 All in violation of Title 31, United States Code, Sections 5324(a)(3) and (c)(2) and Title
3 18, United States Code, Section 2.

4
5 **COUNT FORTY-THREE**
6 **18 U.S.C. § 982(a)(1) and 31 U.S.C. § 5324(a)**
7 **Forfeiture**

8 91. Upon conviction of one or more of the offenses alleged in Counts 27 through 42 of this
9 Indictment, defendant **DAVID ROLAND HINKSON** shall forfeit to the United States
10 pursuant to 18 U.S.C. § 982(a)(1), all property, real and personal, involved in the
11 offense(s), and any property traceable thereto, including but not limited to the following:

12 **MONEY JUDGMENT**

13 92. A sum of money equal to \$227,800.00 in United States currency, representing the amount
14 of money involved in the offense, structuring financial transactions, 31 U.S.C. §§
15 5324(a)(3) and (c)(2).

16 **BANK ACCOUNT**

17 93. All United States currency funds or other monetary instruments credited to account
18 number 8602 in the name of Northern Lands LP, dba: WaterOz located at the Kamiah
19 Community Credit Union, P.O. Box 68, Kamiah, ID 83536 .

20 **SUBSTITUTE PROPERTY**

21 94. If any of the above-described forfeitable property, as a result of any act or omission of the
22 defendant(s):

- 23 (a) cannot be located upon the exercise of due diligence;
- 24 (b) has been transferred or sold to, or deposited with, a third party;
- 25 (c) has been placed beyond the jurisdiction of the court;
- 26 (d) has been substantially diminished in value; or
- 27 (e) has been commingled with other property which cannot be divided without difficulty;

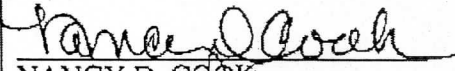
1 95. It is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18
2 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant up to the value
3 of the forfeitable property described in paragraphs 91 through 93 above.

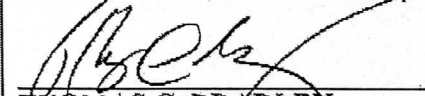
4 DATED July 17, 2002.

5 A TRUE BILL

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7 
8 FOREPERSON

8 THOMAS E. MOSS
9 United States Attorney

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11 NANCY D. COOK
12 Assistant United States Attorney

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14 THOMAS C. BRADLEY
15 Special Assistant United States Attorney

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