Hi,
This rough draft tells the story. Best wishes. Roland Hinkson (Dave Hinkson's dad)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID R. HINKSON,

Defendant□)
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)Case No.: CR-04-0127-C-RCT

DECLARATION OF WESLEY W. HOYT IN SUPPORT OF MOTION FOR TEMPORARY RELEASE OF DEFENDANT INTO APPROPRIATE PRETRIAL HOUSING

DECLARANT, Wesley W. Hoyt, attorney for defendant, submits the following Declaration in Support of Motion for Temporary Release of Defendant into Appropriate Pretrial Housing (and Request for Evidentiary Hearing) as follows:

1. Defendant seeks temporary release from jail under 18 USC §3142(i) to an environment that will allow him to participate in the defense of this case based upon a change in his mental condition which has developed in response to (1) the overly-restrictive jail/housing conditions imposed by the U.S. Attorney's Office through the Office of the U.S. Marshal (the agencies responsible for his care during detention); (2) the cumulative circumstances of the two cases brought against him by the government, and (3) the recent admission by the government that information which it proffered and upon which the Court relied to detain him for nearly two years has now been shown to be false.

2. The undersigned notes that, during meetings with counsel, defendant has recently been unable to focus on the topics of discussion related to his defense, especially when that topic involves case-specific facts or legal principles and has begun diverting from the subject at hand by going off on tangents and talking incessantly about unrelated topics such that counsel has found it more and more difficult to bring him back to the points related to his defense.

3. Defendant is depressed because he has been falsely accused by government informants, including Mariana Raff who set forth a story (herein the "Raff Story") of crimes defendant did not commit□ (see Exhibit A, comprised of two FBI 302 Reports containing statements made by Mariana Raff, filed under seal with the Clerk of the Court and Exhibit C, FBI 302 statement of Mariana Raff's Mexican-National brother Juan Carlos Martinez-Piedras) and

because prosecutors, who were knowledgeable that defendant was not guilty, proffered, inter alia, the "Raff Story" to the Court twice, in two separate detention hearings, with calloused indifference as to the truth thereof merely to hold him in jail. Declarant herein summarizes circumstances which have led to Mr. Hinkson's depression and his resultant current inability to assist in the preparation of this defense.

4. Defendant's depression has increased because he has been incarcerated for twenty months as a result of credibility being given by the government and the Court to the false statements of Mariana Raff and others (see Tax Case Dkt. #68). Then, the reason for his confinement was related to the May 5, 2004 conviction, pending sentencing in the Tax Case (see Tax Case Dkt. #306). Now, he is being held jointly on the post trial conviction in the Tax Case and the Detention Order of July 7, 2004 in the Threats Case (see Threats Case Dkt. #14).

5. Defendant was charged in Tax Case (CR-02-0142-C)with 16 IRS tax-related failure to file income and employment tax returns violations, 10 FDA-related adulterated and mislabeled product violations, 16 IRS-Treasury structuring currency transaction violations and one count of forfeiture and was convicted by a jury on May 5, 2004 of 16 white-collar crimes, having pled guilty to two FDA 'control person' type vicarious liability offenses related to selling a misbranded product and a medical device, the rest having been dismissed. He continues under a post-conviction order of incarceration pending sentencing now scheduled to occur after the trial of the Threats Case which is set to commence January 10, 2005.

6. The Threats Case involves a superseding indictment containing, in essence, twelve counts charging alleged law violations for crimes involving the spoken word that are inchoate as to harm inflicted on anyone. Nine counts of the superseding indictment are for allegedly soliciting murder of federal officials (18 U.S.C. (373); two counts are for purportedly threatening to murder the children of federal officials (18 U.S.C (115); and, under a separate heading entitled "Sentencing Aggravators," there is an enhanced penalty 'count' pursuant to United States Sentencing Guidelines seeking an upward departure or increased sentence based on an allegation that each of the first nine offenses involved offering of something of pecuniary value. All eleven primary offenses were motivated by the federal official's status, and all eleven primary counts involve violations that occurred while defendant was on release.

7. Defendant is depressed by the fact that the Federal District Court and the Ninth Circuit Court of Appeals have not allowed him to have an evidentiary hearing to challenge the hearsay statements of government informants such as Mariana Raff, which hearsay statements have now proven to be a fraud on the Court. (See Exhibits A-1 and A-2 to Defendant's Motion for Temporary Release and Exhibits A and B attached.)

8. According to his testimony in the Tax Case trial, defendant worked as a volunteer paralegal and became interested in exposing government corruption in the late 1980s and early 1990s near Las Vegas in Clark County, Nevada where he lived. In one instance, defendant printed and distributed 600,000 fliers in his effort to expose a corrupt scheme involving a "turtle fee" (environmental mitigation fees) being collected unlawfully under the auspices of the Endangered Species Act, by which county commissioners and other state and federal officials were profiting at the expense of property owners. Four out of five Clark County commissioners were not re-elected due in large measure to defendant's efforts. During the same time period, defendant helped ranchers and farmers avoid seizure of their lands by the U.S. Bureau of Land Management by showing that the BLM was misquoting the Endangered Species Act and did not have the power it claimed. (See Exhibit C-1, Transcript of Tax Case generally and Volume 6, Testimony of David Roland Hinkson, pg. 1126-1254.)

9. Testimony in the Tax Case shows that defendant became the subject of an IRS investigation for failing to file personal income tax returns and employment tax returns after he moved from Nevada, built his WaterOz factory in Idaho and began manufacturing and distributing dietary supplement mineral waters. Id.

10. As a part of that investigation, the IRS, through Revenue Agent Gerald Vernon, advised Mr. Hinkson on March 9, 2000 that he was being pursued "civilly" in said investigation. (See Exhibit D-1 attached, testimony of Agent Vernon in the Tax Case, Tr. Vol. 6 at p. 1271, ll 6-14.) Records of the Idaho Department of Labor ("IDOL"), obtained in a separate lawsuit, show that in February, 2000 while Mr. Hinkson was led to believe that the IRS investigation was civil in nature, Criminal Investigation Division ("CID") officer Ms. Lori Campbell was investigating him. (See Exhibit E, excerpt of Shawn McDonald Deposition of June 30, 2004, pp. 26-27, ll. 19-25.)

11. On March 15, 2000, in reliance upon IRS representations that the claim was being handled as a civil matter, Mr. Hinkson faxed a notice to Agent Vernon that he intended to file a civil suit to activate his Seventh Amendment right to impanel a common law jury to decide whether he was required to file tax returns. (Exhibit D-1, pg. 1272, ll. 5-7.)

12. On March 22, 2000, after receiving notice of Mr. Hinkson's intent to file a civil lawsuit, and having been on sick leave for five days, Agent Vernon immediately made an official referral of Mr. Hinkson's case to the IRS Criminal Investigations Division (Exhibit D-1, Tax Case, Tr at 1275-1276.) Vernon testified in the Tax Case that his purpose in taking such action was based on alleged threats of harm made by Mr. Hinkson against third parties such as former WaterOz employee Steve Bernard and not because of Mr. Hinkson's notice of civil suit. (Ibid. at

1281 and 1282.) In fact, Vernon agreed in his testimony that it would have been improper for him to have referred the case to CID simply because he had been notified that a citizen wanted to file a civil suit. (Ibid. at 1277, ll 18-21.)
13. Agent Vernon perjured himself when he testified in the Tax Case that Steve Bernard said that he "…feared reprisal from Mr. Hinkson…." and "…that he was afraid that Mr. Hinkson would have him shot" in a phone call of March 6, 2000 (Exhibit D-1, pp. 1280, ll. 5-11.) After reading Agent Vernon's testimony in the Tax Case, Mr. Bernard stated under oath that,
19. …I was quoted as having previously reported to him [Vernon] on March 6, 2000 that Mr. Hinkson threatened to "shoot me." … In fact, I remember that conversation and I never said or implied that I believed Mr. Hinkson would harm me or that he was capable of harming me. Specifically, I didn't say Mr. Hinkson intended to "shoot me." I merely said that being an undercover federal agent in Idaho could get a person shot. In his testimony, Agent Vernon added something that I didn't say and apparently he forgot to mention or simply left out the important part of my statement that I wasn't afraid of Mr. Hinkson and didn't consider him a threat.
(See Exhibit F, Affidavit of Steven Bernard, Paragraph 19, pp. 4-5, citation omitted and emphasis added.)
14. Agent Vernon proclaimed he was going to "get" Mr. Hinkson. (McDonald testimony, Exhibit E, pg. 27, Id. at ll. 1-24 and pg. 67, ll. 11-19) and Idaho Department of Labor Correspondence of February 18, 2003 indicates that Agent Vernon was spreading vicious rumors that Mr. Hinkson was "dangerous", had "semi-automatic and automatic weapons" and was a "coward" with "followers" who would perform acts of violence for him. (See Exhibit E with attached documents marked in the McDonald deposition as 'Exhibits. B-10 and B-12.')

15. Further evidence obtained in a separate lawsuit shows that IRS Agents Vernon and Hines also informed Idaho Department of Labor employees Paula Ewald and Bob Harris at their local Grangeville, Idaho office in February, 2000 that Mr. Hinkson was a "dangerous person." (See Exhibits G, Deposition of Paula Ewald, and H, Deposition of Bob Harris, pp. 19, ll. 20-25.) The same information was communicated to IDOL Senior Unemployment Insurance Tax Representative Shawn McDonald. In addition, Agent Morgan/Vernon also stated to McDonald: "We're gonna raid this place [Mr. Hinkson's WaterOz factory]."

Q. All right. And do you remember what he [McDonald's supervisor] chastised you for specifically?
A. For bringing – for being so alarmist and overreacting about the danger of WaterOz.
Q. Well, wasn't that exactly what Jerry Morgan wanted you to do when he called you on the 17th of February and gave you that information?
A. Yeah. It was – he didn't instruct me to do that; but, you know, he wanted to – I got the impression that he wanted to share information from agency to agency and work collaboratively so that he could – he came right out and said, We're going to raid this place.
Q. That's not in your memo.
A. That's not in my memo, but I remember it was in the conversation.
Q. And that was the conversation – to be clear, that was the conversation of February 17th?
A. Yeah.
Q. Okay
A. And—
Q. Did he say why he was going to raid this place?
A. Well, because the guy was out of compliance and they were dangerous people.
(See Exhibit E, McDonald deposition at pp. 67, ll. 11-19 and Dipo. Exhs. B-10 & B-12.)

16. Mr. Hinkson is depressed because IRS agents were also spreading speculative and vicious rumors that he was a "dangerous person" and that he was involved with a group known as the "Mountain Man Militia." (See deposition of Paula Ewald, Ex. G, p. 24, ll 7-13 and p. 25 ll 9-19).

17. Another vicious rumor, that Mr. Hinkson 'put crates of guns into the WaterOz warehouse,' was perpetuated by Paula Ewald, as recorded by Shawn McDonald in his memorandum dated February 16, 2000. Ms. Ewald attributed the origin of the rumor to a friend, Dana Lohrey (see McDonald deposition Exhibit B-10 attached to Exhibit E and Ewald deposition Exhibit G, pp. 25, ll 20-25 and 26 ll 1-12 and 29 ll 9-15). The rumor was completely dispelled by Dr. Lohrey, Director of the Department of Pharmacy Student Services at Washington State University (see Lohrey depo. Exh. I, pp. 5, ll 14-18) who, when asked, testified that the 'crates of guns' was really four guys from the NRA: "No, sir. I cannot figure out where that is coming from. I never saw anything like that." (Ibid., p. 15, ll 3-4.) What Mr. Lohrey did see were four nicely dressed gentlemen whom he believed were from the NRA (National Rifle Association) who had come to the WaterOz facility for a radio show (see Ibid. p. 15 ll 12-25, 16 ll 1-25 and 17 ll 1-19).
18. Mr. Hinkson is extremely depressed that the government was actively perpetuating other vicious rumors based

on the alleged report of Phil Kofahl of February 16, 2000, that Mr. Hinkson was affiliated with the "Mountain Man Militia" (Exhibit D-1 p. 12__, ll _.) The report of Paula Ewald was made on the same day when IRS agents spoke to her and warned her that Mr. Hinkson was a "dangerous person" which she immediately reported to her supervisor, Shawn McDonald. It should be noted that this 'rumor mill' converted 'four nicely dressed gentlemen from the NRA visiting the WaterOz facility for a legitimate business purpose' into 'crates of guns' being unloaded (see testimony of Dana Lohrey, Ibid. p. 15, ll 12-24, who admittedly is the source of information that started the rumor). Paula Ewald's best recollection was that 'one of them was showing a rifle to the others' (see Ewald depo. Exh. G, p. 29, ll 9-12). Even though Ewald stated that she could not recall anything that she might have said to her supervisor Shawn McDonald that would have created the impression that 'crates of guns were put into the WaterOz warehouse' (Ibid. p. 30 ll 3-21), that was what Shawn McDonald reported in his IDOL February 16, 2000 memorandum (see McDonald deposition attached as Exhibit E, and depo. Exhibit B-10). It is evident to Mr. Hinkson that a number of vicious rumors about him were started, perpetuated and embellished by seemingly responsible government employees.

19. Significantly, the vicious rumors about Mr. Hinkson being a 'dangerous person' and a 'coward' were being circulated by IRS Revenue Agent Jerry Morgan (alias Gerald Vernon). On February 17, 2000, Morgan informed McDonald as follows:

Yesterday I received a phone call from Jerry Morgan (IRS Revenue Agent). He verified what Bob [Harris] and Paula [Ewald] concerns (sic) about the dangerous nature of dealing with Mr. Hinkson and his "followers". He mentioned a particularly dangerous companion of Mr. Hinkson – a man named Chad Ericson. He also listed weapons located at WaterOz that (sic) composed of automatic and semiautomatic rifles used by military and law enforcement. He described Mr. Hinkson as a coward that is surrounded by devoted followers that are prepared to defend Mr. Hinkson with violent force.

20. McDonald, who, according to his testimony, had a difficult time believing these rumors because he had received a different impression after having visited the WaterOz factory, made a significant effort to accurately report what he was required to put into his memo and to make certain that he was not merely spreading rumors but was repeating the statements of others, vouched for Agent Morgan's credibility, as follows: "Jerry Morgan is a retired Los Angeles County Sheriff. I believe he is qualified to describe who is a dangerous individual." (Of course, the question arises as to why is was that Agent Morgan felt the need to vouch for himself by advising McDonald that he was a former Sheriff.) It seems obvious that McDonald was concerned about the voracity of this report and was attempting to measure its validity against a known standard, especially since he had been to the WaterOz facility and saw no cause for alarm. However, in his quest to understand how his departmental supervisor wanted him to proceed, McDonald was seeking the most complete information possible.

21. Agent Vernon related that it was the tax reward application to the IRS of disgruntled former WaterOz employee Phil Kofahl, dated December 26, 1998 about one year earlier, that apparently started the IRS inquires about Mr. Hinkson. (Exhibit D-1, Tax Case Tr at 1278, ll. 3-7.) However, because Mr. Kofahl died of a heart attack on May 27, 2003 (see Exhibit J, Death Certificate of Phil Kofahl) he is unavailable to testify as a witness in this case to explain his vindictive reasons for making false reports to the IRS. However, his wife, in a recent statement to investigators stated that this was just Phil's way of getting even with Mr. Hinkson for firing him (see Exhibit K, Statement of Stacey Kofahl dated _____).

22. It was Agent Vernon that described Mr. Hinkson a "coward" as reported in the McDonald memo (see Depo. Exh. B-12 in to the McDonald deposition, Exhibit E) and Vernon who repeated the allegation that Mr. Hinkson was "cowardly" (see Vernon testimony, Exhibit D-1, p. 1281, 12-14) attributing the source to Mr. Kofahl, whom he also said started the vicious rumor that Mr. Hinkson was "closely affiliated with the 'Militia of Montana and the Minutemen Militia,' and asserted that "[m]any of his [Hinkson's] … employees are also members of the Militia movement." (Ibid. at 1281, ll. 3-11.) Former WaterOz employee Steve. Bernard explains that this allegation by Mr. Kofahl completely misconstrued a statement made by WaterOz customer Bill Rich, (a member of the Oregon State Militia, a constitutionally-mandated public service organization) who caught and exposed Phil Kofahl for stealing WaterOz property. (See Exhibit F, Bernard Affidavit, paragraph 12). Defendant is depressed that the government has developed its case based on these false and vicious rumors and failed to investigate these accusations just as it failed to investigate the Mariana Raff allegations. Of greater concern is the fact that the government failed to exercise any control over Agents Vernon and Hines who have used their authority and credibility to develop a 'false persona' of Mr. Hinkson.

23. After March, 2000, Agents Vernon and Hines pursued Mr. Hinkson using what defendant contends were improperly-drawn administrative summonses to obtain his financial records. Mr. Hinkson is depressed that those institutions released his records without giving him a proper opportunity to object. As shown below, attorney

Dennis Albers, who represented disgruntled former WaterOz employee Annette Hasalone, was one of those who turned over records upon the presentation of such a summons without giving Mr. Hinkson an opportunity to make his objection as required by law (see Vernon testimony in the trial of the Tax Case, Exhibit D-2 pp. 907-912).

24. In approximately July, 2001, the government commenced the taking of testimony before the grand jury in Coeur d' Alene, Idaho regarding its investigation of Mr. Hinkson but did no indictment was forthcoming. In October, 2001, Mr. Kofahl was encouraged to testify before the grand jury that Mr. Hinkson's products had killed someone. (See Exhibit L, Grand Jury Transcript of October 17, 2001, pg. 27, ll. 17-25 & 28; ll. 1-2 and take note of the questions by the Assistant U.S. Attorney encouraging that testimony; transcript filed under seal with the Clerk of the Court.) Although thoroughly investigated by the Food and Drug Administration (FDA), the record reflects that no proof ever existed that Mr. Hinkson's WaterOz products had caused injury or harm to anyone, especially a death. The record also reflects that the prosecutor encouraged this egregious testimony by Mr. Kofahl, knowing from his testimony that he was a disgruntled former WaterOz employee who was attempting to settle an old score. Kofahl made a failed attempt to take over Mr. Hinkson's business, and was terminated in 1998 for theft. (See Exhibit L, Kofahl Grand Jury Testimony generally and Exhibit K, statement of Stacey Kofahl.)

25. Mr. Hinkson is depressed by the fact that the government actively promoted the spreading of vicious rumors by Mr. Kofahl and allowed him the use the grand jury as a forum to "get even" with defendant for firing him (e.g., see testimony elicited from Kofahl concerning Mr. Hinkson "enslaving" people, etc., Id at 13, ll 7-25.) Defendant feels it was with reckless disregard for the truth that the government permitted Mr. Kofahl to provide such false 'testimony' concerning a death being caused by WaterOz products and other testimony by Kofahl that Mr. Hinkson was enslaving people, without proper government investigation or foundation. Such testimony only served to enflame the passions of the grand jurors. It is extremely depressing to Mr. Hinkson that the Kofahls have attacked him so viciously after he was so kind to them. (While they were living in a trailer in a remote mining area near Las Vegas, Mr. Hinkson hired Phil Kofahl to be the security guard of over his adjacent mine and mill property which provided the Kofahls with an income at a time when Mr. Hinkson's had very little income himself. He then allowed them to move their trailer onto his property near Las Vegas, Nevada live rent-free as Stacey Kofahl learned how to assemble ozone-gas producing air purifiers for which she was paid $25 per unit and with Phil's help was able to assemble as many as 80 units per week and made upwards of $8,000 per month.)

26. It is likewise depressing to defendant that disgruntled former WaterOz employee Annette Hasalone was allowed to testify before the grand jury that Mr. Hinkson caused the death of Art Bell's son, which was a complete fabrication (see Exhibit M, Grand Jury Transcript of August 21, 2001, pp. 10, 11, 35 & 36, filed under seal with the Clerk of the Court.) Hasalone, who was represented by Grangeville attorney Dennis Albers, sued Mr. Hinkson in the Idaho County District Court in 1999 and 2000 for a 20% interest in WaterOz or $600,000.00. The jury did not award her a share of WaterOz, but did award $95,000.00 for back wages (which Mr. Hinkson was unable to prove had been paid to Hasalone, because the payroll records "disappeared" from the WaterOz factory.) The evidence clearly showed that Ms. Hasalone had no other means of support at the time and she did not have the means to pay for her living expenses had it not been for the compensation paid to her by WaterOz. (See Exhibit N, Affidavit of Kevin Hagen, of March 27, 2003, which shows Hasalone arranged with Bobbie Eve, mother-in-law of Annette Hasalone and office manager of WaterOz, to steal Hasalone's payroll records and put them in a safe place.) It is extremely depressing to Mr. Hinkson that he was sued by Hasalone after he saved her life (according to her own story WaterOz products cured a fatal lung (see Exhibit O, the Testimonial of Annette Hasalone)), provided her shelter from the law and employment as she worked for him for approximately a year when she was as a fugitive from justice and paid her full wages as agareed. (Mr. Hagen did not come forward for almost two and a half years after the judgment for $95,000 was entered against Hinkson, see Exhibit N.) It is very depressing for Mr. Hinkson to know that the government has taken the vicious rumors started by Hasalone and used them as a pretext to commence an relentless investigation filled with outrageous conduct and vindictive prosecution against him.

27. According to Mr. Bernard, Hasalone actively recruited him to join in her quest to "bring Dave down" and her attempts to get even with him for wrongs she perceived had been done to her. Defendant is depressed that the record shows that Hasalone reported him for a variety of false violations to various governmental agencies including the EPA, Idaho Health Department and the Idaho Attorney General, all of whom, after investigation, have conceded that there was no basis for the claims she made against him. (See Exhibit P, letter from the deputy attorney general for Idaho Department of Health and Welfare concluding its investigation of Mr. Hinkson because the complaint was baseless and see Exhibit E, Affidavit of Steve Barnard, paragraph 9.)

28. Subsequently, Ms. Hasalone was encouraged by the government to testify before the grand jury on August 21, 2001 that Mr. Hinkson was responsible for the death of the son of late-night radio talk show host Art Bell. (See Exhibit M, Hasalone Grand Jury Transcript, pp. 10-11 and 35-36, filed under seal with the Clerk of the Court) even though no such evidence, complaint or report ever appeared to support the claim exists. In fact, reports indicate that

Art Bell's son, (i.e., Art Bell IV) is alive today and just collected a six-figure settlement from the Pahrump, Nevada School District in March, 2004. (See Exhibit Q, copies of March, 2004 newspaper articles showing that Art Bell IV is very much alive.) It is depressing to defendant that Hasalone was encouraged by the government to provide the testimony regarding the death of Art Bell IV having been caused by Mr. Hinkson, which was highly prejudicial, merely to inflame the passions of grand jury members against him, in order that the government might obtain an indictment (see Exhibit M, pp. 10-11 and 35-36 generally and the comments of the Assistant U.S. Attorney.) Again, Mr. Hinkson feels it was reckless disregard for the truth to have permitted Hasalone to provide such 'testimony' that Mr. Hinkson was responsible for the death of a child, which was simply vicious rumoring without investigation or foundation.

29. Also depressing to Mr. Hinkson is the fact that the indictment in the Tax Case of July 17, 2002 was placed under seal (Tax Case Dkt. #s 1, 2, 3 and 4) for four months creating the inference that the counts of alleged FDA violations were added to the Tax Case indictment by the government for strategic reasons in order to obtain a search warrant for his home and factory. (See Exhibit S, Report of James Prochnow, FDA expert.) The warrant was executed by a "SWAT-team" in a raid of his property on November 21, 2002. (See Testimony of Agent Long of December 7, 2004 at __, which transcript has not yet been prepared by the court reporter.)

30. Defendant is depressed that the FDA Counts in the indictment were predicated on the theory that his products put the public health and safety at risk (suggesting that urgent and immediate action was needed to reduce the risk of injury to the public.) However, sealing the indictment for four months shows that this was just another government deception in that there was no true health risk associated with defendant's products and that the real purpose of the indictment was to obtain the search warrant merely as a pretext so that the IRS could 'piggy back' on the raid and collect information which otherwise was not available to it. (See Exhibit U, Affidavit of Geraldynne Gray.)

31. It is depressing to defendant to note that Elven Joe Swisher testified before the grand jury in 2001 that the results of his analytical testing of WaterOz products done on a concurrent basis reflected correct PPM (parts per million) content of the products per the labeling and that the products were in compliance with FDA labeling requirements. (See Exhibit O, Swisher grand jury testimony of April _, 2002.) In spite of the fact the government knew that Mr. Hinkson had hired an independent testing company (Swisher) to verify labeling compliance, and in spite of the fact that the FDA, contrary to law, did not send warning letters notifying WaterOz that their products were not in compliance, the government indicted Mr. Hinkson with criminal charges of selling adulterated drugs due to a reduced PPM mineral content. The FDA and the government knew that he had made every reasonable effort to be in compliance, yet contrary to FDA practice, a prosecution was commenced rather than warning letters being sent. (See Exhibit S, Prochnow Report.)

32. It is depressing that during the four months that the indictment was sealed (July 17, 2002 to November 18, 2002), the government breached its own indictment secrecy requirements (see Rule _, Fed.R.Crim.P.) when the FDA disclosed to Mr. Hinkson's primary competitor, ENVIA Corporation, that an indictment had been issued against Mr. Hinkson. On October 19, 2002 (one month before the secrecy order was lifted on the Tax Case indictment) ENIVA associate Art Morris, approached Mr. Hinkson at a health conference in Lansing Michigan and according to an eye witness, stated:

Mr. Morris began verbally attacking Mr. Hinkson in a loud voice, shaking the bag in his hand, gesturing toward Mr. Hinkson with the bag that appeared to have WaterOz product in it, interrupting him, and taking over the conversation by shouting to following:

> "Your products are contaminated. You can't prove the purity or PPM content of your water. You've been indicted. You're gonna be arrested and you're goin' to jail."

(See Affidavit of John Humphries, attached to Motion filed along with Dkt. # 259, Tax Case, attached as Exhibit Q.)

33. This ENIVA representative could not have known of the indictment a month before it was unsealed, unless the government had released that information. The effect of the release of the information to ENIVA by the government was that former disgruntled WaterOz employee Annette Hasalone, who, in 2002, worked for ENIVA, obtained an unfair competitive advantage over WaterOz and took the opportunity to plagiarize verbatim WaterOz marketing materials including a cassette tape based on a lecture given by Mr. Hinkson, entitled "Don't Mortgage Your Life for Your Health" and used that lecture to promote ENIVA products under the new name of "Who Put the Chalk in Your Cheerios" resulting in a dramatic increase in ENIVA sales to $1 million per month, as Mr. Hinkson sat in jail as his

sales declined. (See Exhibit S, Report of James Prochnow.)
34. In addition, Mr. Hinkson is depressed by the fact that he was selectively prosecuted for FDA labeling crimes, while ENIVA used all of Mr. Hinkson's product information and descriptions but, unlike Hinkson, was not prosecuted. Id.
35. It is very depressing for defendant to know that the FDA used its power to assist one business, ENIVA to the disadvantage WaterOz, which is a form of outrageous governmental conduct and vindictive prosecution. Defendant is also depressed that the FDA used its police power to criminally prosecute WaterOz for conduct the FDA allowed another company (ENIVA) to perform with impunity. Clearly, if any WaterOz product had been dangerous to the public, the FDA would not have sealed the indictment on July 17, 2002, but would have immediately served it and removed the products from the market. Defendant recognizes and is depressed by the fact that not doing so is an admission that there was no good faith basis for sealing the indictment in the Tax Case.
36. Once the indictment was released on November 18, 2002, the government commenced its raid on November 21, 2002 (where individuals from several government agencies hid behind face shields (eye protection), toted machine guns and broke down ten doors with battering rams in Mr. Hinkson's home and factory with impunity (see testimony of FBI Agent William Long of December 7, 2004 at pg. __) in order for the IRS to collect additional financial records from Mr. Hinkson. It has continued to be a source of great depression to defendant that the IRS then used the newly-collected financial records to contact Mr. Hinkson's creditors and terminate his merchant bank accounts and credit lines in an effort to totally shut down his business in November, 2002. (See Exhibit U, Affidavit of Geraldynne Gray). While the IRS succeeded in terminating the WaterOz credit lines temporarily, Mr. Hinkson exerted a massive effort to obtain other lines of credit and restart his business after the raid. Id.
37. Mr. Hinkson is very depressed by the fact that in spite of his availability and regular contact with his community through daily interaction with his factory workers, frequent trips to the Town of Grangeville (12 miles away) to visit his children (who live with their mother) and regular trips to the grocery store, bank and other establishments for the purpose of obtaining the necessities of life, the government chose to execute a pre-dawn raid of his home and factory and damage his property when he could have been picked up on the street any day of the week or invited to the Sheriff's office for a "pretext or ruse-type arrest". (See psychological reports of Dr. Jerry Doke, attached as Exhibit A-1 and A-2 to Defendant's Motion for Temporary Release and filed under seal and Testimony of Agent Long of December 7, 2004.)
38. It depresses defendant to know that during the four-month period after the raid, from November 21, 2002 to April 4, 2003, while he was out of jail on pretrial release, Pretrial Services Officer Gaylor on several occasions stated to defendant, 'we have information that you have machine guns' or 'where are you hiding the machine guns?' Because Mr. Hinkson knew that the agencies that raided his factory had searched every inch and found no contraband of any kind (including machine guns or sniper rifles) these continued probes by representatives of the government based on the above vicious rumors were unwarranted.
39. It is extremely depressing to defendant that J.C. Harding and Anne L. Bates were sent as informants to defendant's residence and place of business during said four-month period after the raid, with the specific task of gathering information and entrapping him, or, in the event he was not interested in their entrapment 'bait,' then their job was to falsify 'murder-for-hire' claims against him. It is also quite depressing that AUSA Olson, when asked for Brady/Giglio materials in the Tax Case, responded that Mr. Harding did not receive compensation from the government. However, in July, 2004, AUSA Sullivan disclosed that Harding had been paid over $1,000 by the government. It is further depressing to defendant that evidence shows that Bates downloaded information from Mr. Hinkson's computer to pass along to the government. (See Exhibit V, testimony of Robert Blenkinsop in the Tax Case, showing that he obtained personal emails only available on defendant's personal computer at his home to which Bates had access and which not available on the factory computers.)

40. Defendant is depressed that the Court, in both of its detention orders, and in its arguing of pretrial motions, asserts that the March 27, 2003 body-wire recording by informant J.C. Harding supports their case when, in fact, it disproves their theory that defendant attempted to hire anyone or that defendant is a "danger to the community." In fact, all the statements made in the recorded conversation by defendant demonstrate that he was relying strictly on the legal system for redress of his grievances. When he was repeatedly asked during the recorded conversation if he wanted to kill federal officials, he responded by saying, 'I'm going to sue them," or he declared that he would "beat them at their own system" or he said "I'm just suing them.' Nowhere did he state that he wanted to hire anyone to murder them. Mr. Hinkson is very depressed that while no one who has personally talked with him has ever testified or provided a sworn statement to the Court against him (including informants Harding, Raff and Bates) he has been held in jail for 20 months on flimsy hearsay, much of which is now being unraveled and shown to be lies. (See Exhibit C.) Mr. Hinkson is depressed that the legal system he once believed in has now let him down

miserably.
41. It is very depressing to defendant that, at the time of his arrest on April 4, 2003 by FBI Agent William Long, he was denied his civil right to have his attorney present during interrogation to avoid self incrimination, that Agent Long testified falsely at the April 9, 2003 detention hearing that defendant did not ask for an attorney and then subsequently admitted that he "erroneously" testified when presented with a tape recording of defendant's request for an attorney. (See Testimony of William Long, December 7, 2004 at pg.__.) Agent Long admitted perjury.
42. It further depresses defendant that by April 4, 2003, J.C. Harding, Anne Bates and Mariana Raff (all of whom received some form of compensation from the government) each provided hearsay statements to FBI agents claiming Hinkson had solicited them (or solicited people known to them) to murder federal officials and others. (See Exhibits B, L, and M, FBI 302 Reports filed under seal.)
43. It is very depressing to defendant that Magistrate Williams ruled that there was no condition or set of conditions that would ensure the safety of the community or prevent defendant from fleeing, based on the hearsay statements attributed to Mariana Raff which have now been proven to be false. (See Exhibit C.) Mr. Hinkson cannot understand why he has not been released since there has been no evidence presented to the Court that he is a danger to the community or that he is a flight risk and the only other information against him comes from an admitted perjurer, Agent Long. (See Exhibits A, C, W, X and testimony of William Long, December 7, 2004 at pg.__.)
44. Mr. Hinkson is depressed that the government has now, for the first time (a year and a half after he was sent to jail) confirmed the falsity of the Mariana "Raff Story", to wit: that while in Mexico on business, when accompanied by Mariana Raff as an interpreter and Lonnie Birmingham as an aide, Mr. Hinkson attempted to hire Raff's brothers ("Brothers") to murder a federal judge, a prosecutor and an IRS agent. (Note: the Raff Story included the statement that the Brothers were experienced 'hit men' who had done 'this type of work' before, i.e., the murder of U.S. federal officials). The Raff story, along with the false allegation that Mr. Hinkson was a flight risk, are the key pieces of information that put him in jail on April 9, 2003 because the March 27, 2003 recording of the Harding-Hinkson conversation was exculpatory (see Exhibit _ and paragraph 40, and footnote 3, supra) and the Raff accusations provided the government with the needed inference that Mr. Hinkson had a predisposition to hire someone to murder said federal officials, thus overcoming what the government anticipated to be an entrapment defense (i.e., that when being recorded by FBI Informant Harding on March 27, 2003 defendant never made statements about killing anyone and only allowed the discussion of the subject because informant Harding brought it up as a part of his entrapment efforts and repeatedly asked if Hinkson wanted to kill the federal officials.) (See Exhibits _, _filed in the detention hearing of July 7, 2004, i.e., the entire transcript of the April 9, 2003 detention hearing.)
45. It has been extremely depressing for Mr. Hinkson to learn that the government knew that the Raff Story lacked credibility in March, 2004, when former WaterOz employee Lonnie Birmingham (who had accompanied Mr. Hinkson and Mariana Raff to Mexico) appeared for his grand jury testimony and told government attorneys that Mr. Hinkson never discussed with the Brothers, while in Mexico, homicide and/or murder-for-hire of anyone, including U.S. federal officials. Birmingham was prohibited by the government from testifying as to those facts. (See Exhibit B, Affidavit of Wesley W. Hoyt Regarding Phone Call with Lonnie Birmingham of July 16, 2004.)
46. Mr. Hinkson is depressed that even though the Birmingham information was compelling enough to cause the government to release Ms. Raff as a prosecutorial witness in March 2004, it did not compel them to investigate the Brothers as potential international terrorists for six more months. In fact, no investigation about the Brothers was done until September 15, 2004, one and one-half years after the FBI first came into possession of the information that the Brothers were potential international terrorists. Had the FBI believed the "Raff Story" was true, it would have immediately investigated the Brothers in to take the necessary steps to protect Federal officials from the threat of terrorists "who had done this type of work before." Mr. Hinkson feels that the failure to investigate the Brothers can only mean that the FBI did not believe the Raff Story in the first place. If Agent Long chose not to believe the Raff Story for purposes of investigating a potential international terrorist threat, then Mr. Hinkson feels that Agent Long should not have used other information from that report, as if it was true, in a detention hearing that has cost him his freedom for the last twenty months.
46. Defendant becomes more depressed each day knowing that when the government first discovered that the information which formed the basis of his (now 20-month) incarceration was false, instead of notifying the grand jury, the Court and defense counsel as it is obligated to do (see ¶53 below), they compounded the harm by obtaining an indictment and then a superseding indictment using the same false information. Not only is Mr. Hinkson depressed about the prosecutor's failure to give notifications as required by law that the Raff Story has now been deemed to be false, but he is depressed that irrefutable evidence exists showing that FBI Agent Long knew the Raff Story was not true (or that Long could not be certain the Raff story was true) when he first testified about it on April 9, 2003.

47. If Agent Long had done his job and conducted an investigation (Mr. Hinkson points to the two murder cases of AUSAs, one in Seattle, Washington and the other in Baltimore, Maryland which were unsolved at that time) he would have found that there was no truth to any of these allegations and would have been led to the inescapable conclusion that Mr. Hinkson was not guilty of solicitation of murder of federal officials. (See Exhibits A and C attached.)
48. Without the Raff Story showing a predisposition under the entrapment doctrine and considering that the March 27, 2002 body-wire recording by informant Harding is purely exculpatory, the government did not have a case against Mr. Hinkson without the Raff Story. Now, since Ms. Raff, the pivotal witness that put him in jail has been released, Mr. Hinkson is depressed that he is still in detention.
49. Mr. Hinkson is depressed that the government did not perform an adequate background check on Ms. Raff, who was, at the time, known to be a disgruntled former WaterOz employee and a known law breaker who has been continually involved in felony criminal activity (even though the criminal cases against her have been regularly dismissed as a part of the federal government's 'leniency for informants' program; see Exhibit Y attached, certified copies of criminal case dismissals against Raff and Exhibit Z, Report by Congressman Robert Bauman regarding .)
50. Mr. Hinkson is also depressed about the fact that the government proffered the entire transcript of the detention hearing of April 9, 2003 (including the perjurious Raff Story) as Exhibit A into evidence at the detention hearing of July 7, 2004, asking the Court to consider the same as if it presented proof that defendant was a danger to the community and a flight risk merely to keep him in custody when the government knew (or because of the Birmingham statements at the March, 2004 grand jury, knew it did not know) the truth of the Raff Story.
51. Because defendant is a paralegal by training, he is depressed that he has not able to conduct legal research while in jail for the past 20 months and has been prohibited from using the jail law library, Internet research or his own laptop computer for this purpose. Research performed on defendant's behalf indicates that it is expected this Court would attach a 'presumption of regularity' to grand jury proceedings, which in this case have been anything but regular. See United States v. Claiborne, 765 F.2d 784 (9th Cir. 1985), cert. denied, 475 U.S. 1120 (1986), abrogated on either grounds, Ross v. Oklahoma, 487 U.S. 81 (1988). Nevertheless, the cases recognize that defendants, in the type of situation facing Mr. Hinkson here, may overcome the presumption of regularity that attaches to grand jury proceedings and even obtain dismissal of indictments returned against them, on a proper showing of grand jury abuse. United States v. Claiborne, at 78_.
52. Defendant is aware that he has established a textbook case of grand jury abuse by the government based on the fact that the prosecution obtained an indictment against him by knowingly submitting perjured testimony, after the grand jury indicated that it was not inclined to indict on two different occasions. (See record of grand jury proceedings in which the grand jury refused to indict defendant in August, 2001 and again in early April, 2002, sealed records of the grand jury clerk, Federal District of Idaho.) The fact that prosecutor, Nancy Cook was a named defendant in a $50 million lawsuit by Mr. Hinkson filed April 16, 2002 after the grand jury adjourned without indicting him, demonstrates that the criminal indictment of July 17, 2002 (in the Tax Case) was retaliatory and shows intent to vindictively prosecute defendant. It is extremely depressing to defendant that AUSA Cook reconvened the adjourned grand jury for one day in July 17, 2002 to extract an indictment against Mr. Hinkson. Mr. Hinkson believes that such action should have been prohibited, as Cook had been served as a party defendant in a lawsuit over her alleged misconduct related to the grand jury proceedings. Id.
53. Defendant is aware that by using perjured testimony, a prosecutor acts arbitrarily and capriciously and violates due process; such conduct also must be condemned by the exercise of the courts' supervisory powers. Id. Indeed, a decision of the Ninth Circuit requires a "…prosecutor who discovers perjury by a grand jury witness after indictment [is required] to inform the defendant, the trial court and the grand jury of the perjury so that the grand jury may reconsider its decision to indict." United States v. Basurto, 497 F.2d 781, 785-86 (9th Cir. 1974)." 765 F.2d at 791. It depresses defendant significantly that the prosecutor has failed timely to do so here, as the December, 2004 notice to defendant by the government of Raff's perjury precluded defendant's inclusion in pretrial motions, the deadline for which was November 8, 2004.
54. To justify dismissal of the indictment, perjury before the grand jury must be material. United States v. Claiborne. If sufficient now-perjurious testimony exists to support the indictment, the courts will not dismiss the indictment due to the presence of perjured testimony before the grand jury, on the assumption that the grand jury would have returned the indictment without the perjurious evidence. Id. Defendant is depressed that the perjured testimony was material, as it solidified the question of predisposition and the indictment has not been dismissed.
55. It further depresses defendant that the government has refused to produce (and the Trial Court will not require the production of) grand jury materials in discovery, because defendant believes that (as happened in the detention hearings), the evidence presented to the grand jury consisted of testimony by FBI Agent Long recounting hearsay statements made by informants Harding, Bates and/or Mariana Raff alleging that defendant solicited the murder of

Judge Lodge, AUSA Cook and IRS Agent Hines, even though by the time of the grand jury proceedings which took place in March of 2004, the government should have been fully aware that the Raff Story was false and had been entirely contradicted by, inter alia, Lonnie Birmingham. (See Exhibit B.) Moreover, the other informants have given inconsistent statements and/or are known to have had a motive to fabricate. For example, each witness upon whom the prosecution now relies for Counts against Mr. Hinkson (as reflected in both the April 4, 2003 detention hearing in the Tax Case and the detention hearing of July 7, 2004 in the Threats Case) owe money to, or has sued defendant for money or has made other claims against Mr. Hinkson.

56. Mr. Hinkson is depressed that criminal charges were repeatedly dismissed against Mariana Raff in an effort to keep her record clean and clear so the government could use her testimony against him without impeachment arising from her own criminal conduct. (Her extended crime spree from January, 2004 through May, 2004 spanned the three North-Central Idaho counties of Idaho County, Clearwater County and Nez Perce County where she was charged with numerous felonies including Burglary of a Postal Facility, Counterfeiting, Possession of Counterfeiting Paraphernalia, Forgery and Burglary of two drug stores (see Exhibit Y, certified copies of dismissals of Mariana Raff's criminal charges.))

57. Defendant is depressed to know that he has not been allowed to cross examine government witnesses in a detention hearing or in a de novo hearing to prove how outrageous the conduct of law enforcement has been in this case, when the law allows dismissal of an indictment where such outrageous law enforcement conduct violates due process as it has here. United States v. Ross, 372 F.3d 1097 (9th Cir. 2004); see United States v. Russell, 411 U.S. 423 (1973); see also Hampton v. United States, 425 U.S. 484 (1976) (affirming the existence of the outrageous governmental misconduct doctrine articulated by the Russell Court). Even where no due process violation exists, a federal court may dismiss an indictment pursuant to its supervisory powers. United States v. Ross; see Bank of Nova Scotia v. United States, 487 U.S. 250 (1988). To justify exercise of the court's supervisory powers, prosecutorial misconduct must (1) be flagrant and (2) cause "substantial prejudice" to the defendant. United States v. Ross, 372 F.3d at 1110. Here, defendant is depressed because the prosecutions' misconduct in presenting perjured testimony was indeed flagrant, and caused him to be substantially prejudiced by such misconduct (i.e., being jailed for twenty months based on fabricated information and vindictive prosecution, including the failure of the prosecution to timely notify defendant of the perjured testimony.) The government timed their notification so that the pretrial motions date has passed when defendant would have had an opportunity to move for dismissal because of such misconduct.

58. Defendant is depressed that the Trial Court, being aware of the misconduct of the prosecutor, the FBI and the FDA has not dismissed this case where there exists such a 'widespread pattern of wrongdoing." Even in cases where no prejudice to defendant is shown (here defendant believes extreme prejudice has been shown) dismissal may be appropriate where there is a "widespread pattern of wrongdoing" that would call for "send[ing] a message to the appropriate government agencies." See Ross at 1112. Moreover, even if dismissal is not warranted (which it is here) other sanctions may be necessary to punish prosecutors who fail to fulfill their duty "to win fairly, staying within the rules." Id .at 1111(cit omitted). Here, defendant believes that this case is not about the government "winning fairly," which would imply that a real crime occurred, but rather the case is about vindictively prosecuting Mr. Hinkson who believes he is innocent of any spoken-word crimes (and according to Exhibit C, FBI 302 Report, is innocent of any wrongdoing associated with the solicitation of Raff's Brothers in Mexico). Thus, Mr. Hinkson believes that it is important for the government and the Court to avoid continued abrogation of his rights in order for him to be treated fairly. The use of perjured testimony abrogates defendant's rights.

59. In spoken-word crimes, such as threats against the family members of federal officials and solicitation for murder of federal officials, defendant is aware that the government and the Court should take extra caution in screening witnesses, as the corpus delecti of the crime may be protected speech under the First Amendment of the U.S. Constitution and it is the charge of the prosecution to chronicle both the existence of a crime and its perpetration. The testimony of all such eye witnesses in cases involving spoken word crimes is, and must be, suspect ab initio, for self interest and carefully scrutinized for motive, a fortorari eye witness testimony is notoriously inaccurate, subject to outside influences and where not based on events that can be objectively quantified (such as the body-wire recording) leave much to the imagination and speculation. For example, Ms. Raff fantasized about the criminal behavior of Mr. Hinkson that did not exist and was motivated by revenge to report those fantasies as if they were fact to the FBI and to the grand jury in March, 2004. Mr. Hinkson is very concerned and depressed that he has already been a victim of such false accusations and that he will suffer further jail time because the government refuses to control its informants, as exemplified by the false and baseless testimony of Phil Kofahl and Annette Hasalone in the initial grand jury proceedings in the Tax Case that was also revenge-based. The motivation of Elven Joe Swisher, who sued Mr. Hinkson for $522,000 in July, 2004 to collect money for analytical

testing that he acknowledged under oath had previously been paid in full should be carefully considered in light of the potential for witness testimony to be colored by the desire to 'settle a score'. In this case, the 'score' has involved the attempt of witnesses to obtain a share of Mr. Hinkson's lucrative business, except in the case of J.C. Harding and Annie Bates, paid government informants sent to entrap Mr. Hinkson and motivated by a source yet to be clarified.

60. Defendant believes that the widespread pattern of such misconduct, especially the the entertaining of perjured testimony, requires this court to exercise its supervisory authority to sanction the prosecution, sua sponte, by the only viable way to achieve justice, i.e., dismissal of the indictment with prejudice. See United States v. Kojayan, 8 F.3d 1315 (9th Cir. 1993) (government's misconduct in withholding a witness while falsely stating that said witness did not testify because he invoked his Fifth Amendment privilege, although the government had a cooperation agreement with the witness pursuant to which the witness agreed to testify truthfully, making the withholding of the witness and information as to the cooperation agreement prosecutorial misconduct of a prejudicial nature which violated due process and required reversal of the conviction). It depresses defendant that the law protects other individuals, but not him.

61. Defendant is depressed because the government's misconduct and unfair tactics demonstrate that dismissal is warranted on the grounds of vindictive prosecution and the Court has only shown a continued interest in supporting the government's case.

62. To establish a prima facie case of vindictive prosecution, defendant understands that under the law, he must show either direct evidence of actual vindictiveness or facts that warrant an appearance of such. United States v. Montoya, 45 F.3d 1286 (9th Cir.), cert. denied, 516 U.S. 814 (1995). Evidence indicating a realistic or reasonable likelihood of vindictiveness may give rise to a presumption of vindictiveness on the government's part. Id. Once the presumption of vindictiveness has arisen, the burden shifts to the prosecution to show that independent reasons or intervening circumstances dispel the appearance of vindictiveness and justify its decisions. Id. Defendant notes that the government here has not been asked by this Court to show independent reasons that dispel the appearance of vindictiveness and justify its decisions to proceed in spite of known fraud by informants. While most vindictive prosecution cases involve reindictment of a defendant, the mere filing of an indictment can support a charge of vindictive prosecution. Id. Defendant feels that this doctrine is particularly apt here because the government had an opportunity, after learning from Lonnie Birmingham in March, 2004 that the Raff Story was a fraud, not to indict. After receiving the second confirmation on September 15, 2004 from the Brothers of Raff that her story was a fraud, it had the opportunity to dismiss the superseding indictment and did not. Harding, Bates and Swisher are hardly unimpeachable and tell stories that are equally, if not more, suspect than Raff's. If a defendant makes a prima facie showing of a likelihood of vindictiveness by "some evidence" of vindictiveness he is entitled to pursue discovery against the government to support such claim. United States v. One 1985 Mercedes, 917 F.2d 415, 421 (9th Cir. 1990). Here, even though evidence of vindictiveness was presented when the Raff tale was exposed as a fraud, the government willfully relied upon it in order to jail defendant and has denied defendant discovery.

63. Defendant is depressed because he feels he has been prosecuted vindictively for exercising his First Amendment Constitutional rights to express his political beliefs concerning the income tax system, corruption in government and health related issues, as evidenced by (1) Agents Vernon and Hines commencing a campaign of disinformation against him in February, 2000 asserting that he was a "dangerous person" who had followers that would perform "violent acts" and promising local Idaho Department of Labor officials that the IRS would "raid" his factory (See Exhibits E with Deposition Exhibits B-10 and B-12 attached); (2) Agents Vernon and Hines eventually making good on the promise to raid Mr. Hinkson's factory (even though they had to enlist the assistance of the FDA in order to obtain the search warrant that permitted the raid; see Search Warrant in the Tax Case); (3) the IRS improperly 'piggy-backing' on the search warrant issued to the FDA, so it could enter the WaterOz factory and participate in the seizure of financial records, Id.; and (4) Agent Hines vindictively commencing a campaign to contact each of Mr. Hinkson's credit suppliers, causing them to summarily shut down his credit and interrupt his business activities. (See Exhibit U, Affidavit of Geraldynne Gray.) Defendant is depressed that the government has an interest in stifling defendant's exercise of free speech based on the fact that the government has designated Mr. Hinkson's radio broadcast of January 8, 2003 as a trial exhibit, presumably to make him an 'offender for his words', which action defendant feels is a blatant violation of the First Amendment.

64. Defendant is depressed by the fact that he is aware that under the case law it is indicated that the government's vindictive prosecution against him should be dismissed and it has not. As discussed in the dissenting opinion in United States v. Williams, 504 U.S. 36, 60-61 (1992) (Stevens, J., dissenting):

Like the Hydra slain by Hercules, prosecutorial misconduct has many heads. Some are cataloged in Justice Sutherland's classic opinion for the Court in Berger v. United States, 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314 (1935):

"That the United States prosecuting attorney overstepped the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense is clearly shown by the record. He was guilty of misstating the facts in his cross-examination of witnesses; of putting into the mouths of such witnesses things which they had not said; of suggesting by his questions that statements had been made to him personally out of court, in respect of which no proof was offered; of pretending to understand that a witness had said something which he had not said and persistently cross-examining the witness upon that basis; of assuming prejudicial facts not in evidence; of bullying and arguing with witnesses; and in general, of conducting himself in a thoroughly indecorous and improper manner . . . .

The prosecuting attorney's argument to the jury was undignified and intemperate, containing improper insinuations and assertions calculated to mislead the jury." Id., at 84-85, 55 S. Ct., at 631-632.

65. Defendant is also depressed because numerous examples of prosecutorial misconduct in the grand jury proceedings against him indicate his case should be dismissed (i.e., Lonnie Birmingham being denied the opportunity to testify that defendant did not attempt to hire the brothers of Mariana Raff as 'hit men' to assassinate federal officials; see Exhibit B.) Note the dissent in Williams which cites the following cases:
The cases contain examples of prosecutors presenting perjured testimony, United States v. Basurto, 497 F.2d 781, 786 (CA9 1974), questioning a witness outside the presence of the grand jury and then failing to inform the grand jury that the testimony was exculpatory, United States v. Phillips Petroleum, Inc., 435 F. Supp. 610, 615-617 (ND Okla. 1977), failing to inform the grand jury of its authority to subpoena witnesses, United States v. Samango, 607 F.2d 877, 884 (CA9 1979), operating under a conflict of interest, United States v. Gold, 470 F. Supp. 1336, 1346-1351 (ND Ill.1979), misstating the law, United States v. Roberts, 481 F. Supp. 1385, 1389, and n. 10 (CD Cal.1980), and misstating the facts on cross-examination of a witness, United States v. Lawson, 502 F. Supp. 158, 162, and nn. 6-7 (Md.1980). Emphasis supplied. [Id. at 61-62 (footnote omitted).]
66. Defendant is depressed that even though other jurists recognize similar types of calamity when perpetrated by the government but prosecutor and the Trial Court here have proceeded with an agenda that involves full prosecution, irrespective of the facts and the law. In the Williams dissent he observed Justice Sutherland's identification of the basic reason why this sort of misconduct is intolerable merits repetition:
[T]he prosecutor's duty to protect the fundamental fairness of judicial proceedings assumes special importance when he is presenting evidence to a grand jury. As the Court of Appeals for the Third Circuit recognized, "the costs of continued unchecked prosecutorial misconduct" before the grand jury are particularly substantial because there "the prosecutor operates without the check of a judge or a trained legal adversary, and is virtually immune from public scrutiny. The prosecutor's abuse of his special relationship to the grand jury poses an enormous risk to defendants as well. For while in theory a trial provides the defendant with a full opportunity to contest and disprove the charges against him, in practice, the handing up of an indictment will often have a devastating personal and professional impact that a later dismissal or acquittal can never undo. Where the potential for abuse is so great, and the consequences of a mistaken indictment so serious, the ethical responsibilities of the prosecutor, and the obligation of the judiciary to protect against even the appearance of unfairness, are correspondingly heightened." United States v. Serubo, 604 F.2d 807, 817 (CA3 1979).
67. Defendant is depressed when he sees that renowned jurists, such as Judge Friendly and Justice Sutherland, were able to identify and address the similar plights that has befallen other individuals such as defendant, but that the trial judge here ignores the most obvious evidence of misconduct by the prosecution, which misconduct should have raised serious questions for the Court to demand answers from the government sua sponte by this time. In his dissent in United States v. Ciambrone, 601 F.2d 616 (CA2 1979), Judge Friendly also recognized the prosecutor's special role in grand jury proceedings:
As the Supreme Court has noted, "the Founders thought the grand jury so essential to basic liberties that they provided in the Fifth Amendment that federal prosecution for serious crimes can only be instituted by 'a presentment or indictment of a Grand Jury.'" United States v. Calandra, 414 U.S. 338, 343 [94 S. Ct. 613, 617, 38 L. Ed.2d 561], . . . (1974). Before the grand jury the prosecutor has the dual role of pressing for an indictment and of being the grand jury adviser. In case of conflict, the latter duty must take precedence. United States v. Remington, 208 F.2d 567, 573-74 (2d Cir.1953) (L. Hand, J., dissenting), cert. denied, 347 U.S. 913 [74 S. Ct. 476, 98 L. Ed. 1069] . . . (1954).
"The ex parte character of grand jury proceedings makes it peculiarly important for a federal prosecutor to remember that, in the familiar phrase, the interest of the United States 'in a criminal prosecution is not that it shall win a case, but that justice shall be done.' Berger v. United States, 295 U.S. 78, 88 [55 S. Ct. 629, 633, 79 L. Ed. 1314] . . . (1935)." Id., at 628-629.

Id. at 62-64 (footnote omitted). The dissent continued:

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor(indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Berger v. United States, 295 U.S., at 88, 55 S. Ct. at 633. [Id. at 62.]

68. Defendant is depressed by the fact that while other prosecutors are held to the standard of refraining from improper methods, the prosecutors in this case are not – defendant has been struck with numerous 'foul blows'. The Williams dissent explained that it "is equally clear that [the] prosecutor has the same duty to refrain from improper methods calculated to produce a wrongful indictment." Id. Defendant is depressed because he cannot think of a more grievous "improper method" than the government using perjured testimony from former disgruntled employees who have a vendetta against him to obtain an indictment and for the court to incarcerate him under a fraudulently-obtained detention order. "Indeed," as the court stated:

After all, the grand jury is not merely an investigatory body; it also serves as a "protector of citizens against arbitrary and oppressive governmental action." United States v. Calandra, 414 U.S., at 343, 94 S. Ct., at 617. Explaining why the grand jury must be both "independent" and "informed," the Court wrote in Wood v. Georgia, 370 U.S. 375, 82 S.Ct. 1364, 8 L .Ed.2d 569 (1962):

"Historically, this body has been regarded as a primary security to the innocent against hasty, malicious and oppressive persecution; it serves the invaluable function in our society of standing between the accuser and the accused, whether the latter be an individual, minority group, or other, to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice and personal ill will." Id., at 390, 82 S. Ct., at 1373.

It blinks reality to say that the grand jury can adequately perform this important historic role if it is intentionally misled by the prosecutor(on whose knowledge of the law and facts of the underlying criminal investigation the jurors will, of necessity, rely. [Id. at 68 (Stevens, J., dissenting).]

69. In this instance, prosecutors have embraced the statements of Harding, Bates and Swisher and have presented same to the grand jury and to this Court without proper investigation after having deliberately deprived the grand jury of information that was readily available regarding the false Raff allegations (i.e., preventing Lonnie Birmingham from testifying that Hinkson never solicited the Brothers). The presentation of such information would have provided the jurors with an accurate picture of the false allegations that precipitated Mr. Hinkson's incarceration and also would have helped dispel the notion that he wanted to harm others; in fact, had members of the grand jury been aware that the initial claims (of Raff) that caused Mr. Hinkson's incarceration were fraud-based, they may well have refused to indict, perceiving that because Agent Long presented the false Raff Story to the Court at the detention hearing initially he may well be presenting additional false evidence from Harding, Bates and Swisher.

70. Defendant is disturbed and depressed by the fact that even though he has no criminal record (other than his recent conviction for white-collar crimes in the Tax Case) he is currently incarcerated in the Ada County Jail, Boise, Idaho, under the authority of the U.S Attorney's Office with an unnecessarily high security classification. Agent Long admitted to defendant's father, Roland C. Hinkson, shortly after the April 9, 2003 detention hearing that he (Long) knew David would not harm anyone. (See Affidavit of Roland C. Hinkson filed in the Tax Case, Exhibit ___ attached hereto.) Defendant feels the government has perpetuated his extraordinarily high security classification in order to create a false persona of defendant. (See testimony of David Myers at the December 7, 2004 evidentiary hearing.) Defendant feels conditions of his confinement have been unreasonable and oppressive and have interfered with his ability to aid in his own defense because they have caused mental distress and anguish and deprived him of access to legal research. At this point, the effects of such confinement are indeed interfering with defendant's ability to assist his counsel in preparing his defense for trial. (See Exhibits A-1 and A-2, reports of Dr. Doke and Exhibit B, Affidavit of Roland C. Hinkson, both attached to Defendant's Motion for Temporary Release.)

71. Defendant further perceives that the government has consistently interfered with his housing and placement by directing the Ada County Jail to periodically move him to solitary confinement, reassign him to higher levels of security classification and restrict his living privileges, all with the intent of increasing defendant's level of stress

and inducing the 'Stockholm Syndrome" or a psychological breakdown in defendant. (See Exhibits A-1 and A-2, Doke Reports and Affidavit of Roland C. Hinson, Exhibit B to Defendant's Motion for Temporary Release.)
72. Although completely passive, defendant's physical safety was threatened when he was placed in a jail cell with an individual who strangled another inmate to unconsciousness in defendant's presence (after the strangler had demanded money from defendant) causing defendant to be more stressed and depressed. (See Affidavit of Roland C. Hinson, Exhibit B to Defendant's Motion for Temporary Release.)
73. Defendant is depressed because he has been denied confidential and privileged access to his attorney as a result of (a) the monitoring and recording of his telephone calls (even those now taking place on 'attorney lines' continue to be monitored and/or recorded and some attorney telephone lines have been shut down over the past few months, further restricting defendant's access to his legal counsel); and (b) the monitoring of attorney conference-room visits (in which a monitor warning light was only recently installed.)
74. Further, defendant believes that he has suffered the following unjustified and unwarranted revocation of privileges while in jail: (a) denial of his ability to perform legal research by any available means, i.e., in the law library (law books are outdated because of lack of subscription renewals in the last five years since research is now available on the Internet); on the jail computer which has no access to legal research on the Internet; on his own laptop computer (the use of which was denied by the U. S. Marshal even though the Ada County Jail officials did not object and even though the U.S. Marshal has allowed another detainee the use of a laptop;) (b) denial of access to family visits by the imposition of a punitive 'no visitation' order so that family members who traveled nearly a thousand miles have been turned away; (c) denial of his medically ordered 'gluten-free' diet and insufficient protein content of the jail diet which have caused both an excessive weight-gain (from gluten-laden pasta products) and the compromise of his brain function, a technique used when brain-washing individuals pursuant to the Stockholm Syndrome; (d) denial of commissary privileges which offered an opportunity for defendant to obtain substitute protein foods to augment the nutritionally deficient and inconsistent jail diet; (e) sleep derivation for twenty months; (f) denial of the opportunity to reside in the 'dorms' with other non-violent inmates and placement in a high security 'tank' with accused child molesters and other violent offenders; (g) placement in the maximum

security or 'Closed Custody Unit' where privileges are even more severely restricted; and (h) periodic placement in solitary confinement for reasons such as defendant talking to his attorney too much. (See Affidavit of Roland C. Hinson, Exhibit B to Defendant's Motion for Temporary Release.)
75. It depresses defendant further to know that the evidence shows jail officials have claimed that the punitive conditions applied to Mr. Hinkson (i.e., solitary confinement) were for his "own protection." Defendant is depressed by the fact that any such "protection" was necessitated by (a) the false accusations and rumors perpetuated by the U.S. Attorney's Office, the FBI (an agency of the U.S. government) and U.S. Marshal's Office that defendant was a "killer" and "child molester," which rumors fostered hostility from other inmates and jail-guard personnel; and (b) the fact that jail officials, while allowing Mr. Hinkson to use the telephone to call his attorney after hours, placed him in a location clearly visible to other inmates, engendering hostility from fellow inmates as they viewed this use of the phone by defendant as an "extraordinary privilege." (See Affidavit of Roland C. Hinson, Exhibit B to Defendant's Motion for Temporary Release.)
76. Pursuant to the findings of Psychologist, Dr. Jerry D. Doke (see Exhibits A-1 and A-2 attached to the Defendant's Motion for Temporary Release) these circumstances have negatively impacted defendant and caused him to have increasing levels of depression and to be at risk for decompensating which likely would prevent him from presenting himself adequately at trial and could lead to his loss of his competency to stand trial.
77. In summary, defendant's mental condition has deteriorated and he has become increasingly depressed because he believes he has been denied due process in light of the extremes of prosecutorial misconduct, vindictive prosecution and outrageous governmental conduct as follows:
a. The denial by the Court of a bond and bail evidentiary hearing which would have allowed defendant the opportunity to face his accusers and uncover the lies being told by, inter alia, Mariana Raff;

b. Being misled by IRS Agent Vernon that his tax case was a civil matter (prompting statements not protected by Miranda warnings) when it was actually being investigated by the Criminal Division (see Exhibit D-1, pp. 1281, ll __);

c. The spreading of the unsubstantiated, vicious and false rumors started by IRS Agent Vernon that former WaterOz employee Bernard feared reprisal being shot by defendant (see Exhibit F, Affidavit of Steve Bernard);

d. The spreading of the unsubstantiated, vicious and false rumors started by IRS Agents Vernon and Hines when they told representatives of the Idaho Department of Labor on February 17, 2000 that defendant was a "dangerous person" with "followers" and had dangerous companions who kept automatic and semi-automatic rifles used by military and law enforcement agencies at his factory and that he was a "coward" surrounded by devoted followers who were prepared to defend him with violent force; also Vernon's accusation that defendant was a "coward" on May 3, 2004 when he said, "Kofahl emphasized that, although Hinkson is cowardly, he [Hinkson] could have one of his followers perform violent acts. (Exhibit D-1 at p. 1281, ll _.)

e. The spreading of the unsubstantiated, vicious and false rumors by Agent Vernon from a disgruntled former WaterOz employee Phil Kofahl that defendant was affiliated with illegal militia organization(s);

f. The unfair and improper use of improperly drawn administrative summonses by IRS Agents Vernon and Hines to obtain defendant's records;

g. The government permitting Mr. Kofahl to present vicious and false rumors to the grand jury that defendant's WaterOz products had killed someone -- in order to enflame the passions of the jurors;

h. The government permitting Annette Hasalone to present vicious and false rumors to the grand jury that defendant was responsible for the death of the son of talk-show-radio-host Art Bell -- in order to enflame the passions of the jurors;

i. The unwarranted sealing for four months and subsequent breach of secrecy of the indictment in the Tax Case in order for the government to gain a tactical advantage (to obtain a warrant and conduct a raid on defendant's property) and to give defendant's competitor, ENVIA an unfair business advantage;

j. The selective prosecution of defendant by the FDA for labeling violations which the FDA did not enforce against his competitor(s) who were using the same labeling information which gave his competitors an unfair business advantage;

k. The "piggy-backing" of the IRS onto the FDA search warrant to aid the IRS in obtaining defendant's records (to which it had no right) in order to shut down his credit and the SWAT-Team raid of November 21, 2002 on defendant's home which terrorized him and destroyed his property;

l. The harassment of defendant by the repeated attempts by government informants to entrap him into a solicitation-for-murder crime that never happened and did not exist;

m. The refusal of Assistant United States Attorney Wendy Olsen to provide Brady-Giglio materials concerning an alleged confession by defendant of April 4, 2003 and information as to payment(s) made to Informant Harding, even suggesting by her omission that they did not exist;

n. The denial of defendant's civil right to consult his attorney and have that attorney deal with government interrogation when defendant was lured to the Kooskia, Idaho Sheriff's office on a pretext and arrested by FBI Agent Long on April 4, 2003;

o. The false testimony of FBI Agent Long on April 9, 2003 that defendant had not requested an attorney at the time of his April 4, 2003 arrest (when defendant had a tape recording of him making such a request) and Agent Long's subsequent admission on December 7, 2004 that he had previously testified "erroneously," when he heard the tape recording, together with three other fabrications he made at the April 9, 2003 hearing that constituted perjury and resulted in the detention of defendant;

q. The false testimony offered by Agent Long on April 9, 2003 that Mariana Raff's brothers were solicited by defendant to kill federal officials and that they had "done that type of work before" when he knew, as a member of the Anti-terrorism Task Force, that because such accusations (which constituted a potential international threat) hadn't been investigated they were groundless;

r. The refusal of the prosecution in March, 2004 to notify defendant that it had been discovered that the facts

of the Mariana Raff Story were false, their refusal at that time to allow Lonnie Birmingham to offer evidence they knew he possessed which disproved her story and their failure to immediately seek defendant's release when the falsity of the Raff Story was received by them on September 15, 2004;

s. The 17-month delay of the government's investigation of the "Raff Story" which presumably exposed the United States and its federal officials to a potential terrorist threat, but has kept defendant incarcerated based on fraud;

t. The proffer of the Raff Story for detention purposes a second time on July 7, 2004 when the facts of same were known to be false;

u. The irregular grand jury proceedings throughout this case and the refusal of the Court to order the United States Attorney's office to provide copies of same to defendant as required by the Procedural Order;

v. The repeated dismissal of criminal charges against defendant's primary accuser, Mariana Raff instigated by the government, in exchange for her false statements made against defendant;

w. The release by the Prosecution of defendant's primary accuser, Mariana Raff as a government witness when the false nature of her story became clearly evident in March, 2004 and the failure to timely disclose the impeachment of her statements to defendant, which disclosure would have impacted his detention and given him the right to a de novo hearing;

x. The failure of this Court to dismiss this action, recognizing the foregoing widespread pattern of wrongdoing; and

y. The unwarranted high security classification and oppressive jail conditions that have been imposed upon defendant in light of his non-violent history and model behavior and the 'trumped-up' charges by jail officials related to defendant's possession of a yellow highlighter pen, paper clip and book, all fostered by the U.S. Marshal in an attempt to create a negative persona for defendant.

The above facts and circumstances have contributed to defendant's depression, which condition is impeding defendant's ability to assist in the preparation of his defense in this case and may lead to such serious depression that he may not be competent to stand trial.
Signed this __ day of December, under penalty of perjury as an officer of the Court.

_____
Wesley W. Hoyt

Two FBI 302 statements have been written for Mariana Raff related to early April, 2003, accusing defendant of trying to hire her brothers in Mexico to murder federal officials in Idaho. She also made statements about Mr. Hinkson's intent to use his international business and banking connections to flee prosecution, making him a "flight risk." (See Exhibit A attached.) Raff's credibility has now been completely destroyed by the FBI 302 statement given on September 15, 2004, by her brothers who denied that Mr. Hinkson made any offers to hire them as assassins or even discussed homicide. In a similar vein, Raff's credibility having been impeached,with regard to the contract murder claim is likewise destroyed as to the claim that Mr. Hinkson is a flight risk.
On September 15, 2004, 17 months after Mariana Raff advised the FBI that her brothers in Mexico were approached by Mr. Hinkson to kill federal officials in Idaho, FBI Agent William Long called Juan Carlos Martinez-Piedras in Puebla, Mexico, brother of Mariana Raff, who admitted he had been contacted by Mr. Hinkson regarding the purchase of real property in connection with the WaterOz business. When asked, Juan Carlos denied Mr. Hinkson tried to hire him to kill anyone, including federal officials in Idaho and stated they did not even discuss homicide. (See Exhibit B attached.) Prior to September 15, 2004, and in March, 2004, at the time that the Idaho Federal grand jury was first convened to review the Threats Case, Mr. Lonnie Birmingham advised the government that, as Hinkson and Raff's traveling companion, he was present during conversations between Hinkson and Raff's brothers and that Hinkson did not offer to hire them to kill anyone. (See Exhibit C attached.)
THE INFORMANT: "So you're going to murder them. What are you going to do? What can you do?
MR. HINKSON: I'm going to sue them.
THE INFORMANT: Right.

MR. HINKSON: That's what I have been doing. That's the frustrating part is (sic) the only thing we got is the court system which is so crooked." (Exhibit _, March 27, 2003, tape of body-wire p. 135, ll. 14-20.)
THE INFORMANT: "Got you. Hum, so you think you can beat them at their own system?
MR. HINKSON: Yeah." (Id. at p. 147, ll 12-14.)
THE INFORMANT: "I want to know something for sure. This is dead serious what I'm asking you this. (sic) You talked to me about this on a couple of occasions. Do you want to do it? Do you not want to do it?
MR. HINKSON: What?
THE INFORMANT: Your problem with three wisemen.
MR. HINKSON: I'm just suing them." (Id. at p. 149, ll 3-16.)