UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
V.	)	
	)	Docket No. 20-CR-40021-MRG
RAHIM SHAFA and	)	
NAHID TORMOSI SHAFA	)	
	)	
Defendants.	)	

GOVERNMENT'S SUPPLEMENTAL REQUEST FOR JURY INSTRUCTIONS

Pursuant to Rule 30 of the Federal Rules of Criminal Procedure and the Court's trial order, the United States submits the attached amended jury instructions. The government requests that the Court instruct the jury in accordance with the proposed instructions, in addition to its usual instructions in criminal cases. In particular, the government proposes to amend the instruction previously included as "Duty of the Jury to find Facts and Follow Law" as set forth below. As grounds, the government states that in light of multiple attempts by the defense to introduce arguments aimed at jury nullification, it is proper and necessary for the Court to provide a specific instruction on jury nullification. *See United States v. Brown*, 945 F.3d 597, 603-04 (1st Cir. 2019); *see also In re United States*, 945 F.3d 616 (2d Cir. 2019).

The government reserves its right to supplement or modify these requested instructions in light of the requests, if any, filed by the defendants and the evidence in the case.

Respectfully submitted,

JOSHUA S. LEVY
Acting United States Attorney

By: */s/ Kaitlin J. Brown*
John T. Mulcahy
Howard Locker
Kaitlin J. Brown
Assistant United States Attorneys

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In deciding whether defendant(s) acted knowingly, you may infer that [defendant] had knowledge of a fact if you find that he or she deliberately closed his or her eyes to a fact that otherwise would have been obvious to him or her. In order to infer knowledge, you must find that two things have been established. First, that defendant was aware of a high probability of the fact in question. Second, that defendant consciously and deliberately avoided learning of that fact. That is to say, defendant willfully made himself/herself blind to that fact. It is entirely up to you to determine whether he/she deliberately closed his/her eyes to the fact and, if so,

DUTIES OF THE JURY

Ladies and gentlemen: You now are the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some instructions. At the end of the trial, I will give you more detailed instructions. Those instructions will control your deliberations.

It is your duty to find the facts from all the evidence admitted in this case. To those facts you must apply the law as I give it to you. You, and you alone, are the judges of the facts. The determination of the law is my duty as the presiding judge in this court. It is your duty to apply the law exactly as I give it to you, whether you agree with it or not. You will hear the evidence, decide what the facts are, and then apply those facts to the law I give to you. That is how you will reach your verdict. In doing so you must follow that law whether you agree with it or not. The evidence will consist of the testimony of witnesses, documents and other things received into evidence as exhibits, and any facts on which the lawyers agree or which I may instruct you to accept.

You should not take anything I may say or do during the trial as indicating what I think of the believability or significance of the evidence or what your verdict should be.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 1.01.

NATURE OF INDICTMENT; PRESUMPTION OF INNOCENCE

This criminal case has been brought by the United States government. I will sometimes refer to the government as the prosecution. The government is represented at this trial by Assistant United States Attorneys John Mulcahy, Kaitlin Brown, and Howard Locker. Defendant Rahim SHAFA is represented by attorney Brad Bailey, Paul Cirel, and Patrick Garrity. Defendant Nahid TORMOSI SHAFA is represented by attorney Raymond Sayeg, Jr.

Rahim SHAFA has been charged by the government with violations of federal law. He is charged with ten offenses or counts: one count of conspiracy to commit international money laundering, three counts of international money laundering and aiding and abetting international money laundering, one count of conspiracy to defraud the United States, three counts of importing merchandise contrary to law and aiding and abetting importing merchandise contrary to law, one count of receipt and delivery of misbranded drugs, and one count of conspiracy to commit healthcare fraud.

Nahid TORMOSI SHAFA has been charged by the government with violations of federal law. She is charged with two offenses or counts: one count of conspiracy to commit international money laundering and one count of conspiracy to commit healthcare fraud.

The charges against Rahim SHAFA and Nahid TORMOSI SHAFA are contained in the Superseding Indictment (hereinafter, "the Indictment"). The Indictment is simply the description of the charges against the Defendants; it is not evidence of anything. The Defendants have pleaded not guilty to the charges and deny committing the crimes. They are presumed innocent and may

not be found guilty by you unless all of you unanimously find that the government has proven his guilt beyond a reasonable doubt.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 1.02.

EVIDENCE; OBJECTIONS; RULINGS; BENCH CONFERENCES

I have mentioned the word "evidence." Evidence includes the testimony of witnesses, documents, and other things received as exhibits, and any facts that have been stipulated—that is, formally agreed to by the parties.

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence, and a lawyer on the other side thinks that it is not permitted by the rules of evidence, there may be an objection. This simply means that the lawyer is requesting that I make a decision on a particular rule of evidence.

Then it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference here while the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

Certain things are not evidence. I will list those things for you now:

(1) Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.

(2) Objections are not evidence. Lawyers have a duty to their client to object when they believe something is improper under the rules of evidence. You should not be influenced by the objection. If I sustain an objection, you must ignore the question or exhibit and must not try to guess what the answer might have been or the exhibit might have contained. If I overrule the

objection, the evidence will be admitted, but do not give it special attention because of the objection.

(3) Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.

(4) Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for a particular purpose, and not for any other purpose. I will tell you when that occurs and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms "direct evidence" and "circumstantial evidence." Direct evidence is testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find or infer another fact. You may consider both direct and circumstantial evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 1.05.

CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe everything a witness says or only part of it or none of it.

In deciding what to believe, you may consider a number of factors, including the following: (1) the witness's ability to see or hear or know the things the witness testifies to; (2) the quality of the witness's memory; (3) the witness's manner while testifying; (4) whether the witness has an interest in the outcome of the case or any motive, bias or prejudice; (5) whether the witness is contradicted by anything the witness said or wrote before trial or by other evidence; and (6) how reasonable the witness's testimony is when considered in the light of other evidence which you believe.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 1.06.

CONDUCT OF THE JURY

To ensure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case or about anyone involved with it until the end of the case when you go to the jury room to decide on your verdict;

Second, do not talk with anyone else about this case or about anyone who has anything to do with it until the trial has ended and you have been discharged as jurors. "Anyone else" includes members of your family and your friends. You may tell them that you are a juror, but do not tell them anything about the case until after you have been discharged by me;

Third, do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone should try to talk to you, please report it to me immediately;

Fourth, during the trial do not talk with or speak to any of the parties, lawyers, or witnesses involved in this case—you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you;

Fifth, do not read any news stories or articles about the case or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it;

Sixth, do not do any research on the internet about anything in the case or consult blogs, social media, or dictionaries or other reference materials, and do not make any investigation about the case on your own;

Seventh, do not discuss the case, anyone involved with it, or your status as a juror on any social media or look up any of the participants there.

Eighth, if you need to communicate with me, simply give a signed note to the courtroom deputy to give to me; and

Ninth, do not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence. Keep an open mind until then.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 1.07.

NOTETAKING

I am going to permit you to take notes in this case, and the courtroom deputy has distributed pencils and pads for your use. I want to give you a couple of warnings about taking notes, however. First of all, do not allow your notetaking to distract you from listening carefully to the testimony that is being presented. If you would prefer not to take notes at all but simply to listen, please feel free to do so. Please remember also from some of your grade-school experiences that not everything you write down is necessarily what was said. Thus, when you return to the jury room to discuss the case, do not assume simply because something appears in somebody's notes that it necessarily took place in court. Instead, it is your collective memory that must control as you deliberate upon the verdict. Please take your notes to the jury room at every recess. I will have the courtroom deputy collect them at the end of each day and place them in the vault. They will then be returned to you the next morning. When the case is over, your notes will be destroyed. These steps are in line with my earlier instruction to you that it is important that you not discuss the case with anyone or permit anyone to discuss it with you.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 1.08.

OUTLINE OF THE TRIAL

The first step in the trial will be the opening statements. The government in its opening statement will tell you about the evidence that it intends to put before you, so that you will have an idea of what the government's case is going to be.

Just as the Indictment is not evidence, neither is the opening statement evidence. Its purpose is only to help you understand what the evidence will be and what the government will try to prove.

After the government's opening statement, each defendant may, if he or she chooses, make an opening statement. At this point in the trial, no evidence has been offered by either side.

Next the government will offer evidence that it says will support the charges against the defendants. The government's evidence in this case will consist of the testimony of witnesses and may include documents and other exhibits. In a moment I will say more about the nature of evidence.

After the government's evidence, each defendant may make an opening statement and present evidence on each defendant's behalf, but the defendants are not required to do so. I remind you that the defendants are presumed innocent, and the government must prove the guilt of the defendants beyond a reasonable doubt. The defendants do not have to prove their innocence.

After you have heard all the evidence on both sides, the government and the defense will each be given time for their final arguments. I just told you that the opening statements by the lawyers are not evidence. The same applies to the closing arguments. They are not evidence either. In their closing arguments, the lawyers for the government and the defendants will attempt to summarize and help you understand the evidence that was presented.

The final part of the trial occurs when I instruct you about the rules of law that you are to use in reaching your verdict. After hearing my instructions, you will leave the courtroom together to make your decisions. Your deliberations will be secret. You will never have to explain your verdict to anyone.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 1.09.

[STIPULATIONS]

The evidence in this case includes facts to which the lawyers have agreed or stipulated. A stipulation means simply that the government and the defendants accept the truth of a particular proposition or fact. Since there is no disagreement, there is no need for evidence apart from the stipulation. You must accept the stipulation as a fact to be given whatever weight you choose.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 2.01.

[JUDICIAL NOTICE]

Over the course of the trial, I may have taken what is called "judicial notice" of a certain matter. I believe that any matter subject to judicial notice is of such common knowledge or can be so accurately and readily determined that it cannot be reasonably disputed. You may, therefore, reasonably treat this fact as proven, even though no evidence has been presented on this point.

As with any fact, however, the final decision whether or not to accept it is for you to make. You are not required to agree with me.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 2.02.

IMPEACHMENT BY PRIOR INCONSISTENT STATEMENT; AND PRIOR CONSISTENT STATEMENTS

You have heard evidence that, before testifying at this trial, a witness made a prior statement concerning the same subject matter as their testimony in this trial. You may consider that earlier statement to help you decide how much of the witness's testimony to believe. If you find that the prior statement was not consistent with the witness's testimony at this trial, then you should decide whether that affects the believability of the witness's testimony at this trial.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 2.03.

[IMPEACHMENT OF WITNESS TESTIMONY BY PRIOR CONVICTION]

You have heard evidence that [witness] has been convicted of a crime. You may consider that evidence, together with other pertinent evidence, in deciding how much weight to give to that witness's testimony.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 2.04.

[EVIDENCE OF DEFENDANT'S PRIOR SIMILAR ACTS]

You have heard [will hear] evidence that [defendant**(s)**] previously committed acts similar to those charged in this case. You may not use this evidence to infer that, because of [his/her] character, [defendant**(s)**] carried out the acts charged in this case. You may consider this evidence only for the limited purpose of deciding:

[Provide only the specific purpose(s) below for which the prior act evidence is being admitted.]

Whether [defendant] had the state of mind or intent necessary to commit the crime charged in the indictment;

or

Whether [defendant] had a motive or the opportunity to commit the acts charged in the indictment;

or

Whether [defendant] acted according to a plan or in preparation for commission of a crime;

or

Whether [defendant] committed the acts [he/she] is on trial for by accident or mistake.

Remember, this is the only purpose for which you may consider evidence of [defendant]'s prior similar acts. Even if you find that [defendant] may have committed similar acts in the past, this is not to be considered as evidence of character to support an inference that [defendant] committed the acts charged in this case.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 2.06.

WEIGHING THE TESTIMONY OF AN EXPERT WITNESS

You have heard testimony from witnesses described as experts. An expert witness has special knowledge or experience that allows the witness to give an opinion.

You may accept or reject such testimony. In weighing the testimony, you should consider the factors that generally bear upon the credibility of a witness as well as the expert witness's education and experience, the soundness of the reasons given for the opinion, and all other evidence in the case.

Remember that you alone decide how much of a witness's testimony to believe, and how much weight it should be given.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 2.07.

USE OF TAPES AND TRANSCRIPTS

[*The government will ask that this instruction be given prior to the playing of UC-1 and UC-2's medical visit*:]

At this time, you are going to hear conversations that were recorded. This is proper evidence for you to consider. In order to help you, I am going to allow you to have a transcript to read along as the tape is played. The transcript is merely to help you understand what is said on the tape. If you believe at any point that the transcript says something different from what you hear on the tape, remember it is the tape that is the evidence, not the transcript. Any time there is a variation between the tape and the transcript, you must be guided solely by what you hear on the tape and not by what you see in the transcript.

[*Proposed instruction for final charging conference:*]

In this case, you have heard certain conversations that were recorded. This is proper evidence for you to consider. To help you, I allowed you to have a transcript to read along as the tape was played. The transcript was merely to help you understand what was said on the tape. If you believe at any point that the transcript said something different from what you heard on the tape, remember it is the tape that is the evidence, not the transcript. Any time there was a variation between the tape and the transcript, you must be guided solely by what you heard on the tape and not by what you saw in the transcript.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 2.09.

STATEMENTS BY DEFENDANT

You have heard evidence that the defendants made statements in which the government claims they admitted certain facts.

It is for you to decide (1) whether the relevant defendant made the statement, and (2) if so, how much weight to give it. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the statement may have been made and any facts or circumstances tending to corroborate or contradict the version of events described in the statement.

You are not to consider the statements against any defendant other than the defendant who made the statement. For example, any statements that defendant SHAFA made can only be considered against him, and not against defendant TORMOSI SHAFA. Likewise, any statements that defendant TORMOSI SHAFA made can only be considered against her, and not against defendant SHAFA.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 2.11.

DUTY OF THE JURY TO FIND FACTS AND FOLLOW LAW

It is your duty to find the facts from all the evidence admitted in this case. To those facts you must apply the law as I give it to you. You are not to be concerned with the wisdom of any rule of law as stated by the court. Nor should you be concerned with your opinion, favorable or unfavorable, of the Food and Drug Administration ("FDA") or any other agency whose laws I instruct you on. Regardless of any opinion that you may have as to what the law ought to be, or any opinion, favorable or unfavorable, that you may have regarding the FDA or any other agency whose laws I instruct you on, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the court, just as it would be a violation of your sworn duty, as judges of the facts, to based a verdict upon anything but the evidence in this case.

Authority: *United States v. Brown*, 945 F.3d 597, 603-04 (1st Cir. 2019); Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 3.01.

PRESUMPTION OF INNOCENCE; PROOF BEYOND A REASONABLE DOUBT

It is a cardinal principle of our system of justice that every person accused of a crime is presumed to be innocent unless and until their guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the most important substance.

The presumption of innocence alone may be sufficient to raise a reasonable doubt and to require the acquittal of a defendant. The defendants before you, Rahim SHAFA and Nahid TORMOSI SHAFA, have the benefit of that presumption throughout the trial, and you are not to convict either of any crime charged unless you are persuaded of their guilt of that charge beyond a reasonable doubt.

The presumption of innocence until proven guilty means that the burden of proof is always on the government to satisfy you that the defendants are guilty of the crime with which they are charged beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to the defendants. It is always the government's burden to prove each of the elements of the crime charged beyond a reasonable doubt by the evidence and the reasonable inferences to be drawn from that evidence. The defendants have the right to rely upon the failure or inability of the government to establish beyond a reasonable doubt any essential element of the crimes charged against them.

If, after fair and impartial consideration of all the evidence, you have a reasonable doubt as to a defendant's guilt of a particular crime, it is your duty to find him and/or her not guilty of that crime. On the other hand, if after fair and impartial consideration of all the evidence, you are satisfied beyond a reasonable doubt of the defendants' guilt of a particular crime, you should

find him and/or her guilty of that crime.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 3.02.

DEFENDANTS' CONSTITUTIONAL RIGHT NOT TO TESTIFY

The defendants, Rahim SHAFA and Nina TORMOSI SHAFA, have a constitutional right not to testify and no inference of guilt, or of anything else, may be drawn from the fact that the defendant or defendants did not testify. For any of you to draw such an inference would be wrong; indeed, it would be a violation of your oath as a juror.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 3.03.

KINDS OF EVIDENCE: DIRECT AND CIRCUMSTANTIAL

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness that the witness saw something. Direct evidence is where a witness testifies to what he saw, heard, or observed. In other words, when a witness testifies about what is known to him of his own knowledge by virtue of his own senses—what he sees, hears, touches, or feels—that is called direct evidence. Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. Circumstantial evidence is indirect evidence, that is proof of a fact or facts from which you could draw the inference, by reason and common sense, that another fact exists, even though it has not been proven directly.

You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

There is a simple example of circumstantial evidence that is often used in this courthouse. Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Assume that later in the day, as you were sitting in the jury room, someone walked in with an umbrella which was dripping wet. Somebody else then walked in with a raincoat which also was dripping wet.

Now, you cannot look outside of the jury room and you cannot see whether or not it is raining. So you have no direct evidence of that fact. But, on the combination of facts which I have asked you to assume, it would be reasonable and logical for you to conclude that it had been raining. Inferences are deductions or conclusions which reason and common sense lead you to draw from the facts as established by the evidence.

That is all there is to circumstantial evidence. You infer on the basis of reason and

experience and common sense from an established fact the existence or the nonexistence of some other fact.

Circumstantial evidence is of no less value than direct evidence; for, it is a general rule that the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case. In reaching your verdict, it is permissible to draw and rely upon inferences from the evidence.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 3.05.; and L. B. Sand, Modern Federal Jury Instruction: Criminal ¶ 5-2 (1990).

CHARTS AND SUMMARIES

Charts or summaries prepared by the government have been admitted into evidence and were shown to you during the trial for the purpose of explaining facts that are contained in other documents. You may consider the charts and summaries as you would any other evidence admitted during the trial and give it such weight or importance, if any, as you feel it deserves.

Authority: 1A O'Malley, Grenig, & Hon. Lee, Federal Jury Practice and Instructions, § 14.02 (6th ed. 2008).

CREDIBILITY OF WITNESSES

Whether the government has sustained its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead upon the nature and quality of the evidence presented. You do not have to accept the testimony of any witness if you find the witness not credible. You must decide which witnesses to believe and which facts are true. To do this, you must look at all the evidence, drawing upon your common sense and personal experience.

You may want to take into consideration such factors as the witnesses' conduct and demeanor while testifying; their apparent fairness or any bias they may have displayed; any interest you may discern that they may have in the outcome of the case; any prejudice they may have shown; their opportunities for seeing and knowing the things about which they have testified; the reasonableness or unreasonableness of the events that they have related to you in their testimony; and any other facts or circumstances disclosed by the evidence that tend to corroborate or contradict their versions of the events.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 3.06.

CAUTIONARY AND LIMITING INSTRUCTIONS AS TO PARTICULAR KINDS OF EVIDENCE

A particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I have told you when that occurred and instructed you on the purposes for which the item can and cannot be used.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 3.07.

WHAT IS NOT EVIDENCE

Certain things are not evidence. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them from the evidence differ from the way the lawyers have stated them, your memory of them controls.

2. Questions and objections by lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by my ruling on it.

3. Anything that I have excluded from evidence or ordered stricken and instructed you to disregard is not evidence. You must not consider such items.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at trial.

5. The Indictment is not evidence. This case, like most criminal cases, began with an indictment. That indictment was returned by a grand jury, which heard only the government's side of the case. I caution you, as I have before, that the fact that the defendants have an indictment filed against them is no evidence whatsoever of either of their guilt. The indictment is simply an accusation. It is the means by which the allegations and charges of the government are brought before this court. The indictment proves nothing.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 3.08.

SEPARATE CONSIDERATION OF EACH DEFENDANT

The defendant, Dr. Rahim SHAFA, is charged in ten separate counts. The defendant, Nahid TORMOSI SHAFA, is charged in two separate counts. A separate crime is charged against each defendant in each count. The charges have been joined for trial. You must, however, consider and decide the case of each defendant on each crime charged against each defendant separately. Your verdict as to one defendant should not control your verdict as to any other defendant.

All the instructions apply to each defendant and to each count.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 3.09.

REASONABLE CONSIDERATION

In coming to your decision, you should consider the evidence in the same way that all reasonable persons would treat any question presented to them. You are expected to use your good sense, consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construction in light of your common knowledge of the natural tendencies and inclinations of human beings.

Authority: Devitt and Blackmar, Federal Jury Practice and Instructions, 15.01 (3d ed. 1977).

PROOF MAY BE DISJUNCTIVE

To the extent the Indictment uses the conjunctive word "and," it is sufficient if the government proves the offense in the disjunctive, as if the word "or" had been used.

Authority: *See, e.g., United States v. Garcia-Torres*, 341 F.3d 61, 66 (1st Cir. 2003) ("where an indictment charges in the conjunctive several means of violating a statute, a conviction may be obtained on proof of only one of the means").

MOTIVE

The question of whether someone committed an act knowingly or intentionally should never be confused with the motivation for the act. Motive is what prompts a person to act or fail to act. The concept of motive is different than the concept of knowledge or intent. Intent and knowledge refer only to the state of mind with which the act is done or omitted.

The government is never required to prove motive. In addition, good motive, if any, is never a defense where the act done or omitted is a crime. For purposes of determining innocence or guilt, therefore, the motive of a defendant is immaterial except insofar as evidence of motive may aid in the determination of his or her state of mind or his intent.

Authority: Devitt, Blackmar, Wolff, and O'Malley, Federal Jury Practice and Instructions, §17.06 (4th ed. 1992); *see also United States v. Casanova*, No. 13-cr-10077-DJC, 2021 WL 352350, at *2 (D. Mass. Feb. 1, 2021) ("Moreover, the Court instructed, consistent with applicable law, that motive is different from intent, the government did not have prove motive as to any of the charges against Casanova and that 'motive was immaterial, except insofar as evidence of motive may aid in determination of his state of mind or his intent.'").

"ON OR ABOUT"—EXPLAINED

The Indictment charges that the offense alleged was committed "on or about" certain dates. Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the dates alleged in the Indictment, it is not necessary for the government to prove that the offense was committed precisely on the dates charged.

Authority: Adapted from Devitt, Blackmar, Wolff, and O'Malley, Federal Jury Practice and Instructions, §13.05 (4th Ed. 1992).

PERSONS NOT ON TRIAL

You may not draw any inference, whether favorable or unfavorable, as to either side from the fact that no persons other than the defendants are on trial here. You may not speculate as to the reasons why other people are not on trial. Those matters are wholly outside your concern and have no bearing on your function as jurors.

Authority: L. Sand *et al.*, *Modern Federal Jury Instructions: Criminal,* Instr. 1.21 (2021).

COUNT ONE: CONSPIRACY TO COMMIT INTERNATIONAL MONEY LAUNDERING (18 U.S.C. §1956(h))

Defendants Rahim SHAFA and Nahid TORMOSI SHAFA are accused of conspiring to commit the federal crime of Conspiracy to Commit International Money Laundering as charged in Count One of the Indictment. It is against federal law to conspire with someone to commit this crime.

Elements

For you to find either defendant guilty of Conspiracy to Commit International Money Laundering, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that from in or about July 2008 through in or about January 2018, defendant Rahim SHAFA and defendant TORMOSI SHAFA agreed with one or more co-conspirators to commit international money laundering; and

Second, that each defendant willfully joined in that agreement, either at the time it was first reached or at some later time while it was still in effect.

Element One – Agreement

A conspiracy is an agreement, spoken or unspoken. The conspiracy does not have to be a formal agreement or plan in which everyone involved sat down together and worked out all the details.

But the government must prove beyond a reasonable doubt that those who were involved shared a general understanding about the crime. Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy, but you may consider such

factors.

The government does not have to prove that the conspiracy succeeded or was achieved. The crime of conspiracy is complete upon the agreement to commit the underlying crime.

Element Two - Willfully

To act "willfully" means to act voluntarily and intelligently and with the specific intent that the underlying crime be committed—that is to say, with bad purpose, either to disobey or disregard the law—not to act by ignorance, accident or mistake. The government must prove two types of intent beyond a reasonable doubt before the defendants can be said to have willfully joined the conspiracy: an intent to agree and an intent, whether reasonable or not, that the underlying crime be committed. Mere presence at the scene of a crime is not alone enough, but you may consider it among other factors. Intent may be inferred from the surrounding circumstances.

Proof that the defendant willfully joined in the agreement must be based upon evidence of his and her own words and/or actions. You need not find that the defendants agreed specifically to or knew about all the details of the crime, or knew every other co-conspirator or that they participated in each act of the agreement or played a major role, but the government must prove beyond a reasonable doubt that each of them knew the essential features and general aims of the venture. Even if the defendants was not part of the agreement at the very start, they can be found guilty of conspiracy if the government proves that each of them willfully joined the agreement later. On the other hand, a person who has no knowledge of a conspiracy, but simply happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Authority: *United States v. Ayala-Vazquez*, 751 F.3d 1, 15 (1st Cir. 2014) (elements); *Whitfield v. United States*, 543 U.S. 209, 219 (2005) (holding that "conviction for conspiracy to commit

money laundering, in violation of 18 U.S.C. § 1956(h), does not require proof of an overt act in furtherance of the conspiracy"); Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 4.18.371(1).

COUNT ONE: UNDERLYING OFFENSE AND COUNTS TWO THROUGH FOUR: INTERNATIONAL MONEY LAUNDERING (18 U.S.C. § 1956(a)(2)(A)) AIDING AND ABETTING (18 U.S.C. § 2)

As previously noted, Count One charges the defendants with conspiracy to commit international money laundering. So that you can determine whether a conspiracy between at least two people to commit this crime existed, I will now provide you with instructions regarding the elements of the underlying crime. But before I do that, please remember one thing about the underlying offense or "object" of the conspiracy in the context of Count One.

Remember that a conspiracy is an agreement to commit a crime. The crime of conspiracy is an independent crime, and it is an entirely separate and different offense from the underlying or substantive crime the defendants are alleged to have agreed to commit. The government does not have to prove that the conspiracy succeeded or that its objects were achieved. A conspiracy is complete, and the crime has occurred, once the agreement has occurred.

The elements of the underlying offense or object of the conspiracy, that is international money laundering, apply to not only Count One, but also to Counts Two, Three, and Four. Defendant Rahim SHAFA is charged in these three counts with International Money Laundering. Defendant Rahim SHAFA can be found guilty of Counts Two, Three, and Four only if all the following facts are proven beyond a reasonable doubt:

Elements

First, that the defendant Rahim SHAFA knowingly transported, transmitted, or transferred a monetary instrument or funds, or attempted to do so on the dates described below:

Count Two: on or about June 30, 2016;

Count Three: on or about November 13, 2017; and

Count Four: on or about January 3, 2018;

Second, that the defendant Rahim SHAFA's transportation, transmission or transfer of a monetary instrument or funds, or attempt to do so, was from a place in the United States, specifically Massachusetts and elsewhere, to and through a place outside the United States, specifically Hong Kong; and

Third, that the defendant Rahim SHAFA acted with the intent to promote the carrying on of specified unlawful activity.

Elements One and Two – Transport, Transmit, or Transfer

To "transport, transmit, or transfer" includes all means to carry, send, mail, ship, or move money. It includes any physical means of transferring or transporting funds and also electronic transfer by wire or computer or other means.

It does not matter whether the monetary instrument or money involved in this case was derived from criminal activity. It could be legitimately earned income. In other words, the monetary instrument or funds need not be dirty; the money used by defendant Rahim SHAFA under this subsection can be from a completely legitimate source. It is how the money was used, not how it was generated, that defines the defendant's conduct as criminal. *See generally United States v. Hamilton*, 931 F.2d 1046, 1051-52 (5th Cir. 1991); *United States v. Piervinanzi*, 23 F.3d 670, 682 (2d Cir. 1994).

Element Three – Specified Unlawful Activity and Intent

The term "specified unlawful activity" in the Indictment means importing merchandise contrary to law. I will define "importing merchandise contrary to law" below in my instructions as to Counts Six through Eight. The government does not have to prove the charge of importing merchandise contrary to law to sustain a conviction for the money laundering offenses charged here.

The term "with the intent to promote the carrying on of specified unlawful activity" means that defendant Rahim SHAFA must have conducted or attempted to conduct the financial transaction for the purpose of making easier or helping to bring about the "specified unlawful activity" as just defined.

Aiding and Abetting Liability

Defendant Rahim SHAFA is also charged with aiding and abetting international money laundering. To "aid and abet" means intentionally to help someone else commit the charged crime. To establish aiding and abetting, the government must prove beyond a reasonable doubt:

Elements

First, that the crime of international money laundering was actually committed by someone;

Second, that defendant Rahim SHAFA took an affirmative act to help or cause international money laundering; and

Third, that defendant Rahim SHAFA intended to help or cause the commission of international money laundering.

Element Two – Affirmative Act

The second element, the "affirmative act" element, can be satisfied without proof that defendant Rahim SHAFA participated in each and every element of international money laundering. It is enough if defendant Rahim SHAFA assisted in the commission of international money laundering or caused international money laundering to be committed.

Element Three – Intent

The third element, the "intent" element, is satisfied if defendant Rahim SHAFA had advance knowledge of the facts that make the conduct of Wayne Moran, the principal, criminal. "Advance knowledge" means knowledge at a time the defendant can opt to walk away.

A general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of international money laundering and knowledge that international money laundering is being committed are also not sufficient to constitute aiding and abetting. But you may consider these things among other factors in determining whether the government has met its burden.

Authority: Pattern Crim. Jury Instr. 8th Cir. (2023 ed.), § 6.18.1956D; Pattern Crim. Jury Instr. 9th Cir. (Updated Aug. 2023), § 18.5; Pattern Crim. Jury Instr. 11th Cir. (Revised Mar. 2022), § O74.3; 18 U.S.C. § 1956(c)(5); Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 4.18.02(a); *United States v. Richard*, 234 F.3d 763, 768 (1st Cir. 2000) ("Since a monetary transaction conviction does not require proof of a specific offense, Hall's acquittal of the bankruptcy fraud charges did not have any effect on his monetary transaction convictions.").

COUNT FIVE: CONSPIRACY TO DEFRAUD THE UNITED STATES
(18 U.S.C. § 371)

Defendant Rahim SHAFA is accused in Count Five of conspiring to defraud the United States by mislabeling shipments of naltrexone pellet implants, disulfiram pellet implants, and disulfiram injections in order to conceal the contents of shipments and make them appear to be lawful imports. It is a federal crime to conspire to defraud the United States or any department or agency of the United States.

Elements

For you to find defendant Rahim SHAFA guilty of conspiracy to defraud the United States, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that from in or about July 2008 through in or about January 2018, defendant Rahim SHAFA conspired with Wayne Moran and others to defraud the United States, or one of its agencies or departments, by dishonest means as charged in the Indictment. I instruct you that as a matter of law that the Department of Homeland Security, Customs & Border Protection, Immigration and Customs Enforcement, and the Food & Drug Administration are agencies or departments of the United States government.

Second, that defendant Rahim SHAFA willfully joined in that agreement; and

Third, that one of the conspirators committed an overt act during the period of the conspiracy in an effort to further the purpose of the conspiracy.

Element One – To Defraud

The phrase "to defraud" includes cheating the government out of money or property and interfering with or obstructing lawful government functions by deceit, craft, trickery, or means that are dishonest. It is not necessary that the government actually suffer property or pecuniary loss.

A conspiracy is an agreement, spoken or unspoken. The conspiracy does not have to be a formal agreement or plan in which everyone involved sat down together and worked out all the details.

The government must prove beyond a reasonable doubt that those who were involved shared a general understanding about the agreement to defraud the United States. Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy, but you may consider such factors.

Element Two - Willfully

To act "willfully" means to act voluntarily and intelligently and with the specific intent to defraud the United States—that is to say, with bad purpose, either to disobey or to disregard the law—not to act by ignorance, accident or mistake. The government must prove two types of intent beyond a reasonable doubt before defendant Rahim SHAFA can be said to have willfully joined the conspiracy: an intent to agree and an intent, whether reasonable or not, to defraud the United States. Mere presence at the scene of a crime is not alone enough, but you may consider it among other factors. Intent may be inferred from the surrounding circumstances. The government does not have to prove that defendant Rahim SHAFA knew that his conduct was illegal.

Proof that defendant Rahim SHAFA willfully joined in the agreement must be based upon evidence of his own words and/or actions. You need not find that defendant Rahim SHAFA agreed

specifically to or knew about all the details of the conspiracy to defraud the United States, or knew every other co-conspirator or that he participated in each act of the agreement or played a major role, but the government must prove beyond a reasonable doubt that he knew the essential features and general aims of the venture. Even if defendant Rahim SHAFA was not part of the agreement at the very start, he can be found guilty of conspiracy if the government proves that he willfully joined the agreement later. On the other hand, a person who has no knowledge of a conspiracy, but simply happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Element Three – Overt Act

An overt act is any act knowingly committed by one or more of the conspirators in an effort to accomplish some purpose of the conspiracy. Only one overt act has to be proven. The government is not required to prove that a defendant Rahim SHAFA personally committed or knew about the overt act. It is sufficient if one conspirator committed one overt act at some time during the period of the conspiracy.

The government does not have to prove that the conspiracy succeeded or was achieved. The crime of conspiracy is complete upon the agreement to defraud the United States and the commission of one overt act.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 4.18.371(3).

COUNTS SIX THROUGH EIGHT: IMPORTING MERCHANDISE CONTRARY TO LAW (18 U.S.C. § 545)
AIDING AND ABETTING (18 U.S.C. § 2)

Defendant Rahim SHAFA is charged in Counts Six, Seven, and Eight with Importing Merchandise Contrary to Law in violation of Title 18, United States Code, Section 545.

For you to find defendant Rahim SHAFA guilty of the crime charged in Counts Six, Seven, and Eight of the Indictment, you must be convinced that the United States has proven the necessary elements beyond a reasonable doubt. The Indictment alleges two ways in which defendant Rahim SHAFA committed this crime. The government need only prove that defendant Rahim SHAFA committed this crime in one of these ways for you to find defendant Rahim SHAFA guilty on each of Counts Six, Seven, and Eight.

Elements – Knowingly Importing Merchandise Contrary to Law

For the first way, defendant Rahim SHAFA is charged in Counts Six, Seven, and Eight with knowingly importing merchandise into the United States contrary to law. For defendant Rahim SHAFA to be found guilty on this basis, you must be convinced beyond a reasonable doubt of the following elements:

First, that defendant Rahim SHAFA knowingly imported into the United States the merchandise specified below:

Count Six—on or about June 30, 2016: naltrexone pellet implants

Count Seven—on or about November 17, 2017: naltrexone pellet implants; and

Count Eight—on or about January 3, 2018: disulfiram pellet implants;

Second, that this importation was contrary to law, as further defined below; and

Third, that defendant Rahim SHAFA knew the importation was contrary to law.

The United States is not required to prove that defendant Rahim SHAFA knew exactly what law was violated when the merchandise in question was imported into the United States contrary to law. Rather, the United States need only prove, beyond a reasonable doubt, that defendant Rahim SHAFA was aware of the illegal nature of such merchandise under the laws or regulations of the United States.

I am now going to define some of these terms.

Element One – Knowingly

The word "knowingly" means that the act was done voluntarily and intentionally, and not because of mistake or accident.

Element One – Importation

The word "importation" refers to the act of bringing merchandise into this country from another country. An "importation" is complete whenever it is shown that the merchandise has been brought into the United States from a foreign country. It does not matter by what method or mode the importation is accomplished.

Element One – Merchandise

The word "merchandise" means any goods or articles of value and includes items intended for either commercial or personal use. The Indictment identifies the merchandise that applies to Count Six, Seven, and Eight, respectively, which I have already described to you.

Element Two – Contrary to Law

"Contrary to law" means contrary to any existing law, which includes regulations. *See Callahan v. United States*, 53 F.2d 467 (3d Cir. 1931), *aff'd* 285 U.S. 515 (1932); *United States v. Mitchell*, 39 F.3d 465 (4th Cir. 1994).

In this case, the conduct must be contrary to any of the following laws. The government need only prove that the conduct is contrary to any of these laws; it does not have to prove that the conduct was contrary to all of these laws or more than one to sustain a conviction.

1. 21 U.S.C. §§ 331(a) (introduction or delivery for introduction into interstate of any misbranded drug), (c) (receipt in interstate commerce of any misbranded drug, and the delivery or proffered delivery thereof for pay or otherwise); 352(b) (drug is misbranded if it does not contain the name and place of business of the manufacturer, packer, or distributor), (f)(1) (drug is misbranded if it lacks adequate directions for use); and 353 (b)(4)(A) (drug is misbranded if it does not include "Rx only" symbol); or
2. 18 U.S.C. §§ 541 (criminalizing entry of goods falsely classified); and 542 (criminalizing entry of goods by means of false statements); 19 U.S.C. § 1484 (importer of record required to use reasonable care to, among other things, make accurate report to when importing merchandise as to the contents and value of the merchandise).

I instruct you that the statutes above are laws within the meaning of 18 U.S.C. § 545.

Element Three – Defendant's Knowledge That Importation Was Contrary to Law

The United States is not required to prove that defendant Rahim SHAFA knew exactly what law was violated when the merchandise in question was imported into the United States contrary to law. Rather, the United States need only prove, beyond a reasonable doubt, that defendant Rahim SHAFA was aware of the illegal nature of such merchandise under the laws or regulations of the United States.

Elements – Receiving, Concealing, Buying, Selling, or Facilitating the Transportation, Concealment, or Sale of Unlawfully Imported Merchandise

For the second way, defendant Rahim SHAFA is charged in Counts Six, Seven, and Eight with receiving, concealing, buying, selling, or facilitating the transportation, concealment, or sale of unlawfully imported merchandise. For defendant Rahim SHAFA to be found guilty of Counts Six, Seven and Eight on this basis, you must be convinced beyond a reasonable doubt of the following elements:

First, the merchandise described below had been imported or brought into the United States contrary to law

Count Six—on or about June 30, 2016: naltrexone pellet implants

Count Seven—on or about November 17, 2017: naltrexone pellet implants; and

Count Eight—on or about January 3, 2018: disulfiram pellet implants; and

Second, defendant Rahim SHAFA received, bought, sold, or in any manner facilitated the sale of the merchandise described above knowing that it had been imported or brought into the United States contrary to law.

I just provided you with definitions of knowing, importation, merchandise, and contrary to law. Those definitions apply equally to these elements.

I have instructed you that the government may meet its burden by proving that defendant Rahim SHAFA did unlawfully import or bring the merchandise described above into the United States or that he did unlawfully receive, buy, sell, or facilitate the sale of the merchandise described in the Indictment after importation. In order to convict defendant Rahim SHAFA under either theory, the jury must unanimously agree as to which method of smuggling defendant Rahim SHAFA committed.

Aiding and Abetting Liability

In addition, defendant Rahim SHAFA is also charged with aiding and abetting the importation of merchandise contrary to law.

To "aid and abet" means intentionally to help someone else commit the charged crime. To establish aiding and abetting, the government must prove beyond a reasonable doubt:

Elements

First, that the crime of importing merchandise contrary to law was actually committed by someone;

Second, that defendant Rahim SHAFA took an affirmative act to help or cause importing merchandise contrary to law; and

Third, that defendant Rahim SHAFA intended to help or cause the commission of importing merchandise contrary to law.

Element Two – Affirmative Act

The second element, the "affirmative act" element, can be satisfied without proof that defendant Rahim SHAFA participated in each and every element of importing merchandise contrary to law. It is enough if defendant Rahim SHAFA assisted in the commission of importing merchandise contrary to law or caused importing merchandise contrary to law to be committed.

Element Three - Intent

The third element, the "intent" element, is satisfied if defendant Rahim SHAFA had advance knowledge of the facts that make the conduct of Wayne Moran, the principal, criminal. "Advance knowledge" means knowledge at a time the defendant can opt to walk away.

A general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of importing merchandise contrary to law and knowledge

that importing merchandise contrary to law is being committed are also not sufficient to constitute aiding and abetting. But you may consider these things among other factors in determining whether the government has met its burden.

Authority: *United States v. Manghis*, Case No. 08-cr-10090-NG, 2011 WL 2110212, at *4 (D. Mass. May 26, 2011) (citations omitted); *United States v. Zarauskas*, 814 F.3d 509, 509 (1st Cir. 2016); 5th Cir. Pattern Crim. Jury Instr. § 2.24B (2019); 10th Cir. Pattern Crim. Jury Instr. § 2.30 (2023); 9th Cir. Model Crim. Jury Instr. §§ 21.4, 21.5 (2023); 18 U.S.C. § 545 (setting forth the offense of unlawful importation)); Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 4.18.02(a) (aiding and abetting).

COUNT NINE: RECEIPT AND DELIVERY OF MISBRANDED DRUG
(21 U.S.C. § 331(c), 21 U.S.C. § 333(a)(2))

Count Nine charges Defendant Rahim SHAFA with violating the Federal Food, Drug, and Cosmetic Act, also referred to as the FDCA, specifically the receipt and delivery of misbranded drugs. It is a federal crime for anyone to receive in interstate commerce misbranded drugs and deliver those drugs to patients in exchange for pay.

For you to find defendant Rahim SHAFA guilty of the receipt and delivery of misbranded drugs under 21 U.S.C. § 331(c), the government must prove beyond a reasonable doubt the following elements:

First, that the products listed in Count Nine—naltrexone pellet implants—were drugs;

Second, that the defendant SHAFA received or caused the receipt of the drugs in interstate commerce on or about June 30, 2016;

Third, that the drugs were misbranded when they were received; and

Fourth, that defendant SHAFA delivered or proffered delivery of the misbranded drugs to a patient or patients for pay or otherwise after the drugs had been received in interstate commerce.

Element One – Drug

As used in the FDCA and in these instructions, a "drug" means any article intended for use in the cure, mitigation, treatment, or prevention of disease in humans or any article (other than food) intended to affect the structure or any function of the human body.

Authority: 21 U.S.C. § 321(g)(1)(B)–(C); 21 C.F.R. § 201.128.

Element Two – Interstate Commerce

"Interstate commerce" means commerce between any state and any place outside of that state, including other states, or a foreign country.

Authority: 21 U.S.C. § 321(b).

Element Three – Misbranded

Under the FDCA, a drug can be misbranded in many ways. Three ways are at issue in this case. You do not need to find that the products were misbranded in all three ways in order to find defendant Rahim SHAFA guilty. The element of misbranding is satisfied if you find beyond a reasonable doubt that the products were misbranded in at least one of the three ways, but you must all agree on at least one particular way that the products were misbranded. For this case, the three ways a drug can be misbranded are as follows:

1. **Misbranding for Lacking Adequate Directions for Use**

A drug is misbranded if its labeling lacks adequate directions for use. The FDCA has distinct definitions for the terms "label" and "labeling." The term "label" means a display of written, printed, or graphic matter upon the immediate container of any product. The term "labeling" means all labels and other written, printed, or graphic matter that appears on any product or on any of its containers or wrappers, or that accompanies the product.

The term "adequate directions for use" also has a specific meaning under the FDCA as applied to what is required for labeling for a drug. "Adequate directions for use" under the FDCA means directions sufficient to enable a layperson to use a drug safely and for the purposes for which it is intended. The term "prescription drug" as used in the FDCA and in these instructions means a drug intended for use by humans which, because of its toxicity or other potentially harmful

effect or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug.

Adequate directions for use cannot be written for a prescription drug because such drugs, by definition, can only be used safely at the direction, and under the supervision of, a licensed medical practitioner. FDA-approved prescription drugs with their approved labeling are exempt from having adequate directions for use under specific circumstances. However, any directions for use that appear on the labeling of a prescription drug that is not approved by the FDA are as a matter of law inadequate because that labeling has never been approved by FDA and has not met the exemption. That drug is thus misbranded. In this case, the government asserts that the drugs at issue are prescription drugs and are not approved by the FDA. If you find beyond a reasonable doubt that the naltrexone pellet implants referenced in Count Nine are prescription drugs and that they have not been approved by the FDA, then you must find they lack adequate directions for use under the FDCA.

Authority: 21 U.S.C. § 352(f)(1), 21 C.F.R. § 201.100.

2. Misbranding for Lack of Manufacturer, Packer, or Distributor on the Label

A drug is misbranded if it is in package form unless it bears a label containing the name and place of business of the manufacturer, packer, or distributor.

Authority: 21 U.S.C. § 352(b).

3. Misbranding for Lacking the Symbol "Rx Only"

A drug is misbranded if it is a prescription drug and the label of the drug fails to bear the symbol "Rx only" at any time prior to dispensing.

Authority: 21 U.S.C. § 353(b)(4)(A).

Intent to Defraud

If you find the government has proved the four elements for this charge as defined above, and that defendant Rahim SHAFA is guilty of Count Nine, you will be asked to answer a separate question on the verdict form. You will have to determine if defendant Rahim SHAFA committed this crime with an intent to defraud and mislead. Your answer to this question must be unanimous.

A defendant acts with intent to defraud or mislead under the FDCA if the defendant acts with the specific intent to defraud or mislead either the government or individuals. To act with the intent to defraud or mislead the government means to act with the specific intent to interfere with or obstruct a lawful government function by deceit, craft, trickery, or dishonesty, or at least by means that are dishonest. The government must prove beyond a reasonable doubt that there was an intent to defraud or mislead an identifiable regulatory agency rather than just a general intent to defraud or mislead. Intent to defraud or mislead the government can be demonstrated through evidence that defendant Rahim SHAFA had some knowledge of the facts underlying the misbranding and he concealed his activities from federal authorities that are responsible for regulating those activities. An intent to defraud or mislead may be demonstrated by evidence that a defendant acted with an intent to deceive the Department of Homeland Security, Customs & Border Protection, Immigration and Customs Enforcement, or the Food & Drug Administration and thereby to hinder those departments and agencies in carrying out their respective regulatory responsibilities.

An intent to defraud or mislead individuals can be proven by showing that a defendant knowingly made or caused materially false statements or representations to be made or that he intentionally concealed material facts. It is not necessary for you to find that anyone was actually

misled or defrauded, so long as you find beyond a reasonable doubt that defendant Rahim SHAFA acted with the intent to mislead or defraud.

The intent to defraud or mislead must be connected to the alleged receipt and delivery of misbranded prescription drugs—that is, the government must prove beyond a reasonable doubt that defendant Rahim SHAFA caused the receipt in interstate commerce of misbranded drugs and the delivery of the misbranded drugs to his patients with the intent to defraud or mislead.

Authority: 21 U.S.C. § 331(c); *United States v. Facteau*, Case No. 1:15-cr-10076, Jury Instr. at 34, 40 available at 2016 WL 948864, *aff'd by* No. 21-1080, 2023 WL 8641918 (1st Cir. Dec. 14, 2023); *United States v. Vanmoor*, Case No. 06-cr-60064 (S.D. Fla. 2008) (Doc. 67); *United States v. Norberg*, Case No. 8:15-cr-183 (M.D. Fla.), Dkt. 83 at 26-33 (Gov't Proposed Jury Instr.).

COUNT TEN: CONSPIRACY TO COMMIT HEALTH CARE FRAUD
(18 U.S.C. § 1349)

Defendants Rahim SHAFA and Nahid TORMOSI SHAFA are accused of conspiring to commit the crime of health care fraud. It is against federal law to conspire with someone to commit this crime.

Elements

For you to find either defendant guilty of conspiracy to commit health care fraud, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that from in or about April 2016 through in or about January 2016, defendants Rahim SHAFA and Nahid TORMOSI SHAFA conspired with each other and with others to commit health care fraud; and

Second, that each defendant willfully joined in that agreement.

A conspiracy is an agreement, spoken or unspoken. The conspiracy does not have to be a formal agreement or plan in which everyone involved sat down together and worked out all the details.

But the government must prove beyond a reasonable doubt that those who were involved shared a general understanding about the crime. Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy, but you may consider such factors.

Element Two - Willfully

To act "willfully" means to act voluntarily and intelligently and with the specific intent that the underlying crime be committed—that is to say, with bad purpose, either to disobey or disregard

the law—not to act by ignorance, accident or mistake. The government must prove two types of intent beyond a reasonable doubt before the defendant can be said to have willfully joined the conspiracy: an intent to agree and an intent, whether reasonable or not, that the underlying crime be committed. Mere presence at the scene of a crime is not alone enough, but you may consider it among other factors. Intent may be inferred from the surrounding circumstances.

Proof that the defendants willfully joined in the agreement must be based upon evidence of their own words and/or actions. You need not find that the defendants agreed specifically to or knew about all the details of the crime, or knew every other co-conspirator or that they participated in each act of the agreement or played a major role, but the government must prove beyond a reasonable doubt that they knew the essential features and general aims of the venture. Even if the defendants were not part of the agreement at the very start, they can be found guilty of conspiracy if the government proves that they willfully joined the agreement later. On the other hand, a person who has no knowledge of a conspiracy, but simply happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

The government does not have to prove that the conspiracy succeeded or was achieved. The crime of conspiracy is complete upon the agreement to commit the underlying crime.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), §§ 4.18.1349, 4.18.371(1); *United States v. Iwuala*, 789 F.3d 1, 9-10 (1st Cir. 2015) (listing elements and not including an overt act).

COUNT TEN: UNDERLYING OFFENSE

As previously noted, Count Ten charges the defendants with conspiracy to commit health care fraud. So that you can determine whether a conspiracy between at least two people to commit one of these crimes existed, I will now provide you with instructions regarding the elements of the underlying crime. But before I do that, please remember one thing about the underlying offense or "object" of the conspiracy in the context of Count Ten.

Remember that a conspiracy is an agreement to commit a crime. The crime of conspiracy is an independent crime, and it is an entirely separate and different offense from the underlying or substantive crime the defendants are alleged to have agreed to commit. The government does not have to prove that the conspiracy succeeded or that its objects were achieved. A conspiracy is complete, and the crime has occurred, once the agreement has occurred.

Elements

The elements of health care fraud are:

First, that there existed a scheme to defraud a health care benefit program, or to obtain by false or fraudulent pretenses, representations, or promises any money owed by or under the custody or control of such a program;

Second, that the defendants knowingly and willfully participated in this scheme with the intent to defraud; and

Third, that the scheme was in connection with the delivery of, or payment for, health care benefits, items, or services.

Element One – Scheme to Defraud

A "scheme" means any plan, pattern, or course of action.

The term "defraud" means to deceive in order to obtain money or other property by misrepresenting or concealing a material fact.

"Health care benefit program" means any public or private plan or contract, affecting commerce, under which any medical benefit, item or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract. Medicare is a health care benefit program.

"False or fraudulent pretenses" means any false statements or assertions that conceal a material aspect of the matter in question, that were either known to be untrue when made or made with reckless indifference to their truth, and that were made with the intent to defraud. They include actual, direct false statements as well as half-truths and the knowing concealment of facts.

A "material" fact or matter is one that has a natural tendency to influence or be capable of influencing the decision of the decisionmaker to whom it was addressed.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 4.18.1347.

WILLFULL BLINDNESS

In deciding whether defendant(s) acted knowingly, you may infer that [defendant] had knowledge of a fact if you find that he or she deliberately closed his or her eyes to a fact that otherwise would have been obvious to him or her. In order to infer knowledge, you must find that two things have been established. First, that defendant was aware of a high probability of the fact in question. Second, that defendant consciously and deliberately avoided learning of that fact. That is to say, defendant willfully made himself/herself blind to that fact. It is entirely up to you to determine whether he/she deliberately closed his/her eyes to the fact and, if so, what inference, if any, should be drawn. However, it is important to bear in mind that mere negligence, recklessness or mistake in failing to learn the fact is not sufficient. There must be a deliberate effort to remain ignorant of the fact.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 2.16

PUNISHMENT

The question of possible punishment of the defendants is of no concern to the jury and should not, in any sense, enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the court. Your function is to weigh the evidence in the case and to determine whether or not the defendants are guilty beyond a reasonable doubt, solely upon the basis of such evidence. Under your oath as jurors, you cannot allow a consideration of the punishment which may be imposed upon the defendants, if either or both are convicted, to influence your verdict, in any way, or, in any sense, enter into your deliberations.

Authority: L. Sand *et al.*, *Modern Federal Jury Instructions: Criminal*, Instr. 9-1 (2021); *Shannon v. United States*, 512 U.S. 573, 579 (1994) ("[P]roviding jurors sentencing information invites them to ponder matters that are not within their province, distracts them from their factfinding responsibilities, and creates a strong possibility of confusion"); *Rogers v. United States*, 422 U.S. 35, 40 (1975) (explaining that jury should have been admonished that it "had no sentencing function and should reach its verdict without regard to what sentence might be imposed"); Ninth Circuit Model Criminal Jury Instructions, § 7.4; Fifth Circuit Model Criminal Jury Instructions, § 1.22; Sixth Circuit Model Criminal Jury Instructions, § 8.05; Eighth Circuit Model Criminal Jury Instructions, § 3.12; Tenth Circuit Model Criminal Jury Instructions, § 1.20; Eleventh Circuit Model Criminal Jury Instructions, § B10.4; Third Circuit Model Criminal Jury Instructions, § 3.16.

PREPARING WITNESSES

Some mention has been made of the lawyers having prepared witnesses to testify. There is nothing wrong with a lawyer preparing a witness to testify. If the lawyers did not do some preparation, this case would be much longer than it has been. It is to be expected that when a lawyer puts a witness on the stand for direct examination, the lawyer will have met with the witness and know what the answers are going to be most of the time, that is, assuming the witness is willing to talk to the lawyer ahead of time. The fact that a witness met with a lawyer prior to that witness testifying before you, standing alone, should not usually cause you to discredit the testimony of that witness. You may, however, consider the fact that a witness was willing to meet, or not meet, with one side or the other, prior to this case, in evaluating the witness's testimony. You may also consider whether any such meeting did, in fact, influence the witness's testimony.

Authority: *See United States v. Richard Rosario*, No. 16-cr-30044-MGM, Dkt # 1193 at 18 (D. Mass. February 10, 2020).

FOREPERSON'S ROLE; UNANIMITY

I come now to the last part of the instructions, the rules for your deliberations. When you retire you will discuss the case with the other jurors to reach agreement if you can do so. You shall permit your foreperson to preside over your deliberations, and your foreperson will speak for you here in court. Your verdict must be unanimous.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 6.01.

CONSIDERATION OF EVIDENCE

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 6.02.

REACHING AGREEMENT

Each of you must decide the case for yourself, but you should do so only after considering all the evidence, discussing it fully with the other jurors, and listening to the views of the other jurors.

Do not be afraid to change your opinion if you think you are wrong. But do not come to a decision simply because other jurors think it is right.

This case has taken time and effort to prepare and try. There is no reason to think it could be better tried or that another jury is better qualified to decide it. It is important therefore that you reach a verdict if you can do so conscientiously. If it looks at some point as if you may have difficulty in reaching a unanimous verdict, and if the greater number of you are agreed on a verdict, the jurors in both the majority and the minority should reexamine their positions to see whether they have given careful consideration and sufficient weight to the evidence that has favorably impressed the jurors who disagree with them. You should not hesitate to reconsider your views from time to time and to change them if you are persuaded that this is appropriate.

It is important that you attempt to return a verdict, but of course, only if each of you can do so after having made your own conscientious determination. Do not surrender an honest conviction as to the weight and effect of the evidence simply to reach a verdict.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 6.03.

RETURN OF VERDICT FORM

I want to read to you now what is called the verdict form. This is simply the written notice of the decision you will reach in this case.

[Read verdict form.]

After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and advise the jury officer outside your door that you are ready to return to the courtroom.

After you return to the courtroom, your foreperson will deliver the completed verdict form as directed in open court.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 6.04.

COMMUNICATION WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the jury officer signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me on anything concerning the case except by a signed writing, and I will communicate with any member of the jury on anything concerning the case only in writing, or orally here in open court. If you send out a question, I will consult with the parties as promptly as possible before answering it, which may take some time. You may continue with your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged.

Authority: Pattern Crim. Jury Instr. 1st Cir. (Updated Dec. 8, 2023), § 6.05.

CERTIFICATE OF SERVICE

This is to certify that I have served counsel of record for the Defendant a copy of the foregoing document by ECF.

By: *Kaitlin J. Brown*
Kaitlin J. Brown

Dated: February 5, 2024