IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, v. JARED WHEAT, JOHN BRANDON SCHOPP, and HI-TECH PHARMACEUTICALS, INC., Defendants.	No. 1:17-CR-0229-AT-CMS

DEFENDANTS JARED WHEAT AND HI-TECH PHARMACEUTICALS, INC.'S MOTION TO AMEND CONDITIONS OF PRETRIAL RELEASE AND MEMORANDUM OF LAW IN SUPPORT

COME NOW Defendants Jared Wheat and Hi-Tech Pharmaceuticals, Inc. ("Hi-Tech"), by and through their undersigned counsel and, pursuant to 18 U.S.C. §§ 3142(c)(3) and 3145(a)(2), move this Court for entry of an Order amending the conditions of release imposed on October 4, 2017, which prohibited Mr. Wheat and Hi-Tech from manufacturing or selling products containing DMAA.

Doc. 21-1. In support of this request, Defendants respectfully show this Court the following:

I. INTRODUCTION

On September 28, 2017, a grand jury in this district returned a superseding indictment ("indictment") charging Jared Wheat, Hi-Tech and John Brandon Schopp with various offenses relating to Hi-Tech's business activities involving the manufacture and sale of dietary supplements. Doc. 7 at 1-18. Mr. Wheat was arrested on Wednesday morning, October 4, 2017. Simultaneously, Government agents executed search warrants at Hi-Tech's facilities in Norcross, Georgia. Later that day, Mr. Wheat, in custody, and Hi-Tech, along with Co-Defendant Schopp (also in custody), appeared before Magistrate Judge Alan J. Baverman for purposes of an initial appearance, entry of pleas, and bond hearing proceedings. Doc. 37.

Mr. Wheat's bond was eventually set at an agreed upon $100,000 cash. However, as Assistant United States Attorney Steven D. Grimberg indicated at the outset of the hearing:

> There's also nonfinancial conditions…. With regard to all three defendants, we do request that they be prohibited from manufacturing and selling misbranded drugs and adulterated foods …. I do want to note that the adulterated foods would include products containing DMAA.

Doc. 37 at 10-11.

Mr. Wheat and Hi-Tech were faced with an impossible choice. If an agreement on conditions of pretrial release was not reached in that proceeding, the Government could move for detention and request a continuance of three days, *see* 18 U.S.C. § 3142(f)(2)(B), during which time Mr. Wheat would have remained in custody until at least the following Monday, October 9, 2017. Mr. Wheat had compelling personal reasons to avoid detention for even those five additional days, including two medical conditions and his wife's unavailability to supervise their fifteen-year-old daughter, who had been present that morning when Mr. Wheat was taken from their home under arrest.

As a consequence, neither Mr. Wheat, nor counsel for Mr. Wheat and Hi-Tech had any viable choice but to consent to the DMAA ban condition of bond demanded by AUSA Grimberg, *despite the fact that DMAA is not implicated in any of the charges in Defendants' indictment in any way*. As a condition of release, the magistrate judge entered an Order prohibiting Mr. Wheat and Hi-Tech from manufacturing and selling any products containing DMAA. Doc. 21-1 ("DMAA ban").

Almost immediately after Mr. Wheat's release, the Government presented an application for a warrant to search Hi-Tech's premises for a second time that day. The warrant authorized seizure of all finished or in-process products containing

DMAA, raw materials containing DMAA, labeling materials, and paraphernalia for manufacturing and distributing products containing DMAA. Search Warrant, Case No. 1-17-MC-1136.[1]

When agents for the Government left the Hi-Tech facility, they took with them 109 pallets of DMAA related products, which would have required at least five tractor-trailers to haul away. The DMAA products seized had a retail value of nearly $19 million. Second Declaration of Michelle Harris, attached to this motion as EXHIBIT B at ¶¶ 5-6.

On the same day, the Government executed seizure warrants on two Hi-Tech bank accounts, seizing a total of over $3.4 million. Since his release on bond, Mr. Wheat and Hi-Tech have determined that due to the unprecedented scope of these seizures, Hi-Tech's ability to continue as a viable business is in increasing danger. As noted in Defendants' previously filed emergency motion relating to the seized funds, as of the date that motion was filed, Hi-Tech had already laid off approximately 70 factory workers, and further lay offs of sales representatives and office personnel were imminent if the seized funds are not returned. Doc. 36 at 10. The impact of Hi-Tech's inability to sell and continue to manufacture DMAA related products has been devastating to Hi-Tech's business, and, along with the

[1] A copy of this warrant is attached to this motion as EXHIBIT A.

seizure of the bank accounts, is putting the business in increasingly dire circumstances. EXHIBIT B at ¶¶ 7-8.

The DMAA ban that was imposed as a condition of pretrial release cannot be fully assessed without an understanding of the history of Hi-Tech's years-long battle with the Food and Drug Administration ("FDA") and its agents with the Office of Criminal Investigations of the FDA ("FDA-OCI") in this and other courts. In light of the events in the early stages of this case, it is becoming increasingly apparent that the FDA is now using this criminal case to stop Hi-Tech from manufacturing and and marketing products containing DMAA, despite the fact that DMAA is not even mentioned in the indictment.

The DMAA ban is the central focus in this campaign. Defendants respectfully submit that the changed conditions as a result of the Government's multiple seizures and the endangerment of Hi-Tech's existence as a viable business provide ample justification for an amendment to the bond Order pursuant to this Court's discretion under 18 U.S.C. §§ 3142(c)(3) and 3145(a)(2). Alternatively, Defendants will show that the agreement to the DMAA ban as a condition of pretrial release was a product of coercion at Defendants' initial appearance and was

an improper use of the criminal process to gain an advantage in an ongoing civil case in this District. [2]

II. STATEMENT OF FACTS

In order to place the DMAA ban in its proper context, it is first necessary to set out the history of the FDA's attempts to halt the manufacture and sale of DMAA. This is essential to a full understanding of the motivation driving the Government's actions at Defendants' bond hearing, and shows just how troubling the Government's tactics in regard to the DMAA ban bond condition and other elements of the Government's campaign against Defendants are.

A. Hi-Tech's Business

Hi-Tech is a manufacturer, distributor, wholesaler, and retailer of dietary supplement products. Hi-Tech manufactures and sells products under the Hi-Tech brand and several related brands. In total, Hi-Tech manufactures and sells approximately 215 different products under its brand or related brands. Thousands of retailers sell Hi-Tech Products, including major retail outlets such as GNC, Vitamin Shoppe, Kroger, Meijer Drugs, and Seven Eleven. Hi-Tech also sells its

[2] In light of the effect of the DMAA ban on Hi-Tech's business and the pressing need to save their business, Defendants are not requesting at this time any other modifications of the condition of release imposed in the magistrate judge's order, specifically as it relates to other products. Doc. 22.

products directly to consumers through various retail websites, with approximately 195 different products available through these websites. *See* Doc. 36-5 at ¶¶ 4-8.

Hi-Tech also "contract manufactures" dietary supplements for other sellers in the marketplace. In the year preceding the September 28, 2017 superseding indictment in this matter, Hi-Tech had approximately 30 contract manufacturing customers, and was manufacturing approximately 290 different products for these customers. *Id*. at ¶ 7.

B. The FDA's Attempt to Impose a *De Facto* Ban on DMAA

Prior to 2012, a number of companies nationwide manufactured and distributed numerous products containing DMAA.[3] The FDA has been trying to

[3] Over the course of the past decade, DMAA has been sold as a food-based dietary supplement and "workout booster." A review by a panel convened by the U.S. Department of Defense to study whether the military should ban DMAA containing supplements from stores on its bases concluded that: "the existing evidence does not conclusively establish that DMAA-containing substances are causally associated with adverse medical events." John Lammie, Report of the Department of Defense 1,3 Dimethylamylamiine (DMAA) Safety Review Panel, June 3, 2013. (A copy of this report may be found as Doc. 108-7 in the record of *United States v. Undetermined Quantities of all Articles of Finished and In-process Foods, et al.*, No. 1:13-cv-3675 (N.D. Ga.) ("seizure action"). The report may also be found at: http://www.webcitation.org/6cZi3FUka. Although the FDA has issued a warning based on its determination that DMAA is "potentially dangerous and did not qualify as a dietary substance," U.S. FDA, *Stimulant Potentially Dangerous to Health, FDA Warns,* April 11, 2013, https://www.fda.gov/ForConumers/ConsumerUpdates/ucm34270.htm, the FDA has not obtained an injunction against any manufacturer (although it has obtained some consent decrees by its actions) or prosecuted any company or individual for its manufacture or distribution of

remove DMAA from the market place for the past five years. The process began in the spring of 2012, when the FDA sent warning letters to several manufacturers and marketers of DMAA containing products. *See* https://www.fda.gov/Food/DietarySupplements/ProductsIngredients/ucm346576.htm#warning_letters. The FDA sought to halt the marketing of DMAA in the United States based on its contention that DMAA is dangerous and that it should not be considered a dietary ingredient under the Dietary Supplement Health and Education Act of 1994, 21 U.S.C. §§ 301 *et seq.* ("DSHEA), because, according to the FDA, DMAA is not an extract or constituent of the geranium plant, as producers of DMAA containing products, including Hi-Tech, contend.

All but one of the initial recipients of the FDA's warning letters ceased marketing DMAA shortly after receipt of the FDA's warning letters. The last one eventually ceased marketing DMAA in April 2013. *See*

DMAA. Moreover, Michael Lumpkin, PhD, DABT, a Senior Toxicologist at the Center for Toxicology and Environmental Health provided a detailed declaration in conjunction with the seizure action. Seizure action, Doc. 108-4. Dr. Lumpkin concluded: "The weight of the evidence from data found in the peer-reviewed, published scientific literature and the DoD DMAA safety panel assessment does not indicate that consumption of DMAA at labeled doses in dietary supplements, including those manufactured by Hi-Tech, will likely result in adverse cardiac or thermo-regulatory injuries." *Id*. at ¶ 83. *See also*, *id*. at ¶ 100 (concluding "there is no evidence that consumption of DMAA at concentrations found in Hi-Tech's dietary supplements and according to labeled doses would result in any adverse health effects").

https://www.fda.gov/Food/DietarySupplements/ProductsIngredients/ucm346576.htm#warning_letters.

Notably, Hi-Tech did not receive the DMAA warning letter from the FDA, and continued to manufacture and sell DMAA containing products until entry of the DMAA ban on October 4, 2017 as a condition for Mr. Wheat's bond. EXHIBIT B at ¶ 9.

C. The FDA Seizes Hi-Tech Products Containing DMAA

In early November 2013, the *Atlanta Journal Constitution* published a lengthy article that discussed Hi-Tech's sale of products containing DMAA. Danny Robbins, *Despite checkered history, Norcross supplement maker avoids FDA crackdown*, Atlanta Journal Constitution, Nov. 2, 2013, available at http://www.myajc.com/news/despite-checkered-history-norcross-supplement-maker-avoids-fda-crackdown/OjbFr9il9nMJOpSk9xKxPM/. In that article, the reporter related comments by an FDA official that the FDA was not aware that Hi-Tech was marketing DMAA containing products until being informed about this by the *Atlanta Journal Constitution.*

Three days later, the FDA arrived at Hi-Tech and "seized" several million dollars' worth of DMAA containing products and raw DMAA based on the assertion that the products were "adulterated within the meaning of 21 U.S.C.

§ 342(a)(2)(C)(i)." *United States v. Undetermined Quantities of all Articles of Finished and In-process Foods, et al.*, 1:13-cv-3675 (N.D. Ga.) ("seizure action"), Doc. 1. at ¶ 5.[4] This lawsuit was an *in rem* proceeding, *id*. at 1, and therefore only applied to the product seized by the FDA on November 5, 2013. It did not prevent Hi-Tech from continuing to manufacture or market DMAA or DMAA containing products.

D. Hi-Tech Files Administrative Procedure Act Case Against FDA

Contemporaneous with the FDA's seizure of Hi-Tech's DMAA containing products, Hi-Tech filed a complaint in the District Court for the District of Columbia that alleged the FDA had engaged in a campaign of intimidation against the dietary supplement industry, and DMAA marketers in particular, based on the erroneous belief that DMAA was neither safe nor naturally derived. *See Hi-Tech Pharmaceuticals, Inc. v. Hamburg*, 1:13-cv-1747 (D.D.C.) (the "APA action"), Doc. 2 at ¶ 2. Hi-Tech specifically challenged the FDA's failure to comply with the APA in regard to their effort to ban DMAA. *Id.* at ¶ 3.

The Government moved to have the APA action dismissed or transferred to the Northern District of Georgia and consolidated with the seizure action. *See* APA

[4] The items in question remained at Hi-Tech's facility. EXHIBIT B at ¶ 9. The "seizure" was accomplished by placing yellow tape around the offending products. *Id.* The seized materials are still at Hi-Tech's facility even after the Government's execution of the search warrants in this matter on October 4, 2017. *Id.*

action, Doc. 8. The motion to dismiss was denied without prejudice, but the APA lawsuit was transferred to the Northern District of Georgia and consolidated with the seizure action on July 22, 2014. *Id.,* Doc. 14.

Of particular relevance to the issue presented here concerning the condition of pretrial release in this case, during briefing on the Government's motion to dismiss/transfer venue, the Government represented to the District Court for the District of Columbia that the seizure action was specifically limited to the goods previously seized and that "[t]here is no reasonable expectation that FDA will administratively detain Hi-Tech's products containing DMAA again while the issue of whether those products are adulterated is litigated in the Northern District of Georgia." APA action, Doc. 8 at 9-10. The Government reiterated that position in its reply brief in support of its motion to dismiss. *Id.*, Doc. 13 at 4.

E. The Litigation in the Northern District of Georgia

Once the APA action was consolidated with the seizure action in Georgia, the case, which had been assigned to Judge Hunt, proceeded under the caption of the original filing in the Northern District of Georgia, *United States v. Undetermined Quantities of all Articles of Finished and In-process Foods, et al.*, 1:13-cv-3675 (N.D. Ga.). For purposes of this motion, it will still be referred to as the "seizure action," although going forward it also encompassed Hi-Tech's APA

claims. After the District Court denied the Government's motions to dismiss and to strike certain of Hi-Tech's affirmative defenses, *id*. at Doc. 51, discovery and expert reports were exchanged and by the fall of 2016 all depositions were completed.

The primary issue litigated was the nature and origin of DMAA. Hi-Tech argued, based on the conclusion of multiple researchers conducting separate studies that repeatedly detected DMAA in geraniums, that DMAA is a constituent or extract of the geranium plant and therefore a dietary ingredient under DSHEA. As such, the Government was barred from *de facto* banning it in the manner it attempted. The Government argued, primarily based on its own experts, that DMAA was not present in geraniums and that it was a food additive subject to seizure.

The research that the Government relied upon was especially troubling. The FDA relied on supposedly independent scientists who had published research concluding that DMAA was not present in geraniums. During discovery, it was determined that this research relied on the manipulation of the detection limit utilized by the FDA's experts in their studies, with the result being that the researchers did not detect DMAA in geraniums. What the published versions of those studies failed to reveal, and what the Government also attempted to conceal

from the Court, was that the Government's researchers *did* detect DMAA in geraniums, but unethically decided that such a conclusion could be hidden by simply raising the detection limit in the published articles so that a finding that no DMAA was detected could be reported. *See generally* Hi-Tech motion for summary judgment in the seizure action, Doc. 108-1 at 7-16; Hi-Tech motion to exclude testimony of the Government's expert witness Ikhlas Khan, Ph.D., *id.* at Doc. 101-1.

The unreliability of the Government's primary expert on this subject was so plain that the Government completely abandoned him and chose not to rely on his supposedly definitive research as part of its motion for summary judgment or in opposition to Hi-Tech's motion for summary judgment. *See* Government omnibus opposition to motion to exclude experts, seizure action, Doc. 117 at 2.

F. The District Court's Order in the Seizure Action

Judge Hunt resolved the parties' motions for summary judgment in an Order entered April 3, 2017. Seizure action, Doc. 140. The Court agreed that Hi-Tech had "presented fairly substantial evidence that trace amounts of DMAA have been found in a species of a geranium plant in the form of three published papers that provided the details of tests detecting DMAA" and that the "Court [was] inclined to find that the Government has failed to meet its burden of establishing that

DMAA has not been found in geraniums." *Id.* at 5, 7. Judge Hunt also rejected the Government's "three arguments . . . disput[ing] the presence of DMAA in geraniums," which were "not sufficient to meet the Government's burden of establishing that DMAA is not in geraniums." *Id.* at 5.

The Court, however, did not end its analysis there. Rather, the Court ruled *sua sponte* that DMAA could not be considered a "botanical" as defined in DSHEA because there was no "history of the substance in question [DMAA] having been extracted in usable quantities from a plant or a plant-like organism…." *Id.* at 9. This "commercial extraction" concept had not been briefed by either party, had never been advocated by the FDA, and lacks any foundation in the text of DSHEA or the policy that undergirds it.

After the entry of Judge Hunt's Order, two events occurred that provide insight into the Government's true intent behind its actions in that lawsuit and likewise are informative as to the Government's motive in extracting the DMAA ban as a condition of bond, which is the subject of this motion.

Prior to the filing post trial motions, counsel for Hi-Tech attempted to negotiate a stay with the Government's attorney. That attorney attempted to condition any delay of the "destruction of the condemned products" on an agreement from Hi-Tech that it would "stop all sales of products containing

DMAA pending the resolution of Hi-Tech's appeal." Melissa Jampol Declaration, attached to this motion as EXHIBIT C (April 7, 2017 email from J. Harlow to M. Jampol). Hi-Tech rejected this offer because it was an impermissible attempt by the Government to obtain what it could not in the *in rem* seizure action: a complete halt of the sale of DMAA containing products.

Hi-Tech filed both a motion for reconsideration and a motion to stay the judgment during appeal. *Id.* at Docs. 142, 143. Having failed to negotiate an agreement for a DMAA ban, the Government tried a second move. During the briefing of these motions, the Government attempted to expand the already-decided action by arguing that that Judge Hunt's Order prohibited Hi-Tech and all others from selling DMAA containing products. Seizure action, Doc. 145 at 10. Hi-Tech opposed the request, explaining yet again the *in rem* nature of the Government's action. *Id.,* Doc. 147 at 3-8. Judge Hunt denied Hi-Tech's motion to stay, and simply ignored the Government's request for a broader ruling. *Id*., at Doc. 148. Once again, the Government's effort to prohibit Hi-Tech from manufacturing and selling DMAA was frustrated. Indeed, to this very day, the Government has never sought a ruling in any court that could entitle it to such relief, by requesting an injunction against Hi-Tech or Jared Wheat enjoining the sale of DMAA containing products.

Hi-Tech filed a notice of appeal from the district court's rulings in July 2017 and briefs will be filed in the near future. *United States v. Hi-Tech Pharmaceuticals, Inc., et al.*, Eleventh Circuit Case No. 17-13376.

G. The Indictment in This Case

On September 28, 2017, a grand jury sitting in this District returned an eighteen-count indictment against Hi-Tech, Jared Wheat and John Brandon Schopp. Doc. 7. The indictment includes charges of conspiracy, wire fraud, money laundering, introduction of misbranded drugs, and manufacture and distribution of a controlled substance. *Id*. Notably, there are *no* charges in the indictment that involve DMAA, despite the Government's extensive 2013 seizure and lengthy litigation before Judge Hunt in which the FDA steadfastly claimed that DMAA is not found in geraniums and therefore not legal under DSHEA and that DMAA was dangerous or a significant health risk.

The indictment did, however, include charges based on allegations relating to various Hi-Tech products that were totally unrelated to DMAA containing products. Count Ten of the indictment charges a conspiracy to introduce misbranded drugs into interstate commerce in violation of 18 U.S.C § 371, in conjunction with 21 U.S.C. §§ 321(g)(1), 331(a) and 333(a)(2). The charge is based on sales of a Hi-Tech product named Choledrene, which the indictment

alleges contained lovastatin, the active ingredient in several FDA-approved prescription drugs, without listing it as an ingredient. Count Eleven of the indictment charges a single substantive count of introduction of a misbranded drug (Choledrene) in interstate commerce in violation of 21 U.S.C §§ 331(a), 333(a)(2) and 18 U.S.C. § 2. The Choledrene product produced and marketed by Hi-Tech does not contain DMAA, and Counts Ten and Eleven of the indictment have nothing to do with DMAA in any way.

Counts Twelve through Eighteen charge: a conspiracy to manufacture and distribute controlled substances (Count Twelve, in violation of 21 U.S.C. § 846, Doc. 7 at ¶¶ 36-39); three substantive counts of manufacturing and distributing controlled substances (Counts Thirteen, Fourteen and Fifteen, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2, Doc. 7 at ¶¶ 40-41); and three counts of introduction of misbranded drugs in interstate commerce (Counts Sixteen, Seventeen and Eighteen, in violation of 21 U.S.C. §§ 331(a), 333(a)(2) and 18 U.S.C. § 2, Doc. 7 at ¶¶ 42-43). Each of these counts involves one or more Hi-Tech products that the Government labels as "prohormones" and that the Government alleges all contain anabolic steroids. As with the Choledrene product, the five Hi-Tech products that the Government contends contain anabolic steroids

do not contain DMAA, and Counts Twelve through Eighteen do not involve DMAA in any way.

In short, *the instant indictment has absolutely nothing to do with DMAA containing products*, and the Government has not charged Hi-Tech or Jared Wheat with any wrongdoing involving DMAA containing products. The only action that the Government has taken in conjunction with Hi-Tech regarding DMAA is the *in rem* seizure action before Judge Hunt that involves only the DMAA containing products seized on November 5, 2013, and which is currently on appeal to the Eleventh Circuit.

H. The Arrest and Bond Hearing

Jared Wheat and Brandon Schopp were arrested on the charges in the indictment on October 4, 2017. As set out in the Declaration of Jared Wheat, attached as EXHIBIT D, when the agents came to his home to arrest him at 7:40 a.m., he was at home alone with his fifteen-year-old daughter. Her mother, Mr. Wheat's wife, was not at home and would not be available to supervise their daughter for at least a week. The agents searched Mr. Wheat, handcuffed him behind his back, and took him away, as his daughter looked on. She was left alone in the house. Mr. Wheat was transported to the lock-up in the Richard Russell

Federal Courthouse in Atlanta, where he was held until his first appearance before the magistrate judge that afternoon. *Id*. at ¶¶ 3-4, 7.

In the meantime, beginning at about 7:30 a.m., a large number of federal agents, including agents from the FDA-OCI, executed multiple identical search warrants at multiple Hi-Tech locations.[5]

Mr. Wheat and Mr. Schopp (in custody), along with counsel representing them, appeared before Magistrate Judge Baverman early that afternoon for purposes of arraignment, entry of pleas, and bond. Doc. 37. Immediately before the hearing, AUSA Steven D. Grimberg informed counsel for Defendants – for the first time – that any agreement on bond would have to be subject to a condition that Defendants agree to stop manufacturing and selling all DMAA containing drugs. Declaration of Arthur W. Leach, attached as EXHIBIT E at ¶ 10. Because of the timing, counsel had only a few moments to speak with Mr. Wheat about AUSA Grimberg's demand. *Id.*

[5] As set out in Defendants' "Motion to Suppress Evidence Seized Pursuant to Search Warrants for Emails and Electronically Stored Information and Brief in Support," Doc. 44 at 9, 26-31, the Government seized large quantitates of emails from Mr. Wheat and another employee in 2013 and 2014. When this material was provided for the first time as part of Rule 16 discovery in case, it was immediately apparent that many communications covered by the attorney-client and work product privileges were implicated. *Id.*

When the hearing began, AUSA Grimberg notified the Court that any bond would have to be subject to "nonfinancial conditions" that included a prohibition on "manufacturing and selling misbranded and adulterated foods," noting specifically that "the adulterated foods would include products containing DMAA." Doc. 37 at 10-11.

Counsel for Mr. Wheat and Hi-Tech recognized that they were faced with a difficult choice. In addition to their knowledge that Mr. Wheat's daughter had been left at home without supervision and that her mother would not be available for at least a week, counsel were aware of Mr. Wheat's medical condition that necessitated taking all steps necessary to obtain his prompt release on bond. EXHIBIT E at ¶¶ 7-9.

Mr. Wheat has had two diagnosed medical conditions for a number of years. He has been prescribed two medications for treatment of high blood pressure (Hydrochlorothiazide and Norvasc). EXHIBIT D at ¶ 5. Mr. Wheat has also been prescribed three medications for panic attacks and anxiety (Paxil, Xanax and Ativan). *Id*. The morning of his arrest, the agents allowed Mr. Wheat to take his Norvasc, but not his Hydrochlorothiazide, and not the three medications ofr his panic attacks and anxiety. The agents advised Mr. Wheat that they would take the medications with them when they transported Mr. Wheat, and the Marshals would

let him take the three other medications when he arrived at the Richard Russell Building. *Id*. at ¶ 6. However, when Mr. Wheat arrived downtown, he was not allowed to take any of his medications. He was advised that only medical personnel could provide them, and that no medical personnel were available. *Id.* at ¶ 7. As a consequence, by the time Mr. Wheat was taken to the courtroom for his appearance, he was six hours behind on his medication schedule as to four of his five prescribed medications. *Id*.

Further, Mr. Wheat had been held for nine months at the Atlanta Pretrial Detention Center during the fall of 2006, prior to obtaining pretrial release in conjunction with previous federal charges. Mr. Wheat was well aware of his inability to obtain access to his prescribed medications at the pretrial detention facility, and the debilitating effect that had on his emotional and physical well-being. *Id*. at ¶ 9. Mr. Leach, having represented Mr. Wheat in criminal and civil cases since 2006, was well aware of these concerns. *Id.* at ¶ 7-8. Mr. Leach was also aware of the situation relating to Mr. Wheat's daughter's being left at home unsupervised, as well as the fact that Mr. Wheat's wife would be unavailable to supervise her for at least another week. *Id*. at 9. As a consequence, he was cognizant of the pressing need to obtain Mr. Wheat's pretrial release as quickly as possible, notwithstanding the questionable validity of the Government's demand

for the ban of DMAA containing products, when DMAA was not involved in the indictment in any way.

Mr. Leach, having represented persons accused of federal crimes (and, in the case of Mr. Leach, having prosecuted them during his many years as an Assistant United States Attorney) in this District for many decades, were acutely aware of the fact that unless terms of pretrial release could be agreed upon with AUSA Grimberg, Mr. Wheat was unlikely to be released that day. If bond conditions could not be agreed upon, AUSA Grimberg had unreviewable discretion to advise the magistrate judge that the Government would seek detention of Mr. Wheat.[6] If that were to occur, Mr. Wheat would remain in custody for a minimum of another five days, until at least the following Monday, October 9, 2017. *See* 18 U.S.C. § 3142(f)(2)(B). In these circumstances, Mr. Wheat had no choice but to agree to whatever conditions that the Government required. *See* EXHIBIT E at ¶¶ 4-6.

When the magistrate judge granted Mr. Wheat's pretrial release, a condition of his bond was set out in an Order, which reads:

[6] At a minimum, Mr. Wheat was subject to pretrial detention based on his 21 U.S.C. § 841(a)(1) charges in Counts Twelve through Fourteen of the indictment. Doc. 7 at ¶¶ 46-41. *See* 18 U.S.C. § 3142(f)(1)(C) (detention authorized for offense under the Controlled Substances Act with a maximum term of imprisonment of 10 years or more); and 21 U.S.C. § 841(b)(1)(E)(1) (penalties for Schedule III substances).

> Defendant Hi-Tech Pharmaceuticals, Inc., ("Hi-Tech") was arraigned this date on the First Superseding Indictment. Upon motion of the Government and the agreement of the Defendant, Hi-Tech is prohibited from, directly or indirectly through third parties, manufacturing, distributing or selling adulterated foods or misbranded drugs, including but not limited to products containing DMAA or its chemical equivalent. This includes but is not limited to: purchasing or receiving DMAA ingredients; and manufacturing, processing, packaging, marketing, or distributing food or dietary supplement products containing DMAA or its chemical equivalent.

Doc. 22-1 ("DMAA ban"). Mr. Wheat was released that afternoon, subject to posting a $100,000 surety bond by 3:00 p.m. the following day. Doc. 37 at 23; Doc. 20.

Almost immediately thereafter, AUSA Grimberg presented an application for a second search warrant for Hi-Tech's facilities, specifically for DMAA and manufacturing and marketing materials relating to DMAA products. EXHIBIT A at Attachment A. During the ensuing search federal agents seized, among other things, 109 pallets of DMAA containing products.[7] Given the volume of products seized, they would have had to been removed in at least five tractor-trailers. The seized products were removed in approximately five tractor-trailers. The products

[7] The agents did not take the DMAA containing products that were the subject matter of the ongoing *in rem* seizure action before Judge Hunt, and were being held in Hi-Tech's warehouse, marked off by yellow tape. EXHBIT B at ¶ 9.

on the seized pallets had a retail value of nearly $19 million. EXHIBIT B at ¶¶ 5-6.

In addition to this seizure, the Government executed seizure warrants for two of Hi-Tech's bank accounts, ultimately seizing over $3.4 million.[8] The two bank accounts seized were used to deposit payments from retail sales of all of Hi-Tech products (not just the products named in either the indictment or the application and affidavits requesting the seizure warrant), and payments from companies that Hi-Tech manufactured products for under contract, as well as all funds from the Hi-Tech account primarily used to pay Hi-Tech's employees, their health care, operating expenses, and attorneys fees. Doc. 36 at 2-5, 9-10. As a direct consequence of just these bank account seizures, Hi-Tech's ability to function as a business was severally disrupted. The seizures resulted in approximately 30 Hi-Tech checks (worth more than $600,000) issued to vendors being returned for insufficient funds, as well as three checks written to attorneys representing Hi-Tech or Mr. Wheat. EXHIBIT B at ¶ 7. As a result of just these bank account seizures, Hi-Tech was forced to lay off approximately 70 factory workers, with other layoffs of additional employees in the offing. *Id*. There was no

[8] The Government has subsequently admitted that approximately $400,000 of that amount was seized in error, and has stated it will return those funds. Doc. 42 at 3-4.

way that Mr. Wheat, Hi-Tech, or their counsel could have anticipated the extent of the bank account seizures at the time Mr. Wheat consented to the DMAA ban as a condition of his pretrial release.

Nor could Mr. Wheat, Hi-Tech, or counsel have known or anticipated that as they were agreeing to the DMAA ban as the condition of bond demanded by AUSA Grimberg, he had already prepared an application for a search warrant to seize all of Hi-Tech's DMAA containing products and materials, and that the Government would, that very afternoon, return to Hi-Tech and seize nearly $19 million of DMAA containing products.

The impact of these events have been devastating to Hi-Tech's business and threaten its very survival. The DMAA containing products were a leading category of products manufactured and sold by Hi-Tech in the past five years. EXHIBIT B at ¶ 8. Without the ability to continue to manufacture and sell DMAA containing products, it is will be difficult – if not impossible – for Hi-Tech to remain in business. The implications of this are far reaching. If Hi-Tech is unable to continue in business, at least 200 people will lose their jobs. *Id.* Hi-Tech will eventually be unable to pay its current counsel to represent the corporation and Mr. Wheat in this far-reaching and complex criminal indictment and to defend against forfeiture of their funds and property.

Perhaps even more significantly, it is becoming increasingly apparent, in light of both the pattern of the Government's well-orchestrated actions against Hi-Tech in the past weeks – including the seizure of Hi-Tech's bank accounts, the demand for the DMAA ban as a condition of Mr. Wheat's pretrial release, and the massive seizure of DMAA related products and materials – that the Government has implemented a carefully planned assault with two goals in mind.

First, the Government has used these proceedings, the indictment, the coerced agreement to the DMAA as a condition of pretrial release, and the subsequent DMAA seizure to accomplish the goal that it had failed to accomplish in the *in rem* proceeding before Judge Hunt: to enjoin Hi-Tech from the manufacture and sale of DMAA containing products.

Second, the Government has used these proceedings – and likely will continue to do so, with the looming possibility of civil forfeiture actions and a superseding indictment – to put Hi-Tech and Mr. Wheat completely out of business and render them unable to mount a meaningful defense to the serious criminal charges they are facing.

The extensive seizures and the implications to Hi-Tech's ability to continue in business were not something that Hi-Tech, Mr. Wheat, or their counsel could have anticipated as they faced the difficult and unexpected demand moments

before the first appearance on October 4, 2017 for the DMAA ban as a condition of bond. Those unanticipated events have drastically changed the facts relating to the DMAA ban and support a reconsideration of the bond condition.

As will be discussed in detail below, the circumstances under which Mr. Wheat was forced to agree to the DMAA ban as a condition of bond – while he was in custody and facing an additional five days in custody when he knew he could not ensure parental supervision for his minor daughter, when he had been deprived of four of five prescription medications for six hours, and when he well knew from experience he would face lack of access to his prescribed medications – were inherently coercive. Agreements obtained pursuant to this kind of duress have been repeatedly condemned by the courts of this country. Finally, the Government's well-timed demand for Mr. Wheat's acquiescence to the DMAA ban was an improper use of criminal proceedings to gain an advantage in ongoing civil litigation, as will be set out below.

For all these reasons, Defendants are seeking reconsideration of Mr. Wheat's conditions of bond pursuant to 18 U.S.C. §§ 3142(c)(3) and 3145(a)(2), and, upon the good cause shown in this motion, an amendment of the Court's Order as it applies to the manufacture and sale of DMAA containing products.

III. ARGUMENT AND CITATION OF AUTHORITIES

Defendants respectfully submit that this Court should reconsider the bond condition prohibiting Hi-Tech and Mr. Wheat from manufacturing products containing DMAA for three reasons. First, the DMAA ban should be vacated because the agreement to the condition was a product of the Government's improper use of a criminal case to gain an advantage in a civil action. Second, the agreement was extracted under duress and is therefore unenforceable. Third, an amendment of the bond condition is justified by the change in circumstances between the time the DMAA ban was entered and the subsequent events, which have resulted in a threat to the existence of Hi-Tech as a business.

A. The Government's Extraction of the DMAA Ban Was an Improper Use of a Criminal Proceeding to Gain an Advantage in a Civil Action.

The FDA has been engaged in a concerted effort since at least 2012 to stop the manufacture and sale of DMAA containing products. In November of 2013, the Government seized Hi-Tech's DMAA containing products and initiated an *in rem* forfeiture action in this District. Hi-Tech filed a suit under the APA in the District of Columbia at the same time, which was eventually consolidated with the seizure action in this District. At the conclusion of those proceedings at the trial court level, the Government had not obtained an Order forbidding Hi-Tech from

manufacturing or selling DMAA containing products, nor had it obtained a finding by the Court that DMAA was not a constituent found in geraniums, nor any finding that DMAA was unsafe or a health danger. At the end of those proceedings, it was also apparent to the Government that any effect of the *in rem* seizure action would be limited to the DMAA containing products seized in November 2013. It was equally apparent that, at least until the conclusion of appellate proceedings in the Eleventh Circuit, Hi-Tech would not be ordered to cease manufacturing and selling DMAA containing products, nor could Hi-Tech be forced into agreeing to do so.

With the initiation of these criminal proceedings, if it truly believed that it could prove the DMAA was not a constituent of geraniums or that DMAA was unsafe or a health danger, the Government could have included additional charges relating to the introduction of an adulterated substance in interstate commerce. But it chose not to, and the indictment in this case contained neither charges nor any reference at all relating to the DMAA containing products that Hi-Tech continued to manufacture and sell. Doc. 7. However, the Government nonetheless chose to attempt an end run to obtain the relief that the FDA so long desired – putting Hi-Tech and Mr. Wheat out of the business of manufacturing and selling DMAA containing products – by using this criminal case and the bond process associated with it to coerce an agreement that obtained the result the FDA wanted.

A series of cases beginning in the late 1960s has established a rather straightforward and reasonable rule: a prosecutor may not use a pending criminal charge as a mechanism to extract or extort under duress an agreement from a criminal defendant. In each of these cases, the procedural posture or relief sought varied, but the rule remains: "The Government may not prosecute for the purpose of deterring people from exercising their right to protest official misconduct and petition for redress of grievances." *Dixon v. District of Columbia*, 395 F.2d 966, 968 (D.C. Cir. 1968).

The factual framework for this line of cases typically involves a defendant arrested for a minor charge, who is then offered the following deal from prosecutors: the charges will be dropped if – and only if – the defendant agrees not to bring a civil action against the arresting officers, municipality, or state. Essentially, the defendant is agreeing to forego a civil action – *i.e.*, the First Amendment right to petition for redress – in return for dismissal of all charges. Frequently, and most problematically, these agreements are presented to defendants who are incarcerated or subject to a lengthy delay prior to any possible bail hearing. It is the coercive effect of offering these agreements while the defendant is incarcerated that "infringe[s] important interests of the criminal

defendant and of society as a whole ….” *Newton v. Rumery*, 480 U.S. 386, 392 (1987).

Dixon was the first case to rule that such agreements are improper, unenforceable, and a “gross abuse of [prosecutorial] discretion.” 394 F.2d at 968. In *Dixon*, a retired African-American detective sergeant had been stopped by two white police officers for alleged traffic violations, but was neither ticketed nor arrested. Two days later, Dixon attempted to file a complaint against the police officers. The city responded by offering Dixon an agreement: if he did not persist with his complaint, the authorities would not prosecute him for any traffic charges. When Dixon refused to withdraw his complaint, the city and prosecutor proceeded with charges based on the initial stop. Writing for the D.C. Circuit, Judge Bazelon observed that “the prosecutor in this case has admitted to a gross abuse of discretion….” and concluded: “The Government may not prosecute for the purpose of deterring people from exercising their right to protest official misconduct and petition for the redress of grievances.” *Id*.

A similar situation was involved in *MacDonald v. Musick*, 425 F.2d 373 (9th Cir. 1970), where the court held that a criminal defendant’s civil rights were violated when the prosecutor and trial judge manipulated a criminal DUI proceeding to foreclose the defendant from bringing a civil action against the

arresting officers. In attempting to force an agreement to stipulate to probable cause for the arrest (which would preclude any subsequent civil action), the prosecutor claimed that it was his duty to protect police officers from such civil liability. The Ninth Circuit "strongly disagreed" with this rationale and held that it was improper to "condition a voluntary dismissal of a charge upon a stipulation by the defendant that is designed to forestall the latter's civil case." *Id.* at 375. The court concluded that the action amounted to extortion under California law, because McDonald had a "cause of action for personal injuries," which was considered a "property" interest, and the attempt to extract that property from him under color of law was extortion. *Id*. at 375-76. The court continued its analysis by noting that the "Canons of Ethics have long prohibited misuse of the criminal process by an attorney to gain advantage for his client in a civil case," and noting that such rules apply to "public prosecutors" just as much as they do to "other lawyers." *Id.* at 376 (citing ABA Model Code § DR 7-105(a) and other authorities).

This District Court has invalidated these types of inherently coercive agreements. In *Shepard v. Byrd*, 581 F. Supp. 1374 (N.D. Ga. 1984), plaintiff Shepard, a pharmacist, was charged with stealing drugs and falsifying records at the pharmacy where he was employed. After his acquittal, the Georgia Board of

Pharmacy ("the Board") nonetheless continued to pursue a disciplinary action against him. The Board offered to reinstate Shepard's license after two years on probation in return for a broad consent order releasing the Board and others from liability. When Shepard refused to sign the consent order, the Board held an evidentiary hearing and revoked his license. Shepard filed a 42 U.S.C. § 1983 action against the Board and others. District Judge Murphy, citing *MacDonald* and *Boyd v. Adams*, 513 F.2d 83 (7th Cir. 1975), held that the Board "engaged in a practice which is against public policy and is thus unlawful." *Id*. at 1386.

Here, Hi-Tech and Mr. Wheat had a First Amendment right to pursue their APA and associated due process claims that were filed originally in the District of Columbia and thereafter consolidated with the ongoing seizure action brought by the FDA in this District Court, as to which seizure Hi-Tech and Mr. Wheat had a concomitant right to defend against. The agreement to the DMAA ban as a condition of pretrial release in the instant criminal action is precisely the relief that the Government had been unable to compel through its *in rem* seizure action – banning Hi-Tech and Mr. Wheat from manufacturing and selling DMAA containing products. In essence, the Government obtained an improper advantage in that civil suit by usurping the role of the Eleventh Circuit Court of Appeals and compelling Hi-Tech and Mr. Wheat to cease manufacturing and marketing DMAA

containing products. As the court of appeals unanimously held in *MacDonald*, "it is no part of the proper duty of a prosecutor to use a criminal prosecution to forestall a civil proceeding by the defendant." 425 F.2d at 375.

By conditioning Mr. Wheat's release on bond in this criminal case, the prosecutor improperly advantaged the FDA in the ongoing *in rem* seizure action, by obtaining the relief that the FDA truly sought – banning Hi-Tech and Mr. Wheat from manufacturing and selling DMAA containing products – but had not yet obtained in the still ongoing civil proceedings. This was improper and violated Mr. Wheat and Hi-Tech's First Amendment rights, and this Court should grant Defendants' request to reconsider the DMAA ban as a condition of Mr. Wheat's pretrial release, and amend the Court's Order so as to eliminate the condition relating the DMAA ban.

B. Agreements Extracted by Prosecutors From Defendants Under Duress Are Unenforceable.

A related legal concept in this context is the circumstances under which the agreement in question was obtained. In *Newton*, 480 U.S. 386, the Supreme Court held that release-dismissal agreements such as those previously discussed were not *per se* invalid unless the circumstances under which they were made were unduly coercive, such as where the defendant was incarcerated when the agreement was entered into. *Id*. at 394.

The effect of inherently coercive circumstances under which such agreements are entered into was addressed by the Seventh Circuit in *Boyd v. Adams*, 513 F.2d 83 (7th Cir. 1975). Plaintiff had been arrested by Chicago police officers when she refused to be searched in a putative traffic stop and was charged with disorderly conduct and resisting a police officer. When she appeared in court for trial on the charges, she agreed to sign a release of the police officers and the city for liability in return for dismissal of the criminal charges. The district court dismissed her subsequently filed civil rights complaint under 42 U.S.C. § 1983 based on the release the plaintiff had executed in return for dismissal of the criminal charges. On appeal, she claimed that the release was "executed under duress, coercion and fear of further punitive and harassing action." 513 F.2d at 85. The Court of Appeals, presaging the Supreme Court's analysis in *Newton*, did not find the release invalid *per se*. Instead, relying on *Schneckloth v. Bustamonte*, 412 U.S. 218, 222-34 (1973), the court recognized that one may voluntarily relinquish constitutional rights, but that "such relinquishments [must be] entered into voluntarily under all the circumstances presented." *Boyd*, 513 F. 2d at 87. The court found Boyd's waiver under the release-dismissal agreement invalid because:

> After her arrest, plaintiff was held in custody for five hours until her mother posted a bond. At the time plaintiff executed the release, she still was on conditional recognizance bail. Her uncontested testimony was that she would not be able to pay the disorderly

> conduct and resisting arrest fines and therefore thought she would again be put in jail.

Id. at 87-88. The court went on to conclude that the district court should have held on these facts that "the release was secured in such an inherently coercive context" that plaintiff's right to pursue an action against the officers and the city was not effectively waived. *Id*. at 88.[9]

If anything, the circumstances under which Mr. Wheat and Hi-Tech found themselves at the bond hearing in this case on October 4, 2017, were more inherently coercive than those faced by plaintiff Boyd. Mr. Wheat was in custody at the time of the agreement to the bond condition including the DMAA ban. He knew that his minor daughter was at home without adult supervision and had had no opportunity to explore alternatives for her supervision. Mr. Wheat also knew that if he did not agree to the DMAA ban condition, he would likely be taken to the Atlanta Pretrial Detention Center, where he would be held for at least five days. Mr. Wheat, who had already been deprived of most of his medications in the six hours since his arrest that day, also knew that the likelihood that he would be

[9] The court also found that the fact that the lawyer representing plaintiff at the criminal appearance commenced the discussions leading to the release-dismissal was of no moment: "The inherently coercive character of such a situation is not dependent upon which party first suggests the release since the very existence of the well-known release practice invited plaintiff's counsel to enter the negotiations." *Id.*

provided with his prescribed medications was at best uncertain. Mr. Wheat also knew that, even if he were to wait until the next opportunity to request pretrial release, absent his agreement to the DMAA ban condition demanded by the Government, the likelihood of his release on bond in light of the charges he was facing was far from certain. Finally, neither Mr. Wheat nor counsel, at the time Mr. Wheat agreed to the bond condition, were aware of the Government's intention to obtain a second search warrant and seize nearly $19 million of Hi-Tech's inventory, nor that the Government had already obtained warrants to empty Hi-Tech's two bank accounts, eventually seizing $3.4 million, funds that were essential to Hi-Tech's ongoing operations.

The Government knew exactly what it was doing: it had placed Mr. Wheat in an untenable position in which he had no available alternative but to agree to the DMAA ban as a condition of his pretrial release, *despite the fact that DMAA had nothing to do with the criminal charges he was facing.* The circumstances in which Mr. Wheat and Hi-Tech agreed to the DMAA ban as a condition of bond were inherently coercive, and the bond condition banning Defendants from manufacturing and selling DMAA containing products should be modified.

C. Alternatively, the Circumstances Under Which the Bond Condition Was Imposed Have Significantly Changed, and This Court Should Reconsider the Condition of Release and Modify the Order to Remove the Prohibition Against Manufacturing and Selling DMAA Products.

The circumstances that existed when Mr. Wheat's pretrial release was approved have changed considerably. Contemporaneously with Mr. Wheat's release on bond on October 4, 2017, unbeknownst to Mr. Wheat and his counsel, the Government executed seizure warrants for the entire contents of Hi-Tech's two bank accounts. Immediately after Mr. Wheat's release on bond on October 4, 2017 subject to the DMAA ban condition, the Government presented what was obviously prepared in anticipation of obtaining the condition of bond – an extensive application for a second search warrant at Hi-Tech. It was authorized at 2:35 p.m. that afternoon. With that warrant in hand, agents returned to Hi-Tech and seized everything there that was related to the manufacture and marketing of DMAA containing products – including nearly $19 million in inventory.

Over the ensuing weeks, it has become increasingly apparent that the ability of Hi-Tech to survive as a business is in jeopardy. Without $3 million of its operating funds and without the ability to manufacture and sell one of its leading products, Hi-Tech has suffered returned checks, the need to undertake significant layoffs and contemplate even more extensive layoffs in the immediate future,

difficulties meeting payroll and other operating expenses, and anticipated difficulties in paying counsel to provide representation in regard to serious and complex criminal charges and extensive seizures and, presumably, forfeitures. Neither Mr. Wheat nor his counsel could foresee these events and their ramifications on the viability of Hi-Tech as a business.

These events and their effects are truly changed circumstances from the date of the entry of this Court's Order setting conditions of Mr. Wheat's pretrial release, including the DMAA ban. This Court has statutory authority to reconsider Mr. Wheat's conditions of bond under 18 U.S.C. § 3142(c)(3) ("The judicial officer may at any time amend the order to impose additional or different conditions of release") and § 3145(a)(2) ("the person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release"), and Defendants respectfully urge the Court to do so.

V. CONCLUSION

Under the Bail Reform Act, the Court has authority to order pretrial release subject to an order that requires the defendant to "satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community." Defendants' October 4, 2017 agreement to the DMAA ban as a condition of bond was a product of

inherently coercive circumstances – circumstances clearly anticipated and orchestrated by the Government – and an Order entered in circumstances that rapidly changed after Mr. Wheat's release as the result of the Government's execution of its carefully planned offensive in the wake of the entry of the Order containing the DMAA ban.

The Government's indictment in this case has nothing at all to do with DMAA containing products. The Government has never contended in conjunction with Mr. Wheat's pretrial release, let alone proved, that the DMAA ban is necessary to assure Mr. Wheat's appearance or assure the safety of any person or the community. The DMAA ban as a condition of bond is not rooted in the underlying purposes served by the Bail Reform Act, and is effectively an injunction against Hi-Tech and Mr. Wheat from manufacturing and selling DMAA containing products. Instead, it was a product of Governmental overreaching, an improper overreaching designed to obtain a result that the Government had not yet been able to obtain through its civil action, and an overreaching that is manifestly intended to put Hi-Tech and Mr. Wheat out of business, and thereby provide the Government with an unfair and improper advantage in the instant criminal litigation. That is not the purpose of the conditions that 18 U.S.C. § 3142 empowers the Court to require in order to ensure a defendant's appearance and the

safety of other persons or the community. The DMAA ban condition was obtained through coercion and for improper – and statutorily unauthorized – purposes. This Court should modify Defendants' conditions of bond so as to remove the DMAA ban.

WHEREFORE, Defendants respectfully pray that this Court issue an Order modifying its Order of October 4, 2017 (Doc. 22-1) to remove the prohibition against the manufacture and sale of DMAA containing products, and for such other and further relief as this Court may deem just and proper.

This 10th day of November, 2017.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing "Defendant Jared Wheat and Hi-Tech Pharmaceuticals, Inc.'s Motion to Amend Conditions of Pretrial Release and Memorandum of Law in Support" into this District's ECF System, which will automatically forward a copy to counsel of record in this matter.

This 10th day of November 2017.

/s/ Arthur W. Leach
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