

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

| | | |
|-----------------------------|--------|-----------------------------|
| UNITED STATES OF AMERICA, |) | CR. NO. 10-00384 LEK-01,-02 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| ROGER CUSICK CHRISTIE, | (01)) | |
| SHERRYANNE L. CHRISTIE, | (02)) | |
| formerly known as |) | |
| "Sherryanne L. St. Cyr", |) | |
| SUSANNE LENORE FRIEND, | (03)) | |
| TIMOTHY M. MANN, | (04)) | |
| RICHARD BRUCE TURPEN, | (05)) | |
| WESLEY MARK SUDBURY, | (06)) | |
| DONALD JAMES GIBSON, | (07)) | |
| ROLAND GREGORY IGNACIO, | (08)) | |
| PERRY EMILIO POLICICCHIO, | (09)) | Hearing Date: 6/13/13 at |
| JOHN DEBAPTIST BOUEY, III, | (10)) | 10:00 a.m. before the Hon. |
| MICHAEL B. SHAPIRO, | (11)) | Leslie E. Kobayashi, U.S. |
| also known as "Dewey", |) | District Judge |
| AARON GEORGE ZEEMAN, | (12)) | |
| VICTORIA C. FIORE, | (13)) | |
| JESSICA R. WALSH, also | (14)) | |
| known as "Jessica Hackman", |) | |
| |) | |
| Defendants. |) | |
| |) | |

MEMORANDUM IN OPPOSITION TO DEFENDANTS ROGER CUSICK CHRISTIE AND SHERRYANNE L. CHRISTIE'S MOTION IN LIMINE TO PRESENT RELIGIOUS FREEDOM RESTORATION ACT DEFENSE

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**MEMORANDUM IN OPPOSITION TO DEFENDANTS ROGER CUSICK CHRISTIE
AND SHERRYANNE L. CHRISTIE'S MOTION IN LIMINE TO PRESENT
RELIGIOUS FREEDOM RESTORATION ACT DEFENSE**

The United States of America, by and through its undersigned counsel, hereby opposes defendant Roger Cusick Christie and Sherryanne L. Christie's joint "Motion in Limine to Present Religious Freedom Restoration Act Defense" filed April 1, 2013 (said defendants are hereinafter referred-to as "R. Christie" and "S. Christie", respectively). R. Christie is a self-described "cannabis sacrament minister" and the founder of the THC Ministry (hereinafter "Ministry", whose business premises up through 2010 was located at 94 Kamehameha Avenue, Hilo, HI). Defendant S. Christie (formerly known as Sherryanne L. St. Cyr prior to her marriage to R. Christie in 2011) is R. Christie's business partner in the Ministry.

I. OVERVIEW OF CASE:

As indicated in the First Superseding Indictment, the Christies are charged with various marijuana manufacture and trafficking offenses, primarily occurring in 2008-2010. Their co-defendants include their marijuana suppliers and associates at that time and former Ministry employees.

The U.S. Drug Enforcement Administration ("DEA") had initially attempted to investigate the Ministry through an undercover officer (hereinafter "UC") who was introduced to R. Christie in 2008. During the course of three face-to-face meetings on May 21, June 24, and August 13, 2008, the UC became a

member of the Ministry, and in addition, the UC purchased various quantities of marijuana from R. Christie on these three dates.¹ Furthermore, R. Christie had explained his marijuana supply problems during these meetings to the UC, and the two were also engaged in discussions for the UC to organize and operate an indoor marijuana growing operation or "farm" for the Ministry. However, R. Christie refused have further dealings with the UC after September 2008, after suspecting that the UC was a DEA Agent.

DEA thereafter initiated a court-authorized wiretap investigation of the Ministry. During the period April - July 2009, two land lines were intercepted, these being the Ministry's business telephone and R. Christie's residence telephone (hereinafter Target Telephone 1 ["TT1"] and Target Telephone 2 ["TT2"], respectively). In addition, R. Christie's cell phone was also intercepted during June - July 2009 (hereinafter Target Telephone 3 ["TT3"]).²

¹ These three hand-to-hand distributions of marijuana are charged against R. Christie in Counts 14, 15, and 16 of the First Superseding Indictment. The UC's meetings with R. Christie were also recorded and will be further discussed herein, particularly in Note 2 below.

² These intercepted telephones were as follows:

TT1- (808) 217-9352 [Ministry's business land line]

TT2- (808) 961-0488 [R. Christie's residential land line]

(continued...)

The Christies' motion in limine is in two parts, the first being substantive grounds why they believe they are entitled to present the affirmative defense provided-for in the Religious Freedom Restoration Act, 42 U.S.C. 2000bb-1 (hereinafter "RFRA"), and the second being a procedural argument, namely, that RFRA is a jury question. To simplify matters, we address the Christies' second contention first, because it is primarily a question of law and statutory construction.

II. THE CHRISTIES' ELIGIBILITY TO PRESENT A RFRA DEFENSE AT TRIAL IS NOT A MATTER FOR THE JURY TO DETERMINE. RATHER, LIKE ANY OTHER AFFIRMATIVE DEFENSE IN A CRIMINAL CASE AND ATTENDANT EVIDENCE ADMISSIBILITY ISSUES, THE COURT ITSELF MUST MAKE SUCH DETERMINATIONS AS QUESTIONS OF LAW.

The Christies have contended that the affirmative defense provided-for in RFRA is solely a jury issue, i.e., they are

²(...continued)

TT3- (808) 443-3616 [R. Christie's cell phone]

These intercepted telephone conversations are discretely identifiable for each intercepted telephone line by separate call numbers. In this memorandum, there will be frequent citations to intercepted telephone conversations. Complete transcripts of these intercepted telephone conversations are currently be assembled and will be filed at a later time. For the Court's ease of reference, citations herein to these intercepted telephone conversations will use the convention "TT[#], Call[#], Date" (for example, TT1, Call #2000, 5/1/13).

Likewise, the UC's meetings with R. Christie were also recorded. Citations herein to these recorded meetings will take the form of "UC-recorded conversation, [date]". As with the transcripts of intercepted telephone conversations, these UC recordings were transcribed, and these transcripts will also be filed with the Court.

contending that this Court may not make any eligibility or admissibility determinations with respect to RFRA's religious exercise affirmative defense. We submit that this contention is without merit.

First, by its own terms, RFRA (42 U.S.C. 2000bb-1) does not bestow upon a criminal defendant an automatic entitlement to present an affirmative defense of religious exercise at trial. Rather, subsections (a) and (b) of the statute establish a preliminary, two-step balancing procedure to ascertain a defendant's eligibility therefor. As stated in RFRA:

(a) **In general**

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) **Exception**

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person-

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest

(c) **Judicial relief**

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government

The Ninth Circuit in United States v. Bauer, 84 F.3d 1549, 1559

(9th Cir. 1996), has described RFRA's two-step balancing process as follows:

It is not enough in order to enjoy the protections of the Religious Freedom Restoration Act to claim the name of a religion as a protective cloak. Neither the government nor the court has to accept the defendants' mere say-so. The court may conduct a preliminary hearing in which the defendants will have the obligation of showing that they are in fact Rustafarians and that the use of marijuana is part of the religious practice of Rustafarians.

--and--

[Assuming that the defendants has first met their aforesaid burden of proof] under RFRA, . . . the government has the obligation, first, to show that the application of the marijuana laws to the defendants was in furtherance of a compelling governmental interest and, second, to show that the application of these laws to these defendants was the least restrictive means of furthering that compelling governmental interest.³

[emphasis added]

In other words, even if a defendant meets his/her burden, the prosecution's subsequent establishment of the "compelling government interest/least restrictive means" criterion means that the government's substantial burden on the exercise of religion is justified and therefore, the defendant is not entitled to rely

³ Consistent therewith, the Eighth Circuit has framed RFRA's second requirement as follows:

Under RFRA, neither the state nor the federal government can substantially burden a person's exercise of religion, even through rules of general applicability, unless the government shows the burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest.

United States v. DeWitt, 95 F.3d 1374, 1375 (8th Cir. 1996).

upon this defense. See, e.g., United States v. Lepp, 2008 WL 3843283 (N.D. Cal. 2008), aff'd, 446 Fed.Appx 44 (9th Cir. 2011).⁴ The bottom line is that the Christies' "jury trial" contention cannot logically be correct, inasmuch as it would entirely eliminate this two-step eligibility process, in contravention of RFRA's express statutory requirements.

Second, given this two-step balancing procedure set forth in RFRA, it is clear that only the U.S. District Courts can serve as the appropriate gatekeeper under RFRA to determine what can and cannot be presented to the jury at trial-- which, of course, is the Court's role on questions of law in every criminal case. This is why FRE 104(a) established a general procedure for the

⁴ The Lepp District Court and Ninth Circuit rulings, both being issued after January 1, 2007, are cited to this Court in accordance with FRAP32.1(a).

See also, United States v. Duncan, 356 Fed.Appx 250, 2009 WL 4598305 (11th Cir. 2009); United States v. Quaintance, 471 F.Supp.2d 1153 (D.N.M. 2009), aff'd, 608 F.3d 717 (10th Cir. 2010), cert. denied, 131 S.Ct 544 & 547; United States v. Meyers, 95 F.3d 1475 (10th Cir. 1996), cert. denied, 118 S.Ct 583; United States v. DeWitt, 95 F.3d 1374 (8th Cir. 1996); United States v. Antoine, 318 F.3d 919 (9th Cir. 2003).

Defendants' supporting memorandum at 21 describes this second part of the RFRA process as the prosecution's "affirmative defense of compelling government interest/least restrictive means". This is hardly the situation. As indicated in these referenced cases, this second aspect is part and parcel of the overall eligibility of defendants to be able to present a RFRA affirmative defense to the criminal charges.

District Courts to adjudicate "preliminary questions"⁵ and as indicated in the aforesaid quotation from the Bauer case, the Ninth Circuit itself spoke of "[t]he court conduct[ing] a preliminary hearing" [emphasis added] for this specific gatekeeping purpose under RFRA. 84 F.3d at 1559. Even the Christies' own supporting memorandum at 18 (Note 5) itself expressly acknowledged this Court's authority to determine their eligibility to present a RFRA defense, wherein they said:

The Supreme Court and the Ninth Circuit have 'recognized that RFRA 'plainly contemplates that **courts would recognize exceptions (to the CSA [Controlled Substances Act])**-- that is how the law works'. Oklevueha Native American Church of Hawaii, Inc. v. Holder, 678 F.3d 829, 383 (9th Cir. 2012)(quoting [Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal], 546 U.S. 418, 434 (2006).

[boldface and underscored emphasis added, italics in original].

In short, RFRA's treatment of the qualified affirmative defense provided-for therein is generally consistent with how other affirmative defenses are handled in Federal criminal practice, that is to say, the defendant must establish to the Court's satisfaction his/her eligibility to present that defense to the

⁵ FRE104(a) states that:

The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege. [emphasis added]

jury at trial.⁶

Third, as the Ninth Circuit explained in Bauer, 84 F.3d at 1557-8, prior to the Supreme Court's ruling in Employment Division v. Smith, 494 U.S. 872 (1990), the eligibility of a defendant to raise a First Amendment, "free exercise" religious defense was based upon the "substantial burden/compelling interest" standard. However, Smith established a new Constitutional principle with respect to laws that were neutral on their face vis a vis religion (as for example, the Controlled Substances Act). Congress' reaction to Smith was to enact RFRA, which restored the old "substantial burden/compelling interest" standard as a non-Constitutional matter. It is noteworthy that in Federal criminal cases prior to Smith when this earlier standard was still in effect as a Constitutional matter, the District Court's prior approval was always necessary for a defendant to present a "free exercise" defense at his/her trial. See, e.g., United States v. Rush, 738 F.2d 497, 511-2 (1st Cir. 1984), cert. denied, 471 U.S. 1120.⁷ Nothing in RFRA suggested

⁶ At pages 4-6 of our prior "Memorandum in Opposition to Defendant Sherryanne L. Christie's Motion to Dismiss Indictment for Unconstitutional Vagueness" filed January 25, 2013 (Document #426), we inventoried a number of typical affirmative defenses and the eligibility standards applicable thereto.

⁷ In Rush, after applying this pre-Smith test:

the district court ruled as a matter of law that the first amendment did not protect the possession of marijuana with

(continued...)

that Congress intended to change this traditional role of the courts to determine whether this affirmative defense could be presented at trial.

Fourth, citing Cudjo v. Ayers, 698 F.3d 752 (9th Cir. 2012), as precedent, the Christies seemingly contend at 19-20 of their supporting memorandum that in a criminal case, a jury (and not the Court) must decide all factual questions involving credibility and demeanor. This is hardly the case. District Courts are routinely called upon to convene evidentiary hearings and to engage in fact-finding (including credibility determinations) in connection with pretrial suppression, dismissal, and other substantive motions, even on those issues which are the same as, or closely related to, what the jury itself may later have to decide during the trial (as for example, the "voluntariness" of the defendant's statements made to the police). Moreover, the Christies' cited Cudjo case does not support their contended-for proposition. Cudjo was a 2254 habeus

⁷(...continued)

intent to distribute by the defendants, and further ordered that the defendants be precluded from introducing at trial any evidence concerning the Ethiopian Zion Coptic Church and the use of marijuana by its members, insofar as such evidence related to their alleged first amendment defense.

738 F.2d at 512.

On appeal, the First Circuit affirmed the defendants' convictions, holding on this issue that "[w]e therefore affirm the district court's ruling rejecting appellants' first amendment defense as a matter of law". 738 F.2d at 513.

corpus action which asserted that petitioner's due process rights were violated in his state murder case when the trial judge refused to permit a defense witness to testify at his jury trial that someone else had killed the victim (the judge's reason therefor being that the witness was unreliable). In finding for the petitioner, the Ninth Circuit's Cudjo language quoted in the Christies' memorandum at 19 was hardly the enunciation of a substantive principle of law concerning resolution of factual issues by a jury; rather, it was merely justifying why this particular witness' testimony should be permitted in the defense's case-in-chief at trial.

Fifth, Navajo Nation v. United States Forest Service, 535 F.3d 1058 (9th Cir. 2008), and Oklevueha Native American Church of Hawaii v. Holder, USDC(Hawaii) Civil No. 09-0336SOM, and 676 F.3d 829 (9th Cir. 2012), cited in the Christies' supporting memorandum at 19-20, are civil cases which address the sufficiency of the averments in the Complaint and other pleadings which a plaintiff must allege in order to comply with RFRA in a civil setting and consequently, they have no precedential value vis a vis jury trial issues in criminal cases.

Sixth, with respect to the merits of the Christies' jury contention, the critical starting point is United States v. Gaudin, 515 U.S. 506 (1995), which involved the question of whether in a false statement prosecution under 18 U.S.C. 1001,

the jury had to determine the statement's "materiality" (in this case, the trial court had made the determination that the statement was material and had so instructed the jury, such that the latter did not have to make any finding thereon). The Supreme Court found that materiality was indeed an element of the charged crime under 18 U.S.C. 1001 and held that:

[t]he Constitution gives a criminal defendant the right to have a jury determine, beyond a reasonable doubt, his guilt of every element of the crime with which he is charged. The trial judge's refusal to allow the jury to pass on the 'materiality' of Gaudin's false statements infringed that right.

515 U.S. at 523 [emphasis added].

The corollary of Gaudin's holding is significant in analyzing the merit of the Christies' instant "jury trial" contention, namely, that if Congress had not elected to make "materiality" an express element of this crime, then the Constitutional right to a jury trial would not attach thereto. This corollary was discussed in greater detail in Chief Justice Rehnquist's concurring opinion in Gaudin,⁸ wherein he noted that:

[n]othing in the Court's decision stands as a barrier to legislatures that wish to define-- or that have defined-- the elements of their criminal laws in a way as to remove issues such as materiality from the jury's consideration. We have noted that '(t)he definition of the elements of a criminal offense is entrusted to the legislature, particularly in the case of federal crimes, which are solely creatures of statute''. [citations omitted]

⁸ Justices O'Connor and Breyer also expressly concurred with the Chief Justice. 515 U.S. at 523.

515 U.S. at 525.

Congress clearly intended to make RFRA applicable to all Federal crimes, but only as an affirmative defense and not as an element of the offense. Furthermore, even as an affirmative defense under RFRA, Congress expressly made it a qualified one, only being applicable to criminal defendants who were eligible under the aforementioned two-part balancing standard.

Seventh and most importantly, the majority opinion in Gaudin recognized that notwithstanding its holding, determinations involving the relevancy of evidence and other similar questions of law would still remain within the province of the Court and not the jury. 515 U.S. at 520. Chief Justice Rehnquist elaborated upon this in his concurring opinion:

The Court properly acknowledges that other mixed questions of law and fact remain the proper domain of the trial court. Ante, at 520-521. Preliminary questions in a trial regarding the admissibility of evidence, Fed. Rule Evid. 104(a), the competency of witnesses, ibid., the voluntariness of confessions [citation omitted], the legality of searches and seizures, Fed. Rule Crim. Proc. 12(b)(3), and the propriety of venue, see Fed. Rule Crim. Proc. 18, may be decided by the trial court.

515 U.S. at 525-6.

In other words, as applied to the instant case, Gaudin would indicate that the eligibility of a defendant to raise a RFRA affirmative defense at trial was a preliminary question of law to be decided by the court, not by a jury.

It should also be noted that in all of the cases previously

mentioned in note 2 of this memorandum, it was the District Court that determined whether or not a defendant could present his/her RFRA affirmative defense at trial. We also specifically call this Court's attention to the case of United States v. Duncan, 356 Fed.Appx 250, 2009 WL 4598305 (11th Cir. 2009), wherein the defendant had appealed the district court's refusal of his request for a jury instruction raising RFRA as an affirmative defense. Relying upon Gaudin, the Eleventh Circuit affirmed the defendant's conviction and said on this particular issue:

[t]he question of whether the RFRA applies is a 'pure question of law and is subject to de novo review'. [citation omitted] Moreover, the determination of pure questions of law in criminal cases are not the province of the jury. See United States v. Gaudin, 515 U.S. 506, 115 S.Ct 2310, 2315, 132 L.Ed. 2d 444 (1995). Because application of the RFRA was a question of law, we conclude that the district court abused no discretion in declining to submit the issue to the jury. Because the district court properly denied the requested jury instruction, we need not address Duncan's arguments about the applicability of the RFRA.

356 Fed.Appx at 253-4 [emphasis added].

By like token, the Ninth Circuit in United States v. Antoine, 318 F.3d 919 (9th Cir. 2003), affirmed the defendant's conviction for illegal possession of bald eagle parts, holding that the district court had properly rejected the defendant's proffered RFRA affirmative defense because the government had met its burden of establishing a compelling interest/least restrictive means. In so doing, the Ninth Circuit in its published opinion strongly implied that these RFRA eligibility

determinations were questions of law and statutory construction which must be determined by the court and not the jury.⁹

Consistent with Antoine, there are two other District Court cases from the Ninth Circuit in which the court determined that the defendant could not assert a RFRA affirmative defense at trial, these being:

(1) United States v. Adeyemo, 624 F.Supp.2d 1081, 1094-5 (N.D. Cal. 2008) ("the court finds that the Government has met its burden under RFRA of demonstrating that the current permitting system for leopard skins, which includes no religious exception, is the least restrictive means of furthering its compelling interest of protecting the endangered northern African

⁹ As a matter of fact, the defendant in Antoine had actually made a jury contention similar to the Christies' argument herein. The Ninth Circuit, however, elected to address the defendant's jury contention in a separate, unpublished memorandum opinion. See the last sentence of the published opinion, 318 F.3d at 924.

In its separate memorandum opinion (published in United States v. Antoine, 59 Fed.Appx. 178, 2003 WL 245237 (9th Cir. 2003)), the Ninth Circuit addressed the defendant's jury contention and said:

[w]hether application of a federal law violates RFRA is a question of statutory construction for the court, not a question of fact for the jury. United States v. Huggs, 109 F.3d 1375, 1379 (9th Cir. 1997). Antoine's proposed 'religious freedom defense' instruction was therefore erroneous. Nor did the district court abuse its discretion in excluding evidence of Antoine's religious purpose. Once Antoine's RFRA challenge was rejected, his religious purpose became irrelevant.

59 Fed.Appx. at 179.

leopard"), and

(2) United States v. Tawahongva, 456 F.Supp.2d 1120, 1137 (D. Ariz 2006) ("The government has established a compelling interest in the protection of gold eagles and that the permit system is the least restrictive means of serving that interest").

Also consistent with Antoine, the Ninth Circuit in the later case of United States v. Zimmerman, 514 F.3d 851, 854-5 (9th Cir. 2007), held that these RFRA prerequisites were to be determined by the District Court.

For the foregoing reasons, the Christies' request for a jury to determine the applicability of their RFRA defense is without merit.

III. RELEVANT FACTS TO BE ESTABLISHED AT TRIAL AND PROFFERED HEREIN WITH RESPECT TO THE CHRISTIES' ELIGIBILITY TO PRESENT A RFRA AFFIRMATIVE DEFENSE:

A. Relevant information posted/linked on the THC Ministry's website:

During 2008-10, the Ministry maintained an internet website (www.thc-ministry.org), which on its front page expressly opened with the following words and paragraphs:

The Hawaii Cannabis Ministry

Aloha and welcome - e komo mai

Cultivation and enjoyment of Cannabis sacrament is a fundamental human right provided by God and protected by the First Amendment of the U.S. Constitution. It is our opinion that Cannabis is the original sacrament of Hebrew, Muslim, Christian, Hindu, Shinto, Buddhist, Rasta and more, and fulfills the prophecies to 'raise up for them a plant of renown...'

Like the stone of the Bible that the builders rejected, the sacramental use of Cannabis is the cornerstone of the THC Ministry. Our Ministry helps to build your mana by providing a real education in practical Cannabis spirituality. Among other wonderful things, our Ministry helps to protect you from arrest, prosecution and/or conviction of 'marijuana' charges - wherever you live - starting as soon as you sign-up, become ordained and receive your ministry documents. We provide a legitimate religious 'defense to prosecution' for sincere practitioners over 21 years old. As in Revelations 22-14, our Mission is to protect your God-given Right to 'the tree of life'. If you are under 21 years old, you can still join the ministry if you (1) live independent of your parents, or (2) have your parent's written permission.

[Underline, italicized, and boldface emphasis added].

The emphasized portion of this website quotation best described the principal purpose of the Christies' Ministry, namely, to construct a religious defense to counter arrest and prosecution for marijuana crimes, not only in Hawaii, but as expressly indicated on the website "wherever you live". A former Ministry employee, co-defendant Victoria Fiore, reiterated this particular purpose during a telephone call on June 24, 2009 (TT1, Call #8342), wherein she spoke to "Vanessa" about becoming a Ministry member. In this call, "Vanessa" had called the Ministry and initially asked "is Roger [i.e., R. Christie] in?" and explained that "somebody told me that you can get your marijuana license through him." Fiore asked this person if she was a member, to which "Vanessa" replied in the negative. Fiore then asked if she was "interested in becoming [a] member here?", to which "Vanessa" replied "yes," and also further inquired "what does this help us

do?" Fiore then explained:

well, if you, ah, basically our membership is not medical marijuana. We're not a dispensary, um, we're not a church. We are a ministry. Um, there is a fifty-dollar honorary donation, ah, to become a member here. But it's a lifelong membership. Um, it's basically a defense to prosecution. Um, we are going on the angle on our constitutional rights as our freedom of religion, ah, and we use cannabis religiously. So that is our, basically defense to prosecution. Um, we do have a lot of members here that give testimonies all the time. Ah, if they were stopped by police or anything like that. They were able to show 'em our card [that is, membership card] and be let go and not be arrested. Um, it doesn't happen all the time, but it does help if you're growing over the legal limit [unintelligible].

TT1, Call #8342, 6/24/09 [emphasis added].

Fiore also pointed out to "Vanessa" that there was a second, more cogent reason for becoming a Ministry member, as follows:

Um, but being a member here, um, it's a, you're able to pick up your sacrament here, um, instead being on the streets. Ah, we help medical marijuana patients, so because there is not acting dispensary here on the Big Island or any of the islands for that matter as well. [emphasis added].

TT1, Call #8342, 6/24/09 [emphasis added].

At pages 1 - 4 of his Declaration (appended to the motion in limine), R. Christie inventoried and extolled his various ordinations as a minister. However, in assessing and keeping in perspective the nature of such ordinations as evidence of a "religion", one must also refer to the Ministry's own website and associated links, one of which is to R. Christie's self-authored

article entitled "You can be a minister, too".¹⁰ In this article, R. Christie explained in detail how easy it was for anyone to become a minister:

Aloha,

The word Minister means 'to comfort'. In my opinion, the world needs lots of new Ministers. Ministers also enjoy a higher level of First Amendment freedoms than non-Ministers. Being a Minister helps to build 'mana', or inner spiritual strength. More mana = less victim.

It's easy to become an ordained Minister and to get licensed by the State of Hawaii to legally marry people. I call it a 'promotion from God'. It's available to all Hawaii residents.

The fast, easy, free and effective way to become ordained as a Minister is to go online, or call by telephone:

(1) Go to <www.ulchq.com>, or call the Universal Life Church at (209) 527-8111. Ask them to ordain you as a Minister, and to please send you a 'letter of good standing' along with a beginners packet.^[11]

(2) To legitimize your new Ministry, I recommend that you become licensed by the State of Hawaii to legally marry people. It's easy, it's free and it lasts for life. All you need are three things:

a. an application from the Department of Health for a license to marry people. Ask for one by calling 974-6008. I'll help you fill it out.

b. a Hawaii driver's license or State ID.

¹⁰ This article is published on an internet page which is headed "Ganja-nomics" and "This page Sponsored by Roger Christie and the Hawaii THC Ministry". A photograph of a younger R. Christie with a marijuana plant is also displayed alongside this article.

¹¹ According to paragraph 4 of R. Christie's Declaration, his first ordination was through the Universal Life Church in 1972.

c. a 'letter of good standing' from the Universal Life Church.

There is zero credit or background check involved. Everyone qualifies.

[emphasis added].

To facilitate the process of becoming a minister, the Ministry's website also included a link to the Universal Life Church's website.

Other pertinent information relative to the Ministry and its purposes were contained in its advertised "Sanctuary Kit", described next in this memorandum.

B. The Ministry's Sanctuary Kit:

The Ministry also offered for sale a "Sanctuary Kit", for a "donation" price of \$250.00. This kit was expressly intended to aid and abet the manufacture and distribution of marijuana and to further promote the Ministry's primary mission of providing a defense to arrest and prosecution for marijuana crimes. As described on the Ministry's website:

Get the Sanctuary Kit Online Now [emphasis in original]

CLICK HERE TO ORDER NOW [emphasis in original and interactive link]

Hi. In my opinion, the best religious 'defense to prosecution' for any 'marijuana' charge starts with your own sincerity [emphasis in original and interactive link]. Good manners and respect for others also helps to demonstrate that you are for real.

Our Cannabis Sanctuary Kit provides you with proof of your legitimacy as a religious practitioner of Cannabis Sacramento. You become a full supporting member of the THC

Ministry the moment you receive your Cannabis Sanctuary Kit.
[emphasis added]

Other portions of the website further touted the importance of this Sanctuary Kit specifically for the purpose of establishing a religious defense to prosecutions for marijuana:

Begin your lifetime of protection as soon as you receive your kit.

Being a member of the Hawaii Cannabis (THC) Ministry is a primary building block of your defense to prosecution [emphasis in original and interactive link] for cultivating and using cannabis for your holy sacrament in private at home or in church. Other steps include becoming ordained as a minister and being licensed to marry people in your state [emphasis in original and interactive link].

Our Kit Really works!!!- Read the Testimonials.

The Ministry's website also itemized and described the most important contents of this Sanctuary Kit, namely, the plant tags, Sanctuary sign, and membership ID card:

To protect your sacred plants and sacrament [emphasis in original]:

One of the 'plant tags' can be put in your container of Sacrament. Other tags can be placed on the stems of cannabis plants in your private garden home. These tags work in a similar fashion as a prescription label on medicines.^[12]

¹²These plant tags-- designed to either be inserted into plastic bags of processed marijuana, or affixed to live plants themselves, referenced the Ministry and read as follows:

On one side: "We use cannabis religiously and you can too".

On the other side: "sacred plant and sacrament. It's the high that heals. Thank you for honoring all of my human, civil and religious rights and powers, as I honor yours".

To protect your home and garden [emphasis in original]:

-One Sanctuary sign can be framed and hung inside your front door or kept in private.

-Another Sanctuary sign can be framed and hung inside your greenhouse.

-These Sanctuary Signs designate your home and garden as a 'place of Refuge' for the practice of cannabis spirituality and are legal notification if law enforcement ever visits.^[13]

¹³The Sanctuary sign, designed to be prominently displayed in residences and indoor marijuana cultivation sites, stated in pertinent part on one side:

sanctuary. A place of refuge for the religious practice of cannabis sacrament. Aloha. Thank you for honoring the privacy of our home and garden for religious and spiritual freedom, as we honor yours. The cultivation and use of cannabis is a fundamental right provided by God and preserved by the Constitution. Our home and garden is our place of refuge, one of the highest values of civilization. Cultivation and use of cannabis sacrament is mandated by our religion for spiritual receptivity and unity, for healing of body, mind and spirit, and for our precious connection to God and nature. We give thanks for our many blessings. All is well.

On its opposite side, the sanctuary sign stated in pertinent part:

I am endowed with personal autonomy and divinely-inherited rights and powers revealed by the Holy Bible and the Declaration of Independence and secured by the Constitution of the United States of America. My life, liberty and happiness includes the many beneficial uses of the God-given, natural herb, cannabis, misknown for decades as 'marijuana'. The personal and private use of cannabis is essential for my religion and an integral food for my mind, body and spirit. I can only reach the appropriate religious state of my choice with cannabis. The cannabis plant is a health food and hempseed in a preventive health remedy. The cultivation, possession and reverent use of cannabis is necessary to insure my individuality, human dignity and my

(continued...)

The website went on to describe one other item contained in the Sanctuary Kit, namely, the Ministry membership card, as follows:

To protect your body [emphasis in original]:

-The THC Ministry identification card is to be signed, laminated and kept in your wallet or purse.

-It will protect your use of cannabis sacrament in any of the 50 United States and elsewhere throughout the world.[¹⁴]

In 2010, the Ministry commenced offering on its website a new product called the "Congregation Kit" for a donation price of \$1,000.00. According to the Website, this Congregation Kit:

¹³(...continued)

precious connection to God and nature. Cannabis use is deeply-rooted in the history of civilization and was key to the development of the United States of America for food, clothing, shelter, medicine, sacrament and more. I am free by nature! I claim the cherished right to be left alone, especially in the privacy of my mind and body, in my possessions and in my own sanctuary, a 'place of refuge', one of the highest values of civilization... The Hawaii Cannabis (THC) Ministry. www.thc-ministry.org. (808) 961-0488.

¹⁴ This 'identification card' stated in pertinent part on one side:

we use cannabis religiously and you can, too. Religious practitioner & caregiver of cannabis hemp. www.thc-ministry.org. Tel: (808) 961-0488. A member of the Hawaii Cannabis Ministry.

The identification card further stated in pertinent part on the opposite side:

as an officer of the law, you have zero compelling state or federal interest in prohibiting the free exercise of our sincere, legitimate and private religious practice. Thank you for protecting our First Amendment Constitution Rights, and for honoring your sacred oath of office to defend them.

combines our Sanctuary Kit with the following additions: 1 Minister-size bottle of Holy Anointing Oil (Made Prayerfully with the ancient and sacred recipe of Exodus 30:23); 1 bottle of Cognac and Cannabis Tincture (Made prayerfully with Grand Marnier and Chambord, both premium label French cognacs + an organic Hawaiian Cannabis flower bud); 1 bottle Sweet Cannabis Tincture (Non-alcoholic. Made prayerfully from vegetable glycerin + a premium organic Hawaiian cannabis flower); 12 Practitioner Kits.

Several other factors are pertinent to remember with respect to the above-described contents of the Sanctuary Kit:

-First, all of Christie's marijuana supplier/co-defendants in this case were members of the Ministry, and when their respective residences were searched by law enforcement officers on March 10, 2010, their growing areas contained the Sanctuary Kit's paraphernalia, as e.g., the Sanctuary Sign being posted in the indoor grow areas, as well as use of the plant tags.

-Second, R. Christie himself espoused the widespread and indiscriminate use of the Sanctuary Kit's plant tags. During his first meeting with the UC (May 21, 2008), R. Christie talked about a person he had set up to work with a marijuana grower and said, "I set him up with a grower... And he puts on my tag in his bags. So everybody's bag of herb has my license in it. So I'm taking the risk all over the world. We got four hundred thousand of those plant tags out". (UC-recorded conversation, 5/21/08).

-Third, it was not very difficult at all to become a

Ministry member. For example, without any fanfare or other religious ceremony whatsoever, the UC became a Ministry member on the very first day he was introduced to R. Christy (May 21, 2008). R. Christie handed the membership card to the UC, with R. Christie's only comment being "now it's a defense to prosecution". (UC-recorded conversation, 5/21/08).

-Fourth, the number of Ministry members (and therefore in possession of the Sanctuary Kit and its paraphernalia) was substantial. In his Declaration appended to his motion in limine, R. Christie stated in paragraph 46 (pages 15-6) that:

[a]lthough not all members were located on the Big Island of Hawaii, roughly about 2000-3000 members did reside on the Big Island of Hawaii. Of those members, the ministry would provide sacrament to approximately 200 to 400 members in a month's time.

During his discussions with the UC in 2008, R. Christie quoted substantially higher membership numbers. In their first meeting at the Ministry on May 21, 2008, the UC inquired how many members were part of the Ministry, and R. Christie responded "well, it's sixty thousand now". (UC-recorded conversation, 5/21/08). In addition, during their second meeting on June 24, 2008, R. Christie revised this number upward, stating that ". . . people can join the Ministry from any where in the world. We have over sixty two thousand people". (UC-recorded conversation, 6/24/2008).

-Fifth, as the above-enumerated items would indicate,

the purpose of this Sanctuary Kit was primarily as a criminal defense strategem rather than being any statement of religious teachings or belief. This was made particularly clear in the Ministry's website description of a special "Ministry's Sanctuary Kit", as follows:

Minister's Sanctuary Kit [emphasis in original]:

The Minister's Sanctuary Kit includes powerful legal precedents, successful cases, a history of Roger's religious credentials and successful court actions [emphasis in original and interactive link] and positive critique from all the major cannabis magazines: High Times, Cannabis, Culture, Heads, and Skunk [emphasis in original and interactive link]

* * *

This kit has approximately 130 pages of well-researched materials with research done on the state, national and international level. Included in the kit are real Motions to Dismiss marijuana charges written by lawyers and used successfully by members of our Ministry.

This memorandum will next describe how marijuana (aka "sacrament") was distributed through the Ministry.

- C. Both R. Christie and S. Christie were knowingly utilizing the charade of religious "donations" to camouflage their marijuana trafficking activities at the Ministry.

The prosecution's expected trial evidence will show that while both Christies may have spoken in terms of receiving religious "donations" for "sacrament" (i.e., marijuana) at the Ministry, the reality was that these were actually sales transactions and more importantly, both R. Christie and S. Christie knew it. We catalogue below several pertinent recorded

conversations involving the Christies establishing this.

- (1) S. Christie's statements during intercepted telephone calls with other persons:

S. Christie was deeply involved with R. Christie in the Ministry's marijuana trafficking business and at one point, she was actually running the Ministry while R. Christie was convalescing at home with a broken ankle during summer 2009. During a telephone call on June 29, 2009, S. Christie described to a person named "Andy" how the Ministry operated its marijuana distribution operation (TT1, Call #2997), as follows:

Andy: California is really going towards, ah, legalizing it [marijuana]. In fact, certain parts of it is, is, in California is legal and people are making a fortune on it. They had it on, on, television, that these guys, they, all you have to do is get a note from your doctor and go in there and buy it. You've heard of that?

S. Christie: Of course. This is my field, honey.

Andy: Yeah, this is your new field [laughter].

S. Christie: So I mean, you know, so what I was going to tell you was because he [R. Christie] broke his foot, I've been running the Ministry and I see-

Andy: Oh.

S. Christie: Seventy people a day.

Andy: Oh. That, in counseling or are they lectures?

S. Christie: Mostly counseling, but mostly I'm distributing.

Andy: Distributing the cannabis?

S. Christie: Right.

Andy: And do, do they have to have a prescription for it?

S. Christie: No.

Andy: Then, can, and uh-

S. Christie: They just become a member.

Andy: Oh. Become a member and you could use because it's medicinal?

S. Christie: Because, because, we we're, Roger's on, uh, religious rights.

Andy: Oh, okay.

TT1, Call #2997, 6/26/09 [emphasis added].

S. Christie also advised "Andy" later in this call that the Ministry was supporting itself by selling marijuana to its members, as follows:

Andy: And, and where does the money come from? From selling the cannabis?

S. Christie: From the donations from the cannabis.

Andy: From the donat- well, they donate money to buy the cannabis?

S. Christie: Right.

Andy: But there's no price attached to it. It's a contribution?

S. Christie: We have a suggested donation.

Andy: Oh, yeah, right.

S. Christie: That's how you, that's how you, you know.

Andy: Yeah, of course. And the, financially, it,

it works out real well?

S. Christie: Yeah, and, and, you know, we see, only ten percent of our clients are, are medical marijuana patients.

Andy: Oh.

S. Christie: The other ninety is, members.

Andy: Members. Okay. Now, who grows the cannabis?

S. Christie: We have various people starting to do it.

Andy: Oh, oh, I see. You got, in other words, you gotta, it's suppliers in Hawaii that grow it?

S. Christie: Yeah.

Andy: And then you, you're able to purchase it or bought or whatever you do.

S. Christie: Yeah.

TT1, Call #2997, 6/26/09 [emphasis added].

In another telephone call with former Ministry employee (and co-defendant) Victoria Fiore on April 16, 2009 (TT2, Call #255), S. Christie made it clear that she did not want anyone to have or use written price lists at the Ministry, as follows:

S. Christie: ... The one thing, and I did leave a note for Heather [another Ministry employee at that time] about, um, no more of those numbers. I don't care if it's for Ann [another Ministry employee at that time]. I don't want to see any of those around, and Roger already said something about.

Fiore: No more, what, what, what numbers? What are you talking about?

S. Christie: The piece of paper that says how much

things are.

Fiore: Oh, that has to go?

S. Christie: No way, no way, if we ever got, no way, absolutely.

Fiore: Okay.

S. Christie: And especially anything with a dollar sign on it.

Fiore: Now, what do we tell people then that are asking, how much the something costs?

S. Christie: You memorize it.

TT2, Call #255, 4/16/09 [emphasis added].

During this same call with Fiore, S. Christie also expressed her concern that some of the Ministry's sales proceeds had been misplaced. S. Christie advised that "we're two thousand dollars short, we're in the red from yesterday", further indicating that "this happened in Ministry hours". When Fiore queried "do you, do you have, ah, do you know where it was short from?", S. Christie replied "it's, it's whatever was sold yesterday". (TT2, Call #255)[emphasis added].

(2) R. Christie's statements during recorded conversations with the UC:

During the second meeting with the UC on June 24, 2008 at the Ministry, R. Christie discussed the UC's purchase of eight ounces ($\frac{1}{2}$ pound) of marijuana for \$3,100, which R. Christie purported to be a "donation" to the Ministry, as follows:

R. Christie: Was there anyway you can help us today?

UC: Can you help me today?

R. Christie: Yeah... What do you need?

CS: Yeah, the pound.

UC: The pound.

R. Christie: I got a pound. Now here's my considerations of pound, okay. Pounds come, it's pretty slow... I got one more pound, and uh, I made the value. If all things go right, I'd make a thousand bucks on half a pound. So I can make two thousand bucks on a pound. That, that gets medicine to people and feeds the Ministry here... I could make it happen. I would be able to get you a half a pound or get you a pound right now. Um, but I don't know any- any better or, you know, I don't even want to cut you a good deal because you're a money guy and you don't need money. I need money, you know, and so it doesn't make sense for me to cut you a deal... I've never sold a pound or half pound to anybody. I don't sell. It's donations, people.

UC: That's what I'm saying. We can talk about donations. We don't have to talk about that.

R. Christie: But if you want to donate to the Ministry, I got, I got half a pound for you.

UC: Okay.

R. Christie: It'll be right here. It's absolutely primo.

UC: Are you thinking about, what, three [\$3,000]?

R. Christie: Um, let's see. What- what I got to pay back on it is- is twenty one hundred bucks. Okay, so I really make a grand on it.

UC: I'll give you three. How's that?

R. Christie: So you'll give me three grand?

UC: Give you three grand for half a pound.

R. Christie: I'll make nine hundred bucks. That's a little less than I'm making if I do it on my own. Can you make a little sweeter than that?

UC: .. I'm not gonna [unintelligible] over hundred dollar... 'cause you tell me what to bring for a full [i.e., one pound] and I can bring a full...

R. Christie: I got a half a pound that's- that's for you.

UC: Okay. I'll give you thirty one [\$3,100]. How's that? That way you'll get your thousand.

R. Christie: Yeah, I can make that happen. My supply is not bad... I can't just say give me an extra two pounds. We need the greenhouse supply.

* * *

UC: What are they charging for that [i.e., the ½ pound of marijuana]?

R. Christie: Twenty one hundred.

UC: They're charging you twenty one for this? So, roughly, what's a pound gonna be?

R. Christie: Forty two [\$4,200]. They're charging me forty two. They get forty four from other people, forty eight on Maui, and five grand on Oahu.

UC recorded conversation, 6/24/08 [emphasis added].

That is to say, the foregoing conversation was nothing more than a negotiation over the sales price, with R. Christie indicating that since he could realize a \$1,000 profit from distributing the ½ pound through his normal channels at the Ministry, he wanted to make the same profit margin in this one

bulk sale to the UC (i.e., R. Christie was not offering a volume discount).

(3) R. Christie and S. Christie's discussions of marijuana pricing between themselves:

Because S. Christie took over R. Christie's leadership role at the Ministry during the latter's convalescence, it was necessary on several occasions for S. Christie to discuss marijuana pricing with R. Christie. In these calls between themselves, the Christies dropped any pretense of "donations" and expressly discussed pricing.

In one call on July 1, 2009, the following discussion occurred between the Christies (TT3, Call #730, 7/1/09):

S. Christie: Okay. So I just need to know some prices here.

R. Christie: Okay. Uh, let's see. Um, let's see, five-oh [i.e., \$50] for the three point five [i.e., 3.5 grams (equivalent to 1/8 ounce, also known as an "eightball")] for--

S. Christie: Both of 'em?

R. Christie: No. Oh, yeah, for everything that's bagged.

S. Christie: Yes.

R. Christie: But if gotta get in to the, the, the [unintelligible] bags, it's four point, four oh [i.e., \$40].

S. Christie: Okay. For the Ministry?

R. Christie: Yeah.

TT3, Call #730, 7/1/09.

In another call on July 3, 2009 (TT3, Call #782), S. Christie posed R. Christie a question: "yeah, so if, um someone just asked if this is gonna be the same price if he got, um, seven point zero [i.e., 7.0 grams of marijuana, or equivalent to buying 2 "eightballs" of 3.5 grams each], if it will be, if you get two of those, if it will be cheaper". R. Christie replied, "yep, knock off ten [i.e., \$10]". S. Christie repeated "knock off ten" and then asked "it's ninety each, right? Is it ninety each".¹⁵

In another call on May 8, 2009 (TT1, Call #5195), S. Christie inquired about their marijuana edible products, saying "so Matthew brought over the cookies. How they usually go for again? Three for twenty [i.e., 3 cookies for \$20], is that how it went?" To figure out the profit margin, R. Christie then asked "how much were they? Fifty cents apiece?", to which S. Christie replied, "well there was, it was fifty dollars that I got, worth. I haven't counted how many. But you don't remember". R. Christie answered, "no, I don't. And, uh, you know, just make sure we, we, you know, try and double or triple the money". S. Christie acknowledged, "got it, got it. Okay,

¹⁵ As indicated in the earlier referenced call (TT3, Call #730, 7/1/09), the Ministry charged \$50 for 3.5 grams (one eightball). Consequently, if someone wanted to purchase two eightballs (or a total of 7 grams), R. Christie was indicating that this buyer should get a \$10 "volume discount", so the total price would be \$90 and not \$100.

okay".

In another call on July 6, 2009 (TT1, Call #9227), the following conversation ensued:

S. Christie: So is the new, um the John's, uh, product, is that one point two [i.e., 1.2 grams]?

R. Christie: The new product?

S. Christie: The new herb.

R. Christie: From Roland [i.e., co-defendant/supplier Roland Ignacio].

S. Christie: Yes, Roland. I'm sorry.

R. Christie: Okay. Ah, one point three for twenty [i.e., 1.3 grams for \$20].

S. Christie: Well, it doesn't make sense then for us. We can't figure this out. If somebody wants fifty dollars, then how much is that?

R. Christie: That's three point five [i.e., 3.5 grams (1/8 ounce) for \$50].

S. Christie: Three point five. Well, that does, that makes sense then for three point six. That's, that's sixty dollars. So that doesn't make sense to me. Three point six is sixty dollars. So how could it be three point five?

R. Christie: Three point six and, I don't know.

S. Christie: The twenty is one point. So that's what I saying. It, it, it was one point three was the, the fifty. I mean, um, the last one, the California.

R. Christie: Yeah, they get a quantity discount.

S. Christie: Yeah. I understand that, honey. I'm just trying to do fifty dollars worth.

R. Christie: Fifty dollars worth?

S. Christie: Yeah. So what point is that.

R. Christie: Oh, then it's, it's three point three or something.

S. Christie: Okay, Okay.

R. Christie: Yeah, the idea is to, you know, to the best of our ability. We have people leave there smiling.

S. Christie: Yeah, honey.

R. Christie: Sometime we have to take a little hit to do that.

S. Christie: Yeah.

R. Christie: But we can afford it, which is good.

S. Christie: Okay, okay.

R. Christie: Thank you.

TT1, Call #9227, 7/6/09.

(4) The sale and distribution of marijuana at the Ministry:

The following, representative intercepted telephone calls illustrate the Christies' marijuana trafficking activities at the Ministry:

(a) In a telephone call on April 21, 2009 (TT1, Call #2480), a person identifying himself as "Rio" called and said "I need to get a bag of sacrament from Roger". R. Christie thereafter called "Rio" back (TT1, Call #2482, 4/21/09), and the following conversation ensued:

Rio: Listen, I'd like to, um, get some sacrament.

R. Christie: Cool, we got some.

Rio: Okay.

R. Christie: Donation bag or purchase?

Rio: Purchase.

R. Christie: Cool, how much would you like?

TT1, Call #2482, 4/21/09.

"Rio" then said he preferred not to talk on the phone and asked to come to the Ministry immediately.

(b) In another telephone call on April 25, 2009 (TT1, Call #3293), "Fred" inquired "what is the donation going for?", and R. Christie replied "fifty an eighth [i.e., \$50 for 1/8 ounce (3.5 grams)], a hundred a quarter [i.e., \$100 for 1/4 ounce] for, for grade A".

(c) In another call on May 18, 2009, "Darryl Carter-Ali" spoke to R. Christie (TT2, Call #1751, 5/18/09), wherein the following conversation occurred:

R. Christie: Ah, let's see, we've got a, or the Ministry's open from two to five.

Carter-Ali: Oh really?

R. Christie: So you welcome to, to go by there and make a donation. We've got some, some, uh, free bags of Aloha bags of some pretty good shake, and we have some triple A bud.

Carter-Ali: At regular, um, donation prices?

R. Christie: Yeah.

Carter-Ali: Okay cool.

R. Christie: Yeah, should be, should be good.

Carter-Ali: How much for a, for an ounce?

R. Christie: Four hundred.

Carter-Ali: Wow that's high.

R. Christie: It's retail.

Carter-Ali: Yeah okay.

R. Christie: Normal retail. You know, we buy it, you know, at forty five hundred, five grand a pound, so.

TT2, Call #1751, 5/18/09.

(d) During a call on May 22, 2009 (TT2, Call #2005, 5/22/09), the following conversation ensued between "James" and R. Christie:

James: How much for a zone [i.e., a "z" or ounce (abbreviated "oz")]? And how much for for a pound, wholesale?

R. Christie: Uh, let's, well, I don't have 'em wholesale.

James: Okay.

* * *

R. Christie: So they, you know, they, they, they go for, um, let's see, what I'm gettin' for is 42 [i.e., \$4,200 a pound].

James: 42?

R. Christie: Yep.

James: Okay, and how much for a zone?

R. Christie: Uh, well, I gotta, I gotta make \$400 for 'em.

James: \$400 a zone?

R. Christie: Yeah, that's what I need to get.

TT2, Call #2005, 5/22/09.

(e) In a call on July 22, 2009 (TT1, Call #10436), "Josh" inquired what the donation was for a "half [$\frac{1}{2}$ ounce]". R. Christie quoted two prices of \$160 and \$200, explaining that the the \$160 was for lesser grades "like A-, B+, B- and then our A grade would be \$200".

(f) In another call on July 22, 2009 (TT1, Call #10413), the following conversation occurred between "Mike" and former Ministry (and co-defendant) Jessica Walsh:

Walsh: Aloha, this is Jessica with the Hawaii Cannabis Ministry. May I ask who's calling?

Mike: Yeah, this is Mike. Is Roger in?

Walsh: Ah, Roger is busy right now, Mike. What can I do for you?

Mike: Ah, I needed to talk to him personally. Actually, ah, need to know if he could do me a favor today?

Walsh: Un, okay, ah, Mike, what's your phone number?

["Mike" provides his telephone number]

Walsh: And what was the favor?

Mike: I was wondering if he could, ah, front me, a, some sacrament until Monday? [i.e., "Mike" was asking for a credit purchase]

Walsh: And the amount?

Mike: Forty [i.e., \$40].

Walsh: Ah, I'll ask him and one of us will get back to you.

Mike: Thank you very much.

TT1, Call #10413, 7/22/09.

Shortly thereafter, Walsh called "Mike" back, as follows (TT1, Call #10414):

Walsh: Hi, can I speak with Mike?

Mike: Yeah, this is Mike.

Walsh: Hi, Mike, this is Jessica with the Hawaii Cannabis Ministry. How are you doing?

Mike: Oh, good. That was quick.

Walsh: Yeah, yeah, exactly. Um, so Roger said 'no thank you'. But Mike, you're more than welcome to come in for 'holy anointing oil' or 'tincture' here in the Ministry.

Mike: Oh, okay. He said, he said 'no thank you'. He doesn't want to do that?

Walsh: Yeah, exactly.

TT1, Call #10414, 7/22/09.

(g) On July 22, 2009, R. Christie spoke to someone identifying himself as "Biker Chris" (TT1, Call #10447):

R. Christie: Aloha, it's Roger with the THC Ministry. Who's calling please?

Biker Chris: Hi, Roger, it's Biker Chris.

R. Christie: Hey, Chris! Aloha to you, pal.

Biker Chris: How are you doing? Are you open?

R. Christie: Yeah, come on down.

Biker Chris: Right on. Is it busy there?

R. Christie: I don't know. It was, I don't think it is now.

Biker Chris: Oh, cool, 'cause I would come down when it's kind of quiet.

R. Christie: Yeah, well.

Biker Chris: All right.

R. Christie: I, I can't really see you right now. But I think the, the rush is ah, the rush is over.

Biker Chris: Kind of over, yeah?

R. Christie: I think so.

Biker Chris: Right on.

R. Christie: Yeah, we got some really good, uh, you know, 'A' grade today called 'Lucky'.

Biker Chris: Wow! Can I try a little bit?

R. Christie: Come on, get some 'Lucky'.

Biker Chris: Okay.

R. Christie: We are not giving it away.

Biker Chris: Yeah, I don't have a donation or anything right now. It's 'cause, I mean, my wallet got stolen and everything and I--

TT1, Call #10447, 7/22/09 [emphasis added].

R. Christie then had to answer another call. Minutes later, "Biker Chris" called back, and the following conversation ensued (TT1, Call #10454, 7/22/09):

Biker Chris: I am very blessed, you know, they're selling the blessings, you know.

R. Christie: Yeah.

Biker Chris: And this one girl, said well, she wanted to help me out, you know. She said she knows how it is and I said 'cause, my friend, you know, he, he gave out a whole bunch and stuff, you know, the sacrament?

R. Christie: Uh, huh.

Biker Chris: And I wanted to get a little bit, but I don't have a donation or nothing. She gave me a little bit to give you for a donation for a little 'nuq', but it's not much. Couple dollars.

R. Christie: Couple dollars?

Biker Chris: Yes, two dollars.

R. Christie: Doesn't cut it, bro, not today.

Biker Chris: I know, I was hoping you'd help me anyways, but--

R. Christie: Yeah, I wish I would. No, I gotta say no thank you today 'cause, you know, I give until it's painful.

Biker Chris: Yeah.

R. Christie: And then I have to replenish my supplies. And it just, it's just you're catching me at the down part of my ability.

TT1, Call #10454, 7/22/09 [emphasis added].

(h) In a call on July 17, 2009 (TT1, Call #10129), customer "Mora" asked "what are the brownies?", and R. Christie responded "yeah, they're edibles. They, they get you pretty high". In another call on 4/13/09 (TT1, Call #1047), R. Christie advised customer "Keola" that they had run out of "Aloha bags [i.e., free amounts of "shake" marijuana]"; however, R. Christie

advised "but we have brownies" and "yeah, we got brownies with herb. Five bucks a piece".¹⁶

(i) In a call on April 18, 2009 (TT1, Call #2034), a customer named "Bob" spoke to R. Christie. During this conversation, R. Christie explained what "tincture" was, also indicating that he offered two versions of tincture, the first being an alcoholic version (called "French Cognac") for \$60 and the other being "a non-alcoholic tincture, it's made with vegetable glycerin". In response to "Bob's" query of "how much is this one [the non-alcoholic version]", R. Christie said "it's also sixty". R. Christie also explained how "tincture" was used, stating that "you carry your purse, you can dose yourself at the movie theater, at the restaurant. You know what I mean? You just take out the bottle and give a drop in your tongue and away you go, nobody even looks at you". R. Christie also said that there was a marijuana bud emplaced in every bottle of tincture ("our motto is 'there's a bud in every bottle'"). R. Christie also discussed "anointing oil" with "Bob", saying "okay, holy anointing oil. Anoint your head with oil", and "brother, the testimonials we get from holy oil are off the charts". "Bob"

¹⁶ In a similar call on April 18, 2009 (TT1, Call #1999), Ministry employee Ann advised another customer that "the only thing that we can offer, other than that, is, um, we have brownies and we have ganja balls, which are five dollars". Ann further described "ganja balls" as being "like a chocolate cookie".

also inquired "how much is the oil?", and R. Christie replied "it's, it's \$50 a bottle". (TT1, Call #2034, 4/18/09).

(j) In another call on July 9, 2009 (TT1, Call #9521), R. Christie told the caller that:

[The Ministry was] only open to serve, um, our people, our practitioners here Monday, Wednesday, Friday from two to five. So, during this time, we serve about fifty or seventy people and we dispense cannabis. So that's, so yeah, we go through, ah, easily a half a pound a day in three hours. And we, we, this is taking packets away, during this time, two to five, Monday, Wednesday, Friday. Then they can take live plants away. We have clones, we have seeds, we have candy, we have brownies and chocolate chip cookies, all with cannabis. We have tinctures made with cognac or vegetable glycerin, the non-alcohol kind. [emphasis added]

In order to efficiently distribute marijuana to this large volume of buyers during the short three hour duration that the Ministry was open for business, the Christies in early 2009 instituted "express" service, which will be discussed next in this memorandum.

D. The "Express" procedure was designed to expedite the sale of marijuana at the Ministry:

In order to acquire marijuana from the Ministry, it was not necessary to meet with R. Christie or otherwise engage in any religious activity or ceremony. The customer could easily obtain his/her marijuana via the "express" procedure. During a call on April 17, 2009 (TT1, Call #1847), THC employee Victoria Fiore explained to customer "Joseph" how "express" worked. Fiore

initially inquired "oh, okay, we're, you just, uh, here to sit down and talk to Roger?", to which "Joseph" said "yeah". Fiore then said "okay, 'cause I was gonna say if you were looking for any sacrament, we are doing express today". Joseph then asked "you're doing express? What does that mean?", and Fiore said "um, basically, if you don't wanna have to, if you don't wanna sit down, talk to Roger, you can just come on in, make a donation and pick up your sacrament".

By like token, in another call on April 17, 2009 (TT1, Call #1802), an unknown male asked THC employee Ann "could I make an appointment?", to which Ann asked "sure, do you want to sit down with Roger, or are you looking to come over for express?". The male said "probably for express", and Ann then explained: "oh, for express, you don't need to make an appointment for that, um, just come by after two o'clock and say that you wanna, um, come in for an express, and make sure you bring your [Ministry membership] card with you as well".

In a subsequent call on April 17, 2009 (TT1, Call #1847), THC employee Ann explained that "um, Roger is with clients right now, and he's completely booked today". But if you wanna see him tomorrow, I could set up an appointment for you, or if you're just looking for sacrament, you can come see me at express". The customer then indicated "yeah, I'll, I'll, I'll [unintelligible] over there?". Ann then said, "all right, well, come here for

express then".

Co-defendants/former THC employees Jessica Walsh and Victoria Fiore will be called as prosecution witnesses at the RFRA hearing and will testify about how "express" worked. Essentially, R. Christie had instituted "express" in early 2009 as a means to expedite the distribution of marijuana at the Ministry. "Express" was primarily handled by the employees (as Walsh and Fiore), without the need for any direct contact between Christies and the customers.¹⁷ Prior to the Ministry opening, R. Christie or S. Christie (depending on who was in charge that day) would have a meeting with the employees. In this meeting, the employees would be advised what "sacrament" (marijuana) was available and the prices to be charged for different strains and quantities. The employees primarily handled the "express" procedure; they confirmed that the customers had membership cards and took the marijuana orders from their customers, also collecting their cash payments therefor. Each customer's cash payment and marijuana order would be placed in separate envelopes; at intervals, groups of these envelopes would then be taken back to R. Christie or S. Christie (the latter being present in a private office in back). After taking the money, R. Christie or S. Christie would then place the desired amount of

¹⁷ This was also the situation when S. Christie was running the Ministry during R. Christie's absence.

marijuana in the respective envelopes. The employees would then leave the office, go back to where the customers were located, and then effect the distribution of the marijuana to them.

E. Relevant intercepted telephone conversations between R. Christie and several of his marijuana suppliers:

Several of R. Christie's marijuana suppliers in 2009-10 were identified through the wiretap investigation and have been charged as co-defendants in this case. As hereinbefore indicated, when DEA effected searches of these suppliers' residences on March 10, 2010, it became clear that they all were members of the Ministry; "sanctuary signs", "plants tags", and Ministry ID cards in their names-- that is, Sanctuary Kit paraphernalia-- were found at their respective residences and growing areas.

Furthermore, in fostering his relationship with these marijuana suppliers, the prosecution's evidence will also show that R. Christie also maintained the fiction of religious "donations", that is to say, they supposedly "donated" the marijuana to the Ministry, and R. Christie, in turn, effected his own "donation" back to them. R. Christie described how this worked in a telephone call with a person named "Jonathan" on April 17, 2009 (TT2, Call #269), in which R. Christie opined that "I'm thinking how to step it up another notch, uh, forward, and that's to, like for instance, your situation or somebody else's, let, let some people know that the Ministry needs more herb, but

our new law passed in November allowing 24 plants per adult, in private, at home." The following discussion then occurred later in this call:

Jonathan: Um, yeah, so the use's and all that, but the supply, yeah, that's the thing, that's the key thing.

R. Christie: That's the trick, you know, I'm allowed to have a farm, but I'm too busy to have one and I don't have the finances to have one, so if somebody else has a location, then I'll be happy to, you know, put my stamp of approval on it and, uh, you, you know, make, make it happen now.

* * *

R. Christie: Yeah, so what I, I wanted to express here, too, is that besides the Ministry, just, you know, doing our, our simple, you know, daily sacraments and services, because ballot question 1 [that is, the marijuana ordinance] was approved, it's 24 plants per adult here. Um, it's private at home, but there's no commerce allowed with it.

Jonathan: No commerce allowed with it.

R. Christie: Right, it's not allowed to be grown for sale. So this, this is [where] the Ministry comes in. I think my license allows me to accept offerings of that backyard produce.

Jonathan: Uh, huh.

R. Christie: And then offer something back to the, uh, to the, to the grower. So...

Jonathan: Okay.

R. Christie: So I'm, I'm just, I'm exploring this possibility here, how to take people's backyard profit centers, or the potential profit center in somebody's backyard, and turn it into, you know, make it more legit through the Ministry, and that the Ministry would make medicine, we would weigh

it and grade and process it and make medicine and sacrament with it, and provide it under a, a Ministry label to Ministry members.

* * *

R. Christie: ... [y]ou know, like you have a little bit of property and other people have a little bit of property, and you know, maybe wanna tend to, you know, have a whole cultivation situation, uh, if there's extra [that is, growing in excess of 24 marijuana plants] and you're looking for another choice of what to do with your extra, I think you can offer it to the Ministry.

Jonathan: Right.

R. Christie: And that, that we will offer a check back to the, to people. It won't be black market prices, however.

Jonathan: Right, right.

R. Christie: You know, because we're looking for sincerity and we're looking, you know, to break the black market on this one.

TT2, Call #269, 4/17/09 [emphasis added].

In the following sections, we summarize a number of pertinent telephone calls which either R. Christie or S. Christie had with their marijuana suppliers.

(1) Co-defendant Roland Ignacio:

On May 8, 2009, R. Christie had the following conversation with co-defendant Roland Ignacio (TT2, Call #1172):

R. Christie: Hey, Roland. Aloha to you.

Ignacio: Good, good, good, good. I was wondering if you need, you needed any sacrament?

R. Christie: Um, wow. You got da kine now?

Ignacio: Yeah, I got about, I got about 6 of 'em right now. [unintelligible] I was wondering if you needed any.

R. Christie: 6 ounces?

Ignacio: Yes.

R. Christie: Okay. How much would it be and what's the grade?

Ignacio: Uh, it's, it's good. And probably about three.

R. Christie: About \$300 times 6?

Ignacio: Yeah.

* * *

R. Christie: And so yeah. And so one of our suppliers did come back into the, the swing here temporarily.

Ignacio: Okay.

R. Christie: Do I owe you any money?

Ignacio: Um, yeah. About \$380 or something like that.

R. Christie: Okay, good. Well, I've got your money and I wanna make sure we're clean, so we can keep, keep doing good things.

Ignacio: No problem. We will be [unintelligible] for a long time.

R. Christie: So yeah, yeah. We got a beautiful future, man. This is, this is part of, this is going really great, um.

Ignacio: Good, good.

R. Christie: Let's see. I don't need it at this moment so if you can find another source, you know, for putting it, that, that, that probably would be good for you.

Ignacio: Okay. No problem.

TT2, Call #1172, 5/8/09 [emphasis added].

On June 19, 2009 (TT3, Call #348), R. Christie left a voice mail message for Ignacio: "I've got something for you and hopefully you've got something for me. So call me at your earliest convenience and all the best to you". Shortly thereafter (TT3, Call #349, 6/19/09), R. Christie and Ignacio had a telephone conversation, as follows::

R. Christie: I'm at my condo. Um, I'll be at the office late in the day, like 4:30, 5, something like that. Um.

Ignacio: Okay.

R. Christie: I've got some cash for you.

Ignacio: Okay.

R. Christie: And I have an order for some more clones [i.e., cloned marijuana plants]. Is, is it available?

Ignacio: Uh, how much you need?

R. Christie: Uh, probably, oh, probably. Let's see. I got an order for 12 so far.

Ignacio: Okay, okay. Um, yeah, I can, uh, see what I got put together and I could see what's ready and what's not.

R. Christie: Great.

Ignacio: Okay?

R. Christie: Yeah. Call me later in the day if you'd be so kind. We'll coordinate if, if, today or tomorrow.

TT3, Call #349, 6/19/09.

Ignacio later called R. Christie and advised "oky, I think I can help your friend out". (TT3, Call #368, 6/19/09).

On June 30, 2009, R. Christie and Ignacio had another telephone conversation (TT2, Call #3227), wherein they discussed providing the Ministry with more marijuana clones and in addition::

Ignacio: Okay. I got maybe a quarter.

R. Christie: Oh, no kidding?

Ignacio: Yeah.

R. Christie: Quarter of a pound [i.e., four ounces]?

Ignacio: Yeah, for \$250 [per ounce].

R. Christie: Nice. Uh, great. Um, buh, buh, buh, boom. Why don't you bring that with, when you have the clones?

Ignacio: Okay. I'll bring it down.

R. Christie: Super. You think it's A grade?

Ignacio: Oh, yeah, yeah.

R. Christie: Fantastic. I'd love to try it.

Ignacio: Okay.

TT2, Call #3227, 6/30/09 [emphasis added].

(2) Co-defendant Perry Policicchio:

In a telephone call on April 25, 2009 (TT1, #3254), Policicchio spoke to Ministry employee Julie and advised that "I'm the one that, who brings plants". Later in this call, Policicchio said "Roger owes me some, uh, money, and I just want

to get some sacrament", and then advised, "okay, I'll be down there in a little bit".

On May 15, 2009, Policicchio spoke to S. Christie about supplying marijuana plants to the Ministry (TT2, Call #1106). Policicchio initially advised that he "wanted to check on your plants, how you're doing. I'm the one who bring 'em". S. Christie inquired "what kind are they?", and Policicchio replied "J-F-K". S. Christie then said, "J-F-K? Okay, I'll call you right back. I, we got a lot of people here, so, um, I'll let you know".

On July 17, 2009, R. Christie left a voice mail message for Policicchio (TT3, #1215), as follows: "Hey, Perry, aloha to you. Roger Christie calling. Hey there, I'd love to talk to you about, ah, a little baby girls [NOTE: cloned marijuana plants are female plants], and, ah, a dozen or so, could use ASAP. If you're in the flow, we'll be, we could use 'em". Policicchio thereafter called R. Christie back and left a voice message (TT3, Call #1230, 7/17/09), "this is Perry calling you back. Um, I went and checked. I have seven for you. If you like, uih, give me a holler back. Let me know when you want me to bring 'em". R. Christie subsequently called Policicchio back (TT3, Call #1237, 7/17/09), wherein Policicchio reported that "um, there's seven of 'em I can, uh, bring there". After R. Christie inquired "nice, yeah, I'm down here [at the Ministry], is today a good day

or no?", Ignacio stated "sure... I, I'll be there in about fifteen, twenty minutes".

It appeared that Policicchio brought the cloned marijuana plants to the Ministry on July 17, 2009 as he said he would, because S. Christie thereafter telephoned Policicchio (TT3, Call #1249) to inquire what the plants' name was, to which Policicchio replied "oh, J-F, J-F-K". The two then continued their discussion:

S. Christie: Okay, you have more?

Policicchio: Uh, no. At this point I don't. I mean, I, I can eventually, but not now I don't.

S. Christie: Okay. Thank you very much for your good work.

Policicchio: Okay. No problem. Just let me, you know, let me know in advance through if you know, if you think you guys are doing, are **selling** so many for, you know, a week or so many a month and, you know, kind of give me a round ball figure to calculate for.

S. Christie: I, I, you know, it's hard to tell 'cause we've **sold** in the past. It's been so awful.

TT3, Call #1249, 7/17/09 [emphasis added].

(3) Co-defendant Aaron Zeeman:

On April 22, 2009, Zeeman telephoned the Ministry (TT1, #2615) and asked to talk to R. Christie, saying "I just want to talk to Roger... I think he's in need of my services... And I think he's looking for some sacrament. So maybe he'd want to give me a call".

In the ensuing return call on April 22 (TT1, #2616),
the following discussion occurred:

R. Christie: Can we speak freely? Or you rather not?

Zeeman: We [unintelligible] speak freely. No problem.

R. Christie: Good. Okay. The Ministry is lookin' for, um, a ½ pound at least.

Zeeman: Uh, huh.

R. Christie: Um, we need 1, ½ pound a day actually.

Zeeman: Right.

R. Christie: Uh, huh.

Zeeman: I talked to you before. I was telling you that I wanted to have a discussion about, you know, the, the, a whatever, however, you're pushing for the dispensary. And how me and Mike would be, you know, exclusively work for you.

R. Christie: Um.

Zeeman: You know, supplying what you need?

R. Christie: Nice. Um.

Zeeman: Because we're all set up and you were gonna come up and take a look at the set-up, remember?

R. Christie: Oh.

Zeeman: You maybe don't remember that. I know you're really busy.

R. Christie: But thank you for the, your invitation.

Zeeman: Yeah.

R. Christie: That's always impressive.

Zeeman: Yeah, so um, anyways, we got what you need.

R. Christie: and what the--

Zeeman: Pretty sure.

R. Christie: What's the grade and what's the donation?

Zeeman: the grade is--

R. Christie: Superior?

Zeeman: At least A.

R. Christie: Wow. Good.

Zeeman: At least A. You know, double A, triple A. People, you know, that's all.

R. Christie: Yeah, it's individual.

Zeeman: So yeah. Anyway, yeah, we could, you, hook you up with that and it would be 22 [i.e., \$2,200 for ½ pound].

R. Christie: 22 for A. Okay. Uh, let's see. Do, do, do, do. Can I confer with you later today and get it delivered tomorrow possibly?

Zeeman: Sure thing.

* * *

R. Christie: Sure. Understood. Okay, so 22 for ½, ah, beautiful.

Zeeman: Yup. It is beautiful.

R. Christie: Good. Thank you. I know, I know you're a connoisseur and you like, you gotta have the quality.

TT1, Call #2616, 4/22/09 [emphasis added].

During a telephone call on the following day (TT1, Call #2899, 4/23/09), Zeeman inquired "did you figure out which, wanted to do yet?", and R. Christie answered "uh, I can, I take a quarter [i.e., 1/4 pound [four ounces] rather than 1/2 pound]", further explaining that "I'll start with a quarter" and "I wanna see which has more quality". R. Christie then inquired as to the price for the 1/4 pound, as follows:

R. Christie: And what's, what's the donation for the quarter?

Zeeman: Uh, I'm gonna give--

R. Christie: Give me a Ministry price, please.

Zeeman: Yeah. I, I'll give you the uh, uh, eleven fifty price (i.e., \$1,150).

R. Christie: Eleven fifty. And we'll try that out.

TT1, Call#2899, 4/23/09 [emphasis added].

Zeeman and R. Christie agreed to meet the following day at Bear's Coffee Shop in Hilo to complete the transaction.

On May 1, 2009, Zeeman and R. Christie telephonically conversed (TT2, Call #741), wherein the following discussion occurred:

R. Christie: Which is wonderful. And, and it will run tomorrow. So we will be, yeah, we'll be needin' Monday.

Zeeman: Oh, really?

R. Christie: Yeah.

Zeeman: Okay.

R. Christie: Yeah.

Zeeman: Well, here's the thing, man. Um--

R. Christie: You need something this weekend?

Zeeman: Well, I, here's the thing. This is, yeah, I'm dedicating this to you and other, I'm gonna tell them to go elsewhere. You know what I'm saying? So--

R. Christie: Yeah. I hear you. Well, what is it, half [i.e., ½ pound]?

Zeeman: Anyway, huh?

R. Christie: Is a half?

Zeeman: Yeah.

R. Christie: And how much is that?

Zeeman: 22 [i.e., \$2,200].

R. Christie: Okay. Yeah, I got, I, um, I'm more than halfway there.

Zeeman: All right. Well if you want, I could just hook you up and you can take care of me later, too.

R. Christie: That will work, too.

TT3, Call #741, 5/1/09 [emphasis added].

In a follow-up call on May 3, 2009 (TT2, Call #813), Zeeman advised "I got everything right here ready to go" and "so you want to do what you originally agreed on, right?". R. Christie answered, "yeah, the half [i.e., purchasing the ½ pound]".

On July 22, 2009, R. Christie called Zeeman (TT3, Call #1430) and inquired "do you have anything we could work with today?", also further clarifying that "looking for a half [i.e.,

½ pound]". Zeeman replied "yeah, I got one" and also inquired "pay cash?" R. Christie replied "yes". In a subsequent call (TT3, Call #1433, 7/22/09), the two agreed to meet at R. Christie's condominium apartment; however, R. Christie later changed the meeting site to the Ministry (TT3, Call #1441, 7/22/09).

(4) Co-defendant Michael Shapiro (aka "Dewey"):

On April 14, 2009, Michael Shapiro (nickname: "Dewey") telephoned the Ministry (TT1, Call #1194) and spoke to employee Heather, stating that "I need to talk to Roger on the phone", also adding, yeah, it's for his benefit, not mine". Heather advised that "he [i.e., R. Christie] told me to let people know that I am his spiritual secretary and that I have full authorization to talk to you about this". Shapiro then related that "it's something that he is going to want to purchase from me". When Heather asked "sweet, sweet, and you're able to get weight on that?", Shapiro replied that "I have two units [i.e., two pounds] right now". Heather then asked "sweet, and how much are they goin'?", to which Shapiro responded "thirty nine each [i.e., \$3,900 per pound]". Shortly thereafter on April 14, R. Christie called Shapiro (TT1, Call #1195), saying "you just called here and gave a message and it sounds good to me". The two agreed to meet at the Ministry the following day to complete the transaction. R. Christie said "um, I'll take one [i.e., one

pound] to, to see how it is if I can", to which Shapiro responded "uh-huh, yeah, yeah" and "and then I'll hold the other one for you, obviously". Christie then said "yeah, and it will probably happen two days later [i.e., the transaction for the second pound]. The two then discussed the quality of the two pounds of marijuana, as follows:

R. Christie: What's the, what's the quality?

Shapiro: Ah, everybody tells me the, ah, , actual high is off the hook.

R. Christie: Right on.

Shapiro: I, ah, smoked a little of it. I didn't like how high I got.

R. Christie: [laughing] God.

TT1, Call #1195, 4/14/09.

On May 21, 2009, Shapiro and R. Christie spoke on the telephone (TT2, Call #1940), as follows:

Shapiro: Where are you going?

R. Christie: We're going to Colorado, June first, for two weeks.

Shapiro: Ah, ha. Um, and when is June first?

R. Christie: It's a week from Monday.

Shapiro: Ah-ha. So you don't think you'll be able to move out another one before you go [i.e., distribute one pound]?

R. Christie: I don't know. Maybe, maybe we're going to be open two more days. If, if this goes, if we, if we can finish this off Monday, then yes.

Shapiro: Okay.

R. Christie: Then 'cause we got Wednesday and Friday and we, and we--

Shapiro: All right.

R. Christie: Do a half. Boy, that would be perfect [i.e., ½ pound of marijuana].

Shapiro: Right and ah, let's, let's go for that and we'll see, ah, if you want to return before you leave or whatever. We can work with that also.

R. Christie: Good, well, thank you.

Shapiro: Yeah.

R. Christie: It's a pleasure, pleasure doing ministry with you.

Shapiro: Yeah, so I'm, I'll hear from you Monday, unless things go phenomenal tomorrow.

R. Christie: Yeah, yeah, good. And you can always come early for payment, if you want.

Shapiro: Yeah, if they, ah, clean out by tomorrow, then I'll hear from you tomorrow.

R. Christie: Ha, ha. You got it.

TT2, Call #1940, 5/21/09 [emphasis added].

On June 17, 2009 (after both Christies had returned from Colorado)(TT1, Call #7709), Shapiro called R. Christie and advised as follows:

Shapiro: Do you need my three quarters [3/4 pound]?

R. Christie: Um, not today. Let's see. We're actually, we're good. We got an, an unbelievable windfall here that's some--

Shapiro: Oh, oh.

R. Christie: Couldn't go somewhere anyway. Somebody just blessed us mightily here so we're good for a few days, maybe the best part of the week.

Shapiro: Okay, I'm still waiting to finish up so I can re-up for you.

R. Chrstie: Got it. Okay, and, uh, what's the freight on that again [i.e., price]?

Shapiro: Um, it's two fifty an O [i.e., \$250 per ounce], and I have, uh, I think like eleven or twelve [i.e., 11 or 12 ounces].

TT1, Call #7709, 6/17/09 [emphasis added].

Inasmuch as his inventory was full, R. Christie also suggested that Shapiro sell his 3/4 pound of marijuana to someone else:

R. Christie: Anyway, I'm good for the moment. If, if you have another source, you know, have at it.

Shapiro: No, I don't.

R. Christie: Okay.

TT1, Call #7709, 6/17/09.

(5) Co-defendant Richard Turpen:

During a telephone call on June 29, 2009 (TT3, Call #686), Turpen asked R. Christie, "do you need a refill?", to which R. Christie indicated that "um, not yet, we, we, we're good for another, like three Ministry days, which is about one week.^[18] So we'll let you know in a couple days. But what we do need is shake [marijuana stems and leaves]. Gotta give away some

¹⁸ The Ministry was only open three days a week (Monday, Wednesday, Friday) in the afternoon.

shake here to keep our integrity with Ministry".

On July 8, 2009 (TT3, Call #903), R. Christie had a telephone call with Turpen, as follows:

R. Christie: Can you come in today?

Turpen: Oh, I'm sure I, I probably can.

R. Christie: I could use a half.

Turpen: Yeah, oh, yeah. You need a refill?

R. Christie: Yeah.

Turpen: Oh, no problem.

R. Christie: Cool.

TT3, Call #903, 7/8/09.

On July 11, 2009 (TT1, Call #9675)-- that is, three days after the ½ pound transaction referenced in the prior telephone call-- R. Christie advised Turpen that he (Christie) had inadvertently been "shorted" in this ½ pound transaction::

R. Christie: Hey, I wanted to, uh, confirm with you that when I weighed, uh, what I got from you last time.

Turpen: Yeah, you got my message, right?

R. Christie: Yeah, including the bag, it's two twenty two [that is, 222 grams¹⁹].

Turpen: I, I got home and looked at the scales. I couldn't believe what I done, right? That's when I called you.

¹⁹ One pound is equivalent to 453.6 grams. Thus, a half pound is equivalent to 226.8 grams. In other words, the ½ pound lot of marijuana which R. Christie had purchased from Turpen was 4 - 5 grams short.

R. Christie: It's only under a little bit. It's not under an ounce.

Turpen: Oh, half I thought.

R. Christie: Yeah, no. It's twenty two including the bag.

Turpen: Right, okay.

R. Christie: So it's just, it's just, it's just a pinch under.

Turpen: Not for me. I like things to roll over.

R. Christie: Yeah, yeah. That's a nice way to go. But just to ease your mind, it wasn't that short.

Turpen: All right.

TT1, Call #9675, 7/11/09.

On July 17, 2009 (TT2, Call #3892), R. Christie left a voice mail message for Turpen, as follows:

Hello, Rick. Aloha to you. Roger Christie calling, THC Ministry. Hey there, um, I've got this end of the equation, and I wanna order another half. Another half a pound, uh, I'll be at the Ministry tomorrow if that works for you, from eleven, uh, through the afternoon. So wanna just confirm with me that works for you. Thank you so much. I want your dank, is dank, bruddah, the good kind. Thank you very much. Okay. All the best to you. Aloha.

TT2, Call #3892, 7/17/09.

On July 24, 2009 (TT3, Call #1486), R. Christie and Turpen had a telephone conversation, wherein they agreed to meet at Christie's residence, and R. Christie asked "so bring me a, bring us a half of your very best, to which Turpen responded "coming your way". R. Christie then added "thank you" and "and

any shake, yeah, bye-bye".

(6) Co-defendant Donald Gibson:

On June 17, 2009 (TT3, Call #291), R. Christie telephonically advised Donald Gibson that he was rejecting a shipment of "squashed [marijuana] buds", as follows:

R. Christie: Hey, there. I'm glad you connected. You were on my list to call, but I'm late in calling ya.

Gibson: That's all right.

R. Christie: Okay. Uh, let's see.

Gibson: I'm always, I'm always late in life, I guess. Hey, yeah, you down at the, uh, Ministry yet. Or--

R. Christie: I, I am, I decided against the squashed buds.

Gibson: Oh, you did?

R. Christie: Yeah.

Gibson: Okay.

R. Christie: so, and that's the reason- 'cause they're squashed. Everything else is a hundred percent, but it's kinda like handing somebody a, you know, a dozen roses and kinda, yeah, they're beautiful, but I just sat on 'em in the car.

Gibson: Okay.

R. Christie: You know, it just, it, it pops the resin glands. It is not premium.

Gibson: Is, is, was is one thousand less [i.e., \$1,000]?

R. Christie: Yeah.

TT3, Call #291, 6/17/09.

(7) Co-defendant Wesley Sudbury:

In a call with R. Christie on May 23, 2009 (TT1, Call #6616), co-defendant Wesley Sudbury said "eh, Roger, it's Wesley on over, over at Ocean View", and he further inquired "are all your sacrament needs taken care of?". R. Christie replied, "ah, let's see. Could, well no, could use, we're, we're pretty good for this week, but we could use a little", and also added, "especially if it's yours... yeah, if it's yours, that's prized". R. Christie then told Sudbury, "so, yeah, I'm, I'm open to, to some from you". Sudbury asked, "okay, all right, um, modest though?" and R. Christie replied, "yeah, like a quarter, something like that". Sudbury indicated that "okay, great. Sounds good, Roger. I'll give you a call if anything changes".

On June 16, 2009, R. Christie left a voice mail message for Sudbury (TT3, Call #274), as follows:

This is Roger Christie calling. Sher [S. Christie] and I are cruising the Big Island again. Just got back Sunday night, celebrated [unintelligible] birthday yesterday [inaudible] island style [inaudible] Wednesday the seventeenth. Need some supply help and wanted to know, um, what's the scoop with you? [R. Christie then left his cell phone number (TT3) and asked to call him back]

We open at one o'clock and people come in at two, so we need to, anyway, we need to be re-supplied in the morning, you know, as mid-morning, something like that, so we can do what we need. Anyway, call me at your earliest convenience. Much love and respect to you and your entire ohana there at Rancho de Luck. Aloha.

TT3, Call #274, 6/16/09 [emphasis added].

Later on June 16, Sudbury returned R. Christie's call, as follows

(TT3, Call #277):

R. Christie: Good. Howzit for you? Did you get, you got my message?

Sudbury: Yeah, I got your message. Um, I've got, I've got one for you right now and then more coming up in about, ah, a week or so.

R. Christie: Now I'm not hearing you so well.

Sudbury: Oh [laughter]. I said I had about one for you I can bring by. Let me look at my calendar.

R. Christie: No.

Sudbury: You need it tomorrow?

R. Christie: I heard you say you have one something for me.

Sudbury: Yeah, one, I got one for you, one pound.

R. Christie: Can't hear ya one word, not right now.

Sudbury: Oh, one pound I said.

* * *

Sudbury: Hi, Roger, you there?

R. Christie: Hi there. Can you come in tomorrow and help us out?

Sudbury: Um, I got, is there? I can. Friday is better but I can do it tomorrow if you really need it. I can bring it in for you tomorrow.

R. Christie: I can't hear in this, let me try on a land line in a couple of hours. That work for

you?²⁰]

Sudbury: Yes, that works, Roger.

R. Christie: That was crystal clear [laughter].

Sudbury: Oh, there we go. I was saying that, ah, I can bring it tomorrow, but Friday works better if you can wait on the one from me.

R. Christie: Okay, well good. We will need something there. What's, what's, yeah, well good, you know, 'cause we're going to be open Friday again, so.

Sudbury: I can bring it by tomorrow if you're really feeling like that would, if that helps things work out for ya. Ah, just because I want to, you know, be like that, but um.

R. Christie: Well, it does. We're, tomorrow is our first day open and we're expecting a, you know, like an enormous demand, and right now we've just got a quarter [1/4 pound]. I think, and that's we're going to need, you know, three quarters probably, just for one day.

Sudbury: Um hum, yeah. Okay, um, have you talked to Donny [co-defendant Gibson] and those guys, up in [unintelligible]?

R. Christie: I talked to Donny. He's got something. It's kind of expensive and it's already been crushed.

Sudbury: Right. Okay, so you're not so excited about that, okay.

R. Christie: No, that's you know, that ruins some of the bouquet, and, and he wants full price for something that's already been, you know, literally crushed.

²⁰ Earlier in this same call, R. Christie had indicated that S. Christie and he were "deep in the heart of Puna down on the red road" where cell phone reception was marginal.

Sudbury: Yeah, I, I so you have actually seen it though?

R. Christie: I have. I've had it before and it's, you know, I don't it's, at that price it's. it's, it's, you know, it's like getting, you know, somebody handing you a dozen roses and they've been sitting on them in the car.

Sudbury: Right, right. Okay, well, cool. I just wanted to make sure everything was going good. So, um, I can bring, I got that one for you, and then it's gonna be another week for a couple more, and then it's gonna be, ah, about, ah, seven weeks after that. Six weeks after that or more. Did you catch that schedule, Rog?

R. Christie: No, now I can hear you.

Sudbury: Oh, okay. Well then, maybe I'll just wait to talk to you in person about all that.

R. Christie: Okay, so do you want to come in tomorrow morning?

Sudbury: Yes, I'll come in tomorrow morning.

R. Christie: Great! I'll see you at the Ministry from nine o'clock on.

TT3, Call #274, 6/16/09 [emphasis added].

On the following day (June 17), R. Christie called Sudbury before the latter arrived at the Ministry (TT3, Call #290), and the following conversation occurred:

R. Christie: Can we talk straight?

Sudbury: Yeah, sure. I mean, I'll be there in just a little while so--

R. Christie: Good. I'll be down at the Ministry around nine. What do you have for us?

Sudbury: I got one for you, one pound.

R. Christie: And how soon can I pay you?

Sudbury: Um, how soon can you?

R. Christie: Yeah, how soon do you want me to?

Sudbury: Uh, today would be great if you can.

R. Christie: Cool. I can. Would it work if it's later in the day, or does it need to be immediately?

Sudbury: Um, I have to head back immediately to get back for other things I have going on.

R. Christie: Good. And what do I owe you for that?

Sudbury: Um, does four two [i.e., \$4,200] work for you?

R. Christie: It's a little on the high side, but I'll work with ya' 'cause we didn't discuss this in advance and you jumped for me. So, yes, indeed.

Sudbury: Okay, cool.

R. Christie: All righty. I will, I will make that happen. I'll see ya at the Ministry after nine?

Sudbury: Yeah. I'll probably be around nine fifty or so, close to ten.

TT3, Call #290, 6/17/09 [emphasis added].

On June 28, 2009 (TT3, Call #680), Sudbury called and inquired "I was just calling for one quick purpose, is, what your need is, so", to which R. Christie replied "oh, okay. Please let me call you back in a few minutes, Wes". R. Christie subsequently called Sudbury back and left a voice mail message, as follows:

Hi, Wes. Aloha to you. It's Rog getting back to you a couple hours later. Uh, beautiful Sunday afternoon here, and uh, I hope it is there as well. Thanks for thinking of us here at the Ministry. Uh, let's see, we're good for, we're only open Monday, Wednesday, Friday this week, so it's a half day schedule. So, we need half and, and, we're stocked for one, two, three, we're stocked for three days at this point in time. Boy, your herb is spectacular. Really love it, thank you so much. . . .

TT2, Call #3133, 6/28/09.

Sudbury thereafter called R. Christie back (TT2, Call #3134, 6/28/09), indicating that "I was thinking of maybe coming by to see you on Friday", to which R. Christie responded, "That sounds like a reasonable to do. Okay, just check with me in advance and let me know what you've got and what's the donation". R.

Christie then continued:

R. Christie: I mean, do, uh, you know, I'll, I'll ask this again. Do you talk freely on the phone?

Sudbury: Yeah.

R. Christie: Good. Me, too. So let's see. What I'm, I have now is, some fresh green for one day, probably one busy day which would be to-tomorrow. And then I've got some, some compressed that will last either one or two days. So, you know, I, I may need something by Friday.

Sudbury: Okay.

R. Christie: So if you're coming in Friday, that might work for us. What's, what do you have? What, I mean, we, we love the Mauka Breeze [a marijuana strain]. I guess that was one of the favorites here.

Sudbury: Okay. How'd you like the, uh, Pele, or the Uvila [phonetic]. Was that well received or?

R. Christie: Yes, they, they were all well received. Uh, everybody, everybody you know, gave a thumbs up on it. The, the Mauka Breeze I heard more compliments on.

Sudbury: Okay.

R. Christie: So just, but, but I'm not that particular. Whatever you put out is generally pretty great.

Sudbury: Okay. Well, we're looking, uh, we'll have some different, uh, varieties. I'm not sure what will all be in there, but probably some of those. Except for, uh, actually probably not much Mauka right now. That's gonna be coming up, uh, later again.

R. Christie: Uh-hm.

Sudbury: But, um, we have about two pounds ready for you coming up by that time, I believe.

R. Christie: Um-hm.

Sudbury: And if, uh, and if, we'd love, we love working with ya, so we can do a deal of four [i.e., \$4,000 per pound] for you if, to help you out with the Ministry.

R. Christie: Uh, four works out. All right, well, thank you, Wes. Appreciate that consideration and respect. Um, just let's confirm before a road trip.

Sudbury: Okay.

R. Christie: And we'll, we'll see how it's going. It's, uh, well good. Have a pr--

Sudbury: You have a prediction at all, as far as one or two [i.e., one or two pounds] or what you'll be interested in? As far as so if we have other people come up to--

R. Christie: Yeah, um, it would be one [i.e., one pound].

Sudbury: Okay.

R. Christie: Not two. That's a little too, too much for me at one bite.

TT2, Call #3134, 6/28/09 [emphasis added].

On July 3, 2009, Sudbury left a voice mail message for R. Christie, as follows: "Hey, Roger. It's giving you a call to see if you're interested in, you know, what some sacraments for tomorrow. Uh, I'll be here for forty minutes to an hour so give me a call if you're interested, otherwise, ah, you'll have to give me a call and catch you some other time . . ." (TT3, Call #769, 7/3/09).

F. The Ministry Marijuana Farm: the cultivation operation conducted by co-defendants Susanne Friend and Tim Mann at their Honokaa residence:

Co-defendants Tim Mann and Susanne Friend are married to each other and resided on their farm in Honokaa. On July 22, 2009, DEA searched their residence and discovered a large, indoor growing operation there involving approximately 284 live marijuana plants. Through the investigation herein, DEA had been able to determine that R. Christie had recruited Friend and Mann in late 2008 - early 2009 to engage in this marijuana growing operation.

In his Declaration at page 18 (attached to his RFRA motion), R. Christie has expressly admitted to his association with this marijuana cultivation operation, wherein he stated "[t]he Cannabis grown on the farm operated by Susanne Lenore Friend and

Timothy M. Mann was grown for the purpose of supplying only the THC Ministry with Cannabis".

Furthermore, R. Christie's Declaration only opined that "I believed that they [Friend and Mann] were growing Cannabis to be used as sacrament for the THC Ministry", but did not specify how this "sacrament" was to be utilized. However, R. Christie's own statements recorded during the undercover and wiretap investigation indicated what was to happen, namely, that consistent with how the Christies treated other marijuana "sacrament" acquired from their other suppliers, the Friend/Mann marijuana was to be distributed and sold through the Ministry.

(1) R. Christie's discussions with the UC concerning his supply problems:

As hereinbefore indicated, R. Christie had advised the UC in mid-2008 that the demand for marijuana at the Ministry was always high, that his real problem was maintaining adequate sources of supply to meet this demand, and that he (R. Christie) was looking for someone to grow marijuana on a large scale for him. During his first meeting with the UC on May 21, 2008, R. Christie said, among other things, that:

R. Christie: I have a real street ministry. I mean, at the end of the day here, there'll be people here looking for herb. I distribute almost a half pound a day now...

UC: Half a pound a day?

R. Christie: Yeah. It's really outstanding quality... I don't have a greenhouse though.

It's one part of this whole, um, system that's missing. You know, I'm going as fast as I can with the resources I have. I've dedicated my life to this cause, and uh, I don't have a side job. This is it. Everyday. I work as hard as I can on it. I'm, um, I'm liberating cannabis. And part of what happened for me was, I found a great church years ago on this island. I got here and immediately started speaking about eradication programs.

* * *

R. Christie: I gotta a, uh, license from the Department of Health... A cannabis minister. That means I can have a greenhouse. As soon as I can afford one, I can have one... And I'm looking forward someday to having a greenhouse chapel. Like here on this island... I'm right now, I'm buying off the black market... That's to me, the last piece of the loop here in the Ministry is getting the greenhouse chapel together. Right now, I'm buying herb off the black market like anybody else.

UC: Oh, really?

R. Christie: Yup. Expensive as can be.

UC: ... You gotta couple plants here, but where you getting your stuff from?

R. Christie: I buy it off the black market... There are a couple great growers... They grow and I buy it off the black market. Just like everybody else.

UC: ... What they charge you?

R. Christie: ... Five thousand a pound.

UC-recorded conversation, 5/21/08.

During their third meeting on August 13, 2008, R. Christie reiterated his supply woes to the UC:

UC: You're telling me, that you're going through

what, two-three pounds a week?

R. Christie: And it's not enough.

UC-recorded conversation, 8/13/08.

As also hereinbefore indicated, prior to the cessation of further dealings with the UC in approximately September 2008, R. Christie was also considering having him (the UC) set up this greenhouse operation for the Ministry.

(2) Intercepted telephone conversations during mid-2009:

Intercepted telephone conversations further confirmed that obtaining an adequate marijuana supply to support his distribution operations continued to be R. Christie's primary concern. As R. Christie explained to "Jonathan" during a call on April 17, 2009 (TT2, Call #269):

R. Christie: Hey, since we're allowed to distribute cannabis to downtown Hilo, most every day, we... there's a big demand, you know, right there in the building.

Jonathan: How many customers would you say you have a day?

R. Christie: Um, we've been having 60 to 70 a day.

Jonathan: Wow.

R. Christie: Yeah.

Jonathan: Wow, huh.

R. Christie: Yeah, so it, it's been, it's been more than a half a pound a day.

Jonathan: Yeah.

R. Christie: And, uh, so that's, that's been the demand. Now, now the supply is the trick part.

Jonathan: Right, yeah.

R. Christie: And so, that's, that's been a challenge and, and it's, it's actually gone...

Jonathan: So when you...

R. Christie: It's actually gone pretty well until this last two weeks, when all our suppliers went, coincidentally dry, for different reasons. So, I've had to reach out to a couple different sources and it's not satisfactory yet, so... I think we're gong through a little bit of a, little bit of a, you know, glitch in the system here . . .

TT2, Call #269, 4/17/09.

R. Christie also advised "Jonathan" during this same call that in order to alleviate his supply problems over the long term, he had already made arrangements for someone to exclusively grow marijuana for the Ministry:

Jonathan: So, so can, so could people, um, grow under contract with the church or something like that?

R. Christie: I, yeah, I, I, we have one so far, but it, they haven't delivered yet.

Jonathan: Uh, huh.

R. Christie: Uh, they're, they're fine tuning their system and, um, delivery should be, should be theoretically in May sometime. And, uh, if they do it right and they get through this learning curve properly, it should be a steady supply from that point on.

TT2, Call #269, 4/17/09.

R. Christie also emphasized to "Jonathan" that "it, it's

sanctified herb from the beginning, you know, it's, it's, it's just, you know, they just will not sell on the black market, is, is the arrangement, it's only for the, for the Ministry".(TT2, Call #269, 4/17/09).²¹

Similarly, in another call with another person named "Greg" (TT2, Call #1465, 5/13/2009), R. Christie again spoke about his "THC Ministry farm":

R. Christie: Yeah, we've got, um, we've got our own little farm. Our first harvest is in mid-June. So it's a T-H-C Ministry farm. And it, it's our supply. Because we've been buying it off the black market and, and everybody knows, that's not, that's not pono. You know, that's just what we're doin' in the mean time 'til our thing got goin'. I don't have the money to buy a farm and the time and energy to run it; 'cause we're running, I'm runnin' the ministry, which is--

²¹ In this same call with "Jonathan", R. Christie also made clear that he did not want the police to know about this cultivation operation, even though he believed that his Ministry artifice could provide him cover if it was ever discovered, as follows:

Jonathan: So is the, is the county or the law enforcement guys, is it secret from them, as far as the secrecy thing, or is that just--

R. Christie: Yeah, I don't, I don't let them know, although if they do find out, you know, I'm, I'm, my name is all over it.

Jonathan: Yeah.

R. Christie: So my, you know, my tags and, and I'm taking responsibility for it, because I think I can here. I think it's actually more in-integrity for the Ministry to provide its own herb than to buy it off the black market.

TT2, Call #269, 4/17/09.

Greg: Sure, I know, yeah--

R. Christie: Busy as could be. We're going through a half a pound a day--

Greg: [laughter]

R. Christie: --and live plants out the door and [whispering] we're right next to the Chamber of Commerce. And we applied as members as a matter of fact; they're going to let us know any day now.

Greg: Fat!

R. Christie: [laughter] and ah, yeah, it's just booming, you now? I don't know if that booming, it's, it's a little, it's nothing compared to California or whatever. But, you know, a half a pound a day. Helping people out. We have aloha bags, which are free bags, for poor people. Ah, ah, we anoint people with holy oil every day. But anyway, we finally ah have our own little farm, a little farmette. And, uh, it's going to be supplying all the shake and bud I think we can handle. Um, you know, much more than I'm used to. Starting mid-June. So that'll take us to another level.

TT2, Call #1465, 5/13/09.

In another call on May 18, 2009, a person identifying himself as "Darryl Carter-Ali" spoke to R. Christie on the latter's residence phone line (TT2, Call #1751, 5/18/09). The two initially discussed acquiring marijuana, as follows:

Carter-Ali: . . . I got my money. I'm on Hawaii, now I'm in Hilo cruising.

R. Christie: Right on.

Carter-Ali: You know, I am, I'm with my, I'm with my two sons and umm, they just had to, they just had to scrape their glass piece for some medicine, so I was seeing where you were at.

R. Christie: Ah, let's see, we've got a, or the Ministry's open from two to five.

Carter-Ali: Oh really?

R. Christie: So you welcome to, to go by there and make a donation. We've got some, some, uh, free bags of Aloha bags of some pretty good shake, and we have some triple A bud.

Carter-Ali: At regular, um, donation prices?

R. Christie: Yeah.

Carter-Ali: Okay cool.

R. Christie: Yeah, should be, should be good.

Carter-Ali: How much for a, for an ounce?

R. Christie: Four hundred.

Carter-Ali: Wow that's high.

R. Christie: It's retail.

Carter-Ali: Yeah okay.

R. Christie: Normal retail. You know, we buy it, you know, at forty five hundred, five grand a pound, so.^[22]

TT2, Call #1751, 5/18/09.

Carter-Ali also indicated he could supply R. Christie with marijuana from the mainland at a cheaper price, as follows:

Carter-Ali: I can get 'em to you starting at seventeen, to ah, um, um, thirty-five.

²² Christie's quoted acquisition cost of \$4,500 per pound would be equivalent to \$281.25 per ounce. Consequently, if Christie was reselling this marijuana at a unit price of \$400, he stood to realize a profit of \$118.75 per ounce.

R. Christie: Hm.

Carter-Ali: I surely can, all we have to do is figure out, um, the transportation from, from where, its source. But everything's all medicinal.

R. Christie: That's a good thing. Yeah, we've got a farm coming on line here, ah, in a little while, our own farm so, that's supposed to be--

Carter-Ali: On line?

R. Christie: No, I mean it's supposed to be harvesting in about a, in about a month. We'll have our own source so we don't have to buy it any more.

Carter-Ali: Oh, okay, cool.

R. Christie: So that's--

Carter-Ali: I'll stop by, I'll stop by and check those guys out.

R. Christie: Okay, it's my girlfriend is running it and her name's Sher [i.e., S. Christie]. And you'll have to show a Ministry ID card, or you'll have to get a new one.

TT2, Call #1751, 5/18/09 [emphasis added].

On May 22, 2009, another person named "James" called R. Christie to purchase marijuana, which led to a discussion about R. Christie's marijuana farm and its anticipated benefits for Ministry members as "James"-- namely, an allegedly lower price (TT2, Call #2005, 5/22/09):

James: I need to ask you a question, uh--

R. Christie: Sure.

James: How much for a zone [i.e., a "z" or ounce (abbreviated oz.)]? And how much for a pound,

wholesale?

R. Christie: Uh, let's, well, I don't have 'em wholesale.

James: Okay.

R. Christie: So I got, I got, I got, I got one more until I leave town.

James: Okay.

R. Christie: So they, you know, they, they, they go for, um, let's see, what I'm gettin' for is 42 [i.e., \$4,200].

James: 42?

R. Christie: Yep.

James: Okay, and how much for a zone?

R. Christie: Uh, well, I gotta, I gotta make \$400 for 'em.

James: \$400 a zone?

R. Christie: Yeah, that's what I need to get.

TT2, Call #2005, 5/22/09.

The conversation then turned to what R. Christie said he expected to happen once the Ministry's farm started full-time production:

R. Christie: Yeah. Now, next month, when we get back from Colorado, we're supposed to have our own farm. Make, giving us our own herb.

James: Good.

R. Christie: That's a, that's a whole new boogie then, it's, you know, then it, the, the price goes way down.

James: Right.

R. Christie: the value of that goes way down.

It's sanctified, it's prayed upon at every step of the way.

James: Of course.

R. Christie: And it's not black market money at all. Zero.

James: Yes, exactly.

R. Christie: So that's, that's where we're heading, and, and it should be--

James: Of course.

R. Christie: It's taken months and months and I hope to god it's next month, we, it delivers.

James: Amen. Am I inc--, am I included that?

R. Christie: Of course, 'cause you're a member--

James: Thank you, thank you, thank you, thank you, thank you, thank you, thank you.

R. Christie: Member in good standing.

James: [unintelligible] my sincerity only
[unintelligible singing] have eyes for me.

R. Christie: See, that's where, see that's--

James: [unintelligible singing] tonight

R. Christie: See, that's where our ID card is gonna be very valuable--

James: [unintelligible]

R. Christie: Because then people are going to be able to get herb at a really good low price.

James: It's historical ain't it.

R. Christie: So yeah. It's a b, it's a huge break though.

James: [unintelligible]

R. Christie: So anyway. That's hopefully a month away.

James: So you think that we're gonna, well, that we're both gonna be blessed within a month?

R. Christie: That's what, that's, that's--

James: [unintelligible] really, really, really good [unintelligible]

R. Christie: That's the plan. It, the idea is that it's, it's top grade and it's, it's the lowest price anybody's ever heard of--

James: I mean is that we're gonna get drenching wet or just a little drizzle?

R. Christie: Well, we're supposed to, you know, it's, it's, the, the, uh, uh, the farm is set up to provide a bunch. A lot, you know, per month.

James: Uh huh, yeah.

R. Christie: I see a green month after month after month.

James: Yes, yes, yes, yes.

R. Christie: So, you know, I'm, I'm feeding it. I'm, you know, we're helping to build it and uh--

James: Please [unintelligible]

R. Christie: Hopefully it'll deliver.

TT2, Call #2005, 5/22/09.

- (3) Intercepted telephone calls between the Christies, Friend, and Mann concerning the Ministry marijuana farm, April -July 2009:

During a telephone call on April 14, 2009, Friend discussed with S. Christie the difficulties that her husband (Mann) and she had had in getting this marijuana operation

underway (see TT2, Call #167, 4/14/09).

In addition, on June 14, 2009, R. Christie left a voice mail message on Friend and Mann's telephone line for their business, "Friendly Aquaponics", as follows:

Hello you two, aloha. It's Roger calling from Maui. Actually, Sher [S. Christie] and I are on the last of returning from two weeks in Colorado and wanted to check in with you, see how-- how you're doing. See how the garden grows and, uh, we will be back in Hilo tonight after seven and look forward to catching up with you, hopefully soon thereafter. We're planning to re-open the Ministry on Wednesday afternoon and, uh, I like to talk to you about that proposition and looks, uh, good news to come. Look forward to talk to you later [R. Christie then left his new cell phone number (TT3)].

TT3, Call #215, 6/14/09 [emphasis added].

Susanne Friend thereafter effected two deliveries of marijuana to the Christies in June 2009, as will be described below.

(4) Friend's first marijuana delivery on June 15, 2009:

On June 15, 2009, Friend left a voice mail message on R. Christie's cellphone (TT3), wishing him a happy birthday and also reporting that:

Um, I definitely have something for you. It's so small though. Oh, it's such a tiny start, but, oh my god, it represents so much, so much of us [laughs]. So I have a gift for you. Um, please give me a call at this number

TT3, Call #219, 6/15/09.

R. Christie was subsequently able to contact Friend on the afternoon of June 15. Friend agreed to meet both R. Christie and

S. Christie at Café Pesto in Hilo that evening. (TT3, Call #247, 6/15/09).

At the hearing, Friend will testify that she delivered about 2-3 ounces of marijuana to R. Christie and S. Christie at Café Pesto that evening.

On the following day (June 16), R. Christie had three telephone calls in which he expressly referenced this marijuana received from Friend, as follows:

-In one call, R. Christie left a voice mail message for "Joby" and said:

I and a small crew of helpers will be in the ministry today and we have a very special gift for you. And that's some sacrament that was grown especially for the Ministry, not under black market or guerilla conditions. That's kind of cool. Okay, we'll see you.

TT2, Call #2644, 6/16/09 [emphasis added].

-In another call, R. Christie initially spoke to another person ("Nathan") about a device for growing marijuana, and then the subject switched to Friend's marijuana delivery, as follows:

R. Christie: I've been investing in a, couple [i.e., Friend and Mann] that's, that's our, gonna be our Ministry farm. Our Ministry growers 'cause I'm too busy to, to, to do that.

Nathan: Uh-hm.

R. Christie: And uh, they just delivered the first of it last night. So right, right on my birthday and a, and two and half ounces of

donation to the Ministry and it's, it's good because it's not grown for money.

Nathan: Uh-hm.

R. Christie: You know, they don't sell to anybody. It's just a total, you know. Sanctified Ministry garden.

Nathan: Uh-hm.

R. Christie: They donate it to me and then I donate something to them and hopefully we will keep each other happy.

Nathan: Uh-hm.

R. Christie: so that's, that's a nice development that just happened to us. Really stoked about that.

TT1, Call #7575, 6/16/09 [emphasis added].

-In the third call (TT1, Call #7580, 6/16/09), R.

Christie conversed with Ministry employee (and co-defendant)

Jessica Walsh and advised at one point that "it should be really sparkling tomorrow. We should have just a lot of activity, which means I need to line up some more herb, come to think of it.

And, and, and, we did get our first delivery of, of THC Ministry herb from our own garden" [emphasis added]; R. Christie further

added that "it just showed up yesterday [that is, the marijuana

brought by Friend on June 15]. Christie then asked Walsh, "I can't wait for you to test it, try it, you know, use your, ah,

discriminating, ah, palate and taste buds upon it and tell us

what you think. We, we, Sher [that is, S. Christie] and I

vaporized it last night and were happily high for hours and hours

and really love it" [emphasis added]. Because of the high trafficking activity which R. Christie expected at the Ministry on the following day, he asked Walsh that "I'd love to have you work tomorrow", to which Walsh said "that's sounds great". They then additionally discussed the anticipated high volume, as follows:

R. Christie: . . . I don't know what it's going to be like... maybe it'll be quiet, but it could be a stampede here at two o'clock, you know?

Walsh: That's what I kind of imagine.

R. Christie: That's what I imagine, too... so I gotta line up a little more herb. We have just a quarter pound so far; we need probably triple that for tomorrow [sighs], and ah, I don't know if I'm going to be in here; Sher's probably gonna be in the Ministry

TT1, Call #7580, 6/16/09.²³

On June 22, 2009-- seven days after Friend had made her first marijuana delivery (2½ ounces)-- R. Christie telephoned and left a telephone message for her (Friend), as follows:

Hey guys. Aloha to you, it's Ro [clears throat] Roger Christie calling from home actually, Monday afternoon, about three thirty. Hey, wanted to say that the, uh, um, the donation was very well received. Highly rated. Um, much appreciated by

²³ On June 19, 2009, in response to R. Christie's telephonic query, Walsh advised that she had just tried two different types of marijuana, one call "pele" and the other being "the grow for the Ministry [i.e., the Friend/Mann grow]". Walsh said that "the pele's great and the, um, the grow for the ministry is lovely", and "I, I love both of them. I think they're wonderful". (TT1, Call #7962, 6/19/09).

those that, uh, that tested and enjoyed. So wanted to give you that, uh, that nice, uh, heads up and report, status report. Uh, we've got a donation for you when it's, uh, mutually convenient. And, um, you know, just sending you love and respects here as time marches on. And, uh, anyway, hope you and your ohana are doing well today and always. Much love and respect. Aloha.

TT3, Call #460, 6/22/09 [emphasis added].

- (5) Friend's second marijuana delivery on June 24, 2009:

On June 23, 2009, Friend spoke to R. Christie and the following conversation occurred:

Friend: Okay, great, well I have some more. So I have some more to bring, bring down.

R. Christie: Oh.

Friend: To donate to you, and I wanted to find out if tomorrow is a good day. I'm setting up my morning, I think I'm going to a, buzz on down to Kona, I mean, Hilo, in the morning.

R. Christie: Oh super. Oh, that's a good day 'cause we're open tomorrow afternoon.

Friend: Okay, 'cause I will need to be back to pick up the kids by two, which means I going, we have to leave Hilo around one. What time to you open up around there?

R. Christie: Oh we open the ministry, we open to the public at 2:00. We op, we get there at one.

Friend: At one? That's when I thought. Okay, so if we meet you there, will, will it be possible to meet you there just a little bit early tomorrow?

R. Christie: Yeah, or you could come to the condo before that.

TT3, Call #481, 6/23/09 [emphasis added].

On the morning of June 24, 2009, law enforcement surveillance observed Friend departing her residence in Honokaa and driving southbound towards Hilo. While enroute in Hilo, Friend was observed using her cell phone as she drove her van. Friend's call at this time was to R. Christie, and in this call and an ensuing call, R. Christie gave her driving directions to his condominium apartment residence in Hilo. (TT3, Calls #519 & #521, 6/24/09). Police surveillance thereafter observed Friend and a female child exit her van at about 12:30 p.m. and walk towards R. Christie's apartment (Friend at this time was carrying a wooden box covered by a cloth/towel). At about this same time, S. Christie and another female had exited the Christie apartment and were loading a cooler into a pickup truck parked in the apartment parking lot. Friend and S. Christie then appeared to briefly converse. Friend and the child thereafter entered the apartment. Friend and the child thereafter departed the Christie apartment at about 1:52 p.m.

Friend will testify that on June 24, she delivered about four ounces of marijuana to R. Christie at his residence. R. Christie at this time also paid her \$700 in cash (i.e., the "donation" which R. Christie had referenced in his prior voice mail).

In addition, Friend will also testify that R. Christie had advised he would pay her \$2,000 - 3,000 per pound for the

marijuana which Mann and her produced for the Ministry.

(6) Trafficking of the Friend/Mann-cultivated marijuana through the Ministry:

At the very latest, the Christies were making the marijuana grown by Friend and Mann available for distribution at the Ministry by July 1, 2009. There were at least two telephone calls from customers on this date in which S. Christie specifically referred to it as "THC Ministry sacrament" or "Ministry bud", as follows:

-At about 2:09 p.m., a customer named "Joey" telephoned the Ministry's landline and spoke to S. Christie. "Joey" asked "you guys open?", to which S. Christie responded "yeah, of course we're open... so we have some lovely sacrament today... yes, we have some lovely... we have some THC Ministry, um, sacrament, right now". (TT1, Call #8892, 7/1/09).

-Shortly thereafter, S. Christie had a call on the Ministry's landline with "Ernestine", another customer. "Ernestine" said "I'm doing pretty good. I was just wondering if I could come up and pick up some sacrament". S. Christie advised "yeah, we're open, you know, from two p.m. to five p.m."; S. Christie also added that "we got some beautiful, um, um, Ministry bud, too". (TT1, Call #8894, 7/1/09).

In addition, at about 1:30 p.m. on July 1, 2009-- about 40 minutes prior to S. Christie's above-described calls with "Joey" and "Ernestine"-- S. Christie had telephoned R. Christie

to inquire about the pricing for the marijuana being offered for sale that day at the Ministry, as follows:

S. Christie: Okay. So I just need to know some prices here.

R. Christie: Okay. Uh, let's see, um, let's see, five oh [\$50] for the three point five [3.5 grams, or 1/8 ounce (an "eightball")] for--

S. Christie: Both of them?

R. Christie: No, Oh, yeah, for everything that's bagged.

S. Christie: Yes.

R. Christie: But if you gotta get in to the [unintelligible] bags, it's four point, four oh [\$40].

S. Christie: Okay, for the ministry?

R. Christie: Yeah.

S. Christie: So I'll do that at the end of the day.

R. Christie: Yeah, okay.

S. Christie: Okay. The end of the day or the beginning of the day?

R. Christie: You know, you might as well do it at the beginning and have people hear that--

S. Christie: Yeah.

R. Christie: that, that there's a-a lower value.

S. Christie: Okay. Okay. All right.

R. Christie: Have, have fun that-- that'll make everybody smile.

S. Christie: Yeah, I will, that's, that is good. Thank you honey. Okay, that's--

R. Christie: Yeah, be generous.

S. Christie: Okay.

TT3, Call #730, 7/1/09.

(7) The scheduling of future marijuana deliveries from Friend/Mann:

On July 16, 2009, R. Christie had a telephone call with Mann (Friend's husband)(TT3, Call #1204, 7/16/09), wherein R. Christie indicated that "I got a, some interesting donation, uh, of L-E-D grow-lights for the ministry and I want to pass some along to you, if not a lot of 'em, to you". Mann responded positively, saying "Oh my goodness, that would be welcome". R. Christie then explained the grow-lights, saying, "They're fourteen watts I think, each; squared, like a square foot" and further added, "of, of, rows of these blue and red spectrum lighting with a, with plug to plug 'em in. And fourteen water per each. And apparently they're excellent for clones and you know, vegetation [that is to say, these were grow lights to be used in an indoor marijuana cultivation operation, which is what Friend and Mann were conducting on their property in Honokaa at this time]". Christie also added that, "so I want to give you as many as you want or need to reduce your electric costs and in, you know, and the heat". In response, Mann said, "yeah, that would, that would be wonderful. And that reduce the electric cost, too, 'cause then we're not, we're not air conditioning the

space as much", and adding "not as much hear going into it". Towards the end of this call, R. Christie also asked Mann, "and when do you think, are you guys going to have any herb for us coming up?" Mann replied "unm, Susanne's [Friend] in charge of that. I think within the next week, week and a half, something like that, she should have some". (TT3, Call #1204, 7/16/09).

In addition, during this same time frame, R. Christie was also letting his other marijuana suppliers know that this Friend/Mann marijuana operation was starting to provide the Ministry with marijuana at a reduced cost. For example, R. Christie had several telephone calls with supplier (and co-defendant) Sudbury. On June 28, 2009 (TT2, Call #3134), Sudbury telephonically advised that "we have about two pounds ready for your coming up by that time [the following Friday], I believe", and "we love working with ya so we can ... do a deal of four for you [that is, \$4,000 per pound, or \$250 per ounce] if... to help you out with the Ministry". R. Christie replied, "uh, four works out. All right, well, thank you, Wes, appreciate that consideration and respect". R. Christie also indicated that he would probably only be interested in "one [pound]", and "not two, that's a little too, too much for me at one bite". Sudbury also inquired about R. Christie being interested in additional amounts a week later, and R. Christie then reminded Sudbury "but, but just confirm first, 'cause you know I told we're... we invested

in a farm, right? To deliver herb for us". (TT2, Call #3134, 6/28/09).

Thereafter, on July 1, 2009 (TT3, Call #734), R. Christie and Sudbury had another telephone conversation wherein R. Christie advised that "we got another shipment of our in-house herb the other day²⁴]. So... you know, it's a hundred twenty five an ounce. So that's, that definitely assist the Ministry along here. But I know it doesn't do much for your bottom line, but, uh, um, it's, you know, as I said, that's starting to come in [in the prior telephone call, Sudbury had quote a purchase price equivalent to \$250 per ounce]. So we, we have enough through Friday at this point time, I'm certain".

Because he believed that having his supply needs fulfilled through the Friend/Mann marijuana farm could potentially diminish his purchases from Sudbury, R. Christie in this 7/1/09 call also expressed some concern, asking Sudbury, "are you dependent on... on me as... for your income 100%?", to which Sudbury replied "no".

IV. THE RFRA AFFIRMATIVE DEFENSE: PUTTING THE CHRISTIES' ACTIVITIES IN PERSPECTIVE.

At the outset, it would be useful to consider the criminal activity which is typically prosecuted under the Controlled Substances Act-- namely, the trafficking of controlled

²⁴ As the Court may recall, Friend's second delivery to R. Christie occurred on June 24, 2009.

substances-- vis a vis the conduct for which the Christies herein seek the exception under RFRA. In the typical drug trafficking case, the putative defendant (by himself/herself and/or through associates) engages in the purchase and resale of illegal drugs. The defendant acquires the drugs in large lot quantities from his/her supplier-- or more commonly, suppliers, as this permits him/her to secure the best price through competition-- and then re-sells it to his/her customers in smaller sales units and at a higher unit price. The defendant thus supports himself/herself through the profit realized from the difference between the drug's acquisition cost and its re-sale price.

The evidence to be presented by the prosecution demonstrates that both Christies were engaged in precisely the same drug trafficking activities for profit. In 2008-10, they had a number of suppliers from whom they purchased their marijuana sales inventory in bulk quantities.²⁵ The Christies then broke down

²⁵ As hereinbefore indicated, the Christies purchased their marijuana inventory in the following quantities and associated prices:

-R. Christie had advised the UC that his suppliers charged: (i) \$5,000 a pound (equivalent to \$312.50 per ounce), and (ii) \$2,100 for ½ pound and \$4,200 for one pound (equivalent to \$262.50 per ounce);

-R. Christie told customer "Carter-Ali" that he was charged \$4,500 - 5,000 per pound (equivalent to \$281.25 - \$312.50 per ounce);

-R. Christie said to customer "James" that his

(continued...)

these bulk purchases into smaller sales units and re-sold them at the Ministry for higher retail prices (as, for example, 1/8 ounce [3.5 grams] for \$50, and one ounce for \$400). The Christies' trafficking efforts were considerable. As both Christies had indicated during their various recorded/intercepted conversations, they had approximately 50-70 customers a day, sold approximately ½ pound each day, and made a profit of about \$1,000 per ½ pound. In addition, R. Christie also advised the UC on one occasion that the Ministry could go through two - three pounds a week and that at times would not be enough.²⁶ Alleviating the supply problem-- which R. Christie had bemoaned to the UC and

²⁵(...continued)
acquisition cost was \$4,200 per pound (\$262.50 per ounce).

-Furthermore, the Christies' various suppliers quoted the following sales prices to them:

-Ignacio: \$250 - \$300 per ounce.

-Zeeman: \$2,200 for ½ pound (\$275 per ounce), and \$1,150 for 1/4 pound (\$287.50 per ounce);

-Shapiro: \$3,900 per pound (\$243.75 per ounce), and 3/4 pound to be sold at \$250 per ounce;

-Sudbury: \$4,200 per pound (\$262.50 per ounce), and \$4,000 per pound (\$250 per ounce).

-Friend/Mann: R. Christie advised Sudbury that his acquisition cost from the Friend/Mann farm was supposed to be about \$125 an ounce.

²⁶ It should also be remembered that the Ministry was only open for three hours each business day (2:00 -5:00 p.m.), and that its work week only consisted of Monday, Wednesday, and Friday.

others-- was the motivation to find a supplier who would cultivate and grow marijuana exclusively for the Ministry. For this reason, Susanne Friend and Tim Mann were recruited, and the Christies' intended purpose of the marijuana harvested from their cultivation operation²⁷ was to sell it through the Ministry (by at least July 1, 2009, the first sales offerings of this "Ministry bud/sacrament" had commenced).

In this connection, it should be noted that unlike the facts of Gonzales v, O Centro Espirita Beneficiente Uniao do Vegetal, 546 U.S. 418 (2006), where any distributions of the illegal drug were arguably tangential and de minimus (i.e., the "distribution/delivery" of the drug was not a sale, but rather the transfer of possession from one parishioner to another as they partook in communion services), the instant case involved the Christies' continuing sales of a controlled substance, which constituted the core activities proscribed by the Controlled Substances Act.

The only difference between that aforesaid, typical drug trafficker and the Christies herein is that the latter operated their trafficking activities and realized their profits through the Ministry. The appropriate question herein is whether that should be enough to give rise to a RFRA affirmative defense to

²⁷ As of July 22, 2009 (when it was seized by DEA), Friend and Mann's cultivation operation amounted to about 284 plants.

potentially exempt them from criminal liability.

V. **THE CHRISTIES HAVE FAILED TO ESTABLISH THEIR BELIEFS CONCERNING MARIJUANA ARE RELIGIOUS AND IN ANY EVENT, THEY ARE NOT SINCERELY HELD.**

As hereinbefore indicated, there is a two-part balancing test that must be properly established to the Court's satisfaction before a defendant may present a "religious exercise", affirmative defense under RFRA. The first part of RFRA provides that the "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section". 42 U.S.C. 2000bb-1(a).²⁸ As the Ninth Circuit has indicated in United States v. Zimmerman, 514 F.3d 851, 853 (9th Cir. 2007), in order to establish this first part under RFRA:

defendant must first (1) articulate the scope of his beliefs, (2) prove that his beliefs are religious, (3) prove that his beliefs are sincerely held and (4) establish that the exercise of sincerely held religious beliefs is substantially burdened.

In addressing this first part of the RFRA balancing test, the United States contends that the Christies have failed to establish parts (1), (2), and (3) of the aforesaid Zimmerman test.

²⁸ Subsection (b) is the second part of the balancing test for defendant's eligibility to present a RFRA affirmative defense. It will be addressed in the next section of this memorandum.

Before proceeding to the Zimmerman test itself, it should preliminarily be noted that a considerable amount of the Christies' Declarations (appended to their motion in limine) has been devoted to the espoused religious properties of marijuana and descriptions of how it is used in their various ceremonies. Virtually the same religious claims with respect to marijuana were made concerning Rastafarianism in United States v. Bauer, 84 F.3d 1549 (9th Cir. 1996), and Guam v. Guerrero, 290 F.3d 1210 (9th Cir. 2002). In Bauer and Guerrero, the Ninth Circuit held that while such religious views may constitute a RFRA defense to charges of simple possession and use of marijuana, such beliefs did not provide a defense to the crimes of distribution and possession with intent to distribute marijuana and money laundering (as well as conspiracies to commit the same) and importation. This distinction is important, because the charges asserted against the Christies in the First Superseding Indictment herein are a conspiracy to manufacture, distribute, and possess with intent to distribute marijuana (as well as the substantive offenses themselves). As previously indicated, the underlying basis of these charges is the Christies' conduct of a marijuana trafficking operation for profit within the context of their Ministry. Neither Bauer nor Guerrero-- nor any other case of which the United States is aware-- has ever countenanced any religious entity conducting such an income-producing trafficking

scheme to support itself.

A. The Christies' proffered beliefs with respect to marijuana are not religious.

The Christies' proffered beliefs with respect to marijuana would appear to make all possible possessions, uses and applications thereof tantamount to a "religious" experience. For example, consider the following portions of R. Christie's Declaration: (a) paragraph 12(a) stated that the Ministry's beliefs included "Cultivation and enjoyment of Cannabis sacrament is a fundamental human right provided by God and protected by the United States Constitution"; (b) paragraph 13 stated that "Holy Cannabis sacrament is used by THC Ministry members for prayer, meditation, worship, nutrition, healing, and fellowship"; and (c) paragraph 24 represented that "[t]he budding Cannabis flowers, leaves, and fully developed seeds are all sacraments. Each one can deliver invisible graces by reducing stress and promoting happiness, gladness, joy, and allowing optimum health to occur". Under these rather broad formulations, the religious use of marijuana could occur at any time and at any place. "Meditation" or "fellowship", for example, could presumably occur away from the Ministry and include the exchange and use of a marijuana joint by and between Ministry members in their car or other location.²⁹ Moreover, by including all parts of the marijuana

²⁹ In this regard, no effort was apparently ever made by the
(continued...)

plant as "sacrament", query what possible association with marijuana could ever be deemed a non-religious experience.³⁰

In addition to the Christies' espoused beliefs making all possible activities with marijuana "religious", there likewise was no realistic restriction on who could become a member of the Ministry. As evidenced by the UC becoming a Ministry member the very first day he met R. Christie (and as a member, the UC was also able to purchase marijuana from R. Christie on that date), anyone could become a member. In this regard, R. Christie's Declaration stated in paragraph 37 that:

[t]o be a member of the THC Ministry or part of a ministry family one must be over 21 years of age and must affirm that he/she will use Cannabis sincerely as part of his/her religious practice and method of worship.^[31] . . . The most important requirement to being a member of the THC Ministry was that the member was sincere in his/her use of Cannabis for religious purposes.

²⁹(...continued)

Christies to restrict marijuana use to within the confines of the Ministry itself.

³⁰ S. Christie's Declaration likewise expressed an entirely unrestricted belief that all marijuana use was "religious". According to paragraph 19 of her Declaration, "Cannabis has an attribute that brightens everything up, so I become sensitive to my consciousness. When I am facing a challenge, Cannabis can help through the process I call 'shape-shifting'. I inhale twice, and usually within the hour, I have an 'aha' moment. This is direct Divine intervention".

³¹ R. Christie's quoted statement here was not entirely accurate. According to the Ministry's website, "[i]f you are under 21 years old, you can still join the ministry if you (1) live independent of your parents, or (2) have your parent's written permission". [emphasis added]

In other words, the key criterion to becoming a member was his/her vague affirmation to use marijuana religiously. However, given the Christies' broad description as to what constituted the religious use of marijuana in the first instance (as previously discussed), this affirmation was rather meaningless. In this connection, too, it was not necessary for a candidate to make an in-person appearance at the Ministry to become a member. One could also become a member through the internet by ordering the "Sanctuary Kit" on-line for \$250.³² It was, therefore, no surprise that the Ministry's membership was substantial. R. Christie told the UC that there were 60,000 - 62,000 members worldwide; in his Declaration at paragraph 46, R. Christie represented that there were 2,000 - 3,000 Ministry members residing on the island of Hawaii. Consequently, that the Ministry only provided marijuana ("sacrament") to its members was illusory at best, because everyone qualified as a member.

In order to make his beliefs "religious", R. Christie claimed to be an ordained minister. However, his ordination in the first instance came from the "Universal Life Church" (see paragraph 4 of his Declaration). This raises a number of questions in and of itself, inasmuch as in United States v. Lepp,

³² As pointed out earlier in this memorandum, the Ministry's website had an interactive link to order the Kit and expressly stated that "[y]ou become a full supporting member of the THC Ministry the moment you receive your Cannabis Sanctuary Kit".

2008 WL 3843283 (N.D. Cal 2008), aff'd, 446 Fed.Appx 44 (9th Cir. 2011), the District Court for the Northern District of California has expressly recognized that the Universal Life Church was nothing more than a "credential mill".³³

Moreover, this status as an "ordained minister" attains greater significance in conjunction with other tenets of the belief system espoused by R. Christie, namely, as stated in paragraph 36 of his Declaration:

[t]he THC Ministry calls on its ordained ministers for making and providing Cannabis sacrament for those in need. This is a very important part of the THC Ministry's mission.

This presumably was the Christies' justification for their cultivation and distribution of marijuana, i.e., to provide it "for those in need [and not necessarily restricted to Ministry members only]". However, the efficacy and credibility of this "religious" obligation imposed upon the Ministry's "ordained ministers" must be considered in the context of R. Christie's other writings for the Ministry, specifically, his article posted

³³ As noted by the District Court in Lepp, 2008 WL 3843283 at p. 4:

In addition, [defendant] Lepp's ministry credentials are suspect. The 'Universal Life Church', from which Lepp received his credentials, is not a seminary or religious body; it is a credential mill and each of the credentials Lepp claims can either be purchased on-line or obtained free. Specifically, the Church states that anyone can be ordained a minister immediately and free of charge, without having to go through the pre-ordination process required by other religious faiths. See Universal Life Church, <http://www.ulc.net/>.

on the website entitled "You can be a minister, too". As described in greater detail earlier in this memorandum, R. Christie's article gave step-by-step instructions on how anyone could become an ordained minister (through the same Universal Life Church), and he also extolled:

[i]t's easy to become an ordained Minister and to get licensed by the State of Hawaii to legally marry people. I call it a 'promotion from God'.

* * *

There is zero credit or background check involved. Everyone qualifies.

In other words, the ultimate logic of the Christies' belief system would mean that every Ministry member should also become a minister, which dual role would then qualify him/her to purchase marijuana, live plants and all other paraphernalia from the Ministry (and elsewhere), and to independently engage in his/her own cultivation and distribution operations, all of which conduct would fall under the religious auspices of the Ministry. This was precisely what the Ministry's website proclaimed, wherein it stated in connection with acquiring the Sanctuary Kit that: (1) membership by itself was "a primary building block of your defense to prosecution . . .", and (2) "[o]ther steps include becoming ordained as a minister and being licensed to marry people in your state". In addition, this dual role must also be considered in the context of the Christies' "Sanctuary Kit", which was also heavily promoted through the Ministry's website.

The contents of that Kit-- the sanctuary sign, the plant tags, and ID card-- were all designed to further facilitate the unrestricted "religious" cultivation and distribution of marijuana.

All of the foregoing raises a very pertinent question: why would someone want to put together a belief system in this particular broad and unrestricted fashion relating to marijuana? The answer comes in the manner in which the Christies have promoted and advertised the Ministry to the general public. As hereinbefore indicated, former Ministry employee Victoria Fiore's membership pitch over the telephone to a possible candidate emphasized two things, the ability to acquire "sacrament"-- i.e., marijuana-- at the Ministry, and second and most importantly, "it's basically a defense to prosecution. Um, we are going on the angle on our constitutional rights as our freedom of religion, ah, and we use cannabis religiously. So that is our, basically defense to prosecution". What Fiore related during this telephone call was entirely consistent with what the Christies had conspicuously promulgated in the first instance on the Ministry's website. In the second paragraph of the website's opening screen page (after issuing an "aloha and welcome - e komo mai"), it was stated:

Among other wonderful things, our Ministry helps to protect you from arrest, prosecution and/or conviction of 'marijuana' charges - *wherever you live* - starting as soon as you sign-up, become ordained and receive your ministry

documents. We provide a legitimate religious 'defense to prosecution' for sincere practitioners over 21 years old.

By like token, the contents of the Christies' "Sanctuary Kit" were specifically intended to put police officers on notice of the alleged "religious" purposes of the marijuana marked and identified with the Kit's paraphernalia.

Under these circumstances, we submit that consistent with United States v. Meyers, 95 F.3d 1475 (10th Cir. 1996), cert. denied, 118 S.Ct. 583, and United States v. Quaintance, 608 F.3d 717 (10th Cir. 2010), cert. denied, 131 S.Ct 544 & 547, RFRA was not implicated herein, because the Christies' belief system with respect to marijuana was hardly "religious". Rather, it was a merely a personal philosophy and way of life for the purpose of providing "cover" for their secular marijuana trafficking activities.

B. Even if the Christies held this belief system, it was not a sincerely-held belief.

It is undisputed that during the time period of the charged offenses herein, the Ministry was the sole source of financial support for both Christies. However, both Christies' Declarations are notably silent on how they supported themselves at the Ministry. The closest explanation given was paragraph 17 of S. Christie's Declaration, wherein she spoke of "t[aking] donations and shar[ing] Cannabis Sacrament with Ministry members and medical marijuana patients".

Both Christies affirmatively knew that there were no bonafide "donations" at the Ministry; rather, they were using the characterization of "donations" to camouflage their trafficking of marijuana. For example:

(1) S. Christie expressly instructed her Ministry employees to avoid having written price lists and "especially anything with a dollar sign on it" at the Ministry, and when asked "what do we tell people then that are asking, how much the something costs?", S. Christie's abrupt reply was "you memorize it".

(2) When a telephone caller inquired "where does the money come from, from selling the cannabis?", S. Christie's response was, "from the donations from the cannabis", also pointing out that the Ministry had "suggested donation[s]".

(3) When negotiating the sale of ½ pound of marijuana to the UC, R. Christie stated that "I've never sold a pound or half pound to anybody. I don't sell. It's donations, people". R. Christie then went on to say, "but if you want to donate to the Ministry, I got, I got half a pound for you". When they finally negotiated a "donation" price for the half pound which would net a \$1,000 profit to R. Christie, the latter responded "yeah, I can make that happen", and the sales transaction then occurred.

(4) R. Christie spoke of having marijuana "donated" to

the Ministry and he, in turn, would "donate" something back to the supplier. However, in his telephone conversations with his suppliers, R. Christie said how much he wanted, and the respective supplier then quoted a price back to him, thereby indicating that a sales transaction was involved. By like token, when S. Christie was running the Ministry and had to telephonically consult with R. Christie about pricing, all pretenses about "donations" were dropped; they specifically talked about "prices".

(5) When conversing with callers inquiring about the availability of "sacrament" at the Ministry, it was the Christies (or employees working under their direction) who quoted how much it cost, which was hardly indicative of true "donations". In addition, when describing to customers the "sacrament" that was available, the manner in which the Christies promoted the product's quality was entirely secular in nature-- as e.g., being "triple A bud" or "A grade", or how their marijuana edibles "get you pretty high"-- which was no different from any other drug trafficker peddling his/her wares.³⁴

³⁴ Likewise, notwithstanding the religious attributes which R. Christie's Declaration asserted were associated with marijuana-infused products as "holy anointing oil" and "tinctures", this was not how he marketed these products through the Ministry. As described earlier in this memorandum, R. Christie explained the non-religious benefit of tincture to one customer as being that "you carry your purse, you can dose yourself at the movie theater, at the restaurant. . . . You just (continued...)

Lastly, the Christies' institution of the "express" procedure in 2009 to distribute marijuana at the Ministry-- without the need for any religious fanfare or face-to-face meetings with the Christies-- demonstrated in no uncertain terms that their true goal was to maximize marijuana sales and the production of income therefrom, rather than forwarding any "religious" purpose.

The bottom line is that from their own actions, there is no reason to believe that the Christies themselves sincerely believed what they have propounded as a matter of religion.

VI. ALTERNATIVELY, EVEN IF THE CHRISTIES ARE ABLE TO ESTABLISH THAT THE EXERCISE OF THEIR ALLEGED RELIGIOUS BELIEFS HAS BEEN SUBSTANTIALLY BURDENED BY THE APPLICATION OF THE CONTROLLED SUBSTANCES ACT TO THEM, THIS BURDEN IS JUSTIFIED BY A COMPELLING GOVERNMENTAL INTEREST AND CONSTITUTES THE LEAST RESTRICTIVE MEANS TO FURTHER THIS COMPELLING INTEREST.

As set forth in RFRA, 42 U.S.C. 2000bb-1(b), the:

Government may substantially burden a person's exercise of religion only if it demonstrates that the application of the burden to the person-

(1) is in furtherance of a compelling governmental interest, and

(2) is the least restrictive means of furthering that compelling government interest.

³⁴(...continued)

take out the bottle and give a drop in your tongue and away you go, nobody even looks at you". With respect to the anointing oil, R. Christie touted it for the "high" the user could achieve ("brother, the testimonials we get from holy oil are off the charts"). Both products, of course, were not free; R. Christie quoted the tincture price as \$60 a bottle, and the oil's cost as \$50 per bottle.

In interpreting this provision, the Supreme Court in Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal, 546 U.S. 418 (2006), has instructed:

RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'- the particular claimant, whose sincere exercise of religion is being substantially burdened. 42 U.S.C. 2000(bb-1(b)). RFRA expressly adopted the compelling interest test 'as set forth in Sherbert v. Verner, 374 U.S. 398 (1963), and Wisconsin v. Yoder, 406 U.S. 205 (1972). In each of those cases, this Court looked beyond broadly formulated interests justifying the general applicability of government mandates and scrutinized the asserted harm of granting specific exemptions to particular religious claimants.

546 U.S. at 430-1 [emphasis added].

The Supreme Court also pointed out in O Centro that in granting religious exemptions under RFRA to generally applicable laws, "strict scrutiny 'at least requires a case-by-case determination of the question, sensitive to the facts of each particular claim'". 546 U.S. at 431.³⁵ In applying this specified analysis

³⁵ Accord, United States v. Lepp, 2008 WL 3843283 at 9 ("[t]he court must analyze this argument on a defendant-specific basis"), expressly citing the Ninth Circuit case of Bauer, supra, 84 F.3d at 1559.

O Centro involved a small religious group of approximately 130 members in the U.S. and its importation and use of a very obscure substance called "hoasca" (pronounced "wass-ca"), which contained as one of its ingredients a Schedule I hallucinogen. Hoasca was used in a tea during this group's religious services. The Supreme Court held that under the facts of this case, the contentions made by the Government-- namely, the general need for uniform enforcement with respect to Category I controlled substances against all persons and in order to comply with treaty requirements-- were not sufficient to establish a "compelling

(continued...)

in O Centro, of particular importance to the Supreme Court's conclusion that the Government had not established such a compelling interest in that case was that the claimant was a very small and well-defined religious group and the drug itself did not have any significant demand or potential for diversion to non-members and/or use for non-religious purposes.

A. The United States' compelling interest in the instant case:

In construing RFRA, the Supreme Court in O Centro also expressly recognized that ". . . the Government can demonstrate a compelling interest in uniform application of a particular program by offering evidence that granting the requested religious accommodations would seriously compromise its ability to administer the program". 546 U.S. at 435. In United States v. Lepp, 2008 WL 3843283 (N.D. Cal 2008), aff'd, 446 Fed.Appx 44 (9th Cir. 2011), the District Court for the Northern District of California specifically recognized that in the area of marijuana trafficking enforcement, there could very well be a genuine and significant compromise of the Government's ability to enforce the Controlled Substances Act if the manner in which the religious claimant conducted his/her activities could lead to diversion of

³⁵(...continued)
interest" under RFRA. In the Supreme Court's own words, "RFRA and the strict scrutiny test it adopted, contemplate an inquiry more focused than the Government's categorical approach". 546 U.S. at 430.

the drug to persons outside of that religious activity and/or the use thereof for non-religious purposes. As the Lepp court expressly stated, "this interest-- disallowing the diversion of Schedule I controlled substances [as marijuana] away from permissible religious uses-- is a compelling governmental interest". 2008 WL 3843283 at 9.³⁶

The United States submits that the specific manner in which the Christies have defined their beliefs vis a vis marijuana and have operated the Ministry raise significant diversion concerns. First, as previously discussed, the Christies' espoused beliefs would make all possible associations with marijuana "religious". Consequently, unlike other claimants whose views contain self-imposed restrictions on the religious use of the controlled substance at issue, there is no similar limitation to the Christies' belief system.

Second, as also previously indicated, any restriction of

³⁶ This quotation is from the District Court case. However, it has precedential value because the District Court's decision was subsequently affirmed on appeal by the Ninth Circuit. In validating the District Court's logic and reasoning, the Ninth Circuit said:

[t]he district court did not err in denying Lepp's Motion in Limine seeking to present a religious defense under [RFRA]. Applying the criminal laws prohibiting possession and manufacture of marijuana to Lepp is the least restrictive means of furthering the government's compelling interest in preventing diversion of sacramental marijuana to non-religious users.

United States v. Lepp, 446 Fed.Appx 44, 46 (9th Cir. 2011).

marijuana distribution to "Ministry members only" hardly assuaged diversion concerns, inasmuch as anyone and everyone could become a member with a mere affirmation as to the "religious" use of marijuana. It should, therefore, not be a surprise that the Ministry's membership numbers were substantial (R. Christie's Declaration indicated 2,000 - 3,000 members residing on the big island, and to the UC, he advised 60,000 - 62,000 members worldwide).³⁷ In Lepp, the defendant had asserted that he had 2,500 parishioners in his Rastafarian sect who used marijuana religiously, to which the court there aptly noted that "[defendant] Lepp would then need to demonstrate the sincerity of all 2,500 parishioners in order to allay the court's diversion concerns". 2008 WL 3843283 at p. 11. This same concern applies with equal force to the Christies herein, particularly in the light of their other practices (to be discussed next in this memorandum) which would appear to affirmatively promote diversion rather than limit it.

Third, the Christies advertised and promoted their "Sanctuary Kits" on the Ministry website. Their seemingly uncontrolled dissemination of such "Sanctuary Kits" all over the world raise significant diversion concerns. The materials contained in said Kits purported to confer the Ministry's

³⁷ Such off-island members would, of course, be eligible to purchase marijuana from the Ministry when they visited Hilo.

religious protection to all marijuana cultivation operations (through display of the "Sanctuary sign" and the marking of the plants with the "plant tags"), as well as to all processed marijuana whose plastic bags/containers bore such tags, without regard to who was growing that marijuana and for what purpose it was being cultivated. It was, for example, entirely conceivable that marijuana being grown for the "blackmarket" (as R. Christie would put it) and not for the Ministry could be so marked with Sanctuary Kit paraphernalia. Moreover, it would further appear that R. Christie himself did not care if the marijuana was being used for non-Ministry purposes. On one occasion, R. Christie bragged to the UC that "we got four hundred thousand of those plant tags out". On two other occasions, two of the Ministry's suppliers-- Ignacio and Shapiro-- advised R. Christie that they had marijuana to sell to him; on both occasions, R. Christie declined to purchase at that time (because he then had an adequate inventory) and advised that they should find another buyer.³⁸

³⁸ As related earlier in this memorandum:

R. Christie told Ignacio: "I don't need it at this moment so if you can find another source, you know, for putting it, that, that, that probably would be good for you".

To Shapiro, R. Christie said: "[a]nyway, I'm good for the moment. If, if you have another source, you know, have at it".

In this connection, too, as previously indicated, all of the
(continued...)

Fourth, in order to attain the sales volume that the Christies mentioned during the relatively short period of time that the Ministry was open, the previously-described "Express" procedure was utilized. "Express" was only intended to maximize the Christies' distribution of marijuana, with no regard whatsoever as to how the "members" who purchased that marijuana would make use of it. It was entirely possible, for example, that these "members" could make further distributions of this marijuana to anyone else they saw fit and for any purpose. As will be further discussed next, such unrestricted applications of the marijuana and other products sold by the Ministry was arguably also within the scope of the Christies' doctrines and belief.

Fifth, R. Christie's belief that, on one hand, all ordained ministers of the Ministry had an affirmative duty to "make and provide Cannabis", and on the other, that "it's easy to become an ordained Minister . . . [and] [e]veryone qualifies", meant that the Ministry was advocating the proposition that everyone could readily and independently engage in his/her own cultivation and distribution operations for whatever purpose. Again, diversion concerns abound.

Taken together, the sum of the Christie's "religious"

³⁸(...continued)
Ministry's suppliers were Ministry members and utilized the "Sanctuary Kit" paraphernalia.

beliefs, as expressed on the Ministry website, through their own words and deeds (as recorded during the wiretap and undercover investigations), and as indicated in their respective Declarations, would entirely preclude the enforcement of the Controlled Substances Act against them (and their disciples), without regard as to how the marijuana is cultivated or utilized and to whom it may be distributed. In short, what the Christies are asking for in their motion in limine is for the RFRA exception to swallow the whole prohibition. The United States submits that this makes no sense whatsoever, inasmuch as there are no credible limits as to what the Christies can and cannot do with their marijuana product under the guise of their religious beliefs. This particular concern was echoed by the Court in Lepp, wherein it observed:

[c]oncerns about diversion would still exist, however, even if large quantities of this popular Schedule I drug were all meant for religious purposes. Indeed, there has been no showing here of how Lepp and his congregation would restrict or that they have restricted access to the marijuana to sincere Rastafarians only.

2008 WL 3843283 at p. 13.

For the same reasons articulated in Lepp, the United States has in this case a similarly compelling interest in the enforcement of the Controlled Substances Act against the Christies, in order to avoid the diversion of marijuana for non-religious purposes.

B. The least restrictive means:

The second RFRA requirement which the United States must

establish is that the enforcement of the Controlled Substances Act in its entirety against the Christies is the least restrictive means of furthering the aforesaid compelling interest. In this regard, the Ninth Circuit has stated in Bauer that "[w]e do not exclude the possibility that the government may show the least restrictive means of preventing the sale and distribution of marijuana is the universal enforcement of the marijuana laws". 84 F.3d at 1559.

As discussed at greater length in the prior section, the various "religious" beliefs and practices espoused by the Christies, and also taking into account the manner in which they conduct the Ministry, affirmatively facilitate the substantial diversion of marijuana. Given that the Christies themselves have elected not to impose any limitations on their proposed religious utilization of marijuana, the least restrictive means-- and more realistically, the only practicable means-- is to enforce the Controlled Substances Act against them in its entirety.

In this regard, the case of Olsen v. Drug Enforcement Administration, 878 F.2d 1458 (D.C. Cir. 1989), is instructive. There, the petitioner claimed an entitlement to a DEA statutory exemption for his use of marijuana for religious purposes as a member of the Ethiopian Zion Coptic Church. The petitioner asserted that "the church's sacrament is marijuana; under church teachings, marijuana is combined with tobacco and smoked

'continually all day, through church services, through everything we do". 878 F.2d at 1459. DEA had denied his application and the petitioner sought judicial review thereof. Then-Circuit Judge Ruth Bader Ginsburg (now an Associate Supreme Court Justice), authored the panel decision which denied the petition for review. In so doing, Judge Ginsburg recognized the immensity of the marijuana control problem in the United States and held that, "we conclude that the DEA cannot accommodate Olsen's religious use of marijuana without unduly burdening or disrupting enforcement of the federal marijuana laws". 878 F.2d at 1463. The Christies' espoused "religious" use of marijuana is as broad and unrestricted as that for which the petitioner advocated in Olsen. For the same reasons, anything less than a complete prohibition vis a vis the Christies will not permit the United States to effectively enforce the Controlled Substances Act.

Again, Lepp is instructive here, because the Court in that case expressly relied upon Olsen and found that the least restrictive means to prevent diversion was the full application of the Controlled Substances Act against defendant Lepp and consequently, that Court ruled that "defendant's motion in limine is DENIED. Lepp may not present a RFRA defense at trial". 2008 WL 3843283 at p. 12.

The Christies may wish to factually distinguish the Lepp case on the basis that the defendant's cultivation of 24,784

marijuana plants there gave rise to the diversion concerns, whereas the instant case does not involve any where near that number of plants. This distinction is without merit. The Lepp court itself never established a "red line" limit as to how many plants were necessary before diversion could be inferred. See 2008 WL 3843283 at 11. Furthermore, unlike Lepp, a considerable amount of evidence establishing diversion in the instant case was developed by way of the undercover and wiretap investigation, such that inferences solely arising from plant quantity were unnecessary.

VII. **CONCLUSION:**

For the reasons set forth herein, the Christies are not entitled to present the qualified affirmative defense provided for in RFRA. Their motion in limine should be denied in full.

DATED: Honolulu, Hawaii, May 20, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

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