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8 Attorney for Defendant,
9 DAVID HE

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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA.) CASE NO.: 1:23-CR-00219-NODJ-BAM
Plaintiff,) MOTION FOR REVIEW OF
v.) DETENTION ORDER
DAVID HE,) Date: January 13, 2025
Defendant.) Time: 09:30 a.m.
) Hon. Dale A. Drozd
)
)

Defendant, David He, moves by and through his attorney, Anthony P. Capozzi for a review of the detention order.

Statement of the Case

A complaint was filed on October 18, 2023, charging the defendant with violations of 21 U.S.C. § 331 (a) and (c) along with 18 U.S.C. 1001(a)(1)-(3). (Exhibit A, Docket)

At the defendant's first appearance by zoom he was temporarily detained on October 24, 2023. **At the defendant's initial appearance, the court made a true name finding that the defendant's true name was David He, (Exhibit A, Docket # 10)**

The defendant was indicted on November 16, 2023, on two counts of Distribution of Adulterated and Misbranded Medical Devices, which occurred on December 28, 2020, and January 24, 2022. (Exhibit A, Docket # 14)

1 The defendant was also charged with making false statements that were recorded on a
2 body camera in an interview with agents of the United States Food and Drug Administration.
3 The alleged false statements are as follows:

4 1. He was not Zhu or Jesse Zhu, and that he was instead Qiang He, aka David He;
5 2. He was hired by UMI as Covid-19 consultant in 2021;
6 3. He was hired by PBI, just a couple of weeks prior to speaking with FDA officials, to
7 coordinate the company's interactions with government agencies;
8 4. He did not know the manufacturing and distribution history for UMI or PBI; and
9 5. He did not have access to UMI or PBI's distribution records, financial records, or
10 ownership records. ([Exhibit B](#), Indictment, Docket # 14)

11 The defendant's original name is Jia Bei Zhu who had his name changed in China to
12 Qiang He.

13 The defendant has a Chinese passport in the name of Qiang He. ([Exhibit C](#), Passport)
14 The defendant filed for asylum from China on February 19, 2021. ([Exhibit D](#))

15 The defendant changed his name in the United States from Qiang He to David He on
16 August 3, 2021. ([Exhibit E](#), Court documents).

17 The defendant has a driver authorization card in Nevada in the name of David He, issued
18 on September 12, 2023. ([Exhibit F](#))

19 On November 22, 2023, the defendant was ordered detained. ([Exhibit G](#), Detention
20 Order, Docket #19).

21 On Page 14:21-16:3 of the November 22, 2023, transcript, Judge Stanley Boone
22 determined that the government established that the defendant was a flight risk and obstructed
23 justice by a preponderance of the evidence. ([Exhibit H](#)- Transcript of Detention Hearing,
24 Docket #29).

25 The Court found that there were no conditions or a combination of conditions that would
26 reasonably assure his appearance. The Court did consider the nature and circumstances of the
27 offense as factors in assessing whether the defendant should be released on conditions. (RT
28 15:3-13) ([Exhibit H](#)- Transcript of Detention Hearing, Docket #29)

1 The Court was concerned with the different names that defendant used irrespective of the
 2 proffer that the defendant changed his name, stating that his was not easily done, and it requires a
 3 legal process in order to effectuate a name change in the United States. (RT 15:19-25) (Exhibit
 4 H- Transcript of Detention Hearing, Docket #29)

5 The Government argued that the defendant was a flight risk because six days after the
 6 government executed a search warrant at the Reedley Lab, flight records obtained by Homeland
 7 Security show that the defendant's newborn son and his mother Zhaoyan Wang flew on a one-
 8 way ticket to China. (RT 4:10-17) (Exhibit H-Transcript of Detention Hearing, Docket #29)

9 The Government failed to point out that the airline tickets were booked on September 3,
 10 2023, with flights scheduled for September 20, 2023. (Exhibit I, Declaration of Zhaoyan Wang
 11 regarding airline booking in Chinese and its translation. (Attachment 1)

12 Ms. Wang and her son were not aware of the search warrant which was served on
 13 September 13, 2023. (Exhibit I, Declaration of Zhaoyan Wang)

14 The defendant is a Chinese citizen with a Chinese passport and lived in a house in Las
 15 Vegas, Nevada that is owned by David Destiny Discovery, LLC.

16 Ms. Wang states in her declaration that David Destiny Discovery, LLC, invests in real
 17 estate with money from her family in China.

18 Ms. Wang also states in her declaration that:

19 a) Universal Meditech Inc., (UMI) was established in 2015, and it is engaged in research
 20 development, manufacturing, and sales of medical invitro diagnostic reagents.

21 Wang Xiaoxiao is the current CEO of UMI with two shareholders. 70% is Guandgdi
 22 Packaging Co. Ltd., registered in Qingdao, China, and 30% is MeSauce, registered in Nevada.

23 Ms. Wang is the company manager. The main investment comes from China and the
 24 technology comes from China and Canada.

25 b) Prestige Biotech Inc., PBI was established in 2021, and is engaged in the investment
 26 and management of medical diagnostic company's sole shareholder and investor.

c) David Destiny Discovery, LLC., "3D" was established in 2022. "3D" is engaged in the sale, operation, and management of Las Vegas real estate. It is registered in Las Vegas. Ms. Want is the company manager.

“3D” is willing to post two properties as collateral: 979 Sugar Springs Drive, Las Vegas, Nevada and 1336 N. Blackwood in Clovis, California. ([Exhibit I](#), Declaration of Zhaoyan Wang)

Zhaoyan Want is willing to post a “3D” property in Las Vegas valued at approximately \$850,000. The rental property at 1336 N. Blackwood in Clovis, California valued at approximately \$450,000, would also be posted as collateral.

Mr. He would propose to live in the 979 Sugar Springs Drive Las Vegas, Nevada residence with an ankle bracelet, GPS monitoring and surrender his Chinese passport.

Further Mr. He would propose having two third party custodians, Michael Lin, his Las Vegas attorney, and Ori Solomon, the property manager of 3D properties in Las Vegas

On April 24, 2024, Judge Grojean denied Mr. He's motion for bail review upholding Judge Boone's prior detention order (**Exhibit A**, Docket#48, and **Exhibit J**, Transcript of April 24, 2024, hearing, Dockets#50).

It should be noted that the Pre-trial office had recommended that Mr. He be released with certain conditions.

On July 8, 2024, Mr. He filed an Appeal of the Detention Order. ([Exhibit A](#), Docket #63)

On July 17, 2024, District Court Judge Dale A. Drozd denied the motion for bail review without prejudice. ([Exhibit A](#), Docket #76) Attached as [Exhibit K](#), is the transcript of the proceeding on July 17, 2024)

On August 15, 2024, a First Superseding Indictment (**Exhibit L**, Superseding Indictment) was returned charging David He and including Zhaoyan Wang as a defendant which is the mother of Mr. He's son and the managing partner of David Destinay Discovery LLC, the owner of both properties pledged as collateral for Mr. He. (**Exhibit I**, Declaration of Zhaoyan Wang)

1 David Destiny Discovery LLC., was established in 2022 and is mainly engaged in the
2 sole operation and management of Las Vegas real estate. Funds from Zhaoyan Wang's family
3 were used to purchase both properties. ([Exhibit I](#), Declaration of Zhaoyan Wang)

4 On May 6, 2024, Universal Meditech Inc., and David He filed a civil rights lawsuit
5 against the City of Reedley, Jeremy Harrison, Jesalyn Harper, Jeffery Isaak, County of Fresno,
6 Humbert Prado, Jeffrey Maurice and Meridahl Mather in the United States District Court of the
7 Eastern District, Case No.: 1:24-CV-00528-JLT-EPG, [Exhibit M](#), Complaint)

8 The lawsuit alleges the unlawful seizure and destruction of property in violation of
9 the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C.
10 §1983 and a Bivens Action pursuant to 28U.S.C. § 2679(b)(2)(A) while the federal officers
11 intentionally and recklessly deprived UMI and Mr. He of the rights, privileges and immunities
12 under the United States Constitution and specifically as to Mr. He to be free from unreasonable
13 and excessive force and unreasonable search, seizure and deprivation of property. As a result of
14 the officer's violation of their constitutional right UMI and Mr. He suffered substantial damage.
15 ([Exhibit N](#), Declaration of Anthony P. Capozzi with pictures of Mr. He, taken on October 20th,
16 and 24th, 2023).

17 [Exhibit O](#), Docket in UMI & David He v City of Reedley et al Case No.: 1:24-CV- 528-
18 JLT-EPG.

19 Motions to Dismiss and the Reply by the Plaintiffs are presently under submission to the
20 Court. ([Exhibit O](#), Docket #15)

21 A Motion to Dismiss by Defendant's Mather and Maurice was filed on October 30, 2024,
22 [Exhibit O](#), Docket 28. Opposition to the Motion to Dismiss was filed on November
23 13, 2024. [Exhibit O](#), Docket # 29)

24 On November 15, 2024, the court took all motions under advisement, [Exhibit O](#), Docket
25 30.

27 [Statement of the Law](#)

28 “In our society liberty is the norm and detention prior to trial or without trial is the

1 carefully limited exception" ...*United States v. Salerno*, 481 U.S. 739, 755 (1987).
 2 Consequently, courts may detain a defendant prior to trial only when "no condition or
 3 combination of conditions will reasonably assure the appearance of the person as required and
 4 the safety of any other person and the community." 18 U.S.C. 3142(b); see also *United States v.*
 5 *Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008). If the court determines that there are conditions that
 6 will reasonably assure the defendant's appearance and the safety of the community, it must
 7 release the defendant from pretrial detention under the least restrictive of those conditions.
 8 *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985).

9 **Standard**

10 In the trial court the government must establish risk of flight by a clear preponderance of
 11 the evidence. *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985)

12 In considering risk of flight, the court must take into consideration available information
 13 concerning the nature and circumstances of the offense charges, the weight of the evidence
 14 against the person, the history and characteristic of the person, including his character, physical
 15 and mental condition family ties, employment, appearance at court proceedings, and nature
 16 and seriousness of the danger to any person or the community that would be posed by the
 17 persons release. 18 U.S.C. 3142 (g) (1984).

18 The *Motamedi* Court emphasized that the weight of the evidence is the least important of
 19 the various factors (citations omitted) by impermissibly making a preliminary determination of
 20 guilt, the refusal to grant release could become in substance a matter of punishment (citations
 21 omitted), *Motamedi* at 1408. Further, alienage upon which the district court also placed much
 22 weight, may be taken into account, but it did not point conclusively to a determination that
 23 *Motamedi* posed serious flight risk. (citations omitted) at 1408.

24 In *United States v. Diaz-Hernandez*, 943 F.3d 1196, 1198 (9th Cir. 2019), the court stated:

25 "On a motion for pretrial detention, the government has the burden of showing by a
 26 preponderance of the evidence that the defendant poses a flight risk." (citations omitted) Any
 27 doubt regarding the propriety of pretrial release is to be rendered in favor of the defendant.
 28 (citing *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990))

1 In *United States v. Xulam*, 84 F3 441, 442(D.C., Cir. 1996), a Kurd from Turkey was
 2 charged with making a false statement in a passport application by applying for and obtaining an
 3 American passport under a false name. The Immigration Service was undertaking an
 4 investigation which would result in the defendant's deportation and lodged a detainer to take
 5 effect upon his release. *Xulam* subsequently made two name changes and informed the passport
 6 authorities of the changes. *at 444.*

7 The magistrate and the district court, on motion of the government, ordered that the
 8 defendant be detained pending trial solely as a flight risk.

9 Under 18 U.S.C. § 3142(c) (1994) when the government seeks pretrial detention of an
 10 individual on the ground that he poses a risk of flight, the standard it must satisfy is a
 11 "preponderance of the evidence." (citations omitted) *at 442.* The preponderance must, of
 12 course, go to the ultimate issue: that no combination of conditions—either those set out in the
 13 Bail Reform Act itself or any others that the magistrate or judge might find useful—can
 14 "reasonably" assure that the defendant will appear for trial, 18 U.S.C. 3142(c).

15 The act sets out a number of conditions which may be used to ensure appearance, in
 16 including, *inter alia*:

- 17 1. Remaining in custody of a designated person who agrees to assume supervision and
 18 to report any violation of a release condition;
- 19 2. Maintain employment;
- 20 3. Restrictions on place of abode or travel;
- 21 4. Reporting on a regular basis to a designated law enforcement agency;
- 22 5. Comply with a curfew;
- 23 6. Execute a bond, or;
- 24 7. Any condition that the court deems "reasonably necessary" to assure appearances. 18
 25 U.S.C. § 3742(c)

26
 27 The trial court ordered the defendant to be detained on the basis of the false statement in
 28

1 the passport application and the possibility of deportation. The trial court referred several times
 2 to the notion that if the defendant were to flee, his supervisor could not stop him.

3 The appellant court mentioned that this was true of every defendant released on
 4 conditions but that was not the standard authorized by law for determining whether pretrial
 5 detention is appropriate. Section § 3142 mentions conditions that will “reasonably” assure
 6 appearances, not guarantee it. *at 444.*

7 The appellate court ultimately determined that the government did not meet its burden of
 8 establishing risk of flight and stated that the records contained more than enough to satisfy the
 9 “reasonable” assurance test and not enough to show by a preponderance of the evidence that no
 10 combination of conditions will assure the defendant’s appearance.

11 The appellant court stated that despite the large discretion normally accorded the trial
 12 court in this area, we revoke the order of deportation. *at 444.*

13 In *United States v. Diaz-Hernandez*, 943 F 3d 1196 (9th Cir. 2019), the defendant was
 14 charged with one count of being a removable alien found in the United States. The court denied
 15 the government’s motion for detention and ordered him released on a \$10,000 appearance bond
 16 secured by a \$25,000 cash deposit.

17 The government appealed arguing that the defendant lacked legal status in the Untied
 18 States, the weight of the evidence against him was heavy and therefore facing a substantial
 19 prison sentence before being removed from the country. Furthermore, the defendant had served
 20 a 56-month sentence following a prior conviction for illegal entry.

21 The defense argued that since the defendant was subject to an immigration detainer, he
 22 should be released since the detainer would negate any risk of flight. *at 1196.*

23 The appellate court stated that an immigration detainer cannot support the categorical
 24 denial of bail, nor can an immigration detainer support the categorical grant of bail. The Bail
 25 Reform Act mandates an “individualized evaluation” guided by factors in § 3142(a). *at 1196.*

26 The *Diaz-Hernandez* court concluded that the “individualized evaluation” required by the
 27 Bail Reform Act does not include consideration of an immigration detainer or the possibility that
 28 the defendant, if released from criminal custody, would be held in immigration custody.

1 Immigration status is not an articulated factor in §3142(g). Further detention of a
 2 “criminal” defendant pending trial pursuant to the Bail Reform Act and detention of a removable
 3 alien pursuant to the Immigration and Nationality Act are separate functions that serve separate
 4 purposes and are performed by different authorities (citations omitted) The court ultimately
 5 stated that a district court may not speculate as to what may or may not happen in the future to
 6 the defendant under a different statutory and regulatory regime. at 1198.

7 A “risk of nonappearance referenced in 18 U.S.C. § 3142 must involve an element of
 8 volition. Citing *United States v. Santos Flores*, 794F 3d 1088 at 1091.

9 The court in *Jose Diaz-Hernandez*, 943 F3d 1196, 1199(9th Cir. 2019) ultimately held
 10 that the “individualized evaluation” required by the Bail Reform Act does not include
 11 consideration of an immigration detainer or the possibility that the defendant, if released from
 12 criminal custody, would be held in immigration custody.

13 David He, like the defendants in *Motamedi*, *Xulam*, and *Diaz-Hernandez* *supra* is being
 14 held as a risk of flight not as a danger to the community.

15 The evidence in this case against Mr. He is a short video tape of an interview with the
 16 defendant as to his name and position with two companies, Universal Meditech Inc., “UMI” and
 17 Prestige Biotech Inc., “PBI”. Two other charges allege mailing of misbranded products from
 18 “UMI”, where the defendant had no involvement and the evidence shows no ties to the
 19 defendant, David He.

20 The defendant applied for asylum in the United States from China, (**Exhibit D**) he has a
 21 multi-million-dollar lawsuit pending against the United States Government, the City of Reedley,
 22 California and the County of Fresno in Universal Meditech, Inc. and David He v. City of
 23 Reedley et al, Case No.: 1:23-W-528-JLT-EPG presenting pending before the court. (**Exhibit M**)

24 As in the *Motamedi*, *Xulam* and *Diaz-Hernandez* cases, *supra*, there is no incentive to flee
 25 nor is there a preponderance of evidence that Mr. He would flee.

26 Mr. He does not want to leave the Untied States, he has applied for asylum (**Exhibit D**)
 27 has legally changed his name, (**Exhibit E**) has been involved in business in the United States,
 28 with laboratories in Tulare, Fresno and a warehouse in Reedley, California. Evidence would

1 establish that Mr. He and Meditech Inc. were preparing to build a laboratory in Fresno,
 2 California while the equipment and various items were stored in Reedley, California when the
 3 government seized and destroyed the equipment and items at the Reedley warehouse.

4 With a conviction in this case the guidelines are as follows:

| <u>Statutes</u> | <u>Guideline</u> | <u>Offense Level</u> |
|------------------|------------------|----------------------|
| 18 § 331 (a) | 2N2.1 | 6 |
| 18 § 333 (a) 2 | 2B1.1 | 6 + loss |
| 18 § 10001(a)(2) | 2B1.1 | 6 |

9 With any possible enhancements the guideline range might go up to a guideline level of
 10 14, which has a guideline range of 15-21 months with Criminal History Category I.

11 The defendant will not plead guilty. If Mr. He pleaded guilty he did his guideline level
 12 would be reduced by three levels to 11.

13 The Safety Valve provision would also apply under 5C1.2 or under the First Step Act
 14 which would result in another two-point reduction further reducing the offense level to 9. With
 15 the criminal history category I, Mr. He would have a guideline range of 4-10 months.

16 **Mr. He was arrested on October 19, 2023, has had been in custody since that date
 17 (OVER THIRTEEN MONTHS).**

18 If Mr. He was convicted, with credit for good time (15% reduction) or even without such
 19 credit, Mr. He will have served his sentence and much more. Such an outcome would strain the
 20 fabric of law beyond reason and result in an injustice to Mr. He.

Proposal

23 The defense would post David Destiny Discovery, LLC property in Las Vegas, Nevada,
 24 at 979 Sugar Springs Drive, and as collateral. The property is valued at approximately \$850,000.
 25 The rental property at 1336 N. Blackwood in Clovis, California valued at approximately
 26 \$450,000, would also be posted as collateral.

27 Mr. He would propose to live in the 979 Sugar Springs Drive, Las Vegas, Nevada
 28 residence, with an ankle bracelet, GPS monitoring and surrender his Chinese passport.

Further Mr. He would propose having two third party custodians, Michael Lin, his Las Vegas attorney, and Ori Solomon, the property manager of David Destiny Discovery, LLC, properties in Las Vegas.

Conclusion

Mr. He has substantial and significant reasons not to abscond or flee in this case. He needs to meet with his attorney to prepare for the defense of the criminal case, peril of the civil rights case, and proceed with the asylum application all are strong reason to remain in the United States.

The defendant has proposed posting at total value of \$1.3 million dollars of property with the court, wear an ankle bracelet with GPS monitoring, surrender his Chinese passport along with two third party custodians near his residence in Las Vegas.

It is respectfully requested that the defendant, David He, be released with the combination of conditions proposed by Pre-Trial Office.

Dated: November 12, 2024,

By: s/ Anthony P. Capozzi

ANTHONY P. CAPOZZI, Attorney for
DAVID HE

EXHIBIT

A

U.S. District Court
Eastern District of California - Live System (Fresno)
CRIMINAL DOCKET FOR CASE #: 1:23-cr-00219-NODJ-BAM All Defendants

Case title: USA v. Zhu

Date Filed: 11/16/2023

Magistrate judge case number: 1:23-mj-00123-SKO

Assigned to: No District Court Judge

Referred to: Magistrate Judge Barbara A.

McAuliffe

Defendant (1)

Jia Bei Zhu

also known as

Jesse Zhu

also known as

Qiang He

also known as

David He

represented by **Anthony P. Capozzi**

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Pending Counts

21 U.S.C. 331(a), 333(a)(2) - Distribution of
Adulterated and Misbranded Medical
Devices
(1-2)

18 U.S.C. 1349- Conspiracy to Commit
Wire Fraud
(1s)

18 U.S.C. 1343- Wire Fraud
(2s-9s)

18 U.S.C. 1001(a)(2) - False Statements
(3)

21 U.S.C. 331(a) and 333(a)(2)-
Distribution of Adulterated and Misbranded
Medical Devices
(10s-11s)

18 U.S.C. 1001(a)(2)- False Statements
(12s)

Disposition

Highest Offense Level (Opening)

Felony

Terminated CountsDisposition

None

Highest Offense Level (Terminated)

None

ComplaintsDisposition

21:331(a) and (c)- Misbranded medical devices, 18:1001(a)(1)-(3)- False Statements

Assigned to: No District Court Judge
Referred to: Magistrate Judge Barbara A. McAuliffe

Defendant (2)

Zhaoyan Wang

Pending CountsDisposition18 U.S.C. 1349- Conspiracy to Commit Wire Fraud
(1s)18 U.S.C. 1343- Wire Fraud
(2s-9s)21 U.S.C. 331(a) and 333(a)(2)-
Distribution of Adulterated and Misbranded
Medical Devices
(10s-11s)Highest Offense Level (Opening)

Felony

Terminated CountsDisposition

None

Highest Offense Level (Terminated)

None

ComplaintsDisposition

None

Plaintiff

USA

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| Date Filed | # | Docket Text |
|------------|----------|--|
| 10/18/2023 | <u>1</u> | CRIMINAL COMPLAINT as to Jia Bei Zhu (1). (Maldonado, C) (Additional attachment(s) added on 10/19/2023: # <u>1</u> Penalty Slip) (Kusamura, W). [1:23-mj-00123-SKO] (Entered: 10/18/2023) |
| 10/18/2023 | <u>3</u> | GOVERNMENT'S MOTION to Seal Case by USA as to Jia Bei Zhu. (Maldonado, C) [1:23-mj-00123-SKO] (Entered: 10/18/2023) |
| 10/18/2023 | <u>4</u> | ORDER to Seal Case, signed by Magistrate Judge Sheila K. Oberto on 10/18/2023 as to Jia Bei Zhu. (Maldonado, C) [1:23-mj-00123-SKO] (Entered: 10/18/2023) |
| 10/19/2023 | <u>5</u> | MOTION and ORDER to UNSEAL CASE, signed by Magistrate Judge Sheila K. Oberto on 10/19/2023 as to Jia Bei Zhu. (Maldonado, C) [1:23-mj-00123-SKO] (Entered: 10/19/2023) |
| 10/19/2023 | <u>6</u> | DESIGNATION of COUNSEL FOR SERVICE. Added attorney Joseph Barton for USA (Barton, Joseph) [1:23-mj-00123-SKO] (Entered: 10/19/2023) |
| 10/20/2023 | <u>7</u> | ARREST WARRANT RETURNED Executed on 10/19/2023 as to Jia Bei Zhu. (Maldonado, C) [1:23-mj-00123-SKO] (Entered: 10/20/2023) |
| 10/20/2023 | <u>8</u> | MINUTES (Text Only) for proceedings held before Magistrate Judge Sheila K. Oberto: INITIAL APPEARANCE as to Jia Bei Zhu NOT held on 10/20/2023. The Court noted the hearing was being conducted via the Zoom application. Pursuant to Rule 10, the defendant |

Case 1:23-mj-00123-SKO Document 90-1 Filed 12/05/24 Page 5 of 15 and Counsel consented to the Zoom appearance. The assistant federal defender advised that the defendant is seeking to retain counsel and is requesting to continue the initial appearance to next week, hearing no objection from the government. The Court grants the request and sets the **Initial Appearance re Criminal Complaint for 10/24/2023 at 02:00 PM in Courtroom 10 (EPG) before Magistrate Judge Erica P. Grosjean**. Defendant is Ordered TEMPORARILY detained. The next hearing will be held in person. The Court has been notified that an interpreter is required in this action for Jia Bei Zhu. It is counsel's responsibility to timely notify the Court Staff Interpreter when a hearing requiring an interpreter is scheduled, continued or cancelled. Failure to do so may result in sanctions. See LR 403 - Court Interpreter Services in Criminal Actions

Government Counsel: Arelis Clemente present. Defense Counsel: Eric Kersten - (Standing in and not appointed) present. Custody Status: CUSTODY - FCJ (ZOOM). Court Reporter/CD Number: Corina Lopez Amador. Certified Court Interpreter: Simon Wong, Language: Mandarin-Oath on File. (Kusamura, W) [1:23-mj-00123-SKO] (Entered: 10/20/2023)

| | | |
|------------|----|--|
| 10/23/2023 | 9 | DESIGNATION of COUNSEL FOR SERVICE. Added attorney Arelis M. Clemente, GOVT for USA (Clemente, Arelis) [1:23-mj-00123-SKO] (Entered: 10/23/2023) |
| 10/24/2023 | 10 | MINUTES (Text Only) for proceedings held before Magistrate Judge Erica P. Grosjean: INITIAL APPEARANCE ON COMPLAINT as to Jia Bei Zhu held on 10/24/2023. Defendant advised of charges/rights; reading/adviseement waived; DENIAL ENTERED. TRUE NAME FINDING MADE AS FOLLOWS: DAVID HE. The government requested detention and, with good cause found to hold the detention and preliminary examination hearings outside of the statutory time-frame, the Court set the hearings as follows: <u>DETENTION HEARING set for 11/8/2023 at 02:00 PM in Courtroom 7 (SKO) before Magistrate Judge Sheila K. Oberto (defendant ordered temporarily detained pending said hearing)</u> . <u>PRELIMINARY EXAMINATION HEARING set for 11/8/2023 at 02:00 PM in Courtroom 7 (SKO) before Magistrate Judge Sheila K. Oberto</u> . The government requested an exclusion of time through the detention and preliminary examination hearings and, with agreement of defense counsel, time was excluded as follows: (Excludable time Start: 10/24/2023 Stop: 11/8/2023) Time is to be excluded under the Speedy Trial Act in that good cause exists and that the ends of justice outweigh the interest of the public and the defendant in a speedy trial. For the reasons set forth on the record, the continuance requested is granted for good cause and the Court finds the ends of justice outweigh the interest of the public and the defendant in a speedy trial. Government Counsel: Arelis Clemente and Joseph Barton present. Defense Counsel: Anthony Capozzi present. Custody Status: Custody - FCJ (in person) present. Court Reporter/CD Number: ECRO - Corina Lopez Amador. Certified Court Interpreter: Simon Wong, Language: Chinese/Mandarin-Oath on File. (Rooney, M) [1:23-mj-00123-SKO] (Entered: 10/24/2023) |
| 10/26/2023 | 11 | STIPULATION and PROPOSED ORDER for Continue Detention Hearing and Preliminary Hearing by USA. (Barton, Joseph) [1:23-mj-00123-SKO] (Entered: 10/26/2023) |
| 10/31/2023 | 12 | STIPULATION and ORDER as to David He signed by Magistrate Judge Erica P. Grosjean on 10/31/2023. The Court grants the parties' request to continue the Detention and Preliminary Examination Hearings, currently noticed for 11/8/2023, and CONTINUING them to 11/16/2023. DETENTION AND PRELIMINARY EXAMINATION HEARINGS CONTINUED to 11/16/2023 at 02:00 PM in Courtroom 9 (SAB) before Magistrate Judge Stanley A. Boone. The Court also grants a time exclusion for the purpose of defense preparation and continuity of defense counsel - time excluded as follows: Excludable time Start: 11/9/2023 Stop: 11/16/2023. (Rooney, M) [1:23-mj-00123-SKO] (Entered: 10/31/2023) |

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| 11/02/2023 | <u>13</u> | ARREST WARRANT RETURNED Executed on 10/19/2023 as to David He. (Marrujo, C) [1:23-mj-00123-SKO] (Entered: 11/02/2023) |
| 11/16/2023 | <u>14</u> | INDICTMENT as to Jia Bei Zhu (1) count(s) 1-2, 3. (Attachments: # <u>1</u> True Bill). (Lawrence, A) (Entered: 11/16/2023) |
| 11/16/2023 | <u>15</u> | MINUTES (Text Only) for proceedings held before Magistrate Judge Stanley A. Boone: DETENTION HEARING / ARRAIGNMENT AND PLEA RE INDICTMENT as to Jia Bei Zhu (1) Count 1-2, 3 held on 11/16/2023. The defendant is advised of the charges and rights, waived further reading, NOT GUILTY PLEA and DENIAL OF FORFEITURE entered. True name is DAVID HE - disputed as to the true name of the Defendant. The court instructed government counsel under Rule 5(f) to comply with its disclosure obligations under <u>Brady v. Maryland</u> . Discovery to be produced within 2 weeks from today's hearing. Reciprocal discovery due within 3 weeks from today's hearing. Status Conference set for 01/17/2024 at 01:00 PM in Courtroom 7 (SKO) before Magistrate Judge Sheila K. Oberto. The defendant is ordered to be present. XT: Start: 11/16/2023 Stop: 01/17/2024, Time is to be excluded under the Speedy Trial Act in that good cause exists and that the ends of justice outweigh the interest of the public and the defendant in a speedy trial. For the reasons set forth on the record, the continuance requested is granted for good cause and the Court finds the ends of justice outweigh the interest of the public and the defendant in a speedy trial. Defense Counsel requests to continue the Detention Hearing to allow Defense to go over the report with Defendant is granted, last continuance. Detention hearing is set for 11/22/2023 at 11:00 AM in Courtroom 9 (SAB) before Magistrate Judge Stanley A. Boone. Government Counsel: Joseph Barton present. Defense Counsel: Anthony Capozzi present. Custody Status: In custody - FCJ - present. Certified Court Interpreter: Simon Wong, Language: Mandarin-Oath on File. Court Reporter/CD Number: ECRO: Corina Amador. (Nguyen, J) (Entered: 11/17/2023) |
| 11/16/2023 | <u>16</u> | ORDER (TEXT ONLY) signed by Magistrate Judge Stanley A. Boone on 11/16/2023: According to the Federal Rules of Criminal Procedure Rule 5(f), the government is ordered to comply with its discovery obligations as required by federal law, including those duties imposed by <u>Brady v. Maryland</u> , 373 U.S. 83 (1963), and all applicable decisions interpreting <u>Brady</u> . This order does not relieve any party of any other discovery obligation. The consequences for violating this order or the government's obligations under <u>Brady</u> may include sanctions, referral to a disciplinary authority, adverse jury instruction, exclusion of evidence, and dismissal of charges, among other consequences. (Nguyen, J) (Entered: 11/17/2023) |
| 11/20/2023 | <u>17</u> | MINUTE ORDER signed by Magistrate Judge Stanley A. Boone on 11/20/2023 as to Jia Bei Zhu: (Text Only Entry), The Status Conference set for 01/17/2024 has been RESET to 1/10/2024 at 01:00 PM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe. (Nguyen, J) (Entered: 11/20/2023) |
| 11/22/2023 | <u>18</u> | MINUTES (Text Only) for proceedings held before Magistrate Judge Stanley A. Boone: DETENTION HEARING as to Jia Bei Zhu held on 11/22/2023. The Government argues defendant's true name, as stated on the record. The Government seeks detention. Defense submits. The Court orders the defendant DETAINED. Discovery to be produced and reciprocal discovery ordered. <i>The Status Conference on 01/10/2024 at 01:00 PM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe remains set.</i> Defendant is ordered to be present. Government Counsel: Joseph Barton present. Defense Counsel: Anthony Capozzi present. Custody Status: In custody - FCJ - present. Certified Court Interpreter: Simon Wong, Language: Mandarin-Oath on File. Court Reporter/CD Number: Corina Lopez Amador. (Nguyen, J) (Entered: 11/22/2023) |
| 11/22/2023 | <u>19</u> | DETENTION ORDER signed by Magistrate Judge Stanley A. Boone on 11/22/2023 as to Jia Bei Zhu. (Nguyen, J) (Entered: 11/22/2023) |

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| 12/01/2023 | <u>20</u> | ORDER by Chief Judge Kimberly J. Mueller: Due to the elevation of U.S. District Judge Ana I. de Alba to the Ninth Circuit Court of Appeals, the court finds it necessary to temporarily reassign this case to No District Court Judge (NODJ) until a new district judge is appointed. (Marrujo, C) (Entered: 12/01/2023) |
| 12/19/2023 | <u>21</u> | MINUTE ORDER (TEXT ONLY): This case is set for a status conference on January 10, 2024. At least <u>one week</u> before the hearing the parties shall file a <u>joint</u> status report informing the court of the status of the case, including whether any change of plea is anticipated, a proposed next date for a status conference or change of plea, and whether defendant agrees to exclude time to the next date. In the status report, each defendant's counsel shall state whether defendant is waiving personal appearance pursuant to Rule 43 and whether the waiver is for all appearances or for a single appearance. For waiver, a Rule 43 waiver motion must be submitted with the status report, and if approved by the Court, the defendant's counsel shall appear by video conferencing. If defendant does not waive appearance, counsel and defendant must appear in person for the hearing. Alternatively, the parties may stipulate to a continuance of the status conference, with an appropriate exclusion of time. The stipulation <u>must be filed no later than noon</u> on Wednesday, January 3, 2024, so that the Court may have sufficient time to coordinate inmate movement in the jail(s). <u>If unforeseen circumstances delay the timely submission of the stipulation, the AUSA is instructed to email the courtroom deputy.</u> Minute order signed by Magistrate Judge Barbara A. McAuliffe on 12/19/2023. (Valdez, E) (Entered: 12/19/2023) |
| 12/21/2023 | <u>22</u> | STIPULATION and PROPOSED ORDER for to Continue Status Conference. Attorney Capozzi, Anthony P. added. (Capozzi, Anthony) (Entered: 12/21/2023) |
| 12/21/2023 | <u>23</u> | STIPULATION and ORDER to Continue Status Conference as to Jia Bei Zhu (1) signed by Magistrate Judge Barbara A. McAuliffe on 12/21/2023. It is so ordered that the status conference is continued from January 10, 2024, to January 24, 2024, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe. Time is excluded pursuant to 18 U.S.C. § 3161 (h)(7)(A), B(iv). The Court notes that the parties dispute Defendant's true name. Accordingly, the Court sets an evidentiary hearing for January 24, 2024, at 2:00 p.m. before Magistrate Judge Barbara A. McAuliffe to determine Defendant's true name. Alternatively, the parties may submit, in advance of the evidentiary hearing, a stipulation as to Defendant's true name and the Court will vacate the hearing. (Valdez, E) (Entered: 12/21/2023) |
| 12/27/2023 | <u>24</u> | PROPOSED ORDER re Rule 43 Waiver of Appearance by Jia Bei Zhu. (Capozzi, Anthony) (Entered: 12/27/2023) |
| 12/27/2023 | <u>25</u> | ORDER re <u>24</u> Request for Rule 43 Waiver of Appearance as to Jia Bei Zhu, signed by Magistrate Judge Barbara A. McAuliffe on 12/27/2023. <i>Defendant's appearance may be waived at any and all non-substantive proceedings until further order. However, the request for waiver for the 1/24/2024 evidentiary hearing is DENIED. If the parties submit a stipulation as to the defendant's true name not later than 1/22/2024, Defendant need not appear at the hearing.</i> (Rivera, O) (Entered: 12/27/2023) |
| 01/08/2024 | <u>26</u> | TRANSCRIPT REQUEST for proceedings held on 11/22/2023 before Judge Mag. Judge Stanley A. Boone. Court Reporter ECRO-Fresno. (Capozzi, Anthony) (Entered: 01/08/2024) |
| 01/09/2024 | <u>27</u> | MINUTE ORDER (TEXT ONLY): The Status Conference currently set for January 24, 2024, at 1:00 PM has been RESET the same day, January 24, 2024, at 2:00 PM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe. The Evidentiary Hearing set for January 24, 2024, at 2:00 p.m. before Magistrate Judge Barbara A. |

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| 01/09/2024 | <u>28</u> | AMENDED TRANSCRIPT REQUEST re <u>26</u> for proceedings held on 11/22/2023 before Judge Hon. Stanley A. Boone. Court Reporter ECRO-Fresno. (Capozzi, Anthony) (Entered: 01/09/2024) |
| 01/12/2024 | <u>29</u> | TRANSCRIPT of Proceedings as to Jia Bei Zhu held on 11/22/2023 before Magistrate Judge Stanley A. Boone. DETENTION HEARING filed by ECRO, Phone number 559-499-5928 or 559-499-5290, E-mail Fresno_ECRO@caed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 2/2/2024. Redacted Transcript Deadline set for 2/12/2024. Release of Transcript Restriction set for 4/11/2024. (Lopez Amador, Corina) (Entered: 01/12/2024) |
| 01/18/2024 | <u>30</u> | MINUTE ORDER (TEXT ONLY): On January 18, 2024, a telephone conference was held, off the record, by agreement of the parties re the evidentiary hearing on defendant's true name. After discussion with the parties, the Court VACATES the January 24, 2024 evidentiary hearing because defendant's true name is part of the allegations of the indictment which the government must prove at trial. The Court RESETS the Status Conference for January 24, 2024 at 1:00 PM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe . The parties are to meet and confer and select a mutually convenient date for trial. Minute order signed by Magistrate Judge Barbara A. McAuliffe on 1/18/2024. (Valdez, E) (Entered: 01/18/2024) |
| 01/19/2024 | <u>31</u> | STIPULATION and PROPOSED ORDER for Continue Status Conference by USA. (Barton, Joseph) (Entered: 01/19/2024) |
| 01/19/2024 | <u>32</u> | STIPULATION and ORDER to Continue Status Conference as to Jia Bei Zhu (1) signed by Magistrate Judge Barbara A. McAuliffe on 1/19/2024. Upon the parties' stipulation and for good cause shown, the status conference scheduled for January 24, 2024, is continued until March 13, 2024, at 1:00 p.m., before the Honorable Barbara A. McAuliffe . The period through March 13, 2024, inclusive, is excluded pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv). (Valdez, E) (Entered: 01/19/2024) |
| 02/09/2024 | <u>33</u> | TRANSCRIPT REQUEST for proceedings held on 11/22/2023 before Judge Stanley A. Boone. Court Reporter ECRO-Fresno. (Rosales, O.) (Entered: 02/09/2024) |
| 02/15/2024 | <u>34</u> | TRANSCRIPT REQUEST for proceedings held on 11/22/2023 before Judge Boone. Court Reporter ECRO-Fresno. (Barton, Joseph) (Entered: 02/15/2024) |
| 02/15/2024 | <u>35</u> | AMENDED TRANSCRIPT REQUEST re <u>34</u> for proceedings held on 11/22/2023 before Judge Boone. Court Reporter ECRO-Fresno. (Barton, Joseph) (Entered: 02/15/2024) |
| 02/27/2024 | <u>36</u> | MINUTE ORDER (TEXT ONLY): This case is set for a status conference on March 13, 2024. At least <u>one week</u> before the hearing the parties shall file a <u>joint</u> status report informing the court of the status of the case, including whether any change of plea is anticipated, a proposed next date for a status conference or change of plea, and whether defendant agrees to exclude time to the next date. In the status report, each defendant's counsel shall state whether defendant is waiving personal appearance pursuant to Rule 43 and whether the waiver is for all appearances or for a single appearance. For waiver, a Rule 43 waiver motion must be submitted with the status report, and if approved by the Court, the defendant's counsel shall appear by video conferencing. If defendant does not waive appearance, counsel and defendant must appear in person for the hearing. Alternatively, the parties may stipulate to a continuance of the status conference, with an appropriate exclusion of time. The stipulation <u>must be filed no later</u> |

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that noon on Wednesday, March 6, 2024, so that the Court may have sufficient time to coordinate inmate movement in the jail(s). If unforeseen circumstances delay the timely submission of the stipulation, the AUSA is instructed to email the courtroom deputy. Minute order signed by Magistrate Judge Barbara A. McAuliffe on 2/27/2024. (Valdez, E) (Entered: 02/27/2024)

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| 03/06/2024 | <u>37</u> | STIPULATION and PROPOSED ORDER for Continue Status Conference by USA. (Barton, Joseph) (Entered: 03/06/2024) |
| 03/07/2024 | <u>38</u> | STIPULATION and ORDER to Continue Status Conference as to Jia Bei Zhu (1) signed by Magistrate Judge Barbara A. McAuliffe on 03/07/2024. Upon the parties' stipulation and for good cause shown, the status conference scheduled for March 13, 2024, is continued until April 10, 2024, at 1:00 p.m., before the Honorable Barbara A. McAuliffe. The period through April 10, 2024, inclusive, is excluded pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv). (Lopez Amador, Corina) (Entered: 03/07/2024) |
| 03/21/2024 | <u>39</u> | MINUTE ORDER (TEXT ONLY): This case is set for a status conference on April 10, 2024. At least <u>one week</u> before the hearing the parties shall file a <u>joint</u> status report informing the court of the status of the case, including whether any change of plea is anticipated, a proposed next date for a status conference or change of plea, and whether defendant agrees to exclude time to the next date. In the status report, each defendant's counsel shall state whether defendant is waiving personal appearance pursuant to Rule 43 and whether the waiver is for all appearances or for a single appearance. For waiver, a Rule 43 waiver motion must be submitted with the status report, and if approved by the Court, the defendant's counsel shall appear by video conferencing. If defendant does not waive appearance, counsel and defendant must appear in person for the hearing. Alternatively, the parties may stipulate to a continuance of the status conference, with an appropriate exclusion of time. The stipulation <u>must be filed no later than noon</u> on Wednesday, April 3, 2024, so that the Court may have sufficient time to coordinate inmate movement in the jail(s). <u>If unforeseen circumstances delay the timely submission of the stipulation, the AUSA is instructed to email the courtroom deputy.</u> Minute order signed by Magistrate Judge Barbara A. McAuliffe on 3/21/2024. (Valdez, E) (Entered: 03/21/2024) |
| 04/03/2024 | <u>40</u> | STIPULATION and PROPOSED ORDER for Continue Status Conference by USA. (Barton, Joseph) (Entered: 04/03/2024) |
| 04/08/2024 | <u>41</u> | STIPULATION and ORDER to Continue Status Conference as to Jia Bei Zhu (1) signed by Magistrate Judge Barbara A. McAuliffe on 4/8/2024. Upon the parties' stipulation and for good cause shown, the status conference scheduled for April 10, 2024, is continued until April 24, 2024, at 1:00 p.m., before the Honorable Barbara A. McAuliffe. The period through April 24, 2024, inclusive, is excluded pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv). (Valdez, E) (Entered: 04/08/2024) |
| 04/09/2024 | <u>42</u> | MINUTE ORDER (TEXT ONLY): This case is set for a status conference on April 24, 2024. At least <u>one week</u> before the hearing the parties shall file a <u>joint</u> status report informing the court of the status of the case, including whether any change of plea is anticipated, a proposed next date for a status conference or change of plea, and whether defendant agrees to exclude time to the next date. In the status report, each defendant's counsel shall state whether defendant is waiving personal appearance pursuant to Rule 43 and whether the waiver is for all appearances or for a single appearance. For waiver, a Rule 43 waiver motion must be submitted with the status report, and if approved by the Court, the defendant's counsel shall appear by video conferencing. If defendant does not waive appearance, counsel and defendant must appear in person for the hearing. Alternatively, the parties may stipulate to a continuance of the status |

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| | | conference with the appropriate inclusion of time. The stipulation must be filed no later than noon on Wednesday, April 17, 2024, so that the Court may have sufficient time to coordinate inmate movement in the jail(s). <u>If unforeseen circumstances delay the timely submission of the stipulation, the AUSA is instructed to email the courtroom deputy.</u> Minute order signed by Magistrate Judge Barbara A. McAuliffe on 4/9/2024. (Valdez, E) (Entered: 04/09/2024) |
| 04/17/2024 | <u>43</u> | STIPULATION and PROPOSED ORDER for Continue Status Conference by USA. (Barton, Joseph) (Entered: 04/17/2024) |
| 04/17/2024 | <u>44</u> | STIPULATION and ORDER to Continue Status Conference as to Jia Bei Zhu (1) signed by Magistrate Judge Barbara A. McAuliffe on 4/17/2024. Upon the parties' stipulation and for good cause shown, the status conference scheduled for April 24, 2024, is continued until May 22, 2024, at 1:00 p.m., before the Honorable Barbara A. McAuliffe . The period through May 22, 2024, inclusive, is excluded pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv). (Valdez, E) (Entered: 04/17/2024) |
| 04/18/2024 | <u>45</u> | MOTION for BAIL REVIEW <i>David He</i> by Jia Bei Zhu. Motion Hearing set for 4/24/2024 at 02:00 PM in Courtroom 10 (EPG) before Magistrate Judge Erica P. Grosjean. (Attachments: # <u>1</u> Exhibit Transcript, # <u>2</u> Exhibit Asylum, # <u>3</u> Exhibit Name Change, # <u>4</u> Exhibit Declaration, # <u>5</u> Exhibit Bank Statements, # <u>6</u> Exhibit Lease)(Capozzi, Anthony) (Entered: 04/18/2024) |
| 04/19/2024 | <u>46</u> | MINUTE ORDER signed by Magistrate Judge Erica P. Grosjean on April 19, 2024 as to Jia Bei Zhu: The Court has received Defendant's Motion for Bail Review, document <u>45</u> , noticed for hearing on April 24, 2024, at 2:00 pm before Judge Grosjean. The Court refers the parties to Eastern District Local Rule 429 (Bail Review Procedures) regarding the filing of same, page limits, and the opposition deadline (set for April 23, 2024, at 5:00 pm pursuant to a request of the government). (Text Only Entry) (Rooney, M) (Entered: 04/19/2024) |
| 04/23/2024 | <u>47</u> | BRIEF by USA as to Jia Bei Zhu. Attorney Carbajal, Henry Zazueta added. (Carbajal, Henry) (Entered: 04/23/2024) |
| 04/24/2024 | <u>48</u> | MINUTES (Text Only) for proceedings held before Magistrate Judge Erica P. Grosjean: MOTION HEARING as to Jia Bei Zhu held on 4/24/2024. The Court heard argument on defendant's Motion for Bail Review, document <u>45</u> , with the Court ordering the motion denied. Government Counsel: Henry Carbajal and Arelis Clemente present. Defense Counsel: Anthony Capozzi present. Custody Status: Custody - FCJ - In person. Court Reporter/CD Number: ECRO - Otilia Rosales. Certified Court Interpreter: Simon Wong, Language: Mandarin-Oath on File. (Rooney, M) (Entered: 04/24/2024) |
| 05/01/2024 | <u>49</u> | TRANSCRIPT REQUEST for proceedings held on 4/24/2024 before Judge Erica P. Grosjean. Court Reporter ECRO-Fresno. (Rosales, O.) (Entered: 05/01/2024) |
| 05/06/2024 | <u>50</u> | TRANSCRIPT of Proceedings as to Jia Bei Zhu held on 4/24/2024 , before Magistrate Judge Erica P. Grosjean. MOTION FOR BAIL REVIEW filed by ECRO, Phone number 559-499-5928 or 559-499-5290, E-mail Fresno_ECRO@caed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 5/28/2024. Redacted Transcript Deadline set for 6/6/2024. Release of Transcript Restriction set for 8/5/2024. (Rosales, O.) (Entered: 05/06/2024) |
| 05/06/2024 | <u>51</u> | TRANSCRIPT REQUEST for proceedings held on 4/24/24 before Judge EPG. Court Reporter ECRO-Fresno. (Carbajal, Henry) (Entered: 05/06/2024) |

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| 05/08/2024 | Case 1523-cr-00219-DAD-EPG | MINUTE ORDER (TEXT ONLY): This case is set for a status conference on May 22, 2024. At least <u>one week</u> before the hearing the parties shall file a <u>joint</u> status report informing the court of the status of the case, including whether any change of plea is anticipated, a proposed next date for a status conference or change of plea, and whether defendant agrees to exclude time to the next date. In the status report, each defendant's counsel shall state whether defendant is waiving personal appearance pursuant to Rule 43 and whether the waiver is for all appearances or for a single appearance. For waiver, a Rule 43 waiver motion must be submitted with the status report, and if approved by the Court, the defendant's counsel shall appear by video conferencing. If defendant does not waive appearance, counsel <u>and</u> defendant must appear <u>in person</u> for the hearing. Alternatively, the parties may stipulate to a continuance of the status conference, with an appropriate exclusion of time. The stipulation <u>must be filed no later than noon</u> on Wednesday, May 15, 2024, so that the Court may have sufficient time to coordinate inmate movement in the jail(s). <u>If unforeseen circumstances delay the timely submission of the stipulation, the AUSA is instructed to email the courtroom deputy.</u> Minute order signed by Magistrate Judge Barbara A. McAuliffe on 5/8/2024. (Valdez, E) (Entered: 05/08/2024) |
| 05/14/2024 | <u>53</u> | TRANSCRIPT REQUEST for proceedings held on April 24, 2024 before Judge Hon. Erica P. Grosjean. Court Reporter ECRO-Fresno. (Capozzi, Anthony) (Entered: 05/14/2024) |
| 05/14/2024 | <u>54</u> | STIPULATION and PROPOSED ORDER for Continue Status Conference by USA. (Barton, Joseph) (Entered: 05/14/2024) |
| 05/14/2024 | <u>55</u> | STIPULATION and ORDER to Continue Status Conference as to Jia Bei Zhu (1) signed by Magistrate Judge Barbara A. McAuliffe on 5/14/2024. Upon the parties' stipulation and for good cause shown, the status conference scheduled for May 22, 2024, is continued until June 12, 2024, at 1:00 p.m., before the Honorable Barbara A. McAuliffe. The period through June 12, 2024, inclusive, is excluded pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv). (Valdez, E) (Entered: 05/14/2024) |
| 05/14/2024 | <u>56</u> | AMENDED TRANSCRIPT REQUEST re <u>53</u> for proceedings held on 4/24/2024 before Judge Hon. Erica P. Grosjean. Court Reporter ECRO-Fresno. (Capozzi, Anthony) (Entered: 05/14/2024) |
| 05/22/2024 | <u>57</u> | MINUTE ORDER (TEXT ONLY): This case is set for a status conference on June 12, 2024. At least <u>one week</u> before the hearing the parties shall file a <u>joint</u> status report informing the court of the status of the case, including whether any change of plea is anticipated, a proposed next date for a status conference or change of plea, and whether defendant agrees to exclude time to the next date. In the status report, each defendant's counsel shall state whether defendant is waiving personal appearance pursuant to Rule 43 and whether the waiver is for all appearances or for a single appearance. For waiver, a Rule 43 waiver motion must be submitted with the status report, and if approved by the Court, the defendant's counsel shall appear by video conferencing. If defendant does not waive appearance, counsel <u>and</u> defendant must appear <u>in person</u> for the hearing. Alternatively, the parties may stipulate to a continuance of the status conference, with an appropriate exclusion of time. The stipulation <u>must be filed no later than noon</u> on Wednesday, June 5, 2024, so that the Court may have sufficient time to coordinate inmate movement in the jail(s). <u>If unforeseen circumstances delay the timely submission of the stipulation, the AUSA is instructed to email the courtroom deputy.</u> Minute order signed by Magistrate Judge Barbara A. McAuliffe on 5/22/2024. (Valdez, E) (Entered: 05/22/2024) |
| 06/05/2024 | <u>58</u> | STIPULATION and PROPOSED ORDER for Continue Status Conference by USA. (Clemente, Arelis) (Entered: 06/05/2024) |

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| 06/05/2024 | Case 1:23-cr-00219-PAD-EPG | STIPULATION and ORDER to Continue Status Conference as to Jia Bei Zhu (1), signed by Magistrate Judge Barbara A. McAuliffe on 6/5/2024. Status Conference is continued from 6/12/2024, to 7/10/2024 at 01:00 PM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe . Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv). (Lopez Amador, Corina) Modified on 6/6/2024 (Lopez Amador, Corina). (Entered: 06/05/2024) |
| 06/24/2024 | 60 | MINUTE ORDER (TEXT ONLY): This case is set for a status conference on July 10, 2024. At least <u>one week</u> before the hearing the parties shall file a <u>joint</u> status report informing the court of the status of the case, including whether any change of plea is anticipated, a proposed next date for a status conference or change of plea, and whether defendant agrees to exclude time to the next date. In the status report, each defendant's counsel shall state whether defendant is waiving personal appearance pursuant to Rule 43 and whether the waiver is for all appearances or for a single appearance. For waiver, a Rule 43 waiver motion must be submitted with the status report, and if approved by the Court, the defendant's counsel shall appear by video conferencing. If defendant does not waive appearance, counsel and defendant must appear in person for the hearing. Alternatively, the parties may stipulate to a continuance of the status conference, with an appropriate exclusion of time. The stipulation <u>must be filed no later than noon</u> on Wednesday, July 3, 2024, so that the Court may have sufficient time to coordinate inmate movement in the jail(s). <u>If unforeseen circumstances delay the timely submission of the stipulation, the AUSA is instructed to email the courtroom deputy.</u> Minute order signed by Magistrate Judge Barbara A. McAuliffe on 6/24/2024. (Valdez, E) (Entered: 06/24/2024) |
| 06/27/2024 | 61 | STIPULATION and PROPOSED ORDER for Continue Status Conference by USA. (Barton, Joseph) (Entered: 06/27/2024) |
| 06/27/2024 | 62 | STIPULATION and ORDER to Continue Status Conference as to Jia Bei Zhu (1) signed by Magistrate Judge Barbara A. McAuliffe on 6/27/2024. Upon the parties' stipulation and for good cause shown, the status conference scheduled for July 10, 2024, is continued until August 14, 2024, at 1:00 p.m., before the Honorable Barbara A. McAuliffe . The period through August 14, 2024, inclusive, is excluded pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv). (Valdez, E) (Entered: 06/27/2024) |
| 07/08/2024 | 63 | MOTION for BAIL REVIEW <i>Appeal of Detention Order</i> by Jia Bei Zhu. Motion Hearing set for 7/17/2024 at 08:30 AM in Courtroom 4 (DAD) before District Judge Dale A. Drozd. (Attachments: # <u>1</u> Exhibit Docket Sheet, # <u>2</u> Exhibit Indictment, # <u>3</u> Exhibit Passport, # <u>4</u> Exhibit Asylum document, # <u>5</u> Exhibit Name change documents, # <u>6</u> Exhibit Nevada card, # <u>7</u> Exhibit Transcript, # <u>8</u> Exhibit Declaration, # <u>9</u> Exhibit Transcript, # <u>10</u> Exhibit Lawsuit) (Capozzi, Anthony) (Entered: 07/08/2024) |
| 07/08/2024 | 64 | PROPOSED ORDER re List Defendant's true name by Jia Bei Zhu. (Capozzi, Anthony) (Entered: 07/08/2024) |
| 07/09/2024 | 65 | MINUTE ORDER (Text Only Entry) <u>63</u> MOTION for BAIL REVIEW Appeal of Detention Order as to Jia Bei Zhu set for 7/17/2024 at 08:30 AM in Courtroom 5 before the Honorable Dale A. Drozd signed by Chief District Judge Kimberly J. Mueller on 7/9/2024. USA opposition due on 7/15/2024 by 5:00 PM. Defense reply due by 7/16/2024 by 5:00 PM. (Yang, Pa Gnia) (Entered: 07/09/2024) |
| 07/09/2024 | 66 | ORDER on <u>64</u> Motion to List Defendant's True Name at Detention Facility, signed by District Judge Dale A. Drozd on 07/09/2024 as to Jia Bei Zhu. (Maldonado, C) (Entered: 07/09/2024) |
| 07/15/2024 | 67 | OPPOSITION by USA as to Jia Bei Zhu. (Barton, Joseph) (Entered: 07/15/2024) |

| | | |
|------------|------------------------------------|---|
| 07/15/2024 | <u>Case 16:23-CR-00191-DAD-FPG</u> | Document 80-1 Filed 12/05/24 Page 13 of 15 by USA to <u>Motion for Bail Review</u> , (Barton, Joseph) (Entered: 07/15/2024) |
| 07/16/2024 | <u>69</u> | REPLY/RESPONSE to Government opposition by Jia Bei Zhu. <i>Reply to Government's Opposition to Appeal</i> (Attachments: # <u>1</u> Exhibit Name change document, # <u>2</u> Exhibit Declaration) (Capozzi, Anthony) (Entered: 07/16/2024) |
| 07/17/2024 | <u>70</u> | MINUTES (Text Only) for proceedings held before District Judge Dale A. Drozd: MOTION FOR BAIL REVIEW APPEAL OF DETENTION ORDER HEARING as to Jia Bei Zhu (1) held on 7/17/2024. Government and Defense- Argued and Submitted. Denied Without Prejudice. Government Counsel: Joseph Barton present. Defense Counsel: Anthony Capozzi present. Custody Status: CUSTODY present. Pretrial Services Officer: Ryan Beckwith present. Court Reporter/CD Number: ECRO: Otilia Rosales. Certified Court Interpreter: Simon Wong, Language: Mandarin-Oath on File. (Lopez Amador, Corina) (Entered: 07/18/2024) |
| 07/24/2024 | <u>71</u> | CANCELLED TRANSCRIPT REQUEST for proceedings held on 7/17/2024 before Judge Hon. Dale A. Drozd. Court Reporter ECRO-Fresno. (Capozzi, Anthony) (Entered: 07/24/2024) |
| 07/30/2024 | <u>72</u> | MINUTE ORDER (TEXT ONLY): This case is set for a status conference on August 14, 2024. At least <u>one week</u> before the hearing the parties shall file a <u>joint</u> status report informing the court of the status of the case, including whether any change of plea is anticipated, a proposed next date for a status conference or change of plea, and whether defendant agrees to exclude time to the next date. In the status report, each defendant's counsel shall state whether defendant is waiving personal appearance pursuant to Rule 43 and whether the waiver is for all appearances or for a single appearance. For waiver, a Rule 43 waiver motion must be submitted with the status report, and if approved by the Court, the defendant's counsel shall appear by video conferencing. If defendant does not waive appearance, counsel and defendant must appear in person for the hearing. Alternatively, the parties may stipulate to a continuance of the status conference, with an appropriate exclusion of time. The stipulation <u>must be filed no later than noon</u> on Wednesday, August 7, 2024, so that the Court may have sufficient time to coordinate inmate movement in the jail(s). <u>If unforeseen circumstances delay the timely submission of the stipulation, the AUSA is instructed to email the courtroom deputy.</u> Minute order signed by Magistrate Judge Barbara A. McAuliffe on 7/30/2024. (Valdez, E) (Entered: 07/30/2024) |
| 07/31/2024 | <u>73</u> | STIPULATION and PROPOSED ORDER for Continue Status Conference by USA. (Barton, Joseph) (Entered: 07/31/2024) |
| 07/31/2024 | <u>74</u> | STIPULATION and ORDER to Continue Status Conference as to Jia Bei Zhu (1) signed by Magistrate Judge Barbara A. McAuliffe on 7/31/2024. Upon the parties' stipulation and for good cause shown, the status conference scheduled for August 14, 2024, is continued until September 11, 2024, at 1:00 p.m., before the Honorable Barbara A. McAuliffe. The period through September 11, 2024, inclusive, is excluded pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv). (Valdez, E) (Entered: 07/31/2024) |
| 08/09/2024 | <u>75</u> | TRANSCRIPT REQUEST for proceedings held on 7/17/2024 before Judge Hon. Erica P. Grosjean. Court Reporter ECRO-Fresno. (Capozzi, Anthony) (Entered: 08/09/2024) |
| 08/10/2024 | <u>76</u> | TRANSCRIPT of Proceedings as to Jia Bei Zhu held on 7/17/2024 . MOTION FOR BAIL REVIEW APPEAL OF DETENTION ORDER before District Judge Dale A. Drozd filed by ECRO, Phone number 559-499-5928 or 559-499-5290, E-mail Fresno_ECRO@caed.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of |

Intent to Request Redaction must be filed within 5 court days. Redaction Request due 9/3/2024. Redacted Transcript Deadline set for 9/12/2024. Release of Transcript Restriction set for 11/8/2024. (Lopez Amador, Corina) (Entered: 08/10/2024)

| | | |
|------------|----|--|
| 08/15/2024 | 77 | FIRST SUPERSEDING INDICTMENT as to Jia Bei Zhu (1) count(s) 1s, 2s-9s, 10s-11s, 12s, Zhaoyan Wang (2) count(s) 1s, 2s-9s, 10s-11s. (Attachments: # <u>1</u> True Bill) (Maldonado, C) (Entered: 08/15/2024) |
| 08/16/2024 | 79 | MINUTE ORDER (TEXT ONLY): Pursuant to the request of counsel the Court SETS an <u>Arraignment & Plea re First Superseding Indictment on 8/28/2024 at 2:00 PM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe</u> . Minute order signed by Magistrate Judge Barbara A. McAuliffe on 8/16/2024. (Valdez, E) (Entered: 08/16/2024) |
| 08/27/2024 | 80 | MINUTE ORDER (TEXT ONLY): As to Jia Bei Zhu (1), this case is set for a status conference on September 11, 2024. At least <u>one week</u> before the hearing the parties shall file a <u>joint</u> status report informing the court of the status of the case, including whether any change of plea is anticipated, a proposed next date for a status conference or change of plea, and whether defendant agrees to exclude time to the next date. <u>In the status report, each defendant's counsel shall state whether defendant is waiving personal appearance pursuant to Rule 43 and whether the waiver is for all appearances or for a single appearance. For waiver, a Rule 43 waiver motion must be submitted with the status report, and if approved by the Court, the defendant's counsel shall appear by video conferencing. If defendant does not waive appearance, counsel and defendant must appear in person for the hearing.</u> Alternatively, the parties may stipulate to a continuance of the status conference, with an appropriate exclusion of time. The stipulation <u>must be filed no later than noon</u> on Wednesday, September 4, 2024, so that the Court may have sufficient time to coordinate inmate movement in the jail(s). <u>If unforeseen circumstances delay the timely submission of the stipulation, the AUSA is instructed to email the courtroom deputy.</u> Minute order signed by Magistrate Judge Barbara A. McAuliffe on 8/27/2024. (Valdez, E) (Entered: 08/27/2024) |
| 08/28/2024 | 81 | MINUTES (Text Only) for proceedings held before Magistrate Judge Barbara A. McAuliffe: ARRAIGNMENT & PLEA re First Superseding Indictment as to Jia Bei Zhu (1) Count 1s,2s-9s,10s-11s,12s held on 8/28/2024. Defendant advised of charges, rights and maximum penalties. Defendant received the First Superseding Indictment; waived reading, and advisement of rights - NOT GUILTY PLEA & DENIALS ENTERED. Discovery requested & by statutory time; reciprocal - SO ORDERED. The court instructed government counsel under Rule 5(f) to comply with its disclosure obligations under <i>Brady v. Maryland</i> . Parties requested the status conference be continued. Parties waived excludable time - So Ordered, 18 USC 3161. <u>Status Conference set for 10/23/2024 at 01:00 PM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe.</u> The <u>Status Conference set for 9/11/2024 at 01:00 PM in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe was vacated.</u> Excludable started as to Jia Bei Zhu: XT Start: 8/28/2024 Stop: 10/23/2024. Time is to be excluded under the Speedy Trial Act in that good cause exists and that the ends of justice outweigh the interest of the public and the defendant in a speedy trial. For the reasons set forth on the record, the continuance requested is granted for good cause and the Court finds the ends of justice outweigh the interest of the public and the defendant in a speedy trial. Government Counsel: Joseph Barton - present. Defense Counsel: Anthony Capozzi - present. Custody Status: in Custody (FCJ) - present. Court Reporter/CD Number: ECRO - Otilia Rosales. Certified Court Interpreter: Simon Wong, Language: MANDARIN - Oath on File. (Valdez, E) Modified on 8/29/2024 (Valdez, E). (Entered: 08/28/2024) |
| 08/28/2024 | 82 | MINUTE ORDER (TEXT ONLY): According to the Federal Rules of Criminal Procedure Rule 5(f), the government is ordered to comply with its discovery obligations as required |

| | | |
|------------|----|---|
| | | by federal law, including those duties imposed by Brady v. Maryland, 373 U.S. 83 (1963), and all applicable decisions interpreting <u>Brady</u> . This order does not relieve any party of any other discovery obligation. The consequences for violating this order or the government's obligations under <u>Brady</u> may include sanctions, referral to a disciplinary authority, adverse jury instruction, exclusion of evidence, and dismissal of charges, among other consequences. Minute order signed by Magistrate Judge Barbara A. McAuliffe on 8/28/2024. (Valdez, E) (Entered: 08/28/2024) |
| 10/08/2024 | 83 | MINUTE ORDER (TEXT ONLY): As to Jia Bei Zhu (1), this case is set for a status conference on October 23, 2024. At least <u>one week</u> before the hearing the parties shall file a <u>joint</u> status report informing the court of the status of the case, including whether any change of plea is anticipated, a proposed next date for a status conference or change of plea, and whether defendant agrees to exclude time to the next date. In the status report, each defendant's counsel shall state whether defendant is waiving personal appearance pursuant to Rule 43 and whether the waiver is for all appearances or for a single appearance. For waiver, a Rule 43 waiver motion must be submitted with the status report, and if approved by the Court, the defendant's counsel shall appear by video conferencing. If defendant does not waive appearance, counsel and defendant must appear in person for the hearing. Alternatively, the parties may stipulate to a continuance of the status conference, with an appropriate exclusion of time. The stipulation <u>must be filed no later than noon</u> on Wednesday, October 16, 2024, so that the Court may have sufficient time to coordinate inmate movement in the jail(s). <u>If unforeseen circumstances delay the timely submission of the stipulation, the AUSA is instructed to email the courtroom deputy.</u> Minute order signed by Magistrate Judge Barbara A. McAuliffe on 10/8/2024. (Valdez, E) (Entered: 10/08/2024) |
| 10/16/2024 | 84 | STIPULATION and PROPOSED ORDER for Continue Status Conference by USA. (Barton, Joseph) (Entered: 10/16/2024) |
| 10/16/2024 | 85 | STATUS REPORT by USA as to Zhaoyan Wang. (Barton, Joseph) (Entered: 10/16/2024) |
| 10/16/2024 | 86 | STIPULATION and ORDER to Continue Status Conference as to Jia Bei Zhu (1) signed by Magistrate Judge Barbara A. McAuliffe on 10/16/2024. Upon the stipulation filed by the government and the defendant, Jia Bei Zhu aka Jesse Zhu, Qiang He, and David He, and for good cause shown, the status conference scheduled for October 23, 2024, is continued until December 11, 2024, at 1:00 p.m., before the Honorable Barbara A. McAuliffe. The period through December 11, 2024, inclusive, is excluded pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv). (Valdez, E) (Entered: 10/16/2024) |

EXHIBIT

B

1 PHILLIP A. TALBERT
2 United States Attorney
3 JOSEPH D. BARTON
4 ARELIS M. CLEMENTE
5 Assistant United States Attorneys
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000
Facsimile: (559) 497-4099

FILED
Nov 16, 2023
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

6 Attorneys for Plaintiff
United States of America
7

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

CASE NO. 1:23-cr-00219-ADA-BAM

11 Plaintiff,

21 U.S.C. §§ 331(a) and 333(a)(2) – Distribution of
Adulterated and Misbranded Medical Devices (two
counts); 18 U.S.C. § 1001(a)(2) – False Statements
(one count)

12 v.

13 JIA BEI ZHU,
14 aka Jesse Zhu, Qiang He, and David He,

15 Defendant.

16
17 INDICTMENT

18 COUNTS ONE THROUGH TWO: [21 U.S.C. §§ 331(a), 333(a)(2) – Distribution of Adulterated and
19 Misbranded Medical Devices]

20 The Grand Jury charges:

21 JIA BEI ZHU,

22 aka Jesse Zhu, Qiang He, and David He,

23 defendant herein, as follows:

24 ///

25 ///

26 ///

27

I. INTRODUCTION

1. At all relevant times, defendant ZHU resided in Fresno County, State and Eastern District of California.

2. At all relevant times, defendant ZHU operated and managed Universal Meditech Incorporated (“UMI”) and Prestige Biotech Incorporated (“PBI”), which had their principal places of business in Fresno County, State and Eastern District of California. UMI and PBI were subject to regulation by the Food and Drug Administration (“FDA”) because the companies distributed medical devices, including in vitro diagnostic device (“IVD”) test kits, in the United States.

3. At various times, defendant ZHU used the aliases Jesse Zhu, Qiang He, and David He to conceal his identity from federal, state, and local government officials, among others.

4. COMPANY ONE was a medical laboratory located in Louisiana.

5. COMPANY TWO was a medical device distributor located in Texas.

II. BACKGROUND ON THE FDA, MEDICAL DEVICES, AND IVD TEST KITS

6. The FDA is the federal agency responsible for protecting the health and safety of the American public by enforcing the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.* (“FDCA”). The FDA’s responsibilities include regulating the distribution of medical devices in interstate commerce to ensure that the devices are safe and effective for human use.

7. IVD test kits are medical devices under the FDCA because they are intended for use in the diagnosis of diseases or conditions in humans. IVD test kits are meant to collect, prepare, and examine specimens taken from the human body.

8. Medical devices are classified into one of three categories: Class I, II, or III. Class III medical devices are the most highly regulated devices.

9. Generally speaking, for Class III medical devices, anyone who proposes to introduce, or deliver for introduction, such devices into interstate commerce for distribution is required to obtain pre-market approval, pre-market clearance, emergency use authorization, or other applicable exemption for the devices from the FDA.

10. At all relevant times, COVID-19 IVD test kits were Class III medical devices. Therefore, obtaining pre-market approval, pre-market clearance, emergency use authorization, or other applicable

1 exemption from the FDA was required before anyone could distribute such test kits in the United States.

2 11. At all relevant times, any COVID-19 IVD test kits distributed in the United States
3 without obtaining pre-market approval, pre-market clearance, emergency use authorization, or other
4 applicable exemption from the FDA constituted adulterated and misbranded medical devices under
5 the FDCA.

6 **III. DISTRIBUTION OF ADULTERATED AND MISBRANDED MEDICAL DEVICES**

7 12. Beginning no later than in or around January 2020, and continuing through until at least
8 in or around March 2023, defendant ZHU caused UMI and PBI to enter into contracts with COMPANY
9 ONE, COMPANY TWO, and other companies located throughout the United States pursuant to which
10 UMI and PBI sold at least hundreds of thousands of COVID-19 IVD test kits to the companies. In
11 exchange, the companies paid UMI and PBI millions of dollars.

12 13. For example, in or around December 2020, UMI entered into a contract with COMPANY
13 ONE to sell to COMPANY ONE, and in fact sold to COMPANY ONE, approximately 50,000 COVID-
14 19 IVD test kits for approximately \$200,000.

15 14. As another example, in or around January 2022, UMI entered into a contract with
16 COMPANY TWO to sell to COMPANY TWO, and in fact sold to COMPANY TWO, approximately
17 10,000 COVID-19 IVD test kits for approximately \$36,000.

18 15. At all relevant times, neither UMI nor PBI obtained pre-market approval, pre-market
19 clearance, emergency use authorization, or other applicable exemption from the FDA as was required to
20 distribute COVID-19 IVD test kits in the United States. And, at all relevant times, defendant ZHU knew
21 that UMI and PBI had not met these requirements.

22 16. Accordingly, on or about the dates set forth below, in Fresno County, State and Eastern
23 District of California, and elsewhere, defendant ZHU, with the intent to defraud and mislead, introduced
24 and delivered for introduction into interstate commerce, and caused to be introduced and delivered for
25 introduction into interstate commerce, COVID-19 IVD test kits that were adulterated and misbranded
26 medical devices under the FDCA. This included, but is not limited to, the following transactions:

27 ///

28 ///

| Count | Date | Shipped From | Shipped To | Medical Devices |
|-------|----------|------------------------------------|--------------------------|---|
| One | 12/28/20 | UMI facility in Fresno, California | COMPANY ONE in Louisiana | Approximately 50,000 COVID-19 test kits with Invoice No. - 1502 for \$200,000 |
| Two | 1/24/22 | UMI facility in Fresno, California | COMPANY TWO in Texas | Approximately 10,000 COVID-19 test kits with Lot No. UL-AG-2112-02-Q for \$36,000 |

All in violation of Title 21, United States Code, Sections 331(a) and 333(a)(2).

COUNT THREE: [18 U.S.C. § 1001(a)(2) – False Statements]

The Grand Jury further charges:

JIA BEI ZHU,

aka Jesse Zhu, Qiang He, and David He,

defendant herein, as follows:

17. The allegations made in paragraphs 1 through 16 are incorporated by reference as though fully set forth herein.

18. Between on or about May 2, 2023 and May 3, 2023, in Fresno County, State and Eastern District of California, defendant ZHU did willfully and knowingly make materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the government of the United States, to wit: defendant ZHU made materially false, fictitious, and fraudulent statements and representations to FDA officials who were investigating UMI and PBI, including that:

- a. He was not defendant ZHU or Jesse Zhu, and that he was instead Qiang He aka David He;
- b. He was hired by UMI as a COVID-19 consultant in 2021;
- c. He was hired by PBI, just a couple of weeks prior to speaking with the FDA officials,

///

///

1 to coordinate the company's interactions with government agencies;

2 d. He did not know the manufacturing and distribution histories for UMI or PBI; and

3 e. He did not have access to UMI or PBI's distribution records, financial records, or

4 ownership records.

5 All in violation of Title 18, United States Code, Section 1001(a)(2).

7 A TRUE BILL.

8 */s/ Signature on file w/AUSA*

9 FOREPERSON

10 PHILLIP A. TALBERT

11 United States Attorney

12 KIRK E. SHERIFF

13 KIRK E. SHERIFF

14 Assistant United States Attorney

15 Chief, Fresno Office

No. 1:23-cr-00219-ADA-BAM

FILED

Nov 16, 2023

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

Eastern District of California

Criminal Division

THE UNITED STATES OF AMERICA

vs.

Jia Bei Zhu
aka Jesse Zhu, Qiang He, David He

INDICTMENT

VIOLATION(S): 21 U.S.C. §§ 331(a) and 333(a)(2) – Distribution of Adulterated and Misbranded Medical Devices (two counts); 18 U.S.C. § 1001(a)(2) – False Statements (one count)

A true bill,

/s/

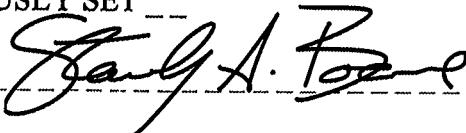
Foreman.

Filed in open court this _____ day

of _____, A.D. 20____

Clerk.

Bail, \$ ___ AS PREVIOUSLY SET ___



DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION -- IN U.S. DISTRICT COURT

BY COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING: Case No.

OFFENSE CHARGED
SEE INDICTMENT

Petty
 Minor
 Misdemeanor
 Felony

Place of offense
Fresno County

U.S.C. Citation
See Indictment

Name of District Court, and/or Judge/Magistrate Judge Location (City)
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEFENDANT -- U.S. vs.
JIA BEI ZHU aka Jesse Zhu, Qiang He, David He

Address

Birth Date

Male

Alien

Female

(if applicable)

(Optional unless a juvenile)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

FDA- SA Maridehl Mather

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per FRCrP 20 21 40. Show District

this is a reprocution of charges previously dismissed which were dismissed on motion of:
 U.S. Att'y Defense

this prosecution relates to a pending case involving this same defendant

prior proceedings or appearance(s) before U.S. Magistrate Judge regarding this defendant were recorded under

SHOW
DOCKET NO.

MAGISTRATE
JUDGE CASE NO.
1:23-mj-00123-SKO

DEFENDANT

IS NOT IN CUSTODY

1) Has not been arrested, pending outcome of this proceeding
If not detained, give date any prior summons was served on above charges

2) Is a Fugitive

3) Is on Bail or Release from (show District)

IS IN CUSTODY

4) On this charge
5) On another conviction
6) Awaiting trial on other charges } Fed'l State
If answer to (6) is "Yes," show name of institution

Has detainer been filed? Yes No If "Yes," give date filed

Mo. Day Year

DATE OF ARREST 10/19/2023

Or . . . if Arresting Agency & Warrant were not Federal

Mo. Day Year

DATE TRANSFERRED
TO U.S. CUSTODY

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

ADD FORFEITURE UNIT (Check if Forfeiture Allegation)

Preliminary Hearing set for 11-16-2023

United States v. Jia Bei Zhu
Penalties for Indictment

COUNTS ONE THROUGH TWO:

VIOLATION: 21 U.S.C. §§ 331(a), 333(a)(2) – Adulterated and misbranded devices

PENALTIES: Up to three years imprisonment
\$250,000 fine
One year of supervised release
\$100 special assessment

COUNT THREE:

VIOLATION: 18 U.S.C. § 1001(a)(2) – False statements

PENALTIES: Up to five years imprisonment
\$250,000 fine
Three years of supervised release
\$100 special assessment

EXHIBIT

C



EXHIBIT

D



DEMIDCHIK LAW FIRM, PC
923 E Valley Blvd Suite 268
San Gabriel, CA 91776
T: 626-317-0033
F: 212-810-7257
W: demidchiklawfirm.com
E: contact@demidchiklawfirm.com

VIA USPS Priority Mail
USCIS
California Service Center
P.O. Box 10881
Laguna Niguel, CA 92607-0881

February 16, 2021

FEB 19 2021

COPY

RE: Asylum Application (Form I-589)
Applicant: HE, Qiang (D.O.B. 06/18/1964)

Dear Sir or Madam:

This matter is being filed pursuant to Section 208 of the Immigration and Nationality Act. To support the applicant's asylum application based upon the fear of persecution if he returns to China, we are enclosing the following documents (in duplicates):

1. Form G-28,
2. Form I-589, Application for Asylum and for Withholding of Removal with One (1) Passport-type Photo,
3. Applicant's Personal Statement, and
4. Copy of Applicant's Passport,

We greatly appreciate your assistance to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Garth Sullivan, Esq." Below the signature, the name "D. Garth Sullivan, Esq." is typed in a smaller, clean font.

DGS/lz
Enclosure

Los Angeles, CA Office: 923 E Valley Blvd, Suite 268, San Gabriel, CA 91776

Flushing, NY Office: 136-18 39th Ave., 8th Floor, Flushing, NY 11354

Orlando, FL Office: 5323 Millenia Lakes Blvd. Suite 300, Orlando, FL 32839

San Jose, CA Office: 5201 Great America Parkway, Suite 3208, Santa Clara, CA 95054

Chicago, IL Office: 150 S Wacker Drive, Suite 2436, Chicago, IL 60606

EXHIBIT

E

NC-130

| | | |
|---|--|------------------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY | | STATE BAR NUMBER: 201577 |
| NAME <i>Roger Leibl</i> | | |
| FIRM NAME <i>Demicheli Law Firm</i> | | |
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| CITY <i>San Gabriel</i> | | STATE: CA ZIP CODE: <i>91776</i> |
| TELEPHONE NO. <i>626 317 0035</i> | | FAX NO. <i>218 07257</i> |
| E-MAIL ADDRESS <i>roger@demicheli.com</i> | | |
| ATTORNEY FOR (name) <i>Qiang He</i> | | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES | | |
| STREET ADDRESS <i>111 N HILL ST</i> | | |
| MAILING ADDRESS <i>111 N HILL ST</i> | | |
| CITY AND ZIP CODE <i>LOS ANGELS, CA 90012</i> | | |
| BRANCH NAME <i>STANLEY MOSK</i> | | |
| PETITION OF (name of each petitioner): QIANG HE | | |
| FOR CHANGE OF NAME | | |
| DECREE CHANGING NAME | | CASE NUMBER: 218TCP01218 |

FILED
Superior Court of California
County of Los Angeles

AUG 03 2021

Sherri R. Carter, Executive Officer/Clerk
By *[Signature]* Deputy
[Signature] *[Signature]*

Electronically Received 04/20/2021 03:31 PM

1. The petition was duly considered:

- at the hearing on (date): *in Courtroom.* of the above-entitled court.
- without hearing.

THE COURT FINDS

- All notices required by law have been given.
- Each person whose name is to be changed identified in item 3 below is not is required to register as a sex offender under section 290 of the Penal Code. This determination was made (check one): by using SLETS/CJIS based on information provided to the clerk of the court by a local law enforcement agency
- No objections to the proposed change of name were made.
- Objections to the proposed change of name were made by (name):
- It appears to the satisfaction of the court that all the allegations in the petition are true and sufficient and that the petition should be granted.
- Other findings (if any):

THE COURT ORDERS

- The name of *QIANG HE* Present name New name
 a. *DAVID HE*
 b.
 c.
 d.
 e.
 is changed to

Additional name changes are listed on Attachment 3.

Date: *AUG 03 2021*

Michelle W. Conrad
JUDGE OF THE SUPERIOR COURT
MICHELLE WILLIAMS COURT
Page 1 of 1

I certify that this is a true and correct copy of the
original on file in this office consisting of 1 pages



SHERRI R. CARTER, Executive Officer / Clerk of the
Superior Court of California, County of Los Angeles

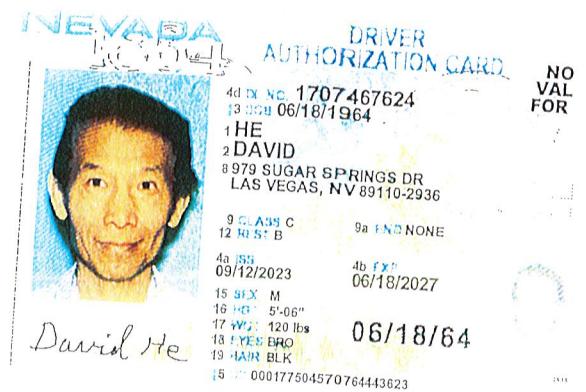
Date: SEP 08 2021 By P. Muro, Deputy

P. Muro

SEP 08 2021

EXHIBIT

F



EXHIBIT

G

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. 23 CR 00219 ADA BAM

Plaintiff,

v.

JIA BEI ZHU, AKA DAVID HE,

DETENTION ORDER

Defendant.

A. Order For Detention

After conducting a detention hearing pursuant to 18 U.S.C. § 3142(f) of the Bail Reform Act, the Court orders the above-named defendant detained pursuant to 18 U.S.C. § 3142(e) and (i).

B. Statement Of Reasons For The Detention

The Court orders the defendant's detention because it finds:

By a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and by preponderance of the evidence that the defendant will obstruct justice. 18 U.S.C. §§ 3142(f)(2)(A) and (B).

By clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person and the community.

C. Findings of Fact

The Court's findings are based on the evidence which was presented in Court and that which was contained in the Pretrial Services Report, and includes the following:

(1) Nature and Circumstances of the offense charged:

- (a) The crime, Distribution of Adulterated and Misbranded Medical Devices and False Statements, is a serious crime and carries a maximum penalty of 3 and years, respectively
- (b) The offense is a crime of violence.
- (c) The offense involves a narcotic drug.
- (d) The offense involves a large amount of controlled substances.

(2) The weight of the evidence against the defendant is high.

(3) The history and characteristics of the defendant including:

- (a) General Factors:
 - The defendant appears to have a mental condition which may affect whether the defendant will appear.
 - The defendant has no known family ties in the area.
 - The defendant has no known steady employment.
 - The defendant has no known substantial financial resources.
 - The defendant is not a long time resident of the community.
 - The defendant does not have any known significant community ties.
 - Past conduct of the defendant : defendant has strong overseas ties to China and Canada
 - The defendant has a history relating to drug abuse.
 - The defendant has a history relating to alcohol abuse.
 - The defendant has a significant prior criminal record.
 - The defendant has a prior record of failure to appear at court proceedings.
 - The defendant has a history of violating probation and/or parole.

(b) Whether the defendant was on probation, parole, or release by a court;

At the time of the current arrest, the defendant was on:

Probation

Parole

Release pending trial, sentence, appeal or completion of sentence.

(c) Other Factors:

The defendant is an illegal alien and is subject to deportation.

The defendant is subject to deportation if convicted.

Other:

(4) The nature and seriousness of the danger posed by the defendant's release are as follows:

(5) Rebuttable Presumptions

In determining that the defendant should be detained, the court also relied on the following rebuttable presumption(s) contained in 18 U.S.C. § 3142(e), which the court finds the defendant has not rebutted:

a. The crime charged is one described in § 3142(f)(1).

(A) a crime of violence; or

(B) an offense for which the maximum penalty is life imprisonment or death; or

(C) a controlled substance violation that has a maximum penalty of ten years or more; or

(D) A felony after the defendant had been convicted of two or more prior offenses described in (A) through (C) above, and the defendant has a prior conviction of one of the crimes mentioned in (A) through (C) above which is less than five years old and which was committed while the defendant was on pretrial release

b. There is probable cause to believe that defendant committed an offense for which a maximum term of imprisonment of ten years or more is prescribed

in the Controlled Substances Act, 21 U.S.C. §§ 801, et seq.,

the Controlled Substances Import and Export Act, 21 U.S.C. §§ 951, et seq.,

the Maritime Drug Law Enforcement Act, 46 U.S.C. App. §§ 1901, et seq., or

an offense under 18 U.S.C. §§ 924(c), 956(a), or 2332b.

an offense involving a minor under 18 U.S.C. §§ 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425.

D. Additional Directives

Pursuant to 18 U.S.C. § 3142(i)(2)-(4), the Court directs that:

The defendant be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

The defendant be afforded reasonable opportunity for private consultation with counsel; and

That, on order of a court of the United States, or on request of an attorney for the Government, the person in charge of the corrections facility in which the defendant is confined deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

IT IS SO ORDERED.

Dated: November 22, 2023



UNITED STATES MAGISTRATE JUDGE

EXHIBIT

H

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE STANLEY A. BOONE
UNITED STATES MAGISTRATE JUDGE

12 APPEARANCES:

13 For the Plaintiff: JOSEPH BARTON, ESQ.
14 United States Attorney's Office
2500 Tulare Street
15 Suite 4401
Fresno, California 93721
(559) 497-4000

17 For the Defendant: ANTHONY P. CAPOZZI, ESQ.
18 Law Offices of Anthony P.
Capozzi
19 1233 West Shaw Avenue
Suite 102
Fresno, California 93711
20 (559) 221-0200

For Pretrial Services: BRIAN J. BEDROSIAN
21 Robert E. Coyle Federal
Courthouse
22 2500 Tulare Street
Suite 3601
23 Fresno, California 93721

25 | Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

ii

1 Court Recorder: Corina Lopez Amador
2 United States District Court
3 Eastern District of California
4 2500 Tulare Street
5 Fresno, California 93721

6 Transcriber: Crystal Thomas
7 Echo Reporting, Inc.
8 9711 Cactus Street
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1 FRESNO, CALIFORNIA WEDNESDAY, NOVEMBER 22, 2023 11:00 A.M.

2 --oo-

3 THE CLERK: All rise. Court is now in session
4 before the Honorable Stanley A. Boone.

5 THE COURT: Good morning. Please be seated.

6 All right. Let's go to Number 2 on the calendar,
7 United States Attorney versus Jia Bei Zhu, a/k/a David He.

8 Appearances, please.

9 MR. CAPOZZI: Good morning, your Honor. Tony
10 Capozzi appearing with the Defendant, who is present in
11 court, being assisted by a Spanish interpreter.

12 THE COURT: Good morning, Mr. Capozzi. That's just
13 that mic. Thank you.

14 MR. BARTON: Good morning, your Honor. Joe Barton
15 for the Government.

16 THE COURT: Good morning.

17 All right. So this matter is on for a detention
18 hearing. I received information, Mr. Capozzi, that you were
19 going to submit?

20 MR. CAPOZZI: Yes, your Honor.

21 THE COURT: Okay. All right.

22 Mr. Barton, anything further for the record?

23 MR. BARTON: Yes, your Honor. The Government
24 will -- I understand that the Defendant is submitting --

25 THE COURT: Okay.

1 MR. BARTON: -- and the Government would also, in
2 this case, given that it is the Government's burden --

3 THE COURT: Yes, please.

4 MR. BARTON: -- would quickly add a couple things
5 into evidence for it (sic).

6 So, formally, the Government is moving for
7 detention on the basis of a flight risk, and also a serious
8 risk of obstructing justice under 3142(f) (2) (A) and (B).

9 First, the Defendant -- who the Government alleges is Mr. Jia
10 Bei Zhu -- the Government border-crossing records show that
11 he has crossed the U.S. border over 40 times. He most
12 recently did so in 2015. The Government obtained his
13 fingerprints from a visa application that was submitted to
14 the Government. The application was denied, but that is how
15 the Government got his fingerprints.

16 THE COURT: What was the name on the visa
17 application?

18 MR. BARTON: Jia Bei Zhu.

19 THE COURT: Jia Bei Zhu, not David He?

20 MR. BARTON: Not David He.

21 THE COURT: Okay.

22 MR. BARTON: And then from -- 2015 was the last
23 record, border-crossing record, the Government has of Mr.
24 Zhu, on a flight from Canada into Los Angeles, and then David
25 He, or David He, applies for an immigration benefit in 2021,

1 also provides fingerprints and other biometrics. Those
2 biometrics and fingerprints are a direct match to the
3 fingerprints that were provided for Jia Bei Zhu back in 2015.

4 Then, in -- that's one piece of evidence of how the
5 Government believes that Mr. Zhu is David He, or vice versa.
6 The other evidence is the driver's license that was found
7 during the search warrant at the Reedley lab. There was a
8 Canadian driver's license in the name of Jia Bei Zhu, with a
9 photograph on it dated 2014. The Government found that
10 photograph and compared it to Mr. Jia Bei Zhu or Mr. He, who
11 was arrested. They believe it's the same person. That
12 photograph of the driver's license is set forth in the
13 complaint.

14 Also, the Government talked to several employees
15 who had worked at the Reedley lab and previously at the
16 company's Fresno facility, showed them photographs of Mr. He
17 or Jia Bei Zhu, and they confirmed they knew him at Jia Bei
18 Zhu or Jesse (phonetic) Zhu, and not David He. So those
19 buckets of evidence are the basis of the Government's
20 allegation that Mr. He is, in fact, Mr. Jia Bei Zhu.

21 In addition, the Government believes the Defendant
22 poses an extreme flight risk, and particularly, about six
23 days after the Government executed the federal search warrant
24 at the Reedley lab, flight records obtained by Homeland
25 Security show that Mr. Zhu's son -- he has a newborn son. He

1 did not disclose that to Pretrial Services, but the
2 Government believes he has a newborn son who was born earlier
3 this year, and the mother is listed as a Ms. Wang.

4 On the son's passport application, Mr. He's name is
5 listed, so he goes on the application as being the son's
6 father, saying he is Mr. He -- or Mr. He -- and Ms. Wang --
7 it says they live at the same address in Las Vegas. It's the
8 Sugar Springs address, which will be relevant here in a
9 minute.

10 But, more importantly, flight records show that,
11 six days after the search warrant, the mom, the son, and the
12 mom's mother, so the son's grandmother, took one-way flights
13 to China, with no return dates. The Government believes
14 they're fleeing, and they're trying to get out of the
15 country. They have -- based on the last check by the
16 Government, they have not returned and have no plans to
17 return to this country.

18 The Government is not sure that he is married to
19 the son's mother, but he does have a relationship with her.
20 It seems they share an address. They are also listed as the
21 principals on a company called David Destiny Discovery, which
22 the address for that company is a residence in Vegas. It's
23 the same residence that's listed on the child -- the newborn
24 child's passport application that Ms. Wang and Mr. He share.
25 The Government believes that that business, to the extent

1 that it is an actual business, is operated out of that
2 residence by them.

3 And then, more importantly, from there, David
4 Destiny Discovery, based on bank records obtained by the
5 Government -- the Government has shown that, just in the
6 month of September of 2023 alone, there has been over
7 \$250,000 transferred to David Destiny Discovery. Those
8 checks are being deposited by Mr. He into bank accounts that
9 he's on.

10 THE COURT: When you say, "Mr. He," are you giving
11 me the name that's being used?

12 MR. BARTON: Yes.

13 THE COURT: Okay.

14 MR. BARTON: Yes, I am, your Honor.

15 THE COURT: All right. Thank you.

16 MR. BARTON: We believe it's the same person, but
17 that's the name that's being used.

18 THE COURT: Got it.

19 MR. BARTON: In the Government's view, it appears
20 that Mr. Jia Bei Zhu is trying to fully assume the identity
21 of Mr. He at this time in all aspects of his dealings.

22 Further investigation by the Government found that
23 the properties -- this company, David Destiny Discovery, is
24 currently the owner on a house in Clovis valued at
25 approximately \$500,000, a house in Las Vegas valued at

1 approximately \$800,000, two condos in Las Vegas that together
2 are worth approximately \$800,000. Again, David Destiny --
3 Mr. He and Wang, the mother of Mr. Wang's (sic) newborn
4 child, are both listed as principals or managing members of
5 this David Destiny Discovery, so the Government believes they
6 control these properties and assets.

7 More importantly, the house in Clovis is currently
8 being rented. Rent checks, the Government obtained all the
9 way through August of this year, are being deposited by Mr.
10 He. He's cashing the checks, meaning whoever is renting the
11 property is paying Mr. He the rent, and he's doing it -- he's
12 depositing those checks. The Government believes this shows
13 that he has control over these assets, even though they're in
14 the name of David Destiny Discovery. It appears that Mr. He
15 and, likely, Ms. Wang have control over these properties that
16 together are worth over a million dollars.

17 The Government notes that in the Defendant's
18 Pretrial Services report, he only disclosed having 10 to
19 \$20,000 in assets. The Government believes that's not true.
20 The Government would say this is the second lie. The first
21 lie is that he has not had -- that he has not had contact
22 with his children since 2016. That's not true. He has a
23 newborn child who was just issued a birth certificate and
24 U.S. passport and flew to China, a passport application that
25 he signed and submitted.

1 THE COURT: Was the passport application a United
2 States or a Chinese?

3 MR. BARTON: United States passport application for
4 the child, your Honor.

5 THE COURT: And did it say what the nationality was
6 of the father?

7 MR. BARTON: China.

8 THE COURT: Okay. And let me ask you, in the 2015
9 entry into -- from Canada, does the United States have
10 documentation as to his Chinese passport?

11 MR. BARTON: Yes, it does, your Honor.

12 THE COURT: And, again, it's in the name -- not
13 David He?

14 MR. BARTON: The 2015 is Jia Bei Zhu, correct.

15 THE COURT: Jia Bei Zhu. And a Chinese passport?

16 MR. BARTON: Correct.

17 THE COURT: Okay.

18 MR. BARTON: Thank you, your Honor. And then,
19 finally, I think the -- one second, your Honor, checking my
20 notes. And thank you.

21 For those reasons, your Honor, the Government would
22 submit -- or, finally, the Government would also note -- I
23 believe the Government stated this before -- that during the
24 various inspections that happened at the Reedley lab, Mr. He,
25 a/k/a Jia Bei Zhu, was on bodycam speaking English fluently

1 with federal agents, state and local officials, talking about
2 FDA rules and regulations and showing a mastery of the
3 English language.

4 The Government believes that any allegation that he
5 does not speak English or understand the language is not true
6 at this point, and the Government has at least two accounts
7 from former employees that worked at the Reedley lab, and the
8 company's Fresno facility before that, saying that when Mr.
9 Zhu, a/k/a Mr. He, is pressed, and under investigation or
10 suspicion, he will feign not speaking English in order to try
11 to avoid consequences.

12 With that, the Government would submit on its
13 argument for detention, unless the Court has any questions.

14 THE COURT: No. You've answered my questions.
15 Thank you, Mr. Barton.

16 Mr. Capozzi.

17 MR. CAPOZZI: I would like that discovery, because
18 I do not have that.

19 THE COURT: Okay.

20 MR. CAPOZZI: And Defendant has told me about the
21 Canadian citizenship and the passport, and there is --

22 THE COURT: Well, I don't know if he's a Canadian
23 citizen. Is he a Canadian citizen?

24 MR. CAPOZZI: I believe he is. If he's got a
25 Canadian passport, he is.

1 THE COURT: No, we were talking about a Chinese
2 passport.

3 MR. BARTON: I believe he has -- the Government
4 will say he has -- he at one point had lawful status in
5 Canada. We're trying to figure -- confirm exactly --

6 THE COURT: Lawful status.

7 MR. CAPOZZI: Yes.

8 THE COURT: So I don't know if he has a passport.

9 MR. CAPOZZI: And --

10 THE COURT: I was talking about a Chinese passport.

11 MR. CAPOZZI: Yes. Okay. I don't think he came
12 across the border illegally. I think he had a work permit,
13 but I may be wrong.

14 THE COURT: I don't think that's what the
15 Government is arguing.

16 MR. CAPOZZI: Okay.

17 THE COURT: It's just that, when he crossed the
18 border, he had a Chinese passport, and it was in this name,
19 not David He.

20 MR. CAPOZZI: That's true. Well, he would not deny
21 that. He did change his name to David He subsequent to all
22 of this. To say that he speaks English fluently is not true.
23 He does speak English. Trust me, I've met with him a number
24 of hours, and I need to have the interpreter to deal with it.

25 THE COURT: I understand that, and I don't take

1 anything that -- the fact that a Defendant is using an
2 interpreter in their language doesn't suggest to me one thing
3 or the other.

4 MR. CAPOZZI: Yeah.

5 THE COURT: I think the Government's point on that
6 is that, when it's convenient, he will then say, "I don't
7 speak English." I don't see the --

8 MR. CAPOZZI: He speaks English. There's no
9 question about that.

10 THE COURT: Yes. Right now, obviously, somebody is
11 more comfortable in their native language to understand
12 proceedings.

13 MR. CAPOZZI: True.

14 THE COURT: I don't use that against anybody in a
15 court proceeding.

16 MR. CAPOZZI: The issue with him is not that he
17 doesn't understand English, it's communicating back in the
18 English language as to what he understood is very difficult.
19 But he needs an interpreter. There's no question about it.

20 We submitted -- I would ask for this new discovery.
21 I'd like to have all that as soon as possible.

22 THE COURT: Right. I did order discovery a couple
23 of days ago, with regard to the initial discovery, as well as
24 reciprocal discovery. So, to the extent that he validly
25 changed his name, which I'm not sure how he would do that in

1 the United States, having the status that he has, but that's
2 something that you can provide in reciprocal discovery if
3 that's of concern to you for a defense.

4 All right. Matter submitted?

5 MR. BARTON: Yes, your Honor.

6 MR. CAPOZZI: Yes, based on a report that he's a
7 flight risk. So we don't deny that.

8 THE COURT: All right. Well, the Government --

9 MR. CAPOZZI: We're looking at putting up
10 additional collateral.

11 THE COURT: The Government is also asking for
12 obstruction under (f) (2) (B), right?

13 MR. BARTON: Correct, your Honor.

14 MR. CAPOZZI: Okay. What -- all right. Tell me
15 what (f) (2) (D) (sic) is. I have no idea.

16 THE COURT: B. B as in boy. It's the obstruction
17 of justice, but there's other components, such as
18 intimidating a witness. He's not articulating that. He's
19 just -- he's articulating the obstruction of justice point,
20 and I think the argument -- well, I won't make the argument,
21 other than I think I know what the argument is.

22 MR. BARTON: If --

23 THE COURT: Go ahead, Mr. Barton.

24 MR. BARTON: If I may, your Honor. I think the
25 Government's primary contention for the obstruction of

1 justice prong is that the Defendant has told Pretrial
2 Services he has \$20,000 in assets.

3 The Government, in just a short time, has traced
4 what it believes is, you know, nearly \$2,000,000 in assets,
5 in just real property, and on top of that, you've got
6 \$250,000 in monetary transfers to a company that the
7 Defendant and the mother of his child control, finally
8 coupled with his -- what the Government is alleging is
9 another lie to Pretrial, that he has not had any contact with
10 his children since 2016, when he just had a newborn child who
11 has a U.S. passport and flew to China. For those reasons,
12 the Government is also seeking detention on the basis of
13 obstruction.

14 MR. CAPOZZI: If I can reply?

15 THE COURT: You have a --

16 MR. CAPOZZI: Okay.

17 THE COURT: Now I have a question.

18 MR. CAPOZZI: Sure.

19 THE COURT: You don't have a forfeiture allegation,
20 though, do you, Mr. Barton?

21 MR. BARTON: We do not at this time, your Honor.

22 THE COURT: And is this, at least charge number
23 one -- charge number one may be mandatory restitution, but is
24 there an allegation, a proffer on the restitution?

25 MR. BARTON: There -- the Government would proffer

1 that the Government at this time anticipates restitution will
2 be in the hundreds of thousands, if not millions, of dollars.

3 THE COURT: Okay.

4 MR. BARTON: And that would -- the basis for that
5 would be COVID tests that were distributed that should not
6 have lawfully been distributed to customers.

7 THE COURT: Okay. Because, in order to obstruct
8 justice, there has to be something that he's obstructing. If
9 you don't have a forfeiture allegation, but if you have
10 restitution, there's an argument to that.

11 MR. BARTON: Correct, your Honor, and the
12 Government would also, in that event -- and to the extent
13 that, in the bail context, that the Defendant was trying to
14 create a caveat of a bond to post, the Government believes he
15 was trying to obscure his assets to reduce the amount of bond
16 that the Court would take.

17 THE COURT: Okay.

18 MR. BARTON: If the Court thinks he only has
19 \$20,000, a bond would be much lower than it should be.

20 THE COURT: Okay. Now Mr. Capozzi.

21 MR. CAPOZZI: Yes. This \$20,000 was in response to
22 a question, "What do you have in your personal bank account?"
23 That's what he said he had. Now, the monies that the
24 Government is talking about may have been with the
25 corporations. I don't know.

1 THE COURT: Well, I do know that Pretrial does go
2 through an extensive asset list --

3 MR. CAPOZZI: They did. They did.

4 THE COURT: -- through their -- and they don't
5 report everything. Like, they just said, "These are the
6 assets that were reported." So they don't usually go to the
7 negative sometimes, in the report, at least.

8 Correct, Mr. Bedrosian?

9 MR. BEDROSIAN: That's correct, your Honor.

10 THE COURT: Okay. All right.

11 MR. CAPOZZI: Right. No. It was a thorough
12 report. There's no question about it.

13 THE COURT: A what?

14 MR. CAPOZZI: It was a thorough report.

15 THE COURT: Okay.

16 MR. CAPOZZI: Yes.

17 THE COURT: Okay. I thought I -- all right.

18 Submitted?

19 MR. BARTON: Yes, your Honor.

20 MR. CAPOZZI: Yes.

21 THE COURT: Okay. All right. The Court has
22 carefully considered the facts and circumstances, mindful of
23 the standard under 3142 in this case. I find that the
24 Government has shown by a preponderance of the evidence that
25 the Defendant is a flight risk, and by preponderance of the

1 evidence that obstruction of justice would occur, and,
2 therefore, I'm ordering him detained.

3 I find that there are no conditions or combination
4 of conditions which would reasonably assure his appearance,
5 and/or even to the extent the safety of the community to
6 fashion, but I'm not ordering him detained as a danger to the
7 community. I'm just noting that that is the balancing test
8 that the Court is required to do under 3142.

9 I find that -- the reason for my decision is the
10 nature and circumstance of the offense, which is the least
11 considered factors, but, nevertheless, are factors that the
12 Court does consider in assessing whether the Defendant should
13 be released on conditions.

14 Additionally, the fact that he has no community
15 ties, other than the nature of the allegations here, there
16 is, at this point in time, insufficient financial resources,
17 and we are unaware of accessibility at this point in time to
18 those financial resources.

19 Frankly, the different names is of the largest
20 concern as to this Defendant, as to who this Defendant, in
21 fact, really is, using the various varieties of names,
22 irrespective of the proffer that he changed his name. That's
23 something not easily done, and it's something that requires
24 legal process in order to effectuate that, at least in the
25 United States.

1 So, for those reasons, he is ordered detained. His
2 next court date -- I think I need to set that, because I
3 don't think we set a status.

4 MR. CAPOZZI: No, it's set.

5 THE COURT: Or did we?

6 MR. CAPOZZI: Yes.

7 MR. BEDROSIAN: We did, your Honor.

8 THE COURT: We did. Okay. Thank you.

9 MR. CAPOZZI: I think it's January --

10 THE CLERK: 10th.

11 MR. CAPOZZI: Yes, the 10th. Yes.

12 THE COURT: January 10th, 2024, at 1:00 p.m. The
13 Defendant is ordered to appear at that date and time.

14 Anything further, Mr. Capozzi?

15 MR. CAPOZZI: No, Judge. Thank you.

16 THE COURT: Mr. Barton, anything further?

17 MR. BARTON: No, your Honor. Thank you.

18 THE COURT: All right. Thank you.

19 (Proceedings concluded.)

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1 I certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.

4

5 /s/Crystal Thomas
6 Transcriber, AAERT CERT *654

1/11/24
Date

7 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

8

9 /s/L.L. Francisco
10 L.L. Francisco, President
Echo Reporting, Inc.

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EXHIBIT

I

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6 Attorney for Defendant,
7 DAVID HE

8
9 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

10 *****

11 UNITED STATES OF AMERICA.) CASE NO.: 1:23-CR-00219-ADA-BAM

12 Plaintiff.)

13 v.)

14 DAVID HE,)

15 Defendant.)

16) DECLARATION OF
17) ZHAOYAN WANG

18 I, Zhaoyan Wang, declare:

19 1. I decided to take my baby back to China on September 3, 2023. On that day, I
20 went online and booked a flight ticket departing on September 20, 2023, through the
21 China Southern Airlines website. I first departed from Los Angeles to Guangzhou, and
22 then departed from Guangzhou on September 22, 2023, to go to Qingdao (EXHIBIT 1),
23 the air ticket to China) I planned to book a round-trip air ticket when I returned to the
24 United States, because at the time I could not determine the specific time to visit my
relatives in China.

25 2. David He and I made a special agreement: our relationship and information about
26 our newborn baby will never be disclosed to outsiders. This is a traditional Chinese
27 concept, and we take it very seriously.

28 3. Since 2015, the companies that I am related to that have invested in the United
States are still operating as follows:

1
UNITED STATES V. DAVID HE, CASE NO. 1:23-CR-00219-ADA-BAM
DECLARATION OF ZHAOYAN WANG

1 a) UMI (Universal Meditech Inc.) was established in 2015 and is engaged in
2 research, development, manufacturing, and sales of medical in vitro diagnostic
3 reagents.

4 Wang Xiaoxiao is the current CEO of UMI with two shareholders. 70% is
5 Guangdi Packaging Co. Ltd., registered in Qingdao, China, and 30% is
6 MedSauce, registered in Nevada. I am the company manager (Managing
7 Director). The main investment comes from China. The technology comes from
8 China and Canada.

9 b) PBI (Prestige Biotech Inc.) was established in 2021 and is engaged in
10 investment and management of medical diagnostic companies and testing
11 institutions. It is registered in Nevada.

12 Yao Xiuqin is the current CEO and the company's sole shareholder and
13 investor.

14 c) David Destiny Discovery L.L.C., (3D) was established in 2022. It is
15 mainly engaged in the sale, operation, and management of Las Vegas real estate.
16 It is registered in Nevada. I am the company manager that mainly invests in
17 family funds from China.

18 4. 3D is willing to post two properties as collateral: 979 Sugar Springs Drive, Las
19 Vegas, Nevada and 1336 N. Blackwood in Clovis, California.

21 I declare under penalty of perjury the laws of the State of California that foregoing is
22 true and correct. Executed _____ day of April of 2024, at Qingduo, China.

24 Dated: 06/18/2024.

25 By: 
26 ZHAOYAN WANG, Declarant

Case No, 1:23-CR-00219-ADA-BAM

我，王朝艷，声明：

1) 我决定于 2023 年 9 月 3 日带宝宝回国。当天，我通过南航网站上网订了 2023 年 9 月 20 日的机票，先从洛杉矶出发到广州，再于 2023 年 9 月 22 日从广州出发到青岛（附件 1，回国机票）我计划回国后再订往返机票，因为当时还不能确定回国探亲的具体时间。

2) 我和何大卫特意约定：我们的关系和新生宝宝的信息绝不会向外人透露。这是中国的传统观念，我们对此非常重视。

3) 自 2015 年以来，我所关联的在美国投资的公司仍在运营，具体如下：

a) UMI (Universal Meditech Inc,) 成立于 2015 年，从事医学体外诊断试剂的研发、制造和销售。

王晓晓是 UMI 现任 CEO，有两个股东，70% 是广迪包装有限公司，注册于中国青岛，30% 是 MedSauce，注册于内华达州，我是公司（董事总经理），主要投资来自中国，技术来自中国和加拿大。

b) PBI (Prestige Biotech Inc,) 成立于 2021 年，从事医疗诊断公司和检测机构的投资和管理。它在内华达州注册。

姚秀琴是现任首席执行官，也是公司的唯一股东和投资者。

c) David Destiny Discovery Ltd.，(3D) 成立于 2022 年。它主要从事拉斯维加斯房地产的销售、运营和管理。它在内华达州注册。我是该公司经理，主要投资来自中国的家族基金。

4) 3D 愿意提供两处房产作为抵押；内华达州拉斯维加斯 Sugar Spring Drive 979 号和加利福尼亚州克洛维斯的 N. Blackwood 1336 号。

我根据加利福尼亚州的法律声明，上述内容真实准确。于 2024 年 4 月 18 日在中国青岛签署。

日期：04/18/2024 由 王朝艳
王朝艳，声明人

EXHIBIT

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Chinese Translation:

This is the airline booking record for CEO Wang, Zhouyan and the baby infant Zhu, Yu Xiang.

The airline booking was made on September 3, 2023, for travel planned, to departure from Los Angeles on September 20th to Guangzhou China by flight CZ328 economy, then departure from Guangzhou to Qingdao on September 22, 2023, by flight CZ-3199, economy.

Translated by:

Simon Wong

 APRIL 17, 2024

南方航空

95539

间与预定航班起飞时间一致。详询平安保
险客服热线：95511。

【南航】尊敬的旅客，您的机票已购买成
功。乘机人：WANG/ZHUYUXIANG；联
程航班 2023-09-20 CZ328航班 经济
舱，洛杉矶机场B航站楼23:50—广州白
云国际机场T2航站楼05:40，有配餐，航
班于起飞前60分钟截止办理乘机手续。

2023-09-22 CZ3199航班 经济舱，广州
白云国际机场T2航站楼07:40—青岛胶东
国际机场10:40，有配餐，航班于起飞前
40分钟截止办理乘机手续；为避免耽误您
的行程，请您预留足够时间在实际承运柜
台完成办理乘机手续。票号：

7842210073483。缔约承运人为南航，
共支付票款330元，税费224元。温馨提示
示：为了保障您的旅行顺畅，请仔细阅读
出行提示信息：

<https://m.csair.com/b/?LpNLnkKnxH> 并
认准南航官方客服电话95539或登陆南航
门户网站www.csair.com，谨防欺诈。

南方航空

南方航空

EXHIBIT

J

10 MOTION FOR BAIL REVIEW
11 BEFORE THE HONORABLE ERICA P. GROSJEAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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25 Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

ii

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1 FRESNO, CALIFORNIA, WEDNESDAY, APRIL 24, 2024 2:21 P.M.

2 --ooOo--

3 (Call to order of the Court.)

4 THE COURT: Okay. Calling United States versus --
5 it's still listed as Jia Bei Zhu, who's also known as David
6 He, 23-CR-219. We're here for a motion for bail review.

7 Let me take appearances, starting with defense
8 counsel.

9 MR. CAPOZZI: Your Honor, Tony Capozzi appearing
10 for Mr. He, who's present in court --

11 THE COURT: Thank you. Good --

12 MR. CAPOZZI: -- with a Chinese interpreter.

13 THE COURT: Thank you. Good afternoon, Mr.
14 Capozzi. Good afternoon, Mr. He.

15 And for the United States?

16 MR. CARBAJAL: Good afternoon, your Honor. Henry
17 Carbajal and Areli Clemente for the United States.

18 THE COURT: Thank you, Mr. Carbajal and Ms.
19 Clemente.

20 We're here for a motion for bail review. I have
21 reviewed the papers as well as the transcript of the earlier
22 hearing. I've also received a recommendation from Pretrial
23 Services. Given Pretrial Services' recommendation, can I
24 hear from the Government?

25 MR. CARBAJAL: Yes, your Honor. We would strongly

1 disagree with Pretrial Services' recommendation. It does
2 not address two, I think -- well, it addresses in part but
3 not comprehensively one very important thing, which is the
4 use of the different aliases.

5 Now, the Government in its submission provided
6 information on what I will term Mr. Zhu's Canadian identity,
7 identifications. You'll note, your Honor, that the name
8 David He doesn't come back in Canada's data. After that,
9 several years later --

10 THE COURT: So, does he still have an operative
11 Canadian passport in Zhu?

12 MR. CARBAJAL: I don't -- I -- I don't -- I
13 believe that's expired as of September 2023.

14 THE COURT: Okay. So, his Canadian passport was
15 Zhu, but it was expired?

16 MR. CARBAJAL: I believe so.

17 THE COURT: Okay.

18 MR. CARBAJAL: That's the latest information that
19 we have.

20 THE COURT: Okay.

21 MR. CARBAJAL: And then we provided a Canadian
22 driver's license as well. And --

23 THE COURT: And that's also under Zhu?

24 MR. CARBAJAL: Correct.

25 THE COURT: Okay.

1 MR. CARBAJAL: And Mr. Zhu, during the initial
2 investigation for Pretrial Services' report, provided
3 background information including his dates of residency,
4 1988 to 2014 in Canada, comes over to the United States in
5 about 2014, resides in -- around the Central Valley area and
6 various other places in the United States until he was
7 arrested. That's what he stated to Pretrial Services.

8 And then in about 2020, he starts using the alias
9 He, He, Qiang He, and then later changed that to David He.
10 And, as Mr. Capozzi submitted in one of his exhibits, there
11 is a letter detailing an asylum application not under the
12 name Zhu but under the name He, and that's significant
13 because the name Qiang He doesn't come up in Canada's
14 database. There's no data associated with it. But if Jia
15 Bei Zhu was disclosed in that letter, that data would come
16 up.

17 THE COURT: Right.

18 MR. CARBAJAL: Okay. So -- and I would point this
19 out as well because in Pretrial Services latest report, this
20 is used as a point of mitigation, that he applied for
21 asylum. All your Honor has is a cover letter. There are
22 very strict confidentiality requirements for the application
23 itself. Mr. -- Mr. Zhu or Mr. Capozzi could have put that
24 in, but they didn't, and that's their business. However,
25 it's -- it would be, I think, important if the Court's going

1 to consider that in mitigation to know what he was telling
2 -- what he was stating in his I-589, the application to --
3 for asylum, versus what he told Pretrial Services.

4 But also, even in the cover letter, it notes purported
5 persecution in China, but he told Pretrial Services in
6 November he hadn't resided in China since 1998. And one of
7 the bases for detention back in November was obstruction of
8 justice, that Mr. He -- Mr. He, Mr. Zhu, was not honest with
9 Pretrial Services in terms of assets, family identity,
10 biographical information. Those things haven't changed.
11 They're just, for some reason, not addressed in this latest
12 Pretrial Services report.

13 So, I'd ask the -- the Court to consider that
14 because the Government presented a lot of -- a lot of
15 information in the initial detention hearing and also in its
16 opposition for this review hearing, and it was one of the --
17 one of -- an important consideration for Judge Boone when he
18 made his findings. So --

19 THE COURT: Where did you find the inconsistency
20 about the Canadian residence?

21 MR. CARBAJAL: The inconsistency being in the
22 cover letter for asylum, he there states persecution upon
23 return to China. But in the Pretrial Services report, the
24 November 22nd, 2023 report --

25 THE COURT: Um-hmm.

1 MR. CARBAJAL: -- he said he lived his entire life
2 in China until he relocated to Canada in 1988, continued to
3 reside in Canada until 2014. And this is page one of that
4 report, your Honor --

5 THE COURT: Okay.

6 MR. CARBAJAL: -- dated November 22nd of 2023.

7 THE COURT: I see that. Let me pull up the cover
8 letter to understand the inconsistency. You mean because he
9 didn't point out the -- anything about Canada in the cover
10 letter?

11 MR. CARBAJAL: No, that he -- he indicated to
12 Pretrial Services he hadn't lived in China since 1988. So,
13 what was the persecution that he was --

14 THE COURT: Oh, okay.

15 MR. CARBAJAL: -- referencing in the cover letter?

16 THE COURT: Okay. Persecution if he returns to
17 China, but you think that was a long time ago. Okay.

18 MR. CARBAJAL: And -- and, again, like we're not
19 sure what the analysis would have been if he disclosed Zhu
20 and the fact that he was a Canadian citizen in that
21 application. We don't know, and I know the Court doesn't
22 have that information in his application because it wasn't
23 submitted.

24 THE COURT: Um-hmm.

25 MR. CARBAJAL: Or just -- just reviewing the cover

1 letter compared to what information he's telling Pretrial
2 Services, there's already an inconsistency.

3 THE COURT: But -- but I think the -- the point
4 here is that to the extent there was a question about his
5 name in the first detention hearing and Judge Boone was
6 bothered by that, this is just showing a change from Qiang
7 He to David He and --

8 MR. CARBAJAL: Correct.

9 THE COURT: -- still is not talking about the
10 change from Zhu and is also not describing and disclosing
11 both Zhu and his Canadian residence as far as we can tell?

12 MR. CARBAJAL: That's correct, your Honor.

13 THE COURT: Okay. Do you -- what did he tell law
14 enforcement was his name?

15 MR. CARBAJAL: David He.

16 THE COURT: And what -- in the course of the
17 investigation, was he holding himself out to investigators
18 as David he?

19 MR. CARBAJAL: To investigators. But when we
20 interviewed employees of his businesses, he was identified
21 as Zhu.

22 THE COURT: Okay.

23 MR. CARBAJAL: Including the alias Jesse Zhu. And
24 if you look at Exhibit 2 of our submission, your Honor,
25 there is an FDA inspection report of a Chinese-based

1 business disclosing the owner of that business Adai
2 (phonetic) Diagnostic, as Jia Bei Zhu.

3 THE COURT: Um-hmm.

4 MR. CARBAJAL: It's on pages two and four of that
5 exhibit, Exhibit 2.

6 THE COURT: Okay.

7 (Pause.)

8 MR. CARBAJAL: The inconsistencies across
9 identity, biographical information, business ties, all of
10 those things are still -- I think really still support Judge
11 Boone's initial finding that there's not been forthrightness
12 on the part of the Defendant. That's not addressed in
13 Pretrial Services' Report. It's not addressed by a bond,
14 and it's certainly not addressed by an offer of an attorney
15 that's been retained either by Zhu or these businesses that
16 are associated with him but, you know, portrayed as not
17 really associated with him --

18 THE COURT: Right.

19 MR. CARBAJAL: -- who can only watch him -- who
20 can only check in with him four times a week. So, three
21 days he's not going to be watched at all, and presumably be,
22 you know, by -- by himself in that area of Las Vegas. I
23 don't think that this -- this recommendation by Pretrial
24 Services addresses all those risk factors which were very
25 significant.

1 And then I would note as well Mr. Zhu not
2 disclosing the -- he doesn't have family ties in the United
3 States at all, and that's why what's being offered is an
4 attorney who has a business relationship but an undisclosed
5 personal relationship -- at least I didn't see it in the
6 Pretrial Services Report -- and who has -- who has known Mr.
7 Zhu for an unknown length of time. That has to be the
8 proposal because all of his family is outside of the
9 country, the mother of his child, the infant son.

10 THE COURT: They didn't come back from China?

11 MR. CARBAJAL: They did not.

12 THE COURT: Okay.

13 MR. CARBAJAL: They did not. And, in fact, the
14 declaration submitted by Mr. Capozzi was executed in China.

15 THE COURT: Um-hmm.

16 MR. CARBAJAL: And -- and when they spoke to Ms.
17 Wang -- when Pretrial Services spoke to her, I believe she
18 was in China, again, with no -- no return date that we're
19 aware of.

20 THE COURT: Um-hmm.

21 MR. CARBAJAL: And that's also very significant.
22 Now, whether her flight was booked September 3rd -- and I
23 can't tell from the screenshot. It's very hard to see. It
24 -- it appears to me to be September 13th, but I know it's
25 being represented as September 3rd when the -- when the

1 tickets were booked. However, investigative activity was
2 already under way. Mr. -- Mr. Zhu was already interviewed
3 by the FDA a few months before that. And, in any event,
4 it's still of -- of huge significance. Even if she booked
5 the tickets on September 3rd, well, the search warrant took
6 place six days before she flew out. Now, that's kind of odd
7 that your closest family ties, including your infant, you
8 would think they would -- you know, if something that
9 serious is happening, you would think that they would stay
10 until that's addressed. But, instead, they flew out on one-
11 way tickets.

12 We noted that Defendant still has the active
13 business interests in the Chinese company Adai and that that
14 was the company -- one of the companies used to fund the
15 purchase of the property -- one of the properties being
16 proposed for bond, and the property that he proposes to live
17 in, which right now is a rental property. In fact, that --
18 that business, that LLC, David Destiny Discovery, owns about
19 five properties. So, what's being offered is only a couple
20 of rental properties off of a portfolio of different
21 properties.

22 And I know there's been -- what Mr. Capozzi has
23 submitted indicates some change in ownership in David
24 Destiny Discovery. Mr. Zhu -- that's Mr. He -- is still the
25 registered agent for that business even today. And he --

1 what has -- what it appears to be is at the time of the
2 first detention hearing, in the lapse of a few months, steps
3 have been taken to move Mr. He -- Mr. Zhu as Mr. He, his
4 name off of these subsidiary businesses and into the name of
5 Ms. Wang who is at this point outside of the jurisdictional
6 reach of the Court. So, I think that's also very
7 significant.

8 THE COURT: Mr. --

9 MR. CARBAJAL: As far as -- if I could respond to
10 a few more things that Mr. Capozzi raised, I wasn't really
11 clear on what the -- you know, there was a reference to
12 pending lawsuits being some incentive for Mr. Zhu to stay.
13 And I'm not sure. If he's the plaintiff, he could dismiss
14 those at any time. He can do what he wants with them. And,
15 in any event, you know, it's sort of a dual argument that,
16 you know, Mr. He has these lawsuits and these -- this
17 interest in sticking around, but the prop -- the businesses
18 that are involved in the lawsuit somehow aren't his anymore
19 and are independent, it's -- it's really not clear. What it
20 appears to me is that there is a -- there was an effort
21 undertaken by Mr. Zhu and his associates to, at least on
22 paper, move his name off, but he still very much retains
23 control over these items, especially when it's the mother of
24 his child that is the managing member of the LLC and has a
25 hand in the other businesses. That's what I see is -- is

1 going on.

2 And then as far as -- I think I raised a couple of
3 items with the third party custodian, not living with Zhu,
4 not having a known personal close relationship. Usually
5 when a third party custodian is picked, it's someone that
6 has a trust relationship with the defendant, a mother, a
7 sibling, someone where there is a -- a moral compulsion to,
8 you know, use best efforts to comply, and it's that trust
9 relationship that drives the appropriateness of having them
10 as a third party custodian that's typical. It's just
11 strange that you have a -- not a friend, a business
12 associate, business relationship and that what's portrayed
13 in the Pretrial Services report is it's a business
14 relationship with the businesses, not necessarily with Mr.
15 Zhu, which then kind of -- it -- it's unclear what the --
16 you know, how -- how that's going to compel Mr. Zhu to
17 comply, why he would care if a lawyer that he can hire and
18 fire or that his wife -- you know, the companies that his --
19 his romantic partner now runs or has a hand in as a managing
20 member can hire or fire, it's unclear why he would be
21 compelled to be compliant.

22 And I would note also that there was a prior
23 attorney that was proposed in November -- in the November
24 2023 report, Mr. Thomas. I'm not sure what happened to him.
25 He had only known Mr. Zhu for four months, and that proposal

1 was that he -- that Mr. Zhu live with him, and I would note
2 that that -- Pretrial -- Pretrial found that insufficient to
3 address the risk factors, and I agree.

4 Here, it's even more removed, and you have --
5 again, you have Mr. Zhu, the proposal being that, you know,
6 three days, may more, maybe even -- I don't know when Mr.
7 Len (phonetic) plans to go check on him, but he's
8 unsupervised with, you know, the use of different names an
9 aliases, and he was somehow able to obtain a passport under
10 a different name here in around 2020, 2021, and that's how
11 he was able to make his asylum application. That's also an
12 important consideration.

13 He's going to have plenty of time to figure out
14 how to get another passport and perhaps another alias. And,
15 so, unless the Court has other questions, I mean, that's
16 what we wanted to respond to and -- and make sure the
17 Court's aware that we do disagree with this recommendation,
18 and we feel there aren't conditions that could assure his
19 compliance and that he won't further obstruct.

20 THE COURT: Thank you.

21 Mr. Capozzi?

22 MR. CAPOZZI: Let me first start off with
23 penalties in this case. He's charged with Title 18, 1001,
24 lying about his name. He said, "My name is David He." It
25 is. The penalty for that -- the offense level is a level

1 14. The penalty for that is 15 to 21 months. The penalty
2 for sending out adulterated COVID kits -- that's Title 21
3 U.S.C. 331(a), the penalty, Judge, six -- zero to six
4 months. If he's sentenced concurrently to the maximum, he's
5 going to do 27 months. If he pled guilty, they would take
6 three points off. He would end up doing maybe 11 months.
7 He's already done seven months. Why would he run?

8 If I could show, he has a claim against the
9 government for what they did to him. If I could present
10 this to your clerk.

11 THE COURT: Thank you.

12 MR. CAPOZZI: That's him in the hospital the day
13 he was arrested. And in the report, the agent said, "We
14 softly pushed him down to the ground." Softly. Yet those
15 are the injuries he suffered. He's filed -- he's hired
16 Kevin Little to file the claim. He's hired Kevin Little to
17 file a civil rights lawsuit and myself to sue the government
18 for what they did to him there.

19 And when you read the statement from the
20 Government -- I think I gave you the other copy. Let me
21 make sure. Yeah, I did -- it points out how they approached
22 him, and when they told him to kneel down, he turned to look
23 at them as though he didn't understand. He speaks English
24 barely, but every time I see him, I have to have an
25 interpreter.

1 He didn't understand what they were saying, and
2 they came, and they pushed him down to the ground, and you
3 saw the injuries he has. He has a very viable claim. So,
4 why would he flee when he's only got -- he's done seven
5 months? He might have eight months more to go. It's not
6 worth him fleeing because he is going to win on this
7 particular case.

8 UMI and PBI has claims against the City of
9 Reedley, County of Fresno for everything they destroyed, and
10 it wasn't a lab. All the press says this was a lab down in
11 Reedley. It was not a lab. It was a place for a warehouse
12 to hold everything until the business in Fresno that the
13 company was developing and paid over \$100,000 to have a
14 building, warehouse refurnished so they can move a lab there
15 and start the process. They were intending on staying here.
16 He was a consultant to them, and they were going to stay
17 here because of the very profitable business.

18 I don't see how he would be a flight risk
19 whatsoever. The -- he changed his name in China. It was
20 Qiang He -- it's pronounced Her, not He.

21 THE COURT: Okay.

22 MR. CAPOZZI: He. And when he filed for asylum,
23 he filed it under that name, and he changed his name
24 legally. I put the document --

25 THE COURT: Where -- I guess where did Zhu come

1 from that he had a Canadian passport in it?

2 MR. CAPOZZI: Oh, he's not denying he's the same
3 person. He changed his name.

4 THE COURT: Well, okay. When he --

5 MR. CAPOZZI: When he came from Canada --

6 THE COURT: But he didn't change it from Zhu to
7 He. He --

8 MR. CAPOZZI: In China he did.

9 THE COURT: -- changed it from --

10 MR. CAPOZZI: In China, yes. He changed it in
11 China, to claim Her, H-E.

12 THE COURT: There's some other document that was
13 in China that went from Zhu to He?

14 MR. CAPOZZI: Well, try to get something from
15 China. He can't --

16 THE COURT: Okay. Well, I mean, what about -- did
17 you tell Canada he has a new name? Because that's where his
18 license and his passport are all in Zhu.

19 MR. CAPOZZI: Right, because that was his name
20 back then.

21 THE COURT: Well, has he told Canada, who has an
22 outstanding civil lawsuit pending, that he's not Zhu, he's
23 really --

24 MR. CAPOZZI: They know --

25 THE COURT: -- He?

1 MR. CAPOZZI: -- where he is. They've been
2 communicating with me.

3 THE COURT: Okay.

4 MR. CAPOZZI: They know where he is in the Fresno
5 County Jail under the name David He.

6 THE COURT: Okay.

7 MR. CAPOZZI: All right. And, again, he changed
8 the name. When he came here, it was Qiang Her, too Chinese.
9 He changed it from Qiang to David.

10 THE COURT: Yeah, I just don't think the issue has
11 ever been about whether it's Qiang or David.

12 MR. CAPOZZI: Okay. That's fine. All right. But
13 the point is he has these pending lawsuits, and for him to
14 flee with so little time to do if he's convicted -- and I've
15 gone through the evidence in this case. It is not as strong
16 a case as the Government would portray it to be. He has
17 these injuries. The two companies have the lawsuit -- will
18 be filing the lawsuits. He's hired two attorneys. He --
19 the company has hired two attorneys. He's willing to put up
20 the two properties fully paid for. It's over a million
21 three or more. If he runs, he's going to lose his -- his
22 partner I guess you'd call her, the mother of his child,
23 would love all that property. He can't go back to China.
24 He's filed for asylum.

25 THE COURT: So, what is the deal with the

1 ownership of the property? It sounded like it's actually
2 just been changed to her hands this month.

3 MR. CAPOZZI: Well, I'd like to know that. That's
4 not true, but I'd like to know that, where they have that
5 information. I'd like to know. Present some evidence
6 showing that.

7 THE COURT: So, you don't -- you don't know?
8 Well, who owns -- who do you think owns it?

9 MR. CAPOZZI: I know who owns it. She does.

10 THE COURT: When did she start owning it?

11 MR. CAPOZZI: There's a grant deed -- hold on.

12 (Pause.)

13 MR. CAPOZZI: I submitted to Pretrial the property
14 profiles, and for some reason we attached the Clovis
15 property to it. I'm trying to see the recording date. May
16 27, 2022, before all this.

17 THE COURT: Okay. That's when Ms. Wang took it?

18 MR. CAPOZZI: The Clovis property in her --

19 THE COURT: Okay.

20 MR. CAPOZZI: Yeah, it was in her name.

21 THE COURT: Okay.

22 MR. CAPOZZI: But the other properties are in the
23 DDD, LLC, which is hers. I just don't see how he's a flight
24 risk, and that's what he's being held here for. Frankly,
25 it's because of all of the press which has been so far off

1 base. He's a Chinese National, and I think there's a lot of
2 prejudice against him. He's at the jail, and it's not easy
3 for him being there at the jail and not speaking English.
4 He can speak some English and try to understand what's going
5 on, but there's fights breaking out all the time. There's a
6 lot of prejudice over there. He is scared to death over
7 there.

8 Now, if he were to be released, we would propose
9 that he not work at any kind of a lab, that he would be
10 working with me, I can assure you. He calls me 10 times a
11 day. He'll be doing the same thing when he's in Las Vegas.
12 And I'm sure, if the Court wanted to, we'll have him call
13 his lawyer every single day or go see him every single day.
14 He'll wear an ankle bracelet. He can't go anywhere. A GPS
15 device would also -- would work.

16 THE COURT: So, does he have a detainer?

17 MR. CAPOZZI: No.

18 MR. CARBAJAL: He does, your Honor. It's recorded
19 in the Pretrial Services Report.

20 THE COURT: So, he has an INS detainer?

21 MR. CARBAJAL: That's what's recorded in the
22 Pretrial Services --

23 THE COURT: Does that mean that he's not an -- I
24 mean, it doesn't actually legally affect my -- that he's not
25 going to be released, but if he gets released, he's going to

1 go to INS?

2 MR. CAPOZZI: Well, he's filed for asylum.

3 THE COURT: Don't know?

4 MR. CARBAJAL: That has historically been the
5 practice, but I -- I don't know if that's --

6 THE COURT: Okay.

7 MR. CAPOZZI: I can --

8 MR. CARBAJAL: Sometimes those are --

9 THE COURT: Okay.

10 MR. CAPOZZI: I can deal with the INS.

11 THE COURT: Okay.

12 MR. CAPOZZI: Those are always bondable.

13 THE COURT: Those are always what?

14 MR. CAPOZZI: Bondable, to put the bond --

15 THE COURT: Bondable?

16 MR. CAPOZZI: Yes.

17 THE COURT: Okay.

18 MR. CAPOZZI: Yes, the immigration bonds.

19 THE COURT: Okay.

20 MR. CARBAJAL: Your Honor, if I may respond to one
21 thing?

22 THE COURT: Well, respond -- I guess, I think Mr.
23 Capozzi's main argument is that there is so little time that
24 he won't flee because of the time.

25 MR. CARBAJAL: And let me respond to that. The

20

1 guideline range that we expect from the misbranding is 63 to
2 78 months, with an acceptance, maybe getting down to about
3 four years.

4 THE COURT: Okay.

5 MR. CAPOZZI: It's not complete.

6 MR. CARBAJAL: But I would note that if you look
7 at the Townsend case that we cited in our brief, your Honor,
8 when you consider the nature and circumstances of the
9 offense, the analysis is really all counts taken together as
10 if they were run consecutive.

11 THE COURT: Okay. Okay. Anything further, Mr.
12 Capozzi?

13 MR. CAPOZZI: Your Honor, the most he's going to
14 serve is 21 months in this particular case, and I don't see
15 where in the world he's a flight risk, and there are so many
16 combination of conditions that can preserve him to be
17 present in court. He wants to be present in court. He
18 wants to get to trial. My problem is I'm tied up in trial
19 for months, and that's unfair to him.

20 Submitted, Judge.

21 THE COURT: Okay. I'm going to deny the motion
22 for bail review. I want a -- a little preference to
23 remember that this is not just me looking at all the things
24 and making a different decision than Judge Boone. What I
25 have to do is look at Judge Boone's decision and then see if

1 the new information, new material information would change
2 that. So, I did review closely the initial detention
3 decision of -- of Judge Boone, and he did find that
4 detention made sense.

5 First, the nature and circumstances of the
6 offense, although Mr. Capozzi has issues with that, I don't
7 think that has changed the motion for bail review. Also,
8 there -- there are no community ties. That continues to be
9 the case. In fact, his -- the -- the newborn and the -- his
10 -- the mother of, that did flee and have -- have not come
11 back.

12 MR. CAPOZZI: Can I --

13 THE COURT: So, there are no -- so, there are no
14 ties. No. You can say something in the record if you want
15 after that.

16 MR. CAPOZZI: Okay.

17 THE COURT: I do agree when he said insufficient
18 financial resources, at least now, that there is a bond.
19 And then he also brought up the different name. In fact, he
20 said that was the largest concern. Again, even though I saw
21 the change from Qiang to David, I still did not see -- and I
22 -- there was -- I was almost expecting to see that there had
23 been some legal change from Zhu to Her. There -- there had
24 not. So, I think Judge Boone's largest concern that he was
25 actually operating in a legal capacity under two names

1 continues to be -- continues to be the case.

2 That -- I also note, as was in the initial report,
3 that he fled a civil lawsuit in Canada and moved his
4 business here. He has used many different company names, as
5 well as aliases. ICE could identify -- could not identify
6 the Defendant based on the information that was given that
7 suggests that there were different names that were not
8 connected, at least according to ICE.

9 He's had an unstable residence since the time he
10 has moved from Canada in 2014. He's been in Seattle, Las
11 Vegas, Tulare, and Los Angeles. Again, he has no family to
12 stay with if he stays here.

13 I still am bothered with the -- what I think is
14 just a misstatement that he said he had no children, and he
15 does have a child. I did not find the reference to the
16 declaration of Ms. Wang that said they have an agreement not
17 to tell anyone about children persuasive at all. I don't
18 understand what that's for, but that is not an excuse not to
19 tell a law enforcement individual about your children when
20 you're asked about your children.

21 He also -- it did not change the fact that he told
22 Pretrial Services that he only had 10 to 20 thousand dollars
23 in assets. This was also discussed at the hearing with
24 Judge Boone. It appeared he had at least access to very
25 significant assets but did not disclose any of that to

1 Pretrial Services.

2 He also -- at least it is alleged that he refused
3 to comply with the arrest. I agree with Mr. Carbajal that I
4 don't think the fact that he has a lawsuit makes it more or
5 less likely that he would stay in or ameliorate the risk of
6 flight. He does have a Chinese passport. He is a Chinese
7 citizen. He has family in China, including his newborn and
8 the mother of his newborn.

9 So, against that, I did look that there was a
10 third party custodian that gives some weight, but it is
11 unusual. They don't have a personal relationship. They
12 have a business relationship. If there are financial
13 consequences, it may hurt the third party custodian as well.
14 So, I -- I weighed that, but I didn't think that that was
15 enough.

16 The bond package is quite large. And, so, that
17 was really -- if that could be ameliorated -- but I don't
18 think so. They are rental properties. It appears that it's
19 only one part of this business property, and I did not think
20 that that alone was enough to change Judge Boone's decision
21 that there are no condition or combination of conditions
22 that will assure his appearance and also satisfy the concern
23 about obstruction of justice. In fact, these -- hearing
24 that there are different owners and that that is changing
25 just elevates that concern.

1 Okay. What did you want to say?

2 MR. CAPOZZI: Just a couple of points. There was
3 no evidence that his personal assets were more than \$20,000.
4 he might have access to the money through his girlfriend,
5 the mother of his child, but his assets were \$20,000 in the
6 bank is what he said.

7 His -- the mother of his child didn't flee the
8 country. She made a reservation --

9 THE COURT: I mean, it was about for posting of a
10 bond, though, because it's -- the Defendant estimated he had
11 10 to 20 thousand dollars cash available for posting of a
12 bond. He reported no other assets.

13 MR. CAPOZZI: Right.

14 THE COURT: And now he says that he does have
15 access to very substantial assets --

16 MR. CAPOZZI: But not his assets.

17 THE COURT: -- and he is at least -- he has some
18 role in that organization. What is the role in this -- in
19 that organization?

20 MR. CAPOZZI: He's got his -- the mother of his
21 child has possession and control.

22 THE COURT: I also heard he takes the actual
23 checks, that he got checks from rentals and that he --

24 MR. CAPOZZI: Yeah, that he put --

25 THE COURT: -- was the person who deposited the

1 checks.

2 MR. CAPOZZI: Right.

3 THE COURT: So, he has an ability to deposit money
4 in that account?

5 MR. CAPOZZI: Right.

6 THE COURT: He has access to the bank account?

7 MR. CAPOZZI: Yes. He can write checks on that,
8 yes.

9 THE COURT: That would be enough to tell Pretrial
10 Services that there was access to assets. They're these
11 same --

12 MR. CAPOZZI: They're not his --

13 THE COURT: -- assets you're putting up right now.

14 MR. CAPOZZI: I'm not going to argue with you.

15 Okay. And rental properties, one was a rental. The other
16 is where he lived, along with his wife -- or his -- the
17 mother of his child.

18 THE COURT: Okay.

19 MR. CAPOZZI: That's it.

20 THE COURT: Okay. Thank you very much.

21 MR. CARBAJAL: Thank you, Judge.

22 MR. CAPOZZI: Thank you, Judge.

23 THE COURT: Wait. Let's make sure we have -- do
24 we need anything else? We need -- no. We have a status
25 conference set. So, stat -- your next status conference is

1 May 22nd, 2024 at 1:00 p.m. before Judge McAuliffe.

2 MR. CAPOZZI: Yeah.

3 MR. CARBAJAL: Thank you, Judge.

4 THE COURT: Thank you.

5 MR. CAPOZZI: Thank you.

6 (Proceedings concluded.)

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1 I certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.

4

5 /s/Crystal Thomas 5/4/2024
6 Transcriber, AAERT CERT *654 Date

7 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

8

9 /s/L.L. Francisco
10 L.L. Francisco, President
11 Echo Reporting, Inc.

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EXHIBIT

K

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA (FRESNO)

3 UNITED STATES OF AMERICA, . Case No.: 1:23-CR-00219-NODJ-BAM

4 Plaintiff, . Fresno, California

5 vs. .

6 JIA BEI ZHU, ALSO KNOWN .
7 AS JESSE ZHU ALSO KNOWN .
8 AS QIANG HE, ALSO KNOWN .
9 AS DAVID HE, .

10 Defendant. . Wednesday, July 17, 2024
11 2:02 P.M.

12 TRANSCRIPT OF HEARING ON MOTION FOR BAIL REVIEW
13 APPEAL OF DETENTION ORDER
14 BEEFOR THE HONORABLE DALE E. DROZD
15 UNITED STATES DISTRICT COURT JUDGE

16 APPEARANCES ON NEXT PAGE.

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1 FRESNO, CALIFORNIA, WEDNESDAY, JULY 17, 2024, 2:02 P.M.

2 THE CLERK: Please remain seated. Court is back in
3 session. The Court calls Item Number 19 on the calendar,
4 1:23-CR-00219, United States versus Jia Bei Zhu, set for a
5 Motion For Bail Review Appeal of Detention Order.

6 THE COURT: The Banda case, by the way, is going to
7 go last. I don't know whether I can sentence that case today
8 or not. Well find out, but it's going last no matter what.

9 Please state your appearances beginning with Counsel
10 for the Government.

11 MR. BARTON: Good afternoon again, Your Honor.

12 Joe Barton for the Government.

13 MR. CAPOZZI: Your Honor, Tony Capozzi for the
14 Defendant David He, who is present in court in custody.

15 THE COURT: And, Mr. Interpreter, your appearance,
16 please.

17 THE INTERPRETER: My name is Simon Wong, W-O-N-G.
18 I'm a court interpreter in the Mandarin (indiscernible), Your
19 Honor.

20 THE COURT: Thank you.

21 THE INTERPRETER: Thank you.

22 THE COURT: All right. This is the case where the
23 few of the cases that are left over from this very long
24 calendar. I will be candid when I say I have read the Appeal
25 from the Detention Order, the Government's Opposition,

1 skinned the Pretrial Services Report, read the Reply of the
2 Defense that was filed yesterday, have not read any
3 transcripts, haven't had time, too many cases, too much to
4 read.

5 MR. CAPOZZI: I agree with the Court. It's a short
6 period of time. I have no objection to another date.

7 THE COURT: No.

8 MR. CAPOZZI: Okay.

9 THE COURT: I just want to tell you what I've
10 focused on and what I haven't.

11 MR. CAPOZZI: Okay.

12 THE COURT: So based upon what I understand of the
13 situation, how -- this case was indicted in 2023. How much
14 time has the Defendant been in custody so far?

15 MR. CAPOZZI: Since that date. Prior to that date,
16 October of 2023.

17 MR. BARTON: About eight months, Your Honor.

18 THE COURT: Okay.

19 MR. BARTON: Eight months, eight, nine months.

20 MR. CAPOZZI: Eight to nine months.

21 THE COURT: Okay. Is there a trial date set?

22 MR. CAPOZZI: No.

23 MR. BARTON: No, Your Honor. But that's been at
24 Defense's request to continue.

25 MR. CAPOZZI: And we're more than happy to set a

1 trial date. He wanted to have this hearing first before a
2 trial date was set.

3 THE COURT: Of course, the question of whether the
4 Court has a Judge that can preside over that trial is another
5 question.

6 MR. CAPOZZI: And I'm in trial throughout the rest
7 of the year.

8 THE COURT: I'll ask you both, but Judge Grosjean
9 heard the last Motion For Bail Review, and that was when
10 Pretrial Services Officer Beckwith recommended release on a
11 very large bond. Judge Grosjean denied the Motion apparently
12 because of flight-risk concerns, as I understand it, having
13 to do with claims of non-disclosure of assets, perhaps some
14 questions regarding the collateral that was being offered to
15 be posted, the various names associated with the Defendant.

16 I don't know whether the fact of his partner and
17 their newborn from the country played a role in the
18 determination or not. Was there anything else that
19 Magistrate Judge Grosjean was concerned about?

20 MR. BARTON: I believe, yes, the Defendant's, the
21 fact that his newborn son and wife, they did not disclose
22 those to Pretrial Services played a role in it. Then, Judge
23 Grosjean was also concerned that he lacks any real tie to the
24 community. His family is in China or New Zealand. His
25 proposed custodians were attorneys or business contacts that

1 he had known for not all that long. He didn't seem to have a
2 personal relationship with them. I believe they're both in
3 L.A.

4 So essentially, he'd have third-party custodians
5 that, I believe her concern was that that wouldn't really be
6 able to watch him or have any meaningful type of supervision.
7 So I think that was the last bucket that Judge Grosjean was
8 concerned about.

9 THE COURT: Now, Mr. Capozzi in his Reply Brief, the
10 Government in their Opposition talks about -- and to me, this
11 is relevant. The Government talks about an eight-year term
12 of imprisonment. I assume that's based upon statutory
13 maximums.

14 MR. BARTON: Correct, Your Honor.

15 THE COURT: So that's unlikely to --

16 MR. BARTON: Well, if I may qualify that, Your
17 Honor. It is statutory maximums, yes, but also the loss
18 amount. Well, the individual accounts for the misbranding
19 can have three years. The guideline here, the Government has
20 got the loss approximately today at about 2.5 million. So if
21 you -- you'd have -- to get a guideline sentence, you'd have
22 to stack a couple of the misbranding counts and then you have
23 the 1001 count.

24 So the Government -- in the Government's estimate,
25 eight years is a realistic sentence.

1 THE COURT: So you disagree with Mr. Capozzi's
2 guideline proposal that, at the worst, this is a -- even if
3 the Defendant were convicted of all charges, this is a Level
4 16 offense with a lack of criminal history, resulting in a
5 guideline range under the Advisory Sentencing Guidelines at
6 the worst of 21 to 27 months. The Government disagrees?

7 MR. BARTON: Yes, Your Honor. The Government
8 strongly disagrees. The loss, this is -- we've traced the
9 loss based on financial records, assuming the Government were
10 to prevail at trial, of companies that purchased COVID test
11 kits, \$2.5 million went into the coffers of Mr. Zhu's
12 companies based on those sales, which the Government is
13 alleging were illegal and unauthorized.

14 That would put a significant loss amount and
15 significantly raise the offense level, as the Court well
16 knows, to quite a degree. And, plus, you have a ten-or-more
17 victim enhancement. There are, I believe, well over 10 if
18 not 20 to 30 victims who bought the test kits. So with those
19 enhancements, the Government believes an eight-year sentence
20 is quite realistic for the Defendant.

21 THE COURT: I am concerned, obviously, if the
22 Detention Orders were to arguably result in someone remaining
23 in custody longer than the sentence that they would be likely
24 to receive even if they went to trial and were convicted. I
25 mean, that is a legitimate concern.

1 It's hard for me to assess in a vacuum. I mean, you
2 two have very different views about what the realistic
3 exposure in this case are.

4 MR. CAPOZZI: If I may?

5 THE COURT: Sure.

6 MR. CAPOZZI: Are there conditions that would
7 reasonably assure his appearance? He's applied for asylum in
8 the United States. He doesn't want to go back to China. If
9 he did, I think he'd be in deep trouble. He has a Chinese
10 passport. He has a driver's license from Las Vegas. And the
11 collateral is in Las Vegas. He would live in Las Vegas. His
12 third-party custodians are in Las Vegas. One is his
13 longstanding attorney because his family is gone, and the
14 other is his property manager of the properties his wife owns
15 in Nevada.

16 I think there's substantial collateral, a million
17 and something. I forgot what the number was.

18 THE COURT: The Government just told me that the
19 third -- the proffered third-party custodians are in Los
20 Angeles --

21 MR. CAPOZZI: They're not.

22 THE COURT: -- not in Las Vegas.

23 MR. CAPOZZI: They're in Las Vegas.

24 MR. BARTON: He's proposed multiple custodians, Your
25 Honor.

1 MR. CAPOZZI: I'm sorry?

2 MR. BARTON: He's proposed -- I believe he's
3 proposed three different custodians since he's been --

4 MR. CAPOZZI: No, there's two. It's Mr. Lynn
5 (phonetic), his attorney, and Ari Solomon (phonetic), both in
6 Las Vegas.

7 MR. BARTON: I believe there was another

8 MR. CAPOZZI: (Indiscernible attorney).

9 MR. BARTON: I believe there was another custodian
10 that he initially proposed.

11 MR. CAPOZZI: That was the first time. He lived in
12 Southern California, so.

13 MR. BARTON: There was a --

14 MR. CAPOZZI: We'll use him too, if we could. But
15 because he lives in Las Vegas, we just went to Las Vegas.
16 And there's no reason for him to run.

17 THE COURT: Well --

18 MR. CAPOZZI: The Government talks about eight years
19 but, Judge, the Indictment, and what I set out is what the
20 Indictment says, that there's two sales of kits that the
21 Government alleges were not finalized. One was for 200,000;
22 one was for 36. And I did the Guidelines on it. It's a
23 \$236,000 loss. And I set out the Guidelines. That's exactly
24 what it is.

25 Now the Government gives this pie in the sky about

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1 all these other things. Show some proof. They don't have
2 it, and there's no need for him to run. He's filed a civil
3 rights lawsuit from getting beat up when he was arrested.
4 They went and took his warehouse and destroyed everything in
5 it, and there's a lawsuit for that. Why leave?

6 THE COURT: Well, the fact that he's got a lawsuit,
7 the civil rights lawsuit pending doesn't impress me too much
8 as far as establishing ties to the community.

9 MR. CAPOZZI: Understand.

10 THE COURT: He's now been charged with a criminal
11 offense.

12 MR. CAPOZZI: Yeah. But it's --

13 THE COURT: A serious federal criminal offense.
14 He's obviously got ties to China. His partner and their
15 child are now there.

16 MR. CAPOZZI: Right.

17 THE COURT: What about this bond that's being
18 proposed? Who's posting it?

19 MR. CAPOZZI: It would be his company.

20 THE COURT: And what is their relationship to him?

21 MR. CAPOZZI: And that's, again, that's his partner,
22 his wife, owns this. David Destiny (phonetic), Dizzy David
23 Destina (phonetic). And they own the properties in Las
24 Vegas. There's one property here in Clovis. It's a rental
25 property. I think the value is 750 to 850 thousand. The

1 ones in Las Vegas, the one in Las Vegas is worth about the
2 same. I think it's a million-two.

3 Now there's another property in Las Vegas. We could
4 put that up, too. We were trying to get a loan on that, but
5 we will hold off getting a loan and put that up as
6 collateral, and that will add up to two million.

7 THE COURT: Who owns that?

8 MR. CAPOZZI: The same as this, his partner, his
9 wife.

10 MR. BARTON: What property is this?

11 MR. CAPOZZI: They're not married.

12 MR. BARTON: What property is that, Tony?

13 MR. CAPOZZI: They're right next to each other.

14 MR. BARTON: What's the address?

15 MR. CAPOZZI: I don't know the address off the top
16 of my head.

17 MR. BARTON: The Government is -- I mean, to
18 Mr. Capozzi's point, two of the properties that the Defendant
19 and his wife and his company owns just went for sale. One
20 has closed and one is in escrow, total about \$900,000 for
21 those two properties.

22 MR. CAPOZZI: And we'll pull the sale on the extra
23 one and put that up or post that money. That is substantial
24 collateral.

25 MR. BARTON: And, Your Honor, if I know the Court's

1 got a lot going on it, the Government does want to address
2 this asylum story. As set forth in the Government -- in
3 Mr. Zhu's Bail Review, Bail Appeal Motion, the Government --
4 there is strong proof he's not telling the truth. This
5 asylum application is false. It's got false -- demonstrably
6 true falsehoods.

7 The Government has the application. We're happy to
8 file it. We can file it under seal. Defense Counsel was
9 asked to sign a waiver allowing the Government to show it in
10 open court. Defense wouldn't sign that waiver. That asylum
11 application has numerous falsehoods about Mr. Zhu, about
12 prior names used, about family connections, about his prior
13 travels to the United States, all lies.

14 He is an incredible flight risk.

15 MR. CAPOZZI: I submitted that to my Motion first
16 time up, his asylum application. I just don't think it
17 should be out to the public. It's fine for the Court. I
18 have no problem with the Court looking at it. It's signed
19 under the name David He, Qiang He, where he legally changed
20 his name.

21 The question is whether or not he's going to show
22 up.

23 MR. BARTON: And, Your Honor, on that point, if I
24 may, the last biggest point the Government wants to emphasize
25 is that Mr. Zhu, as his story would have it, is that at some

1 point, he changed his name from Jia Bei Zhu or Jesse Zhu to
2 Quiang He while in China, and that he came to the United
3 States or came to Canada for the first time in 2020 just to
4 go into the United States. And then when he got into the
5 United States, he applied for asylum. That's not true.

6 He has the Chinese passport for Qiang He was issued
7 in 2011. The Defendant, Jia Bei Zhu, has a Canadian passport
8 and a Canadian driver's license -- the driver's license was
9 found at the search warrant -- that were issued in 2013, 2014
10 under the identity of Jia Bei Zhu. Since 1997, the Defendant
11 has crossed the Canadian border into the U.S. under the name
12 Jia Bei Zhu 40 times, and he's been stopped at least two
13 times with what I could generally describe as stuff related
14 to the healthcare pharmaceutical industry. At times, he was
15 illegally in the country and asked to leave saying he needed
16 a work visa. Other times, he's able to obtain or at least
17 apply for a work visa and stay here for a little bit.

18 So this story that the Defendant changed his name
19 from Zhu to He in China and then came to Canada in 2020 just
20 to make his way to the United States and apply for asylum,
21 absolutely not true. He's been operating under two
22 identities for over a decade. And to the Government, there
23 is -- that's an incredible flight risk.

24 MR. CAPOZZI: He has legal documents that I
25 submitted to the Court changing his name from Qiang Lee to

1 David Lee -- He, not Lee. And then it was changed in China.
2 I can't get those papers. People who knew him as Jia Bei
3 still call him that. There aren't that many people here that
4 know him by that name. They know him as David He.

5 Now he's come back over the border because he has
6 business here. He had a business in Fresno. When that lease
7 ran out, they moved the business down to Reedley just for a
8 warehouse. They were building a new building here, a
9 multi-million-dollar building that was being built here for
10 his warehouse. He had a -- prior to coming to Fresno, they
11 were in Tulare County.

12 So he's got businesses here. They were doing very
13 well. The warehouse in Reedley was found to be not meeting
14 up to code, and that's when they were searched and that's
15 where all of his equipment and all of the animals were
16 destroyed. No reason to run, especially when he's done as
17 much time as he has.

18 MR. BARTON: Your Honor, I mean, Mr. Zhu contends
19 that he legally changed his name from Zhu to Qiang He in
20 China, but he can't produce the documentation. All the stuff
21 the Government just proffered to the Court, we have the
22 documents here. We can show them to the Court. He had dual
23 identities for over a decade that he's using legal documents
24 authorized by Canada and the United States.

25 And then he files for asylum and he lies about it

1 all. When he applied for asylum, he disclosed nothing about
2 his Canadian passport, his time in Canada, none of that.

3 MR. CAPOZZI: Because they're all expired. The only
4 passport that's good is the Chinese passport in the name of
5 Qiang He and the driver's license is David He.

6 MR. BARTON: That's not true. The Canadian passport
7 expired September 2023.

8 MR. CAPOZZI: Are there conditions to reasonably
9 assure his appearance? I submit there are --

10 THE COURT: And I'm not convinced of that as of yet.

11 MR. CAPOZZI: I'm sorry, Judge?

12 THE COURT: I am not convinced of that as of yet. I
13 am obviously concerned. It sounds as if the judges who have
14 heard this matter before came up to me, I'm obviously
15 concerned about the use of multiple names.

16 The Government has also said, oh, we want to talk
17 about that Order that the Defense submitted and you signed.
18 I signed that Order only for purposes of allowing money to be
19 placed on the Defendant's books where he's being retained.

20 MR. BARTON: Understood.

21 THE COURT: If all the names need to be listed in
22 one way or another, the only basis that -- I mean, that Order
23 was routed to me by well-meaning courtroom deputies thinking
24 that it was merely a ministerial task. If you didn't have a
25 chance to oppose it, that's why. It got submitted. It was

1 immediately forwarded to me. I get hundreds of orders a
2 week.

3 It didn't appear to me to be significant. I signed
4 off on it. I signed off on it only to allow what Mr. Capozzi
5 represented was, look, this is causing a problem with him
6 getting anything put on the books at his place of confinement
7 under that name. If we need to modify that in some way that
8 satisfies everybody, happy to modify it.

9 In terms of detention, I'm obviously concerned with
10 the use of multiple names. And I'm not going to be able to
11 figure out here listening to the two of you playing ping pong
12 over what's expired, not expired, what's this, what's that.
13 No, I'm not going to -- I can't. I can't resolve that today
14 --

15 MR. CAPOZZI: I'll be glad to submit that.

16 THE COURT: -- and I'm not going to.

17 Number two, what is the real exposure in this case?
18 Is it the Government's statutory maximum, because the
19 Guidelines are going to exceed the statutory maximum? It
20 sounds to me like they're arguing based upon relevant
21 conduct, not based upon charged conduct. Or is it going to
22 be limited to the charges?

23 I don't know. I've never even opened this docket
24 before. I had no knowledge of this case until I showed up
25 here this morning.

1 Three, what's the collateral that's being proposed?
2 Who actually controls it? Is it the Defendant himself
3 essentially so that all this is, is, well, he profited by
4 millions of dollars in fraud and, therefore, this is just the
5 cost of doing business to put up property that he's managed
6 to acquire as a result of his allegedly fraudulent activities
7 and, therefore, it really does not tie him at all?

8 Normally, of course, what the Court is looking for
9 is somebody very close to a criminal defendant who says, I
10 believe them so much I'm willing to put up the roof over my
11 head. I'm absolutely confident they're not going to flee
12 and, therefore, I'll put my home on the line where I live.
13 Does that -- I mean, the Court usually presumes, A, that
14 that's a very serious matter for people to expose themselves
15 like that and I should take it very seriously and, two, that
16 most somewhat rational human beings would say to themselves,
17 gee, I would love to have run but I can't because somebody
18 really close to me has their home on the line and I just
19 can't do that to them.

20 Now, of course, not everyone's rational. And some
21 people are more selfish than others and, therefore, sometimes
22 people do despicable things. But generally, the Court is
23 impressed by property to be even put by others that are close
24 to the individual. As opposed to, oh, my life partner who
25 just gave birth to our child and then exited for China and

1 isn't planning on returning, yeah, that's their property that
2 they posted. Well, that doesn't sound all that solid to me,
3 no matter how much it's worth. Less impressive than my
4 mother's putting up her home that she lives in and I wouldn't
5 possibly do that to my mother.

6 Now, anyway, I'm just giving you guidelines. I'll
7 hear this again and I'm not saying that I can conceive of no
8 possible conditions. I mean, yeah, it would have to entail
9 electronic monitoring. It would have to include a
10 significant bond.

11 It would have to include third-party custodians who
12 have a close enough relationship to the Defendant who sign
13 declarations saying I understand what my obligations as a
14 third-party custodian would be, I will check on the Defendant
15 on a daily basis. We have a close enough relationship
16 already that I do that anyway, and I understand that if I
17 become aware of the Defendant violating any condition of his
18 pretrial release, I must immediately notify Pretrial
19 Services. I would want that buttoned up.

20 All of those things are relevant to me. Right now,
21 this is a hodgepodge. I can't really tell what I've got in
22 front of me. Of course, the other -- I mean, I would hear it
23 again. I at least have some knowledge now. The problem is
24 I'm about to start a trial in Sacramento, and I doubt I'm
25 going to be here for a while. I don't know whether a Motion

1 For Bail Review is something that we can be allowed to do
2 remotely.

3 I think we might be able to under the Federal Rules
4 of Criminal Procedure. If so, I would certainly conduct a
5 further hearing if the Defense said, okay, Judge, we heard
6 you at the hearing, here's our proposal and here's full
7 support for it. But because I'm not satisfied with respect
8 to all of those things as of yet, I am going to deny the
9 Motion For Bail or Appeal of the Detention Order, Review of
10 the Detention Order, but it is denied without prejudice to
11 renewal if you think you can address some of the concerns I
12 have.

13 MR. CAPOZZI: I feel very confident about that. And
14 I don't have any problem coming to Sacramento. I have other
15 cases in state court in Sacramento I could coordinate with
16 the Court.

17 THE COURT: Okay.

18 MR. CAPOZZI: And --

19 THE COURT: Anything, Mr. Barton, you wanted to add?
20 I've commented about the name situation. I didn't mean to do
21 anything that the Government --

22 MR. BARTON: No.

23 THE COURT: I didn't know the Government opposed.

24 MR. CAPOZZI: Nor did I. Nor did I.

25 MR. BARTON: No, Your Honor. That clarification by

1 the Court is perfect.

2 THE COURT: All right.

3 MR. BARTON: Thank you.

4 MR. CAPOZZI: Okay, good.

5 THE COURT: All right. Denied without prejudice.

6 MR. CAPOZZI: Yeah. Thank you, Judge.

7 (Whereupon, at 2:28 p.m., the hearing was adjourned.)

8 * * * * *

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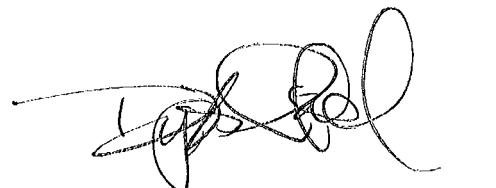
C E R T I F I C A T I O N

13 I, DIPTI PATEL, court-approved transcriber, certify
14 that the foregoing is a correct transcript from the official
15 electronic sound recording of the proceedings in the above-
16 entitled matter, and is transcribed to the best of my
17 ability.

18

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DIPTI PATEL, AAERT CET-997

22

Expires: December 6, 2026

23

LIBERTY TRANSCRIPTS

DATE: August 9, 2024

24

25

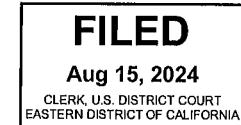
EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

CASE NO. 1:23-cr-00219-NODJ-BAM

Plaintiff,

v.

JIA BEI ZHU,
aka Jesse Zhu, Qiang He, and David He, and
ZHAOYAN WANG,

18 U.S.C. § 1349 – Conspiracy to Commit Wire Fraud; 18 U.S.C. § 1343 – Wire Fraud; 21 U.S.C. §§ 331(a) and 333(a)(2) – Distribution of Adulterated and Misbranded Medical Devices; 18 U.S.C. § 1001(a)(2) – False Statements; 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) – Criminal Forfeiture

Defendants.

FIRST SUPERSEDING INDICTMENT

COUNT ONE: [18 U.S.C. § 1349 – Conspiracy to Commit Wire Fraud]

The Grand Jury charges:

JIA BEI ZHU, aka Jesse Zhu, Qiang He, and David He, and

ZHAOYAN WANG,

defendants herein, as follows:

I. INTRODUCTION

1. At all relevant times, defendants ZHU and WANG owned and controlled Ai De Diagnostic Co. LTD (“Ai De”), which had its principal place of business in China, and Universal

1 Meditech Incorporated (“UMI”) and Prestige Biotech Incorporated (“PBI”), which had their principal
2 places of business in Fresno County, State and Eastern District of California.

3 2. At all relevant times, Ai De, UMI, and PBI were alter egos of one another.

4 **II. RELEVANT BACKGROUND ON THE FDA**

5 3. The Food and Drug Administration (“FDA”) is the federal agency that is responsible for
6 protecting the health and safety of the American public by enforcing the federal Food, Drug, and
7 Cosmetic Act (“FDCA”). Its responsibilities include regulating the distribution of medical devices in
8 interstate commerce to ensure that the devices are safe and effective for human use.

9 4. COVID-19 in vitro diagnostic test kits (“COVID-19 test kits”) collect, prepare, and
10 examine samples taken from the human body to detect diseases or other conditions in humans.
11 Therefore, COVID-19 test kits are medical devices under the FDCA.

12 5. Medical devices are classified into one of three categories: Class I, II, or III. Class III
13 medical devices are the most highly regulated.

14 6. Generally speaking, for Class III medical devices, anyone who proposes to introduce, or
15 deliver for introduction, such devices into interstate commerce for distribution is required to obtain pre-
16 market approval, pre-market clearance, emergency use authorization, or other approval from the FDA.

17 7. At all relevant times, COVID-19 test kits were Class III medical devices. Therefore,
18 obtaining pre-market approval, pre-market clearance, emergency use authorization, or other approval
19 from the FDA was required before distributing such test kits in the United States.

20 8. At all relevant times, any COVID-19 test kits distributed in the United States without
21 obtaining pre-market approval, pre-market clearance, emergency use authorization, or other applicable
22 approval from the FDA were adulterated and misbranded medical devices under the FDCA.

23 9. At all relevant times, any COVID-19 test kits whose packaging did not bear labels
24 containing the names and places of business of the actual manufacturers, packers, and distributors were
25 also misbranded medical devices under the FDCA.

26 **III. CONSPIRACY**

27 10. Beginning on a date unknown to the Grand Jury, but not later than in or around August
28 2020, and continuing at least until in or around March 2023, in Fresno and Tulare Counties, State and

1 Eastern District of California, and elsewhere, defendants ZHU and WANG, and others known and
2 unknown to the Grand Jury, did knowingly conspire, combine, and confederate with each other to cause
3 writings, signs, signals, pictures, and sounds to be transmitted by means of wire and radio
4 communications in interstate commerce, in furtherance of a material scheme and artifice to defraud
5 buyers of UMI and PBI's COVID-19 test kits, and to obtain money and property from the buyers, by
6 means of materially false and fraudulent pretenses, representations, and promises, in violation of 18
7 U.S.C. § 1343.

IV. MANNER AND MEANS

9 11. Defendants ZHU and WANG, and others known and unknown to the Grand Jury, carried
10 out their scheme and artifice to defraud by using the following manner and means, among others:

11 12. Defendants ZHU and WANG, and others known and unknown to the Grand Jury, caused
12 UMI and PBI to import COVID-19 test kits from Ai De that were manufactured in China. On forms
13 used for evaluation or inspection by United States Customs and Border Protection, they caused the
14 COVID-19 test kits to be falsely declared as pregnancy test kits. This was because Ai De was not
15 authorized by any federal agency to import COVID-19 test kits into the United States, but it was
16 authorized to import pregnancy test kits. Therefore, ZHU and WANG illegally imported COVID-19 test
17 kits from China by falsely representing and declaring that the test kits were authorized pregnancy
18 test kits.

13. Defendants ZHU and WANG, and others known and unknown to the Grand Jury, caused
false and fraudulent representations to be made to the buyers of UMI and PBI's COVID-19 test kits,
including but not limited to the following:

22 14. Defendants ZHU and WANG, and others known and unknown to the Grand Jury, caused
23 false and fraudulent representations to be made to the buyers of UMI and PBI's COVID-19 test kits, to
24 wit: that the test kits were manufactured in the United States. They knew, however, that the test kits
25 were manufactured in China.

26 15. Defendants ZHU and WANG, and others known and unknown to the Grand Jury, caused
27 false and fraudulent representations to be made to the buyers of UMI and PBI's COVID-19 test kits, to
28 wit: that the test kits were manufactured by, or in connection with, laboratories certified by the United

1 States Centers for Disease Control and Prevention (“CDC”). They knew, however, that the test kits
2 were not manufactured by, or in connection with, CDC-certified laboratories.

3 16. Defendants ZHU and WANG, and others known and unknown to the Grand Jury, caused
4 false and fraudulent representations to be made to the buyers of UMI and PBI’s COVID-19 test kits, to
5 wit: that UMI and PBI could manufacture up to 100,000 test kits per week in the United States. They
6 knew, however, that UMI did not have the capacity to make test kits at that rate and would have to
7 import additional test kits manufactured in China.

8 17. Defendants ZHU and WANG, and others known and unknown to the Grand Jury, caused
9 false and fraudulent representations to be made to the buyers of UMI and PBI’s COVID-19 test kits, to
10 wit: that UMI and PBI had obtained the required approvals from the FDA to distribute the test kits in the
11 United States. They knew, however, that UMI and PBI had not obtained any such approvals.

12 18. Defendants ZHU and WANG, and others known and unknown to the Grand Jury, caused
13 these false and fraudulent representations to be made to the buyers of UMI and PBI’s COVID-19 test
14 kits through various methods. Those methods included text messages, WeChat messages, WhatsApp
15 messages, emails, calls, in-person meetings, UMI and PBI’s websites, and contract documents.

16 19. When certain buyers of UMI and PBI’s COVID-19 test kits requested to inspect UMI and
17 PBI’s facilities in the United States pursuant to the terms of their contracts, defendants ZHU and
18 WANG, and others known and unknown to the Grand Jury, denied them access and fabricated reasons
19 for the denial. The fabricated reasons included that UMI and PBI’s facilities were undergoing
20 construction and renovation, and that the companies had proprietary and confidential information and
21 technology inside their facilities that they could not allow anyone else to see. In reality, however, they
22 did not want the buyers to know that UMI and PBI were obtaining the COVID-19 test kits from China.

23 20. The false and fraudulent representations that defendants ZHU and WANG, and others
24 known and unknown to the Grand Jury, caused to be made to the buyers of UMI and PBI’s COVID-19
25 test kits were important to the buyers. The buyers would not have made the purchases had they known
26 that the test kits were not manufactured in the United States and were instead manufactured in China
27 because this created quality and customs concerns for them. They also would not have made the
28 purchases had they known that the test kits were not manufactured by, or in connection with, CDC-

1 certified laboratories. Nor would they have made the purchases had they known that UMI and PBI
2 could not manufacture the test kits at the promised rates. Finally, they would not have made the
3 purchases had they known that the test kits were not approved by the FDA.

4 21. As a result of the false and fraudulent representations that defendants ZHU and WANG,
5 and others known and unknown to the Grand Jury, caused to be made to the buyers of UMI and PBI's
6 COVID-19 test kits, UMI and PBI sold hundreds of thousands of the test kits and received over
7 \$1,700,000 in payments. Many payments were made by interstate wire transfers sent from outside
8 California and deposited into UMI's bank accounts opened in Tulare County, State and Eastern District
9 of California.

10 22. At all relevant times, defendants ZHU and WANG, and others known and unknown to
11 the Grand Jury, acted with the intent to defraud.

12 All in violation of 18 U.S.C. § 1349.

13 COUNTS TWO THROUGH NINE: [18 U.S.C. § 1343 –Wire Fraud]

14 The Grand Jury further charges:

15 JIA BEI ZHU, aka Jesse Zhu, Qiang He, and David He,
16 and ZHAOYAN WANG,

17 defendants herein, as follows:

18 23. Paragraphs 1 through 9 and 11 through 22 are incorporated by reference as though fully
19 set forth herein.

20 24. Beginning on a date unknown to the Grand Jury, but not later than in or around August
21 2020, and continuing at least until in or around March 2023, in Fresno and Tulare Counties, State and
22 Eastern District of California, and elsewhere, defendants ZHU and WANG, knowingly devised,
23 intended to devise, participated in, and executed a material scheme and artifice to defraud the buyers of
24 UMI and PBI's COVID-19 test kits, and to obtain money and property from the buyers, by means of
25 materially false and fraudulent pretenses, representations, and promises.

26 25. On or about the dates set forth below, in Fresno and Tulare Counties, State and Eastern
27 District of California, and elsewhere, defendants ZHU and WANG, and others known and unknown to
28 the Grand Jury, for the purpose of executing their scheme and artifice to defraud, caused to be

1 transmitted, by means of wire and radio communication in interstate commerce, writings, signs, signals,
2 pictures, and sounds as follows:

| Count | Date | Description |
|-------|------------|--|
| TWO | 08/11/2020 | Wire transmission of monies in the amount of \$12,000, originating from COMPANY ONE's bank account opened outside California, and sent to UMI's bank account ending - 9664 opened in Tulare County, State and Eastern District of California, that was processed on computers located outside of California through the Federal Reserve Bank's Wire Transfer Network ("Fedwire") |
| THREE | 12/15/2020 | Wire transmission of monies in the amount of \$100,000, originating from COMPANY TWO's bank account opened outside California, and sent to UMI's bank account ending - 9664 opened in Tulare County, State and Eastern District of California, that was processed on computers located outside of California through Fedwire |
| FOUR | 12/24/2020 | Wire transmission of monies in the amount of \$275,000, originating from COMPANY TWO's bank account opened outside California, and sent to UMI's bank account ending in - 9664 opened in Tulare County, State and Eastern District of California, that was processed on computers located outside of California through Fedwire |
| FIVE | 01/13/2022 | Wire transmission of monies in the amount of \$49,000, originating from COMPANY FOUR's bank account opened outside of California, and sent to UMI's bank account ending in - 9345 opened in Tulare County, State and Eastern District of California, that was processed on computers located outside of California through Fedwire |
| SIX | 01/14/2022 | Wire transmission of monies in the amount of \$24,500, originating from COMPANY FOUR's bank account opened outside of California, and sent to UMI's bank account ending in - 9345 opened in Tulare County, State and Eastern District of California, that was processed on computers located outside of California through Fedwire |
| SEVEN | 01/14/2022 | Wire transmission of monies in the amount of \$24,500, originating from COMPANY FOUR's bank account opened outside of California, and sent to UMI's bank account ending in - 9345 opened in Tulare County, State and Eastern District of California, that was processed on computers located outside of California through Fedwire |
| EIGHT | 01/19/2022 | Wire transmission of monies in the amount of \$43,000, originating from COMPANY FOUR's bank account opened outside of California, and sent to UMI's bank account ending in - 9345 opened in Tulare County, State and Eastern District of California, that was processed on computers located outside of California through Fedwire |

| | | | |
|---|------|------------|---|
| 1 | NINE | 01/26/2022 | Wire transmission of monies in the amount of \$36,000, originating from COMPANY THREE's bank account opened outside of California, and sent to UMI's bank account ending in - 9345 opened at the same bank in Tulare County, State and Eastern District of California, that was processed internally by the bank. |
|---|------|------------|---|

5 All in violation of 18 U.S.C. § 1343.

6 COUNTS TEN AND ELEVEN: [21 U.S.C. §§ 331(a) and 333(a)(2) – Distribution of Adulterated and
7 Misbranded Medical Devices]

8 The Grand Jury further charges:

9 JIA BEI ZHU, aka Jesse Zhu, Qiang He, and David He, and

10 ZHAOYAN WANG,

11 defendants herein, as follows:

12 27. Paragraphs 1 through 9, 14, 15, and 17 are incorporated by reference as though fully set
13 forth herein.

14 28. On or about the dates set forth below, in Fresno and Tulare Counties, State and Eastern
15 District of California, and elsewhere, defendants ZHU and WANG, with the intent to defraud and
16 mislead, caused to be introduced and delivered for introduction into interstate commerce, medical
17 devices that were adulterated and misbranded as follows:

| Count | Date | From | Sent To | Medical Devices |
|--------|----------|---------------|---|---|
| TEN | 01/15/22 | UMI in Fresno | COMPANY FIVE in Southern California and then to COMPANY FOUR in Texas | Approximately 10,000 COVID-19 test kits |
| ELEVEN | 01/26/22 | UMI in Fresno | COMPANY THREE in Texas | Approximately 10,000 COVID-19 test kits |

26 All in violation of 21 U.S.C. §§ 331(a) and 333(a)(2).

1 COUNT TWELVE: [18 U.S.C. § 1001(a)(2) – False Statements]

2 The Grand Jury further charges:

3 JIA BEI ZHU, aka Jesse Zhu, Qiang He, and David He,

4 defendant herein, as follows:

5 29. On or about May 2, 2023, and May 3, 2023, in Fresno County, State and Eastern District
6 of California, defendant ZHU did willfully and knowingly make materially false, fictitious, and
7 fraudulent statements and representations in a matter within the jurisdiction of the executive branch of
8 the government of the United States, to wit: defendant ZHU made materially false, fictitious, and
9 fraudulent statements and representations to FDA officials, including that:

- 10 a. He was not defendant ZHU aka Jesse Zhu and was instead Qiang He aka David He;
- 11 b. He was hired by UMI as a COVID-19 consultant in 2021;
- 12 c. He was hired by PBI just a couple of weeks prior to speaking with the FDA officials to
13 coordinate the company's interactions with government agencies;
- 14 d. He did not know the manufacturing and distribution histories for UMI or PBI; and
- 15 e. He did not have access to UMI or PBI's distribution records, financial records, or
16 ownership records.

17 All in violation of 18 U.S.C. § 1001(a)(2).

18
19 FORFEITURE ALLEGATION: 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) – Criminal Forfeiture

20 30. Upon conviction of one or more of the offenses alleged in Counts One through Nine of
21 this First Superseding Indictment, defendants ZHU and WANG shall forfeit to the United States,
22 pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), all property, real and personal, which
23 constitutes or is derived from proceeds traceable to such violations, including, but not limited to, a sum
24 of money equal to the amount of money that constitutes or is derived from proceeds traceable to the
25 offenses for which the defendants are convicted.

26 31. If any property subject to forfeiture as a result of the offenses alleged in Counts One
27 through Nine of this First Superseding Indictment for which the defendants are convicted:

- 28 a. cannot be located upon the exercise of due diligence;

- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property that cannot be divided without difficulty;

5 the United States intends, pursuant to 28 U.S.C. § 2461(c), incorporating 21 U.S.C. § 853(p), to seek
6 forfeiture of any other property of the defendants, up to the value of the property subject to forfeiture

A TRUE BILL.

/s/ Signature on file w/AUSA

FOREPERSON

PHILLIP A. TALBERT
United States Attorney

HENRY Z. CARBAJAL for

KIMBERLY A. SANCHEZ,
Assistant United States Attorney
Chief, Fresno Office

No. 1:23-CR-00219-NODJ-BAM

FILED
Aug 15, 2024
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

Eastern District of California

Criminal Division

THE UNITED STATES OF AMERICA

vs.

JIA BEI ZHU,
aka Jesse Zhu, Qiang He, and David He, and
ZHAOYAN WANG,

FIRST SUPERSEDING INDICTMENT

VIOLATION(S): 18 U.S.C. § 1349 – Conspiracy to Commit Wire Fraud; 18 U.S.C. § 1343 – Wire Fraud; 21 U.S.C. §§ 331(a) and 333(a)(2) – Distribution of Adulterated and Misbranded Medical Devices; 18 U.S.C. § 1001(a)(2) – False Statements; 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) – Criminal Forfeiture

A true bill.

/s/

Foreman.

Filed in open court this _____ day

of _____, A.D. 20 _____

Clerk.

*Bail, \$ ___ AS PREVIOUSLY SET FOR DEFENDANT ZHU; PLEASE ISSUE NO-BAIL
WARRANT FOR DEFENDANT WANG*

Heil K. Oberst

AO 257
(CAED rev. 4/2024)

Matter in USAO prior to Feb. 7, 2024 (KES conflict) YES NO

PER 18 U.S.C. 3170

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION -- IN U.S. DISTRICT COURT

BY COMPLAINT INFORMATION INDICTMENT
 SUPERSIDING: CASE No. 1:23-cr-00219-NODJ-BAM

OFFENSE CHARGED

Petty
 Minor
 Misdemeanor
 Felony

Place of offense

FRESNO AND TULARE COUNTY

U.S.C. Citation

PLEASE SEE CHARGING DOCUMENT

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

FBI- SA Cori Orr

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per FRCrP 20 21 40. Show District

this is a reprocsecution of charges previously dismissed which were dismissed on motion of:

U.S. Atty Defense

this prosecution relates to a pending case involving this same defendant

prior proceedings or appearance(s) before U.S. Magistrate Judge regarding this defendant were recorded under

SHOW
DOCKET NO.

MAGISTRATE
JUDGE CASE NO.

Name and Office of Person Furnishing Information on

THIS FORM

KERRY RIN

U.S. Atty Other U.S. Agency

Name of Asst. U.S. Atty (if assigned) ARELIS CLEMENTE
 FORFEITURE ALLEGATION

ADDITIONAL INFORMATION OR COMMENTS

Name of District Court, and/or Judge/Magistrate Judge Location (City)

Eastern District of California, Fresno

DEFENDANT -- U.S. vs.

JIA BEI ZHU, aka Jesse Zhu, Qiang He, and David He

Address

Birth Date

Male Alien

Female (if applicable)

(Optional unless a juvenile)

DEFENDANT

IS NOT IN CUSTODY

1) Has not been arrested, pending outcome of this proceeding
If not detained, give date any prior summons was served on above charges

2) Is a Fugitive

3) Is on Bail or Release from (show District)

IS IN CUSTODY

4) On this charge
5) On another conviction
6) Awaiting trial on other charges Fed'l State
If answer to (6) is "Yes," show name of institution

Has detainer been filed? Yes
 No

If "Yes,"
give date filed

Mo. Day Year

DATE OF ARREST

Or . . . if Arresting Agency & Warrant were not Federal

Mo. Day Year

DATE TRANSFERRED
TO U.S. CUSTODY

This report amends AO 257 previously submitted

United States v. Jia Bei Zhu
Penalties for First Superseding Indictment

COUNT ONE:

VIOLATION: 18 U.S.C. § 1349 – Conspiracy to commit wire fraud

MAX PENALTY: 20 years in prison
\$250,000 fine
3 years of supervised release
\$100 special assessment

COUNTS TWO THROUGH NINE:

VIOLATION: 18 U.S.C. § 1343 – Wire fraud

MAX PENALTY: 20 years in prison
\$250,000 fine
3 years of supervised release
\$100 special assessment

COUNTS TEN AND ELEVEN:

VIOLATION: 21 U.S.C. §§ 331(a) and 333(a)(2) – Distribution of adulterated and misbranded medical devices

MAX PENALTY: 3 years in prison
\$250,000 fine
1 year of supervised release
\$100 special assessment

COUNT TWELVE:

VIOLATION: 18 U.S.C. § 1001(a)(2) – False statements

MAX PENALTY: 5 years in prison
\$250,000 fine
3 years of supervised release
\$100 special assessment

FORFEITURE ALLEGATION

As stated in the charging document.

AO 257
(CAED rev. 4/2024)

Matter in USAO prior to Feb. 7, 2024 (KES conflict) YES NO

PER 18 U.S.C. 3170

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION -- IN U.S. DISTRICT COURT

BY COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING: CASE No. 1:23-cr-00219-NODJ-BAM
OFFENSE CHARGED

Name of District Court, and/or Judge/Magistrate Judge Location (City)

Eastern District of California, Fresno

Petty
 Minor
 Misdemeanor
 Felony

Place of offense

U.S.C. Citation

FRESNO AND TULARE COUNTY

PLEASE SEE CHARGING DOCUMENT

DEFENDANT -- U.S. vs.

ZHAOYAN WANG

Address

Birth
Date

Male Alien

Female (if applicable)

(Optional unless a juvenile)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

FBI- SA Cori Orr

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per FRCrP 20 21 40. Show District

this is a reprocsecution of charges previously dismissed which were dismissed on motion of:

U.S. Att'y Defense

this prosecution relates to a pending case involving this same defendant

SHOW
DOCKET NO.

prior proceedings or appearance(s) before U.S. Magistrate Judge regarding this defendant were recorded under

MAGISTRATE
JUDGE CASE NO.

Name and Office of Person Furnishing Information on

THIS FORM

KERRY RIN

U.S. Att'y Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned) ARELIS CLEMENTE
 FORFEITURE ALLEGATION

ADDITIONAL INFORMATION OR COMMENTS

PLEASE ISSUE ARREST WARRANT

DEFENDANT

IS NOT IN CUSTODY

1) Has not been arrested, pending outcome of this proceeding
If not detained, give date any prior summons was served on above charges

2) Is a Fugitive

3) Is on Bail or Release from (show District)

IS IN CUSTODY

4) On this charge
5) On another conviction
6) Awaiting trial on other charges Fed'l State
If answer to (6) is "Yes," show name of institution

Has detainer
been filed? Yes
 No
Mo. Day Year
If "Yes,"
give date
filed

**DATE OF
ARREST**

Or . . . if Arresting Agency & Warrant were not Federal

Mo. Day Year

**DATE TRANSFERRED
TO U.S. CUSTODY**

This report amends AO 257 previously submitted

United States v. Zhaoyan Wang
Penalties for First Superseding Indictment

COUNT ONE:

VIOLATION: 18 U.S.C. § 1349 – Conspiracy to commit wire fraud

MAX PENALTY: 20 years in prison
\$250,000 fine
3 years of supervised release
\$100 special assessment

COUNTS TWO THROUGH NINE:

VIOLATION: 18 U.S.C. § 1343 – Wire fraud

MAX PENALTY: 20 years in prison
\$250,000 fine
3 years of supervised release
\$100 special assessment

COUNTS TEN AND ELEVEN:

VIOLATION: 21 U.S.C. §§ 331(a) and 333(a)(2) – Distribution of adulterated and misbranded medical devices

MAX PENALTY: 3 years in prison
\$250,000 fine
1 year of supervised release
\$100 special assessment

FORFEITURE ALLEGATION

As stated in the charging document.

EXHIBIT

M

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15 Attorneys for Plaintiffs Universal Meditech Inc. and David He

16 **UNITED STATES DISTRICT COURT**
17 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

18 UNIVERSAL MEDITECH, INC., a California
19 corporation; DAVID HE, an individual,

20 Plaintiffs,

21 v.

22 CITY OF REEDLEY; BUILDING OFFICER
23 JEREMY HARRISON; CODE ENFORCEMENT
24 OFFICER JESALYN HARPER; FIRE CHIEF
25 JEFFREY ISAAK; COUNTY OF FRESNO;
26 ASSISTANT PUBLIC HEALTH DIRECTOR
27 HUMBERTO PRADO; FDA-OCI SPECIAL
28 AGENT JEFFREY MAURICE; FDA-OCI
SPECIAL AGENT MARIDEHL MATHER;
UNKNOWN GOVERNMENT OFFICIALS,

Defendants.

Case No.: 1:24-cv-0528-JLT-EPG

COMPLAINT FOR DAMAGES

42 U.S.C. § 1983
Cal. Civ. Code § 52.1
Bivens Claim

TO THE HONORABLE COURT:

Plaintiffs, Universal Meditech, Inc. and David He, through counsel, hereby allege as follows and make the following allegations against the Defendants, City of Reedley, Building Officer Jeremy Harrison, Code Enforcement Officer Jesalyn Harper, Fire Chief Jeffrey Isaak, County of Fresno, Assistant Public Health Director Humberto Prado, FDA-OCI Special Agent Jeffrey Maurice, FDA-OCI Special Agent Maridehl Mather, and Unknown Government Officials.

COMPLAINT FOR DAMAGES

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1343, and
2 1367, as it arises under the federal civil rights laws and also include supplemental state law claims.

4. 2. This Court has venue over this action pursuant to 28 U.S.C. § 1391(b)(2), as the events
5 giving rise to this action occurred within this judicial district.

6. 3. Plaintiffs have complied with the California Tort Claims Act, California Government
7 Code §§ 900, *et seq.*, to the extent that they allege claims under California law.

PARTIES

4. 4. Plaintiff Universal Meditech, Inc. (UMI) is a California corporation in good standing,
9 Entity No.3811331. UMI has been in lawful business in the State of California since 2015,operating
10 at authorized locations in Tulare and Fresno County at all relevant times. UMI's ownership is based
11 in the People's Republic of China. UMI is in the lawful business of manufacturing and producing
12 diagnostic testing kits and other biologic medical devices. At all times when it was actively
13 manufacturing and producing said devices, UMI had valid authorization from the federal Food and
14 Drug Administration (FDA). Due to a business dispute with its landlord in the fall of 2022, UMI
15 ceased its lawful operations in the City of Fresno and rented a warehouse in the City of Reedley,
16 located at 850 I Street. UMI began storing its assets at the Reedley warehouse beginning in November
17 2022, in anticipation of the completion of its new facility -- then under construction in the City of
18 Fresno – becoming available in May 2023. The Reedley warehouse was simply that, a warehouse, and
19 UMI was not in active business during the time that its business assets were being stored there.

20. 5. Plaintiff David He is a Chinese national living in the United States in the State of
21 California. Mr. He was at all times an authorized representative of UMI.

22. 6. Defendant City of Reedley (“Reedley”) is a public entity under California law. Reedley
23 operates through its subsidiary agencies and personnel. Reedley is sued herein under California law,
24 under which it is vicariously responsible for the unlawful acts of its employees and agents pursuant
25 to California Government Code § 815.2.

26. 7. Defendant Building Officer Jeremy Harrison (“Officer Harrison”) is, upon information
27 and belief, a citizen and resident of the State of California, County of Fresno. With respect to all of
28 the acts complained of herein, Officer Harrison was on duty and acting as a Reedley officer and
employee. At all material times herein, Officer Harrison acted individually and within the course and

1 scope of his employment with Reedley. Officer Harrison is sued in his personal capacity for acts he
2 performed under the color of law. As alleged herein, Plaintiffs believe in good faith that Officer
3 Harrison is legally responsible and liable for the injuries and damages alleged herein.

4 8. Defendant Code Enforcement Officer Jesalyn Harper (“Officer Harper”) is, upon
5 information and belief, a citizen and resident of the State of California, County of Fresno. With
6 respect to all of the acts complained of herein, Officer Harper was on duty and acting as a Reedley
7 officer and employee. At all material times herein, Officer Harper acted individually and within the
8 course and scope of his employment with Reedley. Officer Harper is sued in his personal capacity for
9 acts she performed under the color of law. As alleged herein, Plaintiffs believe in good faith that
Officer Harper is legally responsible and liable for the injuries and damages alleged herein.
10

11 9. Defendant Fire Chief Jeffrey Isaak (“Chief Isaak”) is, upon information and belief, a
12 citizen and resident of the State of California, County of Fresno. With respect to all of the acts
13 complained of herein, Chief Isaak was on duty and acting as a Reedley officer and employee. At all
14 material times herein, Chief Isaak acted individually and within the course and scope of his
15 employment with Reedley. Chief Isaak is sued in his personal capacity for acts he performed under
16 the color of law. As alleged herein, Plaintiffs believe in good faith that Chief Isaak is legally
responsible and liable for the injuries and damages alleged herein.
17

18 10. Defendant County of Fresno (“Fresno County”) is a public entity under California law.
19 Fresno County operates through its subsidiary agencies and personnel. Fresno County is sued herein
under California law, under which it is vicariously responsible for the unlawful acts of its employees
20 and agents pursuant to California Government Code § 815.2.
21

22 11. Defendant Assistant Public Health Director Humberto Prado (“Asst. Dir. Prado”) is,
upon information and belief, a citizen and resident of the State of California, County of Fresno. With
23 respect to all of the acts complained of herein, Asst. Dir. Prado was on duty and acting as a Fresno
County officer and employee. At all material times herein, Asst. Dir. Prado acted individually and
24 within the course and scope of his employment with Fresno County. Asst. Dir. Prado is sued in his
personal capacity for acts he performed under the color of law. As alleged herein, Plaintiffs believe
25 in good faith that Asst. Dir. Prado is legally responsible and liable for the injuries and damages alleged
herein.
26

27 12. Defendant FDA-OCI Special Agent Jeffrey Maurice (“S.A. Maurice”) is, upon
28

1 information and belief, a citizen and resident of the State of California, County of Alameda. With
2 respect to all of the acts complained of herein, S.A. Maurice was on duty and acting as a federal law
3 enforcement official with the FDA's Office of Criminal Investigations. At all material times herein,
4 S.A. Maurice acted individually and within the course and scope of his employment with the FDA.
5 S.A. Maurice is sued in his personal capacity for acts he performed under the color of law. As alleged
6 herein, Plaintiffs believe in good faith that S.A. Maurice is legally responsible and liable for the
7 injuries and damages alleged herein.

8 13. Defendant FDA-OCI Special Agent Maridehl Mather ("S.A. Mather") is, upon
9 information and belief, a citizen and resident of the State of California, County of Alameda. With
10 respect to all of the acts complained of herein, S.A. Mather was on duty and acting as a federal law
11 enforcement official with the FDA's Office of Criminal Investigations. At all material times herein,
12 S.A. Mather acted individually and within the course and scope of her employment with the FDA.
13 S.A. Mather is sued in her personal capacity for acts she performed under the color of law. As alleged
14 herein, Plaintiffs believe in good faith that S.A. Mather is legally responsible and liable for the injuries
15 and damages alleged herein.

16 14. The fictitious defendants are sued as Unknown Government Officials and they are,
17 upon information and belief, citizens and residents of the State of California. With respect to all of
18 the acts complained of herein, these fictitious defendants were on duty and were acting as officers and
19 employees of a California public entity, or a cooperating state or federal law enforcement agency. At
20 all material times herein, these fictitious defendants acted individually and within the court and scope
21 of their employment. These fictitious defendants are sued in their individual capacities for acts they
22 performed under the color of law. As alleged herein, Plaintiffs believe in good faith that these
23 fictitious defendants are legally responsible and liable for the injuries and damages alleged herein.
24 These fictitious defendants will be renamed in their actual names once they become known.

FACTUAL ALLEGATIONS

25 15. Shortly after UMI rented its Reedley warehouse, it began to be investigated by some
26 or all of the Defendants. Plaintiffs cooperated fully in the investigation, and by March 2023 it should
27 have been clear that UMI was not in active business and was only storing its assets at the warehouse
28 it was leasing. To the extent that there was any activity at the warehouse, it was only to monitor and
maintain its valuable assets, which included biological materials and laboratory mice, as well as

1 medical devices and medical device components. At all times, UMI had its assets safely and securely
2 stored, and there was never any indication of any threat to public health and safety. It should have
3 further been clear that the federal Animal Welfare Act, 7 U.S.C. § 2145, *et seq.*, exempted UMI's
4 possession and maintenance of laboratory mice, and preempted any conflicting state laws. UMI and
5 Mr. He also made it clear that to the extent that there were any zoning or permitting issues related to
6 the storage of the valuable assets at the Reedley warehouse, UMI would cure those issues by either
7 further securing the warehouse, obtaining the needed authorizations, or relocating to another
8 authorized location. UMI personnel and Mr. He were at all times open and cooperative with any and
9 all government officials involved in the investigation.

10 16. Notwithstanding these clear and ascertainable facts, Officer Harrison wrote and
11 submitted an affidavit under penalty of perjury on March 10, 2023 indicating that UMI was operating
12 an illegal laboratory, not merely storing its assets, and that it was engaging in hazardous and unlawful
13 activities. This and other false representations resulted in the issuance of a warrant on March 13, 2023.

14 17. Further notwithstanding these clear and ascertainable facts, Officer Harper wrote and
15 submitted an affidavit under penalty of perjury on March 29, 2023 indicating that UMI was operating
16 an illegal laboratory, not merely storing its assets, and that it was engaging in hazardous and unlawful
17 activities. This and other false representations resulted in the issuance of a warrant on April 4, 2023.

18 18. Further notwithstanding these clear and ascertainable facts, Asst. Dir. Prado wrote and
19 submitted an affidavit under penalty of perjury on June 15, 2023 indicating that UMI was operating
20 an illegal laboratory, not merely storing its assets, and that it was engaging in hazardous and unlawful
21 activities. This and other false representations resulted in the issuance of a warrant on June 23, 2023.

22 19. Further notwithstanding these clear and ascertainable facts, Officer Harper and Chief
23 Isaak wrote and submitted affidavits under penalty of perjury on July 18, 2023 indicating that UMI was
24 operating an illegal laboratory, not merely storing its assets, and that it was engaging in hazardous and unlawful
25 activities. This and other false representations resulted in the issuance of a warrant on July
26, 2023.

27 20. Further notwithstanding these clear and ascertainable facts, Asst. Dir. Prado wrote and
28 submitted an affidavit under penalty of perjury on June 15, 2023 indicating that UMI was operating
an illegal laboratory, not merely storing its assets, and that it was engaging in hazardous and unlawful
activities. This and other false representations resulted in the issuance of a warrant on June 23, 2023.

1 21. Further notwithstanding these clear and ascertainable facts, S.A. Maurice wrote and
2 submitted an affidavit under penalty of perjury on September 11, 2023 indicating that UMI was
3 operating a laboratory, not merely storing its assets, and that it was engaging in hazardous and
4 unlawful activities. This and other false representations resulted in the issuance of a warrant on
5 September 13, 2023.

6 22. In connection with the execution of these various warrants, UMI was deprived of
7 millions of dollars of property without lawful justification, as a result of the seizure and destruction
8 of its assets, including extremely valuable, genetically engineered laboratory mice not subject to
9 duplication. Further, based on the false narrative that UMI was storing contagions that endangered
10 the community, its biological assets were destroyed and seized, as well as its medical device inventory
11 and business records. Explicit and repeated representations from UMI representatives regarding the
12 lawful nature and valuable nature of its assets were ignored, and they were seized and, in many
13 instances, destroyed without justification.

14 23. The Defendants also filed their false and misleading affidavits as public records, which
15 resulted in a wave of extremely negative publicity, fueled by a combination of xenophobia,
16 discrimination, ignorance, and the motivations of public officials seeking to capitalize on those
17 sentiments. UMI was characterized as operating an “illegal Chinese lab” and of engaging in
18 bioterrorism, although neither accusation had even a scintilla of factual support. These accusations
19 have done irreparable damage to UMI’s business interests and turned a multimillion dollar operation
20 into a worthless pariah. UMI’s new facility also had to be abandoned as a result of the negative
21 publicity.

22 24. Despite being unjustifiably dragged through the mud as a result of the Defendants’
23 misconduct, UMI and Mr. He continued to try to cooperate with investigators, in an effort to salvage
24 their business and at least some of their assets. Under the direction of FDA officials, Reedley officials
25 arranged a pretext meeting with Mr. He on October 19, 2023, so that he could be arrested based on
26 baseless federal criminal charges. In connection with that arrest, S.A. Maurice and S.A. Mather used
27 unreasonable and excessive force on Mr. He, which resulted in his sustaining a severe head injury that
28 continues to cause him serious health issues and pain.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Unlawful Seizure and Destruction of Property, in Violation of the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983)

(By Plaintiff UMI Against Defendants Officer Harrison, Officer Harper, Fire Chief Isaak, Asst. Dir. Prado and Unknown Government Officials)

25. Plaintiffs reallege and incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

26. The named Defendants' misconduct resulted in the unlawful seizure and destruction of UMI's valuable business assets, as alleged hereinabove. As a result of this misconduct, UMI was denied its right to be secure in his home or business against unreasonable searches and seizures as guaranteed under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment. UMI also was deprived of its business property without due process of law, as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution.

27. As a direct and proximate result of the named Defendants' violation of UMI's constitutional rights, UMI has suffered substantial damages, as described hereinabove.

28. The named Defendants' misconduct as set forth above was intentional, wanton, malicious, oppressive, and undertaken with reckless disregard for UMI's rights, thus entitling it to an award of punitive damages.

SECOND CAUSE OF ACTION

(Unlawful Seizure and Destruction of Property, in Violation of article I, sections 3 and 13 of the California Constitution and Cal. Civil Code § 52.1)

(By Plaintiff UMI Against Defendants Reedley, Officer Harrison, Officer Harper, Fire Chief Isaak, Fresno County, Asst. Dir. Prado and Unknown Government Officials)

29. Plaintiffs reallege and incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

30. The named individual Defendants' misconduct resulted in the unlawful seizure and destruction of UMI's valuable business assets, as alleged hereinabove. As a result of this misconduct, UMI was denied its right to be secure in his home or business against unreasonable searches and seizures as guaranteed under the California Constitution. UMI also was deprived of its business

1 property without due process of law, as also guaranteed under the California Constitution. These
2 constitutional rights are made actionable under the Bane Civil Rights Act, Cal. Civil Code § 52.1.

3 31. As a direct and proximate result of the named individual Defendants' violation of
4 UMI's constitutional rights, UMI has suffered substantial damages, as described hereinabove.

5 32. The named individual Defendants' misconduct as set forth above was intentional,
6 wanton, malicious, oppressive, and undertaken with reckless disregard for UMI's rights, thus entitling
7 it to an award of punitive damages.

8 33. Reedley and Fresno County are vicariously liable under state law, specifically Cal.
9 Government Code § 815.2, for harms caused by its officials within the course and scope of their
10 official duties.

11 **THIRD CAUSE OF ACTION**

12 (Bivens Action, 28 U.S.C. § 2679(b)(2)(A))

13 (By UMI and Mr. He Against S.A. Maurice and S.A. Mather)

14 34. Plaintiffs reallege and incorporate by reference the foregoing paragraphs of this
15 Complaint as though fully set forth herein.

16 35. The federal defendant officers' intentional and reckless acts, as described above,
17 constitute a deprivation of UMI's and Mr. He's rights, privileges, and immunities under the United
18 States Constitution, specifically (a), as to Mr. He against both S.A. Maurice and S.A. Mather, his rights
19 under the Fourth Amendment to be free from unreasonable, and excessive force, and (b), as to UMI
20 against S.A. Maurice only, its rights Fourth and Fifth Amendments to be free from unreasonable
21 searches, seizures and deprivations of its property.

22 36. As a direct and proximate result of the federal defendant officers' violation of their
23 constitutional rights, UMI and Mr. He have suffered substantial damages, as described hereinabove.

24 37. The federal defendant officers' conduct as set forth above was intentional, wanton,
25 malicious, oppressive, and undertaken with reckless disregard for UMI's and Mr. He's rights, thus
26 entitling them to an award of punitive damages.

27 **REQUESTS FOR RELIEF**

28 WHEREFORE, Plaintiffs pray for the following relief:

1. For general and special damages against each defendant in an amount proven at trial,
as to all causes of action;

2. For punitive damages against each individual defendant, in an amount appropriate to punish and to deter others from engaging in similar misconduct;
3. For prejudgment interest as to all causes of action;
4. For costs and attorney's fees as authorized by 42 U.S.C. § 1988, Civil Code § 52 and other applicable law;
5. For other such relief as the Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiffs demand a jury trial to the greatest extent available under the Seventh Amendment and other federal and state law.

Date: May 4, 2024

LAW OFFICE OF KEVIN G. LITTLE

/s/ Kevin G. Little
Kevin G. Little

LAW OFFICES OF ANTHONY P. CAPOZZI

/s/ Anthony P. Capozzi
Anthony P. Capozzi

Attorneys for Plaintiffs
Universal Meditech Inc. and David He

EXHIBIT

N

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8 www.capozzilawoffices.com

9
10 Attorney for Defendant,
11 DAVID HE

12
13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 *****

16 UNITED STATES OF AMERICA.) CASE NO.: 1:23-CR-00219-NODJ-BAM
17 Plaintiff,)
18 v.)
19 DAVID HE,)
20 Defendant.)
21)
22)
23)
24)
25)
26)
27)
28)

**DECLARATION OF
ANTHONY P. CAPOZZI**

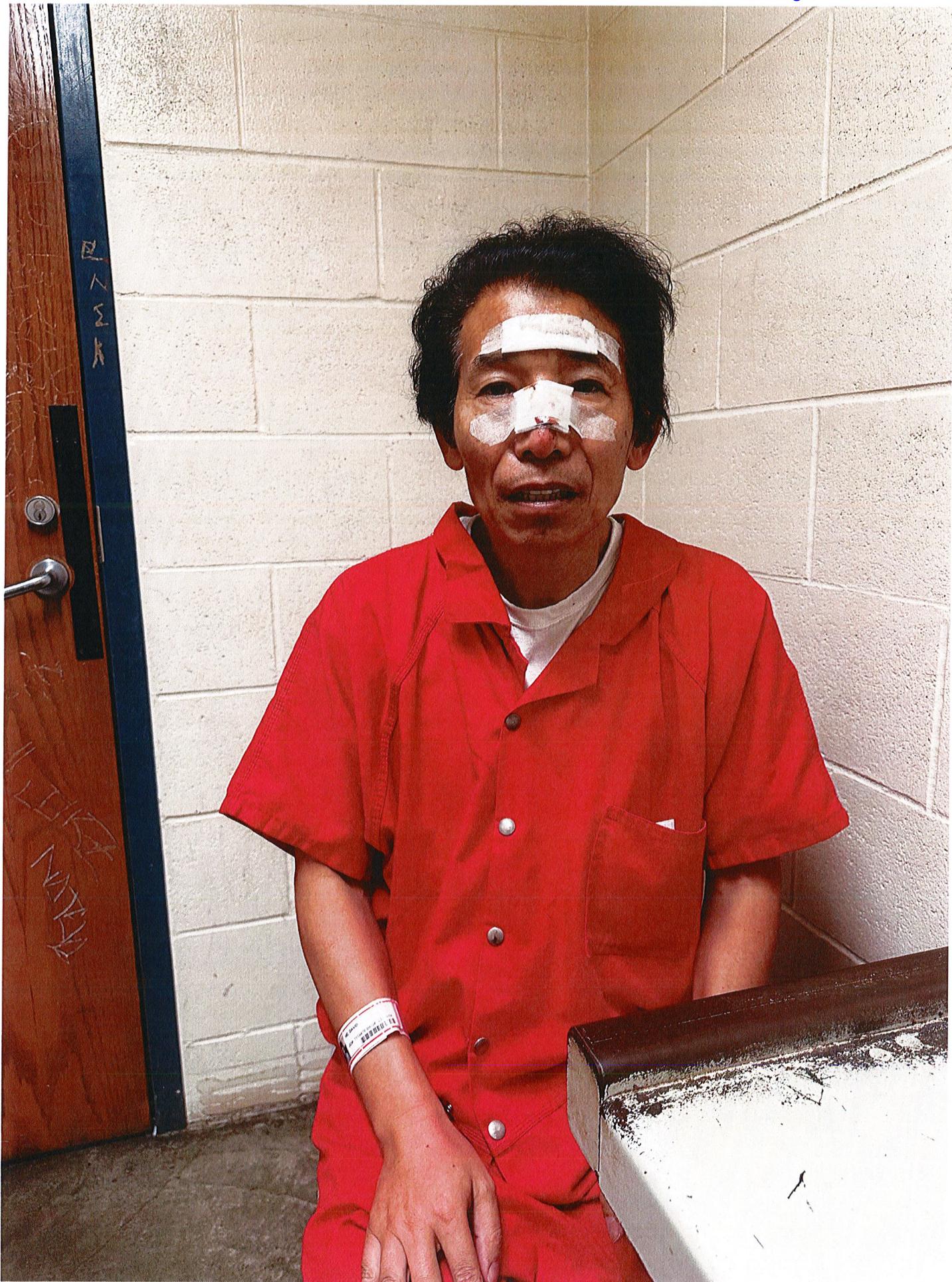
I, Anthony P. Capozzi, declare:

1. This attorney has represents the defendant, David He, since the inception of this case.
2. On October 20, 2023, and on October 24, 2024, this attorney took the pictures for David He while incarcerated at the Fresno County Jail.

I declare under penalty of perjury the laws of the State of Nevada that foregoing is true and correct. Executed 13th day of November of 2024, at Fresno, California

Dated: 11/14/24,

By: Anthony P Capozzi
Anthony P. Capozzi, Declarant





EXHIBIT

O

U.S. District Court
Eastern District of California - Live System (Fresno)
CIVIL DOCKET FOR CASE #: 1:24-cv-00528-JLT-EPG

Universal Meditech, Inc. et al v. City of Reedley et al
Assigned to: District Judge Jennifer L. Thurston
Referred to: Magistrate Judge Erica P. Grosjean
Demand: \$0
Cause: 42:1983 Civil Rights Act

Date Filed: 05/06/2024
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights; Other
Jurisdiction: Federal Question

Plaintiff

Universal Meditech, Inc.
a California corporation

represented by **Anthony P. Capozzi**
Law Offices of Anthony P. Capozzi
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Suite 102
Fresno, CA 93711
559-221-0200
Fax: 559-221-7997
Email: anthony@capozzilawoffices.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kevin G. Little
Law Office of Kevin G. Little
Post Office Box 8656
Fresno, CA 93747
559-342-5800
Fax: 559-242-2400
Email: kevin@kevinglittle.com
ATTORNEY TO BE NOTICED

Plaintiff

David He
an individual

represented by **Anthony P. Capozzi**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kevin G. Little
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

City of Reedley

represented by **Nicole M. Cahill**
Longyear, Lavra & Cahill, LLP
555 University Avenue
Ste 280
Sacramento, CA 95825

916-974-8500
Fax: 916-974-8510
Email: cahill@longyearlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Denny Yu
Longyear, Lavra & Cahill, LLP
555 University Ave
Suite 280
Sacramento, CA 95825
916-753-0566
Email: yu@longyearlaw.com
ATTORNEY TO BE NOTICED

Defendant

Jeremy Harrison

represented by **Nicole M. Cahill**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Denny Yu
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Jesalyn Harper

represented by **Nicole M. Cahill**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Denny Yu
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Jeffrey Isaak

represented by **Nicole M. Cahill**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Denny Yu
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

County of Fresno

represented by **Cavan Micheal Cox , II**
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Defendant**Humberto Prado**represented by **Cavan Micheal Cox , II**

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Defendant**Jeffrey Maurice**represented by **Joseph Frueh , GOVT**

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Defendant**Meridahl Mather**represented by **Joseph Frueh , GOVT**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant**Unknown Government Officials**

| Date Filed | # | Docket Text |
|------------|----------|--|
| 05/06/2024 | <u>1</u> | COMPLAINT FOR DAMAGES against All Defendants by David He, Universal Meditech, Inc.. Attorney Little, Kevin G. added. (Filing fee \$ 405, receipt number ACAEDC-11505971) (Little, Kevin) (Entered: 05/06/2024) |
| 05/06/2024 | <u>2</u> | CIVIL COVER SHEET filed by David He, Universal Meditech, Inc. (Little, Kevin) (Entered: 05/06/2024) |
| 05/06/2024 | <u>3</u> | SUMMONS ISSUED as to *City of Reedley, County of Fresno, Jesalyn Harper, Jeremy Harrison* with answer to complaint due within *21* days. Attorney *Kevin G. Little* *PO Box 8656* *Fresno, CA 93747*. (Sant Agata, S) (Entered: 05/06/2024) |
| 05/06/2024 | <u>4</u> | SUMMONS ISSUED as to *Jeffrey Isaak, Meridahl Mather, Jeffrey Maurice, Humberto Prado, Unknown Government Officials* with answer to complaint due within *21* days. Attorney *Kevin G. Little* *PO Box 8656* *Fresno, CA 93747*. (Sant Agata, S) (Entered: 05/06/2024) |
| 05/06/2024 | <u>5</u> | CIVIL NEW CASE DOCUMENTS ISSUED; Initial Scheduling Conference set for 8/13/2024 at 10:30 AM in Courtroom 10 (EPG) before Magistrate Judge Erica P. Grosjean. (Attachments: # <u>1</u> Standing Order, # <u>2</u> Order re Consent, # <u>3</u> VDRP) (Sant Agata, S) (Entered: 05/06/2024) |

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| 06/27/2024 | <u>6</u> | NOTICE of ERRATA by David He, Universal Meditech, Inc. re <u>2</u> Civil Cover Sheet, <u>4</u> Summons, <u>1</u> Complaint.. (Little, Kevin) (Entered: 06/27/2024) |
| 07/18/2024 | <u>7</u> | MOTION to DISMISS by County of Fresno, Humberto Prado. Attorney Cox, Cavan Micheal added. Motion Hearing set for 8/22/2024 at 09:00 AM in Courtroom 4 (JLT) before District Judge Jennifer L. Thurston. (Cox, Cavan) (Entered: 07/18/2024) |
| 07/18/2024 | <u>8</u> | REQUEST for JUDICIAL NOTICE by County of Fresno, Humberto Prado in re <u>7</u> Motion to Dismiss. (Cox, Cavan) (Entered: 07/18/2024) |
| 07/18/2024 | <u>9</u> | MOTION to DISMISS by City of Reedley, Jesalyn Harper, Jeremy Harrison, Jeffrey Isaak. Attorney Cahill, Nicole M. added. Motion Hearing set for 8/22/2024 at 09:00 AM in Courtroom 4 (JLT) before District Judge Jennifer L. Thurston. (Attachments: # <u>1</u> Points and Authorities) (Cahill, Nicole) (Entered: 07/18/2024) |
| 07/18/2024 | <u>10</u> | REQUEST for JUDICIAL NOTICE by City of Reedley, Jesalyn Harper, Jeremy Harrison, Jeffrey Isaak in re <u>9</u> Motion to Dismiss., (Attachments: # <u>1</u> Exhs 1-4 to Req for Judicial Notice, # <u>2</u> Exhs 5-6 to Req for Judicial Notice) (Cahill, Nicole) (Entered: 07/18/2024) |
| 07/18/2024 | <u>11</u> | EXHIBIT <u>7-9</u> to <i>Request for Judicial Notice</i> filed by Defendants City of Reedley, Jesalyn Harper, Jeremy Harrison, Jeffrey Isaak re <u>9</u> Motion to Dismiss., (Cahill, Nicole) (Entered: 07/18/2024) |
| 07/18/2024 | <u>12</u> | EXHIBIT <u>10-13</u> to <i>Request for Judicial Notice</i> filed by Defendants Jesalyn Harper, Jeremy Harrison, Jeffrey Isaak re <u>9</u> Motion to Dismiss., (Cahill, Nicole) (Entered: 07/18/2024) |
| 07/18/2024 | <u>13</u> | EXHIBIT <u>14-17</u> to <i>Request for Judicial Notice</i> filed by Defendants City of Reedley, Jesalyn Harper, Jeremy Harrison, Jeffrey Isaak re <u>9</u> Motion to Dismiss., (Cahill, Nicole) (Entered: 07/18/2024) |
| 07/18/2024 | <u>14</u> | EXHIBIT <u>18-19</u> to <i>Request for Judicial Notice</i> filed by Defendants City of Reedley, Jesalyn Harper, Jeremy Harrison, Jeffrey Isaak re <u>9</u> Motion to Dismiss., (Cahill, Nicole) (Entered: 07/18/2024) |
| 07/19/2024 | <u>15</u> | MINUTE ORDER (Text Only Entry) Pursuant to Local Rule 302, the filed motions to dismiss <u>7</u> <u>9</u> will be heard and decided by the undersigned. As set forth in the Court's standing order, no hearing will be calendared, and the matter will be decided on the papers. As a result of the ongoing judicial resource emergency in this District, approximately 100 regular civil motions remain under submission before the undersigned. As a result, it is likely to be six <u>or more</u> months until the motion(s) in this matter is resolved. The Court reiterates that magistrate judge consent can alleviate the delay caused by the resource emergency. <u>The parties SHALL reconsider magistrate judge consent for all purposes or only for this pending motion.</u> In addition, the parties are reminded of their ongoing obligation to inform the Court of any changed circumstances that have rendered all or part of any pending motion moot. Finally, the parties are informed that the undersigned generally requires a formal settlement conference take place before any civil case proceeds to trial. Should the parties jointly wish to schedule a settlement conference, they are directed to contact Courtroom Deputy Irma Munoz at imunoz@caed.uscourts.gov signed by District Judge Jennifer L. Thurston on July 19, 2024. (Munoz, I) (Entered: 07/19/2024) |
| 07/22/2024 | <u>16</u> | MINUTE ORDER signed by Magistrate Judge Erica P. Grosjean on July 22, 2024: In light of the recently filed motions to dismiss (ECF Nos. <u>7</u> , <u>9</u>), the Court vacates the scheduling conference set for August 13, 2024, before Magistrate Judge Erica P. Grosjean. (ECF No. <u>3</u>). Within ten days after the issuance of the ruling on the motion(s) to dismiss, should the matter go forward, the parties are directed to contact Courtroom Deputy Felicia Navarro (<u>Fnavarro@caed.uscourts.gov</u>) to secure a new scheduling conference date. (Text Only Entry) (Navarro, F) (Entered: 07/22/2024) |

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| 07/29/2024 | <u>17</u> | EX PARTE APPLICATION by David He, Universal Meditech, Inc. for Extension Of Time To File Opposition To The Defendants Motions To Dismiss. (Attachments: # <u>1</u> Proposed Order) (Little, Kevin) (Entered: 07/29/2024) |
| 07/30/2024 | <u>18</u> | MINUTE ORDER signed by Magistrate Judge Erica P. Grosjean on July 30, 2024: Upon review, Plaintiffs' motion for an extension of time to respond to the pending motions to dismiss are granted, with Plaintiffs' response now being due by no later than August 22, 2024. (ECF No. <u>17</u>). The deadline for any reply under Local Rule 230(d) is likewise extended. (Text Only Entry) (Navarro, F) (Entered: 07/30/2024) |
| 08/16/2024 | <u>19</u> | **AMENDED**MINUTE ORDER signed by Magistrate Judge Erica P. Grosjean on August 16, 2024: Plaintiffs commenced this action on May 6, 2024. The deadline for service of process pursuant to Federal Rule of Civil Procedure 4(m) was August 6, 2024. That deadline has now passed, and the Court has not received any filing indicating Defendants Maurice and Mather have been served. Accordingly, IT IS ORDERED that plaintiffs show cause why this action should not be dismissed without prejudice for failure to complete service pursuant to Rule 4(m) as to Defendants Maurice and Mather, by no later than September 9, 2024. If plaintiffs show good cause for failing to file service, the Court will extend time for service. (Text Only Entry) (Navarro, F) Modified on 8/19/2024 (Navarro, F). (Entered: 08/16/2024) |
| 08/22/2024 | <u>20</u> | OPPOSITION by David He, Universal Meditech, Inc. to <u>9</u> Motion to Dismiss, <u>7</u> Motion to Dismiss. (Little, Kevin) (Entered: 08/22/2024) |
| 08/23/2024 | <u>21</u> | NOTICE of APPEARANCE by Denny Yu on behalf of City of Reedley, Jesalyn Harper, Jeremy Harrison, Jeffrey Isaak. Attorney Yu, Denny added. (Yu, Denny) (Entered: 08/23/2024) |
| 08/30/2024 | <u>22</u> | REPLY by County of Fresno, Humberto Prado re <u>20</u> Opposition to Motion. (Cox, Cavan) (Entered: 08/30/2024) |
| 09/03/2024 | <u>23</u> | REPLY by City of Reedley, Jesalyn Harper, Jeremy Harrison, Jeffrey Isaak re <u>20</u> Opposition to Motion. (Yu, Denny) (Entered: 09/03/2024) |
| 09/04/2024 | <u>24</u> | SUMMONS RETURNED EXECUTED: Meridahl Mather served on 8/29/2024, answer due 9/19/2024; Jeffrey Maurice served on 8/29/2024, answer due 9/19/2024. (Little, Kevin) (Entered: 09/04/2024) |
| 09/09/2024 | <u>25</u> | RESPONSE to <u>19</u> ORDER to SHOW CAUSE by David He, Universal Meditech, Inc.. (Little, Kevin) (Entered: 09/09/2024) |
| 09/10/2024 | <u>26</u> | ORDER Discharging Order to Show Cause signed by Magistrate Judge Erica P. Grosjean on September 10, 2024. IT IS ORDERED: The Court's August 16, 2024, order to show cause is DISCHARGED. (ECF No. 19). (Navarro, F) (Entered: 09/10/2024) |
| 09/18/2024 | <u>27</u> | NOTICE <i>Re: Deadline for Federal Defendants' Response to the Complaint</i> by Meridahl Mather, Jeffrey Maurice. Attorney Frueh, Joseph added. (Frueh, Joseph) (Entered: 09/18/2024) |
| 10/30/2024 | <u>28</u> | MOTION to DISMISS by Meridahl Mather, Jeffrey Maurice. Motion Hearing set for 12/6/2024 at 09:00 AM in Courtroom 4 (JLT) before District Judge Jennifer L. Thurston. (Attachments: # <u>1</u> Memorandum of Points and Authorities) (Frueh, Joseph) (Entered: 10/30/2024) |
| 11/13/2024 | <u>29</u> | OPPOSITION by David He, Universal Meditech, Inc. to <u>28</u> Motion to Dismiss. (Little, Kevin) (Entered: 11/13/2024) |
| 11/15/2024 | <u>30</u> | MINUTE ORDER (Text Only Entry) Pursuant to Local Rule 302, the filed motion to dismiss <u>28</u> will be heard and decided by the undersigned. As set forth in the Court's |

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standing order, no hearing will be calendared, and the matter will be decided on the papers. As a result of the ongoing judicial resource emergency in this District, approximately 100 regular civil motions remain under submission before the undersigned. As a result, it is likely to be six **or more** months until the motion(s) in this matter is resolved. The Court reiterates that magistrate judge consent can alleviate the delay caused by the resource emergency. **The parties SHALL reconsider magistrate judge consent for all purposes or only for this pending motion.** In addition, the parties are reminded of their ongoing obligation to inform the Court of any changed circumstances that have rendered all or part of any pending motion moot. Finally, the parties are informed that the undersigned generally requires a formal settlement conference take place before any civil case proceeds to trial. Should the parties jointly wish to schedule a settlement conference, they are directed to contact Courtroom Deputy Irma Munoz at imunoz@caed.uscourts.gov signed by District Judge Jennifer L. Thurston on November 15, 2024. (Munoz, I) (Entered: 11/15/2024)

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| 11/25/2024 | <u>31</u> | REPLY by Meridahl Mather, Jeffrey Maurice re <u>28</u> Motion to Dismiss. (Frueh, Joseph) (Entered: 11/25/2024) |
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