

AM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

2006 SEP 20 PM 5:00

UNITED STATES OF AMERICA,

Plaintiff

Criminal No.

1106CR 0111

INDICTMENT

v.

STEVEN E. WARSHAK (COUNTS 1-98, 102-106, 108-110, 112),
HARRIET WARSHAK (COUNTS 1, 27, 28, 30, 31, 99-101, 107),
PAUL J. KELLOGG (COUNTS 14, 30, 31, 96, 97, 109-112),
CHARLES W. CLARKE, JR. (COUNT 1),
STEVEN P. PUGH (COUNTS 109 - 111),
AMAR D. CHAVAN (COUNTS 1, 29),
TCI MEDIA, INC, (COUNTS 57-58, 60-73, 79, 83, 91-93)
and
BERKELEY PREMIUM NUTRACEUTICALS, INC.
(COUNTS 1 - 13, 29, 110),

18 U.S.C. § 2
18 U.S.C. § 371
18 U.S.C. § 982
18 U.S.C. § 1029
18 U.S.C. § 1014
18 U.S.C. § 1341
18 U.S.C. § 1344
18 U.S.C. § 1349
18 U.S.C. § 1956
21 U.S.C. § 331
21 U.S.C. § 333

DLOTT

Defendants.

The Grand Jury Charges:

COUNT 1
CONSPIRACY TO COMMIT
MAIL, WIRE, AND BANK FRAUD
18 U.S.C. § 1349

I. GENERAL ALLEGATIONS

A. The Defendants and Coconspirators

1. Defendant **BERKELEY PREMIUM NUTRACEUTICALS, INC.** (hereinafter referred to as "**BERKELEY**") is an Ohio Subchapter S corporation, wholly-owned by defendant

STEVEN E. WARSHAK, with its principal place of business located in the Cincinnati, Ohio area, within the Southern District of Ohio.

2. Defendant **BERKELEY** has utilized various operating locations to conduct its primary business, including its two current principal locations: (1) 1661 Waycross Road in Cincinnati, Ohio (houses most business functions), and (2) 5462 Duff Drive in Cincinnati, Ohio (shipping and fulfillment warehouse).
3. Defendant **BERKELEY'S** primary business is the marketing, distribution, and sale of herbal supplements, known as "nutraceuticals", and vitamins. The products are sold by internet, telephone, mail orders, and retail placement.
4. **BERKELEY** operates with 13 core products:
 - a. Enzyte
 - b. Avlimil
 - c. Altovis
 - d. Dromias
 - e. Suvaril
 - f. Rovicid
 - g. Rudofil
 - h. Prulato
 - i. Rogisen
 - j. Pinadol
 - k. Numovil
 - l. Nuproxi

m. Ogoplex

5. Prior to the formation of defendant **BERKELEY**, these 13 products were marketed under several corporate structures also wholly-owned by defendant **STEVEN E. WARSHAK**, including Wagner Nutraceuticals, Inc. (formed July 9, 2003), Warner Health Care Inc. (formed August 19, 2002), Boland Naturals, Inc. (formed May 7, 2002), and Lifekey, Inc. (formed May 9, 2001).
6. **TCI MEDIA, INC.** is an Ohio Subchapter S corporation with its principal place of business located in the Cincinnati, Ohio area, within the Southern District of Ohio. While TCI is a separate legal entity from defendant **BERKELEY**, it is also wholly-owned by defendant **STEVEN E. WARSHAK**.
7. In addition to owning and controlling defendant **BERKELEY** and its subsidiaries, defendant **STEVEN E. WARSHAK** served as their President. During the time period charged in this Indictment, defendant **STEVEN E. WARSHAK** made all significant operating decisions and was actively involved in the daily operations of **BERKELEY**, its subsidiaries, and TCI.
8. Until about January 2006, coconspirator James G. Teegarden, Jr. was the Chief Operating Officer (also called Vice President of Operations) of **BERKELEY** and its affiliates.
9. Until about January 2006, coconspirator Michael V. Wagner served as Vice President of Marketing at **BERKELEY**. Prior to that time, he held the title of Controller.
10. Defendant **CHARLES W. CLARKE, JR.** (a/k/a Chip Clarke), has held several roles at **BERKELEY** including being in charge of wholesale and the men's division, as well as participating in the marketing of **BERKELEY** products.

11. Coconspirator Gregory J. Cossman, the brother-in-law of defendant **STEVEN E. WARSHAK**, held several roles at **BERKELEY** including President (February 2002 to December 2002), Director of Operations, Property Manager, and Warehouse Manager.
12. Coconspirator Susan E. Cossman, the sister of defendant **STEVEN E. WARSHAK**, held several roles at **BERKELEY** including Director of Customer Care, Director of the Professional Division, and co-founder and Director of the Decline/Recovery Department. During her tenure, coconspirator Susan E. Cossman also worked in the Sales Department and was in charge of the Strong Foundation – a putative charity established by **BERKELEY**.
13. Defendant **HARRIET WARSHAK**, the mother of defendant **STEVEN E. WARSHAK** and coconspirator Susan E. Cossman, has served in various roles including Director of Data Entry and Director of the Credit Department. She has also worked in the warehouse and held various other duties at **BERKELEY**.
14. Coconspirator Shelley B. Kinmon was Director of the Sales Department, and participated in the drafting and creation of sales scripts.
15. Up to about May 2006, defendant **AMAR D. CHAVAN** was employed at **BERKELEY** in the information technology department as a Chief Information Officer. Chavan was formerly head programmer. Chavan was responsible for, among other things, programming **BERKELEY'S** databases, and the design and maintenance of the websites used by **BERKELEY**.

B. The Victims

16. The victims include thousands of consumers who purchased or agreed to a free trial of **BERKELEY'S** various products based upon false representations and promises, and whose credit cards were thereafter charged by **BERKELEY** for products shipped to them without their authorization, knowledge, or consent.
17. The victims also included various merchant banks. Merchant banks are financial institutions that have relationships with merchants, such as **BERKELEY**, for the purpose of allowing the merchants to accept customer payments via credit card. Merchant banks are affiliated with credit card networks, such as VISA and Mastercard.

II. THE CONSPIRACY AND ITS OBJECTS

From at least as early as June 2001, and continuing up to and including the date of this Indictment, within the Southern District of Ohio and elsewhere, defendants **BERKELEY PREMIUM NUTRACEUTICALS, INC., STEVEN E. WARSHAK, HARRIET WARSHAK, CHARLES W. CLARKE, JR., and AMAR D. CHAVAN** (hereafter referred to by name or as "the defendant(s)"), and other persons known and unknown to the Grand Jury (hereafter referred to by name or as "the conspirators") unlawfully, knowingly, and willfully did combine, conspire, confederate, and agree between and among themselves and with others known and unknown to the Grand Jury, in violation of 18 U.S.C. § 1349, to devise a scheme and artifice to defraud and to obtain money from consumers by means of false and fraudulent pretenses, representations, and promises in violation of 18 U.S.C. §§1341 (mail fraud) and 1343 (wire fraud), and to devise a scheme to defraud and to obtain money from federally-insured financial institutions in violation of 18 U.S.C. § 1344 (bank fraud), as more fully described in

Part III below, and, and in execution of the scheme and artifice to defraud consumers and banks, the defendants did the following: (1) the defendants knowingly and unlawfully transmitted and caused to be transmitted in interstate commerce, including within the Southern District of Ohio, by means of wire communications, certain signs, signals, and sounds, that is, interstate telephone, telex, facsimile communications, and wire transfers of funds, in violation of 18 U.S.C. §§1343 and 2; (2) in execution of the scheme and artifice to defraud consumers, and including but not limited to the allegations in Counts 2 - 13, set forth below, the defendants knowingly and unlawfully deposited and caused others to deposit letters, correspondence, and other matter to be sent and delivered by private and commercial interstate carrier as well as by U.S. Mail, and took and received therefrom letters, correspondence, and other matter in violation of 18 U.S.C. §§1341 and 2; and (3) in execution of the scheme and artifice to defraud and to obtain money from federally- insured financial institutions by means of false and fraudulent pretenses, representations, and promises, and including but not limited to the allegations in Counts 15, 17, and 19, set forth below; the defendants submitted false applications and thereby obtained or attempted to obtain merchant bank accounts through which **BERKELEY** credit card sales were processed, including unauthorized credit card charges, and falsely inflated sales transactions in order to lower the chargeback ratio, that is, credits or refunds provided to consumers, as compared to the number of sales transactions, on credit card sales processed through merchant banks, in violation of 18 U.S.C. §§ 1344 and 2.

III. MANNER AND MEANS OF THE CONSPIRACY: THE SCHEME TO DEFRAUD

False Advertising

1. **BERKELEY** advertised by several means including television, print media, radio, and the internet.
2. The advertisements included false medical claims about the effectiveness of its products.
3. Certain advertisements also listed doctors that supposedly endorsed the products when in reality those doctors listed did not exist.
4. The advertisements also included false representations about money-back guarantees that the company as a matter of practice would not honor.
5. The advertisements further included false representations that the product's effectiveness had been verified by surveys and other statistical claims. In many instances, no such survey was ever conducted and the statistical claims were fictitious.
6. Defendants **STEVEN E. WARSHAK** and **CHARLES W. CLARKE, JR.**, among others, created or directed the creation of false advertising on behalf of **BERKELEY**, including the false claims and surveys referenced above.

Misrepresentations by Sales Staff

7. During the conspiracy, when consumers called to order products or make further inquiries regarding the product, sales representatives often made false statements to consumers at the instruction of and using sales scripts provided by the conspirators. These false claims, included, but were not limited to the following:
 - a. Falsely representing that the product had no side effects;

- b. False claims regarding the effectiveness of the product;
- c. Fictitious re-order and satisfaction rates;
- d. False statements regarding the money-back guarantee;
- e. False representations as to what the consumer would be charged;
- f. Non-disclosure, partial disclosure, or false disclosure about the Auto-Ship program and resulting billing;
- g. False representations regarding the return policy of the company; and
- h. Falsely representing the ingredients of the product.

Auto-Ship Program

8. As part of the scheme, the conspirators placed consumers who responded to free-trial advertisements or solicitations on an Auto-Ship program. Most of the consumers were placed on this program without their authorization, knowledge, or consent. Thereafter, **BERKELEY** billed the consumer's credit card and sent the product to the consumer without the authorization or consent of the consumer.
9. Customers that did have knowledge about the Auto-Ship program were told that they could cancel their membership in the program at any time. **BERKELEY** sales representatives promised that if the customers cancelled before the next automatic shipment, their credit cards would not be billed and the product would not be shipped. When these customers called to cancel, however, **BERKELEY** employees would often falsely represent that the customer failed to cancel in a timely fashion. On some occasions, they would inform the customer that the next automatic shipment had already been sent out when in fact this was not true. Moreover, as more fully described below,

the conspirators employed various means to delay or hinder any returns or cancellations from occurring.

10. The Auto-Ship Program generally generated between 60% to 80% of the weekly revenue of defendant **BERKELEY**.
11. The Auto-Ship program had many names including, but not limited to: (1) Managed Care Direct ("MCD"); (2) Continuity Program; (3) Preferred Customer Program; (4) Preferred Care Program; (5) Berkeley Value-Added Program ("BVAP"); and (6) the Home-Delivery Plan ("HDP").
12. At various times, the conspirators would take a number of previously-terminated customers and place them back on the Auto-Ship program without their authorization, knowledge, or consent. The customers' credit cards would then be charged for a new shipment through a computer programming code.
13. The Auto-Ship Program was temporarily suspended in late August 2004 as a result of pressure from Federal Trade Commission regulators and complaints to various state Attorneys General's offices and the Better Business Bureau. Defendant **BERKELEY**, however, reinstated a similar variation of the Auto-Ship program around the beginning of 2005 under the name Home Delivery Plan ("HDP").

Unauthorized Charges

14. Customers that did not consent to the Auto-Ship Program were often automatically enrolled without their consent. Upon seeking a free sample, customers were required to provide their credit card to pay for a nominal shipping and handling fee. Pursuant to the conspiracy, once the customer provided the credit card number, the customer was

automatically enrolled in the Auto-Ship Program and the customer's credit card was charged without the customer's authorization, knowledge or consent, resulting in unauthorized credit card charges.

15. Customers who sought free samples of product were often encouraged to try other free samples. Unbeknownst to the customers, once they agreed to try a free sample of another product, they often were enrolled in that product's Auto-Ship program as well. This would often cause the customer's credit card to be billed for many products – none of which the customer authorized.

Fictitious Director of Customer Care

16. After the consumer placed an initial order, future correspondence with the consumer was handled by the Customer Care Department. At various times, the consumer received a letter in the product shipment that was signed by "Michael Johnson," the "Director of Customer Care." Michael Johnson was a fictitious employee. When customers called to complain that they had been charged for products they did not order, they often were told to write a letter to Michael Johnson. When customers called to speak to Michael Johnson, they were informed that he was not available or that he only accepts customer communication in writing. Customer care representatives at times would represent themselves to be Michael Johnson.

Cancellation, Return, and Refund Policy

17. As part of the conspiracy, defendant **BERKELEY** falsely represented to customers that they could cancel and return any unused product for a refund. Moreover, those who were aware that they were enrolled in the Auto-Ship Program were also told that their

membership in this program could be cancelled at any time and that they would receive a refund.

18. At various times, the conspirators promoted various programs purportedly to provide refunds to unsatisfied customers, including guaranteeing "Double Your Money Back," "Triple Your Money Back," "12-month Money Back Guarantee," and "Full Refund". These refund and guarantee claims were false in that the conspirators sought to delay, discourage, and prevent the return of customer funds. At different times, the conspirators required customers to send back, among other things, (1) unused portion of the product, (2) packaging for the product, (3) empty product containers, (4) doctor notes verifying that the customer cannot medically take the product, (5) a "sex-tracker" diary style document customers were to keep to monitor "personal benefits" of the product, (6) a notarized affidavit stating that the consumer did not achieve the desired results when using the product, and (7) credit card or bank statements. These return policies were not disclosed to the consumer when a free-trial or product purchase was requested.
19. In addition, the conspirators generally implemented a three-step process for all customers requesting refunds. The three-step process required customer care representatives to avoid providing refunds by doing the following: first, attempt to negotiate additional product; second, if that failed, attempt to negotiate a partial refund; and finally, as a last resort, issue a full refund, which was strongly discouraged by the conspirators. Defendant **BERKELEY** provided monetary incentives to customer care representatives and supervisors for successfully avoiding refunds. In order to delay any refund promised to a customer, the conspirators often directed **BERKELEY** employees to inform customers

who complained about not receiving a promised credit that it would take 30 to 90 days to receive the credit and to require customers to fax credit card statements to prove that the credit had not been received.

12-Month Money Back Guarantee

20. In about September 2003, the conspirators developed a "12-month Money Back Guarantee" program. False representations were made to customers that during the first twelve months, they could receive a full refund if they were not satisfied with the product. Defendant **BERKELEY** did not honor this money-back guarantee, instead requiring customers to remain on the product for the full twelve months before they were eligible to receive the benefits of the program.
21. Returns under this policy thus came due in September 2004 and thereafter. At that time, additional requirements were imposed on consumers including requiring the customer to write letters requesting a refund, to return empty packaging for all twelve months, and to provide a completed "sex-tracker" or a doctor's note.

Decline Recovery Scheme

22. During the course of the conspiracy, Defendant **BERKELEY** would process the customer credit cards at different times during the day in batches. Frequently, credit cards would be declined for several different reasons including, but not limited to, the credit card being over limit or expired. Consequently, **BERKELEY** created a department called "Decline Recovery" to process these credit cards by resubmitting them at a later date for approval.

23. The conspirators discovered that a certain decline code meant that the card was declined because it was expired. At the instruction of the conspirators, credit cards declined for this reason were altered by resubmitting the cards for approval with new expiration dates, at times months after the original purchase date, without the knowledge, authorization, or consent of the consumer. In addition, due to various over-limit credit cards subsequently dropping below the credit limit at a future date after payments were made by the cardholders to the card issuer, the conspirators instructed **BERKELEY** employees to periodically resubmit previous charges on these cards for approval, sometimes months later, without the authorization, knowledge, or consent of the consumer.
24. Ultimately, the conspirators developed a computer program which would automatically run cards that were declined.

Chargeback Ratio Scheme

25. Credit card processors regularly monitor a merchant's chargeback ratio, that is, returns provided to consumers, as compared to the number of sales transactions. Credit card processors utilize this ratio to determine, among other things, a merchant's risk, loss exposure to the processor, and potential fraudulent activity. Credit card associations generally monitor any merchant with a ratio higher than 1% for several consecutive months for possible termination.
26. Defendant **BERKELEY** often exceeded the 1% chargeback ratio, which put them in danger of losing their credit card processors and merchant bank accounts, and, consequently, **BERKELEY'S** ability to accept credit cards as a form of payment. Credit card processing was vital to the execution of the Auto-Ship program to make revenue

through unauthorized charges on consumers' credit cards. As such, the conspirators implemented the following schemes to manipulate the chargeback ratio to make it appear lower than 1%:

- a. Split sales (a/k/a Double Ding, Triple Ding) - The conspirators programmed their computer system to divide sales into multiple charges to make it appear to the credit card processor that more than one transaction had occurred. For example, in late 2003, on a \$4.50 shipping charge, the conspirators would charge a consumer's credit card twice – once for \$2.00 and once for \$2.50. This would artificially lower the chargeback ratio by falsely increasing the number of transactions.
- b. Debit/Credit - The conspirators implemented a process to lower the ratio where they would utilize the database of customers, including new orders, and make an unauthorized charges to their credit cards for various small amounts as a debit (amounts usually between \$1.00 and \$3.95) and then issue a credit for the same amount. Credits were not included in the chargeback ratio calculation. The unauthorized debit would appear as and count towards sales volume transactions, even though no sale occurred, and thus such charges served to fraudulently lower the chargeback ratio.
- c. Personal Card Transactions - The conspirators also repeatedly charged three to five personal credit cards in the name of defendant Steven E. Warshak in an attempt to lower the chargeback ratio. The conspirators would charge defendant **WARSHAK'S** credit cards with numerous small amounts generally ranging

between \$1.00 and \$5.00, solely to increase sales transactions. The number and timing of the transactions occurred as a result of the need to get the monthly chargeback ratio less than 1%. Defendant **BERKELEY** would then pay off these charges made to defendant **STEVEN E. WARSHAK'S** credit cards.

- d. **Pushing Forward Continuity Shipments** - The conspirators established the Auto-Ship program to send out shipments of product to allow for regular charges and a continuous supply of product to the consumers. Again, many of these Auto-Ship sales were not authorized or solicited by the consumer. The conspirators would charge the customer once the product was shipped. On occasion, the conspirators would shorten the Auto-Ship cycle in order to move a later month's transaction into the current month to lower the current month's chargeback ratio by increasing sales transactions.

False Merchant Bank Applications

27. The conspirators, at various times, would fill out multiple applications to secure additional, new credit card processors so that chargebacks could be spread out among various processors or merchant accounts. Certain of these applications contained false statements and representations including, among other things, falsely representing the ownership of **BERKELEY**.

IV. OVERT ACTS

In furtherance of this conspiracy and to effect the objects of the conspiracy, one or more of the defendants and conspirators committed one or more overt acts in the Southern District of Ohio and elsewhere, including, but not limited to, the following: placing false and misleading

advertising for **BERKELEY** products in various magazines sent through the U.S. Mail and sold on newsstands within the United States and the Southern District of Ohio, on radio, and on internet websites; making false and fraudulent promises and representations to consumers, and failing to disclose or making false disclosures to consumers regarding products, refunds, guarantees, and the Auto-Ship program; making unauthorized credit card charges for products shipped to consumers without their authorization, knowledge, or consent, and altering expiration dates on credit cards; submitting false applications to obtain merchant bank accounts; falsely inflating sales transactions to lower the chargeback ratio in order to maintain merchant bank accounts through which credit card sales were processed; using or inducing others to use the U.S. Mail in furtherance of the conspiracy and in execution of the scheme and artifice to defraud as alleged in Counts 2 - 13, below, which Counts 2 - 13 are specifically incorporated herein; and including, but not limited to, the following overt acts:

1. Beginning in about July 2001, and continuing until at least June 2005, defendants **STEVEN E. WARSHAK** and **CHARLES W. CLARKE, JR.** created, and caused to be placed, advertising for **BERKELEY** products in various magazines, on websites, and on radio, which the defendants knew contained false representations including, among other things, that:
 - a. Enzyte was developed by two doctors – one at Harvard and another at Stanford – who “collaborated for 13 years studying human blood flow” and that there was a “double your money back” guarantee if not satisfied (Fall 2002 Girls of Penthouse Special Edition, November/December 2001 issue of Girls of Penthouse, November and December 2001 Penthouse Variations Magazine, January and

February 2002 Men's Workout Magazine, January/February 2002 issue of Girls of Penthouse, January and February 2002 Penthouse Letters, January 2002 Men's Fitness Magazine, January and February 2002 Penthouse Variations Magazine, March 2002 Penthouse Best of Variations, March 2002 Girls of Penthouse), when, in fact, neither of these two doctors existed, and it was **BERKELEY'S** practice not to honor the money-back guarantee;

- b. "Enzyte has a tremendous reorder rate – 82% of all Enzyte customers choose to purchase it again", or similar reorder rate representation (September, November, and December 2002 Outside Magazine, September 2002 Men's Fitness Magazine), along with claims of independent customer trials establishing product effectiveness (Enzyte radio ads on Sporting New Radio May 2003 - June 2005) when, in fact, the claimed reorder rate and trial results were made up by a conspirator and were fictitious; and
 - c. penis erectile size increase reported from an Enzyte customer survey of men of an average of 24%, or a 12 - 31% increase (Enzyte website February 5, 2003, June 6, 2003, and September 2, 2003), when, in fact, no such survey was conducted and the numbers were made up by a conspirator.
2. On or about July 15, 2001, defendants **STEVEN E. WARSHAK, HARRIET WARSHAK**, and other conspirators submitted a merchant application, signed by defendant **HARRIET WARSHAK**, to Asia Debit, a foreign credit card processor in located in Singapore, falsely representing that defendant **HARRIET WARSHAK** was the "Director/Owner" of Lifekey, Inc.

3. On or about November 5, 2001, defendant **STEVEN E. WARSHAK** instructed Jim Teegarden to make sure **BERKELEY** customer service representatives generally were refusing to issue customer credits or cancellations, stating “are [customer service representatives] doing everything possible to keep customers from being credited AND from being taken off continuity?” (capitals in original).
4. On or about April 3, 2002, defendant **STEVEN E. WARSHAK** instructed Jim Teegarden, Shelley B. Kinmon, and other conspirators to split sales into two separate charges and to “ding”, or charge, customers’ credit cards twice, in order to falsely inflate sales transactions, stating “every single order – even continuity – must be dinged 2 times
1. for the total \$amount – less \$2.00 [and] 2. \$2.00[.] [P]lease implement immediatel (sic) and make sure all managers know – we received our first ‘too many chargebacks’ letter and we must fix it immediately.”
5. On or about April 3, 2002, in order to implement the above instruction from defendant **STEVEN E. WARSHAK**, Shelley B. Kinmon directed others, and advised defendants **STEVEN E. WARSHAK** and **CHARLES W. CLARKE, JR.**, that “Beginning today, we need to start double dinging EVERY sale again, this includes Continuity, and Mail orders. Please continue to do this until further notice...” (emphasis in original).
6. From on or about December 27, 2002 until at least on or about January 28, 2003, defendant **STEVEN E. WARSHAK** caused several of his personal credit cards to be charged with hundreds of fraudulent, sham transactions in nominal amounts in order to falsely inflate sales transactions in order to lower the chargeback ratio.

7. Defendants **STEVEN E. WARSHAK, HARRIET WARSHAK**, Amar Chavan, and other conspirators made or caused to be made unauthorized and fraudulent charges on consumers' credit cards, including, but not limited to, the following:
 - a. In mid-2002, defendants **STEVEN E. WARSHAK**, Amar Chavan, and other conspirators implemented a plan to fraudulently lower the chargeback ratio by falsely inflating sales transactions, whereby customers' credit cards were charged a total package price including the shipping charge, charged the shipping charge a second time as an additional sham transaction, and then credited back the second shipping charge, resulting in the following unauthorized and fraudulent credit card charges: in April 2002, 2482 customers' credit cards were charged the total package price plus a sham charge of \$19.95, then credited back \$19.95; in May 2002, 1022 customers' credit cards were charged the total package price plus a sham charge of \$9.95, then credited back \$9.95; also in May 2002, 1144 customers' credit cards were charged the total package price plus a sham charge of \$19.95, then credited back \$19.95; also in May 2002, 994 customers' credit cards were charged the total package price plus a sham charge of \$14.95, then credited back \$14.95; in June 2002, 6558 customers' credit cards were charged the total package price plus a sham charge of \$14.95, then credited back \$14.95; also in June 2002, 102 customers' credit cards were charged the total package price plus a sham charge of \$9.95, then credited back \$9.95; in July 2002, 2754 customers' credit cards were charged the total package price plus a sham charge of \$14.95, then credited back \$14.95; and also in July 2002, 402 customers' credit cards were

charged the total package price plus a sham charge of \$9.95, then credited back \$9.95.

- b. On or about January 8, 2003, pursuant to defendant **STEVEN E. WARSHAK'S** instruction to make unauthorized charges on consumers' credit cards for "a one time continuity ...old habits are hard to break", defendant Amar Chavan then created a table of credit card numbers, and defendant **HARRIET WARSHAK** thereafter processed these unauthorized credit card charges for a shipment of product to these customers without their knowledge, authorization or consent;
- c. Between on or about November 28, 2003 and December 2, 2003, at defendant **STEVEN E. WARSHAK'S** direction, Michael V. Wagner and a **BERKELEY** programmer caused 5500 customers' credit cards to be charged \$1, and thereafter to be credited back \$1, without any sale, and without the knowledge, authorization, or consent of the customers, in order to falsely inflate sales transactions to reduce the chargeback ratio;
- d. On or about December 30, 2003, pursuant to defendant **STEVEN E. WARSHAK'S** instruction, defendant Amar Chavan caused 3000 credit cards of customers to be charged \$4.50, and thereafter to be credited back \$4.50, without any sale, and without the knowledge, authorization, or consent of the customers, in order to falsely inflate sales transactions to reduce the chargeback ratio; and
- e. On or about December 31, 2003, pursuant to defendant **STEVEN E. WARSHAK'S** instruction, defendant Amar Chavan caused another 3000 customers' credit cards to be charged \$4.50, and thereafter to be credited back

\$4.50, without any sale and without the knowledge, authorization, or consent of the customers, in order to falsely inflate sales transactions to reduce the chargeback ratio.

8. On or about August 27, 2003, pursuant to defendant **STEVEN E. WARSHAK'S** instruction, defendant Amar Chavan performed programming on the computer system which altered the expiration dates on customers' credit cards by advancing the date to the next year, in an effort to have declined credit card charges approved.
9. On or about November 3, 2003, defendant **STEVEN E. WARSHAK** instructed defendant Amar Chavan to remove **BERKELEY'S** return address from the shipping label from customers' shipments, stating "let's make them call – work some deals..." to accept additional product in lieu of credits, and "no cash refunds[.]"
10. On or about February 25, 2005, defendant **STEVEN E. WARSHAK** directed Shelley B. Kinmon to fabricate advertising claims, stating "GET 3-4 BOTTLES OF WINE...THEN SIT AROUND AND MAKE SHIT UP!!- - THAT'S WHAT I DO...BUT WRITE IT ALL DOWN OR YOU'LL FORGET IT THE NEXT DAY." [capitals in original].

In violation of 18 U.S.C. § 1349.

COUNTS 2 - 13
MAIL FRAUD
18 U.S.C. §1341

1. The Grand Jury realleges and incorporates by reference the allegations in Part III of Count 1 as though fully set forth herein.
2. From about June 2001 up to the date of this Indictment, the defendant **STEVEN E. WARSHAK**, acting in his individual capacity and in his capacity as the sole owner of the

defendant **BERKELEY** and for the benefit of defendant **BERKELEY**, knowingly and willfully devised and intended to devise a scheme and artifice to defraud and to obtain money from consumers by means of false and fraudulent pretenses, representations, and promises in connection with the advertising, marketing, distribution, and sale of products by defendant **BERKELEY**, as described more fully in Part III of Count 1, above, including, but not limited to, using false and fraudulent advertising in order to induce consumers to purchase **BERKELEY** products through false and fraudulent representations in such advertising; making false and fraudulent representations regarding, and failing to disclose or falsely disclosing the Auto-Ship Program; making unauthorized charges to consumers' credit cards for products they did not order; and making false promises regarding money-back guarantees, cancellation, and refund and credit policies; and for the purpose of executing and attempting to execute the scheme and artifice to defraud, defendant **STEVEN E. WARSHAK** used and caused to be used the U.S. Mail and private and commercial interstate carriers for, among other things, the shipment of various products to consumers, including shipments of products to consumers who did not order the products or authorize that the products be shipped or billed to their credit cards; and defendant **STEVEN E. WARSHAK** caused and induced consumers to use the U.S. Mail and private and commercial interstate carriers, for, among other things, the shipment of returned products back to defendant **BERKELEY**, and the defendants caused and induced consumers to send letters as directed by **BERKELEY** representatives to, among other people, "Michael Johnson", a fictitious Director of Sales/Customer Service, and caused and induced consumers to request refunds, credits, or

cancellations, and to send other documentation in support of requests for refunds, credits, or cancellations, with the chart below showing such mailings to or from consumer victims as identified by their initials, on or about the dates set forth below:

<u>Count</u>	<u>Consumer</u>	<u>Mailing by Consumer</u>	<u>Mailing by Berkeley</u>
2	VR	12/07/02 Order	Product
3	JJ	01/07/04 Complaint letter	Product
4	MAO	09/16/04 "Michael Johnson" letter	Product
5	JTC	05/03/04 Complaint letter	Product
6	EJM	08/17/04 Complaint letter	Product
7	DGS	07/12/04 "Michael Johnson" letter	Product
8	DGS	09/01/04 Complaint letter	Product
9	SW	09/14/04 "Michael Johnson" letter	Product
10	MB1	09/05/04 "Michael Johnson" letter	Product
11-12	MK	08/18/04 "Michael Johnson" letter	08/11/04 product shipment with "Michael Johnson" letter / Product
13	DCP	09/02/04 "Michael Johnson" letter	Product

In violation of 18 U.S.C. § 1341.

COUNT 14
FALSE STATEMENT TO BANK
18 U.S.C. § 1014
18 U.S.C. § 2

First Regional Bank

1. First Regional Bank ("FRB"), Los Angeles, California, is Federal Deposit Insurance Corporation (FDIC) insured and holds certificate number 23011. FRB has been FDIC-

- insured from December 31, 1979, through and including at least February 3, 2006. FRB is a supporting merchant bank for the Fission Group, LTD, a credit card processor.
2. Defendant **PAUL J. KELLOGG** is an Ohio licensed attorney and serves as General Counsel for **BERKELEY** and its affiliates.
 3. On or about July 30, 2004, in the Southern District of Ohio, defendants **STEVEN E. WARSHAK** and **PAUL J. KELLOGG** knowingly made one or more false statements to FRB, a financial institution, and aided and abetted each other to do so, in connection with an application to open a merchant bank account on behalf of **BERKELEY** for the purpose of influencing the action of FRB, that is, defendants **STEVEN E. WARSHAK** and **PAUL J. KELLOGG** submitted a merchant application to the Fission Group and FRB seeking to establish a merchant account on behalf of Berkeley Premium Nutraceuticals d/b/a/ Berkeley.
 4. This application falsely represented that **HARRIET WARSHAK** was the 100% owner of **BERKELEY** and the Chief Executive Officer, when, as these defendants then knew, **HARRIET WARSHAK** was not the 100% owner of **BERKELEY**.
 5. As a result of these false statements, defendants **STEVEN E. WARSHAK** and **PAUL J. KELLOGG** influenced FRB and thereby obtained a merchant account at FRB.

In violation of 18 U.S.C. §§ 1014 and 2.

COUNT 15
BANK FRAUD
18 U.S.C. §1344

First Financial Bank

1. First Financial Bank ("FFB"), Atlanta, Georgia, is Federal Deposit Insurance Corporation (FDIC) insured and holds certificate number 90017. FFB has been FDIC insured from May 7, 1993 through and including at least March 20, 2006. FFB is a supporting merchant bank for Cardservice International, Inc. (CSI), a credit card processor.
2. Beginning in about June 2001, and continuing until at least November 2003, in the Southern District of Ohio, defendant **STEVEN E. WARSHAK** devised and intended to devise a scheme and artifice to defraud and to obtain money, funds, credit, and other property owned by or under the custody or control of FFB, a financial institution, by means of false and fraudulent pretenses, representations, or promises.
3. As a result of the conspiracy and scheme and artifice to defraud consumers with respect to the advertising, marketing, distribution, and sale of **BERKELEY** products and the unauthorized charging of consumers' credit cards as described more fully in Part III of Count 1, above, **WARSHAK'S** companies experienced high chargeback ratios. It was part of the scheme and artifice to defraud that the conspirators falsely inflated the number of sales transactions in order to cause the corresponding ratio of credit card chargebacks from disputed credit card charges to appear lower than, in fact, it was. This scheme and artifice to defraud affected and defrauded financial institutions, including FFB, by misleading FFB and its acquiring credit card processor, Card Service International, into believing that **BERKELEY'S** chargeback ratio was lower than it was, in order to avoid

termination of its merchant account for excessive chargebacks and to continue the unauthorized charging of consumers' credit cards.

4. On or about about June 12, 2001, defendant **STEVEN E. WARSHAK** submitted a merchant application to Card Service International and FFB seeking to establish a merchant account on behalf of **TCI MEDIA, INC. d/b/a Lifekey, Inc.**, in order to process credit cards. The application indicated that **STEVEN E. WARSHAK** was the 100% owner of **TCI MEDIA, INC. d/b/a Lifekey, Inc.** On the application, **STEVEN E. WARSHAK** falsely represented that **TCI MEDIA, INC. d/b/a Lifekey, Inc.** had never processed with "Mastercard/Visa." **STEVEN E. WARSHAK** further falsely represented that none of the principals in the organization ever had a "bankcard relationship terminated." The account was established as merchant account #510124.
5. On or about June 18, 2001, Card Service International terminated account #510124 due to a match in the terminated merchant file for previous excessive chargebacks, and due to **STEVEN E. WARSHAK** having lied on the application regarding having a previous processor.
6. Thereafter on July 6, 2001, defendant **STEVEN E. WARSHAK** caused to be submitted a merchant application to Card Service International and First Financial Bank seeking to establish a merchant account on behalf of Lifekey in order to process credit cards. The application falsely represented that **HARRIET WARSHAK** was the 100% owner of Lifekey, when, as defendant **STEVEN E. WARSHAK** then knew, **HARRIET WARSHAK** was not the 100% owner of Lifekey. The application also falsely represented that Lifekey was not currently processing and had never processed with

“Mastercard/Visa.” The application further falsely represented that none of the principals in the organization ever had a “bankcard relationship terminated.” The account was established as merchant account #515581.

7. On November 2, 2001, defendant **STEVEN E. WARSHAK** submitted a merchant application to Card Service International and FFB seeking to establish a merchant account on behalf of Lifekey, Inc. in order to process credit cards. The application indicated that **STEVEN E. WARSHAK** was the 100% owner of Lifekey, Inc. On the application, **STEVEN E. WARSHAK** falsely represented that Lifekey, Inc. was not currently processing and had never processed with “Mastercard/Visa.” **STEVEN E. WARSHAK** further falsely represented that the principals in Lifekey, Inc. never had a “bankcard relationship terminated.” The account was established as merchant account #545793.
8. On December 4, 2002, defendant **STEVEN E. WARSHAK** submitted a merchant application to Card Service International and FFB seeking to establish a merchant account on behalf of Boland Naturals, Inc. in order to process credit cards. In the application, defendant **STEVEN E. WARSHAK** falsely represented that he had never had a bank card relationship terminated. The account was established as merchant account #637736.
9. On December 16, 2002, defendant **STEVEN E. WARSHAK** submitted a merchant application to Card Service International and FFB seeking to establish a merchant account on behalf of Health and Lifestyle Institute, Inc. in order to process credit cards. The application indicated that **STEVEN E. WARSHAK** was the 100% owner of Health and Lifestyle Institute, Inc. On the application, **STEVEN E. WARSHAK** falsely represented that Health and Lifestyle Institute, Inc. was not currently processing and had never

processed with "Mastercard/Visa." **STEVEN E. WARSHAK** further falsely represented that he has never had a "bankcard relationship terminated." The account was established as merchant account #641251.

10. On November 5, 2003, defendant **STEVEN E. WARSHAK** submitted a merchant application to Card Service International and FFB seeking to establish a merchant account on behalf of Lifekey Healthcare, Inc. d/b/a Enzyte in order to process credit cards. The application indicated that **STEVEN E. WARSHAK** was the 100% owner of Lifekey Healthcare, Inc. d/b/a Enzyte. On the application, **STEVEN E. WARSHAK** falsely represented that Lifekey Healthcare, Inc. d/b/a Enzyte was not currently processing and had never processed with "Mastercard/Visa." **STEVEN E. WARSHAK** further falsely represented that he has never had a "bankcard relationship terminated." The account was established as merchant account #842609.
11. On November 5, 2003, defendant **STEVEN E. WARSHAK** submitted a merchant application to Card Service International and FFB seeking to establish a merchant account on behalf of Boland Naturals, Inc. d/b/a Ogoplex in order to process credit cards. The application indicated that **STEVEN E. WARSHAK** was the 100% owner of Boland Naturals, Inc. d/b/a Ogoplex. On the application, **STEVEN E. WARSHAK** falsely represented that Boland Naturals, Inc. d/b/a Ogoplex. was not currently processing and had never processed with "Mastercard/Visa." **STEVEN E. WARSHAK** further falsely represented that he has never had a "bankcard relationship terminated." The account was established as merchant account #842610.
12. The defendant, **STEVEN E. WARSHAK**, executed and attempted to execute the scheme

and artifice to defraud by obtaining the following merchant accounts with FFB by means of false and fraudulent statements on the applications for the following accounts, as set forth above: #510124, #515581, #545793, #637736, #641251, #842609, #842610.

In violation of 18 U.S.C. § 1344.

COUNTS 16-22
FALSE STATEMENT TO BANK
18 U.S.C. §1014

1. The Grand Jury realleges and incorporates by reference the allegations in Count 15 as though fully set forth herein.
2. Beginning in or about June 2001, and continuing until at least November 2003, in the Southern District of Ohio, the defendant **STEVEN E. WARSHAK** knowingly made one or more false statements to First Financial Bank ("FFB"), Atlanta, Georgia, a financial institution, in connection with an application to open a merchant bank account on behalf of various related entities and subsidiaries of **BERKELEY**, including **TCI MEDIA, INC. d/b/a Lifekey, Inc.; Lifekey, Inc.; Boland Naturals, Inc.; Health and Lifestyles Institute, Inc.; Lifekey Healthcare, Inc. d/b/a/ Enzyte**; for the purpose of influencing in any way the action of FFB, which false statements are charged below as Counts 16-22:

Count	Date of Application	Account Number	False Statement
16	June 12, 2001	510124	TCI Media, Inc. never processed with "Mastercard/Visa"; none of the principals in the organization ever had a "bankcard relationship terminated."

17	July 6, 2001	515581	Lifekey was not currently processing and had never processed with "Mastercard/Visa;" none of the principals in the organization ever had a "bankcard relationship terminated."
18	November 2, 2001	545793	Lifekey, Inc. was not currently processing and had never processed with "Mastercard/Visa;" none of principals in Lifekey, Inc. never had a "bankcard relationship terminated."
19	December 4, 2001	637736	Steven E. Warshak falsely represented that he had never had a bank card relationship terminated
20	December 16, 2002	641251	Health and Lifestyle Institute, Inc. was not currently processing and had never processed with "Mastercard/Visa;" Steven E. Warshak further falsely represented that he has never had a "bankcard relationship terminated."
21	November 5, 2003	842609	Lifekey Healthcare, Inc. d/b/a Enzyte was not currently processing and had never processed with "Mastercard/Visa;" Steven E. Warshak further falsely represented that he has never had a "bankcard relationship terminated."
22	November 5, 2003	842610	Boland Naturals, Inc. d/b/a Ogoplex. was not currently processing and had never processed with "Mastercard/Visa"; Steven E. Warshak further falsely represented that he has never had a "bankcard relationship terminated."

3. As to each of these false statements, as set forth above in Counts 16-22, defendant **STEVEN E. WARSHAK** influenced FFB and thereby obtained a merchant account at FFB.

In violation of 18 U.S.C. § 1014.

COUNT 23
BANK FRAUD
18 U.S.C. §1344

The Provident Bank

1. The Provident Bank ("Provident") (n/k/a National City Bank), Cincinnati, Ohio, is Federal Deposit Insurance Corporation (FDIC) insured and holds certificate number 744. Provident was FDIC-insured from December 23, 1969, through and including March 4, 2005. Provident was a supporting merchant bank for Transfirst ePayment Services, a credit card processor from about July 2002, until about March 2004.
2. Beginning in about April 2002, and continuing until at least January 2004, in the Southern District of Ohio, defendant **STEVEN E. WARSHAK** devised and intended to devise a scheme and artifice to defraud and to obtain money, funds, credit, and other property owned by or under the custody or control of Provident Bank, a financial institution, by means of false and fraudulent pretenses, representations, or promises.
3. As a result of the scheme and artifice to defraud consumers with respect to the advertising, marketing, distribution, and sale of **BERKELEY** products and the unauthorized charging of consumers' credit cards as described more fully in Part II and III of Count 1, above, **WARSHAK'S** companies experienced high chargeback ratios. It was part of the scheme to defraud that the defendants and conspirators falsely inflated the number of sales transactions in order to cause the corresponding ratio of credit card chargebacks from disputed credit card charges to appear lower than, in fact, it was. This scheme and artifice to defraud affected and defrauded financial institutions by misleading

banks, including Provident and its acquiring credit card processor, DPI Merchant Services, into believing that **BERKELEY'S** chargeback ratio was lower than it was, in order to avoid termination of its merchant account for excessive chargebacks and to continue the unauthorized charging of consumers' credit cards.

4. On or about April 17, 2002, defendant **STEVEN E. WARSHAK** caused to be submitted a merchant application to DPI Merchant Services (DPI) and Provident seeking to establish a merchant account on behalf of Lifekey, Inc. in order to process credit cards. The application falsely represented that **HARRIET WARSHAK** was the 100% owner and President of Lifekey, Inc., when, as defendant **STEVEN E. WARSHAK** then knew, **HARRIET WARSHAK** was not the President, nor 100% owner of Lifekey. Above the signature block where the signature "Harriet Warshak" appears, the application bears the admonition "THE UNDERSIGNED MERCHANT CERTIFIES, SUBJECT TO CRIMINAL PENALTIES FOR FALSE CERTIFICATION TO A FEDERALLY FUNDED BANKING INSTITUTION THAT ALL THE INFORMATION SET FORTH IN THIS COMPLETE MERCHANT APPLICATION IS TRUE AND CORRECT."
(capitals in original).

5. On or about November 20, 2002, defendant **STEVEN E. WARSHAK** caused to be submitted a merchant application to DPI Merchant Services (DPI) and Provident seeking to establish a merchant account on behalf of Warner Health Care, Inc. in order to process credit cards. The application falsely represented that **HARRIET WARSHAK** was the 100% owner and President of Warner Health Care, Inc. when, as defendant **STEVEN E. WARSHAK** then knew, **HARRIET WARSHAK** was not the President, nor 100%

owner, of Warner Health Care. Above the signature block where the signature "Harriet Warshak" appears, the application bears the admonition "THE UNDERSIGNED MERCHANT CERTIFIES, SUBJECT TO CRIMINAL PENALTIES FOR FALSE CERTIFICATION TO A FEDERALLY FUNDED BANKING INSTITUTION THAT ALL THE INFORMATION SET FORTH IN THIS COMPLETE MERCHANT APPLICATION IS TRUE AND CORRECT." (capitals in original).

6. On or about December 30 and 31, 2003, defendant **STEVEN E. WARSHAK** caused unauthorized charges to be made on 6,000 consumers' credit cards in two 3,000 batches for the purpose of fraudulently inflating sales transactions and thereby lowering **BERKELEY'S** chargeback ratio. Pursuant to defendant **STEVEN E. WARSHAK'S** instructions to a co-conspirator and a **BERKELEY** programmer, the credit cards of consumers who had provided their credit cards previously to **BERKELEY** were pulled out of the consumer database, charged \$4.50, and later credited \$4.50, without the consumers' knowledge, authorization, or consent, and without any sale of any product relating to the \$4.50 charge to such consumers.
7. On February 26, 2004, defendant **STEVEN E. WARSHAK** caused to be submitted a merchant application to TransFirst ePayment Services and Provident seeking to establish a merchant account on behalf of Wagner Nutraceuticals, Inc. in order to process credit cards. The application falsely represented that **HARRIET WARSHAK** was the 100% owner and Chief Executive Officer of Wagner Nutraceuticals, Inc. when, as defendant **STEVEN E. WARSHAK** then knew, **HARRIET WARSHAK** was not the 100% owner, nor the Chief Executive Officer, of Warner Nutraceuticals, Inc.

8. The defendant, **STEVEN E. WARSHAK**, executed and attempted to execute the scheme and artifice to defraud by obtaining merchant accounts with Provident by means of false and fraudulent statements on the account applications set forth above for the following **BERKELEY** companies: Lifekey, Inc., Warner Health Care, Inc., and Wagner Nutraceuticals, Inc.

In violation of 18 U.S.C. § 1344.

COUNTS 24-26
FALSE STATEMENT TO BANK
18 U.S.C. §1014

1. The Grand Jury realleges and incorporates by reference the allegations in Count 23 as though fully set forth herein.
2. Beginning in about April 2002, and continuing until at least January 2004, in the Southern District of Ohio, defendant **STEVEN E. WARSHAK** knowingly made one or more false statements to The Provident Bank ("Provident"), a financial institution, in connection with an application to open a merchant bank account on behalf of various related entities and subsidiaries of **BERKELEY**, including Lifekey, Inc., Warner Health Care, Inc., and Wagner Nutraceuticals, Inc., for the purpose of influencing in any way the action of Provident which false statements are charged below as Counts:

Count	Date of Application	False Statement
24	April 17, 2002	Harriet Warshak was the 100% owner and President of Lifekey, Inc.
25	November 20, 2002	Harriet Warshak was the 100% owner and President of Warner Health Care, Inc.
26	February 26, 2004	Harriet Warshak was the 100% owner and CEO of Wagner Nutraceuticals, Inc.

3. As a result of these false statements, defendant **STEVEN E. WARSHAK** influenced Provident and thereby obtained a merchant account at Provident.

In violation of 18 U.S.C. § 1014.

COUNT 27
BANK FRAUD
18 U.S.C. § 1344
18 U.S.C. § 2

Silicon Valley Bank

1. Silicon Valley Bank ("SVB"), Santa Clara, California, is Federal Deposit Insurance Corporation (FDIC) insured and holds certificate number 24735. SVB has been FDIC-insured from October 17, 1983 through and including at least February 3, 2006. SVB was a supporting merchant bank for Ginix, Inc., a credit card processor through which **BERKELEY** processed credit card sales during the period from approximately September 2003 to January 2004.
2. Beginning in or about September 2003 and continuing until at least January 2004, in the Southern District of Ohio, defendants **STEVEN E. WARSHAK** and **HARRIET WARSHAK** devised and intended to devise, and aided and abetted each other in devising, a scheme and artifice to defraud and to obtain money, funds, credit, and other property owned by or under the custody or control of SVB, a financial institution, by means of false and fraudulent pretenses, representations, or promises.
3. As a result of the scheme and artifice to defraud consumers with respect to the advertising, marketing, distribution, and sale of **BERKELEY** products and the unauthorized charging of consumers' credit cards as described more fully in Part III of

Count 1, **WARSHAK'S** companies experienced high chargeback ratios. It was part of the scheme and artifice to defraud that the defendants and conspirators falsely inflated the number of sales transactions in order to cause the corresponding ratio of credit card chargebacks from disputed credit card charges to appear lower than, in fact, it was. This scheme and artifice to defraud affected and defrauded financial institutions, including SVB, by misleading SVB and its acquiring credit card processor, Ginix, into believing that **BERKELEY'S** chargeback ratio was lower than it was, in order to avoid termination of its merchant account for excessive chargebacks and to continue the unauthorized charging of consumers' credit cards.

4. On or about September 9, 2003, defendant **STEVEN E. WARSHAK** submitted a merchant application to Ginix for credit card processing through supporting bank SVB using the company name Warner Health Care (enzyte.com/ogoplex.com).
5. It was part of the scheme to defraud that, between November 28, 2003, and December 2, 2003, pursuant to the direction of defendant **STEVEN E. WARSHAK**, a conspirator and a **BERKELEY** programmer created false and unauthorized transactions by charging various consumers' credit cards \$1, and then crediting those cards back \$1, without any sale of any product relating to the \$1 charge to such consumers, in order to falsely inflate sales transactions so that **BERKELEY'S** transaction numbers would increase, thereby lowering the chargeback ratio for November 2003 in order to maintain the merchant account with SVB.
6. Thereafter, in a second merchant application to SVB submitted on or about December 15, 2003, these defendants falsely represented that defendant **HARRIET WARSHAK** was

the 100% owner of Warner Healthcare, when in fact, as these defendants then knew, defendant **HARRIET WARSHAK** was not the 100% owner of Warner Healthcare. The application also falsely represented that Warner Healthcare had never had a merchant account cancelled.

7. On or about December 15, 2003, defendants **STEVEN E. WARSHAK** and **HARRIET WARSHAK** executed and attempted to execute the scheme and artifice to defraud, as set forth above, in that these defendants did the following acts: a) defendant **HARRIET WARSHAK** signed the merchant application; and b) defendant **STEVEN E. WARSHAK** caused the merchant application with SVB for Warner Healthcare to be submitted for approval.

In violation of 18 U.S.C. §§ 1344 and 2.

COUNT 28
FALSE STATEMENT TO BANK
18 U.S.C. §1014
18 U.S.C. § 2

1. The Grand Jury realleges and incorporates by reference the allegations in Count 27, above, as though fully set forth herein.
2. On or about December 15, 2003, in the Southern District of Ohio, defendants **STEVEN E. WARSHAK** and **HARRIET WARSHAK** knowingly made one or more false statements to Silicon Valley Bank ("SVB"), a financial institution, and aided and abetted each other to do so, in connection with an application to open a merchant bank account on behalf of various related entities and subsidiaries of **BERKELEY**, including Warner HealthCare, Inc., for the purpose of influencing in any way the action of SVB.

3. These defendants falsely represented that defendant **HARRIET WARSHAK** was the 100% owner of Warner Healthcare, when in fact, as these defendants then knew, defendant **HARRIET WARSHAK** was not the 100% owner of Warner Healthcare. The application also falsely represented that Warner Healthcare had never had a merchant account cancelled.
4. As a result of these false statements, defendants **STEVEN E. WARSHAK** and **HARRIET WARSHAK** influenced SVB and thereby obtained a merchant account at SVB.

In violation of 18 U.S.C. § 1014 and 2.

COUNT 29
CONSPIRACY TO COMMIT and
ATTEMPT TO COMMIT ACCESS DEVICE FRAUD
18 U.S.C. §§ 1029(a)(5), 1029(b)(1) and (2)

The Grand Jury realleges and incorporates by reference the allegations in Part III of Count 1, above, as though fully set forth herein.

A. THE ACCESS DEVICE FRAUD CONSPIRACY AND ITS OBJECTS

From on or about June 2001 to at least March 2005, the exact dates being unknown to the Grand Jury, defendant **STEVEN E. WARSHAK**, acting in his individual capacity and in his capacity as the sole owner of defendant **BERKELEY**, defendant **AMAR D. CHAVAN**, acting in his individual capacity and within the scope of his duties and for the benefit of defendant Berkeley, and others known and unknown to the Grand Jury, did combine, conspire, confederate, and agree to knowingly, and with intent to defraud, effect transactions with one or more access devices issued to other persons by making unauthorized charges on consumers' credit cards in

order to receive payment or any other thing of value, including to maintain the ability to continue to process credit card charges through merchant bank accounts by falsely inflating sales transactions through such unauthorized charges to lower chargeback ratios, during any one-year period of the conspiracy, including from November 1, 2003 through November 30, 2004, the aggregate value of which is equal to or greater than \$1,000.

B. OVERT ACTS

In furtherance of this conspiracy, and to effect the objects of the conspiracy, the defendants engaged in certain conduct and committed overt acts, in the Southern District of Ohio and elsewhere, including making unauthorized charges on consumers' credit cards after consumers provided their credit cards, for the purpose of paying a nominal shipping and handling charge to receive a free trial sample of, or to purchase, a Berkeley product, as described in Part III of Count 1, above, and including the following:

1. On or about December 30 and 31, 2003, pursuant to defendant **STEVEN E. WARSHAK'S** instuction, defendant **AMAR D. CHAVAN** caused unauthorized charges to be made on 6,000 consumers' credit cards in two 3,000 batches for the purpose of fraudulently inflating sales transactions and thereby lowering BPN's chargeback ratio. Pursuant to defendant **STEVEN E. WARSHAK'S** instructions to a co-conspirator and a Berkeley programmer, the credit cards of consumers who had provided their credit cards previously to Berkeley were pulled out of the consumer database, charged \$4.50, and later credited \$4.50, without the consumers' knowledge, authorization, or consent, and without any sale of any product relating to the \$4.50 charge to such consumers, and

2. Between November 28, 2003, and December 2, 2003, pursuant to the direction of defendant **STEVEN E. WARSHAK**, a conspirator and a Berkeley programmer created false and unauthorized transactions by charging various consumers' credit cards \$1, and then crediting those cards back \$1, without any sale of any product relating to the \$1 charge to such consumers, in order to falsely inflate sales transactions so that Berkeley's transaction numbers would increase, thereby lowering the chargeback ratio for November 2003 in order to maintain the merchant account with SVB.

In violation of 18 U.S.C. §§ 1029(a)(5) and (b)(2).

COUNT 30
CONSPIRACY TO COMMIT MONEY LAUNDERING
18 U.S.C. § 1956(h)

A. THE MONEY LAUNDERING CONSPIRACY AND ITS OBJECTS

Beginning in or before December 2003 and continuing through at least July 22, 2005, within the Southern District of Ohio and elsewhere, defendants **STEVEN E. WARSHAK**, **PAUL J. KELLOGG**, and **HARRIET WARSHAK**, and other persons known and unknown to the Grand Jury, did unlawfully, willfully, and knowingly combine, conspire, confederate, and agree among themselves and with each other, to conduct or attempt to conduct financial transactions which in fact involved the proceeds of specified unlawful activity. The defendants and conspirators did these acts with the knowledge that such property was derived from a specified unlawful activity, that is, mail fraud in violation of 18 U.S.C. § 1341, wire fraud in violation of 18 U.S.C. § 1343, and bank fraud in violation of 18 U.S.C. § 1344, and :

- a. with the intent to promote the carrying on of said specified unlawful activity, in violation of 18 U.S.C. § 1956(a)(1)(A)(i); and
- b. knowing that the transactions were designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity, in violation of 18 U.S.C. § 1956(a)(1)(B)(i).

B. MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants sought to accomplish the goals of their conspiracy included, among others, the following:

1. As set forth more fully in Part III of Count 1, above, defendant **STEVEN E. WARSHAK**, defendant **HARRIET WARSHAK**, and others conspired to defraud thousands of consumers and to defraud financial institutions, using the U.S. Mail and wire communications, among other means, to execute the scheme. This fraud scheme generated millions of dollars in proceeds of specified unlawful activity, that is, proceeds of mail fraud in violation of 18 U.S.C. § 1341, proceeds of wire fraud in violation of 18 U.S.C. § 1343, and proceeds of bank fraud in violation of 18 U.S.C. § 1344..
2. Defendants **STEVEN E. WARSHAK**, **HARRIET WARSHAK**, and **PAUL J. KELLOGG** established merchant agreements with various financial institutions to be used for processing credit card purchases. Defendants used merchant accounts of financial institutions to obtain proceeds from victims of their fraud scheme.
3. Defendant **STEVEN E. WARSHAK** received proceeds of consumer fraud, deposited these proceeds into bank accounts at financial institutions, transferred millions of dollars

in fraud proceeds out of the operating accounts into many other accounts for the following purposes, among others: 1) to promote the carrying on of specified unlawful activity by reinvesting fraud proceeds into the illegal enterprise by paying advertising, rent, salaries, and bonuses to managers and other **BERKELEY** employees, such as defendants **PAUL J. KELLOGG** and **HARRIET WARSHAK**; and 2) to conceal or disguise the nature and source of the proceeds of specified unlawful activity through frequent and complex movement of the proceeds and by transferring proceeds into the names of third parties.

4. Defendant **PAUL J. KELLOGG** assisted the defendants and conspirators by, among other things, causing fraud proceeds to be transferred out of the accounts of defendant **STEVEN E. WARSHAK** and into other accounts.
5. Defendant **HARRIET WARSHAK** assisted the defendants and conspirators by, among other things, causing fraud proceeds to be transferred out of the accounts of defendant **STEVEN E. WARSHAK** and into other accounts.

C. OVERT ACTS

In furtherance of such conspiracy and to effect the objects of the conspiracy, these defendants committed overt acts in the Southern District of Ohio and elsewhere including, among others, the acts alleged in Counts 32-107, set forth below, which Counts 32-107 are specifically incorporated herein.

In violation of 18 U.S.C. §§1956(h).

COUNT 31
CONSPIRACY TO COMMIT 18 U.S.C. § 1957 MONEY LAUNDERING
18 U.S.C. § 1956(h)

The Grand Jury realleges and incorporates by reference the allegations in Count 30 as though fully set forth herein.

A. THE MONEY LAUNDERING CONSPIRACY AND ITS OBJECTS

Beginning in or before December 2003 and continuing through at least July 22, 2005, within the Southern District of Ohio and elsewhere, defendants **STEVEN E. WARSHAK, PAUL J. KELLOGG, and HARRIET WARSHAK**, and other persons known and unknown to the Grand Jury did unlawfully, willfully, and knowingly combine, conspire, confederate, and agree among themselves and with each other, to engage or attempt to engage in a monetary transaction by, through, or to a financial institution, in the United States, in criminally derived property of a value greater than \$10,000.

B. MANNER AND MEANS OF THE CONSPIRACY

As described more fully in Part B of Count 30, above, the defendants transferred funds by wire and monetary instrument as set forth and in the amounts listed in Counts 32-107, such property having been derived from a specified unlawful activity, that is, mail fraud in violation of 18 U.S.C. § 1341, wire fraud in violation of 18 U.S.C. § 1343, and bank fraud in violation of 18 U.S.C. § 1344.

C. OVERT ACTS

In furtherance of such conspiracy and to effect the objects of the conspiracy, these defendants committed overt acts in the Southern District of Ohio and elsewhere including,

among others, the acts alleged in Counts 32 - 107, set forth below, which Counts 32-107 are specifically incorporated herein.

In violation of 18 U.S.C. § 1956(b).

COUNTS 32-107
MONEY LAUNDERING
18 U.S.C. § 1956
18 U.S.C. § 2

A. GENERAL ALLEGATIONS

With respect to Counts 32-107:

1. On or about the dates set forth in Counts 32-107, in the Southern District of Ohio and elsewhere, defendants **STEVEN E. WARSHAK, PAUL J. KELLOGG, HARRIET WARSHAK, and TCI MEDIA, INC.**, and other persons known and unknown to the Grand Jury, aiding and abetting each other, did knowingly conduct and attempt to conduct the financial transactions by wire and monetary instrument set forth herein, affecting interstate and foreign commerce, which involved the proceeds of specified unlawful activity, that is, mail fraud in violation of 18 U.S.C. §1341, wire fraud in violation of 18 U.S.C. §1343, and bank fraud in violation of 18 U.S.C. § 1344, and:
 - a. with the intent to promote the carrying on of such specified unlawful activity, in violation of 18 U.S.C. §1956(a)(1)(A)(i); and
 - b. knowing that the transactions were designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity, in violation of 18 U.S.C. §1956(a)(1)(B)(i).

2. As set forth more fully in Part III of Count 1, above, defendants **STEVEN E. WARSHAK, HARRIET WARSHAK**, and others conspired to defraud thousands of consumers and to defraud financial institutions, using the U.S. Mail and wire communications, among other means, to execute the scheme. This fraud scheme generated millions of dollars in proceeds of specified unlawful activity, that is, proceeds of mail fraud in violation of 18 U.S.C. § 1341, wire fraud in violation of 18 U.S.C. § 1343, and bank fraud in violation of 18 U.S.C. § 1344.
3. Defendants **STEVEN E. WARSHAK, HARRIET WARSHAK**, and **PAUL J. KELLOGG** established merchant agreements with various financial institutions to be used for processing credit card purchases. Defendants used merchant accounts of financial institutions to obtain proceeds from victims of their fraud scheme.
4. Defendant **STEVEN E. WARSHAK** received proceeds of consumer fraud, deposited these proceeds into bank accounts at financial institutions, transferred millions of dollars in fraud proceeds out of the operating accounts into many other accounts for the following purposes, among others: 1) to promote the carrying on of specified unlawful activity by reinvesting fraud proceeds into the illegal enterprise by paying advertising, rent, salaries, and bonuses to managers and other **BERKELEY** employees, such as defendants **PAUL J. KELLOGG** and **HARRIET WARSHAK**; and 2) to conceal or disguise the nature and source of the proceeds of specified unlawful activity through frequent and complex movement of the proceeds or by transferring proceeds into the names of third parties.

5. Defendant **PAUL J. KELLOGG, HARRIET WARSHAK, and TCI MEDIA, INC.**, assisted the defendants and conspirators by, among other things, causing fraud proceeds to be transferred out of the accounts of defendant **STEVEN E. WARSHAK** and into other accounts.
6. Defendant **STEVEN E. WARSHAK** is charged in Counts 77-80, 82, and 98 with a violation of 18 U.S.C. § 1956(a)(1)(A)(i).
7. Defendant **STEVEN E. WARSHAK** is charged in Counts 32-76, 81, 83-97, and 102-106 with a violation of 18 U.S.C. § 1956(a)(1)(B)(i).
8. Defendant **HARRIET WARSHAK** is charged in Counts 99-101, 107 with a violation of 18 U.S.C. § 1956(a)(1)(B)(i).
9. Defendant **PAUL J. KELLOGG** is charged in Counts 96-97 with a violation of 18 U.S.C. § 1956(a)(1)(B)(i).
10. Defendant **TCI MEDIA, INC.** is charged in Counts 57-58, 60-73, 79, 83, 91-93 with a violation of 18 U.S.C. § 1956(a)(1)(B)(i).

B. RELEVANT FINANCIAL ACCOUNTS AND TRANSACTIONS

With respect to Counts 32-107:

1. Financial institutions with which **STEVEN E. WARSHAK'S** companies held credit card merchant accounts wired revenue into bank accounts owned by **STEVEN E. WARSHAK** and located at Fifth Third Bank, Cincinnati, Ohio. During the conspiracy, merchant banks wired sale proceeds into **STEVEN E. WARSHAK'S** and **BERKELEY'S** bank accounts, including but not limited to, Fifth Third Bank accounts, such as Lifekey, Inc. account number [REDACTED] 3146; Boland Naturals account number

██████2135; Wagner Nutraceuticals Inc. (Rovucid) account number ██████1642; and Warner Health Care Inc. account number ██████1626. Subsequently, those accounts were converted to zero balance accounts ("ZBA" accounts) sometime in May 2004. Other ZBA accounts were also created by **BERKELEY**.

2. After May 2004, the main operating bank account for **WARSHAK'S** companies was Fifth Third Bank account number ██████0801. Account ██████0801 was the master account into which all ZBA accounts transfer and receive money, such that the ZBA accounts maintained a zero daily balance. Thus, account ██████0801 was a primary depository of money obtained from the consumer fraud scheme.
3. Defendant **STEVEN E. WARSHAK** opened and maintained, and caused to be opened and maintained, numerous business and personal bank accounts. **STEVEN E. WARSHAK** engaged in financial transactions by transferring proceeds of specified unlawful activity from the following accounts:
 - a. Fifth Third Bank account number ██████0801 in the name of Berkeley Premium Nutraceuticals, Inc. (previously served as main **BERKELEY** operating account);
 - b. Fifth Third Bank account number ██████4685 in the name of Wagner Nutraceuticals, Inc.;
 - c. Fifth Third Bank account number ██████9120 in the name of Berkeley Premium Nutraceuticals, Inc. (current **BERKELEY** operating account);
 - d. Fifth Third Bank account number ██████2135 in the name of Boland Naturals (ZBA account);

- e. Fifth Third Bank account number [REDACTED]3146 in the name of Lifekey, Inc. (ZBA account); and
- f. Fifth Third Bank account number [REDACTED]1626 in the name of Warner Health Care Inc. (ZBA account)

and depositing the proceeds of specified unlawful activity into the following accounts:

- g. Fifth Third Bank account number [REDACTED]8440 in the name of Steve Warshak or [spouse];
 - h. Fifth Third Bank account number [REDACTED]0688 in the name of Steve Warshak (personal checking account);
 - i. Fifth Third Bank account number [REDACTED]6526, held by TCI MEDIA, INC., in the name of TCI Media Inc. c/o Steve Warshak; and
 - j. Fifth Third Bank account number [REDACTED]4772 in the name of Steve Warshak (personal savings account).
4. As set forth in the chart below, in Counts 32 - 51, inclusive, defendant STEVEN E. WARSHAK deposited or caused to be deposited funds into Fifth Third Bank account number [REDACTED]8440 in the name of Steve Warshak or in the name of his spouse from January 2004 to November 2004, totaling \$7,700,000.00.

Count	Date of Deposit to [REDACTED]8440	Amount of Deposit	Transfer from Account No.	Account Name
32	01/12/04	\$100,000.00	[REDACTED]4772	Warshak savings
33	02/03/04	\$500,000.00	[REDACTED]0688	Warshak checking
34	02/03/04	\$500,000.00	[REDACTED]0688	Warshak checking
35	03/03/04	\$25,000.00	[REDACTED]0688	Warshak checking

Count	Date of Deposit to [REDACTED]8440	Amount of Deposit	Transfer from Account No.	Account Name
36	03/30/04	\$50,000.00	[REDACTED]0688	Warshak checking
37	03/30/04	\$50,000.00	[REDACTED]0688	Warshak checking
38	04/07/04	\$200,000.00	[REDACTED]0688	Warshak checking
39	04/15/04	\$500,000.00	[REDACTED]0688	Warshak checking
40	04/15/04	\$500,000.00	[REDACTED]0688	Warshak checking
41	04/15/04	\$500,000.00	[REDACTED]0688	Warshak checking
42	04/15/04	\$500,000.00	[REDACTED]0688	Warshak checking
43	05/27/04	\$500,000.00	[REDACTED]0688	Warshak checking
44	06/10/04	\$500,000.00	[REDACTED]0688	Warshak checking
45	06/10/04	\$500,000.00	[REDACTED]0688	Warshak checking
46	06/10/04	\$500,000.00	[REDACTED]0688	Warshak checking
47	07/23/04	\$100,000.00	[REDACTED]0688	Warshak checking
48	08/30/04	\$500,000.00	[REDACTED]0688	Warshak checking
49	09/13/04	\$425,000.00	[REDACTED]0688	Warshak checking
50	09/16/04	\$250,000.00	[REDACTED]0688	Warshak checking
51	11/05/04	\$1,000,000.00	[REDACTED]4133	Warshak investment
	TOTAL	\$7,700,000.00		

5. As set forth in the chart below, in Counts 52 through 59, inclusive, defendant **STEVEN E. WARSHAK** deposited or caused to be deposited funds into Fifth Third Bank account number [REDACTED]0688 in the name of Steve Warshak from January 2004 to May 2004, totaling \$16,514,987.63.

Count	Date of Deposit to [REDACTED] 0688	Amount of Deposit	Transfer from Account No.	Account Name
52	01/26/04	\$6,077,068.30	[REDACTED] 1449	Warshak savings (transfers from accounts 42294772 and 56968440)
53	02/09/04	\$1,000,000.00	[REDACTED] 3146	Lifekey, Inc.
54	02/18/04	\$1,000,000.00	[REDACTED] 2135	Boland Naturals
55	02/23/04	\$1,000,000.00	[REDACTED] 1626	Warner Health Care
56	04/15/04	\$300,000.00	[REDACTED] 8440	Warshak checking
57	05/18/04	\$5,200,000.00	[REDACTED] 6526	TCI Media, Inc.
58	05/20/04	\$1,500,000.00	[REDACTED] 6526	TCI Media, Inc.
59	08/30/04	\$437,919.33	[REDACTED] 8440	Warshak checking
	TOTAL	\$16,514,987.63		

6. Defendant **STEVEN E. WARSHAK** funneled financial transactions through Defendant **TCI MEDIA, INC.** from his companies prior to investing the funds as a way of further disguising and concealing the transactions. As set forth in the chart below, in Counts 60 through 73, inclusive, defendant **STEVEN E. WARSHAK** deposited or caused to be deposited funds into the bank account of defendant **TCI MEDIA, INC.**, Fifth Third Bank account [REDACTED] 6526, in the name of TCI Media Inc. c/o Steve Warshak from March 2004 to December 2004, totaling \$37,639,670.60.

Count	Date of Deposit to TCI MEDIA, INC. Account [REDACTED] 6526	Amount of Deposit	Transfer from Account No.	Account Name
60	03/18/04	\$1,000,000.00	[REDACTED] 2135	Boland Naturals
61	03/25/04	\$1,000,000.00	[REDACTED] 3146	Lifekey, Inc.

Count	Date of Deposit to TCI MEDIA, INC. Account [REDACTED]6526	Amount of Deposit	Transfer from Account No.	Account Name
62	04/09/04	\$530,941.00	[REDACTED]9120	Berkeley Premium Nutraceuticals, Inc.
63	04/16/04	\$534,540.00	[REDACTED]3146	Lifekey, Inc.
64	05/11/04	\$2,074,189.60	[REDACTED]4685	Wagner Nutraceuticals Inc.
65	05/18/04	\$500,000.00	[REDACTED]3146	Lifekey, Inc.
66	05/18/04	\$1,500,000.00	[REDACTED]2135	Boland Naturals
67	06/07/04	\$3,000,000.00	[REDACTED]9120	Berkeley Premium Nutraceuticals, Inc.
68	07/06/04	\$3,000,000.00	[REDACTED]0801	Berkeley operating
69	07/26/04	\$2,000,000.00	[REDACTED]0801	Berkeley operating
70	08/06/04	\$4,000,000.00	[REDACTED]0801	Berkeley operating
71	08/23/04	\$8,000,000.00	[REDACTED]0801	Berkeley operating
72	09/13/04	\$3,000,000.00	[REDACTED]0801	Berkeley operating
73	12/22/04	\$7,500,000.00	[REDACTED]4133	Warshak investment
	TOTAL	\$37,639,670.60		

7. As set forth in the chart below, in Counts 74 through 76, inclusive, defendant **STEVEN E. WARSHAK** deposited or caused to be deposited funds into Fifth Third Bank account number [REDACTED]4772 in the name of Steve Warshak on January 9, 2004, totaling \$4,950,000.00.

Count	Date of Deposit to [REDACTED]4772	Amount of Deposit	Transfer from Account No.	Account Name
74	01/09/04	\$90,000.00	[REDACTED]2135	Boland Naturals

Count	Date of Deposit to [REDACTED] 4772	Amount of Deposit	Transfer from Account No.	Account Name
75	01/09/04	\$1,060,000.00	[REDACTED] 1626	Warner Health Care, Inc.
76	01/09/04	\$3,800,000.00	[REDACTED] 3146	Lifekey, Inc.
	TOTAL	\$4,950,000.00		

8. As set forth in the chart below, in Counts 77 through 78, inclusive, defendant **STEVEN E. WARSHAK** wrote two checks dated January 30, 2004, and drawn on Fifth Third Bank account number [REDACTED] 3146, each in the amount of \$1,000,000.00. **STEVEN E. WARSHAK** made check number 10316 payable to his sister (presented on 2/3/04) and made check number 10317 payable to his other sister (presented on 2/4/04).

Count	Approx. Date of Presentment	Amount of Deposit	Drawing Account No.	Payee	Account Name
77	02/03/04	\$1,000,000.00	[REDACTED] 3146	Sue Cossman	Lifekey, Inc.
78	02/04/04	\$1,000,000.00	[REDACTED] 3146	Cindy Hall	Lifekey, Inc.

9. As set forth in the chart below, in Count 79, defendant **STEVEN E. WARSHAK** wrote a check, number 4272, dated September 22, 2004, made payable to a **BERKELEY** employee, and drawn on **TCI MEDIA, INC.** Fifth Third Bank account number [REDACTED] 6526 in the amount of \$1,000,000.00.

Count	Approx. Date of Presentment	Amount of Deposit	Drawing Account No.	Account Name
79	10/01/04	\$1,000,000.00	[REDACTED] 6526	TCI Media, Inc.

10. On or about January 18, 2005, defendant **PAUL J. KELLOGG** incorporated Strong Foundations, Inc., a purported non-profit charitable entity by which **BERKELEY** would provide homes to single-parent households. As set forth in the chart below, defendant **STEVEN E. WARSHAK** wrote a check, number 4597, dated January 28, 2005, made payable to Strong Foundations, Inc., and drawn on Fifth Third Bank account number [REDACTED] 9120 in the amount of \$100,000.00. **STEVEN E. WARSHAK** deposited or caused to be deposited check 4597 to Fifth Third Bank account number [REDACTED] 9593 in the name of Strong Foundations, Inc. (Count 80). Less than six months later, on July 22, 2005, defendant **STEVEN E. WARSHAK** returned \$90,000.00 from the Strong Foundations account to **BERKELEY'S** operating account (Count 81).

Count	Date of Deposit	Deposit to Account No.	Amount of Deposit	Transfer from Account No.	Account Name
80	01/28/05	71959593	\$100,000.00	[REDACTED] 9120	Berkeley operating
81	07/22/05	71959120	\$90,000.00	[REDACTED] 9593	Strong Foundations

11. Hallmark Homes, LLC is a Kentucky corporation established on January 7, 2005, by defendant **STEVEN E. WARSHAK'S** brother-in-law. During 2005, Hallmark Homes built four homes in Middletown, Ohio, using funds received from **STEVEN E. WARSHAK**. As set forth in the chart below, in Count 82, **STEVEN E. WARSHAK** transferred or caused to be transferred funds from Fifth Third Bank account number [REDACTED] 9120 to Fifth Third Bank account number [REDACTED] 7094 in the name of Hallmark Homes LLC, totaling \$180,000.00.

Count	Date of Credit Memo to ██████████7094	Amount of Deposit	Transfer from Account No.	Account Name
82	01/24/05	\$180,000.00	██████████9120	Berkeley operating

12. Knothead Clothing Co., LLC is a Kentucky limited liability company established on February 17, 2005, by another brother-in-law of defendant **STEVEN E. WARSHAK**. As set forth in the chart below, in Count 83, **STEVEN E. WARSHAK** transferred or caused to be transferred funds from Defendant **TCI MEDIA, INC.** Fifth Third Bank account number ██████████6526 to Fifth Third Bank account number ██████████6494 in the name of Knothead Clothing Company, totaling \$150,000.00.

Count	Date of Credit Memo to ██████████6494	Amount of Deposit	Transfer from Account No.	Account Name
83	02/11/05	\$150,000.00	██████████6526	TCI Media, Inc.

Nationwide Life Insurance Company Annuity Account

13. On or about January 30, 2004, **STEVEN E. WARSHAK** opened an annuity account – Nationwide Life Insurance Company contract number ██████████0961 in the name of Steve E. Warshak. As set forth in the chart below in Count 84, **STEVEN E. WARSHAK** deposited or caused to be deposited, into Nationwide Life Insurance Company contract number ██████████0961, check number 2305, dated February 2, 2004, made payable to Nationwide, signed by **STEVEN E. WARSHAK**, and drawn on Fifth Third Bank account number ██████████8440 in the amount of \$500,000.00.

Count	Annuity Issue Date	Amount of Deposit	Transfer from Account No.	Account Name
84	02/13/04	\$500,000.00	8440	Warshak checking

Life Insurance Company of the Southwest ("LSW")

14. As set forth in the chart below, in Counts 85 through 86, inclusive, on February 2, 2004, defendant STEVEN E. WARSHAK wrote two checks, nos. 2303 and 2304, each in the amount of \$250,000.00, payable to LSW, and drawn on Fifth Third Bank account number 8440 for the purchase of two annuities in the name of Steve Warshak.

Count	Policy Issue Date	Policy No.	Amount of Purchase	Transfer from Account No.	Account Name
85	02/04/04	524676X	\$250,000.00	8440	Warshak checking
86	02/04/04	524677X	\$250,000.00	8440	Warshak checking
		TOTAL	\$500,000.00		

Brinker Capital, Inc.

15. As set forth in the chart below, in Counts 87 through 89, inclusive, defendant STEVEN E. WARSHAK deposited or caused to be deposited funds into investment accounts through Brinker Capital, Inc. in the name of Steve E. Warshak from February 2004 to August 2004, totaling \$5,000,000.00.

Count	Date of Wire to Brinker	Amount of Deposit	Transfer from Account No.	Account Name
87	02/13/04	\$4,000,000.00	0688	Warshak checking

Count	Date of Wire to Brinker	Amount of Deposit	Transfer from Account No.	Account Name
88	06/01/04	\$500,000.00	██████0688	Warshak checking
89	08/19/04	\$500,000.00	██████0688	Warshak checking
	TOTAL	\$5,000,000.00		

National Financial Services, LLC, Equity Services Incorporated Accounts

16. Beginning on or about June 1, 2004, defendant **STEVEN E. WARSHAK** opened or caused to be opened, with the assistance of a conspirator who was defendant **WARSHAK'S** CPA and financial planner, the following investment account with National Financial Services/Equity Services ("NFS"): ████████4133 in the name of Steve E. Warshak, TOD (that is, transfer on death) to his spouse. Defendant **STEVEN E. WARSHAK** deposited or caused to be deposited funds into the National Financial Services/Equity Services accounts from Fifth Third Bank accounts ████████0688 and ████████6526 and from investment accounts with Brinker Capital, Inc.
17. As set forth in the chart below, in Counts 90 through 95, inclusive, defendant **STEVEN E. WARSHAK** deposited to caused to be deposited funds into NFS account number ████████4133, totaling \$28,302,673.89 in under six months.

Count	Date of Wire to ████████4133	Amount of Deposit	Transfer from Account No.	Account Name
90	06/01/04	\$2,500,000.00	██████0688	Warshak checking
91	07/15/04	\$5,500,000.00	██████6526	TCI Media, Inc.
92	08/19/04	\$5,500,000.00	██████6526	TCI Media, Inc.
93	08/31/04	\$8,000,000.00	██████6526	TCI Media, Inc.

Count	Date of Wire to [REDACTED] 4133	Amount of Deposit	Transfer from Account No.	Account Name
94	08/31/04	\$1,500,000.00	[REDACTED] 0688	Warshak checking
95	12/14/04	\$5,302,673.89	various	Brinker Capital
	TOTAL	\$28,302,673.89		

18. In June 2004, defendant **STEVEN E. WARSHAK** was aware that he and his companies were being investigated by the Federal Trade Commission (FTC) for fraudulent business practices. Thereafter, defendant **STEVEN E. WARSHAK**, defendant **PAUL J. KELLOGG**, and others began considering investment strategies to remove assets out of the name of **STEVEN E. WARSHAK** to protect assets from the anticipated FTC litigation and fines. Defendant Warshak, and others known and unknown to the Grand Jury, decided that the use of trusts under the guise of estate planning would successfully hide **WARSHAK'S** money from the FTC.
19. Defendant **KELLOGG** told a conspirator that defendant **STEVEN E. WARSHAK** was not personally named by the FTC as a liable party and that there was a "window of opportunity" in which they could get the money out of **STEVEN E. WARSHAK'S** name and into the name of defendant **STEVEN E. WARSHAK'S** wife.
20. On or about October 1, 2004, **STEVEN E. WARSHAK**, with the assistance of defendant **PAUL J. KELLOGG** and **WARSHAK'S** financial advisor, created at NFS a QTIP trust, account no. [REDACTED] 7671 in the name of Paul J. Kellogg TTEE, The Carri E. Warshak 2004 QTIP Trust U/A 10/1/04 ("QTIP" means qualified terminable interest property;

“TTEE” means trustee; and “U/A” means under agreement). This QTIP account was funded with transfers of stocks and/or bonds valued at approximately \$13,194,878.16.

21. In addition, Warshak transferred approximately \$1,000,000.00 out of [REDACTED] 4133 and into a gift trust (account no. [REDACTED] 7680 in the name of Paul J. Kellogg TTEE, The Warshak 2004 Gift Trust U/A 10/1/04).
22. As set forth in the chart below, in Counts 96 through 97, inclusive, defendants **STEVEN E. WARSHAK** and **PAUL J. KELLOGG** transferred or caused to be transferred \$1,000,000.00 from account [REDACTED] 4133 into account [REDACTED] 7680 and approximately \$13,194,878.16 in stocks/bonds from account [REDACTED] 4133 to account [REDACTED] 7671.
23. On or about November 23, 2004, **WARSHAK’S** financial advisor and coconspirator told defendant **STEVEN E. WARSHAK** that the trust was, in fact, established for litigation purposes, i.e., to hide and otherwise conceal the funds from the FTC. **WARSHAK’S** financial advisor assured **STEVEN E. WARSHAK** that the funds were put beyond the reach of the FTC under the guise of an estate planning strategy. **WARSHAK’S** financial advisor also told defendant **STEVEN E. WARSHAK** that defendant **KELLOGG**, as the trustee, could transfer the funds back into defendant **WARSHAK’S** name after the conclusion of the FTC litigation.

Count	Date of Trust	Deposit to Account No.	Amount of Deposit	Transfer from Account No.	Account Name
96	10/01/04	[REDACTED] 7680	\$1,000,000.00	[REDACTED] 4133	Warshak investment
97	10/01/04	[REDACTED] 7671	\$13,194,878.16	[REDACTED] 4133	Warshak investment
		TOTAL	\$14,194,878.16		

UBS Financial Services, Inc.

24. **STEVEN E. WARSHAK** drafted and signed check number 10320, dated January 30, 2004, payable to **HARRIET WARSHAK**, drawn on Fifth Third Bank account number [REDACTED] 3146 in the name of Lifekey, Inc. in the amount of \$1,000,000.00 (Count 98). On or about February 18, 2004, defendant **HARRIET WARSHAK** opened UBS Financial Services Inc. account number [REDACTED] 41 9D in the name of Harriet Warshak, TOD Steven Warshak. As set forth in the chart below in Count 99, **HARRIET WARSHAK** deposited or caused to be deposited, into UBS Financial Services Inc. account number [REDACTED] 41 9D.

Count	Date	Amount	Transfer from Account No.	Account Name
98	Check Date 01/30/04	\$1,000,000.00	[REDACTED] 3146	Lifekey, Inc.
99	Deposit Date 02/18/04	\$1,000,000.00	[REDACTED] 3146	Lifekey, Inc.

Hartford Life Insurance

25. As set forth in the chart below, in Count 100, defendant **HARRIET WARSHAK** purchased or caused to purchased Hartford Life Insurance annuity account number [REDACTED] 9413 in the name of Harriet Warshak.

Count	Issue Date	Amount of Purchase	Transfer from Account No.	Account Name
100	[REDACTED] 9413 02/20/04	\$250,000.00	[REDACTED] 41 9D	Harriet Warshak

ING USA Annuity and Life Insurance Company

26. As set forth in the chart below, in Count 101, defendant **HARRIET WARSHAK** purchased or caused to be purchased ING USA Annuity and Life Insurance Company account number [REDACTED]87-0W in the name of Harriet Warshak.

Count	Issue Date [REDACTED]87-0W	Amount of Purchase	Transfer from Account No.	Account Name
101	02/23/04	\$250,000.00	[REDACTED]41 9D	Harriet Warshak

U.S. Bank, N.A.

27. As set forth in the chart below, in Count 102, defendant **STEVEN E. WARSHAK** wired \$100,000.00 from Fifth Third account number [REDACTED]0688 into U.S. Bank N.A. checking account number [REDACTED]4409 in the name of Steven Warshak.

Count	Date of Wire Credit to [REDACTED]4409	Amount of Deposit	Transfer from Account No.	Account Name
102	03/12/04	\$100,000.00	[REDACTED]0688	Warshak checking

28. As set forth in the chart below, in Count 103 through 104, inclusive, defendant **STEVEN E. WARSHAK** deposited or caused to be deposited funds into U.S. Bank checking account number [REDACTED]5066 in the name of his spouse, totaling \$285,000.00.

Count	Date of Deposit to [REDACTED]5066	Amount of Deposit	Transfer from Account No.	Account Name
103	09/13/04	\$10,000.00	[REDACTED]4409	Warshak checking
104	11/10/04	\$275,000.00	[REDACTED]8440	Warshak checking
	TOTAL	\$285,000.00		

First Colony Life Insurance Company

29. As set forth in the chart below, in Count 105, defendant **STEVEN E. WARSHAK** wrote check number 2320, dated April 5, 2004, drawn on Fifth Third Bank account number [REDACTED] 8440, made payable to First Colony Life for the purchase of a life insurance policy in the name of Steve E. Warshak.

Count	Approx. Date of Purchase of [REDACTED] 0584	Amount of Purchase	Transfer from Account No.	Account Name
105	04/05/04	\$143,005.87	[REDACTED] 8440	Warshak checking

Midland National

30. As set forth in the chart below, in Count 106, defendant **STEVEN E. WARSHAK** wrote check number 2326, dated May 26, 2004, drawn on Fifth Third Bank account number [REDACTED] 8440, made payable to Midland National, for the purchase of an annuity (Contract no. [REDACTED] 3028) in the name of Steve Warshak.

Count	Issue Date [REDACTED] 3028	Amount of Purchase	Transfer from Account No.	Account Name
106	06/03/04	\$500,000.00	[REDACTED] 8440	Warshak checking

Smith Barney/CitiGroup

31. As set forth in the chart below, in Count 107, on May 12, 2004, defendant **HARRIET WARSHAK** deposited or caused to be deposited into Smith Barney/CitiGroup account number [REDACTED] 3734 in the name of Harriet Warshak TOD Steven Edward Warshak for the purchase of seven different securities.

Count	Date of Deposit to [REDACTED] 34-19	Amount of Deposit	Transfer from Account No.	Account Name
107	05/12/04	\$467,940.15	[REDACTED] 41 9D	Harriet Warshak

All in violation of 18 U.S.C. § 1956(h) and 2.

COUNT 108
MONEY LAUNDERING
18 U.S.C. § 1956
18 U.S.C. § 2

1. From on or about April 16, 2002 and continuing through at least June 28, 2004, in the Southern District of Ohio, and elsewhere, defendant **STEVEN E. WARSHAK** did knowingly conduct and attempt to conduct the following financial transactions by wire and monetary instrument as set forth herein, affecting interstate and foreign commerce, which involved the proceeds of specified unlawful activity, that is, mail fraud in violation of 18 U.S.C. § 1341, wire fraud in violation of 18 U.S.C. § 1343, and bank fraud in violation of 18 U.S.C. § 1344, knowing that the transactions were designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity, in violation of 18 U.S.C. §1956(a)(1)(B)(i).
2. As set forth more fully in Part III of Count 1, above, defendant **STEVEN E. WARSHAK** and others conspired to defraud thousands of consumers and to defraud financial institutions, using the U.S. Mail and wire communications, among other means, to execute the scheme. This fraud scheme generated millions of dollars in proceeds of specified unlawful activity, that is, proceeds of mail fraud in violation of 18 U.S.C. §

1341, wire fraud in violation of 18 U.S.C. § 1343, and bank fraud in violation of 18 U.S.C. § 1344.

3. Defendants established merchant agreements with various financial institutions to be used for processing credit card purchases. Defendants used merchant accounts of financial institutions to obtain proceeds from victims of their fraud scheme.
4. Defendant **STEVEN E. WARSHAK** received proceeds of consumer fraud, deposited these proceeds into bank accounts at financial institutions, transferred millions of dollars in fraud proceeds out of the operating accounts into many other accounts for the following purposes, among others to conceal or disguise the nature and source of the proceeds of specified unlawful activity through frequent and complex movement of the proceeds or by transferring proceeds into the names of third parties.
5. Defendant **STEVEN E. WARSHAK** opened and maintained, and caused to be opened and maintained, numerous business and personal bank accounts including, but not limited to, the following Fifth Third Bank accounts:
 - a. Lifekey, Inc. account number [REDACTED] 3146;
 - b. Warner Health Care Inc. account number [REDACTED] 1626; and
 - c. Berkeley Premium Nutraceuticals, Inc. account number [REDACTED] 9120.
6. Defendant **STEVEN E. WARSHAK** established merchant agreements with various financial institutions to be used for processing credit card purchases. Defendant **STEVEN E. WARSHAK** used merchant accounts of financial institutions to obtain proceeds from victims of their fraud scheme; deposited and caused to be deposited proceeds earned from the consumer fraud scheme into bank accounts, such as the Fifth

Third Bank accounts listed in paragraph 5 above; and caused and directed others to write checks from these accounts as described below to conceal and disguise the nature and source of the proceeds of specified unlawful activity, that is, mail fraud and wire fraud.

7. At the direction of defendant **STEVEN E. WARSHAK**, two **BERKELEY** employees obtained checks drawn on the Fifth Third Bank accounts described in paragraph 5 above. Defendant **STEVEN E. WARSHAK** further directed that the checks be made payable to "Cash" or payable to one of the two **BERKELEY** employees as payee. The checks were issued in the amount of \$5,000.00.
8. The **BERKELEY** employees thereafter endorsed the checks and cashed them at a financial institution and then sent the cash via commercial carrier to defendant **STEVEN E. WARSHAK**. The financial transactions are set forth in greater detail in the chart below.
9. In order to conceal and disguise the nature of these transactions, defendant **STEVEN E. WARSHAK** directed **BERKELEY** employees to list these checks as business expenses.

These transactions include, but are not limited to, those set forth in the chart below:

Trans- action	Account Number	Account Name	Check Number	Check Date	Amount
1	██████3146	LifeKey, Inc.	007687	04/16/02	\$5,000.00
2	██████3146	LifeKey, Inc.	009595	10/02/03	\$5,000.00
3	██████3146	LifeKey, Inc.	009742	10/20/03	\$5,000.00
4	██████3146	LifeKey, Inc.	009879	11/03/03	\$5,000.00
5	██████3146	LifeKey, Inc.	009950	11/10/03	\$5,000.00
6	██████3146	LifeKey, Inc.	009740	11/17/03	\$5,000.00

Transaction	Account Number	Account Name	Check Number	Check Date	Amount
7	████3146	LifeKey, Inc.	010063	11/24/03	\$5,000.00
8	████3146	LifeKey, Inc.	010155	12/09/03	\$5,000.00
9	████3146	LifeKey, Inc.	010221	12/15/03	\$5,000.00
10	████3146	LifeKey, Inc.	010275	12/22/03	\$5,000.00
11	████3146	LifeKey, Inc.	010390	01/05/04	\$5,000.00
12	████1626	Warner Health Care Inc.	006894	01/08/04	\$5,000.00
13	████3146	LifeKey, Inc.	010410	01/09/04	\$5,000.00
14	████1626	Warner Health Care Inc.	006933	01/13/04	\$5,000.00
15	████3146	LifeKey, Inc.	010459	01/14/04	\$5,000.00
16	████3146	LifeKey, Inc.	011557	01/26/04	\$5,000.00
17	████1626	Warner Health Care Inc.	007124	02/02/04	\$5,000.00
18	████3146	LifeKey, Inc.	011569	02/02/04	\$5,000.00
19	████3146	LifeKey, Inc.	011653	02/09/04	\$5,000.00
20	████3146	LifeKey, Inc.	011699	02/17/04	\$5,000.00
21	████1626	Warner Health Care Inc.	007205	02/17/04	\$5,000.00
22	████1626	Warner Health Care Inc.	007268	02/23/04	\$5,000.00
23	████3146	LifeKey, Inc.	011806	02/23/04	\$5,000.00
24	████1626	Warner Health Care Inc.	007343	03/01/04	\$5,000.00
25	████3146	LifeKey, Inc.	011823	03/01/04	\$5,000.00
26	████3146	LifeKey, Inc.	011907	03/08/04	\$5,000.00
27	████1626	Warner Health Care Inc.	007429	03/15/04	\$5,000.00
28	████3146	LifeKey, Inc.	011922	03/15/04	\$5,000.00
29	████1626	Warner Health Care Inc.	007458	03/22/04	\$5,000.00
30	████3146	LifeKey, Inc.	011932	03/22/04	\$5,000.00
31	████1626	Warner Health Care Inc.	007480	03/29/04	\$5,000.00

Trans- action	Account Number	Account Name	Check Number	Check Date	Amount
32	████3146	LifeKey, Inc.	011942	03/29/04	\$5,000.00
33	████1626	Warner Health Care Inc.	007583	04/12/04	\$5,000.00
34	████3146	LifeKey, Inc.	011849	04/12/04	\$5,000.00
35	████1626	Warner Health Care Inc.	007655	04/20/04	\$5,000.00
36	████3146	LifeKey, Inc.	011867	04/20/04	\$5,000.00
37	████1626	Warner Health Care Inc.	007699	04/27/04	\$5,000.00
38	████3146	LifeKey, Inc.	011884	04/27/04	\$5,000.00
39	████1626	Warner Health Care Inc.	007741	05/06/04	\$5,000.00
40	████3146	LifeKey, Inc.	011893	05/06/04	\$5,000.00
41	████1626	Warner Health Care Inc.	007790	05/17/04	\$5,000.00
42	████3146	LifeKey, Inc.	011955	05/17/04	\$5,000.00
43	████1626	Warner Health Care Inc.	007838	05/24/04	\$5,000.00
44	████3146	LifeKey, Inc.	011966	05/24/04	\$5,000.00
45	████9120	Berkeley Premium Nutraceuticals, Inc.	001458	06/03/04	\$5,000.00
46	████1626	Warner Health Care Inc.	007892	06/07/04	\$5,000.00
47	████3146	LifeKey, Inc.	011968	06/07/04	\$5,000.00
48	████1626	Warner Health Care, Inc.	8017	06/28/04	\$5,000.00
49	████3146	LifeKey, Inc.	011998	06/28/04	\$5,000.00
				TOTAL	\$245,000.00

In violation of 18 U.S.C. §§ 1956 and 2.

COUNT 109
CONSPIRACY TO COMMIT AN OFFENSE
AGAINST THE UNITED STATES BY MISBRANDING
18 U.S.C. § 371

A. CONSPIRACY TO MISBRAND AND ITS OBJECTS

1. At all times relevant to this Indictment, the United States Food and Drug Administration ("FDA") was the agency of the United States responsible for protecting the health and safety of the American public by enforcing the Federal Food, Drug, and Cosmetic Act (hereinafter "FDCA") and by assuring, among other things, that food intended for human consumption was not adulterated or misbranded.
2. The FDCA prohibited any act with respect to a food if such act was done while such food was held for sale (whether or not the first sale) after shipment in interstate commerce and if such act resulted in that food becoming misbranded. 21 U.S.C. § 331(k).
3. A food is deemed to be misbranded if its labeling is false or misleading in any particular way. 21 U.S.C. § 343(a)(1).
4. A food was defined as articles used for food or drink for man or other animals. 21 U.S.C. § 321(f)(1).
5. A dietary supplement was an article intended to supplement the diet that contains one or more specified ingredients and, among other things, is labeled as a dietary supplement. A dietary supplement was deemed to be a food within the meaning of the FDCA. 21 U.S.C. § 321 (ff).
6. Defendant **STEVEN P. PUGH** worked at **BERKELEY** primarily in the warehouse as a manager.

Beginning in about February 2004, and continuing until sometime in March 2005, in the Southern District of Ohio and elsewhere, defendants **STEVEN E. WARSHAK, PAUL J. KELLOGG,** and **STEVEN P. PUGH** did, with the intent to defraud and mislead, conspire and agree together and with each other and with other persons both known and unknown to the Grand Jury, to commit an offense against the United States by, among other things, misbranding dietary supplements, in violation of 21 U.S.C. §§ 331 and 333.

B. MANNER AND MEANS OF THE CONSPIRACY

Beginning sometime in 2003, **BERKELEY** marketed and distributed into interstate commerce the product Rovicid as a prostate health product for men which could enhance sexual performance and help reduce susceptibility to certain kinds of cancer. In or about February 2004, defendants **STEVEN E. WARSHAK, PAUL J. KELLOGG,** and **STEVEN P. PUGH** changed the ingredients of Rovicid and labeled it as a heart-health dietary supplement for both men and women. These defendants, having quantities of the "old" Rovicid in stock, conspired to replace the labels of the "old" product with those of the "new" Rovicid, which would cause the "old" Rovicid to become misbranded because its labeling did not accurately reflect its ingredients and was thereby false and misleading. Thereafter, these defendants caused the misbranded Rovicid to be introduced into interstate commerce.

C. OVERT ACTS

In furtherance of such conspiracy and to effect the objects of the conspiracy, one or more of these defendants committed one or more overt acts, including, but not limited to, the following:

1. Sometime in March 2004, defendant **STEVEN E. WARSHAK** instructed a conspirator to coordinate with defendant **STEVEN P. PUGH** the repackaging of **BERKELEY'S** existing supply of Rovicid. Defendant **WARSHAK** directed that the (30) count blister packs be removed from the packaging (boxes) with labeling showing that Rovicid's indications were for prostate health. **WARSHAK** directed that two blister packs of (30) count each were to be placed into new packaging with labeling showing that Rovicid's indication's were for heart health. The labeled ingredients on the two boxes were different. Before the conspirator carried out **WARSHAK'S** instructions, **WARSHAK** contacted the conspirator again and advised that he (**WARSHAK**) had coordinated the repackaging of the Rovicid directly with defendant **PUGH**.
2. Sometime thereafter in March 2004, defendant **STEVEN P. PUGH** directed the **BERKELEY** warehouse staff to repackage the old Rovicid, as needed, to fill orders and not to use either the newly formulated or the clam shell-packaged Rovicid until the old (prostate health) product was used up.
3. Pursuant to defendant **PUGH'S** directive, the misbranded Rovicid was shipped to customers nationwide by U.S. Mail, from about February 2004 until sometime in March 2005.
4. On or before May 14, 2004, at some time prior to the FDA inspection of **BERKELEY'S** warehouse located at Duff Drive, defendant **PAUL J. KELLOGG** did, with the intent to defraud and mislead, order the removal of misbranded Rovicid product, including returns, from the Duff warehouse for the purpose of hiding the misbranded product from the FDA inspectors. Defendant **KELLOGG** discussed this plan to hide the Rovicid from the FDA

with other conspirators. As a result, a conspirator directed defendant **STEVEN P. PUGH** to execute defendant **KELLOGG'S** order to hide the misbranded Rovicid from the FDA.

5. Thereafter, in May 2004, defendant **STEVEN P. PUGH** directed that all of the remaining Rovicid in stock, contained in the "old" packaging with labeling for prostate health, be immediately repackaged into the packaging for heart health and relocated to an area called "the sick aisle". The sick aisle was a designated area of the warehouse set aside for **BERKELEY** products that did not meet FDA labeling requirements or were otherwise misbranded.
6. Thereafter, in May 2004, defendant **PUGH** directed **BERKELEY** warehouse staff to continue to only use the repackaged Rovicid from the sick aisle to fill orders until that product was used up. **BERKELEY** warehouse staff complied with **PUGH'S** directive until sometime in about March 2005, when a conspirator told warehouse employees to destroy the Rovicid in the sick aisle because it was about to exceed its expiration date for usage.

In violation of 18 U.S.C. § 371.

COUNT 110
MISBRANDING
21 U.S.C. §§ 331(k), 333(a)(2)
18 U.S.C. § 2

1. The Grand Jury realleges and reincorporates by reference the allegations in Count 109 as though fully set forth herein.

2. From about February 2004 until sometime in March 2005, in the Southern District of Ohio and elsewhere, defendants **STEVEN E. WARSHAK, PAUL J. KELLOGG, STEVEN P. PUGH** and **BERKELEY**, did, with the intent to defraud and mislead, cause foods and dietary supplements to become misbranded within the meaning of 21 U.S.C. §343(a)(1), and aided and abetted each other in doing so, in that these defendants caused Rovicid, a food and dietary supplement, to contain false or misleading labeling that did not accurately reflect the product's ingredients, and these defendants did so while the food and dietary supplement was held for sale.

In violation of 21 U.S.C. §§ 331 and 333, and 18 U.S.C. § 2.

COUNT 111
CONSPIRACY TO OBSTRUCT PROCEEDINGS BEFORE THE
U.S. FOOD AND DRUG ADMINISTRATION
18 U.S.C. § 371

- A. **CONSPIRACY TO OBSTRUCT AND ITS OBJECTS**
 1. The Grand Jury realleges and incorporates by reference the allegations in Count 109 as though fully set forth herein.
 2. Beginning on or before May 13, 2004, and continuing until the date of this Indictment, in the Southern District of Ohio and elsewhere, defendants **PAUL J. KELLOGG**, and **STEVEN P. PUGH**, knowingly and willfully conspired and agreed together and with each other, and with other persons both known and unknown to the Grand Jury, to commit an offense against the United States, that is, to corruptly influence, obstruct, impede, and endeavor to influence, obstruct, and impede the due and proper administration of law under which a proceeding was being had before the United States

Food and Drug Administration ("FDA"), an agency of the United States, that is, the inspection of the premises of **BERKELEY**, including a warehouse facility operated by **BERKELEY** at 5462 Duff Drive, Cincinnati, Ohio, and aided and abetted each other in doing so, by removing from the warehouse, hiding, and otherwise concealing and attempting to conceal and directing others to remove, hide and otherwise conceal from the FDA inspectors, a substantial quantity of the product Rovacid, a product sold by **BERKELEY**, in violation of 18 U.S.C. §1505.

B. OVERT ACTS

In furtherance of such conspiracy and to effect the objects of the conspiracy, one or more of these defendants committed one or more overt acts, including, but not limited to, the following:

1. On or about May 14, 2004, after learning that the U.S. Food and Drug Administration intended to conduct an inspection of **BERKELEY** products housed in **BERKELEY'S** warehouse facilities, including the warehouse on 5462 Duff Drive in Cincinnati, Ohio, defendant **PAUL J. KELLOGG** instructed a conspirator to tell defendant **STEVEN P. PUGH** to remove from the warehouse the misbranded Rovacid, that is, the "old" Rovacid previously marketed and labeled for prostate health which had been placed into packages with labeling for use of the product for heart health, in order to hide and conceal the misbranded Rovacid from the FDA inspectors.
2. Later on or about May 14, 2004, pursuant to defendant **KELLOGG'S** direction, defendant **PUGH** ordered the second-shift warehouse manager to have the misbranded Rovacid and excess packaging moved out of the warehouse and loaded onto a rental truck

which was being used at that time by **BERKELEY** to transfer products between warehouse locations.

3. Later on or about May 14, 2004, pursuant to defendant **PUGH'S** instruction, the second-shift warehouse employees removed the misbranded Rovicid from the warehouse and loaded onto the rental truck, completing the loading the next morning, before the FDA inspectors arrived at the Duff warehouse.
4. On or about May 15, 2004, defendant **PUGH** instructed a Duff warehouse employee to move the rental truck loaded with the misbranded Rovicid from the Duff warehouse to the parking lot of another **BERKELEY** office location.
5. On or about May 18, 2004, after the FDA inspectors had concluded the Duff warehouse inspection, a conspirator directed the same Duff warehouse employee to go to the offsite location to pick up the rental truck, drive it back to the Duff warehouse, and restock the misbranded Rovicid into the warehouse for continued sale.

In violation of 18 U.S.C. § 371.

COUNT 112
CONSPIRACY TO OBSTRUCT PROCEEDINGS BEFORE THE
U.S. FEDERAL TRADE COMMISSION
18 U.S.C. § 371

A. CONSPIRACY TO OBSTRUCT AND ITS OBJECTS

From about September 2004 and continuing until the date of this Indictment, the exact dates being unknown to the United States, defendants **STEVEN E. WARSHAK** and **PAUL J. KELLOGG** knowingly and willfully conspired and agreed together and with each other and with other persons both known and unknown to the Grand Jury, to commit an offense against the

United States, that is, to corruptly influence, obstruct, impede, and endeavor to influence, obstruct, and impede the due and proper administration of law under which a proceeding was being had before the United States Federal Trade Commission ("FTC"), an agency of the United States, that is, an investigation into false claims and advertising, unauthorized billing and shipping, and other unfair trade practices in connection with the marketing and sale of certain products by **BERKELEY**, located in the Southern District of Ohio in Cincinnati, Ohio, in that defendants **PAUL J. KELLOGG**, **STEVEN E. WARSHAK**, and other persons both known and unknown to the Grand Jury, transferred funds out of an account held by and under the ownership and control of defendant **STEVEN E. WARSHAK**, and transferred such funds into a trust fund account in the name of defendant **WARSHAK'S** spouse, purportedly established for estate planning, but in actuality for the purpose of hiding and otherwise concealing and attempting to conceal such funds from the FTC, in violation of 18 U.S.C. § 1505.

B. OVERT ACTS

In furtherance of such conspiracy and to effect the objects of the conspiracy, one or more of these defendants committed one or more overt acts, including, but not limited to, the following:

1. In June 2004, defendant **STEVEN E. WARSHAK** was aware that he and his companies were being investigated by the Federal Trade Commission (FTC) for fraudulent business practices. Thereafter, defendant **STEVEN E. WARSHAK**, defendant **PAUL J. KELLOGG**, and others began considering investment strategies to remove assets out of the name of Defendant **STEVEN E. WARSHAK** to protect assets from the anticipated FTC litigation and fines. Defendant **WARSHAK**, and others known and unknown to the

Grand Jury, decided that the use of trusts under the guise of estate planning would successfully hide **WARSHAK'S** money from the FTC.

2. Defendant **KELLOGG** told a conspirator that **STEVEN E. WARSHAK** was not personally named by the FTC as a liable party and that there was a "window of opportunity" in which they could get the money out of **WARSHAK'S** name and into the name of defendant **WARSHAK'S** wife.
3. On or about October 1, 2004, **STEVEN E. WARSHAK**, with the assistance of defendant **PAUL J. KELLOGG** and **WARSHAK'S** financial advisor, created a QTIP trust, account no. BJS-017671 in the name of Paul J. Kellogg TTEE, The Carri E. Warshak 2004 QTIP Trust U/A 10/1/04 ("QTIP" means qualified terminable interest property; "TTEE" means trustee; and "U/A" means under agreement). This QTIP account was funded with transfers of stocks and/or bonds valued at approximately \$13,194,878.16.
4. In addition, **WARSHAK** transferred approximately \$1,000,000.00 out of BJS-014133 and into a gift trust (account no. BJS-017680 in the name of Paul J. Kellogg TTEE, The Warshak 2004 Gift Trust U/A 10/1/04).

In violation of 18 U.S.C. § 371.

**FORFEITURE ALLEGATION
SPECIFIED UNLAWFUL ACTIVITY PROCEEDS**

The Grand Jury further finds probable cause to believe that upon conviction of one or more of the offenses alleged in Count 1 (Conspiracy to Commit Mail, Wire and Bank Fraud); Counts 2 - 13 (Mail Fraud); Counts 15, 23, and 27 (Bank Fraud); and Count 29 (Access Device Fraud) of this Indictment, defendants **STEVEN E. WARSHAK, BERKELEY PREMIUM**

NUTRACEUTICALS, INC., CHARLES W. CLARKE, JR., HARRIET WARSHAK, PAUL J. KELLOGG, and AMAR D. CHAVAN, shall forfeit to the United States, pursuant to 18 U.S.C. § 982 or 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations, including but not limited to the following:

1. MONEY JUDGMENT

A sum of money equal to \$100,000,000.00 in United States currency, representing the amount of proceeds obtained as a result of the offense, 18 U.S.C. § 1349, Conspiracy to Commit Mail, Wire, and Bank Fraud; 18 U.S.C. § 1341, Mail Fraud; 18 U.S.C. § 1344, Bank Fraud; and 18 U.S.C. § 1029, Credit Card Fraud, for which the defendants are jointly and severally liable.

2. REAL PROPERTY

The following lots or parcels of land, as further described in EXHIBIT A, together with its buildings, appurtenances, improvements, fixtures, attachments and easements:

- a. Real property known and numbered 5130 Rollman Estates, Hamilton County, Cincinnati, Ohio 45236.
- b. Real property known and numbered 5140 Rollman Estates, Hamilton County, Cincinnati, Ohio 45236.
- c. Real property known and numbered 7027 Beech Hollow Drive, Hamilton County, Cincinnati, Ohio 45236.
- d. Real property known and numbered 5150 Rollman Estates, Hamilton County, Cincinnati, Ohio 45236.

- e. Real property known and numbered 5758 San Elijo, San Diego County, Rancho Santa Fe, California 92067.
- f. Real property known and numbered 7701 Sagamore Drive, Hamilton County, Cincinnati, Ohio 45236.

3. CONVEYANCES

- a. 2004 Grand Cherokee, VIN: 1J8GW68JX4C147775, State of Ohio Title No. 8300742020, in the name of Steve Warshak, with all attachments thereon.
- b. 2005 GMC Denali, VIN: 1GKFK66U14J273213, State of Ohio Title No. 310439556, in the name of Steve Warshak, with all attachments thereon.

4. BANK ACCOUNTS

All United States currency funds or other monetary instruments credited to the following bank accounts:

- a. Funds in the amount of \$158,204.26 seized on 1/30/06 from Fifth Third Bank Account No. [REDACTED] 7094 in the name of Hallmark Homes LLC.
- b. Funds in the amount of \$151,792.92 seized on 1/31/06 from Fifth Third Bank Account No. [REDACTED] 7094 in the name of Hallmark Homes LLC.
- c. Contents of Fifth Third Bank Account No. [REDACTED] 7122 in the name of Paul J. Kellogg.
- d. Contents of U.S. Bank Account No. [REDACTED] 1787 in the names of [REDACTED] and Paul J. Kellogg.
- e. Contents of U.S. Bank Savings Account No. [REDACTED] 3513 in the names of [REDACTED] and Paul J. Kellogg.

- f. Funds in the amount of \$327,596.76 seized on 3/16/05 from Fifth Third Bank Checking Account No. [REDACTED] 6526 in the name of TCI Media, Inc. c/o Steve Warshak.
- g. Funds in the amount of \$19,478.07 seized on 3/16/05 from U.S. Bank N.A. Checking Account No. [REDACTED] 4409 in the name of Steven Warshak.
- h. Funds in the amount of \$2,105,736.48 seized on 3/16/05 from Fifth Third Bank Checking Account No. [REDACTED] 8440 in the name of Steve Warshak or Carri Warshak MD.
- i. Funds in the amount of \$16,239.27 seized on 4/5/06 from Fifth Third Bank Account No. [REDACTED] 6494 in the name of Knothead Clothing Company.
- j. Contents of Fifth Third Bank Account No. [REDACTED] 9593 in the name of Strong Foundations Inc.

5. INVESTMENT ACCOUNTS

- a. Contents of ING USA Annuity & Life Insurance Company Account No. [REDACTED] 870W in the name of Harriet Warshak (approximate value \$272,900.69).
- b. Contents of Hartford Life Insurance Annuity Account No. [REDACTED] 9413 in the name of Harriet Warshak (approximate value \$256,456.11).
- c. Contents of Smith Barney Citigroup Account No. [REDACTED] 3419 in the name of Harriet Warshak TOD Steven Edward Warshak (approximate value \$474,732.76).
- d. Contents of Nationwide Life Insurance Company Annuity Account No. [REDACTED] 0961 in the of Steve E. Warshak (approximate value \$512,174.23).

- e. Contents of National Financial Services, LLC/Equity Services Incorporated
Account No. [REDACTED]4133 in the name of Steve E. Warshak, TOD Carri Warshak
(approximate value \$4,130,212.88).
- f. Contents of National Financial Services, LLC/Equity Services Incorporated
Account No. [REDACTED]7671 in the name of Paul J. Kellogg TTEE, The Carri E.
Warshak 2004 QTIP Trust U/A 10/1/04 (approximate value \$13,741,349.39).
- g. Contents of National Financial Services, LLC/Equity Services Incorporated
Account No. [REDACTED]7680 in the name of Paul J. Kellogg TTEE, The Warshak
2004 Gift Trust U/A 10/1/04 (approximate value \$1,049,011.43).
- h. Contents of Life Insurance Company of the Southwest SPDA-5 Annuity Account
No. [REDACTED]676X in the name of Steve Warshak (approximate value \$244,517.80).
- i. Contents of Life Insurance Company of the Southwest Platinum Annuity Account
No. [REDACTED]677X in the name of Steve Warshak (approximate value \$229,727.54).
- j. Contents of Midland National Life Insurance Company Contract No. [REDACTED]
3028 in the name of Steve Warshak (approximate value \$413,357.76).
- k. Contents of Putnam Investor Services, College Advantage Plan, Account No.
[REDACTED]BBB3 in the name of Steve E. Warshak, [REDACTED]
- l. Contents of Putnam Investor Services, College Advantage Plan, Account No.
[REDACTED]5408 in the name of Steve E. Warshak, [REDACTED]
- m. Contents of Putnam Investor Services, College Advantage Plan, Account No.
[REDACTED]4203 in the name of Steve E. Warshak, [REDACTED]

6. INSURANCE POLICY

- a. Contents of First Colony Life Insurance Company (Genworth Financial) Policy No. [REDACTED]0584 in the name of the Warshak Family 2004 TST UTAD 10/01/2004, Paul J. Kellogg as Trustee (approximate value \$113,280.00).

7. REAL ESTATE PROCEEDS

- a. Funds in the amount of \$152,532.91 seized on 2/15/06, which represents proceeds from the sale of real property known and number as 8153 Darlene Terrace, Middletown, Ohio 45044.

8. ACCOUNTS RECEIVABLE

- a. All funds due to **STEVEN E. WARSHAK** and **BERKELEY** pertaining to an unsecured loan in the amount of \$189,725 to Claudia J. Eagler on or about November 16, 2004 for the purchase of real property known and numbered 7751 Sagamore Drive, Hamilton County, Cincinnati, Ohio 45236.
- b. All funds due to defendants **STEVEN E. WARSHAK**, **BERKELEY**, or **TCI MEDIA, INC.** pertaining to an unsecured loan in the amount of \$250,000.00 to Brian Giebel and Lynn Dowd on or about September 16, 2004.
- c. All funds due to defendants **STEVEN E. WARSHAK**, or **TCI MEDIA, INC.** pertaining to an unsecured loan in the amount of \$450,000 to Richard S. Golden on or about December 14, 2004.

**FORFEITURE ALLEGATION
MONEY LAUNDERING**

1. Pursuant to 18 U.S.C. § 982(a)(1), each defendant who is convicted of one or more of the offenses set forth in Counts 30-108 shall forfeit to the United States the following property:

- a. All right, title, and interest in any and all property involved in each offense in violation of 18 U.S.C. § 1956 or 1957, or conspiracy to commit such offense, for which the defendant is convicted, and all property traceable to such property, including the following: (1) all money or other property that was the subject of each transaction, transportation, transmission or transfer in violation of Section 1956 or 1957; (2) all commissions, fees and other property constituting proceeds obtained as a result of those violations; and (3) all property used in any manner or part to commit or to facilitate the commission of those violations.
- b. A sum of money equal to the total amount of money involved in each offense, or conspiracy to commit such offense, for which the defendant is convicted. If more than one defendant is convicted of an offense, the defendants so convicted are jointly and severally liable for the amount involved in such offense.

All in accordance with 18 U.S.C. § 982(a)(1), and Rule 32.2(a), Federal Rules of Criminal Procedure.

SUBSTITUTE ASSETS

If any of the above-described forfeitable property, as a result of any act or omission of the defendants: (1) cannot be located upon the exercise of due diligence; (2) has been transferred or sold to, or deposited with, a third party; (3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or (5) has been commingled with other property which cannot be divided without difficulty; it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendants up to the value of the forfeitable property described above, including but not limited to the following:

1. BANK ACCOUNTS

- a. Contents of Fifth Third Bank Account No. [REDACTED] 6526 in the name of TCI Media, Inc.
- b. Contents of Fifth Third Bank Account No. [REDACTED] 9120 in the name of Berkeley Premium Nutraceuticals, Inc.
- c. Contents of Fifth Third Bank Account No. [REDACTED] 9358 in the name of Berkeley Healthcare, Inc.
- d. Contents of Fifth Third Bank Savings Account No. [REDACTED] 2186 in the name of Berkeley Premium Nutraceuticals, Inc.
- e. Contents of Fifth Third Bank Checking Account No. [REDACTED] 9373 in the name of Harriet Warshak.
- f. Contents of Fifth Third Bank Account No. [REDACTED] 0801 in the name of Berkeley Premium Nutraceuticals, Inc.

2. INVESTMENT ACCOUNTS

- a. Contents of Smith Barney CitiGroup IRA Account No. [REDACTED] 1111 in the name of Harriet Warshak, CGM IRA Custodian.

- b. Contents of Scudder Investments, mutual fund Account No. [REDACTED] 6871 in the name of Harriet Warshak TR, Warshak Living Trust, U/A05/03/96.
- c. Contents of Scudder Trust Co., CUST for the IRA of Harriet Warshak, Account No. [REDACTED] 1106.
- d. Contents of ING Life Insurance and Annuity Co. TRS of Berkeley Premium Nutraceuticals PS Plan Account No. [REDACTED] M593 in the name of Steve Warshak.

3. ACCOUNTS RECEIVABLE

- a. All funds due to **STEVEN E. WARSHAK/TCI MEDIA, INC.** pertaining to an unsecured loan in the amount of \$300,000 to As Per Usual Productions, LC/Somalab on or about September 29, 2004.
- b. Contents of Fifth Third Bank Account No. [REDACTED] 9470 in the name of Fathead Inc., Attention Steve Warshak.

4. OTHER PROPERTY

- a. Membership at La Costa Resort and Spa purchased on January 23, 2005 for \$10,500.00.
- b. All royalties (approx. 5 %) and accounts receivable payable to **STEVEN E. WARSHAK** and entities owned by **STEVEN E. WARSHAK** from Fathead, LLC.

A TRUE BILL.

15
GRAND JURY FOREPERSON

GREGORY G. LOCKHART
UNITED STATES ATTORNEY



RALPH W. KOHNEN
Deputy Criminal Chief

Exhibit A

Property Address: 5150 Rollman Estates Drive, Cincinnati, Ohio 45236

Common Address 5130 Rollman Estates Drive, Cincinnati, Ohio 45236

Parcel No. 526-110-150

Situated In The County Of Hamilton In The State Of Ohio And In The Township Of Sycamore: Situate In Section 19, Town 4, Entire Range 1, Village Of Amberley, Sycamore Township, Hamilton County, State Of Ohio, And Being More Particularly Described As Follows: Entire Lot Number 69 Of The Rollman Estates, Section Three, As Recorded In Plat Book 308, Pages 97,98 And 99 Of The Hamilton County Records.

Together With And Subject To Legal Highways, Declaration, Easements, Restrictions, Covenants And Agreements Of Record, And Specifically The Declaration Of Covenants, Conditions, Restrictions, Liens, And Reservation Of Easements For The Rollman Estate Homeowner's Association Recorded In Official Record Book 5701, Page 1052, Of The Hamilton County, Ohio Records, And Any Recorded Amendments Or Supplements Thereto.

Subject To All Legal Highways, Easements, Conditions And Restrictions Of Record And All Taxes And Assessments Due And Payable Hereafter.

Prior Deed Reference: O.R. Book 9630, Page 3367, In the Recorder's Office of Hamilton County, Ohio.

Property Address: 5140 Rollman Estates Drive, Cincinnati, Ohio 45236

Parcel No. 526-110-149

Situate In Section 19, Town 4, Entire Range 1, Village Of Amberly, Sycamore Township, Hamilton County, State Of Ohio And Being More Particularly Described As Follows:
Entire Lot No. 68 Of The Rollman Estate, Section Three (3), As Recorded In Plat Book 308, Pages 97, 98 And 99 Of The Hamilton County, Ohio Records.
Subject To All Legal Highways, Easements, Conditions And Restrictions Of Record And All Taxes And Assessments Due And Payable Hereafter.

Prior Deed Reference: O.R. Book 9630, Page 3342, in the Recorder's Office of Hamilton County, Ohio.

Property Address: 7027 Beech Hollow Drive, Cincinnati, Ohio 45236

Parcel No. 526-100-136

Situate In Section 19, Town 4, Entire Range 1, Village Of Amberley, Sycamore Township, Hamilton County, State Of Ohio, And Being More Particularly Described As Follows:
Entire Lot No. 83 Of The Rollman Estate, Section Four, As Recorded In Plat Book 318, Page 75 Of The Hamilton County, Ohio Records.

Together With And Subject To Legal Highways, Declarations, Easements, Restrictions, Covenants And Agreements Of Record, And Specifically The Declarations Of Covenants, Conditions, Restrictions, Liens, And Reservation Of Easements For The Rollman Estate Homeowner's Association Recorded In Official Record Book 5701, Page 1052 Of The Hamilton County, Ohio Records, And Any Recorded Amendments Or Supplements Thereto.

Subject To All Legal Highways, Easements, Conditions And Restrictions Of Record And All Taxes And Assessments Due And Payable Hereafter.

Prior Deed Reference: O.R. Book 9681, Page 2900, in the Recorder's Office of Hamilton County, Ohio.

Property Address: 5150 Rollman Estates Drive, Cincinnati, Ohio 45236

Parcel No. 526-110-148

Situated in the County of Hamilton in the State of Ohio and in the Township of Sycamore;

Situate in Section 19, Town 4, Entire Range 1, Village of Amberley, Sycamore Township, Hamilton County, State of Ohio, and being more particularly described as follows:

Entire Lot Number 67 of the Rollman Estates, Section Three, as recorded in Plat Book 308, Pages 97, 98 and 99 of the Hamilton County Records.

Together with and subject to legal highways, declaration, easements, restrictions, covenants and agreements of record, and specifically the Declaration of Covenants, Conditions, Restrictions, Liens, and Reservations of Easements for the Rollman Estate Homeowner's Association recorded in Official Record Book 5701, Page 1052, of the Hamilton County, Ohio Records, and any recorded amendments or supplements thereto.

Prior Deed Reference: O.R. Book 7835, Page 2319, in the Recorder's Office of Hamilton County, Ohio.

Property Address: 5758 San Elijo, Rancho Sante Fe, California 92067

Parcel No. 265-120-01

PARCEL 1:

LOT 3 OF PHILLIPS HEIGHTS, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 3591, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 14, 1957.

PARCEL 2:

AN EASEMENT AND RIGHT OF WAY FOR INGRESS AND EGRESS FOR ROAD AND WATER PIPE LINE PURPOSES OVER, UNDER, ALONG AND ACROSS THAT PORTION OF LOT 2 OF PHILLIPS HEIGHTS, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 3591, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 14, 1957, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER COMMON TO LOTS 1 AND 2, AS SHOWN ON SAID MAP NO. 3591; THENCE ALONG THE BOUNDARY LINE OF SAID LOT 2 AS FOLLOWS: SOUTHWESTERLY AND SOUTHERLY ALONG THE ARC OF A 40.00 FOOT RADIUS CURVE, CONCAVE EASTERLY, A DISTANCE OF 65.61 FEET; THENCE SOUTH 63° 45' WEST 190.70 FEET; THENCE SOUTH 84° 15' WEST, 102.99 FEET; THENCE NORTH 51° 14' WEST, 28.53 FEET; THENCE LEAVING SAID BOUNDARY NORTH 84° 15' EAST 119.71 FEET; THENCE NORTH 63° 45' EAST, 135.37 FEET TO A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE 32.00 FEET THROUGH AN ANGLE OF 73° 19' 44" TO A POINT OF REVERSE CURVATURE CONCAVE EASTERLY, HAVING A RADIUS OF 65.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, 55.21 FEET TO A POINT IN THE NORTHEASTERLY LINE OF SAID LOT 2; THENCE SOUTH 50° 55'; EAST 25.00 FEET TO THE POINT OF BEGINNING.

Prior Deed Reference: 2044-1075449 of the Official Records of San Diego County, California.

Property Address: 7701 Sagamore Drive, Cincinnati, Ohio 45236

Parcel No. 526-90-95

Situated in the County of Hamilton, in the State of Ohio, and in the Township of Sycamore: Situate in Section 19, Town 4, Entire Range 1, Miami Purchase, Township of Sycamore, County of Hamilton and State of Ohio and Being More Particularly Described as Follows: Beginning in the West Line of Said Registered Land Certificate No. 7674, South 0° 23' 30" West, a Distance of 1995 Feet from the Northwest Corner of Said Registered Certificate No. 7474; Thence South 0° 23' 30" West along the West Line of Said Registered Certificate No. 7474, a Distance of 100 Feet; Thence South 88° 55' East a Distance of 178 Feet to the West Line of a Proposed 80 Foot Street (Sagamore Drive); Thence N 0° 23' 30" East a Distance of 100 Feet; Thence North 88° 55' West, a Distance of 178 Feet to the Place of Beginning.

Together with an Easement for All Street Purposes over an 80 Foot Strip of Land (Sagamore Drive) Adjoining the above Described Property on the East and Extending from the South Line of the above Described Property Northwardly to Amity Road.

Prior Deed Reference: Official Record Book 9578 Page 0322 and Certificate of Title No. 202248 in the Recorder's Office and Registered Land Records of Hamilton County, Ohio.

Property Address: 5249 Tasselberry Drive, West Chester, Ohio 45069

Parcel No. M5620275000030

Situated in the County of Butler, in the State of Ohio and in the Township of Union;

Entire Lot Numbered Thirty (30) in Knottingwood Estates Addition No. 1, a subdivision in Section 6, Town 2, Range 2, Union Township, Butler County, Ohio as platted in Envelope 1394, Pages A and B of the Plat Records of Butler County, Ohio.

The above described real estate being subject to all easements and restrictions of record, matters of zoning, real estate taxes and assessments not yet due and payable, and all legal highways.

Prior Deed Reference: O.R. Book 6041, Page 296, in the Recorder's Office of Butler County, Ohio.