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July 18, 2015

Honorable Charles N. Clevert, Jr.
Chambers # 208
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

*Re: United States v. Vital Health Products Ltd./Conrad E. LeBeau,
Case No. 10-CR-253*

Dear Judge Clevert,

In anticipation of oral argument scheduled for July 21, 2015, the defendant filed a lengthy set of questions addressed to the United States. The purpose of this letter is to advise the Court that the United States does not consider the defendant's filing to be procedurally or substantively proper and, therefore, does not intend to respond to the questions posed.

As this Court is aware, Rule 58 of the Federal Rules of Criminal Procedure creates a right "of appeal" to a district judge in misdemeanor criminal cases. *See United States v. Smith*, 992 F.2d 98 (7th Cir. 1993). Review by the district judge is jurisdictional, that is, an appeal to the Seventh Circuit is unavailable without review by the district judge. *Id.* at 99. While the Seventh Circuit has questioned the wisdom of this procedural "scheme," it is required. *Id.* at 100.

There is little guidance with respect to the scope of Rule 58 proceedings in the district court. The Fourth Circuit has held that the district judge acts as an appellate court giving appropriate deference to the magistrate judge. *See United States v. Cathey*, 2015 WL 4036036, * 1 (4th Cir. 2015) (internal citation omitted). In light of this limited "appellate" role, it is the position of the United States that this Court, like an appellate court, should not entertain new evidence or new arguments. Rather, review should be limited to the arguments that the defendant preserved in his conditional plea agreement. *See Doc. No. 58, ¶ 25.*

Notably, Magistrate Judge Callahan thoroughly addressed the defendants' many arguments. *See* Doc. Nos. 41, 51, and 71. Whether this Court reviews Magistrate Judge Callahan's reasoning *de novo* or with deference, it is sound and should not be disturbed. For all these reasons, even if further briefing is permissible -- and the United States does not agree that any more needs to be said -- the defendant should not be allowed to present new evidence and arguments. For these reasons, at this stage of the proceedings, the United States is prepared to rest on its prior briefs and Magistrate Judge Callahan's careful consideration of the defendant's arguments.

Very truly yours,

JAMES L. SANTELLE
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cc: Conrad E. LeBeau (via email)