

<p>FILED _____ LODGED _____</p> <p>RECEIVED _____</p> <p>Apr 29, 2020</p> <p>CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA BY _____ DEPUTY</p>
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Magistrate Judge J. Richard Creatura

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff

v.

RICHARD MARSCHALL,

Defendant.

CASE NO. MJ20-5097

COMPLAINT for VIOLATION OF

Title 21, United States Code, Sections 331,
333

BEFORE, J. Richard Creatura, United States Magistrate Judge, U. S. Courthouse,
Tacoma, Washington.

The undersigned complainant being duly sworn states:

COUNT ONE

(Introduction of Misbranded Drugs Into Interstate Commerce)

On or about March 31, 2020, at Port Angeles, within the Western District of
Washington, and elsewhere, RICHARD MARSCHALL, after having been convicted of a
violation of Title 21, United States Code, Sections 331(a) and 333(a)(2), did introduce,
deliver, and cause the introduction and delivery for introduction into interstate commerce,
from Port Angeles, Washington, to locations outside of Washington State, of drugs, to
wit: Allimed and IAG Arabinogalactans, which were misbranded as defined at: Title 21,

1 Section 352(f)(1) in that the drugs lacked adequate directions for use and were not
2 exempt from this requirement; Title 21, Section 352(a) in that the drugs were falsely and
3 misleadingly labeled in any particular; and Title 21, Section 352(o) in that the drugs were
4 manufactured in an establishment not registered with the Food and Drug Administration
5 as a drug manufacturer and not included in any list of drugs manufactured in a registered
6 establishment, as required by 21 U.S.C § 360(j).

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

8 And the complainant states that this Complaint is based on the following
9 information:

10 I, ANGELA ZIGLER, being first duly sworn on oath, depose and say:

11 1. I am a Special Agent with the Food and Drug Administration (FDA),
12 Office of Criminal Investigations (OCI) and have been so employed since November
13 2012. As such, I am responsible for investigating criminal violations of the Federal
14 Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. §§ 301 et seq.; the Controlled
15 Substances Act, 21 U.S.C. §§ 801 et seq.; the Public Health Service Act (the “PHSA”),
16 42 U.S.C. §§ 201 et seq.; and related violations within Title 18 of the United States Code.

17 2. The information contained in this Complaint is the result of my own
18 investigation as well as information provided to me by others, including other
19 investigators and law enforcement officers. In each instance when I recite information
20 from such others, I have gained that information either by talking directly to such
21 investigators and law enforcement officers or reviewing written reports of their
22 investigation, or both. This Complaint accurately summarizes some of the evidence I
23 discovered during my investigation; it does not, however, contain every detail known to
24 me about the investigation.

25 **BACKGROUND**

26 3. The FDA is charged with protecting the health and safety of the American
27 public by enforcing the FDCA, including 21 U.S.C. § 331. One purpose of the FDCA is
28

1 to ensure that drugs sold for use by humans were safe, effective, and bore labeling
2 containing only true and accurate information.

3 4. Under the FDCA, “drugs” are defined as, among other things, articles
4 intended for use in the cure, mitigation, treatment or prevention of disease in man (21
5 U.S.C. § 321(g)(a)(B)); articles (other than food) intended to affect the structure or
6 function of the body of man (21 U.S.C. § 321(g)(1)(C)); or articles intended for use as
7 components of other drugs (21 U.S.C. § 321(g)(1)(D)).

8 5. Pursuant to 21 U.S.C. §353(b)(1), a “prescription drug” is any drug
9 intended for use by man which:

- 10 a. because of its toxicity or other potentiality for harmful effect, or the method
11 of its use, or the collateral measures necessary to its use, is not safe for use
12 except under the supervision of a practitioner licensed by law to administer
13 such drug; or
14 b. is limited by an approved new drug application to use under the
15 professional supervision of a practitioner licensed by law to administer such
16 drug.

17 6. The “intended use” of an article means the objective intent of the persons
18 legally responsible for the labeling of that article. The intent is determined by such
19 persons’ expressions or can be shown by the circumstances surrounding the distribution
20 of the article. This objective intent might, for example, be shown by labeling claims,
21 advertising matter, or oral or written statements by such persons or their representatives.
22 It might be shown by the circumstances that the article is, with the knowledge of such
23 persons or their representatives, offered and used for a purpose for which it was neither
24 labeled nor advertised. 21 C.F.R § 201.128.

25 7. Under the FDCA, “label” means “a display of written, printed, or graphic
26 matter upon the immediate container of any article.” 21 U.S.C. § 321(k). The FDCA’s
27 requirement that any word, statement, or other information appear on the label is satisfied
28 only if the word, statement, or other information also appears on the outside container or

1 wrapper, if such exists, of the retail package of such article, or is easily legible through
2 the outside container or wrapper. *Id.* “Labeling” is more broadly defined as all labels
3 and other printed or graphic matter upon any article or any of its containers or wrappers,
4 or accompanying such article. 21 U.S.C. § 321(m).

5 8. The FDCA prohibits the introduction or delivery for introduction into
6 interstate commerce of any drug that is misbranded (21 U.S.C. § 331(a)). A drug can be
7 misbranded in several ways. For example, a drug is misbranded when: its labeling is
8 false or misleading in any particular (21 U.S.C. § 352(a)) or it was manufactured in an
9 establishment not registered with the FDA, or if it was not included in the list of drugs
10 manufactured in a registered establishment, as required by 21 U.S.C. § 360(j), (21 U.S.C.
11 § 352(o)).

12 9. A drug is also misbranded if the labeling of the drug does not bear
13 adequate directions for use (21 U.S.C. § 352(f)(1)). “Adequate directions for use” means
14 directions under which the layman can use a drug safely and for the purposes for which it
15 is intended (21 C.F.R. § 201.5). Directions under which the layperson can use a
16 prescription drug safely cannot be written because such drugs can only be used safely, if
17 at all, at the direction, and under the supervision, of a licensed medical practitioner.
18 There are some exemptions from this general requirement for approved prescription
19 drugs with their approved labeling, but no such exemptions exist for a drug lacking an
20 FDA approval.

21 **BACKGROUND OF RICHARD MARSCHALL**

22 10. In May 2011, RICHARD MARSCHALL pleaded guilty to an
23 Information that charged him with introduction of a misbranded drug into interstate
24 commerce with the intent to deceive, pursuant to Title 21, United States Code, Sections
25 331(a) and 333(a)(2). Specifically, in the Plea Agreement, MARSCHALL acknowledged
26 that he was prescribing Human Chorionic Gonadotropin (HCG) (a drug approved for
27 treating infertility) for weight loss. On September 26, 2011, the Honorable Benjamin H.
28

1 Settle sentenced MARSCHALL to two years’ supervised release. *See United States v.*
2 *Marschall*, CR 11-5222BHS.

3 11. RICHARD MARSCHALL was licensed as a naturopathic physician by
4 the Washington Department of Health beginning August 26, 1986. On November 20,
5 2013, this license was suspended indefinitely by the State of Washington Department of
6 Health due to the above-described 2011 felony conviction.

7 12. In October 2016, RICHARD MARSCHALL was again investigated for
8 distributing misbranded drugs; specifically for introducing the drug HCG in interstate
9 commerce for weight loss. On July 6, 2017, RICHARD MARSCHALL pleaded guilty to
10 one felony count of Title 21, United States Code, Sections 331(a) and 333(a)(2) in the
11 Western District of Washington. On October 20, 2017, the Honorable Ronald B.
12 Leighton sentenced MARSCHALL to 60 days’ incarceration and one year of supervised
13 release. *See United States v. Marschall*, CR 17-5226RBL.

14 13. On October 9, 2018, RICHARD MARSCHALL’s credential to practice
15 as a naturopathic physician in the state of Washington was permanently revoked, with no
16 right to reapply, by the Washington Secretary of Health, based on a finding that due to
17 MARSCHALL’s criminal and professional history, he “cannot be rehabilitated, nor can
18 he regain the ability to practice with reasonable skill and safety,” and finding as
19 aggravating factors the “Gravity of the unprofessional conduct. . . . Failure to comply
20 with multiple Agreed Orders, and state and federal court orders. . . . [and the] Number or
21 frequency of the acts of unprofessional conduct.”

22 **FACTS ESTABLISHING PROBABLE CAUSE**

23 14. According to the Center for Disease Control and Prevention the severe
24 acute respiratory syndrome coronavirus 2 (SARS-CoV-2) produces a respiratory disease,
25 (COVID-19). The Coronavirus disease (COVID-19) is capable of being spread from
26 person to person. COVID-19 can cause mild symptoms (even no symptoms) to severe
27 illness and it has a wide range of associated symptoms such as fever, cough, shortness of
28 breath or difficulty breathing, chills, muscle pain, headache, sore throat and new loss of

1 taste or smell. These symptoms may appear two to fourteen days after exposure to the
2 virus.

3 15. On March 26, 2020, the FDA-Office of Criminal Investigations initiated
4 an investigation into RICHARD MARSCHALL, of Port Angeles, Washington, after
5 receiving multiple complaints regarding Facebook postings by MARSCHALL and others
6 about a product called “the Dynamic Duo,” represented by MARSCHALL as being able
7 to kill viruses, including the aforementioned Coronavirus disease.

8 16. During the investigation, I reviewed the website called
9 rickmarschall.com. The website listed the name “Rick Marschall N.D. retired, Health
10 Coach” and also featured a picture of Defendant RICHARD MARSCHALL, whom I
11 recognize because of my in-person contacts with MARSCHALL during the 2016
12 investigation into MARSCHALL for introducing the drug HCG in interstate commerce
13 for weight loss. On the “Contact Us” page of this website listed the phone number 360-
14 460-9817 and an address in Port Angeles, Washington.

15 17. During the investigation, I also reviewed the “Rick Marschall N.D.
16 retired, Health Coach” Facebook page (“Rick Marschall Facebook Page”), which
17 included the following Facebook posts:

- 18 a. On March 8, 2020, the person controlling the Rick Marschall Facebook
19 Page posted: “Plant Based powerful Allimed & IAG to prevent or treat
20 viral, bacterial, fungal and parasitic infections.” The post continued “The
21 Good News is that there are 2 products that I’ve recommended that are
22 ENTIRELY plant based, that can boost the immune system so it can fight
23 for you but even more importantly while your immune system is being
24 strengthened, can crush, 30 different viral infections including those in the
25 Corona family like in China, 40 different bacterial infections, 25 different
26 fungal infections and 20 different parasitic infections like amoeba.”
- 27 b. On March 9, 2020, the person controlling the Rick Marschall Facebook
28 Page posted: “Taking Allimed, my brand releases 450mg of allicin and is

1 powerful enough to reduce or eliminate most viruses, bacteria, parasites,
2 MRSA, and yeast even if there is antibiotic resistance. Allicin does not kill
3 good bacteria so it can be taken right along with your probiotic.”

4 18. During the investigation, I reviewed the Facebook page for Individual 1,
5 who is associated with RICHARD MARSCHALL’s businesses (“Individual 1’s
6 Facebook Page”):

7 a. On March 4, 2020, the person controlling Individual 1’s Facebook Page
8 posted a flyer titled “BE PREPARED” Virus Dynamic Duo By Rick
9 Marschall, Health Coach.” The flyer claimed that the two products Allimed
10 and I.A.G. “can crush 30 different viral infections, including those in the
11 Corona family, (like in China Corona-19), 40 different bacterial infections,
12 25 different fungal infections and 20 different parasitic infections like
13 amoebas.”

14 b. On March 21, 2020, the person controlling Individual 1’s Facebook Page
15 posted: “The Dynamic Duo knocked out my very bad cough/cold in
16 February. Corona? Want info? Call 360-460-9817.” This is the same
17 telephone number listed on the Rick Marschall website.

18 19. On March 24, 2020, Individual 2, who is a Facebook friend of Individual
19 1 and Marschall, posted the following comment to their Facebook page: “The World
20 Health Organization warned the U.S. that we could be the next “epicenter” of the
21 COVID-19 pandemic. EPICENTER! It means hundreds of thousands, even millions
22 could get sick and many, many would die! So far, the U.S. has 46,000 confirmed cases
23 and 582 people have died. It is running out of control, a disease so virulent that
24 Washington State Gov. Jay Inslee issued a “stay-at-home” order like California and New
25 York. The nation’s economy is sliding off a cliff, already a recession. Consider Italy:
26 6,077 people have died and worldwide the death toll is 17,235. With no vaccine or
27 medication to fight the deadly virus, the only measures are social distancing, washing our
28 hands, and when we contract the illness, ventilators, hospitalization.”

1 20. On or about March 24, 2020, Individual 1 posted a reply, “[Individual
2 2]...there are two products that may be able to stop this. Call and talk to Rick about what
3 we are calling the Dynamic Duo: 360-460-9817.”

4 21. On March 30, 2020, FDA-OCI SA Julie Ryer (acting in an undercover
5 capacity) texted the phone number 360-460-9817, and indicated that she was attempting
6 to reach “Rick Marschall” regarding the Dynamic Duo. The undercover agent texted she
7 was “scared about the corona virus so I would like to hear about this product.” Later on
8 that same day, a person who identified himself as “Dr. Rick Marschall” called and spoke
9 to the undercover agent. This conversation was recorded; I listened to the conversation
10 and I recognized the voice as RICHARD MARSCHALL, based on my prior in person
11 and telephonic contacts with MARSCHALL. During this recorded conversation,
12 MARSCHALL provided information on his product the Dynamic Duo, which included
13 the following statements:

- 14 a. “Allicin doesn’t boost the immune system, it just kills the virus.”
15 b. “Fucose from the larch tree cause is an inexpensive easy way to get a
16 message to the bone marrow to make more stem cells. If you make more
17 stem cells then um you have better more reticulocytes and that’s what the
18 research shows and that they turn into white blood cells. So you kind of up
19 your white blood cells and you if you have more white blood cells, what do
20 you have, you have more killer t-cells and they attack viruses and cancer.
21 See how that can happen?”
22 c. “We have these two things...one kills the viruses, bacteria, parasites and
23 fungus on contact, directly directly antivirally (inaudible). I mean that’s
24 what the research shows. K. I’m not making claims that you know that the
25 FDA is ya know. The FDA says you know this is all mumble jumble. They
26 don’t believe in any of this but um and I’m not make trying to make claims
27 for it. But we do have evidence for it that its directly antiviral anti-bacterial
28 anti-fungal anti-yeast. And we have clinical evidence that its I just told you

1 I haven't I haven't been sick for more than 24 hours maybe 36 at the most.
2 You know because I started taking 10 of these and then yeah a tablespoon
3 of this powder. So this Dynamic Duo is pretty amazing they work together
4 um it costs \$140 dollars to get the kit."

5 d. "You buy it and you leave and you walk away. You leave it in there and
6 then if you. You know if you have evidence that you're getting a sick how
7 does it show up? You ah and it's not just a little cough. You know it's it's
8 ah the cough keeps coming on right? Or your temperature goes up, in this
9 case with the Covid. With the regular flu your temperature might not go up
10 very fast. With with this one it seems to go up faster. And the cough, and
11 then this you know this this new virus this you know it's hitting people. It's
12 going right to their right to their lungs you know deep in their lungs. It's not
13 like you know just bronchitis its pneumonia. You know it's killing people
14 quickly."

15 e. "Unfortunately, um because everybody wants this stuff you know there's a
16 bit of a wait."

17 22. On March 31, 2020, an individual identifying himself as "Dr. Rick
18 Marschall," from the phone number 360-460-9817 called the undercover agent and
19 indicated that the Dynamic Duo was now available. This conversation was recorded; I
20 listened to the conversation and I recognized the voice as RICHARD MARSCHALL,
21 based on my prior in person and telephonic interactions with MARSCHALL. The
22 undercover agent provided the undercover credit card payment information for the
23 purchase of the Dynamic Duo for \$140.00 plus \$9.50 for shipping. The undercover
24 credit card was charged in the amount of \$149.50 by "NATURAL HEALING CLINIC
25 PORT ANGELES WA."

26 23. On April 2, 2020, the undercover purchase was received in Oakland, CA,
27 via USPS tracking number 9405 5036 9930 0304 3065 24. This package was retrieved in
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1 California by SA Ryer. SA Ryer mailed the package to the FDA-OCI office in Kirkland,
2 WA, which was received on April 3, 2020. Examination of the package revealed:

- 3 a. The parcel listed the return address as RICK MARSCHALL in Port
4 Angeles, WA 98362-9202. The street address was the same street address
5 that was listed on the aforementioned MARSCHALL website.
- 6 b. The package contained the following items: Allimax[®] Pro (Allimed) and
7 IAG[™] Arabinogalactans distributed as the “Dynamic Duo,” an invoice and
8 sales receipt along with documents titled “The Dynamic Duo Instructions,”
9 “Preparing for Viral Infections with Plant Medicines Since Antibiotics
10 Can’t Help, Introducing the “Dynamic Duo” by Rick Marschall N,D.”, and
11 “”BE PREPARED” Virus Dynamic Duo By Rick Marschall, Health
12 Coach,” which stated that these two products “can crush 30 different viral
13 infections, including those in the Corona family, (like in China Corona-19),
14 40 different bacterial infections, 25 different fungal infections and 20
15 different parasitic infections like amoebas.”


16 24. The label of the Allimax Pro[®] indicates that it is manufactured by
17 Allimax Nutraceuticals US, 500 W. Superior St., Suite 2205, Chicago, Illinois 60654. A
18 search of the FDA Drug Establishment Database for the business Allimax Nutraceuticals
19 did not return any drug manufacturing establishments registered. No registered drug
20 establishment lists Allimax Pro[®] as a drug it manufactures in their establishment.
21 Although the immediate label of Allimax Pro[®] does not state that the product can kill
22 viruses including those in the Corona family, like in China Corona-19, the accompanying
23 labeling MARSCHALL added to the shipment does make this intended use claim.

24 25. The label of the IAG[™] Arabinogalactans indicates that it is manufactured
25 by Biotics Research Corp, 6801 Biotics Research Drive, Rosenberg, Texas 77471. A
26 search of the FDA Drug Establishment Database for the business Biotics Research Corp
27 identified the business as having previously been registered as a homeopathic drug
28 manufacturer; however, neither Biotics nor any other registered drug establishment has

1 listed IAG™ Arabinogalactans as a drug it manufactures in their establishment. The
2 immediate label does not state that the product can kill viruses including those in the
3 Corona family, like in China Corona-19, however, the accompanying labeling
4 MARSCHALL added to the shipment does make this intended use claim.


5 **CONCLUSION**

6 26. Based on the above facts, I respectfully submit that there is probable
7 cause to believe that RICHARD MARSCHALL did knowingly and intentionally
8 introduce, deliver, and cause the introduction and delivery for introduction into interstate
9 commerce drugs, in violation of Title 21, United States Code, Sections 331(a) and
10 333(a)(2).

11 
12 ANGELA ZIGLER, Complainant
13 Special Agent, FDA-OCI

14 The above-named agent provided a sworn statement attesting to the truth of the
15 contents of the foregoing affidavit, and based on the Complaint and Affidavit, the Court
16 hereby finds that there is probable cause to believe the Defendant committed the offense
17 set forth in the Complaint.

18 Dated this 29th day of April, 2020.

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21 J. RICHARD CREATURA
22 United States Magistrate Judge
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