

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT # 11-MJ-1067 A, B, C, D

I, John M. Rayfield, being first duly sworn, depose and state as follows:

1. I am a Special Agent ("SA") of the United States Fish and Wildlife Service ("FWS" or "Service"), Office of Law Enforcement, and am therefore an "investigative or law enforcement officer" within the meaning of Title 16, United States Code, Section 3375. As such, I also am a Federal Law Enforcement Officer within the meaning of Rule 41(a), Fed. R. Crim. P. I have been so employed for approximately 16 years. During that time, I have worked as a Special Agent in the States of Alaska, South Carolina and Tennessee. Previous to that I was employed as a Tennessee Wildlife Resources Agency Wildlife Officer. I have approximately 21 years of experience in the enforcement of Federal and State laws.

2. As a Special Agent with the Service, I have conducted and assisted in numerous criminal and civil investigations, including many that involved the unlawful import of wildlife and plants from various foreign countries into the commerce of the United States.

3. I am familiar, based on my training and experience, with the laws and regulations primarily enforced by the FWS, such as the Lacey Act, Title 16, United States Code, Sections 3371, et seq.; and the Endangered Species Act (ESA), Title 16, United States Code, Sections 1531, et seq. I am also familiar with additional laws and regulations that may be applied in cases involving illegal

trade in wildlife and plants, including the prohibitions against smuggling and import contrary to law, Title 18, United States Code, Section 545.

4. During my employment with FWS, I have had extensive training in, and have conducted investigations into violations of Federal wildlife related criminal laws, including participation in the execution of many search warrants on the residences and businesses of persons suspected of illegally taking, possessing, and trafficking in wildlife and plants. As a result of my training and experience, as well as the corporate knowledge and experience of other Service agents across the United States, I am familiar with the methods commonly used by wildlife dealers and traders to collect and sell wildlife and plants in interstate and foreign commerce.

5. I am making this affidavit in support of an application for 4 search warrants authorizing Special Agents of the FWS and the Department of Homeland Security (DHS) to search the premises' identified as: (1) GIBSON ELECTRIC DIVISION Manufacturing Facility, 641 Massman Drive, Nashville, Tennessee 37210 and GIBSON ELECTRIC DIVISION Rough Mill, 653 Massman Drive, Nashville, Tennessee 37210; (2) EPIPHONE (GIBSON GUITAR CORPORATION) Company Administrative Office and U.S. Distribution Facility, 645 Massman Drive, Nashville, Tennessee 37210; (3) GIBSON GUITAR CORPORATION Company Headquarters, 309 Plus Park, Nashville, Tennessee 37217; and (4) Red Arrow Delivery Service, 1120 Visco Drive, Nashville, TN

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37210, and to seize evidence (further described in Attachment B which is incorporated herein) of violations of the following laws: Title 16, United States Code, Sections 3372(a)(2)(B) (the Lacey Act); and Title 18, United States Code, Section 545 (Smuggling).

6. This statement is based upon my personal knowledge, a review of evidence obtained during the course of this investigation, and information provided to me by other law enforcement officers and civilians throughout the course of this investigation. Because this statement is being submitted for the limited purpose of establishing probable cause for the search and seizure of the mirror images of computer hard drives and email files maintained on a computer server, relevant hardcopy documents and records, and the seizure of illegally imported plants, it does not contain each and every fact learned by me and other law enforcement officers during the course of the investigation. It contains only a limited recitation of facts needed to establish probable cause for the search and seizure.

Legal Background

7. The Lacey Act, 16 U.S.C. § 3372(a)(2)(B)(iii), makes it unlawful for any person to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant taken, possessed, transported or sold, in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants. Section 3371



defines the term plant and plants to mean any wild member of the plant kingdom, including roots, seeds, parts, or products thereof, and including trees from either natural or planted forest stands.

8. Title 18, United States Code, Section 545, makes it unlawful for anyone to knowingly import or bring into the United States any merchandise contrary to law, or to receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law.

General Background on the International Trade in Plants and Guitar-Making

9. Countries generally establish laws and regulations related to the harvest (logging) and export of wood, timber or plants (forest products) in order to manage natural resources and regulate the commercialization of their nation's natural resources.

10. The international community uses an "International Tariff Code" system or ITC, also known as the "Harmonized Schedule" or HS, to simplify international trade in commodities including plants and plant products. Most relevant to this case is HS Code 4407, "Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded, or end jointed, or a thickness exceeding 6mm." India prohibits the export of products classified under HS Code 4407 for all plant species harvested in India, without exception.

11. Plant importers generally place orders for plants with a foreign supplier. The foreign supplier will locate vendors for the desired plants (if they themselves are not the vendor). The supplier may export the plants themselves and be designated the "exporter of record" or, if exporting from a third country, the vendor will often declare the export directly with the foreign Customs authorities as the "exporter of record". Sometimes the export is transshipped through a third country or first exported to a third country for management (repackaging, fumigation, or other shipment modification) by the supplier with whom the order was placed. Sometimes the export is shipped directly to the importer that placed the order. In some cases, the supplier, or a third party working for the supplier, will declare the import to United States Customs and Border Protection (Customs or CBP) upon import into the United States. These entities would then be termed the "importer of record". However, the entity that placed the order for the import and will ultimately receive the imported plants, is termed the "final consignee" or "ultimate consignee." The final consignee must be identified as such by the "importer of record" to Customs on CBP Form 7501 and other required Customs declaration documents.

12. United States Customs and Border Protection issued tariff classification ruling NY 881630 under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177), on January 26, 1993. The ruling pertains to sawn Indian rosewood (*Dalbergia latifolia*) and sawn Indian ebony (*Diospyros ebenum*) imported for the purpose of manufacturing the sawn wood pieces into parts

called “finger boards” for guitars or violins. The ruling states that these “finger boards” are classified under the HS code 4407.

13. The relevant parts of a guitar include the body, neck, fretboard, and bridge. The body is the center mass of the guitar and the portion over which the strings are strummed by the fingers. The guitar neck is attached to the body, and the fretboard is attached on top of the neck between the neck and the strings. The fretboard is distinguished from a fingerboard by the “fret lines” and inserts that run perpendicular to the length of the fingerboard, cut according to a very precise scale to match the model of guitar the fretboard is designed to support. The fretboard provides a series of “bridges” over which the strings are depressed against the wood by the fingers. Fingerboards (without frets) are used on stringed instruments played with a bow, such as a violin. Importers and exporters have sometimes referred to the sawn pieces of wood intended to be manufactured into fretboards as “fingerboards” or “fingerboard blanks”. The bridge is attached to the base of the guitar body and supports the strings suspended at a specified height from the surface of the body. The fretboards and bridges generally use a hard, dense, fine grained wood.

14. Guitar bodies utilize veneers of various wood species. Veneers are typically large pieces of uniformly cut thin sheets of wood, defined by the harmonized tariff codes under the HS series 4408. Veneers are defined as being less than 6mm thick and are distinct from the HS 4407 series due to the high

level of complexity involved in cutting these thin sheets to a uniform commercial quality. The Republic of India prohibits the export of sawn wood under the HS 4407 series, but allows the export of veneers under the HS 4408 series.

Relevant Law of India

15. The Foreign Trade Development and Regulation Act (FTDG Act) of 1992, as amended by The Foreign Trade Development and Regulation Amendment Act of 2010, established the authority of the Ministry of Commerce and Industry to enact a foreign trade policy for the Government of India.

16. Foreign Trade Policy, 27th August 2009 - 31st March 2014, w.e.f. 23.08.2010, Government of India, Ministry of Commerce and Industry, Department of Commerce “ (FTP). The FTP of India, incorporating provisions related to export and import of goods and services, came into force with effect on 27th August, 2009 and remains in force up to 31st March, 2014, unless otherwise specified. The FTP specifies: “2.29 All goods may be exported without any restriction except to the extent that such exports are regulated by ITC (HS) or any other provision of FTP or any other law for the time being in force.”

17. A review of the ITC (HS), as referenced in the FTP, revealed that the export status of forest products conforming to the HS code 4407, for all species

of plants harvested in India, including wood consisting of either Indian rosewood (*Dalbergia latifolia*) or Indian ebony (*Diospyros ebenum*), is “Prohibited” and “Not permitted to be exported.” No exceptions were cited relevant to this export prohibition under Indian law. Further research of annual supplements to the FTP and all other published laws and regulations of the Government of India, posted on India’s official website for the international import/export community dgft.gov.in, also revealed no exceptions to this export prohibition.

Investigation

The June 27, 2011, shipment

18. On or about June 27, 2011, LUTHIER MERCANTILE INTERNATIONAL imported a shipment of Indian ebony (*Diospyros ebenum*), from India into the United States, at the Dallas, Texas Port of Entry. The shipment was detained by the CBP Officers for suspected violations of the Lacey Act, and referred to Service Wildlife Inspector (WI) Kim Theurer for FWS inspection.

19. From a review of the paperwork accompanying the shipment, WI Theurer determined that the shipment was exported from India and contained twenty five (25) bundles of Indian ebony wood (*Diospyros ebenum*) in the form of sawn logs, totaling one thousand two hundred and fifty (1,250) pieces, sawn to the dimensions of 510-530 x 75/70 x 10mm and 510-530 x 72/62 x 10mm. The shipment was imported into the U.S. on June 22, 2011, via transport on American Airlines under Air Way Bill 589 2025 5804.

20. According to the Air Way Bill, the shipment was exported by ATHEENA EXPORTS of India to ultimate consignee THEODOR NAGEL, GMBH (of Hamburg, Germany), with a note to notify LUTHIER MERCANTILE upon import. The shipment was marked for direct transport in interstate commerce to Nashville, TN following United States Customs clearance. The actual final consignee in Nashville, TN is not identified. Natalie SWANGO, General Manager of LUTHIER MERCANTILE, identified the actual ultimate consignee as GIBSON GUITAR, when questioned by WI Theurer.

21. The CBP Form 3461, U.S. Customs entry declaration, for the shipment listed LUTHIER MERCANTILE as the importer of record. LUTHIER MERCANTILE (of Windsor, CA) was declared to be the ultimate consignee, in contradiction to the Lacey Act declaration and other paperwork listing the final destination of the wood to be Nashville. In addition, the imported wood was falsely declared to CBP as "VENEER SHEET <= 6MM OTH, OT" and further listed the false HS code as "4408.90.0195", to match the false description. The false description and HS code beginning in "4408", fraudulently presents as a shipment that would be legal to export from India, and, in turn, would not be a violation of the Lacey Act.

22. The shipment seized on June 27, 2011 at Dallas was also accompanied by an Indian export declaration dated on or about June 10, 2011. The export



declaration, prepared for presentation to the Indian Customs authorities, falsely classified the Indian ebony in the shipment under HS 9209.92.00 (finished parts of musical instruments). Indian law allows export of plant products that fall under HS code 9209.92.00.

23. The shipment contained a Certificate of Origin from India, for twenty-five (25) bundles of Indian ebony wood (*Diospyros ebenum*) The wood was declared on the form as "Indian ebony finger boards", totaling one thousand two hundred and fifty (1,250) pieces, with the dimensions of 510-530 x 75/70 x 10mm and 510-530 x 72/62 x 10mm. The Certificate of Origin notes only Nashville, TN (Airport) as a final destination.

24. The USDA form PPQ 505, also known as the Lacey Act Declaration, for the shipment was signed by Natalie SWANGO on June 17, 2011, according to the date she entered on the form. However, this document was submitted to CBP only after the shipment had been stopped and referred to WI Thuerer for suspected Lacey Act violations. This was the only import document that properly identified the final consignee for the import. In addition, the Lacey Act Declaration stated that:

The plant product imported was "Ebony fingerboards for guitars: *Diospyros ebenum*, harvested in India". The final consignee was declared as GIBSON GUITAR, 641 Massman Dr, TN, with Herb Jenkins listed as the point of contact.

25. The Harmonized Tariff Schedule code (HS code) listed on the Lacey Act declaration was "4407 99 96". This 4407 series of HS codes describes "Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded, or end jointed, or a thickness exceeding 6mm". The imported ebony, physically, inspected by WI Theurer and CBP Officer and Agriculture Specialist (CBPO/AQI) Raina Dodson, was in the form of sawn wood as described under HS 4407.

Additional Shipments of Indian Rosewood and Ebony

26. The official GIBSON GUITAR CORPORATION website www.gibson.com, provides the following information: Henry Juskiewicz is the CEO and co-owner of GIBSON GUITAR CORPORATION along with co-owner David Berryman, who is the President of GIBSON GUITAR CORPORATION and the CEO of EPIPHONE (Division of GIBSON GUITAR CORPORATION).

- a. GIBSON GUITAR CORPORATION Corporate Headquarters is located at 309 Plus Park Blvd. Nashville, TN 37217.
- b. EPIPHONE is located at 645 Massman Drive, Nashville, TN 37210.
- c. GIBSON ACOUSTIC is located at 1894 Orville Way, Bozeman, MT 59715.
- d. GIBSON ELECTRIC is located at 641 Massman Drive, Nashville, TN 37210.
- e. GIBSON CUSTOM is located at 145 Lt. George W. Lee Avenue, Memphis, Tennessee 38103.

27. The Department of Homeland Security, United States Customs and Border Protection, administers a searchable computer information management

system that includes data concerning all imports into the United States. The system is called the International Trade Data System (ITDS). A search of ITDS shows a number of shipments of sawn wood, HS code 4407, consisting of either rosewood (*Dalbergia* spp.) or ebony (*Diospyros* spp.), consigned to GIBSON ELECTRIC in Nashville, Tennessee; GIBSON ACOUSTIC in Bozeman, Montana, or GIBSON CUSTOM in Memphis, Tennessee.

28. Customs import records on file with the licensed Customs broker for GIBSON GUITAR CORPORATION, V. Alexander & Co., Inc., confirmed the following additional imports, (10 imports by ocean cargo and 1 import by air cargo), of sawn Indian rosewood and Indian ebony. The Customs documents for these imports further indicated the plants were harvested and exported from the Republic of India, and imported into the United States in the form classified under HS code 4407:

<u>Date of Import Entry</u>	<u>Importer of Record</u>	<u>Final Consignee</u>	<u>Species and HS</u>
June 14, 2011 (ocean cargo)	Gibson Guitar Corp. 645 Massman Drive Nashville, TN 37210	Gibson Acoustic 1894 Orville Way Bozeman, MT 59715	Indian rosewood HS 4407
June 3, 2011 (ocean cargo)	Gibson Guitar Corp. 645 Massman Drive Nashville, TN 37210	Gibson Electric 641 Massman Drive Nashville, TN 37210	Indian rosewood HS 4407
April 12, 2011 (ocean cargo)	Gibson Guitar Corp. 645 Massman Drive Nashville, TN 37210	Gibson Electric 641 Massman Drive Nashville, TN 37210	Indian rosewood HS 4407
March 28, 2011	Gibson Guitar Corp.	Gibson Custom	Indian rosewood

(ocean cargo)	645 Massman Drive Nashville, TN 37210	145 Lt. George W. Lee Ave., Memphis, TN 38103	HS 4407
February 4, 2011 (ocean cargo)	Gibson Guitar Corp. 645 Massman Drive Nashville, TN 37210	Gibson Electric 641 Massman Drive Nashville, TN 37210	Indian rosewood HS 4407
December 30, 2010 (ocean cargo)	Gibson Guitar Corp. 645 Massman Drive Nashville, TN 37210	Gibson Custom 145 Lt. George W. Lee Ave., Memphis, TN 38103	Indian rosewood and Indian ebony HS 4407
November 17, 2010 (Air Cargo)	Gibson Guitar Corp. 645 Massman Drive Nashville, TN 37210	Gibson Custom 145 Lt. George W. Lee Ave., Memphis, TN 38103	Indian rosewood and Indian ebony HS 4407
November 8, 2010 (ocean cargo)	Gibson Guitar Corp. 645 Massman Drive Nashville, TN 37210	Gibson Acoustic 1894 Orville Way Bozeman, MT 59715	Indian rosewood HS 4407
September 14, 2010 (ocean cargo)	Gibson Guitar Corp. 645 Massman Drive Nashville, TN 37210	Gibson Electric 641 Massman Drive Nashville, TN 37210	Indian rosewood HS 4407
August 18, 2010 (ocean cargo)	Gibson Guitar Corp. 645 Massman Drive Nashville, TN 37210	Gibson Custom 145 Lt. George W. Lee Ave., Memphis, TN 38103	Indian rosewood HS 4407
August 17, 2010 (ocean cargo)	Gibson Guitar Corp. 645 Massman Drive Nashville, TN 37210	Gibson Acoustic 1894 Orville Way Bozeman, MT 59715	Indian rosewood HS 4407

29. On July 14, 2011, WI Theurer contacted Nancy Alvarez, Manager for Red Arrow Delivery Service, located at 1120 Visco Drive, Nashville, TN 37210.

Alvarez informed WI Theurer that Red Arrow Delivery Service receives and stores all ocean cargo imported for GIBSON GUITAR CORPORATION, which includes large shipments of sawn wood.

30. On or about July 28, 2011, United States Customs and Border Protection (CBP) Officer Bruce Clark personally observed that Red Arrow Delivery Service, located at 1120 Visco Drive, Nashville, TN 37210, had received for storage a shipment of 24 pallets of Indian rosewood and Indian ebony imported on June 20, 2011, from India by LUTHIER MERCANTILE. Although the U.S. Customs import declaration falsely indicates that LUTHIER MERCANTILE is the final consignee, Nancy Alverson, of Red Arrow Delivery Service, advised Officer Clark that the wood was in storage for GIBSON GUITAR. The import documentation further revealed the import contained sawn Indian ebony and sawn Indian rosewood imported under HS code 4407. Nancy Alverson further provided Officer Clark with a copy of an email, written by Natalie SWANGO, General Manager of LUTHIER MERCANTILE INTERNATIONAL, to Nancy Alverson, of Red Arrow Delivery Service. The email stated that the import of 24 pallets was enroute to Red Arrow Delivery Service (via interstate transport) and further indicated the final consignee for the import is actually GIBSON GUITAR CORPORATION, the final GIBSON Division consignee(s) for the import is not identified in the email.

Use of Rosewood and Ebony by Gibson Guitar Corporation

31. SA Seiler conducted an interview with GIBSON GUITAR CORPORATION employee, Eugene Nix, on November 17, 2009. Nix is the wood products engineer for GIBSON GUITAR CORPORATION and is responsible for sourcing types and species of wood for manufacturing use by GIBSON GUITAR CORPORATION. In addition, Nix is responsible for inspection of the imported wood to evaluate its condition, properties, and quality. Nix also accomplished all kiln drying for imported wood received at the GIBSON ELECTRIC manufacturing facility in Nashville, Tennessee, including rosewood and ebony. Nix shipped dried wood to other Gibson divisions when the wood was ready for further manufacturing. The kiln used for drying wood is located in the rough mill, an adjacent building to 641 Massman Drive. The rough mill is marked as building 653 on Massman Drive. Nix stated that Gibson uses only Indian ebony in Gibson products (containing ebony). Nix further stated the following: Rosewood used by Gibson is Indian rosewood, although Gibson had used Madagascar rosewood and ebony in the past. According to Nix, all ebony and rosewood was stored at Red Arrow Delivery Service upon import and delivery to Nashville until GIBSON GUITAR CORPORATION was ready to have it picked up. Gibson's purchasing managers are responsible for actually placing orders for rosewood and ebony from suppliers and Herb Jenkins was the senior purchasing manager at GIBSON ELECTRIC. Nix confirmed he kept electronic files and email correspondence concerning the sourcing, receipt, and use of rosewood and ebony by GIBSON GUITAR CORPORATION on his computer. David (Dave) Berryman conducts GIBSON GUITAR CORPORATION business at the EPIPHONE building located



at 645 Massman Drive, Nashville, Tennessee. Berryman is the co-owner and President of GIBSON GUITAR CORPORATION. Berryman is also the CEO of EPIPHONE, which is a division of GIBSON GUITAR CORPORATION that imports and markets guitars manufactured at GIBSON GUITAR CORPORATION's overseas manufacturing facilities, such as their factory in China.

32. A search of computer hard drives located at GIBSON ELECTRIC, 641 Massman Drive, Nashville, Tennessee, was conducted pursuant to a search warrant issued by the United States District Court, Middle District of Tennessee, on November 17, 2009. The search revealed regular and routine email correspondence between various GIBSON GUITAR CORPORATION employees concerning the purchase, procurement, import, receipt, manufacturing use, and shipment of rosewood and ebony between the different Gibson divisions, including GIBSON ELECTRIC, GIBSON CUSTOM, and GIBSON ACOUSTIC. This correspondence included, but was not limited to, correspondence among the following GIBSON GUITAR CORPORATION employees:

- a. Eugene Nix, Wood Products Engineer
- b. Herb Jenkins, Senior Purchasing Manager
- c. Henry Juskiewicz, CEO
- d. David (Dave) Berryman, President

33. SA Seiler conducted an interview with GIBSON GUITAR CORPORATION



employee, Lynn Matthews, on April 22, 2010. Matthews is the engineering Manager and Production Scheduler for the GIBSON CUSTOM Division of GIBSON GUITAR CORPORATION. Her responsibilities included managing personnel and manufacturing resources to maintain production schedules for between 30 and 50 different models of electric guitars produced by GIBSON CUSTOM.

34. According to Matthews, since January 2010, GIBSON CUSTOM has used only Indian rosewood. Eugene Nix initially receives and inspects all the GIBSON CUSTOM rosewood and ebony upon import. Nix then kiln dries the wood and/or conditions the rosewood and ebony to prepare it for the manufacturing process. The rosewood and ebony is then shipped to GIBSON CUSTOM from the GIBSON ELECTRIC facilities when it is ready. Gibson purchasing managers are responsible for the order placement and purchase of specific species of sawn wood from selected vendors. The following GIBSON GUITAR CORPORATION employees are responsible for the sourcing and procurement of rosewood and ebony for manufacturing at the different GIBSON GUITAR CORPORATION Divisions:

- a. Eugene Nix, Wood Products Engineer
- b. Herb Jenkins, Senior Purchasing Manager
- c. George Cox, Purchasing Manager
- d. Jason Dawson, Purchasing Manager
- e. Edwin Wilson, Historic Programs Director

(The Historic Programs Director oversees the GIBSON GUITAR CORPORATION's manufacturing program that reproduces original models of GIBSON stringed instruments.)

f. The Purchasing Manager for GIBSON Acoustic in Montana, however, Matthews could not recall his name.

Organization and Recordkeeping

35. Based on your affiant's training and experience and that of other Service agents with whom your affiant has spoken, your affiant is aware that persons who unlawfully smuggle or traffic in wildlife and plants typically maintain and store various records (including paper documents and electronic files) detailing the payment for and ordering, receipt, storage, acquisition, and disposition of such plants, including the following:

a. Records which relate to the unlawful taking, acquisition, obtaining, possession, transfer, shipment, transportation, trade, sale or disposition of wildlife and plants, including but not limited to, memobooks, notebooks, notes, books, records, invoices, receipts, notes, bills of sale, air waybills, bills of lading, customs documents, customer lists, price lists, contact lists with phone numbers, correspondence, shipping records, packing slips, and facsimiles.

b. Financial records and accounting records which evidence or relate to the unlawful taking, acquisition, obtaining, possession, transfer, shipment, transportation, trade, sale or disposition of plants or the disposition of funds related thereto including, but not limited to ledgers, checks, bank and checking

account statements, credit card receipts and records, money drafts, letters of credit, money orders and receipts, international bank transfer documents, bank drafts, cashier checks, bank checks, safe deposit box keys.

c. Records and/or documents of mailing, shipping or delivery of illegal plants, including but not limited to, receipts, invoices, and/or packing lists.

d. Records and/or documents reflecting communications with government agencies, consumer associations, and/or business associations related to the acquisition, purchase, possession or sale of plants, including but not limited to documents or permits regarding compliance or non-compliance with governmental rules and regulations.

e. Photographs, negatives, video tapes, films, slides and undeveloped film of potentially unlawfully acquired plants or potential assets associated with the acquisition and disposition of plants.

f. Diaries, calendars, appointment books, journals, address/telephone books (including an address/telephone rolodex or similar index), business cards which reflect communications with or the identities of other plant traffickers.

36. Based on my training and experience and that of other Service agents with whom I have spoken, I am aware that persons who unlawfully smuggle or traffic in wildlife and plants typically maintain records indicating possession of the premises used for this purpose, including such things as, utility bills, rental receipts, mortgage payments receipts, telephone records, vehicle titles, registration receipts and record, open and closed envelopes and magazines

bearing that location's address, and the name(s) associated therewith. These records are essential to their ability to track purchases and sales, maintain inventory, monitor shipments, provide necessary invoicing and other documentation to suppliers and customers, and to maintain control over the financial aspects of the business venture. All of these dealings surpass the reasonable ability of any individual or group of individuals to conduct the enterprise without recourse to written or electronic record keeping.

Computers and Electronic Evidence

37. Gibson Guitar Corporation maintains a business website address, has over 1,000 employees and operates 3 manufacturing plants. Corporations of this size, typically maintain records on computers and uses computers in the management of their businesses. Based on actual inspection of other evidence related to this investigation, including but not limited to emails, spreadsheets, and invoices, I am aware that computer equipment was used to generate, store, and print documents used in the ordering, purchase, importation, receipt, transportation, and processing of illegally imported wood. Specifically, emails were observed between GIBSON GUITAR CORPORATION employees at the GIBSON ACOUSTIC facility in Bozeman, Montana, the GIBSON ELECTRIC facility in Nashville, Tennessee, the GIBSON CUSTOM facility in Memphis, Tennessee and the GIBSON GUITAR CORPORATION Company headquarters in Nashville, Tennessee. In addition, email correspondence between Red Arrow Delivery Service and LUTHIER MERCANTILE INTERNATIONAL, concerning



shipments of Indian rosewood and ebony for GIBSON GUITAR CORPORATION, was obtained during the course of this investigation. There is reason to believe that there are computer systems currently located at all 4 locations subject to this search warrant application.

38. Your affiant is aware that computers are used to engage in business transactions that involve the trade of wildlife and plant species. A computer may have been used to store, generate, and print documents used in furtherance of the shipments of Indian ebony and Indian rosewood, which are in violation of the laws enumerated hereinabove. For example, THEODOR NAGEL GMBH would direct their United States sales representative, Hunter Trading Corporation, to send email notification to Red Arrow Delivery Service, to authorize the release of sawn rosewood and ebony to GIBSON GUITAR CORPORATION upon receipt of invoice payment. In another example, LUTHIER MERCANTILE INTERNATIONAL sent an email notification to Red Arrow Delivery Service to expect arrival of a 24 pallet shipment of Indian rosewood and ebony for GIBSON GUITAR CORPORATION.

39. Your affiant knows that computer hardware, software, and electronic files may be important to a criminal investigation in two distinct ways: (1) the objects themselves may be contraband, evidence, instrumentalities, or fruits of crime, and/or (2) the objects may be used as storage devices that contain contraband, evidence, instrumentalities, or fruits of crime in the form of electronic data. Rule

41 of the Federal Rules of Criminal Procedure permits the government to search for and seize computer hardware, software, and electronic files that are evidence of crime, contraband, instrumentalities of crime, and/or fruits of crime.

40. Your affiant seeks permission to search not only for computer files that might serve as direct evidence of the crimes described on the warrant, but also for forensic electronic evidence that establishes how computers were used, the purpose of their use, who used them, and when. There is probable cause to believe that this forensic electronic evidence will be on any computer in the subject premises' because:

a. Data on the storage medium can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave traces of information on the storage medium that show what tasks and processes were recently active. Web browsers, email programs, and chat programs store configuration information on the storage medium that can reveal information such as online nicknames and passwords. Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage devices or other external storage media, and the times the computer was in use. Computer file systems can record information about the dates files were created and the sequence in which they were created.

b. Forensic evidence on a computer or storage medium can also indicate who has used or controlled the computer or storage medium. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a premises. For example, registry information, configuration files, user profiles, email, email address books, “chat”, instant messaging logs, photographs, the presence or absence of malware, and correspondence (and the data associated with the foregoing, such as file creation and last-accessed dates) may be evidence of who used or controlled the computer or storage medium at a relevant time.

c. A person with appropriate familiarity with how a computer works can, after examining this forensic evidence in its proper context, draw conclusions about how computers were used, the purpose of their use, who used them, and when.

d. The process of identifying the exact files, blocks, registry entries, logs, or other forms of forensic evidence on a storage medium that are necessary to draw an accurate conclusion is a dynamic process. While it is possible to specify in advance the records to be sought, computer evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data is stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.

e. Further, in finding evidence of how a computer was used, the purpose of its use, who used it, and when, sometimes it is necessary to establish that a



particular thing is not present on a storage medium. For example, the presence or absence of counter-forensic programs or anti-virus programs (and associated data) may be relevant to establishing the users intent.

38. Based upon your affiant's knowledge, training and experience, your affiant knows that searching and seizing information from computers often requires agents to seize most or all electronic storage devices (along with related peripherals) to be searched later by a qualified computer expert in a laboratory or other controlled environment. This is true because of the following:

a. The volume of evidence. Computer storage devices (like hard drives, floppy disks, compact disks, "thumb drives" and removable media from cellular telephones and personal digital assistants) can store the equivalent of millions of pages of information. Additionally, a suspect may try to conceal criminal evidence; he or she might store it in random order with deceptive file names. This may require searching authorities to examine all the stored data to determine which particular files are evidence or instrumentalities of crime. This sorting process can take weeks or months, depending on the volume of data stored, and it could be impractical and invasive to attempt this kind of data search on-site.

b. Technical Requirements. Searching computer systems for criminal evidence is a highly technical process requiring expert skill and a properly controlled environment. The vast array of computer hardware and software available requires even computer experts to specialize in some systems and applications,

so it is difficult to know before a search which expert is qualified to analyze the system and its data. In any event, however, data search protocols are exacting scientific procedures designed to protect the integrity of the evidence and to recover even "hidden," erased, compressed, password-protected, or encrypted files. Because computer evidence is vulnerable to inadvertent or intentional modification or destruction (from external sources or from destructive code imbedded in the system as a "booby trap"), a controlled environment may be necessary to complete an accurate analysis. Further, such searches often require the seizure of most or all of a computer system's input/output peripheral devices, related software, documentation, and data security devices (including passwords) so that a qualified computer expert can accurately retrieve the system's data in a laboratory or other controlled environment.

41. In light of these concerns, and consistent with rule 41(e)(2)(B), your affiant hereby requests the Court's permission to seize the computer hardware (and associated peripherals) that are believed to contain some or all of the evidence described in the warrant, and to conduct an off-site search of the hardware for the evidence described, if, upon arriving at the scene, the agents executing the search conclude that it would be impractical to retrieve a duplicate image onsite.

42. Your affiant has requested the assistance of computer forensics analysts in the execution of this search warrant, specifically for the seizure of computer criminal evidence. Upon the discovery of computer systems at the business, the

computer forensic analysts will conduct on-site imaging of all computer hardware, and associated storage devices, in an effort to seize all electronic evidence without removing the computer system from the business. In the event that computer evidence cannot be imaged on-site, the computer hardware and associated electronic files will be removed from the business to accurately retrieve the system data. All seized computer hardware will then be returned to the business within a reasonable amount of time, not to exceed thirty days. In addition, the analyst needs all the system software (operating systems or interfaces, and hardware drives) and any application software which may have been used to create the data (whether stored on hard drives or on external media).

43. Based on your affiant's knowledge of computers and also on information derived from forensic computer specialists, property search retrieval, analysis, documentation and authentication of all such electronically stored computer data requires onsite and/or offsite controlled environment analysis by a qualified computer specialist to prevent the loss of data either from accidental or deliberate programmed destruction. Data and information stored in an electronic format may be found not only on the hard disk drive of a computer, but on other computer equipment and related peripherals, including back-up tapes, floppy disks, and other devices capable of storing information in an electronic format. The evidence contained in the computer will be retrieved by duplicating the computer's hard drive. The duplicated hard drive will be seized as evidence and

taken to a laboratory or other controlled environment where a search will be conducted by experienced computer technicians to extract only that information pertinent to the investigation and the alleged violations.

44. Searching Gibson Guitar Corporation's computer systems for the evidence (described in Attachment B) may require a range of data analysis techniques. In some cases, it is possible for agents to conduct carefully targeted searches that can locate evidence without requiring a time-consuming manual search through unrelated materials that may be commingled with criminal evidence. For example, agents may be able to execute a "keyword" search that searches through the files stored in a computer for special words that are likely to appear only in the materials covered by a warrant. Similarly, agents may be able to locate the materials covered in the warrant by looking for particular directory or file names. In other cases, however, such techniques may not yield the evidence described in the warrant. Criminals can mislabel or hide files and directories; encode communications to avoid using key words; attempt to delete files to evade detection; or take other steps designed to frustrate law enforcement searches for information. These steps may require agents to conduct more extensive searches, such as scanning areas of the disk not allocated to listed files, or opening every file and scanning its contents briefly to determine whether it falls within the scope of the warrant. In light of these difficulties, your affiant requests permission to use whatever data analysis techniques appear necessary to locate and retrieve the evidence (described in Attachment B).

45. Based on your affiant's knowledge, training, and experience, your affiant knows that computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a hard drive, deleted or viewed via the Internet. Electronic files downloaded to a hard drive can be stored for years at little or no cost. Even when such files have been deleted, they can be recovered months or years later using readily-available forensics tools. When a person "deletes" a file on a home computer, the data contained in the file does not actually disappear; rather, that data remains on the hard drive until it is overwritten by new data. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space - that is, in space on the hard drive that is not allocated to an active file or that is unused after a file has been allocated to a set block of storage space - for long periods of time before they are overwritten. In addition, a computer's operating system may also keep a record of deleted data in a "swap" or "recovery" file. Similarly, files that have been viewed via the Internet are automatically downloaded into a temporary Internet directory or "cache." The browser typically maintains a fixed amount of hard drive space devoted to these files, and the files are only overwritten as they are replaced with more recently viewed Internet pages. Thus, the ability to retrieve residue of an electronic file from a hard drive depends less on when the file was downloaded or viewed than on a particular user's operating system, storage capacity, and computer habits.

Warrants Sought

46. Based on these facts and circumstances, your affiant believes probable cause exists that evidence of the forementioned violations exists at the premises' identified as GIBSON ELECTRIC DIVISION Manufacturing Facility, 641 Massman Drive, Nashville, Tennessee 37210; GIBSON ELECTRIC DIVISION Rough Mill, 653 Massman Drive, Nashville, Tennessee 37210; EPIPHONE (GIBSON GUITAR CORPORATION) Company Administrative Office and U.S. Distribution Facility; GIBSON GUITAR CORPORATION Company Headquarters, 309 Plus Park, Nashville, Tennessee 37217; and Red Arrow Delivery Service, 1120 Visco Drive, Nashville, TN 37210; and to seize evidence (further described in Attachment B which is incorporated herein) of violations of the following laws: Title 16, United States Code, Sections 3372(a)(2)(B)(iii) (the Lacey Act); and Title 18, United States Code, Section 545 (Smuggling). I therefore respectfully request that the Court issue four (4) search warrants.

47. The first search warrant authorizing search and seizure of Indian ebony and Indian rosewood unlawfully imported, purchased and received at the premises known as GIBSON ELECTRIC DIVISION, located at 641 Massman Drive, Nashville, Tennessee 37210 and GIBSON ELECTRIC DIVISION Rough Mill, located at 653 Massman Drive, Nashville, Tennessee 37210 and related purchase, procurement, shipping, import, transportation, storage, use, receipt, marketing and delivery documents and correspondence and all related electronic media on which these records and communications are created or stored; to

include the computer hard drives used by the Senior Purchasing Manager, Herb Jenkins, and the Wood Products Engineer, Eugene (Gene) NIX.

48. The second search and seizure warrant authorizing the search and seizure of documents and correspondence related to the purchase, procurement, shipping, import, transportation, storage, use, receipt, marketing and delivery of Indian rosewood and Indian ebony and the resulting products containing these illegally imported species, to include all related electronic media on which these records and communications are created and/or stored; to include the computer hard drive used by GIBSON GUITAR CORPORATION CEO, Henry Juskiewicz, and the computer hard drive used by GIBSON GUITAR CORPORATION President, David (Dave) Berryman located at GIBSON GUITAR CORPORATION Company Headquarters, 309 Plus Park, Nashville, Tennessee 37217.

49. The third search and seizure warrant authorizing the search and seizure of documents and correspondence related to the purchase, procurement, shipping, import, transportation, storage, use, receipt, marketing and delivery of Indian rosewood and Indian ebony and the resulting products containing these illegally imported species, to include all related electronic media on which these records and communications are stored; to include the computer hard drive used by GIBSON GUITAR CORPORATION President, David Berryman located at EPIPHONE Company (GIBSON GUITAR CORPORATION) Administrative Office and U.S. Distribution Facility, 645 Massman Drive, Nashville, Tennessee 37217.

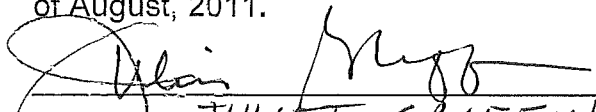
50. The fourth authorizing search and seizure of Indian ebony (*Diospyros ebenum*) and Indian rosewood (*Dalbergia latifolia*) unlawfully imported and stored at the premises known as Red Arrow Delivery Service, 1120 Visco Drive, Nashville, TN 37210 and related purchase, shipping, transportation, storage and delivery documents and correspondence and all related electronic media on which these records and communications are stored.

FURTHER AFFIANT SAYETH NAUGHT



John M. Rayfield
Special Agent
U.S. Fish & Wildlife Service

Signed and sworn to before
me in chambers, this 18th day
of August, 2011.



JULIET GRIFFIN
UNITED STATES MAGISTRATE JUDGE