

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN FRANCISCO

FILED

2014 JUL 17 P 2:14

U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WHO

UNITED STATES OF AMERICA,

v.

CR 14 380

FEDEX CORPORATION,
FEDEX EXPRESS, INC., and
FEDEX CORPORATE SERVICES, INC.,

DEFENDANT(S).

INDICTMENT

VIOLATIONS:

- 21 U.S.C. § 846 – Conspiracy to Distribute Controlled Substances;
- 21 U.S.C. § 841 – Distribution of Controlled Substances;
- 18 U.S.C. § 371 – Conspiracy to Distribute Misbranded Drugs;
- 21 U.S.C. §§ 331, 333, and 353 – Misbranding Drugs;
- 18 U.S.C. § 982; 21 U.S.C. § 853 and 28 U.S.C. § 2461 – Forfeiture

A true bill.

Nancy J. Peterson
Foreman

Filed in open court this 17th day of

July 2014

Rose Maher ROSE MAHER
Clerk

NANDOL J. VADAS
U.S. MAGISTRATE JUDGE

Bail, \$

Summons for July 29, 2014 9:30
before M&J A.M.

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

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA

OFFENSE CHARGED
See Attached Petty
 Minor
 Misdemeanor
 Felony
PENALTY: See Attached

DEFENDANT - U.S.
FEDEX CORPORATION, FEDEX EXPRESS, INC., FEDEX
CORPORATE SERVICES, INC.
DISTRICT COURT NUMBER

PROCEEDING
Name of Complainant Agency, or Person (& Title, if any)
DEA, FDA
 person is awaiting trial in another Federal or State Court, give name of court
 this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District
this is a re prosecution of charges previously dismissed which were dismissed on motion of:
 U.S. ATTORNEY DEFENSE } SHOW DOCKET NO.
this prosecution relates to a pending case involving this same defendant } MAGISTRATE CASE NO.
 prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under }

DEFENDANT
IS NOT IN CUSTODY
Has not been arrested, pending outcome this proceeding.
1) If not detained give date any prior summons was served on above charges
2) Is a Fugitive
3) Is on Bail or Release from (show District)

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

Has detainer been filed? Yes No } If "Yes" give date filed
DATE OF ARREST Month/Day/Year
Or... if Arresting Agency & Warrant were not
DATE TRANSFERRED TO U.S. CUSTODY Month/Day/Year

Name and Office of Person Furnishing Information on this form MELINDA HAAG
 U.S. Attorney Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned) KIRSTIN M. AULT

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS
PROCESS:
 SUMMONS NO PROCESS* WARRANT Bail Amount: _____
If Summons, complete following:
 Arraignment Initial Appearance * Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment
Defendant Address: _____
Date/Time: July 29, 2014 9:30 a.m. Before Judge: Maria-Elena James
Comments: Summons should be provided to DEA SA Jason Chin for service.

ATTACHMENT TO PENALTY SHEET

Counts 1 and 12: 21 U.S.C. § 846 – Conspiracy to Distribute Controlled Substances

Maximum Penalties:

For conduct prior to April 13, 2009:

5 years of probation and a fine of up to \$1,000,000 or twice the gross gain derived from the offense up to \$820,000,000, whichever is greater.

For conduct after April 13, 2009:

5 years of probation and a fine of up to \$2,500,000 (Schedule III) or \$1,000,000 (Schedule IV), or twice the gross gain derived from the offense up to \$820,000,000, whichever is greater.

Counts 2-10 and 13-14: 21 U.S.C. § 841 – Distribution of Controlled Substances

Maximum Penalties:

Same as for Counts 1 and 12.

Counts 11 and 15: 18 U.S.C. § 371 – Conspiracy to Distribute Misbranded Drugs

Maximum Penalties

5 years of probation and a fine of up to \$500,000 or twice the gross gain derived from the offense up to \$820,000,000, whichever is greater.

Forfeiture: 18 U.S.C. § 982; 21 U.S.C. § 853, and 28 U.S.C. § 2461

Any property constituting or derived from any proceeds defendants obtained, directly or indirectly, as a result of the violations and any property used or intended to be used to commit or facilitate the commission of the violations, as well as any property traceable to such property and any substitute assets.

1 MELINDA HAAG (CABN 132612)
2 United States Attorney

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NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

WHO

CR 14 380
NO. CR

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 FEDEX CORPORATION,
15 FEDEX EXPRESS, INC., and
16 FEDEX CORPORATE SERVICES, INC.,
17 Defendants.

) VIOLATIONS: 21 U.S.C. § 846 – Conspiracy to
) Distribute Controlled Substances;
) 21 U.S.C. § 841 – Distribution of Controlled
) Substances;
) 18 U.S.C. § 371 – Conspiracy to Distribute
) Misbranded Drugs;
) 21 U.S.C. §§ 331, 333, and 353 – Misbranding Drugs;
) 18 U.S.C. § 982; 21 U.S.C. § 853 and 28 U.S.C.
) § 2461 – Forfeiture
)
) SAN FRANCISCO VENUE
)
)
)

20 INDICTMENT

21 The Grand Jury charges:

22 INTRODUCTORY ALLEGATIONS

23 At all times relevant to this indictment:

24 Defendants

25 1. Defendants FEDEX CORPORATION, FEDEX EXPRESS, INC. (“FEDEX EXPRESS”),
26 and FEDEX CORPORATE SERVICES, INC. (“FEDEX SERVICES”) (collectively, “FEDEX”), were
27 package delivery companies and providers of specialized transportation and logistics services that
28 delivered packages to persons located in the Northern District of California and throughout the United

1 States. FEDEX EXPRESS and FEDEX SERVICES were wholly owned subsidiaries of FEDEX
2 CORPORATION.

3 Summary of Alleged Conduct

4 A. Illegal Internet Pharmacies

5 2. Beginning in approximately 1998, numerous companies began offering consumers
6 prescription drugs, including controlled substances, based on the provision of information over the
7 Internet. These companies came to be known as Internet or online pharmacies, both terms used
8 interchangeably throughout this indictment. Some Internet pharmacies were managed by well-known
9 pharmacy chains that required valid prescriptions and visits to the patient's personal physician before an
10 order was filled. Others failed to require a prescription before filling orders for any drugs, and
11 distributed controlled substances and prescription drugs based solely on the completion of an online
12 questionnaire, without a physical examination, diagnosis, or face-to-face meeting with a physician.
13 Such practices violated federal and state laws governing the distribution of prescription drugs and
14 controlled substances.

15 3. Internet pharmacies generally operated websites that advertised the sale of various
16 controlled substances and prescription drugs. Through the websites, customers typically placed orders
17 for drugs by answering an online questionnaire calling for basic information such as height, weight and
18 date of birth, making payment arrangements, and providing a shipping address. Internet pharmacies
19 worked with fulfillment pharmacies that carried an inventory of controlled substances and prescription
20 drugs. After filling the order referred by the Internet pharmacy, the fulfillment pharmacy delivered the
21 drugs to the customer by a shipper such as FEDEX.

22 4. From at least as early as 2004, on no less than six different occasions, the DEA, FDA, or
23 members of Congress and their staff informed FEDEX that illegal Internet pharmacies were using its
24 shipping services to distribute controlled substances and prescription drugs in violation of the Controlled
25 Substances Act (CSA) and Food Drug and Cosmetic Act (FDCA). These government officials informed
26 senior FEDEX management that a prescription based solely on a customer's completion of an online
27 questionnaire was invalid and that controlled substances and prescription drugs dispensed based on such
28 an invalid prescription were distributed in violation of the CSA, FDCA, and numerous state laws. The

1 government officials similarly informed FEDEX that doctors writing such prescriptions and pharmacists
2 filling them were acting outside the usual course of professional practice and not for a legitimate
3 medical purpose, according to guidelines published by the American Medical Association (AMA),
4 Federation of State Medical Boards (FSMB), and National Association of Boards of Pharmacy (NABP).

5 B. The Chhabra-Smoley Organization and Superior Drugs

6 5. During the time covered by this indictment, FEDEX shipped controlled substances and
7 prescription drugs for two illegal Internet pharmacy organizations, among others: (1) the Chhabra-
8 Smoley Organization, which operated a network of illegal Internet and fulfillment pharmacies through
9 its principals Vincent Chhabra and Robert Smoley, and (2) Superior Drugs, which was an illegal
10 fulfillment pharmacy that filled drug orders for illegal Internet pharmacies. FEDEX knew that the
11 Chhabra-Smoley Organization and Superior Drugs were each distributing controlled substances and
12 prescription drugs based solely on a customer's completion of an online questionnaire, and that these
13 organizations were distributing drugs outside the usual course of professional practice and not for a
14 legitimate medical purpose in violation of the law. Nevertheless, FEDEX continued to ship controlled
15 substances and prescription drugs for the Chhabra-Smoley Organization and Superior Drugs.

16 6. In 2003, the DEA shut down RxNetwork, the Chhabra-Smoley Organization's primary
17 fulfillment pharmacy, and Chhabra was arrested for violating the CSA. FedEx learned of these events
18 promptly after they occurred, but FEDEX continued to distribute controlled substances and prescription
19 drugs for the Chhabra-Smoley Organization through Internet and fulfillment pharmacies that were
20 controlled by and affiliated with Smoley and other members of the Chhabra-Smoley Organization.
21 FEDEX knew of the connection between these Internet and fulfillment pharmacies and RxNetwork and
22 Chhabra as demonstrated by the principals, company names, shipping addresses and billing addresses
23 that were initially connected to Chhabra and RxNetwork and remained common to Smoley and the
24 members of the Chhabra-Smoley Organization who continued operations after Chhabra's arrest.
25 FEDEX's employees explicitly recognized this connection. For example, in a discussion with FEDEX
26 managers in the Sales and Revenue Operations departments, one employee stated that the controller for
27 Smoley's Internet pharmacy Icom had two other Internet pharmacy accounts: RxNetwork and Dipardi
28 Pharmacy, another fulfillment pharmacy used by Chhabra prior to his arrest.

1 7. In addition to knowing that Superior Drugs illegally distributed controlled substances and
2 prescription drugs based on an online questionnaire, FEDEX knew that Superior Drugs filled orders for
3 Internet pharmacies that were shut down by the DEA or other law enforcement agencies. FEDEX
4 further knew Superior Drugs would fill orders for Internet pharmacies after a fulfillment pharmacy they
5 had been using was shut down by law enforcement. Despite this knowledge, FEDEX continued to
6 distribute controlled substances and prescription drugs for Superior Drugs. For example, when the DEA
7 closed the Waterview fulfillment pharmacy in Maryland, employees in FEDEX's Sales department
8 discussed the fact that CNL Financial, an Internet pharmacy that had used Waterview, had transferred its
9 orders to Superior Drugs. FEDEX continued to ship controlled substances and prescription drugs for
10 CNL Financial from Superior Drugs.

11 C. FEDEX's Internet Pharmacy Policies

12 8. By 2004, illegal Internet pharmacies increasingly were being investigated and closed by
13 DEA and other law enforcement and government agencies, which in turn affected FEDEX's revenue.
14 During this time, Internet pharmacy customers were increasingly causing safety issues for FEDEX
15 drivers in their efforts to secure the controlled substances and prescription drugs they had ordered
16 online. In response to these issues, FEDEX enacted policies and procedures that allowed FEDEX to
17 continue to ship controlled substances and prescription drugs for illegal Internet pharmacies while
18 protecting against lost revenue and addressing its employees' compensation and safety issues.

19 i. *FEDEX's Online Pharmacy Credit Policy*

20 9. In virtually all cases, when law enforcement closed an illegal Internet pharmacy, FEDEX
21 was unable to collect outstanding accounts payable from that customer. To address this issue, beginning
22 in June 2004, FEDEX established an Online Pharmacy Credit Policy that applied only to its Internet
23 pharmacy shippers. Under this policy, all Internet pharmacy shippers had to be approved by the Credit
24 Department prior to opening a new account. Existing Internet pharmacies had to be reviewed by the
25 Credit Department to ensure that they had adequate financial security. In arguing for the Online
26 Pharmacy Credit Policy, FEDEX's Managing Director of Revenue Operations stated "[a]s the past few
27 weeks have unfolded it is becoming more apparent to us that many of these companies are fraudulent
28 and doing business outside Federal regulations." After receiving this e-mail, FEDEX's Vice President

1 of Worldwide Revenue Operations approved FEDEX's continued shipment of drugs pursuant to the
2 proposed Online Pharmacy Credit Policy. The policy was also approved by FEDEX EXPRESS's Chief
3 Financial Officer and FEDEX SERVICES' President of Customer Information Services and Senior Vice
4 President of Sales.

5 10. By 2006, FEDEX had strengthened the Online Pharmacy Credit Policy to require that all
6 online pharmacies be placed on restricted credit terms and provide FEDEX with a security deposit or
7 bank letter of credit. On July 6, 2006, the Credit Policy was circulated to FedEx's Managing Directors
8 of Sales with the following explanation for "Why this is important": "Many of these companies operate
9 outside federal and state regulations over the sale of controlled drugs, which require diagnosis and
10 prescription by a licensed physician. Drugs purchased from these sites may be diluted or counterfeit.
11 Several sites have been shut down by the government without warning or simply disappeared leaving
12 large balances owing to FEDEX."

13 11. Beginning in 2004, FEDEX's Credit analysts maintained a list of FEDEX's online
14 pharmacy customers that was regularly reviewed by FEDEX's Senior Manager and Managing Director
15 of Revenue Operations. As of July 2004, FEDEX employees had identified over 200 accounts that were
16 associated with online pharmacies. By September of 2010, the list had increased to over 600 online
17 pharmacy accounts.

18 *ii. FEDEX's Use of its "Catchall" Classification for Internet Pharmacies*

19 12. FEDEX maintained a Field Sales Department that was responsible for recruiting new
20 customers for FEDEX with potential revenue of up to approximately \$1 million. Within Field Sales,
21 each employee was assigned a fiscal-year sales goal, which was a factor in FEDEX's Variable
22 Compensation Plan. A Sales employee's goal was determined, in part, by the Sales employee's previous
23 year sales. Each year, FEDEX's Sales employees were expected to increase the revenue in their
24 territory. Any customers that were lost were expected to be replaced with new customers with an equal
25 amount of revenue, so that the Sales employee could meet his or her goal for the year.

26 13. Beginning in 2004, Sales employees began to experience revenue losses due to the
27 closure of online pharmacies by law enforcement. At the end of 2005, FEDEX's Sales Department
28 began looking for a streamlined way to address the impact on the Field Sales executives' compensation

1 caused by Internet pharmacy accounts quickly opening, shipping large amounts of express packages,
2 and then being shut down by law enforcement.

3 14. FEDEX maintained a shipping account classification known as "catchall." Catchall
4 accounts were not assigned to specific account executives and did not affect the yearly sales goals of
5 account executives or their managers. In 2006, a group of FEDEX's Sales employees proposed that all
6 online pharmacy accounts be assigned to the catchall classification because, as one Managing Director
7 stated to the Vice President of Field Sales for the Eastern Region, "I can assure you that these types of
8 accounts will always result in a loss at some point. They have a very short lifespan and will eventually
9 be shut down by the DEA."

10 15. On March 29, 2007, a Senior Sales Analyst sent an e-mail to Sales employees informing
11 them that any currently known online pharmacy accounts were to be moved to the "catchall"
12 classification pursuant to an agreement between the Field Sales Vice Presidents. The stated reason for
13 this policy was, "The internet pharmacy industry is governed by strict DEA laws. This type of business
14 is generally very volatile in nature (i.e., here one day and gone the next). There are often numerous
15 large volume shifts associated with internet pharmacies as they move the shipping location often to
16 avoid detection from the DEA."

17 *iii. FEDEX's Holding of Shipments for Internet Pharmacy Customers*

18 16. As early as 2004, FEDEX couriers and customer service agents in Kentucky, Tennessee,
19 and Virginia expressed safety concerns to their management, including the following: FEDEX trucks
20 had been stopped on the road by Internet pharmacy customers demanding packages of pills; delivery
21 addresses included parking lots, schools, and vacant homes where people would wait for deliveries of
22 drugs; customers would jump on FEDEX trucks and demand Internet pharmacy packages; FEDEX
23 drivers were threatened if they insisted on delivering a package to the address instead of giving the
24 package to the customer who demanded it; and customers would use multiple names and identification
25 documents to pick up packages of drugs.

26 17. A FEDEX employee also raised concerns to FEDEX management that some recipients of
27 Internet pharmacy packages were engaged in "doctor shopping," were "known to be selling and using,"
28 and that "some of the recipients have overdosed and died."

1 18. In response to these concerns, FEDEX's Senior Vice President of Security approved a
2 procedure whereby Internet pharmacy packages from problematic shippers were held for pick up at
3 specific stations, rather than delivered to the recipient's address. This policy was eventually expanded
4 to include all Internet pharmacy packages delivered to the stations that were experiencing concerns.
5

6 **COUNT ONE:** (21 U.S.C. § 846 – Conspiracy to Distribute Controlled Substances)

7 19. Paragraphs 1 through 18 are realleged and reincorporated herein by reference.

8 20. Beginning at a time unknown to the grand jury, but no later than January of 2000, and
9 ending on or about February 20, 2008, in the Northern District of California and elsewhere, the
10 defendants,

11 FEDEX CORPORATION;
12 FEDEX EXPRESS, INC.; and
13 FEDEX CORPORATE SERVICES, INC.,

14 together with Vincent Chhabra, Sabina Faruqui, Robert Smoley, RxNetwork, United Mail Pharmacy
15 Services, Icom Group, and others known and unknown to the grand jury, conspired to distribute, and to
16 possess with intent to distribute outside the usual course of professional practice and not for a legitimate
17 medical purpose one or more controlled substances, knowing and intending that the distribution and
18 possession with intent to distribute was outside the usual course of professional practice and not for a
19 legitimate medical purpose, which offense involved substances containing: (a) Phendimetrazine, a
20 Schedule III controlled substance; (b) Ambien, a Schedule IV controlled substance; (c) Phentermine, a
21 Schedule IV controlled substance; (d) Diethylpropion, a Schedule IV controlled substance;
22 (e) Diazepam, a Schedule IV controlled substance; (f) Alprazolam, a Schedule IV controlled substance;
23 (g) Clonazepam, a Schedule IV controlled substance; and (h) Butalbital, a Schedule III controlled
24 substance, in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(D) and (b)(2), all of
25 which conduct was in violation of Title 21, United States Code, Section 846.

26 **Manner and Means of the Conspiracy**

27 It was part of the conspiracy that:

28 A. **Operation of the Chhabra-Smoley Organization**

21. Unindicted co-conspirators Vincent Chhabra and Robert Smoley owned, operated and

1 managed a widespread organization of Internet pharmacy websites, fulfillment pharmacies, and support
2 systems for the purpose of providing controlled substances directly to consumers without valid
3 prescriptions (the "Chhabra-Smoley Organization").

4 22. The Chhabra-Smoley Organization consisted of websites with which Chhabra and
5 Smoley were affiliated, including get-it-on.com, cybrx.com, USAPrescription.com, myrxeasy.com,
6 ezrxovernight.com, fastplanetrx.com, ezmedsonline.com, and others, which offered for sale controlled
7 substances on Schedules III and IV, by means of the Internet, to customers who were only required to
8 complete an online questionnaire and were not examined, diagnosed, or contacted by the physicians who
9 issued the prescriptions in connection with their orders.

10 23. The Chhabra-Smoley Organization also included physicians whom Chhabra and Smoley
11 partnered with, recruited, and hired to review the customers' online questionnaires and to issue
12 prescriptions for controlled substances based solely upon the customers' responses.

13 24. The Chhabra-Smoley Organization also included fulfillment pharmacies that Chhabra
14 and Smoley owned, operated, partnered with, and recruited throughout the United States, including
15 RxNetwork, Next Generation Health Systems, Prescriptions & Travel, Prescription Resources,
16 Lakeridge Pharmacy, C&V Pharmacy, 2U Net-Mail (Choice Rx), Rx Direct, Dipardi Pharmacy, Falks
17 Lignell (Falk's Home Medical Supply), United Mail Pharmacy Services, United Care Pharmacy, Kwic
18 Fill, and Tri-Phasic Pharmacy, among others, to fill invalid prescriptions for controlled substances and
19 to ship those controlled substances to customers in the Northern District of California and elsewhere in
20 the United States.

21 25. The Chhabra-Smoley Organization also included employees and associates whom
22 Chhabra and Smoley hired to call, respond to calls, and send e-mails to existing and prospective
23 customers in the Northern District of California and elsewhere in the United States to solicit orders for
24 controlled substances and refills of invalid prescriptions for controlled substances.

25 26. Chhabra and Smoley arranged for the continuation of the Chhabra-Smoley Organization
26 following Chhabra's December 3, 2003, arrest on charges of violating the CSA, by entering into an
27 arrangement whereby Smoley assumed responsibility for the running of the Chhabra-Smoley
28 Organization.

1 B. FEDEX's Shipment of Illegal Drugs for the Chhabra-Smoley Organization

2 27. FEDEX employees – including those who (a) negotiated and entered into the written
3 agreements with the Chhabra-Smoley Organization on behalf of FEDEX, (b) managed the Chhabra-
4 Smoley Organization accounts for FEDEX, and (c) maintained the Chhabra-Smoley Organization's
5 business relationship with FEDEX, including its credit and payment terms – knew that the Chhabra-
6 Smoley Organization was distributing controlled substances based on prescriptions issued by doctors
7 after reviewing customers' responses to an online questionnaire.

8 28. Chhabra and Smoley and their employees and associates entered into agreements with
9 FEDEX in which FEDEX agreed to ship packages for the Chhabra-Smoley Organization. As part of
10 these agreements, FEDEX opened over 30 accounts for the Chhabra-Smoley Organization, which the
11 Chhabra-Smoley Organization used to illegally distribute controlled substances into the Northern
12 District of California and elsewhere in the United States.

13 29. FEDEX's employees communicated on a regular basis with Chhabra, Smoley, and other
14 employees of the Chhabra-Smoley Organization in writing, by telephone, and in person regarding the
15 Chhabra-Smoley Organization's business trends, volume, and shipping and logistics needs.

16 30. FEDEX employees visited the premises of the Chhabra-Smoley Organization, including
17 its headquarters and the locations of its fulfillment pharmacies. These employees observed the Chhabra-
18 Smoley Organization's operations, including the taking of orders for controlled substances over the
19 telephone and Internet and the filling of orders for controlled substances.

20 31. FEDEX employees observed packages from the Chhabra-Smoley Organization
21 containing pill bottles filled with controlled substances; FEDEX employees assisted with preparing these
22 packages for shipment and subsequently distributed these packages for the Chhabra-Smoley
23 Organization in the Northern District of California and throughout the United States.

24 32. FEDEX employees and their contractors communicated with employees of the Chhabra-
25 Smoley Organization on a regular basis regarding lost, stolen, or delayed FEDEX shipments of
26 controlled substances.

27 33. FEDEX employees knew that online pharmacies and fulfillment pharmacies affiliated
28 with the Chhabra-Smoley Organization were closed down by state and federal law enforcement

1 agencies, including the FDA and DEA, and that their owners, operators, pharmacists, and doctors were
2 indicted, arrested, and convicted of violating the CSA, including:

- 3 a. On July 23, 2002, a FEDEX employee placed a note in FEDEX's electronic
4 account record for Rx Network, "Co has had its license suspended by the state of
5 Florida in an emergency order that said the pharmacy constitutes 'an immediate
6 and serious danger.'"
- 7 b. On November 12, 2003, a FEDEX employee received an e-mail in which she was
8 "advised Rx Network license was suspended for selling illegal prescriptions thru
9 the internet -- I forward email to [the Sales] A/E -- advised cust has to increase
10 weekly pmt to 150,000 to ensure shipping privileges."
- 11 c. On January 30, 2004, a Sales executive informed his co-worker that he should not
12 be responsible for increasing business from the Prescription Resources account, a
13 fulfillment pharmacy for the Chhabra-Smoley Organization, because "State/Fed
14 law closed this facility down about two months ago. It continues to pop up at
15 various places in the country, one step ahead of state regulators, I believe."
- 16 d. In June 2004, FEDEX's Senior Manager of Revenue Operations learned that
17 Chhabra had been indicted for his involvement with Internet drug sales. He
18 further learned that three doctors and two pharmacists involved in the Chhabra-
19 Smoley Organization had pleaded guilty to drug trafficking based on "illegally
20 selling excessive quantities of controlled substances -- diet pills -- through
21 websites by simply having customers fill out online questionnaires without
22 anyone checking the accuracy of the questionnaires."
- 23 e. On March 17, 2006, FEDEX's Managing Director of Sales for the Gulf States
24 Region approved a goal adjustment for the Sales executive responsible for one of
25 Smoley's accounts based on the reason "FDA forced closure of primary supplier
26 for Internet pharmacy. Unable to supply customers with product."
27
28

1 34. In each instance, with the knowledge that these and other members of the Chhabra-
2 Smoley Organization had been subject to law enforcement action for illegally shipping controlled
3 substances, FEDEX continued to deliver controlled substances for the Chhabra-Smoley Organization.

4 35. FEDEX employees knew that the purpose of the Chhabra-Smoley Organization was to
5 provide controlled substances to consumers without the need for a face-to-face meeting with, or physical
6 examination, laboratory tests, or diagnosis, by a physician. FEDEX employees knew that this practice
7 violated the CSA, FDCA, and numerous state laws. FEDEX employees knew that the practice of
8 prescribing medication based solely on a physician's review of an online questionnaire, without a
9 physical examination, laboratory tests, or face-to-face meeting was not in accordance with the usual
10 course of medical and pharmacy practice according to the positions of the AMA, FSMB, NABP, and
11 numerous state laws. FEDEX employees further knew that the Chhabra-Smoley Organization
12 distributed controlled substances to customers who had no legitimate medical need for them.

13 36. FEDEX departed from its usual business practices to participate in and facilitate the
14 Chhabra-Smoley Organization's unlawful sale of controlled substances. According to FEDEX's Service
15 Guide and Tariff, as well as the understanding of its employees, FEDEX did not ship contraband,
16 including illegal drugs, in the usual course of business. FEDEX also deviated from its usual course of
17 business by applying its Online Pharmacy Credit Policy to the Chhabra-Smoley Organization. FEDEX
18 further deviated from its usual course of business by placing assigning accounts associated with the
19 Chhabra-Smoley Organization to the catchall classification for purposes of determining compensation
20 for its sales executives, pursuant to FEDEX's Online Pharmacy Catchall Policy.

21 All in violation of Title 21, United States Code, Section 846.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **COUNTS TWO THROUGH TEN:** (21 U.S.C. § 841 – Distribution of Controlled Substances)

2 37. Paragraphs 1 through 18 and 21 through 36 are realleged and reincorporated herein by
3 reference.

4 38. On or about the dates listed below, in the Northern District of California and elsewhere,
5 the defendants,

6 FEDEX CORPORATION;
7 FEDEX EXPRESS, INC.; and
8 FEDEX CORPORATE SERVICES, INC.,

9 did possess with intent to distribute and distribute outside the usual course of professional practice and
10 not for a legitimate medical purpose one or more controlled substances, knowing and intending that the
11 distribution and possession with intent to distribute was outside the usual course of professional practice
12 and not for a legitimate medical purpose, which offense involved substances containing those listed
13 below:

COUNT	DATE	TRACKING NUMBER	CONTROLLED SUBSTANCE
2	7/19/2007	799181999045	Diethylpropion
3	7/24/2007	799681810394	Phentermine
4	7/24/2007	792529082334	Phentermine
5	7/25/2007	798227118185	Phentermine
6	7/25/2007	790791710858	Phentermine
7	7/26/2007	798726973512	Adipex
8	7/26/2007	790792659716	Phentermine
9	7/27/2007	790792659841	Diazepam
10	7/27/2007	790301123749	Phentermine

24 Each in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(D) and/or (b)(2).

25
26 ///

27 ///

28 ///

1 **COUNT ELEVEN:** (18 U.S.C. § 371 – Conspiracy to Distribute Misbranded Drugs in Interstate
2 Commerce)

3 39. Paragraphs 1 through 18 and 21 through 36 are realleged and reincorporated herein by
4 reference.

5 40. Beginning at a time unknown to the grand jury, but no later than January of 2000, and
6 ending on or about February 20, 2008, in the Northern District of California and elsewhere, the
7 defendants,

8 FEDEX CORPORATION;
9 FEDEX EXPRESS, INC.; and
10 FEDEX CORPORATE SERVICES, INC.,

11 together with Vincent Chhabra, Sabina Faruqui, Robert Smoley, RxNetwork, United Mail Pharmacy
12 Services, Icom Group, and others known and unknown to the grand jury, conspired to distribute and
13 dispense prescription drugs to consumers in various locations throughout the United States, including
14 the Northern District of California, without valid prescriptions from licensed practitioners, which caused
15 the drugs to be misbranded while held for sale after their shipment in interstate commerce, and did so
16 with the intent to defraud and mislead as to a material matter, in violation of Title 21, United States
17 Code, Sections 331(k), 333(a)(1), (a)(2), and 353(b), all of which conduct was in violation of Title 18,
18 United States Code, Section 371.

19 Manner and Means of the Conspiracy

20 It was part of the conspiracy that:

21 41. Paragraphs 1 through 18 and 21 through 36 are realleged and reincorporated herein by
22 reference.

23 42. It is further alleged that each and every aspect of the conduct alleged in paragraphs 21
24 through 36 as the manner and means of the conspiracy involving controlled prescription drugs also
25 involved non-controlled prescription drugs.

26 43. The prescription drugs were distributed with the intent to defraud and mislead in that:

- 27 a. The Chhabra-Smoley Organization and its related online and fulfillment
28 pharmacies falsely and fraudulently represented to consumers and government
agencies that physicians had written valid prescriptions for the drugs they were

1 distributing.

2 b. The Chhabra-Smoley Organization falsely and fraudulently represented to
3 consumers and government agencies that no prescription was required to obtain
4 the controlled and non-controlled prescription drugs advertised on its websites
5 and that the "prescription" issued by a doctor employed by the online pharmacy
6 based solely on his or her review of the responses to an online questionnaire was
7 valid and in accordance with federal and state law.

8 c. The Chhabra-Smoley Organization and its associated fulfillment pharmacies and
9 pharmacists falsely and fraudulently represented to consumers and government
10 agencies that the prescription drugs were dispensed pursuant to valid prescriptions
11 after review by a pharmacist in accordance with federal and state law.

12 d. The Chhabra-Smoley Organization falsely and fraudulently represented to
13 customers who sought to obtain prescription drugs, but who lacked prescriptions
14 from their personal physicians, and to government agencies, that the websites
15 were a legitimate, lawful, safe, and responsible source for these drugs.

16 Overt Acts

17 44. On or about April 26, 2000, FEDEX delivered 30 pills of Meridia, a controlled
18 prescription drug, from ChoiceRx, 14300 Justice Road, Ste. B, Midlothian, Virginia, that had been
19 ordered by FDA agents in Maryland on or about April 7, 2000, from privacyrx.com by completing an
20 online questionnaire.

21 45. On or about February 7, 2001, FEDEX delivered 30 pills of Phentermine, a controlled
22 prescription drug, from Rx Network of Florida, 5400 S University Dr., Ste. 104, Davie, Florida, that had
23 been ordered by the Federation of State Medical Boards (FSMB) on or about February 6, 2001, from
24 eprescribe.com by completing an online questionnaire.

25 46. On or about December 3, 2001, FEDEX delivered 10 pills of Viagra, a prescription drug,
26 from United Mail Pharmacy Services, 800 E Hallandale, Hallandale, Florida, that had been ordered by
27 the FSMB on or about November 30, 2001, from viagraovernight.com by completing an online
28 questionnaire.

1 47. On or about June 28, 2002, FEDEX delivered 30 pills of Phentermine, a controlled
2 prescription drug, from Rx Network, 5400 S University Dr., Ste. 107, Davie, Florida, that had been
3 ordered by agents with the Arkansas Attorney General on or about June 27, 2002, from
4 USAPrescription.com by completing an online questionnaire.

5 48. On or about February 13, 2003, FEDEX delivered 90 pills of Bontril, a controlled
6 prescription drug, from Rx Network of Florida, 5400 S University Dr., Ste. 107, Davie, Florida, that had
7 been ordered by DEA agents in Miami, Florida, on or about February 13, 2003, from eprescribe.com by
8 completing an online questionnaire. The instructions on the website stated that an adult signature would
9 be required for delivery; however, the drugs were shipped to a Mailboxes Etc. and signed for by an
10 employee at the store.

11 49. On or about November 12, 2003, a FEDEX employee received an e-mail in which she
12 was "advised Rx Network license was suspended for selling illegal prescriptions thru the internet – I
13 forward email to [the Sales] A/E – advised cust has to increase weekly pmt to 150,000 to ensure
14 shipping privileges."

15 50. On or about November 25, 2003, FEDEX delivered 30 pills of Ambien, a controlled
16 prescription drug, from C&V Pharmacy, 1803 SW 8th Street, Miami, Florida, that had been ordered by
17 FDA agents in Miami, Florida, on or about November 21, 2003, from medpharmacy.com by filling out
18 an online questionnaire.

19 51. On or about March 4, 2004, FEDEX delivered 10 pills of Cialis, a prescription drug, from
20 United Mail, 800 E Hallandale Bch Blvd #18, Hallandale, Florida, that had been ordered by the FSMB
21 on or about March 3, 2004, from completerxonline.com by filling out an online questionnaire.

22 52. On or about March 31, 2004, FEDEX Credit analysts sent a list of FEDEX's online
23 pharmacy accounts to the Managing Director and Senior Manager of Revenue Operations that included
24 over 20 accounts associated with the Chhabra-Smoley Organization.

25 53. In or about September of 2004, FEDEX's Credit analysts worked with FEDEX's Sales
26 employees to obtain financial security for accounts used by the Chhabra-Smoley Organization pursuant
27 to FEDEX's Online Pharmacy Credit Policy.

28 54. In or about April of 2007, accounts associated with the Chhabra-Smoley Organization

1 were assigned to the catchall classification by FEDEX's Field Sales employees, pursuant to the Online
2 Pharmacy Catchall Policy that had been approved by FEDEX's Field Sales Vice Presidents.

3 55. On or about July 26, 2007, FEDEX delivered 30 pills of Phentermine, a controlled
4 prescription drug, from United Mail Pharmacy, 800 Hallandale Beach Blvd., Hallandale Beach, Florida,
5 that had been ordered by a customer located in Napa, California, on or about July 25, 2007, from
6 fastplanetrx.com by completing an online questionnaire.

7 56. In or about October of 2007, FEDEX's Sales analysts reviewed the placement of
8 accounts associated with the Chhabra-Smoley Organization in catchall and obtained the approval of the
9 Senior Vice President of Field Sales to maintain these "high value" accounts in the catchall
10 classification pursuant to the Online Pharmacy Catchall Policy.

11 57. In or about January of 2008, a FEDEX contractor sent to a FEDEX Security manager a
12 list of packages containing "Red Flag Pharmaceuticals" that had been identified for destruction. The list
13 included a package containing Phentermine, a controlled prescription drug, that had been shipped by
14 FEDEX for United Mail LLC, a fulfillment pharmacy used by the Chhabra-Smoley Organization.

15 All in violation of Title 18, United States Code, Section 371.

16
17 **COUNT TWELVE:** (21 U.S.C. § 846 – Conspiracy to Distribute Controlled Substances)

18 58. Paragraphs 1 through 18 are realleged and reincorporated herein by reference.

19 59. Beginning at a time unknown to the grand jury, but no later than September of 2002, and
20 ending on or about May 12, 2010, in the Northern District of California and elsewhere, the defendants,

21 FEDEX CORPORATION;
22 FEDEX EXPRESS, INC.; and
23 FEDEX CORPORATE SERVICES, INC.,

24 together with Creative Pharmacy Services (doing business as Superior Drugs), Wayne White, Anthony
25 Spence, Christopher Napoli, Sanford Cohen, Orlando Birbragher, Marshall Kanner, David Glass,
26 Michael Bezonsky, Claude Covino, Genetechnica, Physicians Online Network, The Spence Group,
27 Pharmacom, Carmel Management, SaveOn Rx, SafescriptsOnline, Affpower, and others known and
28 unknown to the grand jury, conspired to distribute, and to possess with intent to distribute outside the
usual course of professional practice and not for a legitimate medical purpose one or more controlled

1 substances, knowing and intending that the distribution and possession with intent to distribute was
2 outside the usual course of professional practice and not for a legitimate medical purpose, which offense
3 involved substances containing (a) Phendimetrazine, a Schedule III controlled substance;
4 (b) Phentermine, a Schedule IV controlled substance; (c) Butalbital, a Schedule III controlled substance,
5 and (d) Ambien, a Schedule IV controlled substance, in violation of Title 21, United States Code,
6 Sections 841(a)(1), (b)(1)(D), and (b)(2) (before April 13, 2009), and in violation of Title 21, United
7 States Code, Sections 841(a)(1), (b)(1)(E)(i), (b)(2), (h)(1), and (h)(4) (after April 13, 2009), all of
8 which conduct was in violation of Title 21, United States Code, Section 846.

9 Manner and Means of the Conspiracy

10 It was part of the conspiracy that:

11 A. Operation of Superior Drugs

12 60. Unindicted co-conspirator Wayne White ("White") was the chief pharmacist at Creative
13 Pharmacy Services, doing business as Superior Drugs ("Superior"). White operated Superior as a
14 fulfillment pharmacy that illegally distributed controlled substances without valid prescriptions directly
15 to consumers who had ordered them from Internet pharmacies owned and operated by unindicted co-
16 conspirators Anthony Spence, Christopher Napoli, Sanford Cohen, Orlando Birbragher, Marshall
17 Kanner, David Glass, Michael Bezonsky, and others known and unknown to the grand jury.

18 61. The Internet pharmacies for which Superior filled orders for controlled substances,
19 including discretonlinemeds.com, pricebustersrx.com, safescriptsonline.com, safetrustprocessing.com,
20 rx-max.com, integrarx.com, medscriptsmd.com, dietpillscheap.com, and buymeds.com, offered for sale
21 controlled substances in Schedules III and IV, by means of the Internet, to customers who were only
22 required to complete an online questionnaire and were not examined or diagnosed by the physicians who
23 issued the prescriptions in connection with their orders.

24 62. The Internet pharmacies for which Superior filled orders for controlled substances based
25 on invalid prescriptions partnered with, recruited, and hired throughout the United States and Puerto
26 Rico physicians to review the customers' online questionnaires and to issue invalid prescriptions for
27 controlled substances based solely upon the customers' responses.

28 63. To meet the high demand for illegally obtained controlled substances, the Internet

1 pharmacies for which Superior filled orders for controlled substances based on invalid prescriptions
2 partnered with, recruited, and hired other fulfillment pharmacies throughout the United States, including
3 Gem Pharmacy, Universal Pharmacy, Union Pharmacy, Waterview Pharmacy, United Care Pharmacy,
4 Kwic Fill, and SaveOn Rx, among others, to fill invalid prescriptions for controlled substances and to
5 ship them to customers in the Northern District of California and elsewhere in the United States.

6 64. The Internet pharmacies for which Superior filled orders for controlled substances based
7 on invalid prescriptions hired employees to call, respond to calls, and send e-mails to existing and
8 prospective customers in the Northern District of California and elsewhere in the United States to solicit
9 them to order controlled substances or to refill invalid prescriptions for controlled substances.

10 B. FEDEX's Shipment of Illegal Drugs for Superior

11 65. FEDEX employees, including those (a) who negotiated and entered into the written
12 agreements with Superior and its related Internet and fulfillment pharmacies on behalf of FEDEX,
13 (b) who managed these accounts for FEDEX, and (c) who maintained the business relationship between
14 FEDEX and Superior and its related Internet and fulfillment pharmacies, including credit and payment
15 terms, knew that Superior and its related Internet and fulfillment pharmacies were distributing controlled
16 substances based on prescriptions issued by doctors after only reviewing customers' responses to online
17 questionnaires.

18 66. Unindicted co-conspirators Wayne White, Anthony Spence, Christopher Napoli, Sanford
19 Cohen, Orlando Birbragher, Marshall Kanner, David Glass, Michael Bezonsky, Claude Covino, and
20 others known and unknown to the grand jury and their employees and associates entered into
21 agreements with FEDEX in which FEDEX agreed to ship packages for Superior and the Internet
22 pharmacies for which Superior filled orders for controlled substances based on invalid prescriptions. As
23 part of these agreements, FEDEX opened over 50 accounts for Superior and the Internet pharmacies for
24 which Superior filled orders for controlled substances based on invalid prescriptions. Superior and its
25 related Internet and fulfillment pharmacies used these FEDEX accounts to illegally distribute controlled
26 substances into the Northern District of California and elsewhere in the United States.

27 67. FEDEX's employees communicated on a regular basis with Wayne White, Anthony
28 Spence, Sanford Cohen, Orlando Birbragher, Marshall Kanner, Claude Covino, David Glass, Michael

1 Bezonsky, and other employees of Superior and its related Internet and fulfillment pharmacies in
2 writing, by telephone, and in person regarding, among other things, business trends, volume, and
3 shipping and logistics needs.

4 68. FEDEX employees visited the premises of Superior. These employees observed
5 Superior's operations, including the filling of orders for controlled substances.

6 69. FEDEX employees observed packages from Superior containing pill bottles filled with
7 controlled substances; FEDEX employees assisted with preparing these packages for shipment and
8 subsequently distributed these packages for Superior and its related Internet and fulfillment pharmacies
9 in the Northern District of California and throughout the United States.

10 70. FEDEX employees and their contractors communicated with employees of Superior and
11 its related Internet and fulfillment pharmacies on a regular basis regarding lost, stolen, or delayed
12 FEDEX shipments of controlled substances.

13 71. FEDEX employees knew that the purpose of Superior was to provide controlled
14 substances to consumers without the need for a face-to-face meeting with, or physical examination or
15 laboratory tests by, a physician. FEDEX employees knew that this practice violated the CSA, FDCA,
16 and numerous state laws. FEDEX employees further knew that the practice of prescribing medication
17 based solely on a physician's review of an online questionnaire, without a physical examination,
18 laboratory tests, diagnosis, or face-to-face meeting was not in accordance with the usual course of
19 medical and pharmacy practice according to the positions of the AMA, FSMB, NABP, and numerous
20 state laws. FEDEX employees further knew that Superior distributed controlled substances to customers
21 who had no legitimate medical need for them.

22 72. FEDEX departed from its usual business practices to participate in and facilitate
23 Superior's unlawful sale of controlled substances. According to FEDEX's Service Guide and Tariff, as
24 well as the understanding of its employees, FEDEX did not ship contraband, including illegal drugs, in
25 the usual course of business. FEDEX also deviated from its usual course of business by applying its
26 Online Pharmacy Credit Policy to Superior and its related online and fulfillment pharmacies. FEDEX
27 further deviated from its usual course of business by assigning shipping accounts associated with
28

1 Superior to the catchall classification for purposes of determining compensation for its sales executives
2 pursuant to FEDEX's Online Pharmacy Catchall Policy.

3 73. FEDEX employees knew that Superior and online and fulfillment pharmacies affiliated
4 with Superior were closed down by state and federal law enforcement agencies, including the FDA and
5 DEA, and that their owners, operators, pharmacists, and doctors were indicted, arrested, and convicted
6 of violating the CSA, including:

- 7 a. In June of 2004, a FEDEX Sales manager sent an e-mail regarding Superior
8 stating, "they were shut down for a few days by the DEA and the company they
9 were fulfilling for moved the business to [another fulfillment pharmacy]." The
10 fulfillment pharmacy to which the business was moved when Superior was shut
11 down was also a FEDEX customer.
- 12 b. In March of 2005, the account executive for Superior submitted a request for an
13 adjustment to his sales goals because Superior represented a "significant revenue
14 loss" when "FDA raided their property. No longer ship same volume."
- 15 c. In June of 2004, FEDEX's Senior Manager of Credit learned that the online
16 pharmacy American Medical Services, which had been using Superior to ship its
17 drugs, had been closed down by the FDA and DEA, but was now operating as
18 Dynamic Health Solutions.
- 19 d. In June of 2006, a district sales manager and credit analyst learned that SaveOn
20 Rx owner Claude Covino had stopped shipping drugs from SaveOn Rx because
21 he was under investigation by the DEA. The manager and analyst determined that
22 Covino was using other fulfillment pharmacies, including Superior Drugs, to
23 continue to ship controlled substances for Internet pharmacies while avoiding
24 detection by the DEA.

25 74. After April 13, 2009, FEDEX continued to distribute controlled substances for Superior
26 Drugs that had been obtained by means of the Internet, despite the fact that neither Superior Drugs, nor
27 any of the websites that referred orders to Superior Drugs, had obtained a modified DEA registration,
28 despite the fact that the websites did not display any of the statements required by 21 U.S.C. § 831, and

1 despite the fact that prescriptions were issued by doctors employed by the online pharmacies after either
2 review of an online questionnaire or after reviewing a report of a physical examination conducted by a
3 physician who was not unavailable at the time the prescription was issued and who had not requested
4 that the doctor employed by the online pharmacy serve as a covering physician.

5 All in violation of Title 21, United States Code, Section 846.

6
7 **COUNTS THIRTEEN AND FOURTEEN:** (21 U.S.C. § 841 – Distribution of Controlled Substances)

8 75. Paragraphs 1 through 18 and 60 through 74 are realleged and reincorporated herein by
9 reference.

10 76. On or about the dates listed below, in the Northern District of California and elsewhere,
11 the defendants,

12 FEDEX CORPORATION;
13 FEDEX EXPRESS, INC.; and
14 FEDEX CORPORATE SERVICES, INC.,

15 did possess with intent to distribute and distribute outside the usual course of professional practice and
16 not for a legitimate medical purpose controlled substances knowing and intending that the distribution
17 and possession with intent to distribute was outside the usual course of professional practice and not for
18 a legitimate medical purpose, which offense involved substances containing those listed below:

COUNT	DATE	TRACKING NUMBER	CONTROLLED SUBSTANCE
13	2/7/2008	960103326342	Phentermine
14	5/27/2008	798448652979	Phentermine

21 Each in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(2).

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1 **COUNT FIFTEEN:** (18 U.S.C. § 371 – Conspiracy to Distribute Misbranded Drugs in Interstate
2 Commerce)

3 77. Paragraphs 1 through 18 and 60 through 74 are realleged and reincorporated herein by
4 reference.

5 78. Beginning at a time unknown to the grand jury, but no later than September of 2002, and
6 ending on or about May 12, 2010, in the Northern District of California and elsewhere, the defendants,

7 FEDEX CORPORATION;
8 FEDEX EXPRESS, INC.; and
9 FEDEX CORPORATE SERVICES, INC.,

10 together with Creative Pharmacy Services (doing business as Superior Drugs), Wayne White, Anthony
11 Spence, Christopher Napoli, Sanford Cohen, Orlando Birbragher, Marshall Kanner, David Glass,
12 Michael Bezonsky, Claude Covino, Genetechnica, Physicians Online Network, The Spence Group,
13 Pharmacom, Carmel Management, SaveOn Rx, SafescriptsOnline, Affpower, and others known and
14 unknown to the grand jury, conspired to dispense and distribute prescription drugs, including the
15 prescription drugs identified in paragraphs 10 and 18, to consumers in various locations throughout the
16 United States, including the Northern District of California, without valid prescriptions from licensed
17 practitioners, which caused the drugs to be misbranded while held for sale after their shipment in
18 interstate commerce, and did so with the intent to defraud and mislead as to a material matter, in
19 violation of Title 21, United States Code, Sections 331(k), 333(a)(1), (a)(2), and 353(b), all of which
20 conduct was in violation of Title 18, United States Code, Section 371.

21 Manner and Means of the Conspiracy

22 It was part of the conspiracy that:

23 79. Paragraphs 1 through 18 and 60 through 74 are realleged and reincorporated herein by
24 reference.

25 80. Each and every aspect of the conduct alleged in paragraphs 60 through 74 as the manner
26 and means of the conspiracy involving controlled prescription drugs also involved non-controlled
27 prescription drugs.

28 81. The prescription drugs were distributed with the intent to defraud and mislead in that:

a. Superior and its related online and fulfillment pharmacies falsely and fraudulently

1 represented to consumers and government agencies that physicians had written
2 valid prescriptions for the drugs they were distributing.

3 b. The online pharmacies falsely and fraudulently represented to consumers and
4 government agencies that no prescription was required to obtain the controlled
5 and non-controlled prescription drugs advertised on their websites and that the
6 "prescription" issued by a doctor employed by the online pharmacy based solely
7 on his or her review of the responses to an online questionnaire was valid and in
8 accordance with federal and state law.

9 c. Superior and its associated fulfillment pharmacies and pharmacists falsely and
10 fraudulently represented to consumers and government agencies that the
11 prescription drugs were dispensed pursuant to valid prescriptions after review by
12 a pharmacist in accordance with federal and state law.

13 d. The Internet pharmacies falsely and fraudulently represented to customers who
14 sought to obtain prescription drugs, but who lacked prescriptions from their
15 personal physicians, and to government agencies, that the websites were a
16 legitimate, lawful, safe, and responsible source for these drugs.

17 Overt Acts

18 82. On or about August 5, 2002, FEDEX delivered 30 pills of Phentermine, a controlled
19 prescription drug, from Superior that had been ordered by FDA agents in Miami, Florida, on or about
20 June 18, 2002, from medscriptsmid.com by completing an online questionnaire.

21 83. On or about April 8, 2003, FEDEX delivered 30 pills of Bontril, a controlled prescription
22 drug, from Superior that had been ordered by DEA agents in Seattle, Washington, on or about April 4,
23 2003, from integrarx.com by completing an online questionnaire.

24 84. On or about May 10, 2004, employees in FEDEX's Credit Department prepared a list of
25 FEDEX's online pharmacy customers for FEDEX EXPRESS's Chief Financial Officer. Accounts used
26 by Superior were included on this list.

27 85. In or about September of 2004, employees in FEDEX's Credit Department worked with
28 employees in FEDEX's Sales Department to obtain financial security for accounts used by Superior

1 pursuant to FEDEX's Online Pharmacy Credit Policy.

2 86. On or about September 26, 2005, FEDEX delivered 10 pills of Cialis, a prescription drug,
3 from Superior that had been ordered by the Federation of State Medical Boards (FSMB) on or about
4 September 21, 2005, from order-viagra-online.net by completing an online questionnaire.

5 87. On or about February 27, 2006, FEDEX delivered 60 pills of Phentermine, a controlled
6 prescription drug, from Kwic Fill, Inc. to fill an order placed by DEA agents in San Jose, California, on
7 or about February 24, 2006, for 30 pills of Phentermine from safescriptsonline.com by completing an
8 online questionnaire. FEDEX billed the shipping charges to the account for Superior Drugs.

9 88. In or about May of 2007, accounts used by Superior were assigned to the catchall
10 classification pursuant to FEDEX's Online Pharmacy Sales Catchall Policy.

11 89. On or about May 30, 2008, FEDEX shipped Phentermine, a controlled prescription drug,
12 from Superior to San Mateo, California, in response to an order placed by a customer on or about May
13 27, 2008 from the RxSource Network by completing an online questionnaire.

14 90. On or about August 7, 2009, FEDEX delivered 30 pills of Phentermine, a controlled
15 prescription drug, from Superior that had been ordered by DEA agents in Philadelphia, Pennsylvania, on
16 or about June 1, 2009, from discretonlinemeds.com by completing an online questionnaire and
17 submitting a fictitious report of physical examination that had been created by the agents without the
18 input of a doctor.

19 91. On or about November 2, 2009, FEDEX delivered 90 pills of Butalbital, a controlled
20 prescription drug, from Superior that had been ordered by FDA agents in Philadelphia, Pennsylvania, on
21 or about October 26, 2009, from discretonlinemeds.com by completing an online questionnaire.

22 All in violation of Title 18, United States Code, Section 371.

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1 **FORFEITURE ALLEGATION:**

2 92. Paragraphs 1 through 91 of this Indictment are realleged and fully incorporated herein by
3 reference for the purpose of alleging forfeiture.

4 93. Upon a conviction of any of the offenses alleged in Counts One through Ten and Twelve
5 through Fourteen, the defendants,

6 FEDEX CORPORATION;
7 FEDEX EXPRESS, INC.; and
8 FEDEX CORPORATE SERVICES, INC.,

9 shall forfeit to the United States, pursuant to Title 21, United States Code, Sections 853(a)(1) and (2),
10 any property constituting and derived from any proceeds defendants obtained, directly or indirectly, as a
11 result of said violations, and any property used, or intended to be used, in any manner or part, to commit
12 or to facilitate the commission of said violations.

13 94. Upon a conviction of any of the offenses alleged in Counts Eleven and Fifteen, the
14 defendants,

15 FEDEX CORPORATION;
16 FEDEX EXPRESS, INC.; and
17 FEDEX CORPORATE SERVICES, INC.,

18 shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), any
19 property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds
20 traceable to the commission of said offenses.

21 95. If any of said property, as a result of any act or omission of the defendants:

- 22 a. cannot be located upon the exercise of due diligence;
23 b. has been transferred to, sold to, or deposited with a third person;
24 c. has been placed beyond the jurisdiction of the Court;
25 d. has been substantially diminished in value; or
26 e. has been commingled with other property which cannot be subdivided without
27 difficulty;

28 any and all interest defendants have in other property shall be vested in the United States and forfeited to
the United States pursuant to Title 21, United States Code, Section 853(p), Title 28, United States Code,
Section 2461(c), and Rule 32.2 of the Federal Rules of Criminal Procedure.

1 SENTENCING ALLEGATION

2 96. With respect to the charges in this Indictment, for purposes of determining the alternative
3 maximum fine pursuant to Title 18, United States Code, Section 3571(d), the defendants,

4 FEDEX CORPORATION,
5 FEDEX EXPRESS, INC., and
6 FEDEX CORPORATE SERVICES, INC.,

7 and their coconspirators derived gross gains of at least \$820,000,000.

8 DATED: July 17, 2014

A TRUE BILL.

9
10 Nancy J. Peterson
11 FOREPERSON

12 MELINDA HAAG
13 United States Attorney

14 J. Douglas Wilson
15 J. DOUGLAS WILSON
16 Chief, Criminal Division

17 (Approved as to form: [Signature]
18 AUSA Ault

United States District Court
Northern District of California

FILED

2014 JUL 17 P 2:14

CRIMINAL COVER SHEET

U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Instructions: Effective January 3, 2012, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case.

WHO

Case Name:

Case Number:

USA v. FEDEX CORP., FEDEX EXPRESS, FEDEX SVCS.

CR 14 380

Total Number of Defendants:

Is This Case Under Seal?

1

2-7

8 or more

Yes

No

Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?

Yes

No

Venue (Per Crim. L.R. 18-1):

SF

OAK

SJ

EUR

MON

Is any defendant charged with a death-penalty-eligible crime?

Yes

No

Assigned AUSA (Lead Attorney):

Kirstin M. Ault

Is this a RICO Act gang case?

Yes

No

Date Submitted:

7/17/2014

Comments:

Saves

Print

Clear Form