

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FILED

VENUE: SAN FRANCISCO

AUG 14 2014

UNITED STATES OF AMERICA,

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

v.

FEDEX CORPORATION,
FEDERAL EXPRESS CORPORATION,
(a/k/a FEDEX EXPRESS), and
FEDEX CORPORATE SERVICES, INC.,

DEFENDANT(S).

SUPERSEDING 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. § 1956 - Conspiracy to Launder Money;
- 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 14th day of

August 2014

Jim Paul
Clerk

Bail, \$ NO FERRY

Nathanael Cousins
Nathanael Cousins
United States Magistrate Judge

FILED

AUG 14 2014

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 MELINDA HAAG (CABN 132612)
United States Attorney

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

11 UNITED STATES OF AMERICA,) NO. CR 14-380 CRB
12 Plaintiff,)
13 v.) VIOLATIONS: 21 U.S.C. § 846 – Conspiracy to
14 FEDEX CORPORATION,) Distribute Controlled Substances;
15 FEDERAL EXPRESS CORPORATION,) 21 U.S.C. § 841 – Distribution of Controlled
(A/K/A FEDEX EXPRESS), and) Substances;
16 FEDEX CORPORATE SERVICES, INC.,) 18 U.S.C. § 371 – Conspiracy to Distribute
17 Defendants.) Misbranded Drugs;
18) 21 U.S.C. §§ 331, 333, and 353 – Misbranding Drugs;
19) 18 U.S.C. § 1956 – Conspiracy to Launder Money;
20) 18 U.S.C. §§ 982; 21 U.S.C. § 853 and 28 U.S.C.
21) § 2461 – Forfeiture
22)
23) SAN FRANCISCO VENUE

24 SUPERSEDING INDICTMENT

25 The Grand Jury charges:

26 INTRODUCTORY ALLEGATIONS

27 At all times relevant to this Superseding Indictment:

28 Defendants

1. Defendants FEDEX CORPORATION, FEDERAL EXPRESS CORPORATION
("FEDEX EXPRESS"), and FEDEX CORPORATE SERVICES, INC. ("FEDEX SERVICES")
(collectively, "FEDEX"), were package delivery companies and providers of specialized transportation
and logistics services that delivered packages to persons located in the Northern District of California
and throughout the United States. FEDEX EXPRESS and FEDEX SERVICES were wholly owned

1 subsidiaries of FEDEX CORPORATION.

2 Summary of Alleged Conduct

3 A. Illegal Internet Pharmacies

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

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

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

1 filling them were acting outside the usual course of professional practice and not for a legitimate
2 medical purpose, according to guidelines published by the American Medical Association (AMA),
3 Federation of State Medical Boards (FSMB), and National Association of Boards of Pharmacy (NABP).

4 B. The Chhabra-Smoley Organization and Superior Drugs

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

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

28 7. In addition to knowing that Superior Drugs illegally distributed controlled substances and

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

10 C. FEDEX's Internet Pharmacy Policies

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

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

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

1 proposed Online Pharmacy Credit Policy. The policy was also approved by FEDEX EXPRESS's Chief
2 Financial Officer and FEDEX SERVICES' President of Customer Information Services and Senior Vice
3 President of Sales.

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

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

17 12. On two occasions, in July of 2004 and December of 2005, FEDEX's Senior Vice
18 President of Corporate Security testified before congressional committees on the subject of the illegal
19 distribution of controlled substances and prescription drugs by online pharmacies. FEDEX's Senior
20 Vice President testified under oath that "[t]hese so-called Internet pharmacies are virtual entities and
21 cannot be linked by us to a shipping site, unless law enforcement makes that association for us."
22 However, in July of 2004, FEDEX's Credit Department had a list of more than 200 FEDEX accounts
23 that FEDEX employees had identified as Internet pharmacies and were able to link to a shipping site. In
24 December of 2005, there were more than 250 FEDEX accounts on FEDEX's list of Internet pharmacies
25 that FEDEX's employees were able to link to shipping sites.

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

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

9 14. Beginning in 2004, Sales employees began to experience revenue losses due to the
10 closure of online pharmacies by law enforcement. At the end of 2005, FEDEX's Sales Department
11 began looking for a streamlined way to address the impact on the Field Sales executives' compensation
12 caused by Internet pharmacy accounts quickly opening, shipping large amounts of express packages,
13 and then being shut down by law enforcement.

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

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

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

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

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

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

17 20. FEDEX employees, including its Vice President of Worldwide Revenue Operations and
18 Managing Director of Security, were aware that its online pharmacy customers were shipping drugs to
19 drug addicts who had died after FEDEX delivered drugs to them, including:

20 a. A customer service representative and Security manager in Kentucky discussed a
21 recipient who was found dead of a drug overdose one day after she had picked up
22 a package at a FEDEX station from an online pharmacy. The deceased woman
23 was well known to FEDEX employees as she had been receiving multiple
24 packages from online pharmacies.

25 b. A memorandum drafted by FEDEX's Senior Manager of Revenue Operations and
26 sent to FEDEX's Vice President of Worldwide Revenue Operations stated,
27 "Many online pharmacy customers have been closed by the federal government
28 due to fraud and illegal sales of controlled pharmaceutical products. In a recent

1 case, a teenager died after being illegally supplied with a controlled drug that was
2 delivered by FEDEX.”

3 21. FEDEX delivered controlled substances and prescription drugs from online pharmacies to
4 individuals who subsequently died or accidentally caused the death of others, including but not limited
5 to on or about: August 6, 2002, November 8, 2005, February 24, 2006, March 16, 2006, and March 20,
6 2009.

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

2 22. Paragraphs 1 through 21 are realleged and reincorporated herein by reference.

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

6 FEDEX CORPORATION,
7 FEDERAL EXPRESS CORPORATION,
8 (A/K/A FEDEX EXPRESS), and
9 FEDEX CORPORATE SERVICES, INC.,

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

22 Manner and Means of the Conspiracy

23 It was part of the conspiracy that:

24 A. Operation of the Chhabra-Smoley Organization

25 24. Unindicted co-conspirators Vincent Chhabra and Robert Smoley owned, operated and
26 managed a widespread organization of Internet pharmacy websites, fulfillment pharmacies, and support
27 systems for the purpose of providing controlled substances directly to consumers without valid
28 prescriptions (the “Chhabra-Smoley Organization”).

25. The Chhabra-Smoley Organization consisted of websites with which Chhabra and

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

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

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

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

21 29. Chhabra and Smoley arranged for the continuation of the Chhabra-Smoley Organization
22 following Chhabra's December 3, 2003, arrest on charges of violating the CSA, by entering into an
23 arrangement whereby Smoley assumed responsibility for the running of the Chhabra-Smoley
24 Organization.

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

26 30. FEDEX employees – including those who (a) negotiated and entered into the written
27 agreements with the Chhabra-Smoley Organization on behalf of FEDEX, (b) managed the Chhabra-
28 Smoley Organization accounts for FEDEX, and (c) maintained the Chhabra-Smoley Organization's

1 business relationship with FEDEX, including its credit and payment terms – knew that the Chhabra-
2 Smoley Organization was distributing controlled substances based on prescriptions issued by doctors
3 after reviewing customers’ responses to an online questionnaire.

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

9 32. FEDEX’s employees communicated on a regular basis with Chhabra, Smoley, and other
10 employees of the Chhabra-Smoley Organization in writing, by telephone, and in person regarding the
11 Chhabra-Smoley Organization’s business trends, volume, and shipping and logistics needs.

12 33. FEDEX employees visited the premises of the Chhabra-Smoley Organization, including
13 its headquarters and the locations of its fulfillment pharmacies. These employees observed the Chhabra-
14 Smoley Organization’s operations, including the taking of orders for controlled substances over the
15 telephone and Internet and the filling of orders for controlled substances.

16 34. FEDEX employees observed packages from the Chhabra-Smoley Organization
17 containing pill bottles filled with controlled substances; FEDEX employees assisted with preparing these
18 packages for shipment and subsequently distributed these packages for the Chhabra-Smoley
19 Organization in the Northern District of California and throughout the United States.

20 35. FEDEX employees and their contractors communicated with employees of the Chhabra-
21 Smoley Organization on a regular basis regarding lost, stolen, or delayed FEDEX shipments of
22 controlled substances.

23 36. FEDEX employees knew that online pharmacies and fulfillment pharmacies affiliated
24 with the Chhabra-Smoley Organization were closed down by state and federal law enforcement
25 agencies, including the FDA and DEA, and that their owners, operators, pharmacists, and doctors were
26 indicted, arrested, and convicted of violating the CSA, including:

- 27 a. On July 23, 2002, a FEDEX employee placed a note in FEDEX’s electronic
28 account record for Rx Network, “Co has had its license suspended by the state of

1 Florida in an emergency order that said the pharmacy constitutes ‘an immediate
2 and serious danger.’”

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

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

26 38. FEDEX employees knew that the purpose of the Chhabra-Smoley Organization was to
27 provide controlled substances to consumers without the need for a face-to-face meeting with, or physical
28 examination, laboratory tests, or diagnosis, by a physician. FEDEX employees knew that this practice

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

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

15 40. FEDEX knew that controlled substances were distributed to consumers by the Chhabra-
16 Smoley Organization without regard to the age of the buyers and were a likely means by which
17 underage persons obtained controlled substances absent the supervision of an attending physician.
18 Although FEDEX had an "adult-signature" service that it mandated be used by all alcohol shippers,
19 FEDEX did not require that this service be used by the Chhabra-Smoley Organization. Even when the
20 Chhabra-Smoley Organization voluntarily used this service, FEDEX allowed packages to be re-routed at
21 the direction of the customer or left at a third-party vendor. FEDEX's employees knew that underage
22 customers could use these services to avoid the adult-signature requirement.

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

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

2 41. Paragraphs 1 through 21 and 24 through 40 are realleged and reincorporated herein by
3 reference.

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

6 FEDEX CORPORATION,
7 FEDERAL EXPRESS CORPORATION,
8 (A/K/A FEDEX EXPRESS), and
9 FEDEX CORPORATE SERVICES, INC.,

10 did possess with intent to distribute and distribute outside the usual course of professional practice and
11 not for a legitimate medical purpose one or more controlled substances, knowing and intending that the
12 distribution and possession with intent to distribute was outside the usual course of professional practice
13 and not for a legitimate medical purpose, which offense involved substances containing those listed
14 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

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

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

3 43. Paragraphs 1 through 21 and 24 through 40 are realleged and reincorporated herein by
4 reference.

5 44. 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 FEDERAL EXPRESS CORPORATION,
10 (A/K/A FEDEX EXPRESS), and
11 FEDEX CORPORATE SERVICES, INC.,

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

20 Manner and Means of the Conspiracy

21 It was part of the conspiracy that:

22 45. Paragraphs 1 through 21 and 24 through 40 are realleged and reincorporated herein by
23 reference.

24 46. It is further alleged that each and every aspect of the conduct alleged in paragraphs 24
25 through 40 as the manner and means of the conspiracy involving controlled prescription drugs also
26 involved non-controlled prescription drugs.

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

- 28 a. The Chhabra-Smoley Organization and its related online and fulfillment
pharmacies falsely and fraudulently represented to consumers and government

1 agencies that physicians had written valid prescriptions for the drugs they were
2 distributing.

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

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

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

17 Overt Acts

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

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

26 50. On or about December 3, 2001, FEDEX delivered 10 pills of Viagra, a prescription drug,
27 from United Mail Pharmacy Services, 800 E Hallandale, Hallandale, Florida, that had been ordered by
28

1 the FSMB on or about November 30, 2001, from viagraovernight.com by completing an online
2 questionnaire.

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

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

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

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

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

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

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

4 58. In or about April of 2007, accounts associated with the Chhabra-Smoley Organization
5 were assigned to the catchall classification by FEDEX's Field Sales employees, pursuant to the Online
6 Pharmacy Catchall Policy that had been approved by FEDEX's Field Sales Vice Presidents.

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

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

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

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

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1 **COUNT TWELVE: (18 U.S.C. § 1956 – Conspiracy to Launder Money)**

2 62. Paragraphs 1 through 21, 24 through 40, and 46 through 61 are realleged and
3 reincorporated herein by reference.

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

7 FEDEX CORPORATION,
8 FEDERAL EXPRESS CORPORATION,
9 (A/K/A FEDEX EXPRESS), and
FEDEX CORPORATE SERVICES, INC.,

10 together with Vincent Chhabra, Sabina Faruqui, Robert Smoley, RxNetwork, United Mail Pharmacy
11 Services, Icom Group, and others known and unknown to the grand jury, did knowingly and
12 intentionally conspire to conduct a financial transaction involving the proceeds of a specified unlawful
13 activity, knowing that the property involved in the financial transaction represented proceeds of some
14 form of unlawful activity, and intending to promote the carrying on of the specified unlawful activity, to
15 wit: the possession with intent to distribute and distribution of controlled substances outside the usual
16 course of professional practice and not for a legitimate medical purpose, knowing and intending that the
17 possession with intent to distribute and distribution was outside the usual course of professional practice
18 and not for a legitimate medical purpose, in violation of Title 21, United States Code, Sections 841(a),
19 841(b)(1)(D), (b)(2), and 846, all of which conduct was in violation of Title 18, United States Code,
20 Sections 1956(a)(1)(A)(i) and (h).

21 Manner and Means of the Conspiracy

22 It was part of the conspiracy that:

23 64. Paragraphs 1 through 21, 24 through 40, and 46 through 61 are realleged and
24 reincorporated herein by reference.

25 65. For each package containing controlled substances that FEDEX knowingly and
26 intentionally distributed outside the usual course of professional practice and not for a legitimate
27 medical purpose for the Chhabra-Smoley Organization, FEDEX requested payment for providing
28 shipping services.

1 66. Chhabra, Smoley, and their co-conspirators made payments in the form of wire transfers,
2 checks, direct debit, credit card charges, and payments by telephone to FEDEX for FEDEX's shipment
3 of controlled substances obtained outside the usual course of professional practice and not for a
4 legitimate medical purpose for the Chhabra-Smoley Organization.

5 67. The payments made to FEDEX by Chhabra, Smoley, and their co-conspirators
6 represented proceeds of the illegal sale of controlled substances by the Chhabra-Smoley Organization.

7 68. FEDEX employees knew that the payments from members of the Chhabra-Smoley
8 Organization represented the proceeds of the sale of controlled substances and prescription drugs based
9 on invalid prescriptions that were issued outside the usual course of professional practice and not for a
10 legitimate medical purpose.

11 69. The payments made by the Chhabra-Smoley Organization to FEDEX for the shipment of
12 controlled substances knowingly and intentionally outside the usual course of professional practice and
13 not for a legitimate medical purpose, which payments were made with the proceeds of the unlawful sale
14 of controlled substances, included, but were not limited to:

Date	Payer	Amount
4/24/2000	2U-Netmail LLC	\$ 56,951
12/15/2000	VKC Consulting, LLC	\$ 75,000
1/8/2002	USA Prescription, Inc.	\$ 245,944
12/21/2004	Robert Smoley (American Express)	\$ 3,779
6/7/2005	Robert Smoley (American Express)	\$ 7,734
9/12/2005	Robert Smoley (American Express)	\$ 4,295
12/13/2006	Robert Smoley (American Express)	\$ 4,573
7/26/2007	Robert Smoley (American Express)	\$ 10,558
11/1/2007	Robert Smoley (American Express)	\$ 3,649

25
26 All in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and (h).

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

2 70. Paragraphs 1 through 21 are realleged and reincorporated herein by reference.

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

5 FEDEX CORPORATION,
6 FEDERAL EXPRESS CORPORATION,
7 (A/K/A FEDEX EXPRESS), and
8 FEDEX CORPORATE SERVICES, INC.,

9 together with Creative Pharmacy Services (doing business as Superior Drugs), Wayne White, Anthony
10 Spence, Christopher Napoli, Sanford Cohen, Orlando Birbragher, Marshall Kanner, David Glass,
11 Michael Bezonsky, Claude Covino, Genetechnica, Physicians Online Network, The Spence Group,
12 Pharmacom, Carmel Management, SaveOn Rx, SafescriptsOnline, Affpower, and others known and
13 unknown to the grand jury, conspired to distribute, and to possess with intent to distribute outside the
14 usual course of professional practice and not for a legitimate medical purpose one or more controlled
15 substances, knowing and intending that the distribution and possession with intent to distribute was
16 outside the usual course of professional practice and not for a legitimate medical purpose, which offense
17 involved substances containing (a) Phendimetrazine, a Schedule III controlled substance;
18 (b) Phentermine, a Schedule IV controlled substance; (c) Butalbital, a Schedule III controlled substance,
19 and (d) Ambien, a Schedule IV controlled substance, in violation of Title 21, United States Code,
20 Sections 841(a)(1), (b)(1)(D), and (b)(2) (before April 13, 2009), and in violation of Title 21, United
21 States Code, Sections 841(a)(1), (b)(1)(E)(i), (b)(2), (h)(1), and (h)(4) (after April 13, 2009), all of
22 which conduct was in violation of Title 21, United States Code, Section 846.

23 Manner and Means of the Conspiracy

24 It was part of the conspiracy that:

25 A. Operation of Superior Drugs

26 72. Unindicted co-conspirator Wayne White (“White”) was the chief pharmacist at Creative
27 Pharmacy Services, doing business as Superior Drugs (“Superior”). White operated Superior as a
28 fulfillment pharmacy that illegally distributed controlled substances without valid prescriptions directly
to consumers who had ordered them from Internet pharmacies owned and operated by unindicted co-

1 conspirators Anthony Spence, Christopher Napoli, Sanford Cohen, Orlando Birbragher, Marshall
2 Kanner, David Glass, Michael Bezonsky, and others known and unknown to the grand jury.

3 73. The Internet pharmacies for which Superior filled orders for controlled substances,
4 including discreetonlinemed.com, pricebustersrx.com, safescriptsonline.com, safetrustprocessing.com,
5 rx-max.com, integrarx.com, medscriptsm.com, dietpillscheap.com, and buymeds.com, offered for sale
6 controlled substances in Schedules III and IV, by means of the Internet, to customers who were only
7 required to complete an online questionnaire and were not examined or diagnosed by the physicians who
8 issued the prescriptions in connection with their orders.

9 74. The Internet pharmacies for which Superior filled orders for controlled substances based
10 on invalid prescriptions partnered with, recruited, and hired throughout the United States and Puerto
11 Rico physicians to review the customers' online questionnaires and to issue invalid prescriptions for
12 controlled substances based solely upon the customers' responses.

13 75. To meet the high demand for illegally obtained controlled substances, the Internet
14 pharmacies for which Superior filled orders for controlled substances based on invalid prescriptions
15 partnered with, recruited, and hired other fulfillment pharmacies throughout the United States, including
16 Gem Pharmacy, Universal Pharmacy, Union Pharmacy, Waterview Pharmacy, United Care Pharmacy,
17 Kwic Fill, and SaveOn Rx, among others, to fill invalid prescriptions for controlled substances and to
18 ship them to customers in the Northern District of California and elsewhere in the United States.

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

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

24 77. FEDEX employees, including those (a) who negotiated and entered into the written
25 agreements with Superior and its related Internet and fulfillment pharmacies on behalf of FEDEX,
26 (b) who managed these accounts for FEDEX, and (c) who maintained the business relationship between
27 FEDEX and Superior and its related Internet and fulfillment pharmacies, including credit and payment
28 terms, knew that Superior and its related Internet and fulfillment pharmacies were distributing controlled

1 substances based on prescriptions issued by doctors after only reviewing customers' responses to online
2 questionnaires.

3 78. Unindicted co-conspirators Wayne White, Anthony Spence, Christopher Napoli, Sanford
4 Cohen, Orlando Birbragher, Marshall Kanner, David Glass, Michael Bezonsky, Claude Covino, and
5 others known and unknown to the grand jury and their employees and associates entered into
6 agreements with FEDEX in which FEDEX agreed to ship packages for Superior and the Internet
7 pharmacies for which Superior filled orders for controlled substances based on invalid prescriptions. As
8 part of these agreements, FEDEX opened over 50 accounts for Superior and the Internet pharmacies for
9 which Superior filled orders for controlled substances based on invalid prescriptions. Superior and its
10 related Internet and fulfillment pharmacies used these FEDEX accounts to illegally distribute controlled
11 substances into the Northern District of California and elsewhere in the United States.

12 79. FEDEX's employees communicated on a regular basis with Wayne White, Anthony
13 Spence, Sanford Cohen, Orlando Birbragher, Marshall Kanner, Claude Covino, David Glass, Michael
14 Bezonsky, and other employees of Superior and its related Internet and fulfillment pharmacies in
15 writing, by telephone, and in person regarding, among other things, business trends, volume, and
16 shipping and logistics needs.

17 80. FEDEX employees visited the premises of Superior. These employees observed
18 Superior's operations, including the filling of orders for controlled substances.

19 81. FEDEX employees observed packages from Superior containing pill bottles filled with
20 controlled substances; FEDEX employees assisted with preparing these packages for shipment and
21 subsequently distributed these packages for Superior and its related Internet and fulfillment pharmacies
22 in the Northern District of California and throughout the United States.

23 82. FEDEX employees and their contractors communicated with employees of Superior and
24 its related Internet and fulfillment pharmacies on a regular basis regarding lost, stolen, or delayed
25 FEDEX shipments of controlled substances.

26 83. FEDEX employees knew that the purpose of Superior was to provide controlled
27 substances to consumers without the need for a face-to-face meeting with, or physical examination or
28 laboratory tests by, a physician. FEDEX employees knew that this practice violated the CSA, FDCA,

1 and numerous state laws. FEDEX employees further knew that the practice of prescribing medication
2 based solely on a physician's review of an online questionnaire, without a physical examination,
3 laboratory tests, diagnosis, or face-to-face meeting was not in accordance with the usual course of
4 medical and pharmacy practice according to the positions of the AMA, FSMB, NABP, and numerous
5 state laws. FEDEX employees further knew that Superior distributed controlled substances to customers
6 who had no legitimate medical need for them.

7 84. FEDEX departed from its usual business practices to participate in and facilitate
8 Superior's unlawful sale of controlled substances. According to FEDEX's Service Guide and Tariff, as
9 well as the understanding of its employees, FEDEX did not ship contraband, including illegal drugs, in
10 the usual course of business. FEDEX also deviated from its usual course of business by applying its
11 Online Pharmacy Credit Policy to Superior and its related online and fulfillment pharmacies. FEDEX
12 further deviated from its usual course of business by assigning shipping accounts associated with
13 Superior to the catchall classification for purposes of determining compensation for its sales executives
14 pursuant to FEDEX's Online Pharmacy Catchall Policy.

15 85. FEDEX employees knew that Superior and online and fulfillment pharmacies affiliated
16 with Superior were closed down by state and federal law enforcement agencies, including the FDA and
17 DEA, and that their owners, operators, pharmacists, and doctors were indicted, arrested, and convicted
18 of violating the CSA, including:

- 19 a. In June of 2004, a FEDEX Sales manager sent an e-mail regarding Superior
20 stating, "they were shut down for a few days by the DEA and the company they
21 were fulfilling for moved the business to [another fulfillment pharmacy]." The
22 fulfillment pharmacy to which the business was moved when Superior was shut
23 down was also a FEDEX customer.
- 24 b. In March of 2005, the account executive for Superior submitted a request for an
25 adjustment to his sales goals because Superior represented a "significant revenue
26 loss" when "FDA raided their property. No longer ship same volume."
- 27 c. In June of 2004, FEDEX's Senior Manager of Credit learned that the online
28 pharmacy American Medical Services, which had been using Superior to ship its

1 drugs, had been closed down by the FDA and DEA, but was now operating as
2 Dynamic Health Solutions.

3 d. In June of 2006, a district sales manager and credit analyst learned that SaveOn
4 Rx owner Claude Covino had stopped shipping drugs from SaveOn Rx because
5 he was under investigation by the DEA. The manager and analyst determined that
6 Covino was using other fulfillment pharmacies, including Superior Drugs, to
7 continue to ship controlled substances for Internet pharmacies while avoiding
8 detection by the DEA.

9 86. After April 13, 2009, FEDEX continued to distribute controlled substances for Superior
10 Drugs that had been obtained by means of the Internet, despite the fact that neither Superior Drugs, nor
11 any of the websites that referred orders to Superior Drugs, had obtained a modified DEA registration,
12 despite the fact that the websites did not display any of the statements required by 21 U.S.C. § 831, and
13 despite the fact that prescriptions were issued by doctors employed by the online pharmacies after either
14 review of an online questionnaire or after reviewing a report of a physical examination conducted by a
15 physician who was not unavailable at the time the prescription was issued and who had not requested
16 that the doctor employed by the online pharmacy serve as a covering physician.

17 87. FEDEX knew that controlled substances were distributed to consumers by Superior and
18 its related Internet and fulfillment pharmacies without regard to the age of the buyers and were a likely
19 means by which underage persons obtained controlled substances absent the supervision and care of an
20 attending physician. Although FEDEX had an "adult-signature required" service that it mandated be
21 used by all alcohol shippers, at no point did FEDEX require that this service be used by Superior and its
22 related Internet and fulfillment pharmacies. Even when Superior voluntarily used this service, FEDEX
23 allowed packages sent from Superior to be re-routed at the direction of the customer or left at a third-
24 party vendor. FEDEX's employees knew that underage customers could use these services to avoid the
25 adult-signature requirement.

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

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1 **COUNTS FOURTEEN AND FIFTEEN:** (21 U.S.C. § 841 – Distribution of Controlled Substances)

2 88. Paragraphs 1 through 21 and 72 through 87 are realleged and reincorporated herein by
3 reference.

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

6 FEDEX CORPORATION,
7 FEDERAL EXPRESS CORPORATION,
(A/K/A FEDEX EXPRESS), 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 controlled substances knowing and intending that the distribution
11 and possession with intent to distribute was outside the usual course of professional practice and not for
12 a legitimate medical purpose, which offense involved substances containing those listed below:

COUNT	DATE	TRACKING NUMBER	CONTROLLED SUBSTANCE
14	2/7/2008	960103326342	Phentermine
15	8/15/2008	790069431423	Phentermine

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

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

3 90. Paragraphs 1 through 21 and 72 through 87 are realleged and reincorporated herein by
4 reference.

5 91. 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 FEDERAL EXPRESS CORPORATION,
(A/K/A FEDEX EXPRESS), 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 92. Paragraphs 1 through 21 and 72 through 87 are realleged and reincorporated herein by
24 reference.

25 93. Each and every aspect of the conduct alleged in paragraphs 72 through 87 as the manner
26 and means of the conspiracy involving controlled prescription drugs also involved non-controlled
27 prescription drugs.

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1 98. In or about September of 2004, employees in FEDEX's Credit Department worked with
2 employees in FEDEX's Sales Department to obtain financial security for accounts used by Superior
3 pursuant to FEDEX's Online Pharmacy Credit Policy.

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

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

11 101. On or about October 26, 2006, FEDEX delivered a package from Superior containing
12 Soma, a prescription pain killer, that an undercover officer had ordered by calling a number left on a
13 deceased woman's telephone by an online pharmacy that was seeking to have the woman refill her
14 order.

15 102. On or about December 20, 2006, an agent with the DEA informed FEDEX's Senior Vice
16 President of Security that FEDEX had delivered drugs in response to the undercover order placed by the
17 officer discussed in paragraph 101.

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

20 104. On or about May 30, 2008, FEDEX shipped Phentermine, a controlled prescription drug,
21 from Superior to San Mateo, California, in response to an order placed by a customer on or about May
22 27, 2008 from the RxSource Network by completing an online questionnaire.

23 105. On or about August 7, 2009, FEDEX delivered 30 pills of Phentermine, a controlled
24 prescription drug, from Superior that had been ordered by DEA agents in Philadelphia, Pennsylvania, on
25 or about June 1, 2009, from discreetonlinemeds.com by completing an online questionnaire and
26 submitting a fictitious report of physical examination that had been created by the agents without the
27 input of a doctor.

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

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

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6 **COUNT SEVENTEEN: (18 U.S.C. § 1956 – Conspiracy to Launder Money)**

7 107. Paragraphs 1 through 21, 72 through 87, and 93 through 106 are realleged and
8 reincorporated herein by reference.

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

11 FEDEX CORPORATION,
12 FEDERAL EXPRESS CORPORATION,
(A/K/A FEDEX EXPRESS), and
13 FEDEX CORPORATE SERVICES, INC.,

14 together with Creative Pharmacy Services (doing business as Superior Drugs), Wayne White, Anthony
15 Spence, Christopher Napoli, Sanford Cohen, Orlando Birbragher, Marshall Kanner, David Glass,
16 Michael Bezonsky, Claude Covino, Genetechnica, Physicians Online Network, The Spence Group,
17 Pharmacom, Carmel Management, SaveOn Rx, SafescriptsOnline, Affpower, and others known and
18 unknown to the grand jury, did knowingly and intentionally conspire to conduct a financial transaction
19 involving the proceeds of a specified unlawful activity, knowing that the property involved in the
20 financial transaction represented proceeds of some form of unlawful activity, and intending to promote
21 the carrying on of the specified unlawful activity, to wit: the possession with intent to distribute and
22 distribution of controlled substances outside the usual course of professional practice and not for a
23 legitimate medical purpose, knowing and intending that the possession with intent to distribute and
24 distribution was outside the usual course of professional practice and not for a legitimate medical
25 purpose, in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(D), (b)(2), and 846 (for
26 conduct prior to April 13, 2009), and in violation of Title 21, United States Code, Sections 841(a)(1),
27 (b)(1)(E)(i), (b)(2), (h)(1), (h)(4), and 846 (for conduct after April 13, 2009), all of which conduct was in
28 violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and (h).

Manner and Means of the Conspiracy

It was part of the conspiracy that:

109. It is alleged that for each package containing controlled substances that FEDEX knowingly and intentionally distributed outside the usual course of professional practice and not for a legitimate medical purpose for Superior, FEDEX requested payment for providing shipping services.

110. Wayne White, Anthony Spence, Claude Covino, Sanford Cohen, Orlando Birbragher, Marshall Kanner, Claude Covino David Glass, Michael Bezonsky, and their co-conspirators made payments in the form of wire transfers, checks, direct debit, credit card charges, and payments by telephone to FEDEX for FEDEX's shipment of controlled substances obtained outside the usual course of professional practice and not for a legitimate medical purpose for Superior.

111. The payments to FEDEX by Wayne White, Anthony Spence, Claude Covino, Sanford Cohen, Orlando Birbragher, David Glass, Michael Bezonsky, and their co-conspirators represented proceeds of the illegal sale of controlled substances outside the usual course of professional practice and not for a legitimate medical purpose by Superior and its related online and fulfillment pharmacies.

112. FEDEX employees knew that the payments from Superior and its related Internet and fulfillment pharmacies represented the proceeds of the sale of controlled substances and prescription drugs based on invalid prescriptions that were issued outside the usual course of professional practice and not for a legitimate medical purpose.

113. Some of the payments made by Superior and its related online and fulfillment pharmacies to FEDEX for the shipment of controlled substances knowingly and intentionally outside the usual course of professional practice and not for a legitimate medical purpose, which payments were made with the proceeds of the unlawful sale of controlled substances, included, but were not limited to:

Date	Payer	Amount
12/19/2002	Creative Pharmacy Services, Inc.	\$ 56,555.12
5/23/2003	Creative Pharmacy Services, Inc.	\$ 29,367.18
9/3/2004	Creative Pharmacy Services, Inc.	\$ 23,859.10
12/20/2005	Creative Pharmacy Services, Inc.	\$ 48,786.20

Date	Payer	Amount
10/17/2006	Creative Pharmacy Services, Inc.	\$ 25,118.98
9/18/2007	Creative Pharmacy Services, Inc.	\$ 13,067.47
1/22/2008	Creative Pharmacy Services, Inc.	\$ 19,163.53
2/3/2009	Creative Pharmacy Services, Inc.	\$ 8,582.24
3/9/2010	Creative Pharmacy Services, Inc.	\$ 532.41

All in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and (h).

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1 **COUNT EIGHTEEN: (18 U.S.C. § 1956 – Conspiracy to Launder Money)**

2 114. Paragraphs 1 through 21, 72 through 87, and 93 through 106 are realleged and
3 reincorporated herein by reference.

4 115. Beginning at a time unknown to the grand jury, but no later than November of 2003, and
5 ending on or about May 12, 2010, in the Northern District of California and elsewhere, the defendants,

6 FEDEX CORPORATION,
7 FEDERAL EXPRESS CORPORATION,
(A/K/A FEDEX EXPRESS), and
8 FEDEX CORPORATE SERVICES, INC.,

9 together with Creative Pharmacy Services doing business as Superior Drugs, Wayne White, Anthony
10 Spence, Genetechnica, Physicians Online Network, The Spence Group, and others known and unknown
11 to the grand jury, did knowingly and intentionally conspire to conduct a financial transaction involving
12 the proceeds of a specified unlawful activity, knowing that the property involved in the financial
13 transaction represented proceeds of some form of unlawful activity, and intending to promote the
14 carrying on of the specified unlawful activity, to wit: the possession with intent to distribute and
15 distribution of controlled substances outside the usual course of professional practice and not for a
16 legitimate medical purpose, knowing and intending that the possession with intent to distribute and
17 distribution was outside the usual course of professional practice and not for a legitimate medical
18 purpose, in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(D), (b)(2), and 846 (for
19 conduct prior to April 13, 2009), and in violation of Title 21, United States Code, Sections 841(a)(1),
20 (b)(1)(E)(i), (b)(2), (h)(1), (h)(4), and 846 (for conduct after April 13, 2009), all of which conduct was in
21 violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and (h).

22 Manner and Means of the Conspiracy

23 It was part of the conspiracy that:

24 116. FEDEX delivered and attempted to deliver packages from Superior containing controlled
25 substances for which FEDEX had agreed to collect payment, in the form of checks and money orders,
26 from the recipients using FEDEX's cash-on-delivery (COD) service.

27 117. FEDEX charged Superior a separate fee for use of its COD service.

1 118. FEDEX delivered and attempted to deliver to Superior checks and money orders it had
2 collected as COD payments for deliveries of controlled substances unlawfully ordered from Internet
3 pharmacies, including The Spence Group, Physicians Online Network, Genetechnica, and others.

4 119. FEDEX knew that the money orders and checks were intended as payment for controlled
5 substances that FEDEX had delivered and attempted to deliver from Superior to consumers. FEDEX
6 further knew that those orders had been placed by customers after filling out an online questionnaire
7 with no contact between the prescribing physician and patient and were thus distributed outside the
8 usual course of professional practice and not for a legitimate medical purpose and were not based on
9 valid prescriptions.

10 120. Some of the packages transported to and from Superior by FEDEX as part of FEDEX's
11 agreement to collect payment pursuant to its COD service for controlled substances distributed outside
12 the usual course of professional practice and not for a legitimate medical purpose, included, but were not
13 limited to:

Date	Amount	Recipient Location	Tracking No.
2/7/2008	\$ 164.50	Redwood City, California	960103326342
5/27/2008	\$ 207.51	San Mateo, California	798448652979
8/15/2008	\$ 209.42	Saratoga, California	790069431423 790069431434
11/18/2008	\$ 210.50	Philadelphia, Pennsylvania	791185617968 791185617979
1/16/2009	\$ 199.50	Philadelphia, Pennsylvania	791202845992 790150248910
1/16/2009	\$ 199.50	Philadelphia, Pennsylvania	790150248900 791202846006
7/15/2009	\$ 157.49	Philadelphia, Pennsylvania	798107645420 798107645431
11/2/2009	\$ 157.49	Philadelphia, Pennsylvania	798119025518 798119025529

26 All in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and (h).

27 ///

1 **FORFEITURE ALLEGATION:**

2 121. Paragraphs 1 through 120 of this Superseding Indictment are realleged and fully
3 incorporated herein by reference for the purpose of alleging forfeiture.

4 122. Upon a conviction of any of the offenses alleged in Counts One through Ten and Thirteen
5 through Fifteen, the defendants,

6 FEDEX CORPORATION,
7 FEDERAL EXPRESS CORPORATION,
8 (A/K/A FEDEX EXPRESS), and
9 FEDEX CORPORATE SERVICES, INC.,

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

14 123. Upon a conviction of any of the offenses alleged in Counts Eleven and Sixteen, the
15 defendants,

16 FEDEX CORPORATION,
17 FEDERAL EXPRESS CORPORATION,
18 (A/K/A FEDEX EXPRESS), and
19 FEDEX CORPORATE SERVICES, INC.,

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

23 124. Upon a conviction of any of the offenses alleged in Counts Twelve, Seventeen, and
24 Eighteen, the defendants,

25 FEDEX CORPORATION,
26 FEDERAL EXPRESS CORPORATION,
27 (A/K/A FEDEX EXPRESS), and
28 FEDEX CORPORATE SERVICES, INC.,

shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), any
property, real and personal, involved in said offenses, and any property traceable to said property used to
facilitate said offenses.

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

- 2 a. cannot be located upon the exercise of due diligence;
- 3 b. has been transferred to, sold to, or deposited with a third person;
- 4 c. has been placed beyond the jurisdiction of the Court;
- 5 d. has been substantially diminished in value; or
- 6 e. has been commingled with other property which cannot be subdivided without
- 7 difficulty;

8 any and all interest defendants have in other property shall be vested in the United States and forfeited to

9 the United States pursuant to Title 21, United States Code, Section 853(p), Title 28, United States Code,

10 Section 2461(c), and Rule 32.2 of the Federal Rules of Criminal Procedure.

11

12 **SENTENCING ALLEGATION**

13 126. With respect to the charges in this Superseding Indictment, for purposes of determining

14 the alternative maximum fine pursuant to Title 18, United States Code, Section 3571(d), the defendants,

15 FEDEX CORPORATION,
16 FEDERAL EXPRESS CORPORATION,
17 (A/K/A FEDEX EXPRESS), and
18 FEDEX CORPORATE SERVICES, INC.,

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

19 DATED: August 14, 2014

A TRUE BILL.

20

21 Nancy J. Peterson
22 FOREPERSON

23 MELINDA HAAG
24 United States Attorney

25 J. Douglas Wilson
26 J. DOUGLAS WILSON
27 Chief, Criminal Division

28 (Approved as to form: [Signature]
AUSAs Ault & Waldinger