

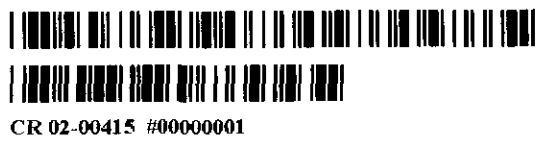
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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,
v.
JAMES N. WUENSCHÉ,
Defendant.

NO. CR02 0415 L
INFORMATION
(Felony: 18 U.S.C. § 371)

THE UNITED STATES ATTORNEY CHARGE



COUNT 1
(Conspiracy)

From in or about July, 2001, through January, 2002, at Bellevue, Seattle and
Bainbridge Island, within the Western District of Washington, and elsewhere, Defendant
JAMES N. WUENSCHÉ, together with other persons known and unknown to the
United States Attorney, did unlawfully, willfully, and knowingly combine, conspire,
confederate and agree among themselves and each other to commit certain offenses
against the United States, as set forth below.

A. OBJECTS OF THE CONSPIRACY

The objects of the conspiracy were as follows:

1. To unlawfully, knowingly, and willfully, directly and indirectly, by
the use of means and instrumentalities of interstate commerce, and of the mails, use and
employ, in connection with the purchases and sales of securities, manipulative and

1 | **deceptive devices and contrivances, by (a) employing devices, schemes, and artifices to**
2 | **defraud; (b) making untrue statements of material facts and omitting to state material**
3 | **facts necessary to make the statements made, in light of the circumstances in which they**
4 | **were made, not misleading; and (c) engaging in acts, practices, and courses of business**
5 | **which operated and would operate as a fraud and deceit upon other persons, in violation**
6 | **of Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal**
7 | **Regulations, Section 240.10b-5;**

8 | **2. To knowingly and willfully transmit and cause to be transmitted by**
9 | **wire communication in interstate and foreign commerce writings, signs, signals, pictures,**
10 | **and sounds in furtherance of a scheme and artifice to defraud and for obtaining money**
11 | **and property by means of false and fraudulent pretenses, representations, and promises, in**
12 | **violation of Title 18, United States Code, Section 1343;**

13 | **3. To knowingly and willfully use and cause the United States mail and**
14 | **interstate couriers to be used in furtherance and execution of a scheme and artifice to**
15 | **defraud investors in HMC, Project X, Znetix, Cascade Pointe, and affiliated entities, and**
16 | **a scheme and artifice for obtaining money and property of said investors by means of**
17 | **false and fraudulent pretenses, representations and promises, in violation of Title 18,**
18 | **United States Code, Section 1341;**

19 | **4. To conduct and attempt to conduct financial transactions affecting**
20 | **interstate commerce involving the proceeds of specified unlawful activity (mail fraud,**
21 | **wire fraud, and securities fraud), knowing that the property involved in the financial**
22 | **transactions represented the proceeds of some form of unlawful activity, and knowing**
23 | **that the transactions were designed in whole and in part to conceal or disguise the nature,**
24 | **the location, the source, the ownership, and the control of the proceeds of specified**
25 | **unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i);**

26 | **5. To transport, transmit, and transfer, and attempt to transport,**
27 | **transmit, and transfer, monetary instruments and funds from places in the United States to**
28 | **and through places outside the United States, and to places in the United States from and**

1 through places outside the United States, knowing that the monetary instruments and
2 funds involved in the transportations, transmissions, and transfers represented the
3 proceeds of some form of unlawful activity and knowing that such transportations,
4 transmissions, and transfers were designed in whole or in part to conceal or disguise the
5 nature, the location, the source, the ownership, and the control of the proceeds of
6 specified unlawful activity, in violation of Title 18, United States Code, Section
7 1956(a)(2)(B)(i); and

8 6. To knowingly and willfully engage and attempt to engage in
9 monetary transactions by, through, and to financial institutions, which monetary
10 transactions affected interstate and foreign commerce, in criminally derived property of a
11 value greater than \$10,000, such property having been derived from specified unlawful
12 activities, that is mail fraud, wire fraud, and securities fraud, in violation of Title 18,
13 United States Code, Section 1957.

14 B. MANNER AND MEANS OF THE CONSPIRACY

15 1. According to public records, HMC was incorporated in Washington
16 State on May 12, 1995, and was administratively dissolved and reinstated at various times
17 throughout the period from on or about December 6, 1995, through on or about
18 October 30, 2000. The Articles of Incorporation filed May 12, 1995, provided that the
19 corporate purposes of HMC were "[t]o operate health and exercise clubs, and related
20 facilities" and "[t]o engage in any business, trade or activity which may be conducted
21 lawfully by a corporation organized under the Washington State Business Corporation
22 Act." On or about December 26, 2001, HMC ceased to exist as a Washington State
23 corporation and merged with a Delaware corporation known as HMC Acquisition Corp.,
24 a wholly-owned subsidiary of Znetix, Inc. Also on or about December 26, 2001, HMC
25 Acquisition Corp. changed its name to Health Maintenance Centers, Inc.

26 2. According to public records, Project X, Inc., was incorporated in the
27 State of Washington on November 3, 1999. On October 3, 2000, Project X filed Articles
28 of Amendment with the Washington State Secretary of State changing its name to Znetix,

1 Inc. On or about September 25, 2001, Znetix, Inc., ceased to exist as a Washington State
2 corporation and merged with a Delaware corporation known as Znetix, Inc.

3 3. From in or about 1995 through in or about January 2002, HMC,
4 Project X, and Znetix, and affiliated entities, through various sales agents, solicited and
5 received in excess of \$50 million from investors. At no time were the offers and sales of
6 securities issued by HMC, Project X, Znetix, and affiliated entities registered with the
7 United States Securities and Exchange Commission, the State of Washington Department
8 of Financial Institutions, Securities Division, or with the securities regulatory authority in
9 any other state. One of the key misrepresentations made by HMC to investors was that
10 investors who purchased the securities of HMC for one dollar per share would receive
11 four shares of Znetix for each share of HMC at the point when Znetix purchased or
12 merged with HMC.

13 4. In or about August, 2000, the State of Washington Department of
14 Financial Institutions, Securities Division (the "DFI") began an investigation of HMC and
15 affiliated entities and individuals. On April 9, 2001, the State of Washington Department
16 of Financial Institutions, Securities Division, issued a Summary Order to Cease and
17 Desist against HMC and Kevin L. Lawrence, the founder and principal officer of HMC.
18 The Cease and Desist Order, among other things, barred HMC (including its employees,
19 officers and directors) and Lawrence and from selling securities through fraudulent
20 representations and material omissions, or in violation of the State of Washington's
21 securities registration laws.

22 5. Cascade Pointe LLC was a limited liability company formed in
23 Washington State on or about May 2, 2001; Cascade Pointe of Arizona LLC was a
24 limited liability company formed in Arizona in or about July 2001; and Cascade Pointe of
25 Nevis LLC was a limited liability company established in the Carribean nation of Nevis
26 on or about July 26, 2001 (collectively "Cascade Pointe"). From in or about May 2, 2001,
27 through in or about January 2002, Cascade Pointe, through various sales agents, solicited
28 and received in excess of \$12 million from investors. At no time were the offers and

1 sales of securities issued by Cascade Pointe and affiliated entities registered with the
2 United States Securities and Exchange Commission, the State of Washington Department
3 of Financial Institutions, Securities Division, or with the securities regulatory authority in
4 any other state.

5 6. On or about June 21, 2002, Kevin L. Lawrence directed that Clifford
6 Baird should be the new Manager of Cascade Pointe. On or about that date, Baird hired
7 Defendant JAMES N. WUENSCHÉ to be the Acting Controller of Cascade Pointe.
8 Defendant, through his company J. Wuensche & Co. LLP, entered into a Consulting
9 Agreement with Cascade Pointe effective June 21, 2001. The Consulting Agreement
10 provided that Defendant would: maintain Cascade Pointe's accounts, ledgers, and records
11 "in preparation for an outside audit"; "Interview, recommend and supervise activities of
12 outside audit firm"; and "Serve as Acting Controller and banking signatory for" Cascade
13 Pointe. Defendant became a signatory on the Cascade Pointe bank accounts on June 21,
14 2001. At no time did Cascade Pointe hire any outside auditors as contemplated by the
15 Consulting Agreement, and no outside audit was ever conducted.

16 7. Investors in Cascade Pointe were provided with a Private Placement
17 Memorandum ("PPM") that purported to set forth material information regarding Cascade
18 Pointe and its business plan. The PPM provided to investors during the time that the
19 Defendant was associated with Cascade Pointe included a section entitled "Use of
20 Proceeds," which purported to disclose to investors the use of their funds by Cascade
21 Pointe. The Use of Proceeds section stated, among other things, that Cascade Pointe
22 would use approximately \$800,000 for "offering expenses," which included "legal,
23 accounting, consulting and management fees." During the period from on or about June
24 21, 2001, through on or about January 23, 2002, when Defendant JAMES N.
25 WUENSCHÉ was a signer on the Cascade Pointe bank accounts, a total of \$1,535,459.60
26 was provided from the Cascade Pointe bank accounts to various individuals who were
27 employed by or otherwise affiliated with Cascade Pointe. The funds provided to such
28 individuals, which constituted "offering expenses" within the meaning of the PPM,

1 exceeded the amount of offering expenses disclosed to investors by \$735,459.60. Of the
2 total of \$1,535,459.60, the Defendant received \$442,995.98.

3 8. In or about July, 2001, Defendant JAMES N. WUENSCHÉ
4 established a company on the Carribean island of Nevis called Alliance Advisory Group,
5 Inc. At all material times, Defendant had control of the activities of Alliance Advisory
6 Group. On or about July 27, 2001, Defendant caused Alliance Advisory Group to enter
7 into a Consulting Agreement with Cascade Pointe. Under the terms of the Consulting
8 Agreement, Alliance Advisory Group was to provide "strategic planning services" and
9 "international marketing advice" to Cascade Pointe. Alliance Advisory Group and the
10 Defendant did not provide such services to Cascade Pointe to any significant extent.
11 During the period June 22, 2001, through January 23, 2002, Defendant sent \$155,000 (out
12 of the total of \$442,995.98 that he received) of Cascade Pointe funds to an offshore bank
13 account in the name of Alliance Advisory Group. The remaining \$287,995.98 that
14 Defendant received was paid to him as reimbursement of expenses or under the
15 consulting agreement between Cascade Pointe and J. Wuensche & Co.

16 C. OVERT ACTS

17 In furtherance of the conspiracy, and to promote the objects thereof, defendant
18 JAMES N. WUENSCHÉ committed and caused to be committed, among others, the
19 following overt acts:

20 1. On or about July 27, 2001, Defendant JAMES N. WUENSCHÉ
21 caused Alliance Advisory Group to enter into a Consulting Agreement with Cascade
22 Pointe.

23 2. On or about August 3, 2001, Defendant JAMES N. WUENSCHÉ
24 wired \$30,000 from a Cascade Pointe account to an account in Nevis under the name of
25 Alliance Advisory Group.

26 3. On or about August 6, 2001, Defendant JAMES N. WUENSCHÉ
27 sent a letter to Martin Cordell, a Securities Examiner with the DFI, that responded to the
28 DFI's inquiry regarding Cascade Pointe and its relationship to HMC.

1 4. On or about September 18, 2001, Defendant JAMES N.
2 WUENSCHÉ wired \$25,000 from a Cascade Pointe account to an account in Nevis under
3 the name of Alliance Advisory Group.

4 5. On or about September 21, 2001, Defendant JAMES N.
5 WUENSCHÉ wired \$60,000 from a Cascade Pointe account to an account in Nevis under
6 the name of Alliance Advisory Group.

7 6. On or about September 24, 2001, Defendant JAMES N.
8 WUENSCHÉ wired \$40,000 from a Cascade Pointe account to an account in Nevis under
9 the name of Alliance Advisory Group.

10 7. On or about October 2, 2001, Defendant JAMES N. WUENSCHÉ
11 wired \$30,000 from a Cascade Pointe account to an account in Nevis under the name of
12 Alliance Advisory Group.

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

14 **CRIMINAL FORFEITURE ALLEGATIONS**

15 Upon conviction of the offense charged in this Information, Defendant JAMES N.
16 WUENSCHÉ shall forfeit to the United States, pursuant to Title 18, United States Code,
17 Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any property
18 constituting or derived from proceeds obtained directly or indirectly as a result of the such
19 offense, including but not limited to the following:

20 Proceeds received by Alliance Advisory Group, Inc., in the amount of
21 \$155,000.00.

22 If any of the above-described forfeitable property, as a result of any act or
23 omission of the Defendant:

- 24 (a) cannot be located upon the exercise of due diligence;
25 (b) has been transferred or sold to, or deposited with, a third party;
26 (c) has been placed beyond the jurisdiction of the Court;
27 (d) has been substantially diminished in value; or
28

1 (e) has been commingled with other property which cannot be divided without
2 difficulty;
3 the United States may, pursuant to Title 21, United States Code, Section 853(p), as
4 incorporated by Title 28, United States Code, Section 2461(c), seek forfeiture of any
5 other property of said defendant up to the value of the forfeitable property described
6 above.

7 DATED this ___ day of November, 2002.

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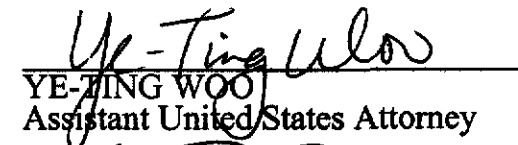
11 MARK BARTLETT
12 Acting United States Attorney

13 

14 FLOYD G. SHORT
15 Assistant United States Attorney

16 

17 JEFFREY B. COOPERSMITH
18 Assistant United States Attorney

19 

20 YE-TING WOO
21 Assistant United States Attorney

22 

23 RICHARD E. COHEN
24 Assistant United States Attorney