

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

12-20275 CR-MOORE

CASE NO. _____

18 U.S.C. § 1349
18 U.S.C. § 1347
42 U.S.C. § 1320a-7b(b)(2)(A)
18 U.S.C. § 2
18 U.S.C. § 982

/TORRES

FILED by TR D.C.
APR 24 2012
STEVEN M. LARIMORE
CLERK U.S. DIST CT
S. D. of FLA. - MIAMI

UNITED STATES OF AMERICA

vs.

JOSE L. VALDES GONZALEZ,
a/k/a "Roberto Gonzalez,"
ALBERTO SOTOLONGO,
a/k/a "Ruben,"
GILBERTO FAURE, and
FRANCISCA GEMA VALDES,

Defendants.

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times material to this Indictment:

The Medicare Program

1. The Medicare Program ("Medicare") was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services, through its agency, the Centers for Medicare and Medicaid Services ("CMS"), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare "beneficiaries."

2. Medicare programs covering different types of benefits were separated into different program "parts." Part D of Medicare subsidized the costs of prescription drugs for Medicare beneficiaries in the United States. It was enacted as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and went into effect on January 1, 2006.

3. In order to receive Part D benefits, a beneficiary enrolled in a Medicare drug plan. Medicare drug plans were operated by private companies approved by Medicare. Those companies were often referred to as Medicare drug plan "sponsors." A beneficiary in a Medicare drug plan could fill a prescription at a pharmacy and use his or her plan to pay for some or all of the prescription.

4. A pharmacy could participate in Part D by entering a retail network agreement with one or more Pharmacy Benefit Managers ("PBMs"). Each PBM acted on behalf of one or more Medicare drug plans. When a Part D beneficiary presented a prescription to a pharmacy, the pharmacy submitted a claim to the PBM that represented the beneficiary's Medicare drug plan. The PBM determined whether the pharmacy was entitled to payment for each claim and periodically paid the pharmacy for outstanding claims. The Medicare drug plan sponsor reimbursed the PBM for its payments to the pharmacy.

5. A pharmacy could also submit claims to a Medicare drug plan sponsor to whose network the pharmacy did not belong. Submission of such out-of-network claims was not common and often resulted in smaller payments to the pharmacy by the drug plan sponsor.

6. Medicare, through CMS, compensated the Medicare drug plan sponsors. Medicare paid the sponsors a monthly fee for each Medicare beneficiary of the sponsors' plans. Such payments were called capitation fees. The capitation fee was adjusted periodically based on various factors, including the beneficiary's medical conditions. In addition, in some cases where a sponsor's expenses

for a beneficiary's prescription drugs exceeded that beneficiary's capitation fee, Medicare reimbursed the sponsor for a portion of those additional expenses.

7. Medicare and the Medicare drug plan sponsors were "health care benefit program[s]," as defined by Title 18, United States Code, Section 24(b).

Medicare Drug Plan Sponsor

8. United Healthcare Insurance Company ("United") was a Medicare drug plan sponsor.

Ilva Pharmacy, Inc.

9. Ilva Pharmacy, Inc. ("Ilva") was a Florida corporation, incorporated on or about April 1, 2004, that did business in Miami-Dade County purportedly providing prescription drugs to Medicare beneficiaries.

The Defendants

10. Defendant **JOSE L. VALDES GONZALEZ, a/k/a "Roberto Gonzalez,"** was a resident of Miami-Dade County.

11. Defendant **ALBERTO SOTOLONGO, a/k/a "Ruben,"** was a resident of Miami-Dade County.

12. Defendant **GILBERTO FAURE** was a resident of Miami-Dade County. After on or about October 20, 2009, he was the president and registered agent of Ilva.

13. Defendant **FRANCISCA GEMA VALDES** was a resident of Miami-Dade County.

COUNT 1

**Conspiracy to Commit Health Care Fraud
(18 U.S.C. § 1349)**

1. Paragraphs 1 through 13 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From in or around August 2009, and continuing through on or about July 18, 2011, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**JOSE L. VALDES GONZALEZ, a/k/a "Roberto Gonzalez,"
ALBERTO SOTOLONGO, a/k/a "Ruben,"
GILBERTO FAURE, and
FRANCISCA GEMA VALDES,**

did knowingly and willfully combine, conspire, confederate and agree with each other, and others known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1347, that is, to execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare and United, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, Medicare and United, in connection with the delivery of and payment for health care benefits, items, and services.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things: (a) concealing the true ownership of Ilva by installing a co-conspirator to act as its nominal president; (b) submitting or causing the submission of false and fraudulent claims to Medicare and United; (c) concealing the submission of false and fraudulent claims to Medicare and United and the receipt and transfer of fraud proceeds; and (d) diverting fraud proceeds for the personal use and benefit of themselves and others.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants and their co-conspirators sought to accomplish the object and purpose of the conspiracy included, among others, the following:

4. Beginning in or around October 2009, **GILBERTO FAURE** was president and registered agent of Ilva.

5. On or about April 26, 2010, **GILBERTO FAURE** and **FRANCISCA GEMA VALDES** participated in an audit to assist in Ilva's false and fraudulent activities, including by maintaining the false and fraudulent appearance of normal business operations in connection with CMS-required inspections, and managing supposed patient information.

6. **JOSE L. VALDES GONZALEZ, ALBERTO SOTOLONGO, GILBERTO FAURE, FRANCISCA GEMA VALDES** and their co-conspirators caused Ilva to submit approximately \$1,352,936 in claims that falsely and fraudulently represented to Medicare and United that prescription drugs and other health care benefits, items, and services had been prescribed by a doctor.

7. As a result of the submission of these false and fraudulent claims, Medicare and United paid Ilva approximately \$1,352,936.

8. **JOSE L. VALDES GONZALEZ, ALBERTO SOTOLONGO, GILBERTO FAURE, FRANCISCA GEMA VALDES** and their co-conspirators transferred and disbursed, and caused the transfer and disbursement of, monies from the corporate bank accounts of Ilva for the benefit of themselves and others.

9. The co-conspirators used the proceeds of the health care fraud for their personal benefit and to further the fraud.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2-6
Health Care Fraud
(18 U.S.C. § 1347)

1. Paragraphs 1 through 13 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From in or around August 2009, and continuing through on or about July 18, 2011, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

JOSE L. VALDES GONZALEZ, a/k/a "Roberto Gonzalez,"
ALBERTO SOTOLONGO, a/k/a "Ruben,"
GILBERTO FAURE, and
FRANCISCA GEMA VALDES,

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare and United, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit programs.

Purpose of the Scheme and Artifice

3. It was the purpose of the scheme and artifice for the defendants to unlawfully enrich themselves by, among other things: (a) submitting or causing the submission of false and fraudulent claims to health care benefit programs; (b) concealing the submission of false and fraudulent claims to health care benefit programs, and the receipt and transfer of fraud proceeds; and (c) diverting fraud proceeds for the personal use and benefit of themselves and others.

The Scheme and Artifice

4. The allegations contained in paragraphs 4 through 9 of the Manner and Means section of Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

Acts in Execution or Attempted Execution of the Scheme and Artifice

5. On or about the dates set forth as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, **JOSE L. VALDES GONZALEZ, ALBERTO SOTOLONGO, GILBERTO FAURE, and FRANCISCA GEMA VALDES**, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare and United, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit programs, in that the defendants submitted and caused the submission of false and fraudulent claims seeking the identified dollar amounts, and representing that Ilva provided pharmaceutical items and services to Medicare beneficiaries pursuant to physicians' orders and prescriptions:

Count	Medicare Beneficiary	Approx. Date of Submission of Claim	Medicare Claim Number	Medicare Drug Plan Sponsor	Item Claimed; Approx. Amount Claimed
2	J.L.	04/12/2011	111033946975013998	United	Geodon 80 mg caplets, 30-day supply; \$525
3	A.M.	06/1/2011	111523589315004999	United	Aricept 10 mg tablets, 30-day supply; \$249
4	A.M.	06/30/2011	111824783127059999	United	Seroquel 300 mg tablets, 30-day supply; \$806
5	A.H.C.	06/30/2011	111824409598032998	United	Venlafaxine 150 mg tablets, 30-day supply; \$226
6	M.Q.	06/30/2011	111824541462060998	United	Tazorac 0.05% gel, 30-day supply, \$691

In violation of Title 18, United States Code, Sections 1347 and 2.

COUNTS 7-12

**Payment of Kickbacks in Connection with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(2)(A))**

1. Paragraphs 1 through 13 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about the dates enumerated below as to each count, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants specified below as to each count, did knowingly and willfully offer and pay any remuneration, that is, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind to a person to induce such person to refer an individual for the furnishing and arranging for the furnishing of any item and service for which payment

may be made in whole and in part under a federal health care program, that is, Medicare, as set forth below:

Count	Defendant(s)	Approximate Date	Approximate Kickback Amount
7	JOSE L. VALDES GONZALEZ, a/k/a "Roberto Gonzalez," and ALBERTO SOTOLONGO, a/k/a "Ruben"	03/02/2011	\$1,250
8	JOSE L. VALDES GONZALEZ, a/k/a "Roberto Gonzalez"	03/14/2011	\$1,500
9	JOSE L. VALDES GONZALEZ, a/k/a "Roberto Gonzalez"	03/24/2011	\$1,250
10	JOSE L. VALDES GONZALEZ, a/k/a "Roberto Gonzalez"	04/26/2011	\$3,000
11	JOSE L. VALDES GONZALEZ, a/k/a "Roberto Gonzalez"	06/16/2011	\$2,000
12	JOSE L. VALDES GONZALEZ, a/k/a "Roberto Gonzalez"	06/30/2011	\$2,000

In violation of Title 42, United States Code, Section 1320a-7b(b)(2)(A), and Title 18, United States Code, Section 2.

FORFEITURE
(18 U.S.C. § 982)

1. The allegations contained in this Indictment are realleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of certain property in which any of the defendants, **JOSE L. VALDES GONZALEZ, ALBERTO SOTOLONGO, GILBERTO FAURE, and FRANCISCA GEMA VALDES**, has an interest.

2. Upon conviction of any violation of Title 18, United States Code, Section 1347 or Title 18, United States Code, Section 1349, as alleged in Counts 1 through 6 of the Indictment, or Title 42,

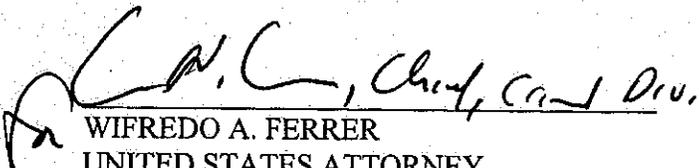
United States Code, Section 1320a-7(b), as alleged in Counts 7 through 12 of the Indictment, the defendant shall forfeit all of her right, title and interest to the United States of any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violation, pursuant to Title 18, United States Code, Section 982(a)(7).

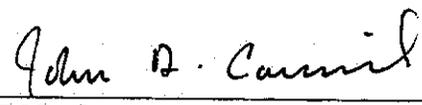
3. The property subject to forfeiture includes, but is not limited to, the sum of \$1,352,936 in United States currency, which is a sum of money equal in value to the gross proceeds traceable to the commission of the violation alleged in this Indictment, which the United States will seek as a forfeiture money judgment as part of the defendant's sentence.

All pursuant to Title 18, United States Code, Section 982(a)(7); and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b)(1).

A TRUE BILL

F


WIFREDO A. FERRER
UNITED STATES ATTORNEY


JOHN D. COURIEL
ASSISTANT UNITED STATES ATTORNEY