

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon.
 :
 v. : Criminal No. 11-
 :
 JOSE BATISTA : 18 U.S.C. § 371

I N F O R M A T I O N

The defendant having waived in open court prosecution by Indictment, the United States Attorney for the District of New Jersey charges:

1. At all times relevant to this Information:

a. The United States Food and Drug Administration ("FDA") was the agency of the United States responsible for, among other things, enforcing the provisions of the Federal Food, Drug, and Cosmetic Act ("the FDCA"), Title 21, United States Code, Section 301 et seq.

b. The FDA's responsibilities included regulating the wholesale distribution of prescription drugs.

c. The FDCA defined a "drug" as including (i) articles recognized as drugs in the official United States Pharmacopoeia and certain other enumerated recognized publications; (ii) articles intended for the use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans; (iii) articles (other than food) intended to affect the structure or any function of the human body; and (iv) articles intended for use as components of drugs. Title 21, United States Code, Section 321(g)(1).

d. Under the FDCA, a "drug" was deemed to be a "prescription drug" if, because of its toxicity and other potential harmful effects, it was not safe for use except under the supervision of a practitioner licensed by law to administer the drug. Title 21, United States Code, Section 353(b)(1)(A). A "drug" was also deemed to be a "prescription drug" if a new drug application approved by the FDA limited the drug to use under the professional supervision of a practitioner licensed by law to administer the drug. Title 21, United States Code, Section 353(b)(1)(B).

e. The FDCA required that persons engaged in the wholesale distribution of prescription drugs in interstate commerce in a State be licensed by the State in accordance with guidelines established by the FDA. Title 21, United States Code, Section 353(e)(2)(A). The "wholesale distribution" of drugs was defined as "distribution of [prescription] drugs to someone other than the consumer or patient." Title 21, United States Code, Section 353(e)(3)(B).

f. In order for an individual or corporation to sell, purchase, trade, or offer to sell, purchase, or trade prescription drugs and be in compliance with the FDCA, that individual or corporation was required to hold a valid "Prescription Drug Wholesaler" license in a State where that individual or corporation operated a facility from which that individual or corporation made shipments of prescription drugs.

g. Atripla, Combivir, Isentress, Kaletra, Prezista, Reyataz, and Truvada are FDA-approved drugs approved for the treatment of HIV. Atripla, Combivir, Isentress, Kaletra, Prezista, Reyataz, and Truvada are "prescription drugs" within the meaning of the FDCA.

h. The defendant, JOSE BATISTA, did not possess a valid license to distribute wholesale quantities of prescription drugs in the State of New Jersey.

2. On or about March 4, 2010, in Bergen County, in the District of New Jersey, and elsewhere, defendant

JOSE BATISTA

did knowingly and intentionally conspire and agree with others to commit an offense against the United States, namely, to engage in the wholesale distribution of prescription drugs in interstate commerce, at a time when the defendant and his coconspirators were not licensed as "Prescription Drug Wholesalers" in New Jersey or any other State, contrary to Title 21, United States Code, Sections 331(t), 333(b)(1)(D), and 353(e)(2)(A).

OBJECT OF THE CONSPIRACY

3. It was the object of the conspiracy for defendant JOSE BATISTA and his coconspirators to profit from the illicit wholesale distribution of prescription drugs that had traveled in interstate commerce.

MANNER AND MEANS OF THE CONSPIRACY

4. It was part of the conspiracy that defendant JOSE BATISTA and his coconspirators obtained more than 6,000 bottles of prescription medication that had been prescribed to individuals and dispensed at various pharmacies. These prescription bottles each included one of a dozen different prescription medications, including Atripla, Combivir, Isentress, Kaletra, Prezista, Reyataz, and Truvada.

5. It was further part of the conspiracy that one of defendant JOSE BATISTA's coconspirators rented an apartment in Fairview, New Jersey, for the purpose of preparing the prescription medication for resale.

6. It was further part of the conspiracy that defendant JOSE BATISTA and his coconspirators used lighter fluid to remove the legitimate prescription labels from the bottles of prescription medication for the purpose of preparing the prescription medication for resale. The prescription medication had a Wholesale Acquisition Cost of more than \$2 million.

OVERT ACTS

7. In furtherance of the conspiracy and in order to effect the object thereof, defendant JOSE BATISTA and his coconspirators committed and caused to be committed the following overt acts in the District of New Jersey and elsewhere:

(a) On or about March 4, 2010, defendant JOSE BATISTA and two of his coconspirators met at an apartment in Fairview, New Jersey;

(b) On or about March 4, 2010, defendant JOSE BATISTA and two of his coconspirators used lighter fluid to remove legitimate prescription labels from bottles of prescription medication.

In violation of Title 18, United States Code, Section 371.



PAUL J. FISHMAN
UNITED STATES ATTORNEY

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INFORMATION FOR

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