

13 MAG 0654

Approved: _____

EDWARD B. DISKANT/JASON A. MASIMORE/RUSSELL CAPONE
Assistant United States Attorneys

Before: HONORABLE RONALD L. ELLIS
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA

:
:
SEALED COMPLAINT

- v. -

: Violation of
: 18 U.S.C. § 1349;
: 21 U.S.C. §§ 331, 333,
: 351 & 352

DAVID CORREA,

Defendant.

: COUNTY OF OFFENSE:
: BRONX
:
-----x

STATE OF NEW YORK) ss:
SOUTHERN DISTRICT OF NEW YORK)

DEAGLAN RYAN, being duly sworn, deposes and says that he is
a Special Agent with the Federal Bureau of Investigation
("FBI"), and charges as follows:

COUNT ONE

(Conspiracy to Commit Healthcare Fraud)

1. From at least in or about 2010 up to and including in
or about July 2012, in the Southern District of New York and
elsewhere, DAVID CORREA, the defendant, and others known and
unknown, willfully and knowingly did combine, conspire,
confederate and agree together and with each other to commit
offenses against the United States, to wit, to violate Title 18,
United States Code, Section 1347.

2. It was a part and an object of the conspiracy that
DAVID CORREA, the defendant, and others known and unknown,
willfully and knowingly would and did execute and attempt to
execute a scheme and artifice to defraud a health care benefit
program, and to obtain, by means of false and fraudulent
pretenses, representations, and promises money owned by and

under the custody and control of a health care benefit program in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347.

(Title 18, United States Code, Section 1349.)

COUNT TWO

(Conspiracy to Commit Adulteration and Misbranding Offenses)

3. From at least in or about 2010, up to and including in or about July 2012, in the Southern District of New York and elsewhere, DAVID CORREA, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, to violate Sections 331(a), 331(b), 331(c), 331(k), and 333(a)(2) of Title 21, United States Code.

Objects of the Conspiracy

4. It was a part and an object of the conspiracy that DAVID CORREA, the defendant, and others known and unknown, willfully and knowingly, and with the intent to defraud and mislead, would and did introduce and deliver for introduction into interstate commerce a drug that was adulterated and misbranded, as those terms are defined in Title 21, United States Code, Sections 351(a) and 352(a), in violation of Title 21, United States Code, Sections 331(a) and 333(a)(2).

5. It was further a part and an object of the conspiracy that DAVID CORREA, the defendant, and others known and unknown, willfully and knowingly, and with the intent to defraud and mislead, would and did adulterate and misbrand as those terms are defined in Title 21, United States Code, Sections 351(a) and 352(a), a drug in interstate commerce, in violation of Title 21, United States Code, Sections 331(b) and 333(a)(2).

6. It was further a part and an object of the conspiracy that DAVID CORREA, the defendant, and others known and unknown, willfully and knowingly, and with the intent to defraud and mislead, would and did receive in interstate commerce a drug that was adulterated and misbranded, as those terms are defined in Title 21, United States Code, Sections 351(a) and 352(a), and would and did deliver and proffer delivery thereof for pay and

otherwise, in violation of Title 21, United States Code, Sections 331(c) and 333(a)(2).

7. It was further a part and an object of the conspiracy that DAVID CORREA, the defendant, and others known and unknown, willfully and knowingly, and with the intent to defraud and mislead, would and did alter, mutilate, destroy, obliterate and remove the whole and any part of the labeling of a drug, and would and did do other acts with respect to a drug while such drug was held for sale, after shipment in interstate commerce and which resulted in such drug being adulterated and misbranded, as those terms are defined in Title 21, United States Code, Sections 351(a) and 352(a), in violation of Title 21, United States Code, Sections 331(k) and 333(a)(2).

Overt Act

8. In furtherance of the conspiracy and to effect the illegal objects thereof, DAVID CORREA, the defendant, and others known and unknown, committed the following overt act, among others, in the Southern District of New York and elsewhere:

a. On or about August 16, 2011, CORREA had a phone conversation with a co-conspirator not named as a defendant herein ("CW-2"). During that call, CORREA complained that there was a problem with one of the bottles of second-hand drugs he had previously purchased from CW-2, and CW-2 promised to come pick it up immediately.

(Title 18, United States Code, Section 371.)

The bases for my knowledge of the foregoing charges are, in part, as follows:

9. I am a Special Agent with the Federal Bureau of Investigation, and have been so since 2010. I am presently assigned to Squad C-33, which is within the FBI's Health Care Fraud Task Force ("HCFTF"). As a Special Agent in the HCFTF, I have conducted numerous investigations into federal crimes relating to mail fraud, wire fraud, health care fraud, prescription drug diversion, unlawful drug trafficking and money laundering, among other things. During that time, I have, among other things, conducted or participated in surveillance, the execution of search warrants, debriefings of informants, confidential sources, and cooperating witnesses, reviews of recorded conversations and drug records, and the interception of wire and electronic communications.

10. I have been personally involved in the investigation of this matter. This affidavit is based on my personal observations and participation during the investigation, my conversations with other law enforcement officers and agents, my interviews of witnesses, my execution of search warrants and seizure of evidence, and my examination of evidence, documents, reports and other records. Because this affidavit is submitted for the limited purpose of establishing probable cause, it does not include all facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

11. Through my training, education, experience and participation in the investigation resulting in the filing of this complaint, I have become familiar with the following scheme involving the unlawful diversion and trafficking of prescription drugs that previously had been dispensed to health care benefit program enrollees, including Medicaid recipients ("second-hand" drugs) in a national, underground market:

a. The prescription drugs involved in this scheme are not drugs of abuse, but rather are drugs designed to treat various illnesses, including, for example, HIV, schizophrenia, and asthma. These second-hand drugs are originally dispensed to health care benefit plan enrollees, including Medicaid recipients, in the New York City area who then sell the drugs into collection and distribution channels that ultimately end at pharmacies that re-sell the second-hand drugs to unsuspecting consumers.

b. Through the methods described herein, the participants profit by exploiting the difference between the cost to the patient of obtaining bottles of prescription drugs through their health insurance providers, including Medicaid - which typically is zero - and the hundreds of dollars per bottle that pharmacies pay to purchase those drugs to distribute to their customers. To reap maximum profits, the participants target the most expensive drugs, including, but not limited to, the following drugs (with the corresponding approximate Medicaid reimbursement values per bottle): Atripla (\$1,879/bottle); Trizivir (\$1,563/bottle); Zyprexa (\$1,286/bottle); Truvada (\$1,149/bottle); Prezista (\$1,129/bottle); Reyataz (\$1,065/bottle); Isentress (\$1,015/bottle); Intelence (\$871/bottle); Kaletra (\$768/bottle); and Sustiva (\$644/bottle).

c. To effectuate the fraudulent scheme, the lowest level participants in the scheme (the "Insurance Beneficiaries") fill prescriptions for month-long supplies of drugs at pharmacies throughout the New York City area and beyond, using health insurance benefits to pay the cost. The Insurance Beneficiaries are typically AIDS patients or individuals who suffer from other illnesses and who sell their medications rather than use them for treatment. Insurance Beneficiaries sell their bottles of drugs to other participants in the scheme ("Collectors") at locations like street corners and bodegas in and around New York City, including in the Washington Heights neighborhood of Manhattan and in the Bronx. Collectors sell the second-hand bottles they collect to other participants in the scheme ("Aggregators"), who typically buy large quantities of second-hand drugs from multiple Collectors. Eventually, the second-hand drugs make their way to pharmacies that dispense the second-hand drugs to unsuspecting consumers.

d. Pharmacies dispense the drugs to Insurance Beneficiaries in original, sealed, manufacturers' bottles. Each bottle comes from the manufacturer bearing a label (the "manufacturer's label") that indicates, among other things, the identity of the manufacturer; the brand of drug; the strength of drug; the required storage conditions (such as temperature); the lot number tracking the actual tablets, pills or capsules contained in the bottle back to the place, date and time of their manufacture; and the expiration date of the drugs. Prior to dispensing each bottle, pharmacies affix to the bottle, on top of the manufacturer's label, a separate, adhesive label ("patient label") that includes additional information, such as the name and address of the pharmacy, the name of the patient, and dosage instructions.

e. After purchasing the second-hand bottles originally dispensed to Insurance Beneficiaries, Collectors and Aggregators use lighter fluid and other potentially hazardous chemicals to dissolve the adhesive on the patient labels, and remove the patient labels and all traces of the adhesive from the bottles. Through this process, the Collectors and Aggregators make the bottles appear new for the purpose of concealing the fact that they had already been dispensed, so that they eventually can be re-sold to unsuspecting consumers. Because the prescription drugs involved in the scheme are not drugs of abuse, the bottles' high value depends on their appearing to contain new, unexpired drugs that legitimately have

been obtained directly from manufacturers through authorized and licensed wholesale distributors.

f. The scheme itself is potentially dangerous to the unwitting consumers of second-hand prescription drugs. As described above, the bottles have been treated with potentially hazardous chemicals, and the drugs themselves may have expired. Additionally, the participants in the scheme store the drugs in uncontrolled conditions, such as car trunks, residences and rented storage facilities, which may not be sufficient to maintain the medical efficacy of such drugs over time. For example, many HIV medications require constant storage in conditions between 25 and 30 degrees Celsius to maintain their efficacy. Moreover, in some instances, by the time Aggregators obtain the bottles of second-hand drugs, some of the bottles contain drugs or doses different from what is indicated on the manufacturers' labels.

g. This scheme also involves material misrepresentations and omissions both on the front end, when Insurance Beneficiaries initially obtain prescription drugs, and on the back end, when the second-hand drugs are dispensed to unwitting consumers filling their prescriptions. On the front end of the scheme, the defendants rely on the fact that the Insurance Beneficiaries fill their prescriptions for little or no cost with the intention of selling the drugs into the underground market rather than taking them as prescribed to treat their illnesses. While the terms of policies offered by different health care benefit programs vary slightly, each policy requires, in sum and substance, that benefits obtained pursuant thereto be for the sole use of the insured. The health care benefit programs, which would not have paid such benefits on behalf of the Insurance Beneficiaries if the Insurance Beneficiaries had disclosed that they were selling the drugs to others, unwittingly fund the scheme.

h. On the back end of the scheme, the conspirators purposeful obfuscation of the true source of the second-hand drugs defrauds legitimate consumers who unknowingly have their prescriptions filled with second-hand drugs that have been sold back to pharmacies as part of the scheme. Legitimate consumers would not knowingly fill their prescriptions with second-hand drugs, and legitimate consumers' insurance companies and other health care benefit programs would not knowingly reimburse pharmacies the cost of second-hand drugs. In fact, the scheme was designed for health care benefit programs to be defrauded multiple times, as the same drugs that came from Insurance

Beneficiaries in the first place could be dispensed to different, insured patients on the back end.

The Purchase and Distribution of Second-Hand Prescription
Drugs by DAVID CORREA

12. On or about July 17, 2012, law enforcement agents arrested, among other people, two individuals not named as defendants herein ("CW-1" and "CW-2"). At all relevant times to this Complaint, CW-1 and CW-2 were participants in the unlawful prescription drug redistribution scheme described above. Shortly after their arrests, CW-1 and CW-2 began providing information to law enforcement in the hopes of receiving lenient treatment in connection with CW-1 and CW-2s respective prosecutions. Information that CW-1 and CW-2 have provided has been corroborated by other information, including, but not limited to, information obtained pursuant to search warrants, recorded calls and conversations, and statements of other cooperating witnesses.

13. Based on conversations with CW-1, I have learned the following, in substance and in part:

a. Since in or about 2005, CW-1 has been involved in the purchase and resale of second-hand prescription medications, including many used to treat HIV and AIDS. At all relevant times, CW-1, who was not a licensed wholesaler or distributor of prescription medications, purchased second-hand medications from various collectors and then resold them, for a profit, to higher level aggregators and other individuals.

b. In or about 2010, CW-1 met an individual known to him as "David." According to CW-1, "David" owned a pharmacy located on Fordham Road in the Bronx, where CW-1's mother routinely filled prescriptions.

c. In or about July 2010, CW-1 and "David" first began discussing the possibility of dealing in second-hand medications. Specifically, CW-1 offered to sell "David" various medications, including HIV medications and various asthma treatments for "David's" pharmacy. Shortly thereafter, "David" called CW-1 and relayed a list of medications "David" wanted to purchase. CW-1 provided these medications to "David" shortly thereafter.

d. CW-1 then began making more frequent sales of second-hand pills to "David." In many instances, "David" would give CW-1 a list of the various medications "David" wished to

purchase, and CW-1 would then endeavor to fill the orders. Among other medications, CW-1 sold "David" bottles of the following medications at the corresponding prices: Truvada (\$200/bottle); Atripla (\$350-\$400/bottle); Reyataz (\$200/bottle); Norvir (\$40-\$50/bottle); Nexium (\$40/bottle).

e. CW-1 estimated that he sold bottles of second-hand drugs to "David" approximately once a month and that he would sell approximately 50 to 100 bottles for approximately \$5,000 to \$10,000 on any one occasion. CW-1 would generally deliver these bottles to "David" in an empty box or a plastic bag.

f. The bottles sold by CW-1 to "David" were usually "cleaned" -- that is, the original patient labels attached by the dispensing pharmacies had been removed using chemicals so as to make the bottles appear to be "new." CW-1 did not himself remove patient labels from the bottles because, according to CW-1, the chemicals used to "clean" the bottles made him physically ill. Instead, CW-1 employed others, including CW-2, to "clean" the bottles.

g. According to CW-1 these sales would either occur in or around "David's" pharmacy on Fordham Road in the Bronx, or in the parking lot of a large department store nearby. CW-1 would frequently sell to "David" on credit and would either collect the money from David himself, or send CW-2 or other co-conspirators not named as defendants herein, to retrieve the money.

h. CW-1 occasionally had conversations with "David" regarding the sale of second-hand prescription drugs by phone. Specifically, CW-1 would use his own cellular phone (the "Cellular Phone") to call "David" to arrange meetings or discuss money owed by "David" for previously delivered second-hand drugs.

i. CW-1 estimate that he last sold to "David" approximately one month before his arrest in July 2012.

j. When shown a photograph of DAVID CORREA, the defendant, CW-1 was able to positively identify him as the "David" to whom he sold second-hand prescription drugs in the manner described above.

14. Based on conversations with CW-2, I have learned the following, in substance and in part:

a. In or about 2008, CW-2 began working for CW-1 as part of the second-hand pill distribution conspiracy described above. Specifically, and at CW-1's direction, CW-2 would assist in collecting and distributing bottles of second-hand pills, collecting money owed for the sale of bottles, and "cleaning" the bottles. Like CW-1, CW-2 was at no time a licensed wholesaler or distributor of prescription medications.

b. In the course of his work for CW-1, CW-2 came to know many of CW-1's buyers, including an individual known to CW-2 as "David." According to CW-2, "David" owned a pharmacy located on Fordham Road in the Bronx.

c. On several occasions between 2010 and in or around October 2011, CW-2 went with CW-1 to deliver bottles of second-hand medication to "David." On these occasions, CW-1 and CW-2 would generally meet "David" in or around his pharmacy. According to CW-2, CW-1 would generally deliver the bottles to David in an empty beer box.

d. On other occasions, CW-2 was sent by CW-1 to collect money "David" owed to CW-1. Specifically, in or around July and August 2011, when CW-1 was out of the country, CW-1 left CW-2 with the Cellular Phone and directions to collect money owed from "David." During that time period and using the Cellular Phone, CW-2 had several conversations with "David" regarding second-hand pills.

e. When shown a photograph of DAVID CORREA, the defendant, CW-2 positively identified him as the "David" to whom he had helped sell second-hand prescription medications as described above.

15. Based on my review of certain calls intercepted pursuant to a wire authorized by judges in this district and placed on the Cellular Phone, I know that on or about August 2, 2011, CW-2 called an individual he has since positively identified as DAVID CORREA, the defendant, to discuss, among other things, money owed by "David" for second-hand pills previously sold by CW-1 and CW-2. On that call, the following conversation took place, in part:

CW-2: Yes. Ah, then, then, when will you call so I can stop by there?

CORREA: Uh...basically the furniture down payment will be for the following week.

[. . .]

CORREA: Listen, the list I gave you, what came of that?

CW-2: Uh...I have to check and see. I have to tell so-and-so and see, because he told me, but then, I'll call you now. I haven't spoken to him in around three days.

CORREA: All right, no problem. Then let me know after you talk to him.

CW-2: Okay, Flaco.

16. Based on my conversations with CW-1 and CW-2, I know that "furniture" was a code used by DAVID CORREA, the defendant, to refer to bottles of second-hand drugs.¹ I further know that the "list" referenced by CORREA was a list of second-hand prescription drugs CORREA wanted to buy from CW-1 and CW-2. However, at the time of this call, CW-2 did not yet have the second-hand drugs CORREA wanted to purchase, so CW-2 stalled to buy himself time to fill the order.

17. Based on my review of certain calls intercepted pursuant to a wire authorized by judges in this district and placed on the Cellular Phone, I know that on or about August 16, 2011, CW-2 called an individual he has subsequently identified as DAVID CORREA, the defendant, to discuss, among other things, second-hand pills previously sold by CW-1 and CW-2. On that call, the following conversation took place, in part:

CORREA: ...where are you?

CW-2: No, I'm here in Brooklyn.

CORREA: Oh, no, I'm here, you know; we're here waiting for you. Look, what I want to know

¹ Based on my investigation, including conversations with CW-1 and CW-2, I know that, at all times relevant to this Complaint, CW-1 owned a furniture business. I further know that while DAVID CORREA, the defendant, bought no actual furniture from CW-1, CORREA used "furniture" and the furniture business as code for the second-hand drugs he bought from CW-1 and CW-2 and, on one or more occasion, made payments for "furniture" to CW-1's furniture business when, in fact, the payments in question were for second-hand drugs.

is the other...the other chair that turned out bad; I have to return that one, because I don't want to keep that here, so...speak with my friend [CW-1], I gotta get rid of this, man.

CW-2: That one?

CORREA: The other chair they brought me that was...that turned out bad; I have to return it.

CW-2: Oh, uh, uh, can I stop by there?

CORREA: Yes, stop by here; I'm waiting for you.

18. Based on my conversations with CW-1 and CW-2, I know that "chair" was code for a bottle of second-hand prescription drugs, and that, by indicating that one of the chairs "turned out bad," DAVID CORREA, the defendant, was conveying that there was a problem with one of the bottles sold to him by CW-1 and CW-2. I further know that, after this call occurred, CW-2 returned to CORREA's pharmacy to retrieve the bottle in question.

19. Based on my investigation as well as my training and experience, I know that by unlawfully buying bottles of second-hand drugs from CW-1 and CW-2 rather than from legitimate, licensed wholesalers, DAVID CORREA, the defendant, obtained the bottles at heavily discounted prices. By re-dispensing these bottles as "new" to unsuspecting patients -- and by fraudulently billing Medicaid and other health care benefit programs for "new" bottles of medication -- DAVID CORREA, the defendant, could reap hundreds of thousands of dollars in unlawful profits.

20. For example, for each second-hand bottle of Truvada obtained from CW-1 and CW-2 for \$200 and then fraudulently re-dispensed as "new" to an unsuspecting patient, CORREA and his pharmacy would be reimbursed approximately \$1,149 by Medicaid or another health care benefit program, for a profit of approximately \$949 per bottle. For each second-hand bottle of Atripla obtained from CW-1 and CW-2 for \$350-400 and then fraudulently re-dispensed as "new" to an unsuspecting patient, CORREA and his pharmacy would be reimbursed approximately \$1,879, for a profit of approximately \$1,479 per bottle. For each second-hand bottle of Reyataz obtained from CW-1 and CW-2 for \$200 and then fraudulently re-dispensed as "new" to an unsuspecting patient, CORREA and his pharmacy would be

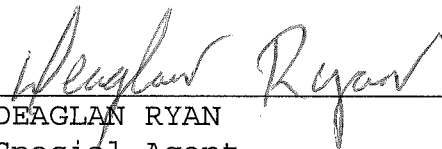
reimbursed approximately \$1,065, for a profit of approximately \$865 per bottle.

21. Based on my review of records and information obtained from the New York State Office of Professions, I have learned the following, in substance and in part:

a. DAVID CORREA, the defendant, is the registrant and sole corporate officer of a pharmacy located on West Fordham Road, in the Bronx, and licensed to do business in the state of New York (the "Pharmacy").

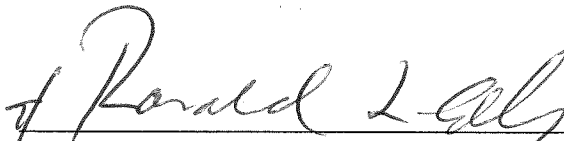
b. CORREA first registered the Pharmacy in April 2007 and has maintained his registration at all times relevant to the Complaint.

WHEREFORE, the deponent asks that a warrant be issued for the arrest of DAVID CORREA, and that he be imprisoned, or bailed, as the case may be.



DEAGLAN RYAN
Special Agent
Federal Bureau of Investigation

Sworn to before me this
14th day of March, 2013.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

RONALD L. ELLIS
United States Magistrate Judge
Southern District of New York