

Approved: EHanft / MC McGinnis  
ELIZABETH HANFT / MICHAEL C. MCGINNIS  
Assistant United States Attorneys

Before: THE HONORABLE BARBARA C. MOSES  
United States Magistrate Judge  
Southern District of New York

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UNITED STATES OF AMERICA	:	<b><u>SEALED COMPLAINT</u></b>
	:	
- v. -	:	Violation of
	:	21 U.S.C. § 846
ERNESTO LOPEZ and	:	
AUDRA BAKER,	:	COUNTIES OF OFFENSE:
	:	BRONX AND NEW YORK
Defendants.	:	
	:	

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SOUTHERN DISTRICT OF NEW YORK, ss.:

KENNETH McGRAIL, being duly sworn, deposes and says that he is a Special Agent with the Drug Enforcement Administration ("DEA"), and charges as follows:

**COUNT ONE**

1. From at least in or about 2015, up to and including in or about October 2017, in the Southern District of New York and elsewhere, ERNESTO LOPEZ and AUDRA BAKER, the defendants, and others known and unknown, intentionally and knowingly did combine, conspire, confederate and agree, together and with each other, to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that ERNESTO LOPEZ and AUDRA BAKER, the defendants, and others known and unknown, would and did distribute and possess with intent to distribute controlled substances, in violation of 21 U.S.C. § 841(a)(1).

3. The controlled substances that ERNESTO LOPEZ and AUDRA BAKER, the defendants, and others known and unknown, conspired to distribute and possess with intent to distribute

were: (i) a quantity of mixtures and substances containing a detectable amount of oxycodone, in violation of 21 U.S.C. § 841(b)(1)(C); and (ii) a quantity of mixtures and substances containing a detectable amount of fentanyl, in violation of 21 U.S.C. § 841(b)(1)(C).

(Title 21, United States Code, Section 846.)

4. The bases for my knowledge and the foregoing charge are, in part, as follows:

5. I am a Special Agent with the DEA Tactical Diversion Squad ("TDS"). I have been personally involved in the investigation of this matter. This Affidavit is based upon my personal participation in the investigation, my examination of reports and records, and my conversations with other law enforcement agents and other individuals. Because this Affidavit is being submitted for the limited purpose of demonstrating probable cause, it does not include all the 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.

**BACKGROUND ON OXYCODONE AND FENTANYL**

6. I have personally participated in the investigation and prosecution of several schemes to illegally divert large amounts of oxycodone for resale. Based on my participation in these investigations, and my conversations with witnesses and review of records involved in these schemes, I know the following:

a. Oxycodone is a highly addictive, narcotic-strength opioid that is used to treat severe and chronic pain conditions, such as post-operative pain, severe back and orthopedic injuries, and pain associated with certain forms of cancer and other terminal illnesses. Oxycodone can be obtained from most pharmacies with a prescription written by a treating physician, and is typically dispensed in tablet form, with dosages varying between 5 milligrams and 80 milligrams.

b. Oxycodone is a Schedule II narcotic, meaning that it is a "controlled substance" under the Controlled Substances Act ("CSA"). In addition to the prescription required to purchase oxycodone, oxycodone is also subject to heightened restrictions under the CSA. For example, the CSA requires

manufacturers, distributors, and pharmacists to report all transactions to the DEA regarding the theft, loss, sale, transfer, or destruction of controlled substances, including narcotics like oxycodone.

c. Oxycodone prescriptions are in high demand and have significant cash value to drug dealers. Oxycodone tablets can be resold on the street for thousands of dollars. For example, 30-milligram oxycodone tablets have a street value of approximately \$20 to \$30 per tablet in New York City, with street prices even higher in other parts of the country, such as Massachusetts, Vermont, and Maine. A single prescription for 120 30-milligram tablets of oxycodone can net an illicit distributor \$2,400 in cash or more.

d. Many diversion schemes involve Board-certified, state-licensed doctors who, for a fee, will write medically unnecessary prescriptions for large quantities of oxycodone. In such schemes, the doctors typically charge cash for "doctor visits" that involve little or no physical examination of the alleged "patient"; nonetheless, the doctor issues a prescription for large doses of oxycodone, typically in 30-milligram tablets. To protect against the possibility of detection by law enforcement, such doctors sometimes ask the "patients" for medical records (such as MRI or x-ray files) purporting to document injuries. The medical records provided to the doctor often do not justify the prescription requested, and may also be falsified and/or contain the medical information for individuals other than the alleged "patient."

e. Many of the "patients" involved in such schemes have no medical need for oxycodone, nor do they have any legitimate medical record documenting an ailment for which oxycodone would be prescribed. Instead, these individuals are typically addicts, drug dealers who resell the pills, or members of "crews," that is, individuals who are recruited and paid by large-scale oxycodone distributors to pose as "patients" in order to receive medically unnecessary prescriptions.

f. In some instances, "patients" also pay employees of the doctors in cash to facilitate or expedite access to the doctors.

7. I have personally participated in the investigation and prosecution of several schemes to illegally distribute fentanyl. Based on my participation in these

investigations, and my conversations with witnesses and review of records involved in these schemes, I know the following:

a. Fentanyl is a highly addictive, narcotic-strength opioid that is used frequently to treat severe and chronic pain conditions, commonly in cancer patients. Fentanyl is abused for its intense euphoric effects and can serve as a direct substitute for heroin in opioid dependent individuals. Because it is much more potent than heroin, fentanyl results in frequent overdoses that can lead to respiratory depression and death.

b. Fentanyl is a Schedule II narcotic, meaning that it is a "controlled substance" under the Controlled Substances Act ("CSA"). In addition to the prescription required to purchase fentanyl, fentanyl is also subject to heightened restrictions under the CSA. For example, the CSA requires manufacturers, distributors, and pharmacists to report all transactions to the DEA regarding the theft, loss, sale, transfer, or destruction of controlled substances, including narcotics like fentanyl.

c. Fentanyl pharmaceutical products are available in numerous forms, including tablets, sprays, and patches. Fentanyl patches are commonly abused by removing the gel contents from the patches and then injecting or ingesting those contents. Fentanyl patches may also be frozen, cut into pieces, and placed under the tongue or in the cheek cavity for drug absorption.

d. Fentanyl is diverted via theft, fraudulent prescriptions, and illicit distribution by patients, physicians, and pharmacists.

#### LOPEZ'S DISTRIBUTION OF OXYCODONE AND FENTANYL

8. Based upon my review of records maintained by the New York State Office of Professional Licensing Services and numerous medical boards, I have learned that ERNESTO LOPEZ, the defendant, is a New York-licensed doctor who appears to lack any current Board certification. LOPEZ is registered with the DEA and authorized to prescribe oxycodone and other controlled substances

9. Based on my training and experience, as well as my participation in this investigation, including my

conversations with other law enforcement agents, I have learned, in part, the following:

a. From at least approximately January 2015 until October 2017, ERNESTO LOPEZ, the defendant, operated multiple medical clinics in locations across New York City and its surrounding areas. During this period, LOPEZ operated clinics in midtown-Manhattan (the "Manhattan Clinic"), Franklin Square, New York (the "Franklin Avenue Clinic"), and Jackson Heights, New York (the "Jackson Heights Clinic"), among others (together, the "Lopez Clinics").

b. As the sole licensed practitioner and proprietor, LOPEZ saw all of the "patients" at the Franklin Avenue Clinic and the Jackson Heights Clinic. In addition, LOPEZ oversaw the day-to-day operations of the Lopez Clinics, including supervising members of LOPEZ's Office Staff. AUDRA BAKER, the defendant, was a member of LOPEZ's Office Staff from at least in or about October 2016 through in or about October 2017.

c. LOPEZ did not accept medical insurance for his services. Instead, LOPEZ charged an approximately \$250 cash fee for an initial office visit and a \$200 cash fee for follow-up visits. LOPEZ and BAKER often oversaw the collection of the cash fee from each of these "patients" before authorizing a prescription, most frequently, for 120 30-milligram oxycodone tablets.

d. As discussed further below, among other methods of providing prescriptions, LOPEZ provided electronic prescriptions - that is, LOPEZ caused his Office Staff to transmit an electronic version of a prescription to a pharmacy designated by a "patient" as that patient's pharmacy of choice, so that the pharmacy could fill the prescription. On thousands of occasions, LOPEZ caused electronic prescriptions for oxycodone written at the Lopez Clinics to be transmitted to pharmacies located in Manhattan and the Bronx, New York.

10. Based upon my review of data obtained from the New York State Bureau of Narcotics Enforcement ("BNE") and the Prescription Monitoring Program ("PMP"), I have learned, in part, that:

a. During the year 2015, ERNESTO LOPEZ, the defendant, wrote approximately 3,459 oxycodone prescriptions and approximately 612 fentanyl prescriptions for approximately 495 patients.

b. During the year 2016, LOPEZ wrote approximately 4,763 oxycodone prescriptions and approximately 1,142 fentanyl prescriptions for approximately 390 patients.

c. As a result of the foregoing, and based on my conversations with other law enforcement agents who have analyzed relevant BNE and PMP data, I estimate that LOPEZ collected in excess of \$2 million in cash fees for "doctor visits" between January 2015 and October 2017.

#### RECORDED OFFICE VISITS

11. In the course of this investigation, I have participated in several law enforcement operations during which the activities of ERNESTO LOPEZ, the defendant, and members of LOPEZ's Office Staff, including AUDRA BAKER, the defendant, were audio- and video-recorded by an undercover DEA Special Agent ("UC-1") and by a confidential source ("CS-1")<sup>1</sup>. Based upon my review of these recordings, as well as my debriefing of the individuals who made the recordings at the direction of law enforcement, I have learned, among other things, the following:

a. During UC-1's and CS-1's office visits, LOPEZ provided no meaningful physical examination of these patients. Rather, a patient visit generally consisted of recording a patient's vitals, occasionally moving a patient's limbs briefly, inquiring whether the patient brought his or her empty prescription bottles, inquiring whether the patient had a pharmacy at which to fill a prescription, and writing a prescription for oxycodone and/or fentanyl.

b. During UC-1's initial patient visit, UC-1 paid LOPEZ and/or his staff approximately \$250 in cash for the patient visit. During subsequent visits, UC-1 paid LOPEZ and/or his staff approximately \$200 in cash per visit and was, in turn, prescribed medications containing oxycodone and/or fentanyl by LOPEZ. From in or about February 2017 until in or about June 2017, UC-1 made approximately four patient visits to the Lopez

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<sup>1</sup> Since approximately 2015, CS-1 has been a paid DEA informant. Since CS-1 began providing information to the DEA, the DEA has deemed CS-1 reliable and CS-1's information has sometimes been corroborated by independent evidence, including, among other things, the audio- and video-recordings described herein. CS-1 has previously been convicted of multiple offenses, including narcotics-related offenses.

Clinics and was prescribed approximately 270 30-milligram oxycodone pills, approximately 80 10-milligram oxycodone pills, and approximately twenty patches containing fentanyl.

c. During CS-1's initial patient visit, CS-1 paid LOPEZ and/or his staff approximately \$300 for the patient visit. During subsequent visits, CS-1 paid LOPEZ and/or his staff approximately \$200 per visit and was in turn prescribed medications containing oxycodone and/or fentanyl by LOPEZ. From in or about approximately December 2016 until in or about approximately October 2017, CS-1 has made approximately ten patient visits to LOPEZ and was prescribed approximately 810 30-milligram oxycodone pills, approximately 240 15-milligram oxycodone pills, and approximately 40 patches containing fentanyl.

12. Based on my participation in debriefing UC-1, conversations with other law enforcement agents who have participated in debriefing UC-1, and recordings made by UC-1, as summarized in ¶ 11(b), *supra*, I have learned, among other things, that UC-1 has made approximately four patient visits to ERNESTO LOPEZ, the defendant. By way of example:

a. On or about January 25, 2017, UC-1 attempted to schedule an appointment at the Manhattan Clinic. During the call, UC-1 was told, in sum and substance, that LOPEZ charges new patients \$250 for an initial visit and \$200 for each follow-up visit. UC-1 was told to bring the following to UC-1's appointment: identification; documentation regarding a present or pending lawsuit of any kind; documentation of workers compensation, if employed; medical records; current pharmacy information; all prescription bottles for medicine currently being taken; a copy of a current MRI; a recent urine drug test; and a photograph of where medications can be securely stored, such as a lockbox.

b. On or about February 17, 2017, UC-1 visited the Manhattan Clinic for an initial appointment. UC-1 completed medical forms and was told that the wait would last approximately two hours. Approximately two hours later, UC-1 was called to the exam room. LOPEZ asked UC-1 to see UC-1's medical records and an empty prescription bottle. UC-1 provided LOPEZ with an MRI and an empty prescription bottle for ibuprofen and cyclobenzaprine (a muscle relaxant). UC-1 also provided a urine test (which was negative for oxycodone), a medical referral, and a pharmacy printout, which printout listed UC-1's ibuprofen and cyclobenzaprine prescriptions. The MRI stated

that UC-1 suffered from "rotator cuff tendinosis with fraying of the supraspinature." UC-1 explained that the pain resulted from a shoulder injury more than ten years old and that UC-1 had not had any surgeries on the shoulder. After discussing the shoulder injury briefly, LOPEZ asked UC-1 to raise UC-1's arm and to shake LOPEZ's hand. LOPEZ did not perform any additional physical examination of UC-1. LOPEZ issued UC-1 an electronic prescription for Percocet (which contains oxycodone), among other drugs. UC-1 paid \$250 in cash for the visit.

c. On or about March 26, 2017, UC-1 visited the Jackson Heights Clinic for a scheduled appointment with LOPEZ. UC-1 paid approximately \$200 in cash for the patient visit. AUDRA BAKER, the defendant, called UC-1 into a different room and took UC-1's weight and blood pressure. After LOPEZ entered, UC-1 and LOPEZ discussed UC-1's use of Percocet. LOPEZ agreed to prescribe UC-1 oxycodone. LOPEZ and UC-1 also discussed UC-1's lack of medical insurance to pay for the prescription. LOPEZ conducted no physical exam of UC-1. LOPEZ issued UC-1 an electronic prescription for 90 30-milligram tablets of oxycodone, among other drugs.

13. Based on my participation in debriefing CS-1, conversations with other law enforcement agents who have participated in debriefing CS-1, and recordings made by CS-1, as summarized in ¶ 11(c), *supra*, I have learned, among other things, that CS-1 has made approximately ten patient visits to ERNESTO LOPEZ, the defendant. By way of example:

a. On or about December 5, 2016, CS-1 visited the Franklin Avenue Clinic. CS-1 met with LOPEZ. LOPEZ inquired about CS-1's medical and prescription history. LOPEZ did not provide CS-1 with any prescription for narcotics and stated that CS-1 needed to return to LOPEZ with an MRI, a urine test, and a photograph of the container in which CS-1 would store any narcotics. LOPEZ also discussed with CS-1 a future prescription for fentanyl patches. LOPEZ briefly lifted CS-1's arm and touched CS-1's spine. LOPEZ performed no further physical examination. CS-1 paid \$300 in cash for the visit.

b. On or about December 19, 2016, CS-1 visited the Franklin Avenue Clinic. CS-1 provided AUDRA BAKER, the defendant, with an MRI and a urine test showing negative results for opioids. The MRI stated that CS-1 suffered from "Rotator cuff tendinosis with fraying of the supraspinatus/infraspinatus tendons as well as small focal insertional tear of the cranial subscapularis tendon." After examining the MRI, LOPEZ stated



that he would prescribe CS-1 oxycodone. LOPEZ did not perform any physical examination of CS-1. LOPEZ issued CS-1 an electronic prescription for 120 15-milligram tablets of oxycodone, among other drugs. CS-1 paid \$200 in cash for the visit.

c. On or about January 16, 2017, CS-1 visited the Franklin Avenue Clinic. CS-1 completed medical forms inquiring about CS-1's pain level. CS-1 indicated on his intake form that, on a scale of 1 - 10, his pain level was a "3" without medicine and a "2" with medicine. BAKER measured CS-1's weight and blood pressure and took possession of his prior prescription oxycodone bottle. LOPEZ met with CS-1. LOPEZ performed no physical examination of CS-1 and did not inquire about CS-1's shoulder. LOPEZ issued CS-1 an electronic prescription for 120 15-milligram tablets of oxycodone, among other drugs. CS-1 paid \$200 in cash for the visit.

d. On or about June 12, 2017, CS-1 visited the Franklin Avenue Clinic. BAKER measured CS-1's weight and blood pressure. BAKER and CS-1 discussed where CS-1 could fill CS-1's prescription. BAKER stated, in sum and substance, that she would call someone at a pharmacy to assist CS-1 in filling his prescription. LOPEZ met with CS-1 and discussed CS-1's purported difficulties in filling CS-1's prescription. LOPEZ performed no physical examination of CS-1 and did not inquire about CS-1's shoulder. LOPEZ issued CS-1 an electronic prescription for 120 30-milligram tablets of oxycodone and 10 Fentanyl patches. CS-1 paid \$200 in cash for the visit. Prior to exiting the Franklin Avenue Clinic, BAKER provided CS-1 with the telephone number for a pharmacy location ("Pharmacy-1") and with her telephone number (the "Baker Number").

#### **BAKER'S ROLE IN THE DIVERSION CONSPIRACY**

14. As discussed below, AUDRA BAKER, the defendant, participated in the conspiracy to divert oxycodone and fentanyl. Specifically, BAKER was aware that patients were selling oxycodone prescriptions and directed patients to individuals and pharmacies that would help the patient divert his or her oxycodone prescription.

15. Based on my involvement in this investigation, including my and other law enforcement agents' conversations with CS-1, review of law enforcement reports, and discussions

with other law enforcement officials involved in the investigation, I have learned, in part, the following:

a. As discussed above, on or about June 12, 2017, LOPEZ prescribed CS-1 with oxycodone and fentanyl (the "June 12 Prescription"). At the conclusion of the visit, BAKER directed CS-1 to call Pharmacy-1 in order to fill CS-1's prescription.

b. On or about June 12, 2017, CS-1 went to Pharmacy-1 to fill the June 12 Prescription. An employee at Pharmacy-1 informed CS-1, in sum and substance, that Pharmacy-1 did not have the medication in stock and that CS-1 could fill the June 12 Prescription elsewhere. Thereafter, CS-1 received a telephone call from an individual ("CC-1") (the "June 12 Call"). Based on my review of the draft transcript from the June 12 Call, I have learned, in part, the following: CC-1 asked CS-1 whether "Audra" gave CS-1 "the breakdown of how this is going down." CC-1 stated that CS-1 was not to go to Pharmacy-1 because Pharmacy-1 was "[CC-1's] Pharmacy" and that Pharmacy-1 "deal[s] with me." CC-1 informed CS-1 that Pharmacy-1 would charge \$700 to fill the prescription for oxycodone, and that CC-1 would buy the oxycodone pills in CS-1's prescription at a rate of \$17 per oxycodone pill. CC-1 further stated that CS-1 could keep the fentanyl patches.

c. On or about June 12, 2017, AUDRA BAKER, the defendant, called CS-1. During that call, the following conversation occurred, in part:

**CS-1:** Hello.

**Baker:** Hey baby, I just got off the train, just now. They had a sick passenger on the train I'm sorry.

**CS-1:** Ohhh, nahh he-he just-he just called me but what-what he want to do I'm trying to tell him I can't do that because where I go, I get like 30 a piece for them. That's why I was in a rush to do it.

**Baker:** Ohhhh really?! Where you go?!

**CS-1:** To Philly.

**Baker:** Oh really? It's like that?

**CS-1:** And you see I already prom-I already promised that to the dude that get 'em from me.

**Baker:** So do what you do. You can't, you know you're not supposed to be telling me this but it's all good, we good...you hear me?

**CS-1:** Yeah.

**Baker:** Hellooo, we good. Me and you are good, you hear me?

**CS-1:** Yeah, that's why I told you but he [unintelligible].

**Baker:** Okay, so did you-did he he take care of it for you already?

**CS-1:** Nah they didn't even have 'em, they saying they wouldn't have everything 'til tomorrow anyway.

**Baker:** Ohhhh tomorrow.

**CS-1:** Yeah so I told him Wednesday cuz I gotta go take care of something else in Philly, I should've been there already.

**Baker:** Ohhhh you [unintelligible]. Okay so when, he's gonna meet up with you tomorrow baby?

**CS-1:** Nah Wednesday, I told him Wednesday. I'ma call him tomorrow but I told him Wednesday cuz I-I need, I-I need those, I don't need the cash.

Based on my training and experience, and my involvement in this investigation, I believe that the foregoing conversation concerns BAKER's participation in the scheme to divert oxycodone. Specifically, it appears that BAKER is attempting to coordinate between CS-1 and CC-1. CS-1 informs BAKER that CS-1 needs the prescription filled because CS-1 can sell the oxycodone for \$30 per pill elsewhere ("CS-1: I'm trying to tell him I can't do that because where I go, I get like 30 a piece for them. That's why I was in a rush to do it."). BAKER first expresses interest regarding where CS-1 can obtain such a high price for the oxycodone ("BAKER: Ohhhh really?! Where you go?!"). BAKER then states that CS-1 should not be telling her such information because of her role in the Lopez Clinics ("BAKER: So do what you do. You can't, you know you're not supposed to be telling me this but it's all good, we good . . . you hear me?").

d. On or about June 15, 2017, a confidential source ("CS-2")<sup>2</sup> in the guise of CS-1, met with CC-1. CC-1 informed CS-2 that in addition to the \$700 for the prescription, CS-2 would also have to pay an additional \$200 for the fentanyl patches prescription. CC-1 then provided CS-2 with \$1,140, the empty prescription oxycodone bottle, and the fentanyl patches.<sup>3</sup>

16. On or about September 28, 2017, the Honorable Loretta A. Preska, United States District Judge for the Southern District of New York, signed an order (the "September 28 Order") authorizing the interception of wire and electronic communications occurring over a cellphone used by CC-1. Interception pursuant to the September 28 Order began on or about September 28, 2017 and terminated on or about October 20, 2017. Based on my and other law enforcement agents' review of draft preliminary linesheets of calls and text messages intercepted pursuant to the September 28 Order, I have learned the following, in substance and in part:

a. On or about October 2, 2017, at approximately 1:45 p.m., AUDRA BAKER, the defendant, sent a text message to CC-1, asking "Is the new patient good did they pay u [CC-1][?]" At approximately 1:56 p.m., CC-1 sent a text message in response that stated "Not yet." At approximately 1:57 p.m., BAKER sent a text message to CC-1 that stated "So reschedule." At approximately 1:58 p.m., CC-1 sent a text message to BAKER that said, "I'm Supposed to see [the new patient] sometime today Let's see what happens."

b. Based on my training, experience, and participation in this investigation, it appears that, in this text message exchange, BAKER was asking CC-1 whether a new patient of ERNESTO LOPEZ, the defendant, with whom BAKER had connected CC-1, was paying CC-1 in connection with their diversion scheme, and CC-1 was responding that the patient had

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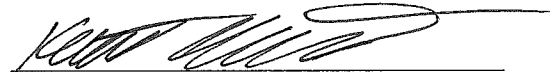
<sup>2</sup>Since at least approximately 2013, CS-2 has been a paid DEA informant. Since CS-2 began providing information, the DEA has deemed CS-2 reliable and CS-2's information has sometimes been corroborated by independent evidence. CS-2 has previously been convicted of multiple offenses, including narcotics-related offenses.

<sup>3</sup>The \$1,140 paid by CC-1 to CS-1 reflects the price per oxycodone pill (\$17 per pill) minus the \$700 prescription cost for the oxycodone and minus the \$200 prescription cost for the fentanyl patches.


not yet paid CC-1, but that CC-1 was supposed to see the patient later that day, and would see what happened before having BAKER reschedule the patient's appointment.

17. Based on my review of BNE and PMP records, and my discussions with law enforcement agents that have analyzed certain BNE and PMP records, I have learned that between in or about January 2015 and in or about October 2017, approximately 54 prescriptions for approximately 5,100 30-milligram oxycodone pills and approximately 2,460 15-milligram oxycodone pills were issued in the name of AUDRA BAKER, the defendant. ERNESTO LOPEZ, the defendant, issued 53 of the prescriptions to BAKER.

WHEREFORE, deponent requests that warrants be issued for the arrests of ERNESTO LOPEZ and AUDRA BAKER, the defendants, and that they be arrested and imprisoned or bailed as the case may be.

  
KENNETH McGRAIL  
Special Agent  
Drug Enforcement  
Administration

Sworn to before me this  
31<sup>st</sup> day of October, 2017

  
HONORABLE BARBARA C. MOSES  
United States Magistrate Judge  
Southern District of New York