

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on November 1, 2013

|                           |   |                                        |
|---------------------------|---|----------------------------------------|
| UNITED STATES OF AMERICA  | : | CRIMINAL NO.                           |
|                           | : |                                        |
| v.                        | : | GRAND JURY ORIGINAL                    |
|                           | : |                                        |
| TITILAYO AKINTOMIDE       | : | VIOLATIONS:                            |
| AKINYOYENU,               | : | 21 U.S.C. § 846                        |
| also known as Tommy Akin, | : | (Conspiracy to Distribute and Dispense |
| also known as Tomi, and   | : | Butalbital)                            |
| ALAN J. SALTZMAN, D.O.,   | : | 21 U.S.C. § 846                        |
|                           | : | (Conspiracy to Distribute and Dispense |
| Defendants.               | : | Controlled Substances by Means of the  |
|                           | : | Internet)                              |
|                           | : | 18 U.S.C. § 371                        |
|                           | : | (Conspiracy to Introduce Misbranded    |
|                           | : | Drugs into Interstate Commerce)        |
|                           | : | 18 U.S.C. § 1341 and § 1349            |
|                           | : | (Conspiracy to Engage in Mail Fraud)   |
|                           | : | 18 U.S.C. § 2                          |
|                           | : | (Aiding and Abetting)                  |
|                           | : |                                        |
|                           | : | FORFEITURE:                            |
|                           | : | 18 U.S.C. § 981(a)(1)(C)               |
|                           | : | 18 U.S.C. § 982(a)(7)                  |
|                           | : | 21 U.S.C. § 853(a) and (p)             |
|                           | : | 28 U.S.C. § 2461(c)                    |

**INDICTMENT**

The Grand Jury charges that:

**COUNT ONE**

**Conspiracy to Distribute Butalbital, a Schedule III, Controlled Substance**

At all times relevant to this indictment:

### **The Controlled Substances Act**

1. The Controlled Substances Act ("CSA") governed the manufacture, distribution, and dispensing of controlled substances in the United States. 21 U.S.C. §§ 801-971.

2. Various prescription drugs were scheduled substances under the CSA. There were five schedules of controlled substances - schedules I, II, III, IV, and V. Drugs were scheduled into these levels based on their potential for abuse, among other things. Abuse of Schedule III drugs may lead to moderate or low physical dependence or high psychological dependence. 21 U.S.C. § 812(b)(3) and (4). All Schedule III controlled substances were available to the public only by prescription according to 21 U.S.C. § 829(c).

3. Fioricet was the brand name for a prescription-required drug containing butalbital. Butalbital is a Schedule III Controlled Substance.

4. Medical practitioners authorized to prescribe or dispense controlled substances by the jurisdiction in which they were licensed to practice medicine were authorized by the CSA to write prescriptions for or otherwise dispense controlled substances if they were registered with the Attorney General of the United States through the Drug Enforcement Administration ("DEA"). Such medical practitioners were authorized by the DEA pursuant to an application, and registrants were issued a unique registration number. Pharmacies engaged in filling controlled substance prescriptions were also authorized by the DEA and obtained a registration number by applying to the DEA. Pharmacists dispensing controlled and non-controlled prescription-required pharmaceuticals in the District of Columbia were licensed by the District of Columbia Board of Health.

5. Title 21, Code of Federal Regulations, Section 1306.04(a) provides that:

A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research, is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

**Apexonlinepharmacy.com**

6. The defendant, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, was a pharmacist licensed by the District of Columbia Board of Health, with license number PHA3242, to dispense controlled and non-controlled pharmaceuticals.

7. Apexonlinepharmacy.com, Inc. was a subsidiary of Matrix Corp., owned by the defendant, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi. It operated as an internet pharmacy registered in Maryland with a domain name of [www.Apexonlinepharmacy.com](http://www.Apexonlinepharmacy.com) (“the Apex website”) and was created January 18, 2005.

8. Apex Care Pharmacy was a retail pharmacy located at 4047 Minnesota Ave., N.E., Washington, D.C., 20019, which was owned by the defendant, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi. Apex Care Pharmacy had a controlled substance certificate issued by the DEA, registration number BA8745145.

9. The defendant **ALAN J. SALTZMAN, D.O.**, was a doctor of osteopathic medicine, and a licensed osteopath in Florida and Pennsylvania.

10. Physicians with the appropriate DEA registration were authorized to write and issue prescriptions for controlled substances. Pharmacies with the appropriate DEA registration and local licenses were authorized to fill prescriptions in accordance with the regulatory and statutory scheme in the CSA.

### **The Food, Drug, and Cosmetic Act**

11. Under the Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. §§ 301-397, the term "drug" included articles which were (1) recognized in the official United States Pharmacopeia or official National Formulary or any supplement to any of them; (2) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man; or (3) intended to affect the structure or any function of the body of man. 21 U.S.C. § 321(g)(1)(A), (B), and (C). 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 FDCA, 21 U.S.C. §§ 301 et seq. Some of the drugs regulated by the FDCA are "prescription drugs." "Prescription drugs" are those drugs, which, because of their toxicity or other potential harmful effects, or the method of their use, or the collateral measures necessary to their use, are not safe for use except under the supervision of a practitioner licensed by law to administer such drugs, or which are required to be administered under the professional supervision of a practitioner licensed by law to administer such drugs as a condition of FDA approving any such drug to be placed on the market. 21 U.S.C. § 353(b)(1)(A) and (B). These "prescription drugs" are sometimes called "legend" drugs. The FDA enforces the provisions of the FDCA with respect to these drugs. The

FDA regulates the distribution of legend drugs and imposes regulations restricting the distribution of such legend drugs by among other things, requiring a valid prescription.

12. Customers ordered numerous prescription drugs during the period in which the Apex website operated, including carisoprodol, which was also marketed as Soma (a controlled substance since January 2012), tramadol, which was marketed as Ultram (a controlled substance since August 2014), Cialis (which contains tadalafil), and Viagra (which contains sildenafil citrate), and approximately 100 other pharmaceuticals which are non-controlled prescription drugs within the meaning of 21 U.S.C. § 353(b)(1)(A) and (B) but which were dispensed and distributed other than for a legitimate medical purpose and not in the usual course of professional medical practice.

#### **Statutory Consequences Implicit in the CSA and FDCA**

13. Physicians who write or authorize prescriptions without a valid doctor-patient relationship are issuing invalid prescriptions because the physicians are acting outside the usual course of professional practice. 21 C.F.R. § 1306.04(a) and 21 U.S.C. § 829(e)(2). The act of dispensing prescription drugs without the valid prescription of a practitioner licensed by law to administer such a drug is an act which causes the drug to become misbranded while held for sale. 21 U.S.C. § 353(b)(1). Pharmacists who knowingly fill such prescriptions, or who have reason to know such prescriptions are invalid, are dispensing misbranded drugs in criminal violation of 21 U.S.C. §§ 353(b)(1), 331(a), and 333(a)(2).

14. The FDCA prohibits the introduction, or delivery for introduction, into interstate commerce of any drug that is misbranded and makes such introduction or delivery into interstate commerce a criminal violation. 21 U.S.C. § 331(a).

**The Conspiracy**

15. Beginning on or about January 18, 2005, the exact date being unknown, and continuing until June 29, 2010, in the District of Columbia, the Southern District of Florida, and elsewhere, the defendants, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, and **ALAN J. SALTZMAN, D.O.**, did knowingly and intentionally combine, conspire, confederate, and agree with others both known and unknown, to distribute and cause to be distributed a Schedule III controlled substance, butalbital (also marketed as Fioricet), for other than a legitimate medical purpose and not in the usual course of professional practice, contrary to the provisions of 21 U.S.C. §§ 841(a)(1) and (b)(1)(E)(i), and ((b)(1)(D), then in effect in 2005); all in violation of 21 U.S.C. § 846.

**Goal of the Conspiracy**

16. It was a goal of the conspiracy to obtain money and other things of value by distributing controlled substances by prescriptions which were not valid.

**Manner and Means**

It was part of the conspiracy that:

17. **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, created an internet pharmacy operation and gave it the name, apexonlinepharmacy.com. **Akinyoyenu** ran the internet pharmacy operation at Apex Care Pharmacy, a subsidiary of the Matrix Corp., located at 4047 Minnesota Avenue NE, Washington, DC, 20019. The registered owner of the Matrix Corp., is Titilayo Akinyoyenu. **Akinyoyenu** hired a Cumberland, Maryland, technology company to design the website and register it under the domain name, apexonlinepharmacy.com. Thereafter, the website design company handled various administrative aspects of the website, but did not participate in or manage the website,

nor did the design company participate in the filling of any of the prescription--required orders placed by customers over the internet. From January 2005, until June 29, 2010, the Apex website sold scheduled and non-scheduled prescription drugs over the internet.

18. It was also part of the manner and means of the conspiracy that the Apex website operated in such a manner as to solicit customers who were interested in obtaining prescription required controlled and non-controlled pharmaceuticals without requiring the customer to be seen or examined by a treating physician or health care professional. During the period of the operation of the Apex website, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, caused the creation of a second website, Bynextday.com, which was a website link to the Apex website. Bynextday.com simply redirected internet inquiries to the Apex website. The existence of this alter ego website increased the likelihood of customers reaching the Apex website and hence, increased business on the Apex website. Customers could order prescription drugs without presenting a prescription and without seeing a doctor, and selected which prescription drugs they wished to order. The Apex website allowed customers to complete an online questionnaire about their medical history and nature of their ailments. The order and medical questionnaire were then electronically transmitted to reviewing physicians or persons purporting to be reviewing physicians, along with credit card information, billing information, and shipping information, all supplied by the customer. The identities of the customers, and the medical information in the questionnaires was not verified, as there were no in-person consultations with physicians, and therefore no medical examinations and no medical diagnoses.

19. The Apex website, along with its alter ego website, Bynextday.com, made the following representation:

apexonlinepharmacy.com does not prescribe medication directly. The physician has the ultimate authority to diagnose a medical condition and/or offer a treatment option. All orders require a prescription from your doctor or other health care professional that is licensed in the United States to write prescriptions for medicine.

This representation was false. Contrary to the statement, none of the drugs supplied through the Apex website, or its alter ego website, Bynextday.com, required a prescription from either the customer's doctor or any other health care professional. The prescriptions for controlled and non-controlled drugs obtained over the Apex website were authorized by a reviewing physician, but that physician never conducted an in-person medical examination of the customer, did not speak with the customer, did not review medical records of the customer, and did not otherwise verify any of the information provided by the customer. In other words, the prescriptions provided by the Apex website were issued solely on the basis of an online medical questionnaire.

20. To facilitate the operation of the websites, and in an attempt to legitimize its operations, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, contracted for physicians to review customer orders submitted via the Apex website, to use the physician's names and DEA registrations to approve the drug orders. **ALAN J. SALTZMAN, D.O.**, a licensed osteopathic physician in Florida and Pennsylvania, who resided in Florida, was one such physician who agreed to review and approve orders placed by customers on the Apex website, and agreed to do this for payments of \$3 to \$7 for each drug order, with the lower rates associated with the approval of prescription renewals and higher rates applicable to new prescription-required orders. **ALAN J. SALTZMAN, D.O.** forwarded his signature and DEA registration number to **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, so that the signature and DEA registration number was on file at Apex Care Pharmacy, and could be associated with pharmacy records of drug

orders filled for Apex website customers. Internet orders were available for review by **ALAN J. SALTZMAN, D.O.**, on the Apex website which accessed with a password provided to him by **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, or his employees. **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, set the prices for orders and filled all orders placed over the Apex website. **ALAN J. SALTZMAN, D.O.**, and **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, could decline orders, but neither received money for online drug orders that were declined. At times, **ALAN J. SALTZMAN, D.O.**, did decline certain online prescriptions but the declinations were of minimal significance when compared to the number of approved prescriptions generated from the Apex website. During the operation of the Apex website, approximately 58,217 orders were filled. Between June 12, 2006, and June 29, 2010, **ALAN J. SALTZMAN, D.O.**, reviewed sometimes several hundred drug orders daily, and approved approximately 38,363 prescription drug orders. Some approved orders permitted additional refills, at least 58,217 orders were filled. Of those drug orders, approximately 9,012 orders, which totaled 1,011,570 units/pills, were for Fioricet. All orders were all filled and shipped by **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, from Apex Care Pharmacy.

21. It was further part of the conspiracy that the defendants, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, and **ALAN J. SALTZMAN, D.O.**, and others both known and unknown to the grand jury, did knowingly and intentionally cause controlled substances and prescription-required non-controlled drugs to be distributed through orders purporting to be prescriptions which in fact,

were **not** issued for a legitimate medical purpose by individual practitioners acting in the usual course of professional practice, in one or more of the following circumstances, among others:

- (i) without adequate verification of the customer's identity or medical complaint;
- (ii) without adequate and reliable patient medical history;
- (iii) without performance of a complete or adequate mental or physical examination;
- (iv) without establishment of a diagnosis;
- (v) without the use of appropriate diagnostic or laboratory testing;
- (vi) without sufficient dialogue with the customer regarding treatment options and risks and benefits of such treatments;
- (vii) without establishment of a treatment plan;
- (viii) without contact or coordination of treatment with the customer's primary care physician or other health care professional(s);
- (ix) without providing a means to follow up with the customer or to monitor the customer's response to the medication or compliance with medical usage; and
- (x) without maintaining accurate and complete medical records that justified the course of treatment for each customer, including but not limited to medical history, physical examination results, diagnostic therapeutic and laboratory results, evaluations and consultations, treatment plans and objectives, discussions of risks and benefits, records of all medications prescribed, dispensed, or administered, instructions and agreements, and periodic reviews.

Consequently, the "prescriptions" issued for the customers of Apex website were invalid because they were **not** issued for a legitimate medical purpose by individual practitioners acting in the usual course of professional practice.

22. It was further part of the conspiracy, that between June 12, 2006, and June 29, 2010, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, opened a bank account at Wachovia Bank in the name of APEXONLINEPHARMACY.COM. The account application identified the owner and president of APEXONLINEPHARMACY.COM as Titilayo Akinyoyenu. Deposits into this account came from credit and debit card transactions processed by the Bank of Omaha, which forwarded the proceeds of orders placed on the Apex website to the account at Wachovia Bank. When customers placed orders over the Apex website, they entered a shipment address, selected standard, next day, or next business day shipping, agreed to pay the shipment price, and provided credit or debit card payment information. The credit or debit card transactions for each of the drug orders were processed by the Bank of Omaha, or other financial institutions. Bank of Omaha transaction records show the following gross receipts for the Apex website transactions by calendar year:

2006: \$1,697,004.92

2007: \$3,739,024.87

2008: \$1,956,516.38

2009 (January through August): \$996,164.23

Between June 12, 2006, and through June 29, 2010, sales income for online transactions totaled at least \$8,388,710.10.

23. It was a part of the conspiracy that **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, issued checks or caused wire transfers from the Apexonlinepharmacy.com Wachovia bank account between August

2006, and June of 2009, totaling \$120,732.50 to **ALAN J. SALTZMAN, D.O.** as payments for his role as the approving physician for internet customer orders.

24. It was a part of the conspiracy, that when internet customer orders placed on the Apex website were approved by participating physicians, including **ALAN J. SALTZMAN, D.O.**, and when payment processors approved the payments for the orders placed, including the costs of shipping, the orders for drugs were filled at Apex Care Pharmacy, under the supervision of **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, who was the pharmacist-in-charge. He or his employees placed the pharmaceuticals in pill bottles. The drug orders were then picked up by Federal Express, an interstate common carrier, from Apex Care Pharmacy, and shipped to customers throughout the United States. The Apex website records reflect that during the course of the conspiracy, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, directly, or through employees acting at his direction, filled approximately 58,127 customer orders for prescription-required controlled and non-controlled pharmaceuticals. Federal Express shipped approximately 62,000 packages for the Apex website during the course of this conspiracy. Records show that some orders were for multiple drugs which may have been filled but sent in separate shipments, so the Federal Express shipping orders exceed the exact number of orders placed by customers.

25. It was a part of the conspiracy that **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, in order to avoid detection by State Boards of Pharmacy outside the District of Columbia and to conceal that he was engaged in an illegal internet pharmacy, or in order to feign compliance with other state laws, applied for non-resident pharmacy licenses in other states so that he could fill and ship customer

orders for prescription-required pharmaceuticals to customers residing outside the District of Columbia. In numerous instances, the out-of-state Board of Pharmacy licensing applications specifically asked the applicant to state whether the applicant was engaged in an internet pharmacy operation. In those instances, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, concealed that he was operating an internet pharmacy by answering falsely, for example, by claiming that he was operating a postal mail order pharmacy, or by explicitly denying that he was operating an internet pharmacy, or by leaving blank a question explicitly asking if he was operating an internet pharmacy or filling prescriptions generated over an internet pharmacy website.

26. **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, incurred disciplinary violations and fines from several State Boards of Pharmacy during the course of the conspiracy for operating an internet pharmacy and filling orders for customers in various states. For example, in November, 2007, the State of California Board of Pharmacy fined Apex Online Pharmacy for two offenses involving operating an internet pharmacy, and reduced the fines in September, 2008, to about \$25,000, for operating an internet pharmacy that was dispensing “dangerous drugs without prescription” to customers in California. Nevertheless, **Akinyoyenu** continued to operate the Apex website and fill online prescription drug orders.

27. Further, it was a part of the conspiracy that in March 2007, during a routine audit by the Executive Director of the District of Columbia Board of Pharmacy, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, was placed on notice that it was illegal to fill prescriptions for internet customers who obtained them

without a valid doctor/patient relationship. Thereafter, **Akinyoyenu** continued to operate the Apex website and fill such internet prescriptions despite the notice.

28. It was also part of the conspiracy that **ALAN J. SALTZMAN, D.O.**, continued participating as the approving physician for the Apex website after being disciplined by the Florida Board of Osteopathic Medicine for prescribing medication to customers over the internet whom he had never seen, never examined and from whom he never had taken a medical history. During the course of the conspiracy, the Florida Board of Osteopathic Medicine twice suspended and disciplined **ALAN J. SALTZMAN, D.O.**, for approving internet prescription orders. Following the second Florida suspension, **ALAN J. SALTZMAN, D.O.**, used a physician's license from the Pennsylvania's Board of Osteopathic Medicine and continued to approve internet prescription orders to customers without establishing a valid doctor/patient relationship.

#### Overt Acts

In furtherance of said conspiracy and to effect and accomplish the objects thereof, the following overt acts, among others, were committed:

(All customer orders referenced in the overt acts listed below were approved by **ALAN J. SALTZMAN, D.O.**).

1. On or about June 11, 2008, a cooperating individual in the State of Hawaii placed an order with the Apex website, by using the cooperating individual's e-mail and credit card to order 180 pills of generic Soma, also known as Carisoprodol (CI Order #1).

2. On or about June 12, 2008, within the District of Columbia, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, filled and caused to be filled CI Order #1, and provided a Federal Express tracking number to the cooperating individual through the Apex website.

3. On or about June 12, 2008, within the District of Columbia, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, shipped and caused to be shipped CI Order #1 by Federal Express which arrived in Hawaii on or about June 13, 2008.

4. On or about December 17, 2008, a cooperating individual in the State of Hawaii placed an order with the Apex website, by using the cooperating individual's e-mail and credit card to order 90 pills of generic Soma, also known as Carisoprodol (CI Order #2).

5. On or about December 17, 2008, within the District of Columbia, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, filled and caused to be filled CI Order #2, and provided a Federal Express tracking number to the cooperating individual through the Apex website.

6. On or about December 17, 2008, within the District of Columbia, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, shipped and caused to be shipped by Federal Express CI Order #2, which arrived in Hawaii on or about December 18, 2008.

7. On or about June 1, 2009, a cooperating individual in the Commonwealth of Virginia placed an order with the Apex website by using the cooperating individual's email and credit card to order 5 pills of Viagra and 120 pills of Fioricet (CI Order #3).

8. On or about June 1, 2009, within the District of Columbia, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, filled and caused to be filled CI Order #3, and provided a Federal Express tracking number to the cooperating individual through the Apex website.

9. On or about June 1, 2009, within the District of Columbia, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, shipped and caused to be shipped by Federal Express CI Order #3, which arrived in the Commonwealth of Virginia on or about June 4, 2009.

10. Between October 30, 2006, and April 17, 2008, within the State of Texas, two individuals, whose initials are J.M.J. and D.E., placed a series of 50 orders of Tramadol from the Apex website, and all of which were filled in the District of Columbia by **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, or his employees, then shipped by Federal Express from the District of Columbia to the State of Texas.

11. Between August 27, 2006, and March 16, 2009, within the Commonwealth of Kentucky, an individual identified as J.E.M., who was a registered nurse, placed a series of 86 orders of Ultram-Tramadol through the Apex website, using her own name, the names of her three children (ages 14, 9, and 7), the name of her ex-husband, and the name of her mother, and all of which were filled in the District of Columbia, by **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, or his employees, and then shipped by Federal Express from the District of Columbia to State of Kentucky.

12. On September 17, 2009, within the District of Columbia and the Southern District of Florida, **ALAN J. SALTZMAN, D.O.** sent an e-mail with a current copy of his Florida physician's license and renewed DEA Registration to **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, which read as follows:

From: Alan <ajs7@myacc.net>  
Sent: Thursday, September 17, 2009 10:32 p.m.  
Subject: Florida license address from A Saltzman  
Attachments: DEA Certificate 2012.jpg; Florida license 33110.jpg

Hello Mr. Akin,

I haven't spoken to you in a while and hope things are going well for you, your family, and your pharmacy.

We are not doing the volume we previously did a few years ago but I know how careful and selective you are with consult reviews.

I had to use this email program since I am not certain how to attach documents with the other webmail.

When you can, please resume using my Florida license (attached) for the address on the prescription labels as it will coincide with recently issued DEA Certificate renewal.

Alan J. Saltzman, D.O.  
5345 NW 125th Ave.  
Coral Springs, FL 33076

As always, thank you for the consults.  
Stay well.

Alan

13. On January 22, 2010, within the District of Columbia, and elsewhere, **ALAN J. SALTZMAN, D.O.** approved the request of R.M., a customer in Alabama, for generic Fioricet, which contains butalbital, based solely on the responses to an online medical questionnaire made over the internet on the Apex website. This prescription was then filled in the District of Columbia by **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, or his employees, and then shipped by Federal Express from the District of Columbia to Alabama.

14. On April 5, 2010, within the District of Columbia and elsewhere, **ALAN J. SALTZMAN, D.O.** approved the online request for 120 pills of Fioricet (generic) made by P.P.L., a customer in South Carolina, based solely on the responses to an online medical

questionnaire made over the internet on the Apex website, which prescription was then filled by **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, or his employees, and then shipped by Federal Express from the District of Columbia to P.P.L. in the State of South Carolina.

**(Conspiracy to Distribute and Dispense Butalbital and Aiding and Abetting, in violation of 21 U.S.C. § 846 and 18, U.S.C. § 2)**

**COUNT TWO**

**Conspiracy to Distribute and Dispense Controlled Substances  
by Means of the Internet**

1. The allegations set forth in paragraphs 1 through 14 of Count One are incorporated by reference as if set forth fully herein.

**The Conspiracy**

2. Beginning on or about April 13, 2009, and continuing until June 29, 2010, in the District of Columbia, the Southern District of Florida, and elsewhere, the defendants, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, and **ALAN J. SALTZMAN, D.O.**, did knowingly and intentionally combine, conspire, confederate and agree with others both known and unknown, to distribute and cause to be distributed a Schedule III controlled substance, butalbital (also marketed as Fioricet), by offering to fill prescriptions for a controlled substance based solely on customers completing online medical questionnaires, contrary to the provisions of 21 U.S.C. §§ 829(e)(1), 841(h)(1) and (b)(1)(E)(i), all in violation of 21 U.S.C. § 846.

**Goal of the Conspiracy**

3. It was a goal of the conspiracy to obtain money and other things of value by distributing controlled substances by prescriptions which were not valid.

**Manner and Means**

It was part of the conspiracy that:

4. The allegations set forth in paragraphs 17 through 28 of Count One are incorporated by reference as if set forth fully herein.

**Overt Acts**

In furtherance of the conspiracy and to affect the illegal object thereof, the following overt acts, among others, were committed:

5. The allegations set forth in paragraphs 7, 8, 9, and 12 through 14 of the Overt Acts Section of Count One are incorporated by reference as if set forth fully herein.

**(Conspiracy to Distribute and Dispense Controlled Substances by Means of the Internet and Aiding and Abetting**, in violation of 21 U.S.C. § 846 and 18 U.S.C. § 2)

**COUNT THREE**

**Conspiracy to Introduce Misbranded Drugs into Interstate Commerce**

1. The allegations set forth in paragraphs 1 through 14 of Count One are incorporated by reference as if set forth fully herein.

**The Conspiracy**

2. Beginning on or about January 18, 2005, the exact date being unknown, and continuing until June 29, 2010, in the District of Columbia, the Southern District of Florida, and elsewhere, the defendants, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, and **ALAN J. SALTZMAN, D.O.**, did knowingly and intentionally combine, conspire, confederate, and agree with others, both known and unknown, to violate the laws of the United States:

a. to defraud the United States and its agencies, specifically, the FDA by circumventing the drug distribution system, laws, and its regulations, and

b. with the intent to defraud and mislead, to introduce into interstate commerce drugs which were misbranded as defined by 21 U.S.C. § 353(b), in that they were dispensed and delivered without valid prescriptions, in violation of 21 U.S.C. §§ 331(a), and 333(a)(2).

**Manner and Means**

It was part of the conspiracy that:

3. The allegations set forth in paragraphs 17 through 27 of Count One are incorporated by reference as if set forth fully herein.

**Overt Acts**

4. In furtherance of the conspiracy and to affect the illegal object thereof, the following overt acts, among others, were committed:

The allegations set forth in paragraphs 1 through 14 of the Overt Acts Section of Count One are incorporated by reference as if set forth fully herein.

**(Conspiracy to Introduce Misbranded Drugs into Interstate Commerce and Aiding and Abetting, in violation of 18 U.S.C. §§ 371 and 2)**

**COUNT FOUR**

**Conspiracy to Engage in Mail Fraud**

1. The allegations set forth in paragraphs 1 through 14 of Count One are incorporated by reference as if set forth fully herein.

**The Mail Fraud Conspiracy**

2. Beginning on or about January 18, 2005, the exact date being unknown, and continuing until June 29, 2010, in the District of Columbia, the Southern District of Florida, and elsewhere, the defendants, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, and **ALAN J. SALTZMAN, D.O.**, did knowingly and intentionally combine, conspire, confederate, and agree with others both known and unknown to devise, and participate in a scheme to defraud online drug customers, and federal and state regulatory agencies, that is, to introduce, and cause to be introduced, into interstate commerce by means of the United States mail, and interstate common carriers, from the District of Columbia, to various locations in the United States, with the intent to defraud and mislead, various Schedule III controlled substances, which were distributed and dispensed outside the usual course of medical practice and for no legitimate medical purpose, in violation of 21 U.S.C. §§ 829(e), 841(a)(1), and 841(h)(1), and various prescription drugs, which were misbranded because they were dispensed without a valid prescription, in violation of 21 U.S.C. §§ 331(a) and 333(a)(2), in order to obtain money, property, and things of value by means of false and fraudulent pretenses, representations, and promises, all in violation of 18 U.S.C. §§ 1341 and 1349.

**Manner and Means**

It was part of the conspiracy scheme and artifice to defraud that:

3. The allegations set forth in paragraphs 17 through 27 of Count One are incorporated by reference as if set forth fully herein.

**Overt Acts**

In furtherance of said conspiracy, scheme and artifice to defraud, and to effect and accomplish the objects thereof, the following overt acts, among others, were committed:

4. The allegations set forth in paragraphs 1 through 14 of the Overt Acts Section of Count One are incorporated by reference as if set forth fully herein.

5. The defendants, **TITILAYO AKINTOMIDE AKINYOYENU**, also known as Tommy Akin, also known as Tomi, and **ALAN J. SALTZMAN, D.O.**, in payment for their participation in the conspiracy, scheme and artifice to defraud, which involved filling prescription required orders for controlled and non-controlled pharmaceuticals for online customers of apexonlinepharmacy.com, and shipping the orders by common carrier, generated proceeds totaling \$8,388,710.10.

**(Conspiracy to Engage in Mail Fraud and Aiding and Abetting**, in violation of 18 U.S.C. §§ 1341, 1349, and 2)

#### **FORFEITURE ALLEGATION**

1. Upon conviction of the offenses alleged in Counts One and Two, the defendants shall forfeit to the United States, pursuant to 21 U.S.C. § 853(a), any property constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of these offenses; and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of these offenses. The United States will also seek a forfeiture money judgment equal to the value of any property constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of these offenses.

2. Upon conviction of the offense alleged in Count Three, the defendants shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense, pursuant to 18 U.S.C. § 982(a)(7). The United States will also seek a forfeiture money judgment equal to the

value of any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

3. Upon conviction of the offense alleged in Count Four, the defendants shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to this offense, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c). The United States will also seek a forfeiture money judgment equal to the value of any property, real or personal, which constitutes or is derived from proceeds traceable to this offense.

4. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property that cannot be divided without difficulty;

the defendants shall forfeit to the United States any other property of the defendants, up to the value of the property described above, pursuant to 21 U.S.C. § 853(p).

**(Criminal Forfeiture**, pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(7), 21 U.S.C. § 853(a) and (p), 28 U.S.C. § 2461(c))

A TRUE BILL:

FOREPERSON

Attorney of the United States in  
and for the District of Columbia.