

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_

**16-20268**

18 U.S.C. § 371  
42 U.S.C. § 1320a-7b(b)(1)(A)  
18 U.S.C. § 2  
18 U.S.C. § 982

**CR-SEITZ**

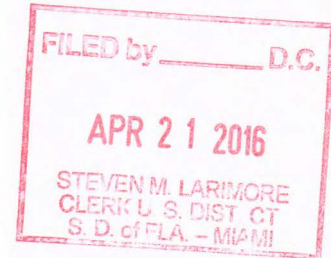
**MAGISTRATE JUDGE  
TURNER**

**UNITED STATES OF AMERICA**

vs.

**KENIA GONZALEZ FERNANDEZ,  
JULIO ESPINOSA MORET,  
LUZBELLA NUNEZ DE LA TORRE,  
and  
FRANK DUNIER PEREZ,**

**Defendants.**



**INDICTMENT**

The Grand Jury charges that:

**GENERAL ALLEGATIONS**

At all times material to this Indictment:

**The Medicare Program**

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

2. Medicare programs covering different types of benefits were separated into different program “parts.” Part D of the Medicare Program subsidized the costs of prescription drugs for Medicare beneficiaries.

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

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

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

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

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

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

#### **Medicare Drug Plan Sponsors**

8. Connecticut General Life Insurance Company ("CIGNA"), Coventry Summit Health Plan ("Coventry"), First Health Life & Health Insurance Company ("First Health"), MEDCO Containment Life Insurance Company ("MEDCO"), Medica HealthCare Plans, Inc. ("Medica"), United American Insurance Company ("United American"), UnitedHealthCare Insurance Company ("UnitedHealthCare"), and WellCare Prescription Insurance, Inc. ("Wellcare"), among others, were Medicare drug plan sponsors.

#### **The Defendants, Co-conspirators, and Related Companies**

9. OMG Pharmacy Discount, Inc. ("OMG Pharmacy") was a Florida corporation, incorporated on or about January 20, 2012, with its principal place of business in Miami-Dade County, in the Southern District of Florida. OMG Pharmacy did business as a pharmacy that purportedly provided prescription drugs to Medicare beneficiaries, among others.

10. Defendant **KENIA GONZALEZ FERNANDEZ** was a resident of Miami-Dade County.

11. Defendant **JULIO ESPINOSA MORET** was a resident of Miami-Dade County.

12. Defendant **LUZBELLA NUNEZ DE LA TORRE** was a resident of Miami-Dade County.

13. Defendant **FRANK DUNIER PEREZ** was a resident of Miami-Dade County.

14. Co-Conspirator Pedro Torres was a resident of Miami-Dade County.

15. Co-Conspirator Antonio Armando Hevia was a resident of Miami-Dade County.
16. Co-Conspirator A was a resident of Miami-Dade County.
17. Co-Conspirator B was a resident of Miami-Dade County.
18. Co-Conspirator C was a resident of Miami-Dade County.
19. Co-Conspirator D was a resident of Miami-Dade County.
20. Co-Conspirator E was a resident of Miami-Dade County.

**COUNT 1**

**Conspiracy to Defraud the United States and Pay and Receive Health Care Kickbacks  
(18 U.S.C. § 371)**

1. Paragraphs 1 through 20 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around October of 2012, and continuing through at least in or around August of 2013, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**KENIA GONZALEZ FERNANDEZ,  
JULIO ESPINOSA MORET,  
LUZBELLA NUNEZ DE LA TORRE,  
and FRANK DUNIER PEREZ,**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, and agree with each other, and with Pedro Torres, Antonio Hevia, Co-Conspirator A, Co-Conspirator B, Co-Conspirator C, and Co-Conspirator D, Co-Conspirator E, and others known and unknown to the Grand Jury;

a. to defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration and oversight of the Medicare

program, in violation of Title 18, United States Code, Section 371; and to commit certain offenses against the United States, that is:

b. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A), by knowingly and willfully soliciting and receiving remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part by a Federal health care program, that is, Medicare; and

c. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A), by knowingly and willfully offering and paying any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to a person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part by a Federal health care program, that is, Medicare.

### **PURPOSE OF THE CONSPIRACY**

3. It was a purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by: (1) offering, paying, soliciting and receiving kickbacks and bribes in return for referring beneficiaries to OMG Pharmacy to serve as patients; and (2) submitting and causing the submission of claims to Medicare and Medicare drug plan sponsors for prescription drugs purportedly provided to Medicare beneficiaries by OMG Pharmacy.

### **MANNER AND MEANS OF THE CONSPIRACY**

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

4. **KENIA GONZALEZ FERNANDEZ, JULIO ESPINOSA MORET, LUZBELLA NUNEZ DE LA TORRE, and FRANK DUNIER PEREZ** solicited and received kickbacks and bribes from Pedro Torres, Antonio Armando Hevia, and others known and unknown to the grand jury to recruit Medicare beneficiaries and induce said Medicare beneficiaries to obtain prescriptions for pharmaceutical drugs to be used in conjunction with the submission of claims to the Medicare Part D Program through OMG Pharmacy.

5. **KENIA GONZALEZ FERNANDEZ, JULIO ESPINOSA MORET, LUZBELLA NUNEZ DE LA TORRE, and FRANK DUNIER PEREZ** caused OMG Pharmacy to submit claims to Medicare and Medicare drug plan sponsors for medical benefits, items and services purportedly provided to Medicare beneficiaries by OMG Pharmacy.

6. Medicare and Medicare drug plan sponsors paid OMG Pharmacy based upon claims for medical items and services allegedly provided to Medicare beneficiaries by OMG Pharmacy.

#### **OVERT ACTS**

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one of the co-conspirators committed and caused to be committed, in the Southern District of Florida, and elsewhere, at least one of the following overt acts, among others:

1. On or about July 22, 2013, **KENIA GONZALEZ FERNANDEZ** negotiated a check, numbered 1515, in the approximate amount of \$4,600, written from OMG Pharmacy's corporate bank account.

2. On or about August 9, 2013, **KENIA GONZALEZ FERNANDEZ** negotiated a check, numbered 1562, in the approximate amount of \$4,770, written from OMG Pharmacy's corporate bank account.

3. On or about March 5, 2013, **JULIO ESPINOSA MORET** negotiated a check, numbered 1056, in the approximate amount of \$2,830, written from OMG Pharmacy's corporate bank account.

4. On or about May 28, 2013, **JULIO ESPINOSA MORET** negotiated a check, numbered 1269, in the approximate amount of \$3,130, written from OMG Pharmacy's corporate bank account.

5. On or about March 5, 2013, **LUZBELLA NUNEZ DE LA TORRE** negotiated a check, numbered 1050, in the approximate amount of \$4,160, written from OMG Pharmacy's corporate bank account.

6. On or about August 8, 2013, **LUZBELLA NUNEZ DE LA TORRE** negotiated a check, numbered 1557, in the approximate amount of \$3,150, written from OMG Pharmacy's corporate bank account.

7. On or about June 10, 2013, **FRANK DUNIER PEREZ** negotiated a check, numbered 1308, in the approximate amount of \$2,950, written from OMG Pharmacy's corporate bank account.

8. On or about June 19, 2013, **FRANK DUNIER PEREZ** negotiated a check, numbered 1340, in the approximate amount of \$4,390, written from OMG Pharmacy's corporate bank account.

All in violation of Title 18, United States Code, Section 371.

**COUNTS 2-9**  
**Receipt of Kickbacks in Connection with a  
Federal Health Care Program  
(42 U.S.C. § 1320a-7b(b)(1)(A))**

1. Paragraphs 1 through 15 of the General Allegation section of the Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about the dates set forth as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**KENIA GONZALEZ FERNANDEZ,  
JULIO ESPINOSA MORET,  
LUZBELLA NUNEZ DE LA TORRE,  
and FRANK DUNIER PEREZ,**

did knowingly and willfully solicit and receive remuneration, that is, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check, as set forth below, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part by a Federal health care program, that is, Medicare, as set forth below:

<b>Count</b>	<b>Defendant</b>	<b>Approximate Date</b>	<b>Approximate Amount</b>
2	<b>JULIO ESPINOSA MORET</b>	March 5, 2013	\$2,830
3	<b>LUZBELLA NUNEZ DE LA TORRE</b>	March 5, 2013	\$4,160
4	<b>JULIO ESPINOSA MORET</b>	May 28, 2013	\$3,130
5	<b>FRANK DUNIER PEREZ</b>	June 10, 2013	\$2,950



Count	Defendant	Approximate Date	Approximate Amount
6	<b>FRANK DUNIER PEREZ</b>	June 19, 2013	\$4,390
7	<b>KENIA GONZALEZ FERNANDEZ</b>	July 22, 2013	\$4,600
8	<b>LUZBELLA NUNEZ DE LA TORRE</b>	August 8, 2013	\$3,150
9	<b>KENIA GONZALEZ FERNANDEZ</b>	August 9, 2013	\$4,770

In violation of Title 42, United States Code, Section 1320a-7b(b)(1)(A) and Title 18, United States Code, Section 2.

**FORFEITURE**  
**(18 U.S.C. § 982)**

1. The allegations contained in this Indictment are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging criminal forfeiture to the United States of America of certain property in which one or more of the defendants, **KENIA GONZALEZ FERNANDEZ, JULIO ESPINOSA MORET, LUZBELLA NUNEZ DE LA TORRE**, and **FRANK DUNIER PEREZ**, have an interest.


2. Upon conviction of a Federal healthcare offense, as defined in Title 18, United States Code, Section 24, as alleged in this Indictment, the defendant so convicted shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violation.

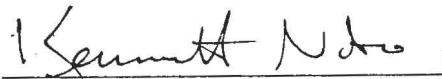
3. The property subject to forfeiture includes, but is not limited to, the following:

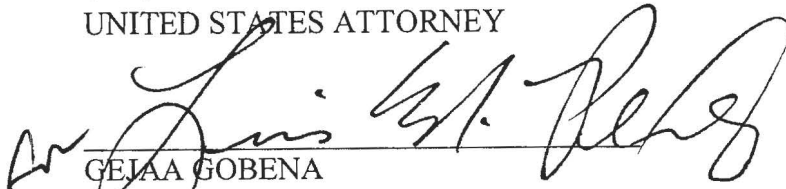
a. The sum of approximately \$3,506,713.19 (US), which is a sum of money equal in value to the gross proceeds traceable to the commission of the violations alleged in this Indictment, which the United States will seek as a forfeiture money judgment against the convicted defendants, jointly and severally, as part of their respective sentence.

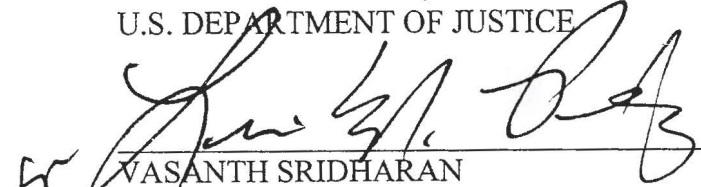
All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b)(1)

A TRUE BILL

  
FOREPERSON

  
WIFREDO A. FERRER  
UNITED STATES ATTORNEY

  
GEJAA GOBENA  
DEPUTY CHIEF  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE

  
VASANTH SRIDHARAN  
TRIAL ATTORNEY  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE