###### Case3:14-cr-00380-CRB Document77 Filed02/06/15 Pagel of 23

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1O *FedEx Corporate Se,vices, Inc.*

###### 11 UNITED STATES DISTRICT COURT

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###### FOR THE NORTHERN DISTRICT OF CALIFORNIA

13

###### 14 SAN FRANCISCO DIVISION

15 . ) **No. CR 14-380 (CRB)**

###### UNITED STATES OF AMERICA, )

1. ) **DECLARATION OF CRISTINA C.**
2. Plaintiff, ) **ARGUEDAS IN SUPPORT OF**

##### ) OPPOSITION TO THEGOVERNMENT'S

1. v. ) **MOTION TO QUASH FEDEX'S RULE**

) **17(c) SUBPOENA**

###### FEDEX CORPORATION, FEDERAL )

1. EXPRESS CORPORATION, and FEDEX) CORPORATE SERVICES, INC., )

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###### Defendants. )

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*U S. v. FedEx Corp. et* a/

No. CR 14-380 (CRB)

Arguedas Deel.

###### Case3:14-cr-00380-CRB Document77 Filed02/06/15 Page2 of 23

* 1. I, Cristina C. Arguedas, declare as follows:
	2. 1. I am a partner at Arguedas, Cassman & Headley, LLP, counsel of record

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###### for defendants FedEx Corporation, Federal Express Corporation and FedEx Corporate

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###### Services, Inc. (collectively, "FedEx") in the above-titled matter. I make this declaration

1. in support of the defendants' Opposition to the Government's FedEx's Rule 17(c)
2. Subpoena to the Drug Enforcement Administration.
3. 2. Attached hereto as Exhibit A is a true and correct copy of a letter I sent to

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###### the prosecution on July 25, 2014 requesting production of discovery.

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###### 3. Attached hereto as Exhibit B is a true and correct copy of an August 11,

1. 2014 letter I received from the prosecution. The prosecutors state in the letter that "the
2. investigating agencies in this case are the San Francisco offices of the DEA and FDA."

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###### The letter further objects to the defense's discovery requests "to the extent that they

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require production of materials not in the custody or control of this Office or of the

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###### investigating agents working on this case." The letter states that the prosecution

1. "take[s)no responsibility for producing materials that are not in [its] custody and control
2. and of which [it is] not aware."

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###### In a September 3, 2014 telephone call with undersigned counsel and

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###### 22 subsequent communications, the prosecutors affirmed the positions stated in their

23 August 11 letter. The prosecutors told me that they had made efforts to gather

1. information from federal agencies outside of the district, and expressed willingness to
2. try, upon defense request, to get other information "to the extent we can and we know

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about it." On several occasions, the prosecutors have offered to seek records if the

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28 defense identifies specific items that are "missing" from the government's discovery

U.S. *v. FedEx Corp. et al.*

No. CR 14-380 (CRB)

1 Arguedas Deel.

###### Case3:14-cr-00380-CRB Document77 Filed02/06/15 Page3 of 23

1. production. But the prosecutors have said that they do not have "full access" to records
2. that reside outside the district - even those in the custody of the DEA.

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* 1. Since FedEx served upon DEA the Rule 17(c) subpoena that underlies the

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###### instant motion practice, I have conferred several times with the prosecutors in this

1. matter. During these conferences, the prosecutors requested that FedEx abandon
2. portions of the requests in the Rule 17(c) subpoena. FedEx declined to do so.
3. However, I and my partner Raphael Goldman did communicate that FedEx would be

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willing to agree to reasonable accommodations concerning the *methods* by which the

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###### government and DEA would be required to search for and review records .u nder the

1. subpoena. The parties discussed the concepts of using "search terms" for digital
2. records and prioritizing searches of custodians' records.
3. 6. During the meet-and-confer sessions discussed in paragraph 5, the

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prosecutors asked whether FedEx would limit the time period of responsive records to

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1. the period of the conspiracies alleged in the indictment. I said that FedEx would be
2. willing to consider this limitation if the government would agree to limit its presentation
3. of evidence at trial to events that occurred during that time period. The prosecutors

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stated that they were unwilling to promise such a limitation. Accordingly, FedEx did not

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22 agree to limit the scope of the subpoena to the period *bf* the alleged conspiracies.

23 7.

###### At no point before filing the government's motion to quash did the

1. prosecutors tell me or express concern that the subpoena's requests were not
2. sufficiently clear or precise, as asserted on pages 19 through 21 of the government's

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motion (Docket #71).

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28 I declare under penalty of perjury under the laws of the United States of America

*U.S. v. FedEx Corp. et al.*

No. CR 14-380 (CRB)

2 Arguedas Deel.

###### that the foregoing is true and correct to the best of my knowledge. Signed this 6th day

1. of February, 2015 in Berkeley, California.

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U.S. *v. FedEx Corp. et al.*

No. CR 14-380 (CRB)

1. Arguedas Deel.

# Exhibit A

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**A R G\_ U J':t D A S, CA S S M :A N- \_** & **ti E A. D L** E **Y, L LP**- \_

- -- "' -- -., --

Law Offices Cristina c. Arguedas

Ted W. Cassman 803 Hearst Avenue, Berkeley, California 94710 Laurel L. Headley Phone: (510) 845-3000 Fax: (51 0) 845-3003 Julie A. Salamon [www.achlaw.com](http://www.achlaw.com/) Raphael M. Goldman

Of Counsel: Christy H. Chandler

July 25, 2014

By Email and Overnight Delivery

Kirstin Ault Kyle Waldinger

Assistant United States Attorneys United States Attorney's Office Northern District of California

450 Golden Gate Avenue, Box 36055 San Francisco, CA 94102

Email: Kirstin.Ault@usdoj.gov; Kyle.Waldinger@usdoi.gov

**Re: *United States v. FedEx Corporation et al.,* Case No. CR 14- 380 (WHO)**

Discovery Request #2

Dear Kirstin and Kyle:

As you know, we represent FedEx Corporation, Federal Express Corporation and FedEx Corporate Services, Inc. (collectively, "FedEx") in the above-referenced case.

On July 18, 2014, we sent you a letter requesting the production of discovery materials pursuant to Rule 16 of the Federal Rules of Criminal Procedure, *Brady v. Maryland,* 373

U.S. 83 (1963), *Giglio v. United States,* 405 U.S. 150 (1972), the Jencks Act, 18 U.S.C.

§ 3500, and Local Criminal Rule 16.1. Later on July 18, we spoke with you on the phone. You expressed that the government is willing *to* produce to FedEx discovery arising from the government's investigations of alleged misconduct by certain online pharmacies and their affiliates referenced in the indictment. We believe the

government's discovery obligations in this case extend significantly beyond such materials. Accordingly, with this letter, we identify and request production of additional specific categories of documents, records and information. This letter supplements and is not a limitation of our previous request. FedEx asserts its right to full discovery under the above authorities. This letter identifies - without limitation of the government's broader obligations - particular categories of documents, records and information that the government should produce under Rule 16, *Brady, Giglio,* the Jencks Act, and/or Local Criminal. Rule 16.1. Nor are these requests intended to be exhaustive. We anticipate that we will make additional requests and specifically reserve our right to do

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###### Case3:14-cr-00380-CRB Document77 Filed02/06/15 Page7 of 23

DEFINITIONS

As used in this letter, the terms "documents" and "records" include, but are not limited to, all books, papers, letters, correspondence, reports, memoranda, studies, calendars, appointment books, diaries, notes, messages, text messages, computer facilitated or transmitted materials, electronically stored lnformation, telephonic voicemails (including those delivered or stored using Voice over Internet Protocol technologies), metadata, images, photographs, polaroids, information in any computer database, audio and video recordings, transcripts, ledgers, printouts, contracts, checks, receipts, and all copies or portions thereof, and any other written, recorded, or memorialized material of any nature whatsoever. To the extent that any documentary discovery is also contained in any format other than a paper copy (for example, a disc or computerized database), FedEx hereby requests that such electronic versions, including all available metadata, *also* be produced in addition to the paper copy.

As used in this letter, the term "alleged co-conspirator" means any individual and/or entity with whom the government alleges that FedEx conspired, whether or not the individual or entity is named or referenced in the indictment, as well as any employee, agent, owner or other representative of an entity with whom the government alleges FedEx conspired . The term includes, without limitation, the following: the Chhabra-Smoley Organization; Vincent Chhabra; Robert Smoley; Superior Drugs; RxNetwork; learn and/or learn Group; Dipardi Pharmacy; Waterview pharmacy; CNL Financial; Sabina Faruqui; United Mail Pharmacy Services, United Mail Pharmacy, United Mail LLC or United Mail; Next Generation Health Systems; Prescriptions & Travel; Prescription Resources; Lakeridge Pharmacy; C&V Pharmacy; 2U Net-Mail (Choice RX); Rx Direct; Falk's Lignell (Falk's Home Medical Supply); United Care Pharmacy; Kwic Fill; Tri-Phasic Pharmacy; Rx Network of Florida; ChoiceRx; Creative Pharmacy Services (doing business as Superior Drugs); Wayne White; Anthony Spence; Christopher Napoli; Sanford Cohen; Orlando Birbragher; Marshall Kanner; David Glass; Michael Bezonsky; Claude Covino; Genetechnica; Physicians Online Network; The Spence Group; Pharmacom; Carmel Management; SaveOn Rx; SafescriptsOnline; Affpower; Gem Pharmacy; Universal Pharmacy; Union Pharmacy; RxSource Network. The term also includes all organizations and individuals affiliated in any way with the websites Get-it-on.com; Cybrx.com; USAPrescription.com; Myrxeasy.com; Ezrxovernight.com; Fastplanetrx.com; Exmedsonline.com; Privacyrx.com; Discreetonlinemeds.com; pricebustersrx.com; safescriptsonline.com; safetrustprocessing.com; rx-max.com; integrarx.com; medscripsmd.com; dietpillscheap.com; buymeds.com; and order-viagra-online.net.

All references in this letter to "online pharmacy" or "internet pharmacy" are intended to identify the entities defined in paragraphs 2 and 3 of the indictment, including all alleged co-conspirators as that term is defined above, any fulfillment pharmacy that dispensed prescription medications for or on behalf of an internet or online pharmacy, and any employee, agent, owner or other representative of such entities.

###### 2

The documents and information that we seek include not only documents and information in the possession, custody, or control of the criminal and civil divisions of the United States Attorney's Office for the Northern District of California (the "USAO-N.D. Cal."), but also documents and information in the possession, custody, or control of:

* 1. the United States Department of Justice ("DOJ");
	2. other United States Attorney's Offices ("USAO");
1. the Drug Enforcement Agency ("DEA");
2. the Federal Bureau of Investigation ("FBI");
3. the Food and Drug Administration ("FDA");
4. the Customs and Border Protection Agency ("CBPA");
5. the U.S. Immigration and Customs Enforcement ("ICE");

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1. the Department of Homeland Security ("OHS");
2. the Federal Trade Commission ("FTC");
3. the U.S. Postal Service, including the U.S. Postal Inspection Service ("USPIS")

U) the United States Congress, including the U.S. Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations and U.S. House of Representatives Committee on Energy and Commerce, Subcommittee on Oversight and Investigations;

1. all state and local law enforcement agencies, including, without limitation, Tennessee, Kentucky, Virginia, Texas, Arkansas, Louisiana and Florida state and local law enforcement agencies and attorney general's offices;
	1. any other federal, state, or local government agency involved in the investigation and prosecution of this case or the investigation or prosecution of any alleged co-conspirator;
2. any person or entity with the legal obligation fo cooperate with the government in the investigation and prosecution of this case or the investigation or prosecution of any alleged co-conspirator; and
3. all private entities that participated with any of the above-identified governmental agencies in investigating shipments of prescription medications and/or controlled substances made by way of FedEx, including but not limited to the Federation of State Medical Boards ("FSMB").

Hereafter, this letter will refer to the above-listed agencies and entities as the "Investigation Agencies."

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REQUESTS

FedEx requests that the government produce the following documents and information from the time period from January 1, 2000 to the present:

* 1. Documents, Information, and Tangible Objects
1. All documents and information and all witness statements that the government contends support the allegations in the indictment.
2. In particular, and without limitation of request #1, for each instance in which the indictment alleges that FedEx knew or was aware of a fact, please:
	1. produce all documents that the government contends demonstrate the alleged knowledge or awareness; and
	2. . produce all witness statements that that the government contends demonstrate the alleged knowledge or awareness.
3. In particular, and without limitation of requests #1 or #2, please produce all documents and information and all witness statements that the government contends support the following allegations:
	1. From paragraph 4 of the indictment: "[O)n no less than six different occasions, the DEA, FDA or members of Congress and their staff informed FEDEX that illegal internet pharmacies were using its shipping services to distribute controlled substances and prescriptions drugs in

violation of the Controlled Substances Act (CSA) and Food Drug and

Cosmetic Act (FDCA)."

* 1. From paragraph 4 of the indictment: 'These government officials informed senior FED EX management that a prescription based solely on a customer's completion of an online questionnaire was invalid and that controlled substances and prescription drugs dispensed based on such an invalid prescription were distributed in violation of the CSA, FDCA, and numerous state laws."
	2. From paragraph 4 of the indictment: '"'The government officials similarly informed FEDEX that doctors writing such prescriptions and pharmacists filling them were acting outside the usual course of professional practice and not for a legitimate medical purpose, according to guidelines published by the American Medical Association (AMA), Federation of State Medical Boards (FSMB), and National Association of Boards of Pharmacy (NABP)."
	3. From paragraph 5 of the indictment: "FEDEX knew that the Chhabra­ Smoley Organization and Superior Drugs were each distributing controlled substances and prescription drugs based solely on a customer's

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completion of an oniine questionnaire, and that these organizations were distributing drugs outside the usual course of professional practice and not for a legitimate medical purpose in violation of the law."

* 1. From paragraph 6 of the indictment: "FEDEX knew of the connection between [Smoley-Chhabra] Internet and fulfillment pharmacies and RxNetwork and Chhabra as demonstrated by the principals, company names, shipping addresses and billing addresses that were initially connected to Chhabra and RxNetwork and remained common to Smoley and the members of the Chhabra-Smoley Organization who continued operations after Chhabra's arrest. FEDEX's employees explicitly recognized this connection."
	2. From paragraph 7 of the indictment: "FEDEX knew that Superior Drugs filled orders for Internet pharmacies that were shut down by the DEA or other law enforcement agencies. FEDEX further knew Superior Drugs would fill orders for Internet pharmacies after a fulfillment pharmacy they had been using was shut down by law enforcement."
	3. From paragraph 20 of the indictment: FedEx "together with Vincent Chhabra, Sabina Faruqui, Robert Smoley, RxNetwork, United Mail Pharmacy Services, lcom Group, and others known and unknown to the grand jury, conspired to distribute, and to possess with intent to distribute outside the usual course of professional practice and not for a legitimate medical purpose one or more controlled substances "
	4. From paragraph 20 of the indictment: FedEx acted "knowing and intending that the distribution and possession with intent to distribute was outside the usual course of professional practice and not for a legitimate medical purpose "
	5. All allegations concerning the. "Chhabra-Smoley Organization" in paragraphs 21 through 26 of the indictment.

0) From paragraph 27 of the indictment: "FEDEX employees knew that

the Chhabra-Smoley Organization was distributing controlled substances based on prescriptions issued by doctors after reviewing customers' responses to an online questionnaire."

1. From paragraph 28 of the indictment: "Chhabra and Smoley and their employees and associates entered into agreements with FEDEX in which FEDEX agreed to ship packages for the Chhabra-Smoley Organization. As part of these agreements, FEDEX opened over 30 accounts for the

Chhabra-Smoley Organization, which the Chhabra-Smoley Organization I

used to illegally distribute controlled substances into the Northern District of California and elsewhere in the United States."

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* 1. From paragraph 29 of the indictment: "FEDEX's employees communicated on a regular basis with Chhabra, Smoley, and other employees of the Chhabra-Smoley Organization in writing, by telephone, and in person regarding the Chhabra-Smoley Organization's business trends, volume, and shipping and logistics needs."
1. From paragraph 30 of the indictment: "[FedEx] employees observed the Chhabra-Smoley Organization's operations, including the taking of orders for controlled substances over the telephone and Internet and the filling of orders for controlled substances."
2. From paragraph 31 of the indictment: "FEDEX employees observed packages from the Chhabra-Smoley Organization containing pill bottles filled with controlled substances; FEDEX employees assisted with preparing these packages for shipment and subsequently distributed these packages for the Chhabra-Smoley Organization.in the Northern District of California and throughout the United States."
3. From paragraph 33 of the indictment: "FEDEX employees knew that online pharmacies and fulfillment pharmacies affiliated with the Chhabra­ Smoley Organization were closed down by state and federal law enforcement agencies, including the FDA and DEA, and that their owners, operators, pharmacists, and doctors were indicted, arrested, and convicted of violating the CSA "
4. From paragraph 34 of the indictment:"... with the knowledge that these and other members of the Chhabra-Smoley Organization had been subject to law enforcement action for illegally shipping controlled · substances, FEDEX continued to .deliver controlled substances for the Chhabra-Smoley Organization."
5. From paragraph 35 of the indictment: "FEDEX employees knew that the purpose of the Chhabra-Smoley Organization was to provide controlled substances to consumers without the need for a face-to-face meeting with, or physical examination, laboratory tests, or diagnosis, by a physician. FED EX employees knew that this practice violated the CSA, FDCA, and numerous state laws. FED EX employees knew that the practice of prescribing medication based solely on a physician's review of an online questionnaire, without a physical examination, laboratory tests, or face-to­ face meeting was not in accordance with the usual course of medical and pharmacy practice according to the positions of the AMA, FSMB, NABP, and numerous state laws. FEDEX employees further knew that the Chhabra-Smoley Organization distributed controlled substances to customers who had no legitimate medical need for them."
6. All allegations contained in paragraph 38 of the indictment (counts two through ten).

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Case3:14-cr-00380-CRB Document77 Filed02/06/15 Page12 of 23

1. From paragraph 40 of the indictment: FedEx "together with Vincent Chhabra, Sabina Faruqui, Robert Smoley, RxNetwork, United Mail Pharmacy Services, learn Group, and others known and unknown to the grand jury, conspired to distribute and dispense prescription drugs to consumers in various locations throughout the United States, including the Northern District of California, without valid prescriptions from licensed practitioners, which caused the drugs to be misbranded while held for sale after their shipment in interstate commerce, and did so with the intent to defraud and mislead as to a material matter "
2. All allegations in paragraph 43 of the indictment.
3. All allegations in paragraphs 44 through 57 of the indictment.
4. From paragraph 59 of the indictm!=lnt: FedEx "together with Creative Pharmacy Services (doing business as Superior Drugs), Wayne White, Anthony Spence, Christopher Napoli, Sanford Cohen, Orlando Birbragher, Marshall Kanner, David Glass, Michael Bezonsky, Claude Covino, Genetechnica, Physicians Online Network, The Spence Group, Pharmacom, Carmel Management, SaveOn Rx, SafescriptsOnline, Affpower, and others known and unknown to the grand jury, conspired **to** distribute, and to possess with intent to distribute outside the usual course of professional practice and not for a legitimate medical purpose one or more controlled substances "
5. Form paragraph 59 of the indictment: FedEx acted "knowing and intending that the distribution and possession with intent to distribute was outside the usual course of professional practice and not for a legitimate medical purpose "
6. All allegations in paragraph 60 through 64 of the indictment.
7. From paragraph 65 of the indictment: "FEDEX employees knew that

Superior and its related Internet and fulfillment pharmacies were distributing controlled substances based on prescriptions issued by doctors after only reviewing customers' responses to online questionnaires."

1. From paragraph 66 of the indictment: "Unindicted co-conspirators Wayne White, Anthony Spence, Christopher Napoli, Sanford Cohen, Orlando Birbragher, Marshall Kanner, David Glass, Michael Bezonsky, Claude Covino, and others known and unknown to the·grand jury and their employees and associates entered into agreements with FEDEX in which FEDEX agreed to ship packages for Superior and the Internet pharmacies for which Superior filled orders for controlled substances based on invalid prescriptions."

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(aa) From paragraph 68 of the indictment: "FEDEX employees observed

Superior's operations, including the filling of orders for controlled substances."

(bb) From paragraph 69 of the rndictment: "FEDEX employees observed packages from Superior containing pill bottles filled with controlled substances; FEDEX employees assisted with preparing these packages for shipment "

(cc) From paragraph 71 of the indictment: "FEDEX employees knew that the purpose of Superior was to provide controlled substances to consumers without the need for a face-to-face meeting with, or physical examination or laboratory tests by,·a physician. FEDEX employees knew that this practice violated the CSA, FDCA, and numerous state laws."

(dd) From paragraph 71 of the indictment: "FEDEX employees further knew that the practice of prescribing medication based solely on a physician's review of an online questionnaire, without a physical examination, laboratory tests, diagnosis, or face-to-face meeting was not in accordance with the usual course of medical and pharmacy practice according to the positions of the AMA, FSMB, NABP, and numerous state laws."

(ee) From paragraph 71 of the indictment: "FEDEX employees further knew that Superior distributed controlled substances to customers who had no legitimate medical need for them."

(ff) From paragraph 73 of the indictment: "FEDEX employees knew that Superior and online and fulfillment pharmacies affiliated with Superior were closed down by state and federal law enforcement agencies, including the FDA and DEA, and that their owners, operators, pharmacists, and doctors were indicted, arrested, and convicted of violating the CSA "

(gg) All allegations in paragraph 76 (counts Thirteen and Fourteen) of the indictment.

(hh) From paragraph 78 of the indictment: FedEx "together with Creative Pharmacy Services (doing business as Superior Drugs), Wayne White, Anthony 10 Spence, Christopher Napoli, Sanford Cohen, Orlando Birbragher, Marshall ,Kanner, David Glass, Michael Bezonsky, Claude Covino, Genetechnica, Physicians Online Network, The Spence Group, Pharmacom, Carmel Management, SaveOn Rx, SafescriptsOnline, Affpower, and others known and unknown to the grand jury, conspired to dispense and distribute prescription \_drugs, including the prescription drugs identified in paragraphs 10 and 18, to consumers in various locations throughout the United States, including the Northern District of California, without valid prescriptions from licensed practitioners, which caused the

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drugs to be misbranded while held for sale after their shipment in interstate commerce, and did so with the intent to defraud and mislead as to a material matter "

(ii) All allegations contained in paragraph 81 of the indictment.

Qj) All allegations contains in paragraphs 82 through 91 of the indictment.

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1. All documents that were introduced as exhibits before the grand jury that issued the indictment.
2. All documents and information constituting, containing or otherwise describing statements made to or by FedEx or any FedEx employee, agent, representative or other person the government contends can bind FedEx pursuant to Federal Rule of Evidence 801 concerning (1) any alleged co-conspirator, (2) any particular online pharmacy, or (3) online pharmacies in general. This request includes, without limitation, all records of correspondence or communications among or between FedEx employees and personnel of the Investigation Agencies that related to online pharmacies or the shipment of prescription medications or controlled substances.
3. All interview notes and memoranda including, but not limited to, all DEA interview memoranda, FBI Form 302s, USAO interview memoranda, and all other interview memoranda prepared by any other governmental and/or law enforcement agency, including, without limitation, the Investigation Agencies, relating to the conduct alleged in the indictment, FedEx's shipment of prescription medications and/or controlled substances, or the shipment of prescription medications and/or controlled substances by one or more of FedEx's alleged co­ conspirators.
4. All documents reflecting or relating to the legal obligation of any person or entity to cooperate with or assist the government in connection with this case or the investigation that led to the case.
5. The name, last known address, and telephone number, of each prospective government witness.
6. All memoranda or notes of proffers, or written proffers, made to the government by counsel for any individuals.
7. All reverse proffers made by the government to any individual and/or his or her

counsel. I

1. All documents or information relating to any type of deal or agreement between the government and counsel for any witness, including, but not limited to, agreements not to disclose documents given to counsel or not to disclose

immunity letters. '

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1. All documents, correspondence, witness statements and interview memoranda referencing or relating to FedEx's requests to an Investigative Agency (other than the USAO-N.D. Cal.) that the government identify illicit online pharmacies.
2. All documents, records, internal memoranda, communications, and information relating to meetings involving FedEx employees and personnel of the Investigation Agencies at which the participants discussed online pharmacies.
3. All documents referring, reflecting, or relating to FedEx's cooperation with Investigation Agencies or other law enforcement agencies in online pharmacy investigations and related efforts relating to diversion of controlled substances and/or prescription medications.
4. All records relating to subpoenas or other requests for documents or information about any online pharmacy issued by any Investigation Agency to FedEx. This request seeks, without limitation, all responses by FedEx to any such subpoena or request for documents or information. This request is not intended to seek information or records concerning the subpoenas and requests for information issued by the USAO-N.D. Cal. or the United States District Court for the Northern District of California in the course of the grand jury investigation that gave rise to this case. ·
5. All records and information relating to any alleged co-conspirator, any other online pharmacy referenced in the indictment or in documents identified in the indictment, any online pharmacy referenced in any document the government intends to introduce at trial, or any other online pharmacy to which to which the government intends to refer at trial, including but not limited to the following:
	1. All documents or information, including all witness statements, correspondence, and plea agreements, referring or relating to any government investigation and/or prosecution of the online pharmacy.
	2. All documents provided by the online pharmacy or any principal, owner, employee, doctor, pharmacist, agent or other person associated or affiliated with the online pharmacy.
	3. All written or oral statements of any principal, owner, employee, doctor, pharmacist, agent or other person associated or affiliated with the online pharmacy.
	4. · All trial exhibits, trial transcripts, demonstratives and expert reports from any criminal, civil, or administrative proceeding involving the online pharmacy.
	5. All plea agreements and sentencing memoranda related to any principal, owner, employee, doctor, pharmacist, agent or other person associated or affiliated with the online pharmacy.

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* 1. All investigative files for any criminal, civil or administrative investigation conducted by any Investigation Agency, including without limitation all DEA investigative files, DEA-6 reports of investigation, internal memoranda, notes, communications, and information regarding investigations of and/or enforcement actions against the online pharmacy.
	2. All communications and documents reflecting communications concerning the online pharmacy between personnel of the Investigation Agencies and any employee, officer or agent of FedEx.
	3. All reports of suspected unlawful sales of prescription medications and/or controlled substances on the internet provided at https://www.deadiversion.usdoj:gov/webforms/ jsp/ umpire/umpireForm. jsp or any predecessor websites, and all documents referencing, recording or otherwise concerning investigations that resulted from such reports of suspected unlawful sales of prescription medications and/or controlled substances.
	4. All documents and information regarding controlled buys by the DEA, FDA, FSMB, Arkansas Attorney General or other Investigation Agency, including but not limited to all documents and information concerning shipments delivered by FedEx and shipments delivered by other carriers.

0) All documents, reports, and memoranda memorializing or reflecting any physical inspection of the online pharmacy.

(k) State and federal licenses, including without limitation the applications for such licenses or the renewal of such licenses, the due diligence performed before granting or renewing such licenses, any reports of alleged illegality made to the bodies governing the issuance of such licenses, and any actions taken by the governing bodies in response to these reports.

(I) DEA Registration request forms.

1. DEA approvals of registration.
2. Information and records concerning any investigative action taken by DEA against the online pharmacy.
3. Information and records concerning the online pharmacy received by Investigation Agencies from other law enforcement agencies.
4. Investigative reports concerning the validity or invalidity of prescriptions.
5. Lists of all prescribed medications, controlled substances, supplies, and other items that were sold or advertised to be sold.
6. Lists of items seized by any government agency.

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1. Copies of written prescriptions related to any seized shipment of prescription medications and/or controlled substances.
2. Documents reflecting any formal civil or criminal charges or allegations and the final disposition of any government investigations.
3. Information on any formal actions taken by the DEA or FDA.
4. Any DEA "Notice of Registration."
5. All FDA warning letters.
* (x) All subpoenas issued to or relating to the referenced entities.
1. All records and information reflecting, concerning or relating to the purported relationship between FedEx's alleged co-conspirators, including but not limited to communications between the alleged co-conspirators and agreements between the alleged co-conspirators.
2. All documents and information concerning each FedEx shipment referenced in the indictment, including but not limited to each shipment charged as a substantive offense and each shipment charged as an overt act. This request seeks, without limitation, all documents - including any responses to any online pharmacy's online questionnaire - relating to the circumstances that led to the shipment being tendered to FedEx for delivery. ·
3. Copies of any audio video, or other electronic recordings of FedEx, FedEx's operations, or any FedEx employee, agent or other representative. This request seeks, without limitation, any records of surveillance, including wiretaps, performed or collected in connection with the government's investigation of FedEx or any of its alleged co-conspirators. For any Title Ill investigation in which FedEx or any of its alleged co-conspirators was an "aggrieved person" as defined in 18 U.S.C. § 2510(11), please provide all Title Ill materials related to the wiretap. This request extends without limitation to all Title Ill applications, affidavits, orders and supporting documents.
	1. Other Crimes Evidence

Pursuant to the Fifth and Sixth Amendments of the United States Constitution and Fed. R. Evid. 404(b), FedEx requests disclosure of all evidence of any similar crimes, wrongs, or acts allegedly committed, upon which the government intends to rely to prove motive, scheme, opportunity, intent, preparation, knowledge, absence of mistake or accident, or any other issue under Rule 404(b).

\* \* \*

We request that the government continue to take affirmative steps to ensure the preservation of all documents relating to FedEx, FedEx's affiliates, subsidiaries,

12

directors, officers, employees, representatives and agents, any alleged co-conspirator, the indictment in this matter, all internet pharmacies mentioned or referenced in the indictment or to which the government intends to refer at trial, and any potential witness-including all documents covered by any request in this or our previous letter, whether or not the government agrees that the materials sought are discoverable. The government's preservation obligation is not limited to documents obtained from third parties, but extends to government documents, notes, emails, and other electronically stored information maintained by the government. In the event the government is not willing to preserve all such documents, please notify us immediately so that we may take all necessary steps to ensure that such documents are preserved.

We request that the government provide the Investigation Agencies, and any other governmental agencies or federal, state or local law enforcement agencies that have been involved with this investigation, with a copy of this letter to facilitate a determination of whether they possesses any Rule 16, *Brady* or *Giglio* material, or any of the other categories of documents requested herein.

We would appreciate your response and position with respect to these requests as soon as possible, so that we can promptly raise any outstanding discovery obligations with the Court.

Thank you in advance for your timely consideration of these matters.

Best regards,

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Cristina C. Arguedas

ARGUEDAS, CASSMAN & HEADLEY, LLP

Counsel for Federal Express Corporation

cc: Allen Ruby, Esq.

### 13

**Exhibit B**

**U.S. Department of Justice**

*United States Attorney Northern District of California*

* + - *11'1, Floor, Federal Building*

*450 Golden Gate Ave., Box 36055 San Francisco, CA 94102-3495*

*(415)436-7200*

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Cris Arguedas Ted Cassman Raphael Goldman

Arguedas, Cassman and Headley, LLP 803 Hearst Avenue

Berkeley, CA 94710 arguedas@achlaw.com cassman@achlaw.com goldman@achlaw.com

August 11, 2014

Re: United States v. FedEx Corporation, *et al.*

CR 14-380 CRB

Dear Cris, Ted and Raphael:

We are writing in response to your letter of July 25, 2014, as well as regarding our meeting on July 29, 2014, and telephone call of August 5, 2014.

On July 29, 2014, we provided a hard drive containing our initial discovery production. We requested that you review the materials on the hard drive and engage in a dialogue with us regarding technical difficulties with accessing the materials and substantive issues; such as whether the materials we produced are of the type that you are interested in receiving. You indicated that you had concerns regarding the discovery production that w\_e had just handed to you. In particular, you stated that the materials on the hard drive were not the type that you were interested in receiving. You stated that you wished to receive reports of interviews with FedEx witnesses immediately. You stated that one of the reasons for your request was to avoid long weekends and late nights preparing for trial. We stated that we understood your'position but that some witnesses had expressed concern regarding the disclosure of their statements to the company. We agreed to talce your request under advisement. You requested that we meet again by telephone on August 5, and we agreed.

On July 31, 2014, you informed us that you were having technical difficulties accessing the discovery we had produced on July 29. We arranged a telephone call the following day, August 1, during which your technical experts explained the requirements for loading discovery to your system, and our technical experts agreed to attempt to produce files that would meet those requirements. Those files were provided to you on August 7 and today. We requested that you notify us as soon as possible whether these files met your needs, as we would need to use the new system to prepare discovery for productions going forward.

##### Case3:14-cr-00380-CRB Document77 Filed02/06/15 Page21 of 23

Letter re: Discovery

*U.S. v. FedEx Corp. etal.,* CR 14-380 CRB August 11, 2014

Page2

On August 5, 2014, we met by telephone to discuss your concerns regarding discovery, in particular, your letter of July 25, 2014. We stated that we believed the call was premature, given that we had only begun the production of discovery and you had not yet had the opportunity to review our initial production. We requested several times during the telephone call that you hold . your questions and concerns regarding discovery until after you had the oppo1tunity to review

the materials that had been produced and would be produced over the coming weeks. In particular, we noted that the materials contained on the hard drive were responsive to numerous requests made in your July 25 letter, yet you stated at our July 29 meeting that those materials were not the type of discovery you were interested in receiving. You clarified that you were interested in receiving materials of the type that we had produced to you.

To address your request for early production ofreports of witness statements, we stated that we would adopt the following procedure: we will contact the witnesses in question or their counsel and inquire whether any witness has concerns regarding the early production of a report of his or her interview. We would begin producing reports for witnesses who did not raise concerns, and temporarily withhold reports for witnesses.who raised concerns. We will inform you of the number of reports that are being temporarily withheld on this ground, if any. We stressed that we are agreeing to tum over these reports early to accommodate your desire to minimize late nights and weekends spent on this matter. We asked that in the same spirit you also undertalce to provide us with early discovery. We agreed to talk again on September 2 regarding the status of this process.

With regard to your letter of July 25, 2014, we have the following responses, some of which were discussed with you during the August 5 telephone call:

Definitions: We informed you that the investigating agencies in this case are the San Francisco offices of the DEA and FDA. We have made efforts to collect materials from other offices and agencies where we are aware that pertinent materials may exist; however, no other investigating agency forms part of the investigative team in this matter. If you have factual or legal reasons to believe otherwise, please provide us with that information. In particular, please provide us with the legal and factual basis for your assertion that state, local, private and Congressional entities fonn part of the investigative team in this matter.

Requests: We object to any and all of your requests to the extent that they require production of materials to which you are not entitled under Federal Rule of Criminal Procedure 16, *Brady, Giglio/Henthorn,* or the Jencks·Act. We similarly object to your requests to the extent they call for the production of work product or any other materials identified as "information not subject to disclosure" under Federal Rule of Criminal Procedure 16(a)(2). We also object to your requests to the extent that they require production of materials not in the custody or control of this Office or the investigating agents wqrking on this case. We have made reasonable efforts to obtain materials of which we are aware from DEA and FDA generally; however, we take no responsibility for producing materials that are not in our custody and control and of which we are not aware. We object to your requests to the extent that they call for the production of public records, as those materials are equally available to the defense. Finally, we will not reproduce documents that we obtained from you. In addition to these general objections, we respond to your particular requests as follows:

*Request #4-* We will produce grand jury materials in advance of trial. We can discuss a date for production once a firm trial date has been set in this matter.

Letter re: Discovery

* *U.S. v. FedEx Corp. et al.,* CR 14-380 CRB August 11, 2014 ·

Page3

*Requests #7-11* - We agreed during our telephone call that these requests pertain to

*Giglio/Henthorn* issues and will be addressed once a firm trial date has been set.

*Request* #*14* - During our telephone call, we stated that this request is unclear. We will attempt to produce any such materials that are in our custody and control to the extent that we are able to interpret this request.

*Requests* #*15* & *16(x)* - During our telephone call, we stated that we will not produce grand jury subpoenas issued in other matters. However, we will produce reports of responses to requests made by subpoena or otherwise from investigating agencies, to the extent that such reports are in our custody and control.

*Request #l 6(a)-(e)* -During our telephone call, we stated that we do not know at this time which witnesses will be called at trial, and we will address *Giglio/Henthorn* materials once we have a firm trial date. However, we further stated that we will not produce documents that are in the public record, such as pleadings or sentencing memoranda that are available on PACER. Similarly, we will produce trial transcripts that are in our custody and control but we will not seek to have testimony transcribed or obtain transcripts that are not in our possession.

You agreed to table these issues until closer to trial. .

*Request #16(/)* -During our telephone call, we n<;>ted that such materials are expressly excluded from production by Rule 16(a)(2), except to the extent that such materials may contain *Brady* information. You agreed to table this request until closer to trial.

*Request #16(h)-During* our telephone call, we stated that we do not understand this request. You agreed to withdraw this request at this time.

*Requests #16(i)-(k)-* We will provide such materials to the extent they are in our custody and control. We will not conduct an exhaustive nationwide-search to locate any and all such materials that may be in existence.

*Requests #16(1.)-(n) and (u)-(w)* -During our telephone call, we informed you·that DEA's Office of Diversion Control is separate from its Investigations.division. Similarly, FDA's Compliance division is separate from its Office of Criminal Investigations. The Investigations division of both agencies are the investigating entity involved in this case, specifically the San Francisco offices of DEA and FDA-OCI. Nevertheless, we have obtained some of these materials in the course of this investigation. To the extent that they are in our custody and control we will provide them to you. Although the Diversion and Compliance divisions are not part of the investigation team on this matter, we will explore·obtaining these materials if you determine, upon reviewing tlJ,e discovery, that there are materials in this category that have not been produced but which you believe to be material to your- defense.

I *Requests #l6(0)-(r)* -During our telephone call we agreed that we would provide such materials that are in oui- custody and control and to the extent that they do not constitute work product. For example, we will produce databases of Internet pharmacy Prders that "list" the controlled substances sold by an Internet phannacy; however, we will not produce any lists we may have created synthesizing or organizing that information.

*Request* #*19* - During our telephone call, we noted that there was a Title III issued in connection with the investigation of Superior Drugs. We will be obtaining a court order to provide these materials in discovery.

Letter re: Discovery

*U.S. v. FedEx Corp. et al.,* CR 14-380 CRB August 11, 2014

Page4

During our telephone call, you stated that we are responsible for providing documents that are "material to the defense." We informed you that we are not aw e at this time what defensesl<'edEx will assert at trial, and you declined to provide us with that information. If you believe that there is information that is material to a defense you intend to assert at trial that is not being provided to you, please let us know so that we may address that issue. While your· citation to *Hernandez v. Mesa,* 720 F.3d 760 (9th Cir. 2013) is informative, that case involved, a straightforward illegal reentry case where the available defenses were·few and apparent. This matter is considerably more complex and the available defenses are not necessarily obvious.

Please contact us at (415) 436-69.40or kirstin.ault@usdoj.gov if you have any questions concerning the foregoing. ·

Sincerely, MELINDA HAAG

United States Attorney



KIRSTINM. AULT KYLEF. WALDINGER

Assistant United States Attorneys