

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 05-60021-CR-COHN(S)(S)

18 U.S.C. §371
21 U.S.C. §§331(a), 333(a)(2)
18 U.S.C. §1341
18 U.S.C. §1343
18 U.S.C. §1346
18 U.S.C. §1623(a)

UNITED STATES OF AMERICA,

vs.

CHAD LIVDAHL,
ZAHRA KARIM, a/k/a
“Anna Tessem,” a/k/a “Sasha,”
BACH McCOMB,
ROBERT BAKER,
TOXIN RESEARCH INTERNATIONAL, INC.,
POWDERZ, INC.,
Z-SPA, INC., and
THE COSMETIC PHARMACY, INC.,

Defendants.

SECOND SUPERSEDING INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At times material to this Indictment:

Regulatory Framework

1. The United States Food and Drug Administration (“FDA”) is the federal agency charged with the responsibility of protecting the health and safety of the American public by enforcing the Federal Food, Drug, and Cosmetic Act, Title 21, United States Code, Sections 301, et seq.

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("FDCA"). One purpose of the FDCA is to ensure that drugs sold for consumption or administration to humans are safe, effective, and bear labeling containing only true and accurate information. The FDA's responsibilities under the FDCA include regulating the manufacture, labeling, and distribution of all drugs and drug components shipped or received in interstate commerce.

2. Under the FDCA, "drug" means ". . . articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; . . . and . . . articles (other than food) intended to affect the structure or any function of the body of man or other animals [and] articles intended for use as a component of any [article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals or of any article (other than food) intended to affect the structure or function of the body of man or other animals]." Title 21, United States Code, Section 321(g)(1).

3. Under the FDCA a "drug" is misbranded unless it bears adequate directions for each of its intended uses. Title 21, United States Code, Section 352(f). Under the FDA's regulations,

The words intended uses . . . refer to the objective intent of the persons legally responsible for the labeling of drugs. The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the article. . . . It may be shown by the circumstances that the article is, with the knowledge of such persons or their representatives, offered and used for a purpose for which it is neither labeled nor advertised. The intended uses of an article may change after it has been introduced into interstate commerce by its manufacturer. . . . But if a manufacturer knows, or has knowledge of facts that would give him notice, that a drug introduced into interstate commerce by him is to be used for conditions, purposes, or uses other than the ones for which he offers it, he is required to provide adequate labeling for such a drug which accords with such other uses to which the article is to be put.

21 CFR 201.128.

4. A “biological product” is defined, in relevant part, by the Public Health Service Act, Title 42, United States Code, Section 262(i), as a “. . . toxin, . . . applicable to the prevention, treatment, or cure of a disease or condition of human beings.” When a “biological product” under Title 42, United States Code, Section 262, also meets the definition of a “drug,” as stated in paragraph 2 of this Indictment, the “biological product” is a “drug” under Title 21, United States Code, Section 321(g).

5. The term “new drug” is defined by Title 21, United States Code, Section 321(p), as any drug not generally recognized as safe and effective among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs for use under the conditions prescribed, recommended or suggested in its labeling.

6. Pursuant to the FDCA, unless there is in effect with the FDA a new drug application (“NDA”), an abbreviated new drug application (“ANDA”), or a notice of claimed exemption for an investigational new drug (“IND”), a drug, including a biological drug product, is an unapproved new drug and can not lawfully be entered into interstate commerce. 21 U.S.C. §§ 355(a); 331(d).

7. The FDCA defines the term “labeling” as all labels and other printed or graphic matter upon any article or any of its containers or wrappers, or accompanying such article. 21 U.S.C. § 321(m).

8. Title 21, United States Code, Section 352(f) provides that a drug shall be deemed to be “misbranded” “[u]nless its labeling bears (1) adequate directions for use . . . ,” among other things.

9. Title 21, United States Code, Section 331(a) prohibits the introduction or delivery for introduction, or the causing of the introduction or delivery for introduction, into interstate commerce of any drug that is misbranded.

Botulinum Toxin Type A

10. The bacterium *Clostridium Botulinum* produces Botulinum Toxin Type A, a highly potent toxin.

11. When present in sufficient amounts in human beings, Botulinum Toxin Type A causes botulism, a muscle-paralyzing condition in which Botulinum Toxin Type A binds to nerve endings at the point where nerves join muscles, preventing the nerves from signaling the muscles to contract. Severe botulism generally results in death, unless the patient receives proper care to ensure continued breathing. Recovery occurs when the affected nerves grow new endings, a process that can extend over several months, although recovery time varies greatly from case to case.

Allergan Botox® and Botox® Cosmetic

12. Botulinum Toxin Type A constitutes a “biological product” under Title 42, United States Code, Section 262, and a “drug” under Title 21, United States Code, Section 321(g), when the product is intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings, or to affect the structure or the function of the body of human beings.

13. On or about December 9, 1991, the Food and Drug Administration (“FDA”) approved Botox®, a drug derived from Botulinum Toxin Type A and manufactured by Allergan, Inc., of Irvine, California, for the treatment of certain medical conditions in human beings.

14. On or about April 12, 2002, the FDA approved a supplement to Allergan’s Botox® license application for the treatment of glabellar lines, commonly referred to as forehead wrinkles. Under this FDA approval, Allergan’s Botulinum Toxin Type A product was marketed and labeled for the supplemental usage as Botox® Cosmetic.

15. Allergan’s Botox® and Botox® Cosmetic constitute the only drugs containing

Botulinum Toxin Type A approved by the FDA for use in human beings.

List Biological Laboratories, Inc.

16. List Biological Laboratories, Inc. (“List”), a California corporation, was located in Campbell, California. List’s website, located at www.listlabs.com, stated that List sold bacterial toxins for research purposes.

17. Among the toxins List sold, List offered Botulinum Toxin Type A in vials containing 100,000 nanograms of the toxin.

Powderz, Inc.

18. On or about June 12, 2001, defendant **POWDERZ, INC.**, was incorporated in Arizona. Defendant **POWDERZ, INC.**, maintained its principal place of business at 3280 E. Hemisphere Loop, Tucson, Arizona.

19. Defendant **CHAD LIVDAHL** was the president of **POWDERZ, INC.**, and defendant **ZAHRA KARIM** was the registered agent for the corporation.

20. Defendant **POWDERZ, INC.**, purported to be a repackager, wholesaler, and distributor of bulk pharmaceutical-grade nutritional products and drugs, and a provider of instruction and support to licensed healthcare practitioners and pharmacies.

21. Defendant **POWDERZ, INC.**, maintained a website at www.powderz.com, which could be accessed by any person operating any computer in the world that was connected to the Internet.

22. From time to time defendants **CHAD LIVDAHL** and **ZAHRA KARIM**, through defendant **POWDERZ, INC.**, held “workshops” where they offered instruction on various cosmetic products and procedures.

Toxin Research International, Inc.

23. On or about May 12, 2003, defendant **TOXIN RESEARCH INTERNATIONAL, INC.** (“**TRI**”), was incorporated in Arizona. Defendant **TRI** maintained its principal place of business at 3280 E. Hemisphere Loop, Tucson, Arizona.

24. Defendant **TRI**’s articles of incorporation identified defendants **CHAD LIVDAHL** and **ZAHRA KARIM** as the corporation’s initial board of directors, and described defendant **TRI**’s business as “[t]oxin distribution & research.”

25. Defendant **TRI** sold only special-order Botulinum Toxin Type A that defendants **CHAD LIVDAHL**, **ZAHRA KARIM**, and **POWDERZ, INC.**, obtained from List in or about May 2003.

26. Defendant **TRI** maintained a website at www.toxinresearch.com, which could be accessed by any person operating any computer in the world that was connected to the Internet.

27. Defendant **TRI** offered its Botulinum Toxin Type A for sale over its Internet website.

The Cosmetic Pharmacy, Inc.

28. On or about June 8, 2004, defendant **THE COSMETIC PHARMACY, INC.**, was incorporated in Arizona, with its principal place of business at 3280 E. Hemisphere Loop, Tucson, Arizona.

29. Defendant **CHAD LIVDAHL** served as the agent of record for defendant **THE COSMETIC PHARMACY, INC.**

30. Defendant **THE COSMETIC PHARMACY, INC.**, maintained a website at www.thecosmeticpharmacy.com, which could be accessed by any person operating any computer in the world that was connected to the Internet.

31. Defendants **CHAD LIVDAHL** and **ZAHRA KARIM**, through defendant **THE COSMETIC PHARMACY, INC.**, offered “workshops” where they offered instruction on various

cosmetic products and procedures.

Z-Spa, Inc.

32. On or about February 13, 2004, defendant **Z-SPA, INC.**, was incorporated in Arizona, with its principal place of business listed as 3280 E. Hemisphere Loop, Suite 116-E, Tucson, Arizona.

33. Defendant **CHAD LIVDAHL** served as the statutory agent for defendant **Z-SPA, INC.**

34. Defendant **Z-SPA, INC.**, maintained a website at www.z-spa.net, which could be accessed by any person operating any computer in the world that was connected to the Internet.

35. Defendant **Z-SPA, INC.**'s website stated that it offered "the most advanced Anti-aging, Laser and Cosmetic skin care treatments . . ." including "Botox."

Advanced Integrated Medical Center

36. On or about September 8, 2003, Advanced Integrated Medical Centers, Inc. ("AIMC"), was incorporated in Florida, with its principal offices located at 1655 East Oakland Park Boulevard, Fort Lauderdale, Florida.

37. Advanced Integrated Medical Center held itself out as a medical facility.

38. Defendant **BACH McCOMB** worked as an osteopathic doctor at AIMC.

39. In or about April 2003, the State of Florida suspended defendant **BACH McCOMB**'s license to practice medicine in Florida.

40. On or about November 26, 2004, four individuals, including defendant **BACH McCOMB**, were admitted to hospitals exhibiting symptoms of severe botulism, which the four individuals developed after purportedly receiving "Botox" injections at AIMC.

41. Beginning on or about November 30, 2004, the national media publicized the

predicament of the four individuals who contracted severe botulism after visiting AIMC, speculating that they may have been injected with something other than Allergan's Botox®.

COUNT 1
(Conspiracy: 18 U.S.C. 371)

42. Paragraphs 1 through 41 of the General Allegations section are realleged and incorporated as though fully set forth herein.

43. From on or about January 26, 2003, and continuing through on or about January 11, 2005, at Broward, Palm Beach, and Miami-Dade Counties, in the Southern District of Florida, and elsewhere, the defendants,

**CHAD LIVDAHL,
ZAHRA KARIM, a/k/a
"Anna Tessem," a/k/a "Sasha,"
BACH McCOMB,
ROBERT BAKER,
TOXIN RESEARCH INTERNATIONAL, INC.,
POWDERZ, INC.,
Z-SPA, INC., and
THE COSMETIC PHARMACY, INC.,**

did knowingly and willfully combine, conspire, confederate, and agree with each other and with others known and unknown to the Grand Jury, to defraud the United States and to commit certain other offenses against the United States, namely:

a. to knowingly and with specific intent to defraud, devise a scheme and artifice to defraud and deprive others of the intangible right of honest services, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice to knowingly transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings,

signs, signals, pictures and sounds, in violation of Title 18, United States Code, Sections 1343 and 1346;

b. to knowingly and with specific intent to defraud, devise a scheme and artifice to defraud and deprive others of the intangible right of honest services, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, and attempting to do so, to knowingly cause to be delivered by the United States Postal Service and by commercial interstate carrier, according to the directions thereon, certain matters and things, in violation of Title 18, United States Code, Sections 1341 and 1346; and

c. with intent to defraud and mislead, to introduce and deliver for introduction into interstate commerce and cause to be introduced and delivered for introduction into interstate commerce, a drug within the meaning of Title 21, United States Code, Section 321(g)(1), that was misbranded as defined by Title 21, United States Code, Section 352(f)(1), in violation of Title 21, United States Code, Sections 331(a) and 333(a)(2).

OBJECTS OF THE CONSPIRACY

44. It was the purpose and object of the conspiracy for the defendants to enrich themselves unjustly by introducing into and marketing and selling in interstate commerce to health care providers for use in human patients Botulinum Toxin Type A that was not approved by the FDA for use in human beings and that was misbranded for failure to bear adequate directions for use in human beings to treat facial wrinkles, as a cheap alternative to Allergan's Botox® Cosmetic, without the administering health care providers advising their patients that the TRI Botulinum Toxin Type A was not Allergan's Botox® Cosmetic and was not approved by the FDA for use in human beings.

45. It was further the purpose and object of the conspiracy for the defendants to enrich themselves unjustly by selling the TRI Botulinum Toxin Type A to co-conspiring health care providers and defrauding the patients of those health care practitioners who purchased and used the TRI Botulinum Toxin Type A on such patients, of money and of the honest services of their health care providers in that the defendants caused the health care providers to breach their fiduciary duties to their patients by administering the TRI Botulinum Toxin Type A to the health care providers' patients and to do so without the health care providers advising those patients that the TRI Botulinum Toxin Type A was not Allergan's Botox® Cosmetic and was not approved by the FDA for use in human beings.

46. It was further the purpose and object of the conspiracy for the defendants to enrich themselves unjustly by defrauding the FDA by distributing TRI Botulinum Toxin Type A that was not approved by the FDA for use in human beings and that was misbranded for failure to bear adequate directions, as a cheap alternative to Allergan's Botox® Cosmetic.

MANNER AND MEANS

The manner and means by which the defendants sought to accomplish the objects of the conspiracy and the scheme and artifice to defraud included the following:

47. Defendants **CHAD LIVDAHL** and **POWDERZ, INC.**, contracted with List to create and obtain a lyophilized (freeze-dried or vacuum-dried) product containing Botulinum Toxin Type A in a formulation that defendants designed and specially ordered in an attempt to mimic Allergan's Botox® Cosmetic ("Mimic Botox"), for use in the treatment of human facial wrinkles.

48. Defendants intended for the Mimic Botox to be used to affect the structure and function of the body of humans, in that defendants intended that the Mimic Botox would be reconstituted with

saline solution and be injected into the human face for the treatment of facial wrinkles. As such, Mimic Botox constituted a “drug” under the FDCA.

49. Defendants caused List to send approximately 3,081 vials of Mimic Botox to defendants **CHAD LIVDAHL** and **POWDERZ, INC.**, in fulfillment of defendants’ special order from List.

50. Defendants then caused the vials of Mimic Botox received from List to be misbranded, in that defendants affixed **TRI**’s labeling that said, “For Research Purposes Only[;] Not for Human Use.” to the vials, when, in truth and in fact, defendants intended for **TRI**’s Mimic Botox to be used

to for the treatment of facial wrinkles in human beings, and the labeling contained no directions for such use.

51. Defendants also did not file a new drug application, an abbreviated new drug application, or a notice of claimed exemption for an investigational new drug with the FDA for **TRI**’s Mimic Botox, nor did they file any paperwork at all with the FDA in support of such an application or exemption.

52. Defendants **CHAD LIVDAHL, ZAHRA KARIM, POWDERZ, INC.**, and **TRI** established defendant **TRI** for the sole purpose of selling **TRI**’s Mimic Botox, the only item defendant **TRI** offered for sale.

53. Defendants **CHAD LIVDAHL, ZAHRA KARIM, POWDERZ, INC.**, and **TRI** caused the vials of **TRI**’s Mimic Botox to be labeled, “For Research Purposes Only[;] Not for Human Use,” in an attempt to avoid FDA detection and regulation, when, in truth and in fact, defendants intended for the product to be used on humans to treat facial wrinkles.

54. Despite the labeling of **TRI**’s Mimic Botox vials as “For Research Purposes Only[;] Not for Human Use,” defendants **CHAD LIVDAHL, ZAHRA KARIM, POWDERZ, INC.**, and **THE**

COSMETIC PHARMACY, INC., held workshops at which they and others, including defendants **BACH McCOMB** and **ROBERT BAKER**, promoted defendant **TRI**'s Mimic Botox for use in treating human facial wrinkles.

55. Defendants **CHAD LIVDAHL, ZAHRA KARIM, POWDERZ, INC.**, and **TRI** attended aesthetic and medical conventions, where they set up a booth to display, encourage, and offer **TRI**'s Mimic Botox for sale to be used as an alternative to Allergan's Botox® Cosmetic in the treatment of facial wrinkles.

56. Defendants **CHAD LIVDAHL, ZAHRA KARIM, POWDERZ, INC.**, and **TRI** caused instructional materials provided with the vials of **TRI**'s Mimic Botox to include reconstitution, storage, and vial usage information and instructions that were potentially dangerous when the product was used on human beings, and to lack entirely information concerning potential adverse effects on human beings, contraindications for use, clinical studies, safe injection techniques, instructions for use on humans, and other such important usage information.

57. Defendants **CHAD LIVDAHL, ZAHRA KARIM, POWDERZ, INC., THE COSMETIC PHARMACY, INC.**, and **TRI** caused promotional material for **TRI**'s Mimic Botox and **POWDERZ, INC.**'s and **THE COSMETIC PHARMACY, INC.**'s seminars, where defendant **TRI**'s Mimic Botox was promoted for use on human beings, to be sent by facsimile and mail to practicing physicians such as plastic surgeons, dermatologists, ophthalmologists, otolaryngologists, and others throughout the United States.

58. Although defendants **CHAD LIVDAHL, ZAHRA KARIM, POWDERZ, INC., TRI, THE COSMETIC PHARMACY, INC.**, and **Z-SPA, INC.**, never purchased and obtained any of Allergan's Botox® Cosmetic, defendants **CHAD LIVDAHL** and **ZAHRA KARIM** nonetheless

offered “one-on-one” hands-on training in “botulinum” for health care providers, which involved teaching such health care providers how to inject the health care providers’ patients with what defendant **ZAHRA KARIM** described as “Botox,” but what, in reality, was defendant **TRI**’s Mimic Botox.

59. Defendants **CHAD LIVDAHL, ZAHRA KARIM, BACH McCOMB, and ROBERT BAKER, TRI, POWDERZ, INC., and THE COSMETIC PHARMACY, INC.,** caused the introduction into interstate commerce of misbranded **TRI**’s Mimic Botox, in that the labeling read, “For Research Purposes Only[;] Not for Human Use,” when, in truth and in fact, defendants intended **TRI**’s Mimic Botox to be used to treat human facial wrinkles, and **TRI**’s Mimic Botox labeling contained no directions for such a use, when defendants sent the misbranded **TRI**’s Mimic Botox to more than 200 practicing health care providers and collected in excess of approximately \$1,500,000.00 in profits from the receiving health care providers in so doing.

60. Despite causing the Mimic Botox to be labeled, “For Research Purposes Only[;] Not for Human Use,” defendants **CHAD LIVDAHL, ZAHRA KARIM, BACH McCOMB, and ROBERT BAKER, TRI, POWDERZ, INC., and THE COSMETIC PHARMACY, INC.,** caused health care providers to inject the non-FDA-approved **TRI**’s Mimic Botox into their human patients to treat wrinkles, without providing the health care providers with adequate instructions for use, without the health care providers advising the human patients that the Mimic Botox was not Allergan’s Botox® or Botox® Cosmetic, and without the health care providers advising the human patients that the Mimic Botox was not approved by the FDA for use on humans.

61. In causing health care providers to inject the non-FDA-approved **TRI**’s Mimic Botox into their human patients to treat wrinkles, without providing the health care providers with adequate

instructions for use, without the health care providers advising the human patients that the Mimic Botox was not Allergan's Botox® or Botox® Cosmetic, and without the health care providers advising the human patients that the Mimic Botox was not approved by the FDA for use on humans. defendants **CHAD LIVDAHL, ZAHRA KARIM, BACH McCOMB, ROBERT BAKER, TRI, POWDERZ, INC.,** and **THE COSMETIC PHARMACY, INC.,** caused and aided and abetted the health care providers to breach their fiduciary duties to their patients to provide the patients with the health care providers' honest services, and defrauded the patients of their health care providers' honest services and money, in that the patients believed that they were paying for and receiving FDA-approved and Allergan Botox® Cosmetic treatments, when, in truth and in fact, the patients were receiving potentially dangerous, non-FDA-approved **TRI's** Mimic Botox.

62. Defendants **CHAD LIVDAHL, ZAHRA KARIM,** and **TRI** refused to provide refunds and accept returns of **TRI's** Mimic Botox from health care providers who, upon receipt of **TRI's** Mimic Botox, realized that the product had not been FDA-approved, declined to use **TRI's** Mimic Botox on their patients, indicated to **TRI** that they had no use for **TRI's** Mimic Botox, and requested a refund for the return of **TRI's** Mimic Botox, instead encouraging such health care providers to find a use for **TRI's** Mimic Botox.

63. Defendants **CHAD LIVDAHL, ZAHRA KARIM,** and **Z-SPA, INC.,** advertised on **Z-SPA, INC.'s** Internet website "Botox" treatments, although Allergan never sold Botox® or Botox® Cosmetic to defendants.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in Broward, Palm Beach, and Miami-Dade Counties, in the Southern

District of Florida, and elsewhere, by at least one co-conspirator:

64. On or about January 26, 2003, defendants **CHAD LIVDAHL** and **POWDERZ, INC.**, submitted a general order form to List for List to provide defendants with Botulinum Toxin Type A.

65. On or about March 4, 2003, defendant **CHAD LIVDAHL**, through **POWDERZ, INC.**, special-ordered from List and caused List to specially produce approximately 3,000 vials of Botulinum Toxin Type A, which were each to contain five nanograms of Botulinum Toxin Type A, along with lactose, albumin, and sodium chloride.

66. On or about March 18, 2003, defendant **BACH McCOMB** sent an e-mail from Florida to defendant **CHAD LIVDAHL** in Arizona, advising **CHAD LIVDAHL** that **BACH McCOMB** would be delighted to participate in providing hands-on training in “BoTox” at the July 2003 **POWDERZ, INC.**, workshop.

67. On or about March 19, 2003, defendants **CHAD LIVDAHL** and **POWDERZ, INC.**, caused **CHAD LIVDAHL** to send an e-mail from Arizona to defendant **BACH McCOMB**, offering **BACH McCOMB** \$100 per person to co-host the **POWDERZ, INC.**, workshop on July 20, 2003.

68. On or about May 9, 2003, defendants **CHAD LIVDAHL** and **POWDERZ, INC.**, sent an e-mail to List agreeing to purchase an additional eighty-five vials of the special-order Botulinum Toxin Type A for \$9.67 each.

69. On or about May 14, 2003, defendants **CHAD LIVDAHL**, **ZAHRA KARIM**, **POWDERZ, INC.**, and **TRI** caused List to send defendants **CHAD LIVDAHL** and **POWDERZ, INC.**, by interstate commercial carrier approximately 3,081 vials of the special-order Mimic Botox for approximately \$29,822.28.

70. In response to an e-mail sent on or about May 15, 2003, by Dr. J.D.M. to defendant **CHAD LIVDAHL**, asking, “Are you dispensing Botox yet, or what is the scoop on it? I’m working on getting the MD I work with to go in on Botox with me (I have a group of patients ready and waiting!),” on or about May 18, 2003, defendant **CHAD LIVDAHL** sent Dr. J.D.M. an e-mail stating, “We do have botulinum toxin and should have it ready to sell in about 2 weeks from Monday.”

71. On or about July 15, 2003, defendant **CHAD LIVDAHL**, sent an e-mail from Arizona to defendant **BACH McCOMB**, requesting the name, address, and telephone number of the nurse attending the July 20, 2003, **POWDERZ, INC.**, workshop with **McCOMB**, for purposes of preparing name badges.

72. From on or about July 19, 2003, through on or about July 20, 2003, defendants **CHAD LIVDAHL, ZAHRA KARIM, BACH McCOMB, ROBERT BAKER, POWDERZ, INC.**, and **TRI** caused health care providers from around the United States to attend a workshop in Scottsdale, Arizona, where defendants promoted **TRI**’s Mimic Botox for use in treating facial wrinkles on humans.

73. On or about October 23, 2003, defendants **ZAHRA KARIM, CHAD LIVDAHL, POWDERZ, INC.**, and **TRI** caused an e-mail to be sent from **ZAHRA KARIM** to R.V. in which **ZAHRA KARIM** advised R.V. that “[t]here is a company called TRI that carries a stabilized Botulinum toxin type A: www.toxinresearch.com[.] This is a very effective product!”

74. In or about 2003 or early 2004, the exact date being unknown to the Grand Jury, defendant **ROBERT BAKER** provided defendants **CHAD LIVDAHL** and **TRI** with a testimonial letter commending defendant **TRI**’s Mimic Botox.

75. On or about January 6, 2004, defendants **ZAHRA KARIM** and **CHAD LIVDAHL** caused **ZAHRA KARIM**, using the false name “Anna Tessem,” to send an e-mail to “Judy” offering “Judy” one-on-one instruction in various techniques, including “botulinum.”

76. In or about January 2004, the exact date being unknown to the Grand Jury, defendants **CHAD LIVDAHL** and **TRI** caused defendant **ROBERT BAKER**’s testimonial letter commending defendant **TRI**’s Mimic Botox to be distributed by mail and over defendant **TRI**’s Internet website to practicing health care providers in support of marketing and sales efforts to practicing health care providers.

77. In or about February 2004, defendant **ZAHRA KARIM** advised Dr. J.T. that if he hired defendants **ZAHRA KARIM** and **CHAD LIVDAHL** to conduct “one-on-one training” regarding Botulinum Toxin Type A, defendants **ZAHRA KARIM** and **CHAD LIVDAHL** would provide the “Botox” to be used on Dr. J.T.’s patients during defendants **ZAHRA KARIM** and **CHAD LIVDAHL**’s training of Dr. J.T.

78. On or about February 24, 2004, defendant **CHAD LIVDAHL** caused defendant **TRI** to send Dr. A.A.’s nurse A.D. a facsimile (1) refusing to refund Dr. A.A.’s money expended purchasing **TRI**’s Mimic Botox after Dr. A.A. learned for the first time upon receipt of **TRI**’s Mimic Botox that **TRI**’s Mimic Botox was not for human use, and requested to return the product and receive a refund; (2) describing **TRI**’s Mimic Botox as “exactly the same as any Botulinum Toxin Type A that you used in the past;” (3) explaining that **TRI**’s Mimic Botox literature and label state that it is a research product “for legal purposes to protect ourselves;” and (4) wishing A.D. and Dr. A.A. to “find some use for [**TRI**’s Mimic Botox].”

79. On or about March 3, 2004, defendant **CHAD LIVDAHL** caused defendant **TRI** to

advise Dr. R.W. that **TRI** was “in the process of getting FDA approval” for **TRI**’s Mimic Botox.

80. In or about April 2004, defendant **BACH McCOMB** advised defendants **CHAD LIVDAHL** and **TRI** that **TRI**’s Mimic Botox did not work on “test subjects” that he identified by first and last initials and requested a replacement vial of **TRI**’s Mimic Botox.

81. On or about April 19, 2004, defendants **CHAD LIVDAHL** and **TRI** advised defendant **BACH McCOMB** that they would send him a replacement vial of **TRI**’s Mimic Botox to make up for the vial that did not work, and recommended changes to defendant **BACH McCOMB**’s reconstitution methods for use of the new vial of **TRI**’s Mimic Botox.

82. In or about July 2004, in response to Dr. J.L.’s complaint to defendant **CHAD LIVDAHL** that Dr. J.L.’s patients whom he had injected with **TRI**’s Mimic Botox had experienced and complained of raised bumps, excruciating headaches, redness and pain at the injection site, and blurred vision, defendant **CHAD LIVDAHL** told Dr. J.L. that he believed that Dr. J.L. must have either failed to use a sterile needle to inject **TRI**’s Mimic Botox into human patients or used bad saline to reconstitute **TRI**’s Mimic Botox, and that no other doctors had complained about that batch of **TRI**’s Mimic Botox.

83. On or about August 11, 2004, defendants **CHAD LIVDAHL** and **ZAHRA KARIM** caused **CHAD LIVDAHL** to send an e-mail to K.L. in which **CHAD LIVDAHL** advised K.L. that K.L.’s friend could contact “Zahra directly [**ZAHRA KARIM**] can do Botox and/or any dermal filler.”

84. On or about August 25, 2004, defendants **CHAD LIVDAHL** and **TRI** advised Dr. J.M. that they regretted that Dr. J.M. had “been having recent unsatisfactory results with [**TRI**’s Mimic Botox]” and instructed Dr. J.M. to “follow [**TRI**’s] reconstitution instructions exactly” so there

would be “no future problems with [**TRI**’s Mimic Botox].”

85. On or about September 18, 2004, defendants **CHAD LIVDAHL**, **ZAHRA KARIM**, **TRI**, and **THE COSMETIC PHARMACY, INC.**, caused a workshop to be held in Scottsdale, Arizona, where Botulinum Toxin Type A was discussed.

86. On or about October 6, 2004, defendants **CHAD LIVDAHL** and **ZAHRA KARIM** falsely advised an FDA consumer safety officer inspecting **TRI** and **POWDERZ, INC.**, that **TRI** sold its Mimic Botox to research institutions and licensed physicians conducting research only.

87. On or about October 6, 2004, defendant **CHAD LIVDAHL** declined to comply with the request of the FDA consumer safety officer inspecting **TRI** and **POWDERZ, INC.**, to provide records of **TRI**’s sales of its Mimic Botox, claiming that such information was “confidential.”

88. On or about October 20, 2004, defendant **ZAHRA KARIM** advised the FDA consumer safety officer inspecting **TRI** and **POWDERZ, INC.**, that everything that she and defendant **CHAD LIVDAHL** had told the FDA consumer safety officer was true, including, among other statements, that defendants sold **TRI**’s Mimic Botox to research institutions and licensed physicians conducting research only.

89. From on or about November 30, 2004, through on or about December 3, 2004, following the onset of national media stories regarding the four individuals who contracted severe botulism after receiving injections at AIMC, defendant **CHAD LIVDAHL** caused approximately \$81,000.00 to be withdrawn by check from **TRI**’s Bank of America bank account in nine checks made payable to three different companies, all in denominations under \$10,000.00, and all ultimately deposited into a single bank account controlled by the significant other of defendant **CHAD LIVDAHL**’s mother.

90. On or about December 1, 2004, after learning of defendant **BACH McCOMB**’s

development of severe botulism from a purported Botulinum Toxin Type A procedure he conducted on himself, and after receiving a facsimile from The New York Times requesting information about **BACH McCOMB**, defendants **CHAD LIVDAHL**, **ZAHRA KARIM**, and **TRI** caused computer records reflecting the sales of **TRI**'s Mimic Botox to **TRI**'s customers, including to defendant **BACH McCOMB**'s company AIMC, to be removed from **TRI**'s computer.

91. On or about December 3, 2004, defendant **CHAD LIVDAHL** instructed his employee to place a fake entry into **TRI**'s Quickbooks records showing that 800 vials of **TRI**'s Mimic Botox had become unusable.

92. On or about December 3, 2004, defendants **CHAD LIVDAHL** and **ZAHRA KARIM** caused paper records reflecting sales of **TRI**'s Mimic Botox to be removed from the offices of **TRI**, **POWDERZ, INC.**, **THE COSMETIC PHARMACY**, and **Z-SPA, INC.**

93. On or about December 4, 2004, the day that a search warrant was executed on defendant **TRI**, defendant **CHAD LIVDAHL** caused approximately \$300,000.00 to be withdrawn from the bank account of defendant **TRI** to purchase a cashier's check for \$300,000.00 made payable to defendant **CHAD LIVDAHL**'s mother.

94. On or about December 4, 2004, defendant **CHAD LIVDAHL** caused the exchange of the \$300,000.00 cashier's check made payable to his mother for a \$300,000.00 cashier's check made payable to defendant **CHAD LIVDAHL**.

95. On or about December 22, 2004, defendants **CHAD LIVDAHL**, **ZAHRA KARIM**, and **TRI** caused a notice to be faxed to health care providers, stating that **TRI** was and always had "cooperated to its fullest extent with the FDA and its investigation[.]" and offering recipients a free vial of **TRI**'s Mimic Botox if the recipients advised **TRI** in writing that events in Florida had

affected their research “in a negative manner.”

96. On or about December 23, 2004, defendant **CHAD LIVDAHL** sent an e-mail to an employee instructing the employee to “[r]emove the 25 quantity order and 50 quantity order” from **TRI**’s website and instead to replace this language with a statement that “[v]olume [d]iscounts apply[;] contact us for details.”

97. On or about December 23, 2004, after a United States District Court in the Southern District of Florida entered an order temporarily restraining **TRI** from selling its Mimic Botox, defendant **CHAD LIVDAHL** caused approximately \$135,000.00 to be withdrawn from defendant **TRI**’s bank account.

98. On or about January 11, 2005, defendant **ZAHRA KARIM** offered an employee \$500 to provide a statement to an attorney for defendants **ZAHRA KARIM, CHAD LIVDAHL, POWDERZ, INC., TRI, THE COSMETIC PHARMACY, INC.,** and **Z-SPA, INC.**, after defendant **CHAD LIVDAHL** had on or about January 3, 2005, suggested to the same employee in an e-mail what her answers should be to the attorney’s questions regarding **TRI**.

99. The factual allegations contained in Counts 2-47 of this Indictment are incorporated by reference as overt acts.

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

COUNTS 2-10
(Wire Fraud: 18 U.S.C. 1343, 1346, and 2)

100. Paragraphs 1 through 41 of the General Allegations and paragraphs 47 through 49, 51 through 58, and 60 through 62 of Count 1 are incorporated by reference as though realleged in their entirety herein.

SCHEME AND ARTIFICE

101. It was the object of the scheme and artifice for the defendants to enrich themselves unjustly by marketing and selling to health care providers for use in human patients **TRI's** Botulinum Toxin Type A that was not approved by the FDA for use in human beings, as a cheap facial wrinkle treatment alternative to Allergan's Botox® Cosmetic, without the administering health care providers advising their human patients that **TRI's** Mimic Botox was not Allergan's Botox® Cosmetic and was not approved by the FDA for use in human beings.

USE OF THE WIRES

102. On or about the dates listed below, at Broward, Palm Beach, and Miami-Dade Counties, in the Southern District of Florida, and elsewhere, the defendants, listed below as to each count, did knowingly and with specific intent to defraud, devise a scheme and artifice to defraud and deprive others of the intangible right of honest services, and for obtaining money and property, by means of materially false and fraudulent pretenses, representations, and promises, and, for the purpose of executing and attempting to execute such scheme and artifice, did knowingly transmit and cause to be transmitted in interstate commerce by means of wire communications, certain writings, signs, signals and sounds, as more specifically described below:

COUNT	DATE	DEFENDANT	DESCRIPTION OF WIRE COMMUNICATION
2	9/29/03	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	E-mail from McCOMB in Florida to LIVDAHL and KARIM in Arizona, requesting that LIVDAHL and KARIM send McCOMB two vials of TRI's Mimic Botox to help offset McCOMB's expenses in attending the July 2003 POWDERZ, INC., workshop.

3	10/1/03	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	E-mail from LIVDAHL in Arizona to McCOMB in Florida, stating that LIVDAHL should be able to send TRI 's Mimic Botox to McCOMB by Thursday.
4	10/2/03	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	E-mail from LIVDAHL in Arizona to McCOMB in Florida, stating that "we" decided to send the TRI Mimic Botox to McCOMB on Monday instead of Thursday.
5	10/3/03	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	E-mail from McCOMB in Florida to LIVDAHL in Arizona, stating that McCOMB would be at the same address on Tuesday for purposes of receiving the shipment of TRI 's Mimic Botox.
6	10/6/03	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	E-mail from LIVDAHL in Arizona to McCOMB in Florida, requesting that McCOMB resend his delivery address.
7	10/03- 12/23/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC.	Communication over POWDERZ, INC. 's website offering information on workshops where TRI 's Mimic Botox was discussed.
8	10/03- 12/23/04	CHAD LIVDAHL ZAHRA KARIM TRI	Communication over TRI 's website offering information and order forms for TRI 's Mimic Botox.
9	10/04- 12/23/04	CHAD LIVDAHL ZAHRA KARIM THE COSMETIC PHARMACY, INC.	Communication over THE COSMETIC PHARMACY, INC. 's website offering information on workshops where TRI 's Mimic Botox was discussed.
10	11/04- 12/23/04	CHAD LIVDAHL ZAHRA KARIM Z-SPA, INC.	Communication over Z-SPA, INC. 's website offering Botox® treatments when defendants had no access to Botox® and instead had access to TRI 's Mimic Botox only.

All in violation of Title 18, United States Code, Sections 1343, 1346, and 2.

COUNTS 11-44
(Mail Fraud: 18 U.S.C. 1341, 1346, and 2)

103. Paragraphs 1 through 41 of the General Allegations and paragraphs 47 through 49, 51 through 58, and 60 through 62 of Count 1 are incorporated by reference as though realleged in their entirety herein.

SCHEME AND ARTIFICE

104. It was the object of the scheme and artifice for the defendants to enrich themselves unjustly by marketing and selling to health care providers for use in human patients TRI's Botulinum Toxin Type A that was not approved by the FDA for use in human beings, as a cheap facial wrinkle treatment alternative to Allergan's Botox® Cosmetic, without the administering health care providers advising their human patients that TRI's Mimic Botox was not Allergan's Botox® Cosmetic and was not approved by the FDA for use in human beings.

USE OF THE MAIL

105. On or about the dates listed below, at Broward, Palm Beach, and Miami-Dade Counties, in the Southern District of Florida, and elsewhere, the defendants, listed below as to each count, did knowingly and with specific intent to defraud, devise a scheme and artifice to defraud and deprive others of the intangible right of honest services, and for obtaining money and property, by means of materially false and fraudulent pretenses, representations, and promises, and, for the purpose of executing and attempting to execute such scheme and artifice, did knowingly cause to be delivered by private and commercial interstate carrier, to wit, UPS, according to the directions thereon, certain mail matters and things, as more specifically described below:

COUNT	DATE	DEFENDANT	DESCRIPTION OF MAIL MATTER
11	8/4/03	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB ROBERT BAKER POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to H.D., in North Miami, Florida
12	8/18/03	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB ROBERT BAKER POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to C.A., in Miami, Florida
13	10/11/03	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to BACH McCOMB, D.O., Ph.D. , in Fort Lauderdale, Florida
14	11/13/03	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to H.D., in North Miami, Florida
15	12/9/03	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to J.G., in North Miami Beach, Florida
16	12/17/03	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to W.M., in Miami Beach, Florida
17	1/8/04	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to H.D., in North Miami, Florida

18	1/26/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to M.F., in Palm Beach Gardens, Florida
19	2/5/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to W.M., in Miami Beach, Florida
20	2/10/04	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to A.Ci., in Boca Raton, Florida
21	2/19/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to M.F., in Palm Beach Gardens, Florida
22	2/23/04	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to H.D., in North Miami, Florida
23	3/9/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to A.S., in Pompano Beach, Florida
24	3/11/04	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to AIMC, in Fort Lauderdale, Florida
25	3/24/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to H.B., in Wellington, Florida

26	3/31/04	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to H.D., in North Miami, Florida
27	4/13/04	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to A.Ci., in Boca Raton, Florida
28	4/19/04	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to AIMC, in Fort Lauderdale, Florida
29	4/27/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to H.B., in Wellington, Florida
30	5/10/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to H.B., in Wellington, Florida
31	5/17/04	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to A.Ci., in Boca Raton, Florida
32	6/17/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to R.K., in Fort Lauderdale, Florida
33	6/21/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to A.F.B., in Miami Beach, Florida

34	6/21/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to W.M., in Miami Beach, Florida
35	7/22/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to B.Y., in Coral Springs, Florida
36	7/27/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to H.B, in Wellington, Florida
37	8/27/04	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to AIMC, in Fort Lauderdale, Florida
38	9/20/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to W.M., in Miami Beach, Florida
39	10/4/04	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to A.Ci., in Boca Raton, Florida
40	10/5/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to B.Y., in Coral Springs, Florida
41	10/5/04	CHAD LIVDAHL ZAHRA KARIM BACH McCOMB POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to AIMC, in Fort Lauderdale, Florida

42	10/26/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to B.Y., in Coral Springs, Florida
43	10/27/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	Two vials of TRI 's Mimic Botox from TRI in Tucson, Arizona, to D.W., in Hollywood, Florida
44	11/10/04	CHAD LIVDAHL ZAHRA KARIM POWDERZ, INC. TRI	One vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to B.Y., in Coral Springs, Florida

All in violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNTS 45-46

(Misbranding: 21 U.S.C. 331(a); 333(a)(2) and 18 U.S.C. §2)

106. The allegations contained in paragraphs 1 through 41 of the General Allegations and 47 through 60, and 62 of Count 1 are incorporated by reference as though set forth fully herein.

107. On or about the dates listed below, in Broward County, in the Southern District of Florida, and elsewhere, the defendants,

**CHAD LIVDAHL,
ZAHRA KARIM, a/k/a "Anna Tessum," a/k/a "Sasha,"
BACH McCOMB,
POWDERZ, INC.,
and TOXIN RESEARCH INTERNATIONAL, INC.,**

with intent to defraud and mislead, did cause **TRI**'s Botulinum Toxin Type A, a drug within the meaning of Title 21, United States Code, Section 321(g)(1), which was misbranded, as defined in Title 21, United States Code, Section 352(f)(1), in that the labels did not bear adequate directions for the use intended by defendants, because although the labels stated, "For Research Purposes Only[;] Not for Human Use," in actuality, defendants intended, promoted, and sold the Botulinum

Toxin Type A for use in humans as a facial wrinkle treatment alternative to Allergan's Botox® Cosmetic, without adequate directions for such use, to be introduced into interstate commerce, as set forth in the individual counts below:

COUNT	DATE	INTERSTATE COMMERCE TRANSACTION
45	8/27/04	Sending in interstate commerce of one vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to AIMC in Fort Lauderdale, Florida.
46	10/5/04	Sending in interstate commerce of one vial of TRI 's Mimic Botox from TRI in Tucson, Arizona, to AIMC in Fort Lauderdale, Florida.

All in violation of Title 21, United States Code, Sections 331(a) and 333(a)(2), and Title 18, United States Code, Section 2.

COUNT 47
(Perjury: 18 U.S.C. 1623(a))

108. The allegations contained in paragraphs 1 through 41 and 47 through 63 are incorporated by reference as though realleged herein in their entirety.

109. On or about January 10, 2005, in Broward County, in the Southern District of Florida, and elsewhere, the defendant,

CHAD LIVDAHL,

did knowingly under oath, in a proceeding before a court of the United States, that is, a preliminary injunction hearing in the case United States v. Chad Livdahl, et al., Case No. 04-61717-CIV-COHN (S.D. Fla.), held before the Honorable James I. Cohn, a United States District Judge for the United States District Court for the Southern District of Florida, make false material declarations, any one of which would be a violation, to wit: (1) defendant **CHAD LIVDAHL** testified that he never

knowingly sold **TRI**'s Mimic Botox knowing that it was going to be used on humans, when, in truth and in fact, as the defendant then and there well knew, he had sold multiple vials of **TRI**'s Mimic Botox knowing that it was going to be used on humans; (2) defendant **CHAD LIVDAHL** testified that he never sold **TRI**'s Mimic Botox to anybody whom **CHAD LIVDAHL** suspected was going to use **TRI**'s Mimic Botox on humans, when, in truth and in fact, as the defendant then and there well knew, he had sold multiple vials of **TRI**'s Mimic Botox suspecting that the product would be used on humans; (3) defendant **CHAD LIVDAHL** testified that he never sold **TRI**'s Mimic Botox for human use at seminars, when, in truth and in fact, as the defendant then and there well knew, he had sold **TRI**'s Mimic Botox for human use at seminars; (4) defendant **CHAD LIVDAHL** testified that he did not know of anyone offering **TRI**'s Mimic Botox for sale at seminars arranged by **POWDERZ, INC.**, when, in truth and in fact, as the defendant then and there well knew, he had caused **TRI**'s Mimic Botox to be offered for sale at seminars arranged by **POWDERZ, INC.**; (5) defendant **CHAD LIVDAHL** testified that he did not offer a discount on **TRI**'s Mimic Botox to people who attended the July 2003 **POWDERZ, INC.**, workshop, when, in truth and in fact, as the defendant then and there well knew, he had offered a discount on **TRI**'s Mimic Botox to people who attended the July 2003 **POWDERZ, INC.**, workshop.

All in violation of Title 18, United States Code, Section 1623(a).

COUNT 48
(Mail Fraud: 18 U.S.C. 1341, 1346, and 2)

110. Paragraphs 1 through 41 of the General Allegations are incorporated by reference as though realleged in their entirety herein.

SCHEME AND ARTIFICE

111. It was the object of the scheme and artifice for defendant **BACH McCOMB** to enrich himself unjustly and to defraud his patients by advising his patients that he was providing them with Botox® treatments, when, in truth and in fact, defendant **BACH McCOMB** was not providing the patients with Botox® injections but instead was injecting them with List's Botulinum Toxin Type A, which had not been approved by the FDA for use in humans.

USE OF THE MAIL

112. On or about November 23, 2005, at Broward County, in the Southern District of Florida, and elsewhere, the defendant,

BACH McCOMB,

did knowingly and with specific intent to defraud, devise a scheme and artifice to defraud and to deprive others of the intangible right of honest services, and for obtaining money and property, by means of materially false and fraudulent pretenses, representations, and promises, and, for the purpose of executing and attempting to execute such scheme, did knowingly cause to be delivered by private and commercial interstate carrier, according to the directions thereon, certain mail matters and things, to wit, one vial of List's Botulinum Toxin Type A, sent from List in California to Fort Lauderdale, Florida, in violation of Title 18, United States Code, Sections 1341, 1346, and 2.

FORFEITURE

113. The allegations of Counts 1 through 44 of this Superseding Indictment are re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeitures to the United States of America of property, in which one or more of the defendants has an interest, pursuant to the provisions of Title 28, United States Code, Section 2461 and Title 18, United States Code, Section 981(a)(1)(C).

114. Upon conviction of the offenses alleged in Counts 1 through 44, the defendants,

**CHAD LIVDAHL,
ZAHRA KARIM, a/k/a
“Anna Tessem,” a/k/a “Sasha,”
TOXIN RESEARCH INTERNATIONAL, INC.,
POWDERZ, INC.,
Z-SPA, INC., and
THE COSMETIC PHARMACY, INC.,**

shall forfeit to the United States all property, real or personal, constituting or derived from proceeds obtained from the afore stated offenses and all property traceable to such property, including but not limited to the following property:

1. A money judgment in the amount of \$ 1,500,000.00;
 2. Bank of America Cashiers' Check No. 004341017, in the amount of \$300,000.00 issued on the TRI account to Robert Gehrke and endorsed to Michael Harwin;
 3. Bank of America Cashiers' Check No. 004341019, in the amount of \$300,000, made payable to Chad Livdahl, purchased with Bank of America Cashier's Check No. 004341018, issued on the TRI account to Joan Livdahl;
- and

4. The real property located at 5225 N. Avenida Drive, La Colina, Tucson, Arizona.

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

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property.

All pursuant to Title 28, United States Code, Section 2461; Title 18, United States Code.

Section 981(a)(1)(C) and Title 21, United States Code, Section 853.

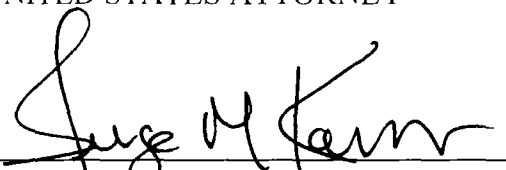
A TRUE BILL



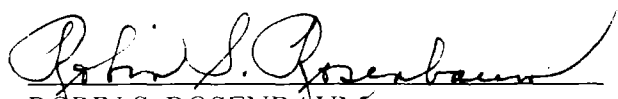
FOREPERSON

for 

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY



GEORGE KARAVETSOS
ASSISTANT UNITED STATES ATTORNEY



ROBIN S. ROSENBAUM
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO. 05-60021-CR-COHN(s)(s)

vs.
CHAD LIVDAHL, et al

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

Court Division: (Select One)
X Miami Key West
 FTL WPB FTP

New Defendant(s) Yes No X
Number of New Defendants 0
Total number of counts 48

I do hereby certify that:

- 1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
- 2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect _____

4. This case will take 25 days for the parties to try.

5. Please check appropriate category and type of offense listed below:
(Check only one) (Check only one)


I	0 to 5 days	_____	Petty	_____
II	6 to 10 days	_____	Minor	_____
III	11 to 20 days	_____	Misdem.	_____
IV	21 to 60 days	<u>X</u>	Felony	<u>X</u>
V	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) Yes
If yes: Judge: James I. Cohn Case No. 05-60012-CR-COHN
(Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No) No
If yes: Magistrate Case No. _____
Related Miscellaneous numbers: 04-61717-CIV-COHN
Defendant(s) in federal custody as of 2/2/05 (Chad Livdahl & Zarah Karim) 3/29/05 (Robert Baker)
Defendant(s) in state custody as of _____
Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) NO

- 7. Does this case originate from a matter pending in the U.S. Attorney's Office prior to April 1, 2003? Yes X No
- 8. Does this case originate from a matter pending in the U. S. Attorney's Office prior to April 1, 1999? Yes X No
If yes, was it pending in the Central Region? Yes No
- 9. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003 Yes X No
- 10. Does this case originate from a matter pending in the Narcotics Section (Miami) prior to May 18, 2003? Yes X No


ROBIN S. ROSENBAUM
ASSISTANT UNITED STATES ATTORNEY
Florida Bar No. 908223

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PENALTY SHEET**

Defendant's Name: CHAD LIVDAHL No.: 05-60021-CR-COHN(s)(s)

Count # 1:

Conspiracy; in violation of 18:371

*Max Penalty: Five years' imprisonment, \$250,000 fine, and three years' supervised release

Counts #2-10:

Wire Fraud; in violation of 18:1343, 1346 and 2

*Max Penalty: Twenty years' imprisonment, \$250,000 fine, and three years' supervised release

Counts #11-44:

Mail Fraud; in violation of 18:1341, 1346 and 2

*Max Penalty: Twenty years' imprisonment, \$250,000 fine, and three years' supervised release

Counts #45-46:

Misbranding; in violation of 21:331(c); 333(a)(2) and 18:2

*Max Penalty: Three years' imprisonment, \$250,000 fine, and one year supervised release

Count #47:

Perjury; in violation of 18:1623(a)

*Max Penalty: Five years' imprisonment, \$250,000 fine, and three years' supervised release

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms or forfeitures that may be applicable.**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PENALTY SHEET**

Defendant's Name: ZARAH KARIM, a/k/a "Anna Tessem," a/k/a "Sasha" No.: 05-60021-CR-COHN(s)(s)

Count # 1:

Conspiracy; in violation of 18:371

*Max Penalty: Five years' imprisonment, \$250,000 fine, and three years' supervised release

Counts #2-10:

Wire Fraud; in violation of 18:1343, 1346 and 2

*Max Penalty: Twenty years' imprisonment, \$250,000 fine, and three years' supervised release

Counts #11-44:

Mail Fraud; in violation of 18:1341, 1346 and 2

*Max Penalty: Twenty years' imprisonment, \$250,000 fine, and three years' supervised release

Counts #45-46:

Misbranding; in violation of 21:331(a)

*Max Penalty: Three years' imprisonment, \$250,000 fine, and one year supervised release

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PENALTY SHEET**

Defendant's Name: BACH McCOMB No.: 05-60021-CR-COHN(s)(s)

Count # 1:

Conspiracy; in violation of 18:371

*Max Penalty: Five years' imprisonment, \$250,000 fine, and three years' supervised release

Counts #2-6:

Wire Fraud; in violation of 18:1343, 1346 and 2

*Max Penalty: Twenty years' imprisonment, \$250,000 fine, and three years' supervised release

Counts #11-14; 17; 20; 22; 24; 26-28; 31; 37; 39; & 41:

Mail Fraud; in violation of 18:1341, 1346 and 2

*Max Penalty: Twenty years' imprisonment, \$250,000 fine, and three years' supervised release

Counts #45-46:

Misbranding; in violation of 21:331(a)

*Max Penalty: Three years' imprisonment, \$250,000 fine, and one year supervised release

Count #48:

Mail Fraud, in violation of 18:1341, 1346 and 18:2

*Max Penalty: Twenty years' imprisonment, \$250,000 fine, and three years' supervised release

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PENALTY SHEET**

Defendant's Name: ROBERT BAKER No.: 05-60021-CR-COHN(s)(s)

Count # 1:

Conspiracy; in violation of 18:371

*Max Penalty: Five years' imprisonment, \$250,000 fine, and three years' supervised release

Counts #11-12:

Mail Fraud; in violation of 18:1341, 1346 and 2

*Max Penalty: Twenty years' imprisonment, \$250,000 fine, and three years' supervised release

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PENALTY SHEET**

Defendant's Name: TOXIN RESEARCH INTERNATIONAL, INC. No.: 05-60021-CR-COHN(s)(s)

Count # 1:

Conspiracy; in violation of 18:371

*Max Penalty: \$250,000 fine

Counts #2-8:

Wire Fraud; in violation of 18:1343, 1346 and 2

*Max Penalty: \$250,000 fine

Counts #11-44:

Mail Fraud; in violation of 18:1341, 1346 and 2

*Max Penalty: \$250,000 fine

Counts #45-46:

Misbranding; in violation of 21:331(a)

*Max Penalty: \$250,000 fine

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PENALTY SHEET**

Defendant's Name: POWDERZ, INC. No.: 05-60021-CR-COHN(s)(s)

Count # 1:

Conspiracy; in violation of 18:371
*Max Penalty: \$250,000 fine

Counts #2-7:

Wire Fraud; in violation of 18:1343, 1346 and 2
*Max Penalty: \$250,000 fine

Counts #11-44:

Mail Fraud; in violation of 18:1341, 1346 and 2
*Max Penalty: \$250,000 fine

Counts #45-46:

Misbranding; in violation of 21:331(a)
*Max Penalty: \$250,000 fine

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PENALTY SHEET**

Defendant's Name: Z-SPA, INC No.: 05-60021-CR-COHN(s)(s)

Count # 1:
Conspiracy; in violation of 18:371
 *Max Penalty: \$250,000 fine

Counts #10:
Wire Fraud; in violation of 18:1343, 1346 and 2
 *Max Penalty: \$250,000 fine

Count # :

 *Max Penalty: _____

Count # :

 *Max Penalty: _____

Count # :

 *Max Penalty: _____

Count # :

 *Max Penalty: _____

Count # :

 *Max Penalty: _____

Count # :

 *Max Penalty: _____

Count # :

 *Max Penalty: _____

Count # :

 *Max Penalty: _____

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PENALTY SHEET**

Defendant's Name: THE COSMETIC PHARMACY, INC. No.: 05-60021-CR-COHN(s)(s)

Count # 1:

Conspiracy; in violation of 18:371

*Max Penalty: \$250,000 fine

Counts #9:

Wire Fraud; in violation of 18:1343, 1346 and 2

*Max Penalty: \$250,000 fine

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

Count # :

*Max Penalty: _____

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