

RETURN

DATE WARRANT RECEIVED

3-16-01

DATE AND TIME WARRANT EXECUTED

3:45 p 3-16-01

COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH

Chris Patton

INVENTORY MADE IN THE PRESENCE OF

Chris Patton Branch Manager

INVENTORY OF PERSON OR PROPERTY TAKEN PURSUANT TO THE WARRANT

1 Cashiers Check # [redacted] 749 in the amount of \$ 936,321.86 seized from account [redacted] 6354 in the name of Robert W. Sutton

CERTIFICATION

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.

Michael [Signature]

Subscribed, sworn to, and returned before me this date.

Robert J. Johnston

U.S. Magistrate

23 MAR 01

Date

FILED

MAR 16 11 01 AM '01

U.S. MAGISTRATE JUDGE  
BY

UNITED STATES MAGISTRATE COURT  
DISTRICT OF NEVADA

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In re: )  
ALL MONIES IN ACCOUNT #0049-6054-6354 ) MAG. 01-1048-M-RJJ  
IN THE NAME OF ROBERT W. SUTTON AT )  
BANK OF AMERICA, LOCATED AT )  
TROPICANA AND DECATUR, LAS VEGAS, )  
NEVADA. )

SEIZURE WARRANT

TO: ANY SPECIAL AGENT OF THE FEDERAL BUREAU OF INVESTIGATION

An Affidavit, having been made before me by Michael T. Solari, Special Agent of the Federal Bureau of Investigation in Las Vegas, Nevada, attached hereto and incorporated herein by reference, states that he has reason to believe that ALL MONIES IN ACCOUNT #0049-6054-6354 IN THE NAME OF ROBERT W. SUTTON AT BANK OF AMERICA, LOCATED AT TROPICANA AND DECATUR, LAS VEGAS, NEVADA are property involved in a violation of Title 18, United States Code, Sections 1956 (Laundering of monetary instruments) and/or 1957 (Engaging in monetary transactions in property derived from specified unlawful activity) and are thus subject to seizure and forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(A); and furthermore constitute, or is derived from proceeds traceable to a violation of Title 18, United States Code, Sections 1341 (Frauds and Swindles) and 1343 (Fraud by Wire, Radio, or Television) and are thus subject to seizure and forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C).

I am satisfied that there is probable cause to believe that the aforementioned property is property involved in a violation of Title 18, United States Code, Sections 1956 (Laundering of

1 monetary instruments) and/or 1957 (Engaging in monetary transactions in property derived from  
2 specified unlawful activity) and are thus subject to seizure and forfeiture pursuant to Title 18, United  
3 States Code, Section 981(a)(1)(A); and furthermore constitute, or is derived from proceeds traceable  
4 to a violation of Title 18, United States Code, Sections 1341 (Frauds and Swindles) and/or 1343  
5 (Fraud by Wire, Radio, or Television) and are thus subject to seizure and forfeiture pursuant to Title  
6 18, United States Code, Section 981(a)(1)(C).

7 **YOU ARE HEREBY COMMANDED** to serve this warrant, to seize the aforementioned  
8 property pursuant to 18 U.S.C. § 981(a)(1)(A) and 981(a)(1)(C) leaving a copy of this warrant and  
9 receipt for the property seized, to prepare a written inventory of the property seized and to return this  
10 warrant to the undersigned United States Magistrate Judge and Court, accompanied by the written  
11 inventory of any property seized, within ten (10) days of this date, as required by law.

12 DATE: 16 MAR 01

13 TIME: 1:30pm

14 Robert Johnston  
15 UNITED STATES MAGISTRATE JUDGE



1 I, MICHAEL T. SOLARI, Special Agent (SA), Federal Bureau of Investigation  
2 (FBI), being duly sworn, deposes and says:

3 **I. AFFLIANT'S BACKGROUND**

4 1. I am a Special Agent of the United States Department of Justice, Federal  
5 Bureau of Investigation (FBI). I have been employed by the FBI as a Special Agent for  
6 approximately four years, three months. Prior to entering the FBI, I received a Bachelors of Science  
7 degree in Biology. I served as an officer in the United States Marine Corps from 1986 to 1992 with  
8 a military occupational specialty in Financial Management. I worked in the private sector as a  
9 financial analyst and budget analyst from 1992 to 1996, most recently for AMF Bowling Inc in  
10 Richmond, Virginia.

11 2. I received four months training at the FBI Academy, Quantico, Virginia which  
12 included examination of various schemes promoted by criminals in violation of federal law using  
13 money laundering, pyramid and investment schemes, mail fraud and wire fraud. During my  
14 employment with the FBI, I have discussed criminal methods and techniques of violating federal  
15 laws with other experienced financial crimes investigators, on a regular and continuing basis.

16 3. I have interviewed and debriefed numerous informants and witnesses, who have  
17 described to me the methods and techniques they and others have used to commit financial crimes.  
18 Other experienced financial crimes investigators have regularly communicated to me the results of  
19 similar interviews and debriefings that they have conducted. I have participated in the planning and  
20 execution of several search warrants.

21 4. I make this affidavit based upon my participation in this investigation since  
22 August, 1998, and upon information and beliefs based on oral and written reports communicated to  
23 me either directly or indirectly.

24 :  
25 :  
26 :



1 intended to ensure that the Rx purchased by the CDPs under the extremely favorable contract pricing  
2 will not be resold into the mainstream wholesale market or sold to retail customers. These contracts  
3 are typically mailed or faxed by the CDP to the respective buying group.

4 9. By purposefully violating the terms of the "own use" contract the CDPs can  
5 obtain enormous profit by selling the Rx back into the mainstream market, thus defrauding the  
6 manufacturer of income that would have been realized if the Rx had been sold at normal wholesale  
7 price. The diverted Rx are sold by the CDPs to a number of Secondary Wholesalers who knowingly  
8 purchase the illegally diverted Rx. The purchase price of these diverted Rx is still below the average  
9 wholesale cost from the manufacturer, enabling the Secondary Wholesalers to significantly increase  
10 their margins compared to purchases of pharmaceutical drugs through legitimate wholesale  
11 channels. The original wholesaler, AmeriSource, knowingly facilitates this scheme by making  
12 special payment and shipping arrangements with the CDPs and VN Chicago. AmeriSource realizes  
13 additional profits in the scheme through increased sales volume and by charging a higher markup  
14 on contract priced Rx sold to CDPs they know are engaged in illegal diversion as compared to  
15 legitimate CDPs.

16 10. The proceeds to be seized, listed in paragraph 5., represent profits of the  
17 aforementioned scheme and interest earned on those profits. The CDP's listed in Attachment "A"  
18 sold diverted pharmaceutical drugs purchased under "own use" contracts to VN Chicago, a  
19 pharmaceutical wholesaler licensed in Nevada and operated by a Cooperating Subject (CS) at the  
20 direction of agents of the Federal Bureau of Investigation. The diverted drugs were then sold to  
21 Secondary Wholesalers who knowingly agreed to purchase these diverted pharmaceutical drugs.

#### 22 **IV. SUMMARY OF INVESTIGATION**

23 11. Beginning on or about July 12, 1999, a CS agreed to assist the Federal Bureau  
24 of Investigation as a term of his plea agreement. The CS agreed to continue to operate his  
25 pharmaceutical wholesale business under the new name and license of VN Chicago, Inc. The  
26

1 purpose of this agreement was to collect evidence of others involved in the scheme, namely the  
2 CDPs and Secondary Wholesalers.

3 12. The existing business operation of the CS remained essentially unchanged  
4 except for the fact that the CS could not derive any profit from the illegal activity, and that he had  
5 to act at the direction of the Federal Bureau Investigation. New business accounts were established  
6 through which the purchase and sale of the diverted pharmaceutical drugs would be executed.

7 13. The normal flow of illegally diverted Rx would proceed as follows:  
8 VN Chicago would receive via fax "out of stock" lists or "want to buy" lists from the Secondary  
9 Wholesalers listing specific drugs they wished to purchase, the Wholesale Acquisition Cost (WAC)  
10 representing the Secondary Wholesalers' normal cost if purchased from the manufacturer, and a  
11 lower price representing the price they were willing to pay for diverted merchandise. This price was  
12 always below WAC. Under a pre existing agreement between the CS, AmeriSource and the CDPs,  
13 the CS was authorized to place purchase orders for Rx from AmeriSource. These purchase orders  
14 were placed by VN Chicago in the name of the CDPs. All the merchandise purchased was contract  
15 price Rx, discounted significantly from the (WAC) by the manufacturers under terms of the  
16 respective "own use" contracts of the CDPs. These purchase requests were usually submitted via  
17 computer modem, but occasionally were faxed from VN Chicago to AmeriSource. The Rx items  
18 requested were often determined by the "want to buy" lists submitted by the Secondary Wholesalers.  
19 VN Chicago paid AmeriSource via Electronic Fund Transfer (EFT) the same day the purchase order  
20 was submitted. Payments were made from VN Chicago's Bank of America Accounts 37326600 and  
21 37326592 to AmeriSource Pharmaceutical Wholesale, Inc., First Union National Bank Account  
22 031201467.

23 14. Rx purchased in the name of Nevada CDPs were shipped Fed Ex from  
24 AmeriSource to Nevada and held at the Fed Ex center for pick up. Employees of VN Chicago would  
25 then retrieve the Rx from the Fed Ex center. Rx purchased in the name of Southern California CDPs  
26 were delivered by AmeriSource to a central drop location in Southern California where other

1 employees of VN Chicago would pick up the Rx and transport the Rx to the VN Chicago warehouse  
2 in Las Vegas. Occasionally Rx would actually be delivered to the CDP at which time VN Chicago  
3 employees would pick up the Rx directly from the CDP.

4 15. At the VN Chicago office in Las Vegas the Rx would be boxed and shipped  
5 via United Parcel Service to the Secondary Wholesalers based on preestablished shipping and  
6 invoicing procedures. When VN Chicago was established a preexisting relationship between JAM  
7 PHARMACEUTICAL, INC. and the CS already existed. JAM PHARMACEUTICAL, INC was  
8 already purchasing diverted merchandise from the CS. The investigation determined through  
9 historical records, interviews, and later through consensually recorded conversations with the  
10 principal of JAM PHARMACEUTICAL, INC, James Miller, that James Miller had a long term  
11 relationship with the CS and that Miller was fully aware that the Rx JAM PHARMACEUTICAL,  
12 INC was purchasing from VN Chicago was obtained through the illegal diversion of "own use"  
13 contract priced Rx. The remaining Secondary Wholesalers were predisposed through historical  
14 investigations to have also been engaged in a scheme to Rx purchase on "own use " contract and  
15 illegally diverted to the wholesale market. Prior to VN Chicago establishing business relationships  
16 with the remaining Secondary Wholesalers consensually recorded meetings were conducted between  
17 the CS and the target wholesaler whereby the illegal origin of the Rx was disclosed to the Secondary  
18 Wholesaler. Regardless of this disclosure the Secondary Wholesalers were willing to purchase as  
19 much of the diverted Rx as could be obtained, so long as the Rx were listed on their "want to  
20 purchase" lists.

21 16. Upon receipt of the diverted Rx the Secondary Wholesalers would pay for the  
22 Rx though EFT from their respective business bank accounts to the VN Chicago business accounts  
23 at Bank of America, account numbers 37326592 and 37326600. Analysis of Bank Statements  
24 confirm that between August 01, 1999 and February 29, 2000, Secondary Wholesalers made a total  
25 of 235 EFTs, worth \$31,232,529, to VN Chicago for the purchase of illegally diverted Rx. Two  
26 hundred nineteen of those transfers were in amounts in excess of \$10,000. These deposits from the

1 Secondary Wholesalers represented the only source of revenue received by VN Chicago between  
2 the period of August 01, 1999 and February 29, 2000 and were derived exclusively through the sale  
3 of illegally diverted Rx obtained on contract price.

4 17. VN Chicago would then pay the CDPs a weekly or biweekly commission check  
5 with the proceeds of the illegally diverted Rx. The amount of the commission check was based on  
6 the amount of Rx purchased under the respective CDPs' "own use" contracts. The remaining  
7 proceeds from the sale of diverted Rx would be used to finance the next Rx purchase from  
8 AmeriSource, to pay the operating expenses of VN Chicago, or were realized as net profit.

9 18. On November 30, 1999, an account in the name of Robert Sutton was opened  
10 at the direction of the Federal Bureau of Investigation at Bank of America Account number 0049-  
11 6054-6354. A deposit in the amount of \$750,000 was made with a check from VN Chicago Bank  
12 of America Account 37326600. The check represented net profits from the purchase and sale of  
13 illegally diverted Rx, obtained under "own use" contract. This transfer was voluntarily made by the  
14 CS at the direction of the FBI to ensure the safe keeping of the illegal proceeds. Between  
15 November 30, 1999, and August 23, 2000, additional deposits were made totaling \$441,525 and two  
16 transfers of funds back to VN Chicago totaling \$ 313,000 were made to ensure adequate operating  
17 capital of the business. The balance of the Robert W. Sutton Bank of America Account #0049-  
18 6054-6354 is \$925,714 as of December 14, 2000 and represents illegally derived proceeds of Rx  
19 diversion and interest accrued on the account.

#### 20 V. PROBABLE CAUSE FOR SEIZURES

21 19. This investigation has shown that AmeriSource, the CDPs listed in  
22 Attachment "A", and the Secondary Wholesalers engaged in a scheme to defraud Rx  
23 manufacturers through the intentional violation of "own use" purchasing contracts. The illegally  
24 obtained Rx was then shipped interstate via United Parcel Service to the Secondary Wholesalers,  
25 [with the exception of Rx sold to JAM PHARMACEUTICALS INC., originating from CDPs  
26 located in California]. The illegally diverted Rx was paid for by the Secondary Wholesalers

1 through the interstate wire transfer of funds through a financial institution. Proceeds from the  
2 sale of illegally diverted Rx were used to pay commissions to the owners and operators of the  
3 CDPs, and to facilitate the continuation of the scheme through the purchase of additional  
4 illegally diverted Rx from AmeriSource.

5 20. Probable cause exists to believe that AmeriSource, the CDPs and the  
6 Secondary Wholesalers engaged in the following offenses: **Mail Fraud--Title 18, U.S.C.**  
7 **§1341; Fraud By Wire--Title 18, U.S.C. §1343, Interstate Transportation of Stolen**  
8 **Property--Title 18, U.S.C. § 2314; Sale or Receipt of Stolen Property--Title 18, U.S.C. §**  
9 **2315, Money Laundering (Financial Transaction Offense)--Title 18, U.S.C. §**  
10 **1956(a)(1)(A)(I); Money Laundering (Monetary Transaction over \$10,000)--Title 18 U.S.C.**  
11 **§ 1957.**

12 21. Based on the foregoing I believe there is probable cause to seize all monies  
13 in the subject bank account.

#### 14 VI. BASIS FOR SEIZURE

15  
16 22. The statutory provisions pursuant to which the funds in the subject bank  
17 accounts are subject to seizure and forfeiture are found in 18 U.S.C. § 981(a)(1)(A) which  
18 subjects to forfeiture any property, real or personal, involved in a transaction or attempted  
19 transaction in violation of 18 U.S.C. § 1956 or 1957, or any property traceable to such property.

20 23. 18 U.S.C. § 1957, imposes a criminal penalty upon any person who,  
21 "knowingly engages in or attempts to engage in a monetary transaction in criminally derived  
22 property that is of a value greater than \$10,000 and is derived from specified unlawful activity."

23 24. The term "monetary transaction" means the deposit, withdrawal, transfer,  
24 or exchange, in or affecting interstate commerce, of funds or a monetary instrument by, through,  
25 or to a financial institution.

26

