1	TODD SPITZER, DISTRICT ATTORNEY COUNTY OF ORANGE, STATE OF CALIFORNIA
2	BY: JAMES BILEK COUNTY OF CALIFORNIA COUNTY OF OF CALIFORNIA
3	Deputy District Attorney State Bar Number 286291 JUL 15 2020
4	POST OFFICE BOX 808
5	SANTA ANA, CALIFORNIA 92702 DAVID H. YAMASAKI, Clerk of the Court
5	TELEPHONE: (714) 834-3600 BY: M. Maran Sala DEPUTY
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8	IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9	IN AND FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
10	THE PEOPLE OF THE STATE OF CALIFORNIA,)
11) Case No.: 20CF1682
12) PEOPLE'S PRELIMINARY
13	vs.) HEARING BRIEF
	DATE: 7/15/20
14	RANDY ROSEN
15	
16	Defendant(s)
17	۲ ۲
18	PRELIMINARY HEARING WITNESSES
19	1) Orange County District Attorney Investigator Todd Franssen
20	2) Orange County District Attorney Investigator Domingo Cabrera
20	3) Orange County District Attorney Investigative Assistant Teresa Willis-Smith
21	4) Orange County District Attorney Investigator Eric Tapper
22	5) Orange County District Attorney Investigator Tom Fullerton
23	6) Orange County District Attorney Investigator Dan Pratt
	 7) Orange County District Attorney Investigator Eric Wiseman 8) Orange County District Attorney Investigator Bob Bogue
24	9) Orange County District Attorney Investigator Bob Bogue9) Orange County District Attorney Investigator Vickie Hurtado
25	10) Orange County District Attorney Investigator Pam Angle
26	11) Orange County District Attorney Investigator Debbie LeChow
27	12) Orange County District Attorney Investigator Tim Lancaster
	13) Orange County District Attorney Investigator Rick Ayres
28	14) Orange County Investigative Technician Jeff Toy
	15) Roseanna Alcala, Medical Billing Expert
	1

1	16) Dr. Joseph DeSanto, MD, Addiction Medicine Expert	
2	17) Robert Lovret, Senior Forensic Accountant 18) Dr. Alex Sinclair	
3	19) Josiah Shafer	
4	20) Krystal De La Piedra	
5		
6	INTRODUCTION	
7	The defendants in this case are charged with numerous fraud related and money	
8	laundering counts.	
9	Rosen is charged with one felony conspiracy count of violating Penal Code Section 549,	
10	one count of violating Penal Code section 550(b)(3) for each victim insurance company, one	
11	count of violating Penal Code Section 550(b)(3) for the various named patients, three counts of	
12	violating Business & Professions Code 650(a), as well as various money laundering counts, and	
13	enhancements.	
14	White collar crimes, by their nature, involve conduct that can appear to be legitimate on	
15	the surface – i.e., there is a legitimate way to engage in the business that the defendants engaged	
16	in and it does not involve conduct that is per se illegal, such as dealing controlled substances on	
17	the street. In order for the Court to determine whether or not the defendant's conduct rises to the	
18	level of fraud, deceit, lying or stealing as defined in Penal Code Section 549 and 550 and their	
19	subdivisions, it is necessary for the Court to first understand what is the legitimate way to	
20	conduct the business that the defendant engaged in, consider the defendants' conduct in this case	
21	and then determine whether or not this defendants' conduct rises to the level of the charged	
22	crimes.	
23	Why Target These Types of Patients?	
24	The sober living business is a huge marketplace in Orange County and Southern	
25	California. Insurance Carriers in California are required to pay for all medically necessary	
26	expenses, which generally include the cost of sober living and rehabilitation homes. As such,	
20	owners of these types of businesses and unscrupulous doctors can make millions in billing	
27	insurance companies for their patients.	

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A doctor can easily take advantage of the vulnerability of drug addicts by ignoring the fact that the patient requires comprehensive treatment (mental and physical) in order to get better. Often times, doctors will work hand in hand with owners of sober living homes, other drug addicts, and what will be referred to as "body brokers" to increase their profit. Unscrupulous doctors can also take advantage of the fact that the addicts are often chasing their next high and desire to have cash in hand. To that end, paying patients to undergo medical procedures with the goal of bilking insurance for millions of dollars can be a lucrative enterprise.

In this case, Dr. Rosen and Liza Vismanos hired these body brokers to recruit drug
addicts to have certain procedures, specifically, Naltrexone implant procedures and cortisone
shots. None of the addicted patients were referred for this procedure by another physician. All
of the patients were referred to the defendants by body brokers. The defendant abandoned his
individual duty of care to the patients and did nothing to ensure that each patient was an
appropriate candidate for the Naltrexone implants or cortisone shots. The defendants were
buying patients, treating them as commodities, instead of human beings.

As will be shown, the defendant and Liza Vismanos communicated with these body brokers to recruit as many patients as possible to undergo this procedure. In exchange for recruiting patients, the brokers were paid a kickback from the insurance companies based either on an up-front fee or a percentage fee of the insurance payout. These kickbacks were often passed down to the patient to incentivize the patient to undergo the procedure. The defendants are charged with defrauding eight specific insurance companies although the true list is upwards of fifteen insurance companies.

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What are Naltrexone Implants?

In April of 2018, Inv. Todd Franssen and Inv. Domingo Cabrera, investigators assigned
to the insurance fraud unit at the Orange County District Attorney's Office, initiated an
investigation into fraudulent practices by drug addiction recovery providers in Orange County.
In the course of their investigation, they discovered a group of body brokers were offering drug
addicts cash incentives for a variety of reasons including undergoing medical procedures such as
a Naltrexone implant surgery.

Dr. DeSanto, the People's addiction expert, will testify that Naltrexone is a medication 1 2 primarily used to manage alcohol or opioid dependence because it suppresses the opiate 3 receptors in the brain and assists the patient in managing their physical cravings to opiates and 4 alcohol. He will explain that it is a non-FDA approved and experimental procedure. He will 5 testify that Naltrexone must be prescribed by a physician and only prescribed as part of a comprehensive addiction recovery and treatment plan. This is because a Naltrexone 6 7 implant is not a cure to addiction. He will explain that, in fact, most addicts are not good 8 candidates for treatment via Naltrexone implant because, if not used appropriately, it can 9 contribute to the patient's death by overdose.

Naltrexone can be delivered via oral medication (in a pill form), an injectable shot, or can
be surgically implanted into a person in a pellet form. Naltrexone in pill form and injectable
form (as manufactured by ReVia or Vivitrol) are FDA approved. However, Naltrexone pellet
implants are not FDA approved.

Doctors can prescribe Naltrexone in pellet form to be implanted in the patient, but
because it is not FDA approved, they must fully inform the patient that the procedure is (1) not
FDA approved, (2) is considered experimental and (3) give the patient all the required warnings
that accompany the use of the drug, including the potential side effects and the risk of deadly
overdose. Patients must give informed and express consent before undergoing an experimental
procedure, with a full understanding of these effects.

20 Furthermore, Dr. DeSanto will testify that Naltrexone, in any form, must be given as part 21 of a comprehensive drug treatment program. Dr. DeSanto will testify that the implant must be 22 given to the patient only under circumstances where the patient's true drug addiction is being 23 addressed, not only from the physical aspect (the implant), but also from the mental aspect. And this requires actual care and consideration for the patient; psychiatric care and evaluations, 24 25 follow up visits and meetings weeks to months after the procedure, follow up testing as well to 26 ensure the pellet is working, follow up visits to ensure the implant site is not infected, and more. 27 Dr. DeSanto will also explain that the proper way to conduct this procedure requires truthful and 28 honest communication about the experimental nature of the procedure, the costs associated with

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1	the procedure, and the costs to the patient as the procedure is considered experimental. He will
2	also explain that the procedure is relatively simple, should be done with a local anesthetic, does
3	not require anesthesia, propofol, or an operating room, and can be done in ten to fifteen minutes.
4	Dr. DeSanto will testify that most addicts are not appropriate candidates to receive Naltrexone, in
5	any form, as part of their treatment, but at the very least, the doctor must make an individual
6	determination that the patient is a suitable candidate for the implant and ensure all aspects of the
7	patient's addiction are being cared for. He will further explain that the drug addict patient is a
8	special type of patient. He will explain that drug addiction is a serious problem and that
9	someone struggling with addiction generally is focused on feeding that addiction. He will testify
10	that providing cash payments to drug addicts is extremely dangerous and undermines the whole
11	purpose of giving an addict a Naltrexone implant. An addict who is providing with cash will use
12	that money to purchase drugs and feed their addiction and habit. Doing so directly undermines
13	the necessity and usefulness of giving the addict the Naltrexone implant.
14	The Basics of Medical Billing
15	Roseanna Alcala, the People's billing expert, will testify the practice of submitting
16	healthcare claims to insurance carriers is standardized. She will explain that a medical biller is a
17	person who is able to take medical documentation such as chart notes and encounter forms from
18	the doctor's office or surgery center and convert those notes into "C.P.T." codes, procedure &
19	Rev codes and diagnostic codes. C.P.T. is an acronym for "Current Procedural Terminology"
20	and was created by the American Medical Association in order to standardize the method of
21	reporting what services were rendered during a medical visit in a healthcare claim submitted to
	an insurance carrier or governmental agencies for payment.
22	Similar to CPT codes, procedure and Rev. codes are used by surgery centers to report
23	what services were rendered to the patient at the surgery center.
24	
	Diagnostic codes are commonly referred to as I.C.D-10 codes. World Health
25	Diagnostic codes are commonly referred to as I.C.D-10 codes. World Health Organization created ICD-10 codes in order to maintain statistical data of diagnoses throughout
25 26	
	Organization created ICD-10 codes in order to maintain statistical data of diagnoses throughout
26	Organization created ICD-10 codes in order to maintain statistical data of diagnoses throughout the world and these codes were adopted in the United States. I.C.D10 codes on the claim forms

- Healthcare providers use a form called the Healthcare Insurance Claim Form¹ (hereafter
 HICF) or UB-04 form to submit a claim for payment of benefits and this form is a standardized
 document used by all healthcare professionals regardless of type of policy involved such as:
 Workers Compensation, P.P.O, Medicare, MediCal or HMO.
- 5 When submitting these forms, the medical professional uses specific coding to notify the 6 insurance carrier of (1) the name of the referring physician; (2) the patient's diagnosis requiring 7 treatment; (3) the service actually provided to the patient on that date; (4) the location where the 8 service was provided; and (5) the location payment is to be sent.
- 9 She will explain that a medical biller submits the claims to the insurance company and
 10 will submit medical records if requested by the insurance company. The biller submits claims
 11 based on what the doctor or healthcare provider submits.
- 12 To avoid criminal liability, the healthcare provider must complete these forms *completely* 13 and accurately when submitting a claim for payment of a healthcare benefit to the insurance 14 carrier. Additionally, the healthcare provider submitting the bill attests to the fact that the 15 medical services billed for were not only rendered but were medically necessary (because 16 an insurance company is not required to pay for claims of healthcare services which are 17 not deemed medically necessary²). Similar to plastic surgery or cosmetic procedures, 18 experimental medical procedures are typically not covered by insurance because they are not 19 considered medically necessary. Dr. DeSanto will testify that the doctor is the person solely and ultimately responsible for what is billed and how it is billed. 20

The Scheme in This Case

- Wellness Wave is a surgical center in Beverly Hills, CA run by the defendant Dr. Randy Rosen. Lotus Laboratories is a toxicology laboratory in Los Alamitos, CA. Both facilities are owned by Liza Vismanos, who is in a romantic relationship with the defendant, lives with the defendant, and has two children in common with the defendant. Starting in approximately 2017,
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27 ¹ The form is also referred to as "CMS 1500 form."

^{28 &}lt;sup>2</sup> Patients are free to obtain any medical services they choose; however, the insurance carrier is not required to pay for this service unless it is deemed medically necessary. An obvious example is the cost involved for most plastic surgery, or Botox injections for cosmetic reasons.

1 Dr. Rosen started using body-brokers to bring addiction treatment patients into his facility for 2 high-dollar surgeries at Wellness Wave. Patients were subjected to non-FDA approved 3 Naltrexone implant procedures and Cortisone injections. Rosen paid these brokers either an upfront fee for each patient or a percentage of the insurance payout on the backend. To inflate 4 the cost of the procedure, Dr. Rosen subjected the patients unnecessarily to undergo anesthesia 5 6 when in reality the procedure can simply be done on an outpatient basis using a local anesthetic. 7 To further inflate the costs of the procedure, Rosen would require the patients to undergo urine 8 drug tests on the day of the procedure when results would not come back until days after. These 9 tests were sent to Vismanos' lab, Lotus Labs, allowing her and Rosen to jointly collect for the 10 procedure and the tests. The purpose of this scheme was to collect as much money as possible, 11 not to care for the patient. As will be shown, Dr. Rosen and Ms. Vismanos ran a sophisticated 12 scheme involving conspiracies with multiple body brokers and paid these brokers a kickback 13 from the insurance payouts for the procedures which was then in turn provided to lower level 14 brokers and ultimately to the patients themselves. These front-end and back-end kickbacks were 15 meant to incentivize brokers to bring in as many patients as possible.

16 DA Investigator Todd Franssen will testify that, based on his investigation and 17 interviews, a typical patient would be seen by the defendant or a member of the defendant's staff 18 for a consultation and lab work, occurring in a medical office in Santa Ana, Los Angeles, or the surgical center in Beverly Hills. At this consultation, the patient was drug tested which was sent 19 20 to Lotus Labs for analysis. A few days after this, the patient would return for the implant, shot, 21 or both. At the surgical date, the patient was again subjected to drug testing which was again 22 sent to Lotus Labs for additional testing. These results weren't processed until days after the 23 procedure despite the fact that the patients never received follow-up care. As will be explained, 24 it would be potentially dangerous if a patient underwent the Naltrexone implant if the patient 25 already had drugs in their system. The purpose of a drug test prior to the procedure, of course, is 26 to confirm that the patient did not have drugs in their system. However where, as here, the 27 results of that test were not returned until days after the procedure, the test was entirely 28 worthless. As will be shown, to further increase their profit, Dr. Rosen would send the tests to

Lotus Labs which is owned and run by his romantic interest and cohabitant, Liza Vismanos. It is
 anticipated that Josiah Shafer will testify that the sole purpose for doing these additional tests
 was to collect money. This was all billed to various insurance companies by the defendants.and
 entities run and operated by the defendants.

5 Typically for one implant procedure which lasts at most ten minutes, the patient's 6 insurance company could be billed hundreds of thousands of dollars when all is said and done. 7 This would generally include a very short consultation, drug test, procedure, general anesthesia, 8 operating room, and another drug test. Based on surgery logs obtained from Wellness Wave, Dr. 9 Rosen performed as many as 72 procedures in a single day with the quickest surgery 10 documented as lasting one minute in length. The procedures were billed from Monox billing 11 located in Irvine, CA. For a reference point, Dr. Desanto will testify that he regularly performs 12 this procedure, it only takes 10-15 minutes, can safely be done with a local anesthetic, and will 13 cost a grand total of \$4,000, not hundreds of thousands of dollars, and that \$4,000 includes pre-14 screenings, consultation, counseling, the procedure, drug testing, prescriptions, and follow-up 15 care. 16 Of course paying for patients is unlawful in and of itself in the medical field,³ but aside 17 from that, the practice presents a number of ethical and moral issues in the medical field. Paying 18 19 ³ In California it is unlawful for "any person acting individually or through his or her employees or agents, who 20 engages in the practice of processing, presenting, or negotiating claims, including claims under policies of insurance. and who offers, delivers, receives, or accepts any rebate, refund, commission, or other consideration, whether in the 21 form of money or otherwise, as compensation or inducement to or from any person for the referral or procurement of clients, cases, patients, or customer." (Ca. Penal Code Section 750(a)). 22 Business and Professions Code 650 similarly provides that the "offer, delivery, receipt, or acceptance by any person 23 licensed under this division of any rebate, refund, commission, preference, patronage dividend, discount, or other compensation...as...compensation or inducement for referring patients...to any person...is unlawful." (Ca. Bus. 24 Prof. Code Section 650). 25 Ca. Insurance Code 1871.7(a) provides that "It is unlawful to knowingly employ runners, cappers, steerers, or other persons to ... procure clients or patients to perform or obtain services or benefits under a contract of insurance or 26 that will be the basis for a claim against an insured individual or his or her insurer." 27

Simply put, it is unlawful for a doctor or anyone in their business or corporation(s) to pay patients, marketers, brokers, or recruiters to locate and refer patients to them. It is of course, in turn, unlawful for those marketers to pay other marketers or to pay patients to undergo the procedure. for patients turns the patients into a commodity and treats them as ATM machines. The doctor
 ends up treating the patient as a way to make money instead of treating the patients' best
 interests. The evidence will also show that Rosen and Vismanos lived a lavish lifestyle. They
 had a mansion in Brentwood, multiple high priced cars, high priced purses and jewelry, artwork,
 and gold and silver bars. Their fraudulent schemes and crimes netted them millions of dollars
 which they in turn used to support this lifestyle.

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Dr. Rosen and Liza Vismanos' Use of Body-Brokers

8 To maximize profit, Dr. Rosen and Liza Vismanos utilized body-brokers to broker in as 9 many patients as possible to their surgery center and drug testing facility. They would pay out 10 "marketing fees," otherwise known as kick-backs, to different groups and individuals over 11 different time periods whose sole job was to broker in patients and then provide those patients 12 with a kickback of the insurance proceeds. The kick-backs were paid either on the "front-end," 13 meaning prior to insurance paying out or on the "back-end" meaning after insurance has paid 14 out. Typically, a front-end payment would be a fixed sum for the patient and a back-end 15 payment would be a percentage of the insurance payout. As will be shown, there were, at 16 different times, different brokers that Rosen worked with. Thomas Douglas was responsible for 17 brokering the most patients and the most fraudulent billing of all the brokers.

Banking records obtained through the investigation of this case, amongst other evidence,
show that Dr. Rosen paid out kickbacks primarily to two body-brokering groups which
comprised different individuals over different periods of time: over \$3.3 million to "EST" and
over \$8.4 million to "HJD Management." EST was primarily run by Josiah Shafer, Shea
Simmons, and Patrick Connolly. HJD Management was primarily run by Thomas Douglas.
This only reflects money paid to these groups via banks and does not include cash payments
which were also made to these groups.

These brokering groups were organized and employed several layers of their own employees, each receiving a portion of the fees, with often a portion of the fee reaching the patient; facts which Rosen knew very well.

1	Interviews of Patients and Brokers Details Dr. Rosen and Liza Vismanos'
2	Involvement and Kickbacks Provided to Patients
3	In May 2018, Inv. Franssen interviewed Mikalya Simpson who was staying in an
4	addiction treatment facility in southern California. She stated she learned from a friend that she
5	could be paid for undergoing a medical procedure in Beverly Hills. She was introduced to
6	Lizardo Chaz ("Lizardo") and they communicated via text messaging. On April 25, 2018,
7	Lizardo drove Ms. Simpson to a medical office in Santa Ana for a consultation. She was then
8	told she would have a Naltrexone implant procedure the following day by Dr. Rosen at Wellness
9	Wave. She notified her treatment center and did not follow through. From billing records
10	obtained from Anthem, and despite not actually having the procedure, Anthem was still billed for
11	urine testing on the day of her procedure by Lotus Laboratories.
12	On June 5, 2018, Invs. Franssen and Cabrera interviewed Jeffrey Koelsch in Oklahoma
13	City. He explained that he had been in California for addiction treatment and lived in sober
14	living homes. His house manager, Justin Evans, introduced him to Lizardo and explained that he
15	arranges for people to go to Beverly Hills to get implants in exchange for money. He received
16	the implant in Beverly Hills at Wellness Wave and was paid \$400 by Lizardo Chaz.
17	On June 27, 2018, they interviewed Kari Sollenberger who explained she was introduced
18	to Lizardo in order to be paid for receiving a Naltrexone implant which was surgically implanted
19	in her lower left back area. Lizardo also told to her to describe specific back pain symptoms to
20	the doctor in order to receive a cortisone shot. On the day of her procedure, Lizardo picked her
21	up and she, as well as other patients, were driven to Wellness Wave by Lizardo. Immediately
22	after the procedure, she was driven to a bank by Lizardo and paid \$1200 cash for the procedure.
23	During the ride to Wellness Wave she was instructed to describe specific back pain by Lizardo to
24	Rosen to obtain the cortisone shot, despite not actually having back pain or needing the cortisone
25	shot. For the shot and drug testing, her insurance company was billed approximately \$87,000.
26	On July 31, 2018, they spoke with Rylee Schmidt who received the implant by Dr.
27	Rosen. She stated that immediately after her procedure, Lizardo drove her to a nearby Bank of
28	America and paid her \$1000 cash.

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In July 2018, a CBS news story aired about a body broker connected to Rosen who was
 paying patients for the procedure. In the news story, a CBS news reporter is seen confronting
 Rosen and asking him why patients are being paid for the procedures. Rosen does not deny the
 statement or make any statements at the time of being confronted.

5 Josiah Shafer, who was a body-broker of Dr. Rosen's, was interviewed on October 19th, 6 2018. Rosen worked with Shafer from approximately April 2017 to October 2018. For his 7 interview he was granted immunity by the Orange County District Attorney's office. He 8 explained that himself and his two other individuals, Shea Simmons and Patrick Connolly, who 9 are separately charged in this case, each moved to California for addiction treatment. Rosen initially only worked with Shafer until Shafer relapsed at which point Simmons and Connolly 10 11 took over. At one point they were partnered together until Shafer left. They individually at 12 separate times agreed to send patients to Dr. Rosen for Naltrexone implants and Cortisone shots. 13 He stated that they formed multiple business entities (collectively referred to here as "EST") 14 which were paid kickbacks by Rosen. The purpose of paying to the entities was to avoid the 15 appearance of a doctor paying large amounts of money directly to recovering addicts. 16 Eventually EST hired Robert Mellon to act as a liaison between Wellness Wave and the body-17 brokers being paid by EST. Mellon's role was to verify the patient's insurance with Wellness 18 Wave before scheduling patients for surgery and handling the scheduling and organization of 19 procedures.

20 Shafer explained that the two primary schemes that Rosen was involved in were 21 Naltrexone implants and Cortisone injections, which were surgeries Rosen performed and billed 22 to private healthcare insurance providers. After receiving payments from insurance, Rosen 23 would pay EST for "marketing," which involved bringing patients to Rosen for consultations and 24 surgeries. EST had several of their own body-brokers/marketers on their payroll who were paid 25 by EST. They even issued 1099s to track their earnings. These marketers would have direct 26 involvement with the patients and would pay the patients a portion of the marketing money to 27 entice them into undergoing unnecessary surgeries.

Shafer confirmed that Rosen was aware that patients were being paid to undergo these
procedures. According to Shafer, Rosen encouraged the payment to patients to ensure patients
were coming in for surgeries even instructing EST to pay higher amounts to the patients to entice
them to his facility over the competition. Shafer stated that Rosen told him it was a "bidding
war" with SoberLife and other facilities to get the patients to come to Wellness Wave. SoberLife
was the subject of another criminal investigation involving patients being paid to under
Naltrexone implant procedures.

8 Shafer stated that the body-brokers would obtain a photo of the patient's ID and their 9 insurance card which was forwarded to EST and then forwarded again to Mellon. Mellon would 10 forward the information to Wellness Wave staff to determine if the insurance was likely to pay. If not, the patient would be denied and would not be scheduled for surgery. If the patient was 11 12 scheduled, Wellness Wave staff would tell Mellon who would notify EST who would notify the 13 broker who would notify the patient. As is clear, there are no medical personnel or doctors 14 involved in this process; it almost entirely consists of recovering addicts recruiting other addicts 15 to undergo this procedure for money. Shafer confirmed that Rosen would then pay out EST or 16 Douglas' group based on the number of patients being sent to Rosen for procedures.

Shafer confirmed Lizardo's involvement by providing that EST employed Salvatore
Johnson who employed Lizardo. The marketers were generally referred to by their initials. For
example in Mellon' charts, Salvatore Johnson is listed as "SJO." Shafer was aware of one other
marketing group which was run by Thomas Douglas. To note, Janet Arriola, the office manager
for Wellness Wave, confirmed with DA Investigators that Wellness Wave utilized two main
marketers and recalled the name of one as "Thomas."

Shafer explained that during his involvement, Rosen paid EST several million dollars in
kickbacks in both "front-end" and "back-end" payments. The amount of the front-end payments
varied based on the quality of the patient's insurance policy and certain rates. The back-end
payments were based upon how much Rosen received from insurance reimbursements after the
claims were submitted, which ranged from 0%-100% of the submitted claims. These kickbacks
from Rosen to EST initially came via checks from Rosen's accounts. As the payments

increased, Rosen became concerned that the size of the checks was too large and may draw
 unwanted attention to their scheme. Rosen would then supplement the checks with large
 amounts of cash to hide the fact that he was paying marketers large sums of money.

Shafer provided Inv. Franssen with photos of the checks and cash and provided the bank
account information where he was paid from which included Wellness Wave, Beverly Hills,
LLC, Integrated Pathology Medical Laboratory, Inc., dba Lotus Laboratories, Mosaic Medical
Management Inc., Rosen Anesthesia Group, and Randy Rosen, APC. All of these businesses are
run by Rosen and/or Vismanos. This information is further confirmed in text messages between
Rosen, Shafer, and the EST group, detailing how much was owed and being paid for the patients
sent to Rosen.

11 Shafer further provided Inv. Franssen with a number of surreptitious recordings he made 12 with meetings between Dr. Rosen and other body brokers. In the recordings, Dr. Rosen is heard 13 confirming with Josiah Shafer and Shea Simmons that he was paying them a "25% cut" on the "back-end." The phrase "back-end" refers to the amount of money received from insurance after 14 15 the patient's insurance pays out for the procedure. They discuss bringing in another marketer, Salvatore Johnson, who would take over for Josiah and Shea as Josiah and Shea are expressing 16 17 their concern about having their names connected to the scheme. They express to Rosen that Sal already "knows the setup" and "how it works." In another meeting, Rosen discusses giving Shea 18 19 and Josiah a 25% cut of the proceeds from the surgeries and then having Josiah and Shea get separate commission checks from Liza for the urine analysis tests. In yet another meeting, Dr. 20 Rosen is heard discussing with Josiah and Shea paying the marketers on the "back-end" and that 21 22 their "back end should be off a percentage of what was collected." During other meetings, Dr. 23 Rosen is discussing with the brokers bringing people in for other surgeries and paying the 24 brokers for doing so.

Shafer confirmed that Rosen "freaked out" when he was confronted by CBS news. At
that point, Rosen wanted everything to go through Thomas Douglas. Douglas would then in turn
pay the other marketers who were involved.

Shafer allowed Inv. Franssen to download the contents of his phone which contained
 thousands of messages sent between him and Rosen. Many of the messages were in group
 threads involving Rosen and other people who at one point or another were apart of EST (Shafer,
 Simmons, Connell) as well as Rosen's staff.

5 There are also texts just between Shafer and Rosen. To give the court a sample of 6 Rosen's mindset, on 10/10/17, Rosen tells Shafer "The procedure takes me less than 5 minutes. 7 So on an hourly that would be about 120k. Lol [laughing out loud]" and on 10/23/17 refers to 8 what insurance pays him for a "2 minute procedure." They also confirm that certain days of the 9 week are scheduled for Orange County patients and other days are set for other patients. They 10 discuss meeting with Liza and the three of them to provide referrals to Liza for the drug testing 11 as well. Rosen tells Shafer that he and Vismanos discussed putting Shafer and his other 12 marketers on the payroll. The majority of their conversation discusses how much to pay Shafer 13 in kickbacks for referring patients for implants and for the drug tests sent to Vismanos. Shafer provides to Rosen the bank account information for wire transfers for payments from Vismanos 14 15 and Rosen. There are numerous photos sent between the two as well as confirmations of wire 16 transfers, patient information, and payments made.

17 On October 3, 2017, Rosen confirms that Vismanos is the one who actually sends the 18 wires to marketers at his direction. In text messages between Shafer and Vismanos, Vismanos 19 confirms paying Shafer for the referral of patients to Lotus Labs. In a particular conversation on 20 October 6, 2017, Rosen details to Shafer that he just got \$18,400 for an injection on a patient and 21 will be getting another \$10,000 from another patient that he did not even do an MRI on. Rosen 22 then says "I guess I did an MRI but he didn't really have any findings. Lol." Shafer later tells 23 Inv. Franssen that Rosen told him he would do "fake MRIs" to justify the procedures being 24 performed on patients. It is clear that Rosen only cares about making as much money as possible 25 and not actually caring for the patients or taking the procedures seriously.

There is one text message thread with Rosen, Josiah, Shea, Patrick Connolly, and Robert Mellon. In that thread there are numerous messages between the four discussing payments that certain patients paid out from insurance, conflicts with other brokers not sending patients, and

1	kickbacks	owed to the vari	ous marketin	ng groups	s. On May 12,	2018, 1	Roser	n tells Sh	nea tl	hat he
2	needs to f	igure out the "tot	al number	for comr	nissions" from	the uri	ne dr	ug tests.	On	March 3,
3	2018, Ros	en expresses his	dissatisfactio	on that a	certain patient	did not	meet	t his ded	uctib	ole and
4	they did n	ot receive much	money from	insuranc	e. He tells the	group	that w	vhoever	sent	that
5	patient ow	ves him another c	lient.							
6	Or	n March 14, 2018	, Robert Mel	llon send	s the group a p	hoto of	the 1	ist of cli	ents	
7	scheduled	for procedures ⁵ :								
8		1								
9		Date Saturday, March 3, 2018	Client -	Markatar :	Protecture Injection 2	Hotes		and in the second second second in the second s		er Marketer -
,		Tuesday, March 6, 2018 Baturday, March 3, 2018	Irene Landa Aleya Grant	HSE	IMPLANT IMPLANT	1.6 2 .5 3/1	5	1.500.00 2.000.00 500.00	5	1,500.00
10		Saturday, March 3, 2018 Saturday, March 3, 2018 Tuesday, March 6, 2018	Cliff Ryan Nicolas Ruskino Annia Nichola	LPA LPA	IMPLANT IMPLANT IMPLANT	2 2 2	5	2,000.00		
11		Tuesday, March 6, 2018 Tuesday, March 6, 2018	Dustina McCauley Ryan Smith	LPA	IMPLANT Injection 2	2.76	*	2,000.00		
11	10 21	Tuesday, March 13, 2018 Saturday, March 3, 2018	Matthew Hartman Justin English	LPA SGR	INJECTION	1.5	5 5	1,500.00	5	10,750.00
12	12	Saturday, March 3, 2018 Tuesday, March 6, 2018	Kevin Joneph Wike	SGR	IMPLANT 2 IMPLANT	1.6 2/13	5	1,500.00		
	3.4 4.5	Tuesday, March 13, 2018 Saturday, March 3, 2018	Emily Hollis Ian Adams	SGR	IMPLANT 2	1 2/23	5	1,000.00		5,500.00
13	3.0 1.7	Tuesday, March 6, 2018 Tuesday, March 8, 2018	Cody Wechnick Devan Appignani	ots ots	IMPLANT	1 3/5	8 5	2,000.00		
10	5.0 2.0	Tuesday, March 13, 2018 Tuesday, March 13, 2018	Halles Russo Hunter Wesden	oLS	IMPLANT	2	8 5	2,000.00		
14	20 23	Tuesday, March 13, 2018 Tuesday, March 13, 2018	Scott Borleau Brian Almazan	OLE	IMPLANT	2	5	2,000.00		
11	22	Tuesday, March 13, 2018 Tuesday, March 13, 2018	Mariesa Montagna Brittanny Jackson	DLa	Injection 2	0.75	5	750.00		
15	23	Tuesday, March 13, 2016	Jane Thomas	SKI	IMPLANT	2	5	2.000.00	•	13,500.00
15	26	Tuesday, March 13, 2018 Saturday, March 3, 2018	Tyle: Bigg Wasley Dwyer	551	Injection (Shoulder/Wrist)	.8 3/1	5	1,000.00	\$	3,000.00
16	29 24	Tuesday, March 13, 2018 Tuesday, March 13, 2018 Tuesday, March 13, 2018	Thomas Okicki William Pivloski	TRU	Injection (anie)	2 1/2	5	2,000.00		2,750.00
10	80	Tuesday, March 13, 2016	Christopher Winn	WDW	IMPLANT	0,79		750.0	<u> </u>	750.00
17	34 82 34 94							40,250.00		40,250.00
18	As	is clear from the	e photo, Robe	ert tells F	Rosen and the g	group th	ie pat	ient nam	e, th	ie
19	marketer who is responsible for sending the patient, what type of procedure, and how much is									
20	owed to th	ne marketer based	d off that clie	ent. To a	cknowledge th	e illega	lities	of this, l	Rose	en tells
21	Robert "O	k. Now destroy	t. LOL." Ro	bert resp	onds "No one	has acc	ess a	nd I will	scru	ib the
22	schedule a	after confirmation	n." Rosen sa	ys "ty [tł	nank you]."					
23	Th	is process of sen	ding schedul	es and ar	nounts owed to	o marke	eters i	s repeate	ed nu	umerous
24	and nume	rous times in the	text groups.	Rosen w	would often resp	pond by	y con	firming o	or de	enying
25	that certai	n clients showed	up. The bro	kers wou	ald also send th	e insur	ance	cards and	d	
26										
27										
28	⁵ During the downloaded	investigation of this and in that phone c	s case multiple	cell phone chats with	s were obtained an Rosen, Shafer, M	nd down	loaded	. Shafer's	s phoi	ne was hat chat are

²⁸ downloaded and in that phone contained group chats with Rosen, Shafer, Mellon, and other brokers. In that chat are schedules of patients due to be sent to Rosen, who the marketer was who brokered that patient, and how much the marketer was owed. These will be collectively introduced as an exhibit.

identification for the clients that are being sent to him so that Robert could then confirm that
 their insurance would pay out.

On a text sent on August 20th, 2017, Rosen tells the group that he is concerned about
having his name on drug tests sent out three times a week. "We have a great thing going and we
don't want to mess things up with something stupid. We are flying nicely under the radar."
[Emphasis added].

On October 10, 2017, Rosen tells the group that he will make sure that Liza gives them a
percentage of what she collects from the drug tests and confirms that he will give them a
percentage of money from Blue Cross if they are able to collect from patients that owe money.

On October 23, 2017, Rosen tells the group to "hold off on talking to the other
marketers" because there is a back order on implants. He tells the group they settled with one
patient for \$18,000 which was "great" for "a 2 minute procedure." In similar texts, they discuss
the percentage to pay the marketers and the sub-marketers. Rosen also suggests giving the submarketers a percentage for collecting on money owed from the patients.

Shafer explained that although Rosen was his primary contact, he also spoke with and
exchanged messages with Liza Vismanos. He stated that Vismanos understood the scheme well
and was very knowledgeable. Shafer's phone contained hundreds of messages between Shafer
and Vismanos discussing the fraud scheme, payments, commissions and patient's referred to
Vismanos.

Shafer confirmed that none of the patients that Rosen saw were referred by a primary
care physician. All the patients were sent there by the brokers.

On October 25th, 2018, Shea Simmons came into the OCDA's office for an interview.
He was not granted immunity or any consideration for his interview. He voluntarily provided the
contents of his phone, EST gmail account, and EST quickbooks data. Simmons confirmed that
he, Shafer, and Connelly were all heavily involved in the fraud scheme with Rosen and acted as
the management for EST. They all were involved in receiving kickbacks from Rosen in
exchange for sending him patients for Naltrexone implants and Cortisone injection surgeries.

1 On January 16, 2019, Simmons confirmed that he communicated with Rosen and others 2 involved in the scheme utilizing an application on his phone called "Signal." This was done at 3 the direction of Rosen. Signal is an application that users can utilize to call, text, send photos, 4 etc. to avoid leaving a communication trail and to keep law enforcement from obtaining evidence 5 of their activity. The messages and photos, etc, delete automatically after a set period of time 6 and cannot be viewed by anyone else except the user. A sampling of the messages between 7 Rosen and Simmons shows that on one day Rosen wired Shea \$135,000 which Shea indicated 8 represented only ½ of that month's money for the kickbacks. Simmons also had multiple 9 threads, some between just him and Rosen, others between him, Mellon and Johnson. Included 10 in the thread were multiple photos of daily schedules/spreadsheets sent from Mellon to Johnson. 11 To highlight certain portions of the text messages, Rosen tells Simmons "I will make sure 12 you get your \$60k every month" to which Simmons responds that "he had been giving so much 13 of it away that [he] was coming away with almost nothing." And Rosen responds "you need to 14 make sure you keep some for yourself' and "first keep the 6k I'm giving you, no one else needs

significance of referencing SJO cannot be understated. SJO is short for "Salvatore Johnson,"
who is another body broker. Salvatore Johnson took over for Shaffer and Simmons as one point
as part of EST.
In another text message conversation with Simmons, Rosen and Simmons are discussing

to know...I know the good policies and I'm incentivizing SJO on the ones I know pay." The

15

20 paying Sal \$1k per surgery for patients. Simmons also provides Rosen with his banking account
21 information to which Rosen uses to wire Simmons the money that is owed to him for the
22 kickbacks for that month.

Simmons told OCDA investigators about a specific meeting he had with Rosen where
Rosen acknowledged to Simmons the illegalities of paying marketers up front for patients.

On December 23, 2018, Steven Kick texts Simmons about Shafer "feeding [him] to the
feds." They go back and forth about Shafer talking to law enforcement and the District
Attorney's Office. At one point, Simmons says "Rosen will literally have him killed." Steven
tells Simmons that Shafer has secret recordings of Rosen, Shafer, and Simmons.

On January 30, 2019, Rosen confirms another wire sent to Simmons for \$160k. A few 1 days later, Simmons sends Rosen a screenshot of a text message from Sal where Sal is telling 2 3 Simmons that "Thomas is going around telling people he can payout full for Aetna...2500...had 4 two of my reps tell me...and he's stealing my reps, he just offered one of my guys more money." 5 To which Rosen responds, "I will check but he doesn't pay near that for Aetna's. He hasn't even 6 sent in an Aetna for a consult in a month. I don't think he has had one Aetna for a procedure in 2 months." Rosen states later on that "I don't know what reps he is talking about since I don't get 7 8 involved with that all as u know. I deal with u and Thomas. That's it. Never lower than that." 9 (emphasis added). Simmons says "Exactly. And it's the same rate right? Bc Sal is saying his 10 reps told him that Thomas offered his reps like 2700 per procedure." To which Rosen responds "yes." It is clear from this conversation alone that Rosen knows that the various brokers are 11 12 receiving kickbacks for the procedures. Thomas is informing patients that he can pay up to 2500 13 for the procedures if they have Aetna. Rosen of course never denies this. Rosen can claim to 14 deny knowing about other reps but he clearly knows that Shea and Thomas are at the top by 15 stating "never lower than that." 16 Simmons had separate text message threads with other brokers and with Robert Mellon.

In the thread with Mellon, Shea, Sal and Mellon, all are discussing the patients that they are
sending to Rosen for various procedures.

19 On January 17, 2019, surveillance was conducted at Wellness Wave by OCDA
20 Investigators. This date was chosen because it was included in a Simmons thread as a date set
21 for surgeries. Many patients and brokers were identified going to and leaving Wellness Wave
22 that day.

On February 6, 2019, Simmons allowed OCDA Investigators to view his phone again. It
was determined that, based on texts in Simmons' phone, February 9, 2019 was another day set
for surgeries. Surveillance on this day again showed many patients being dropped off by
brokers. Rosen was also seen at the location this day.

27 Patients of Wellness Wave were interviewed as well. Patient Suzzanne A. confirmed that
28 Lizardo was her broker and she was paid after receiving an implant at Wellness Wave. Patient

Madhiana R. stated she had been paid multiple times for treatments and surgeries. The main
 body broker she worked with was Manolo "Manny" Martinez. Before receiving a Cortisone shot
 from Wellness Wave she was transported to a medical office in Orange County for a
 consultation, which was arranged by her broker. On the day of her surgery, her broker drove her
 to Wellness Wave from Orange County. He paid her \$100 on the day of her procedure and then
 an additional \$200 on a later date.

On April 11, 2019, multiple search warrants were executed in relation to this case. Inv.
Pam Angle interviewed Salvatore Johnson who admitted to being a marketer who has other
marketers who work underneath him. He admitted to working with Wellness Wave and claimed
that Mellon was the person who handled scheduling.

Inv. Franssen met with Simmons on the morning of April 11, 2019 and Simmons again
allowed him to view the contents of his phone. In a text chain between Simmons and Rosen
which spanned the dates of March 13, 2019 and April 11, 2019, they discuss Josiah Shafer.
Rosen makes such statements as "better he dies than gets arrested," "why won't he just die,"
"hopefully he will go on a bender and that will be it," and "can't do anymore than he is doing by
running his mouth."

On April 18, 2019, Inv. Franssen interviewed Robert Mellon. Mellon admitted to doing
scheduling for EST and described the work as getting the client information from Johnson and
interacting with Wellness Wave staff and scheduling clients. He maintained a spreadsheet with
the information and schedule for the Naltrexone injections and Cortisone injections and would
share the information via the Signal app so the messages would disappear. Also on the
spreadsheet was a column titled "notes" which listed the amount of money paid by Rosen for
each individual patient. He sent the spreadsheet to Wellness Wave and Johnson.

On April 19, 2019. Inv. Franssen interviewed Lizardo Chaj. The scheme was explained
to him by Inv. Franssen and Lizardo never denied any of it or his involvement in it. He
described himself as a "soldier" and not a "general" or "commander."

On April 26, 2019, Ian Manning was interviewed and admitted to being paid for referring
patients to Wellness Wave by Harrison Romanowski who was working for Thomas Douglas.

1 On May 22, 2019, Shafer was interviewed again and explained he first met Rosen 2 through Vincent Le who worked primarily in the workers compensation field. At the time of the 3 introduction, Rosen told Shafer that they could cut Le out of the business arrangement by 4 meeting another time without Le present. 5 Patient Ashton Ford was interviewed on June 4, 2019 and admitted to being paid by Manolo Martinez to receive two Cortisone injections from Wellness Wave. 6 7 On June 6, 2019, patient Christian Snell was interviewed and admitted to receiving 8 multiple surgeries from Wellness Wave and stated he was paid \$1000 by a marketer. 9 On June 20, 2019, Garret Gardner was interviewed and explained that he was staying at a sober living home run by "Vlad" who worked with Thomas Douglas. Vlad was paying people 10 11 involved in treatment and for bringing additional people to him for procedures. 12 On July 18, 2019, Dr. Sinclair was interviewed. Dr. Sinclair was a plastic surgeon who 13 shared the surgery center space in Beverly Hills with Rosen. Sinclair and Rosen each subleased 14 the surgery center and split days there for about one and a half years. During that time, Dr. 15 Sinclair noted that Rosen sometimes saw 60-70 patients a day. Dr. Sinclair had also involved 16 similar implant procedures during his time as a surgeon and felt that the use of an anesthesia, 17 specifically propofol, which Dr. Rosen was using, was unnecessary and a risk to the patient; one 18 that could lead to complications, including death. Dr. Sinclair described Rosen's method of 19 using anesthesia as "a wanton disregard for the patient's wellbeing" and "well below the standard of care." 20 21 On September 9, 2019, Harrison Romanowski was interviewed and admitted to being 22 paid to bring patients to the Wellness Wave facility for Naltrexone implant and Cortisone 23 injection surgeries. He said that he worked for and was paid by Thomas Douglas. He stated that 24 Douglas was doing business at the time with "Brady Storm" (Brady Fierce) until they had a

25 falling out over money and was replaced by Dillon Dygert. Romanowski admitted to paying
26 other brokers to bring in patients as well.

On October 6, 2019, broker Steven Kick was interviewed. Bank records show that Kick
was paid by both EST and Douglas. Kick admitted to being paid for sending patients into

treatment facilities and for referring patients to Wellness Wave. He sent his girlfriend to Rosen
 for a procedure and was paid \$3000 by Douglas for doing so. He explained she was staying at
 "Crest" sober living home and was required to get procedures from Rosen so she could keep her
 bed. Crest was being run by Brennan Balzi and Jordan Walls.

On October 17, 2019, Thomas New was interviewed and stated that Lizardo met him
while going through treatment. He stated that Lizardo offered to pay him for referring additional
patients. He described Wellness Wave as "a fucking zoo" referring to how busy it was on a
regular day.

9 On January 14, 2020, Brady Friece was interviewed who admitted to working for and
10 being paid by Douglas for placing patients into treatment until they had a falling out sometime in
11 2017. He claimed he was aware of Douglas working with Rosen but he denied doing anything
12 illegal.

On January 24, 2020, Justin Lebow was interviewed who admitted to being involved in
body brokering. He took a break from brokering when he saw people being criminally charged
in a separate case but he got back into it. He was previously a patient of Wellness Wave and
received \$2500 for the implant and \$1500-2000 for an injection. He was paid by Robert
Stravolo and Thomas Douglas. While he was brokering patients into Wellness Wave, he
received the money from Stravolo. Stravolo stepped away for a time and Lebow took his spot.
When that happened, Lebow received payments directly from Douglas.

20 On January 28, 2020, Stravolo was interviewed and admitted to his involvement in body-21 brokering. His involvement included receiving kickbacks to get patients into treatment facilities 22 and into Wellness Wave for Naltrexone implants and Cortisone injection surgeries, as well as 23 paying patients kickbacks to entice them into treatment/surgeries. Stravolo struggled with 24 addiction and relapsed often. He admitted that Lebow took over his spot when he would relapse. 25 He admitted that Douglas paid him for brokering patients into Rosen's office for procedures. 26 This is only a summary of the numerous interviews and evidence that was collected; the 27 full breadth will be introduced during the preliminary hearing. In total, based off of interviews,

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bank accounts and transfers, it was determined that Dr. Rosen and his conspirators fraudulently
 billed approximately \$600 million and fraudulently collected approximately \$50 million.

3

Insurance Records and Claims Submitted

Rosen ultimately submitted fraudulent claims to approximately twenty insurance
companies. The People charged him with eight of the highest billed and paid out insurance
companies. Below is a chart created by Inv. Franssen which documents the fraudulent claims
submitted by Rosen and his various entities as well as the amount paid out by the insurance
companies to Rosen and his various entities.

9

	Total - Billed:	Total - Paid:	WW - Billed:	WW - Paid:	LL - Billed:	LL - Paid:	RR - Billed:	RR - Paid:	
	\$676,185,982	\$51,829,337	\$491,252,897	\$40,564,878	\$77,074,098	\$7,011,051	\$107,858,987	\$4,253,408	
Insurance Company	Total - Billed	Total - Paid	WW - Billed	WW - Paid	LI - Billed	LL - Paid	RR - Billed	RR - Paid	Added
Aetna (partial <02/23/19)	\$26,021,436	\$2,489,806	\$21,327,836	\$2,124,927			\$4,693,600	\$364,879	3/31/2020
Anthem	\$294,454,134	\$24,973,654	\$210,025,612	\$20,398,780	\$41,779,514	\$3,224,823	\$42,649,008	\$1,350,052	3/31/2020
Cigna	\$18,655,335	\$496,888	\$13,418,904	\$56,007	\$3,547,291	\$353,569	\$1,689,140	\$87,312	3/31/2020
Fox Valley Laborers Union	\$1,270,796	\$943,891	\$1,021,000	\$852,000	\$74,676	\$58,358	\$175,120	\$33,533	3/31/2020
UMR	\$26,474,410	\$681,603	\$18,965,600	\$353,796	\$1,776,570	\$269,481	\$5,732,240	\$58,327	3/31/2020
United HealthCare	\$175,945,693	\$15,243,916	\$121,716,638	\$11,368,166	\$16,085,026	\$2,310,660	\$38,144,029	\$1,565,091	3/31/2020
BCBS - Louisiana	\$636,624	\$17,947	\$143,900	\$5,378	\$115,300	\$1,698	\$377,424	\$10,871	4/23/2020
BCBS - Nebraska	\$252,111	\$17,389	\$186,500	\$7,940	\$42,311	\$7,529	\$23,300	\$1,920	4/23/202
Blue Shield CA	\$21,035,998	\$1,955,900	\$15,900,896	\$1,681,100	\$1,812,952	\$179,580	\$3,322,150	\$95,220	4/23/2020
BCBS - Independence (PA)	\$40,471,161	\$448,377	\$38,235,281	\$383,633	\$1,182,830	\$46,063	\$1,053,050	\$18,681	4/24/2020
BCBS - Minnesota	\$8,596,429	\$248,822	\$6,394,850	\$134,024	\$795,019	\$88,838	\$1,406,560	\$25,960	4/27/2020
BCBS - Alabama	\$1,678,961	\$26,780	\$1,051,600	\$14,760	\$362,860	\$6,010	\$264,501	\$6,010	4/29/202
BCBS - Tennessee	\$5,913,132	\$333,068	\$2,846,076	\$234,530	\$2,116,726	\$69,494	\$950,330	\$29,044	4/30/202
BCBS - Florida	\$1,199,375	\$176,281	\$265,900	\$34,627	\$720,975	\$3,946	\$212,500	\$137,708	5/1/2020
BCBS - Rhode Island	\$376,624	\$5,858	\$264,600	\$2,612	\$38,884	\$1,836	\$73,140	\$1,409	5/14/2020
BCBS - Arkansas	\$2,982,629	\$71,581	\$2,043,200	\$58,771	\$428,229	\$5,515	\$511,200	\$7,295	5/14/2020
BCBS - Vermont	\$16,144	\$1,347	\$0	\$0	\$16,144	\$1,347	\$0	\$0	5/18/2020
BCBS - Illinois	\$35,959,472	\$2,927,414	\$26,667,004	\$2,325,066	\$4,725,903	\$185,188	\$4,566,566	\$417,160	6/11/2020
BCBS - Premera (WA)	\$7,192,678	\$269,806	\$4,802,550	\$102,382	\$1,374,968	\$148,487	\$1,015,160	\$18,937	07/06/2020
UPMC	\$7,052,840	\$499,008	\$5,974,950	\$426,378	\$77,920	\$48,630	\$999,970		07/06/2020

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- 24 Evidence Code § 1523 provides in pertinent part:
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(d) Oral testimony of the content of a writing is not made inadmissible by subdivision (a) if the writing consists of numerous accounts or other writings that cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

In addition to the above chart, the People will be submitting various excel spreadsheets

created by the insurance companies who were victimized in this case. The spreadsheets are a

compilation of claims that were billed to their company by Rosen, Vismanos, and their entities.

They detail the dates of service, patient, type of service, amount billed, and amount paid out to

Rosen. The above and these spreadsheets are admissible under Evidence Code Section 1523(d).

In essence, the proponent of documentary evidence does not have to produce the actual documents and can rely instead on oral evidence. (Evid. Code Section 1505); People . Bizieff 2 (1991) 226 Cal.App.3d 1689).

The volume of documents in this case is astronomical because Rosen submitted hundreds 4 of these fraudulent claims and there are approximately twenty victims in this case. In an effort to 5 illustrate the pattern of fraudulent billing while not consuming a great deal of the Court's time, 6 the People asked the victims in this case to provide excel spreadsheets summarizing the claims that were submitted to them in a manner which satisfies Evidence Code Section 1523(d) and 8 illustrates the fraudulent billing in this case and the fraudulent claims submitted by Rosen.

9 Inv. Domingo Cabrera confirmed with the various insurance carriers that the information 10 contained in these spreadsheets satisfies the admissibility for a business record. Inv. Franssen then took the information from these spreadsheets to further summarize for the court the amount 11 of loss at issue in this case. The People utilized this summary to establish the amount of alleged 12 loss, based on the amount the companies paid out to Rosen, to satisfy the requirements of PC 13 186.11(a). 14

In addition to the business records exception to the hearsay rule, the healthcare claims 15 which the defendant submitted to the various insurance carriers, by way of his various entities, 16 are all admissible under Evidence Code Sections 1220 (party admissions), 1221 (adoptive 17 admissions), and 1222 (authorized admissions).

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Bank Records

20 In addition to the insurance company documents, numerous search warrants were 21 executed on various bank accounts determined to belong to Rosen, Vismanos, and some of the 22 brokers. Through the use of these records, forensic accountant Robert Lovret created various charts showing the money that Rosen paid the broker groups and the money the broker groups or 23 individual brokers paid to their sub-brokers. As the overwhelming majority, if not the entirety, 24 of the procedures conducted at Wellness Wave were the result of unlawful patient referrals, 25 Robert Lovret created a chart compiling the various transactions that were conducted by Rosen 26 which exceeded \$25,000 for money laundering purposes.

27 The People will seek to introduce these records pursuant to Evidence Codes 1271 and 28 1562. Evidence Code Section 1562 provides,

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2	If the original records would be admissible in evidence if the custodian or other qualified witness had been present and testified to the matters stated in the	
3	affidavit, and if the requirements of Section 1271 have been met, the copy of the	
4	records is admissible in evidence. The affidavit is admissible as evidence of the matters stated therein pursuant to Section 1561 and the matters so stated are	
5	presumed true."	
6	Cal. Evid. Code § 1562.	
7	Evidence Code Section 1560 provides,	
8		
9	If a search warrant for business records is served upon the custodian of records or other qualified witness of a business in compliance with Section 1524 of the Penal	
10	Code regarding a criminal investigation in which the business is neither a party	
11	nor the place where any crime is alleged to have occurred, and the search warrant provides that the warrant will be deemed executed if the business causes the	
12	delivery of records described in the warrant to the law enforcement agency ordered to execute the warrant, it is sufficient compliance therewith if the	
13	custodian or other qualified witness delivers by mail or otherwise a true, legible,	
14	and durable copy of all of the records described in the search warrant to the law enforcement agency ordered to execute the search warrant, together with the	
15	affidavit described in Section 1561, within five days after the receipt of the search warrant or within such other time as is set forth in the warrant.	
16		
17	Cal Evid Code § 1560.	
18	Declarations will be submitted for each bank record sought to be admitted which satisfies	
19	the above requirements.	
20		
21	Expert Testimony is Appropriate in this Case	
22	The People intend to introduce three experts: Roseanna Alcala, Dr. DeSanto, and Robert	
23	Lovret. Ms. Alcala is a medical billing expert. Dr. DeSanto is an addiction medicine expert.	
24	Robert Lovret is a forensic accounting expert. This Court has the discretion to allow expert	
25	testimony based on any area that "that is sufficiently beyond common experience," "would assist	
26	the trier of fact" and so long as such testimony does not usurp the jury's role to decide the case or	
27	the court's role to instruct on questions of law. (See Evid. Code § 801, subd. (a); Summers v.	
28	A.L. Gilbert Co. (1999) 69 Cal.App.4th 1155, 1178).	

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1 Evidence Code section 801 governs expert witness testimony and allows for testimony 2 "[r]elated to a subject that is sufficiently beyond common experience that the opinion of an 3 expert would assist the trier of fact." (Evid. Code, § 801, subd. (a)). The expert's testimony is 4 limited "[b]ased on matter (including his special knowledge, skill, experience, training, and 5 education) perceived by or personally known to the witness or made known to him at or before 6 the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an 7 expert in forming an opinion upon the subject to which his testimony relates, unless an expert is 8 precluded by law from using such matter as a basis for his opinion." (Evid. Code, § 801).

"Testimony in the form of an opinion that is otherwise admissible is not objectionable 9 because it embraces the ultimate issue to be decided by the trier of fact." (Evid. Code, § 805). 10 11 As set forth by the California Supreme Court, "there is no hard and fast rule that the expert 12 cannot be asked a question that coincides with the ultimate issue in the case. 'We think the true 13 rule is that admissibility depends on the nature of the issue and the circumstances of the case, 14 there being a large element of judicial discretion involved ...'." (People v. Wilson (1944) 25 15 Cal.2d 341, 347, 349 (medical doctor as legal expert testified that the defendant's abortion was 16 not necessary to save her life) (internal citations omitted)).

17 Experts may testify as to relevant legal regulations governing the field of their expertise 18 and the basis of their opinions. In People v. Luo (2017) 16 Cal.App.5th 663, the defendant, a 19 project construction manager, was convicted of involuntary manslaughter and three counts of 20 willfully violating an occupational safety/health order causing death under Labor Code section 21 6425, subd. (a), when the male victim that worked for the defendant died when the excavation 22 wall he was working near collapsed crushing the victim's skull. (Id. at 667, 669). On appeal, the 23 Defense argued that there was insufficient evidence to support the Labor Code section 6425 24 violations because there was insufficient evidence for the jury to find that the defendant's 25 violation of safety regulations proximately caused the victim's death. The court found sufficient 26 evidence to infer noncompliance citing to applicable regulations providing for daily inspections 27 and a protective system for employees. The court explained that the prosecution's "expert in 28

excavation safety testified that excavation work presents a high risk of cave-in and that the entire
 purpose of the regulations is to protect employees from cave-ins. " (*Id.* at 672–673).

3 Certain areas of expert testimony necessarily require testimony regarding regulations or 4 laws because of the nature of the field. (Eng v. Brown (2018) 21 Cal.App.5th 675, 709 (finding 5 no error in trial court permitting admission of defense expert testimony regarding the reasonableness of a corporation's directors compensation and IRS regulations governing S 6 7 corporations under Evidence Code section 352); McStay v. Citizens' Nat. Trust & Savings Bank of Los Angeles (1935) 5 Cal.App.2d 595, 601 (permitting testimony relating to the scientific or 8 9 customary construction of steps/stairways in a hotel building when "knowledge of the facts 10 themselves, depend upon professional or scientific knowledge or skill not within the range of 11 ordinary training or intelligence, not only the facts but the conclusions to which they lead may be 12 testified to by qualified experts")).

The court in *People v. Lowe* (2012) 211 Cal.App.4th 678 found that the prosecutor's two
experts properly opined regarding the Defendant's propensity to engage in sexually violent
predatory acts in the future arguing that such testimony was inadmissible under *Summers*' ban on
legal issues that invade the province of the jury. *Id.* at 685-86. The court distinguished *Summers*and found it proper for the People's experts to utilize the statutory language because otherwise
"the jury would not have known whether the experts' opinions were based on the appropriate
criteria." *Id.* at 685.

20 The Courts have routinely permitted testimony regarding laws and regulations when 21 necessary to understand the field of expertise in a case so long as such testimony does not 22 include impermissible legal opinions or conclusions that usurp the role of the jury to decide the 23 case or the judge's rule to instruct on the law of the case. In addition, it is proper for experts to 24 testify on subjects that will embrace the ultimate issue, such as the money laundering counts. (See e.g., People v. Carter, (1997) 55 Cal.App.4th 1376 (upholding admissibility on expert 25 26 opinion on issue of whether drugs were possessed for sale); People v. Harvey, (1991) 233 27 Cal.App.3d 1206, 1227 (upholding admissibility of testimony regarding various drug 28 transactions and various roles and levels of culpability of each codefendant).

1	Robert Lovret's Testimony
2	Robert Lovret is a forensic accountant who created various charts and documents that
3	explain how Rosen used unlawfully and illegally obtained money to make high value purchases,
4	which are the bases for counts 28-50. He also created a chart and supporting documentation
5	which depicts how Rosen provided money and payments to the various brokers at issue in this
6	case which are the basis for counts 51-68. A notebook detailing the reports, charts, and
7	supporting documentation for each count will be submitted to the court.
8	What laws were broken by the defendant and how?
9	The defendant is charged in Count 1 with Conspiracy to commit a violation of Penal
10	Code Section 549. He is charged in subsequent counts with violations of Penal Code 550(a)(5)
11	for the named insurance companies, 550(b)(3) for the named insurance companies and patients,
12	and Business and Professions Code Section 650(a). He is also charged with varying counts of
13	money laundering.
14	To prove someone guilty of the crime of PC 182/549, the People must prove that the
15	defendant (1) intended to agree and did agree with others to commit a violation of PC 549; (2) at
16	the time of the agreement, the defendant and one or more of the other alleged members of the
17	conspiracy intended that one or more of them would commit a violation of PC 549; (3) the
18	defendant or one of the other members committed an overt act to accomplish this violation; and
19	(4) at least one of the overt acts was committed in California.
20	From a reading of Penal Code Section 549, to find the defendant guilty the People must
21	prove (1) that the defendant solicited or referred; (2) any business to or from any individual or
22	entity; (3) with knowledge that or with reckless disregard for whether; (4) the individual or entity
23	for whom the solicitation or referral is made intends to violate section 550 of this code or section
24	1871.4 of the Insurance Code. Other CALCRIMs define "reckless disregard" as such: A person
25	acts with "reckless disregard when (1) he or she is aware that his or her actions present a
26	substantial and unjustifiable risk, (2) he or she ignores that risk, and (3) that person's behavior is
27	grossly different from what a reasonable person would have done in the same situation." (See
28	CALCRIMS 1302, 1303, and 1304).
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To prove someone guilty of violating Penal Code Section 550(a)(5), the People must prove that (1) the defendant prepared, made, signed or subscribed a document with the intent to present or use it or allow it to be presented to support a false or fraudulent claim; (2) the defendant knew that the claim was false or fraudulent; and (3) when the defendant did that act, he intended to defraud. Someone intends to defraud if he or she intends to deceive another person either to cause a loss of money, goods, services, or something else of value, or to cause damage to a legal, financial or property right. (CALCRIM 2000).

8 There is no CALCRIM for 550(b)(3). Under 550(b)(3), it is unlawful to do, or to 9 knowingly assist or conspire with any person to conceal, or knowingly fail to disclose the 10 occurrence of, an event that affects any person's initial or continued right or entitlement to any 11 insurance benefit or payment, or the amount of any benefit or payment to which the person is 12 entitled.

There is no CALCRIM for Business and Professions Code Section 650(a). Under a
reading of this statute, someone is guilty of violating 650(a) if (1) they are licensed under B&P
650(a) [which includes a doctor practicing in California]; (2) offers a rebate, commission, or
other consideration; (3) as compensation or inducement to another for the referral of patients,
clients, or customers. These violations are alleged to involve specific body brokers.

18 Rosen is also charged with various violations of Penal Code Section 186.10. To prove 19 the defendant guilty of this crime, the People must prove that (1) The defendant conducted or attempted to conduct one or more financial transactions involving at least one monetary 20 21 instrument through at least one financial institution; (2) the financial transaction involved a 22 monetary instrument or instruments with a total value of more than \$5,000, or within a seven day 23 period and the monetary instrument or instruments had a total value of more than \$5,000, or 24 within a 30-day period and the monetary instrument or instruments involved had a total value of 25 more than \$25,000; (3) when the defendant did so, he intended to promote, manage, establish, 26 carry on, or facilitate criminal activity or the defendant knew that the monetary instrument 27 represented the proceeds of criminal activity or were derived directly or indirectly from the 28

proceeds of criminal activity. A monetary instrument includes US currency and coin, any bank
 check, cashier's check or personal check. (CALCRIM 2997).

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Evidence Establishing Count 1 (PC 182/549 Counts)

Conspiracies are rarely explicitly laid out in the terms of the conspiracy amongst the 4 members, although in this case the members of the conspiracy did often discuss the terms of their 5 agreements in texts and conversations. And although there must be some manifestation or 6 communication of assent, it is not necessary to show that the parties actually met together and 7 entered into a formal written or oral agreement. It is enough that by some means they come to a 8 mutual understanding, and this may be established by circumstantial evidence. (Lorenson v. 9 Superior Court, (1950) 35 Cal.2d 49, 57). "Thus, it is not necessary to prove that the parties met 10 and actually agreed to perform the unlawful act or that they had previously arranged a detailed 11 plan for its execution. Rather significantly, the agreement may be inferred from the conduct of 12 the defendants mutually carrying out a common purpose in violation of a penal statute." (People v. Lipinski, (1976) 65 Cal.App.3d 566, 575 (emphasis in original). 13 "Where there is some evidence of participation or interest in the commission of the 14 offense, it, when taken with evidence of association, may support an inference of a conspiracy to 15 commit the offense." (People v. Hardeman (1966) 244 Cal.App.2d 1, 41.) 16 In addition to being liable for intended acts of the conspiracy, each member of the 17 conspiracy is liable for the acts of any of the others in carrying out the common purpose, *i.e.*, all 18 acts within the reasonable and probable consequences of the common unlawful design. (People 19 v. Hardy, (1992) 2 Cal.4th 86). 20 In the often cited case of People v. Kaufman, (1907) 152 Cal.331, the California Supreme 21 Court adopted the following language from another source: 22 The general rule is well settled that where several parties conspire or combine together to commit any unlawful act, each is criminally responsible for the acts of 23 his associates or confederates committed in furtherance of any prosecution of the common design for which they combine. In contemplation of law the act of one is 24 the act of all. Each is responsible for everything done by his confederates, which 25 follows incidentally in the execution of the common design as one of its probable and natural consequences, even though it was not intended as a part of the original 26 design or common plan. 27 (Id. at p. 334). 28

1Thus, "a conspirator is criminally liable for the act of a coconspirator which follows as a2probable and natural consequence of the common design, even though it [is] not intended as a3part of the original design or common plan. [Citations.]" (*People v. Luparello* (1986) 1874Cal.App.3d 410, 442; see also People v. Zielesch (2009) 179 Cal.App.4th 731, 739; People v.5Superior Court (Shamis) (1997) 58 Cal.App.4th 833, 843.)

As was stated above, it is unlawful in California to provide marketers or recruiters in 6 California a kickback or a commission in exchange for steering and directing patients to that 7 doctor's office for procedures. That in and of itself is illegal in any form. Here, Dr. Rosen and 8 Vismanso knowingly and intentionally hired multiple brokers and marketers to go out and direct 9 patients to Wellness Wave and Lotus Labs. They then paid these brokers either on the "front-10 end" for patients, in amounts typically around \$2000 or \$2500 or on the "back-end" in amounts 11 of approximately 25-30% of the insurance payout. These kickbacks were then passed down to further sub-marketers, which Dr. Rosen was fully aware of as is evident from text messages and 12 from statements from Josiah Shafer. These kickbacks were ultimately funneled down to patients 13 which Dr. Rosen also knew and even directed as was made clear from statements made by Josiah 14 Shafer. This information was never disclosed to the various insurance companies which Rosen 15 submitted bills and claims to.

16 Dr. Rosen treated this surgery center and Lotus Labs as money making mills. He was not 17 interested in actually caring for the patients. He often performed upwards of seventy-two 18 procedures in a day in increments as small as one minute. He unnecessarily utilized general 19 anesthesia to increase the costs of the procedure. He then submitted health care insurance claims 20 to the various insurance companies for these fraudulent claims. As will be shown through the 21 testimony of witnesses and exhibits, there was no legitimate part of Dr. Rosen's business. These unlawful referrals and brokers were never disclosed to the victim insurance companies. These 22 patients were never referred by doctors but were only sent there by marketers and other drug 23 addicts. These marketers worked with sober living homes to locate the most vulnerable and 24 desperate patients to send to Rosen's surgery center. In short, by purchasing patients, and 25 completing the above acts, the defendant was undermining any legitimate claim of medical 26 necessity, while strengthening the truth that he only cared about profiting from these patients' 27 unfortunate situations and treating them as the commodities he believed them to be.

The People charged this as a conspiracy ranging for the entirety of the length of the conspiracy as it pertains to the 549 charge.

Ms. Vismanos is guilty for this offense based off the above evidence and the additional 3 evidence found in the text messages between Rosen and Shaffer. Specifically, Rosen confirms 4 that Vismanos will be the one to actually send the payments to the brokers. Shafer told Inv. 5 Franssen that he regularly communicated with Vismanos about the fraud scheme, payments, and 6 the referral of patients. Vismanos had entered into a conspiracy with Rosen and the brokers to 7 unlawfully refer patients to Wellness Wave. As she knowingly was paying brokers for the 8 referral of patients and/or conspiring with Rosen to do so, all that is left to establish is that she 9 knew or recklessly disregarded the fact that Rosen was going to commit insurance fraud. As 10 Vismanos was not only benefiting from the millions of dollars collected from this scheme, that 11 alone could be sufficient to establish this. But aside from that fact, patients were also unlawfully being referred to Lotus Labs and receiving a kickback from those tests. As Shafer informed Inv. 12 Franssen, Vismanos was the one often actually paying the brokers. It is not a difficult conclusion 13 to reach that Vismanos knew or, at the very least, recklessly disregarded, the fact that Rosen was 14 going to then bill the insurance companies on a basis of this scheme and defraud the companies 15 of millions of dollars.

Exhibits/Testimony Relevant to Count 1:

• Testimony of all witnesses

• Patient files

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- Patient files as they pertain to the insurance companies
- 1523(d) charts as they pertain to the insurance companies and the charged insurance companies
- 1523(d) charts submitted by Robert Lovret
- Pole Cam Surveillance Video
 - Surreptitious Audio Files from Josiah Shafer
 - Search Warrant and Arrest Warrant Photos
 - Text messages from Josiah Shafer's Phone
 - Text messages from Shea Simmons' Phone
 - Screenshots of the Signal app on Shea Simmons' phone

1	• Checks located in various Rosen and Vismanos controlled properties made out to the
2	brokers
3	• Perioperative logbooks detailing the enormous number of surgeries conducted in a
4	day
5	• Photos of cash given to Josiah by Rosen to hide the high dollar checks that otherwise
6	would have been written
7	Monox billing records
8	Bank account records
9	• Todd Franssens' Chart depicting payments, individual players, and the flow of money
10	Arrest warrant photos
10	• Search warrant photos of Wellness Wave, Lotus Lab,
11	Evidence Establishing Counts 2, 5, 8, 11, 14, 17, 19, 22, (PC 550(a)(5) counts)
13	The purpose of the conspiracy in this case was to defraud the insurance company victims
14	out of as much money as possible. To this end, Dr. Rosen had to submit health insurance claims
14	to the insurance companies seeking reimbursement for the services he provided. This is why
	Rosen created documentation contained within the patient files to attempt to legitimatize the
16	procedures conducted. Rosen drafted consultation and surgical reports to support these unlawful
17	claims and failed to disclose on any of this information that patients and marketers were being
18	paid kickbacks. These documents are contained within the patient files submitted for each
19	insurance company. This is a violation of Penal Code Section 550(a)(5) as the reports and
20	documents contained in the patient files are in turn used to support the various insurance claims
21	made to the insurance companies. Under Penal Code Section 550(a)(5), "the writing required
22	need not be false or fraudulent as long as it is intended to be presented or used in support of any
23	false or fraudulent claim." (<i>People v. Zelver</i> , (1955) 135 Cal.App.2d 226, 235). In the case of <i>People v. Singh</i> , (1995) 37 Cal.App.4 th 1343, the defendant was charged
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25	with Grand Theft by False Pretenses (P.C. 487) and for Presentation of a False Insurance Claim
26	(former P.C. section 556(a)(1)). The evidence used to convict the defendant was based on the
27	fact that the defendant, a chiropractor, was treating and billing patients for medically
28	unnecessary diagnostic tests. At trial, the defendant argued that there was insufficient evidence
1	that he intended to defraud. In that case, there was testimony from the prosecution witnesses that
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the tests being used by the defendant were not necessary to the medical care of the patients. The
defendant argued that he did not intend to defraud because the billings submitted merely
represented the costs of the procedures actually performed. The court rejected this argument
because "when a caregiver causes an insurance company to part with money on the basis of
medical procedures that, though actually conducted, were not necessary, fraud occurs." (*Id.* At p.
1373).

Here, by paying for patients to undergo these procedures, any claim of medical necessity
is directly undermined. Dr. Rosen's goal in conducting the Naltrexone implants, cortisone shots,
and urine drug tests, was not to treat patients who needed help but was to collect as much as
possible from insurance and conduct as many implants and shots as he could. To further this
goal, he unlawfully paid brokers to locate and recruit patients to be directed to his surgery center
and to Lotus Labs. The centers were treated as mills and the patients as ATM machines. Even
though the procedures were actually conducted, they were hardly done out of a medical
necessity, but rather out of an unlawful desire to line the pockets of Dr. Rosen and the brokers.

As claims were submitted to each insurance company for medically unnecessary claims,
each separate count of 550(a)(5) is established through the patient files, claim document, and
spreadsheets detailing the claims made to the insurance companies. Each patient file contains
various written documents created by Rosen and members of his staff to legitimize the
procedures. Each count is specified by the date range as it applies to the company that claims
were submitted while the fraudulent scheme was ongoing.

Vismanos is guilty of this offense under a conspiracy theory of liability as she agreed 20 with Rosen to defraud these insurance companies through the use of the patient brokering 21 scheme. She is similarly liable of the offense of PC 550(a)(5) under a natural and probable 22 consequences theory of liability. To establish her guilt under that theory of liability, it must be 23 proven that (1) the defendant is guilty of the offense of Penal Code 549 and/or Penal Code 24 182/549; (2) during the commission of that crime a co-participant in that crime committed the 25 crime of Penal Code 550(a)(5); and (3) under the circumstances, a reasonable person in the 26 defendant's position would have known that the commission of Penal Code Section 550(a)(5) 27 was a natural and probable consequence of the commission of Penal Code 549 and/or Penal Code 182/549. Here, as the target of the conspiracy to commit 549 was to ultimately collect as 28 much money as possible and defraud the insurance companies as much as possible, it is a

reasonable conclusion that to do so, Rosen would have to legitimize or at least give off the
appearance of legitimacy of the procedures done on the patients. To that end, he would have to
create patient files, consultation reports, surgical reports, and the like, which would all be used to
support his otherwise fraudulent claims and would of course leave out the fact that the patients
were paid for. Given this reasonable conclusion, it is further reasonable to hold Vismanos liable
for this offense as well.

6	<u>E</u> z	xhibits/Testimony Relevant to Counts 2, 5, 8, 11, 14, 17, 20, 23 (PC 550(a)(5)
7	counts)	
8	•	Testimony of all witnesses
9	•	Patient files
10	•	Patient files as they pertain to the insurance companies
11	•	1523(d) charts as they pertain to the insurance companies and the charged insurance
12-		companies
13	•	1523(d) charts submitted by Robert Lovret
14	•	Pole Cam Surveillance Video
15	•	Surreptitious Audio Files from Josiah Shafer
16	•	Search Warrant and Arrest Warrant Photos
17	•	Text messages from Josiah Shafer's Phone
18	•	Text messages from Shea Simmons' Phone
19	•	Screenshots of the Signal app on Shea Simmons' phone
20	•	Checks located in various Rosen and Vismanos controlled properties made out to the
21		brokers
22	•	Perioperative logbooks detailing the enormous number of surgeries conducted in a
23		day
24	•	Photos of cash given to Josiah by Rosen to hide the high dollar checks that otherwise
25		would have been written
	•	Monox billing records
26	•	Bank account records
27	•	Todd Franssens' Chart depicting payments, individual players, and the flow of money
28	•	Arrest warrant photos

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- Search warrant photos of Wellness Wave
- Robert Lovret's 1523(d) charts depicting the transfer of money from Rosen entities to the main brokers

Counts 3-4, 6-7, 9-10, 12-13, 15-16, 18-19, 21-22, 24-25 (PC 550(b)(3) Counts)

5 The violations of 550(b)(3) are easily proven as Rosen never disclosed to the insurance 6 companies that he was illegally brokering patients into his surgical center to undergo these 7 procedures. The insurance companies are only required to pay for medically necessary procedures. As described above, when a health professional submits claims for reimbursement 8 from insurance company they are certifying that those services were actually provided and were 9 medically necessary. However, in making that determination, the insurance companies need to 10 be made aware of all the material information and facts. One such piece of information would be 11 the fact that Rosen was paying body brokers to recruit and locate patients to have these cortisone 12 shots and Naltrexone implants. This information though was never disclosed to any of the 13 insurance companies. The purpose of course was that Rosen knew that the insurance companies 14 would not pay out on claims if they found out that he was unlawfully paying for patients to have 15 these procedures. The 1523(d) charts for each insurance company details the fraudulent bills that were submitted to each respective company as well as what was actually paid out to Rosen and 16 his entities. 17

As to Vismanos, she could be directly liable as described above, or liable under a natural and probable consequence theory as the target of the conspiracy to commit 549 was to ultimately collect as much money as possible and defraud the insurance companies as much as possible. Therefore, it is a reasonable conclusion that to do so, Rosen would have to legitimize or at least give off the appearance of legitimacy of the procedures done on the patients. To that end, he would certainly fail to mention or note in any documents or claim forms submitted to the insurance companies that the patients were being brokered into his facilities for these procedures and tests.

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Exhibits/Testimony Relevant to 3-4, 6-7, 9-10, 12-13, 15-16, 18-19, 21-22, 24-25 (PC 550(b)(3) Counts)

 Files for Kari Sollenberger (Optum/UHC); Jeff Koelsch (Anthem); Justin English (Blue Shield of CA); Matthew Hageman (Fox Valley Laborers); Alexander Bourquin (Aetna); Rylee Schmitt (UMR); Justin Evans (Blue Shield/Blue Cross of Illinois);

1	• 1523(d) charts as they pertain to the insurance companies and the charged insurance
2	companies
	Testimony of all witnesses
3	 Patient files
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5	Patient files as they pertain to the insurance companies
6	• 1523(d) charts as they pertain to the insurance companies and the charged insurance
7	companies
8	• 1523(d) charts submitted by Robert Lovret
9	Pole Cam Surveillance Video
10	Surreptitious Audio Files from Josiah Shafer
11	Search Warrant and Arrest Warrant Photos
12	Text messages from Josiah Shafer's Phone
13	Text messages from Shea Simmons' Phone
	• Screenshots of the Signal app on Shea Simmons' phone
14	• Checks located in various Rosen and Vismanos controlled properties made out to the
15	brokers
16	• Perioperative logbooks detailing the enormous number of surgeries conducted in a
17	day
18	• Photos of cash given to Josiah by Rosen to hide the high dollar checks that otherwise
19	would have been written
20	Monox billing records
21	Bank account records
22	• Todd Franssens' Chart depicting payments, individual players, and the flow of money
23	• Arrest warrant photos
24	Search warrant photos of Wellness Wave
	• Robert Lovret's 1523(d) charts depicting the transfer of money from Rosen entities to
25	the main brokers
26	Counts 26-28 (650(a) Violations)
27	Here, the evidence has established that the defendants were engaged in conspiracies at
28	one time or another with Shafer, Simmons, and Douglas, amongst other brokers. The defendants
	one time or another with onater, ommons, and Douglas, amongst other provers. The defendants

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1	and the brokers agreed to send patients to the defendant in exchange for a kickback of the
2	insurance proceeds.
3	Exhibits/Testimony Relevant to Counts 26-28
4	• 1523(d) charts as they pertain to the insurance companies and the charged insurance
5	companies
6	• Testimony of all witnesses
7	• Patient files
8	• Patient files as they pertain to the insurance companies
9	• 1523(d) charts as they pertain to the insurance companies and the charged insurance
10	companies
10	• 1523(d) charts submitted by Robert Lovret
	Pole Cam Surveillance Video
12	Surreptitious Audio Files from Josiah Shafer
13	Search Warrant and Arrest Warrant Photos
14	Text messages from Josiah Shafer's Phone
15	Text messages from Shea Simmons' Phone
16	• Screenshots of the Signal app on Shea Simmons' phone
17	• Checks located in various Rosen and Vismanos controlled properties made out to the
·18	brokers
19	• Perioperative logbooks detailing the enormous number of surgeries conducted in a
20	day
21	• Photos of cash given to Josiah by Rosen to hide the high dollar checks that otherwise
22	would have been written
23	Monox billing records
24	Bank account records
25	• Todd Franssens' Chart depicting payments, individual players, and the flow of money
26	Arrest warrant photos
27	Search warrant photos of Wellness Wave Behart Learnet's 1522(d) shorts family that a family for family for the family for the family for the family family for the family for the family family for the family for the family for the family for the family family for the family family family for the family family for the family family family family for the family famil
28	• Robert Lovret's 1523(d) charts depicting the transfer of money from Rosen entities to
20	the main brokers

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Money Laundering Counts (Counts 29-50)

As will be shown through the evidence in this case, the majority, if not the entirety, of the money Rosen, Vismanos, and their entities, collected were the result of the unlawful fraud at issue in this case, namely, illegally brokering patients to undergo medically unnecessary procedures and drug tests. As such the overwhelming majority of the money funneled out of these entities was the direct and indirect result of criminal proceeds, of which Rosen and Vismanos were more than aware of.

7 For counts 29-50, the People are proceeding under the theory that the defendant knew 8 that the money was the result of criminal activity. In People v. Mays, (2007) 148 Cal.App.4th 13, 9 the defendant was convicted of a number of counts of money laundering. In Mays, the defendant 10 ran an escort service. He was charged with eight counts of money laundering with each charge 11 involving, within a 10-day period, cash deposits into, and checks written from, a checking account with initially low balances. The checks were used to pay rent for the office and 12 businesses. Testimony established that was a legal part of the defendants business, specifically 13 that 40% of the business conducted was legal. However, the court found, this did not mean that 14 40% of the deposits were from legal activity, given that fees for the unlawful portion of the 15 business were much higher than the fees for the legal portion. Moreover, "the escort business 16 was inextricably intertwined with the prostitution business." The court noted that the law does 17 not require that all funds directly result from criminal activity; "a money laundering conviction is 18 proper when a person conducts a transaction and through a financial institution knowing that the 19 monetary instrument represents the proceeds of, or is derived directly or indirectly from the 20 proceeds of, criminal activity." (Id. at p.13). The court ultimately held that "this is not a case 21 where there was a need to trace funds from different sources on the basis that some of the funds were from legal sources since the escort business was not a legitimate, legal business; it was 22 merely the means of conducting the prostitution business." (Id. at p.35). It was reasonable to 23 conclude that "the fees generated by the escort business represented the indirect proceeds of 24 criminal activity." (Ibid.) 25

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Here, the overwhelming majority, if not the entirety of the business conducted at Wellness Wave was directly or indirectly the result of illegal activity. Aside from the testimony of Josiah Shafer will explain that all the patients sent to Wellness Wave were brokered and thu all the lab tests sent from Wellness Wave to Lotus Labs are also unlawful, the testimony of Todd 1 Franssen, based on his multiple interviews, will further confirm that all the business at Wellness Wave was based on fraud. The fraud scheme so permeated the business that the only reasonable 2 conclusion is that all the proceeds derived from those accounts at issue here were criminal. 3

However, even that much does not need to be proven to be found guilty for these counts. 4 After Mays came out, People v. Bolding, (2019) 34 Cal.App.5th, 1037 was decided presenting a 5 similar issue. In Bolding, the defendant was hired as the controller for a law firm. It was 6 determined that the defendant embezzled about \$1.1 million dollars from the firm. Over the 7 same time period, the forensic account discovered a number of expenditures from and deposits 8 into his credit union account. The prosecution proceeded under the theory that the defendant 9 knew that these expenditures and deposits derived from criminal activity. Defendant argued that 10 his account had legally obtained funds commingled with the illegally obtained funds and so the 11 prosecution could not trace the illegally obtained funds. The court disagreed noting that "such an interpretation would allow individuals to avoid prosecution simply by commingling legitimate 12 funds with proceeds of crime. This would defeat the very purpose of the money-laundering 13 statutes." (Id. at p. 1045-1046, quoting U.S. v. Johnson, (10th Cir. 1992) 971 F.2d 562, 570)). 14

The court ultimately held that "when a defendant is charged with money laundering 15 "knowing that the monetary instrument represents the proceeds of, or is derived directly or 16 indirectly from the proceeds of, criminal activity, the prosecution must demonstrate that the 17 amount of the illegally obtained funds equals or exceeds the amount of the monetary transaction, 18 whether or not the illegally obtained funds have been commingled with legally obtained funds." 19 Here, even if being conservative, it will be shown that Rosen and his entities collected 20 approximately \$50 million in illegal funds. Here counts 28-39 total \$1,800,000. Counts 40-47 21 total \$8,000,000. This comes out to \$9,800,000. It is not even close here that the amount of illegally obtained funds far exceeds the amount of charged transactions. 22

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For counts 51-68, these are easily established as the defendant was paying kickbacks to these marketers and these groups for their unlawful referrals. As Robert Lovret will testify, he can trace these funds from Rosen's accounts and various entities to the body brokering groups such as HJD/Thomas Douglas and EST (Shea Simmons, Josiah Shaffer, and Patrick Connolly). Therefore, it will be shown that the defendant conducted financial transactions with a value of more than \$5,000 in the charged seven day periods with the intention to promote, manage, carry

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2	chart will detail and explain how each minimum amount charged has been met.
3	Evidence Relevant to the Money Laundering Counts
4	• 1523(d) charts as they pertain to the insurance companies and the charged insurance
5	companies
6	• Testimony of all witnesses
7	• Patient files
8	• Patient files as they pertain to the insurance companies
	• 1523(d) charts as they pertain to the insurance companies and the charged insurance
9	companies
10	• 1523(d) charts submitted by Robert Lovret
11	Pole Cam Surveillance Video
12	Surreptitious Audio Files from Josiah Shafer
13	Search Warrant and Arrest Warrant Photos
14	Text messages from Josiah Shafer's Phone
15	Text messages from Shea Simmons' Phone
16	• Screenshots of the Signal app on Shea Simmons' phone
17	• Checks located in various Rosen and Vismanos controlled properties made out to the
18	brokers
19	• Perioperative logbooks detailing the enormous number of surgeries conducted in a
20	day .
21	• Photos of cash given to Josiah by Rosen to hide the high dollar checks that otherwise
22	would have been written
23	Monox billing records
24	Bank account records
	• Todd Franssens' Chart depicting payments, individual players, and the flow of money
25	Arrest warrant photos
26	Search warrant photos of Wellness Wave
27	• Robert Lovret's 1523(d) charts depicting the transfer of money from Rosen entities to
28	the main brokers

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2	Penal Code 186.11 Enhancements	
3	"The purpose of the aggravated white collar crime enhancement is to provide a	
4	mechanism for greater punishment for criminals who engage in a pattern of fraudulent activity	
5	that results in a large amount of accumulated takings." (People v. Williams, (2004) 1188	
6	Cal.App.4 th 735, 747). The People alleged enhancements under Penal Code Section 186.11 for	
	counts 2-4, 5-7, 8-10, 11-13, 14-16, 17-18, 19-21, and 22-24. To find this enhancement to be	
7	true, it must be proved that (1) the defendant committed two or more related felonies;	
8	specifically violations of Penal Code Section 550(a)(5) and 550(b)(3) [as it pertains to each	
9	insurance company]; (2) fraud or embezzlement was a material element of at least two related	
10	felonies committed by the defendant; (3) the related felonies involved a pattern of related felony	
11	conduct; and (4) the pattern of related felony conduct involved the taking of or resulted in the	
12	loss by another person or entity of more than \$500,000. A pattern of related felony conduct	
13	means engaging in at least two felonies that have the same or similar purpose, result, principals,	
14	victims, or methods of commission, or are otherwise interrelated by distinguishing	
15	characteristics, and that are not isolated events. Related felonies are felonies against two or more	ļ
16	separate victims or against the same victim on two or more separate occasions.	
17	Here, as is demonstrated by the chart above, each of the charged insurance companies	
	suffered a loss of more than \$500,000 due to the fraudulent actions of the defendant. Each	
18	insurance company, with the exception of Cigna, has three counts alleged to them: Penal Code	
19	550(a)(5)s and two Penal Code 550(b)(3)s. These are related felonies as they are the result of the	
20	same fraud scheme at issue in this case. For each insurance company, there was fraud committed	
21	against them on two separate occasions, namely creating documents to support the fraudulent	
22	insurance claims, such as the patient files and surgical reports, and failing to disclose on claim	
23	forms ultimately submitted to the insurance companies that Rosen was brokering patients into his	
24	surgery center.	
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|| /// /// Conclusion Based on the evidence that will be presented in Court and the applicable law, the People will move to hold the defendant to answer to the charges as alleged on the complaint. Respectfully submitted, TODD SPITZER, DISTRICT ATTORNEY COUNTY OF ORANGE, STATE OF CALIFORNIA By: L JAMES BILEK Deputy District Attorney