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10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 GARY MARTINOVSKY, M.D., and  
14 INTEGRATED PAIN CARE, INC.,

15 Plaintiffs,

16 v.

17 COUNTY OF ALAMEDA,  
18 DISTRICT ATTORNEY NANCY E.  
O'MALLEY, in Her Official and  
19 Individual Capacities, DA  
INSPECTORS JOHN PAUL  
WILLIAMS and EDDIE  
20 BERMUDEZ, CALIFORNIA  
DEPARTMENT OF INSURANCE  
21 DETECTIVE FERNANDO  
CUBANGBANG, and DOES 1 to 20,

22 Defendants.

Case No. 3:16-CV-403

**COMPLAINT FOR DAMAGES FOR  
VIOLATIONS OF CIVIL RIGHTS**

**DEMAND FOR JURY TRIAL**

23  
24  
25  
26 **JURISDICTION AND VENUE**

27 1. This case arises under 42 U.S.C. § 1983. Accordingly, subject matter  
28 jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343.



1 drugs, covered by the California Business & Professions Code, and the billing of  
2 insurance companies for sales and services. Plaintiffs did not and do not commit fraud  
3 or violate any law, and did not and do not conspire with others to do so.

4 7. Defendant County of Alameda (County) is a political subdivisions of the  
5 State of California. Nancy O'Malley is the District Attorney (DA) for the County. DA  
6 O'Malley is sued in both her individual and official capacities as the relevant policy  
7 maker for and supervisor of the DA inspectors who, as alleged herein, acted on behalf  
8 of the County and the DA when investigating Plaintiffs for supposed improper sales of  
9 controlled substances and insurance fraud. In doing the acts herein alleged, DA  
10 O'Malley acted on behalf of the County, not the State of California, and therefore is not  
11 entitled to Eleventh-Amendment immunity.

12 8. Defendants John Paul Williams and Eddie Bermudez are DA inspectors  
13 under DA O'Malley's supervision and are sued in their individual capacities only.

14 9. Defendant Fernando Cubangbang is a detective for the California  
15 Department of Insurance (DOI), and is sued in his individual capacity only.

16 10. Does 1 to 20 are unnamed because their identities have yet to be  
17 ascertained.

18 11. At all material times, each Defendant was jointly engaged in wrongful  
19 activity, and was an integral participant to the events and violations of rights described  
20 below, resulting in the deprivation of Plaintiffs' constitutional rights and other harms.

21 12. Each individually named defendant and each doe defendant acted under  
22 color of law and within the scope of his or her agency and employment with the  
23 County, the DOI, or some other state or local agency.

## 24 **RELEVANT FACTS**

### 25 **A. Background of the Investigation**

26 13. The State of California has established and regulates a Workers'  
27 Compensation system for the treatment and compensation of injured workers.  
28 Generally, employers purchase policies from insurance carriers which, either directly or

1 through intermediaries such as CorVel Corporation, contract with medical providers  
2 such as Plaintiffs to evaluate and treat injured workers. Workers who sustain work-  
3 related injuries have the option to retain counsel. Some do. Regardless, when a claim is  
4 presented, the carrier assigns a claim number and adjuster.

5 14. There are comprehensive payment schedules covering services, which are  
6 billed by “CPT codes,” and separate schedules for pharmaceutical medications and  
7 over-the-counter products. Medical providers such as Plaintiffs use employees certified  
8 as billing and coding specialists to code and to bill properly. Insurance carriers employ  
9 batteries of sophisticated specialists to scrutinize bills and related medical records with  
10 the goal of minimizing payment to the medical providers, frequently “down coding” or  
11 disallowing charges altogether. There is constant interaction between billings and  
12 payments, with sophisticated actors on both sides. Because they control the money,  
13 however, the insurance carriers have more leverage than the medical providers.

14 15. Insurance carriers operating in California have used their vast financial  
15 resources to influence the DOI and various local entities such as the County and local  
16 officials such as the DA to target medical providers. The carriers’ goal is to retain more  
17 of the money paid to them as workers’ compensation insurance premiums by paying  
18 less out to medical providers, thus reducing injured workers’ access to qualified medical  
19 providers other than for urgent care. As a result, the County DA participated with the  
20 DOI in operations targeting what they labeled, without any reasonable basis, “illegal  
21 medical mill operations.” While in some cases unscrupulous medical providers might  
22 fabricate patients or otherwise bill for services not rendered or medications not  
23 dispensed, in other cases, including this one, lawfully operating clinics are targeted just  
24 because they provide medical treatment to and advocate for injured workers.

25 **B. Defendants Launch an Undercover Operation**

26 16. In August 2013, Defendant DOI Detective Fernando Cubangbang, and  
27 Defendant DA Inspector John Paul Williams fabricated an employer, “Bay Commercial  
28 Landscape,” complete with an insurance policy from Farmers Insurance Company.

1 Defendant DA Inspector Eddie Bermudez, who actually had an injury, played the role  
2 of a Spanish-speaking landscape worker named Carlos Ramirez. An adjuster was  
3 assigned and a claim opened.

4 17. On September 11, 2013, Bermudez/Ramirez called “Centro Legal” and  
5 said he was injured on the job. Centro Legal, which has no relationship with Plaintiffs,  
6 apparently offered to arrange for legal representation. The next day Bermudez/Ramirez  
7 signed a retainer, and was provided a card for Rony Barsoum, an attorney in good  
8 standing with the State Bar of California. At that September 12 meeting, when  
9 Bermudez/Ramirez complained that he was in pain and needed immediate medical  
10 attention, he was told that medical treatment could be arranged through workers’  
11 compensation. Plaintiffs had no involvement in these events.

12 18. On September 26, 2013, Bermudez/Ramirez presented at the Bodner  
13 Chiropractic Professional Corporation in Hayward, California, for evaluation and  
14 treatment. Nika Bodner and Sohila Bodner are licensed chiropractors. Their clinic has  
15 no relationship with Plaintiffs other than that from time to time they refer patients who  
16 may need evaluation or treatment by a medical doctor specializing in pain. The Bodner  
17 clinic evaluated and treated Bermudez/Ramirez, arranged for MRIs of the shoulder and  
18 knee, and referred the patient to an orthopedist. After approximately six weeks of  
19 chiropractic treatment, Bermudez/Ramirez reported he was not responding to the  
20 chiropractic treatments and physical therapy. Bermudez/Ramirez complained he was in  
21 severe pain and asked for pain medication that Dr. Bodner, a chiropractor, could not  
22 legally prescribe. Dr. Bodner appropriately declined to provide medications and instead  
23 referred Bermudez/Ramirez to Plaintiffs by requesting and obtaining an authorization  
24 from Farmers Insurance for pain management evaluation.

25 **C. Defendants Make Three Undercover Visits to Plaintiffs’ Clinic.**

26 19. On November 7, 2013, Bermudez/Ramirez presented at Plaintiffs’ San  
27 Pablo clinic pretending to speak only Spanish. He was wearing a wire, and the  
28 encounter was monitored by Williams and Cubangbang. Unfortunately, the audio

1 quality of the recording is poor. The recording itself, and the summary of the visit in  
2 Williams' report, document an unremarkable first visit to a pain clinic by a patient  
3 presenting with a credible claim of a painful work-related injury.

4 20. After checking in with reception, Bermudez/Ramirez filled out a lengthy,  
5 detailed medical questionnaire with the assistance of a Spanish language interpreter.  
6 Bermudez/Ramirez reported injuries to his left shoulder, hip and knee, and moderate  
7 to severe around-the-clock pain—he called it a “7” on a 1 to 10 scale. Plaintiffs' medical  
8 assistant measured and charted the patient's height, weight and vital signs.

9 21. Dr. Martinovsky reviewed vital signs, medical questionnaire and medical  
10 records forwarded to him by the Bodner clinic. Dr. Martinovsky then interviewed and  
11 examined Bermudez/Ramirez with the assistance of an interpreter, as Dr. Martinovsky  
12 does not speak Spanish. Shortly after Dr. Martinovsky began the examination, a doctor  
13 working for an insurance company called Dr. Martinovsky's cell phone.

14 Dr. Martinovsky politely excused himself and took the call, which required him to  
15 advocate for authorization of a medical procedure for another patient. When  
16 Dr. Martinovsky concluded the phone call he apologized and resumed his examination.  
17 Dr. Martinovsky manipulated the left upper extremity and took measurements of  
18 motion and strength, conducted a neurological examination of the left upper extremity,  
19 and examined the neck, appropriately charting his findings immediately following the  
20 evaluation. Bermudez/Ramirez told Dr. Martinovsky he had pain in his left shoulder,  
21 and that his MRI indicated a small tear in one of the tendons of his shoulder.

22 Dr. Martinovsky told Bermudez/Ramirez that he could prescribe medication for the  
23 pain and that he would consider orthopedic referral following receipt and review of  
24 shoulder MRI, depending on MRI findings. Consistent with their policy to screen out  
25 drug abusers and to ensure patient safety when prescribing medications for pain  
26 Plaintiffs required Bermudez/Ramirez to provide a urine sample. To protect patient  
27  
28

1 privacy, the container was identified by barcode, not patient name. Plaintiffs performed  
2 an in-office drug screen on the urine at that time, which was read as negative for all  
3 substances tested.

4 22. Plaintiffs gave Bermudez/Ramirez the notice required by the California  
5 Business and Professions Code that the prescribed medications could be obtained from  
6 a pharmacy or obtained on site at the clinic. One employee provided Bermudez/  
7 Ramirez non-prescription Terocin topical pain patches, an over-the-counter medication,  
8 explaining that the prescription medications had to be provided by someone else. After  
9 a short wait, another employee, a properly licensed physician's assistant, provided  
10 Bermudez/Ramirez with the prescription medications, Tramadol (Ultram) ER,  
11 Omeprazole, and Naproxen, none of which was a controlled substance. The required  
12 instructions and warnings in both English and Spanish were stapled to the bag of  
13 medications and were clearly spelled out on the properly labeled medication bottles, as  
14 required by the Business & Professions Code.

15 23. Dr. Martinovsky timely prepared a seven-page report accurately  
16 summarizing the answers given on the questionnaire and the results of his own  
17 examination, and detailing his complex decision making process. The report was  
18 submitted to Farmers Insurance with the request for approval of the medications. On  
19 November 20, 2013, CorVel Corporation certified on behalf of Farmers Insurance that  
20 the prescription medications were necessary and appropriate.

21 24. On December 5, 2013, Bermudez/Ramirez appeared for a follow-up  
22 appointment at Plaintiffs' clinic. Again he wore a wire. This time Bermudez/Ramirez  
23 spoke broken English rather than Spanish, so no interpreter was used, but resulting  
24 language issues added confusion to the visit. Bermudez/Ramirez was seen by Plaintiffs'  
25 licensed physician's assistant Frederick Curtis. Bermudez/Ramirez told Mr. Curtis that  
26 he had been taking some unspecified medication provided by a friend to control his  
27 pain. Mr. Curtis said that was very dangerous, he should not be doing that, and that  
28 while in pain he should be taking the prescribed medications as directed. Mr. Curtis



1 lawfully renewed the prescriptions, which were dispensed to Bermudez/Ramirez in the  
2 manner required by the Business & Professions Code.

3 25. On January 16, 2014, Bermudez/Ramirez presented himself to Plaintiffs'  
4 clinic for a final appointment, and reported himself as pain free to Mr. Curtis.  
5 Apparently, there was no wire worn or recording made of this visit.

6 26. Dr. Martinovsky did not interact with Bermudez/Ramirez during either of  
7 his final two visits.

8 27. Plaintiffs' certified billing and coding employee billed for the evaluation  
9 and treatment of Bermudez/Ramirez, although not for the in-office urine test. Farmers  
10 Insurance Company paid \$811.99 for the medications actually dispensed, and another  
11 \$189.85 for all services rendered to Bermudez/Ramirez during the three visits. Farmers  
12 Insurance down coded CPT codes submitted, failed to reimburse Plaintiffs for review  
13 of the knee MRI, intake questionnaire, Dr. Bodner's report, the 7-page report by Dr.  
14 Martinovsky, and the billing code submitted for increased complexity due to utilization  
15 of an interpreter, all billable CPT codes under the California Workers Compensation  
16 Fee Schedule. Farmers reimbursed the medications at prices significantly below  
17 California Workers Compensation Fee Schedule, and failed to reimburse Plaintiffs for  
18 the Terocin topical patches. The insurance carrier's failure to pay the total amount due  
19 is not uncommon in Plaintiffs' experience.

20 28. Defendants made no attempt to contact Plaintiffs to clarify any questions  
21 about the foregoing facts. Instead, they decided to arrest Dr. Martinovsky and raid the  
22 clinic for alleged felony drug and insurance-fraud offenses based on the foregoing.

23 **D. Williams' False and Misleading Probable Cause Declaration**

24 29. Based on this patly investigation which yielded no evidence of wrongdoing  
25 on the part of Plaintiffs, Defendant Williams, in collaboration with Defendants  
26 Cubangbang and Bermudez, prepared a "Probable Cause Declaration" in support of  
27 warrants for Dr. Martinovsky's arrest and for a search of Plaintiffs' premises. No law  
28 enforcement officer exercising reasonable professional judgment would have believed



1 that probable cause existed to apply for a warrant based solely on three undercover  
2 visits that revealed a functioning medical clinic servicing patients with work related  
3 injuries pursuant to law and the professional standards of workers compensation.

4 30. The warrant application violated the Fourth Amendment as Williams,  
5 Cubangbang and Bermudez deliberately and recklessly included falsehoods and omitted  
6 material facts. With the deliberate and reckless falsehoods deleted, and the material  
7 omissions included, the warrant does not provide a scintilla of probable cause for  
8 Dr. Martinovsky's arrest or for the search of Plaintiffs' medical clinic. These material  
9 falsehoods and omissions include, but are not limited to, the following:

10 (a) The probable cause declaration states: "I immediately recognized the name of  
11 [attorney] Rony Barsoum as a suspect who participated in illegal insurance fraud  
12 activity." That statement is false and misleading. Mr. Barsoum is a partner in the  
13 firm Reyes & Barsoum LLP, which represents injured workers, among other  
14 clients. According to the State Bar of California website, Mr. Barsoum has no  
15 history of discipline.

16 (b) The probable cause declaration states: "Bermudez was directed to place a  
17 urine sample in an unmarked plastic cup." That statement is false. The cup was  
18 marked with a bar code that matched to a code included in the medical chart.  
19 The cup had built in chemical strips that change color if the urine contains  
20 common drugs of abuse. Names cannot be used on the cups to protect patient  
21 privacy.

22 (c) The probable cause declaration states: "The unknown woman wordlessly  
23 handed Bermudez two boxes of 'Terocin' topical pain patches. No explanation  
24 about the use of the prescription medication was given. Neither box contained the  
25 name of Carlos Ramirez." That statement is false and misleading. Terocin is an  
26 over-the-counter medication, not a prescription medication. The boxes had  
27 detailed use instructions and warnings.

28

1 (d) The probable cause declaration states: “Bermudez heard his undercover  
2 name called out by an unknown male. Bermudez met the subject who wordlessly  
3 handed him a white paper bag containing three pill bottles. The subject never  
4 told Bermudez what the drugs were or how to use them.” That statement is false  
5 and misleading. The prescription drugs were properly packaged and labeled with  
6 instructions. A sheet with detailed warnings was stapled to the bag. They were  
7 dispensed by a licensed physician’s assistant (PA) as authorized by the Business  
8 & Professions Code.

9 (e) The probable cause declaration states that “Tramadol” is “a schedule IV  
10 dangerous drug.” That statement is false. At the time of the warrant, Tramadol  
11 was not scheduled by either the DEA or California. (The DEA added it to  
12 Schedule IV effective August 18, 2014.) Tramadol is a relatively mild  
13 non-narcotic pain reliever. The FDA approves Tramadol for treatment of  
14 moderate to severe pain. While it has a low potential for abuse, it is even more  
15 difficult to abuse in its time-release form. This prescription was conservative: 30  
16 time-release doses to be taken once a day, the supply to last one month, until the  
17 next appointment. The Tramadol was prescribed to give immediate relief to a  
18 patient who reported constant pain at a level 7, for whom chiropractic treatments  
19 had provided no relief, and who reported that an MRI revealed a small tear.

20 (f) The probable cause declaration states that “[Dr.] Martinovsky[] fail[ed] to  
21 review the documentation completed by Bermudez.” That statement is false.  
22 Dr. Martinovsky used the responses provided by Bermudez/Ramirez’s medical  
23 history questionnaire in his report. Dr. Martinovsky also reviewed Bermudez/  
24 Ramirez knee MRI as well as Dr. Bodner’s follow-up report.

25 (g) The probable cause declaration states that “Martinovsky prescribed  
26 medication for Bermudez after asking him about the results of his MRI, although  
27 he did not review the MRI himself.” That statement is misleading. Neither the  
28 patient nor the referring chiropractor provided Plaintiff the shoulder MRI

1 results. Dr. Martinovsky did review the MRI of the knee, which was provided by  
2 Dr. Bodner's office. The patient presented in immediate need of pain relief. The  
3 medications would have been appropriate even if there were no MRI taken.

4 (h) The probable cause declaration states: "During the alleged treatment  
5 phase of the visit with Martinovsky, the doctor took a telephone call just after  
6 entering the examination room. The call was not an emergency and sounded as if  
7 it was a cross between a business and personal call." That statement is false and  
8 misleading. Dr. Martinovsky can be heard on tape discussing MRI findings for  
9 another patient with a doctor working for insurance company, and explained that  
10 to Bermudez/Ramirez upon completion of the call, apologizing for the  
11 interruption.

12 (i) The probable cause declaration states, in reference to Dr. Martinovsky  
13 asking Bermudez/Ramirez to clarify who represents him: "medical doctors, who  
14 run the type of medical mills operated by Martinovsky, are always concerned about  
15 their patient's legal representation as they believe payment is secured once the patient is  
16 represented by a member of the conspiracy." That statement is false and misleading.  
17 This patient already had an insurance claim number and adjuster assigned.  
18 Frequently patients are unrepresented by counsel. Doctors are required to send  
19 reports to attorneys as well as carriers. There was a discrepancy in this patient's  
20 chart regarding the identity of his attorney, prompting the question. Regardless,  
21 Williams had no evidence that Dr. Martinovsky was involved in a "conspiracy."

22 (j) The probable cause declaration states that "Bermudez was handed the  
23 prescription medications by two different subjects. Neither subject appeared to be a  
24 pharmacist or registered nurse. Neither subject said a word regarding the type of drug  
25 dispensed nor the manner in which it was to be taken." That statement is false and  
26 misleading in multiple respects. The patches were not prescription medications,  
27 and all the prescription medications were handed to Bermudez/Ramirez by a  
28 licensed physician's assistant, as authorized by the Business & Professions Code,

1 which does not require that a pharmacist dispense prescribed medications at a  
2 doctor's office. The instructions were on the packaging and the bottles.

3 (k) The probable cause declaration states that "The cavalier attitude towards  
4 dispensing was further demonstrated by the ease in which an admitted drug  
5 addict, [name not included here to protect patient privacy], was able to enter the  
6 practice and obtain drugs for his addiction. If Martinovsky was in fact  
7 monitoring his patient's drug use via urine samples, then he would have to know  
8 that [name] was abusing the drugs he was dispensing." That statement is  
9 fabricated out of thin air. First, there is nothing to indicate Defendants'  
10 contention of a "cavalier attitude toward dispensing" of prescription medications  
11 in the probable cause declaration. Everything that happened during the first and  
12 second undercover visits was by the book. More significantly, Williams had no  
13 evidence that the patient with whom Bermudez/Ramirez apparently spoke while  
14 in Plaintiffs' waiting room, was either an "addict" or a patient who obtained  
15 "drugs for his addiction" from Plaintiffs. Defendants could not know whether  
16 the patient required a urine test or would have tested positive in a urine sample.  
17 In fact that particular patient had been prescribed Vicodin (a schedule II  
18 controlled substance) prior to the transfer of his care to Plaintiffs.  
19 Dr. Martinovsky discontinued Vicodin on the first visit, which took place prior  
20 to the first visit of Bermudez/Ramirez. Dr. Martinovsky did not prescribe any  
21 "drugs of addiction" at subsequent visits.

22 (l) The probable cause declaration states that "the medical doctors in this  
23 conspiracy were eager to take patients away from fellow co-conspirators if there  
24 was money to be made." That statement is false and misleading, not to mention  
25 internally inconsistent and somewhat incomprehensible. Williams had no basis to  
26 assert that Dr. Martinovsky was engaged in a conspiracy with anyone, and in fact  
27 there was no conspiracy, nor any evidence of conspiracy cited in the probable  
28 cause declaration, involving Plaintiffs with any of the other people or entities

1 mentioned in the probable cause declaration. Medically, there were different  
2 specialities involved in the patient's treatment, so different providers offered  
3 different services at different stages.

4 (m) The probable cause declaration states: "As in all of our previous  
5 undercover visits with all of the doctors involved in this criminal conspiracy,  
6 Bermudez had a recording/broadcast device secreted on his person." That  
7 statement is false and misleading. Williams had no basis to assert that  
8 Dr. Martinovsky was engaged in a conspiracy with any other medical doctor, and  
9 in fact there was no conspiracy. Incidentally, Bermudez/Ramirez was not wired  
10 for his third, final visit to Plaintiffs' clinic.

11 (n) The probable cause declaration states: "Bermudez was eventually called  
12 into an exam room where he was met by a Physicians Assistant (PA) identified as  
13 Frederick [Curtis]. During the contact Frederick asked Bermudez how much pain  
14 he was in. Bermudez told him he was okay and that he did not have any pain."  
15 Williams added: "As with Dr. Martinovsky, it was clear to me that N/P Frederick  
16 was clearly a co-conspirator in the medical mill operation. Frederick prescribed  
17 drugs for a patient who essentially stated he was not hurt. Frederick went out of  
18 his way to get Bermudez to state that he was hurt when he advised that he was  
19 not." These statements are false and misleading. There is an audio recording of  
20 this conversation. PA Frederick Curtis kept asking about pain because  
21 Bermudez/Ramirez, who was speaking pseudo-broken English, would not give  
22 Mr. Curtis a straight answer on whether his reduction in pain was due to  
23 medications. At the end Bermudez/Ramirez indicated that his pain diminished  
24 while taking medications prescribed, and that he ran out of his medications three  
25 days before this visit. Williams left out entirely the "entrapping" fact that  
26 Bermudez/Ramirez told Mr. Curtis that he was taking some unidentified  
27 prescription medication for the pain that someone had given him. Mr. Curtis  
28 counseled him strongly about the health risks of doing so and told him to stop.

1 Mr. Curtis renewed the prescription for medications prescribed by  
2 Dr. Martinovsky based on the above and to keep the patient from using  
3 something illicit or more dangerous for pain relief.

4 (o) The probable cause declaration states: "Frederick had failed to place his  
5 name on the prescription bottles as the prescribing medical practitioner. Even if  
6 Frederick was working at Martinovsky's direction, he would have to provide his  
7 name as the responsible prescribing party." That statement is false and  
8 misleading. Because the medications were dispensed at the clinic, the appropriate  
9 name on the bottle was Dr. Martinovsky's. The chart accurately reflected that  
10 Bermudez/Ramirez saw Mr. Curtis rather than Dr. Martinovsky. The  
11 medications were dispensed properly under the Business & Professions Code.

12 (p) The probable cause declaration states: "In review of the bills from  
13 Martinovsky's office I noted the following fraudulently documented CPT codes  
14 for services never rendered. The first was CPT code 99245." That statement is  
15 false. Dr. Martinovsky conducted a complex initial examination of the patient,  
16 documented in his seven-page report. Pursuant to generally accepted billing  
17 standards for the medical profession and workers compensation, Plaintiffs'  
18 certified billing specialist appropriately listed the services rendered under CPT  
19 99245. Dr. Martinovsky did not indicate that he was billing CPT code 99245  
20 based on time he spent face to face with Bermudez/Ramirez. He instead stated  
21 the following in his report to the insurance carrier: "In accordance with OMFS  
22 Guidelines this report is submitted using RBRVS codes 99245-93, high  
23 complexity evaluation of the injured worker with assistance of an interpreter,  
24 99358 to reflect 15 minutes for record review and 99080 x 7 to reflect 7 pages  
25 used." The vast majority of medical office visits in the United States are similarly  
26 coded based on Complexity Factors/Clinical Circumstances of the evaluation,  
27 not by direct face-to-face physician time. Complexity Factors are published by  
28 the American Medical Association and the California Medical Association. The

1 propriety of the billing cannot be determined without reference to Complexity  
2 Factors. These were deliberately or recklessly omitted by Williams, who  
3 subsequently testified he knew nothing about them and was unaware of the point  
4 system provided by the American Medical Association to appropriately code high  
5 complexity decision making. In any event, Farmers Insurance was fully informed  
6 of the circumstances underlying the charge, elected to down code the charge by  
7 one level to CPT 99244, and then further reduced the amount pursuant to the  
8 contract with Plaintiffs before paying \$137.60 for the service.

9 (q) The probable cause declaration states: "Martinovsky charged \$400.00 for  
10 his services." This statement is false. The \$400 is listed on the bill as a reasonable  
11 and customary charge, but the actual charge for a CPT 99245 is set by Workers'  
12 Compensation schedules, and then is discounted pursuant to the CorVel  
13 Corporation contract with Plaintiffs. Moreover, the carrier down coded.  
14 Ultimately, for the examination, which in fact took place as described in the  
15 documentation submitted, Plaintiffs were paid \$137.60.

16 (r) The probable cause declaration states: "The submission of payment to  
17 Farmers Insurance Company denoting CPT Codes 99080 and 99358 is in fact a  
18 fraudulent misrepresentation completed by Martinovsky for the sole purpose of  
19 defrauding the insurance industry." This statement is false. CPT Code 99080 was  
20 appropriately billed for each page of the 7-page consultation report  
21 Dr. Martinovsky prepared. CPT Code 99358 was appropriately billed for 15  
22 minutes of record review without direct face-to-face contact, which included  
23 review of the intake medical questionnaire, the MRI of the knee, Dr. Bodner's  
24 report, and the authorization form by insurance. These codes were selected by  
25 certified billing specialists, based on and allowed by the Workers Compensation  
26 Fee Schedule. Farmers Insurance did not reimburse Dr. Martinovsky for these  
27 codes even though the services were rendered.  
28



1 (s) The probable cause declaration states: "In further review of the bills  
2 submitted by Martinovsky I noted that he listed CPT code 99070 four times. The  
3 services rendered by Martinovsky were almost non-existent and certainly did not  
4 rise to the level of services billed for. Per the AMA 99070 is for services provided  
5 above those usually included in an office visit." That statement is false. CPT  
6 Code 99070 is used to account for dispensing of medications under Workers  
7 Compensation Official Medical Fee Schedule, and was billed four times to  
8 account for the four medications dispensed.

9 (t) The probable cause declaration states: "I know that the signed medical  
10 report that Martinovsky sent to Farmers Insurance Company for payment in the  
11 amount of \$2,283.00 for the nine and one half minutes of treatment, is in fact  
12 false." This statement is in fact false. The \$2,283.00 is the total of reasonable and  
13 customary fees for the services rendered *and* the the prescription medications  
14 actually dispensed. (There were two other small, separate billings, neither of  
15 which was paid.) Farmers Insurance Company pays pursuant to the workers  
16 compensation schedule and the CorVel Corporation contract amounts that are  
17 significantly less than the reasonable and customary charges stated on Plaintiffs'  
18 billing. After down coding and disallowing charges in Plaintiffs' billings for the  
19 evaluation and treatment of Bermudez/Ramirez, Farmers Insurance Company  
20 paid a total of \$1,001.84, broken down into payments of \$811.99 for the  
21 prescription medications actually dispensed and \$189.85 for services rendered  
22 during three office visits.

23 (u) The probable cause declaration states: "On 2/26/14 I went to the  
24 Walgreens Pharmacy . . . in the city of San Leandro. I contacted Pharmacist Jim  
25 Wang. I identified myself and asked him to provide me with the prices of the  
26 four drugs listed above. Wang quoted the following prices a subject would pay  
27 for each drug if they had no insurance. Tramadol/50mg-60- \$26.79,  
28 Naproxen/550mg-60-\$43.99, Omeprazole/20mg-30-\$24.63, Lidocaine patch 5%

1       \$290.00 per box. The total Martinovsky charged was \$1,645.02. For what could  
2       be considered close to identical, Walgreens charges \$675.41. Martinovsky's prices  
3       are approximately 240% higher than Walgreens. Martinovsky charged Farmers  
4       Insurance a total of \$1,645.02 for the four medications his staff dispensed." That  
5       statement is false and misleading. Dr. Martinovsky's office appropriately  
6       requested and obtained authorization from Farmers Insurance for the  
7       prescription medications provided. Reimbursement for each medication is based  
8       on the unique National Drug Code (NDC) assigned and is published on the  
9       California Department of Workers Compensation website. Medications  
10      dispensed by Plaintiffs were in different formulations, with different NDC  
11      numbers, than the ones Williams is quoting from Walgreens. For example, the  
12      Tramadol prescribed by Dr. Martinovsky was listed at 150 mg dosage in  
13      extended release formulation, appropriate for a patient complaining of around-  
14      the-clock pain, versus the 50 mg immediate release short acting Tramadol  
15      formulation for which Williams obtained a quote at Walgreens. The billing lists  
16      usual and customary charges, but the price is actually set by the Official Medical  
17      Fee Schedule published by California Department of Workers Compensation, as  
18      modified by the CorVel contract. Williams later testified that he did not check  
19      the Official Medical Fee Schedule prior to submitting the affidavit of probable  
20      cause. In fact he stated that he has never seen it. The medications were accurately  
21      listed with NDC numbers clearly stated on the medication bottles and forwarded  
22      to Farmers Insurance with billing pursuant to all applicable laws. Farmers  
23      Insurance approved the prescriptions and paid some at the scheduled prices and  
24      some payments below scheduled prices. Farmers Insurance did not pay for the  
25      Terocin patches. The total reimbursement for all medications dispensed to the  
26      patient was \$811.99, about 20 percent higher than the Walgreens estimate.

27      31.     When the falsehoods are deleted, and the relevant background added,  
28      what Williams' probable cause declaration describes, as relates to Plaintiffs, is a busy

1 medical doctor and medical clinic functioning within the legal milieu of California's  
2 Workers' Compensation system and the California Business & Professions Code.  
3 Calling something a "conspiracy" does not make it one.

4 32. Because of the deliberately and recklessly false and misleading statements,  
5 and omissions of material facts in the probable cause declaration submitted by  
6 Defendants, on March 13, 2014, the Alameda Superior Court issued warrants for the  
7 arrest of Dr. Martinovsky and for the search of Plaintiffs' clinic.

8 **E. The Arrest and the Search**

9 33. On Thursday, March 20, 2014, after 8:00 a.m., Dr. Martinovsky left his  
10 San Francisco home with his two young children to drop them off at school on his way  
11 to work. He had no way to know he was the target of an investigation. After dropping  
12 one child off, Dr. Martinovsky was pulled over by numerous officers, including  
13 Williams and Cubangbang. Williams ordered Dr. Martinovsky out of the car, gave  
14 *Miranda* admonitions and asked whether he wanted to "give a statement, chat with us."  
15 Dr. Martinovsky stated that he wanted to know what was going on. Williams said that  
16 based on his undercover operation, Dr. Martinovsky billed for "a substantial amount of  
17 medical services" that were never rendered and provided "controlled substances  
18 illegally." Dr. Martinovsky responded, accurately: "Everything I do is by the law."

19 34. Faced with Dr. Martinovsky's measured and truthful denials of  
20 wrongdoing, Williams ranted: "You're running a very large, multi-practice criminal  
21 organization in which . . . people sell patients to you for money, and then you treat  
22 those patients, allegedly, and then bill the insurance companies for tens of thousands of  
23 dollars for services you never did." "You use people like sheep and charge the insurance  
24 industry tens of thousands of dollars for services you never gave." "You and the people  
25 that conspire with you are going to be going to jail." "We're going to do everything we  
26 can to take your medical license away from you, which I'm sure we will, and do  
27 everything we can to put you out of business."  
28

1           35.     Dr. Martinovsky's wife was summoned to pick up the child.  
2 Dr. Martinovsky was handcuffed, put into a law enforcement vehicle and taken to  
3 Alameda County Jail, where he was booked on multiple drug and insurance-fraud  
4 charges. Dr. Martinovsky was released on \$71,000 bail after 10 hours in custody.

5           36.     Meanwhile, Defendants raided Plaintiffs' medical clinic while it was open  
6 for business, full of patients and employees. Patients were sent away and employees  
7 interrogated. Defendants defamed Dr. Martinovsky to his employees. Citing a few  
8 examples that wound up recorded, Williams said: "We've got Dr. Martinovsky cold. It's  
9 over with. He's in jail." "Validated" gang members come to the clinic for prescriptions  
10 for drugs, "reselling those drugs, and doing it on a fairly regular basis." "There's a scam  
11 going on here." "This is a criminal enterprise and everyone who works here is a co-  
12 conspirator." "Everything Dr. Martinovsky does is criminal." "There's people that  
13 come in here and sell cases." Williams told a nurse practitioner: "You function in a  
14 doctor's office where 99 percent of the people come in and get drugs," " I consider  
15 medications your office dispenses to patients garbage," and "There is a parallel  
16 investigation with the Feds for medicare fraud."

17           **F.     Plaintiffs' Injuries and Compensable Damages**

18           37.     Because of the search of the clinic, and the defamatory statements made  
19 by Defendants, word spread quickly through the regional medical community, legal  
20 professionals and insurance industry that Dr. Martinovsky had been arrested and  
21 charged with felony drug and insurance fraud charges. The effect was immediate and  
22 devastating for Plaintiffs' otherwise spotless reputation and growing medical practice,  
23 and caused severe emotional distress.

24           38.     As a result of the arrest, the California Medical Board, with the support of  
25 the County DA, sought to suspend Dr. Martinovsky's medical license, but the motion  
26 was denied.

27           39.     Ultimately the DA's case against Dr. Martinovsky in Alameda County was  
28 dismissed on venue grounds. A single felony count for violating Cal. Penal Code

1 § 550(a)(7) (knowingly submitting a claim for a health care benefit not used by, or on  
2 behalf of, the claimant) was filed in Contra Costa County Superior Court. During the  
3 preliminary hearing, which was not completed, the charge was reduced to a  
4 misdemeanor and is scheduled to be dismissed later this year pursuant to a pre-plea  
5 misdemeanor diversion order.

6 40. Plaintiffs have struggled through the difficulties caused by Defendants  
7 actions, which cost them key employees and innumerable professional and business  
8 opportunities. The clinic has remained open, however, and Plaintiffs continue to treat  
9 their patients, including many injured workers. Plaintiffs follow the same policies and  
10 procedures in treating patients, dispensing medications, and billing and coding today  
11 that were in place during the undercover operation.

12 41. As a direct and proximate result of the aforesaid acts and omissions, and  
13 the customs, practices, policies and decisions of the Defendants alleged in this  
14 complaint, Plaintiff Martinovsky suffered the humiliation of being falsely arrested in  
15 front of his wife and child. The charges, especially the drug related counts, caused him  
16 injury in his reputation, health and person. He suffered and will continue to suffer great  
17 emotional, mental and physical pain, suffering, anguish, fright, nervousness, anxiety,  
18 shock, humiliation, indignity, embarrassment, harm to reputation, and apprehension,  
19 which have caused, and will continue to cause, Plaintiff Martinovsky to sustain general  
20 damages in a sum to be determined at trial.

21 42. As a further direct and proximate result of the aforesaid acts, omissions,  
22 customs, practices, policies and decisions of the defendants, Plaintiffs suffered past and  
23 future losses of income which have caused Plaintiffs to sustain economic damages in a  
24 sum to be determined at trial.

25 43. As a further direct and proximate result of the aforesaid acts, omissions,  
26 customs, practices, policies and decisions of the defendants, Plaintiffs incurred legal,  
27 medical and other expenses, and will incur future medical and other expenses, which  
28 have caused Plaintiffs to sustain damages in a sum to be determined at trial.

1 44. Plaintiff Martinovsky now has a professionally damaging criminal history  
2 consisting of this arrest for multiple felonies, including drug offenses.

3 **FIRST CLAIM FOR RELIEF**

4 **Deprivation of Civil Rights – 42 U.S.C. § 1983**

5 **Individual Liability**

6 45. Defendants, while acting under color of law, deprived Plaintiffs of rights  
7 secured under the Fourth and Fourteenth Amendments to the United States  
8 Constitution, including, but not limited to, each of the following particulars:

9 (a) Submitting an application for arrest and search warrants for Plaintiffs  
10 without exercising reasonable judgment that probable cause existed;

11 (b) Deliberately and recklessly including falsehoods and omitting material  
12 facts that compromised the judgment of the issuing magistrate;

13 (c) Preparing false reports and lying to the prosecuting attorneys to cause the  
14 filing of false and malicious criminal charges, including specious drug offenses,  
15 against Dr. Martinovsky;

16 (d) Arresting Dr. Martinovsky without a valid warrant or probable cause;

17 (e) Searching Plaintiffs' medical clinic without a valid warrant or probable  
18 cause and in an unreasonable manner;

19 (f) Defaming Plaintiffs following the illegal arrest and search ("Defamation  
20 Plus"); and

21 (g) Causing Plaintiff to be prosecuted, and to have to undergo a license  
22 suspension hearing, based on falsified reports and evidence.

23 46. The above acts and omissions, carried out under color of law, have  
24 no justification, and constitute a gross abuse of governmental authority and power,  
25 shock the conscience, are fundamentally unfair, arbitrary and oppressive, and unrelated  
26 to any activity in which governmental officers may appropriately and legally undertake  
27 in the course of protecting persons or property, or ensuring civil order. The above acts  
28 and omissions were consciously chosen from among various alternatives.

1 47. As a direct and proximate result of the aforesaid acts, omissions, customs,  
2 practices, policies and decisions of the aforementioned defendants, Plaintiffs were  
3 damaged as alleged above.

4 48. The above mentioned individually named and Doe defendants, acted  
5 under color of law, and both separately and in concert. The aforementioned acts of  
6 those defendants, and each of them, were willful, wanton, malicious and oppressive,  
7 with reckless disregard or with deliberate indifference and with the intent to deprive  
8 Dr. Martinovsky and his corporation of their constitutional rights and privileges, and  
9 did in fact violate the aforementioned rights and privileges, entitling Plaintiffs to  
10 exemplary and punitive damages in an amount to be proven at the trial of this matter.

11 **SECOND CLAIM FOR RELIEF**

12 **Deprivation of Civil Rights – 42 U.S.C. § 1983**

13 **Entity and Supervisory Liability**

14 (Against Defendants County and DA O’Malley)

15 49. In their supervision of so-called insurance fraud investigations against  
16 purported medical “mills” – clinics that service people who are making claims against  
17 insurance carriers – Defendants County of Alameda and District Attorney O’Malley  
18 have been compromised by political pressure and donations from insurance carriers.  
19 They do not treat both sides equally, but instead side with the insurance industry. In  
20 doing so, they act with deliberate indifference, and in conscious and reckless disregard  
21 to the safety, security and constitutional and statutory rights of Plaintiffs, including the  
22 right to be free from unreasonable searches and seizures under the Fourth Amendment,  
23 and the right to procedural and substantive due process and equal protection under the  
24 Fourteenth Amendment.

25 50. Defendants County and DA O’Malley have maintained, enforced,  
26 tolerated, ratified, permitted, acquiesced in, and/or applied, policies of allowing  
27 investigators like J.P. Williams, who lacks expertise in medicine, workers compensation  
28 and insurance, to submit warrants and make arrests based on technical issues involving



1 professional standards of care, among others, and allowed constitutional violations as  
2 alleged herein.

3 51. As a supervisor, DA O'Malley has set into motion, or failed to stop, a  
4 series of acts that caused the constitutional violations alleged herein. In particular, she  
5 or her subordinates allowed a busy doctor to be arrested on multiple, unprovable and  
6 wildly exaggerated felony charges, and for a clinic that treats hundreds of patients to be  
7 raided, abruptly disrupting the operations of a busy medical clinic, full of medical  
8 professionals and patients in need of medical care.

9 52. As a direct and proximate result of the aforesaid acts, omissions, customs,  
10 practices, policies and decisions of the aforementioned defendants, Plaintiffs were  
11 injured as alleged above.

12 **PRAYER**

13 WHEREFORE, Plaintiffs request relief as follows, and according to proof,  
14 against each defendant:

- 15 1. General and compensatory damages in an amount according to proof;
- 16 2. Special damages in an amount according to proof;
- 17 3. Exemplary and punitive damages against each individual and Doe  
18 defendant, not against the County of Alameda or the County of Alameda District  
19 Attorney in her official capacity, in an amount according to proof;
- 20 4. Costs of suit, including attorneys' fees, under 42 U.S.C. § 1988; and,
- 21 5. Such other relief as may be warranted or as is just and proper.

22  
23 Dated: January 20, 2016

THE LAW OFFICES OF JOHN BURTON  
HADDAD & SHERWIN

24  
25  
26 By:         /S/ John Burton          
27    John Burton  
28    Attorneys for Plaintiffs

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**DEMAND FOR JURY TRIAL**

Plaintiffs demands trial by jury.

Dated: January 20, 2016

**THE LAW OFFICES OF JOHN BURTON  
HADDAD & SHERWIN**

By:                         /S/ John Burton                          
                        John Burton  
                        Attorneys for Plaintiffs