

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
v.
JULIAN ESTRADA GARCIA,
dob 06/06/83;
ALEXANDER KIEV MARTINEZ,
dob 12/19/77;
Defendants

CT No. SCD255523

DA No. ADY526

INDICTMENT

PC296 DNA TEST STATUS SUMMARY

<u>Defendant</u>	<u>DNA Testing Requirements</u>
GARCIA, JULIAN ESTRADA	DNA sample has been previously provided
MARTINEZ, ALEXANDER KIEV	DNA sample required upon conviction

The Grand Jury of the County of San Diego, State of California, accuses the Defendant(s) of committing, in the County of San Diego, State of California, before the finding of this Indictment, the following crime(s):

CHARGES

COUNT 1 - OFFER, DELIVER, RECEIVE AND ACCEPT COMPENSATION FOR REFERRING CLIENTS/PATIENTS

On or about March 25, 2015, JULIAN ESTRADA GARCIA and ALEXANDER KIEV MARTINEZ did offer, deliver, receive and accept a rebate, refund, commission, preference, patronage, dividend, discount and other consideration whether in the form of money or otherwise, as compensation or inducement for referring clients or patients to perform or obtain services or benefits pursuant to the California Workers' Compensation law, in violation of LABOR CODE SECTION 3215.

COUNT 2 - OFFER, DELIVER, RECEIVE AND ACCEPT COMPENSATION FOR REFERRING CLIENTS/PATIENTS

On or about April 9, 2015, JULIAN ESTRADA GARCIA and ALEXANDER KIEV MARTINEZ did offer, deliver, receive and accept a rebate, refund, commission, preference, patronage, dividend, discount and other consideration whether in the form of money or otherwise, as compensation or inducement for referring clients or patients to perform or obtain services or benefits pursuant to the California Workers' Compensation law, in violation of LABOR CODE SECTION 3215.

CHARGES (cont'd)

COUNT 3 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between October 14, 2014 and November 27, 2015, JULIAN ESTRADA GARCIA and ALEXANDER KIEV MARTINEZ, did unlawfully conceal and knowingly fail to disclose the occurrence of, and knowingly assist and conspire with another person to conceal and knowingly fail to disclose the occurrence of, an event that affected a person's initial and continued right and entitlement to an insurance benefit and payment, and the amount of a benefit and payment to which the person was entitled (ACE Insurance - DME/hot/cold packs), in violation of PENAL CODE SECTION 550(b)(3).

COUNT 4 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between October 14, 2014 and November 27, 2015, JULIAN ESTRADA GARCIA and ALEXANDER KIEV MARTINEZ, did unlawfully conceal and knowingly fail to disclose the occurrence of, and knowingly assist and conspire with another person to conceal and knowingly fail to disclose the occurrence of, an event that affected a person's initial and continued right and entitlement to an insurance benefit and payment, and the amount of a benefit and payment to which the person was entitled (Amtrust Insurance - DME/hot/cold packs), in violation of PENAL CODE SECTION 550(b)(3).

COUNT 5 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between October 14, 2014 and November 27, 2015, JULIAN ESTRADA GARCIA and ALEXANDER KIEV MARTINEZ, did unlawfully conceal and knowingly fail to disclose the occurrence of, and knowingly assist and conspire with another person to conceal and knowingly fail to disclose the occurrence of, an event that affected a person's initial and continued right and entitlement to an insurance benefit and payment, and the amount of a benefit and payment to which the person was entitled (ESIS Insurance - DME/hot/cold packs), in violation of PENAL CODE SECTION 550(b)(3).

COUNT 6 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between October 14, 2014 and November 27, 2015, JULIAN ESTRADA GARCIA and ALEXANDER KIEV MARTINEZ, did unlawfully conceal and knowingly fail to disclose the occurrence of, and knowingly assist and conspire with another person to conceal and knowingly fail to disclose the occurrence of, an event that affected a person's initial and continued right and entitlement to an insurance benefit and payment, and the amount of a benefit and payment to which the person was entitled (Gallagher Bassett Insurance - DME/hot/cold packs), in violation of PENAL CODE SECTION 550(b)(3).

CHARGES (cont'd)

COUNT 7 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between October 14, 2014 and November 27, 2015, JULIAN ESTRADA GARCIA and ALEXANDER KIEV MARTINEZ, did unlawfully conceal and knowingly fail to disclose the occurrence of, and knowingly assist and conspire with another person to conceal and knowingly fail to disclose the occurrence of, an event that affected a person's initial and continued right and entitlement to an insurance benefit and payment, and the amount of a benefit and payment to which the person was entitled (ICW Insurance - DME/hot/cold packs), in violation of PENAL CODE SECTION 550(b)(3).

COUNT 8 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between October 14, 2014 and November 27, 2015, JULIAN ESTRADA GARCIA and ALEXANDER KIEV MARTINEZ, did unlawfully conceal and knowingly fail to disclose the occurrence of, and knowingly assist and conspire with another person to conceal and knowingly fail to disclose the occurrence of, an event that affected a person's initial and continued right and entitlement to an insurance benefit and payment, and the amount of a benefit and payment to which the person was entitled (Liberty Mutual Insurance - DME/hot/cold packs), in violation of PENAL CODE SECTION 550(b)(3).

COUNT 9 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between October 14, 2014 and November 27, 2015, JULIAN ESTRADA GARCIA and ALEXANDER KIEV MARTINEZ, did unlawfully conceal and knowingly fail to disclose the occurrence of, and knowingly assist and conspire with another person to conceal and knowingly fail to disclose the occurrence of, an event that affected a person's initial and continued right and entitlement to an insurance benefit and payment, and the amount of a benefit and payment to which the person was entitled (Preferred Employer Insurance - DME/hot/cold packs), in violation of PENAL CODE SECTION 550(b)(3).

COUNT 10 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between October 14, 2014 and November 27, 2015, JULIAN ESTRADA GARCIA and ALEXANDER KIEV MARTINEZ, did unlawfully conceal and knowingly fail to disclose the occurrence of, and knowingly assist and conspire with another person to conceal and knowingly fail to disclose the occurrence of, an event that affected a person's initial and continued right and entitlement to an insurance benefit and payment, and the amount of a benefit and payment to which the person was entitled (Sedgwick Insurance - DME/hot/cold packs), in violation of PENAL CODE SECTION 550(b)(3).

CHARGES (cont'd)

COUNT 11 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between October 14, 2014 and November 27, 2015, JULIAN ESTRADA GARCIA and ALEXANDER KIEV MARTINEZ, did unlawfully conceal and knowingly fail to disclose the occurrence of, and knowingly assist and conspire with another person to conceal and knowingly fail to disclose the occurrence of, an event that affected a person's initial and continued right and entitlement to an insurance benefit and payment, and the amount of a benefit and payment to which the person was entitled (Zenith Insurance - DME/hot/cold packs), in violation of PENAL CODE SECTION 550(b)(3).

COUNT 12 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between October 14, 2014 and November 27, 2015, JULIAN ESTRADA GARCIA and ALEXANDER KIEV MARTINEZ, did unlawfully conceal and knowingly fail to disclose the occurrence of, and knowingly assist and conspire with another person to conceal and knowingly fail to disclose the occurrence of, an event that affected a person's initial and continued right and entitlement to an insurance benefit and payment, and the amount of a benefit and payment to which the person was entitled (Zurich Insurance - DME/hot/cold packs) in violation of PENAL CODE SECTION 550(b)(3).

THIS INDICTMENT, NUMBERED SCD255523, CONSISTS OF 12 COUNTS.

"A TRUE BILL"

Bonnie M. Dumanis

District Attorney, County of San Diego, State of California

Foreman of the Grand Jury

Deputy District Attorney

DATE: _____

DATE: _____

✓

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO		For Court Use Only
PEOPLE vs <u>JULIAN ESTRADA GARCIA</u>	Defendant	SAN OCT 19 2013
PLEA OF GUILTY/NO CONTEST - FELONY		COURT Number: <u>330-256523</u> F/A Number: <u>AD4526</u>

I, the defendant in the above-entitled case, in support of my plea of Guilty/No Contest, personally declare as follows:

1. Of those charges now filed against me in this case, I plead GUILTY to the following offenses and admit the enhancements, allegations and prior convictions as follows: Ia

COUNT	CHARGE	ENHANCEMENT/ALLEGATION
1	<u>Labor Code § 3215 - Receiving Compensation for referral of patients</u>	Ø
3	<u>Penal Code § 551(b)(3) - Concealment of Fact Affecting Insurance Claims</u>	Ø
PRIORS: (LIST ALLEGATION SECTION, CONVICTION DATE, COUNTY, CASE NUMBER, AND CHARGE)		
<u>NA</u>		

2. I have not been induced to enter this plea by any promise or representation of any kind, except: (State any agreement with the District Attorney.) Jg
DISMISS BALANCE - RECOMMEND CONCURRENT TIME WITH USDC Case No 15CR 2820 GAS; DEFENDANT FORGITS ANY LIENS IN WORKERS COMP. CASES FOR HOT/COLD PACKS

- 3. I am entering my plea freely and voluntarily, without fear or threat to me or anyone closely related to me. Jg
- 4. I understand that a plea of No Contest is the same as a plea of Guilty for all purposes. Jg
- 5. I am sober and my judgment is not impaired. I have not consumed any drug, alcohol or narcotic within the past 24 hours. Jg

CONSTITUTIONAL RIGHTS

6a. I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer or the Court will appoint a lawyer for me if I cannot afford one. Jg

I understand that as to all charges, allegations and prior convictions filed against me, and as to any facts that may be used to increase my sentence, now or in the future, I also have the following constitutional rights, which I now give up to enter my plea of guilty/no contest:

- 6b. I have the right to a speedy and public trial by jury. I now give up this right. Jg
- 6c. I have the right to confront and cross-examine all the witnesses against me. I now give up this right. Jg
- 6d. I have the right to remain silent (unless I choose to testify on my own behalf). I now give up this right. Jg
- 6e. I have the right to present evidence in my behalf and to have the court subpoena my witnesses at no cost to me. I now give up this right. Jg

Defendant:

JULIAN ESTRADA GARCIA

CASE NUMBER:

SD 255523

CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST

7a. I understand that I may receive this maximum punishment as a result of my plea: 5 1/2 years imprisonment or imprisonment plus a term of mandatory supervision; \$ 20,000 fine; and 5 years parole or post-release community supervision, with return to custody for every violation of a condition thereof. If I am not sentenced to imprisonment, I may be granted probation for a period up to 5 years or the maximum term of imprisonment, whichever is greater. As conditions of probation I may be given up to a year in jail custody, plus the fine, and any other conditions deemed reasonable by the Court. I understand that if I violate any condition of probation I can be sentenced to imprisonment for the maximum term as stated above.

7b. I understand that I must pay a restitution fine (\$200 - \$10,000), that I will also be subject to a suspended fine in the same amount, and that I must pay full restitution to all victims.

7c. I understand that my conviction in this case will be a serious/violent felony ("strike") resulting in mandatory denial of probation, substantially increased penalties, and a term in State Prison in any future felony case.

7d. I understand that if I am not a U.S. citizen, this plea of Guilty/No Contest may result in my removal/deportation, exclusion from admission to the U.S. and denial of naturalization. Additionally, if this plea is to an "Aggravated Felony" listed on the back of this form, then I will be deported, excluded from admission to the U.S., and denied naturalization.

7a. I understand that my plea of Guilty or No Contest in this case could result in revocation of my probation, mandatory supervision, parole or post-release supervision in other cases, and consecutive sentences.

7f. My attorney has explained to me that other possible consequences of this plea may be: (Circle applicable consequences.)

- (1) Consecutive sentences
- (2) Loss of driving privileges
- (3) Commitment to Youth Authority
- (4) Lifetime registration as an arson / sex offender
- (5) Registration as a narcotic / gang offender
- (6) Cannot possess firearms or ammunition
- (7) Blood test and saliva sample
- (8) Priorable (increased punishment for future offenses)

- (9) Prison prior
- (10) Mandatory Imprisonment
- (11) Mandatory State Prison
- (12) Presumptive imprisonment
- (13) Presumptive State Prison
- (14) Sexually Violent Predator Law
- (15) Possible/Mandatory hormone suppression treatment
- (16) Reduced conduct/work credits

- a. Limited local credits (290/serious/prior)
- b. Violent Felony (No credit or max. 15%)
- c. Prior Strike(s) (No credit to max. 20%)
- d. Murder on/after 6/3/98 (No credit)

- (17) Loss of public assistance
- (18) AIDS education program
- (19) Other: _____

8. (Appeal Rights) I give up my right to appeal the following: 1) denial of my 1538.5 motion, 2) issues related to strike priors (under PC sections 687(b)-(l) and 1170.12), and 3) any sentence stipulated herein.

9. (Harvey Waiver) The sentencing judge may consider my prior criminal history and the entire factual background of the case, including any unfiled, dismissed or stricken charges or allegations or cases when granting probation, ordering restitution or imposing sentence.

10. (Blakely waiver) I understand that as to any fact in aggravation that may be used to increase my sentence on any count or allegation to the upper or maximum term provided by law, I have the constitutional rights listed in paragraphs 6b-6e. I now give up those rights and agree that the sentencing judge may determine the existence or non-existence of any fact in aggravation, either at the initial sentencing or at any future sentencing in the event my probation is revoked.

11. (Cruz Waiver) Negotiated Disposition pursuant to PC 1192.5: I understand that if pending sentencing I am arrested for or commit another crime, violate any condition of my release, or willfully fail to appear for my probation interview or my sentencing hearing, the sentence portion of this agreement will be cancelled. I will be sentenced unconditionally, and I will not be allowed to withdraw my guilty/no contest plea(s).

12. (Arbuckle Waiver) I give up my right to be sentenced by the judge who accepts this plea.

13. (Probation Report) I give up my right to a full probation report before sentencing.

Defendant: Julian Estrada GARCIA CASE NUMBER: SCD 255523

14. (Evidence Disposal Waiver) I give up my interest in all non-biological property/evidence impounded during the investigation of this case except cell phone, red house and acknowledge that if I listed any property here, I must also file a claim with the impounding agency within 60 days after pronouncement of judgment or my ability to make a claim will expire. [Signature]

PLEA

15. I now plead Guilty No Contest and admit the charges, convictions and allegations described in paragraph #1, above. I admit that on the dates charged, I: (Describe facts as to each charge and allegation)
CH1 Offered a rebate of money as inducement for referral of patients to perform services pursuant to the California Workers Compensation Law. [Signature]

CH2 Unlawfully concealed & knowingly assisted another person to conceal an event that affects a persons initial & continued right entitlement to benefits (ie Workers Comp claims for hospital pads)

16. I declare under penalty of perjury that I have read, understood, and initialed each item above and any attached addendum, and everything on the form and any attached addendum is true and correct. [Signature]

Dated: 10/19/2016 Defendant's Signature [Signature]

Defendant's Address: 3251 AITA DR
National city Street CA 91950
City State Zip

Telephone Number: (619) 994-6947

Defendant's Right Thumb Print

ATTORNEY'S STATEMENT

I, the attorney for the defendant in the above-entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges and possible defenses with the defendant, and the consequences of this plea, including any immigration consequences. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his/her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Dated: 10/19/16 Victor Torres Attorney for Defendant (Signature)
(Print Name) (Circle one: PD / APD / OAC / RETAINED)

INTERPRETER'S STATEMENT (If Applicable)

I, the sworn _____ language interpreter in this proceeding, truly translated for the defendant the entire contents of this form and any attached addendum. The defendant indicated understanding of the contents of this form and any addendum and then initialed and signed the form and any addendum.

Dated: _____ (Print Name) Court Interpreter (Signature)

PROSECUTOR'S STATEMENT

The People of the State of California, plaintiff, by its attorney, the District Attorney for the County of San Diego, concurs with the defendant's plea of Guilty/No Contest as set forth above.

Dated: 10/19/16 JOHN PHILPOTT Deputy District Attorney (Signature)
(Print Name)

COURT'S FINDING AND ORDER

The Court, having questioned the defendant and defendant's attorney concerning the defendant's plea of Guilty/No Contest and admissions of the prior convictions and allegations, if any, finds that: The defendant understands and voluntarily and intelligently waives his/her constitutional rights; the defendant's plea and admissions are freely and voluntarily made; the defendant understands the nature of the charges and the consequences of the plea and admissions; and there is a factual basis for same. The Court accepts the defendant's plea and admissions, and the defendant is convicted thereby.

Dated: OCT 19 2016 Eugenia Eyherabide Judge of the Superior Court
(Signature)

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CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY _____ DEPUTY

SEALED
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

June 2014 Grand Jury

15 CR 2820 BAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

JULIAN GARCIA,

Defendant.

Case No. _____

I N D I C T M E N T

Title 18, U.S.C., Sec. 371 -
Conspiracy to Commit Honest
Services Mail Fraud, Mail Fraud
and Violate Travel Act; Title 18,
U.S.C., Secs. 1341 and 1346 -
Honest Services Mail Fraud;
Title 18, U.S.C.,
Sec. 1952(a)(1)(A) and (a)(3)(A) -
Travel Act; Title 18, U.S.C.,
Sec. 2 - Aiding and Abetting;
Title 18, U.S.C.,
Sec. 981(a)(1)(C), and Title 28,
U.S.C., Sec. 2461(c) - Criminal
Forfeiture

The grand jury charges:

INTRODUCTORY ALLEGATIONS

At all times pertinent to this Indictment:

1. Defendant JULIAN GARCIA was a provider of durable medical equipment ("DME") licensed by the State of California to sell or rent such equipment to medical practitioners, including chiropractors.
2. Hot/cold packs, also known as hot/cold therapy units, are used to treat swelling and injuries and operate via a reservoir holding hot or cold water, which is continuously circulated through tubes and pads affixed to a patient's body.

1 which is "reasonably required to cure or relieve the injured worker
2 from the effects of his or her injury."

3 7. California law, including but not limited to the California
4 Business and Professions Code, the California Insurance Code, and the
5 California Labor Code, prohibits the offering, delivering, soliciting,
6 or receiving of anything of value in return for referring a patient
7 for DME.

8 Count 1

9 **CONSPIRACY TO COMMIT HONEST SERVICES MAIL FRAUD,
10 MAIL FRAUD AND VIOLATE THE TRAVEL ACT, 18 USC § 371**

11 8. Paragraphs 1 through 7 of this Indictment are realleged and
12 incorporated by reference.

13 9. Beginning on a date unknown and continuing through at least
14 August 2015, within the Southern District of California and elsewhere,
15 defendant JULIAN GARCIA did knowingly and intentionally conspire with
16 others known and unknown to:

17 a. commit Honest Services Mail Fraud, that is, knowingly and
18 with the intent to defraud, devise and participate in a material
19 scheme to defraud and to deprive patients of the intangible right to
20 Dr. A's honest services, and cause mailings in furtherance of the
21 scheme, in violation of Title 18, United States Code, Sections 1341
22 and 1346.

23 b. commit Mail Fraud, that was, knowingly and with the intent
24 to defraud, devise and participate in a material scheme to defraud,
25 and to obtain money and property, by means of materially false and
26 fraudulent pretenses, representations, promises, and omissions and
27 concealments of material facts, and cause mailings in furtherance of
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1 the scheme, in violation of Title 18, United States Code,
2 Section 1341; and

3 c. use and cause to be used facilities in interstate commerce
4 with intent to promote, manage, establish, carry on, distribute the
5 proceeds of, and facilitate the promotion, management, establishment,
6 carrying on, and distribution of the proceeds of an unlawful activity,
7 that is, bribery in violation of California Labor Code Sections 139.3,
8 139.32, and 3215, California Business and Professions Code Section
9 650, and California Insurance Code Section 750 and, thereafter, to
10 promote and attempt to perform acts to promote, manage, establish,
11 carry on, distribute the proceeds of, and facilitate the promotion,
12 management, establishment, carrying on, and distribution of the
13 proceeds of such unlawful activity, in violation of Title 18, United
14 States Code, Section 1952(a)(1)(A) and (a)(3)(A).

15 **FRAUDULENT PURPOSE**

16 10. It was the purpose of the conspiracy to fraudulently obtain
17 money from CWCS insurers by submitting claims for DME that were
18 secured through a pattern of bribes paid to Dr. A and those acting
19 with him and on his behalf, in exchange for the referral of patients
20 for DME to a particular provider, which was a violation of the Dr. A's
21 fiduciary duty to his patients and which defendant JULIAN GARCIA knew
22 to be unlawful under California law.

23 **MANNER AND MEANS**

24 11. The conspirators, including defendant JULIAN GARCIA, used
25 the following manner and means in pursuit of their fraudulent purpose:

26 a. Knowing that receiving a per-patient referral fee was
27 unlawful, defendant JULIAN GARCIA offered to pay Dr. A and others to
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1 a. On January 28, 2015, GARCIA sent a text message to
2 Dr. A arranging a meeting for the same day to discuss the referral of
3 patients to receive hot/cold packs in exchange for kickbacks.

4 b. On January 28, 2015, GARCIA met Dr. A and offered to
5 pay \$50 for each patient referred for receipt of hot/cold packs.

6 c. On March 18, 2015, GARCIA spoke with Dr. A via cellular
7 telephone and discussed the status of hot/cold packs being shipped to
8 patients referred to GARCIA in exchange for kickbacks.

9 d. On March 25, 2015, GARCIA paid Dr. A \$5,000 cash in
10 kickbacks for patients referred to GARCIA for receipt of hot/cold
11 packs.

12 e. On April 6, 2015, GARCIA sent a text message to Dr. A
13 requesting to meet on April 9, 2015 so GARCIA could provide Dr. A an
14 additional kickback payment.

15 f. On April 9, 2015, GARCIA gave Dr. A \$5,000 cash in
16 kickbacks for patients referred to GARCIA for receipt of hot/cold
17 packs.

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

19 Counts 2-11

20 **HONEST SERVICES MAIL FRAUD, 18 U.S.C. §§ 1341, 1346 AND 2**

21 13. Paragraphs 1 through 7 of this Indictment are realleged and
22 incorporated by reference.

23 14. Beginning on a date unknown and continuing through at least
24 August 2015, within the Southern District of California and elsewhere,
25 defendant JULIAN GARCIA knowingly and with the intent to defraud,
26 devised a material scheme to defraud, that is, to deprive patients of
27 their intangible right to Dr. A's honest services.

1 15. Paragraphs 10 through 12 of this Indictment are realleged
2 and incorporated by reference as more fully describing the scheme to
3 defraud, that is, to deprive patients of their intangible right to
4 Dr. A's honest services.

5 16. On or about the dates below, within the Southern District of
6 California and elsewhere, defendant JULIAN GARCIA and others, for the
7 purpose of executing the aforesaid scheme, knowingly caused hot/cold
8 packs to be placed in a post office and authorized depository for mail
9 matters to be delivered by the United States Postal Service and by
10 private commercial carrier:

Count	Date	Patient Name
2	December 9, 2014	A. N.
3	February 15, 2015	J. S.
4	April 20, 2015	M. C.
5	April 20, 2015	R. E.
6	April 20, 2015	S. G.
7	April 20, 2015	R. M.
8	April 20, 2015	R. N.
9	April 20, 2015	C. A.
10	May 11, 2015	J. A.
11	May 11, 2015	A. C.

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

21 Counts 12-14

22 TRAVEL ACT

23 18 USC §§ 1952(a)(1)(A), (a)(3)(A) AND 2

24 17. The allegations contained in paragraphs 1 through 7 are
25 realleged and incorporated by reference.

26 18. Beginning on date unknown and continuing through at least
27 August 2015, within the Southern District of California and elsewhere,
28 defendant JULIAN GARCIA knowingly used and caused to be used
facilities in interstate commerce with intent to promote, manage,

1 establish, carry on, distribute the proceeds of, and facilitate the
 2 promotion, management, establishment, carrying on, and distribution of
 3 the proceeds of an unlawful activity, that is, bribery in violation of
 4 California Labor Code Sections 139.3, 139.32, and 3215, California
 5 Business and Professions Code Section 650, and California Insurance
 6 Code Section 750 and, thereafter, to promote and attempt to perform
 7 acts to promote, manage, establish, carry on, distribute the proceeds
 8 of, and facilitate the promotion, management, establishment, carrying
 9 on, and distribution of the proceeds of such unlawful activity as
 10 follows:

Count	Date	Use of Facility in Interstate Commerce	Acts Performed Thereafter
12	January 28, 2015	GARCIA sent a text message to Dr. A arranging a meeting to discuss the referral of patients to receive hot/cold packs in exchange for kickbacks.	On January 28, 2015, GARCIA met Dr. A and offered to pay \$50 for each patient referred for receipt of hot/cold packs.
13	March 18, 2015	GARCIA spoke with Dr. A via cellular telephone and discussed the status of hot/cold packs being shipped to patients referred to GARCIA in exchange for kickbacks.	On March 25, 2015, GARCIA paid Dr. A \$5,000 cash as a kickback for patients referred to GARCIA for receipt of hot/cold packs.
14	April 6, 2015	GARCIA sent a text message to Dr. A requesting to meet on April 9, 2015 so GARCIA could provide Dr. A an additional kickback payment.	On April 9, 2015, GARCIA gave Dr. A \$5,000 cash in kickbacks for patients referred to GARCIA for receipt of hot/cold packs.

25 All in violation of Title 18, United States Code,
 26 Sections 1952(a)(1)(A), (a)(3)(A) and 2.

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FORFEITURE ALLEGATION

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2 19. Paragraphs 1 through 18 of this Indictment are realleged and
3 incorporated as if fully set forth herein for the purpose of
4 alleging forfeiture pursuant to Title 18, United States Code,
5 Section 981(a)(1)(C), and Title 28, United States Code,
6 Section 2461(c).

7 20. Upon conviction of the offense of Conspiracy as alleged in
8 Count 1, Mail Fraud as alleged in Counts 2 through 11, and violations
9 of the Travel Act as alleged in Counts 12 through 14, defendant JULIAN
10 GARCIA shall forfeit to the United States all right, title, and
11 interest in any property, real or personal, that constitutes or is
12 derived from proceeds traceable to a violation of such offenses,
13 including a sum of money equal to the total amount of gross proceeds
14 derived, directly or indirectly, from such offenses.

15 21. If any of the above described forfeitable property, as a
16 result of any act or omission of defendant JULIAN GARCIA: (a) cannot
17 be located upon the exercise of due diligence; (b) has been
18 transferred or sold to, or deposited with, a third party; (c) has been
19 placed beyond the jurisdiction of the Court; (d) has been
20 substantially diminished in value; or (e) has been commingled with
21 other property which cannot be divided without difficulty;

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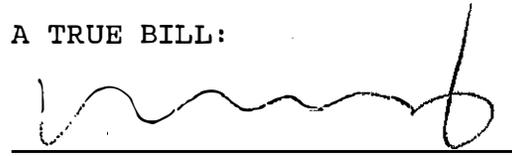
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1 it is the intent of the United States, pursuant to Title 21, United
2 States Code, Section 853(p) and Title 18, United States Code,
3 Section 982(b), to seek forfeiture of any other property of defendant
4 JULIAN GARCIA up to the value of the forfeitable property described
5 above.

6 All pursuant to Title 18, United States Code, Section 981(a)(1)(C),
7 and Title 28, United States Code, Section 2461(c).

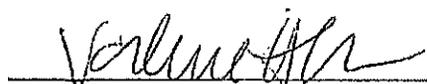
8 DATED: November 5, 2015.

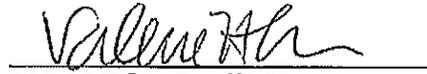
9 A TRUE BILL:

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11 Foreperson

12 LAURA E. DUFFY
13 United States Attorney

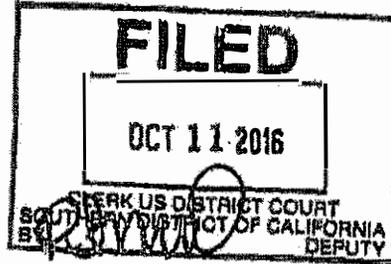
14
15 By: 
16 VALERIE H. CHU
17 Assistant U.S. Attorney

18 By: 
19 CAROLINE P. HAN
20 Assistant U.S. Attorney

21 By: 
22 FRED A. SHEPPARD
23 Assistant U.S. Attorney

24
25
26
27
28

ORIGINAL



1 LAURA E. DUFFY
 United States Attorney
 2 FRED SHEPPARD
 Assistant United States Attorney
 California Bar No. 250781
 3 VALERIE H. CHU
 Assistant United States Attorney
 California Bar No. 241709
 4 CAROLINE P. HAN
 Assistant United States Attorney
 California Bar No. 250301
 5 Federal Office Building
 6 880 Front Street, Room 6293
 7 San Diego, California 92101-8893
 8 Attorneys for United States of America
 9

10 UNITED STATES DISTRICT COURT
 11 SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

Case No. 15CR2820-BAS

13 Plaintiff,

14 v.

PLEA AGREEMENT

15 JULIAN GARCIA.

16 Defendants.
 17

18 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF
 19 AMERICA, through its counsel, Laura E. Duffy, United States Attorney, and Fred
 20 Sheppard, Valerie H. Chu and Caroline P. Han, Assistant United States Attorneys, and
 21 defendant JULIAN GARCIA, with the advice and consent of Victor Torres, counsel for
 22 Defendant, as follows:

23 I

24 THE PLEA

25 Defendant agrees to waive Indictment and plead guilty to a Superseding
 26 Information charging Conspiracy to Commit Honest Services Mail Fraud and Health
 27 Care Fraud, in violation of 18 U.S.C. § 1349.
 28

Def. Initials SG

1 In exchange, the United States agrees to (1) not bring any additional criminal
2 charges against Defendant for conduct outlined in the "Factual Basis" section of this plea
3 agreement and (2) move to dismiss the indictment filed in this matter without prejudice
4 when Defendant is sentenced unless Defendant breaches the plea agreement or the guilty
5 plea entered pursuant to this plea agreement is set aside for any reason. If Defendant
6 breaches this agreement or any of the guilty plea is set aside, section XII below shall
7 apply. Defendant expressly waives all constitutional and statutory defenses to the
8 initiation of any charges that the United States did not bring, or the reinstatement of
9 charged dismissed, pursuant to this agreement.

10 II

11 NATURE OF THE OFFENSE

12 A. ELEMENTS EXPLAINED

13 Defendant understands that the offense to which Defendant is pleading guilty has
14 the following elements:

15 Conspiracy [18 U.S.C. § 1349]

- 16 1. There was an agreement between two or more persons to commit
17 Honest Services Mail Fraud and Health Care Fraud; and
18 2. The defendant entered into the agreement knowing of at least one of its
19 objects and intending to help accomplish it.

20 Honest Services Mail Fraud [18 U.S.C. § 1341 and 1346]

- 21 1. The defendant devised or knowingly participated in a scheme to
22 deprive a victim of his or her right to a doctor's honest services;
23 2. The scheme consisted of soliciting and facilitating the receipt of
24 kickback payments from suppliers of health-care services and products
25 to be paid to the doctor in exchange for referrals;
26 3. The doctor, as a healthcare professional, owed a fiduciary duty to the
27 victim;

1. The defendant acted with the intent to defraud by depriving the victim of his or her right to the doctor's honest services;
2. The defendant's act was material; that is, it had a natural tendency to influence, or was capable of influencing, a person's acts; and
3. The defendant used, or caused someone to use, the mails to carry out or to attempt to carry out the scheme or plan.

Health Care Fraud [18 U.S.C. § 1347]

1. The defendant knowingly executed, or attempted to execute, a scheme or artifice to defraud a health-care benefit program, or to obtain money or property owned by, or under the custody or control of, a health-care benefit program by means of false or fraudulent pretenses, representations, or promises.
2. The false or fraudulent pretenses, representations, or promises related to a material fact.
3. The defendant acted willfully and intended to defraud.
4. The defendant did so in connection with the delivery of or payment for health-care benefits, items, or services.

B. ELEMENTS UNDERSTOOD AND ADMITTED

Defendant has fully discussed the facts of this case with defense counsel and agrees that he has committed each of the elements of the crime charged. Defendant further admits that there is a factual basis for his guilty plea. Specifically, Defendant admits:

1. The California Workers' Compensation System ("CWCS") required that employers in California provide workers' compensation benefits to their employees for qualifying injuries sustained in the course of their employment. CWCS insurers were private plans, affecting commerce, under which medical benefits, items and services were provided to individuals, and therefore were "health care benefit programs" under 18 U.S.C. § 24(b).

1 2. Beginning on a date unknown and continuing through at least August 2015,
2 within the Southern District of California and elsewhere. Defendant knowingly and
3 intentionally conspired with others to commit Honest Services Mail Fraud, in violation of
4 Title 18, United States Code, Sections 1341 and 1346, and Health Care Fraud. In
5 violation of 18 U.S.C. § 1347.

6 3. It was the goal of the conspiracy to fraudulently obtain money from CWCS
7 insurers by submitting claims for medical goods and services that were secured through a
8 pattern of bribes and kickbacks to doctors, in exchange for their referral of patients to
9 particular providers controlled by co-conspirators.

10 4. From approximately March 2012 to March 2014, Defendant managed the
11 payments of unlawful kickback from Carlos Arguello (charged elsewhere), Fermin
12 Iglesias (charged elsewhere), and others to Dr. Steven Rigler (charged elsewhere), in
13 exchange for Dr. Rigler's referral of patients to companies designated by Arguello and
14 Iglesias. During this time, Defendant was not paid by Dr. Rigler, but received a
15 "stipend" from Arguello for Defendant's work brokering the referrals. As part of this
16 unlawful kickback arrangement, Arguello and Iglesias directed that Dr. Rigler's patients
17 be scheduled for ancillary services through MedEx (charged elsewhere), a company
18 controlled by Iglesias. In addition, Iglesias and Arguello directed that patients for whom
19 durable medical equipment was prescribed must be directed to another company owned
20 and controlled by Iglesias, which provided the equipment. Companies providing
21 ancillary services, such as Magnetic Resonance Imaging, that received patients through
22 MedEx as part of this scheme as well as Iglesias' durable medical equipment provider
23 submitted millions of dollars in claims to insurers. Iglesias, Arguello and Garcia ensured
24 that patients referred for treatment to Dr. Rigler were funneled to the specific providers in
25 order to receive money kickback payments from the ancillary service providers or
26 compensation directly from the insurance provider in the case of durable medical
27 equipment.

28
4
Def. Initials JG

1 5. From approximately March 2014 to October 2014, Defendant performed a
2 similar function managing unlawful per-patient kickback payments in exchange for
3 referrals by San Diego chiropractor Dr. J.C.

4 6. Beginning in approximately October 2014, Defendant stopped managing the
5 kickbacks paid by other providers to doctors, and himself became a provider of durable
6 medical equipment ("DME"), who was licensed by the State of California to sell or rent
7 such equipment to medical practitioners, including chiropractors.

8 7. Knowing that paying a per-patient referral fee was unlawful, Defendant
9 offered to pay doctors \$50 per patient referred to Defendant for hot/cold packs, a type of
10 DME.

11 8. Defendant and others agreed to conceal the true nature of the financial
12 relationship established to compensate the doctors for the referral of CWCS patients,
13 including paying kickbacks in cash, and avoiding making contracts and records involving
14 the payments.

15 9. Defendant and others sent, or caused to be sent, claims for reimbursement
16 via mail for providing hot/cold packs which had been procured through unlawful
17 kickback payments.

18 10. Defendant engaged in the same referral scheme with other doctors.
19 Defendant and others generated and submitted claims to insurers totaling over \$3.5
20 million dollars for providing hot/cold packs which were referred to Defendant due to
21 Defendant's payment of unlawful kickbacks.

22 11. Defendant further admits that each of the allegations at paragraphs 9-11, the
23 overt acts in paragraph 12, and the mailings, ^{referenced} described in paragraph 16 are true and ^{of the indictment} correct
24 correct and can be proven beyond a reasonable doubt. ^{in 15-cr-02820-}
^{BAS}

25 12. In particular, Defendant admits that on or about March 25, 2015, he gave Dr. ^(PH)
26 Rigler \$5,000 cash in consideration for patients Dr. Rigler had referred to Defendant for
27 hot/cold packs. On April 9, 2015, Defendant gave another \$5,000 cash to Dr. Rigler in
28 consideration for the referral of patients to Defendant for hot/cold packs.

Handwritten notes:
OG
of the indictment
in 15-cr-02820-
BAS

1 13. Defendant further agrees that the conspiracy involved the abuse of a position
2 of trust, in that the conspiracy offered doctors an incentive to recommend certain
3 providers in exchange for kickbacks, in violation of their fiduciary duties to their patients.

4 14. Defendant further agrees that the conspiracy involved sophisticated means,
5 in that the conspirators inserted intermediaries between the providers and the doctors and
6 used other means to conceal the true nature and source of the payments.

7 **III**

8 **PENALTIES**

9 Defendant understands that the crime to which he is pleading guilty carries the
10 following penalties:

- 11 A. a maximum 20 years in prison;
- 12 B. a maximum \$250,000 fine, or twice the gross gain or loss derived from the
13 offense;
- 14 C. a mandatory special assessment of \$100 per count; and
- 15 D. a term of supervised release of 3 years. Defendant understands that failure to
16 comply with any of the conditions of supervised release may result in
17 revocation of supervised release, requiring defendant to serve in prison. upon
18 any such revocation, all or part of the statutory maximum term of supervised
19 release for the offense that resulted in such term of supervised release.
- 20 E. an order from the Court pursuant to 18 U.S.C. § 3663A that Defendant make
21 mandatory restitution to the victims of the offense of conviction, or the
22 estate(s) of the victims(s). Defendant understands that the Court shall also
23 order, if agreed to by the parties in this plea agreement, restitution to persons
24 other than the victims of the offense of conviction.
- 25 F. an order of forfeiture of any property, real or personal, which constitutes or is
26 derived from proceeds traceable to the offense.
- 27
- 28

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS

Defendant understands that his guilty plea waives the right to:

- A. Continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;
- B. A speedy and public trial by jury;
- C. The assistance of counsel at all stages of trial;
- D. Confront and cross-examine adverse witnesses;
- E. Testify and present evidence and to have witnesses testify on behalf of defendant; and,
- F. Not testify or have any adverse inferences drawn from the failure to testify.

Defendant knowingly and voluntarily waive any rights and defenses he may have under the Excessive Fines Clause of the Eighth Amendment to the United States Constitution to the forfeiture of property in this proceeding or any related civil proceeding.

V

DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

The United States represents that any information establishing the factual innocence of Defendant known to the undersigned prosecutor in this case has been turned over to Defendant. The United States will continue to provide such information establishing the factual innocence of Defendant.

Defendant understands that if this case proceeded to trial, the United States would be required to provide impeachment information relating to any informants or other witnesses. In addition, if Defendant raised an affirmative defense, the United States would be required to provide information in its possession that supports such a defense. Defendant acknowledges, however, that by pleading guilty Defendant will not be provided this information, if any, and Defendant also waives the right to this information.

1 Finally, Defendant agrees not to attempt to withdraw the guilty plea or to file a collateral
2 attack based on the existence of this information.

3 VI

4 **DEFENDANT'S REPRESENTATION THAT GUILTY**
5 **PLEA IS KNOWING AND VOLUNTARY**

6 Defendant represents that:

- 7 A. Defendant has had a full opportunity to discuss all the facts and
8 circumstances of this case with defense counsel and has a clear
9 understanding of the charges and the consequences of this plea. Defendant
10 understands that, by pleading guilty, defendant may be giving up, and
11 rendered ineligible to receive, valuable government benefits and civic rights,
12 such as the right to vote, the right to possess a firearm, the right to hold
13 office, and the right to serve on a jury. Defendant further understands that
14 the conviction in this case may subject defendant to various collateral
15 consequences, including but not limited to deportation, removal or other
16 adverse immigration consequences; revocation of probation, parole, or
17 supervised release in another case; debarment from government contracting;
18 and suspension or revocation of a professional license, as well as civil and
19 administrative liability, none of which will serve as grounds to withdraw
20 defendant's guilty plea.
- 21 B. No one has made any promises or offered any rewards in return for this
22 guilty plea, other than those contained in this agreement or otherwise
23 disclosed to the Court.
- 24 C. No one has threatened defendant or defendant's family to induce this guilty
25 plea.
- 26 D. Defendant is pleading guilty because in truth and in fact defendant is guilty
27 and for no other reason.

28 VII

AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF CALIFORNIA

This plea agreement is limited to the United States Attorney's Office for the
Southern District of California, and cannot bind any other federal, state or local

1 prosecuting, administrative, or regulatory authorities, although the Government will bring
2 this plea agreement to the attention of other authorities if requested by Defendant.

3
4 **VIII**

5 **APPLICABILITY OF SENTENCING GUIDELINES**

6 Defendant understands the sentence imposed will be based on the factors set forth
7 in 18 U.S.C. § 3553(a). Defendant understands further that in imposing the sentence, the
8 sentencing judge must consult the United States Sentencing Guidelines (Guidelines) and
9 take them into account. Defendant has discussed the Guidelines with defense counsel
10 and understands that the Guidelines are only advisory, not mandatory, and the Court may
11 impose a sentence more severe or less severe than otherwise applicable under the
12 Guidelines, up to the maximum in the statute of conviction. Defendant understands
13 further that his sentence cannot be determined until a presentence report has been
14 prepared by the U.S. Probation Office and both defense counsel and the Government
15 have had an opportunity to review and challenge the presentence report. Nothing in this
16 plea agreement shall be construed as limiting the Government's duty to provide complete
17 and accurate facts to the district court and the U.S. Probation Office.

18 **IX**

19 **SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

20 This plea agreement is made pursuant to Federal Rule of Criminal Procedure
21 11(c)(1)(B). Defendant understands that the sentence is within the sole discretion of the
22 sentencing judge. The Government has not made and will not make any representation as
23 to what sentence Defendant will receive. Defendant understands that the sentencing
24 judge may impose the maximum sentence provided by statute, and is also aware that any
25 estimate of the probable sentence by defense counsel is a prediction, not a promise, and is
26 not binding on the Court. Likewise, the recommendation made by the Government is not
27 binding on the Court, and it is uncertain at this time what Defendant's sentence will be.
28 Defendant also has been advised and understands that if the sentencing judge does not

1 follow any of parties' sentencing recommendations. Defendant nevertheless has no right
2 to withdraw his plea.

3 X

4 PARTIES' SENTENCING RECOMMENDATIONS

5 A. SENTENCING GUIDELINE CALCULATIONS

6 Although the parties understand that the Guidelines are only advisory and just one
7 of the factors the Court will consider under 18 U.S.C. § 3553(a) in imposing a sentence,
8 the United States and Defendant will jointly recommend the following Base Offense
9 Level, Specific Offense Characteristics, Adjustments and Departures:

- | | | |
|----|--|-----|
| 10 | 1. Base Offense Level [§ 2B1.1] | 7 |
| 11 | 2. Intended loss more than \$3.5 million | +18 |
| 12 | [§ 2B1.1(b)(1)(K)] | |
| 13 | 3. Sophisticated Means [§ 2B1.1(b)(10)(C)] | +2 |
| 14 | 4. Abuse of Position of Trust [§ 3B1.3] | +2 |
| 15 | 5. Acceptance of Responsibility [§ 3E1.1] | -3 |

16 B. ACCEPTANCE OF RESPONSIBILITY

17 Notwithstanding paragraph A.5 above, the USAO will not be obligated to
18 recommend any adjustment for Acceptance of Responsibility under U.S.S.G. §§ 3E1.1 if
19 the Defendant engages in conduct inconsistent with acceptance of responsibility including,
20 but not limited to, the following:

- 21 1. Fails to truthfully admit a complete factual basis as stated in the plea
- 22 at the time the plea is entered, or falsely denies, or makes a statement
- 23 inconsistent with, the factual basis set forth in this agreement;
- 24 2. Falsely denies prior criminal conduct or convictions;
- 25 3. Is untruthful with the Government, the Court or probation officer;
- 26 4. Materially breaches this plea agreement in any way; or
- 27 5. Contests or assists any third party in contesting the forfeiture of
- 28 property(ies) seized in connection with this case.

JG

1 C. FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS
2 INCLUDING THOSE UNDER 18 U.S.C. § 3553

3 The parties agree that Defendant may request or recommend additional downward
4 adjustments, departures, including criminal history departures under USSC § 4A1.3, or
5 sentence reductions under 18 U.S.C. § 3553, other than those related to the adjustments
6 set forth in Section X, paragraph A above. The Government will oppose any such
7 downward adjustments, departures and sentence reductions not set forth in Section X,
8 paragraph A above.

9 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

10 The parties have no agreement as to defendant's Criminal History Category.

11 E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

12 The parties agree that the facts in the "factual basis" paragraph of this agreement
13 are true, and may be considered as "relevant conduct" under USSG § 1B1.3 and as the
14 nature and circumstances of the offense under 18 U.S.C. § 3553(a)(1).

15 F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

16 The parties agree that the United States will recommend that Defendant be
17 sentenced within the advisory guideline range as calculated by the United States pursuant
18 to this agreement.

19 G. SPECIAL ASSESSMENT/FINE

20 1. Special Assessment.

21 The parties will jointly recommend that Defendant pay a special assessment in the
22 amount of \$100.00 per count of conviction in the federal case to be paid forthwith at the
23 time of sentencing. The special assessments shall be paid through the office of the Clerk
24 of the District Court by bank or cashier's check or money order made payable to the
25 "Clerk, United States District Court."

26 2. Fine.

27 The parties have no agreement as to any fine.

1 3. Restitution.

2 The parties do not recommend imposition of a restitution order in light of the
3 difficulty of determining the loss caused by Defendant's conduct to the victims. 18 USC
4 § 3553A(c)(3)(B). However, Defendant agrees to waive any claim for reimbursement
5 from a health insurance provider for any product or service ordered or provided from
6 2013, through 2015 inclusive. Defendant's waiver in this regard is as to him personally
7 as well as on behalf of any company or entity he owns, controls or in which he has an
8 interest.

9 4. Forfeiture

10 Defendant agrees to immediately withdraw any claims to properties directly or
11 indirectly related to the criminal conduct seized in connection with this case in any
12 pending administrative and civil forfeiture proceeding, and consents to the forfeiture of
13 all properties seized in connection with this case to the United States. Defendant agrees
14 to execute any and all documents requested by the United States to facilitate or complete
15 the forfeiture process(es). Defendant further agrees not to contest or to assist any other
16 person or entity in contesting the forfeiture of the property(ies) seized in connection with
17 this case.

18 Defendant further agrees that the criminal forfeiture money judgment imposed by
19 the Court will be (i) subject to immediate enforcement, and (ii) submitted to the Treasury
20 Offset Program so that any federal payment or transfer of returned property the
21 Defendant Iglesias receives may be offset and applied to the outstanding balance on the
22 forfeiture judgment.

23 Defendant further agrees to waive all constitutional and statutory challenges in any
24 manner (including direct appeal, habeas corpus, or any other means) to any forfeiture
25 carried out in accordance with this agreement on any grounds, including that the
26 forfeiture constitutes an excessive fine or punishment. Defendant agrees to take all steps
27 as requested by the United States to pass clear title to forfeitable assets to the United
28 States, and to testify truthfully in any judicial forfeiture proceeding.

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H. SUPERVISED RELEASE

If the Court imposes a term of supervised release, Defendant agrees that he will not later seek to reduce or terminate early the term of supervised release until he has served at least 2/3 of his term of supervised release and has fully paid and satisfied any special assessments, fine, criminal forfeiture judgment and restitution judgment.

XI

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

A. WAIVER OF RIGHT TO APPEAL CONVICTION

In exchange for the concessions by the United States in this plea agreement, Defendant waives, to the full extent of the laws, any right to appeal the conviction and sentence, including any lawful restitution order and forfeiture order.

B. WAIVER OF RIGHT TO COLLATERAL ATTACK

Defendant waives, to the full extent of the law, any right to collaterally attack the conviction and/or sentence, except for a post-conviction collateral attack based on a claim of ineffective assistance of counsel.

C. OBJECTIONS TO UNITED STATES' RECOMMENDATION

If Defendant believes the recommendation by the United States is not in accord with this plea agreement, Defendant will object at the time of sentencing; otherwise the objection will be deemed waived.

XII

BREACH OF THE PLEA AGREEMENT

A. MATERIAL BREACH OF PLEA AGREEMENT

Defendant acknowledges, understands, and agrees that if Defendant violates or fails to perform any of Defendant's obligations under this agreement, such violation or failure to perform will constitute a material breach of this agreement.

1 Defendant acknowledges, understands, and agrees further that the following non-
2 exhaustive list of conduct by Defendant's unquestionably constitutes a material breach of
3 this plea agreement:

- 4 1. Failing to plead guilty pursuant to this agreement;
- 5 2. Withdrawing the guilty plea or attempting to withdraw the guilty plea;
- 6 3. Failing to fully accept responsibility as established in Section X,
7 paragraph B. above;
- 8 4. Failing to appear in court;
- 9 5. Failing to abide by any lawful court order related to this case;
- 10 6. Appealing or collaterally attacking the sentence or conviction in
11 violation of Section XI of this plea agreement; or
- 12 7. Engaging in additional criminal conduct from the time of arrest until
13 the time of sentencing.
- 14

15 **B. CONSEQUENCES OF BREACH**

16 In the event of Defendant's material breach of this plea agreement. Defendant will
17 not be able to enforce any of its provisions, and the United States will be relieved of all
18 its obligations under this plea agreement. For example, the United States may pursue any
19 charges including those that were dismissed, promised to be dismissed, or not filed as a
20 result of this agreement (Defendant agrees that any statute of limitations relating to such
21 charges is tolled as of the date of this agreement; Defendant also waives any double
22 jeopardy defense to such charges). In addition, the United States may move to set aside
23 Defendant's guilty plea. Defendant may not withdraw his guilty plea based on the
24 United States' pursuit of remedies for Defendant's breach.

25 **XIII**

26 **COMPLETE WAIVER OF PLEA-DISCUSSION EXCLUSION RIGHTS**

1 In exchange for the United States' concessions in this agreement, Defendant agrees
2 that: (i) the stipulated factual basis statement in this agreement; (ii) any statements made
3 by Defendant, under oath, at the guilty plea hearing (before either a Magistrate Judge or a
4 District Judge); and (iii) any evidence derived from such statements, are admissible
5 against Defendant in the prosecution's case-in-chief and at any other stage of the
6 proceedings in any prosecution of or action against Defendant on the current charges
7 and/or any other charges that the United States may pursue against Defendant.
8 Additionally, Defendant knowingly, voluntarily, and intelligently waive any argument
9 under the United States Constitution, any statute, Federal Rule of Evidence 410, Federal
10 Rule of Criminal Procedure 11(f), and/or any other federal rule, that these statements or
11 any evidence derived from these statements should be suppressed or are inadmissible.
12 Defendant's waiver of the aforementioned rights is effective as soon as the parties sign
13 this agreement, and is not contingent upon the Court ultimately accepting Defendant's
14 guilty plea.

15 **XIV**

16 **ENTIRE AGREEMENT**

17 This plea agreement embodies the entire agreement between the parties and
18 supersedes any other agreement, written or oral.

19 **XV**

20 **MODIFICATION OF AGREEMENT MUST BE IN WRITING**

21 No modification of this plea agreement shall be effective unless in writing signed
22 by all parties.

23 **XVI**

24 **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

25 By signing this agreement, Defendant certifies that Defendant has read it,
26 Defendant has discussed the terms of this agreement with defense counsel and fully
27 understands its meaning and effect.

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XVII

DEFENDANT SATISFIED WITH COUNSEL

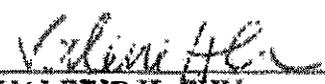
Defendant has consulted with counsel and is satisfied with counsel's representation. This is Defendant's independent opinion, and his counsel did not advise him about what to say in this regard.

LAURA E. DUFFY
United States Attorney

DATED

FRED A. SHEPPARD
Assistant U.S. Attorney

10/7/2016
DATED

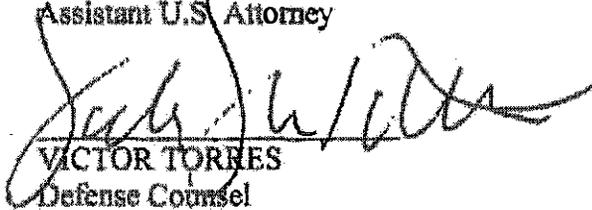


VALERIE H. CHU
Assistant U.S. Attorney

DATED

CAROLINE P. HAN
Assistant U.S. Attorney

10/11/16
DATED

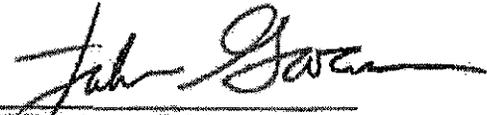


VICTOR TORRES
Defense Counsel

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IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I
SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE
"FACTUAL BASIS" SECTION ABOVE ARE TRUE.

10/5/16
DATED



JULIAN GARCIA
Defendant

1 **CERTIFICATE OF SERVICE BY MAIL**
2 (C.C.P. section 1013(a), 2015.5)

3
4 I am over the age of 18 years and not a party to the entitled action. My business address is
5 1515 Clay Street, 18th Floor, Oakland, California 94612.

6 I served the following documents:

- 7
- 8 • **NOTICE OF PROVIDER SUSPENSION-WORKERS' COMPENSATION**
 - 9 • **INDICTMENT IN *People of the State of California v. Julian Estrada Garcia* (CT No. SCD255523) – SUPERIOR COURT OF CALIFORNIA (SAN DIEGO COUNTY)**
 - 10 • **PLEA OF GUILTY/NO CONTEST – FELONY- (CT No. SCD255523) SUPERIOR COURT OF CALIFORNIA (SAN DIEGO COUNTY)**
 - 11 • **INDICTMENT IN *United States of America v. Julian Garcia* (Case No. 15 CR 2820 BAS) – U.S. DISTRICT COURT (SOUTHERN DISTRICT OF CALIFORNIA)**
 - 12 • **PLEA AGREEMENT IN *United States of America v. Julian Garcia* (Case No. 15 CR 2820 BAS) – U.S. DISTRICT COURT (SOUTHERN DISTRICT OF CALIFORNIA)**

13 on the following person(s) at the following address(es):

14 **Julian Garcia**
15 **3251 Alta Drive**
16 **National City, CA 91950**

17 The documents were served by the following means:

18 **(BY U.S. CERTIFIED MAIL)** I enclosed the documents in a sealed envelope or package
19 addressed to the person(s) at the address(es) listed above and:

20 Placed the envelope or package for collection and mailing, following our ordinary business
21 practices. I am readily familiar with the firm's practice for collection and processing correspondence
22 for mailing. Under that practice, on the same day that correspondence is placed for collection and
23 mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed
24 envelope or package with the postage fully prepaid.

25 I declare under penalty of perjury under the laws of State of California that the above is true
26 and correct.

27 Executed on March 15, 2017, at Oakland, California.

28 
CATHY FUJITA-LAM