

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO  
CENTRAL DIVISION

FILED  
2020 APR 7 PM 3:45  
CLERK  
SAN DIEGO, CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,  <p style="text-align: center;">v.</p> SCHLOMO SCHMUEL, <i>dob 09/13/65;</i>	v.	Plaintiff,          Defendant
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CT No. CD280827  
DA No. AEL959

COMPLAINT-FELONY

INFORMATION    Date: _____
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**PC296 DNA TEST STATUS SUMMARY**

Defendant	DNA Testing Requirements
SCHMUEL, SCHLOMO	DNA sample required upon conviction

**CHARGE SUMMARY**

Count	Charge	Issue Type	Sentence Range	Special Allegations	Allegation Effect
1	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		
2	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		
3	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		
4	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		
5	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		
6	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		
7	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		

## CHARGE SUMMARY (cont'd)

Count	Charge	Issue Type	Sentence Range	Special Allegations	Allegation Effect
8	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		
9	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		
10	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		
11	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		
12	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		
13	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		
14	PC550(b)(3) SCHMUEL, SCHLOMO	Felony	2-3-5		

PC1054.3

INFORMAL REQUEST FOR DISCOVERY

The undersigned, certifying upon information and belief, complains that in the County of San Diego, State of California, the Defendant(s) did commit the following crime(s):

### CHARGES

#### COUNT 1 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between June 1, 2015 and June 30, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Celene A.)

## CHARGES (cont'd)

### COUNT 2 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about June 15, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Juan C.)

### COUNT 3 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about June 16, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Raquel N.)

### COUNT 4 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about June 16, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Rosa M.M.)

### COUNT 5 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between June 1, 2015 and June 30, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Esteban C.)

### COUNT 6 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about June 16, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Bernardo M.)

## CHARGES (cont'd)

### COUNT 7 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between June 1, 2015 and June 30, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Dayid M.)

### COUNT 8 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between June 1, 2015 and June 30, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Cristobal O.M.)

### COUNT 9 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about June 16, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Marisol G.M.)

### COUNT 10 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between June 1, 2015 and June 30, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Silvia G.)

### COUNT 11 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about and between June 1, 2015 and June 30, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Marcela J.)

## CHARGES (cont'd)

### COUNT 12 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about June 16, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Elsa O.D.C.)

### COUNT 13 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about June 16, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Ricardo Z.M.)

### COUNT 14 - INSURANCE - CONCEAL EVENT AFFECTING CLAIM

On or about June 16, 2015, SCHLOMO SCHMUEL, 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, in violation of PENAL CODE SECTION 550(b)(3) (Octavio C.Z.)

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NOTICE: Any defendant named on this complaint who is on criminal probation in San Diego County is, by receiving this complaint, on notice that the evidence presented to the court at the preliminary hearing on this complaint is presented for a dual purpose: the People are seeking a holding order on the charges pursuant to Penal Code Section 872 and simultaneously, the People are seeking a revocation of the defendant's probation, on any and all such probation grants, utilizing the same evidence, at the preliminary hearing. Defenses to either or both procedures should be considered and presented as appropriate at the preliminary hearing.

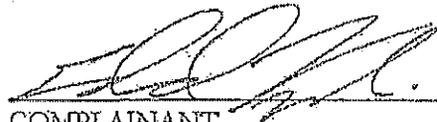
NOTICE: Any defendant named on this complaint who is on Mandatory Supervision in San Diego County is, by receiving this complaint, on notice that the evidence presented to the court at the preliminary hearing on this complaint is presented for a dual purpose: the People are seeking a holding order on the charges pursuant to Penal Code Section 872 and simultaneously, the People are seeking a revocation of the defendant's Mandatory Supervision pursuant to Penal Code Sections 1170(h)(5)(B) and 1203.2, on any and all such grants, utilizing the same evidence, at the preliminary hearing. Defense to either or both procedures should be considered and presented as appropriate at the preliminary hearing.

Pursuant to PENAL CODE SECTION 1054.5(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by PENAL CODE SECTION 1054.3.

Sheriff's records indicate that as of the booking date one or more defendants have not yet provided a DNA sample to the DOJ database. Pursuant to Penal Code Section 296(e), the court shall order collection of DNA from the defendant(s) if advised by the prosecuting attorney that a sample is required but has not been provided by the defendant. Pursuant to Penal Code sections 296/296.1, if not already required from a past conviction, any defendants who have not done so will be required to provide a sample upon conviction of this felony offense.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS COMPLAINT, CASE NUMBER CD280827, CONSISTS OF 14 COUNTS.

Executed at City of San Diego, County of San Diego, State of California, on March 7, 2019.

  
COMPLAINANT

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INFORMATION

SUMMER STEPHAN  
District Attorney  
County of San Diego  
State of California  
by:

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Date

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Deputy District Attorney

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO		<b>FILED</b> <small>For Court Use</small> <small>Clerk of the Superior Court</small> <b>AUG 06 2019</b> <b>By: S. Adam</b>
PEOPLE vs <u>Schlomo Schmuel</u> Defendant		
PLEA OF GUILTY/NO CONTEST - FELONY		COURT CASE NUMBER CD280827 DA CASE NUMBER AEL959

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 95 offenses and admit the enhancements, allegations and prior convictions as follows:

COUNT	CHARGE	ENHANCEMENT(S)/ALLEGATION(S) (List all for each count)
2	Penal Code 550(b)(3)	

PRIOR (SECTION NO.)	CONVICTION DATE	COUNTY	CASE NO.	CHARGE(S)

Additional count(s)/prior(s) listed on Plea of Guilty/No Contest-Felony Attachment Page (SDSC Form #CRM-012A).

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.)* 95  
 5 year lid on state case. State sentence to run concurrent with federal sentence. State sentence may be served in federal custody. (See attached: S. Schmuel's plea agreement in U.S. District Court (Southern Dist. CA) case # 19 CR3006 BAS, which is fully incorporated by reference herein.)

3. I am entering my plea freely and voluntarily, without fear or threat to me or anyone closely related to me. 95

4. I understand that a plea of No Contest is the same as a plea of Guilty for all purposes. X

5. I am sober and my judgment is not impaired. I have not consumed any drug, alcohol or narcotic within the past 24 hours. 95

**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. 95

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. 95

6c. I have the right to confront and cross-examine all the witnesses against me. I now give up this right. 95

6d. I have the right to remain silent (unless I choose to testify on my own behalf). I now give up this right. 95

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. 95

DEFENDANT  
Schlomo Schmucl

CASE NUMBER  
CD280827

CONSEQUENCES OF PLEA OF GUILTY/NO CONTEST

- 7a. I understand that I may receive this maximum punishment as a result of my plea: 5 years imprisonment or imprisonment plus a term of mandatory supervision; \$ 100,000 fine; and 3/4 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. GG
- 7b. I understand that I must pay a restitution fine (\$300 - \$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. GG
- 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. X
- 7d. **Immigration consequences:** (1) I understand that if I am not a U.S. citizen, this plea of Guilty/No Contest may, and for certain offenses will (see page 4), have the consequences of removal/deportation, exclusion from admission to the United States, and/or denial of naturalization pursuant to the laws of the U.S.; (2) I understand I have the right to request additional time to consider my plea in light of the advisement in this paragraph; (3) I have discussed my immigration status with my attorney and have had sufficient time to consider and discuss the immigration consequences of my plea with him/her or an immigration attorney. GG
- 7e. I understand that my plea of Guilty/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. GG
- 7f. My attorney has explained to me that other possible consequences of this plea may be:  
(Circle applicable consequences.)
- |  |   |  |
|--|---|--|
| (1) Consecutive sentences                                | (9) Prison prior                                      | a. Limited local credits (290/serious/prior) |
| (2) Loss of driving privileges                           | (10) Mandatory imprisonment                           | b. Violent Felony (No credit or max. 15%)    |
| (3) Commitment to Youth Authority                        | (11) Mandatory State Prison                           | c. Prior Strike(s) (No credit to max. 20%)   |
| (4) Lifetime registration as an arson / sex offender     | (12) Presumptive imprisonment                         | d. Murder on/after 6/3/98 (No credit)        |
| (5) Registration as a narcotic / gang offender           | (13) Presumptive State Prison                         | (17) Loss of public assistance               |
| (6) Cannot possess firearms or ammunition                | (14) Sexually Violent Predator Law                    | (18) AIDS education program                  |
| (7) Blood test and saliva sample                         | (15) Possible/Mandatory hormone suppression treatment | (19) Other: _____                            |
| (8) Priorable (increased punishment for future offenses) | (16) Reduced conduct/work credits                     |  |
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 667(b)-(l) and 1170.12), and 3) any sentence stipulated herein. GG
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. GG
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. GG
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). GG

DEFENDANT Schlomo Schmucl	CASE NUMBER CD280827
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12. (Arbuckle Waiver) I give up my right to be sentenced by the judge who accepts this plea. SS
13. (Probation Report) I give up my right to a full probation report before sentencing. SS
14. (Evidence Disposal Waiver) I give up my interest in all non-biological property/evidence impounded during the investigation of this case except (None) 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. SS

**PLEA**

15. I now plead Guilty/No Contest and admit the charges, convictions and allegations described in Item 1. I admit that on the dates charged, I: *(Describe facts as to each charge and allegation)*  
(See attached: S. Schmucl's plea agreement in U.S. District Court (Southern Dist. CA) case # 19 CR3006 BAS which includes a recitation of state crimes, factual bases, and terms of state plea agreement. The attached federal plea agreement is fully incorporated by reference herein.)

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. SS

Dated: 8/6/19 Defendant's Signature [Signature]

Defendant's Address: 3809 Hollyline Ave  
Sherman Oaks Street CA 91423  
City State Zip

Telephone Number: (213) 447-3280

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. I have asked the defendant about his/her immigration status, advised defendant of the immigration consequences of this plea to the best of my ability, and advised defendant of the right to additional time to discuss this matter with an immigration attorney. 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: 8/6/19 Harlan Beau [Signature]  
(Print Name) Attorney for Defendant (Signature)  
(Circle one: PD / APD / OAC / RETAINED)

**INTERPRETER'S STATEMENT**

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: 8/6/19 John Philpott [Signature]  
(Print Name) Deputy District Attorney (Signature)

DEFENDANT  
Schlomo Schmucl

CASE NUMBER  
CD280827

### 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: 8/16/09

Eugenia Eyherabide  
Judge of the Superior Court  
EUGENIA EYHERABIDE

### IMMIGRATION CONSEQUENCES

If you are not a U.S. citizen, you should consult your attorney or an immigration attorney about the immigration consequences of your plea, particularly if your offense might qualify as an "aggravated felony," crime of moral turpitude, controlled substance offense, firearm offense, or domestic violence offense (see below). It is your attorney's obligation to provide you with accurate and affirmative advice about the immigration consequences of your plea, and you have the right to additional time to evaluate those immigration consequences. By entering a plea, you are indicating to the court you know of and understand the specific immigration consequences that will result from your conviction.

Immigration consequences are a matter of federal law. Whether an offense qualifies as one of the "aggravated felonies" listed below is determined by federal statutes and case law. (See *Esquivel-Quintana v. Sessions* (2017) \_\_ U.S. \_\_, 137 S.Ct. 1562, 198 L.Ed.2d 22.) Certain offenses defined as misdemeanors under State law may be considered "aggravated felonies" under federal law.

Any conviction of a non-citizen for an "aggravated felony" will result in removal/deportation, exclusion, and/or denial of naturalization. (See 8 U.S.C. § 1227(a)(2)(A)(iii).) "Aggravated felonies" (see 8 U.S.C. § 1101(a)(43)) include but are not limited to:

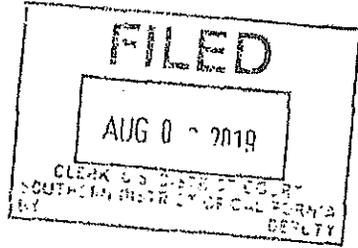
- (1) Murder, rape; or sexual abuse of a minor;
- (2) A crime of violence, as defined in 18 U.S.C. § 16, but not including a purely political offense;\*
- (3) Trafficking of a controlled substance, firearms, destructive devices or explosive materials;
- (4) Money laundering if the amount exceeds \$10,000;
- (5) An explosive materials offense;
- (6) A firearms offense;
- (7) A theft offense, including receipt of stolen property, or burglary offense;\*
- (8) Child pornography;
- (9) Pimping, pandering, or operating a prostitution business;
- (10) Human trafficking;
- (11) Fraud or deceit in which the loss to the victim or victims exceeds \$10,000;
- (12) Failure to appear by a defendant for service of a sentence if the underlying offense is punishable by imprisonment for a term of five years or more, or failure to appear to answer or resolve a felony for which a sentence of two years' imprisonment or more may be imposed;
- (13) Commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered;\*
- (14) Obstruction of justice, perjury or subornation of perjury, or bribery of a witness;\*
- (15) An attempt or conspiracy to commit any of the above offenses.

\*If the term of imprisonment is at least one year.

Other crimes (as defined by federal law) that may result in removal/deportation, exclusion, and/or denial of naturalization or other severe immigration consequences include, but are not limited to:

- (1) A crime of moral turpitude (see 8 U.S.C. §§ 1182(a)(2)(A)(i), 1227(a)(2)(A)(i));
- (2) A controlled substance offense (see 8 U.S.C. §§ 1182(a)(2)(A)(i), 1182(a)(2)(C), 1227(a)(2)(B));
- (3) A firearm or destructive device offense (see 8 U.S.C. § 1227(a)(2)(C));
- (4) A domestic violence, stalking, or child abuse offense (see 8 U.S.C. § 1227(a)(2)(E)(i));
- (5) Violation of a protective order (see 8 U.S.C. § 1227(a)(2)(E)(ii));
- (6) A human trafficking offense (see 8 U.S.C. §§ 1182(a)(2)(H), 1227(a)(2)(F));
- (7) Multiple criminal convictions with an aggregate sentence of five years or more (see 8 U.S.C. § 1182(a)(2)(B));
- (8) A prostitution offense (see 8 U.S.C. § 1182(a)(2)(D));
- (9) A "serious criminal offense," which includes any felony, a crime of violence, and reckless driving or DUI with injury (see 8 U.S.C. § 1182(a)(2)(E)).

of



1 ROBERT S. BREWER, JR.  
United States Attorney  
2 VALERIE H. CHU  
Assistant United States Attorney  
3 California Bar No. 241709  
Federal Office Building  
4 880 Front Street, Room 6293  
San Diego, California 92101-8893

5  
6 Attorneys for United States of America

7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,  
10 Plaintiff,  
11 v.  
12 SCHLOMO SCHMUEL,  
13 Defendant.

Case No. 19 CR 3006 BAS  
PLEA AGREEMENT

14  
15 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA,  
16 through its counsel, Robert L. Brewer, Jr., United States Attorney, and  
17 Valerie H. Chu, Assistant United States Attorney, and defendant SCHLOMO  
18 SCHMUEL, with the advice and consent of Richard Moss and Harland Braun,  
counsel for Defendant, as follows:

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26 //  
27 //  
28 //

Plea Agreement

19CR  
Def. Initials SS

I

THE PLEA

1  
2 1. This agreement is intended to bind the following parties:

3 a. Defendant SCHLOMO SCHMUEL;

4 b. The United States Attorney's Office ("USAO"); and

5 c. The San Diego County District Attorney's Office ("SDCDAO") as  
6 to Criminal Case Number CD280827 currently pending in the  
7 Superior Court of California, County of San Diego (hereinafter  
8 "the state cases"),

9 2. This plea agreement cannot bind any other federal, state or  
10 local prosecuting, administrative, or regulatory authorities, although  
11 the USAO or SDCDAO will bring this plea agreement to the attention of  
12 other authorities if requested by Defendant.

13 3. With regards to the federal case, Defendant agrees to waive  
14 indictment and plead guilty to an Information charging Conspiracy to  
15 Commit Honest Services Mail Fraud and Health Care Fraud, in violation  
16 of 18 U.S.C. § 371.

17 4. In exchange for Defendant's guilty plea in the federal case,  
18 the USAO agrees to: not prosecute Defendant for the conduct set forth  
19 in the Factual Basis unless Defendant breaches the plea agreement or any  
20 of the guilty pleas entered pursuant to this plea agreement are set  
21 aside for any reason. Defendant expressly waives all constitutional and  
22 statutory defenses to the initiation of any charges not brought pursuant  
23 to this agreement.

24 5. With regards to the state case, defendant SCHLOMO SCHMUEL  
25 agrees to plead guilty to the following charges in the following case:

26 a. Case Number CD280827, People v. Schlomo Schmuel: Count 2 and  
27 Count 5: Unlawfully Conceal and Event Affecting an Insurance  
28 Claim in violation of California Penal Code Section 550(b)(3)

b. The combined maximum state penalty for both counts is 6 years  
state prison and a fine of \$ \$100,000.

6. Pursuant to California Labor Code 139.21(e)(1), Defendant  
Schlomo Schmuel admits that he owns 100% of Diamond Orthopedic Services,

1 LLC and agrees to the dismissal of all liens and forfeiture of sums  
2 claimed therein, and waiver of any right to seek collection of sums  
3 claimed in such liens in the California Workers' Compensation System,  
4 regarding any liens which arise from bills with the following  
5 characteristics: (1) the referring provider (Box 17 on CMS 1500) was  
6 Steven J. Rigler, DC; Jose Candelario DC (AKA Joserodel Zavala  
7 Candelario, DC); Dirk H. Kancilia, DC; or Phong H. Tran, MD; (2) the  
8 service billed for was CPT code E0217 (Water circulating heat pad with  
9 pump); or CPT code L0621 (SIO flex pelvic/sacral brace); and (3) the  
10 provider was Diamond Orthopedic Services, LLC (TIN 46-1687642, NPI  
11 1174860522), as these liens arise from fraud.

12 7. In exchange for Defendant's plea to the above-referenced count  
13 in the state case, the SDCDAO agrees to dismiss the remaining counts  
14 against him with a waiver pursuant to People v. Harvey, 25 Cal.3d 754  
15 (1979). The SDCDAO further agrees to recommend that Defendant be  
16 sentenced on the state case to no more than 4 years state prison, to  
17 be served concurrently with his sentence in the federal case, that his  
18 state sentence may be served in federal custody, that he receive the  
19 standard restitution fine(s), and that the court order full restitution  
20 if applicable pursuant to California law. The ultimate state case  
21 sentencing decision is within the sole discretion of the state court  
22 judge. A copy of the written and signed plea agreement in the state  
23 case is incorporated herein.

24 II

25 NATURE OF THE OFFENSE

26 A. FEDERAL CASE: ELEMENTS EXPLAINED

27 Defendant understands that the offense to which he is pleading  
28 guilty has the following elements:

Conspiracy [18 U.S.C. § 371]

1. There was an agreement between two or more persons to  
commit Honest Services Mail Fraud and Health Care Fraud;

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- 2. The defendant entered into the agreement knowing of at least one of its objects and intending to help accomplish it; and
- 3. One of the co-conspirators committed at least one overt act in furtherance of the conspiracy.

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

- 1. The defendant devised or knowingly participated in a scheme to deprive a victim of his or her right to a doctor's honest services;
- 2. The scheme consisted of soliciting and facilitating the receipt of kickback payments from suppliers of health-care services and products to be paid to the doctor in exchange for referrals;
- 3. The doctor, as a healthcare professional, owed a fiduciary duty to the victim;
- 4. The defendant acted with the intent to defraud by depriving the victim of his or her right to the doctor's honest services;
- 5. 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
- 6. 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.

1 3. The defendant acted willfully and intended to defraud.

2 4. The defendant did so in connection with the delivery of  
3 or payment for health-care benefits, items, or services.

4 B. FEDERAL CASE FACTUAL BASIS: ELEMENTS UNDERSTOOD AND ADMITTED

5 Defendant has fully discussed the facts of the federal case and the  
6 state cases with defense counsel. Defendant has committed each of the  
7 elements of Conspiracy to Commit Honest Services Mail Fraud and Health  
8 Care Fraud, in violation of 18 U.S.C. § 371, and admits that there is a  
9 factual basis for the guilty plea in the federal case. Specifically,  
10 Defendant admits:

11 1. Defendant SCHLOMO SCHMUEL was a licensed doctor of podiatric  
12 medicine in the state of California from 1992 to 2019. He owned and  
13 operated various business, including Diamond Orthopedics Services, LLC,  
14 Schlomo Schmuel, D.P.M., Inc., Innovative Orthopedic Solution, Sunset  
15 Ambulatory Surgical Center, and Sunset Foot Clinic Corporation, among  
16 others (together, "Schmuel Entities").

17 2. From at least 2014 through 2015, within the Southern District  
18 of California and elsewhere, defendant SCHLOMO SCHMUEL knowingly and  
19 intentionally conspired with JULIAN GARCIA, BORIS DADIOMOV, STEVEN  
20 RIGLER, JOSE CANDELARIO, and others to commit the offenses of Honest  
21 Services Mail Fraud, in violation of 18 U.S.C. §§ 1341 and 1346, and  
22 Health Care Fraud, in violation of 18 U.S.C. § 1347. It was the goal  
23 of the conspiracy to fraudulently obtain money from health care benefit  
24 programs by submitting claims for medical goods and services that were  
25 generated through a secret pattern of bribes to physicians (and those  
26 acting with them and on their behalf), to induce the physicians to refer  
27 patients for those services, and to refer to particular providers, in  
28 violation of the physicians' fiduciary duty to their patients.

3. It was a further part of the conspiracy that the co-  
conspirators concealed from patients, and intended to cause the  
physicians to conceal from patients, the kickback and bribe payments  
made to physicians for referring patients to companies owned by the co-

1 conspirators or in which they had an interest, in violation of the  
2 physicians' fiduciary duty to their patients.

3 4. It was a further part of the conspiracy that the co-  
4 conspirators utilized the mails as an essential part of their fraudulent  
5 scheme, including by mailing bills to insurance carriers.

6 5. It was a further part of the conspiracy that co-conspirators  
7 billed, and caused insurers to bill, for services provided to patients  
8 that the co-conspirators had procured by paying bribes and kickbacks.

9 6. It was a further part of the conspiracy that the co-  
10 conspirators concealed from insurers and patients the material fact of  
11 the kickback arrangements, which were in violation of California state  
12 law, that led to the referrals.

13 7. Knowing that paying a per-patient referral fee was unlawful,  
14 Defendant offered to pay and paid \$100 for each referral of a certain  
15 type of durable medical equipment ("DME"), called a "hot/cold pack,"  
16 that his co-conspirators could induce physicians to refer to Schmucl  
17 Entities. During the period 2014 through 2015, defendant SCHLOMO SCHMUEL  
18 knowingly paid GARCIA more than \$372,000 in these unlawful, per-patient  
19 referral fees.

20 8. Defendant agrees that he intentionally engaged in or caused  
21 conduct constituting sophisticated means, including by, in an effort to  
22 conceal the corrupt payments for patient referrals, directing payments  
23 through intermediaries, including "marketing" companies, and executing  
24 "marketing" agreements with those intermediaries, when in reality the  
25 payments were unlawful per-patient referral fees. Further, Defendant  
26 SCHLOMO SCHMUEL attempted to conceal these unlawful per-patient  
27 referral fees by making payments to GARCIA from corporations such as  
28 Sunset Ambulatory Surgical Center, Inc., Innovative Orthopedic  
Solution, and Sunset Foot Clinic Corporation, all of which had no direct  
connection to Diamond Orthopedics Services, LLC and/or had no direct  
connection to providing patients with hot/cold packs. Defendant SCHLOMO  
SCHMUEL frequently divided the per-patient referral fees among his  
corporations to conceal the fact the payments were made on a per-patient

1 referral basis, even though he provided the payments to GARCIA on the  
2 same day.

3 9. Defendant agrees that his offense involved abuse of a position  
4 of trust with respect to patients.

5 10. Defendant agrees that the California Workers' Compensation  
6 System is a government health care program, in that it is a plan or  
7 program that provides health benefits, which is funded directly, in  
8 whole or in part, by federal or state government.

9 11. Using the manners and means described above, Defendant and  
10 his co-conspirators submitted and caused to be submitted claims valued  
11 at between \$3.5 million and \$9.5 million for hot/cold packs procured  
12 through the payment of bribes and kickbacks.

13 12. Defendant agrees that as an overt act of his conspiracy, on  
14 or about May 15, 2015, Defendant SCHLOMO SCHMUEL issued two checks, one  
15 from "Innovative Orthopedic Solution," and one from "Sunset Ambulatory  
16 Surgical Center, Inc.," for \$12,350.00 each, to "Memphis Media," a  
17 company associated with JULIAN GARCIA, as compensation for referring  
18 Workers' Compensation patients to defendant SCHMUEL for a "hot / cold  
19 pack."

20 13. Defendant agrees that as an overt act of his conspiracy, on  
21 or about May 24, 2015, Defendant SCHMUEL through Diamond Orthopedic  
22 Services issued a bill to ESIS insurance company for \$5,950 for Durable  
23 Medical Equipment provided to Mayra P.

24 C. STATE CASE: ELEMENTS EXPLAINED

25 Defendant understands that the offenses to which he is pleading  
26 guilty in the state cases have the following elements:

27 Unlawfully Conceal an Event Affecting an Insurance Claim  
28 [California Penal Code, Section 550(b)(3)]

1. Defendant did, knowingly assist, or conspire with another, to conceal or fail to disclose the occurrence of an event;

1           2. That affects any person's right or entitlement to an  
2 insurance benefit or payment, or amount of benefit or  
3 payment; and

3           3. With the specific intent to defraud.

4           D. STATE CASES FACTUAL BASES: ELEMENTS UNDERSTOOD AND ADMITTED

5           Defendant has fully discussed the facts of the state case with his  
6 defense counsel. Defendant has committed each of the elements of  
7 unlawfully concealing an event affecting an insurance claim, in  
8 violation of California Penal Code, Section 550(b)(3) and admits the  
9 following facts are true and undisputed:

9           As to Count 2 of Case Number CD280827, California Penal Code  
10 Section 550(b)(3): On or about June 15, 2015, Defendant Schlomo Schmucl  
11 did aid and abet and conspire with Julian Garcia, Alexander Kiev  
12 Martinez and Steven Rigler to fraudulently submit a bill to Liberty  
13 Mutual Insurance Company for \$5,000 for a "Hot Cold Pack" (CPT Code  
14 E0217) on a California Workers' Compensation patient (Juan C.).  
15 Defendant Schmucl made a \$100 kickback payment to Julian Garcia for the  
16 referral of Juan C., a patient of Steven Rigler, D.C. In exchange for  
17 Defendant Schmucl's \$100 kickback payment, Defendant Schmucl received  
18 a Rigler prescription for a "Hot Cold Pack" for patient Juan C.  
19 Defendant Schmucl provided a "Hot Cold Pack" to Juan C. Defendant  
20 Schmucl billed Liberty Mutual Insurance Company \$5000 for filling the  
21 prescription. Defendant Schmucl did not disclose to, and actively  
22 concealed from, Liberty Mutual Insurance Company that Defendant Schmucl  
23 paid an illegal kickback for the referral of patient Juan C.'s "Hot  
24 Cold Pack" prescription, and did so with the intent to defraud. Had  
25 Liberty Mutual Insurance Company known of the illegal kickback, Liberty  
26 Mutual Insurance Company would not have paid anything on the bill, as  
27 it would have been legally void.

25           As to Count 5, of Case Number CD280827; On or about and between  
26 June 1, 2015, and June 30, 2015, Defendant Schlomo Schmucl did aid and  
27 abet and conspire with Julian Garcia, Alexander Kiev Martinez and Steven  
28 Rigler to fraudulently submit a bill to Insurance Company of the West

1 for \$5,000 for a "Hot Cold Pack" (CPT Code E0217) on California Workers'  
2 Compensation patient (Esteban C.). Defendant Schmucl made a \$100  
3 kickback payment to Julian Garcia for the referral of Esteban C., a  
4 patient of Steven Rigler, D.C. In exchange for Defendant Schmucl's \$100  
5 kickback payment, Defendant Schmucl received a Rigler prescription for  
6 a "Hot Cold Pack" for patient Esteban C. Defendant Schmucl provided  
7 a "Hot Cold Pack" to Esteban C. Defendant Schmucl billed Insurance  
8 Company of the West \$5000 for filling the prescription. Defendant  
9 Schmucl did not disclose to, and actively concealed from, Insurance  
10 Company of the West that Defendant Schmucl paid an illegal kickback for  
11 the referral of patient Esteban C.'s "Hot Cold Pack" prescription, and  
12 did so with the intent to defraud. Had Insurance Company of the West  
13 known of the illegal kickback, Insurance Company of the West would not  
14 have paid anything on the bill, as it would have been legally void.

15 III

16 PENALTIES

17 A. FEDERAL CASE

18 Defendant understands that Conspiracy, in violation of 18 U.S.C.  
19 §371, to which Defendant is pleading guilty in the federal case carries  
20 the following penalties:

- 21 A. a maximum 5 years in prison;
- 22 B. a maximum \$250,000 fine, or twice the gross gain or loss  
23 derived from the offense;
- 24 C. a mandatory special assessment of \$100 per count; and
- 25 D. a term of supervised release of 3 years. Defendant understands  
26 that failure to comply with any of the conditions of supervised  
27 release may result in revocation of supervised release,  
28 requiring defendant to serve in prison, upon any such  
revocation, all or part of the statutory maximum term of  
supervised release for the offense that resulted in such term  
of supervised release.
- E. an order from the Court pursuant to 18 U.S.C. § 3663A that  
Defendant make mandatory restitution to the victims of the

1 offense of conviction, or the estate(s) of the victims(s).  
2 Defendant understands that the Court shall also order, if  
3 agreed to by the parties in this plea agreement, restitution  
4 to persons other than the victims of the offense of conviction.

5 F. an order of forfeiture of any property, real or personal,  
6 which constitutes or is derived from proceeds traceable to the  
7 offense.

8 IV

9 DEFENDANT'S WAIVER OF TRIAL RIGHTS IN FEDERAL CASE

10 Defendant understands that this guilty plea waives the right to:

11 A. Continue to plead not guilty and require the Government to  
12 prove the elements of the crime beyond a reasonable doubt;

13 B. A speedy and public trial by jury;

14 C. The assistance of counsel at all stages of trial;

15 D. Confront and cross-examine adverse witnesses;

16 E. Testify and present evidence and to have witnesses testify  
17 on behalf of defendant; and,

18 F. Not testify or have any adverse inferences drawn from the  
19 failure to testify.

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

24 V

25 DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE

26 PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

27 The USAO and SDCDAO represent that any information establishing the  
28 factual innocence of Defendant known to the undersigned prosecutors in  
this case has been turned over to defendant. The USAO and SDCDAO will  
continue to provide such information establishing the factual innocence  
of defendant.

Defendant understands that if this case proceeded to trial, the  
USAO and SDCDAO would be required to provide impeachment information

1 relating to any informants or other witnesses. In addition, if defendant  
2 raised an affirmative defense, the USAO and SDCDAO would be required to  
3 provide information in its possession that supports such a defense.  
4 Defendant acknowledges, however, that by pleading guilty, Defendant will  
5 not be provided this information, if any, and Defendant also waives the  
6 right to this information. Finally, Defendant agrees not to attempt to  
7 withdraw the guilty plea or to file a collateral attack based on the  
8 existence of this information.

9 VI

10 DEFENDANT'S REPRESENTATION THAT GUILTY

11 PLEAS ARE KNOWING AND VOLUNTARY

12 Defendant represents that:

13 A. Defendant has had a full opportunity to discuss all the facts  
14 and circumstances of this case with defense counsel and has a  
15 clear understanding of the charges and the consequences of  
16 this plea. Defendant understands that, by pleading guilty,  
17 Defendant may be giving up, and rendered ineligible to  
18 receive, valuable government benefits and civic rights, such  
19 as the right to vote, the right to possess a firearm, the  
20 right to hold office, and the right to serve on a jury.  
21 Defendant further understands that the conviction in this case  
22 may subject Defendant to various collateral consequences,  
23 including but not limited to deportation, removal or other  
24 adverse immigration consequences; revocation of probation,  
25 parole, or supervised release in another case; debarment from  
26 government contracting; and suspension or revocation of a  
27 professional license, as well as civil and administrative  
28 liability, none of which will serve as grounds to withdraw  
29 Defendant's guilty plea.

30 B. No one has made any promises or offered any rewards in  
31 return for this guilty plea, other than those contained in  
32 this agreement or otherwise disclosed to the Court.

1 C. No one has threatened Defendant or Defendant's family to  
2 induce this guilty plea.

3 D. Defendant is pleading guilty because in truth and in fact  
4 Defendant is guilty and for no other reason.

5 VII

6 APPLICABILITY OF SENTENCING GUIDELINES

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

22 VIII

23 SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

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

1 also has been advised and understands that if the sentencing judge does  
2 not follow any of the parties' sentencing recommendations, Defendant  
3 nevertheless has no right to withdraw his pleas.

4 **IX**

5 **PARTIES' SENTENCING RECOMMENDATIONS**

6 **A. SENTENCING GUIDELINE CALCULATIONS**

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

- |    |   |     |
|----|---|-----|
| 12 | 1. Base Offense Level [§ 2B1.1]                   | 6   |
| 13 | 2. Intended loss \$3.5 mill to \$9.5 mill         | +18 |
| 14 | [§ 2B1.1(b)(1)(H)]                                |     |
| 15 | 3. Loss of > \$1 mill to Govt health care program | +2  |
| 16 | 4. Sophisticated Means [§ 2B1.1(b)(10)(C)]        | +2  |
| 17 | 5. Abuse of Position of Trust [§ 3B1.3]           | +2  |
| 18 | 6. Acceptance of Responsibility [§ 3E1.1]         | -3  |

19 **B. ACCEPTANCE OF RESPONSIBILITY**

20 Notwithstanding paragraph A above, the USAO will not be obligated  
21 to recommend any adjustment for Acceptance of Responsibility under  
22 U.S.S.G. §§ 3E1.1 or 8C2.5 if Defendant engages in conduct inconsistent  
23 with acceptance of responsibility including, but not limited to, the  
24 following:

- 25 1. Fails to truthfully admit a complete factual basis as  
26 stated in the plea at the time the plea is entered, or  
27 falsely denies, or makes a statement inconsistent  
28 with, the factual basis set forth in this agreement;
2. Falsely denies prior criminal conduct or convictions;
3. Is untruthful with the Government, the Court or  
probation officer;
4. Materially breaches this plea agreement in any way; or

1 5. Contests or assists any third party in contesting the  
2 forfeiture of property(ies) seized in connection with  
3 this case, and any property(ies) to which the  
4 defendant has agreed to forfeit as set forth in the  
attached forfeiture addendum.

5 C. FURTHER ADJUSTMENTS AND SENTENCE REDUCTIONS  
6 INCLUDING THOSE UNDER 18 U.S.C. § 3553

7 The parties agree that Defendant may request or recommend  
8 additional downward adjustments, departures, including criminal history  
9 departures under USSG § 4A1.3, or sentence reductions under 18 U.S.C.  
10 § 3553. The USAO may oppose any downward adjustments, departures and  
sentence reductions not set forth in Section X, paragraph A above.

11 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

12 The parties have no agreement as to Defendant's Criminal History  
13 Category.

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

15 The parties agree that the facts in the "factual basis" sections  
16 of this agreement as to both the federal case and the state cases are  
17 true, and may be considered as "relevant conduct" under USSG § 1B1.3 and  
18 as the nature and circumstances of the offense under 18 U.S.C. §  
3553(a)(1).

19 F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

20 The parties agree that the USAO will recommend the statutory  
21 maximum, 60 months, which is lower than the advisory Guidelines range,  
and accordingly, is the Guidelines sentence.

22 G. SPECIAL ASSESSMENT/FINE/RESTITUTION/FORFEITURE

23 1. Special Assessment

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



1 C. OBJECTIONS TO UNITED STATES' RECOMMENDATION

2 If Defendant believes the recommendation by the USAO or SDCDAO is  
3 not in accord with this plea agreement, Defendant will object at the  
4 time of sentencing; otherwise the objection will be deemed waived.

4 XI

5 BREACH OF THE PLEA AGREEMENT

6 A. MATERIAL BREACH OF PLEA AGREEMENT

7 Defendant acknowledges, understands, and agrees that if Defendant  
8 violate or fail to perform any of Defendant's obligations under this  
9 agreement, such violation or failure to perform will constitute a  
10 material breach of this agreement.

11 Defendant acknowledges, understands, and agrees further that the  
12 following non-exhaustive list of conduct by Defendant unquestionably  
13 constitutes a material breach of this plea agreement:

- 14 1. Failing to plead guilty pursuant to this agreement;
- 15 2. Withdrawing the guilty plea or attempting to withdraw the  
16 guilty plea;
- 17 3. Failing to fully accept responsibility as established in  
18 Section X, paragraph B, above;
- 19 4. Failing to appear in court;
- 20 5. Failing to abide by any lawful court order related to  
21 this case;
- 22 6. Appealing or collaterally attacking the sentence or  
23 conviction in violation of Section XI of this plea  
24 agreement; or
- 25 7. Engaging in additional criminal conduct from the time of  
26 arrest until the time of sentencing.

27 B. CONSEQUENCES OF BREACH

28 In the event of a material breach by Defendant of this plea  
agreement, Defendant will not be able to enforce any of its provisions,  
and the USAO and SDCDAO will be relieved of all obligations under this  
plea agreement. For example, the USAO or SDCDAO may pursue any charges  
including those that were dismissed, promised to be dismissed, or not

1 filed as a result of this agreement. Defendant agrees that any statute  
2 of limitations relating to such charges is tolled as of the date of this  
3 agreement; Defendant also waives any double jeopardy defense to such  
4 charges. In addition, the USAO or SDCDAO may move to set aside the  
5 Defendant's guilty pleas. Defendant may not withdraw his guilty pleas  
6 based on the pursuit of remedies for their breach by the USAO or SDCDAO.

7 **XII**

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

9 In exchange for the concessions in this agreement, Defendant agrees  
10 that: (i) the stipulated factual basis statements in this agreement;  
11 (ii) any statements made by Defendant, under oath, at the guilty plea  
12 hearings in federal and state court; and (iii) any evidence derived from  
13 such statements, are admissible against Defendant in the prosecution's  
14 case-in-chief and at any other stage of the proceedings in any  
15 prosecution of or action against Defendant on the current charges and/or  
16 any other charges that the USAO and SDCDAO may pursue against Defendant.  
17 Additionally, Defendant knowingly, voluntarily, and intelligently waive  
18 any argument under the United States Constitution, any statute, Federal  
19 Rule of Evidence 410, Federal Rule of Criminal Procedure 11(f), and/or  
20 any other federal or California rule, that these statements or any  
21 evidence derived from these statements should be suppressed or are  
22 inadmissible. The waiver of the aforementioned rights by Defendant is  
23 effective as soon as the parties sign this agreement, and is not  
24 contingent upon a federal or state court ultimately accepting  
25 Defendant's guilty pleas.

26 **XIV**

27 **ENTIRE AGREEMENT**

28 The plea agreements in the state cases, which are incorporated  
herein, together with the plea agreement in the federal case embody the  
entire agreement between the parties and supersede any other agreement,  
written or oral.

//

//

Plea Agreement

XV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

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

XVI

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

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

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 Defendant about what to say in this regard.

ROBERT S. BREWER, JR.  
United States Attorney

8/1/2019  
DATED

Valerie H. Chu  
VALERIE H. CHU  
Assistant U.S. Attorney

SUMMER STEPHAN  
San Diego District Attorney

8/1/19  
DATED

John Philpott  
JOHN PHILPOTT  
Deputy District Attorney

FOR DEFENDANT

7/30/19  
DATED

Harland Braun  
HARLAND BRAUN  
Counsel for Defendant

7/30/19  
DATED

Richard A. Moss  
RICHARD A. MOSS  
Counsel for Defendant

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

4 7/30/19  
5 DATED

  
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7 SCHLOMO SCHMUEL  
8 Defendant

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Complaint amended  by interlineation to read:

- Amended  Amendment to  complaint filed  charging  adding  VC23103 (a) pursuant to VC23103.5  VC22107, VC21658(a), PC647(f)
- as INFRACTION(S) pursuant to PC17(d)(2).  other: \_\_\_\_\_
- Defendant advised of and waives the right to a separate and conflict-free attorney / interpreter for this court appearance.
- Defendant duly arraigned and advised of the constitutional and statutory rights as indicated on the reverse side of this minute order\*.
- Acknowledgment of advisal of constitutional rights signed and filed.  Defendant has received copy of complaint.
- Defendant waives reading of complaint.  Deft. states true name is \_\_\_\_\_  on complaint [\_\_\_\_\_] line)
- DEFENDANT PLEADS NOT GUILTY and denies any priors/allegations/separate convictions alleged  on amended complaint.
- Defendant WAIVES:  time for speedy trial  10 day/60 day statutory time for preliminary hearing  personal presence  per PC977
- bail review  jury trial  preliminary hearing

**COUNSEL**  MOTION FOR APPOINTED ATTORNEY  Granted  Public Defender  Alternate Public Defender  Office of Assigned Counsel  
 Ally: \_\_\_\_\_  Re-appointed  Denied  Referred to Near Indigent Panel  Defendant to retain counsel.  
 Motion for self-representation is  granted  denied.  Faretta/Lopez Waiver signed & filed.  OAC appointed - legal runner/reasonable ancillary services.

**CONVICTION**  Deft. is sworn and examined.  Defendant withdraws any previously entered plea.

**DEFENDANT PLEADS:**  GUILTY  NO CONTEST to: (1-2 PC550(b)(3))  VC23152(a) / (b)  
 Admits \_\_\_\_\_ separate conviction(s) alleged/  
 Charges contained in amended/amendment to complaint.  VC23103(a) per 23103.5  as a lesser included offense of \_\_\_\_\_  
 On motion of Court  People/Defendant remaining count(s) \_\_\_\_\_ is/are **DISMISSED**. Allegation(s)/Prior(s) remaining is/are STRICKEN  FOJ  VOP  
 Plea form executed and filed  People vs. West  BAC: \_\_\_\_\_  
 Court finds a knowing and intelligent waiver of constitutional rights and factual basis for the plea.  
 ADVISALS given by the court:  Theft - PC666  DUI - VC23593  Consequences of Conviction - PC1016.5  
 WAIVERS:  Arbuckle  Blakely  Cruz  Harvey  Appeal Rights  Non-Bio. Evidence Disposal  Time for sentencing, see JUDGMENT MINUTES.  
 PC1210  Drug Court  accepted  declined.  
 Stipulated bindover.  Case certified as a general jurisdiction matter.  Complaint deemed the information.  
 Defendant to provide DNA database samples as directed by Sheriff or Probation Dept. (PC296).

**MOTION** for \_\_\_\_\_ by  People  Defendant  with  without objection  GRANTED  DENIED.

**PC1000**  Defendant's motion for  reinstatement to  PC1000 granted as to count(s) \_\_\_\_\_, for \_\_\_\_\_ mo./yrs.  New term  
 Time waived for sentencing  S.D. Rescue Mission Program  Enroll by \_\_\_\_\_ Comply with all directions of Assessor.  
 \$ \_\_\_\_\_ DEJ Admin Fees (PC1001.16(a) and PC1001.90)  Forthwith  By \_\_\_\_\_  
 Defendant has satisfactorily COMPLETED the DEJ Program, previously entered plea to count(s) \_\_\_\_\_ set aside and charges dismissed.  
 Defendant has FAILED to satisfactorily perform in the DEJ Program.  PC1000 set aside and any unpaid fees pertaining thereto deleted.  
 Court makes a finding of guilt to the charge(s) pled.  Time waived for sentencing, see JUDGMENT.

**REFERRALS** Report  forthwith  by \_\_\_\_\_ to  Assessment Unit  Probation Department  Probation to interview.  
 Pre-sentence  Mini  Supplemental  Psych.  Limited re: Drugs / Alcohol / Domestic Violence / Anger Management / Restitution Report Ordered.  
 Pre-sentence report waived.  Court Collections  for payment of attorney fees \*\* \$ \_\_\_\_\_  Indigent as to attorney fees.  
 \* The court finds that the defendant has the ability to repay the County of San Diego for the costs of court appointed attorney fees.

**HEARINGS**  Set cont. on motion of  People  Defense  Opposed  Unopposed  By Stipulation, \_\_\_\_\_  Statutory time is WAIVED  
**DEFENDANT IS ORDERED TO APPEAR** for  \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  
 Re: Attorney \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  Motion/PC1538.5 \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  
 Arraignment \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  Jury / Court Trial \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  
 Bail Review \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  Sentencing \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  
 Readiness/DWT \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  Prob. Hrg. & Sent 11-18-19 at 10:30A in Dept. 1604  
 Prelim Exam \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  DEJ  Drug Ct \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  
 Time Estimate: \_\_\_\_\_ hr/day Days remaining: \_\_\_\_\_ Set with case(s): \_\_\_\_\_

**MENTAL HEALTH**  Proceedings suspended pursuant to PC1368. Mental competency examination on \_\_\_\_\_ at \_\_\_\_\_ by Forensic  
 Psychiatry Clinic. Females - Room 1003, Central Division; Males - Central Detention Facility. Hearing on \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_ of the  
 Central Division.  The Sheriff is ordered to transport the defendant to and from the examination and hearing stated above.

**OTHER**  Verbal notice of license suspension (DL 310) signed.  Fingerprint form filed.  
 Book & Release - Report on \_\_\_\_\_ at \_\_\_\_\_ to  Central  Vista  Las Colinas Detention Facility.

**CUSTODY STATUS** Defendant  REMANDED to custody of Sheriff  without bail  with bail set at / increased to / reduced to \$ \_\_\_\_\_  
 PC1275.1 HOLD.  Pretrial Services Report Ordered re: SOR  Refer to CPAC.  
 REMAINS AT LIBERTY  RELEASED:  on bail previously posted.  after booking  DEJ  OR  SUPERVISED OR - comply with P.T.S. conditions  
 same terms and conditions  to an authorized representative of: \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_  
 Release Conditions:  Attend \_\_\_\_\_ self-help mtgs. per week and submit proof at each court hearing.  Abstain from alcohol.  
 Not use or possess any controlled substances without a valid prescription.  Not possess narcotic paraphernalia.  
 Deft. waives 4<sup>th</sup> amendment rights and agrees to submit person, vehicle, place of residence, property, personal effects to search at any time with or without a  
 warrant, and with or without reasonable cause, when required by a Probation Officer or other law enforcement officer  until revoked.  for the duration of  
 deferred entry of judgment.  Have no contact with / stay away from: \_\_\_\_\_  Protective Order issued.  
 Previously ordered:  4<sup>th</sup> WAIVER  continues  deleted  PROTECTIVE ORDER  continues  deleted.

**WARRANT**  Arrest  Bench  \_\_\_\_\_ Warrant ordered  Bail set at \$ \_\_\_\_\_  No Bail.  Counsel reports no contact with defendant.  
 Schedule for hearing.  Mandatory appearance.  Night service authorized.  Cash bail may be forfeited.  ISSUED ON: \_\_\_\_\_  
 HOLD issuance to DATE ABOVE.  Warrant previously ordered/issued  remains outstanding  rescinded  RECALLED ON: \_\_\_\_\_  
 Affidavit requested. Due by: \_\_\_\_\_

**BAIL** is  exonerated  forfeited  Fine from bail, refund balance,  Declaration of non-collusion/ re-assumption of liability filed.  
 Bail forfeiture is set aside and bond is  reinstated  exonerated  upon payment of court cost \$ \_\_\_\_\_ within 30 days  cost waived  
 Bond #: \_\_\_\_\_ Bond \$ \_\_\_\_\_ Bond Co. \_\_\_\_\_

Date: \_\_\_\_\_ ATTEST A TRUE COPY, Clerk of the Superior Court by \_\_\_\_\_ Deputy

Distribution by: SA on 08/06/19 to: Jail  Deft  Ally  Pros  Prob  R&R Interpreter Acct. Assessment Other: \_\_\_\_\_

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central Division East County Division North County Division South County Division

PEOPLE vs. SCHMUEL SCHLOND STATUS: OR \$
CASE # CD280827 PROS. # AEL95901 DOB: 091365 BKG #
DATE: 08-06-19 AT 01:30 DEPT. # 1604 INTERP:
JUDGE/COMM/TEMP JUDGE: EUGENIA A. EYHERABIDE
CLERK: J. Adam

CHARGE(S): PC550(B)(3) PC550(B)(3) PC550(B)(3) PC550(B)(3)
FUTURE DATES: PE 08-13-19 at 8:30 D-102
John Philpott H. BRAUN / Richard Moss
Attorney for the People (DDA/DCA/DAG) Supervised Cert. Legal Intern
Attorney for Defendant (PD/APD/OAC/Retained/Counseling) Supervised Cert. Legal Intern
DEFENDANT: PRESENT VIA AUDIO VIDEO SELF REPRESENTED NOT PRESENT NOT PRODUCED FAILED TO APPEAR
Case called for FTA Arraignment Bail Review Readiness/DWT Jury Trial Preliminary Examination Motion
DEJ Full Limited Protective Order Expires: Protected Party:
Warrant Ordered/Issued on Held to today Cleared Outstanding Bail Bond \$ forfeited.

CASE TRANSFERRED TO DEPT. TIME ESTIMATE:
Complaint amended by interlineation to read:
Amended Amendment to complaint filed charging adding VC23103 (a) pursuant to VC23103.5 VC22107, VC21658(a), PC647(f)
as INFRACTION(S) pursuant to PC17(d)(2). other:
Defendant advised of and waives the right to a separate and conflict-free attorney / interpreter for this court appearance.
Defendant duly arraigned and advised of the constitutional and statutory rights as indicated on the reverse side of this minute order\*.
Acknowledgment of advisal of constitutional rights signed and filed. Defendant has received copy of complaint.
Defendant waives reading of complaint. Def. states true name is on complaint ( line)
DEFENDANT PLEADS NOT GUILTY and denies any priors/allegations/separate convictions alleged on amended complaint.
Defendant WAIVES: time for speedy trial 10 day/60 day statutory time for preliminary hearing personal presence per PC977
bail review jury trial preliminary hearing

COUNSEL MOTION FOR APPOINTED ATTORNEY Granted Public Defender Alternate Public Defender Office of Assigned Counsel
Atty: Re-appointed Denied Referred to Near Indigent Panel Defendant to retain counsel.
Motion for self-representation is granted denied. Faretta/Lopez Waiver signed & filed. OAC appointed - legal runner/reasonable ancillary services.
CONVICTION Def. is sworn and examined. Defendant withdraws any previously entered plea.
DEFENDANT PLEADS: GUILTY NO CONTEST TO: C-2 PC550(b)(3) VC23152(a) / (b)
Admits separate conviction(s) alleged/ allegation(s)
Charges contained in amended/amendment to complaint. VC23103(a) per 23103.5 as a lesser included offense of
On motion of Court/People/Defendant remaining count(s) is/are DISMISSED. Allegation(s)/Priors remaining is/are STRICKEN FOJ VOP
Plea form executed and filed People vs. West BAC:
Court finds a knowing and intelligent waiver of constitutional rights and factual basis for the plea.
ADVISALS given by the court: Theft - PC666 DUI - VC23593 Consequences of Conviction - PC1016.5
WAIVERS: Arbuckle Blakely Cruz Harvey Appeal Rights Non-Bio. Evidence Disposal Time for sentencing, see JUDGMENT MINUTES
PC1210 Drug Court accepted declined.
Stipulated blindover. Case certified as a general jurisdiction matter. Complaint deemed the Information.
Defendant to provide DNA database samples as directed by Sheriff or Probation Dept. (PC296).

MOTION for by People Defendant with without objection GRANTED DENIED.
PC1000 Defendant's motion for reinstatement to PC1000 granted as to count(s) for mo./ yrs. New term
Time waived for sentencing S.D. Rescue Mission Program Enroll by Comply with all directions of Assessor.
\$ DEJ Admin Fees (PC1001.16(a) and PC1001.90) Forthwith By
Defendant has satisfactorily COMPLETED the DEJ Program, previously entered plea to count(s) set aside and charges dismissed.
Defendant has FAILED to satisfactorily perform in the DEJ Program. PC1000 set aside and any unpaid fees pertaining thereto deleted.
Court makes a finding of guilt to the charge(s) pled. Time waived for sentencing, see JUDGMENT.
REFERRALS Report forthwith by to Assessment Unit Probation Department Probation to Interview.
Pre-sentence Mini Supplemental Psych. Limited re: Drugs / Alcohol / Domestic Violence / Anger Management / Restitution Report Ordered.
Pre-sentence report waived. Court Collections for payment of attorney fees \$ Indigent as to attorney fees.
The court finds that the defendant has the ability to repay the County of San Diego for the costs of court appointed attorney fees.

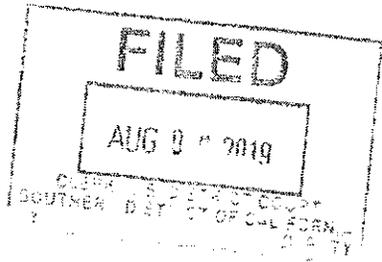
HEARINGS (Set/cont. on motion of People Defense Opposed Unopposed By Stipulation, Statutory time is WAIVED
DEFENDANT IS ORDERED TO APPEAR for on at In Dept.
Re: Attorney at in Dept. Motion/PC1538.5 at in Dept.
Arraignment at in Dept. Jury / Court Trial at in Dept.
Bail Review at in Dept. Sentencing at in Dept.
Readiness/DWT at in Dept. Prob. Hrg. & Sent 11-18-19 at 10:30A in Dept. 160
Prelim Exam at in Dept. DEJ Drug Ct at in Dept.
Time Estimate: hr/day Days remaining: Set with case(s):

MENTAL HEALTH Proceedings suspended pursuant to PC1368. Mental competency examination on at by Forensic
Psychiatry Clinic. Females - Room 1003, Central Division; Males - Central Detention Facility. Hearing on at in Dept. of
Central Division. The Sheriff is ordered to transport the defendant to and from the examination and hearing stated above.

OTHER Verbal notice of license suspension (DL 310) signed. Fingerprint form filed.
Book & Release - Report on at to Central Vista Las Colinas Detention Facility.

CUSTODY STATUS Defendant REMANDED to custody of Sheriff without bail with bail set at / increased to / reduced to \$
PC1275.1 HOLD Pretrial Services Report Ordered re: SOR Refer to CPAC.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
SCHLOMO SCHMUEL,  
  
Defendant.

Case No. 19CR 30010-BAS

INFORMATION

Title 18, United States Code,  
Section 371 - Conspiracy; and Title  
28, U.S.C., § 2461(c) - Criminal  
Forfeiture

The United States charges:

COUNT 1  
CONSPIRACY

18 U.S.C. § 371

From at least 2014 through 2015, within the Southern District of California and elsewhere, defendant SCHLOMO SCHMUEL knowingly and intentionally conspired with JULIAN GARCIA, BORIS DADIOMOV, STEVEN RIGLER, JOSE CANDELARIO, and others to commit the offenses of Honest Services Mail Fraud, in violation of 18 U.S.C. §§ 1341 and 1346, and Health Care Fraud, in violation of 18 U.S.C. § 1347. In furtherance of the conspiracy and in order to effect the objects thereof, Defendant committed and caused the commission of the following overt acts within the Southern District of California and elsewhere:

On or about May 15, 2015, Defendant SCHLOMO SCHMUEL issued two checks, one from "Innovative Orthopedic Solution," and one from "Sunset Ambulatory Surgical Center, Inc.," for \$12,350.00 each, to "Memphis

1 Media," a company associated with JULIAN GARCIA, as compensation for  
2 referring Workers' Compensation patients to defendant SCHMUEL for a  
3 "hot / cold pack."

4 On or about May 24, 2015, Defendant SCHMUEL through Diamond  
5 Orthopedic Services issued a bill to ESIS insurance company for \$5,950  
6 for Durable Medical Equipment provided to Mayra P.

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

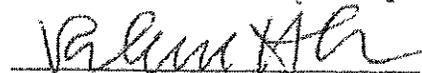
8 FORFEITURE ALLEGATION

9 Upon conviction of the felony offense alleged in this Information  
10 set forth above and pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C.  
11 § 2461(c), and Federal Rule of Criminal Procedure 32.2, defendant  
12 STEPHEN STEPANIUK shall forfeit to the United States any property, real  
13 or personal, which constitutes or was derived from proceeds traceable  
14 to such violation.

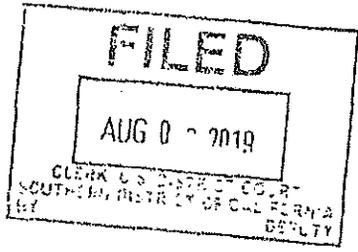
15 If any of the above-described forfeited property, as a result of  
16 any act or omission of SCHLOMO SCHMUEL cannot be located upon the  
17 exercise of due diligence; has been transferred or sold to, or deposited  
18 with, a third person; has been placed beyond the jurisdiction of the  
19 Court; has been substantially diminished in value; or has been commingled  
20 with other property which cannot be subdivided without difficulty, it  
21 is the intent of the United States, pursuant to 21 U.S.C. § 853(p), made  
22 applicable herein by 28 U.S.C. § 2461(c), to seek forfeiture of any  
23 other property of SCHLOMO SCHMUEL up to the value of the property subject  
24 to forfeiture.

25 ROBERT S. BREWER, JR.  
26 United States Attorney

27 DATED: August 6, 2019

28   
VALERIE H. CHU  
Assistant U.S. Attorney

OP



1 ROBERT S. BREWER, JR.  
United States Attorney  
2 VALERIE H. CHU  
Assistant United States Attorney  
3 California Bar No. 241709  
Federal Office Building  
4 880 Front Street, Room 6293  
San Diego, California 92101-8893

5  
6 Attorneys for United States of America

7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,  
10 Plaintiff,  
11 v.  
12 SCHLOMO SCHMUEL,  
13 Defendant.

Case No. 19 CR 3006 BAS

PLEA AGREEMENT

15 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA,  
16 through its counsel, Robert L. Brewer, Jr., United States Attorney, and  
17 Valerie H. Chu, Assistant United States Attorney, and defendant SCHLOMO  
18 SCHMUEL, with the advice and consent of Richard Moss and Harland Braun,  
19 counsel for Defendant, as follows:

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Plea Agreement

19CR  
Def. Initials SC

I

THE PLEA

1  
2 1. This agreement is intended to bind the following parties:

- 3 a. Defendant SCHLOMO SCHMUEL;
- 4 b. The United States Attorney's Office ("USAO"); and
- 5 c. The San Diego County District Attorney's Office ("SDCDAO") as  
6 to Criminal Case Number CD280827 currently pending in the  
7 Superior Court of California, County of San Diego (hereinafter  
8 "the state cases").

9 2. This plea agreement cannot bind any other federal, state or  
10 local prosecuting, administrative, or regulatory authorities, although  
11 the USAO or SDCDAO will bring this plea agreement to the attention of  
12 other authorities if requested by Defendant.

13 3. With regards to the federal case, Defendant agrees to waive  
14 indictment and plead guilty to an Information charging Conspiracy to  
15 Commit Honest Services Mail Fraud and Health Care Fraud, in violation  
16 of 18 U.S.C. § 371.

17 4. In exchange for Defendant's guilty plea in the federal case,  
18 the USAO agrees to: not prosecute Defendant for the conduct set forth  
19 in the Factual Basis unless Defendant breaches the plea agreement or any  
20 of the guilty pleas entered pursuant to this plea agreement are set  
21 aside for any reason. Defendant expressly waives all constitutional and  
22 statutory defenses to the initiation of any charges not brought pursuant  
23 to this agreement.

24 5. With regards to the state case, defendant SCHLOMO SCHMUEL  
25 agrees to plead guilty to the following charges in the following case:

- 26 a. Case Number CD280827, People v. Schlomo Schmucl; Count 2 and  
27 Count 5: Unlawfully Conceal and Event Affecting an Insurance  
28 Claim in violation of California Penal Code Section 550(b)(3)
- 29 b. The combined maximum state penalty for both counts is 6 years  
30 state prison and a fine of \$ \$100,000.

31 6. Pursuant to California Labor Code 139.21(e)(1), Defendant  
32 Schlomo Schmucl admits that he owns 100% of Diamond Orthopedic Services,

1 LLC and agrees to the dismissal of all liens and forfeiture of sums  
2 claimed therein, and waiver of any right to seek collection of sums  
3 claimed in such liens in the California Workers' Compensation System,  
4 regarding any liens which arise from bills with the following  
5 characteristics: (1) the referring provider (Box 17 on CMS 1500) was  
6 Steven J. Rigler, DC; Jose Candelario DC (AKA Joserodel Zavala  
7 Candelario, DC); Dirk H. Kancilia, DC; or Phong H. Tran, MD; (2) the  
8 service billed for was CPT code E0217 (Water circulating heat pad with  
9 pump); or CPT code L0621 (SIO flex pelvic/sacral brace); and (3) the  
10 provider was Diamond Orthopedic Services, LLC (TIN 46-1687642, NPI  
11 1174860522), as these liens arise from fraud.

12 7. In exchange for Defendant's plea to the above-referenced count  
13 in the state case, the SDCDAO agrees to dismiss the remaining counts  
14 against him with a waiver pursuant to People v. Harvey, 25 Cal.3d 754  
15 (1979). The SDCDAO further agrees to recommend that Defendant be  
16 sentenced on the state case to no more than 4 years state prison, to  
17 be served concurrently with his sentence in the federal case, that his  
18 state sentence may be served in federal custody, that he receive the  
19 standard restitution fine(s), and that the court order full restitution  
20 if applicable pursuant to California law. The ultimate state case  
21 sentencing decision is within the sole discretion of the state court  
22 judge. A copy of the written and signed plea agreement in the state  
23 case is incorporated herein.

24 II

25 NATURE OF THE OFFENSE

26 A. FEDERAL CASE: ELEMENTS EXPLAINED

27 Defendant understands that the offense to which he is pleading  
28 guilty has the following elements:

Conspiracy [18 U.S.C. § 371]

1. There was an agreement between two or more persons to  
commit Honest Services Mail Fraud and Health Care Fraud;

- 1           2.    The defendant entered into the agreement knowing of at  
2                    least one of its objects and intending to help accomplish  
3                    it; and  
4           3.    One of the co-conspirators committed at least one overt  
5                    act in furtherance of the conspiracy.

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

- 7           1.    The defendant devised or knowingly participated in a  
8                    scheme to deprive a victim of his or her right to a  
9                    doctor's honest services;  
10           2.    The scheme consisted of soliciting and facilitating the  
11                   receipt of kickback payments from suppliers of health-  
12                   care services and products to be paid to the doctor in  
13                   exchange for referrals;  
14           3.    The doctor, as a healthcare professional, owed a  
15                   fiduciary duty to the victim;  
16           4.    The defendant acted with the intent to defraud by  
17                   depriving the victim of his or her right to the doctor's  
18                   honest services;  
19           5.    The defendant's act was material; that is, it had a  
20                   natural tendency to influence, or was capable of  
21                   influencing, a person's acts; and  
22           6.    The defendant used, or caused someone to use, the mails  
23                   to carry out or to attempt to carry out the scheme or  
24                   plan.

25           Health Care Fraud [18 U.S.C. § 1347]

- 26           1.    The defendant knowingly executed, or attempted to  
27                   execute, a scheme or artifice to defraud a health-care  
28                   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.

1           3.    The defendant acted willfully and intended to defraud.

2           4.    The defendant did so in connection with the delivery of  
3           or payment for health-care benefits, items, or services.

4           B.    FEDERAL CASE FACTUAL BASIS: ELEMENTS UNDERSTOOD AND ADMITTED

5           Defendant has fully discussed the facts of the federal case and the  
6           state cases with defense counsel. Defendant has committed each of the  
7           elements of Conspiracy to Commit Honest Services Mail Fraud and Health  
8           Care Fraud, in violation of 18 U.S.C. § 371, and admits that there is a  
9           factual basis for the guilty plea in the federal case. Specifically,  
10          Defendant admits:

11          1.    Defendant SCHLOMO SCHMUEL was a licensed doctor of podiatric  
12          medicine in the state of California from 1992 to 2019. He owned and  
13          operated various business, including Diamond Orthopedics Services, LLC,  
14          Schlomo Schmuel, D.P.M., Inc., Innovative Orthopedic Solution, Sunset  
15          Ambulatory Surgical Center, and Sunset Foot Clinic Corporation, among  
16          others (together, "Schmuel Entities").

17          2.    From at least 2014 through 2015, within the Southern District  
18          of California and elsewhere, defendant SCHLOMO SCHMUEL knowingly and  
19          intentionally conspired with JULIAN GARCIA, BORIS DADIOMOV, STEVEN  
20          RIGLER, JOSE CANDELARIO, and others to commit the offenses of Honest  
21          Services Mail Fraud, in violation of 18 U.S.C. §§ 1341 and 1346, and  
22          Health Care Fraud, in violation of 18 U.S.C. § 1347. It was the goal  
23          of the conspiracy to fraudulently obtain money from health care benefit  
24          programs by submitting claims for medical goods and services that were  
25          generated through a secret pattern of bribes to physicians (and those  
26          acting with them and on their behalf), to induce the physicians to refer  
27          patients for those services, and to refer to particular providers, in  
28          violation of the physicians' fiduciary duty to their patients.

          3.    It was a further part of the conspiracy that the co-  
conspirators concealed from patients, and intended to cause the  
physicians to conceal from patients, the kickback and bribe payments  
made to physicians for referring patients to companies owned by the co-

1 conspirators or in which they had an interest, in violation of the  
2 physicians' fiduciary duty to their patients.

3 4. It was a further part of the conspiracy that the co-  
4 conspirators utilized the mails as an essential part of their fraudulent  
5 scheme, including by mailing bills to insurance carriers.

6 5. It was a further part of the conspiracy that co-conspirators  
7 billed, and caused insurers to bill, for services provided to patients  
8 that the co-conspirators had procured by paying bribes and kickbacks.

9 6. It was a further part of the conspiracy that the co-  
10 conspirators concealed from insurers and patients the material fact of  
11 the kickback arrangements, which were in violation of California state  
12 law, that led to the referrals.

13 7. Knowing that paying a per-patient referral fee was unlawful,  
14 Defendant offered to pay and paid \$100 for each referral of a certain  
15 type of durable medical equipment ("DME"), called a "hot/cold pack,"  
16 that his co-conspirators could induce physicians to refer to Schmuel  
17 Entities. During the period 2014 through 2015, defendant SCHLOMO SCHMUEL  
18 knowingly paid GARCIA more than \$372,000 in these unlawful, per-patient  
19 referral fees.

20 8. Defendant agrees that he intentionally engaged in or caused  
21 conduct constituting sophisticated means, including by, in an effort to  
22 conceal the corrupt payments for patient referrals, directing payments  
23 through intermediaries, including "marketing" companies, and executing  
24 "marketing" agreements with those intermediaries, when in reality the  
25 payments were unlawful per-patient referral fees. Further, Defendant  
26 SCHLOMO SCHMUEL attempted to conceal these unlawful per-patient  
27 referral fees by making payments to GARCIA from corporations such as  
28 Sunset Ambulatory Surgical Center, Inc., Innovative Orthopedic  
Solution, and Sunset Foot Clinic Corporation, all of which had no direct  
connection to Diamond Orthopedics Services, LLC and/or had no direct  
connection to providing patients with hot/cold packs. Defendant SCHLOMO  
SCHMUEL frequently divided the per-patient referral fees among his  
corporations to conceal the fact the payments were made on a per-patient

1 referral basis, even though he provided the payments to GARCIA on the  
2 same day.

3 9. Defendant agrees that his offense involved abuse of a position  
4 of trust with respect to patients.

5 10. Defendant agrees that the California Workers' Compensation  
6 System is a government health care program, in that it is a plan or  
7 program that provides health benefits, which is funded directly, in  
8 whole or in part, by federal or state government.

9 11. Using the manners and means described above, Defendant and  
10 his co-conspirators submitted and caused to be submitted claims valued  
11 at between \$3.5 million and \$9.5 million for hot/cold packs procured  
12 through the payment of bribes and kickbacks.

13 12. Defendant agrees that as an overt act of his conspiracy, on  
14 or about May 15, 2015, Defendant SCHLOMO SCHMUEL issued two checks, one  
15 from "Innovative Orthopedic Solution," and one from "Sunset Ambulatory  
16 Surgical Center, Inc.," for \$12,350.00 each, to "Memphis Media," a  
17 company associated with JULIAN GARCIA, as compensation for referring  
18 Workers' Compensation patients to defendant SCHMUEL for a "hot / cold  
19 pack."

20 13. Defendant agrees that as an overt act of his conspiracy, on  
21 or about May 24, 2015, Defendant SCHMUEL through Diamond Orthopedic  
22 Services issued a bill to ESIS insurance company for \$5,950 for Durable  
23 Medical Equipment provided to Mayra P.

24 C. STATE CASE: ELEMENTS EXPLAINED

25 Defendant understands that the offenses to which he is pleading  
26 guilty in the state cases have the following elements:

27 Unlawfully Conceal an Event Affecting an Insurance Claim

28 [California Penal Code, Section 550(b)(3)]

1. Defendant did, knowingly assist, or conspire with another, to conceal or fail to disclose the occurrence of an event;

- 1           2. That affects any person's right or entitlement to an  
2           insurance benefit or payment, or amount of benefit or  
3           payment; and  
4           3. With the specific intent to defraud.

5           D. STATE CASES FACTUAL BASES: ELEMENTS UNDERSTOOD AND ADMITTED

6           Defendant has fully discussed the facts of the state case with his  
7           defense counsel. Defendant has committed each of the elements of  
8           unlawfully concealing an event affecting an insurance claim, in  
9           violation of California Penal Code, Section 550(b)(3) and admits the  
10          following facts are true and undisputed:

11          As to Count 2 of Case Number CD280827, California Penal Code  
12          Section 550(b)(3): On or about June 15, 2015, Defendant Schlomo Schmucl  
13          did aid and abet and conspire with Julian Garcia, Alexander Kiev  
14          Martinez and Steven Rigler to fraudulently submit a bill to Liberty  
15          Mutual Insurance Company for \$5,000 for a "Hot Cold Pack" (CPT Code  
16          E0217) on a California Workers' Compensation patient (Juan C.).  
17          Defendant Schmucl made a \$100 kickback payment to Julian Garcia for the  
18          referral of Juan C., a patient of Steven Rigler, D.C. In exchange for  
19          Defendant Schmucl's \$100 kickback payment, Defendant Schmucl received  
20          a Rigler prescription for a "Hot Cold Pack" for patient Juan C.  
21          Defendant Schmucl provided a "Hot Cold Pack" to Juan C. Defendant  
22          Schmucl billed Liberty Mutual Insurance Company \$5000 for filling the  
23          prescription. Defendant Schmucl did not disclose to, and actively  
24          concealed from, Liberty Mutual Insurance Company that Defendant Schmucl  
25          paid an illegal kickback for the referral of patient Juan C.'s "Hot  
26          Cold Pack" prescription, and did so with the intent to defraud. Had  
27          Liberty Mutual Insurance Company known of the illegal kickback, Liberty  
28          Mutual Insurance Company would not have paid anything on the bill, as  
29          it would have been legally void.

30          As to Count 5, of Case Number CD280827: On or about and between  
31          June 1, 2015, and June 30, 2015, Defendant Schlomo Schmucl did aid and  
32          abet and conspire with Julian Garcia, Alexander Kiev Martinez and Steven  
33          Rigler to fraudulently submit a bill to Insurance Company of the West

1 for \$5,000 for a "Hot Cold Pack" (CPT Code E0217) on California Workers'  
2 Compensation patient (Esteban C.). Defendant Schmucl made a \$100  
3 kickback payment to Julian Garcia for the referral of Esteban C., a  
4 patient of Steven Rigler, D.C. In exchange for Defendant Schmucl's \$100  
5 kickback payment, Defendant Schmucl received a Rigler prescription for  
6 a "Hot Cold Pack" for patient Esteban C. Defendant Schmucl provided  
7 a "Hot Cold Pack" to Esteban C. Defendant Schmucl billed Insurance  
8 Company of the West \$5000 for filling the prescription. Defendant  
9 Schmucl did not disclose to, and actively concealed from, Insurance  
10 Company of the West that Defendant Schmucl paid an illegal kickback for  
11 the referral of patient Esteban C.'s "Hot Cold Pack" prescription, and  
12 did so with the intent to defraud. Had Insurance Company of the West  
13 known of the illegal kickback, Insurance Company of the West would not  
14 have paid anything on the bill, as it would have been legally void.

15 III

16 PENALTIES

17 A. FEDERAL CASE

18 Defendant understands that Conspiracy, in violation of 18 U.S.C.  
19 §371, to which Defendant is pleading guilty in the federal case carries  
20 the following penalties:

- 21 A. a maximum 5 years in prison;
- 22 B. a maximum \$250,000 fine, or twice the gross gain or loss  
23 derived from the offense;
- 24 C. a mandatory special assessment of \$100 per count; and
- 25 D. a term of supervised release of 3 years. Defendant understands  
26 that failure to comply with any of the conditions of supervised  
27 release may result in revocation of supervised release,  
28 requiring defendant to serve in prison, upon any such  
revocation, all or part of the statutory maximum term of  
supervised release for the offense that resulted in such term  
of supervised release.
- E. an order from the Court pursuant to 18 U.S.C. § 3663A that  
Defendant make mandatory restitution to the victims of the

1 offense of conviction, or the estate(s) of the victims(s).  
2 Defendant understands that the Court shall also order, if  
3 agreed to by the parties in this plea agreement, restitution  
4 to persons other than the victims of the offense of conviction.

5 F. an order of forfeiture of any property, real or personal,  
6 which constitutes or is derived from proceeds traceable to the  
7 offense.

8 IV

9 DEFENDANT'S WAIVER OF TRIAL RIGHTS IN FEDERAL CASE

10 Defendant understands that this guilty plea waives the right to:

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

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

24 V

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

27 The USAO and SDCDAO represent that any information establishing the  
28 factual innocence of Defendant known to the undersigned prosecutors in  
this case has been turned over to defendant. The USAO and SDCDAO will  
continue to provide such information establishing the factual innocence  
of defendant.

Defendant understands that if this case proceeded to trial, the  
USAO and SDCDAO would be required to provide impeachment information

1 relating to any informants or other witnesses. In addition, if defendant  
2 raised an affirmative defense, the USAO and SDCDAO would be required to  
3 provide information in its possession that supports such a defense.  
4 Defendant acknowledges, however, that by pleading guilty, Defendant will  
5 not be provided this information, if any, and Defendant also waives the  
6 right to this information. Finally, Defendant agrees not to attempt to  
7 withdraw the guilty plea or to file a collateral attack based on the  
8 existence of this information.

9 VI

10 DEFENDANT'S REPRESENTATION THAT GUILTY  
11 PLEAS ARE KNOWING AND VOLUNTARY

12 Defendant represents that:

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

- 1 C. No one has threatened Defendant or Defendant's family to  
2 induce this guilty plea.  
3 D. Defendant is pleading guilty because in truth and in fact  
4 Defendant is guilty and for no other reason.

5 VII

6 APPLICABILITY OF SENTENCING GUIDELINES

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

22 VIII

23 SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

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

1 also has been advised and understands that if the sentencing judge does  
2 not follow any of the parties' sentencing recommendations, Defendant  
3 nevertheless has no right to withdraw his pleas.

4 IX

5 PARTIES' SENTENCING RECOMMENDATIONS

6 A. SENTENCING GUIDELINE CALCULATIONS

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

- |    |   |     |
|----|---|-----|
| 12 | 1. Base Offense Level [§ 2B1.1]                   | 6   |
| 13 | 2. Intended loss \$3.5 mill to \$9.5 mill         | +18 |
| 14 | [§ 2B1.1(b)(1)(H)]                                |     |
| 15 | 3. Loss of > \$1 mill to Govt health care program | +2  |
| 16 | 4. Sophisticated Means [§ 2B1.1(b)(10)(C)]        | +2  |
| 17 | 5. Abuse of Position of Trust [§ 3B1.3]           | +2  |
| 18 | 6. Acceptance of Responsibility [§ 3E1.1]         | -3  |

19 B. ACCEPTANCE OF RESPONSIBILITY

20 Notwithstanding paragraph A above, the USAO will not be obligated  
21 to recommend any adjustment for Acceptance of Responsibility under  
22 U.S.S.G. §§ 3E1.1 or 8C2.5 if Defendant engages in conduct inconsistent  
23 with acceptance of responsibility including, but not limited to, the  
24 following:

- 25 1. Fails to truthfully admit a complete factual basis as  
26 stated in the plea at the time the plea is entered, or  
27 falsely denies, or makes a statement inconsistent  
28 with, the factual basis set forth in this agreement;
2. Falsely denies prior criminal conduct or convictions;
3. Is untruthful with the Government, the Court or  
probation officer;
4. Materially breaches this plea agreement in any way; or

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5. Contests or assists any third party in contesting the forfeiture of property(ies) seized in connection with this case, and any property(ies) to which the defendant has agreed to forfeit as set forth in the attached forfeiture addendum.

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

The parties agree that Defendant may request or recommend additional downward adjustments, departures, including criminal history departures under USSG § 4A1.3, or sentence reductions under 18 U.S.C. § 3553. The USAO may oppose any downward adjustments, departures and sentence reductions not set forth in Section X, paragraph A above.

D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

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

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

The parties agree that the facts in the "factual basis" sections of this agreement as to both the federal case and the state cases are true, and may be considered as "relevant conduct" under USSG § 1B1.3 and as the nature and circumstances of the offense under 18 U.S.C. § 3553(a) (1).

F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

The parties agree that the USAO will recommend the statutory maximum, 60 months, which is lower than the advisory Guidelines range, and accordingly, is the Guidelines sentence.

G. SPECIAL ASSESSMENT/FINE/RESTITUTION/FORFEITURE

1. Special Assessment

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

2. Restitution

The parties do not recommend imposition of a restitution order in the federal case in light of the difficulty of determining the individualized loss amounts suffered by each victim due to Defendant's conduct, see 18 USC § 3553A(c)(3)(B), and in the interest of judicial efficiency to avoid duplication of restitution proceedings in state court. Defendant understands that restitution may be ordered in the state case pursuant to Defendant's guilty pleas in that matter.

3. Fine

The parties will jointly recommend that Defendant be ordered to pay a fine of \$150,000.

4. Forfeiture

Defendant Schlomo Schmucl agrees to the dismissal of all liens and forfeiture of sums claimed therein as set forth at paragraph (I)(6), supra.

H. SUPERVISED RELEASE

If the Court imposes a term of supervised release, the parties agree that Defendant will not seek to reduce or terminate early the term of supervised release until Defendant has served at least 2/3 of the term.

X

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

A. WAIVER OF RIGHT TO APPEAL CONVICTION

In exchange for the concessions by the USAO and SDCDAO in the federal and state cases in this plea agreement, Defendant waives, to the full extent of the law, any right to appeal the convictions and sentence in either the federal or state cases.

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.

//

1 C. OBJECTIONS TO UNITED STATES' RECOMMENDATION

2 If Defendant believes the recommendation by the USAO or SDCDAO is  
3 not in accord with this plea agreement, Defendant will object at the  
4 time of sentencing; otherwise the objection will be deemed waived.

4 XI

5 BREACH OF THE PLEA AGREEMENT

6 A. MATERIAL BREACH OF PLEA AGREEMENT

7 Defendant acknowledges, understands, and agrees that if Defendant  
8 violate or fail to perform any of Defendant's obligations under this  
9 agreement, such violation or failure to perform will constitute a  
10 material breach of this agreement.

11 Defendant acknowledges, understands, and agrees further that the  
12 following non-exhaustive list of conduct by Defendant unquestionably  
13 constitutes a material breach of this plea agreement:

- 13 1. Failing to plead guilty pursuant to this agreement;
- 14 2. Withdrawing the guilty plea or attempting to withdraw the  
15 guilty plea;
- 16 3. Failing to fully accept responsibility as established in  
17 Section X, paragraph B, above;
- 18 4. Failing to appear in court;
- 19 5. Failing to abide by any lawful court order related to  
20 this case;
- 21 6. Appealing or collaterally attacking the sentence or  
22 conviction in violation of Section XI of this plea  
23 agreement; or
- 24 7. Engaging in additional criminal conduct from the time of  
25 arrest until the time of sentencing.

24 B. CONSEQUENCES OF BREACH

25 In the event of a material breach by Defendant of this plea  
26 agreement, Defendant will not be able to enforce any of its provisions,  
27 and the USAO and SDCDAO will be relieved of all obligations under this  
28 plea agreement. For example, the USAO or SDCDAO may pursue any charges  
including those that were dismissed, promised to be dismissed, or not

1 filed as a result of this agreement. Defendant agrees that any statute  
2 of limitations relating to such charges is tolled as of the date of this  
3 agreement; Defendant also waives any double jeopardy defense to such  
4 charges. In addition, the USAO or SDCDAO may move to set aside the  
5 Defendant's guilty pleas. Defendant may not withdraw his guilty pleas  
6 based on the pursuit of remedies for their breach by the USAO or SDCDAO.

6 XII

7 COMPLETE WAIVER OF PLEA-DISCUSSION EXCLUSION RIGHTS

8 In exchange for the concessions in this agreement, Defendant agrees  
9 that: (i) the stipulated factual basis statements in this agreement;  
10 (ii) any statements made by Defendant, under oath, at the guilty plea  
11 hearings in federal and state court; and (iii) any evidence derived from  
12 such statements, are admissible against Defendant in the prosecution's  
13 case-in-chief and at any other stage of the proceedings in any  
14 prosecution of or action against Defendant on the current charges and/or  
15 any other charges that the USAO and SDCDAO may pursue against Defendant.  
16 Additionally, Defendant knowingly, voluntarily, and intelligently waive  
17 any argument under the United States Constitution, any statute, Federal  
18 Rule of Evidence 410, Federal Rule of Criminal Procedure 11(f), and/or  
19 any other federal or California rule, that these statements or any  
20 evidence derived from these statements should be suppressed or are  
21 inadmissible. The waiver of the aforementioned rights by Defendant is  
22 effective as soon as the parties sign this agreement, and is not  
23 contingent upon a federal or state court ultimately accepting  
24 Defendant's guilty pleas.

22 XIV

23 ENTIRE AGREEMENT

24 The plea agreements in the state cases, which are incorporated  
25 herein, together with the plea agreement in the federal case embody the  
26 entire agreement between the parties and supersede any other agreement,  
27 written or oral.

27 //

28 //

Plea Agreement

XV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

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

XVI

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

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

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 Defendant about what to say in this regard.

ROBERT S. BREWER, JR.  
United States Attorney

Valerie H. Chu  
VALERIE H. CHU  
Assistant U.S. Attorney

8/1/2019  
DATED

SUMMER STEPHAN  
San Diego District Attorney

John Philpott  
JOHN PHILPOTT  
Deputy District Attorney

8/1/19  
DATED

FOR DEFENDANT

Harland Braun  
HARLAND BRAUN  
Counsel for Defendant

7/30/19  
DATED

Richard A. Moss  
RICHARD A. MOSS  
Counsel for Defendant

7/30/19  
DATED

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

4 7/30/19  
5 DATED

  
6 \_\_\_\_\_  
7 SCHLOMO SCHMUEL  
8 Defendant

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RELATED

**U.S. District Court  
Southern District of California (San Diego)  
CRIMINAL DOCKET FOR CASE #: 3:19-cr-03006-BAS-1**

Case title: USA v. Schmucl

Date Filed: 08/06/2019

Assigned to: Judge Cynthia Bashant

**Defendant (1)**

Schlomo Schmucl

represented by **Harland W Braun**  
Braun & Braun LLP  
10250 Constellation Boulevard  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Retained*

**Richard A Moss**  
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Pasadena, CA 91101  
626-796-7400  
Fax: 626-796-7789  
Email: rmoss@rmosslaw.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Retained*

**Pending Counts**

18:371; 28:2461(c) - Conspiracy;  
Criminal Forfeiture  
(1)

**Disposition**

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

**Disposition**

None

**Highest Offense Level (Terminated)**

None

**Complaints**

None

**Disposition**

**Plaintiff**

USA

represented by **Valerie Chu**  
 U S Attorneys Office Southern District  
 of California  
 Criminal Division  
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 San Diego, CA 92101  
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 Fax: (619) 546-0450  
 Email: Valerie.Chu@usdoj.gov  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Assistant United States  
 Attorney*

Date Filed	#	Docket Text
08/06/2019	<u>1</u>	INFORMATION as to Schlomo Schmucl (1) count(s) 1. (dls) (Entered: 08/06/2019)
08/06/2019	2	Minute Entry for proceedings held before Magistrate Judge Mitchell D. Dembin: Initial Appearance as to Schlomo Schmucl (present) held on 8/6/2019. Bond set as to Schlomo Schmucl (1) O/R; defendant ordered to appear at USM office for fingerprint and release; abstract issued to USM. Bond packet due by close of business 8/9/2019. Arraignment on Information as to Schlomo Schmucl (1) Count 1 held on 8/6/2019. Change of Plea Hearing as to Schlomo Schmucl held on 8/6/2019. Plea entered by Schlomo Schmucl (1) Count 1. Plea Tendered by Schlomo Schmucl Guilty on count 1 of the Information. Excludable(s) started as to Schlomo Schmucl: XK: 8/6/19-11/4/19. PSR Ordered. Sentence With PSR set for 11/4/2019 09:00 AM before Judge Cynthia Bashant. Information, waiver of indictment, notice of related case, consent, plea and findings filed. (CD# 8/6/2019 MDD: 1036-1058). (Plaintiff Attorney Valerie Chu, AUSA). (Defendant Attorney Harland Braun, RET; Richard Moss, RET). (PTSO: J. Lopez). (dls) (Entered: 08/06/2019)
08/06/2019	<u>3</u>	WAIVER OF INDICTMENT by Schlomo Schmucl (dls) (Entered: 08/06/2019)
08/06/2019	4	

		NOTICE OF RELATED CASE(S) by USA of case(s) 15CR2820-BAS. (dls) (Entered: 08/06/2019)
08/06/2019	<u>5</u>	FINDINGS AND RECOMMENDATION of the Magistrate Judge upon a Tendered Plea of Guilty as to Schlomo Schmucl: Recommending that the district judge accept the defendant's plea of guilty. Court excludes time from 8/6/2019 through 11/4/2019 pursuant to 18 USC 3161(h)(1)(G). Signed by Magistrate Judge Mitchell D. Dembin on 8/6/2019. (jah) (Entered: 08/06/2019)
08/06/2019	<u>6</u>	ORDER Setting Conditions of Release as to Schlomo Schmucl (1). Defendant is released on personal recognizance. Signed by Magistrate Judge Mitchell D. Dembin on 8/6/2019. (jah) (Entered: 08/07/2019)
08/06/2019	<u>7</u>	ABSTRACT OF ORDER Releasing Schlomo Schmucl. Defendant is released on own recognizance. (jah) (Entered: 08/07/2019)
08/06/2019	<u>8</u>	CONSENT TO RULE 11 PLEA before Magistrate Judge Mitchell D. Dembin by Schlomo Schmucl. (jah) (Entered: 08/07/2019)
08/06/2019	<u>9</u>	PLEA AGREEMENT as to Schlomo Schmucl. (jah) (Entered: 08/07/2019)
08/08/2019	<u>10</u>	Own Recognizance Bond Filed as to Schlomo Schmucl. Signed by Magistrate Judge Mitchell D. Dembin on 8/8/2019. (Document applicable to USA, Schlomo Schmucl.) (jah) (Entered: 08/09/2019)
09/03/2019	<u>11</u>	ORDER ACCEPTING GUILTY PLEA as to Count One (1) of the Information, as to Schlomo Schmucl, adopting <u>5</u> Findings and Recommendation. Signed by Judge Cynthia Bashant on 9/3/2019. (sxm) (Entered: 09/03/2019)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
09/05/2019 11:19:47			
<b>PACER Login:</b>	DirAntiFraudUnit:6068869:0	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	3:19-cr-03006-BAS
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.20