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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL CAPEN,

Defendant.

SA CR No. 18- 00124 JLS

I N F O R M A T I O N

[18 U.S.C. § 371: Conspiracy;
42 U.S.C. § 1320a-7b(b) (1) (A):
Soliciting and Receiving Illegal
Remunerations for Health Care
Referrals; 18 U.S.C. §§ 982(a) (7),
981(a) (1) (C), and 28 U.S.C.
§ 2461(c): Criminal Forfeiture]

The United States Attorney charges:

COUNT ONE

[18 U.S.C. § 371]

A. INTRODUCTORY ALLEGATIONS

At all times relevant to this Information:

1. Healthsmart Pacific Inc., doing business as Pacific Hospital of Long Beach ("Pacific Hospital" or "PHLB"), was a hospital located in Long Beach, California, specializing in surgeries, particularly spinal and orthopedic surgeries. From in or around 1997 to in or around June 2004, Pacific Hospital was owned by majority shareholder Michael D. Drobot ("Drobot") -- through his Michael D.

1 Drobot Revocable Trust (the "Revocable Trust") and HealthSmart
2 Management Services Organization, Inc. ("HealthSmart MSO"), an entity
3 affiliated with Drobot -- as well as a number of physicians. In or
4 around June 2004, Pacific Hospital repurchased shares of common stock
5 from the physicians, effectively leaving Drobot as the sole owner of
6 Pacific Hospital.

7 2. On or about September 27, 2005, unindicted co-conspirator A
8 ("UCC-A") effectively became the sole shareholder of Pacific Hospital
9 through his ownership and control of the "[UCC-A] Family Trust,"
10 which, in turn, owned Abrazos Healthcare, Inc. ("Abrazos"), a
11 privately held corporation formed and incorporated in February 2005
12 for the purpose of purchasing shares of Pacific Hospital from Drobot,
13 through the Revocable Trust and HealthSmart MSO. UCC-A, through
14 Abrazos, also acquired other interests in affiliated entities
15 previously owned and/or controlled by Drobot.

16 3. On or about June 26, 2006, UCC-A provided defendant DANIEL
17 CAPEN ("defendant CAPEN"), an orthopedic surgeon, with 10% of the
18 common stock of Abrazos, which effectively gave defendant CAPEN a 10%
19 ownership interest in Pacific Hospital.

20 4. On or about October 12, 2010, Drobot, through an affiliated
21 entity, purchased UCC-A's shares of Abrazos, which effectively
22 provided Drobot a 90% ownership interest in Pacific Hospital, while
23 defendant CAPEN continued to maintain his 10% ownership interest
24 until Pacific Hospital was sold on or about October 8, 2013.

25 5. James Canedo ("Canedo") was Pacific Hospital's Chief
26 Financial Officer ("CFO"). UCC-B was Pacific Hospital's controller
27 and would issue checks to vendors and other payees at the direction
28 of Drobot, Canedo, and others affiliated with Pacific Hospital.

1 6. Pacific Specialty Physician Management, Inc. ("PSPM") was a
2 corporation headquartered in Newport Beach, California, that provided
3 administrative and management services for physicians' offices.
4 Until approximately August 31, 2005, Drobot was the majority
5 shareholder of PSPM, with George William Hammer ("Hammer"), UCC-C (a
6 PSPM executive), Linda Martin ("Martin"), UCC-D (a PSPM manager and
7 executive) all holding minority shareholder interests. After
8 approximately August 31, 2005, PSPM was 47% owned by UCC-A, through
9 the [UCC-A] Family Trust, 36% owned by Drobot, and 17% owned by three
10 individuals affiliated with PSPM. Effective January 1, 2008, Hammer
11 was given close to a 50% ownership interest in PSPM and UCC-D
12 obtained the remaining approximately 50% of PSPM. On or about August
13 1, 2010, Hammer and UCC-D divested their shares in PSPM to Drobot,
14 through his Revocable Trust. UCC-E, who Hammer hired as a controller
15 for PSPM and affiliated entities in approximately 2001, served as
16 PSPM's CFO starting in approximately mid-2008.

17 7. One of the medical practices PSPM managed was Southwestern
18 Orthopedic Medical Corporation, doing business as Downey Orthopedic
19 Medical Group ("Downey Ortho"). Defendant CAPEN, along with other
20 physicians affiliated with Downey Ortho (collectively, the "Downey
21 Ortho-Affiliated Physicians," or singularly, a "Downey Ortho-
22 Affiliated Physician"), maintained a medical practice at various
23 Downey Ortho clinic locations, including Downey, Thousand Oaks, and
24 Sherman Oaks. Martin was the office manager for Downey Ortho from
25 the inception of the practice until approximately 2004, and worked
26 closely with UCC-D, who was affiliated with Downey Ortho since
27 approximately 1997. Through PSPM's management of Downey Ortho,
28 Martin and UCC-D became affiliated with PSPM. UCC-C replaced Martin,

1 in her role managing Downey Ortho, when Martin left PSPM in
2 approximately 2004. UCC-C left PSPM in approximately September 2009
3 and, at that time, UCC-D became the Chief Operating Officer of PSPM,
4 until PSPM stopped managing Downey Ortho in 2013.

5 8. California Pharmacy Management LLC ("CPM") was a limited
6 liability company, headquartered in Newport Beach, California, that
7 operated and managed a pharmaceutical dispensing program in medical
8 clinics for physicians. Drobot and Michael R. Drobot Jr. ("Drobot
9 Jr.") owned and/or operated CPM. Hammer also had an ownership
10 interest in CPM at various times prior to 2010.

11 9. Industrial Pharmacy Management LLC ("IPM") was a limited
12 liability company, headquartered in Newport Beach, California. IPM
13 operated and managed a pharmaceutical dispensing program in medical
14 clinics for physicians through the use of pharmaceutical management
15 agreements and claims purchase agreements. Drobot principally owned
16 and controlled IPM until approximately 2010, when Drobot Jr. assumed
17 ownership and control of IPM.

18 10. International Implants LLC ("I2") was a limited liability
19 company, headquartered in Newport Beach, California, that purchased
20 implantable medical hardware for use in spinal surgeries from
21 original manufacturers and sold them to hospitals, particularly
22 Pacific Hospital, starting around July 2008. At various times, I2
23 was effectively owned and/or controlled by Drobot, PSPM, and UCC-F,
24 who was the General Counsel and Chief Compliance Officer of Pacific
25 Hospital until approximately mid-2012. UCC-E was the CFO of I2.

26 11. UCC-G was a paralegal and risk manager at Pacific Hospital,
27 who worked closely with UCC-F.

28

1 12. Timothy James Hunt ("Hunt") was an orthopedic surgeon
2 specializing in shoulder and knee arthroscopy, who, starting in
3 approximately June 2008, owned and operated Allied Medical Group
4 ("Allied Medical"), a medical practice with clinics in Lawndale and
5 Long Beach, California, specializing in orthopedic medicine.

6 13. UCC-H was an orthopedic surgeon who owned and operated
7 Intercommunity Medical Group ("Intercommunity Medical"), a medical
8 practice with clinic locations in Long Beach, Torrance, Santa Ana,
9 and Lawndale, California. Hunt practiced medicine at Intercommunity
10 Medical from 1998 to 2008.

11 14. UCC-I was an office manager for both Intercommunity Medical
12 and Allied Medical. UCC-J was also an office manager for Hunt at
13 Allied Medical.

14 15. Precision Monitoring Resource, LLC ("PMR") generated
15 toxicology referrals, specifically including urine drug testing
16 ("UDT"), for laboratory testing at Pacific Hospital. Drobot owned
17 and/or operated PMR, along with UCC-K and UCC-E, who were the
18 President and CFO of PMR, respectively.

19 16. Long Beach Prescription Pharmacy, Inc. ("LBPP") was
20 primarily a mail order pharmacy, with a retail pharmacy location
21 onsite at Pacific Hospital. Drobot, through his Revocable Trust,
22 owned LBPP at least until August 2010, when Drobot Jr. assumed
23 ownership and/or control of LBPP. Starting in approximately February
24 2011, Drobot and Drobot Jr. used LBPP as a vehicle for Pacific
25 Hospital to reimburse Drobot Jr. for kickback payments Drobot Jr.
26 provided to certain physicians, through IPM, to induce these
27 physicians to, among other things, refer or perform surgeries at
28 Pacific Hospital.

1 17. From at least 1998, through approximately in or around
2 2010, Hammer performed various executive functions supporting Pacific
3 Hospital, CPM, IPM, PSPM, and related entities. From in or around
4 2010, through at least September 2013, Hammer performed various tax
5 and accounting functions for defendant CAPEN and Pacific Hospital,
6 CPM, IPM, PSPM, I2, PMR, LBPP, and other Drobot-related entities
7 (collectively, "Pacific Hospital and Affiliated Entities") to
8 facilitate the conspiracy described in paragraphs 32 to 36 below.

9 18. Paul Randall ("Randall") was a "marketer" for various
10 entities and individuals, who did business with Pacific Hospital and
11 Hunt. Randall entered into a toxicology referral arrangement with
12 Hunt, and later sold his toxicology "marketing" business to PMR. In
13 or around late 2011, PMR obtained Hunt's toxicology referrals for
14 laboratory testing at Pacific Hospital.

15 19. Philip Sobol ("Sobol") was an orthopedic surgeon who --
16 based on a kickback arrangement with PSPM under a sham option
17 contract, and later with IPM under a partially bogus pharmaceutical
18 claims purchase agreement -- referred surgery patients to defendant
19 CAPEN and others for surgeries to be performed at Pacific Hospital.

20 California Workers' Compensation System ("CWCS")

21 20. The California Workers' Compensation System ("CWCS") was a
22 system created by California law to provide insurance covering
23 treatment of injury or illness suffered by individuals in the course
24 of their employment. Under the CWCS, employers were required to
25 purchase workers' compensation insurance policies from insurance
26 carriers to cover their employees. When an employee suffered a
27 covered injury or illness and received medical services, the medical
28 service provider submitted a claim for payment to the relevant

1 insurance carrier, which then paid the claim. Claims were submitted
2 to and paid by insurance carriers either by mail or electronically.
3 The CWCS was governed by various California laws and regulations.

4 21. The California State Compensation Insurance Fund ("SCIF")
5 was a non-profit insurance carrier, created by the California
6 Legislature, that provided workers' compensation insurance to
7 employees in California, including serving as the "insurer of last
8 resort" under the CWCS system for employers without any other
9 coverage.

10 DOL-OWCP

11 22. The Federal Employees' Compensation Act, Title 5, United
12 States Code, Sections 8101, et seq. ("FECA"), through the FECA
13 program, provided certain benefits to civilian employees of the
14 United States, for wage-loss disability due to a traumatic injury or
15 occupational disease sustained while working as a federal employee.
16 Benefits available to injured employees included rehabilitation,
17 medical, surgical, hospital, pharmaceutical, and supplies for
18 treatment of an injury.

19 23. The Office of Workers' Compensation Programs ("OWCP"), a
20 component of the Department of Labor ("DOL"), administered the FECA
21 program, which was a federal workers' compensation program focused on
22 return to work efforts.

23 Health Care Programs

24 24. The FECA program was a "Federal health care program," as
25 defined by 42 U.S.C. § 1320a-7b(f).

26 25. SCIF and other workers' compensation insurance carriers,
27 the FECA program, personal injury insurers, and other public and
28

1 private plans and contracts, were "health care benefit programs" (as
2 defined in 18 U.S.C. § 24(b)), that affected commerce.

3 Relevant California Laws Pertaining to Bribery and Kickbacks

4 26. California law, including but not limited to the California
5 Business and Professions Code and the California Insurance Code,
6 prohibited the offering, delivering, soliciting, or receiving of
7 anything of value in return for referring a patient for medical
8 services.

9 27. California Business & Professions Code Section 650
10 prohibited the offer, delivery, receipt, or acceptance by certain
11 licensees -- specifically including physicians -- of any commission
12 or other consideration, whether in the form of money or otherwise, as
13 compensation or inducement for referring patients, clients, or
14 customers to any person.

15 28. California Insurance Code Section 750(a) prohibited anyone
16 who engaged in the practice of processing, presenting, or negotiating
17 claims, including claims under policies of insurance, from offering,
18 delivering, receiving, or accepting any commission or other
19 consideration, whether in the form of money or otherwise, as
20 compensation or inducement to any person for the referral or
21 procurement of clients, cases, patients, or customers.

22 Fiduciary Duties and the Physician-Patient Relationship

23 29. A "fiduciary" obligation generally existed whenever one
24 person -- a client -- placed special trust and confidence in another
25 -- the fiduciary -- in reliance that the fiduciary would exercise his
26 or her discretion and expertise with the utmost honesty and
27 forthrightness in the interests of the client, such that the client
28 could relax the care and vigilance which she or he would ordinarily

1 exercise, and the fiduciary knowingly accepted that special trust and
2 confidence and thereafter undertook to act on behalf of the client
3 based on such reliance.

4 30. Physicians owed a fiduciary duty to their patients,
5 requiring physicians to act in the best interest of their patients,
6 and not for their own professional, pecuniary, or personal gain.
7 Physicians owed a duty of honest services to their patients for
8 decisions made relating to the medical care of those patients,
9 including the informed choice of whether to undergo surgery and other
10 medical procedures, as well as the selection of a provider and
11 facility for such surgeries and procedures. Patients' right to
12 honest services from physicians included the right not to have
13 physician-fiduciaries solicit or accept bribes and kickbacks
14 connected to the medical care of such patients.

15 B. OBJECTS OF THE CONSPIRACY

16 31. Beginning on an unknown date, but no later than 1998, and
17 continuing through at least in or around October 2013, in Orange and
18 Los Angeles Counties, within the Central District of California, and
19 elsewhere, Drobot, defendant CAPEN from no later than 1998 to at
20 least in or about March 2013, Canedo from no later than 1999 to at
21 least October 2013, Drobot Jr. from no later than 2005 to at least in
22 or about April 2013, Martin from 1998 to 2004 and 2010 to 2013, UCC-A
23 from in or about August 2005 to at least in or about October 2010,
24 UCC-D from no later than 1998 to at least in or about March 2013,
25 UCC-C from no later than 1998 to at least 2009, UCC-E from no later
26 than 2005 to at least in or about April 2013, and others known and
27 unknown to the United States Attorney at various times between 1998
28

1 and 2013, knowingly combined, conspired, and agreed to commit the
2 following offenses against the United States:

3 a. honest services mail and wire fraud, in violation of
4 Title 18, United States Code, Sections 1341, 1343 and 1346;

5 b. use of an interstate facility in aid of bribery, in
6 violation of Title 18, United States Code, Section 1952(a);

7 c. monetary transactions in property derived from
8 specified unlawful activity, in violation of Title 18, United States
9 Code, Section 1957; and

10 d. knowingly and willfully soliciting or receiving
11 remuneration in return for referring an individual for the furnishing
12 and arranging for the furnishing of any item or service, or
13 purchasing or ordering and arranging for and recommending purchasing
14 or ordering any good, service, or item, for which payment may be made
15 in whole or in part under a Federal health care program, in violation
16 of Title 42, United States Code, Section 1320a-7b(b)(1).

17 C. MANNER AND MEANS OF THE CONSPIRACY

18 32. The objects of the conspiracy were to be carried out, and
19 were carried out, in the following ways, among others:

20 a. Drobot, Hammer, Canedo, Drobot Jr., Martin, UCC-A,
21 UCC-D, UCC-C, UCC-E, UCC-F, UCC-G, UCC-K, and other co-conspirators
22 working with Pacific Hospital and Affiliated Entities would offer to
23 pay and cause the payment of kickbacks to defendant CAPEN, Hunt,
24 Sobol, and other surgeons (the "Kickback Induced Surgeons"),
25 chiropractors, personal injury attorneys, marketers, and others
26 (collectively, the "Pacific Kickback Recipients") in exchange for
27 patient-related referrals to Pacific Hospital and Affiliated Entities
28 for spinal surgeries, other types of surgeries, magnetic resonance

1 imaging ("MRI"), toxicology (or "UDT"), durable medical equipment,
2 and other services (the "Kickback Tainted Surgeries and Services")
3 that would be billed to health care benefit programs, including the
4 CWCS and the FECA program.

5 b. Influenced by the promise of kickbacks, Pacific
6 Kickback Recipients, including Hunt, Sobol, and defendant CAPEN,
7 would cause patients insured by various health care benefit programs
8 to have Kickback Tainted Surgeries and Services at Pacific Hospital
9 and Affiliated Entities.

10 c. The Kickback Tainted Surgeries and Services were
11 performed in connection with patients referred to Pacific Hospital
12 and Affiliated Entities. With respect to surgeries, Kickback Induced
13 Surgeons, including Hunt, Sobol, and defendant CAPEN, would perform
14 these surgeries and/or refer surgery patients to other Kickback
15 Induced Surgeons, or other surgeons, who would be obligated to
16 perform such surgeries at Pacific Hospital. For example, Hunt and
17 Sobol would refer surgery patients to defendant CAPEN, who would
18 bring those surgery referrals, among others, to Pacific Hospital.

19 d. Pacific Hospital and Affiliated Entities and Kickback
20 Induced Surgeons, including Hunt, Sobol, and defendant CAPEN, would
21 submit claims, by mail and electronically, to health care benefit
22 programs for payments related to the Kickback Tainted Surgeries and
23 Services.

24 e. As defendant CAPEN, Drobot, Drobot Jr., Canedo, UCC-A,
25 Hammer, and other co-conspirators knew and intended, and as was
26 reasonably foreseeable to them, in using the mails, wire
27 communications, and facilities in interstate commerce to:
28 (i) communicate about patient referrals and underlying kickback

1 arrangements, (ii) submit claims to health care benefit programs for
2 the Kickback Tainted Surgeries and Services, and (iii) obtain payment
3 from health care benefit programs for the Kickback Tainted Surgeries
4 and Services, Drobot, defendant CAPEN, UCC-A, Hammer, and other co-
5 conspirators would solicit, offer, receive, or pay, and/or cause the
6 solicitation, offering, receipt, and payment of kickbacks that were
7 material to patients and health care benefit programs.

8 f. Medical professionals who were responsible for
9 treating or otherwise rendering care to patients, including defendant
10 CAPEN, owed a duty of honest services to those patients for decisions
11 made relating to medical care and treatment, including the informed
12 choice of whether to undergo surgery and other medical procedures, as
13 well as the choice of a treatment provider and facility for such
14 surgeries and procedures. That defendant CAPEN and other medical
15 professionals responsible for the medical care of these patients
16 would solicit and receive kickbacks to induce the referral of these
17 patients and corresponding ancillary services to Pacific Hospital and
18 Affiliated Entities for Kickback Tainted Surgeries and Services would
19 be material to these patients. As a result, the referral of patients
20 to Pacific Hospital and Affiliated Entities influenced by concealed
21 kickbacks deprived these patients of their right to honest services.

22 g. Using the mails and other facilities in interstate
23 commerce, Drobot, UCC-A, Hammer, Drobot Jr., Canedo, Martin, UCC-D,
24 UCC-C, UCC-E, UCC-F, UCC-K, and others would communicate about and
25 pay, and cause the payment of, kickbacks to Pacific Kickback
26 Recipients, including defendant CAPEN, who referred and caused the
27 referral of Kickback Tainted Surgeries and Services to Pacific
28 Hospital and Affiliated Entities.

1 h. Health care benefit programs would pay Pacific
2 Hospital and Affiliated Entities and Kickback Induced Surgeons,
3 including defendant CAPEN, for the Kickback Tainted Surgeries and
4 Services by mail and electronically.

5 i. To conceal and disguise the kickback payments from
6 health care benefit programs, patients, and law enforcement, Drobot,
7 UCC-A, Hammer, Drobot Jr., UCC-F, and other co-conspirators, through
8 Pacific Hospital and Affiliated Entities, would enter into
9 arrangements with Pacific Kickback Recipients, including defendant
10 CAPEN. In many cases, these arrangements would be reduced to written
11 contracts, including, among others, collection agreements, option
12 agreements, research and development agreements, lease and rental
13 agreements, consulting agreements, marketing agreements, management
14 agreements, and pharmacy agreements.

15 j. The written agreements would not specify that one
16 purpose for the agreements would be to induce Pacific Kickback
17 Recipients to refer Kickback Tainted Surgeries and Services to
18 Pacific Hospital and Affiliated Entities; indeed, some of the
19 agreements would specifically state that referrals were not
20 contemplated or a basis for the agreement. Additionally, the value
21 or consideration discussed as part of these arrangements would, in
22 fact, generally not be provided or desired; rather, the compensation
23 would be paid, entirely or in part, depending on the arrangement, to
24 cause Pacific Kickback Recipients to refer Kickback Tainted Surgeries
25 and Services to Pacific Hospital and Affiliated Entities. Relatedly,
26 the written contracts would generally allow for remuneration to
27 Pacific Kickback Recipients far in excess of any reasonable fair
28 market value assessment of legitimate services or things of value

1 purportedly contracted for -- to the extent calculated without regard
2 to the value of the Kickback Tainted Surgeries and Services.

3 k. Defendant CAPEN would receive remuneration in exchange
4 for performing Kickback Tainted Surgeries and Services at Pacific
5 Hospital and Affiliated Entities. These illegal kickbacks would be
6 provided to defendant CAPEN under the guise of various arrangements,
7 both written and oral, including a management agreement with PSPM; a
8 medical directorship with Abrazos; payments from Pacific Hospital for
9 UDT referrals obtained through PMR; and payments representing
10 purported consulting fees, bonuses, and dividends.

11 l. Under the PSPM management agreement, starting in or
12 about 1998 and continuing until at least January 2013:

13 i. PSPM would manage the Downey Ortho medical
14 practice, including defendant CAPEN and other Downey Ortho-Affiliated
15 Physicians, effectively providing for the management and
16 administration of day-to-day business operations. PSPM's management
17 and administrative services for Downey Ortho would include providing
18 equipment and furnishings; billing and collection services; and
19 payment of rent, administrative staff salaries, and other
20 miscellaneous expenses. In exchange for these management and
21 administrative services, PSPM would be entitled to a percentage of
22 Downey Ortho's monthly collections from patient billings, and, in
23 turn, an allocated share of the monthly collections for defendant
24 CAPEN and other co-conspirators practicing at Downey Ortho.

25 ii. According to the terms of the management
26 agreement between PSPM and Downey Ortho, PSPM's management fee, which
27 was calculated as a specified percentage of Downey Ortho's monthly
28 collections, was purportedly: (1) "projected to be sufficient to

1 enable PSPM to recover all of the operating expenses of PSPM [and]
2 generate a reasonable return on investment[;]" and (2) calculated
3 "without taking into account . . . the volume or value of any
4 referrals of business from . . . [Downey Ortho] to PSPM (or its
5 affiliates)[.]" The PSPM management agreement further provided:

6 No amount paid hereunder is intended to be, nor shall it be
7 construed to be, an inducement or payment for referral of,
8 or recommending referral of, patients by [Downey Ortho] to
9 PSPM (or its affiliates)[.] In addition, the management
10 fee charged hereunder does not include any discount,
11 rebate, kickback, or other reduction in charge, and the
12 management fee charged hereunder is not intended to be, nor
13 shall it be construed to be, an inducement or payment for
14 referral, or recommendation of referral, of patients by
15 [Downey Ortho] [to] PSPM (or its affiliates)[.]

16 iii. In reality, PSPM's management fee was understood
17 to be "upside down," such that the percentage of monthly collections
18 Downey Ortho paid to PSPM would cover only a fraction of PSPM's
19 expenses associated with the management of Downey Ortho. Defendant
20 CAPEN and other Downey Ortho-Affiliated Physicians understood that
21 PSPM would not retain a sufficient percentage of monthly collections
22 to pay the monthly operating expenses and other costs associated with
23 managing Downey Ortho, and that this recurring PSPM deficit would
24 allow defendant CAPEN and other Downey Ortho-Affiliated Physicians to
25 retain a larger share of monthly Downey Ortho collections, based on
26 the expectation and understanding that defendant CAPEN and other
27 Downey Ortho-Affiliated Physicians would refer Kickback Tainted
28 Surgeries and Services to Pacific Hospital and Affiliated Entities.

1 iv. Drobot, UCC-A, defendant CAPEN, Hammer, Drobot
2 Jr., Martin, UCC-E, UCC-D, UCC-C, and other co-conspirators
3 understood that: (1) "PSPM [was] only in existence for [Pacific
4 Hospital's]" benefit; (2) Pacific Hospital was closely affiliated
5 with PSPM; and (3) based on the value of Kickback Tainted Surgeries
6 and Services that defendant CAPEN and other Downey Ortho-Affiliated
7 Physicians referred to Pacific Hospital and Affiliated Entities,
8 Pacific Hospital and Affiliated Entities would make regular payments
9 to PSPM to subsidize the losses associated with PSPM's management of
10 Downey Ortho.

11 v. Starting in mid-2008, I2 would be used to
12 directly subsidize PSPM. Under California law, the cost of
13 implantable medical devices, hardware, and instrumentation for spinal
14 surgeries ("spinal hardware") was considered a "pass-through" cost
15 that could be billed at no more than \$250 over what a hospital paid
16 for the spinal hardware. To circumvent the pass-through
17 restrictions, Drobot, UCC-A, defendant CAPEN, Hammer, and other co-
18 conspirators, would agree to form and use I2 to purchase spinal
19 hardware for surgeries, inflate the price of such hardware, and then
20 "sell" the hardware to Pacific Hospital at the inflated price. In
21 turn, Kickback Induced Surgeons, including defendant CAPEN and other
22 Downey Ortho-Affiliated Physicians, would be instructed to use I2
23 spinal hardware for surgeries performed at Pacific Hospital. PSPM
24 would effectively be made a shareholder of I2 to capture I2 sales
25 proceeds, which would be used to pay kickbacks for the Kickback
26 Tainted Surgeries and Services, including subsidies to PSPM.

27 vi. Stated differently, defendant CAPEN and other
28 Downey Ortho-Affiliated Physicians understood and agreed to receive

1 indirect remuneration from Pacific Hospital, through PSPM, in
2 exchange for referring Kickback Tainted Surgeries and Services to
3 Pacific Hospital and Affiliated Entities and using I2.

4 m. Drobot, UCC-A, Hammer, Drobot Jr., and other co-
5 conspirators would also cause Pacific Kickback Recipients to refer
6 Kickback Tainted Surgeries and Services to Kickback Induced Surgeons,
7 who were obligated to bring such surgeries and services to Pacific
8 Hospital and Affiliated Entities. For example, based on various
9 interrelated kickback arrangements, Hunt and Sobol would refer spinal
10 surgeries to defendant CAPEN, among others, who would perform the
11 referred surgeries at Pacific Hospital.

12 n. Drobot, UCC-A, Hammer, Drobot Jr., Martin, UCC-E, UCC-
13 D, UCC-C, UCC-G, UCC-F, and others would maintain, review and
14 communicate about records of the number of Kickback Tainted Surgeries
15 and Services performed at Pacific Hospital and Affiliated Entities
16 due to referrals from Pacific Kickback Recipients, as well as the
17 amounts paid -- euphemistically referred to as "marketing costs" --
18 to Pacific Kickback Recipients for those referrals. For example,
19 Drobot, UCC-A, Hammer, Canedo, UCC-E, and other co-conspirators would
20 calculate that the average kickback paid for a spinal surgery
21 obtained through PSPM's management of Downey Ortho surgeons,
22 including defendant CAPEN, would be approximately \$22,000, and that
23 the cost of each spinal surgery obtained through an option contract
24 with Hunt would be approximately \$10,000. These calculations would
25 also account for circumstances where more than one kickback was paid
26 for the same surgery; for example, when Hunt would refer a spinal
27 surgery to defendant CAPEN, both would receive separate kickbacks.

28

1 o. Periodically, Drobot, UCC-A, Hammer, Drobot Jr., UCC-
2 F, and other co-conspirators would modify and propose modifying the
3 written agreements used to disguise kickback payments to Pacific
4 Kickback Recipients, or the payments made under the guise of such
5 contracts, to roughly correspond with the volume of referrals to
6 Pacific Hospital from the referral source.

7 p. In an attempt to evade law enforcement and avoid
8 criminal liability for the foregoing illegal kickback arrangements
9 Drobot, UCC-A, defendant CAPEN, Hammer, and Hunt, Drobot Jr., Martin,
10 UCC-F, and others would obtain, cause others to obtain, and provide
11 and/or discuss with each other legal opinions and updates from
12 outside health care attorneys and other sources concerning the
13 legality of the kickback arrangements identified above. In
14 connection with soliciting legal advice from outside health care
15 attorneys, Drobot, UCC-A, defendant CAPEN, Hammer, Drobot Jr., UCC-F,
16 and other co-conspirators would intentionally not disclose, and
17 affirmatively conceal the fact, that the intended purpose of the
18 contractual arrangements, either entirely or in part, would be to
19 induce Pacific Kickback Recipients to refer or perform Kickback
20 Tainted Surgeries and Services at Pacific Hospital and Affiliated
21 Entities. Drobot, UCC-A, defendant CAPEN, Hammer, Martin, UCC-F, and
22 other co-conspirators knew and understood that any such arrangements
23 specifically intended to induce referrals would be unlawful, yet
24 would continue to use these contractual agreements to disguise
25 remuneration provided for Kickback Tainted Surgeries and Services.

26 D. EFFECTS OF THE CONSPIRACY

27 33. Had health care benefit programs and patients known the
28 true facts regarding the payment of kickbacks for the referral of

1 Kickback Tainted Surgeries and Services performed at Pacific
2 Hospital: (a) the health care benefit programs would have subjected
3 the claims to additional review, would not have paid the claims,
4 and/or would have paid a lesser amount on the claims; and
5 (b) patients would have more closely scrutinized a surgery or
6 hospital service recommendation, would have sought second opinions
7 from physicians who did not have a financial conflict of interest,
8 would not have had the surgery or service performed, and/or would
9 have insisted on a different hospital facility.

10 34. From 1998 to in or around April 2013, Pacific Hospital
11 billed health care benefit programs at least approximately \$950
12 million in claims for the Kickback Tainted Surgeries and Services.
13 As a result of submitting these claims, Pacific Hospital was paid
14 approximately \$350 million.

15 35. Between 1998 and April 2013, defendant CAPEN referred or
16 performed Kickback Tainted Surgeries and Services comprising
17 approximately \$142 million of the total amount Pacific Hospital
18 billed to health care benefit programs, and for which Pacific
19 Hospital was paid approximately \$56 million.

20 E. OVERT ACTS

21 36. On or about the following dates, in furtherance of the
22 conspiracy and to accomplish the objects of the conspiracy, Drobot,
23 UCC-A, defendant CAPEN, Hammer, and Hunt, Canedo, Drobot Jr., Martin,
24 UCC-D, UCC-C, UCC-E, UCC-F, UCC-G, UCC-K, and other co-conspirators
25 known and unknown to the United States Attorney, committed, willfully
26 caused others to commit, and aided and abetted the commission of the
27 following overt acts, among others, within the Central District of
28 California and elsewhere:

1 Overt Act No. 1: On or about May 19, 2006, UCC-A, acting as
2 the sole Director of Abrazos, authorized Abrazos to issue additional
3 shares of common stock.

4 Overt Act No. 2: On or about June 28, 2006, UCC-A sent or
5 caused the sending of a letter via facsimile to East West Bank
6 notifying the bank that UCC-A wished to transfer to defendant CAPEN
7 10% of the shares in Abrazos, which were then owned by the [UCC-A]
8 Family Trust, along with a 10% interest in a promissory note owed to
9 UCC-A personally from Abrazos. The letter stated that "[t]he
10 consideration for these share would be [\$500,100] in cash, plus a
11 promissory note in the amount of [\$875,274]." In the context of
12 explaining the underlying purpose for the stock transfer, the letter
13 stated:

14 Finally, [defendant CAPEN], through his professional reputation
15 and contacts in the community, would drive increased business to
16 [Pacific Hospital]. Overall, this would be a financially
17 beneficial transaction for all parties involved.

18 Overt Act No. 3: On or about September 25, 2006, UCC-A and
19 defendant CAPEN met for an Abrazos Board of Directors' Meeting at
20 Pacific Hospital. During the meeting, UCC-A and defendant CAPEN
21 elected the executive officers of Abrazos as follows:

22 President and Corporate Secretary: UCC-A
23 Vice President: defendant CAPEN
24 CFO: Hammer

25 Overt Act No. 4: On or about September 25, 2006, Abrazos held
26 its annual meeting of shareholders, consisting of UCC-A and defendant
27 CAPEN, at Pacific Hospital. During the meeting, according to the
28

1 meeting minutes, "it was agreed that [Abrazos] shall pay [defendant
2 CAPEN] a \$4,000 per month stipend[.]"

3 Overt Act No. 5: On or about December 23, 2006, defendant
4 CAPEN emailed Drobot Jr., copying Drobot, UCC-A, Hammer, UCC-C, and
5 others, stating, in part, that defendant CAPEN met with Hammer, UCC-
6 C, and Drobot two weeks earlier, and discussed, among other PSPM-
7 related topics listed in numerical order: "overhead",
8 "reimbursement", how doctors "could cut overhead," and how "PSPM was
9 going broke and the hospital was going broke[.]"

10 Overt Act No. 6: On or about March 24, 2007, in the context
11 of reporting on a communication with defendant CAPEN, Hammer emailed
12 UCC-C, UCC-D, and UCC-E, with a subject "Dr. [defendant CAPEN] et
13 al," with instructions for UCC-D to prepare "from this point forward
14 a monthly report on the total billings, collections and amount due
15 from each [PSPM-managed] physician."

16 Overt Act No. 7: On or about April 28, 2007, Hammer emailed
17 UCC-C and UCC-E, with a subject "PSPM Cash flow forecast,"
18 instructing them: "Do not show an[y] funds from either PHLB or CPM
19 and just provide [Drobot] and [UCC-A] with the negative cash needed
20 to operate the management company [PSPM] and we will let them
21 determine who will pay what - [but] please show all other expected
22 revenue sources."

23 Overt Act No. 8: On or about May 2, 2007, UCC-E emailed
24 Hammer, with the subject "Cash forecast," reporting on a meeting UCC-
25 E had with UCC-A and Drobot earlier in the day. UCC-E wrote, in
26 part:

27 At least he has a good understanding what our costs are
28 (for the nth time) and where our shortages lie. As of now

1 [UCC-A] and [Drobot] are in agreement to continue to
2 support the PSPM operation via PHLB and CPM.

3 Overt Act No. 9: On or about August 28, 2007, UCC-E responded
4 to an email from Hammer, with a subject "Sept/Oct/Nov Cash Review,"
5 and copied UCC-C and UCC-D, writing, in part: "we are paying [a
6 Pacific Induced Surgeon] a 'management fee' so he will bring in
7 surgeries, if we are not getting the benefit of his collections can't
8 we least request a reimbursement for this fee from PHLB?"

9 Overt Act No. 10: On or about September 13, 2007, Hammer
10 emailed UCC-D, UCC-E, and UCC-C, with a subject "Letter to
11 Physicians," attaching a typewritten letter under Drobot's name to
12 various PSPM-managed physicians. Hammer instructed UCC-D and UCC-C
13 to "go ahead and sign the letters for [Drobot] and include them with
14 the invoices we provide to each physician or hand deliver them to the
15 physicians." In part, the attached letters stated:

16 In our continuing effort to stabilize PSPM so we can stay in
17 business, we have initiated three activities. The first is
18 using VQ Ortho care as our exclusive vend[o]r for DME [durable
19 medical equipment]. We have been fairly successful in this
20 effort and need your continued cooperation in ordering from VQ.
21 The second is the use of Blackstone and Alpha-tech. These
22 contracts are now in place and PSPM will be getting credit for
23 this exclusivity. Both of these programs bring in needed cash
24 flow helping to stabilize our management company.

25 Overt Act No. 11: On or about October 22, 2007, UCC-A and
26 defendant CAPEN met for an Abrazos Board of Directors' Meeting at
27 Pacific Hospital. During the meeting, according to the meeting
28

1 minutes, UCC-A and defendant CAPEN elected executive officers for
2 Abrazos as follows:

3 President and Corporate Secretary: UCC-A

4 Vice President: defendant CAPEN

5 CFO: Hammer

6 Overt Act No. 12: On or about October 22, 2007, Abrazos held
7 its annual meeting of shareholders, consisting of UCC-A and defendant
8 CAPEN, at Pacific Hospital. During the meeting, according to the
9 meeting minutes, "[i]t was agreed that [Abrazos] shall increase the
10 monthly stipend to [defendant CAPEN] to \$10,000."

11 Overt Act No. 13: On or about October 24, 2007, Hammer emailed
12 UCC-C and UCC-E, with a subject "PSPM Review," writing, in part, "I
13 am assuming we are still about \$700,000 per month negative without
14 PHLB and CPM?"

15 Overt Act No. 14: On or about November 3, 2007, defendant
16 CAPEN responded to an October 18, 2007 email by UCC-A, copying Drobot
17 Jr., and writing:

18 [UCC-A and Drobot Jr.,]

19 To recap our meeting yesterday we reviewed expenses and
20 conclude[d] to agree in princip[le] that:

21 1[.] I would pay an additional 20K per month to PSPM[;]

22 2[.] there would be an immediate formation of a spine co[mpany]
23 to provide all surgeons with fixation equipment for profit that
24 would go 50/50 [to] Drobot and PSPM to effectively lower MD
25 costs[;]

26 3[.] Out of Mr. Drobot[']s share[,], he would do something for me
27 for agreeing to this[;]

28 . . .

1 6[.] my name will go back on the Hunt purchase deal to be
2 examined next week[.]

3 Overt Act No. 15: On or about January 21, 2008, UCC-F emailed
4 Drobot, UCC-C, and UCC-D, and copied UCC-A, with the subject
5 "Implants and Blackstone," writing, "This should be circulated to the
6 surgeons." The email included an article titled "Surgeon's Guilty
7 Plea Could Shed New Light on Medical Kickbacks," dated January 21,
8 2008, which reported on a surgeon who pleaded guilty to receiving
9 kickbacks "for using [] spinal-implant devices[, which] could lead
10 to similar charges against other doctors across several states[.]"

11 The article highlighted:

12 Just how big is the problem of medical kickbacks in the U.S.?

13 It's a question that may be of particular financial interest in
14 states such as California, which have "pass-through" provisions
15 that allow hospitals to bill the full cost -- plus an
16 administrative mark-up -- for surgical implants.

17 The article highlighted that the relevant allegations arose from
18 kickback payments disguised under a "bogus consulting contract"
19 between Blackstone (a spinal equipment manufacturer) and the pleading
20 doctor. The article also quoted a source stating that "California
21 has a long history of doctors providing unnecessary medical treatment
22 that just destroyed people's lives."

23 Overt Act No. 16: On or about March 21, 2008, UCC-A emailed
24 Drobot regarding CPM and IPM, writing, in part:

25 Pacific Hospital and CPM/IPM are in a marketing partnership to
26 support PSPM. Each derives benefit from this relationship[,]
27 and each should pay a fair contribution. The current reverse
28 marketing arrangement does not appear fair[, and[, in fact[,]

1 has prompted the doctors and myself to seek competition from
2 another pharmacy partner.

3 Overt Act No. 17: On or about March 21, 2008, defendant CAPEN,
4 who was either blind copied or otherwise forwarded the email
5 identified in the preceding Overt Act, responded as follows:

6 Not that I am in the loop but it seems that PSPM support needs
7 to continue for all MDs managed by PSPM and utilizing IPM.

8 The 50/50 split was always with the understanding that some
9 pharmacy \$\$\$ went to support PSPM.

10 All MD parties utilizing PHLB for Marketing fee should be
11 supported by the PHLB funds[,] however all [Downey Ortho-
12 Affiliated Physicians] should be supported by both as IPM does
13 make \$\$\$.

14 This should be an easily determined number from both groups[.]
15 I might suggest of the 50% to IPM that half be put in PSPM as
16 most competitive [pharmacy] arrangements are 75/25[.]

17 Overt Act No. 18: Between on or about March 24, 2008 and on or
18 about April 2, 2008, defendant CAPEN and Drobot Jr., copying UCC-A
19 and others, emailed each other about the then-current
20 "Hunt/[defendant CAPEN] Pharmacy arrangement." In part, on or about
21 March 24, 2008, Drobot Jr. proposed that defendant CAPEN "prescribe
22 out of [Hunt's] cabinet when at Santa Ana."

23 Overt Act No. 19: On or about March 24, 2008, defendant CAPEN
24 responded to the email identified in the preceding Overt Act, as
25 follows:

26 [W]ith the intolerable deal I have with [UCC-I]/Paul Randall
27 practice, I will NEVER rx from them. I only agreed to the
28

1 original deal to help PHLB [/] your dad and that was 4 yrs ago.

2 . . . We may be going for another Company or a Better deal."

3 Overt Act No. 20: On or about March 27, 2008, as part of the
4 same email chain identified in the two preceding Overt Acts,
5 defendant CAPEN wrote: "[A]lso is not PSPM = PHLB? Which is [UCC-A]
6 and your dad [Drobot]? Help me as there are gaps."

7 Overt Act No. 21: On or about March 28, 2008, as part of the
8 same email chain identified in the three preceding Overt Acts, Drobot
9 Jr. responded to defendant CAPEN, in part:

10 Yes, my understanding is that PSPM is only in existence for
11 PHLB. PSPM runs at a big loss, but this loss pails in
12 comparison to the profit it brings PHLB.

13 Overt Act No. 22: On June 9, 2008, defendant CAPEN emailed
14 UCC-A, writing, in part:

15 Legal opinion letters say there is an argument that the concept
16 is legal. Also in the letter it says IF [I2] can list and
17 document services[,] there can be some explanation for the mark-
18 up, which is why Blackstone is still waiting so they can pay.
19 Apparently that has never been done. My fear is that an
20 argument that it is legal simply grants us the right to pay \$\$\$\$
21 in legal fees.

22 Overt Act No. 23: On June 28, 2008, defendant CAPEN emailed
23 UCC-A, instructing UCC-A to "review with him [referring to an
24 attorney from a spinal implant distributor - Attorney C] the non[-
25]acceptable and legal ways to have a Hospital, a physician management
26 co[mpany,] and an equipment distribution co[mpany,] and how they
27 could work together. Special note to \$\$\$ flow and who can own what
28 and who can use what."

1 Overt Act No. 24: On or about July 9, 2008, defendant CAPEN
2 emailed UCC-A, writing, in part:

3 As you and Mike are aware the new proposed [I2] has several
4 areas of mandated compliance. As [Attorney C] outlined there
5 are significant mandates. I would consider use of Alphatec
6 if[:]

7 1. [Attorney C] clearly explains, in writing, that as a small
8 owner of PHLB I am not violating anything[;] and

9 2. There is written documentation of Separation of ownership of
10 all areas[:] [I2], PSPM, PHLB[;]

11 3. We all meet to discuss[.]

12 Overt Act No. 25: On September 8, 2008, a Pacific Hospital
13 employee in the Accounting Department emailed UCC-K, UCC-B, UCC-G and
14 others, writing that the account department received two checks from
15 UCC-A, via interoffice mail. The checks were from Hunt and written
16 out to Pacific Hospital and appeared to be rent checks. UCC-G
17 forwarded the email to UCC-F, asking if UCC-F was aware of any
18 existing rent contract from Hunt. UCC-F responded by attaching a
19 medical office sublease between Pacific Hospital and Hunt, internally
20 dated June 23, 2008, which provided for a sublease, commencing on
21 June 26, 2008, of the premises located at "4237 Long Beach Boulevard"
22 in Long Beach, California, for \$1,000 per month.

23 Overt Act No. 26: On an unknown date, Hunt executed a medical
24 office sublease between Pacific Hospital and Hunt, internally dated
25 June 23, 2008, which provided for a sublease, commencing on June 26,
26 2008, of the premises located at "4237 Long Beach Boulevard" in Long
27 Beach, California, for \$1,000 per month. On September 20, 2008, UCC-A
28 replied to an email from defendant CAPEN, and wrote, in part:

1 "Regarding - no \$\$\$ in pharma - reminds me of the time someone told
2 me the government was here to help me! If after CPM closed [Drobot]
3 was supposed to pass through his share of the IPM profit to PSPM for
4 your continued loyalty, it appears some money is due PSPM."

5 Overt Act No. 27: On or about October 10, 2008, defendant
6 CAPEN forwarded to UCC-A a legal opinion letter concerning a
7 competitor to I2 selling spinal hardware to various hospitals.

8 Overt Act No. 28: On or about October 10, 2008, UCC-A
9 forwarded the opinion letter referenced in the preceding Overt Act to
10 UCC-F and Hammer, writing, "This is our competition. What do you
11 think of the agreement?"

12 Overt Act No. 29: As part of the same email chain identified
13 in the preceding two Overt Acts, on or about October 10, 2008, UCC-F
14 responded to UCC-A and Hammer, writing, in part, the following:

15 We were strongly advised not to involve physicians in the
16 implant business. I have it in writing from Davis Wright
17 Tremaine, and there has been some investigation into the Newport
18 Beach company that is physician owned. . . . Anyone who gets
19 involved in this is running a high risk. The so-called legal
20 opinion is wishful thinking. The tip-off is that they advise
21 not being involved with any Medicare or Medi-Cal surgeries.
22 First, it is usually impossible to avoid Medicare orthopedic
23 surgery unless you are a [defendant CAPEN][.] . . . Second,
24 saying that Medicare should be avoided is really saying the
25 scheme is illegal under Medicare. If it is illegal under
26 Medicare, then it is illegal under California law because the
27 Attorney General has said, in published AG Opinions it will rely
28 upon Medicare anti-fraud rules in reviewing procedures done in

1 [California]. Third, Medicare has what is called the "one
2 purpose test." This is a terrible rule that says if one purpose
3 of the scheme is to induce referrals, then even a valid scheme
4 is illegal. Fourth, . . . there are active investigations of
5 physician involvement in various supply schemes, so this is a
6 high risk adventure. Fifth, while the letter takes great pains
7 to say there is no kickback, this scheme will pressure hospitals
8 to use the new company, or lose the surgery to another hospital
9 that will use the implants. Finally, as you know there are
10 financial disclosure and other rules under state law, and it is
11 possible a physician doing a surgery would have to disclose to
12 patients they are using implants in which they have a financial
13 interest. If not, and payors find out what is going on, they
14 may stop paying.

15 Overt Act No. 30: As part of the same email chain identified
16 in the preceding three Overt Acts, on or about October 10, 2008, UCC-
17 A replied to UCC-F and Hammer, writing, in part, "Thanks for your
18 strong arguments to avoid this jailbait contract. I'll call
19 [defendant CAPEN] tonight."

20 Overt Act No. 31: On or about October 20, 2008, UCC-A and
21 defendant CAPEN met for an Abrazos Shareholders' Meeting. During the
22 meeting, according to the meeting minutes, UCC-A and defendant CAPEN
23 "agreed that [Abrazos] shall continue the monthly stipend to
24 [defendant CAPEN] in the amount of \$10,000."

25 Overt Act No. 32: On or about December 22, 2008, in connection
26 with PSPM taking over the management of a San Diego clinic where
27 defendant CAPEN saw patients with other physicians, UCC-C emailed
28 Drobot, UCC-A, and UCC-D with a question about the scope of

1 collections PSPM would keep (i.e., collections preceding the
2 management deal or only going forward collections).

3 Overt Act No. 33: As part of the same email chain identified
4 in the preceding Overt Act, on or about December 26, 2008, UCC-A
5 replied to Drobot, UCC-C, and UCC-D, adding defendant CAPEN to the
6 email, and asking "what surgeries has Pacific received from the San
7 Diego clinic" and "What have we spent on the SD clinic . . . up to
8 the hand off date?" UCC-A also asked: "[UCC-D]--any estimate as to
9 number of spines that will be generated out of the San Diego clinic
10 in the next 3 months?"

11 Overt Act No. 34: On or about January 14, 2009, Hammer
12 responded to an outside accountant who emailed Hammer (with a subject
13 "[defendant CAPEN]," initially writing "just want to confirm the
14 numbers you left on my voicemail.") In his response, Hammer wrote:
15 "please don't forget the Medical Directorship [defendant CAPEN]
16 receives. It is \$10,000 per month and thus \$120,000 per year. This
17 comes from Abrazos."

18 Overt Act No. 35: On or about January 16, 2009, UCC-I emailed
19 UCC-A, with the subject "option agreement," writing:

20 [Hunt] asked that I drop you a line. I checked into upcoming
21 spine surgeries to be preformed [sic] at PHLB in the next couple
22 of months. So far we have two scheduled in January, one 2 level
23 fusion and 1 laminoplasty. February has two schedule[d], 1
24 hardware removal and 1 fusion.

25 We have 22 pending response from the insurance carrier and
26 another 10 that are in transcription. So as you can see the
27 pipeline is filling up and I feel very positive about the
28 future.

1 We are going to discuss with [defendant CAPEN] and will try to
2 touch base with you tomorrow afternoon.

3 Overt Act No. 36: On or about January 29, 2009, UCC-I emailed
4 UCC-F, with the subject "Option Agreement," writing, in part:

5 I dropped the signed Option Agreement off at PHLB yesterday. . .
6 any idea when we will get the first check? I have the lease for
7 Long Beach to sign and the Landlord wants a pretty substantial
8 check to accompany the lease. So as you can imagine, I need the
9 Option check in order to make it all happen."

10 Overt Act No. 37: On February 18, 2009, Canedo emailed Drobot
11 and UCC-C, writing, "[w]e need more information as to which cases
12 from [Hunt], Phil Sobol, and the San Diego office apply to the cases
13 that [defendant CAPEN] should use [I2]." Canedo then cited an
14 example of a specific surgery patient for whom scheduling information
15 came from Downey Ortho, with a referral source listed as Sobol, and
16 asked: "Would this have been one of the cases we would expect to have
17 used I2?" UCC-C asked UCC-D if he wanted to check with another
18 individual for a response, who then forwarded the email to defendant
19 CAPEN.

20 Overt Act No. 38: On or about February 18, 2009, defendant
21 CAPEN responded to the email identified in the previous Overt Act, as
22 follows:

23 "[A]s you all can see there is clear coercion [sic] (or is it
24 coercion[),] as Hospital is rewarding Hunt practice for 3
25 spines[.] I will use my choice after the 3rd[.] [A]s for
26 Sobol[,], whoever is on the schedule was explained [I]nnovasis
27 [would be used, so] - I will not change mid stream - or we
28

1 should hold re[garding] see[ing] the patient[,] re-explain[,]
2 and reschedule[.]

3 Overt Act No. 39: On February 22, 2009, defendant CAPEN
4 emailed UCC-C, Hammer, and Drobot, stating, in part, "everyone should
5 be careful about dictating spine instrument use as DOJ has 200 agents
6 in Vegas to separate equip[ment] companies from docs[.]" Defendant
7 CAPEN also complained about having a potential "non [email] address"
8 for Drobot, so Hammer independently forwarded defendant CAPEN's email
9 to Drobot.

10 Overt Act No. 40: On February 26, 2009, UCC-I called UCC-K
11 regarding a transition with respect to Hunt's sublease agreement with
12 Pacific Hospital (advising that Hunt would be taking over the lease
13 directly). After receiving this message, UCC-K instructed UCC-B to
14 remove Hunt's lease obligation from Pacific Hospital's accounts
15 payable system.

16 Overt Act No. 41: Between March 30, 2009 and April 1, 2009,
17 Drobot Jr. and defendant CAPEN emailed about a pharmacy deal with
18 IPM, with a subject "IPM proposal." As part of the email thread,
19 Drobot Jr. asked defendant CAPEN to "explain how the change takes
20 care of PSPM needs?" Defendant CAPEN responded that PSPM "will take
21 a % of the pharm[acy] collections to defray overhead as CPM used to
22 do."

23 Overt Act No. 42: On March 31, 2009, a Downey Ortho office
24 administrator emailed UCC-C with scheduled surgery statistics for
25 Hunt and Sobol for March and April 2009. UCC-C forwarded the email
26 to UCC-A with her comments. UCC-A then forwarded the email chain to
27 Drobot, writing, "[w]e need to discuss this with Sobol - March-0 and
28

1 April-0 for spine surgery[.] Hard to justify the marketing dollars
2 we are spending[.]”

3 Overt Act No. 43: On April 7, 2009, defendant CAPEN emailed
4 UCC-A, UCC-C, and UCC-D, writing, in part:

5 Friends, As you are all aware I have been directed to use
6 Alphatech for certain cases[.] I have agreed, however due to
7 financial constraints of PHLB[,] Innovasis has over 120 days and
8 well over 100K in owings[.] As a result tomorrows case - a
9 [personal injury] neck will be done by Alphatech[.] [But] I
10 will do one of [San Diego], [Hunt], or Sobol cases of c-spine in
11 the future for Alphatech. . . .

12 Overt Act No. 44: On or about May 14, 2009, UCC-C emailed a
13 Downey Ortho assistant, copying Hammer, Drobot, UCC-D, and UCC-E,
14 writing:

15 Per [Drobot] effective June 1st all non-surgical and surgical
16 dme [durable medical equipment] will be ordered through
17 Progressive Orthopedics in the Downey office. Please share this
18 email with your surgery schedulers and physicians.

19 Overt Act No. 45: On or about May 15, 2009, as part of the
20 same email chain identified in the preceding Overt Act, Hammer
21 emailed Drobot, UCC-A, UCC-C, UCC-D, UCC-E writing:

22 With this ch[a]nge [w]ho is going to pick up the monthly
23 \$45,000+ we will lose from VQ? Why this one? It is VQ's
24 largest and I would expect to have the contract termed. Not sure
25 who will pick up the cash shortage.

26 Overt Act No. 46: On or about May 15, 2009, as part of the
27 same email chain identified in the preceding two Overt Acts, Drobot
28 replied: "Progressive has demonstrated their ability to send spine

1 surgeries . . . I anticipate that the surgeries will bring in much
2 more than \$45,000 per month."

3 Overt Act No. 47: On or about May 15, 2009, as part of the
4 same email chain identified in the preceding three Overt Acts, Hammer
5 responded to Drobot only (removing other recipients from the email
6 chain): "I understand this I am just concerned about asking for the
7 extra \$'s each month. We battle now and this is about a 10%
8 [i]ncrease."

9 Overt Act No. 48: On or about May 20 and 21, 2009, Canedo,
10 UCC-A, and UCC-G emailed each other regarding "Abrazos Board Minutes
11 and Payment to [defendant CAPEN]." Canedo advised that "the section
12 authorizing payments to [defendant CAPEN] are in the minutes dated
13 9/26/2006 and 10/22/2007, and UCC-A responded, "So other than a note
14 in the shareholder meeting, there isn't a contract defining the terms
15 of the stipend to [defendant CAPEN]?" After an additional email with
16 UCC-G, UCC-A responded:

17 It's [UCC-F]'s call. But maybe we need more on paper to justify
18 [defendant CAPEN's] payment. Can the current paperwork pass the
19 scrutiny of future creditors, IRS, etc. The IRS question is
20 worth running by [Hammer].

21 Overt Act No. 49: On or about June 5, 2009, Hammer emailed
22 UCC-A and Drobot advising that he "reviewed the present situation
23 with [defendant CAPEN]" regarding how IPM would be buying defendant
24 CAPEN's old accounts receivables, with an agreement to purchase the
25 dispensing receivables going forward without inclusion of PSPM and
26 noting:

27 PSPM was presented to [defendant CAPEN] but he indicated the
28 dollars [for] the purchase of the receivables should all go to

1 him. So we need to discuss this issue with defendant CAPEN if
2 PSPM is to participate in these fees under its management
3 agreement. As the management agreement is written[,] PSPM
4 should be receiving its fees for this work.

5 Overt Act No. 50: On or about June 16, 2009, Hammer emailed
6 UCC-C, requesting "a copy of whatever you pulled together showing
7 what the spine activity has been since Jan [2009]? Need for
8 [Drobot's] meeting with Sob[o]l tomorrow."

9 Overt Act No. 51: On or about August 5 and 6, 2009, Hammer
10 emailed Canedo regarding payments out of a specified Pacific Hospital
11 financial account, inquiring, in part: "[defendant CAPEN] was paid
12 \$100,000 in May [-] what for and was he given a 1099? Dividend?"
13 Canedo responded: "[defendant CAPEN] \$100,000 is part of the bonuses
14 paid totaling \$1 million. UCC-A 510,000, [Drobot] \$390,000,
15 [defendant CAPEN] \$100,000. ([UCC-A] and [Drobot] were paid through
16 payroll and [defendant CAPEN] did get a 1099)." Canedo also
17 highlighted a concern he raised when the bonuses were paid.

18 Overt Act No. 52: On or about September 24, 2009, UCC-C
19 emailed UCC-A, copying Canedo, UCC-F, and UCC-D, with the subject
20 "Hunt surgeries," writing: "[UCC-I] provided me with a list of 29
21 spine surgeries performed at PHLB. I will now cross reference this
22 list with what was provided by the hospital and try to determine why
23 the discrepancy."

24 Overt Act No. 53: On or about September 24, 2009, as part of
25 the same email chain identified in the preceding Overt Act, UCC-F
26 replied to UCC-C and copied UCC-A, writing, in part:

27 To further the point I made today, we probably aren't going to
28 be able to compete with [Hunt], but we could sure use the option

1 money to do our own attorney marketing. I forget what we are
2 paying for the option, is it 30 or 40 k? If 30K, the 29
3 surgeries over 8.5 months cost \$8,793, plus the 22K a surgery we
4 pay for PSPM to manage [defendant CAPEN]. If we pay 40K a
5 month, then [Hunt's] surgeries cost \$11,724 a piece, plus the
6 [defendant CAPEN] subsidy. Getting perilously close to paying
7 out more than we take in when you factor the cost of the
8 surgery.

9 Overt Act No. 54: On or about September 24, 2009, as part of
10 the same email chain identified in the preceding Overt Act, UCC-C
11 responded, in part, "the amount paid to [Hunt] is \$4[0]k but then
12 they give back \$5K each month, so I guess the amount is 35K."

13 Overt Act No. 55: On or about September 24, 2009, as part of
14 the same email chain identified in the preceding two Overt Acts, UCC-
15 F replied to UCC-C, writing: "If we close our eyes, we can pretend
16 we're making money. We said PSPM cost about 22K a surgery, and now
17 you add in the 10K or so we have to pay [Hunt], that can't leave much
18 after the hospital expenses are taken into account."

19 Overt Act No. 56: . On or about September 25, 2009, as part of
20 the same email chain identified in the preceding three Overt Acts,
21 UCC-A responded to Drobot only with the following:

22 This Tuesday we should do a close examination of our real costs
23 in relation to marketing for spines. [UCC-F] is making some
24 excellent points and we need to drill down and determine what an
25 appropriate marketing cost is for our workers comp business. I
26 believe we need to make some adjustments in our marketing
27 payments.
28

1 Overt Act No. 57: On or about March 25, 2010, defendant CAPEN
2 emailed Drobot and UCC-A, writing, in part:

3 [I]t is a little unsettling to hear that there is a legal battle
4 [sic] with Innovasis regarding money owed to I2 vs money owed to
5 Innovasis as [accounts payable] from [PHLB]. At a time we are
6 trying to sell [PHLB] is litigation of these types a danger?
7 With all the skeletons do we need people nosing around? I am
8 certain we do not. These lawsuits will absolutely kill any
9 potential buyer, []let alone place all of us at risk.

10 Overt Act No. 58: On or about October 1, 2010, defendant CAPEN
11 emailed Drobot with the following message:

12 At some point we need to discuss ways of increasing my revenue
13 stream [-] we touched upon urine testing. I see we are now
14 using [Physician H's] brace company. No one discussed with me
15 but we are using [Physician S] for monitoring. I would like to
16 participate in - or chose my own people to take advantage of
17 that. Also there are other avenues available. I am at PHLB
18 sat[urday] am. Or we can meet next week. I need a [Ferarri]
19 458 you know.

20 Overt Act No. 59: On December 4, 2010, defendant CAPEN emailed
21 Drobot, writing, in part: "I signed with IPM [to] start Jan 1
22 2011[.] I hope we are on track for a great 2011. . . . Hope we have
23 enough for a large [year] end bonus and that in January we can bump
24 up my Abrazos directorship[.] I continue to support the Drobot
25 enterprises (can't keep up with the cars tho)[.]"

26 Overt Act No. 60: On April 6, 2011, defendant CAPEN emailed
27 Drobot and UCC-K regarding potentially sending specimens to the "PHLB
28 lab," noting that "there seems to be big money involved as offers are

1 flying in," and asking if "anyone ha[s] an answer for competitions
2 offers?"

3 Overt Act No. 61: On April 22, 2011, UCC-B emailed Drobot
4 stating that an auditor was asking about the nature of a \$100,000
5 payment to defendant CAPEN on January 13, 2011. UCC-B attached the
6 payment authorization from Drobot, and inquired what time period the
7 payment covered. The handwritten sheet of paper from Drobot to UCC-B
8 read: "Please prepare a check for \$100,000 to [defendant CAPEN] for
9 'Workers Comp. Consulting' 1/12/11" and was signed by Drobot.

10 Overt Act No. 62: On or about June 6, 2011, defendant CAPEN
11 emailed Drobot Jr., inquiring, in part, if Drobot Jr. was "making
12 headway with" Hunt's practice, and "what again is the offer for all
13 meds, UDT, scans [MRIs] from my own places"?

14 Overt Act No. 63: On or about June 7, 2011, as part of the
15 same email chain identified in the preceding Overt Act, Drobot Jr.
16 replied that he would pay defendant CAPEN "\$40K for ALL UDT" and
17 noted that defendant CAPEN already had a "PSPM med contract at \$70K,
18 and non-PSPM meds at \$17K. Scans could add another \$10K plus, need
19 to know the volume of scans we are talking about."

20 Overt Act No. 64: On June 16, 2011, defendant CAPEN emailed
21 UCC-D, copied Drobot and Drobot Jr., and wrote that Drobot Jr. "sends
22 lots of referrals to the OC office," and that defendant CAPEN had
23 told Drobot "a month ago that I would use [Drobot Jr.] there for
24 UDT." Defendant CAPEN added: "Hopefully all are on the same page and
25 referrals will continue." UCC-D forwarded defendant CAPEN's email to
26 UCC-K writing, "FYI."

27

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1 Overt Act No. 65: On June 28, 2011, Canedo emailed UCC-F
2 inquiring whether UCC-F was "going to write a contract for the
3 \$500,000 or so we'll pay [defendant CAPEN] this year?"

4 Overt Act No. 66: Between on or about July 9, 2011 and July
5 13, 2011, Drobot Jr. emailed defendant CAPEN regarding UDT referrals.
6 Drobot Jr. initially wrote, in part, "please let me know if I can
7 come by Downey or [Sherman Oaks] next week to discuss options
8 regarding the post-PHLB sale future...I can guarantee \$40K more than
9 my father is offering." Defendant CAPEN replied regarding
10 scheduling, and Drobot Jr. added: "Plus if you come on board...with
11 UDT...I'll give you \$50 per cup for any leads...i.e. [a Downey Ortho-
12 Affiliated Physician], others around the country, etc. [Downey
13 Ortho-Affiliated Physician] must do 400 a month x \$50 = extra \$20K a
14 month[.]" Defendant CAPEN and Drobot Jr. then agreed to a Friday
15 meeting.

16 Overt Act No. 67: Between on or about July 25, 2011 and July
17 27, 2011, Drobot Jr. and defendant CAPEN emailed each other regarding
18 Drobot Jr. paying for defendant CAPEN's ancillary referrals. On July
19 25, 2011, Drobot Jr. asked defendant CAPEN:

20 [W]hat is the latest with PSPM UDT program? Are you getting
21 \$\$\$...? Forget about the 40-7=33...I would do an ADDITIONAL 40
22 for the PSPM UDT.

23 Overt Act No. 68: On or about July 25, 2011, as part of the
24 same email chain identified in the preceding Overt Act,
25 defendant CAPEN responded, in part:

26 Does intra-op monitoring make anything? Is it worth anything?
27 I am very close to doing just you.

28

1 BTW how did Hunt meet[ing] go Friday?--I was at a prior
2 commitment.

3 Overt Act No. 69: On or about July 26, 2011, as part of the
4 same email chain identified in the previous two Overt Acts, Drobot
5 Jr. responded to defendant CAPEN:

6 [UCC-I] said she likes the offer...similar to yours...but she
7 said she has a 30 day out clause with [Randall]...I thought you
8 said that one of the reasons she wanted to switch is to be more
9 legal and not having an agreement was one thing to improve upon?
10 Regardless [UCC-I] will have our handsome offer agreement today.

11 Overt Act No. 70: On or about July 27, 2011, defendant CAPEN
12 emailed Hunt and UCC-I, and copied Drobot, with the following
13 message:

14 I have been involved in trying to get AMG [Allied Medical Group]
15 a better deal[.] Have promised Mike sr [Drobot] that PHLB gets
16 it all[.] Tim [Hunt] said over a yr ago he had a year to go
17 with surgicenter[-]actually it was way over a yr ago[.] Now I
18 see Randall has still been involved[.] I know I am an employee,
19 but some practices need to change-unless all parties are cool
20 with current deals.

21 Overt Act No. 71: Between on or about August 4 and 5, 2011,
22 Martin emailed defendant CAPEN, soliciting his UDT referrals.

23 Overt Act No. 72: On or about August 4, 2011, as part of the
24 same email chain identified in the preceding Overt Act, defendant
25 CAPEN responded, stating that he was already doing urine testing
26 through Drobot Jr.

27 Overt Act No. 73: On or about August 4, 2011, as part of the
28 same email chain identified in the preceding two Overt Acts, after an

1 additional email from Martin soliciting defendant CAPEN to send his
2 urine testing referrals to Pacific Hospital, through PMR, defendant
3 CAPEN responded as follows:

4 Problem with [Drobot] Sr. is all I hear about is how much he
5 subsidizes my practice. 4 yrs ago it was 600K[;] 2 yrs ago
6 300K[;] now 160[.] Wonder where \$\$\$ came from for all luxury
7 trips with [others] and 4.5 mil house with 1 mil remodel. Sick
8 of the shit—at least his kid pays on time[.]”

9 Overt Act No. 74: On September 12, 2011, UCC-B emailed Canedo
10 asking about certain checks Drobot requested that he prepare. With
11 respect to defendant CAPEN, UCC-B inquired: “I charge the \$20K for
12 [defendant CAPEN] in UDT?” Canedo responded that the defendant CAPEN
13 check “can get charged to 8610-2200. Call it ‘Abrazos Stipend.’”

14 Overt Act No. 75: On October 7, 2011, defendant CAPEN emailed
15 Drobot, writing:

16 It was good to speak with you. As I said[,] there are other
17 money offers. We agreed that:
18 1[.] Abrazos check would be sent this week
19 2[.] That November first - and each 1st of the month I would get
20 22 Thousand per month as payment -- partial -- for 10% UDT
21 company[.] In exchange[,] I will do UDT in Oxnard-Valley-Downey
22 [offices]. Keep me informed on the sale[.]”

23 Overt Act No. 76: On October 10, 2011, UCC-E emailed UCC-C a
24 spreadsheet titled, “I2 Surgery Statistics,” writing, in part:

25 The attached spreadsheet shows the number of fusions per month
26 using [I2]. . . . [defendant CAPEN] and [a Downey Ortho-
27 Affiliated Physician] have 1-2 cases per month where they use
28 non-[I2] implants.

1
2 [Downey Ortho] averages \$360,000 in expenses per month. This
3 includes all the locations. From [] [defendant CAPEN] and
4 [another Downey Ortho-Affiliated Physician] we get about
5 \$125,000 per month. In addition, we get about \$30,000 from the
6 other guys. ([listing other Downey Ortho-Affiliated Physicians])
7

8 [The other Downey Ortho-Affiliated Physician] provides about
9 \$66,000 from his management fee (32.5%). In addition, [] his
10 pharmacy provides PSPM an [] additional \$35,000. His allocated
11 share of monthly expenses is \$150,000. PSPM provides about
12 \$50,000 for [the other Downey Ortho-Affiliated Physician] [,]
13 which includes his management fee and extra.
14

15 [Defendant CAPEN] provides about \$60,000 from his management fee
16 (32.5%). He uses [Drobot Jr.'s] pharmacy so we don't get a
17 share of that. His allocated share of expenses is about
18 \$176,000. As you know[,] he is higher maintenance than [the
19 other Downey Ortho-Affiliated Physician]. PSPM provides about
20 \$116,000 for [defendant CAPEN,] which includes his management
21 fee plus extra.
22

23 So the expenses are as follows:

24 \$360,000 avg monthly expenses for [Downey Ortho]
25 (\$101,000) provided by [the other Downey Ortho-Affiliated
26 Physician] from mgmt fees
27 (\$60,000) provided by [defendant CAPEN] from mgmt fees
28 (\$30,000) provided by misc physicians from mgmt fees

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(\$169,000) provided by PSPM over and above mgmt fee

Overt Act No. 77: On or about January 4, 2012, UCC-B emailed Canedo, with a subject "[defendant CAPEN's] Check for \$35K," advising that UCC-B:

did issue the check for [defendant CAPEN] today. However, I'm not sure why we describe it as an Abrazos stipend instead of PMR consulting fees. I might be asked this question by [auditors] in the future.

Overt Act No. 78: On or about January 4, 2012, in response to the email identified in the preceding Overt Act, Canedo replied: "UDT for the whole thing."

Overt Act No. 79: On or about January 4, 2012, UCC-E emailed Drobot the below chart as a "breakdown of PSPM expenses by month and by physician and other cost centers[:]"

PSPM Monthly Contribution to Physicians' Operations			
	<u>Total</u>	<u>Capen</u>	<u>PHLB</u>
Monthly Operational Expenses	(512,934)	(189,055)	(142,083)
Funds 32.5% PSPM Mgmt Fees	159,890	60,343	43,374
Add'l funds required for exp. From PHLB	<u>(353,043)</u>	<u>(128,712)</u>	<u>(23,000)</u>
Total PSPM contributions per physician PSPM + PHLB	<u>(512,934)</u>	<u>(189,055)</u>	<u>(119,083)</u>

and [another Downey Ortho-Affiliated Physician's] practice by about \$200,000 per month."

Overt Act No. 81: On or about January 20, 2012, UCC-B emailed Hammer, copying Canedo, attaching Pacific Hospital's 1099 Reports for 2011.

Overt Act No. 82: On or about January 25, 2012, as part of the email chain identified in the preceding Overt Act, Hammer responded

1 with comments, including the following: "[defendant CAPEN] - what are
2 these payments for? He is a 10% owner so are these dividends?"

3 Overt Act No. 83: On or about January 27, 2012, as part of the
4 email chain identified in the preceding two Overt Acts, UCC-B
5 replied: "We've been paying [defendant CAPEN] for his stipend and not
6 dividends."

7 Overt Act No. 84: On or about January 27, 2012, as part of the
8 email chain identified in the preceding three Overt Acts, Canedo
9 responded to both UCC-B and Hammer, clarifying "[t]he payments in
10 2011 to defendant CAPEN are unsupported by any contracts. The
11 \$100,000 was written on a napkin and the other payments [were] paid
12 for the UDT." "There is no contract in place for the [defendant
13 CAPEN] UDT payments and [UCC-F] won't write one."

14 Overt Act No. 85: On or about January 27, 2012, as part of the
15 email chain identified in the preceding four Overt Acts, Hammer
16 dropped UCC-B from the email chain and emailed only Canedo the
17 following: "Fine then let's make it a dividend and eliminate the
18 problem. BILL"

19 Overt Act No. 86: On February 26, 2012, defendant CAPEN
20 emailed Drobot, writing, in part:

21 When we last spoke you had mentioned things were tight. You
22 said there was a need for you to loan 500k. As my Abrozos urine
23 has stopped [--] we are December[,] Jan[,] Feb[,] behind[,] so I
24 would prefer that the 105[,]000 be converted to a loan as your
25 500 is. Going forward let [UCC-E] reflect that my cost to PSPM
26 is not 160 but 135[,] as you can keep the UDT Downey [generates]
27 as a defrayal of expense. I would hope you would have [C]anedo
28 restore the original Abrazos 10k until the hospital sells.

1 Overt Act No. 87: On April 17, 2012, defendant CAPEN emailed
2 Drobot and Hammer, writing, in part:

3 I was just reminding you both of the agreement. I had an
4 Abrazos consulting agreement that was in place for 2011. It
5 functioned until 12/[20]11. For 12/[20]11 til 3/[20]12[,] it
6 was agreed upon by Mike and me that the 4 month period would be
7 treated as a loan to PHLB. I wish to have the loan treated as a
8 contract. I know [Drobot] and [UCC-A] both "loaned" to PHLB at
9 a good interest. I would like the same loan opportunity[.]

10 Also this is 4/16/12 - there still has been no Abrazos check[.]

11 We need to address this[.]

12 Overt Act No. 88: On July 10, 2012, UCC-E emailed UCC-B asking
13 if he "cut the checks for PMR expenses paid from PHLB?" UCC-E then
14 asked UCC-B about two specific payments made in May 2012: Consulting
15 fee \$70,000 and Purchased Svs \$32,000[.]"

16 Overt Act No. 89: On or about July 10, 2012, UCC-B replied to
17 UCC-E, as part of the email chain identified in the preceding Overt
18 Act, as follows:

19 Yes, the \$70K is for Dr. [defendant CAPEN] (2 checks at \$35,000
20 each). The \$32K is broken down between PMR (\$30K) and
21 Professional Locksmith (\$2K).

22 Overt Act No. 90: On or about January 27, 2013, Drobot emailed
23 defendant CAPEN a "Letter of Intent for Stock Purchase" for the sale
24 of Pacific Hospital to a third party and solicited defendant CAPEN's
25 thoughts on the arrangement.

26 Overt Act No. 91: On or about March 11, 2013, as part of the
27 same email chain identified in the preceding Overt Act, defendant
28 CAPEN forwarded the January 27, 2013 email to Hammer, writing: Bill

1 -- Hope you are on top of this[.] We did a deal you said [Drobot]
2 was aware of[.] Since December--no Abrazos checks[.]”

3 Overt Act No. 92: On or about March 11, 2013, as part of a
4 related thread to the email chain identified in the preceding two
5 Overt Acts, Hammer emailed Canedo and UCC-B, writing: “Do we have a
6 payable to [defendant CAPEN] for past due Med Director fees?”

7 Overt Act No. 93: On or about March 12, 2013, in response to
8 the email from Hammer in the preceding Overt Act, Canedo replied:
9 “It's never past due. We pay when [Drobot] orders [UCC-B] to cut a
10 check. Plus mike combined it with the fee for urine drug testing.”

11 Overt Act No. 94: On or about March 12, 2013, as part of the
12 same email chain identified in the preceding four Overt Acts,
13 defendant CAPEN emailed Drobot, writing:

14 Hope deal is going ahead[.] We do have a deal elsewhere[.]

15 Hope [Hammer] explained that with I2 and what I have

16 deferred[,] i.e[.], 175 from old Abrazos--and last 3 months of
17 New Abrazos--we are a wash[.]

18 Overt Act No. 95: On March 25, 2013, UCC-I and defendant CAPEN
19 exchanged emails concerning how UCC-D would be taking over the
20 scheduling of defendant CAPEN's surgeries on patients originating
21 from Allied Medical, and that all such surgeries would be moved away
22 from Pacific Hospital to another specified hospital.

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COUNT TWO

[42 U.S.C. § 1320a-7b(b) (1) (A); 18 U.S.C. § 2]

37. The United States Attorney hereby repeats and re-alleges paragraphs 1 through 30 and 32 through 36 of this Information as if fully set forth herein.

38. On or about January 15, 2013, in Orange and Los Angeles Counties, within the Central District of California, and elsewhere, defendant DANIEL CAPEN ("defendant CAPEN") knowingly and willfully solicited and received, and willfully caused to be solicited and received, remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, a discount on the management fee defendant CAPEN paid to PSPM, reflected in a \$10,639.30 management fee payment, in return for referring patients to Pacific Hospital for the furnishing and arranging for the furnishing of items and services, that is, Kickback Tainted Surgeries and Services, including the medical care of patient G.G., who defendant CAPEN performed surgery on at Pacific Hospital on or about December 8, 2012, for which payment was made in whole and in part under a Federal health care program, namely, the FECA program.

1 FORFEITURE ALLEGATION

2 [18 U.S.C. §§ 982(a)(7), 981(a)(1)(C) and 28 U.S.C. § 2461(c)]

3 1. Pursuant to Rule 32.2(a), Fed. R. Crim. P., notice is
4 hereby given to defendant CAPEN ("defendant") that the United States
5 will seek forfeiture as part of any sentence in accordance with Title
6 18, United States Code, Sections 982(a)(7) and 981(a)(1)(C) and Title
7 28, United States Code, Section 2461(c), in the event of defendant's
8 conviction under Count One or Count Two of this Information.

9 2. Defendant CAPEN shall forfeit to the United States the
10 following property:

11 a. all right, title, and interest in any and all
12 property, real or personal, that constitutes or is derived, directly
13 or indirectly, from the gross proceeds traceable to the commission of
14 any offense set forth in Count One or Count Two of this Information;
15 and

16 b. a sum of money equal to the total value of the
17 property described in subparagraph a.

18 3. Pursuant to Title 21, United States Code, Section 853(p),
19 as incorporated by Title 28, United States Code, Section 2461(c), and
20 Title 18, United States Code, Section 982(b), defendant shall forfeit
21 substitute property, up to the total value of the property described
22 in the preceding paragraph if, as a result of any act or omission of
23 defendant, the property described in the preceding paragraph, or any
24 portion thereof (a) cannot be located upon the exercise of due
25 diligence; (b) has been transferred, sold to or deposited with a
26 third party; (c) has been placed beyond the jurisdiction of the

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1 Court; (d) has been substantially diminished in value; or (e) has
2 been commingled with other property that cannot be divided without
3 difficulty.

4
5 TRACY L. WILKISON
6 Attorney for the United States,
7 Acting Under Authority Conferred
8 by 28 U.S.C. § 515

9
10 

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13 Chief, Criminal Division

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 CENTRAL DISTRICT OF CALIF.
 SANTA ANA

FILED

10 Attorneys for Plaintiff
 11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,
 15 Plaintiff,
 16 v.
 17 DANIEL CAPEN,
 18 Defendant.

No. SACR18-00124 JLS
PLEA AGREEMENT FOR DEFENDANT
DANIEL CAPEN

20 1. This constitutes the plea agreement between DANIEL CAPEN
 21 ("defendant") and the United States Attorney's Office for the Central
 22 District of California ("the USAO") in the above-captioned case.
 23 This agreement is limited to the USAO and cannot bind any other
 24 federal, state, local, or foreign prosecuting, enforcement,
 25 administrative, or regulatory authorities.

26 DEFENDANT'S OBLIGATIONS

27 2. Defendant agrees to:
 28 a. Give up the right to indictment by a grand jury and,

1 at the earliest opportunity requested by the USAO and provided by the
2 Court, appear and plead guilty to counts one and two of an
3 information in the form attached to this agreement as Exhibit A or a
4 substantially similar form (the "information"), which charges
5 defendant with conspiracy, in violation of 18 U.S.C. § 371, and
6 Receipt of Kickbacks in Connection with a Federal Health Care
7 Program, in violation of 42 U.S.C. § 1320a-7b(b)(1)(A).

8 b. Not contest facts agreed to in this agreement.

9 c. Abide by all agreements regarding sentencing contained
10 in this agreement.

11 d. Appear for all court appearances, surrender as ordered
12 for service of sentence, obey all conditions of any bond, and obey
13 any other ongoing court order in this matter.

14 e. Not commit any crime; however, offenses that would be
15 excluded for sentencing purposes under United States Sentencing
16 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
17 within the scope of this agreement.

18 f. Be truthful at all times with Pretrial Services, the
19 United States Probation Office, and the Court.

20 g. Pay the applicable special assessments at or before
21 the time of sentencing unless defendant lacks the ability to pay and
22 prior to sentencing submits a completed financial statement on a form
23 to be provided by the USAO.

24 h. Not seek the discharge of any restitution obligation,
25 in whole or in part, in any present or future bankruptcy proceeding.

26 i. Defendant understands and acknowledges that as a
27 result of pleading guilty pursuant to this agreement, defendant will
28 be excluded from Medicare, Medicaid, and all Federal health care

1 programs. Defendant agrees to complete and execute all necessary
2 documents provided by the United States Department of Health and
3 Human Services, or any other department or agency of the federal
4 government, to effectuate this exclusion within 60 days of receiving
5 the documents. This exclusion will not affect defendant's right to
6 apply for and receive benefits as a beneficiary under any Federal
7 health care program, including Medicare and Medicaid.

8 3. Defendant further agrees:

9 a. To forfeit the sum of \$5,000,000.00 (five million
10 dollars) (the "Forfeitable Property"), which Forfeitable Property
11 defendant agrees (1) constitutes or is derived from proceeds
12 traceable to violations of 18 U.S.C. §§ 371, including the objects of
13 the conspiracy, and 42 U.S.C. § 1320a-7b(b); (2) was used to
14 facilitate and was involved in violations of 18 U.S.C. §§ 371,
15 including the objects of the conspiracy, and 42 U.S.C. § 1320a-7b(b);
16 and (3) shall, at the sole election of the United States of America,
17 be criminally forfeited or civilly forfeited, administratively or
18 judicially, pursuant to 18 U.S.C. § 981, 18 U.S.C. § 982, 28 U.S.C.
19 § 2461, or otherwise.

20 b. To withdraw any claim defendant may have submitted to
21 any federal agency in any administrative forfeiture proceedings
22 commenced by that agency with respect to the Forfeitable Property.
23 Defendant further waives his rights, if any, to any initial or
24 further notice relative to any administrative forfeiture proceedings.
25 Defendant understands, acknowledges, and agrees that the Forfeitable
26 Property shall, at the sole election of the United States of America,
27 be administratively forfeited to the United States of America without
28 any further notice.

1 c. To pay the Forfeitable Property to the United States
2 of America, at least in part, as follows:

3 (i) within sixty (60) days of defendant's execution
4 of this plea agreement, defendant shall pay \$2,000,000 (two million
5 dollars) by, at the United States of America's sole option
6 (1) delivering to the USAO a cashier's check payable in that amount
7 to the government entity identified in writing by the USAO, or (2)
8 wire transferring the funds to an account designated in writing by
9 the USAO; and

10 (ii) At least thirty (30) days before defendant's
11 sentencing, defendant shall pay \$1,500,000 million (one million five
12 hundred thousand dollars) by, at the United States of America's sole
13 option (1) delivering to the USAO a cashier's check payable in that
14 amount to the government entity identified in writing by the USAO, or
15 (2) wire transferring the funds to an account designated in writing
16 by the USAO.

17 d. To refrain from contesting the forfeiture (by filing a
18 claim, statement of interest, petition for an ancillary proceeding,
19 petition for remission or otherwise) of the Forfeitable Property in
20 any administrative or judicial proceeding, or assisting any other
21 person or entity in falsely contesting the forfeiture of the
22 Forfeitable Property in any administrative or judicial proceeding.

23 e. To take all steps necessary to pass to the United
24 States of America clear title to the Forfeitable Property, including,
25 without limitation, the execution of consent judgments of forfeiture,
26 the entry of any additional money judgments of forfeiture, the
27 identification of all monies, properties and assets of any kind owned
28 and/or controlled by defendant, the liquidation of any item of the

1 Forfeitable Property in the manner required by the United States of
2 America in its sole discretion, the transmission of any item of the
3 Forfeitable Property to the United States of America upon request by
4 the USAO and the completion of any other legal documents required for
5 the transfer of title to the Forfeitable Property to the United
6 States of America.

7 f. To prevent the disbursement of the Forfeitable
8 Property without the authorization of the USAO, if such disbursements
9 are within defendant's direct or indirect control.

10 g. To the Court's entry of an order of forfeiture,
11 including any personal money judgment of forfeiture, at or before
12 sentencing with respect to the Forfeitable Property and to the
13 forfeiture of the Forfeitable Property. Defendant knowingly and
14 voluntarily waives (i) the requirements of Federal Rules of Criminal
15 Procedure 32.2 and 43(a) regarding notice of the forfeiture in the
16 charging instrument, announcement of the forfeiture at sentencing,
17 and incorporation of the forfeiture in the judgment; (ii) all
18 constitutional and statutory challenges in any manner (including by
19 direct appeal, habeas corpus, or any other means) to any forfeiture
20 carried out in accordance with this agreement on any grounds; and
21 (iii) all constitutional, legal and equitable defenses to the
22 forfeiture of the Forfeitable Property in any proceeding on any
23 grounds including, without limitation, that the forfeiture
24 constitutes an excessive fine or punishment. Defendant also
25 acknowledges and understands that the forfeiture of the Forfeitable
26 Property is part of the sentence that may be imposed in this case and
27 waives any failure by the Court to advise defendant of this, pursuant
28 to Rule 11(b)(1)(J), at the time defendant's guilty plea is accepted.

1 4. Defendant further agrees to cooperate fully with the USAO,
2 Federal Bureau of Investigation, United States Postal Service-Office
3 of Inspector General, IRS-Criminal Investigation, and California
4 Department of Insurance, and, as directed by the USAO, any other
5 federal, state, local, or foreign prosecuting, enforcement,
6 administrative, or regulatory authority. This cooperation requires
7 defendant to:

8 a. Respond truthfully and completely to all questions
9 that may be put to defendant, whether in interviews, before a grand
10 jury, or at any trial or other court proceeding.

11 b. Attend all meetings, grand jury sessions, trials or
12 other proceedings at which defendant's presence is requested by the
13 USAO or compelled by subpoena or court order.

14 c. Produce voluntarily all documents, records, or other
15 tangible evidence relating to matters about which the USAO, or its
16 designee, inquires.

17 d. If requested to do so by the USAO, act in an
18 undercover capacity to the best of defendant's ability in connection
19 with criminal investigations by federal, state, local, or foreign law
20 enforcement authorities, in accordance with the express instructions
21 of those law enforcement authorities. Defendant agrees not to act in
22 an undercover capacity, tape record any conversations, or gather any
23 evidence except after a request by the USAO and in accordance with
24 express instructions of federal, state, local, or foreign law
25 enforcement authorities.

26 5. For purposes of this agreement: (1) "Cooperation
27 Information" shall mean any statements made, or documents, records,
28 tangible evidence, or other information provided, by defendant

1 pursuant to defendant's cooperation under this agreement or pursuant
2 to the letter agreement previously entered into by the parties, dated
3 on or about December 11, 2017, as extended for subsequent proffer
4 sessions and designated cooperation-related document productions
5 prior to the effective date of this agreement (the "Letter
6 Agreement"); and (2) "Plea Information" shall mean any statements
7 made by defendant, under oath, at the guilty plea hearing and the
8 agreed to factual basis statement in this agreement.

9 THE USAO'S OBLIGATIONS

10 6. The USAO agrees to:

11 a. Not contest facts agreed to in this agreement.

12 b. Abide by all agreements regarding sentencing contained
13 in this agreement.

14 c. Except for criminal tax violations (including
15 conspiracy to commit such violations chargeable under 18 U.S.C.
16 § 371), not further criminally prosecute defendant for violations
17 arising out of defendant's conduct described in the agreed-to factual
18 basis set forth in paragraph 22 below and in the attached Exhibit B.
19 Defendant understands that the USAO is free to criminally prosecute
20 defendant for any other unlawful past conduct or any unlawful conduct
21 that occurs after the date of this agreement. Defendant agrees that
22 at the time of sentencing the Court may consider the uncharged
23 conduct in determining the applicable Sentencing Guidelines range,
24 the propriety and extent of any departure from that range, and the
25 sentence to be imposed after consideration of the Sentencing
26 Guidelines and all other relevant factors under 18 U.S.C. § 3553(a).

27 d. Subject to paragraph 24, at the time of sentencing,
28 provided that defendant demonstrates an acceptance of responsibility

1 for the offense up to and including the time of sentencing, recommend
2 a two-level reduction in the applicable Sentencing Guidelines offense
3 level, pursuant to U.S.S.G. § 3E1.1, and recommend and, if necessary,
4 move for an additional one-level reduction if available under that
5 section.

6 e. Recommend that defendant be sentenced to a term of
7 imprisonment no higher than the low end of the applicable Sentencing
8 Guidelines range, provided that the offense level used by the Court
9 to determine that range is 27 or higher. For purposes of this
10 agreement, the low end of the Sentencing Guidelines range is that
11 defined by the Sentencing Table in U.S.S.G. Chapter 5, Part A,
12 without regard to reductions in the term of imprisonment that may be
13 permissible through the substitution of community confinement or home
14 detention as a result of the offense level falling within Zone B or
15 Zone C of the Sentencing Table.

16 f. To the extent paid prior to defendant's sentencing,
17 credit any amount defendant paid to resolve any civil claims arising
18 out of the conduct set forth in paragraph 22 and the attached Exhibit
19 B to this agreement, towards defendant's payment of the Forfeitable
20 Property.

21 7.. The USAO further agrees:

22 a. Not to offer as evidence in its case-in-chief in the
23 above-captioned case or any other criminal prosecution that may be
24 brought against defendant by the USAO, or in connection with any
25 sentencing proceeding in any criminal case that may be brought
26 against defendant by the USAO, any Cooperation Information.
27 Defendant agrees, however, that the USAO may use both Cooperation
28 Information and Plea Information: (1) to obtain and pursue leads to

1 other evidence, which evidence may be used for any purpose, including
2 any criminal prosecution of defendant; (2) to cross-examine defendant
3 should defendant testify, or to rebut any evidence offered, or
4 argument or representation made, by defendant, defendant's counsel,
5 or a witness called by defendant in any trial, sentencing hearing, or
6 other court proceeding; and (3) in any criminal prosecution of
7 defendant for false statement, obstruction of justice, or perjury.

8 b. Not to use Cooperation Information against defendant
9 at sentencing for the purpose of determining the applicable guideline
10 range, including the appropriateness of an upward departure, or the
11 sentence to be imposed, and to recommend to the Court that
12 Cooperation Information not be used in determining the applicable
13 guideline range or the sentence to be imposed. Defendant
14 understands, however, that Cooperation Information will be disclosed
15 to the probation office and the Court, and that the Court may use
16 Cooperation Information for the purposes set forth in U.S.S.G.
17 § 1B1.8(b) and for determining the sentence to be imposed.

18 c. In connection with defendant's sentencing, to bring to
19 the Court's attention the nature and extent of defendant's
20 cooperation.

21 d. If the USAO determines, in its exclusive judgment,
22 that defendant has both complied with defendant's obligations under
23 paragraphs 2 through 4 above and provided substantial assistance to
24 law enforcement in the prosecution or investigation of another
25 ("substantial assistance"), to move the Court pursuant to U.S.S.G.
26 § 5K1.1 to fix an offense level and corresponding guideline range
27 below that otherwise dictated by the sentencing guidelines, and to
28 recommend a term of imprisonment within this reduced range. In

1 making this determination and determining the extent of any motion,
2 the government may take into account benefits conferred to defendant
3 as a result of this plea agreement.

4 DEFENDANT'S UNDERSTANDINGS REGARDING COOPERATION

5 8. Defendant understands the following:

6 a. Any knowingly false or misleading statement by
7 defendant will subject defendant to prosecution for false statement,
8 obstruction of justice, and perjury and will constitute a breach by
9 defendant of this agreement.

10 b. Nothing in this agreement requires the USAO or any
11 other prosecuting, enforcement, administrative, or regulatory
12 authority to accept any cooperation or assistance that defendant may
13 offer, or to use it in any particular way.

14 c. Defendant cannot withdraw defendant's guilty plea if
15 the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1 for a
16 reduced guideline range or if the USAO makes such a motion and the
17 Court does not grant it or if the Court grants such a USAO motion but
18 elects to sentence above the reduced range.

19 d. The USAO's determination whether defendant has
20 provided substantial assistance will not depend in any way on whether
21 the government prevails at any trial or court hearing in which
22 defendant testifies or in which the government otherwise presents
23 information resulting from defendant's cooperation.

24 NATURE OF THE OFFENSES

25 9. Defendant understands that for defendant to be guilty of
26 the crime charged in count one of the information, that is,
27 conspiracy, in violation of Title 18, United States Code, Section
28 371, the following must be true: (1) between in or about 1998 and in

1 or about March 2013, there was an agreement between two or more
2 persons to commit violations of Title 18, United States Code,
3 Sections 1341, 1343, and 1346 (Honest Services Mail and Wire Fraud);
4 Title 18, United States Code, Section 1952(a)(3) (Interstate Travel
5 in Aid of Bribery); Title 18, United States Code, Section 1957
6 (Monetary Transactions in Property Derived from Specified Unlawful
7 Activity); and Title 42, United States Code, Section 1320a-7b(b)(1),
8 (b)(2) (Solicitation/Receipt and Offering/Paying Kickbacks in
9 Connection with a Federal Health Care Program); (2) the defendant
10 became a member of the conspiracy knowing of at least one of its
11 objects and intending to help accomplish it; and (3) one of the
12 members of the conspiracy performed at least one overt act for the
13 purpose of carrying out the conspiracy.

14 10. Defendant understands that Honest Services Mail and Wire
15 Fraud, in violation of Title 18, United States Code, Sections 1341
16 and 1346, and 1343 and 1346, each an object of the conspiracy charged
17 in the information, has the following elements: (1) the defendant
18 devised or participated in a scheme or plan to deprive a patient of
19 his or her right to honest services; (2) the scheme or plan included
20 payments of bribes and kickbacks to medical professionals in exchange
21 for medical services or items; (3) the medical professionals owed a
22 fiduciary duty to the patients; (4) the defendant acted with the
23 intent to defraud by depriving the patients of their right of honest
24 services of the medical professionals; (5) the defendant's act was
25 material, that is, it had a natural tendency to influence, or was
26 capable of influencing, a person's acts; and (6) the defendant used,
27 or caused someone to use, the mails and a wire communication to carry
28 out or attempt to carry out the scheme or plan.

1 11. Defendant understands that Interstate Travel in Aid of
2 Bribery, in violation of Title 18, United States Code, Section
3 1952(a) (3), one of the objects of the conspiracy charged in the
4 information, has the following elements: (1) defendant used the mail
5 or a facility of interstate commerce with the intent to promote,
6 manage, establish, or carry on, or facilitate the promotion,
7 management, establishment, or carrying on, of unlawful activity,
8 specifically payment and receipt of kickbacks in violation of
9 California Business & Professions Code § 650 and California Insurance
10 Code § 750; and (2) after doing so, defendant performed or attempted
11 to perform an act to promote, manage, establish, or carry on, or
12 facilitate the promotion, management, establishment, or carrying on,
13 of such unlawful activity.

14 12. Defendant understands that Transactional Money Laundering,
15 in violation of Title 18, United States Code, Section 1957, one of
16 the objects of the conspiracy charged in the information, has the
17 following elements: (1) the defendant knowingly engaged or attempted
18 to engage in a monetary transaction; (2) the defendant knew the
19 transaction involved criminally derived property; (3) the property
20 had a value greater than \$10,000; (4) the property was, in fact,
21 derived from specified unlawful activity, namely, honest services
22 mail or wire fraud, health care fraud, or illegal kickbacks for
23 health care referrals; and (5) the transaction occurred in the United
24 States.

25 13. Defendant understands that Payment or Receipt of Kickbacks
26 in Connection with a Federal Health Care Program, in violation of
27 Title 42, United States Code, Sections 1320a-7b(b) (2) and (b) (1),
28 each an object of the conspiracy charged in the information, has the

1 following elements: (1) defendant knowingly and willfully paid or
2 received remuneration, directly or indirectly, in cash or in kind, to
3 or from another person; (2) the remuneration was given to induce that
4 person to refer an individual for the furnishing or arranging for the
5 furnishing of any item or service for which payment may be made in
6 whole or in part under a Federal health care program; and
7 (3) defendant knew that such payment of remuneration was illegal.

8 14. Defendant understands that for defendant to be guilty of
9 Receipt of Kickbacks in Connection with a Federal Health Care
10 Program, in violation of Title 42, United States Code, Sections
11 1320a-7b(b)(1), as charged in count two of the information, has the
12 following elements: (1) defendant knowingly and willfully received
13 remuneration, directly or indirectly, in cash or in kind, from
14 another person; (2) the remuneration was given to induce defendant to
15 refer an individual for the furnishing or arranging for the
16 furnishing of any item or service for which payment may be made in
17 whole or in part under a Federal health care program; and
18 (3) defendant knew that such payment of remuneration was illegal.

19 PENALTIES AND RESTITUTION

20 15. Defendant understands that the statutory maximum sentence
21 that the Court can impose for a violation of Title 18, United States
22 Code, Section 371, as charged in count one of the information, is:
23 five years' imprisonment, a three-year period of supervised release;
24 a fine of \$250,000 or twice the gross gain or gross loss resulting
25 from the offense, whichever is greater; and a mandatory special
26 assessment of \$100.

27 16. Defendant understands that the statutory maximum sentence
28 that the Court can impose for a violation of Title 42, United States

1 Code, Section 1320a-7b(b) (1) (A), is: five years' imprisonment; a
2 three-year period of supervised release; a fine of \$250,000 or twice
3 the gross gain or gross loss resulting from the offense, whichever is
4 greatest; and a mandatory special assessment of \$100.

5 17. Defendant therefore understands that the total maximum
6 sentence for all offenses to which defendant is pleading guilty is:
7 ten years' imprisonment; a three-year period of supervised release; a
8 fine of \$500,000 or twice the gross gain or gross loss resulting from
9 the offense, whichever is greatest; and a mandatory special
10 assessment of \$200.

11 18. Defendant understands that defendant will be required to
12 pay full restitution to the victims of the offenses to which
13 defendant is pleading guilty. Defendant agrees that, in return for
14 the USAO's compliance with its obligations under this agreement, the
15 Court may order restitution to persons other than the victims of the
16 offenses to which defendant is pleading guilty and in amounts greater
17 than those alleged in the counts to which defendant is pleading
18 guilty. In particular, defendant agrees that the Court may order
19 restitution to any victim of any of the following for any losses
20 suffered by that victim as a result: (a) any relevant conduct, as
21 defined in U.S.S.G. § 1B1.3, in connection with the offenses to which
22 defendant is pleading guilty; and (b) any charges not prosecuted
23 pursuant to this agreement as well as all relevant conduct, as
24 defined in U.S.S.G. § 1B1.3, in connection with those charges. The
25 parties further agree that any amount forfeited under this agreement
26 and/or paid in order to resolve civil claims arising from the conduct
27 set forth in paragraph 22 and the attached Exhibit B to this
28 agreement shall be credited towards defendant's payment of any

1 restitution obligation the Court may order, and that any amount
2 actually paid as restitution shall be credited towards the payment of
3 the Forfeitable Property. The parties also agree that payments made
4 to the government in satisfaction of any civil resolution of claims
5 filed under the False Claims Act, 31 U.S.C. § 3729, based upon the
6 conduct set forth in forth in paragraph 22 and the attached Exhibit
7 B, shall be deemed payments toward restitution.

8 19. Defendant understands that supervised release is a period
9 of time following imprisonment during which defendant will be subject
10 to various restrictions and requirements. Defendant understands that
11 if defendant violates one or more of the conditions of any supervised
12 release imposed, defendant may be returned to prison for all or part
13 of the term of supervised release authorized by statute for the
14 offense that resulted in the term of supervised release, which could
15 result in defendant serving a total term of imprisonment greater than
16 the statutory maximum stated above.

17 20. Defendant understands that, by pleading guilty, defendant
18 may be giving up valuable government benefits and valuable civic
19 rights, such as the right to vote, the right to possess a firearm,
20 the right to hold office, and the right to serve on a jury.
21 Defendant understands that once the court accepts defendant's guilty
22 pleas, it will be a federal felony for defendant to possess a firearm
23 or ammunition. Defendant understands that the conviction in this
24 case may also subject defendant to various other collateral
25 consequences, including but not limited to revocation of probation,
26 parole, or supervised release in another case, mandatory exclusion
27 from providing services for any federal health care benefit program
28 for at least five years, and suspension or revocation of a

1 professional license. Defendant understands that unanticipated
2 collateral consequences will not serve as grounds to withdraw
3 defendant's guilty pleas.

4 21. Defendant understands that, if defendant is not a United
5 States citizen, the felony convictions in this case may subject
6 defendant to: removal, also known as deportation, which may, under
7 some circumstances, be mandatory; denial of citizenship; and denial
8 of admission to the United States in the future. The court cannot,
9 and defendant's attorney also may not be able to, advise defendant
10 fully regarding the immigration consequences of the felony
11 convictions in this case. Defendant understands that unexpected
12 immigration consequences will not serve as grounds to withdraw
13 defendant's guilty pleas.

14 FACTUAL BASIS

15 22. Defendant admits that defendant is, in fact, guilty of the
16 offenses to which defendant is agreeing to plead guilty. Defendant
17 and the USAO agree to the statement of facts provided in the attached
18 Exhibit B and agree that this statement of facts is sufficient to
19 support pleas of guilty to the charges described in this agreement
20 and to establish the Sentencing Guidelines factors set forth in
21 paragraph 24 below, but is not meant to be a complete recitation of
22 all facts relevant to the underlying criminal conduct or all facts
23 known to either party that relate to that conduct.

24 SENTENCING FACTORS

25 23. Defendant understands that in determining defendant's
26 sentence the Court is required to calculate the applicable Sentencing
27 Guidelines range and to consider that range, possible departures
28 under the Sentencing Guidelines, and the other sentencing factors set

1 forth in 18 U.S.C. § 3553(a). Defendant understands that the
 2 Sentencing Guidelines are advisory only, that defendant cannot have
 3 any expectation of receiving a sentence within the calculated
 4 Sentencing Guidelines range, and that after considering the
 5 Sentencing Guidelines and the other § 3553(a) factors, the Court will
 6 be free to exercise its discretion to impose any sentence it finds
 7 appropriate up to the maximum set by statute for the offenses of
 8 conviction.

9 24. Defendant and the USAO stipulate and agree to the following
 10 applicable Sentencing Guidelines factors:

11	Base Offense Level:	8	[U.S.S.G. § 2B4.1(a)(2)]
12	<u>Specific Offense</u>		
13	<u>Characteristics</u>		
14	Value of Improper Benefit		
15	Conferred to Pacific Hospital		
16	(between \$9.5M and \$25M):	+20	[U.S.S.G. § 2B4.1(b)(1)(B)]
17	Abuse of Position of Trust:	+2	[U.S.S.G. § 3B1.3]
18	Acceptance of Responsibility:	-3	[U.S.S.G. § 3E1.1(a)]
19	<u>Total offense level:</u>	27	

20 The USAO will agree to a two-level downward adjustment for acceptance
 21 of responsibility (and, if applicable, move for an additional one-
 22 level downward adjustment under U.S.S.G. § 3E1.1(b)) only if the
 23 conditions set forth in paragraphs 2 through 4 and 7(d) are met and
 24 if defendant has not committed, and refrains from committing, acts
 25 constituting obstruction of justice within the meaning of U.S.S.G. §
 26 3C1.1, as discussed below. Subject to paragraph 39 below, defendant
 27 and the USAO agree not to seek, argue, or suggest in any way, either
 28 orally or in writing, that any other specific offense
 characteristics, adjustments, or departures relating to the offense

1 level be imposed. Defendant agrees, however, that if, after signing
2 this agreement but prior to sentencing, defendant were to commit an
3 act, or the USAO were to discover a previously undiscovered act
4 committed by defendant prior to signing this agreement, which act, in
5 the judgment of the USAO, constituted obstruction of justice within
6 the meaning of U.S.S.G. § 3C1.1, the USAO would be free to seek the
7 enhancement set forth in that section and to argue that defendant is
8 not entitled to a downward adjustment for acceptance of
9 responsibility under U.S.S.G. § 3E1.1.

10 25. Defendant understands that there is no agreement as to
11 defendant's criminal history or criminal history category.

12 26. Defendant and the USAO reserve the right to argue for a
13 sentence outside the sentencing range established by the Sentencing
14 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),
15 (a)(2), (a)(3), (a)(6), and (a)(7).

16 WAIVER OF STATUTE OF LIMITATIONS

17 27. Having been fully advised by defendant's attorney regarding
18 application of the statute of limitations to the offenses to which
19 defendant is pleading guilty, defendant hereby knowingly,
20 voluntarily, and intelligently waives, relinquishes, and gives up:
21 (a) any right that defendant might have not to be prosecuted for the
22 offenses to which defendant is pleading guilty because of the
23 expiration of the statute of limitations for those offenses prior to
24 the filing of the information alleging those offenses; and (b) any
25 defense, claim, or argument defendant could raise or assert that
26 prosecution of the offenses to which defendant is pleading guilty is
27 barred by the expiration of the applicable statute of limitations,
28 pre-indictment delay, or any speedy trial violation.

1 any right to appeal defendant's convictions on the offenses to which
2 defendant is pleading guilty.

3 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

4 30. Defendant agrees that, provided the Court imposes a total
5 term of imprisonment on all counts of conviction at or below the
6 high-end of the Sentencing Guidelines range corresponding to a total
7 offense level of 27 and the criminal history category determined by
8 the Court, defendant gives up the right to appeal all of the
9 following: (a) the procedures and calculations used to determine and
10 impose any portion of the sentence; (b) the term of imprisonment
11 imposed by the Court; (c) the fine imposed by the court, provided it
12 is within the statutory maximum; (d) the amount and terms of any
13 restitution order, provided it requires payment of no more than
14 \$10,000,000 (ten million dollars); (e) the term of probation or
15 supervised release imposed by the Court, provided it is within the
16 statutory maximum; and (f) any of the following conditions of
17 probation or supervised release imposed by the Court: the conditions
18 set forth in General Orders 318, 01-05, and/or 05-02 of this Court;
19 the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and
20 3583(d); and the alcohol and drug use conditions authorized by 18
21 U.S.C. § 3563(b)(7).

22 31. Defendant also gives up any right to bring a post-
23 conviction collateral attack on the convictions or sentence,
24 including any order of restitution, except a post-conviction
25 collateral attack based on a claim of ineffective assistance of
26 counsel, a claim of newly discovered evidence, or an explicitly
27 retroactive change in the applicable Sentencing Guidelines,
28 sentencing statutes, or statutes of conviction.

1 32. The USAO agrees that, provided all portions of the sentence
2 are at or below the total statutory maximum specified above, the USAO
3 gives up its right to appeal any portion of the sentence.

4 RESULT OF WITHDRAWAL OF GUILTY PLEAS

5 33. Defendant agrees that if, after entering guilty pleas
6 pursuant to this agreement, defendant seeks to withdraw and succeeds
7 in withdrawing any of defendant's guilty pleas on any basis other
8 than a claim and finding that entry into this plea agreement was
9 involuntary, then (a) the USAO will be relieved of all of its
10 obligations under this agreement, including in particular its
11 obligations regarding the use of Cooperation Information; (b) in any
12 investigation, criminal prosecution, or civil, administrative, or
13 regulatory action, defendant agrees that any Cooperation Information
14 and any evidence derived from any Cooperation Information shall be
15 admissible against defendant, and defendant will not assert, and
16 hereby waives and gives up, any claim under the United States
17 Constitution, any statute, or any federal rule, that any Cooperation
18 Information or any evidence derived from any Cooperation Information
19 should be suppressed or is inadmissible; and (c) should the USAO
20 choose to pursue any charge that was not filed as a result of this
21 agreement, then (i) any applicable statute of limitations will be
22 tolled between the date of defendant's signing of this agreement and
23 the filing commencing any such action; and (ii) defendant waives and
24 gives up all defenses based on the statute of limitations, any claim
25 of pre-indictment delay, or any speedy trial claim with respect to
26 any such action, except to the extent that such defenses existed as
27 of the date of defendant's signing this agreement.

28

1 any Cooperation Information in any way in any investigation, criminal
2 prosecution, or civil, administrative, or regulatory action.

3 c. The USAO will be free to criminally prosecute
4 defendant for false statement, obstruction of justice, and perjury
5 based on any knowingly false or misleading statement by defendant.

6 d. In any investigation, criminal prosecution, or civil,
7 administrative, or regulatory action: (i) defendant will not assert,
8 and hereby waives and gives up, any claim that any Cooperation
9 Information was obtained in violation of the Fifth Amendment
10 privilege against compelled self-incrimination; and (ii) defendant
11 agrees that any Cooperation Information and any Plea Information, as
12 well as any evidence derived from any Cooperation Information or any
13 Plea Information, shall be admissible against defendant, and
14 defendant will not assert, and hereby waives and gives up, any claim
15 under the United States Constitution, any statute, Rule 410 of the
16 Federal Rules of Evidence, Rule 11(f) of the Federal Rules of
17 Criminal Procedure, or any other federal rule, that any Cooperation
18 Information, any Plea Information, or any evidence derived from any
19 Cooperation Information or any Plea Information should be suppressed
20 or is inadmissible.

21 36. Following the Court's finding of a knowing breach of this
22 agreement by defendant, should the USAO choose to pursue any charge
23 that was not filed as a result of this agreement, then:

24 a. Defendant agrees that any applicable statute of
25 limitations is tolled between the date of defendant's signing of this
26 agreement and the filing commencing any such action.

27 b. Defendant waives and gives up all defenses based on
28 the statute of limitations, any claim of pre-indictment delay, or any

1 speedy trial claim with respect to any such action, except to the
2 extent that such defenses existed as of the date of defendant's
3 signing this agreement.

4 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

5 37. Defendant agrees that if any count of conviction is
6 vacated, reversed, or set aside, the USAO may: (a) ask the Court to
7 resentence defendant on any remaining count of conviction, with both
8 the USAO and defendant being released from any stipulations regarding
9 sentencing contained in this agreement, (b) ask the Court to void the
10 entire plea agreement and vacate defendant's guilty plea on any
11 remaining count of conviction, with both the USAO and defendant being
12 released from all their obligations under this agreement, or
13 (c) leave defendant's remaining conviction, sentence, and plea
14 agreement intact. Defendant agrees that the choice among these three
15 options rests in the exclusive discretion of the USAO.

16 COURT AND PROBATION OFFICE NOT PARTIES

17 38. Defendant understands that the Court and the United States
18 Probation Office are not parties to this agreement and need not
19 accept any of the USAO's sentencing recommendations or the parties'
20 agreements to facts or sentencing factors.

21 39. Defendant understands that both defendant and the USAO are
22 free to: (a) supplement the facts by supplying relevant information
23 to the United States Probation Office and the Court, (b) correct any
24 and all factual misstatements relating to the Court's Sentencing
25 Guidelines calculations and determination of sentence, and (c) argue
26 on appeal and collateral review that the Court's Sentencing
27 Guidelines calculations and the sentence it chooses to impose are not
28 error, although each party agrees to maintain its view that the

1 calculations in paragraph 24 above are consistent with the facts of
2 this case. While this agreement permits both the USAO and defendant
3 to submit full and complete factual information to the United States
4 Probation Office and the Court, even if that factual information may
5 be viewed as inconsistent with the facts agreed to in this agreement,
6 this agreement does not affect defendant's and the USAO's obligations
7 not to contest the facts agreed to in this agreement.

8 40. Defendant understands that even if the Court ignores any
9 sentencing recommendation, finds facts or reaches conclusions
10 different from those agreed to, and/or imposes any sentence up to the
11 maximum established by statute, defendant cannot, for that reason,
12 withdraw defendant's guilty pleas, and defendant will remain bound to
13 fulfill all defendant's obligations under this agreement. Defendant
14 understands that no one -- not the prosecutor, defendant's attorney,
15 or the Court -- can make a binding prediction or promise regarding
16 the sentence defendant will receive, except that it will be within
17 the statutory maximum.

18 NO ADDITIONAL AGREEMENTS

19 41. This agreement supersedes and replaces the Letter
20 Agreement. Defendant understands that, except as set forth in this
21 agreement, there are no promises, understandings, or agreements
22 between the USAO and defendant or defendant's attorney, and that no
23 additional promise, understanding, or agreement may be entered into
24 unless in a writing signed by all parties or on the record in court.

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PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

42. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA

TRACY L. WILKISON
Attorney for the United States,
Acting Under Authority Conferred
by 28 U.S.C. § 515

ASHWIN JANAKIRAM
Assistant United States Attorney

Date

DANIEL CAPEN
Defendant

Date



DOUGLAS A. AXEL
Attorney for Defendant
DANIEL CAPEN

Date 4/20/18

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AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA

TRACY L. WILKISON
Attorney for the United States,
Acting Under Authority Conferred
by 28 U.S.C. § 515

Joe McNay, Esq.
ASHWIN JANAKIRAM
Assistant United States Attorney

6/1/18
Date

Daniel A Capen
DANIEL CAPEN
Defendant

4-19-18
Date

DOUGLAS A. AXEL
Attorney for Defendant
DANIEL CAPEN

Date

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CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charges and wish to take advantage of the promises set forth in this agreement, and not for any other reason.



DANIEL CAPEN
Defendant

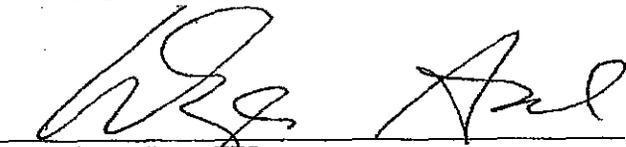
4.19.18

Date

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CERTIFICATION OF DEFENDANT'S ATTORNEY

I am DANIEL CAPEN's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client's entry of guilty pleas pursuant to this agreement.



DOUGLAS A. AXEL
Attorney for Defendant
DANIEL CAPEN

4/20/18
Date

1 **EXHIBIT B**

2 **STATEMENT OF FACTS**

3 Relevant Entities

4 Healthsmart Pacific Inc., doing business as Pacific Hospital of
5 Long Beach ("Pacific Hospital" or "PHLB"), was a hospital located in
6 Long Beach, California, specializing in surgeries, particularly
7 spinal and orthopedic surgeries. From in or around 1997 to in or
8 around June 2004, Pacific Hospital was owned by majority shareholder
9 Michael D. Drobot ("Drobot").

10 On or about September 27, 2005, unindicted co-conspirator A
11 ("UCC-A") effectively became the sole shareholder of Pacific Hospital
12 through his ownership and control of the "[UCC-A] Family Trust,"
13 which, in turn, owned Abrazos Healthcare, Inc. ("Abrazos"), a
14 privately held corporation formed and incorporated in February 2005
15 for the purpose of purchasing shares of Pacific Hospital from Drobot.
16 UCC-A, through Abrazos, also acquired other interests in affiliated
17 entities previously owned and/or controlled by Drobot. Between 1998
18 and March 2013, Pacific Hospital was operated and/or controlled by
19 Drobot and UCC-A.

20 In about June 2006, UCC-A offered defendant DANIEL CAPEN
21 ("defendant"), an orthopedic surgeon, the opportunity to purchase 10%
22 of the common stock of Abrazos to further cement defendant's
23 relationship with Pacific Hospital and incentivize defendant's
24 referral of patients for surgeries and other medical services to
25 Pacific Hospital. While defendant acquired 10% of the common stock
26 of Abrazos, which effectively gave defendant a 10% ownership interest
27 in Pacific Hospital, he did not operate or control the hospital and
28 did not ultimately profit from his investment.

1 On or about October 12, 2010, Drobot, through an affiliated
2 entity, purchased UCC-A's shares of Abrazos, which effectively
3 provided Drobot a 90% ownership interest in Pacific Hospital, while
4 defendant continued to maintain his 10% ownership interest in Pacific
5 Hospital.

6 Pacific Specialty Physician Management, Inc. ("PSPM") was a
7 corporation headquartered in Newport Beach, California, that provided
8 administrative and management services for physicians' offices,
9 including the management of the Southwestern Orthopedic Medical
10 Corporation, doing business as Downey Orthopedic Medical Group
11 ("Downey Ortho"). Defendant CAPEN, along with other physicians
12 affiliated with Downey Ortho, maintained a medical practice at
13 various Downey Ortho clinic locations.

14 California Pharmacy Management LLC ("CPM") was a limited
15 liability company, headquartered in Newport Beach, California, that
16 operated and managed a pharmaceutical dispensing program in medical
17 clinics for physicians. Drobot and Michael R. Drobot Jr. ("Drobot
18 Jr.") owned and/or operated CPM.

19 Industrial Pharmacy Management LLC ("IPM") was a limited
20 liability company, headquartered in Newport Beach, California. IPM
21 operated and managed a pharmaceutical dispensing program in medical
22 clinics for physicians through the use of pharmaceutical management
23 agreements and claims purchase agreements. Drobot principally owned
24 and controlled IPM until approximately 2010, when Drobot Jr. assumed
25 ownership and control of IPM.

26 International Implants LLC ("I2") was a limited liability
27 company, headquartered in Newport Beach, California, that purchased
28 implantable medical hardware for use in spinal surgeries from

1 original manufacturers and sold them to hospitals, particularly
2 Pacific Hospital, starting around July 2008. I2 was effectively
3 owned and/or controlled by Drobot.

4 PHLB, PSPM, CPM, IPM, and I2 are collectively referred to herein
5 as "Pacific Hospital and Affiliated Entities."

6 The Kickback Arrangements

7 Defendant was an orthopedic surgeon specializing in spinal
8 surgeries and owed a fiduciary duty to his patients. Beginning in or
9 around 1998 and continuing through at least March 2013, defendant,
10 along with Drobot, UCC-A, Drobot Jr., James Canedo ("Canedo"), George
11 William Hammer ("Hammer"), Timothy Hunt ("Hunt"), and others, agreed
12 to participate and did, in fact, participate in an illegal
13 arrangement to pay and receive kickbacks in exchange for referring
14 and performing surgeries and other patient-related services at
15 Pacific Hospital and Affiliated Entities. As part of the agreement,
16 defendant agreed to receive proceeds of the kickback scheme, and
17 subsequently participate in financial transactions over \$10,000
18 involving such proceeds.

19 To facilitate the payment of kickbacks, Drobot and UCC-A caused
20 Pacific Hospital and Affiliated Entities to enter into agreements
21 with physicians, including defendant, and other medical professionals
22 ("Pacific Kickback Recipients") that were used to pay kickbacks in
23 exchange for the referral of spinal surgeries, other types of
24 surgeries, magnetic resonance imaging ("MRI"), toxicology ("UDT"),
25 durable medical equipment, and other services (the "Kickback Tainted
26 Surgeries and Services") to be performed at Pacific Hospital and
27 Affiliated Entities.

28

1 In many cases, the agreements would be reduced to written
2 contracts, including, among others, collection agreements, option
3 agreements, research and development agreements, lease and rental
4 agreements, consulting agreements, marketing agreements, management
5 agreements, and pharmacy agreements. The written agreements would
6 not specify that one purpose for the agreements would be to induce
7 Pacific Kickback Recipients to refer Kickback Tainted Surgeries and
8 Services to Pacific Hospital and Affiliated Entities; indeed, some of
9 the agreements would specifically state that referrals were not
10 contemplated or a basis for the agreement. Additionally, the value
11 or consideration discussed as part of these arrangements would be
12 paid, entirely or in part, depending on the arrangement, to cause
13 Pacific Kickback Recipients to refer Kickback Tainted Surgeries and
14 Services to Pacific Hospital and Affiliated Entities. Relatedly, the
15 written contracts would generally allow for remuneration to Pacific
16 Kickback Recipients far in excess of any reasonable fair market value
17 assessment of legitimate services or things of value purportedly
18 contracted for -- to the extent calculated without regard to the
19 value of the Kickback Tainted Surgeries and Services.

20 Defendant received remuneration in exchange for referring and
21 performing Kickback Tainted Surgeries and Services at Pacific
22 Hospital and Affiliated Entities. These illegal kickbacks and bribes
23 were provided to defendant under the guise of various arrangements,
24 both written and oral, including a management agreement with PSPM; a
25 medical directorship with Abrazos; payments from Pacific Hospital for
26 UDT referrals obtained through PMR; and payments representing
27 purported consulting fees, bonuses, and dividends.

28

1 For example, under the PSPM management agreement, starting in or
2 about 1998 and continuing until at least March 2013, PSPM facilitated
3 the payment of kickbacks to defendant by subsidizing medical practice
4 costs that would have otherwise been passed on to, and reduced the
5 profits of, defendant and Downey Ortho. More specifically, defendant
6 and other physicians at Downey Ortho entered into an agreement with
7 PSPM to provide management and administration of day-to-day business
8 operations, including equipment and furnishings, billing and
9 collection services, rent, administrative staff salaries, and other
10 miscellaneous expenses. In exchange for these management and
11 administrative services, PSPM was entitled to a percentage of Downey
12 Ortho's monthly collections from patient billings, and, in turn, an
13 allocated share of the monthly collections for defendant and other
14 co-conspirators practicing at Downey Ortho.

15 According to the terms of the management agreement between PSPM
16 and Downey Ortho, PSPM's management fee, which was calculated as a
17 specified percentage of Downey Ortho's monthly collections, was
18 purportedly: (1) "projected to be sufficient to enable PSPM to
19 recover all of the operating expenses of PSPM [and] generate a
20 reasonable return on investment[;]" and (2) calculated "without
21 taking into account . . . the volume or value of any referrals of
22 business from . . . [Downey Ortho] to PSPM (or its affiliates)[.]"
23 The PSPM management agreement further provided:

24 No amount paid hereunder is intended to be, nor shall it be
25 construed to be, an inducement or payment for referral of,
26 or recommending referral of, patients by [Downey Ortho] to
27 PSPM (or its affiliates)[.] In addition, the management
28 fee charged hereunder does not include any discount,

1 rebate, kickback, or other reduction in charge, and the
2 management fee charged hereunder is not intended to be, nor
3 shall it be construed to be, an inducement or payment for
4 referral, or recommendation of referral, of patients by
5 [Downey Ortho] [to] PSPM (or its affiliates)[.]

6 In reality, however, PSPM's management fee was "upside down,"
7 such that the percentage of monthly collections Downey Ortho paid to
8 PSPM would cover only a fraction of PSPM's expenses associated with
9 the management of Downey Ortho. Defendant, other Downey Ortho-
10 Affiliated Physicians, Drobot, UCC-A, and other co-conspirators
11 understood that PSPM's percentage of the monthly collections would
12 not be enough to pay the monthly operating expenses and other costs
13 associated with managing Downey Ortho, and that the recurring PSPM
14 deficit would allow defendant and other Downey Ortho physicians to
15 retain a larger share of monthly Downey Ortho collections. Defendant
16 and his co-conspirators understood that PSPM was willing to absorb
17 these losses because defendant and other Kickback Induced Surgeons
18 would refer Kickback Tainted Surgeries and Services to Pacific
19 Hospital and Affiliated Entities. Further, starting in mid-2008,
20 Drobot and other co-conspirators told defendant and Downey Otho's
21 other Kickback Induced Surgeons that they need to use I2 hardware in
22 surgeries at Pacific Hospital. The profits from I2 financed the PSPM
23 kickbacks and subsidized PSPM's losses.

24 The Kickback Induced Surgeries included surgeries reimbursed
25 under various federal health programs. For example, on or about
26 December 8, 2012, defendant performed surgery on patient G.G. As a
27 result, on or about January 7, 2013, Pacific Hospital mailed a claim
28 for the hospital-billing component of patient G.G.'s medical care to

1 DOL-OWCP, which administers a federal workers' compensation program
2 (the "FECA program"). On or about February 7, 2013, DOL-OWCP caused
3 a U.S. Treasury Check in the amount of \$147,263.46 to be mailed to
4 Pacific Hospital for reimbursement of various claims, including
5 \$57,445.81 related to the hospital-billing component of patient
6 G.G.'s medical care reimbursed under the FECA program.

7 Defendant understood that: (1) PSPM existed for Pacific
8 Hospital's benefit; (2) Pacific Hospital was closely affiliated with
9 PSPM; and (3) based on the value of Kickback Tainted Surgeries and
10 Services that defendant and other Downey Ortho physicians referred to
11 Pacific Hospital and Affiliated Entities, Pacific Hospital and
12 Affiliated Entities would subsidize the losses associated with PSPM's
13 management of Downey Ortho. Had defendant and his fellow Kickback
14 Induced Surgeons stopped referring and performing surgeries at
15 Pacific Hospital, defendant knew that the arrangement with PSPM would
16 be terminated.

17 Hunt was an orthopedic surgeon specializing in shoulder and knee
18 arthroscopy, who, starting in approximately June 2008, owned and
19 operated Allied Medical Group ("Allied Medical"), a medical practice
20 with clinics in Lawndale and Long Beach, California. As Hunt
21 historically referred spinal surgery candidates to defendant,
22 defendant, along with Drobot, UCC-A, and others, arranged for Drobot
23 to pay kickbacks and bribes to Hunt in exchange for Hunt referring
24 spinal surgeries to defendant that defendant would perform at Pacific
25 Hospital. More specifically, UCC-A and Drobot entered into various
26 contractual relationships with Hunt, including a loan, a
27 substantially below-market sublease, an option agreement, and
28 pharmacy dispensing contracts, to disguise remuneration paid to Hunt

1 to induce additional spinal surgery referrals to defendant. In
2 connection with Hunt's option agreement, for example, in
3 approximately January 2009, UCC-A, Hunt, and defendant met in UCC-A's
4 office to discuss the monthly volume of spinal surgery referrals from
5 Hunt to Capen. UCC-A and Hunt ultimately agreed that Hunt would be
6 paid approximately \$30,000 per month under a sham option contract to
7 induce and reward Hunt to refer a target of approximately three
8 spinal surgeries per month to defendant, who would perform such
9 surgeries at Pacific Hospital.

10 Defendant and his co-conspirators knew that the payment of
11 bribes and kickbacks for the referral of patients for medical
12 services was illegal. Defendant also understood the above-described
13 kickback and bribe payments were conditioned on his continued volume
14 of referrals to Pacific Hospital and Affiliated Entities. Moreover,
15 the payment of kickbacks for the referral of Kickback Tainted
16 Surgeries and Services performed at Pacific Hospital was to material
17 to health care benefit programs and patients. The use of interstate
18 wires and mailings to execute essential parts of the scheme was
19 foreseeable to defendant. Moreover, interstate wires and mailings
20 were used to execute essential parts of the scheme.

21 Between 1998 and April 2013, defendant referred or performed
22 Kickback Tainted Surgeries and Services comprising approximately \$142
23 million of the total amount Pacific Hospital billed to health care
24 benefit programs, and for which Pacific Hospital was paid
25 approximately \$56 million. The parties stipulate and agree that the
26 value of the benefit conferred to Pacific Hospital from the
27 arrangements with defendant, which were designed to steer Kickback
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1 Tainted Surgeries and Services to the hospital and affiliated
2 entities, was between \$9.5 million and \$25 million.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. SACR 18-00124-JLS Date August 24, 2018

Present: The Honorable JOSEPHINE L. STATON, U.S. DISTRICT JUDGE

Interpreter None

<u>Terry Guerrero</u> <i>Deputy Clerk</i>	<u>Deborah Parker</u> <i>Court Reporter/Recorder</i>	<u>Scott Tenley</u> <i>Assistant U.S. Attorney</i>
<u>U.S.A. v. Defendant(s):</u>	<u>Present Cust. Bond</u>	<u>Attorneys for Defendants:</u>
<u>DANIEL CAPEN</u>	<u>X X</u>	<u>Douglas Axel</u>
		<u>Present App. Ret.</u>
		<u>X X</u>

Proceedings: **CHANGE OF PLEA**

X Defendant moves to change plea to **Counts 1 and 2 of the Information**. Waiver of Indictment previously filed; Court enters findings and accepts the Waiver as filed.

X Defendant sworn, and states true name to be Daniel Alexander Capen.

X Defendant enters new and different plea of GUILTY to **Counts 1 and 2 of the Information**.

X The Court questions the defendant regarding plea of GUILTY and FINDS that a factual basis has been laid, and further FINDS the plea is knowledgeable and voluntarily made. The Court ORDERS the plea accepted and entered.

X The Court further ORDERS the Plea Agreement incorporated into this proceeding.

X The Court refers the defendant to the Probation Office for investigation and pre-sentencing report, and the matter is continued to **February 8, 2019, at 8:30 a.m.** for sentencing. Further, sentencing position papers are to be filed with the Court no later than two (2) weeks before the date of sentencing, including service on the assigned U.S. Probation Officer.

X The Court further ORDERS the defendant released on the same terms and conditions as previously set, pending sentencing. Defendant and counsel are ordered to appear on February 8, 2019, at 8:30 a.m. for sentencing.

00 : 50
Initials of Deputy Clerk tg

cc: **USPO; PSA**

W/SO,PASPRT

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA (Southern Division - Santa Ana)
CRIMINAL DOCKET FOR CASE #: 8:18-cr-00124-JLS-1**

Case title: USA v. Capen

Date Filed: 06/28/2018

Assigned to: Judge Josephine L. Staton

Defendant (1)

Daniel Capen

represented by **Douglas A Axel**
Sidley Austin LLP
555 South Flower Street Suite 4000
Los Angeles, CA 90013
213-896-6178
Fax: 213/96-6600
Email: daxel@sidley.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

18:371: Conspiracy
(1)

42:1320a-7b(b)(1)(A): Soliciting and
Receiving Illegal Remunerations for
Health Care Referrals;
(2)

Disposition

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

Plaintiff

USA

represented by **Joseph Timothy McNally**
 AUSA - Office of US Attorney
 Santa Ana Division
 411 West Fourth Street 8th Floor
 Santa Ana, CA 92701
 714-338-2829
 Fax: 714-338-3561
 Email: joseph.mcnally@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Scott D Tenley
 AUSA - Office of US Attorney
 Santa Ana Branch Office
 411 West Fourth Street 8th Floor
 Santa Ana, CA 92701
 714-338-2829
 Fax: 714-338-3561
 Email: scott.tenley@usdoj.gov
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Date Filed	#	Docket Text
06/28/2018	<u>1</u>	INFORMATION filed as to Daniel Capen (1) count(s) 1, 2. (dg) (Entered: 06/29/2018)
06/28/2018	<u>2</u>	CASE SUMMARY filed by AUSA Joseph T. McNally as to Defendant Daniel Capen; defendants Year of Birth: 1949 (dg) (Entered: 06/29/2018)
06/28/2018	<u>3</u>	NOTICE of Related Case(s) filed by Plaintiff USA as to Defendant Daniel Capen Related Case(s): SACR14-00034 JLS (dg) (Entered: 06/29/2018)
06/28/2018	<u>4</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Daniel Capen. This criminal action, being filed on in the U. S. Attorneys Office before the date on which Judge Andre Birotte Jr and Michael Fitzgerald began receiving criminal matters. (dg) (Entered: 06/29/2018)
06/28/2018	<u>5</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Daniel Capen Re Magistrate Judges Jacqueline Chooljian, Patrick J. Walsh, Sheri Pym, Michael Wilner, Jean Rosenbluth, Alka Sagar, Douglas McCormick, Rozella Oliver, Gail Standish, Steve Kim, John Early and Shashi H. Kewalramani. (dg) (Entered: 06/29/2018)
06/28/2018	<u>6</u>	PLEA AGREEMENT filed by Plaintiff USA as to Defendant Daniel Capen (dg) (Entered: 06/29/2018)
07/30/2018	<u>11</u>	

		MINUTES OF INITIAL APPEARANCE ON INFORMATION HEARING held before Magistrate Judge Karen L. Stevenson as to Defendant Daniel Capen. Defendant states true name as charged. Attorney: Douglas A Axel for Daniel Capen, Retained, present. Court orders bail set as: Daniel Capen (1) 250,000 Unsecured AB, See attached bond for terms and conditions. PIA held, see separate minutes. Court Smart: CS 7/30/18. (dg) (Entered: 07/31/2018)
07/30/2018	<u>12</u>	DESIGNATION AND APPEARANCE OF COUNSEL; filed by Douglas A Axel appearing for Daniel Capen (dg) (Entered: 07/31/2018)
07/30/2018	<u>13</u>	ADVISEMENT OF STATUTORY & CONSTITUTIONAL RIGHTS filed by Defendant Daniel Capen. (dg) (Entered: 07/31/2018)
07/30/2018	<u>14</u>	PASSPORT RECEIPT from U. S. Pretrial Services as to Defendant Daniel Capen. USA passport was received on 7/30/18. (dg) (Entered: 07/31/2018)
07/30/2018	<u>15</u>	BOND AND CONDITIONS OF RELEASE filed as to Defendant Daniel Capen conditions of release: \$250,000 Unsecured AB approved by Magistrate Judge Karen L. Stevenson. (dg) (Entered: 07/31/2018)
07/30/2018	<u>16</u>	WAIVER OF INDICTMENT by Defendant Daniel Capen before Magistrate Judge Karen L. Stevenson (dg) (Entered: 07/31/2018)
07/30/2018	<u>17</u>	MINUTES OF POST-INDICTMENT ARRAIGNMENT held before Magistrate Judge Karen L. Stevenson as to Defendant Daniel Capen (1) Count 1,2. Defendant arraigned, states true name: As charged. Attorney Doug Axel, Retained present. Case assigned to Judge Josephine L. Staton. Counsel are directed to contact the Judge's CRD to set dates for all further proceedings. Court Smart: CS 07/30/2018. (dfi) (Main Document 17 replaced on 8/6/2018) (tba). (Entered: 08/02/2018)
08/02/2018	<u>18</u>	SCHEDULING NOTICE by Judge Josephine L. Staton as to Defendant Daniel Capen. Change of Plea Hearing is set for 8/24/2018 at 9:30 AM. Counsel and Defendant are ordered to appear. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (tg) TEXT ONLY ENTRY (Entered: 08/02/2018)
08/07/2018	<u>19</u>	Notice of Appearance or Withdrawal of Counsel: for attorney Scott D Tenley counsel for Plaintiff USA. Adding Scott D. Tenley as counsel of record for United States of America for the reason indicated in the G-123 Notice. Filed by Plaintiff Scott D. Tenley. (Attorney Scott D Tenley added to party USA (pty:pla))(Tenley, Scott) (Entered: 08/07/2018)
08/24/2018	<u>20</u>	ORDER RE CRIMINAL PROCEEDINGS for cases assigned to Judge Josephine L. Staton. (tg) (Entered: 08/24/2018)
08/24/2018	<u>21</u>	MINUTES OF CHANGE OF PLEA Hearing held before Judge Josephine L. Staton as to Defendant Daniel Capen. Defendant sworn. Court questions defendant regarding the plea. The Defendant Daniel Capen (1) pleads GUILTY to Count 1 and 2 of the Information. The plea is accepted. The Court ORDERS the preparation of a Presentence Report. Sentencing set for 2/8/2019 at 8:30 AM before Judge Josephine L. Staton. Court Reporter: Deborah Parker. (es) (Entered: 08/24/2018)

PACER Service Center			
Transaction Receipt			
08/30/2018 11:07:23			
PACER Login:	Odlegal94612:2536794:0	Client Code:	AFU
Description:	Docket Report	Search Criteria:	8:18-cr-00124- JLS End date: 8/30/2018
Billable Pages:	2	Cost:	0.20