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DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JP

DEPUTY

CASE UNSEALED PER ORDER OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

June 2011 Grand Jury

12 CR 2599 BEN

10	UNITED STATES OF AMERICA,	)	Case No. <u>12 CR 2599 BEN</u>
11)	
11	Plaintiff,	)	<u>I N D I C T M E N T</u>
12		)	Title 18, U.S.C., Sec. 371 -
13	v.	)	<u>Conspiracy</u> ; Title 18, U.S.C.,
13		)	Sec. 1347 - Health Care Fraud;
14	IRVING SCHWARTZ (1),	)	Title 18, U.S.C., Sec. 1512 -
14	JOSE MELENDEZ (2),	)	Attempt to Tamper with a Witness;
15		)	Title 18, U.S.C., Sec. 2 - Aiding
15		)	and Abetting; Title 18, U.S.C.,
16	Defendants.	)	Sec. 982(a)(7) - Criminal
16		)	Forfeiture

The grand jury charges:

INTRODUCTORY ALLEGATIONS

At all times pertinent to this Indictment:

THE DEFENDANTS AND OTHER PARTICIPANTS

1. Defendant IRVING SCHWARTZ ("SCHWARTZ") was a medical doctor who prescribed power wheelchairs and accessories to Medicare beneficiaries who lived in Imperial County, which is located within the Southern District of California.

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SMB:vp:San Diego
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1 6. Medicare was subdivided into multiple Parts. Medicare Part
2 B covered, among other things, medically necessary physician services
3 and outpatient care, including an individual's access to DME, such as
4 power wheelchairs and accessories.

5 7. CMS contracted with private insurance carriers to process
6 and pay Medicare claims. DME claims in Southern California were
7 processed and paid by the Durable Medical Equipment Regional Carrier
8 for Region D, which covers the Western United States.

9 8. Patients who qualified for Medicare benefits were commonly
10 referred to as "beneficiaries." Each beneficiary was given a Health
11 Identification Card ("HIC") containing a unique identification number.

12 9. DME companies, physicians and other healthcare providers
13 that provided services to Medicare beneficiaries were referred to as
14 Medicare "providers." To become eligible to participate in Medicare,
15 a provider was required to submit an application in which he/she
16 agreed to comply with all governing laws and regulations. . Once
17 approved by Medicare, a provider was assigned a "provider number."
18 A health care provider with a provider number could file claims with
19 Medicare to obtain reimbursement for services rendered to
20 beneficiaries. Payments under the Medicare program were often made
21 directly to providers, rather than to the beneficiaries.

22 10. Defendant IRVING SCHWARTZ first became a Medicare provider
23 on or about January 1, 1988, and was issued a Medicare provider
24 number.

25 11. Defendant JOSE MELENDEZ became a Medicare provider on or
26 about June 16, 2005, and was issued a Medicare provider number.

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1 12. Co-conspirator Aristeo Tavares became a Medicare provider
2 on or about September 6, 2007, and was issued a Medicare provider
3 number.

4 13. Medicare reimbursed DME companies and other health care
5 providers for equipment and services rendered to beneficiaries.
6 Medicare would only reimburse providers for DME and related items if
7 the DME was prescribed by the beneficiary's physician and was
8 medically necessary for the treatment of the beneficiary's illness or
9 injury.

10 14. Under Medicare regulations, a power wheelchair was only
11 considered medically necessary if: (1) the beneficiary had a mobility
12 limitation that significantly impaired the beneficiary's ability to
13 walk, feed, dress, or bathe; and (2) the beneficiary had so little
14 upper body strength that he or she could not accomplish these
15 activities by using a manual wheelchair, walker or cane.

16 15. To ensure that each beneficiary met these criteria, Medicare
17 required a physician to conduct a face-to-face examination and provide
18 a written evaluation about the beneficiary's mobility and his/her need
19 for a power wheelchair. Only after conducting this face-to-face
20 examination could a physician write a prescription for a power
21 wheelchair. Medicare regulations required the records of the face-to-
22 face examination and the power wheelchair prescription to be forwarded
23 to the DME company within 45 days of completion of the face-to-face
24 examination.

25 16. If a DME company filled a valid prescription and supplied
26 a power wheelchair to a Medicare beneficiary, the DME company could
27 submit a claim to Medicare for reimbursement. A Medicare claim for
28 DME reimbursement was required to set forth, among other things, the

1 beneficiary's name and unique Medicare identification number, the
2 equipment provided to the beneficiary, the date that the equipment was
3 provided, the cost of the equipment, and the name and unique physician
4 identification number of the physician who prescribed the equipment.

5 17. To receive reimbursement from Medicare, DME companies
6 submitted or caused the submission of claims for payment for services
7 to beneficiaries, either directly or through a billing company.
8 Approved Medicare providers could submit claims on paper or
9 electronically. When submitting a claim, the provider was required
10 to certify: (1) that the contents of the claim were true, correct,
11 and complete; (2) that the claim was prepared in compliance with the
12 laws and regulations governing Medicare; and (3) that the equipment
13 referred to in the claim was medically necessary.

14 18. To protect the integrity of Medicare, federal law prohibited
15 doctors and DME companies from paying or receiving illegal
16 remuneration, including kickbacks and bribes, in exchange for power
17 wheelchair prescriptions that were billed to Medicare.

18 Count 1

19 CONSPIRACY TO PAY AND RECEIVE HEALTH CARE KICKBACKS
20 AND DEFRAUD MEDICARE

21 [18 U.S.C. § 371]

22 19. Paragraphs 1 through 18 of the Introductory Allegations of
23 this Indictment are realleged and incorporated by reference.

24 20. Beginning no later than in or about July 2007, and
25 continuing until in or about September 2008, within the Southern
26 District of California, and elsewhere, Defendants IRVING SCHWARTZ and
27 JOSE MELENDEZ, together with Co-conspirators Hernandez, Aristeo
28 Tavares and Laura Tavares (all charged elsewhere), and others known

1 and unknown to the Grand Jury, did knowingly and intentionally
2 conspire together and with each other and with other persons known and
3 unknown to the grand jury, to commit offenses against the United
4 States as set forth below:

5 a. To execute a material scheme to defraud a health care
6 benefit program, that is, Medicare, and to obtain, by means of
7 materially false and fraudulent pretenses, representations, promises,
8 and omission and concealment of material facts, money and property
9 owned by, and under the custody and control of, Medicare, in
10 connection with the delivery of and payment for health care benefits,
11 items and services, in violation of 18 U.S.C. § 1347, and

12 b. To knowingly and wilfully solicit, pay, offer and
13 receive remuneration, specifically kickbacks and bribes, directly and
14 indirectly, overtly and covertly, in return for referring
15 beneficiaries for the furnishing and arranging for the furnishing for
16 any item and service for which payment may be made in whole or in part
17 by a Federal health care program, in violation of 42 U.S.C. § 1320a-
18 7b.

19 PURPOSE OF THE CONSPIRACY

20 21. It was the purpose of the conspiracy for the Defendants and
21 their Co-conspirators to unlawfully enrich themselves by, among other
22 things, submitting and causing the submission of false and fraudulent
23 claims to Medicare.

24 THE MANNER AND MEANS OF THE CONSPIRACY

25 22. The manner and means by which the Defendants and their Co-
26 conspirators sought to accomplish the objects of the conspiracy were,
27 in substance, as follows:

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1 b. In or about October 2007, Defendant SCHWARTZ sold the
2 false and fraudulent power wheelchair prescription for J.R. to Co-
3 conspirator Hernandez in exchange for a \$300 cash kickback.

4 c. In or about October 2007, Defendant MELENDEZ purchased
5 J.R.'s false and fraudulent power wheelchair prescription from Co-
6 conspirator Hernandez in exchange for a kickback of approximately
7 \$1,000.

8 d. On or about October 31, 2007, Defendant MELENDEZ,
9 knowing J.R.'s prescription to be false and fraudulent, submitted a
10 false claim to Medicare for reimbursement of the power wheelchair and
11 accessories.

12 e. In or about November 2007, Defendant SCHWARTZ wrote a
13 false and fraudulent power wheelchair prescription for Medicare
14 beneficiary E.L.

15 f. In or about November 2007, Defendant SCHWARTZ sold the
16 false and fraudulent power wheelchair prescription for E.L. to Co-
17 conspirator Hernandez in exchange for a \$300 cash kickback.

18 g. In or about November 2007, Defendant MELENDEZ purchased
19 E.L.'s false and fraudulent power wheelchair prescription from Co-
20 conspirator Hernandez in exchange for a kickback of approximately
21 \$1,000.

22 h. On or about November 28, 2007, Defendant MELENDEZ,
23 knowing E.L.'s prescription to be false and fraudulent, submitted a
24 false claim to Medicare for reimbursement of the power wheelchair and
25 accessories.

26 i. In or about December 2007, Defendant SCHWARTZ wrote a
27 false and fraudulent power wheelchair prescription for Medicare
28 beneficiary L.L.

1 j. In or about December 2007, Defendant SCHWARTZ sold the
2 false and fraudulent power wheelchair prescription for L.L. to Co-
3 conspirator Hernandez in exchange for a \$300 cash kickback.

4 k. In or about December 2007, Defendant MELENDEZ purchased
5 L.L.'s false and fraudulent power wheelchair prescription from Co-
6 conspirator Hernandez in exchange for a kickback of approximately
7 \$1,000.

8 l. On or about December 7, 2007, Defendant MELENDEZ,
9 knowing L.L.'s prescription to be false and fraudulent, submitted a
10 false claim to Medicare for reimbursement of the power wheelchair and
11 accessories.

12 m. In or about December 2007, Defendant SCHWARTZ wrote a
13 false and fraudulent power wheelchair prescription for Medicare
14 beneficiary H.U.

15 n. In or about December 2007, Defendant SCHWARTZ sold the
16 false and fraudulent power wheelchair prescription for H.U. to Co-
17 conspirator Hernandez in exchange for a \$300 cash kickback.

18 o. In or about December 2007, Defendant MELENDEZ purchased
19 H.U.'s false and fraudulent power wheelchair prescription from Co-
20 conspirator Hernandez in exchange for a kickback of approximately
21 \$1,000.

22 p. On or about December 7, 2007, Defendant MELENDEZ,
23 knowing H.U.'s prescription to be false and fraudulent, submitted a
24 false claim to Medicare for reimbursement of the power wheelchair and
25 accessories.

26 q. In or about December 2007, Defendant SCHWARTZ wrote a
27 false and fraudulent power wheelchair prescription for Medicare
28 beneficiary M.R.

1 r. In or about December 2007, Defendant SCHWARTZ sold the
2 false and fraudulent power wheelchair prescription for M.R. to Co-
3 conspirator Hernandez in exchange for a \$300 cash kickback.

4 s. In or about December 2007, Defendant MELENDEZ purchased
5 M.R.'s false and fraudulent power wheelchair prescription from Co-
6 conspirator Hernandez in exchange for a kickback of approximately
7 \$1,000.

8 t. On or about December 12, 2007, Defendant MELENDEZ,
9 knowing M.R.'s prescription to be false and fraudulent, submitted a
10 false claim to Medicare for reimbursement of the power wheelchair and
11 accessories.

12 u. In or about January 2008, Defendant SCHWARTZ wrote a
13 false and fraudulent power wheelchair prescription for Medicare
14 beneficiary J.C.

15 v. In or about January 2008, Defendant SCHWARTZ sold the
16 false and fraudulent power wheelchair prescription for J.C. to Co-
17 conspirator Hernandez in exchange for a \$300 cash kickback.

18 w. In or about January 2008, Defendant MELENDEZ purchased
19 J.C.'s false and fraudulent power wheelchair prescription from Co-
20 conspirator Hernandez in exchange for a kickback of approximately
21 \$1,000.

22 x. In or about January 2008, Defendant MELENDEZ sold
23 J.C.'s false and fraudulent power wheelchair prescription to Co-
24 conspirators Aristeo and Laura Tavares.

25 y. On or about January 5, 2008, Co-conspirators Aristeo
26 and Laura Tavares, knowing J.C.'s prescription to be false and
27 fraudulent, submitted a false claim to Medicare for reimbursement of
28 the power wheelchair and accessories.

1 z. In or about January 2008, Defendant SCHWARTZ wrote a
2 false and fraudulent power wheelchair prescription for Medicare
3 beneficiary S.R.

4 aa. In or about January 2008, Defendant SCHWARTZ sold the
5 false and fraudulent power wheelchair prescription for S.R. to Co-
6 conspirator Hernandez in exchange for a \$300 cash kickback.

7 bb. In or about January 2008, Defendant MELENDEZ purchased
8 S.R.'s false and fraudulent power wheelchair prescription from Co-
9 conspirator Hernandez in exchange for a kickback of approximately
10 \$1,000.

11 cc. On or about January 10, 2008, Defendant MELENDEZ,
12 knowing S.R.'s prescription to be false and fraudulent, submitted a
13 false claim to Medicare for reimbursement of the power wheelchair and
14 accessories.

15 dd. In or about January 2008, Defendant SCHWARTZ wrote a
16 false and fraudulent power wheelchair prescription for Medicare
17 beneficiary A.R.

18 ee. In or about January 2008, Defendant SCHWARTZ sold the
19 false and fraudulent power wheelchair prescription for A.R. to Co-
20 conspirator Hernandez in exchange for a \$300 cash kickback.

21 ff. In or about January 2008, Defendant MELENDEZ purchased
22 A.R.'s false and fraudulent power wheelchair prescription from Co-
23 conspirator Hernandez in exchange for a kickback of approximately
24 \$1,000.

25 gg. On or about January 10, 2008, Defendant MELENDEZ,
26 knowing A.R.'s prescription to be false and fraudulent, submitted a
27 claim to Medicare for reimbursement of the power wheelchair and
28 accessories.

1 hh. In or about January 2008, Defendant SCHWARTZ wrote a
2 false and fraudulent power wheelchair prescription for Medicare
3 beneficiary A.R.

4 ii. In or about January 2008, Defendant SCHWARTZ sold the
5 false and fraudulent power wheelchair prescription for A.R. to Co-
6 conspirator Hernandez in exchange for a \$300 cash kickback.

7 jj. In or about January 2008, Defendant MELENDEZ purchased
8 A.R.'s false and fraudulent power wheelchair prescription from Co-
9 Conspirator Hernandez in exchange for a kickback of approximately
10 \$1,000.

11 kk. On or about January 10, 2008, Defendant MELENDEZ,
12 knowing A.R.'s prescription to be false and fraudulent, submitted a
13 claim to Medicare for reimbursement of the power wheelchair and
14 accessories.

15 ll. In or about April 2008, Defendant SCHWARTZ wrote a
16 false and fraudulent power wheelchair prescription for Medicare
17 beneficiary M.A.

18 mm. In or about April 2008, Defendant SCHWARTZ sold the
19 false and fraudulent power wheelchair prescription for M.A. to Co-
20 conspirator Hernandez in exchange for a \$300 cash kickback.

21 nn. In or about April 2008, Defendant MELENDEZ purchased
22 M.A.'s false and fraudulent power wheelchair prescription from Co-
23 conspirator Hernandez in exchange for a kickback of approximately
24 \$1,000.

25 oo. In or about April 2008, Defendant MELENDEZ sold M.A.'s
26 false and fraudulent prescription to Co-conspirators Aristeo and Laura
27 Tavares.

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1 pp. On or about April 3, 2008, Co-conspirators Aristeo and
2 Laura Tavares, knowing M.A.'s prescription to be false and fraudulent,
3 submitted a claim to Medicare for reimbursement of the power
4 wheelchair and accessories.

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

6 Counts 2-11

7 HEALTH CARE FRAUD

8 [18 U.S.C. §§ 1347 and 2]

9 24. Paragraphs 1 through 18 of the Introductory Allegations of
10 this Indictment are realleged and incorporated by reference.

11 25. Beginning no later than in or about July 2007, and
12 continuing until in or about September 2008, within the Southern
13 District of California, and elsewhere, Defendant JOSE MELENDEZ, and
14 others known and unknown to the Grand Jury, in connection with the
15 delivery of and payment for health care benefits, items, and services,
16 devised and intended to devise a material scheme and artifice to
17 defraud a healthcare benefit program, namely Medicare, and to obtain
18 money from Medicare by means of materially false and fraudulent
19 pretenses, representations, promises, and omission and concealment of
20 material facts.

21 THE SCHEME AND ARTIFICE

22 26. The fraudulent scheme operated, in substance, in the manner
23 described in Paragraph 22 of this Indictment, which is realleged and
24 incorporated by reference as though fully set forth herein.

25 ACTS IN EXECUTION OF THE SCHEME AND ARTIFICE

26 27. On or about the dates set forth below, within the Southern
27 District of California and elsewhere, Defendant MELENDEZ and others
28 known and unknown to the grand jury, knowingly and willfully executed

1 the scheme to defraud described above, by submitting and causing to
 2 be submitted to Medicare the following false and fraudulent claims for
 3 power wheelchairs and accessories:

Count	Date Claim Submitted	Medicare Beneficiary	Description of Items Billed	Amount Billed	Claim Number
2.	10/31/2007	J.R.	Power Wheelchair and Accessories	\$5,865	107306822482000
3.	11/28/2007	E.L.	Power Wheelchair and Accessories	\$5,865	107338889471000
4.	12/07/2007	L.L.	Power Wheelchair and Accessories	\$5,865	107344825119000
5.	12/07/2007	H.U.	Power Wheelchair and Accessories	\$5,865	107344825118000
6.	12/12/2007	M.R.	Power Wheelchair and Accessories	\$5,865	107348822035000
7.	01/05/2008	J.C.	Power Wheelchair and Accessories	\$5,865	108029817604000
8.	1/10/2008	S.R.	Power Wheelchair and Accessories	\$5,865	108011822601000
9.	1/10/2008	A.R.	Power Wheelchair and Accessories	\$5,865	108011822599000
10.	01/10/2008	A.R.	Power Wheelchair and Accessories	\$5,865	108011822595000
11.	04/03/2008	M.A.	Power Wheelchair and Accessories	\$5,865	108095818312000

25 All in violation of Title 18, United States Code, Section 1347.

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Count 12

ATTEMPT TO TAMPER WITH A WITNESS

[18 U.S.C. § 1512]

28. Paragraphs 1 through 4 of the Introductory Allegations of this Indictment are realleged and incorporated by reference.

29. On or about January 11, 2012, Defendant JOSE MELENDEZ did knowingly and corruptly attempt to persuade another person, namely Co-conspirator Aristeo Tavares, to provide false and misleading information to the Federal Bureau of Investigation, with the intent to hinder, delay and prevent communication to a law enforcement officer of the United States of information relating to the commission of a federal offense; in violation of Title 18, United States Code, Section 1512(b)(3).

CRIMINAL FORFEITURE ALLEGATIONS

[18 U.S.C. § 982(a)(7)]

30. Paragraphs 1 through 27 of this Indictment are realleged and incorporated as if fully set forth herein for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 982(a)(7).

31. Upon conviction of the offenses of Conspiracy to Pay and Receive Kickbacks and Defraud Medicare, and Health Care Fraud as alleged in Counts 1-11, Defendants SCHWARTZ and MELENDEZ shall, pursuant to Title 18, United States Code, Section 982(a)(7), forfeit to the United States: (a) all right, title, and interest in any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such offenses; and (b) a sum of money equal to the total amount of gross proceeds derived, directly or indirectly, from such offenses.

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7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) Case No. 12CR2599-H
11)
Plaintiff,)
12)
v.) PLEA AGREEMENT
13)
JOSE MELENDEZ,)
14)
Defendant.)
15)

16 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF
17 AMERICA, through its counsel, Laura E. Duffy, United States Attorney,
18 and Shireen M. Becker, Assistant United States Attorney, and
19 defendant, JOSE MELENDEZ, with the advice and consent of Kenneth
20 McMullan, counsel for defendant, as follows:

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28 Rev. 11/6/12

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12CR2599-H

1 I

2 THE PLEA

3 Defendant agrees to plead guilty to Count 1 of the Indictment in
4 Criminal Case No. 12-CR-2599-H charging defendant with conspiracy to
5 commit the following offenses against the United States:

6 (A) To execute a material scheme to defraud a health care
7 benefit program, that is, Medicare, and to obtain, by means
8 of materially false and fraudulent pretenses,
9 representations, promises, and omission and concealment of
10 material facts, money and property owned by, and under the
11 custody and control of, Medicare, in connection with the
12 delivery of and payment for health care benefits, items and
13 services, in violation of 18 U.S.C. § 1347; and

14 (B) To knowingly and wilfully offer and pay remuneration,
15 specifically kickbacks and bribes, directly and indirectly,
16 overtly and covertly, in return for the referring of
17 beneficiaries for the furnishing of any item and service
18 for which payment may be made in whole or in part by a
19 Federal health care program, in violation of 42 U.S.C. §
20 1320a-7b.

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

22 The Government agrees to (1) move to dismiss the remaining
23 charges without prejudice when defendant is sentenced, and (2) not
24 prosecute defendant thereafter on such dismissed charges unless
25 defendant breaches the plea agreement or the guilty plea entered
26 pursuant to this plea agreement is set aside for any reason.
27 Defendant expressly waives all constitutional and statutory defenses
28 to the reinstatement of any charges dismissed pursuant to this
agreement.

In addition, defendant consents to the forfeiture allegation of
the Indictment and agrees that the provisions of the attached
forfeiture addendum shall govern forfeiture in this case.

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1 II

2 NATURE OF THE OFFENSE

3 A. ELEMENTS EXPLAINED

4 Defendant understands that the offense to which defendant is
5 pleading guilty has the following elements:

- 6 1. There was an agreement between two or more persons to
7 commit an offense against the United States;
8 2. The defendant became a member of the conspiracy
9 knowing of at least one of its objects and intending
10 to help accomplish it; and
11 3. One of the members of the conspiracy performed at
12 least one overt act for the purpose of carrying out
13 the conspiracy.

14 B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

15 Defendant has fully discussed the facts of this case with defense
16 counsel. Defendant has committed each of the elements of the crime,
17 and admits that there is a factual basis for this guilty plea. The
18 following facts are true and undisputed:

- 19 1. At all times relevant to the plea agreement, Defendant
20 was the owner of Oceanside Medical Supply, a company
21 that sold power wheelchairs and other Durable Medical
22 Equipment ("DME").
23 2. Beginning in or about July 2007 and continuing until
24 in or about September 2008, Defendant conspired with
25 others to: (i) offer and pay kickbacks and bribes in
26 exchange for fraudulent prescriptions for DME; and
27 (ii) cause fraudulent claims for DME to be submitted
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to Medicare for beneficiaries who either did not need or did not receive the DME.

3. Defendant and other co-conspirators carried out the conspiracy through the following manner and means:

a. Co-conspirators I.S. and G.H. traveled to the homes of Medicare beneficiaries in Imperial County and offered those beneficiaries free medical equipment if they were covered under Medicare.

b. Co-conspirator I.S., a medical doctor, wrote fraudulent prescriptions for power wheelchairs for at least 186 Medicare beneficiaries. In nearly every case, the DME was not medically necessary.

c. In exchange for each fraudulent power wheelchair prescription, co-conspirator I.S. received \$300. For the most part, co-conspirator G.H. paid the \$300 kickback to co-conspirator I.S. On at least one occasion, however, Defendant paid co-conspirator I.S. the \$300 kickback directly.

d. In addition to the fraudulent power wheelchair prescription, co-conspirators I.S. and G.H. completed all other forms necessary to receive reimbursement from Medicare, including a fraudulent medical evaluation and power wheelchair order form. Defendant purchased the entire packet of forms from co-conspirator G.H. for \$1,000.

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e. Defendant sold at least 44 of these fraudulent power wheelchair prescription packets to co-conspirators A.T. and L.T. for \$1,100 each. Defendant knew that A.T. and L.T. purchased the fraudulent power wheelchair prescriptions with the intention of submitting false claims to Medicare for reimbursement relating to the costs of the power wheelchairs and other DME. In spite of this, Defendant instructed co-conspirators A.T. and L.T. to provide false information to federal agents about the source of the fraudulent prescriptions. Defendant kept the rest of the fraudulent power wheelchair prescriptions and submitted them to Medicare through his company, Oceanside Medical Supply.

f. With regard to the fraudulent power wheelchair prescriptions that Defendant kept, Defendant would order a power wheelchair from a wholesale supplier and schedule delivery of the power wheelchair to the Medicare beneficiary. Defendant delivered the power wheelchairs to the Medicare beneficiaries himself. Defendant knew that the Medicare beneficiaries did not need the power wheelchairs because, during delivery, Defendant saw the beneficiaries walking without assistance.

g. After delivery of the power wheelchairs, Defendant used the fraudulent prescriptions and

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1 forms to submit false claims to Medicare for
2 reimbursement of the costs associated with the
3 power wheelchairs and other DME.

4 h. Sometimes beneficiaries told Defendant that they
5 did not want the power wheelchairs or that they
6 had changed their minds after the power
7 wheelchairs arrived. Rather than return the
8 power wheelchairs (which would require Defendant
9 to return the Medicare reimbursements), Defendant
10 and his co-conspirators would tell the
11 beneficiaries to keep the power wheelchairs for
12 the future.

13 4. Defendant submitted and caused to be submitted to
14 Medicare approximately \$832,830 in false and
15 fraudulent claims for power wheelchair prescriptions.

16 5. Defendant committed all of the above-referenced acts
17 willfully, and with an intent to defraud.

18 III

19 PENALTIES

20 Defendant understands that the crime to which defendant is
21 pleading guilty carries the following penalties:

- 22 A. a maximum 5 years in prison;
23 B. a maximum \$250,000 fine;
24 C. a mandatory special assessment of \$100 per count; and
25 D. a term of supervised release of 3 years. Defendant
26 understands that failure to comply with any of the
27 conditions of supervised release may result in revocation
28 of supervised release, requiring defendant to serve in

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1 prison, upon any such revocation, all or part of the
2 statutory maximum term of supervised release for the
3 offense that resulted in such term of supervised release;

4 E. an order from the Court pursuant to 18 U.S.C. § 3663A that
5 defendant make mandatory restitution to the victim of the
6 offense of conviction; and

7 F. forfeiture of all property, real and personal, which
8 constitutes or is derived from proceeds traceable to the
9 violation.

10 IV

11 DEFENDANT'S WAIVER OF TRIAL RIGHTS

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

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

15 B. A speedy and public trial by jury;

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

17 D. Confront and cross-examine adverse witnesses;

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

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

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

24 V

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

27 The Government represents that any information establishing the
28 factual innocence of defendant known to the undersigned prosecutor in

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1 this case has been turned over to defendant. The Government will
2 continue to provide such information establishing the factual
3 innocence of defendant.

4 Defendant understands that if this case proceeded to trial, the
5 Government would be required to provide impeachment information
6 relating to any informants or other witnesses. In addition, if
7 defendant raised an affirmative defense, the Government would be
8 required to provide information in its possession that supports such
9 a defense. Defendant acknowledges, however, that by pleading guilty
10 defendant will not be provided this information, if any, and defendant
11 also waives the right to this information. Finally, defendant agrees
12 not to attempt to withdraw the guilty plea or to file a collateral
13 attack based on the existence of this information.

14 VI

15 **DEFENDANT'S REPRESENTATION THAT GUILTY**
16 **PLEA IS KNOWING AND VOLUNTARY**

17 Defendant represents that:

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

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

Def. Initials

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

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

5 VII

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

8 This plea agreement is limited to the United States Attorney's
9 Office for the Southern District of California, and cannot bind any
10 other federal, state or local prosecuting, administrative, or
11 regulatory authorities, although the Government will bring this plea
12 agreement to the attention of other authorities if requested by the
13 defendant.

14 VIII

15 APPLICABILITY OF SENTENCING GUIDELINES

16 Defendant understands the sentence imposed will be based on the
17 factors set forth in 18 U.S.C. § 3553(a). Defendant understands
18 further that in imposing the sentence, the sentencing judge must
19 consult the United States Sentencing Guidelines (Guidelines) and take
20 them into account. Defendant has discussed the Guidelines with
21 defense counsel and understands that the Guidelines are only advisory,
22 not mandatory, and the Court may impose a sentence more severe or less
23 severe than otherwise applicable under the Guidelines, up to the
24 maximum in the statute of conviction. Defendant understands further
25 that the sentence cannot be determined until a presentence report has
26 been prepared by the U.S. Probation Office and defense counsel and the
27 Government have had an opportunity to review and challenge the
28 presentence report. Nothing in this plea agreement shall be construed

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1 as limiting the Government's duty to provide complete and accurate
2 facts to the district court and the U.S. Probation Office.

3 IX

4 SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

5 This plea agreement is made pursuant to Federal Rule of Criminal
6 Procedure 11(c)(1)(B). Defendant understands that the sentence is
7 within the sole discretion of the sentencing judge. The Government
8 has not made and will not make any representation as to what sentence
9 defendant will receive. Defendant understands that the sentencing
10 judge may impose the maximum sentence provided by statute, and is also
11 aware that any estimate of the probable sentence by defense counsel
12 is a prediction, not a promise, and is not binding on the Court.
13 Likewise, the recommendation made by the Government is not binding on
14 the Court, and it is uncertain at this time what defendant's sentence
15 will be. Defendant also has been advised and understands that if the
16 sentencing judge does not follow any of the parties' sentencing
17 recommendations, defendant nevertheless has no right to withdraw the
18 plea.

19 X

20 PARTIES' SENTENCING RECOMMENDATIONS

21 A. SENTENCING GUIDELINE CALCULATIONS

22 Although the parties understand that the Guidelines are only
23 advisory and just one of the factors the Court will consider under
24 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly
25 recommend the following Base Offense Level, Specific Offense
26 Characteristics, Adjustments and Departures:

27
28 Def. Initials JAN
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1	1.	Base Offense Level [USSG § 2B1.1]	6
2	2.	Intended Loss Greater than \$400,000 [§ 2B1.1(b)(1) (H)]	+14
3	3.	Abuse of Position of Trust [USSG § 3B1.3]	+2*
4	4.	<u>Acceptance of Responsibility [§ 3E1.1]</u>	<u>-3</u>
		Total Adjusted Offense Level	19

5 * The parties agree that, at sentencing, the Government is free
6 to argue for a 2-level upward adjustment for abuse of a position of
7 trust, pursuant to United States Sentencing Guidelines Section 3B1.3.
8 Defendant is free to oppose this upward adjustment.

9 B. ACCEPTANCE OF RESPONSIBILITY

10 Notwithstanding paragraph A.4 above, the Government will not be
11 obligated to recommend any adjustment for Acceptance of Responsibility
12 if defendant engages in conduct inconsistent with acceptance of
13 responsibility including, but not limited to, the following:

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

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

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

9 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

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

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

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

17 F. RECOMMENDATIONS REGARDING CUSTODY

18 The parties agree that the Government will recommend that
19 defendant be sentenced to the low end of the advisory guideline range
20 as calculated by the Government pursuant to this agreement.

21 H. SPECIAL ASSESSMENT/FINE/RESTITUTION/FORFEITURE

22 1. Special Assessment.

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

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2. Fine.

The parties do not recommend imposition of a fine due to defendant's limited financial prospects and because the cost of collection, even taking into account the Inmate Responsibility Program, likely would exceed the amounts that could reasonably be expected to be collected.

3. Restitution.

Defendant agrees that the amount of restitution ordered by the Court shall include defendant's total offense conduct, and is not limited to the count(s) of conviction. Accordingly, the parties will jointly recommend that defendant pay restitution in the amount of \$593,429.81 to be paid forthwith at the time of sentencing. Defendant agrees and understands that any payment schedule imposed by the Court is without prejudice to the United States to take all actions and take all remedies available to it to collect the full amount of the restitution.

Defendant agrees that the restitution, restitution judgment, payment provisions, and collection actions of this plea agreement are intended to, and will, survive defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. Defendant further agrees that any restitution collected and/or distributed will survive him, notwithstanding the abatement of any underlying criminal conviction after execution of this agreement.

The restitution described above shall be paid through the Office of the Clerk of the District Court by bank or cashier's check or money order made payable to the "Clerk, United States District Court."

Def. Initials AM
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1 Defendant agrees and consents that, upon execution of this plea
2 agreement, the United States is authorized to run credit reports on
3 the defendant and to share the reports with the Court and the U.S.
4 Probation Office. In addition, defendant agrees that, not later than
5 30 days before sentencing, defendant shall provide to the United
6 States, under penalty of perjury, a financial disclosure form listing
7 all defendant's assets and financial interests valued at more than
8 \$1,000. Defendant understands that these assets and financial
9 interests include all assets and financial interests in which
10 defendant has an interest, direct or indirect, whether held in
11 defendant's own name or in the name of another, in any property, real
12 or personal. Defendant shall also identify all assets valued at more
13 than \$5,000 which have been transferred to third parties since July
14 2007, including the location of the assets and the identity of the
15 third party(ies).

16 The parties will jointly recommend that as a condition of
17 probation or supervised release, defendant will notify the Collections
18 Unit, United States Attorney's Office, of any interest in property
19 obtained, directly or indirectly, including any interest obtained
20 under any other name, or entity, including a trust, partnership or
21 corporation after the execution of this plea agreement until the fine
22 or restitution is paid in full.

23 The parties will also jointly recommend that as a condition of
24 probation or supervised release, defendant will notify the Collections
25 Unit, United States Attorney's Office, before defendant transfers any
26 interest in property owned directly or indirectly by defendant,
27 including any interest held or owned under any other name or entity,
28 including trusts, partnerships and/or corporations.

1 defendant will object at the time of sentencing; otherwise the
2 objection will be deemed waived.

3 If at any time defendant files a notice of appeal, appeals or
4 collaterally attacks the conviction or sentence in violation of this
5 plea agreement, said violation shall be a material breach of this
6 agreement as further defined below.

7 XII

8 BREACH OF THE PLEA AGREEMENT

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

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

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

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Def. Initials JAM
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1 In the event of defendant's material breach of this plea
2 agreement, defendant will not be able to enforce any of its
3 provisions, and the Government will be relieved of all its obligations
4 under this plea agreement. For example, the Government may pursue any
5 charges including those that were dismissed, promised to be dismissed,
6 or not filed as a result of this agreement (defendant agrees that any
7 statute of limitations relating to such charges is tolled as of the
8 date of this agreement; defendant also waives any double jeopardy
9 defense to such charges). In addition, the Government may move to set
10 aside defendant's guilty plea. Defendant may not withdraw the guilty
11 plea based on the Government's pursuit of remedies for defendant's
12 breach.

13 Additionally, defendant agrees that in the event of defendant's
14 material breach of this plea agreement: (i) any statements made by
15 defendant, under oath, at the guilty plea hearing (before either a
16 Magistrate Judge or a District Judge); (ii) the stipulated factual
17 basis statement in this agreement; and (iii) any evidence derived from
18 such statements, are admissible against defendant in any prosecution
19 of, or any action against, defendant. This includes the prosecution
20 of the charge(s) that is the subject of this plea agreement or any
21 charge(s) that the prosecution agreed to dismiss or not file as part
22 of this agreement, but later pursues because of a material breach by
23 the defendant. Additionally, defendant knowingly, voluntarily, and
24 intelligently waives any argument under the United States
25 Constitution, any statute, Rule 410 of the Federal Rules of Evidence,
26 Rule 11(f) of the Federal Rules of Criminal Procedure, and/or any
27 other federal rule, that the statements or any evidence derived from
28 any statements should be suppressed or are inadmissible.

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XIII

ENTIRE AGREEMENT

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

XIV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

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

XV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this agreement, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

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XVI

DEFENDANT SATISFIED WITH COUNSEL

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

LAURA E. DUFFY
United States Attorney

1/30/2013
DATED

Shireen M. Becker
SHIREEN M. BECKER
Assistant U.S. Attorney

30 Jan. 2013
DATED

Kenneth R. McMullan
KENNETH McMULLAN
Defense Counsel

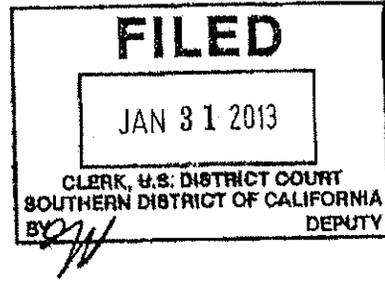
IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" SECTION ABOVE ARE TRUE.

1/30/13
DATED

Jose Melendez
JOSE MELENDEZ
Defendant

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12CR2599-H

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Criminal No. 12CR2599-H
)	
Plaintiff,	)	FINDINGS AND RECOMMENDATION OF
	)	THE MAGISTRATE JUDGE UPON A
v.	)	PLEA OF GUILTY
)	
JOSE MELENDEZ (2),)	
)	
Defendant.)	

Upon Defendant's request to enter a plea of Guilty to Count of the INDICTMENT pursuant to Rule 11 of the Federal Rules of Criminal Procedure, this matter was referred to the Magistrate Judge by the District Judge, with the written consents of the Defendant, counsel for the Defendant, and counsel for the United States.

Thereafter, the matter came on for a hearing on Defendant's plea of guilty, in full compliance with Rule 11, Federal Rules of Criminal Procedure, before the Magistrate Judge, in open court and on the record.

In consideration of that hearing and the allocution made by the Defendant under oath on the record and in the presence of counsel, and the remarks of the Assistant United States Attorney,

1 I make the following FINDINGS - that the Defendant
2 understands:

- 3 1. the right to persist in a plea of "not guilty";
- 4 2. the right to a speedy and public trial;
- 5 3. the right to be tried by a jury, or the ability to
6 waive that right and have a judge try the case without
7 a jury;
- 8 4. the right to the assistance of counsel at trial;
- 9 5. that, at trial, there would be the right to confront
10 and cross-examine the witnesses against the Defendant;
- 11 6. that, at trial, there is the right to present a
12 defense, and the right to have witnesses subpoenaed to
13 testify on the Defendant's behalf;
- 14 7. that, at trial, the Defendant would have the right
15 against compelled self-incrimination;
- 16 8. the nature of the charge filed in this case;
- 17 9. the maximum possible sentence that could be imposed
18 (including imprisonment, fine, term of supervised
19 release, and mandatory special assessment), the effect
20 of a supervised release term, and that the sentencing
21 guidelines are only advisory so that the Court may
22 sentence Defendant up to the statutory maximum;
- 23 10. the terms of the plea agreement;

24 I further find that:

- 25 11. that Defendant's plea of guilty is made knowingly and
26 voluntarily;
- 27 12. the Defendant is competent to enter a plea; and
- 28 13. there is a factual basis for Defendant's plea.

1 I therefore RECOMMEND that the District Judge accept the
2 Defendant's plea of guilty.

3 The sentencing hearing will be before United States District
4 Judge MARILYN L. HUFF, on MAY 6, 2013, at 9:00 A.M..

5 Objections to these Findings and Recommendations are waived
6 by the parties if not made within 14 days of the hearing.

7
8
9 Dated: JANUARY 31, 2013


HONORABLE NITA L. STORMES
United States Magistrate Judge

10
11 Copies to:

12 Hon. MARILYN L. HUFF
13 U.S. District Judge

14 Assistant United States Attorney

15 [2] KENNETH ROBERT McMULLAN, CJA.
16 Counsel for Defendant

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE MELENDEZ (2),

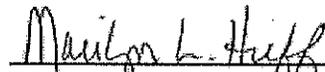
Defendant.

Criminal Case No. 12CR2599-H

ORDER ACCEPTING PLEA

No objections having been filed, **IT IS ORDERED** that the Findings and Recommendation of the Magistrate Judge are adopted and this Court accepts Defendant's **PLEA OF GUILTY** to Count 1 of the Indictment.

DATED: February 15, 2013


MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT

AO 245B (CASD) (Rev. 12/11) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT 2013 JUN 25 PM 2:29
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
v.
JOSE MELENDEZ (2)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 12CR2599-H

Kenneth Robert McMullan

Defendant's Attorney

REGISTRATION NO. 63248-112

THE DEFENDANT:

pleaded guilty to count(s) 1 of the Indictment.

was found guilty on count(s) _____
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Count Number(s)</u>
18 USC 371	CONSPIRACY TO PAY AND RECEIVE HEALTH CARE KICKBACKS AND DEFRAUD MEDICARE	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____
- Count(s) remaining in the Indictment _____ is are dismissed on the motion of the United States.
- Assessment: \$100.00.

- Fine waived
- Forfeiture pursuant to order filed April 12, 2013, included herein.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

JUNE 24, 2013

Date of Imposition of Sentence

Marilyn L. Huff

HON. MARILYN L. HUFF
UNITED STATES DISTRICT JUDGE

12CR2599-H

DEFENDANT: JOSE MELENDEZ (2)
CASE NUMBER: 12CR2599-H

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 18 MONTHS.

- Sentence imposed pursuant to Title 8 USC Section 1326(b).
- The court makes the following recommendations to the Bureau of Prisons:
The Court recommends a medical evaluation for placement.

- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 at _____ a.m. p.m. on _____
as notified by the United States Marshal.

- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before or on Friday August 9, 2013 by 12:00 P.M.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSE MELENDEZ (2)

CASE NUMBER: 12CR2599-H

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
3 YEARS.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

For offenses committed on or after September 13, 1994:

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by court.

The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of a DNA sample from the defendant, pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000, pursuant to 18 USC sections 3563(a)(7) and 3583(d).

The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check if applicable.)

The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant must comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JOSE MELENDEZ (2)
CASE NUMBER: 12CR2599-H

SPECIAL CONDITIONS OF SUPERVISION

- Submit person, residence, office or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
- If deported, excluded, or allowed to voluntarily return to country of origin, not reenter the United States illegally and report to the probation officer within 24 hours of any reentry to the United States; supervision waived upon deportation, exclusion or voluntary departure.
- Not transport, harbor, or assist undocumented aliens.
- Not associate with undocumented aliens or alien smugglers.
- Not reenter the United States illegally.
- Not enter or reside in the Republic of Mexico without written permission of the Court or probation officer.
- Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
- Not possess any narcotic drug or controlled substance without a lawful medical prescription.
- Not associate with known users of, smugglers of, or dealers in narcotics, controlled substances, or dangerous drugs in any form.
- Participate in a program of mental health treatment as directed by the probation officer. The Court authorizes the release of the presentence report and available psychological evaluations to the mental health provider, as approved by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. May be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.
- Take no medication containing a controlled substance without valid medical prescription, and provide proof of prescription to the probation officer, if directed.
- Provide complete disclosure of personal and business financial records to the probation officer as requested.
- Be prohibited from opening checking accounts or incurring new credit charges or opening additional lines of credit without approval of the probation officer.
- Seek and maintain full time employment and/or schooling or a combination of both.
- Resolve all outstanding warrants within _____ days.
- Complete _____ hours of community service in a program approved by the probation officer within _____ days.
- Reside in a Residential Reentry Center (RRC) as directed by the probation officer for a period of _____ days.
- Participate in a program of drug or alcohol abuse treatment, including urinalysis or sweat patch testing and counseling, as directed by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. May be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.

AO 245S Judgment in Criminal Case
Sheet 5 -- Criminal Monetary Penalties

Judgment — Page 5 of 5

DEFENDANT: JOSE MELENDEZ (2)
CASE NUMBER: 12CR2599-H

RESTITUTION

The defendant shall pay restitution in the amount of \$593,429.81 unto the United States of America.

This sum shall be paid immediately.
 x as follows:

Restitution shall be paid forthwith to the following victim:

Center for Medicare and Medicaid Services ("CMS")
Division of Accounting Operations
P.O. Box 7520
Baltimore, MD 21207-0520

through the Clerk, U.S. District Court.

The Court has determined that the defendant does have the ability to pay interest. It is ordered that:

 The interest requirement is waived.

 The interest is modified as follows:

12CR2599-H

AO 245B (CASD) (Rev. 12/11) Judgment in a Criminal Case
Sheet 1

FILED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

13 SEP 18 AM 8:18
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
v.
JOSE MELENDEZ (2)

AMENDED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987) DEPUTY

Case Number: 12CR2599-H
Kenneth Robert McMullan
Defendant's Attorney

REGISTRATION NO. 63248-112

Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

pleaded guilty to count(s) 1 of the Indictment.

was found guilty on count(s) _____
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Count Number(s)</u>
18 USC 371	CONSPIRACY TO PAY AND RECEIVE HEALTH CARE KICKBACKS AND DEFRAUD MEDICARE	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

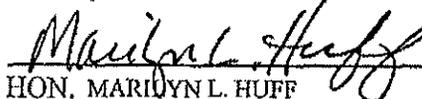
The defendant has been found not guilty on count(s) _____
 Count(s) remaining in the Indictment _____ is are dismissed on the motion of the United States.
 Assessment: \$100.00.

Fine waived Forfeiture pursuant to order filed April 12, 2013, included herein.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

JUNE 24, 2013

Date of Imposition of Sentence



HON. MARYLYN L. HUFF
UNITED STATES DISTRICT JUDGE

12CR2599-H

DEFENDANT: JOSE MELENDEZ (2)
CASE NUMBER: 12CR2599-H

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 18 MONTHS.

- Sentence imposed pursuant to Title 8 USC Section 1326(b).
- The court makes the following recommendations to the Bureau of Prisons:
The Court recommends a medical evaluation for placement.

- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 at _____ a.m. p.m. on _____
as notified by the United States Marshal.

- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before or on Friday August 9, 2013 by 12:00 P.M.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

AO 245B (CASD) (Rev. 12/11) Judgment in a Criminal Case
 Sheet 3 — Supervised Release

Judgment—Page 3 of 5

DEFENDANT: JOSE MELENDEZ (2)
 CASE NUMBER: 12CR2599-H

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:
 3 YEARS.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

For offenses committed on or after September 13, 1994:

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- The defendant shall cooperate in the collection of a DNA sample from the defendant, pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000, pursuant to 18 USC sections 3563(a)(7) and 3583(d).
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant must comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JOSE MELENDEZ (2)
CASE NUMBER: 12CR2599-H

SPECIAL CONDITIONS OF SUPERVISION

- Submit person, residence, office or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
- If deported, excluded, or allowed to voluntarily return to country of origin, not reenter the United States illegally and report to the probation officer within 24 hours of any reentry to the United States; supervision waived upon deportation, exclusion or voluntary departure.
- Not transport, harbor, or assist undocumented aliens.
- Not associate with undocumented aliens or alien smugglers.
- Not reenter the United States illegally.
- Not enter or reside in the Republic of Mexico without written permission of the Court or probation officer.
- Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
- Not possess any narcotic drug or controlled substance without a lawful medical prescription.
- Not associate with known users of, smugglers of, or dealers in narcotics, controlled substances, or dangerous drugs in any form.
- Participate in a program of mental health treatment as directed by the probation officer. The Court authorizes the release of the presentence report and available psychological evaluations to the mental health provider, as approved by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. May be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.
- Take no medication containing a controlled substance without valid medical prescription, and provide proof of prescription to the probation officer, if directed.
- Provide complete disclosure of personal and business financial records to the probation officer as requested.
- Be prohibited from opening checking accounts or incurring new credit charges or opening additional lines of credit without approval of the probation officer.
- Seek and maintain full time employment and/or schooling or a combination of both.
- Resolve all outstanding warrants within _____ days.
- Complete _____ hours of community service in a program approved by the probation officer within _____ days.
- Reside in a Residential Reentry Center (RRC) as directed by the probation officer for a period of _____ days.
- Participate in a program of drug or alcohol abuse treatment, including urinalysis or sweat patch testing and counseling, as directed by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. May be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.

AO 245S Judgment in Criminal Case
Sheet 5 — Criminal Monetary Penalties

Judgment — Page 5 of 5

DEFENDANT: JOSE MELENDEZ (2)
CASE NUMBER: 12CR2599-H

RESTITUTION

The defendant shall pay restitution in the amount of \$593,429.81 unto the United States of America.

Defendant Jose Melendez shall be jointly and severally liable to pay restitution with co- Defendant Irving J. Schwartz in the amount of \$593,429.81.

This sum shall be paid immediately,
 x as follows:

Restitution shall be paid forthwith to the following victim:

Center for Medicare and Medicaid Services ("CMS")
Division of Accounting Operations
P.O. Box 7520
Baltimore, MD 21207-0520

through the Clerk, U.S. District Court.

The Court has determined that the defendant does have the ability to pay interest. It is ordered that:

 The interest requirement is waived.

 The interest is modified as follows:

CLOSED,PROTO,SEALDC

**U.S. District Court
Southern District of California (San Diego)
CRIMINAL DOCKET FOR CASE #: 3:12-cr-02599-H-2**

Case title: USA v. Schwartz et al

Date Filed: 06/27/2012

Date Terminated: 06/25/2013

Assigned to: Judge Marilyn L. Huff

Defendant (2)**Jose Melendez***TERMINATED: 06/25/2013*

represented by **Kenneth Robert McMullan**
Law Offices of Kenneth R McMullan
105 West F Street, 4th Floor
San Diego, CA 92101
(858)401-0669
Fax: (619) 233-3221
Email: KRMcmullan@yahoo.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Pending Counts

18:371; 18:982(a)(7) - Conspiracy;
Criminal Forfeiture
(1)

Disposition

Custody of BOP for 18 months.
Supervised Release for 3 years. Fine
waived. Assessment \$100. Restitution
\$593,429.81.

Highest Offense Level (Opening)

Felony

Terminated Counts

18:1347; 18:2; 18:982(a)(7) - Health
Care Fraud; Aiding and Abetting;
Criminal Forfeiture
(2-11)

18:1512 - Attempt to Tamper with a
Witness
(12)

Disposition

Dismissed without prejudice on
Government's oral motion.

Dismissed without prejudice on
Government's oral motion.

Highest Offense Level (Terminated)

Felony

Complaints

None

DispositionPlaintiff

USA

represented by **U S Attorney CR**
U S Attorneys Office Southern District
of California
Criminal Division
880 Front Street
Room 6293
San Diego, CA 92101
(619)557-5610
Fax: (619)557-5917
Email: Efile.dkt.gc2@usdoj.gov
TERMINATED: 08/01/2012
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant United States
Attorney

Sean P.J. Coyle
U S Attorney's Office
Southern District of California
880 Front Street
Room 6293
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(619) 546-6771
Fax: 619-546-0450
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
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Attorney

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(619) 546-6693
Fax: (619) 546-0450
Email: shireen.becker@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

*Designation: Assistant United States
Attorney*

Date Filed	#	Docket Text
06/27/2012	<u>1</u>	INDICTMENT as to Irving Schwartz (1) count(s) 1, Jose Melendez (2) count(s) 1, 2-11, 12. (kaj) Modified on 8/1/2012, case unsealed, doc attached (leh). (Entered: 06/28/2012)
06/27/2012	<u>3</u>	ARREST WARRANT ISSUED by Magistrate Judge Barbara Lynn Major in case as to Jose Melendez. (kaj) Modified on 8/1/2012 case unsealed, doc attached(leh). (Entered: 06/28/2012)
06/28/2012	<u>4</u>	NOTICE OF RELATED CASE(S) by USA of case(s) 11cr4823-H, 12cr0866-H. (kaj) Modified on 8/1/2012 case unsealed, doc attached (leh). (Entered: 06/29/2012)
06/29/2012	<u>5</u>	Minute Order: A notice of related case has been filed relating this case to 12cr0866-H.. This case has been reassigned from Judge Benitez to Judge Marilyn L. Huff. Judge Roger T. Benitez is no longer assigned to case and Judge Marilyn L. Huff is now assigned. The new case number is 12cr2599-H (no document attached) (jsp) (Entered: 06/29/2012)
07/31/2012	<u>6</u>	Set/Reset Duty Hearings as to Irving Schwartz, Jose Melendez: Arraignment set for 7/31/2012 before Magistrate Judge Nita L. Stormes. (no document attached) (ecs) (Entered: 07/31/2012)
07/31/2012	<u>7</u>	NOTICE OF HEARING as to Defendants Irving Schwartz, Jose Melendez. Arraignment on Indictment set for 7/31/12 at 10:30 AM before Magistrate Judge Nita L. Stormes(no document attached) (ecs) (Entered: 07/31/2012)
07/31/2012	<u>8</u>	Minute Entry for proceedings held before Magistrate Judge Nita L. Stormes: Arraignment on Indictment as to Irving Schwartz (1) Count 1 and Jose Melendez (2) Count 1,2-11,12 held on 7/31/2012. Government's oral motion to unseal case is granted. Not Guilty pleas entered. Attorney Jeremy Warren specially appearing for Irving Schwartz. Status re Counsel Hearing as to Irving Schwartz set for 8/21/2012 09:30 AM before Magistrate Judge Nita L. Stormes. Attorney Kenneth McMullan (n/a) appointed for Jose Melendez. Bond set as to Irving Schwartz (1) Transferred from Eastern District of California. Bond set as to Jose Melendez (2) Transferred from Central District of California. Financial Affidavit submitted. Motion Hearing/Trial Setting set for 9/10/2012 02:00 PM before Judge Marilyn L. Huff. Both Defendants referred to USM to be printed and released and abstracts prepared. (cc: Sealed Clerk) (CD# 7/31/2012 NLS 10:56-11:08). (Plaintiff Attorney Nicholas Pilchak, AUSA). (Defendant Attorney Tommy Vu, FD-S/A, Lauren Cusick, FD-S/A). (no document attached) (lao) (Entered: 07/31/2012)
07/31/2012	<u>10</u>	***Spanish Interpreter needed as to Jose Melendez (no document attached) (lao) (Entered: 07/31/2012)
07/31/2012	<u>11</u>	CJA 23 Financial Affidavit by Jose Melendez (knb) (Entered: 08/01/2012)
07/31/2012	<u>14</u>	ABSTRACT OF ORDER as to Jose Melendez. (ag)(jrd) (Entered: 08/01/2012)

08/01/2012	<u>12</u>	NOTICE OF ATTORNEY APPEARANCE Shireen Matthews Becker appearing for USA. (Becker, Shireen) (ag). (Entered: 08/01/2012)
08/07/2012	<u>15</u>	Joint MOTION for Protective Order Governing Disclosure of Health Information as to Irving Schwartz and Jose Melendez. (ag) (Entered: 08/08/2012)
08/07/2012	<u>16</u>	Protective Order Governing the Disclosure of Health Information as to Irving Schwartz (1) and Jose Melendez (2). Signed by Judge Marilyn L. Huff on 08/07/2012.(ag)(jrd) (Entered: 08/08/2012)
08/07/2012	<u>18</u>	ORDER Setting Conditions of Release. Bond set for Jose Melendez (2) Transferred from Eastern District of California. Secured by the co-signature of defendant and wife financially responsible (related) adults. Signed by Magistrate Judge Nita L. Stormes on 08/07/2012. (ag) (Entered: 08/08/2012)
09/04/2012	<u>25</u>	Arrest Warrant Returned Executed, in case as to Jose Melendez (2), re Doc. <u>3</u> Arrest Warrant Issued. (Per USMS, deft was arrested by the FBI.) (mdc) (Entered: 09/04/2012)
09/05/2012	<u>27</u>	Joint MOTION to Continue <i>motion hearing (with defendants' acknowledgments attached)</i> by Irving Schwartz as to Irving Schwartz, Jose Melendez. (Warren, Jeremy) (ag). (Entered: 09/05/2012)
09/06/2012	<u>28</u>	NOTICE OF HEARING as to Defendants Irving Schwartz (1)(bond), Jose Melendez (2)(bond). The parties have filed a joint motion to continue the motion hearing/trial setting and the defendants have filed acknowledgments of next court date. Date of 9/10/2012 02:00 PM is vacated and Motion Hearing/Trial Setting is reset for 11/26/2012 02:00 PM in Courtroom 13 before Judge Marilyn L. Huff. Pending pretrial motions are on file. (no document attached) (smy) (Entered: 09/06/2012)
09/07/2012	<u>29</u>	ORDER Granting <u>27</u> Joint Motion to Continue Motion Hearing/Trial Setting as to Irving Schwartz (1) and Jose Melendez (2). The Motion Hearing/Trial Setting set for 09/10/2012 is continued to 11/26/2012 at 2:00 PM before Judge Marilyn L. Huff. XT Continuance 09/07/2012-11/26/2012. Signed by Judge Marilyn L. Huff on 09/07/2012.(ag)(jrd) (Entered: 09/10/2012)
11/19/2012	<u>30</u>	RESPONSE in Opposition by USA as to Irving Schwartz, Jose Melendez re <u>23</u> MOTION for Discovery MOTION for Leave to File Further Motions (Becker, Shireen) (ag). (Entered: 11/19/2012)
11/26/2012	<u>31</u>	Minute Entry for proceedings held before Judge Marilyn L. Huff: Motion Hearing/Trial Setting as to Irving Schwartz (1)(n/a), Jose Melendez (2) held on 11/26/2012. Defendant Irving Schwartz (1) not appearing. The Court issues a bench warrant as to defendant Irving Schwartz (1) and stays the warrant until 1/22/2013. The Court will recall the warrant should the defendant file an acknowledgment of next court date by 1/22/2013. Motion Hearing/Trial Setting continued to 1/22/2013 02:00 PM in Courtroom 13 before Judge Marilyn L. Huff. (ECR Lynnette Lawrence). (Plaintiff Attorney Shireen Becker, AUSA). (Defendant Attorney Jeremy Warren, CJA (1); Kenneth McMullan, CJA (2)). (no document attached) (smy) (Entered: 11/26/2012)

01/22/2013	<u>33</u>	Minute Entry for proceedings held before Judge Marilyn L. Huff: Motion Hearing/Trial Setting as to Irving Schwartz (1), Jose Melendez (2) held on 1/22/2013. Motion In Limine Hearing set for 2/11/2013 10:15 AM in Courtroom 15A before Judge Marilyn L. Huff. Motions due by 2/1/2013. Responses due by 2/8/2013. Jury Trial set for 2/12/2013 09:00 AM in Courtroom 15A before Judge Marilyn L. Huff. (ECR Noemy Martinez). (Plaintiff Attorney Shireen Becker, AUSA). (Defendant Attorney Jeremy Warren, CJA (1); Kenneth McMullan, CJA (2)). (no document attached) (smy) (Entered: 01/22/2013)
01/29/2013	<u>34</u>	NOTICE OF HEARING as to Defendants Irving Schwartz, Jose Melendez. Change of Plea Hearing set for 1/31/2013 09:30 AM in Courtroom G before Magistrate Judge Nita L. Stormes. (no document attached) (gcp) (Entered: 01/29/2013)
01/31/2013	<u>35</u>	Minute Entry for proceedings held before Magistrate Judge Nita L. Stormes: Change of Plea Hearing as to Irving Schwartz, Jose Melendez held on 1/31/2013. Plea agreements submitted by the defendants. Pleas Tendered by Irving Schwartz, Jose Melendez to Guilty on counts 1 of the Indictment. All pending Motions and Judge Association terminated as to Irving Schwartz, Jose Melendez. All pending hearing dates vacated as to Irving Schwartz, Jose Melendez. PSR Ordered. Sentence With PSR set for 5/6/2013 09:00 AM in Courtroom 15A before Judge Marilyn L. Huff. (CD# 1/31/2013 NLS13-11:00 to 11:24). (Plaintiff Attorney Shireen Matthews Becker, AUSA). (Defendant Attorney 1 Jeremy D. Warren, CJA; 2 Kenneth Robert McMullan, CJA). (no document attached) (gcp) (Entered: 01/31/2013)
01/31/2013	<u>40</u>	CONSENT TO RULE 11 PLEA before Magistrate Judge Nita L. Stormes by Jose Melendez. (ag) (av1). (Entered: 02/01/2013)
01/31/2013	<u>41</u>	PLEA AGREEMENT as to Jose Melendez (ag) (av1). (Entered: 02/01/2013)
01/31/2013	<u>42</u>	FINDINGS AND RECOMMENDATION of the Magistrate Judge upon a Tendered Plea of Guilty as to Jose Melendez: Recommending that the district judge accept the defendant's plea of guilty. Signed by Magistrate Judge Nita L. Stormes on 01/31/2013. (ag)(jrd) (Entered: 02/01/2013)
01/31/2013	<u>43</u>	Excludable Minute Order: Excludable(s) started as to Jose Melendez: XT1 Continuance - tendered a guilty plea 01/31/2013 - 05/06/2013, XK Proposed Plea Agreement 01/31/2013 - 05/06/2013 and XE Pretrial Motions 08/28/2012 - 01/31/2013. Signed by Magistrate Judge Nita L. Stormes on 01/31/2013. (ag) (jrd) (Entered: 02/01/2013)
02/15/2013	<u>49</u>	ORDER ACCEPTING GUILTY PLEA as to count(s) 1 of the Indictment, as to Jose Melendez. Signed by Judge Marilyn L. Huff on 02/15/2013. (ag)(jrd) (Entered: 02/15/2013)
04/02/2013	<u>52</u>	PRE-SENTENCE REPORT as to Jose Melendez. Report prepared by: Alexandra Adame. (Document applicable to USA, Jose Melendez.) (lhn) (ag). (Entered: 04/02/2013)
04/12/2013	<u>54</u>	ORDER OF CRIMINAL FORFEITURE as to Jose Melendez. Signed by Judge Marilyn L. Huff on 04/12/2013. (ag) (av1). (Entered: 04/12/2013)

04/29/2013	<u>55</u>	SENTENCING MEMORANDUM by USA as to Jose Melendez (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Becker, Shireen) (ag). (Entered: 04/29/2013)
04/29/2013	<u>56</u>	SENTENCING SUMMARY CHART by USA as to Jose Melendez (Becker, Shireen) (ag). (Entered: 04/29/2013)
05/06/2013	<u>57</u>	Minute Entry for proceedings held before Judge Marilyn L. Huff: Sentence With PSR Hearing as to Jose Melendez (2) held on 5/6/2013 and continued to 6/24/2013 09:00 AM in Courtroom 15A before Judge Marilyn L. Huff. (Interpreter Daniel Novoa). (Court Reporter Noemy Martinez). (Plaintiff Attorney John Parmley, AUSA-S/A). (Defendant Attorney Kenneth McMullan, CJA). (no document attached) (smy) (Entered: 05/06/2013)
06/18/2013	<u>62</u>	SENTENCING SUMMARY CHART by Jose Melendez (Attachments: # <u>1</u> Exhibit, # <u>2</u> Proof of Service)(McMullan, Kenneth) (ag). (Entered: 06/18/2013)
06/19/2013	<u>63</u>	ADDENDUM TO PRE-SENTENCE REPORT as to Jose Melendez. Report prepared by: Alexandra Adame. (Document applicable to USA, Jose Melendez.) (Attachments: # <u>1</u> Discovery)(Quito, B.) (ag). (Entered: 06/19/2013)
06/24/2013	<u>64</u>	Minute Entry for proceedings held before Judge Marilyn L. Huff: Sentence With PSR Hearing held on 6/24/2013 for Jose Melendez (2), Count 1: Custody of BOP for 18 months. Supervised Release for 3 years. Fine waived. Assessment \$100. Restitution \$593,429.81; Counts 2-11, 12: Dismissed without prejudice on Government's oral motion. Criminal forfeiture order incorporated into judgment. Defendant shall self-surrender to an institution designated by the BOP on or before 8/9/2013. Bond Exoneration Hearing set for 8/12/2013 02:00 PM in Courtroom 15A before Judge Marilyn L. Huff. (Interpreter Rebeca Calderon). (Court Reporter/ECR Lynnette Lawrence). (Plaintiff Attorney Shireen Becker, AUSA). (Defendant Attorney Kenneth McMullan, CJA). (no document attached) (smy) (Entered: 06/24/2013)
06/24/2013	<u>65</u>	Amended SENTENCING SUMMARY CHART by Jose Melendez (ag)(avl). (Entered: 06/25/2013)
06/25/2013	<u>66</u>	JUDGMENT as to Jose Melendez (2), Count(s) 1, Custody of BOP for 18 months. Supervised Release for 3 years. Fine waived. Assessment \$100. Restitution \$593,429.81.; Count(s) 12, 2-11, Dismissed without prejudice on Government's oral motion. Signed by Judge Marilyn L. Huff (ag) (jrl). (Entered: 06/25/2013)
08/12/2013	<u>67</u>	Minute Entry for proceedings held before Judge Marilyn L. Huff: Bond Exoneration Hearing as to Jose Melendez (n/a) held on 8/12/2013. Defendant has self-surrendered to BOP. Bond exonerated (If the bond was secured by a cash deposit or real property, counsel must prepare an order to disburse funds or release collateral). (Court Reporter/ECR Lynnette Lawrence). (Plaintiff Attorney James Melendres, AUSA-S/A). (Defendant Attorney N/A). (no document attached) (smy) (Entered: 08/12/2013)
09/10/2013	<u>78</u>	NOTICE OF ATTORNEY APPEARANCE Sean P.J. Coyle appearing for USA. (Coyle, Sean)Attorney Sean P.J. Coyle added to party USA(pty:pla) (ag). (Entered: 09/10/2013)

09/16/2013	<u>81</u>	MOTION to Amend/Correct Judgment by USA as to Jose Melendez. (Becker, Shireen) (ag). (Entered: 09/16/2013)
09/17/2013	<u>82</u>	ORDER Granting <u>81</u> Unopposed Motion to Amend Judgment as to Jose Melendez (2). Signed by Judge Marilyn L. Huff on 09/17/2013.(ag) (av1). (Entered: 09/17/2013)
09/18/2013	<u>83</u>	AMENDED JUDGMENT as to Jose Melendez (2), Count(s) 1, Custody of BOP for 18 months. Supervised Release for 3 years. Fine waived. Assessment \$100. Restitution \$593,429.81.; Count(s) 12, 2-11, Dismissed without prejudice on Government's oral motion. Signed by Judge Marilyn L. Huff (ag) (av1). (Entered: 09/18/2013)
11/19/2013	<u>86</u>	Amended Judgment Returned Executed as to Jose Melendez on 11/19/2013. (ag) (av1). (Entered: 11/19/2013)
12/10/2013	<u>87</u>	Judgment Returned Executed as to Jose Melendez on 10/10/2013. (ag) (jrl). (Entered: 12/11/2013)
03/17/2015	<u>91</u>	USPO Request for Modifying the Conditions or Term of Supervision and Order thereon in case as to Jose Melendez. Signed by Judge Marilyn L. Huff on 03/16/2015. (Cordova, M.) (ag). (Entered: 03/17/2015)

PACER Service Center			
Transaction Receipt			
11/06/2018 14:55:51			
PACER Login:	Odlegal94612:2536794:0	Client Code:	AFU
Description:	Docket Report	Search Criteria:	3:12-cr-02599-H
Billable Pages:	5	Cost:	0.50