

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ELZA BUDAGOVA.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition For A Writ of *Certiorari* To The United States Court of Appeals
for the Ninth Circuit**

APPENDIX – VOLUME I

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NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 17 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 15-50387

Plaintiff-Appellee,

D.C. No.

2:11-cr-00922-DDP-15

v.

ELZA BUDAGOVA,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Argued and Submitted January 9, 2019
Pasadena, California

Before: GRABER and WARDLAW, Circuit Judges, and ROBRENO,** District Judge.

Elza Budagova appeals the district court's denial of her motion to dismiss the indictment or for a mistrial during trial, her post-trial motion for a new trial, and her motion to suppress, and the order of restitution following her conviction

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Eduardo C. Robreno, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

and sentence for conspiracy to distribute controlled substances and conspiracy to defraud Medicare and Medi-Cal, in violation of 21 U.S.C. § 846 and 18 U.S.C. § 1349. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). We affirm.

1. The district court did not abuse its discretion by denying Budagova's motion to dismiss or for a mistrial during trial and her post-trial motion for a new trial. *See United States v. Struckman*, 611 F.3d 560, 577 (9th Cir. 2010). Her claim on appeal that the district court should have granted her this relief because of the government's admitted violations of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), is precluded by *United States v. Garrison*, 888 F.3d 1057, 1065–66 (9th Cir. 2018). There, we held that the district court did not abuse its discretion in fashioning a remedy for the government's *Brady* and *Giglio* violations in the same trial, and that these violations did not prejudice Budagova's similarly situated co-defendant, Garrison. *Garrison* is the law of the case or, at a minimum, the law of the circuit. Budagova's attempts to distinguish Garrison's appeal are unavailing.

Even if *Garrison* were not controlling, it leaves no wiggle room for Budagova to argue that the district court abused its discretion. *See Garrison*, 888 F.3d at 1065–66 (citing *United States v. Howell*, 231 F.3d 615, 627 (9th Cir. 2000)). Like Garrison, Budagova has not demonstrated that she was prejudiced by

the government's belated disclosures. There was overwhelming evidence of Budagova's guilt even excluding the testimony of Dr. Santiago and Julie Shishalovsky. The *Brady* and *Giglio* material was given to the jury during trial, the district court admonished the government for its belated disclosures before the jury, and the court issued a curative jury instruction permitting the jury to exonerate Budagova based solely on the government's violations.

2. The district court did not abuse its discretion by denying an evidentiary hearing on Budagova's motion to suppress. *See Howell*, 231 F.3d at 620–21. The district court was not required to hold an evidentiary hearing because there was no material disputed issue of fact as to whether Budagova's statements during her July 19, 2011, interview were voluntary. *United States v. Guerrero*, 847 F.2d 1363, 1365–66 (9th Cir. 1988). Budagova argues that her statements were involuntary because she was confused and she experienced language difficulties during the interview. But her subjective confusion, absent any coercive action by the government, does not demonstrate that her statements were involuntary. *See Colorado v. Connelly*, 479 U.S. 157, 167 (1986) (“[C]oercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’ within the meaning of the Due Process Clause of the Fourteenth Amendment.”). Moreover, the government demonstrated by a preponderance of

the evidence that Budagova's statements were voluntary. *See Guerrero*, 847 F.2d at 1365.

3. Budagova's challenge to the district court's restitution order is foreclosed by *United States v. Green*, 722 F.3d 1146, 1148–49 (9th Cir. 2013).

AFFIRMED.

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[U.S. Constitution › Fifth Amendment](#)

Fifth Amendment

The Fifth Amendment creates a number of rights relevant to both criminal and civil legal proceedings. In criminal cases, the Fifth Amendment guarantees the right to a grand jury, forbids “double jeopardy,” and protects against self-incrimination. It also requires that “due process of law” be part of any proceeding that denies a citizen “life, liberty or property” and requires the government to compensate citizens when it takes private property for public use.

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Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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Sixth Amendment

The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, and the right to know who your accusers are and the nature of the charges and evidence against you. It has been most visibly tested in a series of cases involving terrorism, but much more often figures in cases that involve (for example) jury selection or the protection of witnesses, including victims of sex crimes as well as witnesses in need of protection from retaliation.

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Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

[‹ Forum Selection Clause](#)[up](#)[Seventh Amendment ›](#)

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18 U.S. Code § 3663A. Mandatory restitution to victims of certain crimes

<u>U.S. Code</u>	<u>Notes</u>
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(a)

(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate.

(2) For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

App.7 **(3)** The court shall also order, if agreed to by the parties in a plea

agreement, restitution to persons other than the victim of the offense.

(b) The order of restitution shall require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to —

(i) the greater of—

(I) the value of the property on the date of the damage, loss, or destruction; or

(II) the value of the property on the date of sentencing, less

(ii) the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

App.8 **(4)** in any case, reimburse the victim for lost income and necessary

child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

(c)

(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

(A) that is—

(i) a crime of violence, as defined in section 16;

(ii) an offense against property under this title, or under section 416(a) of the Controlled Substances Act (21 U.S.C. 856(a)), including any offense committed by fraud or deceit;

(iii) an offense described in section 1365 (relating to tampering with consumer products); or

(iv) an offense under section 670 (relating to theft of medical products); and

(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

(3) This section shall not apply in the case of an offense described in paragraph (1)(A)(ii) if the court finds, from facts on the record, that

(A) the number of identifiable victims is so large as to make restitution impracticable; or

(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.

(Added Pub. L. 104-132, title II, § 204(a), Apr. 24, 1996, 110 Stat. 1227; amended Pub. L. 106-310, div. B, title XXXVI, § 3613(d), Oct. 17, 2000, 114 Stat. 1230; Pub. L. 112-186, § 6, Oct. 5, 2012, 126 Stat. 1430.)



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CLERK OF DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
September 2011 Grand Jury

CR 11 00922

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIKE MIKAELIAN,
ANJELIKA SANAMIAN,
ASHOT SANAMIAN,
ELEANOR MELO SANTIAGO, MD,
MORRIS HALFON, MD,
DAVID GARRISON,
JULIE SHISHALOVSKY,
LILIT MEKTERYAN,
THEODORE CHANGKI YOON,
EDGAR HOVANNISYAN,
MIRAN DERDERIAN,
KEITH PULLAM
aka "Keith Pulman,"
aka "KMAC,"
DAVID SMITH
aka "Green Eyes,"
ROSA GARCIA SUAREZ,
aka "Maria," and
ELZA BUDAGOVA,

Defendants.

I N D I C T M E N T

[21 U.S.C. § 846: Conspiracy to
Distribute Controlled
Substances; 18 U.S.C. §§ 1349:
Conspiracy to Commit Health Care
Fraud; 21 U.S.C.
§§ 331(t), 333(b)(1)(D),
353(e)(2)(A): Unlicensed
Wholesale Distribution of
Prescription Drugs; 18 U.S.C.
§ 2: Aiding and Abetting, and
Causing an Act to Be Done]

1 The Grand Jury charges:

2 GENERAL ALLEGATIONS

3 At all times relevant to this Indictment:

4 The Clinic and its Operations

5 1. Defendants MIKE MIKAELIAN ("MIKEALIAN") and ANJELIKA
6 SANAMIAN operated a clinic known as Lake Medical Group ("the
7 Clinic"), located at 2120 West 8th Street, in Los Angeles,
8 California, within the Central District of California.

9 2. The Clinic functioned as a "prescription mill" that
10 generated prescriptions for OxyContin that the Clinic's purported
11 "patients" did not need and submitted claims to Medicare and
12 Medi-Cal for services that were medically unnecessary, not
13 ordered by a doctor and/or not performed.

14 3. The Clinic used patient recruiters, or "Cappers," who
15 brought Medicare patients, Medi-Cal patients, and other
16 "patients" to the Clinic (the "recruited patients") in exchange
17 for cash or other inducements.

18 4. At the Clinic, the recruited patients were routinely
19 issued a prescription for the maximum dosage of OxyContin (90
20 pills, 80mg strength) they were eligible to receive.

21 5. For Medicare and Medi-Cal patients, the Clinic also
22 ordered unnecessary medical tests, such as nerve conduction
23 velocity ("NCV") studies, electrocardiograms, ultrasounds, and
24 spirometry (a type of pulmonary test). Some of the tests were
25 performed; others were not. The Clinic further created falsified
26 medical paperwork for Medicare and Medi-Cal patients to provide a
27 false appearance of legitimacy for the Clinic, its OxyContin
28 prescriptions, and its billings to Medicare and Medi-Cal.

6. Through a company called A & A Billing Services ("A & A"), owned by defendant ASHOT SANAMIAN and operated by defendant ANJELIKA SANAMIAN, the Clinic billed Medicare Part B and/or Medi-Cal for unnecessary office visits and tests, and for tests and procedures that were not ordered by a doctor and/or not performed as represented in the claims submitted to Medicare and Medi-Cal.

7. After the OxyContin prescriptions were issued, "Runners" employed by the Clinic took the recruited patients to pharmacies that filled the prescriptions. The Runners, rather than the patients, then took the OxyContin and delivered it to defendant MIKAELIAN, who then sold it on the streets.

8. For patients who had Medicare prescription drug coverage (Medicare Part D), the pharmacy that dispensed the OxyContin often billed the patient's prescription drug plan ("PDP") for the OxyContin prescriptions they filled.

9. The Clinic also generated OxyContin prescriptions in the names of individuals who never visited the Clinic and whose identities were stolen. In these instances, using falsified patient authorization forms, Runners took the prescriptions for these patients to the pharmacies and paid the pharmacies for the OxyContin, which they then delivered to defendant MIKAELIAN for resale on the streets.

10. For the less than two years that the Clinic operated, it diverted approximately 10,000 bottles of OxyContin. Because the Clinic almost exclusively prescribed 90 quantity pill bottles, this equates to 900,000 pills or more that were diverted during the course of the scheme described herein.

11. During this same time period, the Clinic and its doctors fraudulently billed Medicare approximately \$4.6 million for medical services and billed Medi-Cal approximately \$1.6 million for such services. Medicare Part B paid approximately \$473,595.23 on those claims and Medi-Cal paid approximately \$546,551.00 on those claims. In addition, Medicare Part D and Medicare PDPs paid approximately \$2.7 million for OxyContin prescribed by the Clinic and its doctors.

Defendants

12. Defendant MIKAELIAN was the administrator of the Clinic and sold the OxyContin obtained via prescriptions issued at the Clinic on the streets.

13. Defendant ANJELIKA SANAMIAN was the manager of the Clinic, as well as the contact person and biller for Medicare and Medi-Cal claims at the Clinic.

14. Defendant ASHOT SANAMIAN was a co-owner and CEO of A & A and was also a Runner for the Clinic.

15. Defendant ELEANOR SANTIAGO, MD ("SANTIAGO") was a medical doctor, licensed to practice medicine in California and authorized to prescribe Schedule II narcotic drugs, who worked at the Clinic throughout its operation. Defendant SANTIAGO was the Medical Director of the Clinic.

16. Defendant MORRIS HALFON, MD ("HALFON") was a medical doctor, licensed to practice medicine in California and authorized to prescribe Schedule II narcotic drugs, who worked at the Clinic from late 2008 through approximately January 2010.

17. Defendant DAVID GARRISON ("GARRISON") was a Physician's Assistant, licensed in California, who worked at the Clinic from

1 approximately the summer of 2009 until the Clinic closed in or
2 about February 2010.

3 18. Defendant LILIT MEKTERYAN ("MEKTERYAN") was an
4 ultrasound technician who worked at the Clinic from approximately
5 January 2009 through approximately August 2009.

6 19. Defendant JULIE SHISHALOVSKY ("SHISHALOVSKY") worked at
7 the Clinic as a medical assistant, receptionist, and office
8 manager from the fall of 2008 until the Clinic closed in or about
9 February 2010.

10 20. Defendants EDGAR HOVANNISYAN ("HOVANNISYAN"), KEITH
11 PULLAM, also known as ("aka") "Keith Pulman," aka "KMAC"
12 ("PULLAM") and MIRAN DERDERIAN ("DERDERIAN") were Runners for the
13 Clinic during the Clinic's operation.

14 21. Defendants DAVID SMITH, aka "Green Eyes" ("SMITH"), and
15 ROSA GARCIA SUAREZ, aka "Maria" ("SUAREZ"), were Cappers who
16 recruited patients for the Clinic during the Clinic's operation.

17 22. Defendant THEODORE YOON ("YOON") was a pharmacist,
18 licensed in California to lawfully dispense prescribed Schedule
19 II narcotic drugs, who filled OxyContin prescriptions from the
20 Clinic starting in or about July 2009.

21 23. Defendant ELZA BUDAGOVA ("BUDAGOVA") was a medical
22 assistant at the Clinic from approximately December 2008 through
23 approximately December 2009. While at the Clinic; defendant
24 BUDAGOVA created medical files for patients purportedly seen by a
25 doctor or a physician assistant at the Clinic.

26 OxyContin and CURES Data

27 24. OxyContin was a brand name for the generic drug
28 oxycodone, a Schedule II narcotic drug, and was manufactured by

Purdue Pharma L.P. ("Purdue") in Connecticut.

25. Purdue manufactured OxyContin in a controlled release pill form in 10mg, 15mg, 20mg, 30mg, 40mg, 60mg, and 80mg doses. The 80mg pill was the strongest strength of OxyContin produced in prescription form for the relevant period.

26. The maximum allowable prescription of oxycodone by law was 90 pills per 30-day period.

27. The dispensing of all Schedule II narcotic drugs was monitored by law enforcement through the Controlled Substance Utilization Review & Evaluation System ("CURES"). Pharmacies dispensing Schedule II narcotic drugs were required to report when such drugs were dispensed.

28. Based on CURES data, from August 1, 2008, through February 10, 2010, doctors working at the Clinic prescribed OxyContin approximately 10,833 times, approximately 10,724 of which were for 80mg strength doses.

29. During this same time period, defendant SANTIAGO prescribed OxyContin approximately 6,151 reported times, and defendant HALFON prescribed OxyContin approximately 2,301 reported times.

30. From August 1, 2008, to February 10, 2010, ten pharmacies dispensed approximately 7,435 of the Clinic doctors' reported prescriptions for OxyContin, or approximately 68% of the total number of prescriptions issued from the Clinic.

31. Until July 2009, pharmacies controlled or operated by defendant YOON accounted for only a few of these reported OxyContin prescriptions issued by the Clinic's doctors. However, between July 2009 and February 2010, defendant YOON's pharmacies

1 dispensed approximately 2,799 (approximately 41%) of the Clinic
2 doctors' reported OxyContin prescriptions.

3 The Medicare Program

4 32. Medicare was a federal health care benefit program,
5 affecting commerce, that provided benefits to persons who were
6 over the age of 65 or disabled. Medicare was administered by the
7 Centers for Medicare and Medicaid Services ("CMS"), a federal
8 agency under the United States Department of Health and Human
9 Services ("HHS"). Individuals who received benefits under
10 Medicare were referred to as Medicare "beneficiaries."

11 Medicare Part B

12 33. Medicare Part B covered, among other things, medically
13 necessary physician services and medically necessary outpatient
14 tests ordered by a physician.

15 34. Health care providers, including doctors and clinics,
16 could receive direct reimbursement from Medicare by applying to
17 Medicare and receiving a Medicare provider number. By signing
18 the provider application, the doctor agreed to abide by Medicare
19 rules and regulations, including the Anti-Kickback Statute (42
20 U.S.C. § 1320a-7b(b)), which prohibits the knowing and willful
21 payment of remuneration for the referral of Medicare patients.

22 35. To obtain payment for Part B services, an enrolled
23 physician or clinic, using its Medicare provider number, would
24 submit claims to Medicare, certifying that the information on the
25 claim form was truthful and accurate and that the services
26 provided were reasonable and necessary to the health of the
27 Medicare beneficiary.

28 36. Medicare Part B generally paid 80% of the Medicare

1 allowed amount for physician services and outpatient tests. The
2 remaining 20% was a co-payment for which the Medicare beneficiary
3 or a secondary insurer was responsible.

4 Medicare Part D

5 37. Medicare Part D provided coverage for outpatient
6 prescription drugs through qualified private insurance plans
7 that receive reimbursement from Medicare. Beneficiaries enrolled
8 under Medicare Part B could obtain Part D benefits by enrolling
9 with any one of many qualified PDPs.

10 38. To obtain payment for prescription drugs provided to such
11 Medicare beneficiaries, pharmacies would submit their claims for
12 payment to the beneficiary's PDP. The beneficiary would be
13 responsible for any deductible or co-payment required under his
14 PDP.

15 39. Medicare PDPs, including those offered by
16 UnitedHealthcare Insurance Company, Health Net Life Insurance
17 Company, Anthem Insurance Companies, and Unicare Life and Health
18 Insurance Company, are health care benefit programs, affecting
19 commerce, under which outpatient prescription drugs are provided
20 to Medicare beneficiaries.

21 40. Medicare PDPs commonly provided plan participants with
22 identification cards for use in obtaining prescription drugs.

23 The Medi-Cal Program

24 41. Medi-Cal was a health care benefit program, affecting
25 commerce, that provided reimbursement for medically necessary
26 health care services to indigent persons in California. Funding
27 for Medi-Cal was shared between the federal government and the
28 State of California.

1 42. The California Department of Health Care Services ("CAL-
2 DHCS") administered the Medi-Cal program. CAL-DHCS authorized
3 provider participation, determined beneficiary eligibility,
4 issued Medi-Cal cards to beneficiaries, and promulgated
5 regulations for the administration of the program.

6 43. Individuals who qualified for Medi-Cal benefits were
7 referred to as "beneficiaries."

8 44. Medi-Cal reimbursed physicians and other health care
9 providers for medically necessary treatment and services rendered
10 to Medi-Cal beneficiaries.

11 45. Health care providers, including doctors and pharmacies,
12 could receive direct reimbursement from Medi-Cal by applying to
13 Medi-Cal and receiving a Medi-Cal provider number.

14 46. To obtain payment for services, an enrolled provider,
15 using its unique provider number, would submit claims to Medi-Cal
16 certifying that the information on the claim form was truthful
17 and accurate and that the services provided were reasonable and
18 necessary to the health of the Medi-Cal beneficiary.

19 47. Medi-Cal provided coverage for the cost of some
20 prescription drugs, but Medi-Cal required preauthorization in
21 order to pay for oxycodone.

22 48. Medi-Cal provided coverage for medically necessary
23 ultrasound tests ordered by a physician, but it would not pay
24 separately for both an upper extremity study (ultrasound) and a
25 lower extremity study (ultrasound) performed on the same day.

26 The Food and Drug Administration

27 49. The United States Food and Drug Administration ("FDA")
28 was the federal agency charged with the responsibility of

1 protecting the health and safety of the American public by
2 enforcing the Federal Food, Drug, and Cosmetic Act, Title 21,
3 United States Code, Sections 301-397 ("FDCA"). One purpose of
4 the FDCA was to ensure that drugs sold for use by humans were
5 safe, effective, and bore labeling containing only true and
6 accurate information. The FDA's responsibilities under the FDCA
7 included regulating the manufacture, labeling, and distribution
8 of all drugs, including prescription drugs, and drug components
9 shipped or received in interstate commerce.

10 50. Under the FDCA, the term "drug" included articles that
11 (1) were intended for use in the diagnosis, cure, mitigation,
12 treatment, or prevention of disease in man; or (2) were intended
13 to affect the structure or any function of the body of man.

14 51. There were certain drugs intended for use by man which,
15 because of their toxicity or other potentiality for harmful
16 effect, or the method of their use, or the collateral measures
17 necessary to their use, were not safe for use except under the
18 supervision of a practitioner licensed by law to administer such
19 drugs. These drugs were known as prescription drugs. The
20 application approved by the FDA for certain drugs limited those
21 drugs to use under the professional supervision of a practitioner
22 licensed by law to administer the drugs. These drugs were also
23 known as prescription drugs.

24 52. Oxycodone was a prescription drug.

25 53. The FDCA required that persons engaged in the wholesale
26 distribution of prescription drugs in interstate commerce in a
27 State be licensed by the State in accordance with guidelines
28 established by the FDA.

1 54. The FDCA prohibited the wholesale distribution or causing
2 the wholesale distribution of a prescription drug without the
3 required state license.

4 55. Defendant MIKAELIAN was not licensed as a prescription
5 drug wholesaler in the State of California.

6 ///

COUNT ONE

[21 U.S.C. § 846]

56. The Grand Jury hereby repeats and re-alleges paragraphs 1 through 55 of this indictment, as though fully set forth herein.

A. OBJECT OF THE CONSPIRACY

57. Beginning in or about August 2008, and continuing until in or about February 2010, within the Central District of California and elsewhere, defendants MIKAELIAN, ANJELIKA SANAMIAN, ASHOT SANAMIAN, SANTIAGO, HALFON, GARRISON, YOON, HOVANNISYAN, DERDERDIAN, PULLAM, SMITH, BUDAGOVA, and others known and unknown to the Grand Jury, conspired and agreed with each other to knowingly and intentionally distribute and divert oxycodone in the form of OxyContin, a Schedule II narcotic drug, outside the course of usual medical practice and for no legitimate medical purpose, in violation of 21 U.S.C. §§ 841(a)(1), and 841(b)(1)(C).

B. MEANS BY WHICH THE OBJECT OF THE CONSPIRACY WAS TO BE ACCOMPLISHED

58. The object of the conspiracy was to be accomplished in substance as set forth in paragraphs 1-11 above and as follows:

a. Defendants SMITH and Suarez, and other Cappers, would recruit Medicare and Medi-Cal beneficiaries and other individuals to go to the Clinic by promises of cash, free medical care or medications, and other inducements.

b. Once the recruited patients were at the Clinic, defendants SMITH, Suarez, and others would instruct the patients to sign intake forms provided at the Clinic and indicate that they suffered from various medical ailments. In many cases, the

1 recruited patients would sign such forms without completing them.

2 c. In some cases, the recruited patients would sign
3 forms authorizing the Clinic to obtain prescribed medications
4 from pharmacies for them and to do so without their presence.

5 d. After a recruited Medicare or Medi-Cal patient signed
6 the forms, defendant SANTIAGO, HALFON, GARRISON, or another
7 individual working at the Clinic, would meet briefly with the
8 patient and issue a prescription for 90 pills of OxyContin 80mg
9 strength, regardless of the patient's medical condition or
10 history.

11 e. Defendants SANTIAGO, HALFON, GARRISON, and BUDAVOGA
12 would write medical notes in the recruited patients' medical
13 files indicating that the recruited patients required OxyContin
14 for pain, when in fact, as these defendants then well knew, there
15 was no medical necessity justifying the use of OxyContin by these
16 recruited patients.

17 f. Defendants SANTIAGO, HALFON, and GARRISON would also
18 write and/or sign prescriptions for Oxycontin for recruited
19 patients who did not have Medicare or Medi-Cal coverage ("cash
20 patients") and for patients who never actually visited the
21 Clinic, in some cases pre-signing such prescriptions. These cash
22 patients were frequently individuals whose identities had been
23 stolen.

24 g. Defendants SANTIAGO, HALFON, GARRISON, and BUDAGOVA
25 would also write and/or sign medical notes indicating that cash
26 patients who had not in fact visited the Clinic had been examined
27 at the Clinic and required OxyContin for medical treatment, when
28 in fact, as these defendants then well knew, there was no medical

1 basis for the prescriptions of OxyContin for these individuals.

2 h. One or more unknown co-conspirators would forge cash
3 patients' signatures on forms authorizing the Clinic to obtain
4 prescribed medications from pharmacies for them, without their
5 presence. These forms were maintained in the cash patient files
6 at the Clinic.

7 i. Defendants ASHOT SANAMIAN, HOVANNISYAN, PULLAM,
8 DERDERIAN, and other Runners would take recruited patients and
9 signed authorization forms, along with the OxyContin
10 prescriptions, to various pharmacies, including pharmacies owned
11 by defendant YOON.

12 j. Defendant YOON and others would dispense the
13 OxyContin to defendants ASHOT SANAMIAN, HOVANNISYAN, DERDERIAN,
14 and other Runners, or to the recruited patients, who would in
15 turn give the OxyContin to the Runners.

16 k. For cash patients and patients who had Medi-Cal only,
17 defendants ASHOT SANAMIAN, HOVANNISYAN, DERDERIAN, and other
18 Runners would pay the pharmacy the retail price of the OxyContin,
19 approximately \$1100-\$1300 per prescription, in cash. For
20 Medicare Part D patients, defendants ASHOT SANAMIAN, HOVANNISYAN,
21 DERDERIAN, and the other Runners would either pay the co-payment
22 amount or obtain the OxyContin without charge.

23 l. At times, in order to avoid the CURES reporting
24 requirement, pharmacies, including defendant YOON's pharmacies,
25 would not bill the PDP and would not report OxyContin
26 prescriptions issued by the Clinic to CURES.

27 m. Once the OxyContin was dispensed, defendants ASHOT
28 SANAMIAN, HOVANNISYAN, DERDERIAN, YOON, and others known and

1 unknown to the Grand Jury would give the OxyContin to defendant
2 MIKAELIAN.

3 n. Defendant MIKAELIAN and others known and unknown to
4 the Grand Jury would then sell the OxyContin for between
5 approximately \$23 and \$27 per pill.

6 C. OVERT ACTS

7 59. In furtherance of the conspiracy, and to accomplish its
8 object, defendants, together with others known and unknown to the
9 Grand Jury, committed and willfully caused others to commit the
10 following overt acts, among others, in the Central District of
11 California and elsewhere:

12 DEFENDANT MIKAELIAN.

13 Overt Act No. 1: On or about November 2, 2009, defendant
14 MILAELIAN knowingly diverted and sold 17 bottles of OxyContin
15 80mg (approximately 1530 pills) to a confidential government
16 informant ("CI-1").

17 Overt Act No. 2: On or about December 10, 2009, defendant
18 MIKAELIAN knowingly diverted and sold five bottles of OxyContin
19 80mg (approximately 450 pills) to CI-1.

20 DEFENDANT ANJELIKA SANAMIAN

21 Overt Act No. 3: On or about July 16, 2009, defendant
22 ANJELIKA SANAMIAN issued a check to defendant YOON in the amount
23 of \$7,642.30, written from an account in the name of Group
24 Services United (a company owned by defendant ASHOT SANAMIAN).

25 Overt Act No. 4: On or about July 18, 2009, defendant
26 ANJELIKA SANAMIAN issued a check to defendant YOON in the amount
27 of \$6,300, written from an account in the name of Group Services
28 United.

1 DEFENDANT ASHOT SANAMIAN

2 Overt Act No. 5: On or about June 16, 2009, defendant ASHOT
3 SANAMIAN obtained 90 pills of OxyContin 80mg from Pacific Side
4 Pharmacy, in Huntington Beach, California, in the name of
5 recruited patient A.D.

6 Overt Act No. 6: On or about June 16, 2009, defendant ASHOT
7 SANAMIAN obtained 90 pills of OxyContin 80mg from Med Center
8 Pharmacy, in Van Nuys, California, in the name of recruited
9 patient D.A.

10 Overt Act No. 7: On or about September 18, 2009, defendant
11 ASHOT SANAMIAN paid approximately \$1,290 to Colonial Pharmacy for
12 90 pills labeled OxyContin 80mg in the name of recruited patient
13 J.T.

14 Overt Act No. 8: On or about September 18, 2009, defendant
15 ASHOT SANAMIAN obtained 90 pills labeled OxyContin 80mg from
16 Huntinton Pharmacy in San Marino, California, in the name of
17 recruited patient D.O.

18 Overt Act No. 9: On or about September 18, 2009, defendant
19 ASHOT SANAMIAN obtained 90 pills of OxyContin 80mg from
20 Huntington Pharmacy, San Marino, California, in the name of
21 recruited patient A.A.

22 DEFENDANT SANTIAGO

23 Overt Act No. 10: On or about December 16, 2008, defendant
24 SANTIAGO issued a prescription for 90 pills of OxyContin 80mg in
25 the name of recruited patient R.H.

26 Overt Act No. 11: On or about March 26, 2009, defendant
27 SANTIAGO allowed a prescription for 90 pills of OxyContin 80mg in
28 the name of recruited patient A.A. to be issued in defendant

1 SANTIAGO's name and thereafter signed the patient's chart.

2 DEFENDANT GARRISON

3 Overt Act No. 12: On or about March 3, 2009, defendant
4 GARRISON wrote medical notes in defendant DERDERIAN's medical
5 chart and prescribed, under defendant SANTIAGO's prescription, 90
6 pills of OxyContin 80mg in defendant DERDERIAN's name.

7 Overt Act No. 13: On or about March 26, 2009, defendant
8 GARRISON wrote medical notes in recruited patient A.A.'s medical
9 chart and prescribed, under defendant SANTIAGO's prescription, 90
10 pills of OxyContin 80mg in the name of recruited patient A.A.

11 Overt Act No. 14: On or about May 18, 2009, defendant
12 GARRISON wrote medical notes in recruited patient R.H.'s medical
13 chart and prescribed, under defendant SANTIAGO's prescription, 90
14 pills of OxyContin 80mg in the name of recruited patient R.H.

15 Overt Act No. 15: On or about August 3, 2009, defendant
16 GARRISON wrote medical notes in recruited patient V.F.'s medical
17 chart and prescribed, under defendant SANTIAGO's prescription, 90
18 pills of OxyContin 80mg in the name of recruited patient V.F.

19 Overt Act No. 16: On or about January 13, 2010, defendant
20 GARRISON saw recruited patient C.P. and prescribed, under a
21 Clinic doctor's prescription, 90 pills of OxyContin 80mg in the
22 name of recruited patient C.P.

23 DEFENDANT HALFON

24 Overt Act No. 17: On or about April 16, 2009, defendant
25 HALFON issued a prescription of 90 pills of OxyContin 80mg in the
26 name of recruited patient G.G.

27 Overt Act No. 18: On or about June 23, 2009, defendant
28 HALFON issued a prescription of 90 pills of OxyContin 80mg in the

1 name of recruited patient G.G.

2 Overt Act No. 19: On or about July 14, 2009, defendant
3 HALFON issued a prescription of 90 pills of OxyContin 80mg in the
4 name of recruited patient G.G.

5 DEFENDANT HOVANNISYAN

6 Overt Act No. 20: On or about September 28, 2009, defendant
7 HOVANNISYAN picked up OxyContin at Mission Pharmacy in Fountain
8 Valley, California, and delivered the OxyContin to defendant
9 MIKAELIAN.

10 Overt Act No. 21: On or about September 28, 2009, defendant
11 HOVANNISYAN picked up OxyContin at Avalon Pharmacy in Wilmington,
12 California, and delivered the OxyContin to defendant MIKAELIAN.

13 Overt Act No. 22: On or about October 26, 2009, defendant
14 HOVANNISYAN picked up OxyContin dispensed in the names of
15 recruited Clinic patients at Better Value Pharmacy, in West
16 Covina, California, and delivered the OxyContin to defendant
17 MIKAELIAN.

18 Overt Act No. 23: On a date unknown, but between in and
19 about September 2008, and in and about May 2009, defendant
20 HOVANNISYAN accompanied recruited patients to a pharmacy in order
21 to obtain OxyContin.

22 DEFENDANT DERDERIAN

23 Overt Act No. 24: On a date unknown, but between in and
24 about September 2008, and in and about May 2009, defendant
25 DERDERIAN accompanied recruited patients to a pharmacy in order
26 to obtain OxyContin.

27 DEFENDANT YOON

28 Overt Act No. 25: On or about June 23, 2009, defendant YOON

1 dispensed or caused to be dispensed 90 pills of OxyContin 80mg in
2 the name of recruited patient G.G.

3 Overt Act No. 26: Between on or about June 30, 2009, and on
4 or about October 19, 2009, defendant YOON dispensed or caused to
5 be dispensed five bottles of 90 pills of OxyContin 80mg strength
6 to defendant MIKAELIAN.

7 Overt Act No. 27: Between on or about August 30, 2009, and
8 on or about September 17, 2009, defendant YOON dispensed or
9 caused to be dispensed three bottles of 90 pills of OxyContin
10 80mg to defendant SMITH.

11 Overt Act No. 28: Between on or about September 18, 2009,
12 and on or about December 23, 2009, defendant YOON dispensed or
13 caused to be dispensed four bottles of 90 pills of OxyContin 80mg
14 in the name of recruited patient E.D.

15 Overt Act No. 29: On or about November 11, 2009, defendant
16 YOON knowingly dispensed or caused to be dispensed 90 pills of
17 OxyContin 80mg to defendant MEKTERYAN.

18 Overt Act No. 30: On or about November 12, 2009, defendant
19 YOON dispensed or caused to be dispensed 90 pills of OxyContin
20 80mg to defendant HOVANNISYAN.

21 DEFENDANT PULLAM

22 Overt Act No. 31: On or about December 8, 2008, defendant
23 PULLAM obtained a prescription in his own name for 90 pills of
24 OxyContin 80mg from defendant SANTIAGO.

25 Overt Act No. 32: On or about January 7, 2009, defendant
26 PULLAM obtained a prescription in his own name for 90 pills of
27 OxyContin 80mg strength from defendant SANTIAGO.

28 Overt Act No. 33: On or about January 13, 2010, defendant

PULLAM paid recruited patient C.P. \$300 for 90 pills of OxyContin 80mg.

DEFENDANT SMITH

Overt Act No. 34: On or about January 13, 2010, defendant SMITH offered to pay recruited patient C.P. \$500 to obtain a prescription for OxyContin using patient C.P.'s Medicare Part D coverage.

Overt Act No. 35: On or about January 13, 2010, defendant SMITH wrote "back pain" on recruited patient C.P.'s medical intake form at the Clinic.

Overt Act No. 36: On or about June 18, 2009, defendant SMITH offered to pay recruited patient E.D. \$30 to go to the Clinic and receive a prescription for OxyContin.

Overt Act No. 37: On or about December 16, 2008, defendant SMITH offered to pay recruited patient R.H. between \$50 and \$100 to go to the Clinic and receive a prescription for OxyContin.

DEFENDANT BUDAGOVA

Overt Act Nos. 38-42: On or about July 6, 2009, August 5, 2009, September 1, 2009, September 29, 2009, and October 19, 2009, defendant BUDAGOVA wrote fabricated information in recruited patient L.H.'s medical chart.

Overt Act Nos. 43-44: On or about April 6, 2009, and August 20, 2009, defendant BUDAGOVA wrote fabricated information in recruited patient R.H.'s medical chart.

Overt Act Nos. 45-47: On or about June 16, 2009, July 27, 2009, and August 24, 2009, defendant BUDAGOVA wrote fabricated information in recruited patient G.M.'s medical chart.

Overt Act Nos. 48-49: On or about September 14, 2009, and

1 October 13, 2009, defendant BUDAGOVA wrote fabricated information
2 in recruited patient E.D.'s medical chart.

COUNT TWO

[18 U.S.C. §§ 1349]

60. The Grand Jury hereby repeats and re-alleges paragraphs one through 55 and 58, and Overt Acts Nos. 36 through 49 as set forth in paragraph 59 of this Indictment, as though fully set forth herein.

A. OBJECT OF THE CONSPIRACY

61. Beginning in or about August 2008, and continuing until in or about February 2010, within the Central District of California and elsewhere, defendants ANJELIKA SANAMIAN, SANTIAGO SHISHALOVSKY, SMITH, SUAREZ, MEKTERYAN, and BUDAGOVA, and others known and unknown to the Grand Jury, knowingly combined, conspired, and agreed to execute a scheme to defraud a health care benefit program, namely Medicare Part B and Medi-Cal, in violation of 18 U.S.C. § 1347.

B. MEANS BY WHICH THE OBJECT OF THE CONSPIRACY WAS TO BE ACCOMPLISHED

62. The object of the conspiracy was carried out, and to be carried out, in substance, as set forth in paragraphs 1-11 and 58 of this Indictment and as follows:

a. Defendant ANGELIKA SANAMIAN would recruit doctors, including defendant SANTIAGO, to work at the Clinic.

b. Defendant SANTIAGO and the other doctors would submit provider applications to Medicare and Medi-Cal and obtain Medicare and/or Medi-Cal provider numbers that enabled the Clinic to submit claims in their names.

c. The provider applications would designate defendant ANJELIKA SANAMIAN as the contact person and A & A as the billing

1 entity for Santiago and other Clinic doctors.

2 d. Defendant SANTIAGO and others at the Clinic would
3 write orders for unnecessary medical tests and procedures for the
4 recruited patient who were Medicare and Medi-Cal beneficiaries.

5 e. Unknown individuals at the Clinic would perform tests
6 on recruited patients before any medical examination was
7 conducted or following a cursory examination that did not provide
8 a basis for performing the tests.

9 f. Defendant MEKTERYAN would perform unnecessary
10 ultrasound tests on recruited patients.

11 g. Defendants ANJELIKA SANAMIAN, SHISHALOVSKY, MEKTERYAN,
12 and BUDAGOVA would create false clinical records to make it
13 appear as if legitimate and necessary medical services had been
14 performed on the recruited patients.

15 h. Defendant ANJELIKA SANAMIAN, through A & A, would
16 submit false and fraudulent claims to Medicare and Medi-Cal
17 related to the recruited patients for medical services that were
18 not medically necessary and/or not performed as represented in
19 the claims, including:

20 i. Claims for office visits with physicians that
21 either did not take place or were shorter and more superficial
22 than represented in the claims;

23 ii. Claims for NCVs, electrocardiograms,
24 ultrasounds, and other tests and procedures that were not in fact
25 performed;

26 iii. Claims for ultrasounds purportedly performed
27 one or a few days apart, on dates when the beneficiary was not in
28 fact at the Clinic to be tested.

1 iv. Claims for tests and procedures that had not
2 been ordered by a physician.

3 i. Medicare Part B and Medi-Cal would pay some of the false
4 and fraudulent claims.

5 C. OVERT ACTS

6 63. In furtherance of the conspiracy, and to accomplish its
7 object, defendants ANJELIKA SANAMIAN, SANTIAGO, SHISHALOVSKY,
8 MEKTERYAN, SMITH, SUAREZ', and BUDAGOVA, together with others
9 known and unknown to the Grand Jury, committed and willfully
10 caused others to commit Overt Act Nos. 36 through 49 as set forth
11 in paragraph 59 of this Indictment, and the following overt acts,
12 among others, in the Central District of California and
13 elsewhere:

14 Recruited Patient B.H.

15 Overt Act No. 50: On or about April 12, 2009, defendant
16 SHISHALOVSKY confirmed recruited patient B.H.'s Medicare and
17 Medi-Cal eligibility.

18 Overt Act No. 51: On or about April 29, 2009, defendant
19 ANJELIKA SANAMIAN submitted a claim to Medicare for services
20 allegedly provided to recruited patient B.H. on March 5, 2009,
21 specifically, a Level 3 (approximately 30 minute face-to-face)
22 office visit with defendant Halfon, a duplex scan, and
23 venipuncture.

24 Recruited Patient D.P.

25 Overt Act No. 52: On or about June 25, 2009, defendant
26 SHISHALOVSKY confirmed recruited patient D.P.'s Medicare and
27 Medi-Cal eligibility.

28 Overt Act No. 53: On or about July 7, 2009, defendant

1 ANJELIKA SANAMIAN submitted a claim to Medicare for services
2 allegedly provided to recruited patient D.P. on June 25, 2009,
3 including a Level 3 office visit with defendant HALFON, a duplex
4 scan ultrasound, an ECG, and an NCV.

5 Overt Act No. 54: On or before July 7, 2009, defendant
6 ANJELIKA SANAMIAN submitted a claim to Medicare for services
7 allegedly provided to recruited patient D.P. on June 26, 2009,
8 specifically, a duplex scan (lower) ultrasound test.

9 Overt Act No. 55: On or about September 1, 2009, defendant
10 ANJELIKA SANAMIAN submitted a claim to Medicare for services
11 allegedly provided to recruited patient D.P. on August 27, 2009,
12 including a Level 3 office visit with defendant Halfon, an
13 amplitude and latency study, and an NCV.

14 Recruited Patient E.D.

15 Overt Act No. 56: On or about June 18, 2009, defendant
16 SHISHALOVSKY confirmed recruited patient E.D.'s Medi-Cal
17 eligibility.

18 Overt Act No. 57: On or before July 13, 2009, defendant
19 ANJELIKA SANAMIAN submitted a claim to Medi-Cal for services
20 allegedly provided to recruited patient E.D. on June 18, 2009,
21 including a Level 3 office visit with defendant SANTIAGO, an EKG,
22 ultrasounds and a breathing capacity test.

23 Overt Act No. 58: On or before July 13, 2009, defendant
24 ANJELIKA SANAMIAN submitted a claim to Medi-Cal for services
25 allegedly provided to recruited patient E.D. on June 19, 2009,
26 including an NCV.

27 Overt Act No. 59: On or before September 8, 2009, defendant
28 ANJELIKA SANAMIAN submitted a claim to Medi-Cal for services

1 allegedly provided to recruited patient E.D. on August 14, 2009,
2 including a Level 3 office visit with defendant SANTIAGO, an EKG,
3 and pulmonary function tests.

4 Overt Act No. 60: On or about September 14, 2009, defendant
5 MEKTERYAN created or altered an ultrasound test result for
6 recruited patient E.D.

7 Overt Act No. 61: On or about September 14, 2009, defendant
8 BUDAGOVA wrote fabricated information in recruited patient E.D.'s
9 medical chart.

10 Overt Act No. 62: On or before October 5, 2009, defendant
11 ANJELIKA SANAMIAN submitted a claim to Medi-Cal for services
12 allegedly provided to recruited patient E.D. on September 14,
13 2009, specifically, a Level 3 office visit with defendant
14 SANTIAGO, and an extremity study (ultrasound).

15 Overt Act No. 63: On or before October 5, 2009, defendant
16 ANJELIKA SANAMIAN submitted a claim to Medi-Cal for services
17 allegedly provided to recruited patient E.D. on September 15,
18 2009, specifically an extremity study (ultrasound).

19 Overt Act No. 64: On or about October 13, 2009, defendant
20 BUDAGOVA wrote fabricated information in recruited patient E.D.'s
21 medical chart.

22 Overt Act No. 65: On or before November 9, 2009, defendant
23 ANJELIKA SANAMIAN submitted a claim to Medi-Cal for services
24 allegedly provided to recruited patient E.D. on October 13, 2009,
25 specifically an extremity study (ultrasound).

26 Recruited Patient R.H.

27 Overt Act No. 66: On or about January 8, 2009, defendant
28 SHISHALOVSKY confirmed recruited patient R.H.'s Medi-Cal

1 eligibility.

2 Overt Act No. 67: On or before March 16, 2009, defendant
3 ANJELIKA SANAMIAN submitted a claim to Medi-Cal for services
4 allegedly provided to recruited patient R.H. on March 3, 2009,
5 including a Level 3 office visit with defendant SANTIAGO.

6 Overt Act No. 68: On or about April 6, 2009, defendant
7 SANTIAGO approved the ordering of an NCV for recruited patient
8 R.H., a Medi-Cal beneficiary.

9 Overt Act No. 69: On or about April 6, 2009, defendant
10 BUDAGOVA wrote fabricated information in recruited patient R.H.'s
11 medical chart.

12 Overt Act No. 70: On or before April 27, 2009, defendant
13 ANJELIKA SANAMIAN submitted a claim to Medi-Cal for services
14 allegedly provided to recruited patient R.H. on April 6, 2009,
15 specifically, a Level 3 office visit with defendant SANTIAGO, an
16 NCV, and ultrasound tests.

17 Overt Act No. 71: On or before April 27, 2009, defendant
18 ANJELIKA SANAMIAN submitted a claim to Medi-Cal for services
19 allegedly provided to recruited patient R.H. on April 7, 2009,
20 specifically a visceral vascular study.

21 Overt Act No. 72: On or about August 20, 2009, defendant
22 BUDAGOVA wrote fabricated information in recruited patient R.H.'s
23 medical chart.

24 Overt Act No. 73: On or before September 8, 2009, defendant
25 ANJELIKA SANAMIAN submitted a claim to Medi-Cal for services
26 allegedly provided to recruited patient R.H. on August 20, 2009,
27 specifically, a lower extremity study (ultrasound).

1 Recruited Patient L.H.

2 Overt Act No. 74: On or about June 9, 2009, defendant
3 MEKTERYAN created or altered an ultrasound test result for
4 recruited patient L.H.

5 Overt Act No. 75: On or before October 5, 2009, defendant
6 ANJELIKA SANAMIAN submitted a claim to Medi-Cal for services
7 allegedly provided to recruited patient L.H. on June 9, 2009,
8 including Level 3 office visit with defendant SANTIAGO, an EKG,
9 and extremity study (ultrasound).

10 Overt Act No. 76: On or before October 5, 2009, defendant
11 ANJELIKA SANAMIAN submitted a claim to Medi-Cal for services
12 allegedly provided to recruited patient L.H. on June 10, 2009,
13 specifically, an extremity study (ultrasound).

14 Additional Acts

15 Overt Act No. 77: On or about August 19, 2009, defendant
16 SUAREZ promised a confidential government informant (hereinafter
17 "CI2"), a Medi-Cal beneficiary, \$30 to go to the Clinic for
18 unnecessary medical care.

19 Overt Act No. 78: On or about September 29, 2009, defendant
20 SUAREZ informed an undercover officer that defendant SUAREZ would
21 pay the undercover officer \$10 for each "patient" profile the
22 undercover officer referred to the Clinic and \$40 for the use of
23 the undercover officer's Medi-Cal card.

24 Overt Act No. 79: On or about May 8, 2009, defendant SMITH
25 promised recruited patient R.B., a Medi-Cal beneficiary, \$25 to
26 go to the Clinic.

27 Overt Act No. 80: On or about May 8, 2009, defendant SMITH
28 instructed recruited patient R.B., a Medi-Cal beneficiary, to

1 "come back" to the Clinic another time for more money.

COUNT THREE

[18 U.S.C. §§ 1349, 2]

64. The Grand Jury hereby repeats and re-alleges paragraphs 1 through 55, 59, and 62; Overt Act Nos. 23 through 24, 34, and 36 through 49, as set forth in paragraph 59; and Overt Act Nos. 50 and 52, as set forth in paragraph 63 of this Indictment, as though fully set forth herein.

A. OBJECT OF THE CONSPIRACY

65. Beginning in or about August 2008 and continuing until in or about February 2010, within the Central District and elsewhere, defendants MIKAELIAN, ASHOT SANAMIAN, HOVANNISYAN, DERDERIAN, PULLAM, and SMITH, and others known and unknown to the Grand Jury, combined, conspired, and agreed to execute a scheme to defraud a health care benefit program, namely Medicare Part D and Part D PDPs, in violation of 18 U.S.C. § 1347.

B. MEANS BY WHICH THE OBJECT OF THE CONSPIRACY WAS TO BE ACCOMPLISHED

66. The object of the conspiracy was carried out, and was to be carried out, in substance, as set forth in paragraphs one through 11, 58, and 65 above, and as follows:

a. Defendants ASHOT SANAMIAN, HOVANNISYAN, DERDERDIAN, PULLAM, and others known and unknown to the Grand Jury, would provide and cause recruited beneficiaries to provide information regarding their Medicare Part D coverage, such as PDP identification cards, to pharmacies filling their OxyContin prescriptions, including pharmacies owned and or operated by defendant Yoon.

b. The pharmacies, including pharmacies owned and or

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1 operated by defendant Yoon, would submit claims to the PDPs for
2 the OxyContin they dispensed to fill the prescriptions.

3 c. The PDPs and Medicare Part D would pay some of the
4 claims submitted.

5 C. OVERT ACTS

6 67. In furtherance of the conspiracy, and to accomplish its
7 object, defendants MIKAELIAN, ASHOT SANAMIAN, DERDERIAN,
8 HOHAVANNISYAN, PULLAM, and SMITH, together with others known and
9 unknown to the Grand Jury, committed and willfully caused others
10 to commit Overt Act Nos. 23 through 24, 34, 36 through 49, 50,
11 and 52, as set forth in paragraphs 59 and 63, of this Indictment
12 and the following overt acts, among others, in the Central
13 District of California and elsewhere:

14 Overt Act No. 81: On an unknown date after August 2008, and
15 before on or about May 6, 2009, defendant MIKAELIAN paid B.H., a
16 recruited Medicare/Medi-Cal patient, \$400 in order to obtain a
17 prescription for OxyContin.

18 Overt Act No. 82: On or about September 18, 2009, defendant
19 ASHOT SANAMIAN provided Colonial Pharmacy, in Arcadia,
20 California, with multiple PDP cards and other identifying
21 information belonging to recruited patients at the Clinic.

22 Overt Act No. 83: On or about January 13, 2010, defendant
23 PULLAM paid recruited patient C.P. \$7 to cover recruited patient
24 C.P.'s Medicare Part D co-payment.

COUNTS FOUR AND FIVE

[21 U.S.C. §§ 331(t), 333(b)(1)(D), 353(e)(2)(A)]

68. The Grand Jury hereby repeats and re-alleges paragraphs 1 through 12, and 49 through 55, as well as Overt Act Nos. 31 and 32, as set forth in paragraph 59, of this Indictment, as though fully set forth herein.

69. On or about the dates set forth below, in Los Angeles County, within the Central District of California, and elsewhere, defendant MIKAELIAN knowingly engaged in the wholesale distribution of the prescription drug oxycodone in interstate commerce in a State without being licensed by that State to do so, namely, defendant MIKAELIAN engaged in and caused the wholesale distribution of OxyContin manufactured outside the State of California within California and to areas outside California, at a time when the defendant MIKAELIAN was not

///

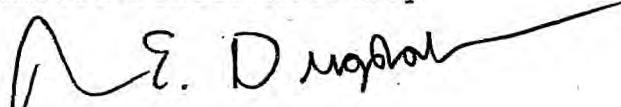
1 licensed as a prescription drug wholesaler in California, in
2 violation of Title 21, United States Code, Sections 331(t),
3 333(b)(1)(D), and 353(e)(2)(A).

4 <u>Count</u>	<u>Date</u>
5 FOUR	11/2/2009
6 FIVE	12/10/2009

8 A TRUE BILL

10 151
Foreperson

11
12 ANDRÉ BIROTTE JR.
United States Attorney

13 
14
15 ROBERT E. DUGDALE
Assistant United States Attorney
Chief, Criminal Division

16
17
18 ELIZABETH R. YANG
Assistant United States Attorney
19 Chief, Violent and Organized Crime Section

20 CONSUELO S. WOODHEAD
Assistant United States Attorney
21 Deputy Chief, Major Frauds Section

22 LANA MORTON-OWENS
Assistant United States Attorney
23 Violent and Organized Crime Section

1 Q Agent Wallace, I'm referring your -- directing your
2 attention to Exhibit 1542, the red pie slice there,
3 1.6 percent of the deposits, are deposits over \$10,000 in
4 cash; correct?

5 A Yes, they are.

6 Q So that on six occasions, Mr. Nguyen or someone acting
7 on his behalf did deposit amounts over \$10,000; correct?

8 A That's correct.

9 MR. JOHNSTON: No further questions. Thank you.

10 MR. GELBERG: Nothing further, Your Honor.

11 THE COURT: Thank you, sir.

12 THE WITNESS: Thank you.

13 THE COURT: You may call your next witness.

14 MR. GELBERG: Thank you, Your Honor.

15 The United States calls Special Agent Patrick Luk.

16 If I could have just a moment to confer with
17 Defense counsel.

18 **GOVERNMENT'S WITNESS, PATRICK LUK, SWORN.**

19 THE CLERK: Please take the stand.

20 Sir, please state your full name and spell your
21 last name for the record.

22 THE WITNESS: It's Patrick Luk, L-u-k.

23 **DIRECT EXAMINATION**

24 MR. GELBERG: Good morning.

25 THE WITNESS: Good morning, sir.

1 BY MR. GELBERG:

2 Q What do you do for a living?

3 A I'm a special agent with the United States Department of
4 Health and Human Services, Office of Inspector General.

5 Q Can we call HHSOIG for short?

6 A Yes.

7 Q And before we talk about your work as a special agent,
8 what's your educational background?

9 A I went to Loyola Marymount University and have a
10 Bachelor of Science degree in Computer Science.

11 Q And what did you do before you started working for
12 HHSOIG?

13 A For approximately eight years I was with the
14 Transportation Security Administration. I was an inspector.

15 Q And what did you do as an inspector?

16 A I was a -- part of the Culver testing team. I assessed
17 vulnerabilities throughout the nation and also analyzed
18 national security for transportation threats --

19 THE COURT: Would you be able to just slow down
20 slightly, because I can see the court reporter struggling.

21 THE WITNESS: I told her this earlier, that it was
22 going to be an issue. Sorry.

23 BY MR. GELBERG:

24 Q And so -- so you're a special agent with HHSOIG?

25 A I am.

1 Q And can you just briefly explain the training you
2 received to become special agent with HHSOIG?

3 A I graduated the criminal investigator training program
4 that is held at the federal law enforcement training center
5 in Gynco, Georgia and also completed the advanced training
6 for the agency -- specific training.

7 Q And what types of cases in general does HHOIG
8 investigate?

9 A We primarily investigate healthcare fraud
10 investigations.

11 Q And any particular type of healthcare fraud?

12 A Individuals or entities that try to defraud the medicare
13 trust fund.

14 Q So medicare specifically?

15 A Primarily.

16 Q And since you've become a special agent, what types of
17 cases -- in terms of subject matter, what types of cases have
18 you investigated?

19 A I've investigated durable medical equipment companies,
20 physicians, and pharmacies.

21 Q And as part of those investigations, have you become
22 familiar with a term "claims data"?

23 A I am.

24 Q Can you briefly remind the jury what "claims data" is?

25 A With the medicare claims data, there's medicare part B

1 claims data and medicare part D claims data that I reviewed.

2 Q And just, in general, what is claims data?

3 A Oh, I'm sorry about that. It's the services that the
4 provider submits to medicare.

5 Q So it's the -- if we're talking about a doctor, it is
6 the request of the doctor, and they send it to medicare to
7 get paid for medicare?

8 A That's correct.

9 Q And based on your work as a healthcare fraud
10 investigator, have you become familiar with Medi-Cal claims
11 data?

12 A I am.

13 Q Is it similar to medicare claims data?

14 A Similar.

15 Q Did you participate in the investigation of this case?

16 A I did.

17 Q And for your testimony today, were you asked to conduct
18 certain types of analyses.

19 A I did.

20 Q And was that analyses involving claims data?

21 A It was.

22 Q And we have no objection, Your Honor, the Government
23 moves Government's Exhibit 1657, 1658, 1659 -- sorry,
24 Mr. Clerk, backtracking -- 1560 and 1562 into evidence.

25 THE COURT: Very well.

1 (Whereupon Government's Exhibits 1657, 1658, 1659, 1560 and
2 1562 are admitted hereto.)

3 MR. GELBERG: Sorry, Mr. Clerk. Thank you.

4 If we could please publish Government's
5 Exhibit 1557...

6 BY MR. GELBERG:

7 Q Special Agent Luk, do you recognize
8 Government's Exhibit 1557?

9 A I do.

10 Q And how do you recognize it?

11 A I created this chart.

12 Q Can you explain how you made this chart?

13 A Using medicare part B claims data and Medi-Cal claims
14 data.

15 Q And can you remind the jury what is medicare part B, as
16 in boy, claims data?

17 A It's the provider's services.

18 Q So like doctor's offices, tests that sort of thing?

19 A That's correct.

20 Q And is this -- this claims data, the chart says it is
21 for Lake Medical Group billing summary?

22 A That is correct.

23 Q Does that mean it was claims submitted by providers who
24 worked at the Lake Medical Group?

25 A That's correct. From August 1st, 2008 through

1 February 28, 2010.

2 Q So let's look at the first row. It says medicare part
3 B, and the billed amount is a little over 5.3 million. Do
4 you see that?

5 A Yes, I do.

6 Q What does that mean?

7 A That means Lake Medical Group submitted approximately --
8 over 5.3 million to medicare, part B.

9 Q And for what types of services were these claims that
10 amounted to over \$5.3 million?

11 A There were multiple services to include office visits,
12 ultrasounds, and CV's.

13 Q And how much was paid based on those bills for
14 5.3 million and change submitted to medicare, part B?

15 A 13 percent or \$690,437.

16 Q Now, going to the next row, Medi-Cal, does that reflect
17 your analysis of the amount billed by Lake Medical Group for
18 Medi-Cal claims?

19 A That is.

20 Q Is it similar types of claims, office visits, and tests
21 billed from the Lake Medical Group?

22 A Correct.

23 Q And how much was billed to Medi-Cal from the Lake
24 Medical Group between your time period 2008 to 2010?

25 A Approximately 1.6 million.

1 Q And how much was paid?

2 A Approximately 546,000 or 33 percent.

3 Q And the final row, the total, what does that represent?

4 A The total is the combined for billed -- approximately
5 \$7 million for both medicare, part B and Medi-Cal. And then
6 for paid amount, it was approximately \$1.2 million or
7 18 percent.

8 Q And that was all from the Lake Medical Group?

9 A That is correct.

10 MR. GELBERG: Now, if we could, please bring up
11 Government's Exhibit 1658 which is now in evidence...

12 By MR. GELBERG:

13 So, Special Agent Luk, do you recognize
14 Government's Exhibit 1658?

15 A I do.

16 Q Did you make this chart?

17 A I did.

18 Q How did you make Government's Exhibit 1658?

19 A It was an analysis of the medicare, part B data.

20 Q And it says -- it's entitled "Top 10 clinic procedures
21 for medicare beneficiary"?

22 A Correct.

23 Q Can you -- what does that mean?

24 A So I looked at approximately -- well, 1,495 medicare
25 beneficiary claims, and these were the top ten procedures

1 that were billed to medicare, part B.

2 Q So when you say number of medicare beneficiaries, 1,495,
3 what does that refer to?

4 A That refers to the beneficiaries -- so medicare, part B
5 beneficiaries.

6 Q So there was 1,000 -- I just want to make sure I
7 understand -- 1,495 separate medicare beneficiaries or people
8 that Lake Medical Group billed for tests on their behalf?

9 A Allegedly. Correct.

10 Q It was billed?

11 A Yes, yes.

12 Q And one of those people might have had multiple tests
13 billed on their behalf?

14 A That's true.

15 Q But the universe of people of medicare beneficiaries is
16 1495.

17 A That's true.

18 Q Okay. So let's just walk through some of these
19 procedures.

20 So starting at -- at -- at the far left -- maybe
21 you could walk us through the first one. It says "office
22 visit," and then it says 99 percent. What does that mean?

23 A It means 99 percent of the beneficiaries were billed for
24 an office visit.

25 Q By the Lake Medical Group?

1 A That's correct.

2 Q And then it says "EKG" and "80 percent." What does that
3 mean?

4 A That means 80 percent of the beneficiaries were billed
5 by Lake Medical Group for an EKG.

6 Q So Just to make sure I've got my numbers straight...

7 So 80 percent of that total number -- that total
8 universe, 1,495 people, 80 percent of those people had an EKG
9 billed in their name?

10 A That's correct.

11 Q Now, let's go to the -- next bar chart -- or the next
12 column. What is that?

13 A That's the nerve conduction velocity test.

14 Q Is that what we've been calling "NCV's"?

15 A It is.

16 Q And that also says 80 percent?

17 A That's correct.

18 Q So that means out of that universe of almost 1500
19 medicare beneficiaries that Lake Medical Group billed
20 medicare for, 80 percent had an NCV billed in their name?

21 A That's correct.

22 Q And we'll just do a couple more...

23 Ultrasound: Do you see "ultrasound" on the chart?

24 A I do.

25 Q And what -- what does your analysis of ultrasound

1 billing show?

2 A It showed that 66 percent of the beneficiaries were
3 billed for an ultrasound by Lake Medical Group.

4 Q To medicare, part B?

5 A Correct.

6 Q And then the last one, it says -- well, not the last
7 one -- the last one we'll talk about; but it says "pulmonary
8 function," what does that refer to?

9 A The PFT test, the pulmonary function test.

10 Q And what does your analysis show in terms of the
11 percentage of medicare beneficiaries billed by Lake Medical
12 who had a PFT billed in their name?

13 A That 53 percent of the beneficiaries were billed for
14 that.

15 Q So just over half?

16 A Correct.

17 Q Now, please bring up Government's Exhibit 1659, which is
18 in evidence...

19 And, Special Agent Luk, do you recognize
20 Government's Exhibit 1659?

21 A I do.

22 Q Did you prepare this chart, as well?

23 A I did.

24 Q And what is this chart, 1659?

25 A This is the top ten clinic procedures for Medi-Cal

1 beneficiaries.

2 Q So the last chart we were looking at, 1658 that was
3 medicare. This one -- is it a similar analysis but this time
4 for people that Lake Medical billed that had Medi-Cal
5 insurance?

6 A That's correct. This is the Medi-Cal universe.

7 Q And what was the number of -- of different individuals
8 who had Medi-Cal that Lake Medical billed Medi-Cal on their
9 behalf?

10 A 733.

11 Q And let's just walk through a couple of -- of these.
12 Starting with "ultrasound," do you see "ultrasound"?

13 A I do.

14 Q And what did your analysis show about Lake Medical
15 Group's billing to Medi-Cal for ultrasounds?

16 A It showed that Lake Medical Group billed 90 percent of
17 the beneficiaries for Medi-Cal.

18 Q So nine out of ten Medi-Cal beneficiaries who were
19 billed -- nine out of ten were billed for an ultrasound?

20 A Correct.

21 Q And then the next one is pulmonary function test?

22 A Correct.

23 Q And what does that show?

24 A It showed that Lake Medical Group billed 88 percent of
25 the Medi-Cal beneficiaries for PFT.

1 Q And one more.

2 Nerve conduction studies, do you see that on the
3 chart?

4 A I do.

5 Q And what is your analysis of billings to Medi-Cal for
6 nerve conduction studies show?

7 A It showed that Lake Medical Group billed Medi-Cal for
8 65 percent of their beneficiaries for an NCV.

9 MR. GELBERG: Thank you. If we could take that one
10 down.

11 BY MR. GELBERG:

12 Q As part of your analysis, were you also asked to look at
13 the prescribing of OxyContin out of the Lake Medical Group?

14 A I was.

15 Q And what data did you look at to analyze the prescribing
16 of OxyContin out of the Lake Medical Group?

17 A I used the CURES data.

18 Q And can you just remind us what "CURES" is again?

19 A CURES is the prescription drug monitoring program for
20 the state of California.

21 Q And so your analysis that you'll be talking about today,
22 that's based on looking at the data, not looking at, like,
23 physical files or prescriptions or things like that; is that
24 right?

25 A That's correct. Those are the records.

1 Q So just data today?

2 A Just data.

3 MR. GELBERG: Okay. If we could please bring up
4 Government's Exhibit 1562 which is in evidence...

5 BY MR. GELBERG:

6 Q Special Agent Luk, do you recognize
7 Government's Exhibit 1562?

8 A I do.

9 Q And did you prepare this chart?

10 A I did.

11 Q And just at a general level -- we'll walk through it
12 briefly -- but at a general level, can you explain what this
13 chart is about?

14 A I analyzed the OxyContin that was -- in the CURES record
15 for Lake Medical Group and I did a summary by milligrams.

16 Q And is "milligrams" the strength of the OxyContin being
17 prescribed?

18 A It is.

19 Q And what did your analysis show the total number of
20 OxyContin prescriptions that came out of the Lake Medical
21 Group; how many were there?

22 A There were 13,207 prescriptions for OxyContin.

23 Q And what was the date range for your analysis?

24 A The date range for my analysis was August 2008 through
25 September 2010.

1 Q So in those two years, Lake Medical Group generated
2 13,207 prescriptions for OxyContin?

3 A That's correct.

4 Q And how many -- what percentage of those 13,207
5 prescriptions for OxyContin were for that 80-milligram
6 strength -- the highest strength?

7 A It was the 99.95 percent.

8 Q And that translates into 13,201 prescriptions?

9 A That is correct.

10 Q So based on your analysis of the data, there were only
11 six prescriptions out of the Lake Medical Group which were
12 for a lower dosage of OxyContin?

13 A Correct.

14 MR. GELBERG: If we can please bring Government's
15 Exhibit 1560, which is in evidence...

16 Special Agent Luk, did you create
17 Government's Exhibit 1560?

18 A I did.

19 Q And how did you make this chart?

20 A Again, I used the CURES data from August 2008 through
21 September 2010.

22 Q And what is -- at a general level, what does this chart
23 show?

24 A This is a summary of the Lake Medical Group
25 prescriptions for OxyContin, 80 milligrams.

1 Q And is it looking at a particular amount of OxyContin
2 being prescribed?

3 A It is. It is looking at the pill counts.

4 Q So how many pills per prescription?

5 A That's correct.

6 Q So our universe now is 13,201 prescriptions; is that
7 right?

8 A That is correct.

9 Q And that was the number of 80-milligram prescriptions
10 that we were looking at on Government's Exhibit 1562?

11 A That's correct.

12 Q And what percentage of those 80-milligram prescriptions
13 which were virtually all the prescriptions from Lake Medical
14 Group -- what percentage of those were for 90 pills?

15 A 95 percent.

16 MR. GELBERG: Now, I want to -- if we could please
17 take that down. I want to transition topics.

18 BY MR. GELBERG:

19 Q In part of your investigation, did you ever interview
20 defendant Nguyen?

21 A I did.

22 Q And how many times did you interview him?

23 A I interviewed Mr. Nguyen three times.

24 Q And was the first interview in approximately -- sorry --
25 on approximately April 30, 2012.

1 A It was.

2 Q Was that interview recorded?

3 A That was not.

4 Q Did you interview him shortly after that first
5 interview?

6 A I did.

7 Q And was that approximately on May 29, 2012?

8 A It was.

9 Q Was that interview recorded?

10 A It was.

11 Q When you met with defendant Nguyen on May 29, 2012, was
12 anyone else with you?

13 A Yes.

14 Q Who was that?

15 A It is Agent Chou Tran with the Department Of Justice.

16 Q Is that the California Department of Justice?

17 A It is.

18 Q When you and Agent Tran met with defendant Nguyen, were
19 you carrying any type of electrical recording -- electric
20 recording equipment?

21 A I did. I utilized an Olympus recorder.

22 Q That's a digital recorder?

23 A That's correct.

24 Q Before May 29, 2012, had you ever used the Olympus
25 recorder before?

1 A Yes.

2 Q So you were familiar with how it worked -- how it
3 functioned?

4 A Yes.

5 Q On that date of the interview with defendant Nguyen,
6 May 29, 2012, did you test the recording device?

7 A I did.

8 Q Did it operate properly?

9 A Yes.

10 Q And did you then use that Olympus recording device to
11 record your interview with defendant Nguyen?

12 A I did.

13 Q And after you recorded the interview, did you listen to
14 it?

15 A I did.

16 MR. GELBERG: Your Honor, if
17 Government's Exhibit 1775 could be placed before the
18 witness -- And while we're at it, 1790 and 1791, please...

19 That's fine. If we can play 1790 and 1791 before
20 the witness...

21 BY MR. GELBERG:

22 Q Now, if you can just take a look at 1790, what's it for
23 marked as Government's Exhibit 1790...

24 Do you recognize what -- what that is?

25 A Yes, I do.

1 Q How do you recognize it?

2 A It's marked as such, Exhibit 1790.

3 Q And do you know what it is?

4 A It's the recording.

5 Q Is it the entire recording or just part of the
6 recording?

7 A It's the entire of the recording.

8 Q Sorry. Exhibit 1790, is that part of the recording or
9 the --

10 A Oh, I'm sorry about that. It's part of the recording --
11 it's a clip.

12 Q It's a clip of the recording?

13 A That's correct.

14 Q And what about Government's Exhibit 1791, what is it?

15 A It's also a clip.

16 Q And prior to your testimony today, have you listened to
17 those clips of the recording?

18 A I did.

19 MR. GELBERG: Your Honor, the Government moves
20 Government's Exhibit 1790 and 1791 into evidence.

21 THE COURT: Very well.

22 (Whereupon Government's Exhibits 1790, 1791 are admitted
23 hereto.)

24 BY MR. GELBERG:

25 Q Prior to your testimony, did you review transcripts of

OCT 22 2014

CENTRAL DISTRICT OF CALIFORNIA
BY *ja* DEPUTY

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELZA BUDAGOVA

Defendant.

No. CR ¹¹12-922(B)-DDP-15

VERDICT FORM

1 DEFENDANT ELZA BUDAGOVA

2 COUNT ONE (Conspiracy to Distribute Controlled Substances)

3 We, the jury in the above-captioned case, unanimously find
4 defendant Elza Budagova:

5
6 X GUILTY

7
8 NOT GUILTY

9
10 of conspiracy to distribute controlled substances as charged in Count
11 One of the Second Superseding Indictment.

1 DEFENDANT ELZA BUDAGOVA

2 COUNT TWO (Conspiracy to Commit Health Care Fraud)

3 We, the jury in the above-captioned case, unanimously find
4 defendant Elza Budagova:

5
6 X

GUILTY

7
8 NOT GUILTY

9
10 of conspiracy to commit health care fraud as charged in Count Two of
11 the Second Superseding Indictment.

12
13
14 Please have the foreperson sign and date the form.

15 FOREPERSON OF THE JURY

16
17 DATED: October 22, 2014 at Los Angeles, California.
18
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26
27
28

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7 Elza Budagova

8
9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 vs.
14 ELZA BUDAGOVA (#15),
15 Defendant.

Case No.: CR 11-922-15-DDP

POSITION WITH RESPECT TO
SENTENCING FACTORS BY
DEFENDANT ELZA BUDAGOVA

Sent. Date July 9, 2015
Time 3:00 p.m.

CTRM. HON.
Dean D. Pregerson

17
18 Defendant, Elza Budagova by and through her counsel of record, Dominic
19 Cantalupo does hereby submit her position with respect to sentencing factors.
20 Objections to the Presentence Investigation Report have been filed separately.

21 Dated: June 28, 2015

Respectfully submitted,

22
23 /s/ Dominic Cantalupo

24 DOMINIC CANTALUPO
25 Counsel for Defendant,
26 Elza Budagova
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES RE SENTENCING**

2 I.
3 **INTRODUCTION**

4 Defendant Elza Budagova appears now for sentencing. On October 22,
5 2014, Ms. Budagova was found guilty by jury trial of Counts One and Two of the
6 underlying Second Superseding Indictment. Count One is a conspiracy to possess
7 with intent to distribute OxyContin, in violation of 21 U.S.C. §§ 864, 841(a)(1),
8 (b)(1)(c). Count Two is a conspiracy to commit health care fraud, in violation of
9 18 U.S.C. § 1349. These convictions arise from Ms. Budagova's working at the
10 Lake Medical Clinic, where she wrote patient information in files purporting to
11 describe the patients' pain symptoms in an effort to justify pain medication
12 prescriptions, and to prescribe nerve conduction tests. These patient files were
13 used to acquire OxyContin, which the lead defendant then distributed, and to bill
14 Medicare. Ms. Budagova did not have knowledge of the scope of the crimes
15 being committed by lead defendants Mikaelian and Sanamian. Ms. Budagova
16 received her instructions of how and what to complete in the patient files from
17 codefendant and cooperator Julie Shishalovsky. During the course of her
18 participation in the conspiracies, Ms. Budagova wrote approximately 500
19 prescriptions for OxyContin.¹

20
21 Ms. Budagova asserts that the reasonable sentence as instructed by United
22 States v. Booker, 5453 U.S. 220 (2005), and taking into consideration the
23 advisory Sentencing Guidelines, the policies of the Sentencing Reform Act of
24 1984, 18 U.S.C. § 3553(a), and the specific facts of this case including the
25 history and characteristics of the defendant, is to impose a five-year term of
26 probation, including a condition of twelve months home confinement, and other

27
28 ¹ Based on a review of patient files produced during discovery.

1 conditions that the Court may deem appropriate.

2 II.

3 SENTENCING GUIDELINES

4 Ms. Budagova objects to probation's computation of the advisory
5 sentencing guidelines. Firstly, Ms. Budagova believes that the 2011 version of
6 the Sentencing Guideline Manual should be used to calculate the applicable
7 advisory guideline range for the conviction under § 1349 (Medicare fraud); and,
8 the 2014 version should be used to calculate the sentencing range under §§ 846,
9 841(a)(1) and (b)(1)(c). Secondly, she believes that (1) the quantity of drugs
10 attributable to her is over-estimated;² (2) a role reduction for her minor
11 participation is warranted; and, (3) a reduction for the safety valve may be
12 warranted.³

13
14 Ms. Budagova does concur with probation that the convictions for counts
15 one and two should be grouped together because they involve the same victim
16 and two or more acts of transactions connected by a common criminal objective
17 or constituting part of a common scheme or plan. U.S.S.G. § 3D1.2(b). (PSR at ¶
18 78.) She also concurs with the government that using the 2011 manual, to
19 compute the adjusted offense level for Count two, the Medicare fraud, is level 26.
20 (Gov. Memo. at page 4.) Therefore, the offense level is the count with the highest
21 offense level, which is Count One, the drug trafficking conviction. U.S.S.G. §
22 3D1.3(a).

23
24 ² See concurrently filed OBJECTIONS TO PRESENTENCE INVESTIGATION
25 REPORT BY DEFENDANT ELZA BUDAGOVA.

26 ³ Section 5C1.2(a)(5) requires that the defendant inform the government of all
27 information she has concerning her participation in the offense prior to sentencing. At the time
28 of filing her sentencing position, Ms. Budagova has not decided whether or not to submit to the
safety valve proffer. She will make that determination prior to sentencing.

Accordingly, Ms. Budagova computes the advisory sentencing guidelines (with the Safety Valve reduction), is as follows:

Base Offense Level ⁴ (§ 2D1.1(c)(3))	34
Adjustment for Role in the Offense (§ 3B1.2(b))	-2
Further Adjustment for Role in the Offense (§ 2D1.1(a)(5)(ii))	-3
Safety Valve (§ 5C1.2)	-2

TOTAL ADJUSTED OFFENSE LEVEL	27

Ms. Budagova concurs with probation's determination of her criminal history. At a Criminal History Category I (PSR at ¶ 95), the applicable advisory sentencing guideline range is 63-78 months.

Alternatively, without the Safety Valve reduction, the total adjusted offense level would be 29, and the corresponding applicable advisory sentencing guideline range at CHI, is 87-108.

III. MINOR ROLE

A defendant is provided a 2-level reduction if she plays a part in committing the offense that makes her substantially less culpable than the average participant. U.S.S.G. § 3B1.2 n. 3(A). In this case, Ms. Budagova was recruited by the lead defendants, including cooperator Julie Shishalovsky, to record patient information into files that were used by the lead conspirators to

⁴ See OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT BY DEFENDANT ELZA BUDAGOVA, filed concurrently with this sentencing position memorandum. The math is as follows: 500 prescriptions x 7.2 grams of OxyContin per 90 pill bottle equals 3,600 grams of OxyContin. 3,600 grams is then multiplied by 6,700 grams of Marijuana (guideline conversion, see PSR at ¶ 81), which equals 24,120 grams of Marijuana.

1 justify prescribing OxyContin. Ms. Budagova was told what information to write
 2 in the files, and later in the conspiracy, she was recruited to write the body of the
 3 OxyContin prescription forms. Some of the prescription forms were indeed pre-
 4 signed by the doctors. Moreover, Ms. Budagova was told by Shishalovsky to
 5 prescribe nerve conduction tests for some patients. Ms. Budagova had no
 6 knowledge of the Medicare fraud being perpetrated by lead defendant Sanamian,
 7 nor did she have knowledge of the OxyContin trafficking being perpetrated by
 8 lead defendant Mikaelian. Accordingly, Ms. Budagova was less culpable than
 9 Mikaelian, Sanamian and Shishalovsky and therefore, a 2-level minor role
 10 reduction is warranted.

11 12 IV. BUDAGOVA'S SENTENCING POSITION

13 *Sentencing Considerations:*

14 This Court has a duty to consider all of the 18 U.S.C. § 3553(a) factors in
 15 determining the appropriate sentence in Ms. Budagova's case, and therefore,
 16 those factors and relevant case law are addressed herein below. There are a
 17 number of equitable and mitigating factors for the Court to consider in this case.
 18 Accordingly, Ms. Budagova contends that a sentence of probation, for a term of
 19 five years, with a condition of twelve months home confinement as well as other
 20 appropriate conditions is warranted.

21 22 1. *The Court Must Impose the Least Punitive Sentence That Fulfills the* *Goals of Sentencing:*

23 The sentencing guidelines are no longer mandatory, United States v.
 24 Booker, 543 U.S. 220 (2005), and a "district court may not presume that the
 25 guidelines range is reasonable." United States v. Carty, 520 F.3d 984, 991 (9th
 26 Cir. 2008) (en banc); see Rita v. United States, 127 S.Ct. 2456, 2465 (2007). The
 27 guidelines are entitled to no more weight than any of the other 18 U.S.C. §
 28

1 3553(a) sentencing factors. Carty, 520 F.3d at 991; United States v. Cantrell, 433
 2 F.3d 1269, 1270-80 (9th Cir. 2006). Accordingly, in sentencing - post-Booker -
 3 this Court is required to fashion a sentence that is appropriate when taking into
 4 account all of the section 3553(a) factors. Gall v. United States, 128 S.Ct. 586,
 5 596 (2007); Carty, 520 F.3d at 991.

6 The overarching duty imposed on this Court by Congress is to arrive at a
 7 sentence sufficient but not greater than necessary to achieve the goals of
 8 sentencing. See 18 U.S.C. § 3553(a); Kimbrough v. United States, 128 S.Ct. 558,
 9 575 (2007); Carty, 520 F.3c at 991. In Kimbrough, the Supreme Court stressed
 10 that this parsimony principle is the most important factor in a court's sentencing
 11 decision. 128 S.Ct. at 575; see Carty, 520 F.3d at 991. Through the directive of
 12 parsimony, Congress embedded in federal sentencing legislation the moral
 13 imperative to impose on any individual the least suffering that is demanded by
 14 the general welfare.

15 Therefore, it is critical for the Court to understand that its charge is
 16 emphatically not to impose a "reasonable" sentence, but to impose a
 17 particularized sentence minimally sufficient to accomplish the statutory purposed
 18 of sentencing. See Carty, 520 F.3d at 991. ("The district court must make an
 19 individualized determination based on the facts.") The question of
 20 reasonableness is left for appellate review. See Rita, 127 S.Ct. at 2465.
 21 Accordingly, this Court should impose a sentence for Ms. Budagova that is
 22 sufficient but not greater then necessary to achieve the goals discussed below.

23
 24 2. *Nature of Circumstances of the Offense and History and*
 25 *Characteristics of the defendant:*

26 The Supreme Court observed in Gall v. United States, 552 U.S. 38, 52
 27 (2007) (internal quotation marks deleted), "the sentencing judge consider[s]
 28

1 every convicted person as an individual and every case as a unique study in the
2 human failings that sometimes mitigate, sometimes magnify, the crime and
3 punishment to ensue". In Ms. Budagova's case, her personal characteristics as
4 well as her conduct in the offenses warrant a downward variance from the
5 otherwise applicable advisory guideline range.

6 Ms. Budagova participated in the underlying instant offenses by following
7 the directions of the lead defendants to record information in the patients' files
8 and to prepare prescription forms (some pre-signed by the doctors). Ms.
9 Budagova did not make any decisions regarding what information to write.
10 Instead, she was directed by Shishalovsky as to what the patient file should
11 contain. Moreover, Ms. Budagova did not act as a medical assistant or an
12 unlicensed physician assistant. Her role is better described as a transcriber of
13 information. She had no knowledge of the scope of the Medicare fraud or the
14 scope of the OxyContin trafficking being committed by Mikaelian, Sanamian or
15 Shishalovsky.
16

17 Ms. Budagova has no prior criminal history. (PSR at ¶ 95.)

18 She was born in Yerevan, Armenia. (PSR at ¶ 100.) She was married in
19 1966, and separated in 2003, but currently maintains a good relationship with her
20 husband. (PSR at ¶ 103.) She is a naturalized United States Citizen. (PSR at page
21 3.)

22 Ms. Budagova is currently 74 years old. (PSR at ¶ 100.) She has two adult
23 children and five grandchildren. (PSR at ¶¶ 104, 105.) She maintains a close
24 relationship with both her children and grandchildren. (*Id.*) One grandchild
25 suffers has Down Syndrome and Budagova acted as his caregiver. (PSR at ¶105.)

26 Ms. Budagova suffers severe failing health. (PSR at ¶¶ 107-111.) She
27 suffers several ailments including, insulin dependent diabetes; anemia;
28

1 angiodistany of lower extremities; cardiac sclerosis which makes walking
2 difficult; hypertension; peripheral neuropathy; brain circulation; osteoarthritis;
3 osteoporosis; deforming spondylosis lumbar vertebrae which causes severe pain
4 in her lower back and legs; neurostem damages which causes sciatic pain in her
5 legs and resulted in her femoral nerve being damaged; high cholesterol; high
6 phospholipids; and arrhythmia with paroxysmal which results in her heartbeat
7 quickening without medication. (PSR at ¶ 107.) Additionally, she suffers from
8 anxiety for the past nine years and from depression for the past seven years. (PSR
9 at ¶ 108.) For these ailments, she takes the following medications: 75 mg Plavix
10 daily; 81 mg Aspirin daily; 40 mg Atorvastatin daily; 40 mg Tricor daily;
11 Vitamin D; 30 units of Lantus injections daily; 50/1000 Janumet twice daily; 4
12 mg DiaBeta twice daily; Novolac as needed for diabetes; 160/12.5
13 Valsartandaily; 160 mg Diovan daily; 40 mg Coreg Cr Daily; one Clonidine
14 Patch weekly; and 200 mg Clebrex, Motrin, Capsaicin gel/cream; Vicodin and
15 Voltaren as needed; 10 mg Lexapro daily; and 50 mg Zoloft daily. (PSR at ¶¶
16 108, 109, 111.)

18 Ms. Budagova has no substance abuse issues. (PSR at ¶ 112.)

19 She was a physician in Armenia. (PSR at ¶ 113.) She also was a registered
20 nurse in Armenia. (PSR at 114.) She became a certified ultrasound technician in
21 the United States in 2001. (PSR at ¶ 115.)

22 Ms. Budagova has been gainfully employed throughout her adult life, up to
23 her retirement. (PSR at ¶ 119.)

24 3. *Purposes of Sentencing:*

25 In crafting a sentence under seciton 3553(a), this Court must consider the
26 need for the sentence. 18 U.S.C. § 3553(a)(2), as follows:
27
28

1 *To Reflect the Seriousness of the Offense -*

2 It is undisputed that the offenses committed here were serious. Millions of
3 dollars were stolen from Medicare and more than 12,000 prescriptions for
4 OxyContin were written during the conspiracy. However, Ms. Budagova was an
5 unwitting (unknowing, unaware, ignorant and oblivious) participant in these
6 conspiracies. Her role was that of a medical transcriber, which later included
7 writing the body of prescriptions. She worked at the direction of leaders of the
8 conspiracies, primarily Julie Shishalovsky. She did not know of the scope of
9 Sanamian's Medicare fraud nor did Ms. Budagova know of the scope of
10 Mikaelian's OxyContin trafficking.

11 *To Promote Respect for the Law -*

12 Ms. Budagova has no prior convictions and no prior contact with law
13 enforcement. She holds a graduate degree and was a physician in Armenia. She
14 has always been a law-abiding citizen. She lawfully immigrated to the United
15 States and became a naturalized U.S. Citizen. Notwithstanding the convictions in
16 the instant case, the Court does not need to instill and promote respect for the
17 law. Ms. Budagova has and continues to demonstrate that respect.

18 *To Provide Just Punishment -*

19 The proposed sentence of five years probation with a condition of twelve
20 months home confinement, and other appropriate conditions does provide just
21 punishment in this case.

22 *To Afford Adequate Deterrence to Criminal Conduct -*

23 Ms. Budagova does not need to be deterred from future criminal conduct.
24 She is of advanced age (74 y.o.), has no prior history of committing crimes and is
25 not a threat to society. Therefore, deterrence is not applicable here.
26
27
28

1 *To Protect the Public from Further Crimes of the Defendant -*

2 Ms. Budagova is not a threat to the public. Her advanced age and failing
3 health as well as her history of lawful behavior clearly makes her unthreatening
4 to the public.

5 *To Provide the Defendant with Needed Educational or Vocational*
6 *Training, Medical Care, or Other Correctional Treatment in the Most Effective*
7 *Manner -*

8 Due to Ms. Budagova's advanced age, failing health as well as her
9 education and employment history she does not require educational or vocational
10 training. She currently under doctors' care and receiving her necessary
11 medications and her health is stable. Accordingly, it is not necessary to
12 incarcerate her to achieve these objectives.

13 V.
14 CONCLUSION

15 For all of the above reasons, Ms. Budagova respectfully requests that this
16 Court impose a five year term of probation, including a condition of home
17 confinement and other appropriate conditions as determined by the Court.

18 Date: June 28, 2015

Respectfully submitted,

19
20 /s/ Dominic Cantalupo

21 DOMINIC CANTALUPO
22 Counsel for Defendant,
23 Elza Budagova
24
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26
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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 MIKE MIKAELIAN et al.,
17 Defendants.
18

No. CR 11-922(B)-DDP (15)

GOVERNMENT'S RESPONSE TO THE
DEFENDANT ELZA BUDAGOVA'S
OBJECTIONS TO PRESENTENCE
INVESTIGATION REPORT AND POSITION
WITH RESPECT TO SENTENCING;
EXHIBIT 7

Hearing Date: August 20, 2015
Hearing Time: 1:30 p.m.
Location: Courtroom of the
Hon. Dean D.
Pregerson

22 Plaintiff United States of America, by and through its counsel
23 of record, the United States Attorney for the Central District of
24 California, hereby files its Response to Defendant Elza Budagova's
25 (15) Objections to Presentence Investigation Report (CR 1097) and
26 Position with Respect to Sentencing (CR 1098).
27
28

1 The Government's Response is based on the PSR, the government's
2 sentencing position filed on March 30, 2015, the record of the trial
3 proceedings in this case, and any further evidence and argument that
4 the Court may permit.

5 Dated: August 4, 2015

Respectfully submitted,

6 EILEEN M. DECKER
United States Attorney

7 LAWRENCE S. MIDDELTON
8 Assistant United States Attorney
Chief, Criminal Division
9

10 /s/

11 LANA MORTON-OWENS
Assistant United States Attorney

12 Attorneys for Plaintiff
13 UNITED STATES OF AMERICA
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 On October 22, 2012, a jury convicted defendant Elza Budagova
4 ("defendant") of conspiracy to possess with intent to distribute
5 OxyContin, in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(C) and
6 conspiracy to commit health care fraud, in violation of 18 U.S.C.
7 § 1349. Defendant's convictions arose out of her participation as an
8 unlicensed medical professional at Lake Medical Group ("Lake Medical"
9 or the "Clinic") where defendant was responsible for generating
10 thousands of fraudulent medical files and prescriptions.

11 The United States Probation Office ("USPO") disclosed
12 defendant's PSR on December 30, 2014. The USPO calculated a total
13 offense level of 38, a criminal history category I, and a
14 corresponding Guidelines sentence of 235-262 months. (PSR ¶ 81). In
15 its disclosed recommendation letter, the USPO recommended a low-end
16 Guidelines sentence of 235 months.

17 On March 30, 2015, the government filed its response to the PSR
18 and sentencing position. (CR 1001 "Gov. Sent. Pos."). In that
19 submission, the government agreed with the PSR that defendant's total
20 offense level is 38. The government, however, recommended that due
21 to defendant's age and the totality of the circumstances of this
22 case, and despite defendant's integral role in both conspiracies,
23 defendant should be sentenced to a well below Guidelines sentence;
24 namely 78 months. (*Id.* at 1). The government's recommendation
25 represents a ten-level variance from defendant's advisory Guidelines
26 range.

27 On June 29, 2015, defendant filed her objections to the PSR (CR
28 1097 "Def. Objections") and sentencing position (CR 1098 "Def. Sent.

1 Pos."). Defendant objects to the USPO's calculation of her total
2 offense level by claiming defendant is responsible for only 500 of
3 the nearly 13,000 illegal OxyContin prescriptions. (Def. Objections
4 at 2). Defendant also objects that the PSR overstated her role in
5 the drug conspiracy. (Id.). Defendant finally makes various
6 corrections and objections to her employment history and medical
7 condition. (Id. at 2-3). In defendant's sentencing position,
8 defendant maintains that she should receive a reduction of five
9 levels based on her mitigating role in the drug conspiracy. (Def.
10 Sent. Pos. at 4-5). Defendant also argues that she should receive a
11 two-level safety-valve reduction, while acknowledging that to date
12 she has not complied with U.S.S.G. §§ 5C1.2(a)(5). (Id. at 3-4).
13 Defendant calculates a total offense level of 27, resulting in an
14 advisory Guidelines range pf 87-108 months. (Def. Sent. Pos. at 3-
15 4). Defendant then argues for a five-year probationary sentence,
16 claiming that her personal characteristics and role in the offense
17 justify a probationary sentence. (Id. at 7-10).

18 As set forth below, defendant's substantive objections to the
19 PSR are without merit. Defendant does not qualify for a minor role
20 adjustment. At this time, defendant is not safety valve eligible.
21 In sum, the USPO properly calculated defendant's total offense level
22 as 38, with an advisory Guidelines sentencing range of 235 to 293
23 months.

24 Defendant's requested probationary sentence provides inadequate
25 punishment and fails to advance any of the goals set forth in Section
26 3553(a). While the government submits that a substantial variance
27 from defendant's Guidelines range is appropriate, a probationary
28 sentence is not. Defendant was an essential member of the drug and

1 health care conspiracies from beginning to end. Unlike other
2 defendants, defendant did not abandon the conspiracy and leave the
3 Clinic; instead defendant was found writing out fraudulent
4 prescriptions when law enforcement raided the final Clinic location
5 nearly two years after she first joined in the conspiracies. Unlike
6 other defendants, she had actual medical training that provided her
7 insight into the harm she was causing and allowed her to perpetrate
8 the crimes. Unlike other defendants, defendant has yet to express
9 any acceptance of responsibility or remorse for the harm defendant
10 caused. Moreover, a probationary sentence would create unwarranted
11 sentencing disparity for similarly situated defendants; and more
12 specifically, defendants in this case. Defendant's age and health,
13 which appear to be the only factors to stand in mitigation, do not
14 justify a probationary sentence.

15 **II. EACH OF DEFENDANT'S SUBSTANTIVE OBJECTIONS TO THE PSR SHOULD BE**
16 **OVERRULED AS THE GOVERNMENT HAS MET ITS BURDEN TO ESTABLISH EACH**
ENHANCEMENT APPLIED BY THE UNITED STATES PROBATION OFFICE

17 This Court may rely on an unchallenged PSR at sentencing to find
18 by a preponderance of the evidence that the facts underlying a
19 sentencing enhancement have been established. See United States v.
20 Charlesworth, 217 F.3d 1155, 1160-61 (9th Cir. 2000) (holding that
21 unchallenged factual assertions in the PSR provides a preponderance
22 of the evidence for the application of an enhancement). When a
23 defendant raises objections to the PSR, "the district court is
24 obligated to resolve the factual dispute, and the government bears
25 the burden of proof." United States v. Showalter, 569 F.3d 1150,
26 1160 (9th Cir. 2009) (emphasis added) (citing United States v.
27 Ameline, 409 F.3d 1073, 1085-86 (9th Cir. 2005) (en banc); Fed. R.
28 Crim. P. 32(i)(3)(B) (requiring the district court to rule on

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ELZA BUDAGOVA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition For A Writ of *Certiorari* To The United States Court of Appeals
for the Ninth Circuit**

PROOF OF SERVICE

I, David A. Schlesinger, declare that on April 17, 2019, as required by Supreme Court Rule 29, I served Petitioner Elza Budagova's MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on counsel for Respondent by depositing an envelope containing the motion and the petition in the United States mail (Priority, first-class), properly addressed to him, and with first-class postage prepaid.

The name and address of counsel for Respondent is as follows:

The Honorable Noel J. Francisco, Esq.
Solicitor General of the United States
United States Department of Justice
950 Pennsylvania Ave., N.W., Room 5614
Washington, DC 20530-0001
Counsel for Respondent

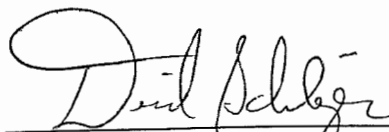
Additionally, I mailed a copy of the motion and the petition to my client,
Petitioner Elza Budagova., by depositing an envelope containing the documents in
the United States mail, postage prepaid, and sending it to the following address:

Elza Budagova
c/o Armen Shahbyza

Los Angeles, CA 90029

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 17, 2019

A handwritten signature in black ink, appearing to read "David Schlesinger", written over a horizontal line.

DAVID A. SCHLESINGER
Declarant