

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

TRACY JEAN-BAPTISTE

on behalf of herself and all others similarly situated,

Plaintiff,

**CLASS ACTION COMPLAINT
AND JURY DEMAND**

v.

A.D.M.E. INVESTMENT PARTNERS, LTD.
d/b/a OCEANSIDE EXTENDED CARE CENTER,
A.D.M.E. INVESTMENT CORPORATION and
A.D.M.E. REAL ESTATE, LLC

Defendants.

Tracy Jean-Baptiste (“Plaintiff”) on behalf of herself and a class of those similarly situated (“Other Similarly Situated Employees”), by way of Complaint against A.D.M.E. Investment Partners, Ltd. d/b/a Oceanside Extended Care Center, A.D.M.E. Investment Corporation and A.D.M.E. Real Estate, LLC (“Defendants”) by and through her counsel allege as follows:

NATURE OF THE ACTION

1. This is a class action for the recovery by Plaintiff and Other Similarly Situated Employees of the Defendants as a single employer of damages in the amount of 60 days’ pay and ERISA benefits by reason of Defendants’ violation of the Plaintiff’s rights under the Worker Adjustment and Retraining Notification Act of 1988 29 U.S.C. §§ 2101-2109 et. seq. (the “WARN Act”). Although the Plaintiff and the Other Similarly Situated Employees were nominally employed by Defendant, A.D.M.E. Investment Partners, Ltd. d/b/a Oceanside

Extended Care Center (“A.D.M.E. Partners”), pursuant to the WARN Act’s single employer rule, A.D.M.E. Investment Corporation (“A.D.M.E. Corporation”) and A.D.M.E. Real Estate, LLC (“A.D.M.E. Real Estate”) (collectively the “Defendants”), were also the Plaintiff’s and the Other Similarly Situated Employees “Employer” until they were terminated as part of, or as a result of a mass layoff and/or plant closing ordered by the Defendants on or about January 12, 2017 and thereafter. The Defendants violated the WARN Act by failing to give the Plaintiff and the Other Similarly Situated Employees of the Defendants at least 60 days’ advance written notice of termination, as required by the WARN Act. As a consequence, the Plaintiff and the Other Similarly Situated Employees of the Defendants are entitled under the WARN Act to recover from the Defendants their wages and ERISA benefits for 60 days, none of which has been paid.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1331 and 29 U.S.C § 2104 (a)(5).

3. The violations of the WARN Act alleged herein occurred in this District and more particularly in Miami Beach, Florida. Venue in this Court is proper pursuant to 28 U.S.C § 123 (b)(2).

THE PARTIES

4. Upon information and belief, at all relevant times, Defendant A.D.M.E. Partners was a limited partnership registered and incorporated in the state of Florida with its principal place of business located at 550 9th Street Miami Beach, Florida 33139.

5. Upon information and belief, at all relevant times, Defendant A.D.M.E. Corporation was a Florida corporation with its principal place of business located at 6865 N Lincoln Avenue, Lincolnwood, IL 60712.

6. Upon information and belief, at all relevant times, Defendant A.D.M.E. Real Estate was a Florida limited liability company with its principal place of business located at 6865 N Lincoln Avenue, Lincolnwood, IL 60712.

7. Defendants jointly maintained, owned, and operated a facility located at 550 9th Street Miami Beach, Florida 33139 (the "Facility").

8. Plaintiff and the Other Similarly Situated Employees were employed by Defendants at the Facility until their termination without cause on or about January 12, 2017 and thereafter at which time Defendants ordered a plant closing of the Facility.

9. Plaintiff was employed by Defendants as a single employer at the Facility until her layoff without cause on or about January 12, 2017.

10. Upon information and belief, approximately 252 persons were employed at the Facility by Defendants until their termination without cause on or about January 12, 2017 and thereafter.

11. Upon information and belief, Defendants, as a single employer, owned and operated the Facility until on or about January 12, 2017 and thereafter.

12. On or about January 12, 2017 and thereafter, Defendants, as a single employer, ordered the termination of the Plaintiff's employment together with the termination of all other employees who worked at or reported to the Facility as part of a plant closing as defined by the WARN Act for which they were entitled to receive 60 days advance written notice under the WARN Act.

CLASS ACTION ALLEGATIONS – 29 U.S.C. § 2104 (a)(5)

13. Pursuant to the WARN Act, 29 U.S.C. § 2104 (a)(5), the Plaintiff maintains this action on behalf of herself and on behalf of each of the Other Similarly Situated Employees.

14. Each of the Other Similarly Situated Employees is similarly situated to the Plaintiff in respect to his or her rights under the WARN Act.

15. Defendants, as a single employer, were required by the WARN Act to give the Plaintiff and the Other Similarly Situated Employees at least 60 days advance written notice prior to their terminations.

16. Prior to their terminations, neither the Plaintiff nor the Other Similarly Situated Employees received written notice that complied with the requirements of the WARN Act.

17. Defendants failed to pay the Plaintiff and the Other Similarly Situated Employees their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for sixty (60) days following their respective terminations and failed to make 401(k) contributions and provide them with health insurance coverage and other employee benefits.

CLASS ACTION ALLEGATIONS RULES 23 (a) and (b)

18. The Plaintiff brings this action on her own behalf and, pursuant to the Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of herself and the Other Similarly Situated Employees who worked at the Facility and were terminated as part of or as the reasonably foreseeable result of the plant closing ordered by the Defendants, as a single employer, on or about January 12, 2017 and thereafter (“the “Class”).

19. The persons in the Class identified above (“Class Members”) are so numerous that joinder of all Class Members is impracticable.

20. There are questions of law and fact common to the Class Members that predominate over any questions affecting only individual members.

21. The claims of the representative party is typical of the claims of the Class.

22. The representative party will fairly and adequately protect the interests of the class.

23. The Plaintiff has retained counsel competent and experienced in complex class action employment litigation.

24. A class action is superior to other available methods for the fair and efficient adjudication of this controversy—particularly in the contest of WARN Act litigation, where individual Plaintiff and Class Members may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant.

25. There are questions of law and fact common to the Class Members that predominate over any questions solely affecting individual members of the Class, including but not limited to:

- (a) Whether the Class Members were employees of the Defendants who worked at or reported to the Facility;
- (b) Whether Defendants, as a single employer, terminated the employment of the Class Members without cause on their part and without giving them 60 days advance written notice;
- (c) Whether the Defendants may rely the WARN Acts “unforeseeable business circumstances” or “Faltering company” defense.
- (d) Whether Defendants failure to provide 60 days notice should render them liable to the Class Members for 60 days pay and benefits.

CLAIM FOR RELIEF

26. At all relevant times, the Defendants employed 100 or more employees, exclusive of part-time employees, or employed 100 or more employees who in the aggregate worked at

least 4,000 hours per week exclusive of hours of overtime within the United States as defined by the WARN Act and employed more than 60 employees at the Facility.

27. At all relevant times, each of the Defendants were an “employer,” as that term is defined in 29 U.S.C. § 2101(a)(1) of the WARN Act and 20 C.F.R. § 639.3(a).

28. The Defendants constituted a “single employer” of the Plaintiff and the Class Members in that, among other things:

- (a) The Defendants shared common ownership, officers and control.
- (b) A.D.M.E. Corporation was the sole general partner of A.D.M.E. Partners.
- (c) A.D.M.E. Corporation’s conducted no other business other than to act as the general partner of A.D.M.E. Partners.
- (d) A.D.M.E. Real Estate was owned by Morris Esformes and Phillip Esformes.
- (e) A.D.M.E. Corporation’s sole Officers were Morris Esformes and Phillip Esformes.
- (f) Each of the Defendants had no other business other than running and operating the Facility.
- (g) Until September 2006, the building which housed the Facility was owned by A.D.M.E. Corporation.
- (h) On or about September 8, 2006, A.D.M.E. Corporation transferred title to the building which housed the Facility to Defendant A.D.M.E. Real Estate in consideration of the payment of ten dollars.
- (i) At all times, A.D.M.E. Real Estate engaged in no business other than owning the Facility.

(j) At all times relevant hereto, Phillip Esformes maintained sole control over all decisions made by A.D.M.E. Partners, A.D.M.E. Corporation and A.D.M.E. Real Estate, all to benefit himself.

(k) At all times relevant hereto, Phillip Esformes as the Vice President of A.D.M.E. Corporation and the Manager of A.D.M.E. Real Estate was the sole decision maker with respect to all matters related to the Facility and the employment of the class members.

(l) Upon information and belief, at all times relevant hereto, A.D.M.E. Partners, A.D.M.E. Corporation and A.D.M.E. Real Estate was run as though they were a single corporation by comingling funds of each together with his own funds, and failing to keep separate records for each entity, and failing to conduct corporate meetings, or keep any minutes or records of any meetings.

(m) Upon information and belief, transactions between A.D.M.E. Partners, A.D.M.E. Corporation and A.D.M.E. Real Estate, were not conducted on an arm's length basis.

(n) On July 21, 2016, the United States of America filed a criminal indictment against Phillip Esformes, a copy of which is annexed hereto as **Exhibit "A"**, and its contents incorporated herein by reference, alleging that Esformes used the Defendant in furtherance of a conspiracy to commit health care fraud, health care fraud, conspiracy to defraud the United States and pay and receive kickbacks, receipt of kickbacks in connection with a federal health care program, payment of kickbacks in connection with a federal health care program, conspiracy to commit money laundering, money laundering and obstruction of justice.

(o) On July 20, 2016, the United States of America filed an *ex parte* complaint against Phillip Esformes for a temporary restraining order and preliminary and

permanent injunction in connection with the violations in paragraph (m) above, a copy of which is attached hereto as **Exhibit “B”** and its contents incorporated herein by reference.

(p) On information and belief, the decision to shut down the Facility without providing proper WARN notice was made by all of the Defendants as a single employer.

29. On or about January 12, 2017 and thereafter, the Defendants, as a single employer, ordered the “plant closing” of the Facility as that term is defined by 29 U.S.C. § 2101(a).

30. The Plaintiff and the Class Members who were terminated by Defendants as a result of Defendants ordering the plant closing at the Facility on or about January 12, 2017 and thereafter were “affected employees” as defined by 29 U.S.C. § 2101(a)(5) of the WARN Act.

31. The plant closing at the Facilities resulted in “employment losses,” as that term is defined by the WARN Act for at least fifty (50) of Defendant’s employees as well as 33% of Defendant’s workforce at the Facilities, excluding “part-time employees,” as that term is defined by the WARN Act.

32. The Plaintiff and each of the Class Members are “aggrieved employees” of the Defendants as that term is defined in 29 U.S.C. § 2104 (a)(7).

33. Pursuant to Sections 2102 of WARN and 20 C.F.R. § 639.1 - § 639.10 et. seq., Defendants were required to provide at least 60 days prior written notice of the termination or notice as soon as practicable, to the affected employees, explaining why the sixty (60) days prior notice was not given.

34. Defendants failed to provide at least sixty (60) days prior notice to the Class Members terminations and also failed to provide notice prior to their terminations setting forth the basis for reduced notice as required by the WARN Act.

35. The Defendants failed to pay the Plaintiff and each of the Class Members their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 working days following their respective terminations, and failed to make the pension and 401(k) contributions, provide other employee benefits under ERISA, and pay their medical expenses for 60 calendar days from and after the dates of their respective terminations.

36. As a result of Defendants' failure to pay the wages, benefits and other monies as asserted above, the Aggrieved Employees were damaged in an amount equal to the sum of the Class Members unpaid wages, accrued holiday pay, accrued vacation pay, accrued sick leave pay and benefits which would have been paid for a period of sixty (60) calendar days after the date of the members' terminations.

WHEREFORE, the Plaintiff and Class Members demand judgment against the Defendants as follows:

- a. An amount equal to the sum of: unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay pension and 401(k) contributions and other ERISA benefits, for sixty (60) working days following the member employee's termination, that would have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act;
- b. Certification that, pursuant to Fed. R. Civ. P. 23 (a) and (b) and the WARN Act, 29 U.S.C §2104(a)(5), Plaintiff and the Class Members constitute a single class;
- c. Interest as allowed by law on the amounts owed under the preceding paragraphs;
- d. Appointment of the undersigned attorneys as Class Counsel;
- e. Appointment of Plaintiff as the Class Representatives and payment of reasonable compensation for her services as such;

f. The reasonable attorneys' fees and the costs and disbursements the Plaintiff incurs in prosecuting this action, as authorized by the WARN Act, 29 U.S.C. §2104(a)(6);

g. Such other and further relief as this Court may deem just and proper.

Dated: July 20, 2017

By: /s/ Brett M. Amron
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Florida Bar No. 105157
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Attorneys for Plaintiff

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS TRACY JEAN-BAPTISTE, on behalf of herself and all others similarly situated DEFENDANTS A.D.M.E. INVESTMENT PARTNERS, LTD. d/b/a OCEANSIDE EXTENDED CARE CENTER, A.D.M.E. INVESTMENT CORPORATION and A.D.M.E. REAL ESTATE, LLC

(b) County of Residence of First Listed Plaintiff Miami-Dade (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Brett M. Amron, BAST AMRON LLP, One Southeast Third Ave, Ste 1400, Miami, FL 33131, Telephone: 305-379-7904 Attorneys (If Known)

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Form with checkboxes for Basis of Jurisdiction (Federal Question, Diversity) and Citizenship of Principal Parties (Citizen of This State, Citizen of Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions

Large grid of checkboxes for Nature of Suit categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding [] 2 Removed from State Court [] 3 Re-filed (See VI below) [] 4 Reinstated or Reopened [] 5 Transferred from another district (specify) [] 6 Multidistrict Litigation Transfer [] 7 Appeal to District Judge from Magistrate Judgment [] 8 Multidistrict Litigation - Direct File [] 9 Remanded from Appellate Court []

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): Worker Adjustment and Retraining Notification Act of 1988 29 U.S.C. §§ 2101-2109 et. seq.

VIII. REQUESTED IN COMPLAINT: LENGTH OF TRIAL via days estimated (for both sides to try entire case)

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 [X] DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE: July 20, 2017 SIGNATURE OF ATTORNEY OF RECORD: /s/ Brett M. Amron

FOR OFFICE USE ONLY RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

TRACY JEAN-BAPTISTE, on behalf of herself and all others similarly situated

Plaintiff(s)

v.

Civil Action No.

A.D.M.E. INVESTMENT PARTNERS, LTD. d/b/a OCEANSIDE EXTENDED CARE CENTER, A.D.M.E. INVESTMENT CORPORATION and A.D.M.E. REAL ESTATE, LLC

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) A.D.M.E. INVESTMENT PARTNERS, LTD. d/b/a OCEANSIDE EXTENDED CARE CENTER INCORP BUSINESS SERVICES, REGISTERED AGENT 17888 67TH COURT NORTH LOXAHATCHEE, FL 33470

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Brett M. Amron BAST AMRON LLP One Southeast Third Ave Ste 1400 Miami, FL 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

TRACY JEAN-BAPTISTE, on behalf of herself and all others similarly situated

Plaintiff(s)

v.

Civil Action No.

A.D.M.E. INVESTMENT PARTNERS, LTD. d/b/a OCEANSIDE EXTENDED CARE CENTER, A.D.M.E. INVESTMENT CORPORATION and A.D.M.E. REAL ESTATE, LLC

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) A.D.M.E. INVESTMENT CORPORATION INCORP SERVICES, INC., REGISTERED AGENT 17888 67TH COURT NORTH LOXAHATCHEE, FL 33470

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Brett M. Amron BAST AMRON LLP One Southeast Third Ave Ste 1400 Miami, FL 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

TRACY JEAN-BAPTISTE, on behalf of herself and all others similarly situated

Plaintiff(s)

v.

A.D.M.E. INVESTMENT PARTNERS, LTD. d/b/a OCEANSIDE EXTENDED CARE CENTER, A.D.M.E. INVESTMENT CORPORATION and A.D.M.E. REAL ESTATE, LLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) A.D.M.E. REAL ESTATE, LLC JACOB BENGIO, REGISTERED AGENT 12221 WEST DIXIE HIGHWAY MIAMI, FL 33161

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Brett M. Amron BAST AMRON LLP One Southeast Third Ave Ste 1400 Miami, FL 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

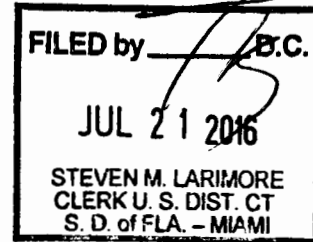
16-20549

CR - LENARD

Case No. _____

- 18 U.S.C. § 1349
- 18 U.S.C. § 1347
- 18 U.S.C. § 1035(a)(2)
- 18 U.S.C. § 371
- 42 U.S.C. § 1320a-7b(b)(1)(A)
- 42 U.S.C. § 1320a-7b(b)(2)(A)
- 18 U.S.C. § 1956(h)
- 18 U.S.C. § 1956(a)(1)(B)(i)
- 18 U.S.C. § 1503
- 18 U.S.C. § 2
- 18 U.S.C. § 981
- 18 U.S.C. § 982

/GOODMAN



UNITED STATES OF AMERICA

vs.

PHILIP ESFORMES,
ODETTE BARCHA, and
ARNALDO CARMOUZE,

Defendants.

_____ /

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times relevant to this Indictment,

The Health Insurance Programs

1. The Medicare Program (“Medicare”) was a federal health care program providing benefits to persons who were 65 or older or disabled. Medicare was administered by the United States Department of Health and Human Services (“HHS”) through its agency, the Centers for Medicare & Medicaid Services (“CMS”). Individuals who received benefits under Medicare were referred to as Medicare “beneficiaries.”

2. The Florida Medicaid Program (“Medicaid”) provided benefits to certain low-income individuals and families in Florida. Medicaid was administered by CMS and the Agency for Health Care Administration (“ACHA”). Medicare and Medicaid were each a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), and a “federal health care program,” as defined by Title 42, United States Code, Section 1320(a)-7(b)-f.

3. The Medicare program was divided into four “parts” that cover different services. Medicare Part A generally covers inpatient hospital services, home health and hospice care, and skilled nursing and rehabilitation care.

4. Subject to certain conditions, Medicare Part A covered up to 100 days of skilled nursing and rehabilitation care for a benefit period (*i.e.*, spell of illness) following a qualifying hospital stay of at least three consecutive days. 42 U.S.C. § 1395d(a)(2)(A); 42 C.F.R. § 409.61(b), (c).

5. The conditions that Medicare imposed on its Part A skilled nursing facility (“SNF”) benefit included: (1) that the patient required skilled nursing care or skilled rehabilitation services (or both) on a daily basis, (2) that the daily skilled services must be services that, as a practical matter, could only be provided in a skilled nursing facility on an inpatient basis, and (3) that the services were provided to address a condition for which the patient received treatment during a qualifying hospital stay or that arose while the patient was receiving care in a skilled nursing facility (for a condition treated during the hospital stay). 42 U.S.C. § 1395f(a)(2)(B); 42 C.F.R. § 409.31(b).

6. Medicare required that a physician or certain other practitioners certify that these conditions were met at the time of a patient’s admission to the nursing facility and to re-certify to the patient’s continued need for skilled rehabilitation therapy services at regular intervals

thereafter. *See* 42 U.S.C. § 1395f(a)(2)(B); Medicare General Information, Eligibility, and Entitlement Manual, Ch. 4, § 40.3.

7. To assist in the administration of Medicare Part A, CMS contracted with “fiscal intermediaries.” 42 U.S.C. § 1395h. Fiscal intermediaries, typically insurance companies, were responsible for processing and paying claims and cost reports.

8. Beginning in or around November 2006, Medicare Administrative Contractors began replacing both the carriers and fiscal intermediaries. *See* Fed. Reg. 67960, 68181 (Nov. 2006). The MACs generally acted on behalf of CMS to process and pay Part A (as well as Medicare Part B) claims and perform administrative functions on a regional level. *See* 42 § C.F.R. 421.5(b).

9. In Florida, First Coast Service Options, Inc. (“First Coast”) served as the fiscal intermediary and carrier until September 2008, at which time it was awarded a contract to serve as the MAC for the Florida region.

10. Providers who wished to be eligible to participate in Medicare Part A were requested to periodically sign an application form, CMS Form 855A. The application, which was required to be signed by an authorized representative of the provider, contained a certification that states:

I agree to abide by the Medicare laws, regulations, and program instructions that apply to this provider. The Medicare laws, regulations, and program instructions are available through the Medicare contractor. I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations and program instructions (including, but not limited to, the federal anti-kickback statute and the Stark law), and on the provider’s compliance with all applicable conditions of participation in Medicare.

11. CMS Form 855A contained additional certifications that the provider “will not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare

and will not submit claims with deliberate ignorance or reckless disregard of their truth or falsity.”

12. Every SNF cost report contained a “Certification” that must be signed by the chief administrator of the provider or a responsible designee of the administrator.

13. SNFs submitted the CMS-1450 electronically under Medicare Part A to their local fiscal intermediary or MAC, which in this case was First Coast. First Coast, on behalf of CMS, processed and paid the Medicare Part A claims.

14. In addition to the services covered under Medicare Part A, Medicare Part B provided coverage for, among other things, certain physician office and home visits, and other health care benefits, items, and services. The physician services at issue in this Indictment were covered by Part B.

15. An “Assisted Living Facility” or “ALF” was a facility licensed by the Florida Agency for Health Care Administration, whether operated for profit or not, which undertook through its ownership or management, to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who were not relatives of the owner or administrator. Medicaid covered a portion of certain costs associated with ALF stays.

The Defendants, Related Companies and Individuals

16. Defendant **PHILIP ESFORMES**, a resident of Miami-Dade County, controlled, owned, or operated the following SNFs and ALFs (collectively referred to as the “Esformes Network”), located throughout Miami-Dade County, in the Southern District of Florida, and elsewhere:

Facility Name	Type of Facility
Adar Associates/Dvar Tove, LLC	ALF
ADME Investment Partners LTD dba Oceanside Extended Care	SNF
Adirhu Associates LLC	ALF
Almovea Associates LLC dba North Dade Nursing and Rehabilitation Center	SNF
Ayintove Associates LLC dba Harmony Health Center	SNF
Courtyard Manor Retirement Living, Inc.	ALF
Eden Gardens LLC	ALF
Fair Havens Holding LLC/Fair Havens Center LLC	SNF/ALF
Flamingo Park Manor LLC/The Pointe	ALF
La Covadonga Retirement Living, Inc.	ALF
Lake Erswin LLC dba South Hialeah Manor/Interamerican	ALF
Kabirhu Associates LLC dba Golden Glades Nursing and Rehabilitation Center	SNF
Lauderhill Manor LLC	ALF
La Serena Retirement Living LLC/La Hacienda Gardens/Rainbow	ALF
Jene's Retirement Living, Inc./Jene's Retirement Investors Ltd dba North Miami Retirement Living	ALF
Sefardik Associates, LLC dba The Nursing Center at Mercy	SNF
Takifhu Associates LLC dba South Dade Nursing and Rehabilitation Center	SNF
Williamsburg Retirement Living	ALF

17. Defendant **ODETTE BARCHA**, a resident of Miami-Dade County, was the registered agent and director of Barcha Consulting, Inc. ("Barcha Consulting"), a Florida corporation, and was the Director of Outreach Programs at Hospital 1.

18. Defendant **ARNALDO CARMOUZE**, a resident of Miami-Dade County, was a physician's assistant ("PA") licensed in the State of Florida.

19. Guillermo Delgado was a resident of Miami-Dade County.

20. Gabriel Delgado was a resident of Miami-Dade County.

21. Diversified Investment Group of Miami, Inc., Diversified Medical Group, La

Covadonga Management Group LLC, and Preferred Providers Group, Inc., were Florida corporations owned and controlled by Guillermo and Gabriel Delgado (collectively “the Delgado Companies”).

22. Guillermo Delgado and Gabriel Delgado owned, controlled and/or operated Tender Touch Home Health LLC (“Tender Touch”) and St. Jude Health Care, Inc. (“St. Jude”), Florida corporations.

23. Nelson Salazar, a resident of Miami-Dade County, was the owner of Nursing Unlimited 2000, Inc. (“Nursing Unlimited”), a Florida corporation.

24. Jose Carlos Morales, a resident of Miami-Dade County, was the owner of Pharmovisa, Inc. and Pharmovisa, MD, Inc. (collectively “Pharmovisa”), Florida corporations.

25. Pharmacy 1, Pharmacy 2, and Pharmacy 3 were pharmacies in Miami-Dade County.

26. American Therapeutic Corporation and Greater Miami Behavioral Health Care Center, Inc. (“Greater Miami”) were partial hospitalization programs in Miami-Dade County.

27. Diagnostic Company 1, Diagnostic Company 2, Diagnostic Company 3, Diagnostic Company 4, and Diagnostic Company 5, were diagnostic companies in Miami-Dade and Broward Counties.

28. Laboratory 1 was a laboratory in Miami-Dade County.

29. Physician Vision Group 1 was a group of vision physicians in Miami-Dade County.

30. Physician 1 was a resident of Miami-Dade County and worked with **ARNALDO CARMOUZE**.

31. Escort 1 was a resident of Miami-Dade County.

32. Escort 2 was a resident of Miami-Dade County.

33. Escort 3 was a resident of Broward County.
34. Escort 4 was a resident of Miami-Dade County.
35. Escort 5 was a resident of Miami-Dade County.
36. Basketball Coach 1 was a resident of Houston, Texas, in Harris County.

COUNT 1
Conspiracy to Commit Health Care Fraud and Wire Fraud
(18 U.S.C. § 1349)

1. Paragraphs 1 through 16 and 18 through 36 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around January 2002, and continuing through in or around June 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

PHILIP ESFORMES
and
ARNALDO CARMOUZE,

did willfully, that is with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with Guillermo Delgado, Gabriel Delgado, Nelson Salazar, Jose Carlos Morales, each other, and others known and unknown to the Grand Jury, to commit certain offenses against the United States, that is:

a. to knowingly and willfully execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare and Medicaid, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, 1347; and

b. to knowingly and with the intent to defraud, devise and intend to devise a

scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and did knowingly transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

Purpose of the Conspiracy

3. It was a purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting false and fraudulent claims to Medicare and Medicaid for claims based on kickbacks and bribes; (b) submitting and causing the submission of false and fraudulent claims to Medicare and Medicaid for services that were medically unnecessary, that were not eligible for Medicare and Medicaid reimbursement, and that were never provided; (c) concealing the submission of false and fraudulent claims to Medicare and Medicaid; and (d) diverting proceeds of the fraud for the personal use and benefit of the defendants and their co-conspirators in the form of compensation and other remuneration.

Manner and Means

The manner and means by which the defendants and their co-conspirators sought to accomplish the purpose of the conspiracy included, among others, the following:

4. **PHILIP ESFORMES** owned and operated the Esformes Network, which gave him access to thousands of Medicare and Medicaid beneficiaries.

5. **PHILIP ESFORMES** and co-conspirators negotiated and paid kickbacks to **ARNALDO CARMOUZE** and other medical professionals in exchange for medically unnecessary referrals to the Esformes Network and co-conspirators.

6. **PHILIP ESFORMES**, Nelson Salazar, Guillermo Delgado, Gabriel Delgado, and others created and caused to be created false and fraudulent invoices for durable medical equipment, which were submitted to Diversified Medical Group for payment, and used the funds to pay kickbacks and bribes to physicians and other medical professionals in exchange for medically unnecessary referrals to the Esformes Network and co-conspirators.

7. On or about September 28, 2009, and again on or about January 1, 2012, **PHILIP ESFORMES** certified to Medicare that Harmony Health Center SNF would comply with all Medicare rules and regulations, including that he and Harmony Health Center SNF would refrain from violating the federal Anti-Kickback statute.

8. On or about February 2, 2011, and again on or about March 22, 2011, **PHILIP ESFORMES** certified to Medicare that Fair Havens SNF would comply with all Medicare rules and regulations, including that he and Fair Havens SNF would refrain from violating the federal Anti-Kickback statute.

9. Thereafter, **PHILIP ESFORMES** paid kickbacks to physicians in exchange for their referral of Medicare beneficiaries to be placed at Harmony Health Center, Fair Havens, and other SNFs.

10. **PHILIP ESFORMES** caused Harmony Health Center, Fair Havens, and other SNFs under his control to file claims to Medicare for skilled nursing services for patients that were obtained through the payment of kickbacks to physicians.

11. Co-conspirators paid **PHILIP ESFORMES** kickbacks, bribes, and other inducements, often through Guillermo and Gabriel Delgado, in exchange for referrals of Medicare and Medicaid beneficiaries that were part of the Esformes Network. These co-conspirator providers included: Tender Touch, St. Jude, Nursing Unlimited, Pharmovisa, Pharmacy 1, Pharmacy 2, Pharmacy 3, American Therapeutic Corporation, Greater Miami,

Diagnostic Company 1, Diagnostic Company 2, Diagnostic Company 3, Diagnostic Company 4, and Diagnostic Company 5, Laboratory 1, Physician Vision Group 1, and other providers.

12. **PHILIP ESFORMES** received the kickbacks and bribes from the co-conspirators which were disguised as: a) cash payments; b) payments to Escort 1, Escort 2, Escort 3, Escort 4, and Escort 5; c) charitable donations; d) payments to Basketball Coach 1 for coaching his son; and e) lease payments.

13. **PHILIP ESFORMES, ARNALDO CARMOUZE**, and their co-conspirators falsified, fabricated and altered, and caused the falsification, fabrication, and alteration of medical records to support services purportedly rendered at Hospital 1, the Esformes Network, and other health care providers operated by co-conspirators.

14. **ARNALDO CARMOUZE** signed what he knew to be falsified, fabricated, and altered prescriptions and medical records, including home health referrals, admissions at Hospital 1, discharge paperwork at Hospital 1, and office visit notes without proper supervision of a physician and, in many instances, without ever meeting with the Esformes Network beneficiary. **ARNALDO CARMOUZE** also prescribed medically unnecessary narcotics, including Oxycodone, without a license, to Esformes Network beneficiaries.

15. **PHILIP ESFORMES, ARNALDO CARMOUZE**, and others, through the use of interstate wires, submitted and caused the submission of false and fraudulent claims to Medicare and Medicaid in an approximate amount of \$1 billion for services that were medically unnecessary, never provided, and procured through the payment of kickbacks and bribes.

16. **PHILIP ESFORMES, ARNALDO CARMOUZE**, and others, through the use of interstate wires, caused Medicare to pay approximately \$464 million for services that were medically unnecessary, never provided, and procured through the payment of kickbacks and bribes.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2-3
Health Care Fraud
(18 U.S.C. § 1347)

1. Paragraphs 1 through 15, 18, and 30 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around January 2009, and continuing through in or around June 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

PHILIP ESFORMES
and
ARNALDO CARMOUZE,

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of Medicare.

Purpose of the Scheme and Artifice

3. It was a purpose of the scheme and artifice for the defendants and their accomplices to unlawfully enrich themselves by, among other things: (a) creating fake medical documentation for services that were not rendered, not necessary, or not provided under the proper supervision of a physician; (b) submitting and causing the submission of false and

fraudulent claims to Medicare; and (c) concealing the submission of false and fraudulent claims to Medicare.

The Scheme and Artifice

4. The allegations contained in paragraphs 4 through 16 of the Manner and Means section of Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice only as those allegations relate to **PHILIP ESFORMES** and **ARNALDO CARMOUZE**.

Acts in Execution or Attempted Execution of the Scheme and Artifice

5. On or about the dates set forth as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

PHILIP ESFORMES
and
ARNALDO CARMOUZE,

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of Medicare, that is, the defendant submitted and caused the submission of false and fraudulent claims to Medicare, as listed below:

Count	Beneficiary Name	Approx. Claim Receipt Date	Services Claimed	Approximate Amount Billed to Medicare	Claim Number
2	S.J.	9/1/11	Office Visit in ALF	\$95	598312167120160
3	S.J.	9/14/11	OXYCODONE HCL Prescription	\$62	30000958375508 19301930356

In violation of Title 18, United States Code, Sections 1347 and 2.

COUNTS 4-5
False Statements Relating to Health Care Matters
(18 U.S.C. § 1035(a)(2))

1. Paragraphs 1 through 15, 18, and 30 of the General Allegations section of the Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about the dates enumerated below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ARNALDO CARMOUZE,

in any matter involving a health care benefit program, knowingly and willfully made any materially false, fictitious, and fraudulent statements and representations, and made and used any materially false writing and document knowing the same to contain any materially false, fictitious and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items, and services, that is, the defendant signed prescriptions and physician visit treatment notes and other documents certifying that the defendant and Physician 1 provided services on the dates enumerated below, when in truth and in fact, and as the defendant then and there well knew, the defendant and Physician 1 did not provide those services on those dates:

Count	Beneficiary Name	Approx. Claim Receipt Date	Services Claimed	Approximate Amount Billed to Medicare	Claim Number
4	S.J.	9/1/11	Office Visit in ALF	\$95	598312167120160
5	S.J.	9/14/11	OXYCODONE HCL Prescription	\$62	30000958375508 19301930356

In violation of Title 18, United States Code, Sections 1035(a)(2) and 2.

COUNT 6

**Conspiracy to Defraud the United States and Pay and Receive Health Care Kickbacks
(18 U.S.C. § 371)**

1. Paragraphs 1 through 36 of the General Allegations and 4 through 16 of the manner and means section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around January 2002, and continuing through in or around June 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**PHILIP ESFORMES,
ODETTE BARCHA,
and
ARNALDO CARMOUZE,**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with Guillermo Delgado, Gabriel Delgado, Nelson Salazar, Jose Carlos Morales, each other, and others known and unknown to the Grand Jury:

a. to defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration and oversight of the Medicare and Medicaid programs, in violation of Title 18, United States Code, Section 371, and to commit certain offenses against the United States, that is:

b. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A), by knowingly and willfully offering and paying remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to any person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a federal health care program, that is, Medicare and Medicaid;

c. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A), by knowingly and willfully soliciting and receiving remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring an individual to a person for the furnishing and arranging for the furnishing of an item and service for which payment may be made in whole and in part under a federal health care program, that is, Medicare and Medicaid; and

d. to violate Title 42, United States Code, 1320a-7b(b)(1)(B), by knowingly and willfully soliciting and receiving remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, leasing, ordering and arranging for and recommending purchasing, leasing, and ordering any good, facility, and service, and item for which payment may be made in whole and in part under a Federal health care program, that is, Medicare and Medicaid.

Purpose of the Conspiracy

3. It was a purpose of the conspiracy for **PHILIP ESFORMES, ODETTE BARCHA, ARNALDO CARMOUZE**, and their co-conspirators, to unlawfully enrich themselves by: (1) offering, paying, soliciting, and receiving kickbacks and bribes to ensure that Medicare and Medicaid beneficiaries would serve as patients in the Esformes Network and co-conspirator providers; and (2) submitting and causing the submission of claims to Medicare and

Medicaid for medical items and services purportedly provided to these recruited beneficiaries.

Manner and Means

The manner and means by which the defendants and their co-conspirators sought to accomplish the purpose of the conspiracy included, among others, the following:

4. **PHILIP ESFORMES** paid and caused the payment of kickbacks and bribes to physicians in exchange for their referrals to the Esformes Network.

5. **PHILIP ESFORMES**, Nelson Salazar, Guillermo Delgado, Gabriel Delgado, and other created and caused to be created false and fraudulent invoices for durable medical equipment, which were submitted to Diversified Medical Group for payment, and used the funds to pay kickbacks and bribes to physicians and other medical professionals in exchange for medically unnecessary referrals to the Esformes Network and co-conspirators.

6. **PHILIP ESFORMES**, through shell companies owned and controlled by Guillermo and Gabriel Delgado, caused the payment of kickbacks and bribes to **ARNALDO CARMOUZE** in exchange for patient referrals to the Esformes Network and co-conspirators. In order to conceal these kickback payments, Guillermo and Gabriel Delgado, at **ESFORMES'** direction, signed checks made payable to **CARMOUZE's** girlfriend.

7. **PHILIP ESFORMES**, through a shell company owned and/or controlled by Gabriel Delgado, caused the payment of kickbacks to **ODETTE BARCHA** via checks made payable to "Barcha Consulting" or her boyfriend.

8. **ODETTE BARCHA** cashed checks from Gabriel Delgado and then used the cash to pay physicians for referrals to the Esformes Network.

9. **ODETTE BARCHA** recruited physicians who worked at Hospital 1 and paid those physicians to refer patients to **PHILIP ESFORMES'** SNFs.

10. The co-conspirators paid **PHILIP ESFORMES** kickbacks, bribes, and other inducements, often through Guillermo and Gabriel Delgado, in exchange for referrals of Medicare and Medicaid beneficiaries that were part of the Esformes Network. These co-conspirator providers included: Tender Touch, St. Jude, Nursing Unlimited, Pharmovisa, Pharmacy 1, Pharmacy 2, Pharmacy 3, American Therapeutic Corporation, Greater Miami, Diagnostic Company 1, Diagnostic Company 2, Diagnostic Company 3, Diagnostic Company 4, and Diagnostic Company 5, Laboratory 1, and Physician Vision Group 1.

11. **PHILIP ESFORMES** received the kickbacks and bribes from the co-conspirators which were disguised as: a) cash payments; b) payments to Escort 1, Escort 2, Escort 3, Escort 4, and Escort 5; c) charitable donations; d) payments to Basketball Coach 1 for coaching his son; and e) lease payments.

12. Medicare and Medicaid made payments to the Esformes Network and co-conspirators based upon claims for medical items and services purportedly provided to Medicare and Medicaid beneficiaries.

Overt Acts

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one of the co-conspirators committed and caused to be committed in Miami-Dade County, in the Southern District of Florida, and elsewhere, at least one of the following overt acts, among others:

1. On or about July 7, 2010, **PHILIP ESFORMES** caused check number 9457 from Diversified Medical Group's bank account ending in x5606, in the approximate amount of \$1,500, to be deposited into Charity 1's bank account for the benefit of **ESFORMES'** father.

2. On or about November 12, 2011, **ARNALDO CARMOUZE** caused check number 3001 from Diversified Investment Group of Miami, Inc. bank account ending in x6837,

in the approximate amount of \$1,250, to be deposited into his girlfriend's bank account for his benefit.

3. On or about April 2, 2012, **PHILIP ESFORMES** caused check number 1464 from the Fair Havens SNF bank account ending in x7170, in the approximate amount of \$11,988, to be deposited into Diversified Medical Group bank account ending in x0205.

4. On or about April 2, 2012, **PHILIP ESFORMES** caused check number 23919 from the Oceanside Extended Care SNF bank account ending in x3409, in the approximate amount of \$11,514, to be deposited into the Diversified Medical Group bank account ending in x0205.

5. On or about April 2, 2012, **PHILIP ESFORMES** caused check number 1255 from the Harmony Health SNF bank account ending in x0102, in the approximate amount of \$28,382, to be deposited into the Diversified Medical Group bank account ending in x5605.

6. On or about April 2, 2012, **PHILIP ESFORMES** caused check number 17661 from The Nursing Center at Mercy SNF bank account ending in x1238, in the approximate amount of \$17,877, to be deposited into the Diversified Medical Group bank account ending in x0205.

7. On or about June 5, 2012, **ODETTE BARCHA** caused check number 1065 from Preferred Providers Group, Inc.'s bank account ending in x4668, in the approximate amount of \$3,500, to be deposited into her boyfriend's account for her benefit.

8. On or about August 1, 2012, **ODETTE BARCHA** caused check number 1219 from Diversified Medical Group's bank account ending in x4668, in the approximate amount of \$1,500, to be deposited into her boyfriend's bank account for her benefit.

9. On or about February 2, 2014, **PHILIP ESFORMES** reserved hotel room 1401 for himself at the Ritz-Carlton in Orlando, Florida.

10. On or about February 2, 2014, Gabriel Delgado paid and arranged for Escort 1 to be picked up in a limousine at her residence in Miami, Florida, transported to Miami International Airport, flown to Orlando on an American Airlines flight, picked up in a limousine at the Orlando airport, and transported to Room 1454 at the Ritz-Carlton in Orlando, Florida.

11. On or about February 2, 2014, **PHILIP ESFORMES** met with Escort 1 at the Ritz-Carlton in Orlando.

12. On or about February 2, 2014, **PHILIP ESFORMES** funded the travel and transportation for Escort 1 with bribes and kickbacks he received from co-conspirators.

13. On or about February 5, 2014, **PHILIP ESFORMES** caused Escort 1 to cash check number 1314, in the approximate amount of \$500, from Preferred Providers Group, Inc.'s bank account ending x4668.

14. On or about February 13, 2014, **PHILIP ESFORMES** reserved Room 1401 for himself at the Ritz-Carlton in Orlando, Florida.

15. On or about February 13, 2014, Gabriel Delgado paid and arranged for Escort 2 to be flown to Orlando, Florida on an American Airlines flight, picked up in a limousine at the Orlando airport, and transported to Room 1445 at the Ritz-Carlton in Orlando, Florida.

16. On or about February 13, 2014, **PHILIP ESFORMES** met with Escort 2 at the Ritz-Carlton in Orlando.

17. On or about February 13, 2014, **PHILIP ESFORMES** funded the travel and transportation for Escort 2 with bribes and kickbacks he received from co-conspirators.

18. On or about May 6, 2014, **PHILIP ESFORMES** caused check number 1356 from Preferred Providers Group, Inc.'s bank account ending in x4668, in the approximate amount of \$3,500, to be deposited into Basketball Coach 1's bank account.

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

COUNTS 7-9
**Receipt of Kickbacks in Connection with a
Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(1)(A))**

1. Paragraphs 1 through 16, 18 through 30, and 36 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. On or about the dates set forth below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

PHILIP ESFORMES
and
ARNALDO CARMOUZE,

did knowingly and willfully solicit and receive remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check, as set forth below, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a federal health care program, that is, Medicare, as set forth below:

Count	Defendant	Approximate Date of Payment	Approximate Amount	Description
7	ARNALDO CARMOUZE	November 12, 2011	\$1,250	Diversified Investment Group of Miami, Inc. Check number 3001
8	PHILIP ESFORMES	February 5, 2014	\$500	Check number 1314 from Preferred Providers Group, Inc. bank account ending in x4668 made payable to Escort 1
9	PHILIP ESFORMES	May 6, 2014	\$3,500	Preferred Providers Group, Inc. check number 1356 made payable to Basketball Coach 1

In violation of Title 42, United States Code, Section 1320a-7b(b)(1)(A) and Title 18, United States Code, Section 2.

COUNTS 10-15

**Payment of Kickbacks in Connection with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(2)(A))**

1. Paragraphs 1 through 17, and 19 through 29 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.
2. On or about the dates enumerated below as to each count, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

PHILIP ESFORMES
and
ODETTE BARCHA,

did knowingly and willfully offer and pay remuneration, that is, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check, as set forth below, to a person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part by a federal health care program, that is, Medicare, as set forth below:

Count	Defendant	Approximate Date of Payment	Approximate Amount	Description
10	PHILIP ESFORMES	April 2, 2012	\$11,988	Fair Havens SNF check number 1464 from bank account ending in x7170 deposited into the Diversified Medical Group bank account to be paid to physicians
11	PHILIP ESFORMES	April 2, 2012	\$11,514	Check number 23919 from the Oceanside Extended Care SNF bank account ending in x3409 deposited into the Diversified Medical Group bank account to be paid to physicians
12	PHILIP ESFORMES	April 2, 2012	\$28,382	Check number 1255 from the Harmony Health SNF bank account ending in x0102 deposited into the Diversified Medical Group bank account to be paid to physicians
13	PHILIP ESFORMES	April 2, 2012	\$17,877	Check number 17661 from The Nursing Center at Mercy bank account ending in x1238 deposited into the Diversified Medical Group bank account to be paid to physicians
14	PHILIP ESFORMES and ODETTE BARCHA	June 5, 2012	\$3,500	Check number 1065 from Preferred Providers Group, Inc. account ending in x4668 deposited into A.H.'s bank account
15	PHILIP ESFORMES and ODETTE BARCHA	August 1, 2012	\$1,500	Check number 1219 from Diversified Medical Group account ending in x4668 deposited into A.H.'s bank account

In violation of Title 42, United States Code, Section 1320a-7b(b)(2)(A) and Title 18, United States Code, Section 2.

COUNT 16
Conspiracy to Commit Money Laundering
(18 U.S.C. § 1956(h))

1. Paragraphs 1 through 36 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around January 2002, to in or around June 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

PHILIP ESFORMES,
ODETTE BARCHA,
and
ARNALDO CARMOUZE,

did knowingly and willfully combine, conspire, confederate, and agree with each other and others known and unknown to the Grand Jury, to commit certain offenses against the United States, that is, to knowingly conduct a financial transaction affecting interstate and foreign commerce, which financial transaction involved the proceeds of specified unlawful activity, knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, and knowing that the transaction was designed, in whole and in part, to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

It is further alleged that the specified unlawful activities are the receipt of kickbacks in connection with a federal health care program, in violation of Title 42, United States Code, Section 1320a-7b(b)(1)(A), and conspiracy to commit health care fraud, in violation of Title 18, United States Code, Section 1349.

All in violation of Title 18, United States Code, Section 1956(h).

COUNTS 17-25
Money Laundering
(18 U.S.C. § 1956(a)(1)(B)(i))

1. Paragraphs 1 through 36 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about the dates set forth below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

PHILIP ESFORMES,
ODETTE BARCHA,
 and
ARNALDO CARMOUZE,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, which financial transaction involved the proceeds of specified unlawful activity, knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, and knowing that the transaction was designed, in whole and in part, to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity, as set forth below:

Count	Defendant	Approximate Date of Payment	Approximate Amount	Description
17	PHILIP ESFORMES and ARNALDO CARMOUZE	November 12, 2011	\$1,250	Diversified Investment Group of Miami, Inc. Check #3001 made payable to E.M.
18	PHILIP ESFORMES	April 2, 2012	\$11,988	Fair Havens SNF check #1464 from bank account ending in x7170 deposited into the Diversified Medical Group bank account

Count	Defendant	Approximate Date of Payment	Approximate Amount	Description
19	PHILIP ESFORMES	April 2, 2012	\$11,514	Check number 23919 from the Oceanside Extended Care SNF bank account ending in x3409 deposited into the Diversified Medical Group bank account
20	PHILIP ESFORMES	April 2, 2012	\$28,382	Check number 1255 from the Harmony Health SNF bank account ending in x0102 deposited into the Diversified Medical Group bank account
21	PHILIP ESFORMES	April 2, 2012	\$17,877	Check number 17661 from The Nursing Center at Mercy bank account ending in x1238 deposited into the Diversified Medical Group bank account
22	PHILIP ESFORMES and ODETTE BARCHA	June 5, 2012	\$3,500	Check number 1065 from Preferred Providers Group, Inc. account ending in x4668 made payable to A.H.
23	PHILIP ESFORMES and ODETTE BARCHA	August 1, 2012	\$1,500	Check number 1219 from Diversified Medical Group account ending in x4668 made payable to A.H.
24	PHILIP ESFORMES	February 5, 2014	\$500	Check number 1314 from Preferred Providers Group, Inc. bank account ending in x4668 made payable to Escort 1
25	PHILIP ESFORMES	May 6, 2014	\$3,500	Preferred Providers Group, Inc. check number 1356 made payable to Coach 1

It is further alleged that the specified unlawful activities are receipt of kickbacks in connection with a federal health care program, in violation of Title 42, United States Code, Section 1320a-7b(b)(1)(A), and conspiracy to commit health care fraud, in violation of Title 18, United States Code, Section 1349.

In violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2.

COUNT 26
Obstruction of Justice
(18 U.S.C. § 1503)

In or around June 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

PHILIP ESFORMES,

did corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede, the due administration of justice by funding Guillermo Delgado's flight from the United States to avoid trial in *United States v. Guillermo Delgado et. al*, Case No. 14-CR-20359-Martinez.

In violation of Title 18, United States Code, Sections 1503 and 2.

COUNT 27
Obstruction of Justice
(18 U.S.C. § 1503)

In or around June 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

PHILIP ESFORMES,

did corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede, the due administration of justice by creating false affidavits for Guillermo and Gabriel Delgado, stating that **PHILIP ESFORMES** was not involved in the commission of health care fraud, to be used in the proceeding, *United States v. Guillermo Delgado et. al*, Case No. 14-CR-20359-Martinez.

In violation of Title 18, United States Code, Sections 1503 and 2.

COUNT 28
Obstruction of Justice
(18 U.S.C. § 1503)

In or around June 2016, in Miami-Dade County, in the Southern District of Florida and elsewhere, the defendant,

ODETTE BARCHA,

did corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede, the due administration of justice by creating sham medical director contracts for Hospital 1, to conceal the fact that **ODETTE BARCHA** paid physicians kickbacks for referrals to Hospital 1 and the Esformes Network, and providing those sham medical director contracts to the Department of Justice in response to a Grand Jury subpoena.

In violation of Title 18, United States Code, Sections 1503 and 2.

FORFEITURE
(18 U.S.C. §§ 981 and 982)

1. The allegations of this Indictment, including the General Allegations section, are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of certain property in which one or more of the defendants, **PHILIP ESFORMES, ODETTE BARCHA, and ARNALDO CARMOUZE,** have an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 371, and/or a violation of, or a conspiracy to violate, Title 18, United States Code, Section 1035, Section 1343, Section 1347, and/or Title 42, United States Code, Section 1320a-7b(b), as alleged in this Indictment, the defendant so convicted shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, that

constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violation.

3. Upon conviction of a violation of, or a conspiracy to violate, Title 18, United States Code, Section 1956(a), as alleged in this Indictment, the defendant so convicted shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(1), any property, real or personal, that is involved in the offense, or any property traceable to such property.

4. Upon conviction of a violation of Title 18, United States Code, Section 1503, as alleged in this Indictment, the defendant so convicted shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violation.

5. The property which is subject to forfeiture includes, but is not limited to, the following:

(a) Forfeiture Money Judgments: A sum of money equal in value to the following, for which the United States will seek entry as a forfeiture money judgment against the defendants, jointly and severally, where applicable, as part of their respective sentence in this case:

1. The property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the federal health care offenses, as defined in Title 18, United States Code, Section 24, as alleged in this Indictment;

2. The property, real or personal, that was involved in the violations of, or the conspiracy to violate, Title 18, United States Code, Section 1956(a)(1)(B)(i), as alleged in this Indictment, or any property traceable to such property; and

3. The property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the violation of Title 18, United States Code, Section 1503, as alleged in this Indictment.

(b) Real Property: The real property, together with all appurtenances, improvements and attachments, therein and/or thereon, which are known and numbered as follows:

- (1) 5077 N. Bay Road, Miami Beach, Florida 33140;
- (2) 5069 N. Bay Road, Miami Beach, Florida 33140;
- (3) 980 W. 48th Street, Miami Beach, Florida 33140;
- (4) 180 E. Pearson Unit 7201, Chicago, Illinois 60611;
- (5) 6894 S. Clyde Avenue 59, Chicago, Illinois 60649; and
- (6) 9427 Sawyer Street, Los Angeles, California 90035.

(c) Personal Property: All principal, deposits, interest, dividends, and/or any other amounts credited to the following:

1. Account number 005487691516 held at Bank of America, N.A. in the name of Sherri Beth Esformes and Philip Esformes;
2. Account number 898049003513 held at Bank of America, N.A. in the name of Sherri Beth Esformes & Philip Esformes;
3. Account number 0036 7620 9546 held at Bank of America, N.A. in the name of Philip Esformes & Julie Betancourt;
4. Account number 003447083409 held at Bank of America, N.A. in the name of ADME DBA Oceanside Extended Care;
5. Account number 5801046102 held at Bank of America, N.A. in the name of Ayintove Associates DBA Harmony Health Center;

6. Account number 8666087170 held at Bank of America, N.A. in the name of Fair Haven LLC;

7. Account number 605575 held at 1st Equity Bank, N.A. in the name of Philip Esformes;

8. Account number 102747 held at 1st Equity Bank, N.A. in the name of Sherri Esformes, Jason Tennenbaum, or Philip Esformes;

9. Account number 311901 held at 1st Equity Bank, N.A. in the name of Sherri Esformes and Philip Esformes;

10. Account number 204735 held at 1st Equity Bank, N.A. in the name of Philip Esformes Inc. (C/O Norman Knopf);

11. Account number 503456 held at 1st Equity Bank, N.A. in the name of Sherri Esformes and Philip Esformes (Special Account Tax Escrow);

12. Account number 209882 held at 1st Equity Bank, N.A. in the name of Philip Esformes Inc.;

13. Account number 312320 held at 1st Equity Bank, N.A. in the name of Philip Esformes Inc. (Pension Plan and Trust);

14. Account number 606212 held at 1st Equity Bank, N.A. in the name of Philip Esformes, Sherri Esformes, Alvin Norman Knopf (FBO Sherri and Philip Esformes);

15. Account number 454362 held at 1st Equity Bank, N.A. in the name of Philip Esformes Inc. Pension Plan;

16. Account number 507858 held at 1st Equity Bank, N.A. in the name of Philip Esformes, Julie Betancourt Charity Account;

17. Account number 505872 held at 1st Equity Bank, N.A. in the name of Philip Esformes and Sherri Esformes;

18. Account number 5050265956 held at FirstMerit Bank, N.A. in the name of Philip Esformes, Inc.;

19. Account number 901021308783 held at FirstMerit Bank, N.A. in the name of Philip Esformes or Alvin Norman Knopf;

20. Account number 1560024295 held at MB Financial Bank, N.A. in the name of Philip Esformes or Alvin N Knopf;

21. Account number 1560001283 held at MB Financial Bank, N.A. in the name of Sefardik DBA Nursing Home at Mercy;

22. Account number 0002412024 held at The Private Bank, N.A. in the name of Almovea Associates (DBA North Dade Nursing and Rehab Center) - Deposit Account;

23. Account number 0002413948 held at The Private Bank, N.A. in the name of Almovea Associates (DBA North Dade Nursing and Rehab Center) - Operating Account;

24. Account number 0002369785 held at The Private Bank, N.A. in the name of Adirhu Associates LLC;

25. Account number 0002369727 held at The Private Bank, N.A. in the name of Kabirhu Associates LLC - Daisa Account;

26. Account number 0002369777 held at The Private Bank, N.A. in the name of Kabirhu Associates, LLC;

27. Account number 0002369735 held at The Private Bank, N.A. in the name of Takifhu Associates LLC, Gramercy Park Nursing Center - Daisa Account;

28. Account number 0002369793 held at The Private Bank, N.A. in the name of Takifhu Associates LLC, Gramercy Park Nursing Center;

29. Account number 110011129 held at Optimum Bank, N.A. in the name of Kabirhu Associates LLC DBA Golden Glades Nursing & Rehabilitation Center;

30. Account number 110012135 held at Optimum Bank, N.A. in the name of Kabirhu Associates LLC DBA Golden Glades Nursing & Rehabilitation Center;

31. Account number 110011137 held at Optimum Bank, N.A. in the name of Takifhu Associates LLC DBA South Dade Nursing & Rehabilitation Center;


32. Account number 110012143 held at Optimum Bank, N.A. in the name of Takifhu Associates LLC DBA South Dade Nursing & Rehabilitation Center;

33. Account number 110011145 held at Optimum Bank, N.A. in the name of Adirhu Associates LLC C/O Donna Prieto;

34. Account number 16021230 held at National Securities Bank, N.A. in the name of Philip Esformes Inc. Pension X1230;

35. Account number NAV-036112 held at in National Securities Bank, N.A. the name of Sherri Esformes X6112; and

36. Account number NAV-008990 held at National Securities Bank, N.A. in the name of Philip Esformes X8990. EY

37. ACCOUNT NUMBER 606296 HELD AT 1ST EQUITY BANK, N.A., IN THE NAME OF PHILIP ESFORMES. 

- (d) Personal effects: One (1) Greubel Forsey Technique timepiece (ALDC No. 14).
- (e) Substitute Property: If any of the property described above in paragraphs 2

through 5 of these Forfeiture Allegations, as a result of any act or omission of a defendant:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- 4. has been substantially diminished in value; or

5. has been commingled with other property which cannot be divided without difficulty, the United States of America shall be entitled to criminal forfeiture of any other property of the defendants, pursuant to Title 21, United States Code, Section 853(p), up to the value of the property described above in subparagraphs (1) through (5), as applicable. The property which is subject to criminal forfeiture as substitute property includes, but is not limited to, the following:

Substitute Personal Property:

- (1) One (1) 1968 Silver Ford (VIN 8R02S116990); and
- (2) One (1) 2014 Black Piaggio (VIN ZAPM459L0E5802248).

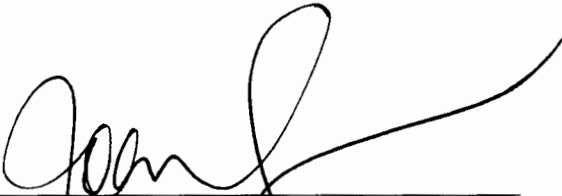
Substitute Real Property: The real property, together with all appurtenances, improvements and attachments, therein and/or thereon, which are known and numbered as follows:

- (1) 201 Curtiss Parkway, Miami, Florida 33166;
- (2) 240, 250 and 260 East 5 Street, Hialeah, Florida 33010;
- (3) 1595 NE 145 Street, Miami, Florida 33161;
- (4) 3051 E. 4 Avenue, Hialeah, Florida 33010;
- (5) 59 E 7 Street, 67 E. 7 Street and 75 E. 7 Street, Hialeah, Florida 33010;
- (6) 130 W. 28 Street, 140 W. 28 Street, 150 W. 28 Street, 160 W. 28 Street, 141 W. 27 Street, Hialeah, Florida 33010;
- (7) 550 9 Street, Miami Beach, Florida 33139; and
- (8) 1221 W. Dixie Highway, Miami, Florida 33161.

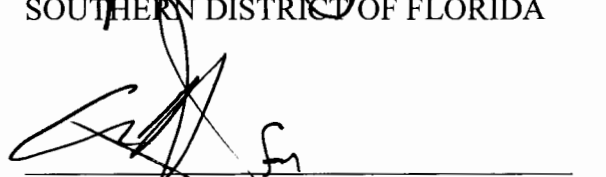
All pursuant to Title 18, United States Code, Sections 982(a)(1) and (a)(7), Title 18, United States Code, Section 981(a)(1)(C), as made applicable by Title 28, United States Code, Section 2461(c), and the procedures set forth at Title 21, United States Code, Section 853, as made applicable by Title 18, United States Code, Section 982(b).

A TRUE BILL 


F



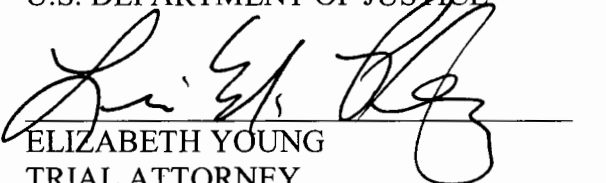
WIFREDO A. FERRER
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA



JOSEPH BEEMSTERBOER
DEPUTY CHIEF
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE



ALLAN J. MEDINA
ASSISTANT CHIEF
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE



ELIZABETH YOUNG
TRIAL ATTORNEY
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

PHILIP ESFORMES, et al.,

Defendants.

Superseding Case Information:

Court Division: (Select One)

New Defendant(s) Yes _____ No _____
Number of New Defendants _____
Total number of counts _____

X Miami _____ Key West _____
FTL _____ WPB _____ FTP _____

I do hereby certify that:

- I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
- I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
- Interpreter: (Yes or No) No
List language and/or dialect _____
- This case will take 15 days for the parties to try.
- Please check appropriate category and type of offense listed below:

(Check only one)	(Check only one)
I 0 to 5 days _____	Petty _____
II 6 to 10 days _____	Minor _____
III 11 to 20 days <u> X </u>	Misdem. _____
IV 21 to 60 days _____	Felony <u> X </u>
V: 61 days and over _____	

6. Has this case been previously filed in this District Court? (Yes or No) No

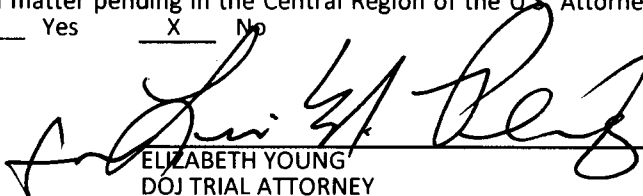
If yes: Judge: Case No. _____
(Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No) No

If yes: Magistrate Case No. _____
Related Miscellaneous numbers: _____
Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

- Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? _____ Yes X No
- Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? _____ Yes X No


 ELIZABETH YOUNG
 DOJ TRIAL ATTORNEY
 Court ID No. A5501858

*Penalty Sheet(s) attached

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: PHILIP ESFORMES

Case No: _____

Count #: 1

Conspiracy to Commit Health Care Fraud and Wire Fraud

Title 18, United States Code, Section 1349

* Max. Penalty: Twenty (20) years' imprisonment

Counts #: 2-3

Health Care Fraud

Title 18, United States Code, Section 1347

* Max. Penalty: Ten (10) years' imprisonment as to each count

Count #: 6

Conspiracy to Defraud the United States and Pay and Receive Health Care Kickbacks

Title 18, United States Code, Section 371

* Max. Penalty: Five (5) years' imprisonment

Counts #: 8-9

Receipt of Kickbacks in Connection with a Federal Health Care Program

Title 42, United States Code, Section 1320a-7b(b)(1)(A)

* Max. Penalty: Five (5) years' imprisonment as to each count

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: PHILIP ESFORMES

Case No: _____

Counts #: 10-15

Payment of Kickbacks in Connection with a Federal Health Care Program

Title 42, United States Code, Section 1320a-7b(b)(2)(A)

* Max. Penalty: Five (5) years' imprisonment as to each count

Count #: 16

Conspiracy to Commit Money Laundering

Title 18, United States Code, Section 1956(h)

* Max. Penalty: Twenty (20) years' imprisonment

Counts #: 17-25

Money Laundering

Title 18, United States Code, Section 1956(a)(1)(B)(i)

* Max. Penalty: Twenty (20) years' imprisonment as to each count

Counts #: 26-27

Obstruction of Justice

Title 18, United States Code, Section 1503

* Max. Penalty: Ten (10) years' imprisonment as to each count

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: ODETTE BARCHA

Case No: _____

Count #: 6

Conspiracy to Defraud the United States and Pay and Receive Health Care Kickbacks

Title 18, United States Code, Section 371

*** Max. Penalty:** Five (5) years' imprisonment

Counts #: 14-15

Payment of Kickbacks in Connection with a Federal Health Care Program

Title 42, United States Code, Section 1320a-7b(b)(2)(A)

*** Max. Penalty:** Ten (10) years' imprisonment as to each count

Count #: 16

Conspiracy to Commit Money Laundering

Title 18, United States Code, Section 1956(h)

*** Max. Penalty:** Twenty (20) years' imprisonment

Counts #: 22-23

Money Laundering

Title 18, United States Code, Section 1956(a)(1)(B)(i)

*** Max. Penalty:** Twenty (20) years' imprisonment as to each count

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: ARNALDO CARMOUZA

Case No: _____

Count #: 1

Conspiracy to Commit Health Care Fraud and Wire Fraud

Title 18, United States Code, Section 1349

*** Max. Penalty:** Twenty (20) years' imprisonment

Counts #: 2-3

Health Care Fraud

Title 18, United States Code, Section 1347

*** Max. Penalty:** Ten (10) years' imprisonment as to each count

Counts #: 4-5

False Statements Relating to Health Care Matters

Title 18, United States Code, Section 1035(a)(2)

*** Max. Penalty:** Five (5) years' imprisonment as to each count

Count #: 6

Conspiracy to Defraud the United States and Pay and Receive Health Care Kickbacks

Title 18, United States Code, Section 371

*** Max. Penalty:** Five (5) years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: ARNALDO CARMOUZA

Case No: _____

Count #: 7

Receipt of Kickbacks in Connection with a Federal Health Care Program

Title 42, United States Code, Section 1320a-7b(b)(1)(A)

*** Max. Penalty:** Five (5) years' imprisonment

Count #: 16

Conspiracy to Commit Money Laundering

Title 18, United States Code, Section 1956(h)

*** Max. Penalty:** Twenty (20) years' imprisonment

Count #: 17

Money Laundering

Title 18, United States Code, Section 1956(a)(1)(B)(i)

*** Max. Penalty:** Twenty (20) years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

EXHIBIT B

Sealed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. **16-23148**

FILED by SLS D.C.
JUL 20 2016
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

CV-Williams

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILIP ESFORMES,

FILED UNDER SEAL

Defendant.

MAGISTRATE JUDGE
SIMONTON

UNITED STATES' EX PARTE COMPLAINT FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTION

Plaintiff, the United States of America, by and through the undersigned attorneys, hereby alleges as follows:

JURISDICTION AND VENUE

1. The United States brings this action for a temporary restraining order, preliminary and permanent injunction, and other equitable relief pursuant to 18 U.S.C. § 1345.
2. This Court has subject matter jurisdiction over this action pursuant to 18 U.S.C. § 1345, and 28 U.S.C. §§ 1331 and 1345.
3. This Court has personal jurisdiction over Defendant and venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) because Defendant resides in this District or transacts business in this District and Defendant's actions that gave rise to this case all occurred in this District.

PARTIES

4. Plaintiff is the United States of America. At all times material to this action, the Department of Health and Human Services ("HHS") was an agency and instrumentality of the

United States, and the Centers for Medicare and Medicaid Services (“CMS”) was the component agency of HHS that administers and supervises the Health Insurance Program for the Aged and Disabled established by Title XVIII of the Social Security Act (“Act”), 42 U.S.C. §§ 1395 *et seq.* (“Medicare Program”).

5. Defendant Philip Esformes, a resident of Miami-Dade County, Florida, controls, owns or operates multiple skilled nursing facilities (“SNFs”) and assisted living facilities (“ALFs”) located throughout this district (collectively, the “Esformes Network”), as noted in the chart below.

Facility Name	Type of Facility
Adar Associates/Dvar Tove, LLC	ALF
ADME Investment Partners LTD dba Oceanside Extended Care	SNF
Adirhu Associates LLC	ALF
Almovea Associates LLC dba North Dade Nursing and Rehabilitation Center	SNF
Ayintove Associates LLC dba Harmony Health Center	SNF
Courtyard Manor Retirement Living, Inc.	ALF
Eden Gardens LLC	ALF
Fair Havens Holding LLC/Fair Havens Center LLC	SNF/ALF
Flamingo Park Manor LLC/The Pointe	ALF
La Covadonga Retirement Living, Inc.	ALF
Lake Erswin LLC dba South Hialeah Manor/Interamerican	ALF
Kabirhu Associates LLC dba Golden Glades Nursing and Rehabilitation Center	SNF
Lauderhill Manor LLC	ALF
La Serena Retirement Living LLC/La Hacienda Gardens/Rainbow	ALF
Jene’s Retirement Living, Inc./Jene’s Retirement Investors Ltd dba North Miami Retirement Living	ALF
Sefardik Associates, LLC dba The Nursing Center at Mercy	SNF
Takifhu Associates LLC dba South Dade Nursing and Rehabilitation Center	SNF
Williamsburg Retirement Living	ALF

6. Esformes used these facilities to carry out his fraudulent scheme in conjunction with Odette Barcha (“Barcha”), who worked at an Esformes ALF and later a local hospital, Gabriel Delgado and Guillermo Delgado (collectively, the “Delgado Brothers”), who worked as Esformes’ “lieutenants,” and others.

The Health Insurance Programs

7. The Medicare Program (“Medicare”) is a federal health care program providing benefits to persons who are 65 or older or disabled. Medicare is administered by the United States Department of Health and Human Services (“HHS”) through its agency, the Centers for Medicare & Medicaid Services (“CMS”). Individuals who receive benefits under Medicare are referred to as Medicare “beneficiaries.”

8. The Florida Medicaid Program (“Medicaid”) provides benefits to certain low-income individuals and families in Florida. Medicaid is administered by CMS and the Florida Agency for Health Care Administration (“ACHA”). Medicare and Medicaid are each a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), and a “federal health care program,” as defined by Title 42, United States Code, Section 1320(a)-7(b)-f.

9. The Medicare program is divided into four “parts” that cover different services. Medicare Part A generally covers inpatient hospital services, home health and hospice care, and skilled nursing and rehabilitation care.

10. Subject to certain conditions, Medicare Part A covers up to 100 days of skilled nursing and rehabilitation care for a benefit period (i.e., spell of illness) following a qualifying hospital stay of at least three consecutive days. 42 U.S.C. § 1395d(a)(2)(A); 42 C.F.R. § 409.61(b), (c). These services are provided in a skilled nursing facility (“SNF”).

11. The conditions that Medicare imposes on its SNF benefit include: (1) that the patient requires skilled nursing care or skilled rehabilitation services (or both) on a daily basis, (2) that the daily skilled services must be services that, as a practical matter, can only be provided in a skilled nursing facility on an inpatient basis, and (3) that the services are provided to address a condition for which the patient received treatment during a qualifying hospital stay or that arose while the patient was receiving care in a skilled nursing facility (for a condition treated during the hospital stay). 42 U.S.C. § 1395f(a)(2)(B); 42 C.F.R. § 409.31(b).

12. Medicare requires that a physician or certain other practitioners certify that these conditions are met at the time of a patient's admission to the nursing facility and to re-certify to the patient's continued need for skilled rehabilitation therapy services at regular intervals thereafter. See 42 U.S.C. § 1395f(a)(2)(B); Medicare General Information, Eligibility, and Entitlement Manual, Ch. 4, § 40.3.

13. To assist in the administration of Medicare Part A, CMS contracted with "fiscal intermediaries." 42 U.S.C. § 1395h. Fiscal intermediaries, typically insurance companies, were responsible for processing and paying claims and cost reports.

14. Beginning in November 2006, Medicare Administrative Contractors ("MACs") began replacing the fiscal intermediaries. See Fed. Reg. 67960, 68181 (Nov. 2006). The MACs generally act on behalf of CMS to process and pay Part A (as well as Medicare Part B) claims and perform administrative functions on a regional level. See 42 § C.F.R. 421.5(b).

15. In Florida, First Coast Service Options, Inc. ("First Coast") served as the fiscal intermediary and carrier until September 2008, at which time it was awarded a contract to serve as the MAC for the Florida region.

16. Providers who wish to be eligible to participate in Medicare Part A must periodically sign an application form, CMS Form 855A, to participate in the program. The application, which must be signed by an authorized representative of the provider, contains a certification that states:

I agree to abide by the Medicare laws, regulations, and program instructions that apply to this provider. The Medicare laws, regulations, and program instructions are available through the Medicare contractor. I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations and program instructions (including, but not limited to, the federal anti-kickback statute and the Stark law), and on the provider's compliance with all applicable conditions of participation in Medicare.

17. CMS Form 855A contains additional certifications that the provider "will not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare and will not submit claims with deliberate ignorance or reckless disregard of their truth or falsity."

18. Every SNF cost report contains a "Certification" that must be signed by the chief administrator of the provider or a responsible designee of the administrator.

19. SNFs submit the CMS-1450 electronically under Medicare Part A to their local fiscal intermediary or MAC, which in this case was First Coast. First Coast, on behalf of CMS, processes and pays the Medicare Part A claims.

20. In addition to the services covered under Medicare Part A, Medicare Part B provides coverage for, among other things, certain physician office and home visits, and other health care benefits, items, and services. The physician services at issue in this Indictment were covered by Part B.

21. An “Assisted Living Facility” or “ALF” is a facility licensed by the Florida Agency for Health Care Administration, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator. Medicaid covers a portion of certain costs associated with ALF stays.

DEFENDANT’S FRAUDULENT SCHEME

22. The government’s investigation revealed that, between January 2009 and June 2016, there were 14,412 Medicare beneficiaries in the Esformes Network, meaning beneficiaries who resided in an Esformes SNF or ALF during that time (the “Esformes Benes”). Esformes and his co-conspirators engaged in a fraudulent scheme to cycle the Esformes Benes through a network of hospitals, Esformes SNFs and ALFs, pharmacies, home health care companies, and other providers. Esformes paid kickbacks to physicians and physician assistants (“PAs”) to refer patients to his SNFs, so the SNFs could bill Medicare for them. Esformes then sold these patients to any provider willing to pay him kickbacks, allowing those providers to bill Medicare and Medicaid for services purportedly provided to Esformes Benes as well. Every entity in the cycle fraudulently billed, and received payments from, Medicare and/or Medicaid for services purportedly provided to the Esformes Benes, as detailed further below.

The Esformes ALFs

23. Medicare does not pay for any services provided in an ALF. On some occasions Medicaid will cover such services. Physicians, however, may enter ALFs, treat their patients, and bill Medicare Part B for an office visit (the claim will specify an office visit in an ALF). To maintain control of his ALFs, Esformes did not let just any physician inside to treat Esformes Benes. Instead, Esformes restricted access at his ALFs to physicians and physician assistants

("PAs") willing to refer patients to Esformes SNFs and to any providers that paid him kickbacks.

The Physicians and Physician Assistants

24. Esformes, through the Delgado Brothers and Barcha, paid and facilitated the payment of kickbacks to physicians and PAs, such as Arnaldo Carmouze ("Carmouze"), in order to induce these medical professionals to refer Medicare beneficiaries to Esformes SNFs so he could bill Medicare for purported services on their behalf. The physicians also referred the Esformes Benes to other providers – including pharmacies, home health care companies, diagnostic companies, and laboratories – who were willing to pay Esformes kickbacks for access to the Esformes Benes. The physicians were enticed into the fraud scheme with various financial incentives, including cash kickbacks, kickback payments disguised as paychecks for sham medical director jobs, and the ability to bill Medicare themselves for services purportedly rendered to Esformes Benes.

25. Carmouze was, in fact, the top referral source for Esformes and received kickbacks in exchange for a guaranteed stream of referrals to Esformes SNFs. Between 2009 and 2016, Carmouze billed Medicare (under the provider number of a physician he worked for) more than \$2.2 million for purported office visits provided to Esformes Benes.

The Hospitals

26. Routine and continuous hospital admissions were vital to the success of the scheme because Medicare requires that a patient spend three consecutive days in the hospital before that patient is eligible to receive services in a SNF. Esformes and Barcha paid physicians to induce them to admit Esformes Benes into local hospitals. Esformes, in fact, told Carmouze when to admit his patients into a local hospital, despite having no medical training. Claims data indicates that a large number of claims submitted to Medicare on behalf of Esformes Benes were

for individuals discharged from hospitals to Esformes SNFs by physicians or PAs, like Carmouze, who received kickbacks from Esformes.

The SNFs

27. To qualify for the SNF benefit, a Medicare beneficiary must be in the hospital for at least three consecutive days, and the hospital stay must have occurred within 30 days of the admission to the SNF. A physician (or certain other licensed practitioners) must determine that the patient needs daily skilled services in an inpatient setting and must require the skills of technical or professional personnel to provide these services. SNF services are intended to be short term, and Medicare only pays for 100 days of skilled nursing care after each qualifying three-day hospital stay. A patient who is discharged from a SNF at the end of the 100-day period can become eligible for another 100-day benefit period if: 1) the beneficiary spends 60 days outside the SNF and 2) is admitted to the hospital for another three-day qualifying inpatient stay.

28. After the Esformes Benes completed their hospital stay, Carmouze and others referred them to a SNF owned by Esformes. While the Esformes Benes were in Esformes' SNFs, Carmouze continued to bill Medicare for those patients. Once discharged from the SNF, Esformes Benes would go or return to an Esformes ALF. After a requisite 60-day waiting period between consecutive admissions into a SNF, physicians and PAs like Carmouze re-admitted Esformes Benes into local hospitals again, thereby initiating another cycle in the scheme.

29. Barcha, who worked at Esformes ALFs until about 2002, helped Esformes maintain a pipeline of patients coming from a local hospital to his SNFs. For instance, the Delgado Brothers paid Barcha cash or checks, sometimes through her boyfriend or disguised as consulting fees, which she cashed and used to pay physicians kickbacks to refer patients from the hospital to Esformes SNFs.

The Other Providers

30. After being discharged from the SNFs, the Esformes Benes were released to ALFs owned and controlled by Esformes or the Delgado Brothers. The Delgado Brothers negotiated kickback arrangements with a number of Medicare providers, including pharmacies, partial hospitalization programs (“PHPs”), laboratories, and diagnostic companies. These Medicare providers paid the Delgado Brothers kickbacks for access to the Esformes Benes, and the Delgado Brothers split these kickbacks 50/50 with Esformes.

31. Esformes received kickbacks from these providers through various means, disguised as 1) cash payments; 2) payments to escorts; 3) charitable donations; 4) payments to a basketball coach for coaching Esformes’ son; and 5) lease payments.

32. Medicare claims data by the providers who paid kickbacks to, or for the benefit of, Esformes for access to the Esformes Benes corresponds to bank records showing a stream of checks from those providers to the Delgado Brothers.

Expected Testimony from Cooperating Witnesses

Gabriel Delgado

33. Gabriel Delgado was a licensed practical nurse who, since approximately 2002, negotiated, paid, and received illegal healthcare kickbacks and bribes for the benefit of Esformes. Gabriel Delgado also served as Esformes’ driver. Gabriel Delgado has provided the following information:

34. Gabriel Delgado and his brother took over the role of “patient broker” for Esformes in or around February 2002. At the time, the Delgado Brothers entered into a sham “Management Agreement” for the sole purpose of disguising kickbacks.

35. Delgado is aware that Esformes paid kickbacks to physicians and other medical professionals, including Carmouze. Esformes directed physicians, and hospital staff like Barcha, to refer patients within the Esformes Network.

36. Esformes would tell Delgado which SNFs needed patients. Once this determination was made, Esformes called Carmouze and told him to admit an ALF patient into the hospital. Then Carmouze, per Esformes' instruction, discharged the patient into one of Esformes' SNFs.

37. The Delgado Brothers entered into sham "consulting" contracts with various health care providers in the Southern District of Florida. The sham contracts were entered into between shell companies owned and incorporated by the Delgado Brothers and the provider and was premised on the providers having access to the Esformes Benes. Half of the proceeds from these sham agreements were kicked back to Esformes via (1) cash; (2) airline tickets, (3) charitable donations; (4) hotel reservations; (5) tickets to sporting events and concerts; (6) limousines; (7) private jets; and (8) payments to escorts.

38. Physicians received illegal health care kickbacks in exchange for providing access to the Esformes Network. For instance, each month, Diversified Medical Group – a company owned by Gabriel Delgado – created invoices for equipment provided to Esformes' facilities. Gabriel Delgado discussed the invoices with Esformes, and they decided how much to inflate the invoices to provide Gabriel Delgado with extra cash to pay kickbacks to physicians. Gabriel Delgado's assistant then sent an e-mail containing a newly-inflated invoice adjusted for the kickback amount, which was in turn e-mailed to an Esformes employee. Gabriel Delgado would cash out the inflated (kickback) amount and deliver it to co-conspirators, including Barcha, for the benefit of physicians who agreed to refer patients to providers within the Esformes Network.

Guillermo Delgado

39. Guillermo Delgado was a licensed practical nurse who, since approximately 2002, negotiated, paid, and received illegal healthcare kickbacks and bribes for the benefit of Esformes. Guillermo Delgado has provided the following information:

40. In or around 2000, Guillermo Delgado became partners with Nelson Salazar (also a cooperating witness) at a defunct home health care agency called Nursing Unlimited 2000 (“Nursing Unlimited”). Prior to 2000, Nursing Unlimited maintained a corrupt relationship with Esformes through the payment of kickbacks and bribes. Soon after becoming business partners with Salazar, Guillermo Delgado learned that Salazar and Esformes were not getting along. Therefore, a meeting was arranged with Esformes to discuss the role the Delgado Brothers would play in maintaining the kickback relationships involving the Esformes Benes.

41. Guillermo Delgado and Gabriel Delgado negotiated sham “consulting” contracts with various health care providers in the Southern District of Florida in exchange for the providers gaining access to the Esformes Benes. All contracts served as conduits to conceal kickbacks and bribes for the ultimate benefit of Esformes.

42. A certified nursing home administrator (“Administrator”), served as a liaison between Esformes, the Delgado Brothers, and the Esformes Network providers involved in the scheme. The Delgado Brothers were present when Esformes called Administrator to direct her/him to send patients to SNFs, nursing homes, and/or providers paying kickbacks for access to the Esformes Network. Administrator would then fax the Delgado Brothers patient lists containing pertinent information (i.e. diagnoses, contact information) for delivery to the providers paying kickbacks for access to the Esformes Network. This information was critical because, in many instances, the providers never saw the patients being billed to Medicare.

43. Carmouze and the physician he worked for were the top referring medical professionals for the Esformes Network.

Nelson Salazar

44. Nelson Salazar co-owned Nursing Unlimited 2000, a defunct home health care agency that accessed Esformes Benes in exchange for illegal health care kickbacks and bribes. Salazar has provided the following information:

45. Salazar served as a patient broker on behalf of Esformes, negotiating kickback arrangements with health care providers throughout the Southern District of Florida. Salazar will testify that Esformes gave Salazar and the Delgado Brothers access to his network of patients, which they would leverage during kickback negotiations with various health care providers throughout the Southern District of Florida, including Nursing Unlimited, which Salazar personally benefitted from.

46. A sham leasing agreement served as a conduit to conceal kickbacks to Esformes. The monies kicked-back to Esformes through this sham lease were derived from the kickback agreements the Delgado Brothers and Salazar negotiated with health care providers. For example, Salazar negotiated a kickback arrangement with American Therapeutic Corp. ("ATC"), now defunct, whereby Salazar was paid through ATC's sham subsidiary, Medlink Professional Management Group LLC. Salazar, in turn, paid Gabriel Delgado kickbacks via check, which were ultimately paid to Esformes, disguised as a lease payment.

47. If Esformes did not get paid, a provider could not bill for Esformes Benes residing in one of the ALFs or SNFs in the Esformes Network.

48. When beds opened at an Esformes SNF, Administrator would, at Esformes' direction, instruct employees at Esformes ALFs and cooperating physicians or PAs to send ALF

patients to local hospitals, who would then be discharged to Esformes SNFs. Salazar heard Administrator say things like “Philip needs to fill two beds.”

Jose Morales

49. Jose Morales was the co-owner of Pharmovisa, Inc. and PharmovisaMD, Inc., now-defunct pharmacies that procured a guaranteed stream of beneficiary information through the payment of kickbacks and bribes. Morales has provided the following information:

50. Since 2006, Morales paid the Delgado Brothers up to \$23,000 per month for access to the Esformes Network. Pharmovisa, Inc. was paid \$8.7 million by Medicare for prescriptions purportedly provided to Esformes Benes.

51. The Delgado Brothers were the boots on the ground for Esformes, handling the relationships with physicians, nursing homes, and the ALFs. The Delgado Brothers would tell Morales that Esformes would lean on them for money, so Morales needed to pay them (the Delgado Brothers) for the benefit of Esformes.

Patient Broker

52. Another cooperating witness was a patient broker (“Patient Broker”) for various health care providers throughout the Southern District of Florida. The Patient Broker has provided the following information:

53. Patient Broker paid the Delgado Brothers kickbacks for “access” to the Esformes Network. “Access” meant that s/he was permitted to go to Esformes ALFs and recruit patients her/himself.

54. The Patient Broker paid kickbacks to the Delgado Brothers through a shell company. According to the Delgado Brothers, Esformes took the “lion’s share” of kickbacks.

55. Administrator was responsible for all Esformes ALFs. Conditions at the ALFs were bad. The Patient Broker would visit the ALFs with alcohol swabs in her/his nose because of the smell.

Other Evidence

56. In addition to the testimony of these cooperating witnesses, the government has consensual recordings that provide further, direct evidence of Esformes' role as the leader of this fraudulent scheme, his payment of kickbacks for patient referrals, and his receipt of kickbacks.

57. Medicare beneficiaries have also provided evidence of how they were cycled through the Esformes Network and used to bill Medicare for services that were not medically necessary.

Medicare Claims Data

58. Esformes knew that billing and receiving payment from Medicare required adherence to applicable laws and regulations, including the federal Anti-Kickback Statute. For example, on or about September 28, 2009, and again on or about January 1, 2012, Esformes certified to Medicare that one of his SNFs, Harmony Health Center, would comply with all Medicare rules and regulations, including that he and Harmony Health Center would refrain from violating the federal Anti-Kickback Statute.

59. As a further example, on or about February 2, 2011, and again on or about March 22, 2011, Esformes certified to Medicare that another of his SNFs, Fair Havens, would comply with all Medicare rules and regulations, including that he and Fair Havens would refrain from violating the federal Anti-Kickback statute.

60. The government has collected Medicare claims data for amounts paid to Esformes SNFs for services purportedly provided to Esformes Benes. The government has also collected

Medicare claims data for amounts paid to the various healthcare providers for services purportedly provided to the Esformes Benes, access to whom they purchased through kickbacks to Esformes.

61. Together, Esformes SNFs, hospitals, and other providers billed Medicare for services on behalf of Esformes Benes in excess of \$1 billion from January 2009 through June 2016, and Medicare paid \$464 million on these claims. The SNFs in the Esformes Network billed \$265 million, and were paid \$221 million, for claims related to the Esformes Benes. Other providers who bought access to the Esformes Benes through kickbacks billed Medicare \$132 million, and were paid \$42 million, for claims related to the Esformes Benes. Local hospitals billed Medicare \$546 million, and were paid \$143 million, for claims related to the Esformes Benes. Florida Medicaid also paid out millions related to claims for the Esformes Benes. These figures are based on the United States' investigation to date and financial analysis that is ongoing. The evidence uncovered during the investigation shows that these claims were tainted by the payment of unlawful kickbacks, were for medically unnecessary services, and/or were for services not provided at all.

DISSIPATION OF ASSETS

62. Entities owned and/or controlled by Esformes, including Esformes Network SNFs located in this district, completed multiple Authorization Agreements for Electronic Funds Transfer, by which they agreed to accept Medicare payments via direct deposit into their bank accounts, including at Bank of America, Optimum Bank, The Private Bank and MB Financial Bank.

63. From 2009 through June 2016, Medicare deposited approximately \$221 million into the corporate accounts of the Esformes Network SNFs located in Miami-Dade County. The

deposits by Medicare to the Esformes Network SNFs were in payment for the fraudulent claims submitted by the Esformes Network SNFs.

64. Esformes implemented schemes to transfer the Medicare monies to himself directly and by using shell companies. Evidence gathered during the government's investigation indicates that Esformes had co-conspirators open shell companies as registered agents, and that these shell companies, in turn, would pay Esformes. On some occasions, the Medicare monies passed through multiple corporate accounts before the monies were deposited into Esformes' personal accounts or used to buy assets for Esformes' benefit. In addition, Esformes would write checks to individuals who would in turn cash checks, pay bills, and wire significant sums of money on Esformes' behalf.

65. Financial analysis to date has revealed that Esformes is significantly funded by his fraudulent Medicare business. Our analysis has revealed that monies traced directly to Medicare accounts have allowed Esformes to withdraw cash of over \$4.8 million, lease private jets in the amount of \$2.1 million, lease luxury vehicles in the amount of \$2.4 million, purchase watches in the amount of \$360,000 and \$600,000, respectively, and paid over \$8.9 million in credit card bills.

66. As of August 31, 2014, Esformes was worth approximately \$78 million, according to his own personal financial statement.

67. From at least 2009 through June 2016, Esformes has systematically dissipated the vast majority of the funds written from Medicare by writing checks and making transfers from the Esformes Network bank accounts to Esformes, his wife, or other nominees on behalf of Esformes, for the personal benefit of Esformes.

68. Although Medicare has paid Esformes, through the Esformes Network SNFs, \$221 million since 2009 and paid hundreds of millions more to other providers as a result of Esformes'

kickback scheme, the United States has been able to locate assets totaling only a fraction of that amount. Esformes appears to have dissipated tens of millions of dollars in Medicare funds, and unless enjoined will continue to dissipate the proceeds of his Medicare fraud.

COUNT I

(18 U.S.C. § 1345 – Injunctive Relief)

69. The United States realleges and incorporates by reference paragraphs 1 through 69 of this Complaint as though fully set forth herein.

70. Among other things, the Defendant committed and is committing a Federal health care offense, as defined in 18 U.S.C. § 24, by conspiring to commit health care fraud, conspiring to pay and receive health care kickbacks, and by paying and receiving kickbacks in connection with a federal health care benefit program, in violation of 18 U.S.C. §§ 1349 & 371, and 42 U.S.C. § 1320a-7b(b)(1)(A) & 1320a-7b(b)(2)(A).

71. Defendant has already dissipated millions of dollars in proceeds of that fraud, and intends to continue dissipating the remainder of the proceeds of the fraud.

43. Defendant's fraud upon Medicare is a fraud against the United States and constitutes a continuing and substantial injury to the United States and its citizens.

72. The United States brings this action to protect Medicare and other funds by restraining Defendant's unlawful fraudulent conduct and to protect and restrain the transfer of funds and assets now in Defendant's hands as ill-gotten gains from his fraud upon the Medicare program.

73. Upon a showing that Defendant is committing or about to commit a Federal health care offense, the United States is entitled, under 18 U.S.C. § 1345(a)(1), to a temporary restraining order, a preliminary injunction, and a permanent injunction, restraining all future fraudulent

conduct and any other action that this Court deems just in order to prevent a continuing and substantial injury to the United States.

74. Upon a showing that defendant is alienating or disposing, or intends to alienate or dispose, property obtained as the result of a Federal health care offense, the United States is entitled, under 18 U.S.C. § 1345(a)(2), to a temporary restraining order, a preliminary injunction, and a permanent injunction, enjoining defendant from alienating, disposing, withdrawing, transferring, removing, dissipating, or disposing of any property obtained as a result of a Federal health care offense, property traceable to such violation, or property of equivalent value.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

Issue a Temporary Restraining Order and Preliminary Injunction in this matter against Defendant, and that a permanent injunction shall be issued forthwith, that orders Defendant, his agents, servants, employees, attorneys, and all persons acting in concert and participation with Defendant, including all corporations over which he exercises control, be enjoined as follows:

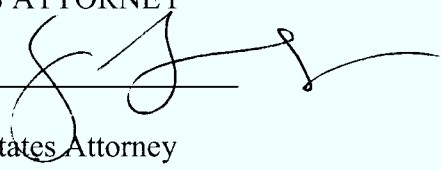
1. From making or conspiring to make any false claims to the Medicare Program or any federal health care benefit program, or otherwise from committing any Federal health care offense, as defined in 18 U.S.C. § 24;
2. From withdrawing or transferring any moneys or sums presently deposited, or held on behalf of Defendant by any financial institution, trust fund, or other financial agency, public or private, that are proceeds from false, fictitious, or fraudulent claims made by Defendant, or any moneys of an equivalent value to those taken through false, fictitious, or fraudulent claims;

3. From transferring, selling, assigning, dissipating, concealing, encumbering, impairing or otherwise disposing of, in any manner, assets, real or personal;
4. To preserve all business, financial, and accounting records, including bank records, that detail Defendant's business operations and disposition of any payment that directly or indirectly arose from the payment of money to Defendant on behalf of the Medicare Program or other federal health care benefit program;
5. To preserve all medical records, including patient records, which relate to Defendant's business operations and/or to services for which claims were submitted to the Medicare Program or other federal health care benefit program;
6. To provide an accounting of all assets, within seven calendar days, and to provide on a monthly basis, commencing forthwith, suitable reports detailing his financial condition; and
7. To complete a Financial Disclosure Statement form provided to Defendant by the United States within seven calendar days;
8. For disgorgement and restitution of all of Defendant's ill-gotten gains attributable to his fraud upon the United States; and
9. For such other and further relief as the Court shall deem just and proper.

Dated: July 20, 2016

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By: *s/Susan Torres* 

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Oceanside Extended Care Center Performs Mass Layoff Without Warning](#)
