

# United States of America v. Farid Fata

Case No. 13-cr-20600 (E.D. Mich.)

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Welcome to the web site for the claims process in the case of

*United States v. Farid Fata.*

**The Fata Claims Facilitator's Office maintained a web site during the Facilitator's appointment. This site is a static version of the Facilitator's site as of March 19, 2018. The language is preserved in its original present tense, but the material is now historical. This is what the site would have looked like to anyone visiting it on March 19, 2018. Addresses and phone numbers listed on the site may no longer be in service. Statistics on the site will not take into account any changes that occurred after March 19, 2018.**

**Please Note: All contact information and links to other websites were valid and operational during the pendency of the case. Some contact information and some links may no longer be operational.**

This web site will provide links to all of the important claims process documents, answers to frequently asked questions (FAQs), contact information, statistics, and more. See the tabs at the top of this home page for links. As the claims process progresses, more information will be added.

If you have questions, please call 1-877-202-3282 for more information.

For additional information on the criminal proceedings, please go to [www.justice.gov/usao-edmi/us-v-farid-fata-court-docket-13-cr-20600](http://www.justice.gov/usao-edmi/us-v-farid-fata-court-docket-13-cr-20600).

**ANNOUNCEMENT: NO FURTHER CLAIMS OR RECONSIDERATION REQUESTS ACCEPTED**

No further claims or reconsideration requests will be accepted for processing by the Claims Facilitator or the Court. Please see [here](#) for the Court's Order and [here](#) for DOJ's update.

## Helpful Links

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## Claims Facilitator

Fata Claims Facilitator

PO Box 2730

Portland, OR 97208-2730

1-877-202-3282

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 13-cr-20600

v.

Paul D. Borman  
United States District Judge

FARID FATA,

Defendant.

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ORDER (1) CONTINUING RESTITUTION PROCESS; and  
(2) PRECLUDING FURTHER SUBMISSION/PROCESSING  
OF LATE FILED CLAIMS FOR RESTITUTION AND  
LATE REQUESTS FOR RECONSIDERATION OF DENIED CLAIMS

On November 21, 2017, the Court held a hearing on the status of the restitution proceedings in this action that have been ongoing pursuant to the Court's April 11, 2016 Order Establishing a Restitution Plan and Review of Claims for Restitution. (ECF No. 186.) The Claims Facilitator, Ms. Randi Ilyse Roth, presented the details of her Final Report to the Department of Justice Regarding the Restitution Process (ECF No. 207) and responded to questions posed by the Court. The government also responded to several inquiries by the Court regarding the claims filing and appeal process and regarding the procedures governing the ultimate payment of finally

approved claims.

Ms. Roth explained to the Court that there were two issues regarding late submissions of claims and late requests for reconsideration of denied claims that required the Court's resolution. The Court has read the materials submitted by Ms. Roth in her Final Report, and has considered the comments made both by Ms. Roth and the government during the November 21, 2017 hearing regarding these late-filed submissions and requests. The Court has determined that granting any further exceptions to claimants filing late claims and/or late requests for reconsideration after the date of Ms. Roth's November 7, 2017 Final Report would necessarily disrupt the established December 11, 2017 deadline for filing appeals to this Court and would be fundamentally unfair to those claimants who filed timely claims and timely requests for reconsideration. Accordingly, the Court has determined that:

1. Late claims and late reconsideration requests that pre-dated Ms. Roth's November 7, 2017 Final Report shall be processed and paid in the same manner as timely filed claims;<sup>1</sup> and

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<sup>1</sup> With respect to any late claim that was filed after Ms. Roth issued her November 7, 2017 Report but before the November 21, 2017 hearing, any request to cure or for reconsideration of a denial of such a claim shall be filed with the Magistrate Judge on or before December 11, 2017, as part of the established process for appealing the Claims Facilitator's determination to this Court. Such claimant(s) will receive instructions to this effect in a letter from the Claims Facilitator.

2. No further late claims or late reconsideration requests will be accepted for processing by the Claims Facilitator or the Court.

Pursuant to *United States v. Dolan*, 130 S. Ct. 2533, 2542 (2010), the Court finds that the continuing complex restitution process necessitates moving back the restitution deadline for six months to May 22, 2018.

IT IS SO ORDERED.

s/Paul D. Borman  
Paul D. Borman  
United States District Judge

Dated: November 22, 2017

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 22, 2017.

s/Deborah Tofil  
Case Manager

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## Important Dates

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## Frequently Asked Questions

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## Basic Information

### 1. What is this case about?

Defendant Farid Fata (hereinafter, "the defendant"), a hematologist-oncologist, pleaded guilty to health care fraud, money laundering,

and conspiracy to pay or receive kickbacks. As part of the defendant's scheme, he deliberately administered medically unnecessary injections and infusions to patients, including chemotherapy, iron, cancer treatment drugs, and other medications. He also administered unnecessary diagnostic tests involving the injection of radiological material into patients. U.S. District Judge Paul D. Borman imposed a sentence of 45 years in prison and ordered the defendant to forfeit assets.

This claim process is the **only** opportunity patients will have to provide documentation for certain losses. The allowable losses are costs associated with medical services prescribed or performed by the defendant from April 11, 2005 through August 6, 2013 and remedial medical, dental, and mental health services performed up to and including September 6, 2016 to compensate for remedial treatments needed in response to the defendant's inappropriate or unnecessary procedures. The claims process also allows family members of patients to seek reimbursement for a portion of patients' funeral costs.

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## **2. Where does the money come from?**

The money generally comes from a fund made up of the net proceeds from liquidating the defendant's assets.

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## **3. Do I have a lawyer in this case? Do I need a lawyer in this case?**

You do not have a lawyer in this case unless you hired a lawyer on your own. The Department of Justice represents the United States of America.

The process does not require a lawyer. However, the Office of the Claims Facilitator cannot give you legal advice about whether you should or should not retain a lawyer to assist you in this process.

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## **4. Are lawyers or administrators being paid from the victims' fund?**

No. The lawyers at the Department of Justice and the Claims Facilitator and her staff are not being paid out of the victims' fund.

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**5. Would I give up rights if I participate in this process, and could I still be part of a lawsuit against the defendant?**

You do not have to give up a civil lawsuit or waive participation in any other kind of compensation process as a condition for being in this claims process. However, you will have an obligation to report in this process any amounts that you recover elsewhere that relate to losses claimed in this process.

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**6. What does it mean to swear under penalty of perjury?**

This means that you are swearing that you are telling the truth during this process. If any of your answers are knowingly untruthful, you can be prosecuted for the crime of perjury.

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## Filing A Claim

**7. Who can file a claim?**

The Claim filing deadline was November 14, 2016. No further claims are being accepted. There were 3 possible types of Claimants.

**a. Victims:**

People who were patients of the defendant could file a claim if they had eligible out-of-pocket losses. (see [FAQ 8](#) below.)

**b. Representatives:**

Legal representatives of patients who are minors and/or who are incapacitated could file on the patient's behalf. They were required to submit documentation of their representative status, such as guardianship papers or a power of attorney.

**c. Heirs:**

Claims could be filed on behalf of the estates of deceased victims. Such Claimants will be required to provide documentation of their representation of the estate.

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**8. What types of claims are eligible for payment?**

The general rules for claim eligibility are based on the fact that this is a criminal restitution process. Restitution is the technical term that describes a process governed by federal law to pay victims for some of the losses they suffered from a crime. Restitution rules apply to cases like this—cases in which the government seizes a convicted

criminal's assets and sets up a process for distributing those assets to victims of the crime who can provide documentation of certain kinds of economic losses.

It is fortunate that the Department of Justice has money to distribute and the Court has authorized the payment of restitution in this case. However, restitution has many detailed requirements and does not cover every type of loss.

Only certain kinds of out-of-pocket costs can be claimed in this process.

**Losses that are eligible for payment in this process are:**

1. Money paid for treatments prescribed by the defendant, treatments and services ordered by the defendant, and prescriptions prescribed by the defendant;
2. Money paid for remedial medical and dental treatments through September 6, 2016 to remedy the effects of the defendant's treatments and what the defendant ordered;
3. Money paid for mental health remedial treatments through September 6, 2016 to remedy mental health issues related to the defendant's treatments; and
4. Money paid by patients' family members for victims' funerals. (Please note that it is likely that the claims process will be able to pay for only a portion of the eligible funeral expenses.)

Victims who have no out-of-pocket costs in the categories listed above were advised not to submit a claim in this process.

This is a restitution process within a criminal case; many categories of loss that are commonly paid in civil cases cannot be paid in this process.

**Losses that are not eligible for payment in this process are:**

1. pain and suffering;
2. lost wages;
3. attorneys' fees; or
4. travel to obtain medical treatment.

We understand this will be very disappointing to many people. These are the rules Congress has set down that we must follow.

The United States Congress set the basic rules in the restitution statutes. The Court set further rules for this case in an Order issued on April 11, 2016. If you would like to see the Order issued by the Court, please visit the United States Attorney's Office for the E.D. of

Michigan *U.S. v. Farid Fata* webpage at [www.justice.gov/usao-edmi/us-v-farid-fata-court-docket-13-cr-20600](http://www.justice.gov/usao-edmi/us-v-farid-fata-court-docket-13-cr-20600).

If you have additional questions or concerns about this process, you can contact the Fata Claims Facilitator phone staff at 1-877-202-3282, or call the Victim Witness Coordinator for the U.S. Attorney's Office for the Eastern District of Michigan, Sandy Palazzolo, at 1-313-226-9633. If you have specific questions about the claims process, please call the phone staff at 1-877-202-3282. Please be advised that Ms. Palazzolo will not be able to provide assistance in the claims process.

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**9. Can one file a claim for remedial treatment for past treatments? Current treatments?**

Both were eligible to be claimed, however, the claim filing deadline has past. Any claims filed after **November 14, 2016** but before November 21, 2017, were set aside, and the Court was asked to determine how they would be handled. The Court's ruling about those late claims is [here](#). Claims received on or after November 21, 2017 will not be accepted for processing.

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**10. What is the deadline to file a claim?**

The claim filing deadline was **November 14, 2016** and has now passed. Any claims filed after **November 14, 2016** were set aside, and the Court was asked to determine how they should be handled. The Court's ruling about those late claims is [here](#). Claims received after on or after November 21, 2017 will not be accepted for processing.

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**11. Is there a cost to file?**

There was no cost to file a claim. The claim filing deadline was **November 14, 2016**. Any claims filed after **November 14, 2016** were set aside, and the Court was asked to determine how they should be handled. The Court's ruling about those late claims is [here](#). Claims received after on or after November 21, 2017 will not be accepted for processing.

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## 12. How do I prove what I paid and/or owed?

This claims process required that for each out-of-pocket expense, the claimant must have either:

1. Provided proof of the amount that the claimant *paid*; or
2. Provided proof of the amount that the claimant *owed*, and *sworn* under oath that the claimant paid that bill.

Click [here](#) to look at some possibilities for the eligible expenses.

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## 13. Is there an easier way to fill out the tables on the Claim Form?

To address the concern that claimants had too many entries to write into the 3 tables in the Claim Form (on pages 5, 8, and 11 of the Claim Form), we offered an *alternative, slightly streamlined way of completing the tables in the Claim Form*. Click [here](#) to read the Listing Multiple Expenses document.

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## 14. Can someone help me file?

The claim filing deadline was **November 14, 2016**. There is no longer any assistance available for filing claims.

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## 15. What is the process for learning about errors in my claim form, and fixing those errors?

The deadline for fixing Claim Form errors has now passed.

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# Getting A Payment

## 16. How will claims be decided?

The Claims Facilitator, Randi Ilyse Roth, made recommendations to the Court as to the amount of restitution that each timely-filed claim is entitled to receive according to the rules of the case. She and her staff examined whether each claim requested categories of compensation that are eligible in this claim process, and whether each claim provided proper documentation. Then the Court will make a decision based, in part, on the Facilitator's recommendations.

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**17. What happens if I submitted my claim or response to a request for additional information late?**

The time to file claims is now closed. The deadline was **November 14, 2016** pursuant to a Court Order. Any claims filed after **November 14, 2016** were set aside, and the Court was asked to determine how they should be handled. The Court's ruling about those late claims is [here](#). Claims received after on or after November 21, 2017 will not be accepted for processing.

Additionally, the time to submit requested information to correct identified errors in claim forms has now passed.

Claims and any claim form corrections received on or after November 21, 2017 will not be accepted for processing.

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**18. When will I receive my decision letter?**

Preliminary Decision Letters were mailed between July 24 and July 25, 2017, and reconsideration requests have been reviewed.

Final Determination Letters were mailed on November 3, 2017. If you submitted a claim and you did not receive your Final Determination Letter, please call 1-877-202-3282 for more information.

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**19. Is the Facilitator's decision final?**

The Court makes the final decision based in part on the Facilitator's recommendations.

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**20. What happens if I don't agree with the Facilitator's decision?**

The Final Determination letter explains that if you don't agree with the Facilitator's recommendation, you may seek a Court Review by December 11, 2017. You must use the specific Court Review form found [here](#) and mail it directly to the Court at the following address, postmarked by December 11, 2017:

Clerk of the Court  
Attn: *U.S. v. Fata* Restitution Claims  
231 W. Lafayette Blvd.  
Theodore Levin U.S. Courthouse  
Detroit, MI 48226

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**21. What happens if I do not file a Claim?**

If you did not file any claim in this case you will not recover any money in this case.

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**22. How much money will I get, and when will I be paid?**

The amount you may get paid depends both on the details of your claim submission and on whether the total amount of eligible claims exceeds the amount of money in the restitution fund.

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## Information About The Claims Package

**23. Where can I find definitions of technical terms in the Claims Package?**

A list of definitions of terms used in this claims process is included in the Claim Package. You can download a PDF copy of the Definitions of Terms used in this claims process [here](#).

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**24. What is the significance of the dates listed in the Claims Package?**

KEY DATES:	
April 11, 2005	This is the date when the defendant started his practice at Mic
August 6, 2013	This is the date when the defendant was arrested.
September 6, 2016	This is the last date of remedial treatment that can be submitte
November 14, 2016	This is the deadline for filing a claim

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## Information About Documentation

**25. What if I do not have records at home about my dates of**

### **treatment or the costs of my treatment?**

A chart containing information on how to contact Medicare and various private insurance companies for Explanation of Benefits or Medicare service notices can be found on the Medicare & Insurance Info page by clicking [here](#).

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### **26. Can the services of ophthalmologists and optometrists count as eligible remedial medical services?**

Yes, if they otherwise meet the requirements for eligibility.

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### **27. What's included in compensable mental health treatment?**

Mental health treatment can include treatments by a psychologist, psychiatrist, licensed therapist, or licensed social worker, and includes prescription medications that they prescribe.

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## **Tax Information**

### **28. Will it affect my taxes if I get paid in this case?**

The Claims Facilitator cannot give you legal or tax advice. You may wish to consult your tax advisor.

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### **29. Will it affect my public benefits—like Social Security or Supplemental Nutrition Assistance Program (SNAP)—if I get paid in this case?**

The Claims Facilitator cannot give you advice regarding public benefits. You should contact your legal counsel or the agency providing the benefits.

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## **Hearing**

### **30. What is the purpose of the Court hearing? What will happen at that hearing? Can I attend the Court hearing?**

The hearing was held on November 21, 2017 in order to provide an

update to the Court on this restitution process. Updates regarding the hearing are posted to the DOJ website for this case found [here](#). The Court's Order following the November 21, 2017 hearing is [here](#).

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## Getting More Information

### 31. How do I get help if I don't understand something or if I have a concern?

If you have any questions or concerns about this claims process, you can contact the Fata Claims Facilitator phone staff at 1-877-202-3282. Please be advised that Ms. Palazzolo will not be able to provide assistance in the claims process.

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## Changing My Claim Information

### 32. What if I file and then my address or phone number changes?

Write to us to report the change of address. Send a letter with the information to:

Fata Claims Facilitator  
PO Box 2730  
Portland, OR 97208-2730

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## Preliminary Decisions

### 33. What is the preliminary decision letter?

The preliminary decision letter explained the Facilitator's preliminary recommendation for your claim.

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### 34. I don't like the decision. I disagree with the decision and the Facilitator got it wrong. What can I do now?

If you believed that the decision was wrong, you could have submitted a request for reconsideration postmarked on or before **August 24, 2017**. Some requests for reconsideration were received after August 24, 2017, but before November 21, 2017. The Court's

Order regarding those requests is [here](#). Requests for reconsideration received on or after November 21, 2017 will not be considered.

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**35. How long will the reconsideration process take, and how will I know whether my decision was changed?**

The Facilitator has completed the review of all timely reconsideration requests and all late reconsideration requests that were allowed by Court Order. Final Determination letters mailed on November 3, 2017, which reflect updates to eligible recommended amounts made as a result of the reconsideration review process.

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**36. I filed a claim for an incapacitated person, a minor or a deceased patient. What documentation do I need to provide in order to receive a payment?**

We need you to provide documentation that you are authorized to represent that patient. This means that:

- **For an incapacitated person:** please submit guardianship papers or power of attorney.
- **For a minor patient:** please submit guardianship papers or a birth certificate identifying you as the parent.
- **For a deceased patient:** please submit (1) letters testamentary, a small estate affidavit, or other Court documentation identifying you as the legal representative of the Estate of the deceased patient AND (2) the Estate's Taxpayer Identification Number ("EIN").

However, if you are the surviving spouse of a deceased patient, see [FAQ 37](#).

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## Legal Representation Documentation

**37. I am the surviving spouse of the deceased patient. Do I need to provide estate documentation?**

Yes, if you have the documentation, please send it in. However, if you don't, then you only need to return a completed surviving spouse affidavit with a postmark date on or before **August 24, 2017**. Click [here](#) for that affidavit.

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**38. I am *only* seeking funeral expenses. Do I need to provide legal representation documents or a surviving spouse affidavit?**

If you are *only* seeking restitution of funeral expenses, then no, you do not need to provide legal rep documents or a surviving spouse affidavit.

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**39. Why do I need to provide this documentation?**

We need to ensure that any restitution that is approved is sent to the individual legally responsible for handling the deceased patient's affairs. The categories of papers listed in [FAQ 38](#) and [FAQ 37](#) above are needed to provide that assurance.

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**40. By when do I need to provide this documentation and/or EIN?**

The documentation along with the EIN (if needed) was supposed to be submitted to us with a postmark date on or before **August 24, 2017**. However, we are still accepting this information.

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**41. What happens if I can't get this documentation within the time period?**

If you can't obtain the documentation by that time, then payment may be delayed.

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**42. Is the EIN the same as the patient's SSN?**

No, the EIN and SSN are different numbers.

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**43. Where can I get the EIN?**

You can get the EIN from the IRS. There is no charge to get this number.

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# Final Determinations

## 44. Is the Final Determination my approved amount?

The amount on your letter is the Facilitator's final recommendation to the Court on what amounts are eligible for restitution. It will be up to the Court to approve the recommended amounts.

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## 45. What if I ask for reconsideration but I am still not happy with the determination?

The Final Determination letter explains that you must seek a Court Review by December 11, 2017. You must use the specific Court Review form found [here](#) and mail it directly to the Court at the following address:

Clerk of the Court  
Attn: *U.S. v. Fata* Restitution Claims  
231 W. Lafayette Blvd.  
Theodore Levin U.S. Courthouse  
Detroit, MI 48226

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## 46. When is the next Court hearing that will look at these determinations?

The Court had a status hearing on **Tuesday, November 21, 2017 at 11:00 a.m.** Any future hearings will be listed on the DOJ website [here](#).

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## 47. How long will it be before I am paid out after the hearing?

We don't know yet how long it will take. That will depend in part on whether there are any requests for Court review of the final recommendations, and on how long it takes the Court to complete review of those requests. It will also depend on the timing of the other steps in the payment process.

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## 48. Will I need to submit estate documentation to you or to the Court?

As noted in the Final Determination letter, the Court will provide further direction on submitting estate documentation.

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**49. Do I send my request for Court review to the Claims Administrator?**

No, any requests for a Court review will need to be submitted to the Court. The Final Determination letter explains that you must seek a Court Review by December 11, 2017. You must use the specific Court Review form found [here](#) and mail it directly to the Court at the following address:

Clerk of the Court  
Attn: *U.S. v. Fata* Restitution Claims  
231 W. Lafayette Blvd.  
Theodore Levin U.S. Courthouse  
Detroit, MI 48226

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**50. Can I wait to request further Court review at the hearing?**

The Final Determination letter explains that you must seek a Court Review by December 11, 2017. You must use the specific Court Review form found [here](#) and mail it directly to the Court at the following address:

Clerk of the Court  
Attn: *U.S. v. Fata* Restitution Claims  
231 W. Lafayette Blvd.  
Theodore Levin U.S. Courthouse  
Detroit, MI 48226

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**51. Will I be able to speak at hearings in this case?**

We do not have that information. You should check the DOJ website for information regarding the hearing and whether individuals will be able to speak at any future hearings. The website is [www.justice.gov/usao-edmi/us-v-farid-fata-court-docket-13-cr-20600](http://www.justice.gov/usao-edmi/us-v-farid-fata-court-docket-13-cr-20600).

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**52. Is the claims administrator also handling the disbursement?**

No, the Court will be handling the disbursement.

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## Helpful Links

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## Claims Facilitator

Fata Claims Facilitator

PO Box 2730

Portland, OR 97208-2730

1-877-202-3282

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The time to file claims is now closed. The deadline was **November 14, 2016**, pursuant to a Court Order. After a hearing on November 21, 2017, the Court issued an Order, on November 22, 2017, explaining how late claims are to be treated. The Court Order is [here](#).

### Claim Package

- [Cover Letter](#)
- [Definitions](#)
- [Claim Form Instructions](#)
- [Claim Form Checklist](#)
- [Claim Form](#)
- [Fillable PDF of Claim Form](#)
- [Physician and Dentist Form](#)
- [Mental Health Treatment Provider Form](#)

If you find that you need additional pages for Tables #1, 2, and/or 3, click on the appropriate link(s) below. You can use these links as a fillable form, or print the pages and fill in the table by hand.

- [Fillable or Printable PDF of Table #1](#)
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- [Fillable or Printable PDF of Table #3](#)

### Other Documents

- [Frequently Asked Questions PDF](#)
- [How to Prove What Victim Paid or Owed](#)
- [Listing Multiple Expenses](#)
- [Affidavit of Surviving Spouse](#)
- [Court Review Form](#)

## Facilitator Reports To The Court

- [January 12, 2017 - Notice of Report on Restitution](#)
- [November 14, 2017 - Notice of Report on Restitution](#)

## Selected Court Documents

Set forth below are some of the significant Court filings. The documents regarding the restitution process begin with the April 11, 2016 Order.

- [August 6, 2013 - Criminal Complaint](#)
- [August 14, 2013 - Indictment](#)
- [September 18, 2013 - First Superseding Indictment](#)
- [October 11, 2013 - Amended Opinion and Order Detaining Defendant Farid Fata Pending Trial](#)
- [October 29, 2013 - Complaint for Offer of Assignment for the Benefit of Creditors](#)
- [November 20, 2013 - Second Superseding Indictment](#)
- [December 18, 2013 - Third Superseding Indictment](#)
- [January 15, 2014 - Fourth Superseding Indictment](#)
- [January 23, 2014 - Court of Appeals Order](#)
- [June 4, 2014 - Order Denying Defendant's Motion For Change Of Venue \(ECF NO. 87\)](#)
- [June 10, 2014 - Defendant's Notice of Withdrawal of Motion for Appointment of Counsel \(DOC. #95\)](#)
- [June 11, 2014 - Order Adjourning Trial and Finding of Excludable Delay](#)
- [October 6, 2014 - The Victim Impact Statement Form](#)
- [May 28, 2015 - The United States Sentencing Memorandum](#)
  - [The Sentencing Memorandum: Exhibit A](#)
  - [The Sentencing Memorandum: Exhibit B](#)
  - [The Sentencing Memorandum: Exhibit C](#)

- [The Sentencing Memorandum: Exhibit D](#)
- [June 25, 2015 - Order Establishing Plan for Sentencing Hearing](#)
- [December 7, 2015 - Defendant-Appellant's Brief on Appeal](#)
- [January 25, 2016 - Brief for the United States](#)
- [February 10, 2016 - Defendant-Appellant's Reply Brief](#)
- [April 11, 2016 - Order Establishing Restitution Plan and Review of Claims for Restitution](#)
- [May 25, 2016 - Opinion Issued by the Court of Appeals](#)
- [August 31, 2016 - Opinion and Order Granting the United States' Motion to Dismiss the Petition \(ECF NO. 4\) and Dismissing the Petition \(ECF NO. 1\).](#)
- [September 26, 2016 - Order Extending Restitution Filing Deadline](#)
- [December 15, 2016 - Order Re: Restitution Status Hearing, January 17, 2017](#)
- [January 12, 2017 - Notice of Report on Restitution](#)
- [January 27, 2017 - Order Setting Restitution Reporting Hearing at 10 A.M. on August 16, 2017](#)
- [July 18, 2017 - Order Adjourning Restitution Report Hearing to 3 P.M. Friday, November 17, 2017](#)
- [November 14, 2017 - Notice of Report on Restitution](#)
- [November 22, 2017 - Order \(1\) Continuing Restitution Process; and \(2\) Precluding Further Submission/Processing of Late Filed Claims for Restitution and Late Requests for Reconsideration of Denied Claims.](#)

All of the documents are in Adobe Acrobat format (.pdf).

To view them, you need to have the [free Adobe Reader](#).



## Helpful Links

- [Contact Us](#)
- [Department of Justice](#)
- [Claim Form](#)
- [Privacy Policy](#)

## Claims Facilitator

Fata Claims Facilitator  
PO Box 2730  
Portland, OR 97208-2730



# United States of America v. Farid Fata

Case No. 13-cr-20600 (E.D. Mich.)

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## Medicare & Insurance Info

**Please Note: All contact information and links to other websites were valid and operational during the pendency of the case. Some contact information and some links may no longer be operational.**

### How to Contact Medicare and Various Private Insurance Companies for Explanation of Benefits or Medicare Service Notices.

INSURER	TELEPHONE #
AETNA	Please call the 1-800 number on the back of the patient's health insurance card. If Claimants do not have the member information, please call the toll-free number: <b>(1-800-872-3862)</b>
BCBS	Call the toll free anti-fraud hotline: <b>1-800-482-3787</b> .
CIGNA	Call toll-free: <b>1-800-667-7145</b> .
GEHA	Please call Carol Arth in the Special Investigations Unit: <b>1-800-441-1111</b> .
HEALTH ALLIANCE PLAN	Call the Supervisor Hotline <b>1-313-664-6150</b> . It is answered by the call center supervisors between 8 a.m. and 5 p.m. EST.
HUMANA	Please call the Humana Special Investigations Unit Hotline: <b>1-800-441-1111</b> . If calling during evenings or weekends, please leave a message on the voicemail.

<b>MEDICARE</b>	Medicare beneficiaries can request copies of their Medicare Su
<b>PRIORITY HEALTH</b>	Beneficiaries should call the Customer Service number on the t

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**Claims Facilitator**

Fata Claims Facilitator  
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Portland, OR 97208-2730  
1-877-202-3282

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## Claim Process Assistance

**Please Note: All contact information and links to other websites were valid and operational during the pendency of the case. Some contact information and some links may no longer be operational.**

**Claims are no longer being accepted pursuant to a recent Order of the Court. Therefore claims process assistance is no longer available.**

### **Process to Correct Claim Form Errors and Assistance in Error**

#### **Correction Process:**

Claims that were filed on time are now being processed. In some of those claims, we will determine that there were errors in the claim form: sometimes important information was missing, or the claim form said two things that are contradictory. In those cases, we will send the claimant a letter explaining the errors or defects in the claim form. The claimant will have 45 days from the date of that letter to submit the missing or corrected information. These letters will be sent on a rolling basis.

The phone agents will be available to help claimants understand exactly what we are referring to or asking for in the letters referenced above. Additionally, in-person assistance may be available in the process of responding to the letters. Volunteer availability is limited. Please call 1-877-202-3282 to talk to a phone agent about your letter and/or to schedule an in-person appointment with a Victim Advocate Specialist or a CPA.

#### **Scheduling Appointments:**

Please schedule an appointment for assistance in responding to a claim form error letter by calling the staff of the Fata Claims Facilitator at 1-877-202-3282. Volunteer availability is limited. There is no central site for the assistance – different volunteers will offer to meet at different sites. The phone agent can explain what volunteers and what sites are available. You may call to schedule your appointment from 9:00 a.m. to 8:00 p.m. Monday through Friday.

**Who's Assisting?:**

Assistance will be provided by Victim Advocate specialists as well as by volunteer Certified Public Accountants (CPAs).

**Bring Your Documents!:**

Please bring your Claim Form, the letter explaining the errors in your Claim Form, and supporting documentation with you to your appointment.

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**Claims Facilitator**

Fata Claims Facilitator

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1-877-202-3282

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## Contact Us

**Please Note: All contact information and links to other websites were valid and operational during the pendency of the case. Some contact information and some links may no longer be operational.**

If you have any specific questions about the claim process, please contact the staff of the Fata Claims Facilitator:

 Call:

1-877-202-3282 (Toll-Free)

Call Center Hours: 9 a.m. - 8 p.m. EST

Monday - Friday except Holidays

 Write:

Fata Claims Facilitator

PO Box 2730

Portland, OR 97208-2730

Please ensure that you include your name and your return address on all correspondence.

For general inquiries about the case, you may contact Sandy Palazzolo, the Victim Witness Coordinator for the U.S. Attorney's Office, Eastern District of Michigan. Please be advised that Ms. Palazzolo **will not be able to provide assistance in the claims process**. If your inquiry is NOT about the claims process, you may call Ms. Palazzolo at 1-313-226-9633, or you may write to her at U.S. Attorney's Office, 211 W. Fort Street, Suite 2001, Detroit, MI 48226.

If you have specific or general questions about the claims process, please call the phone staff at 1-877-202-3282.

**Media Inquiries:**

All questions from the media should be directed to Gina Balaya at the U.S. Attorney's Office, Eastern District of Michigan: 313-226-9758

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1-877-202-3282





**2 Section 2: Claims for Money Paid**

**2(a): Claims for Money Paid to the Defendant, Michigan Hematology Oncology (MHO), to Other Providers at the Defendant’s Direction, and/or for Medications Prescribed by the Defendant**

*This section is for claiming restitution for unreimbursed out-of-pocket costs for treatment provided by the defendant and/or MHO and/or provided at the defendant’s direction between April 11, 2005 and August 6, 2013 (including purchases of medications prescribed by the defendant between April 11, 2005 and August 6, 2013).*

In this section, we are asking you to do three things:

1. **Insurance.** Tell us about the health insurance that may have covered some of the patient’s costs.
2. **Costs.** List the patient’s costs.
3. **Payments.** Provide proof of payment of the costs.

**2(a.1): Tell Us About the Patient’s Insurance**

If the patient had insurance coverage at the time of treatment with the defendant, please check all that apply:

- Private Health Insurance  
(Please provide name of company: \_\_\_\_\_)
- Medicare
- Medicaid
- Veterans Administration
- Other Public Assistance  
(Please indicate type: \_\_\_\_\_)

**2(a.2): List the Patient’s Medical Costs**

Please list all of the out-of-pocket medical costs the patient incurred between April 11, 2005 and August 6, 2013. This includes costs that were paid for treatment by the defendant, the costs of treatments and/or services he ordered, and the purchase of medications prescribed by the defendant.

If the cost was covered by insurance, please list patient costs (amounts paid within deductible or co-pays). If the cost was not covered by insurance, please list the amount paid for each visit, service, or medication. Please provide this list by filling out Table #1 on page 5.

If you are requesting compensation for a treatment or service that the defendant ordered **but did not provide himself or through MHO**, please provide documentation that the defendant ordered the treatment/service. (Examples might include invoices from the provider or Medicare Summary Notice (MSN) showing that the defendant was the referring or ordering physician.)

I am requesting compensation for at least one treatment/service that the defendant requested **but did not provide himself or through MHO**:  Yes  No

If yes, I am providing documentation to show that the defendant ordered the outside treatment/service(s) for which I am requesting compensation:  Yes  No

**2(a.3): Provide Proof of Costs**

In addition to listing these costs, we are asking the patient to provide proof that the patient paid the costs. It is necessary to submit supporting documentation for each claimed out-of-pocket cost. You may submit original documents or photocopies.

**How to Mark the Documents That You Submit.** Each document that you provide as proof should correspond to one of the rows in Table #1 on page 5. Please mark each document in the upper right-hand corner with:

1. "Table #1" and
2. The row number to which the document corresponds.

**What Kinds of Documents Count as Proof?** For each cost, there are two alternative ways to provide proof.

**Provide Receipts.** The easiest way to provide proof is to provide receipts showing that the patient paid the listed costs. The receipt should indicate the patient's name, the date of service, the type of service, and the amount of money paid. You can submit original documents or photocopies.

**Show Amounts Owed, and Swear That the Patient Paid Them.** If you do not have receipts showing payment, please provide proof that the amounts were owed (for example, by providing bills, Medicare Summary Notices [MSN], or Explanation of Benefits [EOB] forms). In addition, check the box below to indicate that you understand that by signing this claim, you are swearing that you, as the patient, paid all of the listed patient costs in full. Or, if you are the authorized representative of a minor or incapacitated patient or of the estate of a deceased patient, you are swearing that you have personal knowledge that the patient paid all of the listed patient costs in full.

If you have proof of payment for some listed patient costs but not for others, please submit the proof you do have and check the box below to swear that you paid the costs for which you do not have receipts.

- By checking this box and signing this Claim Form, I am swearing under oath and under penalty of perjury that I, as the patient, paid all of the listed patient costs in full. Or, if I am the authorized representative of a minor or incapacitated patient or of the estate of a deceased patient, I am swearing that I have personal knowledge that the patient paid all of the listed patient costs in full.

If additional pages of the table below are needed, please copy and provide as many completed pages as necessary.  
NOTE: You need to fill out column #9 only if you have checked "declaration under oath" in column #8.

**Table #1:  
Medical out-of-pocket costs incurred between April 11, 2005 and August 6, 2013 for treatment provided by or ordered by the defendant**

1. Row #	2. Date of Service or Date Rx Filled (MM/DD/YYYY)	3. Type of Service	4. Cost	5. Was this cost covered by insurance? (Y/N)	6. If yes, what is the name of the insurance provider?	7. How much did the patient pay?	8. Supporting Documentation of Payment (check all that apply)	9. Supporting Documentation of Treatment and Cost (check all that apply in this column ONLY if you checked "Declaration under oath" in column 8)
/ /	/ /						<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt from provider <input type="checkbox"/> Credit card statement <i>(circle payment line)</i> <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Bill from provider <input type="checkbox"/> Other insurance company information
/ /	/ /						<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt from provider <input type="checkbox"/> Credit card statement <i>(circle payment line)</i> <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Bill from provider <input type="checkbox"/> Other insurance company information
/ /	/ /						<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt from provider <input type="checkbox"/> Credit card statement <i>(circle payment line)</i> <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Bill from provider <input type="checkbox"/> Other insurance company information

\*EOB = Explanation of Benefits  
\*\*MSN = Medicare Summary Notice

**2(b): Claims for Money Paid for Remedial Medical and Dental Treatments**

***This section is for claiming restitution for unreimbursed out-of-pocket medical and dental costs for remedial medical treatments and medications after receiving unnecessary or inappropriate treatments by the defendant through September 6, 2016.***

Complete this section if you are requesting restitution because the patient incurred out-of-pocket costs for remedial measures as a result of being under the care of the defendant and those losses have not been reimbursed (by any source) as of the date this form is signed.

If you complete this section, you must submit the “Physician and Dentist Form,” which is included in this claim package.

In this section, we are asking you to do four things:

1. **Narrative.** Tell us about your remedial treatments.
2. **Insurance.** Tell us about your health insurance that may have covered some of your costs.
3. **Costs.** List your costs.
4. **Payments.** Provide proof of payment of the costs.

**2(b.1): Narrative**

The defendant’s unnecessary or inappropriate treatments caused me/the patient to need the following remedial medical and/or dental measures, as explained below:

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**2(b.2): Tell Us About the Patient’s Insurance**

If the patient had insurance coverage at the time of treatment with the defendant, please check all that apply:

- Private Health Insurance  
(Please provide name of company: \_\_\_\_\_)
- Medicare
- Medicaid
- Veterans Administration
- Other Public Assistance  
(Please indicate type: \_\_\_\_\_)

**2(b.3): List the Patient's Costs****Patient Out-of-Pocket Costs for Remedial Measures Needed Due to Unnecessary or Inappropriate Treatments and/or Medications**

Please itemize payments that have not been reimbursed and that were costs of treatments, services or purchases needed to remediate unnecessary or inappropriate treatments by the defendant. Remedial medical and/or dental treatments, services, or purchases may include but are not limited to office visits, dental services, chemotherapy port removal, medical testing, prescription medications, assistive devices (e.g., wheelchairs), physical therapy, and occupational therapy. It is necessary to submit supporting documentation for each claimed out-of-pocket cost. If covered by insurance, please list the amounts paid within deductibles or co-pays. If not covered by insurance, please document the amount paid for each item. Please provide this list by filling out Table #2 on page 8.

**2(b.4): Provide Proof of Costs**

In addition to listing these costs, we are asking you to provide proof that you paid the costs. It is necessary to submit supporting documentation for each claimed out-of-pocket cost. You can submit original documents or photocopies.

**How to Mark the Documents That You Submit.** Each document that you provide as proof should correspond to one of the rows in Table #2 on page 8. Please mark each document in the upper right-hand corner with:

1. "Table #2" and
2. The row number to which the document corresponds.

**What Kinds of Documents Count as Proof?** For each cost, there are two alternative ways to provide proof.

**Provide Receipts.** The easiest way to provide proof is to provide receipts showing that the patient paid the listed costs. The receipt should indicate the patient's name, date of service, type of service, and amount of money paid.

**Show Amounts Owed, and Swear That the Patient Paid Them.** If you do not have receipts showing payment, please provide proof that the amounts were owed (for example, by providing bills, Medicare Summary Notices [MSN], or Explanation of Benefits [EOB] forms). In addition, check the box below to indicate that you understand that by signing this claim, you are swearing that you, as the patient, paid all of the listed patient costs in full. Or, if you are the authorized representative of a minor or incapacitated patient or of the estate of a deceased patient, you are swearing that you have personal knowledge that the patient paid all of the listed patient costs in full.

If you have proof of payment for some listed patient costs but not for others, please submit the proof you do have and check the box below to swear that you paid the costs for which you do not have receipts.

- By checking this box and signing this Claim Form, I am swearing under oath and under penalty of perjury that I, as the patient, paid all of the listed patient costs in full. Or, if I am the authorized representative of a minor or incapacitated patient or of the estate of a deceased patient, I am swearing that I have personal knowledge that the patient paid all of the listed patient costs in full.

If additional pages of the table below are needed, please copy and provide as many completed pages as necessary.  
NOTE: You need to fill out column #9 only if you have checked "declaration under oath" in column #8.

**Table #2:  
Out-of-pocket costs for remedial medical and/or dental treatments and medications through September 6, 2016  
after unnecessary or inappropriate treatments by the defendant**

1. Row #	2. Date of Service or Purchase (MM/DD/YYYY)	3. Type of Service or Purchase	4. Cost	5. Was this cost covered by insurance? (Y/N)	6. If yes, what is the name of provider?	7. How much did the patient pay?	8. Supporting Documentation of Payment (check all that apply)	9. Supporting Documentation of Treatment and Cost (check all that apply in this column ONLY if you checked "Declaration under oath" in column 8)
/ /	/ /						<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information
/ /	/ /						<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information

\*EOB = Explanation of Benefits

\*\*MSN = Medicare Summary Notice

\*\*\*"Incurred but not yet paid" means that your necessary remedial treatment has been provided before or on September 6, 2016; you have received a bill for the treatment; and you have not yet paid for the remedial treatment.

**2(c): Claims for Money Paid for Mental Health Treatment**

*This section is for claiming restitution for unreimbursed out-of-pocket costs incurred by the patients of the defendant for mental health treatments between April 11, 2005 and September 6, 2016 (including purchases of medications prescribed between April 11, 2005 and September 6, 2016 as part of such mental health treatment).*

Complete this section if you are requesting restitution because the patient incurred out-of-pocket costs for remedial measures as a result of being under the care of the defendant and those losses have not been reimbursed (by any source) as of the date this form is signed.

If you complete this section, you must submit the "Mental Health Treatment Provider Form," which is included in this claim package.

In this section, we are asking you to do four things:

1. **Narrative.** Tell us about your remedial treatments.
2. **Insurance.** Tell us about your health insurance that may have covered some of your costs.
3. **Costs.** List your costs.
4. **Payments.** Provide proof of payment of the costs.

**2(c.1): Narrative**

The defendant's treatments caused me/the patient to need the following mental health remedial measures, as explained below:

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**2(c.2): Tell Us About the Patient's Insurance**

If the patient had insurance coverage at the time of treatment with the defendant, check all that apply:

- Private Health Insurance  
(Please provide name of company: \_\_\_\_\_)
- Medicare
- Medicaid
- Veterans Administration
- Other Public Assistance  
(Please indicate type: \_\_\_\_\_)

**2(c.3): List the Patient's Costs****Patient Out-of-Pocket Costs for Mental Health Remedial Measures**

Please itemize payments that have not been reimbursed and that were needed to provide remediation of the mental health effects of treatment by the defendant. It is necessary to submit supporting documentation for each claimed out-of-pocket cost. If covered by insurance, please list the patient costs (amounts paid within deductible or co-pays). If not covered by insurance, please document the amount paid for each service. Please provide this list by filling out Table #3 on page 11.

**2(c.4): Provide Proof of Costs**

In addition to listing these costs, we are asking you to provide proof that you paid the costs. It is necessary to submit supporting documentation for each claimed out-of-pocket cost. You can submit original documents or photocopies.

**How to Mark the Documents That You Submit.** Each document that you provide as proof should correspond to one of the rows in Table #3 on page 11. Please mark each document in the upper right-hand corner with:

1. "Table #3" and
2. The row number to which the document corresponds.

**What Kinds of Documents Count as Proof?** For each cost, there are two alternative ways to provide proof. You can submit original documents or photocopies.

**Provide Receipts.** The easiest way to provide proof is to provide receipts showing that the patient paid the listed costs. The receipt should indicate the patient's name, the date of service, the type of service, and the amount of money paid.

**Show Amounts Owed, and Swear That the Patient Paid Them.** If you do not have receipts showing payment, please provide proof that the amounts were owed (for example, by providing bills, Medicare Summary Notices [MSN], or Explanation of Benefits [EOB] forms). In addition, check the box below to indicate that you understand that by signing this claim, you are swearing that you, as the patient, paid all of the listed patient costs in full. Or, if you are the authorized representative of a minor or incapacitated patient or of the estate of a deceased patient, you are swearing that you have personal knowledge that the patient paid all of the listed patient costs in full.

If you have proof of payment for some listed patient costs but not for others, please submit the proof you do have and check the box below to swear that you paid the costs for which you do not have receipts.

- By checking this box and signing this Claim Form, I am swearing under oath and under penalty of perjury that I, as the patient, paid all of the listed patient costs in full. Or, if I am the authorized representative of a minor or incapacitated patient or of the estate of a deceased patient, that I have personal knowledge that the patient paid all of the listed patient costs in full.

If additional pages of the table below are needed, please copy and provide as many completed pages as necessary.  
NOTE: You need to fill out column #9 only if you have checked "declaration under oath" in column #8.

**Table #3: Patient Out-of-Pocket Costs for Mental Health Remedial Measures between April 11, 2005 and September 6, 2016**

1. Row #	2. Date of Service or Date Rx Filled (MM/DD/YYYY)	3. Type of Service or Rx	4. Cost	5. Was this cost covered by insurance? (Y/N)	6. If yes, what is the name of the insurance provider?	7. How much did the patient pay?	8. Supporting Documentation of Payment (check all that apply)	9. Supporting Documentation of Treatment and Cost (check all that apply in this column ONLY if you checked "Declaration under oath" in column 8)
	/ /						<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement <i>(circle payment line)</i> <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information
	/ /						<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement <i>(circle payment line)</i> <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information
	/ /						<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement <i>(circle payment line)</i> <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information

\*EOB = Explanation of Benefits

\*\*MSN = Medicare Summary Notice

\*\*\*"Incurred but not yet paid" means that your necessary remedial treatment has been provided before or on September 6, 2016; you have received a bill for the treatment; and you have not yet been paid for the remedial treatment.

**2(d): Claims for Money Paid for Funeral Costs**

***This section is for claiming funeral costs paid by family members.***

If you would like to be considered for reimbursement in this category, please complete the following:

**2(d.1): Details About Patient's Death**

Patient's Date of Death:   /   /      
MM DD YYYY

With your Claim Form submission, you must include a copy of the death certificate.

Death Certificate included:  Yes  No

**2(d.2): Proof That Deceased Was a Patient of the Defendant**

The government has records containing the names of some of the defendant's patients. However, those records are not complete.

Please provide one document establishing that the deceased was a patient of the defendant. You may submit originals of documents or photocopies. Examples of documents you may provide:

- MHO bill with patient's name and showing treatment by the defendant
- EOB or MSN with patient's name and showing treatment by the defendant
- A page from patient's medical file showing patient's name and the defendant's name

Patient of defendant documentation included:  Yes  No

Describe document included: \_\_\_\_\_

**2(d.3): Your Relationship to the Deceased**

Are you a family member of the deceased?  Yes  No

If yes, please indicate the nature of the family relationship (child, spouse, etc.):

**2(d.4): Details About Funeral**

Date of Funeral:   /   /      
MM DD YYYY

Place of Funeral

Address

City

State

ZIP Code

Phone Number

-  -

Was an obituary published:  Yes  No Where? \_\_\_\_\_

If yes, you must include at least one copy of the obituary with this form.

Obituary included:  Yes  No



Have there been any monies received as a result of the above lawsuit?

Yes     No

If yes, please complete Table #4, below, as to any amounts received.

<b>Table #4: Compensation From Other Sources</b>			
	Identity of Payor (Who provided the compensation?)	Amount Received	What Specific Loss Is This Award Supposed to Compensate? (For example, pain and suffering, out-of-pocket costs, etc.)
Payment #1:			
Payment #2:			
Payment #3:			

Please use additional sheets if necessary.

Has the patient applied for Crime Victim Compensation from the Michigan Department of Community Health?

Yes     No

If yes, has the patient received compensation as a result of the above application?

Yes     No

If yes, please record the amounts in Table #4, above.

Has the patient (or patient’s representative) applied and/or received compensation from any other source not already identified in this Claim Form?

Yes     No

If yes, please record the amounts in Table #4, above.

**PLEASE NOTE: If the patient receives compensation from another source after this Claim Form is filed, you have an ongoing obligation to report that compensation. To file a report, please call 1-877-202-3282 from Monday through Friday between the hours of 9:00 a.m. and 8:00 p.m. Eastern Time.**



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**a.m. EST**

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Additional Information [Here](#)

## Privacy Policy

The Claims Administrator is committed to maintaining the privacy of your personal information. With respect to the collection, use and disclosure of personal information, the Claims Administrator makes every effort to ensure compliance with applicable law, including, but not limited to, the Data Protection Act, 1998, the U.S. Privacy Act of 1974, the U.S. Paperwork Reduction Act of 1995, the US-EU Safe Harbor Privacy Principles and internal information quality guidelines. In connection with the claims administration process, you may be asked to provide certain information, including, but not limited to, name, postal address, telephone number and transactional account data. The information collected will be used solely for the purposes of the Settlement and the claims administration process, as governed by the Court.

## Helpful Links

[Contact Us](#)

[Department of Justice](#)

[Claim Form](#)

[Privacy Policy](#)

## Claims Facilitator

Fata Claims Facilitator

PO Box 2730



## How Do I Prove What I Paid and/or Owed?

This claims process requires that for each out-of-pocket expense, the Claimant must either:

- (1) Prove the amount that the Claimant ***paid***; or
- (2) Prove the amount that the Claimant ***owed***, and ***swear*** that the Claimant paid that bill.

What are the easiest ways to do this? Let's look at some possibilities for the eligible expenses:

### **Proof of Expenses While a Patient of Fata:**

How do I prove the amount the Claimant paid out-of-pocket to or at the direction of the defendant? Here are some suggestions:

1. **Patient File.** Many patients and family members of deceased patients received the patient's medical file after the defendant's arrest. In some cases, the file may contain records of payments to Michigan Hematology Oncology. Claimants who have those payment records can use them to prove that they made the payments shown in those records.
2. **Bank Statements and/or Cancelled Checks.** Claimants who have bank statements and/or cancelled checks can use those statements and/or checks as proof of payment to the extent that they indicate that payments were made to Michigan Hematology Oncology and other medical providers who treated the patient based upon orders by Fata. (However, please note that a handwritten check register alone is insufficient proof of payments.)
3. **Credit Card Statements.** Claimants who have credit card statements during the time of Fata's treatment can use those statements as proof of payment to the extent that they indicate that payments were made to Michigan Hematology Oncology and other medical providers who treated the patient based upon orders by Fata.
4. **Receipts.** If the Claimant has receipts of the payments made, those serve as proof of payment.
5. **Explanation of Benefits (EOBs) and Medicare Summary Notices (MSNs).** Claimants who do not have any of the types of proof listed for one or more out-of-pocket expense(s) above will need to obtain EOBs or MSNs to show that the patient owed a specific amount. Look at the fataclaims.com website and click on "Medicare and Insurance Information" to learn how to get these forms. Please note that some insurance companies may provide a spreadsheet instead of EOBs. We will accept a spreadsheet generated by the patient's insurance company.

### **Remedial Treatments until September 6, 2016**

What is the easiest way to prove the amount the Claimant paid out-of-pocket for remedial treatment? Here are some possible approaches.

1. **Ask Remedial Treatment Provider for Printout of Payments.** In most cases, the remedial treatment providers are still in practice. Claimants can try asking those providers' business offices to send them a statement showing all amounts they have paid so far. Claimants can use those statements as proof of out-of-pocket expenses if they clearly indicate what the patient paid out-of-pocket.
2. **Bank Statements and/or Cancelled Checks.** Claimants who have the victim's bank statements and/or cancelled checks from these years can use those statements and/or checks as proof of payment to the extent that they clearly indicate that payments were made to the remedial treatment provider. (However, please note that a handwritten check register alone is insufficient proof of payments.)
3. **Credit Card Statements.** Claimants who have the victim's credit card statements from these years can use those statements as proof of payment to the extent that they clearly indicate that payments were made to the remedial treatment provider.
4. **Receipts.** If the Claimant has receipts of the payments made, those serve as proof of payment.

- 5. Explanation of Benefits (EOBs) and Medicare Summary Notices (MSNs).** Claimants who do not have any of the types of proof listed for one or more out-of-pocket expense(s) above will need to obtain EOBs and MSNs to show that they owed a specific amount. Look at [www.fataclaims.com](http://www.fataclaims.com) and click on “Medicare and Insurance Information” to learn how to get these forms. Please note that some insurance companies may provide a spreadsheet instead of EOBs. We will accept a spreadsheet produced by the patient’s insurance company.

**Proof or Need to Swear?**

If the Claimant provided proof of payment, there is no need to swear that the payments were made. If, instead, the Claimant is providing proof of what was owed (by way of EOBs and/or MSNs), the Claimant needs to check the box to swear that the bills were paid.

## **Do I Have to Fill Out the Tables on the Claim Form? Is There an Easier Way to Complete the Claim Form?**

To address the concern that Claimants have too many entries to write into the 3 tables in the Claim Form (on pages 5, 8, and 11 of the Claim Form), we are now offering an ***alternative, slightly streamlined way of completing the tables in the Claim Form.***

Instead of copying every transaction onto a table, the Claimant may instead take these five steps:

### **Step #1: Divide Proof into Three Categories.**

Divide all of the proof into three categories:

- **Defendant.** Payments made to or at the direction of the defendant before August 6, 2013.
- **Remedial Medical and Dental.** Payments made to remedial medical and/or dental providers before or on September 6, 2016.
- **Remedial Mental Health.** Payments made to remedial mental health providers before or on September 6, 2016.

Put each category of papers in a separate, labeled folder or envelope within your mailing envelope. Please do not only clip or rubber band the categories together, and please do not use Post-it notes; these items can lose their designated places during the review process.

### **Step #2: Circle the Claimed Out-of-Pocket Expenses.**

For each category of papers, please **circle** on each document the out-of-pocket expenses the Claimant is submitting in the claim. Please do not only highlight the out-of-pocket expenses. If you have already highlighted, please be sure to circle the expenses as well. Please do not use Post-it notes as they can fall from their designated places during the review process.

### **Step #3: Compute the Total for Each Category.**

The Claim Form must include a request for a specific total amount for each category. So, add the figures together to determine the total amount the Claimant is claiming for each category.

### **Step #4: Write the Total on Table.**

Write onto each table the total amount the Claimant is claiming for that category. In other words:

- On Table #1 page 5 of Claim Form, write the total amount the Claimant is claiming for out-of-pocket expenses for payments to or at the direction of the defendant;
- On Table #2 page 8 of Claim Form, write the total amount the Claimant is claiming for out-of-pocket expenses for remedial medical and/or dental treatment;
- On Table #3 page 11 of Claim Form, write the total amount the Claimant is claiming for out-of-pocket expenses for remedial mental health treatment.

### **Step #5: Provide Explanation.**

The Claimant is welcome to include a letter or note explaining any additional information that will help us to understand the documents provided. Telling the story of the treatments and what was involved can help us to understand the documents submitted. This is not required, but providing more information may help.

### **Note: Proof or Need to Swear?**

If the Claimant provided proof of payment, there is no need to swear that the payments were made. If, instead, the Claimant is providing proof of what was owed (by way of EOBs and/or MSNs), the Claimant needs to check the box to swear that the bills were paid.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 2:17-mc-50557  
(SEALED MATTER)

FARID FATA, M.D.,

Honorable Paul D. Borman  
Magistrate Judge David Grand

Defendant.

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**NOTICE OF FACILITATOR'S FINAL RECOMMENDATION AND NOTICE  
OF RIGHT TO COURT REVIEW**

Our records indicate that you filed a Claim for restitution in this case. The Facilitator sent a letter to you explaining the amount of restitution you may be entitled to receive. *If you agree with the Facilitator's recommendation(s), you do not need to take any further action at this time.* Further information and updates regarding the timing and processing of restitution payments will be provided.

If you believe the Facilitator has wrongly denied all or a portion of your Claim, you may request a review by the Court.

If you would like the Court to review the Facilitator's reasons for the denial of all or a portion of your Claim, your request for review by the Court must be postmarked on or before **December 11, 2017**.

**Your request must be in writing on the enclosed form.** The form asks you to explain what mistake was made by the Facilitator in reviewing the *documents you already submitted in your Claim package to support your Claim*. If you need additional space to explain, you may attach additional pages to the enclosed form. Please print clearly in black ink on the enclosed form and on any additional pages. Please be sure to include your name and tracking number on every additional page submitted.

Mail the completed form and all attachments to:

Clerk of the Court  
Attn: *U.S. v. Fata* Restitution Claims  
231 W. Lafayette Blvd.  
Theodore Levin U.S. Courthouse  
Detroit, MI 48226

Please be advised that your written request for review, including all of the details you include on the enclosed form, will be filed **under seal** in the court record by the Clerk of the Court. Therefore, the information will not be publicly available. Please note that the Court will not be providing written confirmation of the receipt of a request for review.

If you request review by the Court according to these instructions, the Court will provide further direction regarding any additional deadlines, court appearances, or other requirements that are necessary to the review of your Claim.

**KEEP A COPY OF THE COMPLETE REQUEST FOR REVIEW  
FOR YOUR RECORDS**





## Definitions of Terms Used in Claims Process

1. **Remedial / remediate.** Something done to correct or cure something. In this context, a treatment, service, or test you received to help you in response to a condition or conditions possibly, probably, or definitely caused by the defendant.
2. **Compensable / compensation / past compensation.** In this context, money given to the patient (or his or her representative) to make-up for certain economic losses.
3. **Claimant.** The person who files a claim. This can refer to the patient him- or herself or to the patient's authorized representative.
4. **Receipt.** A written acknowledgement of having received a specific amount of money in exchange for a service, treatment, or product.
5. **Under oath.** When someone is under oath, he or she has sworn to tell the truth.
6. **Specialties / AMA specialty codes.** The American Medical Association (AMA) publishes a list of Physician Specialty Codes, which is the standard method in the U.S. for identifying physician and practice specialties.
7. **NPI Number.** A National Provider Identifier or NPI is a unique ten-digit identification number issued to health care providers in the United States by the Centers for Medicare and Medicaid Services.
8. **Restitution.** Compensation for certain economic losses caused by the defendant's wrongful acts.
9. **Out-of-pocket costs.** The amount of money that the patient paid out of his or her own funds. If a service cost \$100, the insurance covered \$90 of the cost, and the patient paid \$10 of the cost, then the patient incurred \$10 of out-of-pocket costs.
10. **Explanation of Benefits (EOB).** Documentation provided by the patient's health insurance company outlining the date of a health care service to a patient, costs for the service billed to the insurance company, amounts paid to the provider by the insurance company, and the amount the patient owes to the health care provider.
11. **Medicare Summary Notice (MSN).** Documentation provided by Medicare outlining the dates of health care services to a patient, costs for the services billed to Medicare, amounts paid to the provider by Medicare, and the amounts the patient owes to the health care provider.

**AFFIDAVIT OF SURVIVING SPOUSE**

I, \_\_\_\_\_, make the following statements based upon personal information:

1. I have filed a claim for reimbursement of expenses in this case.
2. My Social Security Number is \_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_.
3. My spouse, \_\_\_\_\_, was a patient of Farid Fata. We were married on \_\_\_\_\_, in the County of \_\_\_\_\_, State of \_\_\_\_\_.
4. We were married during the time that my spouse, \_\_\_\_\_, was a patient of Farid Fata.
5. My spouse, \_\_\_\_\_, died on \_\_\_\_\_. I have included a copy of the death certificate with my claim for reimbursement, OR a copy of the death certificate is attached to this affidavit.
6. We were married to each other at the time of my spouse's death.
7. No probate estate has been opened in any county for or on behalf of my spouse.
8. Upon information and belief, no one else has made a claim for reimbursement of these expenses, and I am entitled to receive these funds.

***I declare under penalty of perjury, 28 U.S.C. § 1746, that the foregoing is true and correct.***

Date Signed: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Subscribed and sworn before me in the City of \_\_\_\_\_, County of \_\_\_\_\_,

State of \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 13-cr-20600

v.

Paul D. Borman  
United States District Judge

FARID FATA,

Defendant.

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ORDER (1) CONTINUING RESTITUTION PROCESS; and  
(2) PRECLUDING FURTHER SUBMISSION/PROCESSING  
OF LATE FILED CLAIMS FOR RESTITUTION AND  
LATE REQUESTS FOR RECONSIDERATION OF DENIED CLAIMS

On November 21, 2017, the Court held a hearing on the status of the restitution proceedings in this action that have been ongoing pursuant to the Court's April 11, 2016 Order Establishing a Restitution Plan and Review of Claims for Restitution. (ECF No. 186.) The Claims Facilitator, Ms. Randi Ilyse Roth, presented the details of her Final Report to the Department of Justice Regarding the Restitution Process (ECF No. 207) and responded to questions posed by the Court. The government also responded to several inquiries by the Court regarding the claims filing and appeal process and regarding the procedures governing the ultimate payment of finally

approved claims.

Ms. Roth explained to the Court that there were two issues regarding late submissions of claims and late requests for reconsideration of denied claims that required the Court's resolution. The Court has read the materials submitted by Ms. Roth in her Final Report, and has considered the comments made both by Ms. Roth and the government during the November 21, 2017 hearing regarding these late-filed submissions and requests. The Court has determined that granting any further exceptions to claimants filing late claims and/or late requests for reconsideration after the date of Ms. Roth's November 7, 2017 Final Report would necessarily disrupt the established December 11, 2017 deadline for filing appeals to this Court and would be fundamentally unfair to those claimants who filed timely claims and timely requests for reconsideration. Accordingly, the Court has determined that:

1. Late claims and late reconsideration requests that pre-dated Ms. Roth's November 7, 2017 Final Report shall be processed and paid in the same manner as timely filed claims;<sup>1</sup> and

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<sup>1</sup> With respect to any late claim that was filed after Ms. Roth issued her November 7, 2017 Report but before the November 21, 2017 hearing, any request to cure or for reconsideration of a denial of such a claim shall be filed with the Magistrate Judge on or before December 11, 2017, as part of the established process for appealing the Claims Facilitator's determination to this Court. Such claimant(s) will receive instructions to this effect in a letter from the Claims Facilitator.

2. No further late claims or late reconsideration requests will be accepted for processing by the Claims Facilitator or the Court.

Pursuant to *United States v. Dolan*, 130 S. Ct. 2533, 2542 (2010), the Court finds that the continuing complex restitution process necessitates moving back the restitution deadline for six months to May 22, 2018.

IT IS SO ORDERED.

s/Paul D. Borman  
Paul D. Borman  
United States District Judge

Dated: November 22, 2017

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 22, 2017.

s/Deborah Tofil  
Case Manager

United States v. Farid Fata  
Fata Claims Facilitator  
P.O. Box 2730  
Portland, OR 97208-2730

**Randi Ilyse Roth**  
Claims Facilitator  
Complex Settlements, PC  
*United States v. Fata*  
Case No. 13-CR-20600

I would like to introduce myself to you. I am the Claims Facilitator in the *United States v. Fata* case.

I have several jobs in this case: I am helping the Department of Justice design and run the claims process. I will make recommendations to the Court about the amount of restitution each victim is entitled to receive. And, most important, my staff and I are here to help you with the claims process.

**Your Claim Form and all supporting papers must be postmarked before or on November 14, 2016.**

This November 14 deadline is *critical*.

Please do not wait until a week or two before November 14 to start filling out the Claim Form. It may take weeks or even longer to gather all documents needed to support the claim.

**Please start filling out the Claim Form as soon as you receive it.**

I will describe more below about the restitution process, how you can apply, and if you should apply, but please keep this deadline in mind. It cannot be changed, even if you have a good reason for missing the deadline.

I would like to introduce you to the enclosed Claim Form Package and share with you messages about eight important topics.

### **1. What Is Restitution?**

Restitution is the technical term that describes a process governed by federal law to pay victims for some of the losses they suffered from a crime. Restitution rules apply to cases like this—cases in which the government seizes a convicted criminal's assets and sets up a process for distributing those assets to victims of the crime who can provide documentation of certain kinds of economic losses.

It is fortunate that the Department of Justice has money to distribute and the [Court has authorized](#) the payment of restitution in this case. Criminal restitution, though, requires specific documentation and does not cover every type of loss. As a result, the claims process may seem detailed and extensive. We will do everything we can to make the process as user-friendly as possible within the constraints of the law.

## 2. What Losses Can and Cannot Be Claimed?

I would like to be clear about what types of claims can and cannot be paid in this process under federal restitution law, as Congress has defined it.

**What Can Be Claimed.** Only certain kinds of out-of-pocket costs can be claimed in this process. Claims can be submitted for:

1. Money paid for treatments prescribed by Defendant Farid Fata (hereinafter, “the defendant”), treatments and services ordered by the defendant, and prescriptions prescribed by the defendant;
2. Money paid for remedial medical and dental treatment through September 6, 2016, to remedy the effects of what the defendant ordered;
3. Money paid for mental health remedial treatment through September 6, 2016, to remedy mental health issues related to the defendant’s treatments; and
4. Money paid by victims’ family members for victims’ funerals. (Please note that it is likely that the claims process will be able to pay for only a portion of the eligible funeral costs.)

Victims who have no out-of-pocket costs in the categories listed above should not submit a claim in this process.

**What Cannot Be Claimed.** This is a restitution process within a criminal case; many categories of loss that are commonly paid in civil cases cannot be paid in this process. For example, this process cannot pay claims for:

1. pain and suffering;
2. lost wages;
3. attorneys’ fees; or
4. travel to obtain medical treatment.

We understand that this will be very disappointing to many people. These are the rules we must follow, however, that Congress has set down. We will do our best to answer all of your questions as you prepare to file a claim for the types of expenses that restitution law allows to be paid from the defendant’s assets.

## 3. Structure of the Claim Package

Your Claim Package has four parts:

- a. Instructions. This 5-page document explains how to fill out the Claim Form.
- b. Checklist. You may find it helpful to go over this Checklist before you submit your Claim Form. It can help you remember to include all of the necessary supporting documents.
- c. The Claim Form. It is important to fill this out carefully and completely and sign it.
- d. Provider Forms. If you are requesting restitution for remedial care—care that you received to help you respond to a condition caused by the defendant—the physician, dentist, or mental health provider who has provided and/or is providing that care to you will need to fill out and sign the appropriate form to support your claim.

It is possible that as we start working on your claim, we will need to ask you for more information. If this happens, we will send you a letter explaining what we will need.

## 4. Support in the Claims Process

You may find that you have questions and/or concerns as you start filling out your Claim Form. There are at least three different ways that you can get support in this process.

First, you can call for phone support. Beginning June 9, trained phone staff will be on duty every weekday from 9:00 a.m. to 8:00 p.m. (Eastern Time) at this toll-free number: 1-877-202-3282. Please feel free to call them. They are in the best position to answer your questions about the Claim Form. For other questions, you may call Sandy Palazzolo, the Victim Witness Coordinator for the United States Attorney's Office in the Eastern District of Michigan, at 1-313-226-9633.

Second, beginning June 9, you may check our website, [www.fataclaims.com](http://www.fataclaims.com), for information and updates about the claims process. You will find a Frequently Asked Questions (FAQ) page there with information about many common concerns; the page will be updated as Claimants raise more questions during the process.

Third, you may choose to involve a family member or friend in the process to help you get answers to your questions and to fill out the Claim Form. For example, you may have your son or daughter call the phone staff to ask questions for you. If you would like to authorize our phone staff to speak to someone besides yourself about your claim, just list that person in Section 4 of the Claim Form.

## **5. How to Fill Out and Submit Your Package**

All Claim Forms must be filled out on paper and submitted by mail or another delivery service (such as FedEx, UPS, etc.). There are two different ways to fill out the Claim Form on paper.

First, you can fill it out by handwriting your answers on the paper Claim Form, or by typing them onto the paper form using a typewriter. If a paper Claim Form was mailed to you, you can fill that out. Or you can visit our website at [www.fataclaims.com](http://www.fataclaims.com) to print a copy of the PDF of the Claim Form for yourself and then fill it out. If you would like to have a paper Claim Form mailed to you, call 1-877-202-3282 and request that one be sent to you.

Second, you can open an Adobe-fillable version of the Claim Form at [www.fataclaims.com](http://www.fataclaims.com) and type in your answers on the computer. When you are finished typing in your answers, you will print it and submit it by mail or by using another delivery service. (Remember to save the document often as you are working on it.)

Before mailing your Claim Form, please be sure to make a photocopy of the form and all supporting papers and keep the copy for your records.

## **6. Important Deadlines**

**As I already stated, your Claim Form and all supporting papers must be postmarked before or on November 14, 2016.**

When you read the Claim Form, you will see that the last date of remedial medical, dental, or mental health treatment for which you can submit claims is **September 6, 2016**. Claims for costs of remedial treatment that the patient received after **September 6, 2016** cannot be paid in this claims process.

## **7. Getting Details About Dates and Cost of Treatment**

To submit claims for out-of-pocket costs related to treatments, you will need to list the dates and costs of treatments and either provide receipts to prove that you paid the costs or sign a statement swearing that you paid the costs. Some of these costs may be the payment of co-pays; some may be payment of the entire cost of a treatment to satisfy an insurance deductible; and some may be costs that were paid in full because the patient did not have insurance that covered the costs.

Some people may not know how they will find this information, may not have detailed records at home, or do not know where to get more information. Please note that one way many people can get access to their records is by obtaining information from their health insurance companies. The information

might be in an Explanation of Benefits (EOB) form or in some other kind of document. The Department of Justice has worked hard to try to let the victims' insurance companies know that requests for these documents may be coming from victims who are trying to file claims in this process. Details about who to contact and what the request process is like at many of the victims' insurance companies can be found on the EOB page of our website at [www.fataclaims.com](http://www.fataclaims.com) or by clicking [here](#).

Another way that many people can get access to payment information is by asking their credit card companies for copies of old credit card statements.

## **8. Definitions of Key Terms**

Several words that are used in the Claim Form have technical meanings. To assist you, I have included a number of terms and definitions with this letter.

### **Conclusion**

Please start filling out the Claim Form as soon as you receive it. Read through it, and if you have any questions or concerns, check the website at [www.fataclaims.com](http://www.fataclaims.com), call the phone staff at 1-877-202-3282, or call Sandy Palazzolo, the Victim Witness Coordinator at the U.S. Attorney's Office, at 1-313-226-9633.

Remember, your completed Claim Form must be postmarked before or on November 14, 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "Randi Ilyse Roth". The signature is fluid and cursive, with a large initial "R" and "I".

Randi Ilyse Roth  
Attorney at Law  
Claims Facilitator

## Claim Instructions

### Introduction

Defendant Farid Fata (hereinafter, “the defendant”) committed crimes that caused traumatic physical harm to individual patients and significant economic losses and emotional harm to individual patients and their families; however, the claims process in this case can compensate victims for only a portion of their losses. That is because restitution in a criminal case is limited to a narrow range of economic losses. The Honorable Judge Paul D. Borman entered an order in the defendant’s criminal case setting forth the types of economic losses that may be considered for restitution. The terms of that order are the basis for this Claim Form.

These limitations prevent this process from providing compensation for all the types of economic losses the victims suffered. The amounts of compensation provided in this process may seem very small in the context of the physical and emotional pain suffered by individual patients and their families.

Moreover, the rules incorporated into this form regarding documentation of economic losses may seem burdensome. However, the law requires that claimed economic losses must have supporting documentation that shows both the amount of and the nature of the claimed loss.

**Please read this form carefully.** There are a number of categories of possible reimbursement. In addition, there are a number of deadlines that must be met. If you have questions or concerns about how to complete this form, please call the staff working with the Facilitator (the phone number is on the top, right-hand corner of every page) or the Victim Witness Coordinator at the United States Attorney’s Office (Sandy Palazzolo, 1-313-226-9633).

In the first stage of this process, the Facilitator will recommend and the Court will determine the amount each Claimant is *eligible* to receive as restitution. However, the Court must make this determination without regard to whether the defendant has the ability to pay the full amount of the losses. The United States Attorney’s Office will continue to work to recover assets to pay the restitution amount ordered by the Court; however, patients and their authorized representatives should be aware that it is possible that all the losses claimed in this process and included in the restitution order will not be paid in full.

Finally, please be aware that **this claims process will be the only opportunity in this federal criminal case** for individual patients or their authorized representatives to submit information and documents to request compensation for economic losses incurred as a result of being a patient of the defendant.

### Deadline

The Claim Form must be **postmarked before or on November 14, 2016.**

### How Is the Claim Form Organized?

There are five sections of the Claim Form.

This Claim Form is color-coded. The color coding can help direct you to fill out the sections that apply to your situation and to skip the sections that do not apply to your situation. Everyone who files a claim must fill out all sections with blue borders (sections 1, 3, and 5). Claimants should choose the other sections that apply to their situations and may skip the ones that do not apply.

Section 1 asks for background information. This section has a BLUE BORDER. Everyone must fill out all of the sections with blue borders.

Section 2 is about listing the losses for which the Claimant is requesting compensation. There are four categories of eligible losses.

Section 2(a) is for requesting compensation for money paid to the defendant, money paid for treatments and/or services ordered by the defendant, and money paid for prescriptions prescribed by the defendant. This section has a GRAY BORDER. Claimants who are not requesting compensation for out-of-pocket costs paid to the defendant, treatments and/or services ordered by the defendant, or for prescriptions prescribed by the defendant should skip this section.

Section 2(b) is for requesting compensation for money paid for medical and dental remedial treatment to help the patient heal from or otherwise respond to harm done by the defendant. This section has a GREEN BORDER. Claimants who are not requesting compensation for out-of-pocket costs paid for medical or dental remedial treatment should skip this section.

Section 2(c) is for requesting compensation for money paid for mental health remedial treatment to help the patient heal from or otherwise respond to harm done by the defendant. This section has a PURPLE BORDER. Claimants who are not requesting compensation for out-of-pocket costs paid for mental health remedial treatment should skip this section.

Section 2(d) is for family members of deceased patients who are requesting compensation for their unreimbursed contributions to the deceased patients' funeral costs. This section has a RED BORDER. Claimants who are not requesting compensation for unreimbursed funeral costs should skip this section.

Section 3 asks the Claimant to explain any compensation received from other sources. This section has a BLUE BORDER. Everyone must fill out all sections with blue borders.

Section 4 asks whether the Claimant would like to authorize anyone else to communicate for them in the claims process. This section has a YELLOW BORDER. Claimants who are not authorizing someone else to speak for the Claimant in this process should skip this section.

Section 5 asks the Claimant to swear under oath that everything in the Claim Form is true. This section has a BLUE BORDER. Everyone must fill out all sections with blue borders.

**Here is a table to help make these choices clear:**

Section	Color Coding	Who Completes This Section?
1. Background	Blue	All Claimants
2. Types of Claims		
2(a). Money Paid to the Defendant, Services Ordered by the Defendant, and Rx's Prescribed by the Defendant	Gray	Claimants who seek compensation for patients' unreimbursed out-of-pocket costs for treatment by the defendant, for treatment or services ordered by the defendant, and for filling prescriptions prescribed by the defendant.
2(b). Money Paid for Medical and Dental Remedial Treatment	Green	Claimants who seek compensation for patients' unreimbursed out-of-pocket costs for remedial medical and dental treatment.
2(c). Money Paid for Mental Health Remedial Treatment	Purple	Claimants who seek compensation for patients' unreimbursed out-of-pocket costs for remedial mental health treatment.
2(d). Money Family Members Paid for Funeral Costs	Red	Family members who seek some compensation for unreimbursed funeral costs.
3. Compensation From Other Sources	Blue	All Claimants
4. Who May Communicate For You?	Yellow	Claimants who choose to authorize someone else to speak for them in this claim process.
5. Swear Under Oath	Blue	All Claimants

**What is Compensable and What Proof is Required?**

Out-of-pocket costs in the following categories may be claimed in this process:

**a. Claims for Money Paid to the Defendant, for Treatment or Services Ordered by the Defendant, or for Prescriptions Prescribed by the Defendant.**

**What Can Be Reimbursed?** All non-reimbursed, out-of-pocket medical costs paid by a patient of the defendant for medical services provided by the defendant or at his direction from April 11, 2005, through August 6, 2013.

**What Proof is Required?**

Claimants are required to provide:

- i. Proof of payment by the patient of these costs; OR
- ii. Documentation of costs that were owed AND swear under oath that the costs were paid by the patient and not reimbursed. (Claimants can swear under oath by checking the appropriate box on the Claim Form in section 2(a)(3) and signing the Claim Form in section 5.)

**b. Claims for Money Paid for Remedial Medical or Dental Treatments.**

**What Can Be Reimbursed?** All non-reimbursed, out-of-pocket medical costs for remedial measures that were incurred up to and including September 6, 2016, as a result of receiving inappropriate or unnecessary treatments while under the care of the defendant, which were paid to other medical or dental providers after leaving the care of the defendant.

The following are examples of some of the types of out-of-pocket costs paid by a patient for remedial measures that will be reviewed and considered for reimbursement:

- i. Out-of-pocket medical costs for the surgical removal of an unnecessary chemotherapy port;
- ii. Out-of-pocket medical costs for required subsequent medical or dental treatments or services required due to the defendant's unnecessary or inappropriate treatments;
- iii. Out-of-pocket medical costs for the medical or dental treatment of side effects caused by the defendant's unnecessary or inappropriate treatments;
- iv. Physician or Dentist services billed to the patient for remedial treatments completed prior to September 6, 2016, including payments made after that date;
- v. Out-of-pocket costs for occupational therapy and physical therapy required as a result of unnecessary treatments by the defendant.

**What Proof is Required?**

Requests in this category must be supported by:

- i. A completed "Physician and Dentist Form" (included in these materials); AND EITHER
- ii. Proof of payment of these costs; OR
- iii. Documentation of costs that were owed AND swear under oath that the costs were paid by the patient and not reimbursed. (Claimants can swear under oath by checking the appropriate box on the Claim Form in section 2(b)(4) and signing the Claim Form in section 5.)

**c. Claims for Money Paid for Mental Health Treatment.**

**What Can Be Reimbursed?** All non-reimbursed, out-of-pocket costs for mental health treatment (by a psychologist, psychiatrist, licensed therapist, or licensed social worker) and prescription mental health medications from April 11, 2005 through September 6, 2016, needed as a result of treatment by the defendant.

**What Proof is Required?**

Requests in this category must be supported by:

- i. A completed “Mental Health Treatment Provider Form” (included in these materials); AND  
EITHER
- ii. Proof of payment of these costs; OR
- iii. Documentation of costs that were owed AND swear under oath that the costs were paid by the patient and not reimbursed. (Claimants can swear under oath by checking the appropriate box on the Claim Form in section 2(c)(4) and signing the Claim Form in section 5.)

**d. Claims for Money Paid for Funeral Costs.**

**What Can Be Reimbursed?** A portion (to be determined) of unreimbursed, out-of-pocket funeral costs incurred by a family member for a patient of the defendant.

Family members seeking reimbursement of funeral costs for patients of the defendant should be aware that full payment of these costs is very unlikely.

**What Proof is Required?**

Requests in this category must be supported by:

- i. A copy of the decedent’s death certificate; AND
- ii. Proof that the deceased was a patient of the defendant; AND
- iii. A copy of an obituary if one was published.

**What is Not Compensable?**

The government is aware that other forms of physical, economic, and emotional harm were incurred by patients treated by the defendant. Unfortunately, this claims process will not be able to compensate Claimants for any other types of physical, economic, or emotional harm a patient may have suffered.

The following are examples of several types of losses that cannot be paid through this process:

- (1) Lost wages
- (2) Costs of representation by an attorney
- (3) Costs for travel to obtain medical treatment
- (4) Compensation for pain and suffering

**Is the Amount I Receive in Restitution Affected by Past Compensation?**

Yes. Please note that if a Claimant seeks a monetary remedy in another forum, any amount ordered as restitution in this case must be reduced by any amount recovered for the same loss in any related proceeding. Accordingly, if a Claimant has received or will receive compensation from insurance, disability, a crime victim’s compensation fund, a civil lawsuit, or any other source with respect to a loss, the Claimant must disclose the compensation in this restitution process.

**How Will Claims Be Decided?**

All of the claims that are postmarked before or on November 14, 2016, will be reviewed by the Facilitator, Ms. Randi Ilyse Roth, to determine whether the Claimant has submitted sufficient and accurate documentation for the costs described above.

There will be a procedure established by the Court for an appeal from the denial of any claim.

**How Much Will Claimants Be Paid?**

At this time, the Department of Justice and the Court cannot determine the amount that will be paid on claims.

## **Remedial Treatment Provider Forms**

Two forms are included as the last sections of this Claim Form. One is a Physician and Dentist Form, and one is a Mental Health Treatment Provider Form.

If you are seeking restitution for out-of-pocket payments for remedial treatments by a physician or dentist, you must ask that physician or dentist to complete the Physician and Dentist Form and then include the completed form with your Claim Form.

If you are seeking restitution for out-of-pocket payments for remedial treatments by a mental health provider, you must ask that mental health provider to complete the Mental Health Treatment Provider Form and then include the completed form with your Claim Form.

If your physician, dentist, or mental health provider has any questions about how to fill out the form, they are invited to call 1-877-202-3282 Monday–Friday between 9:00 a.m. and 8:00 p.m. Eastern Time for assistance.

## **What Should I Include When I File?**

To submit a claim for restitution, please complete and return the following, **postmarked** on or before **NOVEMBER 14, 2016** (refer to the Claim Form Checklist for additional guidance):

1. Completed Claim Form;
2. Supporting documentation of incurred out-of-pocket costs (according to the instructions on the Claim Form);
3. Physician and Dentist Form (if seeking reimbursements for physical and/or dental remedial measures);
4. Mental Health Treatment Provider Form (if seeking reimbursements for mental health remedial measures);
5. Supporting documentation of the death of a patient of the defendant (if seeking a contribution toward funeral costs).

## **How Do I Submit My Completed Claim?**

Please return your completed Package by mail to:

Fata Claims Facilitator  
PO Box 2730  
Portland, OR 97208-2730

**Claim Forms will not be accepted via fax or email. Please make a copy of your completed Package for your records before you place it in the mail.**

## **I Still Have Questions. How Do I Get More Information?**

Beginning at 9:00 a.m. Eastern Time on Thursday, June 9, there will be a specialized team available to answer your questions by phone. Accordingly, if you have specific questions about the Claim Form beginning June 9, please call 1-877-202-3282 on Monday-Friday between the hours of 9:00 a.m. and 8:00 p.m. Eastern Time.

For general questions, you may also contact Sandy Palazzolo, the Victim Witness Coordinator for the United States Attorney's Office for the Eastern District of Michigan, at 1-313-226-9633.

## **Let Us Know If Your Contact Information Changes.**

If any of your contact information changes during this claims process, please let us know. To do so, please write to:

Fata Claims Facilitator  
PO Box 2730  
Portland, OR 97208-2730

# Claim Form Checklist

**YOUR COMPLETED CLAIM FORM MUST BE POSTMARKED BEFORE OR ON NOVEMBER 14, 2016. If you have any questions, call 1-877-202-3282.**

*This checklist is a tool to help you make sure that you include all required information and all required documents with your Claim Form submission. Failure to include required information or documents may result in a delay in the processing of your Claim Form.*

**Review the Claim Form to make sure that you answered all of the questions, that you signed the form, and that you provided all required documents.**

## Section 1: Background (pages 1-2) (Blue)

Please make sure you:

- Completely fill out the information requested on the form.
- Include documentation of your representative status (such as Court Order, power of attorney, or guardianship papers) if you are the patient’s authorized representative or the representative of the patient’s estate.

## Section 2(a): Claims for Money Paid to or at the Direction of Farid Fata (pages 3-5) (Grey)

If you are filing a claim under this section, please make sure you:

- Completely fill out the information requested on the form, AND
- If you are requesting compensation for a treatment or service that the defendant ordered from an outside provider, provide documentation that the defendant ordered it, AND
- Fill out Table #1 on page 5 of the Claim Form, AND provide the following documentation for *each* claimed cost:
  - Receipts (with table number and row numbers written in the upper right-hand corner), OR
  - Proof of amounts owed (with table number and row numbers written in the upper right-hand corner).

## Section 2(b): Claims for Money Paid for Remedial Medical and Dental Treatment (pages 6-8) (Green)

If you are filing a claim under this section, please make sure you:

- Completely fill out the information requested on the form, AND
- Fill out Table #2 on page 8 of the Claim Form, AND provide the following documentation for *each* claimed cost:
  - Receipts (with table number and row numbers written in the upper right-hand corner), OR
  - Proof of amount owed (with table number and row numbers written in the upper right-hand corner).

AND provide your:

- Physician and Dentist Form (signed by the physician or dentist).

**Section 2(c): Claims for Money Paid for Mental Health Treatment (pages 9-11) (Purple)**

If you are filing a claim under this section, please make sure you:

- Completely fill out the information requested on the form, AND
- Fill out Table #3 on page 11 of the Claim Form, AND provide the following documentation for *each* claimed cost:
  - Receipts (with table number and row numbers written in the upper right-hand corner), OR
  - Proof of amount owed (with table number and row numbers written in the upper right-hand corner).

AND provide your:

- Mental Health Treatment Provider Form (signed by the mental health treatment provider).

**Section 2(d): Claims for Money Paid for Funeral Costs (pages 12-13) (Red)**

If you are filing a claim under this section, please make sure you:

- Completely fill out the information requested on the form, AND provide the following documents:
  - Death certificate, AND
  - Proof that deceased was a patient of Farid Fata, AND
  - Copy of obituary (if one was published).

**Section 3: Compensation From Other Sources (pages 13-14) (Blue)**

Please make sure you:

- Completely fill out the information requested on the form.
- No additional documents are required for this section.

**PLEASE NOTE: If you receive compensation from another source after your Claim Form is filed, you have an ongoing obligation to report that compensation. To report compensation, please call 1-877-202-3282 from Monday through Friday between the hours of 9:00 a.m. and 8:00 p.m. Eastern Time.**

**Section 4: Who Can Communicate for You Regarding Your Claim Form (page 15) (Yellow)**

If you would like another person to be able to communicate for you regarding your claim, please make sure you:

- Completely fill out the information requested on the form.
- No additional documents are required for this section.

**Section 5: Swearing That Contents of the Claim Form Are True (page 15) (Blue)**

- Your signature is required to process your Claim Form.***
- Before signing, please review the information you are providing on the Claim Form to ensure it is true, complete, and correct.
- Make a copy of your Claim Form and supporting documents before you submit it, and keep the copy for your records.

It is not necessary to return this checklist with your Claim Form.





**2 Section 2: Claims for Money Paid**

**2(a): Claims for Money Paid to the Defendant, Michigan Hematology Oncology (MHO), to Other Providers at the Defendant’s Direction, and/or for Medications Prescribed by the Defendant**

*This section is for claiming restitution for unreimbursed out-of-pocket costs for treatment provided by the defendant and/or MHO and/or provided at the defendant’s direction between April 11, 2005 and August 6, 2013 (including purchases of medications prescribed by the defendant between April 11, 2005 and August 6, 2013).*

In this section, we are asking you to do three things:

1. **Insurance.** Tell us about the health insurance that may have covered some of the patient’s costs.
2. **Costs.** List the patient’s costs.
3. **Payments.** Provide proof of payment of the costs.

**2(a.1): Tell Us About the Patient’s Insurance**

If the patient had insurance coverage at the time of treatment with the defendant, please check all that apply:

- Private Health Insurance  
(Please provide name of company: \_\_\_\_\_)
- Medicare
- Medicaid
- Veterans Administration
- Other Public Assistance  
(Please indicate type: \_\_\_\_\_)

**2(a.2): List the Patient’s Medical Costs**

Please list all of the out-of-pocket medical costs the patient incurred between April 11, 2005 and August 6, 2013. This includes costs that were paid for treatment by the defendant, the costs of treatments and/or services he ordered, and the purchase of medications prescribed by the defendant.

If the cost was covered by insurance, please list patient costs (amounts paid within deductible or co-pays). If the cost was not covered by insurance, please list the amount paid for each visit, service, or medication. Please provide this list by filling out Table #1 on page 5.

If you are requesting compensation for a treatment or service that the defendant ordered **but did not provide himself or through MHO**, please provide documentation that the defendant ordered the treatment/service. (Examples might include invoices from the provider or Medicare Summary Notice (MSN) showing that the defendant was the referring or ordering physician.)

I am requesting compensation for at least one treatment/service that the defendant requested **but did not provide himself or through MHO**:  Yes  No

If yes, I am providing documentation to show that the defendant ordered the outside treatment/service(s) for which I am requesting compensation:  Yes  No

**2(a.3): Provide Proof of Costs**

In addition to listing these costs, we are asking the patient to provide proof that the patient paid the costs. It is necessary to submit supporting documentation for each claimed out-of-pocket cost. You may submit original documents or photocopies.

**How to Mark the Documents That You Submit.** Each document that you provide as proof should correspond to one of the rows in Table #1 on page 5. Please mark each document in the upper right-hand corner with:

1. "Table #1" and
2. The row number to which the document corresponds.

**What Kinds of Documents Count as Proof?** For each cost, there are two alternative ways to provide proof.

**Provide Receipts.** The easiest way to provide proof is to provide receipts showing that the patient paid the listed costs. The receipt should indicate the patient's name, the date of service, the type of service, and the amount of money paid. You can submit original documents or photocopies.

**Show Amounts Owed, and Swear That the Patient Paid Them.** If you do not have receipts showing payment, please provide proof that the amounts were owed (for example, by providing bills, Medicare Summary Notices [MSN], or Explanation of Benefits [EOB] forms). In addition, check the box below to indicate that you understand that by signing this claim, you are swearing that you, as the patient, paid all of the listed patient costs in full. Or, if you are the authorized representative of a minor or incapacitated patient or of the estate of a deceased patient, you are swearing that you have personal knowledge that the patient paid all of the listed patient costs in full.

If you have proof of payment for some listed patient costs but not for others, please submit the proof you do have and check the box below to swear that you paid the costs for which you do not have receipts.

- By checking this box and signing this Claim Form, I am swearing under oath and under penalty of perjury that I, as the patient, paid all of the listed patient costs in full. Or, if I am the authorized representative of a minor or incapacitated patient or of the estate of a deceased patient, I am swearing that I have personal knowledge that the patient paid all of the listed patient costs in full.

If additional pages of the table below are needed, please copy and provide as many completed pages as necessary.

NOTE: You need to fill out column #9 only if you have checked "declaration under oath" in column #8.

<b>Table #1:</b> <b>Medical out-of-pocket costs incurred between April 11, 2005 and August 6, 2013 for treatment provided by or ordered by the defendant</b>								
1. Row #	2. Date of Service or Date Rx Filled (MM/DD/YYYY)	3. Type of Service	4. Cost	5. Was this cost covered by insurance? (Y/N)	6. If yes, what is the name of the insurance provider?	7. How much did the patient pay?	8. Supporting Documentation of Payment (check all that apply)	9. Supporting Documentation of Treatment and Cost (check all that apply in this column <u>ONLY</u> if you checked "Declaration under oath" in column 8)
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt from provider <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Bill from provider <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt from provider <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Bill from provider <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt from provider <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Bill from provider <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt from provider <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Bill from provider <input type="checkbox"/> Other insurance company information

\*EOB = Explanation of Benefits  
\*\*MSN = Medicare Summary Notice

**2(b): Claims for Money Paid for Remedial Medical and Dental Treatments**

***This section is for claiming restitution for unreimbursed out-of-pocket medical and dental costs for remedial medical treatments and medications after receiving unnecessary or inappropriate treatments by the defendant through September 6, 2016.***

Complete this section if you are requesting restitution because the patient incurred out-of-pocket costs for remedial measures as a result of being under the care of the defendant and those losses have not been reimbursed (by any source) as of the date this form is signed.

If you complete this section, you must submit the “Physician and Dentist Form,” which is included in this claim package.

In this section, we are asking you to do four things:

1. **Narrative.** Tell us about your remedial treatments.
2. **Insurance.** Tell us about your health insurance that may have covered some of your costs.
3. **Costs.** List your costs.
4. **Payments.** Provide proof of payment of the costs.

**2(b.1): Narrative**

The defendant’s unnecessary or inappropriate treatments caused me/the patient to need the following remedial medical and/or dental measures, as explained below:

**2(b.2): Tell Us About the Patient’s Insurance**

If the patient had insurance coverage at the time of treatment with the defendant, please check all that apply:

- Private Health Insurance  
 (Please provide name of company: \_\_\_\_\_)
- Medicare
- Medicaid
- Veterans Administration
- Other Public Assistance  
 (Please indicate type: \_\_\_\_\_)

**2(b.3): List the Patient's Costs****Patient Out-of-Pocket Costs for Remedial Measures Needed Due to Unnecessary or Inappropriate Treatments and/or Medications**

Please itemize payments that have not been reimbursed and that were costs of treatments, services or purchases needed to remediate unnecessary or inappropriate treatments by the defendant. Remedial medical and/or dental treatments, services, or purchases may include but are not limited to office visits, dental services, chemotherapy port removal, medical testing, prescription medications, assistive devices (e.g., wheelchairs), physical therapy, and occupational therapy. It is necessary to submit supporting documentation for each claimed out-of-pocket cost. If covered by insurance, please list the amounts paid within deductibles or co-pays. If not covered by insurance, please document the amount paid for each item. Please provide this list by filling out Table #2 on page 8.

**2(b.4): Provide Proof of Costs**

In addition to listing these costs, we are asking you to provide proof that you paid the costs. It is necessary to submit supporting documentation for each claimed out-of-pocket cost. You can submit original documents or photocopies.

**How to Mark the Documents That You Submit.** Each document that you provide as proof should correspond to one of the rows in Table #2 on page 8. Please mark each document in the upper right-hand corner with:

1. "Table #2" and
2. The row number to which the document corresponds.

**What Kinds of Documents Count as Proof?** For each cost, there are two alternative ways to provide proof.

**Provide Receipts.** The easiest way to provide proof is to provide receipts showing that the patient paid the listed costs. The receipt should indicate the patient's name, date of service, type of service, and amount of money paid.

**Show Amounts Owed, and Swear That the Patient Paid Them.** If you do not have receipts showing payment, please provide proof that the amounts were owed (for example, by providing bills, Medicare Summary Notices [MSN], or Explanation of Benefits [EOB] forms). In addition, check the box below to indicate that you understand that by signing this claim, you are swearing that you, as the patient, paid all of the listed patient costs in full. Or, if you are the authorized representative of a minor or incapacitated patient or of the estate of a deceased patient, you are swearing that you have personal knowledge that the patient paid all of the listed patient costs in full.

If you have proof of payment for some listed patient costs but not for others, please submit the proof you do have and check the box below to swear that you paid the costs for which you do not have receipts.

- By checking this box and signing this Claim Form, I am swearing under oath and under penalty of perjury that I, as the patient, paid all of the listed patient costs in full. Or, if I am the authorized representative of a minor or incapacitated patient or of the estate of a deceased patient, I am swearing that I have personal knowledge that the patient paid all of the listed patient costs in full.

If additional pages of the table below are needed, please copy and provide as many completed pages as necessary.

NOTE: You need to fill out column #9 only if you have checked "declaration under oath" in column #8.

<b>Table #2: Out-of-pocket costs for remedial medical and/or dental treatments and medications through September 6, 2016 after unnecessary or inappropriate treatments by the defendant</b>								
1. Row #	2. Date of Service or Purchase (MM/DD/YYYY)	3. Type of Service or Purchase	4. Cost	5. Was this cost covered by insurance? (Y/N)	6. If yes, what is the name of the insurance provider?	7. How much did the patient pay?	8. Supporting Documentation of Payment (check all that apply)	9. Supporting Documentation of Treatment and Cost (check all that apply in this column ONLY if you checked "Declaration under oath" in column 8)
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement (circle payment line) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement (circle payment line) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement (circle payment line) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information

\*EOB = Explanation of Benefits

\*\*MSN = Medicare Summary Notice

\*\*\*"Incurred but not yet paid" means that your necessary remedial treatment has been provided before or on September 6, 2016; you have received a bill for the treatment; and you have not yet paid for the remedial treatment.

**2(c): Claims for Money Paid for Mental Health Treatment**

***This section is for claiming restitution for unreimbursed out-of-pocket costs incurred by the patients of the defendant for mental health treatments between April 11, 2005 and September 6, 2016 (including purchases of medications prescribed between April 11, 2005 and September 6, 2016 as part of such mental health treatment).***

Complete this section if you are requesting restitution because the patient incurred out-of-pocket costs for remedial measures as a result of being under the care of the defendant and those losses have not been reimbursed (by any source) as of the date this form is signed.

If you complete this section, you must submit the “Mental Health Treatment Provider Form,” which is included in this claim package.

In this section, we are asking you to do four things:

1. **Narrative.** Tell us about your remedial treatments.
2. **Insurance.** Tell us about your health insurance that may have covered some of your costs.
3. **Costs.** List your costs.
4. **Payments.** Provide proof of payment of the costs.

**2(c.1): Narrative**

The defendant’s treatments caused me/the patient to need the following mental health remedial measures, as explained below:

**2(c.2): Tell Us About the Patient’s Insurance**

If the patient had insurance coverage at the time of treatment with the defendant, check all that apply:

- Private Health Insurance  
(Please provide name of company: \_\_\_\_\_)
- Medicare
- Medicaid
- Veterans Administration
- Other Public Assistance  
(Please indicate type: \_\_\_\_\_)

**2(c.3): List the Patient's Costs****Patient Out-of-Pocket Costs for Mental Health Remedial Measures**

Please itemize payments that have not been reimbursed and that were needed to provide remediation of the mental health effects of treatment by the defendant. It is necessary to submit supporting documentation for each claimed out-of-pocket cost. If covered by insurance, please list the patient costs (amounts paid within deductible or co-pays). If not covered by insurance, please document the amount paid for each service. Please provide this list by filling out Table #3 on page 11.

**2(c.4): Provide Proof of Costs**

In addition to listing these costs, we are asking you to provide proof that you paid the costs. It is necessary to submit supporting documentation for each claimed out-of-pocket cost. You can submit original documents or photocopies.

**How to Mark the Documents That You Submit.** Each document that you provide as proof should correspond to one of the rows in Table #3 on page 11. Please mark each document in the upper right-hand corner with:

1. "Table #3" and
2. The row number to which the document corresponds.

**What Kinds of Documents Count as Proof?** For each cost, there are two alternative ways to provide proof. You can submit original documents or photocopies.

**Provide Receipts.** The easiest way to provide proof is to provide receipts showing that the patient paid the listed costs. The receipt should indicate the patient's name, the date of service, the type of service, and the amount of money paid.

**Show Amounts Owed, and Swear That the Patient Paid Them.** If you do not have receipts showing payment, please provide proof that the amounts were owed (for example, by providing bills, Medicare Summary Notices [MSN], or Explanation of Benefits [EOB] forms). In addition, check the box below to indicate that you understand that by signing this claim, you are swearing that you, as the patient, paid all of the listed patient costs in full. Or, if you are the authorized representative of a minor or incapacitated patient or of the estate of a deceased patient, you are swearing that you have personal knowledge that the patient paid all of the listed patient costs in full.

If you have proof of payment for some listed patient costs but not for others, please submit the proof you do have and check the box below to swear that you paid the costs for which you do not have receipts.

- By checking this box and signing this Claim Form, I am swearing under oath and under penalty of perjury that I, as the patient, paid all of the listed patient costs in full. Or, if I am the authorized representative of a minor or incapacitated patient or of the estate of a deceased patient, that I have personal knowledge that the patient paid all of the listed patient costs in full.

If additional pages of the table below are needed, please copy and provide as many completed pages as necessary.  
NOTE: You need to fill out column #9 only if you have checked "declaration under oath" in column #8.

<b>Table #3:</b> <b>Patient Out-of-Pocket Costs for Mental Health Remedial Measures between April 11, 2005 and September 6, 2016</b>								
1. Row #	2. Date of Service or Date Rx Filled (MM/DD/YYYY)	3. Type of Service or Rx	4. Cost	5. Was this cost covered by insurance? (Y/N)	6. If yes, what is the name of the insurance provider?	7. How much did the patient pay?	8. Supporting Documentation of Payment (check all that apply)	9. Supporting Documentation of Treatment and Cost (check all that apply in this column ONLY if you checked "Declaration under oath" in column 8)
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information

\*EOB = Explanation of Benefits

\*\*MSN = Medicare Summary Notice

\*\*\*"Incurred but not yet paid" means that your necessary remedial treatment has been provided before or on September 6, 2016; you have received a bill for the treatment; and you have not yet been paid for the remedial treatment.

**2(d): Claims for Money Paid for Funeral Costs**

*This section is for claiming funeral costs paid by family members.*

If you would like to be considered for reimbursement in this category, please complete the following:

**2(d.1): Details About Patient's Death**

Patient's Date of Death:   /   /      
MM DD YYYY

With your Claim Form submission, you must include a copy of the death certificate.

Death Certificate included:  Yes  No

**2(d.2): Proof That Deceased Was a Patient of the Defendant**

The government has records containing the names of some of the defendant's patients. However, those records are not complete.

Please provide one document establishing that the deceased was a patient of the defendant. You may submit originals of documents or photocopies. Examples of documents you may provide:

- MHO bill with patient's name and showing treatment by the defendant
- EOB or MSN with patient's name and showing treatment by the defendant
- A page from patient's medical file showing patient's name and the defendant's name

Patient of defendant documentation included:  Yes  No

Describe document included: \_\_\_\_\_

**2(d.3): Your Relationship to the Deceased**

Are you a family member of the deceased?  Yes  No

If yes, please indicate the nature of the family relationship (child, spouse, etc.):

**2(d.4): Details About Funeral**

Date of Funeral:   /   /      
MM DD YYYY

Place of Funeral

Address

City

State

ZIP Code

Phone Number

-  -

Was an obituary published:  Yes  No Where? \_\_\_\_\_

If yes, you must include at least one copy of the obituary with this form.

Obituary included:  Yes  No



Have there been any monies received as a result of the above lawsuit?

Yes     No

If yes, please complete Table #4, below, as to any amounts received.

<b>Table #4: Compensation From Other Sources</b>			
	Identity of Payor (Who provided the compensation?)	Amount Received	What Specific Loss Is This Award Supposed to Compensate? (For example, pain and suffering, out-of-pocket costs, etc.)
Payment #1:			
Payment #2:			
Payment #3:			

Please use additional sheets if necessary.

Has the patient applied for Crime Victim Compensation from the Michigan Department of Community Health?

Yes     No

If yes, has the patient received compensation as a result of the above application?

Yes     No

If yes, please record the amounts in Table #4, above.

Has the patient (or patient’s representative) applied and/or received compensation from any other source not already identified in this Claim Form?

Yes     No

If yes, please record the amounts in Table #4, above.

**PLEASE NOTE: If the patient receives compensation from another source after this Claim Form is filed, you have an ongoing obligation to report that compensation. To file a report, please call 1-877-202-3282 from Monday through Friday between the hours of 9:00 a.m. and 8:00 p.m. Eastern Time.**



# Physician and Dentist Form

## Note to Patient:

This form must be filled out by doctor(s) and/or dentist(s) who are providing or have provided the patient with remedial treatment. If the patient is asking for compensation for payments to more than one doctor or dentist, please make copies of this form and have it filled out by each of them.

## Note to Physicians and Dentists:

Your patient wishes to file a claim in the *United States v. Farid Fata* claims process. He or she cannot seek reimbursement for costs related to the remedial treatment you are currently providing or have already provided unless you complete this form. Thank you for taking the time to assist this patient. If you or your office have any questions about this form, please call 1-877-202-3282 for assistance.

## Instructions

1. This Physician and Dentist Form must be completed by the patient’s treating physician or dentist.
2. If additional space is needed to complete any section of this form, please attach additional pages and include the patient’s name at the top of each additional page.

## Section 1: General Information

Patient First Name	MI	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

I am a doctor of (check one)  medicine  osteopathy/osteopathic medicine  
 dentistry

Specialties and AMA  
 Physician Specialty Codes: \_\_\_\_\_  
 (if applicable) \_\_\_\_\_  
 \_\_\_\_\_

## Section 2: Medical and/or Dental Condition(s)

I have treated/am treating the patient named above for the following condition(s):  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## Section 3: Likelihood that Farid Fata Caused the Condition(s)

Do you believe that it is possible, probable, or definite that the condition(s) for which you are/were treating the patient was/were caused by Farid Fata? If your belief aligns with any of those three levels of likeliness, please check “yes” below. If not, please check “no.”

- Yes, I believe that it is possible, probable, or definite that the condition(s) for which I was/am treating this patient was/were caused by Farid Fata.
- No, I do not believe that it is possible, probable, or definite that the condition(s) for which I was/am treating this patient was/were caused by Farid Fata.

If your answer is “yes” to some of the conditions listed in Section 2, above, and “no” to others, please indicate by writing “yes” or “no” next to each condition.

### Section 4: Treatments

Please list the current and/or past treatments and/or orders and/or services provided to this patient to treat the condition(s) that were possibly, probably, or definitely caused by Farid Fata.

These “treatments, orders, and services” may include:

- Both **past** and **current** treatments
- Both **remedial** treatments and **preventative** treatments
  - Some examples of **remedial** treatments include: office visits to treat a condition, removal of an unnecessary chemotherapy port, medical testing, medical devices (e.g., wheelchairs), prescription medications, dental restoration, physical therapy, and occupational therapy.
  - Some examples of **preventative** treatments include: office visits to monitor for the development of a condition and testing to discern whether a condition is developing.

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### Section 5: Certification of Accuracy of Information

I understand that by signing this document, I am declaring the information on this form to be true and accurate. I further understand that the United States is relying upon the information contained in this form to make a decision about the claims for reimbursement submitted by the patient to the United States District Court. I am legally authorized to practice in the state identified below and I have provided my professional license number below.

Date:   -   -

MM                  DD                  YYYY

Signature of Physician or Dentist

Physician or Dentist First Name  MI  Last Name

Physician or Dentist Address

City  State  ZIP Code

Physician or Dentist Primary Phone  -  -  Physician or Dentist Fax  -  -

Physician or Dentist Email Address

State Where Legally Authorized to Practice

Professional License Number  NPI Number (if applicable)

# Mental Health Treatment Provider Form

## Note to Patient/Client:

This form must be filled out by the mental health treatment provider(s) who are providing or have provided the patient/client with remedial treatment. If the patient/client is asking for compensation for payments to more than one mental health treatment provider, please make copies of this form and have it filled out by each of them.

## Note to Mental Health Providers:

Your patient/client wishes to file a claim in the *United States v. Farid Fata* claims process. He or she cannot seek reimbursement for costs related to the remedial treatment you are currently providing or have already provided unless you complete this form. Thank you for taking the time to assist this patient/client. If you or your office have any questions about this form, please call 1-877-202-3282 for assistance.

## Instructions

1. This Mental Health Treatment Provider Form must be completed by the patient's/client's mental health provider.
2. If additional space is needed to complete any section of this form, please attach additional pages and include the patient's/client's name at the top of each additional page.

## Section 1: General Information

Patient/Client First Name

MI

Last Name

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--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

## Section 2: Mental Health Condition(s)

I have treated/am treating the patient/client named above for the following condition(s):

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## Section 3: Likelihood that Farid Fata Caused the Condition(s)

Do you believe that it is possible, probable, or definite that the condition(s) for which you are treating the patient/client was/were attributable in significant part to Farid Fata? If your belief aligns with any of those three levels of likeliness, please check "yes" below. If not, please check "no."

- Yes, I believe that it is possible, probable, or definite that the condition(s) for which I was/am treating this patient/client was/were attributable in significant part to Farid Fata.
- No, I do not believe that it is possible, probable, or definite that the condition(s) for which I was/am treating this patient/client was/were attributable in significant part to Farid Fata.

If your answer is "yes" to some of the conditions listed in Section 2, above, and "no" to others, please indicate by writing "yes" or "no" in Section 2 next to each condition.

**Section 4: Treatments**

Please list the current and/or past treatments and/or orders provided to this patient/client to treat the condition(s) that were possibly, probably, or definitely attributable in significant part to Farid Fata.

These “treatments” may include:

- Both **past** and **current** treatments
- Examples of treatments may include (but are not limited to): therapy sessions and prescription medications.

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**Section 5: Certification of Accuracy of Information**

I certify that in my professional judgment, the patient/client identified above had, or continues to have, mental and/or emotional impairment(s) that possibly, probably, or definitely was/were attributable in significant part to treatment provided by Farid Fata. I understand that, by signing this document, I am declaring the information on this form to be true and accurate. I further understand that the United States is relying upon the information contained in this form to make a decision about the claims for reimbursement submitted by the patient/client to the United States District Court. I am legally authorized to practice in the state identified below, and I have provided my professional license number below.

Date:  -  -   
MM DD YYYY

Signature of Mental Health Provider

Mental Health Provider First Name  MI  Last Name

Mental Health Provider Address

City  State  ZIP Code

Mental Health Provider Primary Phone  -  -  Mental Health Provider Fax  -  -

Mental Health Provider Email Address

State Where Legally Authorized to Practice

Professional License Number  NPI Number (if applicable)

Type of Provider (for example, psychiatrist, psychologist, therapist, licensed social worker, etc.)

If additional pages of the table below are needed, please copy and provide as many completed pages as necessary.

NOTE: You need to fill out column #9 only if you have checked "declaration under oath" in column #8.

<b>Table #1:</b> <b>Medical out-of-pocket costs incurred between April 11, 2005 and August 6, 2013 for treatment provided by or ordered by the defendant</b>								
1. Row #	2. Date of Service or Date Rx Filled (MM/DD/YYYY)	3. Type of Service	4. Cost	5. Was this cost covered by insurance? (Y/N)	6. If yes, what is the name of the insurance provider?	7. How much did the patient pay?	8. Supporting Documentation of Payment (check all that apply)	9. Supporting Documentation of Treatment and Cost (check all that apply in this column <u>ONLY</u> if you checked "Declaration under oath" in column 8)
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt from provider <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Bill from provider <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt from provider <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Bill from provider <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt from provider <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Bill from provider <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt from provider <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Bill from provider <input type="checkbox"/> Other insurance company information

\*EOB = Explanation of Benefits  
\*\*MSN = Medicare Summary Notice

If additional pages of the table below are needed, please copy and provide as many completed pages as necessary.

NOTE: You need to fill out column #9 only if you have checked "declaration under oath" in column #8.

<b>Table #2: Out-of-pocket costs for remedial medical and/or dental treatments and medications through September 6, 2016 after unnecessary or inappropriate treatments by the defendant</b>								
1. Row #	2. Date of Service or Purchase (MM/DD/YYYY)	3. Type of Service or Purchase	4. Cost	5. Was this cost covered by insurance? (Y/N)	6. If yes, what is the name of the insurance provider?	7. How much did the patient pay?	8. Supporting Documentation of Payment (check all that apply)	9. Supporting Documentation of Treatment and Cost (check all that apply in this column ONLY if you checked "Declaration under oath" in column 8)
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement (circle payment line) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement (circle payment line) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement (circle payment line) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information

\*EOB = Explanation of Benefits

\*\*MSN = Medicare Summary Notice

\*\*\*"Incurred but not yet paid" means that your necessary remedial treatment has been provided before or on September 6, 2016; you have received a bill for the treatment; and you have not yet paid for the remedial treatment.

If additional pages of the table below are needed, please copy and provide as many completed pages as necessary.  
NOTE: You need to fill out column #9 only if you have checked "declaration under oath" in column #8.

<b>Table #3: Patient Out-of-Pocket Costs for Mental Health Remedial Measures between April 11, 2005 and September 6, 2016</b>								
1. Row #	2. Date of Service or Date Rx Filled (MM/DD/YYYY)	3. Type of Service or Rx	4. Cost	5. Was this cost covered by insurance? (Y/N)	6. If yes, what is the name of the insurance provider?	7. How much did the patient pay?	8. Supporting Documentation of Payment (check all that apply)	9. Supporting Documentation of Treatment and Cost (check all that apply in this column ONLY if you checked "Declaration under oath" in column 8)
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information
							<input type="checkbox"/> Cancelled check <input type="checkbox"/> Receipt of payment <input type="checkbox"/> Credit card statement ( <i>circle payment line</i> ) <input type="checkbox"/> Receipt or Summary of Rx payments from pharmacy <input type="checkbox"/> Incurred but not yet paid*** <input type="checkbox"/> Declaration under oath	<input type="checkbox"/> EOB* <input type="checkbox"/> MSN** <input type="checkbox"/> Provider bill <input type="checkbox"/> Other insurance company information

\*EOB = Explanation of Benefits

\*\*MSN = Medicare Summary Notice

\*\*\*"Incurred but not yet paid" means that your necessary remedial treatment has been provided before or on September 6, 2016; you have received a bill for the treatment; and you have not yet been paid for the remedial treatment.

# United States of America v. Farid Fata

Case No. 13-cr-20600 (E.D. Mich.)

## Frequently Asked Questions

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2. [Where does the money come from?](#)
3. [Do I have a lawyer in this case? Do I need a lawyer in this case?](#)
4. [Are lawyers or administrators being paid from the victims' fund?](#)
5. [Would I give up rights if I participate in this process, and could I still be part of a lawsuit against the defendant?](#)
6. [What does it mean to swear under penalty of perjury?](#)
7. [Who can file a claim?](#)
8. [What types of claims are eligible for payment?](#)
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## Basic Information

### 1. What is this case about?

Defendant Farid Fata (hereinafter, "the defendant"), a hematologist-oncologist, pleaded guilty to health care fraud, money laundering, and conspiracy to pay or receive kickbacks. As part of the defendant's scheme, he deliberately administered medically unnecessary injections and infusions to patients, including chemotherapy, iron, cancer treatment drugs, and other medications. He also administered unnecessary diagnostic tests involving the injection of radiological material into patients. U.S. District Judge Paul D. Borman imposed a sentence of 45 years in prison and ordered the defendant to forfeit assets.

This claim process is the **only** opportunity patients will have to provide documentation for certain losses. The allowable losses are costs associated with medical services prescribed or performed by the defendant from April 11, 2005 through August 6, 2013 and remedial medical, dental, and mental health services performed up to and including September 6, 2016 to compensate for remedial treatments needed in response to the defendant's inappropriate or unnecessary procedures. The claims process also allows family members of patients to seek reimbursement for a portion of patients' funeral costs.

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### 2. Where does the money come from?

The money generally comes from a fund made up of the net proceeds from liquidating the defendant's assets.

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**3. Do I have a lawyer in this case? Do I need a lawyer in this case?**

You do not have a lawyer in this case unless you hired a lawyer on your own. The Department of Justice represents the United States of America.

The process does not require a lawyer. However, the Office of the Claims Facilitator cannot give you legal advice about whether you should or should not retain a lawyer to assist you in this process.

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**4. Are lawyers or administrators being paid from the victims' fund?**

No. The lawyers at the Department of Justice and the Claims Facilitator and her staff are not being paid out of the victims' fund.

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**5. Would I give up rights if I participate in this process, and could I still be part of a lawsuit against the defendant?**

You do not have to give up a civil lawsuit or waive participation in any other kind of compensation process as a condition for being in this claims process. However, you will have an obligation to report in this process any amounts that you recover elsewhere that relate to losses claimed in this process.

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**6. What does it mean to swear under penalty of perjury?**

This means that you are swearing that you are telling the truth during this process. If any of your answers are knowingly untruthful, you can be prosecuted for the crime of perjury.

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## Filing A Claim

**7. Who can file a claim?**

The Claim filing deadline was November 14, 2016. There were 3 possible types of Claimants.

**a. Victims:**

People who were patients of the defendant could file a claim if they had eligible out-of-pocket losses. (see [FAQ 8](#) below.)

**b. Representatives:**

Legal representatives of patients who are minors and/or who are incapacitated could file on the patient's behalf. They were required to submit documentation of their representative status, such as guardianship papers or a power of attorney.

**c. Heirs:**

Claims could be filed on behalf of the estates of deceased victims. Such Claimants will be required to provide documentation of their representation of the estate.

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**8. What types of claims are eligible for payment?**

The general rules for claim eligibility are based on the fact that this is a criminal restitution process. Restitution is the technical term that describes a process governed by federal law to pay victims for some of the losses they suffered from a crime. Restitution rules apply to cases like this—cases in which the government seizes a convicted criminal's assets and sets up a process for distributing those assets to victims of the crime who can provide documentation of certain kinds of economic losses.

It is fortunate that the Department of Justice has money to distribute and the Court has authorized the payment of restitution in this case. However, restitution has many detailed requirements and does not cover every type of loss.

Only certain kinds of out-of-pocket costs can be claimed in this process.

**Losses that are eligible for payment in this process are:**

1. Money paid for treatments prescribed by the defendant, treatments and services ordered by the defendant, and prescriptions prescribed by the defendant;
2. Money paid for remedial medical and dental treatments through September 6, 2016 to remedy the effects of the defendant's treatments and what the defendant ordered;
3. Money paid for mental health remedial treatments through September 6, 2016 to remedy mental health issues related to the defendant's treatments; and
4. Money paid by patients' family members for victims' funerals. (Please note that it is likely that the claims process will be able to pay for only a portion of the eligible funeral expenses.)

Victims who have no out-of-pocket costs in the categories listed above were advised not to submit a claim in this process.

This is a restitution process within a criminal case; many categories of loss that are commonly paid in civil cases cannot be paid in this process.

**Losses that are not eligible for payment in this process are:**

1. pain and suffering;
2. lost wages;
3. attorneys' fees; or
4. travel to obtain medical treatment.

We understand this will be very disappointing to many people. These are the rules Congress has set down that we must follow.

The United States Congress set the basic rules in the restitution statutes. The Court set further rules for this case in an order issued on April 11, 2016. If you would like to see the Order issued by the Court, please visit the United States Attorney's Office for the E.D. of Michigan *U.S. v. Farid Fata* webpage at [www.justice.gov/usao-edmi/us-v-farid-fata-court-docket-13-cr-20600](https://www.justice.gov/usao-edmi/us-v-farid-fata-court-docket-13-cr-20600) (<https://www.justice.gov/usao-edmi/us-v-farid-fata-court-docket-13-cr-20600>).

If you have additional questions or concerns about this process, you can contact the Fata Claims Facilitator phone staff at 1-877-202-3282, or call the Victim Witness Coordinator for the U.S. Attorney's Office for the Eastern District of Michigan, Sandy Palazzolo, at 1-313-226-9633. If you have specific questions about the claims process, please call the phone staff at 1-877-202-3282. Please be advised that Ms. Palazzolo will not be able to provide assistance in the claims process.

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#### 9. Can one file a claim for remedial treatment for past treatments? Current treatments?

Both were eligible to be claimed, however, the claim filing deadline has past. Any claims filed after **November 14, 2016** will be set aside, and the Court will be asked to determine how they will be handled.

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#### 10. What is the deadline to file a claim?

The claim filing deadline was **November 14, 2016** and has now passed. Any claims filed after **November 14, 2016** will be set aside, and the Court will be asked to determine how they will be handled.

All timely claims submitted or postmarked on or before the claim filing deadline are in process, and eligible claimants will be notified if further documentation is required.

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#### 11. Is there a cost to file?

There was no cost to file a claim. The claim filing deadline was November 14, 2016. Any claims filed after November 14, 2016 will be set aside, and the Court will be asked to determine how they will be handled.

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#### 12. How do I prove what I paid and/or owed?

This claims process required that for each out-of-pocket expense, the claimant must have either:

1. Provided proof of the amount that the claimant *paid*; or
2. Provided proof of the amount that the claimant *owed*, and *sworn* under oath that the claimant paid that bill.

Click [here \(/fataclaims/Content/Documents/How to Prove What Victim Paid.pdf\)](#) to look at some possibilities for the eligible expenses.

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#### 13. Is there an easier way to fill out the tables on the Claim Form?

To address the concern that claimants had too many entries to write into the 3 tables in the Claim Form (on pages 5, 8, and 11 of the Claim Form), we offered an *alternative, slightly streamlined way of completing the tables in the Claim Form*. Click [here \(/fataclaims/Content/Documents/Listing Multiple Expenses.pdf\)](#) to read the Listing Multiple Expenses document.

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#### 14. Can someone help me file?

The claim filing deadline was **November 14, 2016**. There is no longer any assistance available for filing claims.

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#### 15. What is the process for learning about errors in my claim form, and fixing those errors?

Claims that were filed on time are now being processed. In some of those claims, we will determine that there were errors in the claim form: sometimes important information was missing, or the claim form said two things that are contradictory. In those cases, we will send the claimant a letter explaining the errors or defects in the claim form. The claimant will have 45 days from the date of that letter to submit the missing or corrected information. These letters will be sent through the months of December 2016 and January 2017.

The phone agents will be available to help claimants understand exactly what we are referring to or asking for in the letters referenced above. Additionally, in-person assistance may be available in the process of responding to the letters. Volunteer availability is limited. Please call 1-877-202-3282 to talk to a phone agent about your letter and/or to schedule an in-person appointment with a Victim Advocate Specialist or a CPA. Click [here \(/fataclaims/Home/Assistance\)](#) for further information.

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## Getting A Payment

### 16. How will claims be decided?

The Claims Facilitator, Randi Ilyse Roth, will make recommendations to the Court as to the amount of restitution that each timely-filed claim is entitled to receive according to the rules of the case. She and her staff will examine whether each claim is asking for categories of compensation that are eligible in this claim process, and whether each claim provides proper documentation. Then the Court will make a decision based, in part, on the Facilitator's recommendations.

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### 17. What happens if I do not file a Claim?

If you do not file any claim in this case you will not recover any money in this case.

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### 18. How much money will I get, and when will I be paid?

The amount you may get paid depends both on the details of your claim submission and on whether the total amount of eligible claims exceeds the amount of money in the restitution fund.

Once all of the claims have been filed and processed, we will have a better sense of the timing.

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## Information About The Claims Package

### 19. Where can I find definitions of technical terms in the Claims Package?

A list of definitions of terms used in this claims process is included in the Claim Package. You can download a PDF copy of the Definitions of Terms used in this claims process [here \(/fataclaims/Content/Documents/Definitions of Terms.pdf\)](#).

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### 20. What is the significance of the dates listed in the Claims Package?

KEY DATES:	
<b>April 11, 2005</b>	This is the date when the defendant started his practice at Michigan Hematology Oncology ("MHO").
<b>August 6, 2013</b>	This is the date when the defendant was arrested.
<b>September 6, 2016</b>	This is the last date of remedial treatment that can be submitted for compensation in this claims process.
<b>November 14, 2016</b>	This is the deadline for filing a claim

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## Information About Documentation

### 21. What if I do not have records at home about my dates of treatment or the costs of my treatment?

A chart containing information on how to contact Medicare and various private insurance companies for Explanation of Benefits or Medicare service notices can be found on the Medicare & Insurance Info page by clicking [here \(/fataclaims/Home/Benefits\)](#).

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### 22. Can the services of ophthalmologists and optometrists count as eligible remedial medical services?

Yes, if they otherwise meet the requirements for eligibility.

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### 23. What's included in compensable mental health treatment?

Mental health treatment can include treatments by a psychologist, psychiatrist, licensed therapist, or licensed social worker, and includes prescription medications that they prescribe.

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## Tax Information

### 24. Will it affect my taxes if I get paid in this case?

The Claims Facilitator cannot give you legal or tax advice. You may wish to consult your tax advisor.

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### 25. Will it affect my public benefits—like Social Security or Supplemental Nutrition Assistance Program (SNAP)—if I get paid in this case?

The Claims Facilitator cannot give you legal advice.

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## Getting More Information

### 26. How do I get help if I don't understand something or if I have a concern?

If you have any questions or concerns about this claims process, you can contact the Fata Claims Facilitator phone staff at 1-877-202-3282, or call the Victim Witness Coordinator for the U.S. Attorney's Office for the Eastern District of Michigan, Sandy Palazzolo, at 1-313-226-9633. If you have specific questions about the claims process, please call the phone staff at 1-877-202-3282. Please be advised that Ms. Palazzolo will not be able to provide assistance in the claims process.

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## Changing My Claim Information

### 27. What if I file and then my address or phone number changes?

Write to us to report the change of address. Send a letter with the information to:

Fata Claims Facilitator  
PO Box 2730  
Portland, OR 97208-2730

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## Important Dates

### June 9, 2016

Claim Forms Available

### June 9, 2016

Phone Operators Available

### September 6, 2016

Last Date of Remedial Treatment That Is

Eligible for Claim

### November 14, 2016

Postmark Deadline for Claim Forms

## Helpful Links

[Contact Us \(/fataclaims/Home/ContactUs\)](#)

[Department of Justice \(https://www.justice.gov/usao-edmi/us-v-farid-fata-court-docket-13-cr-20600\)](https://www.justice.gov/usao-edmi/us-v-farid-fata-court-docket-13-cr-20600)

[Claim Form \(/fataclaims/Content/Documents/Claim Form.pdf\)](#)

[Privacy Policy \(/fataclaims/Home/Privacy\)](#)

## Claims Facilitator

Fata Claims Facilitator  
PO Box 2730  
Portland, OR 97208-2730  
1-877-202-3282

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**No. 13-cr-20600  
Hon. Paul D. Borman**

**FARID FATA, M.D.**

**Defendant.**

\_\_\_\_\_ /

**NOTICE OF REPORT ON RESTITUTION**

The Court has ordered a hearing on the status of the restitution proceedings pursuant to an Order Establishing a Restitution Plan and Review of Claims for Restitution (“Restitution Order”) entered on April 11, 2016.<sup>1</sup> The Report of the Claims Facilitator, attached hereto as Exhibit 1, sets forth in detail the status of the claims process and review of the 763 claims submitted to the Facilitator as of January 5, 2017.<sup>2</sup> The Claims Facilitator will be in attendance at the January 17, 2017, status hearing to brief the Court regarding the claims process.

The government anticipates that a final Report and Recommendation to the Court shall be completed within the next 6-8 months. At such time, the victim

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<sup>1</sup> The history of restitution proceedings and public hearings on this matter are set forth in greater detail in previous Orders of the Court.

<sup>2</sup> This number includes both the timely-filed claims, postmarked as of November 14, 2016, and untimely-filed claims filed thereafter. The government will process both sets of claims but distinguish them in the final Report and Recommendation to the Court.



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**CERTIFICATE OF SERVICE**

I hereby certify that on January 12, 2017, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to counsel for the defendant.

s/Catherine K. Dick

Trial Attorney

Organized Crime and Gang Section

U.S. Department of Justice

1301 New York Ave., N.W., Suite 701

Washington, D.C. 20005

Phone: (202) 538-4049

E-Mail: [catherine.dick@usdoj.gov](mailto:catherine.dick@usdoj.gov)



COMPLEX SETTLEMENTS, P.C.

Randi Ilyse Roth  
Attorney at Law

rroth@complexsettlements.com

January 10, 2017

Ms. Catherine K. Dick  
Trial Attorney  
U.S. Department of Justice  
1301 New York Ave. N.W.  
Washington, DC 20005

Ms. Linda Aouate  
Assistant United States Attorney  
Chief, Asset Forfeiture Unit  
211 W. Fort St., Ste 2001  
Detroit, MI 48226

Ms. Sarah Resnick Cohen  
Assistant United States Attorney  
211 W. Fort St., Ste 2001  
Detroit, MI 48226

Dear Ms. Dick, Ms. Aouate, and Ms. Cohen:

Claims Facilitator's Report to the Department of Justice Regarding the Restitution Process: Progress Made to Date, Statistics, and Additional Steps Necessary to Complete the Claims Process

## I. INTRODUCTION

The Department of Justice (DOJ) entered a contract with the Claims Facilitator on March 7, 2016. The Claims Facilitator's role is to aid the DOJ in determining the identity of potential victims, as well as the amount and nature of loss suffered by each potential victim that may qualify as restitution in the case of *United States v. Fata*.

This report explains the progress made to date in the claims process and gives an outline of the likely next steps.

### A. Legal Basis for Restitution Process

The rules governing this restitution process (also called the "claims process") are set forth in a series of Court Orders.

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On April 11, 2016, this Court issued an Order Establishing Restitution Plan and Review of Claims for Restitution (April 2016 Order). That Order set forth the statutory basis for this claims process:

Pursuant to the Mandatory Victim Restitution Act of 1996 (MVRA), Pub. L. No. 104-132, § 204(a), 110 Stat. 1227 (1996) (codified as amended at 18 U.S.C. § 3663A), a United States District Court shall order that a defendant make restitution to the victim(s) of certain offenses, including offenses involving fraud or deceit. 18 U.S.C. § 3663A(c)(1)(A)(ii).

The Court ordered restitution for defined categories of loss for former patients of Farid Fata or their legal representatives. The Court also set forth the parameters of the Claims Facilitator's role. The April 2016 Order is available on the website of the U.S. Attorney's Office, E.D. of Michigan: <https://www.justice.gov/usao-edmi/file/840176/download>.

## B. Categories of Claims

There are four categories of permissible claims. The details regarding each category are explained in the claims package documents (<http://fataclaims.com/Home/Documents>). The four categories are:

1. Fata Expenses. This category includes all non-reimbursed, out-of-pocket medical expenses paid by a former patient for medical services provided by Farid Fata or at his direction from April 11, 2005 until August 6, 2013.
2. Remedial Medical Expenses. This category includes all non-reimbursed, out-of-pocket medical expenses for remedial measures that were incurred as a result of any inappropriate or unnecessary treatments ordered or provided by Farid Fata. These expenses relate to services provided by other medical providers after leaving the care of Fata, up to and including September 6, 2016.
3. Remedial Mental Health Expenses. This category includes all non-reimbursed, out-of-pocket psychological and psychiatric mental health expenses for remedial measures that were incurred as a result of any inappropriate or unnecessary treatments ordered or provided by Farid Fata. These expenses relate to services provided by mental health providers after leaving the care of Fata, up to and including September 6, 2016.
4. Funeral Expenses. This category includes partial contributions to expenses incurred by family members for the funeral expenses of former patients of Farid Fata.

## C. Claims Facilitator

### 1. Responsibilities of Claims Facilitator

The April 2016 Order provides that the Claims Facilitator shall:

[R]eview and evaluate the claims and supporting documents submitted by former patients. The facilitator shall make a recommendation as to whether a former patient

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has met the requirements to be identified as a victim and the amount due each such victim for purposes of restitution in this case.

## 2. Background About Claims Facilitator and Epiq Systems

The Claims Facilitator in this case is Randi Ilyse Roth, through her law firm, Complex Settlements, P.C. (“Complex”). Ms. Roth previously served as the independent court-appointed Monitor in the *Pigford v. Vilsack* case, a large civil rights race discrimination class action that involved a very complex claims process. Epiq Systems (“Epiq”) contracts with Complex to provide claims administration services in this case. Epiq has substantial experience with all aspects of administering claims processes. The Claims Facilitator and Epiq have been in close contact with DOJ as this claims process has developed.

## II. PROGRESS MADE TO DATE: STEPS TAKEN FROM MARCH 2016 TO JANUARY 2017

### A. DOJ Provided Draft of Claim Forms Package

The Department of Justice (DOJ) prepared the first draft of a package of claims documents (“claims package”).

### B. Claims Facilitator and DOJ Worked Together to Further Develop Claim Form Documents

When the Claims Facilitator (“Facilitator”) began her work in this case in March, 2016, the first tasks involved working with DOJ to finalize the claims package. The Facilitator, Epiq, and DOJ worked together to anticipate legal and practical issues that might arise in the claims process and to refine the draft claims package as required by those issues. The team produced a draft of the claims package in May 2016.

The Facilitator recommended that the draft claims package be tested in a series of victim focus group meetings. DOJ arranged for two focus groups which were held on May 17, 2016. Each group included five former patients (and/or family members of former patients). In each focus group meeting, participants reviewed every page of and every question in the draft claims package. The participants made many comments that led to improvements in the package. The comments touched on substance, tone, and ease of use. The claims package was significantly improved due to these participants’ willingness to give of their time to help improve the process.

Once the package was re-drafted with the victim focus group input, the package was submitted to a plain-language expert at Epiq. The plain-language expert’s input resulted in further improvements to the claims package.

### C. Launch of Claim Package: June 9, 2016

The claims package was finalized, and was then made available to the public on June 9, 2016. The final claims package is posted on the Claims Facilitator’s website for this case: <http://fataclaims.com/Home/Documents>. The documents include: Cover Letter, Definitions, Claim Instructions, Checklist, Claim Form, Physician and Dentist Form, and Mental Health Treatment Provider Form.

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#### D. Communications to Former Patients and their Families

The team of DOJ, Epiq, and the Claims Facilitator (“the team”) worked together diligently to use many different approaches to communicate with former patients and their families about the claims process. The goal of these communications was to provide timely and relevant information about the claims process to the greatest number of potential claimants.

##### 1. Communication Effort #1: Mailing to Known Victims

The team started the communications effort by mailing the complete claims package to more than 500 people previously identified by the DOJ in its sentencing memoranda as victims of unnecessary treatment by Farid Fata.

##### 2. Communication Effort #2: Websites

The Claims Facilitator launched a website for the case as of June 9, 2016: [www.fataclaims.com](http://www.fataclaims.com). The website includes:

- (a) Important Dates (deadlines, meeting dates, etc.)
- (b) Documents (including the full claims package and PDF-fillable versions of the form)
- (c) Frequently Asked Questions (FAQs)
- (d) Claims Process Assistance (details re: assistance efforts that will be explained below)
- (e) Medicare and Insurance Information
- (f) Contact Information (how to reach phone agents for assistance, address for mailing documents, etc.)

To ensure that patients and family members who were most familiar with the website maintained by the U.S. Attorney’s Office remained fully informed, the U.S. Attorney’s Office continued to update its *U.S. v. Fata* webpage with new developments and important announcements regarding the claims process.

##### 3. Communication Effort #3: Insurance Information

Claimants are required to provide proof of costs incurred which may require proof of a significant number of medical transactions. For many of those victims, the easiest way to find that proof was by ordering documents from their insurance companies. In the private insurance company context, the documents are called Explanation of Benefit forms (EOBs); in the Medicare program, the documents are called Medicare Summary Notices (MSNs). DOJ contacted most of the major insurance companies that had insured Fata’s patients. The insurance companies agreed to provide the EOB or MSN forms quickly and at no cost to the requestor. The Claims Facilitator website includes a “Medicare and Insurance Info” page that gives contact information and notes about how to order EOBs or MSNs from each insurance company.

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4. Communication Effort #4: Phone Agent Assistance

On June 9, 2016, the Claims Facilitator established a toll-free line that former patients and their families could call for information about the claims process. The phone number is 877-202-3282. Professional phone agents who have been trained regarding this claims process are available from 9:00 a.m. to 8:00 p.m. Eastern time on Mondays through Fridays (except holidays). As of January 5, 2017, the phone operators have assisted former patients and their families in 2,960 calls which spanned a total of 18,049 minutes. The phone agents rely on detailed scripting provided by the Claims Facilitator and on their ability to “escalate” complicated issues to trained project managers and attorneys on their staff.

Phone agents also assisted by ensuring that Claim Forms were easily accessible and available to anyone without access to a computer. The phone agents mailed a full claims package via U.S. Mail when requested by a former patient or family member of a former patient.

5. Communication Effort #5: In-Person Meetings in Detroit Area

The Claims Facilitator and DOJ hosted in-person meetings in the Detroit area on July 31, 2016 (at the New Hope Bible Church) and on August 1, 2016 (at the Rochester Hills Public Library). Each was attended by approximately forty to fifty individuals. The meetings were specifically mentioned by the phone agents in their conversations with potential claimants; they were advertised on the Claim Facilitator’s website; and they were advertised on the U.S. Attorney’s Office website. In these meetings, which each lasted more than two hours, the Claims Facilitator, DOJ lawyers, and the U.S. Attorney’s Office Victim Witness Coordinator listened closely to the victims’ concerns about the claims process and answered victims’ and family members’ questions.

6. Communication Effort #6: Mailing of More than 5,000 Flyers

Between September 30 and October 3, 2016, the U.S. Attorney’s Office and the Claims Facilitator sent an explanatory flyer to 5,334 potentially eligible victims and family members. The flyer explained that the claims deadline had been extended (see below), and explained the basic eligibility rules for the claims process, how to obtain a Claim Form, and how to obtain assistance in completing the Claim Form. A copy of the flyer is included with this report as Appendix A.

7. Communication Effort #7: Outgoing Phone Call Effort

On October 11, 2016, Epiq phone agents made outgoing phone calls to 326 potentially eligible claimants who had previously contacted Epiq, but had not yet filed a claim. In these calls, the phone agents reminded the claimant of the claim filing deadline and offered to schedule an appointment for in-person assistance.

8. Communication Effort #8: Ongoing Communications With Victim Witness Coordinator

The Victim Witness Coordinator for the United States Attorney’s Office for the Eastern District of Michigan, Sandy Palazzolo, maintained ongoing telephone and written

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communication with former patients and their family members during the period between the launch of the claims process and the ultimate deadline for the claims process (June 9 – November 14, 2016).

9. *Communication Effort #9: Extensive Public Communications Effort*

During the period between the launch of the claims process and the ultimate deadline for the claims process (June 9–November 14, 2016), the Department of Justice mounted an extensive and effective effort to encourage the press to publicize the claims process to the public. The efforts included:

- (a) U.S. Attorney Media Roundtables. Media Roundtables were held by the United States Attorney, Barbara L. McQuade, and her staff from DOJ on June 9 and on August 29, 2016. These roundtables with the press included time for the press to learn about the claims process in detail. The August 29 roundtable highlighted the availability of in-person assistance for claimants from trained volunteer Certified Public Accountants (CPAs) and Victim Advocates (VAs).
- (b) Press Releases. The United States Attorney issued press releases to encourage media to get information out to potential eligible claimants about the claims process, the deadline, and opportunities for assistance in the claims process. One such press release is on the DOJ website: <https://www.justice.gov/usao-edmi/pr/united-states-attorneys-office-assembles-team-specialists-assist-former-patientsfamily>. Another is included in this report as Appendix B.
- (c) Cumulative Impact. Additionally, DOJ reached out to the press through its media spokesperson, Gina Balaya. A simple Google search for “Fata restitution process” reveals that a significant amount of coverage resulted from these and other efforts. The coverage spanned at least three aspects of the restitution effort: the launch of the claims process on June 9, 2016; the availability of in-person assistance from the volunteer CPAs and VAs; and the extension of the deadline from October 5 to November 14, 2016. The coverage included newspaper stories, radio stories, radio public service announcements (PSAs), television stories, television PSA banners, and “tweets.”

E. Court Order Extended Claims Deadline from October 5 to November 14

The original claims deadline was October 5, 2016. As of September 15, fewer than 200 claims had been filed. On September 26, 2016, this Court issued an Order extending the deadline for approximately six weeks, to November 14, 2016 (“September 2016 Order”). The September 2016 Order said in part:

The Court has been informed by the United States that due to the complexity and nature of the claims being submitted and the necessity that former patients obtain medical and financial documentation supporting these claims, additional time is required to ensure that the maximum number of eligible claims will be submitted by former patients.

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Accordingly, and to ensure that former patients have sufficient time and ability to submit claims for restitution, the Court hereby extends the deadline for filing such claims from October 5, 2016 to November 14, 2016.

The purpose of the extension was to give sufficient time to allow potential claimants to obtain their supporting materials and file claims. In the end, 737 timely claims were filed.

#### F. Assistance to Individuals Interested in Filing Claims

The team of DOJ, Epiq, and the Claims Facilitator took many additional steps to provide assistance to individuals who wished to file claims.

First, based on input from victims at the July 31 and August 1 meetings (see above), the team provided victims and their families with additional information about how to obtain the proof that is necessary to support a claim and made adjustments as to how claimants could transmit the information submitted as proof. The Facilitator published two information sheets regarding the changes: “How to Prove What Victim Paid or Owed” and “Listing Multiple Expenses.” (See <http://fataclaims.com/Home/Documents>.)

Second, the team made arrangements for trained, skilled volunteers to provide significant in-person assistance in the claims process. The team reached out to Mark Davidoff, Michigan managing partner at Deloitte, LLP, the Accounting Aid Society, and the Michigan Association of CPAs and asked them to invite area CPAs to volunteer to provide one-on-one, in-person assistance to individuals who were attempting to file claims. The team also reached out to Director James McCurtis and Program Specialist Leslie O’Reilly of the Crime Services Commission for the State of Michigan and asked them to invite trained Victim Advocates (VAs) to work with CPAs to assist in this effort. In addition to inviting VAs from around the state to assist, the Crime Services Commission secured a location for the assistance: Common Ground in Pontiac, Michigan.

On August 31, 2016, the U.S. Attorney’s Office and the Claims Facilitator (via videoconference) provided a four-hour training session to approximately 70 volunteer CPAs and VAs. In preparation for this training session, the CPAs and VAs reviewed key documents regarding the case and the claims process.

Once they were trained, these CPAs and VAs provided to DOJ and Epiq the dates and times they could be available to assist claimants. Epiq took calls from claimants who wished to have in-person assistance and matched the claimants with available CPAs and VAs. The volunteers filled out detailed “intake forms” regarding each claimant’s situation. The volunteers generally assisted the claimant until the Claim Form was complete. The in-person assistance meetings were held at Common Ground in Pontiac, Michigan and then later at the State of Michigan Department of Health and Human Services Office in Pontiac, Michigan. Overall, CPAs and VAs provided in-person assistance to more than 230 claimants, spanning a total of more than 339 hours of assistance.

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### G. Progress Made Since the November 14 Deadline

To be timely, claims had to be postmarked by November 14, 2016. Statistics about the number of timely filed claims and the number of late claims appear in Table # 1, below.

Since November 14, the team has made much progress in the next phase of the claims process, which concerns curing errors in Claim Forms.

#### 1. Curing Errors in Claim Forms

Claims that were filed on time are now being processed. In some of those claims, the Claims Facilitator has determined or will determine that there are errors in the Claim Form: sometimes important information is missing, or the Claim Form contains pieces of information that contradict each other. In those cases, the Claims Facilitator sends the claimant a letter explaining the errors or defects in the Claim Form. The claimant has 45 days from the date of that letter to submit the missing or corrected information. These letters will be sent on a rolling basis. The first batch of 38 letters was mailed on December 20, 2016. The second batch of approximately 563 letters is scheduled to be mailed on February 3, 2017. A redacted sample letter is included with this report as Appendix C.

#### 2. Assistance With Curing Errors

Several of the CPAs and VAs who assisted claimants with filing Claim Forms have agreed to extend their volunteer service for a few more months so they can assist claimants who are in the process of curing errors in their Claim Forms. Additionally, the phone agents are trained and ready to assist claimants by helping the claimants to understand exactly what they need to do to cure defects in their Claim Forms.

### III. STATISTICS

This section of the report provides some basic statistics about the claims process to date.

All statistics listed here are as of January 5, 2017.

The statistics distinguish between claims that request restitution for funerals only and all other claims because the former claims are far less complex than the latter claims. Data regarding phone activity is provided because it gives a sense of the extent to which assistance is being provided in the claims process. The most frequent topics of conversation on the phone calls include:

- General questions about how to fill out the Claim Form
- Scheduling an appointment for assistance with filling out the Claim Form
- Verifying receipt of Claim Form
- Asking whether it is permissible to file a Claim Form after the deadline
- Asking questions about the letter requesting that errors in the Claim Form be corrected

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<b>Table #1: General Statistics as of January 5, 2017</b>		
1.	Timely Claims	
1(a).	Overall number of timely claims received	737
1(b).	Number of claims requesting restitution for funeral only	117
2.	Late Claims	
2(a).	Overall number of late claims	26
2(a)(1).	Number received 1-14 days late	14
2(a)(2).	Number received 14-28 days late	11
2(a)(3).	Number received 28-42 days late	1
2(b).	Number of late claims requesting restitution for funeral only	1
3.	Phone Activity	
3(a).	Total number of calls (June 9 - January 5, 2017)	2,960
3(b).	Average number of calls per month	423
3(c).	Average number of minutes/month	2,578
3(d).	Average number of minutes/call	6
3(e)(1).	Number of calls in June	134
3(e)(2).	Number of calls in July	178
3(e)(3).	Number of calls in August	175
3(e)(4).	Number of calls in September	634
3(e)(5).	Number of calls in October	1,354
3(e)(6).	Number of calls in November	415
3(e)(7).	Number of calls in December	61
4.	In-Person Assistance Sessions with CPA or VA	
4(a).	Number of in-person assistance sessions scheduled by Epiq with CPA or VA (additional follow-up sessions were scheduled without assistance by Epiq)	222
4(b).	Number of CPAs who provided at least one session	17
4(c).	Number of VAs who provided at least one session	35

#### IV. ADDITIONAL STEPS NECESSARY TO COMPLETE THE CLAIMS PROCESS

The following steps are necessary to complete the claims process:

- A. Cure Errors in Claim Sheets. The process described above to cure errors in Claim Forms needs to be completed. Letters need to be sent out to all claimants whose Claim Forms

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contained errors, and claimants need to return the corrected Claim Forms within the 45-day period specified in the letter.

- B. Late Claims. Once the team obtains guidance from the Court regarding how to handle late claims (claims postmarked after November 14, 2016), the team will comply with that guidance.
- C. Process All Claims, Including Corrected Claims. The Claims Facilitator will process all claims, including the corrected claims, to determine the Claims Facilitator's recommendation in response to each claim.
- D. Issue Provisional Decisions. The Claims Facilitator will send a letter to each claimant explaining the provisional decision in response to the claim. The letter will explain that the claimant may request reconsideration of the Claims Facilitator's recommendation. This reconsideration process will require a relatively short response time and will involve a limited scope of review.

Provisional decision letters are scheduled to be issued in approximately late Spring of 2017.

- E. Reconsideration Process. The Claims Facilitator will review any requests for reconsideration received in response to provisional decisions.
- F. Submit Final Recommendations. The Claims Facilitator will submit to DOJ her final recommendations regarding each claim in summer 2017. Additionally, she will send a letter to each claimant informing the claimant of the Claims Facilitator's final recommendation to DOJ regarding the claim. The DOJ will provide the Court with its recommendations as to the identity of each victim, as well as the nature and amount of loss for each victim. The DOJ will propose to the Court an approach to priority of payment at that time. DOJ will request that the Court establish a process for finalizing the order of restitution. DOJ's request will be filed on the public record and will be provided to all interested parties.

Respectfully submitted,

s/Randi Ilyse Roth

Randi Ilyse Roth  
Claims Facilitator  
Complex Settlements, P.C.

**Appendices:**

Appendix A: Flyer Mailed to More Than 5,000 Potentially Eligible Claimants

Appendix B: Press Release from United States Attorney

Appendix C: Redacted Sample Letter Notifying Claimant of Errors in Claim Form

**Appendix A**

**Flyer Mailed to More Than 5,000 Potentially Eligible Claimants**

*United States v. Farid Fata*

## **Claim-Filing Deadline Extended to November 14, 2016**

On September 26, 2016, Judge Paul D. Borman extended the deadline for filing a restitution claim in the federal criminal case of *United States v. Farid Fata*. The new deadline is November 14, 2016. As a result of this order, ***all claim forms must be postmarked on or before Monday, November 14, 2016.***

### **The Government Encourages Eligible Victims and Their Heirs to File Claims**

The government seized Fata's assets to create a restitution fund for the benefit of Fata's victims and their heirs. Many people have already filed claims. We encourage all qualified patients and authorized representatives of patients to file their claims for restitution before the November 14, 2016 deadline.

### **Who Is Eligible for Restitution?**

**Any person who was a patient of Fata between 2005 and 2013 and who incurred out-of-pocket expenses (such as co-pays and deductibles)** is eligible to file a claim for restitution funds. In addition, authorized representatives of deceased patients may file claims to be reimbursed for the deceased patient's out-of-pocket expenses, as well as for a portion of funeral expenses. Those patients who were harmed physically and/or emotionally by Fata may also request restitution for the out-of-pocket expenses they incurred to remediate the harm. Please read the claim form for more details about the eligibility rules (see "How to get a claim form" below).

### **How to Get a Claim Form**

If you have **not** already requested or received a claim form, you can download and print the claim form from **[www.fataclaims.com](http://www.fataclaims.com)** or you can call 1-877-202-3282 to ask that the form be mailed to you.

### **How to Get Help Completing a Claim Form**

We currently have volunteers offering in-person claim filing assistance. Some people have found this assistance very helpful. You can call our phone agents at 1-877-202-3282 to find out whether volunteer help is still available, and, if it is, to schedule an appointment for assistance.

**[www.fataclaims.com](http://www.fataclaims.com)  
1-877-202-3282**

**Appendix B**

**Press Release from United States Attorney**



**United States Attorney's Office  
Eastern District of Michigan**

**Barbara L. McQuade  
United States Attorney**

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**PRESS RELEASE**

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**FOR IMMEDIATE RELEASE  
November 7, 2016**

**Contact: Gina Balaya - (313) 226-9758  
[www.justice.gov/usao/mie/index.html](http://www.justice.gov/usao/mie/index.html)**

**Last Week to File Restitution Claims  
in the case of U.S. v. Farid Fata**

The deadline to file claims for restitution in the case of United States v. Farid Fata is in one week. United States District Judge Paul D. Borman extended the deadline for filing a restitution claim to November 14, 2016. As a result, all claim forms must be postmarked on or before Monday, November 14, 2016.

**The Government Encourages Eligible Victims and Their Heirs to File Claims**

Fata was sentenced to 45 years in federal prison for providing medically unnecessary chemotherapy treatments to patients. The government has seized approximately \$11.9 million. The government seized Fata's assets to create a restitution fund for the benefit of Fata's victims and their heirs. Many people have already filed claims. We encourage all qualified patients and authorized representatives of patients to postmark their claims for restitution on or before the November 14, 2016 deadline.

**Who Is Eligible for Restitution?**

Any person who was a patient of Fata between 2005 and 2013 and who incurred out-of-pocket expenses (such as co-pays and deductibles) is eligible to file a claim for restitution funds. In addition, authorized representatives of deceased patients may file claims to be reimbursed for the deceased patient's out-of-pocket expenses, as well as for a portion of funeral expenses. Those patients who were harmed physically and/or emotionally by Fata may also request restitution for the out-of-pocket expenses they incurred to remediate the harm. Please read the claim form for more details about the eligibility rules (see "How to get a claim form" below).

## **How to Get a Claim Form**

If you have not already requested or received a claim form, you can download and print the claim form from [www.fataclaims.com](http://www.fataclaims.com)

Visitors to the website will find two information sheets to help claimants understand how to complete the Claim Forms as efficiently as possible and to make the filing process easier. Those can be accessed through the website [www.fataclaims.com](http://www.fataclaims.com) on the homepage. The two documents are:

- How to Prove What Victim Paid or Owed
- Listing Multiple Expenses

## **Questions about the Claim Form**

Please call 1-877-202-3282 or visit [www.fataclaims.com](http://www.fataclaims.com) for answers to questions about the Restitution Claim Form.

United States Attorney McQuade stated, "We recognize that the process of filling out a restitution claim form can be a difficult process both emotionally and physically for victims and their families. While no amount of money can restore what has been taken away by the actions of Fata, we hope that all eligible patients and family members file claims for restitution so that we can return Fata's assets to his patients."

**Appendix C**

**Redacted Sample Letter Notifying Claimant of Errors in Claim Form**

Fata Claims Facilitator  
P.O. Box 2730  
Portland, OR 97208-2730

**Randi Ilyse Roth**  
Claims Facilitator  
Complex Settlements, PC

**Return Postmarked on or before  
February 03, 2017**

*United States vs. Fata*  
Case No. 13-CR-20600



\*887800024762\*

[Redacted]

Tracking Number: 5816

December 20, 2016

Dear [Redacted],

Thank you for submitting your claim. We have conducted a preliminary review of your claim but need some additional information from you that will help us in understanding and evaluating your claim. Please refer to the enclosed copy of your Claim Form and provide the additional information requested below, postmarked on or before February 03, 2017.

**Section 1: Background**

***Section 1(b): Contact Information for Patient's Authorized Representative or Representative of Patient's Estate***

- You have indicated that you are filing on behalf of a deceased patient, but in Section 1(b) you did not provide the estate's Taxpayer Identification Number. This information is not required at this time; however, it may be required if your claim is approved.

**Section 3: Compensation From Other Sources**

***Section 3(a): Lawsuits***

- In Section 3(a), we requested information as to whether the patient applied for Crime Victim Compensation from the Michigan Department of Community Health. However, you did not provide a response. Please provide a response.
- In Section 3(a), we asked if the patient or the patient's representative applied for and/or received compensation from any other source not already identified on the Claim Form. However, you did not provide a response. Please provide a response.

**Section 5: Swearing That Contents of the Claim Form Are True**

- In Section 5, we require that you sign the Claim Form; however, you did not sign. Please sign the Claim Form.

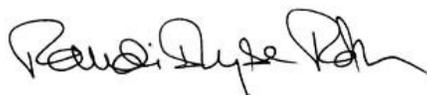
For us to fully understand and evaluate your claim for restitution, you must provide the additional



information requested below postmarked on or before February 03, 2017. If we do not receive the information from you, we may be required to deny the portions of your claim that relate to that information.

We understand that some of the information we are requesting in this letter may be complex or difficult to obtain. Our phone agents can explain any aspects of this letter that may be confusing to you. Do not hesitate to call us toll-free at 1-877-202-3282 to see how we can help or check the website at [www.fataclaims.com](http://www.fataclaims.com). Please be advised that the Victim Witness Coordinator for the Eastern District of Michigan, Sandy Palazzolo, will not be able to answer questions about this letter or provide further assistance in the claims process.

Sincerely,

A handwritten signature in black ink, appearing to read "Randi Ilyse Roth". The signature is written in a cursive, flowing style.

Randi Ilyse Roth  
Attorney at Law  
Claims Facilitator

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**No. 13-cr-20600  
Hon. Paul D. Borman**

**FARID FATA, M.D.**

**Defendant.**

\_\_\_\_\_ /

**NOTICE OF REPORT ON RESTITUTION**

The Court has ordered a hearing on the status of the restitution proceedings pursuant to the Order Establishing a Restitution Plan and Review of Claims for Restitution entered on April 11, 2016.<sup>1</sup> The Final Report of the Claims Facilitator, attached hereto as Exhibit 1, sets forth in detail the status of the claims process and review of the 741 claims submitted to the Facilitator.

The Claims Facilitator, Ms. Randi Ilyse Roth, will be in attendance at the November 21, 2017, status hearing to brief the Court regarding the claims process. Ms. Roth will report, *inter alia*, that “Final Recommendation Letters” were mailed

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<sup>1</sup> The history of restitution proceedings and public hearings on this matter are set forth in greater detail in previous Orders of the Court.

by the Facilitator to each claimant and that she has transmitted to the Department of Justice a “Proposed Restitution List” containing her recommendations regarding the eligibility of each claim. The “Proposed Restitution List” provided by Ms. Roth will be submitted to the Court prior to November 21, 2017.

This Court has instituted a process for claimants to request Court review of the recommendations made by the Facilitator. Each claimant has been provided notice and instructions regarding the process: every claimant received, with their Final Recommendation letter, a “Notice of Facilitator’s Final Recommendation and Notice of Right to Court Review” and a form entitled “Request for Review of Denial of Claim.” As stated on the notice, any claimant who believes the Facilitator has made a mistake, based upon the information on their claim form and documentation provided during the claims process, may request review by Magistrate Judge David R. Grand if a request is timely filed with the Clerk of the Court for the Eastern District of Michigan. To be timely, requests must be postmarked on or before December 11, 2017.

After December 11, 2017, when the number of requests for review are known and the review process is in progress, the claimants will be provided with

further updates regarding the timing of a final restitution order by the Court and the timing of payments.

Respectfully submitted,

DANIEL L. LEMISCH

*Acting United States Attorney*

/s/ Catherine K. Dick

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Trial Attorney, Criminal Division  
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/s/ Sarah Resnick Cohen

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/s/ Linda Aouate

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/s/ Jacqueline M. Hotz

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 14, 2017, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Mark J. Kriger

/s/ Sarah Resnick Cohen  
SARAH RESNICK COHEN  
Assistant United States Attorney  
211 West Fort Street, Ste. 2001  
Detroit, Michigan 48226  
Phone: (313) 226-9637  
sarah.cohen@usdoj.gov

**Exhibit 1**



COMPLEX SETTLEMENTS, P.C.

Randi Ilyse Roth  
Attorney at Law

rroth@complexsettlements.com

November 7, 2017

Ms. Catherine K. Dick  
Trial Attorney  
U.S. Department of Justice  
1301 New York Ave. N.W.  
Washington, DC 20005

Ms. Linda Aouate  
Ms. Sarah Resnick Cohen  
Ms. Jacqueline Hotz  
Assistant United States Attorneys  
211 W. Fort St., Ste 2001  
Detroit, MI 48226

Dear Ms. Dick, Ms. Aouate, Ms. Cohen, and Ms. Hotz:

Claims Facilitator's Final Report to the Department of Justice Regarding the Restitution Process: Steps Taken, Remaining Steps, Statistics, Issues of Note, Questions for the Court, and Transmission of Final Recommendations.

I. INTRODUCTION

The Claims Facilitator's Report to the Department of Justice dated January 9, 2017, provided detailed background about the context of this case and about the mechanics of the restitution process. The report explained:

- Legal Basis. The legal basis for the restitution process.
- Categories of Claims. The four categories of claims in this restitution process.
- Claims Facilitator. The responsibilities of the Claims Facilitator.
- Progress to Date. The steps taken in the restitution process from March 2016—January 2017, including extensive steps that were taken to assist claimants in their efforts to complete their Claim Forms.
- Statistics. Key statistics as of January 2017.
- Next Steps. The additional steps necessary to complete the claims process.

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The material covered in the January 2017 report will not be repeated in this report. However, for your convenience, the January 2017 report is attached as Appendix A.

This report will explain the steps taken in the restitution process since January 9, 2017; the remaining steps to complete the process; key statistics; issues of note; questions for the Court, and the transmission of final recommendations.

## II. STEPS TAKEN

### A. Completed the Process of Curing Errors in Claim Forms

In January 2017, when the last report was filed, the restitution process was in the phase that focused on curing errors in Claim Forms. Letters were being sent out to each claimant who had submitted a Claim Form that contained errors. The error(s) consisted of, *inter alia*, missing information, internally contradictory information, or missing documentation. The claimants were given approximately 45 days to cure the errors in their Claim Forms.

Several types of assistance were offered to the claimants during this “cure” process, including in-person assistance from volunteer Certified Public Accountants (CPAs) and Victim Advocates (VAs),<sup>1</sup> and assistance from phone agents on-call during business hours at the Facilitator’s toll-free line.

The process that allowed claimants to submit information to cure errors concluded in early April 2017. In the weeks that followed the claimants’ submissions of cure information, the Claims Facilitator’s office processed the information and began formulating provisional decisions regarding all claims (see section II.C. below).

### B. Processed All Claims

The Claims Facilitator and her team spent February through mid-July reviewing claimant submissions in detail and formulating provisional decisions. The Claims Facilitator and her team had several conference calls with the Department of Justice in this timeframe to come to an understanding of exactly what outcomes were required in different fact scenarios in light of the governing laws and court orders.

### C. Issued Provisional Decisions

The Claims Facilitator issued a Provisional Decision Letter to each claimant on or about July 24, 2017. The Provisional Decision Letter explained to each claimant the Claims Facilitator’s tentative decision on the claim. A template of a provisional decision letter is attached as Appendix B. The letter explained that, if the claimant believed the decision was wrong, the claimant could request Reconsideration. This Reconsideration process allowed for

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<sup>1</sup> Three CPAs and one VA assisted claimants during the process of curing errors in Claim Forms. These four individuals scheduled at least 17 separate sessions with claimants through the Claims Facilitator’s office. Additional sessions may have been scheduled directly between CPAs and/or VAs who had come to know each other through the process of filling out Claim Forms.

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the submission of additional information and documentation for any claims that had been raised in the earlier stages of the process.

#### D. Reconsideration Process

The Reconsideration process gave the claimant one last chance to explain to the Claims Facilitator why the decision is wrong and to provide additional documentation to support the claim before the issuance of a final recommendation.

##### 1. Assistance in the Reconsideration Process

Claimants working through the Reconsideration process had at least three types of assistance available to them. First, the Claims Facilitator's website, fataclaims.com, had forms and updated information available to claimants. Second, the Claims Facilitator's live phone agents were available during business hours to give claimants personal assistance. And, third, the Claims Facilitator's phone agents made outgoing calls to claimants whose claims had certain categories of technical defects, offering claimants assistance in understanding how to cure the errors.

##### 2. Results of Reconsideration Process

The Reconsideration Process resulted in more claims being found eligible and, in some cases, dollar amounts of eligibility increasing. The results of the Reconsideration process are summarized in the following table.

<b>Table 1: Results of Reconsideration Process</b>		
	<b>After Process of Curing Errors in Claim Forms but Before Reconsideration Process</b>	<b>After Reconsideration Process</b>
Cumulative Total Number of Claims Found Eligible Re: Table 1 (Fata Expenses)	423	451
Cumulative Total Dollar Amount Found Eligible Re: Table 1 (Fata Expenses)	\$1,628,118.69	\$1,711,866.88
Cumulative Total Number of Claims Found Eligible Re: Table 2 (Remedial Medical & Dental)	76	83
Cumulative Total Dollar Amount Found Eligible Re: Table 2 (Remedial Medical & Dental)	\$370,762.16	\$401,339.69
Cumulative Total Number of Claims Found Eligible Re: Table 3 (Mental Health)	10	11
Cumulative Total Dollar Amount Found Eligible Re: Table 3 (Mental Health)	\$8,843.41	\$10,543.72
Cumulative Total Number of Claims Found Eligible Re: Funeral Expenses	270	303

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<b>Table 1: Results of Reconsideration Process</b>		
	<b>After Process of Curing Errors in Claim Forms but Before Reconsideration Process</b>	<b>After Reconsideration Process</b>
Cumulative Total Dollar Amount Found Eligible Re: Funeral Expenses	\$1,767,811.30	\$2,001,290.78
<b>TOTAL</b>	<b>\$3,775,535.56</b>	<b>\$4,125,041.07</b>

E. Issued Final Recommendation Letters

After the Reconsideration process was completed, the Claims Facilitator and her team reviewed all of the claims information that had been submitted and formulated final recommendations for the claims. The Claims Facilitator and her team continued to have conference calls with the Department of Justice to consult about what outcomes were required in different fact scenarios in light of the governing laws and court orders. Final recommendation letters were mailed to all claimants on November 3, 2017. A template of a final recommendation letter is attached as Appendix C.

F. Transmitted Eligibility List to Department of Justice

On November 3, 2017, the Claims Facilitator transmitted to the Department of Justice a Proposed Restitution List containing the Claims Facilitator's recommendations regarding each claim's eligibility for restitution.

G. Summary of All Steps Taken in Restitution Process

The following table summarizes the steps in the restitution process.

<b>Table 2: Steps in Restitution Process</b>			
	<b>Step</b>	<b>Timing</b>	<b>Notes</b>
1.	<b>Preparation.</b> Develop claims process, forms, documents. Victim focus groups review claim form.	Mar. – June 2016	
2.	<b>Launch.</b> Send out claims packages to known potential claimants, post on fataclaims.com and USAO webpage, otherwise disseminate information about process.	June 9, 2016	

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<b>Table 2: Steps in Restitution Process</b>			
	<b>Step</b>	<b>Timing</b>	<b>Notes</b>
3.	<b>Communications.</b> Communications to former patients and their families in nine different ways (including mailing, websites, phone agent assistance, assistance by CPAs and Victim Advocates, in-person large-group meetings, mailing of flyers, outgoing phone calls, ongoing communications with Victim Witness Coordinator, and extensive public communications efforts)	June 2016 – Nov. 14, 2016	Variety of communications efforts designed to help potential claimants understand exactly how to submit claims.
4.	<b>Claim Form Deadline (extended from October 5, 2016)</b>	Nov. 14, 2016	
5.	<b>Process Claims, Notify Re: Errors.</b> Notify each claimant of any errors in their Claim Form submissions.	Dec. 2016 – Feb. 2017	First time that errors in Claim Form submissions are explained to claimants, and they are given an opportunity to submit missing information and/or correct errors. Assistance provided to help claimants understand what information is needed.
6.	<b>Provisional Decisions.</b> Process all information submitted, prepare provisional decision for each claim, issue provisional decision letter to each claimant explaining process for requesting Reconsideration.	Feb. – July 2017	Notified claimants of what claim outcome would be if no further submissions are made.
7.	<b>Reconsideration Process.</b> Process all Reconsideration requests.	July – Oct. 2017	Second time that claimants are given an opportunity to submit missing information and/or correct errors in Claim Forms. Assistance provided to help claimants understand what information is needed.

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<b>Table 2: Steps in Restitution Process</b>			
	<b>Step</b>	<b>Timing</b>	<b>Notes</b>
8.	<b>Prepare Final Recommendations.</b> Review claim information as necessary, prepare and issue final recommendation letter for each claim.	Final Recommendation Letters Mailed November 3, 2017	
9.	<b>Transmit Recommendations to Court.</b> The Claims Facilitator transmitted her final recommendations on each claim to the Department of Justice (DOJ), and the DOJ transmitted them to the Court.	November 2017	
10.	<b>Transmit Data to Department of Justice.</b> Claims Facilitator's data regarding each claim to be transmitted to Department of Justice.	November – December 2017	
11.	<b>Court Review Process.</b> Claimants may request Court Review by Magistrate Judge. Magistrate Judge reviews claims timely submitted for review.	TBD	
12.	<b>Court Determination of Approved Amounts in Each Claim.</b> The Court will examine the Claims Facilitator's final recommendations, as well as the findings and recommendations of the Magistrate Judge, and issue an Order addressing the amount to be approved on each claim.	TBD	
13.	<b>Payment Process.</b> The Court will oversee the process of making payments on approved claims.	TBD	

### III. REMAINING STEPS TO COMPLETE PROCESS

The Claims Facilitator's work is now largely complete. However, the following steps remain to be completed in the claims process.

#### A. Complete Court Review Process

The final recommendation letters that were sent to the claimants on November 3, 2017, included papers regarding the claimants' right to Court Review. The papers, examples of which are included in this report at Appendix D, provide that any claimants seeking Court

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review of the final recommendation must file a request postmarked by December 11, 2017. The next step in the process, then, is for the Court to review and decide any requests for Court Review that may be filed.

B. Court Ruling on Approval of Claims

Once the Court Review process is complete, the Court will be in a position to consider the Claims Facilitator's recommendations about the claimants who are eligible for restitution, the Claims Facilitator's recommendations as to the amounts for which they are eligible, and any proposed amendments to those recommendations made by the Magistrate Judge in the Court Review process. With all this information in hand, the Department of Justice will request that the Court issue a restitution order. This order will identify each person or entity that has been awarded restitution, as well as the amount due each person or entity.

C. Payment Process

Payment of the amounts that are ultimately ordered due as restitution remains dependent upon a number of factors that are outside the scope of the duties of the Facilitator. The Department of Justice will continue with its efforts to timely resolve issues so that funds can be distributed to the approved claimants as promptly as possible.

1. Adjust for Any Additional Reports of Compensation from Other Sources

It is important to note that throughout the claims process—up to and including the time of payment—the claimants have an obligation to report any compensation they may receive from other sources for the expenses for which they seek restitution.

2. Complete Paperwork in Some Estate and Legal Representation Claims

It is important to note that many of the claims relate to estates of deceased patients, and to patients who are minors and/or are incapacitated and who therefore are represented in the claims process by guardians or other legal representatives. Where claims involved estates or legal representatives, the Claims Facilitator asked the claimants to submit the paperwork needed to determine with certainty to whom any payment should be made. For surviving spouses of deceased patients, a procedure was developed to allow the surviving spouse to submit an Affidavit of Surviving Spouse to ease the paperwork burden. (A copy of this form is attached as Appendix E.) In many of the estate and legal representative cases, that work to determine the correct payee has been completed. But in some of the cases, it is not complete. The proposed restitution list that the Claims Facilitator forwarded to the Department of Justice indicates which estate and legal representative cases have incomplete paperwork and therefore need more attention before payment can be issued.

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**IV. STATISTICS**

There are many aspects of the work in this restitution process that can be illuminated by reviewing the statistics.

The overall results of the process are reflected in Table 3, below.

<b>Table 3: Total Amounts Recommended as Eligible (by Table)</b>		
<b>Category of Claim<sup>2</sup></b>	<b>Claims with a Recommended Eligible Amount</b>	<b>Total Final Recommended Eligible Amount</b>
Table 1 (Fata Expenses)	451	\$1,711,866.88
Table 2 (Remedial Medical and Dental Expenses)	83	\$401,339.69
Table 3 (Remedial Mental Health Expenses)	11	\$10,543.72
Funeral Expenses	303	\$2,001,290.78
<b>Total</b>	<b>605</b>	<b>\$4,125,041.07</b>

Table 4, below, provides more detail about activity within the restitution process. It provides some general statistics about the number of timely claims, number of late claims, details of activity involving the live phone agents, details regarding various types of assistance provided to the claimants, details regarding usage of the fataclaims.com website, and details regarding mailings to claimants and their responses to and the results of the mailings.

<b>Table 4: General Statistics as of October 31, 2017</b>		
1	Timely Claims	
1(a).	Overall number of timely claims received (Deadline November 14, 2016)	721
1(b).	Number of timely claims requesting restitution for funeral only	154
2	Late Claims	
2(a).	Overall number of late claims	20
2(a)(1).	Number received 1-14 days late	11
2(a)(2).	Number received 14-28 days late	5
2(a)(3).	Number received 28-42 days late	1
2(a)(4).	Number received 42 plus days late	3
2(b).	Number of late claims requesting restitution for funeral only	3

<sup>2</sup> See Claims Facilitator's Report, January 9, 2017 (attached here as Appendix A) at page 2 for an explanation of the categories of claims.

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<b>Table 4: General Statistics as of October 31, 2017</b>		
3	Phone Activity	
3(a).	Total number of calls	5,056
3(b).	Average number of calls per month	297
3(c).	Average number of minutes/month	1,509
3(d).	Average number of minutes/call	5
3(e)(1).	Number of calls in June 2016	134
3(e)(2).	Number of calls in July 2016	178
3(e)(3).	Number of calls in August 2016	175
3(e)(4).	Number of calls in September 2016	634
3(e)(5).	Number of calls in October 2016	1,354
3(e)(6).	Number of calls in November 2016	415
3(e)(7).	Number of calls in December 2016	61
3(e)(8).	Number of calls in January 2017	24
3(e)(9).	Number of calls in February 2017	1,563
3(e)(10).	Number of calls in March 2017	199
3(e)(11).	Number of calls in April 2017	31
3(e)(12).	Number of calls in May 2017	22
3(e)(13).	Number of calls in June 2017	23
3(e)(14).	Number of calls in July 2017	46
3(e)(15).	Number of calls in August 2017	149
3(e)(16).	Number of calls in September 2017	34
3(e)(17).	Number of calls in October 2017	14
4	In-Person Assistance Sessions with CPA or VA	
4(a).	Number of in-person assistance sessions scheduled by Epiq with CPA or VA (additional follow-up sessions were scheduled without assistance by Epiq)	239
4(b).	Number of CPAs who provided at least one session	17
4(c.)	Number of VAs who provided at least one session	35
5	Website: fataclaims.com	
5(a).	Page Hits	21,814
5(b).	Unique Visitors	5,994
5(c).	Sessions	10,711

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<b>Table 4: General Statistics as of October 31, 2017</b>		
6	Letters Requesting that Claimants Cure Errors in Claim Forms, and Responses	
6(a).	Letters Mailed Requesting that Claimants Cure Errors	681
6(b).	Total Cure Responses Received	592
6(b)(1).	- Cured Claim Errors in Full	162
6(b)(2).	- Cured Claim Errors in Part	430
7	Provisional Decision Letters and Requests for Reconsideration	
7(a).	Provisional Decision Letters Mailed	734
7(b).	Total Reconsideration Requests Received	248
7(b)(1).	- Cured Outstanding Claim Defects in Full	77
7(b)(2).	- Cured Outstanding Claim Defects in Part	171
7(c).	Total Surviving Spouse Affidavit Forms Received	170
7(d).	Substitution of Claimant Form Received	8
8	Assistance in Reconsideration Process	
8(a).	Outgoing Calls Made	114
8(b).	Contact Made	64
8(c).	Left Message	37
8(d).	Invalid Phone Number or No Answer After 3 Attempts	13
9	Final Recommendation Letters	
9(a).	Final Recommendation Letters Mailed	736

## V. THEMES AND ISSUES OF NOTE

### A. Inherent Tension in Claims Process

There is an inherent tension in this claims process between wishing to be fully responsive to the victims' and the victims' families, and adhering to the requirements of the law. On the one hand, the victims and the families of the victims of the Defendant's horrific crimes have suffered terribly. Their physical and emotional lives have been assaulted and, in many cases, badly damaged by the Defendant's actions. Their pain and suffering are plain to see. Everyone wishes to give the victims every kind of assistance that it is possible to give.

On the other hand, the federal restitution statute and regulations that govern this process together with the applicable court orders creates a set of rules that are strict and detailed. Only certain categories of expenses can be compensated, and then only if certain types of documentation are provided.

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The Claims Facilitator and her team and the Department of Justice have designed and implemented this restitution process to be responsive and helpful to the victims and their families in every way possible consistent with the requirements of the law, as set forth below.

#### B. Extensive Efforts to Assist Claimants

As noted above, the Claims Facilitator and her team and the Department of Justice provided many types of assistance to the claimants throughout the process. They are described in the January 2017 report (at Appendix A, pages 4 -8) and described in this report. When we learned that claimants were having trouble with different types of paperwork or forms, in several situations we amended procedures to make them more user-friendly.<sup>3</sup> At every turn we tried to help as much as we could.

#### C. Technical Issues

##### 1. Proof of Out-of-Pocket Expenses

The claims process allowed claimants to prove the amount of their out-of-pocket expenses either by providing receipts regarding the expenses or by providing proof of the amount that was owed combined with swearing under oath that the amounts owed were paid in full. The latter method was useful to claimants who no longer had their receipts. In many cases claimants asked their medical providers and/or their health care insurance provider for records of amounts owed. The insurance providers produced that information on forms called, "Explanation of Benefits" (EOBs) (private insurers) or "Medicare Summary Notices" (MSNs) (Medicare). If the claimant's record was voluminous, the insurance provider produced a spreadsheet for the claimant in lieu of the EOBs and/or MSNs. Some confusion and some errors in claims submissions resulted from situations in which claimants initially misunderstood the information provided in their EOBs, MSNs, or spreadsheets.

##### 2. Remedial Provider Forms

The categories of claims related to remedial medical, dental, and mental health care required that the claimant submit a form signed by the remedial treatment provider attesting that it is "possible, probable, or definite" that the condition being treated was caused by the Defendant.<sup>4</sup> Many claimants reported difficulties in obtaining completed forms from their remedial providers.

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<sup>3</sup> For example, see notice of change in procedures to simplify provision of proof: "How to Prove What Victim Paid or Owed," Appendix F and at <http://fataclaims.com/Content/Documents/How%20to%20Prove%20What%20Victim%20Paid.pdf>, and notice of change in procedure for filling out voluminous tables, "Listing Multiple Expenses," Appendix G and at <http://fataclaims.com/Content/Documents/Listing%20Multiple%20Expenses.pdf>, and "Affidavit of Surviving Spouse," Appendix E and at <http://fataclaims.com/Content/Documents/Spouse%20Affidavit.pdf>.

<sup>4</sup> See remedial medical and dental provider form at Appendix H and at <http://fataclaims.com/Content/Documents/Physician%20and%20Dentist%20Form.pdf>, and remedial mental health provider form at Appendix I and at <http://fataclaims.com/Content/Documents/Mental%20Health%20Treatment%20Provider%20Form.pdf>.

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### 3. Compensation from Other Sources

One section of the Claim Form required claimants to report any compensation from other sources for the expenses for which restitution was being sought. In many cases this inquiry proved confusing. Some claimants reported that they had sought compensation for injuries caused by the Defendant, but it was unclear whether they obtained the compensation, and it was unclear whether what they sought was compensation for pain and suffering (which is not compensated in this restitution process), or compensation for out-of-pocket medical expenses (which is compensated in this restitution process). In many cases clarification of the exact nature of compensation from other sources required several pieces of correspondence or phone calls or both.

### 4. Liens

Liens turned out to be a confusing issue for many claimants. In many cases, insurance companies filed liens against claimants' potential recovery from lawsuits and/or from this restitution process. Claimants filed restitution claims listing the liens as expenses, but the liens were not compensable in this process pursuant to the Court's Order dated August 31, 2016.

### 5. Heirs and Legal Representatives

There were more than 400 claims in which the claimant filed on behalf of a deceased patient of the Defendant, or on behalf of an incapacitated or minor patient of the Defendant. In those cases, the Claims Facilitator determined eligibility without regard to whether proper paperwork was on file to establish the name of the person or entity who would have the right to receive the payment should the claim be approved. However, once the Court issues an order approving payment of a certain claim, then it will become necessary to determine whether the proper paperwork is in place to allow payment to the estate or legal representative. The Claims Facilitator is transmitting to the Department of Justice a listing of which cases have completed the necessary paperwork and which cases need further documentation.

## VI. QUESTIONS FOR COURT

There are two questions for the Court that involve late submissions.

There are three circumstances in which some claimants submitted paperwork late (past the stated deadline).

1. Late Claims. One circumstance involves late claims—claimants who submitted their Claim Forms with a postmark date that was later than November 14, 2017. These were processed but marked “late.”
2. Late Submissions to Cure Errors. Another circumstance involves late responses to the letters that asked claimants to cure errors in Claim Forms. Most of these were processed despite being late, or were deemed timely requests for Reconsideration and were processed in that context.

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3. **Late Reconsideration Requests.** The final circumstance involves late Reconsideration requests—claimants who submitted their Reconsideration requests postmarked after August 21, 2017. To date, all of these were processed but marked “late.”

The following table provides data about late submissions.

Number of Claims Filed Late (postmarked after November 14, 2016 deadline)	20
Number of Cure Defect Letters filed late and processed	46
Number of Cure Defect Letters Filed Late and Deemed to Be Timely Reconsideration Requests	11
Number of Reconsideration Requests filed late (postmarked after August 25) and processed	68
Number of Reconsideration Requests filed late and not processed because received after processing deadline (received after October 31, 2017)	0

The two questions for the Court to address regarding late submissions are:

1. **Treatment of Late Submissions?** Should the late claims and the late Reconsideration requests that were otherwise found to be eligible be processed and paid in the same manner as the timely filed claims?<sup>5</sup> And,
2. **Further Processing?** Should any late claims and/or late Reconsideration requests that may be submitted after the date of this report be processed by the Claims Facilitator or processed by the Court?

## VII. TRANSMISSION OF FINAL RECOMMENDATIONS

With this Final Report, the Claims Facilitator is transmitting to the Department of Justice a Proposed Restitution List which contains a detailed accounting of the Claims Facilitator’s recommendations regarding eligibility of each claim.

Respectfully submitted,

s/Randi Ilyse Roth

Randi Ilyse Roth  
Claims Facilitator  
Complex Settlements, P.C.

<sup>5</sup> The total number of late claims that were filed late and otherwise found to be eligible for some amount of restitution is seven. Four Reconsideration requests contained new bases for for restitution that had not been raised in previous submissions; these new requests for restitution were deemed to be newly filed late claims (because these claims were not postmarked by the November 14, 2016 claims deadline).

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**Appendices:**

- Appendix A: Claims Facilitator's Report to the Department of Justice, January 9, 2017
- Appendix B: Provisional decision letter template
- Appendix C: Final recommendation letter template
- Appendix D: Notice of Facilitator's Final Recommendation and Notice of Right to Court Review, and, Request for Review of Denial of Claim
- Appendix E: Affidavit of Surviving Spouse
- Appendix F: Facilitator Fact Sheet: "How to Prove What Victim Paid or Owed"
- Appendix G: Facilitator Fact Sheet: "Listing Multiple Expenses"
- Appendix H: Physician and Dentist Form
- Appendix I: Mental Health Treatment Provider Form

## **Appendix A**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**No. 13-cr-20600  
Hon. Paul D. Borman**

**FARID FATA, M.D.**

**Defendant.**

\_\_\_\_\_ /

**NOTICE OF REPORT ON RESTITUTION**

The Court has ordered a hearing on the status of the restitution proceedings pursuant to an Order Establishing a Restitution Plan and Review of Claims for Restitution (“Restitution Order”) entered on April 11, 2016.<sup>1</sup> The Report of the Claims Facilitator, attached hereto as Exhibit 1, sets forth in detail the status of the claims process and review of the 763 claims submitted to the Facilitator as of January 5, 2017.<sup>2</sup> The Claims Facilitator will be in attendance at the January 17, 2017, status hearing to brief the Court regarding the claims process.

The government anticipates that a final Report and Recommendation to the Court shall be completed within the next 6-8 months. At such time, the victim

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<sup>1</sup> The history of restitution proceedings and public hearings on this matter are set forth in greater detail in previous Orders of the Court.

<sup>2</sup> This number includes both the timely-filed claims, postmarked as of November 14, 2016, and untimely-filed claims filed thereafter. The government will process both sets of claims but distinguish them in the final Report and Recommendation to the Court.



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**CERTIFICATE OF SERVICE**

I hereby certify that on January 12, 2017, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to counsel for the defendant.

s/Catherine K. Dick

Trial Attorney

Organized Crime and Gang Section

U.S. Department of Justice

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COMPLEX SETTLEMENTS, P.C.

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January 10, 2017

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Dear Ms. Dick, Ms. Aouate, and Ms. Cohen:

Claims Facilitator's Report to the Department of Justice Regarding the Restitution Process: Progress Made to Date, Statistics, and Additional Steps Necessary to Complete the Claims Process

## I. INTRODUCTION

The Department of Justice (DOJ) entered a contract with the Claims Facilitator on March 7, 2016. The Claims Facilitator's role is to aid the DOJ in determining the identity of potential victims, as well as the amount and nature of loss suffered by each potential victim that may qualify as restitution in the case of *United States v. Fata*.

This report explains the progress made to date in the claims process and gives an outline of the likely next steps.

### A. Legal Basis for Restitution Process

The rules governing this restitution process (also called the "claims process") are set forth in a series of Court Orders.

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On April 11, 2016, this Court issued an Order Establishing Restitution Plan and Review of Claims for Restitution (April 2016 Order). That Order set forth the statutory basis for this claims process:

Pursuant to the Mandatory Victim Restitution Act of 1996 (MVRA), Pub. L. No. 104-132, § 204(a), 110 Stat. 1227 (1996) (codified as amended at 18 U.S.C. § 3663A), a United States District Court shall order that a defendant make restitution to the victim(s) of certain offenses, including offenses involving fraud or deceit. 18 U.S.C. § 3663A(c)(1)(A)(ii).

The Court ordered restitution for defined categories of loss for former patients of Farid Fata or their legal representatives. The Court also set forth the parameters of the Claims Facilitator's role. The April 2016 Order is available on the website of the U.S. Attorney's Office, E.D. of Michigan: <https://www.justice.gov/usao-edmi/file/840176/download>.

#### B. Categories of Claims

There are four categories of permissible claims. The details regarding each category are explained in the claims package documents (<http://fataclaims.com/Home/Documents>). The four categories are:

1. Fata Expenses. This category includes all non-reimbursed, out-of-pocket medical expenses paid by a former patient for medical services provided by Farid Fata or at his direction from April 11, 2005 until August 6, 2013.
2. Remedial Medical Expenses. This category includes all non-reimbursed, out-of-pocket medical expenses for remedial measures that were incurred as a result of any inappropriate or unnecessary treatments ordered or provided by Farid Fata. These expenses relate to services provided by other medical providers after leaving the care of Fata, up to and including September 6, 2016.
3. Remedial Mental Health Expenses. This category includes all non-reimbursed, out-of-pocket psychological and psychiatric mental health expenses for remedial measures that were incurred as a result of any inappropriate or unnecessary treatments ordered or provided by Farid Fata. These expenses relate to services provided by mental health providers after leaving the care of Fata, up to and including September 6, 2016.
4. Funeral Expenses. This category includes partial contributions to expenses incurred by family members for the funeral expenses of former patients of Farid Fata.

#### C. Claims Facilitator

##### 1. Responsibilities of Claims Facilitator

The April 2016 Order provides that the Claims Facilitator shall:

[R]eview and evaluate the claims and supporting documents submitted by former patients. The facilitator shall make a recommendation as to whether a former patient

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has met the requirements to be identified as a victim and the amount due each such victim for purposes of restitution in this case.

## 2. Background About Claims Facilitator and Epiq Systems

The Claims Facilitator in this case is Randi Ilyse Roth, through her law firm, Complex Settlements, P.C. (“Complex”). Ms. Roth previously served as the independent court-appointed Monitor in the *Pigford v. Vilsack* case, a large civil rights race discrimination class action that involved a very complex claims process. Epiq Systems (“Epiq”) contracts with Complex to provide claims administration services in this case. Epiq has substantial experience with all aspects of administering claims processes. The Claims Facilitator and Epiq have been in close contact with DOJ as this claims process has developed.

## II. PROGRESS MADE TO DATE: STEPS TAKEN FROM MARCH 2016 TO JANUARY 2017

### A. DOJ Provided Draft of Claim Forms Package

The Department of Justice (DOJ) prepared the first draft of a package of claims documents (“claims package”).

### B. Claims Facilitator and DOJ Worked Together to Further Develop Claim Form Documents

When the Claims Facilitator (“Facilitator”) began her work in this case in March, 2016, the first tasks involved working with DOJ to finalize the claims package. The Facilitator, Epiq, and DOJ worked together to anticipate legal and practical issues that might arise in the claims process and to refine the draft claims package as required by those issues. The team produced a draft of the claims package in May 2016.

The Facilitator recommended that the draft claims package be tested in a series of victim focus group meetings. DOJ arranged for two focus groups which were held on May 17, 2016. Each group included five former patients (and/or family members of former patients). In each focus group meeting, participants reviewed every page of and every question in the draft claims package. The participants made many comments that led to improvements in the package. The comments touched on substance, tone, and ease of use. The claims package was significantly improved due to these participants’ willingness to give of their time to help improve the process.

Once the package was re-drafted with the victim focus group input, the package was submitted to a plain-language expert at Epiq. The plain-language expert’s input resulted in further improvements to the claims package.

### C. Launch of Claim Package: June 9, 2016

The claims package was finalized, and was then made available to the public on June 9, 2016. The final claims package is posted on the Claims Facilitator’s website for this case: <http://fataclaims.com/Home/Documents>. The documents include: Cover Letter, Definitions, Claim Instructions, Checklist, Claim Form, Physician and Dentist Form, and Mental Health Treatment Provider Form.

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#### D. Communications to Former Patients and their Families

The team of DOJ, Epiq, and the Claims Facilitator (“the team”) worked together diligently to use many different approaches to communicate with former patients and their families about the claims process. The goal of these communications was to provide timely and relevant information about the claims process to the greatest number of potential claimants.

##### 1. Communication Effort #1: Mailing to Known Victims

The team started the communications effort by mailing the complete claims package to more than 500 people previously identified by the DOJ in its sentencing memoranda as victims of unnecessary treatment by Farid Fata.

##### 2. Communication Effort #2: Websites

The Claims Facilitator launched a website for the case as of June 9, 2016: [www.fataclaims.com](http://www.fataclaims.com). The website includes:

- (a) Important Dates (deadlines, meeting dates, etc.)
- (b) Documents (including the full claims package and PDF-fillable versions of the form)
- (c) Frequently Asked Questions (FAQs)
- (d) Claims Process Assistance (details re: assistance efforts that will be explained below)
- (e) Medicare and Insurance Information
- (f) Contact Information (how to reach phone agents for assistance, address for mailing documents, etc.)

To ensure that patients and family members who were most familiar with the website maintained by the U.S. Attorney’s Office remained fully informed, the U.S. Attorney’s Office continued to update its *U.S. v. Fata* webpage with new developments and important announcements regarding the claims process.

##### 3. Communication Effort #3: Insurance Information

Claimants are required to provide proof of costs incurred which may require proof of a significant number of medical transactions. For many of those victims, the easiest way to find that proof was by ordering documents from their insurance companies. In the private insurance company context, the documents are called Explanation of Benefit forms (EOBs); in the Medicare program, the documents are called Medicare Summary Notices (MSNs). DOJ contacted most of the major insurance companies that had insured Fata’s patients. The insurance companies agreed to provide the EOB or MSN forms quickly and at no cost to the requestor. The Claims Facilitator website includes a “Medicare and Insurance Info” page that gives contact information and notes about how to order EOBs or MSNs from each insurance company.

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4. Communication Effort #4: Phone Agent Assistance

On June 9, 2016, the Claims Facilitator established a toll-free line that former patients and their families could call for information about the claims process. The phone number is 877-202-3282. Professional phone agents who have been trained regarding this claims process are available from 9:00 a.m. to 8:00 p.m. Eastern time on Mondays through Fridays (except holidays). As of January 5, 2017, the phone operators have assisted former patients and their families in 2,960 calls which spanned a total of 18,049 minutes. The phone agents rely on detailed scripting provided by the Claims Facilitator and on their ability to “escalate” complicated issues to trained project managers and attorneys on their staff.

Phone agents also assisted by ensuring that Claim Forms were easily accessible and available to anyone without access to a computer. The phone agents mailed a full claims package via U.S. Mail when requested by a former patient or family member of a former patient.

5. Communication Effort #5: In-Person Meetings in Detroit Area

The Claims Facilitator and DOJ hosted in-person meetings in the Detroit area on July 31, 2016 (at the New Hope Bible Church) and on August 1, 2016 (at the Rochester Hills Public Library). Each was attended by approximately forty to fifty individuals. The meetings were specifically mentioned by the phone agents in their conversations with potential claimants; they were advertised on the Claim Facilitator’s website; and they were advertised on the U.S. Attorney’s Office website. In these meetings, which each lasted more than two hours, the Claims Facilitator, DOJ lawyers, and the U.S. Attorney’s Office Victim Witness Coordinator listened closely to the victims’ concerns about the claims process and answered victims’ and family members’ questions.

6. Communication Effort #6: Mailing of More than 5,000 Flyers

Between September 30 and October 3, 2016, the U.S. Attorney’s Office and the Claims Facilitator sent an explanatory flyer to 5,334 potentially eligible victims and family members. The flyer explained that the claims deadline had been extended (see below), and explained the basic eligibility rules for the claims process, how to obtain a Claim Form, and how to obtain assistance in completing the Claim Form. A copy of the flyer is included with this report as Appendix A.

7. Communication Effort #7: Outgoing Phone Call Effort

On October 11, 2016, Epiq phone agents made outgoing phone calls to 326 potentially eligible claimants who had previously contacted Epiq, but had not yet filed a claim. In these calls, the phone agents reminded the claimant of the claim filing deadline and offered to schedule an appointment for in-person assistance.

8. Communication Effort #8: Ongoing Communications With Victim  
Witness Coordinator

The Victim Witness Coordinator for the United States Attorney’s Office for the Eastern District of Michigan, Sandy Palazzolo, maintained ongoing telephone and written

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communication with former patients and their family members during the period between the launch of the claims process and the ultimate deadline for the claims process (June 9 – November 14, 2016).

9. Communication Effort #9: Extensive Public Communications Effort

During the period between the launch of the claims process and the ultimate deadline for the claims process (June 9–November 14, 2016), the Department of Justice mounted an extensive and effective effort to encourage the press to publicize the claims process to the public. The efforts included:

- (a) U.S. Attorney Media Roundtables. Media Roundtables were held by the United States Attorney, Barbara L. McQuade, and her staff from DOJ on June 9 and on August 29, 2016. These roundtables with the press included time for the press to learn about the claims process in detail. The August 29 roundtable highlighted the availability of in-person assistance for claimants from trained volunteer Certified Public Accountants (CPAs) and Victim Advocates (VAs).
- (b) Press Releases. The United States Attorney issued press releases to encourage media to get information out to potential eligible claimants about the claims process, the deadline, and opportunities for assistance in the claims process. One such press release is on the DOJ website: <https://www.justice.gov/usao-edmi/pr/united-states-attorneys-office-assembles-team-specialists-assist-former-patientsfamily>. Another is included in this report as Appendix B.
- (c) Cumulative Impact. Additionally, DOJ reached out to the press through its media spokesperson, Gina Balaya. A simple Google search for “Fata restitution process” reveals that a significant amount of coverage resulted from these and other efforts. The coverage spanned at least three aspects of the restitution effort: the launch of the claims process on June 9, 2016; the availability of in-person assistance from the volunteer CPAs and VAs; and the extension of the deadline from October 5 to November 14, 2016. The coverage included newspaper stories, radio stories, radio public service announcements (PSAs), television stories, television PSA banners, and “tweets.”

E. Court Order Extended Claims Deadline from October 5 to November 14

The original claims deadline was October 5, 2016. As of September 15, fewer than 200 claims had been filed. On September 26, 2016, this Court issued an Order extending the deadline for approximately six weeks, to November 14, 2016 (“September 2016 Order”). The September 2016 Order said in part:

The Court has been informed by the United States that due to the complexity and nature of the claims being submitted and the necessity that former patients obtain medical and financial documentation supporting these claims, additional time is required to ensure that the maximum number of eligible claims will be submitted by former patients.

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Accordingly, and to ensure that former patients have sufficient time and ability to submit claims for restitution, the Court hereby extends the deadline for filing such claims from October 5, 2016 to November 14, 2016.

The purpose of the extension was to give sufficient time to allow potential claimants to obtain their supporting materials and file claims. In the end, 737 timely claims were filed.

#### F. Assistance to Individuals Interested in Filing Claims

The team of DOJ, Epiq, and the Claims Facilitator took many additional steps to provide assistance to individuals who wished to file claims.

First, based on input from victims at the July 31 and August 1 meetings (see above), the team provided victims and their families with additional information about how to obtain the proof that is necessary to support a claim and made adjustments as to how claimants could transmit the information submitted as proof. The Facilitator published two information sheets regarding the changes: “How to Prove What Victim Paid or Owed” and “Listing Multiple Expenses.” (See <http://fataclaims.com/Home/Documents>.)

Second, the team made arrangements for trained, skilled volunteers to provide significant in-person assistance in the claims process. The team reached out to Mark Davidoff, Michigan managing partner at Deloitte, LLP, the Accounting Aid Society, and the Michigan Association of CPAs and asked them to invite area CPAs to volunteer to provide one-on-one, in-person assistance to individuals who were attempting to file claims. The team also reached out to Director James McCurtis and Program Specialist Leslie O'Reilly of the Crime Services Commission for the State of Michigan and asked them to invite trained Victim Advocates (VAs) to work with CPAs to assist in this effort. In addition to inviting VAs from around the state to assist, the Crime Services Commission secured a location for the assistance: Common Ground in Pontiac, Michigan.

On August 31, 2016, the U.S. Attorney's Office and the Claims Facilitator (via videoconference) provided a four-hour training session to approximately 70 volunteer CPAs and VAs. In preparation for this training session, the CPAs and VAs reviewed key documents regarding the case and the claims process.

Once they were trained, these CPAs and VAs provided to DOJ and Epiq the dates and times they could be available to assist claimants. Epiq took calls from claimants who wished to have in-person assistance and matched the claimants with available CPAs and VAs. The volunteers filled out detailed “intake forms” regarding each claimant's situation. The volunteers generally assisted the claimant until the Claim Form was complete. The in-person assistance meetings were held at Common Ground in Pontiac, Michigan and then later at the State of Michigan Department of Health and Human Services Office in Pontiac, Michigan. Overall, CPAs and VAs provided in-person assistance to more than 230 claimants, spanning a total of more than 339 hours of assistance.

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### G. Progress Made Since the November 14 Deadline

To be timely, claims had to be postmarked by November 14, 2016. Statistics about the number of timely filed claims and the number of late claims appear in Table # 1, below.

Since November 14, the team has made much progress in the next phase of the claims process, which concerns curing errors in Claim Forms.

#### 1. Curing Errors in Claim Forms

Claims that were filed on time are now being processed. In some of those claims, the Claims Facilitator has determined or will determine that there are errors in the Claim Form: sometimes important information is missing, or the Claim Form contains pieces of information that contradict each other. In those cases, the Claims Facilitator sends the claimant a letter explaining the errors or defects in the Claim Form. The claimant has 45 days from the date of that letter to submit the missing or corrected information. These letters will be sent on a rolling basis. The first batch of 38 letters was mailed on December 20, 2016. The second batch of approximately 563 letters is scheduled to be mailed on February 3, 2017. A redacted sample letter is included with this report as Appendix C.

#### 2. Assistance With Curing Errors

Several of the CPAs and VAs who assisted claimants with filing Claim Forms have agreed to extend their volunteer service for a few more months so they can assist claimants who are in the process of curing errors in their Claim Forms. Additionally, the phone agents are trained and ready to assist claimants by helping the claimants to understand exactly what they need to do to cure defects in their Claim Forms.

### III. STATISTICS

This section of the report provides some basic statistics about the claims process to date.

All statistics listed here are as of January 5, 2017.

The statistics distinguish between claims that request restitution for funerals only and all other claims because the former claims are far less complex than the latter claims. Data regarding phone activity is provided because it gives a sense of the extent to which assistance is being provided in the claims process. The most frequent topics of conversation on the phone calls include:

- General questions about how to fill out the Claim Form
- Scheduling an appointment for assistance with filling out the Claim Form
- Verifying receipt of Claim Form
- Asking whether it is permissible to file a Claim Form after the deadline
- Asking questions about the letter requesting that errors in the Claim Form be corrected

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<b>Table #1: General Statistics as of January 5, 2017</b>		
1.	Timely Claims	
1(a).	Overall number of timely claims received	737
1(b).	Number of claims requesting restitution for funeral only	117
2.	Late Claims	
2(a).	Overall number of late claims	26
2(a)(1).	Number received 1-14 days late	14
2(a)(2).	Number received 14-28 days late	11
2(a)(3).	Number received 28-42 days late	1
2(b).	Number of late claims requesting restitution for funeral only	1
3.	Phone Activity	
3(a).	Total number of calls (June 9 - January 5, 2017)	2,960
3(b)	Average number of calls per month	423
3(c)	Average number of minutes/month	2,578
3(d)	Average number of minutes/call	6
3(e)(1).	Number of calls in June	134
3(e)(2).	Number of calls in July	178
3(e)(3).	Number of calls in August	175
3(e)(4).	Number of calls in September	634
3(e)(5).	Number of calls in October	1,354
3(e)(6).	Number of calls in November	415
3(e)(7).	Number of calls in December	61
4.	In-Person Assistance Sessions with CPA or VA	
4(a).	Number of in-person assistance sessions scheduled by Epiq with CPA or VA (additional follow-up sessions were scheduled without assistance by Epiq)	222
4(b).	Number of CPAs who provided at least one session	17
4(c).	Number of VAs who provided at least one session	35

#### IV. ADDITIONAL STEPS NECESSARY TO COMPLETE THE CLAIMS PROCESS

The following steps are necessary to complete the claims process:

- A. Cure Errors in Claim Sheets. The process described above to cure errors in Claim Forms needs to be completed. Letters need to be sent out to all claimants whose Claim Forms

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contained errors, and claimants need to return the corrected Claim Forms within the 45-day period specified in the letter.

- B. Late Claims. Once the team obtains guidance from the Court regarding how to handle late claims (claims postmarked after November 14, 2016), the team will comply with that guidance.
- C. Process All Claims, Including Corrected Claims. The Claims Facilitator will process all claims, including the corrected claims, to determine the Claims Facilitator's recommendation in response to each claim.
- D. Issue Provisional Decisions. The Claims Facilitator will send a letter to each claimant explaining the provisional decision in response to the claim. The letter will explain that the claimant may request reconsideration of the Claims Facilitator's recommendation. This reconsideration process will require a relatively short response time and will involve a limited scope of review.

Provisional decision letters are scheduled to be issued in approximately late Spring of 2017.

- E. Reconsideration Process. The Claims Facilitator will review any requests for reconsideration received in response to provisional decisions.
- F. Submit Final Recommendations. The Claims Facilitator will submit to DOJ her final recommendations regarding each claim in summer 2017. Additionally, she will send a letter to each claimant informing the claimant of the Claims Facilitator's final recommendation to DOJ regarding the claim. The DOJ will provide the Court with its recommendations as to the identity of each victim, as well as the nature and amount of loss for each victim. The DOJ will propose to the Court an approach to priority of payment at that time. DOJ will request that the Court establish a process for finalizing the order of restitution. DOJ's request will be filed on the public record and will be provided to all interested parties.

Respectfully submitted,

s/Randi Ilyse Roth

Randi Ilyse Roth  
Claims Facilitator  
Complex Settlements, P.C.

**Appendices:**

- Appendix A: Flyer Mailed to More Than 5,000 Potentially Eligible Claimants
- Appendix B: Press Release from United States Attorney
- Appendix C: Redacted Sample Letter Notifying Claimant of Errors in Claim Form

**Appendix A**

**Flyer Mailed to More Than 5,000 Potentially Eligible Claimants**

## *United States v. Farid Fata*

### **Claim-Filing Deadline Extended to November 14, 2016**

On September 26, 2016, Judge Paul D. Borman extended the deadline for filing a restitution claim in the federal criminal case of *United States v. Farid Fata*. The new deadline is November 14, 2016. As a result of this order, ***all claim forms must be postmarked on or before Monday, November 14, 2016.***

### **The Government Encourages Eligible Victims and Their Heirs to File Claims**

The government seized Fata's assets to create a restitution fund for the benefit of Fata's victims and their heirs. Many people have already filed claims. We encourage all qualified patients and authorized representatives of patients to file their claims for restitution before the November 14, 2016 deadline.

### **Who Is Eligible for Restitution?**

**Any person who was a patient of Fata between 2005 and 2013 and who incurred out-of-pocket expenses (such as co-pays and deductibles)** is eligible to file a claim for restitution funds. In addition, authorized representatives of deceased patients may file claims to be reimbursed for the deceased patient's out-of-pocket expenses, as well as for a portion of funeral expenses. Those patients who were harmed physically and/or emotionally by Fata may also request restitution for the out-of-pocket expenses they incurred to remediate the harm. Please read the claim form for more details about the eligibility rules (see "How to get a claim form" below).

### **How to Get a Claim Form**

If you have not already requested or received a claim form, you can download and print the claim form from [www.fataclaims.com](http://www.fataclaims.com) or you can call 1-877-202-3282 to ask that the form be mailed to you.

### **How to Get Help Completing a Claim Form**

We currently have volunteers offering in-person claim filing assistance. Some people have found this assistance very helpful. You can call our phone agents at 1-877-202-3282 to find out whether volunteer help is still available, and, if it is, to schedule an appointment for assistance.

**[www.fataclaims.com](http://www.fataclaims.com)  
1-877-202-3282**

**Appendix B**

**Press Release from United States Attorney**



**United States Attorney's Office  
Eastern District of Michigan**

**Barbara L. McQuade  
United States Attorney**

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## **PRESS RELEASE**

**FOR IMMEDIATE RELEASE  
November 7, 2016**

**Contact: Gina Balaya - (313) 226-9758  
[www.justice.gov/usao/mie/index.html](http://www.justice.gov/usao/mie/index.html)**

### **Last Week to File Restitution Claims in the case of U.S. v. Farid Fata**

The deadline to file claims for restitution in the case of United States v. Farid Fata is in one week. United States District Judge Paul D. Borman extended the deadline for filing a restitution claim to November 14, 2016. As a result, all claim forms must be postmarked on or before Monday, November 14, 2016.

#### **The Government Encourages Eligible Victims and Their Heirs to File Claims**

Fata was sentenced to 45 years in federal prison for providing medically unnecessary chemotherapy treatments to patients. The government has seized approximately \$11.9 million. The government seized Fata's assets to create a restitution fund for the benefit of Fata's victims and their heirs. Many people have already filed claims. We encourage all qualified patients and authorized representatives of patients to postmark their claims for restitution on or before the November 14, 2016 deadline.

#### **Who Is Eligible for Restitution?**

Any person who was a patient of Fata between 2005 and 2013 and who incurred out-of-pocket expenses (such as co-pays and deductibles) is eligible to file a claim for restitution funds. In addition, authorized representatives of deceased patients may file claims to be reimbursed for the deceased patient's out-of-pocket expenses, as well as for a portion of funeral expenses. Those patients who were harmed physically and/or emotionally by Fata may also request restitution for the out-of-pocket expenses they incurred to remediate the harm. Please read the claim form for more details about the eligibility rules (see "How to get a claim form" below).

### **How to Get a Claim Form**

If you have not already requested or received a claim form, you can download and print the claim form from [www.fataclaims.com](http://www.fataclaims.com)

Visitors to the website will find two information sheets to help claimants understand how to complete the Claim Forms as efficiently as possible and to make the filing process easier. Those can be accessed through the website [www.fataclaims.com](http://www.fataclaims.com) on the homepage. The two documents are:

- How to Prove What Victim Paid or Owed
- Listing Multiple Expenses

### **Questions about the Claim Form**

Please call 1-877-202-3282 or visit [www.fataclaims.com](http://www.fataclaims.com) for answers to questions about the Restitution Claim Form.

United States Attorney McQuade stated, "We recognize that the process of filling out a restitution claim form can be a difficult process both emotionally and physically for victims and their families. While no amount of money can restore what has been taken away by the actions of Fata, we hope that all eligible patients and family members file claims for restitution so that we can return Fata's assets to his patients."

**Appendix C**

**Redacted Sample Letter Notifying Claimant of Errors in Claim Form**

Fata Claims Facilitator  
P.O. Box 2730  
Portland, OR 97208-2730

**Randi Ilyse Roth**  
Claims Facilitator  
Complex Settlements, PC

**Return Postmarked on or before  
February 03, 2017**

*United States vs. Fata*  
Case No. 13-CR-20600



[Redacted]

Tracking Number: 5816

December 20, 2016

Dear [Redacted],

Thank you for submitting your claim. We have conducted a preliminary review of your claim but need some additional information from you that will help us in understanding and evaluating your claim. Please refer to the enclosed copy of your Claim Form and provide the additional information requested below, postmarked on or before February 03, 2017.

**Section 1: Background**

**Section 1(b): Contact Information for Patient's Authorized Representative or Representative of Patient's Estate**

- You have indicated that you are filing on behalf of a deceased patient, but in Section 1(b) you did not provide the estate's Taxpayer Identification Number. This information is not required at this time; however, it may be required if your claim is approved.

**Section 3: Compensation From Other Sources**

**Section 3(a): Lawsuits**

- In Section 3(a), we requested information as to whether the patient applied for Crime Victim Compensation from the Michigan Department of Community Health. However, you did not provide a response. Please provide a response.
- In Section 3(a), we asked if the patient or the patient's representative applied for and/or received compensation from any other source not already identified on the Claim Form. However, you did not provide a response. Please provide a response.

**Section 5: Swearing That Contents of the Claim Form Are True**

- In Section 5, we require that you sign the Claim Form; however, you did not sign. Please sign the Claim Form.

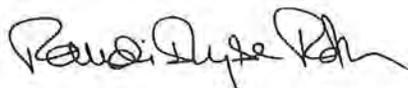
For us to fully understand and evaluate your claim for restitution, you must provide the additional



information requested below postmarked on or before February 03, 2017. If we do not receive the information from you, we may be required to deny the portions of your claim that relate to that information.

We understand that some of the information we are requesting in this letter may be complex or difficult to obtain. Our phone agents can explain any aspects of this letter that may be confusing to you. Do not hesitate to call us toll-free at 1-877-202-3282 to see how we can help or check the website at [www.fataclaims.com](http://www.fataclaims.com). Please be advised that the Victim Witness Coordinator for the Eastern District of Michigan, Sandy Palazzolo, will not be able to answer questions about this letter or provide further assistance in the claims process.

Sincerely,

A handwritten signature in black ink, appearing to read "Randi Ilyse Roth". The signature is fluid and cursive, with the first name "Randi" being the most prominent.

Randi Ilyse Roth  
Attorney at Law  
Claims Facilitator

## **Appendix B**

United States v. Farid Fata  
Claims Facilitator  
P.O. Box 2730  
Portland, OR 97208-2730

**Randi Ilyse Roth**  
Claims Facilitator  
Complex Settlements, PC

United States v. Fata  
Case No. 13-CR-20600

<<Mail ID>>  
<<Name 1 or Estate>>  
<<Name 2 or Rep>>  
<<Address 2>>  
<<Address 1>>  
<<City>><<State>><<Zip>>  
<<Foreign Country>>

Tracking Number: <<TN>>

**This Is Your Decision Letter:  
Any Responses and/or Requests for Reconsideration  
Must Be Postmarked on or Before  
<<+30 Days From Mailing Date>>.**

<<Date>>

Dear <<Name 1 or Estate>>,

Thank you for submitting your claim. **This is a very important letter about the outcome of your claim: please read it carefully.**

This letter addresses these topics:

1. **Preliminary Decision.** This letter explains the Facilitator’s preliminary recommendation for your claim.
2. **How to Request Reconsideration.** This letter explains how you may seek reconsideration of this preliminary decision if you think it is wrong.
3. **Next Steps.** This letter explains the next steps in the claims process.
4. **We Need Information From You.** This letter explains that we need additional information from you.

## **I. Preliminary Decision**

We have reviewed your claim form, and based on the information and documentation that you submitted, the following preliminary determinations have been made about the amounts of restitution for which you are eligible.

**Please note that there may be a difference between the amount that you are “eligible” for and the amount that you will be paid. The amounts that you are eligible for may not be paid in full.** The Department of Justice will inform the Court about the proposed amounts each claimant is eligible for. At this time, we do not know precisely what portion of each claim will be paid, and we do not know the precise timing of payments. The Court will decide what portion, if any, of each claim will be paid based on the total dollar amounts of approved claims and the total amount of funds available for distribution.

&lt;&lt;MAIL ID&gt;&gt;

&lt;&lt;NAME 1 OR ESTATE&gt;&gt;

TRACKING NUMBER: &lt;&lt;TN&gt;&gt;

**Amounts Approved**

The following amounts have been approved on a preliminary basis:

	Amount Requested	Amount Eligible for Restitution	Amount Approved for Payment
Table 1: Claims for Money Paid to the Defendant, Michigan Hematology Oncology, to Other Providers at the Defendant's Direction, and/or for Medications Prescribed by the Defendant	<<\$x,xxx,xxx.xx>>	<<\$x,xxx,xxx.xx>>	To be determined by the Court
Table 2: Claims for Money Paid for Remedial Medical and Dental Treatments	<<\$x,xxx,xxx.xx>>	<<\$x,xxx,xxx.xx>>	To be determined by the Court
Table 3: Claims for Money Paid for Mental Health Treatment	<<\$x,xxx,xxx.xx>>	<<\$x,xxx,xxx.xx>>	To be determined by the Court
Funeral Expenses: Claims for Money Paid for Funeral Costs	<<\$x,xxx,xxx.xx>>	<<\$x,xxx,xxx.xx>>	To be determined by the Court
TOTAL	<<\$x,xxx,xxx.xx>>	<<\$x,xxx,xxx.xx>>	To be determined by the Court

**Amounts Denied**

One or more of the expenses that you sought restitution for was denied as detailed below:

Table 1: Your claims for Money Paid to the Defendant, Michigan Hematology Oncology ("MHO"), to Other Providers at the Defendant's Direction, and/or for Medications Prescribed by the Defendant were denied because of the following:

- You did not provide sufficient proof of payment to the Defendant or MHO.
- You did not provide sufficient proof of the treatment or cost.
- You did not provide sufficient proof that the treatment or service provided by another was ordered by the Defendant or another doctor at MHO.
- You did not provide sufficient proof of payment to a provider other than the Defendant or MHO.
- The expense, treatment or service that you seek restitution for is an ineligible expense.
- The treatment or service that you seek restitution for is outside of the relevant time periods.
- You did not provide sufficient proof that the patient was in fact a patient of the Defendant.
- Liens are not eligible for restitution in this process.
- Insert Direct text from "Custom Explanation Text" Field

Table 2: Your claims for Money Paid for Remedial Medical and Dental Treatments were denied because of the following:

- You did not provide sufficient proof of the treatment or cost.
- You did not provide sufficient proof of payment to a provider other than the Defendant or MHO.
- You did not provide proof that the condition being treated was possibly caused by the Defendant.
- The expense, treatment or service that you seek restitution for is an ineligible expense.
- The treatment or service that you seek restitution for is outside of the relevant time periods.
- You did not provide sufficient proof that the patient was in fact a patient of the Defendant.
- Liens are not eligible for restitution in this process.
- Insert Direct text from "Custom Explanation Text" Field

<<MAIL ID>>

<<NAME 1 OR ESTATE>>

TRACKING NUMBER: <<TN>>

Table 3: Your claims for Money Paid for Mental Health Treatment were denied because of the following:

- You did not provide sufficient proof of the treatment or cost.
- You did not provide sufficient proof of payment to a provider other than the Defendant or MHO.
- You did not provide proof that the condition being treated was possibly caused by the Defendant.
- The expense, treatment or service that you seek restitution for is an ineligible expense.
- The treatment or service that you seek restitution for is outside of the relevant time periods.
- You did not provide sufficient proof that the patient was in fact a patient of the Defendant.
- Liens are not eligible for restitution in this process.
- Insert Direct text from "Custom Explanation Text" Field

Funeral Expenses: Your claims for Money Paid for Funeral Costs were denied because of the following:

- You did not provide sufficient proof that the patient was in fact a patient of the Defendant.
- You did not establish that you are a family member of the deceased and only family members are eligible to receive restitution for funeral expenses.
- You did not establish that you paid for all or part of the funeral.
- Liens are not eligible for restitution in this process.
- Insert Direct text from "Custom Explanation Text" Field

## **II. How to Request Reconsideration**

If you do not agree with this outcome, you may request reconsideration. **If you wish to request reconsideration, you must submit a letter that explains why you think the outcome set forth above is wrong. Your letter should include any documentation that you have not already submitted to us that helps to show that any denials listed in this letter are wrong. Any such letter and documentation must be submitted to us with a postmark date on or before <<+30 Days From Mailing Date>>.** Any requests for reconsideration received after this time will not be considered.

If you do not request reconsideration with a postmark date on or before <<+30 Days From Mailing Date>>, the Facilitator's preliminary recommendation (as explained in this letter) will become final.

There will be a process available for claimants who wish to seek additional Court review of the Facilitator's final recommendation. However, that Court review process may not be available to claimants who did not timely request reconsideration of this preliminary decision.

## **III. Next Steps**

After any requests for reconsideration are received and reviewed, the Facilitator will submit to the Department of Justice a proposed list of eligible claimants and the amounts for which they are eligible. The Department of Justice will review the list and will submit the list to the Court. The Court will make the final decisions about which claims will be paid and the payment amount for each claim.

At this time, we anticipate that the Department of Justice will submit the eligibility list to the Court in or around November 2017. In the meantime, please keep us informed of any changes to your contact information. Also, if you receive compensation from another source relating to any expense for which you sought restitution in this process, you have an ongoing obligation to report that compensation to us.

## **IV. We Need Additional Information From You**

You indicated that you are filing on behalf of an incapacitated person, a minor, or a deceased patient. Because we have determined that you are eligible for restitution, now we need you to provide documentation that you are authorized to represent that patient. This information must be submitted to us with a postmark before or on <<30 days from mailing>>. **Any delay in our receipt of this paperwork may jeopardize your payment.**

For an incapacitated person: please submit guardianship papers or power of attorney.

<<MAIL ID>>

<<NAME 1 OR ESTATE>>

TRACKING NUMBER: <<TN>>

For a minor patient: please submit guardianship papers or a birth certificate identifying you as the parent.

For a deceased patient: please submit (1) letters testamentary, a small estate affidavit, or other court documentation identifying you as the legal representative of the Estate of the deceased patient AND (2) the Estate's Taxpayer Identification Number ("EIN").

However, if you are a surviving spouse submitting a claim on behalf of a deceased spouse: you do not need to submit letters testamentary, a small estate affidavit, or an EIN. Instead, you may fill out and submit the form called "Affidavit of Surviving Spouse." For your convenience, the form is available on our website at [www.fataclaims.com](http://www.fataclaims.com). Please note that this form may only be used by surviving spouses; it may not be used by other family members or other heirs.

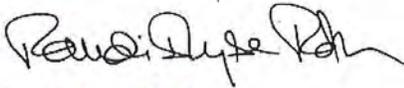
**The information requested above, showing you are authorized to represent the incapacitated person, minor, or Estate, along with the Estate's Taxpayer Identification Number, must be submitted to us with a postmark date on or before <<+30 Days From Mailing Date>>.**

### Conclusion

Our phone agents can explain any aspects of this letter that may be confusing to you and they can explain the reconsideration process to you. Do not hesitate to call us toll-free at 1-877-202-3282 to see how we can help or check the website at [www.fataclaims.com](http://www.fataclaims.com).

Please be advised that the Victim Witness Coordinator for the Eastern District of Michigan, Sandy Palazzolo, will not be able to answer specific questions about the decision made on your claim or provide detailed assistance in any reconsideration process.

Sincerely,



Randi Ilyse Roth  
Attorney at Law  
Claims Facilitator

## **Appendix C**

United States v. Farid Fata  
Fata Claims Facilitator  
P.O. Box 2730  
Portland, OR 97208-2730

**Randi Ilyse Roth**  
Claims Facilitator  
Complex Settlements, PC

United States v. Fata  
Case No. 13-CR-20600

<<Mail ID>>

<<Name 1 or Estate>>

Tracking Number: <<TN>>

<<Name 2 or Rep>>

<<Address 2>>

<<Address 1>>

<<City>><<ST>><<Zip>>

<<Foreign Country>>

**FINAL RECOMMENDATION TO COURT:  
Any Request for Court Review Must Be Postmarked on or  
Before December 11, 2017.**

<<Date>>

Dear <<Name 1 or Estate>>,

Thank you for submitting your claim. **This is a very important letter about the outcome of your claim. Please read this letter carefully.**

This letter addresses these topics:

1. **Final Recommendation.** This letter explains the Facilitator's final recommendation for your claim.
2. **Next Steps.** This letter explains the next steps in the claims process.
3. **How to Seek Court Review.** This letter explains how you may seek the Court's review of this final recommendation by the Facilitator if you think the Facilitator has made a mistake in reaching the final recommendation for your claim.

## **I. Final Recommendation**

We have reviewed your claim form, including any documentation and/or reconsideration request that you may have submitted. This letter explains the Facilitator's recommendation to the Court regarding your eligibility for restitution.

**Please note that there may be a difference between the amount that you are "eligible" for and the amount that you will be paid. The amounts that you are eligible for may not be paid in full.** The Department of Justice will inform the Court about the proposed amounts each claimant is eligible for. At this time, we do not know precisely what portion of each claim will be paid, and we do not know the precise timing of payments. The Court will decide what portion, if any, of each claim will be paid.

<<Also please note that while part or all of your claim is recommended as eligible, your payment may be delayed because the necessary estate or legal representation paperwork has not been received. This will have to be resolved directly with the Court. The Court will notify you as to next steps.>>

&lt;&lt;MAIL ID&gt;&gt;

&lt;&lt;NAME 1 OR ESTATE&gt;&gt;

TRACKING NUMBER: &lt;&lt;TN&gt;&gt;

**Amounts Approved**

The Facilitator recommends that your claim is eligible for restitution as follows:

	<b>Amount Requested</b>	<b>Amount Recommended as Eligible for Restitution</b>	<b>Amount Approved for Payment</b>
Table 1: Claims for Money Paid to the Defendant, Michigan Hematology Oncology, to Other Providers at the Defendant's Direction, and/or for Medications Prescribed by the Defendant	<<\$x,xxx,xxx.xx>>	<<\$x,xxx,xxx.xx>>	To be determined by the Court
Table 2: Claims for Money Paid for Remedial Medical and Dental Treatments	<<\$x,xxx,xxx.xx>>	<<\$x,xxx,xxx.xx>>	To be determined by the Court
Table 3: Claims for Money Paid for Mental Health Treatment	<<\$x,xxx,xxx.xx>>	<<\$x,xxx,xxx.xx>>	To be determined by the Court
Funeral Expenses: Claims for Money Paid for Funeral Costs	<<\$x,xxx,xxx.xx>>	<<\$x,xxx,xxx.xx>>	To be determined by the Court
<b>TOTAL</b>	<b>&lt;&lt;\$X,XXX,XXX.XX&gt;&gt;</b>	<b>&lt;&lt;\$X,XXX,XXX.XX&gt;&gt;</b>	To be determined by the Court

**Amounts Denied**

One or more of the expenses that you sought restitution for was denied eligibility as detailed below:

Table 1: Your claims for Money Paid to the Defendant, Michigan Hematology Oncology ("MHO"), to Other Providers at the Defendant's Direction, and/or for Medications Prescribed by the Defendant were denied because of the following:

- <<You did not provide sufficient proof of payment to the Defendant or MHO.>>
- <<You did not provide sufficient proof of the treatment or cost.>>
- <<You did not provide sufficient proof that the treatment or service provided by another was ordered by the Defendant or another doctor at MHO.>>
- <<You did not provide sufficient proof of payment to a provider other than the Defendant or MHO.>>
- <<The expense, treatment or service that you seek restitution for is an ineligible expense.>>
- <<The treatment or service that you seek restitution for is outside of the relevant time periods.>>
- <<You did not provide sufficient proof that the patient was in fact a patient of the Defendant.>>
- <<Liens are not eligible for restitution in this process.>>
- <<Insert Direct text from "Custom Explanation Text" Field>>

<<MAIL ID>>

<<NAME 1 OR ESTATE>>

TRACKING NUMBER: <<TN>>

Table 2: Your claims for Money Paid for Remedial Medical and Dental Treatments were denied because of the following:

- <<You did not provide sufficient proof of the treatment or cost.>>
- <<You did not provide sufficient proof of payment to a provider other than the Defendant or MHO.>>
- <<You did not provide proof that the condition being treated was possibly caused by the Defendant.>>
- <<The expense, treatment or service that you seek restitution for is an ineligible expense.>>
- <<The treatment or service that you seek restitution for is outside of the relevant time periods.>>
- <<You did not provide sufficient proof that the patient was in fact a patient of the Defendant.>>
- <<Liens are not eligible for restitution in this process.>>
- <<Insert Direct text from "Custom Explanation Text" Field>>

Table 3: Your claims for Money Paid for Mental Health Treatment were denied because of the following:

- <<You did not provide sufficient proof of the treatment or cost.>>
- <<You did not provide sufficient proof of payment to a provider other than the Defendant or MHO.>>
- <<You did not provide proof that the condition being treated was possibly caused by the Defendant.>>
- <<The expense, treatment or service that you seek restitution for is an ineligible expense.>>
- <<The treatment or service that you seek restitution for is outside of the relevant time periods.>>
- <<You did not provide sufficient proof that the patient was in fact a patient of the Defendant.>>
- <<Liens are not eligible for restitution in this process.>>
- <<Insert Direct text from "Custom Explanation Text" Field>>

Funeral Expenses: Your claims for Money Paid for Funeral Costs were denied because of the following:

- <<You did not provide sufficient proof that the patient was in fact a patient of the Defendant.>>
- <<You did not establish that you are a family member of the deceased and only family members are eligible to receive restitution for funeral expenses.>>
- <<You did not establish that you paid for all or part of the funeral.>>
- <<Liens are not eligible for restitution in this process.>>
- <<Insert Direct text from "Custom Explanation Text" Field>>

Late Claims:

- <<Insert Direct text from "Custom Explanation Text" Field>>

## II. Next Steps

The Facilitator will submit to the Department of Justice a proposed list of eligible claimants and the amounts for which they are eligible. The Department of Justice will review the list and will submit the list to the Court. The Court will make the final decisions about what claims will be paid and the payment amount for each claim.

At this time, we anticipate that the Department of Justice will submit the eligibility list to the Court in or about November 2017. In the meantime, please keep us informed of any changes to your contact information. Also, if you receive compensation from another source relating to any expense for which you sought restitution in this process, you have an ongoing obligation to report that compensation to us.

## III. How to Seek Court Review

If you believe that all or part of the Facilitator's recommendation is mistaken based upon the documentation you have already submitted with your claim, you may ask the Court to review the Facilitator's recommendation. If you wish the Court to review the Facilitator's recommendation, you must complete and submit the enclosed "Request for Review of Denial of Claim" form **directly to the Court** postmarked on or before **December 11, 2017**. **Do not return the form to the Facilitator.**

<<MAIL ID>>

<<NAME 1 OR ESTATE>>

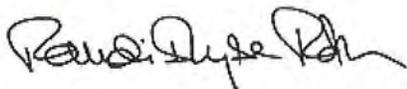
TRACKING NUMBER: <<TN>>

**Conclusion**

Our phone agents can explain any aspects of this letter that may be confusing to you. Do not hesitate to call us toll-free at 1-877-202-3282 to see how we can help, or check the website at [www.FataClaims.com](http://www.FataClaims.com).

Please be advised that the Victim Witness Coordinator for the Eastern District of Michigan, Sandy Palazzolo, will not be able to answer specific questions about the recommendation made on your claim.

Sincerely,



Randi Ilyse Roth  
Attorney at Law  
Claims Facilitator

## **Appendix D**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

FARID FATA, M.D.,

Defendant.

Case No. 2:17-mc-50557  
(SEALED MATTER)

Honorable Paul D. Borman  
Magistrate Judge David Grand

**NOTICE OF FACILITATOR'S FINAL RECOMMENDATION AND NOTICE  
OF RIGHT TO COURT REVIEW**

Our records indicate that you filed a Claim for restitution in this case. The Facilitator sent a letter to you explaining the amount of restitution you may be entitled to receive. *If you agree with the Facilitator's recommendation(s), you do not need to take any further action at this time.* Further information and updates regarding the timing and processing of restitution payments will be provided.

If you believe the Facilitator has wrongly denied all or a portion of your Claim, you may request a review by the Court.

If you would like the Court to review the Facilitator's reasons for the denial of all or a portion of your Claim, your request for review by the Court must be postmarked on or before **December 11, 2017**.

**Your request must be in writing on the enclosed form.** The form asks you to explain what mistake was made by the Facilitator in reviewing the *documents you already submitted in your Claim package to support your Claim*. If you need additional space to explain, you may attach additional pages to the enclosed form. Please print clearly in black ink on the enclosed form and on any additional pages. Please be sure to include your name and tracking number on every additional page submitted.

Mail the completed form and all attachments to:

Clerk of the Court  
Attn: *U.S. v. Fata* Restitution Claims  
231 W. Lafayette Blvd.  
Theodore Levin U.S. Courthouse  
Detroit, MI 48226

Please be advised that your written request for review, including all of the details you include on the enclosed form, will be filed **under seal** in the court record by the Clerk of the Court. Therefore, the information will not be publicly available. Please note that the Court will not be providing written confirmation of the receipt of a request for review.

If you request review by the Court according to these instructions, the Court will provide further direction regarding any additional deadlines, court appearances, or other requirements that are necessary to the review of your Claim.

**KEEP A COPY OF THE COMPLETE REQUEST FOR REVIEW  
FOR YOUR RECORDS**





## **Appendix E**

United States v. Farid Fata  
Claims Facilitator  
P.O. Box 2730  
Portland, OR 97208-2730

Case No. 13CR20600

**AFFIDAVIT OF SURVIVING SPOUSE**

I, \_\_\_\_\_, make the following statements based upon personal information:

1. I have filed a claim for reimbursement of expenses in this case.
2. My Social Security Number is \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_.
3. My spouse, \_\_\_\_\_, was a patient of Farid Fata. We were married on \_\_\_\_\_, in the County of \_\_\_\_\_, State of \_\_\_\_\_.
4. We were married during the time that my spouse, \_\_\_\_\_, was a patient of Farid Fata.
5. My spouse, \_\_\_\_\_, died on \_\_\_\_\_. I have included a copy of the death certificate with my claim for reimbursement, OR a copy of the death certificate is attached to this affidavit.
6. We were married to each other at the time of my spouse's death.
7. No probate estate has been opened in any county for or on behalf of my spouse.
8. Upon information and belief, no one else has made a claim for reimbursement of these expenses, and I am entitled to receive these funds.

***I declare under penalty of perjury, 28 U.S.C. § 1746, that the foregoing is true and correct.***

Date Signed: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Subscribed and sworn before me in the City of \_\_\_\_\_, County of \_\_\_\_\_,

State of \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

## **Appendix F**

## How Do I Prove What I Paid and/or Owed?

This claims process requires that for each out-of-pocket expense, the Claimant must either:

- (1) Prove the amount that the Claimant **paid**; or
- (2) Prove the amount that the Claimant **owed**, **and swear** that the Claimant paid that bill.

What are the easiest ways to do this? Let's look at some possibilities for the eligible expenses:

### **Proof of Expenses While a Patient of Fata:**

How do I prove the amount the Claimant paid out-of-pocket to or at the direction of the defendant? Here are some suggestions:

1. **Patient File.** Many patients and family members of deceased patients received the patient's medical file after the defendant's arrest. In some cases, the file may contain records of payments to Michigan Hematology Oncology. Claimants who have those payment records can use them to prove that they made the payments shown in those records.
2. **Bank Statements and/or Cancelled Checks.** Claimants who have bank statements and/or cancelled checks can use those statements and/or checks as proof of payment to the extent that they indicate that payments were made to Michigan Hematology Oncology and other medical providers who treated the patient based upon orders by Fata. (However, please note that a handwritten check register alone is insufficient proof of payments.)
3. **Credit Card Statements.** Claimants who have credit card statements during the time of Fata's treatment can use those statements as proof of payment to the extent that they indicate that payments were made to Michigan Hematology Oncology and other medical providers who treated the patient based upon orders by Fata.
4. **Receipts.** If the Claimant has receipts of the payments made, those serve as proof of payment.
5. **Explanation of Benefits (EOBs) and Medicare Summary Notices (MSNs).** Claimants who do not have any of the types of proof listed for one or more out-of-pocket expense(s) above will need to obtain EOBs or MSNs to show that the patient owed a specific amount. Look at the [fataclaims.com](http://fataclaims.com) website and click on "Medicare and Insurance Information" to learn how to get these forms. Please note that some insurance companies may provide a spreadsheet instead of EOBs. We will accept a spreadsheet generated by the patient's insurance company.

### **Remedial Treatments until September 6, 2016**

What is the easiest way to prove the amount the Claimant paid out-of-pocket for remedial treatment? Here are some possible approaches.

1. **Ask Remedial Treatment Provider for Printout of Payments.** In most cases, the remedial treatment providers are still in practice. Claimants can try asking those providers' business offices to send them a statement showing all amounts they have paid so far. Claimants can use those statements as proof of out-of-pocket expenses if they clearly indicate what the patient paid out-of-pocket.
2. **Bank Statements and/or Cancelled Checks.** Claimants who have the victim's bank statements and/or cancelled checks from these years can use those statements and/or checks as proof of payment to the extent that they clearly indicate that payments were made to the remedial treatment provider. (However, please note that a handwritten check register alone is insufficient proof of payments.)
3. **Credit Card Statements.** Claimants who have the victim's credit card statements from these years can use those statements as proof of payment to the extent that they clearly indicate that payments were made to the remedial treatment provider.
4. **Receipts.** If the Claimant has receipts of the payments made, those serve as proof of payment.

United States v. Farid Fata

For questions regarding the Claim Form  
call toll-free at 1-877-202-3282  
or visit the website: [www.fataclaims.com](http://www.fataclaims.com)

5. **Explanation of Benefits (EOBs) and Medicare Summary Notices (MSNs).** Claimants who do not have any of the types of proof listed for one or more out-of-pocket expense(s) above will need to obtain EOBs and MSNs to show that they owed a specific amount. Look at [www.fataclaims.com](http://www.fataclaims.com) and click on "Medicare and Insurance Information" to learn how to get these forms. Please note that some insurance companies may provide a spreadsheet instead of EOBs. We will accept a spreadsheet produced by the patient's insurance company.

**Proof or Need to Swear?**

If the Claimant provided proof of payment, there is no need to swear that the payments were made. If, instead, the Claimant is providing proof of what was owed (by way of EOBs and/or MSNs), the Claimant needs to check the box to swear that the bills were paid.

## **Appendix G**

## **Do I Have to Fill Out the Tables on the Claim Form? Is There an Easier Way to Complete the Claim Form?**

To address the concern that Claimants have too many entries to write into the 3 tables in the Claim Form (on pages 5, 8, and 11 of the Claim Form), we are now offering an *alternative, slightly streamlined way of completing the tables in the Claim Form*.

Instead of copying every transaction onto a table, the Claimant may instead take these five steps:

### **Step #1: Divide Proof into Three Categories.**

Divide all of the proof into three categories:

- **Defendant.** Payments made to or at the direction of the defendant before August 6, 2013.
- **Remedial Medical and Dental.** Payments made to remedial medical and/or dental providers before or on September 6, 2016.
- **Remedial Mental Health.** Payments made to remedial mental health providers before or on September 6, 2016.

Put each category of papers in a separate, labeled folder or envelope within your mailing envelope. Please do not only clip or rubber band the categories together, and please do not use Post-it notes; these items can lose their designated places during the review process.

### **Step #2: Circle the Claimed Out-of-Pocket Expenses.**

For each category of papers, please **circle** on each document the out-of-pocket expenses the Claimant is submitting in the claim. Please do not only highlight the out-of-pocket expenses. If you have already highlighted, please be sure to circle the expenses as well. Please do not use Post-it notes as they can fall from their designated places during the review process.

### **Step #3: Compute the Total for Each Category.**

The Claim Form must include a request for a specific total amount for each category. So, add the figures together to determine the total amount the Claimant is claiming for each category.

### **Step #4: Write the Total on Table.**

Write onto each table the total amount the Claimant is claiming for that category. In other words:

- On Table #1 page 5 of Claim Form, write the total amount the Claimant is claiming for out-of-pocket expenses for payments to or at the direction of the defendant;
- On Table #2 page 8 of Claim Form, write the total amount the Claimant is claiming for out-of-pocket expenses for remedial medical and/or dental treatment;
- On Table #3 page 11 of Claim Form, write the total amount the Claimant is claiming for out-of-pocket expenses for remedial mental health treatment.

### **Step #5: Provide Explanation.**

The Claimant is welcome to include a letter or note explaining any additional information that will help us to understand the documents provided. Telling the story of the treatments and what was involved can help us to understand the documents submitted. This is not required, but providing more information may help.

### **Note: Proof or Need to Swear?**

If the Claimant provided proof of payment, there is no need to swear that the payments were made. If, instead, the Claimant is providing proof of what was owed (by way of EOBs and/or MSNs), the Claimant needs to check the box to swear that the bills were paid.

## **Appendix H**

# Physician and Dentist Form

## Note to Patient:

This form must be filled out by doctor(s) and/or dentist(s) who are providing or have provided the patient with remedial treatment. If the patient is asking for compensation for payments to more than one doctor or dentist, please make copies of this form and have it filled out by each of them.

## Note to Physicians and Dentists:

Your patient wishes to file a claim in the *United States v. Farid Fata* claims process. He or she cannot seek reimbursement for costs related to the remedial treatment you are currently providing or have already provided unless you complete this form. Thank you for taking the time to assist this patient. If you or your office have any questions about this form, please call 1-877-202-3282 for assistance.

## Instructions

1. This Physician and Dentist Form must be completed by the patient's treating physician or dentist.
2. If additional space is needed to complete any section of this form, please attach additional pages and include the patient's name at the top of each additional page.

## Section 1: General Information

Patient First Name	MI	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

I am a doctor of (check one)  medicine  osteopathy/osteopathic medicine  
 dentistry

Specialties and AMA

Physician Specialty Codes: \_\_\_\_\_  
(if applicable) \_\_\_\_\_  
\_\_\_\_\_

## Section 2: Medical and/or Dental Condition(s)

I have treated/am treating the patient named above for the following condition(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Section 3: Likelihood that Farid Fata Caused the Condition(s)

Do you believe that it is possible, probable, or definite that the condition(s) for which you are/were treating the patient was/were caused by Farid Fata? If your belief aligns with any of those three levels of likeliness, please check "yes" below. If not, please check "no."

- Yes, I believe that it is possible, probable, or definite that the condition(s) for which I was/am treating this patient was/were caused by Farid Fata.
- No, I do not believe that it is possible, probable, or definite that the condition(s) for which I was/am treating this patient was/were caused by Farid Fata.

If your answer is "yes" to some of the conditions listed in Section 2, above, and "no" to others, please indicate by writing "yes" or "no" next to each condition.



## **Appendix I**



**Section 4: Treatments**

Please list the current and/or past treatments and/or orders provided to this patient/client to treat the condition(s) that were possibly, probably, or definitely attributable in significant part to Farid Fata.

These "treatments" may include:

- Both **past** and **current** treatments
- Examples of treatments may include (but are not limited to): therapy sessions and prescription medications.

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**Section 5: Certification of Accuracy of Information**

I certify that in my professional judgment, the patient/client identified above had, or continues to have, mental and/or emotional impairment(s) that possibly, probably, or definitely was/were attributable in significant part to treatment provided by Farid Fata. I understand that, by signing this document, I am declaring the information on this form to be true and accurate. I further understand that the United States is relying upon the information contained in this form to make a decision about the claims for reimbursement submitted by the patient/client to the United States District Court. I am legally authorized to practice in the state identified below, and I have provided my professional license number below.

Date:   -

Signature of Mental Health Provider

Mental Health Provider First Name  MI  Last Name

Mental Health Provider Address

City  State  ZIP Code

Mental Health Provider Primary Phone  -  -  Mental Health Provider Fax  -  -

Mental Health Provider Email Address

State Where Legally Authorized to Practice

Professional License Number  NPI Number (if applicable)

Type of Provider (for example, psychiatrist, psychologist, therapist, licensed social worker, etc.)

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AO 91 (Rev. 08/09) Criminal Complaint

AUSA Catherine Dick, Asst. Chief (202) 538-4049  
Special Agent Brian Fairweather, FBI (313) 590-4794

UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan

United States of America

v.

FARID FATA

Case: 2:13-mj-30484  
Judge: Unassigned,  
Filed: 08-06-2013 At 10:56 AM  
CMP: USA v FATA (FMM)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of June 2009 to present in the county of OAKLAND in the Eastern District of Michigan, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. 1347	Health Care Fraud

This criminal complaint is based on these facts:  
PLEASE SEE ATTACHED AFFIDAVIT

Continued on the attached sheet.

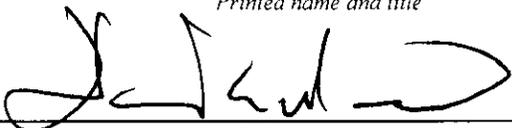
Sworn to before me and signed in my presence.

Date: August 6, 2013

City and state: Detroit, Michigan

  
Complainant's signature

Brian Fairweather, Special Agent, DEA  
Printed name and title

  
Judge's signature

Honorable David R. Grand U.S. Magistrate Judge  
Printed name and title

**AFFIDAVIT IN SUPPORT OF COMPLAINT**

The undersigned, Brian Fairweather, being first duly sworn, hereby deposes and states as follows:

**Affiant's Background and Qualifications**

1. I, Brian Fairweather, hereinafter referred to as the Affiant, am a Special Agent employed by Federal Bureau of Investigation ("FBI"), United States Department of Justice. I have been so employed since May 2010 and am currently assigned to the Detroit Field Office of the FBI. Since becoming a Special Agent with the FBI, my duties and responsibilities have included conducting criminal investigations of individuals, organizations, and businesses that have violated federal laws, including those laws found in 18 U.S.C. § 1347 (Health Care Fraud), 18 U.S.C. § 287 (False, Fictitious, or Fraudulent Claims), 21 U.S.C. § 841(a)(1) (Distribution of Controlled Substances), 18 U.S.C. §§ 1956, 1957 (Money Laundering), 42 U.S.C. §§ 1320a-7(b)(1)(A) and 1320a-7(b)(2)(A) (Payment or Receipt of Health Care Kickbacks).
2. I have knowledge of the facts set forth in this Affidavit as a result of my participation in the investigation as well as information provided to me by other law enforcement agents involved in this investigation and others. Since this Affidavit is being submitted for the limited purpose of supporting a complaint, I have not included each and every fact known to me concerning this investigation.
3. I, with the assistance of other FBI agents and agents from the Department of Health and Human Services-Office of Inspector General (HHS-OIG), have

investigated a health care fraud scheme involving Dr. FARID FATA, the defendant.

4. Dr. Fata has systematically defrauded Medicare by submitting false claims for services that were medically unnecessary, including chemotherapy treatments, Positron Emission Tomograph (PET) scans and a variety of cancer and hematology treatments for patients who did not need them. In the course of the scheme, Dr. Fata has falsified and directed others to falsify documents.
5. Specifically, Dr. Fata has directed the following activities:
  - a. Administration of unnecessary chemotherapy to patients in remission
  - b. Deliberate misdiagnosis of patients as having cancer to justify unnecessary cancer treatment
  - c. Administration of chemotherapy to end-of-life patients who will not benefit from the treatment
  - d. Deliberate misdiagnosis of patients without cancer to justify expensive testing
  - e. Fabrication of other diagnoses such as anemia and fatigue to justify unnecessary hematology treatments
  - f. Distribution of controlled substances to patients without medical necessity
6. Based on the information set forth below, I have probable cause to believe and do believe that the defendant has violated 18 U.S.C. § 1347, Health Care Fraud.

### **The Medicare Program**

7. The Medicare Program (“Medicare”) is a federally-funded health care program providing benefits to persons who are over the age of sixty-five or disabled. Medicare is administered by CMS, a federal agency within the Department of Health and Human Services (“HHS”). Individuals who receive Medicare benefits are referred to as Medicare “beneficiaries.”
8. Medicare is a “health care benefit program,” as defined by 18 U.S.C. § 24(b).
9. Medicare has four parts: hospital insurance (Part A), medical insurance (Part B), Medicare Advantage (Part C), and prescription drug benefits (Part D). Medicare Part B helps pay the cost of physician services, medical equipment and supplies, and other health services and supplies not paid by Part A.
10. This investigation primarily relates to physician services covered under Medicare Part B.
11. Medicare pays only for those services that are both medically necessary and actually rendered.

### **Current Procedural Terminology Codes**

12. The American Medical Association assigns and publishes numeric codes, known as the Current Procedural Terminology (“CPT”) and Health Care Procedure Common Coding System (“HCPCS”) codes. The codes are a

systematic listing, or universal language, used to describe the procedures and services performed by health care providers.

13. According to documents filed with the State of Michigan Department of Labor and Economic Growth (DELEG), Dr. Farid Fata incorporated MHO on or about April 11, 2005. Annual reports submitted by Dr. Fata to the State of Michigan Department of Licensing and Regulatory Affairs (LARA) list the current business address of MHO as 1901 Star-Batt Drive, Suite 200, Rochester Hills, Michigan. Dr. Fata is listed as the President, Secretary, Treasurer, and Vice President of MHO.
14. The registered web site of MHO, [www.michigancancercenter.com](http://www.michigancancercenter.com), lists six additional office locations: 5680 Bow Pointe Drive, Ste 201, Clarkston, MI; 2520 S. Telegraph Road, Ste 107, Bloomfield Hills, MI; 944 Baldwin Road, Ste G, Lapeer, MI; 37450 Dequindre Road, Sterling Heights, MI; 2891 E. Maple, Ste 102, Troy, MI; 15300 W. 9 Mile Road, Oak Park, MI.
15. MHO holds a Medicare provider identification number (“PIN”). Medicare billing records reflect that MHO receives funds through under which it bills Medicare. Medicare pays MHO via an electronic funds transfer agreement (“EFT”) into a Huntington Bank account.
16. Your affiant and other agents interviewed eight former and current employees of MHO in August 2013. According to multiple employees, Dr. Fata works at multiple MHO locations. On Monday, Wednesday and Friday, Fata works at the Rochester location all day. On Tuesday he works

at the Bloomfield Hills office for half the day and then goes to the Clarkston office for the second half of the day. On Thursday Dr. Fata works at the Clarkston location all day.

### **United Diagnostics PLLC**

17. According to Articles of Organization filed with LARA, Dr. Farid Fata incorporated United Diagnostics PLLC on or about November 1, 2012. The Articles listed Dr. Fata as the Organizer and Resident Agent at the registered office, which was listed as 1901 Star-Batt Drive, Suite 200, Rochester Hills, Michigan. According to the filing, the company was organized for the sole and specific purpose of rendering “diagnostic services provided by a licensed physician.”

18. A current employee (EE-1) with personal knowledge of the business practices at MHO informed your affiant that United had moved offices from 1901 Star-Batt Drive to 1688 Star-Batt Drive, Rochester Hills, Michigan. He further advised on August 2, 2013 that all PET scans ordered for MHO patients were conducted at this United location and records of these scans were maintained there. A subsequent open source records search in Lexis-Nexis also indicated that the new United Diagnostics address was 1688 Star-Batt Drive, Rochester Hills, Michigan.

### **Vital Pharmacare LLC**

19. According to Articles of Organization filed with LARA, MHO Pharmacy Services LLC was formed on or about December 26, 2012. Dr.

Farid Fata was listed as the registered agent and the registered office was listed as 1901 Star-Batt Drive, Suite 200, Rochester Hills, Michigan. On the same day, a certificate of assumed name was filed with LARA listing the assumed name Michigan Hematology Oncology Pharmacy Services. A second certificate of assumed name was filed with LARA on February 15, 2013 and listed the assumed name Hope Specialty Pharmacy. Six days later, on February 21, 2013, the Articles of Organization were amended; documents filed with LARA changed the official corporate name to Vital Pharmacare LLC. On the same day, another certificate of assumed name was filed with LARA listing the assumed name MHO Pharmacy Services.

20. An open source records search in Lexis-Nexis indicated that Vital was assigned an active DEA registration number FV3733258 and was located at 1901 Star-Batt Drive, Suite 200, Rochester Hills, Michigan.

### **Residence of Farid Fata**

21. Public records checks performed by agents have shown that Farid Fata currently resides at 2677 Forest Glen Court, Oakland Charter Township, Michigan. Additionally, on the 2013 annual report for MHO filed with LARA on May 31, 2013. Dr. Fata lists his home address as 2677 Forest Glen Court, Oakland Charter Township, Michigan.
22. During an interview conducted on August 2, 2013, EE-1 informed your affiant that Dr. Fata routinely brings MHO patient charts and billing records to his home at night. The employee has both seen Dr. Fata leave the office in the evening with “bags of billing sheets and patient records”, and has been

told by Dr. Fata's wife that Dr. Fata maintains MHO patient files in their home.

**Facts Supporting Allegations**

23. A current employee/doctor, who is an oncologist, EE-2, was interviewed by Agents from HHS-OIG and the FBI on August 5, 2013. EE-2 worked for DR. FATA for more than 18 months. Dr. Fata determined the diagnosis and course of treatment for all patients. EE-2 described his work for Dr. Fata as "living with this hell."
24. EE-2 states that Dr. Fata gives cancer drugs to patients where it is medically unnecessary or in inappropriate dosages.
25. In the case of one patient, M.F., EE-2 discovered that Dr. Fata was ordering Velcade, a chemotherapy treatment even though M.F.'s cancer was inactive. EE-2 told the patient that she should find a second opinion and not return to MHO. M.F. never came back to MHO.
26. As another example, EE-2 stated a normal onocologist might prescribe Rituximab, a monoclonal antibody, for a non-Hodgkins lymphoma patient in the amount of 12 doses over 2 years. Dr. Fata will order 56 doses in two years. This is an inappropriate amount of the drug.
27. According to EE-2, Dr. Fata orders chemotherapy for all end-of-life patients. He states no other physician would do this and would let the patient die in peace.

28. Another form of fraud that EE-2 noted relates to of Intravenous Immunoglobulin (IV/IG) therapy. According to EE-2, only patients with low IgG (an antibody) levels should receive IV/IG. 99% of MHO's patients get IV/IG, despite the fact that they do not have low IgG levels.
29. A MHO nurse practitioner reported to EE-2 a conversation she had with an infusion nurse that IV/IG should not be ordered where there was not a low IgG level. The nurse then reviewed a set of patient files for patients who had received IV/IG and took some of them to EE-2 to say that these patients did not have the necessary low IgG. EE-2 told her that he knew that.
30. In the alternative, IV/IG can be administered in the short term – over a period of a few months – for recurrent infections. EE-2 states that Dr. Fata orders the IV/IG treatment for life.
31. EE-2 further described how Dr. Fata keeps patients on unnecessary treatments with respect to a condition known as Idiopathic Thrombocytopenic Purpura (ITP). ITP is a low platelet condition. The long term solution to ITP can be the removal of the patient's spleen. In the interim period, typically 5-6 weeks before surgery, the drug Rituximab, a monoclonal antibody, can be given as a bridge treatment. According to EE-2, Dr. Fata does not tell patients about the long term solution of spleen removal and simply continues them on Rituximab indefinitely, and for years at a time.
32. EE-2 states that the cancer drugs being ordered and administered unnecessarily by Dr. Fata are toxic, can cause variations in the immune

system and can lead to death. He believes they are being administered at dangerous levels.

33. EE-3 was interviewed by Agents from the FBI and HHS-OIG on August 5, 2013. EE-3 is a nurse practitioner who has been employed by MHO for approximately two and a half years. She works at MHO's Clarkston location. EE-3 is involved in infusions and injections at the Clarkston location.
34. Recently, EE-3 realized that Dr. Fata is ordering IV/IG treatments for patients who do not need them. Based on her prior clinical experience, EE-3 found it strange that IV/IG was being administered at a high volume at MHO, which is an office and not a hospital setting. When EE-3 was a nurse at Beaumont Hospital working for approximately 8 doctors with a larger patient population than Dr. Fata's, she saw approximately 2-3 patients per month coming in for IV/IG. By contrast, EE-3 estimated that she saw 50 patients per month coming to the Clarkston MHO location for IV/IG treatment.
35. IV/IGs are only appropriate for patients with low IgG levels or recurrent infections. EE-3 pulled 40 patient files for patients who were scheduled to receive these treatments and discovered 38 of the patients did not need IV/IG treatment.
36. EE-3 took this issue up with another nurse practitioner and the infusion therapy manager. The employees agreed to discharge the 38 patients whose condition did not justify the IV/IG treatment.

37. EE-3 estimates that Dr. Fata orders chemotherapy for 60-70% of oncology patients who are near the end of their lives. EE-3 states that they are not being allowed to have their last days in comfort and are being given very high doses of chemotherapy.
38. EE-3 states that because of Dr. Fata's large patient volume, possibly around 50-70 patients per day, Dr. Fata has foreign doctors perform most of the actual examination. EE-3 refers to these individuals as "interns" and does not know if they have license. Dr. Fata sees the patients only for 2-3 minutes. The patients frequently complain about it.
39. EE-3 has discussed her concerns about Dr. Fata ordering unnecessary IV/IG treatments and inappropriate chemotherapy in dying patients with EE-2. EE-2 told her he was leaving MHO because of this and that she should watch her back.
40. EE-4 was interviewed by Agents from the FBI on August 5, 2013. EE-4 is a nurse practitioner who began work for MHO in June 2009. She works primarily at the Rochester Hills MHO location, but also travels to other locations with Dr. Fata.
41. According to EE-4, Dr. Fata orders cancer treatment for patients who do not require it. EE-4 specifically recalls two patients who went into remission, but Dr. Fata ordered that they continue on a "maintenance dose" of chemotherapy. These two patients sought second opinions and were told the chemotherapy treatment was inappropriate. They left the practice thereafter.

42. In addition, Dr. Fata falsifies cancer diagnoses to justify cancer treatments. Where a test falls in a “grey” area, he will diagnose cancer in order to start cancer treatment. EE-4 explains that it is easier for the doctor to do this for blood cancers where the doctor has more discretion to interpret blood test results vs. tumors, for which it is harder to falsify diagnoses.
43. Dr. Fata has directed EE-4 to falsify cancer diagnoses to justify PET scans performed by his company where the patient did not have cancer. Patients are not given their false diagnosis; it is written in the chart purely to justify the fraudulent billing to the insurance company.
44. An MHO biller also asked EE-4 to add a fatigue diagnosis for patients who did not have fatigue.
45. Dr. Fata also directed EE-4 to falsify records to justify the administration of IV/IG treatment. Specifically, IV/IG is covered where there is a history of recurring infections, which Dr. Fata would tell EE-4 to document in the file of patients who had not had recurrent infections.
46. In two instances, Dr. Fata directed that chemotherapy be administered to patients who had other serious medical conditions that required immediate treatment before he would permit them to go to the hospital.
47. In one instance, a male patient fell down and hit his head when he came to MHO. Dr. Fata directed EE-4 that he must receive his chemotherapy before he could be taken to the emergency room. MHO administered the

chemotherapy, after which the patient was taken to the emergency room. The patient later died from his head injury.

48. In the second instance, a patient came to MHO with extremely low sodium levels, which can be fatal. Dr. Fata again directed that the patient must first receive chemotherapy before being taken to the emergency room. MHO administered the chemotherapy and the patient was taken to the emergency room and hospitalized.
49. EE-4 stated that Dr. Fata sees 50-70 patients per day. She states that he bills every patient at the highest possible code, even though he spends only 3-5 minutes with each patient.
50. EE-5 was interviewed by Agents from the FBI and HHS-OIG on August 5, 2013. EE-5 was hired in approximately July or August of 2012 as a Medical Assistant for MHO at the Clarkston and Rochester Hill locations. She worked as both an assistant for Dr. Fata as well as working on insurance authorizations for MHO. She quit in May 2013.
51. EE-5 quit MHO in May 2013 due to Dr. Fata's conduct related to a radiology center that he opened. Specifically, EE-5 stated that Dr. Fata ordered her falsify records in order to justify PET scans. Dr. Fata told her to place cancer diagnoses in patients' records to justify the exams, even though the patients did not have cancer. While Dr. Fata was in the process of opening his radiology center, he deliberately delayed ordering PET scans for patients who needed them so that he could provide them through his own

center. Dr. Fata would become angry and yell at staff if they were not correctly documenting the files to justify PET scans.

52. EE-5 believes Dr. Fata ordered chemotherapy for patients who did not need it. Specifically, she believes that “maintenance chemotherapy” was ordered for patients who did not need it. EE-5 said that Dr. Fata would tell patients that once they had chemotherapy, they had to have it for the rest of their lives.
53. EE-5 stated that Dr. Fata directed her and other medical assistants that every patient had to have a chief complaint noted in the file for which Dr. Fata could justify certain tests and/or medications. Frequently, EE-5 and other medical assistants would mark “fatigue” or “anemia” to justify tests for patients who did not have either condition.
54. If patients expressed nervousness to Dr. Fata about their treatment, Dr. Fata would prescribe them Xanax to calm them down. Xanax (alprazolam) is a Schedule IV controlled substance.
55. EE-5’s mother was treated by Dr. Fata for low platelet count. Dr. Fata’s office manager would give EE-5 tasks to do during her mother’s treatment so that EE-5 was not present for the visits. Dr. Fata ordered a cancer treatment drug, Rituxan, for EE-5’s mother. A nurse practitioner informed EE-5 that the appropriate course of treatment was steroid therapy, not cancer treatment drugs. When EE-5 confronted Dr. Fata, he said that steroid therapy would cause her mother to gain weight. Dr. Fata prescribed EE-5’s mother Xanax, which EE-5 told her mother not to take.

56. EE-5 reports that Dr. Fata performed bone marrow biopsies in an unsterile setting at hospitals and at the MHO clinics. Specifically, medical assistants use ungloved hands to handle gauze and other materials used in the procedure.
57. EE-5 reports that Dr. Fata ordered unlicensed medical assistants to give unnecessary injections. Specifically, Dr. Fata ordered unlicensed medical assistants to inject patients with Procrit, a hemoglobin booster shot even when the testing did not show a low hemoglobin count.
58. EE-5 reports that MHO's recordkeeping is so poor that patients frequently receive the wrong medicines or medicines out of sequence. In one instance, EE-5 mistakenly injected a patient with a short term high dosage drug because she was not aware he had received a longer term injection treatment the day before.
59. Dr. Fata writes prescriptions for oxycontin (oxycodone), but gives medical assistants the discretion to decide if patient should receive them. Oxycodone is a Schedule II controlled substance.
60. EE-5 reports that Dr. Fata has approximately 50 patients per day. He employed three foreign doctors who were not licensed in the United States to examine the patients and provide an initial diagnosis. Dr. Fata would then come in for typically five minutes.
61. EE-1 was interviewed by agents from the FBI and HHS-OIG on August 2, 2013. He is currently employed by MHO in a business capacity.

62. EE-1 informed your affiant that Vital is owned by Dr. Fata. He further advised that Dr. Fata instructed all MHO employees that Vital was the only pharmacy they were permitted to use to obtain oral chemotherapy drugs. This instruction was documented in an email from Dr. Fata to all MHO employees.
63. The PET scan equipment used for MHO patients is operated by United Diagnostic, which is owned by Dr. Fata.
64. EE-1 advised that all patients referred to MHO, even those referred only for hematology issues, are prescribed PET scans and blood tests. EE-1 advised that two MHO medical assistants questioned him about the practice of giving all patients PET scans, even those referred only for anemia or other hematology issues.
65. Medical assistants at MHO fielded numerous complaints from patients saying their insurance providers were not covering PET scans because they were not medically necessary. As a result, MHO medical assistants told EE-1 that they were personally pressured by Dr. Fata to fabricate cancer diagnoses in patient records so insurance carriers would fully reimburse the cost of PET scans.
66. Approximately eight to nine months ago, EE-2 raised an objection to a MHO patient in the Lapeer office having chemotherapy with no doctor present because the patient experienced an adverse reaction to the chemotherapy. The reaction resulted in emergency services being called to the office and the patient taken by ambulance to a nearby hospital. EE-2 told EE-1 that it was a common practice at MHO for patients to receive chemotherapy with no doctors present. EE-1 stated that licensed doctors

currently oversee the chemotherapy, but that this was a recent improvement and had not always been the case.

67. EE-1 stated that foreign doctors “just show up” at MHO. These foreign doctors – who do not have a license to practice medicine in the United States – introduce themselves to patients as “Doctor”.
68. The unlicensed doctors are generally assigned to examine Dr. Fata’s patients and complete write-ups of their exam. Dr. Fata typically sees his patients for only a few minutes at the end of their typical 2-4 hour visit to the clinic. The rest of the patients’ time is spent with the unlicensed doctors and other MHO staff. This arrangement allows Fata to routinely see between 50-70 patients per day while other doctors in his practice see between five and ten.
69. EE-1 stated that on multiple occasions he had conversations with staff members about ongoing unethical practices at the MHO clinic. EE-1 advised that several of these staff members were no longer working at the clinic because of these practices.
70. EE-2 explained to EE-1 that MHO had been reimbursed for the improper administration of Intravenous Immunoglobulin (IV/IG). Other drugs EE-2 said were being prescribed improperly were Gammagard and Octagam.
71. A MHO physician spoke with EE-1 approximately six months ago and observed that Dr. Fata sees an inordinately high number of patients; he also

noted that Fata prescribes chemotherapy to patients who do not medically require it.

72. EE-6 was interviewed by Agents from the FBI and HHS-OIG on August 5, 2013. EE-6 is a Nurse Practitioner who currently works for MHO.

73. According to EE-6, 70-80% of MHO patients receive PET scans. EE-6 noted that they received these scans even if it was not indicated for their condition. For example, she observed a patient coming to Rochester location of MHO on August 5, 2013 for a follow-up after a PET scan for breast cancer, which is not indicated.

74. EE-6 was aware of Dr. Fata administering unnecessary chemotherapy treatment. Specifically, EE-6 states a female patient was placed on “maintenance” chemotherapy by Dr. Fata even after her lung cancer was resolved. EE-6 stated that the patient got a second opinion from another doctor who told her that she did not need further chemotherapy treatment, after which the patient left the MHO practice. This occurred around June or July of this year.

75. At other times, EE-6 was aware that Dr. Fata ordered the administration of Octagam – an IV/IG drug – where IgG levels were normal. Octagam should only be administered for low IgG levels or if there have been recurrent infections.

76. When EE-6 told EE-2 she was leaving MHO, he said she made a wise decision. EE-2 told her to make sure her malpractice insurance is kept up. He stated that if one of them went down, all would go down.
77. EE-6 has seen Dr. Fata prescribe intravenous iron for patients who are not iron deficient. This is not an appropriate course of treatment.
78. After EE-6 writes up courses of treatment for patients, Dr. Fata frequently adds treatments. EE-6 would sometimes consult the National Cancer Center Network guidelines and discovered the treatments he added were not indicated.
79. Dr. Fata typically sees 30-60 patients in a single day. Because of the volume of patients, unlicensed doctors and nurse practitioners divide up his patient load, examine the patients, and create courses of treatment. Dr. Fata sees the patients only for a cursory exam and often changes the course of treatment. EE-6 believes he then bills the two highest level office visit codes under his own number.
80. EE-7 was interviewed by Agents from the FBI and HHS-OIG on August 5, 2013. EE-7 reports that she began working on July 5, 2012 for MHO. She currently works as a Receptionist and Medical Assistant.
81. According to EE-7, Dr. Fata opened a company known as United Diagnostics to perform medical testing. Since he opened United Diagnostics the percentage of patients in his practice receiving PET scans she estimates has increased from 30% to 70%.

82. In addition, Dr. Fata owns a pharmacy run by an individual named "Steve."

Dr. Fata directed that EE-7 order all oral chemotherapy drugs through his pharmacy. At times, that pharmacy was unable to provide the drug on the same day so EE-7 wanted to order from a different pharmacy. She believed Dr. Fata was unhappy when EE-7 ordered through a different pharmacy.

83. EE-7 noted that patients admitted for treatment for anemia were receiving initial PET scans. EE-7 states a PET scan is used to detect cancer.

84. EE-7 became aware of inappropriate medical billing at MHO. Specifically, it is inappropriate to bill an office visit with chemotherapy on the same day. EE-7 addressed this with the MHO biller, who stated that he knows he is not supposed to bill it this way but does it anyhow.

### **Medicare Billing**

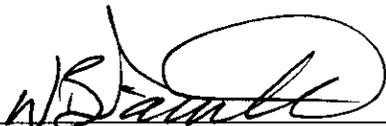
85. According to EE-1, approximately 78% of MHO's practice is based on Medicare billing.

86. Medicare billing data confirms that MHO has billed approximately \$35 million over two years, approximately \$25 million of which was billed by Dr. Fata.

87. Dr. Fata is responsible for approximately \$24.3 million in drug infusions that he billed directly to Medicare, more than any other hematologist/oncologist in the State of Michigan during that time period.

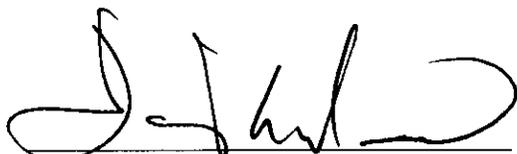
88. The same data confirms that MHO billed Medicare for various infusion and injection medications, including Rituximab, Octagam (IV/IG), and iron supplements.

89. Based on the foregoing, there is probable cause to believe that DR. FARID FATA, the defendant, has committed violations of 18 U.S.C. § 1347 (Health Care Fraud).



Brian Fairweather, Special Agent  
Federal Bureau of Investigation  
United States Department of Justice

Sworn to and subscribed to before me this 6th day of August, 2013.



Hon. DAVID R. GRAND  
United States Magistrate Judge  
Detroit, Michigan

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

FARID FATA, M.D.,

Defendant.

Case:2:13-cr-20600

Judge: Borman, Paul D.

MJ: Michelson, Laurie J.

Filed: 08-14-2013 At 02:23 PM

INDI USA V. FARID FATA (DA)

VIO: 18 U.S.C. § 1347  
18 U.S.C. § 982

\_\_\_\_\_ /

**INDICTMENT**

THE GRAND JURY CHARGES:

**General Allegations**

At all times relevant to this Indictment:

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

2. Medicare was a “health care benefit program,” as defined by 18 U.S.C. § 24(b).

3. The Medicare Program included coverage under two primary components—hospital insurance (Part A) and medical insurance (Part B). Part B of the Medicare Program covered the costs of physicians’ services and other ancillary services (including testing) not covered by Part A. The claims at issue in this indictment were submitted under Part B of the Medicare Program.

4. Wisconsin Physicians Service was the CMS contracted carrier for Medicare Part B in the state of Michigan. TrustSolutions LLC was the Program Safeguard Contractor for Medicare Part B in the State of Michigan until April 24, 2012, when it was replaced by Cahaba Safeguard Administrators LLC.

5. By becoming a participating provider in Medicare, enrolled providers agreed to abide by the policies and procedures, rules, and regulations governing reimbursement. In order to receive Medicare funds, enrolled providers, together with their authorized agents, employees, and contractors, were required to abide by all the provisions of the Social Security Act, the regulations promulgated under the Act, and applicable policies and procedures, rules, and regulations, issued by CMS and its authorized agents and contractors.

6. Upon certification, the medical provider, whether a clinic or an individual, was assigned a provider identification number for billing purposes (referred to as a PIN). When the medical provider rendered a service, the provider would submit a claim for reimbursement to the Medicare contractor/carrier that included the PIN assigned to that medical provider. When an individual medical provider was associated with a clinic, Medicare Part B required that the individual provider number associated with the clinic be placed on the claim submitted to the Medicare contractor.

7. Health care providers were given and provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations. Providers could only submit claims to Medicare for medically necessary services they rendered, and providers were required to maintain patient records to verify that the services were provided as described on the claim.

8. To receive reimbursement for a covered service from Medicare, a provider was required to submit a claim, either electronically or using a form (e.g., a Form CMS-1500 or UB-04), containing the required information appropriately identifying the provider, beneficiary, and services rendered, among other things.

9. Michigan Hematology Oncology, P.C. (MHO) was a Michigan corporation, incorporated in or around April 2005, doing business at various locations in the Eastern District of Michigan, including 1901 Star Batt Drive, Suite 200, Rochester Hills, Michigan; 5680 Bow Pointe Drive, Suite 201, Clarkston, Michigan; 2520 S. Telegraph Road, Suite 107, Bloomfield Hills, Michigan; 944 Baldwin Road, Suite G, Lapeer, Michigan; 37450 Dequindre Road, Sterling Heights, Michigan; 2891 E. Maple, Suite 102, Troy, Michigan; and 15300 W. 9 Mile Road, Oak Park, Michigan. MHO was enrolled as a participating provider with Medicare.

10. Defendant FARID FATA, M.D., a resident of Oakland County, Michigan, was a Medical Doctor licensed in the State of Michigan. FARID FATA, M.D., owned and operated MHO. FARID FATA, M.D., was enrolled as a participating provider with Medicare.

**COUNT 1**  
**(18 U.S.C. § 1347 – Health Care Fraud)**

**FARID FATA, M.D.**

11. Paragraphs 1 through 10 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

12. From in or around August 2010, and continuing through in or around August 2013, the exact dates being unknown to the Grand Jury, in Oakland County, in the Eastern District of Michigan, and elsewhere, the defendant, FARID FATA, M.D., 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, in connection with the delivery of and payment for health care benefits, items, and services.

#### **Purpose of the Scheme and Artifice**

13. It was a purpose of the scheme and artifice for FARID FATA, M.D., to unlawfully enrich himself through the submission of false and fraudulent Medicare claims for services that were not medically necessary.

#### **The Scheme and Artifice**

14. FARID FATA, M.D., would submit or cause the submission of false and fraudulent claims to Medicare for services that were not medically necessary, including claims for (a) administering chemotherapy and other cancer treatments to

patients whose medical conditions did not support the treatments;

(b) administering intravenous immunoglobulin therapy to patients whose medical conditions did not support the therapy; and (c) administering intravenous iron treatments to patients who were not iron deficient.

15. From in or around August 2010, through in or around July 2013, FARID FATA, M.D., submitted and caused MHO to submit over \$150 million in claims to Medicare. Of that amount, Medicare paid over \$62 million.

**CRIMINAL FORFEITURE**  
**(18 U.S.C. § 982)**

16. The above allegations contained in this Indictment are incorporated by reference as if set forth fully herein for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 982.

17. As a result of the violations of 18 U.S.C. § 1347, as set forth in this Indictment, FARID FATA, M.D., shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violations, pursuant to 18 U.S.C. § 982(a)(7).

18. Substitute Assets: If the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property that cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek to forfeit any other property of the defendant up to the value of the forfeitable property described above.

19. Money Judgment: A sum of money in United States currency in the amount representing the total amount of proceeds obtained as a result of defendant's violations, as alleged in this Indictment.

THIS IS A TRUE BILL.

S/Grand Jury Foreperson \_\_\_\_\_

Dated: August 14, 2013

BARBARA L. MCQUADE  
United States Attorney

s/WAYNE F. PRATT  
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**ORIGINAL**

United States District Court Eastern District of Michigan	<b>Criminal Case Cov</b>
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Case:2:13-cr-20600  
 Judge: Borman, Paul D.  
 MJ: Michelson, Laurie J.  
 Filed: 08-14-2013 At 02:23 PM  
 INDI USA V. FARID FATA (DA)

NOTE: It is the responsibility of the Assistant U.S. Attorney signing this form to complete it accurately in all respects.

**Reassignment/Recusal Information** This matter was opened in the USAO prior to August 15, 2008 [ ]

<b>Companion Case Information</b>	Companion Case Number:
This may be a companion case based upon LCrR 57.10 (b)(4) <sup>1</sup> :	Judge Assigned:
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> <b>XX No</b>	AUSA's Initials: <i>CLB</i>

Case Title: USA v. FARID FATA

County where offense occurred : OAKLAND COUNTY

Check One:  **XX Felony**  Misdemeanor  Petty

- Indictment/  Information --- no prior complaint.
- XX Indictment/**  Information --- based upon prior complaint [Case number: 2:13-MJ-30484]
- Indictment/  Information --- based upon LCrR 57.10 (d) [Complete Superseding section below].

**Superseding Case Information**

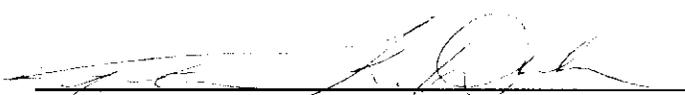
Superseding to Case No: \_\_\_\_\_ Judge: \_\_\_\_\_

- Original case was terminated; no additional charges or defendants.
- Corrects errors; no additional charges or defendants.
- Involves, for plea purposes, different charges or adds counts.
- Embraces same subject matter but adds the additional defendants or charges below:

<u>Defendant name</u>	<u>Charges</u>	<u>Prior Complaint (if applicable)</u>
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**Please take notice that the below listed Assistant United States Attorney is the attorney of record for the above captioned case.**

August 14, 2013  
Date

  
 CATHERINE K. DICK  
 Assistant Chief  
 Criminal Division, Fraud Section  
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 E-Mail address: Catherine.Dick@usdoj.gov  
 Attorney Bar #: IL 292702

<sup>1</sup> Companion cases are matters in which it appears that (1) substantially similar evidence will be offered at trial, (2) the same or related parties are present, and the cases arise out of the same transaction or occurrence. Cases may be companion cases even though one of them may have already been terminated.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA

CRIMINAL NO.: 13-CR-20600

v.

HONORABLE PAUL D. BORMAN

FARID FATA, M.D.,

VIOL: 18 U.S.C. § 1347

18 U.S.C. § 371

18 U.S.C. § 1425(a)

18 U.S.C. § 982

Defendant.

FIRST SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES:

General Allegations

At all times relevant to this Indictment:

1. The Medicare program was a federal health care program providing benefits to persons who were over the age of 65 or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services (CMS), a federal agency under the United State Department of Health and Human Services. Individuals who received benefits under Medicare were referred to as Medicare "beneficiaries."

FILED

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U.S. DIST. COURT OF ENK  
EAST DIST. MICHIGAN  
DETROIT

2. Medicare was a “health care benefit program,” as defined by 18 U.S.C. § 24(b).

3. The Medicare Program included coverage under two primary components—hospital insurance (Part A) and medical insurance (Part B). Part B of the Medicare Program covered the costs of physicians’ services and other ancillary services (including testing) not covered by Part A. The claims at issue in this indictment were submitted under Part B of the Medicare Program.

4. Wisconsin Physicians Service was the CMS contracted carrier for Medicare Part B in the state of Michigan. TrustSolutions LLC was the Program Safeguard Contractor for Medicare Part B in the State of Michigan until April 24, 2012, when it was replaced by Cahaba Safeguard Administrators LLC.

5. By becoming a participating provider in Medicare, enrolled providers agreed to abide by the policies and procedures, rules, and regulations governing reimbursement. In order to receive Medicare funds, enrolled providers, together with their authorized agents, employees, and contractors, were required to abide by all the provisions of the Social Security Act, the regulations promulgated under the Act, and applicable policies and procedures, rules, and regulations, issued by CMS and its authorized agents and contractors.

6. Upon certification, the medical provider, whether a clinic or an individual, was assigned a provider identification number for billing purposes (referred to as a

PIN). When the medical provider rendered a service, the provider would submit a claim for reimbursement to the Medicare contractor/carrier that included the PIN assigned to that medical provider. When an individual medical provider was associated with a clinic, Medicare Part B required that the individual provider number associated with the clinic be placed on the claim submitted to the Medicare contractor.

7. Health care providers were given and provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations. Providers could only submit claims to Medicare for medically necessary services they rendered, and providers were required to maintain patient records to verify that the services were provided as described on the claim.

8. To receive reimbursement for a covered service from Medicare, a provider was required to submit a claim, either electronically or using a form (e.g., a Form CMS-1500 or UB-04), containing the required information appropriately identifying the provider, beneficiary, and services rendered, among other things.

9. Blue Cross and Blue Shield of Michigan (BCBSM) was a non-profit, privately operated insurance company authorized and licensed to do business in the state of Michigan.

10. BCBSM was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

11. BCBSM had agreements with participating providers to furnish medical services to patients ensured by BCBSM. The agreements allowed the participating providers to bill BCBSM directly, and to be paid directly, for services provided to insured patients. BCBSM routinely issued notices to all participating providers advising them services not reasonably necessary for patient treatment would not be paid by BCBSM.

12. BCBSM required participating providers to provide a diagnostic code and a procedure code on claims in order to be paid for professional services rendered to BCBSM subscribers. Payment for services depended upon the truthful submission of specific diagnostic and procedure codes indicated on the claim. BCBSM distributed payments to participating providers electronically, by depositing money into the providers' bank account of record, or by mailing a check to the provider's address of record.

13. Health Alliance Plan of Michigan (HAP) was a non-profit health maintenance organization authorized and licensed to do business in the state of Michigan.

14. HAP was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

15. HAP had agreements with participating providers to furnish medical services to patients who were enrolled as members. HAP's agreements with participating providers required that providers bill HAP only for covered services, which included only those that were medically necessary.

16. HAP required participating providers to provide a diagnostic code and a procedure code on claims in order to be paid for professional services rendered to HAP subscribers. Payment for services depended upon the truthful submission of specific diagnostic and procedure codes indicated on the claim. HAP distributed payments to participating providers electronically, by depositing money into the providers' bank account of record, or by mailing a check to the provider's address of record.

17. Aetna Life Insurance Company (Aetna) was an insurance company authorized and licensed to do business in the state of Michigan.

18. Aetna issued a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

19. Aetna had agreements with participating providers to furnish medical services to patients who were enrolled as members. Aetna's agreements with participating providers required that the provider acknowledge that they will not be paid for services that are not covered by the plan. Services that are not medically necessary are not covered by the plan.

20. Aetna required participating providers to provide a diagnostic code and a procedure code on claims in order to be paid for professional services rendered to Aetna subscribers. Payment for services depended upon the truthful submission of specific diagnostic and procedure codes indicated on the claim. Aetna distributed payments to participating providers electronically, by depositing money into the providers' bank account of record, or by mailing a check to the provider's address of record.

21. Michigan Hematology Oncology, P.C. (MHO) was a Michigan corporation, incorporated in or around April 2005, doing business at various locations in the Eastern District of Michigan, including 1901 Star Batt Drive, Suite 200, Rochester Hills, Michigan; 5680 Bow Pointe Drive, Suite 201, Clarkston, Michigan; 2520 S. Telegraph Road, Suite 107, Bloomfield Hills, Michigan; 944 Baldwin Road, Suite G, Lapeer, Michigan; 37450 Dequindre Road, Sterling Heights, Michigan; 2891 E. Maple, Suite 102, Troy, Michigan; and 15300 W. 9 Mile Road, Oak Park, Michigan. MHO was enrolled as a participating provider with Medicare, BCBSM, HAP and Aetna.

22. Defendant FARID FATA, M.D., a resident of Oakland County, Michigan, was a Medical Doctor licensed in the State of Michigan. FARID FATA, M.D., owned and operated MHO. FARID FATA, M.D., was enrolled as a participating provider with Medicare, BCBSM, HAP and Aetna.

COUNTS 1-12  
(18 U.S.C. § 1347– Health Care Fraud)

23. Paragraphs 1 through 22 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

24. From in or around August 2007, and continuing through in or around August 2013, the exact dates being unknown to the Grand Jury, in Oakland County, in the Eastern District of Michigan, and elsewhere, the defendant, FARID FATA, M.D., 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, BCBSM, HAP and Aetna, 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, BCBSM, HAP, and Aetna in connection with the delivery of and payment for health care benefits, items, and services.

Purpose of the Scheme and Artifice

25. It was a purpose of the scheme and artifice for FARID FATA, M.D., to unlawfully enrich himself through the submission of false and fraudulent

Medicare, BCBSM, HAP, and Aetna claims for services that were not medically necessary.

### **The Scheme and Artifice**

26. FARID FATA, M.D., would submit or cause the submission of false and fraudulent claims to Medicare, BCBSM, HAP, and Aetna for services that were not medically necessary, including claims for (a) administering chemotherapy and other cancer treatments to patients whose medical conditions did not support the treatments; (b) administering intravenous immunoglobulin therapy to patients whose medical conditions did not support the therapy; and (c) administering intravenous iron treatments to patients who were not iron deficient.

27. From in or around August 2007, through in or around August 2013, FARID FATA, M.D., submitted and caused MHO to submit approximately \$225 million in claims to Medicare, of which approximately \$109 million was for chemotherapy or other cancer treatment drugs. Of the approximate \$225 million, Medicare paid over \$91 million, of which over \$48 million was for chemotherapy or other cancer treatment drugs.

28. FARID FATA, M.D. submitted and caused MHO to submit claims for years of medically unnecessary treatments including the following repeated and unnecessary chemotherapy and cancer drug treatments for individuals who did not, in fact, have cancer including the following: approximately 155 chemotherapy

treatments for patient W.W. between on or about January 3, 2011 and or about July 1, 2013; approximately 21 chemotherapy treatments for patient W.D. between on or about May 20, 2013, and on or about July 23, 2013; approximately 25 cancer drug treatments for patient R.S. between on or about August 5, 2011 and on or about July 25, 2013; and approximately 28 chemotherapy treatments for patient J.M. between on or about December 18, 2012 and on or about May 21, 2013.

**Acts in Execution of the Scheme and Artifice**

29. In execution of the scheme and artifice, FARID FATA, M.D. caused the submission of the following claims to Medicare, BCBSM, HAP and Aetna for services that were not medically necessary:

Count	Patient	Insurer	On or About Service Date	Description of Item Billed	Approximate Amount Billed
1	W.D.	Medicare	5/23/13	Azacitidine (chemotherapy)	\$700
2	W.D.	Medicare	7/18/13	Azacitidine (chemotherapy)	\$700
3	W.V.	Medicare	5/23/12	Ferumoxytol (iron)	\$1020
4	W.V.	Medicare	5/29/12	Ferumoxytol (iron)	\$1020
5	W.V.	Medicare	5/20/13	Ferumoxytol (iron)	\$1020
6	R.S.	BCBSM	10/6/11	Zoledronic Acid (cancer drug)	\$1120
7	R.S.	Medicare	11/15/12	Zoledronic Acid (cancer drug)	\$1120

8	M.F.	HAP	7/1/13	Bortezomib (chemotherapy)	\$2100
9	J.M.	Medicare	12/21/12	Bortezomib (chemotherapy)	\$2100
10	J.M.	Medicare	4/26/13	Bortezomib (chemotherapy)	\$2100
11	W.W.	Aetna	2/8/13	Decitabine (chemotherapy)	\$3750
12	W.W.	Aetna	3/8/13	Decitabine (chemotherapy)	\$3750

In violation of Title 18, United States Code, Section 1347.

COUNT 13

(18 U.S.C. § 371 – Conspiracy to Pay and Receive Kickbacks)

30. Paragraphs 1 through 22 of the General Allegations section of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

31. From in or around October 2010 and continuing through in or around August 2013, the exact dates being unknown to the Grand Jury, in Oakland County, in the Eastern District of Michigan, and elsewhere, the defendant FARID FATA, M.D. did willfully and knowingly combine, conspire, confederate and agree with others, known and unknown to the Grand Jury, to commit certain offenses against the United States, that is,

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

knowingly and willfully offering and paying any remuneration

(including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare, a federal health care program as defined in Title 18, United States Code, Section 24(b); and

(b) to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A) by knowingly and willfully soliciting and receiving any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare, a federal health care program as defined in Title 18, United States Code, Section 24(b).

#### Purpose of the Conspiracy

32. It was a purpose of the conspiracy for defendant FARID FATA, M.D. to unlawfully enrich himself through the solicitation and receipt of kickbacks in exchange for the referral of services and arranging for the furnishing of services, including home health care services and hospice services.

#### Manner and Means

33. The manner and means by which the defendant sought to accomplish the purpose of the conspiracy included, among other things:

34. FARID FATA, M.D. would solicit kickback payments from providers of home health care and hospice services.

35. In exchange for such kickbacks, FARID FATA, M.D. would refer patients for home health care services and hospice services purportedly provided by these providers, who were reimbursed in whole or in part by Medicare.

Overt Acts

36. In furtherance of the conspiracy, and to accomplish its purposes and objects, at least one of the conspirators committed, or caused to be committed, in the Eastern District of Michigan, the following overt acts, among others:

37. On or about October 1, 2010, defendant FARID FATA, M.D. received a check in the amount of \$1,000 from Guardian Angel Home Care, Inc. with the memo line "Medical Director Hospice."

38. On or about January 1, 2011, defendant FARID FATA, M.D. received a check in the amount of \$1,000 from Guardian Angel Home Care, Inc. with the memo line "Medical Director Hospice."

39. On or about May 1, 2011, defendant FARID FATA, M.D. received a check in the amount of \$1,000 from Guardian Angel Home Care, Inc. with the memo line "Medical Director Hospice."

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

COUNT 14

(Unlawful Procurement of Naturalization – 18 U.S.C. § 1425(a))

40. Paragraphs 1 through 22 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

41. On or about March 10, 2008, FARID FATA, M.D. completed a naturalization application to become a United States citizen (Form N-400). Question 15 of Section D stated: “Have you ever committed a crime or offense for which you were not arrested?” FARID FATA, M.D. falsely checked the box for the answer “No.” In fact, as FARID FATA, M.D. then well knew, he had as of that date committed crimes of health care fraud.

42. On or about September 22, 2008, a United States Customs and Immigration Services officer interviewed FARID FATA, M.D. regarding his naturalization application. Under oath, FATA repeated his false answer to question 15 of Part D, again stating that he had never knowingly committed a criminal offense for which he had not been arrested.

43. On or about March 28, 2009, FATA completed a Form N-445, entitled “Notice of Naturalization Oath Ceremony.” Question 3 of that form stated:

“AFTER the date you were first interviewed on your Application for Naturalization, Form N-400: . . . Have you knowingly committed any crime or offense, for which you have not been arrested?” FATA checked the box for the answer “No” and signed the Form N-445, falsely certifying that he had committed no crime between the date of his interview with Citizenship and Immigration Services (September 22, 2008) and the date he completed the Form N-445 (March 28, 2009).

44. On or about April 2, 2009, FARID FATA, M.D. was sworn in as a United States citizen in an oath ceremony conducted by the United States District Court, Eastern District of Michigan.

45. On or about April 2, 2009, in the Eastern District of Michigan, FARID FATA, M.D., defendant herein, knowingly procured his naturalization as a United States citizen contrary to law. Defendant FARID FATA, M.D. obtained his citizenship despite having committed numerous criminal offenses, by knowingly making a false statement on his Form N-400, by knowingly making a false statement to an immigration officer, and by knowingly making a false statement on his Form N-445, each of which related to his criminal history and his Good Moral Character, and each of which omitted the fraud offenses which he had committed. All in violation of Title 18, United States Code, Section 1425(a).

CRIMINAL FORFEITURE  
(18 U.S.C. § 982)

46. The above allegations contained in this Indictment are incorporated by reference as if set forth fully herein for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 982.

47. As a result of the violations of 18 U.S.C. § 1347, as set forth in this Indictment, FARID FATA, M.D., shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violations, pursuant to 18 U.S.C. § 982(a)(7).

48. Substitute Assets: If the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or

- e. has been commingled with other property that cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek to forfeit any other property of the defendant up to the value of the forfeitable property described above.

49. Money Judgment: A sum of money in United States currency in the amount representing the total amount of proceeds obtained as a result of defendant's violations, as alleged in this Indictment.

THIS IS A TRUE BILL.

s/ GRAND JURY FOREPERSON  
GRAND JURY FOREPERSON

BARBARA L. MCQUADE  
United States Attorney

s/WAYNE F. PRATT  
WAYNE F. PRATT  
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Dated: September 18, 2013

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 13-20600

v.

Judge Paul D. Borman

FARID FATA, M.D.,

Defendant.

\_\_\_\_\_ /

**AMENDED OPINION AND ORDER**  
**DETAINING DEFENDANT FARID FATA PENDING TRIAL**

**I. BACKGROUND**

**A. Charges.**

On October 2, 2013, this Court held a detention/release hearing pursuant to Title 18 U.S.C. § 3142(f). The operative charging document was a First Superseding Indictment returned on September 18, 2013, charging:

Counts 1 - 12 (up to 10 years incarceration on each Count).

Violations of 18 U.S.C. § 1347 (Health Care Fraud). This charged Defendant with submitting false and fraudulent claims to Medicare, Blue Cross Blue Shield of Michigan (BCBSM), Health Alliance Plan (HAP), and Aetna Insurance for services that were not medically necessary during the period of August 2007 through August 13, 2013.

Count 13 (up to 5 years incarceration)

Violation of Title 18 U.S.C. § 371 (Conspiracy). This charged Defendant with conspiracy to pay and receive kickbacks from October 10, 2010 through August 2013 in violation of 42 U.S.C. § 1370a-7b(b)(2)(A) and § 1320a-7b(b)(1)(A).

Count 14 (up to 10 years incarceration)

Violation of Title 18 U.S.C. § 1325(a). (Unlawful Procurement of Naturalization). This charged Defendant with knowingly procuring his naturalization as a United States citizen contrary to law by knowingly making false statements in 2008 and 2009.

Also included in the Indictment was a count of Criminal Forfeiture under 18 U.S.C. § 982.

Prior to that First Superseding Indictment, Defendant had initially been charged on August 6, 2013 in a criminal Complaint with a violation of Title 18 U.S.C. § 1347 (Health Care Fraud); and then, on August 14, 2013, charged in a single count indictment charging a violation of 18 U.S.C. § 1347 (Health Care Fraud), and a charge of Criminal Forfeiture under 18 U.S.C. § 982.

**B. Release/Detention History.**

(1) August 6, 8, 9 and 13, 2013.

On August 6, 2013, Magistrate Judge David Grand held a hearing/initial appearance on the Complaint, and continued it to August 8, 2013. At that hearing, he ordered that Defendant be released on a \$170,000 cash bond, but continued detention to permit the government to appeal to then presiding U.S. District Judge David Lawson. Magistrate Judge

Grand also granted the government's request for a *Nebbia* hearing prior to the Court accepting the bond to assure that the money posted was not from illicit proceeds.

On August 8, 2013, Judge Lawson commenced a brief hearing, did not change the bond, but ordered that the parties appear before presiding U.S. District Judge Sean Cox who would be presiding on the next day, August 9, 2013, to complete the appeal hearing.

On August 9, 2013, Judge Cox held a brief hearing and ordered the parties to file briefs on their respective positions and return to his courtroom for a hearing on August 13, 2013.

On August 13, 2013, Judge Cox held a hearing, heard argument, and thereafter issued an order setting a cash bond of \$9,000,000, and ordering a *Nebbia* hearing prior to the Court accepting money to post the bail. On August 14, 2013, Defendant was indicted, and his case was assigned to this Court.

(2) The October 2, 2013 Hearing.

On September 10, 2013, Defendant filed a Motion to Amend Conditions of Release. This Court set a hearing date for October 2, 2013. On September 11, 2013, this Court issued an Amended Notice regarding the motion hearing, stating that the hearing would involve 18 U.S.C. § 3142. On September 30, 2013, this Court issued an Order reaffirming its amended notice of the upcoming hearing – that it would consider all of the options contained in 18 U.S.C. § 3142. At the instant hearing, defense counsel acknowledged that the areas of review at the hearing were detention or release under 18 U.S.C. § 3142. (Oct. 2, 2013 Transcript, C. Andreoff, p. 27 (hereinafter Oct. 2, 2013 Tr.)).

Defendant has requested a \$500,000 cash/surety bond with the following conditions:

1. Surrendering passports of his wife and three children;
2. Defendant signing a waiver of extradition;
3. Defendant and his family resigning as trustees of his charitable foundations;
4. The Court issuing a restraining order on Defendant's assets, but leaving open for his wife to have a checking account to pay monthly bills – subsequently altered to permit government to approve outgoing checks;
5. Defendant identifying the source of funds used for bail at a *Nebbia* hearing;
6. Defendant agreeing to continue his 24-hour home lockdown; and
7. Defendant will not practice medicine, or write checks.

(Oct. 2, 2013 Tr., 10-15, C. Andreoff).

The government requested detention. (Oct 2, 2013 Tr. 37).

The Court concludes, for the reasons stated below, that Defendant's proposed conditions do not reasonably assure Defendant Dr. Farid Fata's appearance at trial.

The Court has concluded, after considering arguments and exhibits at the October 2, 2013 hearing that Defendant Dr. Farid Fata be detained pending trial because there was established by a preponderance of the evidence that there is a serious risk of flight, and that no condition or combination of conditions will reasonably assure the appearance of the Defendant.

As to the Section 3142(g) factors to be considered in reaching this conclusion:

- (1) The Court concludes that the nature and circumstances of the offenses charged are very serious: 12 counts of health care fraud over period of six years, carrying a maximum penalty of 10 years incarceration on each count; a conspiracy count charging kickbacks over three years, carrying a maximum penalty of five years incarceration; and a single count charging unlawful procurement of naturalization. The charges are serious, and the potential penalties are double digit years.
- (2) The Court concludes that the weight of the evidence, as set forth at the hearing, appears to be strong based upon the specific allegations of conduct backing up the allegations in the Indictment. The Assistant United States Attorney (AUSA) not only stated that the Defendant was guilty of extensive fraud and lies, but also stated specifically that “[W]e have witnesses to every level of those lies.” (Oct. 2, 2013 Tr. 34). The AUSA then proceeded to elaborate with specifics.

The AUSA stated that its case would call employee witnesses who were directed by Defendant to lie to patients to maximize his fees; patient-witnesses “who caught him in those lies”; “employees who observed Dr. Fata telling lies, lying about what the patient’s prognosis was;” “second opinion doctors for these patients who confirmed that what the patients [sic] told was a lie. Those patients didn’t have the condition, they didn’t have the cancer or they

were grossly overtreated;” and “Experts independent from the second opinion doctors for the patients.” (Oct. 2, 2013 Tr. 39).

The AUSA also stated that its proofs would also include billing records and patient files that sometimes “are not consistent.” What was told to the insurance company to justify the payment is not consistent with what was put in the patient file.” (Oct. 2, 2013 Tr. 40).

The AUSA also stated that it has evidence of a cover-up, where “Dr. Fata frequently would not permit the patients to get their full file or the file itself,” directing “staff at times to remove portions of the file, and at times he tried to convince patients not to take the file or to go to a second opinion doctor. The motive, your Honor, was money. That’s what fraud is about.” (*id.* at 40).

The presumption of innocence applies at this stage, but it does not eviscerate the specific detailed statements made by the AUSA when the Court is required to determine the issue of pretrial detention or release. Indeed, counsel for Defendant described the AUSA’S statements as a “litany of the strong evidence that faces Dr. Fata,” and concluded “that we cannot address at this time because we don’t have access to those medical records.” (Oct 2, 2013 Tr. 54). Nevertheless, the Court was required at this proceeding to hear the argument and rule under 18 U.S.C. § 3142. The Court concludes that, at this stage of the proceeding, the weight of the evidence against Defendant Fata is both specific and strong.

The history and characteristics of Defendant Fata evidences no criminal history. His immediate family ties (wife and children) are to this district, but he also has significant ties to the country of Lebanon where he was born, where his and his wife’s parents live, and to which he recently traveled (in 2013) and purchased a home now occupied by his parents. His

employment history in this district is long, and highly remunerative. The fact that the Defendant was so financially successful supports his ability to flee to Lebanon to escape prosecution, a country that does not have an extradition treaty with the United States. The serious charges, and the government's extensive extrapolation of its case provides a significant motive to flee.

Dr. Fata's financial resources are significant through his and his wife's individual resources, and through corporations, trusts, and charities over which he has had control. Government Exhibits A, B, and C elaborately specify his wealth, and his maze of financial entities. Although most of these assets have been seized/frozen/lienied, his wife, who was chief financial officer of his business ventures, has access to a sufficient sum of money to permit his flight. As the AUSA noted, "Dr. Fata's wife was placed in control of hundreds of thousands of dollars that the government has not seized and continued to write checks on that amount." (Oct. 2, 2013 Tr. 47-48), and "[I]t does not take much money to finance a flight." (*Id.* at 36).

The Court heard argument from the AUSA that some defendants on release, facing significant criminal penalties, have cut off their electronic monitoring devices and fled the country. (*Id.* at 47). The Court's Pretrial Services Department has recommended detention, evidencing that Defendant's presence at trial cannot be guaranteed by conditions, including home detention on a tether.

The Court also notes that the charge that could result in Defendant's denaturalization also provides a motive to flee.

Accordingly, the Court, having heard argument, and the government's presentation of

the case, makes findings of fact that warrant its conclusion by a preponderance of the evidence that Defendant Dr. Farid Fata presents a serious risk of flight, has a motive and means to flee, and that no condition or combination of conditions of release can reasonably assure his appearance at trial.

Finally, the Court recognizes that Defendant's case requires special accommodation to permit the incarcerated Defendant access to counsel, experts, and documents. To this end, present at the October 2, 2013 hearing, were the Supervising Deputy U.S. Marshal Louis Stock, and Mr. James Dunn of the Federal Bureau of Prisons, who were advised of the special needs in this case and were directed by the Court to meet with defense counsel and Defendant after the hearing to facilitate his preparation with defense counsel for trial.

The Court noted, on the record, that the Wayne County Dickerson facility, located closer to his counsel, provides better accommodation for bringing in evidence, and longer visiting hours. Defendant has chosen to remain at the Dickerson facility. (This is not the Wayne County Jail facility.)

This Court stated that it would "make every effort and will stand ready every day of the week to work with defense counsel if there are problems." (Oct. 2, 2013 Tr. 61). This commitment continues. *See* 18 U.S.C. § 3142(i)(3).

Accordingly, Defendant is ordered detained pending trial.

**SO ORDERED.**

s/Paul D. Borman  
PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: October 11, 2013

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 11, 2013.

s/Deborah Tofil  
Case Manager

This case has been designated as an eFiling case. To review a copy of the Notice of Mandatory eFiling visit [www.oakgov.com/clerkrod/efiling](http://www.oakgov.com/clerkrod/efiling).

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

IN RE:

MICHIGAN HEMATOLOGY-ONCOLOGY, PC  
MICHIGAN RADIATION INSTITUTE, LLC  
UNITED DIAGNOSTICS, PLLC  
VITAL PHARMACARE, LLC

2013-137010-CB  
JUDGE POTTS

Case No. 13-                      CB  
Hon.

Assignors.

\_\_\_\_\_  
**SIMON PLC**

**Attorneys & Counselors**

Frank R. Simon (P54731)

Assignee for the Benefit of the Creditors

John Polderman (P65720)

37000 Woodward Avenue, Suite 250

Bloomfield Hills, Michigan 48304  
\_\_\_\_\_

**COMPLAINT FOR OFFER OF ASSIGNMENT FOR THE BENEFIT OF CREDITORS**

NOW COMES, Frank Simon, Assignee, and states:

1. On October 14, 2013, and effective on October 24, 2013, Michigan Hematology-Oncology, PC, Michigan Radiation Institute, LLC, United Diagnostics, PLLC and Vital Pharmacare, LLC (collectively "Assignor") executed an Assignment for the Benefit of Creditors wherein Frank Simon was appointed Assignee for the benefit of the creditors of Assignor. A copy of said Assignments is attached hereto, incorporated herein by reference and marked Exhibit A, 1-4.

- a. Assignment for the Benefit of the Creditors of Michigan Hematology-Oncology, PC (Exhibit A-1)
- b. Assignment for the Benefit of the Creditors of Michigan Radiation Institute, LLC (Exhibit A-2)

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- c. Assignment for the Benefit of the Creditors of United Diagnostics, PLLC (Exhibit A-3)
- d. Assignment for the Benefit of the Creditors of Vital Pharmacare, LLC (Exhibit A-4)

2. The Assignment was executed in accordance with MCLA 600.5201, et. seq. and that, in accordance with MCLA 600.5201(5), a copy of the Assignee's Bond as required by the Michigan Statute is attached hereto as Exhibit B, 1-4.

- a. Surety Bond for the Assignment for the Benefit of the Creditors of Michigan Hematology-Oncology, PC (Exhibit B-1)
- b. Surety Bond for the Assignment for the Benefit of the Creditors of Michigan Radiation Institute, LLC (Exhibit B-2)
- c. Surety Bond for the Assignment for the Benefit of the Creditors of United Diagnostics, PLLC (Exhibit B-3)
- d. Surety Bond for the Assignment for the Benefit of the Creditors of Vital Pharmacare, LLC (Exhibit B-4)

3. The Assignor has prepared and attached to the Assignment for the Benefit of the Creditors, a complete list of all creditors of the Assignor, which is attached hereto, incorporated herein by reference and marked Exhibit C. This list may be supplemented at a later date and additional creditors may exist.

- a. Schedule of Creditors of Michigan Hematology-Oncology, PC (Exhibit C-1)
- b. Schedule of Creditors of Michigan Radiation Institute, LLC (Exhibit C-2)
- c. Schedule of Creditors of United Diagnostics, PLLC (Exhibit C-3)
- d. Schedule of the Creditors of Vital Pharmacare, LLC (Exhibit C-4)

4. The Assignor has prepared and attached to the Assignment for the Benefit of Creditors, a complete list of all assets of the Assignor, which is attached hereto, incorporated herein by reference and marked by Exhibit D, 1-4.

- a. Schedule of Assets of Michigan Hematology-Oncology, PC (Exhibit D-1)
- b. Schedule of Assets of Michigan Radiation Institute, LLC (Exhibit D-2)
- c. Schedule of Assets of United Diagnostics, PLLC (Exhibit D-3)
- d. Schedule of Assets of Vital Pharmacare, LLC (Exhibit D-4)

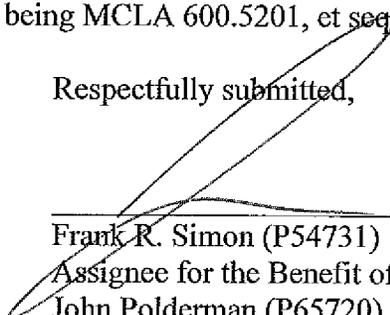
WHEREFORE, Frank Simon, Assignee for the Benefit of Creditors, requests that this Court grant the following relief:

A. Accept this filing pursuant to Chapter 52 of the revised Judicature Act of 1961, MCLA § 600.5201 et seq., thereby instituting the liquidation process as contemplated under a Michigan Statutory Assignment for the Benefit of Creditors; and

B. Grant such other and further relief as is authorized pursuant to the Michigan Assignment for the Benefit of Creditors Statute, being MCLA 600.5201, et seq.

Respectfully submitted,

Dated: October 29, 2013

  
\_\_\_\_\_  
Frank R. Simon (P54731)  
Assignee for the Benefit of the Creditors  
John Polderman (P65720)

# Exhibit A-1

## ASSIGNMENT FOR THE BENEFIT OF CREDITORS

### A. Recitals

This Assignment for the Benefit of Creditors ("Assignment") is made on October 14, 2013, by and between Michigan Hematology-Oncology, P.C. ("Assignor") and Frank Simon of Simon, PLC ("Assignee"). This Assignment is made pursuant to statute, MCL 600.5201, and the common law, for the benefit of Assignor's creditors. This Assignment is intended to assign all of Assignor's property not exempt from execution to the Assignee. The assigned property (the "Estate") is to be liquidated with the proceeds being distributed according to statute. This Assignment shall be effective upon the date of execution by the Assignee.

### B. The Estate

Assignor assigns to Assignee all of Assignor's assets, not exempt from execution, including but not limited to:

1. All legal or equitable interests of the Assignor in property, whether real, personal or mixed, wherever situated;
2. Any interest in property that the Assignee recovers;
3. Any interest in property preserved for the benefit of or ordered transferred to the Estate by any court;
4. Any interest in property that would have been property of the Estate if such interest had been an interest of the Assignor on the date of executing the Assignment, and that the Assignor acquires or becomes entitled to acquire;
5. Proceeds, product, offspring, rents, or profits of or from property of the Estate; and
6. Any interest in property that the Estate acquires after the execution of the Assignment.

A full statement of all property transferred by this Assignment setting forth a description of each item of property, together with its value and location, is attached to this Assignment as Exhibit A and incorporated by reference.

The Assignor also agrees to execute and deliver to the Assignee on demand other and additional instruments in writing as may be required to vest legal title and establish record title in and to all of the Assignor's real and personal property, or the Assignor's interest in the property, including land, mortgages, trust deeds and motor vehicles.

**C. Creditors**

The Assignor agrees to deliver immediately to the Assignee books of account showing all creditors and their addresses. A list of assignor's creditors, including the name and post office address of each creditor, the amount due over and above all defenses, the actual consideration for the debt, when the debt was contracted, and all securities and their value held by each creditor, is attached to this Assignment as Exhibit B and incorporated by reference.

**D. Directives to Financial Institutions, Employers and Others**

Assignor directs all financial or brokerage institutions, business entity, or person, that holds, controls, or maintains custody of any account or asset, or at any time, has held, controlled, managed or maintained custody of any account or asset owned by, in the name or for the benefit of Assignor, including any business in the possession or control of Assignor, any business in which Assignor holds any interest, or any business in which Assignor is an officer, director, manager or member, shall:

1. Prohibit Assignor and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such asset except as directed by the Assignee;

2. Deny Assignor and all other persons access to any safe deposit box that is titled in the name of Assignor either individually or jointly with another person or entity;

3. Provide the Assignee, within five (5) business days of receiving a copy of this Assignment, a statement setting forth:

a. the identification number of each and every account or asset titled in the name,

individually or jointly, of, or held on behalf of, or for the benefit of Assignor;

b. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Assignment is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted;

c. the identification of any safe deposit box that is either titled in the name of Assignor or jointly with, another person or entity or is otherwise subject to access by Assignor; and

d. upon request by the Assignee, promptly provide the Assignee with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, and all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

Assignor grants the Assignee express authority to sign as Assignee, on behalf of Assignor, any checks, bank accounts, drafts, stocks, bonds or other instruments of title and said signature shall have the same legal effect as though Assignor signed the same. Assignor directs all savings, banks or similar institutions receiving a copy of this Assignment to forthwith turnover to the Assignee, any and all contents of safety deposit boxes, owned by Assignor, in whole or together with any other individual. Assignor directs all savings, banks or similar institutions receiving a copy of this Assignment to accept the signature of the Assignee, to withdraw any and all funds Assignor has the right to withdraw from said institution with the same legal effect as though Assignor had signed.

**E. Powers of Assignee**

Assignor grants the Assignee all powers an assignee for the benefit of creditors has under statute and the common law. Assignor grants the Assignee the power to:

1. Preserve, hold and manage all assets, and perform all acts necessary to preserve the value of those assets, to prevent any loss, damage or injury;

2. Remove any officer, independent contractor, employee, or agent of Assignor, from control and management of the affairs of Assignor;
3. Prevent the withdrawal or misapplication of funds;
4. Manage and administer all aspects of Assignor by performing all acts incidental thereto that the Assignee deems appropriate, including hiring or dismissing any and all personnel or suspending operations of any business;
5. Sue for, collect, receive, and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, documents, books, records, work papers, and records of amounts, including computer-maintained information, and other papers of Assignor including documents related to customers, clients or limited partners of Assignor whose interests are now held by or under the direction, possession, custody or control of Assignor;
6. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of Assignor or to carry out his or her duties pursuant to this Assignment, including the power to commence proceedings under Title 11 of the United States Code on behalf of the Assignor;
7. Choose, engage and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Assignee deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Assignment;
8. Issue subpoenas to obtain documents and records pertaining to the Assignment, and conduct discovery in this action on behalf of the Estate;
9. Open one or more bank accounts as designated depositories for funds of Assignor The Assignee may deposit all funds of Assignor in such designated accounts and shall make all payments and disbursements from the Estate from such accounts;
10. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of that Assignor controlled, owned, or managed prior to execution of this Assignment;

11. Exert authority over, control and manage all Assets that Assignor controlled or managed as the Managing Member, Sole Member or Sole Stockholder, prior to execution of this Assignment; and

12. Make payments and disbursements from the Estate that are necessary or advisable for carrying out the directions of this Court, or exercising the authority granted by this Assignment.

#### **F. Additional Powers and Duties of the Assignee**

The Assignee must hold the property assigned in trust for the following uses and purposes and is given the following authority in connection with the property:

1. To take charge and possession of the property and to reduce the property to money as soon as it can be done wisely, prudently, and properly, using the Assignee's best judgment in selling and disposing of the property on such terms as the Assignee may see fit at a public or private sale, or to continue the business, whichever in the judgment of the Assignee is best calculated to net the best returns for the creditors;

2. To administer the trust created by this assignment to the best of the Assignee's ability. However, the Assignee is liable only for reasonable care and diligence in the administering of the trust. Furthermore, the Assignee may act through or by agents and will not be responsible for any negligence of the agents selected with reasonable care, nor will the Assignee be liable or responsible for anything done by the Assignee in good faith in the execution of this trust. Any contract or agreement made by the Assignee in connection with the trust will not be binding on the Assignee in the Assignee's personal capacity, but will bind the assigned estate and the Assignee in the Assignee's representative capacity;

3. To compromise claims, to discount bills, and to complete or refuse to complete and cancel conditional sales contracts and other contracts now in force to which the Assignor is a party;

4. To pay the creditors of the Assignor, pro rata, according to the indebtedness due to them from the Assignor, the net proceeds arising from the conduct of the business and the sale and disposal of the property, or any portion of the property, after deducting all amounts that the Assignee must at the Assignee's option pay to discharge any lien on any of the property and any indebtedness that, under the law, is entitled to priority of payment and, after paying all charges and expenses, including the Assignee's own remuneration and that of any agents or attorneys who may be employed by the Assignee, the amounts of which will be in the discretion of the Assignee;

5. To borrow money or to hypothecate, mortgage, or pledge on such terms as the Assignee may see fit all assets of the Assignor in the Assignee's possession. The

Assignee generally has power and authority to perform all acts that the Assignor could have done prior to the execution of this assignment;

6. To apply for any deposits, refunds, or claims, whenever necessary, in the name of the Assignee. This instrument constitutes a Power of Attorney from the Assignor to the Assignee to accomplish this application;

7. To have all mail matter addressed to the Assignor delivered to the Assignee on the Assignee's order; the Assignee may execute a written order to that effect; and

8. To pay the balance or surplus of the Estate, if any, to the Assignor.

**G. Delivery of Possession of Property to Assignee**

Assignor directs every person or entity served with a copy of this Assignment, shall deliver to the Assignee:

1. Possession and custody of all funds, assets, property, and all other assets, owned beneficially or otherwise, wherever situated of Assignor;

2. Possession and custody of documents of Assignor, including but not limited to, all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;

3. Possession and custody of all precious metals, other commodities, funds, and other assets being held by or on the behalf of Assignor;

4. All keys, computer passwords, entry codes, and combination locks necessary to gain access or to secure access to any of the assets or documents of Assignor, including by not limited to; means of communications, account, computer systems, or other property; and

5. Information identifying the accounts, employees, properties or other assets or obligations of Assignor

**H. Possession of Documents and Restraint on Destruction**

Assignor grants the Assignee the power to take immediate possession of and to copy: all books, records, notes, memoranda, loan documents, deeds, bills of sale, canceled checks, checks, check ledgers, calendar notes, diary notes, notes, records, books, ledgers, electronically stored data, tape recordings, and computer discs, or any other financial

documents or financial information in whatever form belonging to Assignor or any businesses owned or operated by Assignor.

**I. Restraint on Transfer of Property**

Assignor agrees that except as otherwise provided, the Assignor will not:

1. Transfer, sell, alienate, liquidate, encumber, pledge, lease, loan, assign, conceal, dissipate, convert, withdraw, or otherwise dispose of the Assets, including assets held in corporate or partnership accounts in which Assignor has an interest, and assets held outside the United States; and
2. Open or cause to be opened any safe deposit boxes titled in the name of, or subject to access by the Assignor.

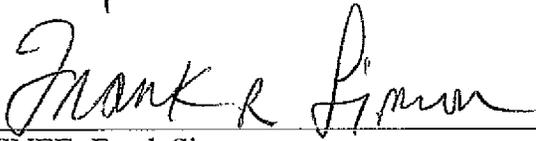
  
 ASSIGNOR: Michigan Hematology oncology P.C.

By:

Its: President

Assignor:   
 Samar Fata as attorney in fact  
 for Farid Fata

Dated: 10/14 2013

  
 ASSIGNEE: Frank Simon

Dated: 10-24 2013

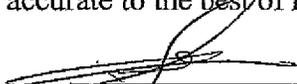
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AFFIDAVIT

STATE OF MICHIGAN

COUNTY OF Oakland

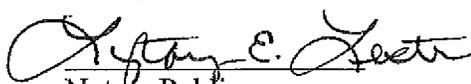
Michigan Hematology oncology, P.C, by and through its <sup>secretary</sup> President, Samar Fata, being duly sworn, deposes and says that it has entered into an Assignment for the Benefit of Creditors and that the inventories and list of creditors attached to the assignment for the benefit of creditors are true and accurate to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
ASSIGNOR:

By:  
Secretary and Treasurer  
Its: ~~President~~

Dated: 10/14 2013

Subscribed and sworn to before me  
This 14 day of October 2013

  
Notary Public,  
Oakland County, Michigan,  
My commission expires: 1/22/14

LYTANYA E. LESTER  
NOTARY PUBLIC, OAKLAND COUNTY, MI  
MY COMMISSION EXPIRES JANUARY 22, 2014  
ACTING IN Oakland COUNTY

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# Exhibit A-2

**ASSIGNMENT FOR THE BENEFIT OF CREDITORS**

**A. Recitals**

This Assignment for the Benefit of Creditors (“Assignment”) is made on October 14, 2013, by and between Michigan Radiation Institute, LLC (“Assignor”) and Frank Simon of Simon, PLC (“Assignee”). This Assignment is made pursuant to statute, MCL 600.5201, and the common law, for the benefit of Assignor’s creditors. This Assignment is intended to assign all of Assignor’s property not exempt from execution to the Assignee. The assigned property (the “Estate”) is to be liquidated with the proceeds being distributed according to statute. This Assignment shall be effective upon the date of execution by the Assignee.

**B. The Estate**

Assignor assigns to Assignee all of Assignor’s assets, not exempt from execution, including but not limited to:

1. All legal or equitable interests of the Assignor in property, whether real, personal or mixed, wherever situated;
2. Any interest in property that the Assignee recovers;
3. Any interest in property preserved for the benefit of or ordered transferred to the Estate by any court;
4. Any interest in property that would have been property of the Estate if such interest had been an interest of the Assignor on the date of executing the Assignment, and that the Assignor acquires or becomes entitled to acquire;
5. Proceeds, product, offspring, rents, or profits of or from property of the Estate; and
6. Any interest in property that the Estate acquires after the execution of the Assignment.

A full statement of all property transferred by this Assignment setting forth a description of each item of property, together with its value and location, is attached to this Assignment as Exhibit A and incorporated by reference.

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The Assignor also agrees to execute and deliver to the Assignee on demand other and additional instruments in writing as may be required to vest legal title and establish record title in and to all of the Assignor's real and personal property, or the Assignor's interest in the property, including land, mortgages, trust deeds and motor vehicles.

**C. Creditors**

The Assignor agrees to deliver immediately to the Assignee books of account showing all creditors and their addresses. A list of assignor's creditors, including the name and post office address of each creditor, the amount due over and above all defenses, the actual consideration for the debt, when the debt was contracted, and all securities and their value held by each creditor, is attached to this Assignment as Exhibit B and incorporated by reference.

**D. Directives to Financial Institutions, Employers and Others**

Assignor directs all financial or brokerage institutions, business entity, or person, that holds, controls, or maintains custody of any account or asset, or at any time, has held, controlled, managed or maintained custody of any account or asset owned by, in the name or for the benefit of Assignor, including any business in the possession or control of Assignor, any business in which Assignor holds any interest, or any business in which Assignor is an officer, director, manager or member, shall:

1. Prohibit Assignor and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such asset except as directed by the Assignee;
2. Deny Assignor and all other persons access to any safe deposit box that is titled in the name of Assignor either individually or jointly with another person or entity;
3. Provide the Assignee, within five (5) business days of receiving a copy of this Assignment, a statement setting forth:
  - a. the identification number of each and every account or asset titled in the name,

individually or jointly, of, or held on behalf of, or for the benefit of Assignor;

b. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Assignment is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted;

c. the identification of any safe deposit box that is either titled in the name of Assignor or jointly with, another person or entity or is otherwise subject to access by Assignor; and

d. upon request by the Assignee, promptly provide the Assignee with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, and all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

Assignor grants the Assignee express authority to sign as Assignee, on behalf of Assignor, any checks, bank accounts, drafts, stocks, bonds or other instruments of title and said signature shall have the same legal effect as though Assignor signed the same. Assignor directs all savings, banks or similar institutions receiving a copy of this Assignment to forthwith turnover to the Assignee, any and all contents of safety deposit boxes, owned by Assignor, in whole or together with any other individual. Assignor directs all savings, banks or similar institutions receiving a copy of this Assignment to accept the signature of the Assignee, to withdraw any and all funds Assignor has the right to withdraw from said institution with the same legal effect as though Assignor had signed.

**E. Powers of Assignee**

Assignor grants the Assignee all powers an assignee for the benefit of creditors has under statute and the common law. Assignor grants the Assignee the power to:

1. Preserve, hold and manage all assets, and perform all acts necessary to preserve the value of those assets, to prevent any loss, damage or injury;

2. Remove any officer, independent contractor, employee, or agent of Assignor, from control and management of the affairs of Assignor;
3. Prevent the withdrawal or misapplication of funds;
4. Manage and administer all aspects of Assignor by performing all acts incidental thereto that the Assignee deems appropriate, including hiring or dismissing any and all personnel or suspending operations of any business;
5. Sue for, collect, receive, and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, documents, books, records, work papers, and records of amounts, including computer-maintained information, and other papers of Assignor including documents related to customers, clients or limited partners of Assignor whose interests are now held by or under the direction, possession, custody or control of Assignor;
6. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of Assignor or to carry out his or her duties pursuant to this Assignment, including the power to commence proceedings under Title 11 of the United States Code on behalf of the Assignor;
7. Choose, engage and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Assignee deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Assignment;
8. Issue subpoenas to obtain documents and records pertaining to the Assignment, and conduct discovery in this action on behalf of the Estate;
9. Open one or more bank accounts as designated depositories for funds of Assignor The Assignee may deposit all funds of Assignor in such designated accounts and shall make all payments and disbursements from the Estate from such accounts;
10. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of that Assignor controlled, owned, or managed prior to execution of this Assignment;

11. Exert authority over, control and manage all Assets that Assignor controlled or managed as the Managing Member, Sole Member or Sole Stockholder, prior to execution of this Assignment; and

12. Make payments and disbursements from the Estate that are necessary or advisable for carrying out the directions of this Court, or exercising the authority granted by this Assignment.

#### **F. Additional Powers and Duties of the Assignee**

The Assignee must hold the property assigned in trust for the following uses and purposes and is given the following authority in connection with the property:

1. To take charge and possession of the property and to reduce the property to money as soon as it can be done wisely, prudently, and properly, using the Assignee's best judgment in selling and disposing of the property on such terms as the Assignee may see fit at a public or private sale, or to continue the business, whichever in the judgment of the Assignee is best calculated to net the best returns for the creditors;
2. To administer the trust created by this assignment to the best of the Assignee's ability. However, the Assignee is liable only for reasonable care and diligence in the administering of the trust. Furthermore, the Assignee may act through or by agents and will not be responsible for any negligence of the agents selected with reasonable care, nor will the Assignee be liable or responsible for anything done by the Assignee in good faith in the execution of this trust. Any contract or agreement made by the Assignee in connection with the trust will not be binding on the Assignee in the Assignee's personal capacity, but will bind the assigned estate and the Assignee in the Assignee's representative capacity;
3. To compromise claims, to discount bills, and to complete or refuse to complete and cancel conditional sales contracts and other contracts now in force to which the Assignor is a party;
4. To pay the creditors of the Assignor, pro rata, according to the indebtedness due to them from the Assignor, the net proceeds arising from the conduct of the business and the sale and disposal of the property, or any portion of the property, after deducting all amounts that the Assignee must at the Assignee's option pay to discharge any lien on any of the property and any indebtedness that, under the law, is entitled to priority of payment and, after paying all charges and expenses, including the Assignee's own remuneration and that of any agents or attorneys who may be employed by the Assignee, the amounts of which will be in the discretion of the Assignee;
5. To borrow money or to hypothecate, mortgage, or pledge on such terms as the Assignee may see fit all assets of the Assignor in the Assignee's possession. The

Assignee generally has power and authority to perform all acts that the Assignor could have done prior to the execution of this assignment;

6. To apply for any deposits, refunds, or claims, whenever necessary, in the name of the Assignee. This instrument constitutes a Power of Attorney from the Assignor to the Assignee to accomplish this application;

7. To have all mail matter addressed to the Assignor delivered to the Assignee on the Assignee's order; the Assignee may execute a written order to that effect; and

8. To pay the balance or surplus of the Estate, if any, to the Assignor.

#### **G. Delivery of Possession of Property to Assignee**

Assignor directs every person or entity served with a copy of this Assignment, shall deliver to the Assignee:

1. Possession and custody of all funds, assets, property, and all other assets, owned beneficially or otherwise, wherever situated of Assignor;

2. Possession and custody of documents of Assignor, including but not limited to, all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;

3. Possession and custody of all precious metals, other commodities, funds, and other assets being held by or on the behalf of Assignor;

4. All keys, computer passwords, entry codes, and combination locks necessary to gain access or to secure access to any of the assets or documents of Assignor, including by not limited to; means of communications, account, computer systems, or other property; and

5. Information identifying the accounts, employees, properties or other assets or obligations of Assignor

#### **H. Possession of Documents and Restraint on Destruction**

Assignor grants the Assignee the power to take immediate possession of and to copy: all books, records, notes, memoranda, loan documents, deeds, bills of sale, canceled checks, checks, check ledgers, calendar notes, diary notes, notes, records, books, ledgers, electronically stored data, tape recordings, and computer discs, or any other financial

documents or financial information in whatever form belonging to Assignor or any businesses owned or operated by Assignor.

**I. Restraint on Transfer of Property**

Assignor agrees that except as otherwise provided, the Assignor will not:

- 1. Transfer, sell, alienate, liquidate, encumber, pledge, lease, loan, assign, conceal, dissipate, convert, withdraw, or otherwise dispose of the Assets, including assets held in corporate or partnership accounts in which Assignor has an interest, and assets held outside the United States; and
- 2. Open or cause to be opened any safe deposit boxes titled in the name of, or subject to access by the Assignor.

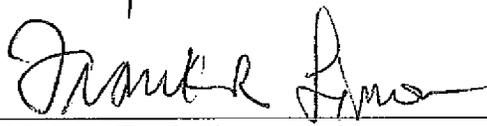


ASSIGNOR: Michigan Radiation Institute, LLC

By:

Its: Member

Dated: 10/14/2013



ASSIGNEE: Frank Simon

Dated: 10/24 2013

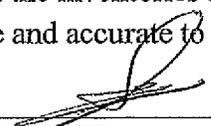
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AFFIDAVIT

STATE OF MICHIGAN

COUNTY OF Oakland

Michigan Radiation Institute by and through its Member, Samer Fata, being duly sworn, deposes and says that it has entered into an Assignment for the Benefit of Creditors and that the inventories and list of creditors attached to the assignment for the benefit of creditors are true and accurate to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
ASSIGNOR:

By:

Its: Member

Dated: 10/14 2013

Subscribed and sworn to before me  
This 14 day of October 2013

  
Notary Public,  
Oakland County, Michigan,  
My commission expires: 1/22/14

LYTANYA E. LESTER  
NOTARY PUBLIC, OAKLAND COUNTY, MI  
MY COMMISSION EXPIRES JANUARY 22, 2014  
ACTING IN Oakland COUNTY

# Exhibit A-3

## ASSIGNMENT FOR THE BENEFIT OF CREDITORS

### A. Recitals

This Assignment for the Benefit of Creditors ("Assignment") is made on October 14, 2013, by and between United Diagnostics, PLLC ("Assignor") and Frank Simon of Simon, PLC ("Assignee"). This Assignment is made pursuant to statute, MCL 600.5201, and the common law, for the benefit of Assignor's creditors. This Assignment is intended to assign all of Assignor's property not exempt from execution to the Assignee. The assigned property (the "Estate") is to be liquidated with the proceeds being distributed according to statute. This Assignment shall be effective upon the date of execution by the Assignee.

### B. The Estate

Assignor assigns to Assignee all of Assignor's assets, not exempt from execution, including but not limited to:

1. All legal or equitable interests of the Assignor in property, whether real, personal or mixed, wherever situated;
2. Any interest in property that the Assignee recovers;
3. Any interest in property preserved for the benefit of or ordered transferred to the Estate by any court;
4. Any interest in property that would have been property of the Estate if such interest had been an interest of the Assignor on the date of executing the Assignment, and that the Assignor acquires or becomes entitled to acquire;
5. Proceeds, product, offspring, rents, or profits of or from property of the Estate; and
6. Any interest in property that the Estate acquires after the execution of the Assignment.

A full statement of all property transferred by this Assignment setting forth a description of each item of property, together with its value and location, is attached to this Assignment as Exhibit A and incorporated by reference.

The Assignor also agrees to execute and deliver to the Assignee on demand other and additional instruments in writing as may be required to vest legal title and establish record title in and to all of the Assignor's real and personal property, or the Assignor's interest in the property, including land, mortgages, trust deeds and motor vehicles.

**C. Creditors**

The Assignor agrees to deliver immediately to the Assignee books of account showing all creditors and their addresses. A list of assignor's creditors, including the name and post office address of each creditor, the amount due over and above all defenses, the actual consideration for the debt, when the debt was contracted, and all securities and their value held by each creditor, is attached to this Assignment as Exhibit B and incorporated by reference.

**D. Directives to Financial Institutions, Employers and Others**

Assignor directs all financial or brokerage institutions, business entity, or person, that holds, controls, or maintains custody of any account or asset, or at any time, has held, controlled, managed or maintained custody of any account or asset owned by, in the name or for the benefit of Assignor, including any business in the possession or control of Assignor, any business in which Assignor holds any interest, or any business in which Assignor is an officer, director, manager or member, shall:

1. Prohibit Assignor and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such asset except as directed by the Assignee;
2. Deny Assignor and all other persons access to any safe deposit box that is titled in the name of Assignor either individually or jointly with another person or entity;
3. Provide the Assignee, within five (5) business days of receiving a copy of this Assignment, a statement setting forth:
  - a. the identification number of each and every account or asset titled in the name,

individually or jointly, of, or held on behalf of, or for the benefit of Assignor;

b. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Assignment is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted;

c. the identification of any safe deposit box that is either titled in the name of Assignor or jointly with, another person or entity or is otherwise subject to access by Assignor; and

d. upon request by the Assignee, promptly provide the Assignee with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, and all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

Assignor grants the Assignee express authority to sign as Assignee, on behalf of Assignor, any checks, bank accounts, drafts, stocks, bonds or other instruments of title and said signature shall have the same legal effect as though Assignor signed the same. Assignor directs all savings, banks or similar institutions receiving a copy of this Assignment to forthwith turnover to the Assignee, any and all contents of safety deposit boxes, owned by Assignor, in whole or together with any other individual. Assignor directs all savings, banks or similar institutions receiving a copy of this Assignment to accept the signature of the Assignee, to withdraw any and all funds Assignor has the right to withdraw from said institution with the same legal effect as though Assignor had signed.

**E. Powers of Assignee**

Assignor grants the Assignee all powers an assignee for the benefit of creditors has under statute and the common law. Assignor grants the Assignee the power to:

1. Preserve, hold and manage all assets, and perform all acts necessary to preserve the value of those assets, to prevent any loss, damage or injury;

2. Remove any officer, independent contractor, employee, or agent of Assignor, from control and management of the affairs of Assignor;
3. Prevent the withdrawal or misapplication of funds;
4. Manage and administer all aspects of Assignor by performing all acts incidental thereto that the Assignee deems appropriate, including hiring or dismissing any and all personnel or suspending operations of any business;
5. Sue for, collect, receive, and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, documents, books, records, work papers, and records of amounts, including computer-maintained information, and other papers of Assignor including documents related to customers, clients or limited partners of Assignor whose interests are now held by or under the direction, possession, custody or control of Assignor;
6. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of Assignor or to carry out his or her duties pursuant to this Assignment, including the power to commence proceedings under Title 11 of the United States Code on behalf of the Assignor;
7. Choose, engage and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Assignee deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Assignment;
8. Issue subpoenas to obtain documents and records pertaining to the Assignment, and conduct discovery in this action on behalf of the Estate;
9. Open one or more bank accounts as designated depositories for funds of Assignor The Assignee may deposit all funds of Assignor in such designated accounts and shall make all payments and disbursements from the Estate from such accounts;
10. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of that Assignor controlled, owned, or managed prior to execution of this Assignment;

11. Exert authority over, control and manage all Assets that Assignor controlled or managed as the Managing Member, Sole Member or Sole Stockholder, prior to execution of this Assignment; and

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The Assignee must hold the property assigned in trust for the following uses and purposes and is given the following authority in connection with the property:

1. To take charge and possession of the property and to reduce the property to money as soon as it can be done wisely, prudently, and properly, using the Assignee's best judgment in selling and disposing of the property on such terms as the Assignee may see fit at a public or private sale, or to continue the business, whichever in the judgment of the Assignee is best calculated to net the best returns for the creditors;

2. To administer the trust created by this assignment to the best of the Assignee's ability. However, the Assignee is liable only for reasonable care and diligence in the administering of the trust. Furthermore, the Assignee may act through or by agents and will not be responsible for any negligence of the agents selected with reasonable care, nor will the Assignee be liable or responsible for anything done by the Assignee in good faith in the execution of this trust. Any contract or agreement made by the Assignee in connection with the trust will not be binding on the Assignee in the Assignee's personal capacity, but will bind the assigned estate and the Assignee in the Assignee's representative capacity;

3. To compromise claims, to discount bills, and to complete or refuse to complete and cancel conditional sales contracts and other contracts now in force to which the Assignor is a party;

4. To pay the creditors of the Assignor, pro rata, according to the indebtedness due to them from the Assignor, the net proceeds arising from the conduct of the business and the sale and disposal of the property, or any portion of the property, after deducting all amounts that the Assignee must at the Assignee's option pay to discharge any lien on any of the property and any indebtedness that, under the law, is entitled to priority of payment and, after paying all charges and expenses, including the Assignee's own remuneration and that of any agents or attorneys who may be employed by the Assignee, the amounts of which will be in the discretion of the Assignee;

5. To borrow money or to hypothecate, mortgage, or pledge on such terms as the Assignee may see fit all assets of the Assignor in the Assignee's possession. The

Assignee generally has power and authority to perform all acts that the Assignor could have done prior to the execution of this assignment;

6. To apply for any deposits, refunds, or claims, whenever necessary, in the name of the Assignee. This instrument constitutes a Power of Attorney from the Assignor to the Assignee to accomplish this application;

7. To have all mail matter addressed to the Assignor delivered to the Assignee on the Assignee's order; the Assignee may execute a written order to that effect; and

8. To pay the balance or surplus of the Estate, if any, to the Assignor.

**G. Delivery of Possession of Property to Assignee**

Assignor directs every person or entity served with a copy of this Assignment, shall deliver to the Assignee:

1. Possession and custody of all funds, assets, property, and all other assets, owned beneficially or otherwise, wherever situated of Assignor;

2. Possession and custody of documents of Assignor, including but not limited to, all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;

3. Possession and custody of all precious metals, other commodities, funds, and other assets being held by or on the behalf of Assignor;

4. All keys, computer passwords, entry codes, and combination locks necessary to gain access or to secure access to any of the assets or documents of Assignor, including by not limited to; means of communications, account, computer systems, or other property; and

5. Information identifying the accounts, employees, properties or other assets or obligations of Assignor

**H. Possession of Documents and Restraint on Destruction**

Assignor grants the Assignee the power to take immediate possession of and to copy: all books, records, notes, memoranda, loan documents, deeds, bills of sale, canceled checks, checks, check ledgers, calendar notes, diary notes, notes, records, books, ledgers, electronically stored data, tape recordings, and computer discs, or any other financial

documents or financial information in whatever form belonging to Assignor or any businesses owned or operated by Assignor.

**I. Restraint on Transfer of Property**

Assignor agrees that except as otherwise provided, the Assignor will not:

1. Transfer, sell, alienate, liquidate, encumber, pledge, lease, loan, assign, conceal, dissipate, convert, withdraw, or otherwise dispose of the Assets, including assets held in corporate or partnership accounts in which Assignor has an interest, and assets held outside the United States; and
2. Open or cause to be opened any safe deposit boxes titled in the name of, or subject to access by the Assignor.

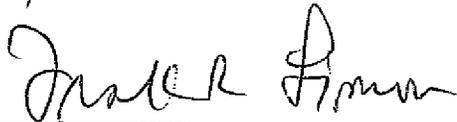


ASSIGNOR: United Diagnostics, Phl C

By:

Its: Member

Dated: 10/14/2013



ASSIGNEE: Frank Simon

Dated: 10/24 2013

AFFIDAVIT

STATE OF MICHIGAN

COUNTY OF Oakland

United Diagnostic, by and through its Member, Samar Faten, being duly sworn, deposes and says that it has entered into an Assignment for the Benefit of Creditors and that the inventories and list of creditors attached to the assignment for the benefit of creditors are true and accurate to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
ASSIGNOR:

By:

Its: Member

Dated: 10/14 2013

Subscribed and sworn to before me  
This 14 day of October, 2013



Notary Public,

Oakland County, Michigan,

My commission expires: 1/22/14

LYTANYA E. LESTER  
NOTARY PUBLIC, OAKLAND COUNTY, MI  
MY COMMISSION EXPIRES JANUARY 22, 2014  
ACTING IN Oakland COUNTY

# Exhibit A-4

**ASSIGNMENT FOR THE BENEFIT OF CREDITORS**

**A. Recitals**

This Assignment for the Benefit of Creditors (“Assignment”) is made on October 14, 2013, by and between Vital Pharmacare, LLC (“Assignor”) and Frank Simon of Simon, PLC (“Assignee”). This Assignment is made pursuant to statute, MCL 600.5201, and the common law, for the benefit of Assignor’s creditors. This Assignment is intended to assign all of Assignor’s property not exempt from execution to the Assignee. The assigned property (the “Estate”) is to be liquidated with the proceeds being distributed according to statute. This Assignment shall be effective upon the date of execution by the Assignee.

**B. The Estate**

Assignor assigns to Assignee all of Assignor’s assets, not exempt from execution, including but not limited to:

1. All legal or equitable interests of the Assignor in property, whether real, personal or mixed, wherever situated;
2. Any interest in property that the Assignee recovers;
3. Any interest in property preserved for the benefit of or ordered transferred to the Estate by any court;
4. Any interest in property that would have been property of the Estate if such interest had been an interest of the Assignor on the date of executing the Assignment, and that the Assignor acquires or becomes entitled to acquire;
5. Proceeds, product, offspring, rents, or profits of or from property of the Estate; and
6. Any interest in property that the Estate acquires after the execution of the Assignment.

A full statement of all property transferred by this Assignment setting forth a description of each item of property, together with its value and location, is attached to this Assignment as Exhibit A and incorporated by reference.

The Assignor also agrees to execute and deliver to the Assignee on demand other and additional instruments in writing as may be required to vest legal title and establish record title in and to all of the Assignor's real and personal property, or the Assignor's interest in the property, including land, mortgages, trust deeds and motor vehicles.

**C. Creditors**

The Assignor agrees to deliver immediately to the Assignee books of account showing all creditors and their addresses. A list of assignor's creditors, including the name and post office address of each creditor, the amount due over and above all defenses, the actual consideration for the debt, when the debt was contracted, and all securities and their value held by each creditor, is attached to this Assignment as Exhibit B and incorporated by reference.

**D. Directives to Financial Institutions, Employers and Others**

Assignor directs all financial or brokerage institutions, business entity, or person, that holds, controls, or maintains custody of any account or asset, or at any time, has held, controlled, managed or maintained custody of any account or asset owned by, in the name or for the benefit of Assignor, including any business in the possession or control of Assignor, any business in which Assignor holds any interest, or any business in which Assignor is an officer, director, manager or member, shall:

1. Prohibit Assignor and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such asset except as directed by the Assignee;
2. Deny Assignor and all other persons access to any safe deposit box that is titled in the name of Assignor either individually or jointly with another person or entity;
3. Provide the Assignee, within five (5) business days of receiving a copy of this Assignment, a statement setting forth:
  - a. the identification number of each and every account or asset titled in the name,

individually or jointly, of, or held on behalf of, or for the benefit of Assignor;

b. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Assignment is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted;

c. the identification of any safe deposit box that is either titled in the name of Assignor or jointly with, another person or entity or is otherwise subject to access by Assignor; and

d. upon request by the Assignee, promptly provide the Assignee with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, and all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

Assignor grants the Assignee express authority to sign as Assignee, on behalf of Assignor, any checks, bank accounts, drafts, stocks, bonds or other instruments of title and said signature shall have the same legal effect as though Assignor signed the same. Assignor directs all savings, banks or similar institutions receiving a copy of this Assignment to forthwith turnover to the Assignee, any and all contents of safety deposit boxes, owned by Assignor, in whole or together with any other individual. Assignor directs all savings, banks or similar institutions receiving a copy of this Assignment to accept the signature of the Assignee, to withdraw any and all funds Assignor has the right to withdraw from said institution with the same legal effect as though Assignor had signed.

**E. Powers of Assignee**

Assignor grants the Assignee all powers an assignee for the benefit of creditors has under statute and the common law. Assignor grants the Assignee the power to:

1. Preserve, hold and manage all assets, and perform all acts necessary to preserve the value of those assets, to prevent any loss, damage or injury;

2. Remove any officer, independent contractor, employee, or agent of Assignor, from control and management of the affairs of Assignor;
3. Prevent the withdrawal or misapplication of funds;
4. Manage and administer all aspects of Assignor by performing all acts incidental thereto that the Assignee deems appropriate, including hiring or dismissing any and all personnel or suspending operations of any business;
5. Sue for, collect, receive, and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, documents, books, records, work papers, and records of amounts, including computer-maintained information, and other papers of Assignor including documents related to customers, clients or limited partners of Assignor whose interests are now held by or under the direction, possession, custody or control of Assignor;
6. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of Assignor or to carry out his or her duties pursuant to this Assignment, including the power to commence proceedings under Title 11 of the United States Code on behalf of the Assignor;
7. Choose, engage and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Assignee deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Assignment;
8. Issue subpoenas to obtain documents and records pertaining to the Assignment, and conduct discovery in this action on behalf of the Estate;
9. Open one or more bank accounts as designated depositories for funds of Assignor The Assignee may deposit all funds of Assignor in such designated accounts and shall make all payments and disbursements from the Estate from such accounts;
10. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of that Assignor controlled, owned, or managed prior to execution of this Assignment;

11. Exert authority over, control and manage all Assets that Assignor controlled or managed as the Managing Member, Sole Member or Sole Stockholder, prior to execution of this Assignment; and

12. Make payments and disbursements from the Estate that are necessary or advisable for carrying out the directions of this Court, or exercising the authority granted by this Assignment.

#### **F. Additional Powers and Duties of the Assignee**

The Assignee must hold the property assigned in trust for the following uses and purposes and is given the following authority in connection with the property:

1. To take charge and possession of the property and to reduce the property to money as soon as it can be done wisely, prudently, and properly, using the Assignee's best judgment in selling and disposing of the property on such terms as the Assignee may see fit at a public or private sale, or to continue the business, whichever in the judgment of the Assignee is best calculated to net the best returns for the creditors;
2. To administer the trust created by this assignment to the best of the Assignee's ability. However, the Assignee is liable only for reasonable care and diligence in the administering of the trust. Furthermore, the Assignee may act through or by agents and will not be responsible for any negligence of the agents selected with reasonable care, nor will the Assignee be liable or responsible for anything done by the Assignee in good faith in the execution of this trust. Any contract or agreement made by the Assignee in connection with the trust will not be binding on the Assignee in the Assignee's personal capacity, but will bind the assigned estate and the Assignee in the Assignee's representative capacity;
3. To compromise claims, to discount bills, and to complete or refuse to complete and cancel conditional sales contracts and other contracts now in force to which the Assignor is a party;
4. To pay the creditors of the Assignor, pro rata, according to the indebtedness due to them from the Assignor, the net proceeds arising from the conduct of the business and the sale and disposal of the property, or any portion of the property, after deducting all amounts that the Assignee must at the Assignee's option pay to discharge any lien on any of the property and any indebtedness that, under the law, is entitled to priority of payment and, after paying all charges and expenses, including the Assignee's own remuneration and that of any agents or attorneys who may be employed by the Assignee, the amounts of which will be in the discretion of the Assignee;
5. To borrow money or to hypothecate, mortgage, or pledge on such terms as the Assignee may see fit all assets of the Assignor in the Assignee's possession. The

Assignee generally has power and authority to perform all acts that the Assignor could have done prior to the execution of this assignment;

6. To apply for any deposits, refunds, or claims, whenever necessary, in the name of the Assignee. This instrument constitutes a Power of Attorney from the Assignor to the Assignee to accomplish this application;

7. To have all mail matter addressed to the Assignor delivered to the Assignee on the Assignee's order; the Assignee may execute a written order to that effect; and

8. To pay the balance or surplus of the Estate, if any, to the Assignor.

#### **G. Delivery of Possession of Property to Assignee**

Assignor directs every person or entity served with a copy of this Assignment, shall deliver to the Assignee:

1. Possession and custody of all funds, assets, property, and all other assets, owned beneficially or otherwise, wherever situated of Assignor;

2. Possession and custody of documents of Assignor, including but not limited to, all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;

3. Possession and custody of all precious metals, other commodities, funds, and other assets being held by or on the behalf of Assignor;

4. All keys, computer passwords, entry codes, and combination locks necessary to gain access or to secure access to any of the assets or documents of Assignor, including by not limited to; means of communications, account, computer systems, or other property; and

5. Information identifying the accounts, employees, properties or other assets or obligations of Assignor

#### **H. Possession of Documents and Restraint on Destruction**

Assignor grants the Assignee the power to take immediate possession of and to copy: all books, records, notes, memoranda, loan documents, deeds, bills of sale, canceled checks, checks, check ledgers, calendar notes, diary notes, notes, records, books, ledgers, electronically stored data, tape recordings, and computer discs, or any other financial

documents or financial information in whatever form belonging to Assignor or any businesses owned or operated by Assignor.

**I. Restraint on Transfer of Property**

Assignor agrees that except as otherwise provided, the Assignor will not:

1. Transfer, sell, alienate, liquidate, encumber, pledge, lease, loan, assign, conceal, dissipate, convert, withdraw, or otherwise dispose of the Assets, including assets held in corporate or partnership accounts in which Assignor has an interest, and assets held outside the United States; and
2. Open or cause to be opened any safe deposit boxes titled in the name of, or subject to access by the Assignor.



ASSIGNOR: Vital pharmaceuticals, LLC

By:

Its: Member

Dated: 10/14/2013



ASSIGNEE: Frank Simon

Dated: 10/24 2013

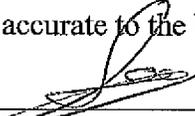
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AFFIDAVIT

STATE OF MICHIGAN

COUNTY OF Oakland

Vital Pharmacies, LLC, by and through its Member, Samar Fata, being duly sworn, deposes and says that it has entered into an Assignment for the Benefit of Creditors and that the inventories and list of creditors attached to the assignment for the benefit of creditors are true and accurate to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
ASSIGNOR:

By:

Its: Member

Dated: 10/14 2013

Subscribed and sworn to before me  
This 14 day of October, 2013

  
Notary Public,  
Oakland County, Michigan,  
My commission expires: 1/22/14

LYTANYA E. LESTER  
NOTARY PUBLIC, OAKLAND COUNTY, MI  
MY COMMISSION EXPIRES JANUARY 22, 2014  
ACTING IN Oakland COUNTY

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# Exhibit B-1

STATE OF MICHIGAN  
CIRCUIT COURT  
COUNTY OF OAKLAND

BOND OF SURETY

FILE NO.  
Hon.

IN RE:  
MICHIGAN HEMATOLOGY-ONCOLOGY, PC  
a Michigan domestic professional service corporation.

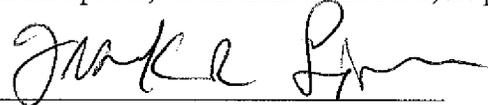
The Principle has been named as Assignee for the Benefit of Creditors of Michigan Hematology-Oncology, PC, a Michigan domestic professional service corporation, and accepts the trust of his appointment and agrees to pay: see attached Surety Bond.

The Principle agrees to:

- a. collect, care for, manage, and preserve all the property of the estate and to make and return to the court an inventory of all the goods, chattels, rights, credits, and property of the estate or trust.
- b. administer the estate according to law and to pay and discharge all debts and charges out of the estate as ordered.
- c. give an account of the administration of the estate within 1 year and at any other time when required by law, court rule, or court order.
- d. perform all court orders and to pay over the residue of the estate or trust to the proper parties as ordered.

This bond is for the prompt and faithful administration of the trust by the assignee, Frank R. Simon.

"I state that I am worth in the aggregate over and above all exemptions, encumbrances and debts, the penal sum of the attached Surety Bond."



Frank R. Simon, P54731  
Assignee  
37000 Woodward Ave., Ste. 250  
Bloomfield Hills, Michigan 48304

Subscribed and sworn to before me this 28 day of October, 2013



Notary Public, Tricia C. Mink  
Oakland County, Michigan,  
Acting in Oakland County  
My commission expires: May 27, 2020

Do not write below this line - For court use only

I have examined and approve this bond.

Date

Judge

Received for Filing Oakland County Clerk 2013 OCT 29 PM 02:40

OAKLAND COUNTY, MI CIRCUIT COURT

BOND No. 601068236

Assignment of: Frank R. Simon

For the Benefit of: Creditors of Michigan Hematology-Oncology, PC

Case: 2013-132136-CK

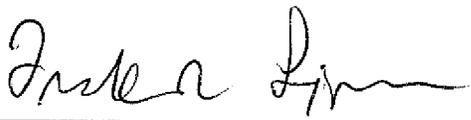
ASSIGNEE BOND

Frank R. Simon, as Principal, and West American Insurance Company, as Surety are held and firmly bound to Oakland County Circuit Court, Obligee, for the above referenced case, in the sum of One Hundred Thousand Dollars, (\$100,000.00) for payment which we bind ourselves and our successors, heirs, executors and administrators, jointly and severly.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, whereas the above named principal was appointed Assignee in the case pending in said Court, wherein debtor name is the Debtor, and the said Principal as Assignee has accepted said trust with all the duties and obligations pertaining thereunto:

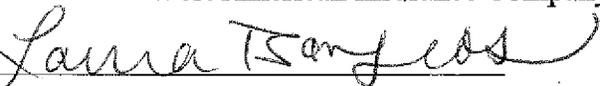
NOW, THEREFORE, if the said Assignee, shall obey such orders as said Court may make in relation to said trust, and shall faithfully and truly account for all moneys, assets and effects of the estate of said Debtor which shall come into his/her hands and possession, and shall in all respects faithfully perform all of his/her official duties as said Assignee, then this obligation to be void; otherwise, to remain in full force and virtue, however, in no event shall the penal sum of this bond exceed bond amount.

Signed, sealed and dated October 28<sup>th</sup>, 2013

By: 

Frank R. Simon, Assignee

West American Insurance Company

By: 

Laura Tsangeos, Attorney-In-Fact

Principal:

POWER OF ATTORNEY  
WEST AMERICAN INSURANCE COMPANY

Agency Name: Insurance Partners Agency, Inc.

Obligee:

Bond Number: 601068236

Know All Men by These Presents: That WEST AMERICAN INSURANCE COMPANY, an Indiana Corporation, pursuant to the authority granted by Article IV, Section 12 of the Code of Regulations and By-Laws of West American Insurance Company, do hereby nominate, constitute and appoint: John D. Hamilton, Thomas E. Hamilton, Andrew J. Yonek, John D. Swartz, Lynne McMurray, Richard M. Myers, Robert L. Volkmer, John W. Hemphill Jr, George S. Dadas, Debbie Douthiel, Christine A. Griffin, Yvonne Kinney, Linda Barrett, Brittany Pierzynski, Ann M. Nasky, Stacey M. Siciliano, Stephanie M. Harris, Victoria M. Deets, Gary E. Wirtz, Janet S. Crittle, Jeffrey C. Bentley, Laura Tsangeos, Vikki Baldwin, Mai Oswald, Peggy J. Cruun, Karen Martin of Westlake, Ohio its true and lawful agent(s) and attorney(ies)-in-fact, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all BONDS, UNDERTAKINGS, and RECOGNIZANCES, excluding, however, any bond(s) or undertaking(s) guaranteeing the payment of notes and interest thereon.

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of said Company at their administrative offices in Indianapolis, IN, in their own proper persons. The authority granted hereunder supersedes any previous authority heretofore granted the above named attorney(ies)-in-fact.

In WITNESS WHEREOF, the undersigned officer of the said West American Insurance Company has hereunto subscribed his name and affixed the Corporate Seal of said Company this 12th day of July, 2011.



STATE OF WASHINGTON  
COUNTY OF KING

Gregory W. Davenport Assistant Secretary

On this 12th day of July, 2011 before the subscriber, a Notary Public of the State of Washington, in and for the County of King, duly commissioned and qualified, came Gregory W. Davenport, Assistant Secretary of West American Insurance Company, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn deposes and says that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at the City of Seattle, State of Washington, the day and year first above written.



Notary Public in and for County of King, State of Washington  
My Commission expires December 9, 2013

This power of attorney is granted under and by authority of Article IV, Section 12 of the By-Laws of West American Insurance Company, extracts from which read:

ARTICLE IV - Officers: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bond, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary.

Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of West American Insurance Company effective on the 15th day of February, 2011:

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

CERTIFICATE

I, the undersigned Assistant Secretary of West American Insurance Company, do hereby certify that the foregoing power of attorney, the referenced By-Laws of the Company and the above resolution of their Board of Directors are true and correct copies and are in full force and effect on this date.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 28th day of October 2013



David M. Carey Assistant Secretary

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# Exhibit B-2

STATE OF MICHIGAN  
CIRCUIT COURT  
COUNTY OF OAKLAND

BOND OF SURETY

FILE NO.  
Hon.

IN RE:  
MICHIGAN RADIATION INSTITUTE, LLC  
a Michigan domestic limited liability corporation.

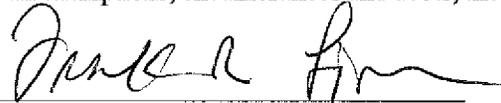
The Principle has been named as Assignee for the Benefit of Creditors of Michigan Radiation Institute, LLC, a Michigan domestic limited liability corporation, and accepts the trust of his appointment and agrees to pay: see attached Surety Bond.

The Principle agrees to:

- a. collect, care for, manage, and preserve all the property of the estate and to make and return to the court an inventory of all the goods, chattels, rights, credits, and property of the estate or trust.
- b. administer the estate according to law and to pay and discharge all debts and charges out of the estate as ordered.
- c. give an account of the administration of the estate within 1 year and at any other time when required by law, court rule, or court order.
- d. perform all court orders and to pay over the residue of the estate or trust to the proper parties as ordered.

This bond is for the prompt and faithful administration of the trust by the assignee, Frank R. Simon.

"I state that I am worth in the aggregate over and above all exemptions, encumbrances and debts, the penal sum of the attached Surety Bond."



Frank R. Simon, P54731  
Assignee  
37000 Woodward Ave., Ste. 250  
Bloomfield Hills, Michigan 48304

Subscribed and sworn to before me this 28 day of October, 2013



Notary Public, Tricia C. Mink  
Oakland County, Michigan,  
Acting in Oakland County  
My commission expires: May 27, 2020

Do not write below this line - For court use only

I have examined and approve this bond.

Date

Judge

Received for Filing Oakland County Clerk 2013 OCT 29 PM 02:40

OAKLAND COUNTY, MI CIRCUIT COURT

BOND No. 601068238

Assignment of: Frank R. Simon

For the Benefit of: Creditors of Michigan Radiation Institute, LLC

Case: 2013-132136-CK

ASSIGNEE BOND

Frank R. Simon, as Principal, and West American Insurance Company, as Surety are held and firmly bound to Oakland County Circuit Court, Oblige, for the above referenced case, in the sum of Ten Thousand Dollars (\$10,000.00) for payment which we bind ourselves and our successors, heirs, executors and administrators, jointly and severly.

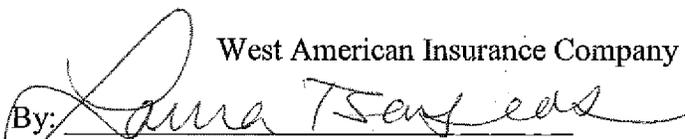
THE CONDITION OF THIS OBLIGATION IS SUCH THAT, whereas the above named principal was appointed Assignee in the case pending in said Court, wherein debtor name is the Debtor, and the said Principal as Assignee has accepted said trust with all the duties and obligations pertaining thereunto:

NOW, THEREFORE, if the said Assignee, shall obey such orders as said Court may make in relation to said trust, and shall faithfully and truly account for all moneys, assets and effects of the estate of said Debtor which shall come into his/her hands and possession, and shall in all respects faithfully perform all of his/her official duties as said Assignee, then this obligation to be void; otherwise, to remain in full force and virtue, however, in no event shall the penal sum of this bond exceed bond amount.

Signed, sealed and dated October 28<sup>th</sup>, 2013

By: 

Frank R. Simon, Assignee

By:  West American Insurance Company

Laura Tsangeos, Attorney-In-Fact

Received for Filing Oakland County Clerk 2013 OCT 29 PM 02:40

Principal:

POWER OF ATTORNEY  
WEST AMERICAN INSURANCE COMPANY

Agency Name: Insurance Partners Agency, Inc.

Obligee:

Bond Number: 601068238

Know All Men by These Presents: That WEST AMERICAN INSURANCE COMPANY, an Indiana Corporation, pursuant to the authority granted by Article IV, Section 12 of the Code of Regulations and By-Laws of West American Insurance Company, do hereby nominate, constitute and appoint: John D. Hamilton, Thomas E. Hamilton, Andrew J. Yonek, John D. Swartz, Lynne McMurray, Richard M. Myers, Robert L. Volkmer, John W. Hemphill Jr, George S. Dadas, Debbie Douthiel, Christine A. Griffin, Yvonne Kinney, Linda Barrett, Brittany Pierzynski, Ann M. Nasky, Stacey M. Siciliano, Stephanie M. Harris, Victoria M. Deets, Gary E. Wirtz, Janet S. Crittle, Jeffrey C. Bentley, Laura Tsangeos, Vikki Baldwin, Mai Oswald, Peggy J. Crum, Karen Martin of Westlake, Ohio its true and lawful agent(s) and attorney(ies)-in-fact, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all BONDS, UNDERTAKINGS, and RECOGNIZANCES, excluding, however, any bond(s) or undertaking(s) guaranteeing the payment of notes and interest thereon.

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of said Company at their administrative offices in Indianapolis, IN, in their own proper persons. The authority granted hereunder supersedes any previous authority heretofore granted the above named attorney(ies)-in-fact.

In WITNESS WHEREOF, the undersigned officer of the said West American Insurance Company has hereunto subscribed his name and affixed the Corporate Seal of said Company this 12th day of July, 2011.



STATE OF WASHINGTON  
COUNTY OF KING

Gregory W. Davenport Assistant Secretary

On this 12th day of July, 2011 before the subscriber, a Notary Public of the State of Washington, in and for the County of King, duly commissioned and qualified, came Gregory W. Davenport, Assistant Secretary of West American Insurance Company, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn deposes and says that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at the City of Seattle, State of Washington, the day and year first above written.



Notary Public in and for County of King, State of Washington  
My Commission expires December 9, 2013

This power of attorney is granted under and by authority of Article IV, Section 12 of the By-Laws of West American Insurance Company, extracts from which read:

ARTICLE IV - Officers: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bond, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary.

Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of West American Insurance Company effective on the 15<sup>th</sup> day of February, 2011:

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

CERTIFICATE

I, the undersigned Assistant Secretary of West American Insurance Company, do hereby certify that the foregoing power of attorney, the referenced By-Laws of the Company and the above resolution of their Board of Directors are true and correct copies and are in full force and effect on this date.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 28<sup>th</sup> day of October 2013



David M. Carey Assistant Secretary

Received for Filing Oakland County Clerk 2013 OCT 29 PM 02:40

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# Exhibit B-3

STATE OF MICHIGAN  
CIRCUIT COURT  
COUNTY OF OAKLAND

BOND OF SURETY

FILE NO.  
Hon.

IN RE:  
UNITED DIAGNOSTICS, PLLC  
a Michigan professional domestic limited liability corporation.

The Principle has been named as Assignee for the Benefit of Creditors of United Diagnostics, LLC, a Michigan professional domestic limited liability corporation, and accepts the trust of his appointment and agrees to pay: see attached Surety Bond.

The Principle agrees to:

- a. collect, care for, manage, and preserve all the property of the estate and to make and return to the court an inventory of all the goods, chattels, rights, credits, and property of the estate or trust.
- b. administer the estate according to law and to pay and discharge all debts and charges out of the estate as ordered.
- c. give an account of the administration of the estate within 1 year and at any other time when required by law, court rule, or court order.
- d. perform all court orders and to pay over the residue of the estate or trust to the proper parties as ordered.

This bond is for the prompt and faithful administration of the trust by the assignee, Frank R. Simon.

"I state that I am worth in the aggregate over and above all exemptions, encumbrances and debts, the penal sum of the attached Surety Bond."



Frank R. Simon, P54731  
Assignee  
37000 Woodward Ave., Ste. 250  
Bloomfield Hills, Michigan 48304

Subscribed and sworn to before me this 28 day of October, 2013



Notary Public, Tricia C. Mink  
Oakland County, Michigan,  
Acting in Oakland County  
My commission expires: May 27, 2020

Do not write below this line - For court use only

I have examined and approve this bond.

Date

Judge

OAKLAND COUNTY, MI CIRCUIT COURT

BOND No. 601068239

Assignment of: Frank R. Simon

For the Benefit of: Creditors of United Diagnostics PLLC

Case: 2013-132136-CK

ASSIGNEE BOND

Frank R. Simon, as Principal, and West American Insurance Company, as Surety are held and firmly bound to Oakland County Circuit Court, Obligee, for the above referenced case, in the sum of Ten Thousand Dollars (\$10,000.00) for payment which we bind ourselves and our successors, heirs, executors and administrators, jointly and severally.

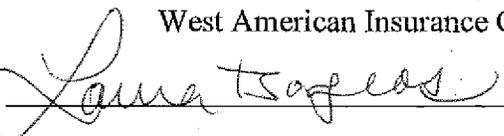
THE CONDITION OF THIS OBLIGATION IS SUCH THAT, whereas the above named principal was appointed Assignee in the case pending in said Court, wherein debtor name is the Debtor, and the said Principal as Assignee has accepted said trust with all the duties and obligations pertaining thereunto:

NOW, THEREFORE, if the said Assignee, shall obey such orders as said Court may make in relation to said trust, and shall faithfully and truly account for all moneys, assets and effects of the estate of said Debtor which shall come into his/her hands and possession, and shall in all respects faithfully perform all of his/her official duties as said Assignee, then this obligation to be void; otherwise, to remain in full force and virtue, however, in no event shall the penal sum of this bond exceed bond amount.

Signed, sealed and dated October 28<sup>th</sup>, 2013

By: 

Frank R. Simon, Assignee

West American Insurance Company  
By:   
Laura Tsangeos, Attorney-In-Fact

Received for Filing Oakland County Clerk 2013 OCT 29 PM 02:40

Received for Filing Oakland County Clerk 2013 OCT 29 PM 02:40

Principal:

POWER OF ATTORNEY  
WEST AMERICAN INSURANCE COMPANY

Agency Name: Insurance Partners Agency, Inc.

Obligee:

Bond Number: 601068239

Know All Men by These Presents: That WEST AMERICAN INSURANCE COMPANY, an Indiana Corporation, pursuant to the authority granted by Article IV, Section 12 of the Code of Regulations and By-Laws of West American Insurance Company, do hereby nominate, constitute and appoint: John D. Hamilton, Thomas E. Hamilton, Andrew J. Yonek, John D. Swartz, Lynne McMurray, Richard M. Myers, Robert L. Volkmer, John W. Hemphill Jr, George S. Dadas, Debbie Doutil, Christine A. Griffin, Yvonne Kinney, Linda Barrett, Brittany Pierzynski, Ann M. Nasky, Stacey M. Siciliano, Stephanie M. Harris, Victoria M. Deets, Gary E. Wirtz, Janet S. Crittle, Jeffrey C. Bentley, Laura Tsangeos, Vikki Baldwin, Mai Oswald, Peggy J. Crum, Karen Martin of Westlake, Ohio its true and lawful agent(s) and attorney(ies)-in-fact, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all BONDS, UNDERTAKINGS, and RECOGNIZANCES, excluding, however, any bond(s) or undertaking(s) guaranteeing the payment of notes and interest thereon.

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of said Company at their administrative offices in Indianapolis, IN, in their own proper persons. The authority granted hereunder supersedes any previous authority heretofore granted the above named attorney(ies)-in-fact.

In WITNESS WHEREOF, the undersigned officer of the said West American Insurance Company has hereunto subscribed his name and affixed the Corporate Seal of said Company this 12th day of July, 2011.



STATE OF WASHINGTON  
COUNTY OF KING

Gregory W. Davenport Assistant Secretary

On this 12th day of July, 2011 before the subscriber, a Notary Public of the State of Washington, in and for the County of King, duly commissioned and qualified, came Gregory W. Davenport, Assistant Secretary of West American Insurance Company, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn deposes and says that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at the City of Seattle, State of Washington, the day and year first above written.



Notary Public in and for County of King, State of Washington  
My Commission expires December 9, 2013

This power of attorney is granted under and by authority of Article IV, Section 12 of the By-Laws of West American Insurance Company, extracts from which read:

ARTICLE IV - Officers: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bond, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary.

Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of West American Insurance Company effective on the 15<sup>th</sup> day of February, 2011:

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

CERTIFICATE

I, the undersigned Assistant Secretary of West American Insurance Company, do hereby certify that the foregoing power of attorney, the referenced By-Laws of the Company and the above resolution of their Board of Directors are true and correct copies and are in full force and effect on this date.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 28<sup>th</sup> day of October 2013



David M. Carey Assistant Secretary

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# Exhibit B-4

STATE OF MICHIGAN  
CIRCUIT COURT  
COUNTY OF OAKLAND

BOND OF SURETY

FILE NO.  
Hon.

IN RE:  
VITAL PHARMACARE, LLC  
a Michigan domestic limited liability corporation.

The Principle has been named as Assignee for the Benefit of Creditors of Vital Pharmacare, LLC, a Michigan domestic limited liability corporation, and accepts the trust of his appointment and agrees to pay: see attached Surety Bond.

The Principle agrees to:

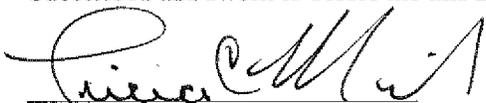
- a. collect, care for, manage, and preserve all the property of the estate and to make and return to the court an inventory of all the goods, chattels, rights, credits, and property of the estate or trust.
- b. administer the estate according to law and to pay and discharge all debts and charges out of the estate as ordered.
- c. give an account of the administration of the estate within 1 year and at any other time when required by law, court rule, or court order.
- d. perform all court orders and to pay over the residue of the estate or trust to the proper parties as ordered.

This bond is for the prompt and faithful administration of the trust by the assignee, Frank R. Simon.

"I state that I am worth in the aggregate over and above all exemptions, encumbrances and debts, the penal sum of the attached Surety Bond."

  
Frank R. Simon, P54731  
Assignee  
37000 Woodward Ave., Ste. 250  
Bloomfield Hills, Michigan 48304

Subscribed and sworn to before me this 28 day of October, 2013

  
Notary Public, Tricia C. Mink  
Oakland County, Michigan,  
Acting in Oakland County  
My commission expires: May 27, 2020

Do not write below this line - For court use only

I have examined and approve this bond.

Date

Judge

Received for Filing Oakland County Clerk 2013 OCT 29 PM 02:40

OAKLAND COUNTY, MI CIRCUIT COURT

BOND No. 601068240

Assignment of: Frank R. Simon

For the Benefit of: Creditors of Vital Pharmicare LLC

Case: 2013-132136-CK

ASSIGNEE BOND

Frank R. Simon, as Principal, and West American Insurance Company, as Surety are held and firmly bound to Oakland County Circuit Court, Obligee, for the above referenced case, in the sum of Ten Thousand Dollars (\$10,000.00) for payment which we bind ourselves and our successors, heirs, executors and administrators, jointly and severally.

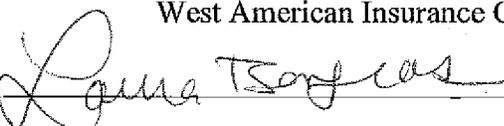
THE CONDITION OF THIS OBLIGATION IS SUCH THAT, whereas the above named principal was appointed Assignee in the case pending in said Court, wherein debtor name is the Debtor, and the said Principal as Assignee has accepted said trust with all the duties and obligations pertaining thereunto:

NOW, THEREFORE, if the said Assignee, shall obey such orders as said Court may make in relation to said trust, and shall faithfully and truly account for all moneys, assets and effects of the estate of said Debtor which shall come into his/her hands and possession, and shall in all respects faithfully perform all of his/her official duties as said Assignee, then this obligation to be void; otherwise, to remain in full force and virtue, however, in no event shall the penal sum of this bond exceed bond amount.

Signed, sealed and dated October 28<sup>th</sup>, 2013

By: 

Frank R. Simon, Assignee

West American Insurance Company  
By:   
Laura Tsangeos, Attorney-In-Fact

Received for Filing Oakland County Clerk 2013 OCT 29 PM 02:40

Principal:

POWER OF ATTORNEY  
WEST AMERICAN INSURANCE COMPANY

Agency Name: Insurance Partners Agency, Inc.

Obligee:

Bond Number: 601068240

Know All Men by These Presents: That WEST AMERICAN INSURANCE COMPANY, an Indiana Corporation, pursuant to the authority granted by Article IV, Section 12 of the Code of Regulations and By-Laws of West American Insurance Company, do hereby nominate, constitute and appoint: John D. Hamilton, Thomas E. Hamilton, Andrew J. Yonck, John D. Swartz, Lynne McMurray, Richard M. Myers, Robert L. Volkmer, John W. Hemphill Jr, George S. Dadas, Debbie Douthett, Christine A. Griffin, Yvonne Kinney, Linda Barrett, Brittany Pierzynski, Ann M. Nasky, Stacey M. Siciliano, Stephanie M. Harris, Victoria M. Deets, Gary E. Wirtz, Janet S. Crittle, Jeffrey C. Bentley, Laura Tsangeos, Vikki Baldwin, Mai Oswald, Peggy J. Crum, Karen Martin of Westlake, Ohio its true and lawful agent(s) and attorney(ies)-in-fact, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all BONDS, UNDERTAKINGS, and RECOGNIZANCES, excluding, however, any bond(s) or undertaking(s) guaranteeing the payment of notes and interest thereon.

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of said Company at their administrative offices in Indianapolis, IN, in their own proper persons. The authority granted hereunder supersedes any previous authority heretofore granted the above named attorney(ies)-in-fact.

In WITNESS WHEREOF, the undersigned officer of the said West American Insurance Company has hereunto subscribed his name and affixed the Corporate Seal of said Company this 12th day of July, 2011.



STATE OF WASHINGTON  
COUNTY OF KING

Gregory W. Davenport Assistant Secretary

On this 12th day of July, 2011 before the subscriber, a Notary Public of the State of Washington, in and for the County of King, duly commissioned and qualified, came Gregory W. Davenport, Assistant Secretary of West American Insurance Company, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn deposes and says that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at the City of Seattle, State of Washington, the day and year first above written.



Notary Public in and for County of King, State of Washington  
My Commission expires December 9, 2013

This power of attorney is granted under and by authority of Article IV, Section 12 of the By-Laws of West American Insurance Company, extracts from which read:

ARTICLE IV - Officers: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bond, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary.

Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of West American Insurance Company effective on the 15<sup>th</sup> day of February, 2011:

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

CERTIFICATE

I, the undersigned Assistant Secretary of West American Insurance Company, do hereby certify that the foregoing power of attorney, the referenced By-Laws of the Company and the above resolution of their Board of Directors are true and correct copies and are in full force and effect on this date.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 28<sup>th</sup> day of October 2013



David M. Carey Assistant Secretary

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# Exhibit C-1

Michigan Hematology-Oncology, PC - Schedule of Creditors			
Creditor		Address	Amount Owed
Estate of Robert B. Bullock #12034	Acct	Jaffe Raitt Heuer & Weiss Franklin Rd., Ste 2500, Southfield, Michigan 48034-8214	27777 \$252.47
Guardian Alarm Company 897455	Cust No.	Law Offices of Robert M. Craig & Assocs. 20800 Southfield Rd. Southfield, MI 48237	\$1,500.00
Hartford Fire Insurance Company #12101862	Acct	The Hartford P O Box 660916 Dallas, TX 75266-0916	\$8,206.00
AT & T Account titled to: Sue Dankha 188066292760	Acct	AT & T Mobility P O Box 6416 Carol Stream, IL 60197-6416	\$770.00
Rochester Hills Real Estate Holdings, LLC Lease for 1919 Starr-Batt Dr., Rochester Hills, Michigan		Rochester Hills Real Estate Holdings, LLC c/o R. Ray LeDuc 2251 N. Squirrel Road, Ste 320 Auburn Hills, Michigan 48326	\$1,744,424.64 9 years remaining on lease (9 x 12=108 months) x \$16,152.08 monthly lease rate (w/out CPI increase) = \$1,744,424.64 = Prorata share of real estate taxes & CAMS = ?
McLaren-Northern Equities Cancer Center Project, LLC Country Club Drive Farmington Hills, Michigan 48331 Lease for Great Lakes Center, Suite 201	39000	McLaren-Northern Equities Cancer Center Project, LLC 39000 Country Club Drive Farmington Hills, Michigan 48331	\$2,516,520.00 Years 5 to 15 base rent schedule = \$2,516,520.00 + prorata share of real estate taxes and CAMs = ?
Badar Ahmed MD PC Lease for 500 Perry Rd., Grand Blanc, Michigan 48439		Badar Ahmed MD PC 500 Perry Road Grand Blanc, Michigan 48439	\$15,000.00 Gross lease for one year
Raad & Nidhal Toma Lease for office space at 15300 W. 9 Mile Rd., Oak Park, Michigan		Raad & Nidhal Toma 15300 W 9 Mile Rd, Ste 1 Oak Park, Michigan 48237	\$652,800.00 34 months remain on the lease / Gross lease
Internal Medicine and Pediatrics of Bloomfield PC Lease for 1109 West Long Lake Rd., Bloomfield Twp., Michigan 48302		Internal Medicine and Pediatrics of Bloomfield PC 1109 West Long Lake Rd. Bloomfield Twp., Michigan 48302	\$0.00 Lease terminated in June 2013, was month to month
Lapeer Regional Medical Center Lease for 1295 Berry Dr., Lapeer, Michigan		Lapeer Regional Medical Center 1375 North Main Street Lapeer, Michigan 48446	\$76,843.00 Lease has one year remaining approx - don't have commencement date - Tenant shall also pay its prorata share of real estate taxes
Tri-County Medical Clinic			\$600.00 Office Rental
Absopure Water Acct 94450		Absopure Water Company Dept #921744 PO Box 701760 Plymouth, MI 48170	\$172.96
Absopure Water Acct 186346		Absopure Water Company Dept #921744 PO Box 701760 Plymouth, MI 48170	\$331.26
Absopure Water Acct 921744		Absopure Water Company Dept #921744 PO Box 701760 Plymouth, MI 48170	\$86.45
Absopure Water 937885	Acct	Absopure Water Company Dept #921744 PO Box 701760 Plymouth, MI 48170	\$21.20
Airgas USA Acct 1458853		Airgas USA, LLC 2661 N. Opdyke Rd. Auburn Hills, MI 48326-1941	\$179.48
AlphaCopy Systems, Inc Inv 77320 & 77321		Alpha Copy Systems, Inc. 30427 W 8 Mile Rd Livonia, Michigan 48152	\$268.45
American Messaging Acct Z1-289631			184.12

ASD Healthcare	ASD Healthcare PO Box 848104 Dallas, TX 75284-8104	\$37,485.00	
AT & T Acct 831-000-4219-497	AT & T PO Box 5019 Carol Stream, IL 60197-5019	\$0.00	
AT & T Acct 810-667-4226-522-4	AT & T PO Box 5019 Carol Stream, IL 60197-5019	\$2.09	
AT & T Acct 831-000-4434-204	AT & T PO Box 5019 Carol Stream, IL 60197-5019	\$65.00	
AT & T Acct 831-000-4167-542	AT & T PO Box 5019 Carol Stream, IL 60197-5019	1,963.76 CREDIT - NO PAYMENT DUE	
AT & T Acct 117525543-1	AT & T PO Box 5014 Carol Stream, IL 60197-5014	\$153.00	
AT & T Acct 831-000-4189-598	AT & T PO Box 5019 Carol Stream, IL 60197-5019	\$2.28	
AT & T Acct 810-245-7398-468-0	AT & T PO Box 5019 Carol Stream, IL 60197-5019	\$45.92	
AT & T Acct 248-844-7128-655	AT & T PO Box 5093 Carol Stream, IL 60198-5093	\$234.38	
AT & T Acct 248-844-5690-006-0	AT & T PO Box 5080 Carol Stream, IL 60197-5080	\$1,813.19	
AT & T Acct 810-667-6141-8084	AT & T PO Box 5080 Carol Stream, IL 60197-5080	\$892.63	
AT & T Acct 810-667-4226-522-4	AT & T PO Box 5080 Carol Stream, IL 60197-5080	\$1.74	
AT & T Acct 248-852-6889-243-5	AT & T PO Box 5080 Carol Stream, IL 60197-5080	\$126.27	
AT & T / U-Verse Acct ending in 8832	AT & T PO Box 5014 Carol Stream, IL 60197-5014	\$198.00	
BASIC Inv 244363, 245531 & 245516	BASIC 9246 Portage Industrial Drive Portage, MI 49024	\$659.00	
Benefit Advantage	Benefit Advantage, Inc. 3497 Auburn Rd. Auburn Hills, MI 48326	\$21,000.00	
Bill Car Signs, Inc	Bill Carr Signs, Inc. PO Box 7223 Flint, MI 48507-0223	\$1,750.55	
Biologix Direct Acct 000166190-BXD	Biologix Direct 12601 Collections Center Drive Chicago, IL 60693	\$29,959.76	
Bulldog Records Mngt	Bulldog Records Management 17000 15 Mile Road Fraser, MI 48026	\$965.00	
Canon Acct 001-0306108-001	Canon Financial Services, Inc. 14904 Collections Center Drive Chicago, IL 60693-0149	\$89.56	
Canon Acct 306108	Canon Financial Services, Inc. 14904 Collections Center Drive Chicago, IL 60693-0149	\$355.49	
Charter Business Acct 8245 12 426 0105586	Charter Communications PO Box 3019 Milwaukee, WI 53201-3019	\$147.04	
CIG Corp		\$36,265.00	
Clearview		\$4,095.00	
CloudSparks, LLC		\$975.00	

Colman-Wolf Supply Company	Colman-Wolf Supply Company 15201 East Eleven Mile Rd. Roseville, MI 48066	\$141.49	
Comcast Acct 09589 322701-01-8	ComCast 41112 Concept Drive Plymouth, MI 48170-4253	\$838.62	
Comcast Acct 09589 310668-02-2	ComCast 41112 Concept Drive Plymouth, MI 48170-4253	\$1,760.59	
Continental Linen Service Acct 30357-00000	Continental Linen Service 4200 Manchester Road Kalamazoo, MI 49001	\$506.69	
Continental Linen Service Acct 130356-00000	Continental Linen Service 4200 Manchester Road Kalamazoo, MI 49001	\$175.05	
Continental Linen Service Acct 30914-00000	Continental Linen Service 4200 Manchester Road Kalamazoo, MI 49001	\$1,054.85	
Convergent Outsourcing Collection for American Messaging Services	Convergent Outsourcing, Inc. 800 SW 39th St., PO Box 9004 Renton, WA 98057	\$384.41	
Credit Protection Association Creditor: ComCast Acct 01-009501-81075601-00	Credit Protection Association, L.P. 13355 Noel Road Dallas, TX 75240	\$480.00	
DISH Deanna Paquette (Employee)	DISH PO Box 94063 Palatine, IL 60094-4063	\$349.66	
DTE Energy Acct 5750 271 0002 4	DTE Energy PO Box 740786 Cincinnati, OH 45274-0786	\$3,277.04	
ETKIN Customer Code: fata01	ETKIN 42370 Van Dyke Road Sterling Heights, MI 48314	\$675.00	
First Communications Global Signs & Awnings Inv 308	First Communications, LLC PO Box 182854 Columbus, OH 43218-2854	\$2,301.00	
Hartford Insurance Acct 12101862	The Hartford P O Box 660916 Dallas, TX 75266-0916	\$968.00	
Health Plus Insurance Acct P29550000		\$26,427.61	
Huntington Merchant Services	Huntington Merchant Services 5251 Westheimer Road Houston, TX 77056-5404	\$279.90	
Huntington National Bank Acct 8001777939	The Huntington National Bank EA2W35 - Returns 7 Easton Oval Columbus, OH 43219-6010	\$31.74	
IC System Acct 10847833	IC System, Inc. PO Box 64808 St. Paul, MN 55164-0808	\$1,133.70	
Interstate Lock & Safe	Interstate Lock & Safe L.L.C. PO Box 2422 Farmington Hills, MI 48333	\$101.96	
Lapeer Janitorial Service, Inc Inv 4032, 4033		\$630.00	
Medical Arts Press Acct 06670916	Medical Arts Press PO Box 37647 Philadelphia, PA 19101-0647	\$226.54	
Medline Acct 1370292		\$754.67	
MedSym Solutions Acct M11148		\$3,248.93	
Mellen, Smith & Pivoz, PLC		\$4,425.00	
Merchant Services Acct ending in 8227		(\$216.00)	
MetLife Insurance		\$2,283.04	

McLaren	McLaren 39000 Country Club Drive Farmington Hills, MI 48331	\$107.06	
McKesson Acct 57306		\$126.92	
Navicure Acct TF4D119L	Navicure, Inc. 2055 Sugarloaf Circle Suite 600 Duluth, GA 30097-4363	\$2,685.58	
NBS Commercial Interiors Acct TF4D119L		\$1,890.58	
Oncology Supply Acct 92407	Oncology Suppy 2801 Horace Shepard Dr. Dothan, AL 36303	unknown	
Oncology Supply Acct 156757	Oncology Supply 2801 Horace Shepard Dr. Dothan, AL 36303	unknown	
Oncology Supply Acct 133019	Oncology Suppy 2801 Horace Shepard Dr. Dothan, AL 36303	unknown	
Payroll		unknown	
Pitney Bowes Acct. 8000-9090-0395-7821	Pitney Bowes Purchase Power PO Box 371874 Pittsburgh, PA 15250-7874	\$1,315.13	
Pitney Bowes Acct. 8000-9090-0590-4185	Pitney Bowes Global Financial Services PO Box 371887 Pittsburgh, PA 15250-7887	\$237.11	
Pitney Bowes Lease Acct No. 9982068	Pitney Bowes Global Financial Services PO Box 371887 Pittsburgh, PA 15250-7887	\$386.24	
Pitney Bowes Lease Acct No. 2320515	Pitney Bowes Global Financial Services PO Box 371887 Pittsburgh, PA 15250-7887	\$138.86	
Pro Audio Production	Pro Audio Production 3842 Sandhill Road Lansing, MI 48911	\$469.00	
Rose Pest Solutions Acct 30032930	Rose Pest Solutions PO Box 309 Troy, MI 48099	\$78.00	
Scott, Realtor Bloomfield Hills, Michigan			commission for 3 year lease
State of Michigan Withholding Taxes	Michigan Department of Treasury Lansing, Michigan 48922	\$13,115.90	
State of Michigan Unemployment Tax	State of Michigan Tax Office UIA 3024 W. Grand Blvd., Suite 11-500 Detroit, MI 48202	\$3,670.35	
Stericycle, Inc. Acct 2066020	Stericycle, Inc. 4010 Commercial Ave. Northbrook, IL 60062	\$8,218.43	
Stericycle, Inc. Acct 2223674	Stericycle, Inc. 4010 Commercial Ave. Northbrook, IL 60062	\$12,509.23	
Stericycle, Inc. Acct 2223675	Stericycle, Inc. 4010 Commercial Ave. Northbrook, IL 60062	\$1,531.11	
US Servico, Inc Inv 33400 & 33401		\$900.00	
Verizon Wireless Acct 542001840-00001	Verizon Wireless PO Box 4002 Acworth, GA 30101	\$353.01	
IRS - Payroll tax		\$38,242.65	
FUTA		\$50.94	

# Exhibit C-2

Michigan Radiation Institute LLC - Schedule of Creditors			
Creditor	Address	Amount Owed	
Absopure Water Acct 944040	Absopure Water Company Dept #921744 PO Box 701760 Plymouth, MI 48170	\$51.34	
AlphaCopy Systems, Inc Inv 77320 & 77321	Alpha Copy Systems, Inc. 30427 W 8 Mile Rd Livonia, Michigan 48152	\$58.80	
American Express Acct ending in 0-91001	American Express PO Box 297879 Ft. Lauderdale, FL 33329-7879	\$3,150.60	
AT & T Acct 127908832-8	AT & T Mobility P O Box 6416 Carol Stream, IL 60197-6416	\$233.01	
Canon Financial Services Inc Acct 641269	Canon Financial Services, Inc. 14904 Collections Center Drive Chicago, IL 60693	\$110.10	
CIG Corp		\$295.00	
CNMC Company, C/O Best Medical International Acct 2331		\$242.00	
Continental Linen Service Acct 30914-00000	Continental Linen Service 4200 Manchester Road Kalamazoo, MI 49001	\$1,308.60	
Earles, John		\$1,900.00	
HealthPlus Insurance Company Acct P286550004		\$1,941.06	
Huntington National Bank Acct 01382103019	The Huntington National Bank EA2W35 - Returns 7 Easton Oval Columbus, OH 43219-6010	\$2,890.00	
KGF Enterprises Inc		\$442.75	
Medline Industries Inc Acct 1445494		\$183.69	
Merry X-Ray/Sourceone Healthcare Inc Acct 617071797	Merry X-Ray/Sourceone Healthcare, Inc. PO Box 8004 Mentor, OH 44061-8004	\$6,664.48	
Michelle's Bio Tech Linen Services		\$992.00	
Oakland Physicians Medical Center LLC d/b/a Doctors Hospital of Michigan Lease - 461 W. Huron, Pontiac, Michigan	Oakland Physicians Medical Center, LLC 461 W. Huron St. Pontiac, Michigan 48341	\$65,127.96	12 month term / gross rent
Payroll		unknown	
Pioneer Micrographix Inc Inv 49306		\$318.75	
Premiere Electronics		\$180.00	
Princeton Billing Service Ltd Inv 1668		\$1,500.00	
Signs by Tomorrow Inv 15750		\$75.00	
State of Michigan Dept of Licensing and Regulatory Affairs		\$7,240.00	
Sue Dankha		\$123.06	
US Servico Inc Inv 33211, 33236 & 33502		\$1,684.15	
US Treasury		\$10,496.90	
IRS - payroll taxes		\$10,496.90	
FUTA taxes		\$311.10	
State of Michigan - Unemployment taxes	State of Michigan Tax Office UIA 3024 W. Grand Blvd., Suite 11-500 Detroit, MI 48202	\$1,490.14	

State of Michigan - withholding taxes	Michigan Department of Treasury	\$2,602.83		
	Lansing, Michigan 48922	\$122,110.22		

# Exhibit C-3

United Diagnostics PLLC - Schedule of Creditors			
Creditor	Address	Amount Owed	
Absopure Water Acct 942997	Absopure Water Company Dept #921744 PO Box 701760 Plymouth, MI 48170	\$156.54	
Advanced Disposal Acct V3194662	Advanced Disposal PO Box 6484 Carol Stream, IL 60197-6484	\$203.13	
Alliance - HNV PET/CT Services, LLC for siemens Biograph PET/CT system	Alliance-HVN PET/CT Services, LLC 100 Bayview Circle, Suite 400 Newport beach, CA 92660		lease for 60 months commencing in 11/2012
AlphaCopy Systems, Inc Inv 77320 & 77321	Alpha Copy Systems, Inc. 30427 W 8 Mile Rd Livonia, Michigan 48152	\$58.80	
AT & T Acct 248-852-3359-237-1	AT & T Mobility P O Box 6416 Carol Stream, IL 60197-6416	\$919.49	
AT & T Wireless Acct 188066292760	AT & T PO Box 5080 Carol Stream, IL 60197-5080	\$770.00	
Canon Financial Services Inc Acct 641087	Canon Financial Services, Inc. 14904 Collections Center Drive Chicago, IL 60693-0149	\$209.66	
CIG Corp Inv 1440		\$3,447.50	
Dickinson Wright PLLC Inv 884838	2600 W. Big Beaver Rd., Ste 300 Troy, Michigan 48084-3312	\$9,807.50	
Direct TV Acct 70522344	Direct TV PO Box 78626 Phoenix, AZ 85062-8626	\$489.53	
DTE Energy Acct 5750 271 0002 4	DTE Energy PO Box 740786 Cincinnati, OH 45274-0786	\$572.21	
EMC Computer Acct P26550002		\$977.27	
HealthPlus Insurance Company Acct P286550002		\$455.65	
John Earles & assigns Lease for 1688 Star Batt Rd., Rochester Hills, Michigan	John Earles 6300 18 Mile Rd. Sterling Heights, Michigan 48314	\$46,200.00	estimated 12 months remaining on lease, tenant also responsible for paying its share of utilities
Kevin M. Brandon Acct 2012-155		\$350.00	
Medical Arts Press Acct 07443174	Medical Arts Press PO Box 37647 Philadelphia, PA 19101-0647	\$63.59	
Medline Industries Inc Acct 1437106		\$1,122.69	
Metro Detroit Medical Waste 107		\$201.00	
Michelle's Bio Tech Linen Services 2070,2076,2089, 2095, 2114, 2121		\$449.42	
Mister Mat Rental Service Acct UD-9784199	Mister Mat Rental Service 18500 Fitzpatrick Street Detroit, MI 48228	\$82.70	
Payroll		unknown	
Peter Hamame		\$112.25	
Sue Dankha		\$1,524.29	
US Servico Inc Inv 32505, 32545 & 33487		\$1,355.70	
IRS - withholding taxes		\$186.70	
State of Michigan - withholding taxes	Michigan Department of Treasury Lansing, Michigan 48922	\$110.16	

	State of Michigan Tax Office UIA 3024 W. Grand Blvd., Suite 11-500 Detroit, MI 48202		
State of Michigan - unemployment taxes		\$69.98	
FUTA taxes		\$15.55	
		\$69,911.31	

# Exhibit C-4

Vita Pharmacare, LLC - Schedule of Creditors		
Creditor	Address	Amount Owed
American Express Business Gold Rewards card Acct ending in 0-31009	American Express PO Box 297879 Ft. Lauderdale, FL 33329-7879	\$2,971.53
ANDA Acct 106119	ANDA #28 3000 Alt Blvd. Grand Island, NY 14072	\$541.78
AT & T Acct 248-299-1701-786-0	AT & T Mobility P O Box 6416 Carol Stream, IL 60197-6416	\$413.71
Huntington National Bank Acct 132101192	Huntington Bank PO Box 1558 (EA4W92) Colombus, OH 43216	\$1,524.40
McKesson Company Acct 57306		\$126.92
MI Unemployment Insurance Agency Acct 2019305 000	State of Michigan Tax Office UIA 3024 W. Grand Blvd., Suite 11-500 Detroit, MI 48202	\$114.91
Oncology Supply Cust No. 235500	Oncology Supply P O Box 676554 Dallas, TX 75267-6554	\$199,623.28
Payroll		unknown
Pioneer RX Acct N476-430	Pioneer RX PO Box 53407 Shreveport, LA 71135-3407	\$488.35
State of Michigan - withholding taxes	Michigan Department of Treasury Lansing, Michigan 48922	\$425.45
State of Michigan - unemployment taxes	State of Michigan Tax Office UIA 3024 W. Grand Blvd., Suite 11-500 Detroit, MI 48202	\$80.83
FUTA taxes		\$12.90
IRS - withholding taxes		\$1,523.76
		\$207,847.82

# Exhibit D-1



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# Exhibit D-2

Michigan Radiation Institute, LLC - Schedule of Assets

Item	Description	Value
Furniture, fixtures and medical apparatices located at; 461 West Huron St., Pontiac, Michigan;		estimated value \$11,950.00
Cash		\$0.00
Certificate of Need		unknown

# Exhibit D-3

**United Diagnostics, LLC - Schedule of Assets**

Item	Description	Value
Furniture, fixtures and medical apparatuses located at; 1688 Star Batt, Rochester Hills, Michigan		estimated value \$1,225.00
Cash		\$0.00
Certificate of Need		unknown

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# Exhibit D-4

**Vital Pharmacare, LLC - Schedule of Assets**

<b>Item</b>	<b>Description</b>	<b>Value</b>
Furniture, fixtures and medical apparatuses located at; 1901 Star Batt, Rochester Hills, Michigan		estimated value \$0.00
Returned Medication		unknown
Cash		\$0.00

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

CRIMINAL NO. 13-CR-20600

v.

HONORABLE PAUL D. BORMAN

FARID FATA, M.D.,

VIOS: 18 U.S.C. § 1347  
18 U.S.C. § 371  
18 U.S.C. § 1425(a)  
18 U.S.C. § 982

Defendant.

SECOND SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES:

General Allegations

At all times relevant to this Indictment:

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

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DETROIT

2. Medicare was a “health care benefit program,” as defined by 18 U.S.C. § 24(b).
3. The Medicare Program included coverage under two primary components—hospital insurance (Part A) and medical insurance (Part B). Part B of the Medicare Program covered the costs of physicians’ services and other ancillary services (including testing) not covered by Part A. The claims at issue in this indictment were submitted under Part B of the Medicare Program.
4. Wisconsin Physicians Service was the CMS contracted carrier for Medicare Part B in the state of Michigan. TrustSolutions LLC was the Program Safeguard Contractor for Medicare Part B in the State of Michigan until April 24, 2012, when it was replaced by Cahaba Safeguard Administrators LLC.
5. By becoming a participating provider in Medicare, enrolled providers agreed to abide by the policies and procedures, rules, and regulations governing reimbursement. In order to receive Medicare funds, enrolled providers, together with their authorized agents, employees, and contractors, were required to abide by all the provisions of the Social Security Act, the regulations promulgated under the Act, and applicable policies and procedures, rules, and regulations, issued by CMS and its authorized agents and contractors.
6. Upon certification, the medical provider, whether a clinic or an individual, was assigned a provider identification number for billing purposes (referred to as a

PIN). When the medical provider rendered a service, the provider would submit a claim for reimbursement to the Medicare contractor/carrier that included the PIN assigned to that medical provider. When an individual medical provider was associated with a clinic, Medicare Part B required that the individual provider number associated with the clinic be placed on the claim submitted to the Medicare contractor.

7. Health care providers were given and provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations. Providers could only submit claims to Medicare for medically necessary services they rendered, and providers were required to maintain patient records to verify that the services were provided as described on the claim.

8. To receive reimbursement for a covered service from Medicare, a provider was required to submit a claim, either electronically or using a form (e.g., a Form CMS-1500 or UB-04), containing the required information appropriately identifying the provider, beneficiary, and services rendered, among other things.

9. Blue Cross and Blue Shield of Michigan (BCBSM) was a non-profit, privately operated insurance company authorized and licensed to do business in the state of Michigan.

10. BCBSM was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

11. BCBSM had agreements with participating providers to furnish medical services to patients insured by BCBSM. The agreements allowed the participating providers to bill BCBSM directly, and to be paid directly, for services provided to insured patients. BCBSM routinely issued notices to all participating providers advising them services not reasonably necessary for patient treatment would not be paid by BCBSM.

12. BCBSM required participating providers to provide a diagnostic code and a procedure code on claims in order to be paid for professional services rendered to BCBSM subscribers. Payment for services depended upon the truthful submission of specific diagnostic and procedure codes indicated on the claim. BCBSM distributed payments to participating providers electronically, by depositing money into the providers’ bank account of record, or by mailing a check to the provider's address of record.

13. Health Alliance Plan of Michigan (HAP) was a non-profit health maintenance organization authorized and licensed to do business in the state of Michigan.

14. HAP was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

15. HAP had agreements with participating providers to furnish medical services to patients who were enrolled as members. HAP's agreements with participating providers required that providers bill HAP only for covered services, which included only those that were medically necessary.

16. HAP required participating providers to provide a diagnostic code and a procedure code on claims in order to be paid for professional services rendered to HAP subscribers. Payment for services depended upon the truthful submission of specific diagnostic and procedure codes indicated on the claim. HAP distributed payments to participating providers electronically, by depositing money into the providers' bank account of record, or by mailing a check to the provider's address of record.

17. Michigan Hematology Oncology, P.C. (MHO) was a Michigan corporation, incorporated in or around April 2005, doing business at various locations in the Eastern District of Michigan, including 1901 Star Batt Drive, Suite 200, Rochester Hills, Michigan; 5680 Bow Pointe Drive, Suite 201, Clarkston, Michigan; 2520 S. Telegraph Road, Suite 107, Bloomfield Hills, Michigan; 944 Baldwin Road, Suite G, Lapeer, Michigan; 37450 Dequindre Road, Sterling Heights, Michigan; 2891 E. Maple, Suite 102, Troy, Michigan; and 15300 W. 9 Mile Road, Oak Park, Michigan. MHO was enrolled as a participating provider with Medicare, BCBSM, and HAP.

18. United Diagnostics, PLLC (United Diagnostics) was a Michigan corporation, incorporated in or around November 2012, doing business at 1688 Star Batt Drive, Rochester Hills, Michigan. United Diagnostics billed BCBSM for positron emission tomography (PET) scans.

19. Defendant FARID FATA, M.D., a resident of Oakland County, Michigan, was a Medical Doctor licensed in the State of Michigan. FARID FATA, M.D., owned and operated MHO and United Diagnostics. FARID FATA, M.D., was enrolled as a participating provider with Medicare, BCBSM, and HAP.

**COUNTS 1-17**  
**(18 U.S.C. § 1347– Health Care Fraud)**

20. Paragraphs 1 through 19 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

21. From in or around August 2007, and continuing through in or around August 2013, the exact dates being unknown to the Grand Jury, in Oakland County, in the Eastern District of Michigan, and elsewhere, the defendant, FARID FATA, M.D., 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, BCBSM,

and HAP, 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, BCBSM, and HAP in connection with the delivery of and payment for health care benefits, items, and services.

### **Purpose of the Scheme and Artifice**

22. It was a purpose of the scheme and artifice for FARID FATA, M.D., to unlawfully enrich himself through the submission of false and fraudulent claims for services that were not medically necessary.

### **The Scheme and Artifice**

23. FARID FATA, M.D., would submit or cause the submission of false and fraudulent claims to Medicare, BCBSM, and HAP for services that were not medically necessary, including claims for (a) administering chemotherapy and other cancer treatments to patients whose medical conditions did not support the treatments; (b) administering intravenous immunoglobulin therapy to patients whose medical conditions did not support the therapy; (c) administering intravenous iron treatments to patients who were not iron deficient; (d) administering antiemetic drugs to patients whose medical conditions did not support treatment; and (e) diagnostic tests, such as PET scans, for patients who did not need them.

24. From in or around August 2007, through in or around July 2013, FARID FATA, M.D., submitted and caused MHO to submit approximately \$225 million in claims to Medicare, of which approximately \$109 million was for chemotherapy or other cancer treatment drugs. Of the approximate \$225 million, Medicare paid over \$91 million, of which over \$48 million was for chemotherapy or other cancer treatment drugs.

25. FARID FATA, M.D. submitted and caused MHO to submit claims for years of medically unnecessary treatments including the following repeated and unnecessary chemotherapy and cancer drug treatments for individuals who did not, in fact, have cancer and/or did not require treatment for cancer including the following: approximately 21 chemotherapy treatments for patient W.D. between on or about May 20, 2013, and on or about July 23, 2013; approximately 25 cancer drug treatments for patient R.S. between on or about August 5, 2011 and on or about July 25, 2013; and approximately 28 chemotherapy treatments for patient J.M. between on or about December 18, 2012 and on or about May 21, 2013.

#### **Acts in Execution of the Scheme and Artifice**

26. In execution of the scheme and artifice, FARID FATA, M.D. caused the submission of the following claims to Medicare, BCBSM, and HAP for services that were not medically necessary:

<b>Count</b>	<b>Patient</b>	<b>Insurer</b>	<b>On or About Service Date</b>	<b>Description of Item Billed</b>	<b>Approximate Amount Billed</b>
1	W.D.	Medicare	5/23/13	Azacitidine (chemotherapy)	\$700
2	W.D.	Medicare	7/18/13	Azacitidine (chemotherapy)	\$700
3	W.D.	Medicare	6/26/13	Pegfilgrastim (growth factor)	\$5000
4	W.V.	Medicare	5/23/12	Ferumoxytol (iron)	\$1020
5	W.V.	Medicare	5/29/12	Ferumoxytol (iron)	\$1020
6	W.V.	Medicare	5/20/13	Ferumoxytol (iron)	\$1020
7	R.S.	BCBSM	10/6/11	Zoledronic Acid (cancer drug)	\$1120
8	R.S.	Medicare	11/15/12	Zoledronic Acid (cancer drug)	\$1120
9	M.F.	HAP	7/1/13	Bortezomib (chemotherapy)	\$2100
10	J.M.	Medicare	12/21/12	Bortezomib (chemotherapy)	\$2100
11	J.M.	Medicare	4/26/13	Bortezomib (chemotherapy)	\$2100
12	T.H.	BCBSM	7/18/13	Rituximab (monoclonal antibody)	\$8100
13	T.H.	BCBSM	6/4/13	Octagam (immunoglobulin)	\$7420
14	D.M.	BCBSM	7/22/13	Rituximab (monoclonal antibody)	\$7200
15	M.H.	Medicare	7/9/13	Rituximab (monoclonal antibody)	\$6300

16	M.H.	Medicare	11/28/11	Ferumoxytol (iron)	\$1020
17	M.C.	BCBSM	7/11/13	PET Scan	\$4573

In violation of Title 18, United States Code, Section 1347.

**COUNT 18**  
**(18 U.S.C. § 371 – Conspiracy to Pay and Receive Kickbacks)**

27. Paragraphs 1 through 19 of the General Allegations section of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

28. From in or around October 2010 and continuing through in or around August 2013, the exact dates being unknown to the Grand Jury, in Oakland County, in the Eastern District of Michigan, and elsewhere, the defendant FARID FATA, M.D. did willfully and knowingly combine, conspire, confederate and agree with others, known and unknown to the Grand Jury, to commit certain offenses against the United States, that is,

(a) to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A) by knowingly and willfully offering and paying any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the

furnishing of any item or service for which payment may be made in whole or in part by Medicare, a federal health care program as defined in Title 18, United States Code, Section 24(b); and

(b) to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A) by knowingly and willfully soliciting and receiving any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare, a federal health care program as defined in Title 18, United States Code, Section 24(b).

#### **Purpose of the Conspiracy**

29. It was a purpose of the conspiracy for defendant FARID FATA, M.D. to unlawfully enrich himself through the solicitation and receipt of kickbacks in exchange for the referral of services and arranging for the furnishing of services, including home health care services and hospice services.

#### **Manner and Means**

30. The manner and means by which the defendant sought to accomplish the purpose of the conspiracy included, among other things:

31. FARID FATA, M.D. would solicit kickback payments from providers of home health care and hospice services.

32. In exchange for such kickbacks, FARID FATA, M.D. would refer patients for home health care services and hospice services purportedly provided by these providers, who were reimbursed in whole or in part by Medicare.

**Overt Acts**

33. In furtherance of the conspiracy, and to accomplish its purposes and objects, at least one of the conspirators committed, or caused to be committed, in the Eastern District of Michigan, the following overt acts, among others:

34. On or about October 1, 2010, defendant FARID FATA, M.D. received a check in the amount of \$1,000 from Guardian Angel Home Care, Inc. with the memo line "Medical Director Hospice."

35. On or about January 1, 2011, defendant FARID FATA, M.D. received a check in the amount of \$1,000 from Guardian Angel Home Care, Inc. with the memo line "Medical Director Hospice."

36. On or about May 1, 2011, defendant FARID FATA, M.D. received a check in the amount of \$1,000 from Guardian Angel Home Care, Inc. with the memo line "Medical Director Hospice."

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

**COUNT 19**

**(Unlawful Procurement of Naturalization – 18 U.S.C. § 1425(a))**

37. Paragraphs 1 through 19 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

38. On or about March 10, 2008, FARID FATA, M.D. completed a naturalization application to become a United States citizen (Form N-400). Question 15 of Section D stated: “Have you ever committed a crime or offense for which you were not arrested?” FARID FATA, M.D. falsely checked the box for the answer “No.” In fact, as FARID FATA, M.D. then well knew, he had as of that date committed crimes of health care fraud.

39. On or about September 22, 2008, a United States Citizenship and Immigration Services officer interviewed FARID FATA, M.D. regarding his naturalization application. Under oath, FATA repeated his false answer to question 15 of Part D, again stating that he had never knowingly committed a criminal offense for which he had not been arrested.

40. On or about March 28, 2009, FATA completed a Form N-445, entitled “Notice of Naturalization Oath Ceremony.” Question 3 of that form stated: “AFTER the date you were first interviewed on your Application for Naturalization, Form N-400: . . . Have you knowingly committed any crime or

offense, for which you have not been arrested?” FATA checked the box for the answer “No” and signed the Form N-445, falsely certifying that he had committed no crime between the date of his interview with Citizenship and Immigration Services (September 22, 2008) and the date he completed the Form N-445 (March 28, 2009).

41. On or about April 2, 2009, FARID FATA, M.D. was sworn in as a United States citizen in an oath ceremony conducted by the United States District Court, Eastern District of Michigan.

42. On or about April 2, 2009, in the Eastern District of Michigan, FARID FATA, M.D., defendant herein, knowingly procured his naturalization as a United States citizen contrary to law. Defendant FARID FATA, M.D. obtained his citizenship despite having committed numerous criminal offenses, by knowingly making a false statement on his Form N-400, by knowingly making a false statement to an immigration officer, and by knowingly making a false statement on his Form N-445, each of which related to his criminal history and his Good Moral Character, and each of which omitted the fraud offenses which he had committed. All in violation of Title 18, United States Code, Section 1425(a).

**CRIMINAL FORFEITURE**  
**(18 U.S.C. § 982)**

43. The above allegations contained in this Second Superseding Indictment are incorporated by reference as if set forth fully herein for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 982.

44. As a result of the violations of 18 U.S.C. § 1347, as set forth in this Second Superseding Indictment, FARID FATA, M.D., shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violations, pursuant to 18 U.S.C. § 982(a)(7).

45. Substitute Assets: If the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property that cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek to forfeit any other property of the defendant up to the value of the forfeitable property described above.

46. Money Judgment: A sum of money in United States currency in the amount representing the total amount of proceeds obtained as a result of defendant's violations, as alleged in this Second Superseding Indictment.

THIS IS A TRUE BILL.

BARBARA L. MCQUADE  
United States Attorney

s/ GRAND JURY FOREPERSON  
GRAND JURY FOREPERSON

s/ WAYNE F. PRATT  
WAYNE F. PRATT  
Chief, Health Care Fraud Unit  
Assistant United States Attorney  
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Dated: November 20, 2013

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA

CRIMINAL NO. 13-CR-20600

v.

HONORABLE PAUL D. BORMAN

FARID FATA, M.D.,

VIOS: 18 U.S.C. § 1347

18 U.S.C. § 371

18 U.S.C. § 1425(a)

18 U.S.C. § 982

Defendant.

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**THIRD SUPERSEDING INDICTMENT**

THE GRAND JURY CHARGES:

**General Allegations**

At all times relevant to this Indictment:

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

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DETROIT

2. Medicare was a “health care benefit program,” as defined by 18 U.S.C. § 24(b).
3. The Medicare Program included coverage under two primary components—hospital insurance (Part A) and medical insurance (Part B). Part B of the Medicare Program covered the costs of physicians’ services and other ancillary services (including testing) not covered by Part A. The claims at issue in this indictment were submitted under Part B of the Medicare Program.
4. Wisconsin Physicians Service was the CMS contracted carrier for Medicare Part B in the state of Michigan. TrustSolutions LLC was the Program Safeguard Contractor for Medicare Part B in the State of Michigan until April 24, 2012, when it was replaced by Cahaba Safeguard Administrators LLC.
5. By becoming a participating provider in Medicare, enrolled providers agreed to abide by the policies and procedures, rules, and regulations governing reimbursement. In order to receive Medicare funds, enrolled providers, together with their authorized agents, employees, and contractors, were required to abide by all the provisions of the Social Security Act, the regulations promulgated under the Act, and applicable policies and procedures, rules, and regulations, issued by CMS and its authorized agents and contractors.

6. Upon certification, the medical provider, whether a clinic or an individual, was assigned a provider identification number for billing purposes (referred to as a PIN). When the medical provider rendered a service, the provider would submit a claim for reimbursement to the Medicare contractor/carrier that included the PIN assigned to that medical provider. When an individual medical provider was associated with a clinic, Medicare Part B required that the individual provider number associated with the clinic be placed on the claim submitted to the Medicare contractor.

7. Health care providers were given and provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations. Providers could only submit claims to Medicare for medically necessary services they rendered, and providers were required to maintain patient records to verify that the services were provided as described on the claim.

8. To receive reimbursement for a covered service from Medicare, a provider was required to submit a claim, either electronically or using a form (e.g., a Form CMS-1500 or UB-04), containing the required information appropriately identifying the provider, beneficiary, and services rendered, among other things.

9. Blue Cross and Blue Shield of Michigan (BCBSM) was a non-profit, privately operated insurance company authorized and licensed to do business in the state of Michigan.

10. BCBSM was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

11. BCBSM had agreements with participating providers to furnish medical services to patients insured by BCBSM. The agreements allowed the participating providers to bill BCBSM directly, and to be paid directly, for services provided to insured patients. BCBSM routinely issued notices to all participating providers advising them services not reasonably necessary for patient treatment would not be paid by BCBSM.

12. BCBSM required participating providers to provide a diagnostic code and a procedure code on claims in order to be paid for professional services rendered to BCBSM subscribers. Payment for services depended upon the truthful submission of specific diagnostic and procedure codes indicated on the claim. BCBSM distributed payments to participating providers electronically, by depositing money into the providers’ bank account of record, or by mailing a check to the provider's address of record.

13. Health Alliance Plan of Michigan (HAP) was a non-profit health maintenance organization authorized and licensed to do business in the state of Michigan.

14. HAP was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

15. HAP had agreements with participating providers to furnish medical services to patients who were enrolled as members. HAP’s agreements with participating providers required that providers bill HAP only for covered services, which included only those that were medically necessary.

16. HAP required participating providers to provide a diagnostic code and a procedure code on claims in order to be paid for professional services rendered to HAP subscribers. Payment for services depended upon the truthful submission of specific diagnostic and procedure codes indicated on the claim. HAP distributed payments to participating providers electronically, by depositing money into the providers’ bank account of record, or by mailing a check to the provider's address of record.

17. Michigan Hematology Oncology, P.C. (MHO) was a Michigan corporation, incorporated in or around April 2005, doing business at various locations in the Eastern District of Michigan, including 1901 Star Batt Drive, Suite 200, Rochester

Hills, Michigan; 5680 Bow Pointe Drive, Suite 201, Clarkston, Michigan; 2520 S. Telegraph Road, Suite 107, Bloomfield Hills, Michigan; 944 Baldwin Road, Suite G, Lapeer, Michigan; 37450 Dequindre Road, Sterling Heights, Michigan; 2891 E. Maple, Suite 102, Troy, Michigan; and 15300 W. 9 Mile Road, Oak Park, Michigan. MHO was enrolled as a participating provider with Medicare, BCBSM, HAP and Aetna.

18. United Diagnostics, PLLC (United Diagnostics) was a Michigan corporation, incorporated in or around November 2012, doing business at 1688 Star Batt Drive, Rochester Hills, Michigan. United Diagnostics billed BCBSM for positron emission tomography (PET) scans.

19. Defendant FARID FATA, M.D., a resident of Oakland County, Michigan, was a Medical Doctor licensed in the State of Michigan. FARID FATA, M.D., owned and operated MHO and United Diagnostics. FARID FATA, M.D., was enrolled as a participating provider with Medicare, BCBSM, and HAP.

**COUNTS 1-19**  
**(18 U.S.C. § 1347– Health Care Fraud)**

20. Paragraphs 1 through 19 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

21. From in or around August 2007, and continuing through in or around August 2013, the exact dates being unknown to the Grand Jury, in Oakland County, in the Eastern District of Michigan, and elsewhere, the defendant, FARID FATA, M.D., 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, BCBSM, and HAP, 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, BCBSM, and HAP in connection with the delivery of and payment for health care benefits, items, and services.

#### **Purpose of the Scheme and Artifice**

22. It was a purpose of the scheme and artifice for FARID FATA, M.D., to unlawfully enrich himself through the submission of false and fraudulent claims for services that were not medically necessary.

#### **The Scheme and Artifice**

23. FARID FATA, M.D., would submit or cause the submission of false and fraudulent claims to Medicare, BCBSM, and HAP for services that were not medically necessary, including claims for (a) administering chemotherapy and

other cancer treatments to patients whose medical conditions did not support the treatments; (b) administering intravenous immunoglobulin therapy to patients whose medical conditions did not support the therapy; (c) administering intravenous iron treatments to patients who were not iron deficient; (d) administering antiemetic drugs to patients whose medical conditions did not support treatment; and (e) diagnostic tests, such as PET scans, for patients who did not need them.

24. From in or around August 2007, through in or around July 2013, FARID FATA, M.D., submitted and caused MHO to submit approximately \$225 million in claims to Medicare, of which approximately \$109 million was for chemotherapy or other cancer treatment drugs. Of the approximate \$225 million, Medicare paid over \$91 million, of which over \$48 million was for chemotherapy or other cancer treatment drugs.

25. FARID FATA, M.D. submitted and caused MHO to submit claims for years of medically unnecessary treatments including the following repeated and unnecessary chemotherapy and cancer drug treatments for individuals who did not, in fact, have cancer and/or did not require treatment for cancer including the following: approximately 155 chemotherapy treatments for patient W.W. between on or about January 3, 2011 and or about July 1, 2013; approximately 21

chemotherapy treatments for patient W.D. between on or about May 20, 2013 and on or about July 23, 2013; approximately 25 cancer drug treatments for patient R.S. between on or about August 5, 2011 and on or about July 25, 2013; and approximately 28 chemotherapy treatments for patient J.M. between on or about December 18, 2012 and on or about May 21, 2013.

**Acts in Execution of the Scheme and Artifice**

26. In execution of the scheme and artifice, FARID FATA, M.D. caused the submission of the following claims to Medicare, BCBSM, and HAP for services that were not medically necessary:

<b>Count</b>	<b>Patient</b>	<b>Insurer</b>	<b>On or About Service Date</b>	<b>Description of Item Billed</b>	<b>Approximate Amount Billed</b>
1	W.D.	Medicare	5/23/13	Azacitidine (chemotherapy)	\$700
2	W.D.	Medicare	7/18/13	Azacitidine (chemotherapy)	\$700
3	W.D.	Medicare	6/26/13	Pegfilgrastim (growth factor)	\$5000
4	W.V.	Medicare	5/23/12	Ferumoxytol (iron)	\$1020
5	W.V.	Medicare	5/29/12	Ferumoxytol (iron)	\$1020
6	W.V.	Medicare	5/20/13	Ferumoxytol (iron)	\$1020
7	R.S.	BCBSM	11/3/11	Zoledronic Acid (cancer drug)	\$1120
8	R.S.	Medicare	11/15/12	Zoledronic Acid (cancer drug)	\$1120

9	M.F.	HAP	7/1/13	Bortezomib (chemotherapy)	\$2100
10	J.M.	Medicare	12/21/12	Bortezomib (chemotherapy)	\$2100
11	J.M.	Medicare	4/26/13	Bortezomib (chemotherapy)	\$2100
12	T.H.	BCBSM	7/18/13	Rituximab (monoclonal antibody)	\$8100
13	T.H.	BCBSM	6/4/13	Octagam (immunoglobulin)	\$7420
14	D.M.	BCBSM	7/22/13	Rituximab (monoclonal antibody)	\$7200
15	M.H.	Medicare	7/9/13	Rituximab (monoclonal antibody)	\$6300
16	M.H.	Medicare	11/28/11	Ferumoxytol (iron)	\$1020
17	M.C.	BCBSM	7/11/13	PET Scan	\$4573
18	W.W.	Aetna	2/8/13	Decitabine (chemotherapy)	\$3750
19	W.W.	Aetna	3/8/13	Decitabine (chemotherapy)	\$3750

In violation of Title 18, United States Code, Section 1347.

**COUNT 20**  
**(18 U.S.C. § 371 – Conspiracy to Pay and Receive Kickbacks)**

27. Paragraphs 1 through 19 of the General Allegations section of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

28. From in or around October 2010 and continuing through in or around August 2013, the exact dates being unknown to the Grand Jury, in Oakland County, in the Eastern District of Michigan, and elsewhere, the defendant FARID FATA, M.D. did willfully and knowingly combine, conspire, confederate and agree with others, known and unknown to the Grand Jury, to commit certain offenses against the United States, that is,

(a) to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A) by knowingly and willfully offering and paying any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare, a federal health care program as defined in Title 18, United States Code, Section 24(b); and

(b) to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A) by knowingly and willfully soliciting and receiving any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the

furnishing of any item or service for which payment may be made in whole or in part by Medicare, a federal health care program as defined in Title 18, United States Code, Section 24(b).

**Purpose of the Conspiracy**

29. It was a purpose of the conspiracy for defendant FARID FATA, M.D. to unlawfully enrich himself through the solicitation and receipt of kickbacks in exchange for the referral of services and arranging for the furnishing of services, including home health care services and hospice services.

**Manner and Means**

30. The manner and means by which the defendant sought to accomplish the purpose of the conspiracy included, among other things:

31. FARID FATA, M.D. would solicit kickback payments from providers of home health care and hospice services.

32. In exchange for such kickbacks, FARID FATA, M.D. would refer patients for home health care services and hospice services purportedly provided by these providers, who were reimbursed in whole or in part by Medicare.

**Overt Acts**

33. In furtherance of the conspiracy, and to accomplish its purposes and objects, at least one of the conspirators committed, or caused to be committed, in the Eastern District of Michigan, the following overt acts, among others:

34. On or about October 1, 2010, defendant FARID FATA, M.D. received a check in the amount of \$1,000 from Guardian Angel Home Care, Inc. with the memo line "Medical Director Hospice."

35. On or about January 1, 2011, defendant FARID FATA, M.D. received a check in the amount of \$1,000 from Guardian Angel Home Care, Inc. with the memo line "Medical Director Hospice."

36. On or about May 1, 2011, defendant FARID FATA, M.D. received a check in the amount of \$1,000 from Guardian Angel Home Care, Inc. with the memo line "Medical Director Hospice."

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

**COUNT 21**

**(Unlawful Procurement of Naturalization – 18 U.S.C. § 1425(a))**

37. Paragraphs 1 through 19 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

38. On or about March 10, 2008, FARID FATA, M.D. completed a naturalization application to become a United States citizen (Form N-400).

Question 15 of Section D stated: "Have you ever committed a crime or offense for which you were not arrested?" FARID FATA, M.D. falsely checked the box for the answer "No." In fact, as FARID FATA, M.D. then well knew, he had as of that date committed crimes of health care fraud.

39. On or about September 22, 2008, a United States Citizenship and Immigration Services officer interviewed FARID FATA, M.D. regarding his naturalization application. Under oath, FATA repeated his false answer to question 15 of Part D, again stating that he had never knowingly committed a criminal offense for which he had not been arrested.

40. On or about March 28, 2009, FATA completed a Form N-445, entitled "Notice of Naturalization Oath Ceremony." Question 3 of that form stated: "AFTER the date you were first interviewed on your Application for Naturalization, Form N-400: . . . Have you knowingly committed any crime or offense, for which you have not been arrested?" FATA checked the box for the answer "No" and signed the Form N-445, falsely certifying that he had committed no crime between the date of his interview with Citizenship and Immigration

Services (September 22, 2008) and the date he completed the Form N-445 (March 28, 2009).

41. On or about April 2, 2009, FARID FATA, M.D. was sworn in as a United States citizen in an oath ceremony conducted by the United States District Court, Eastern District of Michigan.

42. On or about April 2, 2009, in the Eastern District of Michigan, FARID FATA, M.D., defendant herein, knowingly procured his naturalization as a United States citizen contrary to law. Defendant FARID FATA, M.D. obtained his citizenship despite having committed numerous criminal offenses, by knowingly making a false statement on his Form N-400, by knowingly making a false statement to an immigration officer, and by knowingly making a false statement on his Form N-445, each of which related to his criminal history and his Good Moral Character, and each of which omitted the fraud offenses which he had committed. All in violation of Title 18, United States Code, Section 1425(a).

**CRIMINAL FORFEITURE**  
**(18 U.S.C. § 982)**

43. The above allegations contained in this Third Superseding Indictment are incorporated by reference as if set forth fully herein for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 982.

44. As a result of the violations of 18 U.S.C. § 1347, as set forth in this Third Superseding Indictment, FARID FATA, M.D., shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violations, pursuant to 18 U.S.C. § 982(a)(7).

45. Substitute Assets: If the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property that cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek to forfeit any other property of the defendant up to the value of the forfeitable property described above.

46. Money Judgment: A sum of money in United States currency in the amount representing the total amount of proceeds obtained as a result of defendant's violations, as alleged in this Third Superseding Indictment.

THIS IS A TRUE BILL.

s/GRAND JURY FOREPERSON  
GRAND JURY FOREPERSON

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United States Attorney

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Dated: December 18, 2013

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
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UNITED STATES OF AMERICA

CRIMINAL NO. 13-CR-20600

v.

HONORABLE PAUL D. BORMAN

FARID FATA, M.D.,

VIOS: 18 U.S.C. § 1347

18 U.S.C. § 371

18 U.S.C. § 1425(a)

18 U.S.C. § 1956(a)(1)(A)(i)

18 U.S.C. § 982

Defendant.

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**FOURTH SUPERSEDING INDICTMENT**

THE GRAND JURY CHARGES:

**General Allegations**

At all times relevant to this Indictment:

1. The Medicare program was a federal health care program providing benefits to persons who were over the age of 65 or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services (CMS), a federal agency under the

United State Department of Health and Human Services. Individuals who received benefits under Medicare were referred to as Medicare “beneficiaries.”

2. Medicare was a “health care benefit program,” as defined by 18 U.S.C. § 24(b).

3. The Medicare Program included coverage under two primary components—hospital insurance (Part A) and medical insurance (Part B). Part B of the Medicare Program covered the costs of physicians’ services and other ancillary services (including testing) not covered by Part A. The claims at issue in this indictment were submitted under Part B of the Medicare Program.

4. Wisconsin Physicians Service was the CMS contracted carrier for Medicare Part B in the state of Michigan. TrustSolutions LLC was the Program Safeguard Contractor for Medicare Part B in the State of Michigan until April 24, 2012, when it was replaced by Cahaba Safeguard Administrators LLC.

5. By becoming a participating provider in Medicare, enrolled providers agreed to abide by the policies and procedures, rules, and regulations governing reimbursement. In order to receive Medicare funds, enrolled providers, together with their authorized agents, employees, and contractors, were required to abide by all the provisions of the Social Security Act, the regulations promulgated under the

Act, and applicable policies and procedures, rules, and regulations, issued by CMS and its authorized agents and contractors.

6. Upon certification, the medical provider, whether a clinic or an individual, was assigned a provider identification number for billing purposes (referred to as a PIN). When the medical provider rendered a service, the provider would submit a claim for reimbursement to the Medicare contractor/carrier that included the PIN assigned to that medical provider. When an individual medical provider was associated with a clinic, Medicare Part B required that the individual provider number associated with the clinic be placed on the claim submitted to the Medicare contractor.

7. Health care providers were given and provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations. Providers could only submit claims to Medicare for medically necessary services they rendered, and providers were required to maintain patient records to verify that the services were provided as described on the claim.

8. To receive reimbursement for a covered service from Medicare, a provider was required to submit a claim, either electronically or using a form (e.g., a Form

CMS-1500 or UB-04), containing the required information appropriately identifying the provider, beneficiary, and services rendered, among other things.

9. Blue Cross and Blue Shield of Michigan (BCBSM) was a non-profit, privately operated insurance company authorized and licensed to do business in the state of Michigan.

10. BCBSM was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

11. BCBSM had agreements with participating providers to furnish medical services to patients insured by BCBSM. The agreements allowed the participating providers to bill BCBSM directly, and to be paid directly, for services provided to insured patients. BCBSM routinely issued notices to all participating providers advising them services not reasonably necessary for patient treatment would not be paid by BCBSM.

12. BCBSM required participating providers to provide a diagnostic code and a procedure code on claims in order to be paid for professional services rendered to BCBSM subscribers. Payment for services depended upon the truthful submission of specific diagnostic and procedure codes indicated on the claim. BCBSM distributed payments to participating providers electronically, by depositing money

into the providers' bank account of record, or by mailing a check to the provider's address of record.

13. Health Alliance Plan of Michigan (HAP) was a non-profit health maintenance organization authorized and licensed to do business in the state of Michigan.

14. HAP was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

15. HAP had agreements with participating providers to furnish medical services to patients who were enrolled as members. HAP's agreements with participating providers required that providers bill HAP only for covered services, which included only those that were medically necessary.

16. HAP required participating providers to provide a diagnostic code and a procedure code on claims in order to be paid for professional services rendered to HAP subscribers. Payment for services depended upon the truthful submission of specific diagnostic and procedure codes indicated on the claim. HAP distributed payments to participating providers electronically, by depositing money into the providers' bank account of record, or by mailing a check to the provider's address of record.

17. Aetna Life Insurance Company (Aetna) was an insurance company authorized and licensed to do business in the state of Michigan.
18. Aetna issued a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).
19. Aetna had agreements with participating providers to furnish medical services to patients who were enrolled as members. Aetna’s agreements with participating providers required that the provider acknowledge that they will not be paid for services that are not covered by the plan. Services that are not medically necessary are not covered by the plan.
20. Aetna required participating providers to provide a diagnostic code and a procedure code on claims in order to be paid for professional services rendered to Aetna subscribers. Payment for services depended upon the truthful submission of specific diagnostic and procedure codes indicated on the claim. Aetna distributed payments to participating providers electronically, by depositing money into the providers’ bank account of record, or by mailing a check to the provider's address of record.
21. Michigan Hematology Oncology, P.C. (MHO) was a Michigan corporation, incorporated in or around April 2005, doing business at various locations in the Eastern District of Michigan, including 1901 Star Batt Drive, Suite 200, Rochester

Hills, Michigan; 5680 Bow Pointe Drive, Suite 201, Clarkston, Michigan; 2520 S. Telegraph Road, Suite 107, Bloomfield Hills, Michigan; 944 Baldwin Road, Suite G, Lapeer, Michigan; 37450 Dequindre Road, Sterling Heights, Michigan; 2891 E. Maple, Suite 102, Troy, Michigan; and 15300 W. 9 Mile Road, Oak Park, Michigan. MHO was enrolled as a participating provider with Medicare, BCBSM, HAP and Aetna.

22. United Diagnostics, PLLC (United Diagnostics) was a Michigan corporation, incorporated in or around November 2012, doing business at 1688 Star Batt Drive, Rochester Hills, Michigan. United Diagnostics billed BCBSM for positron emission tomography (PET) scans.

23. Defendant FARID FATA, M.D., a resident of Oakland County, Michigan, was a Medical Doctor licensed in the State of Michigan. FARID FATA, M.D., owned and operated MHO and United Diagnostics. FARID FATA, M.D., was enrolled as a participating provider with Medicare, BCBSM, HAP and Aetna.

**COUNTS 1-19**  
**(18 U.S.C. § 1347– Health Care Fraud)**

24. Paragraphs 1 through 23 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

25. From in or around August 2007, and continuing through in or around August 2013, the exact dates being unknown to the Grand Jury, in Oakland County, in the Eastern District of Michigan, and elsewhere, the defendant, FARID FATA, M.D., 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, BCBSM, HAP and Aetna, 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, BCBSM, HAP and Aetna in connection with the delivery of and payment for health care benefits, items, and services.

#### **Purpose of the Scheme and Artifice**

26. It was a purpose of the scheme and artifice for FARID FATA, M.D., to unlawfully enrich himself through the submission of false and fraudulent claims for services that were not medically necessary.

#### **The Scheme and Artifice**

27. FARID FATA, M.D., would submit or cause the submission of false and fraudulent claims to Medicare, BCBSM, HAP and Aetna for services that were not medically necessary, including claims for (a) administering chemotherapy and

other cancer treatments to patients whose medical conditions did not support the treatments; (b) administering intravenous immunoglobulin therapy to patients whose medical conditions did not support the therapy; (c) administering intravenous iron treatments to patients who were not iron deficient; (d) administering antiemetic drugs to patients whose medical conditions did not support treatment; and (e) diagnostic tests, such as PET scans, for patients who did not need them.

28. From in or around August 2007, through in or around July 2013, FARID FATA, M.D., submitted and caused MHO to submit approximately \$225 million in claims to Medicare, of which approximately \$109 million was for chemotherapy or other cancer treatment drugs. Of the approximate \$225 million, Medicare paid over \$91 million, of which over \$48 million was for chemotherapy or other cancer treatment drugs.

29. FARID FATA, M.D. submitted and caused MHO to submit claims for years of medically unnecessary treatments including the following repeated and unnecessary chemotherapy and cancer drug treatments for individuals who did not, in fact, have cancer and/or did not require treatment for cancer including the following: approximately 21 chemotherapy treatments for patient W.D. between on or about May 20, 2013, and on or about July 23, 2013; approximately 25 cancer

drug treatments for patient R.S. between on or about August 5, 2011 and on or about July 25, 2013; and approximately 28 chemotherapy treatments for patient J.M. between on or about December 18, 2012 and on or about May 21, 2013.

**Acts in Execution of the Scheme and Artifice**

30. In execution of the scheme and artifice, FARID FATA, M.D. caused the submission of the following claims to Medicare, BCBSM, HAP and Aetna for services that were not medically necessary:

<b>Count</b>	<b>Patient</b>	<b>Insurer</b>	<b>On or About Service Date</b>	<b>Description of Item Billed</b>	<b>Approximate Amount Billed</b>
1	W.D.	Medicare	5/23/13	Azacitidine (chemotherapy)	\$700
2	W.D.	Medicare	7/18/13	Azacitidine (chemotherapy)	\$700
3	W.D.	Medicare	6/26/13	Pegfilgrastim (growth factor)	\$5000
4	W.V.	Medicare	5/23/12	Ferumoxytol (iron)	\$1020
5	W.V.	Medicare	5/29/12	Ferumoxytol (iron)	\$1020
6	W.V.	Medicare	5/20/13	Ferumoxytol (iron)	\$1020
7	R.S.	BCBSM	11/3/11	Zoledronic Acid (cancer drug)	\$1120
8	R.S.	Medicare	11/15/12	Zoledronic Acid (cancer drug)	\$1120
9	M.F.	HAP	7/1/13	Bortezomib (chemotherapy)	\$2100
10	J.M.	Medicare	12/21/12	Bortezomib (chemotherapy)	\$2100

11	J.M.	Medicare	4/26/13	Bortezomib (chemotherapy)	\$2100
12	T.H.	BCBSM	7/18/13	Rituximab (monoclonal antibody)	\$8100
13	T.H.	BCBSM	6/4/13	Octagam (immunoglobulin)	\$7420
14	D.M.	BCBSM	7/22/13	Rituximab (monoclonal antibody)	\$7200
15	M.H.	Medicare	7/9/13	Rituximab (monoclonal antibody)	\$6300
16	M.H.	Medicare	11/28/11	Ferumoxytol (iron)	\$1020
17	M.C.	BCBSM	7/11/13	PET Scan	\$4573
18	W.W.	Aetna	2/8/13	Decitabine (chemotherapy)	\$3750
19	W.W.	Aetna	3/8/13	Decitabine (chemotherapy)	\$3750

In violation of Title 18, United States Code, Section 1347.

**COUNT 20**

**(18 U.S.C. § 371 – Conspiracy to Pay and Receive Kickbacks)**

31. Paragraphs 1 through 23 of the General Allegations section of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

32. From in or around October 2010 and continuing through in or around August 2013, the exact dates being unknown to the Grand Jury, in Oakland County,

in the Eastern District of Michigan, and elsewhere, the defendant FARID FATA, M.D. did willfully and knowingly combine, conspire, confederate and agree with others, known and unknown to the Grand Jury, to commit certain offenses against the United States, that is,

(a) to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A) by knowingly and willfully offering and paying any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare, a federal health care program as defined in Title 18, United States Code, Section 24(b); and

(b) to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A) by knowingly and willfully soliciting and receiving any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in

whole or in part by Medicare, a federal health care program as defined in Title 18, United States Code, Section 24(b).

**Purpose of the Conspiracy**

33. It was a purpose of the conspiracy for defendant FARID FATA, M.D. to unlawfully enrich himself through the solicitation and receipt of kickbacks in exchange for the referral of services and arranging for the furnishing of services, including home health care services and hospice services.

**Manner and Means**

34. The manner and means by which the defendant sought to accomplish the purpose of the conspiracy included, among other things:

35. FARID FATA, M.D. would solicit kickback payments from providers of home health care and hospice services.

36. In exchange for such kickbacks, FARID FATA, M.D. would refer patients for home health care services and hospice services purportedly provided by these providers, who were reimbursed in whole or in part by Medicare.

**Overt Acts**

37. In furtherance of the conspiracy, and to accomplish its purposes and objects, at least one of the conspirators committed, or caused to be committed, in the Eastern District of Michigan, the following overt acts, among others:

38. On or about October 1, 2010, defendant FARID FATA, M.D. received a check in the amount of \$1,000 from Guardian Angel Home Care, Inc. with the memo line "Medical Director Hospice."

39. On or about January 1, 2011, defendant FARID FATA, M.D. received a check in the amount of \$1,000 from Guardian Angel Home Care, Inc. with the memo line "Medical Director Hospice."

40. On or about May 1, 2011, defendant FARID FATA, M.D. received a check in the amount of \$1,000 from Guardian Angel Home Care, Inc. with the memo line "Medical Director Hospice."

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

**COUNT 21**

**(Unlawful Procurement of Naturalization – 18 U.S.C. § 1425(a))**

41. Paragraphs 1 through 23 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

42. On or about March 10, 2008, FARID FATA, M.D. completed a naturalization application to become a United States citizen (Form N-400).

Question 15 of Section D stated: "Have you ever committed a crime or offense for which you were not arrested?" FARID FATA, M.D. falsely checked the box for

the answer “No.” In fact, as FARID FATA, M.D. then well knew, he had as of that date committed crimes of health care fraud.

43. On or about September 22, 2008, a United States Citizenship and Immigration Services officer interviewed FARID FATA, M.D. regarding his naturalization application. Under oath, FATA repeated his false answer to question 15 of Part D, again stating that he had never knowingly committed a criminal offense for which he had not been arrested.

44. On or about March 28, 2009, FATA completed a Form N-445, entitled “Notice of Naturalization Oath Ceremony.” Question 3 of that form stated: “AFTER the date you were first interviewed on your Application for Naturalization, Form N-400: . . . Have you knowingly committed any crime or offense, for which you have not been arrested?” FATA checked the box for the answer “No” and signed the Form N-445, falsely certifying that he had committed no crime between the date of his interview with Citizenship and Immigration Services (September 22, 2008) and the date he completed the Form N-445 (March 28, 2009).

45. On or about April 2, 2009, FARID FATA, M.D. was sworn in as a United States citizen in an oath ceremony conducted by the United States District Court, Eastern District of Michigan.

46. On or about April 2, 2009, in the Eastern District of Michigan, FARID FATA, M.D., defendant herein, knowingly procured his naturalization as a United States citizen contrary to law. Defendant FARID FATA, M.D. obtained his citizenship despite having committed numerous criminal offenses, by knowingly making a false statement on his Form N-400, by knowingly making a false statement to an immigration officer, and by knowingly making a false statement on his Form N-445, each of which related to his criminal history and his Good Moral Character, and each of which omitted the fraud offenses which he had committed. All in violation of Title 18, United States Code, Section 1425(a).

**COUNTS 22-23**  
**(Money Laundering - 18 U.S.C. § 1956(a)(1)(A)(i))**

47. On or about the dates specified as to each count below, in the Eastern District of Michigan, defendant FARID FATA, M.D. did knowingly conduct and attempt to conduct a financial transaction affecting interstate commerce, which involved the proceeds of a specified unlawful activity, that is health care fraud, with the intent to promote the carrying on of specified unlawful activity, that is health care fraud, and that while conducting and attempting to conduct such financial transaction, knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity:

Count	On or About Date	Description of Financial Transaction
22	5/03/2013	Check in the amount of \$100,000, drawn on Michigan Hematology Oncology, P.C. account at Huntington Bank, made payable to "United Diagnostics," deposited into United Diagnostics account at Huntington Bank
23	07/02/2013	Check in the amount of \$100,000, drawn on Michigan Hematology Oncology, P.C. account at Huntington Bank, made payable to "United Diagnostics," deposited into United Diagnostics account at Huntington Bank

All in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

**CRIMINAL FORFEITURE**  
**(18 U.S.C. § 982)**

48. The above allegations contained in this Fourth Superseding Indictment are incorporated by reference as if set forth fully herein for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 982.

49. As a result of the violations of 18 U.S.C. § 1347, as set forth in this Fourth Superseding Indictment, FARID FATA, M.D., shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly,

from gross proceeds traceable to the commission of such violations, pursuant to 18 U.S.C. § 982(a)(7).

50. As a result of the violation of 18 U.S.C. § 371 (Conspiracy to Pay and Receive Kickbacks in violation of 42 U.S.C. § 1320a-7b), as set forth in this Fourth Superseding Indictment, FARID FATA, M.D., shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violation, pursuant to 18 U.S.C. § 982(a)(7).

51. As a result of the violation of 18 U.S.C. § 1425(a), as set forth in this Fourth Superseding Indictment, FARID FATA, M.D., shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from or is traceable to the proceeds obtained directly or indirectly from the commission of such violation, and any property that is used to facilitate, or is intended to be used to facilitate, the commission such violation, pursuant to 18 U.S.C. § 982(a)(6).

52. As a result of the violations of 18 U.S.C. § 1956, as set forth in this Fourth Superseding Indictment, FARID FATA, M.D., shall forfeit to the United States (a) any property, real or personal, involved in such offense(s), or any property traceable to such property, and (b) any property, real or personal, which constitutes

or is derived from proceeds traceable to such offenses, pursuant to 18 U.S.C. § 982(a)(1).

53. Substitute Assets: If the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property that cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek to forfeit any other property of the defendant up to the value of the forfeitable property described above.

54. Money Judgment: A sum of money in United States currency in the amount representing (a) the total amount of proceeds obtained as a result of defendant's violations, and (b) the total amount involved in defendant's money laundering offenses, as alleged in this Fourth Superseding Indictment.

THIS IS A TRUE BILL.

s/GRAND JURY FOREPERSON  
GRAND JURY FOREPERSON

BARBARA L. MCQUADE  
United States Attorney

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Dated: January 15, 2014

No. 13-2375

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Jan 23, 2014  
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA, )  
 )  
Plaintiff-Appellee, )  
 )  
v. )  
 )  
FARID FATA, )  
 )  
Defendant-Appellant. )

O R D E R

Before: KEITH, NORRIS, and KETHLEDGE, Circuit Judges.

Defendant Farid Fata appeals the district court’s order detaining him pending trial on charges of health care fraud, conspiracy to pay and receive kickbacks, and unlawful procurement of naturalization. We unanimously agree that the facts and legal arguments are adequately presented in the briefs and record, and that the decisional process would not be significantly aided by oral argument. *See* Fed. R. App. P. 34(a)(2)(C).

A finding of fact in support of pretrial detention will not be disturbed on appeal unless clearly erroneous. *United States v. Ganier*, 468 F.3d 920, 925 (6th Cir. 2006). “[W]e consider mixed questions of law and fact—including the ultimate question whether detention is warranted—de novo.” *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010).

Initially, a magistrate judge ordered that Fata be released on a \$170,000 secured bond with conditions. The bond was later increased to \$9 million. Fata sought to modify the conditions of release by lowering the \$9 million bond. *See* 18 U.S.C. § 3142(c)(3) (“The judicial officer may at any time amend the order to impose additional or different conditions of release.”). The government

No. 13-2375

- 2 -

responded by moving to reopen the detention hearing on the ground that—in light of new evidence—no set of conditions would secure Fata’s appearance at trial. Instead of modifying the conditions of his release, the district court ordered that Fata be detained.

Pursuant to 18 U.S.C. § 3142(f), a detention hearing

may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

The grant or denial of a motion to reopen is reviewed for abuse of discretion. *United States v. Watson*, 475 F. App’x 598, 600 (6th Cir. 2012). In the present case, the new information provided by the government was of a nature that would increase the likelihood that Fata would be inclined to flee and had the means to do so. Thus, the district court did not abuse its discretion in reopening Fata’s detention hearing. And there was no error in the district court’s weighing of the evidence and the conclusion that no bond could be set that would reasonably assure Fata’s appearance.

Accordingly, the order detaining the defendant pending trial is **AFFIRMED**.

ENTERED BY ORDER OF THE COURT



---

Clerk

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 13-cr-20600

v.

Paul D. Borman  
United States District Judge

FARID FATA,

Defendant.

\_\_\_\_\_ /

ORDER DENYING DEFENDANT'S MOTION FOR CHANGE OF VENUE (ECF NO. 87)

Before the Court is Defendant's Motion for Change of Venue. (ECF No. 87.) The Government filed a Response (ECF No. 90) and Defendant filed a Reply (ECF No. 94). For the reasons stated on the record at a hearing on the motion held on June 3, 2014, the motion is DENIED at this time.

IT IS SO ORDERED.

s/Paul D. Borman \_\_\_\_\_  
PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: June 4, 2014

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 4, 2014.

s/Deborah Tofil \_\_\_\_\_  
Case Manager

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 2:13-cr-20600

Hon. Paul D. Borman

FARID FATA, M.D.,

Defendant.

---

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---

**DEFENDANT'S NOTICE OF WITHDRAWAL OF  
MOTION FOR APPOINTMENT OF COUNSEL (DOC. #95)**

Defendant, Farid Fata, M.D. ("Defendant") through his attorney Christopher A. Andreoff of Jaffe, Raitt, Heuer & Weiss, P.C. hereby withdraws his Motion for

Appointment of Counsel (Doc #95) filed on May 20, 2014. Counsel for Defendant is also requesting that the hearing set for June 12, 2014 be cancelled.

Respectfully submitted,

JAFFE, RAITT, HEUER & WEISS, P.C.

By: /s/ Christopher A. Andreoff  
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(P10193)

Dated: June 10, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2014 I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of.

/s/ Christopher A. Andreoff  
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P10193

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIM. NO. 13-20600

HON. PAUL D. BORMAN

v.

FARID FATA,

Defendant.

\_\_\_\_\_ /

ORDER ADJOURNING TRIAL  
AND FINDING OF EXCLUDABLE DELAY

This matter came before the Court at the motion hearing held on June 3, 2014.

Upon this Court's consideration of the defendant's request for adjournment, the defendant's waiver of Speedy Trial being placed on the record and the Court being apprised of the circumstances,

IT IS HEREBY ORDERED that the trial date for this case shall be adjourned from August 12, 2014 to October 21, 2014. An amended scheduling order will issue.

IT IS FURTHER ORDERED that the time period between August 12, 2014 and October 21, 2014 shall be deemed excludable delay under the provisions of the Speedy Trial Act, 18 U.S.C. §3161, because considering the factors listed in §3161(h)(7) and the reasons given by the defendant, this Court finds that the ends of justice served by this delay outweigh

the best interest of the defendant and the public in a speedy trial. *See* 18 U.S.C. §3161(h)(1) & (h)(7).

IT IS SO ORDERED.

s/Paul D. Borman  
PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: June 11, 2014

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 11, 2014.

s/Deborah Tofil  
Case Manager

*UNITED STATES v. FARID FATA*  
Victim Impact Statement (Instructions and Consent Form)

Your Name: \_\_\_\_\_

Patient's Name: \_\_\_\_\_

Relationship to Patient: \_\_\_\_\_

Contact Phone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Sentencing for Farid Fata is scheduled to begin on February 23, 2015. Prior to sentencing, Sentencing Memorandums and Victim Impact Statements will be submitted to Judge Paul Borman. The Victim Impact Statements and Memorandums are considered by the Court in determining the appropriate sentence for the defendant. Please be advised that Victim Impact Statements are not part of the public record. However, Sentencing Memorandums are public court filings and the Department of Justice may elect to reference Victim Impact Statements in its Sentencing Memorandum. Accordingly, if you write a Victim Impact Statement, please choose from the following options:

Check one:

\_\_\_\_\_ I provide consent for the Department of Justice to use my Victim Impact Statement referencing my full name

\_\_\_\_\_ I provide consent for the Department of Justice to use my Victim Impact Statement referencing my initials

\_\_\_\_\_ I provide consent for the Department of Justice to use my Victim Impact Statement anonymously

\_\_\_\_\_ I do not provide consent for my Victim Impact Statement to be referenced in the Sentencing Memorandum filed by the Department of Justice

Please be advised that Victim Impact Statements must be returned **on or before January 1, 2015** to the United States Attorney's Office for the Eastern District of Michigan:

By Mail:

Sandy Palazzolo, Victim Witness Coordinator  
U.S. Attorney's Office  
211 W. Fort Street, Suite 2001  
Detroit, MI 48226

Or By Fax to Sandy Palazzolo: (313) 226-3561

Or By E-mail to: [sandy.palazzolo@usdoj.gov](mailto:sandy.palazzolo@usdoj.gov)

Please indicate whether or not you plan to attend the sentencing hearing so appropriate accommodations can be made with the Court.

Check one:

\_\_\_\_\_ I will be present in Court during the sentencing phase beginning on February 23, 2015

Number of people attending: \_\_\_\_\_

\_\_\_\_\_ I will NOT be present in Court

Please note: If you plan on attending, please contact Sandy Palazzolo (313-226-9633) or call the Victim Information Hotline (1-888-702-0553) one day prior to the scheduled hearing to confirm the date and time has not been changed.

*UNITED STATES v. FARID FATA*  
Victim Impact Statement

Your Name: \_\_\_\_\_

Patient's Name: \_\_\_\_\_

Relationship to Patient: \_\_\_\_\_

Contact Phone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Begin your Victim Impact Statement here and attach additional sheets as necessary.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA**

**Plaintiff,**

**v.**

**No. 13-cr-20600**

**Hon. Paul D. Borman**

**FARID FATA, M.D.,**

**Defendant.**

\_\_\_\_\_ /

**The United States' Sentencing Memorandum**

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## **I. Summary of Argument**

Dr. Farid Fata (Fata) is the most egregious fraudster in the history of this country, measured not by the millions of dollars he stole but by the harm he inflicted on his victims, over 550 identified so far. Rather than healing or easing the suffering of the cancer patients and others who sought his help, Fata administered thousands of unnecessary treatments—a variety of chemical infusions and injections, all with potentially harmful and even deadly side effects—to the patients who entrusted him with their care. He did it entirely for his own benefit.

To accomplish his goal of administering and billing for expensive, unnecessary treatments, Fata had to tell lies. He had to tell thousands upon thousands of lies and perpetrate untold numbers of deceptions upon his patients, their family members, his staff, other treating physicians, insurers, and even charitable foundations seeking to assist his patients. The lies Fata told differed in many ways, but were the same in one. Fata's singular overriding purpose was to persuade, cajole, frighten and deceive his patients into accepting more injections, more infusions, more tests, and any other treatments that he could bill through his solely-owned practice, Michigan Hematology Oncology (MHO) and its infusion centers, opened in 2005, and later his pharmacy Vital Pharmacare (Vital) and diagnostic testing facility, United Diagnostics, both opened in 2013. The longer Fata kept his

patients in his infusion chairs, the more money he made. To Fata, patients were not people. They were profit centers.

The investigation and prosecution of Fata turned up patterns to his lies and deceptions, across his patient population. Some of the lies and deceptions Fata used to accomplish his scheme included:

Chemotherapy and Supportive Therapies (MHO)

- Fata deliberately misdiagnosed patients with multiple myeloma in order to administer and bill unnecessary chemotherapy at MHO.
- Fata administered chemotherapy to patients whose pre-leukemic condition myelodysplastic syndrome (MDS) required, at most, observation in order to bill chemotherapy through MHO.
- Fata lied to patients about the availability of alternative treatments, including cures like stem cell transplants, to keep them on chemotherapy he could bill through MHO.
- Fata told patients with any type and at any stage of cancer, including Stage IV cancer patients with dire prognoses, that they had a 70% chance or greater of remission to give them “hope” so they would take chemotherapy billed through MHO.
- Fata administered chemotherapy to patients with Acute Myeloid Leukemia (AML) in the outpatient setting at MHO when it should have been administered in a hospital both for safety and effectiveness.
- Fata ordered infusion times increased beyond what was medically necessary or advisable purely to increase his reimbursement through MHO.

- Fata ordered the administration of redundant, unnecessary doses of anti-nausea medications accompanying chemotherapy, often causing painful constipation and other side effects in order to bill them through MHO.
- Fata ordered medically unnecessary human growth factors to stimulate white and red blood cell growth in order to bill them through MHO.
- Fata ordered Zometa, a supportive medication to treat symptoms of cancer that affects bones, for a patient who did not have cancer, causing all of his teeth to fall out, a known side effect of Zometa.
- Fata told patients who were in remission from cancer that they needed medically unnecessary “maintenance” Rituximab treatments (a monoclonal antibody infusion) so that they would not relapse in order to administer and bill those treatments at MHO. He concocted a “European” or “French protocol” to support these unnecessary treatments, and even provided to the government falsified documents to support this fake study.

#### Home Health Care and Hospice (Guardian Angel)

- Fata directed his staff to send referrals and forced his patients to receive care from Guardian Angel home health care and hospice care, a company that was paying him kickbacks. Patients and staff report that Guardian Angel’s care was often substandard, at best.

#### Other Unnecessary Infusions: Rituximab, Iron, IVIG, Hydration (MHO)

- Fata also administered Rituximab to patients who purportedly had a condition known as ITP (idiopathic thrombocytopenia purpura), when in fact they either did not have ITP or had recovered from it in order to bill it through MHO.
- Fata told patients that they had iron-deficient anemia in order to bill and administer unnecessary iron infusions at MHO (1) where they did not have iron deficiency (2) and even if they did, oral iron is the safer, more appropriate initial treatment (3) and where the infusions caused many to

reach dangerous levels of iron, otherwise known as iron overload (4) which he sometimes remedied by alternating iron infusions with phlebotomies, i.e., removing blood to reduce iron.

- Fata ordered medically unnecessary intravenous immunoglobulin (IVIG) treatments in order to administer and bill it through MHO.
- Fata ordered hydration for patients not suffering from dehydration, which can and did cause complications such as atrial flutter, *i.e.*, heart arrhythmia, in order to bill infusion time through MHO.

#### Pharmacy (Vital)

- Fata ordered all medications, particularly oral chemotherapy medications, be dispensed through his pharmacy Vital even though it was often understocked and patients had to wait days for their medications and travel to his business rather than go to a pharmacy near their homes.

#### Diagnostic Testing (United Diagnostics)

- Fata ordered medically unnecessary PET scans—a cancer detection test—in order to bill them through United Diagnostics. When his new facility was not ready to open on time, he lied, rescheduled and delayed the tests (both necessary and unnecessary), telling patients that they must or should wait for a variety of reasons including (1) their insurer would not cover it at another location; (2) his PET scan machine was better; and (3) it did not matter if they waited months for this cancer test.

In addition to these lies, Fata employed a number of tactics to maintain control over his patients and their care, including controlling access to patients' files and remaining on call even when other doctors were rounding on his hospitalized patients. At times, Fata bullied, berated and browbeat patients who

dared to question his treatment, telling them they risked death without him or in the case of a patient who could not afford copays, “It’s your life or your money.”

Fata’s crimes demand a sentence commensurate with the momentous suffering he inflicted: a life sentence or statutory maximum of 175 years.

## **II. Factual Background**

### **A. Fata’s Background**

#### **1. Medical Training**

Farid Fata is originally from Lebanon, where he obtained a medical degree in 1992. He immigrated to the United States thereafter and was a resident at Maimonides Medical Center in Brooklyn from 1993-96. Following his residency, he began a hematology-oncology fellowship at Memorial Sloan Kettering Cancer Center in New York that he completed in 1999. In 2000, he began working as an attending physician at Geisinger Medical Center in Danville, Pennsylvania.

#### **2. MHO**

In 2005, Fata incorporated MHO, his solely owned practice, located at 543 N. Main Street in Rochester Hills. As of August 2013, MHO had grown to seven locations in Rochester Hills, Clarkston, Bloomfield Hills, Lapeer, Sterling Heights, Troy and Oak Park.

Fata's original practice on Main Street was a small, single physician office. By his arrest, MHO had 16,000 historical patients and 1,700 current patients, the vast majority of whom were Fata's. Fata accomplished this astonishing growth by a number of means. Numerous employees report (and records confirm) he was seeing as many as 50-60 patients per day, scheduled in 8 minute increments. Fata employed non-licensed physicians with medical degrees from foreign countries to work them up before he saw them for 5-10 minutes, billing at the two highest levels for office visits. Patients waited for hours at a time before they were seen.

Even at the Main Street office, Fata had a plan. He told an oncology supply company representative supplying most of his drugs he wanted to compete with large practices. Fata's orders skyrocketed in only a year to over \$7 million, then \$16 million. At times, he ordered in bulk at the ends of quarters to reach the threshold for contractual discounts. Over time, Fata's buying noticeably outstripped his peers, particularly for Neulasta (Count 3), Feraheme (Counts 4, 5, 6, 16), and Aloxi (an overused anti-nausea medication included in the amount of loss as relevant conduct). What should have lasted him a quarter was gone in six weeks. An average doctor in an oncology practice purchases approximately \$1.5 million of drugs in a given year; by Fata's arrest, MHO was purchasing \$45 million for only three doctors.

### **3. Other Fata Businesses and Charity**

In addition, Fata expanded his businesses to include (1) a radiation treatment center, Michigan Radiation Institute (MRI), (2) an in-house pharmacy at MHO's Rochester Hills location, Vital Pharmacare (Vital), and (3) a diagnostic testing facility, United Diagnostics. He also created and controlled a charity located at MHO and staffed by social workers and grant writers, Swan for Life.

#### **B. Fata's Cancer Misdiagnoses, Mistreatment and Overtreatment**

The government's evidence of Fata's mistreatments comes from numerous sources: patients, second opinion doctors for the patients, employees and experts. The two experts employed by the government, Dr. David Steensma and Dr. Dan Longo, are Harvard Medical School professors, as well as practicing hematologist-oncologists at Dana-Farber Cancer Institute. Both have noted that Fata defaulted to more costly treatments over the medically correct treatments.

#### **1. Chemotherapy Given to Deliberately Misdiagnosed Multiple Myeloma Patients [Counts 9, 10, 11—Guilty Pleas]**

Fata admitted he deliberately misdiagnosed M.F. [Count 9] and J.M. [Counts 10, 11] with multiple myeloma, a plasma cell cancer so he could administer Velcade, a chemotherapy. Additional Medicare patients misdiagnosed with multiple myeloma were identified through expert patient file review.

M.F. and J.M. did not have cancer. Rather, they each had a positive M protein test, which is known as monoclonal gammopathy of undetermined significance (MGUS), a pre-cancerous condition that carries a risk of evolving into cancer, most commonly multiple myeloma. Approximately 3% of individuals over the age of 50 have MGUS and 5-7% over the age of 70 have MGUS. In the majority of individuals, MGUS will not progress into cancer: only in approximately 1% of MGUS patients per year. *Id.* MGUS should generally be observed, not treated.

Proper diagnosis and treatment of multiple myeloma, smoldering myeloma and MGUS is as follows:

<b>Diagnosing Multiple Myeloma</b>	
<b>MGUS</b> (Observe, treat in less than 5% of cases)	1. M protein present
<b>Smoldering Myeloma</b> (Observe, treat in less than 5% of cases)	1. M protein present 2. Over 10% plasma cells in bone marrow
<b>Multiple Myeloma</b> (Treat)	1. M protein present 2. Over 10% plasma cells in bone marrow 3. One of four “CRAB criteria” present: high calcium; renal insufficiency; anemia; or bony lesions

Neither M.F. nor J.M. even had smoldering myeloma: M.F. had 1% plasma cells, and J.M. had less than 10% in every bone marrow biopsy result.

Nevertheless, Fata began chemotherapy.

Fata initially lied and told M.F. she had 5% plasma cells; he then lied again by telling her she had smoldering myeloma. Later, he said she had 7% plasma cells (another lie) calling his treatment preventative because he was catching her cancer early. Fata's lies were uncovered when M.F. broke her leg and was admitted to Crittendon hospital on July 1, 2013. While in the hospital, she first learned that a pre-operative bone marrow biopsy did not show any indication of cancer. *Id.* Then, one of Fata's employees, Dr. Soe Tin Maunglay, reviewed M.F.'s records while rounding at Crittendon, and told M.F. not only that she did not have cancer but to "run" from Fata. Because of Dr. Maunglay's intervention, M.F. received only one dose of Velcade on July 1, 2013 [Count 9].

Patient J.M.'s false diagnosis and unnecessary treatment were not discovered or stopped until after Fata's arrest. J.M., a 33 year military veteran, received approximately 28 unnecessary Velcade treatments between December 2012 and May 2013, including one on December 21, 2012 [Count 10] and one on April 26, 2013 [Count 11]. Before starting chemotherapy, J.M. was in good health, walking two miles, three times a week and regularly bowling. After starting chemotherapy, J.M.'s health deteriorated significantly, resulting in at least ten hospitalizations for congestive heart failure (a known side effect of Velcade), kidney dysfunction and blood clots. J.M.'s current treating doctor believes Velcade may have contributed

to his congestive heart failure. His heart functions at 25% of its capacity and he uses a walker.

Fata's deliberate misdiagnosis of multiple myeloma stretches back years with the earliest confirmed instance occurring in 2006. Fata administered Velcade to Maggie Dorsey, a patient with MGUS, who later got a second opinion and sued him. According to patient file notes Fata created (found on his home computer), (1) Fata told Dorsey her diagnosis was unclear; (2) Dorsey and her husband insisted on chemotherapy, (3) Dorsey and her husband insisted on continuing it after she suffered from side effects over Fata's objections, and (3) Fata eventually stopped the chemotherapy over their wishes. He repeated this version of events in a deposition. Dorsey and her husband vigorously deny Fata's version, stating that Fata told Dorsey she had multiple myeloma and treated her with chemotherapy until she found a second opinion. Fata settled the lawsuit with Dorsey in January 2009.

Dorsey, like J.M., continues to suffer numerous aftereffects from the unnecessary Velcade, including severe osteoporosis and painful neuropathy. . I am on lots of medicine and even with all that I take; it only takes the edge off just enough to keep me from going insane or crying incessantly . . . I didn't deserve to end up like this even though I am still alive with love & many thanks, some days

when the pain is too great I close my eyes longing for the relief of heaven . . .”

Maggie Dorsey VIS. Another patient reporting unnecessary treatment for smoldering myeloma, including oral chemotherapy (Revlimid), IVIG (Octagam), iron and Neulasta states that “the things that are wrong with [me] now are related to the unnecessary chemo treatment. I am now weak . . . I have constant bone and muscle pain . . . I was very active before this and now I cant do the things I was able to prior to treatment.” Doris Gilley VIS.<sup>1</sup>

**2. Unnecessary Zometa Given to Deliberately Misdiagnosed Multiple Myeloma Patient [Counts 7, 8—No Plea/Relevant Conduct Stipulation]**

Fata administered unnecessary Zometa, an expensive cancer supportive medication for bones, to Robert Sobieray based on false diagnoses of multiple myeloma and metastatic bone cancer. Despite not pleading to these counts, he has stipulated that the government can prove the conduct by a preponderance for purposes of the loss amount.

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<sup>1</sup> Each Victim Impact Statement submitted to the U.S. Attorney’s Office included a consent form regarding the publication of portions of the Victim Impact Statement. The consent form requested the writer to indicate whether their full names could be used, only their initials, or neither. The government includes in this sentencing memorandum only the level of identification permitted by each of the writers.

Sobieray had a test in November 2010 showing a minor M protein (the protein present when a patient has MGUS), although the M protein disappeared from all subsequent tests. The M protein's presence was likely due to an inflammation. Sobieray did not even have MGUS much less multiple myeloma or any other cancer. Nevertheless, Fata began him on a regimen of Zometa, a drug approved for patients with active myeloma, intended to support patients with weakened bones. Fata wrote a letter saying Sobieray had both myeloma and metastatic bone cancer (cancer that originated elsewhere and migrated to the bone marrow) and would need to be on Zometa for the rest of his life. There was no medical support for these diagnoses.

The most well-known and feared side effect of Zometa (as described in the manufacturer's label) is osteonecrosis of the jaw—death of the jaw bone. Zometa should be stopped if necrosis occurs. After starting Zometa, Sobieray's teeth began to hurt. When he asked Fata if it was due to the Zometa, Fata told him no. Sobieray continued on the treatment for over two years during which he received approximately 25 doses of Zometa, including on November 3, 2011 [Count 7] and November 15, 2012 [Count 8].

All but two of Sobieray's teeth have fallen out and he cannot afford to have them replaced. Not only his teeth, but also the roots have fallen out and the

necrosis (death) of the jaw bone left a hole in his gums from his mouth to his sinuses that surgeons had to cover with a piece of skin from his cheek pulled over the hole. Sobieray lost his job, and experiences extreme ongoing pain, taking daily morphine and Oxycontin. He says, “I have terrible dreams of what I look like to people who don’t know me because of no teeth.” Sobieray VIS.

Other patients and family members report unnecessary Zometa treatments:

- “An oral surgeon refused to touch my father because of the high chance my dad could have “osteonecrosis” (bone death) of the jaw with the slightest dental work. Meaning: so much as pulling a tooth or filling a cavity could cause his jaw to start melting away like wet plaster, a side effect of this drug.” Ellen Piligian VIS, Daughter of Patient.
- “[Fata] gave me Zometa infusions to strengthen my bones . . . My bone density was fine. I never needed to receive the Zometa!” Patient Melissa Ann Kloc VIS.

### **3. Mistreatment of Lymphoma Patients in Remission and Non-Cancer Patients with Rituximab [Count 12, 14, 15—Guilty Pleas + Relevant Conduct Stipulation]**

Fata invented “maintenance” regimens so he could administer unnecessary Rituximab (Rituxan), a monoclonal antibody used in the treatment of, among other things, certain lymphomas and certain blood disorders. Appropriately administered, rituximab can increase the effectiveness of chemotherapy for certain diseases, such as diffuse large B cell lymphoma. It is also a second or third-line treatment for idiopathic thrombocytopenic purpura (ITP), a non-cancerous

autoimmune condition. Unnecessary rituximab poses multiple risks, as it is a powerful immunosuppressant that increases risk of infections and reactivation of latent viruses. One significant, if rare, risk associated with rituximab is Progressive Multifocal Leukoencephalopathy (“PML”), a generally fatal disease of the nervous system caused by reactivation of a latent infection. Fata ignored these risks, for instance, by inappropriately administering it to a patient with Hepatitis C.

The three examples to which Fata pleaded guilty in the indictment represent the spectrum of unnecessary rituximab administrations he ordered: in July 2012, D.M. received medically necessary and appropriate rituximab to treat his diffuse large B cell lymphoma. After D.M. successfully entered remission in August 2012, Fata continued to administer rituximab six weeks on/six weeks off, totaling 23 doses over the next year, including one on July 22, 2013 [Count 14], none of which were medically necessary. Fata referred to this administration of rituximab as “maintenance” and told D.M. that without two years of rituximab, his lymphoma could return. There are no medical studies to support rituximab’s use as maintenance therapy for diffuse large B cell lymphoma. Fata also told D.M. that his remission made him a “miracle” patient. In fact, the chemotherapy regimen that Fata used to treat D.M.’s cancer through July 2012 is a highly effective therapy that results in remission for most patients.

M.H. initially received rituximab appropriately as part of her treatment for ITP.<sup>2</sup> The treatment saved her life. However, after her ITP successfully resolved in February 2010, Fata continued to administer rituximab to M.H. on a six weeks/six weeks off schedule, totaling 76 doses over more than three years, including one on July 9, 2013 [Count 15]. Not one of the 76 infusions was medically necessary.

Fata diagnosed patient Teddy T.H. with ITP and began administering rituximab to him in early 2012. In fact, T.H. never responded to the rituximab and, in fact, actually had liver cirrhosis. *Id.* Rather than cease this ineffective treatment, Fata continued to administer the medically unnecessary rituximab for over a year, totaling 12 doses, including one on July 18, 2013 [Count 12]. When T.H. could not afford the expensive co-pays for his rituximab treatments, Fata's office assisted him in applying to a foundation that helps patients like him. Upon discovering that the foundation did not have grant money for patients with T.H.'s diagnosis (ITP), *id.*, Fata changed the diagnosis to lymphoma for purposes of obtaining the grant money only. T.H. has never heard of lymphoma nor did Fata ever diagnose him—in his patient file or through insurance billing—as having lymphoma. This

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<sup>2</sup> Even medically appropriate treatments were marred by Fata's greed. M.H.'s first rituximab dose came while she was hospitalized due to severely low platelet levels. Fata claimed to be unhappy with how the hospital administered rituximab, and yelled at M.H.'s husband to have her discharged and brought to MHO the same day for treatment (that he could bill).

additional lie was solely to obtain additional funds from a charitable organization intended to assist needy patients in receiving necessary medical treatments.

D.M., M.H. and T.H. were not taken off rituximab until Fata was arrested and they went to new physicians. In 2014, T.H. received a liver transplant for his real condition, liver cirrhosis.

Multiple MHO nurses and doctors confronted Fata about his overuse of rituximab, particularly the six weeks on/six week off regimen resulting in 52 doses over the course of two years. Fata repeatedly told the suspicious medical professionals (and patients) that he followed a “European” or “French” protocol, which they could never locate through their own research. The “French protocol” does not exist.

Months after Fata was indicted, his attorneys produced to the government, pursuant to a reciprocal discovery request, papers purporting to reflect a medical study under Bon Secours Cottage Health Services in Grosse Pointe, Michigan with the six weeks on/six weeks off protocol. No explanation was given for how it is European. Dr. Donald Bignotti, who purportedly approved the study in a letter dated May 25, 2005, was interviewed and reported the following:

- Dr. Bignotti had no memory of approving a rituximab study or Fata being part of any study at Bon Secours.
- Dr. Bignotti had no memory of the approval letter.

- Fata’s purported approval letter was dated after Dr Bignotti had left Bon Secours Hospital.
- In official documents such as a letter approving a medical study, Dr. Bignotti would have (1) listed his middle initial, which was missing from this letter and (2) used a formal signature, which the letter did not have.
- The language of the approval letter was not the language Dr. Bignotti would have used, and he would have included additional information such as approval date and a due date for the project.

Furthermore, when shown a “Rituximab Maintenance Protocol” dated January 2006, Dr. Bignotti could not understand how the study could have been approved in May 2005 before the proposal was written and submitted. In other words, Fata fabricated and forged an entire medical study to cover up, after the fact, for his unnecessary rituximab treatments.<sup>3</sup>

Victims of Fata’s fake rituximab (Rituxan) “French protocol” report physical and psychological devastation in its wake:

- “I was also given rituxan treatments six weeks on six weeks off for two years that totaled around 52 treatments that I should have never had. They say the rituxan destroys your immune system. When I contacted the NCI they told me that no one should ever receive back to back rituxan treatments and no more than sixteen treatments in a one year period . . . All the hours of waiting in his office to see him for five minutes . . Now my bones hurt all the time I’m sick all winter long because I can’t even

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<sup>3</sup> Although the government did not seek and Probation did not apply it, the government notes this conduct arguably falls within the Section 3C1.1 obstruction enhancement.

fight off a cold . . . I have problems with my hands and wrist they hurt all the time.” Patient Tim Parkin Sr. VIS.

- “I was also told that they have no idea as to what effects this will have on me as no one has had this much retuxan. I live in fear every day no knowing what, when or how my organs will fail.” Diane Molitoris VIS.

**4. Mistreated and Overtreated Pre-Leukemic Myelodysplastic Syndrome (MDS) Patients [Counts 1, 2, 18, 19—No Plea/Relevant Conduct Stipulation]**

Fata diagnosed numerous patients with myelodysplastic syndrome (MDS) who either did not have it or did not need treatment so he could administer and bill for medically unnecessary chemotherapies called Vidaza (injection) and Dacogen (intravenous). While he did not plead guilty to Counts 1, 2, 18 and 19, he has stipulated to the amount of loss related to these examples of MDS mistreatment as well as others.

MDS is a pre-leukemic condition in which bone marrow fails to produce adequate amounts of healthy blood cells. The patient’s prognosis is assessed using a scoring system that divides MDS patients into four risk groups, further grouped as “lower risk MDS” and “higher risk MDS.” Many patients in the lower risk MDS groups can be observed and not treated. Studies show generally no established benefit from early initiation of treatment,. and, in fact, recent studies show that premature initiation may actually be detrimental. For higher risk MDS patients, the first key decision is whether the patient should receive a stem cell transplant, the

only known cure for MDS. Stem cell transplant candidates should receive one as soon as it can be arranged. They may receive Vidaza or Dacogen as a bridge therapy while awaiting a transplant.

The two patients whose treatment forms the basis of Counts 1, 2, 18 and 19 of the indictment were low risk MDS patients with no indications for treatment:

W.W. came to Fata as a lower risk MDS patient. He was observed for a time, however, Fata ordered him started on Dacogen on July 14, 2010 despite no apparent change in his condition. Fata ordered 155 doses of Dacogen over the next three years even though W.W. never having exhibited features of higher-risk MDS. Fata had no medical justification for beginning the Dacogen and certainly not for continuing it for three years thereafter.

Fata initially told W.W. that his prognosis was one to two years. After two years, Fata upgraded his prognosis to five years, telling him the chemotherapy was for life. W.W. independently researched and discovered stem cell transplants, the only cure for MDS. When he asked Fata about them, Fata lied and told W.W. he was too old because he was over 50.

After Fata's arrest, W.W. was initially taken off of Dacogen, but later went into decline, which his physicians believe may have been due to the unnecessary chemotherapy. With his condition in decline, W.W.'s new treating physician

assessed him and determined he was an “outstanding transplant candidate” and well within the appropriate age range. Unusually, W.W. has a perfect match donor: his fraternal twin brother. W.W. received a stem cell transplant from his brother in 2014.

W.D. was a low risk patient with CMML (chronic myelomonocytic leukemia), which is an overlap syndrome with features of MDS such as bone marrow failure and chromosomal abnormalities. His tests showed that he was a low risk patient with CMML, and observation would have been appropriate. However, W.D. was started on medically unnecessary Vidaza, received 21 injections of Vidaza from May through July 2013, including on May 23, 2013 [Count 1] and July 18, 2013 [Count 2]. Fata told W.D. he would need chemotherapy for the rest of his life. W.D.’s new physician stopped treatment after Fata’s arrest and he is currently on observation.

Dr. Steensma, the government’s expert, has identified numerous problems with Fata’s treatment of multiple other MDS patients, including:

- Patients who were treated with Vidaza and Dacogen when in fact they had myelofibrosis for which the indicated treatment is a less costly oral medication.
- Patients whose tests did not clearly demonstrate that they had MDS, much less require treatment with Vidaza or Dacogen.

- Patients who probably had MDS, but whose risk score was such that observation was appropriate, not treatment with Vidaza or Dacogen.
- Patients whose MDS subtype indicated treatment with an oral medication, not Vidaza or Dacogen infusions.
- MDS patients who received IV iron when they were neither iron deficient nor anemic. Patients with MDS are at risk for iron overload. Giving them IV iron might have increased their risk of subsequent iron overload.

One of the non-indictment MDS victims identified through expert file review says, “During the years of treatment by Fata I suffered from many side effects...Currently my ability to walk normally has become very difficult because of neuropathy in my legs, feet and arms.” H.G. VIS. Family members report the psychological toll of believing their loved one was dying of MDS:

- “From the beginning of his horrible diagnosis [of MDS], which was presented to us as terminal, I begin to feel a sense of helplessness . . . I’m going to los[e] my soulmate. I had retired and had planned on having a fun active life together . . . All this seemed shattered. This caused me . . . to battle with depression . . . I also began smoking cigarettes and drinking alcohol. . . The emotional breakdown of our relationship is the hardest for me to copy with now . . . We took a rushed Disney trip to make memories for our family. I watched as if it was surreal as my wife gave away all the things she thought people close to her would want to remember her . . . we felt hopeless and in despair.” Michael Hester VIS, Husband of Patient Patricia Hester VIS.
- “When I found out that [she] had Myelodysplastic Syndrome . . . I was inconsolable. I feel into a deep depression. I felt like I couldn’t go on . . . I cried myself to sleep almost every night. Those years we thought [she] was sick were the worse years of my life. We will never get

those years back . . . Then I found out that Fata had purposely had her believe she was dying, I became very angry, the years of sadness . . . had taken over our lives.” (Writer Requested Anonymity).

**5. Patients Given Underdoses of Necessary Chemotherapy  
[Not In Amount of Loss]**

Fata regularly underdosed patients, giving real cancer patients less chemotherapy than they needed. Multiple staff members noted the underdosing, one noting underdosing to round numbers, mostly in patients with non-small cell lung cancer, as well as any head or neck cancer and another that he automatically reduced chemotherapy doses by 25%.

This was confirmed in expert review. Dr. Steensma found that some MDS patients were appropriately given Vidaza or Dacogen and others were not. Regardless of the necessity, however, he found that Fata systematically underdosed them all, creating a spreadsheet comparing appropriate dosage to actual dosage. The underdosing was in round numbers, all at 100 mg or less, when normal dosing would not expect to be round as it is based on a calculation involving the patient’s weight and height. The round numbers suggest no calculation was performed at all. Of 7039 total Vidaza doses billed by Fata to Medicare, 7002 were exactly 100 mg, and 37 were less. By contrast, other oncologists’ dosages billed to Medicare follow no pattern, with amounts above, below and at 100 mg.

Fata's choice of 100 mg or less was not arbitrary. Vidaza comes in 100 mg vials. If patients had been dosed properly, for instance given 138 mg, then 62 mg in the second vial would likely be wasted. Medicare does not pay for the entire second vial; it pays just for what is actually administered and in increments of 25 mg (2011 Medicare average paid amounts: 100 mg—\$406, 125 mg—\$513, 150 mg—\$612, 175 mg—\$666, 200 mg—\$807). By consistently using only one vial (100 mg) and billing for exactly that vial (100 mg) irrespective of patient need, Fata maximized his profit margin perfectly. Administering according to patient need would have risked losing (1) the product itself (excess Vidaza from the second vial for which Medicare would not pay) and (2) the opportunity cost of billing the entire vial. Fata did not just overtreat MDS patients who did not need chemotherapy, he undertreated MDS patients who did need it to increase his profit margin.

One MDS patient's dosage stands out as being close to the correct amount. D.K. was underdosed for a period of time, but after his leg was amputated his weight loss made Fata's dose close to the correct amount. D.K. reports that Fata refused to let him take chemotherapy breaks to heal after multiple amputation surgeries, breaks his new oncologist permits him to take. D.K. VIS. Fata did not

just underdose D.K. He also withheld from him the knowledge of a possible stem cell transplant cure until it was too late and he was too old:

- “My husband started treating with Fata 7 years ago for MDS. . . Since 2007, David has remained on chemo, in addition to iron infusions and four injections a month. . . [Our 2<sup>nd</sup> opinion doctor] asked us why we never tried stem cell transplants? He said they can be very effective in treating MDS, rather than taking dangerous chemo treatments. Dr. Fata never told us this was an option. When we discussed alternatives to chemo, all Dr. Fata indicated was that if Dave did not follow Dr. Fata’s chemo regimen, David would get leukemia . . . He did not tell us stem cell transplants have been available for years. Unfortunately, the normal cutoff is 70. David is 71.” T.K. VIS, Wife of Patient D.K.

#### **6. Unnecessary Human Growth Factor Injections [Count 3–Guilty Plea]**

Fata administered a variety of unnecessary human growth factors, intended to stimulate either white or red blood cell production. Fata pleaded guilty to ordering unnecessary Neulasta [Count 3], an injection that is used to increase white blood cell counts and decrease the risk of fever or infection during periods of low white cell counts (neutropenia). Fata ordered it with numerous chemotherapy regimens regardless of whether the patient had low white blood counts or whether there was a danger of neutropenia, as he did to W.D. on multiple occasions, including on June 26, 2013 [Count 3]. In some instances, patients actually had high white blood cell counts. Neulasta can cause ruptured spleens, rashes, muscle

aches, and bone aches. Additional unnecessary Neulasta administrations were identified in individual patient file review and are included in the amount of loss.

Fata also ordered unnecessary red blood stimulating factors such as Procrit and Aranesp. These work by stimulating the bone marrow to produce red blood cells, and should only be administered when a patient's hemoglobin measures at a low level. Potential side effects include elevated blood pressure, headaches, and pain at the injection site and/or bones and joints. Fata would change the hemoglobin criteria under which he would administer Procrit and Aranesp to justify their use. Significantly, when used outside of guidelines as Fata did, these drugs can shorten remission time or survival time in some people with certain types of cancer.

#### **7. Excessive, Unnecessary Anti-Nausea Medications [Relevant Conduct Stipulation]**

Expert review revealed that Fata regularly ordered excessive anti-nausea medication, known as antiemetics.<sup>4</sup> Antiemetics are intended to prevent nausea and vomiting associated with chemotherapy. Fata (1) administered the antiemetics in the absence of associated chemotherapy, which would have no beneficial effect;

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<sup>4</sup> Vital's pharmacist noted that Fata ordered redundant anti-nausea medications that sometimes cost patients a \$100 co-pay.

(2) regularly ordered powerful and expensive infusion antiemetics, that are typically used only after less powerful and expensive antiemetics have failed; and  
(3) regularly prescribed multiple antiemetics at the same time from the same therapeutic class, which would have no therapeutic benefit.

Some of the patients who received excessive and unjustified antiemetics include indictment patients W.V., W.W. (who reported painful constipation), and W.D. Multiple patients who received excessive and unjustified antiemetics also reported that they had no nausea and complained of no nausea before having the drugs administered to them.

In addition to expert file review by government experts, the stipulated amount of loss includes data analysis of the expensive antiemetic infusion, Aloxi. Aloxi should typically be given no more than once every five days, three days at most. Aloxi given more than once every three days was included in the amount of loss.

**8. Unnecessarily Extended Infusion Times [Not In Amount of Loss]**

Fata's greed extended to every aspect of his medical practice, even the most marginal payments. Fata told a nurse on multiple occasions to check on the additional amounts that he could bill by extending infusion times for a variety of treatments beyond what was appropriate and indicated by the manufacturer. Fata

knew that his reimbursements increased the longer that a patient stays in the infusion chair, by particular increments, *e.g.*, changing an IV push to a 20 minute infusion or lengthening an infusion to 35 minutes would convert it to an hour for billing purposes. In one instance, after learning that billing a chemotherapy infusion an hour longer only increased reimbursement by \$22, Fata replied, “\$22 over \$22 over \$22 is a lot of money.” This was a volume business for Fata.

Fata ordered infusion times lengthened for numerous medications:

<b>Drug</b>	<b>Appropriate Administration</b>	<b>Fata Administration</b>
<b>Aloxi</b> ( <i>Anti-nausea</i> )	IV push (1-2 mins)	20 minute infusion
<b>Adriamycin</b> ( <i>Chemotherapy</i> )	IV push (1-2 mins)	20 minute infusion
<b>Alimta</b> ( <i>Chemotherapy</i> )	10 minute infusion	1 hour infusion
<b>Avastin</b> ( <i>Tumor-shrinking aid</i> )	1 <sup>st</sup> admin: 90 mins 2 <sup>nd</sup> admin: 60 mins 3 <sup>rd</sup> admin: 30 mins	1 <sup>st</sup> admin: 100 mins 2 <sup>nd</sup> admin: 60 mins 3 <sup>rd</sup> admin: 35 mins
<b>CPT-11 with Leucovorin</b> ( <i>Chemotherapy</i> )	90 minute infusion (infused together)	2 hour infusion (infused separately)
<b>Decadron</b> ( <i>Steroid</i> ) with Aloxi	10 minute infusion	20 min infusion
<b>Folfox</b> ( <i>Chemotherapy, 2 drugs: Oxaliplatin, Leucovorin</i> )	2 hour infusion (infused together)	3 hour infusion (infused separately)
<b>Velcade</b> ( <i>Chemotherapy</i> )	IV push (1-2 mins)	1 hour infusion
<b>Zometa</b>	20 minute infusion	35 minute infusion

The nurse infusion manager reported Aloxi was being infused on the lengthened schedule as early as August 2007 (when she was hired) through 2011, when she ended the practice. When she ordered the nurses to infuse on the correct times, Fata would order them to change the times in the file to increase the billing, which was often then rejected. In keeping with this theme of administering medications in the way that profited him over the way that benefited the patient, Fata resisted switching to an injectable form of Velcade (multiple myeloma chemotherapy) when it became available, even though studies show it caused a lower rate of neuropathy (pain caused by nerve damage). His own staff assumed this was due to greed. One year after the approval came through, Fata finally switched from the more expensive infusion to the injection.

The only way the nurse-manager could get Fata to adjust treatments was to show that it affected his bottom line, in which case Fata would respond, “Yeah, if we lose money, then we won’t do that.” Fata’s disregard for the practice of medicine and the comfort of his patients is staggering.

#### **9. Chemotherapy Ports [Not Included in Amount of Loss]**

Chemotherapy ports are surgically installed in the patient’s chest or arm under anesthesia or sedation. They give direct access to the patients’ veins and decrease the number of times a patient must be stuck with a needle. Countless

patients had chemotherapy ports surgically installed, many so that Fata could administer unnecessary infusions. Other times, he left ports in patients in remission. Many patients had them removed only after his arrest.

**10. Mistreatment of Acute Myeloid Leukemia [AML] Patients [Relevant Conduct Stipulation]**

A physician employed by Fata noted that he treated patients with acute myeloid leukemia (AML) at MHO when the appropriate treatment in the induction phase of chemotherapy is weeks of inpatient treatment in a hospital. Expert review of patient files confirms that for multiple (properly diagnosed) AML patients, Fata administered inappropriate, less effective treatment that he could bill through MHO. He has stipulated to the related loss amount.

AML is a cancer that can arise on its own or develop from MDS or CMML, with a five year survival rate of approximately 25%. For patients under 70 with relatively few health problems, AML treatment should begin with an inpatient intensive seven-day chemotherapy regimen of cytarabine (a chemotherapy) administered by around-the-clock continuous infusion. Taking breaks in the continuous regimen limits its effectiveness. Cytarabine administration puts patients at risk for infection and other complications, which is why they are typically kept in the hospital where they are monitored closely and treated quickly if they develop signs of infection.

By administering cytarabine at MHO in the outpatient setting and not continuously, Fata both limited the effectiveness of the chemotherapy and put his patients at greater risk. Furthermore, he (1) dosed them with Leukine, a white blood cell growth factor, that was contraindicated because it can actually stimulate the growth of leukemia, (2) used another contraindicated medication that can cause cardiac rhythm abnormalities, and (3) does not appear to have referred stem cell transplant candidates for transplantation.

It is impossible to know whether Fata's AML patients could have survived longer, achieved better results with proper chemotherapy and stem cell transplants, or suffered less. What is certain is that Fata reduced their chances by administering chemotherapy in the manner most beneficial to his wallet and not the patients.

#### **11. False Prognoses and Mistreatment of End-of-Life Patients [Not In Amount of Loss]**

Fata lied to patients about their prognoses, telling every new patient they had 70% chance or better of remission irrespective of the type or stage of cancer. The effect of this lie was to induce patients to take chemotherapy, with particularly devastating effect on late stage cancer patients. Fata robbed many dying patients not just of their money but of their choices and dignity. Instead of spending their last days coming to terms with their deaths, these patients endured painful treatments in search of a non-existent cure.

Nurse practitioners worked with Fata to assess new patients and with social workers who counseled patients with new diagnoses of cancer. Both groups report that Fata told every new cancer patient—regardless of the type of cancer, stage of that cancer, and known medical research concerning remission and survival rates—that they had a 70% or greater chance of remission. When asked by those nurses and social workers about his false prognoses, Fata would say he was giving the patients “hope.”

Fata’s false hope extended to multiple Stage IV lung cancer patients:

- M.D.: 70-77% chance of remission.
- V.I.: first opinion: 3-4 months, no treatment; Fata’s opinion: 70% chance of remission.
- J.H.: Curable with a couple of years of chemotherapy and radiation.
- A.C.: 70% chance of remission.
- L.H.: 75% chance of remission.

In reality, Stage IV non-small cell lung cancer patients and extensive stage small cell lung cancer patients have a prognosis of approximately 9-12 months.

Fata told these patients that their post-chemotherapy tests showed improvement. He told M.D. her tumors were shrinking, V.I.’s daughter that his tumor was shrinking, and A.C. his tumors were shrinking as A.C. was getting

sicker. Fata told L.H. his tumors were shrinking when the radiology report said they had spread. When confronted by L.H.'s daughter, Fata said the radiologist was wrong.

None of them lasted a year. M.D. lived just under seven months from diagnosis. V.I. lived four months. J.H. lived less than two months. A.C. lived just under a year. L.H. lived less than four months.

Some of these terminal patients never knew they were dying because of Fata's lies. L.H. never believed he was going to die because Fata told him he was making progress. A.C. and his children never questioned Fata, even as A.C. got sicker. A.C. wanted to live and was hopeful because the 70% chance of remission was "gigantic." Fata told A.C. at one of his last hospital visits, and after the cancer had spread to his brain, that he still had a 70% chance of remission. By the time he died, A.C. had lost 200 pounds from his 300 pound frame. At A.C.'s last visit to MHO, he fell and hit his head. He was taken inside and given chemotherapy before being sent to the hospital. Within four hours, he was on life support. Several days later, he died.<sup>5</sup>

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<sup>5</sup> When A.C.'s wife learned she also had Stage IV lung cancer in January 2013, she decided not to get treatment based on the suffering she saw her husband endure. According to the couple's daughter, her mother did not suffer at the end

MHO medical staff report that Fata's patients generally were not adequately counseled about hospice care, and that many were on chemotherapy far beyond what they believed was appropriate. At least one social worker reports Fata counseling patients out of hospice care that they wanted.

What Fata stole from these dying patients is immeasurable and unrecoverable: time to make plans, time to be with family and friends, time to make peace with their fates. One victim's family reports Fata caused an estrangement when they tried to get their dying mother a second opinion:

- “Our mother . . . was diagnosed with Stage 4 Breast Cancer. It had already metastasized to her lungs, her brain, her liver and her sternum. . . In that very first meeting [with Fata] he said, “I can cure you”. He indicated that he had access to medications that other doctors did not. He indicated that as long as [she] followed his instructions and kept her insurance paid up, she could be cured . . .Fata had instilled so much FALSE HOPE of a cure over the months of seeing him . . . Farid reminded [her] that she would die without him . . .we were wondering if there was any reason to file bankruptcy, questioning her life expectancy. He indicated again that he was trying a new therapy and we should definitely file bankruptcy on her behalf, “but make certain you do not cancel any of her insurance. I won't be able to treat her without”, he told us . . .we asked about Hospice . . . He . . . stated that our discussion of hospice was unnecessary as he had access to so many more drug therapies that she would be around for a long time. He then held her hand, looked straight into her eyes and gently said, “Don't worry, I will not let them stop the treatments you need”. . . She . . . was very angry at us for the discussion that had just taken place. In addition to everything else he was doing, he was also coming between my mother and us . . .maybe she would have

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like her father did, instead she “lived her last few months” where A.C. had “only existed.”

participated more in life knowing that it was nearing the end. She kept putting things off thinking that she would have time “when she got better.” . [our mother] was never able to accept that she was dying because Fata convinced her she was not. We never had the benefit of the final conversation we should have been able to have, to say the things we wanted to say. Family of Deceased Patient VIS.

*See also* Ex. A (Victim Impact Statement Excerpts) at Section VII. Instead of treasuring final moments with their loved ones, patients struggled to the end against their fatal diseases and endured painful treatments, never knowing it was all to feed Fata’s bottomless greed.

**C. Guardian Angel Hospice and Home Care Kickback Conspiracy [Count 20—Guilty Plea]**

Fata has admitted to taking illegal kickbacks from the owner of Guardian Angel Hospice and Guardian Angel Home Care, payments made to him as a fake “Medical Director” for Guardian Angel Hospice, but in reality inducements to refer Medicare patients. Guardian Angel’s owner got his money’s worth, as Fata manipulated and forced patients into Guardian Angel’s often substandard hospice and home care, with the assistance of his unknowing, but often suspicious, staff.

Fata may have been reluctant to send patients to hospice care, but once he did, he made sure it was Guardian Angel:

- The family of M.D., a Stage IV lung cancer patient who had been told by Fata she had a 70-77% chance of remission, fired Guardian Angel hospice after two days because they were “terrible.” Fata called the

patient's daughter and was "irate" telling them that Guardian Angel was the only hospice her mother's insurance was cover.

- Fata yelled at the daughter of L.H., a Stage IV lung cancer patient he had told had a 75% chance of remission, when she placed her father in hospice, then questioned her choice of Hospice of Michigan over Guardian Angel Hospice.
- After ignoring the family's calls for days, Fata yelled at the wife of hospitalized V.I., a Stage IV lung cancer patient he had given a 70% chance of remission, when she chose not to use Guardian Angel Hospice. V.I. died a day later.
- "[In June 2010], L.B. received chemo again . . . [on] July 5, because Dr. Fata wouldn't talk to us, [we] began to interview hospice providers. We decided which one we wanted to use and Dr. Fata finally came in . . . and said, "Oh, no, you must use Guardian Angel's. They are the best" . . . The next morning, our whole family was there waiting for Guardian Angel's nurse to come. SHE NEVER SHOWED UP, no phone calls, nothing. . . [another doctor] said, "you can choose which hospice you want." [The new hospice] talked to Dr. Fata to see if he would still be L.B.'s doctor and he would not. We had gone against his wishes by using another hospice and he was not able to make any more money off of us. L.B. passed away July 22." B.B. VIS, Wife of Patient L.B.

Fata had social workers consult him about hospice referrals, and forced patients go to Guardian Angel with limited exceptions.

Fata also bullied patients into taking treatment from Guardian Angel home health care, despite the fact that patients often preferred other companies and despite Guardian Angel's terrible treatment and reputation with his staff. MHO received many complaints that Fata would not allow patients to go to non-

Guardian Angel home care companies. The only occasions on which Fata allowed patients to go elsewhere is if they fought with him. Furthermore, there were numerous complaints about Guardian Angel's poor patient care, including not receiving appropriate care and not showing up to appointments. Patients told MHO staff Guardian Angel was engaged in outright fraud, having them sign multiple documents at a single visit and never returning. Fata exclusively referred to Guardian Angel until phased out around 2012, which coincides with the end of his kickbacks.

Fata gave the owner of Guardian Angel extensive access not only to his patient population but also his charity and other MHO physicians to obtain more referrals. Fata installed Guardian Angel's owner on the board of the charity Swan for Life. Swan for Life and MHO both advertised Guardian Angel's services, which Swan employees found suspicious.<sup>6</sup> At the same time, the owner of Guardian Angel was paying thousands of dollars of "donations" into Swan for Life. Guardian Angel sponsored a "welcome" party for an MHO doctor when he

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<sup>6</sup> Unbeknownst to its staff, Swan for Life was another vehicle for Fata's kickbacks. In addition to the relationship with Guardian Angel's owner—whose companies donated to Swan for Life—Fata solicited kickbacks from at least one pharmaceutical representative through Swan for Life, insisting by email that he "expected" support from her company, and threatening by phone to stop ordering their drugs if Swan for Life did not get \$10,000.

began with MHO, with the clear purpose of getting his referrals (which he rarely gave). The owner had left the Swan for Life board by the time of Fata's arrest, coinciding with the end of his kickback payments and a decline in Fata's referrals to him.

**D. Other Infusion Mistreatments: Iron, IVIG and Hydration**

**1. Iron [Counts 4, 5, 6, 16—Guilty Pleas]**

Fata admitted to repeatedly misdiagnosing patients with iron deficient anemia and administering unnecessary intravenous iron to them. Fata achieved his false diagnoses by deliberately misapplying iron guidelines created for patients with chronic kidney disease to those who did not have kidney disease. Even had they been iron-deficient, the appropriately first line treatment is oral iron. Fata always prescribed expensive iron infusions first.

Numerous MHO medical professionals noted the overtreatment. One questioned amount of iron treatments. Another said Fata had every patient tested for low iron, used wrong levels and old blood work to justify infusion, and had no real list of guidelines. Another felt too much iron was administrated under chronic kidney disease guidelines, noting IV iron can cause bad reactions. Fata was so intent on giving iron infusions that he had the front desk keep an "Iron List." He ordered staff to schedule patients for infusions even before he had lab results to

justify the treatments. He also changed what levels were needed to justify iron administration. At times, Fata ordered a phlebotomy (a procedure removing blood from a patient to reduce his or her iron) followed by an iron infusion. As one patient who received alternating iron infusions and phlebotomies succinctly put it:

- “I received a regular dose of Iron supplement on a schedule of about every 2 months . . . Once he had moved to the new clinic in Rochester Hills, he continued with my infusions of Iron but now they started withdrawing blood because my counts were too high . . . WTF is with that?” Jack Fields VIS.

The examples in the indictment demonstrate the lengths Fata took to ensure he could bill unnecessary iron infusions. On May 20, 2013, cancer patient W.V. went to Fata's office for a medically unnecessary iron (Feraheme) infusion [Count 6]. As W.V. was walking into Fata's office, he fell and hit his head and was knocked out for several minutes. Individuals in the waiting area and MHO staff rushed to his aid and called paramedics. Fata came out to the waiting area and instructed that W.V. be placed in an infusion chair. Fata then ordered that W.V. be given an iron infusion before going to the emergency room. When EMS arrived, the paramedics had to wait approximately 30 minutes for the infusion to conclude. W.V. did not need iron, much less for his acute treatment to be delayed for an infusion. After being transported, he was admitted to a hospital where a CAT scan showed bleeding in the right back of the brain. W.V. passed away several weeks later in a rehab facility. In addition to the May 20, 2013 infusion, Fata administered

multiple other medically unnecessary iron infusions to W.V., including infusions on May 23, 2012 [Count 4] and May 29, 2012 [Count 5].

Fata administered medically unnecessary iron treatments to numerous patients, including indictment patients on multiple occasions like M.H. [Count 16] on November 28, 2011, and D.M. Fata told M.H. he was administering it for her fatigue. She discovered after his arrest that the real cause of her fatigue was untreated sleep apnea. Some additional patients who received unnecessary intravenous iron were identified through expert patient file review and included in the amount of loss.

Iron is toxic, and sustained iron overload can lead to organ failure. At particular risk are the liver, pancreas, and the heart. Fata put many patients into iron overload, some of whom have submitted statements:

- “Fata repeatedly gave me iron infusions (Fereheme) that I did not need . . . the day after Dr. Fata was arrested I brought my lab reports to a new hematologist who explained that my ferritin levels were dangerously high . . . I missed so much work leaving early for appointments with Fata or to receive injections. I waited for *hours* to see him each time. . . The injections made me feel ill. . . In August 2013 my ferritin levels were over 10-15 times what they should be. . . high levels of iron cause organ damage and major complications. To this day, I am still having complications from my high iron levels and my ferritin levels are still very high. The iron started depositing in my liver causing pain and abnormal blood levels. An MRI confirmed that the iron was in my liver. . . they had to drain blood out of my body and throw it away. This was emotionally very hard for me; I should have never had to endure this procedure!” Jessica Arsenault VIS.

- “I spent three (3) days a week during my first pregnancy and five (5) days a week getting [iron] infusions from Fata during my second pregnancy. I was depressed, in pain; my veins were destroyed because of the constant blood draws and infusions... I received nearly 300 infusions, but after his arrest, I got a second and third opinion [and] was told I never needed more than five (5). I was also advised that the type of iron was not the correct type. . . I went to two doctors. Both of them advised me that I had iron poisoning. Both of them told me, I now have to check my major organ functions and also be checked for calcification of my organs.. I had to have both of my children tested for iron poisoning . . .I took them to the hospital. I had them poked by needles, a two (2) year old and four (4) year old. I had to have their blood drawn . . continued testing will be necessary in order to properly monitor them for the unforeseen future . . . I have residual damages as a result of the iron. I have been advised to have regular phlebotomies in order to get rid of the extra iron I have. I have lost feeling, due to nerve damage.” (Writer Requested Anonymity) VIS.

## **2. IVIG [Count 13—Guilty Plea]**

Fata repeatedly and deliberately administered unnecessary intravenous immunoglobulin (IVIG) treatments to numerous patients in his practice. He created false criteria and ordered his staff to review patient blood tests to find medically incorrect justifications for the treatments.

There are three human immunoglobulins: IgG, IgA and IgM. IVIG is an immunoglobulin treatment containing is a highly purified immunoglobulin G (IgG) taken from human donors. Octagam and Gammagard are two common types of IVIG. IVIG is primarily used to treat severe immune deficiencies, as decreased antibodies make patients more susceptible to infections. IVIG is appropriate where the patient both (1) has low IgG levels and (2) recurrent and/or serious infections.

It is contraindicated for low IgA as it could produce an adverse reaction and will not increase low IgA or IgM levels. Fata ordered IVIG for patients who had not only low (or borderline low) IgG levels but also low IgM (not medically indicated) and low IgA (medically contraindicated) levels. Fata ordered a nurse to find a study justifying IVIG for low IgA and IgM where none existed.

To justify the unnecessary IVIG, Fata reverse engineered a fake need. In normal medical practice, a doctor presented with a patient suffering from an infection and low total gamma globulin levels might order immunoglobulin (IgG, IgA, IgM) testing to determine if low IgG is an issue for the patient. Fata ordered immunoglobulin testing for patients irrespective of their condition, then ordered his staff to review for low IgG, IgA or IgM. Like the iron infusions, IVIG lists were created at the front desk and tests ordered before the lab results came back.

To justify the second criteria—a history of recurrent infection—Fata admitted in his arrest interview and other employees confirm he would add it even where the patient did not report it. Fata stated, in response to question whether he gave IVIG to patients without recurrent infection knowing low IgG and recurrent infection were required, Fata replied, “Yes, we overutilized.” And a nurse said he ordered nurses to falsely add recurrent infections to files.

MHO nurses finally put a stop to the IVIG treatments. In the summer of 2013, the nurse-manager confronted Fata about his over-administration of IVIG treatments and, Fata agreed to stop giving them for low IgA and IgM levels. When an infusion nurse reviewed charts of patients scheduled to receive IVIG the next day, she discovered that 90-95% of patients did not have low IgG to justify the treatments. Numerous patients had IVIG added to their treatment regimens inappropriately, such as Teddy T.H. on multiple occasions, including on June 4, 2013 [Count 13]. Other indictment patients who received unnecessary IVIG include J.M. and D.M. Fata also ordered medically unnecessary IVIG for M.F. that was never administered because she left his care after finding out he had misdiagnosed her with cancer. The government has identified numerous other patients who received unnecessary IVIG treatments through a patient file review, and Fata has stipulated to the related loss amount.

### **3. Hydration [Not Included in Amount of Loss]**

Fata often ordered unnecessary hydration. He frequently directed patients to return to MHO on days they had off from chemotherapy to receive the hydration, which he was able to bill for infusion time in the chair. Hydration can be harmful in older patients who are not dehydrated, causing complications like heart arrhythmia that can and did lead to hospitalizations.

**E. Vital Pharmacy**

Fata required all MHO patients to fill their prescriptions at his pharmacy, Vital, after it started in May 2013. The patients did not like this for a variety of reasons including insurance limitations, convenience to other pharmacies and Vital's access to drugs. Often, Vital would run out of various medications, including oral chemotherapy. On those occasions, Fata would refuse to send their prescriptions to another pharmacy unless some insurance limitation applied to Vital. Angry patients would be forced to drive back to MHO's Rochester Hills location once the drugs were available, rather than getting the drugs immediately from their local pharmacy.

**F. United Diagnostics: PET Scan Fraud [Count 17] and Promotional Money Laundering [Count 22, 23]**

Fata opened United Diagnostics in July 2013, just before his arrest, and began ordering and billing for unnecessary PET scans, a cancer detection test. Fata funded this next stage of his fraud with money obtained from the infusion fraud at MHO. He pleaded guilty to the United Diagnostics conduct in Counts 17 [PET scan fraud], 22 and 23 [promotional money laundering].

When Fata incorporated United Diagnostics in December 2012, it had no staff, physical location or equipment to perform tests. Nevertheless, he ordered his staff to schedule all PET scans at United Diagnostics rather than a hospital or other

location. The facility was scheduled to open in April 2013, so the original round of PET scans were scheduled for that date. The percentage of patients for whom Fata ordered PET scans dramatically increased after he incorporated United Diagnostics.

In April 2013, United Diagnostics was not ready to begin operations because of credentialing issues. Rather than send the patients to other facilities for the test, Dr. Fata ordered his staff to reschedule all of the patients. The rescheduling occurred on multiple occasions over the next several months, as United Diagnostics was not ready to open and bill Medicare and other insurance companies. It finally opened its doors in July 2013, performing tests for just over a month before Fata's arrest.

Staff and patients reported intense concern because patients believed their medically necessary and important cancer tests were being delayed by months. When patients called to ask about the delay, Fata resisted sending them to another facility. He ordered staff to lie and say that the patient did not need the scan yet, his machine was more high tech or their insurance would not cover it elsewhere. At least one MHO staff member subverted Fata by obtaining referrals to outside facilities. When United Diagnostic's medical director told Fata to refer patients

elsewhere during the delay, Fata just pushed him to open faster. Fata never spoke about patient care to him.

In addition to delaying PET scans, Fata ordered numerous unnecessary PET scans, justifying them with false information. In the case of M.C. [Count 17], Fata was required to do a peer-to-peer pre-authorization for the PET scan with a Blue Cross Blue Shield (BCBS) doctor. He lied to the doctor, saying that M.C. had a rising tumor marker (a sign of possible tumor activity) and a low kidney function (which could rule out using a contrast CT scan in place of the PET scan). In fact, M.C.'s file reflects that her tumor marker was decreasing, and no other legitimate basis for ordering a PET scan. M.C. herself confirms Fata's lie, as he told her that her tumor marker was normal at the same time he was telling BCBS it was rising.

Dr. Fata pleaded guilty to using the fraud proceeds from MHO to fund the fraud at United Diagnostics. Specifically, he admitted to funding it with two checks drawn on the MHO bank account that received insurer payments and deposited into the United Diagnostics bank account, one dated May 3, 2013 in the amount of \$100,000 [Count 22] and one dated July 2, 2013 in the amount of \$100,000 [Count 23].

## **G. Fata's Control Over Patients**

Fata did not run a medical practice. He ran, in his own words, a "kingdom" or "empire." According to Fata, God and the prophets worked through him. As the king, he exerted his control over every aspect of MHO and its patients in a variety of ways that fed the fraud he was committing.

### **1. Access to Medical Files/Control Over Care**

Fata controlled the patients' and other physicians' access to patient medical information. To seek a second opinion and possibly a new treating physician, it is important to have your medical record. MHO staff report that Fata had an unusual policy that patient files could only be released with his personal approval. At times, he refused to release files, released only parts of files or tried to convince patients that they should not leave his practice when they requested their files. At least one member of his staff defied him and secretly provided patients with their full files.

MHO physicians split rounding duties, with other MHO physicians seeing Fata's patients on weekends when they rounded at one of the hospitals where Fata had privileges. Those physicians reported that Fata had the unusual practice of never turning off his pager, and generally keeping other physicians in the dark about his treatment of his patients. In other words, Fata kept control over the treatment of his patients instead of relinquishing it to the rounding physician for a

single weekend. Notably, it was while rounding at Crittendon that Dr. Maunglay discovered Fata's misdiagnosis of Monica M.F.

## **2. Bullying Patients**

Numerous examples exist of Fata's callous disregard for his patients and bullying tactics:

An MHO biller reports that Fata sometimes asked her to contact certain patients about their balances saying, "Go talk to him/her...I know they have money." Another time, Fata told the biller he was going to recommend a patient for hospice care and wanted her to settle the account before the patient died, because Fata would have a difficult time collecting after the fact. Twenty minutes after the family was informed the patient was dying, a staff member told the biller Fata wanted her to go speak to the patient's family. The biller entered the room to ask about the patient's outstanding balance, with his wife, children and grandchild present. The patient's wife cut her off, saying, "Are you kidding me with this? Are you really going to do this right now?" The biller left, upset and ashamed.

In front of another biller tasked with helping patients bridge the cost of copays, Fata told a patient who could not afford treatment "your life or your money" in spring 2013. Another time, Fata refused to treat a patient who could not

afford the copays because he said she was “loaded.” He refused even after the biller enrolled the patient in an assistance program.

When the daughter of a lung cancer patient told Fata she planned to seek a second opinion, Fata became upset and “nervously aggressive,” telling mother and daughter that other doctors did not have the same drugs or doses as Fata. Fata then told the patient, T.R., that he did not want her daughter in the room anymore. T.R. died in March 2013, not long after Fata told her that her cancer was shrinking and she was on the verge of a cure.

Victim impact statements also contain numerous examples of Fata’s bullying and strong arming patients into treatment that benefitted his bottom line. Ex. A (Victim Impact Statement Excerpts) at Section XII.

#### **H. Fata’s Continued Deceit After Indictment**

Fata’s lies did not end with his arrest. On May 20, 2014, Fata’s attorneys submitted a motion for CJA funds. (Dkt. # 95). In communications with attorneys for the government regarding the motion, the government stated it would ask for Fata to not only sign a financial affidavit but also be put under oath and on the stand—whether in public or *in camera*—to attest that he no longer had any funds. Shortly thereafter, on June 10, 2014, the motion was withdrawn. (Dkt. # 99). No further motion has been filed.

In the interim, the government learned that Fata had accounts at Pershing LLC which contained approximately \$630,000. One of the accounts, which contained in excess of \$500,000, received a stream of income coming out of investments which were sourced with fraudulent Medicare proceeds. Upon discovering these additional accounts, the government seized the account that contained in excess of \$500,000. Prior to the seizure, on June 9, 2014, Fata had \$121,472.81 withdrawn from the other Pershing LLC account to fund his defense, thereby depleting that account of available funds. Fata's greed extends to the taxpayers: attempting to have the Court fund his defense using money intended for the indigent when he had access to approximately \$630,000.

### III. Sentencing Guidelines

#### A. Guidelines: The Parties' Positions

The parties' positions regarding the Guidelines are as follows, with the areas of dispute highlighted:

<b>Guideline</b>	<b>Probation</b>	<b>Government</b>	<b>Defendant</b>
<b>Base Offense Level 2B1.1(a)(2)</b>	6	6	6
<b>Amount of Loss 2B1.1(b)(1)</b>	22	22 (over \$20 million billed amount)	20 (over \$7 million paid amount)

<b>Guideline</b>	<b>Probation</b>	<b>Government</b>	<b>Defendant</b>
<b>Federal Health Care Program Offense 2B1.1(b)(8)(iii)</b>	4	4 (over \$20 million billed amount)	3 (over \$7 million paid amount)
<b>Offense Involving Large Number of Victims (over 250) 2B1.1(b)(2)</b>	6	6	6
<b>Sophisticated Means 2B1.1(b)(10)(C)</b>	2	2	2
<b>Risk of Death or Serious Bodily Injury 2B1.1(b)(15)(A)</b>	2	2	2
<b>§ 1956 Money Laundering 2S1.1</b>	2	2	2
<b><i>Base Offense Level</i></b>	<b><i>44</i></b>	<b><i>44</i></b>	<b><i>41</i></b>
<b>Abuse of Trust or Special Skill 3B1.3</b>	2 (Special Skill)	2 (Abuse of Trust)	2 (Abuse of Trust)
<b>Organizer/Leader of Otherwise Extensive Crime 3B1.1(a)</b>	0 (Foreclosed by 3B1.3 special skill enhancement)	4 (Leader/organizer, otherwise extensive)	0
<b><i>Adjusted Offense Level</i></b>	<b><i>46</i></b>	<b><i>48</i></b>	<b><i>43</i></b>
<b>Acceptance of Responsibility 3E1.1</b>	-3	-3	-3
<b>TOTAL</b>	<b>43 (LIFE)</b>	45, adjusted to → <b>43 (LIFE)</b>	<b>40 (292-365)</b>

**B. Section 2B1.1(b)(1): Amount of Intended Loss****1. Stipulation to Billing Totals**

The parties agreed by stipulation that the government is able to prove by a preponderance of the evidence the following amount of loss:

<b>Category</b>	<b>Billed</b>	<b>Paid</b>
<b>Patient File Review by Experts Drs. Steensma and Longo</b>	Medicare: \$14,728,413 BCBS: \$1,069,250	Medicare: \$6,241,916 BCBS: \$753,687
<b>Rituximab</b>	Medicare: \$7,577,325 BCBS: \$1,721,675	Medicare: \$4,324,932 BCBS: \$1,924,224
<b>Aloxi</b>	Medicare: \$1,886,715 BCBS: \$556,450	Medicare: \$405,567 BCBS: \$267,245
<b>IVIG</b>	Medicare: \$3,985,954	Medicare: \$1,621,828
<b>Office Visits</b>	Medicare: \$3,178,610	Medicare: \$1,866,735
<b>Home Health Care Based on Kickback Referrals</b>	N/A	Medicare: \$195,099
<i>Medicare Subtotal</i>	<i>\$31,357,017</i>	<i>\$14,656,077</i>
<i>BCBS Subtotal</i>	<i>\$3,347,375</i>	<i>\$2,945,156</i>
<b>Total</b>	<b>\$34,704,392</b>	<b>\$17,601,233</b>

These amounts were reached by the following methodology:

- Patient File Review: Particular files reviewed by Drs. Steensma and Longo in which they found specific inappropriate treatments, including patients diagnosed with multiple myeloma, MDS, lymphoma, AML, ITP, and other conditions, are counted as loss.
- Aloxi: Aloxi should not be given more than once every five days, three days at most. All Aloxi treatments given more than once every three days are counted as loss.

- Rituximab: Rituximab should never be given to diffuse large B-cell lymphoma patients more than eight times. For patients with indolent lymphomas, no patient should ever receive more than 24 administrations in a two-year period. For patients with ITP, Rituximab should not be given more than six times. Rituximab infusions above that amount are counted as loss.
- IVIG: A review of Medicare IVIG patients. Every patient with an IgG level over 500 or no justifying IgG test (and no autoimmune diagnosis) are counted as loss.
- Home Health Care: Guardian Angel's billing based on Fata's kickback-procured referrals are counted as loss.
- Office Visits: Fata spent approximately 5 minutes with most patients but billed the highest codes for these visits even when unlicensed physicians were working them up. Existing patient visits billed at the highest two codes are counted as loss.

Based on this analysis, 553 patient victims have been identified. Along with the four insurer victims (Medicare, BCBS, HAP and Aetna), there are in total 557 known victims at this time. The analysis also reflects over 9000 medically unnecessary infusions or injections, each one ordered by Fata.

## **2. Amount of Intended Loss**

The United States Sentencing Guidelines provide that the appropriate measure of loss in economic crimes offenses is the greater of the actual or intended loss. U.S.S.G. § 2B1.1(b)(1) cmt. n.3(A). Intended loss is defined in the same section as “the pecuniary harm intended to result from the offense,” where the actual loss is “the reasonably foreseeable pecuniary harm that resulted from the

offense.” *Id.* at cmt. n.3(A)(i-ii). Intended loss may include “pecuniary harm that would have been impossible or unlikely to occur.” *Id.* at cmt. n.3(A)(ii). In health care fraud cases, the government must “prove by a preponderance of the evidence that the defendant had the subjective intent to cause the loss that is used to calculate his offense level.” *United States v. Valdez*, 726 F.3d 684, 696 (5th Cir. 2013).

In the instant case, the parties have stipulated that that the government could prove that Fata caused approximately \$34,704,392 to be fraudulently billed to the Medicare program and to Blue Cross/Blue Shield of Michigan (BCBS), with approximately \$17,601,233 of that amount paid by those insurers on those claims. The Probation Office used the amount Fata billed for these medically unnecessary procedures as the intended loss for the purpose of calculating Fata’s offense level. Fata objects to Probation’s use of the total billed amount as an appropriate measure of intended loss. Medicare and BCBS have fee schedules capping the amount they will pay for a particular procedure or service; Fata argues that he was aware of this cap on reimbursement and consequently knew full well that he would not receive the full amount billed on any of his fraudulent claims. Fata therefore asserts that the amount paid on those fraudulent claims is the best measure of loss for Guideline purposes in this case.

An amendment to the Guidelines in 2011 instructs that in health care fraud cases involving a Government health care program, such as this one, the “aggregate dollar amount of fraudulent bills submitted to the Government health care benefit program shall constitute *prima facie* evidence of the amount of the intended loss.” *Id.* at cmt. n. 3(F)(viii). This presumption is rebuttable, however, in that the defendant may introduce evidence that the billed amount overstates the economic harm defendant subjectively intended to cause. *See United States v. Popov*, 742 F.3d 911, 915 (9th Cir. 2014). This burden-shifting framework was already established in several Circuits even before the 2011 amendment became effective. *See, e.g. United States v. Isiwile*, 635 F.3d 196, 203 (5th Cir. 2011); *United States v. Singh*, 390 F.3d 168, 194 (2d Cir. 2004); *United States v. Miller*, 316 F.3d 495, 504 (4th Cir. 2003). The framework has been affirmed in a number of Circuit-level cases in the past several years, with results varying based on the factual pattern presented at sentencing. *See, e.g., United States v. Elliott*, No. 13-20560, 2015 WL 327648 (5th Cir. Jan. 27, 2015) (holding district court not clearly erroneous using amount billed to Medicare as intended loss, despite some evidence adduced at trial showing defendant’s familiarity with Medicare fee schedule) (Unpublished opinion); *Popov*, 742 F.3d at 916 (vacating and remanding for re-sentencing based on guidelines calculation using billed amount, with instructions

that district court consider evidence that defendants were aware of Medicare caps on reimbursement); *Valdez*, 726 F.3d at 696 (error to use billed amount as intended loss figure without consideration of evidence defendant subjectively intended to collect less than total amount billed).

In this case, the government does not dispute that Fata was generally familiar with the fee schedule and reimbursement process, and would have known he was unlikely to recoup the entirety of the amount billed to Medicare or BCBS on his fraudulent claims. Fata was nothing if not a sophisticated criminal. However, using the amount paid by insurers in this case, on these procedures, as the measure of intended loss substantially *understates* the economic loss Fata purposely sought to inflict in the course of his offenses. Fata's intended harm was greater than the total amount he received from Medicare and BCBS on the stipulated fraudulent claims, and was more than \$20 million, as set forth below.

*a. Loss Including Co-Pays and Co-Insurance is Over \$20 million*

First, the approximately \$17.6 million paid by Medicare and BCBS does not capture co-pays paid by patients, and does not capture all of the co-insurance paid by third parties. Medicare Part B, as a primary payor, "allows" a certain maximum amount to be paid for a given procedure or service on a fee schedule. Generally, 20 percent of that allowed amount is paid by the Medicare beneficiary as a co-pay,

or by the beneficiary's secondary insurer. The paid amount set forth in the PSR does not include the amounts paid by patients or any co-insurance paid by insurers other than BCBS, when acting as a secondary insurer for Medicare beneficiaries. All the PSR captured was the amount Medicare and BCBS actually paid for medically unnecessary procedures – nothing patients, or other secondary insurers, paid was included.

Fata, by any standard, intended to collect co-pays and co-insurer reimbursements on his fraudulent claims. *See United States v. Hoffman-Vaile*, 568 F.3d 1335, 1344 (11th Cir. 2009) (not error to use billed amount where doctor knew or reasonably should have known she could recoup 20% not paid by Medicare from private insurance companies or patients). The evidence obtained in this case is replete with examples of Fata's meticulous familiarity with dollar amounts due to him, from patients and insurers. As set forth in Section G-2 of this memorandum, *supra*, Fata bullied patients who had difficulty paying their co-pays, telling one patient that "it is your life or your money." He personally oversaw the collection of patient balances, in the case of one Medicaid patient with a five-figure balance, sending an email to his billing staff regarding collection that ended with, "I need my money!" Ex. B (8/3/13 Email). In another email, he told billing staff he (1) questioned why a patient had been given chemotherapy during the

month in which his insurance had lapsed (2) asked what action had been taken on his high balance, and (3) informed staff that he (Fata) had negotiated the patient's payment plan at \$300 per month. Ex. C (8/1/12 Email). Fata even involved himself in patients' efforts to obtain co-pay assistance from charitable groups, going so far as to lie about patients' diagnoses to ensure that the foundation would pay for his medically unnecessary treatments. Plainly, Fata was well aware that his fraudulent claims entitled to him to reimbursement greater than the insurance payment from the primary insurer – it entitled him to co-pays from patients, and co-insurance reimbursements from secondary insurers as well.

Using the allowed amounts for Medicare on the claims in the PSR – claims Fata concedes were unnecessary – yields a figure of \$18,346,136, which is substantially higher than the roughly \$14.6 million paid to Fata by Medicare on these fraudulent claims. The difference of roughly \$3.7 million is money Fata certainly intended to collect from patients and co-insurers, and should fairly be included in any calculation of intended loss.

BCBS was a secondary insurer on many of the claims referenced above on which Medicare was primary, and as such, paid Fata the co-insurance amount on certain of those claims. However, BCBS was also the primary insurer of many of the victims included in the stipulated loss figure, and incurred losses from Fata's

fraud totally independent of those suffered by the Medicare program or Medicare beneficiaries and co-insurers. The parties have stipulated that BCBS paid a total of \$2,945,156 on Fata's fraudulent claims. Of this amount, approximately \$1,843,427 was paid by BCBS on behalf of Fata patients who never had a claim paid by Medicare. In other words, BCBS incurred actual losses from Fata's fraud that are wholly separate from the \$18,346,136 in loss that Fata intended to cause Medicare, Medicare beneficiaries, and Medicare secondary insurers. This \$1,843,427 figure, representing losses Fata intended to and actually did cause to BCBS, should certainly be added to any computation of intended loss in this case.

In sum, the Medicare allowed amount is a better proxy of Fata's intentions that the amount actually paid by Medicare, as it includes funds that Fata intended to obtain from patients and co-insurers on his fraudulent Medicare claims. When the \$18,346,136 Medicare allowed amount (paid amount plus the amount sought from patients and coinsurers) is added to what BCBS actually paid on separate fraudulent claims for beneficiaries who were not insured by Medicare, we arrive at a figure of \$20,189,563. This amount is a conservative estimate of the dollar value Fata intended to fleece from his victims, and yields a 22-level adjustment from his base offense level.

*b. Understated Loss from Patient Harm*

Second, the amount paid on the fraudulent claims by Medicare and BCBS excludes any amounts paid out of pocket by patients to undo the physical harm Fata wrought. Unlike the typical economic crimes case, Fata's victims incurred costs completely independent of the amounts they, or their insurers, paid to his practice. Indeed, patients incurred direct, tangible medical and other expenses related directly to Fata's frauds and deceptions. While impossible to calculate at this stage, the indisputable existence of these costs provides another reason for the Court to estimate the appropriate loss figure as one above and beyond the amounts paid by Medicare and BCBS on Fata's fraudulent treatments.

Under the Guidelines, actual loss is defined as "reasonably foreseeable pecuniary harm that resulted from the offense." U.S.S.G. § 2B1.1 cmt. note 3(A)(i). The Guidelines go on to define "reasonably foreseeable pecuniary harm" as "pecuniary harm the defendant knew, or, under the circumstances, reasonably should have known, was a potential result of the offense." U.S.S.G. 2B1.1 cmt. note 3(A)(iv).

Fata, given his training and experience in the practice of oncology, was undoubtedly aware of the possibility of tangible pecuniary harm to patients seeking to remedy the damage his frauds inflicted upon their bodies. Every time Fata

administered a dose of unnecessary rituximab, Fata knew that the patient may eventually incur costs to treat infections resulting from the immunosuppressive features of the drug. Every time Fata implanted an unnecessary chemotherapy port into a patient's chest, Fata knew the patient may someday incur costs to remove the port. Every time Fata provided unnecessary iron infusions to his patients, he knew that the patient may ultimately incur costs to treat iron overload.

The existence of these tangible pecuniary harms to patients are not speculative – they are real, and the victim impact letters submitted in this case are full of references to such costs. The letters of victims of Jessica Arsenault and the second iron victim who wished to remain anonymous (Iron Victim 2), cited *supra*, each illustrate the reality of costs patients of Fata's are continuing to incur as a result of his crimes. Ms. Arsenault states that she received unnecessary iron infusions from Fata, and that her ferritin levels eventually reached 10-15 times normal. Jessica Arsenault VIS. She references current complications she suffers as a result of this excess iron, and states that she is presently having to endure having "blood drained out of my body and thrown away." *Id.* Iron Victim 2 also received excessive iron from Fata while pregnant, and referenced having to endure regular testing for herself and her children in order to monitor for iron poisoning. Iron Victim 2 also referenced the need for regular phlebotomies as a result of her

Fata-induced iron overload. The phlebotomies, tests, and procedures these women have endured as a result of Fata's unnecessary iron infusions carry enormous emotional costs, eloquently spoken to in the victim impact statements; however, they also carry tangible pecuniary costs. These procedures cost money, and those wholly unnecessary costs are being borne by victims and their insurers as a result of Fata's offenses.

Courts have recognized that "reasonably foreseeable pecuniary harm" in economic crimes cases can include costs imposed on victims above and beyond the amount stolen from them directly by the defendant. In *United States v. May*, 706 F.3d 1209 (9th Cir. 2013), defendants were convicted of mail theft and receipt of stolen mail. The defendants' scheme was sufficiently pervasive that the post office was forced to change its delivery policy in the area where defendants were active. *Id.* at 1212. The changes to the delivery policy imposed costs on the Post Office, and the defendants challenged the inclusion of those costs in their intended loss figure for guideline purposes. The court held that the cost of these remedial measures could appropriately be considered as part of the intended loss figure, given the reasonable foreseeability of the harm. *Id.* at 1213. In *United States v. Barnes*, 375 F. App'x 678 (9th Cir. 2010), defendant was convicted of bank fraud for attempting to steal approximately \$193,000 from a bank. Individual account

holders had their direct losses reimbursed; however, they incurred certain “collateral” expenses, such as the hours spent “going to their banks, signing affidavits, and fixing their accounts.” *Id.* at 680. The inclusion of these costs in the intended loss amount was found not to be clearly erroneous. *Id.*

The government acknowledges that these additional losses, borne by patients or their insurers, are unquantifiable at this stage. However, these losses are nonetheless relevant to the defendant’s subjective intent, and there is no requirement that the loss figure be calculated precisely. Indeed, the Guidelines expressly contemplate that the district court “need only make a reasonable estimate of the loss.” U.S.S.G. Section 2B1.1 cmt. note 3(C). The Sixth Circuit has recognized the same principle, holding that “the district court does not have to establish the value of the loss with precision . . . .” *United States v. Poulsen*, 655 F.3d 492, 513 (6th Cir. 2011). The existence of this body of unquantifiable, but real, costs provides a further basis for the Court to estimate the amount of intended loss in this case to be substantially above and beyond the amount paid by Medicare and BCBS.

*c. Understated Loss Due to Scope of Fraud*

Third, the loss amount – as stipulated to by the parties – substantially understates the amount Fata actually stole, and does so because of practical

limitations on the government's investigative resources. The government has undertaken a huge effort with thousands of agent, prosecutor, expert and other employee hours to substantiate the harms Fata caused through his deceptions. But the government's loss figure is necessarily bounded by the resources it has at its disposal. Some examples of reasons why loss is undoubtedly understated:

- an IVIG test review was done for Medicare patients, but not BCBS or other insurers, based purely on available resources
- employee witnesses report overuse of human growth factors like Neulasta, but individual patient file review is necessary to substantiate each
- the files reviewed by the experts who found serious instances of patient harm number in the dozens, where 16,000 files exist that could theoretically be reviewed
- the real, but underdosed, MDS and other cancer patients are not included
- the scope of the search warrant began in 2009 so allegations regarding treatment before that date could not be verified
- the Rituximab data analysis was never done for insurers other than Medicare and BCBS
- second opinion physicians notified the government of so many examples of Fata's mistreatment that not all of them could be investigated criminally, often describing trends of unnecessary bone marrow biopsies, overuse of Feraheme and rituximab in Fata patients taken in after his arrest.

There are many more examples of how the full scope of Fata's theft is undercounted due to the limits of what the government's ability to investigate

every aspect of his fraud. These additional losses have not been quantified, but there is evidence supporting their existence, and they bear on Fata's subjective intent to cause substantially more loss than is measured in the insurer-paid amounts that form part of the stipulation. The existence of these additional losses counsels in favor of the Court estimating the intended loss in this case as an amount substantially higher than the dollars paid by Medicare and BCBS on the agreed-upon fraudulent claims.

Because, in the instant case, the insurer-paid amount included in the PSR substantially understates the amount of economic harm Fata intended to create through his conduct, the government submits that the Court can reasonably estimate that the intended loss exceeded \$20 million and thus apply a 22-level adjustment under Section 2B1.1(b)(1).

**C. Section 3B1.3: Abuse of Trust is More Appropriate Than Use of Special Skill**

Fata violated every trust in his quest for money. His Guidelines should reflect that abuse. In addition, making the special skill finding over the abuse of trust unnecessarily forecloses consideration of Fata's role in the offense—that is, that he was a leader/organizer of the kickback conspiracy. Probation added a two-level enhancement because Fata “abused a special skill.” PSR ¶ 81 (citing U.S.S.G. § 3B1.3). Fata filed no objection, and agreed in a stipulation between the

parties that “the government could prove, by a preponderance of the evidence, that Fata’s offense involved the abuse of a position of trust.” The government objects to Probation’s application of the special skill enhancement rather than the abuse of trust enhancement under Section 3B1.3.

Every Circuit Court of Appeals that has directly addressed the issue has found that physicians occupy a position of trust with respect to insurance providers, including Medicare, and that physicians who defraud their insurers may be liable under Section 3B1.3 for abusing that trust. *See, e.g., United States v. Liss*, 265 F.3d 1220, 1229 (11th Cir. 2001); *United States v. Nishona*, 156 F.3d 318, 321 (2d Cir. 1998); *United States v. Adam*, 70 F.3d 776, 782 (4th Cir. 1995); *United States v. Hoogenboom*, 209 F.3d 665, 671 (7th Cir. 2000). Insurers like the Medicare program entrust physicians with great discretion in the exercise of their professional responsibilities, and expect them to ensure the integrity of the claims submitted. *See, e.g., Adam*, 70 F.3d at 782 (physicians exercise enormous discretion: their judgments with respect to necessary treatments ordinarily receive great deference and it is difficult to prove that those decisions were made for reasons other than the patient’s best interests); *Hoogenboom*, 209 F.3d at 671 (Medical Service providers occupy positions of trust with respect to public or private insurers and enjoy significant discretion and consequently a lack of

supervision in determining the type and quality of services that are necessary and appropriate for their patients). The Sixth Circuit does not appear to have addressed this issue directly in the Medicare context; however, in applying an abuse of trust enhancement under section 3B1.3 to a physician who wrote fraudulent prescriptions, the Circuit did note that a practicing physician enjoys perhaps the highest level of discretion afforded any professional. *See United States v. McCollister*, 96 F. App'x 974, 976 (6th Cir. 2004).

One need not even be a physician to violate trust with an insurer. *See, e.g. United States v. Hodge*, 259 F.3d 549, 556-57 (6th Cir. 2001) (therapist operator of substance abuse counseling facility held position of trust due to managerial role); *United States v. Barnett*, 89 F. App'x 906, 910-11 (6th Cir. 2003) (upholding abuse of trust enhancement to non-owner office manager “who had substantial discretionary judgment) (unpublished). *See also United States v. Miller*, 607 F.3d 144, 150 (5th Cir. 2010) (upholding application to owner of a licensed DME provider whose “complex, situation-specific decision making [] is given considerable deference”).

Fata did not just violate insurers' trust. He violated his patients' in the most egregious possible manner. The Hippocratic oath states in part:

I will use those dietary regimens which will benefit my patients according to my greatest ability and judgement, and I will do no

harm or injustice to them...I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan...Into whatever homes I go, I will enter them for the benefit of the sick, avoiding any voluntary act of impropriety or corruption...So long as I maintain this Oath faithfully and without corruption, may it be granted to me to partake of life fully and the practice of my art, gaining the respect of all men for all time. However, should I transgress this Oath and violate it, may the opposite be my fate.

See [https://www.nlm.nih.gov/hmd/greek/greek\\_oath.html](https://www.nlm.nih.gov/hmd/greek/greek_oath.html). Fata violated every part of this oath: acting for his own good, doing harm, prescribing deadly drugs for his own pleasure (money), giving advice that could hasten death, and entering these patients' lives with corrupt purpose, and not for their good, but his own.

One of the hallmarks of Fata's criminal conduct is the manner in which he abused the many trusts placed in him. His Guidelines should reflect this abuse pursuant to Section 3B1.3.

**D. Section 3B1.1(a): Fata Held a Leadership Role in an Otherwise Extensive Kickback Conspiracy**

Fata should receive a four-level enhancement as a leader/organizer of the Guardian Angel kickback conspiracy. Fata and the owner of Guardian Angel entered into a criminal agreement – Guardian Angel paid Fata kickbacks and in exchange he sent Guardian Angel Hospice and Guardian Angel Home Care patients. Each of the co-conspirators led his part of the conspiracy: Fata's leadership was in organizing and directing the MHO staff and Swan for Life

workers who sent the patients to Guardian Angel. Probation applied the Section 3B1.3 Use of Special Skill enhancement (rather than the Abuse of Trust under the same section) which forecloses the application of a leadership role. The Government objected.

The MHO-Guardian Angel kickback conspiracy was “otherwise extensive.” An offense is otherwise extensive “when the combination of knowing participants and non-participants in the offense is the functional equivalent of an activity involving five criminally responsible participants.” *United States v. Anthony*, 280 F.3d 694, 699 (6th Cir. 2002). The Sixth Circuit has explained that the test for extensiveness under Section 3B1.1(a) is a test of “numerosity,” *Anthony*, 280 F.3d at 700, and has set forth specific instructions as to how courts must examine the contributions of knowing participants and non-participants to determine whether the combination is the functional equivalent of an activity involving five criminally responsible participants. The three-factor test, as adopted from the Second Circuit, examines:

- (1) the number of knowing participants;
- (2) the number of unknowing participants whose activities were organized or led by the defendant with specific criminal intent; and

(3) the extent to which the services of the unknowing participants were peculiar and necessary to the criminal scheme.

*Anthony*, 280 F.3d at 700-01(citing *United States v. Carrozzella*, 105 F.3d 796, 803-04 (2d Cir. 1997), *abrogated in part on other grounds by United States v. Kennedy*, 233 F.3d 157, 160-61 (2d Cir. 2000)). “In assessing whether an organization is ‘otherwise extensive,’ all persons involved during the course of the entire offense are to be considered. Thus, a fraud that involved only three participants but used the services of many outsiders could be considered extensive.” *Anthony*, 280 F.3d at 700 (quoting U.S.S.G. § 3B1.1, App. Note 3).

After this Court determines the number of individuals who should be counted under (1) and (2), this Court must consider whether the combination of knowing participants and countable non-participants is the functional equivalent of an activity carried out by five criminally responsible participants. “The Second Circuit noted that this requires more than a simple summation of participants and non-participants because ‘[t]he use of unknowing participants to carry out a criminal activity may be more inefficient than the use of knowing participants.’” *Anthony*, 280 F.3d at 701. As a result, “in addition to the *number* of countable non-participants, the test for functional equivalence requires that a sentencing court consider how significant the role and performance of an unwitting participant was

to the ultimate criminal objective.” *Anthony*, 280 F.3d at 701 (emphasis in original).

Fata’s scheme was unquestionably “otherwise extensive.” The knowing participants in the scheme were two: Fata and Guardian Angel’s owner. Fata organized and led countless other unknowing participants who were “peculiar and necessary” to his crime: it is impossible to assign a specific number given the volume of employees who churned through his turnstile at MHO and the numerous hospital staff he directed over the years of the scheme. The qualitative nature of the unknowing participants’ actions was undeniably integral and vital to the success of the scheme. This fraud could not have been accomplished without the unknowing assistance of countless individuals at MHO. Multiple employees, including nurse practitioners (NPs) and Swan for Life social workers reported that Fata made them participate in the scheme to send patients to Guardian Angel, at times over the objection of the patient. MHO staff and Swan for Life social workers were also responsible for fielding numerous complaints about the company and reassuring patients who wanted to be sent elsewhere. The patients themselves were unwittingly drawn into the scheme, and numerous examples have been provided of patients who received problematic care from Guardian Angel.

All of this evidences how crucial the non-participants were to continuing the kickback scheme and the value Fata provided to the companies. Fata met repeatedly with Guardian Angel representatives at the MHO offices and allowed them to solicit business from non-participant physicians working under him. He allowed Guardian Angel to advertise both through MHO and Swan for Life. Fata relied on his staff to execute many of his orders (as he only spent around 5 minutes with most existing patients). Without the many MHO and Swan for Life employees at his disposal, he could not have efficiently funneled Medicare patients to the Guardian Angel companies. While *Anthony* cautioned that that counting non-participants can be difficult where non-participants are only tangentially involved in the offense, *Anthony*, 280 F.3d at 700, such a concern is not presented here. The essential aid provided by unknowing participants was sufficient to render the fraud the functional equivalent of a five-member scheme. All of the roles of the unwitting participants were significant to the ultimate criminal objective.

Several Circuit Courts of Appeal have upheld four-level role enhancements in situations analogous to this one. In *United States v. Frost*, 281 F.3d 654 (7th Cir. 2002), two defendants (named Frost and Bracken) who owned and managed an Indiana trade school were convicted of fraudulently obtaining federal student loan funds to which they were not entitled. Each defendant received a four-level

enhancement for an aggravating role, which they challenged on appeal. The Court assumed that the defendants were the only two criminally culpable participants, and that employees at the school “who aided Frost and Bracken could not have been convicted of conspiring to defraud the United States—that those who aided Frost and Bracken were their dupes rather than knowing participants.” *Id.* at 658. The Court nonetheless noted that Frost and Bracken supervised many staff at the school who assisted them in submitting false applications for student aid, and upheld the four level enhancements for the two defendants, given that the scheme was “otherwise extensive.” *Id.*

Similarly, in *United States v. Yeager*, 331 F.3d 1216 (11th Cir. 2003), the Eleventh Circuit affirmed a four-level leadership role enhancement for a defendant in a conspiracy with only two participants. The offense of conviction, which involved the active use of many non-culpable employees in a pharmaceutical distribution business, was found to be “otherwise extensive.”<sup>7</sup> The defendant noted that the other participant had likewise received a four-level enhancement at

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<sup>7</sup> The defendant in *Yeager* owned a small pharmaceutical distributor, and his co-conspirator owned a mail-order pharmacy. The conspirators obtained a restricted right from a drug manufacturer to distribute certain pharmaceuticals at a low price to a group of home health patients; they in fact worked together to sell those pharmaceuticals at a large profit to non-authorized buyers. Both defendants directed their respective employees to engage in conduct designed to conceal the scheme from the drug manufacturer. *Id.* at 1220.

sentencing, and argued that only one participant should be eligible for such an enhancement. The Court disagreed, noting that a two-participant conspiracy can involve each participant exercising control or influence over the other participant with respect to certain aspects of the plan. *Id.* at 1226. The Court went on to note that “even more telling, the record indicates that Yeager directed other employees,” presumably non-participant dupes, “to undertake risks designed to further the scheme.” *Id.* The oversight and direction of non-criminally culpable participants in an otherwise extensive scheme is an appropriate basis for application of the enhancement.

In sum, the combination of knowing participants (Fata and Guardian Angel’s owner) and non-participants in the offense is unquestionably far beyond the functional equivalent of an activity involving five criminally responsible participants. Moreover, Fata plainly exercised oversight and control over a substantial number of “dupes” who were integral to the success of the home health scheme. Accordingly, this Court should apply the four-level enhancement pursuant to 3B1.1(a).

#### **E. Upward Departures Applicable to Fata’s Conduct**

In the event the Court determines that the Guidelines for Fata’s offenses are anything less than life imprisonment, the United States respectfully moves the

Court to depart upward to life imprisonment. Fata's conduct falls far outside the heartland of cases within the 2B1.1 guidelines, *Koon v. United States*, 518 U.S. 81, 94 (1996), and numerous 5K upward departures apply.

**1. Aggravating Role Departure (Section 3B1.1(a))**

If the Court does not apply an enhancement for aggravating role pursuant to Section 3B1.1, the Court should depart upward pursuant to Application Note 2 as it may be warranted where the defendant "nevertheless exercised management responsibility over the property, assets, or activities of a criminal organization." U.S.G.G. § 3B1.1(a), Application Note 2.

As discussed, *supra*, in the Factual Background, Fata managed all of the property, assets and activities of MHO, United Diagnostics, Vital and Swan for Life which were simply the corporate names he gave to the criminal organization he orchestrated, developed, and led on a daily basis in order to line his pockets with millions of dollars in total disregard of the health of his patients.

**2. Physical and Psychological Harm (Section 2B1.1, 5K2.1, 5K2.2, 5K2.3)**

The physical and psychological harm Fata caused are understated by the Guidelines range, which is driven primarily by the pecuniary harm Fata caused. Probation has applied, and the parties agree that the Section 2B1.1(b)(15)(A)(2) level enhancement for "conscious or reckless risk of death or serious bodily

injury.” Nevertheless, these two levels do not begin to account for the immense physical and psychological harm he caused to not merely the over 500 identified victims, but also to others that remain unidentified by the government but suffered nonetheless. The extent of the harm—coming as it does from the repeated administration of poisonous drugs with no benefits—is staggering.

Application Note 20(A)(ii) of Section 2B1.1 permits an upward departure where “the offense caused or risked substantial non-monetary harm” such as “physical harm, psychological harm or severe emotional trauma.” Section 5K2.0 of the United States Sentencing Guidelines similarly instructs sentencing courts that they may depart upward under a variety of circumstances of a kind not adequately taken into account, including risk of death (Section 5K2.1), physical injury (Section 5K2.2), and extreme psychological injury (Section 5K2.3), overlapping with the 2B1.1 departure.<sup>8</sup>

*a. Section 5K2.1: Death*

Fata’s mistreatment of his hematology and oncology patients knowingly risked death warranting an upward departure under Section 5K2.1. The

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<sup>8</sup> If the Court departs upward based on physical or psychological injuries, it should choose to do so only under one upward departure provision to avoid double counting, *i.e.* physical injury: Section 2B1.1, App. Note 20 or Section 5K2.2; severe psychological injury: Section 2B1.1, App. Note 20 or Section 5K2.3.

government need not prove that Fata's conduct actually caused a death or multiple deaths; it is sufficient that Fata knowingly engaged in criminal activity that risked death for an upward departure to be legally permissible. *See, e.g., United States v. White*, 979 F.2d 539, 545 (7th Cir. 1992) (death need only be intentionally or knowingly risked); *see also United States v. Nossan*, 647 F.3d 822, 826-27 (8th Cir. 2011) (applied even though defendant did not intend to kill the person to whom she twice distributed heroin and cocaine); *United States v. Mousseau*, 517 F.3d 1044, 1049 (8th Cir. 2008) (defendant distributed methamphetamine to a minor who died after using the drug; defendant's conduct was dangerous and defendant disregarded a known risk); *United States v. Reis*, 369 F.3d 143, 152 (2d Cir. 2004) (defendant knowingly risked death by squeezing the victim's neck); *United States v. Fortier*, 242 F.3d 1224, 1232-33 (10th Cir. 2001) (death was reasonably foreseeable when defendant sold weapons and gave proceeds of the sales to the bombers of the Murrah Federal Building in Oklahoma City); *United States v. Davis*, 30 F.3d 613, 614-15 (5th Cir. 1994) (defendant should have anticipated that serious injury or death could result when gas station employee died from an aneurysm during robbery); *United States v. Grover*, 486 F. Supp. 2d 868, 887 (N.D. Iowa 2007) (defendant sold heroin to victim twice and knew the heroin was especially pure and dangerous).

This upward departure may be applied even though the Court will have applied the 2B1.1(b)(15)(A)(2) level enhancement for “conscious or reckless risk of death or serious bodily injury.” U.S.S.G. § 5K2.0(a)(2)(B)(3). It is the degree of the upward departure under 5K2.1 that is to be considered when the 2B1.1 enhancement has already been applied. In this case, the government submits that Fata’s conduct warrants an adjustment higher than the mere 2-level adjustment provided by 2B1.1(b)(15)(A), as the Guidelines do not adequately account for the immense risks he created for his patients, risks that may well have hastened some deaths.

*b. Physical Injury: Section 5K2.2 or Physical Harm Section 2B1.1, App. Note 20(A)(ii)*

The Guidelines allow an upward departure based on a factor already taken into account in the guideline calculation “if the court determines that, in light of unusual circumstances, the guideline level attached to that factor is inadequate.” U.S.S.G. § 5K2.0. To depart upward for the documented physical injuries caused by Fata’s unnecessary treatments, this Court need only find that the two-level adjustment for conscious or reckless risk of serious bodily injury under Section 2B1.1(b)(15)(A)(2) was inadequate. *United States v. Myers*, 66 F.3d 1364, 1374-75 (4th Cir. 1995); *United States v. Evans*, 272 F.3d 1069, 1089 (8th Cir. 2001) (no impermissible double counting where factor is present to an exceptional degree

or the case is significantly different from the ordinary case where the factor is present). Unquestionably, this is undeniably an exceptional case where the physical injuries are present to a degree substantially in excess of that which ordinarily is involved in fraud offenses, which two levels hardly represent.

*c. Extreme Psychological Injury (Section 5K2.3) or Psychological Harm/Emotional Trauma (Section 2B1.1, App. Note 20(A)(ii))*

Fata's unfathomable criminal conduct caused not only physical, but also extreme psychological injury to his patients and to the family members of his patients. An upward departure for extreme psychological injury is authorized by Section 5K2.3 where victims suffer psychological injury "much more serious than that normally resulting from commission of the offense." U.S.S.G. §5K2.3.<sup>9</sup> The Court should take into account the (1) severity of the injury and extent to which it was (2) intended or knowingly risked. *Id.* In addition, the Court should look to how likely it was, given the defendant's conduct, that "substantial impairment of the intellectual, psychological, emotional, or behavioral functioning of a victim, when the impairment is likely to be of an extended or continuous duration, and when the

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<sup>9</sup> Because physical and psychological injuries are distinct injuries suffered by each patient, separate upward departures are appropriate. *See United States v. Newman*, 965 F.2d 206 (7th Cir. 1992) (in a fraud prosecution, the court need not merge upward departures for both bodily and psychological harm; upward departures are appropriate for both when physical harm to a victim is distinct from psychological injuries inflicted by the defendant's threats, lies, and physical harm).

impairment manifests itself by physical or psychological symptoms or by changes in behavior patterns.” *Id.*

As illustrated by numerous interviews and Victim Impact Statements, Fata is responsible for causing profound levels of psychological and emotional injuries. Sadly and significantly, these extreme psychological injuries were knowingly risked by Fata. Fata chose to exploit the most vulnerable of victims, namely cancer patients and their fear-ridden families. As their trusted doctor, Fata was in a uniquely well-placed position to foresee the damage to patients and families that his scheme would and did cause by, among other things:

- Traumatizing people who did not have cancer by telling them that they would die without his treatment.
- Telling people who had terminal cancer that they could survive with his treatment.
- Not informing patients of their options, whether it was a cure (transplant) or end-of-life (hospice), leaving them and/or their families to always wonder what if?
- Creating ongoing doubt, anxiety and fear in his patients about their health after unnecessary treatments.
- Creating ongoing doubt, anxiety and fear in his patients about their ability to trust any medical professional.

For these reasons, an upward sentencing departure based on extreme psychological injury is warranted. *See, e.g., United States v. Barnes*, 125 F.3d

1287 (9th Cir. 1997) (pharmacist who, after losing his license, impersonated a doctor and fraudulently treated patients); *United States v. Greene*, 17 F. App'x (9th Cir. 2001) (defendant marketed bogus HIV tests that gave false results to AIDS victims). Several cases involving conduct far less egregious than Fata's have resulted in Section 5K2.3 upward departures. *See, e.g., United States v. Jarvis*, 258 F.3d 235, 239-41 (3rd Cir. 2001) (defendant's mail fraud investment scheme caused victims to seek counseling and take medication for depression); *United States v. Astorri*, 923 F.2d 1052, 1058-59 (3rd Cir. 1991) (two victims of an investment fraud were found to have suffered extreme psychological injury, evidenced by one victim seeking treatment for high blood pressure); and *United States v. Pergola*, 930 F.2d 216, 219 (2nd Cir. 1991) (offense conduct of mailing sixty threatening letters to people caused the recipients of the letters to suffer severe emotional impairment).

### **3. Extreme Conduct (Section 5K2.8)**

Section 5K2.8 separately permits an upward departure in this case to account for his crimes, which were “unusually heinous, cruel, brutal, or degrading” to the victims. U.S.S.G. § 5K2.8. “Examples of extreme conduct include torture of a victim, gratuitous infliction of injury, or prolonging of pain or humiliation. *Id.*

Fata's scheme was clothed in legitimacy, but at its base required him to act brutally: he ordered his patients poisoned for money. He saw many of them deteriorate before his eyes, and ordered more treatments. As his patients declined, Fata escalated. Fata's conduct is deeply offensive to human norms of decency and morality. Taking advantage of sick patients or making healthy ones believe they are sick is unusually heinous and sadistically cruel. People entrusted Fata with not money, but their lives. He betrayed that trust on an unprecedented scale.

Fata's fraud was not the result of a spontaneous decision borne out of financial distress, a heat of the moment lapse in judgment or crime of passion. Rather, his crimes were generated and prolonged by daily and hourly decisions cold-bloodedly carried out year after year after year. As illustrated by the Victim Impact Statements and all of the facts set forth in this sentencing memorandum, his conduct was extreme, extraordinary, and unprecedented. An upward departure under Section 5K2.8 would appropriately recognize Fata's extreme conduct.

#### **IV. Section 3553(a) Factors**

Title 18, United States Code, Section 18 U.S.C. § 3553(a), provides numerous factors that the Court shall consider in sentencing Fata. Factors pertinent to the instant offense are referenced and/or discussed below.

##### **A. The nature and circumstances of the offense and the history and characteristics of the defendant.**

*See* Factual Background, *supra*.

- B. The need for the sentence imposed (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with appropriate education, vocational training, or medical care.**

As illustrated by the Victim Impact Statements, *see, e.g.*, Exhibit K (Victim Impact Statement Excerpts), the physical and emotional impact of Fata's crimes is staggering. Only a life sentence appropriately recognizes the seriousness and magnitude of this scheme and the effect it had on its victims. The imposition of such a sentence is particularly appropriate because the impact of Fata's crimes will have a lifelong effect on his victims.<sup>10</sup>

In imposing the statutory maximum – 150 years – on notorious Ponzi schemer Bernard Madoff, the sentencing judge discussed the importance of deterrence and symbolism, considerations that are at issue here. Judge Chin acknowledged that any sentence beyond a dozen years or so would be largely symbolic for Mr. Madoff, who was 71 and had a life expectancy of about 13 years at the time of sentencing. But, as with Fata, such “symbolism is important for at least three reasons.” Ex. D (Madoff Sentencing Transcript) Tr. at 47.

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<sup>10</sup> In this case, of course, the longest available term is the statutory maximum of 175 years.

First, retribution. . . . Here, the message must be sent that Mr. Madoff's crimes were extraordinarily evil. . . . Second, deterrence. . . . The strongest possible message must be sent to those who would engage in similar conduct that they will be caught and that they will be punished to the fullest extent of the law. Finally, the symbolism is also important or the victims. [M]ore is at stake than money, as we have heard. The victims placed their trust in Mr. Madoff.

*Id.* Judge Chin also noted that these same victims were “placing their trust in the system of justice,” adding that “[a] substantial sentence, the knowledge that Mr. Madoff has been punished to the fullest extent of the law, may, in some small measure, help these victims in their healing process.” Tr. at 49.

Symbolism is important here for the same three reasons: Fata's crimes were “extraordinarily evil.” A life sentence would deter others from committing similar crimes. It would also assist the healing process for the victims and their families who would know that Fata has been punished to the full extent of the law.

**C. The sentencing range established by the United States Sentencing Guidelines**

*See* Sentencing Guidelines Section, *supra*.

**D. Any pertinent policy statement issued by the United States Sentencing Commission (“U.S.S.C.”)**

*See* Upward Departure Section, *supra*.

**E. The need to avoid unwarranted sentencing disparities among defendants with similar records**

### **1. Sentences Over 100 Years/At Statutory Maximum for Fraud**

For fraudulent schemes with a potential of physical harm, Fata is most comparable to Roger Day, who committed \$11.2 million in procurement fraud, and who was sentenced to the statutory maximum of 105 years in prison. *United States v. Roger Charles Day*, No. 07-00154 (E.D. Va. 2011) (Offense Level 45, Criminal History IV). Day created fake companies to bid on government contracts and then sold parts to the U.S. military that were substandard or defective and could not be used for their intended purposes. The court found that the Government did not provide evidence of actual harm to members of the military, but in furnishing its sentence, stated that “somebody’s life was put in jeopardy” as a result of Day’s scheme. (Tr. R 85, ¶ 19-20). Like Day, Fata’s scheme risked lives. Although Day had a higher Criminal History category, Fata’s loss amount is twice that of Day’s, And Fata’s fraud involved actual harm rather than risk of harm.

For comparatively-sized fraudulent schemes without physical harm to the victims, Fata is also similar to a number of defendants who were convicted of running Ponzi schemes. Like a Ponzi scheme, Fata preyed on the most vulnerable people to make money. But unlike a Ponzi scheme, Fata did not just steal money, he used cancer patients and vulnerable people he made believe were cancer

patients, as props for days and weeks on end, subjecting them to unnecessary chemotherapy in order to steal more money.

In imposing a 330-year sentence on Norman Schmidt, who committed \$43 million in investment fraud on approximately 1,000 victims, the court stated “What is also unique is the harm caused by these offenses. This defendant did not simply steal money from the rich in Robin Hood like fashion, he stole money from the elderly, the infirm and the disabled. The victim letters attached to the pre-sentence report indicate clearly that he ruined many people’s lives by defrauding them of their life savings.” *United States v. Norman Schmidt*, No. 04-00103 (D. Colo 2008) (Offense Level 45, Criminal History V) (Tr. at 51, ¶ 4-10). Schmidt was 72 years old at the time of sentencing and faced a statutory maximum of 345 years. Like Schmidt, Fata ruined people’s lives. Unlike Schmidt, Fata did this by affecting their health and not just their savings. *See also United States v. Williams*, No. 09-00213 (D. Md. 2012) (sentenced to 150 years for his participation in a \$34 million mortgage fraud Ponzi scheme involving more than 1,000 victims).

Bernard Madoff received the statutory maximum sentence of 150 years in arguably the most famous white collar sentence ever to be handed down. *See United States v. Madoff*, No. 09-00213 (S.D.N.Y. 2009) (Offense Level 52, Criminal History I). In imposing a sentence greater than other financial fraud

cases, and greater than the 50 years requested by Probation, Judge Chin acknowledged, “I have taken into account the sentences imposed in other financial fraud cases in this district. But, frankly, none of these other cases is comparable to this case in terms of scope, duration and enormity of the fraud, and the degree of betrayal.” Ex. D (Madoff Sentencing Transcript) at 46. Fata, like Madoff, is not comparable to any other crime in this District in the scope and enormity of the fraud and degree of betrayal. In many ways, he is worse than Madoff, in that he wreaked damage on not only his victims’ bank accounts, but their bodies.

Similar to Madoff, Allen Stanford was convicted of running a \$7 billion Ponzi scheme and sentenced to 110 years. *United States v. Stanford*, No. 09-00342 (S.D. Tex. 2012) (Offense Level 56, Criminal History I, Maximum Sentence 230 years). Unlike Madoff, however, Stanford’s scheme, like Fata’s, overwhelmingly benefited one person – himself.

In requesting either the statutory maximum or an effective life sentence, the Government highlighted that Stanford had closely supervised the fraud and orchestrated an elaborate cover-up of his actions. For example, Stanford’s analysts, who were responsible for running the day-to-day business operations, had access to only 15-20% of the bank’s portfolios.

Similarly, Fata singlehandedly designed the fraud, which necessitated fooling his own employees and professional staff. Questions from other doctors and nurses were met with lies and high-handed dismissal. Employees who did push back on Fata – sending patients to non-Guardian Angel home cares and hospices or insisting he stop treatments contrary to known administrations – were met with resistance at every step. Fata went to extreme lengths to cover up his actions not just to insurers and patients, but within his organization. His position as a doctor, trusted to make decisions base on patient care, helped him cover up his real motives. Many of MHO’s doctors, nurses, medical assistants and staff tried to do their best for Fata’s patients, only to have Fata reverse those efforts so he could perpetrate his fraud. Fata bears an enormous responsibility for this fraud that is comparable to or greater than Stanford’s.

The Judge sentenced Stanford to the statutory maximum of 20 years on the one count of conspiracy to commit wire and mail fraud, and 20 years on each of the four counts of wire fraud, as well as 10 years on the SEC obstruction charges – to run consecutively for a total of 1320 months (110 years). The Judge also sentenced Stanford to the statutory maximum sentences on the other charges, to run concurrently.

**2. Courts Have Imposed Sentences Up To 50 Years for Defendants Convicted of Health Care Fraud Without Harm To Patients**

Defendants convicted of health care fraud are routinely sentenced at, or above, the top of the Guideline range, and often receive effective life sentences of 30 or more years. *See United States v. Alvarez*, No. 08-20270 (S.D. Fla. 2008) (54-year-old sentenced to 30 years (360 months) when the Guideline range was 210-262 months for her participation in a \$9 million healthcare fraud); *United States v. Antonio Macli*, No. 11-20587 (S.D. Fla. 2013) (73-year-old sentenced to 30 years (360 months) when the Guideline range was 292-365 months for his participation in a \$50 million healthcare fraud).

In *United States v. Duran*, No. 10-20767 (S.D. Fla. 2011) (Offense Level 50, Criminal History I), Duran was sentenced to 50 years imprisonment for his role in a fraudulent Partial Hospitalization Program (PHP). In that case, Defendant Duran was responsible for conspiring with others to submit thousands of false claims totaling more than \$200 million to the Medicare program. During the course of his criminal conspiracy, Duran falsified medical records, taught others to do so, and paid for the patients to be brought into the scheme. Duran's Guidelines were calculated at Life, and the court explained the impact of the scheme on the patients when discussing the vulnerable victim enhancement:

The record shows that these patients were elderly, sick, demented, and suffering from, in many instances, substance abuse, who could not and did not benefit from partial hospitalization treatment that was alleged by the operator. . . . Not only was the treatment purportedly offered to them, not only was it useless, but by spending their days at ATC and ASI, these people were denied their opportunity to receive treatment appropriate for their illnesses. The doctors at ATC and ASI would sign off on charts without ever having examined or consulted with these people. . . They could have received. . . treatment that perhaps or might have helped them. Might not have, depending on the state of their disease, but nevertheless, this was the process.” (Tr. at 21-23).

Although the amount of loss caused by Duran was greater than that caused by Fata, his fraud was like many of the typical health care fraud cases in which services or treatments are billed for, but not rendered. Rather than causing affirmative harm, he failed to treat or provided useless treatment. Fata is unique in the annals of health care fraud in that did not just bill for medically unnecessary treatments, but that he actually rendered a huge quantity of them, all of which posed serious risks or harm or actually caused harm.

On May 21, 2015, *United States v. Khan*, No. 12-00064 (S.D. Tex. 2015), former hospital assistant administrator Khan was sentenced to 40 years imprisonment for submitting claims for \$116 million in partial hospitalization program services that were not medically necessary and, in some cases, never provided. Khan also admitted that he and his co-conspirators paid kickbacks to patient recruiters and to owners and operators of group care homes in exchange for

which those individuals delivered ineligible Medicare beneficiaries to the hospital's PHPs. As with *Duran*, although the loss amount is higher, this case involves a failure to deliver adequate or medically necessary services, not actual harm to the patients. The paid amount in the scheme was, in fact, only around \$31 million. Neither Duran nor Khan comes close to the type of harm inflicted by Fata on hundreds of patients with such devastating results.

Because statutory maximum sentences of more than 100 years have been given in fraud cases, and because of the patient harm in this case, the requested sentence of 175 years does not create an unjustified sentencing disparity, and is appropriate to the defendant's crimes.

## Recommendation

Based upon the considerations set forth above, the United States respectfully requests that this Court impose a term of life imprisonment, *i.e.*, the statutory maximum of 175 years.

Respectfully submitted,  
BARBARA L. MCQUADE

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Date: May 28, 2015

### **Certificate of Service**

I hereby certify that on May 28, 2015, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to counsel for the defendant.

/s Catherine K. Dick  
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# EXHIBIT A

**U.S. v. FATA VICTIM IMPACT STATEMENT EXCERPTS<sup>1</sup> :**

**I. Multiple Myeloma Patients**

- “After [unnecessary] chemotherapy . . . I started off bed ridden with unbearable pain. I went to a walker, then the 4 pronged cane . . I have a paralysis of 2 ½ toes on my left foot. I have peripheral neuropathy in both hands and both feet. I am unable to eat with regular utensils. Only plastic ware may touch my mouth or enter in . . . I stopped being able to comb my daughter’s hair when she needed me the most. I couldn’t take care of my own either. I couldn’t attend the functions for my children’s sports . . . I have bad ticks/tremors in my hands. I . . have . . unbearable pain at the point of touch that feels like a thousand bee stings. My feet ache, percolate causing level 10 pain 80-90% of each day no matter what I’m doing. I have days when I cannot stand, nor even lay down comfortably. Most nights the pain is too great to allow me to sleep. I am on lots of medicine and even with all that I take; it only takes the edge off just enough to keep me from going insane or crying incessantly . . . I didn’t deserve to end up like this even though I am still alive with love & many thanks, some days when the pain is too great I close my eyes longing for the relief of heaven . . .”  
(Patient Maggie Dorsey)
- From Approx. May 2012 – July 2013 I was treated for Multiple Myeloma with Velcade 3 times per week Revlimid . . . Octagam . . iron and nuelasta . . . for a cancer that I did not have. . . The things that are wrong with [me] now are related to the unnecessary chemo treatment. I am now weak . . . I

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<sup>1</sup> Each Victim Impact Statement submitted to the U.S. Attorney’s Office included a consent form regarding the publication of portions of the Victim Impact Statement. The consent form requested the writer to indicate whether their full names could be used, only their initials, or neither. The government includes in this sentencing memorandum only the level of identification permitted by each of the writers.

have constant bone and muscle pain . . . I actually have what is called smoldering myeloma which requires no treatment . . . I was very active before this and now I can't do the things I was able to prior to treatment. (Patient Doris Gilley)

- “Chemo doses were never the same anytime you would ask why you were told that there were new protocols which I knew that was not the case and would state that the manufactures website dosage chart had not changed but was told b[ ]y fata . . . they just had not changed it yet . . brain damage is a side effect of Revlimd.. . mom can't be left alone in her own home she is very confused and upset all the time now she lives in constant pain from all the unnecessary chemo.. . Mom now has medical issues that the doctors can't explain other than to say it is probably caused from all the unnecessary chemo.” (Jerry Cline, Son of Patient Doris Gilley)
- “Dr. Fata . . confirmed that I . . . [had] cancer but since it was found so early the prognosis was good. By November, 2010 Dr. Fata informed me I was in remission but would need to be on [Velcade] chemo for the next 2 -3 years. . . I explained [to him] I was experienceing extreme pain in my hands, joints, legs and feet. He diagnosed me with neuropathy and gave me pain medications. He said it was a result of the Velcade, and that I had to continue with treatments. . . In Nov. 2010 I went to the Karmanos Cancer Center . . to have my stem cells collected just in case the cancer came back. Dr. Fata tried to talk me out of that decision, but I was scared and went . . .Dr. [name omitted] of the Karmanos Center sent a letter to Dr. Fata recommending that my treatment be discontinued because of my Neuropathy being so bad. Dr. Fata did not change the treatment nor did he ever mention the letter . . . He told me that unless I continued the treatments the cancer would come back and there would probably not be a treatment that I could take . . . I was in treatment for a total of 3 ½ years, which was 3 years too much. The chemo destroyed my immune system, which has landed me in the hospital multiple times. I have trouble walking and am in constant pain. I am on so many medications just to cope with the problems that the Velcade gave me . . . Dr. Fata has hurt me irreparably . . .My life will never be without the torture of pain and the daily hardships I face every day . . .”(Patient Ruth Petruniak)

## II. MDS Patients

- “Since my discovery (8 Aug 2013) of receiving prolonged over treatments (78 cycles too much, and/or 1 year and 3 months) with chemotherapy and numerous other toxic unnecessary infusions (zommeta, iron shots, neulasta, rituxan, and ferehame) administered by Dr. Fata . . . nurses . . .told me that I was actually “o-ding from toxic treatments.” When all along, my cancer was gone. . . I’m withdrawn from society and I don’t trust doctors at all. My eyesight had been damaged . . . my teeth are becoming loose, and gums are painfully sore and inflamed. I just want me back. I live in fear every day, unknowingly what organs will eventually shut down due to the prolonged over treatments . . . “ (Patient C.B.)
- “My mom received her records from the F.B.I and found a new doctor . . . The new doctor . . did not agree with the treatment that had been given . . . She was diagnosed in march of 2013 with MDS which was caused from the chemo she had previously received in 2011. (Writer Requested Anonymity)
- “I began chemo treatment after Farid Fata diagnosed me with (MDS) or Myelodysplastic Syndrome. . . I received iron shots, then two hr IV to remove iron that can cause organ damage.. . I do have MDS . . Sept. 3, 2013, I was told by a new Dr. I never should have been on chemo [;] only weekly bloodwork done . . Fata said I’d be getting [chemo] the rest of my life. (Patient Mariann Gierczak)
- “He [Fata] . . .determined that I had Myelodyspastic Syndrome (MDS) and put me on Vidaza chemotherapy . . . [and] Neulasta . . . Dr. Fata told me initially that I would need treatments for six months; however, when this time came, he informed me that I would need treatments for the rest of my life. Consequently, I continued to receive treatments for about 6-1/2 years until he was arrested . . .Upon learning of Dr. Fata’s indictment, I went to another . . . Oncologist . . . after studying my history . . . he determined that I did not need further Chemo or the Neulasta shots. During the years of treatment by Dr. Fata I suffered from many side effects . . . Currently my ability to walk normally has become very difficult because of neuropathy in my legs, feet and arms. (Patient H.G.)

- “I . . . was a patient of Dr. Farid Fata from 2010 until the day of his arrest August 2013 . . . It started with a horrific painful bone-marrow biopsy . . he told my husband and myself that I had Myelodysplastic Syndrome . . . Fata informed us that it was a terminal cancer. . . He informed us . . . that I would need to start chemo right away . . I had ran a very successful drive for a friend . . and, knew the only cure would be a stem cell transplant. I informed Fata I would not receive Chemo unless I was going on the donor list. Which he refused. I begged him to draw my blood again . . The blood was drawn that day . . . One hour later Fata entered the room . . He said . . “Today my lady you do not need to start chemo, its kind of your lucky day. Your count is up enough that we’ll start you on iron infusions.” . . . Every visit was a constant reminder that I was terminal. Farid Fata told me I would either die from MDS or a secondary infection. He told I still could not go on the transplant list even thou my counts were very low. . . my transfusion days . . . progressed to [including] IVIG Octagam . . . I later found out Octagam should never be given to anyone who has little to no IGA . . Which would be me. . . . My new Doctor . . . said she could not believe what her findings were! I shook and cried as she said its all lies . . . (Patient Patricia Hester)
- “My wife was falsely and, wrongfully treated by Dr. Farid Fata . . Fata gave my wife a diagnosis of Myelodysplastic Syndrome . . which she did not have. . . From the beginning of his horrible diagnosis, which was presented to us as terminal, I begin to feel a sense of helplessness . . I’m going to loss my soulmate. I had retired and had planned on having a fun active life together . . All this seemed shattered. This caused me . . to battle with depression . . I also began smoking cigarettes and drinking . . The emotional breakdown of our relationship is the hardest for me to cope with now . . We took a rushed Disney trip to make memories for our family. I watched as if it was surreal as my wife gave away all the things she thought people close to her would want to remember her . . we felt hopeless and in despair. (Michael Hester, Husband of Patient Patricia Hester)
- “When I found out that [she] had Myelodysplastic Syndrome . . . I was inconsolable. I feel into a deep depression. I felt like I couldn’t go on. . . . I cried myself to sleep almost every night. Those years we thought [she] was

sick were the worst years of my life. We will never get those years back . . . Then I found out that Dr. Fata had purposely had her believe she was dying. I became very angry, the years of sadness . . . had taken over our lives.” (Writer Requested Anonymity, Family Member of Patient)

- “On June 19, 2013, Dr. Fata diagnosed [my husband] with MDS/cmml. We were told the only treatment was to have monthly chemo treatments to prevent this form of leukemia to become acute. The chemo treatments . . . of Vidaza and Nuelasta would be for the rest of his life . . . We asked what the percentage of probability it was, that by stopping chemo, the cmml would become acute . . He answered 70% . . The reverse would be true if [he] continued treatment . . . 70% chance of not become acute . . .on August 6, Dr. Fata was arrested . . . we made an appointment with Karmanos Cancer Center . . After doing a blood analysis and reviewing the records, [the doctor at Karmanos] said . . [my husband] never needed chemo and didn’t need it now. . . “(Cindy Richardson, Wife of Patient)
- “My husband was told by [Fata] that he could help him by being treated with a chemo . . .Vidasia . . .My husband supposedly had a low blood count and was diagnosed with Myelodysplasia, a blood disorder that could lead to Leukemia . . . After 3 treatments in 3 days and life support for 10 days [after a heart attack] my husband was gone. . . I have been told by 2 doctors that with what my husband had, the treatment would have been to watch and observe before giving such an aggressive treatment . . .” (Diane Sawgle, Widow of Patient)

### **III. Rituximab (Rituxan) Patients**

- “My mother . . . [received] the two year maintenance of Rituxin. . . Her current cancer doctor has told us that was way too long.” (Donna Martin, Daughter of Patient)
- [Fata] told [me] I had (ITP), and was subsequently put on chemotherapy immediately thereafter . . . After Dr. Fata’s arrest, I obtained another Hematologist and discovered I did not need chemotherapy and his direction and prognosis was fabricated. . . I will never be the same . . . It has be[en]

extremely painful both physically and emotionally for me and emotionally for my wife and daughter. My future doesn't look promising or bright to me. I have a permanent illness, with a daily fight." (Writer Requested Anonymity)

- "When the Chemo was concluded [for cancer], I was told [by Fata] I need to have additional infusions of rituxan . . .once a week for 6 weeks then 6 weeks off, followed by 6 more weeks and so on for two years. The first year I had 29 treatments . . I am now under the care of Henry Ford Hospital . . I was informed that the max number of rituxan treatments should have been 6 total. I was also told that they have no idea as to what effects this will have on me as no one has had this much rituxan. I live in fear every day not knowing what, when or how my organs will fail." (Patient Diane Molitoris)
- "I was treated by fata from February 2009 to July of 2013 . . after the seventh chemo treatment . . I was in remission . . . I was given . . rituxan treatments six weeks on six weeks off for two years that totaled around 52 treatments that I should have never had. They say the rituxan destroys your immune system. When I contacted the NCI they told me that no one should ever receive back to back rituxan treatments and no more than sixteen treatments in a one year period . . . All the hours of waiting in his office to see him for five minutes . . Now my bones hurt all the time I'm sick all winter long because I can't even fight off a cold . . . I have problems with my hands and wrist they hurt all the time." (Patient Tim Parkin Sr.)
- "I was a patient of Farid Fata for six years. He diagnosed me [with] B-Cell Non-Hodgkin's Lymphoma that I never had. I underwent years of unnecessary treatments. . . I started treatment in March of 2011 with a medicine/chemo called Treanda and Rituxan along with other medicines . . . in February 2013 . . I was in remission . . . He informed me that I would have to take Rituxan for 6 weeks on and 6 weeks off to keep the cancer in remission . . I had 18 weeks of treatment with this medicine before he got arrested . . .I went to get a second and third opinion by two different oncologists. Both doctors told me I never had cancer and should never have been treated for it. One of the Doctors told me even if I was in remission

the most Rituxin I should have been given would be 9 treatments over a year's time. . . I received approximately 18 treatments in a 6 month period . . . At Fata's suggestion, I had a mediport surgically inserted in my chest. I was told by my new Oncologist that I did not need it and I had it removed . . . " (Patient Steven Skrzypczak)

- "I lost my health over . . . 5 year's of treatment . . . I should of had 2 years max treatment . . . so that gave me 1 time a month a infusion of Rutexin, . . . Octagam and Iron for 3 Year's to much. 36 infusion I didn't need at about \$7,000 each time \$252,000 + a lot of hospital trips for being sick and yes allmost death . . ." (Patient Terry Spurlock)

#### IV. Zometa Patients

- "On 9/19/2013, I consulted with [a new Oncologist] . . . He . . . came to the conclusion that I should not have been given chemotherapy . . . I was over treated for my [breast] cancer. Dr. Fata insisted that I receive hydration and a shot of Neulasta the day after ever y chemo treatment. These are only supposed to be given if you're dehydrated and if white blood cell count is low . . . Records indicate that I was never any of these things! In addition, he gave me multiple iron transfusions that I did not need. He gave me Zometa infusions to strengthen my bones . . . My bone density was fine. I never needed to receive the Zometa! . . . Dr. Fata gave me such toxic doses of chemo and other drugs that I am now permanently bald. . . I also suffer from debilitating bone and joint pain. Finally, I struggle with something called "chemo brain," which is characterized by a permanent loss of memory due to the high doses of chemotherapy that I was administered . . . a . . . Breast Conference Board at Crittenton Hospital . . . [recommended] surgery, and radiation therapy followed by 5 years of hormone therapy . . . I never knew that was the recommendation of the Board . . . [until] I received my records from the FBI . . ." (Patient Melissa Ann Kloc)
- "I took my father for a second opinion at the University of Michigan . . . The doctor there . . . said the first chemo protocol was not necessarily unreasonable . . . but the second line chemo protocol Fata put my father on was essentially insane. . . he could not believe that anyone would put my

father on those drugs . . .we stayed with Fata to continue with injections of Zometa and XGeva . . . An oral surgeon refused to touch my father because of the high chance my dad could have “osteonecrosis” (bone death) of the jaw with the slightest dental work. Meaning: so much as pulling a tooth or filling a cavity could cause his jaw to start melting away like wet plaster, a side effect of this drug . . .”(Ellen Piligian, Daughter of Patient)

- “Fata told us that I had MGUS and he was going to put me on Infusions of Zometa every 30 days . . . After a few months he told us that I had Multiple Myeloma and I would probably be on the Infusions of Zometa for the rest of my life . . . I started losing my teeth in the beginning of 2013 . . . I had told Fata every time something would happen. I had one tooth come out with the socket and all. That caused me to have a hole through my jaw into my sinuses. I had to have all but two teeth removed . . in hopes they could use them for anchors to restore my teeth or put in dentures. That was December of 2013. Since then I have had no teeth to eat with and now I found out . . that the two other ones need to come out because the drug Zometa is eating at them . . . I can not eat normal food . . . I have terrible dreams of what I look like to people who don’t know me because of no teeth . . . (Patient Robert Sobieray)

**V. Other Unnecessary Chemotherapy Confirmed by Second Opinion Doctors**

- I was a patient of Dr. Fata’s for 5 years . . . During that time I was on a chemotherapy schedule of 3 weeks of chemo, one day a week and then one week with a Dr.’s office visit. That comes to 195 chemo treatments. After Dr. Fata’s arrest I saw two other Oncologist’s for their opinions on my case. They both stated that per standard protocol without showing any reoccurrences of cancer activity, I should have had six months of chemotherapy and then follow up observation with testing. That means I received an unnecessary 177 treatments of chemo . . The extensive chemo I received has affected my everyday life. I have severe Neuropathy of the hands, feet and legs. . . I also have bladder and bowel issues . . I have compromised kidneys with Stage 3 Chronic Kidney Disease. . I am on permanent disability.” (Patient Charles Charter)

- “Dr. Fata knowingly and purposefully treated me for the wrong cancer and gave me the wrong chemotherapy in 2013. Dr. Fata treated me for lung cancer. The biopsy report with Dr. Fata’s signature clearly stated that the cancer was not lung cancer . . . but was . . . kidney cancer . . . I suffered needlessly with no treatment benefit and the cancer grew. Dr. Fata also gave me unnecessary iron infusion treatments. The lab reports in my medical records show that my hemoglobin levels were not low enough to require the iron treatments. Too much iron can damage the liver.” (Patient D.C.)
- He stated that [my mother] had a very aggressive cancer that would become untreatable if she stopped chemo and then he wouldn’t be able to save her. I now know, he told this to MANY patients. He diagnosed my Mom with . . . breast cancer. Sadly, I now know that the chemotherapy drug he used during the last month of her life, wasn’t even a drug used for breast cancer . . . he had her on a 24 hour drip for a drug used for patients with colon cancer all in the name of greed. Several times when I had researched and questioned his treatment, he asked if I had fellowshiped at Sloan Kettering like he had.” (Michelle Mannarino, Daughter of Patient)
- “Dr. [Fata] decided I needed 18 months of maintenance [chemo] since he declared I had stage 4 lung cancer . . . When I went to my new radiologist oncologist, he said . . . it wasn’t lung [cancer]. . . and that all maintenance chemos after first six were unnecessary as were the iron shots.” (Patient A.M.)
- “I met Dr. Fata . . . on September 6, 2011 . . . Dr. Fata started my chemo treatments that same day . . . I went in for a chemo treatment one day a week for three weeks and then on the fourth week I had an office visit to see Dr. Fata. This schedule continued until Dr. Fata’s arrest in August 2013. . . Around August in 2012 . . . Dr. Fata told me the chemo that I was originally on had “stopped working” and he was going to have to order a special chemo from Europe. Dr. Fata told me that it was hard to choose chemo for an individual from this country because there are so many to choose from . . . Dr. Fata also ordered several iron infusions because he told me my iron was low . . . Due to Dr. Fata’s arrest, I found a new oncologist who ran his

own tests . . . The new oncologist indicated to me that he doubted I had cancer to begin with. He said that if I did have cancer that it would have been a slow growing cancer and I would have been able to live through it without chemo treatments . . . I am currently house bound because of my health . . . Before coming under Dr. Fata's care, I was a very active senior . . . My life has gone from full to empty. . .(Patient J.P.)

- “I was a patient . . . from March, 2011 until his arrest August 6, 2013 . . . After his arrest I had to find and get a new doctor . . . to see if I had been properly treated by Dr. Fata . . . They were . . . amazed and shocked that I had survived Dr. Fata's overly gross overtreatment of a fairly easy cancer to get rid of. This included 40 full days of chemo, 14 days of hydration, 3 iron infusions, 3 blood transfusion, 24 various steroid injections, and 37 radiation treatments. . . My kidneys almost failed . . . My bladder has been compromised . . . My liver function has been compromised . . . My heart has sustained unnecessary abuse and wear . . . My hands and feet have severe “chemo induced neuropathy.” . . . My ears ring all the time and I have subsequent hearing loss due to the nerve damage. . .The excessive treatment has also damaged and compromised my immune and nervous systems.” (Patient Christopher Sneary)
- “[Fata] informed me that I had blood cancer and I needed to get treatments which were 5 hrs. long . . .Above my other treatments that were 2 hrs 3 times a week . . . Since [Fata's arrest] I have gone to another blood doctor that agree that . . . I do not have any form of Blood Cancer. . . “ (Patient Michael Ureel)

#### **VI. Other Unnecessary Treatments Confirmed by Second Opinion Doctors**

- “I began looking for another doctor [for my mother] . . . he immediately changed her treatment. The new Doctor told us that Dr. Fata had been treating her for three years using a medication that should only be used for a short time (Up to 3 months) and that it was doing nothing to correct her condition, only mask the symptoms.” (Harvey Hammond, son of Patient)

## **VII. Giving Chemo and False Hopes to End of Life Patients and their Families**

- “In late December . . .we wanted to quit chemo. Dr. Fata ushered us right away into his private office. . . .He told us . . . in quitting the chemo we should prepare for end of life care! My Mother-in-law . . . decided to continue with the chemo . . .Feb 4<sup>th</sup> . . . The doctors at HFM told us that they had never seen such high levels of . . .chemo in one person, that it was off the charts! . . . she . . . passed away . . . not even 24 hours later . . . I believe that she could have had a passing more on her own terms without all the suffering from chemo.” (Rene and Robert Beaupre, Daughter-in-law/Son of Patient)
- “On April 12, 2010 . . . Dr. Fata . . . said the MDS had progressed to AML and he HAD to begin treatment the next day with aggressive chemo IN HIS CHEMO OFFICE . . .on April 15, 2010 . . . I told him that L.B. was so weak and unable even to lift his arms. His response was, “Don’t you have help! He HAS to go to my office for chemo.” . . he just repeated this over and over. . . When I told Dr. Fata [that we were taking L.B. to Crittenton] HE HUNG UP THE PHONE ON ME!!! . . he was diagnosed with RENAL FAILURE as a result of the chemo and was put on dialysis, in ICU and was in very critical condition. . . . When he was discharged [on April 26, 2010], Dr. Fata INSISTED that he HAD TO GO to his chemo office and start chemo again IMMEDIATELY. He kept insisting that he HAD to have the chemo if he was going to live. . . .[In June 2010], L.B. received chemo again . . [on] July 5, because Dr. Fata wouldn’t talk to us, [we] began to interview hospice providers. We decided which one we wanted to use and Dr. Fata finally came in . . and said, “Oh, no, you must use Guardian Angel’s. They are the best” . . . The next morning, our whole family was there waiting for Guardian Angel’s nurse to come. SHE NEVER SHOWED UP, no phone calls, nothing. . .[another doctor] said, “you can choose which hospice you want.” [The new hospice] talked to Dr. Fata to see if he would still be L.B.’s doctor and he would not. We had gone against his wishes by using another hospice and he was not able to make any more money off of us. L.B. passed away July 22. . . An expert reviewed L.B.s case and concluded that . . .after he went into renal failure,

ANY CHEMO should have been given in the HOSPITAL and L.B. RECEIVED MORE than he should have . . . I don't even have a doctor now because I don't trust them . . He took away the trust in the doctors, hospitals and any medical care provider. . . Yes, L.B., according to the expert, would have passed away regardless of who his doctor was but did he have to SUFFER needlessly? Did he have to endure rounds of chemo just to pad Dr. Fata's pocketbook? Did he have to BEG to talk about end of life decisions and hospice and even then Dr. Fata ignored his requests to discuss this, was this the way a doctor treats a dying patient? Did he have to sit in an office and wait for hours for the doctor to see him for 5 minutes when LB. could hardly hold up his head because he was so weak, not even able to walk to the car by himself? Shouldn't he have returned phone calls and when we did talk to him not INSIST that he go to his OFFICE for chemo BEFORE going to ER? Shouldn't a doctor give chemo in the most appropriate place and not only in his office for him to make money?" (B.B. and Family of Patient)

- “we were given the news that Art [had] cancer in his lungs, rib and liver, but that it had not spread to his brain and that with treatment he stood over a 75% chance of survival . . . Art started getting sick not long after his treatment began . . He was getting weaker by the day, but still Fata led us to believe Art stood a chance so he kept doing treatment . . a Doctor at Crittenton came to the family. He said he did not know why Art was still doing treatments because when cancer spreads to the brain there is nowhere else for it to go. We were shocked . . He continued getting treatments and getting sicker. . . It seems nothing I can say is strong enough except to say that Art looked like someone who was being tortured at a death camp. He was skin and bones . . He kept getting injections . . He was suffering so much. He had no life anymore . . but Fata kept encouraging him to continue treatment. I am going to move forward to my stepdads last days. His daughter brought him in for his treatment, but he was so weak he fell and had to be helped back into his wheelchair. Fata still injected him with chemo and then told his daughter to take him to the hospital. HE didn't even call an ambulance; he just wanted to make sure he gave him the dose of poison so he could get paid. . . within an hour he was put on life support. . . he passed a short time later. . . Fata did not give my stepdad

cancer, but he did torture him and make him so sick with unnecessary treatment that he knew would not help. He knew my stepdad was terminal but chose to never let the family in on that information. Had we known the truth we would never have recommended Art go through the treatment . . . Art spent more time in the hospital than he did at home because of the side effects of the chemotherapy he should never have been given. . .”(Tammy Weston, Stepdaughter of Patient)

- “I am an RN. . . I asked questions, but he had Dad so scared and believing that Dad was his “miracle patient” and that he would save him. Dad was too scared to leave him, even though I begged him and told him that something was really wrong with this doctor . . . Fata never had any clinical or scientific answers, he just used fear to control my Dad. He told him that if he left him, he would die. Dad was so scared, he did not want to die . . . Just before Father’s Day 2010 . . . We were told by . . . one of Fata’s illegal “doctors” , that Dad was in remission. . . I called Fata over 40 times on Father’s Day weekend. I wanted to speak to him directly. Dad seemed too sick to be getting better. On Monday, the day after Father’s Day, he answered the phone. “Oh yeah. Your Dad has full blown leukemia. He needs to go to hospice now.” What ??? I just spent all weekend reassuring him that he was going to live! . . . [R.S.] 7/ 21/46 - 6/24/10.” (Lynn Johnston, Daughter of Patient)
- “My mother . . . was a patient of Farid Fata. He diagnosed her with cancer and offered her and the family false hope that she would be able to survive it. He diagnosed and treated her for ovarian and pancreatic cancer. . . He said she can survive this. . . She sat through countless hours of chemotherapy and several visits . . . in the hospital due to the dosage of chemotherapy. Fata had convinced her that it would cure her . . . Farid Fata stole from my mother her ability to make the final decisions regarding her life by offering a false hope of a cure . . . It was indeed pancreatic cancer [not ovarian cancer] . . . After [she was informed that her pancreatic cancer was inoperable] she quickly deteriorated . . . Farid Fata shortened my mother’s life and took away her choices by misleading her to believe she had a curable cancer. (Wendy Lukianoff, Daughter-in-law of Patient)

- “Our father was told in the hospital that he had incurable cancer and the chemo should be stopped. Then in walked Fata giving our family all kinds of hope with his language of new chemo drugs and miracles that he would use. Our father was told on at least 5 occasions that his cancer was either gone or could barely be seen on the scan and that he would be cured soon with a few more doses of “maintenance chemo” and that he would need to do “maintenance chemo” the rest of his life in order to keep the cancer from reappearing. . . We saw my dad get sicker and sicker . . . We saw our dad’s face light up many times when told the cancer was gone or almost gone just to be told again a few weeks later that “the cancer was back with a vengeance” and he needed more chemo. Along with many unnecessary treatments our father was given hundreds of injections we now know he did not need . . . [S.L.’s] oldest child remembers Fata standing at our father’s bedside assuring all of us that he had a “mixture” of drugs that no other doctor had access to and that if our father was willing to “tough it out” he could save our father’s life. . . . [S.L.’s] daughter remembers that our father died five days after Fata told him he was very “close to remission but needed a chemo boost to be sure” 6 days after this “boost” our father died.”(Children of Patient)
- When my mom saw Fata he told her that she had cancer, but not to worry because he was . . . utilizing technologies that other doctors didn’t even know about . . .if she went through treatment with him, she had an excellent chance of being cured . . . A surgeon who had to operate on my mom, numerous times, as a result of Fata’s incorrect “treatments” told us that she needed to stop chemo because it was killing her. But Fata would come into the hospital, and lie to us, telling us chemo was her only hope, that it was actually shrinking her tumor, and that she HAD to start treatment back up as soon as she was released from the hospital if she wanted to live . . .My mom wanted to live so badly . . and believed Fata was trying to help her. (Writer Requested Anonymity, Family Member of Patient)
- “On January 7<sup>th</sup>, 2013, my father [while in the hospital for congestive heart failure] was diagnosed with lung cancer that we were told had moved to into his spine . . .all agreed that palliative care was best to keep him comfortable, because he had become too frail for a stronger treatment. Fata

insisted on doing chemo at his personal office. He told us it was the only option because St. Jose would not let us do the treatment in the hospital . . . On February 8<sup>th</sup> 2013 after signing out of the hospital, my father went for treatment at Dr. Fata's office . . . We were informed . . . that Fata had changed his treatment method that morning to something that had never been discussed or agreed upon . . . My father was back in the hospital on February 13<sup>th</sup>, 2013 . . . [On] March 1<sup>st</sup> 2013, . . . [the hospital said] my father should go home with hospice . . . the next day . . . he passed away.”. (Craig Rambo, Son of Patient)

- “Farid Fata kept adding more and more chemo to my Dad's regime. . . He had to beg Fata to lower his medication dosage. Farid Fata kept him on double doses of chemo (wearing a pump) even while he was on his death bed and it was apparent he was not going to live. He did not even let my Dad die in peace. My Dad had to beg Farid Fata to remove his chemo pump while he was on his death bed.” (L.C., Daughter of Patient)
- “Our mother . . . was diagnosed with Stage 4 Breast Cancer. It had already metastasized to her lungs, her brain, her liver and her sternum. . . In that very first meeting [with Fata] he said, “I can cure you”. He indicated that he had access to medications that other doctors did not. He indicated that as long as [she] followed his instructions and *kept her insurance paid up*, she could be cured . . . Fata had instilled so much FALSE HOPE of a cure over the months of seeing him . . . Farid reminded [her] that she would die without him . . . we were wondering if there was any reason to file bankruptcy, questioning her life expectancy. He indicated again that he was trying a new therapy and we should definitely file bankruptcy on her behalf, “but make certain you do not cancel any of her insurance. I won't be able to treat her without”, he told us . . . we asked about Hospice . . . He . . . stated that our discussion of hospice was unnecessary as he had access to so many more drug therapies that she would be around for a long time. He then held her hand, looked straight into her eyes and gently said, “Don't worry, I will not let them stop the treatments you need”. . . She . . . was very angry at us for the discussion that had just taken place. In addition to everything else he was doing, he was also coming between my mother and us . . . maybe she would have participated more in life knowing that it was

nearing the end. She kept putting things off thinking that she would have time “when she got better.” . . . [our mother] was never able to accept that she was dying because Fata convinced her she was not. We never had the benefit of the final conversation we should have been able to have, to say the things we wanted to say.” (Family of Patient)

- “My mother . . . was a patient of Dr. Fatas . . . While reading moms file I received and asking a few medical professionals I know, it has been brought to my attention that mom was terminal right from the very first meeting with [Fata]. . .” (Suzanne Spry, Daughter of Patient)
- “Regardless of the physical condition my dad was in you insisted treatment must go on and it would save his life. When I pulled you into the hallway at the hospital multiple times to ask you to tell me the truth if the treatment would make a difference since he appeared to be getting worse, you insisted the treatment must go on and it would save his life. . . When the PET scan that you had insisted initially wasn’t necessary until you had the machine installed in your office (coincidentally) revealed that the cancer had spread to the majority of dad’s bones, what did you say? Press on! More treatment! All the while, insisting you would save him . . . [our] family doctor intervened . . . He told us the truth. Just take him home to die in peace with his family. No more unnecessary treatment. No more lies, no more false hope. . .” (Dennis Wynn, Son of Patient)

### **VIII. Guardian Angel**

- “when he said we should go home with Hospice[,] [h]e insisted we use Guardian Angels hospice and when we didn’t he washed his hands of our dear Mom. . .” (Sydney Zaremba, Daughter of Patient)

### **IX. Unnecessary Iron**

- “Dr. Fata repeatedly gave me iron infusions (Feraheme) that I did not need . . . the day after Dr. Fata was arrested I brought my lab reports to a new hematologist who explained that my ferritin levels were dangerously high . . . Even though my ferritin levels were incredibly high, Dr. Fata continued to

give me dose after dose of the iron infusions . . . My “low iron” caused me a lot of stress . . I missed so much work, leaving early for appointments with Dr. Fata or to receive injections. I waited for *hours* to see him each time. The injections made me feel ill. . . My family was very worried . . . .As it turns out, nothing was going on . . . all I needed was the initial dose of iron infusions . . In August 2013, my ferritin levels were over 10-15 times what they should be . . . high levels of iron cause organ damage and major complications. To this day, I am still having complications from my high iron levels and my ferritin levels are still very high. The iron started depositing in my liver causing pain and abnormal blood levels. An MRI confirmed that the iron was in my liver. . . they had to drain blood out of my body and throw it away. This was emotionally very hard for me; I should have never had to endure this procedure!” (Patient Jessica Arsenault)

- “The doctors at U of M . . .told me I didn’t need the five weeks of Iron treatments Dr Fata told me I had to have . . . I didn’t need the 22 hydration treatments he gave me the day after every chemo treatment. He also gave me a Neulasta shot in 2011 . . . it made me so ill and gave me so much pain that I reused when they tried to give it to me again. I found out I didn’t need that shot either. I didn’t need the PET scan he said I HAD to have. . . .” (Patient Tina Farrell)
- “I spent three (3) days a week during my first pregnancy and five (5) days a week getting [iron] infusions from Dr. Fata during my second pregnancy. I was depressed, in pain; my veins were destroyed because of the constant blood draws and infusions . . . Because of the harsh reaction I had to the iron . . . I also had to take benadryl everyday. Not only were both my children exposed to the iron, but also a second drug in order for me to tolerate it. I was drugging my kids but not drinking soda . . . I would pray and ask G-d that my numbers would be good enough for me to be “normal” and for my kids to be safe, but according to *Dr. Fata*, they were never good enough. I wanted to experience a healthy, happy pregnancy, but never did. I was in fear and depressed each time . . . I received nearly 300 infusions, but after his arrest, I got a second and third opinion [and] was told I never needed more than five (5). I was also advised that the type of iron was not the correct type. Being self employed . . . taking daily treatments put me

out of business during the years I was pregnant. . . I went to two doctors. Both of them advised me that I had iron poisoning. Both of them told me, I now have to check my major organ functions and also be checked for calcification of my organs. I am 37 years old . . . The worst part is . . . I had to have both of my children tested for iron poisoning . . . I took them to the hospital. I had them poked by needles, a two (2) year old and four (4) year old. I had to have their blood drawn . . . I questioned myself. Was my trust in Dr. Fata going to be hurtful to my children? Will they be sick because of me? . . . Did he really infuse a pregnant woman, with unnecessary iron for financial gain? . . . The thought that he could have done this to my kids was unbearable. . . continued testing will be necessary in order to properly monitor them for the unforeseen future . . . I have residual damages as a result of the iron. I have been advised to have regular phlebotomies in order to get rid of the extra iron I have. I have lost feeling, due to nerve damage . . . I am still missing work and time away from my kids.” (Writer Requested Anonymity)

- “I was . . . diagnosed and treated by Dr. Fata [for a couple of years] for “severe” anemia/iron deficiency. I quote “severe” because as news broke of his crimes I obtained my medical records and discovered that while my iron counts were low, I was in the “normal” range. . . . Upon my first visit to Dr. Fata I was told . . . my iron was “dangerously” low and that I needed an infusion immediately . . .” (Patient Rachel Pingle)
- “My father was under Dr. Fata’s care from June 2007 through February 2010 . . . On March 26, 2010 he passed away from liver failure. While in Dr. Fata’s care he was being treated of anemia. He was . . . receiv[ing] iron infusions 3 times weekly to get his iron count to a normal range . . . After many infusions . . . Dr. Fata suggested he start receiving an iron shot that (in his words) unfortunately was much more expensive but might work, since (in his words) the infusions were not working. After 3 years and many weeks and days of iron therapy . . . a few weeks later he became ill, 15 days later he died . . .” (H.L., Daughter of Patient)
- “After my first visit with Dr. Fata, he stated that I had low iron deficiency anemia and . . . therefore I had to be treated with iron infusions . . . My

insurance was billed \$3,000 per infusion . . . While being treated over the years with iron infusions and/or shots yet never feeling any improvement . . . Dr. Fata kept saying the shots were going to work but I just had to give it time . . . I was on unpaid leave for almost a year! . . . after 2-3 years of having these symptoms . . . [a] sleep study [by a neurologist] revealed that I had severe sleep apnea . . . my new physician ran a battery of tests [in April 2014] . . . my iron and blood platelet levels are fine . . . “(Writer Requested Anonymity)

#### **X. Lying About Availability of Stem Cell Transplants**

- “My husband started treating with Fata 7 years ago for Myelodysplasia/MDS. . . since 2007, [my husband] has remained on chemo, in addition to iron infusions and four injections a month. . . [Our 2<sup>nd</sup> opinion doctor] asked us why we never tried stem cell transplants? He said they can be very effective in treating MDS, rather than taking dangerous chemo treatments. Dr. Fata never told us this was an option. When we discussed alternatives to chemo, all Dr. Fata indicated was that if [my husband] did not follow Dr. Fata’s chemo regimen, [he] would get leukemia . . . He did not tell us stem cell transplants have been available for years. Unfortunately, the normal cutoff is 70. [My husband] is 71.” (T.K., Wife of Patient)

#### **XI. Patient Not Informed About Risk of Sterility**

- “I began seeing Dr. Fata in May 2006 for his diagnosis of Hodgkins lymphoma. He treated me with chemo for approx.. 6 months . . . [at] U of M Ann Arbor . . . I was told . . . that I actually had non-Hodgkin’s lymphoma and would now need a bone marrow transplant because of the previous failed chemo treatment . . . When I told [Fata] I had cancelled [my chemo treatment] he proceeded to yell at me that I was wasting his time & a spot someone else could have been using . . . The conversation ended with me in tears & him telling me not to bother coming back to him because “There are too many hands in your cookie jar.” . . his nurse called . . . & tried to reschedule me. I refused . . . I first learned of harvesting my eggs [from U of M] but was told I would already be sterile because I had already

had chemo even though I was never informed it would make me sterile or given the option of harvesting my eggs by Dr. Fata. . . .” (Patient Jaclyn (Sheldon) McDowell)

## **XII. Frightening Patients into Chemotherapy**

- “I asked Dr. Fata if could get the treatments in either Kalamazoo or St. Joseph, MI as I have a small cottage in western Michigan. He absolutely refused . . . I had to travel 500 miles round trip . . . to return for treatments. At one point I inquired if a second opinion would be advisable. His reply was, “if I obtained a second opinion, do not return for his care.” (Patient H.G.)
- “Fata was a fear-monger. When we asked about trying a chemo holiday for a month or two (something many of my dad’s [doctor] colleagues suggested and seemed to think was quite normal) Fata would say that was not possible . . . Fata also threatened more than once that if my dad quit doing chemo, he would have to sign on to Hospice, and that Hospice would make him stop dialyzing.” (Ellen Piligian, Daughter of Patient)
- “Fata basically scared my husband into continuing the chemo treatments by telling him that discontinuing treatment could cause the cancer [in his blood] to attach to his bones or metastasize and he (Fata) would be unable to help him.” (Florence Wilson, Wife of Patient)

## **XIII. United Diagnostic PET Scan Fraud/Vital Pharmacy**

- “My last follow up with Fata was July 2013. . . at this visit, he said he wanted me to get a PET scan. He also wanted me to use a pharmacist that he knew . . . He seemed very nervous during this discussion . . . Fata also lied when getting my PET scan ordered by saying I had bone pain. I never said that to him.” (Patient Irene Farley)
- “I had an appointment with Dr. Fata on May 9, 2013, and he said I HAD to have a PET and his office scheduled one for me for August. I remember seeing him write in the diagnosis box on the order form “new hip pain” as

an explanation of why I needed the PET scan. I thought that was odd since I had had the same hip pain since . . . 2008 . . . Dr. FATA said I HAD to have the PET scan. I told him I wanted to go to Crittenton Hospital and he said no, his machine at his office was much better and he said I HAD to have it there. I really didn't want to drive all the way to his office for the PET scan but he insisted." (Patient Tina Farrell)

- "Dr. Fata had scheduled me for several PET scans but always cancelled them, saying the machine wasn't ready yet. Does that beg the question of why, if it was so necessary, he couldn't just send me to another facility? . . . Dr. Fata sent one of the ladies to check if my insurance would cover my medications and I thought he was going to jump out of his seat when she returned and told him all meds were covered by my insurance. All medications were going to be handled right out of his own little pharmacy that was right then being built." (Patient Jack Fields)
- "When the PET scan that you had insisted initially wasn't necessary until you had the machine installed in your office (coincidentally) revealed that the cancer had spread to the majority of dad's bones, what did you say? Press on! More treatment! All the while, insisting you would save him . . ." (Dennis Wynn, Son of Patient )

#### **XIV. Short Office Visits**

- I always thought it was strange that he only spent 3 minutes with me and never had any records on my blood count numbers." (Patient Susan Duda)
- "It was always the same . . . wait . . . 2 or 3 hours to talk with Dr. Fata who spent a grand total of 2 or 3 minutes to tell you that "you are doing fine" and then schedule another appointment." (Patient Jack Fields)
- "Most of the time, I waited one to two hours to see him . . . He rarely spent more than five minutes with me." (Patient H.G.)

- “we would have to wait long hours to see him and when he did finally meet with us, he would spend literally five minutes discussing my treatment in general terms before moving on to the next patient.”(Patient Melissa Ann Kloc)
- “We sat in the waiting room for 5 hours . . . we are finally called into the room . . . Fata comes in spends maybe 5 mins with you, and then takes you to the front so you can make your next appointment.” (Patient M.M.)
- “We would wait for hours to see him personally . . . Dr. Fata would come in for 5 minutes . . . “ (Sandra Voorhis, Wife of Patient)

#### **XV. Loss of Faith in Doctors**

- “I relate to the Health Care industry entirely differently. I am suspicious, cynical and lacking in trust. . . I went from feeling informed and reasonably knowledgeable to feeling ignorant and helpless. I can no longer fill out a family medical history survey because I no longer know the truth about my father’s health.” (Jane Heineken, Daughter of Patient)
- “It is so hard to trust doctors now because of Dr. Fata and it will take a long time to trust again . . . I want him to know that my 10 year old daughter sees him now on the news and I have to explain to her why my doctor hurt people. How do you explain in a 10 year old that a doctor could hurt people, I have no answers for her. (Patient Tina Farrell)
- “I don’t trust any doctor or medical professional, I doubt everything they say. When I start thinking about it I can’t function, I become so anxious that I can’t even go to work, and if I have a doctor’s appointment for myself or my son I cancel it. I thought it would get better with time, but it hasn’t. How am I supposed to go thru the rest of my life not trusting the medical profession?” (Patient Sandra Lord)

- “I have a hard time getting either one of my children to see a doctor when the need calls because they have lost trust not only with doctors but society as a whole because of what Dr. Fata did to their grandfather.” (H.L., Daughter of Patient)
- “I now have major trust issues with anyone or anything involving medical decisions or my continuing care. I’m afraid they are all out to take advantage of the system, or me and my family, only for their financial gains.” (Patient Christopher Sneary)

#### **XVI. Financial Impact**

- “. . . we were financially devastated with medical bills. I had medical bills that I shouldn’t have had for extra surgeries, extra chemo . . . I couldn’t work in my licensed daycare for almost two years because I was so sick . . . I had to close the doors . . . My husband had to work two jobs so we could make it . . . “. (Patient Tina Farrell)
- “Before this devastating situation, I was working and making more than \$50,000/yr. as a financial analyst. Because of the many visits and physical deterioration from the chemotherapy treatments I was let go from my job and was no longer able to support my wife and family. I have gone into debt deeply both medically and materially. I also am not sure if I will ever be able to support myself and family the same as before.” (Writer Requested Anonymity)
- “my entire family suffered emotionally and financially. We paid many bills out-of-pocket that our insurance did not cover. . . we had to rely on the kindness of others to help us buy groceries, pay our mortgage, and other miscellaneous bills. All of our money went [to] Dr. Fata to pay for his unnecessary and damaging treatments. We could not even afford Christmas gifts for our daughter that year.. . this was extremely upsetting for my husband. He felt terrible that we could not make ends meet, through no fault of his own.”(Patient Melissa Ann Kloc)

- “Dr. Fata’s treatments have caused me to exhaust a . . .retirement account and withdraw another 10,000 . . . (Patient Diane Molitoris)
- “The financial harm and responsibility to me and my family has been and still is substantial. I have spent thousands on my deductibles and co-pays. My health insurance company was billed close to \$400,000 for his prescribed procedures for me alone. Most of it was unnecessary . . . I estimate that I myself have lost more than 5,000 man hours in the past 44 months . . . This setback for my time alone could potentially have been worth several million dollars of lost revenue to [my] business. . . He has financially destroyed any chance of me being able to retire with any financial security.” (Patient Christopher Sneary)
- “After I started seeing Fata for a while, I lost my insurance for 3 months before I got Medicare and he said I need to get those [Zometa] infusions and not stop so I got them on loan from him. I would pay so much each month for the Zometa and the room time. We have so many other medical bills that we cannot pay on our income I just put them in a pile, cry, and pray. We have to be about 30 thousand in debt and 10 thousand is in medical bills . . . Between dealing with the bills, the pain and headaches I get from thinking about Fata and seeing my wife suffer everyday is getting to me and is really warring heavy on my shoulders.” (Patient Robert Sobieray)

## **XII. Overwhelming Feeling of Guilt Experienced by Family Members of Patients**

- The thought of anyone mistreating his father haunts him and causes guilt feelings because “we should have known”, but you trust your doctor to do right . . .it forever changes us as human beings . . . I myself often wonder why I didn’t see it, how did I miss it, could I have done something . . .”(Children of Patient)
- “I blame myself for not seeing the red flags, sooner . . .“(Antoinette Zanotti, Wife of Patient)

- “. . . the guilt I bear that I should have been more aware of her mistreatment is with me for life.” (Anita Kepley, Daughter of Patient)
- “. . . not a day goes by that I don’t feel guilt . . . I have only a picture to apologize to now . . .”(Sydney Zaremba, Daughter of Patient)

# EXHIBIT B



Farid Fata [redacted]

j. f. [redacted]

[redacted]

Farid Fata <[redacted]>

Sat, Aug 3, 2013 at 12:24 AM

To: s. y. [redacted] <[redacted]>, michigan hematology oncology <[redacted]>, Farid Fata <[redacted]>

I am concerned how come this patient had a balance of 51.000.00 \$ since 2011  
He had Medicaid spent down  
I spoke to c. [redacted] of this complex case but I am not convinced.

I need my money !

Dr Fata

# EXHIBIT C

From: farid fata <[REDACTED]>  
To: s [REDACTED] y [REDACTED]  
<[REDACTED]>; c [REDACTED]  
s [REDACTED]  
<[REDACTED]>; s [REDACTED]  
p [REDACTED]  
<[REDACTED]>; farid fata  
<[REDACTED]>  
Cc:  
Bcc:  
Subject: D [REDACTED] L [REDACTED] CONCERN-HIGH BALANCE  
Date: Wed Aug 01 2012 06:37:20 EDT  
Attachments:

---

S [REDACTED]

D [REDACTED] has a 9062 \$ balance

The reason for this high balance is that he had a one month lapse/no coverage in his insurance

He missed paying his premium for one month

He has been contacting his insurance and the UNION over the past 6 months

- 1- How come this was not discovered and the chemo was given during that month
  - 2- I gave his name to billing for high balance two months ago. Any intervention taken yet
  - 3- He and his wife both work and have an income
- He is expecting a call/meeting from billing to establish payments (300\$ permonth)

Thank you for your cooperation

Dr Fata

# EXHIBIT D

96TJMADF Sentence

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

4 v. 09 CR 213 (DC)

5 BERNARD L. MADOFF,  
6 Defendant.

7 -----x

New York, N.Y.  
June 29, 2009  
10:00 a.m.

10 Before:

11 HON. DENNY CHIN,  
12 District Judge

14 APPEARANCES

15 LEV L. DASSIN  
16 Acting United States Attorney for the  
16 Southern District of New York

17 MARC O. LITT  
17 LISA A. BARONI  
18 BARBARA A. WARD  
18 Assistant United States Attorneys

19 DICKSTEIN SHAPIRO LLP  
20 Attorneys for Defendant

20 IRA LEE SORKIN  
21 DANIEL J. HORWITZ  
21 MAURO M. WOLFE  
22 NICOLE P. DE BELLO

CONNECTED

23 ALSO PRESENT: KEITH D. KELLY, FBI  
24 JULIA SCHULTE HANISH, USDOJ, FBI

25

96TJMADF Sentence

1 (In open court)

2 (Case called)

3 THE COURT: Please be seated. Good morning. Mr.  
4 Madoff, would you please stand.

5 Mr. Madoff, you pled guilty on March 12th, 2009 to 11  
6 counts of securities fraud, investment advisor fraud, wire and  
7 mail fraud, money laundering, making false statements, perjury,  
8 filing false documents with the SEC and theft from employee  
9 benefit funds You are here this morning to be sentenced for  
10 those crimes.

11 Have you reviewed the presentence report?

12 THE DEFENDANT: Yes, I have, your Honor.

13 THE COURT: Did you discuss it with your lawyers?

14 THE DEFENDANT: I have.

15 THE COURT: Mr. Sorkin, have you reviewed the  
16 presentence report and discussed it with your client?

17 MR. SORKIN: Yes, your Honor, we have.

18 THE COURT: Do you or your client have any objections  
19 to the factual recitations or the guidelines calculation?

20 MR. SORKIN: We do not, your Honor.

21 THE COURT: Thank you. You can be seated.

22 Ms. Baroni, does the government have any objections to  
23 the presentence report?

24 MS. BARONI: No, your Honor.

25 THE COURT: Thank you.

96TJMADF

Sentence

1 I accept and adopt the factual recitations set forth  
2 in the presentence report. I accept and adopt the guidelines  
3 calculation set forth in the presentence report with one  
4 clarification which I will discuss in a moment.

5 The total offense level is 52, the criminal history  
6 category is I. The PSR concludes that the guideline range is  
7 life imprisonment. That is not quite accurate, however,  
8 because the guidelines range cannot be life imprisonment as no  
9 count carries the possibility of a life sentence. Rather the  
10 most serious counts carry a maximum of 20 years' imprisonment.

11 I look then to Section 5G1.2(d) of the guidelines,  
12 which tells us that where there are multiple counts, and the  
13 guideline range exceeds the statutory maximum for the most  
14 serious count, the court must impose consecutive terms of  
15 imprisonment to the extent necessary to achieve the total  
16 punishment.

17 There is a little bit of ambiguity, however, as to  
18 what is meant by "total punishment" where the guideline  
19 calculation calls for life imprisonment, but Second Circuit  
20 case law makes clear that in such a situation, the district  
21 court is to stack or add up the maximum sentences for all the  
22 counts.

23 In *United States v. Evans*, for example, 352 F.3d 65,  
24 where the guideline calculation called for life imprisonment  
25 but no count carried a life sentence, the court held that the

96TJMADF Sentence

1 guideline range is 240 years, the maximum sentences for all the  
2 counts added together.

3 Accordingly, here the guideline range is not life  
4 imprisonment, but 150 years, the maximum sentences for each of  
5 the 11 counts added together. Of course, in light of Booker  
6 and the case law that followed, the guideline range is advisory  
7 only. While I must give the guideline range fair and  
8 respectful consideration, I am not bound by it. In fact, the  
9 Probation Department recommends a sentence of 50 years.  
10 Instead I must make an individualized assessment based on all  
11 the facts and circumstances, including the factors set forth in  
12 the statute. In the end, I must impose a sentence that is  
13 reasonable.

14 We will proceed as follows:

15 First we will hear from the victims. Then Mr. Sorkin  
16 will speak on behalf of Mr. Madoff. Next Mr. Madoff may speak  
17 if he wishes. Finally, I will hear from the government.

18 First the victims. I have received several hundred  
19 written statements from victims including the e-mails and  
20 letters submitted back in March. Every victim who made a  
21 timely request to speak will be permitted to speak today except  
22 in two instances. Two members of the same family asked to  
23 speak, and we will permit one person to speak on behalf of the  
24 family. Two victims have now withdrawn their request.  
25 Accordingly, we will hear from 9 victims today.

96TJMADF

Sentence

1 First we will hear from Mr. and Mrs. Ambrosino. The  
2 Ambrosinos can step up to the microphone. Go ahead.  
3 Mr. Ambrosino, go ahead. Come up to the microphone so everyone  
4 can hear you.

5 MR. AMBROSINO: Thank you, your Honor. My name is  
6 Dominic Ambrosino and my --

7 THE COURT: Sir, just keep your voice up.

8 MR. AMBROSINO: I thank the court for allowing me to  
9 speak today. As a retired New York City Correction Officer, I  
10 am very familiar with the inside of a courtroom. However, I  
11 never in my wildest dreams ever expected to be sitting in one  
12 as a victim of an indescribably heinous crime --

13 THE COURT: Mr. Ambrosino, slow down a touch so our  
14 Court Reporter can transcribe what you're saying.

15 MR. AMBROSINO: That dream came true on March 12th as  
16 I watched Bernie Madoff stand and be cuffed. However, the  
17 dream really started as a nightmare on December 11th. I can  
18 remember the exact second my wife told me the news. I  
19 immediately knew all the ramifications, but I don't think she  
20 did. The fallout from having your entire life savings drop  
21 right out from under your nose is truly like nothing you can  
22 ever describe. At first it was the obvious, and how will we  
23 pay our bills? How can someone do this to us?

24 We worked honestly and we worked so hard. This can't  
25 be real. We did nothing wrong.

96TJMADE

Sentence

1 I don't know if anyone other than another victim can  
2 explain what the less obvious effects are, how every decision  
3 directly and indirectly hinged on the fact that we had the  
4 security of our savings. When I was able to leave the job, we  
5 bought a motor home to travel the country. We took out a  
6 mortgage since it was better to keep our savings in Madoff. We  
7 sold the house my wife lived in for 27 years and also put all  
8 those profits -- and they were high -- into our Madoff account.  
9 We trusted that the savings and planning would see us through  
10 our retirement.

11 We had ideas of traveling the country. It all stopped  
12 abruptly on December 11th. As a result, we are left with no  
13 permanent house, a depreciating motor home, we are upside down  
14 on the loan and an income from my pension that is our life.  
15 This pension used to be perceived as spending money before  
16 December 11th, and now although it doesn't cover our monthly  
17 expenses, we rely on it fully. It is all we have.

18 I sustained a 52 percent hearing loss on my job, and  
19 at 49 years' old I can't go back to my previous career so I  
20 have taken on a job this summer in Arizona as an construction  
21 project coordinator. The job will only last until August.  
22 Then I don't know what I am going to do.

23 My wife's foot was run over by a van while in New York  
24 City. There was a plea hearing in March. She had a job lined  
25 up before the trip. The expenses of the trip were given to us

96TJMADF

Sentence

1 and we had to let it go since she was in a cast for eight  
2 weeks. She is now rehabilitating and still feels pain when she  
3 stands for long periods of time.

4 With that background as to who I am, I would like to  
5 share some of the specific problems Madoff's crime brought to  
6 us. My pension distribution, a one-time decision, and our  
7 health insurance plan, also one-time decision, were based on  
8 the fact that we had savings and security with Madoff. If I  
9 should die, my wife is left without my income or health  
10 insurance.

11 We sold our home in New York with the expectation that  
12 someday we would have the finances to purchase another one. We  
13 have no credit now and can't get a mortgage. We have been  
14 forced to take care of people's homes while they are traveling  
15 for the summer, as we used to do prior to December 11th.

16 We have through the generosity of friends been able to  
17 stay rent free on the RV lots of people in the community. This  
18 will come to a screeching halt in October when the owners  
19 return for the winter season. We don't know where we'll go at  
20 that time. We don't have enough income from my pension to pay  
21 monthly rent.

22 The most devastating to us is we lost our freedom. We  
23 lost the ability to share our life every day as we explore the  
24 country every day. We lost the time to hold hands as we  
25 walked. As they say in the commercial, this is priceless.

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1 In closing, I would like to say, Judge Chin,  
2 sentencing Bernard L. Madoff to the fullest extent will  
3 certainly not eliminate any of the issues I wrote about. It  
4 probably won't even gain me satisfaction. As the guard who  
5 used to be on the right side of the prison bars, I'll know what  
6 Mr. Madoff's experience will be and will know that he is in  
7 prison in much the same way he imprisoned us as well as others.

8 He took from us the freedom that we held so preciously  
9 close to our lives, the very thing I always valued and never  
10 took for granted. In a sense, I would like someone in the  
11 court today to tell me how long is my sentence.

12 Thank you very much.

13 THE COURT: Thank you. Next we'll hear from Mr. and  
14 Mrs. FitzMaurice.

15 MS. EBEL: No, Judge Chin. I am next.

16 THE COURT: I saw the gentleman standing up next and I  
17 thought -- you are Maureen Ebel?

18 MS. EBEL: Yes, I am. I am here with my brother,  
19 William Thomas McDonough.

20 THE COURT: All right.

21 MS. EBEL: My name is Maureen Ebel and I am a victim  
22 of Bernard L. Madoff.

23 I have lost all of my life's hard-earned savings. I  
24 have lost my life savings because our government has failed me  
25 and thousands and thousands of other citizens. There are many

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1 levels of government complicity in this crime. The Securities  
2 & Exchange Commission, by its total incompetence and criminal  
3 negligence, has allowed a psychopath to steal from me and steal  
4 from the world.

5 I am a 61-year-old widow and I am now working full  
6 time. I have done many things to survive since December 11th,  
7 including selling a lot of my possessions and working three  
8 jobs at the same time. I have lost a home that my husband and  
9 I had owned for 25 years because of this theft.

10 I have lost my ability to care for myself in my old  
11 age. I have lost the ability to donate to charity, especially  
12 the Leukemia & Lymphoma Society. I have lost my ability to  
13 donate my time working for that charity as I had done in the  
14 past because now I must work full time in order to eat.

15 I have lost the ability to help future generations of  
16 my family get an education. I have lost the ability to help  
17 them with their housing needs. It pains me so much to remember  
18 my husband getting up in the middle of the night. He was a  
19 very fine physician. He would get up in the middle of the  
20 night year after year in all kinds of weather to go to the  
21 hospital to save someone's life in rain, ice and snow.

22 He would save someone's life so that Bernie Madoff  
23 could buy his wife another party rock. I have lost the ability  
24 to move around the world freely at this stage in my life using  
25 the money my husband and I have worked so hard to earn. We had

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1 worked, saved and planned for our old age so that we could  
2 leave something behind and not be a burden when we became sick  
3 and old.

4 The emotional toll that this has taken on me has been  
5 devastating. I have had great pain and suffering at the hands  
6 of Bernie Madoff. My health deteriorated rapidly after  
7 December 11th. I could not eat or sleep. I was very agitated  
8 and hyperactive. I had all the signs and symptoms of someone  
9 undergoing great stress. I suffered rapid weight loss, rapid  
10 heart rate, sweating, insomnia and sometimes spells.

11 I had the horrible feeling that I had been pushed into  
12 the great black abyss, but I could not indulge these paralyzing  
13 feelings too long. I had work to do. While experiencing all  
14 these symptoms, I had to sell my home of 25 years, sell my  
15 car, sell my possessions and go to work full time. I accepted  
16 gifts of money from family and friends to pay for heat,  
17 electricity, gasoline and food.

18 I was the recipient of so many kindnesses and saw so  
19 much goodness in people. Goodness in people is something that  
20 you, Mr. Madoff, have been blind to your whole life, and that  
21 goodness is better than all the yachts and all the French homes  
22 in all the world put together.

23 Sadly, Mr. Madoff not only defrauded thousands of  
24 investors, he mastered the art of manipulating our government.  
25 FINRA and the Securities & Exchange Commission became his

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1 tools. They were willing to relax all regulations that would  
2 have uncovered his fraud. The justification for relaxing the  
3 regulations was to ease the burden on Wall Street firms, the  
4 very firm that bankrupted the world economy.

5 THE COURT: Ms. Ebel, this is not the time to  
6 criticize the agencies. That is not before me. What is before  
7 me is what sentence to impose, so if you would address that,  
8 please.

9 MS. EBEL: I will, Judge Chin.

10 Mr. Madoff, I have read you will be making a statement  
11 about your guilt and shame. I do not believe you. Judge Chin,  
12 Mr. Madoff should stay in jail until every person who enabled  
13 him to cause such a massive devastation is brought to justice.  
14 He should stay in jail until the families of every one of his  
15 victims are able to restore their financial stability. That  
16 could easily take 150 years. Thank you.

17 THE COURT: Thank you. Next we'll hear from Mr. and  
18 Mrs. FitzMaurice.

19 MR. FITZMAURICE: Thank you, Judge Chin, for allowing  
20 us to be heard in your courtroom today.

21 My wife and I here are today representing the  
22 thousands of Madoff victims. We have all suffered extensively  
23 as a result of his actions. It has been well chronicled that  
24 Madoff did not limit his treachery to a few. He stole from the  
25 rich, he stole from the poor and he stole from the in-between.

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1 He had no boundaries. He stole from individuals as well as  
2 charitable organizations of all types and denominations.

3 My wife and I are not millionaires. He has taken our  
4 entire life savings. We have not been overlooked just as many  
5 of his other victims. We have worked hard, long and hard for  
6 all of our lives to provide for our family and to be in a  
7 position to retire someday. I am now forced to work three  
8 jobs. My wife is working a full-time job only to make ends  
9 meet, to allow us to pay our mortgage and put food on the  
10 table.

11 We are 63 years' old. It will be no retirement for us  
12 in the next two or three years. There will be no trips to  
13 California to visit our one-year-old grandson. There will be  
14 no vacations of any type. Again we are too old to recoup the  
15 monies that he has taken from us. We can only work as long as  
16 our health will hold up and then we will have to sell our home  
17 and hope to survive on social security alone.

18 Madoff has shown no remorse. Please do not confuse  
19 his prepared statement as remorse. His crime was premeditated  
20 and calculated. He was attempting to scam investors only days  
21 before his arrest. If he had the opportunity, he would still  
22 be stealing from innocent investors. He has not truly  
23 cooperated with the authorities to recover the money that  
24 rightfully belongs to his investors, whom we are now known as  
25 victims.

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1           He cheated his victims out of their money so that he  
2           and his wife Ruth and their two sons could live a life of  
3           luxury beyond belief. This life is normally reserved for  
4           royalty, not for common thieves.

5           Your Honor, we implore you to give him the maximum  
6           sentence at a maximum prison for this evil lowlife. This would  
7           be true justice. Minimum security prison would only allow  
8           Madoff too many freedoms that he does not deserve. He would be  
9           leading a life better than a lot of his victims. That is not  
10          true justice. His was a violent crime without the use of a  
11          tangible weapon.

12          His attorney will argue for a lenient sentence of up  
13          to twelve years. That is both insulting and another example of  
14          Madoff's arrogance. The scope of the devastation he has  
15          wreaked is unparalleled. It is impossible to compare his crime  
16          to any past criminal act. The pain he has inflicted will  
17          continue for many years. My life will never be the same. I am  
18          financially ruined and will worry every day about how I will  
19          take care of my wife.

20          Where will we be able to live? How will we pay our  
21          bills? How will we get medical insurance?

22          All of his victims worldwide will be waiting to see  
23          that true justice is served. True justice is a maximum  
24          sentence in a maximum security prison. I have a quotation from  
25          my wife, since only one of us could speak. She wants to say:

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1 "I cry every day when I see the look of pain and  
2 despair in my husband's eyes. I cry for the life we once had  
3 before that monster took it away. Our two sons and  
4 daughter-in-law have rallied with constant love and support.  
5 You, on the other hand, Mr. Madoff, have two sons that despise  
6 you. Your wife, rightfully so, has been vilified and shunned  
7 by her friends in the community. You have left your children a  
8 legacy of shame. I have a marriage made in heaven. You have a  
9 marriage made in hell, and that is where you, Mr. Madoff, are  
10 going to return. May God spare you no mercy."

11 THE COURT: Thank you.

12 Next we will hear from Carla Hirschhorn.

13 MS. HIRSCHHORN: Good morning and thank you, your  
14 Honor, for allowing me to address you.

15 My husband and I write to you to explain the  
16 devastation caused by Bernard L. Madoff to our lives. Since  
17 1992 we were invested with Bernard L. Madoff Investment  
18 Securities. We have never been rich people. We have worked  
19 throughout all our adult lives. Over the years my husband has  
20 worked hard to learn a trade as a glazer which afforded him the  
21 opportunity to start a small business. I have been a physical  
22 therapist and worked through to the day I was graduated from  
23 college in 1980. We have both diligently saved our hard-earned  
24 money to invest with Bernard Madoff over the years. We used  
25 our money to raise our children, purchase our home and put our

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1 savings in Bernard Madoff Securities.

2 On December 11th, 2008, our world crumbled beneath us  
3 as news of the Bernard Madoff ponzi scheme became public. This  
4 turn of events has been devastating to our family. We lost our  
5 entire life savings. This money was being used to provide our  
6 children with a college education they have worked so hard to  
7 deserve and to provide us with savings for a secure retirement.

8 Since December 11th, 2008 life has been a living hell.  
9 It feels like a nightmare that we can't wake from. I am so  
10 thankful that my father died two years ago and was spared from  
11 having to live in his terminal condition without the money to  
12 provide him 24/7 health care which allowed him to die with  
13 indignity.

14 My father died and left my mother believing she would  
15 be able to live a safe and secure life with the money in her  
16 Bernard Madoff accounts. Now all she has to live on is a  
17 sparce social security check and a small pension which will  
18 last less than one year. She may not have enough money to  
19 maintain her home and living expenses.

20 It is our hope and in our prayers she does not become  
21 ill and require extraordinary means to sustain her. Our  
22 daughter who sits in this courtroom today to witness this  
23 horrific event is a junior at college and has worked two jobs  
24 since our Madoff accounts were stolen while going to school  
25 full time. The stress and worry about her family's financial

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1 situation and health of her parents has been devastating to  
2 her. We have no idea how we will continue to pay for college  
3 without it being a terrible financial burden and worry on all  
4 of us.

5 Immediately after hearing the news of the ponzi  
6 scheme, we filed papers for financial aid to sustain our  
7 daughter through college. We were informed we were not  
8 eligible for any grant money, that our only hope would be to  
9 take out loans. However, in this financial environment,  
10 without SIPIC insurance and with concern about claw-back  
11 litigation, we can't possibly take loans out to send our  
12 daughter to college. The turmoil caused by our financial  
13 devastation has caused us serious physical and emotional  
14 problems from which we need medical treatment.

15 Your Honor, please understand that we, the investors,  
16 have been punished by Madoff's crime. We were devastated by  
17 the SEC's failure to uncover Madoff's fraud and its continued  
18 stamp of approval behind Madoff over the decades of his crime.  
19 We have been abandoned by our elected officials which refuse to  
20 require the SEC to find income. We have been betrayed by  
21 SIPIC, which in order to save money, has invented a new  
22 definition of net equity to deprive us of the \$500,000 of  
23 insurance of which we were assured.

24 Please, your Honor, do not fail us. Please assure  
25 that Madoff is sentenced with the maximum possible time and he

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1 is required to serve his sentence in a maximum security prison.  
2 This is not a man who deserves a federal country club.

3 Respectfully, Carla Hirschhorn.

4 THE COURT: Thank you.

5 It is not up to me, by the way, where Mr. Madoff will  
6 be designated. A number of people have made that suggestion,  
7 but it is up to the Bureau of Prisons.

8 Next we'll hear from Sharon Lissauer.

9 MS. LISSAUER: My name is Sharon Lissauer. Thank you,  
10 your Honor, for letting me speak. I am very emotional, so  
11 please bear with me if I break down into tears. As everyone  
12 knows, this nightmare has begun six and a half months ago and  
13 yet it seems like a lifetime.

14 I keep on thinking I am going to wake up from it. It  
15 keeps on getting worse. My life and my future have been  
16 ruined. I was always so careful with my money, but I entrusted  
17 everything I had to Mr. Madoff, my whole life savings from  
18 modeling and the inheritance of my mom. She just died last  
19 year, and as soon as I got the money, because I just miss her  
20 and I trusted Mr. Madoff so much, I gave it all to him, but now  
21 I don't have my mom or the money.

22 I know I am not alone. I know he has ruined thousands  
23 of people's lives. In the March hearing he said that he was  
24 truly sorry, which I don't really believe, but even if it is a  
25 little bit true, then I am not asking him, I am begging him, if

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1 he has any money from the offshore accounts or his family has  
2 any money obtained from this horrible fraud, that they disgorge  
3 it and give it back to the victims so they can have a little  
4 bit of their lives back.

5 With respect to his sentencing, I used to think that  
6 it didn't matter if he got 150 years, what would that do for  
7 the victims? It wouldn't get their money back. But now upon  
8 reflection, I think he should spend his whole life in jail  
9 because what he has done is just despicable. He has ruined so  
10 many people's lives. He killed my spirit and shattered my  
11 dreams. He destroyed my trust in people. He destroyed my  
12 life, and I have no other assets. I make very little money  
13 from modeling and he left me in a very difficult position to  
14 pay my bills and support myself. For the first time in my life  
15 I am very, very frightened of my future.

16 Thank you, your Honor.

17 THE COURT: Thank you.

18 Next we'll hear from Burt Ross. Mr. Ross.

19 MR. ROSS: Your Honor, my name is Burt Ross and my  
20 wife Joan and I lost \$5 million because of the criminal acts of  
21 Bernard Madoff. Not only have I lost the inheritance of my  
22 father who worked his entire life, not only have I lost the  
23 inheritance of my father who worked for his entire life so that  
24 his children and his children's children can leave a better  
25 life, I have lost our retirement accounts and funds in trust

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1 for our children.

2 The fact is though we are one of the fortunate ones  
3 because we still have a roof over our heads, food on our table,  
4 unlike so many others who have been forced to sell their homes,  
5 who have been forced to sell their homes and pick up the pieces  
6 of their lives.

7 Years ago I attended a Friends secondary school where  
8 we thought that in each person there was an inner light, that  
9 of God and everyone. For the life of me, as far as I have  
10 searched, I cannot find that inner light in Bernard Madoff.

11 What can we possibly say about Madoff, that he was a  
12 philanthropist, when the money he gave to charities he stole  
13 from the very same charities he ultimately devastated; that he  
14 was a good family man when he leaves his grandchildren a name  
15 that mortifies them, a name which will live in infamy; that he  
16 is genuinely remorseful for his conduct when the statement he  
17 read in this very court was totally without emotion, when even  
18 after confessing he fought to keep assets away from those he  
19 hurt, when we all know his only regret was getting caught.

20 Can we say Madoff was a righteous Jew who served on  
21 the boards of Jewish institutions when he sank so low, when he  
22 sank so low as to steal from Elie Weisel, as if Weisel hasn't  
23 already suffered enough in his lifetime.

24 A righteous Jew, when in reality nobody has done more  
25 to reinforce the ugly stereotyped that all we care about is

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1 money the fact is there are no people on this earth more  
2 charitable? But we will survive. We have survived worse than  
3 Madoff.

4 What Bernard L. Madoff did far transcends the loss of  
5 money. It involves his betrayal of the virtues people hold  
6 dearest -- love, friendship, trust -- and all so he can eat at  
7 the finest restaurants, stay at the most luxurious resorts, and  
8 travel on yachts and private jets. He has truly earned his  
9 reputation for being the most despised person to be in America  
10 today.

11 Several hundred years ago the Italian poet Dante in  
12 his "The Divine Comedy" recognized fraud as the worst of sins,  
13 the ultimate evil more than any other act contrary to God's  
14 greatest gift to mankind -- love. In fact, he placed the  
15 perpetrators of fraud in the lowest depths of hell, even below  
16 those who had committed violent acts. And those who betrayed  
17 their benefactors were the worst sinners of all, so in the  
18 three mouths of Satan struggle Judas for betraying Jesus  
19 Christ, and Brutus and Cassius for betraying Julius Caesar.

20 Please Allow me to take a liberty now by speaking for  
21 many of those victims who because of frailty, privacy,  
22 distance, or other reasons are unable to bear witness today.  
23 We urge your Honor to commit Madoff to prison for the remainder  
24 of his natural life, and when he leaves this earth virtually  
25 unmourned, may Satan grow a forth mouth where Bernard L. Madoff

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1 deserves to spend the rest of eternity.

2 Thank you.

3 THE COURT: Thank you. Next we'll hear from Michael  
4 Schwartz.

5 MR. SCHWARTZ: Can everyone hear me?

6 My name is Michael Schwartz. I am 33 years' old. It  
7 was my family's trust fund that helped fund the money for  
8 Bernard Madoff's organization. Since I was a teenager, I  
9 invested into what I thought was a forthright and legitimate  
10 investment firm. During this time I made sure I lived well  
11 within my means, nothing extravagant. I viewed my investment  
12 as a safety net in case I should hit hard times or perhaps face  
13 medical issues.

14 Unfortunately, several months ago, my job was  
15 regionalized, eliminated. I was handed a letter of  
16 recommendation and sent on my way. It didn't hit me until I  
17 got home that the company that you ran had already taken my  
18 life savings. At 33, I was wiped out.

19 I am one of the lucky ones by far. I have my health.  
20 I am young, I have great friends, got a loving wife.  
21 Unfortunately, the money you took from other members of my  
22 family wasn't a minor setback. It was quite a bit more. Your  
23 Honor, part of the trust fund wasn't set aside for a house in  
24 the Hamptons, a large yacht or box seat to the Mets. No, part  
25 of that money was set aside to take care of my twin brother who

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1 is mentally disabled, who at 33, he lives at home with my  
2 parents and will need care and supervision for the rest of his  
3 life.

4 In the final analysis, my family wants to remember  
5 that in addition to stealing from retirees, veterans, widows,  
6 Bernard Madoff stole from the disabled. Every time he cashed a  
7 check and paid for his family's decadent lifestyle, he killed  
8 dreams. My parents had a simple dream for my brother, a week  
9 at summer camp, someday being able to live in a good, a good  
10 group home. Thanks to Bernard Madoff's greed, complete lack of  
11 ethics, that dream will be delayed.

12 At the end of the day my twin brother will be taken  
13 care of. My family is strong enough to weather this storm but,  
14 your Honor, I say this without any malice, Bernard Madoff  
15 should no longer be allowed back in society. I only hope that  
16 his prison sentence is long enough so that his jail cell  
17 becomes his coffin. Thank you.

18 THE COURT: Thank you.

19 We'll hear next from Miriam Siegman.

20 MS. SIEGMAN: I was born a few blocks from this  
21 courthouse. I still live here. On a cold winter's day just  
22 before my 65th birthday, the man sitting in front of me  
23 announced to the world that he had stolen everything I had.  
24 After that he refused to say another word to his victims. I am  
25 here today to bear witness for myself and others, silent

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1 victims.

2 The streets of my childhood felt safe. The streets I  
3 wander now feel threatening. The man sitting in this courtroom  
4 robbed me. In an instant his words and deeds beat me to near  
5 senselessness. He discarded me like road kill. Victims became  
6 the byproduct of his greed. We are what is left over, the  
7 remnants of stunning indifference and that of politicians and  
8 bureaucrats.

9 Six months have passed. I manage on food stamps. At  
10 the end of the month I sometimes scavage in dumpsters. I  
11 cannot afford new eyeglasses. I long to go to a concert, but I  
12 never do. Sometimes my heartbeats erratically for lack of  
13 medication when I cannot pay for it.

14 I shine my shoes each night, afraid they will wear  
15 out. My laundry is done by hand in the kitchen sink. I have  
16 collected empty cans and dragged them to redemption centers.

17 I do this. People ask how are you? My answer always  
18 is I'm fine, but it is not always true. I have lived with  
19 fear. It strikes me at all hours. I calculate again and again  
20 how long I can hold out.

21 It is only a matter of time. I will be unable to meet  
22 my own basic needs, food, shelter, medicine. I feel grief at  
23 no longer being able to help support my beloved sister. I feel  
24 shame and humiliation asking for help.

25 I also feel overwhelming sadness. I know that another

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1 human being did this to me and to all victims, but I don't know  
2 why. What I do understand frightens me. The man who did this  
3 had deep contempt for his victims.

4 There are many victims including those we never hear  
5 from or see; union members, pipe-fitters, laborers, women who  
6 work in nursing homes, bricklayers, firemen, working people.  
7 One victim shot himself. The inquest informs us he was a  
8 highly decorated former soldier who could not face the shame of  
9 his ruin, his last words on a humanitarian mission in  
10 Afghanistan. By self-admission, this thief among us knew his  
11 victims were facing a kind of death at his hands, yet he  
12 continued to play with us as a cat would with a mouse.

13 What shall be the punishment for such a man? What  
14 sentence? Carry the burden we carry, feel his shame,  
15 humiliation and isolation as I do. Feel it each day wherever  
16 you are until life ends.

17 Face an acknowledge the murderous effects of your  
18 life's work. I long for the truth that might become of a trial  
19 and hope justice had placed a higher premium on truth and  
20 expediency. Forgiveness for now, it will have to come from  
21 someone other than me.

22 THE COURT: Thank you. Finally we'll hear from Sheryl  
23 Weinstein.

24 MS. WEINSTEIN: Hello, your Honor.

25 THE COURT: Good morning.

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1 MS. WEINSTEIN: I was introduced to Bernard Madoff 21  
2 years ago at a business meeting. At the time I was the chief  
3 financial officer of Hadassah, a charitable women's  
4 organization. I now view that day as perhaps the unluckiest  
5 day of my life because of the many events set into motion that  
6 would eventually have the most profound and devastating effect  
7 on me, my husband, my child, my parents, my in-laws and all  
8 those who depended upon us for their liveliness.

9 You have read and you appear from many of us, the old,  
10 the young, the healthy and infirm about the unimaginable extent  
11 of human tragedy and devastation. According to a Time Magazine  
12 article, there are over 3 million individuals worldwide who  
13 have been directly or indirectly affected. They, the press and  
14 the media, speak of us as being greedy and rich. Most of us  
15 are just ordinary working people, worker bees, as I like to  
16 refer to us.

17 My husband and I are now both in our 60's and have  
18 been married for 37 years. We have saved for most of our lives  
19 by living beneath our means in order to provide for our  
20 retirement. This past Thursday at 2:00 o'clock my husband and  
21 I sold our home of 20 years. People are always asking how much  
22 did we lose? My reply is that when you lose everything, it  
23 really doesn't matter because you have nothing left, and we  
24 have lost everything.

25 Many have told us we were lucky -- I no longer know --

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1 to be able to sell in this depressed market although at a  
2 greatly reduced amount. We had to sell because four years ago  
3 we refinanced our mortgage and gave the excess cash to Bernie  
4 Madoff. There was very little left over after all was said and  
5 done at the closing.

6 It is difficult to describe how it feels due to  
7 circumstances outside of your control to be virtually forced  
8 out of your home, to leave unwillingly. Last Tuesday I walked  
9 out following the movers with a thought I would be back before  
10 the closing, but knowing in the back of my mind that I  
11 wouldn't.

12 My husband was the last to be in our home. He shared  
13 with me his hesitation of not wanting to leave, of wanting to  
14 remain, but realizing that staying was no longer an option. We  
15 chose not to go to the closing because it would have been too  
16 difficult and painful for either of us to be there. For months  
17 after December 11th I would wake in the dark hours of the night  
18 and early morning and to my horror realize that there were no  
19 calming, soothing words I could say to myself because it wasn't  
20 a dream. The monster who visited me was true, a reality.  
21 Those same thoughts would occur to me upon waking in the  
22 morning and during the day and a deep, heavy depression would  
23 surround me and not lift.

24 This went on for many months. I went on after bad  
25 dreams, virtually not unable to eat. The sight of food was

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1 making me feel sick, unable to escape the reality of my  
2 personal devastation. At times I could not even bear to be  
3 alone. I would ask my friends to either stay with me at the  
4 office even if there was very little work to do. It would  
5 prompt me to pick up the phone to call my husband to be  
6 reassured I was not alone.

7 This continued until March 12th when Madoff entered  
8 his plea of guilty. I began to speak out to the media, and the  
9 helpless and hopeless feelings began to retreat and I began to  
10 feel empowered. It came together for me while being  
11 interviewed by Katie Couric. She asked me wasn't I embarrassed  
12 being a CPA losing all my money? At that moment I realized and  
13 responded no, I am not embarrassed because I did not lose my  
14 money. My money was stolen from me.

15 Ms. Couric said to me you sound angry, and I said yes,  
16 you're right. When someone steals from you, you get angry.  
17 That was the beginning of my healing process.

18 I felt it was important for somebody who as personally  
19 acquainted with Madoff to speak. My family and I are not  
20 anonymous people to him. He knows my husband's name is Rob and  
21 my son's name is Eric. In fact, Eric worked for him one summer  
22 while in college many years ago. Eric would continue to call  
23 him over the years to ask for his advice and input. Eric  
24 entrusted him with his money that he worked and saved. a few  
25 months before all this happened Eric had spoken to him and

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1 thanked him for doing such a good job.

2 I would now like to have the opportunity to share with  
3 you my personal feelings about Madoff and to speak to his  
4 sentencing.

5 I remember when my son was perhaps a few weeks' old  
6 and I would watch him as he slept and he would whimper, not a  
7 cry of hunger, but a whimper. Even at a few weeks' old there  
8 was something in his subconscious that could frighten him. It  
9 amazed me such a young child, an infant can have nightmares.

10 All of us from our earliest ages remember those times  
11 when the terror, the monsters and goblins would come visit us  
12 in those dark hours. Eventually we would be so frightened that  
13 we would awake sometimes calling out to our parents because of  
14 the fear.

15 It was calming to have our parents remind us it was  
16 only a dream. As we got older, we could wake ourselves and  
17 self-assure ourselves it was only a dream. That terror, that  
18 monster, that horror, that beast has a name to me, and it is  
19 Bernard L. Madoff. I will now attempt to explain to you the  
20 nature of this beast who I called Madoff.

21 He walks among us. He dresses like us. He drives and  
22 eats and drinks and speaks. Under the facade there is truly a  
23 beast. He is a beast that has stolen for his own needs the  
24 livelihoods, savings, lives, hopes and dreams and futures of  
25 others in total disregard. He has fed upon us to satisfy his

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1 own needs. No matter how much he takes and from whom he takes,  
2 he is never satisfied. He is an equal opportunity destroyer.

3 I felt it important for you to know in appearance, he  
4 would be just like everybody else and it is for this reason I  
5 am asking your Honor to keep him in a cage behind bars because  
6 he has lost the privilege of walking and being among us mortal  
7 human beings. He should not be given the opportunity to walk  
8 into our society again.

9 I would like to suggest that while any man, woman or  
10 child that has been affected by his heinous crime still walks  
11 this earth, Madoff the beast should not be free to walk among  
12 them. You should protect society from the likes of him. I  
13 have reread Madoff's March 12th statement to you. Certain  
14 quotes jumped out at me. His continuing self-serving  
15 references, and I quote, that his proprietary trading in the  
16 market making business managed by his brother and two sons was  
17 legitimate, profitable and successful in all respects, or that  
18 he felt, "compelled to satisfy my clients' expectations at any  
19 cost."

20 It sounds as if he is laying the blame on his clients'  
21 expectations and never admitting the truth he was stealing from  
22 these clients and the lives he ruined. If he was attempting to  
23 protect his family, he should not be given that opportunity  
24 because we, the victims, did not have the same opportunity to  
25 protect our families. Madoff the beast has stolen our ability

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1 to protect our loved ones away from us. He should have no  
2 opportunity to protect his family.

3 We, the victims, are greatly disappointed by those  
4 agencies that were set up to protect us. SIPIC has now  
5 redefined what we are entitled to. The IRS approved their  
6 office request to be a custodian of our IRAs and pension funds  
7 and the SEC appears to have looked the other way on numerous  
8 occasions. This is a human tragedy of historic proportions and  
9 we ask -- no, we implore -- that those whose agencies may have  
10 failed us in the past through acts of omissions, step up to the  
11 plate, fulfill their responsibilities. I thank your Honor for  
12 your indulgence and I feel comfortable you will make sure  
13 justice is served.

14 Thank you.

15 THE COURT: Thank you.

16 Thanks to all the victims who spoke today and to all  
17 those who wrote. I appreciate hearing your views.

18 Mr. Sorkin.

19 MR. SORKIN: Good morning, your Honor.

20 THE COURT: Good morning.

21 MR. SORKIN: Before I speak, would your Honor  
22 respectfully acknowledge you have received both the  
23 government's sentencing memorandum and two responses?

24 THE COURT: Yes, I have your initial letter. I  
25 received yesterday your reply brief. I have the government's

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1 memorandum as well.

2 MR. SORKIN: Thank you.

3 THE COURT: I have read them all.

4 MR. SORKIN: Thank you, your Honor.

5 May I proceed?

6 THE COURT: Yes.

7 MR. SORKIN: Your Honor, I know I speak on behalf of  
8 all Mr. Madoff's counsel as well as Mr. Madoff who will speak.  
9 We cannot be unmoved by what we heard. There is no way that we  
10 cannot be insensitive to the victims' suffering.

11 This is a tragedy as some of the victims have said at  
12 every level. There is no doubt Mr. Madoff will speak. We  
13 represent a deeply flawed individual, but we represent, your  
14 Honor, a human being. We don't represent a statistic. We  
15 don't represent a number. We speak to the victims. We have  
16 heard what they've had to say and we can only imagine, your  
17 Honor, what we would have heard from others.

18 I say again, forgive me for being redundant, we  
19 represent a very flawed individual, an individual who appears  
20 before this court facing a sentence that is sufficient but not  
21 unreasonably necessary to carry out the mandate that this court  
22 has to carry out.

23 The magnificence of our legal system, your Honor, is  
24 that we do not seek an eye for an eye. To be sure, if it is  
25 any consolation to the victims, we have worked hopefully

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1 diligently with the U.S. Attorney's Office in an atmosphere of  
2 trying to recover assets. To that extent, your Honor, we have  
3 provided the government with what we believe to be the assets  
4 that Mr. Madoff has gathered over the years which the victims  
5 have referred to, and again if it is any consolation to them,  
6 to the extent that the government has left him and his family,  
7 his wife impoverished, we are just about there with respect to  
8 everything the government believes it can show in order to  
9 obtain the appropriate assets for forfeiture.

10 Vengeance is not the goal of punishment. Our system  
11 of justice, your Honor, has recognized that justice is and must  
12 always be blind and fair -- not blind to the criminal acts that  
13 Mr. Madoff pleaded guilty to and certainly not blind to the  
14 suffering of the victims, but blind to the extent that it will  
15 achieve a sentence that has been set out over the years in the  
16 guidelines and the cases interpreting the guidelines, and the  
17 guidelines and the courts and the statutes, your Honor, do not  
18 speak of vengeance and revenge.

19 There is something bordering on the absurd, and we  
20 cited United States versus Ellison on this point, your Honor.  
21 For the government to ask for 150 years so that Mr. Madoff gets  
22 out of jail at the age of 221 because he is 71 now, he will  
23 face supervised release. By the same token, your Honor, it  
24 defies reason for the Probation Department to suggest that he  
25 be sentenced to 50 years in prison for the very same reasons.

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1 I point out to the court, and forgive me, your Honor,  
2 for repeating what is in the letter we sent you most recently,  
3 that Mr. Madoff, as he pleaded to, as appears in the  
4 presentence report and appears in the information in which the  
5 government agrees, for most of the period of time that Mr.  
6 Madoff is alleged to have engaged in this ponzi scheme and, in  
7 fact, it was a ponzi scheme, it was money in and money out.

8 Most of the money, and I am quoting from the PSR, went  
9 for redemptions. People who invested money were given back  
10 money. To be sure, it was a fraud. To be sure, it was a ponzi  
11 scheme. To be sure, it was a crime, but nevertheless, your  
12 Honor, I point out, and in response respectfully to some of the  
13 victims, the PSR noted, and I think it is common knowledge in  
14 the industry that Mr. Madoff built up this firm on the  
15 proprietary trading side to the point in 1991, as the  
16 presentence report points out, the proprietary trading side  
17 which at the point of his arrest had approximately 200  
18 employees separate and apart from the fraudulent advisory  
19 business, a hundred traders making markets and in 1991, your  
20 Honor, accounted for almost 10 percent of all transactions on  
21 the New York Stock Exchange.

22 Sufficient to provide revenue at the same time Mr.  
23 Madoff engaged in taking money in and taking money out, most of  
24 that money went for redemptions. As we point out in our letter  
25 of yesterday, and as the government notes and as the PSR notes,

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1 the loans, the comingling, and we we do dispute this with the  
2 government, but I don't think it is a relevant issue, the  
3 comingling, the loans.

4 (Continued on next page)

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1           MR. SORKIN: The loans, the commingling, commenced  
2 within the last eight to ten years. And as Mr. Madoff will  
3 say, things began to collapse. And there was commingling with  
4 \$250 million over the last eight or so years, of advisory  
5 money, as well as money in, money out of investments.

6           I think it's important to note, your Honor, again that  
7 Mr. Madoff stepped forward. He chose not to flee. He chose  
8 not to hide money. To the extent money is overseas, we are  
9 still actively engaged -- we, his defense counsel -- in  
10 assisting the government, at the request of the government, to  
11 obtain assets located overseas, as we speak, and we submitted  
12 that voluntarily, and we have been trying to help, with  
13 Mr. Madoff's authorization, permission, and blessing.

14           Mr. Madoff is 71 years old, your Honor. Based upon  
15 his health, which is in the PSR, his family history, his life  
16 expectancy, that is why we ask for a sentence of 12 years, just  
17 short, based upon the statistics that we have, of a life  
18 sentence.

19           We also said, if your Honor is inclined, your Honor  
20 obviously makes the decision, 15 to 20 years. So that if  
21 Mr. Madoff ever sees the light of day, in his 90s, impoverished  
22 and alone, he will have paid a terrible price. He expects,  
23 your Honor, to live out his years in prison.

24           The PSR points out, your Honor, as we noted in our  
25 letter to you, that the loss in this case is \$13,226,000,000.

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1 The exact numbers are in the PSR. What has not been heard  
2 publicly, your Honor, is the fact that over \$1,276,000,000 is  
3 held by the SIPC trustee, and we have no control over how that  
4 money is disbursed. And I say this for the victims we have  
5 heard. Again, we have no control over what the SIPC trustee  
6 does with the money that he obtains, nor do we have any control  
7 over what the SEC will do, nor do we have any control as to how  
8 the government to whom we have forfeited all of the assets but  
9 a few, which the government and we have agreed were weighed  
10 against the risk of litigation, we have no control how that  
11 money is disbursed.

12 Additionally to the \$1,276,000,000, the SIPC trustee,  
13 according to the PSR, has recovered \$1,225,000,000, has sent  
14 demand letters to individuals for 735 million, and has  
15 commenced litigation to seek a clawback from some very large  
16 funds to obtain redemptions and interest payments in the amount  
17 of \$10,100,000,000. It is our hope, your Honor, our sincerest  
18 hope, that all that money is collected, in an amount in excess  
19 of \$13,226,000,000, that that will be provided to investors.

20 The frenzy, the media excitement, that Mr. Madoff  
21 engaged in a Ponzi scheme involving \$65 billion and that he has  
22 ferreted money away, as far as we know, your Honor, that is  
23 simply not true, and it is not borne out either by the  
24 government or by the PSR, and we take no issue with the PSR.

25 In closing, your Honor, there is no question that this

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1 case has taken an enormous toll, not only on Mr. Madoff and his  
2 family, but to the victims to be sure. But it has also taken a  
3 toll, your Honor, as Mr. Madoff will say, on the industry that  
4 he helped revolutionize, that he helped grow, and now has  
5 become the object of disrespect and abomination, and that is a  
6 tragedy as well.

7 We ask only, your Honor, that Mr. Madoff be given  
8 understanding and fairness, within the parameters of our legal  
9 system, and that the sentence that he be given be sufficient,  
10 but not greater than necessary, to carry out what this Court  
11 must carry out under the rules, statutes and guidelines.

12 Thank you, your Honor.

13 THE COURT: Thank you.

14 Mr. Madoff, if you would like to speak, now is the  
15 time.

16 THE DEFENDANT: Your Honor, I cannot offer you an  
17 excuse for my behavior. How do you excuse betraying thousands  
18 of investors who entrusted me with their life savings? How do  
19 you excuse deceiving 200 employees who have spent most of their  
20 working life working for me? How do you excuse lying to your  
21 brother and two sons who spent their whole adult life helping  
22 to build a successful and respectful business? How do you  
23 excuse lying and deceiving a wife who stood by you for 50  
24 years, and still stands by you? And how do you excuse  
25 deceiving an industry that you spent a better part of your life

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1 trying to improve? There is no excuse for that, and I don't  
2 ask any forgiveness.

3           Although I may not have intended any harm, I did a  
4 great deal of harm. I believed when I started this problem;  
5 this crime, that it would be something I would be able to work  
6 my way out of, but that became impossible. As hard as I tried,  
7 the deeper I dug myself into a hole. I made a terrible  
8 mistake, but it wasn't the kind of mistake that I had made time  
9 and time again, which is a trading mistake. In my business,  
10 when you make a trading error, you're expected to make a  
11 trading error, it's accepted. My error was much more serious.  
12 I made an error of judgment. I refused to accept the fact,  
13 could not accept the fact, that for once in my life I failed.  
14 I couldn't admit that failure and that was a tragic mistake.

15           I am responsible for a great deal of suffering and  
16 pain. I understand that. I live in a tormented state now  
17 knowing of all the pain and suffering that I have created. I  
18 have left a legacy of shame, as some of my victims have pointed  
19 out, to my family and my grandchildren. That's something I  
20 will live with for the rest of my life.

21           People have accused me of being silent and not being  
22 sympathetic. That is not true. They have accused my wife of  
23 being silent and not being sympathetic. Nothing could be  
24 further from the truth. She cries herself to sleep every night  
25 knowing of all the pain and suffering I have caused, and I am

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1 tormented by that as well. She was advised to not speak  
2 publicly until after my sentencing by our attorneys, and she  
3 complied with that. Today she will make a statement about how  
4 she feels about my crimes. I ask you to listen to that. She  
5 is sincere and all I ask you is to listen to her.

6 Apologizing and saying I am sorry, that's not enough.  
7 Nothing I can say will correct the things that I have done. I  
8 feel terrible that an industry I spent my life trying to  
9 improve is being criticized terribly now, that regulators who I  
10 helped work with over the years are being criticized by what I  
11 have done. That is a horrible guilt to live with. There is  
12 nothing I can do that will make anyone feel better for the pain  
13 and suffering I caused them, but I will live with this pain,  
14 with this torment for the rest of my life.

15 I apologize to my victims. I will turn and face you.  
16 I am sorry. I know that doesn't help you.

17 Your Honor, thank you for listening to me.

18 THE COURT: Thank you.

19 Mr. Sorkin, did I understand Mr. Madoff to say that  
20 Mrs. Madoff wanted to speak?

21 MR. SORKIN: No, your Honor. Mrs. Madoff after the  
22 sentencing will be giving a statement. And I add what  
23 Mr. Madoff said about belaboring it, that she was advised by  
24 counsel to wait till after sentence.

25 THE COURT: I thought he was saying she wanted to

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1 speak. Thank you.

2 I will hear from the government.

3 MS. BARONI: This defendant carried out a fraud of  
4 unprecedented proportion over the course of more than a  
5 generation. For more than 20 years he stole ruthlessly and  
6 without remorse. Thousands of people placed their trust in him  
7 and he lied repeatedly to all of them. And as the Court heard  
8 from all of the victims, in their words and in the letters, he  
9 destroyed a lifetime of hard work of thousands of victims. And  
10 he used that victims' money to enrich himself and his family,  
11 with an opulent lifestyle, homes around the world, yachts,  
12 private jets, and tens of millions of dollars of loans to his  
13 family, loans of investors' money that has never been repaid.

14 The guideline sentence in this case, as your Honor  
15 knows, is 150 years and the government respectfully submits  
16 that a sentence of 150 years or a substantial term of  
17 imprisonment that will ensure that he spends the rest of his  
18 life in jail is appropriate in this case.

19 This was not a crime born of any financial distress or  
20 market pressures. It was a calculated, well orchestrated,  
21 long-term fraud, that this defendant carried out month after  
22 month, year after year, decade after decade. He created  
23 literally hundreds and hundreds of thousands of fake documents  
24 every year. Every time he told his clients that he was making  
25 trades for them he sent them trade confirmations filled with

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1 lies. At every month end he sent them account statements that  
2 were nothing but lies. And the defendant knew that his clients  
3 made critically important life decisions, as your Honor heard  
4 today, based on these lies. Decisions about their children's  
5 education, their retirement, how to care for elderly relatives,  
6 and how to provide for their families. He knew this, and he  
7 stole from them anyway.

8 In doing so, he drove charities, companies, pension  
9 plans and families to economic ruin. And even on the most  
10 dispassionate view of the evidence, the scale of the fraud,  
11 which is at a conservative estimate, your Honor, \$13 billion,  
12 when you look at the duration of the fraud, which is more than  
13 20 years, when you look at the fact that the defendant could  
14 have stopped this fraud and saved the victims' losses, all of  
15 these facts justify a guideline sentence of 150 years.

16 And to address briefly some of Mr. Sorkin's arguments,  
17 despite Mr. Sorkin's arguments, the defendant here deserves no  
18 leniency and certainly does not deserve a sentence of 12 years'  
19 imprisonment.

20 Mr. Sorkin tries to argue that the loss amount is  
21 actually going to be less than 13 billion because the trustee  
22 may recover some assets in clawback proceedings. As your Honor  
23 knows, that has nothing to do with the loss amount in this  
24 case. Further, the defendant shouldn't get any credit for  
25 anything the government or the trustee does after the fraud to

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1 recover money.

2 In asking for 12 years, your Honor, the defendant is  
3 asking you to impose a sentence that a defendant would receive  
4 in a garden variety fraud case in this district, a case with  
5 about \$20 million of losses and far fewer victims. In imposing  
6 a 12 year sentence in this case, on the facts and circumstances  
7 here, would be profoundly unfair. Not only would it not  
8 reflect the seriousness and the scope of the defendant's  
9 crimes, but, also, it would not promote the goals of general  
10 deterrence going forward.

11 Mr. Sorkin's argument that the defendant should get  
12 some credit for coming forward and turning himself in is also  
13 entirely meritless. The defendant continued his fraud scheme  
14 until the very end, when he knew the scheme was days away from  
15 collapse, when he was almost out of money and when he was faced  
16 with redemption requests from clients that he knew he could not  
17 meet. And even at that point, rather than turning himself in,  
18 he tried to take the last of his victims' money. He prepared  
19 \$173 million in checks that he planned to give to his family,  
20 his friends, and some preferred clients. It was his final  
21 effort to put his interests above those of his clients, and had  
22 the FBI not arrested him when they did, he might well have  
23 succeeded.

24 Your Honor, in sum, for running an investment advisory  
25 business that was a complete fraud, for betraying his clients

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1 for decades, and for repeatedly lying to regulators to cover up  
2 his fraud, for the staggering harm that he has inflicted on  
3 thousands of people, for all of these reasons and all of the  
4 reasons your Honor heard so eloquently from the victims, the  
5 government respectfully requests that the Court sentence the  
6 defendant to 150 years in prison or a substantial term of  
7 imprisonment that ensures that he will spend the rest of his  
8 life in jail.

9 Thank you.

10 THE COURT: Thank you.

11 I take into account what I have read in the  
12 presentence report, the parties' sentencing submissions, and  
13 the e-mails and letters from victims. I take into account what  
14 I have heard today. I also consider the statutory factors as  
15 well as all the facts and circumstances in the case.

16 In his initial letter on behalf of Mr. Madoff, Mr.  
17 Sorkin argues that the unified tone of the victims' letters  
18 suggests a desire for mob vengeance. He also writes that  
19 Mr. Madoff seeks neither mercy nor sympathy, but justice and  
20 objectivity.

21 Despite all the emotion in the air, I do not agree  
22 with the suggestion that victims and others are seeking mob  
23 vengeance. The fact that many have sounded similar themes does  
24 not mean that they are acting together as a mob. I do agree  
25 that a just and proportionate sentence must be determined,

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1 objectively, and without hysteria or undue emotion.

2 Objectively speaking, the fraud here was staggering.  
3 It spanned more than 20 years. Mr. Madoff argues in his reply  
4 letter that the fraud did not begin until the 1990s. I guess  
5 it's more that the commingling did not begin until the 1990s,  
6 but it is clear that the fraud began earlier. And even if it  
7 is true that it only started in the 1990s, the fraud exceeded  
8 ten years, still an extraordinarily long period of time. The  
9 fraud reached thousands of victims.

10 As for the amount of the monetary loss, there appears  
11 to be some disagreement. Mr. Madoff disputes that the loss  
12 amount is \$65 billion or even \$13 billion. But Mr. Madoff has  
13 now acknowledged, however, that some \$170 billion flowed into  
14 his business as a result of his fraudulent scheme. The  
15 presentence report uses a loss amount of \$13 billion, but as I  
16 understand it, that number does not include the losses from  
17 moneys invested through the feeder funds. That's what the PSR  
18 states. Mr. Madoff argues that the \$13 billion amount should  
19 be reduced by the amounts that the SIPC trustee may be able to  
20 claw back, but that argument fails. Those clawbacks, if they  
21 happened, will result in others who suffered losses. Moreover,  
22 Mr. Madoff told his sons that there were \$50 billion in losses.  
23 In any event, by any of these monetary measures, the fraud here  
24 is unprecedented.

25 Moreover, the offense level of 52 is calculated by

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1 using a chart for loss amount that only goes up to \$400  
2 million. By any of these measures, the loss figure here is  
3 many times that amount. It's off the chart by many fold.

4 Moreover, as many of the victims have pointed out,  
5 this is not just a matter of money. The breach of trust was  
6 massive. Investors -- individuals, charities, pension funds,  
7 institutional clients -- were repeatedly lied to, as they were  
8 told their moneys would be invested in stocks when they were  
9 not. Clients were sent these millions of pages of account  
10 statements that the government just alluded to confirming  
11 trades that were never made, attesting to balances that did not  
12 exist. As the victims' letters and e-mails demonstrate, as the  
13 statements today demonstrate, investors made important life  
14 decisions based on these fictitious account statements -- when  
15 to retire, how to care for elderly parents, whether to buy a  
16 car or sell a house, how to save for their children's college  
17 tuition. Charitable organizations and pension funds made  
18 important decisions based on false information about fictitious  
19 accounts. Mr. Madoff also repeatedly lied to the SEC and the  
20 regulators, in writing and in sworn testimony, by withholding  
21 material information, by creating false documents to cover up  
22 his scheme.

23 It is true that Mr. Madoff used much of the money to  
24 pay back investors who asked along the way to withdraw their  
25 accounts. But large sums were also taken by him, for his

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1 personal use and the use of his family, friends, and  
2 colleagues. The PSR shows, for example, that Mr. Madoff  
3 reported adjusted gross income of more than \$250 million on his  
4 tax returns for the ten year period from 1998 through 2007. On  
5 numerous occasions, Mr. Madoff used his firm's bank accounts  
6 which contained customer funds to pay for his personal expenses  
7 and those of his family, including, for example, the purchase  
8 of a Manhattan apartment for a relative, the acquisition of two  
9 yachts, and the acquisition of four country club memberships at  
10 a cost of \$950,000. Billions of dollars more were paid to  
11 individuals who generated investments for Mr. Madoff through  
12 these feeder funds.

13 Mr. Madoff argues a number of mitigating factors but  
14 they are less than compelling. It is true that he essentially  
15 turned himself in and confessed to the FBI. But the fact is  
16 that with the turn in the economy, he was not able to keep up  
17 with the requests of customers to withdraw their funds, and it  
18 is apparent that he knew that he was going to be caught soon.  
19 It is true that he consented to the entry of a \$170 billion  
20 forfeiture order and has cooperated in transferring assets to  
21 the government for liquidation for the benefit of victims. But  
22 all of this was done only after he was arrested, and there is  
23 little that he could have done to fight the forfeiture of these  
24 assets. Moreover, the SIPC trustee has advised the Court  
25 Mr. Madoff has not been helpful, and I simply do not get the

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1 sense that Mr. Madoff has done all that he could or told all  
2 that he knows.

3 Mrs. Madoff has stipulated to the transfer of some \$80  
4 million in assets to the government for the benefit of victims,  
5 but the record also shows that as it became clear that  
6 Mr. Madoff's scheme was unraveling, he made substantial loans  
7 to family members, he transferred some \$15 million of firm  
8 funds into his wife's personal accounts, and he wrote out the  
9 checks that the government has just described.

10 I have taken into account the sentences imposed in  
11 other financial fraud cases in this district. But, frankly,  
12 none of these other cases is comparable to this case in terms  
13 of the scope, duration and enormity of the fraud, and the  
14 degree of the betrayal.

15 In terms of mitigating factors in a white-collar fraud  
16 case such as this, I would expect to see letters from family  
17 and friends and colleagues. But not a single letter has been  
18 submitted attesting to Mr. Madoff's good deeds or good  
19 character or civic or charitable activities. The absence of  
20 such support is telling.

21 We have heard much about a life expectancy analysis.  
22 Based on this analysis, Mr. Madoff has a life expectancy of 13  
23 years, and he therefore asks for a sentence of 12 years or  
24 alternatively 15 to 20 years. If Mr. Sorkin's life expectancy  
25 analysis is correct, any sentence above 20 or 25 years would be

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1 largely, if not entirely, symbolic.

2 But the symbolism is important, for at least three  
3 reasons. First, retribution. One of the traditional notions  
4 of punishment is that an offender should be punished in  
5 proportion to his blameworthiness. Here, the message must be  
6 sent that Mr. Madoff's crimes were extraordinarily evil, and  
7 that this kind of irresponsible manipulation of the system is  
8 not merely a bloodless financial crime that takes place just on  
9 paper, but that it is instead, as we have heard, one that takes  
10 a staggering human toll. The symbolism is important because  
11 the message must be sent that in a society governed by the rule  
12 of law, Mr. Madoff will get what he deserves, and that he will  
13 be punished according to his moral culpability.

14 Second, deterrence. Another important goal of  
15 punishment is deterrence, and the symbolism is important here  
16 because the strongest possible message must be sent to those  
17 who would engage in similar conduct that they will be caught  
18 and that they will be punished to the fullest extent of the  
19 law.

20 Finally, the symbolism is also important for the  
21 victims. The victims include individuals from all walks of  
22 life. The victims include charities, both large and small, as  
23 well as academic institutions, pension funds, and other  
24 entities. Mr. Madoff's very personal betrayal struck at the  
25 rich and the not-so-rich, the elderly living on retirement

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1 funds and social security, middle class folks trying to put  
2 their kids through college, and ordinary people who worked hard  
3 to save their money and who thought they were investing it  
4 safely, for themselves and their families.

5 I received letters, and we have heard from, for  
6 example, a retired forest worker, a corrections officer, an  
7 auto mechanic, a physical therapist, a retired New York City  
8 school secretary, who is now 86 years old and widowed, who must  
9 deal with the loss of her retirement funds. Their money is  
10 gone, leaving only a sense of betrayal.

11 I was particularly struck by one story that I read in  
12 the letters. A man invested his family's life savings with  
13 Mr. Madoff. Tragically, he died of a heart attack just two  
14 weeks later. The widow eventually went in to see Mr. Madoff.  
15 He put his arm around her, as she describes it, and in a kindly  
16 manner told her not to worry, the money is safe with me. And  
17 so not only did the widow leave the money with him, she  
18 eventually deposited more funds with him, her 401(k), her  
19 pension funds. Now, all the money is gone. She will have to  
20 sell her home, and she will not be able to keep her promise to  
21 help her granddaughter pay for college.

22 A substantial sentence will not give the victims back  
23 their retirement funds or the moneys they saved to send their  
24 children or grandchildren to college. It will not give them  
25 back their financial security or the freedom from financial

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1 worry. But more is at stake than money, as we have heard. The  
2 victims put their trust in Mr. Madoff. That trust was broken  
3 in a way that has left many -- victims as well as others --  
4 doubting our financial institutions, our financial system, our  
5 government's ability to regulate and protect, and sadly, even  
6 themselves.

7 I do not agree that the victims are succumbing to the  
8 temptation of mob vengeance. Rather, they are doing what they  
9 are supposed to be doing -- placing their trust in our system  
10 of justice. A substantial sentence, the knowledge that  
11 Mr. Madoff has been punished to the fullest extent of the law,  
12 may, in some small measure, help these victims in their healing  
13 process.

14 Mr. Madoff, please stand.

15 It is the judgment of this Court that the defendant,  
16 Bernard L. Madoff, shall be and hereby is sentenced to a term  
17 of imprisonment of 150 years, consisting of 20 years on each of  
18 Counts 1, 3, 4, 5, 6, and 10, 5 years on each of Counts 2, 8,  
19 9, and 11, and 10 years on Count 7, all to run consecutively to  
20 each other. As a technical matter, the sentence must be  
21 expressed on the judgment in months. 150 years is equivalent  
22 to 1,800 months.

23 Although it is academic, for technical reasons, I must  
24 also impose supervised release. I impose a term of supervised  
25 release of 3 years on each count, all to run concurrently. The

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1 mandatory, standard, and special conditions are imposed, as set  
2 forth on pages 58 and 59 of the PSR.

3 I will not impose a fine, as whatever assets  
4 Mr. Madoff has, as whatever assets may be found, they shall be  
5 applied to restitution for the victims.

6 As previously ordered, I will defer the issue of  
7 restitution for 90 days.

8 Finally, I will impose the mandatory special  
9 assessment of \$1,100, \$100 for each count.

10 Mr. Sorkin, any requests?

11 MR. SORKIN: Yes, your Honor.

12 As you pointed out to one of the victims, you cannot  
13 designate a prison, but we would ask, based upon an analysis  
14 that we have done that in 75 percent of the cases  
15 recommendations made by the court are followed by the Bureau of  
16 Prisons, we respectfully request that your Honor recommend to  
17 the Bureau of Prisons that Mr. Madoff be designated to  
18 Otisville.

19 THE COURT: I will recommend to the Bureau of Prisons  
20 that Mr. Madoff be designated to an appropriate facility in the  
21 northeast region of the United States.

22 MR. SORKIN: Thank you.

23 THE COURT: Ms. Baroni?

24 MS. BARONI: Two issues. If you can specifically  
25 incorporate by reference the forfeiture order of Friday,

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1 pronounce it as part of the sentence.

2 THE COURT: The forfeiture order is hereby  
3 incorporated.

4 MS. BARONI: Special assessment.

5 THE DEFENDANT: I did the special assessment of  
6 \$1,100.

7 MS. BARONI: Thank you.

8 THE COURT: Mr. Madoff, please stand one more time.

9 Mr. Madoff, you have the right to appeal at least  
10 certain aspects of this judgment and conviction. If you wish  
11 to appeal, you must do so within ten days. If you cannot  
12 afford an attorney, the court will appoint one for you.

13 We are adjourned.

14 (Adjourned)

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 13-20600

v.

HON. PAUL D. BORMAN

DR. FARID FATA,

Defendant.

---

**ORDER ESTABLISHING PLAN FOR SENTENCING HEARING**

The sentencing hearing will begin on Monday, July 6 at 9:00 a.m. In light of the public interest in this case, the Court is creating a seating plan for Courtroom 737. There will also be victim and public seating in overflow courtrooms with live feed transmission: Room 115 and Courtroom 712.

**A. Overview**

1. Location: Judge Paul D. Borman's Courtroom is on the Seventh Floor (Courtroom 737) in the U.S. Theodore Levin Courthouse, 231 W. Lafayette in Detroit.
2. Schedule: Sentencing proceedings will begin on Monday, July 6, 2015, at 9:00 a.m., and continue every day thereafter from 9:00 a.m. to 1:30 p.m. until the sentence is imposed.

3. Updates: Any changes to the sentencing schedule will be posted on the following websites:

- a. The Court's website: [www.mied.uscourts.gov](http://www.mied.uscourts.gov)
- b. The U.S. Attorney's Office website:  
<http://www.justice.gov/usao-edmi/pr/us-v-farid-fata-court-docket-13-cr-20600>

**B. Seating:**

1. The four seats of the first bench behind the government's table are reserved for government agents. The other four seats are for credentialed media. Media members requesting seats must contact Rod Hansen, the Media Officer for the Court, at (313) 234-5421 or at Rod\_Hansen@mied.uscourts.gov. The four media representatives will be selected by random lottery. No media outlet will be permitted more than one representative.
2. The remaining five rows behind the government's table are reserved as follows; 4 rows: government witnesses, victims/former patients of Dr. Fata. The last row is for the general public.
3. Former patients or family members of a deceased former patient who wish to attend the sentencing, please contact Sandy Palazzolo, the Victim Witness Coordinator for the United States Attorney's Office **by Tuesday, June 30, 2015**, by phone at (313) 226-9633 or by e-mail at

sandy.palazzolo@usdoj.gov and advise her of the desired dates of attendance and the number of seats requested.

- a. The available seats in Courtroom 737 for each day of the proceedings will be determined by a lottery system prior to July 6. Former patients and their family members will be notified prior to July 6 if they have been randomly selected to sit in Courtroom 737 and on which date(s).
  - b. If you are randomly selected to sit in Courtroom 737, one seat will be reserved for you and one seat will be reserved for one guest to accompany you.
  - c. Seats will also be available via live-feed in overflow Room 115 each day for those not randomly selected to sit in Courtroom 737.
4. The first bench behind the defense table is reserved for the U.S. Marshal Service. The second and third benches behind the defense table are reserved for the Defendant's witnesses, family, and friends.

5. The fourth bench behind the defense table is reserved for Court designees.
6. Three seats in the jury box furthest from the Court's bench will be reserved for sketch artists commissioned by the media. Artists requesting a seat should contact Media Officer Rod Hansen.
7. The Court's live-feed media room, located on the second floor of the Courthouse, Room 214, will be available for credentialed media. All media representatives are to check in each day at 8:00 a.m. with Rod Hansen, Room 840, for media credentials. He can be reached at (313) 234-5421.
8. A Court Security Officer will be present in the overflow courtroom(s) and the media room at all times when the Court is in session to ensure compliance with this Court's orders.

**C. Transcripts:**

1. Persons interested in obtaining transcripts of the sentencing should contact the Court Reporter, Leann Lizza, at [Leann\\_Lizza@mied.uscourts.gov](mailto:Leann_Lizza@mied.uscourts.gov)

## **COURT ORDERS**

### **1. Electronic Devices**

Properly credentialed media will be permitted to have laptops in the media room, but not to transmit real-time transcripts.

No one can bring into the Courthouse any cameras, electronic recording, or communication devices of any kind. No member of the public or the media may record or transmit, or attempt to record or transmit, any court proceedings in any manner.

*See Eastern District of Michigan Local Rules 83.31(c), (e), and (f).*

### **2. Courtroom Decorum**

Courtroom 737 will be open fifteen (15) minutes before each court session. All media personnel and spectators with reserved seats should be seated five (5) minutes before each session and remain seated throughout the proceedings until a court recess. Counsel and an assistant may exit and re-enter the Courtroom during proceedings.

### **3. Court Authorized Media ID Badges**

Media representatives covering the trial from inside the Courthouse must obtain a court media ID badge and publicly display their ID throughout the sentencing. On entering the Courthouse, media representatives must be screened as

is required of all public visitors.

Media representatives must register for a court authorized ID badge by completing the form available on the Court's internet site, [www.mied.uscourts.gov](http://www.mied.uscourts.gov) and follow the directions on the website for obtaining proper credentials from the Court's Media Officer, Rod Hansen.

The badges may not be duplicated or shared. When the sentencing concludes, media badges must be returned to Rod Hansen.

#### **4. Restrictions on Interviews and Outside Media Area**

To assist with overall security and general public access to the Courthouse, the Court has designated the usual outside area for media use throughout the sentencing proceedings: the north side of Lafayette, across from the Courthouse. This is the only area where interviews, still pictures, and film coverage can be conducted.

At no time should public access to the Courthouse be restricted by media covering events.

No member of the media shall attempt to secure an interview or conduct an interview in the Courthouse or in any area which prevents ingress to and egress from the Courthouse.

At no time may any attorney or party otherwise affiliated with this case hold

a press conference in the Courthouse, on the front or rear steps of the Courthouse, or at any point of ingress or egress from the Courthouse.

Parking of the media's equipment trucks must conform to all city laws and court security measures.

The United States Marshal and his Deputies are responsible for maintaining order and decorum in the courtrooms and the Courthouse. All orders given by the Marshal or his deputies are deemed orders of this Court and must be complied with immediately. Failure by any person to do so will subject him/her to sanctions by the Court.

**IT IS SO ORDERED.**

s/Paul D. Borman  
PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: June 25, 2015

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 25, 2015.

s/Deborah Tofil  
Case Manager

CASE NO. 15-1935

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

FARID FATA,  
*Defendant-Appellant.*

**On Appeal from the United States District Court  
for the Eastern District of Michigan  
Southern Division**

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**DEFENDANT-APPELLANT'S BRIEF ON APPEAL**

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ORAL ARGUMENT REQUESTED

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**STATEMENT IN SUPPORT OF ORAL ARGUMENT**

This case should not be submitted without oral argument. The factual matrix and the issues presented are of sufficient complexity as to require the interplay of oral argument to properly present them for review.

**STATEMENT OF SUBJECT MATTER  
AND APPELLATE JURISDICTION**

The indictment in which Farid Fata was charged stated offenses against the United States, defined in Title 18, United States Code. The trial court had jurisdiction under 18 U.S.C. §3231. Defendant-appellant appeals from a final judgment of the district court which disposed of all claims of all parties ripe for adjudication as of the time of its entry. The Judgment and Commitment Order (R. E. 158), which completed the proceedings in the district court, was entered July 14, 2015. An Order extending the time to appeal therefrom until August 17, 2015 was entered July 23, 2015 (R. E. 160), and a Notice of Appeal timely filed on August 5, 2015 (R. E. 165). This Court has jurisdiction pursuant to 28 U.S.C. §1291.

**STATEMENT OF ISSUES FOR REVIEW**

- I. WHETHER THE TRIAL COURT ERRED IN ITS APPLICATION OF “ROLE IN THE OFFENSE” ENHANCEMENTS?
- II. WHETHER THE DISTRICT COURT’S AGREEMENT TO ALLOW VICTIM IMPACT STATEMENTS FROM PERSONS WHOSE STATUS AS ACTUAL “VICTIMS” HAD NOT BEEN DETERMINED REQUIRES THAT DEFENDANT’S SENTENCE BE VACATED AND THE CASE REMANDED TO ALLOW HIM AN OPPORTUNITY TO PRESENT NECESSARY COUNTERVAILING EVIDENCE?
- III. WHETHER THE DISTRICT COURT ERRED IN ACCEPTING DEFENDANT’S PLEAS OF GUILTY TO MONEY LAUNDERING CHARGES IN THE ABSENCE OF A SUFFICIENT FACTUAL BASIS TO SUPPORT THOSE PLEAS?

## STATEMENT OF THE CASE

Defendant-appellant Farid Fata, M.D., was originally charged in a criminal complaint filed in the United States District Court for the Eastern District of Michigan on August 6, 2013. (R. E. 1) Shortly thereafter, on August 14, the first of a series of Indictments (R. E. 20) was returned against him, culminating in the Fourth Superseding Indictment (R. E. 66), which was filed on January 15, 2014.

That charging instrument consisted of 19 counts of Health Care Fraud, 18 U.S.C. § 1347, one count alleging a conspiracy to pay unlawful kickbacks, 18 U.S.C. § 371, one count charging the unlawful procurement of naturalization (by concealing the commission of the crime of health care fraud), 18 U.S.C. § 1425(a), and three counts of “promotional” money laundering under 18 U.S.C. § 1956(a)(1)(1)(A)(i).

On September 16, 2014, Dr. Fata appeared before the Hon. Paul D. Borman, District Judge, and, without the benefit of a Rule 11 plea agreement, pled guilty to thirteen of the health care fraud counts, the kickback conspiracy count, and two of the money laundering charges. R. E. 111, Transcript, Pg ID 1104 - 1131.

Sentencing hearings were held July 6-10, 2015, at the conclusion of which Judge Borman imposed sentence as follows: concurrent and consecutive terms totaling 240 months for the health care fraud counts, a consecutive term of 60 months for the kickback conspiracy charge, and concurrent terms of 240 months for the money

laundering charges, to run consecutively to the other sentences, for a total term of imprisonment of 45 years, followed by three years of supervised release, and special assessments totaling \$1,600. R. E. 161, Transcript, Pg ID 2503 - 2504.

A Judgment and Commitment Order incorporating that sentence was entered July 14, 2015 (R. E. 158), an Order extending the time appeal therefrom until August 17, 2015 entered July 23, 2015 (R. E. 160), and a Notice of Appeal timely filed on August 5, 2015 (R. E. 165).<sup>1</sup>

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<sup>1</sup> The remaining counts were subsequently dismissed on motion of the government. (R. E. 162 and 163)

## STATEMENT OF FACTS

Without doubt, the charges against Dr. Farid Fata, a prominent and well-respected oncologist in the Detroit area,<sup>2</sup> were shocking, involving, according to the Fourth Superseding Indictment, submission of “ claims for years of medically unnecessary treatments including the following repeated and unnecessary chemotherapy and cancer drug treatments for individuals who did not, in fact, have cancer and/or did not require treatment for cancer.” R. E. 66, fourth Superseding Indictment, Pg ID 746. Unsurprisingly, his arrest and prosecution was a matter of extreme public interest and concern. Thus, a Google search for “Farid Fata” conducted

---

<sup>2</sup>As Paragraph 122 of the Presentence Investigation Report (lodged with the Court, D. E. 14) reflects:

According to the Editor-in-Chief for *Cancer*, the medical journal selected and published several of the defendant's articles. Furthermore, FATA M.D. served as a member of the Board of Reviewers for *Cancer*. The defendant's responsibilities included reviewing the works of others and recommending reports for publication. On November 13, 2009, FATA M.D. received a certificate of recognition from the Physician's Council for Responsible Reforms for his role as a Physician Consultant. In 2009 and 2010, the defendant received the Patient's Choice award from *MDx Medical, Incorporated*, an online medical resource helping patients find doctors and medical facilities. According to records, patients rate medical professional on areas such as bedside manner, doctor patient face time, and degree of follow-up. In 2007, 2008, 2009, 2011, and 2012, FATA M.D. was reportedly listed as a Top Doc in Hour Detroit Magazine.

a few months after the return of the Fourth Superseding Indictment generated approximately 381,000 results, or “hits.”<sup>3</sup>

Ultimately, and without the benefit of a Rule 11 plea agreement, Dr. Fata pled guilty to thirteen of the health care fraud counts (Counts 3-6 and 9-17), the kickback conspiracy count (Count 20), and two of the money laundering charges (Counts 22 and 23). R. E. 111, Transcript, Pg ID 1104 - 1131. In the course of those guilty pleas he acknowledged, *inter alia*, that he ordered medically unnecessary injections of Neulasta (a drug intended to boost white blood cell counts which have been eroded by chemotherapy<sup>4</sup>) and Velcade (a chemotherapy drug for the treatment of an iron

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<sup>3</sup> See, R. E. 87, Motion for Change of Venue, Pg ID 848. As noted there, these postings included a local television station’s exploration of previous complaints by an alleged “whistleblower,” an organization which organized a petition drive to make patient records available, a Crain’s Business essay on how Dr. Fata resembled other health care “culprits,” and the Facebook page of the organization of Dr. Fata’s alleged “victims” and their families, with 1,473 members, and which described him as “This MONSTER.” Other websites served as aggregators of vituperation, such as a Good Morning America comments page on which Dr. Fata is described as “scum,” and “an awful human being,” calls for a “Death sentence,” or to “EXEcUTE [*sic*] him I am serious,” “Hang him high,” or “put him through a wringer drain every blood from his body,” and which furnishes an outlet for other hate speech, such as “His Allah don’t care about infidels.” See, R. E. 87-2 - 87-9, Exhibits to Motion for Change of Venue, Pg ID 856-911.

<sup>4</sup> Neulasta.com, [https://www.neulasta.com/?WT.z\\_co=A&WT.z\\_in=FN&WT.z\\_ch=PDS&WT.z\\_st=&WT.z\\_mt=&WT.z\\_pdkw=&WT.z\\_ag=&WT.z\\_se=G&WT.srch=1&WT.z\\_prm=&WT.mc\\_id=A\\_FN\\_PDS\\_G](https://www.neulasta.com/?WT.z_co=A&WT.z_in=FN&WT.z_ch=PDS&WT.z_st=&WT.z_mt=&WT.z_pdkw=&WT.z_ag=&WT.z_se=G&WT.srch=1&WT.z_prm=&WT.mc_id=A_FN_PDS_G), as viewed November 17, 2015.

replacement product<sup>5</sup>), and medically unnecessary infusions of Feraheme (an iron replacement product<sup>6</sup>), Rituxan (a type of antibody therapy used for the treatment of Non-Hodgkin's Lymphoma and Chronic Lymphocytic Leukemia<sup>7</sup>), and Octagam (a sterilized solution made from human plasma used to prevent infections<sup>8</sup>), as well as medically unnecessary PET scans. The government, however, argued that Dr. Fata's medical misdeeds went far beyond this. *See, e.g.*, R. E. 135, Government Sentencing Memorandum, Pg ID 1274-1276.

Because of the intense public interest, as well as the complexities of the medical issues raised by the differing positions of the parties,<sup>9</sup> the trial court

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<sup>5</sup> Velcade.com, <http://www.velcade.com/What-velcade-treats/Multiple-myeloma>, as viewed November 17, 2015

<sup>6</sup> Rxlist, Feraheme, <http://www.rxlist.com/feraheme-drug.htm>, as viewed November 17, 2015.

<sup>7</sup> Rituxan.com, What is Rituxan? [http://www.rituxan.com/hem/patient/what-is-rituxan?cid=rth\\_PS\\_00001048&mkwid=s7DInNq6n\\_dc|pcrid|84713826260|pkw|rituxan|pmt|p&utm\\_source=google&utm\\_medium=cpc&utm\\_campaign=&utm\\_term=rituxan&gclid=CjwKEAiAvauyBRDwuYf3qNyXmW4SJACX9-fX\\_T0-InvJME Din9GttFa0dsTWPr8kvCs-RHvjvNVFbBoCNeLw\\_wcB](http://www.rituxan.com/hem/patient/what-is-rituxan?cid=rth_PS_00001048&mkwid=s7DInNq6n_dc|pcrid|84713826260|pkw|rituxan|pmt|p&utm_source=google&utm_medium=cpc&utm_campaign=&utm_term=rituxan&gclid=CjwKEAiAvauyBRDwuYf3qNyXmW4SJACX9-fX_T0-InvJME Din9GttFa0dsTWPr8kvCs-RHvjvNVFbBoCNeLw_wcB), as viewed November 17, 2015

<sup>8</sup> Drugs.com, Octagam, <http://www.drugs.com/octagam.html>, as viewed November 17, 2015.

<sup>9</sup> At times, the submissions of the parties more resembled medical journals than legal pleadings. Thus, for example, as to the drug Neulasta, the government argued, in part:

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Fata pleaded guilty to ordering unnecessary Neulasta [Count 3], an injection that is used to increase white blood cell counts and decrease the risk of fever or infection during periods of low white cell counts (neutropenia). Fata ordered it with numerous chemotherapy regimens regardless of whether the patient had low white blood counts or whether there was a danger of neutropenia, as he did to W.D. on multiple occasions, including on June 26, 2013 [Count 3].

R.E. 135, Government Sentencing Memorandum, Pg ID 1296-1297.

The defense responded, in part, as follows:

[T]he government fails to identify, with the exception of W[] D[], any patients that who received unnecessary Neulasta. Thus, it is impossible for undersigned counsel to respond to the government's sweeping allegation.

It should be noted, however, that it is perfectly acceptable for an oncologist to administer Neulasta without determining the white blood cell count if a particular chemotherapy drug carries with it a 20% or greater chance of causing febrile neutropenia. In fact, it is acceptable to administer Neulasta even with a normal white blood cell count because the administration of the Neulasta may prevent the development of a low white count.

In fact, studies suggest that Neulasta may be administered to a patient receiving chemotherapy even if the chemotherapy carries with it only a 10% chance of febrile neutropenia if the patient also has certain co-morbidities such as chronic kidney, heart, or lung disease because the consequences of febrile neutropenia can be dire. Aapro MS, Cameron DA, Pettengell R, Bohlius J, Crawford J, Ellis M, Kearney N, Lyman GH, Tjan-Heijnen VC, Walewski J, Weber DC, Zielinski C, *EORTC Guidelines for the Use of Granulocyte-Colony Stimulating Factor to Reduce the Incidence of Chemotherapy-Induced Febrile Neutropenia in Adult Patients with Lymphomas and Solid Tumours*, Eur J Cancer. 2006 Oct;42(15):2433-53. Epub 2006 Jun 5.

held a Status Conference on July 1, 2015, to determine the details of the procedure to be followed, *see*, R. E. 171, Transcript, Pg ID 2946 - 2995, and thereafter entered a detailed order setting forth procedures for seating at a projected multi-day sentencing proceedings (to “begin on Monday, July 6, 2015, at 9:00 a.m., and continue every day thereafter from 9:00 a.m. to 1:30 p.m. until the sentence is imposed.”), establishing a seating plan for the courtroom (reserving seats for the press, the public, and “victims/former patients of Dr. Fata”), and providing for “victim and public seating in overflow courtrooms with live feed transmission.” R.E. 140, Order, Pg ID 1490-1496.

While both sides offered numerous objections to the Presentence Investigation Report (19 by the government, 18 by the defense), most were resolved by stipulations or otherwise,<sup>10</sup> so that, when the time for sentencing proceedings came, only a handful of Guidelines-related issues remained for decision.

The five days of sentencing hearings, however, were not limited to the resolution of Guidelines disputes. In addition, the government presented testimony

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Defense Sentencing Memorandum (filed under seal, per R. E. 143), pp. 36-37.

<sup>10</sup> *See, e.g.*, Exhibit A to Defendant’s Sentencing Memorandum (filed under seal per R. E. 143).

from two physicians, and 22 former patients or relatives of former patients offered statements.

In the end, Judge Borman calculated Dr. Fata's Guideline Sentencing Range at 360 months - life, based on an Offense Level of 42, and a Criminal History Category of I. R. E 170, Transcript, Pg ID 81. The defense argued for a sentence of 25 years, R. E. 161, Transcript, Pg ID 2480, and the government for 175 years, the cumulative total of statutory maximum punishments for the counts to which Dr. Fata had pled guilty, which it characterized as "punishment . . . to the fullest extent of the law." *Id.*, at 2491. Judge Borman imposed the following sentences:

With regard to Count 3, the Court commits the Defendant to the custody of Bureau of Prisons for a period of 120 months.

With regard to Counts 4 through 6 and 9 through 17, the Court commits the Defendant, Dr. Farid Fata, to the custody of the U.S. Bureau of Prisons for a period of 120 months on all counts to run concurrent to each other but consecutive to all other counts.

With regard to Count 20, the Court commits Defendant, Dr. Farid Fata, to the custody of the Bureau of Prisons for a term of 60 months to run consecutive to all other counts.

With regard to Count 22, the Court commits Defendant, Dr. Farid Fata, to the custody of the Bureau of Prisons for a term of 240 months to run consecutive to all other counts.

With regard to Count 23, the Court commits Defendant to the custody of Bureau of Prisons for a period of 60 months to run concurrent to all other counts which creates a total sentence of 45 years.

*Id.*, at Pg ID 2503.

Such additional facts as are necessary to the understanding of the issues raised will be set forth in connection with the discussion of those issues.

## SUMMARY OF ARGUMENT

The trial court erred in its application of the “Role in the Offense” enhancements contained in Part B of Chapter Three of the Sentencing Guidelines. This error was premised on an incorrect application of the enhancement provided for in U.S.S.G. § 3B1.3 for “abuse of trust,” rather than on the alternative basis, the use of a “special skill. Proper application of § 3B1.3 would have foreclosed a “leadership role” enhancement under § 3B1.1, and would have reduced the Adjusted Level by two. This error was not harmless, and requires the vacation of Dr. Fata’s sentences.

The trial court improperly permitted the presentation of deeply disturbing narratives from supposed “victims” of Dr. Fata’s misconduct under circumstances that did not allow the defense to meaningfully test their accuracy and truthfulness, where the circumstances strongly suggested the likelihood that testing would have revealed significant flaws in their reliability. Although the trial judge expressed the belief that he was not affected by these presentations, it is difficult to see how he could have truly put these highly evocative, deeply compelling, narratives of pain and suffering out of mind. Accordingly, the Court should vacate Dr. Fata’s sentences and remand with instructions to allow the defense to present the evidence it sought to in the first instance - regarding the care and treatment of those patients who claimed to be, but were not in fact “victims” of the offenses to which he pled guilty.

The trial judge erred in accepting Dr. Fata's pleas of guilty to two counts of "promotional" money laundering under 18 U.S.C. § 1956(a)(1)(A)(i) because the plea colloquy did not provide a sufficient basis for the plea, as required by F. R. Cr. P. 11(b)(3), insofar as it failed to establish that Dr. Fata engaged in the identified financial transaction with the specific intent to promote the specified underlying unlawful activity. Although this argument was not raised below, it should be held to constitute "plain error." As a result, Dr. Fata's convictions and sentences for Counts 22 and 23 of the Fourth Superseding Indictment must be vacated, as well as his sentence as a whole, and the case remanded for resentencing.

## ARGUMENT

### I

THE TRIAL COURT ERRED IN ITS APPLICATION OF “ROLE IN THE OFFENSE” ENHANCEMENTS.<sup>11</sup>

The Presentence Investigation Report Guidelines calculations included a single enhancement under Part B of Chapter Three of the Sentencing Guidelines, regarding the defendant’s role in the offense: a two-level upward adjustment under U.S.S.G. § 3B1.3 on the basis that Dr. Fata, “a medical doctor licensed in the State of Michigan,” employed “a special skill in a manner that significantly facilitated the commission or concealment of the offense.” Presentence Investigation Report (lodged with the Court, D. E. 14), ¶ 81.

Under the terms of § 3B1.3, two levels may be added to the scoring of a defendant’s Offense Level “[i]f the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense;” however, “[i]f this adjustment is based solely on the use of a special skill, it may not be employed in addition to an adjustment under §

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<sup>11</sup> “To determine if the district court properly calculated the applicable Guidelines range, we review the district court's findings of fact under the clear-error standard and its legal conclusions regarding application of the Guidelines de novo.” *United States v. Holcomb*, 625 F.3d 287, 291 (6<sup>th</sup> Cir. 2010).

3B1.1 (Aggravating Role).” Accordingly, the Presentence Investigation Report did not add an enhancement under § 3B1.1.<sup>12</sup>

The government objected, arguing that the application of a § 3B1.3 enhancement under an “abuse of trust” theory would be “more appropriate” than under the “special skill” finding suggested by the Probation Department, and that Dr. Fata’s offense level would therefore also be subject to a four level enhancement under § 3B1.1(a), on the basis that he was the organizer or leader of “an otherwise extensive kickback conspiracy.” *see, e.g.*, R. E. 135, Sentencing Memorandum, Pg ID 1336-1340.

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<sup>12</sup> This provision reads in full as follows:

§ 3B1.1. Aggravating Role

Based on the defendant's role in the offense, increase the offense level as follows:

(a) If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by 4 levels.

(b) If the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive, increase by 3 levels.

(c) If the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in (a) or (b), increase by 2 levels.

In its Addendum to the Presentence Investigation Report, the Probation Department rejected the government's arguments in this regard, Presentence Investigation Report, pp. A-1 - A-4, but the trial judge ultimately partially agreed with the government's position, applying the § 3B1.3 enhancement under an "abuse of trust" theory and adding a further two levels under § 3B1.1(c), applicable by its terms to an organizer, leader, manager, or supervisor in any criminal activity that did not involve "five or more participants or was otherwise extensive:"

The second issue relates to the leadership -- I should say whether it's -- let me just look at that correct -- whether it's an abuse of trust or special skill under 3B1.3. The first one, the amount, comes to the loss provision in the fraud provision, and the Court finds that it is a abuse of trust.

The Court explained earlier that -- and I think defense can see it's abuse of trust but also argue that special skill was more appropriate.<sup>13</sup> I

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<sup>13</sup> The colloquy Judge Borman was referring to had occurred earlier in the proceeding, in the course of defense counsel's argument on the issue:

THE COURT: Well, let's then talk a minute about abuse of trust. And the statute, you know, talks about abuse of trust -- not the statute, the guideline. And while the definition of special skill in Application Note 4 says examples would include lawyers or doctors, the other definition in Application Note 1, private trust, it says: "Thus, for example, this adjustment applies in the case of an embezzlement of a client's funds by an attorney serving as a guardian or sexual abuse of a patient by a physician under the guise of an examination."

So even though the special skill definition talks about doctors and lawyers, the public or private trust definition also mentions where an

think abuse of trust is more appropriate given the testimony in this case, the facts of this case in terms of the trusting role, and I note that the guideline provision 3B1.3, while it mentions special skill referring to lawyers or doctors, it also notes, that's in Application Note 4 to the commentary, also notes that there may be conduct by an attorney or physician in Application Note 1 that would support the abuse of position of trust, and I believe that it does apply in this case.<sup>14</sup>

And I think that then permits the Court to consider the role in the offense under guideline 3B1.1, and the Court will apply 3B1.1C. I

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attorney or a physician could be coming under that provision as well. So can you discuss that?

MR. KRIGER: Well, I guess when you're deciding which is the most appropriate, which is the ultimate decision you have to make, I think given the two, the more appropriate one is the special skill. I mean, I think I've said that one could argue in this case the abuse of trust and that such an argument wouldn't be without merit, but if you're going to choose between the two, the special skill is everything. I mean, without that we're not here today.

R.E. 170, Transcript, Pg ID 2914-2915.

<sup>14</sup> Application Note Four reads as follows:

“Special skill” refers to a skill not possessed by members of the general public and usually requiring substantial education, training or licensing. Examples would include pilots, lawyers, doctors, accountants, chemists, and demolition experts.

The reference to lawyers and doctors in application Note One, defining “public or Private Trust,” is as follows:

This adjustment, for example, applies in the case of an embezzlement of a client's funds by an attorney serving as a guardian, a bank executive's fraudulent loan scheme, or the criminal sexual abuse of a patient by a physician under the guise of an examination.

believe that Dr. Fata was an organizer, leader in criminal activity and is increasing his offense level by two levels.

R. E. 170, Transcript, Pg ID 2936-2937.

As counsel acknowledged in the colloquy set forth in the margin, one could certainly make a case for the proposition that Dr. Fata may have abused positions of trust with both insurers and patients - at least in connection with the Health Care Fraud violations to which he pled guilty - in determining which of the alternatives to enhancement disjunctively set forth in § 3B1.3 would be most appropriate. On the other hand, as counsel also there pointed out, the heart of the matter - the *sine qua non* of the offense behavior in this case - was Dr. Fata's medical skills, without which *none* of the offense conduct would have been possible ("without that we're not here today").

As the Third Circuit pointed out in *United States v. Hickman*, 991 F.2d 1110, 112 (3d Cir. 1993) the alternative bases for the § 3B1.3 enhancement, are conceptually and effectively distinct:

To abuse a position of trust, a defendant must, by definition, have taken criminal advantage of a trust relationship between himself and his victim. *See, e.g., United States v. Hill*, 915 F.2d 502, 506 & n. 3 (9th Cir.1990). The additional wrong undergirding the upward adjustment is the corrupt abuse of that trust relationship. The use of a special skill, on the other hand, does not require the existence of a relationship between the defendant and his victim. *See, e.g., United States v. Hummer*, 916 F.2d 186, 191 (4th Cir.1990) (defendant's use of his special skills in threatening to tamper with consumer products accomplished in the

absence of any relationship between himself and his victims), *cert. denied*, 499 U.S. 970, 111 S.Ct. 1608, 113 L.Ed.2d 670 (1991).

These two alternative bases for enhancement have been disjunctively stated in § 3B1.3 since the inception of the Guidelines in 1987, but as first written, the application of the enhancement on *either* basis foreclosed the application of a further Role in the Offense enhancement under § 3B1.1.<sup>15</sup> In 1990, by Amendment 346, The Sentencing Commission added the language now found in the provision that allowed the additional § 3B1.1 enhancement “[i]f this adjustment is based upon an abuse of a position of trust,” but did so without explaining why,<sup>16</sup> and the reason for treating the two alternative - and disjunctively stated - rationales differently in this regard is not readily apparent.

However, the distinction between the alternative avenues to § 3B1.3 enhancement drawn by the Third Circuit in *Hickman, supra*, - that the “abuse of trust”

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<sup>15</sup> As originally written, § 3B1.3 read as follows:

If the defendant abused a position of public or private trust, or used a special skill, to a manner that significantly facilitated the commission or concealment of the offense, increase by 1 levels. This adjustment may not be employed in addition to that provided for in §3B1.1, nor may it be employed if an abuse of trust or skill is included in the base offense level or specific offense characteristic.

<sup>16</sup> Indeed, Amendment 346 is a model of opacity: “Reason for Amendment: This amendment provides that the enhancement for abuse of a position of trust may apply in addition to an enhancement for an aggravating role under §3B1.1.”

rationale requires a relationship with the victim, while the “special skill” predicate does not - suggests a functional explanation: it may be appropriate to further punish a person who amplifies the effect of his relationship with a victim through the use of others (as, perhaps, by “ganging up”), while the use of confederates does not necessarily, in and of itself, amplify the impact of (or damage done by) an individual defendant’s “special skill.”

If, indeed, this is the functional basis for the distinction between the alternative bases for enhancement under § 3B1.3, in determining which of the rationales is, to use the government’s phrase, “more appropriate” in a given case, one should perhaps look to the nature of the conduct involved in which the numerosity upon which any proposed § 3B1.1 enhancement might be based.

Here, the numerosity enhancement sought by the government was premised on Dr. Fata’s involvement in the payment of kickbacks for hospice referrals ) (“he was a leader/organizer of the kickback conspiracy”) - an activity which had nothing whatever to do with any abuse of trust, and everything to do with his status as a physician, with patients to refer. R. E. 135, Government Sentencing Memorandum, Pg ID 1339-1345. As explained in the defense sentencing memorandum:

Dr. Fata also agrees with the probation department’s assessment that because defendant has received an enhancement for special skill, he cannot be given an enhancement under §3B1.1. Although a doctor may be in a fiduciary relationship with its insurers and patients, in this case

the government argues that Dr. Fata abused his position of trust because he “lied to his patients and insurers, as well as his staff, and even to charitable foundations to fraudulently obtain payment for **medically unnecessary services.**” (Emphasis added). In contrast, the government based its §3B1.1 argument on his kickback scheme - not on the medically unnecessary services, and did not claim that the patients received unnecessary hospice care. Dr. Fata’s ability to refer the patients to Guardian Angel was based on his special skill of being an oncologist, thereby having the ability to refer his terminal patients to hospice. This is precisely the type of special skill envisioned by §3B1.3. Sentencing Memorandum (filed under seal per R. E. 143), pp. 15-16.

Accordingly, the trial court’s application of the two-level “leadership role” enhancement under § 3B1.1 - which was premised on its improper attribution of the § 3B1.3 enhancement on the basis of “abuse of trust” rather than use of a “special skill” - should be held to be erroneous.

Without this two level adjustment, Dr. Fata’s Guidelines Sentencing Range would, have been at most 292-365 months, and the 45 year (540 month sentence) imposed would have represented an upward variance. Thus, the error is of manifest significance to the sentencing calculus, and cannot be considered harmless. *Cf., United States v. Anderson*, 526 F.3d 319, 329 (6<sup>th</sup> Cir. 2008) (“it is unclear that an error in determining the Guidelines recommendation can ever be considered harmless post- *Gall*.”). As a result of this error in the calculation of Dr. Fata’s Guidelines, his sentence should be vacated *in toto*, and the case remanded for resentencing.

II

THE DISTRICT COURT’S AGREEMENT TO ALLOW VICTIM IMPACT STATEMENTS FROM PERSONS WHOSE STATUS AS ACTUAL “VICTIMS” HAD NOT BEEN DETERMINED REQUIRES THAT DEFENDANT’S SENTENCE BE VACATED AND THE CASE REMANDED TO ALLOW HIM AN OPPORTUNITY TO PRESENT NECESSARY COUNTERVAILING EVIDENCE.<sup>17</sup>

In the course of the July 1 Status Conference, defense counsel raised a concern regarding the large number of “victim impact statements” which had been received from the government, and the large number of persons claiming to have been “victims” of Dr. Fata’s misconduct whose claims either seemed to be unfounded, or the validity of which the defense had not had sufficient opportunity to evaluate:

[MR. ANDREOFF:] When Dr. Fata was indicted in September of 2013, there were roughly ten patients that were identified in the indictment with their initials. The Court has the fourth superseding indictment so I don't have to go through those.

In December of 2013 we received a supplement from the United States Attorney's Office and the Department of Justice indicating

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<sup>17</sup> **Standard of review.** This issue presents both factual and legal questions. While defendant’s research has unearthed no Sixth Circuit case specifically setting forth the proper standard of review for a trial court’s decision to admit evidence at a sentencing proceeding, there is no reason to believe that the ordinary distinction between questions of fact and law would apply: questions of law are subject to *de novo* consideration and questions of fact are reviewed under the “clearly erroneous” standard. *See, e.g., United States v. Williams*, 753 F.3d 626, 632 (6<sup>th</sup> Cir. 2014).

approximately 125 other patients that were being identified as relevant conduct that were not going to be part of any superseding indictment.

As the Court knows, from December of 2013 up to and through May of 2015, with the exception of some computer data analysis identifying other patients that may have received medications that were not warranted or unnecessary treatments, that 550, 525, are basically data driven. They have been identified, but they are data driven. And none of those patients, maybe with some minor exceptions, are part of the victim impact statements, except for there will be a few that are mentioned on the sheet that you have before you.

To our surprise, which Mr. Kriger addressed with you last week informally, we have received approximately 150 victim impact statements that were typewritten for the Court and received, I believe, the end of May of this year, 2015. As the Court may or may not know, we have the electronic medical record consisting of most of Dr. Fata's patients, which my client has had access to, and our two experts have. And this Court recalls, as well, that this Court issued subpoenas on the 120 -- actually, the 125, plus the ten indictment patients to access other medical records from other doctors as well as the hospitals. . . .

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. . . Roughly 80 to 90 percent of those patients identified in that 150 letters, and we're approximating approximately about 100, are patients that have had solid tumor cancer.

When we received those typewritten impact statements that have been submitted to the Court under -- ostensibly under Title 18, Section 3771, we did not have an opportunity, and still to this day have been -- it's been a very difficult task to review those patient files, because they're incomplete.

What I mean by that is, at least we have given the Court, in a sampling as part of the sentencing memoranda on behalf of Dr. Fata, roughly 20, 15 to 20 that had been reviewed very carefully by the two doctors, and we have given the Court and opined as it relates to the treatment that they received, which in our opinion is -- was acceptable.

The difficulty is, number one, the Government's own experts or no one on behalf of the Government have reviewed those patient files, in large measure, maybe with some minor exceptions, and have verified that they are, in fact, victims under 18 U.S.C. 3771(e).

And if the Court looks at that subsection, it indicates that a victim is defined as a person directly or proximately harmed as a result of the commission of a federal offense; again, 18 U.S.C. 3771(e); and also, under Title 42 United States Code Section 10607(e)(2).

The problem I have is that those letters are extremely damaging and very prejudicial to my client, our client, Mr. Kriger and my client, and can -- and I understand the Government is going to stand up here and say you can give it whatever discretion you want to give it or every weight you want to give it, but the problem is, those victim statements may not only end here with you, but may go, if there is any appeal -- which there may not be, I don't know what will happen in the future -- to the United States Court of Appeals.

And my concern is, when you read those letters --and they are horrible to read. I mean, I have members of my family that have gone through cancer, my wife's, and I understand not only the trauma but the emotion that comes with that disease.

But the problem is, just as a quick example, of those 100 patients, we have no hospital records. We have no other primary care doctor's records. We don't have the second opinion letters indicating that my client may have mistreated this particular patient. . . .

R. E. 171, Transcript, Pg ID 2956 - 2960.

Counsel argued, first, that the unsubstantiated claims of victimhood should be struck, *id*, at 2960, but that, failing that, that the defense be given time - a number of weeks - to gather and review the necessary medical records and present the court with its analysis of the merits of each of the claims; to fail to do so, counsel argued, would

implicate Due Process concerns as to the reliability of the information underlying the trial court's sentencing decision. *Id.*, at Pg ID 2963 - 2966.<sup>18</sup>

While the trial judge expressed some dubiety regarding a continuance of the length counsel described, *id.*, at 2991, in keeping with his direction that any objections be made in writing, *id.*, at 2960-2991, later that day the defense filed a Motion to Strike any written or oral statements from persons "Who do Not Qualify as a Victim Under 18 U.S.C. § 3771(e) or Who Will be Providing Information that is not Reliable and Accurate," R. E. 146, which requested "that in the absence of a finding that each of the patients identified in the 150 victim impact letters or who will speak in Court, are in fact victims under 18 U.S.C. 3771(e), or that their information is reliable and accurate, that this Court should strike those written statements, and not permit those relatives to speak in open Court." *Id.*, at 1252-1253.

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<sup>18</sup> That not all of the patients who were the subjects of the written statements and proposed expositions were in fact "victims" was not disputed by government counsel:

THE COURT: So you're saying that some of the letters are individuals that could be victims and that -- or might not be victims?

MS. DICK [Government counsel]: Exactly.

R. E. 171, Transcript, Pg ID 2981. The dispute, rather, centered on what level of examination - if any - their claims to victimhood s should be subjected.

The memorandum brief in support of that motion argued, in pertinent part, as follows:

Without restating all of the arguments to the Court on July 1, 2015, there must be a finding that the relatives of patients and/or the patients are indeed victims as defined in 18 U.S.C. 3771(e), and that they will not present materially false and misleading information which will prejudice Defendant and constitute a violation of due process.

As was stated in *United States v Bradley*, 628 F3d 394 (7<sup>th</sup> Cir 2010) the Court stated:

A defendant has a due process right to be sentenced based on accurate information, and the threshold for accuracy is whether the information has sufficient indicia of reliability to support its probable accuracy. *United States v. Pulley*, 601 F.3d 660, 665 (7<sup>th</sup> Cir. 2010). Sentencing judges necessarily have discretion to draw conclusions about the testimony given and evidence introduced at sentencing, but due process requires that sentencing determination be based on reliable evidence, not speculation or unfounded allegations. [citations omitted]

When the Supreme Court in *Williams v New York*, 337 U.S. 241 (1949) determined that the Constitution does not give a criminal defendant the right to cross-examine witnesses against him at sentencing, it was careful to point out that this did not mean that sentencing procedures are immune from scrutiny under the due process clause. See *Townsend v Burke*, [334 U.S. 736,] at 741 [(1948) (due process right to ensure that sentence was not based upon assumptions concerning defendants criminal record which were materially untrue).

In *United States v. Hamad*, 495 F3d 241 (6<sup>th</sup> Cir 2007) the Sixth Circuit held:

Although the district court may consider hearsay evidence in determining a sentence, the accused must be given an

opportunity to refute it, and the evidence must bear some minimal indicia of reliability in respect of defendants right to due process. Silverman, 976 F.2d at 1512U (internal quotation marks and emphasis omitted); see Scalzo, 716 F.2d at 466 (noting the fundamental and undisputed due process right of a defendant to be sentenced on the basis of accurate information).

See also United States v Tucker, 404 U.S. 443 (1972); Gregg v Georgia, 428 U.S. 153, 190 (1976)

To rely on the 150 victim impact statements which relate to solid tumor patients, and to permit relatives of deceased patients or those patients to provide prejudicial and inflammatory statements to the Court, without a determination that they are victims or are providing reliable and accurate information, constitutes a violation of due process of law. Many of those patients were properly diagnosed, treated and were subject to an intensive review by the Tumor Boards at their applicable hospitals.

The Government cannot be permitted to be a clearinghouse to provide all kinds of extremely prejudicial and inflammatory letters to the Court that are either factually inaccurate, misleading or materially false. Consequently, they should be struck and those patients or relatives should not be permitted to speak at sentencing.

*Idi*, at Pg ID 1525-1526.

The government filed its response in opposition the next day, R. E. 150, and on July 6, Judge Borman denied the motion from the bench as follows:

With regard to one issue, I want to make a ruling on the issue of the Defendant's motion to not allow the victims to speak. And the Congress passed a law which governs what takes place under the Victim Act which gave the victims of crime an independent right to speak. Congress placed it within the Justice Department in terms of saying that's where the coordination is going to be, but that the victims have a right

to speak, and even went so far as to say that if a person in the Justice Department doesn't properly administer the act with regard to victims, there should be disciplinary sanctions of Justice Department people who willfully and wantonly, W-A-N-T-O-N-L-Y, fail to comply with the provisions of federal law pertaining to the treatment of crime victims.

So the law says that they -- there should be a reasonable procedure to allow them to speak. I have indicated that tomorrow the session from 9:00 to 1:00 will have victim statements up to ten minutes, one person per family, and I think the Justice Department has coordinated that.

So the act itself talks about victims of a crime. There are cases that talk about the right to have a victim speak, and the Court ultimately at the end, when it does proceed to sentence, will decide after hearing from the victims what it will accept as a basis in imposing sentence, what it --or if it doesn't accept things or that's the Court's decision to make at that time.

The Court recognizes that the Supreme Court has said that the -- well, the Supreme Court has said no limitation, also -- not Supreme Court, the Congress in 18 U.S.C. 3661 says, "No limitation shall be placed on the information concerning the background, character, and conduct of the person convicted of an offense," and that's cited in *Pepper versus United States*, 131 Supreme Court 1229.

There's also issues of the minimum standard of reliability, and, of course, the Supreme Court in *Townsend* said that there is to be the question of the reliability of the statement indicating the reliability of the evidence, but the Supreme Court in *Pepper versus United States* said they should permit sentencing courts to consider the widest possible breadth of information and that ensures that the punishment will suit not merely the offense but the individual Defendant.

And both the Supreme Court and *Pepper* also said both Congress and the Sentencing Commission expressly preserves a traditional discretion of sentencing courts to conduct an inquiry broad in scope largely unlimited either as to the kind of information they may consider

or the source that it came from. That's Justice Sotomayor's majority opinion in that case.

At the end of the day, the *Townsend*, Supreme Court decision in *Townsend*, 334 U.S. 741, says that there is a due process component, and the sentence cannot be founded on misinformation of constitutional magnitude.

So the question is what the Court demonstrably relies on at the end when the Court imposes a sentence, and that's what we'll see after all the testimony and after the Court takes into consideration that testimony which it is required to do under the Victim Witness Protection Act, Crime Victims' Rights Act. And the Court has a responsibility for implementing that act as well to ensure the victims are afforded those rights.

So, finally, the Supreme Court in *Roberts versus U.S.*,<sup>100</sup> Supreme Court 1358 says: "The fundamental sentencing principles that a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider or the source from which it may come," but there are due process objections if the information is misinformation of constitutional magnitude.

So that's my job to deal with that at the end of this sentencing process. Before I do impose sentence, I should say, but at the end of this informational and legal process.

So that's the ruling of the Court with regard to the Defendant's motion.

R. E. 156, Transcript, Pg ID 2292 - 2295.

Later that day, he entered an Order denying the motion "[f]or the reasons stated on the record." R. E. 152, Order, Pg ID 2036.

At the end of the day on July 7, after all concerned had spent several hours listening to the statement of some 20 persons (about which more later), defense counsel expressed concern regarding the trial judge's ability to put the horrific - although in many cases wholly untested - recitals out of his mind, but Judge Borman opined that he could, that the matter ultimately rested on whether or not his judgment was not swayed, and that he would "not utilize what I think is inappropriate:"

[MR. KRIGER:] In the victim impact statements today which anybody that sat here would understand the power of those statements, some of the statements which I indicated when we were here the very first time when we'd spoken informally without the client here.

THE COURT: Because it was a scheduling conference.

MR. KRIGER: That's right. But some of the statements, for example, while they may have been improper ancillary care, there was appropriate chemotherapy or there was appropriate chemotherapy that went on too long. But in these victim impact --

THE COURT: Well, then it's not appropriate, it went on too long.

MR. KRIGER: No, I agree with that. But in these victim impact statements, for example, one today said the person never had non-Hodgkin's lymphoma. There was a biopsy confirming the non-Hodgkin's lymphoma. There's a biopsy confirming it. Another one where it said that Dr. Fata killed her father. He was a patient that had Stage IV lung cancer which was -- had metastasized and nobody can cure.

So the point that I'm trying to make is while some of it says confirmed, not everything in these horribly powerful impact statements is, in our opinion, accurate. And that's why I asked the last time we were here as an alternative relief to allow us time to at least do a random

sample, and I just want to make the record and I understand the Court has ruled, but it wasn't in the motion but we would still like time to at least do a random sample. As I told you, it takes two to seven hours to review each file, so for us to come and try to rebut each one of the 20 would take a few hundred hours which we don't have the time or the resources nor is the Court inclined to let us do that.

MR. ANDREOFF: We don't even have all the files.

MR. KRIGER: That's the problem.

THE COURT: The question is fast forward to the sentencing, is am I going to rely on what information, and that information that you're speaking about, if I don't rely on it with regard to the sentence, then it is not an issue.

MR. KRIGER: Right. But I have to say, Judge, you know, it's sort of like in the Bruton case.

THE COURT: What?

MR. KRIGER: The Bruton case, the confession case where the co-defendant's confession, and the Supreme Court says it's impossible for a fact finder to put it out of it's mind. Now, I understand you're not a jury and I don't in any way suggest that the Court doesn't understand its duties. But to put what -- out of your mind some of the statements that went today, I think, is going to be next to impossible.

THE COURT: It is my job to follow the law and to rely on what I feel is appropriate and to not rely on what I feel is not appropriate. And if I don't rely on it, it doesn't in anyway indicate the determination of the validity or invalidity from the speaker's point of view. But every judge throughout the year has motions to suppress where you hear things and then it's a bench trial and you grant the motion to suppress, you don't go in front of another judge, you heard something that shouldn't be heard. We all do this in making rulings. And so that -- I've got a job to do.

MR. KRIGER: I understand.

THE COURT: You've got a job to do. The government has a job to do. And yes, I will put in what I think is appropriate, and I will not utilize what I think is inappropriate. And we'll go from there.

R. E. 168, Transcript, Pg ID 2638-2641.

Defense counsel's reference to *Bruton v. United States*, 391 U.S. 123 (1968) was, of course, meant to highlight the intuition which underlies that case's holding: that in some situations, human nature, and human intelligence, is not always capable of obedience to duty, where that duty requires the compartmentalizing of information whose power resists compartmentalizing.

Thus, in *Bruton*, and cases like it, the law recognizes that jurors have their limitations:

Juries are presumed to follow the court's instructions, *Richardson v. Marsh*, 481 U.S. 200, 210, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987), but that presumption may be overcome when "there is an 'overwhelming probability' that the jury will be unable to [do so], and a strong likelihood that the effect of the evidence would be 'devastating' to the defendant." *Greer v. Miller*, 483 U.S. 756, 766 n. 8, 107 S.Ct. 3102, 97 L.Ed.2d 618 (1987) (citing *Richardson*, 481 U.S. at 208, 107 S.Ct. 1702; *Bruton v. United States*, 391 U.S. 123, 136, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968)).

*Williams v. Swarthout*, 771 F.3d 501, 507 (9<sup>th</sup> Cir. 2014).

Of course, as Judge Borman recognized, the duties of a federal trial judge "[s]ometimes . . . requires difficult mental gymnastics-as in a bench trial where the judge decides both what facts to admit into evidence and how to weigh that evidence-

but trial judges manage such feats of objectivity all the time.” *United States v. Abanatha*, 999 F.2d 1246, 1250 (8<sup>th</sup> Cir. 1993). Indeed, in *Rogers v. McMackin*, 884 F.2d 252, 256 (6<sup>th</sup> Cir.1989), this Court held that the *Bruton* rule did not apply to bench trials, “indulg[ing] the usual presumption that” a trial judge, sitting as a finder of fact, “considered only properly admitted and relevant evidence in rendering its decision.” *United States v. McCarthy*, 470 F.2d 222, 224 (6<sup>th</sup> Cir.1972).

Yet, as Justice Hand’s well-known admonition that a court should avoid “the recommendation to the jury of a mental gymnastic which is beyond, not only their powers, but anybody’s else” illustrates, *Nash v. United States*, 54 F.2d 1006, 1007 (2d Cir. 1932), some feats of mental discipline are beyond the reach of even duly appointed United States District Judges.

The case law, of course, recognizes that there are limits to the mental dexterity of district judges, and appellate courts often seek to avoid rules that would ask a sentencing judge to engage in “complex mental and psychological gymnastics.” *United States v. Hernandez Camacho*, 779 F.2d 227, 232 (5<sup>th</sup> Cir. 1985).

True enough, when Judge Borman ultimately pronounced sentence, he stated that he was not relying on the written or oral statements of the persons claiming to be victims:

And with regard to the victims’ oral and written statements, the Court finds it unnecessary to rely on them insofar as the testimony of the

doctors and the plea -- pleas recorded by the Defendant provide a basis for the sentencing.

R.E. 161, Transcript, Pg ID 2499, as corrected by R. E. 178, Stipulation, Pg ID 3025.

However, as the Second Circuit noted in *United States v. Griffin*, 510 F.3d 354, 366 (2d Cir. 2007), a trial judge's claim "not to have been influenced by . . . improper advocacy" is not conclusive, where the circumstances are such that "a reviewing court can do no more than speculate as to whether the judge was in fact influenced, even unconsciously." quoting *United States v. Amico*, 416 F.3d 163, 168 (2d Cir. 2005).

Defendant presumes that Judge Borman honestly believed in his ability to compartmentalize, and to "not rely on" the statements of the people who appeared before him and laid out their stories. He submits, however, that it would have been impossible for Judge Borman to do so - if even subconsciously.<sup>19</sup> This assertion is not intended as a slight on Judge Borman's fairness or integrity, or his good faith in asserting that he was capable of - and in fact did - disregard what he had heard. Rather, it is based on having heard those statements himself, and on a well-founded

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<sup>19</sup> The case law makes clear, of course, that a substantial possibility that a sentencing judge relied, even subconsciously, on significant improper information is sufficient to require resentencing, *See, e.g., United States v. Reese*, 775 F.2d 1066, 1078 (9<sup>th</sup> Cir. 1985) (possibility of "reliance, conscious or otherwise, on [an] *ex parte* submission" raised a sufficiently serious question to warrant resentencing, "[n]otwithstanding the district court's conscientious efforts to assure that the sentencing proceedings were conducted in as fair and equitable a manner as possible . . .").

belief that *no one*, no matter how well-intentioned, could have failed to have been moved by them. It is no discredit to Judge Borman that he would assert otherwise, and might be wrong - after all, “[o]ur society demands much of trial judges in this day and time; it cannot, however, fairly demand that they be omniscient.” *Washington v. Strickland*, 673 F.2d 879, 905 (5<sup>th</sup> Cir.) *on reh'g*, 693 F.2d 1243 (5<sup>th</sup> Cir. 1982) *rev'd on other grounds*, 466 U.S. 668 (1984).

Here, then, is a small sampling of what transpired in Judge Borman’s courtroom on July 7, 2015 - 87 pages of the printed record, and clearly, in one of the writers’ experience, the longest and most painful day to pass in a courtroom in more than thirty years at the bar - in the form of brief excerpts from the statements of persons claiming to have suffered at Dr. Fata’s hands:

From the daughter of a patient, E.P.:

He preyed on our trust and exhaustion and fears. He threatened my father at least twice that if he quit chemo, he would have to go onto hospice and if he went on hospice, they would not allow him to dialyze. To a dialysis patient, that is death.

\* \* \*

For me it seemed life was one crisis after another. I was angry at life often. It just seemed so unfair. We had so much stress and suffering at the time. At the same time to me it was like a cruel twist of fate. But that's all I thought it was, and I accepted it and I lovingly took care of them. But to find out in 2013 what Fata did was unbelievable. To know he caused so much pain and suffering that was unnecessary. I know my father could have been there more for my mother, and I needed him too. He passed away in November, 2012, two months after my mom died.

R. E. 168, Transcript, Pg ID 2544 - 2546.

From patient C. S.:

I didn't realize until my records were gone over with me at this time the magnitude to the life-threatening treatments and improper procedures Dr. Fata had subjected me to. The amount of negligent, improper procedures, gross overtreatment, surgery, complications and side effects are too long to list. Dr. Fata took full advantage of my trust in him, my fear of dying from this disease and, first and foremost, my top-of-the-line health insurance.

These almost fatal decisions Dr. Fata made have affected almost every one of my bodily functions and my life. My kidneys almost failed due to poisoning and subsequent overdose of specific chemo drugs. My bladder has been compromised due to the improper sequence in administering of protective drugs before certain chemotherapy drugs were given. My liver function has been compromised due to numerous medically unnecessary iron infusions and the 7,000 plus oral medications.

My heart has sustained unnecessary abuse and wear due to going into an atrial fibrillation condition due to the overdosing of chemo. This condition required me to have three cardioversions within a 24-hour period in hope of surviving.

My hands and feet have severe chemo-induced neuropathy. In my case this is one of the first symptoms an oncologist doctor has to indicate that too much chemo has been given and to back off or change chemo drugs.

\* \* \*

Dr. Farid Fata doesn't deserve the title of "doctor" anymore. He is a manipulative, deceptive, devious, greedy, cold hearted, lying, cowardly bastard who has no inkling or compassion or regard for human life. Trust, loyalty, responsibility, accountability, respect, reverence, kindness and compassion are traits I have lived by and have treated everyone with my whole life. I only expected the same in return from him, my doctor.

He has violated all of these. He can use every last breath of his remaining life to reflect on how his hideous and greedy choices affected me, my family and so many others. He is an evil person.

*Id.*, at Pg ID 2551-2552, 2556.

From P. L., the wife of a former patient:

Oh, my 60th birthday was coming. I prayed that my wish would be granted for K[] to go home. As K[] being in constant pain for two and a half years was enough, I granted that wish on 9-2-14. My husband is gone. Our money is gone. But the bills continue to grow. I don't know where I'll be without K[]. This is a nightmare I wish I could wake up from.

*Id.*, at Pg ID 2586.

And from K. T., a patient's wife:

On J[]'s 57th birthday, he was diagnosed with a mass on his pancreas. J[] and I were told by Fata and his hospital team that it was too dangerous to biopsy this mass for fear that if they nicked the pancreas, it would cause infection. Fata informed us that J[] needed chemo and radiation treatments.

July 19th, 2012, J[] was told he needed surgery before treatments could begin. J[] never fully recovered from his surgery and was pushed into having radiation chemo in August, 2012. The radiologist informed J[] that he could eliminate the mass by radiation alone but Fata said that J[] needed the chemo as well.

J[] had a chemo pump. They gave him chemo 24/7 in addition to the four- to five-hour chemo treatments once a week at Fata's office. J[]'s body became weaker and weaker, and by the 1st of November J[] could no longer walk and his body became very bloated.

\* \* \*

February 8th, 2013. An x-ray revealed the mass on the pancreas was gone. Despite J[]'s other major organs being in distress, Fata insisted that the chemo treatments continue. J[] declined. Fata then had J[] admitted to the physical therapy in the hospital for ten days of nothing but torture which resulted in further deterioration of J[]'s already weakened body.

Upon the completion of the rehab, Fata recommended J[] go home and sign up for hospice. J[] passed away a week later.

A part of me died back on Thursday, March 7, 2013. My life will never be the same. . . .

*Id.*, at Pg ID 2608-2609.

As painful as these recitations are, there is good reason to believe that some of them were simply untrue.

At the close of the first day of the in-court presentation of “victim” statements, defense counsel pointed out that in the case of “11 or 12” of the 20 people who had come to court, “there has been no confirmation of their – the statements relative to Dr. Fata’s treatment or care.” *Id.*, at Pg ID 2619. The government disputed this statement as to only three of the patients, *id.*, at Pg ID 2624 - 2526 - although, as to two of the three, the defense contended that while Dr. Fata had conceded some misconduct in their cases, such as the unnecessary administration of a medication, he had *not*, and

the defense did not, concede that the broader claims of mistreatment advanced by the patients or their representatives were true. *Id.*, at Pg ID 1626 - 2627.<sup>20</sup>

All in all, of the 165 victim impact statements submitted to the trial court, including the statements made or read in open court, only 56 were “confirmed” in any sense of the word - *i.e.*, that either some or all of the claims of mistreatment had been verified in any way whatsoever. *See*, Defense Exhibit J, admitted under seal at R. E. 168, Transcript, Pg ID 2940 - 2941. As to the remaining 109, there was simply *no* extrinsic information corroborating their claims.<sup>21</sup>

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<sup>20</sup> For example, as to the first of these patients, T. M., defense counsel pointed out:

We are confirming portions of her treatment in terms of some of the medications she received. The problem is, which was the Rituxan protocol, the problem was she indicated, the victim representative indicated, that she was misdiagnosed with non-Hodgkin's lymphoma and we are letting the Court know in her own statement to the Court, one of the victims of the -- indicate that there was a biopsy as well as a bone marrow confirmation not from Dr. Fata but from a hospital that confirmed the diagnosis of non-Hodgkin's lymphoma.

*Id.*, at Pg ID 2626.

<sup>21</sup> The limited nature of the government's review of the patients who were the subject of the victim impact statements was confirmed by the testimony of the two physicians called by the government in the course of the sentencing proceedings. The first, Dr. Dan Longo, testified that he had looked at “eight or ten” of the patients as to whom victim impact statements had been submitted, and was not sure if he had access to the complete medical and hospital records for all of them. R. E. 156, Transcript, Pg ID 2408. The other, Dr. David Steensma, said that he only “looked at a few of the files” on the victim impact statement list, and as to most of them “had only files from

Prior to sentencing, the defense had commissioned a physician, Dr. Jack Goldberg, a Clinical Professor of Medicine at the University of Pennsylvania, to conduct a review of a random sample of the written victim impact statements submitted by individuals whose cases had not previously been evaluated by the government's experts - *i.e.*, the "unconfirmed" victims. As pointed out in defendant's sentencing memorandum, that review established that in the vast majority of cases, the claims of the "victims" were either unfounded or overstated:

The majority of the victim impact letters, are from patients who were treated for solid tumors. The victim impact letters contain approximately 100 letters from patients who were not previously identified by the government. Of the approximately 100 letters, approximately 1/3 of the letters referenced patients treated for hematological diseases and the remaining 2/3 were treated for solid tumor cancers. It is certainly not surprising that many of Dr. Fata's former patients, after reading and listening to the sensational media accounts, assume that that they too were mistreated whether or not they actually were. Family members are understandably upset about the death of a loved one and Dr. Fata has become the natural target of their anguish and anger over losing a loved one. As to those whose diseases were not fatal, it is also understandable for them to assume that the chemotherapy that they received was unnecessary and that the debilitating side effects associated with the chemotherapy could have avoided.

Dr. Fata does not dispute that some of the victims suffering from blood disorders who wrote letters to this court received unnecessary treatments, others, however did not. He submits that the vast majority of the patients suffering from solid tumor cancers who wrote letters to

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subsequent referrals." R. E. 169, Transcript, Pg ID 2844.

this court received appropriate treatments and that lives were saved or prolonged because of the treatment.

Counsel for Dr. Fata directed him to provide summaries of the treatment rendered to the patients that are referenced in the victim impact letters but whose files were not previously reviewed by the government experts. Because of time limitations and lack of resources, undersigned counsel's consultant and expert were not able to review the patient files of each and every patient listed in the victim impact letters. Counsel for Dr. Fata directed their consultant to randomly select patients referenced in the victim impact letters whose files had not previously been reviewed by the government experts and compare the complaints contained in the victim impact letters to the patient's medical file. In the time available, the consultant and expert reviewed 27 randomly selected medical files. Because counsel for Dr. Fata does not have medical records from health facilities other than MHO for the newly identified patients, counsel's expert and consultant were unable to form an opinion on whether Dr. Fata's treatment was appropriate for 7 of the patient files reviewed. As to the 20 patients for which the expert and consultant were able to render an opinion, they concluded that the treatment rendered to 17 of the patients was appropriate and that statements contained in the victim impact letters for the 17 patients are simply inaccurate, or the letters blamed Dr. Fata for the death of their loved one when death was inevitable, or accused Dr. Fata for inappropriate treatment when in fact, the treatment was appropriate, or a combination thereof. (Footnote omitted)

Defendant's Sentencing Memorandum (filed under seal per R. E. 143, pp. 18-20).<sup>22</sup>

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<sup>22</sup> As the sentencing memorandum notes, the distinction between "solid tumors" and other forms of cancer is significant because the treatment of solid tumors is ordinarily subject to peer review by a hospital "tumor board:"

It should also be noted that many of the solid tumor patients referenced in the victim impact letters had their cases reviewed by the hospital tumor board before the treatment regimen was established. The tumor board is a board certified by the American College of Surgeons and

As noted above, it happened that two of the “unconfirmed” speakers who appeared in court on July 7 had been evaluated by Dr. Goldberg<sup>23</sup> - however, the defense simply had not had the opportunity to evaluate the majority of them - including *every one of the speakers whose statements are excerpted hereinabove* at pp. 36-39.

However, Judge Borman’s rulings prevented the defense from subjecting these accounts to the kind of meaningful testing which their severity - and Due Process - demanded - a demand especially compelling where the circumstances, as illustrated

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consists of several physicians, including a radiation oncologist, surgeon, oncologist, primary care physician, and a tumor registrar. The physicians review the case prior to the board meeting and come to a consensus on a multi-disciplinary treatment regimen.

Defendant’s Sentencing Memorandum (filed under seal per R. E. 143), p. 33. It is to be noted, as the sentencing memorandum pointed out, that fully two-thirds of the 109 “unconfirmed” cases identified in the victim impact statements were treated for solid tumor cancers. *Id.*, at 18.

<sup>23</sup> In one case, the patient J. T., Dr. Goldberg’s conclusion was that “[g]iven the myriad of medical problems and the advancement of his disease, Dr. Fata’s care was exemplary.” Defendant’s Sentencing Memorandum, filed under seal pursuant to R. E. 143, p. 23. In the other, the patient P. Z., he observed:

His type of lung cancer has 1%-5%, 5-year chance of survival. The administration of the chemotherapy was necessary to alleviate the pain, shortness of breath, and to slow the progression of the cancer. Dr. Fata took all the appropriate steps to prolong the life of a man who unquestionably was suffering from a terminal illness.

*Id.*, at p. 27.

by Dr. Goldberg's analysis, so strongly suggested the likelihood that testing would have revealed significant flaws in the reliability of the information which the statements conveyed in such stark and arresting terms.

In order to ensure that the trial judge was *not* subject to the undue influence of highly evocative, deeply compelling narratives of pain and suffering that, however moving, wrongly sought to lay the burden of that suffering at Dr. Fata's door, it would have been necessary to give the defense the opportunity to do the research and review necessary to put those narratives into proper perspective.

Again, Dr. Fata does not question Judge Borman's desire to impose a fair and just sentence in this case. Rather, he questions whether his ability to do so was fatally tainted by rulings which deprived him of all the information necessary for him to do so - and which the evidence suggests was likely to have borne fruit. Accordingly, the Court should vacate Dr. Fata's sentences and remand with instructions to allow the defense to present the evidence it sought to in the first instance - regarding the care and treatment of those patients who claimed to be, but were not in fact "victims" of the offenses to which he pled guilty.

### III

THE DISTRICT COURT ERRED IN ACCEPTING DEFENDANT’S PLEAS OF GUILTY TO MONEY LAUNDERING CHARGES IN THE ABSENCE OF A SUFFICIENT FACTUAL BASIS TO SUPPORT THOSE PLEAS.<sup>24</sup>

The Fourth Superseding Indictment framed the two money laundering charges (Counts 22 and 23), sounding under 18 U.S.C. § 1956(a)(1)(A)(i), as follows:

On or about the dates specified as to each count below, in the Eastern District of Michigan, defendant FARID FATA, M.D. did knowingly conduct and attempt to conduct a financial transaction affecting interstate commerce, which involved the proceeds of a specified unlawful activity, that is health care fraud, with the intent to promote the carrying on of specified unlawful activity, that is health care fraud, and that while conducting and attempting to conduct such financial transaction, knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity

R. E. 66, Fourth Superseding Indictment, ¶ 47, Pg ID 753.

The guilty plea colloquy as to those two counts reads in full as follows:

[THE COURT:] Okay. Mr. Andreoff, if we go to Count 22, please.

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<sup>24</sup> **Standard of review.** Because defendant did not question the sufficiency of the factual basis for his plea in the district court, this claim is reviewable under a “plain error” standard. *United States v. Trejo*, 610 F.3d 308, 313 (5<sup>th</sup> Cir. 2010). Under this standard, he must show “(1) error (2) that was obvious or clear, (3) that affected [his] substantial rights[,] and (4) that affected the fairness, integrity, or public reputation of the judicial proceedings.” *United States v. Vonner*, 516 F.3d 382, 386 (6<sup>th</sup> Cir.2008) (*en banc*).

MR. ANDREOFF: Yes, Your Honor. It's Count 22 and 23. They're both the money laundering counts.

THE COURT: Okay.

MR. ANDREOFF: The recitation of facts, with the Court's permission, will relate to both counts.

THE COURT: Okay.

MR. ANDREOFF: Go ahead, Doctor.

THE DEFENDANT: As I previously stated in the other counts, I submitted claims to various insurance companies and Medicare for unnecessary services and infusions through my company, Michigan Hematology Oncology. In 2013 I incorporated a new company, United Diagnostics, that would perform tests such as PET scan, P-E-T. United Diagnostics was funded in part using funds that I had earned through my submission of claims for unnecessary services. I had ordered that Michigan Hematology Oncology, specifically I deposited or caused the deposit of two checks from MHO to United Diagnostics --

THE COURT: From who?

THE DEFENDANT: Michigan Hematology Oncology to United Diagnostics on May 3rd, 2013, and May 2nd -- and July 2nd, 2013.

THE COURT: Okay.

THE DEFENDANT: Each written in the amount of \$100,000.

THE COURT: Okay.

THE DEFENDANT: After United Diagnostics became operational, I submitted false claims of certain -- for certain patients for unnecessary PET scans through United Diagnostics.

THE COURT: Okay. And you knew that the checks that you received were going to be going through interstate commerce; is that correct, Mr. Andreoff?

MR. ANDREOFF: Yes, Your Honor.

THE COURT: And you understand that as well, that when you write a check and it goes through the clearing process, you accept that as interstate commerce?

THE DEFENDANT: Yes.

THE COURT: Okay. And this took place in Oakland County again?

THE DEFENDANT: Yes.

THE COURT: That's the Eastern District of Michigan. Ms. Dick, any questions you want to ask to further establish a factual basis?

MS. DICK: No, Your Honor.

THE COURT: As to Count 22, how do you plead? How do you plead, Dr. Fata?

THE DEFENDANT: Guilty.

THE COURT: The Court finds Defendant's plea as to Count 22 is knowingly, freely, voluntarily made. The elements of the offense to which he pleads guilty have been made out by his statements in court. Accept the plea to Count 22.

And as to Count 23, how do you plead, Dr. Fata?

THE DEFENDANT: Guilty.

THE COURT: The Court finds Defendant's plea as to Count 23 is knowingly, freely, voluntarily made. The elements of the offense to

which he pleads guilty have been made out by his statement in court. And that also took place in Oakland County as well, correct?

THE DEFENDANT: Correct.

THE COURT: Any question you want to ask with regard to Count 23, Ms. Dick?

MS. DICK: No, Your Honor.

R. E. 111, Transcript, Pg ID 1129-1131.

F. R. Cr. P. 11(b)(3), “Determining the Factual Basis for a Plea,” specifically provides as follows: “Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.” This provision “requires the district court to satisfy itself that there is a factual basis for all elements of the offense charged before accepting a guilty plea.” *United States v. Alber*, 56 F.3d 1106, 1110 (9<sup>th</sup> Cir.1995).

The elements of the offense defined by § 1956(a)(1)(A)(i), and charged by the Fourth Superseding Indictment, are that the defendant “1) conducted a financial transaction with the proceeds of an illegal activity; 2) knew that the property represented illegal proceeds; and 3) *conducted the transaction with the intent to promote the carrying on of the unlawful activity.*” *United States v. Malone*, 484 F.3d

916, 920 (7<sup>th</sup> Cir. 2007) (quoting *United States v. Febus*, 218 F.3d 784, 789 (7<sup>th</sup> Cir.2000)) (emphasis supplied).<sup>25</sup>

Here, the plea colloquy entirely fails to address the third of these essential elements - that Dr. Fata conducted the financial transactions “with the intent to promote the carrying on of specified unlawful activity.”

As the Fifth Circuit observed in *United States v. Trejo*, 610 F.3d 308, 314 (5<sup>th</sup> Cir. 2010), “[t]he ‘specific intent to promote requirement’ has been called the ‘gravamen’ of a § 1956(a)(1)(A)(i) violation,” citing *United States v. Carcione*, 272 F.3d 1297, 1303 (11<sup>th</sup> Cir.2001), and is subject to “stringent mens rea requirement:”

Essentially, the government must show the transaction at issue was conducted with the intent to promote the carrying on of a specified unlawful activity. [*United States v. Brown*, 186 F.3d 661, 670 (5<sup>th</sup> Cir.1999)] *It is not enough to show that a money launderer's actions resulted in promoting the carrying on of specified unlawful activity. Id. Nor may the government rest on proof that the defendant engaged in “knowing promotion” of the unlawful activity. Id.* Instead, there must be evidence of intentional promotion. *Id.* In other words, the evidence must show that the defendant's conduct not only promoted a specified

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<sup>25</sup> The statutory provision defines the offense as follows:

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity

unlawful activity *but that he engaged in it with the intent to further the progress of that activity.* *Brown*, 186 F.3d at 670. The justification for this rigorous *mens rea* requirement is that, in enacting the statute, Congress meant to create a separate crime of money laundering, discrete and apart from the underlying substantive offense. *United States v. Febus*, 218 F.3d 784, 790 (7<sup>th</sup> Cir.2000) (citing *United States v. Jackson*, 935 F.2d 832, 841 (7<sup>th</sup> Cir.1991); *United States v. Heaps*, 39 F.3d 479, 486 (4<sup>th</sup> Cir.1994)). Strict adherence to this standard “helps ensure that the money laundering statute will punish conduct that is really distinct from the underlying specified unlawful activity and will not simply provide overzealous prosecutors with a means of imposing additional criminal liability any time a defendant makes benign expenditures with funds derived from unlawful acts.” *Brown*, 186 F.3d at 670. [Emphasis supplied]

The case law makes clear that “where specific intent is an element of a crime, ‘the specific intent must be proved as an independent fact and cannot be presumed from the commission of the unlawful act.’” *United States v. Cortes-Caban*, 691 F.3d 1, 37 (1<sup>st</sup> Cir. 2012) (quoting *United States ex rel. Vraniak v. Randolph*, 261 F.2d 234, 237 (7<sup>th</sup> Cir.1958)).

Here, while the plea colloquy shows only that Dr. Fata used ill-gotten funds to underwrite the opening of United Diagnostics [“United Diagnostics was funded in part using funds that I had earned through my submission of claims for unnecessary services”], and that subsequently [“[a]fter United Diagnostics became operational”] he submitted false claims through that entity [“I submitted false claims of certain -- for certain patients for unnecessary PET scans through United Diagnostics”], but it wholly fails to establish that he engaged in the financial transactions funding United

Diagnostics with the specific intent to promote the submission of false claims; rather, all that colloquy says regarding the purpose with which United Diagnostics was formed was that it “would perform tests such as PET scan.”

Clearly, and without more, then, acceptance of Dr. Fata’s guilty plea to Counts 22 and 23 on this record violated Rule 11. As this Court explained the governing law in *United States v. Tunning*, 69 F.3d 107, 111 (6<sup>th</sup> Cir. 1995):

In *McCarthy v. United States*, 394 U.S. 459, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969), the Supreme Court adopted a rule of strict compliance with the procedures of Rule 11. This rule was modified in 1983 with the adoption of Rule 11(h), which provides that variations from the requirements of Rule 11 are excusable so long as they do not affect the “substantial rights” of the defendant. *See, e.g., United States v. Goldberg*, 862 F.2d 101 (6th Cir.1988). However, this “harmless error” analysis does not apply to appellate review of the sufficiency of the factual basis supporting the guilty plea. “[W]hile the exact method of producing a factual basis on the record is subject to a flexible standard of review, the need to have *some* factual basis will continue to be a rule subject to no exceptions.” *Id.* at 106 (quoting *United States v. Fountain*, 777 F.2d 351, 357 (7th Cir.1985), *cert. denied*, 475 U.S. 1029, 106 S.Ct. 1232, 89 L.Ed.2d 341 (1986)). [Emphasis supplied]

Admittedly, this claim was not raised below. As the Court explained in *Henderson v. United States*, \_\_\_ U.S. \_\_\_, 133 S.Ct. 1121, 1124 (2013):

A federal court of appeals normally will not correct a legal error made in criminal trial court proceedings unless the defendant first brought the error to the trial court's attention. *See United States v. Olano*, 507 U.S. 725, 731, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993). But Federal Rule of Criminal Procedure 52(b), creating an exception to the normal rule, says that “[a] plain error that affects substantial rights may be considered even though it was not brought to the [trial] court's attention.”

As the *Henderson* Court explained the application of these principles, pursuant to *United States v. Olano*:

There, we said that Rule 52(b) authorizes an appeals court to correct a forfeited error only if (1) there is “an error,” (2) the error is “plain,” and (3) the error “affect[s] substantial rights.” 507 U.S., at 732, 113 S.Ct. 1770 (internal quotation marks omitted). Pointing out that Rule 52 “is permissive, not mandatory,” *id.*, at 735, 113 S.Ct. 1770, we added (4) that “the standard that should guide the exercise of remedial discretion under Rule 52(b)” is whether “the error ‘seriously affect[s] the fairness, integrity or public reputation of judicial proceedings,’” *id.*, at 736, 113 S.Ct. 1770 (quoting *United States v. Atkinson*, 297 U.S. 157, 160, 56 S.Ct. 391, 80 L.Ed. 555 (1936); brackets in original).

*Id.*, at 1126 -1127.

Defendant submits that even under this exacting standard, he is entitled to relief.

As noted above, there was an “error.” And, in contrast to *United States v. Trejo*, *supra*, at 319, where the Fifth Circuit declined to set aside an inadequately supported guilty plea because existing circuit precedent did not then sufficiently define the *mens rea* element of the statute in light of the defendant’s admissions, this Circuit’s repeated explications of the “specific intent to promote requirement” mandates the conclusion that the error residing in the wholesale failure to even *address* the matter of intent is indeed “plain.” *See, e.g., United States v. Reed*, 264 F.3d 640, 651 (6<sup>th</sup> Cir. 2001) ( discussing cases defining the “intent to promote” requirement, including *United States v. King*, 169 F.3d 1035, 1039 (6<sup>th</sup> Cir. 1998), which the panel described as “upholding defendant's "promotion" money laundering

conviction for wiring money to his drug couriers in payment for prior marijuana deliveries and for current expenses incurred while making deliveries,” *United States v. Reed*, 167 F.3d 984, 992-993 (6<sup>th</sup> Cir. 1999), holding that payment of “an antecedent drug debt” was sufficient where the defendant “acted with the intent to facilitate the continuation of drug trafficking (rather than simply with the intent to facilitate the payment of an antecedent debt),” and *United States v. Baez*, 87 F.3d 805, 810-11 (6<sup>th</sup> Cir. 1996), which the panel described as “upholding defendant's money laundering conviction under ‘promotion’ prong of statute for sending a courier to pick up drug proceeds in one state and deliver them in another,”

That Dr. Fata’s “substantial rights” were affected seems clear enough as well. Most obviously, Judge Borman imposed a 20-year sentence on Count 22, to run consecutively to the Health Care Fraud sentences. Although even without doing so he could have reached a total sentence of 45 years with reference only to these latter charges, the application of the Money Laundering Guideline, U.S.S.G. § 2S1.1 (specifically, § 2S1.1(b)(2)(B)) resulted in a two-level enhancement of his Offense Level from 40 to 42. R. E. 170, Transcript, Pg ID 2938. This Adjusted Offense Level called for a Guideline Sentencing Range of 360 months - life, and the 45 year (540 month) sentence imposed by Judge Borman was within that range. It would *not*, however, have been within the 292-365 month range called for if that Offense Level

had not been subject to the two-level enhancement, and had remained at 40. Judge Borman's determination to impose a within-Guidelines sentence, which would have been an above-Guidelines sentence absent the erroneous acceptance of Dr. Fata's pleas to the money laundering counts clearly establishes that his "substantial rights" were affected by the error.

As to the fourth factor - the impact on the "fairness, integrity or public reputation of judicial proceedings," as this Court observed in *United States v. Oliver*, 397 F.3d 369, 380 (6<sup>th</sup> Cir. 2005): "[a] sentencing error that leads to a violation of the Sixth Amendment by imposing a more severe sentence than is supported by the jury verdict 'would diminish the integrity and public reputation of the judicial system [and] also would diminish the fairness of the criminal sentencing system.'" (quoting *United States v. Bostic*, 371 F.3d 865, 877 (6<sup>th</sup> Cir.2004) (internal quotation and citation omitted)).

The same may be said, *mutatis mutandis*, where the basis for the defendant's conviction is a guilty plea. See, e.g., *United States v. McCreary-Redd*, 475 F.3d 718, 726 (6<sup>th</sup> Cir. 2007) (upholding conviction in absence of sufficient factual basis "would be inconsistent with the purposes of Rule 11 . . . [which] helps to ensure that a defendant's guilty plea is truly voluntary, a constitutional requirement," and "would have an adverse impact which would seriously affect the fairness and integrity of the

judicial proceeding.” *see also, United States v. Hildenbrand*, 527 F.3d 466, 474 (5<sup>th</sup> Cir. 2008) (holding that “[e]ven valid waivers do not bar a claim that the factual basis is insufficient to support the plea.”)

Dr. Fata’s convictions and sentences for Counts 22 and 23 of the Fourth Superseding Indictment must be vacated, as well as his sentence as a whole, and the case remanded for resentencing.

## CONCLUSION

Because the trial judge erred in accepting Dr. Fata's pleas of guilty to money laundering under 18 U.S.C. § 1956(a)(1)(A)(i), Dr. Fata's convictions and sentences for Counts 22 and 23 of the Fourth Superseding Indictment must be vacated, as well as his sentences as a whole, and the case remanded for resentencing.

Because the trial court erred in its application of the "Role in the Offense" enhancements, and because proper application of these provisions would have reduced his Adjusted Offense Level by two, this error was not harmless, and requires the vacation of Dr. Fata's sentences.

Because the trial court improperly permitted the presentation of deeply disturbing narratives from supposed "victims" of Dr. Fata's misconduct under circumstances that did not allow the defense to meaningfully test their accuracy and truthfulness, where the circumstances strongly suggested the likelihood that that testing would have revealed significant flaws in their reliability, the Court should vacate Dr. Fata's sentences and remand with instructions to allow the defense to present the evidence it sought to in the first instance - regarding the care and treatment of those patients who claimed to be, but were not in fact "victims" of the offenses to which he pled guilty.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 32(a)(7)(C), Federal Rules of Appellate Procedure, the undersigned certifies that this brief complies with the type-volume limitations of Rule 32(a)(7)(B), Federal Rules of Appellate Procedure.

The brief contains a total of 13,997 words, exclusive of the Table of Contents, Table of Authorities, Statement in Support of Oral Argument, Addendum and Certificates of Compliance and Service. It has been prepared, and this word count generated, using WordPerfect X7. The typeface is 14pt Times New Roman.

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**ADDENDUM**  
**DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS**

Record Entry	Description	Pg ID Range
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87	Motion for Change of Venue, with exhibits	844 - 941
111	Transcript of guilty plea	1096 - 1139
135	Government Sentencing Memorandum, with exhibits	1263 - 1448
140	Order Establishing Plan for Sentencing Hearing	1490 - 1496
143	Order granting Motion to Seal	1499
146	Motion to Strike	1519 - 1527
150	Response to Motion to Strike, with exhibits	1961 - 1992
152	Order Denying Motion to Strike	2036 - 2037
156	Transcript of proceedings, July 6, 2015	2287 - 2457
158	Judgment and Commitment Order	2459 - 2468
160	Order extending time to file Notice of Appeal	2470 - 2471
161	Transcript of proceedings, July 10, 2015	2472 - 2508
162	Motion to Dismiss Remaining Counts	2509 - 2510
163	Order Dismissing Remaining Counts	2511
165	Notice of Appeal	2513 - 2514
168	Transcript of proceedings, July 7, 2015	2517 - 2642
169	Transcript of proceedings, July 8, 2015	2643 - 2856
170	Transcript of proceedings, July 9, 2015	2857 - 2945

171	Transcript of Status Conference, July 1, 2015	2946 - 2996
	<b>DOCUMENTS FILED UNDER SEAL</b>	
	Defense Sentencing Memorandum, with exhibits	
	Defense Exhibit J	
	<b>DOCUMENTS LODGED WITH THIS COURT</b>	
[14]	Presentence Investigation Report, with Addendum	

## CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2015, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

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**No. 15-1935**

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In the  
United States Court of Appeals  
for the Sixth Circuit

**United States of America,**

Plaintiff-Appellee,

v.

**Farid Fata,**

Defendant-Appellant.

On Appeal from the United States District Court  
for the Eastern District of Michigan  
No. 2:13-cr-20600 (Hon. Paul D. Borman)

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## Waiver of Oral Argument

Because the issues are straightforward and adequately presented in the briefs and record, this appeal should be decided without oral argument.

## Introduction

Farid Fata was a doctor who poisoned his patients for profit. He falsely diagnosed them with cancer and other maladies, then administered—and billed for—chemotherapy, cancer treatments, intravenous iron, and other dangerous chemicals they did not need. His scheme caused hundreds, and perhaps thousands, of patients to suffer permanent damage to their bodies. And he ultimately pleaded guilty, admitting that he victimized 553 individuals and four insurers and that he took over \$17 million in fraudulent payments.

This Court should affirm Fata's convictions and deservedly lengthy 45-year sentence. *First*, Fata stipulated that his conduct involved an abuse of a trust, and the record establishes—in agonizing detail—how Fata abused patients' and insurers' trusts by administering chemotherapy and other dangerous treatments to people who did not need them. The sentencing guidelines therefore permitted the district court to apply both the two-level adjustment in U.S.S.G. § 3B1.3 and the aggravating role adjustment in U.S.S.G. § 3B1.1. *Second*, the district court appropriately received written and oral statements from Fata's patients and their family members during the sentencing

process. Any of the confirmed victims had a right to be heard under the Crime Victims' Rights Act, and the district court was permitted to hear from any other patients under 18 U.S.C. § 3661. Nor can Fata show any prejudice given the district court's ruling that it would not base Fata's sentence on the statements. *Third*, because the full record supports Fata's guilt on the money laundering counts, Fata cannot show plain error from the factual basis on those counts.

## Issues Presented

- I. Did the district court clearly err in enhancing Fata's sentence for abusing a position of trust under U.S.S.G. § 3B1.3, where patients and insurers trusted him to administer and bill for only medically necessary oncology and hematology treatments?
- II. Is a remand necessary to allow Fata to counter the statements submitted at sentencing by his patients and their family members, given that the district court was permitted to receive those statements, Fata presented rebuttal, and the court declined to rely on them when imposing sentencing?
- III. Were sufficient facts presented to the district court prior to entry of judgment to support Fata's guilt on two counts of promotional money laundering?

## Statement of the Case

### 1. Overview

Farid Fata was a doctor who owned and operated a medical practice called Michigan Hematology Oncology. (PSR ¶ 28). Between 2005 and 2013, the practice grew to seven locations and treated approximately 17,000 patients. (*Id.* ¶¶ 28, 57). Fata eventually expanded his businesses to include a pharmacy (Vital Pharmacare) and a diagnostic testing facility (United Diagnostics). (*Id.* ¶¶ 29-30).

Fata used his businesses to perpetrate an almost unthinkable scheme of dosing patients with unnecessary medications, just so he could bill for them. As he later admitted, Fata engaged in numerous types of patient mistreatment, including:

- Unnecessary chemotherapy and other cancer treatment drugs given to patients without cancer or in remission;
- Aggressive, dangerous chemotherapy given in the office (where Fata could bill) instead of the appropriate hospital setting;
- Unnecessary “supportive” treatments, such as human growth factors, intravenous immunoglobulin, and anti-nausea medication;
- Unnecessary intravenous iron given to patients who were not iron-deficient; and

- Unnecessary positronic emission test (PET) scans, which involve the injection of radioactive material into patients.

## 2. Unnecessary Chemotherapy and Zometa for Deliberately Misdiagnosed Multiple Myeloma Patients

Fata deliberately misdiagnosed more than a few of his patients with multiple myeloma (a type of cancer), so that he could administer chemotherapy to them. (PSR ¶¶ 35-36; R. 169: Tr., 2678-79; U.S. Sentencing Exhibit (“U.S. Sent. Ex.”) 11, Sealed App’x at 307). These patients received hundreds of unnecessary chemotherapy doses, in addition to other drugs given as part of a pattern of mistreatment. (United States’ 5/27/15 Sealed Sentencing Memorandum (“U.S. Sent. Memo.”), Ex. B3 ¶ 1, Sealed App’x at 231; U.S. Sent. Ex. 11, Sealed App’x at 307).

One of those patients was M.F. (*Id.*). M.F. did not have cancer. (PSR ¶ 36; U.S. Sent. Memo., Ex. B1 ¶ 26, Sealed App’x at 223; R. 169: Tr., 2677). But Fata diagnosed her with it and began administering chemotherapy. (PSR ¶ 36). By sheer luck, Fata’s lies were uncovered on the very first day of M.F.’s chemotherapy, when she was admitted to the hospital after breaking her leg. (U.S. Sent. Memo., Ex. A INT-1183 ¶ 2, Sealed App’x at 194). While there, M.F. underwent a pre-operative bone

marrow biopsy that did not show any indication of cancer. (*Id.*). Then, one of Fata's doctors (whose complaints later triggered Fata's arrest) reviewed M.F.'s records while rounding at the hospital. He told M.F. that she did not have cancer and that she should "run" from Fata. (U.S. Sent. Memo., Ex. A INT-1183 ¶¶ 3, 5; INT-0075 ¶ 1, Sealed App'x at 194, 116). Because of that intervention, M.F. received only one dose of chemotherapy. (U.S. Sent. Ex. 11, Sealed App'x at 307).

J.M. was not so lucky. Like M.F., J.M. did not have cancer, but Fata diagnosed him with it and began treating him with chemotherapy. (PSR ¶ 36). In total, J.M. received approximately 28 unnecessary treatments of chemotherapy (U.S. Sent Ex. 11, Sealed App'x at 307), and his false diagnosis was not discovered until after Fata's arrest. (U.S. Sent. Memo., Ex. A INT-1154 ¶ 10, INT-1155 ¶ 1, Sealed App'x at 190-91). Before chemotherapy, J.M. was in good health, walking two miles several times each week, and regularly bowling. (U.S. Sent. Memo., Ex. A, INT-1154 ¶ 3, Sealed App'x at 190). After chemotherapy began, J.M.'s health deteriorated significantly, resulting in at least ten hospitalizations for congestive heart failure (a known side effect of chemotherapy), kidney dysfunction, and blood clots. (*Id.* ¶¶ 4, 5, Sealed

App'x at 190). J.M.'s doctor believes the chemotherapy may have contributed to his congestive heart failure; his heart now functions at only 25% of its capacity. (U.S. Sealed Sentencing Memo, Ex. A, INT-1155 ¶ 3, Sealed App'x at 191; R. 169: Tr., 2683).

Fata also administered a drug called Zometa to patient R.S. (PSR ¶ 52). Zometa is intended to support weakened bones in patients with active myeloma. (*Id.*; U.S. Sent. Memo., Ex. B1 ¶ 25, Sealed App'x at 223). R.S. did not have active myeloma. (*Id.*; R. 169: Tr., 2672-73). But Fata told R.S. that he had both myeloma and metastatic bone cancer and would have to be on Zometa for life. (U.S. Sent. Memo., Ex. E, Sealed App'x at 248). Fata then began R.S. on a monthly regimen of Zometa. (PSR ¶ 52; R. 168: Tr. 2614).

The most well-known and feared side effect of Zometa is osteonecrosis of the jaw (death of the jaw bone). (U.S. Sent. Memo., Ex. B1 ¶ 25, Sealed App'x at 223; R. 169: Tr., 2673-74). Zometa should be stopped if osteonecrosis occurs. (U.S. Sent. Memo., Ex. B1 ¶ 25, Sealed App'x at 223). And after starting Zometa, R.S.'s teeth began to hurt. (U.S. Sent. Memo., Ex. A INT-1013 ¶ 2, Sealed App'x at 180). Nevertheless, Fata continued R.S. on Zometa for over two years, during

which he received approximately 25 doses. (PSR ¶ 52; U.S. Sent. Memo., Ex. B1 ¶ 25, Sealed App'x at 223; R. 168: Tr., 2614).

All but one of R.S's teeth fell out. (R. 168: Tr., 2614; U.S. Sent. Memo., Ex. A, INT-1013 ¶ 3, Sealed App'x at 180). The roots of his teeth fell out as well, and osteonecrosis left a hole in his gums that surgeons had to cover with a piece of skin from his cheek. (*Id.*). R.S. lost his job and required daily morphine and OxyContin for his extreme ongoing pain. (U.S. Sent. Memo., Ex. A, INT-1014 ¶¶ 1-2, Sealed App'x at 181).

### **3. Unnecessary Chemotherapy for Deliberately Misdiagnosed Myelodysplastic Syndrome Patients**

Myelodysplastic syndrome is a deadly form of cancer that can also develop into leukemia. (R. 169: Tr., 2686-87). Fata misdiagnosed patients with myelodysplastic syndrome, so that he could give them medically unnecessary chemotherapies and other drugs. (U.S. Sent. Memo., Ex. B1 ¶¶ 28-29, Ex. B2 ¶ 10, Ex. B3 ¶ 2, Sealed App'x at 224-26, 228-29, 231-32). Fata treated some individuals who did not clearly have myelodysplastic syndrome. (U.S. Sent. Ex. 10, Sealed App'x at 306; R. 169: Tr., 2687). Others actually had it, but they should have only been observed (not given chemotherapy) because of their relatively lower risk from the disease. (*Id.*). One expert's review of approximately

100 patient files (out of 17,000 total patients) turned up mistreatment of 22 myelodysplastic syndrome patients, who were all dosed unnecessarily with chemotherapy or other harmful or unnecessary medications. (U.S. Sent. Ex. 12, Sealed App'x at 308-09; R. 169: Tr. 2664-65). Those 22 patients received 2770 unnecessary doses of chemotherapy, along with thousands of doses of other unnecessary infusions and injections. (U.S. Sent. Ex. 12, Sealed App'x at 308-09).

Patient W.W. came to Fata as a lower-risk patient. (PSR ¶ 51; U.S. Sent. Memo., Ex. B1, ¶ 29, Sealed App'x at 225-26). He was observed for a time. But eventually, despite no apparent change in W.W.'s condition, Fata started him on infusions of chemotherapy. (*Id.*). Fata then ordered 155 doses of chemotherapy for W.W. over the next three years. (*Id.*). Fata had no medical justification for beginning the chemotherapy—and certainly not for continuing it for three years. (*Id.*; R. 169: Tr., 2694). And when W.W. independently researched and discovered stem cell transplants, the only known cure for myelodysplastic syndrome, Fata lied and told W.W. that he was too old for a stem cell transplant. (U.S. Sent. Memo., Ex. A, INT-0917 ¶ 3, Sealed App'x at 177; R. 169: Tr., 2725-26).

After Fata's arrest, W.W. was initially taken off treatment, but later went into decline, which his new physician believed might be due to the unnecessary chemotherapy. (U.S. Sent. Memo., Ex. A, INT-1350 ¶ 1, Sealed App'x at 208). W.W.'s physician determined that he was an outstanding transplant candidate and well within the appropriate age range. (U.S. Sent. Memo., Ex. A, INT-1350 ¶ 3, Sealed App'x at 208). All along, W.W. had a perfect match donor: his fraternal twin brother. (*Id.*). W.W. successfully received a stem cell transplant from his brother in 2014. (R. 168: Tr., 2564).

Fata also started another patient, W.D., on medically unnecessary chemotherapy. W.D. received 21 injections of chemotherapy over three months, and Fata told W.D. that he would need chemotherapy for the rest of his life. (U.S. Sent. Memo., Ex. A, INT-0183 ¶ 4, Sealed App'x at 134). W.D.'s new physician stopped treatment after Fata's arrest. (U.S. Sent. Memo., Ex. A, INT-0184 ¶ 1, Sealed App'x at 135).

#### **4. Underdosed Chemotherapy for Myelodysplastic Syndrome Patients Who Actually Needed It**

Fata did not just overprescribe chemotherapy; he also underprescribed it—if it saved him money. (U.S. Sent. Memo., Ex. B3 ¶¶ 3, 4, Ex. B8, Sealed App'x at 232, 246-47; R. 169: Tr., 2689-2692).

Some of Fata's myelodysplastic syndrome patients actually needed chemotherapy. (R. 169: Tr., 2689). If Fata had dosed them properly, according to their body mass, they would have been given one vial of chemotherapy plus a portion of a second vial. (*Id.* at 2691; U.S. Sent. Memo., Ex. B8, Sealed App'x at 246-47). But the unused portion of the second vial must be discarded, and Medicare would not reimburse Fata for that portion. (R. 169: Tr., 2692). So Fata only gave his patients only one vial (or a portion of one vial), maximizing his profit margin while shortchanging the patients of the medicine they needed. (*Id.* at 2689).

#### **5. Mistreatment of Acute Myeloid Leukemia Patients**

Fata also mistreated many of his acute myeloid leukemia patients. Myelodysplastic syndrome can develop into acute myeloid leukemia. (R. 169: Tr., 2711). Proper treatment for acute myeloid leukemia involves four to six weeks of inpatient treatment at a hospital, beginning with intensive around-the-clock infusions of chemotherapy for seven days. (R. 169: Tr., 2712-13; U.S. Sent. Memo., Ex. B2 ¶ 13, Sealed App'x at 229-30). Taking breaks limits the treatment's effectiveness, and the intense chemotherapy puts patients at risk for infection and other

complications that can only be safely managed in a hospital setting. (R. 169: Tr., 2713-14).

But Fata often did not send his leukemia patients to a hospital for this treatment. (U.S. Sent. Memo., Ex. B2 ¶ 13, Sealed App'x at 229-30; R. 169: Tr., 2716). Instead, he infused them with chemotherapy at his office—where he could bill for it. (U.S. Sent. Memo., Ex. B2 ¶ 13, Sealed App'x at 229-30; R. 169: Tr., 2716-25).

L.B. was one of Fata's patients in need of real care. (R. 169: Tr., 2720). When L.B. first began receiving treatment, he had myelodysplastic syndrome—and Fata gave him underdosed chemotherapy. (*Id.*). Then, when L.B. developed acute myeloid leukemia, Fata inappropriately treated him as an outpatient. (*Id.* at 2721). L.B. developed one of the known side effects of that chemotherapy, tumor lysis syndrome, and he soon suffered kidney failure as a result. (*Id.* at 2714, 2721). After L.B. was hospitalized and put on dialysis for his kidney failure, Fata continued to dose him with intensive chemotherapy, putting him in further danger. (*Id.* at 2722). He died only three months after he had been first diagnosed with acute

myeloid leukemia. (*Id.* at 2721). If L.B. had received no treatment at all, his prognosis would have been three to six months. (*Id.* at 2721-22).

## 6. Unnecessary Immunosuppressant Infusions for Lymphoma Patients in Remission and Non-Cancer Patients

Fata also gave patients unnecessary rituximab, a powerful antibody. (PSR ¶ 41). Rituximab (also known as Rituxan) is also an immunosuppressant, increasing a patient's risk of infection, as well as potentially reactivating latent viruses, or causing a generally fatal disease of the nervous system. (*Id.*; U.S. Sent. Memo., Ex. B5, ¶ 5, Sealed App'x at 235; R. 156: Tr., 2322-23; U.S. Sent. Ex. 1B, Sealed App'x at 304). Each dose is very potent (and very costly), and even patients who need it should receive a limited number of doses. (PSR ¶¶ 41, 60). Fata administered huge quantities of the drug, in one instance giving a patient 94 doses where the maximum justifiable would have been eight doses. (R. 156: Tr., 2309; U.S. Sent. Ex. 2A, Sealed App'x at 305). The billing records showed why Fata did it: he received over \$6.2 million for his patients' unnecessary rituximab treatments. (PSR ¶ 60).

D.M. was one of Fata's patients who was treated with rituximab. At first, D.M. received medically appropriate rituximab to treat his diffuse large B cell lymphoma. (PSR ¶ 45). But after D.M. went into

remission, Fata continued to administer rituximab 23 more times. (*Id.*). Fata referred to this treatment as “maintenance,” and he told D.M. that, without two years of rituximab, his lymphoma could return. (*Id.*). This was a lie; there are no medical studies to support rituximab’s use as a maintenance therapy. (PSR ¶ 45; R. 156: Tr., 2306-2307). But when Fata’s staff confronted him about it, Fata invented a “European” or “French” study as his justification. (U.S. Sent. Memo., Ex. A INT-0111 ¶ 5, INT-0123 ¶ 8, INT-0124 ¶ 1, INT-0133 ¶ 5, INT-0820 ¶ 3, INT-0821 ¶ 1, INT-1464, Sealed App’x at 123, 127, 128, 131, 167, 168, 215).

Patient T.H. had liver cirrhosis—not something that is appropriately treated with rituximab. (U.S. Sent. Memo., Ex. B5 ¶12, Sealed App’x at 237). But Fata diagnosed him with a different condition and began administering rituximab. (PSR ¶ 44). Although T.H.’s condition never responded to the drug, Fata continued to administer it 12 times for over a year. (*Id.*; R. 156: Tr., 2315-17). When T.H. could not afford the expensive co-pays, Fata’s office assisted him in applying to a charitable foundation that pays for treatments. (U.S. Sent. Memo., Ex. A INT-1246 ¶ 7, 1247 ¶ 1, Ex. G, Sealed App’x at 199, 200, 250-53). When Fata discovered that the foundation had run out of grant money

for people with T.H.'s diagnosis, Fata lied and changed the diagnosis to lymphoma. (*Id.*, U.S. Sent. Memo., Ex. F, Sealed App'x at 249).

#### **7. Unnecessary Supportive Treatments: Human Growth Factor Injections, Intravenous Immunoglobulin, and Antiemetics**

Human growth factor injections are used to increase white blood cell or red blood cell counts. (U.S. Sent. Memo., Ex. B1, ¶¶ 20, 23, Sealed App'x at 221-22). Fata ordered those injections unnecessarily for many patients, including for patient W.D. (PSR ¶ 46; U.S. Sent. Memo., Ex. B1, ¶ 28, Sealed App'x at 224-25; R. 169: Tr., 2692). White blood cell growth factors can cause ruptured spleens, rashes, fevers, muscle aches, and bone aches. (U.S. Sent. Memo., Ex. B1, ¶ 20, Sealed App'x at 221-22; R. 169: Tr., 2702-03, 2705-06). When used outside of medical guidelines, red blood cell growth factors can shorten remission time and survival time in patients with certain types of cancer. (U.S. Sent. Memo., Ex. B1, ¶ 23, Sealed App'x at 222).

Another one of Fata's unnecessary supportive treatments was intravenous immunoglobulin. (PSR ¶¶ 48-49). Intravenous immunoglobulin is primarily used to treat severe immune deficiencies, and it carries the risk of allergic reactions, thrombosis (blood clots),

anaphylactic shock, acute renal failure, and death. (PSR ¶ 48; U.S. Sent. Memo., Ex. B1 ¶ 21, Sealed App'x at 222; R. 156: Tr., 2326, 2329, 2333-37). Fata unnecessarily infused numerous patients with intravenous immunoglobulin, and he received over \$1.6 million for it. (PSR ¶ 62). To justify the treatments, Fata falsified medical records by stating that the patients had recurrent infections. (PSR ¶ 49; U.S. Sent. Memo., INT-0467 ¶ 2, Sealed App'x at 156).

Antiemetics were another supportive therapy that Fata ordered unnecessarily. Antiemetics are intended to prevent nausea and vomiting associated with chemotherapy. (PSR ¶ 61; U.S. Sent. Memo., Ex. B1 ¶ 24, Sealed App'x at 222-23). They can have significant side effects, including severe pain, severe constipation, bowel obstructions, and bowel perforations. (U.S. Sent. Memo., Ex. B6, Sealed App'x at 239-41; R. 156: Tr. 2343-44; United States' 6/30/15 Under Seal Response to Defendant's Sentencing Memorandum ("U.S. Sent. Resp."), Ex. A INT-1675-1676 ¶¶ 1-10, Sealed App'x at 301-02). And although some antiemetics are inexpensive, Fata often ordered the most expensive ones, totaling over \$660,000 of unnecessary antiemetics for his patients. (PSR ¶ 61).

## 8. Unnecessary Iron and Hydration Infusions

Iron is toxic, and sustained iron overload can cause organ failure. (PSR ¶ 39; U.S. Sent. Memo.; Ex. B5 ¶ 10, Sealed App'x at 236; R. 169: Tr., 2701; R. 156: Tr., 2365, 2370-71; U.S. Sent. Ex. 1B, Sealed App'x at 304). Even if a patient is iron-deficient, the appropriate first-line treatment is inexpensive iron pills, not expensive infusions. (PSR ¶ 38; U.S. Sent. Memo., Ex. B5 ¶ 9, Sealed App'x at 236; R. 156: Tr., 2356).

Fata repeatedly administered intravenous iron to patients who did not need it, sometimes to toxic levels that can cause iron overload. (U.S. Sent. Memo., Ex. B5 ¶ 11, Ex. B6, Ex. B7 ¶ 2, Sealed App'x at 236-37, 239-41, 243; R. 156: Tr., 2357, 2365; R. 169: Tr., 2693). And sometimes, after ordering iron infusions, he even ordered phlebotomies—a procedure to drain blood from his patients and reduce the iron in their bodies—just so he could order more iron infusions. (U.S. Sent. Memo., Ex. A INT-0466 ¶ 2, Sealed App'x at 155).

The treatment of W.V. demonstrates Fata's commitment to billing unnecessary iron infusions. The last time W.V. went to Fata's office for an unnecessary iron infusion, he hit his head and was knocked out for several minutes. (PSR ¶ 39; U.S. Sent. Memo., Ex. A INT-0289 ¶ 9, Ex.

B6, Sealed App'x at 145; R. 156: Tr., 2359-61, 2372). Individuals in the waiting area and the clinic's staff rushed to his aid and called paramedics, but Fata instructed his staff to put W.V. in an infusion chair. (PSR ¶ 39). Fata then ordered a nurse to give W.V. an unnecessary iron infusion before allowing him to go to the emergency room. (*Id.*; R. 156: Tr., 2372-73). Paramedics had to wait approximately 30 minutes for the infusion to conclude. (PSR ¶ 39). After W.V.'s admission to the hospital, a CAT scan showed bleeding in the right back of the brain. (*Id.*). W.V. passed away several weeks later. (*Id.*).

Fata also ordered unnecessary hydration infusions—often when simply drinking water would have sufficed. (R. 156: Tr., 2348-49, 2354). Hydration infusions can be harmful in older patients who are not dehydrated, causing complications like heart arrhythmia that can and did lead to hospitalizations. (U.S. Sent. Memo., Ex. B7 ¶ 4, Sealed App'x at 243; R. 156: Tr., 2349-55). Fata ordered them frequently, directing patients to return to his clinic for hydration infusions on days they had off from chemotherapy. (R. 156: Tr., 2347-48). Then, he billed for the additional infusion time.

## 9. Concealing the Fraud at Michigan Hematology Oncology

In his own words, Fata ran a “kingdom” and an “empire.” (U.S. Sent. Memo., Ex. A, INT-0314 ¶ 7, INT-1242 ¶ 3, Sealed App’x at 150, 197). As the king, he exerted his control over every aspect of Michigan Hematology Oncology and its patients. He controlled access to the patients’ medical information, setting down an unusual policy that patient files could only be released with his personal approval. (U.S. Sent. Memo., Ex. A, INT-0063 ¶ 3, INT-0212 ¶¶ 2, 3, INT-0755 ¶ 2, Sealed App’x at 112, 139, 159). He often refused to release files, released only parts of files, or tried to convince patients they should not leave his practice when they requested their files. (U.S. Sent. Memo., Ex. A, INT-0212 ¶ 3, Sealed App’x at 139). Fata also never relinquished decision-making control to the other doctors in his practice, even if other physicians were seeing his patients in the hospital. (U.S. Sent. Memo., Ex. A, INT-0754 ¶ 3, INT-0755 ¶ 1, INT 819 ¶ 3, Sealed App’x at 157, 158, 166).

## 10. PET Scan Fraud and Money Laundering at United Diagnostics

United Diagnostics was a testing facility that Fata opened to commit another type of fraud: cancer-testing fraud. When Fata incorporated United Diagnostics in December 2012, it had no staff, physical location, or equipment. (U.S. Sent. Memo., Ex. A, INT-1367 ¶ 2, Sealed App'x at 212). After incorporating United Diagnostics, Fata dramatically increased the percentage of patients for whom he ordered PET scans, a test that requires injection of radioactive material into the patient. (U.S. Sent. Memo., Ex. A INT-0210 ¶ 2, Ex. B1 ¶ 19, Sealed App'x at 137, 221). Fata also ordered his staff to schedule all PET scans for April 2013—when United Diagnostics was scheduled to open—rather than earlier at a hospital or other location. (U.S. Sent. Memo., Ex. A INT-0085 ¶ 2, Sealed App'x at 120; PSR ¶ 67).

When April came around, United Diagnostics was still not ready to open. (PSR ¶ 67). Rather than send his patients to other facilities, Fata ordered his staff to reschedule all the tests. (*Id.*). Patients became concerned about the wait, because they believed a medically necessary test to detect cancer was being delayed by months. (*Id.*). But when they asked about the delay, Fata resisted sending them to another facility.

(*Id.*). He ordered his staff to lie and say that the patient did not need the scan yet, his machine was more high tech, or the patient's insurance would not cover the test elsewhere. (U.S. Sent. Memo, Ex. A, INT-0211 ¶ 2, INT-1316 ¶ 22, Sealed App'x at 138, 205).

While this was happening, Fata began funding United Diagnostics with money from the infusion fraud at Michigan Hematology Oncology. (PSR ¶ 69). He wrote two checks drawn on the bank account for Michigan Hematology Oncology funded by the infusion fraud, depositing the funds into the account for United Diagnostics. (*Id.*). The first check was for \$100,000 and was deposited on May 3, 2013. (*Id.*). The second check was also for \$100,000 and was deposited on July 2, 2013. (*Id.*).

Within days of that second check, United Diagnostics finally opened its doors and began performing unnecessary tests. (PSR ¶¶ 67-68). As Fata later admitted, one such unnecessary test was performed on patient M.C. on July 11, 2013, only nine days after Fata had funded United Diagnostics with money from Michigan Hematology Oncology. (R. 111: Tr., 1126; U.S. Sent. Memo., Ex. A, INT-0780 ¶ 5, Ex. B2 ¶ 5,

Sealed App'x at 163, 228). Ultimately, United Diagnostics performed tests for a little over a month before Fata's arrest. (PSR ¶ 67).

## 11. Fata's Guilty Plea and Sentencing

Fata pleaded guilty to 13 counts of health care fraud (counts 3-6, 9-17), one count of conspiracy to pay and receive kickbacks (count 20), and two counts of promotional money laundering (counts 22-23). (R. 111: Tr., 1112-31; R. 66: Fourth Superseding Indictment, 738-758). He did not have a written plea agreement.

Before sentencing, the parties initially contested most of Fata's guideline calculation, but they ultimately resolved most of the disputes. (6/16/05 Defendant's Sealed Sentencing Memorandum ("Def. Sent. Memo."), Ex. A, Sealed App'x at 382-84). One of the remaining disputes was the applicability of the adjustment in U.S.S.G. § 3B1.3 for abuse of trust or use of a special skill, along with the related question of whether Fata could receive an aggravating role adjustment under U.S.S.G. § 3B1.1. (Def. Sent. Memo. at 15-16, Sealed App'x at 329-30). After hearing from both parties, the district court found that Fata's conduct was most appropriately characterized as an abuse of trust, rather than as using a special skill. (R. 170: Tr., 2936). The district court's finding

meant that it could (and did) apply both the two-level adjustment in U.S.S.G. § 3B1.3 and an aggravating role adjustment in U.S.S.G. § 3B1.1. (*Id.*). After applying those adjustments, the district court calculated a total offense level of 42 and a guideline range of 360 months to life. (R. 170: Tr., 2937-38).

The district court then sentenced Fata within that guideline range—to 45 years in prison. (R. 161: Tr., 2503). Fata timely appealed. (R. 165: Notice of Appeal, 2513).

## Summary of the Argument

The district court did not clearly err in finding that Fata qualified for the adjustment in U.S.S.G. § 3B1.3 based on his abuse of trust. Fata violated the trust of his patients and insurers, and he even stipulated that § 3B1.3 could be justifiably applied to him based on his abuse of trust. And the plain language of the guidelines forecloses the rest of Fata's argument. The guidelines permit a district court to apply an aggravating role adjustment under U.S.S.G. § 3B1.1 in any case where an adjustment under § 3B1.3 is based, in whole or in part, on an abuse of trust—even where the defendant might also have used a special skill. *See* U.S.S.G. § 3B1.3.

The district court also did not abuse its discretion in receiving the written and oral statements that Fata's patients (or their family members) submitted during the sentencing proceedings. The confirmed victims had a right to submit statements under the Crime Victims' Rights Act, 18 U.S.C. § 3771, and the district court was permitted to hear from any other patients—even patients who had not been confirmed as victims—under 18 U.S.C. § 3661. The district court also permitted Fata to submit substantial rebuttal to those statements. And

Fata simply cannot demonstrate any prejudice here given the district court's ruling that it would not rely on the statements in determining Fata's sentence.

Finally, Fata cannot show plain error from the factual basis supporting his guilty pleas to the two money laundering counts. The district court received ample facts to support Fata's guilt prior to the entry of judgment—most notably, the timing of Fata's two checks to United Diagnostics while he was setting up the PET scan fraud there. Fata's plain error argument also fails because he only claims to want a "resentencing," not to withdraw his guilty pleas and go to trial. Because Fata has not even argued—much less proven—that "he would not have entered [his] plea[s]," he cannot show plain error. *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004).

## Argument

### I. The district court did not clearly err in applying the § 3B1.3 adjustment based on Fata's abuse of trust.

This Court reviews a district court's legal conclusions de novo and its factual findings only for clear error. *United States v. Bolds*, 511 F.3d 568, 579 (6th Cir. 2007). Here, the district court did not clearly err—or even err at all—in finding that Fata abused the trust of his patients and insurers. And based on that finding, the district court correctly determined that the guidelines permitted both the two-level adjustment in U.S.S.G. § 3B1.3 and the aggravating role adjustment in U.S.S.G. § 3B1.1.

Under § 3B1.3, a defendant's guideline range is increased by two levels if he either “abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense.” U.S.S.G. § 3B1.3. Where this two-level adjustment “is based *solely* on the use of a special skill, it may not be employed in addition to an adjustment under § 3B1.1 (Aggravating Role).” U.S.S.G. § 3B1.3 (emphasis added). Thus, by implication, where the adjustment in § 3B1.3 is based on either (1) abuse of trust alone, or (2) both abuse of trust and the use of a special skill, the district court

may apply the two-level adjustment in § 3B1.3 in addition to the aggravating role adjustment in § 3B1.1. *Id.*

Here, the district court did not err, much less clearly err, in finding that Fata engaged in an abuse of trust under § 3B1.3. Fata has consistently agreed that his scheme involved an abuse of trust. He even stipulated to it: “The parties agree that the government could prove, by a preponderance of the evidence, that Fata’s offense involved the abuse of a position of trust.” (Def. Sent. Memo, Ex. A ¶ 6, Sealed App’x at 383). He made a similar concession at the sentencing hearing. (R. 170: Tr., 2915 (“[O]ne could argue in this case the abuse of trust and that such an argument wouldn’t be without merit”)). He also reiterated it in his appeal brief. (Fata Br. at 19 (“[O]ne could certainly make a case for the proposition that Dr. Fata may have abused positions of trust with both insurers and patients.”)).

Fata’s conduct supported those concessions. Fata violated his patients’ trust in the most egregious possible manner. He violated every part of the Hippocratic Oath: acting for his own good, doing harm, prescribing deadly drugs for his own gain, giving advice that could hasten death, and entering his patients’ lives with corrupt purpose.

Those patients trusted Fata with their lives—and he poisoned them. That conduct, even standing alone, more than supported the district court’s finding here. *See United States v. Singh*, 54 F.3d 1182, 1193 & n.7 (4th Cir. 1995) (explaining that the abuse-of-trust component of § 3B1.3 encompasses a doctor who “abuse[s] the unique relationship between [himself] and his patient”).

Fata also abused the trust of the insurers he defrauded.

Physicians who defraud their insurers are accountable under § 3B1.3 for abusing that trust as well. *See United States v. Hoogenboom*, 209 F.3d 665, 671 (7th Cir. 2000); *United States v. Adam*, 70 F.3d 776, 782 (4th Cir. 1995). Insurers entrust physicians with considerable discretion in exercising their professional responsibilities, and they expect physicians to ensure the integrity of their claims. *See Hoogenboom*, 209 F.3d at 671; *Adam*, 70 F.3d at 782. As this Court has explained, “[a] practicing physician enjoys perhaps the highest level of discretion afforded any professional.” *United States v. McCollister*, 96 F. App’x 974, 976 (6th Cir. 2004). Fata violated that trust, submitting fraudulent claims for chemotherapy and other dangerous treatments that his patients simply did not need.

Fata's primary argument on appeal, moreover, rests on a misreading of the guidelines. He appears to argue that where both "use of a special skill" and "abuse of trust" apply to a defendant's conduct, the district court is required to pick the best rationale before applying § 3B1.3. (Fata Br. at 19). Nothing in the guidelines supports that reading. Rather, where both rationales apply, the district court simply applies § 3B1.3 and increases the defendant's guideline calculation by two levels. *See* U.S.S.G. § 3B1.3; *United States v. Sawaf*, 129 F. App'x 136, 145 (6th Cir. 2005) (noting that the district court applied the two-level increase under § 3B1.3 where the defendant both abused a position of trust and used a special skill). The only limitation is that if the adjustment in § 3B1.3 is based "solely" on the use of a special skill, the aggravating role adjustment in U.S.S.G. § 3B1.1 cannot also be imposed. U.S.S.G. § 3B1.3. And here, by Fata's own admission, the adjustment in § 3B1.3 was not based "solely" on the use of a special skill. The district court therefore did not err in applying both the two-level adjustment in § 3B1.3 and the aggravating role adjustment in § 3B1.1.

Moreover, even if the district court were required to “choose” between the two rationales in § 3B1.3, it did not clearly err in finding that “abuse of trust [was] more appropriate given the testimony in this case, the facts of this case in terms of the trusting role.” (R. 170: Tr., 2936). If there was ever a case that involved an abuse of trust, it was Fata’s. Fata violated the trust of his patients, diagnosing them with deadly diseases they did not have. He violated their trust again by poisoning them with treatments they did not need. And he violated their insurers’ trust by billing for it. Fata’s guideline calculation should—and did—reflect that reality.

**II. The district court properly accepted statements from Fata’s patients and their family members, and Fata cannot demonstrate any prejudice that would justify a resentencing.**

For two independent reasons, Fata’s case should not be remanded for resentencing based on his patients’ written and oral statements at sentencing. First, those statements were properly submitted to the district court under both the Crime Victims’ Rights Act and 18 U.S.C. § 3661. Second, the district court expressly stated that it was not considering those statements in determining Fata’s sentence. Fata’s sentence should therefore be affirmed.

**A. The district court was permitted to hear the patients' statements under the Crimes Victims' Rights Act and 18 U.S.C. § 3661.**

Government investigators and medical experts were able to confirm—and Fata stipulated—that his mistreatments involved 553 individual patient victims. (U.S. Sent. Memo. at 56, Sealed App'x at 66). Because of the sheer breadth of Fata's scheme, and because more than 17,000 patients were treated at his offices, there will always remain an unconfirmed number of additional victims. (PSR ¶¶ 57, 58). As a result, the government sought to permit Fata's patients (or their family members) to tell the district court about their experiences, even if they were not one of the 553 "confirmed" victims specifically identified during the investigation. Patients and family members were permitted to submit written statements prior to sentencing. The government then forwarded copies of the statements to defense counsel and the district court. (R. 171: Tr., 2974-75).

Although the district court accepted all of the statements written by Fata's patients and their family members, it explained that it would filter and screen them according to the evidence presented during the sentencing proceedings: "So basically, I'm going to be receiving the

statements which I have already received, plus the testimony and will look through the prism of indicia of reliability.” (R. 171: Tr., 2972; *see also id.* at 2986, 2988-89, 2992-93). To assist the court, the government submitted a spreadsheet that listed the name of the person writing each statement, the name of the patient identified in the statement, whether the patient was a “confirmed” victim of the investigation, and, if so, how the patient had been confirmed as a victim. (Victim Spreadsheet (Written Statements), Sealed App’x at 310-13).

Before the sentencing hearing, the district court also addressed Fata’s arguments concerning the reliability of the statements, and the court explained how it would review them. The court stated that it would hear any statements under its traditional discretion to receive evidence at sentencing, but that it would also subject the statements to the minimum standard of reliability under *Townsend v. United States*, 334 U.S. 736, 741 (1948), so that Fata’s sentence would not be founded on “misinformation of a constitutional magnitude.” (R. 156: Tr., 2292-95).

Most of Fata’s five-day sentencing hearing involved expert testimony, guideline disputes, and arguments from the attorneys. But

on one of those days, the district court also spent several hours hearing oral statements from Fata's patients. (R. 168: Tr., 2528-2615). Twenty were individual patients or their relatives, and one was the representative of victim Blue Cross Blue Shield. (*Id.*). At the court's request, the government specified whether or not each speaker was the victim in a count to which Fata pleaded guilty. (R. 168: Tr., 2522-23, 2526). Only two of the oral statements came from family members who were not confirmed as victims by the government or told by a second opinion doctor that the patient's treatments were inappropriate. (Victim Spreadsheet (Oral Statements), Sealed App'x at 314).

The district court appropriately received all of those written and oral statements under the Crime Victims' Rights Act or 18 U.S.C. § 3661. The Crime Victims' Rights Act guarantees that crime victims are accorded certain rights, including:

- "The right to be reasonably heard at any public proceeding in the district court involving . . . sentencing . . .";
- "The right to proceedings free from unreasonable delay"; and
- "The right to be treated with fairness and with respect for the victim's dignity and privacy."

18 U.S.C. § 3771(a)(4), (7), (8). The government is obligated under the Act to ensure that victims are accorded those rights. 18 U.S.C.

§ 3771(c)(1). And any of Fata’s confirmed victims were allowed to make statements under that Act.

In addition, under 18 U.S.C. § 3661, a district court faces “[n]o limitation” on the information that it may consider at sentencing:

No limitation shall be placed on the information concerning the background character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

18 U.S.C. § 3661.

The Crime Victims’ Rights Act does not cabin a district court’s broad discretion under § 3661. *United States v. Leach*, 206 F. App’x 432, 434-35 (6th Cir. 2006); *see also United States v. Griggs*, 241 F. App’x 153, 155 (4th Cir. 2007). It simply identifies a certain class of people—victims—who have the *right* to speak at sentencing. *Leach*, 206 F. App’x at 435; 18 U.S.C. § 3771(a). But even where a speaker does not qualify as a victim—and therefore does not have the right to speak under the Crime Victims’ Rights Act—“the Act [does] not alter (or, more importantly, limit) a district court’s traditionally broad discretion to

consider ‘a wide variety of factors’ at sentencing.” *Leach*, 206 F. App’x at 435 (quoting *Wisconsin v. Mitchell*, 508 U.S. 476, 485 (1993)). Courts of appeals have thus upheld district courts’ decisions permitting a non-victim to make a statement against the defendant at sentencing. *See, e.g., United States v. Straw*, 616 F.3d 737, 740-41 (8th Cir. 2010) (finding no error where a non-victim cousin of the defendant provided a statement that the defendant had defrauded their 91-year-old grandmother); *United States v. Spiwak*, 377 F. App’x 319, 323-24 (4th Cir. 2010) (finding no abuse of discretion where the government presented a statement from a woman who alleged that the defendant abused her as a child).

That same reasoning controls here—and permitted the district court to hear from all of Fata’s patients (or their families) under 18 U.S.C. § 3661, even where those patients had not been confirmed as victims. Indeed, evaluating the information in those statements was no different than evaluating any other information about a defendant’s background, character, and conduct—something district courts do every day. As long as the defendant has notice and an opportunity to be heard, it is well established that the judge has largely unlimited

discretion “either as to the kind of information he may consider, or the source from which it may come.” *United States v. Tucker*, 404 U.S. 443, 446 (1972). And here, the district court also asked the government to specify whether each patient had been confirmed as a victim. Those additional precautions assisted the district court in evaluating the reliability of each statement and protected Fata from any potential reliance on erroneous information.

Fata was also afforded sufficient opportunities to rebut the statements. The defense had three months to review the written statements. (R. 171: Tr., 2974-75, 2992 (noting that the defense “had these letters for a long time”)). The defense had time to undertake a “random sampling” by its expert, and it submitted an extensive rebuttal that attempted to show that Fata’s mistreatment was not as widespread as the statements suggested. (Def. Sent. Memo. at 18-33, Ex. C (Dr. Goldberg Report), Sealed App’x at 332-47, 385-403; R. 171: Tr., 2966, 2991). The defense even made the same argument below that Fata now claims he needs a remand to raise again: that, because his expert approved his treatment of some of the solid tumor patients who wrote statements, the district court should have presumed that the vast

majority of his patients were treated properly for their solid tumor cancers. (Def. Sent. Memo. at 18-33, Sealed App'x at 332-47).

Fata's argument was, and remains, incorrect. He mistreated solid and non-solid tumor patients alike, and his guilty pleas and stipulations contradicted his own expert's previous analysis. (See U.S. Sent. Resp. at 14-22, Ex. A, INT-1203 ¶ 3, INT-1205 ¶¶ 1-4, INT-1206 ¶ 1, INT-0445 ¶¶ 2, 5, INT-0446 ¶¶ 1-2, Sealed App'x at 272-80, 297, 299, 300, 295, 296; R. 156: Tr., 2377-2383, 2444). And a different medical expert, who reviewed 100 of Fata's patient files, found that Fata had mistreated every single patient in some fashion. (R. 169: Tr., 2664-65).

Nevertheless, and as explained below, Fata's rebuttal and argument may well have had its intended effect: the district court ultimately decided that it would not base Fata's sentence on any statements submitted by his patients or their family members.

**B. Fata cannot show any prejudice given that the district court did not rely on the statements in imposing sentence.**

Fata's argument for a remand fails for another, even simpler reason: the district court decided not to rely on the patients' statements in determining Fata's sentence. The district court explained that it was "unnecessary to rely on them," because the expert testimony and Fata's

guilty pleas already “provide[d] a basis for the sentencing.” (R. 161: Tr., 2499; *see also* R. 178: Stipulation to Correct the Record (correcting a typo in the original record), 3025; R. 161-1: Errata Sheet, 3026 (same)).

Fata is left, therefore, with the untenable argument that the district court was not capable of disregarding those statements. The Supreme Court has squarely rejected Fata’s argument in the analogous context of bench trials: “[J]udges routinely hear inadmissible evidence that they are presumed to ignore when making decisions. It is equally routine for them to instruct juries that no adverse inference may be drawn from [certain types of evidence or lack of evidence]; surely we must presume that they follow their own instructions when they are acting as factfinders.” *Harris v. Rivera*, 454 U.S. 339, 346 (1981).

The presumption that judges can, and do, disregard prejudicial information when sitting in judgment of a defendant has been well settled before and after *Harris*. Trial courts are presumed to consider only properly admitted and relevant evidence in rendering their decisions and to give no weight to improper evidence. *United States v. McCarthy*, 470 F.2d 222, 224 (6th Cir. 1986); *see also United States v. Castro*, 413 F.2d 891, 895 n.7 (1st Cir. 1969) (“A jury may have

difficulty in disregarding extrajudicial statements implicating a defendant. We will not presume that a judge suffers from the same disability. Indeed, the presumption is to the contrary.”). This Court has recognized a trial judge’s ability to “compartmentalize . . . in his mind” co-defendants’ confessions implicating one another, holding that *Bruton v. United States*, 391 U.S. 123 (1968), does not apply to bench trials. *Rogers v. McMackin*, 884 F.2d 252, 255 (6th Cir. 1989); *see also Johnson v. Tennis*, 549 F.3d 296, 300 (3d Cir. 2008) (collecting similar cases).

The cases Fata relies upon are distinguishable. In *Griffin*, the government breached a plea agreement, opposing a guideline reduction that it had agreed not to oppose, and the district court then sentenced the defendant without that guideline reduction. *United States v. Griffin*, 510 F.3d 354, 361-66 (2d Cir. 2007). The court of appeals was thus given reason to question the district court’s assurances that it had not relied on the government’s statements, because the court had sentenced the defendant in accordance with those statements. *Id.* at 366. The same was true in *Reese*, Fata’s other case, where the district court gave conflicting statements about whether it had relied on information that

the government had improperly submitted *ex parte* before sentencing. *United States v. Reese*, 775 F.2d 1066, 1078 (9th Cir. 1985).

Here, in contrast, nothing in the record provides any reason to question the district court's assurances. The district court understood well that some of the statements involved patients who were not confirmed as victims, but nevertheless had experiences to share about Fata's character and conduct. The district court also emphasized that it understood how to compartmentalize the different statements:

It is my job to follow the law and to rely on what I feel is appropriate and to not rely on what I feel is not appropriate . . . every judge throughout the year has motions to suppress where you hear things and then it's a bench trial and you grant the motion to suppress, you don't go in front of another judge, you heard something that shouldn't be heard. We all do this in making rulings. And so . . . I've got a job to do . . . I will put in what I think is appropriate, and I will not utilize what I think is inappropriate . . . You've been saying all along, that it's not possible, but I can. And other judges can. It's not that I'm super judge . . . that's our job and that's what I'll do.

(R. 168: Tr., 2639-2641). Those rulings demonstrated that the district court recognized what it was doing and was fully capable of carrying it out. *See Rogers*, 884 F.2d at 256 (holding *Bruton* does not apply where judge in bench trial "recognized his duty to separate [co-defendants'] statements out" and said "he would be capable of doing so"). And the

district court then made patently clear that it was not relying on the patients' statements as a basis for Fata's sentence. (R. 161: Tr., 2499; *see also* R. 178: Stipulation to Correct the Record (correcting a typo in the original record), 3025; R. 161-1: Errata Sheet, 3026 (same)). So even if this Court were to find or assume that the district court abused its discretion in receiving any of the statements, those statements simply did not affect Fata's sentence.

**III. A sufficient factual basis supported each of Fata's pleas to the money laundering charges.**

Over one year after his guilty pleas, Fata now claims for the first time that his guilty pleas to promotional money laundering (counts 22 and 23) were not supported by a sufficient factual basis, and he requests a "resentencing" without those counts. (Fata Br. at 45-55). As Fata concedes, he is raising this issue for the first time on appeal, so he must demonstrate reversible plain error. *United States v. Vonn*, 535 U.S. 55, 58-59 (2002); *United States v. Mobley*, 618 F.3d 539, 544 (6th Cir. 2010).

Fata's appeal fails to acknowledge that the Court may consider the entire record, including proceedings that occurred after his plea hearing, to determine whether there was a factual basis. Federal Rule

of Criminal Procedure 11(b)(3) directs the district court to make the factual basis determination “before *entering judgment*.” *Mobley*, 618 F.3d at 545 (emphasis added) (quoting Rule 11(b)(3)); *see also United States v. Dominguez Benitez*, 542 U.S. 74, 80 (2004). Thus, a factual basis need not necessarily be established at the plea hearing. *Mobley*, 618 F.3d at 545. Any deficiencies at the plea hearing may be cured by additional facts submitted to the district court, such as those contained in the PSR. *United States v. Bennett*, 291 F.3d 888, 897 (6th Cir. 2002).

To sustain a conviction for money laundering under 18 U.S.C. § 1956(a)(1)(A)(i), the defendant must have (1) conducted a financial transaction, (2) which defendant knew involved proceeds of unlawful activity, (3) with the intent either to promote or further a specified unlawful activity. *United States v. Reed*, 264 F.3d 640, 650 (6th Cir. 2001). Fata challenges only the factual basis for the last element: intent to promote the carrying on of a specified unlawful activity. (Fata Br. at 49).

The case law is clear that this intent may be inferred when a defendant supplies an unlawful activity with funds or supplies to ensure its operations and continuation. *See, e.g., United States v. Haun*,

90 F.3d 1096, 1100-1101 (6th Cir. 2011) (defendant intended to promote unlawful activity when deposits into a bank account supported the past and future unlawful activity), *overruled in part on other grounds by United States v. Cosgrove*, 637 F.3d 646 (6th Cir. 2011); *United States v. Parker*, 364 F.3d 934, 948 (8th Cir. 2004) (intent element met when defendant uses proceeds to purchase supplies that were part and parcel to and would further his scheme); *United States v. Thorn*, 317 F.3d 107, 133 (2d Cir. 2003) (the deposit of laundered funds is made with the intent to promote the specified underlying unlawful activity when it continues the illegal activity or is essential to the completion of the scheme).

The district court here was presented at the plea, as well as after the plea, with more than sufficient facts and circumstantial evidence to show that Fata intended to promote his PET scan fraud when he deposited two checks into the United Diagnostics account, drawn on funds from his infusion fraud at Michigan Hematology Oncology. Fata admitted at his plea hearing that he used United Diagnostics to bill Blue Cross Blue Shield for an unnecessary PET scan on July 11, 2013,

only nine days after depositing the second check from Michigan

Hematology Oncology:

MR. ANDREOFF: Doctor, would you give us a recitation of the facts concerning Count 17.

THE DEFENDANT: I ordered at PET . . . scan for M.C. that was performed by my company, United Diagnostics, July 11th, 2013. I knew that the PET scan was medically unnecessary; therefore, at the time I submitted the claim to the Blue Cross I knew that the claim was false.

THE COURT: Okay. And you billed \$4,573; is that correct, sir?

THE DEFENDANT: Correct.

(R. 111: Tr., 1126).

Fata then described his promotional money laundering offenses involving United Diagnostics:

THE DEFENDANT: As I previously stated in other counts, I submitted claims to various insurance companies and Medicare for unnecessary services and infusions through my company, Michigan Hematology Oncology. In 2013, I incorporated a new company, United Diagnostics, that would perform tests such as PET scan . . . United Diagnostics was funded in part using funds that I had earned through my submission of claims for unnecessary services. I had ordered that Michigan Hematology Oncology, specifically I deposited or caused the deposit of two checks from MHO to United Diagnostics --

THE COURT: From who?

THE DEFENDANT: Michigan Hematology Oncology to United Diagnostics on May 3rd, 2013 . . . and July 2nd, 2013,

THE COURT: Okay.

THE DEFENDANT: Each written in the amount of \$100,000.

THE COURT: Okay.

THE DEFENDANT: After United Diagnostics became operational, I submitted false claims . . . for certain patients for unnecessary PET scans through United Diagnostics.

(R. 111: Tr., 1129-30).

The district court properly found that Fata deposited the checks from Michigan Hematology Oncology with the intent to promote the PET scan fraud at United Diagnostics. The timing alone shows intent. Fata wrote the two checks on May 3, 2013, and July 2, 2013. (*Id.*). During that same time period—both before and after he wrote the checks—Fata was using Michigan Hematology Oncology to commit, and bill for, infusion fraud. (R. 111: Tr., 1112-1126).

The record also shows that, at the same time, Fata already knew that he would be using United Diagnostics to commit PET scan fraud. Months before United Diagnostics opened, Fata dramatically increased the percentage of his patients referred for PET scans, which

demonstrated that he was ordering unnecessary scans. (U.S. Sent. Memo., Ex. A INT-0210 ¶ 2, Sealed App'x at 137). When United Diagnostics had still not opened in April 2013, Fata began rescheduling his patients' tests, rather than sending them to another facility. (PSR ¶ 67; U.S. Sent. Memo., Ex. A INT-0085 ¶ 2, Sealed App'x at 120). He also told his staff to lie to patients about whether they could get the scans elsewhere. (U.S. Sent. Memo., Ex. A INT-0211 ¶ 2, INT-1316 ¶ 22, Sealed App'x at 138, 205).

Then, once United Diagnostics opened in July 2013, Fata instantly began using it to conduct and bill for unnecessary tests. (R. 111: Tr., 1126). M.C.'s unnecessary test, for instance, occurred on July 11, 2013, immediately after United Diagnostics opened its doors and only *nine days* after Fata deposited the second money-laundering check into the United Diagnostics account. (R. 111: Tr., 1126, 1129-30). That timing was no coincidence. It confirmed that Fata not only deposited the checks to get United Diagnostics up and running, but also did so with the intent to use United Diagnostics—and the funds supporting it—to commit PET scan fraud.

The PSR further confirmed that Fata was engaged in promotional money laundering. It stated, without objection, that Fata “admittedly funded [United Diagnostics] with money he fraudulently received from medically unnecessary treatment and/or services provided by [Michigan Hematology Oncology].” (PSR ¶ 69). Having agreed, time and again, that he engaged in money laundering, Fata cannot demonstrate error—much less show plain error—requiring that his money laundering counts be vacated.

Fata’s argument must be rejected for another reason as well. To establish reversible plain error under Rule 11, Fata must show a reasonable probability that he would not have pleaded guilty but for the alleged error. *Dominguez Benitez*, 542 U.S. at 83; *United States v. Taylor*, 627 F.3d 1012, 1018 (6th Cir. 2010). Here, Fata never actually asserts that he would not have entered his guilty pleas and would have gone to trial. Instead, he repeats at least three times—in very carefully crafted language—that the appropriate remedy would be to vacate those counts and remand for a “resentencing.” (Fata Br. at 14, 55, 56). That is not true: the appropriate remedy would be to remand for a trial or a new plea hearing on the money laundering counts. But Fata does

not ask for that. He just wants his money laundering counts to disappear, without any further court proceedings or mention of them. And because Fata has not even requested a trial on those counts—much less shown that “he would not have entered [his] plea[s]”—he cannot establish reversible plain error. *Dominguez Benitez*, 542 U.S. at 83.

### Conclusion

The judgment should be affirmed.

Respectfully submitted,

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Date: January 25, 2016

## **Certificate of Compliance with Rule 32(a)**

This brief complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 9,262 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook.

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## Certificate of Service

I certify that on January 25, 2016, I electronically filed this brief for the United States with the Clerk of the United States Court of Appeals for the Sixth Circuit using the ECF system, which will send notification of such filing to the following attorneys for the defendant:

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## Relevant District Court Documents

Appellee, the United States of America, designates as relevant the following documents available electronically in the district court's record, case number 2:13-cr-20600 in the Eastern District of Michigan:

<b>Record Entry No.</b>	<b>Document Description</b>	<b>PgID</b>
R. 66	Fourth Superseding Indictment	738-758
R. 111	Arraignment/Plea Hearing Tr. 09/16/14	1096-1139
R. 156	Sentencing Tr. 07/06/15	2287-2457
R. 158	Judgment	2459-2468
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R. 165	Notice of Appeal	2513-2514
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R. 169	Sentencing Tr. 07/08/15	2643-2856
R. 170	Sentencing Tr. 07/09/15	2857-2945
R. 171	Status Conference Tr. 07/01/15	2946-2996
R. 178	Stipulation to Correct the Record	3025
R. 161-1	Errata Sheet	3026
n/a	Presentence Report	

CASE NO. 15-1935

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

FARID FATA,  
*Defendant-Appellant.*

**On Appeal from the United States District Court  
for the Eastern District of Michigan  
Southern Division**

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**DEFENDANT-APPELLANT'S REPLY BRIEF**

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ORAL ARGUMENT REQUESTED

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## **RESPONSE TO GOVERNMENT’S STATEMENT OF THE CASE**

Since Dr. Fata is not challenging the substantive reasonableness of his sentence, it is difficult to see any legitimate need for the government’s extensive discussion of the details of the allegations of medical misconduct which it leveled against him. That discussion is not, on the other hand, surprising, given the government’s history of inflammatory rhetoric in this case - including the accusation, made in its 95-page sentencing memorandum, seeking a sentence of 175 years in prison, that Dr. Fata “is the most egregious fraudster in the history of this country.” Sealed App’x, pp. 11, 104.

As is inherent in this kind of argumentative overreaching, not all of the government’s allegations will survive any kind of meaningful scrutiny. Because most of the specifics of the government’s claims are simply irrelevant to the legal issues presented, and because they are confident that the Court will not be distracted from the merits of those issues by the corrosive nature of those claims, the writers will not undertake a point-by-point traverse, but, by way of example, and to put things in something approaching a proper perspective, will offer some brief rejoinder to the government’s claims regarding two of the first three patients discussed by the government, J.M. and R.S..

Referring to an HHS memorandum of interview of J.M., the government states that prior to receiving unnecessary chemotherapy, “[J.M.] was in good health, walking

two miles, three times a week, and regularly bowling,” and that after (and supposedly as a result of) his treatment, his “health deteriorated significantly.” Government Brief, p. 6.

While acknowledging that J.M. received unnecessary treatments with the chemotherapy drug Velcade, Dr. Fata’s sentencing memorandum challenged the narrative of good health and iatrogenic decline, on the basis that “[a]n examination of his medical records, however, tells a different story:”

[J.M.] was referred to Dr. Fata by his internist, Dr. James Gibson, for anemia and his long standing MGUS.<sup>1</sup> When first seen by Dr. Fata, [J.M] reported that prior to seeing Dr. Fata “he became increasingly weak and fatigued over the last 4-6 weeks. Prior to the onset of fatigue, he was walking 2 miles up to three times a week. He feels unable to exercise now.” In fact, [J.M], in filling out his medical history, stated that he was suffering from fatigue. Thus, the side effects that [J.M.] claims were caused by Dr. Fata’s unnecessary Velcade treatments were the precise reason [J.M.] was referred to Dr. Fata in the first place and the symptoms he claims were caused by the Velcade are fully consistent with the anemia that caused Dr. Gibson to refer [J.M.] to Dr. Fata.

[J.M.] also blames his diminished kidney function on his Velcade treatments. An examination of his medical records, however, reveal that

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<sup>1</sup> “Monoclonal gammopathy of unknown significance (MGUS) is characterised by the presence of an abnormal protein in the blood that is produced by plasma cells. Plasma cells are cells in the bone marrow that normally produce antibodies to fight infection. . . . MGUS can be referred to as a benign condition as there is only a small risk that MGUS can develop into myeloma or a related blood disorder.” Leukemia Foundation, Monoclonal gammopathy of unknown significance (MGUS), <http://www.leukaemia.org.au/blood-cancers/myeloma/mgus>, as viewed February 1, 2016.

[J.M.] had decreased kidney function prior to receiving Velcade. His GFR was 47 prior to being placed on Velcade. A person with a GFR of 47 has severe kidney impairment. After starting the Velcade, his GFR remained relatively unchanged. It should also be noted that [J.M.] was suffering from other health problems such as hypertension which also impacted his heart disease. While heart failure has been linked to Velcade, the studies note that the incidence of heart failure due to Velcade is rare. Heart failure occurs in less than one of every ten thousand patients. [Honton B<sup>1</sup>](#), [Despas F](#), [Dumonteil N](#), [Rouvellat C](#), [Roussel M](#), [Carrie D](#), [Galinier M](#), [Montastruc JL](#), [Pathak A](#), *Bortezomib and heart failure: case-report and review of the French Pharmacovigilance database*, [See comment in PubMed Commons below](#)[Fundam Clin Pharmacol](#). 2014 Jun;28(3):349-52. doi: 10.1111/fcp.12039. Epub 2013 Jun 19.

Sealed App'x, pp. 350-351.

So too with respect to the patient R.S., as to whom the government claims that the (admittedly) unnecessary administration of the chemotherapy drug Zometa caused to lose all of his teeth. As explained in defendant's sentencing memorandum:

A review of [R.S.]'s medical and dental file, however, makes clear that [R.S.] had significant dental problems independent of the Zometa and that his loss of teeth was due to his poor dental hygiene and was not the result of the Zometa treatments.

When [R.S.] was seen on December 20, 2013 at the University of Michigan Dental School, an examination revealed that he had cavities in four teeth and five broken teeth. Indeed, the University of Michigan noted that [R.S.] admitted to having poor dental hygiene:

Patient reports having bad teeth for a long time and denied having had a regular dentist for a long time.

None of the aforementioned problems were related to his use of Zometa or related to the osteonecrosis of the jaw. Osteonecrosis of the jaw is a breakdown of the bone in the jaw. In [R.S.]’s case, the osteonecrosis of the jaw was only 1 x 1 cm and would not have caused any dental problems outside the area of the osteonecrosis. (See declaration of Dr. Earl Bogrow, D.D.S. attached as **Exhibit E**). Moreover, the dental records also state that [R.S.] had no tooth mobility which means that the teeth were intact and not loose. If the osteonecrosis of the jaw was responsible for his dental problems, you would expect to see a loosening of the teeth because of bone damage.

Although not diagnosed with osteonecrosis of the jaw at his initial visit to the University of Michigan dental clinic, [R.S.] was so diagnosed a month later by Dr. Gutierrez, a professor at the University of Michigan Dental School. Dr. Gutierrez recommended that all of his teeth be extracted with the exception of teeth 6 & 11. These extractions were caused, not by the osteonecrosis of the jaw, but by [R.S.]’s poor dental hygiene. The dental records make clear that his dental disease was pre-existing and unrelated to the osteonecrosis of the jaw. Dr. Fata suspended the use of Zometa while undergoing dental treatment. It should be noted that it was Dr. Fata who referred [R.S.] to the University of Michigan Dental Clinic because he was concerned about [R.S.]’s dental care.

Sealed App’x, pp. 348-350.

Dr. Fata forthrightly acknowledged and expressed his remorse for the conduct underlying the Health Care Fraud counts to which he pled guilty.<sup>2</sup> He has, throughout,

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<sup>2</sup> Thus, in the course of his allocution, Dr. Fata said, in part, the following:

Your Honor, I stand before you so ashamed of my action. That’s for me, from a successful doctor who -- who had excellent profile, to what I am today. I had a gift, and I violated the gift. . . . I have violated the medical oath, and I have caused anguish, hardship and pain to my patients and their families. I do not know what else I can do to heal their

acknowledged the seriousness of that conduct - indeed, in his sentencing memorandum, he sought a sentence of 25 years, which, he noted, “is very close to life in prison, given Dr. Fata’s life expectancy,” Sealed App’x, p. 378 - and he does not now seek to minimize it.

But the assignments of error he advances on appeal do not turn on whether or not he “poisoned his patients for profit,” as the government alliteratively alleges at page one of its brief, or the degree to which he resembles the caricature of evil the government seeks to draw throughout its submission. He trusts that the Court will not be distracted in its analysis of those issues by the government’s overheated rhetoric and overblown claims of wrongdoing.

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wound. I do not know what to do more to express my sorrow and shame . . . I misused my talents, and permitted the sin to enter me because of power and greed. . . . I also grossly abused the trust that my patients placed in me. They came to me seeking compassion and care. I failed them.

R. E. 161, Transcript, Pg ID 2487-2488.

## ARGUMENT

### I

THE TRIAL COURT ERRED IN ITS APPLICATION OF “ROLE IN THE OFFENSE” ENHANCEMENTS.

In weighing the government’s response to defendant’s arguments regarding the applicability of the abuse of trust/special skill enhancement set forth in U.S.S.G. § 3B1.3, the Court should bear in mind that the question before the trial court was *not* whether Dr. Fata should receive the two-level enhancement - indeed, he did not object to it - but rather whether the enhancement should be applied in such a way as to make him eligible for a further enhancement under § 3B1.1. It was the government, it should be remembered, that raised this issue, when it objected to the Probation Department’s failure to calculate a § 3B1.1 enhancement, and when it did, it did so in a way which is contradictory to the position it now advances.

Specifically, the government argued that the application of a § 3B1.3 enhancement under an “abuse of trust” theory would be “more appropriate” than under the “special skill” finding suggested by the Probation Department, and that Dr. Fata’s offense level would therefore also be subject to a four level enhancement under § 3B1.1(a), on the basis that he was the organizer or leader of “an otherwise extensive

kickback conspiracy.” *see, e.g.*, R. E. 135, Sentencing Memorandum, Pg ID 1336-1340.

The government argues at some length (and in the overheated fashion that has typified its advocacy in this case) that Dr. Fata certainly violated his patients’ trust, as well as that of the insurers, by “submitting fraudulent claims for chemotherapy and other dangerous treatments that his patients simply did not need,” government brief, pp. 27-28, and, as it notes therein, the defendant does not dispute those arguments. What it does *not* argue, however - and could not, one would think - was that these abuses of trust were particularly germane to the theory on which it sought the enhancement under § 3B1.1 - for Dr. Fata’s leadership role in a “kickback conspiracy.” And in so doing (or failing to do), the government simply fails to frame a meaningful response to the principal thrust of defendant’s argument. *See*, Brief on Appeal, pp. 19-22.

More significantly, perhaps, the government also seeks to reframe the issue which it initially framed below as a *choice* between alternative theories (special skills/abuse of trust), when, at page 29 of its response, it accuses Dr. Fata of “misreading” § 3B1.3:

*He appears to argue* that where both “use of a special skill” and “abuse of trust” apply to a defendant’s conduct, the district court is required to pick the best rationale before applying § 3B1.3. (Fata Br. at 19). Nothing in the guidelines supports that reading. Rather, where both rationales

apply, the district court simply applies § 3B1.3 and increases the defendant's guideline calculation by two levels. [Emphasis supplied].

Ever mindful of the principles of civility which both guide and limit appellate advocacy, the writers will eschew characterizing this argument as “disingenuous,” but would merely point out that the government should have no difficulty understanding the argument that the two bases for the § 3B1.3 enhancement should be read as alternatives to each other *because that was exactly the way the government framed the issue in the district court.*

Indeed, as noted above, this was *exactly* the way that the government's objection to the Presentence Investigation Report stated the question for the district court to decide. Indeed, in its Sentencing Memorandum the subheading relating to this issue read:

**C. Section 3B1.3: Abuse of Trust is More Appropriate Than Use of Special Skill**

R. E. 135, Sentencing Memorandum, Pg ID 1336. (Emphasis in original).

Unsurprisingly, that memorandum specifically presented the thrust of the government's quarrel with the Presentence Investigation Report as a choice between competing alternative theories:

The government objects to Probation's application of the special skill enhancement *rather than* the abuse of trust enhancement under Section 3B1.3.

*Id.*, at Pg ID 1337. (Emphasis supplied).

Nowhere in its pleadings, or in argument to the district court did the government take the position which it now does - that the court need not weigh the competing applicability of the two alternative theories of enhancement under § 3B1.3. Quite to the contrary, as the following colloquy between the district judge and government counsel illustrates, it consistently posited a *choice* between the two:

MS. DICK: Your Honor, I'll address them in turn. First the *abuse of trust versus special skill* and then the leadership role because I think they have to be taken in turn.

THE COURT: Well, one lets you coordinate; the other doesn't.

MS. DICK: Exactly. If the Court chooses to apply the special skill enhancement as probation has recommended, it forecloses the consideration of leadership. And we submit for two reasons the abuse of trust should be applied. The first and most important is that *it is the most relevant and it, in fact, is the most appropriate to this Defendant's crimes and what he did*. Second, of course, we don't see a reason to choose a special skill enhancement which we agree could apply also given that it would foreclose the consideration of his leadership role. So just going briefly to the Defendant's abuse of trust --

THE COURT: Let me just ask and I know you're aware of this, but the definition in 3B1.3 of special skill says, "...refers to a skill not possessed by members of the general public and usually requiring substantial education, training or licensing. Examples would include...doctors..."

MS. DICK: Absolutely. And we absolutely concede that special skill applies here. *We just believe the abuse of trust is the more appropriate of the two.*

R. E. 170, Transcript, Pg ID 2905-2906. (Emphasis supplied).

In light of all this, it is hardly surprising that the trial judge decided the question posed on the basis of the way that question was posed *by the government* - *i.e.*, whether or not “abuse of trust is more appropriate” than use of a special skill. *Id.*, at Pg ID 2936.

Whatever the merits of the government’s new position - and the only case it cites in support of that position, *United States v. Sawaf*, 129 Fed. Appx. 136 (6<sup>th</sup> Cir. 2005) is an unpublished decision of this Court in which the question was not even presented or discussed- the government’s attempt to change its position, and press an argument not made below, simply should not be countenanced.

As Judge Hardiman, writing for the Third Circuit in *United States v. Dupree*, 617 F.3d 724, 727-728 (3d Cir. 2010), put the matter:

I begin with the well-established proposition that arguments not raised in the district courts are waived on appeal. *See Steagald v. United States*, 451 U.S. 204, 209, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981). . . . Just as a defendant may not introduce new “theories of suppression” on appeal that were never argued below, *United States v. Lockett*, 406 F.3d 207, 212 (3d Cir.2005), the Government is “subject to the ordinary rule that an argument not raised in the district court is waived on appeal[.]” [*United States v. ] Stearn*, 597 F.3d [540,] 551 n. 11 [(3d Cir. 2010)] (citing *Steagald*, 451 U.S. at 209, 101 S.Ct. 1642).

This raise-or-waive rule is essential to the proper functioning of our adversary system because even the most learned judges are not

clairvoyant. *See United States v. Nee*, 261 F.3d 79, 86 (1st Cir.2001). Thus, we do not require district judges to anticipate and join arguments that are never raised by the parties. *See United States v. Griffiths*, 47 F.3d 74, 77 (2d Cir.1995). Instead courts rely on the litigants not only to cite relevant precedents, but also to frame the issues for decision. *See id.* (“The government was required to offer some argument or development of its theory. It failed to do so, and has therefore waived the issue.”).

*See also, United States v. Davis*, 751 F.3d 769, 777 (6<sup>th</sup> Cir. 2014) (“we will not consider this argument here because the government waived it below by failing to make it in the district court.”); *United States v. Piazza*, 647 F.3d 559, 565 (5<sup>th</sup> Cir. 2011) (“The Government failed to raise this argument in its response to the defendant's motion for a new trial or at the hearing on the motion in district court. . . . Thus, the Government has waived this argument.”)

The Court should, therefore, consider and decide the issue raised in defendant’s opening submission on the basis that it was framed by the government and decided by the district court, and, for the reasons set forth in that submission, should reverse and remand for resentencing.

II

THE DISTRICT COURT'S AGREEMENT TO ALLOW VICTIM IMPACT STATEMENTS FROM PERSONS WHOSE STATUS AS ACTUAL "VICTIMS" HAD NOT BEEN DETERMINED REQUIRES THAT DEFENDANT'S SENTENCE BE VACATED AND THE CASE REMANDED TO ALLOW HIM AN OPPORTUNITY TO PRESENT NECESSARY COUNTERVAILING EVIDENCE.

The writers acknowledge that the argument advanced here is an unusual one - that a trial judge's exposure to significantly inflammatory information, the reliability of which was impossible for him to test, requires a remand for further exploration of the facts notwithstanding the judge's profession that he did not rely on the material in the first place. That argument arises, however, out of an extremely unusual set of facts and circumstances, in which the trial judge's ability to fairly compartmentalize unusually prejudicial information was sorely tested, and compromised by his refusal to allow the defendant to present information necessary to allow him to reasonably evaluate the reliability of that information.

Unsurprisingly, the government seeks to minimize the issue of unreliability. Thus, the government claims, at page 33 of its brief, that "[o]nly two of the oral statements came from family members who were not confirmed as victims by the

government or told by a second opinion doctor that the patient's treatments were inappropriate."

The difficulty with this claim, however, is that, as it repeatedly complained, R. E. 171, Transcript, Pg ID 2959-2960, 2964-2965, the defense was never presented with any of these supposed "second opinions," and, in fact, as government counsel ultimately admitted, the government had not independently confirmed that any such opinions had in fact been given, much less what, or how accurate, they were, but that, instead, it relied solely on the statements of the alleged "victims" that they had, in fact, received them. *Id.*, at 2970-2971. Thus, the trial court had no way to weigh, much less verify, the reliability of the "victims'" claims. And, of course, as pointed out at pages 42-45 of defendant's opening brief, independent review of a random sample of the claims of the supposed "victims" revealed grave reason to doubt the reliability of a majority of those claims.<sup>3</sup>

In fact, as pointed out at pages 41-42 of defendant's original submission, and as reflected in defendant's exhibit J,<sup>4</sup> as to the vast majority of the supposed "victims"

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<sup>3</sup> A summary of the findings of that review, as well as the report of the independent examiner, may be found at pages 333-347 and 385-403 of the Sealed Appendix, respectively.

<sup>4</sup> Exhibit J was filed under seal in the trial court. It is a slightly modified version of the chart which appears at pages 310-313 of the Sealed Appendix filed by the government, but does not appear in that appendix. Accordingly, and for purposes

there was simply no information available to the trial judge which would have him to meaningfully weigh the reliability of their assertions of victimhood - and, as Judge Borman himself pointed out, “I’m not a doctor.” R.E. 171, Transcript, Pg ID 2986.<sup>5</sup>

Defendant does not argue, as pages 33-35 of the government’s brief seems to suggest, that the admission of the speakers’ or writers’ statements hinged on the application of the Crime Victims’ Rights Act, 18 U.S.C. § 3771.<sup>6</sup> Nor does the defendant quarrel with “the longstanding principle that sentencing courts have broad discretion to consider various kinds of information,” codified in 18 U.S.C. § 3661, *United States v. Watts*, 519 U.S. 148, 151 (1997), notwithstanding the government’s arguments in that regard. Government’s brief, pp. 35-36. Above and beyond these principles, however, is the supervening requirement of reliability, or, as expressed in *Tucker v. United States*, 404 U.S. 443, 447 (1972) that a sentence may not be

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of completeness and ease of access, defendant is filing it under seal with the Court, as a part of his own Sealed Appendix, at the same time it files this reply brief.

<sup>5</sup> Qualifying this remark, Judge Borman added: “but I'm reading, I'm learning from your side, from the Government's side, from statements, from documents that are filed in the case, and I will get further education from the Government's witnesses, from your witnesses.” The difficulty, or course, as pointed out at pages 41-45 of defendant’s opening submission, is that as to the vast majority of the supposed “victims,” including those who spoke at sentencing, this additional education would have added little, because their claims were not shown to have been meaningfully tested by anyone.

<sup>6</sup> Indeed, the Act itself provides that “[a] person accused of the crime may not obtain any form of relief under this chapter.” 18 U.S.C. § 3771(d)(1).

“founded,” even “in part upon misinformation of constitutional magnitude”<sup>7</sup> that is at issue here.

While the available evidence certainly suggests a great likelihood that the statements of the alleged “victims” *flooded* the trial judge with information which was *at least* in part incorrect, the more basic problem is that the information, which was of a character which was bound to influence the trial judge’s view of the case, was not subject to meaningful testing, which is the *sine qua non* of the cluster of rights and interests protected by the Due Process guarantee, and it is this guarantee which lies at the heart of defendant’s challenge, and the protections defined by the cases cited to

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<sup>7</sup> The government cites *Tucker* at pages 34-35 of its brief for the proposition that “[a]s long as the defendant has notice and an opportunity to be heard, it is well established that the judge has largely unlimited discretion ‘either as to the kind of information he may consider, or the source from which it may come.’”

The *Tucker* majority indeed wrote that “a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come,” *id.*, at 446, but was quick to point out that, given the inaccuracy found in that case, “these general propositions do not decide the case before us.”

The same may be said, *mutatis mutandis*, here, for a number of reasons, including the unknown, but likely, unreliability of the information presented to the district judge, and the fact that the defendant was denied a meaningful opportunity to engaging in the kind of testing that it called for. Indeed, if nothing else, the trial judge’s refusal to allow the defense the opportunity to undertake a detailed evaluation of the claims of the supposed “victims,” *see*, Defendant-Appellant’s Brief on Appeal, pp. 26-32, denied him the “opportunity to be heard” which the government seems to acknowledge was his right.

the district court, including *Gregg v Georgia*, 428 U.S. 153 (1976), *United States v. Tucker, supra*, *Williams v New York*, 337 U.S. 241 (1949), and *Townsend v Burke*, 334 U.S. 736(1948).

Unfortunately, the factual assertions of the government's brief only compound the problem. Thus, although the government argues, at page 37 of its brief, that the distinction the defense drew in the court below and here between solid tumor and hematology patients is "incorrect," the record does not support this claim:

- The material to which it first cites, set forth in a response to the defendant's sentencing memorandum was never presented in open court, or otherwise made subject to meaningful testing - and, of course, nothing in that memorandum, or in the government's brief on appeal, in any way contradicts the import of the fact, pointed out at page 44, n. 27, or defendant's opening submission, and at page 33 of the sentencing memorandum filed in the district court, Sealed App'x p. 347, that a physician's treatment of solid tumor patients is ordinarily subject to peer review by a hospital "tumor board;" and
- Neither does the government's assertion in support of this claim that "a different medical expert, who reviewed 100 of Fata's patient files, found that Fata had mistreated every single patient in some fashion," government's brief, p. 37, support this claim, because as the cross-examination of that expert, David Steensma, made clear, virtually *none* of the he examined were of solid tumor patients, even though solid tumors account for the vast majority of cancers:

Q. Out of the 100 patients that you reviewed, how many were solid tumor patients?

A. All of the patients that I reviewed had blood disorders. There were just a few that were sent right at the end, less than five that were solid tumor patients.

Q. You know -- in a typical community practice, what percent would be solid tumors, would you estimate?

A. Probably at least 80 percent in a typical community practice, the most common ones being breast, lung, colorectal and prostate.

R. E. 169, Transcript, Pg ID 2837.

The government suggests that the decision of the Supreme Court in *Harris v. Rivera*, 454 U.S. 339 (1981) represents a “rejection” of the defendant’s argument that the trial judge could not have actually (as opposed to aspirationally) gone uninfluenced by the statements of the alleged “victims.” Government’s brief at 8. This assertion is apparently based on the *Harris* majority’s statement that, just as judges guide juries with curative instructions about evidence which should not have been heard in the first place, then “surely we must presume that they follow their own instructions when they are acting as factfinders.” *Id.*, at 46.

Unquestionably this is ordinarily the case, but few presumptions are irrebuttable. Indeed, as the analogy to *Bruton v. United States*, 391 U.S. 123 (1968) in the arguments before Judge Borman, and at pages 34-35 of defendant’s opening

brief suggest, just as in the case of the similar presumption ordinarily applied to jurors - that they can and do follow instructions, including curative instructions - “that presumption may be overcome,” *Williams v. Swarthout*, 771 F.3d 501, 507 (9<sup>th</sup> Cir. 2014), where “there is an overwhelming probability” that the factfinder will be unable to do so, “and a strong likelihood that the effect of the evidence would be devastating to the defendant.” *Greer v. Miller*, 483 U.S. 756, 766 n. 8 (1987) (internal quotations omitted). Defendant suggests that that is the case here.

In so doing, defendant takes no issue with the Circuit precedent set forth at pages 38-39 of the government’s brief, or the sincerity of Judge Borman’s comments and intentions, alluded to at page 40, but merely suggests that the situation in the case is unique, and presented a unique challenge that not even a well-meaning and sincere jurist could, as a practical matter, be expected to overcome without the information necessary to put the extremely disturbing claims in perspective.

This is, of course, an extremely fact-bound assertion. To test it, the Court should examine the submissions of the persons claiming to have suffered at Dr. Fata’s hands in detail - certainly, the excerpts of the testimony set forth at pages 37-40 of defendant’s opening brief, but, ideally, the entirety of the transcript of that day’s proceedings, R. E. 168, Transcript, Pg ID 2528-2615, and also to review, or at least sample, the 638 pages of the letters, photographs, and other documents submitted to

the trial court under the supposed aegis of 18 U.S.C. § 3771, all of which are contained in Defendant's Sealed appendix, which is being filed along with this brief.

The weight of these submissions resides not so much in the individual stories they tell - although the stories themselves are at time gripping - as much as they are in the wellsprings of emotion they represent, and, of course, in their remarkable volume. Over and over, for pages and pages on end, the writers claim to have had their own, and the lives of their loved ones and families ruined and diminished in various ways by a man described over and over as a monster. No one with a heart bigger than a mustard seed could read them and not be touched. And no one so moved could fail to respond, at least on some level, to the fact that, *en masse*, they laid the blame for the suffering at Dr. Fata's door.

It is of course difficult (and perhaps pointless) to try to quantify suffering, especially when viewed in hindsight, or through any of the various lenses which may have been brought into play here, and it is not defendant's position that he should have been given a greater opportunity to litigate precisely *how much* each of the respondents or their loved ones had suffered, or exactly *how much* of that suffering was attributable to him.<sup>8</sup> He does, however, maintain that he should have been - but

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<sup>8</sup> The writers do not mean in any way to demean or dismiss the feelings or perceptions of the respondents, but suggest instead that those perceptions may have been distorted by their circumstances, and, as has been said, "the most dangerous

was not - given a meaningful opportunity to supply Judge Borman with a body of countervailing information, which would have put the enormously troubling body of information supplied by the respondents in some proper context.

While the writers understand the gravity of the interest in finality - from both a practical and institutional point of view - in the end, one wonders, what harm would it do to for the trial judge another chance to examine his sentencing decision in the light of a full factual record? It would involve more work for all concerned (including, of course, the undersigned), but would insure that the sentence upon which Judge Borman ultimately settled is one that truly serves the ends of the sentencing process, fully complies with Due Process protections, and is based on the best, best informed, and most reliable evaluation of the factual matrix.

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untruths are truths slightly distorted.”

### III

THE DISTRICT COURT ERRED IN ACCEPTING DEFENDANT’S PLEAS OF GUILTY TO MONEY LAUNDERING CHARGES IN THE ABSENCE OF A SUFFICIENT FACTUAL BASIS TO SUPPORT THOSE PLEAS.

The government argues, first, that because F. R. Cr. P. 11(b)(3), “Determining the Factual Basis for a Plea,” specifically provides that the determination of a factual basis must be made “[b]efore entering judgment on a guilty plea,” rather than before accepting it, the question of whether the record adequately supports the plea is not limited to the plea colloquy itself. Government brief, pp. 41-42. The case law certainly supports that assertion, *see., e.g., United States v. Mobley*, 618 F.3d 539, 545 (6<sup>th</sup> Cir. 2010), although it is to be noted that in the case at bar, Judge Borman actually (if inaccurately) made the required findings at the time of the plea colloquy itself. R. E. 111, Transcript, Pg ID 1131.<sup>9</sup>

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<sup>9</sup> Specifically, the trial judge there found as follows:

THE COURT: The Court finds Defendant's plea as to Count 22 is knowingly, freely, voluntarily made. The elements of the offense to which he pleads guilty have been made out by his statements in court. Accept the plea to Count 22.

\* \* \*

THE COURT: The Court finds Defendant's plea as to Count 23 is knowingly, freely, voluntarily made. The elements of the offense to

As noted in defendant's opening submission, "promotional" money laundering, as charged in Counts 22 and 23, is subject to "stringent mens rea requirement," *United States v. Trejo*, 610 F.3d 308, 314 (5<sup>th</sup> Cir. 2010), which is, in fact "the 'gravamen' of a § 1956(a)(1)(A)(i) violation," citing *United States v. Carcione*, 272 F.3d 1297, 1303 (11<sup>th</sup> Cir.2001). And nothing in the factual record cited by the government at pages 45-47 of its brief comes even close to satisfying it - that is, as proving it "as an independent fact" rather than presuming it "from the commission of the unlawful act." *United States v. Cortes-Caban*, 691 F.3d 1, 37 (1<sup>st</sup> Cir. 2012).

While some cases, including this Court's decision in *United States v. Mobley*, *supra*, have held it appropriate, in weighing factual basis challenges, to consider the information furnished by a Presentence Investigation Report, in this case, the Report, including the passage from Paragraph 69 set forth at page 47 of the government's brief, does not in any way address the critical *mens rea* issue, stating only that the defendant "admittedly funded [United Diagnostics] with money he fraudulently received from medically unnecessary treatment and/or services provided by [Michigan Hematology Oncology]."

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which he pleads guilty have been made out by his statement in court.  
And that also took place in Oakland County as well, correct?

The rest of the government's arguments, which suggest that purpose can be inferred from the temporal proximity of the offenses to which Dr. Fata pled guilty, are mere exercises in *ipse dixit*, and suffer from the logical fallacy *post hoc ergo propter hoc* ("after this, therefore because of this"), and fail to supply an appropriate basis for the required finding of "an independent fact." *United States v. Cortes-Caban, supra*.

Finally, the government argues that the defendant cannot prevail on "plain error" review, based on language from the supreme Court's decision in *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004) to the effect that "a defendant who seeks reversal of his conviction after a guilty plea, on the ground that the district court committed plain error under Rule 11, must show a reasonable probability that, but for the error, he would not have entered the plea. Government brief, p. 47.

Such a rule makes a good deal more sense in a case like *Dominguez Benitez*, which involved a failure to adequately advise a defendant of the consequences of his plea than it does here, where the issue is whether the factual record adequately supports the defendant's plea-based conviction. Still, defendant concedes that in *United States v. Taylor*, 627 F.3d 1012, 1018 (6<sup>th</sup> Cir. 2010), cited by the government, the Court did apply the *Dominguez Benitez* rule in the context of challenges to a plea's

factual basis, noting that “plain error review requires a heightened showing of prejudice.” *Ibid.*

At the same time, it hardly strains credulity to suggest that a defendant, including Dr. Fata, “would not have pled guilty to a statutory offense that subjected him to a prison sentence<sup>10</sup> if he had realized that the factual basis relied on by the court and the government to support the conviction on that count failed to show that his conduct violated the statute.” *United States v. Garcia-Paulin*, 627 F.3d 127, 134 (5<sup>th</sup> Cir. 2010). Moreover, as Judge Torruella observed, dissenting in *United States v. Caraballo-Rodriguez*, 480 F.3d 62, 87 (1<sup>st</sup> Cir. 2007), even under a “heightened” standard, “[i]t is hard for me to see how [the defendant] would not be prejudiced, or the public reputation of judicial proceedings would not be adversely impacted if we affirm his conviction without any factual basis to support it.”

Defendant’s argument in regard to remedy is premised on the less-than-obscure notion that a conviction premised on an insufficient factual basis simply cannot stand - however, if the Court is persuaded by the government’s remedy argument, at the very

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<sup>10</sup> It may be noted in this connection that, not only did the money laundering convictions result in a two-level increase in Dr. Fata’s offense level, R. E. 170, Transcript, Pg ID 2938, but that as to Count 22, Judge Borman imposed a sentence of 240 months, to run consecutively to all other counts. R. E. 158, Judgment, Pg ID 2461.

least the matter should be, as the government suggests, remanded “for a trial or a new plea hearing on the money laundering counts.” Government brief, p. 47.

## CONCLUSION

Because the trial judge erred in accepting Dr. Fata's pleas of guilty to money laundering under 18 U.S.C. § 1956(a)(1)(A)(i), Dr. Fata's convictions and sentences for Counts 22 and 23 of the Fourth Superseding Indictment should be vacated, as well as his sentences as a whole, and the case remanded for resentencing - or, at least for a new plea hearing.

Because the trial court erred in its application of the "Role in the Offense" enhancements, and because proper application of these provisions would have reduced his Adjusted Offense Level by two, this error was not harmless, and requires the vacation of Dr. Fata's sentences.

Because the trial court improperly permitted the presentation of deeply disturbing narratives from supposed "victims" of Dr. Fata's misconduct under circumstances that did not allow the defense to meaningfully test their accuracy and truthfulness, where the circumstances strongly suggested the likelihood that that testing would have revealed significant flaws in their reliability, the Court should vacate Dr. Fata's sentences and remand with instructions to allow the defense to present the evidence it sought to in the first instance - regarding the care and treatment of those patients who claimed to be, but were not in fact "victims" of the offenses to which he pled guilty.

Respectfully submitted,  
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DATED: February 10, 2016

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C), Federal Rules of Appellate Procedure, the undersigned certifies that this brief complies with the type-volume limitations of Rule 32(a)(7)(B), Federal Rules of Appellate Procedure.

The brief contains a total of 6,278 words, exclusive of the Table of Contents, Table of Authorities, and Certificates of Compliance and Service. It has been prepared, and this word count generated, using WordPerfect X7. The typeface is 14pt Times New Roman.

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## **CERTIFICATE OF SERVICE**

I hereby certify that on February 10, 2016, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record.

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**FILED**  
APR 11 2016  
CLERK'S OFFICE  
U.S. DISTRICT COURT  
EASTERN MICHIGAN

UNITED STATES OF AMERICA

v.

No. 13-cr-20600  
Hon. Paul D. Borman

FARID FATA, M.D.

Defendant.

ORDER ESTABLISHING RESTITUTION PLAN  
AND REVIEW OF CLAIMS FOR RESTITUTION

Defendant Dr. Farid Fata was convicted of, among other offenses, Health Care Fraud, in violation of 18 U.S.C. § 1347. Dr. Fata's sentencing hearing was held and a Judgment was issued, with the determination of restitution being deferred to a later hearing date.

Pursuant to the Mandatory Victim Restitution Act of 1996 (MVRA), Pub. L. No. 104-132, § 204(a), 110 Stat. 1227 (1996) (codified as amended at 18 U.S.C. § 3663A), a United States District Court shall order that a defendant make restitution to the victim(s) of certain offenses, including offenses involving fraud or deceit. 18 U.S.C. § 3663A(c)(1)(A)(ii). The MVRA provides, however, that a court is not obligated to order restitution if it finds that (1) "the number of identifiable victims is so large as to make restitution impractical" or (2) "determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to

any victim is outweighed by the burden on the sentencing process.” 18 U.S.C. § 3663A(c)(3).

On July 30, 2015, March 10, 2016, and March 28, 2016, hearings were held regarding the determination of restitution during which the government proposed to the Court a restitution plan which would identify the patient victims to whom restitution should be ordered and amounts of restitution with respect to those areas of restitution that are readily determinable under the plan set forth below.

The Court finds that there are complex issues of fact with respect to the areas of restitution not included in the plan. Determining the cause and amount of each victim’s losses in the areas not included in the plan would unreasonably prolong the sentencing process and incur a monetary expense to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process.

As set forth by the government at the July 30, 2015, March 10, 2016, and March 28, 2016 hearings, the Court will order restitution in defined categories to former patients of Dr. Fata who are victims of Dr. Fata’s offenses and representatives of their legal estates (hereinafter, collectively, “former patients”)<sup>1</sup>. In an attempt to identify the former patients to whom restitution should be ordered

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<sup>1</sup> As used in this Order, the term “patient” means a patient who received at least one office-based evaluation and management service (i.e., office visit) from Farid Fata as the rendering physician. The term “former patient” includes former patients of Dr. Fata, or if deceased, the personal representative of his/her estate.

and the amount to be paid, the Court sets forth the following plan for determining restitution:

1. The government shall post on its victim notification website, located at <http://www.justice.gov/usao-edmi/us-v-farid-fata-court-docket-13-cr-20600>, instructions and a restitution claim form on or about June 1, 2016 to provide former patients who wish to request restitution the opportunity to submit a claim. Consistent with its obligations under the Crime Victims' Rights Act, 18 U.S.C. § 3771, and MVRA, the government shall further mail copies of the instructions and restitution claim form to all victims previously confirmed through the government's investigation. The claim form will also be available on a dedicated website for the restitution process, [www.fataclaims.com](http://www.fataclaims.com). The [www.fataclaims.com](http://www.fataclaims.com) website will be accessible to the public beginning on or about June 1, 2016.

2. Former patients who wish to request restitution must submit the restitution claim form and supporting documents, according to the instructions on the claim form, on or before October 5, 2016.

3. The claims facilitator retained by the Department of Justice, Ms. Randi Ilyse Roth, shall review and evaluate the claims and supporting documents submitted by former patients. The facilitator shall make a recommendation as to whether a former patient has met the requirements to be identified as a victim and

the amount due each such victim for purposes of restitution in this case. The facilitator's review and recommendation shall be completed by a date to be determined by the Court after the facilitator reports to the Court the number and complexity of claims submitted.

4. The facilitator shall review and make a recommendation to allow or disallow claims for only the following categories of practicable, determinable restitution:

a) All non-reimbursed, out-of-pocket, medical expenses paid by a former patient for medical services provided by Dr. Farid Fata or at his direction from April 11, 2005 until August 6, 2013. Former patients will be required to either:

(1) submit proof of payment of these expenses; or

(2) submit documentation that certain monies were owed; and submit a written declaration, under oath, swearing that the monies owed were paid.

No medical opinion will be required.

Requests in this category must also include an affirmation that the claimant has a good faith belief that the expenses were incurred as a result of overtreatment, mistreatment, unnecessary treatment, or

material misrepresentations by Dr. Fata regarding their disease and/or treatment.

- b) All non-reimbursed, out-of-pocket medical expenses for remedial measures that were incurred as a result of any inappropriate or unnecessary treatments ordered or provided by Dr. Farid Fata. These expenses will relate to services provided by other medical providers after leaving the care of Dr. Fata, up to and including September 6, 2016. Requests in this category must comply with specific instructions that will be provided in the claim form, including the signed statement of a rendering physician attesting that the physician has reviewed the patient's medical records and that the expenses were incurred in order to remediate the effects of inappropriate treatment by Dr. Farid Fata.

Expenses for remedial measures may include medical services that have been completed prior to the deadline to submit a claim, but for which the patient has not paid the full cost before the claim submission deadline, if the patient can document a contract for services with a defined amount.

- c) All non-reimbursed, out-of-pocket expenses for psychological and psychiatric mental health treatment and prescription mental health

medications from April 11, 2005 through September 6, 2016, needed as a result of treatment by Dr. Farid Fata. Requests in this category must comply with specific instructions that will be provided in the claim form including a signed statement of the mental health provider that the expenses were incurred to remediate the mental health effects of treatment by Dr. Farid Fata.

5. In the event that the sum of the claims approved for restitution to former patients under paragraphs 4(a), 4(b) and 4(c) exceeds the sum of the funds currently available, each former patient may not receive the full amount recommended by the facilitator.

6. The Department of Justice will include in its claim form a section requesting submission of information from family members of former patients who wish to request a contribution toward funeral expenses incurred because the deceased was a former patient of Dr. Farid Fata. It would unreasonably prolong the restitution process to determine whether each death was caused by the actions or inactions of Dr. Farid Fata. It is, however, appropriate to provide a process to determine the amount of funeral costs incurred by the families. After review of the claims submitted for this category of loss, along with review of the claims submitted in all other categories of loss, a determination will be made as to the amount of allowable costs associated with funerals.

7. The facilitator will notify the former patients concerning the facilitator's recommendation as to any claim.
8. The Court will establish a process for a claimant to appeal the facilitator's recommendation. The process will be set forth by a further Order of the Court.
9. Claims allowed for restitution to former patients shall be limited to the categories of claims specifically identified in this Order. No other claim will be allowed as restitution for former patients.
10. Upon reviewing and considering the recommendations of the facilitator, the Court will make a restitution determination and an Amended Judgment in a Criminal Case will be entered.
11. For the reasons stated on the record at the hearings held on March 10, 2016, and March 28, 2016, the procedures and dates set forth in this Order, and the legal precedent set forth in the United States Supreme Court case of *United States v. Dolan*, 130 S. Ct. 2533 (2010), the restitution hearing in this case is adjourned from July 22, 2016, until November 1, 2016.

**IT IS SO ORDERED.**

DATED: APR 11 2016

  
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PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

No. 15-1935

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR THE
FARID FATA,	)	EASTERN DISTRICT OF MICHIGAN
	)	
Defendant-Appellant.	)	

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BEFORE: BOGGS and KETHLEDGE, Circuit Judges; STAFFORD, District Judge.\*

STAFFORD, District Judge. The defendant, Farid Fata, was a physician who intentionally mis-diagnosed no fewer than 553 of his patients with cancer and other maladies they did not have, then administered debilitating treatments, noxious chemicals, and invasive tests—including chemotherapy, intravenous iron, and PET scans—they did not need. For this reprehensible conduct, Fata received no less than \$17 million in ill-gotten payments from Medicare and other insurers. The district court accurately described Fata’s conduct as “a huge, horrific, series of criminal acts.”

Fata pleaded guilty to sixteen counts—thirteen counts of health-care fraud, one count of conspiracy to pay and receive kickbacks, and two counts of promotional money laundering. He

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\* The Honorable William H. Stafford, Jr., Senior United States District Judge for the Northern District of Florida, sitting by designation.

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*United States v. Fata*

did not have a Rule 11 plea agreement. After a five-day hearing, the district court sentenced Fata to 45 years in prison, a sentence within his guideline range of 360 months to life. Fata thereafter filed this timely appeal, arguing that the district court (1) erred in its application of “Role in the Offense” enhancements under sections 3B1.3 and 3B1.1 of the United States Sentencing Guidelines (“USSG”); (2) erred in allowing victim impact statements from patients whose status as actual “victims” had not been determined; and (3) lacked a sufficient factual basis to accept his guilty plea to the money laundering counts. Because Fata’s arguments on appeal are without merit, we affirm.

I.

Fata first contends that the trial court erred in enhancing his sentence under USSG §§ 3B1.3 and 3B1.1. “In reviewing the district court’s application of the sentencing guidelines, this court reviews the district court’s legal conclusions *de novo* and its factual findings for clear error.” *United States v. McCloud*, 730 F.3d 600, 605 (6th Cir. 2013).

Under § 3B1.3, a defendant’s guideline range is increased by two levels if he “abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense.” USSG § 3B1.3. Where this two-level enhancement is “based *solely* on the use of a special skill, it may not be employed in addition to an adjustment under § 3B1.1” for aggravating role. *Id.* (emphasis added). On the other hand, “[i]f this adjustment is based upon an abuse of a position of trust, it may be employed in addition to an adjustment under § 3B1.1.” *Id.*

The offense-level calculations in Fata's Presentence Investigation Report ("PSR") included a two-level upward adjustment under § 3B1.3 based on Fata's abuse of a special skill. The PSR's calculations did not include an aggravating-role enhancement under § 3B1.1. The government objected to the calculations, arguing that the calculations should reflect both Fata's abuse of trust under § 3B1.3 and his aggravating role under § 3B1.1. While not disputing that Fata utilized special skills to commit his offenses, the government argued that Fata's "most significant abuse" under § 3B1.3 was his abuse of the trust position he held with respect to his patients and the organizations he billed for fraudulent services. Given the applicability of an abuse-of-trust adjustment under § 3B1.3, the government urged the district court to add a two-level adjustment under § 3B1.1 for Fata's leadership role in the kickback conspiracy. Fata responded to the government's argument by arguing that a special-skill enhancement was more appropriate because "[e]verything in this case stems from [Fata's] special skill." Fata accordingly urged the district court to adopt the calculations as presented by the probation officer. Persuaded by the government's arguments, the district court applied a two-level upward adjustment for abuse of trust under § 3B1.3 and then added another two-level upward adjustment under § 3B1.1(c) for aggravating role.<sup>1</sup>

The record amply supports the district court's two-level enhancement for abuse of trust. Prior to sentencing, Fata *admitted* that his offenses involved an abuse of trust. Indeed, after he

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<sup>1</sup> The government argued for a four-level enhancement for aggravating role under § 3B1.1(a). That section applies "[i]f the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." The district court instead added two levels under § 3B1.1(c), which applies "[i]f the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than [one that involved five or more participants or was otherwise extensive.]"

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pleaded guilty, Fata entered into a stipulation with the government as follows: “The parties agree that the government could prove, by a preponderance of the evidence, that Fata’s offense involved the abuse of a position of trust [under] Section 3B1.3.” At sentencing, Fata spoke to the judge, saying that he “violated the medical oath . . . and caused anguish, hardship and pain to my patients and their families.” Fata then added that he “grossly abused the trust that my patients placed in me. They came to me seeking compassion and care. I failed them.” Fata’s counsel similarly advised the judge at sentencing that Fata “admitted to [his probation officer] the first day we saw her . . . that he had betrayed the trust of his patients and took advantage of them in their most vulnerable state.”

Per the Guidelines, a position of trust is “characterized by professional or managerial discretion (i.e., substantial discretionary judgment that is ordinarily given considerable deference),” and subjects persons holding such positions “to significantly less supervision than employees whose responsibilities are primarily non-discretionary in nature.” USSG § 3B1.3, Application Note 1; *see also United States v. Gilliam*, 315 F.3d 614, 618 (6th Cir. 2003) (explaining that a “position of trust arises almost as if by implication when a person or organization intentionally makes himself or itself vulnerable to someone in a particular position, ceding to the other’s presumed better judgment some control over their affairs” (internal quotation marks omitted)). That a doctor works with little supervision and exercises “substantial discretionary judgment that is ordinarily given considerable deference” is axiomatic. *See United States v. Kaminski*, 501 F.3d 655, 667 (6th Cir. 2007) (referring to the “mantle of trust” accorded to medical doctors). The Guidelines recognize as much, offering—as one example of a proper

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abuse-of-trust enhancement—the “sexual abuse of a patient by a physician under the guise of an examination.” § 3B1.3, Application Note 1.

Clearly, Fata occupied a position of trust vis-à-vis his patients within the meaning of § 3B1.3. With little supervision and a great deal of discretion, Fata was able to make false diagnoses and administer potentially deadly, yet unnecessary, courses of treatment for hundreds of patients who relied on his presumed integrity and accepted his presumed professional judgments—all to their detriment and to Fata’s financial gain. Like the physician in the Guidelines example who sexually abuses a patient under the guise of an examination, Fata occupied a position of trust when he abused his patients by treating non-existent maladies with life-threatening chemicals.

Fata also occupied a position of trust vis-à-vis the insurers—both public and private—that he billed for fraudulent services. In *United States v. Hodge*, 259 F.3d 549 (6th Cir. 2001), this court held, “in accord with the other circuits,” that:

[C]ertain health care providers, or persons who hold themselves out as providers of care, occupy a position of trust with respect to both public and private insurance companies if they exercise professional or managerial discretion in treating patients and in billing for those treatments, which discretion is given deference by the insurers and helps to facilitate [a] crime. Our determination that health care providers may be subject to the § 3B1.3 adjustment is in harmony with our circuit's case law on this adjustment. Our precedents make clear that the touchstone for a finding that the defendant occupies a position of trust is not necessarily the amount of supervision the person receives, although that is an important factor to consider, but rather the amount of discretion the person has in his or her position of employment. Insurance companies must, for the most part, assume that health care providers are billing for services that they have actually performed. Because the methods available to insurance companies for assessing whether care providers have been honest . . . are limited, billing fraud is hard to detect, and insurance companies must ultimately defer to the health care providers’ representations that service was performed.

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*Id.* at 556 (citations omitted).

Not only did Fata occupy a position of trust, but that position also facilitated in a significant way his crimes of health-care fraud and conspiracy to pay and receive kickbacks. The discretion, the lack of supervision, and the deference granted to Fata by virtue of his being a physician not only placed him in the position to commit his offenses but also allowed him to victimize so many for so long for so much. As his criminal conduct illustrates, Fata took advantage of the trust of his patients and their insurers in a particularly heinous manner. For Fata, an enhancement for abuse of trust was appropriate. See *United States v. Goldman*, 607 F. App'x 171, 176 (3d Cir. 2015) (finding that a physician's position of trust significantly facilitated the offense of receiving kickbacks for medical referrals); *United States v. Hoogenboom*, 209 F.3d 665, 671 (7th Cir. 2000) (upholding abuse-of-trust enhancement for psychologist who billed Medicare for services that had not been performed or services not performed as billed); *United States v. Sidhu*, 130 F.3d 644, 655–56 (5th Cir. 1997) (finding that a physician's abuse of his patients' trust significantly facilitated the physician's offense of defrauding various government programs and insurance companies by billing for services that were not performed or were not performed appropriately); *United States v. Adam*, 70 F.3d 776, 782 (4th Cir. 1995) (upholding abuse-of-trust enhancement for an internist who took illegal kickbacks from a cardiologist in exchange for patient referrals).

While not denying that Fata abused a position of trust with both his insurers and his patients, Fata contends (1) that the *sine qua non* of the offense behavior in this case was his use of special skills; and (2) that, of the two alternatives to enhancement set forth disjunctively in

§ 3B1.3, the district court should have selected the special-skill alternative as the more appropriate—and only—basis for the § 3B1.3 upward adjustment. Had the trial judge done so, the additional enhancement for aggravating role under § 3B1.1 would have been precluded.<sup>2</sup> Fata thus maintains that he is entitled to resentencing without the two-level enhancement for aggravating role.<sup>3</sup>

Fata's argument is not persuasive. As the first sentence of § 3B1.3 provides, a two-level increase in the Guidelines calculation is applicable if a defendant abused a position of trust *or* used a special skill to facilitate or conceal an offense. From that first sentence, it is reasonable to conclude that § 3B1.3 authorizes only a single two-level increase in the sentencing calculus. It does not allow for two-level increases for *both* abuse of trust and special use. However, as the word "solely" in the third sentence of § 3B1.3 implies, the two applications are not otherwise mutually exclusive. The third sentence of § 3B1.3 provides that a two-level aggravating-role enhancement under § 3B1.1 may not be applied if the § 3B1.3 adjustment "is based solely on the use of a special skill." That third sentence thus implies that a district court may add two-level adjustments under both § 3B1.3 and § 3B1.1 when the § 3B1.3 adjustment is based on either (1) abuse of trust alone, or (2) both abuse of trust and use of a special skill. If it were otherwise, the word "solely" in § 3B1.3 would be superfluous. *See United States v. Porcelli*, 440 F. App'x

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<sup>2</sup> Without the § 3B1.1 two-level enhancement for aggravating role, Fata's sentencing range would have been 292–365 months, and the 45-year sentence that was imposed would have represented an upward variance.

<sup>3</sup> Fata does not contend that there are no facts to support the aggravating role enhancement. He limits his argument to the district court's purported error in attributing the § 3B1.3 enhancement to abuse of trust rather than solely to the use of a special skill.

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*United States v. Fata*

870, 877 (11th Cir. 2011) (recognizing that a court may apply enhancements under both § 3B1.1 and § 3B1.3 “if the latter is based at least in part on an abuse of trust”).

Here, the district court properly added two levels to Fata’s Guidelines calculation based—at least in part—on Fata’s abuse of a position of trust under § 3B1.3. Because Fata’s § 3B1.3 adjustment was based at least in part on abuse of trust, the district court did not err in also adding two levels for aggravating role under § 3B1.1.

## II.

Fata next contends that the district court erred by allowing victim impact statements, both written and oral, from patients whose status as actual “victims” was not confirmed. Even assuming that the district court considered statements from non-victim patients, Fata’s claim of error is without merit.

It is well established that a district court may consider a wide variety of information at sentencing that could not otherwise be considered at trial. *See* 18 U.S.C. § 3661 (providing that “[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence”); *Pepper v. United States*, 562 U.S. 476, 489 (2011) (noting that sentencing courts may appropriately “conduct an inquiry broad in scope, largely unlimited as to the kind of information they may consider, or the source from which it may come”) (internal quotation marks and alteration omitted). The Sentencing Commission has incorporated the “no limitation” principle in the Guidelines by providing as follows: “In determining the sentence to impose within the guideline range, or whether a departure from the

guidelines is warranted, the court may consider, *without limitation*, any information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law.” USSG § 1B1.4 (emphasis added); *see also United States v. Case*, 434 F. App’x 522, 523 (6th Cir. 2011) (noting that the district court “could freely consider” statements from the defendant’s sister-in-law and mother-in-law, “regardless of whether the in-laws were properly characterized as ‘victims’”). The law thus makes clear that the district court in this case was permitted to consider oral and written statements from Fata’s patients, whether or not those patients were confirmed as “victims.”

In any event, the district court decided *not* to rely on the patients’ statements in determining Fata’s sentence. The district court expressly explained that it was unnecessary to rely on them because the expert testimony and Fata’s pleas “provide[d] a basis for the sentencing.” To the extent, *if any*, that the district court considered patient statements, Fata’s sentence was not rendered unreasonable.

### III.

Finally, Fata claims for the first time on appeal that his guilty pleas to promotional money laundering (Counts 22 and 23) were not supported by a sufficient factual basis. This claim is reviewed for plain error. Under the plain-error standard, Fata must show “(1) error (2) that was obvious or clear, (3) that affected [his] substantial rights and (4) that affected the fairness, integrity, or public reputation of the judicial proceedings.” *United States v. Vonner*, 516 F.3d 382, 386 (6th Cir. 2008) (en banc) (internal quotation marks omitted).

A district court must determine that there is a “factual basis” for a guilty plea “[b]efore entering judgment” on that plea. Fed. R. Crim. P. 11(b)(3). Because a sufficient factual basis need be present only by the time of judgment, it is not necessary that the factual basis be established at the plea hearing. Judges may draw factual bases from many sources, including such post-plea sources as the defendant’s PSR and testimony proffered at sentencing. *United States v. Byrd*, 220 F. App’x 421, 425 (6th Cir. 2007); *United States v. Bennett*, 291 F.3d 888, 896–97 (6th Cir. 2002).

The elements of promotional money laundering, prohibited by 18 U.S.C. § 1956(a)(1)(A)(i), are that the defendant “(1) conducted a financial transaction that involved the proceeds of unlawful activity; (2) knew the property involved was the proceeds of unlawful activity; and (3) intended to promote that unlawful activity.” *United States v. Prince*, 618 F.3d 551, 554 (6th Cir. 2010) (internal quotation marks omitted). *Fata* challenges only the third element: intent to promote the unlawful activity.

*Fata* focuses on the plea colloquy only. At the plea hearing, *Fata* was asked to recite the facts supporting the two promotional money laundering counts. He testified as follows:

THE DEFENDANT: As I previously stated in other counts, I submitted claims to various insurance companies and Medicare for unnecessary services and infusions through my company, Michigan Hematology Oncology [MHO]. In 2013 I incorporated a new company, United Diagnostics, that would perform tests such as PET scan[s]. . . . United Diagnostics was funded in part using funds that I had earned through my submission of claims for unnecessary services. . . . I deposited or caused the deposit of two checks from MHO to United Diagnostics –

THE COURT: From who?

THE DEFENDANT: Michigan Hematology Oncology to United Diagnostics on May 3rd, 2013 . . . and July 2nd, 2013.

THE COURT: Okay.

THE DEFENDANT: Each written in the amount of \$100,000.

THE COURT: Okay.

THE DEFENDANT: After United Diagnostics became operational, I submitted false claims . . . for certain patients for unnecessary PET scans through United Diagnostics.

According to Fata, this plea colloquy “wholly fails to establish that he engaged in the financial transactions funding United Diagnostics with the specific intent to promote the submission of false medical claims.”

Even assuming the plea colloquy was insufficient by itself to establish a factual basis for the third element of the money-laundering counts, the record as a whole supports the district court’s finding that Fata deposited checks from MHO with the intent to promote health-care fraud at United Diagnostics. Before judgment was entered, the district court was able to consider the PSR,<sup>4</sup> the parties’ pre-sentence stipulation,<sup>5</sup> and the sentencing documents proffered by the prosecutor, including the record of interviews taken of medical assistants who worked for Fata at MHO. From those interviews and the record as a whole, the district court had the following information: (1) United Diagnostics was originally scheduled to open in April 2013; (2) There was a huge increase in the number of PET-scan orders signed by Fata beginning in February 2013, all to be done when United Diagnostics opened its doors, supposedly in April; (3) When the opening

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<sup>4</sup> Fata filed no objections to the paragraphs in the PSR that related to the money laundering counts.

<sup>5</sup> After Fata entered his plea but before he was sentenced, the parties stipulated that “consistent with his guilty plea, Fata’s offense involved money laundering under 18 U.S.C. Section 1956.” Sealed Stip., Doc. 147–2, Ex. A in the record of the district court in this case (Case No. 2:13cr20600–PDB–DRG).

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of United Diagnostics was delayed until July, Fata instructed his staff to reschedule the PET- scan appointments, delaying them to July and August when scans could be done at United Diagnostics; (4) Fata made clear to his staff that he did not want his patients referred to other facilities for scans; (5) When patients questioned the delays and asked for referrals to other PET scan facilities, Fata instructed his staff to lie to the patients rather than referring them elsewhere; (6) Fata deposited \$100,000 into the bank account of United Diagnostics on May 3, 2013, and again on July 2, 2013, during the very time period when scans were being rescheduled at United Diagnostics and referrals were being refused; and (7) The \$100,000 checks came from MHO's bank account. This information—combined with Fata's admission that he was guilty of laundering money in violation of 18 U.S.C. § 1956(a)(1)(A)(i)—was more than enough to provide a sufficient factual basis to determine that Fata transferred MHO funds to United Diagnostics with the specific intent to promote the submission of false medical claims at United Diagnostics. The district court did not err, much less commit plain error, when it accepted Fata's guilty plea to the money-laundering counts.

#### IV.

For the foregoing reasons, we **AFFIRM** the judgment of the district court.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

*In re* Petition of Tracy Korff, *et al.*,  
*In the matter of:*

Case No. 16-cv-12984  
Criminal Case No. 13-cr-20600

UNITED STATES OF AMERICA,

Plaintiff,

v.

Paul D. Borman  
United States District Judge

FARID FATA,

Defendant.

OPINION AND ORDER GRANTING THE UNITED STATES' MOTION TO DISMISS THE  
PETITION (ECF NO. 4) AND DISMISSING THE PETITION (ECF NO. 1)

On May 27, 2016, Petitioner Tracy Korff, Personal Representative of the Estate of John Korff, filed this action individually and on behalf of 43 individuals involved in civil litigation in the Oakland County Circuit Court, State of Michigan, against Farid Fata and several other allegedly associated tortfeasors. The Petition is filed pursuant to 18 U.S.C. § 3771(d)(3), the Crimes Victims' Rights Statute ("the CVRA"), and seeks to avoid potential claims for reimbursement by Medicare and other health providers in relation to Petitioners' state court settlements against Fata and several other tortfeasors. On July 1, 2016, the government filed a response and motion to dismiss the Petition. (ECF No. 4.) The Petitioners filed a response to the motion to dismiss (ECF No. 6) and the government filed a reply (ECF No. 9). On August 11, 2016, the Court permitted Petitioners to file a supplemental brief. (ECF No. 12.) The Court held a hearing on Friday, August 19, 2016 and heard extensive argument from both the Petitioners and the government. For the reasons that follow, the Court GRANTS the government's motion to dismiss, DENIES the Petitioners' request for relief and

DISMISSES the Petition.

## **INTRODUCTION**

This Petition is filed on behalf of 43 individuals currently involved in civil litigation in the Oakland County Circuit Court against Farid Fata, Crittenton Hospital Medical Center, McLaren Health Corporation and Trinity Health-Michigan, among other defendants, in which the Petitioners assert claims of medical malpractice arising out of Fata's admitted malfeasance in treating patients, conduct that is the subject of a criminal health care fraud proceeding against Fata in a separate action in this Court. *United States v. Farid Fata*, Case No. 13-cr-20600 ("the Fata criminal proceeding"). In this Fata criminal proceeding, the Court accepted Fata's pleas of guilty without benefit of a Rule 11 plea agreement and sentenced him to 45 years in prison.<sup>1</sup> The Court, after holding three days of post-sentencing public hearings on the restitution issue, established an initial plan of restitution that provides for notice to all patient victims and establishes a process for the filing of claims by those victims. (Fata criminal proceeding, ECF No. 186, Order Establishing Restitution Plan and Review of Claims for Restitution) ("the Restitution Order"). The Restitution Order defines certain categories of Fata's former patients' non-reimbursed, out-of-pocket medical expenses that will be compensable under the restitution plan with appropriate documentation.

Petitioners contend that their recently-completed \$8 million settlement in their state court civil actions may subject them to federal statutory obligations to reimburse Medicare from those settlement awards for certain payments made by Medicare on their behalf (hereinafter the "medical expense or health care liens"). Petitioners acknowledge that this Court's Restitution Order allowing

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<sup>1</sup>Fata plead guilty to charges arising in the Eastern District of Michigan. The pleas of guilty were to Health Care Fraud, 18 U.S.C. § 1347, Conspiracy to Pay and Receive Kickbacks, 18 U.S.C. § 371, and Money Laundering, 18 U.S.C. § 1956(a)(1)(A)(i).

restitution only for non-reimbursed expenses “clearly prohibits Petitioner [Korff] from seeking restitution for monies that she is required to pay to satisfy the liens of Medicare, Medicaid or Blue Cross Blue Shield in the civil case.” (Petition 3.) Petitioners assert that precluding restitution for these amounts victimizes the Petitioners and violates their rights as crime victims under the CVRA to receive full restitution and to be treated with respect and dignity.

Petitioners now ask this Court to “remedy” this alleged inequity by either: (1) ordering that Medicare (and/or other health care benefit programs) “waive off” Petitioners’ medical expense liens that they may be statutorily obligated to pay from their settlement award in their state civil cases against Fata and other tortfeasors; or alternatively (2) modifying this Court’s Restitution Order to remove the word “non-reimbursed,” and/or deeming any payments that Petitioners are required to make from their settlement award to satisfy any medical expense liens in their underlying state civil actions as qualifying “out-of-pocket expenses” under the Court’s Restitution Order.

The government opposes the Petition and moves to dismiss, arguing that: (1) Petitioners are asking this Court to relieve them of their reimbursement obligations under the Medicare laws but have failed to exhaust their administrative remedies under the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b), (the “MSP”) and thus this Court lacks subject matter jurisdiction over Petitioners’ claims; and (2) assuming Petitioners do have standing in this Court, the relief requested by Petitioners that would require this Court to recharacterize their medical expense reimbursement payments as qualifying out-of-pocket expenses under the Court’s Restitution Order (a) would violate the mandate of the Mandatory Victim Restitution Act, 18 U.S.C. § 3663A (“the MVRA”) that victims receive compensation only for actual and direct monetary loss and (b) would award the Petitioners a windfall recovery at the expense of the hundreds of Fata victims who have not filed and

settled individual civil actions and thus would not similarly be entitled to recover amounts from the restitution fund for “expenses” that they themselves did not pay.

## I. FACTUAL BACKGROUND

In the Fata criminal proceeding, Fata, without benefit of a plea agreement, pleaded guilty to 13 counts of health care fraud, one count of conspiracy to pay and receive kickbacks, and two counts of money laundering. As part of a sentencing stipulation, Fata admitted that he had administered unnecessary medical treatments and testing, including dangerous chemotherapy and other chemical infusions, to at least 553 patients. On July 10, 2015, Fata was sentenced to 45 years’ imprisonment.<sup>2</sup> A Judgment was issued and the determination of restitution to the victims of Fata’s crimes under the MVRA was deferred to a later date. *United States of America v. Farid Fata*, No. 13-cr-20600 (E.D. Mich. July 14, 2015) (ECF No. 158, Judgment p. 6.) Fata stipulated to a Preliminary Order of Forfeiture that was entered by the Court on July 9, 2015, pursuant to which Fata agreed to forfeit his rights to certain property and further agreed to a money judgment of \$17,601,233.00, “representing the amount of gross proceeds obtained as a result of [his] health care fraud violations as alleged in the Fourth Superseding Indictment.” (E.D. Mich. No. 13-cr-20600, ECF No. 154, Preliminary Order of Forfeiture.) Presently, the restitution fund stands at approximately \$12 million after liquidation and a 10% payment to a whistleblower.

Typically, forfeited funds are deposited directly in the Treasury of United States, absent special agreement from the Asset Forfeiture and Money Laundering Section (“AFMLS”) of the Criminal Division of the Department of Justice. The Department of Justice may, however, in its

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<sup>2</sup> Fata’s 45-year sentence was affirmed on appeal in all respects. *United States of America v. Fata*, No. 15-1935, \_\_F. App’x\_\_, 2016 WL 3000349 (6th Cir. May 25, 2016).

discretion, transfer “forfeited assets to restitution where the defendant does not have sufficient resources to pay restitution outside of the forfeited assets.” Catharine M. Goodwin, Federal Criminal Restitution, § 12:13 (2014 Edition). Working extensively with AFMLS, the government obtained the authorization to create a restitution plan in the Fata criminal proceeding that seeks to apply the full amount of the forfeited funds to restitution for individual victims of Fata’s crimes. The government estimates that after liquidation and payment to a *qui tam* relator, approximately \$12 million will be available for restitution.

Under the Restitution Order entered by this Court on April 11, 2016, three different categories of restitution will be available to Fata patient-victims: (1) all non-reimbursed, out-of-pocket medical expenses paid by any former patient for medical services provided by Fata or at his direction; (2) all non-reimbursed, out-of-pocket medical expenses for remedial measures that were incurred as a result of any inappropriate or unnecessary treatments ordered or provided by Fata; and (3) all non-reimbursed, out-of-pocket expenses for psychological and psychiatric mental health treatment and prescription mental health medications. Each of the three categories of expenses that will be available to the patient victims requires differing levels of supporting documentation but, in each case, restitution is available only for *non-reimbursed, out-of-pocket* expenses. If any portion of a patient-victim’s medical expenses have been paid by another payer, such amounts are not available for recoupment by the patient-victim under the restitution plan.

It is undisputed that some portion of Petitioners’ medical expenses were paid on their behalf by certain medical lien holders, and the Petitioners represent that they will be statutorily obligated to reimburse those medical lien holders out of their settlement awards. Petitioners concede that such reimbursements, which they will be required to make from the money that they receive from the

various tortfeasors in their state court suits, are not non-reimbursed, out of pocket expenses that may be recouped under the Restitution Order. Petitioners, however, believe they are entitled to recover those reimbursement payments again from the restitution fund in the criminal proceedings and seek a ruling from this Court that would enable them to do so. For the reasons that follow, the Court denies the relief Petitioners request and dismisses the Petition.

## II. STANDARD OF REVIEW

The government does not cite any particular statute or court rule under which it moves to dismiss, but its claim that Petitioners failed to exhaust their administrative remedies with respect to their Medicare liens and that therefore the Court lacks subject matter jurisdiction over Petitioners' claim presumably is asserted under Federal Rule of Civil Procedure 12(b)(1). Federal courts derive their jurisdictional power to hear cases and controversies from Article III of the Federal Constitution. It is axiomatic that a court must have subject matter jurisdiction over a controversy before it can render any decision on the merits. The party invoking federal subject matter jurisdiction bears the burden of proving it. *Dismas Charities, Inc. v. U.S. Dept of Justice*, 401 F.3d 666, 671 (6th Cir. 2005). Challenges to subject-matter jurisdiction under Fed. R. Civ. P. 12(b)(1) "come in two varieties: a facial attack or a factual attack." *Gentek Bldg. Prod., Inc. v. Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007). Under a facial attack, all of the allegations in the complaint must be taken as true, much as with a Rule 12(b)(6) motion. *Gentek*, 491 F.3d at 330 (citing *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990)). Under a factual attack, however, the court can actually weigh evidence to confirm the existence of the factual predicates for subject-matter jurisdiction. "Where the defendant brings a factual attack on the subject matter jurisdiction, no presumption of truth applies to the allegations contained in the pleadings, and

the court may consider documentary evidence in conducting its review.” *Id.* “If the district court must weigh conflicting evidence to arrive at the factual predicate that subject matter jurisdiction exists or does not exist, it has wide discretion to allow affidavits, documents and even a limited evidentiary hearing to resolve disputed jurisdictional facts. *Id.*”

To the extent that the government moves to dismiss “alternatively” on the basis that the “substance of the Petition’s arguments is equally unsound,” *see* Mot. at 18, the Court construes the motion as one to dismiss under Fed. R. Civ. P. 12(b)(6). *See Jordan v. Dept of Justice*, \_\_\_F.Supp.3d\_\_\_, 2016 WL 1271070, at \*3 (S.D.N.Y. March 29, 2016) (analyzing government’s motion to dismiss plaintiff’s petition to enforce her rights under the CVRA under 12(b)(6)). When reviewing a motion to dismiss under Rule 12(b)(6), a court must “construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff.” *Directv Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007). But the court “need not accept as true legal conclusions or unwarranted factual inferences.” *Id.* (quoting *Gregory v. Shelby County*, 220 F.3d 433, 446 (6th Cir. 2000)). “[L]egal conclusions masquerading as factual allegations will not suffice.” *Eidson v. State of Tenn. Dep’t of Children’s Servs.*, 510 F.3d 631, 634 (6th Cir. 2007). In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), the Supreme Court explained that “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level . . . .” *Id.* at 555 (internal citations omitted). Dismissal is appropriate if the plaintiff has failed to offer sufficient factual allegations that make the asserted claim plausible on its face. *Id.* at 570. A plaintiff’s factual allegations, while “assumed to be true, must do more than create speculation

or suspicion of a legally cognizable cause of action; they must show *entitlement* to relief.” *LULAC v. Bredesen*, 500 F.3d 523, 527 (6th Cir. 2007) (emphasis in original) (citing *Twombly*, 127 S.Ct. at 1965). Thus, “[t]o state a valid claim, a complaint must contain either direct or inferential allegations respecting all the material elements to sustain recovery under some viable legal theory.” *Bredesen*, 500 F.3d at 527 (citing *Twombly*, 127 S.Ct. at 1969).

### III. ANALYSIS

#### A. This Court Lacks Subject Matter Jurisdiction Over Those Claims in the Petition That Necessarily Would Require Interpretation and Application of the MSP

The government argues that regardless of how Petitioners choose to characterize their claim, in essence they seek to avoid their legal obligations under the Medicare Secondary Payer (“MSP”) provisions of the Social Security Act, 42 U.S.C. § 1395y(b), to reimburse Medicare for medical expenses that Medicare has paid on their behalf. The government argues that the MSP has strict presentment and exhaustion requirements with which Petitioners have failed to comply and therefore the Court lacks subject matter jurisdiction over their claims.

Under the MSP, Medicare is a secondary source of payment and may make a “conditional payment . . . if a primary plan . . . has not made or cannot reasonably be expected to make payment . . . promptly . . . .” 42 U.S.C. § 1395y(b)(2)(B)(i). “Any such payment by the Secretary shall be conditioned on reimbursement to the appropriate Trust Fund . . . .” *Id.* Thus, Medicare becomes obligated as a secondary payer only when a “primary plan” has not or cannot promptly pay a claim and expressly reserves the right to reimbursement from “a primary plan, *and [from] an entity that receives payment from a primary plan.*” 42 U.S.C. § 1395y(b)(2), and (b)(2)(B)(ii) (emphasis added).

A tortfeasor against whom a judgment is rendered or settlement obtained, such as Fata in a successful medical malpractice action, is considered a “primary payer” under the MSP. *See Hadden v. United States*, 661 F.3d 298, 300 (6th Cir. 2011) (“Federal law aims to make Medicare only a ‘secondary payer’ as to medical expenses for which some other entity (e.g., a tortfeasor) bears responsibility.”) (quoting 42 U.S.C. § 1395y(b)(2)); *Anderson v. Burwell*, \_\_\_F. Supp. 3d\_\_\_, 2016 WL 827368, at \*8 (E.D. Mich. Mar. 3, 2016) (“If a Medicare beneficiary seeks medical expenses as damages in a lawsuit, and the parties settle the claim, the settlement demonstrates the tortfeasor’s responsibility for those medical expenses . . . [and if] the tortfeasor directly pays the settlement proceeds to the Medicare beneficiary, Medicare may seek reimbursement from the beneficiary.”). A successful plaintiff in such a civil action, who receives a judgment or a settlement, is thus “an entity that receives payment from a primary plan,” e.g. the tortfeasor. *See* 42 C.F.R. 411.22 (a “primary payer, and an entity that receives payment from a primary payer, must reimburse CMS for any payment if it is demonstrated that the primary payer has or had a responsibility to make payment,” which responsibility may be demonstrated by a judgment, or a payment conditioned on a release (even absent a finding of liability) of claims of payment for services included in a claim against the primary payer or the primary payer’s insured, or by any other means including but not limited to a settlement, award or contractual obligation).

The United States may bring an action against “any entity that has received payment from a primary plan or from the proceeds of a primary plan’s payment to any entity.” 42 U.S.C. § 1395y(b)(2)(B)(iii). These provisions of the MSP thus operate in part “to prevent responsible tortfeasors or recovering plaintiff/beneficiaries from retaining the medical expenses paid by Medicare.” *Burwell*, 2016 WL 827368, at \*8 (internal quotation marks and citation omitted). When

a primary payment is received as the result of a settlement or judgment, “Medicare reduces its recovery to take account of the cost of procuring the judgment or settlement,” if the procurement costs are incurred because the claim is disputed and the costs are borne by the party against whom recovery is sought. 42 C.F.R. § 411.37. The procurement provisions generally result in a Medicare recovery below the amount of the lien.

The MSP contains a “in the best interests of the Medicare program” waiver provision, *see* 42 U.S.C. § 1395y(b)(2)(B)(v), under which the government “may waive (in whole or in part) the provisions of [the MSP] in the case of an individual claim if the Secretary determines that the waiver is in the best interests of the [Medicare] program . . . .” (alterations added). Additionally, the MSP provides for a hardship waiver, 42 U.S.C. § 1395gg(c), where collection ‘would defeat the purposes of the Medicare Act or would be against equity and good conscience.’” *Walters v. Leavitt*, 376 F. Supp. 2d 746, 756 (E.D. Mich. 2005) (quoting *Cochran v. U.S. Health Care Financing Admin.*, 291 F.3d 775, 779 (3d Cir. 2002)) (quoting 42 U.S.C. § 1395gg(c)).

“Judicial review of claims arising under the Medicare Act is available only after the Secretary renders a “final decision” on the claim, in the same manner as is provided in 42 U.S.C. § 405(g) for old age and disability claims arising under Title II of the Social Security Act.” *Heckler v. Ringer*, 466 U.S. 602, 605 (2013) (citing 42 U.S.C. § 1395ff(b)(1)(C)). The Sixth Circuit has recognized this important limitation on judicial review of final decisions of the Secretary of HHS on Medicare claims:

42 U.S.C. § 1395ff(b)(1)(A) provides the jurisdictional basis for judicial review of a final decision of the Secretary on a Medicare Part B claim. It states that “any individual dissatisfied ... [with a determination] shall be entitled to ... judicial review of the Secretary's final decision after [a] hearing as is provided in section 405(g) of this title.” Section 405(g) states in relevant part that “Any individual, after any final decision of the [Secretary] made after a hearing to which he was a party ... may

obtain a review of such decision by a civil action....”

*Southern Rehabilitation Grp., P.L.L.C. v. Sec’y of Health and Human Servs.*, 732 F.3d 670, 677 (6th Cir. 2013). “Section 405(g) has been interpreted to contain two prerequisites to judicial review. First, a ‘nonwaivable and nonexcusable requirement that an individual present a claim to the agency before raising it in court.’ Second, a waivable requirement of exhaustion of administrative review.” *Id.* at 678 (quoting *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 15, 26). *See also Bird v. Thompson*, 315 F. Supp. 2d 369, 374 (S.D.N.Y. 2003) (noting that “[t]he ‘final decision’ requirement consists of two elements, one of which is waivable, and one of which is jurisdictional and nonwaivable,” observing that “[Section] 405(g) contains the nonwaivable and nonexcusable requirement that an individual present a claim to the agency before raising it in court.”) (quoting *Illinois Council*, 529 U.S. at 15) (first alteration added).

“The Medicare Act also expressly adopts the Social Security Act’s jurisdictional bar to judicial review found at 42 U.S.C. § 405(h). *See* 42 U.S.C. § 1395ii (“The provisions of ... subsection ... (h) ... of section 405 of this title shall also apply with respect to this subchapter....”).” *Southern Rehabilitation*, 732 F.3d at 678 (alterations in original). “Section 405(h) channels most, if not all, Medicare claims through [the] special review system of an administrative hearing and purports to make exclusive the judicial review method set forth in 405(g).” *Id.* at 678 (internal quotation marks and citations omitted) (alteration in original).

A claim “arises under” the Medicare Act if “both the standing and the substantive basis” for the presentation of the claim are provided by the Medicare Act or if the claim is “inextricably intertwined with a claim for medical benefits under the Medicare Act.” *Bird*, 315 F. Supp. 2d at 372 (holding that a challenge to Medicare’s right to reimbursement under the MSP from plaintiff’s

settlement from a tortfeasor's insurance company, which involved benefits that had been conditionally paid on plaintiff's behalf and required an interpretation of the substantive provisions of the MSP, was a claim "arising under" the Medicare Act) (citing *Heckler*, 466 U.S. at 614-15). *See also Leavitt*, 376 F. Supp. 2d at 755. This is true even if the Constitution or another statute also provides a substantive basis for a claim. *Heckler*, 466 U.S. at 614 (finding that medicare claimants challenging the policy of the Secretary of HHS with regard to payment of benefits for particular surgical procedures, which sought only declaratory and injunctive relief, was a claim "arising under" the social security act, and demanded administrative exhaustion, even though "it was in one sense also a claim arising under the Constitution"). Where "[t]he merits of Plaintiffs' claims necessarily turn on the interpretation of the Medicare Act's secondary payer provisions," the claim "arises under" the Medicare Act. *Potts v. Rawlings Co.*, 897 F. Supp. 2d 185, 194 (S.D.N.Y. 2012).

The Sixth Circuit summarized the effect of these provisions and constraints on judicial review in *Southern Rehabilitation*:

In sum, Congress provided a limited waiver of sovereign immunity in the Medicare Act by permitting claimants to file civil actions seeking judicial review of the Secretary's final decision. However, Congress conditioned that waiver on several elements: (1) claimants are required to have presented their claims to the Secretary; (2) claimants must exhaust their administrative remedies resulting in a final decision; and (3) claimants are barred from raising federal question claims that are "inextricably intertwined" with their claim for benefits.

732 F.3d at 678.

Petitioners do not dispute the applicability of the mandatory provisions and requirements of the MSP to the medical liens of the 14 Petitioners. Indeed they state that: "The United States argues that Medicare has a right to reimbursement, a fact that Petitioner does not deny." Petitioners' Reply

5. At the hearing on the motion to dismiss the Petition, the Petitioners conceded that Medicare

claims for reimbursement in tort cases happen “every day of the week,” and that the claims for reimbursement as to the 14 Medicare liens at issue in the civil litigation would be “perfectly appropriate” in the typical tort case “absolutely no question about it.”

Nor do Petitioners dispute that the MSP requires presentment and exhaustion of administrative remedies and that they have failed to exhaust those remedies here, a fact rendered beyond dispute given that no Medicare claims for reimbursement have actually been made in the civil litigation. Petitioners half-heartedly suggest that exceptions to the exhaustion requirement exist when it can be shown that the administrative body “is biased or has otherwise predetermined the issue before it.” Reply at 7. But beyond stating that this exception exists, and that the government should “recluse” [sic] itself, Petitioners make no effort to demonstrate how such an exception would apply here.

Despite acknowledging that their settlement awards render them subject to the MSP reimbursement obligations, Petitioners request that the Court order “the Department of Health and Human Services or the Centers for Medicare Medicaid Services” to “simply waive off” their liens against these 14 individuals. In response to the Court’s questioning whether Petitioners had filed an administrative claim with Medicare to request such a waiver, Petitioners responded that “we aren’t there yet,” because such claims are handled on an individual basis after a demand for reimbursement has been presented which, of course, has not yet occurred with respect to the medical liens of the 14 Petitioners involved in the civil litigation who only anticipate such requests.

Petitioners proffer another possible (but related) form of relief: a ruling from this Court ordering a “global” waiver for all the Medicare liens connected to the civil litigation. As precedent for this request, Petitioners attached to their Supplemental Brief an email exchange from an

individual at CMS regarding such a waiver that apparently was granted in regard to certain settlements that resulted from the September 11, 2001 World Trade Center bombings. That email explains: “In accordance with her discretionary authority to issue a ‘best interests of the [Medicare] program’ waiver under Section 1862(b)(2)(B)(v) of the Social Security Act, the Secretary determined that it was in the best interest of the Medicare program for the Centers for Medicare Medicaid Services (CMS) to waive its Medicare Secondary Payer (MSP) recovery claims against certain settlements obtained by first responders and other victims related to the September 11, 2001 terrorist attacks on the World Trade Center in New York City.” (ECF No. 12, Ex. 1, July 29, 2016 email from Sherri McQueen of CMS).<sup>3</sup> The email further explains that the “Secretary has not employed such authority since.” *Id.*

The 911 case demonstrates that the decision to “waive off” Petitioners’ Medicare liens is one to be made in the first instance not by this Court but by the administrative body solely empowered to evaluate the request and make that call. The inescapable conclusion with respect to both of these requested forms of relief is that they present claims “arising under” the MSP that would necessarily require this Court to interpret and apply the provisions of the MSP. In essence, Petitioners request the Court to make a determination of hardship, a decision expressly reserved under the MSP to the Secretary of HHS under 42 U.S.C. § 1395y(b)(2)(B)(v) or to CMS under 42 U.S.C. § 1395gg(c). While CMS has “broad discretion” to waive its right to payment under the MSP “when pursuing it ‘would defeat the purposes of the Medicare or Social Security Act or would be against equity and

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<sup>3</sup> The MSP provisions, *see generally* 42 U.S.C. § 1395y(b), are also referred to as Section 1862(b) of the Social Security Act. Thus, 42 U.S.C. § 1395y(b)(2)(B)(v), the hardship waiver under the MSP, is the same provision referred to in the email as “Section 1862(b)(2)(B)(v) of the Social Security Act.”

good conscience,” the administrative presentment and exhaustion requirements demand that Petitioners ““would first have to request that the agency exercise its discretion to waive its right to collect from the proceeds of [their] tort suit the medical expenses it had paid on her behalf.”” *Leavitt*, 376 F. Supp. 2d at 746 (quoting *Cochran*, 291 F.3d at 779) (alteration added). Ultimately, judicial review is available in this Court if Petitioners are dissatisfied with the relief they receive at the agency level. *Burwell*, 2016 WL 827368, at \*12 (upholding Medicare Appeals Council decision requiring reimbursement of MSP payments from state court settlement as supported by substantial evidence).

The MSP presentment and exhaustion requirements cannot be avoided simply because Petitioners profess to present their claims under a different statute, the CVRA. Any claims Petitioners make seeking to “waive off” their Medicare lien obligations require presentment and exhaustion of remedies, neither of which has occurred here. Accordingly, the Court lacks subject matter jurisdiction over claims that would require the Court deem Petitioners’ obligations under the MSP waived.

**B. Petitioners are Not Entitled to the Relief They Seek Under the CVRA.**

Petitioners claim that the government improperly directs the Court’s attention to the MSP when, they insist, they have filed their Petition not under the MSP but under the CVRA, seeking injunctive or declaratory relief. Petitioners propose that as an alternative to the Court “ordering” the lien waivers, discussed *supra*, the Petitioners would satisfy their medical lien obligations to Medicare out of their settlement awards, as those amounts become finally determined in the civil litigation proceeding, if this Court will modify the Restitution Order it has entered in this case to “remove the word non-reimburs[ed]” or simply declare their Medicare repayments to be “out of

pocket reimbursable expenses,” so that the 14 Petitioners with Medicare lien obligations can again recoup their Medicare reimbursement payments in this Court’s restitution proceeding. The government responds that this claim too arises under the MSP and that Petitioners cannot sidestep the administrative scheme simply by stating that the claims arise under some other statute. Thus, the government concludes, this Court lacks jurisdiction to resolve the claim asserted under the CVRA. Alternatively, the government responds, even assuming the Court can properly exercise jurisdiction under the CVRA over Petitioners’ claim, the claim lacks substantive merit.

The CVRA accords victims of crimes various rights, including the right to notice of proceedings involving the crimes, the right to be reasonably heard at such proceedings, the right to receive full and timely restitution, the right to be treated fairly and with respect for their dignity and privacy, and the right to be informed of their rights under the CVRA. 18 U.S.C. § 3771(a)(1)-(10). “These rights may be enforced by the victim or the victim’s representative, or the government.” Goodwin, Federal Criminal Restitution § 11:10 (citing 18 U.S.C. § 3771(d)(1)). The rights described in Section 3771(a) “shall be asserted in the district court in which a defendant is being prosecuted for the crime,” and the “district court shall take up and decide any motion asserting a victim’s right forthwith.” 18 U.S.C. § 3771(d)(3). “If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus.” *Id.* The CVRA expressly provides, however, that it does not authorize an independent cause of action for damages. 18 U.S.C. § 3771(d)(6).

“On its face, the Crime Victims’ Rights Act (CVRA) does not directly affect the determination of restitution under the restitution statutes and resulting case law. However, it can provide the procedural means for victims to challenge restitution law, and can affect how the court

receives information about victims and their harms.” Goodwin, Federal Criminal Restitution § 11.11 (footnote omitted). Through its mandate that the victim has a right to “full and timely restitution as provided in law,” and its declaration that the CVRA “does not affect the victim’s right to restitution as provided in title 18, United States Code,” the CVRA seeks to further the purpose of the MVRA (18 U.S.C. § 3663A), under which the Court has ordered restitution in this case. *Id.* See also *United States v. Atlantic States Cast Iron Pipe Co.*, 612 F. Supp. 2d 453, 458 (D. N. J. 2009) (noting that “[a]lthough the CVRA provides the vehicle for [a petitioner] to assert her right to restitution, it does not create an independent obligation for a district court to order or a defendant to pay such an award. . . . Rather, the CVRA merely protects the right to receive restitution that is provided for elsewhere”) (internal quotation marks and citation omitted) (alterations in original).

Both the CVRA and the MVRA contain provisions granting the court discretion, in cases involving multiple victims, to restrict the availability of full restitution. The MVRA provides that a court is not obligated to order restitution if it finds that: (1) “the number of identifiable victims is so large as to make restitution impracticable,” or (2) “determining complex issues of fact related to the cause or amount of the victim’s losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.” 18 U.S.C. § 3663A(c)(3). See also 18 U.S.C. § 3663(a)(1)(B)(ii) (providing that “to the extent that the court determines that complications and prolongation of the sentencing process resulting from the fashioning of an order of restitution . . . outweighs the need to provide restitution to any victims, the court may decline to make such an order”). Likewise, the CVRA contains the following “multiple crime victims” provision: “In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights

described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.” 18 U.S.C. § 3771(d)(2). Thus, in a multiple crime victim case such as this, the Court has discretion to order less than full restitution and to accord fewer than all of the rights listed in § 3771(a)(1)-(10). *See also In re W.R. Huff Mgt. Co., LLC*, 409 F.3d 555, 564 (2d Cir. 2005) (upholding district court’s restitution order that allegedly failed to compensate all victims, observing that the court had appropriately considered the numerosity of victims and the prospect of delay in sentencing in arriving at a restitution plan).

In this Court’s Restitution Order, after holding multiple public hearings on the issue of restitution (of which these Petitioners received notice), this Court approved a plan and invoked the complication provision of the MVRA to conclude that areas of restitution that might otherwise be available to victims of Fata’s crimes were not included in the plan due to the delay and expense that would be involved in determining the cause and amount of each victim’s loss were the plan to include categories of loss other than those approved in the Restitution Order. (ECF No. 186, Restitution Order.) Many factors informed the Court’s decision to approve a plan that limited the categories of compensable losses in this case, including the fact that the government had diligently worked to create and preserve the restitution fund by: (1) obtaining concessions from AFMLS with regard to utilizing the full amount of the forfeited funds, which were obtained as the result of the health care fraud conviction, for restitution; and (2) obtaining funding from the government (not from the forfeited funds used for restitution) for the claims process, specifically to bear the cost of Ms. Roth’s work as the Claims Facilitator. Similarly, the Court concluded that attempting to include categories of a patient victim’s loss beyond those ultimately agreed upon in the plan would have presented impossibly complicated issues in attempting to determine the cause and amount of

individual victim's losses in those other categories.

The Court's Restitution Order sets forth a detailed claims process and the Court has approved Ms. Randi Roth as a Claims Facilitator for that process. The Court will establish a separate process for a claimant to appeal a decision of the Claims Facilitator to the Court. Only if amounts remain in the restitution fund after all patient victims have been compensated under the claims process will any funds be available for other victims of Fata's crimes, i.e. private, non-patient victims (health care benefit programs) and government victims (Medicare). The government will be last in line and will recover only after private individuals and entities have received the full measure of their restitution. Indeed, such a sequencing of restitution is required by the MVRA. *See* 18 U.S.C. § 3664(i) ("In any case in which the United States is a victim, the court shall ensure that all other victims receive full restitution before the United States receives any restitution."). The goal of the restitution plan approved by the Court is to pay as much, if not all, of Fata's assets to individual victims.

Petitioners challenge the limitation imposed in the Restitution Order to payment of claims only for *non-reimbursed, out-of-pocket* expenses. Such a limitation, however, is consistent with the mandate of the MVRA, which permits restitution only for actual non-compensated losses that flow directly from the crime. The "purpose of restitution is not to provide a windfall for crime victims but rather to ensure that victims, to the greatest extent possible, are made whole for their losses." *United States v. Martin*, 803 F.3d 581, 594 (11th Cir. 2015) (internal quotation marks and citation omitted) (citing *Hughey v. United States*, 495 U.S. 411, 416 (1990) ("[T]he ordinary meaning of "restitution" is restoring someone to a position he occupied before a particular event.")). "Thus, the amount of restitution owed to each victim must be based on the amount of loss *actually*

caused by the defendant's conduct.” *Martin*, 803 F.3d at 595 (internal quotation marks and citation omitted) (emphasis in original).

This overarching limitation to out-of-pocket, non-reimbursed costs is expressed in several provisions of the MVRA. For example, 18 U.S.C. § 3663A(b)(2) limits recovery to actual monetary losses, providing for payment of amounts “equal to the cost of necessary medical and related professional services.”<sup>4</sup> And 18 U.S.C. § 3664(j)(2) prevents double recovery by disallowing restitution for a loss that is compensated by some other source, providing that “any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in . . . any State civil proceeding . . . .”<sup>5</sup> Petitioners will have been “compensated” by the tortfeasors in their civil law suits for amounts they are required to reimburse to Medicare; indeed, as discussed *infra*, those portions of their state court

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<sup>4</sup> 18 U.S.C. § 3663A(b) provides in relevant part:

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

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

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

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

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

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

<sup>5</sup> 18 U.S.C. § 3664(j) provides in relevant part:

(2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in--

(A) any Federal civil proceeding; and

(B) any State civil proceeding, to the extent provided by the law of the State.

settlements that represent recovery for medical expenses that Medicare long ago paid on their behalf are due and owing to Medicare upon Petitioners' receipt of such amounts, and Petitioners are statutorily obligated to permit such funds to pass through from the primary payer (the tortfeasor) to the secondary payer (Medicare). After "satisfying" their medical lien obligations from their state court settlement, Petitioners will be in the same position as the hundreds of other Fata victims who had such amounts paid on their behalf: without an actual monetary out of pocket loss with respect to those payments. Nothing more is required, with regard to these MSP reimbursements, to "restore" Petitioners to the financial position they enjoyed prior to receiving their medical treatments from Fata. *See United States v. McDaniel*, 398 F.3d 540, 554-55 (6th Cir. 2005) (noting that "the restitution statutes do not permit victims to obtain multiple recoveries for the same loss" and instructing district court on remand "that in no case" should restitution payments be made to any victims who have already been fully compensated for their losses in state court actions). Neither the letter nor the spirit of the MVRA requires that Petitioners be permitted to recover the MSP amounts again through the restitution process in the criminal proceeding, because those amounts are not a "cost" or a "loss" to the Petitioners! Further, as discussed *infra*, under the circumstances of this case, to permit this select group of state court civil litigants such a recovery would inequitably diminish the restitution funds available for those hundreds of Fata victims who *did not have* the benefit of a state court civil settlement in their favor but who *do have* legitimate actual non-reimbursed out of pocket losses for which they deserve to be made whole.

Petitioners next assert that requiring the Petitioners to satisfy their Medicare lien obligations out of their state court settlement and disallowing recovery for those same reimbursed amounts in this Court's restitution proceeding violates that mandate of the MVRA that the government must be

the last victim in line to receive criminal restitution. *See* 18 U.S.C. § 3664(i) (“In any case in which the United States is a victim, the court shall ensure that all other victims receive full restitution before the United States receives any restitution.”). *See also United States v. Williams*, 612 F.3d 500, 510 (6th Cir. 2010) (“In cases where the United States is a victim, “the court shall ensure that all other victims receive full restitution before the United States receives any restitution.”) (citing § 3664(i)). Petitioners argue that precluding them from seeking recovery for their Medicare reimbursements a second time from the criminal restitution fund penalizes them and moves the government ahead of the patient victims in the order of priority for receipt of restitution in contravention of this mandate.

As an initial matter, it is worth pausing here to recall that the restitution fund exists in this case because the government elected to turn over all of Fata’s forfeited assets for purposes of restitution to Fata’s victims, a decision it was not obligated to make. And in taking on the financial obligation (independent of the forfeited funds) to pay for the complex claims processing, including payment for Ms. Roth’s salary, the government has further contributed to preservation of the restitution fund. Finally, it is acknowledged that, given the sheer number of victims and the size of the claims of the private insurers (Blue Cross reportedly has a stipulated \$7 million loss), the government stands to recover little or more likely nothing as a victim of Fata’s crimes. But putting aside these realities, the fact is that the money that Petitioners receive from their state court settlements are not criminal restitution funds – they are civil settlement awards compensating Petitioners at least in part for the very same medical expenses (which Petitioners were never called upon to pay in the first place) for which Petitioners would seek to recover again in the criminal restitution proceeding. Moreover, the lien reimbursement payments they may be required to make

to reimburse Medicare are not direct payments for medical expenses they incurred for treatment. Those medical expenses were paid long ago by Medicare as a secondary payer. The payments Petitioners may be required to make out of their settlement awards are reimbursement to Medicare for money it laid out long ago on Petitioners' behalf. And those monies, that were paid by Medicare on Petitioners' behalf, are statutorily required to be repaid to Medicare from Petitioners' settlements under the MSP. Thus, permitting Medicare to recover Petitioners' MSP reimbursements from their settlement awards does not move the government ahead of the private patient victims for recovery from the restitution fund created in this Court as a result of the government's criminal health care prosecution.

An additional point that has been raised by the government, and that has received no adequate response from Petitioners, is that the state court litigation settlement involves multiple tortfeasors in addition to Fata. The government argues that because the majority of Fata's assets have been forfeited in the criminal proceeding, it is likely that the bulk of the settlement payment in state court action came from non-Fata defendants. Petitioners have not disputed this suggestion and offer no basis for determining which portion of the settlement was paid by Fata as distinct from the other tortfeasors, such as Crittenton Hospital Medical Center, McLaren Health Care Corporation, Trinity Health. Medicare's recovery of conditional payments from these entities could not possibly be considered as offsets to Fata's restitution payments to Medicare, yet Petitioners offer the Court no basis for making such a critical determination.

Petitioners have not persuaded the Court that, under the particular circumstances of this case, allowing Medicare to enforce its rights under the MSP runs afoul of the mandate of the MVRA that the government be last in line to recover from the restitution fund that resulted from Fata's criminal

health care prosecution. The restitution fund in the Fata criminal proceeding was created only by the voluntary action of the government in electing to apply all of the forfeited funds it obtained in the criminal proceeding to restitution for Fata's victims – a decision the government made with the knowledge that it was unlikely to benefit from that restitution fund after all private victims had been compensated. The Court is confident that the claims process will achieve the goal of paying most, if not all, of Fata's assets to individual and private Fata victims.

Petitioners argue (perhaps alternatively although this is unclear) that when they receive the settlement monies that they anticipate from their civil actions, some of which they acknowledge they will be obligated to use to reimburse Medicare and other medical expense lien holders, that settlement money will first “go into their pockets,” will become their property and therefore any amounts that they are required to pay as reimbursement of the medical liens will be expenses paid “out of their pocket” that they should be entitled to claim in the restitution process established by this Court. Petitioners argue that “Medicare does not have a property right to the funds a Plaintiff receives from a tort settlement, only a right to recover its conditional payment from the Plaintiff,” and therefore reimbursement payments come directly “out of their pockets.” Petitioners offer no statute or case or even general principle of law to support this conclusion, which in any event ignores the basic fact that Medicare made payments on Petitioners' behalf that were expressly “conditioned on reimbursement” to Medicare and that the government has a *direct* right to recover such payments. *Hadden*, 661 F.3d at 304 (holding that Medicare's right to reimbursement from *any entity* that has received payment from a primary payer, including by way of a judgment or settlement in a medical malpractice action, is direct and “not encumbered by any of the subrogation baggage that might (or might not) weigh down an action” to enforce subrogation rights). Petitioners offer

no support for the notion that the money paid in settlement can be found “in Petitioners’ pockets” and that Medicare enjoys only a “conditional” right to repayment.<sup>6</sup> There are no conditions on Medicare’s right to recover, which is direct and unqualified. *See Taransky v. Sec’y of U.S. Dept. of Health and Human Servs.*, 760 F.3d 307, 317 (3d Cir. 2014) (holding that “because of [the MSP] reimbursement right,” a tort claimant whose medical expenses have been provisionally paid by Medicare could recover such expenses in her state court tort suit because she “could not pocket” those expense recoveries, which she was obligated to pass on to Medicare and hence she would not obtain a double recovery).

This is a complicated and horrific criminal case with over 550 identified victims. The Court has invested significant time, held multiple public hearings and considered a multitude of competing factors in fashioning what it believes is a fair and equitable restitution plan that puts Fata’s patient victims first in line to receive full restitution for their actual non-reimbursed, out-of-pocket medical expenses. Petitioners’ claims do not involve a challenge to the amount of restitution that Fata will be required to pay – that has been established. Rather, Petitioners’ claims involve a challenge to the type of loss that will qualify for restitution and ultimately to the equitable distribution of a limited restitution fund that must satisfy the claims a large number of victims. The Petitioners represent only a small fraction of Fata’s patient-victims but the relief they seek would put them in a position to recover a disproportionate share of the limited restitution fund. Petitioners represented to the Court that 14 of the Petitioners have known Medicare liens that total approximately \$587,758.00 and

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<sup>6</sup> Indeed, Petitioners’ counsel explained to the Court at the hearing that the settlement funds are not immediately made available to the Petitioners but are held back while a claims administrator goes through a complicated process of determining how much of the settlement recovery must be directly paid to Medicare and other health care lien holders. Thus, the medical lien reimbursement amounts never make it “into Petitioners’ pockets” in the first place.

that the total outstanding health care reimbursement claims against the 43 Petitioners, including the claims of private health insurers, amounts to about \$7 million. Permitting this small subset of Fata's victims (about 8.6% of the 553 *identified* victims) to receive a disproportionately large share of the restitution fund to reimburse "losses" that they were never actually required to pay (or for which they have been compensated through their state court settlements), thus diminishing the amount of restitution available for the rest of Fata's victims with real out of pocket, non-reimbursed medical expenses, who did not pursue state court settlements, presents an intolerable inequity.

Petitioners have not demonstrated that their right "to full and timely restitution," or their right "to be treated with fairness and respect for [their] dignity and privacy," or their "right to be informed of their rights" under the CVRA, all of which are rights guaranteed to them as victims of Fata's crimes, *see* 18 U.S.C. §§ 3771 (a)(6), (a)(8), and (a)(10), have been violated.

#### **IV. CONCLUSION**

Because (1) the Court lacks subject matter jurisdiction over Petitioners' claims that arise under the MSP, and (2) Petitioners have failed to demonstrate a violation of their rights under the CVRA, the government's motion to dismiss the Petition is GRANTED and the Petition is DISMISSED.

IT IS SO ORDERED.

s/Paul D. Borman  
PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: August 31, 2016

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 31, 2016.

s/Deborah Tofil  
Case Manager

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

No. 13-cr-20600

Hon. Paul D. Borman

FARID FATA, M.D.

Defendant.

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**ORDER EXTENDING RESTITUTION FILING DEADLINE**

On April 11, 2016, pursuant to the Mandatory Victim Restitution Act of 1996 (MVRA), Pub. L. No. 104-132, § 204(a), 110 Stat. 1227 (1996) (codified as amended at 18 U.S.C. § 3663A), the United States District Court entered an Order Establishing a Restitution Plan and Review of Claims for Restitution (“Restitution Order”).

The Court’s Restitution Order followed multiple hearings held on July 30, 2015, March 10, 2016, and March 28, 2016, regarding the determination of restitution during which the government proposed to the Court a restitution plan which would identify the patient victims to whom restitution should be ordered and amounts of restitution with respect to those areas of restitution that are readily determinable under the plan set forth below.

The Court found in its Restitution Order that complex issues of fact with respect to the areas of restitution not included in the plan for determining the cause

and amount of each patient victim's losses that would unreasonably prolong the sentencing process to a degree and a monetary expense that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

The Court ordered restitution in the Restitution Order to defined categories to former patients of Dr. Fata who are victims of Dr. Fata's offenses and representatives of their legal estates (hereinafter, collectively, "former patients").<sup>1</sup>

The Court further ordered that former patients who wished to request restitution must submit a restitution claim form and supporting documents according to the instructions on the claim form, on or before October 5, 2016.

The Court has been informed by the United States that due to the complexity and nature of the claims being submitted and the necessity that former patients obtain medical and financial documentation supporting these claims, additional time is required to ensure that the maximum number of eligible claims will be submitted by former patients.

Accordingly, and to ensure that former patients have sufficient time and ability to submit claims for restitution, the Court hereby extends the deadline for filing such claims from October 5, 2016 to November 14, 2016.

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<sup>1</sup> As used in this Order, the term "patient" means a patient who received at least one office-based evaluation and management service (i.e., office visit) from Farid Fata as the rendering physician. The term "former patient" includes former patients of Dr. Fata, or if deceased, the personal representative of his/her estate.

For the reasons stated on the record at the hearings held on March 10, 2016 and March 28, 2016, the procedures and dates set forth in the Restitution Order, the reasons set forth in the instant Order and the legal precedent set forth in the United States Supreme Court case of *United States v. Dolan*, 130 S. Ct. 2533 (2010), the restitution hearing in this matter is adjourned from November 1, 2016 until January 17, 2016 at 2:00 p.m.

IT IS SO ORDERED.

s/Paul D. Borman  
Paul D. Borman  
United States District Judge

Dated: September 26, 2016

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 26, 2016.

s/Deborah Tofil  
Deborah Tofil  
Case Manager

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIM. CASE NO. 13-20600

v.

PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

DR. FARID FATA

Defendant.

\_\_\_\_\_ /

**ORDER RE: RESTITUTION STATUS  
HEARING, JANUARY 17, 2017.**

This Hearing will relate solely to the progress of the previously-approved plan of Restitution: (Dkt. # 186) The Government will report on the progress of the plan.

The Hearing will not involve or discuss Dr. Fata's conviction and sentence, or the Sixth Circuit's Affirmance of the Judgment of The District Court filed May 25, 2016; Sixth Circuit Case #15-1935; the Sixth Circuit Mandate issued 5/25/2016.

SO ORDERED.

DATED: DEC 15 2016



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PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIM. CASE NO. 13-20600

v.

PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

DR. FARID FATA

Defendant.

\_\_\_\_\_ /

ORDER SETTING RESTITUTION REPORT HEARING  
AT 10 A.M. ON AUGUST 16, 2017

On January 17, 2017, the Court held a “Report on Restitution Hearing.” At that hearing, the Claims Facilitator set forth in detail the progress made under the Court’s Order Establishing a Restitution Plan and Review of Claims for Restitution (Restitution Order) entered on April 11, 2016. “The Claims Facilitator reported that she had received 763 claims as of January 5, 2017, and that the processing and validation of these claims, applying the claims to the corpus of the seized funds, recommending the appropriate payments and then providing for victim appeals from these determinations to Magistrate Judge David Grand, will require a period of 6-8 months.

Given the necessary complexity of this significant process, the Court concludes that 7 months is appropriate for the restitution process, and the Court will set the next report hearing for seven months from January 17, 2017 – August 16, 2017, at 10 am.

Accordingly, for the reasons set forth in the instant Order, and the precedent set forth in *United States v. Dolan*, 130 S.Ct. 2533 (2010)<sup>1</sup> the next restitution report to the Court is scheduled for August 16, 2017.

SO ORDERED.

DATED: JAN 27 2017



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PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> “The fact that a sentencing court misses the statute’s 90-day deadline . . . does not deprive the court of the power to order restitution..” *Id.* 2539.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIM. CASE NO. 13-20600

v.

PAUL D. BORMAN  
U. S. DISTRICT JUDGE

DR. FARID FATA

Defendant.

\_\_\_\_\_ /

**ORDER ADJOURNING RESTITUTION REPORT HEARING TO  
3PM FRIDAY, NOVEMBER 17, 2017**

The Court has been advised that the claims facilitator is continuing to review the over 700 claims submitted. Once her review is completed, she will mail provisional decision letters to each claimant that will inform of (1) the provisional decision, (2) an opportunity to request reconsideration of that decision, and then (3) reach a conclusion/final decision.

Going forward, a claimant can request review by Magistrate Judge David Grand on the ground that the claims facilitator has made a mistake, and specifically, what part of her review was incorrect.

As to the claims process, due to the number of claims and the complexity of

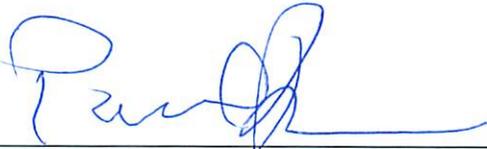
the process, the claims facilitator will not have her provisional decision and her reconsideration finalized before the August 16, 2017 date.

Accordingly, the Court will adjourn the status hearing scheduled for August 16, 2017, to 3pm Friday, November 17, 2017. This November hearing will be an advisory update to the Court on the claims facilitator's progress, and not include finalized conclusions with regard to any claimant appeals to Magistrate Judge Grand from the decisions of the claims facilitator. It is anticipated that this status hearing will conclude the claims facilitator's involvement, her final Report, and be a preliminary determination of restitution pending any appeal to Magistrate Judge Grand.

Accordingly, for the reasons set forth in the instant order, and the ruling in the precedential Supreme Court decision *United States v. Dolan*, 130 S. Ct. 2533 (2010),\* the next restitution report to the Court is scheduled for November 17, 2017.

SO ORDERED.

DATED: JUL 18 2017

  
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PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

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\* "The fact that a sentencing court misses the statute's 90-day deadline, even through its own fault or that of the Government, does not deprive the court of the power to order restitution." *Dolan* at 2539.