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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

January 2019 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARIN FLASHBERG and
NAJIB JABBOUR,

Defendants.

No. CR

19 CR 00209 JAK

I N D I C T M E N T

[18 U.S.C. § 371: Conspiracy to Pay Illegal Remunerations for Health Care Related Purchases; 42 U.S.C. § 1320a-7b(b)(2)(B): Illegal Remunerations for Health Care Related Purchases; 18 U.S.C. § 2: Aiding and Abetting and Causing an Act to be Done; 18 U.S.C. §§ 982(a)(7), 981(a)(1)(C), and 28 U.S.C. § 2461(c): Criminal Forfeiture]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. § 371]

A. INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

DEFENDANTS AND RELATED ENTITIES

1. Defendant DARIN FLASHBERG ("defendant FLASHBERG")

1 owned, operated, controlled and/or was affiliated with several
2 durable medical equipment ("DME") companies (the "Affiliated
3 DMEs").

4 2. Defendant NAJIB JABBOUR ("defendant JABBOUR") owned,
5 operated, controlled and was affiliated with EZ Fit Medical
6 Group, Inc. ("EZ Fit"), located at 466 W. Arrow Highway, Suite
7 H, San Dimas, California, within the Central District of
8 California, a DME company that was among the Affiliated DMEs.

9 3. Person A, an individual known to the Grand Jury, was
10 the founder, part owner, and manager of Company A and Company B,
11 which operated international call centers.

12 4. Person B was the stepson of defendant FLASHBERG.

13 5. The Affiliated DMEs included the following DME
14 companies, among others, at various times between at least in or
15 around April 2016 and in or around March 2019:

16 a. Medisphere, Inc., which also did business under
17 the name Flash Medical ("Flash Medical"), was a DME company
18 located at 482 W. Arrow Highway, Suite E, San Dimas, California,
19 within the Central District of California. From at least
20 approximately February 10, 2010, Flash Medical was owned and
21 operated by defendant FLASHBERG. Person B was the Office
22 Manager at Flash Medical. Flash Medical had a business bank
23 account at JPMorgan Chase Bank, N.A. ("Chase"), located in San
24 Dimas, California, with an account number ending in 5788 (the
25 "Flash Medical Acct"). Defendant FLASHBERG was the sole
26 signatory on the Flash Medical Acct. Between in or around April
27 2016 through in or around March 2019, Flash Medical submitted
28 claims for DME to various insurance companies, including at

1 least approximately \$21,205,147 billed to Medicare, on which
2 claims Medicare paid approximately \$10,677,810. Pursuant to
3 defendant FLASHBERG's authorization, Medicare deposited such
4 payments into the Flash Medical Acct.

5 b. Qual Med, LLC ("Qual Med") was a DME company
6 located at 466 W. Arrow Highway, Suite G, San Dimas, California,
7 within the Central District of California. From at least
8 approximately September 1, 2016, Qual Med was owned and operated
9 by defendant FLASHBERG. Qual Med had a business bank account at
10 Chase, located in Glendora, California, with an account number
11 ending in 8995 (the "Qual Med Acct"). Defendant FLASHBERG was
12 the sole signatory on the account. Between in or around
13 September 2017 through in or around October 2018, Qual Med
14 submitted claims for DME to various insurance companies,
15 including at least approximately \$3,626,615 billed to Medicare,
16 on which claims Medicare paid approximately \$1,745,042.
17 Pursuant to defendant FLASHBERG's authorization, Medicare
18 deposited such payments into the Qual Med Acct.

19 c. Optimal Med LLC ("Optimal Med") was a DME company
20 located at 458 W. Arrow Highway, Suite A, San Dimas, California,
21 within the Central District of California. From at least
22 approximately August 16, 2017, Person B was the nominal owner
23 and a managing member of Optimal Med, and defendant FLASHBERG
24 was the Vice President of Sales and Operations at Optimal Med.
25 Optimal Med had a business bank account at Chase, located in San
26 Dimas, California, with an account number ending in 6657 (the
27 "Optimal Med Acct"). Defendant FLASHBERG and Person B were
28 signatories on the account. Between in or around January 2018

1 through in or around October 2018, Optimal Med submitted claims
2 for DME to various insurance companies, including at least
3 approximately \$7,139,385 billed to Medicare, on which claims
4 Medicare paid approximately \$3,728,335. Pursuant to Person B's
5 authorization, Medicare deposited such payments into the Optimal
6 Med Acct.

7 d. EZ Fit was a DME company located at 466 W. Arrow
8 Highway, Suite H, San Dimas, California, within the Central
9 District of California. From at least approximately April 4,
10 2018, defendant JABBOUR was the owner and operator of EZ Fit.
11 Defendants FLASHBERG and JABBOUR were partners in EZ Fit with an
12 agreement to share the profits of the business. EZ Fit had a
13 business bank account at Chase, located in San Dimas,
14 California, with an account number ending in 2125 (the "EZ Fit
15 Acct"). Defendants FLASHBERG and JABBOUR were signatories on
16 the account. Between in or around November 2018 through in or
17 around March 2019, EZ Fit submitted claims for DME to various
18 insurance companies, including at least approximately \$2,061,670
19 billed to Medicare, on which claims Medicare paid approximately
20 \$1,090,500. Pursuant to defendant JABBOUR's authorization,
21 Medicare deposited such payments into the EZ Fit Acct.

22 e. DR Diagnostic Solutions LLC ("DR Diagnostic") was
23 a DME company located at 466 W. Arrow Highway, Suite D, San
24 Dimas, California, within the Central District of California.
25 From at least approximately January 30, 2017, DR Diagnostic was
26 owned and operated by defendant FLASHBERG. DR Diagnostic had a
27 business bank account at Chase, located in San Dimas,
28 California, with an account number ending in 6766 (the "DR

1 Diagnostic Acct"). Defendant FLASHBERG was the sole signatory
2 on the account. Between in or around January 2019 through in or
3 around February 2019, the DR Diagnostic Acct received payments
4 from various insurance companies, including private insurance
5 companies that received Medicare funds to administer health care
6 benefits to Medicare beneficiaries.

7 f. Pro-Fit Solutions, Inc. ("Pro-Fit") was a DME
8 company located at 449 W. Allen Avenue, Suite 101, San Dimas,
9 California, within the Central District of California. From at
10 least approximately November 20, 2018, Pro-Fit was owned and
11 operated by defendant FLASHBERG. Pro-Fit had a business bank
12 account at Chase, located in San Dimas, California, with an
13 account number ending in 6327 (the "Pro-Fit Acct"). Defendant
14 FLASHBERG was the sole signatory on the account. Between in or
15 around January 2019 through in or around February 2019, the Pro-
16 Fit Acct received payments from various insurance companies,
17 including private insurance companies that received Medicare
18 funds to administer health care benefits to Medicare
19 beneficiaries.

20 g. Advanced Orthotics, Inc. ("Advanced Orthotics")
21 was a DME company located at 417 W. Allen Avenue, Suite 107, San
22 Dimas, California, within the Central District of California.
23 From at least approximately November 20, 2018, Advanced
24 Orthotics was owned and operated by defendant FLASHBERG.
25 Advanced Orthotics had a business bank account at Chase, located
26 in San Dimas, California, with an account number ending in 8595
27 (the "Advanced Orthotics Acct"). Defendant FLASHBERG was the
28 sole signatory on the account. In or around February 2019, the

1 Advanced Orthotics Acct received payments from various insurance
2 companies, including private insurance companies that received
3 Medicare funds to administer health care benefits to Medicare
4 beneficiaries.

5 The Medicare Program and Durable Medical Equipment

6 6. Medicare was a federal health care benefit program,
7 affecting commerce, that provided benefits to individuals who
8 were 65 years and older or disabled. Medicare was administered
9 by the Centers for Medicare and Medicaid Services ("CMS"), a
10 federal agency under the United States Department of Health and
11 Human Services. Individuals who qualified for Medicare benefits
12 were referred to as Medicare "beneficiaries." Each beneficiary
13 was given a unique health insurance claim number ("HICN").

14 7. Medicare was a "Federal health care program" as
15 defined by Title 42, United States Code, Section 1320a-7b(b),
16 and a "health care benefit program" as defined by Title 18,
17 United States Code, Section 24(b).

18 8. Medicare programs covering different types of benefits
19 were separated into different program "parts." Medicare Part A
20 covered health services provided by hospitals, skilled nursing
21 facilities, hospices, and home health agencies. Medicare Part B
22 covered physician services and outpatient care, including an
23 individual's access to DME, such as orthotic devices and
24 wheelchairs. Parts A and B were known as the "original fee-for-
25 service" Medicare program, in which Medicare paid health care
26 providers fees for services rendered to beneficiaries.

27 9. Orthotic devices were a type of DME that included
28 rigid and semi-rigid devices such as ankle braces, knee braces,

1 back braces, elbow braces, shoulder braces, wrist braces, and
2 hand braces (collectively "braces").

3 10. DME companies, physicians, and other health care
4 providers that provided services to Medicare beneficiaries that
5 were reimbursed by Medicare were referred to as Medicare
6 "providers." To participate in Medicare, providers, including
7 DME suppliers, were required to submit applications in which the
8 providers agreed to comply with all Medicare-related laws and
9 regulations, including the Anti-Kickback Statute (42 U.S.C.
10 § 1320a-7b(b)), which proscribes the offering, payment,
11 solicitation, or receipt of any remuneration to induce the
12 referral of a patient or the purchase, lease, order, or
13 arrangement therefor, of any good, facility, service, or item
14 for which payment may be made by a federal health care program.
15 Providers were given access to Medicare manuals and service
16 bulletins describing procedures, rules, and regulations. If
17 Medicare approved a provider's application, Medicare assigned
18 the provider a Medicare "provider number," which was used for
19 the processing and payment of claims.

20 11. Medicare reimbursed DME suppliers and other healthcare
21 providers for services rendered to beneficiaries. To receive
22 payment from Medicare, providers submitted or caused the
23 submission of claims to Medicare, either directly or through a
24 billing company.

25 12. Most providers submitted their claims electronically
26 pursuant to an agreement they executed with Medicare in which
27 the providers agreed that: (a) they were responsible for all
28 claims submitted to Medicare by themselves, their employees, and

1 their agents; (b) they would submit claims only on behalf of
2 those Medicare beneficiaries who had given their written
3 authorization to do so; and (c) they would submit claims that
4 were accurate, complete, and truthful.

5 13. A Medicare claim for DME reimbursement was required to
6 set forth, among other things, the beneficiary's name and unique
7 Medicare identification number, the equipment provided to the
8 beneficiary, the date the equipment was provided, the cost of
9 the equipment, and the name and National Provider Identifier
10 ("NPI") of the attending physician who prescribed or ordered the
11 equipment.

12 14. A claim for DME submitted to Medicare qualified for
13 reimbursement only if the DME was medically necessary to the
14 treatment of the beneficiary's illness or injury and prescribed
15 by the beneficiary's physician.

16 Part C - Medicare Advantage

17 15. Medicare Part C, also known as the "Medicare
18 Advantage" Program, provided Medicare beneficiaries with the
19 option to receive their Medicare benefits through private
20 managed care plans, including health maintenance organizations
21 ("HMOs") and preferred provider organizations ("PPOs").
22 Medicare Advantage provided beneficiaries with all of the same
23 services provided by an original fee-for-service Medicare plan,
24 in addition to mandatory supplemental benefits and optional
25 supplemental benefits.

26 16. To receive Medicare Advantage benefits, a beneficiary
27 was required to enroll in a managed care plan operated by a
28 private company approved by Medicare. Those companies were

1 often referred to as Medicare Advantage plan "sponsors." A
2 beneficiary's enrollment in a Medicare Advantage plan was
3 voluntary.

4 17. Rather than reimbursing based on the extent of the
5 services provided, as CMS did for providers enrolled in original
6 fee-for-service Medicare, CMS made fixed, monthly payments to a
7 plan sponsor for each Medicare Advantage beneficiary enrolled in
8 one of the sponsor's plans, regardless of the services rendered
9 to the beneficiary that month or the cost of covering the
10 beneficiary's health benefits that month.

11 18. Medicare Advantage beneficiaries chose to enroll in a
12 managed care plan administered by private health insurance
13 companies, which were typically HMOs or PPOs. A number of
14 entities were contracted by CMS to provide managed care to
15 Medicare Advantage beneficiaries through various approved plans.
16 Such plans covered DME and related health care benefits, items,
17 and services. Among its responsibilities, these Medicare
18 Advantage plans received, adjudicated, and paid the claims of
19 authorized suppliers seeking reimbursements for the cost of DME
20 and related health care benefits, items, and services supplied
21 to Medicare Advantage beneficiaries.

22 B. THE OBJECT OF THE CONSPIRACY

23 19. Beginning no later than in or around April 2016, and
24 continuing through at least in or around March 2019, in Los
25 Angeles County, within the Central District of California, and
26 elsewhere, defendant FLASHBERG, together with defendant JABBOUR
27 from in or around April 2018 to in or around March 2019, and
28 others known and unknown to the Grand Jury, knowingly combined,

1 conspired, and agreed to commit the following offense against
2 the United States, namely, knowingly and willfully offering to
3 pay and paying any remuneration to any person to induce such
4 person to purchase, lease, order, and arrange for and recommend
5 purchasing, leasing, and ordering any good, facility, service,
6 or item for which payment may be made in whole or in part under
7 a Federal health care program, in violation of Title 42, United
8 States Code, Section 1320a-7b(b) (2) (B).

9 C. THE MANNER AND MEANS OF THE CONSPIRACY

10 20. The object of the conspiracy was carried out, and to
11 be carried out, in substance, as follows:

12 a. Defendant FLASHBERG would submit enrollment
13 applications to Medicare for Flash Medical and Qual Med for the
14 submission of claims for reimbursement from Medicare. In the
15 applications, defendant FLASHBERG would falsely certify to
16 Medicare that he, as well as Flash Medical and Qual Med, would
17 comply with all applicable federal regulations and laws,
18 including that they would not knowingly present or cause to be
19 presented a false and fraudulent claim for payment by Medicare
20 and that they would comply with the federal Anti-Kickback
21 Statute.

22 b. Defendant FLASHBERG would submit and cause to be
23 submitted an enrollment application to Medicare for Optimal Med
24 for the submission of claims for reimbursement from Medicare
25 that would fail to disclose defendant FLASHBERG's ownership of
26 Optimal Med and falsely state that Person B was the owner of
27 Optimal Med.

28 c. Defendant JABBOUR would submit an enrollment

1 application to Medicare for EZ Fit for the submission of claims
2 for reimbursement from Medicare. In the application, defendant
3 JABBOUR would falsely certify to Medicare that he, as well as EZ
4 Fit, would comply with all applicable federal regulations and
5 laws, including that they would not knowingly present or cause
6 to be presented a false and fraudulent claim for payment by
7 Medicare and that they would comply with the federal Anti-
8 Kickback Statute.

9 d. Defendants FLASHBERG, through all of the
10 Affiliated DMEs, and defendant JABBOUR through EZ Fit, would pay
11 illegal kickbacks and bribes to Person A, through Company A and
12 Company B, in exchange for completed prescriptions for braces
13 and other Medicare-required documents (collectively referred to
14 as "doctors' orders") that would be used to support claims to
15 Medicare for those braces from the Affiliated DMEs. Defendants
16 FLASHBERG and JABBOUR would agree to pay and pay a fixed price
17 to Person A, through Company A and Company B, for each brace
18 listed on a doctors' order.

19 e. The doctors who signed the doctors' orders for
20 braces purchased by defendants FLASHBERG and JABBOUR would often
21 do so regardless of medical necessity, in the absence of a pre-
22 existing doctor-patient relationship, without a physical
23 examination, and frequently based solely on a short telephonic
24 conversation with the Medicare beneficiary.

25 f. Defendant FLASHBERG, through all of the
26 Affiliated DMEs, would submit and cause to be submitted claims
27 to original fee-for-service Medicare and to Medicare Advantage
28 plans for braces that were procured through the payment of

1 kickbacks and bribes and which were medically unnecessary and/or
2 not provided as represented.

3 g. Defendants FLASHBERG and JABBOUR, through EZ Fit,
4 similarly would submit claims to original fee-for-service
5 Medicare and to Medicare Advantage plan sponsors for braces that
6 were procured through the payment of kickbacks and bribes and
7 which were medically unnecessary and/or not provided as
8 represented.

9 h. To conceal the illegal kickbacks and bribes,
10 defendant FLASHBERG, defendant JABBOUR, Person A, and others
11 known and unknown to the Grand Jury, would create sham contracts
12 and documentation that disguised the illegal kickbacks and
13 bribes as payments from the Affiliated DMEs to Person A for
14 marketing and business process outsourcing, among other
15 services.

16 i. Defendants FLASHBERG and JABBOUR would pay Person
17 A amounts that exceeded the fair market value for legitimate
18 marketing and business process outsourcing services. Defendants
19 FLASHBERG and JABBOUR would not have made these payments to
20 Person A if they were not receiving doctors' orders from Person
21 A for the Affiliated DMEs.

22 21. Over the course of the conspiracy, several of the
23 Affiliated DMEs including Flash Medical, Qual Med, Optimal Med,
24 and EZ Fit would bill original fee-for-service Medicare and
25 Medicare Advantage plan sponsors for DME items purportedly
26 provided to thousands of Medicare beneficiaries who resided
27 across the United States, including to over 2,000 Medicare
28 beneficiaries who resided in California.

1 a. In or about August 2017, CMS suspended Medicare
2 payments to Flash Medical. CMS based this suspension decision
3 on information indicating that Flash Medical had misrepresented
4 services billed to the Medicare program, and that Flash Medical
5 had billed Medicare for DME that was not ordered by the doctor
6 whom Flash Medical had listed as the ordering doctor on claims
7 submitted to Medicare.

8 b. In or about August 2018, CMS suspended Medicare
9 payments to Qual Med. CMS based this suspension decision on
10 information indicating that there were credible allegations of
11 fraud; that doctors listed as the ordering doctors on claims
12 submitted for payment by Qual Med to Medicare did not have a
13 relationship with the Medicare beneficiary to whom they
14 prescribed DME; that medical records submitted by Qual Med to
15 Medicare during a prepayment review of Qual Med's claims had
16 insufficient information to substantiate the items that Qual Med
17 billed to Medicare; and that ordering doctors associated with
18 Qual Med's claim submissions to Medicare failed to meet CMS
19 telemedicine regulations by failing to use interactive video or
20 an audio telecommunication system.

21 22. Between in or about April 2016 through in or about
22 March 2019, defendants FLASHBERG and JABBOUR, through the
23 Affiliated DMEs, would pay illegal kickbacks and bribes to
24 Person A, through Company A and Company B, in exchange for
25 doctors' orders for braces, as follows:

26 a. From in or about April 2016 through in or about
27 March 2019, defendant FLASHBERG paid illegal kickbacks and
28 bribes to Person A collectively totaling at least approximately

1 \$12,737,611 in exchange for doctors' orders for braces for Flash
2 Medical, Qual Med, Optimal Med, DR Diagnostic, Pro-Fit, and
3 Advanced Orthotics.

4 b. From in or about June 2018 through in or about
5 March 2019, defendants FLASHBERG and JABBOUR paid illegal
6 kickbacks and bribes to Person A totaling at least approximately
7 \$1,804,020 in exchange for doctors' orders for braces for EZ
8 Fit.

9 23. From in or about April 2016 through in or about March
10 2019, defendant FLASHBERG, together with defendant JABBOUR from
11 in or about April 2018 to in or about March 2019, collectively
12 submitted and caused the submission of at least approximately
13 \$34 million in claims to original fee-for-service Medicare for
14 DME, the vast majority of which were the product of illegal
15 kickbacks and bribes. As a result, Medicare collectively paid
16 Flash Medical, Qual Med, Optimal Med, and EZ Fit at least
17 approximately \$17.2 million. These false and fraudulent claims
18 were based upon the doctors' orders for braces that Person A,
19 through Company A and Company B, provided to defendants
20 FLASHBERG and JABBOUR in exchange for illegal kickbacks and
21 bribes.

22 D. OVERT ACTS

23 24. On or about the following dates, in furtherance of the
24 conspiracy and to accomplish its object, defendants FLASHBERG
25 and JABBOUR, together with Person A and others known and unknown
26 to the Grand Jury, committed and willfully caused others to
27 commit the following overt acts, among others, within the
28 Central District of California and elsewhere:

1 a. Company A and Company B Contracts with
2 Affiliated DMEs

3 Overt Act No. 1: On or about April 12, 2017, defendant
4 FLASHBERG, on behalf of Flash Medical, signed a Marketing
5 Services Agreement with Company B.

6 Overt Act No. 2: On or about April 12, 2017, defendant
7 FLASHBERG, on behalf of Qual Med, signed a Marketing Services
8 Agreement with Company B.

9 Overt Act No. 3: On or about April 25, 2018, defendant
10 FLASHBERG caused Person B, on behalf of Optimal Med, to sign a
11 Business Process Outsourcing and Call Center Services Agreement
12 with Company A, and a Marketing Services Agreement and a HIPAA
13 Business Associate Agreement with Company B.

14 Overt Act No. 4: On or about June 13, 2018, defendant
15 JABBOUR, on behalf of EZ Fit, signed a Business Process
16 Outsourcing and Call Center Services Agreement with Company A,
17 and a Marketing Services Agreement and a HIPAA Business
18 Associate Agreement with Company B.

19 Overt Act No. 5: On or about October 20, 2018, defendant
20 FLASHBERG, on behalf of DR Diagnostic, signed a Business Process
21 Outsourcing and Call Center Services Agreement with Company A,
22 and a Marketing Services Agreement and a HIPAA Business
23 Associate Agreement with Company B.

24 Overt Act No. 6: On or about November 21, 2018, defendant
25 FLASHBERG, on behalf of Pro-Fit, signed a Business Process
26 Outsourcing and Call Center Services Agreement with Company A,
27 and a Marketing Services Agreement and a HIPAA Business
28

1 Associate Agreement with Company B.

2 Overt Act No. 7: On or about November 21, 2018, defendant
3 FLASHBERG, on behalf of Advanced Orthotics, signed a Business
4 Process Outsourcing and Call Center Services Agreement with
5 Company A, and a Marketing Services Agreement and a HIPAA
6 Business Associate Agreement with Company B.

7 b. Select Payments to Company A and Company B
8 from Affiliated DMEs that Billed Original
9 Fee-For-Service Medicare

10 Overt Act No. 8: On or about April 7, 2016, defendant
11 FLASHBERG wired approximately \$18,750 from the Flash Medical
12 Acct to Person A, through Company A and Company B, for doctors'
13 orders for braces at approximately \$280 per brace ordered.

14 Overt Act No. 9: On or about June 10, 2016, defendant
15 FLASHBERG wired approximately \$37,501 from the Flash Medical
16 Acct to Person A, through Company A and Company B, for doctors'
17 orders for braces at approximately \$280 per brace ordered.

18 Overt Act No. 10: On or about April 5, 2017, defendant
19 FLASHBERG wired approximately \$112,000 from the Flash Medical
20 Acct to Person A, through Company A and Company B, for doctors'
21 orders for braces at approximately \$280 per brace ordered.

22 Overt Act No. 11: On or about April 24, 2017, defendant
23 FLASHBERG wired approximately \$15,120 from the Qual Med Acct to
24 Person A, through Company B, for doctors' orders for braces at
25 approximately \$280 per brace ordered.

26 Overt Act No. 12: On or about October 24, 2017, defendant
27 FLASHBERG wired approximately \$20,160 from the Qual Med Acct to
28 Person A, through Company A and Company B, for doctors' orders

1 for braces at approximately \$280 per brace ordered.

2 Overt Act No. 13: On or about March 19, 2018, defendant
3 FLASHBERG wired and caused to be wired approximately \$56,000
4 from the Optimal Med Acct to Person A, through Company A and
5 Company B, for doctors' orders for braces at approximately \$280
6 per brace ordered.

7 Overt Act No. 14: On or about April 4, 2018, defendant
8 FLASHBERG wired approximately \$56,000 from the Flash Medical
9 Acct to Person A, through Company A and Company B, for doctors'
10 orders for braces at approximately \$280 per brace ordered.

11 Overt Act No. 15: On or about May 7, 2018, defendant
12 FLASHBERG wired approximately \$56,000 from the Qual Med Acct to
13 Person A, through Company A and Company B, for doctors' orders
14 for braces at approximately \$280 per brace ordered.

15 Overt Act No. 16: On or about June 18, 2018, defendants
16 FLASHBERG AND JABBOUR wired and caused to be wired approximately
17 \$28,000 from the EZ Fit Acct to Person A, through Company A and
18 Company B, for doctors' orders for braces at approximately \$280
19 per brace ordered.

20 Overt Act No. 17: On or about January 22, 2019, defendant
21 FLASHBERG wired approximately \$56,000 from the Flash Medical
22 Acct to Person A, through Company A and Company B, for doctors'
23 orders for braces at approximately \$280 per brace ordered.

24 Overt Act No. 18: On or about February 6, 2019, defendants
25 FLASHBERG and JABBOUR wired and caused to be wired approximately
26 \$100,008 from the EZ Fit Acct to Person A, through Company A and
27 Company B, for doctors' orders for braces at approximately \$280
28 per brace ordered.

1 Overt Act No. 19: On or about February 21, 2019, defendant
2 FLASHBERG wired and caused to be wired approximately \$63,002
3 from the Optimal Med Acct to Person A, through Company A and
4 Company B, for doctors' orders for braces at approximately \$280
5 per brace ordered.

6 Overt Act No. 20: On or about February 27, 2019, defendant
7 FLASHBERG wired approximately \$76,998 from the Qual Med Acct to
8 Person A, through Company A and Company B, for doctors' orders
9 for braces at approximately \$280 per brace ordered.

10 c. Select Emails: Defendant FLASHBERG and Person A

11 Overt Act No. 21: On or about June 14, 2016, defendant
12 FLASHBERG emailed a response to an email sent to him the day
13 prior by Company B which contained Company B Invoice #1643 for
14 \$9,376, due on June 14, 2016, and informed defendant FLASHBERG
15 that Company B had completed 87% of his current order.

16 Defendant FLASHBERG's emailed response stated, "I just paid the
17 last one on Friday."

18 Overt Act No. 22: On or about October 12, 2016, defendant
19 FLASHBERG responded to an email from Person A, in which Person A
20 had stated, "Hello Darin due to the Increasing cost to market,
21 and the insatiable appetite that is cannibalizing on this
22 industry to get a compliant Patient, the \$280 is the only way we
23 can survive. [Person A]." Defendant FLASHBERG specifically
24 responded, "What would the invoice be for 200[,] 400[?] The
25 only concern I would have is the patients refusing orders after
26 the orders are sent to us so I would like to get credit, also
27 patients that are billed and then it's being denied, I would
28 like to [get] credit for as well. We had quite a few of those

1 customers from [doctor's name] . . . and a few other drs that
2 was [sic] audited by zpic." Person A responded, "Let's do a
3 call on Friday to discuss whats returnable, and whats clearly
4 pay for patient"

5 Overt Act No. 23: On or about July 23, 2017, defendant
6 FLASHBERG emailed Person A, stating, "Just checking in on our
7 last conversation that you mentioned we can be expecting 200-400
8 ppo do [doctors' orders] per week for flash medical. I know for
9 qual med my other company, I am buying 20k per week. Just want
10 to see how we can get the numbers for flash and get qual med to
11 increase?"

12 Overt Act No. 24: On or about October 11, 2017, defendant
13 FLASHBERG emailed Person A, inquiring, "When do you think we can
14 start back up with the Medicare orders for qual med that we did
15 in the past for flash medical?"

16 Overt Act No. 25: On or about November 7, 2017, defendant
17 FLASHBERG emailed Person A, stating, "Wanted to see last time we
18 spoke you mentors [sic] we can increase the ppo for flash and
19 for qual med and we would send all of qual orders to Bently
20 medical. Also with all [M]edicare that we got from flash that
21 we stopped - we would like to get that back but with qual med
22 because we now have the [M]edicare license now. Also 3rd DME we
23 would like to get 75 ppo do's weekly and all that will go to
24 Bently medical."

25 Overt Act No. 26: On or about November 15, 2017, defendant
26 FLASHBERG emailed Person A, stating, "We ran numbers for humana
27 and will keep that payor. When can we get [M]edicare dos for
28 qual med? We are only getting ppos for both flash and qual. We

1 want to see if we can get flash and qual ppo increased and for
2 qual at least 300 [M]edicare dos and 150 ppos[.] Flash1 350
3 dos[.] New company. 200 ppo dos. Waiting for [M]edicare
4 license."

5 Overt Act No. 27: On or about November 23, 2017, defendant
6 FLASHBERG emailed Person A, stating, "...Just want to touch base
7 with you and see when we can get [M]edicare busienss [sic] over
8 at qual and increase the ppo business for flash, qual and
9 possibly get some for new dne."

10 Overt Act No. 28: On or about November 27, 2017, defendant
11 FLASHBERG emailed Person A and another Company B employee,
12 stating, "[C]hecking in to see if we can get qual med's PPO from
13 72 DO's to 200 DO's and to get 300 DO's for [M]edicares. Flash
14 has 200 ppos, can we increase this to 400 ppos? And the new
15 company to 72 Do's[.] I'll send all the orders to Bentley
16 Medical with the increases. Let me know when we can get this
17 going?"

18 Overt Act No. 29: On or about November 28, 2017, defendant
19 FLASHBERG emailed Person A, stating, "Can you let me know if we
20 can increase the DO's with qual ppos, and to start getting
21 [M]edicare business and increase Do's with flash and get new
22 Do's with new company?"

23 Overt Act No. 30: On or about January 1, 2018, defendant
24 FLASHBERG emailed Person A and another Company B employee,
25 stating, "I want to see if we can increase both flash medical
26 and qual med account with more ppo do's? We are currently at
27 200 do's with flash medical and 72 do's with qual med. I want
28 to know how much more we can increase them both too? And the

1 3rd company I can accept both ppo and Medicare."

2 Overt Act No. 31: On or about January 6, 2018, defendant
3 FLASHBERG emailed Person A and another Company B employee,
4 stating, "Can you let me know what volume we can increase to for
5 flash, qual and new dme. I can send all the ones for the new
6 company to Bently medical[.]"

7 d. May 2016 Meeting: Defendant FLASHBERG and
8 Person A

9 Overt Act No. 32: On or about May 5, 2016, defendant
10 FLASHBERG and Person A met at an Applebee's restaurant in San
11 Dimas, California, and discussed the ongoing purchasing of
12 doctors' orders for braces from Person A.

13 e. December 2018 Philippines Call Center Visit:
14 Defendant JABBOUR

15 Overt Act No. 33: In or around December 2018, defendant
16 JABBOUR visited Person A's call center in the Philippines, where
17 he toured the facility, spoke with Person A's staff about
18 operations, and observed the call center process.

19 f. January 2019 Meetings: Defendants FLASHBERG and
20 JABBOUR and Person A

21 Overt Act No. 34: On or about January 22, 2019, defendant
22 FLASHBERG and Person A met at Ultra Med, Inc. ("Ultra Med"), a
23 DME company located at 457 W. Allen Avenue, Suite 118, San
24 Dimas, California, and discussed the ongoing purchasing of
25 doctors' orders for braces from Person A.

26 Overt Act No. 35: At the January 22, 2019 meeting,
27 defendant FLASHBERG stated, in sum and substance, that he
28

1 recently opened and owned Ultra Med; that he had seven DMEs in
2 San Dimas, California; that Flash Medical and Qual Med had
3 ongoing Medicare suspensions, which is why defendant FLASHBERG
4 had recently opened additional DME companies that would provide
5 DME to only Medicare Advantage patients; that he was concerned
6 about the Office of the Inspector General and the Department of
7 Justice pursuing him criminally; that he and defendant JABBOUR
8 had just opened EZ Fit; that defendant JABBOUR wanted doctors'
9 orders billable to original fee-for-service Medicare from Person
10 A; that currently EZ Fit was defendant FLASHBERG's only DME
11 company seeking doctors' orders for original fee-for-service
12 Medicare patients, and that the rest of defendant FLASHBERG's
13 DME companies were utilizing doctors' orders for only Medicare
14 Advantage patients; that going forward, EZ Fit was seeking to
15 purchase from Person A doctors' orders for braces for both
16 original fee-for-service Medicare patients and Medicare
17 Advantage patients; that he was billing a lot of DME to Humana
18 and Aetna for Medicare Advantage patients; that the doctors'
19 orders he purchased from Person A, whether for patients with
20 traditional Medicare coverage or patients with Medicare
21 Advantage PPO coverage, were all attributable to Medicare; and
22 that he wanted Person A to provide him with more doctors' orders
23 for Medicare Advantage patients, and specifically with more
24 Medicare Advantage patients with United Healthcare coverage.

25 Overt Act No. 36: During the January 22, 2019 meeting,
26 defendant FLASHBERG also negotiated with Person A to obtain a
27 new payment structure for future doctors' orders purchased by
28 defendant FLASHBERG from Person A.

1 Overt Act No. 37: On January 22, 2019, defendant FLASHBERG
2 agreed with Person A to pay Person A an increased amount of
3 approximately \$290 per DME product, instead of the existing rate
4 of \$280 per product, in exchange for Person A's guarantee that
5 if defendant FLASHBERG was unable to get paid for a claim based
6 upon a particular doctor's order provided by Person A, then
7 Person A would replace that doctor's order with a new one at no
8 additional charge.

9 Overt Act No. 38: Thereafter on or about January 22, 2019,
10 defendants FLASHBERG and JABBOUR and Person A met at a
11 restaurant in San Dimas, California, to discuss the ongoing
12 purchasing of doctors' orders for braces from Person A.

13 Overt Act No. 39: During the January 22, 2019 meeting at
14 the restaurant, defendants FLASHBERG and JABBOUR stated that, in
15 sum and substance, that going forward for EZ Fit, they would pay
16 Person A an increased amount of approximately \$290 per DME
17 product, instead of the existing rate of \$280 per product, in
18 exchange for Person A's guarantee that if defendants FLASHBERG
19 and JABBOUR were unable to get paid for a claim based upon a
20 particular completed doctor's order provided by Person A, then
21 Person A would replace that doctor's order with a new one at no
22 additional charge.

23 Overt Act No. 40: Also during the January 22, 2019 meeting
24 at the restaurant, defendants FLASHBERG and JABBOUR reached an
25 agreement with Person A that Person A would increase for EZ Fit
26 the number of both doctors' orders billable to original fee-for-
27 service Medicare, and doctors' orders billable to Medicare
28 Advantage providers.

1 g. March 2019 Meetings: Defendants FLASHBERG and
2 JABBOUR and Person A

3 Overt Act No. 41: On or about March 18, 2019, defendant
4 FLASHBERG and Person A met at Ultra Med in San Dimas,
5 California, and discussed the ongoing purchasing of doctors'
6 orders for braces from Person A.

7 Overt Act No. 42: During the March 18, 2019 meeting with
8 Person A, defendant FLASHBERG told Person A, in sum and
9 substance, that all of his DME companies were currently billing
10 PPO private insurance companies, with the exception of EZ Fit
11 which was billing both Medicare and PPO private insurance
12 companies.

13 Overt Act No. 43: During the March 18, 2019 meeting with
14 Person A, defendant FLASHBERG discussed with Person A, in sum
15 and substance, increasing, or potentially later increasing, the
16 number of PPO doctors' orders billable to Medicare Advantage
17 providers for Qual Med, Optimal Med, EZ Fit, DR Diagnostic, Pro-
18 Fit, and Advanced Orthotics.

19 Overt Act No. 44: During the March 18, 2019 meeting with
20 Person A, defendant FLASHBERG also discussed with Person A, in
21 sum and substance, that he wanted Person A to increase the
22 number of doctors' orders for original fee-for-service Medicare
23 patients at EZ Fit immediately, and at Optimal Med in the near
24 future.

25 Overt Act No. 45: During the March 18, 2019 meeting with
26 Person A, defendant FLASHBERG stated with respect to Optimal
27 Med, in sum and substance, that his step-son Person B's last day
28 at Optimal Med would be on approximately March 22, 2019; that

1 Person B wanted his name off of Optimal Med; that defendant
2 FLASHBERG intended to sell Optimal Med to a friend; that after
3 the sale, defendant FLASHBERG was requesting that Person A begin
4 providing Optimal Med with doctors' orders for original fee-for-
5 service Medicare patients for all brace types except knee
6 braces, because Medicare was currently reviewing all Optimal Med
7 knee brace claims; and that Optimal Med had also been
8 experiencing audit issues with Medicare Advantage providers
9 Humana and United Healthcare, resulting in lower billings.

10 Overt Act No. 46: During the March 18, 2019 meeting with
11 Person A, defendant FLASHBERG further stated that Optimal Med,
12 DR Diagnostic, and Pro-Fit were currently getting claim payment
13 review requests from Medicare Advantage provider Aetna.

14 Overt Act No. 47: During the March 18, 2019 meeting with
15 Person A, in response to Person A mentioning the prospect of
16 emailing DME owners to tell them that they had credits due,
17 defendant FLASHBERG told Person A that Person A could not put
18 this information in an email.

19 Overt Act No. 48: During the March 18, 2019 meeting with
20 Person A, defendant FLASHBERG discussed his continuing concern
21 that he would be subject to criminal investigation and
22 prosecution relating to the ongoing Medicare payment suspensions
23 for Flash Medical and Qual Med.

24 Overt Act No. 49: On or about March 18, 2019, defendants
25 FLASHBERG and JABBOUR and Person A met at Ultra Med in San
26 Dimas, California, and discussed defendants FLASHBERG's and
27 JABBOUR's ongoing purchasing of doctors' orders from Person A.

28 Overt Act No. 50: During the March 18, 2019 meeting

1 involving defendants FLASHBERG and JABBOUR and Person A,
2 defendant FLASHBERG discussed his and defendant JABBOUR's prior
3 agreement that Person A credit defendants FLASHBERG and JABBOUR
4 for doctors' orders provided by Person A on which defendants
5 FLASHBERG and JABBOUR were unable to bill.

6 Overt Act No. 51: During the March 18, 2019 meeting
7 involving defendants FLASHBERG and JABBOUR and Person A,
8 defendants FLASHBERG and JABBOUR described some instances to
9 Person A where they believed such doctors' orders credits were
10 due to them from Person A, because the doctors' orders were not
11 billable for reasons including that: the patient did not want
12 and returned the brace; the patient received multiple boxes from
13 different DME companies that each contained the same brace; and
14 the patient was scared of the cost for the brace that they saw
15 on their explanation of benefits.

16 Overt Act No. 52: During the March 18, 2019 meeting
17 involving defendants FLASHBERG and JABBOUR and Person A,
18 defendants FLASHBERG and JABBOUR agreed with Person A that, in
19 order for Person A to continue granting defendants FLASHBERG and
20 JABBOUR credits for unbillable doctors' orders, defendant
21 FLASHBERG's and JABBOUR's DMEs could not hold on to the doctors'
22 orders for the purpose of billing for the doctors' orders at a
23 later date; that defendant JABBOUR agreed not to do this; and
24 that defendant FLASHBERG was in charge of an "upsell team" that
25 was in the business of doing this, but would instruct his team
26 not to upsell on unbillable doctors' orders provided by Person
27 A.

28 Overt Act No. 53: During the March 18, 2019 meeting

1 involving defendants FLASHBERG and JABBOUR and Person A,
2 defendants FLASHBERG and JABBOUR agreed with Person A that
3 Person A would issue doctors' orders credits for the Affiliated
4 DMEs when a doctor's order provided by Person A was unbillable
5 for specific reasons including that: the patient had previously
6 received the same or a similar brace; the patient changed
7 insurance; or the patient's deductible was too high at the time
8 for the brace to bill.

9 Overt Act No. 54: During the March 18, 2019 meeting
10 involving defendants FLASHBERG and JABBOUR and Person A,
11 defendant FLASHBERG agreed with Person A that, going forward,
12 Person A's call center would focus on "upselling" patients whose
13 doctors' orders would go to the Affiliated DMEs on their need
14 for multiple braces, in order to lower the number of doctors'
15 orders credits Person A would owe to the Affiliated DMEs for
16 doctors' orders that were unbillable because a patient's
17 deductible was too high.

18 Overt Act No. 55: During the March 18, 2019 meeting
19 involving defendants FLASHBERG and JABBOUR and Person A,
20 defendants FLASHBERG and JABBOUR also agreed with Person A to
21 change the manner that defendants FLASHBERG and JABBOUR had
22 historically paid Person A, through Companies A and B, beginning
23 on April 1, 2019. Specifically, Person A, through Companies A
24 and B, had historically accepted only up-front payments for
25 doctors' orders for the Affiliated DMEs from defendants
26 FLASHBERG and JABBOUR and Person B, from which Person A would
27 deduct the amount of each doctor's order provided to defendant
28 FLASHBERG, defendant JABBOUR, and Person B. Defendants

1 FLASHBERG and JABBOUR agreed with Person A that, beginning on
2 April 1, 2019, and only as to EZ Fit, Person A would begin
3 issuing defendants FLASHBERG and JABBOUR \$200,000 per week in
4 up-front credit for doctors' orders, and would deduct the \$290
5 per doctor's order cost from this weekly \$200,000 credit.
6 Defendants FLASHBERG and JABBOUR agreed to pay Person A in full
7 for each doctor's order they received for EZ Fit pursuant to
8 these up-front credits, but only after they had received the
9 orders. Defendants FLASHBERG and JABBOUR agreed with Person A
10 that this same up-front credit structure for doctors' orders
11 could be extended to the rest of the Affiliated DMEs on
12 approximately May 1, 2019.

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COUNTS TWO THROUGH NINE

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

25. The Grand Jury incorporates by reference and re-alleges paragraphs 1 through 18 and 20 through 24 of this Indictment as though set forth in their entirety herein.

26. On or about the dates set forth below, in Los Angeles County, within the Central District of California, and elsewhere, defendants DARIN FLASHBERG and NAJIB JABBOUR, as identified below, together with others known and unknown to the Grand Jury, aiding and abetting one another, knowingly and willfully offered to pay, paid, and caused to be paid, remuneration, specifically, kickbacks and bribes, in the amounts and from the accounts set forth below, to Person A, to induce Person A to purchase, lease, order, and arrange for and recommend the purchasing, leasing, and ordering of any good, facility, service, and item, namely, doctors' orders for DME braces, for which payment may be made in whole and in part under a Federal health care program, namely, Medicare, as set forth below:

| COUNT | DEFENDANT (S) | APPROXIMATE DATE | APPROXIMATE AMOUNT | ORIGINATING ACCOUNT | RECIPIENT |
|-------|---------------|------------------|--------------------|---------------------|-----------------------------|
| TWO | FLASHBERG | 06/10/2016 | \$28,125 | Flash Medical Acct | Person A, through Company A |
| THREE | FLASHBERG | 06/10/2016 | \$9,376 | Flash Medical Acct | Person A, through Company B |

| COUNT | DEFENDANT (S) | APPROXIMATE DATE | APPROXIMATE AMOUNT | ORIGINATING ACCOUNT | RECIPIENT |
|-------|----------------------|------------------|--------------------|--------------------------|-----------------------------------|
| FOUR | FLASHBERG JABBOUR | 06/18/2018 | \$7,000 | EZ Fit Acct | Person A, through Company A |
| FIVE | FLASHBERG JABBOUR | 06/18/2018 | \$21,000 | EZ Fit Acct | Person A, through Company B |
| SIX | FLASHBERG | 01/22/2019 | \$14,000 | Flash Medical Acct | Person A, through Company A |
| SEVEN | FLASHBERG | 01/22/2019 | \$42,000 | Flash Medical Acct | Person A, through Company B |
| EIGHT | FLASHBERG JABBOUR | 2/6/2019 | \$25,008 | EZ Fit Acct | Person A, through Company A |
| NINE | FLASHBERG JABBOUR | 2/6/2019 | \$75,000 | EZ Fit Acct | Person A, through Company B |

FORFEITURE ALLEGATION

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

27. Pursuant to Rule 32.2(a) Fed. R. Crim. P., notice is hereby given to defendants DARIN FLASHBERG and NAJIB JABBOUR (collectively, the "defendants") that the United States will seek forfeiture as part of any sentence in accordance with Title 18, United States Code, Sections 982(a)(7) and 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), in the event of any defendant's conviction under Counts One through Nine of this Indictment.

28. Defendants shall forfeit to the United States the following property:

a. All right, title, and interest in any and all property, real or personal, that constitutes or is derived, directly or indirectly, from the gross proceeds traceable to the commission of any offense set forth in Counts One through Nine of this Indictment; and/or

b. A sum of money equal to the total value of the property described in subparagraph a. For each of Counts One through Nine for which more than one defendant is found guilty, each such defendant shall be jointly and severally liable for the entire amount forfeited pursuant to that Count.

29. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 982(b), each defendant shall forfeit substitute property, up to the total value of the property described in the preceding paragraph if, as a result of any act or omission of a defendant, the property

1 described in the preceding paragraph, or any portion thereof
2 (a) cannot be located upon the exercise of due diligence;
3 (b) has been transferred, sold to, or deposited with a third
4 party; (c) has been placed beyond the jurisdiction of the Court;
5 (d) has been substantially diminished in value; or (e) has been
6 commingled with other property that cannot be divided without
7 difficulty.

8
9 A TRUE BILL

10
11 _____
Foreperson

12 NICOLA T. HANNA
13 United States Attorney

14 

15 LAWRENCE S. MIDDLETON
16 Assistant United States Attorney
Chief, Criminal Division

17 RANEE A. KATZENSTEIN
18 Assistant United States Attorney
Chief, Major Frauds Section

19 ROBERT ZINK
20 Acting Chief, Fraud Section
21 United States Department of Justice

22 JOSEPH S. BEEMSTERBOER
23 Deputy Chief, Fraud Section
United States Department of Justice

24 NIALL M. O'DONNELL
25 Assistant Chief, Fraud Section
United States Department of Justice

26 ROBYN N. PULLIO
27 Trial Attorney, Fraud Section
28 United States Department of Justice