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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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UNITED STATES OF AMERICA : **TO BE FILED UNDER SEAL**  
:   
v. : Hon. Leda Dunn Wettre  
:   
LEE BESEN and : Mag. No. 20-13358  
KIMBERLY SCHMIDT :   
: **CRIMINAL COMPLAINT**

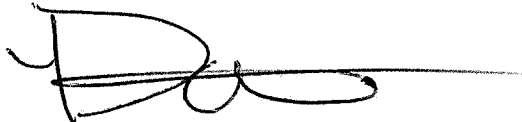
I, Daniel Shim, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

**SEE ATTACHMENT A**

I further state that I am a Special Agent with the Federal Bureau of Investigation, and that this Complaint is based on the following facts:

**SEE ATTACHMENT B**

continued on the attached pages and made a part hereof.



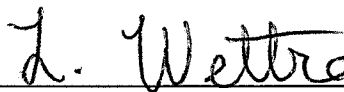
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Daniel Shim, Special Agent  
Federal Bureau of Investigation

Special Agent Daniel Shim attested to this Affidavit by Telephone Pursuant to F.R.C.P. 4.1(b)(2)(A).

July 8, 2020, at  
District of New Jersey

HONORABLE LEDA DUNN WETTRE  
UNITED STATES MAGISTRATE JUDGE



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Signature of Judicial Officer

**ATTACHMENT A**

**(Conspiracy to violate the  
Federal Anti-Kickback Statute)**

From in or about December 2018 to in or about June 2020, in the District of New Jersey and elsewhere, defendants

**LEE BESEN and  
KIMBERLY SCHMIDT**

did knowingly and intentionally conspire and agree with each other and others to knowingly and willfully solicit and receive remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, in exchange for the furnishing and arranging for the furnishing of items and services, namely, the referral of genetic screening tests, for which payment was made in whole or in part under a Federal health care program, contrary to Title 42, United States Code, Section 1320a-7b(b)(1)(A).

In violation of Title 18, United States Code, Section 371.

## ATTACHMENT B

I, Daniel Shim, a Special Agent with the Federal Bureau of Investigation (“FBI”), having conducted an investigation and having discussed this matter with other law enforcement officers who have participated in this investigation, have knowledge of the following facts. Because this Complaint is being submitted for the limited purpose of establishing probable cause, I have not included each and every fact known to me concerning this investigation. Rather, I have set forth only the facts that I believe are necessary to establish probable cause. Unless specifically indicated, all dates described in this affidavit are approximate and all conversations and statements described in this affidavit are related in substance and in part.

### Relevant Individuals and Background Information

1. At various times relevant to this Complaint:
  - a. Defendant DR. LEE BESEN (“BESEN”) was a physician licensed in Pennsylvania. He resided in Waverly, Pennsylvania and practiced medicine at his office in Peckville, Pennsylvania (the “Besen Office”).
  - b. Defendant KIMBERLY SCHMIDT (“SCHMIDT”), resided in Pennsylvania and worked at the Besen Office.
  - c. Dr. Yitzachok Kurtzer a/k/a Barry Kurtzer (“Kurtzer”), a conspirator uncharged in this Complaint, was a physician licensed in Pennsylvania who practiced medicine in three different offices in and around Scranton, Pennsylvania.<sup>1</sup>
  - d. Medicare was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare was a “health care program” as defined in 18 U.S.C. § 24(b) and a “Federal health care program” as defined in 42 U.S.C. § 1320a-7b(t). People who received benefits under Medicare were commonly referred to as “beneficiaries.”
  - e. The Medicare Part B program was a federally funded supplemental insurance program that provided Medicare insurance benefits for individuals aged 65 or older, and for certain individuals who were disabled. The

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<sup>1</sup> Kurtzer is presently charged in a separate criminal complaint charging him and others for conspiring to violate the federal anti-kickback statute, contrary to 42 U.S.C. § 1320a-7b(b)(1), in violation of 18 U.S.C. § 371. *See* Mag No. 20-13360 (LDW). The scheme described in that complaint is highly similar to the one charged in this case.

Medicare Part B program paid for various medical services for beneficiaries, including diagnostic genetic tests.

f. Genetic tests were laboratory tests designed to identify specific inherited mutations in a patient's genes. These genetic variations affected a patient's risk of developing certain diseases or how the patient responded to medications.

g. Pharmacogenomic genetic tests related to identifying how a patient's genes affect the patient's response to drugs were commonly referred to as "PGx" tests. Genetic tests related to a patient's hereditary predisposition for cancer were commonly referred to as "CGx" tests.

h. To conduct a genetic test, a laboratory had to obtain a DNA sample from the patient, typically from the patient's saliva by using a cheek (buccal) swab to collect sufficient cells to provide a genetic profile. The DNA sample was then submitted with a requisition form to the laboratory for analysis, such as PGx and CGx. The requisition form typically included information about the patient, the swab being submitted, and the referring physician. That physician or another authorized person had to confirm on the form that the genetic test was medically necessary.

i. If the patient had insurance, the laboratory typically submitted a claim for reimbursement for the test to the patient's insurance carrier. Reimbursement rates for CGx tests may have exceeded \$1,900 per test, while reimbursement rates for PGx may have exceeded \$6,000 per test.

j. "Laboratory-1," located in New Jersey, and "Laboratory-2," located in Pennsylvania, were clinical laboratories that each collected genetic tests and submitted claims for reimbursement to Medicare.

k. In most cases, Laboratory-1 and Laboratory-2 did not perform the actual genetic testing onsite. Instead, both typically outsourced the testing to "Laboratory-3," located in New Jersey.

l. "Individual-1"<sup>2</sup> resided in New Jersey and worked as a sales representative for Laboratory-1 and Laboratory-2. Individual-1's compensation from each laboratory was based in part on the volume of genetic tests that Individual-1

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<sup>2</sup> Individual-1 is a cooperating witness who, in or about the spring 2019, while cooperating with the Government on federal charges, was discovered engaging in additional criminal conduct during the term of Individual-1's cooperation. Individual-1 acknowledged that additional criminal conduct and continued to cooperate with the Government.

generated for Laboratory-1 or Laboratory-2 through Individual-1's physician accounts.

### **The Conspiracy**

2. Before in or about the fall 2018, BESEN had a business relationship with Individual-1 but had never sent any diagnostic tests to Laboratory-1, including genetic tests. In or about October 2018, BESEN and Individual-1 agreed to a deal in which BESEN would steer genetic tests for his Medicare patients to Laboratory-1. In return, BESEN would accept from Individual-1 monthly kickback and bribe payments of approximately \$1,000 to \$1,500. BESEN enlisted SCHMIDT to facilitate the scheme by, among other things, filling out paperwork for the genetic tests sent to Laboratory-1. BESEN asked Individual-1 to pay SCHMIDT for her assistance, which Individual-1 agreed to do.

3. Beginning in or about December 2018, consistent with their kickback arrangement, BESEN and SCHMIDT collected DNA swabs for genetic tests, primarily PGx, from many of BESEN's Medicare patients. At BESEN's direction, SCHMIDT and other staff members sent those genetic tests to Laboratory-1 in New Jersey. As a result, from in or about December 2018 to in or about May 2019, BESEN and SCHMIDT submitted genetic tests to Laboratory-1 for approximately 90 Medicare patients, for which Medicare was billed approximately \$866,270.

4. In or about the same time period, BESEN accepted from Individual-1 payments ranging from approximately \$1,000 to \$1,500 per month as a kickback and bribe for the genetic tests that BESEN and SCHMIDT steered to Laboratory-1. SCHMIDT separately accepted from Individual-1 payments of approximately \$25 for each genetic test sent to Laboratory-1, totaling approximately \$2,250. For each monthly payment, Individual-1 typically traveled from New Jersey to the Besen Office, where BESEN and SCHMIDT received cash payments from Individual-1 by hand. However, on at least one occasion, BESEN accepted from Individual-1 a kickback and bribe of approximately \$1,000 by check, dated on or about February 20, 2019. To conceal the true and illicit purpose of that check, Individual-1: (a) sent it from a New Jersey shell corporation that Individual-1 created; (b) made out the check to "Besden [sic] Family LLC," instead of to BESEN personally; and (c) wrote in the memo section that the payment was for "Office Rent," even though neither the shell corporation nor Individual-1 rented office space from BESEN or a BESEN-related LLC.

5. During this same approximate time period, BESEN introduced Individual-1 to Kurtzer. Soon after, Kurtzer and Individual-1 entered into a virtually identical scheme in which Kurtzer accepted monthly kickbacks and bribes from

Individual-1 in exchange for Kurtzer steering genetic tests for Medicare patients to Laboratory-1. BESEN knew about Individual-1's kickback arrangement with Kurtzer and occasionally asked Individual-1 about it.

6. In or about May to in or about early July 2019, Individual-1 did not pay kickbacks to BESEN, SCHMIDT, or Kurtzer. In turn, the volume of genetic tests that BESEN and SCHMIDT sent to Laboratory-1 decreased, with virtually no tests submitted in or about July 2019. Likewise, Kurtzer similarly decreased the number of genetic tests he and his staff submitted to Laboratory-1. On or about July 22, 2019, Individual-1 sent BESEN text messages apologizing for being "radio silent" and stating that Individual-1 planned to come to the Besen Office later that week. BESEN responded by text, "Great."

7. On or about July 31, 2019, during a recorded meeting in the Besen Office, BESEN accepted a kickback and bribe of approximately \$1,500 cash from Individual-1 in exchange for sending genetic tests to Laboratory-1 in New Jersey. Individual-1 put the money on BESEN's desk and said, "It's 1,500." BESEN responded, "Thank you. Seriously." During the same meeting, BESEN asked Individual-1 about the status of "genetic testing" at Kurtzer's office. Individual-1 explained that Kurtzer had been generating a high volume of genetic tests, but it "died off" when Individual-1 did not visit him for two months. However, Individual-1 said that Individual-1 had just met with Kurtzer and given him "money," in response to which Kurtzer said he was going to tell his staff "to get back to work" on the genetic tests. BESEN responded, "Yeah. Greenbacks speak."

8. Later in the conversation, BESEN told Individual-1 that he wanted to know "[w]hatever we could do together that will make you money and make me money." BESEN and Individual-1 agreed that BESEN would work with SCHMIDT to increase the volume of genetic tests, primarily PGx, that BESEN collected and sent to Laboratory-1. BESEN also confirmed that he had enough Medicare patients to keep the scheme going.

9. Consistent with those conversations, in or about August 2019, BESEN, aided by SCHMIDT, increased his genetic testing volume by sending at least approximately 14 new genetic tests, primarily for PGx, to Laboratory-1 in New Jersey. On or about August 16, 2019, SCHMIDT texted Individual-1 that she needed 50 additional "kits" to take DNA swabs for genetic tests. Individual-1 asked by text if BESEN was "back on schedule banging pgx out?" to which SCHMIDT responded, "Yes we are."

10. During a recorded meeting at the Besen Office on or about September 12, 2019, BESEN accepted a kickback and bribe of approximately \$1,500 cash from

Individual-1. Individual-1 said to BESEN, “Here’s the 1,500. 1,500.” BESEN asked, “Are you sure you are okay with it?” and Individual-1 replied, “I’m totally good.” During the same visit, SCHMIDT also had a recorded conversation with Individual-1 and acknowledged that Individual-1 had been paying her approximately \$25 per genetic test; she expressed no preference for how her payments would be calculated going forward.<sup>3</sup> Later that month, on or about September 24, 2019, SCHMIDT texted Individual-1 that she and BESEN were “up to 19” genetic tests for the month.

11. Individual-1 returned to the Besen Office on or about October 17, 2019. During a recorded meeting, BESEN accepted a kickback and bribe of approximately \$1,500 cash from Individual-1 in exchange for genetic tests that BESEN, aided by SCHMIDT, sent to Laboratory-1. Individual-1 said, “[T]his is for you. This is fifteen hundred.” BESEN acknowledged the payment and said “thanks.” Individual-1 also told BESEN that Individual-1 brought SCHMIDT “500 bucks,” noting that SCHMIDT had recently sent in approximately 19 genetic tests. Individual-1 subsequently had a recorded conversation with SCHMIDT and SCHMIDT accepted the approximately \$500 cash kickback and bribe from Individual-1. Individual-1 then asked if SCHMIDT needed additional “stuff” for PGx tests, and SCHMIDT replied, “I could always use that, know what I mean?”

12. In another recorded meeting in the Besen Office on or about November 21, 2019, BESEN and Individual-1 discussed a shipment of genetic tests that SCHMIDT claimed to have sent to Laboratory-1 in or about October 2019, but which never arrived. BESEN then accepted from Individual-1 a kickback and bribe of approximately \$500 cash to BESEN and approximately \$100 to SCHMIDT. After Individual-1 acknowledged it was a smaller payment than usual due to the decrease in volume, BESEN responded, “I never shake ya’ down.”

13. In a recorded call on or about January 7, 2020, BESEN spoke to Individual-1 about Individual-1’s ongoing kickback relationship with both BESEN and Kurtzer. Individual-1 said that Individual-1 planned to visit both of them the following week to pay Kurtzer his “monthly vig”<sup>4</sup> for genetic tests, which recently

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<sup>3</sup> During the same recorded conversations, BESEN, SCHMIDT, and Individual-1 agreed to add to their kickback and bribery relationship by including clinical allergy tests in addition to genetic tests. Individual-1 said he would pay BESEN \$100 for each allergy test BESEN steered to Laboratory-1, and BESEN replied, “Yeah.” However, that aspect of their scheme never materialized.

<sup>4</sup> A “vig” is a slang term that typically refers to a fee collected by a bookie. Here, it referred to the fixed monthly kickbacks and bribes that BESEN and Kurtzer each received from Individual-1.

increased to approximately 30 tests in one month. By comparison, BESEN said he planned “to talk to [SCHMIDT] later” that day because the volume of genetic tests from his office had decreased. Referencing kickback and bribe payments to SCHMIDT, Individual-1 stated, “I take care of her you know[.]” BESEN first replied “yes you do.” But then, acknowledging the quid pro quo nature of their scheme, BESEN said that he did not expect kickback payments if they did not generate genetic tests, stating, “[N]o you don’t take care of her, you don’t [take] care of me because if there’s nothing coming down I don’t expect any[.]”

14. During two recorded conversations that occurred on or about January 14 and 15, 2020, BESEN told Individual-1 that he and SCHMIDT wanted to continue their PGx genetic testing scheme, but that BESEN also wanted to find additional opportunities to make money. Thus, BESEN introduced the idea of Individual-1 working for Laboratory-2, which, according to BESEN, collected high reimbursement rates for CGx genetic tests. BESEN and Individual-1 then agreed to the following: (a) Individual-1 would service BESEN’s physician account with Laboratory-2; (b) BESEN would steer a high volume of CGx tests to Laboratory-2; and (c) in turn, they would split Individual-1’s commissions 50/50. They also agreed that BESEN would continue to be paid “cash” from Individual-1, which BESEN said was “the only way to do this.” BESEN admitted that, to that point, his office rarely ordered CGx tests, but that going forward “my office is totally open now for CGx[.]”

15. BESEN, in the same recorded conversations, acknowledged the illegality of their scheme and expressed a desire to find additional ways to profit from the CGx genetic tests. BESEN said, “So the problem is, other than, other than greenbacks—we’re not being taped. I don’t think you work for the government, do you?” After Individual-1 said no, BESEN continued, “Okay, so other than greenbacks how does Lee Besen legitimately get commissioned on testing outside of my office?” BESEN said he had to “generate more income” to “retire early.”

16. In the weeks that followed, Individual-1 began working for Laboratory-2, and on or about February 20, 2020, BESEN and Individual-1 had a recorded meeting in the Besen Office and confirmed that BESEN would receive kickbacks from Individual-1 for steering CGx genetic tests to Laboratory-2. Specifically, they discussed that Medicare reimbursed Laboratory-2 approximately \$6,000 for each CGx genetic test, resulting in a commission to Individual-1 of approximately \$2,500 per test, which Individual-1 would split with BESEN. BESEN said they would figure out later if Individual-1 should pay him by check or “greenbacks.” BESEN also asked Individual-1 to continue “tak[ing] care of Kim [SCHMIDT].”



17. From in or about mid-March 2020 to early in or about June 2020, as the COVID-19 pandemic escalated, BESEN had several recorded telephone calls with Individual-1 in which BESEN discussed their ongoing kickback scheme, as follows:

a. On or about March 18, 2020, BESEN confirmed that his office had already performed approximately eight to ten CGx genetic tests.

b. On or about March 26, 2020, BESEN indicated that his office already received back CGx results from Laboratory-2, so now BESEN and Individual-1 had “to work on a payment” for those tests.

c. On or about April 17, 2020, BESEN said that because of the ongoing pandemic and the inability to see patients in person, “CGx isn’t going to come through big yet till I get back in – in full.” After BESEN learned that Kurtzer received a kickback from Individual-1 by wire transfer, BESEN opined that Kurtzer was “nuts” for creating that “sort of trail,” and that Kurtzer was “fucking dead” if he ever got audited. BESEN said he would wait to receive his payment from Individual-1 in person.

18. During a recorded call on or about June 2, 2020, BESEN told Individual-1 that, as his office got busier, he wanted “to get back to go doing cancer genetics,” meaning CGx testing. BESEN said he was willing to meet Individual-1 “whenever” to receive his kickback and bribe payment, explaining that he wanted to use the “greenbacks” to pay for his “pool house.”

19. BESEN and Individual-1 eventually agreed to meet on or about June 18, 2020, in the parking lot of a fast food restaurant in New Jersey (the “Parking Lot”), so that BESEN could receive a kickback and bribe from Individual-1. During a recorded phone call on or about the morning of that planned meeting, BESEN made several mafia references and told Individual-1 “we’re going to paint your house today,” which was a mafia expression for murder featured in the movie *The Irishman*. BESEN then expressed concerns about receiving money from Individual-1 in a public place like a parking lot where there could be “cameras everywhere.” Instead, BESEN suggested that they exchange the money inside BESEN’s car. They ultimately did not resolve the payment mechanics, but BESEN said he still wanted to proceed with meeting Individual-1 in the Parking Lot.

20. Later on or about that same day, BESEN and his wife had a recorded meeting with Individual-1 in the Parking Lot, and BESEN received from Individual-1 a cash kickback and bribe payment, which was wrapped in a box. BESEN asked how much was in the box, and Individual-1 answered, “\$8,445. That’s literally half, right down the middle,” referring to the commission that Individual-1 received from

Laboratory-2 for the CGx tests that BESEN steered there. BESEN responds, “Got it.” BESEN claimed that he was “joking” when he spoke earlier about “painting houses.” In terms of sending additional CGx genetic tests to Laboratory-2, BESEN said, “I’m ready to roll.”

21. In total, over the course of the charged conspiracy, Medicare was billed approximately \$903,270.00 for genetic tests that BESEN, aided by SCHMIDT, steered to Laboratory-1, and approximately \$104,074 for genetic tests that they steered to Laboratory-2.