

United States District Court
FOR THE
NORTHERN DISTRICT OF CALIFORNIA
VENUE: SAN JOSE

FILED
NOV 12 2020
SUSAN Y. SOONG
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES OF AMERICA,

v.

CR 20 00425

MARK SCHENA,

BLF
SVK

DEFENDANT(S).

INDICTMENT

18 U.S.C. § 1349 - Conspiracy to Commit Health Care Fraud (One Count);
15 U.S.C. §§ 78j, 78ff; 17 C.F.R. 240-10b.5 - Securities Fraud (Three Counts);
18 U.S.C. §§ 981(a)(1)(C) & 982(a) & 28 U.S.C. § 2461 - Criminal Forfeiture

A true bill.

/s/ Foreperson of the Grand Jury

Foreman

Filed in open court this 12th day of

November, 2020

Virginia K. DeMarchi

Clerk

Bail, \$ No Process

1 DAVID L. ANDERSON (CABN 149604)
United States Attorney

2
3 WILLIAM FRENTZEN (LABN 24421)
Assistant United States Attorney

4 DANIEL KAHN (NYBN 4196413)
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NOV 12 2020
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN JOSE DIVISION

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 MARK SCHENA,

18 Defendant.

CR 20 00425
Case No.

) **VIOLATIONS:** 18 U.S.C. § 1349
) Conspiracy to Commit Health Care Fraud; 15
) U.S.C. §§ 78j & 78ff; 17 C.F.R. 240.10b-5 -
) Securities Fraud; 18 U.S.C. §§ 981(a)(1)(C) &
) 982(a) & 28 U.S.C. § 2461 - Criminal
) Forfeiture

) SAN JOSE VENUE

BLF
SVK

19
20
21 INDICTMENT

22 The Grand Jury charges:

23 Introductory Allegations

24 1. The defendant Mark Schena ("SCHENA") resided in the Northern District of California
25 and served as the President of Arrayit Corporation ("Arrayit"). Schena described himself as the "Father
26 of Microarray Technology."

27 2. Arrayit was a publicly traded medical technology company incorporated in Nevada, and
28 based in Sunnyvale, California. Arrayit described itself as "a world leader in microarray technology

1 empowering researchers and doctors in the life sciences, wellness and healthcare testing markets.” Arrayit
2 was a participating provider in the Medicare program, and submitted or caused the submission of claims
3 to Medicare, Medicaid, and other private health insurance companies.

4 3. Shares of Arrayit stock were traded “over the counter” (OTC) using the ticker symbol
5 “ARYC.” As a security traded OTC, individuals, entities, and other investors were able to buy or sell
6 Arrayit shares.

7 Arrayit’s Communications with Investors

8 4. Since 2015, Arrayit communicated with investors using a number of methods and means.
9 Arrayit ceased filing formal quarterly reports (Form 10-Qs) with the Securities and Exchange Commission
10 (“SEC”) in 2015, but continued to communicate with investors using press releases, email, and Twitter, a
11 social media platform accessible to the public. SCHENA was the primary person at Arrayit responsible
12 for communicating with investors.

13 5. Arrayit opened its Twitter account in 2009, and until approximately mid-2019, SCHENA
14 posted frequently on a Twitter account identified with the username @arrayit.

15 6. SCHENA would often bunch Arrayit tweets together, so that Arrayit posted multiple tweets
16 per day. Many of SCHENA’s tweets adopted a journalistic tone, noting that Arrayit sales teams are
17 “report[ing]” on a topic of interest related to the company, and used stock photos unconnected to Arrayit’s
18 actual business.

19 The Medicare and Medicaid Programs

20 7. Medicare was a federally-funded health care program that provided benefits to persons
21 who were at least 65 years old or disabled. Individuals who received benefits under Medicare were
22 referred to as Medicare “beneficiaries.” Medicare was administered by the Centers for Medicare and
23 Medicaid Services (“CMS”), a federal agency under the United States Department of Health and Human
24 Services (“HHS”).

25 8. The Medicaid program was jointly funded by the federal and state governments and was a
26 program that provided benefits to certain low-income individuals and families in states. Medicaid was
27 administered by CMS and various state agencies.
28

1 9. Medicare and Medicaid were each a “Federal health care program” as defined in Title 42,
2 United States Code, Section 1320a-7b(f), and a “health care benefit program” as defined in Title 18,
3 United States Code, Section 24(b).

4 10. Medicare was divided into multiple parts with separate coverages. Medicare Part B was a
5 medical insurance program that covered non-institutional care including, among other things, medical
6 testing by clinical laboratories, where those services were reasonable and necessary to diagnose or treat
7 medical conditions and that met accepted standards of medical practice.

8 11. Diagnostic testing laboratories, physicians, clinics, and other health care providers, all of
9 which provided services to Medicare beneficiaries, were able to apply for and obtain a “provider number.”
10 A health care provider that received a Medicare provider number was able to file claims with Medicare to
11 obtain reimbursement for services provided to beneficiaries.

12 12. To participate in Medicare, providers were required to submit an application in which the
13 providers agreed to abide by the policies and procedures, rules, and regulations governing reimbursement.
14 To receive Medicare funds, enrolled providers, together with their authorized agents, employees, and
15 contractors, were required to abide by all provisions of the Social Security Act, the regulations
16 promulgated under the Act, and applicable policies, procedures, rules, and regulations issued by CMS and
17 its authorized agents and contractors. This included a certification that the provider would comply with
18 the Federal Anti-Kickback Statute, which prohibited the knowing and willful payment of “remuneration”
19 to induce or reward patient referrals or the generation of business involving any item or service payable
20 by federal health care programs. Health care providers were given and provided with online access to
21 Medicare manuals and services bulletins that described proper billing procedures and billing rules and
22 regulations.

23 13. If Medicare approved a provider’s application, Medicare assigned the provider a Medicare
24 Provider Identification Number (“PIN” or “provider number”). A health care provider who was assigned
25 a Medicare PIN and provided services to beneficiaries was able to submit claims for reimbursement to the
26 Medicare contractor/carrier that included the PIN assigned to that medical provider. Payments under the
27 Medicare program were often made directly to a provider of the goods or services, rather than to a
28

1 Medicare beneficiary. This payment occurred when the provider submitted the claim to Medicare for
2 payment, either directly or through a billing company.

3 14. Medicare regulations required health care providers enrolled with Medicare to maintain
4 complete and accurate patient medical records reflecting the medical assessment and diagnoses of their
5 patients, as well as records that documented actual treatment of the patients to whom services were
6 provided and for whom claims for payment were submitted by the physician. Medicare required complete
7 and accurate patient medical records so that Medicare would be able to verify that the services were
8 provided as described on the claim form. These records were required to be sufficient to permit Medicare,
9 through its contractors, to review the appropriateness of Medicare payments made to the health care
10 provider.

11 15. Medicare and Medicaid paid for claims only if the items or services were medically
12 reasonable, medically necessary for the treatment or diagnosis of the patient's illness or injury,
13 documented, and actually provided as represented to Medicare and Medicaid. Medicare and Medicaid
14 would not pay for items or services that were procured through kickbacks and bribes.

15 Commercial Insurance Plans

16 16. Commercial insurance plans were provided by private health insurance companies
17 ("Commercial Insurers") that offered individual and group health benefit plans under which members
18 could obtain coverage for health care items and services.

19 17. Each of the Commercial Insurers was a "health care benefit program" as defined in Title
20 18, United States Code, Section 24(b).

21 18. The Commercial Insurers often made payments directly to laboratories and other health
22 care providers, rather than to the beneficiary who received the health care benefits, items, and services.
23 This occurred when the provider accepted assignment of the right to payment from the beneficiary.
24

25 19. To obtain payment for treatment or services provided to a beneficiary, laboratories and
26 other health care providers were required to submit itemized claim forms to the beneficiary's commercial
27 insurance plan. The claim forms were typically submitted electronically. The claim form required certain
28

1 important information, including: the beneficiary's name and identification number; a description of the
2 health care benefit, item, or service that was provided or supplied to the beneficiary; the billing codes for
3 the benefit, item, or service; the date upon which the benefit, item, or service was provided or supplied to
4 the beneficiary; and the name of the referring physician or other health care provider, as well as the
5 applicable identification number.

6
7 20. When a provider submitted a claim to the Commercial Insurers, the provider certified that
8 the contents of the form were true, correct, complete, and that the form was prepared in compliance with
9 applicable laws and regulations. The provider also certified that the items or services being billed were
10 medically necessary and were in fact provided as billed.

11 Diagnostic Testing

12 21. CMS regulated all laboratory testing (except research) performed on humans in the United
13 States through the Clinical Laboratory Improvement Amendments (CLIA). All clinical laboratories were
14 required to be properly certified by CLIA and state regulatory agencies.

15 22. Examples of clinical laboratory testing included the following:

16
17 a. Allergy testing: Allergy referred to conditions in which immune responses to
18 environmental antigens caused tissue inflammation and organ dysfunction. Allergy testing was performed
19 to determine immunologic sensitivity or reaction to antigens for the purpose of identifying the cause of
20 the allergic state.

21 b. COVID-19 testing: COVID-19 testing assessed whether an individual had the novel
22 coronavirus disease 2019, commonly referred to as "COVID-19."

23
24 23. Medicare did not cover diagnostic testing, including allergy and COVID-19 testing, that
25 was "not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the
26 functioning of a malformed body member." Title 42, United States Code, Section 1395y(a)(1)(A).
27 Except for certain statutory exceptions, Medicare did not cover "examinations performed for a purpose
28

1 other than treatment or diagnosis of a specific illness, symptoms, complaint or injury.” Title 42, Code of
2 Federal Regulations, Section 411.15(a)(1).

3 24. If diagnostic testing were necessary for the diagnosis or treatment of illness or injury or to
4 improve the functioning of a malformed body member, Medicare imposed additional requirements before
5 covering the testing. Title 42, Code of Federal Regulations, Section 410.32(a) provided, “All diagnostic
6 x-ray tests, diagnostic laboratory tests, and other diagnostic tests must be ordered by the physician who is
7 treating the beneficiary, that is, the physician who furnishes a consultation or treats a beneficiary for a
8 specific medical problem and who uses the results in the management of the beneficiary’s specific medical
9 problem[.]” and “[t]ests not ordered by the physician who is treating the beneficiary are not reasonable
10 and necessary.”
11

12 25. Medicare, through its contractors, set forth rules and regulations regarding the
13 circumstances in which allergy testing was reasonable and necessary. One type of allergy testing was “in
14 vivo,” which correlated the performance and evaluation of selective cutaneous and mucous membrane
15 tests (commonly referred to as “skin tests”) with the patient’s history, physical examination, and other
16 observations. Another type of allergy testing was a test for allergy hypersensitivity “in vitro” (commonly
17 referred to as “blood tests”), which measured allergen-specific serum IgE. Percutaneous skin testing was
18 the test of choice in most clinical situations where immediate hypersensitivity reactions were suspected.
19 Overall, skin testing was quick, safe, and cost-effective.
20

21 26. Under certain limited conditions, in vitro testing was covered by Medicare. Quantitative
22 (measuring the amount of sensitivity) in vitro allergen specific IgE testing was covered under conditions
23 where skin testing was not possible or was not reliable. Examples of indications for in vitro testing would
24 include patients with severe dermatographism, ichthyosis or generalized eczema. In vitro testing is
25 significantly more expensive than skin testing.
26

27 27. Medicare’s rules and regulations state that not all patients should be tested for the same
28

1 number of allergens. The number of allergens that are tested for was required to be judicious and related
2 to the history, physical findings, and clinical judgment specific to each individual.

3 The Scheme to Defraud

4 28. Beginning in or around 2015 and continuing through in or around 2020, SCHENA, together
5 with others known and unknown to the Grand Jury, engaged in a fraudulent scheme to obtain money and
6 property by: (a) deceiving purchasers and sellers of Arrayit's securities, and the market at-large, about the
7 performance of Arrayit's business, Arrayit's financial condition, the nature and composition of Arrayit's
8 products, Arrayit's sales, revenues, and expenses, and Arrayit's prospects for growth; and (b) deceiving
9 Medicare, Medicaid, and Commercial Insurers about insurance claims that SCHENA and his co-
10 conspirators caused to be submitted to Medicare, Medicaid, and Commercial Insurers.

11 29. The purposes of the scheme to defraud were, among other things: (a) to promote Arrayit
12 and SCHENA online and in public by overstating its status and influence; (b) to enrich SCHENA and
13 Arrayit by increasing the company's value and receiving additional revenue from Medicare, Medicaid,
14 and the Commercial Insurers; and (c) to artificially increase and maintain the share price of Arrayit
15 securities to, among other things, make Arrayit attractive to potential purchasers.

16 30. It was a part of the scheme that SCHENA and others used a variety of manners and means,
17 among others:

1 a. Failing to provide investors and the SEC with accurate financial statements and
2 reports of Arrayit's financial condition;

3 b. Concealing Arrayit's financial condition by falsely promising that the public
4 release of Arrayit's financial statements was imminent;

5 c. Making false and misleading statements to investors about the performance of
6 Arrayit's business, Arrayit's financial condition, the nature and composition of Arrayit's products,
7 Arrayit's sales, revenues, and expenses, and Arrayit's prospects for growth;

8 d. Making false and misleading statements to investors about the proliferation of
9 Arrayit's proprietary allergy testing, and about "deals" and other agreements to spread Arrayit's
10 proprietary allergy testing;

11 e. Making false and misleading statements to investors about Arrayit's plans to list on
12 the NASDAQ stock exchange;

13 f. Making false and misleading statements to investors about Arrayit's capability to
14 test for COVID-19, the accuracy of Arrayit's COVID-19 test, the status of its regulatory approval, and the
15 proliferation of Arrayit's COVID-19 testing technology;

16 g. Conspiring to defraud Medicare, Medicaid, and the Commercial Insurers, as
17 discussed in greater detail in paragraphs 33 through 46; and

18 h. Concealing from investors, through false and misleading statements and omissions
19 of material fact, Arrayit's scheme to defraud Medicare, Medicaid, and the Commercial Insurers, and to
20 illegally profit from the proceeds of illegal health care kickbacks and bribes.

21 31. It was further a part of the scheme to defraud that SCHENA and others took the following
22 actions, among others:

23 a. On or about November 19, 2018, SCHENA issued a press release falsely stating
24 that pursuant to "an allergy testing agreement," Arrayit "is providing its proprietary microarray-based
25 finger stick allergy testing services to Sutter Health via doctors in the Sutter Health-affiliated Palo Alto
26 Medical Foundation," Sutter Health, "one of the nation's largest healthcare networks," reports "total
27 patient service revenues of \$12,000,000,000 annually."

28 b. On or about August 8, 2019, SCHENA posted from the Arrayit Twitter account

1 that “Arrayit clinical team commences \$240,000,000 test kit manufacturing run to build inventory for our
2 rapidly expanding physician-ordered finger stick allergy testing services empowering clinic network
3 doctors to identify, manage and treat allergy and asthma.” This false and misleading tweet was
4 subsequently repeated elsewhere, including on social media and investor-focused message boards.

5 c. In early 2020, as COVID-19 began to spread around the world, SCHENA and
6 Arrayit began promoting a test for COVID-19 through its website. SCHENA attempted to exploit the
7 pandemic by claiming that Arrayit could test dried blood samples for both allergens and COVID-19, and
8 instructing its patient recruiters and clinics to add on or bundle Arrayit’s allergy test and COVID-19 test
9 regardless of medical necessity.

10 d. Between on or about March 19, 2020, and on or about March 21, 2020, SCHENA
11 sent an email to dozens of investors who had inquired about the COVID-19 test. SCHENA’s email stated:
12 *“Dear Valued Customer, We received more than 50,000 requests for our finger stick blood test for SARS-*
13 *CoV-2, the virus that causes coronavirus disease 2019 (COVID-19). Our team is coordinating with local,*
14 *state and federal agencies and with our distributors to make this test available to as many patients as*
15 *possible on an expedited timeline. Please consult our website and press releases for updates. Best regards,*
16 *Arrayit Corporation.”* These false statements were subsequently amplified on social media and reposted
17 on investor-focused message boards.

18 COUNT ONE: 18 U.S.C. § 1349 (Conspiracy to Commit Health Care Fraud)

19 32. The factual allegations in Paragraphs 1 through 31 are re-alleged and incorporated by
20 reference as if fully set forth herein.

21 33. Beginning in or around 2018, and continuing until in or around June 2020, in the Northern
22 District of California and elsewhere, the defendant,

23 MARK SCHENA,

24 did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine,
25 conspire, confederate, and agree with others known and unknown to the Grand Jury to knowingly and
26 willfully execute a scheme and artifice to defraud health care benefit programs affecting commerce, as
27 defined in Title 18, United States Code, Section 24(b), that is, Medicare, Medicaid, and the Commercial
28

1 Insurers, and to obtain by means of materially false and fraudulent pretenses, representations and
2 promises, money and property owned by, and under the custody and control of, said health care benefit
3 programs, in connection with the delivery of and payment for health care benefits, items, and services, in
4 violation of Title 18, United States Code, Section 1347.

5 Purpose of the Conspiracy

6 34. It was a purpose of the conspiracy for SCHENA and his co-conspirators to unlawfully
7 enrich themselves by: (a) submitting or causing the submission of false and fraudulent claims to Medicare,
8 Medicaid, and the Commercial Insurers for services that were (i) procured by the payment of kickbacks
9 and bribes; (ii) medically unnecessary; (iii) not eligible for reimbursement; and/or (iv) not provided as
10 represented; (b) concealing the submission of false and fraudulent claims to Medicare, Medicaid, and the
11 Commercial Insurers, and the receipt and transfer of the proceeds from the fraud; and (c) diverting
12 proceeds of the fraud for their personal use and benefit, and to further the conspiracy.

13 Manner and Means

14 35. SCHENA and his co-conspirators used the following manner and means, among others, to
15 accomplish the object and purpose of the conspiracy.

16 36. In or around May 2018, SCHENA and others announced that Arrayit had developed
17 revolutionary new technology that allowed Arrayit to test for exposure to 120 common food and
18 environmental allergens with only a single drop of blood from a finger stick sample.

19 37. SCHENA and others would apply for and maintain various laboratory certifications from
20 state and federal agencies, including from CLIA, that were necessary for Arrayit to legally conduct testing
21 and submit claims to Medicare, Medicaid, and Commercial Insurers.

22 38. SCHENA and others would submit or cause the submission of false and fraudulent
23 attestations and other documents to state and federal regulators, including CLIA, that falsely certified the
24 identity, roles, and responsibilities of Arrayit's laboratory director and other personnel, and concealed
25 SCHENA's roles and responsibilities.

26 39. SCHENA and others would submit and cause the submission of false and fraudulent
27 enrollment applications on behalf of Arrayit to Medicare, Medicaid, and Commercial Insurers, in which
28

1 Arrayit certified that payment of claims was conditioned upon the underlying claims complying with the
2 federal anti-kickback statute, the applicable laws, regulations, and program instructions, and that Arrayit
3 would not knowingly present or cause to be presented false or fraudulent claims.

4 40. SCHENA and others paid and caused the offer and payment of illegal kickbacks and bribes
5 to other individuals and purported marketing companies in exchange for blood samples collected from
6 patients and orders for allergy testing from health care providers, all of which were used to support false
7 and fraudulent claims that were submitted by Arrayit and others to Medicare, Medicaid, and Commercial
8 Insurers.

9 41. SCHENA and others distributed false and fraudulent marketing material and other
10 documents that misrepresented the medical necessity of Arrayit's allergy test and Arrayit's ability to
11 provide accurate, fast, and reliable allergy test results that would be medically necessary and reasonable
12 in the treatment of the patient.

13 42. SCHENA and others caused Arrayit to test for 120 allergens regardless of the medical
14 necessity, availability of the less expensive skin tests, reasonableness, rules against ordering the same test
15 for each patient, or use of such testing in the treatment of each patient, in order to maximize the amount
16 billed to Medicare, Medicaid, and the Commercial Insurers and allow SCHENA and others to issue
17 positive financial projections for Arrayit that were deceptively based off the amount billed by Arrayit.

18 43. As the effects of the COVID-19 pandemic began to be felt in the United States and many
19 patients faced difficulty obtaining access to COVID-19 testing, SCHENA and others used the COVID-19
20 pandemic as an opportunity to expand the pre-existing allergy test scheme and to capitalize on a national
21 emergency for their own financial gain by offering COVID-19 testing and bundling the COVID-19 test
22 with, i.e., requiring combination with, Arrayit's more expensive allergy testing, which did not identify or
23 treat COVID-19.

24 44. SCHENA and others obtained fraudulent orders for allergy and COVID-19 testing by
25 making false and fraudulent statements, directly and indirectly, to health care providers, patients, and
26 others concerning Arrayit's ability to provide accurate, fast, and reliable COVID-19 testing in compliance
27 with applicable state and federal regulations, and the purported need to bundle the COVID-19 test with
28 Arrayit's allergy test, while concealing that, at various times, the Arrayit COVID-19 test had not been

1 developed, validated, produced, or received the requisite regulatory authorization as represented.

2 45. SCHENA and others entered into sham contracts and agreements, and created and
3 maintained false and fraudulent invoices and other documents, in order to conceal and disguise the illegal
4 kickbacks and bribes, as well as that the testing was not provided as billed to Medicare, Medicaid, and the
5 Commercial Insurers, including concealing the ordering physician, medical clinic, and/or laboratory that
6 actually conducted the testing.

7 46. SCHENA and others caused Arrayit to submit approximately \$69 million in claims to
8 Medicare, Medicaid, and the Commercial Insurers for allergy tests that were obtained through illegal
9 kickbacks and bribes, medically unnecessary, ineligible for reimbursement, and/or not provided as
10 represented.

11 In violation of Title 18, United States Code, Section 1349.

12 COUNTS TWO THROUGH FOUR: (15 U.S.C. §§ 78j & 78ff; 17 C.F.R. 240.10b-5 and 18 U.S.C. § 2-
13 Securities Fraud)

14 47. The allegations in Paragraphs 1 through 31 are realleged and incorporated as if fully set
15 forth here.

16 48. On or about the dates set forth below, in the Northern District of California and elsewhere,
17 the defendant,

18 MARK SCHENA,

19 willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate
20 commerce, the mails, and the facilities of national securities exchanges, in connection with the purchase
21 and sale of securities, did use and employ manipulative and deceptive devices and contrivances, and aided
22 and abetted others known and unknown to the grand jury, in violation of Title 15, United States Code,
23 Sections 78j and 78ff, Title 17, Code of Federal Regulations, Sections 240.10b5 and 240.10b5-2, and Title
24 18, United States Code, Section 2, by: (a) employing devices, schemes and artifices to defraud; (b) making,
25 and causing others to make, untrue statements of material facts and omitting to state material facts
26 necessary in order to make the statements made, in the light of the circumstances under which they were
27 made, not misleading; and (c) engaging in acts, practices and courses of business which operated and
28

1 would operate as a fraud and deceit upon persons; to wit, SCHENA used, and caused others to use, wires
 2 and the mails to issue false and misleading statements related to Arrayit securities in the manner, and on
 3 or about the dates listed, below:

COUNT	DATE	DESCRIPTION
TWO	11/19/18	SCHENA press release about "an allergy testing agreement" with multibillion-dollar company in Palo Alto, California
THREE	8/8/2019	SCHENA tweet about "\$240,000,000 test kit manufacturing run" disseminated to market
FOUR	3/19/20	SCHENA emails to investors about demand for Arrayit's COVID-19 tests and coordination with government agencies

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 7
 8
 9 Each count a separate offense, in violation of Title 15, United States Code, Sections 78j and 78ff,
 10 Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2.

11
 12 **FORFEITURE ALLEGATION:** (18 U.S.C. §§ 981(a)(1)(C) & 982(a) & 28 U.S.C. § 2461 –
 Criminal Forfeiture)

13 49. The allegations in Paragraphs 1 through 34 are re-alleged and incorporated by reference
 14 for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and
 15 982(a), and Title 28, United States Code, Section 2461(c).

16 50. Upon conviction of any of the offenses alleged in Counts One through Four, the defendant,
 17 **MARK SCHENA,**
 18 shall forfeit to the United States pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and
 19 982(a), and Title 28, United States Code, Section 2461, any property, real or personal, which constitutes
 20 or is derived from proceeds traceable to said violations, including but not limited to a sum of money equal
 21 to the total proceeds from the commission of said offense.

- 22 51. If, as a result of any act or omission of the defendant, any of said property
 23 a. cannot be located upon the exercise of due diligence;
 24 b. has been transferred or sold to or deposited with a third person;
 25 c. has been placed beyond the jurisdiction of the Court;
 26 d. has been substantially diminished in value; or
 27 e. has been commingled with other property, which cannot be divided without difficulty;
 28

1 the United States shall be entitled to forfeiture of substitute property, pursuant to Title 21, United States
2 Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), and Title 28,
3 United States Code, Section 2461(c).

4 All pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a), and Title 28,
5 United States Code, Section 2461.

6 DATED: November 12, 2020

A TRUE BILL

7

8

_____/s/_____
FOREPERSON

9

10 DAVID L. ANDERSON
United States Attorney

11

12 DANIEL KAHN
Acting Chief, Fraud Section

13

14 _____/s/_____
WILLIAM FRENTZEN
15 Assistant United States Attorney

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17 _____/s/_____
JACOB FOSTER
18 JUSTIN WEITZ
Assistant Chiefs
19 Fraud Section, Criminal Division

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AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: [] COMPLAINT [] INFORMATION [X] INDICTMENT [] SUPERSEDING

OFFENSE CHARGED

COUNT ONE: 18 U.S.C. § 1349 - Conspiracy to Commit Health Care Fraud
COUNTS TWO, THREE, FOUR: 15 U.S.C. §§ 78j, 78ff; 17 C.F.R. 240-10b.5 - Securities Fraud
FORFEITURE: 18 U.S.C. §§ 981(a)(1)(C) & 982(a) & 28 U.S.C. § 2461
[] Petty
[] Minor
[] Misdemeanor
[X] Felony

PENALTY: COUNT ONE: Not more than 10 years imprisonment, not more than \$250,000 fine, not more than 3 years supervised release and \$100 assessment; COUNTS TWO, THREE, FOUR: Not more than 20 years imprisonment, not more than \$5,000,000 fine, not more than 3 years supervised release and \$100 assessment.

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DEFENDANT - U.S.

MARK SCHENA

DISTRICT COURT NUMBER

CR 20 00425 BLF

DEFENDANT

SVK

IS NOT IN CUSTODY

- Has not been arrested, pending outcome this proceeding.
1) [] If not detained give date any prior summons was served on above charges
2) [] Is a Fugitive
3) [X] Is on Bail or Release from (show District) Northern District of California

IS IN CUSTODY

- 4) [] On this charge
5) [] On another conviction } [] Federal [] State
6) [] Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? [] Yes [] No If "Yes" give date filed

DATE OF ARREST Month/Day/Year

Or... if Arresting Agency & Warrant were not
DATE TRANSFERRED TO U.S. CUSTODY Month/Day/Year

[] This report amends AO 257 previously submitted

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

USPIS, HHS-OIG, and FBI

[] person is awaiting trial in another Federal or State Court, give name of court

[] this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

[] this is a reprosecution of charges previously dismissed which were dismissed on motion of: SHOW DOCKET NO.
[] U.S. ATTORNEY [] DEFENSE

[] this prosecution relates to a pending case involving this same defendant MAGISTRATE CASE NO.

[X] prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under 20-mj-70721

Name and Office of Person Furnishing Information on this form David L. Anderson
[X] U.S. Attorney [] Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned) William Frentzen

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

[] SUMMONS [X] NO PROCESS* [] WARRANT

If Summons, complete following:

[] Arraignment [] Initial Appearance

Defendant Address:

Bail Amount: _____

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____ Before Judge: _____

Comments:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED

NOV 12 2020

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

CRIMINAL COVER SHEET

Instructions: Effective November 1, 2016, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case.

CASE NAME:

USA v. MARK SCHENA

CASE NUMBER

CR 20 CR 00425

BLF
SVK

Is This Case Under Seal?

Yes No

Total Number of Defendants:

1 2-7 8 or more

Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?

Yes No

Venue (Per Crim. L.R. 18-1):

SF OAK SJ

Is this a potential high-cost case?

Yes No

Is any defendant charged with a death-penalty-eligible crime?

Yes No

Is this a RICO Act gang case?

Yes No

Assigned AUSA (Lead Attorney): William Frentzen

Date Submitted: 11/12/2020

Comments: