

United States Courts
Southern District of Texas
FILED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

June 21, 2023

Nathan Ochsner, Clerk of Court

UNITED STATES OF AMERICA

v.

EMYLEE THAI (1),
LILY TRAN DANIEL (2), and
KENNETH REYNOLDS (3),

Defendants.

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Criminal No. 4:22-CR-329

SUPERSEDING INDICTMENT

The Grand Jury charges:

General Allegations

At all times material to this Superseding Indictment, unless otherwise specified:

The Medicare Program

1. The Medicare Program (“Medicare”) was a federally funded program that provided free and below-cost health care benefits to individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services (“HHS”), through its agency, the Centers for Medicare & Medicaid Services (“CMS”), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare “beneficiaries.”

2. Medicare was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), and a “Federal health care program,” as defined by Title 42, United States Code, Section 1320a-7b(f).

3. Medicare covered different types of benefits and was separated into different program “parts.” Medicare “Part B” covered, among other things, medical services provided by

physicians, medical clinics, laboratories, and other qualified health care providers, such as office visits and laboratory testing, that were medically necessary and ordered by licensed medical doctors or other qualified health care providers.

4. Medicare “providers” included independent clinical laboratories, physicians, and other health care providers who provided items or services to beneficiaries. To bill Medicare, a provider was required to submit a Medicare Enrollment Application Form (“Provider Enrollment Application”) to Medicare. The Provider Enrollment Application contained certifications that the provider was required to make before the provider could enroll with Medicare. Specifically, the Provider Enrollment Application required the provider to certify, among other things, that the provider would abide by the Medicare laws, regulations, and program instructions, including the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and that the provider would not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare.

5. A Medicare “provider number” was assigned to a provider upon approval of the Provider Enrollment Application. A health care provider that received a Medicare provider number was able to file claims with Medicare to obtain reimbursement for reasonable and necessary services provided to beneficiaries.

6. A Medicare claim was required to contain certain information, including: (a) the beneficiary’s name and Health Insurance Claim Number; (b) a description of the health care benefit, item, or service that was provided or supplied to the beneficiary; (c) the billing codes for the benefit, item, or service; (d) the date upon which the benefit, item, or service was provided or supplied to the beneficiary; (e) the name of the referring physician or other health care provider; and (f) the referring provider’s unique identifying number, known either as the Unique Physician Identification Number or National Provider Identifier (“NPI”). The claim form could be submitted

in hard copy or electronically.

7. When submitting claims to Medicare for reimbursement, providers were required to certify that: (1) the contents of the forms were true, correct, and complete; (2) the forms were prepared in compliance with the laws and regulations governing Medicare; and (3) the services that were purportedly provided, as set forth in the claims, were medically necessary.

8. Medicare claims were required to be properly documented in accordance with Medicare rules and regulations. Medicare would not reimburse providers for claims that were procured through the payment of kickbacks and bribes.

Medicare Coverage for Genetic Testing

9. Cancer genetic (“CGx”) testing used DNA sequencing to detect mutations in genes that could indicate a higher risk of developing certain types of cancers in the future. CGx testing was not a method of diagnosing whether an individual presently had cancer.

10. Genetic testing for cardiovascular disease used DNA sequencing to detect mutations in genes that could indicate an increased risk of developing serious cardiovascular conditions in the future and could assist in the treatment or management of a patient who presently had signs or symptoms of a cardiovascular disease or condition. Genetic testing for cardiovascular disease was not a method of diagnosing whether an individual presently had a cardiac condition.

11. Laboratories purported to offer other kinds of genetic testing that used DNA sequencing to detect mutations in genes that could indicate an increased risk of developing diseases such as Parkinson’s disease, Alzheimer’s disease, dementia, diabetes, obesity, pulmonary diseases, and hearing loss (collectively, with CGx and genetic testing for cardiovascular disease, “genetic testing”). All genetic testing was a form of diagnostic testing.

12. For genetic testing, a beneficiary provided a saliva sample or cheek or nasal swab

containing DNA material. The DNA sample was then submitted to a laboratory to conduct genetic testing. Tests were then run on different “panels” of genes. Genetic testing typically involved performing lab procedures that resulted in billing Medicare using certain billing codes, each with its own reimbursement rate.

13. DNA samples were submitted along with requisitions that identified the beneficiary, the beneficiary’s insurance, and indicated the specific type of genetic testing to be performed. In order for laboratories to submit claims to Medicare for genetic testing, the requisitions had to be signed by a physician or other authorized medical professional, who attested to the medical necessity of the genetic testing.

14. Medicare did not cover diagnostic testing that was “not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.” 42 U.S.C. § 1395y(a)(1)(A). Except for certain statutory exceptions, Medicare did not cover “examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptoms, complaint or injury.” 42 C.F.R. § 411.15(a)(1).

15. If diagnostic testing was necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member, Medicare imposed additional requirements before covering the testing. Title 42, Code of Federal Regulations, Section 410.32(a) provided, “All . . . diagnostic laboratory tests . . . must be ordered by the physician who is treating the beneficiary, that is, the physician who furnishes a consultation or treats a beneficiary for a specific medical problem and who uses the results in the management of the beneficiary’s specific medical problem.” “Tests not ordered by the physician who is treating the beneficiary are not reasonable and necessary.” *Id.*

The Relevant Entities, Defendant, and Relevant Individuals

16. ApolloMDx, LLC was a Texas limited liability company with a principal place of business in Harris County, Texas. ApolloMDx, LLC was an independent clinical laboratory enrolled with Medicare that purportedly provided laboratory services and diagnostic testing, including genetic testing, to individuals, including Medicare beneficiaries.

17. Artemis DNA TX, LLC (“Artemis DNA”) was a Texas limited liability company with a principal place of business in Harris County, Texas. Artemis DNA was the amended name for ApolloMDx, LLC with Medicare as of in or around December 2021, though it retained the same NPI as ApolloMDx, LLC, and carried on the same business of purportedly providing laboratory services to individuals, including Medicare beneficiaries.

18. IDP Management LLC (“IDP Management”) was a Nevada limited liability company with its principal place of business in Clark County, Nevada.

19. Snuggie & Snuggie, LLC (“Snuggie & Snuggie”) was a Delaware limited liability company, with its principal place of business in New Castle County, Delaware.

20. Company 1 was a New Jersey limited liability company, with its principal place of business in Morris County, New Jersey.

21. Company 2 was a New Jersey limited liability company, with its principal place of business in Morris County, New Jersey.

22. Defendant **EMYLEE THAI** (“**THAI**”) was a resident of Orange County, California, and Harris County, Texas, and was the owner of ApolloMDx, LLC and Artemis DNA (collectively, “ApolloMDx”). **THAI** signed the Provider Enrollment Application, as well as additional documents submitted to Medicare, on behalf of ApolloMDx.

23. Defendant **LILY TRAN DANIEL** (“**TRAN**”) was a resident of Orange County,

California. **TRAN** referred DNA samples and signed doctors' orders for genetic testing to ApolloMDx.

24. Defendant **KENNETH REYNOLDS** ("REYNOLDS") was a resident of New Castle County, Delaware, and the owner of Snuggie & Snuggie. **REYNOLDS** referred DNA samples and signed doctors' orders for genetic testing to ApolloMDx.

25. Marketer 1 was a resident of Morris County, New Jersey, and the owner of Company 1 and Company 2. Marketer 1 referred DNA samples and signed doctors' orders for genetic testing to ApolloMDx. Marketer 1 also referred other marketers to ApolloMDx, including **REYNOLDS** and Marketer 2.

26. Marketer 2 was a resident of Morris County, New Jersey, and referred DNA samples and signed doctors' orders for genetic testing to ApolloMDx.

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

27. Paragraphs 1 through 26 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

28. From in or around December 2019, and continuing through in or around May 2022, the exact dates being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas, and elsewhere, the Defendants,

EMYLEE THAI and
LILY TRAN DANIEL,

did knowingly and willfully combine, conspire, confederate, and agree with each other and with others known and unknown to the Grand Jury, to execute and attempt to execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, and to obtain, by means of materially false and

fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347.

Purpose of the Conspiracy

29. It was a purpose of the conspiracy for **THAI, TRAN**, and their co-conspirators known and unknown to unlawfully enrich themselves by, among other things: (a) paying and receiving kickbacks and bribes in exchange for the referral of Medicare beneficiaries and doctors' orders for genetic testing, and other documentation necessary to submit claims to Medicare (collectively, "doctors' orders"), without regard to any medical necessity for the genetic testing; (b) submitting and causing the submission, via interstate wire, of false and fraudulent claims to Medicare for genetic testing that were predicated on kickbacks and bribes, not medically necessary, and not eligible for Medicare reimbursement; (c) concealing and causing the concealment of the submission of false and fraudulent claims to Medicare; and (d) diverting fraud proceeds for their personal use and benefit, the use and benefit of others, and to further the fraud.

Manner and Means

The manner and means by which **THAI, TRAN**, and their co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among other things:

30. **THAI** falsely certified to Medicare, through a Provider Enrollment Application submitted to Medicare, that she, as well as ApolloMDx, would comply with all Medicare rules and regulations, and federal laws, including that she would not knowingly present or cause to be presented a false and fraudulent claim for payment by Medicare, and that she would comply with the Federal Anti-Kickback Statute.

31. **THAI** negotiated kickback and bribe arrangements with marketers, to include **TRAN**, **REYNOLDS**, Marketer 1, and Marketer 2, and knowingly and intentionally disguised the nature and source of these kickbacks and bribes through sham contracts and otherwise concealed such kickbacks and bribes by describing them as a “flat fee,” “fixed pay,” or a “salary” for legitimate services.

32. **THAI**, through ApolloMDx, offered to pay, and paid, kickbacks and bribes to marketers, to include **TRAN**, **REYNOLDS**, Marketer 1, and Marketer 2, in exchange for the ordering and arranging for the ordering of genetic testing for Medicare beneficiaries by ApolloMDx, knowing that ApolloMDx would bill Medicare for genetic testing that was purportedly provided on behalf of these beneficiaries and that was predicated on these kickbacks and bribes.

33. **THAI**, **TRAN**, and others altered and fabricated doctors’ orders to reflect false diagnoses of beneficiaries’ medical conditions to make the beneficiaries appear eligible for genetic testing. **THAI**, **TRAN**, and others then submitted, and caused ApolloMDx to submit, claims to Medicare for genetic testing listing the false diagnoses from the altered doctors’ orders.

34. **THAI**, **TRAN**, and others also altered and fabricated doctors’ orders to reflect false dates of service for beneficiaries’ visits with medical providers to make it appear that DNA samples had been collected on multiple dates, when in fact they had been collected on a single date, so that ApolloMDx could bill Medicare for several dates of service. **THAI**, **TRAN**, and others then submitted and caused ApolloMDx to submit claims to Medicare for genetic testing listing these false dates of service for beneficiaries’ visits with medical providers.

35. From in or around December 2019, and continuing through in or around May 2022, **THAI**, **TRAN**, and others submitted and caused ApolloMDx to submit approximately \$142

million in false and fraudulent claims to Medicare for genetic testing that was often: (a) induced through kickbacks and bribes; (b) not medically necessary; and (c) not eligible for reimbursement. In reliance on these representations, Medicare paid approximately \$95 million on those claims.

36. After Medicare reimbursed ApolloMDx, **THAI** transferred proceeds of the fraud to herself, **TRAN**, **REYNOLDS**, Marketer 1, and Marketer 2, and their co-conspirators.

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

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

37. Paragraphs 1 through 26 and 30 through 36 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

38. From in or around January 2020, and continuing through in or around May 2022, the exact dates being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas, and elsewhere, the Defendants,

EMYLEE THAI and
LILY TRAN DANIEL,

did knowingly and willfully combine, conspire, confederate, and agree with one another and with others known and unknown to the Grand Jury, to commit offenses against the United States, that is:

- a. to defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of HHS and CMS in their administration and oversight of Medicare;
- b. to violate Title 42, United States Code, Section 1320a-7b(b)(1), by soliciting and receiving any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check and interstate wire transfer, in return for

referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a Federal health care program, that is, Medicare; and in return for the purchasing, leasing, ordering, and arranging for, and recommending the purchasing, leasing, and ordering of any good, item, and service for which payment may be made in whole or in part by a Federal health care program, that is, Medicare; and

- c. to violate Title 42, United States Code, Section 1320a-7b(b)(2), by offering and paying any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check and interstate wire transfer, to any person to induce such person to refer an individual for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a Federal health care program, that is, Medicare; and to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole or in part under a Federal health care program, that is, Medicare.

Purpose of the Conspiracy

39. It was a purpose of the conspiracy for **THAI, TRAN**, and their co-conspirators, known and unknown to the Grand Jury, to unlawfully enrich themselves by, among other things: (a) soliciting, receiving, offering, and paying kickbacks and bribes in exchange for the referral of Medicare beneficiaries' DNA samples and arranging for doctors' orders for genetic testing to ApolloMDx; (b) submitting and causing the submission of false and fraudulent claims to Medicare for genetic testing that were procured through kickbacks and bribes, were not medically necessary, and were not eligible for reimbursement; (c) concealing and causing the concealment of kickbacks

and bribes; and (d) diverting the proceeds for their personal use and benefit, the use and benefit of others, and to further the conspiracy.

Manner and Means

The manner and means by which **THAI**, **TRAN**, and their co-conspirators, known and unknown, sought to accomplish the objects and purpose of the conspiracy included, among other things, the following:

40. **TRAN** and others solicited and received kickbacks and bribes from **THAI** in exchange for DNA samples and doctors' orders for genetic testing, knowing that ApolloMDx would bill Medicare for genetic testing purportedly provided on behalf of these beneficiaries. **TRAN** and others submitted these DNA samples and doctors' orders to ApolloMDx in Houston, Texas.

41. **THAI** offered, paid, and caused the payment of kickbacks and bribes to be transmitted to **TRAN** and others, by check and interstate wire, from ApolloMDx's bank accounts or other bank accounts **THAI** controlled ("**THAI**'s Accounts") to bank accounts held in the name of different companies under **TRAN**'s control.

42. **THAI**, **TRAN**, and others caused ApolloMDx to submit false and fraudulent claims by interstate wire to Medicare for genetic testing knowing that it was procured through the payment of kickbacks and bribes, medically unnecessary, and ineligible for reimbursement.

43. From on or about February 28, 2020, and continuing through on or about July 6, 2022, **THAI** caused payments of approximately \$11,697,247.00 from **THAI**'s Accounts to various bank accounts in the names of companies **TRAN** controlled, which constituted kickbacks paid in exchange for doctors' orders for genetic testing that **TRAN** referred to ApolloMDx, which supported claims to Medicare and resulted in Medicare paying reimbursements to ApolloMDx.

44. **THAI, TRAN**, and their co-conspirators used the proceeds received from Medicare to benefit themselves and others, and to further the scheme.

Overt Acts

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one co-conspirator committed and caused to be committed, in the Houston Division of the Southern District of Texas, and elsewhere, at least the following overt acts, among others:

45. On or about January 22, 2020, **TRAN** communicated with **THAI** about ceasing the referral of DNA samples and signed doctors' orders for genetic testing to another lab, and instead referring those DNA samples and signed doctors' orders for genetic testing to **THAI**'s lab, ApolloMDx, in Houston, Texas, knowing that ApolloMDx would bill Medicare for this genetic testing.

46. On or about July 1, 2021, **THAI** signed a "Marketing and Data Management Services Agreement" with IDP Management, which was countersigned by **TRAN**'s father (though **TRAN** was a signatory on the bank account for IDP Management). The agreement provided that IDP Management would be paid a flat fee every quarter and that the flat fee was based on the fair market value of the services IDP Management provided, not on the volume or number of referrals IDP Management generated for ApolloMDx. Although the agreement stated that **THAI** would pay IDP Management a flat fee, **THAI** paid or caused IDP Management—and by extension, **TRAN**—to be paid a percentage of Medicare reimbursements in violation of the federal Anti-Kickback Statute.

47. On or about July 21, 2021, **TRAN** asked an ApolloMDx employee for assistance viewing ApolloMDx's claims data, explaining that while **TRAN** could see "the total amount of my payments at 15%," **TRAN** could not see the breakdown by doctor.

48. In or around early September 2021, **TRAN** communicated with an ApolloMDx

employee regarding the companies **TRAN** should be using to receive kickback payments from ApolloMDx, to include IDP Management, among others.

49. On or about February 23, 2022, **THAI** caused a payment of approximately \$50,000 from **THAI**'s Accounts to IDP Management, which constituted a kickback paid in exchange for doctors' orders that **TRAN** referred to ApolloMDx, which supported claims to Medicare and resulted in Medicare paying reimbursements to ApolloMDx.

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

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

50. Paragraphs 1 through 26 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

51. From in or around August 2020, and continuing through in or around November 2021, the exact dates being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas, and elsewhere, the Defendants,

EMYLEE THAI and
KENNETH REYNOLDS,

did knowingly and willfully combine, conspire, confederate, and agree with one another and with others known and unknown to the Grand Jury, including with Marketer 1 and Marketer 2, to commit offenses against the United States, that is:

- a. to defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of HHS and CMS in their administration and oversight of Medicare;
- b. to violate Title 42, United States Code, Section 1320a-7b(b)(1), by soliciting and receiving any remuneration, including kickbacks and bribes, directly and indirectly, overtly and

covertly, in cash and in kind, including by check and interstate wire transfer, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a Federal health care program, that is, Medicare; and in return for the purchasing, leasing, ordering, and arranging for, and recommending the purchasing, leasing, and ordering of any good, item, and service for which payment may be made in whole or in part by a Federal health care program, that is, Medicare; and

- c. to violate Title 42, United States Code, Section 1320a-7b(b)(2), by offering and paying any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check and interstate wire transfer, to any person to induce such person to refer an individual for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a Federal health care program, that is, Medicare; and to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole or in part under a Federal health care program, that is, Medicare.

Purpose of the Conspiracy

52. It was a purpose of the conspiracy for **THAI** and **REYNOLDS**, Marketer 1, Marketer 2, and their co-conspirators, known and unknown to the Grand Jury, to unlawfully enrich themselves by, among other things: (a) soliciting, receiving, offering, and paying kickbacks and bribes in exchange for the referral of Medicare beneficiaries' DNA samples and arranging for doctors' orders for genetic testing to ApolloMDx; (b) submitting and causing the submission of false and fraudulent claims to Medicare for genetic testing that were procured through kickbacks

and bribes, were not medically necessary, and were not eligible for reimbursement; (c) concealing and causing the concealment of kickbacks and bribes; and (d) diverting the proceeds for their personal use and benefit, the use and benefit of others, and to further the conspiracy.

Manner and Means

The manner and means by which **THAI** and **REYNOLDS**, and their co-conspirators, known and unknown, sought to accomplish the objects and purpose of the conspiracy included, among other things, the following:

53. **REYNOLDS**, Marketer 1, Marketer 2, and others solicited and received kickbacks and bribes from **THAI** in exchange for DNA samples and doctors' orders for genetic testing, knowing that ApolloMDx would bill Medicare for genetic testing purportedly provided on behalf of these beneficiaries. **REYNOLDS** and others submitted these DNA samples and doctors' orders to ApolloMDx in Houston, Texas.

54. **THAI** offered, paid, and caused the payment of kickbacks and bribes to be transmitted to **REYNOLDS**, Marketer 1, Marketer 2, and others, by check and interstate wire, from **THAI**'s Accounts to bank accounts in the name of Snuggie & Snuggie, Company 1, Company 2, and Marketer 2.

55. **THAI**, **REYNOLDS**, Marketer 1, and Marketer 2, and others caused ApolloMDx to submit false and fraudulent claims by interstate wire to Medicare for genetic testing knowing that it was procured through the payment of kickbacks and bribes, medically unnecessary, and ineligible for reimbursement.

56. From on or about August 5, 2020, and continuing through on or about November 26, 2021, **THAI** caused payments of approximately \$396,000 from **THAI**'s Accounts to Company 1's bank account, which constituted kickbacks paid in exchange for doctors' orders for genetic

testing that Marketer 1 or Marketer 1's sales representatives (including **REYNOLDS**) referred to ApolloMDx, which supported claims to Medicare and resulted in Medicare paying reimbursements to ApolloMDx.

57. From on or about April 5, 2021, and continuing through on or about November 26, 2021, **THAI** caused payments of approximately \$310,000 from **THAI**'s Accounts to Company 2's bank account, which constituted kickbacks paid in exchange for doctors' orders that Marketer 1 or Marketer 1's sales representatives (including **REYNOLDS**) referred to ApolloMDx, which supported claims to Medicare and resulted in Medicare paying reimbursements to ApolloMDx.

58. From on or about April 5, 2021, and continuing through on or about November 26, 2021, **THAI** caused payments of approximately \$630,000 from **THAI**'s Accounts to Snuggie & Snuggie's bank account, which constituted kickbacks paid in exchange for doctors' orders that **REYNOLDS** referred to ApolloMDx, which supported claims to Medicare and resulted in Medicare paying reimbursements to ApolloMDx.

59. **THAI**, **REYNOLDS**, and their co-conspirators used the proceeds received from Medicare to benefit themselves and others, and to further the scheme.

Overt Acts

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one co-conspirator committed and caused to be committed, in the Houston Division of the Southern District of Texas, and elsewhere, at least the following overt acts, among others:

60. In or around mid-2020, **THAI** reached an agreement with Marketer 1 to pay Marketer 1 thirty-five percent of the amounts Medicare reimbursed ApolloMDx on claims Marketer 1 and Marketer 1's sales representatives (including **REYNOLDS**) referred to ApolloMDx in Houston, Texas.

61. On or about September 9, 2020, **THAI** sent Marketer 1 a Medicare billing statement showing that Medicare was reimbursing ApolloMDx approximately \$8,295.72 for genetic testing for cardiovascular disease to incentivize Marketer 1 and Marketer 1's sales representatives (including **REYNOLDS**) to increase their referrals.

62. On or about September 25, 2020, Marketer 1 communicated with **THAI** about the number of DNA samples that **REYNOLDS** and Marketer 2 were causing to be referred to ApolloMDx in Houston, Texas, and **THAI** offered Marketer 1 an additional bonus if Marketer 1 and Marketer 1's sales representatives (including **REYNOLDS** and Marketer 2) referred over a thousand DNA samples to ApolloMDx before December 25, 2020.

63. On or about October 5, 2020, **THAI** and **REYNOLDS** signed a "Direct Marketing Services Contract" that purported to govern the marketing arrangement between ApolloMDx and Snuggie & Snuggie. The agreement provided that the compensation payable to Snuggie & Snuggie was purportedly to be based on the fair market value of services rendered and was to "bear absolutely no correlation to the volume or quantity of Leads, Records, or Clients." Despite **REYNOLDS** signing a contract that stated that he would be paid a flat fee, **THAI** paid or caused **REYNOLDS** to be paid a percentage of Medicare reimbursements in violation of the federal Anti-Kickback Statute.

64. On or about October 8, 2020, Marketer 1 and **THAI** discussed concealing Marketer 1 and Marketer 1's sales representatives' (including **REYNOLDS**'s) compensation arrangements with ApolloMDx by paying the sales representatives a "salary" instead of a commission based on Medicare reimbursements.

65. On or about December 4, 2021, **THAI** caused a payment of approximately \$100,000 from **THAI**'s Accounts to Marketer 2, which constituted a kickback paid in exchange

for doctors' orders that Marketer 2 referred to ApolloMDx in Houston, Texas, which supported claims to Medicare and resulted in Medicare paying reimbursements to ApolloMDx.

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

COUNTS FOUR THROUGH SEVEN

**Payment of Health Care Kickbacks in Connection with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(2) and 18 U.S.C. § 2)**

66. Paragraphs 1 through 26, 30 through 36, 40 through 44, and 53 through 59 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

67. On or about the dates set forth below, the exact dates being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas, and elsewhere, the Defendant,

EMYLEE THAI,

aiding and abetting, and aided and abetted by, others known and unknown to the Grand Jury, did knowingly and willfully offer and pay remuneration, that is, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check and interstate wire transfer, to any person to induce such person to refer an individual for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a Federal health care program, that is, Medicare; and to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part under a Federal health care program, that is, Medicare as set forth below:

COUNT	Approximate Date of Payment	Approximate Amount	Description
4	12/4/2020	\$25,000	Wire Transfer from ApolloMDx's account at HSBC to Company 1's account at TD Bank
5	12/4/2020	\$100,000	Wire Transfer from ApolloMDx's account at HSBC to Snuggie & Snuggie's account at Citizens Bank
6	12/4/2020	\$100,000	Wire transfer from ApolloMDx's account at HSBC to Marketer 2's account at TD Bank
7	2/23/2022	\$50,000	Wire Transfer from ApolloMDx's account at Morgan Stanley to IDP Management's account at JP Morgan Chase

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

COUNT EIGHT

Receipt of Health Care Kickbacks in Connection with a Federal Health Care Program

(42 U.S.C. § 1320a-7b(b)(1) and 18 U.S.C. § 2)

68.

Paragraphs 1 through 26, 30 through 36, and 40 through 44 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

69.

On or about the date set forth below, the exact date being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas, and elsewhere, the Defendant,

LILY TRAN DANIEL,

aiding and abetting, and aided and abetted by, others known and unknown to the Grand Jury, did knowingly and willfully solicit and receive remuneration, that is, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check and interstate wire transfer, in return for referring an individual to a person for the furnishing and arranging for the

furnishing of any item and service for which payment may be made in whole and in part under a Federal health care program, that is, Medicare; and in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part under a Federal health care program, that is, Medicare as set forth below:

COUNT	Approximate Date of Payment	Approximate Amount	Description
8	2/23/2022	\$50,000	Wire Transfer from ApolloMDx's account at Morgan Stanley to IDP Management's account at JP Morgan Chase

COUNT NINE

**Receipt of Health Care Kickbacks in Connection with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(1) and 18 U.S.C. § 2)**

70. Paragraphs 1 through 26 and 53 through 59 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

71. On or about the date set forth below, the exact date being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas, and elsewhere, the Defendant,

KENNETH REYNOLDS,

aiding and abetting, and aided and abetted by, others known and unknown to the Grand Jury, did knowingly and willfully solicit and receive remuneration, that is, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check and interstate wire transfer, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a Federal health care program, that is, Medicare; and in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering any good, facility, service, and

item for which payment may be made in whole and in part under a Federal health care program, that is, Medicare as set forth below:

COUNT	Approximate Date of Payment	Approximate Amount	Description
9	12/4/2020	\$100,000	Wire Transfer from ApolloMDx's account at HSBC to Snuggie & Snuggie's account at Citizens Bank

NOTICE OF CRIMINAL FORFEITURE
(18 U.S.C. §§ 981(a)(1)(C), 982(a)(7), and 28 U.S.C. § 2461(c))

72. The allegations contained in Counts One through Nine of this Superseding Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(7); and Title 28, United States Code, Section 2461(c).

73. Upon conviction of the offenses set forth in Counts One through Nine of this Superseding Indictment, the Defendants, **EMYLEE THAI**, **LILY TRAN DANIEL**, and **KENNETH REYNOLDS**, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offenses.

74. Defendants **EMYLEE THAI**, **LILY TRAN DANIEL**, and **KENNETH REYNOLDS**, are notified that upon conviction, a money judgment may be imposed against them. If any of the property described above, as a result of any act or omission of the Defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty, the United States of America shall be entitled to forfeiture of substitute property up to the amount of the money judgment pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and Title 28, United States Code, Section 2461(c).

A TRUE BILL

Original Signature on File
FOREPERSON

ALAMDAR S. HAMDANI
UNITED STATES ATTORNEY

GLENN LEON
CHIEF, FRAUD SECTION
CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE

Andrew Tamayo

ANDREW TAMAYO
TRIAL ATTORNEY
FRAUD SECTION, CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE