



**ATTACHMENT A**  
**(Conspiracy to Pay Illegal Kickbacks)**

From at least as early as in or about June 2018 through in or about November 2018, in the District of New Jersey and elsewhere, defendants

**JOHN BERBERIAN and**  
**CHRISTOPHER LYTLÉ**

did knowingly and intentionally conspire and agree with each other and others to commit certain offenses against the United States, that is, to knowingly and willfully offer and pay remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, in return for the referral of an individual to another person for the furnishing and arranging for the furnishing of items and services, namely genetic tests, for which payment was made in whole or in part under a Federal health care program, namely, Medicare, contrary to Title 42, United States Code, Section 1320a-7b(b)(2)(A).

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

## ATTACHMENT B

I, Brian Dyson, a Special Agent with the U.S. Department of Health and Human Services, Office of Inspector General, 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.

### The Defendants and the Related Clinical Laboratory

1. At all times relevant to this Complaint:

a. Defendant JOHN BERBERIAN (“BERBERIAN”) was a resident of Georgia who owned and operated the “Consulting Company,” a consulting company based in Atlanta, Georgia. Among other things, the Consulting Company entered into agreements with marketing and sales groups who acquired patients’ DNA samples and physicians’ orders for purposes of submitting those samples and orders to clinical laboratories for genetic tests and related services (“Patient Acquisition Groups”).

b. Defendant CHRISTOPHER LYTLE (“LYTLE”) was a resident of Texas who partnered with BERBERIAN and others to recruit and oversee Patient Acquisition Groups.

c. Personalized Genetics, LLC, d/b/a Personalized Genomics (“PGL”), was a clinical laboratory in Pittsburgh, Pennsylvania owned by Ravitej Reddy (“Reddy”), a resident of Pennsylvania. PGL was an approved Medicare provider and Medicare paid PGL for genetic tests and related services performed for Medicare beneficiaries referred to PGL. BERBERIAN, LYTLE, and others managed the Patient Acquisition Groups that submitted DNA samples to PGL in exchange for payments from the Consulting Company.<sup>1</sup>

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<sup>1</sup> In most instances, PGL did not itself perform the genetic tests but instead acted as a “referring laboratory” that sent the DNA samples to another laboratory (commonly referred to as a “reference laboratory”) to conduct the testing. PGL, however, served as the Medicare provider for the tests, submitted claims, and received payments from Medicare for tests that a reference laboratory performed.

## **Relevant Entities and Individuals**

d. Ark Laboratory Network LLC (“Ark”) was a Florida limited liability company that purported to operate a nationwide network of laboratories and laboratory partners that facilitated genetic testing. Ark served as a Patient Acquisition Group for the Consulting Company and PGL. Throughout 2018, Ark delivered hundreds of DNA samples and physicians’ orders—including from patients in New Jersey—to PGL for purposes of genetic testing. Ark acquired patients’ DNA samples through various methods, including offering bribes in the form of \$75 gift cards to patients, all without the involvement of a treating health care professional. In turn, as set forth below, the Consulting Company paid Ark kickbacks and bribes in exchange for the DNA samples submitted to PGL. PGL then billed Medicare for the genetic tests associated with the samples that Ark acquired and referred to PGL.

e. Edward B. Kostishion (“Kostishion”), a co-conspirator not charged in this Complaint, resided in Lakeland, Florida and was a managing partner and part owner of Ark.

f. Kacey C. Plaisance (“Plaisance”), a co-conspirator not charged in this Complaint, resided in Altamonte Springs, Florida and was a managing partner and part owner of Ark.

g. Jeremy M. Richey (“Richey”), a co-conspirator not charged in this Complaint, resided in Mars, Pennsylvania and was a managing partner and part owner of Ark.

## **Background on the Medicare Program and Genetic Testing**

h. 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(f). Individuals who received Medicare benefits were commonly referred to as “beneficiaries.”

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

j. 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.

k. Genetic tests related to a patient's hereditary predisposition for cancer were commonly referred to as "CGx" tests. 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.

l. To conduct a genetic test, a laboratory must obtain a DNA sample from the patient. Such samples were typically obtained 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 to the laboratory for analysis, such as CGx or PGx.

m. 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 exceeded \$10,000 per test, while reimbursement rates for PGx exceeded \$6,500 per test.

### **Related Charges and Guilty Pleas from Reddy, Plaisance, and Kostishion<sup>2</sup>**

n. On September 25, 2019, a federal grand jury sitting in Newark, New Jersey returned an indictment charging Kostishion, Plaisance, Richey, among other defendants and offenses, with conspiracy to solicit and receive bribes through Ark from various clinical laboratories, in violation of 18 U.S.C. § 371. *United States v. Matthew S. Ellis et al.*, Dkt. No. 1, No. 19-cr-693 (BRM) (D.N.J.).

o. On January 10, 2020, Reddy, PGL's owner, pleaded guilty in the United States District Court for the Western District of Pennsylvania to a four-count information filed on November 26, 2019 charging him with two counts of conspiracy to pay and receive kickbacks, each in violation of 18 U.S.C. § 371, one count of conspiracy to pay kickbacks, in violation of 18 U.S.C. § 371, and one count of offering and paying kickbacks in connection with a federal health care program, in violation of 42 U.S.C. § 1320a-7b(b)(2)(A). The purpose of the conspiracy to pay and receive kickbacks charged in Count One was for Reddy and his co-conspirators to unlawfully enrich themselves by, among other things, paying kickbacks and bribes "in connection with the recruitment and referral of Medicare beneficiaries to PGL[.]" Reddy also admitted that he and others had paid kickbacks and bribes to Patient Acquisition Groups in exchange for causing Medicare beneficiaries to submit CGx and PGx samples to PGL. In addition, Reddy admitted to entering "sham agreements" with certain Patient Acquisition Groups that attempted to conceal the kickback and bribe payments. *United States v. Ravitej Reddy*, No. 19-cr-357 (WSS) (W.D. Pa.).

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<sup>2</sup> The information related to the Indictment and guilty pleas is included for the Court's information and for completeness. The affiant does not rely on the fact of the Indictment or pleas to establish probable cause.

p. On May 6, 2020, Plaisance pleaded guilty in the United States District Court for the District of New Jersey to an information charging him with two counts of conspiracy to defraud the United States in connection with schemes to commit health care fraud and violate the Anti-Kickback Statute, in violation of 18 U.S.C. § 371. *United States v. Matthew S. Ellis, et al.*, Dkt. No. 84, No. 19-cr-693 (BRM) (D.N.J.).

q. On November 19, 2020, Kostishion pleaded guilty in United States District Court for the District of New Jersey to an information charging him with two counts of conspiracy to defraud the United States in connection with schemes to commit health care fraud and violate the Anti-Kickback Statute, in violation of 18 U.S.C. § 371. *United States v. Matthew S. Ellis, et al.*, Dkt. No. 112, No. 19-cr-693 (BRM) (D.N.J.).

r. As part of their respective guilty pleas, Kostishion and Plaisance each pleaded guilty to entering into kickback agreements with certain clinical laboratories under which the laboratories paid Ark kickbacks and bribes in exchange for delivering DNA samples and orders for genetic tests. Kostishion and Plaisance further admitted that Ark concealed these kickback arrangements through issuing sham invoices to laboratories that purportedly reflected services provided at an hourly rate even though the parties had already agreed upon the bribe amount that laboratories agreed to pay Ark in exchange for the DNA samples.

### **The Conspiracy**

2. From as early as in or about June 2018 through in or about November 2018, BERBERIAN, LYTLE, and others conspired to offer and pay kickbacks and bribes to Ark in exchange for the referral of patient DNA samples, including from beneficiaries in New Jersey, to PGL for genetic testing. PGL, in turn, via a billing company associated with BERBERIAN, billed and obtained payment from Medicare for these genetic tests and related services. Specifically, the Consulting Company paid Ark approximately \$957,783 in kickbacks and bribes in exchange for DNA samples—predominantly for CGx tests—and physicians' orders it delivered to PGL. As a result of the claims PGL submitted to Medicare for the related genetic tests, Medicare paid PGL more than \$2.7 million. BERBERIAN, LYTLE, and Reddy divvied up this money.

3. In or about May 2018, LYTLE introduced Ark and Kostishion to BERBERIAN and the Consulting Company for purposes of Ark serving as a Patient Acquisition Group for the Consulting Company. In or about June 2018, LYTLE invited Kostishion and Richey to meet LYTLE and BERBERIAN in Pittsburgh to discuss, among other things, the terms under which the Consulting Company would pay Ark in exchange for DNA samples. Before this meeting, Kostishion engaged in a series of communications via text message with LYTLE to negotiate the rate that

Ark would receive for CGx and PGx samples.<sup>3</sup> Specifically, on or about June 7, 2018, Kostishion sent a text message to LYTTLE asking him: “what is the name of the federal lab in PA please also I need the contract for the federal lab \$1700 for CGX and \$650 for PGX, I’d like to get this buttoned up today and definitely before I get up there.” LYTTLE replied via text message and identified PGL as the laboratory in Pennsylvania.

4. On or about June 9, 2018, Kostishion asked LYTTLE to confirm the bribe that Ark would receive per DNA sample, stating in a text message: “Hey my friend will discuss this further up in Pittsburgh when we’re together . . . let’s nail down an exact cgx price not a range and I think of that PGX price not a range.” LYTTLE replied to Kostishion: “Range is based upon volume [of DNA samples]. So let’s nail down some exact volume. What is your exact volume or do you just have a range? I can comfortably commit to \$1500 without knowing your volume just because I consider you a friend.”

5. On or about June 13, 2018, Kostishion and Richey, on behalf of Ark, met with BERBERIAN, LYTTLE, Reddy, and others in Pittsburgh to finalize the terms under which Ark would send DNA samples to PGL. Following this meeting, BERBERIAN and LYTTLE agreed to pay Ark \$1,500 per individual CGx sample—which the parties commonly referred to as a “flat fee”—and approximately 50% of the net revenue PGL received for PGx tests. On or about June 16, 2018, LYTTLE sent a text message to Kostishion confirming the bribe per CGx tests, stating: “Will do the \$1,500 flat fee for CGX.”

6. To effectuate the conspiracy and disguise their kickback and bribe payments, BERBERIAN, LYTTLE, and others caused PGL to enter into a sham contract with Ark, purportedly effective on or about June 19, 2018, under which Ark agreed to provide various marketing, call center, and other services for PGL (the “Sham Ark Contract”). In return, PGL agreed under the contract to pay Ark for its services purportedly on an hourly basis at a rate of \$500 per hour. The Sham Ark Contract further provided that Ark would supply invoices to PGL setting forth the billable hours it performed associated with the contracted services.

7. In reality, however, the Consulting Company—not PGL—paid Ark in exchange for DNA samples and physicians’ orders. The amount it paid Ark was unconnected to the amount of hours Ark billed for the phony services identified in the Sham Ark Contract. Instead, the payments were based on the number of CGx samples that Ark delivered to PGL—\$1,500 per individual sample—and, with respect to PGx, approximately 50% of the net revenue that PGL received from Medicare for PGx tests (the “Bribe Formula”).

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<sup>3</sup> Examples of these messages are quoted verbatim in this Complaint, including any typographical or grammatical errors.

8. To conceal the payment of kickbacks and bribes from the Consulting Company to Ark, BERBERIAN, LYTTLE, and others directed Ark to draft and submit, via the Consulting Company, sham invoices to PGL. These invoices were based on the Sham Ark Contract and purported to bill for hourly services at a rate of \$500 per hour. BERBERIAN and LYTTLE, however, had already determined with Ark the amount of kickbacks and bribes that the Consulting Company would pay Ark pursuant to the Bribe Formula. Ark's sham invoices, which typically repeated the same identical description of services, including "conference calls" and "prospective Ark client visits," simply adjusted the total amount of hours billed so that the amount due under the invoice equaled the same amount due to Ark under the Bribe Formula.

9. For example:

a. On or about August 9, 2018, Kostishion sent an email to BERBERIAN, copying Plaisance and Richey, attaching an invoice from Ark to PGL for \$187,500 that listed approximately 374 hours of various purported services performed over a two week period, including 176 hours and thus \$88,000 for "[p]rospective Ark client visits / Travel & Expenses." On or about August 10, 2018, BERBERIAN forwarded the email and invoice to his bookkeeper at the Consulting Company ("Employee-1"). On or about August 13, 2018, Plaisance sent an email to BERBERIAN and Employee-1, copying Kostishion and Richey, asking if Employee-1 was "able to secure and confirm Ark's details for today's wire?" Employee-1 replied: "Your ACH [electronic bank transfer] has been approved and the \$187,500.00 will hit your account tonight and be available tomorrow am." On or about August 16, 2018, the Consulting Company electronically transferred \$187,500 to Ark's bank account. At Ark's rate of \$1,500 per individual CGx sample, this payment corresponded to 125 samples. On or about August 21, 2018, Employee-1 sent BERBERIAN and others at the Consulting Company a "report to reflect Ark's sample submission." The report consisted of a spreadsheet that included a column entitled "Sum of CGX" and indicated that Ark had, indeed, submitted 125 CGx samples.

b. On or about August 23, 2018, the Consulting Company electronically transferred \$112,500 to Ark's bank account in exchange for CGx samples that Ark had delivered to PGL. At Ark's rate of \$1,500 per individual CGX sample, this corresponded to 75 samples. The description from the Consulting Company that accompanied this electronic bank transfer stated: "75 SAMPLES 1 500 EA[.]"

c. On or about October 5, 2018, BERBERIAN sent a text message to Employee-1 and Plaisance asking Employee-1 "how much was the ACH [the electronic bank transfer payment] for Arc [?]" Employee-1 replied via text message that Employee-1 had "only set up the three for [another Patient Acquisition Group]" and that "Ark hasn't been set up yet[.] It's for \$150,000 per you verbally only[.] They usually send an invoice first." BERBERIAN then instructed Plaisance via text

message as follows: “Kacey send your invoice in please.” A short time later, Plaisance replied to BERBERIAN and Employee-1 via text message: “[Employee-1] Have it sent in 10.”

d. Later that same day, Kostishion sent Employee-1 an email, copying BERBERIAN and Plaisance, stating: “attached is the Invoice for the 100 samples as per John [BERBERIAN]’s and Kacey [Plaisance]’s Agreement.” The attached Ark invoice to PGL was for \$150,000—which corresponded to 100 samples at \$1,500 per sample—and used the identical language as other sham invoices to describe the various services Ark purportedly performed. After receiving this sham invoice, BERBERIAN sent a text message to Plaisance, stating: “150k wire sent.” That same day, the Consulting Company electronically transferred \$150,000 to Ark’s bank account.

e. On or about October 18, 2018, Kostishion sent an email to BERBERIAN and Employee-1, copying Plaisance and Richey, attaching another sham invoice for \$150,000 and stating to Employee-1, “attached is the Invoice for the 100 samples as per John [BERBERIAN]’s and Kacey’s Agreement.” Thus, the invoiced amount was identical to the amount due pursuant to the Bribe Formula for 100 CGx samples.

10. BERBERIAN, LYTTLE, and others tracked: (i) the amounts paid as kickbacks and bribes to Ark; (ii) the genetic tests, including CGx and PGx tests, that Ark referred or caused to be referred to PGL; and (iii) the revenue that these genetic tests generated for PGL and the Consulting Company.

11. On or about October 17, 2018, Employee-1 sent an email to Plaisance, copying Kostishion, BERBERIAN, LYTTLE, Reddy, and others that attached a report detailing, on an individual patient basis, the DNA samples that Ark delivered to PGL and the resulting claims and payments from Medicare. In the email sending the report, Employee-1 stated to Plaisance: “One tab shows the funded CGX paid claims. You had a few PGX paid claims and you[r] portion is \$783.49.” The attached report included: (i) the total amount PGL billed to insurance payors, typically Medicare, for each patient, which often exceeded approximately \$13,000 for CGx tests; and (ii) the total payments PGL received, which ranged from approximately \$6,500 to over \$10,000 for each CGx test. The line entry for each individual patient included a “Funded” column which listed a \$1,500 payment for Ark for each CGx test. With respect to PGx samples, the report included a tab that reflected the Consulting Company’s arrangement with Ark to pay Ark 50% of the net payment PGL received for PGx tests, which for the period covered in the report, amounted to \$783.49.