UNITED STATES DISTRICT COURT

for the
Central District of California

ORIGINAL

In the Matter of the Search of *(Briefly describe the property to be searched or identify the person by name and address)* 336 1/2 South Glendora Avenue West Covina, California 91790	)	Case No.

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Central District of California
(identify the person or describe the property to be searched and give its location):

See Attachment A-4

The person or property to be searched, described above, is believed to conceal *(identify the person or describe the property to be seized):*

See Attachment B

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property. Such affidavit(s) or testimony are incorporated herein by reference and attached hereto.

YOU ARE COMMANDED to execute this warrant on or before 14 days from the date of its issuance
(not to exceed 14 days)

☑ in the daytime 6:00 a.m. to 10 p.m. ☐ at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge on duty at the time of the return through a filing with the Clerk's Office.
(name)

☐ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)* ☐ for _____ days *(not to exceed 30)*.

☐ until, the facts justifying, the later specific date of _____.

Date and time issued: 11/13/2017 3:44 pm Alicia G. Rosenberg
Judge's signature

City and state: Los Angeles, California Hon. Alicia G. Rosenberg
Printed name and title

AUSA: Benjamin R. Barron

Return

Case No.:	Date and time warrant executed:	Copy of warrant and inventory left with:

Inventory made in the presence of :

Inventory of the property taken and name of any person(s) seized:

[Please provide a description that would be sufficient to demonstrate that the items seized fall within the items authorized to be seized pursuant to the warrant (e.g., type of documents, as opposed to "miscellaneous documents") as well as the approximate volume of any documents seized (e.g., number of boxes). If reference is made to an attached description of property, specify the number of pages to the attachment and any case number appearing thereon.]

Certification (by officer present during the execution of the warrant)

I declare under penalty of perjury that I am an officer who executed this warrant and that this inventory is correct and was returned along with the original warrant to the designated judge through a filing with the Clerk's Office.

Date: _____

_____
Executing officer's signature

_____
Printed name and title

AUSA: Benjamin R. Barron

ATTACHMENT A-4

Description of SUBJECT PREMISES-4 to be searched

SUBJECT PREMISES-4 is described as follows:

SUBJECT PREMISES-4 is TENNANT's business office located at 336 ½ South Glendora Avenue, West Covina, CA. SUBJECT PREMISES-4 is located on the second floor in the same building as SUBJECT PREMISRS-3. The sign above the entry door shows "TENNANT FOUNDATION" and the door opens to a stairway to the second floor.

ATTACHMENT B

I. ITEMS TO BE SEIZED

1. The items to be seized are evidence, contraband, fruits, or instrumentalities of violations of 21 U.S.C. §§ 841(a)(1) and 846 (distribution and possession with intent to distribute a controlled substance, and related conspiracy), 18 U.S.C. §§ 1347 and 1349 (health care fraud and related conspiracy), and 18 U.S.C. § 1956 (money laundering and related conspiracy), for the dates January 1, 2013, and the present, namely:

a. Controlled substances, including but not limited to Fentanyl, oxycodone, and hydrocodone.

b. Documents that refer or relate to times when controlled substances, including but not limited to fentanyl, oxycodone, and hydrocodone, were prescribed or dispensed, customer lists, appointment books, pharmacy information, correspondence, notations, logs, receipts, journals, books, and records.

c. Medical records, patient files, sign-in sheets, charts, billing information, payment records, and identification documents for or that refer to any of the following patients: (i) patients who have received any controlled drug from UNITED and/or TENNANT, or (ii) Medicare beneficiaries.

d. Documents or other materials that refer or relate to the TIRF REMS program or that otherwise address the requirements for safe or appropriate prescribing of TIRF drugs.

e. Documents that refer or relate to: payments to or

from INSYS Therapeutics or any agent of INSYS Therapeutics; payments received or paid to attend any event connected to INSYS Therapeutics or the TIRF drug Subsys; or any Medicare or other billing for prescribing or dispensing of a TIRF drug (to include pre-authorization for any such billing).

f. Documents, including but not limited to emails, check registers, cancelled checks, deposit items, financial instruments, facsimile transmissions, ledgers, or correspondence to/from any insurance provider, that refer or relate to: the prescribing or dispensing of any controlled drug or to any person to whom a controlled substance was prescribed or dispensed.

g. United States currency, financial instruments, and precious metals in an aggregate value exceeding $1,000.

h. Records, documents, titles, mortgage paperwork, and deeds reflecting the purchase, rental, or lease of any real estate and vehicles, such as a car, truck, motorcycle, boat, plane, or RV.

i. Not more than twenty (20) indicia of occupancy, residency, rental, or ownership of each **SUBJECT PREMISES**, including but not limited to utility bills, telephone bills, loan payment receipts, rent receipts, trust deeds, lease or rental agreements, and escrow documents.

j. Keys to show ownership of storage facilities, businesses, locked containers, cabinets, safes, conveyances, and/or other residences.

k. Any digital device used to facilitate the above-

listed violations and forensic copies thereof.

2. With respect to any digital devices used to facilitate the above-listed violations or containing evidence falling within the scope of the foregoing categories of items to be seized:

a. evidence of who used, owned, or controlled the device at the time the things described in this warrant were created, edited, or deleted, such as logs, registry entries, configuration files, saved usernames and passwords, documents, browsing history, user profiles, e-mail, e-mail contacts, chat and instant messaging logs, photographs, and correspondence;

b. evidence of the presence or absence of software that would allow others to control the device, such as viruses, Trojan horses, and other forms of malicious software, as well as evidence of the presence or absence of security software designed to detect malicious software;

c. evidence of the attachment of other devices;

d. evidence of counter-forensic programs (and associated data) that are designed to eliminate data from the device;

e. evidence of the times the device was used;

f. passwords, encryption keys, and other access devices that may be necessary to access the device;

g. applications, utility programs, compilers, interpreters, or other software, as well as documentation and manuals, that may be necessary to access the device or to conduct a forensic examination of it;

h. records of or information about Internet Protocol addresses used by the device;

i. records of or information about the device's Internet activity, including firewall logs, caches, browser history and cookies, "bookmarked" or "favorite" web pages, search terms that the user entered into any Internet search engine, and records of user-typed web addresses.

3. As used herein, the terms "records," "documents," "programs," "applications," and "materials" include records, documents, programs, applications, and materials created, modified, or stored in any form, including in digital form on any digital device and any forensic copies thereof.

4. As used herein, the term "digital device" includes any electronic system or device capable of storing or processing data in digital form, including central processing units; desktop, laptop, notebook, and tablet computers; personal digital assistants; wireless communication devices, such as telephone paging devices, beepers, mobile telephones, and smart phones; digital cameras; peripheral input/output devices, such as keyboards, printers, scanners, plotters, monitors, and drives intended for removable media; related communications devices, such as modems, routers, cables, and connections; storage media, such as hard disk drives, floppy disks, memory cards, optical disks, and magnetic tapes used to store digital data (excluding analog tapes such as VHS); and security devices.

II. SEARCH PROCEDURE FOR DIGITAL DEVICES

5. In searching digital devices or forensic copies thereof, law enforcement personnel executing this search warrant will employ the following procedure:

a. Law enforcement personnel or other individuals assisting law enforcement personnel (the "search team") will, in their discretion, either search the digital device(s) on-site or seize and transport the device(s) to an appropriate law enforcement laboratory or similar facility to be searched at that location. The search team shall complete the search as soon as is practicable but not to exceed 120 days from the date of execution of the warrant. The government will not search the digital device(s) beyond this 120-day period without first obtaining an extension of time order from the Court.

b. The search team will conduct the search only by using search protocols specifically chosen to identify only the specific items to be seized under this warrant.

i. The search team may subject all of the data contained in each digital device capable of containing any of the items to be seized to the search protocols to determine whether the device and any data thereon falls within the list of items to be seized. The search team may also search for and attempt to recover deleted, "hidden," or encrypted data to determine, pursuant to the search protocols, whether the data falls within the list of items to be seized.

ii. The search team may use tools to exclude normal operating system files and standard third-party software that do not need to be searched.

iii. The search team may use forensic examination and searching tools, such as "EnCase" and "FTK" (Forensic Tool Kit), which tools may use hashing and other sophisticated techniques.

c. If the search team, while searching a digital device, encounters immediately apparent contraband or other evidence of a crime outside the scope of the items to be seized, the team shall immediately discontinue its search of that device pending further order of the Court and shall make and retain notes detailing how the contraband or other evidence of a crime was encountered, including how it was immediately apparent contraband or evidence of a crime.

d. If the search determines that a digital device does not contain any data falling within the list of items to be seized, the government will, as soon as is practicable, return the device and delete or destroy all forensic copies thereof.

e. If the search determines that a digital device does contain data falling within the list of items to be seized, the government may make and retain copies of such data, and may access such data at any time.

f. If the search determines that a digital device is (1) itself an item to be seized and/or (2) contains data falling within the list of items to be seized, the government may retain forensic copies of the digital device but may not access data

falling outside the scope of the items to be seized (after the time for searching the device has expired) absent further court order.

g. The government may retain a digital device itself until further order of the Court or one year after the conclusion of the criminal investigation or case (whichever is latest), only if the device is determined to be an instrumentality of an offense under investigation or the government, within 14 days following the time period authorized by the Court for completing the search, obtains an order from the Court authorizing retention of the device (or while an application for such an order is pending). Otherwise, the government must return the device.

h. After the completion of the search of the digital devices, the government shall not access digital data falling outside the scope of the items to be seized absent further order of the Court.

6. In order to search for data capable of being read or interpreted by a digital device, law enforcement personnel are authorized to seize the following items:

a. Any digital device capable of being used to commit, further or store evidence of the offense(s) listed above;

b. Any equipment used to facilitate the transmission, creation, display, encoding, or storage of digital data;

c. Any magnetic, electronic, or optical storage device capable of storing digital data;

d. Any documentation, operating logs, or reference manuals regarding the operation of the digital device or software used in the digital device;

e. Any applications, utility programs, compilers, interpreters, or other software used to facilitate direct or indirect communication with the digital device;

f. Any physical keys, encryption devices, dongles, or similar physical items that are necessary to gain access to the digital device or data stored on the digital device; and

g. Any passwords, password files, test keys, encryption codes, or other information necessary to access the digital device or data stored on the digital device.

7. During the execution of this search warrant, the law enforcement personnel are authorized to depress the fingerprints and/or thumbprints of any person, who is located at the SUBJECT PREMISES during the execution of the search and who is reasonably believed by law enforcement to be a user of a fingerprint sensor-enabled device that is located at the SUBJECT PREMISES and falls within the scope of the warrant, onto the fingerprint sensor of the device (only when the device has such a sensor) in order to gain access to the contents of any such device.

8. The special procedures relating to digital devices found in this warrant govern only the search of digital devices pursuant to the authority conferred by this warrant and do not

apply to any search of digital devices pursuant to any other court order.

9. **PROCEDURE FOR PATIENT REQUESTS FOR MEDICAL RECORDS**

10. The following procedures will be followed in order to minimize disruption to the legitimate medical needs of patients: A patient whose medical information has been seized pursuant to this search warrant may request that a copy of that seized information be returned to the patient. These requests must be in writing and shall be submitted to Diversion Investigator Stephanie A. Kolb, Drug Enforcement Administration, 1900 East First Street, Santa Ana, California 92701. Requests may also be faxed to (714) 647-4971 or emailed to Stephanie.a.kolb@usdoj.gov. The government must provide to the patient making the request a copy of any medical information it has regarding the patient within 48 hours (excluding weekends and holidays) of receiving the request.

AFFIDAVIT

I, Stephanie Kolb, being duly sworn, declare and state as follows:

I. INTRODUCTION

1. I am presently employed as a Diversion Investigator ("DI") for the United States Drug Enforcement Administration ("DEA") and have been so employed since 2012. I am currently assigned to the Los Angeles Field Division, Tactical Diversion Squad ("TDS"), which is tasked solely with the investigation of the illegal trafficking of pharmaceutical controlled substances.

2. During the course of my employment, I received approximately thirteen weeks of instruction in the investigation of controlled substance registrants (including doctors, physician assistants, and nurse practitioners) and major narcotics traffickers at the DEA Academy in Quantico, Virginia. I received additional training at Quantico in asset forfeiture and money laundering investigations.

3. I have specialized training and experience in narcotics trafficking, conspiracy, and distribution investigations, specifically including pharmaceutical controlled substances investigations. I have participated in all aspects of drug investigations, including the use of confidential sources and undercover officers, electronic surveillance, the execution of search and arrest warrants, investigative interviews, and the analysis of seized records, physical evidence, and taped conversations. Over the course of my employment as a DI, I have been the case agent or lead

investigator on several federal investigations that have specifically involved the illegal trafficking of pharmaceutical controlled substances by medical doctors, physician assistants, and nurse practitioners, and I have participated in multiple other investigations that involved the illegal diversion of pharmaceutical controlled substances. I have spoken on numerous occasions with pharmacists, physicians, DIs, Medical Board investigators, patients, and other witnesses having extensive knowledge of pharmaceuticals regarding the methods and practices of individuals trafficking in or diverting pharmaceutical controlled substances.

4. Through my investigations, my training and experience, and my conversations with other law enforcement personnel, I have become familiar with the tactics and methods used by traffickers to smuggle and safeguard pharmaceutical controlled substances, to distribute and divert pharmaceutical controlled substances, and to collect and launder the proceeds from the sale of controlled substances. Further, I am aware of the tactics and methods employed by pharmaceutical trafficking organizations and individuals to thwart investigation of their illegal activities.

5. I have participated in the federal prosecution of physicians, physician assistants, and pharmacists. During the course of trial, I have testified both to specific knowledge of the case and my knowledge obtained through training and experience.

6. The facts set forth in this affidavit are based upon my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not purport to set forth all of my knowledge of or investigation into this matter. Unless specifically indicated otherwise, all conversations and statements described in this affidavit are related in substance and in part only.

II. PURPOSE OF AFFIDAVIT

7. This affidavit is made in support of an application for search warrants to search the following locations (collectively the "**SUBJECT PREMISES**") and to seize evidence, fruits, and instrumentalities of violation of 21 U.S.C. §§ 846, 841 (distribution of controlled substances, possession of controlled substances with intent to distribute, and related conspiracy); 18 U.S.C. § 1349 (conspiracy to commit health care fraud); and 18 U.S.C. §§ 1956(a), (h) (money laundering and related conspiracy):

a. **SUBJECT PREMISES-1**: United Pharmacy Inc., ("UNITED"), located at 1129 South Robertson Boulevard, Los Angeles, California 90035. SUBJECT PREMISES-1 is the business location for UNITED, as further described in this affidavit and in Attachment A-1;

b. **SUBJECT PREMISES-2**: a residence located at 702 Foothill Road, Beverly Hills, California 90210. SUBJECT PRESMISES-2 is the residence of Farid Pourmorady ("POURMORADY"),

Pharmacist in Charge and Owner of UNITED as further described in this affidavit and in Attachment A-2;

c. **SUBJECT PREMISES-3**: 338 South Glendora Avenue, West Covina, CA 91790. SUBJECT PREMISES-3 is the office location of Dr. Forest Tennant ("TENNANT"), as further described in this affidavit and in Attachment A-3;

d. **SUBJECT PREMISES-4**: 336 1/2 South Glendora Avenue, West Covina, CA 91790. SUBJECT PREMISES-4 is a second office location of TENNANT as further described in this affidavit and in Attachment A-4; and

e. **SUBJECT PREMISES-5**: a residence located at ~~1477~~ 1744 e Aspen Village Way, West Covina, California 91791. SUBJECT PREMISES-4 is TENNANT's residence, as further described in this affidavit and in Attachment A-5.

8. The **SUBJECT PREMISES** are more specifically described in Attachments A-1, A-2, A-3, A-4, and A-5 to the search warrant application, which are incorporated as though fully set forth herein. The items to be seized from the **SUBJECT PREMISES** are set forth in Attachment B to the search warrant application, which is also incorporated as though fully set forth herein.

9. The facts set forth in this affidavit are based on my personal observations, my training and experience, and information obtained from various law enforcement personnel and witnesses. This affidavit is intended merely to show that there is sufficient probable cause for the requested warrant and does not purport to set forth all of my knowledge of the investigation into this matter. Unless specifically indicated

otherwise, all conversations and statements described in this affidavit are related in substance and in part only. The instant application for search warrants is specifically requested by Benjamin R. Barron, an Assistant United States Attorney for the United States Attorney's Office for the Central District of California, who is an "attorney for the government" as that term is defined and used in Federal Rules of Criminal Procedure 1(b)(1)(B) and 41(b).

III. SUMMARY OF INVESTIGATION

10. This investigation was initiated in approximately February 2015 and currently targets a drug trafficking organization ("DTO") involving a pharmacy (UNITED) and multiple physicians whose prescriptions are filled at UNITED, focusing in particular on TENNANT. Specifically, investigators believe that UNITED, TENNANT, and various medical practitioners are profiting from the illicit diversion of controlled substances, including the powerful narcotic fentanyl, which are prescribed and dispensed other than for a legitimate medical purpose. The evidence discussed herein includes analysis of multiple data sets regarding the prescribing, ordering, and billing patterns of UNITED and/or TENNANT; opinions from three separate experts about red flags of diversion and fraud reflected in the data as to both UNITED and TENNANT; witness interviews; surveillances conducted by investigators; summaries of financial records obtained during the investigation; and records of a prior criminal conviction and related medical board adjudication against TENNANT for submitting fraudulent billings to Medi-Cal.

Based on the evidence developed in this investigation, I submit that there is probable cause to believe the following:

a. The crimes perpetrated by the DTO include the sale of powerful prescription narcotics such as oxycodone and fentanyl, along with other dangerous and addictive controlled drugs often sought in combination with narcotics, based on invalid prescriptions issued by practitioners including TENNANT. For example, I submit that expert review of Medicare data along with beneficiary interviews independently demonstrate probable cause that TENNANT prescribed fentanyl drugs to non-cancer patients, even though the drugs prescribed are for use in treatment of breakthrough cancer pain.

b. UNITED has been submitting millions of dollars in fraudulent Medicare prescription drug claims, namely, claims for the cost of filling invalid narcotic prescriptions, including those issued by TENNANT.

c. Moreover, both UNITED and TENNANT are implicated in a large-scale federal investigation in the District of Massachusetts, which recently resulted in the issuance of a federal indictment against persons including the executives of a company manufacturing the fentanyl product Subsys. As set forth below, the grand jury's findings include, among other things, that the defendants would engineer fraudulent insurance claims for Subsys (misleadingly make it appear as though the drugs were prescribed for breakthrough cancer pain), and that they would pay kickbacks to medical practitioners in the guise of purported "speaker fees." Records obtained by the investigators in that

case show that UNITED was among the top purchasers of Subsys nationwide, that TENNANT was paid such "speaker fees" for presentations at locations including an expensive steakhouse, and that the owner and pharmacist in charge of UNITED (POURMORADY) attended such purported speaking events.

IV. BACKGROUND REGARDING PROBABLE CAUSE

11. Based on my training and experience, I know the following about the drugs relevant to the investigation in this case:

a. Fentanyl is a generic name for a narcotic analgesic classified under federal law as a Schedule II controlled substance, also commonly known by the brand names Astral, Fentora, Actiq, and Subsys. Fentanyl is formulated in several strengths between 200mcg and 1600mcg per dosage unit. Fentanyl, when legally prescribed for a legitimate medical purpose, is typically used for breakthrough pain in end stage cancer patients. The Actiq lozenges or "pops" and fentanyl patches are the most sought after on the black market and can go for $100 per patch. A fentanyl prescription is generally issued for a modest number of dosage units to be taken over a short period of time. Fentanyl can be habit-forming and is a commonly abused controlled substance that is often diverted from legitimate medical channels.

b. Oxycodone (brand name OxyContin, Percocet, Roxicodone) is a generic name for a narcotic analgesic classified under federal law as a Schedule II narcotic controlled substance. Oxycodone, when legally prescribed for a

legitimate medical purpose, is typically used for the relief of moderate to severe pain. Oxycodone is sometimes referred to as "synthetic heroin" or "hillbilly heroin," and the effects, addiction, and chemical composition of oxycodone are extremely similar to heroin. An oxycodone prescription is generally issued for a modest number of pills to be taken over a short period of time because of the potential for addiction. OxyContin is a time-released formulation available in several strengths between 10mg and 80mg per tablet, designed for absorption into the system over the course of 10 to 12 hours. OxyContin was approved for use in 1996, and, by 2001, OxyContin was the largest grossing opiate pain reliever in the United States. In 2010, because of public pressure, the manufacturer reformulated OxyContin to make it more difficult to snort, smoke, or otherwise abuse, and changed the markings on the pill from "OC" to "OP" to differentiate the newer tamper-proof version. Roxicodone is an immediate-release formulation available in 5mg, 15mg, and 30mg tablets. Because of the immediate-release component, the potential for overdose and death with Roxicodone is exponentially higher than OxyContin, even though individual tablets generally contain less of the narcotic substance. Oxycodone in either formulation is extremely addictive and is a commonly abused controlled substance that is diverted from legitimate medical channels. Oxycodone typically has a street value of $10 to $15 per 30mg tablet in the greater Los Angeles area.

c. Hydrocodone (Vicodin, Norco, and Lortab) is a generic name for a narcotic analgesic classified under federal law as a Schedule II narcotic drug controlled substance; hydrocodone was elevated from a Schedule III to Schedule II drug in October 2014. Hydrocodone, when legally prescribed for a legitimate medical purpose, is typically used for the relief of mild to moderate pain. Accordingly, the prescription is generally for a modest number of pills to be taken over a short period of time. Hydrocodone is formulated in combinations of 5 to 10mg of hydrocodone and 325 to 750mg of acetaminophen. Hydrocodone can be addictive and is a commonly abused controlled substance that is diverted from legitimate medical channels. Hydrocodone typically has a street value of $3 per 10mg tablet in the greater Los Angeles area.

d. Individuals on the black market - both drug addicts and drug traffickers - often seek to abuse or sell narcotics such as those listed above in combination with drugs including benzodiazepines and muscle relaxants. Examples of benzodiazepines include alprazolam (brand name Xanax), diazepam (brand name Valium), and clonazepam (brand name Klonopin), each of which are Schedule IV drugs, intended primarily for use in treatment of conditions such as anxiety or insomnia. The primary muscle relaxant sought on the black market is carisoprodol (Soma), also a Schedule IV drug primarily used for treatment of physiological conditions such as muscle spasms. While those drugs are addictive and dangerous even taken alone, the combination of a narcotic with a benzodiazepine and/or a

muscle relaxant magnifies the danger of the overall cocktail, and is known among law enforcement to be a major red flag of illicit diversion by medical practitioners such as doctors prescribing and/or pharmacists dispensing such cocktails. A cocktail of all three categories of drugs (a narcotic, benzodiazepine, and muscle relaxant) is commonly referred to on the black market as the "holy trinity" and is among the most sought-after prescription drug cocktails by addicts and dealers.

12. Based on my training and experience, I know that the distribution of controlled substances must meet certain federal rules and regulations. Specifically, I know the following:

a. 21 U.S.C. § 812 establishes schedules for controlled substances that present a potential for abuse and the likelihood that abuse of the drug could lead to physical or psychological dependence. Such controlled substances are listed in Schedule I through Schedule V depending on the level of potential for abuse, the current medical use, and the level of possible physical dependence. Controlled substance pharmaceuticals are listed in Schedules II through V because they are drugs for which there is a substantial potential for abuse and addiction. There are other drugs available only by prescription but not classified as controlled substances. Title 21 of the Code of Federal Regulations, Part 1308, provides further listings of scheduled drugs.

b. Pursuant to 21 U.S.C. § 822, controlled substances may only be prescribed, dispensed, or distributed by persons registered with the Attorney General of the United

States to do so (with some exceptions, such as delivery persons). The Attorney General has delegated to the DEA authority to register such persons.

c. Under 21 U.S.C. § 823(f), DEA-registered medical practitioners (including pharmacies, see 21 U.S.C. § 802(21)) must be specifically authorized to handle controlled substances in any jurisdiction in which they engage in medical practice.

d. 21 C.F.R. § 1306.04 sets forth the requirements for a valid prescription. It provides that for a "prescription for a controlled substance to be effective [it] must be issued for a *legitimate medical purpose* by an individual practitioner *acting in the usual course of his professional practice*. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription." (Emphases added.)

e. 21 C.F.R. § 1306.05 sets forth the manner of issuance of prescriptions. It states that "[a]ll prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address, and registration number of the practitioner."

f. 21 C.F.R. § 1306.12 governs the issuance of multiple prescriptions and states: "An individual practitioner may issue multiple prescriptions authorizing the patient to

receive a total of up to a 90-day supply of a Schedule II controlled substance provided the following conditions are met:

i. Each separate prescription is issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice;

ii. The individual practitioner provides written instructions on each prescription (other than the first prescription, if the prescribing practitioner intends for that prescription to be filled immediately) indicating the earliest date on which a pharmacy may fill each prescription;

iii. The individual practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse;

iv. The issuance of multiple prescriptions as described in this section is permissible under the applicable state laws; and

v. The individual practitioner complies fully with all other applicable requirements as well as any additional requirements under state law."

g. California Health and Safety Code § 11172 states: "No person shall antedate or postdate a prescription."

h. 21 U.S.C. § 841(a)(1) makes it an offense for any person to knowingly and intentionally distribute or dispense a controlled substance except as authorized by law. Distribution of a scheduled controlled substance in violation of 21 U.S.C. § 841(a)(1) (often referred to as "diversion") by a medical doctor occurs when a medical doctor knowingly and intentionally

prescribes a controlled substance, knowing the drugs were controlled, for a purpose other than a legitimate medical purpose and outside of "the usual course of professional practice." *See United States v. Moore*, 423 U.S. 122, 124 (1975) ("We . . . hold that registered physicians can be prosecuted under 21 U.S.C. § 841 when their activities fall outside the usual course of professional practice."); *see also United States v. Feingold*, 454 F.3d 1001, 1008 (9th Cir. 2006) ("[T]o convict a practitioner under § 841(a), the government must prove (1) that the practitioner distributed controlled substances, (2) that the distribution of those controlled substances was outside the usual course of professional practice and without a legitimate medical purpose, and (3) that the practitioner acted with intent to distribute the drugs and with intent to distribute them outside the course of professional practice.").

13. The Medical Board of California formally adopted a policy statement entitled "Prescribing Controlled Substances for Pain." The Medical Board's guidelines for prescribing a controlled substance for pain state that the practitioner must obtain a medical history and conduct a physical examination. Such history and exam include an assessment of the pain and physical and psychological function; substance abuse history; prior pain treatment; assessment of underlying or coexisting diseases and conditions; and documentation of the presence of a recorded indication for the use of a controlled substance.

14. California Business and Professions Code, Section 2242(a), states that there must be a logical connection between

the medical diagnosis and the controlled substance prescribed: "Prescribing, dispensing, or furnishing dangerous drugs . . . without an appropriate prior examination and a medical indication, constitutes unprofessional conduct." A practitioner must make "an honest effort to prescribe for a patient's condition in accordance with the standard of medical practice generally recognized and accepted in the country." *United States v. Hayes*, 794 F.2d 1348, 1351 (9th Cir. 2006).

15. As noted above, the drugs implicated in this case include fentanyl, including in particular a form of fentanyl spray marketed under the brand name Subsys. From my training and experience, I know that fentanyl is the most powerful narcotic available on the prescription market, and is approximately 50 times more powerful than heroin. The class of fentanyl particularly relevant in this investigation, including Subsys, is commonly referred to as TIRF drugs (transmucosal immediate-release fentanyl). TIRF medicines are used to manage breakthrough pain in adults with cancer who are routinely taking other opioid pain medicines around-the-clock for pain.[1]

a. To avoid the risk of misuse, abuse, and addiction associated with TIRF drugs, in December 2011, the United States Food and Drug Administration approved a Risk Evaluation and Mitigation Strategy ("REMS") for such drugs, commonly referred to as the TIRF REMS or TIRF REMS Access program. REMS requires providers be registered with the program in order to prescribe

[1] www.fda.gov/Drugs/DrugSafety/InformationbyDrugClass/ucm282110.htm (reviewed Oct. 18, 2017).

TIRF medications out patient. Patients must sign a patient-prescriber agreement form before they can be prescribed any TIRF drugs. REMS requires enrollment of prescribers and pharmacies handling TIRF drugs and mandates specialized training on handling TIRF drugs. According to the REMS program, "TIRF medicines are indicated only for the management of breakthrough pain in adult cancer patients". In addition, TIRF medications can only be dispensed by enrolled pharmacies. The pharmacy must designate a representative to complete the REMS enrollment by reviewing the education program and completing a knowledge assessment form.

b. As discussed below, I submit that the evidence demonstrates probable cause that UNITED and TENNANT were distributing TIRF drugs in violation of the REMS program.

V. STATEMENT OF PROBABLE CAUSE

A. Background on Targets of Investigation

1. UNITED and POURMORADY

16. I have investigated UNITED's federal controlled drug registration with DEA and state licensing records with the California State Board of Pharmacy ("CSBOP"), based on which I know the following:

a. On April 1, 2003, UNITED was issued a retail pharmacy license by the CSBOP, listing POURMORADY as the pharmacy's pharmacist-in-charge; POURMORADY is a licensed pharmacist. UNITED is a retail pharmacy with a current pharmacy license in the State of California (license number CA 46362),

and with a listed place of business of **SUBJECT PREMISES-1** (1129 S Robertson Boulevard, Los Angeles, California).

b. UNITED has a current DEA registration number (BU8256403). Registration number BU8256403 was renewed on April 1, 2015, and expires on May 31, 2018. UNITED's DEA records also show that **SUBJECT PREMISES-1** is its registered address.

17. On October 4, 2017, I queried Thompson Reuters CLEAR, a public records database, and observed that **SUBJECT PREMISES-2** is POURMORADY's residence. POURMORADY maintains the property deed and property taxes for **SUBJECT PREMISES-2**.

18. Records from the office of the California Secretary of State show that United Pharmacy, Inc. was created by POURMORADY in February 2003, with a listed address of **SUBJECT PREMISES-1**. POURMORADY is identified in filings as recent as September 2016 as the president of the company and is the listed agent for service of process for the business.

19. Investigators have conducted surveillances at both **SUBJECT PREMISES-1** and **SUBJECT PREMISES-2** during the investigation. On October 24 and 25, 2017, DEA Special Agents ("SAs") and Task Force Officers ("TFOs") have seen POURMORADY travel between **SUBJECT PREMISES-1** and **SUBJECT PREMISES-2**; for example, investigators have observed POURMORADY leave **SUBJECT PREMISES-2** and enter his car on the driveway, and they have observed him use a key to access **SUBJECT PREMISES-1**. Based on recent surveillance at **SUBJECT PREMISES-1**, including as recently as October 25, 2017, I know that UNITED continues to operate at

that location, and that individuals continue to enter and exit UNITED in a manner consistent with customer activity.

2. TENNANT

20. I have investigated TENNANT's registration and licensing records with DEA and the Medical Board of California and have learned the following:

a. TENNANT is a medical doctor with a current medical license in the State of California (license number G22141). TENNANT's medical license lists a specialty in Pain Management and Board Certification in Public Health and General Preventive Medicine. According to the website for the Medical Board of California, the address of record associated with TENNANT's medical license is **SUBJECT PREMISES-5** (1744 Aspen Village Way, West Covina, CA 91791).

b. TENNANT obtained his medical degree in 1966 from the University of Kansas, School of Medicine, and his medical license on March 22, 1972.

c. TENNANT's California Medical License is listed as "License Renewed and Current" and expires on January 31, 2019. According to the Medical Board of California website, "License Renewed and Current" means that the "Licensee meets requirements for the practice of medicine in California."

21. TENNANT has a current DEA registration number: AT2866222. A DEA registration number is required for ordering, storing, administering, and/or dispensing controlled substances.[3]

[3] On October 4, 2017, I reviewed the ARCOS system for records of orders by TENNANT. In the past year, TENNANT has not ordered any scheduled controlled substance tracked by ARCOS.

AT2866222 was renewed on May 5, 2016, and expires on May 31, 2019. TENNANT's registration is currently listed as "Active Pending," which means that TENNANT is currently under review/ investigation (connected to this investigation). TENNANT maintains this registration at **SUBJECT PREMISES-3** (338 South Glendora Boulevard, West Covina, California).

22. **SUBJECT PREMISES-3**, one of TENNANT's offices, is located at 338 South Glendora Ave, West Covina, CA. A sign located above the clinic states "Veract, Inc." According to records from the office of the California Secretary of State, TENNANT is the Chief Executive Officer of the corporation Veract, Inc., which was created in July 1983.

23. **SUBJECT PREMISES-4**, another of TENNANT's offices, is located at 336 1/2 South Glendora Ave, West Covina, CA. A sign located above the office entrance states "TENNANT FOUNDATION." According to records from the office of the California Secretary of State, TENNANT is the Chief Executive Officer of the business Tennant Foundation, which was created in September 1991.

24. **SUBJECT PREMISES-5** is TENNANT's residence in West Covina, California. On October 4, 2017, I queried Thompson Reuters CLEAR for records related to TENNANT, and observed from the records that **SUBJECT PREMISES-5** is TENNANT's current residence. TENNANT maintains the property deed and property taxes for both **SUBJECT PREMISES-3** and **SUBJECT PREMISES-4**.

25. Investigators have conducted surveillances at **SUBJECT PREMISES-3**, **SUBJECT PREMISES-4**, and **SUBJECT PREMISES-5** during the investigation. To provide one notable example, on October

30, 2017, DEA SAs witnessed TENNANT leave **SUBJECT PREMISES-3** and travel to **SUBJECT PREMISES-4**. TENNANT later left that location with patient files in his possession, and he drove to Hamilton Steakhouse in Covina, California. TENNANT sat at a bar at the steakhouse, and agents witnessed TENNANT writing in the patient files while seated at the bar. Later that evening, TENNANT left the steakhouse and was followed to **SUBJECT PREMISES-5**.

26. Bank records obtained during the investigation for both the business and personal accounts belonging to TENNANT likewise show **SUBJECT PREMISES-3** as the business address and **SUBJECT PREMESIS-5** as his home address. In addition, records for TENNANT's cellular telephone show **SUBJECT PREMISES-5** as the billing address. A DMV record for TENNANT's driver's license also lists **SUBJECT PREMISES-5** as TENNANT's address.

27. On March 14, 2001, the California Department of Justice filed an Accusation ("the Accusation") against TENNANT regarding his state medical licensure, charging TENNANT with three causes of discipline: dishonesty, insurance fraud, and having sustained a criminal conviction. In a Stipulated Settlement and Disciplinary Order signed by TENNANT on June 14, 2001, TENANT asserted that he "admits the truth and each and every charge and allegation" in the Accusation and agreed to be subject to a disciplinary order against his medical license. The stipulated discipline included, among other things, a four-year term of probation and TENNANT's enrollment in an ethics course. On August 24, 2001, the MBC, Division of Medical Quality, entered an order adopting the stipulated disciplinary

order. From my review of the Accusation, I learned the following, among other things:

a. on September 25, 2000, TENNANT pled nolo contendere in California Superior Court for the County of Sacramento to a charge of violating California Penal Code Section 500(a)(7) (knowingly making false or fraudulent claims for payment of a health care benefit); the plea was to a misdemeanor offense, as a result of which a charge of violating California Penal Code Section 487 (grand theft) was dismissed. As part of the plea disposition, TENNANT agreed, among other things, to stop submitting billings to the Medi-Cal program, to pay $20,000 in restitution to the California Department of Health, and to submit to a three-year term of formal probation.

b. TENNANT submitted fraudulent Medi-Cal billings while serving as executive director of various methadone clinics. Specifically, TENNANT was the owner of a business (Community Health Projects Medical Group ("CHPMG")) that operated 29 methadone drug rehabilitation clinics in California. The Accusation states that, as director of the clinics, TENNANT "devised a system of double billing for detox and [outpatient methadone maintenance] patients," resulting in fraudulent billings totaling $18,135. The Accusation cites specific conduct by TENNANT during the course of executing this scheme. For example, that TENNANT wrote a manual for CHPMG staff to use during the course of business relating to fee-for-service billings to Medi-Cal, including directing staff "to use certain diagnosis when certain procedures were done" and directing staff

"to assign the procedure code for office visits based upon the quantity of notes the physician or nurse practitioner writes." TENNANT would review income and expense statements from each clinic and would send comments that included "Not enough treatment under the Medi-Cal program," and "not enough medical treatment of addicts with Medi-Cal."

28. From researching TENNANT's background via the Internet, I know that: In 1997, the year after OxyContin was introduced to the market (which I know from my training and experience marked the beginning of what eventually became the national opioid epidemic), TENNANT sponsored the "Pain Patient's Bill of Rights" in the State of California, which called for expanding the use of opiate drugs for medical treatment of pain.[3] Additionally, I know that TENNANT has published on topics including pain medicine and opioids, such as an article in 2009 arguing for using "ultra-high opioid doses" for certain patients with severe chronic pain.[4]

B. Initiation of Investigation

29. In February 2015, the DEA initiated the investigation in this case after receiving information from the DEA Fresno Resident Office that Dr. Ernestina Saxton ("SAXTON") was writing large quantities of controlled substance prescriptions to patients located in Los Angeles. While SAXTON is a Medi-Cal

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[3] See "Bill to Ease Access to Drugs for Pain Gains," July 16, 1997, articles.latimes.com/1997/jul/16/news/mn-13133.

[4] See www.practicalpainmanagement.com/treatments/pharmacological/opioids/patients-who-require-ultra-high-opioid-doses?page=0,1

provider, patients are required to see a provider within their area network. Investigators also learned that SAXTON was responsible for prescription billing to Medi-Cal ($3,152,033 in pharmacy prescription drug claims from January 1, 2010 to January 1, 2014), the majority of which were controlled substance prescriptions filled at UNITED (over $2 million). A review of recent Medi-Cal data showed that claims for SAXTON's prescriptions have more than doubled in the last two years ($3,285,448 from January 1, 2015 to October 19, 2017).

30. The husband of one of Saxton's patients was interviewed by investigators in May 2015. He stated that his wife had overdosed multiple times from the controlled substances prescribed by Saxton. He stated that his wife paid cash for office visits with Saxton, but the medications that SAXTON prescribed were covered by insurance. The husband stated that Saxton communicated with patients via text messages to schedule appointments a couple days before SAXTON's arrival to Los Angeles. He stated that the location for the appointments change each time. All of the prescriptions were being filled by UNITED and mailed to the patients. According to data the State of California's Controlled Substance Utilization Review and Evaluation System ("CURES"),[5] Saxton also has patients living in

[5] CURES is California's Controlled Substance Utilization Review and Evaluation System. It is a database which contains almost one hundred million records and includes information about the drug dispensed, drug quantity and strength, patient name, address, prescriber name, and authorization number, including DEA number or prescription number. California doctors

Fresno and out-of-state that fill prescriptions at UNITED, including a Fresno-patient who filled 13 prescriptions for fentanyl products between February and July 2017, a patient residing in Arizona who filled 56 prescriptions for oxycodone and the benzodiazepine lorazepam between August 2014 and June 2017, and similar entries for patients residing in Nevada, Oregon, and New Mexico.

31. In November 2011, investigators from the California Department of Health Care Services ("DHCS") interviewed SAXTON in connection with an investigation into SAXTON's billing activities. SAXTON stated that her patients came from different areas of California and from other states because she is a specialist in headaches and migraines, and that her patients needed the quantities of controlled substances she was prescribing; at the time of the interview, SAXTON's primary medical practice was located in Los Angeles, California. SAXTON also stated that she had an agreement with UNITED regarding the dispensing of controlled substances she prescribed to patients; SAXTON provided documentation of this agreement to the investigators. DEA registration records show that SAXTON moved to the Fresno area shortly after the interview, while CURES data show that she continued to prescribe to Los Angeles patients thereafter (including, from CURES data that I reviewed, as recently as October 28, 2017).

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and pharmacies are required to report to the California Department of Justice, within seven days, every schedule II, III and IV drug prescription that is written.

32. CURES data for UNITED, for the time period August 1, 2014 through July 31, 2017, reflects that UNITED filled 4,151 prescriptions for controlled drugs issued by SAXTON, including as recently as July 31, 2017. From reviewing the CURES data, I observed multiple red flags of diversion, such as a large volume of entries showing patients simultaneously receiving cocktails of narcotics with benzodiazepines including in the most recent data (July 2017).

33. In February 2017, the California Department of Justice filed an administrative accusation against SAXTON's license, charging SAXTON with, among other things, improperly prescribing controlled drugs including narcotics, benzodiazepines, and the muscle relaxant Soma. (As noted above, this is the "trinity" cocktail that is highly sought-after by addicts and dealers.) The state action remains pending.

34. In April 2015, DEA investigators witnessed a patient enter UNITED pharmacy and then exit with a white bag later identified as containing oxycodone. The investigators then witnessed a sale (hand-to-hand transaction) of the bag by the patient outside UNITED. A traffic stop was conducted by Los Angeles Police Department ("LAPD") on the individual that purchased the oxycodone, later identified as G.P. When the officers searched the vehicle, they found 36 tablets of oxycodone in the white paper bag, which was found in the front seat. G.P. identified A.L. as the individual he purchased the 36 oxycodone tablets from outside UNITED. A review of CURES

showed A.L. received 84 tablets of 40mg oxycodone from a doctor with initials S.S. and filled the prescription at UNITED.

C. **CURES and ARCOS Data Regarding UNITED**

35. CURES data for UNITED shows that the pharmacy dispensed approximately 380,000 dosage units of fentanyl between August 1, 2014 and July 31, 2017, over approximately 1,091 prescriptions. In addition, UNITED dispensed over one million dosage units of oxycodone over the same time period, with over 400,000 dosage units for 30mg oxycodone. I know that 30mg oxycodone - as noted, the maximum strength available for short-acting oxycodone - is the most sought-after form of oxycodone currently on the black market.[6] Similarly, UNITED dispensed over 690,000 dosage units of hydrocodone over the same time period, with over 60 percent of the dosage units the maximum strength 10mg hydrocodone.

a. The CURES data shows that UNITED filled 1,516 prescriptions for Schedule II controlled substance, totaling approximately 204,815 dosage units dispensed, to out-of-state patients. These out-of-state patients received multiple opiate and benzodiazepine prescriptions, some of which include, 79,673 dosage units of Fentanyl, of which 21,030 were for maximum strength 1600mcg Subsys spray, and 26,074 dosage units of 30mg oxycodone.

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[6] In long acting forms, such as the brand name drug OxyContin, oxycodone comes in strengths as high as 80 milligrams. However, 80mg OxyContin is no longer preferred by addicts because of a change in formulation in around 2010 that made the pills more difficult to crush and abuse.

b. A review of CURES shows multiple "red flags" based on my training and experience, including: (1) Patients receiving the "trinity" cocktails (opiate, benzodiazepine, and muscle relaxant); (2) patients residing at the same address, yet each receiving high volumes of commonly abused controlled drugs including narcotics; (3) family members (as reflected by shared last name and place of residence) likewise receiving the same or similar commonly abused drugs; and (4) the geographic distance between UNITED and a large volume of patients receiving commonly abused drugs.

36. Investigators also reviewed Automated Reports and Consolidated Orders System ("ARCOS") data for UNITED's wholesale transaction orders for the period of January 1, 2014 through June 30, 2017.[7] From the data, I observed that a large volume of the pharmacy's orders were for maximum strength narcotics: of the 5,224,291 total dosage units of drugs reported to ARCOS, approximately 1,459,115 dosage units were for 30 mg oxycodone, 10 mg hydrocodone, 1600 mcg Fentanyl lozenges, 100 mcg Fentanyl Patches, and 10 mg methadone. Specifically, the pharmacy ordered 451,600 dosage units 30 mg of oxycodone, 539,875 dosage units of 10 mg hydrocodone, 92,135 Fentanyl Lozenges and Patches, and 372,600 dosage units of 10 mg methadone.

[7] ARCOS is an automated drug reporting system that monitors the flow of certain controlled substances from their point of manufacture through commercial distribution channels to point of sale or distribution at the dispensing/retail level. The drugs tracked by ARCOS include all Schedule II drugs and all Schedule III opiates.

37. A review of ARCOS and CURES has been performed for records from August 1, 2017 through November 1, 2017. All records show the pattern of ordering and dispensing has continued to date.

D. **Expert Review of UNITED's Controlled Drug Records**

38. I reviewed a report related to UNITED prepared by pharmacist Carmen Catizone ("Dr. Catizone"), dated April 24, 2017. Dr. Catizone is the Executive Director of the National Association of Boards of Pharmacy ("NABP"), a position that he has held for approximately 30 years. Dr. Catizone graduated from the University of Illinois at Chicago, College of Pharmacy, with a Bachelor of Science degree in pharmacy and a Master of Science degree in pharmacy administration. Dr. Catizone is a registered pharmacist and has an Honorary Doctor of Pharmacy from the Oklahoma State Board of Pharmacy. In addition to his leadership role at NABP, Dr. Catizone has practiced as a registered pharmacist in community, hospital, and institutional settings throughout his career, and Dr. Catizone has served as an expert witness on pharmacy practice and prescription drug diversion in at least 16 cases nationwide between September 2006 and May 2015.

39. Dr. Catizone's report was based on ARCOS and CURES data for UNITED for January 1, 2014 through December 31, 2016. In his report, Dr. Catizone concluded: "Based upon my education, training, and experience in the practice and regulation of pharmacy, it is my opinion that [UNITED] willingly and knowingly engaged in illegal activities outside the scope of pharmacy

practice. Those activities violated state and federal laws and regulations governing the practice of pharmacy."

40. Dr. Catizone's opinion was supported by multiple findings, including:

a. UNITED was purchasing "an excessively high number of controlled substances, particularly Schedule II controlled substances, when placed in comparison to the average quantities purchased and dispensed by similar pharmacies."

b. UNITED dispensed dangerous combinations of drugs to patients, including "a combination of controlled substances . . . that serve no legitimate medical purpose and are well documented in the medical literature as life threatening and further identified as drugs of abuse. In fact, there are specific warnings in the medical literature and known to pharmacists, about the use of these drugs individually or in concomitantly." For example, Dr. Catizone observed that narcotics were also dispensed in combination with buprenorphine hydrochloride. This drug "is used to treat narcotic (opiate) addiction and must be dispensed with extreme caution. Taking buprenorphine hydrochloride with other opiates can result in death. . . . The prescribing of these drugs concomitantly posed a significant danger to the individual and should have alerted [UNITED] to concerns with the legitimacy of the prescriptions and prescribers."

c. Dr. Catizone also observed that the pharmacy was filling prescriptions "to individuals from prescribers located in different states than the patient and pharmacy." Moreover,

controlled substances were dispensed "to individuals with addresses geographically distanced from the pharmacy. In multiple instances, patient's address were approximately 10-20 miles from the pharmacy and in a city or region that listed multiple pharmacies, sometimes as many as twenty or more, in closer proximity to the patient's address. In these instances, the prescribers' office addresses were also geographically distanced from the patient's and pharmacy's addresses."

E. UNITED's Medicare Claims and Related Expert Review

41. A review of billing data provided by the Medicare Prescription Drug Integrity Contractor ("MEDIC")[8] regarding Medicare Part D claims submitted by UNITED from January 2014 through October 27, 2016, and data from the One Program Integrity[9] ("OnePI") Business Objects database for claims submitted by UNITED from January 1, 2014 to October 27, 2016. The review was conducted by Dr. Jodi Sullivan, Pharm.D., C.Ph., a MEDIC senior pharmacist.[10] Based on my review of the report produced by Dr. Sullivan, I know the following:

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[8] MEDIC provides services including assisting in identifying fraud and abuse in Medicare prescription claims based on analysis of billing data.

[9] For purposes of this Affidavit, OnePI claims data obtained by law enforcement should be considered as an investigative tool, and an indication of the types and amounts of claims billed by UNITED PHARMACY, but not necessarily representative of final claims data, which may be subject to change based on various factors.

[10] From a review of her CV, Dr. Sullivan's qualifications include, among other things, the following. Dr. Sullivan received a Doctorate of Pharmacy with high Honors in 1995 from the University of Florida College of Pharmacy. She has served

a. In total, there were approximately 31,109 prescription drug claims submitted by UNITED, for approximately 1,560 Medicare beneficiaries, for a total of approximately $18,050,385 in paid claims.

b. Dr. Sullivan observed that UNITED submitted more billings for opioid agonists (the classification of drugs that includes narcotics relevant to this investigation, such as oxycodone, fentanyl, and hydrocodone) than for any other drug subclass. Notably, UNITED submitted 8,794 claims for those drugs, compared to 1,777 claims for the next highest drug subclass (hydrocodone combinations). In total, four of the top six subclasses billed by UNITED were controlled drugs, while the other two contain both controlled and non-controlled substances. In total, UNITED submitted 15,991 claims for those six subclasses of drugs, accounting for 51.4% of all drug claims. Dr. Sullivan concluded, "It is not consistent with usual community pharmacy practice to have the top classes consist of controlled substances." Dr. Sullivan noted that the two drugs that are the "usual top classes by volume for Medicare [prescription drug] patients" ("proton pump inhibitors" and "HMG CoA reductase inhibitors") accounted for only 4.5% of UNITED's claims.

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as an expert for Medicare-related prescription drug investigations, both internally and externally for law enforcement, since 2014, and her duties also include conducting audits of prescription drug claims for fraud, waste, and abuse. Prior to that time, Dr. Sullivan served in various capacities including as director of pharmacy for a hospital, clinical pharmacist for CVS Caremark, and clinical services manager/clinical account manager for a prescription drug benefit management company.

c. Similarly, Dr. Sullivan observed that 17 of the top 20 drugs billed by the pharmacy were for controlled substances, and that all 20 of the drugs are associated with pain management. Moreover, Dr. Sullivan observed a "trend" in the claims data "towards high dispensing of opioids that are more potent, more commonly associated with abuse, or the highest available dose strength of a given opioid." For example, 81% of all claims for hydrocodone/acetaminophen was for maximum strength of 10 mg, and 84% of all methadone and methadose claims were likewise for 10 mg, "the highest dose strength available for dispensing through a retail pharmacy."

d. Dr. Sullivan also addressed claims submitted by UNITED for fentanyl drugs, specifically TIRF drugs, which accounted for 978 claims submitted by UNITED resulting in approximately $12.7 million in Medicare payments, of which 90 claims were for out-of-state patients.

e. Dr. Sullivan observed that "[t]he TIRF drugs dispensing does not appear to be in accordance with principles of the REMS program." For example, as Dr. Sullivan observed, "All pharmacy staff are required to be trained through the TIRF REMS access program, which states that all TIRF medications are indicated only for the management of breakthrough pain in adult patients with cancer. In addition, the enrollment form for outpatient pharmacies advises that the initial starting dose for all patients is the lowest dose, unless the individual labels provide product-specific conversion recommendations. TIRF drugs have a maximum of four doses per day."

i. In opining that UNITED appears to have violated the REMS program, Dr. Sullivan observed the following, among other things:

(I) Dr. Sullivan observed that a large volume of the claims for TIRF drugs submitted by UNITED were at the highest or near-highest strength available. For example, of 213 claims for Fentora tablets, 40% were for the highest dose strength. Similarly, UNITED submitted 561 claims for Subsys spray, averaging 5.3 sprays per day.

(II) Similarly, "[o]f the top 10 prescribers of TIRF drugs associated with United Pharmacy, only two prescribers are associated with hospice or cancer treatment by specialty," accounting for 638 of the pharmacy's TIRF claims.

f. Dr. Sullivan also addressed the volume of claims submitted by UNITED for out-of-state patients and prescribers:

i. Dr. Sullivan observed that UNITED submitted 851 prescription drug claims for 66 Medicare beneficiaries with an address outside of the state of California. The 66 beneficiaries were associated to 24 different states within the United States and two beneficiaries with an address outside of the United States. The total Medicare Part D amount paid for the beneficiaries with an address outside of the state of California was $1,570,317.29. Approximately 98% of these payments were for controlled drug claims: specifically, UNITED submitted 586 claims for controlled drugs to out-of-state patients, accounting for $1,538,958.30 in total amounts paid. Dr. Sullivan investigated whether UNITED held any out-of-state

pharmacy licensure, and could not locate any license held by UNITED in any of the above 24 states.

ii. The Medicare data also showed that UNITED submitted 463 prescription drug claims for prescriptions issued by 68 total prescribers with practices outside of California, in 27 separate states. The total billing amount for these prescribers was $95,468.10, approximately 75% of which ($71,962.22) were for controlled drug claims.

iii. Dr. Sullivan concluded, "It appears that United Pharmacy was shipping prescriptions to states where it did not have appropriate pharmacy licensure. The total paid amount and PDE record volume associated with the out of state PDE records is not consistent with incidental provision of services to traveling beneficiaries. In addition, the majority of the PDE records associated with out of state prescribers and beneficiaries were controlled substances. It is not consistent with usual pharmacy community retail practice to ship controlled substances to other states without appropriate licensure (e.g. a mail order pharmacy)."[11]

g. Finally, Dr. Sullivan also reviewed UNITED's claims data for some of the top prescribers.

i. Regarding TENNANT, Dr. Sullivan observed that UNITED submitted 319 prescription drug claims totaling

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[11] As Dr. Sullivan noted, PDEs reflect the beneficiary or prescriber's address at the time the data is pulled, not the historical location at the time the billing was submitted. Based on the volume of claims for out-of-state patients, and on the other facts cited in this affidavit, I submit that any such discrepancies would not materially impact a finding of probable cause.

approximately $2,018,652 in payments. Significantly, TENNANT was the top prescriber of Subsys for UNITED, with 96 claims totaling $1,984,603 in payments (accounting for 98% of all payments received by UNITED for TENNANT prescriptions), for five unique beneficiaries. Dr. Sullivan observed that two of the beneficiaries resided in California, while the other three resided in, respectively, Georgia, Hawaii, and Washington. Overall, TENNANT prescriptions accounted for 154 claims submitted by UNITED for beneficiaries residing outside of California, all of which were for controlled drugs. Based on these findings, Dr. Sullivan concluded, "the association of Dr. Tennant with United Pharmacy may warrant further investigation."

ii. Regarding the top prescriber by amount paid, M.S., UNITED received approximately $4 million based on 109 prescription drug claims, all of which were for Schedule II narcotics and approximately half for TIRF drugs. Dr. Sullivan observed that M.S.'s practice location is located approximately one hour away from UNITED. Dr. Sullivan observed that the distance may be explained by M.S.'s area of specialty (including hospice/palliative care), although some of the Schedule II drugs for which UNITED submitted billings are "not consistent with hospice care or internal medicine." Dr. Sullivan noted that her "finding may warrant further investigation into [M.S.] and his association with United Pharmacy."[12]

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[12] Dr. Sullivan also addressed two practitioners for whom UNITED submitted the largest number of prescription drug claims, and concluded that because they operated pain practices in

h. Dr. Sullivan ultimately concluded that UNITED's claims were "inconsistent with a community retail pharmacy." While the claims were consistent with a pharmacy specializing in pain management, Dr. Sullivan summarized the areas of concern that she addressed in her report. "The dispensing of products to states outside of California without appropriate state licensure is not consistent with a legitimate pharmacy specializing in controlled substances. In addition, there appears to be a trend of high dose strengths, high quantities, and high proportions of more abusable opioid analgesics being dispensed from this pharmacy." Moreover, Dr. Sullivan noted that "doses of TIRF drugs are on average higher than maximum daily doses and are often for the highest dose strengths."

i. Accordingly, "[t]hese findings combined strongly indicate the potential for fraudulent activity by United Pharmacy. The potential intrastate shipping of controlled substances without appropriate state pharmacy licensures strongly warrants further investigation."

F. CURES Data for Tennant and Related Expert Review

42. I have reviewed CURES data for drugs prescribed by TENNANT, for the approximate time period of August 2014 to July 2016. My review of the data shows what I recognize to be red flags reflecting the illicit diversion of controlled substances.

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relatively close proximity (1.1 miles) away from the pharmacy, the claims "appear[ed] consistent with usual pain management and pharmacy practice." UNITED submitted 2,816 claims regarding those two prescribers, for $343,000 in payments.

a. For example, of the approximately 597 prescriptions for hydrocodone in tablet form, approximately 85% (509 prescriptions) were for maximum strength 10-mg hydrocodone. The remainder was predominately for high potency 7.5-mg hydrocodone.

b. I also observed that TENNANT was prescribing large volumes of benzodiazepines. For example, the CURES data reflects 362 total entries for alprazolam. Notably, nearly half of these prescriptions (171) are for 2-mg alprazolam, the maximum strength tablet of the drug available at retail pharmacies, which I know is a drug that even psychiatrists will not ordinarily prescribe for outpatient treatment. Similarly, of the 561 entries for diazepam, approximately 72% (507 prescriptions) are for maximum strength 10-mg. To the best of my knowledge, TENNANT has no advertised specialty in psychiatry; I recognize large volumes of benzodiazepines prescribed by a non-psychiatric specialist, particularly when prescribed in combinations with narcotics, as a major red flag of illicit diversion. The CURES data also shows 493 entries for the carisoprodol (Soma), 100% of those entries are at maximum strength 350-mg.

c. I observed repeated entries throughout the CURES data of patients simultaneously filling TENNANT prescriptions for dangerous combinations, such as combinations of narcotics with benzodiazepines and/or Soma.

43. As part of this investigation, Dr. Timothy Munzing reviewed CURES data for the time period of June 22, 2016 through

September 19, 2017, reflecting 3,775 total prescriptions written to 183 unique patients. Dr. Munzing received his medical degree from UCLA School of Medicine in 1982. He has served as a medical expert consultant for the Medical Board of California since 2004 and as a medical expert consultant for the DEA since 2014. During that time, Dr. Munzing has formally reviewed and provided opinions in more than 100 cases, of which more than 70% have dealt in some capacity with prescriptions of opioid and other controlled medications. Dr. Munzing has taught and/or lectured staff physicians, students, and medical residents on guidelines and appropriate practice in opioid prescribing. Dr. Munzing has nearly 30 years of clinical experience as a family physician with the Southern California Permanente Medical Group (Kaiser Permanente) in Santa Ana, California, during which time he served as a physician leader responsible for reviewing the quality of care given to patients and as a family medicine residency program Director teaching medicine to thousands of residents and medical students. Dr. Munzing also holds an appointment as a clinical professor at University of California Irvine School of medicine. Dr. Munzing is board certified in family medicine and is a member of the American Pain Society and the American Academy of Integrative Pain Medicine. In its summer 2017 issue, the peer-reviewed Permanente Journal published an article authored by Dr. Munzing titled, "Physician Guide to Appropriate Opioid Prescribing in Noncancer Pain."

a. Dr. Munzing produced a written report dated October 13, 2017, documenting his findings. In conducting his

review, Dr. Munzing selected 20 patients for "more detailed" review in his written report "based on potential significant areas of concern as far as the prescribing patterns identified" from his review of the CURES data. However, Dr. Munzing noted that "most of the patients on the CURES database have similar findings and could have been chosen," and that the 20 patients selected "represent only a small fraction of the total patients with very suspicious prescribing patterns." As to those 20 patients, Dr. Munzing concluded that "all have many extremely concerning findings" reflecting "prescribing patterns [that] are highly suspicious for medication abuse and/or diversion."

b. The "non-exhaustive" "areas of concern" cited by Dr. Munzing include the following:

i. Dr. Munzing observed that TENANNT was writing "extremely high numbers of pills/tablets" at a time. Dr. Munzing likewise noted the dangerous cocktails that the patients were receiving, including "multiple opioids/controlled substances concurrently. This increases the risk of overdose and/or death." Notably, of the 20 patients selected by Dr. Munzing, eight were receiving the "holy trinity" cocktail (a narcotic, benzodiazepine, and muscle relaxant). Dr. Munzing also observed that "many patients are receiving injectable opioids, hormones, etc.," which is "highly irregular."

ii. Dr. Munzing addressed the morphine equivalency dosing ("MED") for the narcotic prescriptions

written by TENNANT.[13] According to Dr. Munzing's report, the risk of overdose death increases once a cocktail reaches an MED of 50-100 mg/day. By comparison, Dr. Munzing concluded that "many or most patients" reflected in TENNANT's CURES data "had levels far over those thresholds, including all 20 patients selected. Some had levels at 1,000 mg/day or even as high as over 3,000 mg/day - extremely high and at high risk of overdose and death."

iii. Dr. Munzing noted that "many patients are traveling long distances to see Dr. Tennant, some as far away as Maryland and Louisiana. Others are coming from between 100 to 500 miles."

44. Ultimately, Dr. Munzing stated that "it is not possible to give a final conclusive opinion" regarding the legality of the prescriptions in the CURES data, absent review of further evidence. Accordingly, investigators will likely obtain an updated opinion from Dr. Munzing based on the evidence developed from the execution of the requested search warrants, such as patient files. However, Dr. Munzing concluded "based on the findings, and my extensive experience reviewing such cases, I find to a very high level of certainty that after review of the medical records, once obtained if they exist, that Dr. Tennant failed to meet the requirements in prescribing these

[13] MED is a means of calculating the potency of narcotic(s) prescribed to a patient. For example, if a patient is prescribed a cocktail of multiple narcotics (e.g., oxycodone, hydrocodone, and fentanyl), the potency of each drug is converted to the approximately equivalent milligram strength of morphine, thus allowing practitioners and reviewers to aggregate and compare the total dosage of narcotics prescribed.

dangerous medications. These prescribing patterns are highly suspicious for medication abuse and/or diversion. If the patients are actually using all of the medications prescribed, they are at very high risk for addiction, overdose, and death."

G. **Expert Review of Medicare Claims Regarding TENNANT**

45. In addition to producing a report regarding her review of UNITED's Medicare Claims, Dr. Sullivan also produced a separate review regarding Medicare Part D claims for prescriptions issued by TENNANT (i.e., including those submitted by pharmacies other than UNITED). Dr. Sullivan's report was based on her review of 5,837 prescription drug claims for 97 unique beneficiaries, for the time period of January 2014 to October 2016. From her review, Dr. Sullivan concluded, among other things: "In summary, the overall impression of Dr. Tennant's prescribing is high opioid analgesic prescribing with questionable practices and combinations that are likely to be harmful to patients."

46. Dr. Sullivan's findings include, among other things, the following:

a. Approximately 44% of all prescription drug claims (2,577) were for beneficiaries with an address outside the State of California; in total, TENNANT prescribed to 45 patients residing in 25 different states. Similarly, 1,716 claims were submitted by a pharmacy outside of California, in 16 different states. Dr. Sullivan observed again that, while the PDE data reflects where beneficiaries live at the time the data is run, "the level of prescribing to out of state beneficiaries appears

such that it would not be explained by beneficiaries moving to other states." Dr. Sullivan stated that "a telemedicine registration" may be obtained for prescribers "if they demonstrate a legitimate need for the special registration and are registered in the state in which the patient is located when receiving the telemedicine treatment," but that "[f]rom review of state license sites where Dr. Tennant is associated with beneficiaries, there are no current state licenses for Dr. Tennant outside of California."

b. Dr. Sullivan noted that 144 of the PDEs were for TIRF drugs, of which 108 PDEs were for doses greater than four per day; the average dose quantity per day was 8.8, more than doubled that threshold. Moreover, the TIRF claims included 98 claims for Subsys, of which 63 were at maximum strength, and 45 were for Fentanyl lozenges, all of which were for at maximum or second-highest strength. Dr. Sullivan reviewed Medicare records for seven patients for whom the TIRF claims were submitted, and noted that three of them had no diagnosis of cancer on record with Medicare (although Dr. Sullivan noted that Medicare diagnosis records are not necessarily complete).

c. Dr. Sullivan noted a "trend" in TENNANT's "prescribing combinations of drugs that are consistent with 'pill mill' prescribing practices and are considered high risk prescribing," such as:

i. Dr. Sullivan focused in particular on combinations narcotics, benzodiazepines, stimulants, and/or carisoprodol, noting that "patients were commonly given two or

three categories of drugs together," including cocktails of opioids with carisoprodol or benzodiazepines (i.e., as noted, the "trinity").

d. Dr. Sullivan also noted the large volumes of benzodiazepines prescribed by TENNANT, including her observation of a "trend . . . of prescribing for the highest strength of a given benzodiazepine."

47. Dr. Sullivan also reviewed the Open Payments Database for records of compensation received by TENNANT.[14] The database reflects that, in the years 2013 through 2015, TENNANT received $127,451.39 in payments from pharmaceutical companies, broken up between several categories including "gift," "consulting fees," "serving as faculty or speaker at venue other than a continuing education program," "education" and food/travel reimbursements. Notably, 99.5% of these payments ($126,844.34) were from INSYS Therapeutics, Inc., the manufacturer of the TIRF drug Subsys. Dr. Sullivan noted that Subsys accounted for 57.6% of total paid amounts for the TENNANT Medicare records that she reviewed. Dr. Sullivan concluded, "The association of Dr. Tennant with significant payments from Insys Pharmaceuticals, in light of his significant prescribing of Subsys, may indicate fraudulent activity specific to this drug in particular." Dr. Sullivan also noted that 58.4% of the Medicare payments that she reviewed

[14] "Sometimes, doctors and hospitals have financial relationships with health care manufacturing companies. Open Payments is the federally run transparency program that collects information about these financial relationships and makes it available to [the public]. These relationships can involve money for research activities, gifts, speaking fees, meals, or travel." https://openpaymentsdata.cms.gov/about

were paid to UNITED ($2,018,652.50 based on 319 PDEs), of which 92% were for controlled substances, 90% of which were for Schedule II drugs.

a. As discussed below, multiple executives of INSYS Therapeutics and other persons are currently under federal indictment in the District of Massachusetts based on a scheme to, among other things, provide kickback payments to doctors in the guise of "speaker fees" promoting Subsys.

b. Dr. Sullivan also concluded: "The association with United Pharmacy, in light of its strong association with Subsys, may warrant further investigation for potential relationships between Dr. Tennant and United. It is strongly recommended to pursue further investigation of this prescriber."

H. Interview with medical professional

48. On May 6, 2016, I spoke with a doctor with initials S.G., who reported that she had information on a person (initials J.M.) that she believed is selling medication prescribed to him. S.G. stated that she received a call from a CVS pharmacist stating that J.M. was attempting to fill an S.G. prescription; the pharmacist was inquiring whether S.G. in fact wrote the prescription. After looking into the matter further, S.G. determined that he/she did not write the prescription, and that J.M. was filling a fraudulent prescription issued under S.G.'s name. S.G. observed from checking CURES records that J.M. had filled prescriptions in S.G.'s name previously for drugs including acetaminophen-codeine phosphate and lorazepam. In fact, S.G. had never seen J.M. as a patient, nor had S.G.

ever issued a prescription to J.M., and the prescription was thus forged. S.G. stated that she (S.G.) checked the urgent care and emergency room data base at the hospital she works and learned that J.M. was never a patient at either location. S.G. observed from CURES records that the majority of J.M. prescriptions were being filled at one pharmacy, UNITED. Moreover, S.G. learned from the CURES inquiry that the volume of narcotics that J.M. was receiving surpassed what even a patient suffering severe pain, such as from bone cancer, would reasonably be expected to receive. I checked CURES and confirmed that J.M. is filling prescriptions for drugs including hydrocodone, oxycodone, morphine, and alprazolam at UNITED, and that J.M. filled the prescriptions reported by S.G at a CVS.

I. **Financial Investigation**

49. IRS Special Agent Todd Hardy obtained records from Bank of America for accounts that are held in the names of UNITED or PORMOURADY.[15] Based on SA Hardy's analysis of these records, I learned the following:

a. Regarding an account ending in numbers 7553, held in the name of UNITED, for the time of June 2015 through May 2017, the account received a total of $48,967,166.72 in deposits. Close to all of these deposits came either from third party insurance providers that also serve as Medicare pharmacy benefit managers (e.g., approximately $33 million in total

[15] SA Hardy primarily relied on summaries of bank records for the accounts provided by DRA analysts, which were limited to transactions exceeding $1,000. The figures below thus understate the total money flow to and from the analyzed accounts.

deposits from Prism Cardinal and Express Scripts), or from DHCS for Medi-Cal claims ($2,201,051.81). The latter amounts closely correlate with the Medi-Cal payments made to UNITED for its prescription drug claims, based on records acquired by a DHCS investigator: for the time period between August 2015 through August 2017, claims data reflects Medi-Cal paid $2,081,952.90.

i. The total for cash deposits for the 7553 account was $4,354.45. The total from check deposits from patients, as confirmed with CURES, for this account was $6,306.82. Merchant Services and American Express deposits, which could account for credit card charges, deposited into this account was $2,144,978.45. A review of CURES during the same approximate time frame shows approximately 3,810 prescriptions were dispensed by UNITED and private pay (cash, check, or credit card) was indicated as the payment type.

ii. SA Hardy observed that approximately $40,423.376.49 was paid to various pharmaceutical distributors, with the majority of payments going to HD Smith and McKesson. ARCOS records for UNITED show that the majority of the reported Schedule II and Schedule III drugs are purchased from HD Smith and McKesson.

b. SA Hardy also reviewed records from Bank of America personal checking account ending in 7052, held by POURMORADY, for approximately the same time period of June 2015 through May 15, 2017. SA Hardy observed $2,980,163.02 in deposits and $3,098,000 in withdrawals were made during that period. The majority of the deposits, $2,194,273.76 were checks

from UNITED. The $3.098 million in withdrawals (16 total withdrawals) during the review period were transfers into a Vanguard tax exempt money market account; investigators intend to subpoena records from this account and thus are not directly familiar with what occurred to the funds on reaching the account.[16] According to SA Hardy, "The purpose of this account seems to be only a clearing account for money coming in from UNITED and investments then funnel out to a tax exempt money market account."

c. Notably, however, SA Hardy found a more substantial cash inflow into ~~POURMORAD's~~ POURMORADY's name (7052) than into the business account for UNITED (7553). Namely, investigators have identified more than $185,000 in cash deposits into this account, all of which were under $10,000. The following are examples of particularly large under-$10,000 cash deposits into the account:

09/08/2015	Cash	9,600.00
10/20/2015	Cash	9,700.00
01/08/2016	Cash	8,480.00
02/13/2016	Cash	4,400.00
03/19/2016	Cash	7,930.00
04/02/2016	Cash	7,100.00
04/30/2016	Cash	8,200.00
05/28/2016	Cash	8,800.00
06/25/2016	Cash	8,400.00
07/20/2016	Cash	5,000.00
08/02/2016	Cash	8,900.00

[16] As noted above, the DEA summary analysis of the accounts was limited to transactions exceeding $1,000. However, SA Hardy reviewed bank statements for this account and verified that, while there were additional withdrawals from the account via check, nearly all of the funds withdrawn from the account went to the Vanguard account.

08/13/2016	Cash	9,920.00
09/17/2016	Cash	9,200.00
09/24/2016	Cash	8,100.00
10/04/2016	Cash	8,250.00
11/05/2016	Cash	7,200.00
11/19/2016	Cash	8,800.00
12/17/2016	Cash	8,500.00
12/29/2016	Cash	8,350.00
01/21/2017	Cash	7,800.00
03/20/2017	Cash	7,000.00
05/08/2017	Cash	8,150.00

Banks have an obligation to report to the federal government currency transactions that exceed $10,000. Accordingly, from my training and experience, and SA Hardy's, I know that corrupt medical practitioners and other drug traffickers often "structure" cash transactions involving criminal proceeds, such as by taking a large pot of such proceeds exceeding $10,000 and breaking it up into smaller under-$10,000 deposits for the purpose of preventing banks from reporting the transactions. Based on the pattern set forth above (including both the number of large, under-$10,000 deposits and the relatively low number of deposits overall), SA Hardy believes that POURMORADY is spreading structured cash deposits into accounts that have not yet been discovered by investigators, such as nominal accounts in third party names; both from SA Hardy's training and experience, and from mine, I know that this is a common tactic used by corrupt medical professionals and drug traffickers to conceal criminal proceeds.

d. In any event, I believe that the cash deposited into POURMORADY's personal account are proceeds from UNITED,

which POURMORADY is attempting to keep out of the business's account for the purpose of concealing the nature and source of the proceeds. My belief that the deposited cash represent UNITED proceeds is corroborated by checks that were deposited into POURMORADY's account: from my own review of the bank records, I observed at least 24 multiple checks for which the payor is someone whom I know from CURES data was filling controlled drug prescriptions at UNITED. I know that using nominal accounts (i.e., accounts held other than in the medical business's name) to conceal proceeds is a common method of laundering funds, including in the context of prescription drug diversion by medical practitioners. Moreover, I also know of at least one recent case in which a corrupt medical practitioner used the same tactic of placing criminal cash proceeds into his personal account for the purpose of concealment. Following a recent jury trial in this district against Dr. Andrew Sun that resulted in his conviction of illegally prescribing narcotics and other controlled drugs, the jury also convicted Dr. Sun of laundering criminal cash proceeds from the prescriptions by placing them in a personal rather than business account; the Ninth Circuit affirmed the laundering convictions on appeal.[17]

50. SA Hardy also reviewed a personal Citibank credit card account held by POURMORADY. The account showed multiple charges

[17] *United States v. Andrew Sun*, 673 Fed. Appx. 729, 733 (9th Cir. 2016) (holding that evidence presented at trial supported the jury's finding that "Sun deposited the illegal cash proceeds from his medical practice into his personal bank account, rather than his personal account, with the purpose "to conceal or disguise the nature [or] ... the source" of the proceeds), *cert denied*, --- S. Ct. ---, 2017 WL 2619880 (Oct. 2, 2017).

for shipping from the United States Postal Service. These credit card bills are paid by UNITED from the business account ending in 7553. Information obtained during the investigation shows that a large portion of the prescriptions being filled by UNITED are being shipped to the patients.

J. Overlap with Insys Criminal Investigation

51. In December 2016, the CEO and other executives and employees of INSYS Therapeutics Inc. were indicted by a grand jury in the District of Massachusetts on charges of racketeering, mail fraud, wire fraud, and related conspiracy. United States v. Michael L. Babich, et al., 16-CR-10343. In summary, the grand jury's findings include that the conspiracy started around March 2012 when Insys Therapeutics began marketing a new Fentanyl spray product called Subsys; as noted above, Subsys is a TIRF drug intended to be used in treating breakthrough cancer pain, for which practitioners prescribing or dispensing the drug must participate in the TIRF REMS program mandating, among other things, specialized training.

52. I know the following from my communications with investigators in the INSYS investigation and from review of the 60-page indictment setting forth evidence developed during the investigation:

a. The indictment charges that the conspirators "sought to profit by devising and fostering a scheme to bribe practitioners who were licensed to practice in various states, many of whom ran pain clinics. In exchange for those bribes and kickbacks, the practitioners wrote large numbers of Fentanyl

Spray prescriptions, most often for patients who did not have cancer. The bribes and kickbacks took different forms, but were most frequently disguised as fees the Company paid the practitioners for marketing events." The grand jury's findings further include that the "potential for profits generated by the bribes could not be fully realized unless insurers authorized payment. Accordingly, [the conspirators] created and fostered a scheme to mislead insurers, and the agents of insurers, into authorizing payment for the Fentanyl Spray," such as by "lying about patient diagnoses, the type of pain being treated, and the patient's course of treatment with other medication."

b. Of particular note, the indictment alleges that INSYS provided kickbacks to physicians in exchange for prescribing Subsys over other fentanyl products, guised as "speaker fees" for presentations on Subsys. In fact, "Speaker Program events were often just social gatherings at high-priced restaurants that involved no education and no presentation," and "sales representatives were told to falsify the names of attendees and their signatures on Company sign-in sheets" to conceal problems including that the events "frequently did not have attendees who were licensed to prescribe Fentanyl Spray." For example, in a text message sent by an INSYS executive to a sales representative about the "speaker program" telling the representative not to worry about the communication skills of the practitioner-speakers: "[t]hey do not need to be good speakers, they need to write a lot of [Fentanyl Spray prescriptions]." Similarly, in a September 2012 email, an

executive emailed a sales representative: "Your local speaker should be your 'business partner.' You do not work for him, nor does he work for you. You are partners in this endeavor, if your speaker does not see it this way..... (then it is time to identify another speaker)."

c. The conspirators also hired a "prior authorization specialist" to "seek prior authorizations directly from insurers and pharmacy benefit managers on behalf of patients from select practitioners based in several locations around the country." The indictment charges that the conspirators would provide false statements in order to get these authorizations. For example, they would state the patient needed the medication for "'breakthrough pain,' rather than 'breakthrough cancer pain,'" to misleadingly suggest the patients needed it for breakthrough cancer pain, when many of the patients did not have cancer.

d. In the early stages following the introduction of Subsys to the prescription market, UNITED was the number three top pharmacy purchaser of Subsys nationwide, and UNITED remains in the top 10. TENNANT was paid, in total, $134,499.72 from INSYS for purported "speaker fees", and the majority of the meetings took place in upscale steak restaurants. INSYS records show that POURMORADY was in attendance at multiple meetings, including meetings at **SUBJECT PREMISES-1**. A communication obtained by investigators from INSYS stated that "Dr. Tennant is switching all of his patients from Actiq to SUBSYS so Holly

[(apparently the name of an INSYS representative)] requested voucher asap while they work on the PA (Pre-Authorization)."[18]

K. Beneficiary Interviews

1. Beneficiary D.P.

53. Medicare claims data extracted from OnePI disclosed from on or about January 16, 2015 through December 11, 2015, beneficiary D.P. received 13 prescriptions for the TIRP drug Subsys, which were written by TENNANT or TENNANT's subordinate, Kenneth Guess Pharm.D., and filled at UNITED. The total cost paid by Medicare was $126,268.70, which averaged to $9,712.98 per Subsys prescription. The total cost responsible (copayments, deductibles, and/or coinsurance) to D.P. was approximately $8,799.80.

54. On August 23, 2017, I interviewed D.P. at D.P.'s residence, along with Health and Human Services - Office of Inspector General ("HHS-OIG") SA Joshua Preuss. The following is a summary of the interview:

a. D.P. stated that he/she has never had cancer. D.P. also stated that he/she did not personally pay the co-pays or other shared costs shown in his/her Medicare claims data (as noted above approximately $8,800). D.P. would travel to TENNANT's office on a quarterly basis to receive an evaluation and prescriptions for drugs including Subsys the following three months. TENNANT would send the prescriptions directly to UNITED and UNITED would deliver the prescriptions to D.P. D.P. used a

[18] Investigators received over 30,000 documents obtained during the INSYS investigation that relate to UNITED and/or TENNANT, only a portion of which I have reviewed to date.

company called "PSI" to assist in paying the cost (copayments, coinsurance, and/or deductibles) D.P. was responsible for. D.P. did not use all of the Subsys prescriptions each month and "stocked up" on the remaining Subsys prescriptions.

2. Beneficiary G.G.

55. Medicare claims data extracted from OnePI disclosed from between March 28, 2014 and February 27, 2016, beneficiary G.G. received 25 prescriptions for Subsys, the majority of which were written by TENNANT and filled at UNITED. Medicare paid $526,071.99 for these claims, averaging $21,042.88 per Subsys prescription. The total cost responsible (copayments, deductibles, and/or coinsurance) for which G.G. was approximately $31,939.97.

56. On June 5, 2017, HHS-OIG SA Joshua Preuss telephonically interviewed G.G. The following is a summary of the interview:

a. TENNANT prescribed G.G. Subsys every 30 days. In 2010, G.G. underwent a hysterectomy due to a diagnosis of ovarian cancer from earlier in 2010. G.G. has not been diagnosed with cancer since the hysterectomy. G.G. believed Subsys was not for cancer, but for pain management. UNITED delivered medications to G.G.'s residence, to include Subsys. Before the medications would be delivered, UNITED's pharmacist would call G.G. when the medications were ready. Additionally, G.G received assistance to help pay for G.G.'s copayments. G.G. was only responsible for paying the monthly insurance bill and a $50 cash payment to TENNANT. Thus, G.G. did not pay the

approximately $32,000 in shared costs reflected in his/her Medicare billing data.

57. On June 15, 2017, SA Preuss and DI Kolb again interviewed G.G. at G.G.'s residence. The following is a summary of the interview:

a. TENNANT referred G.G. to UNITED, because G.G.'s regular pharmacy would not fill the prescriptions for Subsys. G.G. stated that TENNANT had patients from outside of the state of California because she would have conversations with other patients in TENNANT's waiting room.

VI. ADDITIONAL PROBABLE CAUSE FOR ITEMS TO BE SEIZED

58. Based on my training, education, experience, and discussions with other law enforcement officers, I know the following regarding the common modus operandi of the offenses under investigation in this case, namely, controlled drug diversion and health care fraud committed by medical practitioners (including both doctors and pharmacists):

a. Such practitioners often keep controlled substances and drugs, records of drug transactions, criminal proceeds, ledgers of compromised patients and beneficiaries (*i.e.*, those to whom invalid prescriptions are issued), and other records within their businesses and other secure locations, (*i.e.*, residences, safe deposit boxes, and storage areas), and vehicles, and conceal such items from law enforcement authorities. The drugs/prescriptions may be distributed or sold, but documentary records and ledgers remain. Such records often include books, account ledgers, payments,

and/or notes and other evidence of financial transactions relating to obtaining, transferring, and spending substantial sums of money which result from engaging in drug trafficking activities.

b. Such practitioners also often retain personal and business notes, letters, and correspondence relating to their narcotics/prescription orders at their residences, businesses, safe deposit boxes, in storage areas, and electronically via digital devices such as cellular telephones and computers.

c. Such practitioners often retain telephone and address books and appointment books identifying additional individuals, including patients and patient recruiters, involved in drug diversion or health care fraud.

d. Such practitioners commonly use personal communication devices and services to coordinate and otherwise further their criminal activities, such as communications with criminal associates or patients via cellular telephone calls or via cellular text messaging. I am aware of multiple recent cases in which, on searching cellular telephones of practitioners, investigators obtained text messages discussing, for example, the issuance of prescriptions to patient recruiters, the per-pill price of narcotics to be sold to drug traffickers, and coordinating meetings for the purpose of transferring fraudulent prescriptions from a corrupt physician to a corrupt pharmacy to conceal illicit black market sales.

e. Such practitioners often maintain large amounts of United States currency in their residences and businesses,

safe deposit boxes, and other storage areas, including to conceal their criminal activities, to finances their ongoing illegal activities, and for their personal benefit and expenses.

f. Additionally, such practitioners and their employees, including those involved in healthcare fraud and prescription drug diversion, routinely maintain patient files, which will often include notes and/or copies of prescriptions, notes of communications between pharmacy and doctor to verify prescriptions, notes about supporting diagnoses, symptoms, and examinations, and other patient records such as copies of identification and insurance cards. Such records also often include the following: medical board or pharmacy board documents, contracts and agreements reflecting business or financial arrangements with other medical providers, bank statements, check registers, financial statements, drafts, billing records, files, journals and ledgers, patient lists, invoices, purchase orders, leases, or other rental documentation.

g. Relatedly, I know that California Business and Professions Code Section 4081 mandates that pharmacies keep records of the sale of dangerous drugs (including controlled substances) for at least three years, including records documenting the sale, acquisition, receipt, shipment, or such drugs. I also know that pharmacists and employees often keep these types of patient records and controlled substance records on computers or in other electronic forms, in addition to keeping hardcopy records. Similarly, I know from Assistant

United States Attorney Benjamin R. Barron that caselaw applies a general presumption that long-term illicit drug businesses and related conspiracies will continue to operate over extensive periods of time. *See United States v. Fernandez*, 388 F.3d 1199 (9th Cir. 2004) ("[T]his Court has concluded that in cases involving ongoing narcotics businesses, lapses of several months—and up to two years in certain circumstances—are not sufficient to render the information in an affidavit too stale to support probable cause.").

h. In summary, I know that such corrupt practitioners will often keep incriminating evidence not only in the pharmacy or medical practice location itself, but also in other secure locations such as their residence, for which an inspector or auditor is unlikely to seek or gain access. For example, I am aware of multiple recent cases involving search warrants executed at the residences of corrupt practitioners (doctors and pharmacists) that resulted in the seizure of evidence such as bulk currency, pay/owe ledgers, bulk controlled drugs, controlled drugs bearing labels reflecting that they were prescribed to a third party, lists of identity theft victims used to conceal black market diversion, medical records for such identity theft victims, and incriminating communications on personal communication devices such as with patient recruiters or black market patient recruiters. I also know from AUSA Barron that the Ninth Circuit applies a general presumption that individuals engaged in illicit drug trafficking are presumed to keep evidence of their activities in their residence. *See*,

e.g., United States v. Fannin, 817 F.2d 1379, 1382 (9th Cir. 1987) ("[E]vidence discovered by [] officers linking the defendants to a drug scheme provide[s] 'more than a sufficient showing for obtaining the warrant to search [their]... residence.'").

VII. TRAINING AND EXPERIENCE ON DIGITAL DEVICES

46. Based on my training and experience, I know that doctors routinely store information about patients on computers and other digital devices. Further, video of the multiple CS undercover visits with UNITED shows UNITED regularly using his laptop computer, which is always with him in the exam room. Accordingly, I seek authority to seize and examine any computers and electronic storage devices found at the SUBJECT PREMISES, pursuant to the protocol set forth in Attachment B.

47. I believe that the facts presented in this affidavit provide probable cause to believe that UNITED's medical practice is permeated with illicit overprescribing. On this basis, the government does not intend to use a filter team to review any digital devices (including any patient files or portions thereof stored on such digital devices) in the execution of this search warrant. Based on my training and experience, I am also aware that DEA is entitled to demand an administrative review of the medical records, including patient files, of a DEA-registered and DATA-waived practitioner such as UNITED at any time. On this basis as well, the government does not believe that a filter team is needed for the review of digital devices.

48. As used herein, the term "digital device" includes any electronic system or device capable of storing or processing data in digital form, including central processing units; desktop, laptop, notebook, and tablet computers; personal digital assistants; wireless communication devices, such as telephone paging devices, beepers, mobile telephones, and smart phones; digital cameras; gaming consoles (including Sony PlayStations and Microsoft Xboxes); peripheral input/output devices, such as keyboards, printers, scanners, plotters, monitors, and drives intended for removable media; related communications devices, such as modems, routers, cables, and connections; storage media, such as hard disk drives, floppy disks, memory cards, optical disks, and magnetic tapes used to store digital data (excluding analog tapes such as VHS); and security devices. Based on my knowledge, training, and experience, as well as information related to me by agents and others involved in the forensic examination of digital devices, I know that data in digital form can be stored on a variety of digital devices and that during the search of a premises it is not always possible to search digital devices for digital data for a number of reasons, including the following:

i. Searching digital devices can be a highly technical process that requires specific expertise and specialized equipment. There are so many types of digital devices and software programs in use today that it is impossible to bring to the search site all of the necessary technical manuals and specialized equipment necessary to conduct a

thorough search. In addition, it may be necessary to consult with specially trained personnel who have specific expertise in the types of digital devices, operating systems, or software applications that are being searched.

j. Digital data is particularly vulnerable to inadvertent or intentional modification or destruction. Searching digital devices can require the use of precise, scientific procedures that are designed to maintain the integrity of digital data and to recover "hidden," erased, compressed, encrypted, or password-protected data. As a result, a controlled environment, such as a law enforcement laboratory or similar facility, is essential to conducting a complete and accurate analysis of data stored on digital devices.

k. The volume of data stored on many digital devices will typically be so large that it will be highly impractical to search for data during the physical search of the premises. A single megabyte of storage space is the equivalent of 500 double-spaced pages of text. A single gigabyte of storage space, or 1,000 megabytes, is the equivalent of 500,000 double-spaced pages of text. Storage devices capable of storing 500 or more gigabytes are now commonplace. Consequently, just one device might contain the equivalent of 250 million pages of data, which, if printed out, would completely fill three 35' x 35' x 10' rooms to the ceiling. Further, a 500 gigabyte drive could contain as many as approximately 450 full run movies or 450,000 songs.

1. Electronic files or remnants of such files can be recovered months or even years after they have been downloaded onto a hard drive, deleted, or viewed via the Internet. Electronic files saved to a hard drive can be stored for years with little or no cost. Even when such files have been deleted, they can be recovered months or years later using readily-available forensics tools. Normally, when a person deletes a file on a computer, the data contained in the file does not actually disappear; rather, that data remains on the hard drive until it is overwritten by new data. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space, i.e., space on a hard drive that is not allocated to an active file or that is unused after a file has been allocated to a set block of storage space, for long periods of time before they are overwritten. In addition, a computer's operating system may also keep a record of deleted data in a swap or recovery file. Similarly, files that have been viewed on the Internet are often automatically downloaded into a temporary directory or cache. The browser typically maintains a fixed amount of hard drive space devoted to these files, and the files are only overwritten as they are replaced with more recently downloaded or viewed content. Thus, the ability to retrieve residue of an electronic file from a hard drive depends less on when the file was downloaded or viewed than on a particular user's operating system, storage capacity, and computer habits. Recovery of residue of electronic files from a hard drive

requires specialized tools and a controlled laboratory environment. Recovery also can require substantial time.

m. Although some of the records called for by this warrant might be found in the form of user-generated documents (such as word processing, picture, and movie files), digital devices can contain other forms of electronic evidence as well. In particular, records of how a digital device has been used, what it has been used for, who has used it, and who has been responsible for creating or maintaining records, documents, programs, applications and materials contained on the digital devices are, as described further in the attachments, called for by this warrant. Those records will not always be found in digital data that is neatly segregable from the hard drive image as a whole. Digital data on the hard drive not currently associated with any file can provide evidence of a file that was once on the hard drive but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave digital data on the hard drive that show what tasks and processes on the computer were recently used. Web browsers, e-mail programs, and chat programs often store configuration data on the hard drive that can reveal information such as online nicknames and passwords. Operating systems can record additional data, such as the attachment of peripherals, the attachment of USB flash storage devices, and the times the computer was in use. Computer file systems can record data about the dates files were created and the sequence

in which they were created. This data can be evidence of a crime, indicate the identity of the user of the digital device, or point toward the existence of evidence in other locations. Recovery of this data requires specialized tools and a controlled laboratory environment, and also can require substantial time.

n. Further, evidence of how a digital device has been used, what it has been used for, and who has used it, may be the absence of particular data on a digital device. For example, to rebut a claim that the owner of a digital device was not responsible for a particular use because the device was being controlled remotely by malicious software, it may be necessary to show that malicious software that allows someone else to control the digital device remotely is not present on the digital device. Evidence of the absence of particular data on a digital device is not segregable from the digital device. Analysis of the digital device as a whole to demonstrate the absence of particular data requires specialized tools and a controlled laboratory environment, and can require substantial time.

o. Digital device users can attempt to conceal data within digital devices through a number of methods, including the use of innocuous or misleading filenames and extensions. For example, files with the extension ".jpg" often are image files; however, a user can easily change the extension to ".txt" to conceal the image and make it appear that the file contains text. Digital device users can also attempt to conceal data by

using encryption, which means that a password or device, such as a "dongle" or "keycard," is necessary to decrypt the data into readable form. In addition, digital device users can conceal data within another seemingly unrelated and innocuous file in a process called "steganography." For example, by using steganography a digital device user can conceal text in an image file that cannot be viewed when the image file is opened. Digital devices may also contain "booby traps" that destroy or alter data if certain procedures are not scrupulously followed. A substantial amount of time is necessary to extract and sort through data that is concealed, encrypted, or subject to booby traps, to determine whether it is evidence, contraband or instrumentalities of a crime.

p. As discussed herein, based on my training and experience I believe that digital devices will be found during the search. I know from my training and experience and my review of publicly available materials that Apple Inc., Motorola, HTC, and Samsung, among other companies, produce devices that can be unlocked by the user with a numerical or an alpha-numerical password, or, for some newer versions of the devices, with a fingerprint placed on a fingerprint sensor. Each company has a different name for its fingerprint sensor feature; for example, Apple's is called "Touch ID." Once a user has set up the fingerprint sensor feature in the security settings of the device, the user can unlock the device by placing a finger or thumb on the device's fingerprint sensor. If that sensor recognizes the fingerprint or thumbprint, the

device unlocks. Most devices can be set up to recognize multiple prints, so that different prints, not necessarily from the same person, will unlock the device. In my training and experience, users of devices with a fingerprint sensor feature often enable that feature, because it unlocks the phone more quickly than the entry of a passcode or password but still offers a layer of security.

q. In some circumstances, fingerprint sensors will not work, and a passcode must be entered to unlock the device. For example, with Apple, Touch ID will not work if (1) more than 48 hours have passed since the device has been unlocked, (2) the device has been turned on or restarted, (3) the device has received a remote lock command, or (4) five attempts to match a fingerprint have been unsuccessful. Other brands have similar restrictions. I do not know the passcodes of the devices likely to be found at the SUBJECT PREMISES.

r. For these reasons, while executing the warrant, agents will likely need to use the fingerprints or thumbprints of any user(s) of any fingerprint sensor-enabled device(s) to attempt to gain access to that device while executing the search warrant. The warrant seeks the authority to compel the use of the fingerprint and/or thumbprint of every person who is located at the SUBJECT PRRMISES during the execution of the search and who is reasonably believed by law enforcement to be a user of a fingerprint sensor-enabled device that is located at the SUBJECT PREMISES and falls within the scope of the warrant. The government may not be able to obtain the contents of the devices

if those fingerprints are not used to access the devices by depressing them against the fingerprint sensor at the time of the search. Although I do not know which of the fingers are authorized to access on any given device, I know based on my training and experience that it is common for people to use one of their thumbs or index fingers for fingerprint sensors, and in any event all that would result from successive failed attempts is the requirement to use the authorized passcode or password.

s. As indicated above, the United States has attempted to obtain this data by serving a search warrant on Office Ally. Office Ally is an electronic medical records ("EMR") company. UNITED has used Office Ally as his EMR company since December 2013. The records obtained from Office Ally contain information of patient office visits, tests performed, and some outside medical records. However, I have reviewed video of the undercover visits and seen paper charts kept at the office. I have confirmed the existence of additional records outside the EMR by reviewing the CSs' EMR and comparing them with documents the CSs provided to UNITED, some of which were missing from the CSs' EMR patient files. In addition, documents completed by the CSs at the time of the undercover visits were not present in the EMR.

VIII. CONCLUSION

64. Based on the foregoing, I respectfully submit there is probable cause to believe that evidence, fruits, and instrumentalities of violations of 21 U.S.C. §§ 846, 841 (distribution of controlled substances, possession of controlled

substances with intent to distribute, and related conspiracy); 18 U.S.C. § 1349 (conspiracy to commit health care fraud); and 18 U.S.C. §§ 1956(a), (h) (money laundering and related conspiracy) will be located at the SUBJECT PREMISES and request that the Court issue the requested search warrants.

/S/

Stephanie A. Kolb
Diversion Investigator, DEA

Subscribed to and sworn before me on November 13, 2017.

ALICIA G. ROSENBERG

UNITED STATES MAGISTRATE JUDGE