


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED by  D.C.
SEP 14 2012
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

CASE NO. **12-23374**

UNITED STATES OF AMERICA

CIV - SEITZ

Plaintiff,

v.

JOSE CARLOS MORALES,

Defendant.

**UNITED STATES' EMERGENCY EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION AND SUPPORTING MEMORANDUM OF LAW**

Pursuant to 18 U.S.C. § 1345 and Local Rule 7.1(e)¹, the United States of America (“United States”) seeks a temporary restraining order, preliminary injunction, and other equitable relief in this matter to prevent further losses from being suffered by the United States as a result of Defendant Jose Carlos Morales’s (“Morales”) scheme to defraud Medicare and Medicaid. The government has thus far identified losses to federal health care programs of at least \$368,000.00 – stemming from an extensive healthcare kickback scheme devised and implemented by Morales – and it believes that the actual losses are far greater.

Without urgent action from the Court, the United States believes that monies currently held by Morales in Bank of America accounts will be dissipated, causing further harm to the United States. While counsel for the United States had initial discussions with counsel for Morales with respect to these funds, the parties were unable to come to an agreement about their

¹ Although Federal Rule of Civil Procedure 65 typically governs the filings of injunctions, the injunction requested herein is sought pursuant to specific statutory injunction authority, and thus, as explained further below, many of the procedural requirements of Rule 65 do not apply.

status. Thus, the United States now seeks a temporary restraining order on an *ex parte*, emergency basis to prevent these funds from being transferred or otherwise dissipated before any hearing on the government's request for preliminary and permanent injunctive relief.

I. STATEMENT OF FACTS

The United States has gathered substantial evidence demonstrating that Morales has engaged in a widespread scheme to pay kickbacks to owners or operators of assisted living facilities ("ALFs"), and in return obtained Medicare and Medicaid numbers for beneficiaries residing in those ALFs. *See* Decl. of Terence G. Reilly in Support of the United States' Emergency Motion for Temporary Restraining Order & Preliminary Injunction ("Reilly Decl."). Morales then used this information to submit claims from his pharmacies to Medicare and Medicaid for prescription drugs and other products. *See id.* In so doing, Morales has violated federal criminal law and has been indicted in this district for conspiracy to pay health care kickbacks (18 U.S.C. § 371) and payment of health care kickbacks (42 U.S.C. § 1320a-7b(b)(2)). *See United States of America v. Jose Carlos Morales*, No. 12-20644-Cr-Lenard (Indictment, D.E. 3, filed Sept. 5, 2012). Deemed a flight risk, Morales has been detained pending trial. *See id.* (D.E. 13).

THE MEDICARE PROGRAM

In 1965, Congress enacted Title XVIII of the Social Security Act, known as the Medicare Program, to pay for the costs of certain healthcare services. Entitlement to Medicare is based on age, disability or affliction with end-stage renal disease. *See* 42 U.S.C. §§ 426, 426A. Individuals who receive benefits under Medicare are commonly referred to as "beneficiaries." Medicare is financed by federal funds including funds from payroll taxes and premiums paid by beneficiaries. Benefits available under Medicare are prescribed by statute and by federal

regulations administered by HHS, through its agency, the Centers for Medicare and Medicaid Services (“CMS”).

Medicare is subdivided into multiple “parts.” Prescription drug coverage is provided through Medicare Part D, which covers the cost of most prescription drugs for Medicare beneficiaries. Part D of the Medicare program was enacted as part of the Medicare Prescription Drug, Improvement and Modernization Act of 2003. Part D provides coverage for Medicare beneficiaries for prescription drugs, and it is administered by private insurance plans that are reimbursed by Medicare through CMS. Part D subsidizes the costs of prescription drugs by prospectively paying private insurers on a monthly basis to provide benefits to Medicare beneficiaries.

Medicare beneficiaries can obtain Part D benefits in two ways: (1) by joining a Prescription Drug Plan, which covers only prescription drugs, or (2) by joining a Medicare advantage plan, which covers both prescription drugs and medical services (collectively, “Part D plans”). Under Part D, a pharmacy can contract with multiple Part D plans or their Pharmacy Benefit Managers (“PBMs”), which provide Medicare Part D coverage. A pharmacy also can submit claims for payment to a Part D plan with which it does not have a contract. Under either arrangement, the pharmacy submits claims for prescriptions filled for Medicare Part D beneficiaries. Most Part D plans contract with a PBM to administer processing and payment of prescription drug claims. Furthermore, pharmacies typically contract with the Part D plans’ PBMs either directly or through a third-party administrator often referred to as a Pharmacy Services Administrative Organization (“PSAO”).

Typically, Medicare beneficiaries enrolled in a Medicare Part D plan obtain their prescription medications from a pharmacy authorized by the Medicare beneficiary’s Part D plan.

After filling a Medicare beneficiary's prescription, the pharmacy then submits the prescription drug claim to a Part D Plan or PBM for payment under the beneficiary's Health Insurance Claim Number and/or Medicare Plan Identification Number. Then, the Part D Plan or PBM sends a reimbursement check to the pharmacy or initiates an electronic transfer of funds to the pharmacy's bank account. Each Part D Plan submits to CMS a record of each prescription drug claim it receives from a pharmacy. CMS contracts with Medicare Administrative Contractors ("MACs") to process claims for the payment. The MAC that processes and pays Medicare Part D claims in Florida is Palmetto Government Benefits Administrators, LLC ("Palmetto").

A Medicare claim for payment is required to set forth, among other things, the following: the beneficiary's name and unique Medicare identification number; the item or service provided; the cost of the item or service; and the name and Unique Physician Identification Number ("UPIN") and/or the National Provider Identifier ("NPI") of the physician who prescribed or ordered the item or service.

In order to be eligible to file a claim for payment with Medicare, providers must submit an enrollment application to obtain a Medicare provider number. 42 U.S.C. § 1395cc. In the application, the provider agrees to abide by all Medicare laws, regulations, and program instructions. Further, the provider certifies that it understands that payment of a claim by Medicare is conditioned upon the claims and the underlying transaction complying with such laws, regulations, and applicable program instructions and on the provider's compliance with all applicable conditions of participation in Medicare. Under federal regulations, Part D plans must ensure that pharmacies submitting prescription drug claims for reimbursement under Part D are contractually required to maintain records for 10 years. In addition, federal regulations require all pharmacies to maintain prescription documentation for three years from the date of service.

The documentation that must be maintained includes written and electronic documents relating to written orders and requests for payments.

THE MEDICAID PROGRAM

Medicaid is a partnership between the states and the federal government, with each paying about half the cost. Each state operates its own Medicaid program under a state plan that must be approved by CMS. The plan outlines current Medicaid eligibility standards, policies, and reimbursement methodologies to ensure the state program receives matching federal funds. In Florida, the Agency for Health Care Administration (“ACHA”) is responsible for Medicaid.

Although pharmacy coverage is an optional benefit under federal Medicaid law, all states currently provide coverage for outpatient prescription drugs to all categorically eligible individuals and most other enrollees within their Medicaid programs.

Pharmacies that bill Medicare under Part D are required to follow certain billing requirements, including: (i) billing Medicare for only reasonable and necessary pharmaceutical drugs; (ii) providing economical pharmaceutical drugs when those services are medically necessary; (iii) assuring that the pharmaceutical drugs provided are not substantially in excess of the needs of patients; and (iv) not making false statements or misrepresentations of material facts concerning requests for payment under Medicare.

DEFENDANT’S SCHEME TO DEFRAUD MEDICARE AND MEDICAID

Defendant Morales is the co-owner and officer of two Florida companies, Pharmovisa, Inc. and PharmovisaMD, Inc., which operated three pharmacies in Miami-Dade County (the “Morales Pharmacies”). Information obtained from numerous cooperating witnesses, and documentary evidence obtained by law enforcement, demonstrate that Morales engaged in a widespread scheme to pay illegal health care kickbacks to ALF owners through “marketers.”

Reilly Decl. ¶ 33. In return, the ALF owners provided Morales with Medicare and Medicaid numbers and other identifying information belonging to beneficiaries who were residents of the ALFs. Morales then used the beneficiary information to submit claims on behalf of the Morales Pharmacies to Medicare Part D and Medicaid for prescription drugs and related services. *Id.*

The cooperating witnesses who have provided information to the government include: (1) a former owner of an ALF who received kickbacks in exchange for Medicare beneficiary information, which the Morales Pharmacies then used to submit claims to Medicare and Medicaid; (2) a “marketer” for Morales, who would pick up cash to pay kickbacks for Morales, and made numerous consensual video recordings of Morales giving instructions on how to pay kickbacks to ALF owners to induce them to send patients to the Morales Pharmacies; (3) another witness who was recruited to be a “marketer” in 2010 and was told by Morales that the Morales Pharmacies could be marketed by paying kickbacks; (4) a former driver for the Morales Pharmacies who stated that they billed for prescription medications even though the medications were never delivered to patients; and (5) a current employee of the Morales Pharmacies, who stated that Jose Carlos Morales pays ALF owners \$30 per patient per month, identified rosters listing the ALF owners paid by Morales, and stated that many more ALF owners receive kickbacks in exchange for patient referrals. *Id.* ¶¶ 35-39. Information from this last witness indicates that the losses occasioned by Morales’s fraudulent scheme are far greater than the government has currently been able to identify. *Id.* ¶ 39.

The first of these witnesses, an ALF owner, informed federal agents that, in August 2011, a marketer working for Morales was interested in paying illegal kickbacks to the ALF owner in exchange for Medicare and Medicaid beneficiary information belonging to residents of the ALF, which would allow the Morales Pharmacies to submit claims to Medicare and Medicaid on

behalf of those beneficiaries. The marketer stated that he/she was acting under the direction of Jose Carlos Morales, and that Jose Carlos Morales paid kickbacks to other ALF owners and administrators. Following that conversation, the marketer in fact paid kickbacks to the ALF owner, consisting of \$30 cash per Medicare/Medicaid beneficiary each month. *Id.* ¶ 40.

Medicare Part D data confirmed that, on or about August 28, 2011, the Morales Pharmacies submitted a claim to Medicare on behalf of Medicare beneficiary E.T. for Seroquel XR in the approximate amount of \$456.95. Medicare beneficiary E.T. resided at the ALF owner's facility. The Morales Pharmacies submitted another claim on May 25, 2012 for beneficiary E.T. for Seroquel XR in the approximate amount of \$501.95. *Id.* ¶¶ 41-42.

The marketer told federal agents that the cash kickbacks paid to ALF owners and operators were placed in envelopes, and that the marketer would pick up the envelopes containing the kickback payments at the Morales Pharmacies. The marketer produced "print screens" that Morales used to calculate the kickback payments that the marketer delivered to ALF owners each month. The print screens are maintained on Morales Pharmacies computers. The marketer further stated that Morales maintained a record of the kickbacks paid to ALF owners on behalf of the Morales Pharmacies in a small "spiral" notebook. Agents did recover a kickback log from a briefcase in Morales's residence, along with an article about the anti-kickback statute. *Id.* ¶¶ 43-46.

Significantly, the marketer consented to the recording of multiple conversations he/she had with Morales in which they discussed, among other things, the illegality surrounding the cash kickback payments to owners and operators of ALFs. As a result of these consensual recordings, ten ALFs were identified as receiving health care kickbacks in exchange for referring Medicare and Medicaid beneficiaries to the Morales Pharmacies. During a majority of these

recorded conversations, the ALF owners would initial the “print screen” corresponding to the Medicare beneficiaries residing at their ALF, indicating that they received the previously agreed-upon cash kickback amount for a particular resident. *Id.* ¶¶ 47-49. Following the payment of cash kickbacks to these ALF owners, the Morales Pharmacies submitted claims to Medicare Part D and Medicaid on behalf of residents of these ALFs. *Id.* ¶ 50.

Additional witnesses have stated that they were recruited to serve as marketers for Morales by paying kickbacks to ALF owners. *Id.* ¶¶ 51, 53. Witnesses have also indicated that Morales’s scheme to defraud federal health programs spreads much wider, by either not delivering medications at all to beneficiaries for whom they were ordered, or by accepting unused medications from beneficiaries for the purpose of reselling them at the Morales Pharmacies. *Id.* ¶¶ 52-53.

From February 2011 through June 2012, the Morales Pharmacies were paid approximately \$368,000.00 by Medicare and Medicaid for claims submitted for beneficiaries residing at the ten ALFs identified in the government’s investigation and whose information the Morales Pharmacies received in return for kickbacks from Morales. *Id.* ¶¶ 15-16. The United States believes, however, that the losses to the government are far greater, given recent information from witnesses that Morales was paying kickbacks to many more ALFs than the ten identified thus far. *Id.* ¶¶ 39, 52-53.

DISSIPATION OF FRAUD PROCEEDS

Jose Carlos Morales and Rosa Morales have opened at least five bank accounts at Bank of America, in the name of entities associated with the Morales Pharmacies. *Id.* ¶ 54. While Bank of America, as a courtesy, placed a temporary hold on those accounts, that hold was lifted as of September 10, 2012, and the monies in those accounts are currently not subject to any

restraint. *Id.* ¶ 56. Moreover, Rosa Morales, who has not been indicted or detained in the criminal case, has access to the accounts. *Id.* ¶ 57. Finally, the government has been informed by counsel for Morales that the funds in the Bank of America accounts may be used for business or other expenses of the Morales Pharmacies. *Id.* ¶ 58. Morales does not appear to have other significant assets other than his home. *Id.* ¶ 55. For all of these reasons, there is a significant risk that the monies in the Bank of America accounts may be imminently dissipated and unavailable to the government to satisfy any future judgment in the criminal case.

II. MEMORANDUM OF LAW

A. Federal Law Authorizes Injunctions To Prevent the Dissipation of Proceeds of Fraud

Injunctive relief to restrain a violation of a Federal health care offense and the dissipation of assets is authorized by 18 U.S.C. § 1345 (“section 1345” or the “fraud injunction statute”).

See, e.g., United States v. DBB, Inc., 180 F.3d 1277, 1283 (11th Cir. 1999). In relevant part, 18 U.S.C. § 1345 provides that:

(a)(2) If a person is alienating or disposing of property, or intends to alienate or dispose of property, obtained as a result of . . . a Federal health care offense or property which is traceable to such violation, the Attorney General may commence a civil action in any Federal court—

- (A) to enjoin such alienation or disposition of property; or
- (B) for a restraining order to –
 - (i) prohibit any person from withdrawing, transferring, removing, dissipating, or disposing of any such property or property of equivalent value; and
 - (ii) appoint a temporary receiver to administer such restraining order.

The fraud injunction statute further states that the Court may take such other action as is warranted to prevent a continuing and substantial injury to the United States. 18 U.S.C. § 1345(b).

Essentially, section 1345 allows the government to restrain assets of a defendant who has disposed or intends to dispose of funds obtained by committing a “Federal health care offense.” That term is defined in 18 U.S.C. § 24(a)² and covers numerous crimes, including conspiracy to defraud the United States, 18 U.S.C. § 371,³ and crimes against federal health care programs such as the paying of kickbacks, 42 U.S.C. § 1320a-7b(b)(2).⁴ An injunction pursuant to this section can reach not just the actual assets that are directly traceable to the fraud, but can also reach “property of equivalent value.” 18 U.S.C. § 1345(a)(2)(B)(i); *DBB, Inc.*, 180 F.3d at 1283, 1286.

In this case, the facts establish that Morales has engaged in a conspiracy to defraud the United States by conspiring to pay health care kickbacks and by actually paying unlawful kickbacks. He is charged by Indictment under 18 U.S.C. § 371 and 42 U.S.C. § 1320a-7b(b)(2),

² 18 U.S.C. § 24 states:

As used in this title, the term “Federal health care offense” means a violation of, or a criminal conspiracy to violate--

- (1) section 669, 1035, 1347, or 1518 of this title;
- (2) section 287, 371, 664, 666, 1001, 1027, 1341, 1343, or 1954 of this title, if the violation or conspiracy relates to a health care benefit program.

³ 18 U.S.C. § 371 states:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. . . .

⁴ 42 U.S.C. § 1320a-7b(b)(2) provides:

whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person-- (A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program . . . shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

both of which fall within the scope of section 1345, and there is ample evidence to establish that he violated these statutes. All amounts he received as a result of claims tainted by kickbacks are fraudulent proceeds. The facts also establish that the assets held by Morales in the bank accounts at Bank of America may be imminently dissipated.

Therefore, a temporary restraining order and preliminary injunction with respect to the dissipation of proceeds of the fraud as well as equivalent assets is warranted under 18 U.S.C. § 1345(a)(2). At this time, the United States seeks an injunction only as to the assets identified as being in the Bank of America accounts at the time of the Indictment. This request is quite limited, and if granted, will freeze only a small portion of what the United States believes is the total loss occasioned by a much larger fraudulent scheme.

Pursuant to 18 U.S.C. § 1345 and the general equitable power of the court, the United States is asking this Court to enter a temporary restraining order and preliminary injunction in order to prevent a continuing and substantial injury to the United States by preventing the disposition and concealment of assets presently in the hands of defendant.

B. Prior Notice to the Defendant Is Unnecessary When Notice Could Cause the Very Harm Which the Motion Seeks To Prevent

The issuance of the temporary restraining order without prior notice is necessary in this case. If advance notice of the application for the temporary restraining order were given to the Defendant, it is possible that the assets would immediately be transferred beyond the reach of the United States. Moreover, the entry of an order is urgently needed, as the accounts at Bank of America have been unrestrained since Bank of America lifted on September 10th temporary holds it had placed on the accounts.

In these circumstances, the law provides for the issuance of *ex parte* temporary restraining orders. As stated by the court in *In the Matter of Vuitton et Fils S.A.*, 606 F.2d 1, 5

(2nd Cir. 1979): “If notice is required, that notice all too often appears to serve only to render fruitless further prosecution of the action. This is precisely contrary to the normal and intended role of ‘notice,’ and it is surely not what the authors of the rule either anticipated or intended.” *Id.*; see also *Calero-Toledo v. Pearson Yacht Leasing Company*, 416 U.S. 663, 679 (1974) (pre-seizure notice and hearing not necessary where such procedure might frustrate the interests served by the statutes);⁵ *Little Tor Auto Center v. Exxon Company USA*, 822 F. Supp. 141, 143 (S.D.N.Y. 1993) (*ex parte* procedure allowed in connection with TRO application “where advance contact with the adversary would itself be likely to trigger irreparable injury”). It is appropriate that the United States’ motion be granted without prior notice to the Defendant. Defendant can be fully protected by prompt post-seizure notice and opportunity for a hearing, both of which can be required by the terms of the temporary restraining order itself and have in fact been incorporated into the proposed order submitted herewith.

C. The Traditional Prerequisites to a Temporary Restraining Order Are Not Applicable When the Government Seeks An Injunction Pursuant to a Federal Statute That Was Enacted To Protect the Public Interest

The traditional test for the issuance of a temporary restraining order does not apply where the United States is seeking an injunction pursuant to a federal statute that was enacted to protect the public interest and that authorizes injunctive relief. *United States v. Medina*, 718 F. Supp. 928, 930 (S.D. Fla. 1989). Under such circumstances the United States is not required to demonstrate irreparable harm in order to obtain an injunction. *Id.*; *U.S. v. Livdahl*, 356 F. Supp.

⁵ *Calero-Toledo* relied upon and reaffirmed the Supreme Court’s earlier finding that seizure of property without a hearing is constitutionally permissible and does not violate due process notice requirements where “[f]irst . . . the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force; the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance.” *Calero-Toledo*, 416 U.S. at 679 (citing *Fuentes v. Shevin*, 407 U.S. 67, 91 (1972)). As reflected by Congress’ amendment of section 1345 to include Federal health care offenses, all three identified concerns are satisfied in section 1345 health care fraud cases.

2d 1289, 1293-94 (S.D. Fla. 2005); *U.S. v. Sene X Eleemosynary Corp., Inc.*, 479 F. Supp. 970, 981 (S.D. Fla. 1979). “The passage of the statute is, in a sense, an implied finding that violations will harm the public and ought, if necessary, be restrained.” *U.S. v. Diapulse Corp. of America*, 457 F.2d 25, 28 (2nd Cir. 1972).

“Where an injunction is authorized by statute, it is proper to issue such an order to restrain violations of the law if the statutory conditions are satisfied.” *Sene X Eleemosynary Corp., Inc.*, 479 F. Supp. at 980. Florida District Courts have repeatedly found in section 1345 cases “that because both statutes expressly authorize injunctive relief, no specific finding of irreparable harm is necessary, no showing of the inadequacy of other remedies at law is necessary, and no balancing of the interests of the parties is required prior to the issuance of a preliminary injunction in this case.” *Livdahl*, 356 F. Supp. 2d at 1290-91. Thus, the government does not need to establish the inadequacy of other remedies at law, and no balancing of the interests of the parties is required. *Id.*; *Medina*, 718 F. Supp. at 930; *Sene X*, 479 F. Supp. at 981.

In order for the Court to issue an injunction there need only be a showing that a defendant has violated the statute and that there exists “some cognizable danger of recurrent violation.” *Medina*, 718 F. Supp. at 930; *Sene X*, 479 F. Supp. at 981. The government satisfies its burden under section 1345 when it shows that there is “probable cause” to believe that the defendant is violating, about to violate, or that there is some cognizable danger of recurrent violation of any of the sections specified in section 1345. *U.S. v. Livdahl*, 356 F. Supp. 2d at 1293-94; *see also DBB*, 180 F.3d at 1280 (noting District Court adopted Magistrate Judge’s findings of a “reasonable probability”); *U.S. v. Payment Processing Center, LLC*, 461 F. Supp. 2d 319, 323 (E.D. Pa. 2006) (citing “probable cause, i.e., a fair probability”); *U. S. v. Fang*, 937 F. Supp.

1186, 1197 (D. Md. 1996) (“Given this background, the Court is prepared to conclude that the ‘reasonable probability’ standard of conventional preliminary injunction analysis equates with ‘probable cause’ and that it applies in the present [§ 1345] case.”); *U.S. v. William Savran & Associates, Inc.*, 755 F. Supp. 1165, 1180 (E.D.N.Y. 1991); *U.S. v. Belden*, 714 F. Supp. 42, 45-46 (N.D.N.Y. 1987) (examining the legislative history and noting “it is unlikely that Congress intended to hold the government to a more stringent standard than that of probable cause when relief under § 1345 was sought”).

Once the government establishes probable cause to believe that a defendant has violated the statute, the burden shifts to the defendant to show that “there is no reasonable expectation that the wrong will be repeated.” *Sene X*, 479 F. Supp. at 981. In sum, the United States is entitled to the requested injunction by showing that there is probable cause to believe that the Defendant has obtained assets as a result of committing Federal health care offenses, and that Defendant has dissipated or is still attempting to dissipate the proceeds of his fraud. At that point, the United States has satisfied its burden. Defendant, if opposed to the issuance of an injunction as to any funds or assets, bears the burden of establishing that such funds or assets are not related to the fraud or are beyond the equivalent value of the funds taken through the fraud.

CONCLUSION

The facts contained in the Indictment and in the Declaration of Special Agent Terence G. Reilly amply demonstrate that Defendant has defrauded the United States by conspiring to pay and paying illegal health care kickbacks, and that there is a strong probability that Defendant will dissipate assets currently held by him in accounts maintained at Bank of America. Accordingly, injunctive relief under 18 U.S.C. § 1345(a)(2) is warranted.

WHEREFORE, the United States requests that this Court, pursuant to 18 U.S.C. § 1345(a)(2), grant its motion for a temporary restraining order and preliminary injunction, and

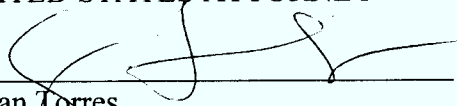
other equitable relief in this case. A proposed order is submitted herewith.

Dated: September 14, 2012

Respectfully submitted,

WIFREDO A. FERRER
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. **12-23374**

UNITED STATES OF AMERICA

CIV - SEITZ

Plaintiff,

v.

JOSE CARLOS MORALES,

Defendant.

_____ /

TEMPORARY RESTRAINING ORDER

On this _____ day of September 2012, at _____ .m., upon consideration of Plaintiff United States of America's ("United States") Motion for Temporary Restraining Order and Preliminary Injunction and Supporting Memorandum of Law, pursuant to 18 U.S.C. § 1345, the Complaint filed by the United States, and the Declaration of Special Agent Terence G. Reilly, the Court finds that the United States has demonstrated that:

1. the Defendant, Jose Carlos Morales is alienating or disposing of property, or intends to alienate or dispose of property, obtained as a result of a Federal health care offense, property which is traceable to such violation, or property of equivalent value; and
2. the provision of advance notice to the Defendant will likely aggravate the damage that the order seeks to prevent because advance notice will provide the Defendant with the opportunity to transfer, expend, or conceal the property.

Based on the foregoing, the Court hereby concludes as follows:

3. that the requested relief be considered and GRANTED without prior notice to the Defendant; and

4. because the United States' motion is based upon 18 U.S.C. § 1345, which expressly authorizes injunctive relief to protect the public interest, no specific finding of irreparable harm is necessary, no showing of the inadequacy of other remedies at law is necessary, and no balancing of the interests of the parties is required prior to the issuance of a temporary restraining order in this case.

After consideration of the foregoing, it is therefore

ORDERED and ADJUDGED that the Defendant, his agents, employees, attorneys, and all persons acting in concert and participation with him, including all banking and other financial institutions at which he does business, and all corporations over which he exercises control, who receive actual or constructive notice by personal service, by publication, or otherwise, be enjoined as follows:

From alienating, withdrawing, transferring, removing, dissipating, or otherwise disposing of, in any manner, moneys or sums identified, as of the time of the Indictment, as being deposited, or held on behalf of Defendant by Bank of America, in the following accounts:

Account Nos.	
<u>Ending In</u>	<u>Amount</u>
3204	\$144,284.00
9824	\$129,113.00
8847	\$ 38,963.00
6471	\$ 25,848.00
1951	\$ 32,591.00

IT IS FURTHER ORDERED that the United States shall promptly attempt to provide notice of this action and this Order to Defendant. Pursuant to 18 U.S.C. § 1345(a)(3) and Rule

65(c) of the Federal Rules of Civil Procedure, Plaintiff United States of America shall not be required to post security for the instant action.

This temporary restraining order shall remain in force until the close of business on the _____ day of _____, 2012, or at such later date as may be extended by the Court, or agreed upon by the parties.

The parties shall take notice that this matter shall come before the Court for a preliminary injunction hearing on the _____ day of _____, 2012, at _____, _____ m., in accordance with the United States' Complaint and motion for injunctive relief. Defendant may request an earlier hearing on the terms of this temporary restraining order in accordance with the terms of Federal Rule of Civil Procedure 65.

DONE AND ORDERED at Miami, Florida, this _____ day of September, 2012.

UNITED STATES DISTRICT JUDGE

cc: Susan Torres, AUSA