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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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UNITED STATES OF AMERICA : **TO BE FILED UNDER SEAL**  
:   
v. : Hon. Cathy L. Waldor  
:   
ERIK SANTOS : Mag. No. 20-9096  
:   
: **CRIMINAL COMPLAINT**

I, Eric Eccleston, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

**SEE ATTACHMENT A**

I further state that I am a Special Agent with the Federal Bureau of Investigation and that this Complaint is based on the following facts:

**SEE ATTACHMENT B**

continued on the attached page and made a part hereof.



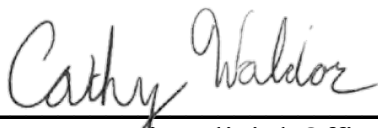
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Eric Eccleston, Special Agent  
Federal Bureau of Investigation

Agent Eccleston attested to this Affidavit by telephone pursuant to Fed. R. Crim. P. 4.1(b)(2)(A)

March 26, 2020, at  
District of New Jersey

Honorable Cathy L. Waldor  
United States Magistrate Judge



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Signature of Judicial Officer

**ATTACHMENT A**

**COUNT ONE**

**(Conspiracy to Violate the Federal Anti-Kickback Statute)**

From on or about November 16, 2019, through on or about March 26, 2020, in the District of New Jersey, and elsewhere, the defendant,

**ERIK SANTOS,**

did knowingly and intentionally conspire and agree with others to commit offenses against the United States, that is to knowingly and willfully solicit and receive remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, from any person in return for purchasing, ordering, and arranging for, and recommending purchasing and ordering, any good, item, and service, namely, COVID-19 testing, respiratory pathogen panel tests, and genetic cancer screening tests, for which payment may be made in whole or in part under a Federal health care program, as defined in Title 18, United States Code, Section 24(b), namely, Medicare, contrary to Title 42, United States Code, Section 1320a-7b(b)(1).

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

**COUNT TWO**  
**(Conspiracy to Commit Health Care Fraud)**

From on or about November 16, 2019, through on or about March 26, 2020, in the District of New Jersey, and elsewhere, the defendant,

**ERIK SANTOS,**

did knowingly and intentionally conspire and agree with others to knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program and to obtain, by means of false and fraudulent pretenses, representations, and promises, any of the money owned by, and under the custody and control of, a health care benefit program, as defined by 18 U.S.C. § 24(b), in connection with the delivery of or payment for health care benefits, items and services, contrary to Title 18, United States Code, Section 1347.

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

## **ATTACHMENT B**

I, Eric Eccleston, am a Special Agent with the Federal Bureau of Investigation. I have knowledge of the following facts based upon both the investigation to date and discussions with other law enforcement personnel and others. Because this affidavit is being submitted for the sole purpose of establishing probable cause to support the issuance of a complaint, I have not included each and every fact known to the government concerning this matter. Where statements of others are set forth herein, these statements are related in substance and in part. Where I assert that an event took place on a particular date, I am asserting that it took place on or about the date alleged.

### **Background on the Medicare Program**

1. The Department of Health and Human Services, Office of the Inspector General (“HHS”) and the Federal Bureau of Investigation (“FBI”) have been investigating a large-scale scheme to defraud the Medicare Program (“Medicare”) and other federal payors through the paying and receiving of kickbacks in return for referrals of patients interested in certain medical services and products.

2. Medicare is a federally-funded program established by the Social Security Act of 1965 (codified as amended in various sections of Title 42 of the United States Code) to provide medical insurance benefits for individuals age 65 and older and certain disabled individuals who qualify under the Social Security Act. Individuals who receive benefits under Medicare are referred to as “Medicare beneficiaries.”

3. Medicare is administered by the Center for Medicare and Medicaid Services (“CMS”), a federal agency under the United States Department of Health and Human Services.

4. Medicare is a “health care benefit program,” as defined by 18 U.S.C. § 24(b), that affects commerce and a “Federal health care program,” as defined by 42 U.S.C. § 1320a-7b(f), that affects commerce.

5. Medicare is divided into four parts, which help cover specific services: Part A (hospital insurance), Part B (medical insurance), Part C (Medicare Advantage), and Part D (prescription drug coverage).

6. Medicare Part B covers non-institutional care that includes, among other things, medical testing by clinical laboratories, where those services are reasonable and necessary to diagnose or treat medical conditions and that meet accepted standards of medical practice. Some examples of medical tests that fall within the purview of Medicare Part B include:

- a. Genetic Cancer Screenings. A genetic cancer screening (a “CGx Test”) is a diagnostic tool that tests for a genetic predisposition to cancer. In general, Medicare reimburses healthcare providers approximately \$7,700 for each qualifying CGx Test.
- b. COVID-19 Testing. There are several different laboratory tests available to assess whether an individual has the novel coronavirus disease 2019, commonly referred to as “COVID-19” (collectively referred to herein as a “Coronavirus Test”). In general, Medicare reimburses healthcare providers approximately \$51 for each qualifying Coronavirus Test.
- c. Respiratory Pathogen Panel Testing. A Respiratory Pathogen Panel test (“RPP Test”) is used to detect certain respiratory viruses and bacterial pathogens. The RPP Test does not and cannot test for COVID-19. The RPP Test can include a bacterial panel (which tests only for bacteria, referred to herein as a “Partial RPP Test”), a viral panel (which tests only for viruses), or both (referred to as a “Complete RPP Test”). To date, Medicare is still developing reimbursement procedures and policies related to RPP Tests. However, based on information received in connection with this investigation, there is reason to believe Medicare is offering reimbursement of approximately \$300 to \$400 for each qualifying Partial RPP Test, and approximately \$650 for each qualifying Complete RPP Test.

7. Under Medicare regulations, any diagnostic laboratory test must be ordered by the physician treating the Medicare beneficiary; that is, the physician who furnishes a consultation or treats a beneficiary for a specific medical problem and who uses the results in the management of the beneficiary’s specific medical problem. For example, Medicare does not cover preventative CGx Tests for beneficiaries who do not exhibit symptoms of cancer or are not being treated for cancer. Moreover, any tests not ordered by the treating physician are considered not reasonable and necessary and are thus not covered by Medicare.

8. Generally, in order to have one of the tests described above conducted, an individual will complete a buccal or nasopharyngeal swab or a respiratory sample to collect a specimen, which will then be transmitted to a laboratory for testing.

9. In order for a healthcare provider to bill Medicare for services rendered, it must enroll with Medicare as a Medicare provider or “supplier.” For example, in order to bill Medicare for a CGx Test, Coronavirus Test, or RPP Test,

a clinical laboratory is first required to complete and submit a Form CMS-855B, the Medicare Enrollment Application for “Clinics/Group Practices and Certain Other Suppliers.”

10. Under Medicare regulations, a Medicare-approved laboratory can refer a specimen that it receives to another laboratory for performance of a laboratory test. A laboratory that refers specimens is known as a “referring laboratory.” The laboratory that receives the specimen and actually conducts the test is known as a “reference laboratory.” The laboratory that submits a bill or claim to Medicare is known as a “billing laboratory.” Under Medicare rules, a billing laboratory that acts as a referring laboratory must physically receive any testing specimens before those specimens are sent out to a reference laboratory.

11. As provided in the Form CMS-855B, in order to enroll with Medicare, a supplier of healthcare services such as a clinical laboratory must, among other things, certify the following: (1) the supplier understands that any deliberate omission, misrepresentation, or falsification of any information on the Form CMS-855B may be punished by criminal, civil, or administrative penalties; (2) the supplier agrees to abide by applicable Medicare laws, regulations and program instructions, such as, but not limited to, the federal anti-kickback statute (42 U.S.C. § 1320a-1b(b)) (“AKS”); (4) the supplier understands that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations and program instructions; and (5) the supplier must refrain from knowingly presenting or causing to present a false or fraudulent claim for payment by Medicare and submitting claims with deliberate ignorance or reckless disregard of their truth or falsity.

12. Medicare-authorized suppliers of healthcare services, such as clinical laboratories, can only submit claims to Medicare for reasonable and medically necessary services. Medicare will not reimburse claims for services that it knows are procured through kickbacks or bribes. Such claims are deemed false and fraudulent because they violate Medicare laws, regulations, and program instructions, as well as violating federal criminal law. For example, where a CGx Test, a Coronavirus Test, or an RPP Test is procured through the payment of a kickback in violation of the AKS, a claim to Medicare for reimbursement for that test is fraudulent. By implementing these restrictions, Medicare aims to preserve its resources, which are largely funded by United States taxpayers, for those elderly and other qualifying beneficiaries who have a genuine need for medical services.

## **Overview of the Conspiracy**

13. Since in or around July 2019, law enforcement agents have been working with a cooperating witness (“CW-1”), who was previously involved in a scheme to commit health care fraud and to violate the AKS. Law enforcement agents have determined that information provided by CW-1 has been reliable and accurate, and corroborated by other evidence obtained in the investigation.

14. From in or around November 2019 through the present, Defendant ERIK SANTOS (“SANTOS”) and others engaged in a scheme to defraud Medicare by soliciting and receiving kickback payments from companies involved in clinical and diagnostic testing in exchange for steering to those companies individuals eligible for testing that Medicare would reimburse.

15. Starting in or around February 2020, the effects of the COVID-19 pandemic began to be felt in the United States. The virus was considered especially dangerous to elderly patients over 65—the same population that is eligible for Medicare benefits. As cases increased in the United States, many individuals reported difficulty obtaining Coronavirus Tests to determine whether they were infected.

16. The investigation has revealed that SANTOS used the COVID-19 pandemic as an opportunity to expand his pre-existing kickback schemes and to capitalize on a national emergency for his own financial gain. As described below, SANTOS agreed with others to be paid kickbacks on a per-test basis for Coronavirus Tests, provided that those tests were bundled with a much more expensive RPP Test, which does not identify or treat COVID-19. In this way, SANTOS sought to maximize his kickback profits and to bleed Medicare resources at a time when Medicare beneficiaries across the United States were in dire need of coverage for medical treatment and services.

17. At all times relevant to this Complaint:

a. CW-1 had a financial or controlling interest in a marketing call center (“Call Center-1”), and a clinical laboratory (“Laboratory-1”), both located in the United States, that together conducted or arranged for a variety of medical tests (collectively, the “Testing Companies”). Laboratory-1 was enrolled as a Medicare supplier and authorized to bill Medicare for, among other things, CGx Tests, Coronavirus Tests, and RPP Tests. Pursuant to the requirements described above, Laboratory-1 was also responsible for acknowledging that any claims made to Medicare complied with the relevant laws, regulations, and program instructions.

b. SANTOS was a resident of Georgia. SANTOS owned and operated a company (“Santos Company-1”) that conducted business with the Testing Companies. As described more fully below, SANTOS and others engaged

in a fraudulent kickback scheme whereby the Testing Companies paid SANTOS on a per-test basis for providing the Testing Companies with CGx Tests, Coronavirus Tests, and RPP Tests, or information amounting to a guarantee that a CGx Test, Coronavirus Test, or RPP Test would be conducted through Laboratory-1, and thereafter reimbursed by Medicare, referred to herein as a “qualified patient lead.”

c. As that term was used during the course of the scheme, a “qualified patient lead” was comprised of information identifying individuals who were: (i) covered by Medicare; (ii) eligible for a reimbursement from Medicare for the relevant test, whether it be a CGx Test, a Coronavirus Test, or an RPP Test; and (iii) thereafter had a completed test kit processed by Laboratory-1 and billed to Medicare.

18. The investigation has revealed that from at least as early as in or around October 2018, the Testing Companies entered into kickback agreements with a number of individuals and entities who were able to generate qualified patient leads (the “Suppliers”). The Testing Companies paid the Suppliers, including SANTOS, kickbacks for each qualified patient lead that resulted in a Medicare reimbursement, regardless of medical necessity.

19. Generally speaking, in order to generate qualified patient leads, Suppliers used a variety of methods, including making cold calls, using targeted Internet advertisements, and making in-person solicitations for various medical services to elderly Medicare beneficiaries across the United States. Through the Suppliers, targeted beneficiaries were questioned to determine whether they met certain eligibility requirements for the relevant test. Once an eligible beneficiary was identified, that individual’s information was passed to the Testing Companies and others as part of a qualified patient lead. The Testing Companies operated an online portal (the “Portal”) through which Suppliers uploaded qualified patient leads directly to the Testing Companies.

20. After receiving qualified patient leads for likely candidates for Medicare reimbursement, the Testing Companies worked with a network of telemedicine health care providers who reached out to the Medicare beneficiaries named in the qualified patient leads submitted by the Suppliers. In general, those health care providers were not treating the beneficiaries for any symptoms or conditions, but were instead operating with the objective of providing those pre-screened beneficiaries with prescriptions for the relevant tests. In other circumstances, SANTOS and other Suppliers had their own independent relationships or arrangements with health care providers who could write prescriptions to follow up on a qualified patient lead. In those cases, a doctor’s order for the beneficiary was passed to the Testing Companies.

21. Once the Testing Companies obtained prescriptions generated through the qualified patient lead process or otherwise, testing kits were then



sent to the beneficiaries. Beneficiaries then completed the buccal swab or other testing mechanism contained in the kit and returned it to Laboratory-1. Ultimately, Laboratory-1 electronically submitted or caused the electronic submission of claims to Medicare for payment for each of the tests. Laboratory-1 paid kickbacks to Suppliers for each test kit that was returned to the lab and processed, and subsequently billed to Medicare.

#### The CGx Test Scheme

22. On or about November 13, 2019, SANTOS was introduced to CW-1 as a new potential Supplier of qualified patient leads for CGx Tests for the Testing Companies.

23. On or about November 14, 2019, SANTOS and CW-1 had a conversation about the payment of kickbacks to SANTOS in exchange for his submission of qualified patient leads for CGx Tests to the Testing Companies. At law enforcement's direction, CW-1 recorded that conversation. SANTOS stated that, through Santos Company-1, he would be able to provide hundreds of qualified patient leads to the Testing Companies through his relationships with a number of downstream Suppliers. SANTOS and CW-1 agreed that once a Medicare beneficiary returned a CGx Test kit to Laboratory-1 and the lab confirmed that the swab could be processed, SANTOS would be paid a kickback of approximately \$1,750 per test. SANTOS stated that \$1,750 was the price that he was "normally used to doing" for similar arrangements. SANTOS further stated that if, after the Testing Companies paid him a kickback, Medicare or another relevant insurance program did not reimburse Laboratory-1 for a particular beneficiary's CGx Test, the Testing Companies would receive a credit from SANTOS against a future qualified patient lead submitted by Santos Company-1.

24. After their conversation, on or about November 14, 2019, CW-1 sent an email to SANTOS attaching a blank "referral services agreement," (the "CGx Agreement") and another document entitled "Cancer History Requirements." The Cancer History Requirements document provided an explanation of which types of beneficiaries were eligible for reimbursement for CGx Tests from Medicare and, thus, which beneficiaries the Testing Companies would deem qualified patient leads for which SANTOS would receive a kickback. A review of the CGx Agreement reveals that it was a sham contract designed to conceal the nature of the kickback payments. For instance, the CGx Agreement made it appear that Santos Company-1 was engaged in referral services for Laboratory-1 and provided, among other things, that Laboratory-1 would pay SANTOS based on the hours and expenses SANTOS incurred, rather than on a per-test basis.

25. On or about November 15, 2019, SANTOS and CW-1 engaged in another recorded conversation. During the conversation, SANTOS told CW-1 that he was in possession of a number of CGx Test kits with patient specimens ready

to send to Laboratory-1, but specified that none of the kits had yet been ordered or prescribed by a healthcare professional. CW-1 did not object to receiving them, but responded that in the legitimate course of practice, medical professionals have to issue prescriptions for CGx Tests before a Medicare beneficiary provides a specimen.

26. On or about November 16, 2019, SANTOS emailed an executed version of the CGx Agreement to CW-1. On or about November 19, 2019, SANTOS registered with the Portal, enabling him to upload qualified patient leads, and to review the status of those leads that had already been uploaded to the Testing Companies.

27. On or about December 9, 2019, SANTOS and CW-1 engaged in another recorded conversation. During the conversation, SANTOS told CW-1 that he was in possession of hundreds of CGx Test kits with completed testing swabs that had been returned to SANTOS and were ready for laboratory testing and subsequent Medicare billing (hereinafter, "Completed Kits"). SANTOS explained that some of the Completed Kits still required prescriptions from health care professionals, while others already had prescriptions. SANTOS noted that with respect to those Completed Kits that still required prescriptions, after CW-1 assisted SANTOS with obtaining prescriptions through CW-1's network of telemedicine health care providers, SANTOS would falsify the collection dates for the swab samples to make it appear that the samples were collected after the prescriptions for the Completed Kits had been obtained.

28. On or about December 11, 2019, SANTOS and CW-1 engaged in another recorded conversation. During the call, SANTOS explained that he planned to pay a kickback of approximately \$1,000 to \$1,500 downstream to other Suppliers under his management for every processed CGx Test for which CW-1 paid a kickback to SANTOS.

29. Beginning on or about December 16, 2019, SANTOS and Santos Company-1 began submitting Completed Kits and qualified patient leads to the Testing Companies for Medicare beneficiaries located in New Jersey and elsewhere. Specifically, on or about December 18, 2019, Santos Company-1 submitted to the Portal information identifying approximately 4 Medicare beneficiaries located in New Jersey for whom SANTOS possessed Completed Kits that SANTOS sought to have processed by Laboratory-1.

30. As previously described, once a qualified patient lead or Completed Kit was processed by Laboratory-1, CW-1 paid a kickback of approximately \$1,750 per test to SANTOS. To try to legitimize the terms of the CGx Agreement, SANTOS generated false invoices for hourly referral services and sent them to the Testing Companies, even though SANTOS knew that the invoiced payments were, in fact, pre-arranged kickbacks for each qualified patient lead or Completed Kit that had been processed by Laboratory-1.

31. For example, on or about January 16, 2020, CW-1 sent a text message to SANTOS, stating that he/she had received approximately 6 Completed Kits and told SANTOS to “invoice me for the 6 in the first package.” Shortly thereafter, SANTOS emailed an invoice to CW-1 for approximately \$10,500 in “[s]ervices [at] \$1750 per hour [for] 6 hrs.” In reality, SANTOS knew that the invoiced payment represented a kickback payment of approximately \$1,750 for each of the 6 Completed Kits. On or about January 17, 2020, CW-1 caused approximately \$10,500 to be wired to a bank account controlled by SANTOS.

32. For tracking purposes, each Medicare beneficiary for whom SANTOS submitted a qualified patient lead or Completed Kit was assigned a unique record identification number in the Portal. In order for SANTOS and CW-1 to keep track of the kickback payments owed to SANTOS, they agreed that SANTOS’s invoices would include the record identification numbers for each Medicare beneficiary for whom SANTOS was invoicing CW-1 for kickbacks.

33. For example, on or about January 29, 2020, SANTOS emailed an invoice to CW-1 for approximately \$8,750. The invoice included record identification numbers in parentheses and stated that the \$8,750 payment was for “Services (72895, 72875, 72981, 79011) \$1750 per hour 5hrs.” Notably, the invoice only included 4 record identification numbers even though it reflected a request for kickbacks for 5 Completed Kits. After SANTOS sent the email to CW-1 on or about January 29, 2020, SANTOS and CW-1 had a telephone conversation, which was recorded. During the call, CW-1 told SANTOS that the invoice SANTOS had sent had incorrectly included “4 patient numbers but 5 billing hours for 5 patients.” CW-1 asked SANTOS to correct the invoice. Shortly thereafter, SANTOS emailed a revised invoice to CW-1. The revised invoice included 5 record identification numbers for 5 Medicare beneficiaries: “Services (72895, 72875, 72981, 79011, 79012) \$1750 per hour 5hrs.” Ultimately, SANTOS again revised the invoice for this set of Medicare beneficiaries because only approximately 3 of them had Completed Kits that could be processed by Laboratory-1. Thus, on or about January 31, 2020, SANTOS emailed a revised invoice for approximately \$5,350, which represented approximately \$1,750 in kickbacks for each of the 3 Completed Kits. Notwithstanding the agreement as to the nature of the payments to SANTOS, the invoice stated that it was for “Services (72895, 79011, 79012) \$1750 per hour 3hrs.” On or about February 3, 2020, CW-1 caused \$5,250 to be wired to a bank account controlled by SANTOS. This evidence demonstrates that the “invoices” were merely efforts by SANTOS to manipulate his purported services and fees to cover up the fraudulent kickback scheme.

34. As a result of the scheme, from in or around November 2019 through on or about March 26, 2020, the Testing Companies paid SANTOS kickbacks of approximately \$33,250 for qualified patient leads and Completed Kits that

Santos Company-1 provided to the Testing Companies. The leads and tests submitted by SANTOS to the Testing Companies were intended to be billed to Medicare for a total of approximately \$1,193,709.00 in reimbursements.

### The Coronavirus and RPP Test Scheme

35. Starting on or about March 12, 2020, SANTOS approached CW-1 to arrange a kickback scheme wherein SANTOS would be paid for each Coronavirus and RPP Test processed by Laboratory-1 for testing and submitted to Medicare for payment. To that end, on various dates between on or about March 12, 2020 and March 26, 2020, SANTOS and CW-1 communicated via telephone and text message regarding the scheme and how SANTOS intended it to operate.

36. For example, on or about March 12, 2020, SANTOS and CW-1 communicated via text message about extending their ongoing scheme to profit from testing related to COVID-19:

**SANTOS:** This stuff is crazy.

We are working with a lab for the covid-19 so let me know if you have any dr networks , etc that need testing.

**CW-1:** Might. What's the payout structure and such?

**SANTOS:** We are waiting for the final fee schedule for the cpt code for covid-19. Should be out in a week or so. ...

So once we get final number we can confirm the flat rate.

Govt ok'd all copays and deductables [sic] across the board for this so it is huge. I just got a call to service the DOD<sup>1</sup> with one of our channel partners.

**CW-1:** Wow.

Based on my training and experience, as well as information obtained during the investigation, "cpt code" refers to Medicare coding denoting the price at which Coronavirus Tests and related testing would be reimbursed.

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<sup>1</sup> Based on my training and experience, as well as information obtained during the investigation, "DOD" refers to the United States Department of Defense. The Defense Health Agency manages the TRICARE health care entitlement program on behalf of DOD. TRICARE is a federal health care program that provides health care reimbursement for military personnel and veterans. Like Medicare, TRICARE will also refuse to reimburse any claim known to have been procured by fraud, violations of the AKS, or other criminal activity.

37. On or about March 19, 2020, CW-1 and SANTOS engaged in a recorded conversation. During the call, SANTOS made the following statements explaining that he viewed the pandemic as a money-making opportunity:

- “[W]hile there are people going through what they are going through, you can either go bankrupt or you can prosper.”
- “[T]he good thing is we’re opening a lot of doors through this coronavirus testing.”
- SANTOS noted that his other work was on hold because “everybody has been chasing the Covid dollar bird.”

38. During the March 19, 2020, conversation, SANTOS explained that he was already working with 3 laboratories (the “Santos Laboratories”) and, within a period of just a few days, had already begun to process approximately 5,000 bundled Coronavirus and RPP Tests. He told CW-1 that because Laboratory-1 currently lacked the capability to perform Coronavirus Tests and RPP Tests, SANTOS could arrange a lab-to-lab reference relationship between Laboratory-1 and one of the Santos Laboratories for the Coronavirus Tests and RPP Tests, allowing Laboratory-1 to submit claims to Medicare, acting both as a referring laboratory and a billing laboratory.

39. SANTOS explained that he believed the Medicare reimbursement for the Coronavirus Test was approximately \$35 per test, but that the RPP Test reimbursement was much higher, depending upon whether it was a Complete or Partial RPP Test. SANTOS told CW-1 that pursuant to the scheme, doctors would sign pre-made prescription forms for a combination of a Coronavirus Test and RPP Test: if a Medicare beneficiary tested positive for COVID-19, the prescription directed the laboratory to then run a Partial RPP Test, which Medicare would reimburse for approximately \$300 to \$400 per test. In that circumstance, SANTOS would expect a kickback of approximately \$125 per test. If a beneficiary tested negative for COVID-19, the prescription directed the laboratory to then run a Complete RPP Test, which Medicare would reimburse for approximately \$650 per test. In that circumstance, SANTOS would expect a kickback of approximately \$250 per test.

40. According to SANTOS, the goal of the scheme was to specifically target Medicare beneficiaries who were not exhibiting symptoms of COVID-19 or were otherwise unlikely to test positive for the virus, in order to increase his chances of being paid at the higher kickback rate of \$250 for a Complete RPP Test. During a recorded conversation with CW-1 on or about March 23, 2020, for example, SANTOS noted, “we’re trying to have more of the asymptomatic patients going through,” and, “if we got 1,000 tests a day to do, we don’t want

999 coming in at just COVID. What it does its gonna bankrupt everybody. It's not gonna work.” Based on my training and experience and information obtained during the investigation, SANTOS was indicating that he preferred to run Coronavirus Tests for Medicare beneficiaries who were likely to test negative for COVID-19, so that the more expensive Complete RPP Test would then be performed and billed to Medicare.

41. On or about March 19, 2020, SANTOS told CW-1 that downstream Suppliers under his management were able to generate between roughly 8,000 to 10,000 completed test kits per month for the combined Coronavirus and RPP Tests from assisted living facilities, hospitals, urgent care centers, and medical practices, where most of the patients were Medicare beneficiaries. SANTOS explained that his Suppliers encouraged doctors to prescribe both the Coronavirus Test and RPP Test and that not a single doctor had refused to prescribe both tests, regardless of whether they were medically necessary.

42. On or about March 19, 2020, SANTOS emailed CW-1 an example of the prescription form that the Santos Laboratories had been using to procure doctors’ orders for Coronavirus and RPP Tests. The prescription form comported with SANTOS’s description of the test-bundling scheme, requiring a “Full RPP panel for [COVID-19] negatives and [Partial RPP] bacterial targets only for [COVID-19] positives.” A sample of the prescription form is below:

From: "Erik Santos"  
 Sent: Thu, 19 Mar 2020 20:50:02 -0400  
 To:  
 Subject: COVID/RPP

**\*\*If both panels are selected, reflex for SARS-CoV-2 results will be: Full RPP panel for negatives and bacterial targets only for positives.\*\***

SARS-CoV-2

Respiratory Pathogen Panel (RPP)

<b>Viral Targets:</b>	<b>Bacterial Targets:</b>
Influenza A	<i>Chlamydia pneumoniae</i>
Influenza A H1	<i>Mycoplasma pneumoniae</i>
Influenza A H3	Bordetella
Influenza A 2009 H1N1	<i>Bordetella holmesii</i>
Influenza B	<i>Bordetella pertussis</i>
Respiratory Syncytial Viruses (RSV) A & B	<i>Legionella pneumophila</i>
Parainfluenza Viruses (PIV) 1, 2, & 3	<i>Moraxella catarrhalis</i>
Human Metapneumovirus (hMPV)	<i>Streptococcus pneumoniae</i>
Human Rhinovirus (HRV)	<i>Streptococcus pyogenes</i> (group A)
Adenovirus B/C/E	<i>Klebsiella pneumoniae</i>
Coronavirus	<i>Haemophilus influenzae</i>
Coronavirus NL63	
Coronavirus OC43	
Coronavirus HKU-1	
Coronavirus 229E	

Collection date \_\_\_\_\_

Swab Type  Nasopharyngeal  
 Other \_\_\_\_\_

\*ICD-10 \_\_\_\_\_

43. During their conversations, SANTOS explained to CW-1 how he aimed to profit from the scheme by offering doctors and healthcare workers expedited test results within 24-hours of submission of a completed testing kit. In return, SANTOS expected that this would encourage the doctors and healthcare workers to use his companies and laboratories to process their prescriptions for bundled Coronavirus and RPP Tests. To further expedite the testing process and meet his promised 24-hour turnaround, SANTOS asked if CW-1 would agree that, contrary to Medicare rules, the Suppliers could skip over

Laboratory-1 and send completed Coronavirus and RPP Tests directly to their reference laboratory, rather than following the proper procedures for a referral laboratory.

44. During their conversations, SANTOS also negotiated the payment of kickbacks under the scheme. For example, during a March 20, 2020, recorded call, SANTOS and CW-1 discussed that the Testing Companies would pay SANTOS a kickback of \$100 per-bundled Coronavirus Test and Partial RPP Test kit processed by Laboratory-1, and \$225 per-bundled Coronavirus Test and Complete RPP Test processed by Laboratory-1. SANTOS stated that, in addition to the Coronavirus Test kits and RPP Test kits his Suppliers would be referring to Laboratory-1, he would also arrange to send the Testing Companies qualified patient leads for Medicare beneficiaries who had not yet been approached regarding Coronavirus and RPP Testing. CW-1 told SANTOS that he/she was in the process of forming a new business entity for the purposes of arranging a sham referral services agreement similar to the CGx Agreement to cover up the scheme.

45. On or about March 23, 2020, at the direction of law enforcement, CW-1 registered a limited liability company in New Jersey (the “New Jersey Company”). On or about March 23, 2020, CW-1 sent SANTOS a blank referral services agreement (the “COVID-19 Agreement”). The parties to the COVID-19 Agreement were Santos Company-1 and the New Jersey Company. The Agreement provided that SANTOS would be paid based on the hours and expenses SANTOS incurred for engaging in referral services, rather than on a per-test basis. On or about March 23, 2020, SANTOS and CW-1 discussed on a recorded call that, under the proposed COVID-19 Agreement, SANTOS would continue to send fake invoices that purported to bill for hourly services. Per their discussion, the invoices would “hide the fact that [the payments were actually] per patient.” SANTOS stated that he would make the hourly rate on each invoice match the amount of the kickback in order to conceal that the payments were on a per-test basis.

46. During their March 23, 2020, call, CW-1 and SANTOS also agreed that, like with CGx Tests, if Medicare ultimately did not reimburse for a Coronavirus Test or RPP Test after CW-1 had already paid a kickback to SANTOS, CW-1 would receive a credit from SANTOS for that kickback on SANTOS’s next invoice. SANTOS noted that in case of an audit, SANTOS would reduce the amount of billed hours on the next invoice to make it appear that SANTOS was entitled to fewer hours of payments, even though both parties were aware that the payment was a credit for a kickback.

47. On or about March 24, 2020, SANTOS emailed CW-1 an executed version of the COVID-19 Agreement, which SANTOS signed on behalf of Santos Company-1.