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10 THELMA PEDROCHE

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SUPERIOR COURT OF CALIFORNIA

Case No. 17CR10194
COUNTY OF SANTA BARBARA - MILLER DIVISION

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

SEFERINO PEREZ HERNANDEZ, EDEN
BAUTISA, and THELMA PEDROCHE

Defendants.

**NOTICE OF MOTION AND MOTION
TO SET ASIDE THE INFORMATION
(Pen. Code, § 995); MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: September 15, 2020
Time: 1:30 pm
Dept.: Dept. SM7
Judge: Hon. James K. Voysey

1 **TO SANTA BARBARA COUNTY DISTRICT ATTORNEY JOYCE DUDLEY AND**
2 **DEPUTY DISTRICT ATTORNEY STEPHEN F. WAGNER:**

3 PLEASE TAKE NOTICE that Defendant Thelma Pedroche hereby moves under Penal
4 Code section 995, subdivision (a)(2)(B), to set aside the Information on the grounds that the
5 Defendant has been committed without reasonable or probable cause. Petitioner's motion is
6 based on the attached Memorandum of Points and Authorities and will be heard on September
7 15, 2020 at 1:30 p.m. in Department SM7 of the Santa Barbara County Superior Court, Miller
8 Division.

9
10 Dated: September 10, 2020

Respectfully submitted,
Law Offices of J. Jeff Chambliss

12 By: 
13 J. Jeff Chambliss,
14 Attorney for THELMA PEDROCHE

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Defendant Thelma Pedroche is Eduardo Pedroche's sister-in-law. She was also his caretaker for the better part of a decade. Though she was not Eduardo's *only* caretaker during this time period, she was the one with whom Eduardo spent the most time. By all accounts, Thelma took good care of Eduardo. She bathed him, fed him, kept track of his various medications, and maintained a clean and restful home environment. She took Eduardo to all of his doctors' appointments, medical treatments, or even the hospital if that was where he needed to go.

But taking care of Eduardo took up a significant amount of Thelma's time—so much so that she could not simultaneously care for Eduardo *and* maintain full employment elsewhere. This caused Thelma, her sister Eden Bautista, and Eden's husband Seferino Hernandez to all come to an agreement: Using money paid to Eden by the California Department of Social Services' In-Home Supportive Services Program, Eden would compensate Thelma for any and all caretaking services that she provided to Eduardo. There would be no additional paperwork, as IHSS had already authorized Eden and Seferino to provide caretaking services to Eduardo. The situation was complicated somewhat by the fact that Thelma lived in Las Vegas, Nevada. But all Eduardo needed to do in order to maintain Medi-Cal eligibility was return to California on a semi-regular basis. This was hardly a problem, however, as all his doctors were here. He was welcome to stay with Seferino as often as he liked.

The California Department of Health Services eventually learned about this arrangement from Fe Pedroche, a woman formerly married to Thelma’s son. Thelma, Eden, and Seferino were all charged with conspiring to defraud Medi-Cal out of hundreds of thousands of dollars. Thelma herself is alleged to have conspired to present IHSS with “fraudulent” claims for “services or merchandise.” But all of this is greatly exaggerated. Even if everything above were true, the worst that might be said about Thelma is that she performed Eden’s work for Eden’s rate. While Thelma may have violated Medi-Cal’s rules and regulations, there exists no evidence that she intended to fraudulently obtain something for nothing—or even less than it was worth—or

1 otherwise take payments from IHSS beyond what it would have paid Eden or Seferino for doing
2 the same. Thus, Thelma has committed no fraud, and this Court should therefore set aside Counts
3 1 and 6 of the Information.

4 MATERIAL ALLEGATIONS

5 The People allege that, between January 1, 2005 and December 31, 2016, Thelma
6 Pedroche both conspired to commit and did commit Medi-Cal fraud. (See Information, Counts
7 1, 6.) More specifically, Thelma is alleged to have both conspired to present and to have
8 presented a “fraudulent claim for services or merchandise” in violation of Welfare & Institutions
9 Code section 14107, subdivision (b)(1). (See also Pen. Code, § 182.) This alleged “fraud” is also
10 alleged to have resulted in a “theft” of more than \$100,000. (See Information, Count 1; see also
11 Pen. Code, § 1203.045.)

12 MATERIAL FACTS

13 “In-Home Supportive Services [IHSS] is a program that is funded by Medi-Cal money,
14 as well as Federal, State, and local county money. It provides services to individuals to remain
15 in their homes so they don’t have to go institutions to get taken care of.” (R.T. 17:3-7.)¹ Eduardo
16 Pedroche has been a recipient of IHSS since approximately 2006. (R.T. 18:1.) Thelma Pedroche
17 is Eduardo’s sister-in-law and former caretaker. (R.T. 41:3-4.) Eden Bautista is Thelma’s sister.
18 Seferino Hernandez is Eden’s husband. Each has cared for Eduardo at various times. (R.T. 19:1-
19 8.) For a time, Eduardo lived with Seferino on “Oakridge Court” in Santa Maria, CA. “Oakridge
20 Court” is the address “formally connected to IHSS applications or documentation.” (R.T. 21:20-
21 22:2, 26:20-24.)²

22 In or around 2016, Department of Health Care Services (DHCS)’s Supervising Fraud
23 Investigator Cory Chevalier interviewed Fe Pedroche, a woman formerly married to Thelma’s
24 son. (R.T. 19:12-20, 36:21-22.) Fe told Chevalier that Eduardo “lived in the State of Nevada”
25 and was not “receiving proper care.” (R.T. 28:21-23.) Fe also told Chevalier that Eduardo never

27 ¹ “R.T.” refers to the Reporter’s Transcript of Preliminary Hearing, which was filed with the Court on March 19,
28 2020.

² Defendant believes that “Oakridge Court” may be a mistaken reference to Seferino’s actual address, which is 1528
North Oakcrest Way, Santa Maria, CA. (R.T. 57:10-14.)

1 lived at one of the addresses he was “supposed to be living in the past.” (R.T. 28:23-27.) Around
2 this same time, a Santa Barbara County Social Services Worker named Jose Vargas visited
3 Seferino’s home on “Oakridge Court.” (R.T. 26:14-27:15.) Eduardo, Seferino, and Thelma were
4 all present inside the home. (R.T. 27:19-23.) According to Chevalier, Vargas “felt Eduardo did
5 not live there because there were not bed rails on the bed.” (R.T. 27:23-24.) Vargas also noted
6 that there was a “van parked in front of the home with Nevada plates,” and that when Eduardo
7 asked for medication, a “man left the home and exited to the van with Nevada plates and got the
8 medication out and brought them in. (27:25-27.) He also noted that “there were not things
9 conducive to a person in Eduardo’s shape, health-wise, that he noticed that would be living in
10 that home.” (R.T. 27:27-28:2.)

11 Relying on this information, Chevalier obtained and executed a search warrant against
12 Seferino’s home on “Oakridge Court.” (R.T. 22:22-23.) Seferino was present that day but
13 Eduardo was not. (R.T. 22:25-23:1.) After speaking with Seferino, Chevalier concluded that
14 Eduardo was not living there. (R.T. 23:5-23.) Working with a “Detective DePalma from Las
15 Vegas Metro,” however, Chevalier was able to determine that Eduardo was living with Thelma
16 in Las Vegas, Nevada. (R.T. 24:2-17, 41:2-4.) Chevalier subsequently learned from Eden that
17 Eduardo moved to Las Vegas “approximately 2005, 2006,” that Eden was the “IHSS provider in
18 California,” that “she received the pay warrants from the State Controller’s office” and “would
19 then take the pay warrants and cash them at Wal-Mart,” and “deposit the cash into Thelma’s
20 bank account, Bank of America.” (R.T. 41:2-10.)

21 Thelma Pedroche was “never an IHSS provider” and, therefore, never received any
22 payments directly from the State of California. (R.T. 31:13-18, 38:1-2, 51:3-11.) She “never
23 signed an In-Home Supportive Provider timesheet,” nor applied to be an In-Home Support
24 Services Provider.” (R.T. 51:12-17, 64:2-14.) This is not to suggest, however, that Eduardo did
25 not receive excellent care. (R.T. 46:3-9.) As Chevalier himself testified, Eduardo looked “very
26 clean” when he was located by DePalma. (R.T. 50:22.) Thelma’s “home was very clean, as well.”
27 (R.T. 50:25.) Medications, toiletries, etc. were all in order. (R.T. 50:26-51:2.) Between 2006 and
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1 2016, Eden is believed to have paid Thelma approximately \$283,452.70 for these caretaking
2 services—less however much she retained for herself. (R.T. 33:9-15, 52:21-10.)

3 **ARGUMENT**

4 **I. The Court must set aside any counts not supported by “reasonable or probable”
5 cause.**

6 The Court must set aside each count in the Information of which any element is not
7 supported by “reasonable or probable cause.” (Pen. Code § 995, subd. (a)(2)(B); *People v.*
8 *Caffero* (1989) 207 Cal.App.3d 678, 684.) “Reasonable or probable cause” means such a state
9 of facts as would lead a man of ordinary caution or prudence to believe, and conscientiously
10 entertain a strong suspicion of the guilt of the accused.” (*People v. Nagle* (1944) 25 Cal.2d 216,
11 222.) “To establish probable cause sufficient to withstand a section 995 motion to dismiss, the
12 People must make some showing as to the existence of each element of the charged offense.”
13 (*People v. Chapple* (2006) 138 Cal.App.4th 540, 545.)

14 **II. The People failed to show that Eduardo’s Medi-Cal eligibility had terminated.**

15 The “gravamen” of the People’s case is “the allegation . . . that [Medi-Cal] benefits were
16 received when services were not provided . . . [i]n the State of California.” (R.T. 9:3-8, 10:18-
17 22, 88:8-15.) Where services are ultimately provided, however, is neither here nor there. It is not
18 the beneficiary’s physical location but their “California residence” status that ultimately controls
19 their eligibility for Medi-Cal. (See 22 Cal. Code Regs., § 50320, subd. (a).) Provided that certain
20 other verification requirements are met, “California residence shall be established” if the
21 “applicant is physically present and is living in California with the intention to remain
22 permanently or for an indefinite period.” (22 Cal. Code Regs., §§ 50320, subd. (b)(1), 50320.1,
23 subd. (a).) “Once California residence is established it continues until residence is established in
24 another state or country.” (22 Cal. Code Regs., § 50320, subd. (e).) “Residence shall not be
25 affected by temporary absence from the State for periods of 60 days or less.” (22 Cal. Code
26 Regs., § 50321, subd. (a).) “Absence from the State for more than 60 days shall be presumptive
27 evidence of the applicant’s or beneficiary’s intent to change residence from California to a place
28 outside the State unless the person declares in writing both: (1) An intent to return to California;

[and] (2) The existence of one of the following circumstances: (A) Illness or emergency circumstances which prohibit return to California; (B) Family members with whom the applicant or beneficiary lives are California residents and are physically present in the State; [or] (C) The applicant or beneficiary maintains California housing arrangements.” (22 Cal. Code Regs., § 50323, subd. (a.)) “Unless there is evidence to the contrary, California residence may be considered to be terminated when an applicant or beneficiary leaves California and then takes any of the following actions in another state: (1) Purchases, leases or rents a residence; (2) Becomes employed; (3) Obtains an out-of-state driver’s license; [or] (4) Applies for aid in another state.” (22 Cal. Code Regs., § 50323, subd. (b.))

Eduardo’s Medi-Cal eligibility would not have been affected by any “temporary absences” from California of “60 days or less.” He could leave and re-enter California once every 60 days—a mere six times per year—without jeopardizing his “California residence.” In the event that Eduardo remained away from California for more than 60 days, he need only “declare in writing” that he “inten[ded] to return to California” and had “maintain[ed] California housing arrangements.” (22 Cal. Code Regs., § 50323, subd. (a.)) Though the People have made “some showing” that Eduardo received most of his care in Nevada (R.T. 88:8-15), they have yet to demonstrate that Eduardo’s “California residence” would have been terminated had IHSS been aware of how much time he spent in Nevada. That this would have occurred actually seems unlikely, as Eduardo returned regularly to California for doctors’ appointments, medical treatments, and to visit his family. He certainly never took any action that “may be considered” to have terminated his “California residence” (e.g., obtaining his own residence, obtaining a Nevada driver license, or applying for aid in Nevada). And while Chevalier testified that IHSS is a “benefit that only applies to those who live in California” (R.T. 43:22-24), it would be more accurate to say that “California residence is a requirement for Medi-Cal eligibility.” (See 22 Cal. Code Regs., § 50320, subd. (a.)) It having been shown that Eduardo had established “California residence,” that Medi-Cal never terminated his “California residence,” *and* that Eduardo never did anything that would *necessarily* result in the termination of his “California residence,” there

1 exists no basis upon which this Court may conclude that Eduardo was not entitled to Medi-Cal
2 benefits.

3 **III. There is no “probable cause” to believe that Codefendants violated Welfare &**
4 **Institutions Code section 14107, subdivision (b)(1).**

5 By its own terms, Welfare Code section 14107, subdivision (b)(1), is limited to the
6 presentment of “fraudulent claim[s] for services or merchandise.” As Chevalier testified, the
7 quality and amount of services rendered here is not at issue. (R.T. 46:3-9.) As explained above,
8 Codefendants did not “willfully [fail] to report . . . with the intention of deceiving [IHSS] for the
9 purpose of obtaining Medi-Cal benefits to which the *beneficiary* was not entitled.” (See 22 Cal.
10 Code Regs., § 50782 [defining “fraud”] (emphasis added).) Defendants also provided all of the
11 services for which payment was claimed. (See *Bower v. AT&T Mobility, LLC* (2011) 196
12 Cal.App.4th 145, 1557 [“It is essential . . . that the person complaining of fraud actually have . .
13 suffered damages as a result.”].)

14 The People might counter that the presentment of “fraudulent claim[s] for services or
15 merchandise” includes the submission of “false information for the purpose of obtaining greater
16 compensation than that to which [she] is legally entitled for furnishing services or merchandise.”
17 Under this theory, Eden may have violated subdivision (b)(1) by claiming compensation for
18 services that Thelma provided. Similarly, the People may argue that that the presentment of
19 “fraudulent claim[s] for services or merchandise” includes the submission of “false information
20 for the purpose of obtaining authorization for furnishing services or merchandise.” Under this
21 theory, both Eden or Seferino may have violated subdivision (b)(1) by failing to alert IHSS to
22 the fact that Eduardo resided in Nevada. Insofar as either of these theories is the People’s theory
23 of this case, however, the entire Information should be set aside because submission of the types
24 of “false information” described above has already been made punishable under subdivisions
25 (b)(2) and (b)(3). “[W]herever reasonable we should indulge in statutory interpretations that
26 produce internal harmony, avoid redundancy and accord a significance to each word in the
27 phrase.” (*Franchise Tax Bd. of State of Cal. v. Superior Court* (1998) 63 Cal.App.4th 794, 799].)

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1 If there exists no “probable cause” to believe that Codefendants violated subdivision
2 (b)(1), there can be no “reasonable or probable cause” to believe that Thelma aided and abetted
3 or otherwise acted as an accessory to that particular offense. “[T]he commission of a crime is a
4 prerequisite for criminal liability. If the defendant himself commits the offense, he is guilty as a
5 direct perpetrator. If he assists another, he is guilty as an aider and abettor. It follows, therefore,
6 that for a defendant to be found guilty under an aiding and abetting theory, someone other than
7 the defendant must be proven to have attempted or committed a crime; i.e., absent proof of a
8 predicate offense, conviction on an aiding and abetting theory cannot be sustained.” (*People v.*
9 *Perez* (2005) 35 Cal.4th 1219, 1225.)

10 **IV. There is no “probable cause” to believe that Thelma presented—or aided and
11 abetted the presentment of—a “fraudulent claim for services or merchandise.”**

12 Welfare and Institutions Code, Division 9, Chapters 7 and 8 address “Basic Health Care”
13 and “Prepaid Plans,” respectively. Welfare & Institutions Code section 14107, subdivisions (a)
14 through (b)(1), states that “Any person” who, “with intend to defraud, presents for allowance or
15 payment any false or fraudulent claim for furnishing services or merchandise under [Chapter 7]
16 or Chapter 8,” is “punishable by imprisonment as set forth in subdivisions (c), (d), and (e), by a
17 by a fine not exceeding three times the amount of the fraud or improper reimbursement or value
18 of the scheme or artifice, or by both this fine and imprisonment.” As relevant here, subdivision
19 (c) states that “A violation of subdivision (a) is punishable by imprisonment in a county jail, or
20 in the state prison for two, three, or five years.” “An intent to defraud is an intent to deceive
21 another person for the purpose of gaining a material advantage over that person or to induce that
22 person to part with property or alter that person’s position by some false statement or false
23 representation of fact, wrongful concealment or suppression of the truth or by any artifice or act
24 designed to deceive.” (*People v. Guzman* (2011) 201 Cal.App.4th 1090, 1097-1098 [quoting
25 *People v. Pugh* (2002) 104 Cal.App.4th 66, 72].)

26 *A. Thelma did not present IHSS with a “claim for furnishing service or
27 merchandise.”*

1 Chevalier's testimony at Defendants' preliminary hearing established that Thelma herself
2 never directly presented IHSS with any "claim for furnishing services or merchandise," "signed
3 an In-Home Supportive Provider timesheet," or even "applied to be an In-Home Support
4 Services Provider." (R.T. 31:13-18, 38:1-2, 51:3-17, 64:2-14.)

5 *B. Thelma did not "aid and abet" Codefendants in their alleged effort to present
6 IHSS with "fraudulent claim[s] for furnishing services or merchandise."*

7 The People may argue that, while Thelma did not directly present any "fraudulent
8 claim[s] of services" here, she may still be held to answer for violating Welfare & Institutions
9 Code 14107 because she "aided and abetted" the presentment of Eden's own allegedly
10 "fraudulent claim[s] for furnishing services." (See Pen. Code, § 31; *People v. Campbell* (1994)
11 25 Cal.App.4th 402, 409 ["A person aids and abets the commission of a crime when he or she,
12 (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose
13 of committing, facilitating or encouraging commission of the crime, (iii) by act or advice, aids,
14 promotes, encourages or instigates the commission of the crime."].) This theory must fail,
15 however, as the People have not shown that Thelma specifically intended to commit a fraud or
16 had knowledge of Eden's allegedly fraudulent purpose. The opposite is actually suggested by
17 Chevalier's testimony regarding statements made by Thelma's daughter Geraldine, who
18 informed Chevalier that she was "unaware" that she could not submit timecards for "somebody
19 who was not living in the State of California," and that she did not know that IHSS "was a
20 California-only program." (R.T. 45:15-46:2.) Importantly, the People have also failed to show
21 that Thelma—before or during the commission of any alleged offense—did anything to aid,
22 promote, encourage, or instigate the presentment of any "fraudulent claim[s] for furnishing
23 services." (See *People v. Cooper* (1991) 53 Cal.3d 1158, 1161 [holding that the "requisite intent
24 to aid and abet must be formed before or during" the commission of the "principal offense"].)
25 Even if Eden's intent was fraudulent, that Thelma knew Eden's intent to be fraudulent, and that
26 Thelma intended to benefit from Eden's allegedly fraudulent act, it does not follow that
27 Thelma—though she may at that point be a co-conspirator—was also an "aider and abettor" of
28 the alleged offense. (See *People v. Huling* (1925) 71 Cal.App. 144, 146 ["A 'conspirator' is one

1 who is a participant in a conspiracy. And a conspirator is not necessarily an aider and abettor.”];
2 *People v. Malotte* (1956) 46 Cal.2d 59, 65 (“[A] conspirator does not have to participate in the
3 crime conspired.”).) Absent evidence that Thelma acted as a “principal” here; i.e., that Thelma
4 actually *participated* in the presentment of any “fraudulent claim[s] for furnishing services or
5 merchandise,” this Court should set aside Count 1 of the Information (See Pen. Code, § 27, 31.)

6 C. *Thelma could not have violated Welfare & Institutions Code section 14107,
7 subdivision (b)(1), if she was only an “accessory after the fact.”*

8 The People may argue that Thelma also aided and abetted Codefendants by helping
9 Codefendants conceal evidence of fraudulent “claims” (e.g., regarding “residency”) that had
10 already been made. The *sole* evidence in support of this argument would be the fact that Vargas
11 observed Eduardo and Thelma together inside Seferino’s Santa Maria residence. (R.T. 27:18-23;
12 see also *People v. Campbell* (1994) 25 Cal.App.4th 402, 409 (“[Defendant] correctly points out
13 that in general neither presence at the scene of a crime nor knowledge of, but failure to prevent
14 it, is sufficient to establish aiding and abetting its commission.”).) Even assuming that this fact
15 constituted “reasonable or probable cause” to believe Thelma had helped Codefendants conceal
16 evidence of some fraud, though, Thelma would be at most an “accessory after the fact”—not a
17 “principal” to the commission of the alleged offense itself. (See Pen Code, § 32.) “The accessory
18 after the fact, defined in Penal Code section 32, commits an offense separate and distinct from
19 the crime of the principal. This is a difference sometimes overlooked.” (*People v. Prado* (1977)
20 67 Cal.App.3d 267, 271.)

21 V. **There is no “probable cause” to believe that Thelma conspired to commit Medi-
22 Cal fraud.**

23 Penal Code section 182 provides in relevant part that “[i]f two or more persons conspire
24 . . . [t]o commit any [felony] . . . [t]hey shall be punishable in the same manner and to the same
25 extent as is provided for the punishment of that felony.” “Criminal conspiracy is an offense
26 distinct from the actual commission of a criminal offense that is the object of the conspiracy.”
27 (*People v. Morante* (1999) 20 Cal.4th 403, 416.) “A conviction of conspiracy requires proof that
28 the defendant and another person had the specific intent to agree or conspire to commit an

1 offense, as well as the specific intent to commit the elements of that offense, together with proof
2 of the commission of an overt act ‘by one or more of the parties to such agreement’ in furtherance
3 of the conspiracy.” (*Ibid.* [quoting Pen. Code, § 184].) “Although a conspiracy may be proved
4 by circumstantial evidence, there must be some evidence from which the unlawful agreement
5 can be inferred before criminal liability may be imposed on the basis of conspiracy. There must
6 be substantial evidence to establish all the essential elements of the conspiracy. Mere association
7 alone cannot furnish the basis for a conspiracy.” (*People v. Drolet* (1973) 30 Cal.App.3d 207,
8 218 [citations omitted].)

9 A. *There exists no evidence that Thelma ever specifically intended to agree to*
10 *commit Medi-Cal fraud.*

11 If there exists any circumstantial evidence of “specific intent to agree or conspire to
12 commit an offense, as well as the specific intent to commit the elements of that offense” here,
13 it must be based on Chevalier’s recounting of the “tip” provided to DHCS by Fe Pedroche:

14 [Fe] told me that [Eduardo] lived in the state of Nevada and that she was concerned
15 for Eduardo because she felt Eduardo wasn’t receiving proper care; that she actually
16 lived at one of the addresses listed where Eduardo was supposed to be living in the
17 past and she told me he never lived there. The mail would come, as in IHSS checks
18 or documents, and they were somehow given to the people in Nevada.

19 (R.T. 28:21-27.) The gist of Fe’s “tip” was that Seferino, Eden, and Thelma were being paid by
20 IHSS to care for Eduardo but were not actually providing such care, and that Eduardo—who was
21 not even a California resident—might therefore be in danger. Without suggesting that DHCS
22 acted unreasonably by investigating Fe’s “tip,” Defendant must emphasize that the fruits of that
23 investigation ultimately revealed the opposite to be true:

24 • Eduardo was receiving quality care. (R.T. 46:3-9, 50:17-52:2.)
25 • Eduardo visited California regularly—not just for his yearly assessment but for
26 doctor’s appointments and medical treatment as well. (R.T. 25:18-24, 36:11-16, 55:8-
27 16, 56:12-23.)

- 1 • Though Fe believed that Eduardo was “supposed” to be residing at an address on
2 “Premier Court” (R.T. 60:20-26), “Oakridge Court” was the address “formally”
3 registered with IHSS. (R.T. 21:16-25.)
- 4 • Vargas was ultimately able to located Eduardo at “Oakridge Court.” (R.T. 27:16-24).
- 5 • IHSS made multiple visits to Seferino’s home “during the time” that Seferino had
6 “custody” of Eduardo, and each time Eduardo was “observed to be present in the
7 residence.” (R.T. 54:22-55:11.)

8 Had Fe’s report been accurate, it would have read quite differently:

9 *Eduardo spends most days with Thelma in Las Vegas, Nevada. He visits California
10 regularly, though, in order to attend doctors’ appointments and receive medical
11 treatment. He has also been hospitalized there for up to several months at a time.
12 But Thelma takes good care of him. He rests often. He is clean. Their home is well-
13 kept. His medications are in order. When Eduardo visits Santa Maria, he stays with
14 his brother-in-law Seferino. Seferino’s address is on file with IHSS. Because
15 Thelma is Eduardo’s primary caregiver, however, Eden compensates her directly
16 using the money that Eden receives from IHSS.*

17 This hypothetical-but-factually-accurate summary of the evidence demonstrates that the
18 facts uncovered during Chevalier’s investigation would not “lead a man of ordinary caution or
19 prudence to believe, and conscientiously entertain a strong suspicion” that Thelma—or even
20 Codefendants—were involved in a criminal conspiracy to commit Medi-Cal fraud of any sort,
21 much less a conspiracy to present “fraudulent claims for services or merchandise,” specifically.
22 (See Welf. & Inst. Code, § 14107, subd. (b)(1); see also *Nagle, supra*, 25 Cal.2d at p. 222.) There
23 being no other evidence of such a “conspiracy,” the Court may set aside Count 6 on this basis
24 alone.

25 B. *The Court should not infer that Thelma specifically intended to agree to commit
26 Medi-Cal fraud based solely on Thelma’s presence in Seferino’s home.*

27 Even assuming that Codefendants were engaged in a criminal conspiracy to present
28 fraudulent claims for services to IHSS, the People must still demonstrate that Thelma and at least
 one other person specifically intended to “agree or conspire” to present fraudulent claims for
 services to IHSS, and that Thelma and another party to that agreement specifically intended that
 one of them would “commit the elements” of that offense. (See *Morante, supra*, 20 Cal.4th at p.

1 416; see also *People v. Jones* (1986) 180 Cal.App.3d 509, 517 [“To sustain a conspiracy
2 conviction, there must be proof of specific intent to commit the offense which is the subject of
3 the conspiracy.”].) Once again, the *sole* evidence of Thelma’s allegedly fraudulent intent is
4 Vargas’s *singular* observation of Thelma and Eduardo inside Seferino’s residence. (R.T. 27:18-
5 23.) Even though “[m]ere association alone cannot furnish the basis for a conspiracy” (*Drolet*,
6 *supra*, 30 Cal.App.3d at p. 218), the People insist that this fact proves not only that Thelma
7 regularly transported Eduardo to Santa Maria, but that Thelma did so in order conceal the fact
8 that Eduardo resided with her in Las Vegas. Absent this most tenuous logical link, there would
9 exist no basis to believe that Thelma herself ever conspired to commit Medi-Cal fraud.

10 Defendant must emphasize at this point that not every violation Medi-Cal’s rule or
11 regulations resulting in an “overpayment” is necessarily “fraud.” Title 22 of the California Code
12 of Regulations, section 50782, states in relevant part that “Fraud occurs if an overpayment occurs
13 and the beneficiary or the person acting on the beneficiary’s behalf willfully failed to report facts
14 as specified in Section 50781(a) with the intention of deceiving the Department, the county
15 department or the Social Security Administration for the purpose of obtaining Medi-Cal benefits
16 to which the beneficiary was not entitled.” Welfare & Institutions Code section 14107,
17 subdivision (b), sets forth several types of Medi-Cal fraud that one might commit. Germane to
18 each of the types of fraud listed there, however, are two elements: (1) a knowingly false
19 misrepresentation; and (2) the receipt of greater benefits or compensation than would have
20 otherwise been received. It follows that even if Thelma agreed to take IHSS money directly from
21 Eden for caretaking services that Thelma had performed, there would still be no evidence that
22 Thelma intended to receive *greater* compensation than she herself would have received if she
23 were an approved services provider for Eduardo.

24 C. *Mere knowledge of allegedly criminal activity does not provide a sufficient basis*
25 *from which to establish intent to participate in a criminal conspiracy.*

26 The People may argue that Defendant’s narrative is too rosy; i.e., that Thelma’s
27 transportation of Eduardo to Santa Maria begins to look much more culpable once the Court
28 accepts that Codefendants were likely engaged in some type of fraud. Even were this true,

1 however, the Court may not simply infer that Thelma agreed to participate in the alleged
2 conspiracy based on an imputed knowledge of Codefendant's allegedly criminal intent. (See
3 *People v. Lauria* (1967) 251 Cal.App.2d 471.) At issue in *Lauria* was Louis Lauria's indictment
4 for "conspiracy to commit prostitution. " (*Id.* at p. 475.) Though Lauria himself was not a
5 prostitute, he operated an "answering service" that at least nine or ten women—whom Lauria
6 knew to be prostitutes—used to communicate with customers. (*Id.* at pp. 474-475.) The specific
7 question before the court in *Lauria* was whether the People could "establish a conspiracy by
8 showing that Lauria, well aware that his codefendants were prostitutes who received business
9 calls from customers through his telephone answering service, continued to furnish them with
10 such service." (*Id.* at p. 475.) The People argued that, "since Lauria knew his customers were
11 using his service for illegal purposes but nevertheless continued to furnish it to them, he must
12 have intended to assist them in carrying out their illegal activities. Thus through a union of
13 knowledge and intent he became a participant in a criminal conspiracy. Essentially, the People
14 argue that knowledge alone of the continuing use of his telephone facilities for criminal purposes
15 provided a sufficient basis from which his intent to participate in those criminal activities could
16 be inferred." (*Id.* at pp. 477-478.)

17 In rejecting the People's attempt there to equate mere knowledge with intent, the court
18 "deduce[d] the following rule: the intent of a supplier who knows of the criminal use to which
19 his supplies are put to participate in the criminal activity connected with the use of his supplies
20 may be established by (1) direct evidence that he intends to participate, or (2) through an
21 inference that he intends to participate based on, (a) his special interest in the activity, or (b) the
22 aggravated nature of the crime itself." (*Id.* at p. 482.) Applying this rule, the court was ultimately
23 able to conclude that the conspiracy allegations against Lauria must "fail" for want of proof:

24 When we review Lauria's activities in the light of this analysis, we find no proof
25 that Lauria took any direct action to further, encourage, or direct the call-girl
26 activities of his codefendants and we find an absence of circumstances from which
27 his special interest in their activities could be inferred. Neither excessive charges
28 for standardized services, nor the furnishing of services without a legitimate use,
nor an unusual quantity of business with call girls, are present. The offense which
he is charged with furthering is a misdemeanor, a category of crime which has never
been made a required subject of positive disclosure to public authority. Under these

1 circumstances, although proof of Lauria's knowledge of the criminal activities of
2 his patrons was sufficient to charge him with that fact, there was insufficient
3 evidence that he intended to further their criminal activities, and hence insufficient
4 proof of his participation in a criminal conspiracy with his codefendants to further
5 prostitution.

6 (Id. at pp. 482-483.) *Lauria* might appear at first glance to be distinguishable on the grounds
7 that: (1) Thelma had a "special interest" in Codefendant's alleged "criminal activity"; and (2)
8 Defendants are charged with a felony violation of Welfare & Institutions Code section 14107. A
9 close reading of *Lauria*, however, shows these differences to be relatively insignificant under
10 *Lauria*'s rationale. First, Lauria's use of term "special interest" was not intended to describe just
11 any close relationship, but an *illegitimate business* interest: "Intent may be inferred from
12 knowledge, when the volume of business with the buyer is grossly disproportionate to any
13 legitimate demand, or when sales for illegal use amount to a high proportion of the seller's total
14 business." (Id. at p. 479.) "In such instances participation by the supplier of legal goods to the
15 illegal enterprise may be inferred because in one way or another the supplier has acquired a
16 special interest in the operation of the illegal enterprise. His intent to participate in the crime of
17 which he has knowledge may be inferred from the existence of his special interest." (Id. at p.
18 480.) Conversely, the People have done nothing to show that Thelma's business relationship
19 with Eden was anything other than ordinary. Even assuming that Codefendants were engaged in
20 Medi-Cal fraud and that Thelma was aware of such activity, it remains that Thelma's conduct
21 itself was no different than that of any other caretaker; i.e., she took Eduardo to doctors'
22 appointments, medical appointments, to visit his family members and was compensated for her
23 efforts. It may even be that Thelma was aware of Medi-Cal's residency requirement and was
24 doing her best to *maintain compliance* therewith—as would any good caretaker. In establishing
25 "probable cause" to believe that Thelma specifically intended to defraud Medi-Cal, the People
26 should have to do more than show that Thelma was trying to help Eduardo comply with Medi-
27 Cal's rules and regulations.

28 Second, the People's decision to charge Defendant with a felony violation of Penal Code
29 section 182 does not establish that Thelma's alleged misconduct was sufficiently "heinous" or
30 "venal" as to "justify and inference that the furnisher intended to aid the execution of the crime

1 and that [s]he thereby became a participant.” (*Id.* at pp. 480-481.) The alleged “conspiracy” here
2 is nothing like the “extortion of ransom,” the “distribution of heroin,” or the “passing of
3 counterfeit money.” (*Id.* at p. 480.) As previously stated, Thelma is accused of nothing worse
4 than receiving a fair wage for caretaking services that she actually provided. If Thelma’s conduct
5 is a felony at all, it is “strictly” *malum prohibitum*, and “wrong only because it violates a statute
6 intended to regulate” Medi-Cal benefits—a “wrong” directed “primarily and exclusively against
7 the state.” (See *People v. Main* (1925) 75 Cal.App. 471, 477-478.) Unlike more serious felonies,
8 such “wrongs” should not uniformly give rise to the same inference of specific intent:

9 With respect to misdemeanors, we conclude that positive knowledge of the supplier
10 that his products or services are being used for criminal purposes does not, without
11 more, establish an intent of the supplier to participate in the misdemeanors. With
12 respect to felonies, we do not decide the converse, viz. that in all cases of felony
13 knowledge of criminal use alone may justify an inference of supplier’s intent to
14 participate in the crime. The implications of Falcone make the matter uncertain with
15 respect to those felonies which are merely prohibited wrongs. But decision on this
16 point is not compelled, and we leave the matter open.

17 (*Id.* at p. 482.)

18 CONCLUSION

19 Apart from failing to show that Eduardo’s “California residence” had terminated, the
20 People also failed to establish “reasonable or probable cause” to believe that Defendants Thelma
21 Pedroche, Eden Bautista, or Seferino Hernandez violated Welfare & Institutions Code section
22 14017, subdivision (b), that Defendant Thelma Pedroche “aided and abetted” any such violation,
23 or that Defendant Thelma Pedroche otherwise conspired to commit Medi-Cal fraud. For these
24 reasons, Defendant requests that this Court set aside Counts 1 and 6 of the Information under
25 Penal Code section 995.

26 Dated: September 10, 2020

27 Respectfully submitted,
28 Law Offices of J. Jeff Chambliss

By: 
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Attorney for THELMA PEDROCHE

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PROOF OF SERVICE

I, the undersigned, hereby state:

That I was, at the time of the service of the papers herein referred to, over the age of eighteen years and not a party to within entitled action. I am employed by the Law Offices of William C. Makler, P.C., 140 E. Figueroa Street, Santa Barbara, California 93101. On September 10, 2020. I served the foregoing document described as **Notice of Motion and Motion to Set Aside the Information (Penal Code Section 995); Memorandum of Points and Authorities (People vs Seferino Perez Hernandez, Eden Bautista, Thelma Pedroche, #17CR10194)**, on all interested parties in this action as stated:

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[X] BY ELECTRONIC TRANSMISSION - I transmitted a PDF version of this document by electronic mail to the party(s) identified above using the e-mail address(es) indicated.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 10, 2020, at Santa Barbara, California.

Maureen Byers