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DUAL DIAGNOSIS TREATMENT CENTER, INC.
8 AND DR. TONMOY SHARMA

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 IN RE: SEARCH WARRANTS
13 ISSUED JUNE 12, 2017

Case Nos.: 8:17-MJ-193
8:17-MJ-194
8:17-MJ-195
8:17-MJ-196
8:17-MJ-197
8:17-MJ-198
8:17-MJ-00200

Assigned to Magistrate Judge Douglas
F. McCormick, Crtrm. 6B

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18 **NOTICE OF COMBINED MOTION**
AND COMBINED MOTION TO
UNSEAL SEARCH WARRANT
AFFIDAVITS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT

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DATE: September 19, 2017
TIME: 10:00 a.m.
JUDGE: Hon. Douglas F. McCormick
CTRM: 6B

*[Declarations of Joshua M. Robbins, Sara
Baxter, and Dr. Tonmoy Sharma; Request
for Judicial Notice; and [Proposed] Order]*

Filed: August 15, 2017

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

1 **NOTICE OF MOTION**

2 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE THAT on September 19, 2017 at 10:00 a.m. or as
4 soon thereafter as the matter can be heard in Courtroom 6B of the above-entitled
5 Court, located at 411 West Fourth Street, Santa Ana, California 92701,
6 Petitioners/Movants Dual Diagnosis Treatment Center, Inc. (“Sovereign”) and Dr.
7 Tonmoy Sharma (“Dr. Sharma”) shall move the Court for an Order to unseal search
8 warrant affidavits in support of the government’s search of Movants’ premises on
9 June 13, 2017.

10 This motion is made following the conference of counsel pursuant to L.R. 7-3
11 which took place on August 2, 2017, and is based upon this Notice of Motion and
12 accompanying Memorandum of Points and Authorities in support thereof, the
13 Declarations of Joshua M. Robbins, Sara Baxter, and Dr. Tonmoy Sharma,
14 Movants’ Request for Judicial Notice, the exhibits attached thereto, and any further
15 evidence and argument that the Court may receive at or before the hearing.

16
17 DATED: August 15, 2017

GREENBERG GROSS LLP

18
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20 By: _____

Joshua M. Robbins

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22 Attorneys for Petitioners and Movants
23 DUAL DIAGNOSIS TREATMENT
24 CENTER, INC. AND DR. TONMOY
25 SHARMA
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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. INTRODUCTION **Error! Bookmark not defined.**

II. FACTUAL BACKGROUND 6

 A. Sovereign..... 6

 B. Health Net 7

 C. Insurance Dispute between Health Net and Substance Abuse Providers 9

 D. Civil Litigation between Providers and Health Net..... 10

 E. Civil Litigation between Sovereign and DHCS/DSS 12

 F. The Raids 12

 G. Damage to Sovereign 16

 H. Health Net’s Exploitation of the Raids 16

 I. Government Refusal to Unseal the Search Warrant Affidavit 17

III. ARGUMENT 17

 A. Sovereign and Dr. Sharma Have a Right to Access the Search Warrant Affidavit 17

 B. The Government has No Compelling Interests Requiring Further Sealing..... 21

IV. CONCLUSION 23

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Ganek v. Leibowitz</i> , 167 F. Supp. 3d 623 (S.D.N.Y. 2016).....	14
<i>J.B. Manning Corp. v. U.S.</i> , 86 F.3d 926 (9th Cir. 1996)	14
<i>In re Search of 14416 Coral Gables Way, North Potomac, Maryland</i> , 946 F. Supp. 2d 414 (D.Md. 2011)	14, 18, 19
<i>In re Search of Up North Plastics, Inc.</i> , 940 F. Supp. 229 (D. Minn. 1996)	14, 19
<i>In re Search Warrant for 2934 Anderson Morris Road</i> , 48 F. Supp. 2d 1082 (N.D. Ohio 1999)	14
<i>In re Search Warrants Issued August 29, 1994</i> , 889 F. Supp. 296 (S.D. Ohio 1995).....	14, 18
<i>In re Searches and Seizures</i> , 2008 WL 5411772 (E.D. Cal. 2008)	14, 18
<i>Societe d’Equipments Internationaux Nigeria, Ltd. v. Dolarian Capital, Inc.</i> , 2016 WL 4191887 (E.D. Cal. Aug. 8, 2016)	14
<i>United States v. Hall</i> , 113 F.3d 157 (9th Cir. 1997).....	16
<i>United States v. Oliver</i> , 208 F.3d 211, 2000 WL 263954 (4th Cir. 2000).....	14, 18
<i>United States v. Wey</i> , 15 –CR-611, 2017 WL 2574026 (S.D.N.Y. June 13, 2017).....	17
Statutes	
18 U.S.C. § 1343.....	10
28 U.S.C. § 1983.....	14

1 42 U.S.C. § 1320a-7b 10, 15
2 42 U.S.C. § 18022(b)(1)(E) 6
3 California Rule of Professional Conduct 2-100 16
4 Federal Rule of Criminal Procedure 41(g) 14
5
6
7
8
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Pursuant to a series of warrants issued by this Court, armed federal and state
5 agents raided various Sovereign facilities and the home of its CEO Dr. Sharma,
6 seizing a huge volume of records and equipment, coercively interrogating dozens of
7 employees, seizing personal and other property outside the scope of the authorized
8 seizures, traumatizing both employees and patients, and devastating Sovereign’s and
9 Dr. Sharma’s reputations. Events preceding the raid, as well as the contents of the
10 warrants themselves, indicate that the raids and the government investigation
11 underlying them were induced in part by major insurance company Health Net, Inc.
12 (“Health Net”) in order to gain advantage in its pre-existing and ongoing litigation
13 with Sovereign and other health care providers. That and other aspects of the
14 warrants suggest that the affidavit likely contains false and misleading information
15 and omits other material information. Sovereign and Dr. Sharma thus seek to obtain
16 a copy of the warrant in order to determine whether the searches were lawfully
17 authorized, and to take appropriate action if they were not. The Fourth Amendment
18 entitles them to do so.

19 The search warrant affidavit, however, remains under seal, and the
20 government has refused to unseal it. Yet the government, which has the burden of
21 justifying the continued sealing, has no legitimate basis to do so. The warrants have
22 been executed, ensuring their disclosure will not frustrate their purpose. There is no
23 genuine concern of evidence destruction or witness intimidation in what is in
24 essence an insurance fraud investigation of a health care provider and executive with
25 no criminal history, represented by experienced counsel. Any concerns regarding
26 specific portions of the affidavit can be addressed through redaction. The affidavit
27 should thus be unsealed and provided to the movants.

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II.

FACTUAL BACKGROUND

A. Sovereign

Sovereign offers specialized treatment for mental health, substance abuse, and dual diagnosis disorders for adults and adolescents. In operation since 2009, it currently has nine licensed treatment facilities in five states, employs approximately 850 people in the United States (including approximately two dozen professionals with M.D. and/or PhD degrees, and many others with different professional degrees), and has treated thousands of patients across the country, with an independently-verified track record of success that far exceeds the industry average. Its California facilities have been licensed by the California Department of Health Care Services (DHCS) since 2009 for detoxification and residential treatment, and by the California Department of Social Services (DSS) since 2012 for mental health treatment. Its affiliate Vedanta Laboratories, Inc. is authorized to provide laboratory services by COLA (formerly the Commission on Office Laboratory Accreditation), an accreditation organization for clinical laboratories under the Clinical Laboratory Improvement Amendments program.

Sovereign’s approach to addiction and other mental health treatment is consistent with best practices in the industry. Its facilities have earned the Gold Seal of Approval from the Joint Commission, an independent not-for-profit organization that is the nation’s oldest and largest standard-setting and accrediting body in health care. Declaration of Sara Baxter, August 14, 2017 (“Baxter Decl.”), ¶ 2 and Exh. A. The National Alliance on Mental Illness has recognized Sovereign for providing “the gold standard for mental health treatment for patients in Orange County and throughout the country.” *Id.* at ¶ 3 and Exh. B. Studies conducted in 2016 and 2017 by Harvard Medical School affiliate McLean Hospital have consistently found that Sovereign’s residential patients are up to two times sicker than those typically admitted to other behavioral health care providers, and that Sovereign’s program

1 produces clinical outcomes two to three times better than at other Joint
2 Commission-accredited behavioral health institutions. *See*
3 <https://www.sovhealth.com/about/ebasis/>.

4 Sovereign is a well-recognized behavioral health educator. Earlier this year,
5 the American Psychological Association authorized Sovereign and its staff to train
6 licensed doctoral psychologists. Baxter Decl. ¶ 4. The California Board of
7 Behavioral Health Sciences, the California Association for Alcohol/Drug Educators,
8 the National Association for Alcoholism and Drug Abuse Counsels, and the
9 Association for Psychology Postdoctoral and Internship Centers have approved
10 Sovereign entities to provide continuing education to licensed professionals in the
11 substance abuse field. Baxter Decl. at Exh. C. The University of Southern
12 California sends its Master of Social Work students to receive training at Sovereign
13 facilities.

14 Sovereign accepts only private health insurance, particularly from Preferred
15 Provider Organization (PPO) plans. As a matter of policy, and as prospective
16 patients are instructed, it does not accept payment from federal health care
17 programs, such as Medicare, Medicaid, or Tricare. Baxter Decl. ¶ 5.

18 **B. Health Net**

19 Health Net is one of California's largest health insurers, and has a checkered
20 history of fraud and other unlawful and bad-faith conduct. It is currently under
21 investigation by the U.S. Department of Justice for defrauding the Medicare
22 Advantage program. *See* *Feds Probe Aetna, Humana, Health Net, Cigna Division*
23 *Over Medicare Advantage Risk Scores*, [http://www.fiercehealthcare.com/cms-](http://www.fiercehealthcare.com/cms-chip/feds-probe-aetna-humana-health-net-cigna-affiliate-over-ma-risk-scores)
24 [chip/feds-probe-aetna-humana-health-net-cigna-affiliate-over-ma-risk-scores](http://www.fiercehealthcare.com/cms-chip/feds-probe-aetna-humana-health-net-cigna-affiliate-over-ma-risk-scores). In
25 April 2017, it agreed to pay millions of dollars to settle another DOJ fraud case
26 involving Health Net's receipt of kickbacks from an Indiana hospital in return for
27 patient referrals. *See* *Indiana University Health and HealthNet to Pay \$18 Million to*
28 *Resolve Allegations of False Claims*, <https://www.justice.gov/opa/pr/indiana->

1 [university-health-and-healthnet-pay-18-million-resolve-allegations-false-claims](#). In
2 2016, it was fined by the Securities and Exchange Commission for illegally using
3 severance agreements to discourage its employees from reporting to the SEC
4 regarding unlawful conduct in the company. *See* Company Punished for Severance
5 Agreements that Removed Financial Incentives for Whistleblowing,
6 <https://www.sec.gov/news/pressrelease/2016-164.html>. The same year, it was fined
7 by the Centers for Medicare & Medicaid Services for wrongly denying coverage for
8 prescription drugs. *See* Medicare Fines Health Net, Tenet for Problems with Drug
9 Benefit, <https://www.bna.com/medicare-fines-health-n57982068243/>.

10 State and local enforcement agencies have also taken action against Health
11 Net for unlawfully withholding coverage or payment from patients. The New York
12 Attorney General brought an enforcement action against Health Net for using a
13 database that systematically allowed the company to underpay patients for out-of-
14 network services. *See*
15 [https://ag.ny.gov/sites/default/files/pdfs/bureaus/health_care/settlements/Health%20](https://ag.ny.gov/sites/default/files/pdfs/bureaus/health_care/settlements/Health%20Net.pdf)
16 [Net.pdf](#). The California Department of Insurance (DOI), California Department of
17 Managed Health Care (DMHC), and LA City Attorney have each brought actions
18 against it for defrauding consumers and wrongfully denying coverage. *See* Health
19 Net Agrees with California Regulators to Pay Fine,
20 <http://www.reuters.com/article/healthnet-idUSBNG9582420080912>; LA City
21 Attorney Sues Health Net Over Cancellations,
22 <http://www.reuters.com/article/healthnet-lawsuit-idUSN2148209420080221>. In one
23 DMHC case, Health Net was found to have concealed from the agency a program
24 incentivizing employees to rescind customers' insurance policies. *See* Department
25 of Managed Health Care fines Health Net for Not Disclosing Bonus Program for
26 Employees Considering Cancellation of Health Policies,
27 [https://www.dmhc.ca.gov/Portals/0/AbouttheDMHC/NewsRoom/PressReleases/200](https://www.dmhc.ca.gov/Portals/0/AbouttheDMHC/NewsRoom/PressReleases/2007/healthnetfinepr.pdf)
28 [7/healthnetfinepr.pdf](#). In 2013, DMHC fined Health Net for wrongfully denying

1 coverage to numerous patients for speech and occupational therapy, and for
2 “repeatedly and unlawfully” mischaracterizing requests for coverage. *See* DMHC
3 Issues Cease and Desist Orders Against Health Net, Anthem Blue Cross, and Blue
4 Shield for the Unlawful Denial of Medically Necessary Therapies,
5 [https://www.dmhc.ca.gov/Portals/0/AbouttheDMHC/NewsRoom/PressReleases/201](https://www.dmhc.ca.gov/Portals/0/AbouttheDMHC/NewsRoom/PressReleases/2013/HN_BS_ABC_CD_pr_111813.pdf)
6 [3/HN_BS_ABC_CD_pr_111813.pdf](https://www.dmhc.ca.gov/Portals/0/AbouttheDMHC/NewsRoom/PressReleases/2013/HN_BS_ABC_CD_pr_111813.pdf).

7 In addition, Health Net has been frequently sued for dishonest business
8 practices and bad-faith denial of coverage, resulting in verdicts and settlements of
9 tens and even hundreds of millions of dollars. In some cases, Health Net has
10 wrongfully denied coverage to its insureds for cancer treatment. *See* Health Net
11 Deemed Chemotherapy for Santa Monica Cancer Patient Unnecessary, Wrongful
12 Death Suit Alleges, [https://patch.com/california/pacificpalisades/health-net-deemed-](https://patch.com/california/pacificpalisades/health-net-deemed-chemotherapy-santa-monica-cancer-patient-unnecessary-wrongful-death-suit-alleges)
13 [chemotherapy-santa-monica-cancer-patient-unnecessary-wrongful-death-suit-](https://patch.com/california/pacificpalisades/health-net-deemed-chemotherapy-santa-monica-cancer-patient-unnecessary-wrongful-death-suit-alleges)
14 [alleges](https://patch.com/california/pacificpalisades/health-net-deemed-chemotherapy-santa-monica-cancer-patient-unnecessary-wrongful-death-suit-alleges); Health Net Sued for 'Bait & Switch' of Doctor and Hospital Networks,
15 [http://www.prnewswire.com/news-releases/health-net-sued-for-bait--switch-of-](http://www.prnewswire.com/news-releases/health-net-sued-for-bait--switch-of-doctor-and-hospital-networks-consumer-pays-12000-out-of-pocket-for-cancer-treatment-says-consumer-watchdog-300030254.html)
16 [doctor-and-hospital-networks-consumer-pays-12000-out-of-pocket-for-cancer-](http://www.prnewswire.com/news-releases/health-net-sued-for-bait--switch-of-doctor-and-hospital-networks-consumer-pays-12000-out-of-pocket-for-cancer-treatment-says-consumer-watchdog-300030254.html)
17 [treatment-says-consumer-watchdog-300030254.html](http://www.prnewswire.com/news-releases/health-net-sued-for-bait--switch-of-doctor-and-hospital-networks-consumer-pays-12000-out-of-pocket-for-cancer-treatment-says-consumer-watchdog-300030254.html) ; LA Doctors, Patients Sue
18 Health Net for Denying Claims, [http://www.reuters.com/article/us-healthnet-](http://www.reuters.com/article/us-healthnet-lawsuit-idUSBRE88C19T20120913)
19 [lawsuit-idUSBRE88C19T20120913](http://www.reuters.com/article/us-healthnet-lawsuit-idUSBRE88C19T20120913); Cancer Patient Loses Health Benefits,
20 <http://abcnews.go.com/WN/story?id=3846673>; \$89 Million Awarded Family Who
21 Sued HMO, [http://www.nytimes.com/1993/12/30/us/89-million-awarded-family-](http://www.nytimes.com/1993/12/30/us/89-million-awarded-family-who-sued-hmo.html)
22 [who-sued-hmo.html](http://www.nytimes.com/1993/12/30/us/89-million-awarded-family-who-sued-hmo.html).

23 **C. Insurance Dispute between Health Net and Substance Abuse Providers**

24 Beginning in 2014, the Affordable Care Act, in addition to expanding access
25 to health insurance for low-income individuals, required Health Net and other
26 insurers to cover mental health and substance abuse treatment at “parity” – that is,
27 on an equivalent basis – with other types of essential medical services in small
28 group and individual market plans. *See* 42 U.S.C. § 18022(b)(1)(E). As a result,

1 millions of Americans were able to obtain coverage for such treatment from
2 Sovereign and other providers. Predictably (indeed, by statutory design), the
3 numbers of patients enrolling for coverage and seeking those benefits increased
4 rapidly. This led to a sharp rise in claims from providers, and increased costs for
5 Health Net and other insurers. In turn, these cost increases threatened the
6 completion of Health Net’s pending multi-billion dollar acquisition by Centene
7 Corp. *See* Struggling with Health Net, Centene Will Drop Many Arizona ACA
8 Plans, <http://www.modernhealthcare.com/article/20160726/NEWS/160729926>.

9 Health Net took an extraordinary measure in response to this statutorily
10 required coverage: it simply refused to pay providers for all claims. In
11 approximately January 2016, Health Net began implementing a blanket policy of
12 denying coverage to patients seeking treatment from out-of-network providers for
13 substance abuse and mental health treatment. This policy, which violated state law,
14 affected over one hundred providers, and resulted in potentially hundreds of millions
15 of dollars in wrongfully-denied claims for services. In response, well over 100
16 providers filed complaints with the California DOI and DMHC. Both of those
17 agencies opened investigations into Health Net’s conduct. *See* Regulators Probing
18 Whether Health Net Is Stiffing Drug Treatment Providers,
19 [http://californiahealthline.org/news/regulators-probing-whether-health-net-is-](http://californiahealthline.org/news/regulators-probing-whether-health-net-is-stiffing-drug-treatment-providers/)
20 [stiffing-drug-treatment-providers/](http://californiahealthline.org/news/regulators-probing-whether-health-net-is-stiffing-drug-treatment-providers/).

21 **D. Civil Litigation between Providers and Health Net**

22 On June 30, 2016, Sovereign filed a complaint against Health Net in the Los
23 Angeles Superior Court, alleging bad faith, breach of contract, and other state law
24 claims resulting from Health Net’s wrongful denial of over \$55 million in claims by
25 Sovereign. *See* Movants’ Request for Judicial Notice in Support of Combined
26 Motion to Unseal (“RJN”), Exh. 1. On August 10, 2016, a group of six (later
27 expanded to eleven) other mental health and substance abuse treatment providers
28 filed a similar complaint in the same court. RJN Exh. 5.

1 Health Net’s main strategy in the litigation has been to counter-attack by
2 accusing the providers of crimes. On February 14, 2017, it filed a cross-complaint
3 against Sovereign, alleging a RICO conspiracy based on underlying acts of federal
4 Mail and Wire Fraud. RJN Exh. 2. The cross-complaint asserted that Sovereign
5 had, among other things: (1) illegally paid marketers or “cappers” to refer patients
6 to Sovereign; (2) provided kickbacks to patients and defrauded Health Net by
7 waiving the patients’ co-pays and deductibles, and by paying patients’ insurance
8 premiums; (3) defrauded Health Net by having patients put false information in
9 applications for Health Net insurance about their residency; and (4) fraudulently
10 billed Health Net for services that were not necessary or not provided. *Id.* The
11 cross-complaint further stated that suspicious claims from Sovereign and other
12 providers had begun to increase dramatically in 2014. *See id.* at ¶¶ 4-5. It claimed
13 that Health Net had interviewed various former Sovereign patients and employees as
14 part of its investigation, and listed a number of patients whom Sovereign had
15 allegedly used to submit fraudulent claims. *Id.* at ¶¶ 46-50.

16 On April 14, 2017, Health Net filed a similar cross-complaint against the
17 providers in the separate action, accusing them of the same misconduct. RJN Exh. 6
18 at pp. 8, 16-17, and 19.

19 In March 2017, Health Net served discovery requests on Sovereign. Among
20 the various requested items were interrogatories and document requests targeting
21 identification of Sovereign’s alleged (1) payments for patient referrals, (2) payments
22 of patients’ premiums, (3) waiver of patients’ co-pays and deductibles, (4) payment
23 of patients’ travel expenses, (5) fraudulent applications for patient insurance
24 policies, and (6) fraudulent billing for unnecessary or fictional services. *See*
25 Declaration of Joshua M. Robbins, August 15, 2017, ¶¶ 3-4 and Exhs. A and B.
26 Health Net’s special interrogatories used a default time period of “January 1, 2014
27 to the present;” and its document requests similarly sought various types of
28 communications for that same time period. *See id.*

1 **E. Civil Litigation between Sovereign and DHCS/DSS**

2 Sovereign has also been engaged in litigation with DHCS and the California
3 Department of Social Services (DSS). RJN Exh. 7. In June 2016, at a meeting to
4 discuss Sovereign’s license applications for several mental health facilities, DSS
5 Regional Manager Robert Gomez made racist comments mocking Dr. Sharma’s
6 ethnicity. *See id.* at ¶¶ 40-41. In September 2016, DSS arbitrarily denied the
7 license applications. *Id.* at ¶ 43. The next month, DHCS denied Sovereign’s license
8 applications for several substance abuse treatment facilities, based on DSS’s earlier
9 denial. *Id.* at ¶¶ 50-51. In November 2016, Sovereign sued both agencies in Los
10 Angeles Superior Court on several constitutional grounds. The litigation was
11 dismissed without prejudice on July 26, 2017, but was ongoing at the time the
12 search warrants were executed.

13 **F. The Raids**

14 On the morning of June 13, 2017 – several months after Health Net’s cross-
15 complaints and discovery requests – more than 100 armed agents from the FBI, U.S.
16 Department of Health and Human Services, IRS, DHCS, and several other agencies,
17 many of whom had been brought in from outside California for the occasion,
18 simultaneously executed search warrants at six of Sovereign’s business premises
19 across southern California and at the residence of its CEO, Dr. Tonmoy Sharma.
20 Mental health patients and others recovering from substance addiction, as well as
21 their counselors, medical care providers, and all other Sovereign employees, were
22 ordered to line up and physically escorted from their rehabilitative activities while
23 government agents seized a multitude of business and personal documents,
24 computers, cell phones, and other devices. Agents, some with their weapons drawn,
25 immediately separated patients from employees, confining employees to conference
26 rooms and lobbies and forcing patients suffering from PTSD and anxiety to stand
27 outside alongside armed agents; forcibly searched patients and employees’ persons
28 and effects; demanded identifying information of those seized, including social

1 security number, contact information, and insurance information; demanded access
2 information to devices, whether belonging to Sovereign or individuals; and
3 coercively interrogated the majority of those present. The government agents cut
4 surveillance camera feeds, summoned and interrogated Sovereign IT workers and
5 network administrators and instructed them to provide passwords to their devices
6 and servers, confiscated cell phones, and searched lawyers' offices.

7 The agents seized a huge volume of records, many of which had no obvious
8 connection to the investigation. For example, when agents raided Dr. Sharma's
9 home, they took, among other things, photographs taken at a family member's
10 wedding, medical school textbooks, and personal medical prescriptions. Declaration
11 of Dr. Tonmoy Sharma, August 14, 2017, ¶ 3.

12 DHCS participated in the raids as part of the investigative team, even though
13 it was in litigation with Sovereign based on its denial of Sovereign's license
14 applications. DHCS agents and other individuals identifying themselves to patients
15 as being "with" the agents sowed discontent by repeatedly warning patients that
16 Sovereign would not be in business for long, encouraging patients to seek out
17 alternative care facilities, and even handing out business cards and brochures
18 referring mental health patients to competing mental health and substance abuse
19 providers who are not licensed to provide mental health treatment.

20 The agents provided copies of search warrants for each location. Baxter Decl.
21 ¶¶ 12-18 and Exhs. D-J. The warrants indicate that they were issued under seal, and
22 that they were signed from 2:30 PM to 3:30 PM the day before the raid. *Id.* The
23 affidavit supporting each of the warrants, which apparently remains under seal, was
24 not provided.

25 Each of the warrants states that the agents were authorized to seize only
26 evidence of violations of certain federal statutes, including the federal Wire Fraud
27 statute (18 U.S.C. § 1343) – a statute expressly listed in Health Net's cross-complaint
28 – and the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b). *See, e.g.,* Baxter

1 Decl. Exh. D at p. 3. Moreover, the warrants authorized seizure of records
2 strikingly similar to those sought by Health Net in its civil discovery requests, which
3 were issued in March 2017. For example, like the Health Net requests, the warrants
4 authorized seizure of documents dated “beginning January 2014, and continuing to
5 the present.” *Id.* The categories of documents the government was authorized to
6 seize, which substantially conform to the items identified for production in the grand
7 jury subpoenas issued the same day (*compare id.* at pp. 4-5, ¶¶ 1(a)-(o) *with* Baxter
8 Decl. Exh. K at pp. 12-13, (a)-(o)), track closely with the allegations in Health
9 Net’s civil cross-complaint filed in February 2017 and the types of records Health
10 Net has sought through discovery:

- 11 ▪ **Health Net** alleges that Sovereign paid kickbacks to brokers for patient
12 referrals, and seeks discovery regarding the same. RJN Exh. 2 at ¶¶ 5, 40,
13 80, 88, 95; Robbins Decl. Exh. A at pp. 6-7, interrogatories 12-19 (e.g.,
14 “Identify each THIRD PARTY that referred or ‘sold’ FORMER
15 PATIENTS to YOU, or had knowledge of such THIRD PARTY referrals .
16 . . Identify all brokers, consultants, recruiters or any other THIRD PARTY
17 whom YOU compensated in any way in return for referrals or ‘sales’ of
18 prospective patients[.]”); Robbins Decl. Exh. B at pp. 8-9, requests 28-34
19 (e.g., “ALL COMMUNICATIONS . . . CONCERNING the referral or
20 ‘sale’ of prospective patients and any compensation for such referrals or
21 sales[.]”). The **warrants** sought documents relating to patient referrals,
22 payments for referrals, and kickbacks, bribes, or other financial incentives.
23 *See, e.g.,* Baxter Decl. Exh. D at p. 4, ¶¶ 1(i)-(k) (“Any documents . . .
24 reflecting payments made . . . to entities or individuals referring patients to
25 SOVEREIGN . . . Any documents referencing kick-backs[.]”).
- 26 ▪ **Health Net** alleges that Sharma and Sovereign improperly paid patients’
27 premiums through a “Foundation,” and seeks discovery regarding the
28 same. RJN Exh. 2 at ¶ 43; Robbins Decl. Exh. A at p. 10, interrogatory 36

1 (“Identify each EMPLOYEE involved in the formation and use of the
2 entity referred to (internally or otherwise) as ‘the Foundation,’ including
3 its use to pay insurance premiums[.]”); Robbins Decl. Exh. B at pp. 7-8,
4 requests 21-27 (e.g., “ALL DOCUMENTS CONCERNING the formation
5 and use of the entity referred to (internally or otherwise) as ‘the
6 Foundation,’ including its use to pay insurance premiums[.]”). The
7 **warrants** sought documents “referencing a foundation or scholarship
8 program.” *See, e.g.,* Baxter Decl. Exh. D at p. 4, ¶ 1(l).

- 9 ■ **Health Net** alleges that Sovereign obtained insurance for patients,
10 including by using gift cards, and seeks discovery regarding the same.
11 RJN Exh. 2 at ¶¶ 41-43; Robbins Decl. Exh. A at p. 10, interrogatory 35
12 (seeking “all payment methods . . . YOU used to make premium payments
13 for any FORMER PATIENT . . . including but not limited to . . . gift
14 cards[.]”); Robbins Decl. Exh. B at pp. 5-8, requests 6-8, 13-22, and 27
15 (seeking documents evidencing any payment of patient premiums by
16 Sovereign). The **warrants** sought documents related to Sovereign
17 obtaining insurance for patients, and they also seek financial records
18 including gift cards. *See, e.g.,* Baxter Decl. Exh. E at p. 4, ¶¶ 1(k) and (m).
- 19 ■ **Health Net** alleges and seeks discovery regarding billing fraud, including
20 improper use of insurance codes. RJN Exh. 2 at ¶¶ 53-58; Robbins Decl.
21 Exh. A at pp. 4-5 and 8-9, interrogatories 1-9 and 22-30 (requesting
22 general information relevant to identification of any insurance billing
23 fraud, e.g., “Identify each EMPLOYEE involved in, or with knowledge of,
24 YOUR health insurance billing and claims handling functions[.]”);
25 Robbins Decl. Exh. B at pp. 4 and 9-11, requests 4-5, 35-38, and 48-49
26 (same, e.g., “All policies, procedures, instructions, guidelines, or manuals .
27 . . that CONCERN billing insurers for services[.]”). The **warrants** sought
28 numerous categories of documents related to billing, including insurance

1 codes. *See, e.g.*, Baxter Decl. Exh. D at p. 3 ¶¶ 1(a)-(d) (“correspondence
2 with insurance providers, related to billing . . . Documents related to the
3 selection or applicability of codes used to bill any insurance providers . . .
4 Billing manuals, bulletins, newsletters, articles, notices, memoranda, lists
5 of procedure codes, price sheets, copies of rules or regulations, and
6 instructions or directions relating to billing insurance providers.”).

7 **G. Damage to Sovereign**

8 The raid and attendant media coverage had predictable effects, traumatizing
9 Sovereign patients and employees and severely damaging Sovereign’s reputation.
10 In the weeks following the raid, at least sixty-eight patients left Sovereign facilities
11 specifically as a result of the raid, while others have declined to seek treatment from
12 Sovereign. *See* Baxter Decl. ¶¶ 6-7. During the same period, numerous Sovereign
13 employees resigned or sought medical leave due to anxiety caused by the search. *Id.*
14 ¶ 8. A number of entities who had historically referred patients to Sovereign,
15 including universities, hospitals, specialty care providers, specialists, and other
16 treatment providers, suspended their referrals. *Id.* ¶ 9. Sovereign’s primary bank,
17 Bank of America, informed Sovereign that its accounts would be closed within 30
18 days. *Id.* ¶ 10. In some cases, Sovereign’s operations have been disrupted or
19 slowed as clinical staff treating patients have been without necessary files and
20 documents and have had to secure replacements for their seized laptops and cell
21 phones, or find ways to work without them.

22 **H. Health Net’s Exploitation of the Raids**

23 Shortly after the raids, Health Net sought to capitalize on them in the civil
24 litigation. On July 11, 2017, it noticed depositions of both Dr. Sharma and
25 Sovereign’s “person most knowledgeable” (“PMK”) regarding various topics.
26 Robbins Decl. Exhs. A and B. Both were directed to provide “ALL DOCUMENTS
27 and COMMUNICATIONS CONCERNING any and all search warrants that were
28 served on YOU by the Federal Bureau of Investigation, or any other state or federal

1 government entity, on or about June 2017.” *Id.* at pp. 6 and 10, respectively. The
2 PMK was required to have knowledge of the search warrants. Robbins Decl. Exh. B
3 at p. 9. Dr. Sharma’s deposition was set for August 7, 2017; the PMK’s for August
4 9, 2017. Robbins Decl. Exhs. A and B.

5 Sovereign has applied for a stay of the civil litigation, citing the ongoing
6 criminal investigation and noting the evidence that Health Net has provided
7 information to the government and sought to induce and shape its investigation.
8 RJN Exh. 3. Health Net has opposed the stay, arguing that Sovereign has “not
9 offer[ed] to dismiss [its] action.” RJN Exh. 4 at p. 1:13. But Health Net has not
10 denied its involvement in the government’s investigation, as described by
11 Sovereign. *See id.*

12 Sovereign thus believes, with good reason, that Health Net has solicited the
13 government’s intervention in this matter in order to gain advantage in its broader
14 dispute with substance abuse providers, by intimidating them and impairing their
15 ability or willingness to pursue their claims against Health Net. The government,
16 unfortunately and perhaps unknowingly, has played exactly the role Health Net had
17 in mind.

18 **I. Government Refusal to Unseal the Search Warrant Affidavit**

19 On August 2, 2017, Sovereign’s and Dr. Sharma’s counsel asked government
20 counsel to stipulate to unseal the search warrant affidavit. Government counsel
21 declined to do so. Robbins Decl. at ¶ 6.

22 **III.**

23 **ARGUMENT**

24 **A. Sovereign and Dr. Sharma Have a Right to Access the Search Warrant**
25 **Affidavit**

26 As various courts have held, the subject of a search warrant has a post-search,
27 pre-indictment right under the Fourth Amendment to examine the affidavit
28 supporting the warrant. *E.g., United States v. Oliver*, 208 F.3d 211, 2000 WL

1 263954, at *2 (4th Cir. 2000); *Societe d'Equipments Internationaux Nigeria, Ltd. v.*
2 *Dolarian Capital, Inc.*, 2016 WL 4191887, at *1-2 (E.D. Cal. Aug. 8, 2016) (“there
3 exists a *private* right of access under the Fourth Amendment to the affidavit in
4 support of the search warrant during the pre-indictment stage”); *In re Searches and*
5 *Seizures*, 2008 WL 5411772, at *4 (E.D. Cal. 2008); *In re Search of 14416 Coral*
6 *Gables Way, North Potomac, Maryland*, 946 F. Supp. 2d 414, 419 (D.Md. 2011); *In*
7 *re Search Warrant for 2934 Anderson Morris Road*, 48 F. Supp. 2d 1082, 1083
8 (N.D. Ohio 1999); *In re Search of Up North Plastics, Inc.*, 940 F. Supp. 229, 232
9 (D. Minn. 1996); *In re Search Warrants Issued August 29, 1994*, 889 F. Supp. 296,
10 299 (S.D. Ohio 1995). Put simply, given the extraordinary effect of a search
11 warrant on a subject’s privacy rights, the subject has “a right to know the basis for
12 such an invasion of privacy.” *14416 Coral Gables Way*, 946 F. Supp. 2d at 429. In
13 addition, the subject of a warrant often needs access to the warrant affidavit in order
14 to determine whether the warrant was improperly obtained, and thus whether the
15 search was unlawful and the subject is entitled to return of the property under
16 Federal Rule of Criminal Procedure 41(g). *See* Fed. R. Crim. Pro 41(g); *see also*
17 *J.B. Manning Corp. v. U.S.*, 86 F.3d 926, 927 (9th Cir. 1996). Further, because a
18 defective warrant affidavit can be grounds for a *Bivens* or 28 U.S.C. § 1983 action
19 when the search has harmed the subject, access to the affidavit is needed in order to
20 evaluate the potential for such an action. *See Ganek v. Leibowitz*, 167 F. Supp. 3d
21 623, 633-636 (S.D.N.Y. 2016) (finding that *Bivens* claim could be based on false
22 statements in search warrant affidavit, where execution of warrant caused
23 reputational damage to business).

24 Sovereign and Dr. Sharma have an obvious right and interest in obtaining the
25 affidavit supporting the June 12, 2017 search warrants. As described above, not
26 only was the raid of their facilities and residence an extreme invasion of privacy, but
27 the overwhelming force used in conducting it – at a facility treating mental health
28 and substance abuse patients – was so traumatic for those present that it has led

1 patients to relapse and staff to seek psychological counseling of their own. At the
2 same time, the resulting extensive negative publicity has led others, including
3 patients and referral sources, to avoid Sovereign. If the warrants were unlawfully
4 obtained, Sovereign will have a substantial claim for damages, as well as a right to
5 demand immediate return of all items seized.

6 And there is good reason to suspect that the warrant affidavit was defective.
7 *First*, the affidavit appears to falsely assert that Sovereign has taken funds from
8 federal health care programs. The search warrants authorize agents to seize
9 evidence of violations of the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b,
10 and many of the items seized in the raids appear to be focused on such violations.
11 That statute applies only to conduct involving a “federal health care program,” as
12 defined in subsection (f) of the statute, such as Medicare, Medicaid, or Tricare. *See*
13 42 U.S.C. §§ 1320a-7b (a)(1), (b)(1)(A)-(B), and (b)(2)(A)-(B). Thus, to properly
14 support seizure of such evidence, the search warrant affidavit had to state that the
15 government had probable cause to believe that Sovereign had engaged in improper
16 conduct concerning funds from such a program. But Sovereign does not accept
17 payment from such programs, nor patients covered by them. And it is not clear how
18 the government, whose investigative team includes the Department of Health and
19 Human Services, could have reasonably believed otherwise. Accordingly, it appears
20 that the affidavit contained false statements to support seizure of a number of items.

21 *Second*, as discussed above, it is apparent that the affidavit is based at least in
22 part on information provided by Health Net, and possibly from witnesses (such as
23 former Sovereign patients or employees) recruited by Health Net and referred to the
24 government. The parallels between the evidence sought in Health Net’s March
25 2017 discovery requests and the government’s June 2017 search warrants and
26 subpoenas – down to the exact same time period and same statutes at issue – are
27 unmistakable. And Health Net has not denied that it has provided information and
28 advocacy to the government in an effort to launch the current investigation and

1 thereby intimidate Sovereign and other providers into dropping their claims. Its
2 conduct since the raid is entirely consistent with that strategy. If the affidavit did
3 not disclose Health Net's own history of fraud and other unlawful conduct, as well
4 as its extreme bias and the civil litigation motivating its referral, any account it
5 contains of information provided by Health Net may be irredeemably tainted and
6 misleading. *See United States v. Hall*, 113 F.3d 157 (9th Cir. 1997) (holding that
7 failure to disclose credibility issues with source of information can negate probable
8 cause and invalidate warrant).

9 *Third*, any failure by the testifying agent to disclose the ongoing civil
10 litigation is particularly troubling because of the fact that Sovereign was represented
11 by counsel at the time of the raids. Under California Rule of Professional Conduct
12 2-100, an attorney, including a prosecutor, may not communicate about the subject
13 of a representation with a party the member knows to be represented by another
14 lawyer in the matter, unless that other lawyer has consented. Under 2-100(B), that
15 restriction extends to communications with officers, directors, and managing agents
16 of a corporation, as well as all employees, if the subject of the communication is an
17 act or omission of the employee that may be imputed to the corporation for purposes
18 of civil or criminal liability or whose statement may constituted an admission on the
19 part of the corporation. In this case, at the time of the raid, Sovereign (including its
20 component companies), its officers, and its employees were all represented by
21 counsel in the civil litigation with Health Net, which involves the very same issues
22 of fact and law as the criminal investigation. Yet the agents, in executing the
23 warrants, took advantage of the occasion to interrogate Sovereign employees –
24 outside the presence of counsel – regarding the subject matter underlying the civil
25 and criminal matters. If the agent concealed the civil litigation from the Court (and,
26 presumably, from the prosecutor), he thereby also concealed this conflict.

27 *Fourth*, and similarly, DHCS was involved in the raids, and apparently has
28 been part of the investigative team in this case. At the same time, and at the time the

1 search warrant affidavit was submitted, the agency has been in litigation with
2 Sovereign, defending against Sovereign’s claims that it violated constitutional
3 protections. DHCS actions in the raids – encouraging patients to leave Sovereign
4 for other providers – constitute egregious misconduct and cast doubt on its
5 objectivity and professionalism. To the extent that it has been a source of any
6 information described in the affidavit, the affidavit and resulting warrant are further
7 tainted.

8 *Fifth*, the sheer volume of items the agents seized suggests that the affidavit
9 may have exaggerated the scope of the alleged conduct for which the government
10 has probable cause. Agents went so far as to take personal effects from Dr.
11 Sharma’s home that had no conceivable connection to the investigation. Given the
12 breadth of the seizures, it is likely that inspection of the warrant materials will reveal
13 that there was no probable cause to seize large subsets of items taken, meriting
14 return of that property and suppression of any evidence gleaned therefrom at any
15 subsequent criminal proceeding. *See United States v. Wey*, 15 –CR-611 (AJN),
16 2017 WL 2574026, at *40 (S.D.N.Y. June 13, 2017) (government agents’ broad
17 seizure of documents and other items pursuant to overbroad search warrants merited
18 suppression of all evidence seized).

19 **B. The Government has No Compelling Interests Requiring Further Sealing**

20 To overcome the warrant subject’s Fourth Amendment right to access the
21 affidavit, the government must demonstrate “(1) that a compelling governmental
22 interest requires the materials to be kept under seal and (2) there is no less restrictive
23 means, such as redaction, available.” *Oliver*, 2000 WL 263954, at *2 (quoting *In re*
24 *Search Warrants Issued Aug. 29, 1994*, 889 F. Supp. at 299). While disclosure of
25 ongoing wiretaps or danger to informant’s lives might present such a compelling
26 interest, the mere fact that an investigation is ongoing, or that disclosure may reveal
27 the government’s theory of the case and direction of the investigation, would not.
28 *See In re Searches and Seizures*, 2008 WL 5411772, at *4 (rejecting as “mere

1 conclusory statements” government’s objection that disclosure of affidavit would
2 reveal scope and direction of open investigation); *14416 Coral Gables Way*, 946 F.
3 Supp. 2d at 420 (“the requirement of a compelling interest requires ‘[m]ore than a
4 conclusory allegation of an ongoing investigation’”) (quoting *In re Up North*
5 *Plastics, Inc.*, 940 F. Supp. at 233); *In re Search Warrants Issued Aug. 29, 1994*,
6 889 F. Supp. at 299 (no compelling interest shown where investigation was not
7 multi-district, did not involve wiretaps, and no informants’ lives were endangered).

8 The government cannot make any such showing here. While it may assert the
9 potential for destruction of documents or other evidence, such a generic possibility
10 does not suffice to overcome the warrant subjects’ Fourth Amendment rights. *See*
11 *14416 Coral Gables Way*, 946 F. Supp. 2d at 420-21 (rejecting “general concern” of
12 evidence destruction); *In re Searches and Seizures*, 2008 WL 5411772, at *4
13 (rejecting as “general conclusory concerns, potentially present in any investigation”
14 government’s objection that disclosure of affidavit would result in obstruction of
15 government investigation). In this case, there is no basis to expect destruction of
16 documents: the government has already seized everything it sought, and has had
17 months to use subpoenas or other processes to obtain records from third-party
18 custodians. As to any remaining records in Sovereign’s or Dr. Sharma’s possession,
19 it is worth noting that Sovereign has been engaged in civil litigation regarding the
20 same subject matter for over a year, and is currently represented by experienced
21 counsel in both the civil and criminal matters. *See Search of 8420 Ocean Gateway*
22 *Easton, Md.*, 353 F. Supp. 2d at 582 (explaining that there is less of an interest in
23 sealing warrant affidavit when the subject likely knows the sources of information).

24 Nor would the threat of witness harassment or intimidation justify continued
25 sealing. This investigation concerns neither violent crime nor drug trafficking, but
26 rather alleged insurance fraud. The apparent subjects of the investigation are a
27 group of licensed health care providers that have been operating openly and
28 successfully for years, as well as their CEO. None of them have any criminal

1 history. As noted, all are represented and advised by experienced criminal defense
2 counsel. *See 14416 Coral Gables Way*, 946 F. Supp. 2d at 425-426 (finding that in
3 white-collar crime investigation, and unlike in “violent or drug-related crime
4 conspiracy investigations,” there was little risk of danger to cooperating witnesses);
5 *Up North*, 940 F. Supp. at 234 (considering white-collar movant’s arguments that
6 “unlike the violent or drug-related crime conspiracy investigations, the government’s
7 investigation in this matter simply doesn’t involve a serious threat to any likely
8 witnesses, either by way of harassment, threats, or intimidation” in granting
9 requested unsealing); *8420 Ocean Gateway*, 353 F. Supp. 2d at 582 (finding that the
10 government failed to demonstrate a compelling interest rendering sealing search
11 warrant authorizing search of medical offices essential where it could not credibly
12 demonstrate any risk of witness harassment or intimidation by property-owner).

13 Even if disclosure of the affidavit could threaten evidence, witnesses,
14 or other interests, the risk could presumably be mitigated through limited redactions
15 of information. *See 14416 Coral Gables Way, North Potomac, Maryland*, 946 F.
16 Supp. 2d at 426 (“even where a court has found a compelling interest in protecting
17 the identity of a confidential informant, the court has stated that such an interest may
18 easily be satisfied by redacting the informant’s name, rather than sealing the entire
19 affidavit”). To justify keeping the entire affidavit sealed, the government would
20 need to demonstrate that redactions would be inadequate to protect a compelling
21 government interest.

22 **IV.**

23 **CONCLUSION**

24 For the foregoing reasons, Movants Sovereign and Sharma respectfully
25 request that the court order the application and affidavits in support of the search
26 warrants issued on June 12, 2017 be unsealed for the limited purpose of providing
27 them to Movants.

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DATED: August 15, 2017

GREENBERG GROSS LLP

By: _____
Joshua M. Robbins

Attorneys for Petitioners and Movants
DUAL DIAGNOSIS TREATMENT
CENTER, INC. AND DR. TONMOY
SHARMA

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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 650 Town Center Drive, Suite 1700, Costa Mesa, CA 92626.

On August 15, 2017, I served true copies of the following document(s) described as **NOTICE OF COMBINED MOTION AND COMBINED MOTION TO UNSEAL SEARCH WARRANT AFFIDAVITS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address PGrenner@GGTrialLaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 15, 2017, at Costa Mesa, California.



Patricia Grenner

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SERVICE LIST

IN RE: SEARCH WARRANTS ISSUED JUNE 12, 2017

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