

**RULING ON DEMURRER TO FELONY COMPLAINT**  
**People v. Rony M. Barsoum & Jorge Humberto Reyes**  
(OCSC Case Number: 22CF0191)

**The pending Felony Complaint does not involve the same conduct as charges filed in prior prosecutions for tolling purposes and does not afford defendants adequate notice of the offenses they are charged with as required by due process. Given the People’s burden of demonstrating that criminal charges are timely filed, and the fact statutes of limitation are strictly construed in defendants’ favor, the Demurrer is sustained without leave to amend for the following reasons:**

**FACTUAL AND PROCEDURAL BACKGROUND**

***Relevant Prior Prosecutions-***

OCSC Case # 17CF1367 - “Original Felony Complaint”

On 6-5-17, Defendants (attorneys) were charged via complaint with one count of conspiring to unlawfully refer clients for compensation (Pen. Code, § 182(a)(1)/Labor Code, § 3215), one count of making a false and fraudulent claim (Pen. Code, § 549), and nine counts of insurance fraud (Pen. Code, § 550(b)(3)), with each of the latter nine counts specifically referencing named client/patient insurance claims submitted to individual insurance carriers.

On 2-13-18, a First Amended Felony Complaint was filed changing the dates of some of the existing offenses as well as adding thirteen counts of insurance fraud with each of the claims of insurance fraud referencing specific claims submitted to individual insurance carriers. With respect to all the insurance fraud claims, the amended complaint alleged defendants engaged in a pattern of fraudulent misconduct resulting of a taking in excess of \$500,000 (Pen. Code, § 186.11(a)(1)/(2)). As to all counts, defendants are alleged to have engaged in a pattern of fraudulent misconduct resulting in a taking in excess of \$200,000 (Pen. Code, § 12022.6(a)(2)). Defendants entered pleas of not guilty and denial all enhancements.

On 7-1-21 and prior to any pretrial motion or preliminary hearing being held, the case was ordered dismissed on the People’s motion pursuant to Penal Code § 1387(c).

OCSC Case # 21ZF0003 – “Indictment”

On 3-26-21, a 23 count indictment was filed charging defendant with one count of conspiring to unlawfully refer clients for compensation (Pen. Code, § 182(a)(1)/Labor Code, § 3215), one count of making a false and fraudulent claim (Pen. Code, § 549), and twenty-one counts of insurance fraud (Pen. Code, § 550(b)(3)) with each of the latter twenty-one counts specifically referencing an affected insurance carrier as well as a grand jury exhibit number (presumably itemizing the affected claims). As to all but the first count, a white-collar enhancement alleging a taking of between \$100,000 and \$500,000 was also pled (Pen. Code, § 186.11(a)(1)/(3)). No tolling allegation was alleged.

On 11-1-21, the People filed a first amended indictment altering the dates of offenses and adding a statute of limitations tolling allegation with respect to all counts pursuant to Penal Code § 803(b). (This superseding indictment was not signed by the Grand Jury.)

On 12-2-21, the defense filed a joint demurrer/non-statutory motion to dismiss the first amended indictment.

On 1-13-22, the People, rather than file a written opposition or response to the joint demurrer/motion, instead filed a notice of intent to refile criminal charges and dismiss the pending first amended indictment upon defendants' arraignment on the new complaint.

On 1-28-22, the Court (Judge Menninger) dismissed the Indictment case on the People's motion over the Defense's objection, accepted filing of the New Felony Complaint and defendants were arraigned.

OCSC Case # 22CF0191 – “New/Subject Felony Complaint”

On 1-27-22, defendants were charged via a New Felony Complaint (also referred to herein as “Subject Felony Complaint,” or just “Felony Complaint”) with 14 counts in total. Count one charged conspiracy to engage in an unlawful client referral scheme for compensation (Pen. Code, § 182(a)(1)/Lab. Code, § 3215), (no dates were specified relating to any overt act), Count 2 alleges one count of referral fraud (Pen. Code, § 549), and 12 counts of insurance fraud (Counts 3 through 14 – Pen. Code, § 550(b)(3)). With respect to Counts 2 through 14, defendants are further alleged to have engaged in a pattern of related fraudulent activity resulting in a taking of between \$100,000 and \$500,000 (Pen. Code, § 186.11(a)(1)/(3)). This New Felony Complaint also added a Penal Code § 803(b) statute of limitations *tolling allegation* with respect to all counts.

This **tolling allegation** in the “Other Allegations” section asserts that the offenses listed in this New Felony Complaint, “are based upon the same conduct that was the subject of the prosecution that was commenced by the issuance of an arrest warrant for the (named) defendants signed by Judge Nancy E. Zeltzer of the Orange County Superior Court in the State of California on June 5, 2017, in case number **17CF1361**<sup>1</sup>, which was pending through March 26, 2021, within the meaning of Penal Code § 804(d), and continued on March 26, 2021, by issuance of a superseding indictment within the meaning of Penal Code § 804(a), which is pending until January 28, 2022, in the Orange County Superior Court, in the State of California, in case number 21ZF0003, tolling the statute of limitations.”

On September 15, 2023, Defendants filed a joint Demurrer and Non-Statutory Motion to Dismiss to the subject New Felony Complaint seeking the dismissal of all counts and enhancements without leave to amend.

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<sup>1</sup> The earlier case associated with these defendants was 17CF1367, *not* 17CF1361, as incorrectly set forth in the subject tolling provision.

### ***Current Demurrer to Felony Complaint-***

Defendants' Arguments- Defendants demurrer to the Felony Complaint and make a non-statutory motion to dismiss seeking the dismissal of all counts and enhancements without leave to amend, on three principal grounds<sup>2</sup>.

1. First, defendants maintain the charges on their face are time barred by the applicable statute of limitations because the prior charges were themselves time barred and because tolling pursuant to Pen. Code, § 803(b) does not apply as the new charges are based upon new, different, and expanded instances of alleged criminal conduct than in prior prosecutions.
2. Second, defendants assert the subject Felony Complaint does not afford them fair notice and thus violates Due Process.
3. Third, defendants allege charges should be dismissed because the People have already incurred two dismissals of criminal charges and the present prosecution violates Penal Code § 1387.

Defendants offer three principal arguments in support of their first asserted ground, 1) all charges and related enhancements are time barred on their face by the applicable three or four-year statute of limitations because the alleged misconduct falls outside this time frame; 2) tolling of the applicable statute of limitations per Pen. Code, § 803(b) does *not* apply because the pending charges allege new, different, and expanded instances of criminal conduct compared to that alleged in prior prosecutions; and 3) tolling of the applicable statute of limitations per Pen. Code, §803(b) does not apply because the prior charges upon which tolling is dependent upon were themselves time barred on their face when filed.

With respect to the second asserted ground, defendants maintain the Felony Complaint fails to afford them fair notice of the offenses they are charged with as well as whether such charges are timely filed as required by constitutional due process guarantees. Specifically, the defense contends the prosecution has continually changed the scope of criminal charges filed against them over the past six years. As a result, the prosecution is faulted for failing to plead sufficient facts to afford defendants adequate notice of the charges filed given the variance in the factual and legal bases underlying the charges over time.

With respect to the third asserted ground, defendants maintain their prosecution is barred by the “two dismissal” rule set forth in Penal Code § 1387(a) because a) the dismissal of the felony complaint in OCSC case number 17CF1367 in favor of the indictment filed in OCSC case number 21ZF0003 constitutes one dismissal because the indictment did not involve the same subject matter as the dismissed complaint and therefore does not qualify as an exception to the rule under § 1387(c) and b) and the People’s actions in moving to dismiss the third amended indictment in case number

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<sup>2</sup> In support, the defense attaches as exhibits copies of many other documents, including a verified declaration from counsel stating the procedural history of the past and present pending and related/parallel prosecutions, (including People v. Fusi (22CF0192), People v. Giron (22CF0190), People v. Jansen (22CF0187), and People v. Zargari (22CF0183), in which similar demurrers were previously heard by this court and sustained without leave to amend in parallel cases with similarly situated defendants), for which defense counsel *joins* in said arguments and judicial notice is requested.

21ZF0003 constitutes a second dismissal. They go on that, to hold otherwise would violate the public policies served by Penal Code § 1387 which include preventing prosecutorial harassment of defendants and infringement upon their right to a speedy trial.

Though the validity of the white-collar enhancements (Pen. Code, § 186.11(a)(1)/(3)) charged in connection with Counts 2 through 14 will likely stand or fall depending on whether the substantive counts survive the demurrer/motion to dismiss as implicitly acknowledged by the defense, the defense nevertheless further argues that the enhancements also must be dismissed because they have been effectively nullified by the 2018 repeal of Penal Code § 12022.6.

People's Response- At the outset, the People do not contest the demurrer as to Counts 1 and 2 and, at the hearing on this demurrer, moved to dismiss these counts before the court ruled on the pending demurrer. (Counts 1 and 2 were dismissed 11-17-23; therefore, there will be no further discussion of Counts 1 and 2 herein.)

With respect to the remaining counts, the People oppose the demurrer/motion and request that it be overruled/denied respectfully asserting that it is untimely and that the court erred in sustaining the demurrers in the "parallel cases" especially with respect to the insurance fraud charges because the specific criminal conduct at issue can be traced back to individual claim numbers initially prosecuted in case number 17CF1367 and then in case number 21ZF0003.

As to Counts 3 through 14, the People concede each count involves conduct occurring outside of the applicable statute of limitations, but claim no pleading problem exists because the People properly allege tolling pursuant to Penal Code § 803(b). In other words, it is alleged that the current charges involve the same conduct as prior charges which is sufficient to survive a demurrer at this stage of the proceeding. Moreover, Counts 3 through 14 of the felony complaint provide sufficient notice to defendants satisfying statutory and due process requirements (citing *Hoffman v. Superior Court* (2017) 16 Cal.App.5<sup>th</sup> 1086, 1091-1093).

The People also maintain there is no violation of the "two dismissal rule" precluding further prosecution because there has only been one prior dismissal of felony charges in this case when the indictment in case number 21ZF0003 was ordered dismissed. The dismissal of the first amended felony complaint in OCSC case number 17CF1367 does not qualify as a prior dismissal because it occurred prior to the preliminary hearing in favor of an indictment pertaining to the same subject matter and therefore falls under the exception set forth in Penal Code § 1387(c). In the alternative and in the event the demurrer is sustained, the People maintain they should be afforded leave to amend the felony complaint to identify specific claims underlying defendants' prosecution in all three cases (citing Pen. Code, § 1007).

Lastly, responding to the defense's assertion with respect to the charged white-collar enhancements, the People maintain the 2018 repeal of Penal Code § 12022.6 does not render Penal Code § 186.11 "dead letter." The People assert § 186.11 has greater effect than merely imposing additional punishment, as was the case under former § 12022.6, because it also provides for the imposition of fines, restitution, the preservation of assets, and an extended period of probation. The fact § 12022.6 was repealed does not mean it has no application to offenses committed prior to its 2018 repeal date (citing *People v. Medeiros* (2020) 46 Cal.App.5<sup>th</sup> 1142, 1157).

## DISCUSSION

### ***Timeliness of Demurrer***

A “defendant may demur to the accusatory pleading at any time prior to the entry of a plea.” (Pen. Code, § 1004.) “Both the demurrer and plea must be put in, in open Court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.” (Pen. Code, § 1003.) “Ordinarily a demurrer is to be made at the time of arraignment, and that the failure to demur before entering a plea may be deemed a waiver of objection to the pleadings under at least some circumstances.” (*Hudson v. Superior Court* (2017) 7 Cal.App.5th 999, 1017 [citations omitted].) “Deciding when and whether to allow a challenge to the phrasing of the pleadings after arraignment has occurred is a task best entrusted to the discretion of the trial court, which has an intimate knowledge of the case and any unique issues or irregularities that may have arisen or are likely to arise if amendment is allowed or disallowed.” (*Ibid.*)

The People’s objection made on procedural (timeliness) grounds is not persuasive and is overruled. Here, defense reserved the right to make all motions at the time of the defendants’ 1-28-22 arraignment on the subject Felony Complaint. Moreover, defense counsel Mark Ravis represents in a 9-14-23 verified declaration that defendants were arraigned on 1-28-22 by Judge Menninger on stipulation that their arraignment did not waive their right to bring a demurrer or make other motions challenging the validity of the subject complaint. This representation is consistent with similar representations made by other counsel in parallel cases in which similarly situated defendants were criminally charged with the same offenses. Under these circumstances, the demurrer is not untimely and the court has the authority to adjudicate the subject demurrer to the 1-27-22 Felony Complaint on the merits.

### ***Authority Regarding Demurrers and Statute of Limitations***

Penal Code § 1004 governs demurrers and provides, in relevant part, that a defendant may demur to an accusatory pleading at any time prior to the entry of a plea, when it appears upon the face thereof that, “the court has no jurisdiction of the offense charged therein,” “that the facts stated do not constitute a public offense,” or that it “contains matters which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.” (*See*, Pen. Code, § 1004(1)(4) & (5).)

“In California, the statute of limitations in criminal cases is jurisdictional.” (*People v. Lopez* (1997) 52 Cal.App.4th 233, 244.) “It is well settled that a demurrer raises an issue of law as to the sufficiency of the accusatory pleading, and it tests only those defects appearing on the face of that pleading.” (*People v. Williams* (1979) 97 Cal.App.3d 382, 387–388.) “A demurrer is not a proper means of testing the sufficiency of the evidence supporting an accusatory pleading. Rather, a demurrer lies only to challenge the sufficiency of the *pleading*. It is limited to those defects appearing on the face of the accusatory pleading, and raises only issues of law. (*People v. Biane* (2013) 58 Cal.4th 381, 388.) “In ruling on demurrers, courts appropriately consider matters which may be judicially noticed, as if they had been pled.” (*Linda Vista Village San Diego Homeowners Assn., Inc. v. Tecolote Investors, LLC* (2015) 234 Cal.App.4th 166, 173.)

“The bar of the statute is a jurisdictional defect rather than simply an affirmative defense which must be raised by special plea (such as double jeopardy), the burden is on the People of establishing that the offense was committed within the applicable period of limitations.” (*People v. Crosby* (1962) 58 Cal.2d 713, 725.) “Statutes of limitation must be strictly construed in favor of a defendant.” (*People v. Castillo* (2008) 168 Cal.App.4<sup>th</sup> 364, 369 citing *People v. Zamora* (1976) 18 Cal.3d 538, 574.)

“(W)here the pleading of the state shows that the period of the statute of limitations has run, and nothing is alleged to take the case out of the statute... the power to proceed in the case is gone.” (*People v. Williams*, (1999) 21 Cal.4<sup>th</sup> 335, 344.)

In *Hudson v. Superior Court*, the court clarified the statute of limitations analysis in the criminal context, “(s)pecial rules have been developed regarding the interaction of the rules of criminal pleading and the above discussed rules regarding the statute of limitations. For example, “An accusatory pleading must allege facts showing that the prosecution is not time-barred,” (*Hudson v. Superior Court*, (2017) 7 Cal. App. 5<sup>th</sup> 999, 1014, citing *People v. Crosby*, *supra*, 58 Cal.2d at 724, and *People v. Zamora*, (1976) 18 Cal.3d 538, 564, fn 26, internal citations omitted, emphasis added.) The *Hudson* court goes on, “(i)n addition, if a period of time in excess of that permitted by the statute has elapsed since the commission of the offense, further facts must be alleged to show the People’s entitlement to rely on the tolling doctrine.” (*Hudson v. Superior Court*, *supra*, 7 Cal. App. 5<sup>th</sup> at 1014, citing *Crosby* at 724-725.)

As violations of Penal Code § 182(a)(1) and Penal Code §549, (Counts1 and 2), were dismissed previously, the Court will not address those charges or arguments herein.

A violation of Penal Code § 550(b)(3) is a “wobbler” punishable by a term of two, three, or five years in the county jail or by imprisonment in the county jail for no more than one year. (Pen. Code, § 550(c)(3).) Prosecution for this offense must be commenced within four years after the discovery of the commission of the offense or within four years after the completion of the offense, whichever is later. (Pen. Code, § 801.5.)<sup>3</sup>

### ***Analysis***

#### **1. Charges in Counts 3 through 14 Barred on Their Face by the Statute of Limitations:**

Absent a valid tolling allegation, there is no dispute the charges alleged in Counts 3 through 14 are barred on their face by the applicable four-year statute of limitations.

Defendants are alleged to have engaged in twelve distinct acts of insurance fraud perpetrated against twelve different insurance carriers between 6-5-13 and 6-5-17 (Counts 5, 8, 12, 13) or between 2-24-14 and 2-23-18 (Counts 3, 4, 6, 7, 9, 10, 11, 14). Defendants’ current prosecution commenced on 1-28-22 when they were arraigned on the felony complaint. Without a valid tolling allegation, the charges alleged would have to be committed on or after 1-28-18 to come within the four-year statute of limitations. Absent tolling, prosecution of these offenses and related enhancements is barred by the four-year statute of limitations.

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<sup>3</sup> “Notwithstanding §801 or any other provision of law, prosecution for any offense described in subdivision (c) of §803 shall be commenced within four years after discovery of the commission of the offense, or within four years after the completion of the offense, whichever is later.” (Pen. Code, § 801.5.) Felony insurance fraud is an offense expressly listed in Penal Code § 803(c). (Pen. Code, § 803(c)(6).)

It is true that eight of the twelve counts as pled encompass approximately three weeks falling within the statute of limitations. However, there is no indication from the face of the felony complaint that any of the offenses were committed within this three-week time frame. As such, the charges and related enhancements on their face are barred by the statute of limitations. (See, *Gasaway v. Superior Court* (1977) 70 Cal.App.3d 545, 551, “without specifying the date of any particular offense within that time period ... as to count IV, the trial court should have sustained the demurrer....”)

2. Tolling per Penal Code § 803(b) Does Not Apply Because Pending Charges Allege New & Expanded Conduct Different from Underlying Prior Charges:

The subject Felony Complaint materially varies from the same or similar charges alleged in prior prosecutions for many reasons, including but not limited to, the legal basis for the charges, the number of entities involved and victims alleged, the date ranges for the charged offenses, the value of the property at issue per the enhancement and the number of specific fraudulent claims alleged in support of the charges.

The Penal Code § 550(b)(3) Insurance Fraud Charges, (Counts 3 through 14), materially vary from the same or similar charges alleged in prior prosecutions with respect to the alleged time frames of their commission. Although the face of the subject Felony Complaint indicates all charges are timely filed *assuming there is a valid tolling allegation*, the charges pled in the accusatory pleadings in prior prosecutions alleged time frames that straddle periods of time both within and beyond the applicable four-year statute of limitations making it impossible to discern whether the charged offenses were timely filed.

Moreover, Counts 3 through 14 materially vary from the same or similar charges alleged in prior prosecutions in the number specific fraudulent claims alleged in support of the charges. The corresponding insurance fraud charges in defendants’ prior prosecutions referenced specific allegedly fraudulent claims submitted to insurance carriers identified by claim number or incorporated by reference via grand jury exhibits presumably itemizing such claims submitted to individual insurance carriers. The pending insurance fraud charges only identify individual insurance carriers without referencing any allegedly fraudulent claims whatsoever submitted to the carriers.

Perhaps key to the issue is what appears to be a material variance in the factual and legal bases underlying Counts 3 through 14. As originally pled in OCSC case number 17CF1367 and up until the time the first amended felony complaint was ordered dismissed in that case on 7-1-21, the factual and/or legal bases for the charged offenses was the alleged concealment and failure to disclose violations of Labor Code § 139.32(c) generally involving an interested party’s unlawful referral of a person for services provided by another entity if such entity will be paid by worker’s compensation insurance and the interested party has a financial interest in the other entity. In contrast, the pending charges allege concealment and failure to disclose the existence of an unlawful patient referral scheme involving worker’s compensation insurance claims billed to individual insurance carriers. Notwithstanding the People’s plausible contention that the gravamen of the charged offenses has remained consistent across defendant’s three prosecutions, the factual and legal bases underlying the pending and prior charges appear sufficiently distinct from this vantage point such as to support a conclusion that the charges filed in prior prosecutions do *not* involve the same conduct for tolling purposes.

Comparing the subject Felony Complaint with the indictment filed in case number 21ZF0003 and the original complaint filed in case number 17CF1367, the material variances in the current charges compared to the prior prosecutions with respect to the substance of the charges, the number of entities involved and victims alleged, the enhancement amount increase, and the number of specific fraudulent claims alleged in support of the charges, the offenses alleged in the subject felony complaint are deemed separate instances of criminal conduct committed over the four-year period at issue and thus, tolling of the statute of limitations does not apply because there has not been a prior prosecution of the defendant involving the *same conduct*.

Given the People have prosecuted this case over many separate prosecutions spanning over six years, and it is getting less clear and less specific with each incarnation, as well as the fact that statutes of limitation are strictly construed in defendants' favor, the existing record supports sustaining the demurrer without leave to amend.

3. The Subject Felony Complaint Violates Due Process as it Does Not Afford Defendants with Fair Notice of the Charges

Defendants maintain the People's actions in continually changing the scope of criminal charges filed against them over numerous prosecutions spanning over six years, as well as the failure to plead facts sufficient to place defendants on notice of the charges filed against them given the variance in the factual and legal bases underlying the charges over time, has resulted in the filing of a Felony Complaint lacking specificity that deprives them of their constitutional right to fair notice of the crimes they are alleged to have committed.

"The accusatory pleading must contain: ... 2. A statement of the public offense or offenses charged therein." (Pen. Code, § 950(2).) "In charging an offense, each count shall contain, and shall be sufficient if it contains in substance, a statement that the accused has committed some public offense therein specified. Such statement may be made in ordinary and concise language without any technical averments or any allegations of matter not essential to be proved. It may be in the words of the enactment describing the offense or declaring the matter to be a public offense, or in any words sufficient to give the accused notice of the offense of which she is accused. In charging theft it shall be sufficient to allege that the defendant unlawfully took the labor or property of another." (Pen. Code, § 952.) "The precise time at which the offense was committed need not be stated in the accusatory pleading, but it may be alleged to have been committed at any time before the finding or filing thereof, except where the time is a material ingredient in the offense." (Pen. Code, § 955.)

"Both the Sixth Amendment of the federal Constitution and the due process guarantees of the state and federal Constitutions require that a criminal defendant receive notice of the charges adequate to give a meaningful opportunity to defend against them. Notice is supplied in the first instance by the accusatory pleading." (*People v. Hoyt* (2020) 8 Cal.5th 892, 923 [citations omitted].) The prosecution has the burden of proof in this regard.

"While an allegation in the statutory language may be held sufficient (when reviewed on appeal) if the defendant has chosen not to demur, a pleading which satisfies section 952 will not invariably, when tested by demurrer, satisfy due process notice requirements. Due process requires that an accused receive notice of the charges against him sufficient to give him reasonable opportunity to prepare and present his defense and in order not to be taken by surprise by evidence at his trial.



Neither discovery nor an assumption that the accused has pertinent knowledge may be relied upon to furnish the requisite notice (...)." (*Lamadrid v. Municipal Court* (1981) 118 Cal.App.3d 786, 790 citing e.g., *People v. Jordan* (1971) 19 Cal.App.3d 362, 369.) In fraud related cases, "due process may require that the victim and type of fraud be identified." *Hoffman v Superior Court*, (2017) 16 Cal.App. 5<sup>th</sup> 1086, 1093.

*Under the particular circumstances in this case*, the subject Felony Complaint does not afford defendants sufficient notice of the offenses they are charged with because no allegedly fraudulent claims are alleged, (so Defendants lack sufficient notice to prepare a defense against those charges pertaining to those claims). The corresponding insurance fraud charges in defendants' prior prosecutions referenced specific allegedly fraudulent claims submitted to insurance carriers identified by claim number or incorporated by reference via grand jury exhibits. Pending insurance fraud charges only identify individual insurance carriers without referencing any allegedly fraudulent claims.

Moreover, the subject Felony Complaint does not afford defendants sufficient notice of whether the charges are timely filed, as it does not adequately relate the pending charges back to the charges alleged in the original prosecution, for tolling purposes. Most of the charges pled in the accusatory pleadings in prior prosecutions alleged time frames that straddle periods of time both within and beyond the applicable four-year statute of limitations making it impossible to discern whether the charged offenses were timely filed. (Not to mention, the case referred to in the subject tolling provision 17CF1361, is the wrong case number and identifies one of the parallel cases, not the subject case (17CF1367), making it particularly unhelpful to these defendants on the notice issue.)

Finally, there are material variance in the factual and legal bases underlying Counts 3 through 14. As originally pled in OCSC case number 17CF1367 and up until the time the first amended felony complaint was ordered dismissed in that case on 7-1-21, the factual and/or legal bases for the charged offenses was the alleged concealment and failure to disclose violations of Labor Code § 139.32(c). In contrast, the pending charges allege concealment and failure to disclose the existence of an unlawful patient referral scheme involving worker's compensation insurance claims billed to individual insurance carriers. Though it may be argued that there is a degree of overlap with respect to the two factual and/or legal bases underlying the insurance fraud charges, they appear to be sufficiently distinct from this vantage point such as to support a conclusion that the charges filed in prior prosecutions do not involve the same conduct for tolling purposes. This all is particularly relevant considering the People's concession there may be some unanswered questions about the exact time range and subject matter that is covered by the tolling allegation.

In *Hudson v. Superior Court*, the court clarified the statute of limitations analysis in the criminal context, "(s)pecial rules have been developed regarding the interaction of the rules of criminal pleading and the above discussed rules regarding the statute of limitations. For example, "An accusatory pleading **must allege facts showing that the prosecution is not time-barred**," (*Hudson v. Superior Court*, (2017) 7 Cal. App. 5<sup>th</sup> 999, 1014, citing *People v. Crosby*, *supra*, 58 Cal.2d at 724, and *People v. Zamora*, (1976) 18 Cal.3d 538, 564, fn 26, internal citations omitted, emphasis added.) The *Hudson* court goes on, "(i)n addition, if a period of time in excess of that permitted by the statute has elapsed since the commission of the offense, **further facts must be alleged to show the People's entitlement to rely on the tolling doctrine**." (*Hudson v. Superior Court*, *supra*, 7 Cal. App. 5<sup>th</sup> at 1014, citing *Crosby* at 724-725.)

Absent a valid tolling allegation, the charge is time barred on its face by the statute of limitations. The People have not met their burden to plead facts sufficient to show entitlement to rely on a Penal Code § 803(b) tolling allegation. The tolling allegation simply asserts the charge is timely because it involves the same conduct charged in defendant's two prior prosecutions, and then refers to the wrong case number altogether for one of those prior prosecutions.

Given the foregoing, under the specific circumstances in this case, the subject Felony Complaint fails to afford defendants sufficient and fair notice of the offenses they are charged with and prosecution has not met its burden of demonstrating that it is only pleading and prosecuting timely charges that are not time-barred.

4. Argument That Tolling of the Statute of Limitations per Pen. Code, §803(b) Does Not Apply Because the Prior Charges Upon Which Tolling is Dependent Upon Were Themselves Time Barred on their Face when Filed.

The Court does not analyze this argument as other grounds to sustain the instant Demurrer were reached, as set forth herein.

5. Argument that the Two Dismissal Rule Applies & Any Non-Statutory Motion to Dismiss.

The Court does not analyze these arguments as other grounds to sustain the instant Demurrer were reached, as set forth herein. Any non-statutory Motion to Dismiss would be moot.

#### **RULING & ORDER**

The Court, having considered all applicable and relevant law, facts, record, briefing, exhibits and arguments of the parties, now rules as follows:

**The pending Felony Complaint does not involve the same conduct as charges filed in prior prosecutions for tolling purposes and does not afford defendants adequate notice of the offenses they are charged with as required by due process. Given the People's burden of demonstrating that criminal charges are timely filed and the fact statutes of limitation are strictly construed in defendants' favor, the Demurrer is sustained without leave to amend and all charges, as well as related enhancements, are ordered dismissed.**