

Memorandum of Understanding

Between

The California Department of Insurance

And

**The District Attorneys of Fresno, Tulare, Kings, Kern, Merced and Madera Counties, the
Employment Development Department and the Franchise Tax Board**

For a Workers' Compensation Fraud Task Force

Introduction:

This Memorandum of Understanding (MOU) continues an agreement to operate an inter-agency Workers' Compensation anti-fraud partnership together with the Fresno County District Attorney's Office, the Tulare County District Attorney's Office, the Kings County District Attorney's Office, the Kern County District Attorney's Office, the Merced County District Attorney's Office, the Madera County District Attorney's Office and the California Department of Insurance. In addition, the California Franchise Tax Board and the California Employment Development Department will be participating members. Any salary and benefits associated with these positions shall be the responsibility of the participating agency.

Background:

This MOU was originally signed and was in effect from August 2, 2017 through June 30, 2018 by head representatives of the California Department of Insurance, Fresno County District Attorney's Office, the Tulare County District Attorney's Office, the Kings County District Attorney's Office, the Kern County District Attorney's Office, the Merced County District Attorney's Office, the Madera County District Attorney's Office, the California Franchise Tax Board and the California Employment Development Department will be participating members.

In addition to the Central Valley District Attorneys' offices dedicated workers' compensation fraud units, the California Department of Insurance (CDI), Central Valley Regional Office has two investigators, one auditor, one Sergeant and a Captain to work cases, coordinate with allied agencies and provide leadership as well as a dedicated location for Task Force efforts consisting of housing of full-time Task Force staff, Task Force and/or other group meetings, case review and strategy meetings, training of workers' compensation personnel, and a command center for special operations and resource sharing.

Participating on an as needed/as available basis are the investigative branches of the Franchise Tax Board (FTB) and the Employment Development Department (EDD). These state agencies

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have cases that arise out of the work of the Central Valley Workers' Compensation Fraud Task Force (Task Force) and their regional personnel lend expertise and resources to assist Task Force cases.

Given the challenges of one investigator working alone in a county to make an impact on workers' compensation fraud in their community, and those that come with working a complex premium fraud or medical provider fraud case that affects multiple counties in the central California region, the idea was formed to work together as a task force to combine our existing resources to fight workers' compensation insurance fraud on a more effective scale with a more robust program through inter-agency cooperation. Smaller agencies and those with new personnel can benefit by shortening their learning curve in working with a task force of experienced personnel as well as ramp up and navigate a larger case much more quickly. Conversely they can participate (schedule permitting) with larger counties working in unison on complex and large scale cases and in enforcement operations such as the execution of search warrants and arrest details. When evidence in these types of cases can be collected in a coordinated effort and the cases completed in a tighter time-frame, the success of the case and its outcome are significantly improved.

Mission:

To have a Workers' Compensation Fraud Task Force in Central California that successfully investigates and prosecutes all areas of workers' compensation fraud in our counties focusing our combined resources on complex medical fraud cases. In addition, the Task Force will work premium fraud and applicant fraud cases in accordance with the Insurance Commissioner's goals and objectives. This task force approach will include all areas of workers' compensation fraud, but will be committed to focusing on those cases which have the highest impact in our communities as well as cases that cross county lines.

Program Objectives:

- Utilize state and regional resources in a coordinated manner to reduce the impact of workers' compensation fraud and related criminal activity.
- Investigate, arrest and prosecute individuals and criminal enterprises that commit or conspire to commit workers' compensation fraud and related criminal activities.
- Use contemporary technology to develop investigation and prosecution strategies to reduce workers' compensation fraud activity.
- In conjunction with District Attorneys, develop investigative and prosecutorial strategies that will significantly and measurably address the incidences of workers' compensation fraud in the region.

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- Establish liaisons and communication between allied agencies, the insurance industry and other public and private sectors to enhance intelligence and informant development.
- Through outreach, educate the public about fraud and deter others from committing fraud.
- Publicize the consequences of committing fraud by utilizing social media and other sources to report prosecutions, convictions and sentencing.

Organizational Structure/Direction:

This Task Force includes investigators and prosecutors from local and state law enforcement. All participants acknowledge that the Task Force is a joint operation in which all agencies act as partners. There will be three levels of Task Force participation:

- Level I: Full-time member - assigned to CDI regional office. Attends all related meetings and functions. Due to alternative work schedules, the primary Task Force working days of the week will be Tuesday, Wednesday and Thursday. However, operations remain open and flexible to suit the needs of the Task Force.
- Level II: Part-time member - may be assigned to the CDI regional office, including intermittently. Attends quarterly meetings and other meetings when possible, participates in large-scale cases that encompass the member's county, participates in training when needed and assists in multi-agency sweeps, searches and outreach activities. The Task Force assists such member when requested.
- Level III: Participating member - attends quarterly meetings and related functions when available. The Task Force assists such members when requested.

The day-to-day operational supervision of sworn personnel and administrative control of the Task Force is the responsibility of the assigned Task Force Sergeant. This Sergeant will be staffed by the California Department of Insurance. The Sergeant will work cooperatively with other supervisors and investigators from the participating agencies to keep them informed of issues and progress. Responsibility for the personal and professional conduct of Task Force members shall remain with the respective agencies in keeping with each agency's rules regarding conduct and policy.

The overall goals, mission, reporting and conflict resolution of this Task Force will be the responsibility of the Task Force Commander. The California Department of Insurance will staff this position with the Captain of the Central Valley Regional Office. The Task Force Commander will report to the participating District Attorney's offices quarterly on the activities of the Task Force.

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The California Department of Insurance will provide at least two detectives and one forensic auditor to work at Level I on the Task Force.

Fresno County will provide two full-time District Attorney Investigators to work at Level I on the Task Force. (Full-time member).

Tulare County will provide one part-time District Attorney Investigator to work at Level II or III on the Task Force. (Part-time or Participating member).

Kings County will provide one part-time District Attorney Investigator to work at Level II or III on the Task Force. (Part-time or Participating member).

Kern County will provide one part-time District Attorney Investigator to work at Level III on the Task Force. (Participating member).

Merced County will provide one part-time District Attorney Investigator to work at Level III on the Task Force. (Participating member).

Madera County is not grant funded and will participate on the Task Force on an as-needed basis. (Participating member).

FTB and EDD will provide one part-time Special Agent/Investigator to the Task Force on an as-needed basis, meeting no less than once a quarter with the Task Force. (Participating member).

The Task Force Sergeant will strive to ensure equity in investigation and prosecution efforts among the participating agencies on par with their financial and actual contributions to the work of the Task Force.

Investigations:

All investigations will be conducted in the spirit of cooperation. Investigations will follow guidelines established by each agency's respective policy manual and/or guidelines. Report formatting will be consistent among the Task Force members who are housed (Level I or Level II) at CDI as part of the Task Force and will follow the format utilized by the California Department of Insurance.

The routine investigative strategy regarding case development and direction shall be the responsibility of the Task Force Sergeant.

Prosecution:

There will be an assigned Deputy District Attorney (DDA) to this Task Force. Cross-designation to file cases in all participating jurisdictions can occur should the need arise. The assigned DDA shall be contacted on a regular basis for updates, legal opinions and guidance. "Vertical

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Prosecution” shall be used on all cases investigated by the Task Force and the team should strive to meet with the DDA on a weekly basis or as often as practicable.

Vertical Prosecution means that supervisors and investigators will work together with the assigned DDA(s) at the earliest opportunity during the initial investigation and will build the investigation from inception through prosecution and final adjudication as a team.

The DDA shall be available to provide legal review and, when appropriate, shall file Task Force cases warranting criminal complaint. Any salary and benefits associated with this position shall be the responsibility of the participating agency. The DDA shall retain sole charging, filing and settling authority for all cases. Prior to any settlement offers the DDA will discuss their decision with the assigned investigator(s).

Fresno County will dedicate one full-time Deputy District Attorney to be regularly available for consultation who will provide support and guidance to the Task Force.

Cases for Kings, Kern, Tulare, Merced and Madera counties will be overseen by their respective assigned attorney staff.

Media Relations and Releases:

Media release information regarding joint Task Force operations will be coordinated by the Task Force Commander and made jointly by all participating agencies. No unilateral press releases will be made by any participating agency without prior notification to participating agencies and approval of the Task Force Commander.

Conflict Resolution Procedures:

Every effort will be made to work in collaboration and cooperation for the benefit of the mission. Members are encouraged to work out conflict at the lowest level possible. If this cannot be accomplished, the Task Force Sergeant will intervene to provide resolution. If the issue still cannot be resolved, then commanding officers from each agency may be called upon to resolve the issue with the Captain of the Fraud Division for the Central Valley Regional Office taking the lead role in mediating the issue.

Use of Force Issues:

Use of force shall comply with the laws of the State of California and the individual agency policy of each member participating in the Task Force. Any concerns regarding the use of force by a member of the Task Force shall be reported to the Task Force Sergeant and that member's supervisor.

Complaint Procedures:

Complaint procedures shall comply with the laws of the State of California and the individual agency policy of each Task Force participant. Any complaint against a Task Force member shall be reported to the Task Force Sergeant and the supervisor of the involved member at their employing agency.

Disciplinary Action:

Any concerns regarding disciplinary action shall be discussed with and is the responsibility of the supervisor of the member at their employing agency.

Use of Funds for Undercover Operations:

Office members of the Task Force who are under the direction of the Task Force Sergeant will have access to the Department of Insurance's Investigative Fund and must adhere to the policies and procedures regarding use of that fund.

The Investigative Fund is authorized by Insurance Code §§1879.4(a) and 1879.4(b) and the Department of Insurance. Expenditures from the Investigative Fund are for items supporting investigations where the origin of the item or relationship to the Task Force is to be concealed so the investigation is not jeopardized. Most often expenditures will relate to undercover activity. The CDI Fraud Division's manual will be followed when funds are used. The Captain of the Department of Insurance Fraud Division's Central Valley Regional Office, or a designee, will be responsible for all funds expended from the Investigative Fund. Reports of expenditures shall be prepared by the Task Force Sergeant, or a designee, on Investigation Expense Vouchers and forwarded to the Captain for review or approval as appropriate.

Funding for Equipment:

Each participating agency will provide the necessary equipment for their participants to be effective in the Task Force including laptops, cellular phones and vehicles. The California Department of Insurance will provide working space for each participating member, as available, to ensure active and collaborative participation.

Funding for Training:

Each participating agency will fund necessary training that would be useful to the detection and investigation of workers' compensation fraud.

Liability and Responsibility:

Each member agency shall be responsible for the acts, errors or omissions of its assigned investigators, DDAs, officers, agents or employees. Personnel assigned to the Task Force shall be deemed to be continuing under the employment of their respective agencies and shall continue

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to have the same powers, duties, privileges, responsibilities and immunities as are conferred upon them in their own jurisdictions.

No member agency shall be responsible for the acts, errors, or omissions of another member agency's investigators, DDAs, officers, agents or employees, nor will they incur any liability arising out of the services and activities of another member agency's investigators, DDAs, officers, agents or employees.

Policy and Procedures for Amending MOU:

Upon receiving all signatures, this MOU will remain in effect until a participating party requests an amendment. Any changes to this MOU must be approved by all participating agencies according to the following process:

- Recommended changes shall be provided in writing to all participating agencies.
- Once a recommendation for change has been submitted, the Task Force Commander shall arrange a meeting for the Task Force participants to discuss the proposed change.
- This meeting shall take place within 30 days from the day that all parties have received the proposed change.
- Upon commencement of such meeting, the party recommending the change shall present the proposed change and the reason for the change. Upon completion of the presentation, open discussion will commence, followed by a vote. If additional time is needed to research any matter involving the change, a subsequent meeting will be scheduled by the Task Force Commander within 30 days.
- Following the vote, if any change to the MOU is approved, a revised MOU will be distributed with the change and all parties will sign the revised document.

Duration and Termination:

This MOU will be in effect beginning July 1, 2018 till June 30, 2021. Task Force member agencies may voluntarily withdraw participation at any time by providing 30 days prior written notice to the CDI Central Valley Regional Office Captain who will disseminate the notification to all parties of this MOU.

Central Valley Workers' Compensation Fraud Task Force

Merced County District Attorney's Office
Larry D. Morse II
District Attorney

Date

Madera County District Attorney's Office
John Markle
Chief Investigator

Date

Franchise Tax Board
Chris Beach, CEA
Audit Division

Date

Employment Development Department
Frank Waldschmitt
Supervising Criminal Investigator II

Date