

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

*Plaintiff,*

-against-

ESTATE OF MORRIS BERKOWITZ, TZODIK  
WEINBERG a/k/a JUSTIN WEINBERG, and MAIER  
ARM,

*Defendants.*

23 Civ. 3803

**STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL**

WHEREAS, the United States of America (the “United States” or “Government”), by its attorney, Damian Williams, United States Attorney for the Southern District of New York, and on behalf of the Department of Health and Human Services Office of Inspector General (“HHS-OIG”), commenced the above-captioned civil law enforcement action by filing a complaint (the “Complaint”) in this Court against the Estate of Morris Berkowitz, Tzodik Weinberg a/k/a Justin Weinberg (“Weinberg”), and Maier Arm (“Arm” or “Defendant”);

WHEREAS, this Stipulation and Order of Settlement and Dismissal (“Stipulation”) is entered into by and among the United States and Arm (the “Parties”), by their authorized representatives;

WHEREAS, during the relevant period, Morris Berkowitz owned and operated the Morris Park Nursing Home (“Morris Park”) as a sole proprietorship;

WHEREAS, Morris Park is a 191-bed skilled nursing facility located at 1235 Pelham Parkway North, Bronx, NY 10469;

WHEREAS, Morris Berkowitz died on April 17, 2020, and his wife, Doris Berkowitz, is

the designated Executrix of his estate;

WHEREAS, shortly before the death of Morris Berkowitz, a limited liability company assumed the ownership of Morris Park;

WHEREAS, the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (the “AKS”), prohibits anyone from knowingly and willfully offering or paying, directly or indirectly, any remuneration—which includes money or any other thing of value—to induce the referral of items or services covered by Medicare, Medicaid, or any other federal healthcare program;

WHEREAS, Medicare-eligible beneficiaries may enroll in insurance plans that are administered pursuant to either Medicare Part A (“Original Medicare”) or Medicare Part C, which reimburse the costs of care and services provided by skilled nursing facilities;

WHEREAS, in order for a skilled nursing facility such as Morris Park to receive reimbursement for a claim under Original Medicare, that facility must submit a claim to Medicare on a fee-for-service basis;

WHEREAS, in order for a skilled nursing facility such as Morris Park to receive reimbursement for a claim under Medicare Part C, that facility must submit a claim to a private insurance company that administers a Medicare Part C insurance plan (a “Medicare Advantage Plan”);

WHEREAS, the Complaint alleges in part that, in violation of the False Claims Act, 31 U.S.C. § 3729 *et seq.* (the “FCA”), and the AKS, from January 1, 2018, through December 31, 2019, Morris Park, at the direction of Weinberg, the facility’s former Administrator, disenrolled residents from their self-selected Medicare Advantage Plans and enrolled them in Original Medicare without obtaining the consent of the residents or their authorized representatives; offered to reduce or waive the co-payments that would be owed by residents in

order to induce them to switch to Original Medicare; and retained Arm, a third-party independent contractor, to assist with the improper disenrollments (who split with Weinberg the \$1,000 fee Arm received for each resident switched to Original Medicare).<sup>1</sup> As a result of the foregoing, Morris Park staff, Weinberg, and Arm submitted or caused to be submitted false claims for payment to Medicare for care and services provided to Morris Park residents. The conduct described in this Paragraph is the “Covered Conduct” for purposes of this Stipulation;

WHEREAS, in July 2020, Morris Park made a voluntary self-disclosure to the Government regarding the improper disenrollment of residents from their Medicare Advantage Plans;

WHEREAS, the Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the claims asserted against Arm in the Complaint;

NOW, THEREFORE, upon the Parties’ agreement IT IS HEREBY ORDERED that:

#### **TERMS AND CONDITIONS**

1. The Parties agree that this Court has subject matter jurisdiction over this action and consent to this Court’s exercise of personal jurisdiction over each of them.
2. Defendant admits, acknowledges, and accepts responsibility for the following conduct (the “Admitted Conduct”):
  - a. In the summer of 2018, Weinberg, who was the Administrator of Morris Park at the time, contacted Arm, who worked full-time at another skilled nursing facility in the Bronx. Weinberg asked Arm if he could assist Morris Park with the process of disenrolling Morris Park residents from their Medicare Advantage Plans and enrolling them in Original Medicare. Arm understood that Morris Park would benefit from maximizing the number of residents who were enrolled in Original Medicare because the facility typically received a higher daily reimbursement rate for residents enrolled in Original Medicare as compared to Medicare Advantage Plans,

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<sup>1</sup> The Complaint also asserts other claims against the Estate of Morris Berkowitz and Weinberg that do not implicate Arm.

and Original Medicare residents were often approved by Medicare for longer stays in the facility.

- b. Arm reached an agreement under which Morris Park would pay \$1,000 to Arm for each Morris Park resident whom Arm helped to disenroll from a Medicare Advantage Plan and enroll in Original Medicare. Weinberg asked Arm to split this \$1,000 payment with him, so that Weinberg would receive \$500 for each resident disenrolled. Arm agreed. Arm did not disclose this arrangement to anyone else at Morris Park.
- c. From August 2018 through December 2019, Morris Park paid Arm \$1,000 for each Morris Park resident who was disenrolled from their Medicare Advantage Plan and enrolled in Original Medicare. Morris Park typically paid Arm on a monthly basis. The initial monthly payments were made to Revenue Enhancer, a company created and owned by Arm. In November 2018, Arm and Weinberg formed a new company together called We R Legends Therapy LLC, with each having a 50% interest in the company. In December 2018, Morris Park started directing the monthly disenrollment payments to We R Legends Therapy.
- d. Several days each month, Arm went to Morris Park to assist with disenrollments. Arm helped Weinberg identify new admissions who were good candidates to be switched to Original Medicare. He also provided guidance to Morris Park staff members concerning how to explain to residents and their family members the potential benefits of disenrollment and how to encourage residents and their family members to agree to the insurance coverage change.
- e. Arm was responsible for processing the disenrollments and effectuating the resident's change in insurance coverage. He did this by logging on to the Medicare.gov website using the resident's personal identifying information. After logging on, Arm would enroll the resident in a Part D Prescription Drug Plan, which resulted in the resident automatically being disenrolled from their Medicare Advantage Plan and being enrolled into Original Medicare. Arm decided which specific Part D Prescription Drug Plan to enroll the resident in, without any input from the resident or their family.
- f. In most cases, Morris Park disenrolled residents from their Medicare Advantage Plans without obtaining from the resident or any family member a signed disenrollment form or any other document evidencing the resident's consent to the insurance change. Although Arm usually relied on Morris Park staff to obtain and document the resident's consent, he did not confirm that the resident had actually consented or signed the disenrollment form before processing the disenrollment.

3. Defendant shall pay to the Government within fourteen (14) business days of the Effective Date (defined below in Paragraph 23) the sum of \$115,000 (the "Settlement Amount") in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York. Of the Settlement Amount, \$57,500 constitutes restitution to the United States. Defendant agrees that he shall not seek indemnification from any source with respect to any portion of the Settlement Amount.

4. Defendant agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Stipulation.

5. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below and subject to Paragraph 8 (concerning default) and Paragraph 11 (concerning bankruptcy proceedings) below, and conditioned on Defendant's full compliance with the terms of this Stipulation, including full payment of the Settlement Amount to the United States pursuant to Paragraph 3 above, the United States releases Defendant from any civil or administrative monetary claim that the United States has for the Covered Conduct under the FCA, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and the common law theories of fraud, payment by mistake, and unjust enrichment.

6. Defendant fully and finally releases the United States, its agencies, officers, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendant has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, employees, servants, or agents related to the Covered Conduct or the United States' investigation, prosecution and settlement thereof.

7. Notwithstanding the release given in Paragraph 5 above, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released by this Stipulation:

- a. any liability arising under Title 26, United States Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Stipulation, any administrative liability or enforcement right, including but not limited to mandatory or permissive exclusion from any Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) or 42 U.S.C. § 1320a-7(b) (permissive exclusion);
- d. any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. any liability based upon obligations created by this Stipulation; and
- f. any liability of individuals, except for Arm.

8. Defendant shall be in default of this Stipulation if Defendant fails to make the required payment set forth in Paragraph 3 above on or before the due date for such payment, or if Defendant fails to comply materially with any other term of this Stipulation that applies to Defendant ("Default"). The Government will provide a written Notice of Default to Defendant of any Default in the manner set forth in Paragraph 22 below. Defendant shall then have an opportunity to cure the Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due and paying any additional interest accruing under the Stipulation up to the date of payment. If Defendant fails to cure the Default within thirty (30)

calendar days of receiving the Notice of Default (“Uncured Default”), interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance). In the event of an Uncured Default, Defendant shall agree to the entry of a consent judgment in favor of the United States against Defendant in the amount of the Settlement Amount as attached hereto as Exhibit A. Defendant also agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Stipulation, and reinstate the claims asserted against Defendant in the Complaint, or bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the release provided in Paragraphs 5 above, with any recovery reduced by the amount of any payments previously made by Defendant to the United States under this Stipulation; (ii) take any action to enforce this Stipulation in a new action or by reinstating the Complaint; (iii) offset the remaining unpaid balance from any amounts due and owing to Defendant by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Defendant agrees immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States’ reasonable attorneys’ fees and expenses incurred in such an action. In the event that the United States opts to rescind this Stipulation pursuant to this paragraph, Defendant waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims

that (i) are filed by the United States against Defendant within 120 days of written notification that this Stipulation has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the date the Complaint was filed. Defendant agrees not to contest any offset, recoupment, and/or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

9. Defendant, having truthfully admitted to the Admitted Conduct set forth in Paragraph 2 hereof, agrees he shall not, through his attorneys, agents, officers, or employees, make any public statement, including but not limited to, any statement in a press release, social media forum, or website, that contradicts or is inconsistent with the Admitted Conduct or suggests that the Admitted Conduct is not wrongful (a “Contradictory Statement”). Any Contradictory Statement by Defendant, his attorneys, agents, officers, or employees, shall constitute a violation of this Stipulation, thereby authorizing the Government to pursue any of the remedies set forth in Paragraph 8 hereof, or seek other appropriate relief from the Court. Before pursuing any remedy, the Government shall notify Defendant that it has determined that Defendant has made a Contradictory Statement. Upon receiving notice from the Government, Defendant may cure the violation by repudiating the Contradictory Statement in a press release or other public statement within four business days. If Defendant learns of a potential Contradictory Statement by his attorneys, agents, officers, or employees, Defendant must notify the Government of the statement within 24 hours. The decision as to whether any statement constitutes a Contradictory Statement or will be imputed to Defendant for the purpose of this Stipulation, or whether Defendant adequately repudiated a Contradictory Statement to cure a violation of this Stipulation, shall be within the sole discretion of the Government. Consistent



with this provision, Defendant may raise defenses and/or assert affirmative claims or defenses in any proceeding brought by private and/or public parties, so long as doing so would not contradict or be inconsistent with the Admitted Conduct.

10. Defendant waives and shall not assert any defenses that he may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such criminal prosecution or administrative action.

11. In exchange for valuable consideration provided in this Stipulation, Defendant acknowledges the following:

- a. Defendant has reviewed his financial situation and warrants that he is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.
- b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Defendant, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

- c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.
- d. The Parties do not intend to hinder, delay, or defraud any entity to which Defendant was or became indebted on or after the date of any transfer contemplated in this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).
- e. If Defendant's obligations under this Stipulation are avoided for any reason (including but not limited to through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, Defendant or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Defendant's debts, or to adjudicate Defendant as bankrupt or insolvent, or seeking appointment of a receiver, trustee, custodian, or other similar official for Defendant or for all or any substantial part of Defendant's assets:
  - (1) the United States may rescind the releases in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the release provided in Paragraph 5 above; and
  - (2) the United States has an undisputed, noncontingent, and liquidated allowed claim against a Defendant in the amount of \$115,000, less any payments received pursuant to the Stipulation, provided, however, that such payments are not otherwise avoided and recovered from the United

States by Defendant, a receiver, trustee, custodian, or other similar official for Defendant.

- f. Defendant agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 8 above is not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States’ police and regulatory power. Defendant shall not argue or otherwise contend that the United States’ claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Defendant waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to Defendant that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the date the Complaint was filed.

12. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (*e.g.*, Medicare Administrative Contractor, fiscal intermediary, carrier) related to the Covered Conduct; and Defendant agrees not to resubmit to any Medicare contractor any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

13. This Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity except as otherwise provided herein.

14. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

15. Any failure by the Government to insist upon the full or material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon the full or material performance of any and all of the provisions of this Stipulation.

16. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York.

17. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Parties. No prior agreements, oral representations or statements shall be considered part of this Stipulation.

19. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and the entities indicated below.

20. This Stipulation is binding on Defendant's successors, transferees, heirs, and assigns.

21. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

22. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by hand, express courier, or e-mail transmission followed by postage-prepaid mail, and shall be addressed as follows:

TO THE UNITED STATES:

Jeffrey K. Powell  
Assistant United States Attorney  
United States Attorney's Office  
Southern District of New York  
86 Chambers Street, Third Floor  
New York, New York 10007  
Email: [jeffrey.powell@usdoj.gov](mailto:jeffrey.powell@usdoj.gov)

TO DEFENDANT:

David N. Kelley, Esq.  
Benjamin Rosenberg, Esq.  
Dechert LLP  
1095 Avenue of the Americas  
New York, New York 10036-6797  
Email: [David.Kelley@dechert.com](mailto:David.Kelley@dechert.com)  
[Benjamin.Rosenberg@dechert.com](mailto:Benjamin.Rosenberg@dechert.com)

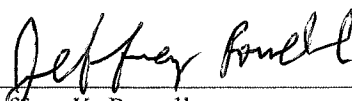
23. The effective date of this Stipulation is the date upon which the Stipulation is approved by the Court (the "Effective Date").

Agreed to by:

**THE UNITED STATES OF AMERICA:**

Dated: ~~April~~ <sup>May</sup> 5, 2023

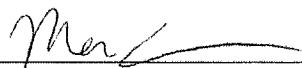
DAMIAN WILLIAMS  
United States Attorney for the  
Southern District of New York

By:   
\_\_\_\_\_  
Jeffrey K. Powell  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
Tel.: (212) 637-2706  
Email: [jeffrey.powell@usdoj.gov](mailto:jeffrey.powell@usdoj.gov)

**DEFENDANT:**

Dated: April 3, 2023

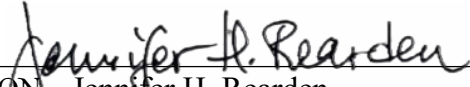
DEFENDANT MAIER ARM

  
\_\_\_\_\_  
Maier Arm

DECHERT LLP

By:   
\_\_\_\_\_  
David N. Kelley, Esq.  
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1095 Avenue of the Americas  
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[Benjamin.Rosenberg@dechert.com](mailto:Benjamin.Rosenberg@dechert.com)  
*Attorneys for Maier Arm*

SO ORDERED:

  
\_\_\_\_\_  
HON. Jennifer H. Rearden  
UNITED STATES DISTRICT JUDGE

Dated: May 16, 2023

# **EXHIBIT A**



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

*Plaintiff,*

-against-

ESTATE OF MORRIS BERKOWITZ, TZODIK  
WEINBERG a/k/a JUSTIN WEINBERG, and MAIER  
ARM,

Defendants.

23 Civ. 3803

**CONSENT JUDGMENT**

Upon the consent of Plaintiff the United States of America and defendant Maier Arm, it is hereby:

ORDERED, ADJUDGED and DECREED: that plaintiff the United States of America is awarded judgment in the amount of \$115,000 against defendant Maier Arm, as well as post-judgment interest at the rate of 12% per annum compounded annually.

Agreed to by:

**THE UNITED STATES OF AMERICA**

Dated: April \_\_\_, 2023

DAMIAN WILLIAMS  
United States Attorney for the  
Southern District of New York

By:

\_\_\_\_\_  
Jeffrey K. Powell, Esq.  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
Telephone: (212) 637-2706  
Email: [Jeffrey.Powell@usdoj.gov](mailto:Jeffrey.Powell@usdoj.gov)

**DEFENDANT**

Dated: April \_\_\_, 2023

\_\_\_\_\_  
Maier Arm

DECHERT LLP

By:

\_\_\_\_\_  
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*Attorneys for Maier Arm*

SO ORDERED:

\_\_\_\_\_  
HON. \_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

Dated: \_\_\_\_\_