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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA and THE STATE OF NEW YORK *ex rel.* MICHELE MARTINHO,

Plaintiffs,

v.

GRAMERCY CARDIAC DIAGNOSTIC SERVICES P.C. and KLAUS PETER RENTROP,

Defendants.

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

GRAMERCY CARDIAC DIAGNOSTIC SERVICES P.C. and KLAUS PETER RENTROP,

Defendants.

18 Civ. 7400 (JMF)

COMPLAINT-IN-INTERVENTION OF THE UNITED STATES OF AMERICA

JURY TRIAL DEMANDED

Plaintiff the United States of America (the "United States"), by and through its attorney, Damian Williams, United States Attorney for the Southern District of New York, brings this action against Dr. Klaus Peter Rentrop ("Rentrop") and Gramercy Cardiac Diagnostic Services P.C. ("Gramercy Cardiac") (collectively "Defendants") alleging as follows:

PRELIMINARY STATEMENT

1. This is a civil action brought by the United States against Rentrop and Gramercy Cardiac under the False Claims Act, 31 U.S.C. §§ 3729-33 (the "FCA"), to recover treble damages sustained by, and penalties owed to, the United States as a result of the submission of false claims to Medicare and Medicaid. The United States also seeks penalties under the Stark Law, 42 U.S.C. § 1395nn, and damages under the common law for unjust enrichment and payment by mistake.

2. Gramercy Cardiac is a New York-based company founded, owned, and controlled by Rentrop, a cardiologist who serves as its president. Gramercy Cardiac offers cardiac diagnostic services, including echocardiograms, positron emission tomography ("PET") scans, and single-photon emission computerized tomography ("SPECT") scans. For many years, Gramercy Cardiac operated four offices in New York City; today, it operates one.

3. From 2010 through 2021, Rentrop and Gramercy Cardiac offered and paid physicians and their practices millions of dollars in kickbacks in the form of inflated "rental payments" and referral fees to induce them to refer patients to Gramercy-contracted cardiologists and to Gramercy Cardiac for diagnostic tests and procedures, in violation of the Anti-Kickback Statute (the "AKS"), 42 U.S.C. § 1320a-7b(b), and the Stark Law.

4. Defendants' scheme worked as follows. Defendants entered into office space rental agreements ("Rental Agreements"), often in excess of fair market value, with primary care and other physicians or their medical practices (the "Rental Practices"). Gramercy Cardiac had

independent contractor agreements with dozens of cardiologists (the "Gramercy-Contracted Cardiologists") who were sent to see patients at the Rental Practices. In exchange for the purported "rental payments," the Rental Practices referred patients to the Gramercy-Contracted Cardiologists, who in turn referred many of these patients to a Gramercy Cardiac office to undergo cardiac diagnostic tests and procedures. Defendants paid the Gramercy-Contracted Cardiologists a flat fee for each test or procedure performed on referred patients at a Gramercy Cardiac location, with larger fees paid for tests and procedures for which Gramercy Cardiac received a greater reimbursement. These per-procedure fees were the only compensation paid to some Gramercy-Contracted Cardiologists.

5. To ensure the kickbacks paid to the Rental Practices were working, Rentrop directed his staff to calculate Gramercy Cardiac's return on investment from the "rental payments" paid to each Rental Practice. Rentrop insisted on a minimum return on investment of at least 300% from these kickbacks.

6. When the value of a Rental Practice's referrals fell below that threshold, Rentrop often refused to pay the Rental Practice the "rental payments." In addition, Rentrop typically directed Gramercy Cardiac sales representatives to deliver a message to that Rental Practice: if the value of the patient referrals did not increase, Defendants would decrease the monthly "rental payments" or terminate the relationship with the Rental Practice entirely. Defendants often followed through on these threats.

7. Defendants performed cardiac imaging and other tests and procedures on thousands of Medicare and Medicaid beneficiaries who were referred by physicians who received kickbacks. As a result, the claims submitted for payment for these tests and procedures

were false. Defendants wrongfully collected tens of million of dollars from Medicare and Medicaid in connection with tests and procedures generated through these kickbacks.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the claim brought under the FCA pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. §§ 1331 and 1345, over the claim brought under the Stark Law pursuant to 42 U.S.C. § 1395nn(g)(3) and 28 U.S.C. §§ 1331 and 1345, and over the common law claims pursuant to 28 U.S.C. § 1345.

9. This Court may exercise personal jurisdiction over Defendants pursuant to 31 U.S.C. § 3732(a), which provides for nationwide service of process.

10. Venue lies in the Southern District of New York pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. §§ 1391(b) and 1391(c), because Rentrop resides in this district, Gramercy Cardiac does business in this district, and Defendants' misconduct occurred in this district.

11. No official of the United States charged with responsibility to act in the circumstances knew or should have known of the facts material to the claims alleged herein prior to August 15, 2018, the date relator's counsel filed the *qui tam* complaint. Between July 26, 2021, and January 26, 2023, the United States and Defendants agreed to toll potential civil claims against Defendants arising "under the [FCA], other federal statutes, and the common law, arising in connection with remuneration offered or paid by Gramercy, Rentrop, and/or affiliates of either, directly or indirectly, to physicians, entities owned or controlled by physicians, and/or their affiliates."

PARTIES

12. Plaintiff is the United States of America suing on its own behalf and on behalf of the United States Department of Health and Human Services and its component agency, the

Centers for Medicare and Medicaid Services, which administers and oversees the Medicare and Medicaid programs.

13. Defendant Gramercy Cardiac Diagnostic Services P.C. is a New York-based company that offers cardiac diagnostic services, including echocardiograms, PET scans, and SPECT scans, and for many years operated four offices in New York City.

14. Defendant Klaus Peter Rentrop is a cardiologist who founded and wholly owns and controls Defendant Gramercy Cardiac, serving as its president. Rentrop is a resident of New York County, New York.

15. Relator is a resident of New York County, New York.

BACKGROUND

I. Relevant Statutes

A. The False Claims Act

16. The FCA establishes liability for treble damages and civil penalties to the United States for an individual who, or entity that, "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval." 31 U.S.C. § 3729(a)(1)(A). "Knowingly" is defined to include "actual knowledge," "act[ing] in deliberate ignorance of the truth or falsity of the [relevant] information," or "act[ing] in reckless disregard of the truth or falsity of the information." *Id.* § 3729(b)(1). The FCA "require[s] no proof of specific intent to defraud." *Id.*

B. The Anti-Kickback Statute

17. The AKS prohibits knowingly offering or paying any remuneration to induce the referral of any service for which payment may be sought from a federal health care program, including Medicare and Medicaid. 42 U.S.C. § 1320a-7b(b)(2).

18. A violation of the AKS is a *per se* violation of the FCA. 42 U.S.C. § 1320a-7b(g). Accordingly, a person violates the FCA when they knowingly submit or cause to be submitted claims to federal health care programs that result from violations of the AKS.

19. The Office of the Inspector General for the United States Department of Health and Human Services has promulgated "safe harbor" regulations that define practices that are not subject to the AKS because such practices are unlikely to result in fraud or abuse. 42 C.F.R. § 1001.952. The safe harbors set forth specific conditions that, if met, assure persons involved of not being sanctioned for the arrangement qualifying for the safe harbor. However, safe harbor protection is an affirmative defense that is afforded to only those arrangements that meet all requirements of the safe harbor.

20. Under the "space rental" safe harbor, a payment made to lease medical office space is not remuneration for purposes of the AKS if certain requirements are met. These requirements include, among other things, that the lease agreement is in writing for a term of at least one year and that the rent is set in advance, consistent with fair market value, and not determined in a manner that takes into account the volume or value of any referrals for services that may be covered by a federal health care program. 42 C.F.R. § 1001.952(b), (c). For purposes of these provisions, "fair market value" means the value of the rental property or equipment "for general commercial purposes, but shall not be adjusted to reflect the additional value that one party . . . would attribute to the property [or equipment] as a result of its proximity or convenience to sources of referrals" for services that may be covered by a federal health care program. *Id.* In addition, the space or equipment rented must "not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose for the rental." *Id.*

21. There is also an AKS safe harbor for payments for personal services, provided certain criteria are met. Among other things, the amount paid must be set in advance, consistent with fair market value, and not be determined in a manner that takes into account the volume or value of any referrals for services that may be covered by a federal health care program. *Id.* § 1001.952(d). In addition, the services contracted for must "not exceed those which are reasonably necessary to accomplish the commercially reasonable business purpose of the services." *Id.*

C. The Stark Law

22. The Medicare/Medicaid Self-Referral Statute, 42 U.S.C. § 1395nn, known as the Stark Law, prohibits physicians from referring Medicare or Medicaid patients for "designated health services" to an entity with which the physician has a nonexempt "financial relationship," including a nonexempt "compensation arrangement" in which remuneration of any kind is exchanged. 42 U.S.C. § 1395nn(a)(1)(A). It also prohibits anyone from presenting claims for "designated health services" generated through such a referral, and prohibits the payment of claims generated through such a referral. *Id.* § 1395nn(a)(1)(B), (g)(1).

23. "Designated health services" include, among other things, imaging services identified in the regulation's List of Current Procedural Terminology (CPT)/Healthcare Common Procedure Coding System (HCPCS) Codes ("Stark List of Covered Codes"). *Id.* § 1395nn(h)(6); 42 C.F.R. § 411.351.

24. Office space rental agreements are excepted from the Stark Law's definition of "compensation arrangement," provided certain criteria are met. Among other things, the Stark Law requires that the lease is in writing and for a term of at least one year; the rental charges "are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the

parties"; and "the lease would be commercially reasonable even if no referrals were made between the parties." 42 U.S.C. § 1395nn(e)(1).

25. Similarly, personal services arrangements are excepted from the definition of "compensation arrangement" if they meet certain criteria. Among other things, the services contracted for must be "reasonable and necessary for the legitimate business purposes of the arrangement, and the remuneration must not exceed fair market value and "not [be] determined in a manner that takes into account the volume or value of any referrals." *Id.* § 1395nn(e)(3).

26. "Fair market value" is defined, for purposes of the Stark Law, to mean "the value in arms length transactions, consistent with the general market value" and, for leases, "the value of the rental property for general commercial purposes not taking into account its intended use" and should "not [be] adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee." *Id.* § 1395nn(h)(3).

27. The Stark Law subjects to civil monetary penalties those who present or cause to be presented claims for services that they know or should know were generated through referrals prohibited by the Stark Law. *Id.* § 1395nn(g)(3).

II. Relevant Federal Health Care Programs

28. Medicare is a federal program that provides subsidized health insurance primarily for persons who are 65 of older or disabled. *See* 42 U.S.C. § 1395 *et seq.* Through Part B, Medicare covers doctors' services and outpatient care, including the types of services and tests provided by Gramercy Cardiac.

29. Medicaid is a joint federal and state program that provides healthcare benefits to certain groups, primarily the poor and those with disabilities. 42 U.S.C. § 1396 *et seq.* Under Medicaid, each state establishes its own eligibility standards, benefit packages, payment rates,

and program administration rules in accordance with certain federal statutory and regulatory requirements. The state directly pays the healthcare providers for services rendered to Medicaid recipients, with the state obtaining the federal share of the Medicaid payment from accounts which draw on the United States Treasury. *See* 42 C.F.R. § 430.0 *et seq.*

30. New York's Medicaid program covers doctors' services and outpatient care, including the types of the services and tests provided by Gramercy Cardiac.

31. The federal portion of each state's Medicaid payments, known as the Federal Medical Assistance Percentage, is based on the state's per capita income compared to the national average. 42 U.S.C. § 1396d(b). Federal funding under Medicaid is provided only when there is a corresponding state expenditure for a covered Medicaid service to a Medicaid recipient. The federal government pays to the state the statutorily established share of the "total amount expended . . . as medical assistance under the State plan." 42 U.S.C. § 1396b(a)(1).

DEFENDANTS' FRAUDULENT SCHEME

32. Between 2010 and 2021, Rentrop and Gramercy Cardiac operated a two-part kickback scheme designed to funnel patients to Gramercy Cardiac for tests and procedures, particularly PET and SPECT scans: Defendants first paid kickbacks in the form of inflated "rental payments" to the Rental Practices to induce them to refer patients to the on-site Gramercy-Contracted Cardiologists; Defendants then paid kickbacks in the form of per-test fees to the Gramercy-Contracted Cardiologists to induce them to refer patients to undergo imaging tests at Gramercy Cardiac.

I. Defendants Paid Physicians Kickbacks in the Form of Inflated "Rental Payments."

33. Defendants dispatched Gramercy Cardiac sales representatives, called "physician liaisons," to visit physicians and medical practices—often primary care—and persuade them to enter into kickback arrangements. Knowing these arrangements to be wrong, Defendants sought

to structure these kickbacks as "rental payments" for office space and equipment used by the Gramercy-Contracted Cardiologists. In actuality, the purpose of these payments was to induce referrals to the Gramercy-Contracted Cardiologists placed in the Rental Practices.

34. Defendants' agreements with these Rental Practices typically provided for the use of an exam room once or twice a month by a designated Gramercy-Contracted Cardiologist, as well as for the use of basic equipment (*e.g.*, a telephone and a computer) and front desk staff to assist with scheduling. In exchange, Defendants agreed to pay a monthly "rental payment," which was often several thousand dollars. In many cases, that "rental payment" was above fair market value for Defendants' limited use of the Rental Practice's space, equipment, and services.

35. The primary factor Defendants took into account when setting the "rental payment" was the expected value of the patient referrals the Rental Practice would generate. When a Rental Practice requested an increase in Defendants' "rental payment," Defendants calculated the value of referrals in recent months and determined whether Gramercy Cardiac's return on investment would be sufficient after granting an increase.

36. Rentrop was personally involved in negotiating the Rental Agreements, approved the amounts to be paid, and signed them on behalf of Gramercy Cardiac.

37. From 2010 to 2021, Defendants paid more than $11 million in "rental payments" to approximately 180 Rental Practices. These Rental Practices referred tens of thousands of patients to the Gramercy-Contracted Cardiologists, who in turn referred more than 23,000 patients for PET and SPECT scans at Gramercy Cardiac. A significant proportion of these patients were Medicare or Medicaid beneficiaries: Gramercy Cardiac billed Medicare or Medicaid for tests or procedures provided to tens of thousands of Medicare or Medicaid

beneficiaries who were referred by the Rental Practices, including for PET and SPECT scans for many thousands of these beneficiaries.

38. To ensure the “rental payments” were generating the expected volume and value of patient referrals, Rentrop directed his staff to (1) track the revenue Gramercy Cardiac received from referrals from the Gramercy-Contracted Cardiologist assigned to each Rental Practice and (2) calculate Defendants’ return on investment from the payments made to each Rental Practice. Defendants’ return on investment—which they internally referred to as the “efficiency” of the Rental Agreement —was calculated by dividing the monthly payments to a Rental Practice by the total revenue Gramercy Cardiac received from referrals from that Practice. Generally, Rentrop insisted on a minimum return on investment of at least 300% from Rental Practices. That is, Rentrop required that Gramercy Cardiac receive at least three times as much in revenue from referrals as it paid to a Rental Practice in “rental payments.”

39. According to an internal Gramercy Cardiac document, one of the “[p]rimary responsibilities” of Defendants’ physician liaisons” was to “obtain efficiency minimums to ensure continuous profit.” Physician liaisons were expected to “[c]onsistently evaluate all contracts to ensure efficiency and profitability.”

40. Rentrop met weekly with his physician liaisons to discuss the Rental Practices and discussed instances where the value of referrals had dropped below Defendants’ “efficiency” requirements. In such cases, notwithstanding Defendants’ purported obligation to pay a fixed monthly rent under the Rental Agreement, Rentrop regularly instructed his staff to reduce or skip the monthly “rental payment” to the Rental Practice to ensure that Defendants paid the Practice no more than 20% of the revenue generated from referrals.

41. When the referrals from a Rental Practice were markedly lower than Defendants' expectations for a period of time, Rentrop often instructed the relevant physician liaison to warn the Rental Practice that the whole arrangement would be terminated if the Rental Practice did not increase patient referrals. The physicians liaisons delivered these warnings to Rental Practices. And Defendants regularly followed through on these threats, ending Defendants' arrangement with underperforming Rental Practices.

42. For example, according to the notes of a 2014 summer meeting, Rentrop and his physician liaisons discussed Rental Practices that were "inefficient and in question," broken down into "2 Months inefficient," "3 Months inefficient," and "4 months inefficient"—that is, the Rental Practices where the value of referrals had fallen below Defendants' return-on-investment requirements for two, three, or four months. These notes reflect Rentrop's instructions with respect to these Practices, which included "cutting the rent" by up to 50%; a direction to "increase patient volume,"; and, for another Practice, a warning that "if they do not meet benchmark of consults [referrals] then we will cancel" following a "[f]ree month" for which Rentrop would refuse to pay.

43. As reflected in notes from an October 2015 meeting with the physician liaisons, Rentrop instructed his staff to set up a "3-month tester period at $1,000/month rental" with one prospective Rental Practice and then "[m]onitor the efficiency." For another Rental Practice, Rentrop directed his staff to "[c]onfirm that referrals are coming in."

44. In March 2016, a physician liaison noted in an internal email that, "since the numbers are very low, we are going to hold off on paying rent for April. . . . [I]f we continue [with] this contract[,] [the Rental Practice physician] and I are going to work to bring the numbers up to make it an efficient account."

45. The AKS and the Stark Law provide safe harbors for legitimate office and equipment rental agreements. However, to qualify for the relevant safe harbors, the rental fees must be set in advance, consistent with fair market value, and not be determined in a manner that takes into account the volume of any referrals, and the lease must be commercially reasonable in the absence of referrals. Here, because Defendants' monthly payments to Rental Practices were actually kickbacks structured as "rental payments," they failed to meet any of these criteria. As described above, though each Rental Agreement set a monthly rental fee, Defendants reduced or skipped monthly payments to a Rental Practice when the value of referrals dipped, without regard to the rent purportedly due. In many cases, Defendants' payments were substantially in excess of fair market value. And the Rental Agreements were not commercially reasonable in the absence of referrals; indeed, when the value of referrals from a Rental Practice continued to fall below Defendants' expectations, they terminated the arrangement with that Practice.

II. Defendants Paid Their Contracted Cardiologists Kickbacks by Compensating Them Based on the Number of Cardiac Diagnostic Tests Referred.

46. Defendants paid Gramercy-Contracted Cardiologists a flat fee for each cardiac diagnostic test they referred to Gramercy Cardiac, provided the patient underwent the test. As a result, when a Rental Practice referred patients to a Gramercy-Contracted Cardiologist, that cardiologist would, in turn, refer as many of these patients as possible to Gramercy Cardiac for tests.

47. In particular, Gramercy-Contracted Cardiologists referred the Rental Practice's patients to Gramercy Cardiac for PET and SPECT scans, echocardiograms, vascular studies, Ankle-Brachial Index ("ABI") tests, Holter monitoring, and percutaneous coronary intervention cardiac catheterizations. In some cases, the Gramercy-Contracted Cardiologist performed tests

(billed by Gramercy Cardiac) on these patients at the Rental Practice, including echocardiograms, vascular studies, ABI tests, or electrocardiograms.

48. The per-test fee that was paid to Gramercy-Contracted Cardiologists varied based on the nature of the test, with higher fees attached to those tests for which Gramercy Cardiac could charge more to insurers. For instance, Defendants typically paid Gramercy-Contracted Cardiologists about $30 per echocardiogram—tests that were not particularly lucrative for Defendants—compared with $175 per SPECT scan and $225 for each PET scan. The Medicare and Medicaid reimbursement rate is relatively low for echocardiograms, greater for SPECT scans, and even greater for PET scans.

49. Rentrop was personally involved in negotiating the per-test fees with Gramercy-Contracted Cardiologists, and Rentrop signed their Independent Contractor Agreements on behalf of Gramercy Cardiac.

50. For some Gramercy-Contracted Cardiologists, the only compensation they received from Defendants were these per-test fees. Others also received a fee for each patient they saw at the Rental Practice—Gramercy Cardiac billed for these office visits, too—but those fees (often $100 per office visit with a new patient and $50 per follow-up visit) were smaller than the per-procedure fees for the referral of PET and SPECT scans.

51. Unsurprisingly, Gramercy-Contracted Cardiologists referred a high percentage of the patients they saw at the Rental Practices to Gramercy Cardiac for follow up cardiac testing. Some Gramercy-Contracted Cardiologists referred as many as 90% of their patients to Gramercy Cardiac for some type of testing, and more than half of these patients were referred specifically for PET and SPECT scans.

52. Because the AKS and Stark Law have personal services safe harbors, Defendants attempted to conceal these kickbacks to the Gramercy-Contracted Cardiologists—which were payments to induce referrals—as compensation for the time the referring cardiologist purportedly spent supervising the tests performed at the Gramercy Cardiac office and evaluating the test results. For instance, Defendants' independent contractor agreements with many of the Gramercy-Contracted Cardiologists claimed that the contracting cardiologist was to be paid for "[s]upervision of a SPECT [or PET] stress test, evaluation of the results and sign off on that evaluation."

53. This was a fiction. Defendants routinely paid per-test fees to Gramercy-Contracted Cardiologists for tests they referred but did not supervise or evaluate. Indeed, Gramercy Cardiac employed other cardiologists who were on-site and responsible for supervising the administration and analysis of these tests.

54. Indeed, even if the Gramercy-Contracted Cardiologists had supervised and evaluated the tests, the payment of these high per-procedure fees would not have made commercial sense absent the value of the referrals to Gramercy Cardiac, as the former Chief Operating Officer admitted to the Government. Supervision and evaluation of these PET and SPECT scans by a small number of in-house clinicians would have been far cheaper than paying specialists to travel to Gramercy Cardiac offices and personally supervise each test. The former Chief Operating Officer conceded that it was obvious that Rentrop intended to induce referrals through these per-test payments.

55. The AKS and Stark Law personal services safe harbors require, among other things, that payments not be set in a way that considers the volume or value of referrals, be consistent with fair market value, and be in exchange for services reasonably necessary to

accomplish a commercially reasonable business purpose. *See* 42 C.F.R. § 1001.952(d). Defendants' payments to many Gramercy-Contracted Cardiologists failed on all counts: they were per-referral, above fair market value, and commercially unreasonable absent the value of the referrals.

*   *   *

56. Defendants submitted or caused to be submitted claims for payment to Medicare and Medicaid for services that resulted from the unlawful payments made to the Rental Practices and the Gramercy-Contracted Cardiologists. These services included thousands of cardiac imaging tests and procedures performed at Gramercy Cardiac offices (including PET and SPECT scans and other "designated health services" under the Stark Law), as well as services provided by the Gramercy-Contracted Cardiologists at the Rental Practices. Because these claims were tainted by Defendants' kickbacks, they constituted false claims under the FCA and also violated the Stark Law. As a result, Defendants wrongfully received tens of millions of dollars from Medicare and Medicaid.

CLAIMS FOR RELIEF

COUNT ONE: PRESENTING FALSE CLAIMS FOR PAYMENT VIOLATION OF THE FALSE CLAIMS ACT

57. The United States repeats and realleges the allegations in paragraphs 1 through 56.

58. The United States seeks relief against Rentrop and Gramercy Cardiac under Section 3729(a)(1)(A) of the False Claims Act.

59. Through the acts set forth above, Defendants, acting with actual knowledge or with deliberate ignorance or reckless disregard of the truth, presented, or caused to be presented, false or fraudulent claims for payment or approval to the government when requesting

reimbursements for services or procedures. Specifically, Defendants presented or caused to be presented false claims for payment to the government for cardiac tests and procedures that were the result of patient referrals by physicians to whom Defendants had paid kickbacks in violation of the AKS.

60. By reason of the false or fraudulent claims, the United States has sustained damages in a substantial amount to be determined at trial and is entitled to treble damages plus a civil penalty for each violation.

**COUNT TWO: PRESENTING IMPROPER CLAIMS
VIOLATION OF THE STARK LAW**

61. The United States repeats and realleges the allegations in paragraphs 1 through 56.

62. The United States seeks relief against Rentrop and Gramercy Cardiac under Section 1395nn(g)(3) of the Stark Law.

63. Through the acts set forth above, Defendants presented or caused to be presented bills or claims for services that they knew or should have known were services for which payment was prohibited by the Stark Law, 42 U.S.C. § 1395nn(g)(1). Specifically, Defendants presented or caused to be presented claims for services referred, directly (in the case of the Gramercy-Contracted Cardiologists) or indirectly (in the case of the Rental Practices), by physicians with whom Defendants had a nonexempted financial relationship.

64. The United States is entitled to a civil penalty for each violation.

COUNT THREE: UNJUST ENRICHMENT

65. The United States repeats and realleges the allegations in paragraphs 1 through 56.

66. Through the acts set forth above, Defendants have received Medicare and Medicaid reimbursements to which they were not entitled and therefore have been unjustly enriched. The circumstances of these payments are such that, in equity and good conscience, Defendants should not retain those payments, the amount of which are to be determined at trial.

COUNT FOUR: PAYMENT UNDER MISTAKE OF FACT

67. The United States repeats and realleges the allegations in paragraphs 1 through 56.

68. The United States seeks relief against Defendants to recover monies paid under mistake of fact.

69. The Government paid Defendants for claims submitted to Medicare and Medicaid based on the mistaken and erroneous belief that the claims were not the result of patient referrals by physicians to whom Defendants had paid kickbacks in violation of the AKS and with whom Defendants had a nonexempted financial relationship. If the Government had known that the claims were the result of patient referrals by physicians to whom Defendants had paid kickbacks in violation of the AKS and with whom Defendants had a nonexempted financial relationship, it would not have paid the claims. In such circumstances, the payments by Medicare and Medicaid to Defendants were by mistake and were not authorized.

70. Because of these payments by mistake, Defendants received monies to which they are not entitled.

71. By reason of the foregoing, the United States was damaged in a substantial amount to be determined at trial.

PRAYER FOR RELIEF

72. WHEREFORE, the United States respectfully requests judgment to be entered in its favor as follows:

(i) On Count One (FCA violation), a judgment against Defendants for treble damages and civil penalties to the maximum extent allowed by law.

(ii) On Count Two (Stark Law violation), a judgment against Defendants for civil penalties to the maximum extent allowed by law.

(iii) On Counts Three and Four (Unjust Enrichment and Payment Under Mistake of Fact), a judgment against Defendants for damages to the maximum extent allowed by law.

(iv) A judgment against Defendants for costs and such other relief as the Court may deem appropriate.

Dated: September 15, 2023
New York, New York

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

/s/ Jacob Lillywhite

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