

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Small Business Administration (“SBA”) (collectively the “United States”), Shore Memorial Physicians’ Group, P.C. (“SPG”), Shore Memorial Health System, Inc. and its affiliates (collectively, “SMHS” or the “System”), and Dr. David May, M.D., in his capacity as the former President and nominal shareholder of SPG (collectively, SPG, the System, and Dr. David May, M.D., are referred to hereinafter as the “Defendants”), and relator Zachary Holtzman. (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. SMHS is a 501(c)(3) non-profit corporation operating in Atlantic County, New Jersey. SMHS operates Shore Memorial Hospital d/b/a Shore Medical Center (the “Medical Center”), an acute care hospital with approximately 200 beds, and a wide variety of affiliated health care enterprises in the communities surrounding the Medical Center.

B. Several of the System’s affiliates are professional corporations. For example, SPG is a for-profit professional corporation established for the purpose of developing a physician network to provide professional medical services for the community served by the Medical Center. These affiliates are intended to keep the System in compliance with the New Jersey Professional Service Corporation Act, N.J.S.A. 14A:17-1 et seq., the Corporate Practice of Medicine (“CPOM”) regulations promulgated by the New Jersey Board of Medical Examiners interpreting that statute,

N.J.A.C. 13:35-6.16(f), the various executive and judicial interpretations of the statute, and other laws.

C. The financial statements of the professional corporate affiliates are included in the Consolidated Financial Statements of the System.

D. In April 2020, SPG applied for a Paycheck Protection Program (“PPP”) loan in the amount of \$2,777,510.00 (the “PPP Loan”). That loan, number 3729187305, was approved on or about April 29, 2020, and was subsequently forgiven by the SBA in 2021. Dr. May signed both the initial application and the forgiveness application in his capacity as President of SPG.

E. The PPP Loan was booked in the System’s Consolidated Financial Statements as a loan to the System. The PPP Loan’s forgiveness was likewise booked to the System’s consolidated financial statements.

F. On July 11, 2023, Relator filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *US ex rel. Zachary Holtzman v. Dr. David P. May; Shore Memorial Hospital d/b/a Shore Medical Center*, 23-cv-3680 (JHR), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The Defendants deny the allegations in the Relator’s complaint.

G. The United States contends that SPG’s affiliation with the system rendered it ineligible to receive the PPP loan or forgiveness of the PPP Loan and that the United States has certain civil claims against SPG and/or the System arising from the application, receipt, and/or the retention of the PPP Loan, including those articulated in the relator’s complaint. That conduct is referred to below as the “Covered Conduct.”

H. This Settlement Agreement is neither an admission of liability by the Defendants nor a concession by the United States that its claims are not well founded.

I. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. SPG, SMHS, and/or May shall collectively pay to the United States Three Million, One Hundred Fifty-One Thousand, Seventy-Seven Dollars and Seventeen Cents (\$3,151,077.17) (the "Settlement Amount"), of which Two Million, Eight Hundred Thirty-Six Thousand, Seventy-Seven Dollars and Seventeen Cents (\$2,836,077.17) is restitution, by electronic funds transfer pursuant to written instructions to be provided by Office of the United States Attorney for the District of New Jersey no later than 15 days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay Three Hundred Fifteen Thousand Dollars (\$315,000.00) to Relator by electronic funds transfer ("Relator's Share").

3. No later than 15 days after the Effective Date of this Agreement, SPG shall pay to counsel for Relator, the Law Offices of Darth Newman LLC, Eighteen Thousand Dollars (\$18,000.00) for attorney fees and/or costs.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, the United States releases the Defendants from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount and Relator's counsel's receipt of the payment for fees and/or costs set out in Paragraph 3, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases the Defendants from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; and any and all causes of action, claims, or other theories of liability for the Covered Conduct which were or which could have been asserted in the Civil Action.

6. Notwithstanding the releases given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in the Agreement, any administrative liability or enforcement right, or any administrative remedy,

including the suspension and debarment rights of any federal agency;

- 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 Agreement;
- f. Any liability of individuals except Dr. May, as described above;

7. Relator and its heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

Conditioned upon Relator's receipt of the Relator's Share, Relator and its heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Upon the receipt of payment for fees and/or costs set out in Paragraph 3, Relator, for itself, and for its heirs, successors, attorneys, agents, and assigns, releases Defendants, and their officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

9. Defendants waive and shall not assert any defenses they 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 Agreement bars a remedy sought in such criminal prosecution or administrative action.

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

11. Defendants fully and finally release the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that they have asserted, could have asserted, or may assert in the future against the Relator for acts taken up to the date of this Settlement Agreement, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

12.

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Defendants, and their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) the System's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and

- civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
  - (5) the payment the System makes to the United States pursuant to this Agreement and any payments that the System may make to Relator, including costs and attorneys fees,

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by the System, and the System shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, the System shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by the System or any of its subsidiaries or affiliates from the United States. The System agrees that the United States, at a minimum, shall be entitled to recoup from the System any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine the System's books and records and to disagree with any calculations

submitted by the System or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by the System, or the effect of any such Unallowable Costs on the amount of such payments.

13. This Agreement is intended to be for the benefit of the Parties only.

14. Upon receipt of the payments described in Paragraphs 1 and 3, above, the Relator and the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

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

16. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

17. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

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



20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

21. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

22. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

23. All parties consent to the United States', Relator's, and Relators' counsel's disclosure of this Agreement, and information about this Agreement, to the public.

24. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.


THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_


BY: \_\_\_\_\_  
Paul W. Kaufman  
Assistant United States Attorney  
U.S. Attorney's Office  
District of New Jersey

RELATOR ZACHARY HOLTZMAN

DATED: 07/08/24

BY:  \_\_\_\_\_  
Zachary Holtzman

DATED: 07/08/24

BY:  \_\_\_\_\_  
Darth Newman  
Law Offices of Darth Newman LLC  
Counsel for Relator Zachary Holtzman

20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.


21. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

22. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.


23. All parties consent to the United States', Relator's, and Relators' counsel's disclosure of this Agreement, and information about this Agreement, to the public.


24. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 3/8/2024 BY:   
Paul W. Kaufman  
Assistant United States Attorney  
U.S. Attorney's Office  
District of New Jersey

RELATOR ZACHARY HOLTZMAN

DATED: 07/08/24 BY:   
Zachary Holtzman

DATED: 07/08/24 BY:   
Darth Newman  
Law Offices of Darth Newman LLC  
Counsel for Relator Zachary Holtzman

SHORE MEMORIAL HEALTH SYSTEM, INC.

DATED: 8/2/2024 BY: [Signature]  
Ronald Johnson  
CEO

DATED: 8/7/2024 BY: [Signature]  
Craig A. Domalewski  
Dughi, Hewit & Domalewski, P.C.  
Counsel for Shore Memorial Health System

SHORE MEMORIAL PHYSICIANS' GROUP, P.C.

DATED: 8/6/2024 BY: [Signature]  
Ulises Perez-Feliz, M.D.  
President

DATED: 8/7/2024 BY: [Signature]  
Craig A. Domalewski  
Dughi, Hewit & Domalewski, P.C.  
Counsel for Shore Memorial Physicians' Group

DAVID MAY, M.D.

DATED: 8/6/2024 BY: [Signature]  
David May, M.D.

DATED: 8/7/2024 BY: [Signature]  
Craig A. Domalewski  
Dughi, Hewit & Domalewski, P.C.  
Counsel for David May, M.D.