

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U S DISTRICT COURT E.D.N.Y.

----- X ★ AUG 28 2012 ★
UNITED STATES OF AMERICA, ex rel.,
MATHEW I. GELFAND, M.D., and STATE OF
NEW YORK, ex rel., MATHEW I. GELFAND,
M.D.,

Plaintiffs.

LONG ISLAND OFFICE
STIPULATION
AND ORDER OF SETTLEMENT

-against-

NEW PARKWAY HOSPITAL, SPECIALCARE
HOSPITAL MANAGEMENT CORPORATION,
ROBERT MCNUTT, LONG BEACH MEDICAL
CENTER, NEW YORK DOWNTOWN HOSPITAL,
BENEDICTINE HOSPITAL, ST. JOSEPH'S
MEDICAL CENTER, and COLUMBIA
MEMORIAL HOSPITAL

Defendants.

Docket No. CV-02-6079(LDW)(ETB)

UNITED STATES OF AMERICA, and STATE OF
NEW YORK, ex rel., ENRICO MONTAPERTO,

Plaintiffs.

STIPULATION
AND ORDER OF SETTLEMENT

-against-

Docket No. CV-05-4911 (LDW)(ETB)

NEW PARKWAY HOSPITAL, SPECIALCARE
HOSPITAL MANAGEMENT CORPORATION,
ROBERT MCNUTT, LONG BEACH MEDICAL
CENTER, NEW YORK DOWNTOWN HOSPITAL,
BENEDICTINE HOSPITAL, ST. JOSEPH'S
MEDICAL CENTER, and COLUMBIA
MEMORIAL HOSPITAL,

Defendants.

----- X

IT IS HEREBY STIPULATED AND ORDERED THAT the plaintiffs' claims against defendant New York Downtown Hospital in these actions are settled in accordance with the following terms and conditions:

I. PARTIES

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 Office of the Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively, the "United States"); the State of New York (including, without limitation, all of its agencies, offices, officers, agents and departments), acting through the New York State Attorney General's Office Medicaid Fraud Control Unit ("MFCU") and on behalf of the New York State Office of the Medicaid Inspector General ("OMIG") (collectively, "the State of New York"); Relator Mathew I. Gelfand, M.D. ("Gelfand"); Relator Enrico Montaperto ("Montaperto") (collectively, "Relators") and New York Downtown Hospital ("NY Downtown"), through their authorized representatives (hereinafter collectively referred to as "the Parties").

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

- A. NY Downtown is a 180 bed, not-for-profit, hospital located at 170 William Street, New York, New York.
- B. Relator Gelfand is an individual resident of the State of New York. On November 16, 2002, Gelfand filed a qui tam action in the United States District Court for the Eastern District of New York captioned, United States of America ex rel. Mathew T. Gelfand v. SpecialCare Hospital Management Corp., CV-02-6079 (hereinafter "Civil Action I"). In June

2007, Relator Gelfand filed the Corrected Second Amended Complaint stating a claim for relief under the New York False Claims Act, N.Y. State Fin. Law §§ 187 et seq.

C. Relator Montaperto is an individual resident of the State of Florida. On October 21, 2005, Montaperto filed a qui tam action in the United States District Court for the Eastern District of New York captioned, United States of America ex rel. Enrico Montaperto v. New Parkway Hospital, Case No. 05-cv-4911 (“Civil Action II”). On September 12, 2007, Relator Montaperto filed an Amended Complaint adding a claim for relief under the New York False Claims Act, N.Y. State Fin. Law §§ 187 et seq.

D. The United States and the State of New York jointly investigated the allegations in Civil Action I and Civil Action II.

E. On July 7, 2008, the United States and the State of New York filed Notices of Election to Intervene and Convert In Part and Decline in Part as to the Fifth and Seventh Causes of Action as pleaded in Gelfand’s Corrected Second Amended Complaint as to defendants Long Beach Medical Center, SpecialCare Hospital Management Corporation (“SpecialCare”) and Parkway Hospital in Civil Action I.

F. On July 7, 2008, the United States and the State of New York filed Notices of Election to Intervene and Convert in Part and Decline in Part as to the Fifth and Seventh Causes of Action as pleaded in Montaperto’s Amended Complaint as to defendants Benedictine Hospital, Columbia Memorial Hospital, New Parkway Hospital, NY Downtown, Our Lady of Mercy Medical Center (“OLM”), St. Joseph’s Medical Center and SpecialCare and Robert McNutt (“McNutt”) in Civil Action II.

G. On July 15, 2008, by Stipulation and Order of Settlement, the State of New York, the United States, the Relators, and OLM agreed to settle certain claims of the State of New York, the United States and Relators against OLM in Civil Action I and Civil Action II.

H. On October 8, 2008, the United States and the State of New York filed their respective Complaint-In-Intervention in Civil Action I and Civil Action II against SpecialCare, McNutt and the Hospital Defendants, except for OLM.

I. The United States contends that: NY Downtown submitted, and conspired with SpecialCare and McNutt to submit, claims for inpatient services reimbursed by the Medicaid Program, 42 U.S.C. §§ 1396–1396w-5 (“Medicaid”), and by the Medicare Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk (“Medicare”), for the Covered Conduct described in Paragraph K below.

J. The State of New York contends that: NY Downtown submitted, and conspired with SpecialCare and McNutt to submit, claims for inpatient services reimbursed by Medicaid, for the Covered Conduct described in Paragraph K below.

K. The United States and the State of New York contend that they have certain civil claims, as specified in Paragraphs 4 and 5 below, against NY Downtown, for engaging in the following “Covered Conduct” during the period February 25, 1998 through February 14, 2006:

NY Downtown knowingly and unlawfully obtained, or conspired with or participated with SpecialCare and McNutt to obtain, payment from Medicare and Medicaid by presenting false claims for reimbursement to Medicaid and Medicare. Specifically, NY Downtown presented claims for reimbursement for: 1) inpatient detoxification services (“Inpatient Detoxification Services”) provided by NY Downtown through its operation, with SpecialCare, of

a discrete unit within its hospital that provided chemical dependence services through its inpatient emergency detoxification and/or medical stabilization program, called the "New Vision Program," when NY Downtown lacked the required operating certificate from the New York State Office of Alcoholism and Substance Abuse Services ("OASAS") to operate such a unit, in violation of N.Y. Mental Hygiene Law § 32.05(a); 2) Inpatient Detoxification Services provided by NY Downtown while NY Downtown was holding out to the public the availability at NY Downtown of treatment, programs and services for persons suffering from chemical abuse or dependence, through the indirect and direct marketing of its New Vision Program, when NY Downtown lacked the required operating certificate from OASAS to hold itself out as providing such treatment, programs and services, in violation of N.Y. Mental Hygiene Law § 32.05(c); 3) Inpatient Detoxification Services provided by NY Downtown for which NY Downtown made payments, directly or indirectly, for the referral of Medicaid and Medicare patients for Inpatient Detoxification Services in violation of the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and N.Y. Social Services Law § 366-d, as this conduct is more fully described in the United States' and the State of New York's Complaint-In-Intervention in Civil Action I and Civil Action II, which is incorporated by reference; and 4) Inpatient Detoxification Services provided by NY Downtown to patients admitted to its New Vision Program which services were reimbursed by Medicaid but were not medically necessary and/or failed to meet professionally recognized standards of care, as this conduct is more fully described in the State of New York's Complaint-In-Intervention in Civil Action I and Civil Action II, which is incorporated by reference.

L. The United States also contends that it has certain administrative claims, as specified in Paragraphs 4 and 8 below, against NY Downtown for engaging in the Covered Conduct.

M. The State of New York also contends that it has certain administrative claims, as specified in Paragraph 5 below, against NY Downtown for engaging in the Covered Conduct.

N. Relators claim entitlement under 31 U.S.C. § 3730(d) and N.Y. State Finance Law § 190(6) to a share of the proceeds of this Agreement. The Agreement between the Relators, the United States and the State of New York regarding the Relators' respective entitlement of that award is set forth in Paragraphs 2 and 3 below.

O. NY Downtown denies the allegations of the United States and the State of New York set out in Paragraphs I, J and K, as well as the allegations contained in the Complaints filed in this matter by the United States, the State of New York, and the Relators. This stipulation is neither an admission of liability by NY Downtown, nor a concession by the United States, the State of New York, or the Relators that their claims are not well founded.

P. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement of the plaintiffs' claims against NY Downtown in Civil Action I and Civil Action II, pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. NY Downtown agrees to pay the United States and the State of New York thirteen million, four hundred thousand dollars (\$13,400,000.00), plus interest at an annual rate of 1.75% compounded monthly, resulting in a total payment amount of thirteen million, nine

hundred and eighty-four thousand, one hundred and sixty-seven dollars (\$13,984,167.00), (“the Total Settlement Amount”), to be paid as follows:

a. NY Downtown shall pay the United States eight hundred thousand dollars (\$800,000.00), plus interest at an annual rate of 1.75% compounded monthly, in settlement of the claims of the United States in Civil Action I and Civil Action II which concern Medicare (“Medicare Settlement Amount”), as specified under Schedule A and as set forth below in Paragraph 1.c.;

b. NY Downtown shall pay the United States and the State of New York a total of twelve million, six hundred thousand dollars (\$12,600,000.00), plus interest at an annual rate of 1.75% compounded monthly, as set forth in Paragraphs 1.c and 1.d below, in settlement of the claims of the United States and the State of New York in Civil Action I and Civil Action II which concern Medicaid (“Total Medicaid Settlement Amount”). Payment to the United States and the State of New York of the Total Medicaid Settlement Amount shall be made as specified in Schedules A and B, and Paragraphs 1.c and 1.d herein, respectively;

c. NY Downtown shall pay the United States five million, eight hundred forty thousand dollars (\$5,840,000.00), which amount shall include the Medicare Settlement Amount of eight hundred thousand dollars (\$800,000.00), and payment of the United States’ share of the Total Medicaid Settlement Amount of five million, forty thousand dollars (\$5,040,000.00), plus interest at an annual rate of 1.75% compounded monthly, (collectively, the “U.S. Settlement Amount”), in settlement of all claims of the United States against NY Downtown in Civil Action I and Civil Action II. NY

Downtown agrees to pay the U.S. Settlement Amount to the United States as follows:

(i) One hundred and one thousand, five hundred seventy-seven dollars (\$101,577.00) in accordance with instructions provided by the United States for an electronic funds transfer, no later than two business days from the Effective Date of this Agreement, as defined in Paragraph 39 herein (the "Effective Date of this Agreement"); and

(ii) One hundred and one thousand, five hundred seventy-seven dollars (\$101,577.00) to be paid in fifty-nine (59) monthly installment payments, on or before the fifth day of each month, for the fifty-nine(59) consecutive months following the payment made in Paragraph 1.c(i) above, by electronic funds transfer, in accordance with instructions to be provided by the United States.

d. NY Downtown agrees to pay the State of New York seven million, five hundred sixty thousand dollars (\$7,560,000.00), plus interest at an annual rate of 1.75% compounded monthly, as the State of New York's share of the Total Medicaid Settlement Amount, (the "New York State Medicaid Settlement Amount") in settlement of all of the State of New York's claims against NY Downtown in Civil Action I and Civil Action II. NY Downtown agrees to pay the New York State Medicaid Settlement Amount to the State of New York as specified under Schedule B and as set forth below:

(i) One hundred thirty one thousand, four hundred ninety-three dollars (\$131,493.00) in accordance with instructions provided by the State of New York for an electronic funds transfer, no later than two business days from the Effective Date of this Agreement; and

(ii) One hundred thirty-one thousand, four hundred ninety-three dollars (\$131,493.00), to be paid in fifty-nine (59) additional monthly installment payments, on or before the fifth day of each month, for the fifty-nine (59) consecutive months following the payment made in Paragraph 1.d(i) above, by electronic funds transfer, in accordance with instructions to be provided by the State of New York.

The entire balance of the Medicare Settlement Amount and Total Medicaid Settlement Amount, or any portion thereof, may be prepaid without penalty, without affecting any other agreements contained herein, provided such payment, if not made in full, is made both to the United States and the State of New York in the same ratio as the scheduled payments herein.

If at any point NY Downtown elects to pay the entire outstanding balance of the Settlement Amount, NY Downtown will not be required to pay remaining interest amounts (which are reflected in the payment schedule). If NY Downtown elects to pre-pay part, but not all of the Settlement Amount, the parties agree that the payment schedule will be revised to reflect the lower principal amounts due and the resulting lower interest payments.

e. In accordance with 31 U.S.C. § 3730(d) and N.Y. State Finance Law § 190(7), NY Downtown agrees to pay Relators' expenses and attorneys' fees and costs in the total amount of one hundred fifty thousand dollars (\$150,000.00) for counsel fees, expenses and costs, in accordance with written instructions provided by counsel for Relators for two electronic funds transfers: the first transfer of seventy-five thousand

dollars (\$75,000.00) shall be paid within five days after the Agreement is "So Ordered;" the second transfer of seventy-five thousand dollars (\$75,000) shall be paid on August 3, 2013.

f. NY Downtown consents to entry of a judgment in the form annexed as Exhibit A hereto. Execution upon the judgment shall not take place other than as provided in Paragraph 22, or absent the provision of notice and the opportunity to cure set forth in Paragraph 25 herein, as to the United States, Paragraph 26 herein, as to the State of New York, and Paragraph 27 herein, as to the Relators.

2. Contingent upon the United States receiving the amounts of the U.S. Settlement Amount set forth in Schedule A, and Paragraphs 1.a and 1.c(i) and (ii), within thirty (30) days after the United States' receipt of each of these payments, the United States agrees to pay Relators, collectively, eighteen (18%) of each of these payments (the "Relators' Share"). The United States' obligation to pay the Relators' Share is conditioned upon the United States' actual receipt of each payment due from NY Downtown, as set forth in Schedule A, and Paragraphs 1.a and 1.c(i) and (ii). The United States shall make each such payment of the Relators' Share in the form of an electronic funds transfer pursuant to written instructions to be provided by the Relators' attorneys.

3. Contingent upon the State of New York receiving the amounts of New York State Medicaid Settlement Amount set forth in Schedule B, and Paragraph 1.d(i) and (ii), within thirty (30) days after the State of New York's receipt of each of these payments, the State of New York agrees to pay Relators, collectively, eighteen (18%) of each of these payments (the "Relators' Share"). The State of New York's obligation to pay the Relators' Share is

conditioned upon the State of New York's actual receipt of each payment due from NY Downtown, as set forth in Schedule A, and Paragraph 1.d(i) and (ii). The State of New York shall make each such payment of the Relators' Share in the form of an electronic funds transfer pursuant to written instructions to be provided by the Relators' attorneys.

4. Subject to the exceptions in Paragraph 9 below, in consideration of the obligations of NY Downtown set forth in this Agreement, conditioned upon the full payment by NY Downtown of the U.S. Settlement Amount, and subject to Paragraph 22 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment to the United States under the Agreement, whichever is later), the United States agrees to release NY Downtown, its respective affiliates, members, trustees, directors, officers, agents, employees, successors, and assigns ("the NYDH Released Parties") from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-33; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-12, or the common law theories of payment by mistake, unjust enrichment, and fraud. Nothing in this Paragraph shall be deemed to constitute a release by the United States as to any other defendant in Civil Action I or Civil Action II for the Covered Conduct.

5. Subject to the exceptions in Paragraph 10 below, in consideration of the obligations of NY Downtown set forth in this Agreement, conditioned upon the full payment by NY Downtown of the New York State Medicaid Settlement Amount, and subject to Paragraph 22 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment to the State of New York under the

Agreement, whichever is later), the State of New York agrees to release the NYDH Released Parties from any civil or administrative monetary claim the State has or may have for the Covered Conduct under the New York False Claims Act, N.Y. State Fin. Law §§ 187 et seq., N.Y. Executive Law § 63(12), N.Y. Social Services Law § 145-b, or the common law or equitable theories of payment by mistake, disgorgement, unjust enrichment, breach of contract and fraud. Nothing in this Paragraph shall be deemed to constitute a release by the State of New York as to any other defendant in Civil Action I or Civil Action II for the Covered Conduct.

6. Subject to the exceptions in Paragraphs 9 and 10, in consideration of the obligations of NY Downtown in this Agreement, conditioned upon the full payment by NY Downtown of the U.S. Settlement Amount and the New York State Medicaid Settlement Amount, and the full payment by NY Downtown set forth in Paragraph 1.e above, and subject to Paragraph 22 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment to the United States or the State of New York under the Agreement, whichever is later), Relator Gelfand, for himself, and for his heirs, successors, attorneys, agents, and assigns, agrees to release the NYDH Released Parties from any claim and all claims that he may have against NY Downtown, including, without limitation, any civil monetary claim the United States and the State of New York or either of them has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-33; the New York False Claims Act, N.Y. State Fin. Law §§ 187 et seq., and any claims asserted or assertable by Relator Gelfand in Civil Action I. Nothing in this Paragraph shall be deemed a release by Relator Gelfand as to any other defendant in Civil Action I or Civil Action

II for the Covered Conduct.

7. Subject to the exceptions in Paragraphs 9 and 10, in consideration of the obligations of NY Downtown in this Agreement, conditioned upon the full payment by NY Downtown of the U.S. Settlement Amount and the New York State Medicaid Settlement Amount, and the full payment by NY Downtown set forth in Paragraph 1.e above, and subject to Paragraph 22 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment to the United States under the Agreement, whichever is later), Relator Montaperto, for himself, and for his heirs, successors, attorneys, agents, and assigns, agrees to release the NYDH Released Parties from any claim and all claims that he may have against NY Downtown, including, without limitation, any civil monetary claim the United States and the State of New York or either of them has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-33; the New York False Claims Act, N.Y. State Fin. Law §§ 187 et seq., and any claims asserted or assertable by Relator Montaperto in Civil Action II. Nothing in this Paragraph shall be deemed a release by Relator Montaperto as to any other defendant in Civil Action I or Civil Action II for the Covered Conduct.

8. HHS-OIG expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against the NYDH Released Parties from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. 1320a-7b(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

9. Notwithstanding any term of this Agreement, the United States specifically does

not release any person or entity from any of the following liabilities:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code ("Internal Revenue Code");
- b. Any criminal liability;
- c. Any administrative liability, including mandatory or permissive exclusion from the Medicare, Medicaid or other Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability which may be asserted, directly or indirectly, by private payors or insurers, including those that are paid by the Medicare Program or New York State Medicaid Program on a fully capitated basis;
- f. Any liability based upon such obligations as are created by this Agreement;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- i. Any liability for failure to deliver goods or services due;
- j. Any civil or administrative liability of any of the defendants, or their employees, in Civil Action I and Civil Action II, other than NY Downtown; or
- k. Any civil or administrative liability of individuals, except as provided for herein.

10. Notwithstanding any term of this Agreement, the State of New York specifically does not release any person or entity from any of the following liabilities:

- a. Any civil, criminal, or administrative liability arising under state tax laws;
- b. Any criminal liability;
- c. Any administrative liability, including mandatory or permissive exclusion from the Medicaid Program;
- d. Any civil liability that NY Downtown has or may have under any state statute, regulation, or rule not covered by this Agreement;
- e. Any liability to the State of New York (or its agencies) for any conduct other than the Covered Conduct;
- f. Any liability which may be asserted, directly or indirectly, by private payors or insurers, including those that are paid by the State of New York Medicaid Program on a fully capitated basis;
- g. Any liability based upon such obligations as are created by this Agreement;
- h. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- j. Any liability for failure to deliver goods or services due;
- k. Any civil or administrative liability of any of the defendants, or their

employees, in Civil Action I and Civil Action II, other than NY Downtown; or

l. Any civil or administrative liability of individuals, except as provided for herein.

11. Relators, and each of their respective heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and 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) and, conditioned upon receipt of the payment described in Paragraph 2, Relators, each for himself and for his heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730 with regard to NY Downtown; from any claims arising from the filing of Civil Action I and Civil Action II against NY Downtown; from any other claims for a share of the U.S. Settlement Amount; and in full settlement of any claims each Relator may have against the United States under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against each Relator arising under the Internal Revenue Code, or any claims arising under this Agreement.

12. Relators, and each of their respective heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to N.Y. State Finance Law § 190(5)(b)(ii) and, conditioned upon receipt of the payment described in Paragraph 3, Relators, each for himself and for his heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges the State of New York, its officers, agents, and employees, from any claims arising from or relating to N.Y. State Finance Law § 190 with

regard to NY Downtown; from any claims arising from the filing of Civil Action I and Civil Action II against NY Downtown; from any other claims for a share of New York State Medicaid Settlement Amount; and in full settlement of any claims each Relator may have against the State of New York under this Agreement. This Agreement does not resolve or in any manner affect any claims the State of New York has or may have against each Relator arising under state tax laws, or any claims arising under this Agreement.

13. NY Downtown waives and shall not assert any defenses that NY Downtown 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 to the Constitution, or under the Excessive Fines Clause in the Eighth Amendment to the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the U.S. Settlement Amount for purposes of the Internal Revenue Code. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the State of New York concerning the characterization of the New York State Medicaid Settlement Amount for purposes of the state tax laws.

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

thereof.

15. NY Downtown fully and finally releases the State of New York, its agencies, employees, servants, attorneys and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that NY Downtown has asserted, could have asserted, or may assert in the future against the State of New York, its agencies, employees, servants, and agents, related to the Covered Conduct and the State of New York's investigation and prosecution thereof.

16. NY Downtown fully and finally releases Relators, and each of their respective heirs, successors, attorneys, agents, and assigns, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that NY Downtown has asserted, or could have asserted, or may assert in the future against the Relators and their heirs, successors, attorneys, agents and assigns, related to the Covered Conduct and their investigation and prosecution thereof.

17. The U.S. Settlement Amount and New York Medicaid Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carriers or intermediary or any state payer, related to the Covered Conduct; and NY Downtown shall not resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

18. NY Downtown agrees to the following:

- a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations, 48 C.F.R. §§ 31.205-47 and in Titles XVIII and XIX of the Social

Security Act, 42 U.S.C. §§ 1395-1395kkk and 1396-1396w-5v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of NY Downtown, its 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 and any criminal investigation(s) of the matters covered by the United States' Complaint-InIntervention in this action, the State of New York's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by the State of New York's Complaint-In-Intervention in this action, and this Agreement,
- (3) NY Downtown's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by the United States' Complaint-In-Intervention in this action, or in response to the State of New York's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by the State of New York's Complaint-In-Intervention in this action, and this Agreement (including attorneys' fees),
- (4) the negotiation and performance of this Agreement, and
- (5) the payments NY Downtown makes to the United States or the State of New York pursuant to this Agreement, including any interest, costs and attorneys' fees.

- b. Future Treatment of Unallowable Costs: These Unallowable Costs, as defined in

Paragraph 18.a, will be separately determined and accounted for by NY Downtown, and NY Downtown will not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any state Medicaid Program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by NY Downtown, or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:NY

Downtown further agrees that within ninety (90) days of the entry of this Stipulation and Order, it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph 18.a) included in payments previously sought from the United States, or any state Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by NY Downtown or any of its subsidiaries or affiliates, and will request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs, as defined in Paragraph 18.a. NY Downtown agrees that the United States, at a minimum, will be entitled to recoup from NY Downtown any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information

reports, cost statements, or payment requests.

- d. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by NY Downtown or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on NY Downtown's or any of its subsidiaries' or affiliates' cost reports, information reports, cost statements, or payment requests.
- e. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or re-examine the books and records of NY Downtown to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

19. Except as expressly stated otherwise, this Agreement is intended to be for the benefit of the Parties to this Agreement only. The Parties do not release any claims against any other person or entity, except as expressly stated in Paragraph 20 of this Agreement.

20. NY Downtown waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

21. NY Downtown warrants that it has reviewed its financial situation and that it will be 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 and the State of New York of the Total

Medicaid Settlement Amount and the Medicare Settlement Amount, and to the Relators of the attorney's fees under Paragraph 1.e hereof. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to NY Downtown, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which NY Downtown was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

22. If within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, NY Downtown commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (i) seeking to have any order for relief of NY Downtown's debts, or seeking to adjudicate NY Downtown as bankrupt or insolvent; or (ii) seeking appointment of a receiver, trustee, custodian, or other similar official for NY Downtown or for all or any substantial part of NY Downtown's assets, NY Downtown agrees as follows:

- a. NY Downtown's obligations under this Agreement, or under the consent judgment attached hereto as Exhibit A, may not be avoided pursuant to 11 U.S.C. § 547, and NY Downtown shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) NY Downtown's obligations under this Agreement, or under the consent judgment attached as Exhibit A, may

be avoided under 11 U.S.C. § 547; (ii) NY Downtown was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States or to the State of New York; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to NY Downtown.

- b. If NY Downtown's obligations under this Agreement and/or under the consent judgment attached hereto as Exhibit A, are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States and the State of New York, at their sole options, may rescind their releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against NY Downtown for the claims that would otherwise be covered by the releases provided in Paragraphs 4, 5, 6, 7, 11, and 12 above. NY Downtown agrees that (i) any such claims, actions, or proceedings brought by the United States and the State of New York are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and NY Downtown shall not argue or otherwise contend that the United States or the State of New York's claims, actions, or proceedings are subject to an automatic stay; (ii) NY Downtown 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 claims, actions, or proceeding that are brought by the United States or the State of New York within ninety (90) calendar days

of written notification to NY Downtown, that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; (iii) the United States has a valid claim against NY Downtown in an amount no less than nine million, six hundred forty-four thousand, four hundred eighty-three dollars and thirty-nine cents (\$9,644,483.39), plus civil penalties to be determined by the Court, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding; and (iv) the State of New York has a valid claim against NY Downtown in an amount no less than nine million, one hundred fifty-six thousand, two hundred thirty-eight dollars and forty-seven cents (\$9,156,238.47), and the State of New York may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

- c. NY Downtown acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

23. Subject to Paragraph 22 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment under the Agreement), the United States and the Relators, on the 91st day following the receipt of the first installment payment set forth in Paragraph 1.c(i) above, or as soon as practicable thereafter,

shall each file a Joint Notice of Dismissal in Civil Action I and Civil Action II pursuant to Fed.

R. Civ. P. 41(a)(1), with prejudice.

24. Subject to Paragraph 22 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment under the Agreement), the State of New York and the Relators, on the 91st day following the receipt of the first installment payment set forth in Paragraph 1.d(i) above, or as soon as practicable thereafter, shall each file a Joint Notice of Dismissal in Civil Action I and Civil Action II pursuant to Fed. R. Civ. P. 41(a)(1), with prejudice.

25. In the event of the failure by NY Downtown to make any or all payments of the U.S. Settlement Amount when due under Schedule A and Paragraph 1.c above, the United States will provide written notice of the non-payment to:

President/Chief Executive Officer
Jeffrey Menkes
New York Downtown Hospital
170 William Street
New York, NY 10038

and

John G. Martin, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, NY 11201

and NY Downtown shall have an opportunity to pay the unpaid balance within fifteen (15) calendar days from receipt of the written notice. If NY Downtown fails to pay the overdue unpaid balance of its payment obligations under this Agreement within fifteen (15) calendar days of receiving the notice of non-payment ("Default"), the United States, in its sole discretion, may declare or do any or all of the following:

(a) execute upon the consent judgment provided under Paragraph 1.f above.

(b) any dismissals as to NY Downtown shall be null and void, and the United States may declare the U.S. Settlement Amount referenced in Paragraph 1 above, less any payments already made immediately due and payable, with unpaid amounts bearing the Default rate of interest at the Medicare interest rate (per 42 C.F.R. part 405.378) beginning as of the date of Default until payment of the U.S. Settlement Amount is made in full;

(c) rescind its agreement to this Stipulation and Order as to NY Downtown and pursue all available remedies; or

(d) reinstitute an action or actions against NY Downtown in this Court.

In the event of a Default as described above, NY Downtown agrees not to contest any action to enforce this Agreement or any other collection action undertaken by the United States pursuant to this Paragraph, and NY Downtown agrees to pay the United States all reasonable costs of collection and enforcement of this Agreement, including attorneys' fees and expenses.

In the event the United States reinstitutes this action, NY Downtown: (1) expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (i) are filed by the United States after the written notification to NY Downtown that this Stipulation has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available as July 7, 2008, and (2) further waives and will not assert any defenses it may have to any administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines Clause in the

Eighth Amendment of the United States Constitution, this Stipulation and Order bars a remedy sought in such administrative action.

26. In the event of the failure by NY Downtown to make any or all payments of the New York State Medicaid Settlement Amount when due under Schedule B and Paragraph 1.d above, the State of New York will provide written notice of the non-payment to:

President/Chief Executive Officer
Jeffrey Menkes
New York Downtown Hospital
170 William Street
New York, NY 10038
and

John G. Martin, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, NY 11201

and NY Downtown shall have an opportunity to pay the overdue unpaid balance within fifteen (15) calendar days from receipt of the written notice. If NY Downtown fails to pay the remaining unpaid balance of its payment obligations under this Agreement within fifteen (15) calendar days of receiving the notice of non-payment ("Default"), the State of New York, in its sole discretion, may declare or do any or all of the following:

(a) execute upon the consent judgment provided under Paragraph 1.f above;

(b) any dismissals as to NY Downtown shall be null and void, and the State of New York may declare the New York State Medicaid Settlement Amount referenced in Paragraph 1 above, less any payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the Medicare interest rate (per 42 C.F.R. part

405.378) beginning as of the date of Default until payment of the New York State Medicaid Settlement Amount is made in full;

(c) rescind its agreement to this Stipulation and Order as to NY Downtown and pursue all available remedies; or

(d) reinstitute an action or actions against NY Downtown in this Court. In the event of a Default as described above, NY Downtown agrees not to contest any action to enforce this Agreement or any other collection action undertaken by the State of New York pursuant to this Paragraph, and NY Downtown agrees to pay the State of New York all reasonable costs of collection and enforcement of this Agreement, including attorneys' fees and expenses.

In the event the State of New York reinstitutes this action, NY Downtown: (1) expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (i) are filed by the State of New York after the written notification to NY Downtown that this Stipulation has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available as July 7, 2008, and (2) further waives and will not assert any defenses it may have to any administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Stipulation and Order bars a remedy sought in such administrative action.

27. In the event of the failure by NY Downtown to make any or all payments of the Relators' counsel fee when due under Paragraph 1.e above, Relators will provide written notice of non-payment to:

President/Chief Executive Officer
Jeffrey Menkes
New York Downtown Hospital
170 William Street
New York, NY 10038

and

John G. Martin, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, NY 11201

and NY Downtown shall have an opportunity to pay the overdue unpaid balance within fifteen (15) calendar days from receipt of the written notice. In the event of the Relators transmission of written notice of non-payment to NY Downtown as set forth above, Relators will provide written notice of NY Downtown's non-payment, on the same day that said notice is sent to NY Downtown, to:

Richard K. Hayes
Assistant United States Attorney
United States Attorneys Office
Eastern District of New York
271 Cadman Plaza East, 7th Floor
Brooklyn, New York 11201

and

Amy Held
Special Assistant Attorney General
New York State Attorney General's Office
Medicaid Fraud Control Unit
120 Broadway, 12th Floor
New York, New York 10271

If NY Downtown fails to pay the remaining unpaid balance of its payment obligations under this Agreement within fifteen (15) calendar days of receiving the notice of non-payment, the Relators, in their sole discretion, may execute upon the consent judgment provided under Paragraph 1.f above.

28. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

29. NY Downtown represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

30. Relators represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

31. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the parties under the Agreement shall be the United States District Court for the Eastern District of New York. The Court is retaining jurisdiction over this Agreement.

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

33. The individuals signing this Agreement on behalf of NY Downtown represent and warrant that they are authorized by NY Downtown to execute this Agreement. The individuals signing this Agreement on behalf of Relators represent and warrant that they are authorized by Relator Gelfand and Relator Montaperto respectively to execute this Agreement.

The United States and the State of New York signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

34. For purposes of construction, 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.

35. Any failure by the United States or the State of New York to insist upon the strict performance by NY Downtown of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the United States and the State of New York, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by NY Downtown.

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

37. This Agreement is binding on NY Downtown's successors, transferees, heirs, and assigns.

38. This Agreement is binding on Relator Gelfand's and Relator Montaperto's successors, transferees, heirs, and assigns.

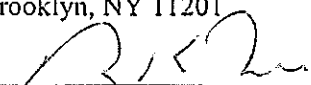
39. This Agreement is effective on the date that it is approved by the Court and entered onto the Court's docket through an electronic filing notice recorded on ECF ("Effective Date of this Agreement").

40. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

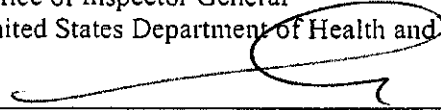
DATED: 8/15/12

THE UNITED STATES OF AMERICA
LORETTA E. LYNCH
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

BY: 
RICHARD K. HAYES
Assistant U.S. Attorney

DATED: 8/16/12

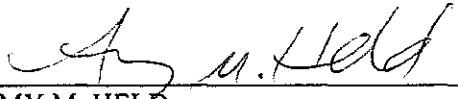
GREGORY E. DEMSKE
Chief Counsel to the Inspector General
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services



THE STATE OF NEW YORK

DATED: 8/8/12

THE STATE OF NEW YORK
ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

BY: 
AMY M. HELD
Special Assistant Attorney General
Medicaid Fraud Control Unit
120 Broadway, 12th Floor
New York, NY 10271

RELATOR MATHEW I. GELFAND, M.D.

DATED: _____

MENZ BONNER KOMAR & KOENIGSBERG LLP
Attorneys for Relator Mathew I. Gelfand, M.D.

BY: _____
DAVID KOENIGSBERG, ESQ.
444 Madison Avenue, 39th Floor
New York, NY 10022
(212) 233-2100

RELATOR ENRICO MONTAPERTO

DATED: _____

ARNOLD SAPHIRSTEIN, ESQ.
Attorney for Relator Enrico Montaperto

BY: _____
ARNOLD SAPHIRSTEIN, ESQ.
155 Belmore Rd
East Meadow, NY 11554
(516) 731-6011

THE STATE OF NEW YORK

DATED: _____

THE STATE OF NEW YORK
ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

BY: _____

AMY M. HELD
Special Assistant Attorney General
Medicaid Fraud Control Unit
120 Broadway, 12th Floor
New York, NY 10271

RELATOR MATHEW I. GELFAND, M.D.

DATED: 8/3/12

MENZ BONNER KOMAR & KOENIGSBERG LLP
Attorneys for Relator Mathew I. Gelfand, M.D.

BY: 

DAVID KOENIGSBERG, ESQ.
444 Madison Avenue, 39th Floor
New York, NY 10022
(212) 233-2100

RELATOR ENRICO MONTAPERTO

DATED: _____

ARNOLD SAPHIRSTEIN, ESQ.
Attorney for Relator Enrico Montaperto

BY: _____

ARNOLD SAPHIRSTEIN, ESQ.
155 Belmore Rd
East Meadow, NY 11554
(516) 731-6011

THE STATE OF NEW YORK

DATED: _____

THE STATE OF NEW YORK
ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

BY: _____

AMY M. HELD
Special Assistant Attorney General
Medicaid Fraud Control Unit
120 Broadway, 12th Floor
New York, NY 10271

RELATOR MATHEW I. GELFAND, M.D.

DATED: _____

MENZ BONNER KOMAR & KOENIGSBERG LLP
Attorneys for Relator Mathew I. Gelfand, M.D.

BY: _____

DAVID KOENIGSBERG, ESQ.
444 Madison Avenue, 39th Floor
New York, NY 10022
(212) 233-2100

RELATOR ENRICO MONTAPERTO

DATED: 8/3/12

ARNOLD SAPHIRSTEIN, ESQ.
Attorney for Relator Enrico Montaperto

BY: _____

ARNOLD SAPHIRSTEIN, ESQ.
155 Belmore Rd
East Meadow, NY 11554
(516) 731-6011

DATED: 8/5/12

ALAN LEBENBAUM, ESQ.
Attorney for Relator Enrico Montepertio
156 Beach 96th St.
Belle Harbor, NY 11694
(917) 826-1371

BY: Alan Lebenbaum
ALAN LEBENBAUM, ESQ.

NEW YORK DOWNTOWN HOSPITAL - DEFENDANT

DATED: _____

BY: _____
JEFFREY MENKES
President/Chief Executive Officer of New York
Downtown Hospital

GARFUNKEL WILD, P.C.
Attorneys for New York Downtown Hospital

DATED: _____

BY: _____
JOHN G. MARTIN
111 Great Neck Road
Great Neck, NY 11204
(516) 393-2214

SO ORDERED

On this ____ day of _____, 2012

HONORABLE LEONARD D. WEXLER
United States District Judge


DATED: _____

ALAN LEBENBAUM, ESQ.
Attorney for Relator Enrico Montaperto
156 Beach 96th St.
Belle Harbor, NY 11694
(917) 826-1371

BY: _____
ALAN LEBENBAUM, ESQ.

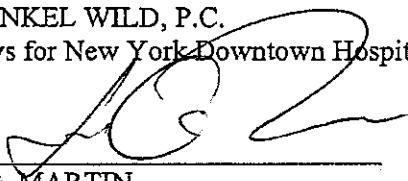
NEW YORK DOWNTOWN HOSPITAL - DEFENDANT

DATED: 8/6/12

BY: 
JEFFREY MENKES
President/Chief Executive Officer of New York
Downtown Hospital

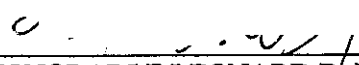
GARFUNKEL WILD, P.C.
Attorneys for New York Downtown Hospital

DATED: 8/6/12

BY: 
JOHN G. MARTIN
111 Great Neck Road
Great Neck, NY 11201
(516) 393-2214

SO ORDERED

On this 28 day of AUG., 2012



HONORABLE LEONARD D. WEXLER
United States District Judge

CENTRAL ISLIP, NY

SCHEDULE A

Installment Payment Amount to United States	Installment Payment Amount Due Date
\$101,577.00	On or before September 5, 2012
\$101,577.00	On or before October 5, 2012
\$101,577.00	On or before November 5, 2012
\$101,577.00	On or before December 5, 2012
\$101,577.00	On or before January 5, 2013
\$101,577.00	On or before February 5, 2013
\$101,577.00	On or before March 5, 2013
\$101,577.00	On or before April 5, 2013
\$101,577.00	On or before May 5, 2013
\$101,577.00	On or before June 5, 2013
\$101,577.00	On or before July 5, 2013
\$101,577.00	On or before August 5, 2013
\$101,577.00	On or before September 5, 2013
\$101,577.00	On or before October 5, 2013
\$101,577.00	On or before November 5, 2013
\$101,577.00	On or before December 5, 2013
\$101,577.00	On or before January 5, 2014
\$101,577.00	On or before February 5, 2014
\$101,577.00	On or before March 5, 2014
\$101,577.00	On or before April 5, 2014
\$101,577.00	On or before May 5, 2014
\$101,577.00	On or before June 5, 2014
\$101,577.00	On or before July 5, 2014
\$101,577.00	On or before August 5, 2014
\$101,577.00	On or before September 5, 2014
\$101,577.00	On or before October 5, 2014
\$101,577.00	On or before November 5, 2014
\$101,577.00	On or before December 5, 2014
\$101,577.00	On or before January 5, 2015
\$101,577.00	On or before February 5, 2015
\$101,577.00	On or before March 5, 2015
\$101,577.00	On or before April 5, 2015
\$101,577.00	On or before May 5, 2015
\$101,577.00	On or before June 5, 2015
\$101,577.00	On or before July 5, 2015
\$101,577.00	On or before August 5, 2015
\$101,577.00	On or before September 5, 2015
\$101,577.00	On or before October 5, 2015
\$101,577.00	On or before November 5, 2015
\$101,577.00	On or before December 5, 2015

\$101,577.00	On or before January 5, 2016
\$101,577.00	On or before February 5, 2016
\$101,577.00	On or before March 5, 2016
\$101,577.00	On or before April 5, 2016
\$101,577.00	On or before May 5, 2016
\$101,577.00	On or before June 5, 2016
\$101,577.00	On or before July 5, 2016
\$101,577.00	On or before August 5, 2016
\$101,577.00	On or before September 5, 2016
\$101,577.00	On or before October 5, 2016
\$101,577.00	On or before November 5, 2016
\$101,577.00	On or before December 6, 2016
\$101,577.00	On or before January 5, 2017
\$101,577.00	On or before February 5, 2017
\$101,577.00	On or before March 5, 2017
\$101,577.00	On or before April 5, 2017
\$101,577.00	On or before May 5, 2017
\$101,577.00	On or before June 5, 2017
\$101,577.00	On or before July 5, 2017

SCHEDULE B

Installment Payment Amount to the State of New York	Installment Payment Amount Due Date
\$131,493.00	On or before September 5, 2012
\$131,493.00	On or before October 5, 2012
\$131,493.00	On or before November 5, 2012
\$131,493.00	On or before December 5, 2012
\$131,493.00	On or before January 5, 2013
\$131,493.00	On or before February 5, 2013
\$131,493.00	On or before March 5, 2013
\$131,493.00	On or before April 5, 2013
\$131,493.00	On or before May 5, 2013
\$131,493.00	On or before June 5, 2013
\$131,493.00	On or before July 5, 2013
\$131,493.00	On or before August 5, 2013
\$131,493.00	On or before September 5, 2013
\$131,493.00	On or before October 5, 2013
\$131,493.00	On or before November 5, 2013
\$131,493.00	On or before December 5, 2013
\$131,493.00	On or before January 5, 2014
\$131,493.00	On or before February 5, 2014
\$131,493.00	On or before March 5, 2014
\$131,493.00	On or before April 5, 2014
\$131,493.00	On or before May 5, 2014
\$131,493.00	On or before June 5, 2014
\$131,493.00	On or before July 5, 2014
\$131,493.00	On or before August 5, 2014
\$131,493.00	On or before September 5, 2014
\$131,493.00	On or before October 5, 2014
\$131,493.00	On or before November 5, 2014
\$131,493.00	On or before December 5, 2014
\$131,493.00	On or before January 5, 2015
\$131,493.00	On or before February 5, 2015
\$131,493.00	On or before March 5, 2015
\$131,493.00	On or before April 5, 2015
\$131,493.00	On or before May 5, 2015
\$131,493.00	On or before June 5, 2015
\$131,493.00	On or before July 5, 2015
\$131,493.00	On or before August 5, 2015
\$131,493.00	On or before September 5, 2015
\$131,493.00	On or before October 5, 2015
\$131,493.00	On or before November 5, 2015

\$131,493.00	On or before December 5, 2015
\$131,493.00	On or before January 5, 2016
\$131,493.00	On or before February 5, 2016
\$131,493.00	On or before March 5, 2016
\$131,493.00	On or before April 5, 2016
\$131,493.00	On or before May 5, 2016
\$131,493.00	On or before June 5, 2016
\$131,493.00	On or before July 5, 2016
\$131,493.00	On or before August 5, 2016
\$131,493.00	On or before September 5, 2016
\$131,493.00	On or before October 5, 2016
\$131,493.00	On or before November 5, 2016
\$131,493.00	On or before December 5, 2016
\$131,493.00	On or before January 5, 2017
\$131,493.00	On or before February 5, 2017
\$131,493.00	On or before March 5, 2017
\$131,493.00	On or before April 5, 2017
\$131,493.00	On or before May 5, 2017
\$131,493.00	On or before June 5, 2017
\$131,493.00	On or before July 5, 2017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA, EX REL.,
MATHEW I. GELFAND, M.D., AND STATE OF
NEW YORK, EX REL., MATHEW I. GELFAND,
M.D.,

PLAINTIFFS.

-AGAINST-

NEW PARKWAY HOSPITAL, SPECIALCARE
HOSPITAL MANAGEMENT CORPORATION,
ROBERT MCNUTT, LONG BEACH MEDICAL
CENTER, NEW YORK DOWNTOWN HOSPITAL,
BENEDICTINE HOSPITAL, ST. JOSEPH'S
MEDICAL CENTER, AND COLUMBIA
MEMORIAL HOSPITAL

DEFENDANTS.

**CONSENT JUDGMENT
AGAINST DEFENDANT NEW
YORK DOWNTOWN HOSPITAL**

DOCKET No. CV-02-6079(LDW)(ETB)

UNITED STATES OF AMERICA, AND STATE OF
NEW YORK, EX REL., ENRICO MONTAPERTO,

PLAINTIFFS.

-AGAINST-

NEW PARKWAY HOSPITAL, SPECIALCARE
HOSPITAL MANAGEMENT CORPORATION,
ROBERT MCNUTT, LONG BEACH MEDICAL
CENTER, NEW YORK DOWNTOWN HOSPITAL,
BENEDICTINE HOSPITAL, ST. JOSEPH'S
MEDICAL CENTER, AND COLUMBIA
MEMORIAL HOSPITAL,

DEFENDANTS.

**CONSENT JUDGMENT
AGAINST DEFENDANT NEW
YORK DOWNTOWN HOSPITAL**

DOCKET No. CV-05-4911 (LDW)(ETB)

It appearing to the Court that plaintiff the United States of America acting through the United States Department of Justice and on behalf of the Office of the Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively, the "United States"), plaintiff the State of New York (the "State"), acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit ("MFCU"), Defendant New York Downtown Hospital; Relator Mathew I. Gelfand, M.D. ("Gelfand"); and Relator Enrico Montaperto ("Montaperto") (collectively, "Relators"), through their authorized representatives (collectively, the "Parties") have resolved the matters in controversy between them and have consented to the terms of this judgment.

NOW, THEREFORE, based upon the advice and stipulation of the Parties, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED, AS FOLLOWS:

1. Upon agreement of the Parties, the Court hereby enters this Consent Judgment in the amount of thirteen million, nine hundred and eighty-four thousand, one hundred and sixty-seven dollars (\$13,984,167.00), as to the United States and the State of New York, and one hundred fifty thousand dollars (\$150,000.00) as to the Relators, and in so doing, incorporates by reference the Stipulation and Order entered in this action in August, 2012.

2. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Judgment.

Consent to Judgment

3. The Parties acknowledge that they have read the foregoing Consent Judgment, are aware of their right to a trial in this matter and have waived that right.

4. Defendant New York Downtown Hospital agrees to the jurisdiction of the Court and consents to entry of this Consent Judgment.

5. The Parties state that no promise of any kind or nature whatsoever (other than the terms of the Consent Judgment) was made to induce them to enter in to this Consent Judgment, that they have entered into this Consent Judgment voluntarily, and that this Consent Judgment constitutes the entire agreement between the Parties, except as set forth in the Stipulation and Order entered in August, 2012.

DATED this _____ day of August, 2012

NEW YORK DOWNTOWN HOSPITAL - DEFENDANT

DATED: 2/6/12

BY: _____

JEFFREY MENKES

President/Chief Executive Officer of New York
Downtown Hospital

APPROVED AS TO FORM AND SUBSTANCE:

THE UNITED STATES OF AMERICA - PLAINTIFF

DATED: _____

THE UNITED STATES OF AMERICA

LORETTA E. LYNCH

United States Attorney

Eastern District of New York

271 Cadman Plaza East

Brooklyn, NY 11201

BY: _____

RICHARD K. HAYES

Assistant U.S. Attorney

4. Defendant New York Downtown Hospital agrees to the jurisdiction of the Court and consents to entry of this Consent Judgment.

5. The Parties state that no promise of any kind or nature whatsoever (other than the terms of the Consent Judgment) was made to induce them to enter in to this Consent Judgment, that they have entered into this Consent Judgment voluntarily, and that this Consent Judgment constitutes the entire agreement between the Parties, except as set forth in the Stipulation and Order entered in August, 2012.

DATED this _____ day of August, 2012

NEW YORK DOWNTOWN HOSPITAL - DEFENDANT

DATED: _____

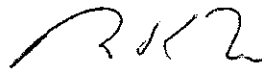
BY: _____
JEFFREY MENKES
President/Chief Executive Officer of New York
Downtown Hospital

APPROVED AS TO FORM AND SUBSTANCE:

THE UNITED STATES OF AMERICA - PLAINTIFF

DATED: 8/17/12

THE UNITED STATES OF AMERICA
LORETTA E. LYNCH
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

BY:  _____
RICHARD K. HAYES
Assistant U.S. Attorney

THE STATE OF NEW YORK - PLAINTIFF

DATED: 8/8/12

THE STATE OF NEW YORK
ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

BY: 

AMY M. HELD
Special Assistant Attorney General
Medicaid Fraud Control Unit
120 Broadway, 12th Floor
New York, NY 10271

RELATOR MATHEW I. GELFAND, M.D.

DATED: _____

MENZ BONNER KOMAR & KOENIGSBERG LLP
Attorneys for Relator Mathew I. Gelfand, M.D.

BY: _____

DAVID KOENIGSBERG, ESQ.
444 Madison Avenue, 39th Floor
New York, NY 10022
(212) 233-2100

RELATOR ENRICO MONTAPERTO

DATED: _____

ARNOLD SAPHIRSTEIN, ESQ.
Attorney for Relator Enrico Montaperto

BY: _____

ARNOLD SAPHIRSTEIN, ESQ.
155 Belmore Rd
East Meadow, NY 11554
(516) 731-6011

THE STATE OF NEW YORK - PLAINTIFF

DATED: _____

THE STATE OF NEW YORK
ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

BY: _____

AMY M. HELD
Special Assistant Attorney General
Medicaid Fraud Control Unit
120 Broadway, 12th Floor
New York, NY 10271

RELATOR MATHEW I. GELFAND, M.D.

DATED: 8/3/12

MENZ BONNER KOMAR & KOENIGSBERG LLP
Attorneys for Relator Mathew I. Gelfand, M.D.

BY: 

DAVID KOENIGSBERG, ESQ.
444 Madison Avenue, 39th Floor
New York, NY 10022
(212) 233-2100

RELATOR ENRICO MONTAPERTO

DATED: _____

ARNOLD SAPHIRSTEIN, ESQ.
Attorney for Relator Enrico Montaperto

BY: _____

ARNOLD SAPHIRSTEIN, ESQ.
155 Belmore Rd
East Meadow, NY 11554
(516) 731-6011

THE STATE OF NEW YORK - PLAINTIFF

DATED: _____

THE STATE OF NEW YORK
ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

BY: _____

AMY M. HELD
Special Assistant Attorney General
Medicaid Fraud Control Unit
120 Broadway, 12th Floor
New York, NY 10271

RELATOR MATHEW I. GELFAND, M.D.

DATED: _____

MENZ BONNER KOMAR & KOENIGSBERG LLP
Attorneys for Relator Mathew I. Gelfand, M.D.

BY: _____

DAVID KOENIGSBERG, ESQ.
444 Madison Avenue, 39th Floor
New York, NY 10022
(212) 233-2100

RELATOR ENRICO MONTAPERTO

DATED: 8/3/2012

ARNOLD SAPHIRSTEIN, ESQ.
Attorney for Relator Enrico Montaperto

BY:  _____

ARNOLD SAPHIRSTEIN, ESQ.
155 Belmore Rd
East Meadow, NY 11554
(516) 731-6011

DATED: 8/15/12

ALAN LEBENBAUM, ESQ.
Attorney for Relator Enrico Montaperto
156 Beach 96th St.
Belle Harbor, NY 11694
(917) 826-1371

BY: Alan Lebenbaum
ALAN LEBENBAUM, ESQ.

SO ORDERED

On this 28 day of Aug, 2012
M. J. D.

HONORABLE LEONARD D. WEXLER
United States District Judge

CENTRAL ISLIP, NY



U.S. Department of Justice

Df

United States Attorney
Eastern District of New York

SLR:RKH

271 Cadman Plaza East
Brooklyn, New York 11201

August 17, 2012

By ECF
Honorable Leonard D. Wexler
United States District Judge
Eastern District of New York
610 Federal Plaza - Room 944
Central Islip, NY 11722-4454

Re: United States *ex rel.* Gelfand. v. Special Care Hospital Management Corp., *et al.*,
Civil Action No. CV-02-6079 and United States *ex rel.* Montaperto v. New
Parkway Hospital, *et al.*, Civil Action No. CV-05-4911

Dear Judge Wexler:

The United States respectfully encloses for the Court's consideration a Stipulation and Proposed Order of Settlement whereby these actions would be settled as to defendant NY Downtown Hospital.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: s/ Richard K. Hayes
RICHARD K. HAYES
Assistant U.S. Attorney
(718) 254-6050

encl.

cc: All parties (by ECF)