

STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL LETITIA JAMES

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IN THE MATTER OF:

ALAN SCHWARTZ AND SARATOGA CENTER FOR CARE, LLC.

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") reached the 15 day of February 2023, is by and among the State of New York (the "State") by the Office of the Attorney General, through the Medicaid Fraud Control Unit ("MFCU"), Saratoga Center for Care LLC, and Alan "Ari" Schwartz ("Ari Schwartz"), both individually and as an owner of Saratoga Center for Care LLC. The State, Saratoga Center for Care LLC, and Ari Schwartz shall be collectively referred to as the "Parties."

WHEREAS, Saratoga Center for Care LLC is a New York Limited Liability Company created by Ari Schwartz and his business partner, Jeffrey Vegh ("Vegh"), each owning fifty (50) percent:

WHEREAS, Ari Schwartz resides in Miami Beach, Florida. Ari Schwartz and Vegh have worked in the nursing home industry since at least 2009;

WHEREAS, Ari Schwartz and Vegh, under the corporate name, Saratoga Center for Care LLC, along with a third individual, acquired a nursing home from Saratoga County in 2014 and began operating it in 2015 under the name Saratoga Center for Rehabilitation and Skilled Nursing Care ("Saratoga Center");

WHEREAS, Ari Schwartz and Vegh applied and received approval for an operating license from the New York State Department Of Health ("NYSDOH"), which is required to

operate a nursing home in New York State, and between February 2015 and February 2021 (the “Relevant Period”), Ari Schwartz and Vegh were the owners and licensed operators of Saratoga Center.

WHEREAS, Saratoga Center was a 257-bed skilled nursing facility located at 149 Ballston Ave. Ballston Spa, New York until its closure by NYSDOH, pursuant to a closure plan, in February 2021;

WHEREAS, at all relevant times, Saratoga Center for Care LLC was enrolled as a healthcare provider in New York State’s Medical Assistance Program (“Medicaid Program” or “Medicaid”) under MMIS No. 00473809;

WHEREAS, the Medicaid Program reimburses enrolled healthcare providers for services rendered to beneficiaries of the program, including healthcare services reimbursed directly by NYSDOH on a fee-for-service basis, and healthcare services reimbursed through Medicaid Managed Care Organizations (“MCOs”);

WHEREAS, during all times relevant to this Agreement, Saratoga Center for Care LLC executed annual Certification Statements For Provider Billing Medicaid through the State’s Medicaid Fiscal Agent (“Certification Statements”), pursuant to 18 NYCRR §§ 504.1 (b)(1), 504.9, certifying that all claims that Saratoga Center for Care LLC submitted for payment to Medicaid were made in full compliance with applicable federal and state laws and regulations and pertinent provisions of the eMedNY Provider Manual and all revisions thereto, and that Saratoga Center for Care LLC understood and agreed that it would be subject to and bound by all rules, regulations, policies, standards, fee codes, and procedures of NYSDOH and the Office of the Medicaid Inspector General (“OMIG”) as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulations of New York State and other publications of NYSDOH, including eMedNY Provider Manuals and other official bulletins of NYSDOH;

WHEREAS, MFCU and the United States of America (the “United States”) conducted an investigation (the “Investigation”) of Saratoga Center for Care LLC, Ari Schwartz, and Saratoga Center and determined that in 2014, Ari Schwartz, Saratoga Center for Care LLC, and Saratoga Center submitted or caused to be submitted false and fraudulent statements and material omissions to the New York State Public Health and Health Planning Commission (“PHHPC”) in their application for an operating license, fraudulently inducing the PHHPC to approve their application:

WHEREAS, the investigation also determined that during Relevant Period, Saratoga Center for Care LLC and Ari Schwartz submitted or caused to be submitted claims for payment for grossly substandard and worthless services to the State’s Medicaid Program:

WHEREAS, the State has determined that Ari Schwartz engaged in the following conduct (which conduct is referred to in this Agreement as the “Covered Conduct”) during the Relevant Period:

A. In or around 2013, Ari Schwartz, Vegh, and a third person entered into a business arrangement with respect to the operation of two nursing homes in Massachusetts and one in Pennsylvania, all three of which were owned by a third party entity (hereinafter referred to as “the landlord”). The three nursing homes paid rent to the landlord pursuant to a lease. That rent was derived in large part from government healthcare programs.

B. Ari Schwartz and Vegh lacked adequate financial resources to fund the initial operating costs of the three nursing homes. At the landlord’s request, the landlord advanced them a line of credit through one of his wholly-owned entities rather than Vegh and Ari Schwartz obtaining a bank line of credit. The landlord also allowed Ari Schwartz and Vegh each to draw \$15,000 per month from the line of credit to pay for their living expenses. As collateral, Ari Schwartz and Vegh, along with their spouses, executed a document stating that they pledged “all personal and

fixture property of every kind and nature,” including their interests in the nursing home operating entities.

C. In 2013, Ari Schwartz, Vegh, and the landlord became interested in acquiring a nursing home, then known as Maplewood Manor, located at 149 Ballston Avenue, Ballston Spa, New York, which was for sale by Saratoga County through a local development corporation.

D. Following a months-long vetting process conducted by a national broker and the County, the County selected Schwartz and Vegh to operate the nursing home and the landlord to purchase the real estate associated with it. Following a series of negotiations with the County’s local development corporation, the development corporation declared Ari Schwartz and Vegh, under the corporate name, Saratoga Center for Care LLC, as the Selected Operator” and the landlord, under the corporate name, 149 Ballston Ave LLC (“149 Ballston”), as the “Real Property Purchaser.” Ari Schwartz and Vegh each owned 50% of Saratoga Center. The landlord owned and controlled 149 Ballston, the real property purchaser.

E. To complete the transaction, Saratoga Center for Care LLC and its principals – Ari Schwartz and Vegh – needed approval by New York State Public Health and Health Planning Council (“PHHPC”) to operate Saratoga Center. *See* New York Public Health Law § 2801-a(1)&(4). When the PHHPC approves applicants, they receive an “operating certificate” which is akin to a license from New York State to operate a nursing home. An operating certificate is also required to participate in government health insurance programs, including Medicaid, and obtain payment for patients covered by those programs. *See* 42 U.S.C § 1396r(d)(2)(A); 42 C.F.R. §§ 442.12, 483.1, 483.70; 18 NYCRR §§ 504.1(c) & 505.9(a)(1)(i). NYSDOH administers the application process for PHHPC approval. This process requires applicants to submit a “Certificate of Need” (CON) application to NYSDOH. Among other factors considered as part of the CON application process are: (1) the character, competence, and standing in the community, of the

proposed operator and its owners; and (2) the financial resources of the proposed operator. New York Public Health Law § 2801-a(3)(b)(c).

F. Ari Schwartz and Vegh executed the CON application, which a law firm prepared and submitted to NYSDOH. In the application, Ari Schwartz and Vegh, as the proposed operators and owners of the facility, sought to demonstrate that they had the character, competence, standing in the community, and financial resources to operate Saratoga Center, as required under New York Public Health Law § 2801-a(3). Ari Schwartz and Vegh then certified, under penalty of perjury, that the information provided in their application was true, correct, and complete.

G. Ari Schwartz and Vegh's CON application misrepresented that their relationship with 149 Ballston and its owner, the landlord, was more than "strictly that of Landlord and Tenant," in that they failed to disclose their business relationship with the landlord involving three other nursing homes and various financial arrangements that left them indebted to the landlord. Further, Ari Schwartz and Vegh's CON application represented that they were seeking financing from an unrelated lender but during the pendency of the application, they accepted financing from the landlord and did not affirmatively notify NYSDOH of such change.

H. In October 2014, PHHPC approved Saratoga Center for Care LLC's application for an operating certificate. Once Saratoga Center for Care LLC had the operating certificate, it then pursued enrollment of Saratoga Center for Care LLC in the Medicaid program, which required disclosure of anyone with an ownership or control interest in Saratoga Center, 42 C.F.R. §§ 455.104, 483.70(k), 420.206, 18 NYCRR § 504.1. Ari Schwartz and Vegh disclosed only themselves as having an ownership interest, materially omitting that the landlord had a contractual right to exercise a control interest in certain circumstances.

I. In February 2015, NYSDOH granted Ari Schwartz and Vegh the operating certificate and they assumed responsibility for Saratoga Center's operations. They became the "governing body."

also known as the “governing authority”—those legally responsible for establishing and implementing policies regarding the management and operation of the facility. 42 C.F.R. § 483.70(d); 10 NYCRR § 415.26(b). As the governing body, Ari Schwartz and Vegh had the non-delegable authority to: (1) hire and fire key management employees; (2) maintain books and records, (3) dispose of Saratoga Center’s assets and incur liabilities on its behalf, and (4) adopt and enforce policies regarding the Saratoga Center’s operations. 10 NYCRR § 600.9.

J. Even though Ari Schwartz and Vegh were the governing body, they lacked autonomy over the operation of Saratoga Center when the landlord decided to exercise his rights arising from the debt instrument. When Saratoga Center began to experience financial problems, the landlord demanded more control, and his agents made decisions detrimental to the well-being of the sick and disabled patients residing at Saratoga Center.

K. Around November 2016, the landlord required that Ari Schwartz and Vegh surrender control of Saratoga Center to a potential purchaser of the landlord’s choosing. Ari Schwartz and Vegh agreed, as part of a negotiated resolution of a lawsuit that the landlord had filed through one of his entities, seeking to collect the debt owed by Ari Schwartz, Vegh, and their wives. Ari Schwartz and Vegh authorized the transfer of all funds in the four nursing homes’ bank accounts, in which Medicaid payments were deposited, to the landlord. They did not inform NYSDOH about the agreement or the transfer.

L. Around early 2017, the landlord chose a prospective purchaser, Skyline Management Group LLC (“Skyline”), to operate Saratoga Center and the three other nursing homes. Skyline worked with Jack Jaffa (“Jaffa”), who agreed to buy the real estate from the landlord, and who operated Saratoga Care and Rehabilitation Center LLC (“SCRC”). To facilitate the transfer of control, Ari Schwartz and Vegh signed several documents that stated SCRC would “consult,” “assist,” “advise” and provide various “administrative services” to Saratoga Center. Instead of

abiding by the terms of these documents, Ari Schwartz and Vegh acquiesced to Joseph Schwartz, Skyline, Jack Jaffa, and SCRC exercising complete control over Saratoga Center, including all of the non-delegable duties enumerated in 10 NYCRR § 600.9.

M. From February 2017 until closure of Saratoga Center in February 2021, Saratoga Center was operated by individuals and entities who lacked legal authority over it. Joseph Schwartz, Skyline, Jaffa, and SCRC operated Saratoga Center from February 2017 until approximately April 2018 when Skyline, which owned many nursing homes nationwide, ceased operating. Jack Jaffa and SCRC then partnered with Chaim “Mutt” Scheinbaum (“Scheinbaum”) and his company, Alliance Healthcare Management LLC (“Alliance”), to operate Saratoga Center until it closed in February 2021.

N. From February 2017 to February 2021, the care provided to Saratoga Center’s residents during the relevant time did not meet federal and state standards of care for nursing homes. Among other problems during that time, the Nursing Home did not consistently: staff Saratoga Center sufficiently; ensure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident; ensure that residents were free of any significant medication errors; prevent residents from unnecessarily falling and injuring themselves; prevent residents from developing avoidable pressure ulcers; adequately treat pressure sores that developed; and ensure that residents were regularly toileted and/or bathed.

O. From February 2017 through February 2021, the physical conditions at Saratoga Center did not consistently meet federal and state requirements for a safe, healthy, functional, sanitary, and comfortable environment for residents. Among other problems, Saratoga Center did not consistently: maintain plumbing and plumbing fixtures and sometimes there was no hot water in parts of the facility; maintain an adequate linen inventory and sometimes make-shift linens were

created; and dispose of solid waste. Many of these problems resulted from the Nursing Home's failure to pay vendors from February 2017 through February 2021.

P. In 2017, NYSDOH concluded that medication errors at Saratoga Center posed "immediate jeopardy to resident health or safety." In 2018, Saratoga Center was assessed substantial fines by NYSDOH and the federal government because of the serious deficiencies at Saratoga Center. In 2019, it was placed on the Centers for Medicare and Medicaid Services ("CMS") Special Focus Facility list—a list of the most poorly performing nursing homes in the United States.

Q. Even though Skyline, Jaffa, and Scheinbaum took control of the facility, their applications for a CON were either withdrawn or incomplete and were never approved. As a result, the operating certificate for the facility remained with Ari Schwartz and Vegh. Pursuant to 10 NYCRR § 415.26(b), those on the operating certificate are responsible "for establishing and implementing policies regarding the management and operation of the facility."

WHEREAS, as a result of the Covered Conduct, Saratoga Center for Care LLC and Ari Schwartz caused Saratoga Center to submit claims for reimbursement to the Medicaid Program for services rendered to Saratoga Center's residents.

WHEREAS, the State contends the claims were substandard and worthless;

WHEREAS, as a result of the Covered Conduct, Saratoga Center for Care LLC and Ari Schwartz caused the State to suffer damages of at least the amount to be repaid under this Agreement;

WHEREAS, Saratoga Center for Care LLC and Ari Schwartz wish to resolve their civil liability for the Covered Conduct;

WHEREAS, Saratoga Center for Care LLC and Ari Schwartz are contemporaneously herewith entering into an agreement with the United States (the "United States Agreement") to resolve the United States' claims arising from the Covered Conduct.

NOW, THEREFORE. in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

1. Saratoga Center for Care LLC and Ari Schwartz admit, acknowledge and accept responsibility for the Covered Conduct.

2. As payment to the State and the United States for the Covered Conduct, Saratoga Center for Care LLC and Ari Schwartz shall pay a total of One Million One Hundred Thousand Dollars \$1,100,000 (the "Total Settlement Amount"), no later than 21 days after the Effective Date (as defined in Paragraph 26) of this Agreement as follows:

a. Of the Total Settlement Amount, Saratoga Center for Care LLC and Ari Schwartz shall pay to the State a total of \$660,000 ("State Settlement Amount"), plus interest as set forth above, by electronic funds transfer pursuant to written instructions to be provided by MFCU.

3. Of the State Settlement Amount, Three Hundred Thirty Thousand (\$330,000) is restitution.

4. Subject to the provisions of Paragraph 5 below (concerning reserved claims) and conditioned upon the State's receipt of the State Settlement Amount, the State releases Saratoga Center for Care LLC and Ari Schwartz, individually and as a member of Saratoga Center for Care LLC, from any civil monetary causes of action that the State has for the Covered Conduct under the New York State False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.*, Social Services Law § 145-b(2), Executive Law §§ 63-c(1) and 63(12), and the common law theories of fraud in inducement, payment by mistake, unjust enrichment, fraud, and breach of contract.

5. Notwithstanding the release given in Paragraph 4 of this Agreement, or any other term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- (a) Any civil, criminal or administrative liability arising under state revenue codes;
- (b) Any criminal liability;
- (c) Any liability of entities or individuals other than Saratoga Center for Care LLC and Ari Schwartz;
- (d) Any administrative liability, including mandatory or permissive exclusion from the State's Medicaid Program;
- (e) Any civil or administrative liability that Saratoga Center for Care LLC and Ari Schwartz have or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 4 above, including but not limited to, any and all claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (f) Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- (g) Any liability for personal injury, patient abuse or neglect arising from the Covered Conduct;
- (h) Any liability that may be asserted by or on behalf of any payor or insurer paid by the State's Medicaid program on a capitated basis, other than liability of Saratoga Center for Care LLC and Ari Schwartz to the State for the Covered Conduct; and
- (i) Any liability based upon obligations created by this Agreement.

6. Saratoga Center for Care LLC, including any and all predecessors, successors, and members, together with current and former officers, directors, trustees, servants, employees, and assigns, fully and finally release the State, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that it has asserted, could have asserted, or may assert in the future against the State.

its agencies, officers, agents, employees, and servants, related to the Covered Conduct, and the State's investigation and prosecution thereof.

7. Ari Schwartz, including any and all of his trustees, servants, employees and assigns, fully and finally releases the State, its agencies, officers, agents, employees, servants, from any claims (including attorney's fees, costs, and expenses of every kind and however, denominated) that he has asserted, could have asserted, or may assert in the future against the State, its agencies, officers, agents, employees, and servants, related to the Covered Conduct, and the State's investigation and prosecution thereof.

8. This Agreement is intended for the benefit of the Parties only, and, by this instrument, except as provided in Paragraphs 4, 6, and 16-19, the Parties do not release any claims against any other person or entity. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of any of the relevant statutes or regulations, and the Agreement shall not be construed as an admission by the State as to any contested issue encompassed by the State's investigation.

9. This Agreement relates solely to Medicaid compensation paid to, claimed, or received by Saratoga Center for Care LLC and Ari Schwartz pursuant to any statutes, rules, regulations, and official directives governing Medicaid payments with respect to the Covered Conduct, and not to any other relationship between Saratoga Center for Care LLC, Ari Schwartz, and the State or Saratoga Center for Care LLC, Ari Schwartz, and any other government-funded healthcare program.

10. Saratoga Center for Care LLC and Ari Schwartz agree to the following:

(a) Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 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-5; and the regulations and official program directives

promulgated thereunder) incurred by or on behalf of Saratoga Center for Care LLC and Ari Schwartz in connection with:

- i. the matters covered by this Agreement;
- ii. the State's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- iii. Saratoga Center for Care LLC's and Ari Schwartz's investigation, defense, and corrective actions undertaken in response to the State's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- iv. the negotiation and performance of this Agreement; and
- v. the payments Saratoga Center for Care LLC and Ari Schwartz make relating to this Agreement including costs and attorney's fees, are unallowable costs for government contracting purposes and under the Medicaid Program (hereinafter referred to as "Unallowable Costs").

(b) Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by Saratoga Center for Care LLC and Ari Schwartz; and Saratoga Center for Care LLC and Ari Schwartz shall 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 Consolidated Fiscal Report ("CFR"), cost report, cost statement, information statement, or payment request submitted by Saratoga Center for Care LLC, Ari Schwartz, or any of their affiliates to the Medicaid Program.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Saratoga Center for Care LLC and Ari Schwartz further agree that within ninety (90) days of the Effective Date

(as defined in Paragraph 26) of this Agreement they shall endeavor in good faith to identify to applicable Medicaid fiscal agents, any Unallowable Costs (as defined in Paragraph 10(a)) included in payments previously sought from 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 Ari Schwartz, Saratoga Center for Care LLC, or any of their affiliates and shall 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. Saratoga Center for Care LLC and Ari Schwartz agree that the State, at a minimum, shall be entitled to recoup from Saratoga Center for Care LLC and Ari Schwartz 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, appeals, or requests for payment. Any payments due after the adjustments have been made shall be paid to the State. The State reserves its rights to disagree with any calculations submitted by Saratoga Center for Care LLC, Ari Schwartz, or any of their affiliates on the effect of inclusion of Unallowable Costs (as defined in Paragraph 10(a)) on Saratoga Center for Care LLC's, and Ari Schwartz's, or any of their affiliates' CFRs, cost reports, cost statements, or information reports, appeals, or other payment requests. If the State does disagree with any calculations submitted by Saratoga Center for Care LLC, Ari Schwartz, or any of their affiliates as outlined above, then the State and Saratoga Center for Care LLC and Ari Schwartz shall confer in good faith in an effort to come to a resolution regarding such calculations. In the event that a resolution cannot be reached, the State reserves its rights to take any action it deems appropriate.

(d) Nothing in this Agreement shall constitute a waiver of the rights of the State to audit, examine, or re-examine the books and records of Saratoga Center for Care LLC and Ari

Schwartz to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

11. All payments due to the State hereunder shall be made by certified check, bank check, money order, or wire transfer payable to the "New York State Medicaid Fraud Control Restitution Fund." All non-electronic payments shall be delivered to the Medicaid Fraud Control Unit, Finance Department, 13th Floor, 28 Liberty Street, New York, New York 10005. Any other notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier and/or email followed by postage prepaid first-class mail, and addressed as follows:

TO THE STATE:

Chief, Civil Enforcement Division
Medicaid Fraud Control Unit
New York State Office of the Attorney General
28 Liberty Street, 13th Floor
New York, NY 10005
Telephone: (212) 417-5300
MFCUNotices@ag.ny.gov

TO SARATOGA CENTER FOR CARE LLC AND ARI SCHWARTZ:

4775 Collins Avenue
Apartment 1205
Miami Beach, Florida 33140

With a copy to:

David Burch, Esq.
Barclay Damon LLP
125 East Jefferson Street
Syracuse, New York 13202

12. This Agreement is binding upon all Parties and upon the assigns, transferees, purchasers, and any successors-in-interest of Saratoga Center for Care LLC and Ari Schwartz.

13. Saratoga Center for Care LLC and Ari Schwartz waive and shall not assert any

defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct, 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.

14. This Agreement constitutes the complete and full agreement reached by the Parties relating to the Covered Conduct, and it may not be changed in any respect, except by a writing duly executed by the Parties or their authorized representatives.

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. Saratoga Center for Care LLC and Ari Schwartz agrees that they waive and shall not seek payment for any health care billings based upon claims defined as Covered Conduct from any individual health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors.

17. Saratoga Center for Care LLC and Ari Schwartz agree not to submit any further claim or to resubmit to any state payor any previously denied claims, or cause any further claim or adjustment to be submitted or resubmitted, related to the Covered Conduct, and agrees not to appeal any such denials of claims.

18. Saratoga Center for Care LLC and Ari Schwartz will not submit any insurance claims for the Covered Conduct.

19. Saratoga Center for Care LLC and Ari Schwartz waive any claim for any tax rebate or refund, or other governmental payment, from the State, until the Settlement Amount is satisfied. In the State's sole discretion, the State may recoup or offset any such payment without further notice to Saratoga Center for Care LLC and/or Ari Schwartz for credit toward the Settlement

Amount.

20. Saratoga Center for Care LLC and Ari Schwartz agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this Paragraph affects Saratoga Center for Care LLC's and Ari Schwartz's (a) testimonial obligations or (b) right to take contrary legal or factual positions in defense of litigation or other proceedings to which the Attorney General is not a party.

21. This Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

22. Saratoga Center for Care LLC and Ari Schwartz acknowledge that they have entered this Agreement freely, voluntarily, and upon due deliberation, with the advice of counsel and without coercion or duress.

23. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to choice of law or conflict of laws principles. The Parties consent to the jurisdiction of the Supreme Court of the State of New York, Saratoga County, and any other county in which Saratoga Center for Care LLC and Ari Schwartz conduct business, in any action to enforce or interpret this Agreement.

24. Any failure by the State to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

25. This Agreement may be executed in counterparts, each of which shall constitute an

original and all of which shall constitute one and the same Agreement.

26. This Agreement is effective on the date of the last signatory to the Agreement (“Effective Date of this Agreement”). Electronic transmissions of signatures shall constitute acceptable, binding signatures for the purpose of this Agreement.

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WHEREFORE, the Parties have read the foregoing Agreement and accept and agree to the provisions contained herein and hereby have caused this Agreement to be signed as of the day and date adjacent to their signature.

THE STATE OF NEW YORK

LETITIA JAMES

Attorney General of the State of New York

By: Emily Auletta Dated: February 27, 2023
Emily L. Auletta
Special Assistant Attorney General
Medicaid Fraud Control Unit
The Capitol
Albany, New York 12224
Tel: (518) 776-2342
E: emily.auletta@ag.ny.gov

SARATOGA CENTER FOR CARE LLC

By: [Signature] 2/15/23
Date
Alan "Ari" Schwartz
Member, Saratoga Care for Care LLC

ALAN "ARI" SCHWARTZ, individually

By: [Signature] Dated: 2/15/23
Alan "Ari" Schwartz


Approved as to Form

By: [Signature] Dated: 2/23/23
David Burch, Esq.
Barclay Damon LLP
125 East Jefferson Street
Syracuse, New York 13202
Counsel for Alan "Ari" Schwartz and Saratoga Center for Care LLC

State of New York)
)ss:
County of Nassau ✓)

On this 15 day of February, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Alan Schwartz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same both individually and in his capacity as member of Saratoga Center for Care LLC, and that by his signature on the instrument, both Alan Schwartz and Saratoga Center for Care LLC, upon behalf of which Alan Schwartz acted, executed the instrument.

YONINA NEUFELD
Notary Public, State of New York
Reg. No. 01NE6319577
Qualified in Queens County
Commission Expires 2/23/2023



NOTARY PUBLIC

STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL LETITIA JAMES

-----X

IN THE MATTER OF:

JEFFREY VEGH AND SARATOGA CENTER FOR CARE, LLC.

-----X

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) reached the 27th day of Feb. 2023, is by and among the State of New York (the “State”) by the Office of the Attorney General, through the Medicaid Fraud Control Unit (“MFCU”), and Jeffrey Vegh (“Vegh”), both individually and as an owner of Saratoga Center for Care LLC. The State and Vegh shall be collectively referred to as the “Parties.”

WHEREAS, Vegh resides in Woodmere, New York. Vegh and his business partner, Alan “Ari” Schwartz (“Ari Schwartz”), have worked in the nursing home industry since at least 2009.

WHEREAS, Saratoga Center for Care LLC is a New York Limited Liability Company created by Vegh and Ari Schwartz, each owning 50% percent;

WHEREAS, Vegh and Ari Schwartz, under the corporate name, Saratoga Center for Care LLC, along with a third individual, acquired a nursing home from Saratoga County in 2014 and began operating it in 2015 under the name Saratoga Center for Rehabilitation and Skilled Nursing Care (“Saratoga Center”);

WHEREAS, Vegh and Ari Schwartz applied and received approval for an operating license from the New York State Department Of Health (“NYSDOH”), which is required to operate a nursing home in New York State, and between February 2015 and February 2021 (the “Relevant Period”), Vegh and Ari Schwartz were the owners and licensed operators of Saratoga

Center.

WHEREAS, Saratoga Center was a 257-bed skilled nursing facility located at 149 Ballston Ave, Ballston Spa, New York until its closure by DOH, pursuant to a closure plan, in February 2021;

WHEREAS, at all relevant times, Saratoga Center for Care LLC was enrolled as a healthcare provider in New York State's Medical Assistance Program ("Medicaid Program" or "Medicaid") under MMIS No. 00473809;

WHEREAS, the Medicaid Program reimburses enrolled healthcare providers for services rendered to beneficiaries of the program, including healthcare services reimbursed directly by NYSDOH on a fee-for-service basis, and healthcare services reimbursed through Medicaid Managed Care Organizations ("MCOs");

WHEREAS, during all times relevant to this Agreement, Saratoga Center for Care LLC executed annual Certification Statements For Provider Billing Medicaid through the State's Medicaid Fiscal Agent ("Certification Statements"), pursuant to 18 NYCRR §§ 504.1 (b)(1), 504.9, certifying that all claims that Saratoga Center for Care LLC submitted for payment to Medicaid were made in full compliance with applicable federal and state laws and regulations and pertinent provisions of the eMedNY Provider Manual and all revisions thereto, and that Saratoga Center for Care LLC understood and agreed that it would be subject to and bound by all rules, regulations, policies, standards, fee codes, and procedures of NYSDOH and the Office of the Medicaid Inspector General ("OMIG") as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulations of New York State and other publications of NYSDOH, including eMedNY Provider Manuals and other official bulletins of NYSDOH;

WHEREAS, MFCU and the United States of America (the "United States") conducted an investigation (the "Investigation") of Vegh and Saratoga Center and determined that in 2014, Vegh

submitted or caused to be submitted false and fraudulent statements and material omissions to the New York State Public Health and Health Planning Commission (“PHHPC”) in their application for an operating license, fraudulently inducing the PHHPC to approve their application;

WHEREAS, the investigation also determined that during Relevant Period, Vegh submitted or caused to be submitted claims for payment for grossly substandard and worthless services to the State’s Medicaid Program;

WHEREAS, the State has determined that Vegh engaged in the following conduct (which conduct is referred to in this Agreement as the “Covered Conduct”) during the Relevant Period:

A. In or around 2013, Ari Schwartz, Vegh, and a third person entered into a business arrangement with respect to the operation of two nursing homes in Massachusetts and one in Pennsylvania, all three of which were owned by a third-party entity (hereinafter referred to as “the landlord”). The three nursing homes paid rent to the landlord pursuant to a lease. That rent was derived in large part from government healthcare programs.

B. Vegh and Ari Schwartz lacked adequate financial resources to fund the initial operating costs of the three nursing homes. At the landlord’s request, the landlord advanced them a line of credit through one of his wholly-owned entities, rather than Vegh and Ari Schwartz obtaining a bank line of credit. The landlord also allowed Vegh and Ari Schwartz each to draw \$15,000 per month from the line of credit to pay for their living expenses. As collateral, Vegh and Ari Schwartz, along with their spouses, pledged, among other things, all of their personal property, including their interests in the nursing home operating entities.

C. In 2013, Vegh, Ari Schwartz, and the landlord became interested in acquiring a nursing home, then known as Maplewood Manor, located at 149 Ballston Ave, Ballston Spa, New York, which was for sale by Saratoga County through a local development corporation.

D. Following a months-long vetting process conducted by a national broker and the County, the County selected Vegh and Ari Schwartz, to operate the nursing home and the landlord to purchase the real estate associated with it. Following a series of negotiations with the County's local development corporation, the development corporation declared Vegh and Ari Schwartz, under the corporate name, Saratoga Center for Care LLC, as the Selected Operator" and the landlord, under the corporate name, 149 Ballston Ave LLC ("149 Ballston"), as the "Real Property Purchaser." Vegh and Ari Schwartz each owned 50% of Saratoga Center. The landlord owned and controlled 149 Ballston, the real property purchaser.

E. To complete the transaction, Saratoga Center for Care LLC and its principals – Vegh and Ari Schwartz – needed approval by New York State Public Health and Health Planning Council ("PHHPC") to operate Saratoga Center. *See* New York Public Health Law § 2801-a(1)&(4). When the PHHPC approves applicants, they receive an "operating certificate" which is akin to a license from New York State to operate a nursing home. An operating certificate is also required to participate in government health insurance programs, including Medicaid, and obtain payment for patients covered by those programs. *See* 42 U.S.C § 1396r(d)(2)(A); 42 C.F.R. §§ 442.12, 483.1, 483.70; 18 NYCRR §§ 504.1(c) & 505.9(a)(1)(i). NYSDOH administers the application process for PHHPC approval. This process requires applicants to submit a "Certificate of Need" (CON) application to NYSDOH. Among other factors considered as part of the CON application process are: (1) the character, competence, and standing in the community, of the proposed operator and its owners; and (2) the financial resources of the proposed operator. New York Public Health Law § 2801-a(3)(b)(c).

F. Vegh and Ari Schwartz executed the CON application, which a law firm prepared and submitted to NYSDOH. In the application, Vegh and Ari Schwartz, as the proposed operators and owners of the facility, sought to demonstrate that they had the character, competence, standing in

the community, and financial resources to operate Saratoga Center, as required under New York Public Health Law § 2801-a(3). Vegh and Ari Schwartz then certified, under penalty of perjury, that the information provided in their application was true, correct, and complete.

G. Ari Schwartz and Vegh's CON application misrepresented that their relationship with 149 Ballston and its owner, the landlord, was more than "strictly that of Landlord and Tenant," in that they failed to disclose their business relationship with the landlord involving three other nursing homes and various financial arrangements that left them indebted to the landlord. Further, Ari Schwartz and Vegh's CON application represented that they were seeking financing from an unrelated lender but during the pendency of the application, they accepted financing from the landlord and did not affirmatively notify NYSDOH of such change.

H. In October 2014, PHHPC approved Saratoga Center for Care LLC's application for an operating certificate. Once Saratoga Center for Care LLC had the operating certificate, it then pursued enrollment of Saratoga Center for Care LLC in the Medicaid program, which required disclosure of anyone with an ownership or control interest in Saratoga Center, 42 C.F.R. §§ 455.104, 483.70(k), 420.206, 18 NYCRR § 504.1. Vegh and Ari Schwartz disclosed only themselves as having an ownership interest, materially omitting that the landlord had a contractual right to exercise a control interest in certain circumstances.

I. In February 2015, NYSDOH granted Vegh and Ari Schwartz the operating certificate and they assumed responsibility for Saratoga Center's operations. They became the "governing body," also known as the "governing authority"—those legally responsible for establishing and implementing policies regarding the management and operation of the facility. 42 C.F.R. § 483.70(d); 10 NYCRR § 415.26(b). As the governing body, Vegh and Ari Schwartz had the non-delegable authority to: (1) hire and fire key management employees; (2) maintain books and

records, (3) dispose of Saratoga Center's assets and incur liabilities on its behalf, and (4) adopt and enforce policies regarding the Saratoga Center's operations. 10 NYCRR § 600.9.

J. Even though Vegh and Ari Schwartz were the governing body, they lacked autonomy over the operation of Saratoga Center when the landlord decided to exercise his rights arising from the debt instrument. When Saratoga Center began to experience financial problems, the landlord demanded more control, and his agents made decisions detrimental to the well-being of the sick and disabled patients residing at Saratoga Center.

K. Around November 2016, the landlord required that Vegh and Ari Schwartz surrender control of Saratoga Center to a potential purchaser of the landlord's choosing. Vegh and Ari Schwartz agreed, as part of a negotiated resolution of a lawsuit that the landlord had filed through one of his entities, seeking to collect the debt owed by Vegh, Ari Schwartz, and their wives. Vegh and Ari Schwartz authorized the transfer of all funds in the four nursing homes' bank accounts, in which Medicaid payments were deposited, to the landlord. They did not inform NYSDOH about the agreement or the transfer.

L. Around early 2017, the landlord chose a prospective purchaser, Skyline Management Group LLC ("Skyline"), to operate Saratoga Center and the three other nursing homes. Skyline worked with Jack Jaffa ("Jaffa"), who agreed to buy the real estate from the landlord, and who operated Saratoga Care and Rehabilitation Center LLC ("SCRC"). To facilitate the transfer of control, Vegh and Ari Schwartz signed several documents that stated SCRC would "consult," "assist," "advise" and provide various "administrative services" to Saratoga Center. Instead of abiding by the terms of these documents, Vegh and Ari Schwartz acquiesced to Joseph Schwartz, Skyline, Jack Jaffa, and SCRC exercising complete control over Saratoga Center, including all of the non-delegable duties enumerated in 10 NYCRR § 600.9.

M. From February 2017 until closure of Saratoga Center in February 2021, Saratoga Center was operated by individuals and entities who lacked legal authority over it. Joseph Schwartz, Skyline, Jaffa, and SCRC operated Saratoga Center from February 2017 until approximately April 2018 when Skyline, which owned many nursing homes nationwide, ceased operating. Jack Jaffa and SCRC then partnered with Chaim “Muttu” Scheinbaum (“Scheinbaum”) and his company, Alliance Healthcare Management LLC (“Alliance”), to operate Saratoga Center until it closed in February 2021.

N. From February 2017 to February 2021, the care provided to Saratoga Center’s residents during the relevant time did not meet federal and state standards of care for nursing homes. Among other problems during that time, the Nursing Home did not consistently: staff Saratoga Center sufficiently; ensure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident; ensure that residents were free of any significant medication errors; prevent residents from unnecessarily falling and injuring themselves; prevent residents from developing avoidable pressure ulcers; adequately treat pressure sores that developed; and ensure that residents were regularly toileted and/or bathed.

O. From February 2017 through February 2021, the physical conditions at Saratoga Center did not consistently meet federal and state requirements for a safe, healthy, functional, sanitary, and comfortable environment for residents. Among other problems, Saratoga Center did not consistently: maintain plumbing and plumbing fixtures and sometimes there was no hot water in parts of the facility; maintain an adequate linen inventory and sometimes make-shift linens were created; and dispose of solid waste. Many of these problems resulted from Saratoga Center’s failure to pay vendors.

P. In 2017, NYSDOH concluded that medication errors at Saratoga Center posed “immediate jeopardy to resident health or safety.” In 2018, Saratoga Center was assessed substantial fines by

NYSDOH and the federal government because of the serious deficiencies at Saratoga Center. In 2019, it was placed on the Centers for Medicare and Medicaid Services (“CMS”) Special Focus Facility list—a list of the most poorly performing nursing homes in the United States.

Q. Even though Skyline, Jaffa, and Scheinbaum took control of the facility, their applications for a CON were either withdrawn or incomplete and were never approved. As a result, the operating certificate for the facility remained with Vegh and Ari Schwartz. Pursuant to 10 NYCRR § 415.26(b), those on the operating certificate are responsible “for establishing and implementing policies regarding the management and operation of the facility.”

WHEREAS, as a result of the Covered Conduct, Vegh caused Saratoga Center to submit claims for reimbursement to the Medicaid Program for services rendered to Saratoga center’s residents.

WHEREAS, the State contends the claims were substandard and worthless;

WHEREAS, as a result of the Covered Conduct, Vegh caused the State to suffer damages of at least the amount to be repaid under this Agreement;

WHEREAS, Vegh wishes to resolve his civil liability for the Covered Conduct;

WHEREAS, Vegh is contemporaneously herewith entering into an agreement with the United States (the “United States Agreement”) to resolve the United States’ claims arising from the Covered Conduct.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

1. Vegh admits, acknowledges, and accepts responsibility for the Covered Conduct.
2. As payment to the State and the United States for the Covered Conduct, Vegh shall pay a total of Four Hundred and Eighty Five Thousand Dollars (\$485,000) (the “Total Settlement Amount”), no later than 30 days after the Effective Date (as defined in Paragraph 31) of this

Agreement as follows:

3. Of the Total Settlement Amount, Vegh shall pay to the State a total of \$291,000 (“State Settlement Amount”) plus interest at a rate of 4% per annum from the Effective Date of this Agreement (as defined in Paragraph 31 below) to the date of the final payment, by electronic funds transfer pursuant to written instructions to be provided by MFCU, pursuant to the conditions set forth below:

a. *Initial Payment*

i. Within thirty (30) days of the execution of this Agreement, Vegh shall pay to the State a sum of One Hundred Forty Five Thousand and Five Hundred dollars (\$145,500) (“Initial Payment”). If any portion of the Initial Payment is made within 10 days of the Effective Date of this Agreement, no interest will be charged on said portion.

b. *Remaining Payment*

i. Within one (1) year of the execution of this Agreement, Vegh shall pay to the State a sum of One Hundred Forty Five Thousand and Five Hundred dollars (\$145,500). The Total Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

4. Of the State Settlement Amount, One Hundred Forty Five Thousand and Five Hundred Dollars (\$145,500) is restitution.

5. In consideration for the State’s agreement to accept the Remaining Payment within one year of the execution of this Agreement, as delineated in Paragraph 3(b), Vegh will execute an Affidavit of Confession of Judgment in the amount of Four Hundred and Eighty Five Thousand Dollars (\$485,000), in the form annexed as Exhibit A, simultaneously with the execution of this Agreement. Vegh consents to the filing of said Confession of Judgment and entry of judgment

thereon (the “Judgment”) without further notice, less any monies received, plus all costs of collection, excluding attorney’s fees and other proper relief, without further notice to Vegh. The State shall forbear from executing upon said Judgment as long as Vegh is current on all payments due under this Agreement.

6. In the event that Vegh fails to comply with the terms and conditions as set forth herein, in whole or in part, Vegh shall be in default of this Agreement (“Default”). The State will provide written notice of the Default, to be sent by first-class mail to the undersigned attorney for Vegh. Vegh shall have the opportunity to cure such Default within five (5) business days from the date of receipt of such notice (the “Cure Period”). If Vegh fails to cure the Default within the Cure Period (“Uncured Default”), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of nine percent (9%) per annum compounded daily from the date of Default on the remaining unpaid total balance. In the event of an Uncured Default, the State, at its sole option, may:

- a. Execute upon the Confession of Judgment provided under Paragraph 5, above;
- b. Retain any payments previously made, rescind this Agreement, and bring any civil and/or administrative claim, action, or proceeding against Vegh for the claims that would be otherwise covered by the release in Paragraph 10, with any new recovery reduced by the amount of any payments previously made to the State by Vegh;
- c. Offset the remaining unpaid balance from any amounts due and owing to Vegh by any department, agency, or agent of the State at the time of Default;
- d. Seek specific performance of the Agreement by Vegh; and
- e. Exercise any other rights granted by law, or under the terms of this Agreement, or recognizable at common law or in equity, including referral of this matter for private collection.

7. Acceptance by the State of late payment with interest shall not cure any other Default hereunder. Vegh agrees not to contest any consent judgment, offset, recoupment, and/or collection action undertaken by the State pursuant to this paragraph, either administratively or in any state or federal court.

8. In the event that the State seeks remedies for collection or enforcement of Vegh's obligations hereunder, and the State substantially prevails in its collection or enforcement action, Vegh shall be responsible for all costs and expenses incurred by the State in connection with that action.

9. In the event the State opts to rescind this Agreement pursuant to Paragraph 6(b) above, Vegh expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, res judicata, or similar theories to any civil or administrative claims that relate to the Covered Conduct, except to the extent such defenses were available to Vegh on the Effective Date of this Agreement, as defined in Paragraph 31, below.

RELEASE

10. Subject to the provisions of Paragraph 11 below (concerning reserved claims) and conditioned upon the State's receipt of the State Settlement Amount, the State releases Vegh, individually and as a member of Saratoga Center for Care LLC, from any civil monetary causes of action that the State has for the Covered Conduct under the New York State False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.*, Social Services Law § 145-b(2), Executive Law §§ 63-c(1) and 63(12), and the common law theories of fraud in inducement, payment by mistake, unjust enrichment, fraud, and breach of contract.

11. Notwithstanding the release given in Paragraph 10 of this Agreement, or any other term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- (a) Any civil, criminal or administrative liability arising under state revenue codes;
- (b) Any criminal liability;
- (c) Any liability of individuals other than Vegh;
- (d) Any administrative liability, including mandatory or permissive exclusion from the State's Medicaid Program;
- (e) Any civil or administrative liability that Vegh has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 10 above, including but not limited to, any and all claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (f) Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- (g) Any liability for personal injury, patient abuse or neglect arising from the Covered Conduct;
- (h) Any liability that may be asserted by or on behalf of any payor or insurer paid by the State's Medicaid program on a capitated basis, other than liability of Vegh to the State for the Covered Conduct; and
- (i) Any liability based upon obligations created by this Agreement.

12. Vegh, including any and all of his trustees, servants, employees and assigns, fully and finally releases the State, its agencies, officers, agents, employees, servants, from any claims (including attorney's fees, costs, and expenses of every kind and however, denominated) that he has asserted, could have asserted, or may assert in the future against the State, its agencies, officers, agents, employees, and servants, related to the Covered Conduct, and the State's investigation and prosecution thereof.

13. This Agreement is intended for the benefit of the Parties only, and, by this instrument, except as provided in Paragraphs 10, 12, and 21 through 24, the Parties do not release any claims against any other person or entity. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of any of the relevant statutes or regulations, and the Agreement shall not be construed as an admission by the State as to any contested issue encompassed by the State's investigation.

14. This Agreement relates solely to Medicaid compensation paid to, claimed, or received by Vegh pursuant to any statutes, rules, regulations, and official directives governing Medicaid payments with respect to the Covered Conduct, and not to any other relationship between Vegh and the State or Vegh and any other government-funded healthcare program.

15. Vegh agrees to the following:

(a) Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 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-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Vegh in connection with:

- i. the matters covered by this Agreement;
- ii. the State's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- iii. Vegh's investigation, defense, and corrective actions undertaken in response to the State's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- iv. the negotiation and performance of this Agreement; and
- v. the payments Vegh makes relating to this Agreement including costs and attorney's fees, are unallowable costs for government contracting purposes

and under the Medicaid Program (hereinafter referred to as “Unallowable Costs”).

(b) Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by Vegh; and Vegh shall 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 Consolidated Fiscal Report (“CFR”), cost report, cost statement, information statement, or payment request submitted by Vegh or any of his affiliates to the Medicaid Program.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Vegh further agrees that within ninety (90) days of the Effective Date (as defined in Paragraph 27) of this Agreement it shall endeavor in good faith to identify to applicable Medicaid fiscal agents, any Unallowable Costs (as defined in Paragraph 15(a)) included in payments previously sought from 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 Vegh or any of his affiliates and shall 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. Vegh agrees that the State, at a minimum, shall be entitled to recoup from Vegh 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, appeals, or requests for payment. Any payments due after the adjustments have been made shall be paid to the State. The State reserves its rights to disagree with any calculations submitted by Vegh or any of his affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Vegh’s or any of his affiliates’ CFRs, cost reports, cost statements, or information reports, appeals, or other payment requests. If the State does

disagree with any calculations submitted by Vegh or any of his affiliates as outlined above, then the State and Vegh shall confer in good faith in an effort to come to a resolution regarding such calculations. In the event that a resolution cannot be reached, the State reserves its rights to take any action it deems appropriate.

(d) Nothing in this Agreement shall constitute a waiver of the rights of the State to audit, examine, or re-examine the books and records of Vegh to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

16. All payments due to the State hereunder shall be made by certified check, bank check, money order, or wire transfer payable to the “New York State Medicaid Fraud Control Restitution Fund.” All non-electronic payments shall be delivered to the Medicaid Fraud Control Unit, Finance Department, 13th Floor, 28 Liberty Street, New York, New York 10005. Any other notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier and/or email followed by postage prepaid first-class mail, and addressed as follows:

TO THE STATE:

Chief, Civil Enforcement Division
Medicaid Fraud Control Unit
New York State Office of the Attorney General
28 Liberty Street, 13th Floor
New York, NY 10005
Telephone: (212) 417-5300
MFCUNotices@ag.ny.gov

TO VEGH:

374 Forest Ave
Woodmere, NY 11598

With a copy to:

David Burch, Esq.
Barclay Damon LLP
125 East Jefferson Street
Syracuse, New York 13202

17. This Agreement is binding upon all Parties and upon the assigns, transferees, purchasers, and any successors-in-interest of Vegh.

18. Vegh waives and shall not assert any defenses he may have to any criminal prosecution or administrative action relating to the Covered Conduct, 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.

19. This Agreement constitutes the complete and full agreement reached by the Parties relating to the Covered Conduct, and it may not be changed in any respect, except by a writing duly executed by the Parties or their authorized representatives.

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

21. Vegh agrees that he waives and shall not seek payment for any health care billings based upon claims defined as Covered Conduct from any individual health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors.

22. Vegh agrees not to submit any further claim or to resubmit to any state payor any previously denied claims, or cause any further claim or adjustment to be submitted or resubmitted, related to the Covered Conduct, and agrees not to appeal any such denials of claims.

23. Vegh will not submit any insurance claims for the Covered Conduct.

24. Vegh waives any claim for any tax rebate or refund, or other governmental

payment, from the State, until the Settlement Amount is satisfied. In the State's sole discretion, the State may recoup or offset any such payment without further notice to Vegh for credit toward the Settlement Amount.

25. Vegh agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this Paragraph affects Vegh's (a) testimonial obligations or (b) right to take contrary legal or factual positions in defense of litigation or other proceedings to which the Attorney General is not a party.

26. This Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

27. Vegh acknowledges that they have entered this Agreement freely, voluntarily, and upon due deliberation, with the advice of counsel and without coercion or duress.

28. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to choice of law or conflict of laws principles. The Parties consent to the jurisdiction of the Supreme Court of the State of New York, Saratoga County, and any other county in which Vegh conducts business, in any action to enforce or interpret this Agreement.

29. Any failure by the State to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

30. This Agreement may be executed in counterparts, each of which shall constitute an

original and all of which shall constitute one and the same Agreement.

31. This Agreement is effective on the date of the last signatory to the Agreement (“Effective Date of this Agreement”). Electronic transmissions of signatures shall constitute acceptable, binding signatures for the purpose of this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

WHEREFORE, the Parties have read the foregoing Agreement and accept and agree to the provisions contained herein and hereby have caused this Agreement to be signed as of the day and date adjacent to their signature.

THE STATE OF NEW YORK

LETITIA JAMES

Attorney General of the State of New York

By: Emily Auletta Dated: February 27, 2023
Emily L. Auletta
Special Assistant Attorney General
Medicaid Fraud Control Unit
The Capitol
Albany, New York 12224
Tel: (518) 776-2342
E: emily.auletta@ag.ny.gov

JEFFREY VEGH

By: Jeffrey Vegh Dated: 2/16/23
Jeffrey Vegh

Approved as to Form

By: David Burch Dated: 2/23/23
David Burch, Esq.
Barclay Damon LLP
125 East Jefferson Street
Syracuse, New York 13202
Counsel for Jeffrey Vegh

State of New York)
)ss:
County of NASSAU)

On this 16 day of February, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey Vegh, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and Vegh executed the instrument.



NOTARY PUBLIC

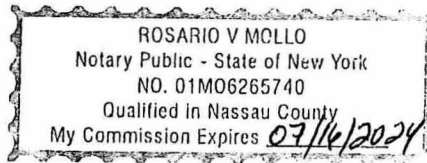


EXHIBIT A

MEDICAID FRAUD CONTROL UNIT

THE PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of New
York,

Plaintiff,

- against -

JEFFREY VEGH

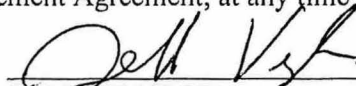
Defendant.

**AFFIDAVIT OF CONFESSION
OF JUDGMENT**

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

JEFFREY VEGH, being duly sworn, deposes and says:

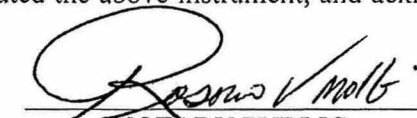
1. I am the individual named above and I reside in Nassau County, New York.
2. I hereby confess judgment, pursuant to CPLR § 3218, in favor of Plaintiff, the People of the State of New York, against myself and authorize entry thereof in Albany County, and in any county in which I own property, in the sum of Two Hundred and Ninety-One Thousand dollars (\$291,000).
3. This confession of judgment is for a debt justly due to Plaintiff, the State of New York, arising out of the acts set forth in the attached Settlement Agreement, which I executed on February 16, 2023 in my individual capacity. As a result of the conduct described in the Settlement Agreement, I caused claims to be submitted to the New York State Medicaid Program for which I received, or caused others to receive, amounts that were not legally due. As a result, the New York State Medicaid Program was harmed by at least the amount confessed herein of Two Hundred and Ninety-One Thousand dollars (\$291,000).
4. I authorize entry of judgment against me in Albany County, in the State of New York, and in any county in which I own property, in the amount of Two Hundred and Ninety-One Thousand dollars (\$291,000), less any payments paid pursuant to the Settlement Agreement, at any time without further notice.



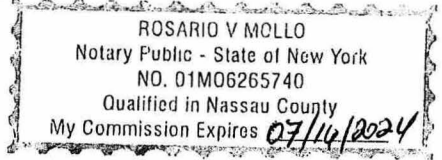
JEFFREY VEGH

STATE OF NEW YORK, COUNTY OF NASSAU ss.:

On 16/Feb, 2023, before me personally came Jeffrey Vegh, to me known, and known to me to be the individual described in, and who executed the above instrument, and acknowledged to me that he executed same.



NOTARY-PUBLIC



STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL LETITIA JAMES

-----X

IN THE MATTER OF:

149 BALLSTON AVE LLC, BALLSTON TWO, LLC, and LEON
MELOHN.

-----X

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) reached the 27th day of February 2023, is by and among the State of New York (the “State”) by the Office of the Attorney General, through the Medicaid Fraud Control Unit (“MFCU”), 149 Ballston Ave LLC, Ballston Two, LLC, and Leon Melohn (collectively referred to as the “Parties”).

WHEREAS, 149 Ballston Ave LLC (“149 Ballston”) is a New York Limited Liability Company;

WHEREAS, Ballston Two, LLC (“Ballston Two”) is a New York Limited Liability Company;

WHEREAS, Leon Melohn is the managing and controlling member of 149 Ballston and Ballston Two, which are owned by a trust in which Melohn is a trustee;

WHEREAS, in December 2013, 149 Ballston agreed to purchase the real estate associated with a nursing home being sold by Saratoga County (“Saratoga Center”), located at 149 Ballston Ave, Ballston Spa, New York. 149 Ballston intended for Saratoga Center for Care LLC, a New York limited liability company, to operate the nursing home and pay rent to 149 Ballston pursuant to a lease.

WHEREAS, Saratoga Center was a 257-bed skilled nursing facility located at 149 Ballston

Ave, Ballston Spa, New York, until its closure in February 2021;

WHEREAS, at all relevant times, Saratoga Center was enrolled as a healthcare provider in New York State's Medical Assistance Program ("Medicaid Program" or "Medicaid") under MMIS No. 00473809;

WHEREAS, the Medicaid Program reimburses enrolled healthcare providers for services rendered to beneficiaries of the program, including healthcare services reimbursed directly by the New York State Department of Health ("NYSDOH") on a fee-for-service basis, and healthcare services reimbursed through Medicaid Managed Care Organizations ("MCOs");

WHEREAS, during all times relevant to this Agreement, Saratoga Center executed annual Certification Statements For Provider Billing Medicaid through the State's Medicaid Fiscal Agent ("Certification Statements"), pursuant to 18 NYCRR §§ 504.1 (b)(1), 504.9, certifying that all claims that Saratoga Center submitted for reimbursement to Medicaid were made in full compliance with applicable federal and state laws and regulations and pertinent provisions of the eMedNY Provider Manual and all revisions thereto, and that Saratoga Center understood and agreed that it would be subject to and bound by all rules, regulations, policies, standards, fee codes, and procedures of NYSDOH and the Office of the Medicaid Inspector General ("OMIG") as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulations of New York State and other publications of NYSDOH, including eMedNY Provider Manuals and other official bulletins of NYSDOH;

WHEREAS, MFCU and the United States of America (the "United States") conducted an investigation (the "Investigation") of 149 Ballston and Ballston Two, and determined that, from February 2017 through February 2021, 149 Ballston and Ballston Two caused to be submitted claims for payment for grossly substandard and worthless services to the State's Medicaid Program;

WHEREAS, the State has determined that 149 Ballston and Ballston Two engaged in the following conduct, described in paragraphs A through K below (the conduct described in paragraphs A through K is referred to hereinafter as the “Covered Conduct”):

A. In December 2013, 149 Ballston agreed to purchase the real estate associated with Saratoga Center. 149 Ballston intended for Saratoga Center for Care LLC to operate the Saratoga Center and pay rent to 149 Ballston pursuant to a lease.

B. In May 2014, LNH, LLC, an entity affiliated with 149 Ballston, entered into a “Revolving Credit and Security Agreement” to advance funds to the individuals who owned Saratoga Center for Care LLC, to provide working capital at nursing homes those individuals intended to operate, including Saratoga Center.

C. In New York, a potential operator of any nursing home must apply for, and be granted, a license from the New York State Public Health and Health Planning Council (“PHHPC”), prior to operating that nursing home.

D. In December 2014, PHHPC granted Saratoga Center for Care LLC the license, and in February 2015 its owners assumed responsibility for Saratoga Center’s operations. Saratoga Center for Care LLC’s owners became the “governing body” and thus had the non-delegable authority to: (1) hire and fire key management employees; (2) maintain books and records; (3) dispose of Saratoga Center’s assets and incur liabilities on its behalf; and (4) adopt and enforce policies regarding Saratoga Center’s operations. 10 NYCRR § 600.9. Saratoga Center for Care LLC also applied for and was granted permission to participate in government health insurance programs, including Medicaid.

E. By 2016, however, Saratoga Center for Care LLC’s owners defaulted on the Revolving Credit and Security Agreement and owed millions of dollars to LNH, LLC (“LNH”). Saratoga Center for Care LLC also owed back rent to 149 Ballston. LNH sued Saratoga Center for Care LLC’s owners individually to collect the money owed on the Revolving Credit and Security

Agreement. To resolve the lawsuit, LNH and Saratoga Center for Care LLC's owners entered into a Forbearance Agreement. Pursuant to the agreement, LNH forewent collecting on the debt in exchange for Saratoga Center for Care LLC's owners transitioning Saratoga Center's operations to a designee of LNH.

F. Around late 2016 or early 2017, 149 Ballston assigned its interest in the real property to Ballston Two.

G. In early 2017, individuals and entities affiliated with 149 Ballston and Ballston Two identified Saratoga Care and Rehabilitation Center ("SCRC"), an entity affiliated with Skyline Management Group LLC ("Skyline"), as the designee to which the Nursing Home's operations were to be transitioned. Consistent with its obligations under the Forbearance Agreement, in February 2017, Saratoga Center for Care LLC entered into an Asset Purchase Agreement and a Consulting Agreement with SCRC. Pursuant to the Asset Purchase Agreement, SCRC was to submit an application to New York State Department of Health ("NYSDOH") for approval to operate Saratoga Center, and SCRC's acquisition of Saratoga Center's assets was conditioned on SCRC obtaining such approval. Pursuant to the Consulting Agreement, and pending approval of SCRC to operate Saratoga Center, SCRC was only to assist Saratoga Center for Care, LLC by providing certain consulting and administrative services for Saratoga Center.

H. The owners of Saratoga Center for Care LLC, however, relinquished control over the operation of Saratoga Center to SCRC, Skyline, and, later, Chaim "Mutt" Scheinbaum, to include managing the finances and books and records, hiring and firing high-level personnel, and enacting policies—all duties that are non-delegable under New York State law.

I. In April 2018, Skyline ceased operating, and SCRC then partnered with Scheinbaum and his company (collectively "Scheinbaum") to operate Saratoga Center. Scheinbaum assumed the non-delegable duties described above and continued to operate Saratoga Center until it closed in

February 2021. NYSDOH never approved SCRC, Skyline, Scheinbaum, or any other individual or entity to operate Saratoga Center.

J. During the time when SCRC, Skyline, and Scheinbaum operated Saratoga Center, NYSDOH cited the facility for deficient resident care. According to multiple inspections, NYSDOH determined that Saratoga Center violated the regulations requiring the facility to be administered in a manner that enables it to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. Specifically, NYSDOH cited Saratoga Center for failing to: ensure that residents were free of any significant medication errors; prevent unnecessary falls and injuries; provide sufficient staffing; prevent the development of pressure ulcers; adequately treat pressure ulcers; and maintain appropriate pest control. In addition, NYSDOH found that these conditions placed the residents' health and safety in immediate jeopardy.

K. In March 2019, Saratoga Center was placed on the Center for Medicare Services' Special Focus Facilities ("SFF") list. The SFF list represents the facilities in each state that received the highest number of deficiency citations and/or whose deficiency citations were greater in scope or severity as compared to other facilities in the same state.

WHEREAS, the State has determined that: as a result of the Covered Conduct, 149 Ballston, Ballston Two, and Melohn (hereinafter, collectively "Ballston") knowingly caused to be presented false and fraudulent claims for reimbursement to the Medicaid Program; the claims were false and fraudulent because Ballston required Saratoga Center's governing body to relinquish its lawful position as the operator of Saratoga Center; Ballston then installed SCRC, Skyline, and Scheinbaum to operate Saratoga Center, although those entities lacked a license to do so; and Saratoga Center provided care that constituted worthless services to several residents from February 17, 2017 through closure in February 2021.

WHEREAS, as a result of the Covered Conduct, the State has determined that Ballston

caused the State to suffer damages of at least the amount to be repaid under this Agreement;

WHEREAS, Ballston wishes to resolve any civil liability for the Covered Conduct;

WHEREAS, Ballston is contemporaneously herewith entering into an agreement with the United States (the “United States Agreement”) to resolve the United States’ claims arising from the Covered Conduct.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

1. Ballston admits and acknowledges the Covered Conduct.
2. As payment to the State and the United States for the Covered Conduct, Ballston shall pay a total of Four Million Seven Hundred and Fifty Thousand dollars (\$4,750,000) (the “Total Settlement Amount”), no later than 14 days after the Effective Date of this Agreement (as defined in Paragraph 24), as follows:

- a. Of the Total Settlement Amount, Ballston shall pay to the State a total of Two Million Eight Hundred and Fifty Thousand dollars (\$2,850,000) (“State Settlement Amount”) by electronic funds transfer pursuant to written instructions to be provided by MFCU.
- b. Of the State Settlement Amount, One Million Four Hundred Twenty Five dollars (\$1,425,000) is restitution.

3. Subject to the provisions of Paragraph 4 below (concerning reserved claims) and conditioned upon the State’s receipt of the State Settlement Amount, the State releases Ballston, together with their current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; affiliated companies; current or former corporate owners of any of them; and the corporate successors and assigns of any of them, from any civil monetary causes of action that the State has for the Covered Conduct under the New York State False Claims Act,

N.Y. State Fin. Law §§ 187 *et seq.*, Social Services Law § 145-b(2), Executive Law §§ 63-c(1) and 63(12), and the common law theories of fraud in inducement, payment by mistake, unjust enrichment, fraud, and breach of contract.

4. Notwithstanding the release given in Paragraph 3 of this Agreement, or any other term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- (a) Any civil, criminal or administrative liability arising under state revenue codes;
- (b) Any criminal liability;
- (c) Any liability of individuals or entities other than as expressly released herein;
- (d) Any administrative liability, including mandatory or permissive exclusion from the State's Medicaid Program;
- (e) Any civil or administrative liability that 149 Ballston and Ballston Two have or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 3 above, including but not limited to, any and all claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (f) Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- (g) Any liability for personal injury, patient abuse or neglect arising from the Covered Conduct;
- (h) Any liability that may be asserted by or on behalf of any payor or insurer paid by the State's Medicaid program on a capitated basis, other than liability of Ballston to the State for the Covered Conduct; and
- (i) Any liability based upon obligations created by this Agreement.

5. Ballston, including any and all of their servants, employees and assigns, fully and finally release the State, its agencies, officers, agents, employees, servants, from any claims (including attorney's 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 State, its agencies, officers, agents, employees, and servants, related to the Covered Conduct, and the State's investigation and prosecution thereof.

6. This Agreement is intended for the benefit of the Parties only, and, by this instrument, except as provided in Paragraphs 3, 5, and 14 through 17, the Parties do not release any claims against any other person or entity. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of any of the relevant statutes or regulations, and the Agreement shall not be construed as an admission by the State as to any contested issue encompassed by the State's investigation.

7. This Agreement relates solely to Medicaid compensation paid to, claimed, or received by Saratoga Center or Ballston pursuant to any statutes, rules, regulations, and official directives governing Medicaid payments with respect to the Covered Conduct, and not to any other relationship between Ballston and the State or Ballston and any other government-funded healthcare program.

8. Ballston agree to the following:

(a) Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Ballston in connection with:

- i. the matters covered by this Agreement;
- ii. the State's audit(s) and civil and any criminal investigation(s) of the matters

covered by this Agreement;

- iii. Ballston's investigation, defense, and corrective actions undertaken in response to the State's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- iv. the negotiation and performance of this Agreement; and
- v. the payments Ballston makes relating to this Agreement including costs and attorney's fees, are unallowable costs for government contracting purposes and under the Medicaid Program (hereinafter referred to as "Unallowable Costs").

(b) Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by Ballston; and Ballston shall 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 Consolidated Fiscal Report ("CFR"), cost report, cost statement, information statement, or payment request submitted by 149 Ballston and Ballston Two or any of their affiliates to the Medicaid Program.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Ballston further agrees that within ninety (90) days of the Effective Date of this Agreement (as defined in Paragraph 24), they shall endeavor in good faith to identify to applicable Medicaid fiscal agents, any Unallowable Costs (as defined in Paragraph 8(a)) included in payments previously sought by Ballston or any of its affiliates from 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 Ballston or any of its affiliates, and shall 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. Ballston agrees that the State, at a minimum, shall be entitled to recoup from Ballston 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, appeals, or requests for payment by Ballston or any of its affiliates. Any payments due after the adjustments have been made shall be paid to the State. The State reserves its rights to disagree with any calculations submitted by Ballston or any of its affiliates on the effect of inclusion of Unallowable Costs (as defined in Paragraph 8(a)) on Ballston's or any of its affiliates' CFRs, cost reports, cost statements, or information reports, appeals, or other payment requests. If the State does disagree with any calculations submitted by Ballston or any of their affiliates as outlined above, then the Parties shall confer in good faith in an effort to come to a resolution regarding such calculations. In the event that a resolution cannot be reached, the State reserves its rights to take any action it deems appropriate.

(d) Nothing in this Agreement shall constitute a waiver of the rights of the State to audit, examine, or re-examine the books and records of Ballston to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

9. All payments due to the State hereunder shall be made by certified check, bank check, money order, or wire transfer payable to the "New York State Medicaid Fraud Control Restitution Fund." All non-electronic payments shall be delivered to the Medicaid Fraud Control Unit, Finance Department, 13th Floor, 28 Liberty Street, New York, New York 10005. Any other notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier and/or email followed by postage prepaid first-class mail, and addressed as follows:

TO THE STATE:

Chief, Civil Enforcement Division
Medicaid Fraud Control Unit
New York State Office of the Attorney General
28 Liberty Street, 13th Floor
New York, NY 10005
Telephone: (212) 417-5300
MFCUNotices@ag.ny.gov

TO 149 BALLSTON, BALLSTON TWO, and LEON MELOHN:

Christopher B. Harwood, Esq.
Morvillo Abramowitz Grand Iason & Anello PC
565 Fifth Avenue
New York, NY 10017
T: (212) 880-9547
charwood@maglaw.com

With a copy to:

Michael Tremonte
Sher Tremonte LLP
90 Broad Street, 23rd Floor
New York, NY 10004 |
T: 212.202.2603
mtremonte@shertremonte.com

10. This Agreement is binding upon all Parties and upon the assigns, transferees, purchasers, and any successors-in-interest of Ballston.
11. Ballston waives and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct, 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.
12. This Agreement constitutes the complete and full agreement reached by the Parties relating to the Covered Conduct, and it may not be changed in any respect, except by a writing duly executed by the Parties or their authorized representatives.

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

14. Ballston agrees that it waives and shall not seek payment for any health care billings based upon claims defined as Covered Conduct from any individual health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors.

15. Ballston agrees not to submit any further claim or to resubmit to any state payor any previously denied claims, or cause any further claim or adjustment to be submitted or resubmitted, related to the Covered Conduct, and agrees not to appeal any such denials of claims.

16. Ballston will not submit any insurance claims for the Covered Conduct.

17. Ballston waives any claim for any tax rebate or refund, or other governmental payment, from the State, until the State Settlement Amount is satisfied. In the State's sole discretion, the State may recoup or offset any such payment without further notice to Ballston for credit toward the State Settlement Amount.

18. Ballston agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement, or creating the impression that this Agreement is without factual basis. Nothing in this Paragraph affects Ballston's (a) testimonial obligations or (b) right to take contrary legal or factual positions in defense of litigation or other proceedings to which the Attorney General is not a party.

19. This Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

20. Ballston acknowledges that they have entered this Agreement freely, voluntarily, and upon due deliberation, with the advice of counsel and without coercion or duress.

21. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to choice of law or conflict of laws principles. The

Parties consent to the jurisdiction of the Supreme Court of the State of New York, Saratoga County, and any other county in which Ballston conducts business, in any action to enforce or interpret this Agreement.

22. Any failure by the State to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

24. This Agreement is effective on the date of the last signatory to the Agreement (“Effective Date of this Agreement”). Electronic transmissions of signatures shall constitute acceptable, binding signatures for the purpose of this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

WHEREFORE, the Parties have read the foregoing Agreement and accept and agree to the provisions contained herein and hereby have caused this Agreement to be signed as of the day and date adjacent to their signature.

THE STATE OF NEW YORK

LETITIA JAMES
Attorney General of the State of New York

By: Emily Auletta Dated: February 27, 2023
Emily L. Auletta
Special Assistant Attorney General
Medicaid Fraud Control Unit
The Capitol
Albany, New York 12224
Tel: (518) 776-2342
E: emily.auletta@ag.ny.gov

LEON MELOHN, 149 BALLSTON AVE LLC, and BALLSTON TWO, LLC

By: [Signature] Dated: 2/27/23
Leon Melohn
Individually and as Managing Member of
149 Ballston Ave LLC and Ballston Two LLC

By: [Signature] Dated: 2/27/23
Robert J. Anello, Esq.
Christopher B. Harwood, Esq.
Morvillo Abramowitz Grand Iason & Anello PC
Counsel for 149 Ballston Ave LLC, Ballston Two, LLC, and Leon Melohn

By: [Signature] Dated: 2/22/23
Michael Tremonte
Sher Tremonte LLP
Counsel for 149 Ballston Ave LLC, Ballston Two, LLC, and Leon Melohn

State of New York)
)ss:
County of New York)

On this 21st day of February, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Leon Melohn, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same both individually and in his capacity as member of 149 Ballston Ave LLC and Ballston Two, LLC, and that by his signature on the instrument, both Leon Melohn and 149 Ballston Ave LLC and Ballston Two, LLC, upon behalf of which Leon Melohn acted, executed the instrument.

Paul Schwartz
NOTARY PUBLIC

PAUL J. SCHWARTZ
Notary Public, State of New York
No. 01SC6297155
Qualified in New York County
Commission Expires Feb. 18, ~~2018~~
2016

STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL LETITIA JAMES

-----X

IN THE MATTER OF:

JACK JAFFA and SARATOGA CARE AND REHABILITATION
CENTER, LLC.

-----X

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) reached the 27 day of February 2023, is by and among the State of New York (the “State”) by the Office of the Attorney General, through the Medicaid Fraud Control Unit (“MFCU”), Jack Jaffa (“Jaffa”), and Saratoga Care and Rehabilitation Center, LLC (“SCRC”). The State, Jaffa, and SCRC shall be collectively referred to as the “Parties.”

WHEREAS, Jaffa resides in Brooklyn, New York. Jaffa is in the real estate business and invested in properties occupied by nursing homes;

WHEREAS, SCRC is a New Jersey limited liability company that Jaffa created in February 2017. Jaffa owned 100% of SCRC until at some point in 2018 when Chaim “Muttu” Scheinbaum (“Scheinbaum”) became a minority owner of SCRC;

WHEREAS, in February 2017, Jaffa, on behalf of SCRC, signed an agreement to purchase a nursing home known as Saratoga Center for Care (“Saratoga Center”), a 278-bed skilled nursing facility located at 149 Ballston Ave, Ballston Spa, New York until its closure in February 2021;

WHEREAS, at all relevant times, Saratoga Center was enrolled as a healthcare provider in New York State’s Medical Assistance Program (“Medicaid Program” or “Medicaid”) under MMIS No. 00473809;

WHEREAS, the Medicaid Program reimburses enrolled healthcare providers for services rendered to beneficiaries of the program, including healthcare services reimbursed directly by the New York State Department of Health (“NYSDOH”) on a fee-for-service basis, and healthcare services reimbursed through Medicaid Managed Care Organizations (“MCOs”);

WHEREAS, during all times relevant to this Agreement, Saratoga Center executed annual Certification Statements For Provider Billing Medicaid through the State’s Medicaid Fiscal Agent (“Certification Statements”), pursuant to 18 NYCRR §§ 504.1 (b)(1), 504.9, certifying that all claims that Saratoga Center submitted for reimbursement to Medicaid were made in full compliance with applicable federal and state laws and regulations and pertinent provisions of the eMedNY Provider Manual and all revisions thereto, and that Saratoga Center understood and agreed that it would be subject to and bound by all rules, regulations, policies, standards, fee codes, and procedures of NYSDOH and the Office of the Medicaid Inspector General (“OMIG”) as set forth in statute or title 18 of the Official Compilation of Codes, Rules and Regulations of New York State and other publications of NYSDOH, including eMedNY Provider Manuals and other official bulletins of NYSDOH;

WHEREAS, MFCU and the United States of America (the “United States”) conducted an investigation of Jaffa, SCRC, and Saratoga Center and determined that between February 2017 and February 2021 (“the Relevant Period”), Jaffa and SCRC submitted or caused to be submitted on Saratoga Center’s behalf claims for payment to the State’s Medicaid Program for services that were grossly substandard and worthless;

WHEREAS, the State has determined that Jaffa and SCRC engaged in the following conduct (which conduct is referred to in this Agreement as the “Covered Conduct”) during the Relevant Period:

A. In February 2017, Jaffa sought to become an investor and part owner of Saratoga Center, including the land and buildings that it occupied. At that time, Saratoga Center was operated by an entity called Saratoga Center for Care LLC, which was owned by two individuals named Alan “Ari” Schwartz and Jeffrey Vegh, who were the facility’s licensed operators. This transaction involved the transfer of operations from the licensed operators to Jaffa, acting by and through SCRC, which had arranged for Joseph Schwartz and his company, Skyline Health Care LLC (“Skyline”) to operate the facility. To complete the sale and transfer operations to SCRC, Jaffa was required to obtain a license to operate Saratoga Center from the New York State Public Health and Health Planning Council (“PHHPC”). *See* New York Public Health Law § 2801-a(1)&(4). In the interim, the parties intended for SCRC, with Skyline, to operate as a “consultant” under the license of the current operator of Saratoga Center until Jaffa and SCRC obtained their own license. However, NYSDOH never granted the license. Nevertheless, SCRC and Skyline took control over the day-to-day operations and management of Saratoga Center. Saratoga Center’s licensed operators agreed to this transfer of control. Because the transfer of authority was never approved by NYSDOH, the sale of the nursing home was never finalized.

B. Only the licensed operators were legally authorized to (1) hire and fire key management employees; (2) maintain books and records, (3) dispose of Saratoga Center’s assets and incur liabilities on its behalf, and (4) adopt and enforce policies regarding Saratoga Center’s operations. 10 NYCRR § 600.9. However, after February 2017, the licensed operators effectively ceased operating Saratoga Center, having ceded control to Jaffa and Skyline. There was no licensed operator involved in the day-to-day operations of Saratoga Center after February 2017. Initially, Jaffa, through SCRC, entrusted Joseph Schwartz and Skyline to operate the facility. Jaffa, SCRC, Joseph Schwartz, Skyline, and the licensed operators of Saratoga Center endeavored, for

some period while the potential sale was pending, to give the appearance that the licensed operators controlled the facility and to conceal the transfer of operations from NYSDOH.

C. From February 2017 to April 2018, however, Jaffa and SCRC, through Joseph Schwartz and Skyline, jointly operated Saratoga Center without an operating license. In or around April 2018, Jaffa learned that Saratoga Center had been financially mismanaged and had accrued significant debt. Around that time, Skyline ceased operating. Skyline never sought to obtain a license to operate Saratoga Center.

D. Jaffa then partnered with Scheinbaum, through his companies, Alliance Health Care Management, LLC (“Alliance”), to manage Saratoga Center. Jaffa and Scheinbaum, and subsequently Scheinbaum alone, applied for a license to operate Saratoga Center, but their applications were never approved. From approximately April 2018 until Saratoga Center closed in February 2021, Jaffa and SCRC, through Scheinbaum and Alliance, exercised control over the management and operations of Saratoga Center, without participation from Saratoga Center’s licensed operator. Accordingly, for four years, unlicensed operators ran the day-to-day operations of Saratoga Center.

E. From February 2017 to February 2021, while Jaffa and SCRC, with Joseph Schwartz, Scheinbaum, Skyline, and Alliance, exercised control over the management and operations of Saratoga Center, the care provided to certain Saratoga Center residents failed to meet federal and state standards of care. Various NYSDOH surveys cited Saratoga Center for failing to: ensure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident; ensure that residents were free of any significant medication errors; prevent residents from unnecessarily falling and injuring themselves; prevent residents from developing avoidable pressure ulcers and then not adequately treating them; and regularly toilet and bathe residents.

F. In September 2017, NYSDOH issued a survey report that found there were serious deficiencies (medication errors and ineffective administration) at Saratoga Center that placed the residents in immediate jeopardy of harm.

G. In March 2019, Saratoga Center was placed on the Center for Medicare Services' Special Focus Facilities ("SFF") list. This is a list of facilities that have a history of serious quality deficiencies and failed to substantially comply with the required standard of care to which residents are entitled. The list is limited to the worst nursing homes in the United States.

H. Between 2017 and 2021, while Jaffa and SCRC, through Joseph Schwartz, Scheinbaum, Skyline, and/or Alliance, exercised control over the management and operations of Saratoga Center, vendor bills often went unpaid. Vendors refused to deliver goods and/or services, including making necessary repairs, and the physical condition of the Saratoga Center deteriorated. Saratoga Center failed to ensure that residents had access at all times to hot water; the fire alarm system was properly maintained; the kitchen was clean and its staff was able to serve hot food; there was a supply of linens to bathe and care for residents; garbage was collected; there was effective pest control; and that leaks were timely repaired.

WHEREAS, as a result of the Covered Conduct, Jaffa and SCRC caused Saratoga Center to submit claims for reimbursement to the Medicaid Program for services rendered to Saratoga center's residents that were substandard and worthless;

WHEREAS, as a result of the Covered Conduct, Jaffa and SCRC caused the State to suffer damages of at least the amount to be repaid under this Agreement;

WHEREAS, Jaffa and SCRC wish to resolve their civil liability for the Covered Conduct;

WHEREAS, Jaffa and SCRC are contemporaneously herewith entering into an agreement with the United States (the "United States Agreement") to resolve the United States' claims arising from the Covered Conduct.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

1. Jaffa and SCRC admit, acknowledge, and accept responsibility for the Covered Conduct.

2. As payment to the State and the United States for the Covered Conduct, Jaffa and SCRC shall pay a total of Eight Hundred Thirty Three Thousand dollars (\$833,000) (the “Total Settlement Amount”).

3. Of the Total Settlement Amount, Jaffa and SCRC shall pay to the State a total of Four Hundred Ninety Nine Thousand and Eight Hundred dollars (\$499,800) (“State Settlement Amount”), plus interest at a rate of 3% per annum from the Effective Date of this Agreement (as defined in Paragraph 34 below) to the date of the final payment by electronic funds transfer pursuant to written instructions to be provided by MFCU, pursuant to the conditions set forth below:

a. *Initial Payment*

- i. Within thirty (30) days of the execution of this Agreement, Jaffa and SCRC shall pay to the State a sum of One Hundred and Fifty Thousand dollars (\$150,000);
- ii. Within sixty (60) days of the execution of this Agreement, Jaffa and SCRC shall pay to the State a sum of One Hundred and Fifty Thousand dollars (\$150,000);

b. *Monthly Payments*

- i. Jaffa and SCRC shall pay to the State eighteen (18) monthly installments of Eleven Thousand One Hundred dollars (\$11,100) (“Monthly Payments”). Jaffa and SCRC shall make the first of the

Monthly Payments within ninety (90) days of the execution of this Agreement, and make each of the subsequent Monthly Payments every thirty (30) days thereafter by the 1st day of each month.

4. Of the State Settlement Amount, Two Hundred and Forty-Nine Thousand and Nine Hundred dollars (\$249,900) is restitution.

5. In consideration for the State's agreement to accept Monthly Payments as delineated in Paragraph 3(b), Jaffa and SCRC will each execute an Affidavit of Confession of Judgment in the amount of Four Hundred Ninety Nine Thousand Eight Hundred Dollars (\$499,800.00), in the form annexed as Exhibit A, simultaneously with the execution of this Agreement. Jaffa and SCRC consent to the filing of said Confession of Judgment and entry of judgment thereon (the "Judgment") without further notice, less any monies received, plus all costs of collection, excluding attorney's fees and other proper relief, without further notice to Jaffa and SCRC. The State shall forbear from executing upon said Judgment as long as Jaffa and SCRC are current on all payments due under this Agreement.

6. In the event that Jaffa and SCRC fail to comply with the terms and conditions as set forth herein, in whole or in part, Jaffa and SCRC shall be in default of this Agreement ("Default"). The State will provide written notice of the Default, to be sent by first-class mail to the undersigned attorney for Jaffa and SCRC. Jaffa and SCRC shall have the opportunity to cure such Default within five (5) business days from the date of receipt of such notice (the "Cure Period"). If Jaffa and SCRC fail to cure the Default within the Cure Period ("Uncured Default"), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of nine percent (9%) per annum compounded daily from the date of Default on the remaining unpaid total balance. In the event of an Uncured Default, the State, at its sole option, may:

- a. Execute upon the Confession of Judgment provided under Paragraph 5, above;
- b. Retain any payments previously made, rescind this Agreement, and bring any civil

and/or administrative claim, action, or proceeding against Jaffa and SCRC for the claims that would be otherwise covered by the release in Paragraph 10, with any new recovery reduced by the amount of any payments previously made to the State by Jaffa and/or SCRC;

- c. Offset the remaining unpaid balance from any amounts due and owing to Jaffa and/or SCRC by any department, agency, or agent of the State at the time of Default;
- d. Seek specific performance of the Agreement by Jaffa and SCRC; and
- e. Exercise any other rights granted by law, or under the terms of this Agreement, or recognizable at common law or in equity, including referral of this matter for private collection.

7. Acceptance by the State of late payment with interest shall not cure any other Default hereunder. Jaffa and SCRC agree not to contest any consent judgment, offset, recoupment, and/or collection action undertaken by the State pursuant to this paragraph, either administratively or in any state or federal court.

8. In the event that the State seeks remedies for collection or enforcement of Jaffa and SCRC's obligations hereunder, and the State substantially prevails in its collection or enforcement action, Jaffa and SCRC shall be responsible for all costs and expenses incurred by the State in connection with that action.

9. In the event the State opts to rescind this Agreement pursuant to Paragraph 6(b) above, Jaffa and SCRC expressly agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, res judicata, or similar theories to any civil or administrative claims that relate to the Covered Conduct, except to the extent such defenses were available to Jaffa and SCRC on the Effective Date of this Agreement, as defined in Paragraph 34, below.

RELEASES

10. Subject to the provisions of Paragraph 11 below (concerning reserved claims), Paragraph 16 (concerning bankruptcy proceedings) and Paragraph 6 (concerning default), and conditioned upon the State's receipt of the State Settlement Amount, the State releases Jaffa, together with all of his trustees, servants, employees, and assigns, and SCRC, including all of its predecessors, successors, members, assigns, and corporations under SCRC, from any civil monetary causes of action that the State has for the Covered Conduct under the New York State False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.*, Social Services Law § 145-b(2), Executive Law §§ 63-c(1) and 63(12), and the common law theories of fraud in inducement, payment by mistake, unjust enrichment, fraud, and breach of contract.

11. Notwithstanding the release given in Paragraph 10 of this Agreement, or any other term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- (a) Any civil, criminal or administrative liability arising under state revenue codes;
- (b) Any criminal liability;
- (c) Any liability of individuals other than Jaffa;
- (d) Any administrative liability, including mandatory or permissive exclusion from the State's Medicaid Program;
- (e) Any civil or administrative liability that Jaffa and SCRC have or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 3 above, including but not limited to, any and all claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (f) Any liability to the State (or its agencies) for any conduct other than the Covered

Conduct;

(g) Any liability for personal injury, patient abuse or neglect arising from the Covered

Conduct;

(h) Any liability that may be asserted by or on behalf of any payor or insurer paid by the

State's Medicaid program on a capitated basis, other than liability of Jaffa and SCRC to the State for the Covered Conduct; and

(i) Any liability based upon obligations created by this Agreement.

12. Jaffa, including any and all of his trustees, servants, employees and assigns, fully and finally releases the State, its agencies, officers, agents, employees, servants, from any claims (including attorney's fees, costs, and expenses of every kind and however, denominated) that he has asserted, could have asserted, or may assert in the future against the State, its agencies, officers, agents, employees, and servants, related to the Covered Conduct, and the State's investigation and prosecution thereof.

13. SCRC, including any and all predecessors, successors, members, and corporations under SCRC, together with current and former officers, directors, trustees, servants, employees, and assigns, fully and finally release the State, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that it has asserted, could have asserted, or may assert in the future against the State, its agencies, officers, agents, employees, and servants, related to the Covered Conduct, and the State's investigation and prosecution thereof.

14. This Agreement is intended for the benefit of the Parties only, and, by this instrument, except as provided in Paragraph 10, 12, 13, and 24 through 27, the Parties do not release any claims against any other person or entity. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of any of the relevant statutes or

regulations, and the Agreement shall not be construed as an admission by the State as to any contested issue encompassed by the State's investigation.

15. This Agreement relates solely to Medicaid compensation paid to, claimed, or received by Jaffa and SCRC pursuant to any statutes, rules, regulations, and official directives governing Medicaid payments with respect to the Covered Conduct, and not to any other relationship between Jaffa and SCRC and the State or Jaffa and SCRC and any other government-funded healthcare program.

16. If within ninety-one (91) days of the date of this Agreement or any payment made under this Agreement, Jaffa or SCRC commence any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors or a third party commences any case, action, or other proceeding under any law related to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of Jaffa's debts, or seeking to adjudicate SCRC as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for SCRC for all or part of any of Jaffa's, or SCRC's, assets, Jaffa and Saratoga Center LLC agree as follows:

(a) Jaffa's and SCRC obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and they shall not argue or otherwise take the position in any such case, action, or proceeding that (i) their obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) they were insolvent at the time this Agreement was entered into; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Jaffa.

(b) If Jaffa's and SCRC's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its option, may rescind the releases in this Agreement and bring

any civil and/or administrative claim, action, or proceeding against Jaffa and Saratoga Center LLC for the claims that would otherwise be covered by the releases in Paragraph 10 above. Jaffa and SCRC agree that (i) any such claim, action, or proceeding brought by the State would not be subject to an “automatic stay” pursuant to 11 U.S.C. § 362 (a) as a result of the case, action, or proceeding described in the first sentence of this Paragraph, and Jaffa and SCRC shall not argue or otherwise contend that the State’s claim, action, or proceeding is subject to an automatic stay; (ii) Jaffa and SCRC shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any claim, action, or proceeding that is brought by the State within 60 calendar days of written notification to Jaffa and SCRC that the releases have been rescinded pursuant to this Paragraph; and (iii) the State has a valid claim against Jaffa and SCRC in the amount of the Settlement Amount and the State may pursue its claim in the case, action, or proceeding described in the first sentence of this Paragraph, as well as in any other case, action, or proceeding.

(c) Jaffa and SCRC acknowledge that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

17. Jaffa and SCRC agree to the following:

(a) Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 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-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Jaffa and SCRC, or any of its present or former officers, directors, trustees, employees, shareholders, and agents in connection with:

i. the matters covered by this Agreement;

- ii. the State’s audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- iii. Jaffa’s and SCRC’s investigation, defense, and corrective actions undertaken in response to the State’s audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney’s fees);
- iv. the negotiation and performance of this Agreement; and
- v. the payments Jaffa and SCRC make relating to this Agreement including costs and attorney’s fees, are unallowable costs for government contracting purposes and under the Medicaid Program (hereinafter referred to as “Unallowable Costs”).

(b) Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by Jaffa and SCRC; and Jaffa and SCRC shall 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 Consolidated Fiscal Report (“CFR”), cost report, cost statement, information statement, or payment request submitted by Jaffa and SCRC or any of their affiliates to the Medicaid Program.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Jaffa and SCRC further agree that within ninety (90) days of the Effective Date of this Agreement it shall endeavor in good faith to identify to applicable Medicaid fiscal agents, any Unallowable Costs (as defined in Paragraph 17(a)) included in payments previously sought from 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 Jaffa and SCRC or

any of their affiliates and shall 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. Jaffa and SCRC agree that the State, at a minimum, shall be entitled to recoup from Jaffa or SCRC 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, appeals, or requests for payment. Any payments due after the adjustments have been made shall be paid to the State. The State reserves its rights to disagree with any calculations submitted by Jaffa, SCRC or any of their affiliates on the effect of inclusion of Unallowable Costs (as defined in Paragraph 17(a)) on Jaffa's, SCRC's, or any of their affiliates' CFRs, cost reports, cost statements, or information reports, appeals, or other payment requests. If the State does disagree with any calculations submitted by Jaffa, SCRC or any of their affiliates as outlined above, then the State and Jaffa and SCRC shall confer in good faith in an effort to come to a resolution regarding such calculations. In the event that a resolution cannot be reached, the State reserves its rights to take any action it deems appropriate.

(d) Nothing in this Agreement shall constitute a waiver of the rights of the State to audit, examine, or re-examine the books and records of Jaffa and SCRC to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

18. All payments due to the State hereunder shall be made by certified check, bank check, money order, or wire transfer payable to the "New York State Medicaid Fraud Control Restitution Fund." All non-electronic payments shall be delivered to the Medicaid Fraud Control Unit, Finance Department, 13th Floor, 28 Liberty Street, New York, New York 10005. Any other notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier and/or email followed by postage prepaid first-class mail,

and addressed as follows:

TO THE STATE:

Chief, Civil Enforcement Division
Medicaid Fraud Control Unit
New York State Office of the Attorney General
28 Liberty Street, 13th Floor
New York, NY 10005
Telephone: (212) 417-5300
MFCUNotices@ag.ny.gov

TO JAFFA AND SCRC:

147 Prince Street
Brooklyn, NY 11210

With a copy to:

Thomas Barnard, Esq.
Baker Donelson
100 Light Street, 19th Floor
Baltimore, MD 21202

19. Nothing in this Agreement constitutes a representation by the State or concerning the characterization of any relevant statutes or regulations. This Agreement shall not be construed as an admission by the State or Jaffa or SCRC as to any contested issue encompassed by the State's investigation.

20. This Agreement is binding upon all Parties and upon the assigns, transferees, purchasers, and any successors-in-interest of Jaffa and SCRC.

21. Jaffa and SCRC waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct, 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.

22. This Agreement constitutes the complete and full agreement reached by the Parties

relating to the Covered Conduct, and it may not be changed in any respect, except by a writing duly executed by the Parties or their authorized representatives.

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

24. Jaffa and SCRC agree that they waive and shall not seek payment for any of the health care billings based upon claims defined as Covered Conduct from any individual health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors.

25. Jaffa and SCRC agree not to submit any further claim or to resubmit to any state payor any previously denied claims, or cause any further claim or adjustment to be submitted or resubmitted, related to the Covered Conduct, and agree not to appeal any such denials of claims.

26. Jaffa and SCRC will not submit any insurance claims for the Covered Conduct.

27. Jaffa and SCRC waive any claim for any tax rebate or refund, or other governmental payment, from the State, until the Settlement Amount is satisfied. In the State's sole discretion, the State may recoup or offset any such payment without further notice to Jaffa and SCRC for credit toward the Settlement Amount.

28. Jaffa and SCRC agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this Paragraph affects Jaffa's or SCRC's (a) testimonial obligations or (b) right to take contrary legal or factual positions in defense of litigation or other proceedings to which the Attorney General is not a party.

29. This Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

30. Jaffa and SCRC acknowledge that they have entered this Agreement freely, voluntarily, and upon due deliberation, with the advice of counsel and without coercion or duress.

31. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to choice of law or conflict of laws principles. The Parties consent to the jurisdiction of the Supreme Court of the State of New York, Saratoga County, and any other county in which Jaffa and Saratoga Center LLC conduct business, in any action to enforce or interpret this Agreement.

32. Any failure by the State to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

34. This Agreement is effective on the date of the last signatory to the Agreement (“Effective Date of this Agreement”). Electronic transmissions of signatures shall constitute acceptable, binding signatures for the purpose of this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

WHEREFORE, the Parties have read the foregoing Agreement and accept and agree to the provisions contained herein and hereby have caused this Agreement to be signed as of the day and date adjacent to their signature.

THE STATE OF NEW YORK

LETITIA JAMES
Attorney General of the State of New York

By: Emily Auletta Dated: February 27, 2023
Emily L. Auletta
Special Assistant Attorney General
Medicaid Fraud Control Unit
The Capitol
Albany, New York 12224
Tel: (518) 776-2342
E: emily.auletta@ag.ny.gov

JACK JAFFA, individually

By: [Signature] Date: 2/27/23
Jack Jaffa

SARATOGA CARE AND REHABILITATION CENTER LLC

By: [Signature] Date: 2/27/23
Jack Jaffa, Owner
Saratoga Care and Rehabilitation Center LLC

Business Address: _____

Tax Identification Number: _____

Approved as to Form

By: [Signature] Dated: 2/27/23
Thomas Barnard, Esq.
Baker Donelson
Counsel for Jack Jaffa & Saratoga Care and Rehabilitation Center, LLC

State of New York)
)ss:
County of Kings)

On this 14th day of February, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Jack Jaffa, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same both individually and in his capacity as owner of Saratoga Care and Rehabilitation Center, LLC, and that by his signature on the instrument, both Jack Jaffa and Saratoga Care and Rehabilitation Center, LLC, upon behalf of which the Jack Jaffa acted, executed the instrument.



NOTARY PUBLIC

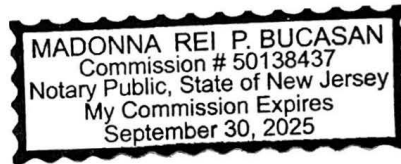


EXHIBIT A

MEDICAID FRAUD CONTROL UNIT

THE PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of
New York,

Plaintiff,

- against -

JACK JAFFA and SARATOGA CARE AND
REHABILITATION CENTER,

Defendants.

**AFFIDAVIT OF CONFESSION
OF JUDGMENT**

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

JACK JAFFA, being duly sworn, deposes and says:

1. I am the individual named above and I reside in Kings County, New York.
2. I am the owner of Saratoga Care and Rehabilitation Center (“SCRC”) and as such, I am authorized to execute this Affidavit of Confession of Judgment on behalf of SCRC.
3. I hereby confess judgment, pursuant to CPLR Sect. 3218, in favor of Plaintiff, the People of the State of New York, against myself and authorize entry thereof in Albany County, and in any county in which I own property, in the sum of Four Hundred Ninety Nine Thousand Eight Hundred Dollars (\$499,800.00).
4. I hereby confess judgment against SCRC, and authorize entry thereof in favor of Plaintiff, the People of the State of New York, in the sum of Four Hundred Ninety Nine Thousand Eight Hundred Dollars (\$499,800.00) in Albany County, and in any county in which SCRC owns property.
5. This confession of judgment is for a debt justly due to Plaintiff, the State of New York, arising out of the acts set forth in the attached Settlement Agreement, which I executed on February 27, 2023 in my individual capacity, and as an owner of SCRC. As a result of the conduct described in the Settlement Agreement, I caused claims to be submitted to the New York State Medicaid Program for which I received, or caused others to receive, amounts that were not legally due. As a result, the New York State Medicaid Program was harmed by at least the amount confessed herein of Four Hundred Ninety Nine Thousand Eight Hundred Dollars (\$499,800.00).
6. I authorize entry of judgment against me and against SCRC, jointly and severally, in Albany County, in the State of New York, and in any county in which SCRC or I own

property, in the amount of Four Hundred Ninety Nine Thousand Eight Hundred Dollars (\$499,800.00), less any payments paid pursuant to the Settlement Agreement, at any time without further notice.

JACK JAFFA



STATE OF NEW YORK, COUNTY OF KINGS _____ ss.:

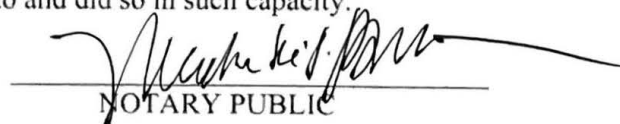
On February 26, 2023, before me personally came Jack Jaffa, to me known, and known to me to be the individual described in, and who executed the above instrument, and acknowledged to me that he executed same.

MADONNA REI P. BUCASAN
Commission # 50138437
Notary Public, State of New Jersey
My Commission Expires
September 30, 2025


NOTARY PUBLIC

STATE OF NEW YORK, COUNTY OF KINGS _____ ss.:

On February 26, 2023, before me personally came Jack Jaffa, to me known, who being by me duly sworn, did depose and say that he resides in Kings County, New York; that he is the owner of SCRC, the company that is described in and that executed the above instrument; and that he is duly authorized to sign his name thereto and did so in such capacity.


NOTARY PUBLIC

MADONNA REI P. BUCASAN
Commission # 50138437
Notary Public, State of New Jersey
My Commission Expires
September 30, 2025