

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into among: (a) the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) and the Defense Health Agency (DHA), acting on behalf of the TRICARE program (collectively, the “United States”); and (b) Jagpreet Mukker, D.P.M. (“Dr. Mukker”) and Jay Mukker, DPM Inc. (d/b/a Advanced Foot Care and Clinical Research Center). The United States, Dr. Mukker, and Jay Mukker, DPM Inc. are hereafter collectively referred to as “the Parties,” through their authorized representatives.

### **RECITALS**

A. Dr. Mukker is a podiatrist and the owner and Chief Executive Officer of Jay Mukker, DPM Inc.

B. Jay Mukker, DPM Inc. is a California medical corporation with a principal office location of 7210 N. Milburn Avenue, Suite 101, Fresno, CA 93722.

C. Dr. Mukker and Jay Mukker, DPM Inc. are each enrolled as suppliers in the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”), the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”), and the California Medi-Cal Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medi-Cal”).

D. The United States contends that Dr. Mukker and Jay Mukker, DPM Inc. submitted and caused to be submitted claims for payment to Medicare, TRICARE, and Medi-Cal during all times relevant to this Agreement.

E. The United States contends that it has certain civil claims against Dr. Mukker and Jay Mukker, DPM Inc. arising from (1) Dr. Mukker’s and Jay Mukker DPM Inc.’s solicitation and receipt of kickbacks designed to induce and reward prescriptions to mail-order pharmacies

owned or controlled by Matthew Peters (“Peters”), including for beneficiaries of Medicare and other Federal health care programs, between March 2016 and October 2020, as further described in Paragraphs G.1 to 16 below, which the United States contends violated the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (“AKS”); and (2) Jay Mukker DPM Inc.’s submission of claims to Medicare for peripheral venous studies that were falsely identified as physician evaluation and management services, between January 1, 2017 to November 22, 2023, as further described in Paragraphs G.17 to 19 below. That conduct, together with the conduct described in Paragraph F, is referred to in this Agreement as the “Covered Conduct.”

F. This Settlement Agreement is neither an admission of liability by Dr. Mukker or Jay Mukker DPM, Inc., nor a concession by the United States that its claims are not well founded.

G. Dr. Mukker and Jay Mukker DPM Inc. acknowledge and accept the following facts in Paragraphs G.1 to 19 below and agree not to make any public statement denying or contesting these facts.

### **Peters MSO Investment**

1. Between 2015 and the end of 2020, Dr. Mukker issued prescriptions for compounded creams and other medications to certain non-local pharmacies owned or controlled by Peters, including Professional Rx Pharmacy LLC; Inland Medical Consultants, LLC; Portland Professional Pharmacy LLC; Sunrise Pharmacy LLC; Professional 205 Pharmacy, LLC; Synergy Medical Systems, LLC; Synergy RX LLC; Synergy Medical Systems LLC; Prestige Professional Pharmacy; One Way Drug LLC; Optimum Care Pharmacy, Inc.; JMSP LLC; and MPKM, LLC (“the Pharmacies”).

2. A sales agent (hereinafter referred to as “Sales Representative 1”) promoted the Pharmacies to Dr. Mukker.

3. In March 2016 and January 2017, Dr. Mukker invested in an investment entity created by Peters that Peters termed a “PPM.” Sales Representative 1 introduced Dr. Mukker to the investment opportunity on behalf of Peters. Dr. Mukker invested \$4,000 in the PPM, by directing checks to Innovative Specialty Services LLC, to the attention of Peters. Sales Representative 1 confirmed by text on March 9, 2016 that the cost of investment would be “\$100 for every 1%” Dr. Mukker received.

4. In approximately July 2017, Dr. Mukker and Jay Mukker DPM Inc. invested in Coastline Specialty Services LLC (the “Coastline MSO”), an entity created and controlled by Peters. Dr. Mukker and Jay Mukker DPM Inc. initially invested \$10,000, corresponding to 20 shares. Sales Representative 1 explained at that time that the opportunity to invest and receive financial returns was a reward for prescriptions to the Pharmacies, including Medicare and other Federal health care program beneficiaries, including by stating to Dr. Mukker that “you are being rewarded for scripts from day 1.”

5. Dr. Mukker and Jay Mukker DPM Inc. purchased an additional 20 shares in Coastline MSO in October 2017. Peters explained to Dr. Mukker that Peters was awarding Dr. Mukker the opportunity to purchase additional shares based on the number and value of prescriptions (including for Federal health care program beneficiaries) that Dr. Mukker had directed and would continue to direct to the Pharmacies. To that effect, Peters stated in an October 18, 2017 email that the shares would be offered due to Dr. Mukker’s “size” and that the Coastline MSO “can offer you more shares as performance increase.” Peters explained in that email that the monthly payout that Dr. Mukker received from the Coastline MSO would double as a result of the increased shares in the Coastline MSO. As time went on, Peters again told Dr. Mukker that Peters and the Coastline and Bayview MSOs could offer additional shares for purchase on the basis of prescription “performance” with respect to the Pharmacies.

6. Based on Forms K-1 submitted to the Internal Revenue Service, Dr. Mukker and Jay Mukker DPM Inc. received distributions of \$43,655 from the Coastline MSO in 2017, ending with a capital account balance of \$21,177. In 2018, Dr. Mukker began with that capital account of \$21,177 in the Coastline MSO, invested an additional \$5,000 in capital, and received \$74,860 in withdrawals and distributions. The capital account balance was \$6,639 at the end of 2018.

7. In approximately September 2018, Dr. Mukker and Jay Mukker DPM Inc. invested \$20,000 to purchase 40 shares in Bayview Specialty Services LLC (the “Bayview MSO”), another entity created and controlled by Peters. Sales Representative 1 and Peters stated that the opportunity to purchase 40 shares was granted based on the volume and value of prescriptions (including for Federal health care program beneficiaries) that Dr. Mukker had directed and would continue to direct to the Pharmacies.

8. Based on Forms K-1 submitted to the Internal Revenue Service, Dr. Mukker and Jay Mukker DPM Inc. received \$40,000 in distributions from the Bayview MSO in 2018 and ended the year with a capital account balance of \$23,431. In 2019, Dr. Mukker and Jay Mukker DPM Inc. began with a \$23,431 capital account, invested no additional capital, and received \$117,400 in withdrawals and distributions.

9. Dr. Mukker was not familiar with differences between the Pharmacies and did not direct prescriptions to any specific Pharmacy among them. Rather, Dr. Mukker prescribed to the Pharmacies collectively through a fax number or electronic portal corresponding to any and all of the Pharmacies, with a prescription pad customized to Dr. Mukker that was furnished by Peters and Sales Representative 1.

10. The investment returns from the Coastline and Bayview MSOs caused Dr. Mukker to send prescriptions to the Pharmacies rather than send them to other pharmacies not affiliated with Peters.

11. Dr. Mukker was aware that Sales Representative 1 called upon other Fresno, CA physicians (hereinafter referred to as “Dr. A, Dr. B, Dr. C, and Dr. D”). Along with Sales Representative 1, he told them that they would benefit by their investment in the Coastline MSO and Bayview MSO. Dr. Mukker received monthly data from Peters or other individuals affiliated with Pharmacies showing these physicians’ prescriptions to the Pharmacies. Using this data, Dr. Mukker communicated to these doctors whether their prescription volume to the Pharmacies met the expectation of Peters and whether it would enable the doctors to receive additional shares. Peters made the decision as to who received shares.

12. For example, in the spring of 2018, Dr. A had Dr. Mukker inform Sales Representative 1 that Dr. A would like to purchase additional shares in the Coastline MSO. Cognizant that the opportunity to purchase shares was contingent on prescribing enough to be approved by Peters, on May 31, 2018, Dr. Mukker asked Sales Representative 1, “What place would you say he is at in the US in writing prescriptions? You said I was 4th so what would he be?” Dr. Mukker then stated to Sales Representative 1, “I think he wants us to buy more shares in it. Please talk to Matt.” Sales Representative 1 then replied that Dr. A would be allowed to purchase 6 more shares, and that “He had 158 scripts last month” whereas Dr. Mukker had 280, so “He shouldn’t complain” because “It’s not like Walgreens or CVS is doing anything for him.” Dr. Mukker replied: “Completely true and that’s where a businessman appreciates that and a fool doesn’t.”

13. At the request of Sales Representative 1 and Peters, Dr. Mukker told Dr. A and Dr. B that additional prescriptions were needed to justify their investment and the financial returns. For example, in August 2018, prior to the operation of the Bayview MSO, Dr. Mukker discussed with Sales Representative 1 that Dr. A would like to purchase shares in the Bayview MSO. Replying that Dr. A was not prescribing enough at the time to justify the desired level of investment, Sales Representative 1 texted Dr. Mukker regarding Dr. A, stating that “It’s a game of numbers[.] If he doesn’t write he can’t have shares.” That month, Dr. Mukker told Dr. A that Sales Representative 1 had said that he would be allowed to invest in more shares in the Bayview MSO if he increased his prescription level to the Pharmacies and discussed prescription data he received from Sales Representative 1 with Dr. A.

14. On November 1, 2019, when monthly payouts from the Bayview MSO were \$5,000 less than expected for himself and for Dr. B, Dr. Mukker emailed Peters to ask “about the remaining 5K for the month.” Dr. Mukker then stated that “[Dr. B] and myself have held up our end of the bargain and kept up with supporting the company and prescribing a lot of the compounding to our patients.” Dr. Mukker then requested that he and Dr. B “be made whole.”

15. Across the duration of the Coastline MSO and Bayview MSO, Sales Representative 1 continued to tell Dr. Mukker and the other physicians to prescribe compounded drugs saying that their prescription volume was too low to justify their investment.

16. At their request, Dr. Mukker attempted to introduce two additional physicians, practicing in Texas, to Sales Representative 1, but was informed soon thereafter that their practices did not generate enough prescription volume to justify their intended investments. In October 2020, Dr. Mukker told Sales Representative 1 that that was not fair because the pharmacies made money on the volume of prescriptions, but the two physicians did not receive shares and that he felt bad because he had introduced them to Sales Representative 1, writing to Sales Representative 1: “u made money while [the two physicians] didn’t make anything out of the deal and I felt really bad because I introduced them to you.” Dr. Mukker then wrote “Because of that , I can’t and stopped writing those prescriptions” (*sic*) to the Pharmacies.

### **Billing of Peripheral Venous Studies**

17. From January 1, 2017 to November 22, 2023, Dr. Mukker and Jay Mukker DPM Inc. submitted or caused to be submitted claims for reimbursement to Medicare for non-invasive peripheral venous studies. These studies are associated with Current Procedural Terminology (“CPT”) code 93965.

18. Beginning in 2017, CMS policy did not allow reimbursement for the non-invasive peripheral venous studies associated with code 93965. Dr. Mukker and Jay Mukker DPM Inc. continued furnishing those services, however. Dr. Mukker and Jay Mukker DPM Inc. billed these services to Medicare using the CPT code 99214, which identifies a physician evaluation and management service.

19. Dr. Mukker arranged for the creation of medical records for patients receiving non-invasive peripheral venous studies from Jay Mukker DPM Inc. which suggested that those patients had been evaluated and treated by a physician, when the patients had not received the degree of physician involvement and professional services to meet the coding and billing requirements for those services.

H. On November 22, 2023, the Centers for Medicare & Medicaid Services (“CMS”) suspended payments to Jay Mukker, DPM Inc., pursuant to 42 C.F.R. § 405.371(a)(2), based upon a determination by the United States that credible allegations of fraud existed (“the Suspension”). The amount of approved, paid claims held in suspense as of October 2, 2024 is \$330,460.79. The amount held in suspense as of the Effective Date of this Settlement Agreement is referred to in this Agreement as the “Suspended Amount.”

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

## TERMS AND CONDITIONS

1. Dr. Mukker and Jay Mukker DPM Inc. shall pay to the United States the sum of one million, one hundred fifty thousand dollars (\$1,150,000), plus interest as provided herein, according to the payment schedule and in the manner set forth in Paragraphs 1.a through 1.f below (“Settlement Amount”). In addition to the Settlement Amount, the United States shall retain the Suspended Amount. Dr. Mukker and Jay Mukker DPM Inc. shall make the payments set forth in Paragraphs 1.a through 1.f below by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the Eastern District of California.

a. Within sixty (60) calendar days of the Effective Date of this Agreement, Dr. Mukker and Jay Mukker DPM Inc. will make a payment to the United States in the amount of thirty-five thousand dollars (\$35,000).

b. No later than October 1, 2025, Dr. Mukker and Jay Mukker DPM Inc. will make a payment to the United States in the amount of two hundred ninety-six thousand, nine hundred fifty-six dollars and twenty-five cents (\$296,956.25).

c. No later than October 1, 2026, Dr. Mukker and Jay Mukker DPM Inc. will make a payment to the United States in the amount of two hundred eighty-seven thousand, one hundred twenty-three dollars and forty-four cents (\$287,123.44).

d. No later than October 1, 2027, Dr. Mukker and Jay Mukker DPM Inc. will make a payment to the United States in the amount of two hundred seventy-seven thousand, two hundred ninety dollars and sixty-three cents (\$277,290.63).

e. No later than October 1, 2028, Dr. Mukker and Jay Mukker DPM Inc. will make a payment to the United States in the amount of two hundred sixty-seven thousand, four hundred fifty-seven dollars and 81 cents (\$267,457.81).

f. No later than October 1, 2029, Dr. Mukker and Jay Mukker DPM Inc. will make a payment to the United States in the amount of one hundred three thousand, eight hundred seventy-five dollars (\$103,875.00).

2. Dr. Mukker and Jay Mukker DPM Inc. agree that the United States shall retain forevermore the Suspended Amount. The Suspended Amount will first be applied to any outstanding Medicare overpayments determined by CMS or a CMS contractor, including any interest. Dr. Mukker and Jay Mukker DPM Inc. expressly relinquish any and all rights of any kind that they, or any of their affiliates or assigns, may have or ever claim with respect to the Suspended Amount, including but not limited to: any and all claims or rights to have an overpayment determined under 42 C.F.R. § 405.372(c), any and all rights to payment of those funds, and any and all rights to appeal, whether formally or informally and whether administrative or judicially, the right of the United States and/or CMS to retain those funds, and any other rights Dr. Mukker and Jay Mukker DPM Inc. or any affiliate or assign may have to challenge the Suspension or the Suspended Amount in any respect.

3. Subject to the exceptions in Paragraph 4 (concerning reserved claims); Paragraph 9 (concerning disclosure of assets); Paragraph 10 (concerning default); and Paragraph 11 (concerning bankruptcy); upon the United States' receipt of the Settlement Amount (including interest due under Paragraph 1), the United States releases Dr. Mukker and Jay Mukker DPM Inc. from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.



4. Notwithstanding the release given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals employed or contracted by Jay Mukker DPM Inc. other than Dr. Mukker;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. Dr. Mukker and Jay Mukker DPM Inc. waive and shall not assert any defenses Dr. Mukker or Jay Mukker DPM Inc. may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the



Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

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

7. Following the Effective Date of this Agreement, Dr. Mukker and Jay Mukker DPM Inc. may not submit any claim to Medicare or any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, or carrier) for any items or services furnished during the Suspension, between November 22, 2023 and the Effective Date of this Agreement.

8. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Federal health care program, including but not limited to payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier), TRICARE, or any state payer, related to the Covered Conduct. Dr. Mukker and Jay Mukker DPM Inc. agree not to resubmit to any Federal health care program (including but not limited to any Medicare contractor, TRICARE, or any state payer) any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

9. Dr. Mukker and Jay Mukker DPM Inc. have provided sworn financial disclosures and supporting documents (together "Financial Disclosures") to the United States. The United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this Agreement. The Settlement Amount represents the amount the United States is willing to

accept in compromise of their civil claims arising from the Covered Conduct due solely to Dr. Mukker's and Jay Mukker DPM Inc.'s financial condition as reflected in the Financial Disclosures. Dr. Mukker and Jay Mukker DPM Inc. warrant that the Financial Disclosures were complete, accurate, and current as of the date they were submitted (the "Disclosure Date"). If the United States learns of asset(s) in which Dr. Mukker or Jay Mukker DPM Inc. had an interest of any kind as of the Effective Date of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy Dr. Mukker's or Jay Mukker DPM Inc.'s obligations under this Agreement) that were not disclosed in the Financial Disclosures, or if the United States learns of any material false statement or misrepresentation by Dr. Mukker or Jay Mukker DPM Inc. on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Financial Disclosures by two hundred thousand dollars (\$200,000) or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of Dr. Mukker's and Jay Mukker DPM Inc.'s previously undisclosed assets. Dr. Mukker and Jay Mukker DPM Inc. agree not to contest any collection action undertaken by the United States pursuant to this provision and agree that they will immediately pay the United States the greater of (i) a ten percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to this paragraph, rescinds this Agreement, Dr. Mukker and Jay Mukker DPM Inc. waive and agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 180 calendar days of written notification to Dr. Mukker and Jay Mukker

DPM Inc. that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement.

10. If Dr. Mukker and Jay Mukker DPM Inc. fail to pay the Settlement Amount as provided in the payment schedules set forth in Paragraph 1 above, Dr. Mukker and Jay Mukker DPM Inc. shall be in Default of their payment obligations (“Default”). In the event of Default, the United States will provide a written Notice of Default, and Dr. Mukker and Jay Mukker DPM Inc. shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule. Notice of Default will be delivered to Dr. Mukker or Jay Mukker DPM Inc., or to such other representative as they designate in advance in writing.

a. If Dr. Mukker and Jay Mukker DPM Inc. fail to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule (“Uncured Default”), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. Upon execution of this Settlement Agreement, Dr. Mukker and Jay Mukker DPM Inc. shall enter into a Consent Judgment with the United States in the form attached as **Attachment A**. The United States shall not file the Consent Judgment unless Dr. Mukker and Jay Mukker DPM Inc. are in Uncured Default as defined above. Dr. Mukker and Jay Mukker DPM Inc. agree not to contest any Consent Judgment and/or collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

c. At its sole option, in the event of Uncured Default as defined above, the United States alternatively may (i) retain any payments previously made, rescind this Agreement and bring any civil and/or administrative claim, action, or proceeding against Dr. Mukker and Jay Mukker DPM Inc. for the claims that would otherwise be covered by the releases provided in Paragraph 3 above, with any recovery reduced by the amount of any payments previously made by Dr. Mukker or Jay Mukker DPM Inc. to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action; (iii) offset the remaining unpaid balance from any amounts due and owing to Dr. Mukker or Jay Mukker DPM Inc. and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity, including referral of this matter for private collection. In the event the United States pursues a collection action, Dr. Mukker and Jay Mukker DPM Inc. agree immediately to pay the greater of (i) a ten percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, Dr. Mukker and Jay Mukker DPM Inc. waive and agree not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the Government within 180 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement. Dr. Mukker and Jay Mukker DPM Inc. agree not to contest any offset, recoupment, and/or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

d. In the event of Uncured Default, the OIG-HHS may exclude Dr. Mukker and Jay Mukker DPM Inc. from participating in all Federal health care programs until Dr. Mukker and Jay Mukker DPM Inc. pay the Settlement Amount, with interest, as set forth in this Agreement (“Exclusion for Default”). The OIG-HHS will provide written notice of any such exclusion. Dr. Mukker and Jay Mukker DPM Inc. waive any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7) and agree not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, Dr. Mukker or Jay Mukker DPM Inc. wish to apply for reinstatement, they must submit a written request for reinstatement to the OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-3005. Dr. Mukker and/or Jay Mukker DPM Inc. will not be reinstated unless and until the OIG-HHS approves such request for reinstatement. Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

11. In exchange for valuable consideration provided in this Agreement, Dr. Mukker and Jay Mukker DPM Inc. acknowledge the following:

a. Dr. Mukker and Jay Mukker DPM Inc. have reviewed their financial situation and warrant that they are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount. Dr. Mukker and Jay Mukker DPM Inc. have not filed and do not intend to file for relief under the Bankruptcy Code following the payment to the United States of any portion of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Dr. Mukker and Jay Mukker DPM Inc., within the meaning of

11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. If Dr. Mukker's and Jay Mukker DPM Inc.'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); or, if before the Settlement Amount is paid in full, Dr. Mukker, Jay Mukker DPM Inc., or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Dr. Mukker's or Jay Mukker DPM Inc.'s debts, or seeking to adjudicate Dr. Mukker or Jay Mukker DPM Inc. as bankrupt or insolvent, or seeking appointment of a receiver, trustee, custodian, or other similar official for Dr. Mukker or Jay Mukker DPM Inc. or for all or any substantial part of Dr. Mukker's or Jay Mukker DPM Inc.'s assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Dr. Mukker or Jay Mukker DPM Inc. for the claims that would otherwise be covered by the releases provided in Paragraph 3 above; and

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Dr. Mukker and Jay Mukker DPM Inc. in the amount of at least \$1,150,000, less any payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by Dr. Mukker or Jay Mukker DPM Inc., a receiver, trustee, custodian, or other similar official thereof.

e. Dr. Mukker and Jay Mukker DPM Inc. agree that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 11.d is not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States’ police and regulatory power. Dr. Mukker and Jay Mukker DPM Inc. shall not argue or otherwise contend that the United States’ claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Dr. Mukker and Jay Mukker DPM Inc. waive and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 180 days of written notification to Dr. Mukker and Jay Mukker DPM Inc. that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date.

12. Dr. Mukker and Jay Mukker DPM Inc. hereby expressly waive all rights they may have by virtue of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

13. Dr. Mukker and Jay Mukker DPM Inc. agree to cooperate fully and truthfully with the United States’ investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Dr. Mukker and Jay Mukker DPM Inc. shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Dr. Mukker and Jay Mukker DPM Inc. further agree to furnish to the United States, upon request,



complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

14. Dr. Mukker and Jay Mukker DPM Inc. 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 Dr. Mukker and Jay Mukker DPM Inc., their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Dr. Mukker's and/or Jay Mukker DPM Inc.'s investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Dr. Mukker and Jay Mukker DPM Inc. make to the United States pursuant to this Agreement

are unallowable costs for government contracting purposes and under the Federal health care programs, including but not limited to Medicare, Medi-Cal, and TRICARE (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Dr. Mukker and Jay Mukker DPM Inc., who 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 cost report, cost statement, information statement, or payment request submitted by Dr. Mukker or Jay Mukker DPM Inc. or any of its subsidiaries or affiliates to any Federal health care program, including but not limited to Medicare, Medicaid, or TRICARE.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Dr. Mukker and Jay Mukker DPM Inc. further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Dr. Mukker, Jay Mukker DPM Inc., or any of their subsidiaries or 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. Dr. Mukker and Jay Mukker DPM Inc. agree that the United States, at a minimum, shall be entitled to recoup from Dr. Mukker and Jay Mukker DPM Inc. any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Dr. Mukker,

Jay Mukker DPM Inc., or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Dr. Mukker, Jay Mukker DPM Inc., or any of their subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Dr. Mukker's or Jay Mukker DPM Inc.'s books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

15. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 16 (waiver for beneficiaries), below.

16. Dr. Mukker and Jay Mukker DPM Inc. agree that they waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

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

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

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

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

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

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

23. This Agreement is binding on Dr. Mukker's and Jay Mukker DPM Inc.'s successors, transferees, heirs, and assigns.

24. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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

**THE UNITED STATES OF AMERICA**

DATED: 11/5/24

BY:



DAVID E. THIESS  
STEVEN S. TENNYSON  
Assistant United States Attorneys  
Eastern District of California

DATED: 10/30/24

BY:

**SUSAN GILLIN**

Digitally signed by SUSAN  
GILLIN  
Date: 2024.10.30 18:26:34  
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SUSAN E. GILLIN  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

DATED: 10/24/2024\_

BY:

BLEY.PAUL.NICHOLAS.1099873821

Digitally signed by  
BLEY.PAUL.NICHOLAS.1099873821  
Date: 2024.10.24 17:14:50 -04'00'

for

SALVATORE M. MAIDA  
General Counsel  
Defense Health Agency  
United States Department of Defense

**DR. MUKKER AND JAY MUKKER DPM INC.**

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

BY:

JAGPREET MUKKER, D.P.M.  
Individually and On Behalf of Jay Mukker DPM Inc.

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

BY:

MALCOLM SEGAL  
Counsel for Dr. Mukker and Jay Mukker DPM Inc.

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


BY: \_\_\_\_\_

SALVATORE M. MAIDA  
General Counsel  
Defense Health Agency  
United States Department of Defense

**DR. MUKKER AND JAY MUKKER DPM INC.**

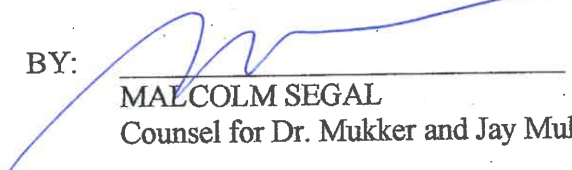
DATED: 11-1-24

BY: \_\_\_\_\_

  
JAGPREET MUKKER, D.P.M.  
Individually and On Behalf of Jay Mukker DPM Inc.

DATED: 11-1-24

BY: \_\_\_\_\_

  
MALCOLM SEGAL  
Counsel for Dr. Mukker and Jay Mukker DPM Inc.