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Attorneys for Relator Jeffrey Mazik

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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| UNITED STATES OF AMERICA, *et al., ex rel*. JEFFREY MAZIK,<br><br>Plaintiffs,<br><br>v.<br><br>KAISER FOUNDATION HEALTH PLAN, *et al.*,<br><br>Defendants | Case No. No.: 2:19-cv-00559-DAD-JDP<br><br>**NOTICE OF MOTION AND MODIFIED MOTION FOR A STAY PENDING RESOLUTION OF APPEAL**<br><br>**Date: June 1, 2026**<br>**Time: 1:30 PM**<br>**Courtroom 4, 15th Floor**<br>**Hon. Dale A. Drozd** |

**TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that on June 1, 2026, at 1:30 PM in the Courtroom 4 on the 15th floor at Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, CA, relator Jeffrey Mazik will and hereby does move the Honorable Dale A. Drozd for a stay in the case pending resolution of Mazik's appeal to the Ninth Circuit from the April 10, 2026, order of Hon. Eward Chen in the consolidated case in the Northern District of California (the *Osinek* matters).[1] This motion seeks to modify, or add to, relator's motion for modification of the case scheduling order, temporary stay of discovery and an order of reference, currently set for hearing on May 18, 2026.

Relator now seeks a stay of the entire case under *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). In that case, the Supreme Court held "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." As further explained by the Ninth Circuit, a "trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979).

Here, Mazik moves for a stay pending resolution of his Ninth Circuit appeal in the related *Osinek* case. Judge Chen denied Mazik's motion on April 10, 2026 (Exhibit A), and he expressly directed the clerk to enter judgment on the claim so as to commence the time for Mazik to notice an appeal. Mazik then filed a notice of appeal on April 12, 2026 (Exhibit B). Subsequently, the parties – including the government, Kaiser defendants and Mazik – were notified of the a Ninth Circuit briefing schedule, which currently sets a due date for Mazik's opening brief by July 6, 2026, and any answering brief by August 5, 2026.

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[1]The consolidated *Osinek* matters were comprised of Case Nos. 3:13-cv-03891-EMC, 3:18-cv-01347-EMC and 3:21-cv-03894-EMC. Mazik's appeal from Judge Chen's order of April 10, 2026, is assigned Ninth Circuit Case No. 26-2425.

In light of Mazik's appeal, the Ninth Circuit now will decide whether Mazik is entitled to a share of the *Osinek* settlement proceeds. In doing so, the Ninth Circuit will necessarily rule upon a key legal issue presented in this case: whether, under the "one-recovery rule," Mazik – in privity with the United States – may recover damages again from Kaiser without offset in his federal *qui tam* claim pending in this Court, given that the government has already recovered damages and released its claims on the same false claims for payment that were raised and settled in the Osinek case. As explained by the Ninth Circuit in *United States ex rel. Barajas v. Northrop Corp.*, 147 F.3d 905, 910 (9th Cir. 1998), recovery under the False Claims Act is for the false or fraudulent claim for payment, not each false statement or bad act. Although Mazik alleged unique material elements not found in the complaints by Osinek and Taylor – and thus this Court found that his claim survived the first-to-file rule – the government could have obtained the same remedy by also intervening in Mazik's action. The Ninth Circuit will thus also determine whether Mazik's federal risk adjustment fraud claim is precluded by res judicata, and whether that claim by Mazik is effectively moot by the offset to which Kaiser would be entitled based upon what it already paid to the United States through the *Osinek* settlements.

Mazik requests a stay of these proceedings pending resolution of his appeal in *Osinek*, to avoid duplicative litigation and prevent inconsistent rulings, to clarify legal defenses and guide the scope of discovery, and to balance hardships and preserve the orderly course of justice. Mazik makes out a clear case of hardship and inequity in being required to pursue a claim in this Court that he believes, and that the Ninth Circuit will likely determine, has been settled, precluded or rendered moot by the historic half-billion dollar settlement between the United States and Kaiser defendants in *Osinek*. Neither Kaiser nor the United States would suffer any harm by the stay, given the settlement those parties already reached, and the relatively short length of time it will take to complete the appeal. The Ninth Circuit will simplify the issues, claims and defenses available in this action, and a stay is necessary to avoid inconsistent rulings.

This request is supported by this motion, the attached Memorandum of Points and Authorities, the declaration of Jeremy L. Friedman, a proposed order, the previously filed (and pending) motion for a stay and modification of the case schedule (and supporting papers), the pleadings and orders in the dockets of this and the consolidated cases, and any further evidence or argument permitted by the Court.

**Certification**

Pursuant to § 1.C of the Court's Standing Order in Civil Cases, the undersigned counsel hereby certify that they have engaged in substantial meet and confer efforts with counsel for defendants; they have discussed thoroughly the relief sought through this modified motion; and the parties were unable to reach a stipulation on the issues presented. Such efforts included video conferences and email exchanges. Counsel certify that, as of the filing of this motion, such efforts have been exhausted and that the substantive issues presented in this motion require resolution by the Court.

Respectfully submitted,

Dated: April 27, 2026

Law Office of Jeremy L. Friedman
Mendenhall Law Group

By: /s/Jeremy L. Friedman
Jeremy L. Friedman

Attorneys for relator Jeffrey Mazik

## MEMORANDUM OF POINTS AND AUTHORITIES

On April 10, 2026, Judge Chen denied relator Mazik's motion for a share of the settlement proceeds in *Osinek* – the consolidated intervened action which had raised *qui tam* claims against the same Kaiser defendants alleging the same false claims for capitated payments based on the same falsely inflated risk adjustment factors, covering the same Medicare Advantage enrollees during the same time period. Because Mazik's unique allegations of software tampering were not expressly raised by the United States in the government's amended complaint-in-intervention, Judge Chen held that Mazik's claim and the government's "claim were different and distinct," such that the *Osinek* settlement did not also settle Mazik's federal *qui tam* claim in this Court. Judge Chen further held that the claim asserted by Mazik on the government's behalf was not affected by claim preclusion, and that Kaiser would not be entitled to a damage credit – or offset – in damages the government might recover through Mazik's action in this Court.

Judge Chen recognized that his ruling would likely impact Mazik's proceedings here. The Northern District Court judge did not predict how this Court might rule on Kaiser's defenses, but he stated that any such ruling would have to "account for" his rulings on *res judicata* and damage credit. Judge Chen directed the clerk to enter judgment on the motion so as to trigger the time to appeal; and Mazik noticed his appeal on April 12, 2026.

The Ninth Circuit's resolution of Mazik's appeal will directly impact proceedings in this Court. Contrary to the government's representations on Mazik's motion, both relator and Kaiser agree that there can be only one recovery by the United States on any one false claim for a Medicare Advantage capitated payment. Whether or not the factual elements differ leading up to the false claim for payment, recovery is on the false claim, not the false statements or bad acts by the defendant. That is the holding of the Ninth Circuit in *Barajas*. As a result, the Ninth Circuit is likely to follow its own precedent, hold that the government already recovered a remedy on the same injury identified by Mazik, and award him a share.

Mazik argues that this case should be stayed pending resolution of his appeal in *Osinek*. Whether or not this Court would independently agree with Judge Chen's analysis, the Ninth Circuit will now determine if Judge Chen's holdings were correct under the case law. It would be a clear case of undue hardship to require Mazik to pursue claims that both he and Kaiser believe are already settled. Without a stay, relator may spend significant effort and capital pursuing claims that could be rendered moot if the Ninth Circuit finds the *Osinek* settlement effectively settled Mazik's federal *qui tam* claim. Forcing relator to litigate against defenses like claim preclusion and damage offset while the Ninth Circuit is simultaneously deciding the impact of the *Osinek* settlement puts relator in an impossible position.

In contrast, there would be no countervailing harm to either Kaiser or the United States if this action was stayed pending resolution of the appeal. A stay causes no tactical disadvantage to defendants, who are already fully aware of the allegations following the settlement in the consolidated action. Nor could the government be injured, since it takes no position on Mazik's action here. Moreover, given that a briefing schedule has already been set, the moderate duration of the stay is hardly "indefinite." Mazik's civil appeal is likely to be resolved within six to nine months from the issuance of the stay in this Court.

Preservation of the orderly course of justice weighs heavily in favor of granting the stay requested by Mazik. In this overlapping claim scenario, a stay is appropriate because it promotes economy of time and effort for the Court, for counsel and for the litigants. Judge Chen already expressed hesitation to predict how this Court would rule. He nevertheless held that the parties in this action would have to "account for" his findings, which are now on appeal. The Ninth Circuit will therefore provide a roadmap to the resolution of Mazik's claims in this Court.

Moreover, a stay is necessary to avoid potential inconsistencies between judicial rulings. Proceeding on Mazik's claims now would risk a judgment in this Court that is directly contradicted by the judgment rendered on appeal. A stay preserves the status quo until the Ninth Circuit determines the relative rights of the parties.

## LEGAL STANDARDS

Relator seeks a stay pursuant to the decision in *Landis v. North American Co.*, 299 U.S. 248 (1936), in which the Supreme Court noted that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis*, 299 U.S. at 254; *Aldapa v. Fowler Packing Co.*, No. 1:15-cv-00420-DAD-SAB, 2016 U.S. Dist. LEXIS 145746, at *2-4 (E.D. Cal. Oct. 19, 2016).

"A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case. This rule applies whether the separate proceedings are judicial, administrative, or arbitral in character, and does not require that the issues in such proceedings are necessarily controlling of the action before the court." *Leyva v. Certified Grocers of California Ltd.*, 593 F.2d 857, 863-64 (9th Cir.1979) (citing *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180 (1952)). *See Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1111 (9th Cir. 2005).

"Deciding whether to grant a stay pending the outcome of other proceedings 'calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.'" *Aldapa*, 2016 U.S. Dist. LEXIS 145746 at *2 (quoting *Landis*, 299 U.S. at 254-55). The competing interests include: (1) the possible damage that may result from granting a stay, (2) the hardship or inequity a party may suffer in being required to go forward, and (3) the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law expected to result from a stay. *Lockyer*, 398 F.3d at 1110 (citations omitted).

"[W]hile it is the prerogative of the district court to manage its workload, case management standing alone is not necessarily a sufficient ground to stay proceedings." *Dependable Highway Express, Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007). "[I]f there is even a fair possibility that the stay for which he prays will work damage to some one else," the moving party "must make out a clear case of hardship or

inequity in being required to go forward." *Landis*, 299 U.S. at 255. Furthermore, "a stay should not be granted unless it appears likely the other proceedings will be concluded within a reasonable time in relation to the urgency of the claims presented to the court." *Leyva*, 593 F.2d at 864. "The proponent of a stay bears the burden of establishing its need." *Clinton v. Jones*, 520 U.S. 681, 708 (1997) (citing *Landis*, 299 U.S. at 255). *See Morgan Hill Concerned Parents Assoc. v. Cal. Dep't of Educ.*, No. 2:11-cv-3471 KJM AC, 2018 U.S. Dist. LEXIS 36578, at *3-5 (E.D. Cal. Mar. 5, 2018).

## ARGUMENT

### I. Mazik's request for a stay in this case is even stronger than the stay requested in *Landis* because the matter on appeal involves the same parties and issues

Reasons may have existed for the Supreme Court to place some limits on the district courts' discretion to issue stays in any case involving pending appeals that may "bear upon" the case. In *Landis*, the Court addressed circumstances where the movant sought to require a litigant to "stand aside" while a litigant in "another case settles the rule of law that will define the rights of both." 299 U.S. at 255 (noting opinions, not held by the Court, that "there is no power by a stay to compel an unwilling litigant to wait upon the outcome of a controversy to which he is a stranger"). Here, the circumstances are much stronger for a stay, as the parties with vested interests in the action before the Court – Mazik, the Kaiser defendants and the United States – are the same parties to Mazik's appeal in *Osinek*. Although Kaiser claimed that it did not have standing to oppose Mazik's motion, Judge Chen nevertheless based his ruling, in part, on Kaiser's responses to his questions, and Kaiser no doubt could raise any contentions it seeks to assert in the Ninth Circuit regarding its available defenses in this action

Courts in this circuit have found sufficient bases to justify a stay request predicated on lesser compelling facts, *i.e.*, the existence of a parallel case brought by other parties that might decide dispositive facts or legal claims. *See Veytia v. Portfolio Recovery Associates, LCC*, Case No. 20-CV-0341-GPC-MSB, 2020 U.S. Dist. LEXIS 161588, at *8 (S.D. Cal. Sep. 3, 2020) ("For the foregoing reasons, the Court HEREBY ORDERS

that all proceedings in this action are stayed pending the Supreme Court's decision in *Facebook, Inc. v. Duguid*, No. 19-511 (July 9, 2020)"); *Bowden v. Contract Callers, Inc.*, Case No. 16-cv-06171-MMC, 2017 U.S. Dist. LEXIS 52162, at *8 (N.D. Cal. Apr. 5, 2017) ("For the reasons stated above, Contract Callers' motion to stay is hereby GRANTED and the instant action is hereby STAYED pending the D.C. Circuit's opinion in *ACA International*. No later than four weeks from the date the D.C. Circuit issues said opinion, the parties shall submit a joint report apprising the Court of the status of any appeal of *ACA International*, the status of the Ninth Circuit's review of *Marks*, and the parties' positions as to whether a continuation of the stay is warranted"); *Fontes v. Time Warner Cable, Inc.*, No. CV 14-2060-CAS (CSW), 2015 U.S. Dist. LEXIS 169580, at *14 (C.D. Cal. Dec. 17, 2015) (finding stay appropriate where decision may otherwise "render moot substantial efforts by the parties as well as many of the Court's rulings"); *Gustavson v. Mars, Inc.*, No. 13-CV-04537-LHK, 2014 U.S. Dist. LEXIS 171736, at *9 (N.D. Cal. Dec. 10, 2014) (finding stay appropriate where decision may change "the applicable law or the landscape of facts that need to be developed" and "the need to re-brief and potentially re-open discovery would involve a significant expenditure of time and resources") (internal quotation and citation omitted).

Indeed, other courts have similarly recognized the merit of a stay pending resolution of the potentially dispositive issue before another court, even when brought by other parties. *See Bechtel Corp. v. Local 215, Laborers' Int'l Union of N. Am., AFL-CIO*, 544 F.2d 1207, 1215 (3d Cir. 1976) ("In the exercise of its sound discretion, a court may hold one lawsuit in abeyance to abide the outcome of another which may substantially affect it or be dispositive of the issues."); *Clean Fuels Development Coalition v. Kessler*, No. 23-cv-610 (KMM/DTS), 2023 U.S. Dist. LEXIS 148849, at *11 (D. Minn. Aug. 24, 2023) ("For the foregoing reasons, the Court finds it appropriate to stay this case during the pendency of the *Ohio v. EPA* case before the D.C. Circuit."); *Iowa Network Services, Inc. v. AT&T Corp*, Case No. 3:14-cv-3439 (PGS) (LHG) 2019 U.S. Dist. LEXIS 170792, at *22 (D.N.J. Oct. 1, 2019) (D. N.J. Oct. 1, 2019) ("The interests of judicial economy

weigh in favor of continuing the stay. As mentioned above, several petitions for appellate review have been filed and consolidated before the D.C. Circuit") (granting a stay in the 2014 case because "although the case has been pending for a while, this factor weighs in favor of continuing the stay"); *Reynolds v. Geico Corporation*, Case No. 2:16-cv-01940-SU, 2017 U.S. Dist. LEXIS 28867, at *15 (D. Or. Mar. 1, 2017) ("For the foregoing reasons, the Court GRANTS defendant's Motion to Stay. This action is stayed pending the D.C. Circuit panel's decision in ACA International. . . . The Court instructs the parties to notify the Court when the D.C. Circuit's opinion is issued and to file supplemental briefing regarding the impact of the opinion on this case within 15 days of that notice."); *Frable v. Synchrony Bank*, 215 F. Supp.3d 818, 823 (D. Minn. 2016) ("In sum, the Court finds that the relevant factors weigh in favor of staying this case until the D.C. Circuit Court of Appeals issues a decision in *ACA International v. FCC*, Case No. 15-1211 (D.C. Cir.)"); *Martin v. United States Dep't of Educ*., No. 1:12-cv-1228, 2012 U.S. Dist. LEXIS 151481, at *3 (M.D. Pa. Oct. 22, 2012) ("The Supreme Court's decision in *Bormes* will be dispositive of Defendant USDOE's motion to dismiss and could be dispositive of this litigation. Granting a stay would inflict no significant injury of Plaintiff, and would simplify the issues in this case to promote judicial economy").

Given this long line of cases, the specific issues that will necessarily be decided by the Ninth Circuit, and the ability of all parties to submit briefing on appeal, relator has clear justification for requesting a stay in this case. Requiring Mazik to pursue his *qui tam* action before the appeal has concluded may end up a waste of resources of the parties and the court, lead to inconsistent judgments, and place Mazik in a clear position of inequity.

**II. No indication exists that Kaiser would at all be harmed by a stay in this case**

There would be no damage to Kaiser based on the granting of this stay. It has already settled the relevant fraud claim brought by the government in the *Osinek* matters, and having the Ninth Circuit resolve Mazik's claim would only streamline Mazik's action in this case to the benefit of both Mazik and defendants. Unlike the many other cases cited above where defendants sought a stay that was opposed by plaintiffs, here it is the

*qui tam* plaintiff that seeks the stay, and Kaiser is the defendants. The *Osinek* case was pending for 13 years before it was finally resolved in settlement. Mazik's case was filed in 2019, and it came out from under seal in 2021. Given the related proceedings in *Osinek*, the parties did not engage in substantial discovery until 2024 and 2025. Indeed, key records were not even produced by Kaiser in this litigation until October of 2025. Staying these proceedings while Mazik's counsel briefs the appeal over his share motion in *Osinek* will not make Kaiser's evidence grow any staler. And, most importantly, the very essence of Mr. Mazik's federal *qui tam* claim over Kaiser's risk adjustment fraud will be decided by the Ninth Circuit, namely whether it was settled and whether Mazik is entitled to a share as a result. There can be no greater simplification to this case than having the Ninth Circuit decide if the federal risk adjustment claim has any vitality left.

**III. The requested stay would be for a relatively modest duration**

A stay until the *Osinek* appeal has concluded will not be indefinite. Mazik has already briefed his motion for a share under the alternate remedy provision of the False Claims Act; the government has already articulated its opposition to the motion; and Judge Chen has already heard from the parties and ruled upon the motion. Although Mazik recently noticed the appeal – two days after the ruling issued – the Ninth Circuit has already set a briefing schedule, with the opening brief due on July 6, 2026, and any answering brief due by August 5, 2026. While the parties may request appropriate extensions of time on the briefing, given the current speed with which the Ninth Circuit is hearing and deciding its docket of cases, as well as the priority that Mazik and the United States will assign to the appeal, it is likely that Mazik's appeal witll be resolved within 6 to 9 months from the date that this stay request is decided.[2]

During the relatively modest stay, the parties could continue to discuss settlement, preserving Mazik's rights on the appeal of the denial of a share.

[2]Mazik has already asked for a six month continuance of the case schedule, in part to provide time for Attorney Warner Mendenhall to obtain medical care for a serious health condition. A stay in the case would also provide that needed flexibility. Relator would likely be able to complete discovery within a few months after the stay is lifted.

## IV. A stay would preserve the orderly course of justice

Given the overlapping nature of the issues on appeal and the viability of Mazik's claims and Kaiser's defenses in this action, there can be little dispute over the simplification and streamlining that the Ninth Circuit's decision will have on this case. And, given the rare agreement between Mazik and defendants regarding the effect of the *Osinek* settlement, claim preclusion and/or damage offset, a stay in this case while the Ninth Circuit resolves the appeal would merely preserve the status quo until the appeal is resolved. These are exactly the sort of circumstances warranting a stay.

Going forward on claims that the Ninth Circuit will likely find settled or precluded under the *Barajas* precedent risks a direct conflict of inconsistent judgments. Judge Chen recognized this potential conflict. He stated that any contention by Kaiser (or Mazik) that the *Osinek* settlement impacted Mazik's action would have to "account for this Court's finding," and he directed entry of judgment so that Mazik could take his appeal. Whether or not this Court felt bound by Judge Chen's determination, the Ninth Circuit will definitively decide these key questions. A stay is the only way to avoid any inconsistent rulings on the same contentions between the same parties, as between this Court, Judge Chen, and the Ninth Circuit.

## CONCLUSION

For the foregoing reasons, relator Mazik requests that the Court stay the entire action until the Ninth Circuit resolves the appeal brought by Mazik in the *Osinek* case, and that the parties be ordered to submit further case management statements within 30 days of the Ninth Circuit mandate.

Respectfully submitted,

Dated: April 27, 2026

Law Office of Jeremy L. Friedman
Mendenhall Law Group

By: /s/Jeremy L. Friedman
Jeremy L. Friedman

Attorneys for relator Jeffrey Mazik

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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| UNITED STATES OF AMERICA, *et al., ex rel*. JEFFREY MAZIK,<br><br>Plaintiffs,<br><br>v.<br><br>KAISER FOUNDATION HEALTH PLAN, *et al.*,<br><br>Defendants | Case No. No.: 2:19-cv-00559-DAD-JDP<br><br>**SUPPLEMENTAL DECLARATION OF JEREMY L. FRIEDMAN IN SUPPORT OF MODIFIED MOTION FOR A STAY**<br><br>**Date: June 1, 2026**<br>**Time: 1:30 PM**<br>**Courtroom 4, 15th Floor**<br>**Hon. Dale A. Drozd** |

**DECLARATION OF COUNSEL**

I, Jeremy L. Friedman, declare and state:

1. I am one of the attorneys representing relator Jeffrey Mazik in this action. I make this supplemental declaration in support of relator's modified motion for a stay of the case, pending resolution of the appeal to the Ninth Circuit from Hon. Edward M. Chen's April 10, 2026, ruling on his request for a share of the *Osinek* settlement proceeds. The declaration is based on my own personal knowledge. If called as a witness hereto, I would and could testify to the following.

2. A true and accurate copy of Judge Chen's April 10, 2026, Order is attached hereto as Exhibit A.

3. A true and accurate copy of the notice of appeal from Judge Chen's ruling is attached hereto as Exhibit B. Subsequent to the filing of this notice, all parties were served with a docketing notice by the clerk of the Ninth Circuit, including a Time Schedule Order. Therein, the Court set dates for filings and briefings, including a due date for Mazik's opening brief by July 6, 2026, and answering briefs from any other party by August 5, 2026. While we anticipate that the parties may seek relatively short extensions of time as might be appropriate, the United States has already made appearances, as have I, and I anticipate that the appeal will receive a high priority. From my knowledge, I believe that the Ninth Circuit would likely hear and resolve the appeal within six to nine months after this Court resolves the stay motion. In addition, I have reported the request for a stay to the Ninth Circuit, and will likely seek formally or informally to expedite the appeal in light of any stay granted by this Court.

4. A true and accurate copy of the hearing transcript from the April 2, 2026, motion hearing on Mazik's motion is attached hereto as Exhibit C. Judge Chen made clear from the first question that he was interested in knowing the status of the proceedings before this Court in connection with his ruling on the motion. Subsequently, Judge Chen suggested that his ruling might depend on issues that would impact the course of the litigation in this Court. For example:

THE COURT: Well, I wonder if there's a way we can fashion each party to put their money where their mouth is, because you can't have it both ways. I mean, I don't know. Maybe can this Court wait and see what -- is there going to be a motion to dismiss on preclusion grounds, claim preclusion grounds, before Judge Drozd?

MR. CIVINS: You're asking me?

THE COURT: Yeah.

MR. CIVINS: I can't answer that. The government has no intent to do that at this point. [RT 16:1-10.]

. . .

THE COURT: Okay. So let me rephrase. I didn't mean that the government, you're not in that case, you didn't intervene, but is Kaiser going to bring a preclusion motion to dismiss the federal qui tam action based on this settlement? And I don't know if you know the answer to that, but we don't know -- if they did, we don't know what the answer what the Court is going to rule [RT 17:10-16]

. . .

THE COURT: I'm not trying to be too cute, but I'm wondering, you know, in a way it would be interesting to see what happens in the Mazik case to see if Kaiser brings a preclusion motion and what the Mazik, you know, relator does in 17 response to that, because, you know, there's a -- I could see some inconsistent position, and maybe it's -- it may be relevant. I mean, if your position is right any such motion brought will be without success, and that will just underscore he fact that they've got a remedy, which underscores the fact that they're really not entitled to anything in this case. It's a separate case.

On the other hand, if a court were to find that, oh, yeah, they are, you know, through whatever theory, that it's the same harm, it's the same pool of money, or whatever it is, at least there's a slightly stronger argument, you know, for the alternate remedy here, because it's saying that this settlement did close off an avenue, et cetera, et cetera, in a legal way. So I'm wondering what if I defer decision for a bit and see what happens in the Eastern District. [RT 20:13 – 21:6.]

I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct. Executed this 28th day of April, 2026.

/s/Jeremy L. Friedman
Jeremy L. Friedman

# EXHIBIT A

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RONDA OSINEK, et al.,

Plaintiffs,

v.

PERMANENTE MEDICAL GROUP, INC, et al.,

Defendants.

Case No. 13-cv-03891-EMC

**ORDER DENYING THIRD PARTY MAZIK'S MOTION FOR SHARE OF SETTLEMENT PROCEEDS**

Docket No. 439

Several qui tam suits were brought against Kaiser entities ("Kaiser"), alleging that Kaiser submitted false claims for payment as part of the Medicare Part C program, also known as Medicare Advantage. Before this Court, six cases were consolidated. The government intervened in part with respect to the consolidated cases. In general, the Court shall use the term "*Osinek* matters" to refer to the consolidated cases and the term "*Osinek*" to refer to the portion of the consolidated cases where the government intervened.

Another qui tam suit was brought against Kaiser in the Eastern District of California. For that suit, filed by Jeffrey Mazik,[1] the government declined to intervene. Subsequently, Kaiser moved to transfer *Mazik* to this District, but both Mazik and the government (as the real party in interest) opposed transfer. The Eastern District court agreed with Mazik and the government, concluding that transfer was not appropriate.

/ / /

[1] As alleged in his complaint, Mazik is the former Senior Practice Leader for Kaiser's National Compliance Office. He began working for Kaiser in 2008 as an Information Technology Audit Specialist. In March 2012, he became the Senior Practice Leader. In 2017, he was fired. *See* Mot. at 1-2 (citing allegations in Mazik SAC).

In January 2026, the *Osinek* matters settled. The main settlement agreement was the agreement covering *Osinek* – *i.e.*, the government's complaint-in-intervention. The parties to that settlement agreement were:

- the United States,
- Kaiser,
- Osinek (who filed the first qui tam suit), and
- Taylor (who filed the second qui tam suit).

There was also a second settlement agreement covering the portion of the *Osinek* matters where the government declined to intervene.

In the main settlement agreement covering the government's complaint-in-intervention, the government recovered $556 million plus interest. According to a press release, "[t]he relator share of [that] recovery will be $95 million" – *i.e.*, about 17% of the $556 million. Friedman Decl., Ex. B (press release). As indicated above, it appears this relator share will go to Osinek and Taylor.

Now pending before the Court is a motion filed by Mazik (*i.e.*, the plaintiff in the non-transferred Eastern District case). Mazik contends that he is entitled to a share of the above settlement proceeds recovered in *Osinek*. Specifically, Mazik asks that he be awarded 8% of the total $556 million (*i.e.*, $44.48 million). Mazik maintains that the 8% should be deducted from the government's share; he does not challenge the 17% that will go to Osinek and Taylor. According to Mazik, adding up the 8% and 17% (*i.e.*, 25% total) would mean the government would still get 75%, an allocation consistent with the False Claims Act ("FCA") statute. *See* 31 U.S.C. § 3730(d)(2) (providing that, if the government declines to intervene in a FCA case brought by a qui tam plaintiff, "the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages[;] [t]he amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement"). The government, Osinek, and Taylor all oppose Mazik's motion. Osinek and Taylor's opposition, however, is cursory in nature; thus, ultimately, the substantive opposition is from the government.

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Having considered the parties' briefs and accompanying submissions, all other evidence of record, and the oral argument of counsel, the Court hereby **DENIES** Mazik's motion for relief.

## I. FACTUAL & PROCEDURAL BACKGROUND

### A. *Osinek* Matters

The *Osinek* matters litigated before this Court consist of six cases: *Osinek* (filed in 2013); *Taylor* (filed in 2014); *Arefi* (filed in 2015); *Stein* (filed in 2016), and *Bryant* (filed in 2018). Each case involved allegations about false claims for payment to the government in conjunction with Medicare Advantage.

As the Court has explained in a prior order, Medicare Advantage is different from traditional Medicare. With traditional Medicare, the government reimburses health care providers using a fee-for-service system. In contrast to traditional Medicare, Medicare Advantage uses a capitation payment system:

> Under that system, "private health insurance organizations provide Medicare benefits in exchange for a fixed monthly fee per person enrolled in the program – regardless of actual healthcare usage." The fixed monthly fee for an enrollee is set as follows. First, there is a predetermined base payment for each enrollee in a Medicare Advantage plan. Second, the base payment is then adjusted "to account for (1) demographic factors such as age and gender (among others) and (2) health status. This is known as risk adjustment."
>
> Risk adjustment is accomplished by assigning each beneficiary a risk score, which "acts as a multiplier that is applied to the [Medicare Advantage] plan's base rate to determine the overall monthly payment for the beneficiary." A beneficiary's risk score is determined through a model called the CMS Hierarchical Conditions Category ("CMS-HCC") model, which, as indicated above, is based on the patient's demographic factors and health status. With respect to health status, the model relies on diagnosis codes from the International Classification of Diseases ("ICD"). "ICD diagnosis codes are alphanumeric codes used by healthcare providers, insurance companies, and public health agencies to represent medical conditions; every disease, injury, infection, and symptom has its own code."

*United States ex rel. Osinek v. Permanente Med. Grp., Inc.*, 601 F. Supp. 3d 536, 542 (N.D. Cal. 2022).[2]

[2] Technically, "[t]he CMS-HCC model is prospective in the sense that it uses diagnoses made in a base year (the service year), along with demographic information (such as age and gender, among

Generally speaking, because of risk adjustment, if an individual is diagnosed with a serious medical condition, the higher the fixed monthly fee will be under the Medicare Advantage program. Risk adjustment can be fraudulent if a false diagnosis is rendered. In other words, for a given enrollee, if a false diagnosis is issued, then (1) the health status of the enrollee would be deemed more serious than it actually was, and (2) the health insurance organization would get a higher monthly payment from the government for that enrollee.

In the case at bar, all *Osinek* matters asserted false claims for payment in conjunction with Medicare Advantage because of improper risk adjustment. However, the government chose to intervene in the *Osinek* matters only in part: "Specifically, the United States intervenes on the allegations that [Kaiser] submitted, or caused to be submitted, false claims for risk-adjustment payments **based on diagnoses improperly added via addenda** under Medicare Part C from the years 2009 until present. The United States declines to intervene on all other allegations." Docket No. 64 (Not. ¶ 1) (emphasis added). Thus, the government's case was based on a specific factual predicate: false diagnoses were added via addenda – and by Kaiser doctors specifically. *See* Docket No. 240 (U.S. FAC ¶ 1) (alleging that "Kaiser mined Medicare Advantage patient medical files for potential additional diagnoses" and "then pressed *its* physicians to add the diagnoses to medical records retrospectively using an addendum to make it appear as if the conditions had been addressed in some way during the patient visit when in fact they had not") (emphasis added).

While the government made the decision to intervene in part, it did not take any position on how first-to-file rule codified in the FCA applied to each relator in the *Osinek* matters . *See* 31 U.S.C. § 3730(b)(5) (providing that, "[w]hen a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action"); *see also United States ex rel. Lujan v. Hughes Aircraft Co.*, 243 F.3d 1181, 1187 (9th Cir. 2001) (noting that the purpose of the first-to-file rule is twofold: (1) "to promote incentives for whistle-blowing insiders" and (2) "[to] prevent opportunistic successive

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others), to predict costs for Medicare benefits and adjust payments for the following year (the payment year)." *Osinek*, 601 F. Supp. 3d at 542-43 (internal quotation marks omitted).

plaintiffs"). The first-to-file bar was an issue litigated among Kaiser and the various relators.

That being said, the Court's first-to-file order, *see* Docket No. 171 (order), did have an impact – at the very least, a practical one – on the government's complaint-in-intervention. Based on the Court's order, only two relators had claims that were not barred by the first-to-file rule **and** that were covered by the government's complaint-in-intervention: (1) Osinek and (2) Taylor.

- Osinek met this criteria because she had filed the very first qui tam suit and because she alleged that Kaiser doctors in California added false diagnoses via addenda.
- Taylor met this criteria because, even though he did not file the first qui tam suit, he was the first relator to allege that Kaiser doctors in other states – including Colorado – added false diagnoses via addenda.

In each case, the addenda was alleged to have been "upcoded" internally by Kaiser doctors – the same position taken by the government in its complaint-in-intervention.

For purposes of the pending motion, it is worth noting that Taylor also had claims that were not barred by the first-to-file rule but where the government did **not** intervene. For example, Taylor alleged that non-Kaiser (*i.e.*, external) doctors also made false diagnoses. In contrast to Taylor, the government focused solely on Kaiser (*i.e.*, internal) doctors. *See, e.g.*, Docket No. 240 (U.S. FAC ¶ 1) (alleging that "Kaiser mined Medicare Advantage patient medical files for potential additional diagnoses" and "then pressed *its* physicians to add the diagnoses to medical records retrospectively using an addendum to make it appear as if the conditions had been addressed in some way during the patient visit when in fact they had not") (emphasis added).

B. *Mazik*

In his case filed in the Eastern District of California, Mazik also claims Kaiser made false claims for payment because of improper risk adjustment. While *Mazik* and *Osinek* (*i.e.*, the government's complaint-in-intervention) are thus similar in a general sense, there are important differences between the two cases. Most notably:

(1) *Osinek* focused on false diagnoses issued by **Kaiser (*i.e.*, internal) doctors** whereas *Mazik* focused on false diagnoses issued by **non-Kaiser (*i.e.*, external) doctors**. *Compare, e.g.*, Docket No. 240 (U.S. FAC ¶ 1) ("The allegations in this

Amended Complaint concern Kaiser's efforts to increase its Medicare revenue by systematically pressuring **its** physicians to add diagnoses that did not appear in the original visit note" – "retrospectively using an addendum to make it appear as if the conditions had been addressed in some way during the patient visit when in fact they had not.") (emphasis added), *with Mazik* Docket No. 122 (Order at 4) ("According to [Mazik], since 2008 at the latest, defendants have schemed to defraud the federal government by allowing **external**, i.e., 'non-Kaiser,' healthcare providers to submit false diagnosis codes, which defendants in turn submit to CMS in order to inflate their capitation rates.") (emphasis added).

(2) *Osinek* described Kaiser being **alerted** to improper upcoding **when, *e.g.*, audits were conducted but then doing nothing in response**. *See, e.g.*, Docket No. 240 (U.S. FAC ¶ 12) (alleging that "Kaiser ignored numerous red flags and internal warnings that it was violating Medicare rules, including concerns raised by its own physicians that these were false claims and audits by its own compliance office identifying the issue of inappropriate addenda"). In contrast, Mazik alleged that Kaiser contracted with **third-party vendors (such as McKesson and Verisk) to use their software applications** to ensure that the Medicare Advantage billing was correct. *See* Mot. at 5. "Mazik discovered that Kaiser **intentionally failed** to use [the third-party vendors'] fraud-detection tools . . . . Specifically, Kaiser **intentionally misused** these programs by setting them at minimum capacity and disabling key features to purposely reduce the changes of detecting false diagnoses data errors." Mot. at 5 (emphasis added). In other words, *Osinek* proceeded with the assumption that the audits that revealed errors were valid, whereas *Mazik* challenged the validity of the audits themselves.

Significantly, Mazik drew these very distinctions in arguing before Judge Drozd (the presiding judge in *Mazik*) that the first-to-file rule did not bar his case and/or that his case should not be transferred to this District. And these differences in focus led Judge Drozd to conclude that the first-to-file rule did not bar all of Mazik's case/or that *Mazik* should not be transferred to the

Northern District. However, Mazik now maintains that his case and *Osinek* are similar such that he is entitled to a share of the *Osinek* settlement proceeds. Mazik claims, for instance, that in both *Osinek* and *Mazik*, the same injury was suffered by the government. *See* Mot. at 12. He also suggests that, if Kaiser had not "deliberate[ly] tamper[ed]" with the compliance software (*i.e.*, the subject of *Mazik*), then the software "would have detected the scheme [described in *Osinek*] and precluded Kaiser from engaging in it." Mot. at 13 (emphasis added). Mazik further maintains that, without his "filings and disclosures[,] the United States would have been unable to articulate the one-way data mining set forth in its amended complaint-in-intervention." Mot. at 18.

C. Timeline

In evaluating whether Mazik is entitled to a share of the settlement proceeds in *Osinek* (the government's complaint-in-intervention), the Court bears in mind the events that have taken place in both *Mazik* and the *Osinek* matters.

- **8/22/2013.** The qui tam plaintiff in *Osinek* filed her complaint in the Northern District of California. *See* Docket No. 1 (complaint). The complaint was filed under seal as required by the FCA.
- **2014-2018.** Four additional qui tam suits were filed (under seal) against Kaiser: *Taylor* (filed in 2014), *Arefi* (filed in 2015), *Stein* (filed in 2016), and *Bryant* (filed in 2018). The complaints were either filed in or transferred to the Northern District of California.
- **4/1/2019.** Mazik filed his case in the Eastern District of California (No. C-19-0559 DAD-JAP). *See Mazik* Docket No. 1 (complaint).
- **2/10/2020.** Yet another qui tam suit was filed against Kaiser: *Bicocca*. The case was filed in the Eastern District of California but was later transferred to the Northern District.
- **7/13/2020.** The United States declined to intervene in *Mazik*. *See Mazik* Docket No. 18 (notice). Judge Mendez unsealed the *Mazik* complaint. *See Mazik* Docket No. 20 (order). (Judge Mendez was the judge who presided over *Mazik* before Judge Drozd.)

- **4/2/2021.** Mazik filed an amended complaint. *See Mazik* Docket No. 48 (FAC).
- **4/19/2021 and 5/21/2021.** Mazik served on the United States two supplemental disclosure statements which were related to the alleged false claims pled in his FAC. *See* Friedman Decl. ¶ 11; *see also* Friedman Decl. ¶¶ 5-9 (describing documents provided to the government as part of the second supplemental disclosure – *e.g.*, a 2013 internal report on Reimbursement Compliance from the Audit and Compliance Committee, a document of results of the 2012 HCC audit probe using 2011 data showing 89% accuracy rate, the CMS Medicare Advantage Fraud Handbook, a copy of an April 2015 snapshot of Kaiser's claims metrics, a copy of McKesson ClaimsXten documentation comparing McKesson functionality with the functionality of a competitor).
- **6/25/2021.** This Court consolidated the six qui tam suits that were pending in the Northern District of California: *Osinek* (filed in 2013), *Taylor* (filed in 2014), *Arefi* (filed in 2015), *Stein* (filed in 2016), *Bryant* (filed in 2018), and *Bicocca* (filed in 2020). *See* Docket No. 61 (order).
- **7/27/2021.** The government elected to intervene in part with respect to the six consolidated suits in the Northern District (*i.e.*, the *Osinek* matters). "Specifically, the United States intervenes on the allegations that [Kaiser] submitted, or caused to be submitted, false claims for risk-adjustment payments **based on diagnoses improperly added via addenda** under Medicare Part C from the years 2009 until present. The United States declines to intervene on all other allegations." Docket No. 64 (Not. ¶ 1) (emphasis added).
- **7/29/2021.** This Court unsealed the complaints in the six consolidated cases. *See* Docket No. 65 (order).
- **10/25/2021.** The United States filed its complaint-in-intervention in *Osinek*. *See* Docket No. 110 (U.S. Compl.). The complaint-in-intervention focused on Kaiser's health plans and provider medical groups in Northern California, Southern California, and Colorado specifically. *See* Docket No. 110 (U.S. Compl. ¶ 19).

(Osinek's case was California-centric; Taylor's extended more broadly, including Colorado.) The United States alleged that Kaiser had engaged in "data mining" and "chart review," where it would use "automated algorithms and/or human reviewers to identify new diagnoses for a patient," and then "pressure [its] physicians to improperly add these diagnoses" "via addenda." Docket No. 110 (U.S. Compl. ¶¶ 7-9); *see also* Docket No. 110 (U.S. Compl. ¶ 11) ("Through these coordinated and systematic efforts to have physicians create retrospective addenda to patient medical records with diagnoses that did not exist or were unrelated to the medical visit, Kaiser improperly submitted thousands upon thousands of diagnoses to CMS as claims for payment.").

- **12/1/2021.** The United States declined to intervene with respect to Mazik's FAC. *See* Docket No. 62 (notice). The following day, Judge Mendez unsealed the *Mazik* FAC. *See* Docket No. 63 (order).
- **1/3/2022.** Judge Mendez approved a stipulation submitted by the parties, staying *Mazik* pending this Court's decision on Kaiser's motion to dismiss in the *Osinek* matters based on the first-to-file rule.[3] *See* Docket No. 69 (stipulation and order).
- **5/5/2022.** This Court issued its first-to-file order. *See* Docket No. 171 (order). The Court's first-to-file order dismissed Arefi and Stein's cases in their entirety. It also found that most of Taylor's, Bryant/Hernandez's, and Bicocca's cases barred by the first-to-file rule, but not all. *See* Docket No. 171 (Order at 46). Bicocca voluntarily dismissed his claims that were not barred. *See* Docket No. 159 (notice). Thus, as a practical matter, the parties involved in the *Osinek* matters thereafter were: the United States, Osinek, Taylor, Bryant/Hernandez, and Kaiser. However, as discussed above, the only two relators that were not subject to the first-to-file bar **and** that had claims covered by the government's complaint-in-intervention were

[3] *See* 31 U.S.C. § 3730(b)(5) ("When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.").

(1) Osinek and (2) Taylor.

- **7/13/2022.** Kaiser filed a motion to dismiss in *Mazik*, in part based on the first-to-file rule. *See Mazik* Docket No. 78 (motion).
- **12/12/2022.** The United States filed an amended complaint-in-intervention in *Osinek*. *See* Docket No. 240 (U.S. FAC). This was in response to a Court order granting in part Kaiser's motion to dismiss the original complaint-in-intervention. *See, e.g.*, Docket No. 223 (Order at 14) (holding that the only *systemic* scheme sufficiently pled by the government was with respect to one diagnosis only (cachexia); but giving the government "leave to amend . . . to expand the scope of its allegations on clinically false diagnoses").
- **2/13/2024.** Judge Drozd (to whom the *Mazik* case had been reassigned) granted in part and denied in part the first-to-file motion in *Mazik*. *See Mazik* Docket No. 104 (order). More about the order is discussed *infra*.
- **3/26/2024.** Mazik filed a second amended complaint. *See Mazik* Docket No. 107 (SAC).
- **4/8/2024.** Kaiser moved to transfer *Mazik* to the Northern District of California. *See Mazik* Docket No. 109 (motion). Mazik opposed the motion. *See* Docket No. 114 (opposition by Mr. Mazik). Although the government had declined to intervene in *Mazik*, it still remained the real party in interest and thus filed a statement. Like Mazik, the government also opposed transfer. *See Mazik* Docket No. 111 (statement by United States).
- **6/14/2024.** Judge Drozd denied Kaiser's motion to transfer. *See Mazik* Docket No. 122 (order). More about this order is discussed *infra*. Mazik's case remains pending in the Eastern District of California.

D. Rulings in *Mazik*

As indicated by the above, Judge Drozd issued two orders of note in *Mazik*: (1) his order finding that part of Mazik's case was subject to the first-to-file rule, *see Mazik* Docket No. 104 (order), and (2) his order denying Kaiser's motion to transfer to the Northern District. *See Mazik*

Docket No. 122 (order).

1. First-to-File Order

In the first order, Judge Drozd considered whether Mazik's FAC was subject to the first-to-file bar based on *Taylor* (one of the *Osinek* matters). *See Mazik* Docket No. 104 (Order at 10-11). As noted above, the government's complaint-in-intervention covered part of *Taylor* – *i.e.*, that part which implicated false diagnoses via addenda made by Kaiser doctors. However, the government did not intervene with respect to other parts of *Taylor* – *e.g.*, Taylor's claim that non-Kaiser (*i.e.*, external) doctors engaged in improper upcoding.[4] Although Judge Drozd did not expressly state why he compared *Mazik* to *Taylor*, implicitly, it was because, like *Mazik*, part of *Taylor* focused on improper upcoding by non-Kaiser doctors (whereas *Osinek*, the first qui tam suit, addressed only improper upcoding by Kaiser doctors). In other words, Judge Drozd was comparing the declined part of *Taylor* (in which the government chose not to intervene) to *Mazik*.

Mazik argued to Judge Drozd that there was no first-to-file bar as a result of the declined part of *Taylor* because, *e.g.*, he was "'the first to put the government on notice about Kaiser's practice of acquiring and utilizing recognized fraud-detecting programs to make it *appear* as though it has a robust compliance operation, but purposefully *configuring* those programs to overlook readily identifiable instances of fraud.'"[5] *Mazik* Docket No. 104 (Order at 12) (emphasis added). This basis of fraud – invalidity of the audit – differed from that asserted in the declined part of *Taylor*. Judge Drozd found this reasoning persuasive. He held that Mazik's "FCA claim is barred by the first-to-file rule **except** to the extent [he] alleges that defendants deliberately tampered with compliance software to ensure that it did not identify erroneous diagnosis codes." *Mazik* Docket No. 104 (Order at 12) (emphasis added). Specifically, Mazik's "federal FCA claim

[4] *See* Docket No. 171 (Order at 46) (in this Court's order on the first-to-file rule, comparing *Osinek* and *Taylor* and finding that the first-to-file rule barred all of *Taylor* except, *e.g.*, to the extent Taylor pled "a fraud based on improper coding by external providers").

[5] As indicated above, the programs were provided by third-party vendors such as McKesson and Verisk. *See Mazik* Docket No. 122 (Order at 4). As alleged, Kaiser "tampered" with the programs "by disabling key features, in order to reduce the chances of detecting claims errors." *Mazik* Docket No. 122 (Order at 4-5) (noting as an example that Kaiser allegedly deactivated 25 of the 54 rules used by the McKesson program known as "ClaimsXten").

is barred insofar as it alleges a general fraudulent scheme wherein defendants knowingly requested CMS reimbursements premised on erroneous diagnosis codes." *Mazik* Docket No. 104 (Order at 13). But

> [t]he Taylor Complaint describes various Kaiser entities discovering errors in the diagnosis codes via audits and then failing to act on those discoveries. By contrast, here relator's allegations in his FAC describe defendants' decision to disable compliance software so that the audits would *not* identify erroneous codes and defendants would not discover the errors in the first place.

*Mazik* Docket No. 104 (Order a 13) (emphasis in original). There was "nothing in [*Taylor*] that would have prompted the government to question the validity of the audits." *Mazik* Docket No. 104 (Order at 14). Thus, Judge Drozd allowed this part of *Mazik* to proceed. Significant to the motion at bar, this part of *Mazik* was independent of not only (1) the declined part of *Taylor* but also (2) the government's complaint-in-intervention in the *Osinek* matters (which focused solely on upcoding by Kaiser doctors and which did not include allegations of deliberate tampering with the compliance software).

2. Transfer Order

In the second order, Judge Drozd considered Kaiser's motion to transfer what remained in *Mazik* to the Northern District of California.

In his papers, Mazik focuses on the fact that the government opposed transfer. While that is true, Mazik himself also opposed transfer to the Northern District. Notably, Mazik took the position that, from an efficiency/economy standpoint, it did not make sense to transfer *Mazik* so that it could essentially be consolidated with the *Osinek* matters in the Northern District. Mazik argued, *e.g.*, as follows:

- "[T]he factual basis for proving Mazik's claim is not present in the consolidated cases [in the Northern District]. None of the evidence concerning Kaiser's contracts with third-party vendors for fraud detection software, Defendants' determination to turn off certain functionality on that software, or Relator's extensive interactions with Kaiser management regarding its mis- or non-use and resulting overpayment, is material to the *Osinek* actions. Yet, this evidence forms

the basis for Mazik's claims. And while the United States in *Osinek* will focus on proof that Kaiser providers added false diagnostic codes in addenda after patient encounters, Mazik will focus on a different compliance system and database, to show Kaiser tampered with it to allow fraudulent claims by non-Kaiser providers." *Mazik* Docket No. 114 (Mazik Opp'n at 10).

- "Whether Kaiser is responsible for false claims caused by its tampering with compliance software for detecting fraudulent claims by outside providers would be a determination that is simply unaffected by a different judicial determination that Kaiser physicians did or did not use false diagnosis codes to record patient encounters. And vice versa." *Mazik* (Docket No. 114) (Opp'n at 11).

In his order, Judge Drozd largely agreed with Mazik. Judge Drozd noted that there were "some high-level similarities between *Mazik* and the *Osinek* matters" in that "[b]oth involve defendants' alleged violations of the federal FCA via incorrect diagnoses and deficient compliance programs." *Mazik* Docket No. 122 (Order at 17). But, after Judge Drozd's ruling on the first-to-file issue, "the scope of *Mazik* is different from that of the *Osinek* matters": "[t]he FCA claim in *Mazik* is predicated on defendants' alleged tampering with compliance software, while the FCA claims in the *Osinek* matters is almost entirely predicated on defendants' providers allegedly adding false diagnostic codes in addenda after patient encounters." *Mazik* Docket No. 122 (Order at 16). Accordingly, Judge Drozd found that "the lack of factual similarity between the actions undercuts defendants' claim that consolidation would promote efficiency in discovery and case management." *Mazik* Docket No. 122 (Order at 17).

Judge Drozd also went on to note that there was potential for delay if there were to be consolidation:

> Consolidating *Mazik* with the *Osinek* matters appears likely to disrupt the laboriously negotiated schedule currently in place in the cases pending before Judge Chen in the Northern District. Moreover, transfer runs the risk of injecting [Mr. Mazik] into discovery disputes *with little relation to his action given the factual dissimilarity of his federal FCA claim*. Accordingly, the court concludes that the potential for delay weighs strongly in favor of denying the pending motion.

*Mazik* Docket No. 122 (Order at 18) (emphasis added).

Ultimately, Kaiser's motion to transfer *Mazik* to the Northern District was denied.

E. Settlement Agreements in *Osinek*

After Judge Drozd denied Kaiser's motion to transfer, *Mazik* continued to be litigated in the Eastern District while the *Osinek* matters continued to be litigated in the Northern District. In January 2026, this Court received notice that the *Osinek* matters had settled.

The settlement of the *Osinek* matters technically involves two agreements:

(1) The 1/14/2026 Settlement Agreement addressing the U.S.'s complaint-in-intervention. *See* Friedman Decl., Ex. A (settlement agreement); *see also* Docket No. 421 (stipulation of dismissal entered into by the United States, Osinek, Taylor, and Kaiser). As noted above, this is the main settlement agreement. The agreement reflects that the only relators who had claims that were not barred by the first-to-file rule **and** that were covered by the government's complaint-in-intervention (focusing on false diagnoses made by Kaiser doctors via addenda) were Osinek and Taylor.

(2) The 1/14/2026 Declined Claims Agreement. *See* Docket No. 423 (stipulation of dismissal entered into by Bryant/Hernandez, Taylor, and Kaiser). This secondary agreement reflects that the government did not intervene on all aspects of the *Osinek* matters, including part of *Taylor*.

The main settlement agreement addressing the United States's complaint-in-intervention specifically stated that it released Kaiser from liability only with respect to "Covered Conduct," defined as conduct implicated in the operative complaint-in-intervention filed by the government. *See* Opp'n at 3; Friedman Decl., Ex. A (Sett. Agmt. ¶ I) ("The United States contends that it has certain civil claims against the Defendants for the time period between 2009 and 2018, as specified in the United States' Amended Complaint-in-Intervention. That conduct is referred to herein as the 'Covered Conduct.'").

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## II. DISCUSSION

A. Legal Standard

Mazik contends that he is entitled to a share of the main settlement agreement – *i.e.*, the first settlement agreement involving the United States, Osinek, Taylor, and Kaiser. He argues that his entitlement to a share is required by the FCA statute, specifically 31 U.S.C. § 3730(c)(5).

Before the Court focuses on that provision, it first provides a brief overview of the FCA statute. Under the FCA, "[a] person may bring a civil action for a violation of section 3729 [addressing false claims for payment to the government] for the person and for the United States Government. The action shall be brought in the name of the Government." *Id.* § 3730(b)(1). "When a person brings an action under this subsection, **no person** other than the Government may intervene or bring a related action based on the facts underlying the pending action." *Id.* § 3730(b)(5) (emphasis added). As noted above, this is the first-to-file provision.

The government has two options when a qui tam suit is filed pursuant to the FCA.

- **Intervene.** "If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to [certain] limitations . . . ." *Id.* § 3730(c)(1). "If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action." *Id.* § 3730(d)(1).
- **Decline intervention.** "If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action." *Id.* § 3730(c)(3). "If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the

> proceeds of the action or settlement and shall be paid out of such proceeds." *Id.* § 3730(d)(2).

Section 3730(c)(5) is the FCA provision on which Mazik relies in support of the pending motion. Section 3730(c)(5) states:

> Notwithstanding subsection (b) [actions by private persons], the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in **another proceeding**, the person initiating the action shall have the same rights in such proceeding as such person would have had **if the action had continued under this section**.

*Id.* § 3730(c)(5) (emphasis added). The Ninth Circuit has explained § 3730(c)(5) as follows: "If the government **declines** to intervene but instead 'pursue[s] its claim through any alternate remedy,' the relator [in the declined suit] remains entitled to the same share of the recovery to which she would have been entitled **had the government pursued its claim by intervening in the relator's qui tam action**." *United States ex rel. Barajas v. United States*, 258 F.3d 1004, 1005 (9th Cir. 2001) (emphasis added).

> An alternate remedy under § 3730(c)(5) is a remedy achieved through the government's **pursuit of a claim after it has chosen not to intervene** in a qui tam relator's FCA action. The use of the term "alternate remedy" makes clear that the government must choose one remedy or the other; it cannot choose both. If the government chooses to intervene in a relator's action, and if the government recovers any proceeds in the action, the relator has a right to a share of those proceeds. If the government chooses not to intervene in the relator's action, but, instead, chooses to pursue "any alternate remedy," the relator has a right to recover a share of the proceeds of the "alternate remedy" to the same degree that he or she would have been entitled to a share of the proceeds of an FCA action.

*Id.* at 1010 (emphasis added).

B. First-to-File Rule

Mazik invokes § 3730(c)(5) in support of his contention that he is entitled to a share of the *Osinek* settlement proceeds. But before getting to § 3730(c)(5) as applied to Mazik, the Court must take into account the first-to-file rule. *See* 31 U.S.C. § 3730(b)(5) ("When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action."). To the extent part of *Mazik* was based

(at one point) on the same factual predicate as that in *Osinek*, Mazik cannot claim a share of the *Osinek* settlement because of the first-to-file bar. *See United States ex rel. Dhillon v. Endo Pharms.*, 617 Fed. Appx. 208, 212 (3d Cir. 2015) ("Only the first-filed Relator is entitled to a Relator's share award from a settlement, and Dhillon is not a first-filed Relator."). Mazik does not make any argument to the contrary.

The Court also takes into consideration that Judge Drozd allowed part of *Mazik* to survive – when comparing *Mazik* to *Taylor* – because part of *Mazik* focused on different conduct. As noted above, while *Taylor* focused on a theory that audits alerted Kaiser to improper coding, *Mazik* focused on the theory that Kaiser tampered with compliance (*i.e.*, auditing) software. To be sure, here, Judge Drozd was comparing *Mazik* to the part of *Taylor* where the government *declined* to intervene (*i.e.*, addressing non-Kaiser doctors). However, that underscores the even greater difference between *Mazik* and the government's complaint-in-intervention; while the former focused on non-Kaiser doctors, the latter focused solely on Kaiser doctors.

C. Alternate Proceeding for the Same Claim

The Court next considers that, in order for Mazik to get a share of the *Osinek* settlement under § 3730(c)(5), the government would have had to – in effect – pursued and/or settled **Mazik's** FCA claim in *Osinek*. *See United States ex rel. Bledsoe v. Cmty. Health Sys.*, 342 F.3d 634, 650 (6th Cir. 2003) ("We . . . hold that a settlement pursued by the government in lieu of intervening in a qui tam action asserting **the same FCA claims** constitutes an 'alternate remedy' for purposes of 31 U.S.C. § 3730(c)(5)."") (emphasis added); *Rille v. PricewaterhouseCoopers LLP*, 803 F.3d 368, 373 (8th Cir. 2015) ("[A] relator seeking recovery must establish that 'there exists [an] **overlap** between Relator's allegations and the conduct discussed in the settlement agreement.'"") (emphasis added); *United States ex rel. Conyers v. Conyers*, 108 F.4th 351, 354, 358 (5th Cir. 2024) ("Courts applying this provision [§ 3730(c)(5)] permit the relator to recover only insofar as the settled claim '**overlaps**' with the relator's claim."") (emphasis added); *cf. United States ex rel. Kennedy v. Novo A/S*, 5 F.4th 47, 58 (D.C. Cir. 2021) ("[F]actual overlap is *necessary* for an alternative proceeding to be an 'alternate remedy' within the meaning of subsection 3730(c)(5)."") (emphasis in original).

Mazik has failed to cite any authority that interprets § 3730(c)(5) in a different way. That being the case, his motion for a share of the settlement proceeds in *Osinek* fails. As indicated above, the claims the government pursued in *Osinek* were materially different from those pursued by Mazik in his case. First, *Osinek* focused on upcoding by internal (Kaiser) providers (specifically, via addenda) while *Mazik* focused on upcoding by external providers. Second, *Osinek* focused on the theory that audits revealed improper coding but Kaiser did nothing in response; meanwhile, *Mazik* focused on Kaiser deliberately tampering with compliance (*i.e.*, auditing) software.

At the hearing, Mazik protested that the government did, in fact, settle his FCA claim because:

- The main settlement agreement stated that the United States released Kaiser "from any civil or administrative monetary claim the United States has for the Covered Conduct," Friedman Decl., Ex. A (Sett. Agmt. ¶ 4);
- "Covered Conduct" was defined by reference to the government's operative complaint-in-intervention, *see* Friedman Decl., Ex. A (Sett. Agmt. ¶ I) (stating that "[t]he United States contends that it has certain civil claims against [Kaiser] for the time period between 2009 and 2018, as specified in the United States' Amended Complaint-in-Intervention[;] [t]hat conduct is referred to herein as the 'Covered Conduct'");
- The government's operative complaint-in-intervention broadly alleged, *e.g.*, that Kaiser had "presented or caused to be presented false claims for risk-adjustment payments in the form of improper diagnosis codes for [Kaiser's] Medicare patients," Docket No. 240 (U.S. FAC ¶ 379); and
- Mazik also asserted in his case that there were false diagnosis codes that resulted in improper risk-adjustment payments by the government to Kaiser.

But Mazik's position lacks merit. The government's complaint-in-intervention focused solely on Kaiser "min[ing] Medicare Advantage patient medical files for potential additional diagnoses" and then "press[ing] its physicians to add the diagnoses to medical records retrospectively using an

addendum to make it appear as if the conditions had been addressed in some way during the patient visit when in fact they had not." Docket No. 240 (U.S. FAC ¶ 1). As Mazik conceded at the argument herein, there is not a single reference in the government's pleading to upcoding by external non-Kaiser doctors nor is there any allegation that Kaiser misused third party software in effectuating that upcoding. Instead, Mazik's position is predicated on **isolating** a single allegation from the government's operative complaint-in-intervention (¶ 379) that essentially summarizes in a general way the allegations of Kaiser's fraud in upcoding. Mazik ignores (1) an almost-immediately preceding allegation (in ¶ 377) which incorporates by reference all prior allegations in the operative pleading, *see* Docket No. 240 (U.S. FAC ¶ 377) ("The United States repeats and re-alleges the allegations contained in ¶¶ 1 to 376 above as though they are fully set forth herein."), and (2) the allegations contained in those preceding paragraphs which make no reference to the specific kinds of fraudulent conduct alleged in Mazik.[6]

Thus, the claims settled in *Osinek* were different and distinct from the claims asserted by *Mazik*, and hence § 3730(c)(5) is inapplicable.

D. Other Theories for Sharing in Settlement

In his papers, Mazik suggests there are other theories to support his claim of entitlement to settlement proceeds. He argues, for example, that Kaiser will likely assert as a defense in *his* case (1) claim preclusion[7] and (2) damage credit.[8] *See* Mot. at 19- 21. What Kaiser may or may not

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[6] At the hearing, Kaiser did not disagree that the government's complaint-in-intervention covered only improper upcoding by Kaiser doctors (not external ones) and did not include any allegations of Kaiser deliberately tampering with the auditing software.

[7] *See, e.g.*, *United States ex rel. Barajas v. Northrop Corp.*, 147 F.3d 905, 910 (9th Cir. 1998) (where relator was pursuing a claim on which the government had declined to intervene, evaluating whether claim was barred by res judicata in light of settlement between the government and defendant on the claim where the government did intervene; concluding res judicata applied because both claims were based on the same transactional nucleus of fact: "[w]hile Barajas [relator] is plainly correct that it is one thing to have fluid that gums up in the cold, and another to lie about whether the fluid was tested for gumming up, both wrongful acts arise out of the same attempt to get paid for flight data transmitters not up to specifications").

[8] By damage credit, Mazik is referring to a situation "when the qui tam defendant [Kaiser] would be entitled to claim a damage credit against the relator's [Mazik's] action based upon money paid in an alternative proceeding [*Osinek*]." Mot. at 21. *See, e.g.*, *Barajas*, 258 F.3d at 1011 (noting that, through an agreement between the government and Northrop, "the government obtained a remedy from Northrop for the defective damping fluid that substantially replicated the remedy it

assert as a defense in the *Mazik* case is not clear, particularly given Kaiser's acknowledgement herein that the claims in *Osinek* (*i.e.*, the government's complaint-in-intervention) addressed improper upcoding by Kaiser doctors. Nor will this Court predict how Judge Drozd might rule should Kaiser assert claim preclusion or damage credit as a defense in *Mazik*. But from the perspective of this Court at least (as well as from the government's perspective as articulated at the hearing), Kaiser will have difficulty in arguing in *Mazik* that there is claim preclusion or that it is entitled to a damage credit for what it paid out in *Osinek*, **unless** the same conduct or injury was at issue in both *Mazik* and *Osinek*. But Kaiser did not assert to this Court that the same conduct or injury is at issue in the two cases. Any such argument would have to account for this Court's finding that the conduct or injury at issue in *Mazik* and that in *Osinek* are not the same, particularly because *Osinek* focused on upcoding by internal providers while *Mazik* focused on upcoding by external providers.

The Court acknowledges that Medicare Advantage is different from traditional Medicare: with traditional Medicare, the government reimburses health care providers using a fee-for-service system; in contrast, Medicare Advantage uses a capitation payment system. Nevertheless, the capitation payment system still depends on diagnosis codes that are issued by physicians. Thus, the government could isolate diagnosis codes issued from internal Kaiser providers and focus on risk-adjustment payments based on those diagnosis codes only. While there could be instances in which, *e.g.*, a diagnosis was rendered by an internal provider and then the same diagnosis by an external provider, there is no indication that this occurred and if so, how often. Absent such a coincidence of upcoding of the **same diagnosis** of the **same patient** by two different doctors – one Kaiser and one external – **at the same time**, the fraudulent conduct and damages alleged in *Osinek* and *Mazik* would not overlap. Certainly, Mazik did not convincingly suggest such.

Although not entirely clear, Mazik seems to suggest in his reply brief that he is still entitled to a share of the *Osinek* settlement because, even if his case focuses on different conduct, both the

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could have obtained if it had intervened in Barajas' second qui tam action"; the agreement also stated Northrop could use the agreement "'in any civil proceeding in which Northrop attempts to obtain appropriate credit for funds paid or value received pursuant to this Agreement'").

conduct at issue in *Osinek* and the conduct at issue in his case are part of a "single complex fraud scheme." Reply at 6-7 (arguing that the fact that "multiple relators alleged independent material allegations all in support of a single complex fraud scheme is hardly surprising"; multiple relators may "'each describe pertinent aspects of a broad-reaching fraud'"). This argument, however, is not persuasive because, even if there was a larger overarching scheme, the government was entitled to intervene as to only part of that scheme, that part which involved different conduct and different damages. Notably, the case that Mazik cites, *United States ex rel. Bryant v. Community Health Systems, Inc.*, 24 F.4th 1024 (6th Cir. 2022), is distinguishable because, there, the government intervened in *each* of the relators' actions, *see id.* at 1029, and thus there was a basis for all of the relators to get an allocation of the settlement.

The only other theory that Mazik offers in support of his motion is a causation theory – *i.e.*, because of the deliberate tampering with the compliance software, Kaiser was able to carry out its upcoding scheme and/or, because of Mazik's assistance to the government (providing documents or information), the government was able to file an informed amended complaint-in-intervention. Any such causation theory is subject to the same problem as above; that is, given that *Mazik* focused on external providers and *Osinek* internal ones, there would not seem to be any causation. In this regard, it is worth noting that Mazik fails to provide any real specifics as to how the government's pleading was informed by documents or information he provided.

Furthermore, even if there were a factual basis for the causation claim, at least one court has indicated that a causation theory is not enough to support a claim to a share of settlement proceeds under § 3730(c)(5). *See United States ex rel. LaCorte v. Wagner*, 185 F.3d 188, 192 (4th Cir. 1999) ("The Global Settlement did not include Wagner and Dehner's original qui tam action. Instead, the government settled other potential claims, at least some of which arose from discoveries that were made pursuant to Allied's CIA [Corporate Integrity Agreement]. The fact that the CIA was part of the settlement of Wagner and Dehner's original qui tam suit confers on them no entitlement to proceeds resulting from the later findings. There is no ground in the statute for recovery based on such attenuated 'but for' causation. Therefore, nothing in the Global Settlement can be considered an 'alternate remedy' to any part of the original action."). Nothing

in the language of the statute suggests otherwise, and Mazik cites no case to the contrary.

Finally, to the extent Mazik suggests (in his reply brief) that he is entitled to a share of settlement proceeds because he is in no different position from Taylor, that argument also lacks merit. According to Mazik, Taylor was not the first to file, yet is still being given a share; Mazik should be treated no differently. *See* Reply at 10. The problem for Mazik is that he and Taylor are positioned differently. The government did not intervene in Mazik's case at all. But the government **did** intervene in part in Taylor's case: specifically, that part which claimed false diagnoses (via addenda) by Kaiser doctors outside of California, in particular, Colorado. (*Osinek*, the first qui tam suit, focused only on false diagnoses (via addenda) by Kaiser doctors in California. Because of this limitation, not all of *Taylor* was subject to the first-to-file rule.) Mazik cannot rely on § 3730(c)(5) to recovery from the settlement fund here.

## III. CONCLUSION

For the foregoing reasons, the Court denies Mazik's motion for a share of the settlement proceeds.

The Clerk of the Court is directed to close the file in the case. The Clerk is also directed to enter a final judgment with respect to this order so as to trigger the time to appeal. The Court acknowledges that there is no final judgment with respect to the direct litigants in the *Osinek* matters because a settlement was reached.

This order disposes of Docket No. 439.

**IT IS SO ORDERED**.

Dated: April 10, 2026

EDWARD M. CHEN
United States District Judge

# EXHIBIT B

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA ex rel. RONDA OSINEK,<br><br>Plaintiff,<br><br>v.<br><br>KAISER PERMANENTE, et al.,<br><br>Defendants | Case No. 3:13-cv-03891-EMC<br><br>**NOTICE OF APPEAL**<br><br>[Hon. Edward M. Chen] |

(Caption continued on next page)

UNITED STATES OF AMERICA and STATE OF CALIFORNIA ex rel. GLORYANNE BRYANT and VICTORIA M. HERNANDEZ,

Plaintiff,

v.

KAISER PERMANENTE, et al.,

Defendants

Case No. 3:18-cv-01347-EMC

**NOTICE OF APPEAL**

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UNITED STATES OF AMERICA ex rel. JAMES M. TAYLOR,

Plaintiff,

v.

KAISER PERMANENTE, et al.,

Defendants

Case No. 3:21-cv-03894-EMC

**NOTICE OF APPEAL**

**NOTICE OF APPEAL**

Notice is hereby given that claimant Jeffrey Mazik appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment entered against him on the 10th of April, 2026 (ECF 462), pursuant to Rule 58 of the Federal Rules of Civil Procedure, in accordance with the Court's Order of the same date (ECF 461) denying Mr. Mazik's motion for a share of the settlement proceeds under the alternate remedy provision of the False Claims Act, 31 U.S.C. § 3730(c)(5). This appeal includes all interlocutory orders that gave rise to the Judgment, including the order denying the motion for a share, and all other orders entered in connection with Mr. Mazik's claim.

Respectfully submitted,

Dated: April 12, 2026

Law Office of Jeremy L. Friedman
Mendenhall Law Group

By: /s/Jeremy L. Friedman
Jeremy L. Friedman

Attorneys for claimant Jeffrey Mazik

# EXHIBIT C

**Pages 1 - 51**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Edward M. Chen, Judge

| | | |
|---|---|---|
| RONDA OSINEK, et al., | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| VS. | ) | **NO. 3:13-CV-03891-EMC** |
| | ) | |
| PERMANENTE MEDICAL GROUP, INC., et al., | ) | |
| | ) | |
| Defendants. | ) | |
| | ) | |

San Francisco, California
Thursday, April 2, 2026

**TRANSCRIPT OF PROCEEDINGS**

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Official United States Reporter

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**Thursday - April 2, 2026** **1:33 p.m.**

**P R O C E E D I N G S**

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**THE COURT:** Good afternoon, everyone. Have a seat.

**THE COURTROOM DEPUTY:** The Court is calling the case Osinek, et al. versus Kaiser Permanente, Case Number 13-3891. Counsel, please state your appearance for the record beginning with the plaintiff, and please come to the lecturn.

**MR. FRIEDMAN:** Good afternoon, Your Honor. This is Jeremy Friedman for the claimant, Jeffrey Mazik.

**THE COURT:** All right. Thank you, Mr. Friedman.

**MR. CIVINS:** Your Honor, my name is Braden Civins. I'm here on behalf of the United States. I'm joined by Michelle Lo from the U.S. Attorney's Office.

**THE COURT:** All right. Thank you, Mr. Civins.

**MS. ZEMAN:** Good afternoon, Your Honor. This is Amy Zeman on behalf of relator Ronda Osinek.

**THE COURT:** All right. Thank you.

All right. What is the current status of the Mazik case? It's still pending in the Eastern District?

**MR. FRIEDMAN:** Yes, Your Honor, it's currently pending in the district -- in the Eastern District. All of the claims are still pending. We're working on trying to confer with defense, with Kaiser defendants, to determine whether and when to dismiss the federal qui tam claims. But the case is

pending, and there's still a status of the retaliation claims and the state Medicaid and Medi-Cal claims.

**THE COURT:** But the federal qui tam claims, which, as I know centers on the upcoding by external doctors, that's a live claim still, right, the upcoding problem?

**MR. FRIEDMAN:** The risk adjustment fraud claim is still alive.

**THE COURT:** But you said there's talk about dismissing that, or ...

**MR. FRIEDMAN:** Yes, as a result of this settlement.

**THE COURT:** Dismissal pursuant to a settlement, or why would it be dismissed? Is it --

**MR. FRIEDMAN:** It would be dismissed because of the claim preclusion or damage credit, and it would be a voluntarily dismissal or motion by Kaiser or probably just a stipulation.

**THE COURT:** And what's the basis for claim preclusion?

**MR. FRIEDMAN:** The basis for claim preclusion arises out of the *Berajas* case that -- and *Berajas* and the 1998 decision said the recovery in a qui tam case is not for each false statement or bad act done to the government, it is for the false claim, false or fraudulent claim for payment or approval.

So the cause of action, the federal qui tam cause of

action that's pending in the Eastern District is for fraud in the claim for capitated payments on the Medicare Advantage organization, and the claim is that it's fraudulent because it had inflated risk adjustment factors and false and invalid diagnostic codes, and those are the claims that were settled in the Osinek matter.

**THE COURT:** Were they exactly the same claims? I mean, of course, that begs part of the question what we're trying to do, but wouldn't there -- in terms of the monies involved, they're different acts as I understand it. One involved upcoding -- like our case involved upcoding internally. Your case involves upcoding by external doctors. One claim was about how it was discovered and in what, you know, what Kaiser did in terms of turning a blind eye after the audit showed some red flags, whereas I think in your case there's an allegation of a much more deliberate kind of conduct of disabling software and purposefully turning things off.

With the damage -- if you ignore claim splitting and all sort of -- would there -- I would think that there would be separate damages for each of these two sets of claims.

**MR. FRIEDMAN:** Your Honor, we -- there would not be two separate sets of damages. The damages are tied to the false claim for capitated payments. Those capitated payments to Medicare Advantage organization are based on inflated risk adjustments, and we can only -- the government can only recover

one time for the false claim. That's why I quoted the *Berajas* case.

And the *Bledsoe* case that is cited and quoted at length in the 2003 decision that was quoted in the reply brief makes it very clear that when the government settles the underlying claim for payment, the false claimant for payment, the violation, that they're not entitled to another -- the government is not entitled to another recovery on the same false claim.

One way to look at it is the *Berajas* case itself. In *Berajas* there was an issue in the first case that Northrop had lied about whether or not the dampening fluid was tested for being gummed up, for gumming up. And then in a subsequent action there was an argument that an allegation that Northrop had lied about the dampening fluid gumming up, and the relator had claimed that there were different sets of facts, and the Court said, yes, those are arguably different, but both -- I'm quoting now: Both wrongful acts arose outs of the same attempt to get paid for flight data transmitters not up to specification.

And so that's exactly what we have here. We have --

**THE COURT:** Aren't there different sets of payments involved?

**MR. FRIEDMAN:** No, Your Honor.

**THE COURT:** No?

**MR. FRIEDMAN:** No. It's one set of payments, and it's a payment for each Medicare Advantage enrollee. And each Medicare Advantage enrollee is a per capita, or we call it capitated payments, and the government, CMS, pays Kaiser for each enrollee, but they pay a higher rate of higher capitated payment for each enrollee based upon risk adjustment factors, and --

**THE COURT:** All right. So the same enrollees affected in your case, in the Mazik case as in the Osinek case?

**MR. FRIEDMAN:** Yes, Your Honor.

**THE COURT:** Exact same ones, even though the reviews may have been done by different folks either inside or outside of Kaiser?

**MR. FRIEDMAN:** Yes, Your Honor.

And in fact, the -- whether the diagnosis codes come from internal physicians, Kaiser physicians, or whether the diagnostic codes come through the claim submissions by external physicians, they both get interwoven into the electronic health record. Kaiser has a massive electronic health records called Health Connect, and it puts together all of those, all of the encounter data, whether it's encounters from external physicians or whether it's from internal physicians, and then it's that encounter data that gets submitted to the government as part of the risk adjustment.

So there's no -- and the settlement in this case didn't

say, we're only going to do these patients and these patients. It was systemic. It was all of the patients for overlapping patients, overlapping time frames. So there were different routes to proving the same fraud, but there was only one false claim or, you know, one -- it boils down to one set of false claims which are the claim for capitated payments.

I think a helpful way to look at this, Your Honor, is the *Kathleen Bryant* case. It's the Community Health Services Systems case that we cited. It's out of the Sixth Circuit. And it says: In the face of -- well, it talks about how, in -- when there's massive amount of fraud, it's not surprising that you'll have multiple relators describing independent facts that all come to head in a single fraud.

**THE COURT:** Well, if it's the same payment, yes. There are many ways of procuring that payment, many routes of fraud. But if there's different groups of payments, like if your case involved different enrollees than the enrollees in Osinek, then that would seem to me to be different. But you're saying it's the same enrollees.

**MR. FRIEDMAN:** Yes, Your Honor. It's the same systemic overcharging for the same --

**THE COURT:** So why wouldn't your entire case have been subject to the first to file rule?

**MR. FRIEDMAN:** Well, because the first to file rule doesn't take out everybody who is based on the same claim for

payment. The first to file rule, as this Court found, that Dr. Taylor's claim survived the first to file even though they were over the same claims for payment, because he had added material elements that were not present in Judge -- in --

**THE COURT:** It was over the same money.

**MR. FRIEDMAN:** It was over the same money, and same thing with Mr. Mazik. And Judge Drozd, in his decision on the first to file, determined that Mr. Mazik brought elements independent of the other relators in your case that were material elements of the same fraud. It's a very important point. The -- there's one fraud of false claim for payment in the words of *Berajas* the recovery in a qui tam is not for each false statement or each bad act done to the government, it's for the false or fraudulent claim for payment. And all of these claims for payment were the same, were overlapping, and it's just that as -- and the *Hartpence* case points out that you want to have different relators come forward even when it involves the same claim for payment if they bring material elements.

And if I could quote the *Kathleen Bryant* case, Your Honor, it's in our reply brief, they quote -- first, the Sixth Circuit quotes from the legislative history of the 1986 amendments. It says: In the face of sophisticated and widespread fraud, only a coordinated effort of both the government and the citizenry will decrease this role of defrauding public funds.

And then in the Sixth Circuit's words it says: No more is such a coordinated effort more salient than when multiple relators each describe the pertinent aspects of a broad-reaching fraud. And in *Bryant*, Your Honor, there were seven different relators, they uncovered multiple independent parts of the same complex scheme, and all seven relators recovered a relator's share and apportionment and allocation from their relator's share, and all seven sets of attorneys were awarded their attorney's fees.

So the first to file and the alternate remedy provisions are two extremely important parts of the evolution to the 1986 amendments. The first to file protects relators from other relators who would be relators who come in and try to claim the same fraud but don't have any new material elements to it. On the other hand, the alternate remedy provision is there to protect the relator who has survived the first to file motion, who has survived the Rule 9(b)(6) motion like Mr. Mazik, but the government ends up settling his claim out from under him in an alternate case.

**THE COURT:** That's the question.

**MR. FRIEDMAN:** Yes.

**THE COURT:** Did this relator's claims get settled out from under him by the Taylor/Osinek settlement.

**MR. FRIEDMAN:** I agree, Your Honor.

**THE COURT:** You claim that it is, and you're prepared

to concede that claim preclusion is going to be the end of your qui tam?

**MR. FRIEDMAN:** We don't have a choice. If it's not claim preclusion, Your Honor, it certainly is damage credit, which means that let's say he could still keep going forward with the claim, but he would try to get more money that was already paid. The -- Kaiser would be able to say, every penny we just paid to the government to settle these claims is a credit towards whatever damages that we would owe you. It's more like --

**THE COURT:** That doesn't necessarily wipe it all out if you recover more, because it was a compromise I take it, and your claim for damages exceeds the 556. So, yes, it will reduce, but it's still live. It may be worth fighting for.

**MR. FRIEDMAN:** It may be, but that doesn't determine whether or not we're entitled to this share here. Even if we could go forward and try to get 556 million and another dollar, all we'd recover for the government is the dollar and we'd have to expend all those costs and expenses, and it wouldn't be worth it. However, he will pursue his state Medicaid False Claims Act claims and he will pursue his retaliation claims, and it's likely that it's also claim preclusion, Your Honor. I just, we're hoping that we can reach an agreement. We're hoping to see what the Court rules on the share.

**THE COURT:** Let me hear from the government's

perspective, because it does -- one could argue these are different sides of the same point coin, and if there is a claim preclusion, then why wouldn't there be some entitlement under the False Claims Act here?

**MR. CIVINS:** Your Honor, because there is no claim preclusion, and the reason for that is, and with respect to counsel, he gets the description of the way Medicare Advantage works wrong, right?

**THE COURT:** Say that again?

**MR. CIVINS:** He gets the description of the way Medicare Advantage works and the overlapping claims wrong. There aren't any overlapping claims for reimbursement between the government's action and Mr. Mazik's action, and the reason for that is what's at issue in the government's action are individual diagnoses added by internal Kaiser providers, as you said, that were addended or added after patient visits to medical records. Those individual diagnoses are then submitted to the Centers for Medicaid and Medicare Services for reimbursement, right? Those diagnoses are the claims for reimbursement the government alleges are false.

**THE COURT:** And those are individualized?

**MR. CIVINS:** Individualized, that's correct. And so --

**THE COURT:** And so they're paid on a patient-by-patient basis?

**MR. CIVINS:** Diagnosis -- patient-by-patient base, and those payments to patients are increased by the addition of those diagnoses, right? So if you add a diagnosis of aortic arthrosclerosis to a patient's visit after the visit via addenda, that would increase the following year's capitated payment.

**THE COURT:** For that patient.

**MR. CIVINS:** Correct, correct.

**THE COURT:** So it's a patient-by-patient determination.

**MR. CIVINS:** That's right, Your Honor.

And so what Mr. Mazik's counsel is hinting at is, well, all of that, that diagnosis gets mixed in with other stuff from external providers and it's all kind of the same. That's simply inaccurate. If an external provider makes a diagnosis like aortic arthrosclerosis during or after a visit doesn't really matter, and then that diagnosis is submitted and that causes an increase in payment for that patient for the next year, that's an individual potentially false claim, right, according to Mr. Mazik. So those are two nonoverlapping sets of claims reimbursement.

**THE COURT:** That's the question.

So I think I am correct that one case involved internal Kaiser doctor upcoding. Others involved external doctors doing the upcoding, correct? That's the Mazik case.

**MR. CIVINS:** Correct.

**THE COURT:** And so there would be -- those would be -- never would they or rarely would they be the same payment on the same upcoding, because you wouldn't have it done -- you might have one -- I assume different patients. Is it typically different patients, one that would be subject to internal, one would be subject to external, or ...

**MR. CIVINS:** I suspect that's exactly right, but I don't have any discovery in Mr. Mazik's case. I don't know how much discovery he's taken to establish that point. But I think you're absolutely right, there's no way those two universes of diagnoses could overlap.

**THE COURT:** So therefore there is no claim preclusion, because he's got an independent set of enrollees who were affected and you would say almost exclusively by the external review and whatever happened in that regard, the use of the third-party software, and those external reviews, and disabling of the security functions, et cetera, et cetera, they would overlap the internal -- the folks who are subject to the internal Kaiser doctor, in-house Kaiser doctor upcoding.

**MR. CIVINS:** The only quibble I would have, Your Honor, is to say you're focusing on the patients being different universes, and I'm focused on the diagnoses that are submitted to CMS.

**THE COURT:** Okay. So you got the same patient,

but -- well, I guess you could have the same patient with two different diagnoses, and they were referred out to a specialist outside the field for a particular heart problem, but then they had a neurological problem that was seen and the internal, somebody could have two upcharges, but they would be separate upcharges.

**MR. CIVINS:** Correct.

And if they are -- to make things even more complicated, the only diagnoses that were at issue in our case are diagnoses added via addenda by Kaiser providers that resulted in reimbursement. In other words, if three different doctors added aortic arthrosclerosis during the course of a service year, only the one that was addended and led to the payment by CMS was at issue in our case, right? So if you had an internal provider who had added a diagnosis of AA, or aortic arthrosclerosis, an external provider who added that same diagnosis that same service year, we were focused only on addended diagnoses by internal providers that led to payment by CMS.

**THE COURT:** Okay. So in short, there would not be a claim preclusion of the Mazik claim which is based on that part of the qui tam case that survived the first to file rule, because it was distinct, as Judge Drozd found, from what was at issue here.

**MR. CIVINS:** I believe that's correct.

**THE COURT:** Well, I wonder if there's a way we can fashion each party to put their money where their mouth is, because you can't have it both ways. I mean, I don't know. Maybe can this Court wait and see what -- is there going to be a motion to dismiss on preclusion grounds, claim preclusion grounds, before Judge Drozd?

**MR. CIVINS:** You're asking me?

**THE COURT:** Yeah.

**MR. CIVINS:** I can't answer that. The government has no intent to do that at this point.

Let me point one other thing out, Your Honor, that might clear some of this up.

Even if Mr. Mazik could establish that there is some overlap in the claims for reimbursement that were submitted to CMS -- and he can't, right? Two distinct, discrete nonoverlapping sets of claims for reimbursement. But let's assume that he could. That, in itself, would not lead to claim preclusion or an automatic entitlement to alternate remedy, and the reason for that is this, Your Honor. We have no idea as we stand here today whether Mr. Mazik's claims have any merit, right? He survived a motion to dismiss. He hasn't proved anything up. He hasn't gotten a judgment. He hasn't gotten a settlement from Kaiser. So we have no idea if those claims will actually bear out, right? And his remedy, the remedy that is still available to him, is to proceed with his claims,

litigate those claims and try to get a settlement or a judgment, right?

And just because, in this hypothetical world where there were overlapping claims for reimbursement, just because some of those claims Kaiser might have been subject to or are released in the settlement does not mean he gets an alternate remedy. The key question to Your Honor as you put it is did we settle Mr. Mazik's claim, and that has to do with a False Claims Act allegation, not simply a claim for reimbursement.

**THE COURT:** Okay. So let me rephrase. I didn't mean that the government, you're not in that case, you didn't intervene, but is Kaiser going to bring a preclusion motion to dismiss the federal qui tam action based on this settlement? And I don't know if you know the answer to that, but we don't know -- if they did, we don't know what the answer what the Court is going to rule.

**MR. CIVINS:** My response would be they can't based on this. It doesn't make any sense, right? What's released in our settlement is just what's in our complaint. What's in our complaint are addended diagnoses by internal providers and nothing else. There is no other release. No external providers, no fraud detection software allegations, nothing. So I do not see how Kaiser could make that argument, but that's just me. I mean ...

**THE COURT:** And what's your response to the credit,

the payment credit argument?

**MR. CIVINS:** It has no bearing whatsoever on whether someone is entitled to an alternate remedy, right? That goes back to that hypothetical world where our claims for reimbursement in the two cases might overlap, although they don't. There's a good case on this that Mazik's counsel cites and that we cite, as well, that we think is -- it's not directly on point, but it's kind of illustrative of this point, and it's the *Van Dyck* case where a relator tried to intervene in a criminal action, forfeiture action, and said, hey, we have these claims pending in the district court, this qui tam complaint, and we're entitled to some of this -- of these forfeited proceeds. And the Ninth Circuit basically says, yeah, look, you need to take that up with the district court in your case. Go litigate your claims, get a judgment, do something. But whether or not some of those claims have been resolved in a forfeit action, that's a practical matter. That doesn't entitle you to a, you know, an alternate remedy by itself. The key question remains. Did we settle Mr. Mazik's claims, the False Claims Act allegations, not just is there overlapping money at issue, right? We don't think that in itself is sufficient to establish a right to an alternate remedy, and I don't think that any authority supports that.

**THE COURT:** So what is the timing -- so this issue is before me now. Have monies been dispersed to the relators? So

there's a settlement sum. In the real world what's happened? Has that been paid? What's going on with that?

**MR. CIVINS:** My understanding is that we have not paid that sum yet, and that's because of Mr. Mazik's claim here seeking a portion of that share.

**THE COURT:** Okay. But the sums have been obtained from the defendant.

**MR. CIVINS:** They have.

**THE COURT:** And, but they haven't been dispersed to the two relators in this, our case.

**MR. CIVINS:** That's correct. That's correct. And if anybody here has information different from that, please correct me. I would also say we're not paying two relators, we're paying one share.

**THE COURT:** Okay.

**MR. CIVINS:** We're just paying one share.

**THE COURT:** Okay. But nothing in this motion here would -- should hold that up, right? I mean, that's whether the Mazik relator is able to recover anything at all, it's the 17 percent I think it is, whatever it is, has been earned or allocated to the relator in the Osinek and Taylor case, correct?

**MR. CIVINS:** Yeah, and it will be paid, but we had some concern about doing that while this motion was still pending.

**THE COURT:** That's what I'm trying to find out. What -- how is this matter delaying that payment? Because they're going to get the 17. It's not like there's a sliding scale, right? It still would not exceed the 25 percent.

**MR. CIVINS:** That's correct.

And if I could, that's not something I can speak to as articulately today as I would like, and I'd be happy to provide additional information on that. But my understanding is the reason we were in a holding pattern on paying the relator share was because of this motion. We wanted to make sure we understood what was at issue here and how this was going to shake out.

**THE COURT:** I'm not trying to be too cute, but I'm wondering, you know, in a way it would be interesting to see what happens in the Mazik case to see if Kaiser brings a preclusion motion and what the Mazik, you know, relator does in response to that, because, you know, there's a -- I could see some inconsistent position, and maybe it's -- it may be relevant. I mean, if your position is right any such motion brought will be without success, and that will just underscore the fact that they've got a remedy, which underscores the fact that they're really not entitled to anything in this case. It's a separate case.

On the other hand, if a court were to find that, oh, yeah, they are, you know, through whatever theory, that it's the same

harm, it's the same pool of money, or whatever it is, at least there's a slightly stronger argument, you know, for the alternate remedy here, because it's saying that this settlement did close off an avenue, et cetera, et cetera, in a legal way.

So I'm wondering what if I defer decision for a bit and see what happens in the Eastern District.

**MR. CIVINS:** I'm not sure, and I apologize, Your Honor. I'm not sure I fully followed the hypothetical there.

All I would say is there's no cause to defer here. We think the issue is completely ripe, and we think Mr. Mazik's position has no merit, and that whatever happens in his action, he should litigate that and pursue whatever remedy he's entitled to there. That is his remedy that's available to him, to play these allegations out in his own case, not in this one, right? His case has nothing to do with ours. This issue could be decided now, and we think that's the appropriate action.

**THE COURT:** Would there be an inconsistency between the Mazik relator losing this motion on the grounds that you stated, because it's a different claim, and then also then being held to be barred in the Eastern District under claim preclusion on sort of the other side of the coin, with that court saying, well, it's really the same. There was just one pool of money, just one payment, and therefore it's just like those cases where there's different theories to get to the same pool of money, but you're out. Would that be -- would those

two kinds of judgments be inconsistent?

**MR. CIVINS:** So I don't see how you can get to that eventuality. I don't see how that arises.

So that would be if you deny Mr. Mazik's motion here and then Kaiser makes an argument that there were in fact overlapping claims reimbursement?

**THE COURT:** Yeah.

**MR. CIVINS:** And I think my response would be it still doesn't matter if there are overlapping claims reimbursement. The conduct is different. And that's also, it's critical to an alternate remedy analysis, right? You have to get the conduct right, you have to get the mechanism of fraud right, you have to get the specific fraud right. You have to get everything right in order to have an overlapping claim and be entitled to an alternate remedy, and Mr. Mazik accomplishes none of that. Setting asides the claims for reimbursement in the hypothetical world where they overlap, Mr. Mazik doesn't come close to meeting those requirements.

**THE COURT:** I guess it probably depends on what the Court, if it were to grant claims preclusion, what it found. I mean, his theory is that there's one pool of money, one -- if you have like the same 10 enrollees, but both -- you had both kinds of fraud occurring, and so the same amount of money, and let's say it's 10,000 apiece or something, that might present a problem for him.

**MR. CIVINS:** It would be a damages issue, though, wouldn't it, sir? If it's the same claim for reimbursement, we still don't know if his claims have any merit, right? So it's more of a damages, a practical issue like they decided in *Van Dyck* than it is an issue that says we've extinguished his claim. Our settlement releases the conduct described in our amended complaint, and that conduct is about Kaiser providers addending diagnoses after patient visits, and just that.

**THE COURT:** Even if it related to the same damage.

**MR. CIVINS:** Even if it related to the same damage.

**THE COURT:** To the same single fraudulently obtained payment.

**MR. CIVINS:** Correct, sir. And we believe the cases are clear on that.

**THE COURT:** So the normal rule of sort of common law claim splitting doesn't really apply. You can have -- you can split claims, essentially, for the alternative remedy section of the FCA.

**MR. CIVINS:** In this scenario that's how that would work, and there would still be available, you know, penalties I believe under the False Claims Act and Mazik's action if we were in this hypothetical world of overlapping claims reimbursement. But again, the starting position is we're not in that world, we can't be in that world. That doesn't make any sense in the context of Medicare Advantage.

**THE COURT:** So the alternative remedies section of FCA does not incorporate the old common law claim splitting doctrine essentially?

**MR. CIVINS:** Sorry, I'm a little rusty on the old common law claim splitting doctrine, and I apologize for that, but my understanding of it and how you described it, I think that's right.

**THE COURT:** Yeah. So you can have two kinds of wrongdoings leading to the same damage, and on claim splitting you gotta bring them all. You can't bring separate -- the tort one and the contract one and the quasi contract one. You've got to bring it all if it all leads to the exact same damage. But you're saying that could happen here. That is, the government takes one prong of that claim, same damage and recovers on that, that doesn't entitle the claimant who had the other route to get there to participate.

**MR. CIVINS:** And intuitively that makes sense, right? We determine these claims, the addenda claims had merit, and we settled those claims. We have no idea whether Mr. Mazik is actually entitled to any recovery at all. Whether the evidence supports the claims that he's asserting we have no clue, right? So it wouldn't be an equitable outcome for him to just get paid on a theory that we have no idea whether there's merit to it.

**THE COURT:** All right. I'll give you a chance to respond.

First of all, I'm being told that as a practical matter there is not that kind of overlap. It would be unusual because these~-- the payments are made enrollee by enrollee, and some would have had their upcoding and resulting overpayment done through the Osinek way, others may have done it through the Mazik way, and they're likely different payments.

**MR. FRIEDMAN:** They're absolutely the same payments, Your Honor. One patient would go to an internal Kaiser physicians and get some treatment and there would be some diagnostic coding, and then that same patient would also be referred to external physicians. That was Dr. Taylor's allegations which the Court found survived the first to file. And then that patient's diagnostic codes that came in by way of the external physician claim form, Kaiser would take that claim form, they would take all the encounter data from that claim form, put it into the claims warehouse, and then that would go into the ARIS database and would all get combined in the Health Connect database, and there would be one set of codes that would be sent to CMS that would be the risk adjustment factors. So --

**THE COURT:** That would assume a patient sees an internal doctor, i.e. the Osinek way, sees also an external specialist, i.e. the Mazik way. They both confirm the same upcoding, so the upcoding occurs and the fraud occurs, the overpayment occurs maybe by concurrence of both external and

internal. That may be one scenario. But wouldn't there be another scenario where there'd be different diagnoses or different patients? Some were only seen internal, some get referred out immediately to an external for completely different problems, but one sees only an external and is subject only to the external upcoding, another patient enrollee is subject only to the internal coding. One is for heart, the other is for lungs or something. Wouldn't there be -- isn't it possible that there are two different sets of damages there?

**MR. FRIEDMAN:** It's possible -- well, there wouldn't be two sets of damages.

**THE COURT:** I mean, two kinds of overcharge with two different enrollees.

**MR. FRIEDMAN:** There would be two different sources of false coding for the same patient. There could be --

**THE COURT:** I'm saying one patient only sees an internal.

**MR. FRIEDMAN:** Then there would be -- then the coding for that patient would only come from internally.

**THE COURT:** Okay.

**MR. FRIEDMAN:** But it's crucial to realize two things:

One is the government's settlement with Kaiser didn't go patient by patient, it covered time periods and an entire Kaiser population. So while it may be true that some patients

got their coding increased because of the internal physician or some of it because of the internal physician and the external physicians and some because of just the external physicians, this settlement releases the claim for payment for all of those patience, whether it came from one source or the other.

Now, he's correct that -- my brother is correct that when he -- when they submit a claim for payment it's on an individual basis, but it's not on the basis of this patient saw such and such and this patient saw such and such.

However, there is a release of all claims. It's not like this settlement said, we're going to release the claims for this patient, this patient, this patient. And in fact, you can't get to $556 million in damages going patient by patient, claim by claim. It's a systemic problem that Kaiser had.

**THE COURT:** So the release, you're saying -- so putting aside claim preclusion. You're saying the release itself, regardless of the theory that the government pursued within the confines of Taylor and Osinek, were broader than that and extended to release all claims based on false upcharges that were effectuated through an external doctor.

**MR. FRIEDMAN:** It would release external, internal. It would release everybody, any physicians, any provider that provided coding for that patient.

**THE COURT:** Okay. Hold that thought right there.

And let me ask you. Do you agree with that? Is that

right? The release is broad enough to cover the kinds of false payments that were made under the Mazik theory?

**MR. CIVINS:** Absolutely not.

**THE COURT:** Well, I'm hearing a difference here between ...

**MR. CIVINS:** And the reason for that is because our release is tied explicitly and completely to the conduct in our amended complaint and intervention. I'm happy to point you to the language of the settlement, but the covered conduct just says what's released is what is in our amended complaint and intervention.

And what's in our amended complaint and intervention throughout, and there is no dispute about this between us and Kaiser, even yourself, Your Honor, when you ruled on motions to dismiss our complaint and amended complaint and intervention identified our complaint is exclusively about addended diagnoses by Kaiser providers. That is a -- that is its own universe that affects nothing else but that universe. If the diagnosis was added during a patient visit and not addended, then it's not in the universe. If a diagnosis was added by an external provider it's not in the universe. The only thing in the universe are addending diagnosis by Kaiser providers.

**THE COURT:** Okay. Where is the -- what document number would I find the ...

**MR. CIVINS:** In Mr. Mazik's motion there's a

declaration attached, Document Number 441.

**THE COURT:** Friedman declaration?

**MR. CIVINS:** Friedman declaration, correct.

And it is on the -- the settlement agreement is on page -- it's Document 441, page 11 of 430, and before that it's actually -- it starts on page 7 of 430 is the beginning, and then I would refer you to page 9 to see the covered conduct defined in paragraph I.

**MR. FRIEDMAN:** If I may, Your Honor?

**THE COURT:** Yeah, go ahead. My computer is a little slow.

**MR. FRIEDMAN:** Yes, it's true the settlement agreement releases all claims raised in the complaint and intervention. So you have to then look to the complaint and intervention, and that's what we cited, and that's one of the documents in your docket, Your Honor. It's ECF 110, and you can look at paragraphs 348 to 351, first claim for relief 353 to 355, second claim for relief, and you will see that those allegations in the claim for relief is for risk adjustment fraud. It doesn't go patient by patient. It doesn't go claim by claim. It doesn't go provider by provider. It's all risk adjustment fraud, and it's the same claim that --

**THE COURT:** Risk adjustment fraud not limited to those risk adjustments accomplished by Kaiser doctors?

**MR. FRIEDMAN:** That's right, Your Honor.

Now, the factual material elements that Kaiser focused -- that the government focused on in their complaint and intervention had to do with the pressures that they put on internal physicians to add diagnostic codes sometimes by way of addenda, sometimes just by way of pressure. And so the material elements that Ms. Osinek brought on this was that they had put pressure on internal physicians to provide false coding. Dr. Taylor pointed out that external physicians would provide false coding. And the key here, Your Honor, one key here is that Mr. Mazik's software tools, they ran on the claims submitted by external providers, that the way that they determined whether or not the coding was inconsistent was to look at both -- to look at the electronic health records to determine that the claims, that the diagnostic codes were inconsistent with the care being given.

So it's not that Mr. Mazik's claim is only focused on external providers, and it's not that Mr. Mazik's claim is not related to internal providers. Mr. Mazik's software tools, which are now the standard required by OIG for all Medicare Advantage organizations, these analytic tools were the ones that were used by the GAO to find 14.3 billion dollars in fraud in one year, in 2013. It's -- these are data analytic tools that determine on a broad range and on a specific range when there is inconsistency between the procedure codes and the diagnostic codes, so that if it's -- even if it's accepting as

true, because we do accept it as true that Kaiser put pressure on external physicians, Kaiser put pressure on internal physicians, it was Mr. Mazik's codes that allowed all of that fraud to go forward.

**THE COURT:** Well, that's a different theory. That's like an enablement-type theory. That's not -- that's like an enablement contributing to the victory-type theory, causation theory. That's not -- the claims, an alternative remedies theory. That's almost like an unjust enrichment kind of a theory, an equitable theory.

**MR. FRIEDMAN:** No, it's the very factual element that Judge Drozd found was the reason why Mr. Mazik could go forward with his risk adjustment fraud claims, because it was --

**THE COURT:** He limited those claims. He didn't -- some of that was barred by the first of file rule by Judge Drozd.

**MR. FRIEDMAN:** Just like Dr. Taylor's overlapping claims --

**THE COURT:** Yeah, so you don't get to do everything. It depends on how much overlap there is. And to the extent Judge Drozd found there was sufficient overlap such as to invoke the first to file rule, there it is.

So the question is whether what remains is live and viable or whether it sort of got scooped up by the settlement that the government entered into in the other case. If it did get swept

up, then there's a -- then there's a, you know, decent argument that it was sort of adjudicated in the other case and there was an alternative forum.

But, so I'm still interested in the -- I don't know if I'm looking at the right document here. I'm looking at the settlement agreement.

**MR. FRIEDMAN:** It refers to the complaint, the amended complaint.

**THE COURT:** What paragraph? Tell me what paragraph.

**MR. CIVINS:** Paragraph I on page 9 out of 430 in Document -- excuse me, Docket Number 441.

**THE COURT:** Okay. The United States contends that it has certain civil claims against the defendants for time period blah, blah, blah, as specified in the United States' Amended Complaint in Intervention. This conduct is referred to herein as the "Covered Conduct."

I assume that the waiver is for covered conduct.

**MR. CIVINS:** That's correct.

**MR. FRIEDMAN:** That's correct, Your Honor.

**MR. CIVINS:** If you continue on to -- and I want to correct a couple of inaccuracies. I can't go through them all, but one of them is that this release applied to Docket Number 110. It didn't. The docket number for the amended complaint is 240, and I suggest we take a look at a couple of sections of that in a minute.

But I also wanted to refer you to page 11 of 430, paragraph 6, sub D.

**THE COURT:** Okay. Hold on. Sub D.

**MR. CIVINS:** Where what's not released is any liability to the United States or its agencies for any conduct other than the covered conduct.

**THE COURT:** All right.

**MR. CIVINS:** Just to button up that point.

**THE COURT:** So it's circumscribed through the Covered Conduct, with capital C's, and that's defined by the complaint.

**MR. CIVINS:** And if we could, Your Honor, I want to look at one or two sections of the complaint that Mr. Mazik's counsel has pointed out in his reply and just in what he just kind of argued now.

**THE COURT:** Yeah, and the complaint, is that the 87?

**MR. CIVINS:** Document 240.

**THE COURT:** 240. U.S. Okay.

**MR. FRIEDMAN:** Yes, Your Honor. I did misspeak. The original complaint was 110. The amend complaint is 240. They both have the same claims for relief. They both broadly release and allege fraud in the risk adjustment factors. They don't go patient by patient. They don't go only on the basis of the pressures on the ...

**THE COURT:** Okay. Well, let your opponent tell me where to look to circumscribe.

**MR. CIVINS:** So in his reply, Mr. Mazik points to pages 102 through 104, Document 240, towards the end, the Causes of Action section.

**THE COURT:** Okay. Let me ... what page in the actual document is that?

**MR. CIVINS:** It is 97 in the actual document of the PDF, and the paragraph is 378 that Mr. Mazik references.

**THE COURT:** Ninety-seven.

**MR. FRIEDMAN:** I could quote from it, Your Honor.

**THE COURT:** Well, don't. Let me look at it first.

**MR. FRIEDMAN:** Okay. I have it, page 102 to 104.

**THE COURT:** Well, first I'm going to look at 97. And which paragraph?

**MR. CIVINS:** 378.

**THE COURT:** Defendants violated 31 by knowingly presenting, causing to be presented, false or fraudulent claims for payment or approval to CMS, resulting in their receiving inflated Medicare payments from CMS to which they are not entitled. Yeah.

**MR. CIVINS:** And your Honor, I would refer you to the preceding paragraph 377, which is not cited by Mr. Mazik in his reply.

**THE COURT:** It repeats the allegations contained there above.

**MR. CIVINS:** Correct.

**THE COURT:** So where does this circumscribe to payments, the inflation due to internal Kaiser?

**MR. CIVINS:** Throughout the entire complaint, right? And this is something that has been the subject of your motion to dismiss orders that Kaiser has acknowledged, that you have acknowledged, that the entire case is about addended diagnosis and exclusively addended diagnosis. In fact, in one of Kaiser's motions to dismiss they used that language, that it is exclusively about addended diagnosis.

**THE COURT:** Addended diagnosis would be --

**MR. CIVINS:** By Kaiser providers.

**THE COURT:** -- by Kaiser.

And so if I -- if you're saying if I go through all of the allegations, I'll see that?

**MR. CIVINS:** Correct.

This is the cause for action section that Mr. Mazik is pointing to, right? Every complaint has one, right, that generally lays out what the false claims are, but they don't describe the nature of the conduct or what's actually -- what the actual falsity about it, right? Those are just cause sections. The rest of the complaint is where we think the substantive analysis needs to be done.

**THE COURT:** Is there -- well, paragraph 363: The representative examples discussed below are Kaiser patients that had diagnoses added to their medical records by defendant

Permanente Medical Group physicians often many months after the visit.

So that paragraph says that the representative examples, those are examples of Kaiser doctors. Is there anything above that that gives further --

**MR. CIVINS:** Yeah.

**THE COURT:** -- indication that we're talking about Kaiser doctors only?

**MR. CIVINS:** Apologies for interrupting, Your Honor.

The entire complaint is only about Kaiser doctors adding addenda. The word "addenda" is listed 269 times throughout the complaint, and that doesn't even cover all of the retrospective diagnoses that would also qualify as addenda. There is no reference to external providers adding diagnoses anywhere in this complaint. There is no reference to false diagnoses being added the day of the visit. There is none, right? Our complaint is just about addended diagnoses by Kaiser providers who were pressured to add those diagnoses.

**THE COURT:** So addenda diagnosis as a term of art, that's the -- that was the mechanism that applied only to internal Kaiser doctors?

**MR. CIVINS:** I don't know whether external doctors were also doing addenda, but our -- because our case wasn't focused on it. Our case, our discovery, everything about this case that we worked on for a good period of time was about

addenda by Kaiser providers, no one else.

**THE COURT:** All right. You were going to point me to some paragraph or something.

**MR. CIVINS:** Sure. I mean, even going to paragraph --

**THE COURT:** Your opposing counsel.

**MR. CIVINS:** Oh, I'm sorry.

**MR. FRIEDMAN:** I was going to read from the pages 102 to 104. By settling the covered conduct claims, defendants were released from liability for --

**THE COURT:** 102 to 104 of which document?

**MR. FRIEDMAN:** Of the Document 240.

And I'm reading from the reply brief on page 4 that they -- the defendants were released from liability for allegations that they, quote, violated 31 U.S.C, Section 3729(a)(1)(A) by knowingly presenting or causing to be presented false or fraudulent claims for payment or approval to CMS resulting in their receiving inflated Medicare payments from CMS to which they were not entitled. Specifically, they presented or caused to be presented false claims for risk adjustment payments in the form of improper diagnosis codes for defendant's Medicare patients, in violation of CMS regulations and policies which defendants agreed to and were obligated to comply with.

The cause of action was not restricted to only patients

that saw only internal physicians and that only received --

**THE COURT:** Now you're talking to me. You're not reading. You're not quoting.

**MR. FRIEDMAN:** Yes, I'm sorry.

**THE COURT:** I'm not interested in the brief. I'm interested in the actual document. The document makes it clear that covered conduct is defined by the complaint, so I have to go to the complaint.

**MR. FRIEDMAN:** Yes.

**THE COURT:** And so I'm looking at the complaint, and tell me where in the complaint does it purport to state as a part of the complaint as the legal claim here, misdiagnoses, upcharge or upcoded diagnoses by anyone other than Kaiser employees. Is there somewhere in the complaint that --

**MR. FRIEDMAN:** What I read to you on those -- that paragraph, 378 and 379, don't limit it to those Medicare Advantage patients who got upcoding from internal physicians by way of addenda. Those were the material allegations that were central to the government's claim. They were part of Osinek's disclosure, but it's not -- doesn't limit what the covered conduct is.

And Dr. Taylor also alleged external providers and he's receiving a share of this recovery, and Mr. Mazik's claims cover the same Medicare patients that were released. And I was explaining in addition that the -- that Mr. --

**THE COURT:** Are there any allegations in this complaint which defines what covered conduct is that makes reference to upcoding by external non-Kaiser doctors?

**MR. FRIEDMAN:** No, Your Honor. It doesn't talk about that because it's not focused on that material element. But there are multiple material elements to the same massive fraud, and what was settled here was the inflated risk adjustment fraud. You could bring Mr. Mazik's case and continue on it, and if you prove there was tampering with the software what would you result in? You would result in fraud in the claim -- submission of a claim for capitated payments based upon risk adjustment fraud. There are multiple different avenues that support the same fraud. It's the *Berajas* case.

**THE COURT:** Let me ask the government. And I don't know. Maybe this is part of the privilege settlement discussions, but does the 4, what is it, 455 million? What is the amount?

**MR. CIVINS:** 556 million.

**THE COURT:** 556?

556 million, does that represent a settlement based on the estimated size of the payments, overpayments that were made as a result of only Kaiser doctors and not -- did not take into account any estimate of what non-Kaiser doctors may have done in terms of upcoding?

**MR. CIVINS:** Absolutely. Kaiser doctors and addended

diagnoses, that's the universe.

And I need to correct something that Mr. Friedman said just now about, well, Dr. Taylor has external claims and he's getting paid.

There is no payment being made by the government in the intervening settlement for external provider allegations. We are paying only for allegations related to addenda by internal Kaiser providers. Dr. Taylor had some declined claims, including claims about external providers we didn't intervene in, right? So we're not paying Dr. Taylor. We're not -- we didn't intervene in those claims. We didn't settle. We didn't provide a release with prejudice of those claims. That has nothing to do with this.

Our release, our settlement, our complaint, and I think you'll see this in a substantive review of what we've alleged, is all about addended diagnosis by Kaiser providers, and I don't think that's even a question.

**THE COURT:** All right. Let me ask you, other than the terms of the settlement agreement itself and its incorporation by reference, the complaint, are there any other documents in the record that shows that the settlement negotiations and the estimated sum, and the sum ultimately paid, were based on the internal liability assessment based on the internal upcoding and not enhanced in any way by any possible external upcoding?

**MR. CIVINS:** I could refer you to our press release which also ties to the language of the settlement, but again, all you need for purposes of this analysis, Your Honor -- and this will probably make it a little easier for me to respond to some of these points, because I'm having trouble responding to some of what Mr. Friedman is saying because there are some inaccuracies, respectfully, we think the question you're answering, did we settle Mazik's claim, has to be addressed through a substantive comparison of our complaint and Mr. Mazik's, in our settlement and the release therein, and that's it. Those are the documents that determine whether we settled his claim, and I think you'll see the answer is a clear, no, we did not.

**THE COURT:** Has there -- was there produced in discovery anything that shows the magnitude of damages that the government initially, either Rule 26 estimate or something that shows the government estimate of damages from the internal stuff?

**MR. CIVINS:** So there are references to numbers throughout the complaint, as you will see. I'm a little hesitant to tell you about too much of what happened. I just want to be careful about --

**THE COURT:** It's privilege.

**MR. CIVINS:** Well, yeah.

I will represent to you here today that the sample we did,

the statistically valid random sample, the patient files that we included on our complaint and that we -- I want to go a step further, but I'm going to walk that back.

All of the patient files at issue in our case that we collected, that we used as part of our damages analysis, that we negotiated with Kaiser about were all internal Kaiser providers and addended diagnosis. That's it. There was nothing else in our universe. And everything we did with our statistical valid random sample and our medical review of those records, there were over 1200 of them total, both statistically valid random sample and some additional records, all of them were addended diagnosis by Kaiser --

**THE COURT:** Is there a nonprivileged, nonprivileged document, of course, not subject to formal waiver or anything else, that is either in the record somehow? For instance, I don't know if you fulfilled -- I don't know if you did a, under Rule 26, your early disclosures, you're supposed to do a damage assessment and show that to the other side to show what, you know, your initial take, was anything like that exchanged?

**MR. CIVINS:** Yes, that's a good idea. In fact, I don't have that in front of me, but I did draft a -- one of our amended disclosures, and that might tell you exactly what you need to know.

**THE COURT:** That's not privileged.

**MR. CIVINS:** No, it's not.

And Your Honor, I'm just struggling to think of a document, a single -- we collected over 3 million documents from Kaiser during the course of our litigation. We took about 50 depositions. I, myself, took about a dozen of them and attended a dozen more. I'm just trying to think of a single document that will get you what you need, and I think that's a good idea. We can look at the disclosures and amended disclosures, and that might provide the answer.

**THE COURT:** And I assume it would show that the asserted damages or request was going to exceed 556 million, that that was compromise.

**MR. CIVINS:** I can't speak -- I don't know that we put specific numbers in there offhand, because it was -- I mean, we were developing our methodology as we went. But the entire universe, and I spent a lot of time going through that data, what the universe of diagnosis at issue was, that entire universe was all added -- of diagnoses were all added by Kaiser providers via addenda. I can represent that to you.

**THE COURT:** Well, I think the main point, if after this hearing there's some document in the record that informs this question of what was included or not that's nonprivileged, I'll allow you to submit that.

**MR. CIVINS:** We would be happy to.

**THE COURT:** But I would say even without that, looking at the terms of the settlement, the complaint as

defines what's released and defines what was at issue in this case seems singularly focused on internal Kaiser addendum diagnoses and upcharges or upcoding, the fact that there's a general statement of liability that, you know, Kaiser violated the law by X, Y and Z, that follows the 376 paragraphs which describe one thing and not, it appears not, in not any one instance is there a description of the kind of practice that the Mazik complaint complains about.

And so I just don't see how the settlement here waives your claim that's now still live. Maybe Kaiser would argue contrarily, but I'm having a hard time seeing that.

**MR. FRIEDMAN:** I -- not only will Kaiser argue it. They're on the Zoom right here, and you can ask them whether that's their position.

But let me state this. Under the government's view here they could go ahead and settle this $556 million settlement, waive all claims related to what's stated in their cause of action, which is lying about the risk adjustment factors for Kaiser's Medicaid Advantage patients, and they could do it on the basis of their complaint that was focused on the factual allegations about addenda. Tomorrow they could then go ahead and file a lawsuit on Dr. Taylor's allegations that they lied about the same Medicare Advantage payments, the same Medicare Advantage claim for payments, the same Medicare Advantage patients, the same inflated diagnostic codes, the same false

risk adjustment factors, but now because their claims were supported by facts of external physicians, there is not even a damage credit entitled.

And then the day after they settle that for independent money that's undiminished, they could go ahead and bring Mr. Mazik's claim and get the same damages from the same claim of payments for the same false risk adjustment factors for the same diagnostic codes, but because Mr. Mazik's evidence showed that they had turned off the software that would have caught the false diagnosis codes from both internal and external, because they each represent different factual elements, they can keep going back and back and back to this endless well. The way I wanted to phrase it was it does not matter how deep runs the well of Kaiser's risk adjustment fraud. The government can -- is not permitted to dip twice.

**THE COURT:** Well, but you're assuming it's the same well. You're assuming the fact in question. That's what we've been talking about for the last 45 minutes. I've been told there's different wells. You're saying it's the same well, and I'm looking at the papers to see whether it's the same well, and I'm not seeing that.

Let me ask Kaiser, since -- who's representing Kaiser? You're on the line?

**MR. ATKINSON:** Rush Atkinson on behalf of Kaiser.

**THE COURT:** What's your position on this question

about whether or not the settlement waives Mr. Mazik's claim which is based on upcharges not by Kaiser doctors but by outside doctors?

**MR. ATKINSON:** Your Honor, so to back up, I think at this point Your Honor's ruling is sort of irrelevant to the proceeding in the Eastern District, in part because Mr. Mazik has now taken the position they are the same claims. He is the master of his complaint, and he may choose where to bring claims against which defendants.

To date, Your Honor, until this hearing, Mr. Mazik has not identified a single specific claim as to what exactly he, you know, he is -- he purports to have a scheme, but he has not identified a single claim in our matter, in that Eastern District matter. He has now told you they are the same claims with the same individuals. That is the first time. He's also told the Eastern District, last week he filed a motion last week before the Eastern District on March 26 saying that the recovery -- the government's recovery on and waiver of its risk adjustment claims in Osinek will therefore provide Kaiser with a defense here based on res judicata.

So Kaiser's position is that Mr. Mazik has already conceded to this, and so therefore, you know, your ruling and the scope of relief we agree with the government is covered in the complaint, but that Mr. Mazik has, in fact in the Eastern District case, extinguished his federal claims as he announced

today.

**THE COURT:** All right. Putting aside whatever he's filed, whatever his admissions or concessions may be, have been or asserted to be, do you agree that the settlement agreement that was reached with the government in the Osinek and Taylor case covers only conduct pertaining to Kaiser doctor-generated upcodes and not external doctor-generated upcodes?

**MR. ATKINSON:** The scope of relief, Your Honor, and the nature of the government's complaint only started with complaints that involved Kaiser doctors. If there's a question as to whether or not there's overlapping claims, I think the government's conceded it's possible -- we don't have a position -- in the sense of it could be the same claim, if you could have the same individual as Your Honor noted, submit the same diagnosis being submitted by two different doctors.

**THE COURT:** Right. But a separate patient enrollee who is only subject to an upcharge diagnosis or upcoded diagnosis by an external doctor does not fall within the four corners of this release. Is that -- do you agree with that?

**MR. ATKINSON:** Claims that -- solely by a external doctor, Your Honor? I don't think that we've seen that allegation in the government's complaint.

**THE COURT:** So you would agree that in the -- if it's not in the complaint, that the settlement agreement was intended to waive those claims that are in the complaint,

correct?

**MR. ATKINSON:** That is correct. Our scope of relief is only to the conduct that's alleged in the amended complaint.

**THE COURT:** Well, I mean, I think it's pretty clear that it's defined by -- and that's what the thing says. That's what ...

(Zoom audio failure.)

**MR. FRIEDMAN:** There is only one kind of fraud, Your Honor, and it's the claim for payment.

**THE COURT:** No, I understand that. I understand that.

**MR. FRIEDMAN:** It's the same thing as in the Northrop case, Your Honor.

**THE COURT:** Now we're going around in circles. Not helpful.

**MR. FRIEDMAN:** Can I add one additional?

**THE COURT:** One last thing, and then I'm going to conclude this hearing.

**MR. FRIEDMAN:** Okay. The counsel referred to the alternate remedy provision as it has to be complete overlap, that it has to overlap not only on the underlying claim for payment, but also all the different material elements that go into that, and that's not accurate. The cases say, including the *Bledsoe* case, that if there's any overlap. And that's exactly what we have here. We have an overlap on the ultimate

claim for payment, and under *the Berajas* decision that is what is overlapping. We just had material facts that led to it, to the same claim for payments, but they were additional reasons why -- additional facts supporting that it was false. And so that overlap is enough to get us entitlement to a share of the recovery, and I'm certain that there will be consequences for Mr. Mazik in the district court. There's --

**THE COURT:** Well, my view is the question, to put it metaphorically, is how many wells are there. If it's the same well and they're different, the water got there by, you know, different methods, it's still one well. But if there are different wells and come from completely different sources, then taking one well out of commission doesn't take the other well out of commission, and I think that's what we have here.

Now, there may have been some instances of overlap. Like you say, you posit a situation where a person was reviewed and upcoded by the internal doctor, saw a specialist, same upcode again, and that led to the false payment. Maybe there's some overlap then, but that's really a coincidence. The claim that was brought by the government was predicated on one type of fraud, and the damages were calculated, and the waiver, and it appears to me that the scope of the release pertains to one kind of fraud, does not release every kind of fraud that resulted in an overpayment and an upcode. And so I have a hard time seeing how the alternative remedy provision of the FCA

applies, but I will take a second look and take the matter under submission.

**MR. CIVINS:** Thank you, Your Honor.

**THE COURT:** Thank you, Counsel.

**MR. FRIEDMAN:** In doing that, Your Honor, I'd ask that you consider the fact that the actual software tools would have reflected and exposed the single well, that there's just one --

**THE COURT:** I understand that, and that's a causation kind of argument. Which, I understand that you made that argument. Again, I have a hard time seeing how statutorily that affords a basis. If you provide helpful information to the government, I don't know, do you get an extra bounty? Even if you didn't, I don't see a basis for that.

I understand the equitable argument. I understand the cause are causation argument. Just like if you provide a key witness and they disclose, you've identified a key witness to disclose both kinds but it was essential to the one claim that was being prosecuted, should the relator who brought forth this witness, you know, get some compensation by facilitating that settlement? It's like an equitable argument, but I don't know if this statute provides for that kind of equitable, you know, relief.

I understand the argument.

**MR. FRIEDMAN:** I agree, Your Honor.

It's not based on some equitable claim that it's only fair, although I think it is fair. Mr. Mazik litigated his case, and he has a legitimate case and now it's over, at least his federal claims are. But it's not based on whether Mr. Mazik assisted the government in the settlement. What it's based on is whether or not the government's settlement has now extinguished his claim or impacted his claim.

**THE COURT:** And that's what we've been talking about. Thank you.

(Proceedings concluded at 2:43 p.m.)

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**CERTIFICATE OF REPORTER**

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Monday, April 13, 2026

Stephen W. Franklin, RMR, CRR
Official Reporter, U.S. District Court