

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the “United States”), and St. James Healthcare (SJH) and SCL Health System (SCLHS) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. SJH is a licensed, non-profit hospital located in Butte, Montana. SCLHS is a faith-based, non-profit health care organization that owns and operates hospitals, clinics, and ambulatory service centers in California, Colorado, Kansas, and Montana. SJH is operated by SCLHS. Throughout the time period relevant to this Agreement, SJH and SCLHS submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1.

B. The conduct described in this paragraph is hereinafter referred to as the “Covered Conduct.” In June 2010 and later supplemental communications, SJH and SCLHS disclosed to the United States certain actions and arrangements that may have been unlawful. Specifically, SJH and SCLHS disclosed that on or about December 15, 2005, SJH and a number of physicians and physician groups entered into a joint venture known as the Regional Medical Arts Partnership, LLC (RMAP) that was formed for the purpose of developing a medical office building on the SJH campus. The RMAP Operating Agreement required that SJH (the “Class A Member”) and the physicians/physician groups identified in Attachment A (the “Class B Members”) make equal equity contributions so that each Class had a fifty percent ownership

interests in RMAP, and that SJH make an additional contribution to RMAP characterized as the “St. James Cost Prepayment” (the “Cost Prepayment”). The United States contends that as a result of the Cost Prepayment, the Class B Members received an effective ownership interest in RMAP that was disproportionate to the amount of their capital contributions. The United States further contends that as a result of the Cost Prepayment, RMAP’s mortgage on the building was lower than it would otherwise have been, allowing RMAP to service that debt through leases to the Class B Members that the United States contends were below fair market value. SJH and SCLHS also disclosed that from March 1, 2007 to August 31, 2012, RMAP leased land owned by SCLHS. The United States contends that payments under that ground lease were below fair market value rates. SJH and SCLHS also disclosed they had entered into a Shared Facilities Agreement in effect from on or about March 1, 2007 to August 31, 2012, and a Use and Maintenance Agreement in effect from on or about March 1, 2007 to August 31, 2012, with RMAP. The United States contends that payments under those agreements were likely not fair market value. The United States further contends that the actions and arrangements set forth in this paragraph violated the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) and the Stark Law, 42 U.S.C. § 1395nn, and that as a result of these violations, SJH submitted claims to the Medicare program for items and services provided to patients referred by the Class B Members to SJH that violated the False Claims Act, 31 U.S.C. §§ 3729-3733, and that it has civil claims against SJH and SCLHS arising from these actions and arrangements from December 15, 2005, through August 31, 2012.

C. This Settlement Agreement is neither an admission of liability by SJH or SCLHS, nor a concession by the United States that its claims are not well founded.

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

TERMS AND CONDITIONS

1. SJH and SCLHS shall pay to the United States \$3,850,000 (Settlement Amount), plus interest on the Settlement Amount at a rate of 2.125% from August 12, 2013, through the date of payment, no later than ten days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Montana.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon SJH and SCLHS's full payment of the Settlement Amount, the United States releases SJH and SCLHS, together with their current and former parent corporations, direct and indirect subsidiaries, divisions, and affiliates, and their successors and assigns, as well as their officers, directors, employees, and agents, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the civil monetary provision of the Stark Law at 42 U.S.C. § 1395nn(g)(3); and the common law theories of payment by mistake, unjust enrichment, and fraud.

3. In consideration for SJH and SCLHS's disclosure of this matter and the obligations of SJH and SCLHS in this Agreement, and conditioned upon SJH and SCLHS's full payment of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid,

and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against SJH and SCLHS under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), the civil monetary penalty provision of the Stark Law at 42 U.S.C. § 1395nn(g)(3), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 4 (concerning excluded claims), below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude SJH and SCLHS from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 4, below.

4. Notwithstanding the release given in paragraphs 2 and 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

- g. Any liability for failure to deliver goods or services due; and
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. SJH and SCLHS waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

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

7. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and SJH and SCLHS agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.

8. SJH and SCLHS agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of SJH or SCLHS, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) SJH and SCLHS's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment SJH and SCLHS make to the United States pursuant to this Agreement

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by SJH and SCLHS, and they shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any

cost report, cost statement, information statement, or payment request submitted by SJH or SCLHS or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

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

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by SJH or SCLHS or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on SJH or SCLHS or any of their subsidiaries or affiliates' cost reports, cost statements, or information reports.

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

9. SJH and SCLHS agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, SJH and SCLHS shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. SJH and SCLHS further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in their possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that has been performed by another on their behalf.

10. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in this Agreement, including Paragraph 11 (waiver for beneficiaries paragraph) below.

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

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

13. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

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

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

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

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

18. This Agreement is binding on SJH and SCLHS's successors, transferees, heirs, and assigns.

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

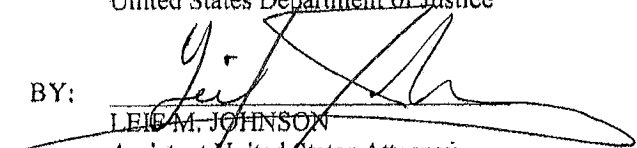
20. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

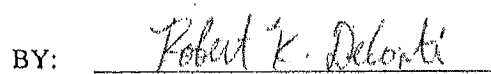
DATED: 12/30/2013 BY: 
SHAUN M. PETTIGREW

Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 12/19/13

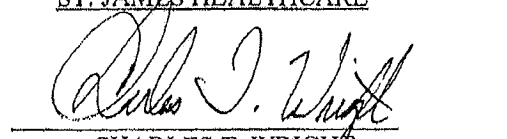
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DATED: 12/19/13

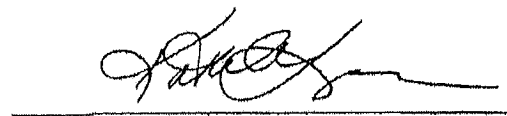
BY: 
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

ST. JAMES HEALTHCARE


DATED: 11/26/13 BY:



CHARLES T. WRIGHT
President and Chief Executive Officer

DATED: 11/26/13 BY:


KATHERINE A. LAUER
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Counsel for St. James Healthcare

SCL HEALTH SYSTEM

DATED: 11/26/13 BY: 
MICHAEL A. SLUBOWSKI
President and Chief Executive Officer

DATED: 11/26/13 BY: 
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Counsel for SCL Health System

ATTACHMENT 1 – CLASS B MEMBERS

Physician Groups
Summit Surgery Center, LLC
Butte Orthopedics
Rocky Mountain Clinic
Physicians
Nick M. DiGiovine, M.D.
Richard Gould, M.D.
Michael Gallagher, M.D.
Charles E. Buehler, M.D.
Bart Martyak, M.D.
Nicholas Blavatsky, M.D.
Kenneth Graham, M.D.
Sharon Hecker, M.D.
Dennis Salisbury, M.D.
Jessie Salisbury, M.D.