

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”), the State of California, acting through the California Department of Justice Division of Medi-Cal Fraud and Elder Abuse (“California”), Twin Cities Community Hospital (“Twin Cities”) and Sierra Vista Regional Medical Center (“Sierra Vista”) (collectively “SV/TC” or the “Hospitals”), and Julio Bordas (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. The Hospitals are acute healthcare facilities operating in San Luis Obispo County, California. The Hospitals are subsidiaries of Tenet Healthcare Corporation (“Tenet”). The Hospitals contracted with Santa Barbara San Luis Obispo Regional Health Authority d/b/a CenCal Health (“CenCal”) to provide healthcare services to patients under California’s Medicaid program (known as “Medi-Cal”).

B. On December 22, 2015, Relator filed a qui tam action in the United States District Court for the Central District of California captioned *United States and State of California ex rel. Julio Bordas v. CenCal Health, Cottage Health System, Dignity Health, Lompoc Valley Medical Center, and Tenet Healthcare Corporation*, [REDACTED] pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (“FCA”), and the California False Claims Act (“CFCA”), California Government Code § 12650, et seq. (the “Civil Action”). On December 10, 2018, Relator filed a First Amended Complaint in the Civil Action, adding Community Health Centers of the Central Coast, Inc., Pacific Central Coast Health Centers, and Sansum Santa Barbara Medical Clinic, Inc. as defendants. Relator alleges, generally, that Tenet

violated the FCA and the CFCA in connection with certain payments made by CenCal to the Hospitals in connection with Medi-Cal Adult Expansion under the Affordable Care Act (referred to as the “SV/TC Allegations”). Relator alleges that CenCal and the other defendants also violated the FCA and CFCA in connection with certain payments made by CenCal to the other defendants in connection with Medi-Cal Adult Expansion under the Affordable Care Act.

C. The United States and California contend that the Hospitals submitted or caused to be submitted claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396w 5.

D. The United States and California contend that they have certain civil claims against the Hospitals arising from the Hospitals submitting or causing the submission of false claims to Medi-Cal pursuant to two Medi-Cal Access and Coordination Expansion (“ACE”) Program Agreements (the “ACE Agreements”) for the provision of “Enhanced Services” to Adult Expansion Medi-Cal members between January 1, 2014, and April 30, 2015. Such ACE Agreements were executed (i) by Sierra Vista on April 25, 2015 and by CenCal on April 28, 2015; and (ii) by Twin Cities on April 29, 2015 and by CenCal on April 28, 2015. On May 14, 2015, CenCal made lump sum payments to Sierra Vista and to Twin Cities pursuant to the ACE Agreements. The United States and California contend that the May 14, 2015 payments to Sierra Vista and to Twin Cities under the ACE Agreements were wrongful because (a) the payments were not for “Allowed Medical Expenses” under CenCal’s contract with DHCS; (b) the payments were unlawful gifts of public funds in violation of the California Constitution; and (c) the payments were for pre-determined amounts that did not reflect the cost or fair market value of any Enhanced Services provided, and/or the Enhanced Services were duplicative of Services already required to be rendered. That conduct described in this Paragraph D is referred to below as the “Covered Conduct.”

E. The Hospitals deny the allegations in Paragraph D.

F. This Settlement Agreement is neither an admission of liability by the Hospitals nor a concession by the United States or California that their claims are not well founded.

G. Relator claims entitlement under 31 U.S.C. § 3730(d) and California Government Code § 12652(g) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

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. Hospitals shall pay to the United States and California \$7,500,000 (the "Settlement Amount"), of which \$3,750,000 constitutes restitution, plus interest on the Settlement Amount at a rate of 1.625% per annum from January 14, 2022, as follows:

a. Hospitals shall pay the United States \$6,750,000, plus interest at a rate of 1.625% per annum from January 14, 2022, no later than 30 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

b. Hospitals shall pay California \$750,000, plus interest at a rate of 1.625% per annum from January 14, 2022, no later than 30 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the California Department of Justice Division of Medi-Cal Fraud and Elder Abuse.

2. Conditioned upon the United States and California receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$1,299,375 and California shall pay \$190,875 to Relator by electronic funds transfer (Relator's Share).

3. Relator claims entitlement under 31 U.S.C. § 3730(d) and California Government Code § 12652(g) to Relator's reasonable expenses, attorney's fees and costs ("Relator's Statutory Fee Claim"), and Relator's Statutory Fee Claim is not included in this Agreement or the Settlement Amount and this claim is expressly reserved.

4. Subject to the exceptions in Paragraph 8 (concerning reserved claims) below, and upon the United States' and California's receipt of the Settlement Amount plus interest due under Paragraph 1, the United States releases the Hospitals, together with their current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. In consideration of the obligations of the Hospitals in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and the Hospitals, and upon the United States' and California's receipt of full payment of the Settlement Amount plus interest due under Paragraph 1, the OIG-HHS shall 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 the Hospitals under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) 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 this paragraph and in Paragraph 8 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude the Hospitals 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 8, below.

6. Subject to the exceptions in Paragraph 8 (concerning reserved claims) below, and upon the United States' and California's receipt of the Settlement Amount plus interest due under Paragraph 1, California releases the Hospitals, together with their current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; affiliates; divisions; current or former corporate owners; and the corporate successors and assigns of any of them of any of them from any civil or administrative monetary claim the California has for the Covered Conduct under the California False Claims Act, California Government Code §§ 12650-12656; or the common law theories of payment by mistake, unjust enrichment, and fraud.

7. Subject to the exceptions in Paragraph 8 (concerning reserved claims) below, and upon the United States' and California's receipt of the Settlement Amount, plus interest due under Paragraph 1, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases the Hospitals, together with their current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns and their directors, officers, agents, administrators, attorneys and employees, of any of them from any civil monetary claim the Relator has on behalf of the United States for the SV/TC Allegations under the False Claims Act, 31 U.S.C. §§ 3729-3733 and the California False Claims Act, California Government Code §§ 12650-12656.

8. Notwithstanding the releases given in Paragraphs 4 through 6 this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

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

9. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and California Government Code § 12652(e)(2)(B). Conditioned upon Relator's receipt of the Relator's Share, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730 as to the SV/TC Allegations, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action as to the SV/TC Allegations; and Relator and his heirs, successors, attorneys, agents, and

assigns fully and finally release, waive, and forever discharge California, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action as to the SV/TC Allegations, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action as to the SV/TC Allegations.

10. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases the Hospitals, together with their current or former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; and the corporate successors and assigns and their directors, officers, agents, administrators, attorneys and employees, from any liability to Relator arising from the filing of the Civil Action, except that Relator expressly reserves and does not waive or release Relator's Statutory Fee Claim. Nothing in this release shall be construed to limit or release any claims against the other defendants in the Civil Action.

11. The Hospitals waive and shall not assert any defenses the Hospitals 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.

12. The Hospitals fully and finally release the United States and California, their agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the Hospitals have asserted, could have asserted, or may assert in the future against the United States or California, their agencies, officers, agents, employees, and servants, related to the SV/TC Allegations or the United States' and California's investigation or prosecution thereof.

13. The Hospitals, together with their current or former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; and the corporate successors and assigns and their officers, agents, administrators, attorneys and employees fully and finally release the Relator, his heirs, successors, attorneys, agents, and assigns, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the Hospitals, their current or former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; and the corporate successors and assigns and their officers, agents, administrators, attorneys and employees have asserted, could have asserted, or may assert in the future against the Relator, related to the SV/TC Allegations or the Relator's investigation and prosecution thereof.

14. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by Medi-Cal, related to the Covered Conduct; and the Hospitals agree not to resubmit to any Medi-Cal contractor any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

15. The Hospitals agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the Hospitals, 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) the Hospitals' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment the Hospitals make to the United States and to California pursuant to this Agreement and any payments that the Hospitals may make to Relator, including costs and attorneys' fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the CIA to: (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and (ii) prepare and submit reports to the OIG-HHS

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). However, nothing in paragraph 15.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to the Hospitals.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by the Hospitals, and the Hospitals 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 the Hospitals or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: the Hospitals further agree that within 90 days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by the Hospitals 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. The Hospitals agree that the United States, at a minimum, shall be entitled to recoup from the Hospitals 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 the Hospitals or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on the Hospitals 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 the Hospitals' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

16. The Hospitals agree to cooperate fully, truthfully, and actively with the United States regarding any matter about which the Hospitals have any knowledge or information

relating to any ongoing investigation, litigation, trial, or other proceeding arising out of any ongoing federal investigation related to the SV/TC Allegations. The Hospitals' cooperation shall include the following:

a. Upon reasonable notice, the Hospitals shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use their 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.

b. The Hospitals agree to provide testimony, declarations/affidavits, or other information necessary to identify or establish the original location, authenticity, or other basis for admissibility into evidence documents or physical evidence as requested by the United States; and

c. The Hospitals 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 SV/TC Allegations that they have undertaken, or that has been performed by another on their behalf.

d. Any refusal by the Hospitals to cooperate fully, truthfully, and actively will constitute a breach of this Agreement.

17. 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 herein and in Paragraph 18 (waiver for beneficiaries paragraph), below.

18. The Hospitals 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.

19. Upon receipt of the payment described in Paragraph 1, above, the United States, California, and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal as to Tenet pursuant to Rule 41(a)(1) as follows:

a. the Stipulation of Dismissal shall be with prejudice as to the United States' and California's claims against Tenet as to the Covered Conduct;

b. the Stipulation of Dismissal shall be without prejudice as to the United States and California as to all other claims against Tenet; and

c. the Stipulation of Dismissal shall be with prejudice as to Relator as to all claims against Tenet, with the exception of Relator's Statutory Fee Claim, which Relator expressly reserves.

20. Except as specifically provided herein, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

22. 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 Central District of California. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

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

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

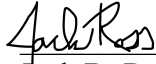
26. This Agreement is binding on the Hospitals' successors, transferees, heirs, and assigns.

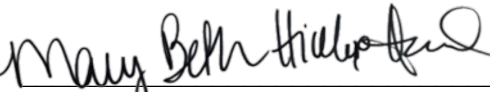
30. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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

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

THE UNITED STATES OF AMERICA

DATED: December 2, 2022 BY: 
Jack D. Ross
Assistant United States Attorney
Central District of California

DATED: December 2, 2022 BY: 
Mary Beth Hickcox-Howard
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: _____ BY: _____
Lisa M. Re
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

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

Jack D. Ross
Assistant United States Attorney
Central District of California

DATED: _____

BY: _____

Mary Beth Hickcox-Howard
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice


DATED: _____

BY: _____


Lisa M. Re
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

THE STATE OF CALIFORNIA

DATED: 12/02/22

BY: 
Nicholas N. Paul
Senior Assistant Attorney General
California Department of Justice
Division of Medi-Cal Fraud & Elder Abuse

DATED: 12/02/2022

BY: 
Michelle Baass
Director
California Department of Healthcare Services

TWIN CITIES COMMUNITY HOSPITAL - DEFENDANT

DATED: 12/2/22

BY:

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Mark Lisa
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Mark Lisa
Chief Executive Officer
Twin Cities Community Hospital

DATED: 12/2/22

BY:

Stacy Brainin

Stacy L. Brainin
Haynes and Boone, LLP
Counsel for Twin Cities Community Hospital

SIERRA VISTA REGIONAL MEDICAL CENTER - DEFENDANT

DATED: 12/2/22

BY:

DocuSigned by:
Mark Lisa
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Mark Lisa
Chief Executive Officer
Sierra Vista Regional Medical Center

DATED: 12/2/22

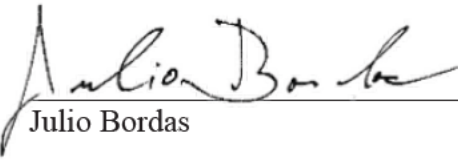
BY:




Stacy L. Brainin
Haynes and Boone, LLP
Counsel for Sierra Vista Regional Medical Center

Julio Bordas - RELATOR

DATED: 12/02/2022

BY: 
Julio Bordas

DATED: 12/02/2022

BY: 
Edward Arens
Phillips & Cohen LLP
Counsel for Julio Bordas