

## 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 Dr. Aytac Apaydin (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Dr. Apaydin (“Physician”) is a resident of California. Physician is a urologist currently practicing in Monterey County, California.

B. The United States contends that Physician 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 (“Medicare”).

C. The United States contends that it has certain civil claims against Physician arising from the submission of claims to Medicare for image-guided radiation therapy (“IGRT”) performed at the Advanced Radiation Oncology Center (“AROC”) in Salinas, California, with dates of service from April 1, 2008 through December 31, 2014. The United States contends that Physician and Dr. Stephen Worsham jointly owned AROC and caused AROC to enter into “lease” arrangements with other urologists or their physician practices in the Salinas and Monterey, California area (“Lessee Urologists”) whereby the Lessee Urologists billed insurers, including Medicare, for IGRT referred by the Lessee Urologists to their own physician practices but furnished to patients at AROC. The United States contends that Physician knew that AROC did not meet the location requirements applicable to the Lessee Urologists’ physician practices under the physician self-referral law, 42 U.S.C. § 1395nn (commonly known as the “Stark Law”), and, therefore, that the claims submitted to Medicare by the Lessee Urologists for the

IGRT services furnished at AROC were not eligible for payment by Medicare. The United States also contends that the remuneration provided to the Lessee Urologists under the arrangements, in the form of potential profits from their referrals, was offered in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). The United States further contends that Dr. Worsham and Physician knowingly caused Salinas Valley Urology Associates (“SVUA”), their jointly owned medical practice, to bill Medicare for IGRT furnished to patients at AROC when the financial relationship between AROC and SVUA did not comply with any exception to the Stark Law. The conduct described in this Paragraph is referred to below as the “Covered Conduct.”

D. This Settlement Agreement is neither an admission of liability by Physician nor a concession by the United States that its claims are not well founded. Physician denies the United States’ allegations in Recital C.

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. Physician agrees to pay to the United States the sum of \$205,000 (“Settlement Amount”), by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Northern District of California, as follows:
  - a. Within ten days of the Effective Date of this Agreement, Physician will make a principal payment to the United States in the amount of Fifteen Thousand Dollars (\$15,000);

- b. Within six months of the Effective Date of this Agreement, Physician will make a second principal payment to the United States of Fifteen Thousand Dollars (\$15,000);
- c. Over a period of five years, Physician will pay the remaining One Hundred and Ninety Thousand Dollars (\$190,000), plus interest at 2.375% per annum on the outstanding balance, as set forth below and in the chart attached hereto as Exhibit 1 (the "Schedule"):
  - i. One thousand and forty-one dollars and sixty-six cents (\$1,041.66) per month, to be paid on the first business day of each month, for the first twenty-four (24) months following the Effective Date of this Agreement.
  - ii. Four thousand one hundred and sixty-six dollars and sixty-six cents (\$4,166.66) per month, to be paid on the first business day of each month, for months 25 through 60 following the Effective Date of this Agreement.
  - iii. Physician may, at any time, pay the remaining payments, together with any accrued interest, ahead of schedule without any prepayment penalty.
- d. Physician shall provide the fullest security possible during the term of repayment set forth in this Paragraph 1 for the balance of all payments of the Settlement Amount still due and owing in the form of lien rights or other security interest on collateral approved by the United States, including, but not limited to, all assets and earnings of the Aytac H. Apaydin Family Trust and the Kazim Corporation. Physician shall submit liens or security instruments

to the United States for approval and filing within thirty (30) days of the Effective Date of this agreement.

e. Physician agrees to provide written notice to the United States of any sale, merger, or liquidation of significant assets by Physician, the Aytac H.

Apaydin Family Trust or Kazim Corporation during the Settlement Payment Period (“Sale Event”).

i. The United States, at its sole discretion, may terminate this Agreement if Physician fails to provide, written notice within seven (7) days of a Sale Event.

ii. Upon the occurrence of a Sale Event, all remaining payments owed by Physician shall be accelerated and shall become immediately due and payable within fifteen (15) days of the closing on the Sale Event, plus accrued interest from the closing of the Sale Event until the date of full payment to the United States.

f. Interest shall accrue on the unpaid settlement amount as indicated in the Schedule. Collectively the Settlement Amount and interest received by the United States shall be referred to as the “Settlement Proceeds.”

2. In consideration of the obligations of Physician in this Agreement, the United States agrees to refrain from instituting, directing, or maintaining any civil action for 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 civil monetary penalty provisions of the Stark Law, 42 U.S.C. §§ 1395nn(g)(3) and (4); 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, except as reserved below in Paragraph 4

(concerning excluded claims), Paragraph 5 (concerning undisclosed assets), Paragraph 13 (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), and Paragraphs 14 and 15 (concerning default).

3. Upon Physician's full payment of the Settlement Proceeds, the United States will release Physician 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 civil monetary penalty provisions of the Stark Law, 42 U.S.C. §§ 1395nn(g)(3) and (4); 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, subject to the exceptions in Paragraph 4 (concerning excluded claims), Paragraph 5 (concerning undisclosed assets), Paragraph 13 (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement) and Paragraphs 14 and 15 (concerning default).

4. Notwithstanding the covenant not to sue in Paragraph 2 and the anticipated release in Paragraph 3, 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 or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

- e. Any liability based upon obligations created by this Agreement;
- f. Any liability 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. Physician has provided sworn financial disclosure statements (“Financial Statements”) for himself, SVUA, and AROC to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. Physician warrants that the Financial Statements are complete, accurate, and current. If the United States learns of asset(s) in which Physician had an interest at the time of this Agreement that were not disclosed in the Financial Statements, or if the United States learns of any misrepresentation by Physician on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the Physician’s estimated net worth set forth in the Financial Statements by Twenty-Five Thousand Dollars (\$25,000) or more, the United States may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of Physician previously undisclosed. Physician agrees not to contest any collection action undertaken by the United States pursuant to this provision, and immediately to pay the United States all reasonable costs incurred in such an action, including attorney’s fees and expenses.

6. In the event that the United States, pursuant to Paragraph 5 (concerning disclosure of assets), above, opts to rescind this Agreement, Physician agrees not to plead, argue, or

otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within ninety (90) calendar days of written notification to Physician that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on April 1, 2014.

7. Physician waives and shall not assert any defenses he 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.

8. Physician fully and finally releases 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 Physician has asserted, could have asserted, or may assert in the future against the United States, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' investigation and prosecution thereof.

9. 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 Physician agrees not to resubmit to any Medicare contractor or any state payer any

previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

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 Paragraph 11 (waiver for beneficiaries paragraph), below.

11. Physician agrees, on behalf of himself and SVUA, that he waives 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. Physician warrants that he has reviewed his financial situation and that he currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Physician, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Physician was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

13. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Physician commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of



debtors (a) seeking to have any order for relief of Physician's debts, or seeking to adjudicate Physician as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Physician or for all or any substantial part of Physician's assets, Physician agrees as follows:

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

b. If Physician's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Physician for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3, above. Physician agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Physician shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Physician shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within ninety calendar days of written notification to Physician that the releases have been rescinded

pursuant to this Paragraph, except to the extent such defenses were available on April 1, 2014; and (iii) the United States has a valid claim against Physician in the amount of \$10,000,000, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Physician acknowledges that his agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. Time is of the essence as to all payments required under Paragraph 1. In the event that Physician fails to pay the complete amount of any of the payments owed pursuant to this Agreement within ten (10) days of the due date, Physician shall be in “Default” of this Agreement. The United States will provide written notice of the Default to Physician (the “Notice of Default”) and Physician shall have the opportunity to cure such Default within five (5) business days from the date of receipt of the notice. If Physician fails to cure such Default within five (5) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount and any interest then accrued shall become accelerated and immediately due and payable, and interest shall accrue at a simple rate of 12% per annum from the date of Default until the date of payment. Moreover, if Physician fails to cure such Default within five (5) business days of receiving the Notice of Default, the United States may, at its sole option, (a) offset the remaining unpaid balance from any amount due and owing to Physician, or any of its subsidiaries or affiliates by any department, agency, or agent of the United States at the time of default; (b) file an action for specific performance of this Agreement; (c) file a civil action for the Covered Conduct; or (d) exercise any other rights granted by law or in equity. In the event a complaint is filed pursuant to subsection (c) of the preceding sentence, Physician agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, except to the extent such defenses were available to Physician on

April 1, 2014. Physician further agrees not to contest any collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court. Physician shall pay the United States all reasonable costs of collection enforcement under this Paragraph, including attorney's fees and expenses, provided however that this sentence shall not apply to the extent the United States elects to file a civil action for the Covered Conduct pursuant to subsection (c) of this Paragraph.

15. In the event that Physician fails to pay any amount as provided in Paragraph 1 within ten (10) business days of the due date, OIG-HHS may exclude Physician from participating in all Federal health care programs until Defendants pay the Settlement Amount and reasonable costs as set forth in Paragraph 1, above. OIG-HHS will provide written notice of any such exclusion to Physician. Physician waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion Physician wishes to apply for reinstatement, Physician must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Physician will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

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

17. 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.

18. 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 Northern 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.

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

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

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

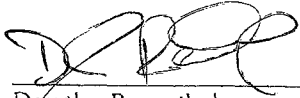
22. This Agreement is binding on Physician's successors, transferees, heirs, and assigns.

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

24. 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.

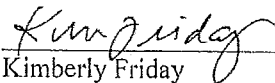
THE UNITED STATES OF AMERICA

DATED: 1/18/18


BY:   
Douglas Rosenthal  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

Alex G. Tse  
Acting United States Attorney

DATED: 1/17/18

BY:   
Kimberly Friday  
Assistant United States Attorney  
U.S. Attorney's Office, Northern District of California

DATED: 1/11/2018

BY:   
Lisa Re  
Assistant Inspector General for Legal Affairs  
Office of Inspector General  
U.S. Department of Health and Human Services

DR. AYTAC APAYDIN

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

BY: \_\_\_\_\_  
Aytac Apaydin, M.D.

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

BY: \_\_\_\_\_  
R. Gregory Cochran, Esq.  
Robert J. Sullivan, Esq.  
Nossaman LLP  
Counsel for Aytac Apaydin

THE UNITED STATES OF AMERICA

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

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

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

Alex G. Tse  
Acting United States Attorney

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

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

Kimberly Friday  
Assistant United States Attorney  
U.S. Attorney's Office, Northern District of California

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

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

Lisa Re  
Assistant Inspector General for Legal Affairs  
Office of Inspector General  
U.S. Department of Health and Human Services

DR. AYTAC APAYDIN

DATED: 1/10/18

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

Aytac Apaydin, M.D.

DATED: 1-10-18

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

R. Gregory Cochran, Esq.  
Robert J. Sullivan, Esq.  
Nossaman LLP  
Counsel for Aytac Apaydin

**Exhibit 1**  
**Payment Schedule**

	<u>Payment</u>	<u>2.375%</u> <u>Interest</u>	<u>Principal</u>	<u>Balance</u>
Settlement Amount				\$205,000.00
Initial Payment	\$15,000.00		\$15,000.00	\$190,000.00
Month				
1	\$1,417.70	\$376.04	\$1,041.66	\$188,958.34
2	\$1,415.64	\$373.98	\$1,041.66	\$187,916.68
3	\$1,413.58	\$371.92	\$1,041.66	\$186,875.02
4	\$1,411.52	\$369.86	\$1,041.66	\$185,833.36
5	\$1,409.46	\$367.80	\$1,041.66	\$184,791.70
6	\$16,407.39	\$365.73	\$16,041.66	\$168,750.04
7	\$1,375.64	\$333.98	\$1,041.66	\$167,708.38
8	\$1,373.58	\$331.92	\$1,041.66	\$166,666.72
9	\$1,371.52	\$329.86	\$1,041.66	\$165,625.06
10	\$1,369.46	\$327.80	\$1,041.66	\$164,583.40
11	\$1,367.40	\$325.74	\$1,041.66	\$163,541.74
12	\$1,365.34	\$323.68	\$1,041.66	\$162,500.08
13	\$1,363.27	\$321.61	\$1,041.66	\$161,458.42
14	\$1,361.21	\$319.55	\$1,041.66	\$160,416.76
15	\$1,359.15	\$317.49	\$1,041.66	\$159,375.10
16	\$1,357.09	\$315.43	\$1,041.66	\$158,333.44
17	\$1,355.03	\$313.37	\$1,041.66	\$157,291.78
18	\$1,352.97	\$311.31	\$1,041.66	\$156,250.12
19	\$1,350.91	\$309.25	\$1,041.66	\$155,208.46
20	\$1,348.84	\$307.18	\$1,041.66	\$154,166.80
21	\$1,346.78	\$305.12	\$1,041.66	\$153,125.14
22	\$1,344.72	\$303.06	\$1,041.66	\$152,083.48
23	\$1,342.66	\$301.00	\$1,041.66	\$151,041.82
24	\$1,340.60	\$298.94	\$1,041.66	\$150,000.16
25	\$4,463.54	\$296.88	\$4,166.66	\$145,833.50
26	\$4,455.29	\$288.63	\$4,166.66	\$141,666.84
27	\$4,447.04	\$280.38	\$4,166.66	\$137,500.18
28	\$4,438.80	\$272.14	\$4,166.66	\$133,333.52
29	\$4,430.55	\$263.89	\$4,166.66	\$129,166.86
30	\$4,422.30	\$255.64	\$4,166.66	\$125,000.20
31	\$4,414.06	\$247.40	\$4,166.66	\$120,833.54
32	\$4,405.81	\$239.15	\$4,166.66	\$116,666.88
33	\$4,397.56	\$230.90	\$4,166.66	\$112,500.22
34	\$4,389.32	\$222.66	\$4,166.66	\$108,333.56
35	\$4,381.07	\$214.41	\$4,166.66	\$104,166.90
36	\$4,372.82	\$206.16	\$4,166.66	\$100,000.24
37	\$4,364.58	\$197.92	\$4,166.66	\$95,833.58

38	\$4,356.33	\$189.67	\$4,166.66	\$91,666.92
39	\$4,348.08	\$181.42	\$4,166.66	\$87,500.26
40	\$4,339.84	\$173.18	\$4,166.66	\$83,333.60
41	\$4,331.59	\$164.93	\$4,166.66	\$79,166.94
42	\$4,323.34	\$156.68	\$4,166.66	\$75,000.28
43	\$4,315.10	\$148.44	\$4,166.66	\$70,833.62
44	\$4,306.85	\$140.19	\$4,166.66	\$66,666.96
45	\$4,298.61	\$131.95	\$4,166.66	\$62,500.30
46	\$4,290.36	\$123.70	\$4,166.66	\$58,333.64
47	\$4,282.11	\$115.45	\$4,166.66	\$54,166.98
48	\$4,273.87	\$107.21	\$4,166.66	\$50,000.32
49	\$4,265.62	\$98.96	\$4,166.66	\$45,833.66
50	\$4,257.37	\$90.71	\$4,166.66	\$41,667.00
51	\$4,249.13	\$82.47	\$4,166.66	\$37,500.34
52	\$4,240.88	\$74.22	\$4,166.66	\$33,333.68
53	\$4,232.63	\$65.97	\$4,166.66	\$29,167.02
54	\$4,224.39	\$57.73	\$4,166.66	\$25,000.36
55	\$4,216.14	\$49.48	\$4,166.66	\$20,833.70
56	\$4,207.89	\$41.23	\$4,166.66	\$16,667.04
57	\$4,199.65	\$32.99	\$4,166.66	\$12,500.38
58	\$4,191.40	\$24.74	\$4,166.66	\$8,333.72
59	\$4,183.15	\$16.49	\$4,166.66	\$4,167.06
60	\$4,175.31	\$8.25	\$4,167.06	\$0.00
<b>Total</b>	<b>\$218,413.84</b>	<b>\$13,413.84</b>	<b>\$205,000.00</b>	