

STIPULATION AND ORDER OF SETTLEMENT

IT IS HEREBY STIPULATED AND ORDERED THAT the action captioned *United States, ex rel. [under seal] v. [under seal]*, No. 11-CV-07560 (D.N.J.) is settled in accordance with the following terms and conditions:

PARTIES

This Settlement Agreement (“Agreement”) is entered into by and among the United States of America, acting through the United States Department of Justice and the United States Attorney’s Office for the District of New Jersey, 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 New Jersey, acting through the Department of Law and Public Safety, New Jersey Attorney General’s Office (“New Jersey”), [under seal] (“Relator”), and Saint Michael’s Medical Center, Inc. (“Saint Michael’s”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Saint Michael’s is a New Jersey nonprofit corporation incorporated on or about March 30, 1953, with its principal place of business located at 111 Central Avenue, Newark, New Jersey 07102.

B. On December 28, 2011, the Relator filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States, ex rel. [under seal] v. [under seal]*, No. 11-CV-07560, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) and the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1, *et seq.* (the “Civil Action”).

(1) The Relator's identity has been disclosed to Saint Michael's as confirmed in a letter dated May 5, 2016, from Assistant U.S. Attorney Bernard J. Cooney to Bruce Levy, Esq., counsel for Saint Michael's, and David J. Caputo, Esq., counsel for Relator, which this Agreement incorporates by reference (the "May 5, 2016 Letter").

(2) The Civil Action alleges that Saint Michael's and four individual physicians, each identified in the May 5, 2016 Letter, knowingly caused the submission of false claims for payment by the federal and state government for percutaneous coronary interventions, carotid catheterizations, renal catheterizations, related angiograms and stents.

C. The United States and New Jersey contend that Saint Michael's submitted or caused to be submitted claims for payment to: (a) the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 ("Medicare"); and (b) the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-5, and N.J. Stat. Ann. § 30:4D-1, *et seq.*, (collectively, "Medicaid").

D. The United States and New Jersey contend that they have certain civil claims against Saint Michael's for submitting or causing to be submitted false claims to Medicare and Medicaid. In particular, during the period from January 1, 2009 through January 1, 2015, the United States and New Jersey allege that St. Michael's submitted or caused to be submitted false claims for medically unnecessary percutaneous coronary interventions, catheterizations, and stents, billed under codes G0290, 92980, 92982, 92920, 93454, 92928, 93508, 93458, 93510, 93455, 37205, 92921, 92933, 93459, 93526, and 78452, performed by six individual physicians, each of which is identified in the May 5, 2016 Letter, which this Agreement incorporates by reference. This conduct together with the allegations and claims set forth against Saint Michael's in the Civil Action, are referred to below as the "Covered Conduct."

E. Relator claims entitlement under 31 U.S.C. § 3730(d), N.J. Stat. Ann. § 2A:32C-7, and N.J. Stat. Ann. § 2A:32C-8 to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

F. On August 10, 2015, Saint Michael's and affiliated debtors and debtors-in-possession (collectively the "Debtors") filed voluntary petitions under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and are operating their business as debtors in possession pursuant to section 1107 and 1108 of the Bankruptcy Code.

G. On November 5, 2015, the United States filed a Limited Objection of the United States Department of Health and Human Services to Debtors' Motion to Approve Sale of Substantially All of Their Assets Free and Clear of Liens, Claims and Encumbrances and Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Notice of Possible Assumption and Assignment of Executory Contract or Unexpired Lease (Docket No. 343).

H. On November 13, 2015, the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court") entered an *Order Authorizing the Debtors to Sell Substantially all Their Assets Free and Clear of Liens, Claims and Encumbrances, and Assume and Assign Certain Executory Contracts and Expired Leases* (Docket No. 383). In that Order, the court authorized the sale of substantially all of the Debtors' assets to Prime Healthcare Services – Saint Michael's, LLC ("Prime").

I. Prime is a wholly owned subsidiary of Prime Healthcare Services, Inc. ("PHS"), a Delaware corporation. As of November 20, 2015, PHS and its affiliate, Prime Healthcare Services Foundation, a 501(c)(3) public charity, collectively owned and/or operated a total of thirty-six (36) acute care hospitals in eleven (11) states.

J. This Settlement Agreement and the payment described herein are neither an admission of liability by the Debtors nor a concession by the United States or New Jersey that their claims are not well founded or a concession by the Relator that his 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. Saint Michael's shall pay the following sums:

(a) \$427,500 (four hundred and twenty-seven thousand, five hundred dollars) to the United States (for Medicare and the federal share of New Jersey Medicaid) no later than 5 business days after the Effective Date of this Agreement, pursuant to written instructions to be provided by the Office of the United States Attorney for the District of New Jersey; and

(b) \$22,500 (twenty-two thousand, five-hundred dollars) to the State of New Jersey (for the state share of New Jersey Medicaid), no later than 5 business days after the Effective Date of this Agreement, pursuant to written instructions to be provided by New Jersey.

The total of these sums, \$450,000 (four hundred and fifty thousand dollars), shall hereafter be referred to as the "Settlement Amount."

2. Conditioned upon the United States and New Jersey receiving the Settlement Amount from Saint Michael's and as soon as feasible after receipt:

(a) the United States shall pay the amount of \$106,875 (one hundred and six thousand, eight hundred and seventy five dollars) to Relator by electronic funds transfer pursuant to written instructions provided by Relator's counsel; and

(b) New Jersey shall pay the amount of \$5,625 (five thousand, six hundred and twenty five dollars) to Relator by electronic funds transfer pursuant to written instructions provided by Relator's counsel.

The total of these sums shall equal \$112,500 (one hundred twelve thousand, five hundred dollars).

3. No later than 5 business days after the Effective Date of this Agreement, Saint Michael's shall pay \$50,000 (fifty thousand dollars) to Relator as payment for attorneys' fees and costs in connection with the Civil Action, pursuant to written instructions provided to Saint Michael's by Relator's counsel.

4. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon Saint Michael's full payment of the Settlement Amount, the United States and New Jersey fully and finally release, waive and forever discharge the Debtors, and their current and former parent corporations, direct and indirect subsidiaries, divisions, and the successors and assigns, from any civil or administrative monetary claim the United States or New Jersey 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 New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1, *et seq.*; and the common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud.

5. The United States and New Jersey shall withdraw with prejudice any and all proofs of claim, if any, that either may have filed that are for any claims set forth in this Agreement.

6. Upon receipt of the payments described in Paragraphs 1, 2, and 3, Relator, for himself and for his heirs, successors, attorneys, agents and assigns, fully and finally release,

waive and forever discharge Saint Michael's, the Debtors and their current and former parent corporations, direct and indirect subsidiaries, divisions, and the successors and assigns from any civil monetary claim or any liability to the Relator on behalf of the United States and New Jersey for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, and the New Jersey False Claims Act, N.J. Stat. Ann. § 2A:32C-1, *et seq.*, and for any claims for expenses or attorney's fees and costs arising from the filing of the Civil Action.

7. Notwithstanding the releases given in Paragraph 4 of this Agreement, or any other term of this Agreement, the United States and New Jersey each specifically reserves and does not release the following claims, to the extent each has such claims:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code) and any criminal, civil, or administrative liability arising under New Jersey's revenue codes;
- 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 to New Jersey (or any of their agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; and
- f. Any liability of individuals.

8. 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 under 31 U.S.C. § 3730(c)(2)(B) and N.J. Stat. Ann. § 2A:32C-6.

Conditioned upon Relator's receipt of the payments described in Paragraph 2 and 3, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever

discharge the United States and New Jersey, and 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, N.J. Stat. Ann. § 2A:32C-6, and N.J. Stat. Ann. § 2A:32C-7, and from any claims to a share of the proceeds of this Agreement. Notwithstanding any other language in this Agreement, the Relator is not releasing any claims to a share of the proceeds that the United States or New Jersey may recover as a result of a judgment against or settlement with the individual defendants identified in the May 5, 2016 Letter.

9. Upon receipt of the payments described in Paragraphs 1, 2, and 3, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Saint Michael's, and its current and former parent corporations, direct and indirect subsidiaries, divisions, and the successors and assigns, from any liability to Relator arising from the filing of the Civil Action, under 31 U.S.C. § 3730(h) and N.J. Stat. Ann. § 2A:32C-10, and under 31 U.S.C. § 3730(d) and N.J. Stat. Ann. § 2A:32C-8 for expenses or attorney's fees and costs arising from the filing of the Civil Action.

10. Saint Michael's waives and shall not assert any defenses Saint Michael's 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 or New Jersey concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code, or New Jersey's revenue codes.

11. Saint Michael's fully and finally releases the United States and New Jersey, and their agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Saint Michael's has asserted, could have asserted, or may assert in the future against the United States or New Jersey and their agencies, officers, agents, employees, and servants, related to the Covered Conduct and the investigation and prosecution thereof.

12. Saint Michael's fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Saint Michael's has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

13. 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 or Medicaid carrier or intermediary or any state payer, related to the Covered Conduct; and Saint Michael's agrees not to resubmit to any Medicare or Medicaid carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

14. Saint Michael's agrees 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. §§ 1395-13951ddc-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Saint Michael's, its present or former officers, directors, employees, shareholders, and agents in connection with:

(1) the matters covered by this Agreement;

- (2) the audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Saint Michael's investigation, defense, and corrective actions undertaken in response to the 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 St. Michael's makes to the United States and to New Jersey pursuant to this Agreement and any payments that St. Michael's may make to Relator, including costs and attorney's fees;

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 12(a) 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 Saint Michael's.

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: Saint Michael's further agrees 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 Saint Michael's or any of its 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. Saint Michael's agrees that the United States or any State Medicaid program, at a minimum, shall be entitled to recoup from Saint Michael's 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 and New Jersey pursuant to the direction of the Department of Justice and/or the affected agencies. The United States and New Jersey reserve their rights to disagree with any calculations submitted by Saint Michael's or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Saint Michael's or any of its 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 and New Jersey to audit, examine, or re-examine Saint Michael's books and

records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. Saint Michael's agrees to cooperate fully and truthfully with the United States' and New Jersey's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Saint Michael's 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. Saint Michael's further agrees to furnish to the United States and New Jersey, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

16. 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 Paragraphs 4, 5, 6, and 17 (waiver for beneficiaries). Specifically, notwithstanding any other language in this Agreement, the United States, New Jersey, and Relator are not releasing any claims against the individual defendants identified in the May 5, 2016 Letter.

17. Saint Michael's agrees that it 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.

18. Upon receipt of the payments described in Paragraph 1, 2, and 3 above, the United States, New Jersey, and the Relator shall promptly sign and file in the Civil Action a joint

stipulation under Fed. R. Civ. P. 41(a)(1) dismissing all claims against Saint Michael's in the Civil Action. The joint stipulation will only apply to claims asserted against Saint Michael's and shall not dismiss any claims against any other defendants named in the Civil Action or any other parties.

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

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

21. 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 New Jersey. 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.

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

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

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

25. This Agreement is binding on Saint Michael's successors, transferees, heirs, and assigns.

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

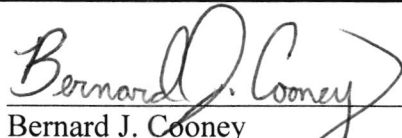
27. All parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

28. This Agreement is effective upon the approval of this Settlement Agreement by the United States Bankruptcy Court for the District of New Jersey and the Closing Date of the sale under Section 363 and 365 of the Bankruptcy Code approved by the United States Bankruptcy Court for the District of New Jersey in its November 13, 2015, Order (“Effective Date of this Agreement”). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

ON BEHALF OF THE UNITED STATES OF AMERICA

DATED: 5/6/2016

BY:



Bernard J. Cooney
Assistant United States Attorney
District of New Jersey

APPROVED:



JACOB T. ELBERG
Chief, Health Care & Government Fraud Unit
United States Attorney’s Office
District of New Jersey

ON BEHALF OF THE STATE OF NEW JERSEY

ROBERT T. LOUGY
Acting Attorney General
State of New Jersey

DATED: _____

BY:

Michelle T. Weiner
Joan Karn
Deputies Attorney General
Office of the Attorney General of New Jersey

27. All parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

28. This Agreement is effective upon the approval of this Settlement Agreement by the United States Bankruptcy Court for the District of New Jersey and the Closing Date of the sale under Section 363 and 365 of the Bankruptcy Code approved by the United States Bankruptcy Court for the District of New Jersey in its November 13, 2015, Order ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

ON BEHALF OF THE UNITED STATES OF AMERICA

DATED: _____ BY: _____
Bernard J. Cooney
Assistant United States Attorney
District of New Jersey

APPROVED:

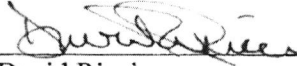
JACOB T. ELBERG
Chief, Health Care & Government Fraud Unit
United States Attorney's Office
District of New Jersey

ON BEHALF OF THE STATE OF NEW JERSEY

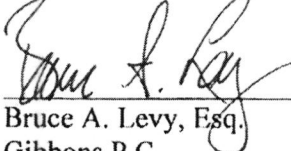
ROBERT T. LOUGY
Acting Attorney General
State of New Jersey

DATED: 5/5/2016 BY: Michelle T. Weiner
Michelle T. Weiner
Joan Karn
Deputies Attorney General
Office of the Attorney General of New Jersey

ON BEHALF OF SAINT MICHAEL'S MEDICAL CENTER, INC.

DATED: May 6, 2016 BY: 
David Ricci
President and Chief Executive Officer
Saint Michael's Medical Center, Inc.

DATED: BY: _____
Ryan T. Jareck, Esq.
Cole Schotz P.C.
Counsel to Saint Michael's Medical Center, Inc.

DATED: May 6, 2016 BY: 
Bruce A. Levy, Esq.
Gibbons P.C.
Counsel to Saint Michael's Medical Center, Inc.

ON BEHALF OF RELATOR

DATED: BY: _____
David J. Caputo, Esq.
Kline & Specter
1525 Locust St.
Philadelphia, PA 19102
Counsel to Relator

ON BEHALF OF SAINT MICHAEL'S MEDICAL CENTER, INC.

DATED:

BY:

David Ricci
President and Chief Executive Officer
Saint Michael's Medical Center, Inc.

DATED: *May 5, 2016*

BY:

Ryan Jareck
Ryan T. Jareck, Esq.
Cole Schotz P.C.
Counsel to Saint Michael's Medical Center, Inc.

DATED:

BY:

Bruce A. Levy, Esq.
Gibbons P.C.
Counsel to Saint Michael's Medical Center, Inc.

ON BEHALF OF RELATOR

DATED:

BY:

David J. Caputo, Esq.
Kline & Specter
1525 Locust St.
Philadelphia, PA 19102
Counsel to Relator

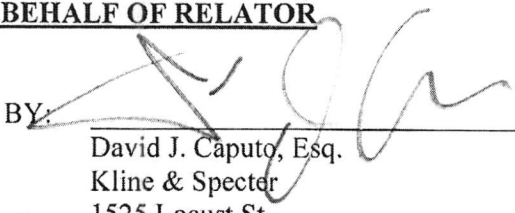
ON BEHALF OF SAINT MICHAEL'S MEDICAL CENTER, INC.

DATED: BY: _____
David Ricci
President and Chief Executive Officer
Saint Michael's Medical Center, Inc.

DATED: BY: _____
Ryan T. Jareck, Esq.
Cole Schotz P.C.
Counsel to Saint Michael's Medical Center, Inc.

DATED: BY: _____
Bruce A. Levy, Esq.
Gibbons P.C.
Counsel to Saint Michael's Medical Center, Inc.

ON BEHALF OF RELATOR

DATED: BY: _____

David J. Caputo, Esq.
Kline & Specter
1525 Locust St.
Philadelphia, PA 19102
Counsel to Relator