

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”), San Mateo Medical Center (“SMMC”), San Mateo County (the “County,” and collectively with SMMC, “Defendants”), and Felix Levy (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

- A. The County is a political subdivision of the State of California and owns and operates SMMC.
- B. On October 11, 2016, Relator filed a qui tam action in the United States District Court for the Northern District of California captioned *United States ex rel. Felix Levy v. San Mateo County and the San Mateo Medical Center*, Case No. 16-cv-5881, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (“the Civil Action”). On November 2, 2017, Relator filed a First Amended Complaint. On August 14, 2018, Relator filed a Second Amended Complaint. Among other things, Relator alleges that Defendants defrauded Medicare by making false claims and causing false claims to be made for patients who did not qualify for inpatient care.
- C. The United States contends that Defendants submitted or caused to be submitted through SMMC claims for payment to the Medicare Program.
- D. The United States contends that it has certain civil claims against Defendants arising from SMMC’s billing of Medicare for noncovered services during the period from January 1, 2013 through February 28, 2017 (the “Covered Period”). Specifically, the United States contends that, during the Covered Period,

- SMMC admitted certain patients for whom inpatient care was not medically reasonable or necessary, including patients who were admitted for reasons other than medical status, including social reasons and lack of available alternative placements;
- SMMC’s policies and practices contributed to billing under Medicare Part A for medically unnecessary inpatient stays despite SMMC’s knowledge that such admissions were not reimbursable by Medicare Part A, causing false claims to be submitted; and
- Despite such knowledge, SMMC submitted claims to Medicare Part A for reimbursement for patients whose inpatient care was not medically reasonable or necessary.

The conduct described in this paragraph is referred to below as the “Covered Conduct.”

E. This Settlement Agreement is not an admission by the Defendants of the facts alleged in the Covered Conduct or of liability. This Settlement Agreement is also not a concession by the United States that its claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) 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. Defendants shall pay to the United States \$11,401,975.16 (Settlement Amount), of which \$5,845,487.58 is restitution, plus accrued interest on the Settlement Amount at a rate of 0.875 percent per annum from February 7, 2021, until the date payment is made under this Paragraph, no later than 14 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 Northern District of California.

2. Conditioned upon the United States receiving the Settlement Amount, and further conditioned upon the United States and Relator resolving Relator's claim to a share of the Settlement Amount, either through a separate agreement or by the Court, the United States will pay the Relator within a reasonable amount of time by electronic funds transfer pursuant to written instructions provided by counsel for Relator Ronald D. Foreman, Foreman & Brasso to the United States Attorney's Office for the Northern District of California. (Relator's Share). Relator and his counsel agree to provide any information requested by the United States Attorney's Office for the Northern District of California that is necessary to make the electronic funds transfer.

3. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases Defendants 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.

4. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount plus interest due under Paragraph 1, Relator, for himself and for his heirs, successors, agents, and assigns, releases all defendants in the Civil Action from any and all claims relating to or arising from the conduct alleged in the Civil Action, including from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733 including any and all claims with respect to Relator's employment with Defendants, as separately defined and agreed to in the May 6, 2021 agreement executed by the Relator and County, including but not limited to, any claim for

retaliation under 31 U.S.C. § 3730(h), any other action(s) under California state false claims acts or other state law, and any and all claims under any other federal or state law, regulation, rule or ordinance, and/or public policy, common law, contract, or tort, including but not limited to any claims arising out of or in any way connected with the Civil Action, the Covered Conduct, and Relator's employment and/or voluntary cessation of employment. A separate agreement ("Separate Agreement") relating to Relator's claim for attorney's fees, expenses and costs under 31 U.S.C. § 3730(d) in connection with the Civil Action is forthcoming, unless otherwise resolved by the Court. Nothing in this release shall be deemed a release of the Relator or the County from their obligations pertaining to attorney's fees, expenses, and costs under 31 U.S.C. § 3730(d) or be deemed a waiver of the Relator or his counsel's right to pursue the recovery of attorney's fees, expenses and costs by resolution through the Court, if no Separate Agreement is reached.

5. In consideration of the obligations of Defendants in this Agreement and the Corporate Integrity Agreement ("CIA"), entered into between OIG-HHS and Defendants, and upon the United States' receipt of full payment of the Settlement Amount, plus interest due under Paragraph 1, 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 SMMC 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 6 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude SMMC 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 6, below.

6. Notwithstanding the releases given in Paragraphs 3-5 of 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 rights, 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.

7. 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). The United States and Relator and his/her heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, that Relator should receive of any proceeds of the settlement of his claim(s) in accord with 31 U.S.C. Section 3730(d)(3) and 3730(e), and that no agreements concerning Relator share have been reached to date.

8. Defendants waive and shall not assert any defenses Defendants 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.

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

10. Defendants fully and finally release the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the Relator, related to the conduct alleged in the Civil Action and the Relator's investigation and prosecution thereof.

11. 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 SMMC 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.

12. Defendants 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 Defendants, 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) Defendants' 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 Defendants make to the United States pursuant to this Agreement and any payments that Defendants 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 11.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 SMMC.

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

c. Treatment of Unallowable Costs Previously Submitted for Payment:

Defendants 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 SMMC 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. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants 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 Defendants or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on SMMC 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 to audit, examine, or re-examine Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

13. Defendants agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendants 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. Defendants 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.

14. 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 16 (waiver for beneficiaries paragraph), below.

15. Upon receipt of the payment described in Paragraph 1, above, the United States and the Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Partial Dismissal of the Civil Action, subject to the terms of this Agreement, pursuant to Rule 41(a)(1). The Civil Action shall be dismissed by the United States with prejudice against Defendants as to the Covered Conduct and without prejudice as to all remaining claims against Defendants. The Civil Action shall be dismissed with prejudice by the Relator including employment claims against Defendants pursuant to 31 U.S.C. § 3730(h) in the Civil Action. However, the Relator's claims for attorneys' fees, expenses, and costs under 31 U.S.C. § 3730(d) and the Relator's

claims for a share of the settlement amount shall not be dismissed. Both of those claims are expressly preserved and shall be resolved either by the Court or through a separate agreement between the respective Parties.

16. Defendants 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 payers based upon the claims defined as Covered Conduct.

17. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, excluding the Relator's claims for attorneys' fees, expenses, and costs under 31 U.S.C. § 3730(d).

18. 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.

19. 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.

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

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

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

23. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

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

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

26. 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: _____

DIANA
CIESLAK

Digitally signed by DIANA
CIESLAK
Date: 2021.07.28 17:28:02
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DIANA K. CIESLAK
Trial Attorney, Civil Division

DATED: 7/28/2021

STEPHANIE M. HINDS
Acting United States Attorney,
Northern District of California



MICHAEL T. PYLE
Assistant United States Attorney,
Northern District of California

DATED: _____

GREGORY
DEMSKE

Digitally signed by
GREGORY DEMSKE
Date: 2021.07.28
15:41:52 -04'00'


LISA M. RE
Assistant Inspector General
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human
Services

SAN MATEO MEDICAL CENTER, AN AGENCY OF SAN MATEO COUNTY

DATED: 7/27/2021


BY: 
SAN MATEO MEDICAL CENTER, an
agency of SAN MATEO COUNTY

DATED: 7/28/2021


BY: 
JENNIFER STALZER KRASKE
JOHN NIBBELIN
JOHN BEIERS, COUNTY COUNSEL
Office of the County Counsel
San Mateo County
Counsel for San Mateo County

FELIX LEVY - RELATOR

DATED: 07/27/21

BY: 
Felix Levy

DATED: 7/21/21

BY: 
RONALD D. FOREMAN
Counsel for Felix Levy