

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and the United States Attorney’s Office for the Eastern District of California (collectively, the “United States”); and the following affiliates of Sutter Health: Sutter West Bay Medical Foundation, dba Sutter Pacific Medical Foundation; Sutter Bay Hospitals dba Mills-Peninsula Medical Center; Sutter Bay Hospitals dba Eden Medical Center; Sutter Bay Hospitals dba Novato Community Hospital; Sutter Valley Hospitals dba Sutter Medical Center Sacramento; Sutter Valley Hospitals dba Sutter Tracy Community Hospital; Sutter East Bay Hospitals dba Sutter Delta Medical Center; Auburn Surgical Center, LP dba Sutter Auburn Surgery Center; Fort Sutter Surgery Center, a California Limited Partnership; North Bay Regional Surgery Center, LLC; Santa Rosa Surgery Center, LP dba Santa Rosa Surgery and Endoscopy Center; and The Surgery Center of Alta Bates Summit Medical Center, LLC (collectively referred to herein as “Sutter Affiliates”), through their authorized representatives. The United States and the Sutter Affiliates are collectively referred to herein as “the Parties.”

## RECITALS

A. The Sutter Affiliates are affiliates or affiliated with Sutter Health, a California not-for-profit health system headquartered in Sacramento, California. These entities provide healthcare services in the Northern California area. In connection with these services, the Sutter Affiliates have submitted claims for reimbursement of healthcare services to government healthcare payers, including the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”), and

the Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.* (“Medicaid”).

B. The Sutter Affiliates through Sutter Health made voluntary self-disclosures to the United States Department of Health and Human Services, Office of Inspector General (HHS-OIG) relating to the conduct addressed herein.

C. The United States contends that it has certain civil claims against the Sutter Affiliates listed in Attachment A hereto arising from their submission of claims to the Medicare program resulting from referrals by the physicians/physician groups listed in Attachment A, which claims violated or resulted from violations of the Stark Law, during the period from January 1, 2009 through March 2, 2012. Specifically, and as detailed in Attachment A, the United States alleges that through twenty-eight compensation arrangements, the Sutter Affiliates listed in Attachment A: (1) paid certain physicians/physician groups for hours in excess of those actually worked by the contracting physicians or their administrative staff; (2) undercharged certain physicians under lease agreements for office space owned by Sutter; (3) paid certain physician groups in excess of contractually-required reimbursement under Recruitment Agreements; and (4) paid a physician group for dual primary call coverage, even though the group supplied only a single physician for the subject coverage. The United States further alleges that these arrangements are properly characterized as compensation arrangements under the Stark Law and did not satisfy the requirements of any applicable statutory or regulatory exception to the Stark Law.

D. The United States further contends that it has certain civil claims against Fort Sutter Surgery Center, a California Limited Partnership; Auburn Surgical Center, LP

dba Sutter Auburn Surgery Center; The Surgery Center of Alta Bates Summit Medical Center, LLC; Santa Rosa Surgery Center, LP, dba Santa Rosa Surgery and Endoscopy Center; and North Bay Regional Surgery Center, LLC, for the submission of claims to the Medicare program that included charges for the technical component of fluoroscopy services that were also billed by Vista Imaging Services, Inc., during the period from February 5, 2007 through December 31, 2014.

E. The conduct described in Recital Paragraphs C and D above is referred to herein as “the Covered Conduct.”

F. This Settlement Agreement is neither an admission of liability by the Sutter Affiliates nor a concession by the United States that its claims are not well founded.

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

#### TERMS AND CONDITIONS

1. The Sutter Affiliates shall pay to the United States \$15,117,516.36 plus accrued interest at the rate of 2.5 percent per annum from July 26, 2019 through the date payment is made under this Paragraph (the “Settlement Amount”). The restitution amount is \$14,690,217.29. The Settlement Amount shall be made to the United States by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of California no later than the latter of fourteen (14) days after the Effective Date of this Agreement or five (5) business days after receiving the above-referenced written instructions. If payment is not timely

received, the Sutter Affiliates shall also pay interest on the Settlement Amount at a rate of 10% in addition to the 2.5% noted above (12.5%) from the date payment was due through the date payment is received.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon the Sutter Affiliates' fulfillment of all payment obligations in Paragraph 1, the United States releases the Sutter Affiliates, together with their current and former parent entities; direct and indirect subsidiaries; brother or sister corporations; divisions, current or former entity owners; and the corporate successors and assigns of any of them from any civil monetary claim the United States has for the Covered Conduct under the common law theories of payment by mistake and unjust enrichment.

3. The Sutter Affiliates fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that they 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 and the United States' investigation and prosecution thereof.

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

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any liability arising under 31 U.S.C. §§ 3729-3733 (the False Claims Act);



- c. Any criminal liability;
- d. Any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- e. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- f. Any liability based upon obligations created by this Agreement;
- g. Any liability of individuals;
- h. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- i. Any liability for failure to deliver goods or services due; and,
- j. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. The Sutter Affiliates waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

6. 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 the Sutter Affiliates agree not to resubmit to any

Medicare contractor or any state payer 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.

7. The Sutter Affiliates agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Sutter Health and Sutter Affiliates, their present or former officers, directors, employees, shareholders, affiliates, 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) their investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Sutter makes to the United States pursuant to this Agreement

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

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: The Sutter Affiliates 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 Sutter Affiliates 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 Sutter Affiliates agree that the United States, at a minimum, shall be entitled to recoup from them 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 Sutter Affiliates or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on the Sutter Affiliates' 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 Sutter Affiliates' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

8. 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 9 (waiver for beneficiaries paragraph), below.

9. The Sutter Affiliates 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.

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

11. 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.



12. 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 Eastern 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.

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

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

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

16. This Agreement is binding on Sutter Health and its successors, transferees, heirs, and assigns.

17. This Agreement is binding on Sutter Affiliates' successors, transferees, heirs, and assigns.

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

19. 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**

MCGREGOR W. SCOTT  
United States Attorney  
Eastern District of California


DATED: 11/1/2019 BY: CJ Swann  
Catharine J. Swann  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of California

**THE SUTTER AFFILIATES**

DATED: 10/31/2018

BY:   
FLORENCE L. DI BENEDETTO  
Senior Vice President and General Counsel, Sutter Health;  
Authorized agent of the Sutter Affiliates: Sutter West Bay Medical Foundation, dba Sutter Pacific Medical Foundation; Sutter Bay Hospitals dba Mills-Peninsula Medical Center; Sutter Bay Hospitals dba Eden Medical Center; Sutter Bay Hospitals dba Novato Community Hospital; Sutter Valley Hospitals dba Sutter Medical Center Sacramento; Sutter Valley Hospitals dba Sutter Tracy Community Hospital; Sutter East Bay Hospitals dba Sutter Delta Medical Center ; Auburn Surgical Center, LP dba Sutter Auburn Surgery Center; Fort Sutter Surgery Center; North Bay Regional Surgery Center, LLC; Santa Rosa Surgery Center, LP dba Santa Rosa Surgery and Endoscopy Center; and The Surgery Center of Alta Bates Summit Medical Center, LLC

DATED: 10/30/2019

BY:   
KATHERINE A. LAUER, ESQ.  
Latham & Watkins LLP  
Attorney for Sutter Health and the Sutter Affiliates

## Attachment A

Sutter Affiliate	Physician / Physician Group	Dates of Conduct	Description of Issue
Sutter West Bay Medical Foundation, dba Sutter Pacific Medical Foundation ("Sutter Pacific Medical Foundation")	Arvon, Regina, M.D. (Physician Foundation Medical Associates, Inc. dba Sutter West Medical Group ("PFMA") - Maternal Fetal Medicine)	1/1/2009 - 3/31/2011	Physician failed to meet minimum hours set forth in Physician Services Agreement (PSA)
Sutter Pacific Medical Foundation	Brockway, Stephen, M.D. (PFMA - Psychiatry)	11/1/2010 - 4/4/2011	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Davern, Timothy, M.D. (PFMA - Hepatology)	1/1/2010 - 12/31/2010	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Katznelson, Steven, M.D. (PFMA - Nephrology)	1/1/2010 - 12/31/2010	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Kersh, Edward, M.D. (PFMA - Cardiovascular)	3/1/2011 - 2/29/2012	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Merriman, Raphael, M.D. (PFMA - Hepatology)	1/1/2010 - 12/31/2010	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Otto, Carl, M.D. (PFMA - Maternal Fetal Medicine)	1/1/2009 - 3/31/2011	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Wyatt, Deborah, M.D. (PFMA - Family Health Center - Peds)	1/1/2011 - 12/31/2011	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Ziemann, Elizabeth, M.D. (PFMA - Primary Care - Golden Gate)	8/1/2010 - 7/31/2011	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Bohannon, Lawrence, M.D. (PFMA - Nephrology)	1/1/2010 - 12/31/2010	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Brill, Andrew, M.D. (PFMA - Minimally Invasive Gyn)	1/1/2010 - 12/31/2010	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Gish, Robert, M.D. (PFMA - Hepatology)	1/1/2010 - 11/30/2010	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Hemmer, Sarah, M.D. (PFMA - Pediatrics)	3/1/2010 - 2/28/2011	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Lindes, Deborah, M.D. (PFMA - Family Health Center - Internal Medicine)	1/1/2011 - 12/31/2011	Physician failed to meet minimum hours set forth in PSA



Sutter Affiliate	Physician / Physician Group	Dates of Conduct	Description of Issue
Sutter Pacific Medical Foundation	Madison, Catherine, M.D. (PFMA - Neurology - Neuromuscular)	4/1/2010 - 3/31/2011	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Miller, Robert, M.D. (PFMA - Neurology - Neuromuscular)	4/1/2010 - 3/31/2011	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Pullen-Williams, Kristin M.D. (PFMA - Maternal Fetal Medicine)	1/1/2010 - 3/31/2011	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Quiros, J. Antonio, M.D. (PFMA - Pediatric Gastroenterology)	1/16/2010 - 1/15/2011	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Sorem, Kimberlee, M.D. (PFMA - Maternal Fetal Medicine)	1/1/2009 - 12/31/2009	Physician failed to meet minimum hours set forth in PSA
Sutter Pacific Medical Foundation	Weinberg, Melissa, M.D. (PFMA - Endocrinology)	9/1/2009 - 5/31/2010	Physician failed to meet minimum hours set forth in PSA
Sutter Bay Hospitals dba Mills-Peninsula Medical Center	Zatarain-Rios, Ernesto, M.D.	8/1/2009 - 3/2/2012	The subject Agreement provided for use of Sutter office space and Sutter staff. This referring physician used additional space beyond leased square footage and used Sutter personnel for more time than allocated in the lease.
Sutter Bay Hospitals dba Eden Medical Center	Knotts, Don, M.D.	1/1/2009 - 9/1/2010	The subject Lease Agreement included a rental rate adjustment (increase in rent). Sutter failed to bill the party to this contract, a referring physician, for the increase.
Sutter Bay Hospitals dba Novato Community Hospital	Yohai, Robert, M.D.	9/1/2009 - 8/31/2010	The subject Lease Agreement included a rental rate adjustment (increase in rent). Sutter failed to bill the party to this contract, a referring physician, for the increase.

Sutter Affiliate	Physician / Physician Group	Dates of Conduct	Description of Issue
Sutter Valley Hospitals (formerly: Sutter Health Sacramento Sierra Region) dba Sutter Medical Center Sacramento	Graves, Gregory, M.D. (Capitol Surgical Associates Medical Group, PC)	1/1/2009 - 8/22/2010	Physician's administrative staff was paid by Sutter for clinical coordination at a rate above fair market value for the services rendered.
Sutter Valley Hospitals dba Sutter Tracy Community Hospital	Mast, John, M.D. (John Mast, M.D., Inc.)	1/1/2009 - 2/28/2010	Sutter undercharged this doctor for office space under the subject Lease Agreement.