

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively, the “United States”), the State of California, acting through the California Department of Justice Division of Medi-Cal Fraud and Elder Abuse (“California”), Cottage Health System (“Cottage”), and Julio Bordas (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Cottage is a not-for-profit system of healthcare providers that operates five hospitals, including Santa Barbara Cottage Hospital, Santa Ynez Cottage Hospital, and Goleta Valley Cottage Hospital. Cottage contracted with Santa Barbara San Luis Obispo Regional Health Authority d/b/a CenCal Health (“CenCal”) to provide healthcare services to patients under California’s Medicaid program (known as “Medi-Cal”).

B. On December 22, 2015, Relator filed a *qui tam* action in the United States District Court for the Central District of California captioned *United States and California ex rel. Julio Bordas v. CenCal Health, Cottage Health System, Dignity Health, Lompoc Valley Medical Center, and Tenet Healthcare Corporation*, [REDACTED] pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (“FCA”) and the California False Claims Act (“CFCA”), California Government Code § 12650, et seq. (the “Civil Action”). On December 20, 2018, Relator filed a First Amended Complaint in the Civil Action, adding Community Health Centers of the Central Coast, Pacific Central Coast Health Centers, and Sansum Santa Barbara Medical Clinic, Inc. as defendants. Relator alleges, generally, that Cottage violated the FCA and the CFCA in connection with certain payments made by CenCal to

Cottage in connection with Medi-Cal Adult Expansion under the Affordable Care Act (referred to as the “Cottage Allegations”). Relator further alleges that CenCal and the other defendants also violated the FCA and CFCA in connection with certain payments made by CenCal to the other defendants in connection with Medi-Cal Adult Expansion under the Affordable Care Act. The United States intervened in the Civil Action on December 2, 2022.

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

D. The United States and California contend that they have certain civil claims against Cottage arising from Cottage causing the submission of false claims to Medi-Cal pursuant to Medi-Cal Access and Coordination Expansion (“ACE”) Program Agreements (the “ACE Agreements”):

(1) executed by CenCal on March 11, 2015 and by Cottage on March 17, 2015, for “Enhanced Services” to Adult Expansion Medi-Cal members;

(2) executed by CenCal on July 14, 2015 and by Cottage on July 27, 2015, for “Enhanced Services” to Adult Expansion Medi-Cal members;

(3) executed by CenCal on December 10, 2015 and by Cottage on January 4, 2016, for “Enhanced Services” to Adult Expansion Medi-Cal members.

The United States and California contend that the Medi-Cal payments claimed and received by Cottage pursuant to the above-referenced ACE Agreement were wrongful because (a) the payments were not for “Allowed Medical Expenses” under CenCal’s contract with DHCS; (b) the payments were unlawful gifts of public funds in violation of the California Constitution; and (c) the payments were for pre-determined amounts that did not reflect the cost or fair market value of any Enhanced Services provided, and/or the Enhanced Services were duplicative of

Services already required to be rendered. That conduct is referred to below as the “Covered Conduct.”

E. Cottage denies the United States’ and California’s allegations in Paragraph D.

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

G. Relator claims entitlement under 31 U.S.C. § 3730(d) and California Government Code § 12652(g) to a share of the proceeds of this 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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Cottage shall pay to the United States and California \$10,000,000 (the “Settlement Amount”), of which \$4,890,000 constitutes restitution, plus interest on the Settlement Amount at a rate of 3.875% per annum from December 12, 2022, as follows:

a. Cottage shall pay the United States \$9,000,000, plus interest at a rate of 3.875% per annum from December 12, 2022, no later than 30 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

b. Cottage shall pay California \$1,000,000, plus interest at a rate of 3.875% per annum from December 12, 2022, no later than 30 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the California Department of Justice Division of Medi-Cal and Elder Abuse.

2. Conditioned upon the United States and California receiving the Settlement Amount payments, the United States agrees to pay to Relator by electronic funds transfer 19% and California agrees to pay to Relator by electronic funds transfer 25.45% of each such payment received under the Agreement as soon as feasible after receipt of each such payment. Those payments described shall collectively be referred to as “Relator’s Share.”

3. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States’ and California’s receipt of the full Settlement Amount plus interest due under Paragraph 1, the United States releases Cottage, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States’ and California’s receipt of the full Settlement Amount plus interest due under Paragraph 1, California releases Cottage, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from any civil or administrative monetary claim California has for the Covered Conduct under the California False Claims Act, California Government Code §§ 12650-12656; or the common law theories of payment by mistake, unjust enrichment, and fraud and all rights to recoup, demand, or otherwise seek the return of any funds distributed by CenCal to Cottage pursuant to the ACE Agreements and arising out of the Covered Conduct.

5. Relator's Release

a. Subject to the exceptions in Paragraph 6 below, and upon the United States' and California's receipt of the full Settlement Amount plus interest due under Paragraph 1 and Relator's receipt of the full payment due under Cottage's separate agreement with Relator resolving his claims for attorney's fees, expenses, and costs under 31 U.S.C. § 3730(d) and California Government Code § 12652(g), Relator, for himself and for his heirs, successors, attorneys, agents, transferees, and assigns, irrevocably and unconditionally waives, releases, and forever discharges Cottage and its current or former heirs, successors, attorneys, agents, transferees, officers, directors, supervisors, and assigns, from any and all charges, complaints, lawsuits, claims, liabilities, obligations, promises, agreements, controversies, injuries, damages, actions, causes of action, suits, rights, demands, judgments, claims for relief, indebtedness, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether in law or in equity, known or unknown, suspected or unsuspected, actual or potential, in his individual capacity or on behalf of the United States or California, which Relator has had, now has, or may have against Cottage, including without limitation, for claims arising from the filing of the Civil Action and any federal or California law including, but not limited to, 31 U.S.C. §§ 3729-3733 and California Government Code §§ 12650-12656.

b. It is the intention of Relator in executing this Agreement that it shall be effective as a full and final accord and satisfactory release of each and every matter specifically referred to herein and all claims and causes of action that Relator on behalf of himself, and Relator's heirs, successors, attorneys, agents, transferees, and assigns, may have as to Cottage, and/or their current or former heirs, successors, attorneys, agents, transferees, members, officers, directors, commissioners, supervisors, employees, and assigns. In furtherance of this intention, Relator

acknowledges that he is familiar with § 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

As to the claims and causes of actions that Relator may have against Cottage, Relator waives and relinquishes any rights and benefits he may have under § 1542 of the Civil Code of the State of California to the full extent that he may lawfully waive all such rights and benefits.

Nothing in this release shall be construed to limit or release any claims against the other defendants in the Civil Action.

6. Notwithstanding the releases given in Paragraphs 3 to 5 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States and California are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code) or under California tax law;
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States or California (or their agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;

- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

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) and California Government Code § 12652(e)(2)(B). Conditioned upon Relator's receipt of the Relator's Share from the United States, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

Conditioned upon Relator's receipt of the Relator's Share from California, Relator and his heirs, successors, attorneys, agents and assigns fully and finally release, waive, and forever discharge California, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under California Government Code § 12652, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Cottage waives and shall not assert any defenses Cottage 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. Cottage fully and finally releases the United States, California, and their agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Cottage has asserted, could have asserted, or may assert in the future against the United States, California, and their agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' and California's investigation or prosecution thereof.

10. Cottage, for itself and for its current or former heirs, successors, attorneys, agents, transferees, officers, supervisors, and assigns, irrevocably and unconditionally waives, releases, and forever discharges Relator and his heirs, successors, attorneys, agents, transferees, and assigns, from any and all charges, complaints, lawsuits, claims, liabilities, obligations, promises, agreements, controversies, injuries, damages, actions, causes of action, suits, rights, demands, judgments, claims for relief, indebtedness, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether in law or in equity, known or unknown, suspected or unsuspected, actual or potential, which Cottage has had or now has against Relator, including without limitation, for claims arising from the filing of the Civil Action and any federal or California law including, but not limited to, 31 U.S.C. §§ 3729-3733 and California Government Code §§ 12650-12656.

It is the intention of Cottage in executing this Agreement that it shall be effective as a full and final accord and satisfactory release of each and every matter specifically referred to herein and all claims and causes of action that Cottage on behalf of itself, and its current or former heirs, successors, attorneys, agents, transferees, officers, supervisors, and assigns, may have as to Relator, and/or his heirs, successors, attorneys, agents, transferees, and assigns. In

furtherance of this intention, Cottage acknowledges that it is familiar with § 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

As to the claims and causes of actions that Cottage may have against Relator, Cottage waives and relinquishes any rights and benefits it may have under § 1542 of the Civil Code of the State of California to the full extent that they may lawfully waive all such rights and benefits.

11. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by Medi-Cal, related to the Covered Conduct; and Cottage agrees not to resubmit to Medi-Cal 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. Cottage 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Cottage, its 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) Cottage's 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; and
- (5) the payments Cottage makes to the United States and California pursuant to this Agreement and any payments that Cottage may make to Relator, including costs and attorneys' 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).

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

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

13. Cottage agrees to cooperate fully, truthfully, and actively with the United States and California regarding any matter about which Cottage has any knowledge or information relating to any ongoing investigation, litigation, trial, or other proceeding arising out of any ongoing federal investigation related to the Cottage Allegations. Cottage's cooperation shall include the following:

a. Upon reasonable notice, Cottage shall encourage, and agree 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.

b. Cottage agrees to provide testimony, declarations/affidavits, or other information necessary to identify or establish the original location, authenticity, or other basis for

admissibility into evidence documents or physical evidence as requested by the United States and/or California; and

c. Cottage further agrees to furnish to the United States and California, 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 Cottage Allegations that it has undertaken, or that has been performed by another on its behalf.

d. Any refusal by Cottage to cooperate fully, truthfully, and actively will constitute a breach of this Agreement. 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 14 (waiver for beneficiaries paragraph), below.

14. Cottage 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.

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

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

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

c. the Stipulation of Dismissal shall be with prejudice as to Relator as to all claims against Cottage.

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

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

18. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Central District of California. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

19. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties. Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

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 Cottage's successors, transferees, heirs, and assigns.


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

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

25. 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.

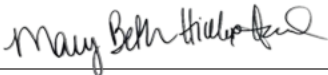
THE UNITED STATES OF AMERICA

DATED: June 12, 2023

BY: 

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

DATED: June 16, 2023

BY: 

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

DATED: _____

BY: _____
Lisa M. Re
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

THE UNITED STATES OF AMERICA

DATED: _____

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

DATED: _____

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

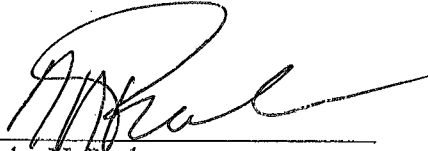
DATED: _____

BY: **LISA RE**  Digitally signed by LISA RE
Date: 2023.06.15 11:35:18
-04'00'

Lisa M. Re
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

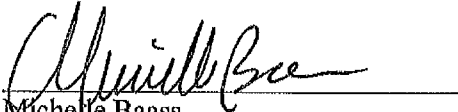
THE STATE OF CALIFORNIA

DATED: 6-8-23 BY:



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

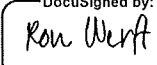
DATED: 6-7-23 BY:



Michelle Baass
Director
California Department of Health Care Services

COTTAGE HEALTH SYSTEM - DEFENDANT

DATED: 6/13/2023

BY: 
56548527EB65466...

Ron C. Werft, President & CEO
on behalf of Cottage Health

DATED: _____

BY: _____
Stacy Bratcher, Vice President and General Counsel
on behalf of Cottage Health System

DATED: _____

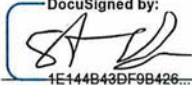
BY: _____
John H. Lawrence
Counsel for Cottage Health System

COTTAGE HEALTH SYSTEM - DEFENDANT

DATED: _____

BY: _____
Ron C. Werft, President & CEO
on behalf of Cottage Health

DATED: 6/13/2023

BY:  _____
1E144B43DF9B426...
Stacy Bratcher, Vice President and General Counsel
on behalf of Cottage Health System

DATED: _____

BY: _____
John H. Lawrence
Counsel for Cottage Health System

COTTAGE HEALTH SYSTEM - DEFENDANT

DATED: _____

BY: _____
Ron C. Werft, President & CEO
on behalf of Cottage Health

DATED: _____


BY: _____
Stacy Bratcher, Vice President and General Counsel
on behalf of Cottage Health System

DATED: 6/14/2023

BY: 
John H. Lawrence
Counsel for Cottage Health System


JULIO BORDAS - RELATOR

DATED: 06/09/2023

BY: 

Julio Bordas

DATED: June 9, 2023

BY: 

Edward Arens
Phillips & Cohen LLP
Counsel for Julio Bordas