

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”), Dignity Health (“Dignity Health”) and Julio Bordas (“Relator”) (hereafter collectively referred to as “the Parties” and each is a “Party”), through their authorized representatives.

RECITALS

A. Dignity Health is a not-for-profit Catholic hospital system that owns and operates three hospitals and one clinic in Santa Barbara County and San Luis Obispo County, California, including Pacific Coast Health Care Centers, Arroyo Grande Community Hospital, French Hospital Medical Center, and Marian Regional Medical Center. CommonSpirit Health is the successor in interest to Dignity Health. Throughout this Agreement, we refer to “Dignity Health” as the applicable entity during the relevant time period. Dignity Health contracted with Santa Barbara San Luis Obispo Regional Health Authority d/b/a CenCal Health (“CenCal”), a county organized health system, established by Santa Barbara County and San Luis Obispo County pursuant to California state law. CenCal contracts with California’s Department of Health Care Services (“DHCS”) to arrange for the provision of health care services to Santa Barbara County and San Luis Obispo County residents 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 State of 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 10, 2018, Relator filed a First Amended Complaint in the Civil Action, adding Community Health Centers of the Central Coast, Inc., Pacific Central Coast Health Centers (a subsidiary of Dignity Health), and Sansum Santa Barbara Medical Clinic, Inc. as defendants. Relator alleges, generally, that Dignity Health violated the FCA and the CFCA in connection with certain payments made by CenCal to Dignity Health in connection with Medi-Cal Adult Expansion under the Affordable Care Act (referred to as the “Dignity Health 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.

C. The United States and California contend that Dignity Health caused to be submitted claims for payment under the Medicaid Program, 42 U.S.C. §§ 1396-1396w5.

D. The United States and California contend that they have certain civil claims against Dignity Health arising from Dignity Health causing the submission of false claims to Medi-Cal pursuant to the Eleventh Amendment to the Medi-Cal Hospital Services Agreement – 2011 entered into between CenCal and Dignity Health (executed by CenCal on January 23, 2015 and by Dignity Health on January 26, 2015), the Thirteenth Amendment to the Medi-Cal Hospital Services Agreement – 2011 (executed by CenCal and by Dignity Health on June 30, 2015), the Fifteenth Amendment to the Medi-Cal Hospital Services Agreement – 2011 (executed by CenCal on July 10, 2015 and by Dignity Health on July 28, 2015), and the Sixteenth Amendment to the Hospital Services Agreement – 2011 (executed by CenCal on January 4, 2016 and by Dignity Health on December 29, 2015) (collectively, the Medi-Cal Access and

Coordination Expansion (ACE) Program Agreements (the “ACE Agreements”)) for “Enhanced Services” provided to Adult Expansion Medi-Cal members between February 1, 2015 and June 30, 2016. The United States and California contend that the Medi-Cal payments claimed and received under the ACE Agreement for “Enhanced Services” during the period between February 1, 2015 and June 30, 2016 were wrongful because, allegedly: (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 Article IV, section 17 of the California Constitution; and (c) the payments did not reflect the fair market value of any Enhanced Services provided, and/or the Enhanced Services were duplicative of services already required to be rendered. The conduct described in this Paragraph D is referred to below as the “Covered Conduct.”

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

F. This Agreement is neither an admission of liability by Dignity Health 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. Dignity Health shall pay to the United States and California Fifteen Million Dollars (\$15,000,000) (“Settlement Amount”), plus interest on the Settlement Amount at a rate of 1.625% per annum from February 4, 2022, as follows:
 - a. Dignity Health shall pay the United States Thirteen Million Five Hundred Thousand Dollars (\$13,500,000), plus interest at a rate of 1.625% per annum from February 4, 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 United States Attorney’s Office for the Central District of California.
 - b. Dignity Health shall pay California One Million Five Hundred Thousand Dollars (\$1,500,000), plus interest at a rate of 1.625% per annum from February 4, 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 Fraud and Elder Abuse.
2. Conditioned upon receiving the Settlement Amount and as soon as feasible after receiving the Settlement Amount payments, the United States shall pay \$2,598,750 and California shall pay \$381,750 to Relator by electronic funds transfer (collectively, the “Relator’s Share”).
3. Relator claims entitlement under 31 U.S.C. § 3730(d) and California Government Code § 12652(g) to Relator’s reasonable expenses, attorney’s fees and costs (“Relator’s Statutory Fee Claim”), and Relator’s Statutory Fee Claim is not included in this Agreement or the Settlement Amount and this claim is expressly reserved.
4. Subject to the exceptions in Paragraph 7 (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 Dignity Health, together with its current or former successors and assigns, from any civil or administrative monetary claim the United States has for the Covered Conduct under the FCA, 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.

5. Subject to the exceptions in Paragraph 7 (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 Dignity Health, together with its current and former successors and assigns, from any civil or administrative monetary claim that California has for the Covered Conduct under the CFCA, California Government Code §§ 12650-12656; or the common law theories of payment by mistake, unjust enrichment, and fraud.

6. Relator's Release

a. Subject to the exceptions in Paragraph 7 below, and upon the United States' and California's receipt of the full Settlement Amount plus interest due under Paragraph 1, Relator, for himself and for his heirs, successors, attorneys, agents, transferees, and assigns, irrevocably and unconditionally waives, releases, and forever discharges Dignity Health 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 Dignity Health, 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, except that Relator expressly reserves and does not waive or release Relator's Statutory Fee Claim.

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 Dignity Health, and/or their current or former heirs, successors, attorneys, agents, transferees, members, officers, directors, commissioners, supervisors, employees, and assigns, except that Relator expressly reserves and does not waive or release Relator's Statutory Fee Claim. 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 Dignity Health, 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 they may lawfully waive all such rights and benefits, subject to the exclusions set out in Paragraph 6.a.

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

7. Notwithstanding the releases given in Paragraphs 4 and 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 state 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; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

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, pursuant to 31 U.S.C. § 3730(c)(2)(B) and California Government Code § 12652(e)(2)(B). Conditioned upon Relator's receipt of 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 as to the Dignity Health Allegations, and from any claims to a share of the proceeds of this Agreement

and/or the Civil Action as to the Dignity Health Allegations. Conditioned upon Relator's receipt of 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 as to the Dignity Health Allegations, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action as to the Dignity Health Allegations.

9. Dignity Health waives and shall not assert any defenses Dignity Health 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 United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

10. Dignity Health fully and finally releases the United States and California, their agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Dignity Health has asserted, could have asserted, or may assert in the future against the United States or California, their agencies, officers, agents, employees, and servants, related to the Dignity Health Allegations or the United States' or California's investigation or prosecution thereof.

11.a. Dignity Health, 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 Dignity Health 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.

b. It is the intention of Dignity Health 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 Dignity Health 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, Dignity Health 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 Dignity Health may have against Relator, Dignity Health 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.

12. 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 Dignity Health 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.

13. Dignity Health 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 Dignity Health, 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) Dignity Health'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 payment Dignity Health makes to the United States pursuant to this Agreement and any payments that Dignity Health 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 Dignity Health, and Dignity Health 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 Dignity Health or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

Dignity Health 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 Dignity Health 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. Dignity Health agrees that the United States, at a minimum, shall be entitled to recoup from Dignity Health 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 Dignity Health or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on Dignity Health 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 Dignity Health's books and records to determine

that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

14. Subject to applicable privileges which Dignity Health does not waive, Dignity Health agrees to cooperate fully and truthfully with the United States' and California's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Dignity Health 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. Dignity Health 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 Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

15. 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.

16. Dignity Health 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.

17. Upon receipt of the payments described in Paragraph 1, above, the United States, California, and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of Dignity Health and Pacific Coast Central Health Centers, 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 Dignity Health 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 Dignity Health (including all claims against Pacific Coast Central Health Centers);

c. the Stipulation of Dismissal shall be with prejudice as to Relator as to all claims against Dignity Health (including all claims against Pacific Coast Central Health Centers), with the exception of Relator's Statutory Fee Claim, which Relator expressly reserves.

18. 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.

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

20. 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 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.

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

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

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

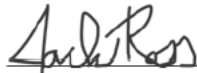
24. This Agreement is binding on Dignity Health's current or former successors, transferees, heirs, and assigns.

25. This Agreement is binding on Relator's current or former successors, transferees, heirs, and assigns.

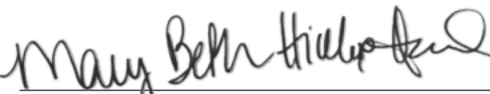
26. All Parties consent to the United States' and California's disclosure of this Agreement, and information about this Agreement, to the public.

27. 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: November 30, 2022 BY: 

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

DATED: December 2, 2022 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

24. This Agreement is binding on Dignity Health's current or former successors, transferees, heirs, and assigns.

25. This Agreement is binding on Relator's current or former successors, transferees, heirs, and assigns.

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

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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: 12/2/2022 BY: Lisa M. Re | RMP
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: 12/02/22

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

DATED: 12/02/2022

BY: 
Michelle Baass
Director
California Department of Healthcare Services

DIGNITY HEALTH - DEFENDANT

DATED:
Dec 1, 2022

DocuSigned by:
BY: Marvin O'Quinn
Marvin O'Quinn
President, COO CommonSpirit Health ¹
on behalf of Dignity Health

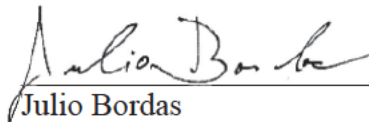
DATED: Dec 1, 2022

BY: Daniel A. Cody
Daniel A. Cody
Counsel for Dignity Health

¹ CommonSpirit Health is the successor in interest to Dignity Health.


Julio Bordas - RELATOR

DATED: 12/01/2022

BY: 

Julio Bordas

DATED: 12/01/2022

BY: 

Edward Arens
Phillips & Cohen LLP
Counsel for Julio Bordas