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COPY

**ENDORSED
FILED**
San Francisco County Superior Court

APR 28 2006

GORDON PARK-LI, Clerk
PHILOMENA DIAS
BY: _____
Deputy Clerk

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7 BRENDA KLUTZ, and the CALIFORNIA
DEPARTMENT OF HEALTH SERVICES

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FOR NURSING HOME REFORM, LYNN
14 HUMPHRIES, THOMAS MANDEY, RENA
MANDEY, and MARJORIE WEGNER

15
16 SUPERIOR COURT OF CALIFORNIA
17 COUNTY OF SAN FRANCISCO
18

19 **CALIFORNIA ADVOCATES FOR NURSING**
20 **HOME REFORM; and LYNN HUMPHRIES,**
21 **THOMAS MANDEY, RENA MANDEY, and**
MARJORIE WEGNER, taxpayers,
22
23
24 **SANDRA SHEWRY, in her official capacity as**
25 **Director of the California Department of Health**
26 **Services; BRENDA KLUTZ, in her official capacity**
27 **as Deputy Director of Licensing and Certification of**
28 **the California Department of Health Services;**
CALIFORNIA DEPARTMENT OF HEALTH
SERVICES; and DOES 1-10,

Plaintiffs,

v.

Defendants.

CASE NO. CGC 04-437210
**STIPULATION AND
SETTLEMENT AGREEMENT**

Dept: 302
Judge: The Honorable
Ronald E.
Quidachay

Trial Date:
Action Filed: December 17,
2004

1 This Stipulation and Settlement Agreement is entered into by and between California
2 Advocates for Nursing Home Reform, Lynn Humphries, Thomas Mandey, Rena Mandey, and
3 Marjorie Wegner (plaintiffs), on the one hand, and the California Department of Health Services,
4 its Director, Sandra Shewry, and Brenda Klutz (DHS or defendants), on the other hand.

5 1. Whereas, in this lawsuit, plaintiffs contend that defendants have violated Health and
6 Safety Code section 1267.5 by failing to collect accurate and up-to-date information about the
7 ownership of skilled nursing facilities and intermediate care facilities licensed by the State of
8 California (hereinafter, "facility licensees"), and by failing to make timely and accurate
9 information available to the public as required by law;

10 2. Whereas, defendants contend that their practices comply with Health and Safety Code
11 section 1267.5 and deny that plaintiffs are entitled to any relief;

12 3. Whereas, to avoid the costs and uncertainty of litigation, the parties desire to settle,
13 fully and finally, the case; and,

14 4. Whereas, the Effective Date of this Settlement Agreement shall be the date on which it
15 is "so ordered" by the court.

16 THE PARTIES STIPULATE AND AGREE AS FOLLOWS:

17 5. DHS shall contact all facility licensees to obtain current and accurate licensee and
18 ownership information required by Health and Safety Code section 1265 and 1267.5(a) which
19 shall include:

20 A. The name of the licensee (§ 1265(a); 22 C.C.R. § 72211);

21 B. The location of the facility (§ 1265(c); 22 C.C.R. § 72211);

22 C. The name of the person in charge of the facility (§ 1265(d); 22 C.C.R. § 72211);

23 D. The names and addresses of any persons or organizations listed as owner of
24 record in the real estate, including the building and grounds appurtenant to the building (§
25 1265(h); 22 C.C.R. § 72211);

26 E. The name and address of each general partner if the licensee is a partnership, or
27 each director and officer, if the licensee is a corporation (§ 1267.5(a)(1), § 1267.5(a)(5), 22
28 C.C.R. § 72211);

1 F. The name and address of each person having a beneficial ownership interest of 5
2 percent or more in the licensee corporation or partnership (§ 1267.5(a)(1), § 1267.5(a)(5), 22
3 C.C.R. § 72211);

4 G. If any person who is a general partner, director, officer or beneficial owner of 5
5 percent or more of the licensee corporation or partnership, has served or currently serves as an
6 administrator, general partner, trustee, trust applicant or sole proprietor of any licensee who is a
7 sole proprietorship, executor or corporate officer or director of, or has held a beneficial
8 ownership interest of 5 percent or more in, any other skilled nursing facility or intermediate care
9 facility or in any community care facility licensed by DSS, the name and current or last address
10 of the health facility or community care facility and the date the relationship commenced and, if
11 applicable, the date it was terminated (§ 1267.5(a)(2), § 1267.5(a)(5), 22 C.C.R. § 72211);

12 H. If the facility is operated under a management contract, the name and address of
13 any person or organization, or both, having an ownership or control interest of 5 percent or more
14 in the management company (§ 1267.5(a)(3)(A), § 1267.5(a)(5), 22 C.C.R. § 72211);

15 I. If the facility is operated under a management contract, and the management
16 company is a subsidiary of one or more other organizations, the names and addresses of the
17 parent organizations of the management company and the names and addresses of any officer or
18 director of the parent organizations (§ 1267.5(a)(3)(B), § 1267.5(a)(5), 22 C.C.R. § 72211);

19 J. If the licensee is a subsidiary of one or more organizations, the names and
20 addresses of the parent organizations of the subsidiaries and the names and addresses of any
21 officers or directors of the parent organizations (§ 1267.5(a)(4), § 1267.5(a)(5), 22 C.C.R. §
22 72211).

23 6. No later than sixty (60) days after the Effective Date of this Stipulation and Settlement
24 Agreement, DHS shall notify all facility licensees by United States mail that it is updating the
25 information required by section 1265 and 1267.5(a). In this mailing, DHS shall include
26 appropriate forms for that purpose. The parties agree that DHS may accomplish the purpose of
27 Paragraph 5 by using the following forms to obtain the information:

28 A. Form HS200 (8/99)

1 B. Form HS215A, except that DHS shall first modify the current (1/05) version of
2 this form to enable those persons who have a 5 percent or greater stake in the licensee and/or
3 management company of the licensee, and who have served in some capacity for a different
4 skilled nursing facility or intermediate care facility, to disclose the dates that the relationship
5 with the other facility commenced and/or terminated, as set forth in section 1267.5(a)(2) of the
6 Health and Safety Code. DHS shall provide CANHR a reasonable opportunity to review and
7 comment on the revised form, and will acknowledge receipt of those comments.

8 C. Form HS309 (3/03)

9 7. In connection with the mailing described in Paragraphs 5 and 6, DHS shall advise
10 facility licensees of the following:

11 A. All facility licensees must complete and return accurate current information, and
12 required supporting documentation, within 60 days (i.e., the Due Date) from the date of mailing.
13 The facility licensees shall provide a certification that the information provided is current and
14 correct.

15 B. If the facility licensee is operated under a management contract, then a
16 representative of the management company also must complete and return the appropriate forms
17 described above by the Due Date.

18 C. If the management company described in Paragraph 7(B) above is a subsidiary of
19 one or more organizations (i.e., parent companies), then each of those parent companies also
20 must complete and return the appropriate forms described above by the Due Date.

21 D. Failure to return the forms may result in action to revoke or deny renewal of a
22 license.

23 8. If a facility licensee fails to return the required forms by the Due Date, DHS staff shall
24 conduct a follow-up mailing, requiring the facility to provide all information required by
25 Paragraph 7 within 30 days after receipt of notification from DHS regarding the missing
26 information. DHS shall notify the facility licensee that failure to provide the information
27 requested may result in action to revoke or deny renewal of a license.

28 9. DHS Licensing and Certification staff shall review the information provided by each

1 facility licensee pursuant to Paragraph 7 to determine whether it is accurate, complete and
2 consistent. If DHS Licensing and Certification staff determines that the information is
3 inaccurate, incomplete, or inconsistent, DHS shall notify the licensee that it must provide any
4 additional information within 14 days of being so notified, and that failure to provide the
5 information requested may result in action to revoke or deny renewal of a license.

6 10. DHS shall initiate appropriate proceedings to revoke the license or cause non-renewal
7 of any facility licensee that fails to provide the required information in accordance with
8 Paragraphs 6-9.

9 11. DHS Licensing and Certification staff shall cause the data provided by each facility
10 licensee, management company, and parent company to be entered into the ELMS database
11 maintained by DHS within 180 days from the date(s) that the data is received from that facility
12 licensee, management company, and parent company.

13 12. On or before 30 days after the Effective Date of this Stipulation and Settlement
14 Agreement, DHS shall send a District Administrator/District Manager Memorandum (DA/DM
15 Memo) to all its district offices regarding the requirements of Health and Safety Code sections
16 1265 and 1267.5, subdivisions (a) and (b). In addition, the DA/DM Memo shall direct the
17 district offices to include, prominently in the public file for each facility, all of the information
18 required by sections 1265 and 1267.5(a) to be available to the public, including forms HS 200,
19 HS 215a and HS309 and any supporting documentation, and to update the information in the
20 public file when it is received from licensees, management companies and parent companies.
21 The DA/DM Memo also shall direct the district offices to include a current printout from the
22 ELMS database that contains all the information referenced in paragraph 5 of this Stipulation
23 and Settlement Agreement in the public file. The DA/DM Memo shall further direct district
24 offices to put in each facility's public file a new ELMS printout of this ownership information
25 annually. For purposes of this paragraph, the Los Angeles County L&C district offices shall be
26 considered a district office of DHS and shall be bound by this agreement.

27 13. DHS shall revise, as necessary, within 90 days of the Effective Date of this agreement,
28 any internal policy manuals or directives concerning the availability of information required to

1 be available in the public file of each facility as required by § 1265(k) and § 1267.5(a)(7).

2 14. DHS shall draft a poster, no less than 17 x 22 inches, that explains to members of the
3 public that they have the right to inspect the public file of any facility, including ownership
4 information, and obtain a current ELMS print out of ownership information for any Facility on
5 request. On or before 60 days after the Effective Date of this Stipulation and Settlement
6 Agreement, DHS shall provide a draft of this poster to CANHR. The parties agree that the
7 poster required by this paragraph shall be subject to mutual agreement of CANHR and DHS,
8 prior to distribution to district offices. Once the parties have reached agreement regarding the
9 form of the poster, DHS shall distribute the poster to all district offices, and direct the managers
10 of all district offices to display the poster in a conspicuous public place. For purposes of this
11 paragraph, the Los Angeles County L&C district offices shall be considered a district office of
12 DHS and shall be bound by this agreement.

13 15. Within ten months of the Effective Date of this agreement, DHS shall conduct random,
14 unannounced audits of at least five district offices to assure that they have complied with the
15 provisions of this agreement and the directives required by this agreement. Written results of the
16 audit shall be provided to plaintiffs within twelve months of the Effective Date of this
17 agreement.

18 16. DHS shall provide written notification to CANHR of the following:

19 A. Within 10 business days from when DHS completes the mailing described in
20 Paragraphs 5 and 6, DHS shall provide written notification that the mailing is complete, together
21 with an exemplar of the materials sent to each facility licensee.

22 B. Within 10 business days from when DHS completes the mailing of the DA/DM
23 Memo described in Paragraph 12, DHS shall provide written notification that the mailing is
24 complete, together with an exemplar of the materials sent to each district office.

25 C. Within 10 business days after DHS has revised its internal policy manuals or
26 directives as provided in Paragraph 13, DHS shall provide written notification of any
27 modifications that it has made.

28 D. Within 150 days from the Effective Date of this agreement, DHS shall provide

1 written notification of how many facility licensees, management companies and their parent
2 companies have submitted all or part of the information required by Paragraph 6. and how many
3 facility licensees, management companies and their parent companies have failed to respond to
4 the mailing.

5 E. DHS shall provide written notification to CANHR when it has completed entry of
6 the data received in response to the mailing described in Paragraph 6.

7 17. This Stipulation and Settlement Agreement constitutes a settlement of disputed claims
8 and its execution shall not constitute the admission of any fact or claim or defense asserted in the
9 case.

10 18. The parties agree that this Stipulation and Settlement Agreement is the result of their
11 mutual negotiation and preparation and accordingly shall not be deemed to have been prepared
12 or drafted by any party. The parties further agree that any court seeking to interpret this
13 Stipulation and Settlement Agreement should construe it as the product of mutual negotiation
14 and preparation.

15 19. The parties agree that this document constitutes the sole, entire, and complete
16 agreement among the parties to resolve the case.

17 20. This Stipulation and Settlement Agreement only shall be valid and enforceable if it is
18 "so ordered" by the Court. If the Court fails to "so order" it, then the parties shall continue to
19 litigate the lawsuit as if this Stipulation and Settlement Agreement never existed, and this
20 Stipulation and Settlement Agreement shall not be admissible or cited for any purpose either in
21 this lawsuit or any other lawsuit.

22 21. Defendants designate Brenda Klutz, in her official capacity as Deputy Director for
23 Licensing and Certification, or her successor, as the person responsible for seeing that the terms
24 of this Stipulation and Settlement Agreement are met.

25 22. Nothing herein shall constitute a waiver of plaintiffs' claim for attorneys' fees and
26 expenses. Plaintiffs reserve the right to file a motion for an award of fees and expenses, which
27 defendants reserve the right to oppose.

28 23. While this settlement agreement is in effect, if CANHR would like to review public

1 documents related to implementation of the settlement agreement. then it may make
2 arrangements to do so without need for filing a Public Records Act request, provided that it gives
3 DHS at least 10 days notice of its intentions. and subject to the availability of DHS staff on the
4 day that review of the records is requested.

5 24. It is the intent of the parties that all obligations required by this agreement will be
6 implemented and completed no later than April 1, 2007.

7 25. The court will retain jurisdiction to enforce the terms of this Settlement Agreement.

8 26. This Stipulation and Settlement Agreement may be executed in counterparts.

9 So stipulated.

10
11 Dated: April 11, 2006 Patricia M. McGinnis
12 Patricia McGinnis
13 For: CALIFORNIA ADVOCATES FOR
14 NURSING HOME REFORM,
15 Plaintiff

15 Dated: _____
16 Lynn Humphries
17 Plaintiff

18 Dated: _____
19 Thomas Mandey
20 Plaintiff

21
22 Dated: _____
23 Rena Mandey
24 Plaintiff

25
26 Dated: _____
27 Marjorie Wegner
28 Plaintiff

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Dated: _____

Patricia McGinnis
For: CALIFORNIA ADVOCATES FOR
NURSING HOME REFORM,
Plaintiff

Dated: April 21, 2006

Lynn Humphries
Lynn Humphries
Plaintiff

Dated: _____

Thomas Mandey
Plaintiff

Dated: _____

Rena Mandey
Plaintiff

Dated: _____

Marjorie Wegner
Plaintiff

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9 So stipulated.

10
11 Dated: _____

Patricia McGinnis
For: CALIFORNIA ADVOCATES FOR
NURSING HOME REFORM,
Plaintiff

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15 Dated: _____

Lynn Humphries
Plaintiff

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18 Dated: 4/13/06

Thomas Mandey

Thomas Mandey
Plaintiff

19
20
21 Dated: 4/13/06

Rena Mandey

Rena Mandey
Plaintiff

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25 Dated: _____

Marjorie Wegner
Plaintiff

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11 Dated: _____

Patricia McGinnis
For: CALIFORNIA ADVOCATES FOR
NURSING HOME REFORM,
Plaintiff

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15 Dated: _____

Lynn Humphries
Plaintiff

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19 Dated: _____

Thomas Mandey
Plaintiff

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23 Dated: _____

Rena Mandey
Plaintiff

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26 Dated: April 12, 2006

Marjorie Wegner
Marjorie Wegner
Plaintiff

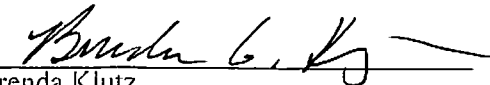
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Dated: 4-10-06


Brenda Klutz
For: CALIFORNIA DEPARTMENT OF
HEALTH SERVICES, Sandra Shewry, and
Brenda Klutz
Defendants

Approved as to form:

Dated: 4/27/06


Karin S. Schwartz
Counsel to CALIFORNIA DEPARTMENT
OF HEALTH SERVICES, Sandra Shewry,
and Brenda Klutz
Defendants

Dated: _____

Amitai Schwartz
Counsel to CALIFORNIA ADVOCATES
FOR NURSING HOME REFORM, Lynn
Humphries, Thomas Mandey, Rena Mandey,
and Marjorie Wegner
Plaintiffs

PURSUANT TO THE PARTIES' STIPULATION, THE STIPULATION AND SETTLEMENT
IS APPROVED AND THE PARTIES ARE ORDERED TO COMPLY WITH ITS
PROVISIONS.

RONALD E. GUIDACHAY

Dated: APR 28 2006

Judge of the Superior Court

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Dated: _____

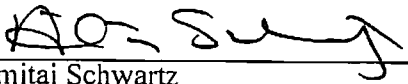
Brenda Klutz
For: CALIFORNIA DEPARTMENT OF
HEALTH SERVICES, Sandra Shewry, and
Brenda Klutz
Defendants

Approved as to form:

Dated: _____

Karin S. Schwartz
Counsel to CALIFORNIA DEPARTMENT
OF HEALTH SERVICES, Sandra Shewry,
and Brenda Klutz
Defendants

Dated: 4.24.04



Amitai Schwartz
Counsel to CALIFORNIA ADVOCATES
FOR NURSING HOME REFORM, Lynn
Humphries, Thomas Mandey, Rena Mandey,
and Marjorie Wegner
Plaintiffs

PURSUANT TO THE PARTIES' STIPULATION, THE STIPULATION AND SETTLEMENT
IS APPROVED AND THE PARTIES ARE ORDERED TO COMPLY WITH ITS
PROVISIONS.

Dated: _____

Judge of the Superior Court

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