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23 **UNITED STATES DISTRICT COURT**

24 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

25 INDEPENDENT LIVING CENTER  
26 OF SOUTHERN CALIFORNIA, INC.,  
27 a nonprofit corporation, *et al.*,

28 Petitioners,

SACRAMENTO FAMILY MEDICAL  
CLINICS, INC.; *et al.*,

Intervenors,

v.

TOBY DOUGLAS, Director of the  
Department of Health Care Services,  
State of California

Defendants.

Case No. CV 08-3315 CAS (MANx)

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
JOINT MOTION FOR APPROVAL  
OF SETTLEMENT AGREEMENT**

[Notice of Motion and Joint Motion;  
Declaration of Craig J. Cannizzo in  
Support of Joint Motion for Approval  
of Settlement Agreement; and  
[Proposed] Order filed concurrently  
herewith]

Date: September 22, 2014

Time: 10:00 a.m.

Crtrm.: 5, Floor 2

Hon. Christina A. Snyder

Action Filed: April 22, 2008

CV 08-3315 CAS (MANx)

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

1 CALIFORNIA PHARMACISTS  
ASSOCIATION, *et al.*,

2 Plaintiffs,

3 v.

4 TOBY DOUGLAS, Director of the  
California Department of Health Care  
Services

5 Defendant.

Case No. CV 09-722 CAS (MANx)

Hon. Christina A. Snyder, Judge  
Presiding

Action Filed: January 29, 2009

6 INDEPENDENT LIVING CENTER  
OF SOUTHERN CALIFORNIA, INC.,  
7 *et al.*,

8 Plaintiffs,

9 v.

10 TOBY DOUGLAS, Director of the  
Department of Health Care Services,  
State of California

11 Defendant.

Case No. CV 09-382 CAS (MANx)

Hon. Christina A. Snyder, Judge  
Presiding

Action Filed: January 16, 2009

12 CALIFORNIA HOSPITAL  
ASSOCIATION

13 Plaintiff,

14 v.

15 TOBY DOUGLAS, Director of the  
Department of Health Care Services,  
State of California

16 Defendant.

Case No. CV 09-8642 CAS (MANx)

Hon. Christina A. Snyder, Judge  
Presiding

Action Filed: November 24, 2009

CV 08-3315 CAS (MANx)

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs and Intervenors (collectively, “Plaintiffs”), on the one hand, and the Department of Health Care Services (“DHCS”) and the Director of DHCS, (collectively, “the Department”), on the other, jointly move the Court to approve the Settlement Agreement reached in the above-referenced cases. The Settlement Agreement was reached after six years of complex and exhaustive litigation, including multiple preliminary injunctions entered by this Court, numerous opinions by the Ninth Circuit Court of Appeals, complex regulatory proceedings, and ultimately, a United States Supreme Court decision that vacated most of the Ninth Circuit decisions and remanded the matter for further proceeding. After the Supreme Court’s opinion was issued in February 2012, the parties engaged in continuous negotiations under the supervision of the chief Ninth Circuit mediator. As a result of these efforts, the parties ultimately negotiated a settlement which was executed in April 2014, and which the parties now present to the Court for approval.

The settlement was intensively negotiated by all parties and represents a fair and adequate resolution of these cases. Under the terms of the settlement, the parties have already dismissed their appeals from the preliminary injunctions issued in the cases, (§§ III.A.1, and § 1.16); and Plaintiffs agree, when this Agreement becomes effective, to dismiss the within actions with prejudice, (§ III.A.3), subject however to the Court retaining continuing jurisdiction to determine (1) motions for attorneys’ fees by counsel for Plaintiffs, and (2) motions or proceedings by Plaintiffs to enforce the Agreement, up to and including January 1, 2016 (§ III.D.17). In return, under the settlement, the Department has agreed – either by release (§ III.B.2 (page 14), or by agreement § III.A.8 (page 13) – to forgo recoupment of any amounts paid out by the Department to Medi-Cal providers, pursuant to the preliminary injunctions previously issued by this Court, except with respect to “opt-out providers.” In other words, when the settlement becomes effective, Plaintiffs

1 will give up their right to seek any further relief, and the state will give up its right  
2 to seek recoupment of funds that have already been paid pursuant to the preliminary  
3 injunctions, except with respect to “Claimed Excess Payments” for providers that  
4 “opt out” of the settlement. This preserves the status quo, and by any measure is  
5 fundamentally fair and equitable given the risk, expense, complexity and likely  
6 duration of further litigation if the settlement is not approved.

7 **II. BACKGROUND**

8 **A. Original Medi-Cal Rate-Cut Legislation**

9 The Court is familiar with the complex procedural and factual history of these  
10 actions, and the legislative enactments which they challenge, Assembly Bill X3 5  
11 (“2008 AB 5”), Assembly Bill 1183 (“AB 1183”), and Assembly Bill X4 5 (“2009  
12 AB 5”).

13 **B. Subsequent Legislation Impacting The Rate Cuts**

14 The effective dates of certain of the payment reductions in these cases have  
15 been impacted or superseded by subsequent legislation.

16 First, the 10% outpatient payment reduction of 2008 AB 5 was superseded on  
17 March 1, 2009 by AB 1183, which imposed smaller payment reductions.

18 Second, Senate Bill 90 (“SB 90”), which was enacted effective April 13, 2011  
19 eliminated the AB 1183 Reductions as to hospital inpatient services provided by  
20 Non-Contracting hospitals, for services rendered on or after April 13, 2011.

21 Another legislative enactment impacting the effective date of the challenged  
22 payment reductions is Section 93.5 of Assembly Bill 97 of 2011 (“AB 97”), which  
23 authorized the Department to reduce payments for various outpatient services and  
24 DP/NF services by ten percent, effective June 1, 2011 (the “AB 97 Reductions”).  
25 The instant settlement does not involve actions challenging the AB 97 Reductions.

26 **C. The Supreme Court’s February 2012 Ruling And Subsequent**  
27 **Ninth Circuit Mediation Efforts**

28 On January 18, 2011, the Supreme Court granted certiorari with respect to the

1 various payment reduction lawsuits. Earlier, on November 18, 2010, the Centers for  
2 Medicare & Medicaid Services (“CMS”) had disapproved various State Plan  
3 Amendments (“SPAs”) related to the payment reductions, and the Department had  
4 requested reconsideration. Oral argument in the Supreme Court was conducted on  
5 October 3, 2011. However, following oral argument, CMS approved some of the  
6 pending SPAs, and the Department withdrew its request for reconsideration of some  
7 of its other SPAs. The parties subsequently submitted letter briefs to the Supreme  
8 Court regarding the effect on the applicable cases, if any, of these administrative  
9 developments.

10 The Supreme Court issued its decision on February 22, 2012. *Douglas v.*  
11 *Indep. Living Ctr. of S. Cal., Inc.*, 132 S.Ct. 1204 (2012). The Supreme Court held  
12 that the SPA decisions of CMS changed the procedural posture of the cases. *Id.* at  
13 1209-10. The Supreme Court further held that, given the complexity of these cases,  
14 it would remand the cases back to the Ninth Circuit for further consideration of  
15 whether providers could maintain an action under the Supremacy Clause with  
16 respect to the payment reductions at issue. *Id.* at 1211. Thus, the Court vacated the  
17 Ninth Circuit decisions that had affirmed the various preliminary injunctions, and  
18 remanded the matter to the Ninth Circuit.

19 Following the Supreme Court’s decision, the Plaintiffs in the various cases  
20 and the Department then engaged in lengthy settlement negotiations overseen by the  
21 chief Ninth Circuit mediator, Claudia Bernard. These mediation efforts were  
22 successful, ultimately resulting in execution of the instant proposed settlement on  
23 April 28, 2014.<sup>1</sup>

24  
25  
26 <sup>1</sup> The Settlement Agreement is attached as Exhibit A to the Declaration of Craig J.  
27 Cannizzo in Support of Joint Motion for Approval of Settlement Agreement, filed  
28 concurrently herewith.

1 **III. THE PROPOSED SETTLEMENT**

2 **A. General Provisions**

3 First, pursuant to the Settlement Agreement, the parties have dismissed their  
4 various appeals in these actions. Then, after both this Court and CMS approves the  
5 Settlement, Plaintiffs will dismiss their actions with prejudice, subject to the Court  
6 retaining jurisdiction (1) to determine Plaintiffs' attorneys' fees motions and (2) to  
7 determine any motions by Plaintiffs to enforce the Agreement, up to and including  
8 January 1, 2016. In exchange, the Department will agree to forgo recoupment  
9 claims against Medi-Cal providers arising out of the preliminary injunctions in these  
10 cases, except with respect to "Claimed Excess Payments" for the following: (1) any  
11 current or prior hospital member of California Hospital Association ("CHA"), that,  
12 after notice sent after the Effective Date of the Settlement, nevertheless elects to opt  
13 out of the benefits of the Settlement (as specified in ¶¶ III.A.4 and 5); and (2) any  
14 provider that institutes a new suit or fails to dismiss a pending suit or administrative  
15 action against the State or Federal government, or officials in respect to the 2008  
16 AB 5, 2009 AB 5, or AB 1183 Reductions, and (3) the plaintiff hospitals in the  
17 *Santa Rosa* or *North Bay* litigation (¶¶ II.19 and III.A.7). Each side is to bear its  
18 own costs, except for any Plaintiffs' attorneys' fees which may be awarded, if any.

19 Among other things, the agreement provides that the Settling Plaintiffs –  
20 which include not only individual providers but also associational plaintiffs who are  
21 acting as virtual representatives of the associations' members – will release state and  
22 federal entities "from any and all liability, derivative or otherwise," for all claims  
23 concerning or relating to the payment reductions, "excluding any claims that any  
24 individual Medi-Cal provider may have relating exclusively to the accuracy of the  
25 computation by DHCS of the reimbursement due to that provider under applicable  
26 law." (§ III.B.1.)

27 In turn, pursuant to § III.B.2, the Department will release the Settling  
28 Plaintiffs from liability relating to "DHCS's Claimed Excess Payments," meaning

1 payments made while challenged payment reductions were enjoined, but where  
2 DHCS ultimately obtained federal approval from CMS for those payment reductions  
3 (§ III.A.8).<sup>2</sup> In addition, pursuant to the Settlement Agreement, the Department has  
4 agreed to forgo recoupment of amounts paid as a result of various preliminary  
5 injunctions where the Department subsequently withdrew its request for SPA  
6 approvals. This covers various pharmacy and other outpatient provider payments  
7 during the period from July 1, 2008 through February 28, 2011, as well as certain  
8 hospital payments through December 31, 2010, or February 28, 2011, depending on  
9 the provider category. (See fn. 1, *supra*.)

10 The settlement will not be effective until fully approved by CMS, or, if only  
11 partially approved by CMS, the Department decides to nevertheless proceed and not  
12 recover monies from providers for the payment reductions for time periods  
13 discussed above. The date on which the settlement is effective is known as the  
14 “Settlement Effective Date.” (§ II.24.)

15 **B. Special Hospital Notice Provisions**

16 Under the Settlement Agreement, the hospitals are required to forgo pursuing  
17 any further legal relief from the Medi-Cal payment reductions that were challenged  
18 in the applicable cases. In contrast with the other portions of these cases involving  
19 the outpatient payment reductions, this includes several hospital payment reductions  
20 that were enjoined only after they had been implemented for a period of time or  
21 \_\_\_\_\_

22 <sup>2</sup>This includes, with some exceptions, all payments made as a result of injunctions  
23 of the AB 1183 Reductions for services rendered from March 1, 2011 through May  
24 31, 2011, after which the successor legislation, AB 97, became effective. However,  
25 for hospital outpatient services and Non-Contract hospital inpatient services, the  
26 relevant dates of service are January 1, 2011 through April 12, 2011. Claimed  
27 Excess Payments also include payments made to small and rural Non-Contract  
28 hospitals for inpatient services while the 2009 AB 5 Reductions were enjoined, for  
dates of service of January 1, 2011 through April 12, 2011 and for DP/NFs for the  
period March 1, 2011 through May 31, 2011.



1 were never enjoined by this Court, some of which were statutorily eliminated  
2 several years later by SB 90 in 2011. Additionally, the association members of  
3 CHA are relatively few in number (approximately 450) and are readily identifiable.  
4 Because of these unique circumstances that are *only* applicable to hospital providers,  
5 the settlement is structured to provide special notice to hospitals, such that  
6 individual hospitals, that are not already an “opt-out provider”, may choose not to  
7 accept the benefits of this settlement, and instead opt out and pursue claims on their  
8 own if they determine the settlement is not in their best interests.

9 Specifically, within 30 days of the Settlement Effective Date, the CHA is  
10 required to send a notice to all current members – and any hospital that was a  
11 member during any period on or after July 1, 2008 – advising them of the terms of  
12 the settlement (the “CHA Notice”). (§ III.A.4.) Within 45 days of when the CHA  
13 Notice is mailed, hospitals may opt out of the settlement by filing their own lawsuit  
14 challenging any or all of the payment reductions for any or all hospital services,  
15 and/or the federal government’s approval of those reductions. If a hospital opts out,  
16 it is not required to release the State from any potential claims, and could seek  
17 retroactive relief with respect to the payment reductions. However, any such opt-out  
18 hospital would not get the benefit of the settlement, meaning that DHCS will have  
19 the right to seek recoupment of any Claimed Excess Payment from the hospital.

20 The CHA Notice must advise the hospitals of (a) the terms of the Settlement;  
21 (b) that they may “opt out” by timely filing a lawsuit in their own name; and (c) if a  
22 hospital does file such an individual action, then it will lose the benefits of the  
23 Settlement, and the Department will have the right to seek recoupment of any  
24 payment to that provider that constitutes or constituted a DHCS’ Claimed Excess  
25 Payment. (§ III.A.4.) If CHA and DHCS cannot reach agreement on wording of the  
26 CHA Notice, any such dispute will be submitted to the Court for resolution. (*Id.*)

27 **C. Retention of Jurisdiction, and Attorneys’ Fees**

28 Finally, the settlement also provides (§ III.D.17) that the Court shall retain



jurisdiction, after the agreed dismissal of the within actions, with respect to motions or proceedings by any named Plaintiff to enforce the Settlement Agreement; and with respect to any motion for attorneys' fees by any of the Plaintiffs or Plaintiffs' attorneys. Then, § III.C. provides that attorneys for Plaintiffs may seek an award of fees from the Department and/or the benefitted parties, including hospitals. Any such application must be filed no earlier than the Settlement Effective Date, and no later than 30 days after the Settlement Effective date.

**IV. THE SETTLEMENT SHOULD BE APPROVED BECAUSE IT IS FUNDAMENTALLY FAIR, ADEQUATE AND REASONABLE**

In deciding whether to approve a settlement agreement under which the court retains continuing enforcement jurisdiction, the criteria applied is whether it is "fair, adequate, and reasonable, as well as consistent with the public interest." *United States v. Lexington-Fayette Urban County Gov't*, 591 F.3d 484, 489 (6th Cir. 2010). As the Ninth Circuit has noted, "[s]ettlement is the offspring of compromise; the question . . . is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *see also Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982) ("The proposed settlement is not to be judged against hypothetical or speculative measure of what might have been achieved by the negotiators.").

The proposed settlement is the result of years of negotiation between counsel for the Plaintiffs and counsel for the Department. There is no question that the positions of the Plaintiffs and the Department were adverse, and that the settlement is the fruit of arm's-length negotiations. This is particularly true in light of the fact that the Department is a governmental entity which has defended these actions zealously, and which has dedicated substantial resources to advocating for its position in multiple state and federal fora, up to and including the United States Supreme Court. *See Hanlon*, 150 F.3d at 1026 (participation of governmental entity

weights in favor of approving settlement agreement).

The proposed settlement is fundamentally fair, adequate, and reasonable. By this settlement, providers will have secured gains they achieved in the litigation and will avoid the risk that would ensue if these actions were further litigated.

**V. CONCLUSION**

For all the above reasons, the parties jointly request that this Court approve the Settlement Agreement, subject to the retention of jurisdiction for the limited purposes described in the [Proposed] Order.

DATED: August 19, 2014

Respectfully submitted,  
LYNN S. CARMAN

Bv: /s/

LYNN S. CARMAN  
Attorneys for Petitioners/Plaintiffs

DATED: August 19, 2014

Respectfully submitted,  
STANLEY L. FRIEDMAN

Bv: /s/

STANLEY L. FRIEDMAN  
Attorneys for Petitioners/Plaintiffs

DATED: August 19, 2014

Respectfully submitted,  
HOOPER, LUNDY & BOOKMAN, P.C.

Bv: /s/

CRAIG J. CANNIZZO  
Attorneys for Plaintiffs/Intervenors

DATED: August 19, 2014

Respectfully submitted,  
OFFICE OF THE ATTORNEY GENERAL

Bv: /s/

SUSAN M. CARSON  
Supervising Deputy Attorney General

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23 **UNITED STATES DISTRICT COURT**

24 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

25 INDEPENDENT LIVING CENTER  
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28 Petitioners,

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Intervenors,

v.

TOBY DOUGLAS, Director of the  
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State of California

Defendants.

Case No. CV 08-3315 CAS (MANx)

**DECLARATION OF CRAIG J.  
CANNIZZO IN SUPPORT OF  
JOINT MOTION FOR APPROVAL  
OF SETTLEMENT AGREEMENT**

[Notice of Motion and Joint Motion,  
Memorandum of Points and Authorities  
and Proposed Order filed concurrently  
herewith]

Date: September 22, 2014

Time: 10:00 a.m.

Ctrm.:5, Floor 2

Hon. Christina A. Snyder

Action Filed: April 22, 2008

CV 08-3315 CAS (MANx)

DECLARATION OF CRAIG J. CANNIZZO IN SUPPORT OF  
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1 CALIFORNIA PHARMACISTS  
ASSOCIATION, *et al.*,

2 Plaintiffs,

3 v.

4 TOBY DOUGLAS, Director of the  
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Services

5 Defendant.

Case No. CV 09-722 CAS (MANx)

Hon. Christina A. Snyder, Judge  
Presiding

Action Filed: January 29, 2009

6 INDEPENDENT LIVING CENTER  
OF SOUTHERN CALIFORNIA, INC.,  
7 *et al.*,

8 Plaintiffs,

9 v.

10 TOBY DOUGLAS, Director of the  
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State of California

11 Defendant.

Case No. CV 09-382 CAS (MANx)

Hon. Christina A. Snyder, Judge  
Presiding

Action Filed: January 16, 2009

12 CALIFORNIA HOSPITAL  
ASSOCIATION

13 Plaintiff,

14 v.

15 TOBY DOUGLAS, Director of the  
Department of Health Care Services,  
State of California

16 Defendant.

Case No. CV 09-8642 CAS (MANx)

Hon. Christina A. Snyder, Judge  
Presiding

Action Filed: November 24, 2009

CV 08-3315 CAS (MANx)

DECLARATION OF CRAIG J. CANNIZZO IN SUPPORT OF  
JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

**DECLARATION OF CRAIG J. CANNIZZO**

I, CRAIG J. CANNIZZO, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am an attorney with the law firm of Hooper, Lundy & Bookman, P.C., counsel of record for certain Plaintiffs and Intervenor herein. The facts stated herein are personally known to me, and if called as a witness I could and would competently testify to them.

2. Attached hereto as Exhibit A is a true and correct copy of the Settlement Agreement reached in the above-referenced cases.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 19, 2014, at San Francisco, California.

/s/  
CRAIG J. CANNIZZO

EXHIBIT A

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is made by and among Toby Douglas, in his official capacity as the Director of the California Department of Health Care Services, and the Department of Health Care Services (collectively, DHCS), on the one hand, and each of the named plaintiffs and intervenors in the Applicable Cases as defined below; Lynn Carman and Stanley L. Friedman with respect to Paragraphs III.C.1.a and III.C.1.c only; and Hooper, Lundy & Bookman, P.C. with respect to Paragraphs III.C.1.b and III.C.1.c only, on the other hand.

### **I. RECITALS**

WHEREAS, the State of California implemented various reductions and limitations on Medi-Cal reimbursement effective on and after July 1, 2008;

WHEREAS, certain of the Medi-Cal reimbursement reductions and limitations are being challenged in the Applicable Cases;

WHEREAS, certain of the plaintiffs in the Applicable Cases and their counsel believe that they have viable legal claims against DHCS for additional Medi-Cal reimbursement arising from the application of the challenged Medi-Cal reimbursement reductions and limitations;

WHEREAS, DHCS denies the validity of any such claims;

WHEREAS, DHCS believes that it has valid claims for recovery of Medi-Cal reimbursement as to certain providers for various time periods during which various reductions and limitations on Medi-Cal reimbursement were enjoined by a district court, but where the federal government, through its Centers for Medicare and Medicaid Services (CMS), ultimately approved the reductions and limitations;

WHEREAS, the Settling Plaintiffs deny the validity of any such claims;



WHEREAS, the California Legislature enacted legislation in 2011 (SB 90) that ended effective April 13, 2011 the reductions and limitations challenged in some of the Applicable Cases for non-contract hospital inpatient services, as codified at Welfare and Institutions Code section 14166.245;

WHEREAS, as a result of the enactment of the 2011 legislation (SB 90), certain of the Settling Plaintiffs agreed not to pursue further certain legal claims against DHCS relating to the 2008 AB 5 Reductions, 2009 AB 5 Reductions, and AB 1183 Reductions (as defined below) as to certain hospitals services;

WHEREAS, the settlement provided for herein is not, and shall not in any way be construed as, deemed to be evidence of, or be admissible in any action or proceeding of any kind whatsoever (including, without limitation, litigation, arbitration, and administrative proceedings) as an admission or concession of any fault, liability, or fact by any individual or entity;

WHEREAS, the Parties recognize the inherent uncertainty in litigation, and the time and resources necessary to litigate the issues raised in the Applicable Cases;

WHEREAS, the Parties desire to fully and finally resolve and settle the Applicable Cases; and

WHEREAS, the Parties have engaged in extensive settlement negotiations supervised by a Ninth Circuit mediator; including in-person meetings, conference calls, and electronic communications prior to reaching the terms contained in this Settlement Agreement.

## **II. DEFINITIONS**

The following definitions shall apply for purposes of this Settlement Agreement:

1. “2008 AB 5,” means Assembly Bill X3 5, enacted February 16, 2008, and enrolled at Chapter 3, Statutes of 2007-2008, Third Extraordinary Session.

2. “2008 AB 5 Reductions,” means the 10% reduction to Medi-Cal payments for various health care services enacted pursuant to 2008 AB 5, and previously codified at California Welfare & Institutions Code §§ 14105.19(b) and 14166.245.

3. “2009 AB 5,” means Assembly Bill X4 5, enacted on July 28, 2009, and enrolled at Chapter 5, Statutes of 2009-2010, Fourth Extraordinary Session.

4. “2009 AB 5 Reductions,” means the Medi-Cal reductions and limits enacted pursuant to 2009 AB X4 5 and codified at California Welfare & Institutions Code §§ 14105.191(f)(1) and 14166.245(g).

5. “AB 1183,” means Assembly Bill 1183, enacted on September 30, 2008, and enrolled at Chapter 758, Statutes of 2008.

6. “AB 1183 Reductions,” means the Medi-Cal 1% and 5% payment reductions, and “applicable average regional per diem contract rate reduced by 5%” reimbursement limit for some non-contract hospitals, enacted pursuant to AB 1183, and previously codified at California Welfare & Institutions Code § 14105.191(b) and § 14166.245(b)(2)(A) and (c)(3)(B).

7. “Agreement” or “Settlement Agreement” or “Settlement” means this Settlement Agreement.

8. “Applicable Cases” means the following:

a. *California Association for Health Services at Home v. Shewry*, United States District Court for the Central District of California, Case No. CV08-07045 CAS-MAN;

b. *California Hospital Association v. Maxwell-Jolly*, United States District Court for the Central District of California, Case No. 2:09-CV-08642 CAS;

c. *California Hospital Association v. Maxwell-Jolly*, Sacramento County Superior Court, Case No. 34-2010-80000673;

d. *California Hospital Association v. Douglas*, San Francisco Superior Court, Case No. CPF-11-511413;

e. *California Medical Association v. Shewry*, Los Angeles County Superior Court, Case No. BC390126;

f. *California Medical Transportation Association, Inc. v. Shewry*, United States District Court for the Central District of California, Case No. CV08-07046 CAS-MAN;

g. *California Pharmacists Association v. Maxwell-Jolly*, United States District Court for the Central District of California, Case No. CV 09-722 CAS(Ex);

h. *Independent Living Center of Southern California v. Maxwell-Jolly*, United States District Court for the Central District of California, Case No. 2:08-cv-03315 CAS (MANx); and

i. *Independent Living Center of Southern California v. Maxwell-Jolly*, United States District Court for the Central District of California, Case No. 2:09-CV-00382-CAS (MANx).

9. “CHA” means the California Hospital Association.

10. “CHA Notice” means the notice described in paragraph III.A.4.

11. “DHCS” means and includes each of the California Department of Health Care Services and the Director of the California Department of Health Care Services.

12. “DHCS’s Claimed Excess Payments” means payments that DHCS has made to Medi-Cal providers, or may make to Medi-Cal providers in the future, in excess of the amounts authorized by state law, specifically as to periods in which (1) the 2008 AB 5 Reductions, 2009 AB 5 Reductions, and/or AB 1183 Reductions were enjoined by a court, and (2) DHCS ultimately obtained federal approval from CMS to implement the reductions, and where, in

addition, (3) such payments were in excess of the Medicaid reimbursement ultimately approved by CMS through amendments to the California State Medicaid Plan.

13. “DHCS’s Released Claims” means any and all rights, claims, and causes of action that DHCS and/or the State had, has, or may have in the future against Medi-Cal providers for recoupment of DHCS’s Claimed Excess Payments, if CMS approves DHCS’s request not to recoup those payments in accordance with Paragraph III.A.2, *supra*. However, “DHCS’s Released Claims” shall not include any claims for recoupment of DHCS’s Claimed Excess Payments as to any Opt Out Provider.

14. “DP/NF,” means distinct part nursing facility, which is a unit of a hospital that furnishes skilled nursing services.

15. “Federal Released Entities” means any federal agency, federal agency subdivision, or person employed by the federal government, including but not limited to the United States Department of Health and Human Services (HHS); the Secretary of HHS; CMS; any subdivisions of HHS and CMS; and the officers, employees and agents of HHS and CMS, and persons working with them.

16. “Interlocutory Ninth Circuit Appeals and Cross-Appeals” means:

- a. *California Hospital Association v. Maxwell-Jolly*, 9th Cir. No. 10-55462;
- b. *California Pharmacists Association v. Maxwell-Jolly*, 9th Cir. No. 09-55365;
- c. *California Pharmacists Association v. Maxwell-Jolly*, 9th Cir. No. 09-55532;
- d. *Independent Living Center of Southern California, Inc. v. Shewry*, 9th Cir. No. 08-56422;

e. *Independent Living Center of Southern California, Inc. v. Shewry*, 9th Cir. No. 08-56554;

f. *Independent Living Center of Southern California, Inc. v. Shewry*, 9th Cir. No. 08-57016; and

g. *Independent Living Center of Southern California, Inc. v. Maxwell-Jolly*, 9th Cir. No. 09-55692.

17. “Non-Contract Hospital” means a hospital that has not entered into a Selective Provider Contracting Program (SPCP) contract with DHCS, as set forth in Article 2.6 of Chapter 7, Part 3, Division 9 of the California Welfare and Institutions Code.

18. “North Bay HealthGroup Plaintiff” means any plaintiff in *NorthBay Healthcare Group v. Douglas*, San Francisco Superior Court, Case No. CGC-11-512059.

19. “Opt Out Provider” means any and all of the following: (1) any individual or entity that maintains and fails to dismiss within thirty (30) days of the Settlement Effective Date any lawsuit or administrative action (e.g., administrative audit appeal) against any entity or official of the State or Federal governments with respect to any or all of the 2008 AB 5 Reductions, the 2009 AB 5 Reductions, or the AB 1183 Reductions as applied to any service(s), excluding any such action limited exclusively to the accuracy of the computation of any of the challenged statutory reductions to a specific Medi-Cal provider; (2) any individual or entity that, at any time on or after the Settlement Effective Date, initiates a new lawsuit or administrative action against any entity or official of the State or Federal governments with respect to any one or all of the 2008 AB 5 Reductions, the 2009 AB 5 Reductions, or the AB 1183 Reductions, excluding any such action limited exclusively to the accuracy of the computation of any of the

challenged statutory reductions to a specific Medi-Cal provider; and (3) any Santa Rosa Plaintiff or North Bay HealthGroup Plaintiff.

Lawsuits or administrative actions that will be the basis for treating a provider as an “Opt Out Provider” under this Paragraph shall include, but shall not be limited, to any lawsuit that a hospital may timely file in accordance with the CHA Notice and the procedures set forth in Paragraph III.A.4, *infra*, and any following lawsuits that are not dismissed with prejudice within thirty (30) days after the Settlement Effective Date:

- a. *California Association of Health Facilities v. Maxwell-Jolly*, United States District Court for the Central District of California, Case No. CV10-03259;
- b. *California Hospital Association v. Maxwell-Jolly*, United States District Court for the Central District of California, No. 2:09-CV-03694;
- c. *Care Centers, Inc. v. Maxwell-Jolly*, Sacramento County Superior Court, Case No. 34-2010-80000700;
- d. *Developmental Services Network v. Maxwell-Jolly*, United States District Court for the Central District of California, Case No. CV10-03284;
- e. *Hospital of Barstow, Inc., v. California Department of Health Care Services*, Sacramento County Superior Court, Case No. 34-2010-80000522;
- f. *Hospital of Barstow, Inc. v. Sebelius*, United States District Court for the Central District of California, Case No. CV11-10638 CAS (MANx);
- g. *NorthBay Healthcare Group v. Douglas*, San Francisco Superior Court, Case No. CGC-11-512059, subject to the additional terms described in this Paragraph;

h. *Santa Rosa Memorial Hospital v. Maxwell-Jolly*, United States District Court for the Northern District of California, Case No. 08-CV-5173-SC, subject to the additional terms described in this Paragraph; and

i. *Santa Rosa Memorial Hospital v. Douglas*, San Francisco Superior Court, Case No. CPF-09-509658, subject to the additional terms described in this Paragraph.

20. “Parties” means the named plaintiffs and intervenors in the Applicable Cases and DHCS.

21. “Plaintiff Released Claims” means:

a. Any and all rights, claims, and causes of action, whether federal, state, or otherwise, and whether past, present, or future, asserted in the Applicable Cases, and the Interlocutory Ninth Circuit Appeals and Cross-Appeals, and any and all rights, claims, and causes of action, whether federal, state, or otherwise, and whether past, present, or future, concerning or relating to the 2008 AB5 Reductions, 2009 AB5 Reductions, or AB 1183 Reductions, that could have been asserted in respect to those Reductions in those cases based on the facts alleged therein, including but not limited to any claim for Medicaid reimbursement for services subject to those Reductions rendered on or after July 1, 2008 but before June 1, 2011 that would exceed reimbursement that complies with California’s federally-approved Medicaid State Plan as amended, including but not limited to State Plan Amendments (SPAs) approved by CMS as SPA 08-009A, SPA 08-009B1, and SPA 08-009D on or about October 27, 2011, excluding any such claim by an Opt Out Provider; and

b. Any and all rights, claims, and causes of action, under the federal Administrative Procedures Act (APA) or any other federal or state law, whether past, present, or future, arising from HHS’s approval for various periods of implementation the 2008 AB 5



Reductions, 2009 AB 5 Reductions, AB 1183 Reductions, excluding any such rights, claims, and causes of action by an Opt Out Provider.

22. “Santa Rosa Plaintiff” means any plaintiff in the following matters: *Santa Rosa Memorial Hospital v. Maxwell-Jolly*, United States District Court for the Northern District of California, Case No. 08-CV-5173-SC; *Santa Rosa Memorial Hospital v. Douglas*, San Francisco Superior Court, Case No. CPF-09-509658.

23. “Settlement Execution Date” means the date that this Settlement Agreement is fully executed.

24. “Settlement Effective Date” means either (1) the date on which CMS grants complete and total approval of DHCS’s request to forgo seeking recoupment of DHCS’s Claimed Excess Payments, as provided in Paragraph III.A.2 *infra*, or (2) if CMS only partially approves DHCS’s request, the date (if any) upon which DHCS notifies plaintiffs’ counsel that it is not exercising its option to terminate the Settlement as set forth in Paragraph III.D.4, *infra*.

25. “Settling Plaintiffs” means all of the named plaintiffs and intervenors in the Applicable Cases; their successors and assigns, agents, heirs, executors, administrators, and personal representatives (as to plaintiffs who are individual persons); their successors and assigns, parent corporations, affiliates, subsidiaries, divisions, current members, former members who were members during any period of time in which the 2008 AB 5 Reductions, the 2009 AB 5 Reductions, and the AB 1183 Reductions were in effect or would have been in effect if not enjoined by the courts, officers, directors, agents and employees (as to plaintiffs and intervenors who are not individual persons); and any person or entity in privity with the named plaintiffs and intervenors, or who otherwise can claim through or be bound by them. Notwithstanding the foregoing, Settling Plaintiffs shall not include any Opt Out Provider.

26. “State Released Entities” means the State of California; the Governor of the State of California; the State Legislature and all of its members; any elected state officer; any state agency, board, and commission, and their officers, employees, agents, and persons working with them, including but not limited to DHCS and the Director of DHCS; and any subdivision of the State.

### **III. TERMS**

In view of the foregoing, the Parties agree as follows.

Each of the foregoing recitals and definitions is incorporated by reference herein and made a part hereof.

#### **A. General Terms**

1. Within fifteen (15) days of the Settlement Execution Date, the parties shall jointly request that the United States Court of Appeals for the Ninth Circuit dismiss the Interlocutory Ninth Circuit Appeals and Cross Appeals, with each side to bear their own costs including but not limited to costs previously awarded by any appellate court in these cases. Within fifteen (15) days of the date that the Ninth Circuit dismisses the appeals in this matter, the parties shall jointly submit this Settlement to the United States District Court for the Central District of California and request that the Court approve it.

2. Within thirty (30) days of receiving notice of the district court’s approval of this Settlement as described in Paragraph III.A.1, DHCS shall send a written request to CMS for approval to forgo seeking recoupment of DHCS’s Claimed Excess Payments to Medicaid providers without jeopardizing any federal financial participation (FFP). However, DHCS may request to retain the right to apply the 2008 AB 5 Reductions, 2009 AB 5 Reductions, and AB 1183 Reductions, to the extent that implementation of such reductions was previously approved by CMS, with respect to any Opt Out Provider. Within 5 business days of its receipt of CMS’s

decision to approve or reject, in whole or in part, its request, DHCS shall notify all plaintiffs' counsel in writing by email to their known email addresses of that occurrence and provide a copy of CMS's response.

3. Within thirty (30) days of the Settlement Effective Date, all plaintiffs in the Applicable Cases shall file a dismissal of all actions in the Applicable Cases, with prejudice, each party to bear their own costs, including any costs that may have been previously awarded or by any court in these proceedings. The parties stipulate that any order of dismissal shall state that the district court retains jurisdiction to entertain any application for attorneys' fees as described in Part III.C and for purposes of enforcement of this Agreement and for such period as described in Part III.D.17.

4. Within thirty (30) days of the Settlement Effective Date, CHA shall send a notice to all current hospital members, and any hospital that was a prior member of CHA during any period on or after July 1, 2008, by registered or certified mail, return-receipt requested, to their last known address, that advises them: (a) of the terms of this Settlement; (b) that they may "opt out" of the settlement by filing their own lawsuit(s), in their own name(s), challenging any one or all of the 2008 AB 5 Reductions, 2009 AB 5 Reductions, or AB 1183 Reductions for any or all hospital services, including without limitation Non-Contract hospital inpatient services, DP/NF services, or hospital outpatient services, and/or the federal government's approval of these reductions, provided that they file any such individual action within forty-five (45) days of when the notice was mailed to them; and (c) that, if a hospital does file such an individual action challenging one or more of these payment reductions, then it will lose the benefits of this Settlement, and DHCS will have the right under this Agreement to seek recoupment of any payment to that provider that constitutes or constituted a DHCS's Claimed Excess Payment.

Counsel for CHA shall meet and confer with DHCS's counsel regarding the wording of the notice; in the event that the parties are unable to reach agreement on such wording, the matter shall be submitted to the United States District Court for the Central District of California for resolution. Within fourteen (14) days of sending the notice provided in this paragraph, CHA shall file a proof of service regarding that notice with the United States District Court for the Central District of California, and attach thereto true and accurate copies of all executed return receipts. If any notices are returned to CHA as nondeliverable, CHA shall also include photocopies of such returned notices as attachments to its proof of service.

5. With respect to any individual lawsuit filed by a hospital as described in Paragraph III.A.4 that complies with the 45-day time period set forth therein: (1) DHCS shall waive, and not assert, any collateral estoppel or res judicata defense, based on the dismissals, the Settlement, or the Settlement Agreement; and (2) any such lawsuit shall be treated as if it was filed on May 5, 2008 with respect to the 2008 AB 5 Reductions, September 30, 2010 with respect to the AB 1183 Reductions, and June 30, 2011 with respect to the 2009 AB 5 Reductions, for statute-of-limitations and laches purposes. Except as provided in this paragraph, DHCS shall retain any and all defenses that may be available to it in such cases and to such claims. Nothing in this Settlement Agreement shall extend the time for the filing of any administrative action by an Opt Out Provider. Nothing in the Settlement, the Settlement Agreement, or any dismissal in this matter, shall have any collateral estoppel or res judicata effect on *CHA v. Shewry*, No. CPF-03-503772 (S.F. Super. Ct.); *CHA v. Shewry*, No. CPF-08-508578 (S.F. Super. Ct.); *CHA v. Douglas*, CPF-12-512379 (S.F. Super. Ct.) (collectively, the "CHA Cases"), and no Party shall assert otherwise. The CHA Cases shall not be included in Plaintiff Released Claims.

6. Other than hospitals as provided in Paragraphs III.A.4, no Settling Plaintiff shall seek to continue to litigate their claims in the Applicable Cases, institute any new lawsuit or claim challenging the 2008 AB 5 Reductions, 2009 AB 5 Reductions, or AB 1183 reductions in any forum, or otherwise seek to opt out of this Settlement.

7. DHCS shall retain the right to seek recoupment of any payments that constitutes or constituted DHCS's Claimed Excess Payments from any Opt Out Provider.

8. DHCS hereby confirms that it has never had, and does not currently have, any intention to seek recoupment from providers for services rendered during any period in which 2008 AB 5, 2009 AB5, or AB1183 were enjoined, and for which DHCS chose to withdraw its request for SPA approvals for reductions during those periods, including but not limited to the additional money that DHCS was required to pay to physicians, clinics, optometrists, pharmacies, optometrists, and adult day health care centers for services rendered July 1, 2008-August 17, 2008 pursuant to the amended preliminary injunction issued by Judge Snyder, dated January 22, 2010. DHCS hereby confirms, represents, warrants, and agrees that DHCS will not seek recoupment with respect to the reductions described above for time periods in which it withdrew its request for, and did not receive, SPA approval, nor will it otherwise seek to enforce the reductions described above for those periods. No Settling Plaintiff may quote, cite, reference, or otherwise rely upon this Paragraph, or any portion of it, in connection with any motion for attorney's fees.

## **B. Releases**

1. Effective on the Settlement Effective Date, all Settling Plaintiffs shall release the State Released Entities and the Federal Released Entities from any and all liability, derivative or otherwise, for all of the Plaintiff Released Claims, excluding any claims that any individual

Medi-Cal provider may have relating exclusively to the accuracy of the computation by DHCS of the reimbursement due to that provider under applicable law.

2. Effective on the Settlement Effective Date, DHCS shall release the Settling Plaintiffs from any and all liability for DHCS's Released Claims for Payments, and shall not seek to recoup DHCS's Claimed Excess Payments, except that DHCS shall not release its claims to recoup DHCS's Claimed Excess Payments from any Opt Out Provider.

**C. Attorneys' Fees and Costs**

1. The Parties shall each pay their own fees and costs, including but not limited to any costs incurred and/or awarded in any appellate proceeding, except as expressly set forth herein.

a. No earlier than the Settlement Effective Date, and no later than thirty (30) days after the Settlement Effective Date, plaintiffs and their attorneys Lynn Carman and Stanley Friedman may file (an) application(s), together or separately, for attorneys' fees for services performed in litigating *Independent Living Center of Southern California v. Maxwell-Jolly*, United States District Court for the Central District of California, Case No. 2:08-cv-03315 CAS (MANx), and *Independent Living Center of Southern California v. Maxwell-Jolly*, United States District Court for the Central District of California, Case No. 2:09-CV-00382-CAS (MANx), including any proceeding in these cases before the Judicial Council on Multidistrict Litigation, the Ninth Circuit Court of Appeals, or the Supreme Court. DHCS may oppose any such request and retains any and all arguments and defenses that it may have to an award of attorneys' fees and to the amount of such award that may be claimed.

b. No earlier than the Settlement Effective Date, and no later than thirty (30) days after the Settlement Effective Date, intervenors and the law firm of Hooper, Lundy & Bookman, P.C., may file an application for attorneys' fees for services performed in litigating

*Independent Living Center of Southern California v. Maxwell-Jolly*, United States District Court for the Central District of California, Case No. 2:08-cv-03315 CAS (MANx), including any appellate proceedings in this case. DHCS may oppose any such request and retains any and all arguments and defenses that it may have to an award of attorneys fees and to the amount of such award that may be claimed.

c. No earlier than the Settlement Effective Date, and no later than thirty (30) days after the Settlement Effective Date, any plaintiffs' attorney who has appeared in one or more of the Applicable Cases may file an application for attorneys fees under the "common benefit" theory (as described in *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 392-96 (1970)) or any other theory for services performed in litigating the relevant case(s), provided that such application shall seek payment exclusively and directly from any Medicaid providers that purportedly obtained a benefit from counsel's work, and not from DHCS or any of the State Released Entities. In connection with any such application, plaintiffs counsel shall not assert any argument that would require DHCS or any other state agency to utilize its resources or modify its internal practices to assist plaintiffs' counsel in collecting any fee award that the court may grant. Further, any plaintiffs' counsel who makes such an application shall fully indemnify the State Released Parties and hold them harmless as to any claims asserted by any provider who may be ordered by the court to pay fees to counsel in connection with work done on the Applicable Cases, provided such indemnification obligation shall not exceed the actual attorneys fee recovery of such counsel pursuant to an award of fees as described in this Paragraph.

2. Except as provided in Paragraph III.C.1 *supra*, the Settling Plaintiffs and their counsel release DHCS for any attorneys' fees incurred in connection with the Applicable Cases.



#### **D. Other Terms**

1. In the event that this Settlement Agreement is not finally approved by the United States District Court for the Central District of California, as provided in Paragraph III.A.1, *supra*, the Parties shall be restored to their respective positions as of the date when this Settlement Agreement is signed, except that the dismissed Interlocutory Ninth Circuit Appeals and Cross-Appeals shall remain dismissed. In this event, the terms and provisions of this Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in any action or in any other proceeding for any purpose, and any judgment or order entered by the United States District Court for the Central District of California in accordance with the terms of this Settlement Agreement shall be treated as vacated, nunc pro tunc.

2. If CMS does not act upon DHCS's request to forgo recoupment of DHCS's Claimed Excess Payments to Medicaid providers, as provided in Paragraph III.A.2, *supra* within 180 days from when DHCS submits its request, then any of the Parties, individually or collectively, may elect to terminate the Settlement by providing written notice to all the other Parties in the manner set forth in Paragraph III.D.18, *infra*. If any Party or Parties exercise their right to terminate the Settlement pursuant to this Paragraph, then the Parties shall be restored to their respective positions as of the date when this Settlement Agreement is signed, except that the dismissed Interlocutory Ninth Circuit Appeals and Cross-Appeals shall remain dismissed. Subject only to this exception (i.e., continued dismissal of the Interlocutory Ninth Circuit Appeals and Cross-Appeals), the terms and provisions of this Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in any action or in any other proceeding for any purpose, and any judgment or order entered by the United States District Court for the Central District of California in accordance with the terms of this Settlement Agreement shall be treated as vacated, nunc pro tunc.

3. In the event that CMS completely rejects DHCS's request to forgo recoupment of DHCS's Claimed Excess Payments to Medicaid providers, as provided in Paragraph III.A.2, *supra*, the Parties shall be restored to their respective positions as of the date when this Settlement Agreement is signed, except that the dismissed Interlocutory Ninth Circuit Appeals and Cross-Appeals shall remain dismissed. Subject only to this exception (i.e., continued dismissal of the Interlocutory Ninth Circuit Appeals and Cross-Appeals), the terms and provisions of this Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in any action or in any other proceeding for any purpose, and any judgment or order entered by the United States District Court for the Central District of California in accordance with the terms of this Settlement Agreement shall be treated as vacated, nunc pro tunc.

4. In the event that CMS partially, but not fully, approves DHCS's request to forgo recoupment of DHCS's Claimed Excess Payments to Medicaid providers, as provided in Paragraph III.A.2, *supra*, DHCS shall have the option of terminating this Settlement, as follows:

a. Within thirty (30) days of receiving notice of CMS's decision to only partially approve its request, DHCS shall notify plaintiffs' counsel, as provided in Paragraph III.D.18, *infra*, of whether it is continuing with, or terminating, the Settlement.

b. If DHCS exercises its option to terminate the Settlement, the Parties shall be restored to their respective positions as of the date when this Settlement Agreement is signed, except that the dismissed Interlocutory Ninth Circuit Appeals and Cross-Appeals shall remain dismissed. Subject only to this exception (i.e., continued dismissal of the Interlocutory Ninth Circuit Appeals and Cross-Appeals), the terms and provisions of this Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in any action or

in any other proceeding for any purpose, and any order entered by the United States District Court for the Central District of California in accordance with the terms of this Settlement Agreement shall be treated as vacated, nunc pro tunc.

5. If this Settlement Agreement is approved by the court as provided in Paragraph III.A.1.a, *supra*, and if CMS fully approves DHCS's request to forgo recoupment as provided in Paragraph III.A.2, *supra*, or, if CMS partially, but not fully, approves DHCS's request but DHCS nevertheless does not exercise its option to terminate this Agreement (as provided in Paragraph III.D.4, *supra*), then DHCS also shall agree not to implement the 2009 AB 5 Reductions and AB 1183 Reductions as to DP/NF services provided and/or prescription drugs dispensed by Medicaid providers on or after June 1, 2011, in the event that superseding statutory reductions as to such services are or remain under court injunction. *See Order Granting Preliminary Injunction, California Hospital Association v. Douglas*, No. 11-9078 CAS (MANx) (C.D. Cal. Dec. 28, 2011).

6. No order of a court pertaining to an application for attorneys' fees as set forth in Paragraph C, *supra*, or modification or reversal on appeal of any court order concerning any application for attorneys' fees awarded to any of plaintiff's counsel, shall constitute grounds for cancellation, modification or termination of this Agreement, and neither the Parties nor plaintiff's counsel shall request or suggest any such relief.

7. Notwithstanding any failure to obtain final court or federal approval as contemplated by this Agreement, and notwithstanding any other termination of this Agreement, any agreements made and orders entered during the course of the settlement negotiations relating to the confidentiality of information shall survive.

8. This Settlement Agreement is executed without reliance upon any representation by any of the named plaintiffs and intervenors in the Applicable Cases, and their agents, on the one hand, and DHCS or its agents on the other hand, concerning the nature or extent of any damages or legal liability, and all Parties have read the contents hereof, have been fully advised by counsel as to the consequences thereof, and have signed the same as a free act.

9. Each Party executing this Agreement received independent legal advice from its counsel regarding the meaning and legal effect of this Settlement Agreement, the advisability of making the agreements provided for herein, and the execution of this Settlement Agreement, and fully understand the same. Each Party executing this Settlement Agreement has the full right and authority to enter into this Agreement on behalf of itself, or any person or entity on behalf of whom it enters into this Agreement in a representative capacity, and to bind fully such person or entity to the terms and obligations of this Settlement Agreement. The Parties executing this Agreement have full power to enter into this Settlement Agreement and have not heretofore assigned, transferred, or encumbered, or purported to assign, transfer, or encumber, voluntarily or involuntarily, to any person or entity, all or any portion of the obligations or rights which are the subject of this Settlement Agreement.

10. None of the Parties shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Settlement Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein.

11. The terms set forth in this Agreement constitute the entire Agreement and are not subject to modification except by a writing signed by all of the Parties through their respective counsel.

12. The Parties agree to execute all documents that may be necessary to effectuate the purpose of this Agreement.

13. This Agreement shall be used solely for the following purposes, and for no other purpose: (1) settlement; (2) enforcement of the terms of this Agreement; and (3) in an action for breach of this Agreement.

14. This Agreement may be executed through the use of two or more counterparts, each of which will be deemed an original, and together shall constitute one written instrument. Photographic or facsimile copies of signed counterparts may be used in lieu of the originals for any purpose and shall have the same force and effect as an original ink signature.

15. The Settling Parties acknowledge that this Agreement (and any order that may incorporate its terms) is based on a compromise of disputed claims and does not constitute an admission by any of the Settling Parties as to any of the Settling Parties' claims or defenses in any of the Applicable Cases referenced in this Agreement.

16. This entire Settlement Agreement, and all of its obligations, shall fully terminate upon the first of the following:

a. Termination of this Settlement Agreement for lack of court approval as set forth in Paragraph III.D.1, *supra*;

b. Termination of the Settlement on a Party's (Parties') election because CMS failed to act upon DHCS's request to forgo recoupment of DHCS's Claimed Excess Payments as set forth in Paragraph III.D.2, *supra*.

c. Termination of this Settlement Agreement because CMS disapproves entirely DHCS's request to forgo recoupment of DHCS's Claimed Excess Payments made to Medicaid Providers, as set forth in Paragraph III.D.3, *supra*; and

d. Termination of this Settlement Agreement because CMS only partially disapproves DHCS's request to forgo recoupment of DHCS's Claimed Excess Payments made to Medicaid Providers, and DHCS exercises its option to terminate the Settlement, as set forth in Paragraph III.D.4, *supra*.

In addition, the district court's continuing jurisdiction, as set forth in Part III.D.17, shall terminate on the earlier of the following.

a. Completion of all of the parties' respective obligations under this Settlement Agreement; or

b. The arrival of January 1, 2016.

The Parties further agree that, upon the occurrence of any event set forth above in this Paragraph, no court will retain any jurisdiction over this Settlement Agreement, and the parties will not seek to either extend or enforce any court's jurisdiction over this Settlement Agreement beyond the time at which any of the events set forth in this Paragraph have occurred.

Notwithstanding the foregoing, following a termination of this Settlement Agreement as described in this Paragraph, the jurisdiction of United States District Court for the Central District of California shall remain in full force and effect for any actions, disputes, claims or controversies regarding the validity, enforcement, interpretation or breach of this Settlement Agreement to the extent they relate to any period of time in which this Settlement Agreement was in effect.

17. The Parties agree to submit to the continuing jurisdiction of the United States District Court for the Central District of California, (1) with respect to any motion for attorney's fees as contemplated by Part III.C., and (2) in any motion or proceeding brought or filed by any named plaintiff in any of the Applicable Cases to enforce this Settlement Agreement, up to and including January 1, 2016. The Parties agree to the court's continuing jurisdiction solely as a means for expediting the resolution of any disputes that may arise, and do not intend for their agreement to submit to the court's jurisdiction as described in this Paragraph to be a factor for the district court to consider in assessing any application for attorneys' fees as described in Part III.C., *supra*, and no Party shall argue otherwise.

18. All notices to the Parties that this Agreement may require or permit shall be made in writing and shall be sufficiently served if personally delivered or sent by certified or registered mail, return receipt requested, postage prepaid, addressed to the parties as set forth below:

a. The Plaintiffs and Intervenors:

Lloyd A. Bookman  
Hooper, Lundy & Bookman, P.C.  
1875 Century Park East  
Suite 1600  
Los Angeles, California 90067  
lbookman@health-law.com

Craig Cannizzo  
Hooper, Lundy & Bookman, P.C.  
575 Market Street, Suite 2300  
San Francisco, California 94105  
ccannizzo@health-law.com

Lynn S. Carman  
Medicaid Defense Fund  
404 San Anselmo Ave.  
San Anselmo, California 94960  
lynns carman@hotmail.com



Stanley L. Friedman  
445 S. Figueroa Street, 27<sup>th</sup> Floor  
Los Angeles, California 90071  
friedman@friedmanlaw.org

b. DHCS:

Susan Carson  
Greg Brown  
Office of the Attorney General  
455 Golden Gate Ave., Suite 11000  
San Francisco, California 94102  
[Susan.Carson@doj.ca.gov](mailto:Susan.Carson@doj.ca.gov)  
[Gregory.Brown@doj.ca.gov](mailto:Gregory.Brown@doj.ca.gov)

Douglas Press  
Chief Counsel  
Department of Health Care Services  
Office of Legal Services  
MS 0011  
PO Box 997413  
Sacramento, California 95899-7413

Notice shall be deemed given on the date of personal delivery or, if served by mail, upon the date stamped by the postal service on the return receipt. Any Party may change its address for notice by notifying all of the other parties of the change of address in writing in accordance with the provisions of this subparagraph.

19. This Settlement Agreement may be signed in counterparts. This Settlement Agreement shall be signed by each named plaintiff in the Applicable Cases, who agree to be bound thereby. However, an attorney may sign on behalf of a named plaintiff if authorized to do so by that named plaintiff, and any attorney who so signs warrants and represents that he/she has full authority to bind the named plaintiff on whose behalf he/she signs.

20. This Agreement, along with any exhibits, appendices, addendums, schedules, and amendments hereto, encompasses the entire agreement of the Parties, and supersedes all previous understandings and agreements between the Parties, whether oral or written. No prior versions

of this Agreement, or written proposals of any party, are admissible in any court for any purpose, including but not limited to use to interpret the meaning of this Agreement. This Agreement is the product of drafting by all the Settling Parties and, in construing this Agreement, no Party shall have any term or provision hereof construed against it solely by reason of such party having drafted this Agreement or any portion of it.

For: Acacia Adult Day Services

By: Mallory Vega  
Name: Mallory Vega  
Title: Executive Director  
Date: March 10, 2014

For: American College of Emergency  
Physicians, State Chapter of California, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For: California Association for Adult Day  
Services

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For: California Association of Medical Product  
Suppliers

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For: Acacia Adult Day Services

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: American College of Emergency  
Physicians, State Chapter of California, Inc.

By: EL \_\_\_\_\_

Name: Elena Lopez-Gutman

Title: Executive Director

Date: April 8, 2014

For: California Association for Adult Day  
Services

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Association of Medical Product  
Suppliers

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Acacia Adult Day Services

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: American College of Emergency  
Physicians, State Chapter of California, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Association for Adult Day  
Services

By:  \_\_\_\_\_

Name: LYDIA MISSAELIDES

Title: EXECUTIVE DIRECTOR

Date: 3/07/2014

For: California Association of Medical Product  
Suppliers

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Acacia Adult Day Services

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: American College of Emergency  
Physicians, State Chapter of California, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Association for Adult Day  
Services

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Association of Medical Product  
Suppliers

By:  \_\_\_\_\_

Name: ROBERT ACKERMANN

Title: EXECUTIVE DIRECTOR

Date: 3/18/14

For: California Association of Public Hospitals  
and Health Systems

By: 

Name: ERICA MURRAY

Title: PRESIDENT & CEO

Date: 4/4/14

For: California Dental Association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Hospital Association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Medical Association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Association of Public Hospitals  
and Health Systems

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Dental Association

By: \_\_\_\_\_

Name: Peter A. DuBois

Title: Executive Director

Date: March 17, 2014

For: California Hospital Association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Medical Association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



For: California Association of Public Hospitals  
and Health Systems

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Dental Association

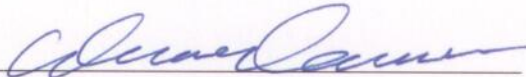
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Hospital Association

By:  \_\_\_\_\_

Name: C. Duane Dauner

Title: President/CEO

Date: March 31, 2014

For: California Medical Association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Association of Public Hospitals  
and Health Systems

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Dental Association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Hospital Association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Medical Association

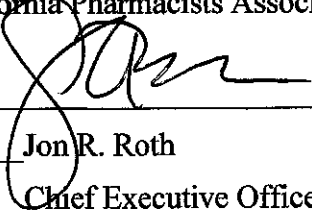
By:  \_\_\_\_\_

Name: Dustin Corcoran

Title: CEO

Date: 3/12/14

For: California Pharmacists Association

By:  \_\_\_\_\_

Name: Jon R. Roth

Title: Chief Executive Officer

Date: 3/10/14

For: Farmacia Remedios, Inc. \*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Charles Gallagher

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Fey Garcia

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\* Farmacia Remedios, Inc. no longer exists, and the corporate form of the original plaintiff is no longer recognized by the State of California or the state of incorporation (Delaware).

For: California Pharmacists Association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Farmacia Remedios, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Charles Gallagher

By: Charles Gallagher

Name: Charles Gallagher

Title: ADS Participant

Date: 3-17-14

For: Fey Garcia

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: California Pharmacists Association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Farmacia Remedios, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Charles Gallagher

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Felix Garcia

By: Felix P. Garcia

Name: FE P. GARCIA

Title: \_\_\_\_\_

Date: April 8, 2014

For: Grossmont Hospital Corporation

By: 

Name:

CARLISLE C. LEWIS III

Title:

ASSISTANT SGT

Date:

3/21/2014

For: Marin Apothecary, Inc. d/b/a Ross Valley  
Pharmacy

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Theodore M. Mazer, M.D.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Ronald B. Mead, D.D.S.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Grossmont Hospital Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For: Marin Apothecary, Inc. d/b/a Ross Valley  
Pharmacy

By: Paul W. Lofgren  
Name: Paul W. Lofgren Pharm D  
Title: President  
Date: 3/11/14

For: Theodore M. Mazer, M.D.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For: Ronald B. Mead, D.D.S.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_


For: Grossmont Hospital Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For: Marin Apothecary, Inc. d/b/a Ross Valley  
Pharmacy

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For: Theodore M. Mazer, M.D.

By:  \_\_\_\_\_  
Name: Theodore Mazer MD  
Title: Speaker of the House  
Date: 4/10/14

For: Ronald B. Mead, D.D.S.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



For: Grossmont Hospital Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For: Marin Apothecary, Inc. d/b/a Ross Valley  
Pharmacy

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For: Theodore M. Mazer, M.D.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For: Ronald B. Mead, D.D.S.

By: RM  
Name: RONALD B. MEAD  
Title: DENTIST  
Date: 3/13/14

For: Sacramento Family Medical Clinics

By: Gilbert Simon, MD  
Name: GILBERT SIMON, MD  
Title: MEDICAL DIRECTOR  
Date: 3/10/14

For: South Sacramento Pharmacy

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For: Sharp Chula Vista Medical Center

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

For: Sharp Coronado Hospital and Healthcare Center

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

(2) of 2

For: Sacramento Family Medical Clinics

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: South Sacramento Pharmacy

By: Frank Cable

Name: Frank Cable

Title: Owner

Date: 3/11/2014

For: Sharp Chula Vista Medical Center

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Sharp Coronado Hospital and Healthcare  
Center

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Sacramento Family Medical Clinics

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: South Sacramento Pharmacy

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For: Sharp Chula Vista Medical Center

By:  \_\_\_\_\_

Name: Candice C. Lewis, M.D.

Title: Asst Secy

Date: 3-21-2014

For: Sharp Coronado Hospital and Healthcare Center

By:  \_\_\_\_\_

Name: Candice C. Lewis, M.D.

Title: Asst Secy

Date: 3-21-2014

For: Sharp Memorial Hospital

By: 

Name: Carolee C. Lewis, III

Title: Asst Secy

Date: 3-21-2014

\_\_\_\_\_  
Lynn S. Carman

Date: \_\_\_\_\_

\_\_\_\_\_  
Stanley L. Friedman

Date: \_\_\_\_\_

for Independent Living Center of Southern California, Inc.;  
Gray Panthers of Sacramento; Gray Panthers of San Francisco;  
Gerald Shapiro, Pharm. D., doing business as Uptown  
Pharmacy and Gift Shoppe; Sharon Steen, doing business as  
Central Pharmacy; Mark Beckwith; Margaret Dowling; Tran  
Pharmacy, Inc., doing business as Tran Pharmacy; California  
Association For Health Services at Home; California Medical  
Transportation Association, Inc.; and Managed Pharmacy  
Care.

For: Toby Douglas, in his official capacity as Director of the  
California Department of Health Care Services, and the  
California Department of Health Care Services

\_\_\_\_\_  
Toby Douglas

Director, California Department of Health Care Services

Date: \_\_\_\_\_

For: Sharp Memorial Hospital

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



Lynn S. Carman

Date: 3/18/14

Stanley L. Friedman

Date: \_\_\_\_\_

for Independent Living Center of Southern California, Inc.; Gray Panthers of Sacramento; Gray Panthers of San Francisco; Gerald Shapiro, Pharm. D., doing business as Uptown Pharmacy and Gift Shoppe; Sharon Steen, doing business as Central Pharmacy; Mark Beckwith; Margaret Dowling; Tran Pharmacy, Inc., doing business as Tran Pharmacy; California Association For Health Services at Home; California Medical Transportation Association, Inc.; and Managed Pharmacy Care.

For: Toby Douglas, in his official capacity as Director of the California Department of Health Care Services, and the California Department of Health Care Services

\_\_\_\_\_  
Toby Douglas

Director, California Department of Health Care Services

Date: \_\_\_\_\_

For: Sharp Memorial Hospital

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Lynn S. Carman

Date: \_\_\_\_\_



Stanley L. Friedman

Date: March 18, 2014

for Independent Living Center of Southern California, Inc.;  
Gray Panthers of Sacramento; Gray Panthers of San Francisco;  
Gerald Shapiro, Pharm. D., doing business as Uptown  
Pharmacy and Gift Shoppe; Sharon Steen, doing business as  
Central Pharmacy; Mark Beckwith; Margaret Dowling; Tran  
Pharmacy, Inc., doing business as Tran Pharmacy; California  
Association For Health Services at Home; California Medical  
Transportation Association, Inc.; and Managed Pharmacy  
Care.

For: Toby Douglas, in his official capacity as Director of the  
California Department of Health Care Services, and the  
California Department of Health Care Services

\_\_\_\_\_  
Toby Douglas

Director, California Department of Health Care Services

Date: \_\_\_\_\_

For: Sharp Memorial Hospital

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Lynn S. Carman

Date: \_\_\_\_\_

\_\_\_\_\_  
Stanley L. Friedman

Date: \_\_\_\_\_

for Independent Living Center of Southern California, Inc.;  
Gray Panthers of Sacramento; Gray Panthers of San Francisco;  
Gerald Shapiro, Pharm. D., doing business as Uptown  
Pharmacy and Gift Shoppe; Sharon Steen, doing business as  
Central Pharmacy; Mark Beckwith; Margaret Dowling; Tran  
Pharmacy, Inc., doing business as Tran Pharmacy; California  
Association For Health Services at Home; California Medical  
Transportation Association, Inc.; and Managed Pharmacy  
Care.

For: Toby Douglas, in his official capacity as Director of the  
California Department of Health Care Services, and the  
California Department of Health Care Services

  
\_\_\_\_\_  
Toby Douglas  
Director, California Department of Health Care Services

Date: 3118/14



Approved as to form:

HOOPER, LUNDY & BOOKMAN, P.C.

  
Craig J. Cannizzo

April 28, 2014

OFFICE OF THE ATTORNEY GENERAL

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Gregory D. Brown  
Deputy Attorney General

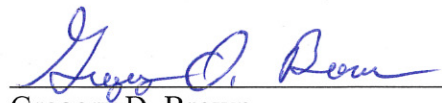
Approved as to form:

HOOPER, LUNDY & BOOKMAN, P.C.

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Craig J. Cannizzo

OFFICE OF THE ATTORNEY GENERAL

 3/18/14

Gregory D. Brown

Deputy Attorney General