

1 Amitai Schwartz (State Bar #55187)
Law Offices of Amitai Schwartz
2 Watergate Towers
2000 Powell Street, Ste. 1286
3 Emeryville, CA 94608
(510) 597-1775

4 Attorney for Plaintiffs
5 California Advocates for Nursing
Home Reform and Patricia McGinnis

6 Bill Lockyer
7 Attorney General
Douglas M. Press
8 Supervising Deputy Attorney General
Karin S. Schwartz (State Bar #209455)
9 Deputy Attorney General
455 Golden Gate Avenue, Ste 11000
10 San Francisco, CA 94102
(415) 703-1382

11 Attorneys for Defendants
12 Diana M. Bonta, et al.

13
14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 CITY AND COUNTY OF SAN FRANCISCO
17 UNLIMITED JURISDICTION
18

19 CALIFORNIA ADVOCATES FOR)
NURSING HOME REFORM et al.)

NO. 315107

20
21 Plaintiffs,

SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
INJUNCTION

22 vs.

23 DIANA M. BONTA, et al.

24 Defendants.
25
26
27
28

1 2. Defendants agree to submit regulations to the Office of Administrative
2 Law (“OAL”) for notice, hearing, and publication in the California Code of
3 Regulations, covering, but not limited to, the following matters administered and
4 interpreted by the Estate Recovery Unit of the DHS:

5 A. Specifying the types of property interests subject to recovery, which
6 will be limited to those listed in the regulation and will not include the term “other
7 arrangements”;

8 B. Specifying those annuities that are subject to recovery;

9 C. Clarifying which types of life estates are subject to recovery,
10 including the distinction between a Medi-Cal beneficiary’s interest in a life estate
11 and in a remainder interest;

12 D. Clarifying the treatment of In Home Support Services (IHSS) and any
13 amounts that will not be recovered;

14 E. Provide additional information regarding what costs are included in
15 the DHS’s estate recovery claims (e.g., nursing facility services) and what costs are
16 not included in its claims (e.g., Medicare premiums paid on behalf of a Qualified
17 Medicare or Specified-Low Income Medicare Beneficiary). The Department
18 agrees to provide a description of these costs similar in detail to that provided on
19 page 1 of the All County Letter No. 02-35, dated June 18, 2003 (under “Estate
20 Recovery Claims”).

21 F. Identifying the Estate Recovery Unit post office box as an additional
22 location to send the notice of death;

23 G. Identifying criteria and procedures under which alternatives to lump
24 sum payment of the amount due will be available;

25 H. Identifying the criteria under which voluntary liens may be negotiated
26 in lieu of immediate payment, the procedure for entering into such liens, whether
27 interest will be charged on the unpaid balance, and how interest will be calculated.

28

1 I. Enumerating all criteria used in considering hardship waiver
2 applications; and

3 J. Defining the disability exemption pursuant to 42 U.S.C. § 1396p(b)(2)
4 and 22 C.F.R. § 433.36, including the standard to be applied, the necessary
5 documentation, the burden of providing documentation, and the time when the
6 disability must exist.

7 3. Defendants will make the required submissions to the OAL no later
8 than:

9 A. December 1, 2003: matters covered by 2.B (annuities) above.

10 B. June 1, 2004: all matters, except those covered by 2.B
11 (annuities) and 2.J. (disability) above.

12 C. December 1, 2004: matters covered by 2.J. (disability) above.

13 4. If Defendants reasonably anticipate they will not meet any deadline in
14 paragraph 3, they will inform counsel for Plaintiffs in writing no later than 30 days
15 before the deadline of the specific reasons for the delay and the anticipated date
16 that the regulations will be submitted. Plaintiffs will have 15 days thereafter to
17 respond to Defendants' counsel in writing. Thereafter, Plaintiffs may file a
18 motion with the court to enforce the existing deadline or to set a new deadline or to
19 seek other appropriate relief. The parties agree that Plaintiffs may seek an ex parte
20 order from the court shortening the time for the motion to be heard to no less than
21 15 days after the notice of motion is served on Defendants' counsel by facsimile
22 transmittal.

23 5. Defendants agree that they will submit monthly progress reports
24 covering the process of drafting and reviewing the regulations covered by
25 paragraph 2 to Plaintiffs in writing, no later than the first day of each month,
26 beginning October 1, 2003, through and including January 1, 2004. Thereafter,
27 beginning on March 1, 2004, they shall submit bi-monthly progress reports
28 covering the process of drafting and reviewing any regulations that have not been

1 submitted to the OAL to Plaintiffs in writing no later than the first day of each
2 month, until all regulations covered by paragraph 2 have been submitted.

3 6. Defendants designate Stan Rosenstein, Assistant Deputy Director for
4 Medical Care Services at the DHS, or his successor, as the person responsible for
5 seeing that the terms of this agreement and the injunction are met. Mr. Rosenstein
6 (and/or his successor) need not sign the reports required by paragraph 5, but may
7 designate someone else to do so.

8 7. Defendants agree that drafts of all regulations specified in paragraph 2
9 will be delivered to Plaintiffs for review and comment prior to submission to the
10 OAL. Defendants agree to deliver the drafts of the matters covered by paragraph
11 2.B (annuities) no later than August 1, 2003 and drafts of all matters other than
12 those covered by paragraphs 2.B and 2.J (annuities and disability) no later than
13 December 1, 2003. Defendants will deliver the drafts of the matters covered by
14 paragraph 2.J (disability) no later than the date on which the drafts are submitted to
15 the DHS's internal Office of Regulation for review. It is the intention of the parties
16 that Plaintiffs shall receive drafts covered by this paragraph in sufficient time to
17 submit substantive comments to the DHS before the regulations are transmitted to
18 the OAL. The parties further intend that the DHS will acknowledge receipt of
19 Plaintiffs' comments and will consider the comments. Nothing in this paragraph 7
20 requires Defendants to adopt Plaintiffs' substantive position regarding any draft
21 regulation or regulations. However, the procedural requirements of this
22 paragraph 7 are material to this agreement.

23 8. If the OAL rejects any regulation or regulations submitted pursuant to
24 this agreement on the ground that they do not meet the requirements of
25 Government Code section 11342.2, Plaintiff reserves the right to initiate litigation
26 to compel adoption of the regulations or file an appropriate motion to add the OAL
27 or its officials as parties in this case. Defendants will take no position with respect
28

1 to whether the OAL, or its officials, may be added as parties or whether the
2 requirements of section 11342.2 have been satisfied.

3 9. Plaintiffs agree to dismiss their third cause of action for return of
4 money, without prejudice, within 10 days of the court's entry of the injunction.

5 10. The parties agree that this settlement agreement and stipulation will be
6 submitted to the court for entry of a permanent injunction in accordance with the
7 terms of this agreement and in the form attached hereto. It is further agreed that
8 the court shall retain jurisdiction to enforce the injunction and nothing herein limits
9 the remedies available in the event that the injunction is violated.

10 11. In the event of a future change in the law that eliminates or reduces
11 any obligation or duty that the Defendants have assumed under this settlement
12 agreement and stipulation, the parties shall meet and confer with respect to such
13 modifications of the settlement agreement and injunction as may be necessary to
14 make them conform with the changed state of the law. If the parties are unable to
15 reach agreement, Defendants may request that the court modify their obligations
16 under the settlement agreement and the injunction to conform with the changed
17 state of the law.

18 12. All affirmative obligations assumed by Defendants under this
19 settlement agreement and stipulation will be met when Defendants have filed with
20 the OAL the final set of regulations contemplated by this agreement. However, the
21 injunction will remain in effect for a period of five years from the date of filing.
22 Thereafter the injunction will be deemed dissolved without further action by the
23 Court, and the court's continuing jurisdiction over this case to enforce the
24 injunction shall end. Nothing in this paragraph precludes any party from asking
25 the Court to dissolve the injunction at an earlier time, provided that all material
26 terms of this settlement agreement and stipulation and the injunction have been
27 met.

28

1 13. Nothing herein shall constitute a waiver of plaintiffs' claim for
2 attorneys' fees and expenses. Plaintiffs reserve the right to file a motion for an
3 award of fees and expenses, which Defendants reserve the right to oppose.

4 14. This Settlement Agreement and Stipulation for Entry of Injunction
5 may be executed in counterparts.

6 So stipulated.

7
8
9 Dated:

10 _____
11 Stan Rosenstein
12 Assistant Deputy Director
13 Medical Care Services
14 California Department of
15 Health Services

16
17
18 Dated:

19 _____
20 Patricia McGinnis
21 Executive Director
22 California Advocates
23 for Nursing Home Reform

24
25
26 Approved as to Form:

27 _____
28 Bill Lockyer
Attorney General
Douglas M. Press
Supervising Deputy Attorney General
Karin S. Schwartz
Deputy Attorney General
Attorneys for Defendants

29 _____
30 Amitai Schwartz
Attorney for Plaintiffs