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ENDORSED
FILED
San Francisco County Superior Court

APR 25 2005

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

6 Attorneys for Defendants and Respondents

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

11 **CALIFORNIA ADVOCATES FOR NURSING
HOME REFORM,**

13 Plaintiff and Petitioner,

14 v.

15 **ARNOLD SCHWARZENEGGER, in his official
16 capacity as Governor of the State of California;
17 SANDRA SHEWRY, in her official capacity as
18 Director of the California Department of Health
19 Services; STAN ROSENSTEIN, in his official
20 capacity as Deputy Director, Medical Care Services
of the California Department of Health Services; the
DEPARTMENT OF HEALTH SERVICES, and
DOES 1-10, inclusive,**

21 Defendants and Respondents.

CASE NO. 05-440183

**STIPULATION AND
SETTLEMENT AGREEMENT**

Dept: 301
Judge: The Honorable
James L. Warren
Action Filed: April 7, 2005

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23 This Stipulation and Settlement Agreement is entered into by and between
24 CALIFORNIA ADVOCATES FOR NURSING HOME REFORM (plaintiff), on the one hand,
25 and the CALIFORNIA DEPARTMENT OF HEALTH SERVICES, its Director, SANDRA
26 SHEWRY, and STAN ROSENSTEIN (defendants), on the other hand, to fully resolve the issues
27 in the case. Defendant ARNOLD SCHWARZENEGGER shall be dismissed from this case.

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1 **INTRODUCTION**

2 On April 7, 2005, plaintiff filed a Complaint for Declaratory and Injunctive Relief;
3 Petition for Writ of Mandate (Complaint) against defendants in San Francisco County Superior
4 Court, Case Number 05-440183 (Lawsuit). At issue is defendants’ promulgation of various
5 regulations, entitled “Estate Recovery Regulations, R-32-00E,” to govern its Medi-Cal estate
6 recovery program. Plaintiff challenges adoption of the regulations as “emergency regulations”
7 because, according to plaintiff, no “emergency” exists within the meaning of Government Code
8 section 11346.1 or Welfare and Institutions Code section 14043.75.

9 Defendants deny that they have violated the Administrative Procedure Act (APA) as
10 alleged in the Complaint. They contend that the regulations were properly adopted on an
11 “emergency” basis in order to avoid the potential for fraud and abuse, to comply with the
12 permanent injunction in *CANHR v. Bonta*, Case No. 315107, in San Francisco Superior Court,
13 and to assist the State in meeting its obligations under state and federal laws applicable to estate
14 recovery.

15 To avoid the costs and uncertainty of litigation, the parties desire to settle, fully and
16 finally, the Lawsuit. The parties therefore stipulate and agree as follows.

17 **TERMS**

18 1. Defendants shall not apply the Estate Recovery Regulations, R-32-00E, and the
19 regulations shall have no effect, until interested persons have had an opportunity to comment on
20 them; defendants have considered those comments; defendants have made all modifications to
21 the regulations that they deem appropriate; the rulemaking file has been submitted to the Office
22 of Administrative Law (OAL), as set forth in Government Code sections 11346.8 and 11346.9;
23 and the OAL has completed any review required under the applicable statutes. The intent of the
24 parties is that the final Estate Recovery Regulations, R-32-00E, shall be effective in individual
25 estate recovery cases only after they are finally adopted pursuant to paragraph 3.

26 2. Subject to paragraph 1, defendants shall continue the process for adoption of R-
27 32-00E, as previously approved by the OAL and filed with the Secretary of State on March 23,
28 2005, that it already has initiated. The parties agree that, with respect to R-32-00E, all

1 provisions of the APA governing submission of the initial proposed regulations to the OAL
2 through scheduling of a public hearing on the proposed regulations and solicitation of public
3 comments have been satisfied.

4 3. Defendants shall proceed with the public hearing that they have scheduled for
5 May 23, 2005 and with the public comment period, to end on 5 p.m. on May 27, 2005, as
6 originally noticed. Defendants shall consider all comments made in connection with the
7 proposed regulations as required by the APA. If defendants determine that modifications are
8 appropriate, then defendants shall comply with Government Code section 11346.8, subdivision
9 (c), and any other applicable law. Once defendants have satisfied any applicable APA
10 requirements for additional notice and comment, defendants shall prepare a Final Statement of
11 Reasons and submit the rulemaking file to the OAL as provided by Government Code section
12 11346.9.

13 4. Within 8 business days from the date that the Court “so orders” this Stipulation
14 and Settlement Agreement, the Department of Health Services shall mail a notice to those
15 interested persons to whom it originally sent notice of the hearing and comment period on the
16 Estate Recovery Regulations, R-32-00E. The notice shall reference this settlement and state that
17 the Estate Recovery Regulations, R-32-00E, shall not be applied until the conditions described in
18 paragraph 1 above have been satisfied. In addition, the Department of Health Services shall post
19 this information on its website.

20 5. Plaintiff shall file a request for dismissal of defendant Arnold Schwarzenegger
21 from the lawsuit within three court days from the date that it receives notice that the Court has
22 “so ordered” this Stipulation and Settlement Agreement.

23 6. This stipulation constitutes a settlement of disputed claims and its execution shall
24 not constitute the admission of any fact or claim or defense asserted in the Lawsuit.

25 7. The parties agree that this stipulation is the product of their mutual negotiation and
26 preparation and accordingly shall not be deemed to have been prepared or drafted by any party.
27 The parties further agree that any court seeking to interpret this stipulation should construe it as
28 the product of mutual negotiation and preparation.

1 8. The parties agree that this document constitutes the sole, entire, and complete
2 agreement among the parties to resolve the Lawsuit.

3 9. This Stipulation and Settlement Agreement only shall be valid and enforceable if
4 it is “so ordered” by the Court. If the Court fails to “so order” the stipulation, then the parties
5 shall continue to litigate the Lawsuit as if this Stipulation and Settlement Agreement never
6 existed, and this Stipulation and Settlement Agreement shall not be admissible or cited for any
7 purpose either in this lawsuit or any other lawsuit.

8 10. Nothing in this Stipulation and Settlement Agreement shall modify the parties’
9 respective obligations under the permanent injunction entered in *CANHR v. Bonta*, Case No.
10 315107, in San Francisco Superior Court.

11 11. The Lawsuit only concerns the procedural aspects of the promulgation of Estate
12 Recovery Regulations, R-32-00E. Therefore, nothing in this Stipulation and Settlement
13 Agreement, or any judgment in this case, shall bind the parties or have preclusive effect with
14 respect to the positions that they may take on the substantive aspects of Estate Recovery
15 Regulations, R-32-00E.

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12. This Stipulation and Settlement Agreement may be signed in counterparts.

13. The parties shall prepare a proposed form of judgment consistent with the terms of this Stipulation and Settlement Agreement.

IT IS SO STIPULATED


Dated: _____

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

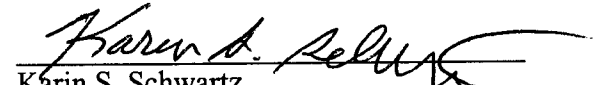
Dated: _____

Amitai Schwartz
Counsel to CALIFORNIA ADVOCATES
FOR NURSING HOME REFORM,
Plaintiff

Dated: 4/21/05



Stan Rosenstein
For: CALIFORNIA DEPARTMENT OF
HEALTH SERVICES
Defendant

Dated: 4/22/05


Karin S. Schwartz
Counsel to CALIFORNIA DEPARTMENT
OF HEALTH SERVICES, SANDRA
SHEWRY, and STAN ROSENSTEIN
Defendants

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

Dated: APR 25 2005



Judge of the Superior Court

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IT IS SO STIPULATED

Dated: April 21, 2005

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

Dated: April 21, 2005

Amitai Schwartz
Amitai Schwartz
Counsel to CALIFORNIA ADVOCATES
FOR NURSING HOME REFORM,
Plaintiff

Dated: _____

Stan Rosenstein
For: CALIFORNIA DEPARTMENT OF
HEALTH SERVICES
Defendant

Dated: _____

Karin S. Schwartz
Counsel to CALIFORNIA DEPARTMENT
OF HEALTH SERVICES, SANDRA
SHEWRY, and STAN ROSENSTEIN
Defendants

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