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CITY AND COUNTY OF SAN FRANCISCO
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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
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18 CITY AND COUNTY OF SAN
FRANCISCO,

19 Plaintiff,

20 vs.

21 UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
22 XAVIER BECERRA, Secretary of the
Department of Health and Human Services;
23 and DOES 1-25,

24 Defendants.
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Case No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Trial Date: None set.

1 **INTRODUCTION**

2 1. Throughout its 150-year history, Laguna Honda Hospital and Rehabilitation Center
3 (“Laguna Honda”) has provided skilled nursing and rehabilitation services to San Francisco’s most
4 vulnerable residents, including seniors, adults with disabilities, and others who cannot care for
5 themselves. For many, Laguna Honda provides the last safety net for patients who must, or wish to,
6 receive health care in the Bay Area near friends, family, and their communities. Because of its
7 commitment to serve the underserved, Laguna Honda often provides a last resort for patients who have
8 nowhere else to go, and serves a critical need for San Francisco.

9 2. Laguna Honda relies on federal and state funding through the Medicare and Medicaid
10 programs. Ninety-eight percent of Laguna Honda’s patients are Medicare or Medicaid beneficiaries.
11 They have no other means of financial support. And because federal funds makeup sixty-seven
12 percent of Laguna Honda’s operating budget, the facility’s participation in both programs is necessary
13 to pay for the critical care the facility provides to San Francisco’s underserved. Laguna Honda cannot
14 stay open without these essential funds.

15 3. Laguna Honda has recently faced challenges. After distinguishing itself among skilled
16 nursing facilities nationwide through its successful response to the COVID-19 pandemic, the
17 California Department of Public Health (“CDPH”) recently cited Laguna Honda for deficiencies in
18 care. Those deficiencies related to preventing contraband, such as cigarette lighters and drug
19 paraphernalia, on campus, infection prevention and control, as well as two missed doses of a
20 medication. Laguna Honda takes these deficiencies seriously and has worked hard to correct them.
21 Although Defendants terminated Laguna Honda’s Medicare and Medicaid provider agreements as a
22 result of the deficiencies, Laguna Honda is on its way to correcting all deficiencies and is confident
23 that it will submit an application allowing it to be recertified as a Medicare and Medicaid provider by
24 the end of the year.

25 4. But that recertification cannot come in time for Laguna Honda and especially its
26 patients and their loved ones in the community. According to Defendants, Laguna Honda must
27 transfer or discharge all of its remaining 610 patients—a daunting number—close its doors, and stop
28 providing critical services for San Francisco’s most vulnerable residents, all in just what is now a little

1 over a month, by September 13, 2022. Defendants are well aware that it is impossible for Laguna
2 Honda to comply with the unrealistic September 13 deadline that they imposed. Simply put, there are
3 not enough skilled nursing beds or facilities in the San Francisco Bay Area, in California, or in nearby
4 states to care for Laguna Honda's 610 patients, many of whom have a combination of behavioral
5 health challenges, substance use disorders, and other complex social and medical needs. And the
6 impossibility of the September 13 deadline is only exacerbated by Defendants' recent decision to
7 temporarily pause all discharges and transfers from Laguna Honda. Though San Francisco welcomes
8 the pause so that Laguna Honda can do the work to bring the facility back into compliance without
9 forcing patients out of the hospital, the pause makes it even less reasonable to impose a September 13
10 deadline.

11 5. Likewise, Defendants have determined that they will cease the federal funding that is
12 essential for Laguna Honda's operations on September 13, 2022. Laguna Honda cannot operate
13 without federal funding, and it cannot get recertified before that date. Further, Laguna Honda should
14 not need to be recertified at all. Laguna Honda has filed three successive administrative appeals
15 challenging the Centers for Medicare & Medicaid Services' ("CMS's") termination of the facility and
16 the statement of deficiencies that led to CMS's decision to terminate Laguna Honda as a Medicare and
17 Medicaid provider. If Laguna Honda is successful in its administrative appeals, Laguna Honda will
18 obtain an order finding that CMS improperly terminated Laguna Honda's Medicare and Medicaid
19 provider agreements, and restoring Laguna Honda as a Medicare and Medicaid provider. But that
20 administrative appeal will not be decided before September 13. Thus, Laguna Honda "might well be
21 forced to close its doors, and the residents might have to be transferred during the very period when
22 the hearing and post-hearing briefing . . . are taking place." *International Long Term Care, Inc. v.*
23 *Shalala*, 947 F. Supp. 15, 18 (D.D.C 1996). Defendants' arbitrary September 13 date renders illusory
24 the due process protections that Laguna Honda should receive through the administrative appeals
25 process. And, even though patients cannot be relocated at this time because of the pause in transfers
26 and discharges, Defendants remain unmovable on their arbitrary September 13 cutoff date for federal
27 funding. Come September, Laguna Honda faces the very real prospect of having to provide services

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1 to over 600 Medicaid and Medicare patients, without the funding and resources necessary to provide
2 quality care.

3 6. Defendants created this impossible situation knowing that Laguna Honda would have
4 no choice but to agree to their unreasonable demands. When Defendants terminated Laguna Honda’s
5 Medicare and Medicaid provider agreements on April 14, 2022, the San Francisco Department of
6 Public Health (“SFDPH”) was compelled to prepare a closure plan to continue federal funding. In that
7 plan, SFDPH proposed a termination and recertification process that would not require relocating
8 existing patients while SFDPH pursued Laguna Honda’s recertification. Defendants refused. SFDPH
9 then asked for 18 months to ensure that patients were transferred or discharged in a safe and
10 appropriate manner. Defendants refused. SFDPH also asked to be allowed to phase transfers so the
11 most vulnerable patients would be transferred last. Again, Defendants refused. Instead, Defendants
12 stuck with their unreasonable and impossible-to-satisfy demand that Laguna Honda transfer all patient
13 populations simultaneously, including those in end of life or palliative care, and all by their
14 unreasonable September 13 deadline to transfer all patients and close the facility. With no other
15 option, SFDPH had no choice but to agree to that deadline.

16 7. Defendants’ unreasonable conduct has given Laguna Honda and its patients a Hobson’s
17 choice. According to Defendants, Laguna Honda cannot stay open and it cannot close before
18 transferring or discharging its patients. Laguna Honda cannot transfer or discharge patients, but it
19 must transfer or discharge hundreds of patients by September 13. Laguna Honda will not receive
20 federal funding after September 13, but it cannot operate without federal funding. Laguna Honda has
21 availed itself of the right to appeal its termination as a Medicare and Medicaid provider, but it must
22 close its doors and transfer all patients before that appeal can even be decided. SFDPH has repeatedly
23 sought guidance from Defendants to resolve these conflicts, including in a July 15, 2022 letter from
24 San Francisco’s City Attorney that raised many of the same concerns that are the subject of this
25 complaint, only to be ignored or rebuffed at every turn.

26 8. Because of Defendants’ arbitrary and capricious conduct, San Francisco now has no
27 choice but to seek declaratory and injunctive relief to stop the harm Defendants have caused to the
28 City and County of San Francisco (“San Francisco” or “City”), Laguna Honda, and its patients.

1 **JURISDICTION AND VENUE**

2 9. The Court has jurisdiction under 5 U.S.C. Sections 703–706 (Administrative Procedure
3 Act), 28 U.S.C. Sections 1331 (action arising under the laws of the United States) and 1346 (United
4 States as a defendant). This Court has further remedial authority under the Declaratory Judgment Act,
5 28 U.S.C. Sections 2201(a) and 2202 *et seq.*

6 10. Defendants’ actions constitute final agency action and therefore are judicially
7 reviewable within the meaning of the Administrative Procedure Act (“APA”). 5 U.S.C. §§ 704, 706.

8 11. Venue properly lies within the Northern District of California because Plaintiff,
9 San Francisco, resides in this judicial district and a substantial part of the events or omissions giving
10 rise to this action occurred in this District. 28 U.S.C. § 1391(e)(1).

11 **DIVISIONAL ASSIGNMENT**

12 12. Assignment to the San Francisco or Oakland Division of this District is proper under
13 Civil Local Rule 3-2(c)–(d) because a substantial part of the acts or omissions that give rise to this
14 action occurred in the City and County of San Francisco.

15 **PARTIES**

16 13. Plaintiff City and County of San Francisco is a municipal corporation organized and
17 existing under and by virtue of the laws of the State of California, and is a charter city and county.

18 14. Defendant United States Department of Health and Human Services (“HHS”) is an
19 agency of the United States government and bears responsibility, in whole or in part, for the acts
20 complained of in this Complaint. CMS is part of HHS.

21 15. Defendant Xavier Becerra is the Secretary of HHS. He is sued in his official capacity.
22 Secretary Becerra is responsible for implementing and fulfilling HHS’s duties under the United States
23 Constitution and the APA.

24 16. Does 1 through 25 are sued under fictitious names. Plaintiff San Francisco does not
25 now know the true names or capacities of said Defendants, who were responsible for the alleged
26 violations, but pray that the same may be alleged in this Complaint when ascertained.

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1 **FACTUAL ALLEGATIONS**

2 **I. LAGUNA HONDA PROVIDES CARE TO SAN FRANCISCO’S MOST VULNERABLE.**

3 17. Laguna Honda is one of the largest skilled nursing facilities in the United States. It
4 represents one of the most extensive commitments by any local public entity to therapeutic skilled
5 nursing and rehabilitative care for seniors, adults with disabilities, and those with chronic diseases
6 needing skilled nursing or rehabilitative care. Once referred to as the last almshouse in the country,
7 Laguna Honda provides healthcare for San Francisco’s most vulnerable residents who cannot care for
8 themselves.

9 18. Like many facilities that provide skilled nursing services, Laguna Honda has faced
10 challenges in recent years. Laguna Honda has been cited by federal and state surveyors for
11 deficiencies in patient care related to preventing contraband (such as cigarette lighters and drug
12 paraphernalia) in the facility and infection prevention and control, as well as two missed doses of a
13 medication. Patient care is Laguna Honda’s highest priority, and Laguna Honda leadership takes these
14 issues seriously. With the help of hired expert consultants, Laguna Honda is working hard to correct
15 any existing deficiencies and to create new protocols aligned with industry best-practices that will
16 prevent deficiencies from occurring in the future.

17 19. But Laguna Honda’s recent challenges do not diminish its long history of success and
18 importance to the community:

- 19 • Laguna Honda provides a nationally-recognized program for people with Alzheimer’s
20 and other dementias.
- 21 • Laguna Honda provides the only dedicated skilled nursing facility for HIV/AIDS in the
22 San Francisco Bay Area.
- 23 • Through its award-winning restorative care program that assists patients to retain and
24 reclaim physical competency, every year as many as 240 people complete
25 rehabilitative therapy at Laguna Honda and move to a lower level of care or
26 independent living.
- 27 • While other facilities faced COVID-19 outbreaks that caused great suffering and loss
28 of life, Laguna Honda distinguished itself through its successful and life-saving

1 response to the pandemic. Starting in early March 2020, the facility implemented
2 cutting-edge infection prevention and control systems to protect its patients, and in
3 2020, Laguna Honda received the top honor from the California Association of Public
4 Hospitals and Health Systems for its response to the COVID-19 pandemic.

5 20. Every day, Laguna Honda clinicians and staff dedicate themselves to high-quality,
6 individualized care for the facility's over 600 patients, including by providing group living facilities
7 for people with developmental disabilities, treatment for multiple sclerosis, Parkinson's and other
8 degenerative diseases, therapeutic services for traumatic brain injuries, services for people with
9 psychosocial difficulties, end-of-life care emphasizing comfort and dignity, and the complex system of
10 care required for people with multiple diagnoses.

11 **II. DESPITE LAGUNA HONDA'S LONG HISTORY OF SUCCESS, CMS TERMINATED**
12 **LAGUNA HONDA'S PROVIDER AGREEMENTS.**

13 21. Laguna Honda relies primarily on federal funding, through the Medicare and Medicaid
14 programs, to provide care for its patients. Without continued federal funding, Laguna Honda cannot
15 operate and provide quality care for its patients. Laguna Honda's monthly budget is approximately
16 \$26 million and the facility receives almost \$18 million each month from Medicare and Medicaid
17 reimbursements.

18 **A. The Medicare and Medicaid Programs**

19 22. The Medicare program is a federally-administered and funded program for individuals
20 65 and older and disabled individuals who are eligible for Social Security benefits. 42 U.S.C. §§ 426;
21 1395c. The Medicaid program (known in California as Medi-Cal) is a joint federal and state program
22 that provides medical insurance to low income individuals who are aged, blind, disabled, pregnant,
23 young children, or members of families with dependent children. 42 U.S.C. §§ 1396 *et seq.*

24 23. Both the Medicare and Medicaid programs require facilities, including skilled nursing
25 facilities ("SNFs"), to meet the Medicare conditions of participation to be eligible to participate in
26 each program and receive reimbursement for services rendered to Medicare or Medicaid patients. 42
27 U.S.C. §§ 1395i-3, 1396r; 42 C.F.R. § 483.1 *et seq.* To receive reimbursement, providers, such as
28 SNFs, must enter into provider agreements with CMS. 42 U.S.C. § 1395cc(a)(1). Under the provider

1 agreements, the provider agrees to provide services on the terms of the program. In return, CMS
2 agrees to reimburse providers for services rendered to beneficiaries and not to terminate the provider
3 without just cause and due process. *See* 42 U.S.C. §§ 1395f(b); 1395cc(b)(2), (h)(1)(A); CMS
4 Publication 100-07, State Operations Manual, Chapter 3, § 3005D.

5 24. CMS enforces the Medicare conditions of participation by conducting periodic surveys
6 of participating facilities. 42 U.S.C. § 1395i-3(g). CMS also enters into agreements with state survey
7 agencies to carry out surveys of skilled nursing facilities. 42 U.S.C. § 1395aa; 42 C.F.R. § 488.330.
8 In California, the state survey agency is the Licensing & Certification Program within CDPH.

9 25. If CMS or CDPH determines that a facility is not in substantial compliance with a
10 condition of participation, it assesses that deficiency using a scope and severity rating and documents
11 the deficiency on a Statement of Deficiencies (also known as a CMS Form 2567). 42 C.F.R.
12 § 488.408. A facility that CMS or CDPH finds to be out of substantial compliance must submit a Plan
13 of Correction within 10 days of receiving a Statement of Deficiencies. 42 C.F.R. § 488.402(d). If a
14 facility's deficiencies do not pose immediate jeopardy to a patient's health or safety, CMS has two
15 options—it may terminate the facility's provider agreement immediately or allow the facility to
16 participate for an additional 6 months. 42 C.F.R. § 488.412(a). During that six-month period, CMS or
17 CDPH conducts revisit surveys to determine whether the facility has returned to substantial
18 compliance. If a facility is not in substantial compliance at the end of the 6-month period, CMS
19 terminates the provider agreement. 42 C.F.R. § 488.412(d).

20 **B. CMS's and CDPH's Enforcement Actions Against Laguna Honda**

21 26. In July 2021, Laguna Honda self-reported two illicit drug overdose incidents where the
22 patients were taken to an emergency department before ultimately returning to the facility. Based on
23 this report, CDPH surveyed Laguna Honda in October 2021, completing the survey on October 14,
24 2021. Over two months later, on December 16, 2021, CDPH issued a Statement of Deficiencies that
25 assessed two deficiencies based on Laguna Honda's failure to eliminate all illicit drugs and contraband
26 (such as cigarette lighters) from the facility. CDPH found that those two deficiencies amounted to
27 substandard quality of care, meaning that Laguna Honda was out of substantial compliance with the
28 Medicare conditions of participation. In its letter to Laguna Honda, CDPH stated that it recommended

1 that CMS impose a civil monetary penalty and terminate Laguna Honda’s provider agreements by
2 April 14, 2022, if Laguna Honda did not achieve substantial compliance by that date. Laguna Honda
3 submitted a Plan of Correction for the deficiencies on December 27, 2021, which CDPH accepted on
4 January 14, 2022.

5 27. On January 21, 2022, CDPH completed a revisit survey of the facility where it found
6 that three patients continued to possess illicit drugs and contraband and that staff did not properly
7 dispose of the confiscated contraband. Again, CDPH determined Laguna Honda was out of
8 substantial compliance with the Medicare conditions of participation, and recommended that CMS
9 terminate Laguna Honda’s provider agreements on April 14, 2022. CDPH further recommended that
10 CMS deny payments to Laguna Honda for newly admitted patients. On February 24, 2022, CMS
11 issued a notice approving the remedies that CDPH recommended, including levying civil monetary
12 penalties, denying federal reimbursements for new patients, and imposing the April 14, 2022,
13 termination date.

14 28. Beginning March 16, 2022, CDPH conducted a second revisit survey. On March 22,
15 2022, CDPH found Laguna Honda to be in immediate jeopardy to patient health or safety, meaning a
16 deficiency likely to cause serious injury, harm, impairment, or death, after concluding that three
17 patients were in possession of contraband or using illicit substances. After accepting Laguna Honda’s
18 Plan of Correction, five days later, on March 27, 2022, CDPH removed the immediate jeopardy
19 finding. But, when the revisit survey ended the next day, on March 28, 2022, CDPH continued to find
20 deficiencies related to use and possession of illicit substances, as well as new, previously unidentified
21 deficiencies.

22 29. On March 30, 2022, CMS issued a notice to Laguna Honda that it remained out of
23 substantial compliance with the Medicare conditions of participation and confirming that CMS still
24 intended to terminate Laguna Honda’s Medicare provider agreements effective at 12:01 a.m. on
25 April 14, 2022 (“Termination Notice”).

26 30. CMS and CDPH conducted a third revisit of the facility starting April 11 and ending
27 April 13, 2022. At the exit interview, representatives of CMS and CDPH verbally informed Laguna
28 Honda that the facility was not in substantial compliance. Surveyors identified new issues with

1 infection prevention and control, as well as two missed doses of a medication. CMS did not give
2 Laguna Honda any time to cure these previously unidentified deficiencies because CMS terminated
3 Laguna Honda’s provider agreements the following day.

4 31. Laguna Honda has filed three successive administrative appeals with CMS. The first
5 two appeals, dated February 15, 2022, and April 25, 2022, challenged the December 16, 2021
6 Statement of Deficiencies and associated civil monetary penalties. On May 28, 2022 Laguna Honda
7 filed the third appeal, challenging the March 30, 2022 Termination Notice. The administrative law
8 judge has consolidated all three appeals; Laguna Honda’s brief is currently due September 5 and
9 CMS’s is due October 7, with a hearing to be scheduled soon thereafter. The appeals challenge CMS
10 and CDPH’s pattern and practice of failing to provide timely Statements of Deficiencies prejudicing
11 Laguna Honda’s ability to respond to and correct any deficiency. They also challenge Defendants’
12 unwritten zero-tolerance policy of requiring Laguna Honda to “eliminate” all illicit drugs and
13 contraband in the facility, an unlawful standard that started the six-month cycle resulting in
14 termination of Laguna Honda’s provider agreements. On information and belief, Defendants have not
15 imposed that unlawful standard on other facilities. Laguna Honda has undertaken significant efforts
16 since October 2021 to address the occurrence of illicit drugs and contraband in the facility, but given
17 the complexities of the patient population and that Laguna Honda is not a locked facility, it is
18 impossible to comply with Defendants’ strict liability policy.

19 **III. CMS ABUSED ITS DISCRETION BY ARBITRARILY TERMINATING FUNDING**
20 **ON SEPTEMBER 13 AND REQUIRING ALL PATIENTS TO BE RELOCATED BY**
21 **THAT DATE.**

22 32. In the March 30 Termination Notice, CMS stated that it would exercise its discretion to
23 provide funding for a transition period following termination of the facility if the facility submitted a
24 notification of closure under 42 C.F.R. § 483.70(*l*). Federal regulations require that such a notification
25 include an approved closure plan providing for the relocation of the patients of the facility. *Id.* But
26 federal regulations do not mandate that the closure occur within any set period of time.

27 33. Thereafter, CMS representatives advised SFDPH to prepare a Closure and Patient
28 Transfer and Relocation Plan (“Closure Plan”) that would meet the requirement of 42 C.F.R.
§ 483.70(*l*), as well as a CMS Recertification Milestone Document (“Milestone Document”) detailing

1 milestones that, if met, would put Laguna Honda on a defined path to recertification in the Medicare
2 and Medicaid programs and thus prevent the closure plan from going into effect. In accordance with
3 CMS’s direction, SFDPH spent several weeks preparing these documents and on May 9, 2022
4 submitted them to CMS.

5 34. Despite encouraging SFDPH to prepare and submit the Milestone Document, CMS
6 changed course and rejected it that same day, without explanation. CMS also indicated that it was
7 contemplating a four-month deadline for terminating Laguna Honda’s funding, with the possibility of
8 a two-month extension.

9 35. CMS and CDPH then reviewed SFDPH’s proposed Closure Plan and demanded
10 extensive revisions. Although federal law delegates authority to CDPH to approve closure plans under
11 federal law, upon information and belief, CMS provided extensive direction to CDPH in reviewing
12 SFDPH’s proposed Closure Plan.

13 36. In its proposed Closure Plan, SFDPH stated that “a patient-centered transfer or
14 discharge of all of [Laguna Honda’s] current patients will take *up to eighteen months, or until*
15 *November 9, 2023.*” (Emphasis in original.) SFDPH also explained why 18 months was required,
16 noting the large size of Laguna Honda, “the limited availability of SNF beds and beds in other
17 appropriate placements in the San Francisco Bay Area and California,” and the “complexity of its
18 patient population, many of whom have a combination of behavioral health needs, substance use
19 disorders, and other complicated social and medical factors.”

20 37. CDPH rejected this proposed timeline, stating that 18 months “is not acceptable for
21 transfer of residents given [CMS’s] proposed timeline for funding to continue for 4 months” with a
22 [possible] 2-month extension for “extenuating circumstances.” Without addressing SFDPH’s practical
23 concerns about the length of time it would take to safely transfer hundreds of patients, CDPH
24 instructed SFDPH that “[t]he plan should include activities and timelines to complete transfers within
25 4 months [i.e., by September 13]”—the same date that CMS said it would terminate federal funding.
26 CMS and CDPH did not explain—and have never explained—why they selected this unreasonable
27 deadline. Nor have they explained why a longer timeline would not better serve the common goal of
28 ensuring that patients are “transferred to the most appropriate facility or other setting in terms of

1 quality, services, and location, taking into consideration the needs, choice, and best interests of each
2 resident.” 42 U.S.C. § 1320a-7j(h)(1)(C).

3 38. SFDPH’s proposed Closure Plan also stated its intent to have interdisciplinary teams
4 complete comprehensive assessments for each patient at Laguna Honda prior to transfer. SFDPH
5 explained that because these assessments would take one to two hours per patient, staff would need
6 until August 15 to complete the assessment process. As detailed in the proposed Closure Plan, this
7 was an ambitious timeline at best, requiring staff to conduct 50 assessments every week. CDPH
8 responded that SFDPH’s proposal was “unacceptable,” because it would not “meet [CMS’s] required
9 timeline” to transfer all patients out of the facility by CMS’s arbitrarily selected September 13
10 deadline.

11 39. SFDPH also proposed that patients be transferred or discharged based on a tiered
12 system that would allow patients who did not require significant healthcare treatment to be moved
13 before patients with more complex needs. CMS and CDPH rejected this aspect of the proposed
14 Closure Plan as well, directing SFDPH to transfer all patient populations simultaneously, including
15 those in end of life or palliative care.

16 40. As indicated in its initial proposed Closure Plan, SFDPH was concerned about the non-
17 tiered approach and informed CMS and CDPH that relocation of all patients within 4 months was not
18 possible—much less in the best interest of patients—given the shortage of SNF beds locally and
19 statewide (*see* ¶¶ 47-50, *infra*) and the complexity of its patient population. But CMS would not
20 continue discretionary funding for Laguna Honda past May 13, 2022, without an approved plan; and
21 CDPH would not approve a plan that contained a realistic closure deadline because of CMS’s required
22 timeframe. And without CMS funding, Laguna Honda would not have the funds necessary to continue
23 to provide care to its patients during the transition period. Laguna Honda had no choice but to
24 resubmit a plan that complied with CMS’s and CDPH’s unreasonable demands.

25 41. Accordingly, on May 13, 2022, SFDPH submitted a revised Closure Plan that
26 incorporated CMS’s and CDPH’s arbitrary deadline and time frames. The revised plan required
27 Laguna Honda staff to conduct 78 patient assessments every week—over 50 percent more than
28 SFDPH thought was manageable. It abandoned the tiered transfer protocol SFDPH wanted to follow.

1 And it included the four-month deadline mandated by CMS. It explained: “Per CMS, Laguna Honda
2 is required to transfer or discharge all of its current patients within four months from the approval of
3 the Closure Plan (approval of which is anticipated on May 13, 2022, with four months from that date
4 being September 13, 2022), with a possible 2-month extension based on extenuating circumstances as
5 approved by CDPH and CMS.”

6 42. CDPH, which upon information and belief was acting at the direction of CMS,
7 approved the revised plan.

8 43. Although federal regulations do not mandate that closure occur within any set period of
9 time and allow the Secretary of HHS discretion to continue funding until the last patient is safely
10 transferred or discharged from the facility, CMS and CDPH confirmed in several subsequent
11 communications that federal funding will not be continued past September 13, 2022, and that all
12 Medicare and Medicaid patients must be relocated by that date. This arbitrary and capricious decision
13 constitutes an abuse of discretion.

14 44. Nonetheless, Laguna Honda has used best efforts to comply with CMS’s and CDPH’s
15 arbitrary deadline. Over the past eleven weeks, Laguna Honda has transferred 41 patients and
16 discharged 16 others.

17 45. Tragically, as of this filing, Laguna Honda has been informed that seven patients died
18 after being transferred to another facility and one patient died after being discharged. Although there
19 is no evidence that the deaths were the result of the transfers or discharges, San Francisco, SFDPH,
20 and Laguna Honda are deeply concerned by these deaths as patient health and safety has always
21 been—and remains—the highest priority.

22 46. On July 28, 2022, CMS reversed course—at least in part—by agreeing that Laguna
23 Honda should pause all transfers and discharges of patients for an unspecified period. But, despite
24 these dramatically changed circumstances regarding the transfers and discharges and the increasing
25 reality of the infeasibility of the deadline in the closure plan, CMS has refused to vacate or extend the
26 September 13 deadline. To the contrary, on July 29, 2022, counsel for CMS expressly confirmed that
27 the September 13 date to relocate all patients and terminate funding is still in effect.

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1 **IV. LAGUNA HONDA CANNOT TRANSFER AND DISCHARGE PATIENTS ALL**
2 **PATIENTS BY SEPTEMBER 13 AS CMS AND CDPH CONTINUE TO REQUIRE.**

3 47. CMS’s unreasonable demands have placed Laguna Honda and its patients in an
4 impossible situation: Laguna Honda cannot transfer or discharge any patients at this time, yet CMS
5 requires Laguna Honda to transfer or discharge all patients by September 13. Laguna Honda cannot
6 close its facility, and also cannot provide quality care to patients after September 13 in the absence of
7 funding.

8 48. Laguna Honda’s overriding concern is to ensure patient health, safety, and welfare at all
9 times, including when executing the clinically appropriate transfer or discharge of patients. Although
10 this should be Defendants’ primary concern as well, CMS’s impossible requirements instead put the
11 health and safety of Laguna Honda’s patients at risk. As anticipated, Laguna Honda faces the lack of
12 available skilled nursing beds to which it could transfer Medicare and Medicaid patients while trying
13 to comply with CMS’s unreasonable timeline. Since CMS and CDPH imposed the Closure Plan,
14 Laguna Honda staff have called, on average, over a thousand skilled nursing facilities per week in the
15 San Francisco Bay Area, across California, and even neighboring states, but has been unable to
16 identify suitable placements for most patients. For example, during the week of July 4–10, 2022,
17 Laguna Honda called 1,400 unique skilled nursing facilities, and identified no vacant beds eligible for
18 Medicare or Medicaid reimbursement that could accept and provide sufficient skilled nursing services
19 to Laguna Honda’s patients. Putting aside the hardship of moving patients away from the
20 communities where their loved ones live, Laguna Honda cannot transfer patients when there are no
21 facilities available that can serve a patient’s needs. CMS’s unreasonable September 13 deadline is
22 inconsistent with the obligation to “ensure that, before a facility closes, all residents of the facility
23 have been successfully relocated to another facility or an alternative home and community-based
24 setting.” 42 U.S.C. § 1320a-7j (h)(2).

25 49. CMS was well aware of the critical shortage of skilled nursing facilities when it
26 imposed its arbitrary and capricious September 13 deadline for Laguna Honda’s closure. There is a
27 shortage of nursing home beds for elderly persons in California and in the country as a whole due to a
28 severe staffing crisis—exacerbated by the COVID-19 pandemic—that has caused long-term care

1 facilities to cut back on new admissions. According to a survey conducted by the American Health
2 Care Association/National Center for Assisted Living (AHCA/NCAL), three out of five nursing homes
3 (61%) have limited new admissions due to staffing shortages. The AHCA/NCAL survey found that
4 87% of nursing home providers are facing moderate to high staffing shortages, with nearly half (48%)
5 struggling with a severe staffing shortage. Given the shortage of available facilities, it is unreasonable
6 to expect Laguna Honda to complete the impossible task of transferring several hundred patients in
7 just four months.

8 50. Laguna Honda also cannot simply close its doors. As described above Laguna Honda
9 serves as a safety net for many of San Francisco's most vulnerable residents. Laguna Honda has a
10 duty to continue to provide care to patients in the facility while they await transfer or discharge.
11 Nearly all of Laguna Honda's patients require either skilled nursing facilities, psychiatric health
12 facilities, or board and care or residential supportive housing services. Even for the small number of
13 patients who no longer have significant medical facility care needs, SFDPH requires adequate time to
14 locate shelter and supportive services. Otherwise, discharged patients might wind up with no place to
15 go. Indeed, three of the 16 patients who no longer need skilled nursing care and have been discharged
16 (as opposed to transferred to another SNF) now live in homeless shelters. Once discharges resume to
17 satisfy the arbitrary and capricious September 13 deadline imposed by CMS, additional vulnerable
18 individuals are likely to end up homeless.

19 **V. CMS'S CONDUCT HAS VIOLATED LAGUNA HONDA'S DUE PROCESS RIGHTS.**

20 51. CMS's unreasonable requirements are not only harmful to patients and impossible to
21 achieve, they are also unlawful. Laguna Honda has filed three successive administrative appeals
22 challenging CMS's Termination Notice and the statement of deficiencies that led to CMS's decision to
23 terminate Laguna Honda as a Medicare and Medicaid provider. If Laguna Honda is successful in its
24 administrative appeals, Laguna Honda will obtain an order finding that CMS improperly terminated
25 Laguna Honda as a Medicare and Medicaid provider, and restoring Laguna Honda as a Medicare and
26 Medicaid provider.

27 52. But that remedy will come too late to protect Laguna Honda and more importantly its
28 vulnerable patients. Despite Laguna Honda's diligence and requests for expedited consideration of its

1 appeals, the administrative appeals will not be fully briefed—let alone decided—before the September
2 13 deadline for transferring all patients and for ending federal funding. The “Medicare statute is
3 designed to protect the interests” of patients in facilities such as Laguna Honda, but “it is these very
4 residents who will suffer the most if they are unnecessarily transferred” because of CMS’s arbitrary
5 deadlines. *Int’l Long Term Care*, 947 F. Supp. at 19.

6 53. By terminating funding before Laguna Honda has the opportunity to be heard, CMS
7 violates procedural due process. “The fundamental requirement of due process is the opportunity to be
8 heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333
9 (1976) (internal punctuation omitted). Here, for the administrative appeals process to be meaningful,
10 the process must conclude before CMS terminates funding and requires Laguna Honda to care for
11 Medicare and Medicaid patients, without federal reimbursement, until those patients can be transferred
12 or discharged. Otherwise, Laguna Honda and its patients would suffer irreparable harm that cannot be
13 remedied even if Laguna Honda ultimately prevails on its administrative appeals. Indeed, because of
14 CMS’s September 13 deadline, Laguna Honda “might well be forced to close its doors, and the
15 residents might have to be transferred during the very period when the hearing and post-hearing
16 briefing . . . are taking place.” *Int’l Long Term Care*, 947 F. Supp. at 18. And, if the Administrative
17 Law Judge eventually concludes that Laguna Honda should not be terminated from the Medicare
18 program, “it may be too late for [Laguna Honda] to recover.” *Id.* at 19.

19 54. CMS is well aware of the harm its September 13 deadline causes to Laguna Honda’s
20 due process rights. On July 15, 2022, San Francisco City Attorney David Chiu sent a letter to CMS’s
21 Chief Counsel Paula Lee, explaining the violation of due process and harm to patients that CMS
22 caused with its September 13 deadline. (*See Ex. A.*) Yet, instead of working cooperatively with San
23 Francisco to allow the administrative appeals process to provide meaningful relief and to protect
24 patient safety, CMS doubled down. CMS confirmed that the September 13 deadline still holds. Even
25 though the September 13 deadline is impossible to achieve as described above, CMS confirmed that
26 Laguna Honda must discharge or transfer hundreds of patients by September 13 although it cannot
27 transfer patients at this time. And it confirmed that funding will terminate on September 13 although
28 CMS has provided no plan for the safe care of patients after that date.

1 55. CMS did not have to do this. It could have worked with Laguna Honda to correct
2 deficiencies without compromising patient care and endangering patients. It could have provided a
3 reasonable closure deadline that allows for the safe relocation of patients. It could have provided
4 funding until the administrative appeals process is complete and the last patient is safely transferred or
5 discharged. It could have allowed the administrative appeals process to resolve before forcing Laguna
6 Honda to close. Instead, CMS has held fast to its arbitrary and unreasonable September 13 deadline
7 without explanation or justification.

8 **VI. CMS’S ARBITRARY AND CAPRICIOUS CONDUCT HAS CAUSED GRAVE HARM**
9 **TO THE CITY, LAGUNA HONDA AND ITS PATIENTS.**

10 56. Requiring transfers and discharges on an expedited time frame in the absence of
11 available facilities is arbitrary and capricious, and causes irreparable harm to Laguna Honda and its
12 patients.

13 57. CMS’s conduct has already caused grave harm to the City, Laguna Honda, and its
14 patients. Laguna Honda serves as the last safety net for patients who must, or wish to, receive care in
15 the Bay Area near friends, family and their communities. There are no available skilled nursing beds
16 for Medicare and Medicaid patients in San Francisco and very few in California or surrounding states.
17 And the quality of care these patients with specialized needs require is unlikely to be replicated at
18 another facility. Transferring a patient hundreds of miles from their home would uproot them from
19 their family and friends, and remove the only caregivers they know.

20 58. Elderly patients with dementia have faced, and will continue to face, the confusion,
21 disruption and ordeal of being transferred away from their long-term caregivers for reasons they might
22 not understand. These elderly patients are at risk for relocation stress syndrome, also known as
23 transfer trauma. For those patients, maintaining familiarity with people, place, and surroundings is
24 important for their orientation and stability. The California Legislature has declared that “the transfer
25 trauma which accompanies the abrupt and involuntary transfer of patients from one nursing home to
26 another should be avoided when reasonable alternatives exist.” Cal. Health & Safety Code § 1325.
27 California law also requires transferring facilities to take reasonable steps to minimize possible
28 transfer trauma. Cal. Health & Safety Code § 1336.2(a).

1 59. CMS’s arbitrary and capricious decision to move every Medicare and Medicaid patient
2 out of the facility within four months has placed immense strain on Laguna Honda’s resources and
3 staff, causing stress and burnout among already overburdened staff. As a result of CMS’s actions,
4 Laguna Honda staff must conduct patient assessments and meetings to prepare patients for transfer or
5 discharge on CMS’s unreasonable timeline, and simultaneously prepare the facility for recertification
6 in Medicare and Medicaid, including resolving all previously identified deficiencies and implementing
7 new systems and structures to prevent future deficiencies. And the multiple overlapping
8 responsibilities impacts patient care because Laguna Honda must continue to provide essential care for
9 its patients while awaiting discharge or transfer. All of these activities are occurring in the shadow of
10 two public health emergencies—COVID-19 and monkeypox—which requires patients and staff to
11 adhere to rigorous protocols.

12 60. Because Laguna Honda faces an imminent loss of funding, it is already losing
13 employees who are needed to provide care to patients. The facility has already experienced an
14 increase in the number of registered nurses transferring to other positions within the City. Laguna
15 Honda’s vacancy rate for open positions is higher now (12.8% in June) than before the termination
16 (10.2% in March) despite vigorous recruiting efforts by the facility. The loss of personnel undermines
17 the facility’s ability to care for its patients, safely transfer or discharge patients who are eligible to be
18 moved, and threatens Laguna Honda’s state-mandated minimum care requirements. *See, e.g.,* Cal
19 Health & Safety Code § 1276.5 (requiring a minimum of 3.2 nursing hours per patient in skilled
20 nursing facilities). Moreover, California is experiencing a shortage of registered nurses and Laguna
21 Honda is already facing difficulties attracting quality licensed providers to a facility with uncertain
22 funding or status in Medicare and Medicaid.

23 61. As explained above, Laguna Honda recognizes that it has fallen short of its goal to
24 provide the highest standard of care at all times. Laguna Honda is committed to addressing all
25 existing deficiencies and preventing new ones from occurring in the future. But Defendants’ demand
26 that Laguna Honda close its doors before Laguna Honda can obtain recertification, before Laguna
27 Honda receives the due process to which it is entitled through its administrative appeals, and before
28 Laguna Honda’s patients can be safely transferred or discharged, violates the law.

1 **COUNT ONE**

2 **Violation of APA (5 U.S.C. § 706(2)(A))—Arbitrary and Capricious**

3 62. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as
4 if fully set forth herein.

5 63. The APA requires courts to “hold unlawful and set aside” agency action that is
6 “arbitrary, capricious [or] an abuse of discretion.” 5 U.S.C. § 706(2)(A).

7 64. By terminating Laguna Honda’s funding on September 13 and requiring Laguna Honda
8 to relocate all patients by that date, Defendants ignored important aspects of the problem, including
9 impacts of their final decision on the vulnerable populations that Laguna Honda serves and
10 information about the length of time it would take to safely transfer hundreds of medically fragile
11 patients in the midst of a critical shortage of skilled nursing facilities. Those factors were raised by
12 San Francisco but ignored by Defendants. Moreover, Defendants have failed to offer adequate
13 explanation for their decision. Accordingly, Defendants’ decision to terminate funding on September
14 13 and to reject Laguna Honda’s proposal to implement an 18-month closure plan to ensure sufficient
15 time to safely relocate its patients in favor of a 4-month deadline was arbitrary, capricious, and an
16 abuse of discretion. The September 13 deadline for funding termination and patient relocation is
17 invalid as a result.

18 65. There is a substantial controversy between parties having adverse legal interests, and
19 the controversy is of sufficient immediacy and reality to warrant declaratory relief.

20 66. The controversy between the parties is of sufficient immediacy and reality to warrant
21 declaratory relief. Indeed, without prompt judicial action, Defendants actions will cause irreparable
22 harm to the City, Laguna Honda and its patients.

23
24 **COUNT TWO**

25 **Violation of Procedural Due Process under the United States Constitution**

26 67. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as
27 if fully set forth herein.

28 //

1 5. Award San Francisco reasonable costs and attorneys' fees; and

2 6. Grant any other further relief that the Court deems fit and proper.

3 Dated: August 3, 2022

4 DAVID CHIU
5 City Attorney
6 JESSE C. SMITH
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15 FRANCISCO