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Renne's Grandstanding Gambit Goes Belly-up

LHH Patients' Class Action Lawsuit Tossed Out

Public Still Denied Basic Information About the Surviving Settlement

by Patrick Monette-Shaw

Because she had not exhausted available administrative remedies, former City Attorney Louise Renne appears to be headed for a lawsuit defeat trying to represent patients of Laguna Honda Hospital.

Indeed, current City Attorney David Chiu effectively snatched away any chance of success Renne had at prevailing in her lawsuit.

As the *Westside Observer* has previously reported, former City Attorney Renne has a long history of grandstanding on issues related to Laguna Honda Hospital (LHH), in part to be seen as a loyal ally of the hospital and in part to burnish her image and legacy.

As I [reported](#) in August 2022, Renne and her allies have long sought to take credit that it was she who had thought of and won the Tobacco Settlement Revenue lawsuit that will bring in slightly over \$1 billion in City revenue by 2060 that was used, in part, to pay for the LHH rebuild project. Renne had done no such thing.

Indeed, it was then Board of Supervisors member Angela Alioto who had developed a novel strategy to sue Big Tobacco. Just five minutes before the San Francisco Board of Supervisors were scheduled to take a vote in 1996 to approve suing the tobacco companies, Renee had waltzed into then-Board President Alioto's office trying to stop the Board from approving the lawsuit. Alioto had already lined up the eight votes necessary to prevent a mayoral veto by then-Mayor Willie Brown.

Separately, Renne had formed her non-profit Laguna Honda Foundation to raise money to buy furniture, fixtures, and equipment (FFE) for the new LHH replacement hospital, but as reported last August she raised not one penny for the rebuild or the FFE, but was rewarded with having the hospital's new lobby named in her honor — a misplaced reward if there ever was one.

Perhaps wanting to be seen for her philanthropic efforts on behalf of LHH and its residents, Renne filed a class action lawsuit on behalf of four LHH patients at risk of being discharged from the hospital following the loss of LHH's Centers for Medicare and Medicaid (CMS) provider participation agreement funding stream.

Judge Tosses Renne's Class Action Lawsuit

On August 3, 2022 Renne's law firm filed a class action [lawsuit](#) on behalf of four LHH residents who alleged that CMS' decision to terminate funding to Laguna Honda didn't provide for their safe and orderly transfer to alternative skilled nursing facilities and, therefore, had violated the Americans with Disabilities Act, the Rehabilitation Act, and the Administrative Procedure Act (*United States District Court for the Northern District of California, Case No. 3:22-cv-04501*).

On November 11, a Google Alert e-mail tagged for any news involving Laguna Honda Hospital reported:

“Patients and residents of Laguna Honda Hospital can't proceed with a proposed class action challenging a plan to close the skilled-nursing facility until administrative remedies have been exhausted with the Department of Health and Human Services, a federal court in California ruled.”

The Google alert contained a link to a November 10 *Bloomberg Law* story but prevented reading the full article restricted behind a pay wall. However, *Bloomberg Law*'s Help Desk kindly provided access to the full [article](#).



On the City Hall Mayor's Balcony: City Attorney David Chiu — flanked by Mayor London Breed and Louise Renne — seems to have forgotten that residents of LHH were the victims of his LHH Settlement Agreement and Louise Renne's class action Federal lawsuit.

Judge William Alsup of the U.S. District Court for the Northern District of California denied Renne's lawsuit seeking class action certification on behalf of other similarly situated LHH residents. Alsup's November 9 ruling asserted the Court lacked subject matter jurisdiction, and said the case should be dismissed on the same grounds.

Reportedly, CMS and the California Department of Public Health (CDPH) argued to Alsup that the Court lacked jurisdiction over the case because the plaintiffs hadn't presented their claims to the U.S. Department of Health and Human Services and had not exhausted administrative remedies.

Alsup said that Renne and her clients' claims — including claims for benefits under the Americans with Disabilities Act and the Rehabilitation Act that are subject to administrative review — “*arise under the Medicare Act and must be channeled through DHHS before judicial review becomes available.*” He also noted that the *Medicare Act* does not allow plaintiffs to circumvent the administrative review process by seeking judicial remedies.

Alsup went a step further and asserted that even if the LHH patients' claims that the *LHH Closure and Patient Relocation* plan violated the Administrative Procedures Act and patients' due process rights, those claims are “*inextricably intertwined*” with a claim for benefits subject to administrative review by DHHS.

Of note, although current City Attorney David Chiu had filed three administrative appeals with the DHHS and his own separate Federal lawsuit (*United States District Court for the Northern District of California, Case No. 3:22-cv-4500-WHA*), Renne and her clients were not parties to Chiu's legal remedy actions.

Alsup gave the plaintiffs 14 days to contest his dismissal of Renne's District Court case. The Renne Law Group did not respond to a request for comment about this article by press time, and didn't respond to whether it intends to contest Alsup's dismissal of the case.

Once again, Renne sank from being LHH patients' potential savior to being a mere flop. Having served for 16 years as San Francisco's City Attorney, Renne should have known she could not hopscotch bypassing DHHS administrative review by filing a lawsuit in a Federal trial court.

City Attorney David Chiu Withdrew DHHS Appeals and Lawsuit

As the *Westside Observer* [reported](#) on October 25, just six days after news surfaced on October 12 that City Attorney David Chiu had struck a problematic Settlement Agreement deal with CMS and CDPH, San Francisco's seven-member Health Commission entered an hour-long closed session on Tuesday, October 18 and approved the proposed settlement agreement that had *not* been provided to members of the public for review in advance.

Then on November 1, San Francisco's Board of Supervisors also entered into closed session and approved the proposed settlement agreement on first reading. A week later, City Supervisors approved it on second reading on November 8. The next day, Mayor Breed approved the settlement on November 9, on the same date Alsup tossed out Renne's lawsuit.

The [Settlement Agreement](#) required Chiu to withdraw his three appeals to the U.S. DHHS, and also withdraw his own Federal lawsuit. By withdrawing his appeals and lawsuit, Chiu had to have known he was dooming Ms. Renne's separate class action lawsuit to failure.

Paragraph 36, “*Withdrawal of Appeal*” (page 18) of the Settlement Agreement states LHH must withdraw its appeal *with prejudice* pending before the U.S. Department of Health and Human Services, Departmental Appeals Board, Civil Remedies Division, Docket No. C-22-555.

Paragraph 37, “*Dismissal of Complaint*” (page 19) states the City and County of San Francisco must file a Notice of Dismissal of its lawsuit, Case No. 3:22-CV-4500, also *with prejudice* that had been pending in U.S. District Court for the Northern District of California.

Paragraph 38, “*Waiver of Appeal Rights*” stated LHH agreed to waive all of its rights to administratively or judicially challenge CMS and CDPH over LHH's decertification and termination from Federal reimbursement by CMS.

“*Dismissal with prejudice*” means that Chiu cannot refile the same claims again in the same court or with DHHS.

Some observers initially thought Alsup’s ruling couldn’t stop Renne from trying to work with DHHS again to mount new administrative appeals on behalf of LHH residents. But the *dismissal with prejudice* provisions in the Settlement Agreement seem to suggest Chiu all but threw Renne and her LHH lawsuit clients under the bus.

At this point, it seems extremely unlikely Renne would prevail in contesting Alsup’s dismissal of her lawsuit.

“**Revised LHH Closure Plan**” Missing in Action

Chiu’s *Settlement Agreement* approved by the Health Commission and Board of Supervisors made reference to a “*Revised LHH Closure Plan*” 19 times. Presumably Chiu must have seen, or perhaps helped write, the *Revised Closure Plan*. Also presumably, someone on the seven-member Health Commission and 11-member Board of Supervisors — or perhaps the Mayor herself — must have asked to see the *Revised Closure Plan* before approving the *Settlement Agreement*.

Paragraph 41 of the *Settlement Agreement*, “*Public Disclosure*” (page 20) states the Agreement is subject to disclosure in accordance with the *Freedom of Information Act* (FOIA) and/or in accordance with all applicable [local] laws and processes. All parties — the City of San Francisco, CMS, and CDPH — had consented to public disclosure of the Agreement and information about the Agreement.

In response to a records request to San Francisco’s Department of Public Health (SFDPH) for a copy of the “*Revised LHH Closure Plan*,” SFDPH responded saying that once the *Revised Closure Plan* is submitted to the California Department of Public Health it will be made public, despite the Agreement saying public disclosure is required.

SFDPH essentially admitted the *Revised Closure Plan* exists, but that SFDPH doesn’t want members of the public to see it quite yet. You have to wonder why not. And you have to wonder whether Ms. Renne has seen it.

Postscript

On November 14, Mr. Chiu [formally withdrew](#) his three U.S. DHHS Appeals *with prejudice*. On November 15, Chiu [also formally withdrew](#) his U.S. District Court Federal lawsuit, again *with prejudice*.

Judge Alsup’s [full Order](#) dismissing Ms. Renne’s class action lawsuit on behalf of four LHH residents became available following publication of this article. Of note, Alsup’s full Order repeated multiple times that the four plaintiffs may seek judicial review of the LHH relocation plan *on their own* **after** the City and County of San Francisco exhausts administrative remedies (but apparently *not* as a *class action* case). He noted that judicial review by plaintiffs — *after* the City and County exhausts administrative remedies — “*is favored*,” provided that they litigate for themselves once the DHHS administrative procedures eventually run their course.

Of interest, when Alsup wrote his Order and when *Bloomberg* ran its article on November 10, Chiu’s appeals were still technically “*pending*” before a DHHS Administrative Law Judge. But when Chiu withdrew his DHHS appeals four or five days later, Chiu essentially aborted the Appeals process, thereby not fully exhausting administrative remedies, as if the Appeals had never been filed.

It is thought the four LHH residents probably have no further judicial recourse, because the DHHS administrative remedies were simply *withdrawn with prejudice*, and not “*exhausted*” by the City before a DHHS Administrative Law Judge on the residents behalf — since withdrawing a case before its completion is thought not to have fully exhausted an available prescribed remedy.

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