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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN
FRANCISCO,

Plaintiff,

vs.

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

Defendants.

Case No. 3:22-CV-4500

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Trial Date: None set

INTRODUCTION

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

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

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

4. But that recertification cannot come in time for Laguna Honda and especially its patients and their loved ones in the community. According to Defendants, Laguna Honda must transfer or discharge all of its remaining 610 patients—a daunting number—close its doors, and stop 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.

JURISDICTION AND VENUE

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

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

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

DIVISIONAL ASSIGNMENT

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

PARTIES

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

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

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

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

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FACTUAL ALLEGATIONS

I. LAGUNA HONDA PROVIDES CARE TO SAN FRANCISCO'S MOST VULNERABLE.

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

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

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

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

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

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

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

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

33. Thereafter, CMS representatives advised SFDPH to prepare a Closure and Patient 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 eight 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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IV. LAGUNA HONDA CANNOT TRANSFER AND DISCHARGE ALL PATIENTS BY SEPTEMBER 13 AS CMS AND CDPH CONTINUE TO REQUIRE.

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

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

49. CMS was well aware of the critical shortage of skilled nursing facilities when it imposed its arbitrary and capricious September 13 deadline for Laguna Honda's closure. There is a shortage of nursing home beds for elderly persons in California and in the country as a whole due to a 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.

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

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

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

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

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

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

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

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

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

65. There is a substantial controversy between parties having adverse legal interests.

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

COUNT TWO**Violation of Procedural Due Process under the United States Constitution**

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

//

68. Defendants have acted individually and in concert to deprive Plaintiff of its protected property interests in Medicare and Medicaid reimbursements by (1) terminating Medicare and Medicaid reimbursements without just cause before the validity of Laguna Honda's termination as a Medicare and Medicaid provider has been adjudicated through the administrative appeals process, and (2) requiring San Francisco and Laguna Honda to provide services to Medicare and Medicaid patients who cannot be transferred or discharged by September 13, 2022, without compensation.

69. Defendants have acted to deprive Laguna Honda of its property interests without adequate procedural protections. Although CMS purports to offer an opportunity to challenge its decision to terminate Laguna Honda's provider agreements, CMS's arbitrary September 13 deadline has rendered the protections provided by that process illusory.

70. There is a substantial controversy between parties having adverse legal interests, and the controversy is of sufficient immediacy and reality to warrant declaratory relief. Indeed, without prompt judicial action, Defendants actions will cause irreparable harm to the City, Laguna Honda and its patients.

PRAYER FOR RELIEF

Wherefore, San Francisco prays that the Court grant the following relief:

1. Declare that Defendants violated the APA by requiring Laguna Honda to relocate all patients by September 13, 2022, and in terminating funding at that time;

2. Declare that Defendants violated Plaintiff's procedural due process rights by terminating funding on September 13, 2022, before the administrative appeals process concludes and before all patients can be safely transferred or discharged;

3. Issue an injunction against implementation and enforcement of Defendants' arbitrary and capricious September 13, 2022 deadline for terminating funding and requiring the transfer or discharge of all patients;

4. Issue an injunction requiring Defendants to extend Medicare and Medicaid funding to Laguna Honda until Laguna Honda's administrative appeal is finally resolved and all Laguna Honda patients have been safely transferred or discharged;

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
7 YVONNE R. MERÉ
8 SARA J. EISENBERG
9 WAYNE SNODGRASS
10 TARA M. STEELEY
11 HENRY L. LIFTON
12 Deputy City Attorneys

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By: /s/ Tara M. Steeley

TARA M. STEELEY

Attorneys for Plaintiff CITY AND COUNTY OF SAN
FRANCISCO

EXHIBIT A

CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU
City Attorney

OFFICE OF THE CITY ATTORNEY

July 15, 2022

Via Email and U.S. Mail

Paula R. Lee, Chief Counsel, Region IX
U.S. Department of Health and Human Services
Office of the General Counsel, Region IX
90 7th Street, Suite 4-500
San Francisco, California 94103-6705

Re: Due Process Issues with Laguna Honda Closure

Dear Ms. Lee:

We write to bring a serious problem to your attention, with the hope that we can find an amicable solution. We ask that the Centers for Medicare & Medicaid Services (“CMS”) exercise its discretion to continue funding to Laguna Honda Hospital & Rehabilitation Center D/P SNF, Provider Number 555020 (“Laguna Honda”) until all patients are safely discharged or transferred. That funding extension is necessary in light of the extreme difficulty in transferring or discharging so many patients with complex needs—especially due to the well-documented lack of beds across the region for these kinds of patients. At a bare minimum, we ask CMS to continue funding at least through completion of the appeal process described below.

Laguna Honda provides care to San Francisco’s most vulnerable patients.

Throughout its 150-year history, Laguna Honda has provided skilled nursing and rehabilitation services to San Francisco’s most vulnerable patients, including seniors, adults with disabilities, and others cannot care for themselves. For many, Laguna Honda provides the last safety net for patients who must, or wish to, receive care in the Bay Area near friends, family and their communities. For instance, Laguna Honda provides the only dedicated skilled nursing facility for HIV/AIDS in the San Francisco Bay Area. Because of its commitment to serve the underserved, Laguna Honda often provides a last resort for patients who have nowhere else to go, and serves a critical need for San Francisco’s most vulnerable.

There is no doubt that Laguna Honda has faced challenges in recent months. But those challenges do not diminish Laguna Honda’s history of success. Laguna Honda provides a nationally-recognized program for people with Alzheimer’s and other dementias. Through its award-winning restorative care program that assists patients to retain and reclaim physical competency, every year as many as 240 people complete rehabilitative therapy at Laguna Honda and move to a lower level of care or independent living. While other facilities faced COVID-19 outbreaks that caused great suffering and loss of life, Laguna Honda distinguished itself through its successful response to the pandemic. Starting in early March 2020, the facility implemented cutting-edge infection prevention and control systems to protect its patients, and in 2020, Laguna Honda received the top honor from the California Association of Public Hospitals and Health Systems for its response to the COVID-19 pandemic.

Every day, Laguna Honda clinicians and staff dedicate themselves to high-quality, individualized care for the center’s over 600 patients, including by providing group living

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facilities for people with developmental disabilities, treatment for multiple sclerosis, Parkinson's and other degenerative diseases, therapeutic services for traumatic brain injuries, services for people with psychosocial difficulties, end-of-life care emphasizing comfort and dignity, and the complex system of care required for people with multiple diagnoses. Laguna Honda seeks the opportunity to continue to serve the underserved, and the time needed to continue to act in the best interest of its patients.

If CMS were to terminate funding or require Laguna Honda to complete closure of the facility before the appeals process is complete, Laguna Honda's due process rights would be violated.

As you know, CMS recently terminated the Medicare provider agreement of Laguna Honda. Under the terms of a Closure and Patient Transfer and Relocation Plan ("Closure Plan"), CMS has agreed to extend federal reimbursement for Laguna Honda through September 13, 2022, with the possibility of extending reimbursement through November 13, 2022.

Meanwhile, our Office, on behalf of Laguna Honda, has filed three successive administrative appeals, including most recently on May 28, 2022, challenging CMS's March 30, 2022 Notice of Termination. CMS's prehearing brief is due by August 31, 2022, and our response brief is due by October 5, 2022. While the administrative law judge will schedule a hearing soon after we file our brief, the administrative appeals process almost certainly will not conclude before September 13, 2022, and likely will not conclude before November 13, 2022.

If CMS terminates funding and requires Laguna Honda to complete the transfer or discharge of its affected patients before Laguna Honda has the opportunity to be heard, Laguna Honda's due process rights will be violated. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal punctuation omitted). Here, for the administrative appeals process to be meaningful, the process must conclude before CMS terminates funding and requires Laguna Honda to transfer its patients. Otherwise, Laguna Honda and its patients would suffer irreparable harm that cannot be remedied even if Laguna Honda ultimately prevails on its appeals.

As in *International Long Term Care, Inc. v. Shalala*, Laguna Honda is facing what is essentially a "scheduling mismatch" between the date CMS has said funding will terminate and date when Laguna Honda's administrative appeals process will conclude. 947 F. Supp. 15, 18–19 (D.D.C. 1996). As a result, if CMS does not agree to extend funding until at least the end of the administrative appeals process, Laguna Honda "might well be forced to close its doors, and the residents might have to be transferred during the very period when the hearing and post-hearing briefing . . . are taking place." *Id.* at 18. And if the ALJ eventually concludes that Laguna Honda should not be terminated from the Medicare program, "it may be too late for [Laguna Honda] to recover." *Id.* at 19. Federal courts have repeatedly issued injunctive relief to prevent exactly that sort of "irreparable and unnecessary harm." *Id.*; see also *New Orleans Home for Incurables, Inc. v. Greenstein*, 911 F. Supp. 2d 386, 413 (E.D. La. 2012); *Pathfinder Healthcare, Inc. v. Thompson*, 177 F. Supp. 2d 895, 896 (E.D. Ark. 2001); *Frontier Health Inc. v. Shalala*, 113 F. Supp. 2d 1192, 1193 (E.D. Tenn. 2000); *Mediplex of Mass., Inc. v. Shalala*, 39 F. Supp. 2d 88, 94 (D. Mass. 1999); *Libbie Rehab. Ctr., Inc. v. Shalala*, 26 F. Supp. 2d 128, 130 (D.D.C. 1998); *Niskayuna Operating Co., LLC v. Sebelius*, 2010 WL 4248852, at *5 (N.D.N.Y. Oct. 26, 2010); *Intensiva Hosp. of Greater St. Louis, Inc. v. Johnson*, 2009 WL 10704985, at *5 (W.D. Mo. Apr. 15, 2009); *Oak Park Health Care Ctr., LLC v. Johnson*, 2009 WL 331563, at *3 (W.D. La. Feb. 10, 2009); *Ridgeview Manor of Midlands, L.P. v. Leavitt*, 2007 WL 1110915, at *9 (D.S.C. Apr. 9, 2007).

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Laguna Honda shares CMS's paramount goal of ensuring patient health, safety, and welfare, but implementation of the schedule under the current Closure Plan conflicts with that goal.

The violation of Laguna Honda's due process rights will also cause unnecessary and irreparable harm to patients. If Laguna Honda is forced to transfer its patients and close its doors before the administrative appeal process concludes, Laguna Honda's eventual success in the administrative appeals will come too late to protect patients. By that time, Laguna Honda's "residents will have already undergone an unnecessary and potentially destructive transfer from which many of them may sustain significant physical or psychological trauma." *Int'l Long Term Care, Inc.*, 947 F. Supp. at 19.

Laguna Honda's overriding concern, which we know CMS shares, is to ensure patient health, safety, and welfare, even when executing the clinically appropriate transfer or discharge of patients. Laguna Honda must take reasonable steps to transfer affected patients safely and minimize possible transfer trauma. (Cal. Health & Safety Code § 1336.2(a).) Laguna Honda has met the various requirements of section 1336.2(a) including, as of July 11, 2022, conducting 482 patient assessments, meeting with 284 patients and their representatives, discharging 13 patients, and transferring 35 patients.¹

While Laguna Honda has proceeded in conducting patient assessments, meeting with patients, and transferring or discharging patients, Laguna Honda has repeatedly faced the lack of available skilled nursing beds to which it could transfer Medicare and Medicaid patients. Every week, Laguna Honda staff calls over a thousand skilled nursing facilities in the San Francisco Bay Area, across California, and even neighboring states, but is unable to identify suitable placements for most patients. For example, during the week of July 4–10, 2022, Laguna Honda called 1,400 unique out-of-county skilled nursing facilities, and identified no vacant beds eligible for Medicare or Medicaid reimbursement and that can provide a sufficient skilled nursing level of care for such patients. Discharging patients also often leaves them without adequate support. Indeed, three of the 13 patients who have been discharged now live in homeless shelters because they lack any other place to go, and three patients are receiving medical and case management services in temporary housing. Given the challenges Laguna Honda has had in trying to identify and transfer its patients, it is likely these extremely vulnerable individuals will end up homeless if CMS does not extend payment through when the last patient is transferred.

The population Laguna Honda serves is primarily either low-income or extremely low-income with diverse issues, including elderly patients and those with behavioral health issues, substance use and addiction disorders, and other complex conditions. Requiring transfers and discharges to facilities inadequate to a patient's level of care or to facilities that are hundreds of miles away from patients' homes and family support structures would not only be cruel, but it would also be unnecessary if Laguna Honda prevails in its administrative appeal. The "Medicare statute is designed to protect the interests" of patients in facilities such as Laguna Honda, but "it is these very residents who will suffer the most if they are unnecessarily transferred" because of a gap in Laguna Honda's funding before the administrative appeals process concludes. *Int'l Long Term Care*, 947 F. Supp. at 19. And, because Laguna Honda faces an imminent loss of funding, it is already losing employees who are needed to provide care to patients.

¹ Laguna Honda provided the 60-day notice required by California Health and Safety Code section 1336.2(c) on May 15, 2022 and could not involuntarily transfer patients before July 15, 2022.

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CMS is effectively requiring Laguna Honda to abandon its administrative rights and remedies in order for a short-term continuation of funding to serve the patients it is committed to serving. There is no real opportunity to be heard when process is delayed and deferred; unfortunately, that renders administrative due process illusory. We hope we can find an amicable solution to this problem given that both Laguna Honda and CMS intend to provide patients with a stable environment while Laguna Honda safely carries out its Closure Plan. Indeed, federal regulations contemplate CMS providing continued federal reimbursements “during the period beginning on the date such notification [of closure] is submitted and ending on the date on which the residents are successfully relocated.” (42 C.F.R. § 489.55(b); *see also* 42 C.F.R. § 488.450(c)(2).) And, in its 2013 final rule regarding Requirements for Long-Term Care Facilities, CMS agreed with “the need to provide continued funding until all of the residents are successfully relocated.” (Medicare and Medicaid Programs; Requirements for Long-Term Care (LTC) Facilities; Notice of Facility Closure, 78 Fed. Reg. 16,795-01, 16,801 (Mar. 19, 2013) (emphasis added).)

CMS should exercise its statutory discretion to extend payments to Laguna Honda.

Our Office, on behalf of Laguna Honda, requests that CMS exercise its discretion under Section 1128I(h)(2) of the Social Security Act and title 42 Code of Federal Regulations sections 489.55(b) and 488.450(c)(2) to extend payments to Laguna Honda. Those provisions allow CMS to extend funding until the last patient leaves Laguna Honda. Exercising that discretion would be appropriate in this case given the critical services provided by Laguna Honda, the lack of other facilities for patients, and the trauma patients are currently experiencing because of CMS’s threats to prematurely terminate funding. In its draft Closure Plan, Laguna Honda reasonably estimated that it would take 18 months to find suitable facilities who can accept Laguna Honda’s patients and satisfy their particular needs. CMS and CDPH imposed a four-month timeline instead. Allowing Laguna Honda only four months to complete that process is not reasonable, and is causing unnecessary trauma for patients.

At a minimum, Laguna Honda requests that CMS continue funding until a reasonable time after the Secretary of Health and Human Services reaches a final decision regarding Laguna Honda’s administrative appeal. Due process requires no less. Our Office previously requested an expedited hearing for Laguna Honda’s administrative appeals and remains willing to expedite the administrative appeals process so it can be resolved in a timely manner to reduce due process concerns.

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We request a response to our letter by Monday July 25, 2022, and we are available to discuss this matter further. Please direct any questions to Deputy City Attorneys Tara Steele (Tara.Steele@sfcityatt.org) and Henry Lifton (Henry.Lifton@sfcityatt.org).

Very truly yours,



DAVID CHIU
City Attorney

cc: Femi M. Johnson, Acting Deputy Chief Counsel
Jacob Richards, Assistant Regional Counsel
Jacob Rossman, Assistant Regional Counsel

Honorable London N. Breed, Mayor, City and County of San Francisco
Grant Colfax, M.D., Director of Health, San Francisco Department of Public Health
Naveena Bobba, M.D., Deputy Director of Health, San Francisco Department of Public Health
Roland Pickens, Director, San Francisco Health Network & Interim Chief Executive Officer, Laguna Honda Hospital
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

D. B. as conservator for JOHN DOE 1; C.C. as
 guardian for JANE DOE 1; JOHN DOE 2; and JANE
 DOE 2 on behalf of themselves and all others similarly
 situated,

Plaintiffs,

v.

CHIQUITA BROOKS-LASURE, in her official
 capacity as Administrator for the Centers for Medicare
 and Medicaid Services; CALIFORNIA
 DEPARTMENT OF PUBLIC HEALTH; TOMAS
 ARAGON in his official capacity as Director of the
 California Department of Public Health; XAVIER
 BECERRA in his official capacity as Secretary of the
 U.S. Department of Health and Human Services;
 DOES 1–30,

Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE,
 DECLARATORY, AND CLASS-WIDE
 RELIEF**

JURY TRIAL REQUESTED

INTRODUCTION

This is a case of tragic proportions. As set forth below, Federal and State agencies recently ordered San Francisco’s Laguna Honda Hospital and Rehabilitation Center to relocate its nearly 700 residents by mid-September. They must go, no matter their medical condition, or financial or social safety net. Some have already become homeless. Eight residents have died following their relocation. As this tragedy

unfolds, the Federal and State agencies are also requiring the hospital to undertake a recertification process intended to reduce any future patient population. As it is, skilled nursing beds are in critically short supply.

Laguna Honda has a storied history, going back to the Gold Rush days of 1866, when it started as an almshouse for the poor. Today, it continues to serve the poor and others in need of good care. It takes patients from San Francisco General Hospital, people suffering trauma from accidents or violence, and those with dementia, Alzheimer's, hospice, or end-of-life needs. In today's world, its residents frequently include those with substance abuse problems, which adds to the challenge of their care.

A new Laguna Honda was rebuilt and certified in 2010 as the first green hospital in California. Its amenities include a "farm" with animals, a garden, an indoor swimming pool, and a hair salon. Art classes are held for those who may have never held a brush in their hand before. Medical staff at Laguna Honda, one of the only publicly-owned facilities of its kind, are on duty daily—something rare even in private facilities. During the COVID-19 pandemic, Laguna Honda's record of prevention was exemplary, especially when compared to other nursing homes.

Despite its achievements, the Federal government, under the auspices of the Centers for Medicare and Medicaid Services ("CMS") and in conjunction with the State of California Department of Public Health ("CDPH" or "the State"), ordered Laguna Honda to close and relocate all patients by September 13, 2022. After that, CMS will no longer provide the Medicare and Medicaid funding necessary to keep it running. CMS and the State are requiring the hospital to be re-certified, just as if it were brand new, with additional requirements, and to reduce the number of patients the facility can serve in the future.

When can the hospital be recertified? Will the hospital remain empty in the meantime? Can its former residents move back? If so, how and under what circumstances? These questions are unanswered.

In the meantime, relocation strikes terror in the hearts of the residents and their families as they face the prospect of eviction. Where will they go? Will their new facility be equipped to treat them? Will families be able to continue to visit? As it is, Laguna Honda represents the bulk of the available skilled nursing beds in San Francisco. There are few, if any, other alternatives in the Bay Area or even the State of California. To add to the urgency, most private facilities limit available beds for the poor, preferring a wealthier clientele.

The isolated deficiencies at Laguna Honda that led CMS to impose closure and relocation involved

1 a small fraction of patients and were correctable. There is an array of remedies that CMS could have
2 invoked to address those alleged violations which would not cause the vast displacement of poor and fragile
3 people. In short, the draconian actions by CMS and the State are illegal, unnecessary, and cruel.

4 Now, Plaintiffs, by and through their attorneys, and on behalf of all members of the class of
5 residents at Laguna Honda, bring this Complaint against the above-named Defendants and their employees,
6 agents, delegates, and successors in office, in their official capacity to enjoin them from carrying out this
7 injustice.

8 **PARTIES**

9 1. Plaintiffs JOHN DOE 1, JANE DOE 1, JOHN DOE 2, and JANE DOE 2, and the class of
10 similarly situated persons they seek to represent, are current patients of Laguna Honda.

11 2. Plaintiff JOHN DOE 1 is a patient with a brain injury, short-term memory loss, depression,
12 dementia, and compulsive behavior. He has lived at Laguna Honda cumulatively for 17 years. He is 49
13 years old. He feels safe and secure with his community and daily routine at Laguna Honda. He is mostly
14 unable to speak, but his mother can interpret his minimal communication. She attends most of his medical
15 appointments, such as injections, vaccinations, dental cleanings, eye exams, and podiatry care to help him
16 cooperate. She is a resident of San Francisco, 73 years old, works full-time, and relies on public
17 transportation. She visits him every day as he does not engage with many others. Her proximity to Laguna
18 Honda is essential for his mental and emotional wellbeing. She fears that if he is transferred, he will be
19 the target of aggression from other residents due to some of his compulsive behavior, which his fellow
20 residents at Laguna Honda have come to accept. She also fears that her daily visits will no longer be
21 possible depending on where he is transferred.

22 3. Plaintiff JANE DOE 1 is a patient with late-stage dementia. She has lived at Laguna Honda
23 for four years. She is 86 years old. Sometimes she recognizes her family members when they visit, but
24 other times she does not. She needs assistance with most basic needs, including eating, moving, and using
25 the bathroom. Her transfer was scheduled for July 15, 2022, but her family asked Laguna Honda to delay
26 her transfer date because they found significant staffing and management issues with the facility where she
27 was going to be transferred. A transfer to an insufficient facility could be fatal for her.

28 4. Plaintiff JANE DOE 2 is a patient with “brittle diabetes”—one of the most severe forms of

the condition and one which is exceptionally hard to manage. She has been in and out of hospitals for many years. She is 45 years old and has lived at Laguna Honda since July 2021. She and her family found that other facilities could not manage her condition but have been very satisfied with the care and attention provided to her by Laguna Honda staff and physicians.

5. Plaintiff JOHN DOE 2 is a patient who had a hemorrhagic stroke and is now in a wheelchair. Prior to that he worked at Candlestick Park, Levi Stadium and AT&T Park because he loves sports, especially the San Francisco Giants and the 49ers. He has lived at Laguna Honda since January 2021. He is 58 years old. He and his family appreciate the tremendous care he receives at Laguna Honda. Laguna Honda has been playing a vital role in his recovery.

6. Defendant XAVIER BECERRA, sued in his official capacity, is the Secretary of the United States Department of Health and Human Services (“DHHS”). As such, he is responsible for administering the Social Security Act, 42 U.S.C. § 301 *et seq.* and the Medicare and Medicaid Act, 42 U.S.C. § 1396 *et seq.*

7. Defendant CHIQUITA BROOKS-LASURE, sued in her official capacity, is the Administrator of CMS, a division of DHHS responsible for administering Medicare, Medicaid and other health-related programs.

8. Defendant CALIFORNIA DEPARTMENT OF PUBLIC HEALTH (“CDPH”) is the state agency charged with surveying Medicare and Medicaid facilities, relocating residents at facilities undergoing termination of their Medicaid and Medicare funding, and assuring that the relocation plans comply with state and federal law.

9. Defendant TOMAS ARAGON, sued in his official capacity, is the Director and the State Public Health Officer of CDPH.

10. Defendant DOES 1–30 are unknown to Plaintiffs at this time but may be officers of the United States or the State of California. They are sued in their official capacity.

VENUE AND JURISDICTION

11. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1343, 1361, 1367, 1651, 2201, 2022, 42 U.S.C. §§ 1983, and 5 U.S.C. § 701 *et seq.*

12. The claims arise under the Social Security Act, 42 U.S.C. § 301 *et seq.*, the Medicare Act,

42 U.S.C. § 1396 et seq., Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*, the Rehabilitation Act of 1973 section 504, and the Fifth and Fourteenth Amendments to the United States Constitution.

13. Venue is based on 28 U.S.C. § 1391(b)(2) and (e)(1) in that a substantial part of the events or omissions giving rise to the claims occurred and the plaintiffs reside in this District.

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

STATEMENT OF FACTS

I. LAGUNA HONDA

15. Laguna Honda is a skilled nursing facility (“SNF”) and hospital owned and operated by the San Francisco Department of Public Health (“SFPDH”), an agency of the City and County of San Francisco (“the City”).

16. With 700 beds, Laguna Honda is the largest SNF in California and one of the largest in the nation. For over 150 years, Laguna Honda has provided skilled nursing and rehabilitation services to San Francisco’s most vulnerable patients, including seniors, adults with disabilities, and others who cannot care for themselves.

17. In June 2010, Laguna Honda moved into new buildings on its 62-acre campus. It is considered among the most modern skilled nursing and rehabilitation facilities in the Country. Residents are organized into 13 units, also known as neighborhoods, which promote the experience of living in a community. Residents are assigned to each neighborhood in part according to their medical and treatment needs. Each neighborhood provides high-quality, individualized care for its patients, including facilities for people with developmental disabilities, treatment for multiple sclerosis, Parkinson’s and other degenerative diseases, therapeutic services for traumatic brain injuries, services for people with psychosocial difficulties, end-of-life care emphasizing comfort and dignity, and the complex system of care required for people with multiple diagnoses.

18. Laguna Honda is the only dedicated SNF for patients with HIV/AIDS in the San Francisco Bay Area.

1 19. Laguna Honda also provides a nationally recognized program for people with Alzheimer’s
2 and other dementias. Each year, the program provides rehabilitative therapy to as many as 240 people,
3 helping them retain and reclaim physical competency so that they can move to a lower level of care or
4 independent living.

5 20. Unlike other SNFs, Laguna Honda has a farm, a large garden, an indoor swimming pool,
6 and an entertainment theater that provide a holistic and therapeutic environment for its residents.

7 21. In November 2020, Laguna Honda received the Top Honor for the 200 Quality Leaders
8 Award from the California Association of Public Hospitals and Health Systems for its successful response
9 to the COVID-19 pandemic, which included cutting-edge infection prevention and control systems to
10 protect its patients.

11 22. In January 2021, the San Francisco Health Commission recognized every Laguna Honda
12 employee and volunteer for their heroic work and vital contributions during the COVID-19 pandemic to
13 benefit the health and wellbeing of residents.

14 **II. THE PROVISION OF MEDICARE AND MEDICAID TO STATES**

15 23. Title XIX of the Social Security Act authorizes DHHS to grant funding to states to help pay
16 for medical assistance for low-income individuals, people with disabilities, and seniors. States must adopt
17 and adhere to a “state plan” for medical assistance pursuant to 42 U.S.C. § 1396a to be eligible for this
18 funding. Included is a requirement that the plan provide coverage for the “categorically needy,” which
19 includes recipients of public assistance and the “medically needy,” which includes certain individuals
20 whose income is insufficient to meet the cost of necessary medical treatment.

21 24. Once DHHS approves a state plan, CMS, a division of DHHS, administers Medicaid and
22 Medicare funding to the state.

23 25. California’s approved medical assistance plan is known as Medi-Cal. Individuals with
24 Medi-Cal receive treatment from Medi-Cal certified facilities which are then reimbursed with Medicaid
25 funds.

26 26. States enter into “provider agreements” with health care providers that serve Medicare and
27 Medicaid patients. To qualify as a Medicare and Medicaid provider, the provider must comply with
28 participation requirements established by federal law. Provider agreements are for a term of years, with

1 near-automatic renewal unless the provider is decertified, or the provider voluntarily terminates the
2 arrangement.

3 27. Most if not all public hospitals or SNFs in California, such as Laguna Honda, could not
4 operate without a provider agreement. The termination of a provider agreement is a de facto death knell
5 for such a facility.

6 **III. CDPH SURVEYS LEAD TO TERMINATION OF LAGUNA HONDA'S PROVIDER** 7 **AGREEMENT**

8 28. CDPH is California's survey agency. In conjunction with CMS, it is charged with surveying
9 Medi-Cal providers to make sure the facilities comply with federal law.

10 29. From October 2021 to April 2022, CDPH conducted six abbreviated surveys of Laguna
11 Honda. Based on these surveys, CDPH alleged a series of deficiencies, most of which were self-reported
12 by Laguna Honda and commonly occur at other SNFs. The alleged deficiencies included 13 residents
13 testing positive for non-prescribed substances; 23 residents possessing "contraband;"¹ and 11 residents
14 possessing lighters.

15 30. The deficiencies identified could be reasonably anticipated at a large SNF that cares for
16 many residents with substance abuse disorders in the middle of a large city. Laguna Honda also must
17 comply with the Patients' Bill of Rights, which provides patients a reasonable expectation of privacy in
18 their rooms, the right to receive unopened mail, and to freely come and go from Laguna Honda (with some
19 restrictions) whether on a pass or against medical advice. Upon investigation, Laguna Honda found that
20 residents were obtaining "contraband" when they left the facility despite staff's extraordinary efforts to
21 identify and confiscate substances and contraband from patients and their visitors entering the facility,
22 while respecting their privacy rights.

23 31. Promptly after receiving each of CDPH's notices of deficiencies, Laguna Honda developed
24 and submitted detailed Plans of Correction to address and prevent further problems. Collectively, Laguna
25 Honda's Plans of Correction set forth almost 120 corrective actions it would take or had already taken to
26 address the alleged deficiencies CDPH identified. The plans listed the persons responsible for taking each
27

28 ¹ Upon information and belief, the contraband included marijuana, a pocket-knife, scissors, smoking paraphernalia, and bottles of alcohol.

of those actions, the completion date of those actions, and ongoing actions Laguna Honda would take to prevent future deficiencies. The corrective actions included clinical searches to confiscate contraband; the creation of a facility-wide system for the handling and disposition of contraband including a new tracking procedure; a new monitoring assessment for residents coming and going from the hospital; stationing deputy sheriffs at the facility to prevent, identify, and respond to the use of contraband by residents; installation of prescreening technology at facility entry points; additional screening of patients with histories of substance abuse disorders; and much more.

32. On February 24, 2022, CMS sent Laguna Honda a notice imposing a Denial of Payment for New Admissions and civil money penalties.

33. Despite receiving Laguna Honda's detailed Plans of Correction, CDPH continued conducting abbreviated surveys and fished for additional deficiencies, without explaining to Laguna Honda the reasons why it found the Plans of Correction insufficient. Sometimes, CDPH returned for another visit before Laguna Honda even had time to address the alleged deficiencies identified from CDPH's previous visit. For example, on March 28, 2022, CDPH went to Laguna Honda for its fifth survey, and then just two days later on March 30, 2022, CDPH returned for a sixth survey.

34. On March 30, 2022, the same day CDPH conducted its sixth and final survey, CMS issued Laguna Honda a notice of "Termination of Provider Agreement," effective April 14, 2022. CMS also imposed civil penalties of nearly \$400,000 on the facility.

35. Upon information and belief, the sanctions listed above are far more severe than what CMS and CDPH generally impose on facilities for the deficiencies identified at Laguna Honda. Indeed, in a published statement, Patricia L. McGinnis, executive director of California Advocates for Nursing Home Reform stated, "[i]t was absolutely unprecedented for this to happen in a facility that large. This is unreal...We have facilities in this state that shouldn't be able to care for my cat, much less a human, and they stay open."²

² Sydney Johnson, *Laguna Honda halts discharges after deaths; future of the hospital still unclear* (July 29, 2022), https://www.sfexaminer.com/news/laguna-honda-halts-discharges-after-deaths-future-of-the-hospital-still-unclear/article_f5563e42-0ec2-11ed-8a35-bf7fec064aad.html?utm_source=sfexaminer.com&utm_campaign=%2Fnewsletter%2Foptimize%2Fexaminer-daily%2F%3Fdc%3D1659049233&utm_medium=email&utm_content=headline

36. The City has filed three requests for hearings with the DHHS Departmental Appeals Board regarding flaws in CDPH's surveys and the sanctions imposed by CMS. The City filed these requests on February 15, 2022, April 25, 2022, and May 28, 2022.

37. As set forth in the appeal filed by the City on May 28, 2022, CDPH applied a "zero-tolerance policy" for contraband on Laguna Honda that was contrary to federal law both because it conflicted with the four-factored test for deficiencies outlined in the CMS State Operations Manual and because it made Laguna Honda responsible for hazards beyond its control. As explained by the City in its appeal, had CDPH not applied this illegal policy, Laguna Honda would have been in substantial compliance and its provider agreement could not have been terminated.

IV. CMS AND CDPH IMPOSE A DEFICIENT RELOCATION PLAN

38. When CMS and a state survey agency terminate a skilled nursing facility's provider agreement, the facility may need to relocate its residents. This occurred when CMS and CDPH terminated Laguna Honda's provider agreement because its patients are almost entirely indigent and thus the hospital is almost entirely reliant on Medi-Cal and Medicare reimbursement. Upon information and belief, CMS and CDPH illegally imposed a deficient relocation plan on Laguna Honda requiring it to transfer its residents to other facilities in just four months, despite the recognized shortage of certified Medicare and Medicaid beds in the San Francisco Bay Area and of affordable housing for patients who will be discharged. CMS and CDPH directed Laguna Honda to implement a plan that jeopardizes the lives of patients who are low-income, elderly, and suffer from chronic illnesses and disabilities.

39. When CMS and CDPH issued Laguna Honda its termination notice, CMS indicated that it would provide post-termination funding to Laguna Honda on the condition that SFDPH "submit a notification of relocation under § 483.70(I)" for the hospital. Upon information and belief, CMS and CDPH told SFDPH that assistance would only be provided for existing patients after April 14, 2022, and that they would only recertify the facility if SFDPH adopted a relocation plan with terms agreeable to CMS and CDPH. SFDPH had no choice but to follow this direction.

40. Upon information and belief, CMS representatives advised SFDPH to prepare a closure and relocation plan that would meet the requirement of 42 C.F.R. § 483.70(I), as well as a CMS Recertification Milestone Document ("Milestone Document") detailing milestones that, if met, would put Laguna Honda

1 on a defined path to recertification in the Medicare and Medicaid programs, preventing a closure from
2 going into effect. However, despite encouraging SFDPH to prepare and submit the Milestone Document,
3 CMS changed course and rejected it without explanation and insisted that the facility follow through with
4 a relocation and closure plan requiring discharge and transfer of all residents.

5 41. SFDPH then proposed a relocation plan that would relocate its residents over the course of
6 eighteen months. Even that timeline was optimistic given that there is a critical shortage of SNFs in
7 California and the Bay Area, and Laguna Honda is one of the nation's largest and most complex SNFs.
8 SFDPH had significant concerns that a shorter relocation timeline would jeopardize the health and safety
9 of its residents. However, CMS and CDPH insisted that the facility complete the relocation in four months;
10 a time-span far too short given the size and complex needs of Laguna Honda's residents. A four-month
11 time frame also conflicted with the City's due process rights in that its three administrative appeals against
12 CDPH's findings and CMS's sanctions would not be resolved prior to the closure and relocation.

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

17 43. To Plaintiffs' knowledge neither CMS nor CDPH has provided a rationale for its
18 requirement that all residents are relocated in four months or why a system that relocated patients in tiers
19 based on their vulnerability was inappropriate.

20 44. On May 13, 2022, the SFDPH reluctantly submitted its relocation and patient transfer and
21 closure plan (the "Relocation Plan") to CMS and CDPH, as mandated by CMS and CDPH for continued
22 funding. CDPH approved the plan.

23 45. The Relocation Plan includes the September 13, 2022 deadline to relocate its Medi-Cal and
24 Medicare residents and does not include a tiered system to protect vulnerable residents who require
25 complex or specialized care. The City and Laguna Honda have significant concerns that a Relocation Plan
26 on such a short timeline would jeopardize the health and safety of residents.

27 46. On July 15, 2022, the City sent a letter to CMS requesting that it continue Laguna Honda's
28 Medicare and Medicaid funding until the resolution of its appeal hearing, given that its administrative

appeals process almost certainly will not conclude before November 13, 2022. Specifically, CMS's prehearing brief is due on August 31, 2022, and Laguna Honda's response brief is due on October 5, 2022.

47. Upon information and belief, CMS and CDPH have primarily communicated with Laguna Honda verbally and have refused to communicate their directives to Laguna Honda in written form. Upon information and belief, the two agencies have operated in this manner to cloak the degree to which they have orchestrated this catastrophe.

V. OVERVIEW OF RELOCATION PLAN DEFICIENCIES RESULTING FROM CMS AND CDPH ACTION

48. Both federal law and state law govern relocation plans upon the termination of a SNF's provider agreement. *See* 42 U.S.C. § 1320a-7j(h)(1)–(2); 42 C.F.R. §§ 483.15, 488.26; 483.70(l)–(m); Health & Safety Code §§ 1325, 1336.2; CMS State Operations Manual §§ 3008–3008.3C.

49. Laguna Honda's Relocation Plan, as imposed by CMS and CDPH, states the following as its objectives:

The intent of this Closure Plan is to ensure the safe, orderly, and clinically appropriate transfer or discharge of each patient with a minimum amount of stress for patients, families, guardians, and legal representatives (collectively, Representatives). All Medicare and Medicaid beneficiary patients will be discharged or transferred to the most appropriate setting possible in terms of quality, services, and location, as available and determined appropriate by the resident care team after taking into consideration the patient's individual needs, choices, and interests. (Note that this Closure Plan only relates to Medicare and Medicaid beneficiary patients.) This objective shall be accomplished in as expeditious manner as possible under the circumstances, as set forth herein. Laguna Honda shall use reasonable best efforts to achieve the time frames set forth herein.

50. However, the short four-month deadline imposed by CMS and CDPH prevents the Relocation Plan from "ensuring the safe, orderly, and clinically appropriate transfer or discharge of each patient with a minimum amount of stress for patients, families, guardians, and legal representatives." Rather, it assures the unsafe, disorderly, inappropriate transfer or discharge of each patient, resulting in tremendous stress, emotional and physical harm to Plaintiffs and all residents and their families. Upon information and belief, since CMS and CDPH ordered the discharge and transfer of residents, eight relocated residents have died. CMS and CDPH's unreasonable September 13, 2022 deadline jeopardizes

1 the lives of hundreds more.

2 **A. CMS and CDPH's Four-Month Deadline Prevents Laguna Honda from Ensuring**
 3 **Safe and Orderly Transfers Given the Lack of Available Beds**

4 51. Federal law requires facilities to “provide and document sufficient preparation and
 5 orientation to residents to ensure safe and orderly transfer or discharge.” 42 C.F.R. § 483.15(c)(7.)

6 52. CMS and CDPH's four-month deadline prevents Laguna Honda from providing sufficient
 7 preparation and orientation to residents to ensure safe and orderly relocation. The sheer number of Laguna
 8 Honda residents and lack of available beds exposes this glaring deficiency with the four-month deadline.

9 53. When Laguna Honda submitted its Relocation Plan, the facility had 686 residents.
 10 Approximately 540 of those residents were on Medi-Cal and 126 on Medicare. At least 480 are considered
 11 to have multiple conditions, disabilities, and especially complex needs.

12 54. The Relocation Plan specifically acknowledged that there is a critical shortage of SNF beds
 13 in the San Francisco Bay Area such that it is practically impossible to relocate these residents to appropriate
 14 facilities:

15 Nationwide, and specifically with respect to the San Francisco Bay Area,
 16 there is a recognized shortage of Medi-Cal beds in Skilled Nursing Facilities
 17 (SNFs). Not counting Laguna Honda, in 2020, there were only about 340
 18 Medi-Cal certified hospital-based SNF beds in San Francisco. In addition,
 19 only 368 out of approximately 845 total free-standing SNF beds were Medi-
 20 Cal certified in 2020. San Francisco only had approximately 16 SNF beds
 21 per 1,000 adults aged 65 and older in 2020.¹ According to a report compiled
 22 by the San Francisco Department of Public Health (SFDPH), Office of
 23 Policy and Planning, on SNF bed shortages in San Francisco and the Bay
 24 Area, San Francisco has the largest number of SNF beds in the Bay Area,
 25 however, between 2013 and 2020, there was a 23.4% decrease in hospital-
 26 based and 10.6% decrease in free- standing SNF beds in San Francisco and
 27 a 2% decrease across the Bay Area. Given the size of Laguna Honda, the
 28 limited availability of SNF beds and beds in other appropriate placements in
 the San Francisco Bay Area and California, the processes required for notice
 and discharge, and the complexity of Laguna Honda's patient population,
 many of whom have a combination of behavioral health needs, substance
 use disorders, and other complicated social and medical factors, the process
 to transfer and discharge patients will need to occur over a period of time.

55. As explained in the Relocation Plan, “[t]he patient population at Laguna Honda is large and
 complex. Many patients have complicated chronic medical needs along with behavioral health components

(such as diagnosed mental illnesses and/or substance use disorders) and other social or behavior issues. This makes placement difficult in many situations, as some facilities do not have the capability or capacity to serve patients with certain medical and/or behavioral needs.”

56. Given the shortage of available beds in the San Francisco Bay Area and the complex needs of Laguna Honda’s patients, the Relocation Plan imposed by CMS and CDPH would inevitably require relocation of many residents to facilities far from their families and communities. The Relocation Plan “anticipates that placements will be necessary outside of the San Francisco Bay Area, including Northern California, the Central Valley, Southern California, and possibly to other states. Transfers to other states will require additional time because each patient’s Medicare and Medicaid benefits will have to be transferred to the receiving state.” The vast majority of Laguna Honda’s residents rely on their families and communities for not only emotional support in their most difficult stage of life, but also for critical decision-making in their medical care and end-of-life needs. Notably, a substantial number of patients have issues with legal capacity. Displacing them to other parts of the state, or even out of state, would strip them of their critical support system.

57. State and federal law require SNFs to complete comprehensive assessments for each patient prior to any transfer or discharge during a facility closure. Therefore, the Relocation Plan first requires Laguna Honda to review all patients’ charts to identify those who could be discharged to lower levels of care. Second, an interdisciplinary team assesses each patient and their medical records, while Laguna Honda conducts (a) medical and nursing assessments to identify particular needs or behaviors, including those that could complicate placement or increase the risk of transfer trauma; (b) social assessments that “identify specific social needs such as family and social services supports or other program requirements, including preferred activities inside and out of the facility, interests, and other preferences;” and (c) assessments on each patient’s “functional capabilities and health needs” including “the patient’s comorbidities, physical, psychological, and psychosocial functioning in addition to any treatments (*e.g.*, end of life care, oxygen therapy, dialysis) or therapies (*e.g.*, physical, occupational, speech, restorative nursing) needed.”

58. Based on these assessments, each patient is assigned to one of the following groups for relocation:

Group 1 (people who do not require significant residential/inpatient healthcare or SNF level of care): discharge with no significant facility care needs, including discharge to home or other housing or placement with significant community supports as necessary;

Group 2 (people who require a lower level of care in a residential placement but not SNF level of care): discharge to a lower level of care, such as board and care or residential supportive housing;

Group 3 (people with SNF level of care needs): transfer to a skilled nursing facility; and

Group 4 (people who need care above the SNF level of acuity): transfer to a higher level of care, such as psychiatric health facilities.

However, the Relocation Plan acknowledges that there will “likely [be] placement delays” and Laguna Honda will need to modify patient assessments and the above categorizations because it “expects placement to be challenging based on specific factors...such as the presence of complex medical needs...or mental health, substance use, or other social/behavioral needs.”

59. After classifying the residents and meeting with them and their families, Laguna Honda, in conjunction with the California Department of Health Care Services (“DHCS”) and CDPH, attempts to match them with facilities that can accommodate each of their complex needs. Laguna Honda will only transfer patients in Group 3 to another SNF or to a hospice facility and patients in Group 4 to “Locked Subacute Treatment” facilities, psychiatric SNFs, or a state psychiatric hospital.

60. Upon information and belief, CMS and CDPH allowed patients to reject their relocation placements only until July 15, 2022. After that date, patients could not refuse a placement, although they would still have a right to appeal the placement.

61. There simply are not enough beds available to accommodate Laguna Honda’s patients. A preliminary survey of SNFs found that as of May 2022, only 16 Medi-Cal certified beds were available in San Francisco and only three to six qualifying beds were available in surrounding counties. Although there were 240 available beds at non-skilled nursing facilities in San Francisco, Laguna Honda anticipated that the majority of those beds were not suitable for its residents in Group 2 because “[t]he needs of these patients cannot be maintained with the services available at places like board and care, or residential hotels. These patients will require extensive assistance from care-giver professionals for 8 hours a day or more.”

62. At the time the Relocation Plan was issued, there were 4,000 long-term care facilities, including SNFs, in California. Laguna Honda planned to call 80 facilities a day for 50 days to locate beds to relocate its patients. As of July 18, 2022, Laguna Honda had called 9,779 facilities both inside and outside of San Francisco but could not find even close to the number of beds required. For example, during the week of July 4–10, 2022, Laguna Honda called 1,400 unique out-of-county skilled nursing facilities and identified **no** vacant beds eligible for Medicare or Medicaid reimbursement that could provide a sufficient skilled nursing level of care for its patients.

63. As expected, Laguna Honda has been unable to relocate its patients according to the unrealistic timeline imposed by CMS and CDPH due to the severe shortage of available and adequate beds. By July 17, 2022, halfway through the four-month timeline, Laguna Honda had only been able to successfully relocate 56 out of 686 residents. Of those 56 residents, Laguna Honda discharged 16 and transferred 40 to other facilities: one in San Francisco; 35 in San Mateo County; and four in Alameda County.

64. Upon information and belief, shockingly, eight patients, or 14% of those relocated to date, have already **died** and three discharged patients are now living in homeless shelters—all due to the cruel, senseless, and tragically misguided directives of state and federal bureaucrats which were issued without explanation.

B. CMS and CDPH’s Actions Deny Patients their Rights to Adequate Notice

65. Federal law requires that patients receive a notice at least 30 days before the transfer or discharge that includes “the location to which the resident is transferred or discharged.” 42 C.F.R. § 483.15(c)(3)–(c)(5); *see also* 42 U.S.C. §§ 1396i-3(c)(2)(B), 1396r(c)(2)(B).

66. On May 16, 2022, all patients and their decision-makers received the Relocation Plan and a 60-day relocation notice. However, the May 16 notice does not state each resident’s transfer or discharge location—just that the resident would be transferred. Indeed, Laguna Honda still needed to conduct the assessment and match-making processes described above before confirming the residents’ transfer or discharge location.

67. Starting July 15, 2022, CMS and CDPH require all patients to accept their assigned placement. However, upon information and belief, many residents still do not know the location of their

placement. As of July 17, 2022, only 56 out of 686 patients had been transferred or discharged due to the difficulty of finding adequate beds. It is highly unlikely that all remaining 630 patients will receive notice of a new placement location by August 13 (30 days before the September 13 cutoff date). Thus, CMS and CDPH's insistence on a rapid relocation plan will inevitably prevent residents from receiving the notice required by law. 42 C.F.R. § 483.15(c)(3)–(c)(5).

C. CMS and CDPH's Actions Deny Patients their Rights to Appeal their Relocation

68. Federal law requires that patients have a right to appeal their transfer or discharge and a right to stay in their current facility while their appeal is pending. 42 C.F.R. § 483.15(c)(1)(ii).

69. The Relocation Plan states that "Laguna Honda receives notice of the hearing date typically about 14 days after the patient appeals," then the State of California issues a decision approximately 14 days after the hearing. Thus, the appeal process could take about 30 days to complete.

70. Laguna Honda has been waiting over a month for answers from CDPH, DHCS, and CMS to important questions about the appeals process.

71. Laguna Honda had asked CDPH and CMS "about payment obligations during the appeals process" but was still awaiting clarification from them as of July 18, 2022.

72. CMS also reports that extended funding is contingent on progress in transferring and discharging patients, but it had not communicated progress metrics to Laguna Honda as of July 18, 2022.

73. The delayed response time from CDPH and CMS, their strict direction that all patients must accept their placement after July 15, 2022, and the slim likelihood that the remaining 630 patients will receive notice of an adequate placement by CMS and CDPH's fast approaching deadline of September 13, 2022, all prevent patients from exercising their right to appeal their relocation. Any patients who have not yet received notice of their placement or those who recently received it may be unable to exercise their full appeal rights given CMS's delay in responding to Laguna Honda's questions and the uncertain time period needed to conduct an appeal process.

D. CMS and CDPH's Actions Deny Patients their Right to Effective Discharge Planning

74. Federal law requires facilities "to develop and implement an effective discharge planning process that focuses on the resident's discharge goals, the preparation of residents to be active partners and effectively transition them to post-discharge care, and the reduction of factors leading to preventable

readmissions.” 42 C.F.R. § 483.21(c)(1).

75. Federal law also requires facilities to ensure “that the residents would be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.” 42 C.F.R. § 483.70(1)(3).

76. CMS and CDPH’s insistence on relocating patients by September 13, 2022 prevents Laguna Honda from implementing effective discharge and transfer planning for its residents. Upon information and belief, the short timeline has required the discharge of patients with as little as five-minutes notice to the physician; the transfer of patients without adequate preparation, including confirmation whether the receiving facility has appropriate resources to treat the patient’s medical conditions; and Laguna Honda to assume responsibility for health problems that occur post-transfer.

77. The absurdity of CMS and CDPH’s imposed September 13 deadline is painfully obvious, not least because, since its implementation, eight patients have died following their relocation, and three discharged patients are now living in homeless shelters.

E. CMS and CDPH Pause All Transfers and Discharges

78. On July 26, 2022, the San Francisco Board of Supervisors unanimously passed a resolution imploring Defendant BECERRA to halt the Relocation Plan and extend payment to Laguna Honda until the facility can regain certification.

79. On July 28, 2022, apparently after realizing that the requirements CMS and CDPH imposed through the Relocation Plan have been a catastrophe, CMS paused its implementation. Currently, residents of Laguna Honda will not be discharged or transferred. However, CMS has failed to give any guidance on how long it intends to pause the Relocation Plan, whether relocation will resume, and if so, on what timeline.

80. On July 28, 2022, after no less than four patients died following their relocation, Defendant BROOKS-LASURE stated that patients should only be relocated after a thorough assessment to a safe environment where they can receive quality care. However, she failed to acknowledge that doing so was impossible for Laguna Honda given that CMS and CDPH had required Laguna Honda to relocate its patients in only four months and there is a critical shortage of nursing beds which makes this effectively impossible. She also failed to acknowledge that City officials had proposed relocating patients on a tiered

1 system and an 18-month plan, but CMS and CDPH rejected both proposals, and imposed an impossible
2 deadline.

3 81. Upon information and belief, Defendants may order the transfer of patients to resume as
4 early as next week—the week of August 8, 2022—just five weeks from the September 13, 2022 deadline,
5 which remains in place. A transfer or discharge of the represented plaintiffs or their fellow class members
6 could be fatal or severely disruptive to their care and emotional well-being.

7 **CLASS-WIDE ALLEGATIONS**

8 82. This lawsuit is properly maintained as a class action under Federal Rules of Civil Procedure
9 23(b)(1)(B) and (b)(2).

10 83. The class consists of the roughly 681 Medi-Cal or Medicare residents of Laguna Honda
11 Hospital who have been or are yet to be discharged or transferred under the Relocation Plan as directed by
12 Defendants. A sub-class also consists of all present and future Medi-Cal or Medicare recipients who
13 (a) reside in the City and County of San Francisco, (b) who have or will have disabilities, and (c) who,
14 because of their disabilities need or will need inpatient and/or outpatient rehabilitative and other medical
15 services that are currently only comprehensively provided at Laguna Honda.

16 84. Plaintiffs Jane Does 1 and 2 and John Does 1 and 2 are adequate class representatives
17 because they, like other members of the class, are residents of Laguna Honda and will be either transferred
18 or discharged by the facility pursuant to the Relocation Plan. Like the vast majority of the residents at
19 Laguna Honda, they have serious disabilities or conditions that require treatment at a SNF. Further, all of
20 the representative Plaintiffs have familial connections in San Francisco that play a pivotal role in the
21 coordination of their care. As with almost every member of this class, Plaintiffs would suffer tremendous
22 harm if they were discharged or transferred from Laguna Honda, especially in the dangerous and cruel way
23 imposed by Defendants.

24 85. Defendants' action in imposing the Relocation Plan on Laguna Honda harms all class
25 members in the same manner. It will cause the transfer or discharge of residents in a hasty and dangerous
26 manner that jeopardizes their lives, deprives them of their substantive and procedural due process rights,
27 and the statutory protections afforded to them by Federal and State law. The sub-class will suffer further
28 harm because, while some residents may ultimately be able to obtain services at other facilities, the sub-

1 class will not because of their severe disabilities.

2 86. As a practical matter, adjudication of Plaintiffs' claims would be dispositive of the interests
3 of the other class members.

4 **CAUSES OF ACTION**

5 **FIRST CLAIM FOR RELIEF**

6 **(Violation of Title II of Americans with Disabilities Act against Defendants ARAGON and CDPH)**

7 87. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 86 above .

8 88. Title II of the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12131 *et seq.*)
9 prohibits discrimination in public services and programs. Title II's enabling regulations provide: "No
10 qualified individual with a disability shall, on the basis of disability, be excluded from participation in or
11 be denied the benefits of the services, programs, or activities of a public entity, or be subjected to
12 discrimination by any public entity." 28 C.F.R. § 35.130.

13 89. Plaintiffs are qualified individuals with disabilities within the meaning of the ADA.
14 Plaintiffs are presently or in the future will be excluded from participation in or denied the benefits of
15 Laguna Honda's services, programs or activities or otherwise discriminated against by CDPH and CMS's
16 discontinuation of funding of Laguna Honda and the September 13, 2022 deadline to relocate residents.
17 Such exclusion, denial of benefits, or discrimination was based on Plaintiffs' disabilities. Depriving
18 Plaintiffs entirely of the only facility in the County that provides services disproportionately required by
19 the disabled and available nowhere else in the County—or the State—violates Title II of the ADA.

20 **SECOND CLAIM FOR RELIEF**

21 **(Violation of the Rehabilitation Act of 1973, section 504 against all Defendants)**

22 90. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 89 above.

23 91. The Rehabilitation Act of 1973 Section 504 prohibits discrimination against persons with
24 disabilities with respect to service availability, accessibility, delivery, employment, and the administrative
25 activities and responsibilities of programs or activities receiving federal financial assistance or under any
26 program or activity conducted by an executive agency. The Rehabilitation Act's enabling regulations
27 provide: "No qualified handicapped person shall, on the basis of handicap, be excluded from participation
28 in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity

1 which receives Federal financial assistance.” 45 C.F.R. § 84.4(a).

2 92. Plaintiffs are “qualified handicapped persons” within the meaning of the Act. CDPH
3 receives federal financial assistance. Medicare and Medicaid are programs conducted by DHHS, an
4 executive agency. By approving and enforcing the Relocation Plan, Defendants are denying Plaintiffs
5 participation in and the benefit of the services at Laguna Honda, a unique facility that provides services
6 that are not available in any other facility in violation of the Rehabilitation Act. Many disabled Plaintiffs
7 will not be able to find necessary medical treatment elsewhere if Laguna Honda closes. The closing of the
8 facility will have a devastating effect on the facility’s predominantly disabled patients, including Plaintiffs,
9 in violation of the Rehabilitation Act of 1973 section 504, as well as the statutes’ enabling regulations,
10 45 C.F.R. § 84.

11 **THIRD CLAIM FOR RELIEF**

12 **(Writ of Mandate Against Defendant ARAGON for Violating Federal and State Law)**

13 93. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 92 above.

14 94. Under Federal and California Law, as the Director of CDPH, Defendant had a duty to
15 approve and oversee implementation of a relocation plan that provided for the safe transfer or discharge of
16 residents of Laguna Honda. *See* 42 U.S.C. §§ 1320a-7j(h)(1)–(2); 42 C.F.R. § 483.70(l); 42 U.S.C.
17 § 1396a(a)(19); CMS State Operations Manual §§ 3008.3 B–C; Health & Safety Code §§ 1325, 1336.2.

18 95. Defendant also had a legal duty to approve a relocation plan that provides residents of
19 Laguna Honda due process rights pursuant to Federal and California Law. *See, e.g.* 42 U.S.C. §§ 1396i-
20 3(c)(2), 1396r(c)(2); 42 C.F.R. § 483.15(c)(1), (3)–(5); Health & Safety Code § 1336.2.

21 96. SFDPH told Defendants that at minimum, 18 months were required to relocate its residents
22 safely given the size and complexity of the facility’s population and the critical shortage of nursing beds
23 across the state. SFDPH also told Defendant that relocation should occur pursuant to a tiered system to
24 protect vulnerable patients. Defendant ignored this warning.

25 97. Defendant, working in conjunction with the Federal Defendants, then imposed a four-month
26 relocation plan that was patently unrealistic and would require patently unsafe transfers or discharges of
27 patients in the violation of their rights under Federal and California Law.

28 98. Eight patients have died following the implementation of the September 13, 2022

1 Relocation Plan deadline. Its deficiencies pose an immediate and substantial threat to the lives and health
2 and safety of Plaintiffs.

3 **FOURTH CLAIM FOR RELIEF**

4 **(Deprivation of substantive due process rights in violation of the 14th Amendment against**
5 **Defendant ARAGON)**

6 99. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 98 above.

7 100. Plaintiffs have protected life, liberty and/or property interests to be free from emotional
8 trauma, physical danger, and/or bodily harm as well as an interest in safe and orderly transfer from Laguna
9 Honda conferred by the Medicare/Medicaid statutes and regulations and California statutes and regulations
10 governing skilled nursing facilities.

11 101. Defendant, acting as an officer of the CDPH, joined with the Federal Defendants to impose
12 the Relocation Plan.

13 102. The Relocation Plan has exposed Plaintiffs to potential and actual severe harms, including
14 emotional trauma, physical danger and bodily harm, including death. Defendant's conduct shocks the
15 conscience and violates Plaintiffs' substantive rights under the Fourteenth Amendment.

16 **FIFTH CLAIM FOR RELIEF**

17 **(Deprivation of procedural due process in violation of the Fourteenth Amendment against**
18 **Defendant ARAGON)**

19 103. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 102 above.

20 104. Plaintiffs have constitutionally protected life, liberty, and interests to be free from emotional
21 trauma, physical danger, and/or bodily harm.

22 105. Plaintiffs also have an interest in safe and orderly transfer from Laguna Honda conferred
23 by Federal and California law regarding the provision of assistance under Title XIX of the Social Security
24 and the regulation of nursing facilities.

25 106. Defendant, acting as an officer of the CDPH, joined with the Federal Defendants
26 BECERRA and BROOKS-LASURE to impose the current relocation plan, which injures Plaintiffs'
27 protected interests, without providing Plaintiffs with due process prior to the adoption and implementation
28 of the Plan.

107. Defendant's conduct violates Plaintiffs' rights under the Fourteenth Amendment.

SIXTH CLAIM FOR RELIEF

(Deprivation of substantive due process rights in violation of the Fifth Amendment against Defendants BECERRA, BROOKS-LASURE)

108. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 107 above.

109. Plaintiffs have protected life, liberty and/or property interests to be free from emotional trauma, physical danger, and/or bodily harm as well as an interest in safe and orderly transfer from Laguna Honda conferred by the Medicare/Medicaid statutes and regulations and California statutes and regulations governing skilled nursing facilities.

110. Defendants, acting as officers of the United States government, joined with the Defendant ARAGON to impose the Relocation Plan.

111. The plan has exposed Plaintiffs to potential and actual severe harms, including emotional trauma, physical danger, and bodily harm, including death. Defendants' conduct shocks the conscience and violates Plaintiffs' substantive rights under the Fifth Amendment.

SEVENTH CLAIM FOR RELIEF

(Deprivation of procedural due process under the Fifth Amendment against Defendants BECERRA, BROOKS-LASURE)

112. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 111 above.

113. Plaintiffs have constitutionally protected life, liberty, and interests to be free from emotional trauma, physical danger, and/or bodily harm.

114. Plaintiffs also have an interest in safe and orderly transfer from Laguna Honda conferred by Federal and California law regarding the provision of assistance under Title XIX of the Social Security and the regulation of nursing facilities.

115. Defendants, acting as officers of the United States government, joined with the Defendant ARAGON to impose the current Laguna Honda Relocation Plan, which injures Plaintiffs' protected interests, without providing Plaintiffs with due process prior to the adoption and implementation of the plan.

116. Defendants' conduct violates Plaintiffs' rights under the Fifth Amendment.

EIGHTH CLAIM FOR RELIEF

(Violation of the Administrative Procedure Act, 5 U.S.C. § 706, against Defendants BECERRA, BROOKS-LASURE)

117. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 116 above.

118. Defendants, acting independently and in concert with Defendant ARAGON, imposed the Relocation Plan in violation of Plaintiffs' federal due process rights, and in violation of federal statutory and regulatory requirements concerning facility closure and resident relocation, including but not limited to the requirement that a relocation plan must provide for safe and orderly transfer of residents to adequate facilities. The decision to impose the current Relocation Plan was a final administrative action which was arbitrary, capricious, an abuse of discretion, contrary to constitutional law, or otherwise not in accordance with law.

NINTH CLAIM FOR RELIEF

(Violation of California Constitution, Article I, Section 7 for deprivation of substantive due process rights, against Defendant ARAGON)

119. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 118 above.

120. Plaintiffs have protected life, liberty and/or property interests to be free from emotional trauma, physical danger, and/or bodily harm.

121. Defendants joined with the Federal Defendants BECERRA and BROOKS-LASURE to impose the Relocation Plan. The plan has exposed Plaintiffs to potential and actual severe harms, including emotional trauma, physical danger and bodily harm, including death. Defendant's conduct shocks the conscience and violates Plaintiffs' substantive rights under Article I, Section 7.

TENTH CLAIM FOR RELIEF

(Violation of California Constitution, Article I, Section 7 for deprivation of procedural due process rights, against Defendant ARAGON)

122. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 121 above.

123. Plaintiffs have protected life, liberty and/or property interests to be free from emotional trauma, physical danger, and/or bodily harm as well as an interest in safe and orderly transfer from Laguna Honda conferred by the Medicare/Medicaid statutes and regulations and California statutes and regulations

governing skilled nursing facilities. Further, Plaintiffs have a dignitary interest in being informed about the nature, grounds, and consequences of state action.

124. Defendants, acting as officers of CDPH, joined with the Federal Defendants BECERRA and BROOKS-LASURE to impose the Relocation Plan, which injures Plaintiffs' protected interests, without providing Plaintiffs with an opportunity for hearing prior to the adoption and implementation of the Relocation Plan. Defendant's conduct deprived Plaintiffs of their procedural due process under Article I, Section 7.

PRAYER FOR RELIEF

1. Declaratory judgment that CMS and CDPH's enforcement of the September 13, 2022 deadline for transfers and termination of funding violates the statutes and regulations cited above.

2. An injunction enjoining CMS and CDPH from forcing Laguna Honda to comply with and implement the Relocation Plan, specifically in transferring or discharging residents.

3. An injunction against Defendant BECERRA enjoining him from halting post-termination Medicare and Medicaid payments to Laguna Honda.

4. A writ of mandamus against Defendants ARAGON and BROOKS-LASURE directing them to withdraw the September 13, 2022 deadline for relocation and discharge.

5. An order enjoining CMS and CDPH from imposing/approving any Relocation Plan on Laguna Honda that would force residents to be discharged or transferred.

6. Award of reasonable attorneys' fees and costs; and

7. Such other further relief as the Court deems just and proper.

DATED: August 3, 2022

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