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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14
15 SUSAN RODDE, KENNETH) Case No. CV 03-1580 FMC (PJWx)
YOUNGER, AND ANTONIO)
16 GAXIOLA, et al.,) **SETTLEMENT AGREEMENT**
17 Plaintiffs,)
18 v.) [Honorable Florence-Marie Cooper]
19 DIANA BONTA, R.N., DR. P.H.,)
Director of the State Department of)
20 Health Services, an Individual in Her)
Official Capacity; COUNTY OF LOS)
21 ANGELES, a public entity; THOMAS)
L. GARTHWAITE, M.D., Director and)
22 Chief Medical Officer of Defendant)
County's Department of Health)
23 Services; an individual in his official)
24 capacity; and DOES 1-10, inclusive,)
individual Defendants are sued in their)
official capacities,)
25 Defendants.)
26
27
28

1 **SETTLEMENT AGREEMENT**

2 WHEREAS, Plaintiffs Susan Rodde, Kenneth Younger and Antonio Gaxiola
3 brought this lawsuit entitled *Susan Rodde, et al. v. Diana Bontá, et al.* filed on or
4 about March 6, 2003, Case No. 03-1580 FMC (PJWx) (the “Action”) in the United
5 States District Court for the Central District of California (“District Court”), seeking
6 certification of a class and declaratory and injunctive relief against Diana Bontá, then
7 the Director of California Department of Health Services (“State Defendant”), and
8 against County of Los Angeles and Thomas L. Garthwaite, M.D., Director of Los
9 Angeles County Department of Health Services (hereinafter collectively referred to as
10 “the County Defendants”), and Does 1 through 10, inclusive; and

11 WHEREAS, the Action alleges claims against the State Defendant and County
12 Defendants for violations of various provisions of the Medicaid Act, including 42
13 U.S.C. §§ 1396a(a)(4), 1396a(a)(8), 1396a(a)(10)(A), 1396a(a)(30)(A),
14 1396a(a)(43)(C), 1396d(a)(1) and (2)(a), Title II of the Americans with Disabilities
15 Act, 42 U.S.C. §§ 12131-12134, Section 504 of the Rehabilitation Act, 29 U.S.C. §
16 794, California Government Code § 11135, California Civil Code § 51 et seq., and
17 California Civil Code § 54 et seq.;

18 WHEREAS, the District Court has jurisdiction over the claims in this Action
19 against the State Defendant and County Defendants pursuant to 28 U.S.C. §§ 1331,
20 1343 and 1367, and venue is proper in the Central District of California pursuant to
21 28 U.S.C. § 1391(b);

22 WHEREAS, on April 29, 2003, the District Court certified the Action as a class
23 action on behalf of a class consisting of “all present and future recipients of the
24 Medicaid program: (a) who reside in the County of Los Angeles, (b) who have or will
25 have disabilities, and (c) who, because of their disabilities, need or will need inpatient
26 and/or outpatient rehabilitative and other medical services that are currently provided
27 at Rancho Los Amigos National Rehabilitation Center”;

LAW OFFICES
CHRISTENSEN, MILLER, FINK, JACOBS, GLASER, WEIL & SHAPIRO
10250 Constellation Boulevard
Nineteenth Floor
Los Angeles, California 90067
(310) 553-3000

1 WHEREAS, on May 6, 2003, the District Court entered a preliminary
2 injunction, which, inter alia, enjoined the County Defendants from “closing Rancho
3 Los Amigos National Rehabilitation Center (“Rancho”), or terminating, reducing, or
4 making any further reductions in any inpatient or outpatient medical services,
5 including remedial services, at Rancho which are covered by the Medi-Cal program”
6 until the County Defendants can assure the District Court that plaintiffs and members
7 of the class: (i) “will continue to receive comparable inpatient or outpatient services
8 from other Medi-Cal providers in Los Angeles County and that they will receive these
9 inpatient or outpatient services in a timely manner and to the same extent as members
10 of the general population” and/or (ii) “will continue to have the same access to
11 inpatient and outpatient services at other health care facilities within the Los Angeles
12 County health care system that they experienced at Rancho as of the filing of this
13 lawsuit on March 6, 2003”;

14 WHEREAS, on February 5, 2004, the United States Court of Appeals, Ninth
15 Circuit, affirmed the above-mentioned preliminary injunction in a published opinion
16 entitled *Rodde v. Bonta*, 357 F.3d 988 (9th Cir. 2004);

17 WHEREAS, the County Defendants deny all wrongdoing alleged in this Action
18 and deny any liability whatsoever to Plaintiffs, and whereas the County Defendants
19 assert that they have meritorious defenses which they have asserted in this Action,
20 and assert that they have entered into this Agreement solely for the purpose of settling
21 and compromising the claims of the Plaintiffs, to avoid the expense and diversion of
22 its personnel caused by protracted litigation, and to terminate the claims asserted
23 against the County Defendants; and

24 WHEREAS, Plaintiffs and Plaintiffs’ Counsel believe that the Agreement is
25 fair, reasonable and adequate to members of the Class in this Action in part because
26 the parties’ respective experts have estimated that it will take three years of diligent
27 efforts by the County Defendants to pursue a buyer and/or operator to take over
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1 Rancho and to identify and address all barriers to Rancho operating in the most
2 efficient manner;

3 NOW THEREFORE, in consideration of the covenants and undertakings set
4 forth herein and intending to be legally bound thereby, it is stipulated and agreed by
5 the Plaintiffs and the County Defendants, represented by their undersigned counsel,
6 that all of Plaintiffs' claims for relief against the County Defendants which were
7 asserted in the Complaint filed on or about March 6, 2003, including any claims
8 against employees and officers of the County of Los Angeles, shall be resolved on the
9 following terms as set forth in this Agreement and the accompanying Stipulated
10 Order.

11 1. Definitions.

12 1.1. "Action" means this litigation entitled *Susan Rodde, et al. v.*
13 *Diana Bontá, et al.*, filed on or about March 6, 2003 in the United States District
14 Court for the Central District of California, Case No. 03-1580 FMC (PJWx).

15 1.2. "Agreement" means this Settlement Agreement.

16 1.3. "Board" means the Board of Supervisors of the County of Los
17 Angeles.

18 1.4. "Class" means all present and future recipients of the Medicaid
19 program: (a) who reside in the County of Los Angeles, (b) who have or will have
20 disabilities, and (c) who, because of their disabilities, need or will need inpatient
21 and/or outpatient rehabilitative and other medical services that are currently provided
22 at Rancho Los Amigos National Rehabilitation Center.

23 1.5. "Class Member" means all natural persons who fall within the
24 definition of the Class.

25 1.6. "County" means the County of Los Angeles.

26 1.7. "County Defendants" means the County and Thomas L.
27 Garthwaite, M.D., Director and Chief Medical Officer of the County's Department of
28 Health Services, and his successor in office.

1 1.8. “Court” means the United States District Court for the Central
2 District of California.

3 1.9. “DHS” means the County’s Department of Health Services.

4 1.10. “Effective Date” means the first date after which all of the
5 following events and conditions set forth below have occurred or have been met or
6 occurred:

7 a. All Parties have executed this Agreement.

8 b. The Court has entered the Preliminary Approval Order
9 preliminarily approving the Agreement and authorizing notice be given of the
10 Agreement to Class Members .

11 c. The Court has entered the Stipulated Order finally
12 approving this Agreement and dismissing without prejudice the Action.

13 d. The Stipulated Order finally approving this Agreement and
14 dismissing without prejudice the Action has become Final as defined in Paragraph
15 1.11 hereof.

16 1.11. “Final” means the latest of:

17 a. if an appeal or review is sought from the Stipulated Order
18 (as defined herein), (a) ten (10) days after the date of final affirmance of the
19 Stipulated Order, the expiration of the time for a petition for review or certiorari, or if
20 review or certiorari is granted, ten (10) days after the date of final affirmance
21 following review pursuant to that grant, or (b) ten days after the date of final dismissal
22 of any appeal, denial of a petition for writ of certiorari, or final dismissal of any
23 proceeding on review; or

24 b. if no appeal is filed, ten (10) days after the expiration date
25 of the time for filing or noticing any appeal from the Stipulated Order

26 1.12. “Parties” means Plaintiffs (as defined herein) and the County
27 Defendants.
28

1 1.13. "Plaintiffs" means Susan Rodde, Kenneth Younger and Antonio
2 Gaxiola.

3 1.14. "Preliminary Approval Order" means the order to be entered by
4 the Court giving preliminary approval to the Agreement and authorizing notice to be
5 given of the Agreement to Class Members. That Preliminary Approval Order shall be
6 substantially in the form attached hereto as Exhibit "A".

7 1.15. "Rancho" means Rancho Los Amigos National Rehabilitation
8 Center.

9 1.16. "Roybal" means Roybal Comprehensive Health Center.

10 1.17. "Settlement" means the settlement of this Action pursuant to the
11 terms set forth in this Agreement.

12 1.18. "Stipulated Order" means the entered and appealable order of this
13 Court approving this Agreement and dismissing without prejudice the Action. That
14 order shall be substantially in the form attached hereto as Exhibit "B."

15 2. After notice of and an opportunity to comment on this Agreement has
16 been provided to the Class and others thereby affected, the Court shall determine
17 whether to approve this Agreement as being a fair, reasonable and adequate
18 settlement of the Action. Except as otherwise noted, the terms of this Agreement
19 shall not take effect until the occurrence of the Effective Date.

20 3. This Agreement settles all claims against the County Defendants in this
21 lawsuit.

22 4. This is a binding and enforceable agreement. It is not a consent decree.

23 5. The County shall negotiate in good faith with entities interested in taking
24 over Rancho and/or the core rehabilitation services provided by Rancho. The County
25 shall assemble a dedicated team to oversee such negotiations.

26 6. The County shall advise Plaintiffs' counsel about the progress of the
27 negotiations and about any barriers to reaching an agreement ("Takeover
28

1 Agreement”) with an entity to take over Rancho. The County shall provide counsel
2 for Plaintiffs with quarterly updates on the status of any such negotiations.

3 7. For purposes of this Agreement only, the term “indigent” shall mean and
4 include those individuals who (a) reside in Los Angeles County, and either (b) meet
5 the income and resource eligibility requirements for Medi-Cal but do not fall into
6 specified Medi-Cal eligibility criteria categories, or (c) have income below 200% of
7 the Federal Poverty Level.

8 8. The County shall ensure that any Takeover Agreement requires the
9 takeover entity to continue the mission of Rancho as a catastrophic rehabilitation
10 hospital. The Takeover Agreement shall require the takeover entity to accept for
11 treatment eligible County indigent and Medi-Cal rehabilitation inpatients and
12 outpatients pursuant to catastrophic injuries, illnesses and related medical services
13 admissions protocols in place at Rancho in the year prior to any takeover and shall
14 further require the County to compensate the takeover entity at a competitive rate
15 within industry norms for catastrophic rehabilitation hospitals. To the extent that
16 Rancho lacks available beds or outpatient slots (appointments) for eligible County
17 indigent rehabilitation patients who otherwise would be accepted under the above-
18 mentioned admissions protocols, the County has the obligation of referring and
19 paying for those patients to be treated at a rehabilitation facility with the appropriate
20 Commission for Accreditation of Rehabilitation Facilities (“CARF”) accreditation
21 until such time as a bed or outpatient slot at Rancho becomes available.

22 9. The County shall provide an opportunity for Plaintiffs’ counsel to review
23 and comment on the provisions in the Takeover Agreement relating to continued
24 access to Rancho's inpatient and outpatient services by eligible County indigent and
25 Medi-Cal rehabilitation patients. The County shall send any Takeover Agreement to
26 Plaintiffs’ counsel for their review and comment at least thirty (30) days before such
27 agreement is submitted to the Board for approval or is executed, whichever is sooner.
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1 10. The County shall operate Rancho at a total of 162 available beds
2 (budgeted Average Daily Census (“ADC”) of 146 beds) with the complement of core
3 rehabilitation services (clinical rehabilitation services as outlined in the Gill/Balsano
4 report and the rehabilitation and related services¹ listed in the County's 7/18/2003
5 Feasibility Report (“Core Rehabilitation Services”)) and the budgeted for outpatient
6 services that support the Core Rehabilitation Services as set out in the County’s
7 7/18/2003 Feasibility Report plus outpatient services to support the ortho-diabetes and
8 arthritis services at approximately the March 2005 level unless and until the take-over
9 entity begins operating Rancho. A true and correct copy of the County’s 7/18/2003
10 Feasibility Report is attached hereto as Exhibit “C” and incorporated herein by this
11 reference. The County’s operation of Rancho includes the CART (Center for Applied
12 Rehabilitation Technology), the Pathokinesiology Laboratory and the Vocational
13 Rehabilitation and Drivers' Training Program. Rancho shall continue to treat persons
14 with the diagnosis of postpolio syndrome.

15 11. The County shall fund twelve (12) beds at Rancho (included in the 162
16 available bed commitment in Paragraph 10 above) to continue to provide its ortho-
17 diabetes and arthritis services. Additionally, the outpatient services provided to the
18 ortho-diabetes and arthritis patients must be maintained at the same level existing as
19 of March 18, 2005, with respect to both the types of outpatient services provided as
20 well as the number of outpatients served. The foregoing twelve (12)-bed commitment
21 and commitments regarding outpatient services must be maintained, whether at
22 Rancho or, in the event of a takeover or closure of Rancho, elsewhere in the County
23 system, for a period of three (3) years from the date this Agreement is executed. At
24 the end of those three (3) years, the County must continue to provide ortho-diabetes
25 and arthritis patients with the same level of inpatient and outpatient services and
26 clinics existing at Rancho as of March 18, 2005, whether at Rancho or at another

27 _____
28 ¹ Adult Brain Injury, Spinal Cord Injury, Major Multiple Trauma, Pediatrics, Neurology,
Stroke, Gerontology, Pressure Ulcer Management, Rehab Related Medical Surgeries, Intensive Care
Unit (“ICU”) and two (2) Operating Rooms.

1 County facility, for an additional three (3) years, and the budget of the County facility
2 receiving those patients shall be increased to cover the cost of providing these
3 services.

4 12. County hospitals that admit patients who require chronic intravenous
5 ("IV") antibiotic treatment services shall no longer be required to transfer them to
6 Rancho.

7 13. To offset the increased demand on the beds at Los Angeles County-
8 University of Southern California Medical Center ("LAC-USC") for those patients
9 who require chronic IV antibiotic treatment and who shall no longer be transferred to
10 Rancho (ADC at Rancho of 2.4 patients), Rancho shall direct admit from the LAC-
11 USC emergency room ortho-diabetes patients up to a projected daily census
12 averaging 2.0 patients on an annual basis.

13 14. The County may operate Rancho under the license of LAC-USC if it
14 elects to do so as long as it does not interfere with future Medi-Cal revenue.

15 15. The County shall provide medically necessary health care, on an
16 inpatient and outpatient basis, to eligible County indigent and Medi-Cal patients with
17 liver disease who would otherwise have received such care at Rancho's former liver
18 service ("Liver Patients").

19 15.1. The County shall provide inpatient care to the Liver Patients at
20 County facilities which have a full-time gastrointestinal consult service.

21 15.2. The County shall provide outpatient care to the Liver Patients by
22 at least continuing to operate liver and hepatitis outpatient clinics in the LAC-USC
23 Healthcare Network at the same level as they were operated at Roybal and LAC-USC
24 (as measured by average visits per month) as of March 2005. Medical staff at the
25 liver clinics shall have direct admitting privileges at County hospitals.

26 15.3. The County shall provide outpatient care that is designed to limit
27 or prevent the hospitalization or repeat hospitalization of the Liver Patients.
28

1 15.4. The County shall include the Liver Patients into a case
2 management system.

3 15.5. The County shall monitor all current patients registered in the liver
4 clinics at Roybal and LAC-USC beginning as soon as practical, for the following
5 indicators:

- 6 a. What is the Emergency Department boarding time and
7 waiting time for hospital admission for patients from the clinics
8 who require acute inpatient care (i.e., time for patient referred
9 from clinic to be admitted to a hospital bed)?
10 b. What is the readmission rate for these patients?
11 c. What percentage of the patients continue to maintain the
12 same principal source of care?
13 d. When admitted for acute care, which hospitals are used?

14 15.6. The Medical Director of the DHS, the Medical Director of LAC-
15 USC and the Medical Executive Committee of LAC-USC shall review the results of
16 the above-mentioned monitoring semi-annually and shall provide said results without
17 patient identifying information to Plaintiffs' counsel. Upon submission of the results
18 to the Medical Executive Committee of LAC-USC, the Medical Director of LAC-
19 USC shall send a written confirmation to Plaintiffs' counsel, as designated in
20 Paragraph 33 herein, attesting to the fact that the results have been submitted to the
21 Medical Executive Committee of LAC-USC.

22 15.7. In the event the above-mentioned data in Paragraph 15.5 above
23 reveal that the Liver Patients are not receiving medically necessary health care, the
24 County shall implement additional measures to ensure that these patients will receive
25 medically necessary health care for their liver disease.

26 16. Except as otherwise provided herein, the County shall operate Rancho
27 under the standards cited in Paragraphs 10-15 above for a period of three (3) years
28 from the occurrence of the Effective Date ("Three Year Period").

1 17. During the Three Year Period, the County shall pursue with due
2 diligence (as defined in Paragraph 17.1 below) a buyer and/or operator and/or the
3 establishment and operation of an Internal Revenue Code section 501(c)(3)
4 corporation to take over Rancho and shall use its best efforts to implement measures
5 to improve Rancho's operations so that the facility operates in the most efficient and
6 economical manner practicable. Should another entity be willing to take over
7 Rancho, the County shall require that entity to continue to operate Rancho as a
8 comprehensive catastrophic rehabilitation hospital with both inpatients and
9 outpatients.

10 17.1 "Due Diligence" shall mean at least the following:

11 a. A panel ("the Panel") shall be promptly created consisting
12 of Dr. Robert Tranquada (tentative selection) or another person chosen by the
13 Plaintiffs' counsel at any time and Dean Norman, M.D., or another person chosen by
14 the County at any time. Plaintiffs' Counsel and the County reserve the right to
15 change their Panel designees at any time. The County shall compensate members of
16 the Panel no more than \$225.00 per hour of work fulfilling the obligations set forth in
17 this Agreement provided that the members submit to the County bills reflecting the
18 number of hours and a brief description of the work performed. The County shall
19 also pay the reasonable out-of-pocket costs (excluding travel expenses) incurred by
20 members of the Panel, such costs to be paid in accordance with the County's travel
21 reimbursement policy. Notwithstanding the foregoing, the County shall not be
22 obligated to pay Plaintiffs' appointee to the Panel more than \$100,000 plus allowable
23 out-of-pocket expenses for the performance of his or her duties as a member of the
24 Panel under this Agreement.

25 b. The County shall fund and retain at least one individual on a
26 full-time basis to pursue the County's duties under Paragraph 17 above. The Panel
27 shall approve the full-time individual so retained.
28

1 c. The County shall prepare quarterly written reports of its
2 progress to find an entity to take over Rancho as well as its efforts to implement
3 measures to improve Rancho's operations so that the facility operates in the most
4 efficient and economical manner practicable and shall send such reports to the Panel,
5 Plaintiffs' counsel and Defendants' counsel in the manner specified in Paragraph 33
6 herein. The Panel shall evaluate the quarterly reports and report their evaluation to
7 the Parties.

8 d. Should the County initiate any of the steps set forth in
9 Paragraph 18 below, any member of the Panel who is not licensed to practice
10 medicine shall be replaced with an individual who is licensed to practice medicine.

11 e. The Panel shall remain in existence for three (3) years and
12 six (6) months from the occurrence of the Effective Date.

13 18. a. If after the end of the Three Year Period, the County has not engaged
14 an entity to assume the responsibility of operating Rancho pursuant to the terms of
15 Paragraphs 8 and 17 above, the County cannot close Rancho without: (i) holding a
16 hearing under the Beilenson Act; (ii) developing a written plan addressing how those
17 eligible County indigent patients who otherwise would have been admitted to Rancho
18 will instead receive medically necessary rehabilitation services at a facility with the
19 appropriate CARF accreditation; (iii) developing a written discharge plan for each
20 existing indigent, Medi-Cal or Medi-Cal pending inpatient at Rancho in accordance
21 with applicable law and medically acceptable standards; (iv) developing a written
22 discharge plan for each indigent, Medi-Cal or Medi-Cal pending outpatient at Rancho
23 who is diagnosed with one or more ambulatory care sensitive conditions or a chronic
24 medical condition of clinical significance, during a previous visit, and is not stabilized
25 or has a complex multi-system disorder (e.g., outpatients who use a ventilator and/or
26 who have a diagnosis of postpolio syndrome) in accordance with applicable law,
27 medically acceptable standards and the notification and assistance requirements set
28 forth in DHS's September 11, 2002 memo entitled Check of Actions Related to

1 Redesign Implementation and Attachment 5 (patient triage requirements) thereto (a
2 true and correct copy of which is attached hereto as Exhibit D and incorporated herein
3 by this reference) regarding health center closure requirements and the attached
4 patient triage requirements for patient notification, medical records and clinical staff
5 follow-up for the above categories of indigent, Medi-Cal or Medi-Cal pending; (v)
6 developing referral procedures for all other indigent, Medi-Cal or Medi-Cal pending
7 outpatients at Rancho (not covered by the immediately receding subparagraph (iv)) in
8 accordance with applicable law and medically acceptable standards; and (vi)
9 arranging for Los Angeles County's California Children's Services (CCS) program to
10 assume responsibility for ensuring that appropriate inpatient and outpatient care are
11 provided to CCS eligible children who otherwise would have been receiving inpatient
12 and/or outpatient care at Rancho. For purposes of this subparagraph 18.a., outpatients
13 include those persons who received an outpatient service at Rancho during the three
14 (3) years prior to the date that work begins on any of the discharge plans identified in
15 this subparagraph.

16 b. If after the end of the Three Year Period, the County decides either
17 to close Rancho or to reduce inpatient or outpatient services at Rancho by twenty-five
18 percent (25%) or more from the levels set out in Paragraphs 10 and 11 above, the
19 County shall do the following:

20 (1) The County shall provide the Panel (if in existence) and
21 Plaintiffs' counsel with copies of the transfer agreements that it has in place at the
22 time it makes any decision to close Rancho or reduce inpatient and outpatient
23 services at Rancho (as described above) for its directly operated trauma centers
24 pursuant to 22 Cal. Code Regs. §§ 100259(d)(4), 100259(e)(2), 100261(d)(3),
25 100261(e)(2), and 100263(j)(3)(C);

26 (2) The County shall provide a written report to the Panel (if in
27 existence) and Plaintiffs' counsel as to the plans the County has developed for: (i)
28 providing inpatient and outpatient rehabilitation services or related medical services

1 to eligible County indigents and Medi-Cal recipients who are impacted by the
2 proposed closure or reduction at other County facilities with appropriate CARF
3 accreditation instead of at Rancho; or (ii) referring eligible County indigents and
4 Medi-Cal recipients who otherwise would have been referred to Rancho for inpatient
5 and/or outpatient rehabilitation services or related medical services to non-County
6 facilities with the appropriate CARF accreditation in Los Angeles County;

7 (3) In developing the above-mentioned written plans, the
8 County shall conduct a survey of CARF accredited facilities that accept Medi-Cal
9 recipients as patients and that provide the same or similar inpatient and outpatient
10 services as provided by Rancho pursuant to Paragraph 10 of this Agreement. Based
11 upon the results of this survey, the written report to the Panel shall set forth for each
12 such facility: (i) the different rehabilitation services provided by the facility; (ii) the
13 number of beds that the facility has designated for rehabilitation services, including
14 for catastrophic rehabilitation services and for patients on ventilators, and (iii) the
15 facility's response to the County's inquiry as to whether it would be willing to
16 provide inpatient and/or outpatient rehabilitation services to additional Medi-Cal
17 recipients and, if so, the number of additional Medi-Cal recipients the facility would
18 be willing to accept for inpatient rehabilitation services and for outpatient
19 rehabilitation services.

20 c. At least seventy-five (75) days prior to giving notice under the
21 Beilenson Act pursuant to this Paragraph, the County shall distribute the plans
22 referenced in paragraphs 18.a.(ii)-(iv) and 18.b.(2) to the Panel (if in existence) and
23 to Plaintiffs' counsel. Within sixty (60) days after receipt of any of these Plans, the
24 Panel (if in existence) shall issue to the Board and Plaintiffs' counsel and
25 Defendants' counsel: (i) a written recommendation as to whether the County's plan
26 ensures the indigent patients shall continue to receive medically appropriate
27 rehabilitation and related services as provided at Rancho as of March, 2005, and as
28 defined in this Agreement and (ii) a written report on the impact of a Rancho closure

1 or reduction that excludes Medi-Cal patients on the ability of these Medi-Cal patients
2 to receive medically necessary rehabilitation and related medical services.

3 d. Notwithstanding Paragraphs 18.b.(1)-(3) and 18.c. above,
4 Defendants shall no longer be required to provide the Panel with the written
5 materials covered by Paragraphs 18.b.(1)-(3) and 18.c. of this Agreement after three
6 (3) years and six (6) months from the occurrence of the Effective Date of this
7 Agreement, but this shall not relieve Defendants of the obligation to provide the
8 written materials required by Paragraphs 18.b.(1)-(3) and 18.c. to Plaintiff's counsel
9 beyond that time period.

10 e. If the Plaintiffs or Class Members wish to assert that the County
11 has breached any of the terms of this Agreement, or that the County's decision to
12 close Rancho or to reduce inpatient or outpatient services at Rancho by twenty-five
13 percent (25%) or more from the levels set out in Paragraphs 10 and 11 above
14 otherwise violate the law, the County will not object to the new matter being
15 assigned to the Honorable Florence Marie Cooper.

16 f. During the Three Year Period, Plaintiffs shall not file or initiate
17 any new legal action against the County Defendants as to the matters covered by
18 Paragraphs 10-15 of this Agreement so long as the County Defendants fully comply
19 with the standards cited in Paragraphs 10-15 of this Agreement during those same
20 period(s) of time. This Agreement is otherwise not intended in any way to limit,
21 impair or affect the rights of Plaintiffs or Class Members, if any, to challenge within
22 the Three Year Period any: (i) future closure of Rancho; (ii) future transfer of
23 Rancho to a take-over entity; and/or (iii) future reduction in the level of services
24 available at Rancho to Medi-Cal recipients below those set forth in Paragraphs 10,
25 11, 13 and 15 of this Agreement.

26 19. Information under this Agreement:

27 19.1. During the Three Year Period, the County shall provide Plaintiffs'
28 counsel with the information listed below on a quarterly basis no later than thirty (30)

1 days after the expiration of the preceding quarter (e.g., information shall be provided
2 no later than April 30, 2006, for the quarter covering January 1, through March 31,
3 2006):

4 a. The monthly census of inpatients and outpatients at Rancho
5 with separate breakdowns by payor source at time of admission (namely, Medi-Cal
6 recipients, Medi-Cal pending, General Relief, self-pay/uninsured and other indigents)
7 and by service (e.g., Pediatrics or Neurology).

8 b. The monthly census of ortho-diabetes patients directly
9 admitted to Rancho from the LAC-USC emergency room.

10 19.2. During the last year of the Three Year Period, the County shall
11 provide Plaintiffs' counsel on a quarterly basis a breakdown of the numbers of
12 patients who have been admitted to Rancho by source of referral (i.e., another County
13 hospital or facility, other hospitals, long-term care facilities); and

14 19.3. Additionally, if the County enters into a Takeover Agreement
15 prior to the last quarter of the Three Year Period, the County shall provide Plaintiffs'
16 counsel with the information set out in the immediately preceding subparagraph 19.2
17 for the three (3) quarters prior to the County's signing of the Takeover Agreement.

18 20. Judge Florence-Marie Cooper of the Court or her successor at the Court
19 shall retain jurisdiction over this Action for the purpose of resolving any disputes that
20 may arise regarding this Agreement, including any action to enforce the Agreement.

21 21. If the Court does not approve this Agreement and the basis for the
22 Court's disapproval of the Agreement does not involve a material term of this
23 Agreement, then the Parties shall make good faith efforts to modify the Agreement so
24 as to gain the Court's approval. If the Parties are unable to modify the Agreement so
25 as to gain the Court's approval, or if an order approving this Agreement is not upheld
26 on appeal, this Agreement shall be null and void and the Action shall proceed with
27 respect to the Parties and Class Members as if there had been no Settlement.
28

1 22. The County Defendants expressly deny each and all of the claims and
2 contentions alleged against them by the Plaintiffs in this Action. This Agreement,
3 anything contained herein, and any negotiations or proceedings hereunder shall not be
4 construed as or deemed to be an admission, presumption, evidence of, or concession
5 by the County Defendants of the truth of any fact alleged or the validity of any claim
6 which has or could have been asserted in this Action, or of the deficiency of any
7 defense which has or could have been asserted in this Action or of any wrongdoing or
8 liability whatsoever.

9 23. This Agreement, the fact of its existence, and any term hereof shall not
10 be construed as an admission by the County Defendants or used as evidence against
11 the County Defendants in any civil, criminal, or administrative action or proceeding
12 except as described below. This Agreement, the fact of its existence, and any term
13 hereof shall be admissible in evidence in any proceedings in this Action and in any
14 subsequent lawsuit to enforce the terms of this Agreement.

15 24. Plaintiffs' counsel can file a lawsuit to enforce the terms of this
16 Agreement on behalf of Plaintiffs and/or Class Members; County Defendants can file
17 a lawsuit on their own behalf to enforce the terms of this Agreement. Before filing
18 any lawsuit to enforce the terms of this Agreement, counsel for the Party or Parties
19 (including Class Members) who wish to bring such a lawsuit shall contact counsel for
20 the opposing Parties to discuss thoroughly, preferably in person, the substance of the
21 contemplated lawsuit and any potential resolution. Any such lawsuit shall not be filed
22 until twenty (20) days after the Parties have conferred to discuss the lawsuit unless
23 either Party is threatened with irreparable harm, in which case the lawsuit can be filed
24 in a shorter period of time.

25 25. Subject to approval by the Court, the County Defendants shall pay \$1.75
26 million to Plaintiffs' counsel for the County Defendants' share of the attorneys' fees,
27 costs, and expenses incurred by Plaintiffs' counsel. Within thirty (30) days of the
28 Effective Date, a check in the amount of \$1.75 million made payable to the Western

1 Law Center for Disability Rights on behalf of all Plaintiffs' counsel shall be issued
2 and delivered to Paula D. Pearlman at the address set forth in Paragraph 33. After this
3 Agreement has been finally approved by the Court, Plaintiffs' counsel and County
4 Defendants' counsel shall respectively be entitled to recover their reasonable
5 attorneys' fees, costs and expenses as ordered by the Court in accordance with the
6 standards otherwise applicable to civil rights actions brought under 42 U.S.C. § 1983
7 (including *Christianburg Garment Co. v. EEOC*, 434 U.S. 412 (1977)) if their
8 respective clients are the prevailing parties on any new lawsuit to enforce the terms of
9 this Agreement. Before the filing of any motion for attorneys' fees, costs and
10 expenses, the parties shall follow the procedures set forth in Paragraph 24 above.

11 26. Nothing contained herein shall be deemed to constitute a custom, policy
12 or practice of the County.

13 27. This Agreement contains all the terms and conditions agreed upon by the
14 Parties hereto, and no oral agreement entered into at any time nor any written
15 agreement entered into prior to the execution of this Agreement regarding the subject
16 matter of this proceeding shall be deemed to exist, or to bind the Parties hereto, or to
17 vary the terms and conditions contained herein.

18 28. The Parties agree that no single Party shall be deemed to have drafted
19 this Agreement or any portion thereof and that for purposes of construing any
20 ambiguity it is agreed that this Agreement is the collaborative effort of all attorneys
21 and there will be no construction of any ambiguity against any Party on account of
22 any claim that such Party drafted the subject language.

23 29. Counsel for the Parties are expressly authorized by the Parties whom
24 they represent to enter into this Agreement, to take all appropriate action required or
25 permitted to be taken by such Parties pursuant to this Agreement to effectuate its
26 terms, and to execute any other documents required to effectuate the terms of this
27 Agreement. The Parties and their counsel will cooperate with each other in good faith
28 to effect the implementation of the Agreement.

- 1 30. This Agreement may only be amended, modified, or supplemented by:
- 2 (a) an agreement in writing signed by both the County Defendants and
- 3 Plaintiffs' counsel and approved by the Court; or
- 4 (b) other order of the Court.

5 31. The Parties recognize and acknowledge that this Agreement must be

6 approved by the Court pursuant to Paragraph 2 above. No later than forty-five (45)

7 days after this Agreement has been executed by all the Parties, Plaintiffs' Counsel

8 shall file a motion seeking preliminary approval of the Agreement, the giving of the

9 notice to Class Members, and entry of the Preliminary Approval Order substantially

10 in the form attached hereto as Exhibit "A." The Parties agree to cooperate in good

11 faith in the creation of all papers submitted to the Court to secure such approval.

12 32. This Agreement shall inure to the benefit of and be binding upon the

13 legal representatives and any successor of Plaintiffs, Class Members and the County

14 Defendants.

15 33. All notices, requests, demands and other communications required or

16 permitted hereunder shall be given in writing and shall be deemed to have been duly

17 given if delivered by hand, or if mailed by United States certified or registered mail,

18 with postage prepaid, five (5) days after mailing, or if delivered by telecopy, with

19 receipt confirmed and a confirming letter sent by United States mail, certified or

20 registered mail, two (2) days after telecopying:

21

22 To the Marilyn Holle, Esq.
 Plaintiffs: Protection and Advocacy, Inc.
 3580 Wilshire Boulevard, Suite 902
 Los Angeles, California 90010-2512
 Telephone: (213) 427-8747
 Facsim ile: (213) 427-8767

23

24

25 with a copy to: Paula D. Pearlman, Esq.
 Western Law Center for Disability Rights
 919 South Albany Street
 Los Angeles, California 90015-1211
 Telephone: (213) 736-1031
 Facsim ile: (213) 736-1428

26

27

28

1 or to such other person or a ddress as Plaintiffs shall furn ish to the other Party hereto
2 in writing.

3 To the County Raymond G. Fortner, Esq., County Counsel
Defendants: Leela A. Kapur, Esq., Senior Assistant County
Counsel
4 Sharon A. Reichman, Esq., Principal Deputy
County Counsel
5 648 Kenneth Hahn Hall of Administration
6 500 West Temple Street
Los Angeles, California 90012
7 Telephone: (213) 974-1825
Facsim ile: (213) 680-2165

8 with a copy to: Patricia L. Glaser, Esq.
Alisa Morgenthaler Lever, Esq.
9 Christensen, Miller, Fink, Jacobs,
Glaser, Weil & Shapiro, LLP.
10 10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067
11 Telephone: (310) 553-3000
Facsim ile: (310) 556-2920

12
13 or to such other person or address as the County Defendants shall furnish to the other
14 Party hereto in writing.

15 34. This Agreement may be executed in counterparts, each of which will be
16 deemed to be an original and all of which taken together shall constitute a single
17 instrument. This Agreement may be executed by signature via facsimile transmission
18 which shall be deemed the same as an original signature.

19 35. This Agreement and the Stipulated Order shall be considered to have
20 been negotiated, executed and delivered, and to be wholly performed, in the State of
21 California, and the rights and obligations of the Parties to the Agreement, as well as
22 Class Members, shall be construed in accordance with and governed by, the internal
23 substantive laws of the State of California without giving effect to that state's choice
24 of law principles.

25 36. Except as expressly provided herein, this Agreement shall not confer any
26 right or benefit upon or release from liability any person who is not a Party to this
27 Agreement or a Class Member.
28

1 37. No waiver of any provision of this Agreement shall be deemed, or shall
2 constitute, a waiver of any other provision whether or not similar, nor shall any
3 waiver constitute a continuing waiver. No waiver shall be binding unless executed in
4 writing by the party making the waiver. In the event that any provision of this
5 Agreement shall be held to be invalid, the same shall not effect in any respect
6 whatsoever, the validity of the remainder of this Agreement.

9 Dated: August 16, 2005

[signed]

SUSAN RODDE

11 Dated: September 7, 2005

[signed]

KENNETH YOUNGER

13 Dated: August 6, 2005

ANTONIO

[signed]

GAXIOLA

15 COUNTY

OF LOS ANGELES

16 By:

OFFICE OF THE COUNTY
COUNSEL

17 RAYMOND

G. FORTNER,
COUNTY COUNSEL

19 Dated: August 16, 2005

LEELA
Senior

[signed]

ANN KAPUR
Assistant County Counsel

22 Dated: August 17, 2005

THOMAS
County

By: [signed]

L. GARTHWAITE, M.D.,
Director and Chief Medical Officer of the
of Los Angeles Department of Health
Services

26 [SIGNATURES ON NEXT PAGE]

1 **APPROVED AS TO FORM AND CONTENT:**

2 CHRISTENSEN, MILLER, FINK, JACOBS,
3 GLASER, WEIL & SHAPIRO, LLP

4 Dated: August 22, 2005
ALISA

By: _____ [signed]
MORGENTHALER LEVER
Attorneys for Defendants Board of Supervisors
of the County of Los Angeles, Los Angeles
County Department of Health Services and
Thomas L. Garthwaite, M.D.

8 OFFICE OF THE COUNTY COUNSEL,
9 COUNTY OF LOS ANGELES

10 Dated: August 16, 2005
LEELA

By: _____ [signed]
ANN KAPUR
Attorneys for Defendants Board of Supervisors
of the County of Los Angeles, Los Angeles
County Department of Health Services and
Thomas L. Garthwaite, M.D.

14 WESTERN LAW CENTER FOR
15 DISABILITY RIGHTS

16 Dated: August 23, 2005

By: _____ [signed]
EVE L. HILL
Attorneys for Plaintiffs

18 PROTECTION

AND ADVOCACY, INC.

20 Dated: September 7, 2005

By: _____ [signed]
MELINDA BIRD
Attorneys for Plaintiffs

23 WESTERN LAW CENTER ON LAW &
24 POVERTY

25 Dated: August 31, 2005
26 ROBERT

By: _____ [signed]
D. NEWMAN
Attorneys for Plaintiffs

27 [SIGNATURES ON NEXT PAGE]
28

KIRKLAND

& ELLIS LLP

Dated: August 31, 2005
JEFFREY

By: _____ [signed] _____
DAVIDSON
Attorneys for Plaintiffs

NATIONAL SENIOR CITIZENS LAW
CENTER

Dated: August 19, 2005

By: _____ [signed] _____
GERALD A. MCINTYRE
Attorneys for Plaintiffs