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the Department of Health Care Services, State of
 8 *California Department of Health Care Services*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA

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 13 **PABLO CARRANZA,**

14 Plaintiff,

15 v.

16 **TOBY DOUGLAS, Director of the**
 17 **Department of Health Care Services, State**
 18 **of California DEPARTMENT OF HEALTH**
CARE SERVICES,

19 Defendants.

2:12-cv-02928-WBS-GGH

SETTLEMENT AGREEMENT

Courtroom: 5
 Judge: The Hon. William B. Shubb

Action Filed: December 4, 2012

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 22 Plaintiff Pablo Carranza (Carranza) and Defendants Toby Douglas, Director of the
 23 Department of Health Care Services and the State of California Department of Health Care
 24 Services (collectively, the Department), through their attorneys of record, enter into this
 25 Settlement Agreement.

26 **RECITALS & SETTLEMENT AGREEMENT**

27 A. Carranza has been enrolled in the Medi-Cal Home and Community-Based Services
 28 Nursing Facility and Acute Hospital (NF/AH) waiver, which is administered by the

1 Department/In Home Operations (IHO), since November 1, 2005. He has muscular dystrophy,
2 tracheostomy, gastrostomy, and scoliosis. Before he turned 21-years old on September 17, 2012,
3 Carranza received in-home nursing services at the pediatric sub-acute level of care (LOC) through
4 the Early Periodic Screening, Diagnosis, and Treatment program.

5 B. On August 29, 2012, IHO staff informed Carranza that when he turned 21, he would
6 be eligible for services at the sub-acute LOC for adults 21 and over through the NF/AH waiver.

7 C. On September 6, 2012, Carranza requested a state fair hearing with the Department of
8 Social Services State Hearing Division to appeal the sub-acute LOC determination. The
9 administrative hearing, Hearing No. 2012275358, was held on October 22, 2012. At the hearing,
10 the administrative law judge (ALJ) ordered the Department to provide Carranza with aid paid
11 pending.

12 D. On December 4, 2012, Carranza filed a complaint for injunctive and declaratory relief
13 (Complaint) alleging violations of the Americans with Disabilities Act, 42 U.S.C. § 12134-35 *et*
14 *seq.*; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*; and deprivation of the
15 Federal Constitutional right to procedural due process under 42 U.S.C. § 1983. (Case No. 2:12-
16 cv-02928-WBS-GGH, Dkt. No. 1.)

17 E. On December 27, 2012, the Department issued to Carranza the Director's Alternate
18 Decision on Carranza's administrative appeal, Hearing No. 2012275358. The Director's
19 Alternate Decision ordered the Department to find Carranza eligible for NF/AH Waiver services
20 at the Acute Hospital LOC.

21 F. In order to avoid the uncertainty of litigation and to resolve all matters between them,
22 Carranza and the Department (collectively, the parties) agree to settle all actual and potential
23 claims between them related to the facts giving rise to the Complaint.

24 **THEREFORE**, and in consideration of the mutual terms, covenants and conditions set
25 forth in this Settlement Agreement, the parties agree and stipulate as follows:

26 1. The terms, conditions, and covenants of this Settlement Agreement shall be
27 interpreted under the laws of the State of California.

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1 2. The Department agrees not to seek recoupment of any monies paid to Western Home
2 Health Agency pursuant to the ALJ's order for aid paid pending the final administrative decision.

3 3. To address his medically necessary health care needs, Carranza may select any
4 combination of the services available under both the Medi-Cal State Plan and the list of services
5 specified in the NF/AH Waiver that are available to waiver participants at the Acute Hospital
6 LOC.

7 4. In addition to the Department's annual in-person assessment of Carranza's LOC,
8 Carranza may, as medically necessary, submit a request, and be reassessed, for additional Medi-
9 Cal State Plan and NF/AH waiver services not to exceed those services allowed under the
10 designated Acute Hospital LOC cost neutrality expenditure cap.

11 5. This Settlement Agreement shall be effective as of the date the last party or counsel
12 executes the Settlement Agreement.

13 6. The Department shall pay to Carranza's attorneys reasonable attorneys' fees and costs
14 in a total amount of \$69,500. The Department shall make payment to Debra Marley at Disability
15 Rights California, Federal Tax Id. No. 94-2505916.

16 7. The total payment in the amount of \$69,500 constitutes full and final satisfaction of
17 all claims for attorneys' fees and costs related to and stemming from this action.

18 8. By signing below, the parties affirm that they understand that the Department must
19 seek a legislative appropriation for the attorneys' fees and cost set out in paragraph 6 and,
20 accordingly, that the payment date of the attorneys' fees and costs depends on the date that the
21 parties have a fully-executed Settlement Agreement. If the parties have a fully-executed
22 Settlement Agreement on or before approximately March 25, 2013, such that the attorneys' fees
23 and costs payment can be included in the May 2013 budget estimate, the Department shall pay the
24 attorneys' fees and costs by July 1, 2013. If the parties have a fully-executed Settlement
25 Agreement after March 25, 2013, the Department shall pay the attorneys' fees and costs by March
26 1, 2014.

27 9. Post-judgment interest shall begin to accrue at the rate of seven percent (7%) if
28 payment is not tendered by the date established in paragraph 8.

1 10. Within 30 days of the tendering of the \$69,500 payment for attorneys' fees and costs,
2 the parties shall execute and file a stipulation for dismissal and a proposed order of dismissal.

3 11. This Settlement Agreement may be signed in counterparts, each of which will be
4 deemed to be an original and all of which together shall constitute a single instrument. A
5 signature made on a faxed or electronically mailed copy of the Settlement Agreement or a
6 signature transmitted by facsimile or electronic mail shall have the same force and effect as the
7 original signature.

8 12. By signing below, each party affirms that it has read the Settlement Agreement, had it
9 fully explained by counsel, and fully understands and appreciates the words and terms used in this
10 Settlement Agreement.

11 13. This Settlement Agreement is the product of joint draftsmanship and negotiation, and
12 should any of its terms be determined by a court to be vague, ambiguous, or unintelligible, the
13 words, phrases, sentences or other verbiage shall not be construed against the drafting party and
14 all words and phrases shall be interpreted according to their customary usage.

15 14. The parties agree that this Settlement Agreement is binding upon its heirs, personal
16 representatives, executors, administrators, assigns, agents and successors and shall inure to the
17 benefit of their agents, employees, servants, and successors.

18 15. Both parties understand and agree that this Settlement Agreement sets forth the
19 parties' complete agreement and that no statements or representations, other than those contained
20 in this Settlement Agreement, have been made or relied upon by the parties as an inducement for
21 executing this Settlement Agreement.

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1 16. By entering into this Settlement Agreement, no party makes any admission of
2 wrongdoing or liability. This Settlement Agreement applies to this matter only and is solely for
3 the purposes of settling this matter, Case No. 2:12-cv-02928-WBS-GGH. The Settlement
4 Agreement has no bearing on and shall not be used for any purpose in any other proceeding.

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6 **Plaintiff:**

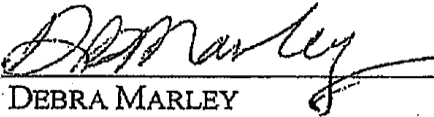
7 Dated: March 25, 2013

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9 By: 
10 PABLO CARRANZA
11 Plaintiff

12 **Approved as to form:**

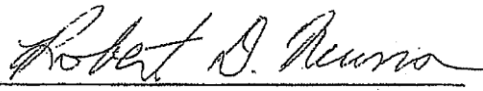
13 Dated: March 25, 2013

DISABILITY RIGHTS CALIFORNIA

14 By: 
15 DEBRA MARLEY
16 Attorneys for Plaintiff Pablo Carranza

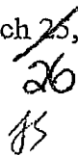
17 Dated: March 25, 2013

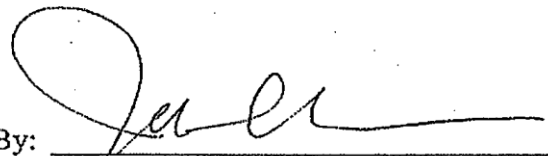
WESTERN CENTER ON LAW AND POVERTY

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19 By: 
20 ROBERT NEWMAN
21 Attorneys for Plaintiff Pablo Carranza

22
23 **Defendants:**

24 Dated: March 25, 2013

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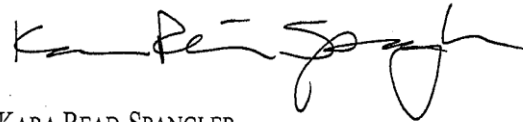
26 By: 
27 ~~DOUGLAS M. PRESS~~ JOHN SHEN, DIVISION CHIEF, LONG TERM CARE
28 Defendants Toby Douglas, Director of the Department DIVISION
of Health Care Services, State of California JS
Department of Health Care Services

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Approved as to form:

Dated: March 25, 2013

KAMALA D. HARRIS
Attorney General of California
NIROMI W. PFEIFFER
Supervising Deputy Attorney General



KARA READ-SPANGLER
Deputy Attorney General
*Attorneys for Defendants Toby Douglas, Director
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of California Department of Health Care Services*

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