

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into by and between Plaintiffs Maria Hernandez, by and through her Guardian Ad Litem, Isabel Simental-Collier, and Vicki Glenn, as successor-in-interest to the Estate of Melba Ann Shroyer, on their own behalf and on behalf of others similarly situated (collectively, “Plaintiffs”), and Defendants GGNSC Equity Holdings LLC (erroneously named in the Complaint and Amended Complaints as Golden Gate Equity Holdings, LLC); Golden Gate National Senior Care LLC; GGNSC Holdings LLC; Drumm Corp. (erroneously named in the Complaint and the Amended Complaints as Drumm Investors, LLC); Fillmore Strategic Investors LLC; Fillmore Strategic Management LLC; Fillmore Capital Partners LLC; Ronald E. Silva; GGNSC Clinical Services LLC; GGNSC Administrative Services LLC; Beverly Enterprises, Inc.; Beverly Health and Rehabilitation Services, Inc.; Beverly Healthcare-California, Inc. (erroneously named in the Complaint and the Amended Complaints as Beverly-Healthcare California, Inc.); GGNSC Fresno LP; GGNSC Stockton LP; GGNSC Shafter LP; and DOES 1 THROUGH 100 (collectively “Settling Defendants”). Plaintiffs and the Settling Defendants shall be collectively referred to herein as “Parties,” or singularly, a “Party.”

RECITALS

On or about November 10, 2010, Plaintiffs filed a putative class action styled *Hernandez v. Golden Gate Equity Holdings, LLC*, case number CGC 10-505288, in San Francisco Superior Court, against the Settling Defendants alleging, in part, that Settling Defendants understaffed their skilled nursing facilities within the State of California. On or about September 23, 2011, Plaintiffs filed a second amended complaint making similar allegations.

The Parties have investigated the facts and applicable law, have engaged in extensive arms-length negotiations, and participated in three mediation sessions before Hon. Edward A. Infante (Ret.) and Catherine A. Gianni, Esq. of JAMS’ San Francisco office. In addition to the mediation sessions, the Parties and their counsel engaged in many additional conference calls, and other communications intended to further the process of the resolution of the Action. Negotiations were at arms length.

Taking into account the burdens and expense of litigation, including the risks and uncertainties associated with a protracted trial and appeal, Class Counsel has concluded that the substantial benefits provided in this Agreement are in the best interests of the Settlement Classes.

Settling Defendants deny all allegations of wrongdoing, fault or liability alleged in the Complaint and Amended Complaints, but have agreed to this settlement in order to avoid the substantial expense, inconvenience, risk and distraction of further litigation.

The Parties intend to resolve the Action and settle all claims asserted therein by the Named Plaintiffs and the Settlement Classes in accordance with the terms and conditions set forth in this Agreement.

ACCORDINGLY, the Parties agree as follows:

DEFINITIONS

As used in this Agreement, the following phrases and words shall have the following meanings:

“Action” means the lawsuit filed on or about November 10, 2010 styled *Hernandez v. Golden Gate Equity Holdings, LLC*, case number CGC 10-505288, in San Francisco Superior Court, against the Settling Defendants, and all allegations asserted in the Complaint or Amended Complaints.

“Agreement” or **“Settlement Agreement”** means this settlement agreement.

“Claim Form” means the form and any other necessary documentation to be completed by a Settlement Class Member in order to receive settlement benefits pursuant to this Agreement.

“Claim Bar Deadline” means the date by which Settlement Class Members must mail their completed Claim Forms to the Settlement Administrator.

“Class Counsel” means Stebner and Associates; The Arns Law Firm; The Law Offices of Michael D. Thamer; Janssen, Malloy, LLP; and McKenna, Long & Aldridge, LLP.

“Class Notice” means the Court-approved notice of the settlement and this Agreement.

“Class Notice Date” means the date that the mailing of the Class Notice and Claim Forms has been completed, as confirmed by the declaration of the Settlement Administrator in accordance with paragraph 2 herein.

“Complaint” means the initial complaint in the action. **“Amended Complaints”** means the amended complaints filed in the Action on or about January 6, 2011 and September 23, 2011.

“Court” means the Superior Court of California, County of San Francisco, in which the Action is pending.

“Defendant Facility” or **“Defendant Facilities”** means Golden LivingCenter-Galt; Golden LivingCenter-Chateau; Golden LivingCenter-Hy-Pana; Golden LivingCenter-Portside; Golden LivingCenter-Redding; Golden LivingCenter-Clovis; Golden LivingCenter-Fowler; Golden LivingCenter-Country View Alzheimer’s Care; Golden LivingCenter-Hillcrest; Golden LivingCenter-Hy-Lond; Golden LivingCenter-Reedley; Golden LivingCenter-Sanger; Golden LivingCenter-Shafter; Golden LivingCenter-Bakersfield; Golden LivingCenter-Fresno; Golden LivingCenter-Napa; Golden LivingCenter-Petaluma; Golden LivingCenter-Santa Rosa, and Golden LivingCenter-London House Sonoma.

“Duration of Stay” means the specific time period or number of days in which a Settlement Class Member resided in a Defendant Facility during the Settlement Class Period.

“Eligible Settlement Class Member(s)” means (1) any Current Resident Settlement Class Member who is a resident of a Defendant Facility at the Class Notice Date, (2) any Former Resident Class Member who submits a timely and complete Claim Form, or (3) any Successor-in-Interest (as term is defined by Code of Civil Procedure section 377.11) to a Resident Class Member who submits a timely and complete Claim Form.

“Fees and Expense Payment” means the payment of Class Counsel’s attorneys’ fees and litigation costs actually incurred litigating the Action, as provided for in paragraph 10 herein.

“Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of this Agreement pursuant to California Rule of Court 3.769.

“Final Approval Order and Judgment” means the Final Approval Order and Judgment, entered by the Court in the form prepared by Class Counsel, approving this Agreement as fair, adequate and reasonable under California Rule of Court 3.769 and dismissing the Action and all allegations, claims and causes of action asserted against the Settling Defendants with prejudice.

“Final Effective Date” means (a) if no appeal from the Judgment is filed, the date of expiration of the time for the filing or noticing of any appeal from the Judgment; or (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the appeal dismissed by a judgment or order of the California Court of Appeal (“Appellate Judgment”), thirty days after the date of such affirmance or dismissal; or (c) if a petition for review of the Appellate Judgment is filed and denied, the date the petition is denied; or (d) if a petition for review of the Appellate Judgment is filed and granted, or the California Supreme Court orders review of the Appellate Judgment on its own motion, and the Appellate Judgment is affirmed or the review proceeding dismissed, and no petition for a writ of certiorari with respect to the California Supreme Court’s judgment affirming the Appellate Judgment or dismissing the review proceeding (“Review Judgment”) is filed, the date of expiration of the time for the filing of such a petition for a writ of certiorari; or (e) if such a petition for a writ of certiorari is filed and denied, the date the petition is denied; or (f) if such a petition for a writ of certiorari is filed and granted, the date of final affirmance of the Review Judgment or final dismissal of the review proceeding initiated by the petition for a writ of certiorari; or (g) should there be no objections to the settlement filed and ultimately ruled upon by the trial court, the date of final approval of the settlement by the trial court.

“Monitor” shall mean a Court-appointed neutral, third-party monitor referenced in paragraph 9.2.1 herein.

“Monitoring Costs” shall mean all costs and fees incurred by the court-appointed monitor, as set forth in the Stipulated Compliance Protocol, and paragraph 9 herein.

“Preliminary Approval Order” means the Preliminary Approval Order to be prepared by Class Counsel and approved by the Court in accordance with paragraph 1 herein.

“Preliminary Approval Date” means the date that the Preliminary Approval Order is entered by the Court.

“Related Persons and Entities” means any and all past, present and future parent companies and entities, subsidiaries, divisions, subdivisions, affiliates, related corporations, limited liability companies and other entities, general partners, limited partners, partnerships, partners, joint ventures, shareholders, investors, owners, directors, officers, employees, attorneys, experts, consultants, predecessors, successors, heirs, administrators, executors, trusts, trustees, fiduciaries, beneficiaries, creditors, assigns, agents and representatives of Settling Defendants.

“Released Claims” means and includes, subject to the exclusions below and in paragraph 12 herein, any and all claims, actions, causes of actions, suits, proceedings, and damages resulting from violations of Health and Safety Code section 1430(b), Title 22 CCR section 72527, Health and Safety Code section 1599.1(a), Health and Safety Code section 1276.5, the Consumers Legal Remedies Act (Civ. Code §§ 1700 et seq.) or the Unfair Competition Law (Bus. & Professions Code §§ 17200 et seq.) based on the acts or omissions alleged in the Action only.

Specifically excluded from the Released Claims are any and all claims for personal injuries or wrongful death and related damages that were not asserted in the Action. Any Settlement Class Member bringing such claims shall be entitled to assert all relevant allegations (including without limitation, allegations that the facility was understaffed) in connection with any such claims for personal injuries, wrongful death, elder abuse and related damages.

“Request for Exclusion” means a written request mailed by a Settlement Class Member to the Settlement Administrator specifically stating that the Settlement Class Member is excluding himself or herself from participation in the settlement, in accordance with paragraph 3.1 herein.

“Service Payments” shall mean the payments to the Named Plaintiffs set forth in paragraph 10.3 herein.

“Settlement Administration Costs” means the reasonable costs incurred by the Settlement Administrator as part of performing its duties of class notice and claims administration.

“Settlement Administrator” means the entity identified in paragraphs 2 and 7 herein that shall administer the Class Notice and receive and administer Claim Forms submitted by Settlement Class Members and undertake the other functions set forth in this Agreement, such as mailing and publishing the Class Notice.

“Settlement Class” or **“Settlement Classes”** means the “Resident Class” and the “Successors-in-Interest Class.”

The **“Resident Class”** consists of all persons who resided at one or more of the Defendant Facilities at any time during the Settlement Class Period. **“Current Resident Class Member”** means any Resident Class Member who resides at a Defendant Facility as of the Class Notice Date. **Former Resident Class Members** means all Resident Class Members who resided at a Defendant Facility during the Class Period but departed the Facility prior to the Class Notice Date.

The **“Successors-in-Interest Class”** consists of all persons who are the successors-in-interest (as set forth in California Probate Code section 13006) of any Resident Class Member who is deceased as of the Settlement Date.

“Settlement Class Member” means all persons who fall within the definition of the Settlement Classes, except persons who file a valid and timely Request for Exclusion from the Settlement Classes.

“Settlement Class Period” means November 10, 2006 through and including March 15, 2013.

“Settlement Date” means March 15, 2013.

“Stipulated Compliance Protocol” means the compliance and monitoring provisions that the parties agree Defendants will comply with, as set forth in paragraph 9 herein.

“Subject Day Amount” means the per day dollar amount that will be used to calculate the Cash Payments to be made to Eligible Settlement Class Members. The Subject Day Amount is \$20.

“Subject Day Percentage” means, for purposes of calculating the Cash Payments, the percentage described in paragraph 6.1.3 and Exhibit A thereto, of each Eligible Settlement Class Member’s Duration of Stay.

TERMS OF AGREEMENT

1. PRELIMINARY COURT APPROVAL

1.1. The Parties shall apply to the Court for entry of the Preliminary Approval Order, which shall:

1.1.1. preliminarily approve the settlement and this Agreement, subject to the right of Settlement Class Members to be heard at the Final Approval Hearing;

1.1.2. certify the provisional Settlement Classes;

1.1.3. approve the Class Notice and the Claim Form;

1.1.4. direct that Named Plaintiffs or their designees publish and mail or cause to be published and mailed the Class Notice and Claim Form to the Settlement Class Members;

1.1.5. set a date convenient to the Court for the Final Approval Hearing;

1.1.6. provide that any objection to the proposed settlement shall be filed and served no later than 30 days prior to the Final Approval Hearing; and

1.1.7. provide that the deadline for any Class Member to opt-out of the settlement shall be 30 days after the Class Notice Date, as set forth in paragraph 3 below.

1.2. The parties shall exercise best efforts to have the motion for a Preliminary Approval Order (and motion for a Final Approval Order and Judgment) briefed and ready for Court determination as soon as practical, consistent with the notice requirements set forth herein.

1.3. Settling Defendants shall support, and not oppose, Plaintiffs' motion for a Preliminary Approval Order.

2. **NOTICE TO THE CLASS**

2.1. On or before 15 calendar days from the Settlement Date, Settling Defendants shall provide to the Settlement Administrator a complete list of all Settlement Class Members, with their last known contact information, social security numbers, and Duration of Stay information. This information shall be maintained as confidential and used solely for the purpose of providing Class Notice.

2.2. Within 30 business days after the Preliminary Approval Date, the Settlement Administrator shall complete the first class mailing of the Class Notice and the Claim Form to the Settlement Classes in the form and manner approved by the Court.

2.3. The Settlement Administrator will also provide publication notice of the Settlement Agreement (if necessary, via a summarized Class Notice) through one notice to be published in an appropriate newspaper of state-wide publication, or as otherwise ordered by the Court, not later than 30 days after the Court enters the Preliminary Approval Order.

2.4. The Settlement Administrator and each Class Counsel will provide a link on their website, if they have one, to a certain site maintained by the Settlement Administrator to obtain downloadable or printable copies of the Settlement Agreement, the Class Notice, and Claim Form.

2.5. The costs the Settlement Administrator incurs providing Class Notice are to be paid as set forth in paragraph 7.10 herein.

2.6. Prior to the Final Approval Hearing, Class Counsel shall file a declaration from the Settlement Administrator confirming the Class Notice Date.

3. **OPT-OUT PROCEDURE**

3.1. A Settlement Class Member who does not want to participate in the settlement may opt-out of the Settlement Class by mailing a written Request for Exclusion to the Settlement Administrator on or before the date that is 30 calendar days after the Class Notice Date, or, if that day is a Sunday or Holiday, the first business day thereafter. Absent relief from the Court, Settlement Class Members who do not exclude themselves by the timely completion and mailing of a Request for Exclusion (as determined by the date of postmark) shall be deemed to be Settlement Class Members and be bound by the terms and conditions of this Agreement and the Final Approval Order and Judgment.

3.2. A Settlement Class Member who timely complies with the exclusion procedures set forth herein shall be returned to the position he or she occupied on November 10, 2010 (the date the Action was filed), shall be excluded from the Settlement Classes, shall have no standing to object to or otherwise be heard by the Court and/or on appeal with respect to any aspect of this Agreement, and shall be ineligible for any benefits pursuant to this Agreement.

4. **OBJECTIONS TO SETTLEMENT**

4.1. Any Settlement Class Member who has not filed a timely written request for exclusion and who wishes to object to or oppose the fairness, reasonableness or adequacy of this Settlement Agreement, or any application for the Fees and Expenses Payment, must serve upon Class Counsel and counsel for Settling Defendants, and must file with the Court, no later than 30 days prior to the Final Approval Hearing, or, if that day is a weekend or holiday, the first business day thereafter, a statement of his or her objection, as well as the specific reason(s), if any, for such objection, including any legal support the Settlement Class Member wishes to bring to the Court's attention and any evidence the Settlement Class Member wishes to introduce in support of the objection. Settlement Class Members may so object either on their own or through an attorney hired at their own expense. Settlement Class Members who intend to appear and be heard at the Final Approval Hearing shall be required to so state in connection with their objection. The deadline for objections will be conspicuously listed in the Class Notice.

4.2. Class Counsel and counsel for Settling Defendants may file and serve a written response to any objection(s) filed and served by any Settlement Class Member. Any written response shall be filed with the Court, and served upon the Settlement Class Member or Settlement Class Member's attorney, if any, in the most expeditious manner practicable, not later than seven calendar days before the Final Approval Hearing.

4.3. The Final Approval Hearing will be the only opportunity for any Settlement Class Member who objects to the proposed settlement, to the Released Claims, or to the entry of an order awarding the Fees Payment and Litigation Costs, to appear and be heard.

5. **FINAL COURT APPROVAL**

5.1. The date for the Final Approval Hearing shall be set on a date convenient to the Court that is after the last day for any Settlement Class Member to opt out of the settlement.

5.2. If the Court does not grant the motion for entry of the Final Approval Order and Judgment, the Settlement Administrator shall notify all Settlement Class Members of the Court's ruling within 30 calendar days after the Court's ruling, unless the Parties reach some different agreement or the Court orders other timing for such notice.

5.3. Settling Defendants shall support and not oppose Plaintiffs' motion for a Final Approval Order and Judgment.

6. **BENEFITS TO SETTLEMENT CLASS**

6.1. Cash Payments to Eligible Settlement Class Members shall be made, and the amounts thereof determined, as follows:

6.1.1. Subject to exceptions set forth in this paragraph 6.1.1, Current Resident Class Members shall be paid their Cash Payment without the need to submit a Claim Form. Current Resident Class Members who leave a Defendant Facility after the Class Notice Date, but before the Distribution Date, shall: (a) be given 90 days from the date they depart the Facility or the date of the Initial Cash Payments, whichever is later, to submit a Claim Form and will be paid as Former Resident Class Members (defined in paragraph 6.2.2); and (b) advised in writing by the Facility of the 90-day deadline to submit a Claim Form and provided with a Claim Form on or before the date the resident leaves the facility. Upon request by the Settlement Administrator, Defendants shall provide a list of all Current Resident Class Members who have left any of the Defendant Facilities.

6.1.2. Former Resident Class Members (or their representatives) who desire to receive a Cash Payment shall submit a Claim Form to the Settlement Administrator as set forth herein. The Class Notice shall disclose that the date for determining whether a Resident Class Member is either a Current Resident Class Member or a Former Resident Class Member shall be the Class Notice Date.

(a) If a Current Resident Class Member or Former Resident Class Member passes away any time before the Final Effective Date, their successor-in-interest shall be given 90 days from the date of death to submit a Claim Form.

6.1.3. Eligible Settlement Class Members will receive a Cash Payment calculated as follows: the Eligible Settlement Class Member's Duration of Stay for each applicable calendar year multiplied by the Subject Day Amount multiplied by the Subject Day Percentage based on yearly averages for each facility as set out in Exhibit A. Exhibit A reflects the Parties' negotiated yearly average for each facility and does not constitute an admission by the Settling Defendants as to the actual miss rates.

6.1.4. Successor-in-Interest Class Members shall be entitled to the Cash Payment that would be owed to the deceased Resident Class Members as to whose interest they have become successors-in-interest. In the event that a deceased Resident Class Member has more than one successor-in-interest, the Cash Payment shall be divided

equally amongst such deceased Resident Class Member's successors-in-interest who submit Claim Forms.

6.1.5. As soon as practicable after the Final Effective Date and the date all Claim Forms have been processed, the Cash Payments shall be distributed by the Settlement Administrator. Uncashed or returned checks, if any, shall be distributed to cy pres recipient(s) nominated by Class Counsel and approved by the Court under Code of Civil Procedure section 384, and shall not revert to Settling Defendants.

6.2. Other Relief

6.2.1. In addition to the Settlement Payment referenced above, the Settling Defendants shall be required to pay all Monitoring Costs incurred in connection with the Stipulated Compliance Protocol described in paragraph 9 below. Settling Defendants shall pay the Monitoring Costs within 14 days of being presented with an invoice reflecting those costs.

6.2.2. Settling Defendants shall issue a written directive to each Defendant Facility requiring each Defendant Facility to comply with all terms of the Stipulated Compliance Protocol as set forth in paragraph 9, including without limitation, the provision that requires Settling Defendants to maintain nurse staffing levels at each Defendant Facility pursuant to the Stipulated Compliance Protocol in accordance with then-existing guidelines of the California Department of Public Health. A copy of that directive shall be provided to Class Counsel. In addition, Settling Defendants shall provide copies of the applicable staffing documents to the Monitor sufficient to show that the Defendant Facilities are meeting this requirement. Commencing on the Final Effective Date and continuing each quarter for as long as the Stipulated Compliance Protocol is in effect, Settling Defendants shall provide the Monitor with a quarterly report for each Facility for the three-month time period preceding the report date as set forth in the Stipulated Compliance Protocol.

6.2.3. Not later than 14 calendar days after execution of the Settlement Agreement, Settling Defendants shall provide a sworn declaration confirming Settling Defendants' estimated costs of compliance with the Stipulated Compliance Protocol.

7. **SETTLEMENT ADMINISTRATION**

7.1. Class Counsel shall select the Settlement Administrator, subject to Court approval as part of the motion for a Preliminary Approval Order. If the selected and approved entity is unable or unwilling to serve as Settlement Administrator, or if Class Counsel believes that it should be replaced, it shall select another Settlement Administrator, subject to Court approval, who shall have the same authority as set forth in this Agreement.

7.2. In addition to the duties set forth in paragraph 2 above, the Settlement Administrator shall be authorized to undertake all tasks and duties that are reasonably necessary to carry out the claims administration provisions of this Agreement, including without limitation:

- 7.2.1. processing of Claim Forms;
 - 7.2.2. arranging for the Cash Payment to Eligible Settlement Class Members;
 - 7.2.3. implementing reasonable procedures designed to avoid payment with respect to any fraudulent or unsupported Claim Form;
 - 7.2.4. implementing reasonable procedures to ensure an acceptable level of reliability and quality control in the processing of Claim Forms;
 - 7.2.5. communicating with Settlement Class Members regarding the claims administration process; provided that the Settlement Administrator shall not be required to respond to requests for legal advice, which requests shall be referred to Class Counsel.
- 7.3. Subject to paragraph 7.4, the Claim Bar Deadline shall be 90 calendar days after the Class Notice Date or, if such day falls on a Sunday or holiday, the first business day thereafter.
- 7.4. The Settlement Administrator shall establish appropriate procedures for processing submitted Claim Forms in the following manner: the Settlement Administrator shall make an initial determination that the submitted Claim Form has been timely mailed (as determined by the postmark date), signed and properly completed. If a Claim Form submitted by a Successor-in-Interest Class Member has been timely mailed, but does not include a materially complete Probate Code section 13100 declaration (“Declaration”), the Successor In Interest shall be given the opportunity to correct the Declaration within 30 days of written notice from the Claims Administrator. If the Successor-in-Interest fails to submit a fully corrected Claim Form within the 30 day period, the Claim Form shall be deemed invalid and that Successor-in-Interest shall be ineligible to receive any Cash Payment under this Agreement.
- 7.5. Claim Forms that are submitted after the Claim Bar Deadline will not be allowed.
- 7.6. The claims administration process may require reasonable proof that the person submitting a Claim Form is in such instances the Settlement Class Member or his or her personal representative.
- 7.7. All such duties shall be performed in a cost-effective and timely manner. The Settlement Administrator shall enter into an agreement with Class Counsel that confirms its duties under this Agreement and the compensation to be paid to the Settlement Administrator and its designees for the services to be performed.
- 7.8. The Settlement Administrator shall provide Class Counsel with any information, including budgets, requested by Class Counsel to assist in the Claims Administration Process.
- 7.9. Neither Settling Defendants, their counsel, nor Class Counsel shall be responsible for or otherwise have any liability for any of the acts or omissions of the Settlement Administrator.

7.10. Subject to Court approval, Settling Defendants agree to pay the Settlement Administration Costs not to exceed \$150,000. Settling Defendants agree to pay the Settlement Administration Costs within 14 days of being presented with invoices reflecting those costs. Class Counsel agree to pay any Administration Costs above and beyond \$150,000 out of the Fees and Expense Payment.

8. **SCHEDULE FOR CASH PAYMENTS TO CLAIMANTS**

The Settlement Administrator shall make the Cash Payments at a reasonable time after (i) five days after the Final Effective Date, or (ii) the deadlines referenced in paragraphs 6.1.1, 6.1.2 and 7.4 above, whichever is applicable.

9. **STIPULATED COMPLIANCE PROTOCOL**

9.1. Compliance With Law. Defendants will comply with all applicable nurse staffing requirements, including without limitation, Health & Safety Code sections 1276.5 and 1599.1(a) and 22 C.C.R. section 72327, and with the Stipulated Compliance Protocol described below.

9.1.1. At all times, Settling Defendants shall comply with Health and Safety Code section 1276.5 by providing a minimum of 3.2 actual nursing hours per patient day (“NHPPD”) at each and every Defendant Facility. “Nursing hours” shall mean the actual number of nursing hours performed by direct caregivers pursuant to Health & Safety Code section 1276.5(b) and the California Department of Public Health All Facilities Letter (AFL 11-19), issued on January 31, 2011. Notwithstanding the foregoing, if “nursing hours” as defined by Health & Safety Code section 1276.5(b) or the California Department of Public Health is amended during the time period this Stipulated Compliance Protocol is in effect, the amendment shall apply to the terms of this Stipulated Compliance Protocol from the date of such amendment.

9.1.2. At all times, Settling Defendants shall comply with Health and Safety Code section 1599.1 by employing an adequate number of qualified personnel to carry out all of the functions of the facility at each and every Defendant Facility. Without limitation, this paragraph shall require that Settling Defendants employ an adequate number of qualified nursing personnel to provide skilled nursing services (as that term is defined in 22 CCR section 72309) at each and every Defendant Facility included in this Action.

9.1.3. At all times, Defendant Facilities shall comply with the provisions of Health and Safety Code section 1276.65(f) and 42 C.F.R. § 483.30(e) by posting the following information in a prominent public place at each and every Defendant Facility: (a) the actual nursing hours for each shift; and (b) the resident census for each day. In addition, Defendant Facilities shall retain the daily posted nurse staffing sheets for the term of this Stipulated Compliance Protocol, or the period required under applicable law, whichever is longer.

9.1.4. Beginning on May 15, 2013, and continuing until May 15, 2015, the Defendant Facilities shall budget to staff all Facilities at not less than 3.4 NHPPD. Nothing stated herein shall relieve the Defendant Facilities of the obligation to provide sufficient staffing at levels in excess of 3.4 NHPPD to the extent required based on patient acuity or other applicable factors.

9.1.5. In accordance with applicable law, each Defendant Facility with 60 or more beds: (a) shall employ a full time Director of Nursing five full days a week; and (b) shall not count Director of Nursing hours for purposes of calculating NHPPD, except as expressly permitted under the California Department of Public Health All Facilities Letter (AFL 11-19), issued on January 31, 2011.

9.2. Third Party Monitor/Compliance Reports

9.2.1. A third party monitor (herein, the “Monitor”) shall be selected to review Compliance Reports submitted by the Defendant Facilities (as defined below) and undertake all other necessary actions to monitor Defendant Facilities’ compliance with the terms of this Stipulated Compliance Protocol. All fees and costs of the Monitor shall be paid by the Defendants. The parties shall meet and confer to select the Monitor. If the Parties cannot agree to a Monitor, the Monitor will be selected by Catherine A. Yanni, Esq. of JAMS from a list of 3 candidates submitted separately by Plaintiffs and Settling Defendants.

9.2.2. Commencing on the Final Effective Date, and continuing each quarter thereafter for as long as this Stipulated Compliance Protocol is in effect, Defendant Facilities shall provide the Monitor with a quarterly report (“Compliance Report”) for each Facility for the three-month time period preceding the report date (the “Reporting Period”) that indicates the NHPPD for each day during the Reporting Period.

9.2.2.1.1. The Compliance Report shall be signed under penalty of perjury under the laws of the State of California by the Defendant Facility’s Director of Nursing or the Defendant Facility’s Administrator.

9.2.2.1.2. Upon request by the Monitor, Defendants shall provide the applicable Kronos data and Census Reports (collectively, the “Backup Data”) for any Defendant Facility for the three month period immediately preceding the request, provided that: (a) the request shall be limited to three (3) or fewer Defendant Facilities per each Compliance Period; and (b) Defendants shall be provided with not less than ten (10) calendar days to produce the Backup Data.

9.2.3. The Compliance Reports shall be delivered on or before the 25th day of the third month of each quarter and shall be signed under penalty of perjury under the laws of the State of California by the facility administrator or director of nursing for each facility submitting a Compliance Report.

9.2.4. In the event that a question is raised by the Monitor with respect to information contained in a Compliance Report, the Monitor shall request clarifying information or data from the Defendant Facility or Defendant Facilities in question. Defendants will provide a full and complete response to any such request to both the Monitor and Class Counsel within ten (10) calendar days of receiving the request.

9.3. Remedies For Violation.

9.3.1. Plaintiffs agree not to enforce the Stipulated Compliance Protocol unless one Defendant Facility has more than 3 violations in any Reporting Period or all Defendant Facilities combined have more than 15 violations in any Report Period (a “Qualifying Violation”). Unless there have been a prior Qualifying Violation by any Defendant Facility or Defendant Facilities, Plaintiffs shall not seek contempt sanctions, but shall be entitled to seek all other legal and equitable remedies.

9.3.2. Unless reasonable grounds exist to assert that a Defendant Facility should have employed more than 3.4 NHPPD on weekdays and 3.3 NHPPD on weekends, Plaintiffs will not assert violations of Health & Safety Code section 1599.1(a) if the Defendant Facility is in compliance with Health & Safety Code section 1276.5 and the provisions of 9.1.4 above.

9.3.3. If there is a Qualifying Violation by any Defendant Facility or Defendant Facilities, plaintiffs shall provide Defendants with not less than seven (7) calendar days notice and an opportunity to show either (i) that no Qualifying Violation or violations occurred; or (ii) even if a Qualifying Violation or violations occurred, it or they were caused by fire, flood, earthquake, disease outbreak or some other cause completely beyond the control of Defendants.

9.3.4. Upon the occurrence of a Qualifying Violation: (a) the Stipulated Compliance Protocol will upon the filing date of Plaintiffs’ Notice of Qualifying Violation convert to a mandatory injunction against all Settling Defendants and Defendant Facilities that shall remain in place not less than three years from the Court’s order confirming the Qualifying Violation; and (b) for any subsequent Qualifying Violation by any Defendant Facility or Defendant Facilities, plaintiffs shall be entitled to seek all legal and equitable remedies, including contempt sanctions.

9.3.5. If this Stipulated Compliance Protocol converts to a mandatory injunction pursuant to paragraph 9.3.4, any request to enforce the injunction shall be made on a noticed motion to Court in the pending action, without need to file a new lawsuit.

9.4. Nothing stated in this Stipulated Compliance Protocol shall relieve Defendants, or any of them, from complying with any other applicable federal or state law or regulation.

9.5. Plaintiffs’ agreement to this Stipulated Compliance Protocol is based in material part on Settling Defendants’ representation that, within the two years immediately

preceding the execution of the Settlement Agreement, the violation rate at each of the Defendant Facilities has been less than 2%.

9.6. Subject to the extension provision in paragraph 9.3.5 above, this Stipulated Compliance Protocol shall be effective as of the Final Effective Date; provided that, Settling Defendants agree to commence implementation and comply with the provisions set forth in paragraphs 9.1.1 thru 9.1.5 within 14 days of the date the trial court signs the Preliminary Approval order, or May 15, 2013, whichever is later. The Stipulated Compliance Protocol shall remain in full force and effect for 3 years from that date, with the exception of paragraph 9.1.4.

10. **ATTORNEYS' FEES AND EXPENSES, AND SERVICE PAYMENTS**

10.1. Subject to Court approval, Settling Defendants agree to pay attorneys' fees of \$2,975,000 and litigation costs not to exceed \$147,826 (collectively, the Fees and Expense Payment) to Class Counsel.

10.1.1. Settling Defendants shall make the Fees and Expenses Payment by wire transfer to the Settlement Account within 5 calendar days after the trial court signs the Final Approval Order.

10.1.2. Distribution of attorneys' fees among Class Counsel will be at Class Counsel's sole discretion.

10.2. Settling Defendants agree not to oppose Class Counsel's request for the Fees and Expense Payment.

10.3. In addition, each of the Named Plaintiffs may each seek Court approval for a \$5,000 Service Payment for their contribution to the Action. Settling Defendants agree not to oppose any such application. If the Court awards any Service Payments, Settling Defendants shall pay the Service Payments by wire to the Settlement Account within 5 days after the Final Effective Date.

10.4. Other than the Cash Payments pursuant to paragraph 6.1, Fees and Expense Payment, Service Payments, Monitoring Costs and the Settlement Administration Costs, Settling Defendants shall have no further obligation to Plaintiffs, Class Counsel, Settlement Class Members, or any of them with respect to any claim for attorneys' fees, court costs or any other fees, costs or litigation expenses incurred or claimed to have been incurred in connection with this Action.

11. **EXCLUSIVE REMEDY, DISMISSAL OF ACTION, JURISDICTION OF COURT**

11.1. Except as otherwise provided in this Agreement, this Agreement shall be the sole and exclusive remedy for any and all Released Claims of all Settlement Class Members.

11.2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain exclusive and continuing jurisdiction over the Action, all Parties, the claims administration process, including without limitation the Stipulated Compliance Protocol, and Settlement Class Members, to interpret and enforce the Agreement's terms, conditions, and obligations.

11.3. Upon the Final Effective Date, Named Plaintiffs shall dismiss the Action without prejudice. Specifically excluded from the res judicata effect of the dismissal of the Action will be any and all claims for personal injuries, wrongful death, or elder abuse, and related damages that could have been asserted, or could be asserted.

12. **RELEASE PROVISIONS**

12.1. Upon entry of the Final Approval Order and Judgment and the Final Effective Date, each and every Settlement Class Member shall be deemed to and does hereby release and forever discharge all Settling Defendants and all Related Persons and Entities from any and all Released Claims. Each Settlement Class Member shall be barred and enjoined from initiating, asserting, or prosecuting any Released Claim against any Settling Defendant or Related Persons or Entity.

12.2. Upon entry of the Final Approval Order and Judgment, and the Final Effective Date, each and every Settling Defendant, Related Person or Entity, and each of them, shall be deemed to and does hereby release and forever discharge all Named Plaintiffs, Settlement Class Members, Class Counsel from any claim arising from or related to the prosecution of the Action, including without limitation, any claim for malicious prosecution or abuse of process. Each and every Settling Defendant, Related Person or Entity, and each of them, shall be barred and enjoined from initiating, asserting, or prosecuting any such claim.

12.3. With respect to any and all claims released herein, for good and valuable consideration, all Parties shall be deemed to have, and by operation of the Final Approval Order and Judgment contemplated by this Agreement shall have, fully, finally, and forever expressly waived and relinquished, to the fullest extent permitted by law, any and all provisions, rights, and benefits of section 1542 of the Civil Code and any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to section 1542 of the Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

12.4. This waiver shall apply even if facts are later discovered that are different from or in addition to those which they now know or believe to be true with respect to the matters released herein.

12.5. This Agreement shall constitute a full and complete defense to, and may be used as a basis for, a permanent injunction against any such action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of this Agreement.

13. **NO ADMISSION OF LIABILITY**

The Parties agree that this Agreement is intended to compromise disputed allegations and that this Agreement is entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Agreement or its attachments, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as any admission or concession with respect to any allegation of any wrongdoing, fault, violation of law, or liability of any kind on the part of Settling Defendants, alleged in the Complaint, Amended Complaints, or otherwise. By agreeing to this settlement, the Settling Defendants do not concede or agree that this Action could be properly maintained as a litigation class action through trial and reserve all rights to oppose certification of a litigation class if this settlement is not approved or the Agreement is otherwise rescinded. Nothing stated in this paragraph, however, shall preclude any Party from seeking to introduce the terms of this Agreement in any proceeding to enforce the Agreement.

14. **BINDING EFFECT**

This Agreement shall inure to the benefit of and be binding on the Named Plaintiffs, the Settlement Classes Members, the Settling Defendants, the Related Persons and Entities, and each of them. The Parties intend this Agreement to be binding and fully enforceable pursuant to Code of Civil Procedure section 664.6.

15. **PARTIES RELYING ON OWN ATTORNEYS AND EXPERTS**

The Parties have selected and retained their own attorneys, experts and consultants to inspect, analyze and advise them regarding, without limitation: (i) the nature, extent, and cause of the allegations and causes of action asserted in the Action; and (ii) whether to enter into this Agreement. The Named Plaintiffs expressly agree that they have not relied on any statements, representations, opinions, conclusions, recommendations, estimates, written or oral reports or any other materials generated or disclosed during settlement negotiations or at any other time by Settling Defendants or any of their Related Persons and Entities (including but not limited to their attorneys, experts and/or consultants), and have not been induced to enter into the Agreement by reliance upon any of them. The Parties acknowledge and represent that they have had the benefit and advice of legal counsel in evaluating, finalizing, and executing this Agreement. All the terms and provisions of this Agreement have been explained to each of the Parties by their legal counsel and the Parties acknowledge that they understand and accept all terms and provisions. The Parties further warrant that they have entered into this Agreement based on their own understanding of the merits of the Action, as well as in reliance on the statements, representations, opinions, conclusions, recommendations, estimates and reports of their own attorneys, consultants and experts.

16. **INTERPRETATION OF AGREEMENT**

This Agreement is the product of negotiation and preparation by and among Class Counsel and Settling Defendants and their respective attorneys. Neither this Agreement nor any provision thereof shall be deemed prepared or drafted by one party or another, or its attorneys, and shall not be construed more strongly against any party.

17. **GOVERNING LAW**

This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed by and under the laws of the State of California, without reference to its choice of law rules. Any action to enforce the provisions of this Agreement shall be commenced in the San Francisco Superior Court of California.

18. **SEVERABILITY**

The Parties agree that should any provision of this Agreement, or any portion of any provision, be declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of the provision and the Agreement shall nonetheless remain binding and in effect, unless this would result in a substantial failure of consideration.

19. **COUNTERPARTS**

This Agreement may be executed in counterparts, and as so executed shall be binding upon all Parties hereto, notwithstanding that the signatures of all Parties' designated representatives do not appear on the same page. Facsimile or email signature pages shall have the same force and effect as original signatures.

20. **INTEGRATION CLAUSE**

This Agreement, including all exhibits attached hereto, constitutes the full and complete agreement between and among the Parties with regard to the matters herein set forth, and supersedes any and all prior agreements or understandings between them, whether written or oral. There are no representations, warranties, agreements, arrangements, or undertakings, oral or written, between or among the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement shall be interpreted according to its own terms, as defined in this Agreement or otherwise according to their ordinary meaning without any parol evidence.

21. **NO MODIFICATION UNLESS WRITTEN AND SIGNED BY ALL PARTIES**

This Agreement may not be amended, modified, altered or otherwise changed in any manner except by a writing signed by a duly authorized agent of Settling Defendants and Class Counsel, and approved by the Court.

22. **CONDITIONS OF SETTLEMENT, CANCELLATION, TERMINATION**

22.1. Except as specifically provided for herein, all terms of this Agreement shall be conditioned upon the occurrence of all of the following events:

22.1.1. The Court shall have approved the Class Notice;

22.1.2. The Court shall have entered the Final Approval Order and Judgment; and

22.1.3. The Final Approval Order and Judgment shall have become final as set forth in the definition of the Final Effective Date.

22.2. Additionally, notwithstanding any other provision(s) of this Settlement Agreement, Settling Defendants may unilaterally withdraw from and terminate this Settlement Agreement if more than three percent of the Settlement Class request exclusion pursuant to paragraph 3 herein.

22.2.1. Any notice of intent to withdraw and terminate this Settlement Agreement pursuant to paragraph 22.2 must be made by Settling Defendants no later than five business days after the deadline for class members to opt-out, as described in paragraph 3.

22.3. If any of the conditions specified in paragraph 22.1 are not met, or in the event Settling Defendants exercise their option to withdraw from and terminate this Settlement Agreement pursuant to paragraph 22.2, this Settlement Agreement shall be of no force or effect whatsoever, all obligations hereunder shall be null and void, and the parties shall be restored to their respective positions as if this settlement had never existed.

23. **NOTICES**

Unless otherwise stated herein, any notice required or provided for under this Agreement shall be in writing and shall be sent by telefax or hand delivery, and confirmed by registered or certified mail, postage prepaid, *as follows*:

If to Class Counsel:

Christopher J. Healey
McKenna, Long & Aldridge, LLP
600 West Broadway, Suite 2600
San Diego, CA 92101
Phone: (619) 236-1414
Fax (619) 232-8311

and

Kathryn A. Stebner
STEBNER AND ASSOCIATES
870 Market Street, Suite 1212
San Francisco, CA 94102
Tel: (415) 362-9800
Fax: (415) 362-9801

If to counsel for Settling Defendants:

H. Joseph Escher III
DECHERT LLP
One Maritime Plaza, Suite 2300
San Francisco, California 94111
Tel: 415.262.4500
Fax: 415.262.4555

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized attorneys, as of the dates indicated, with the most recent date constituting the date of this Agreement.

PLAINTIFFS:

Dated: _____

Maria Hernandez, by and through her
Guardian Ad Litem, Isabel Simental-Collier

Dated: _____

Vicki Glenn, as successor-in-interest to the
Estate of Melba Ann Shroyer

SETTLING DEFENDANTS:

Dated: _____ GGNSC Equity Holdings LLC
By: _____
Its: _____

Dated: _____ Golden Gate National Senior Care LLC
By: _____
Its: _____

Dated: _____ GGNSC Holdings LLC
By: _____
Its: _____

Dated: _____ Drumm Corp.
By: _____
Its: _____

Dated: _____ Fillmore Strategic Investors LLC
By: _____
Its: _____

Dated: _____ Fillmore Strategic Management LLC
By: _____
Its: _____

Dated: _____

Fillmore Capital Partners LLC

By: _____

Its: _____

Dated: _____

GGNSC Clinical Services LLC

By: _____

Its: _____

Dated: _____

GGNSC Administrative Services LLC

By: _____

Its: _____

Dated: _____

Beverly Enterprises, Inc.

By: _____

Its: _____

Dated: _____

Beverly Health and Rehabilitation Services,
Inc.

By: _____

Its: _____

Dated: _____

Beverly Healthcare-California, Inc.

By: _____

Its: _____

Dated: _____

GGNSC Fresno LP

By: _____

Its: _____

Dated: _____

GGNSC Stockton LP

By: _____

Its: _____

Dated: _____

GGNSC Shafter LP

By: _____

Its: _____

Dated: _____

Ronald E. Silva

APPROVED AS TO FORM AND CONTENT:

CLASS COUNSEL

**COUNSEL FOR SETTLING
DEFENDANTS**

Date: _____

Date: _____

By: _____

Christopher J. Healey
McKenna, Long & Aldridge, LLP

By: _____

H. Joseph Escher III
Dechert LLP

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