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August 16, 2016

Centralized Case Management Operations
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Building
Washington, D.C. 20201

Michael Leoz, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
90 7th Street, Suite 4-100
San Francisco, CA 94103

ADMINISTRATIVE COMPLAINT

RE: California's Failure to Address Illegal Nursing Facility Resident Discharges

I. Complainants

AARP
601 E Street, N.W.
Washington, D.C. 20049

and

AARP Foundation
601 E Street, N.W.
Washington, D.C. 20049

AARP is a nonprofit, nonpartisan organization dedicated to fulfilling the needs and representing the interests of people age fifty and older. AARP fights to protect older people's financial security, health, and well-being. AARP's charitable affiliate, AARP Foundation, creates and advances effective solutions that help low-income individuals fifty and older secure the essentials. AARP and AARP Foundation raise awareness about critical issues affecting older Americans and advocate for their legal rights in health, consumer, employment, retirement, and long-term care issues.

II. State Agency Violating the Law

California Health and Human Services Agency
1600 Ninth Street, Room 460
Sacramento, CA 95814

The California Health and Human Services Agency (CHHS) oversees the State's departments and offices that provide health care and other social services. CHHS is responsible for enforcing administrative decisions from involuntary transfer and discharge hearings for nursing facility residents.

III. Jurisdiction

The Office for Civil Rights (OCR) of the Department of Health and Human Services (HHS) is responsible for enforcing nondiscrimination regulations applicable to programs, services, and activities that receive federal financial assistance. This complaint concerns CHHS's failure to enforce administrative decisions pursuant to the Nursing Home Reform Act (NHRA), codified at 42 U.S.C. §§ 1395i-3(e)(3), 1396r(e)(3). Under the NHRA, states are directed to establish a system for adjudicating residents' appeals of involuntary transfers and discharges from nursing facilities in compliance with federal standards. The practices at issue in this complaint fall under the jurisdiction of HHS OCR because they are taking place through a state program and at nursing facilities that receive federal financial assistance from HHS.

IV. Discussion

AARP and AARP Foundation file this complaint requesting that HHS OCR investigate CHHS's failure to enforce the federal laws that protect vulnerable nursing home residents from being involuntarily removed from the facilities in which they reside. This is a form of resident dumping. Resident dumping is a significant problem for skilled nursing facility residents and commonly occurs when facilities refuse to readmit residents after they have been discharged from a stay in the hospital. Such actions prompted federal laws and regulations that seek to protect residents from dumping. Under the current federal scheme, when a facility refuses to readmit a resident, that resident is guaranteed the right to appeal a facility's decision at a state-level hearing. 42 U.S.C. §§ 1395i-3(e)(3), 1396r(e)(3).

California has such a hearing system in place, but many residents who have successfully challenged their facilities' refusal to readmit them continue to be without recourse, because CHHS has not taken action to enforce hearing decisions. The State's failure to enforce hearing decisions has caused significant harm to vulnerable people who are left without legal protections even after they have successfully challenged their illegal and involuntary discharge from the facility. The State's refusal to enforce its own administrative process violates federal law and the due process rights of these residents who depend on the State to enforce its own rules and regulations. As a

result, AARP and AARP Foundation request that HHS OCR investigate the State's administrative enforcement of both the illegal dumping by nursing facilities in California and the enforcement processes that the State has in place to enforce successful administrative challenges to involuntary discharges from these facilities.

a. The NHRA and accompanying regulations require states to enforce administrative hearing decisions for nursing facility residents.

The NHRA amended the Medicaid Act and was codified in the Social Security Act, 42 U.S.C. §§ 1395i-3(e)(3), 1396r(e)(3). Section 1395i-3 applies to any nursing facility that accepts Medicare reimbursement, while Section 1396r applies to any nursing facility that accepts Medicaid reimbursement. The NHRA requires that states have processes whereby nursing facility residents are provided notice, opportunity for a hearing, and the opportunity to appeal contested discharges. The NHRA also directs the HHS Secretary to promulgate regulations setting standards for appeals and requires the states to comply with those regulations. 42 U.S.C. §§ 1395i-3(e)(3), (f)(3), 1396r(e)(3), (f)(3). Further, the NHRA directs states to establish a system for adjudicating residents' appeals of involuntary transfers and discharges in compliance with federal standards. 42 U.S.C. §§ 1395i-3(e)(3), 1396r(e)(3).

Under the NHRA, HHS has promulgated regulations that govern appeals procedures for transfers and discharges from skilled nursing facilities. 42 C.F.R. §§ 431.200-250. These regulations state that involuntary transfer or discharge form a nursing facility is only allowed for one of the following six reasons: 1) the resident has failed to pay; 2) the facility is going out of business; 3) the resident no longer needs nursing facility care; 4) the resident needs a higher level of care; 5) the resident's presence endangers the health of others; or 6) the resident's presence endangers the safety of others. *Id.* A resident is entitled to a hearing to challenge the discharge, and the notice of proposed transfer or discharge must include information on appeal rights.

States are required to establish a hearing process for readmission of nursing home residents that "promptly . . . provide[s] for admission or readmission of an individual to a facility if the hearing decision is favorable to the applicant or beneficiary." 42 C.F.R. § 431.246(a). The hearings are conducted "[b]y one or more impartial officials" and must be held "[a]t a reasonable time, date, and place. 42 C.F.R. §§ 431.240(a)(1), (3).

Most importantly for this complaint, the regulations specifically require state agencies to enforce the federally mandated hearing decisions:

> The agency must promptly make corrective payments, retroactive to the date an incorrect action was taken, and if appropriate, provide for admission or readmission of an individual to a facility if – (a) The hearing decision is favorable to the applicant or beneficiary; or (b) the agency decides in the applicant's or beneficiary's favor before the hearing.

42 C.F.R. § 431.246. California's failure to enforce these favorable administrative decisions eviscerates the protections nursing facility residents so desperately need to protect themselves from arbitrary or discriminatory practices by facilities. The entire anti-discriminatory purpose of the statute is nullified if, for example, a facility evicts a resident when he or she goes into a hospital for reasons that relate to that person's actual or perceived disability and the resident fights the eviction and wins, but the State does nothing to force the facility to readmit the resident.[1]

b. California's failure to enforce readmission hearings violates the requirements of the NHRA.

Federal law prohibits discharging a resident from a skilled nursing facility—except under very limited circumstances—and seeks to protect against resident dumping. As outlined above, facilities are required to provide notice and opportunity for a hearing, while states are required to provide for such hearings and to enforce outcomes. California has a hearing system for residents to challenge the denial of their readmission to nursing facilities that is facilitated through the California Department of Health Care Services (DHCS), an agency that falls under CHHS.

DHCS's process to handle nursing facility resident readmission hearings does not adhere to the NHRA's requirements. Under the established protocols, residents who believe they have been wrongfully discharged from a facility are given notice and an opportunity to challenge the discharge at a hearing. DHCS conducts hearings for residents, but if the hearing decision is favorable to the applicant, the State does not ensure that the resident is readmitted to the facility. CHHS has informed residents questioning the lack of enforcement that "once the Office of Administrative Hearings and Appeals issues its final order it does not retain jurisdiction in the matter and has no authority to enforce its own orders."[2] The California Department of Public Health (CDPH) could also enforce such hearings. However, like DHCS, CDPH does not enforce readmission orders. In a Memorandum issued by CDPH, the agency stated that it was not obligated to enforce the decisions of hearing officers relating to appeals of evictions by nursing home residents.[3]

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[1] By not enforcing the readmission hearing rights of individuals who successfully challenge involuntary nursing facility evictions, the State is contributing to a larger issue of resident dumping that is taking place all over the country. Recently, an article by the Associated Press highlighted the fact that there has been a spike in evictions across the United States. Matt Sedensky, *Nursing homes turn to eviction to drop difficult patients*, ASSOCIATED PRESS, May 5, 2016, http://bigstory.ap.org/article/95c33403b5024b4380836d3ed3dfecb0/nursing-homes-turn-eviction-drop-difficult-patients. Residents can challenge involuntary evictions, but when there is no enforcement mechanism, such challenges are deterred and patients are left in hospitals. Anna Gorman, *Abandoned Nursing Home Residents Live Months in Hospital, Waiting*, KQED NEWS, Feb. 22, 2016, http://ww2.kqed.org/stateofhealth/2016/02/22/abandoned-nursing-home-residents-live-months-in-hospital-waiting/.

[2] Department of Health Care Services, August 6, 2015 Response Letter (Attached as Exh. 1). DHCS responded to a letter from the California Advocates for Nursing Home Reform (CANHR) asking DHCS to enforce a client's successful appeal so that he could return to the nursing home from which he was illegally ejected.

[3] California Department of Public Health, Memorandum, DOM 08-19 (2008) (Attached as Exh. 2).

CHHS oversees both agencies that administer the required hearings and is obligated to enforce readmission hearing decisions. CHHS is aware of the agencies' failure to enforce readmission hearing decisions that result in favorable outcomes for residents. Local advocates in California have raised this issue with the CHHS Secretary repeatedly.

Further, in 2012, the Centers for Medicare & Medicaid Services (CMS) put the State and CHHS on notice that the federal government expected California to enforce its hearing decisions. In a letter from CMS to CDPH, CMS explained that the State is required to provide for admission or readmission of an individual to a facility if the hearing decision is favorable to the individual.[4] CMS advised that, although the federal agency could not dictate which part of CHHS—CDPH or DHCS—should enforce hearing decisions, the regulations are clear that the state must promptly make corrective actions.[5] CHHS has not taken action to require either agency to enforce readmission hearing decisions. The California Advocates for Nursing Home Reform (CANHR) contacted CHHS and CDPH about enforcing readmission hearing decisions, to which both agencies responded that they do not have the authority to enforce hearing orders or that they are not obligated to enforce decisions of the hearing officers.[6] CANHR also reached out to the CHHS Secretary and requested that the Secretary require that these agencies enforce successful readmission hearings. The CHHS Secretary represented that the department was looking into the problem but did not provide a means of solution or immediate relief to individuals who were denied their right of readmission to a nursing facility.

In a series of communications following the initial meeting, the State responded by listing various enforcement actions it could take, none of which involved enforcing DHCS readmission hearing orders. CANHR subsequently filed a lawsuit against the CHHS Secretary in her official capacity. *Anderson et al. v. Dooley*, No. 3:15-cv-05120 (N.D. Cal. June 7, 2016). CANHR, on behalf of the plaintiffs, sought an injunction to stop the State from continuing to fail to enforce readmission hearing orders and declaratory relief. Unfortunately, the federal court dismissed the suit, finding that there was no private right of action for individuals to sue the State for these violations of federal law. The court's decisions makes clear that only the federal government can take action to compel CHHS to stop violating the NHRA.

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[4] May, 17, 2012 Letter from Centers for Medicare & Medicaid Services to Deputy Director of the California Center for Health Care Quality (Attached as Exh. 3) (letter addressing a CDPH inquiry into state statutory responsibility for refusal to enforce readmission hearing decisions and whether the state must enforce such decisions). In the letter, CMS lays out California's duties under the NHRA to provide for readmission hearings and to enforce such decisions.

[5] *Id.* (stating that CMS cannot advise on which department should enforce the readmission hearing decisions, as the CMS statute is silent on which state entity is responsible, but that CMS regulations are clear that the state agency must promptly make corrective actions).

[6] *Id.*; *see also* August 6, 2015 DHCS Letter (CANHR sent a letter to DHCS asking the agency to enforce a client's successful appeal, and the agency responded that it does not retain jurisdiction in the matter and has no authority to enforce its own orders).

c. California's failure to address and adhere to the requirements of the NHRA chills the due process rights of California nursing facility residents.

The California agencies' refusal to enforce administrative decisions when facility residents win these hearings is a violation of federal law that has a broad impact on the administrative hearing process. By not enforcing readmission hearings for involuntary eviction cases, the State is depriving nursing facility residents of their due process rights and rendering the NHRA hearing provisions virtually meaningless. The State's inaction also chills residents' and advocates' rights pursuant to the protections of the NHRA hearing provisions. Regardless of the outcomes of these hearings, residents' legal position will not change without the State's enforcement action. Residents and their advocates are, therefore, discouraged from expending time and resources to challenge involuntary evictions.

d. The human consequences of the State's failure to enforce administrative decisions for nursing facility residents are immense.

The human implications of the State's failure to enforce the NHRA provisions are staggering and predictable. Many people who are not permitted to return to the facilities to which they are legally entitled to return are left in more restrictive hospital settings for prolonged periods at great expense to the federal government and in violation of their civil rights. These inappropriate and prolonged hospitalizations result in harm to individuals as confinement to hospitals often causes a lag in the needed rehabilitative services that formed the basis for their admissions to the nursing facilities. Further, these individuals and their families incur financial liability for that inappropriate placement and are deprived of their right to receive services in the most integrated settings appropriate to their needs, pursuant to Title II of the Americans with Disabilities Act.[7] The United States Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999), held that state and local governments must administer their programs in a manner that does not cause people with disabilities to be unnecessarily institutionalized. The Court concluded that state and local governments may be held liable for failing to serve people with disabilities in the most integrated settings appropriate to their needs.

V. Relief Requested

AARP and AARP Foundation request that HHS OCR:

1. Conduct a comprehensive review of DHCS's fair hearings requests and results involving involuntary nursing facility evictions from January 2014 to the present. The requested review should examine hearings where nursing facility residents were successful in challenging their involuntary evictions and were found by the hearing panel to have a right to readmission. The reviewers should look at the decisions and determine if the residents were still evicted, despite receiving a favorable outcome at the hearing;

[7] 42 U.S.C. § 12131.

2. Examine whether and in what ways California's inaction has harmed residents who have a right to readmission and chilled the hearing process;

3. Direct CHHS to implement necessary corrective actions needed to address both involuntary evictions and any adverse impact that the failure to enforce hearing decisions has had on the use of the hearing process in the State; and

4. Take any other corrective actions that HHS OCR deems appropriate.

Sincerely,

David M. Certner
Legislative Counsel & Legislative Policy Director
AARP Government Affairs

William Alvarado Rivera
Senior Vice President, Litigation
AARP Foundation

EXHIBIT 1

DEPARTMENT OF HEALTH & HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES
Consortium For Quality Improvement and Survey & Certification Operations
Western Division of Survey & Certification
Refer to: WCDSC-PP

May 17, 2012

Debby Rogers, Deputy Director
Center for Health Care Quality
1615 Capitol Avenue, MS 0512
Sacramento, CA 95814

Dear Ms. Rogers,

Thank you for CDPH's inquiry dated October 7, 2011 requesting guidance and direction from our office regarding whether State Survey Agencies are responsible for enforcing Transfer/Discharge Appeal (TDA) and Refusal to Readmit (RTR) hearing decisions. I apologize for the extended period since your initial request.

The State plan is defined at 42 CFR 430.10 as "a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements for title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department." §431.10(a) describes the basis and purpose of the State agency as "This section implements section 1902(a)(5) of the Act, which provides for designation of a single State agency for the Medicaid program." 431.200, states the State plan is required to "provide an opportunity for a fair hearing to any person whose claim for assistance is denied or acted upon promptly," including an appeals process for any person who "is subject to a proposed transfer or discharge from a nursing facility." §431.202 mentions, "A State plan must provide that the requirements of §§431.205 through 432.246 of this subpart are met." These sections include the language found at §431.220(a)(3) that the State agency must grant an opportunity for a hearing to the following, "Any resident who requests it because he or she believes a skilled nursing facility or nursing facility has erroneously determined that he or she must be transferred or discharged." In addition, §483.246 includes, "The agency must promptly make corrective payments, retroactive to the date an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility if (a) The hearing decision is favorable to the applicant or recipient; or (b) The agency decides in the applicant's or recipient's favor before the hearing."

The CMS cannot advise CDPH or DHCS which department should enforce TDA/RTR decisions, as CMS statute is silent on which State entity is responsible. However, the CMS regulations are clear that the State Agency must promptly make corrective actions.

One statement in the letter mentions that CDPH staff will cite facilities at the "D" level for findings of inappropriate discharge and refusal to readmit. Although this level of deficiency may fit some situations, our office does not want the CDPH District Offices to feel this is the only severity and scope designation that can be used. We encourage CDPH Licensing and Certification personnel to review Appendix P, section IV-E, Psychosocial Outome Severity Guide, including the portion subtitled, Application of the Reasonable Person Concept. Other severity and scope levels may apply, including a "G" level deficiency (severity level 3, actual harm that is not immediate jeopardy).

Thank you for your attention to this matter. If you have further questions, please feel free to contact me.

Sincerely,

Steven Chickering
Associate Regional Administrator
Western Division of Survey and Certification

cc: SMA

EXHIBIT 2

State of California—Health and Human Services Agency

California Department of Public Health

CDPH

MARK B. HORTON, MD, MSPH
Director

ARNOLD SCHWARZENEGGER
Governor

October 23, 2008

DOM 08-19

TO: District Office Managers and Supervisors

SUBJECT: Transfer and Discharge Appeal (TDA) Decisions

This DOM addresses transfer and discharge appeal decisions and the release of these decisions to the public. The procedure for handling transfer and discharge appeals is discussed in the Licensing and Certification (L&C) Policy and Procedure Manual Section 618.01. The TDA hearings provide SNF/NF's residents a forum for opposing a proposed involuntary transfer/discharge out of the facility. The authority for the hearing is found in the Code of Federal Regulations, specifically Section 483.12 (a) (2) which states:

The facility must permit each resident to remain in the facility and not transfer or discharge the resident from the facility unless:

(i) The transfer and discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
(iii) The safety of individuals in the facility is endangered;
(iv) The health of the individuals in the facility would otherwise be endangered;
(v) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, or Medicaid (Medi-Cal)) to stay at the facility;
(vi) The facility ceases to operate.

In addition, facilities must permit a resident to return to the facility under certain conditions. Section 483.12 (b) (3) states:

> A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident –
> (i) requires the services provided by the facility;
> (ii) is eligible for Medicaid (Medi-Cal) nursing facility services.

The L&C Policy and Procedure Manual, Section 618.07 further states: "The decision whether the proposed transfer/ discharge is appropriate shall be rendered by the Administrative Appeals Hearing Officer (HO) after an informal hearing is conducted in the transferring facility." The hearing officer's decision will represent the Department's final decision. Neither the facility nor the recipient has any further administrative appeal rights under this process. This does not mean that the parties involved cannot pursue other remedies such as a writ to Superior Court.

The hearing is between the resident and the facility. Licensing and Certification is not a party involved in the proceedings or bound by the decision. Rather, the transfer and discharge process provides a hearing mechanism for these disputes between residents and facilities as required by 42 CFR 483.204 and Subpart E of Part 431.

Licensing & Certification does not issue citations based upon TDA decisions alone. Yet, L&C does investigate the same complaints that resulted in the resident's request for a TDA hearing. If during the complaint investigation process, L&C finds a violation of state or federal law that warrants the imposition of state or federal remedies, those remedies may be applied.

L&C is charged with enforcing a broader spectrum of State and Federal laws than just those that pertain to transfer and discharge and for that reason, L&C may not reach the same conclusion as the TDA hearing decision. For example, if a resident was not given proper notice of a discharge, the Transfer/Discharge Appeal (TDA) decision may conclude that the facility cannot discharge the resident. However, if the facility produces sufficient evidence that the resident's health status changed so that the facility can no longer provide adequate care for the resident, then L&C will not require the facility to re-admit the resident, because Heath and Safety Code 1418.6 provides that a long-term health care facility shall not accept or retain a patient for whom it cannot provide adequate care.

TDA decisions are NOT subject to release to the public, even in redacted form, under State and Federal law, specifically Welfare & Institution Code § 14100.2 and 42 CFR Part 431. These are decisions in private disputes between individual patients and their health care providers, and the decisions contain highly personal, confidential medical information. **Please do not release any TDA appeal decision, even in redacted form.**

If you have any further questions, please contact your respective Branch Chief.

Sincerely,

Original Signed by Pamela Dickfoss for Kathleen Billingsley, R.N.

Kathleen Billingsley, R.N.
Deputy Director
Center for Health Care Quality

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
Bruce Anderson, John Wilson, Robert Austin, and California Advocates for Nursing Home Reform

(b) County of Residence of First Listed Plaintiff: Sacramento
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Matthew Borden, J. Noah Hagey, Eva Schueller
BraunHagey & Borden, LLP
220 Sansome St., 2nd Floor, San Francisco, CA 94104

DEFENDANTS
California Department of Health and Human Services, Diana Dooley, Secretary

County of Residence of First Listed Defendant: N/A
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only.)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)* *(For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*
42 U.S.C. § 1983

Brief description of cause: This is an action for prospective injunctive relief seeking to stop California Secretary of Health and Human Services Diana Dooley from willfully violating the federal laws that protect vulnerable nursing home residents from being forcibly removed from their homes and dumped into hospitals.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*

JUDGE _____ DOCKET NUMBER _____

DATE
11/09/2015

SIGNATURE OF ATTORNEY OF RECORD

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

☑ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.