

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is entered into as of the Agreement Effective Date (defined below) by and among AIDS Healthcare Foundation d/b/a PHC California (“AHF”), on the one hand, and the California Department of Health Care Services (the “Department”) and Michelle Baass, in her official capacity as Director of the Department (the “Director”), on the other hand. AHF, the Department, and the Director are each individually referred to as a “Party” and are collectively referred to as the “Parties.”

RECITALS

This Agreement is made with reference to the following facts:

A. WHEREAS, in 1965, Congress created the Medicaid program which authorizes federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons. The federal Medicaid program is administered in California by the Department as the California Medical Assistance Program, also known as “Medi-Cal,” in accordance with the California Welfare and Institutions Code sections 14000 et seq.

B. WHEREAS, AHF and the Department have contracted since 1995 for AHF to provide health care benefits and services to Medi-Cal beneficiaries who reside in Los Angeles County with Acquired Immune Deficiency Syndrome (“AIDS”) under a Medi-Cal managed care plan called the Positive Healthcare Special Needs Plan (the “Plan”). As relevant to this matter, the Parties entered into the initial primary contracts governing the Plan in 2011 for a term from January 1, 2012 to December 31, 2016 (the “Contract”). The Parties over the succeeding years amended and/or extended the Contract for successive one-year terms, starting on the first of January of each year through the 31st of January of that year, through December 31, 2021.

C. WHEREAS, on November 12, 2021, AHF sent a letter to enrollees in the Plan (“Enrollees”) discussing various matters (the “November 2021 Letter”).

D. WHEREAS, the Parties thereafter extended/amended the Contract for the term January 1, 2022 through December 31, 2022.

E. WHEREAS, the Department notified AHF in June 2022 that the Department did not intend to extend or amend the Contract for the term January 1, 2023 through December 31, 2023.

F. WHEREAS disputes and differences arose among the Parties concerning the Department’s decision not to extend or amend the Contract for the term January 1, 2023 through December 31, 2023.

G. WHEREAS, on July 8, 2022, AHF filed with the Department a Notice of Dispute claiming the Department breached the Contract by deciding not to extend and/or amend the Contract for the term January 1, 2023 to December 31, 2023. On August 24, 2022, the Department denied AHF’s claims in AHF’s Notice of Dispute. AHF appealed this denial to the Office of Administrative Hearings and Appeals on September 1, 2022. Subsequently, AHF filed a Second Notice of Dispute alleging Constitutional violations pertaining to the Department’s determination not to extend the Contract, which the Department denied. The Department issued a decision in response to AHF’s Second Notice

of Dispute stating “DHCS’s contractual dispute process is not the proper forum to decide questions of constitutionality” and AHF elected not to appeal. The administrative appeal related to the First Notice of Dispute was later dismissed and there are no current pending administrative actions.

H. WHEREAS, on September 16, 2022, AHF filed in the Superior Court of California for the County of Sacramento a Petition for Writ of Administrative Mandamus and an *Ex Parte* Application for Stay of Administrative Decision claiming breach of the Contract and abuse of discretion in AIDS Healthcare Foundation d/b/a PHC California v. California Department of Health Care Services, Case No. 34-2022-800004011 (the “Writ matter”). On November 16, 2022, the Sacramento County Superior Court denied AHF’s *Ex Parte* Stay Application. AHF later dismissed its mandamus action.

I. WHEREAS, on September 16, 2022, AHF filed in the United States District Court for the Central District of California against the Department and the Director a Complaint for Injunctive Relief and Declaratory Relief in AIDS Healthcare Foundation d/b/a PHC California v. Department of Health Care Services, et al., Case No. 2:22-CV-06636 alleging, among other things, violations of the First Amendment to the United States Constitution (the “District Court Action”). On November 14, 2022, the Department and the Director filed in the District Court Action a Motion to Dismiss. On March 30, 2023, the District Court granted the Motion to Dismiss without prejudice as to all claims against the Department and as to the California constitutional claims against the Director. The District Court denied the Motion to Dismiss with respect the federal constitutional claims against the Director. On April 13, 2023, the Director filed an Answer to the Complaint with affirmative defenses.

J. WHEREAS, on October 4, 2022, AHF filed in the District Court Action a motion for Preliminary Injunction. On November 28, 2022, the Court in the District Court Action granted AHF’s Motion for Preliminary Injunction ordering, among other things, that: “The Department, and its representatives, agents, and employees, and all those acting on its behalf, in concert with it, or at its direction, are preliminarily enjoined and restrained for the pendency of this action from relying on AHF’s Nov. 2021 Letter in terminating, or refusing to extend or amend, the PHC Special Needs Plan for operation starting January 1, 2023.”

K. WHEREAS, on December 19, 2022, the Parties agreed to extend the Contract for the term January 1, 2023 through December 31, 2023.

L. WHEREAS, on December 23, 2022, the Director filed a Notice of Appeal of the Preliminary Injunction issued by the Court in the District Court Action commencing in the United States Court of Appeal for the Ninth Circuit AIDS Healthcare Foundation d/b/a PHC California, Plaintiff-Appellee v. California Department of Health Care Services, et al. Defendants-Appellants, Case No. 22-56203 (the “Appeal”). The parties have briefed the Appeal, and the Ninth Circuit Court of Appeals set oral argument in the Appeal for October 2, 2023.

M. WHEREAS the Parties, in the interest of avoiding the expense and uncertainty of further disputes, litigation, and possible litigation, now desire to resolve and release any and all claims and allegations, as defined below, that the Parties have asserted, may assert, or could have asserted against one another based on facts and/or allegations known or unknown, arising at any time prior to the Agreement Effective Date.

AGREEMENT

N. NOW, THEREFORE, in consideration of the mutual promises made in this Agreement, the Parties covenant and agree as follows:

1. Compromise Only/No Admission of Liability. The Parties, and each of them, acknowledge and agree that this Agreement effectuates, among other things, the settlement of Claims, as defined below, that are denied and contested by the other Parties and that nothing contained herein consists of or shall be construed as an admission of liability, fault, violation of law or any ethical or legal duty or obligation, or wrongdoing (“Liability”) by or on behalf of any of the Parties, all of which Liability is expressly denied. The Parties acknowledge and agree that they enter into this Agreement solely to buy their respective peace and to avoid the inconvenience, stress, costs, fees, and expenses attendant with the prosecution or defense of Claims or potential further or other litigation.

2. Certain Definitions

- a. “Agreement Effective Date” means the first date on which this Agreement is fully executed by all the Parties.
- b. “Allegations” means all of the Parties’ allegations concerning the conduct of the other Parties, whether expressed or unexpressed by the Parties and whether or not made in the context of the District Court Case or the Appeal or the Writ Matter or the Disputes filed with the Department or any other adjudicative process between the Parties. The Parties agree that, to serve the purposes of this Agreement, this definition shall be given the broadest possible construction, with the aim of capturing allegations of all kinds, made or unmade.
- c. “Business Day” means a weekday, provided that such weekday is not otherwise designated as a federal holiday of the United States of America.
- d. “Claims” shall mean and include all claims, causes of action, causes of suit, suits, demands, damages, disputes, controversies, rights, obligations, liabilities and actions of every kind and nature, known, unknown, suspected, or unsuspected, arising on or prior to the Agreement Effective Date, including without limitation any and all claims or rights relating to the Allegations, excepting only any claims based on or arising from the obligations created by this Agreement. Claims includes, but is not limited to, Claims based on facts and/or circumstances discovered or otherwise made known to the Parties before, on, or at any time after the Agreement Effective Date. The Parties agree that, to serve the purposes of this Agreement, this definition shall be given the broadest possible construction consistent with applicable law.
- e. “Person” means an individual, association of individuals, and any individual, entity, and association of individuals acting on their behalf.

3. The Extension of the Contract for Terms January 1, 2024 through December 31, 2024 and January 1, 2025 through December 31, 2025. The Parties agree that the Contract for the Plan shall be extended, with actuarially sound rates to be determined through the

customary process for determining such rates for the Contract, for the terms January 1, 2024 through December 31, 2024 and January 1, 2025 through December 31, 2025.

4. The Department and Director's Release of All Claims, Known and Unknown. Except for the obligations under this Agreement, on the Agreement Effective Date, the Department and the Director, and each of them, hereby irrevocably, unconditionally, and completely release, acquit and forever discharge AHF, and all Persons acting on its behalf or at its instruction, from any and all Claims and any and all alleged matters, facts, agreements, activities, transactions, events, occurrences, acts, omissions or failures to act related to same and related to or arising out of the Claims made by the Parties in or concerning the November 2021 Letter, the Notice of Dispute (or the response thereto), the Second Notice of Dispute (or the response thereto), the District Court Action, the Writ Matter, and the Appeal. The Parties intend that this Section shall be construed in the broadest possible fashion consistent with applicable law.

5. AHF's Release of All Claims, Known and Unknown. Except for the obligations under this Agreement, on the Agreement Effective Date, AHF hereby irrevocably, unconditionally, and completely releases, acquits and forever discharges the Department and the Director, and all Persons acting on their behalf or at their instruction, from any and all Claims and any and all alleged matters, facts, agreements, activities, transactions, events, occurrences, acts, omissions or failures to act related to same and related to or arising out of the Claims made by the Parties in or concerning the November 2021 Letter, the Notice of Dispute (or the response thereto), the Second Notice of Dispute (or the response thereto), the District Court Action, the Writ Matter, and the Appeal. The Parties intend that this Section shall be construed in the broadest possible fashion consistent with applicable law.

6. The Parties' Waiver of California Civil Code Section 1542: To further the Parties' intention with respect to the scope of the full and final releases set forth herein, the Parties acknowledge that they are familiar with California Civil Code §1542, which provides as follows:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Except as provided otherwise herein, the Parties fully and forever waive and relinquish any rights and benefits that they may have under California Civil Code §1542. The Parties furthermore acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true, but it is the Parties' intention to settle fully, finally and forever, and to release any and all Claims pertaining to any and all matters, disputes, and differences, known or unknown, suspected or unsuspected, which do now exist, may exist, or heretofore have existed and are related to or arise out of the Claims made by the Parties in or concerning the November 2021 Letter, the Notice of Dispute (or the response thereto), the Second Notice of Dispute (or the response thereto), the District Court Action, the Writ Matter, and the Appeal. To further this intention, the releases herein shall be and remain in effect as full and complete releases notwithstanding discovery or existence of any such additional or different facts. The Parties agree that this Section shall be construed in the broadest possible fashion consistent with applicable law.

7. Dismissal With Prejudice by AHF of the District Court Action: Within two (2) Business Days of the Agreement Effective Date, AHF shall cause to be filed with the United States District Court in the District Court Action a Stipulation of Dismissal With Prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), providing, among other things, that the parties each shall bear their own costs and attorneys' fees.

8. Dismissal With Prejudice by the Director of the Appeal: Within two (2) Business Days of the Agreement Effective Date, the Director shall cause to be filed with the United States Court of Appeals for the Ninth Circuit a Stipulated Motion to Dismiss Voluntarily the Appeal with Prejudice, pursuant to Federal Rules of Appellate Procedure 42(b), providing, among other things, that the parties each shall bear their own costs and attorneys' fees.

9. Of The Essence. The Parties agree that the provisions of Sections 3, 4, 5, 6, 7, and 8 of this Agreement are of the essence of the Agreement and are material consideration for the Parties, without which consideration the Parties would not have entered into this Agreement. The Parties agree that a breach of any or all of the provisions of Sections 3, 4, 5, 6, 7, and/or 8 of this Agreement is a material breach of the Agreement.

10. Governing Law. This Agreement shall be exclusively interpreted, enforced, and governed by and under the laws of the State of California, without regard to California's conflict of laws rules.

11. Binding Agreement. This Agreement is binding upon and shall inure to the benefit of the Parties and each of their successors and assigns.

12. Representation and Warranties.

- a. The Parties each represent and warrant that they are the sole and lawful owners of all rights, title and interest in and to every Claim that they released herein, and that they have not assigned, transferred or granted any of the Claims that are settled and resolved and/or released by this Agreement.
- b. Each Party represents and warrants that: (a) they have read this Agreement; (b) they have been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice; (c) they have made such investigation of the facts pertaining to the settlement and this Agreement, and of all the matters pertaining to them, as they deem necessary; (d) they understand the terms and consequences of this Agreement and of the mutual releases it contains; and (e) they are fully aware of the legal and binding effect of this Agreement.

13. Entire Agreement. This Agreement represents the entire agreement and understanding between the Parties concerning the subject matter hereof, the releases provided for herein, and supersedes and replaces any and all prior agreements, representations and understandings among them whether written or oral. Each term of this Agreement, including its recitals, is contractual and not merely a recital.

14. No Oral Modification. This Agreement may only be amended in a writing signed by all Parties.

15. Construction. The Parties have cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be strictly or liberally construed for or against any of the Parties.

16. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned. A copy of a signature page delivered via e-mail as a PDF or via facsimile shall be deemed to have the same force and effect as an original. A signature via DocuSign is deemed an original signature for purposes of this Agreement.

17. Voluntary Execution of Agreement. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto.

18. Further Assurances; Cooperation. Each Party will execute, acknowledge and deliver any further assurances, documents and instruments reasonably requested by any other Party for the purpose of giving effect to the transactions contemplated in the Agreement or the intentions of the Parties with respect thereto. The Parties agree to cooperate fully with each other and to undertake all action reasonably necessary to implement the purposes of this Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

Defendant Michelle Baass, in her official capacity as Director of the California Department of Health Care Services

Dated: 3/1/2024



Michelle Baass, Director

Dated: 3/1/2024

Defendant California Department of Health Care Services



Michelle Baass, Director

Dated: 2/26/24

Plaintiff AIDS Healthcare Foundation



Michael Weinstein, President