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7
 8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 CARES, INC. aka CONSUMER)
 11 ADVOCATES RIGHTS ENFORCEMENT)
 SOCIETY, a California not for profit)
 12 public benefit consumer advocacy)
 Corporation, PAMELA WALL,)
 13 individually and on behalf of all those)
 similarly situated,)

Case No. 2:05-CV-02553-FCD-GGH

SETTLEMENT STIPULATION; RELEASES;
 DISMISSAL; ORDER THEREON

14 Plaintiff,)

15 v.)

16 KATHLEEN SEBELIUS, Secretary of the)
 Department of Health and Human Services,)

17 Defendant.)
 18)
 19)

20 It is hereby stipulated by and between Plaintiff PAMELA WALL, individually and on behalf
 21 of those similarly situated, ("Plaintiff") and Defendant KATHLEEN SEBELIUS, Secretary of the
 22 Department of Health and Human Services, collectively referred to as "the parties", and their
 23 undersigned attorneys as follows:

24 1. On September 8, 2006 Plaintiffs CARES, Inc. aka CONSUMER ADVOCATES RIGHTS
 25 ENFORCEMENT SOCIETY, a California not for profit public benefit consumer advocacy
 26 corporation ("CARES") and PAMELA WALL, individually and on behalf of those similar situated,
 27 filed a complaint for declaratory and injunctive relief challenges, among other things, the
 28 constitutionality of the Secretary's pre and post-deprivation procedures for securing reimbursement
 of expenses believed to be owed under the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)(2).

1 (Court Docket (“CD”) #1.) On November 27, 2006 the Secretary answered the Plaintiffs’ Complaint
2 denying the allegations therein and asserting numerous affirmative defenses. (CD #28.) Extensive
3 litigation, discovery and motions followed. On November 1, 2007, Plaintiff CARES was dismissed
4 with prejudice from this action. CD #82.) On October 29, 2008 the Court issued an order and
5 finding and recommendations granting the Secretary’s Motion for Summary Adjudication of the pre-
6 deprivation due process claims in the first and third causes of action. (CD # 202.) On January 9,
7 2009, the Court adopted the findings and recommendations and granted summary adjudication of the
8 pre-deprivation due process claims in the first and third causes of action. (CD #209.) Thereafter,
9 additional motions for filed, including the Secretary’s Motion for Summary Judgment on all
10 remaining claims. (CD # 213-215.) On May 1, 2009 the Court issued findings and
11 recommendations granting the Secretary’s Motion for Summary Judgment on all remaining claims.
12 (CD #220.) On June 19, 2009, the court adopted the findings and recommendations granting
13 summary judgment and entered judgment for the Secretary on all remaining claims in this case. (CD
14 # 225, 226.) On June 25, 2009, the Secretary timely filed a cost bill seeking \$3,982.75 in costs for
15 this case. (CD #227.)

16 2. The parties hereby agree to settle and compromise each and every claim of any kind,
17 whether known or unknown, including right to appeal, arising directly or indirectly from the acts or
18 omissions that gave rise to the above-captioned action under the terms and conditions set forth in
19 this Stipulation. Specifically, the Secretary agrees to waive all costs and expenses incurred in the
20 defense of this action in full settlement and satisfaction of any and all claims, demands, rights, and
21 causes of action of whatsoever kind and nature, arising from, and by reason of any and all known
22 and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the
23 consequence thereof, resulting, and to result, from the subject matter of this action, including any
24 claims by Plaintiff or her guardians, heirs, executors, administrators, or assigns, and each of them,
25 now have or may hereafter acquire against the Secretary arising from issues involved in this
26 litigation.

27 3. Plaintiff and his guardians, heirs, executors, administrators or assigns hereby agree to
28 accept the waiver of costs set forth in paragraph 2 as full settlement and satisfaction of any and all

1 claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by
2 reason of, any and all known and unknown, foreseen and unforeseen bodily and personal injuries,
3 damage to property and the consequences thereof that they may have or hereafter acquire against the
4 Secretary and its agents, servants, contractors, and employees on account of the same subject matter
5 that gave rise to this action, including any appeal rights and/or future claim or lawsuit of any kind or
6 type whatsoever, whether known or unknown, and whether for compensatory or exemplary
7 damages. Plaintiff and her guardians, heirs, executors, administrators, or assigns further agree to
8 reimburse, indemnify and hold harmless the Secretary and its agents, servants, contractors and
9 employees from and against any and all causes of action, claims, liens, rights, or subrogated or
10 contribution interests incident to or resulting from further litigation or the prosecution of claims
11 arising from the subject matter of this action.

12 4. Plaintiff's undersigned attorney represents that she has explained, and plaintiff warrants
13 and represents that she intends, that this Stipulation shall release all existing and future claims
14 arising directly or indirectly from the acts or omissions that gave rise to the above-captioned action,
15 including claims that are unknown and unforeseen, notwithstanding Section 1542 of the Civil Code
16 of the State of California, which provides as follows:

17 A general release does not extend to claims which the creditor does
18 not know or suspect to exist in his favor at the time of executing [this]
19 Release, which if known by him must have materially affected his
20 settlement with the debtor.

21 5. This Stipulation is not, is in no way intended to be, and should not be construed as, an
22 admission of liability or fault on the part of the Secretary or its agents, servants, contractors, or
23 employees, and it is specifically denied that they are liable to Plaintiffs. This settlement is entered
24 into by all parties for the purpose of compromising disputed claims and avoiding the expenses and
25 risks of appeal and/or further litigation.

26 6. The parties agree that they will each bear their own costs, fees, and expenses; that no
27 attorney's fees owed by plaintiff will be paid by the defendant; and that all outstanding or future
28 litigation related bills and liens will be the sole responsibility of plaintiff. The Secretary agrees to

1 withdraw the pending memorandum of costs upon the court's approval of this stipulation and entry
2 of order thereon.

3 7. The parties agree and acknowledge that nothing in this agreement shall affect in any
4 way Plaintiff's right to receive her social security payments and the parties agree that no sums may
5 be deducted or claimed by the Secretary against Plaintiff in relation to this action.

6 8. The parties and their undersigned attorneys agree to execute and deliver such other and
7 further documents as may be required to carry out the terms of this Agreement.

8 9. Each person signing this Stipulation warrants and represents that he or she possesses full
9 authority to bind the person[s] on whose behalf he or she is signing to the terms of the Stipulation.

10 10. Each person signing this Stipulation warrants and represents that no promises,
11 inducements, or other agreements not expressly contained herein have been made; that this
12 Stipulation contains the entire agreement between the parties; and that the terms of this Stipulation
13 are contractual and not mere recitals. This Stipulation may not be altered, amended, modified, or
14 otherwise changed in any respect, except by a writing duly executed by the party to be charged. All
15 prior oral understandings, agreements, and writings are superseded by this Stipulation and are of no
16 force or effect.

17 11. Each person executing this Stipulation represents that he or she has read and understands
18 its contents; that he or she executes this Stipulation voluntarily; that he or she has not been
19 influenced by any person acting on behalf of any party.

20 12. The above-captioned action is hereby DISMISSED WITH PREJUDICE in its entirety
21 and, upon approval by the Court as provided below, the Clerk of the Court is requested to enter this
22 dismissal and release in the official docket.

23 13. Notwithstanding the entry of a dismissal herein, the parties hereby stipulate that Hon.
24 Frank C. Damrell, Jr., District Judge, shall retain jurisdiction to enforce the terms of this
25 compromise settlement.

1 IT IS SO STIPULATED.

2 DATED: June 30, 2009

LAWRENCE G. BROWN
Acting United States Attorney

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4 By /s/ Kelli L. Taylor
KELLI L. TAYLOR
Assistant U.S. Attorney
Attorneys for Kathleen Sebelius,
Secretary for the Department of Health and
Human Services

8 DATED: June 29, 2009

BRONSON AND ASSOCIATES

10 By /s/ Martha Bronson
MARTHA BRONSON
Attorneys for Plaintiff Pamela Wall, individually and
on behalf of those similarly situated

14 DATED: June 29, 2009


16 By /s/ Pamela Wall
PAMELA WALL, individually and on behalf of those
similarly situated

19 **ORDER**

20 Pursuant to the parties' stipulated settlement, and good cause appearing, the Court hereby
21 approves the stipulated settlement and orders this action dismissed with prejudice with Plaintiff to
22 waive all appeal rights and the Secretary to waive her right to collect costs with prejudice and per
23 the other terms and conditions set forth in the settlement agreement.

24 IT IS SO ORDERED.

25 DATED: July 1, 2009

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FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE