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 17 CATHOLIC HEALTHCARE WEST

18 UNITED STATES DISTRICT COURT  
 19 EASTERN DISTRICT OF CALIFORNIA

20 EDWARD L. KEMPER and CONNIE J.  
 21 ARNOLD, for themselves and all others  
 22 similarly situated,

23 Plaintiffs,

24 v.

25 CATHOLIC HEALTHCARE WEST, a  
 26 California corporation, et. al.

27 Defendants.

Case No. 2:06-CV-00295-LKK-EFB

**FACILITY CONSENT DECREE – MERCY  
 GENERAL HOSPITAL**

Date: October 25, 2010  
 Time: 10:00 a.m.  
 Court Room: 4

**Before The Honorable Lawrence K. Karlton**

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1 Edward L. Kemper and Connie J. Arnold (the “Named Plaintiffs”), acting on behalf of a  
2 nationwide class of disabled persons (the “Class”), as defined in the Court’s October 2, 2006,  
3 Order Granting Class Certification (the “Certification Order”), and Defendant, Catholic  
4 Healthcare West (“CHW”), hereby enter into the following Facility Consent Decree (the  
5 “Facility Consent Decree”) as to Mercy General Hospital.

6 **RECITALS**

7 On May 19, 2006, the Named Plaintiffs – both of whom have disabilities as defined by  
8 42 U.S.C. § 12102(2) – filed a proposed class action captioned *Edward L. Kemper and Connie*  
9 *J. Arnold, for themselves and all others similarly situated v. Catholic Healthcare West*, United  
10 States District Court for the Eastern District of California, Sacramento Division, Case No. 2:06-  
11 CV-00295-LKK-PAN (JFM), alleging inaccessible architectural barriers at CHW hospital  
12 campuses. CHW owns and/or operates more than forty (40) hospitals and other health care  
13 facilities in Arizona, California, and Nevada, including, e.g., acute care hospitals, outpatient  
14 care facilities, freestanding surgery and diagnostic centers, behavioral health hospitals, clinics,  
15 medical office buildings, and long term care and skilled nursing facilities.

16 On October 2, 2006, the Court entered the Certification Order, certifying the Class as  
17 follows:

18 All people in the United States with disabilities as that term has been defined by 42  
19 U.S.C. §12102(2) - including those persons that have a physical mobility impairment  
20 that substantially limits a major life function - who have and who were, prior to the filing  
21 of the Class Action Complaint through the pendency of this action, denied the full and  
equal enjoyment of the goods, services, programs, facilities, privileges, advantages, or  
accommodations of any of CHW’s Facilities, because of their respective disabilities.

22 The Certification Order also certified counsel for the Named Plaintiffs as counsel for the Class  
23 (“Class Counsel”). The Named Plaintiffs and the Class are collectively referred to herein as  
24 “Plaintiffs.” CHW and CHW Affiliates are collectively referred to herein as the “CHW Group.”  
25 The CHW Group and Plaintiffs are collectively referred to herein as the “Parties,” and  
26 individually herein as a “Party.”

27 On or about March 17, 2009, the Court approved the Class Settlement Agreement and  
28 Consent Decree (“Consent Decree”) entered into by the Parties.

1 On or about October 15, 2009, the Court approved the Stipulation Regarding Agreed  
2 Upon Tolerances and Procedures (“Tolerance Stipulation”) entered into by the Parties.

3 In accordance with Sections 13 and 14 of the Consent Decree, the Parties conducted a  
4 Facility Site Inspection of the Mercy General Hospital facility in order to evaluate physical,  
5 communication, and operational accommodations for persons with disabilities. This Facility  
6 Consent Decree incorporates the Facility Modification Plan created as a result of that Facility  
7 Site Inspection.

8 The Parties now, therefore, in accordance with paragraph 14.4 of the Consent Decree,  
9 and in consideration of the mutual covenants and undertakings contained herein, and other good  
10 and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the  
11 Parties, agree to the following terms and conditions as full and complete settlement of the action  
12 as to Mercy General Hospital.

### 13 **GENERAL PROVISIONS**

14 1. **Definitions.** In addition to the terms defined elsewhere in this Consent Decree, the  
15 following terms shall have the meanings set forth below. Any terms not defined herein shall  
16 have the meaning ascribed to them in the ADA and in its implementing regulations.

17 1.1. “ADA” means the Americans With Disabilities Act, as contained in 42 U.S.C.  
18 Section 12101, *et seq.*, and its implementing regulations.

19 1.2. “Class Members” means members of the Class.

20 1.3. “Consent Decree” means the Class Settlement Agreement and Consent Decree,  
21 approved by the Court on or about March 17, 2009, including any attached exhibits as of  
22 the date of its approval or attached in the future in accordance with paragraph 16.1.

23 1.4. “Disability Laws” means: (1) the ADA; (2) Section 504 of the Rehabilitation  
24 Act of 1973, as amended, 29 U.S.C. §§ 701, *et seq.*; (3) the California Disabled Persons  
25 Act, Cal. Civ. Code §§ 54 *et seq.*; (4) any other provision of California law to the extent  
26 it grants a right of action for alleged violations of the foregoing; (5) any state or local  
27 law, statute, administrative rule, regulatory or code provision that either directly  
28 incorporates Title III of the ADA or any of its implementing regulations, or sets forth

1 standards or requirements that are equivalent to Title III of the ADA or any of its  
2 implementing regulations; and (6) any other federal, state, local, or administrative  
3 statute, rule, or regulation relating to access for the disabled or prohibiting public  
4 accommodations from discriminating on the basis of disability.

5 1.5. “Facility” or “Facilities” means public accommodations owned and/or operated  
6 by the CHW Group which are identified in Exhibit A to the Consent Decree or in  
7 supplements to Exhibit A. A Facility includes all areas open to and available for use by  
8 the public, including, but not limited to, the parking spaces and sidewalks that serve  
9 these areas, so long as the CHW Group has a legal right of alteration or control over  
10 these areas. In the case of an acute care hospital, Facility includes all buildings related  
11 to the hospital’s function, or otherwise located contiguous with or adjacent to the  
12 hospital, sharing parking lots or garages or other common areas; such groups of  
13 buildings and common areas may be referred to as a “Hospital Facility Campus.”

14 1.6. “Facility Consent Decree” means a judgment approved by the Court regarding a  
15 Facility Modification Plan.

16 1.7. “Facility Modification Plan” means a plan developed by the Parties identifying  
17 the barriers to be removed and/or other modifications to be made pursuant to Disability  
18 Laws for a Facility.

19 1.8. “Facility Site Inspection” is an initial inspection to identify potential barriers, and  
20 the needed barrier removal or other modifications necessary to make a Facility  
21 compliant with Disability Laws.

22 1.9. “Medical Equipment” means equipment that assists in providing disabled  
23 patients access to diagnostic and treatment services (including examination tables,  
24 examination chairs, and lifts), scales, and patient beds.

25 1.10. “Noncompliance” means that more than five percent (5%) of all applicable line  
26 items identified in an approved Facility Consent Decree have not been completed  
27 adequately, after applying all acceptable dimensional tolerances, construction tolerances,  
28 acceptable variations, and equivalent facilitations cited in the Facility Consent Decree.

1 1.11. "Post Compliance Inspection" means a survey conducted by Plaintiffs, through  
2 their Expert(s), to determine whether Noncompliance exists at a Settlement Corrected  
3 Facility.

4 1.12. A "Settlement Corrected Facility" is a Facility that has completed barrier  
5 removal or other modifications pursuant to an approved Facility Consent Decree.

6 1.13. A "Settlement Corrected Facility Order" is a Court order determining that the  
7 CHW Group's obligations with respect to a Settlement Corrected Facility have been  
8 fulfilled, in accordance with the procedures described in paragraph 19 of the Consent  
9 Decree.

10 2. **Facilities Subject to Agreement.** CHW owns and/or operates the following property,  
11 which is a Facility in this litigation covered by the Consent Decree:

12 (1) Mercy General Hospital, 4001 J Street, Sacramento, CA 95819.

13 (2) Mercy Medical Plaza, 3941 J Street, Sacramento, CA 95819.

14 (3) Mercy Clinic Norwood, 3911 Norwood Avenue, Sacramento, CA 95838.

15 3. **Conditions.**

16 3.1 This Facility Consent Decree is effective only upon approval by the Court in  
17 accordance with Fed. R. Civ. P. 23(e) and entry of judgment in accordance with the  
18 terms of the Consent Decree and this Facility Consent Decree.

19 3.2 This Facility Consent Decree incorporates a Facility Modification Plan  
20 respecting the Plaintiffs and Mercy General Hospital, attached hereto as Exhibit A.  
21 Subject to the terms and conditions of the Consent Decree and this Facility Consent  
22 Decree, CHW will cause the physical, communications and operational alterations and  
23 modifications described in the Facility Modification Plan to be made, with respect to the  
24 Facility commonly known as Mercy General Hospital, in order to bring about the  
25 removal of physical and other barriers and thus allows disabled persons the full  
26 enjoyment of the goods and services provided by Mercy General Hospital.

27 4. **Nonadmission/Nondetermination.**

28 4.1. This document constitutes a settlement agreement pursuant to Federal Rule of

1 Evidence 408. Entering into this Facility Consent Decree does not constitute an  
2 admission by the CHW Group, express or implied, that the CHW Group has in any way  
3 violated any Disability Laws. This Facility Consent Decree, does not contain, and will  
4 not be interpreted or construed as containing, any such admission.

5 4.2. The Court has made no findings concerning the alleged violations of any  
6 Disability Laws. Accordingly, this Facility Consent Decree does not constitute, and will  
7 not be used in this or any other case or action, as evidence of any such violation of any  
8 Disability Laws. If for any reason this Facility Consent Decree is not executed, no  
9 evidence of this proposed Facility Consent Decree will be admissible for any purpose in  
10 this or any other action.

11 5. **No Third Party Beneficiaries/Plaintiffs' Right to Enforce.** For purposes of interpreting  
12 or enforcing this Facility Consent Decree, individual Class Members shall not be deemed to  
13 be third-party beneficiaries. Individual unnamed Class Members may not bring any action  
14 for any alleged violation of this Facility Consent Decree. Only the Named Plaintiffs and  
15 Class Counsel have the authority to bring an action to enforce this Facility Consent Decree.

16 6. **Exclusivity of this Facility Consent Decree.**

17 6.1 Plaintiffs, either individually or collectively, may not now, or at any time in the  
18 future, maintain any legal action contending that the Facility addressed by this Facility  
19 Consent Decree is required, under the legal theories asserted in this action, to make  
20 additional or different modifications beyond those agreed to pursuant to this Facility  
21 Consent Decree.

22 6.2 If any conflicts exist or are perceived between the Consent Decree, this Facility  
23 Consent Decree, and the Facility Modification Plan incorporated herein, the Facility  
24 Modification Plan will govern only with regard to the physical, communications and  
25 operational modifications and alterations to be implemented by CHW respecting Mercy  
26 General Hospital. For all other such conflicts between the Consent Decree, this Facility  
27 Consent Decree, and the Facility Modification Plan incorporated herein, the Consent  
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1 Decree will govern the Facility Consent Decree, and both in conjunction (as so  
2 construed) will govern the Facility Modification Plan.

3 7. **Term.** This Facility Consent Decree shall have a term (“Term”) that expires when the Court  
4 enters a Settlement Corrected Facility Order with regard to the Facility addressed herein.

5 8. **Entire Facility Consent Decree.** This Facility Consent Decree, including the Facility  
6 Modification Plan incorporated within it, constitutes the complete understanding between  
7 the Parties as to this Facility, may not be changed orally, and supersedes any and all prior  
8 agreements or understandings between the Parties as to this Facility. Each Party  
9 acknowledges that no other Party, nor any representative of a Party, has made any  
10 representations or promises other than as set forth herein. No other promises, agreements, or  
11 modifications to this Facility Consent Decree shall be binding unless in writing and signed  
12 by all Parties. The Parties further agree that if any term of this Facility Consent Decree is  
13 held to be void, voidable, unlawful or unenforceable, the remaining portion of the Facility  
14 Consent Decree shall remain in full force and effect.

15 **INJUNCTIVE RELIEF**

16 9. **Medical Equipment Review.** In accordance with Paragraph 10.4 of the Consent Decree,  
17 Mercy General Hospital’s Medical Equipment Report will be finalized within twenty four  
18 (24) months of the finalization of the Medical Equipment Questionnaire.

19 10. **Auxiliary Aids and Services and Service Animal Policies.** CHW will ensure that  
20 appropriate policies regarding Auxiliary Aids and Services and regarding Service Animals  
21 are implemented at the Mercy General Hospital Facility. Such policies will be provided to  
22 Class Counsel for their review and comment prior to implementation.

23 11. **Barrier Removal and Other Modifications.**

24 11.1. CHW will make good faith efforts, including, but not limited to, meeting and  
25 conferring with Class Counsel as necessary, to have all remediation and changes  
26 completed at this Facility within three (3) years of the date the Court approves this  
27 Facility Consent Decree, subject to a stipulated or court-approved extension.

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1 11.2. The Parties acknowledge that such good faith efforts will be sensitive to, and  
2 attempt to account for: the need to comply with applicable building codes and applicable  
3 local, state, and federal laws and regulations (including amendments or other changes  
4 thereto); changes in medical science or technology; developments in patient care or  
5 related services; the operational needs of this Facility; the timing of existing or projected  
6 construction and alteration schedules for this Facility unrelated to the Facility  
7 Modification Plan; or other changed circumstances materially affecting this Facility  
8 Consent Decree or its underlying assumptions.

9 11.3. A Party may, at any time, propose amendments to this Facility Consent Decree  
10 if, in the view of the Party proposing the amendment, an amendment is necessary or  
11 appropriate to accommodate changes or developments (as identified in paragraph 15.2 of  
12 the Consent Decree), or to further the objectives of this Facility Consent Decree.

13 Unresolved differences concerning such proposals for resolution may be submitted to  
14 ADR as set forth in paragraph 20 of the Consent Decree. Any recommended resolution  
15 of differences obtained pursuant to the process set forth in paragraph 20 of the Consent  
16 Decree may also be appealed by any Party to the Court pursuant to the process set forth  
17 in paragraph 20 of the Consent Decree. Amendments to this Facility Consent Decree  
18 shall be submitted to the Court for hearing and, if appropriate, approval in keeping with  
19 the process employed for approval of Facility Consent Decrees.

20 12. **Post Compliance Inspection.** In accordance with the Consent Decree, CHW will notify  
21 Class Counsel in writing within ninety (90) days after this Facility becomes a Settlement  
22 Corrected Facility. Following this notification, the Parties will cooperate to arrange for a  
23 Post Compliance Inspection of this Settlement Corrected Facility on reasonable notice and at  
24 a mutually convenient time. The Post Compliance Inspection will be scheduled so that the  
25 inspection will occur within ninety (90) days of CHW's notice.

26 13. **Procedures for Addressing Alleged Noncompliance in Post Compliance Inspections.**

27 13.1. Within sixty (60) days of conducting the Post Compliance Inspection, Class  
28 Counsel will notify CHW in writing if Plaintiffs assert Noncompliance with this Facility

1 Consent Decree. The written notice shall identify with particularity the basis for any  
2 alleged Noncompliance. If no written Notice of Noncompliance is received by CHW  
3 within 90 days after the Post Compliance Inspection is completed, CHW's modifications  
4 will be deemed accepted by Class Counsel so that CHW may seek court approval of this  
5 Facility in accordance with paragraph 19.1 of the Consent Decree.

6 13.2. Within sixty (60) days of receipt of the written notice described in paragraph  
7 13.1, CHW will respond in writing to Class Counsel. The Parties will then meet and  
8 confer over any alleged noncompliance within forty-five (45) days after Class Counsel  
9 receives CHW's response.

10 13.3. Within thirty (30) days after the meeting described in paragraph 13.2, any  
11 remaining unresolved differences as to this Facility will be referred to the Court or, if the  
12 Parties so agree, resolved by ADR as set forth in paragraph 20 of the Consent Decree.

13 13.4. The Court or a Special Master is entitled to provide appropriate relief upon a  
14 showing of Noncompliance as to this Facility Consent Decree. Relief may include, but  
15 is not limited to, enforcement of this Facility Consent Decree, and extension of the  
16 Consent Decree for such period as may be necessary to remedy Noncompliance.

17 13.5. Any Party may petition the Court for relief from the provisions of this Facility  
18 Consent Decree upon a showing of supervening obligations or events that are  
19 unforeseeable or beyond the control of the Parties, including, but not limited to: changes  
20 in state or local building codes or ordinances; other legal or administrative requirements;  
21 problems in the financial credit or bond financing markets or the occurrence of natural  
22 disasters that may prevent timely compliance with the injunctive relief provisions set  
23 forth herein.

24 **14. Final Hearings Regarding Settlement Corrected Facilities.**

25 14.1. Once this Facility becomes a Settlement Corrected Facility, and: (1) after any  
26 disputes over alleged Noncompliance as to this Settlement Corrected Facility are  
27 resolved as described in section 13 above; or (2) sixty (60) days after Class Counsel has  
28 waived a Post-Compliance Inspection or (3) ninety (90) days after this Facility's Post

1 Compliance Inspection is deemed accepted because Class Counsel has not provided the  
2 written notice described in paragraph 13.1 above, CHW may seek, via motion, a  
3 Settlement Corrected Facility Order finding that CHW's obligations with respect to this  
4 Settlement Corrected Facility have been fulfilled and that CHW has complied with this  
5 Facility Consent Decree.

6 14.2. Within fifteen (15) days of CHW filing the motion described in paragraph 14.1,  
7 Plaintiffs may request an evidentiary hearing on CHW's motion. It is in the Court's  
8 discretion to grant or deny the request.

9 14.3. If the Court finds, as to this Facility, that CHW's obligations have been fulfilled  
10 and that CHW has complied with this Facility Consent Decree, the Court will enter a  
11 Settlement Corrected Facility Order to that effect with regard to this Facility.

12 **BINDING EFFECT; NO NOTICE**

13 15. Once the Court approves this Facility Consent Decree it is a final decree binding the Parties,  
14 and a final judgment pursuant to Fed. R. Civ. P. 54, subject to all rights of judicial review  
15 provided by law for judgments of this Court.

16 16. In accordance with Fed. R. Civ. P. 23(b)(2), because the Complaint seeks injunctive relief  
17 only, and in keeping with the Court's order dated October 6, 2008, no individual notice to  
18 the Class will be required prior to approval of this Facility Consent Decree.

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DATED: June 22, 2010

By: /S/ \_\_\_\_\_  
EDWARD L. KEMPER  
Named Plaintiff

DATED: June 21, 2010

By: /S/ \_\_\_\_\_  
CONNIE J. ARNOLD  
Named Plaintiff

DATED: June 21, 2010

By: /S/ \_\_\_\_\_  
JEFF LAND  
Vice-President, Corporate Real Estate  
CATHOLIC HEALTHCARE WEST

DATED: June 21, 2010

DE LA O, MARKO, MAGOLNICK & LEYTON  
  
By: /S/ \_\_\_\_\_  
DANIEL L. LEYTON  
CHARLES D. FERGUSON  
Attorneys for Named Plaintiffs and the Class

DATED: June 24, 2010

DOWNEY BRAND LLP  
  
By: /S/ \_\_\_\_\_  
DANIEL J. MCVEIGH  
ELIZABETH B. STALLARD  
Attorneys for Defendant  
CATHOLIC HEALTHCARE WEST

**IT IS SO ORDERED.**

**Dated: November 3, 2010**

  
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT