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18 UNITED STATES DISTRICT COURT  
 19 NORTHERN DISTRICT OF CALIFORNIA  
 20 SAN FRANCISCO DIVISION

21 ST. FRANCIS MEMORIAL HOSPITAL )  
 AND FRANKLIN BENEVOLENT )  
 CORPORATION f/k/a DAVIES MEDICAL )  
 22 CENTER, )  
 23 )  
 24 Plaintiffs, )  
 )  
 25 v. )  
 )  
 26 MICHAEL O. LEAVITT, Secretary, )  
 U.S. Department of Health and Human )  
 27 Services, )  
 )  
 28 Defendant. )

No. CV 08-1440 MMC  
 STIPULATION AND ~~PROPOSED~~  
 ORDER TO STAY ACTION  
 AND ORDER DIRECTING PARTIES TO  
 FILE JOINT STATUS REPORT

1 Defendant, Michael O. Leavitt, the Secretary of Health and Human Services (“the  
2 Secretary”) and Plaintiffs, St. Francis Memorial Hospital and Franklin Benevolent Corporation  
3 f/k/a Davies Medical Center (the “Hospitals”), by and through their undersigned counsel,  
4 respectfully stipulate that this Court enter an order staying the proceedings in the above-  
5 captioned action pending the final administrative and judicial disposition of the case of Provider  
6 Reimbursement Review Board (“PRRB”) Group Appeal No. 98-1376G (the “Group Appeal”).

7 In support of this stipulation, the parties state as follows:

8 1. The parties previously informed the Court that they were discussing the possibility of  
9 staying this case as well as another case, Glendale Memorial Hosp. and Health Ctr. v. Leavitt,  
10 CV08-1747 (MMM) (AGRx) (C.D. Cal.), pending the final administrative and judicial  
11 disposition of the Group Appeal. By a “final judicial disposition,” the parties mean to refer to a  
12 final non-appealable Court decision.

13 2. Counsel for the Hospitals have been informed that the Group Appeal is set for a record  
14 hearing. Although it is impossible to predict with any certainty when the decision of the PRRB  
15 will be issued, the parties are hopeful that the decision may be issued in the reasonably near  
16 future.

17 3. In this action, Plaintiffs challenge three jurisdictional decisions by the PRRB. See  
18 Complaint ¶¶ 50, 58, 66, and Exhs. 1-3 thereto. The sole legal issue before the Court is whether  
19 the PRRB’s decisions declining jurisdiction over Plaintiffs’ claims for certain fiscal years at  
20 issue in the Group Appeal were arbitrary, capricious, contrary to the law, or an abuse of  
21 discretion.

22 4. In anticipation of the PRRB’s eventually issuing a decision in the Group Appeal, to allow  
23 for the possibility that the final administrative and judicial disposition of the Group Appeal may  
24 obviate the need for further proceedings in this action, and in the interest of conserving the  
25 resources of the Court and the parties, the Hospitals and the Secretary believe that proceedings in  
26 the instant case should be stayed, pending the final administrative and judicial disposition of the  
27 Group Appeal.

28 5. In the event the Providers do not prevail upon the final administrative and judicial

1 disposition of the Group Appeal, the Hospitals will dismiss the instant case with prejudice within  
2 thirty days following the date of such final disposition.

3 6. In the event the Providers prevail upon the final administrative and judicial disposition of  
4 the Group Appeal, the parties will jointly move the Court to reinstate the instant case for  
5 proceedings and a determination regarding the PRRB's decision denying the Hospitals the right  
6 to participate in the Group Appeal within thirty days following such final disposition.

7 7. In the event the Hospitals first prevail upon the final administrative and judicial  
8 disposition of the Group Appeal, and then prevail in the final disposition in the instant case  
9 (including any postjudgment proceedings and appeals), the Secretary will pay to the Hospitals  
10 the underlying Medicare payment to which they would have been entitled had they participated  
11 in the Group Appeal, without the necessity for a remand to the Secretary for further proceedings  
12 and a decision on the merits, within ninety days following the date of such final disposition.

13 8. In the event the PRRB does not issue a decision in the Group Appeal within six months  
14 following the date of the Court's order staying the instant case the Hospitals will have the right  
15 at any time thereafter to move the Court to reinstate the instant case, which motion the Secretary  
16 will not oppose. In the event that the Secretary settles the Group Appeal while this action is  
17 stayed, the Hospitals will have the right to move the Court to reinstate the instant case, which  
18 motion the Secretary will not oppose.

19 9. This request is made in good faith and not for purposes of delay.  
20

21 ACCORDINGLY, THE PARTIES hereby stipulate and agree that:

22 1. Proceedings in the instant case be stayed, pending the final administrative and judicial  
23 disposition of the Group Appeal; and

24 2. In the event the Providers do not prevail upon the final administrative and judicial  
25 disposition of the Group Appeal, the Hospitals will dismiss the instant case with prejudice within  
26 thirty days following the date of such final disposition; and

27 3. In the event the Providers prevail upon the final administrative and judicial disposition of  
28 the Group Appeal, the parties will jointly move the Court to reinstate the instant case for

1 proceedings and a final determination regarding the PRRB's decision denying the Hospitals the  
2 right to participate in the Group Appeal within thirty days following such final disposition; and

3 4. In the event the Hospitals first prevail upon the final administrative and judicial  
4 disposition of the Group Appeal, and then prevail in the final disposition in the instant case  
5 (including any postjudgment proceedings and appeals), the Secretary will then pay to the  
6 Hospitals the underlying Medicare payment to which they would be entitled had they  
7 participated in the Group Appeal, without necessity for a remand to the Secretary for further  
8 proceedings and a decision on the merits, within ninety days following the date of such final  
9 disposition; and

10 5. In the event the PRRB does not issue a decision in the Group Appeal within six months  
11 following the date of the Court's order staying the instant case, the Hospitals will have the right  
12 at any time thereafter to move the Court to reinstate the instant case, which motion the Secretary  
13 will not oppose. In the event that the Secretary settles the Group Appeal while this action is  
14 stayed, the Hospitals will have the right to move the Court to reinstate the instant case, which  
15 motion the Secretary will not oppose.

16 6. In the event the Court denies this Stipulation to Stay Action, the parties agree that  
17 each of the deadlines in the current briefing schedule will be extended by 14 days from the date  
18 of the Court's order, and that upon receipt of any such order, they will promptly submit a  
19 Stipulation and [Proposed] Order to the Court reflecting this agreement

20 The filer of this document, counsel for Federal Defendant, attests that concurrence in the

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