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 13 *and Harry Harrison*

14 UNITED STATES DISTRICT COURT
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

17 HAZEL WALSH,
 18 Plaintiff,
 19 v.
 20 KINDRED HEALTHCARE, INC., et al.,
 21 Defendants.

Case No. 3:11-cv-00050-JSW

**STIPULATION AND ~~PROPOSED~~
 ORDER REGARDING ALTER EGO
 DISCOVERY AND PLAINTIFFS'
 SECOND AMENDED COMPLAINT**

The Honorable Jeffrey S. White

24 **WHEREAS** on June 15, 2011 the Court granted in part and denied in part Defendants'
 25 motions to dismiss Plaintiffs' First Amended Complaint, and granted Plaintiffs leave to amend
 26 their Complaint, *see* Order Regarding Defendants' Motions to Dismiss (Dkt. 58), at 16;

27 **WHEREAS** with respect to alleged vertical alter ego relationships between the Facility

28

1 Defendants,¹ Subsidiary Licensee Defendants,² and the Parent Kindred Defendants,³ the Court
2 held in its June 15, 2011 Order that “Plaintiffs have sufficiently alleged ‘unity of interest and
3 ownership’ as between Kindred and the Facilities,” and that Plaintiffs have also sufficiently
4 alleged “an injustice based on the parent Kindred entities’ attempt to avoid liability,” *id.* at 7;
5 however, the Court also held that “Plaintiffs have not alleged what injustice would result if the
6 Facilities, other than Rossmoor, were not held liable or if Hillhaven and Smith Ranch were not
7 held liable,” *id.* at 7-8;

8 **WHEREAS** the Parties stipulated, and the Court ordered, that Plaintiffs’ Second Amended
9 Complaint would be due ninety (90) days from when Plaintiffs’ Motion for Limited, Expedited
10 Discovery was granted, *see* Order Postponing Deadline for Filing of Amended Complaint and
11 Continuing Case Management Conference (Dkt. 64);

12 **WHEREAS** the Court subsequently granted Plaintiffs’ Motion for Limited, Expedited
13 Discovery, and therefore the deadline for Plaintiffs to file their Second Amended Complaint is
14 November 23, 2011, *see* Order Regarding Plaintiffs’ Motion for Leave to Conduct Discovery
15 (Dkt. 69);

16 **WHEREAS** Plaintiff intend to join, in their Second Amended Complaint, additional class
17 representatives who resided at Facilities other than Care Center of Rossmoor; and

18 **WHEREAS** the parties have met and conferred about alleged alter ego discovery and the
19 addition of new Plaintiffs who resided in facilities other than Care Center of Rossmoor;

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21
22 ¹ The thirteen “Facility Defendants” are: Alta Vista Healthcare & Wellness Centre (a/k/a Alta Vista
23 Healthcare); Bay View Nursing And Rehabilitation Center; Canyonwood Nursing and Rehab Center;
24 Care Center of Rossmoor (f/k/a Guardian of Rossmoor); Fifth Avenue Health Care Center; Golden
25 Gate Healthcare Center; Hacienda Care Center; Nineteenth Avenue Healthcare Center; Kindred
26 Healthcare Center of Orange; Santa Cruz Healthcare Center; Smith Ranch Care Center (f/k/a Guardian
27 at Smith Ranch Care Center); Valley Gardens Healthcare & Rehabilitation Center; and Victorian
28 Healthcare Center (f/k/a Hillhaven Victorian).

² The three “Subsidiary Licensee Defendants” are: Care Center of Rossmoor, LLC; Smith Ranch Care
Center, LLC; and Hillhaven-MSO Partnership.

³ The four “Kindred Defendants” are: Kindred Healthcare, Inc. (“Kindred Inc.”); Kindred Healthcare
Operating, Inc. (“KHOI”); Kindred Nursing Centers West, LLC (“Kindred West”); and California
Nursing Centers, LLC (“California Nursing”).

1 **NOW THEREFORE**, it is stipulated that:

2 1. Plaintiffs will file their Second Amended Complaint by November 23, 2011;

3 2. Defendants will stipulate to the filing of a Second Amended Complaint that adds
4 Plaintiffs who resided in Facilities other than Care Center of Rossmoor. This stipulation is made
5 without prejudice to Defendants' right to raise any appropriate challenge(s) to the Second
6 Amended Complaint after it is filed;

7 3. Defendants will not move to dismiss Plaintiffs' Second Amended Complaint based
8 upon insufficiency of Plaintiffs' alter ego allegations as to 1) the vertical alter ego relationships
9 between the Facility Defendants, Subsidiary Licensee Defendants, and the Parent Kindred
10 Defendants, or 2) the horizontal alter ego relationships between the Facility Defendants. Nothing
11 in this stipulation will prevent Defendants from challenging Plaintiffs' vertical or horizontal alter
12 ego theories through motion for summary judgment, opposition to class certification or other
13 motion that does not merely challenge the legal sufficiency of the allegations in Plaintiffs' Second
14 Amended Complaint or any subsequent complaint;

15 4. If any Defendant or Defendants move to dismiss Plaintiffs' Second Amended
16 Complaint based upon lack of personal jurisdiction, the Parties agree that litigation related to the
17 Defendants' challenge to personal jurisdiction shall be stayed until further notice. If any Party
18 wishes to lift the stay, it may move the Court for such relief after providing all other Parties with
19 fourteen (14) days written notice;

20 5. If any Party moves to lift the stay on litigation of personal jurisdiction, then
21 Plaintiffs will have ninety (90) days from the date the stay is lifted to conduct jurisdictional
22 discovery, including on alter ego issues, before filing their opposition brief. This agreement is
23 without prejudice to Defendants' ability to challenge the scope of such discovery, including the
24 alter ego discovery propounded by Plaintiffs;

25 6. Plaintiffs withdraw their currently pending discovery requests on horizontal and
26 vertical relationships among Defendants, without prejudice to their right to reassert the requests
27 ninety (90) days prior to the close of fact discovery, or if and when any of the following occur:

28 a. The Court sets a schedule for class certification briefing; or

- 1 b. Any Defendant moves to lift the stay on personal jurisdiction; or
2 c. Any Defendant moves for summary judgment based in whole or part on the
3 insufficiency of Plaintiffs' alter ego, agency, or joint venture allegations.

4 7. Nothing stated herein shall preclude any Party from seeking a Court-ordered
5 modification of the above-stated provisions for good cause shown.

6
7 Dated: November 9, 2011

Respectfully submitted,

8 MANATT, PHELPS & PHILLIPS

9
10 By: /s/ Brad W. Seiling
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16 Dated: November 9, 2011

Respectfully submitted,

17 STEBNER & ASSOCIATES

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HARRY HARRISON*

Pursuant to General Order 45, Part X-B, the filer attests that concurrence in the filing of this document has been obtained from Brad W. Seiling and Kathryn Ann Stebner.

~~PROPOSED~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: November 14, 2011



The Honorable Jeffrey S. White

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