



City Attorney Dennis Herrera News Release

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Herrera files class action suit against Nevada over ‘patient dumping’ practices, expenses

City Attorney follows through on litigation threat to seek statewide injunction, restitution for S.F.’s costs for care of improperly bused non-residents

SAN FRANCISCO (Sept. 10, 2013)—City Attorney Dennis Herrera today filed a class action against the State of Nevada on behalf of California local governments to which indigent patients were improperly bused from the state-run Rawson-Neal Hospital in Las Vegas. The lawsuit filed in San Francisco Superior Court this morning seeks a court-ordered injunction barring Nevada from similar patient discharge practices in the future, and reimbursement for San Francisco’s costs to provide care to the patients bused there.

The litigation makes good on Herrera’s legal threat in a formal demand letter to Nevada Attorney General Catherine Cortez Masto last month, alleging that Rawson-Neal improperly discharged and unsafely transported at least two-dozen patients by Greyhound bus to San Francisco between 2008 and 2013. Herrera’s investigation established that patients were transported without adequate food, water or medication, and without instructions or arrangements for their continued care when they reached their destination. Twenty of the patients required medical care shortly after their arrival in San Francisco—some within hours of getting off the bus—at a cost of approximately \$500,000 to City taxpayers for medical care, shelter, and basic necessities. Herrera said he hoped the suit would be a “wake-up call” to similarly errant medical institutions nationwide that they risk being held accountable for mistreating indigent and mentally ill patients.

“Homeless psychiatric patients are especially vulnerable to the kind of practices Nevada engaged in, and the lawsuit I’ve filed today is about more than just compensation—it’s about accountability,” said Herrera. “What the defendants have been doing for years is horribly wrong on two levels: it cruelly victimizes a defenseless population, and punishes jurisdictions for providing health and human services that others won’t provide. It’s my hope that the class action we’re pursuing against Nevada will be a wake-up call to facilities nationwide that they, too, risk being held to account if they engage in similarly unlawful conduct.”

[MORE]

If successful, San Francisco's claim for reimbursement of the amounts it expended to care for indigent patients Nevada bused here would benefit all California jurisdictions by establishing a precedent for award of restitution to all jurisdictions able to demonstrate claims for damages and restitution substantially similar to San Francisco's. Herrera's suit additionally seeks injunctive relief that would apply statewide to prohibit Nevada from continuing to transfer non-residents into California without prior arrangements for patients' care, or in a manner that violates state or federal standards governing patient discharges.

Case Background

In March, the *Sacramento Bee* first reported the story of 48-year-old James Flavy Coy Brown, a former Rawson-Neal patient who was sent on a 15-hour bus ride to Sacramento—despite having never before visited there, having no friends or family members in the area, and with no prior arrangements for his care, housing or medical treatment. The Nevada-run hospital had discharged Brown in a taxicab to the Greyhound bus station with a one-way ticket to Sacramento, snacks, and a three-day supply of medication to treat his schizophrenia, depression and anxiety. Brown was instructed to call 911 when he arrived. A Rawson-Neal physician reportedly recommended “sunny California” to Brown as a destination, according to the *Sacramento Bee*, because they “have excellent health care and more benefits than you could ever get in Nevada.”

The following month, in response to news reports that Nevada's Rawson-Neal Psychiatric Hospital in Las Vegas had questionably bused more than 1,500 psychiatric patients to locations throughout the nation, the San Francisco City Attorney's office launched an investigation to determine whether any of the 31 Greyhound bus tickets Rawson-Neal purchased for trips to San Francisco conveyed improperly discharged patients. The initial conclusion of Herrera's investigation is that among 24 patients bused to San Francisco (including some who made multiple trips), 20 sought and were provided emergency medical care, some shortly after their arrival.

Those findings led Herrera to issue the formal demand letter on August 20, giving Silver State officials until yesterday to respond, and threatening legal action if they did not do so satisfactorily. The Nevada Attorney General's reply letter, dated yesterday, recounted its efforts to cooperate with Herrera's investigation, but proposed better collaboration between officials in both states “rather than trying to allocate financial responsibility through litigation.”

The case is: *City and County of San Francisco v. State of Nevada et al.*, San Francisco Superior Court, filed Sept. 10, 2013.

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ENDORSED
FILED
San Francisco County Superior Court

SEP 10 2013

CLERK OF THE COURT

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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 UNLIMITED JURISDICTION

13 CITY AND COUNTY OF SAN
14 FRANCISCO, on behalf of itself and on behalf
of all others similarly situated,

15 Plaintiff,

16 vs.

17 STATE OF NEVADA; NEVADA
18 DEPARTMENT OF HEALTH AND HUMAN
SERVICES [DHHS], an agency of the State of
19 Nevada; MICHAEL J. WILLDEN, in his
official capacity as Director of DHHS;
20 NEVADA DIVISION OF MENTAL
HEALTH & DEVELOPMENTAL SERVICES
21 [MHDS], a division of DHHS; RICHARD
WHITLEY, in his official capacity as
22 Administrator of MHDS; SOUTHERN
NEVADA ADULT MENTAL HEALTH
23 SERVICES [SNAMHS], AN AGENCY OF
MHDS; RAWSON-NEAL PSYCHIATRIC
24 HOSPITAL, a Nevada state mental health
facility operated by SNAMHS; CHELSEA
25 SZKLANY, in her official capacity as Hospital
Administrator for SNAMHS and Rawson-Neal
26 Psychiatric Hospital; and DOES 1 through 20;

27 Defendants.
28

Case No. **CGC-13-534108**

CLASS ACTION

**COMPLAINT FOR DAMAGES, EQUITABLE,
AND CLASS-WIDE DECLARATORY AND
INJUNCTIVE RELIEF**

- (1) Common Law Misappropriation
- (2) Restitution or Quasi-Contract
- (3) Declaratory Relief

1 Plaintiff, the City and County of San Francisco, is informed and believes and alleges as
2 follows:

3 INTRODUCTION

4 1. Over the past five years, the State of Nevada ("Nevada") has transferred to other states
5 approximately 1,500 patients discharged from its state-run Rawson-Neal Psychiatric Hospital
6 ("Rawson-Neal"), including almost 500 patients that Nevada sent by Greyhound bus to cities and
7 counties in California. Nevada knew many of these patients were not California residents at the time it
8 discharged them to buses bound for California. A substantial number of the patients bused to
9 California are mentally ill and indigent, and at the time of their discharge and transportation, were not
10 residents of the California cities and counties to which they were bused. Further, despite the fact that
11 virtually all of the patients transported to California required continuing medical care, Nevada did not
12 make arrangements for the patients to be received by family members or a medical facility in the
13 destination city or county prior to putting the patients on a Greyhound bus for California. Nevada
14 jeopardized the bused patients' physical and mental health by failing to provide them with adequate
15 food, water and medication during their trip to California, and by failing to assure that shelter or
16 medical care had been arranged for the patients at their destinations. While some of the patients were
17 given the names of shelters or told to dial "911" upon arrival in California, a substantial number were
18 not provided any instructions or assistance in finding shelter, continued medical care, or basic
19 necessities in the cities and counties to which they were sent.

20 2. Of the 24 patients that Nevada bused to Plaintiff City and County of San Francisco
21 ("San Francisco") since April 2008, 20 required medical care shortly after their arrival in San
22 Francisco, some within mere hours of getting off the bus. San Francisco provided medical care to
23 these patients at San Francisco General Hospital ("SFGH") or at a neighborhood health clinic run by
24 the San Francisco Department of Public Health. San Francisco has also provided many of these
25 patients shelter or housing support, and basic necessities. Since arriving in San Francisco, some of the
26 patients have applied for and received from San Francisco a monthly cash grant of assistance for basic
27 necessities. San Francisco calculates that it has provided approximately \$500,000 in medical care,
28 shelter, and basic necessities to these bused patients.

1 3. A substantial number of the 24 patients that Nevada bused to San Francisco were not
2 residents of San Francisco at the time they were discharged by Rawson-Neal; nor did they have family
3 members in San Francisco who were willing and able to care for them; nor were they sent to a medical
4 facility, as Nevada made no arrangements for patients to be received by a responsible family member
5 or medical facility prior to putting the patients on a bus to San Francisco. A number of these patients
6 were in fact residents of Nevada at the time they were discharged from Rawson-Neal and put on a bus
7 to San Francisco.

8 4. Defendant Rawson-Neal, its administrators and staff, including doctors, social workers,
9 and nurses, were aware that the 24 patients whom they bused to San Francisco were indigent, living in
10 shelters or on the streets of Las Vegas or other Nevada cities, and suffering from mental illnesses
11 requiring ongoing medical care and medication, and that in most cases the bused patients were not
12 residents of San Francisco and had no family here to care for them. Rawson-Neal understood and
13 expected that the bused patients would rely on San Francisco's public health resources for continuing
14 medical care, and specifically directed some of the patients to seek care at San Francisco public health
15 clinics and shelter at San Francisco-supported shelter and care programs.

16 5. If Defendants had not transported them to San Francisco, these 24 indigent patients
17 would instead have been reliant upon Rawson-Neal or other publicly-supported hospitals and medical
18 clinics in Nevada for their continued medical care, and upon shelter and support programs publicly
19 funded by Nevada.

20 6. By transporting to California cities and counties indigent and mentally ill patients who
21 were not residents of those cities and counties, Nevada intentionally and wrongfully appropriated the
22 resources that the destination California cities and counties had established to provide medical care
23 and basic necessities to the indigent, and avoided expending its own public resources to care for these
24 patients. Nevada, through its political subdivisions, is required by state law to provide "care, support
25 and relief to the poor, indigent, incompetent, and those incapacitated by age, disease or accident" to
26 county residents. Nev. Rev. Stat. section 428.010.

1 7. San Francisco has filed this action in part on its own behalf to seek damages and
2 restitution for the public resources it expended to provide medical care and support for indigent
3 patients Nevada was obligated to care for.

4 8. Nevada also transported all of the almost 500 patients in a manner that jeopardized the
5 patients' health and also jeopardized the health and safety of their fellow passengers and of the
6 residents of the cities and counties to which the patients were transported. All of the patients were
7 transported without escorts, without regard for the welfare of the patients themselves or of their fellow
8 bus passengers during trips that lasted many hours. Nevada failed to provide adequate food, water,
9 and medication to the patients to sustain them during the bus trip and for a reasonable time following
10 their arrival at their destination in California, and did not provide instructions for the patients' follow-
11 up medical care, housing or support services. Nevada did not make arrangements for a responsible
12 party to receive the patients at their destination. As a result, many of the patients that Nevada bused to
13 California cities and counties ended up on the streets of their destination cities without funds and
14 without a means of support, shelter, or medication for their physical and mental illnesses. The manner
15 in which Nevada transported the patients jeopardized the patients' physical and mental health, and to
16 the extent the mental health of these bused patients deteriorated, also jeopardized the safety of San
17 Francisco's residents. Nevada law authorizes the Administrator of the Nevada Division of Mental
18 Health and Behavioral Services to enter into reciprocal agreements with appropriate officials of other
19 states for the mutual exchange of consumers who have been admitted to a mental health facility in one
20 state but have a legal residence in another. Nevada Revised Statutes section 433.444. Nevada has not
21 entered into, nor proposed, such an agreement with any state or local official in the State of California.
22 Such agreements would ensure that patients are not transferred to a state of which they are not
23 residents, and also would ensure that those patients who are returned to their state of residence are
24 transported in a manner that ensure the safety and well-being of the patients, fellow passengers, and
25 residents of the patients' home state communities

26 9. San Francisco has also filed this action on behalf of itself and other similarly situated
27 cities and counties in California to seek declaratory relief and preliminary and permanent injunction
28 prohibiting Nevada from transporting patients to California without escort, adequate food, water and

1 medications, and without prior arrangement for the patients to receive continued medical care and to
2 be received by a responsible adult at the destination.

3 **JURISDICTION AND VENUE**

4 10. The Superior Court has jurisdiction over this action. Defendants have transported
5 patients to San Francisco and to other California cities and counties with the knowledge that such
6 patients were not residents of the destination California cities and counties, and with knowledge that
7 these indigent, homeless and mentally ill patients would require medical care, shelter and other basic
8 necessities and would seek them from San Francisco and other destination California cities and
9 counties.

10 11. Venue is proper in this Court because some of the injuries of which Plaintiff complains
11 have occurred in San Francisco and because injunctive relief is necessary to stop Defendants from
12 continuing to transport to San Francisco patients who are mentally ill, homeless and indigent, and who
13 are not residents of San Francisco nor transported to family members or a medical facility ready to
14 receive them.

15 **PARTIES**

16 12. Plaintiff CITY AND COUNTY OF SAN FRANCISCO [San Francisco] is a municipal
17 corporation existing under the laws of the State of California, and is both a City and a County under
18 the Constitution of the State of California.

19 13. Defendant STATE OF NEVADA operates the Rawson-Neal Psychiatric Hospital
20 which transported indigent and mentally ill patients to California cities and counties.

21 14. Defendant NEVADA DEPARTMENT OF HEALTH AND HUMAN SERVICES
22 [DHHS] is an agency of the State of Nevada and is responsible for the administration and oversight of
23 the provision of health services, including mental health services, in Nevada.

24 15. Defendant MICHAEL J. WILLDEN is and was at all times relevant to the claims
25 asserted here the Director of the Nevada Department Of Health And Human Services and responsible
26 for the administration and oversight of the provision of medical services, including mental health
27 services, in Nevada. Defendant Willden is sued in his official capacity only.
28

1 16. Defendant NEVADA DIVISION OF MENTAL HEALTH & DEVELOPMENTAL
2 SERVICES (MHDS) is an agency of the State of Nevada, and a Division of the Nevada Department of
3 Health and Human Services. Defendant MHDS is responsible for planning, administration, policy
4 setting, monitoring, and budget development of all state funded mental health and developmental
5 services programs in Nevada.

6 17. Defendant RICHARD WHITLEY is and was at all times relevant to the claims asserted
7 here the Administrator of the Nevada Division Of Mental Health & Developmental Services and
8 responsible for planning, administration, policy setting, monitoring, and budget development of all
9 state funded mental health and developmental services programs in Nevada. Defendant Whitley is
10 sued in his official capacity only.

11 18. Defendant SOUTHERN NEVADA ADULT MENTAL HEALTH SERVICES
12 (SNAMHS) is an agency of the State of Nevada and of the Nevada Division of Mental Health &
13 Developmental Services, and at all times relevant to the claims asserted here operated Defendant
14 Rawson-Neal Psychiatric Hospital. Defendant SNAMHS arranged and paid for the transportation by
15 Greyhound bus of the almost 500 patients bused to California cities and counties whose discharge and
16 transportation is the basis for San Francisco's claims.

17 19. Defendant RAWSON-NEAL PSYCHIATRIC HOSPITAL (Rawson-Neal) is a hospital
18 licensed by the State of Nevada and operated by Defendant Southem Nevada Adult Mental Health
19 Services to provide in-patient mental health services. The almost 500 patients bused to California
20 cities and counties were discharged by Defendant Rawson-Neal, which also arranged for their
21 transportation by Greyhound bus to California.

22 20. Defendant CHELSEA SZKLANY is and was at all times relevant to the claims asserted
23 here the Hospital Administrator for Defendant SNAMHS and in that capacity responsible for the care
24 provided to patients at the Rawson-Neal Psychiatric Hospital. Defendant SZKLANY is sued in her
25 official capacity only.

26 21. Plaintiff San Francisco is not aware of the true names and capacities of Defendants
27 sued herein as DOES 1 through 20, inclusive, and therefore sues these Defendants by such fictitious
28 names. Each fictitiously named Defendant is responsible in some manner for the actions resulting in

1 the busing of patients discharged from Defendant Rawson-Neal to California and for the resulting
2 injury to Plaintiff San Francisco and to members of the Class. The People will seek leave of court to
3 amend this complaint to allege their true names and capacities when that information is ascertained.
4 Whenever reference is made in this Complaint to "Defendants" or any individual "Defendant," such
5 reference shall include DOES 1 through 20 as well as the named Defendant or Defendants.

6 **GENERAL FACTUAL ALLEGATIONS**

7 22. Since April 2008, Defendant the State of Nevada and its health care agencies and
8 administrators, DHHS, DHHS Director Michael J. Willden, MHDS, MHDS Administrator Richard
9 Whitley, SNAMHS, Rawson-Neal Psychiatric Hospital, Hospital Director Chelsea Szklany, and Does
10 1 through 20 [collectively referenced herein as "Nevada" or "State of Nevada"], have transported
11 almost 500 indigent, mentally ill patients by Greyhound bus to California cities and counties,
12 including at least 24 such patients to Plaintiff San Francisco.

13 23. A substantial number of the indigent patients that Nevada bused to California were at
14 the time of their discharge and transportation not residents of the California city or county to which
15 they were transported.

16 24. Although virtually all of the indigent patients that Nevada discharged and transported to
17 California suffered from mental illnesses that required continuing medical treatment and medication,
18 Nevada did not make any arrangements for the patients to be received by family members or medical
19 facilities willing and able to care for the patients.

20 25. Nevada jeopardized the mental and physical health of the patients by putting them on
21 Greyhound buses to California without making provision for adequate food, water, and medication to
22 sustain the patients during the bus trip; without making arrangements for the patients' continued
23 medical care or access to necessary medication upon their arrival in California, without providing
24 instructions for the patients' follow-up care and medication; without arranging for housing or basic
25 necessities for the patients at their destinations, and without making arrangements for a responsible
26 person or medical facility to receive the patients at their destination.

27 26. Nevada also jeopardized the mental and physical health of the patients, and the welfare
28 of their fellow bus passengers, by transporting the patients alone and without escort.

1 27. Because of the manner in which the patients were transported to California, many of
2 them suffered deterioration of their mental health during the bus trip and required emergency care
3 within a short time after their arrival at their destination in California. Of the 24 patients that Nevada
4 bused to San Francisco, 20 sought and obtained necessary medical care in San Francisco, including 11
5 who required emergency medical care within days of their arrival, and 7 who required emergency
6 medical care within less than 72 hours of their arrival.

7 28. San Francisco provided medical care to these 20 bused patients at San Francisco
8 General Hospital and at neighborhood health clinics operated by the San Francisco Department of
9 Public Health.

10 29. A number indigent, mentally ill patients transported by Nevada to San Francisco and
11 other California cities and counties arrived in a state of mental or physical crisis and in urgent need of
12 water, food, shelter, medical care and other services.

13 30. For example, one of the almost 500 patients bused to California in the past five years,
14 an individual brought to Rawson-Neal on February 9, 2013 on a legal hold for "suicidal ideation and
15 auditory hallucinations," was discharged to a Greyhound bus and transported to Sacramento,
16 California on February 11, 2013. The patient had no family in Sacramento and did not know anyone
17 there. Rawson-Neal's medical records state that this patient had been living in a Las Vegas assisted
18 living housing facility, but was homeless at the time of his admission to the hospital; that despite the
19 patient's stated preference to return to the assisted living facility, he was "discharge[d] to California
20 via Greyhound," with a three day supply of medication, cans of Ensure and snacks. The patient told a
21 Rawson-Neal staff psychiatrist he did not want to go to California, but the psychiatrist told him he had
22 to go. Nevada did not provide the patient with names, addresses or maps to shelters in Sacramento,
23 but was told to call 911 on his arrival there and to go to the nearest hospital to get his medications.
24 The patient took all of the 3 day supply of medication during the 15 hour bus trip to Sacramento; he
25 was hungry and thirsty during the trip, but had no water and no money to purchase food. His food
26 stamps, Medicaid/Medicare card and driver's license had not been returned to him when he left
27 Rawson-Neal. By the time he got off the bus in Sacramento, the patient was hearing voices, one
28 telling him to do something to get arrested, one telling him to go to the police station, and one telling

1 him to jump off a bridge over the river. The patient went to a police station in Sacramento, from
2 which he was taken to a shelter and then to a hospital, where he was evaluated by a psychiatrist and
3 started on medication. The patient was discharged to a Sacramento residential "board and care"
4 facility for mental health patients for 2 weeks.

5 31. Another patient, a 36 year old male bused to San Francisco on March 6, 2012, had a
6 history of 13 prior visits to Rawson-Neal at the time he was brought to Rawson-Neal on a legal hold
7 on March 4, 2012. The patient was diagnosed as having psychosis, schizophrenia, and
8 suicidal/homicidal ideation. The Rawson-Neal medical records state the patient was unemployed and
9 receiving SSI (supplemental security income), was homeless and living on the streets of Las Vegas,
10 and was originally from California but had no stable support system there. Nonetheless, Rawson-Neal
11 discharged this patient on March 6, 2012 with a two-week supply of medications, instructions to
12 follow up with a mental health clinic, d a taxi voucher to the Greyhound bus station and a one-way
13 ticket to San Francisco. Rawson-Neal's medical records for this patient do not identify any address in
14 San Francisco to which the plaintiff was being discharged, nor that any effort was made to contact the
15 patient's family regarding his discharge and transfer to San Francisco. Immediately upon his arrival in
16 San Francisco on March 6, 2012, the patient sought and received treatment at a San Francisco-funded
17 Community Behavioral Health Services Urgent Care Center, where he received five days of "crisis
18 stabilization" and "crisis intervention" care. The patient returned to Las Vegas, Nevada in mid-2012,
19 but was again bused by Rawson-Neal to San Francisco on November 11, 2012. The patient again
20 returned to Las Vegas, but was yet again bused by Rawson-Neal to San Francisco on February 20,
21 2013. On February 24, 2013, the patient was brought to the San Francisco General Hospital by police
22 after he had expressed thoughts of suicide and homicide. The patient reported to medical staff at San
23 Francisco General that he had attempted to get a gun a few weeks earlier, with intentions of killing
24 himself or other persons "who were saying [he's] crazy," but was unable to find a gun and so decided
25 to seek medical help instead.

26 32. Another patient, brought to Rawson-Neal on September 16, 2010 as despondent and
27 with 3 prior suicide attempts, was discharged on September 17, 2010 and bused to San Francisco
28 despite the fact that the patient had been living and working in Las Vegas, having moved there from

1 Florida in 2009. The patient had no prior connection to San Francisco, and no family there.
2 Nonetheless, Defendants transported the patient to San Francisco within one day of his arrival at
3 Rawson-Neal. Defendants sent the patient by taxi to the Greyhound bus station in Las Vegas, gave
4 him a one-way Greyhound bus ticket to San Francisco and a “day’s worth of sack lunches.”
5 Defendants gave the patient the address of a shelter in San Francisco and instructed him to follow up
6 with counseling at a clinic in San Francisco “and/or to the SF County Clinic, as needed” for medical
7 care relating to hypertension. Since arriving in San Francisco, the patient has received ongoing
8 medical care for his hypertension at San Francisco General Hospital, publicly-supported housing, and
9 has just begun to receive monthly cash assistance payments funded by San Francisco.

10 33. In its May 2013 investigation of the patient discharge practices of Rawson-Neal, the
11 federal Centers for Medicare and Medicaid Services (“CMS”) found evidence of “inappropriate
12 medical screening examinations, patient transfers, and discharges,” in violation of the federal
13 Emergency Medical Treatment and Labor Act (“EMTALA”), 42 U.S.C. §§ 1395dd, and implementing
14 regulations. The CMS investigation reviewed a sample of 41 patient files, and found deficiencies in
15 the discharge plans and instructions for 16 of the 41 sampled patients, including deficiencies in the
16 discharges and transfers of 6 patients whom Rawson-Neal had bused to California. A CMS
17 investigation conducted in March 2013 also found evidence of Rawson-Neal’s unsafe and unlawful
18 discharge of patients based on a sample of 30 patient files.

19 34. Since April 2008, Defendants have transported at least 24 indigent, mentally ill patients
20 by Greyhound bus to San Francisco. The information available to Plaintiff indicates that a substantial
21 number of these patients were not residents of San Francisco at the time they were discharged from
22 Rawson-Neal and put on the Greyhound bus to San Francisco; nor were such patients sent to family
23 members or a medical facility willing and able to care for them in San Francisco.

24 35. The May 2013 CMS Report quotes from Rawson-Neal’s medical records, which reveal
25 that Defendant Rawson-Neal, its administrators and staff were aware that the patients they bused to
26 San Francisco were indigent and suffering from mental illnesses that require continuing medical care
27 and medications, that the patients did not have homes in San Francisco, and that a substantial number
28 of these patients were residents of Nevada at the time of their admission to Rawson-Neal and either

1 had no family in San Francisco or no effort had been made to contact the patient's family to determine
2 whether the family was willing and able to provide a home and continued care for the patient. The
3 Rawson-Neal medical records for these patients reflect the understanding of Rawson-Neal staff and
4 administrators that the bused patients would have to rely on publicly funded medical care in San
5 Francisco, as well as on publicly funded shelter and support programs.

6 36. San Francisco has to date expended approximately \$500,000 to provide necessary
7 medical care, shelter and housing, and other basic necessities to the patients that San Francisco has to
8 date identified as having been bused to it by Nevada. .

9 37. Had Nevada not transported them to California cities and counties, the 500 indigent,
10 mentally ill patients sent to California by Greyhound bus would have remained in Nevada and relied
11 upon Rawson-Neal and other publicly-funded hospitals and medical clinics for necessary medical care,
12 and upon other Nevada agencies and counties for shelter and housing and for basic necessities.

13 CLASS ACTION ALLEGATIONS

14 38. Plaintiff brings this action on behalf of itself and all others similarly situated as a class
15 action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to
16 represent is composed of and defined as follows:

17 All cities and counties of the State of California to which Defendants have improperly
18 transported patients discharged from Defendants' mental health facilities or to which
19 Defendants may in the future improperly transport patients discharged from
20 Defendants' mental health facilities.

21 39. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
22 amend or modify the class description with greater specificity or division into subclasses or limitation
23 to particular issues.

24 40. This action may be brought and maintained as a class action pursuant to Code of Civil
25 Procedure section 382 because there is a well-defined common or general interest of many entities,
26 and it is impractical to bring them all before the court.

26 NUMEROSITY

27 41. The potential number of all members of the Class as defined is so numerous that joinder
28 of all members would be unfeasible and impractical. There are fifty-eight counties in the State of

1 California; Defendants have in the past four years transported patients discharged from their state
2 mental health facilities to at least twenty-six California counties, and are expected to transport more
3 such patients to these and other California counties in the future. There are 964 cities in the State of
4 California; Defendants have in the past four years transported patients discharged from their state
5 mental health facilities to at least 52 California cities, and are expected to transport more such patients
6 to these and other California cities in the future.

7 COMMON QUESTIONS PREDOMINATE

8 42. Common questions of law and fact exist as to all Class Members, and predominate over
9 any questions that affect only individual members of the Class. The common questions of law and
10 fact include, but are not limited to:

- 11 a. whether Defendants' practice of transporting to California indigent persons who
12 suffer from mental illnesses requiring ongoing medical care and medication and
13 who are not residents of the destination California city or county constitutes a
14 violation by Defendants of Nevada Revised Statutes section 428.010,
15 b. whether Defendants' practice of transporting to California indigent persons who
16 suffer from mental illnesses requiring ongoing medical care and medication and
17 who are not residents of the destination California city or county constitutes a
18 misappropriation by Defendants of the public resources of the destination
19 California cities and counties intended by the cities and counties for the care and
20 support of their indigent populations;
21 c. whether, as a result of their practice of transporting to California indigent
22 persons who suffer from mental illnesses requiring ongoing medical care and
23 medication and who are not residents of the destination California city or
24 county, Defendants have unjustly benefitted themselves at the expense of
25 Plaintiff San Francisco and the other California cities and counties to which
26 Defendants have transported such patients.

27 //

28

1 TYPICALITY

2 43. The claims of Plaintiff are typical of the claims of all members of the Class because all
3 members of the Class sustained similar injuries and damages arising out of Defendants' conduct in
4 transporting patients discharged from Defendants' mental health facilities to Class Members'
5 jurisdictions, resulting in Class Members incurring expenses in providing medical care, shelter or other
6 basic necessities to such patients, and in threats to the well-being of residents of the Class Members
7 jurisdictions as a result of Defendants' transportation of such patients in a manner that jeopardized the
8 patients' mental and physical health.

9 ADEQUACY OF REPRESENTATION

10 44. Plaintiff is an adequate representative of the Class as defined. Plaintiff is both a city
11 and a county, and as such is subject to the same burdens of providing health care, shelter and basic
12 necessities to the indigent within its jurisdiction as are members of the Class, and stands in the same
13 position as do Class members with respect to its interest in protecting the well-being of its residents
14 from harm. Plaintiff therefore will fairly protect the interests of the members of the Class, has no
15 interests antagonistic to the members of the Class, and will vigorously pursue this suit via attorneys
16 who are competent, skilled, and experienced in litigation matters of this type. Class counsel is
17 competent and experienced in litigating class actions.

18 SUPERIORITY

19 45. The nature of this action and the nature of laws available to Plaintiff make the use of
20 the class action format a particularly efficient and appropriate procedure to afford declaratory and
21 injunctive relief to Plaintiff and to the Class Members for the wrongs alleged herein. Individual
22 joinder of all Class Members is impractical. Class action treatment will permit a large number of
23 similarly situated cities and counties to prosecute their common claims in a single forum
24 simultaneously, efficiently and without the unnecessary duplication of effort and expense that
25 numerous individual actions engender.

26 46. Class action treatment is particularly appropriate in this action to avoid the possibility
27 of inconsistent standards to which Defendants might be subject as a result of declaratory or injunctive
28 relief awarded in separate actions by cities or counties other than Plaintiff San Francisco.

FIRST CAUSE OF ACTION
(Common Law Misappropriation)

1
2
3 47. Plaintiff realleges and incorporates by reference Paragraphs 1 through 46 above.

4 48. Plaintiff San Francisco has made a substantial investment of public resources into
5 creating programs to provide health care, shelter and housing, and other basic necessities of life to
6 indigent residents of San Francisco. Plaintiff San Francisco created and funds these health care and
7 safety net programs for its indigent population in part to satisfy its statutory obligations under federal
8 and state law.

9 49. Defendants and each of them have misappropriated the public resources of San
10 Francisco's program for health care and other support for its indigent residents by transporting to San
11 Francisco indigent patients discharged from Nevada state mental health facilities who were not
12 residents of San Francisco at the time of their discharge and who were not sent to family members or a
13 medical facility in San Francisco which was able and willing to provide care and support for the
14 patients. A substantial number of the bused patients were residents of the State of Nevada at the time
15 that Defendants transported them to San Francisco.

16 50. Defendants and each of them have not provided any compensation to Plaintiff San
17 Francisco for the public resources Defendants appropriated for the bused patients.

18 51. San Francisco has been harmed as a result of Defendants' actions in that it has had to
19 expend additional resources to provide medical care, shelter and other basic necessities to the indigent
20 population in San Francisco, to the detriment of San Francisco's funding of these and other programs
21 created and maintained by San Francisco for the benefit of its citizens, both indigent and not.

22 52. Similarly, the members of the Class of California cities and counties to which
23 Defendants transported non-residents have made substantial investments of public resources to create
24 programs to provide medical care, shelter and/or basic necessities to their indigent residents, which
25 resources Defendants wrongfully appropriated to provide medical care, shelter and/or other basic
26 necessities for indigent patients whose care was the responsibility of Defendants. Defendants have
27 provided no compensation to members of the Class for the public resources misappropriated from
28 them. As a result, members of the Class have been harmed by Defendants' actions in that such

1 members have had to expend additional resources to provide medical care, shelter and other basic
2 necessities to their indigent populations, to the detriment of the members' funding of other programs
3 created and maintained by them for the benefit of their citizens, both indigent and not. Absent
4 injunctive relief prohibiting improper transfer of patients to California, Nevada will continue to
5 misappropriate the public resources that San Francisco and members of the Class have developed to
6 provide medical care, shelter and basic necessities to their indigent populations, to the detriment of
7 these programs and of other programs maintained for the benefit of all residents of San Francisco and
8 of members of the Class.

9 SECOND CAUSE OF ACTION

10 (Restitution or Quasi-Contract)

11 53. Plaintiff realleges and incorporates by reference Paragraphs 1 through 52 above.

12 54. Defendants and each of them have benefitted financially as a result of their having
13 transported to San Francisco indigent patients discharged from Nevada state mental health facilities
14 who were not residents of San Francisco at the time of their discharge and who were not sent to family
15 members or a medical facility in San Francisco which was able and willing to provide care and support
16 for the patients. These indigent patients, absent their being bused to San Francisco, would have
17 subsequently sought additional medical care and supportive services from Defendants at publicly-
18 funded hospitals, clinics and supportive care facilities in Nevada. A substantial number of the bused
19 patients were residents of the State of Nevada at the time that Defendants transported them to San
20 Francisco.

21 55. In providing necessary medical care, shelter and basic necessities to the indigent
22 patients who were not San Francisco residents at the time that Defendants transported them there, San
23 Francisco acted in accordance with its statutory obligations under federal and state law to provide to
24 the indigent, bused patients basic necessities which Defendants had an obligation to provide them.

25 56. Similarly Defendants and each of them have avoided costs and benefitted financially as
26 a result of their having transported to members of the Class of California cities and counties indigent
27 patients discharged from Nevada state mental health facilities who were not residents of the
28 destination California city or county at the time of their discharge and who were not sent to family

1 members or a medical facility at the destination which was able and willing to provide care and
2 support for the patients. These indigent patients, absent their being bused to California, would have
3 subsequently sought additional medical care and supportive services from Defendants at publicly-
4 funded hospitals, clinics and supportive care facilities.

5 57. In providing necessary medical care, shelter and basic necessities to the indigent
6 patients who were not residents of the California cities and counties at the time that Defendants
7 transported them there, the members of the Class acted in accordance with their obligations under
8 federal and state law to provide the indigent, bused patients with basic necessities which Defendants
9 had an obligation to provide them.

10 58. Defendants have thereby unjustly benefitted themselves at the expense of Plaintiff San
11 Francisco and members of the Class of California cities and counties to which Defendants transported
12 indigent patients, and absent injunctive relief will continue to do so to the detriment of San Francisco,
13 members of the Class, and their residents.

14 **THIRD CAUSE OF ACTION**

15 (For Declaratory Relief – Code of Civil Procedure section 1060)

16 59. Plaintiff realleges and incorporates by reference Paragraphs 1 through 58 above.

17 60. Plaintiff San Francisco contends that Defendants' practice of transporting to California
18 indigent persons who suffer from mental illnesses requiring ongoing medical care and medication and
19 who are not residents of the destination California city or county constitutes a misappropriation by
20 Defendants of the public resources of the destination California cities and counties intended by them
21 for the care and support of their indigent populations.

22 61. Plaintiff San Francisco further contends that Nevada law imposes an obligation on
23 Nevada and its subdivisions to "provide care, support and relief to the poor, indigent, incompetent and
24 those incapacitated by age, disease or accident" who are residents. Nevada Revised Statute section
25 428.010.

26 62. Defendants contend that their practice of busing indigent and mentally ill patients to
27 destinations in California of which the patients are not residents is appropriate and in the patients' best
28

1 interests, despite the obligation of Nevada and its subdivisions to provide care, support and relief to
2 such individuals who are residents of Nevada.

3 63. Accordingly, an active controversy has arisen and now exists between San Francisco
4 and Defendants concerning their respective rights, duties, and responsibilities. The controversy is
5 definite and concrete, and touches on the legal relations and obligations of the parties, including the
6 members of the Plaintiff Class.

7 64. San Francisco requests, pursuant to Code of Civil Procedure section 1060, that this
8 Court declare the respective rights and duties of the parties and declare that Defendants' practice of
9 transporting to California indigent persons who suffer from mental illnesses requiring ongoing medical
10 care and medication and who are not residents of the destination California city or county constitutes a
11 violation by Defendants of Nevada Revised Statutes section 428.010, and a misappropriation by
12 Defendants of the public resources of the destination California cities and counties intended by them
13 for the care and support of their indigent populations.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff seeks relief from this Court as follows:

- 16 1. For an order certifying the proposed plaintiff Class under section 382 of the California
17 Code of Civil Procedure;
- 18 2. For an order appointing the City and County of San Francisco as the representative
19 plaintiff of the plaintiff Class, and the City Attorney of San Francisco as class counsel;
- 20 3. For a preliminary injunction and a permanent injunction prohibiting Defendants from
21 continuing to transfer to any California city or county any patient discharged from Defendants'
22 medical facilities unless such patient is a resident of the destination city or county at the time of
23 transfer, or is being sent to responsible family members in the destination city or county who are able
24 and willing to care for the patient, or is being transferred to a medical facility with which prior
25 arrangements have been made by Defendants for the facility's receipt of the patient;
- 26 4. For a preliminary injunction and a permanent injunction prohibiting Defendants from
27 continuing to transfer to any California city or county any patient discharged from Defendants'
- 28

1 medical facilities in a manner that violates state or federal standards governing discharge of patients,
2 or in a manner that jeopardizes the patient's mental or physical well-being;

3 5. For a declaration that that Defendants' practice of transporting to California indigent
4 persons who suffer from mental illnesses requiring ongoing medical care and medication and who are
5 not residents of the destination California city or county constitutes a violation by Defendants of
6 Nevada Revised Statutes section 428.010, and a misappropriation by Defendants of the public
7 resources of the destination California cities and counties intended by them for the care and support of
8 their indigent populations;

9 6. For an award of damages to Plaintiff San Francisco in an amount according to proof;

10 7. For an award of restitution to Plaintiff San Francisco in an amount according to proof;

11 8. For costs of suit;

12 9. For attorneys' fees as provided by law;

13 10. For such other and further relief as the Court may deem just and proper.

14
15 DATED: September 10, 2013

Respectfully submitted,

16 DENNIS J. HERRERA

17 City Attorney

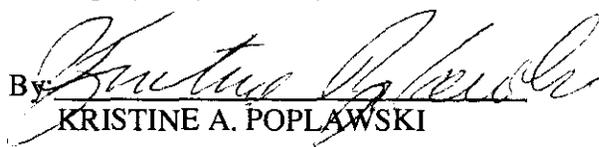
OWEN J. CLEMENTS

18 Chief of Complex and Special Litigation

KRISTINE A. POPLAWSKI

19 ELAINE M. O'NEIL

Deputy City Attorneys

20
21 By 

KRISTINE A. POPLAWSKI

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23 CITY AND COUNTY OF SAN FRANCISCO



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September 9, 2013

Dennis Herrera, City Attorney
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San Francisco, CA 94102-5408

*By first class mail and fax
to (415) 554-4715*

Dear Mr. Herrera:

I am writing in response to your letter dated August 20, 2013, to the Nevada Office of the Attorney General. As you noted in your letter, our office was unable to meet in May of this year. However, the Department of Health and Human Services (DHHS) has responded to your records request of April 22, 2013, through our office, which sought the following information:

1. All public documents that had been provided to the Sacramento Bee.
2. All public documents regarding challenged discharges from DHHS psychiatric facilities.
3. Copies of citations from state or federal regulatory bodies to DHHS psychiatric facilities.
4. Copies of current licenses for DHHS psychiatric facilities.
5. Funding sources for DHHS psychiatric facilities and programs.
6. Any reciprocal agreements between Nevada DHHS and the State of California regarding the "mutual exchange" of MHDS clients.
7. Copies of records of written permission from California officials for the return of MHDS clients from Nevada.
8. Copies of records of approval of the Nevada MHDS Administrator for the transfer of any non-Nevada resident to the State of California.

On April 25, 2013, a responsive letter and documentation were provided to the San Francisco City Attorney's Office. On May 8, 2013, supplemental disclosures were made to your office.

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On May 15, 2013, two letters were received from the San Francisco City Attorney's Office requesting documentation regarding:

1. All public records given to the Sacramento Bee.
2. Copies of all communications with the Sacramento Bee.
3. Documentation regarding policies and practices of SNAMHS and NNAMHS for the transportation of clients from Rawson Neal to out of state locations.
4. Documentation regarding the same policies and practices for NNAMHS.
5. Documentation regarding the same policies and practices for DHHS.
6. Documentation regarding the transportation of clients discharged to out of state locations from Dini Townsend and/or NNAMHS.
7. Documentation regarding transportation of clients by car to out of state locations.
8. Documentation regarding transportation of clients by plane to out of state locations.
9. Documentation detailing funding for items 6, 7 and 8.
10. All records regarding client preference for return or delivery to an out of state location.
11. All records identifying Nevada medical facilities that have discharged clients to out of state locations within the past 5 years.

On May 31, 2013, a responsive letter and documentation were provided to the San Francisco City Attorney's Office.

Therefore, our office has assisted DHHS in ensuring that you received all of the information you requested above with the exception of the identity of patients. The identity of patients was not provided because the Health Insurance Portability and Accountability Act (HIPAA) prohibits the disclosure of this information. We believe that the records that DHHS provided demonstrate that the policies are appropriate and that proper discharges were made.

In your letter, you make a demand for approximately \$500,000 but you fail to provide details to support your claim including how you identified the twenty patients. Moreover, you do not provide sufficient explanation of your legal theory or standing for the initiation of a lawsuit by you on behalf of the "affected California cities and counties." Unless you identify the jurisdiction and authority of your government office to represent individuals, apart from the City of San Francisco, in a class action lawsuit and provide more information on your theory of recovery, my office is unable to evaluate your claim.

The press has recently reported that an individual with mental health problems was sent to a Nevada hospital from California and DHHS reports that many of their clients claim residency in California. In the analysis released in June 2013, by DHHS of the admissions or discharges from Rawson-Neal Hospital during the period July, 1, 2008, through March 31, 2013, it was determined that approximately 8 percent (2,402 of over 31,000 admissions or discharges)

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had records (Medicaid cards, drivers licenses, patient's statement, etc.) indicating the patient being served had primary residency other than Nevada. Approximately 771 of these admissions or discharges appeared to be residents of California. Of the 771 discharges to California, approximately 42 percent (326) of these patients received services in the Psychiatric Observation Unit (POU), with an average length of stay of two days. However, the remaining 58 percent (445) of the total 771 patients were admissions or discharges to or from the inpatient hospital, with an average length of stay of 18 days. Therefore, it could be argued that using the average cost of services in the Rawson-Neal Hospital of \$653 per day, the taxpayers of the State of Nevada have subsidized the State of California over \$6.2 million during this same period.

Therefore, since both California and Nevada are financially impacted by the travel of individuals with mental illness between our states, we believe that government officials would benefit from better communication and collaboration on protocols to address the needs of these patients rather than trying to allocate financial responsibility through litigation. DHHS believes that the proposed discharge protocols included with your letter are very similar to the protocols currently in place within Nevada that we have provided to you. My office will continue to encourage DHHS to work with mental health officials in California on these issues.

Sincerely,



Linda C. Anderson
Chief Deputy Attorney General
Department of Health and Human Services