

1 CABLE LAW OFFICES
2 KEITH D. CABLE (Bar No. 170055)
3 101 Parkshore Drive, Suite 100
4 Folsom, CA 95630
5 Telephone: (916) 608-7995
6 Facsimile: (916) 984-5775

7 DE LA O, MARKO, MAGOLNICK & LEYTON
8 DANIEL L. LEYTON (FL Bar No. 0061824)
9 CHARLES D. FERGUSON (FL Bar No. 0741531)
10 3001 S. W. 3rd Avenue
11 Miami, FL 33129
12 Telephone: (305) 285-2000
13 Facsimile: (305) 285-5555

14 Attorneys for Plaintiffs
15 EDWARD L. KEMPER
16 CONNIE J. ARNOLD

17 DOWNEY BRAND LLP
18 DANIEL J. MCVEIGH (Bar No. 77410)
19 ELIZABETH B. STALLARD (Bar No. 221445)
20 621 Capitol Mall, Eighteenth Floor
21 Sacramento, CA 95814
22 Telephone: (916) 444-1000
23 Facsimile: (916) 444-2100

24 Attorneys for Defendant
25 CATHOLIC HEALTHCARE WEST

26 UNITED STATES DISTRICT COURT
27 EASTERN DISTRICT OF CALIFORNIA

28 EDWARD L. KEMPER and CONNIE J.
ARNOLD, for themselves and all others
similarly situated,

Plaintiffs,

v.

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

Defendants.

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

**FACILITY CONSENT DECREE –
METHODIST HOSPITAL OF
SACRAMENTO**

Date: April 25, 2011
Time: 10:00 a.m.
Court Room: 4

Before The Honorable Lawrence K. Karlton

///

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 Methodist Hospital of Sacramento.

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 Methodist Hospital of Sacramento facility in order to evaluate
5 physical, communication, and operational accommodations for persons with disabilities. This
6 Facility Consent Decree incorporates the Facility Modification Plan created as a result of that
7 Facility Site Inspection.

8 The Parties now, therefore, in accordance with paragraph 14.4 of the Consent Decree, and in
9 consideration of the mutual covenants and undertakings contained herein, and other good and
10 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 Methodist Hospital of Sacramento.

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) Methodist Hospital of Sacramento, 7500 Hospital Drive, Sacramento, CA 95823.

13 (2) Outpatient Surgery, 7601 Hospital Drive, Suite 103, Sacramento, CA 95823.

14 (3) Bruceville Terrace, 8151 Bruceville Road, Sacramento, CA 95823.

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

28 ///

1 4. **Nonadmission/Nondetermination.**

2 4.1. This document constitutes a settlement agreement pursuant to Federal Rule of
3 Evidence 408. Entering into this Facility Consent Decree does not constitute an
4 admission by the CHW Group, express or implied, that the CHW Group has in any way
5 violated any Disability Laws. This Facility Consent Decree, does not contain, and will
6 not be interpreted or construed as containing, any such admission.

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

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

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

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

24 6.2 If any conflicts exist or are perceived between the Consent Decree, this Facility
25 Consent Decree, and the Facility Modification Plan incorporated herein, the Facility
26 Modification Plan will govern only with regard to the physical, communications and
27 operational modifications and alterations to be implemented by CHW respecting Methodist
28 Hospital of Sacramento. For all other such conflicts between the Consent Decree, this

1 Facility Consent Decree, and the Facility Modification Plan incorporated herein, the Consent
2 Decree will govern the Facility Consent Decree, and both in conjunction (as so construed)
3 will govern the Facility Modification Plan.

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

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

16 **INJUNCTIVE RELIEF**

17 9. **Medical Equipment Review.** In accordance with Paragraph 10.4 of the Consent Decree,
18 Methodist Hospital of Sacramento Facility’s Medical Equipment Report will be finalized
19 within twenty four (24) months of the finalization of the Medical Equipment Questionnaire,
20 and filed with the Court.

21 10. **Auxiliary Aids and Services and Service Animal Policies.** CHW will ensure that
22 appropriate policies regarding Auxiliary Aids and Services and regarding Service Animals
23 are implemented at the Methodist Hospital of Sacramento Facility. CHW’s current
24 Auxiliary Aids and Services policies have been in place since 2008 and are filed with the
25 Office of Civil Rights. These policies have been provided to Class Counsel for review and
26 approval. CHW is in the process of developing a system-wide Service Animals Policy,
27 which will also be provided to Class Counsel for review and approval. CHW’s Auxiliary
28 Aids and Services and Service Animals policies will be filed with the Court within 180 days

1 of the approval of this Facility Consent Decree.

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

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

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

15 11.3. A Party may, at any time, propose amendments to this Facility Consent Decree
16 if, in the view of the Party proposing the amendment, an amendment is necessary or
17 appropriate to accommodate changes or developments (as identified in paragraph 15.2 of
18 the Consent Decree), or to further the objectives of this Facility Consent Decree.
19 Unresolved differences concerning such proposals for resolution may be submitted to
20 ADR as set forth in paragraph 20 of the Consent Decree. Any recommended resolution
21 of differences obtained pursuant to the process set forth in paragraph 20 of the Consent
22 Decree may also be appealed by any Party to the Court pursuant to the process set forth
23 in paragraph 20 of the Consent Decree. Amendments to this Facility Consent Decree
24 shall be submitted to the Court for hearing and, if appropriate, approval in keeping with
25 the process employed for approval of Facility Consent Decrees.

26 **12. Post Compliance Inspection.** In accordance with the Consent Decree, CHW will notify
27 Class Counsel in writing within ninety (90) days after this Facility becomes a Settlement
28 Corrected Facility. Following this notification, the Parties will cooperate to arrange for a

1 Post Compliance Inspection of this Settlement Corrected Facility on reasonable notice and at
2 a mutually convenient time. The Post Compliance Inspection will be scheduled so that the
3 inspection will occur within ninety (90) days of CHW's notice.

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

5 13.1. Within sixty (60) days of conducting the Post Compliance Inspection, Class
6 Counsel will notify CHW in writing if Plaintiffs assert Noncompliance with this Facility
7 Consent Decree. The written notice shall identify with particularity the basis for any
8 alleged Noncompliance. If no written Notice of Noncompliance is received by CHW
9 within 90 days after the Post Compliance Inspection is completed, CHW's modifications
10 will be deemed accepted by Class Counsel so that CHW may seek court approval of this
11 Facility in accordance with paragraph 19.1 of the Consent Decree.

12 13.2. Within sixty (60) days of receipt of the written notice described in paragraph
13 13.1, CHW will respond in writing to Class Counsel. The Parties will then meet and
14 confer over any alleged noncompliance within forty-five (45) days after Class Counsel
15 receives CHW's response.

16 13.3. Within thirty (30) days after the meeting described in paragraph 13.2, any
17 remaining unresolved differences as to this Facility will be referred to the Court or, if the
18 Parties so agree, resolved by ADR as set forth in paragraph 20 of the Consent Decree.

19 13.4. The Court or a Special Master is entitled to provide appropriate relief upon a
20 showing of Noncompliance as to this Facility Consent Decree. Relief may include, but
21 is not limited to, enforcement of this Facility Consent Decree, and extension of the
22 Consent Decree for such period as may be necessary to remedy Noncompliance.

23 13.5. Any Party may petition the Court for relief from the provisions of this Facility
24 Consent Decree upon a showing of supervening obligations or events that are
25 unforeseeable or beyond the control of the Parties, including, but not limited to: changes
26 in state or local building codes or ordinances; other legal or administrative requirements;
27 problems in the financial credit or bond financing markets or the occurrence of natural
28

1 DATED: January 12, 2011

By: /s/ Edward L. Kemper
EDWARD L. KEMPER
Named Plaintiff

2
3
4 DATED: January 11, 2011

By: /s/ Connie J. Arnold
CONNIE J. ARNOLD
Named Plaintiff

5
6
7 DATED: September 22, 2010

By: /s/ Jeff Land
JEFF LAND
Vice-President, Corporate Real Estate
CATHOLIC HEALTHCARE WEST

8
9 DATED: January 12, 2011

DE LA O, MARKO, MAGOLNICK & LEYTON

By: /s/ Charles D. Ferguson
DANIEL L. LEYTON
CHARLES D. FERGUSON
Attorneys for Named Plaintiffs and the Class


10
11
12
13
14 DATED: January 13, 2011

DOWNEY BRAND LLP

By: /s/ Elizabeth B. Stallard
DANIEL J. MCVEIGH
ELIZABETH B. STALLARD
Attorneys for Defendant
CATHOLIC HEALTHCARE WEST

15
16
17
18
19
20 **IT IS SO ORDERED.**

21
22
23
24 DATED: **April 27, 2011**

25 
LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT