

1 DAVID CHIU, State Bar #189542
 City Attorney
 2 JESSE C. SMITH, State Bar #122517
 Chief Assistant City Attorney
 3 YVONNE R. MERÉ, State Bar #173594
 Chief Deputy City Attorney
 4 SARA J. EISENBERG, State Bar #269303
 Chief of Complex and Affirmative Litigation
 5 WAYNE SNODGRASS, State Bar #148137
 Chief of Government Litigation
 6 TARA M. STEELEY, State Bar #231775
 Chief of Appellate Litigation
 7 HENRY L. LIFTON, State Bar #319005
 Deputy City Attorney
 8 City Hall, Room 234
 1 Dr. Carlton B. Goodlett Place
 9 San Francisco, California 94102-4682
 Telephone: (415) 554-4655
 10 Facsimile: (415) 554-4699
 E-Mail: Tara.Steeley@sfcityatty.org

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 12 Attorneys for Plaintiff
 CITY AND COUNTY OF SAN FRANCISCO

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 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 CITY AND COUNTY OF SAN
 18 FRANCISCO,

19 Plaintiff,

20 vs.

21 UNITED STATES DEPARTMENT OF
 22 HEALTH AND HUMAN SERVICES;
 XAVIER BECERRA, Secretary of the
 23 Department of Health and Human Services;
 and DOES 1-25,

24 Defendants.

Case No. 3:22-CV-4500

**COMPLAINT FOR DECLARATORY AND
 INJUNCTIVE RELIEF**

Trial Date: None set

INTRODUCTION

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2 1. Throughout its 150-year history, Laguna Honda Hospital and Rehabilitation Center
3 (“Laguna Honda”) has provided skilled nursing and rehabilitation services to San Francisco’s most
4 vulnerable residents, including seniors, adults with disabilities, and others who cannot care for
5 themselves. For many, Laguna Honda provides the last safety net for patients who must, or wish to,
6 receive health care in the Bay Area near friends, family, and their communities. Because of its
7 commitment to serve the underserved, Laguna Honda often provides a last resort for patients who have
8 nowhere else to go, and serves a critical need for San Francisco.

9 2. Laguna Honda relies on federal and state funding through the Medicare and Medicaid
10 programs. Ninety-eight percent of Laguna Honda’s patients are Medicare or Medicaid beneficiaries.
11 They have no other means of financial support. And because federal funds makeup sixty-seven
12 percent of Laguna Honda’s operating budget, the facility’s participation in both programs is necessary
13 to pay for the critical care the facility provides to San Francisco’s underserved. Laguna Honda cannot
14 stay open without these essential funds.

15 3. Laguna Honda has recently faced challenges. After distinguishing itself among skilled
16 nursing facilities nationwide through its successful response to the COVID-19 pandemic, the
17 California Department of Public Health (“CDPH”) recently cited Laguna Honda for deficiencies in
18 care. Those deficiencies related to preventing contraband, such as cigarette lighters and drug
19 paraphernalia, on campus, infection prevention and control, as well as two missed doses of a
20 medication. Laguna Honda takes these deficiencies seriously and has worked hard to correct them.
21 Although Defendants terminated Laguna Honda’s Medicare and Medicaid provider agreements as a
22 result of the deficiencies, Laguna Honda is on its way to correcting all deficiencies and is confident
23 that it will submit an application allowing it to be recertified as a Medicare and Medicaid provider by
24 the end of the year.

25 4. But that recertification cannot come in time for Laguna Honda and especially its
26 patients and their loved ones in the community. According to Defendants, Laguna Honda must
27 transfer or discharge all of its remaining 610 patients—a daunting number—close its doors, and stop
28 providing critical services for San Francisco’s most vulnerable residents. All in all, what is now a little

1 over a month, by September 13, 2022. Defendants are well aware that it is impossible for Laguna
2 Honda to comply with the unrealistic September 13 deadline that they imposed. Simply put, there are
3 not enough skilled nursing beds or facilities in the San Francisco Bay Area, in California, or in nearby
4 states to care for Laguna Honda's 610 patients, many of whom have a combination of behavioral
5 health challenges, substance use disorders, and other complex social and medical needs. And the
6 impossibility of the September 13 deadline is only exacerbated by Defendants' recent decision to
7 temporarily pause all discharges and transfers from Laguna Honda. Though San Francisco welcomes
8 the pause so that Laguna Honda can do the work to bring the facility back into compliance without
9 forcing patients out of the hospital, the pause makes it even less reasonable to impose a September 13
10 deadline.

11 5. Likewise, Defendants have determined that they will cease the federal funding that is
12 essential for Laguna Honda's operations on September 13, 2022. Laguna Honda cannot operate
13 without federal funding, and it cannot get recertified before that date. Further, Laguna Honda should
14 not need to be recertified at all. Laguna Honda has filed three successive administrative appeals
15 challenging the Centers for Medicare & Medicaid Services' ("CMS's") termination of the facility and
16 the statement of deficiencies that led to CMS's decision to terminate Laguna Honda as a Medicare and
17 Medicaid provider. If Laguna Honda is successful in its administrative appeals, Laguna Honda will
18 obtain an order finding that CMS improperly terminated Laguna Honda's Medicare and Medicaid
19 provider agreements, and restoring Laguna Honda as a Medicare and Medicaid provider. But that
20 administrative appeal will not be decided before September 13. Thus, Laguna Honda "might well be
21 forced to close its doors, and the residents might have to be transferred during the very period when
22 the hearing and post-hearing briefing . . . are taking place." *International Long Term Care, Inc. v.*
23 *Shalala*, 947 F. Supp. 15, 18 (D.D.C 1996). Defendants' arbitrary September 13 date renders illusory
24 the due process protections that Laguna Honda should receive through the administrative appeals
25 process. And, even though patients cannot be relocated at this time because of the pause in transfers
26 and discharges, Defendants remain unmovable on their arbitrary September 13 cutoff date for federal
27 funding. Come September, Laguna Honda faces the very real prospect of having to provide services

1 to over 600 Medicaid and Medicare patients, without the funding and resources necessary to provide
2 quality care.

3 6. Defendants created this impossible situation knowing that Laguna Honda would have
4 no choice but to agree to their unreasonable demands. When Defendants terminated Laguna Honda's
5 Medicare and Medicaid provider agreements on April 14, 2022, the San Francisco Department of
6 Public Health ("SFDPH") was compelled to prepare a closure plan to continue federal funding. In that
7 plan, SFDPH proposed a termination and recertification process that would not require relocating
8 existing patients while SFDPH pursued Laguna Honda's recertification. Defendants refused. SFDPH
9 then asked for 18 months to ensure that patients were transferred or discharged in a safe and
10 appropriate manner. Defendants refused. SFDPH also asked to be allowed to phase transfers so the
11 most vulnerable patients would be transferred last. Again, Defendants refused. Instead, Defendants
12 stuck with their unreasonable and impossible-to-satisfy demand that Laguna Honda transfer all patient
13 populations simultaneously, including those in end of life or palliative care, and all by their
14 unreasonable September 13 deadline to transfer all patients and close the facility. With no other
15 option, SFDPH had no choice but to agree to that deadline.

16 7. Defendants' unreasonable conduct has given Laguna Honda and its patients a Hobson's
17 choice. According to Defendants, Laguna Honda cannot stay open and it cannot close before
18 transferring or discharging its patients. Laguna Honda cannot transfer or discharge patients, but it
19 must transfer or discharge hundreds of patients by September 13. Laguna Honda will not receive
20 federal funding after September 13, but it cannot operate without federal funding. Laguna Honda has
21 availed itself of the right to appeal its termination as a Medicare and Medicaid provider, but it must
22 close its doors and transfer all patients before that appeal can even be decided. SFDPH has repeatedly
23 sought guidance from Defendants to resolve these conflicts, including in a July 15, 2022 letter from
24 San Francisco's City Attorney that raised many of the same concerns that are the subject of this
25 complaint, only to be ignored or rebuffed at every turn.

26 8. Because of Defendants' arbitrary and capricious conduct, San Francisco now has no
27 choice but to seek declaratory and injunctive relief to stop the harm Defendants have caused to the

28 City and County of San Francisco ("San Francisco" or "City"). Laguna Honda and its patients

JURISDICTION AND VENUE

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2 9. The Court has jurisdiction under 5 U.S.C. Sections 703–706 (Administrative Procedure
3 Act), 28 U.S.C. Sections 1331 (action arising under the laws of the United States) and 1346 (United
4 States as a defendant). This Court has further remedial authority under the Declaratory Judgment Act,
5 28 U.S.C. Sections 2201(a) and 2202 *et seq.*

6 10. Defendants’ actions constitute final agency action and therefore are judicially
7 reviewable within the meaning of the Administrative Procedure Act (“APA”). 5 U.S.C. §§ 704, 706.

8 11. Venue properly lies within the Northern District of California because Plaintiff,
9 San Francisco, resides in this judicial district and a substantial part of the events or omissions giving
10 rise to this action occurred in this District. 28 U.S.C. § 1391(e)(1).

DIVISIONAL ASSIGNMENT

11
12 12. Assignment to the San Francisco or Oakland Division of this District is proper under
13 Civil Local Rule 3-2(c)–(d) because a substantial part of the acts or omissions that give rise to this
14 action occurred in the City and County of San Francisco.

PARTIES

15
16 13. Plaintiff City and County of San Francisco is a municipal corporation organized and
17 existing under and by virtue of the laws of the State of California, and is a charter city and county.

18 14. Defendant United States Department of Health and Human Services (“HHS”) is an
19 agency of the United States government and bears responsibility, in whole or in part, for the acts
20 complained of in this Complaint. CMS is part of HHS.

21 15. Defendant Xavier Becerra is the Secretary of HHS. He is sued in his official capacity.
22 Secretary Becerra is responsible for implementing and fulfilling HHS’s duties under the United States
23 Constitution and the APA.

24 16. Does 1 through 25 are sued under fictitious names. Plaintiff San Francisco does not
25 now know the true names or capacities of said Defendants, who were responsible for the alleged
26 violations, but pray that the same may be alleged in this Complaint when ascertained.

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