

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Settlement Agreement") is made and entered into this ___ day of _____, 2010, by and between:

"Plaintiffs/Releasers"	Elizabeth Nicks, a minor, by and through her Guardian ad Litem, Gerry Nicks, Gerry Nicks individually and Laddie Nicks individually
"Defendant/Releasee"	County of Los Angeles and any and all of its employees, agents or representatives.

Recitals

A. Releasers filed a complaint against County of Los Angeles and its employees ("Defendant") in the Superior Court, County of Los Angeles, State of California, Court Action BC398837, ("the Complaint"), which Complaint arose out of certain alleged negligent acts or omissions by Defendant. In the Complaint, Elizabeth Nicks, a minor, by and through her Guardian Ad Litem, was admitted on August 30, 2007 to Harbor UCLA Medical Center for a head trauma she suffered as a result of a fall during a cheerleading routine. Elizabeth Nicks was discharged from Harbor UCLA Medical Center on September 4, 2007. On September 5, 2007, Elizabeth Nicks returned to Harbor UCLA Medical Center and remained there until October 16, 2007. In the Complaint, Releasers sought to recover monetary damages for physical and personal injuries sustained during Elizabeth Nicks' August 30, 2007 to September 4, 2007 hospitalization at Harbor UCLA Medical Center.

B. The parties desire to enter into this Settlement Agreement in order to provide for certain payments in full settlement and discharge of all claims which have, or might be made, by reason of the incident described in Recital A above, upon the terms and conditions set forth below.

Agreement

The parties agree as follows:

1.0 Release and Discharge.

1.1 In consideration of the payments set forth in Section 2, Releasers hereby completely release and forever discharge the County of Los Angeles and any and all of its employees, agents, and representatives from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Releasers now have, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the subject of the Complaint (and all related pleadings) including, without limitation, any and all known or unknown claims for bodily and personal injuries to Releasers, or any future wrongful death claim of Elizabeth Nicks' representatives or heirs, which have resulted or may result from the alleged acts or omissions of the Defendant.

1.2 This release and discharge shall also apply to Defendant's past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees,

subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.3 This release, on the part of the Releasors, shall be a fully binding and complete settlement among the Releasors, the Defendant and their heirs, assigns and successors. The parties acknowledge that this Settlement Agreement and Release is contingent upon the court's approval of the Minor's Compromise.

1.4 The Releasors acknowledge and agree that the release and discharge set forth above is a general release. Releasors expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which the Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Releasors' decision to enter into this Settlement Agreement. The Releasors further agree that Releasors have accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Releasors assume the risk that the facts or law may be other than Releasors believe. It is understood and agreed to by the parties that this settlement is a compromise of a disputed claim, and the payments are not to be construed as an admission of liability on the part of the Defendant, by whom liability is expressly denied.

1.5 The Releasors hereby waive any and all rights based upon the provisions of *California Civil Code* Section 1542 that reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known to him or her, must have materially affected his or her settlement with the debtor."

2.0 Payments

In consideration of the release set forth above, Defendant, a self-insured entity, agrees to pay to the individual(s) named below ("Payee(s)") the sums outlined in this Section 2 below:

2.1 Payments due at the time of settlement as follows:

Up Front Cash: \$2,450,000.00 to be disbursed in compliance with the Order Approving Minor's Compromise and the balance of \$3,050,000.00 will be utilized to provide the following benefits, under 2.2, for a total settlement of \$5,500,000.00

2.1(a) Releasors, Gerry Nicks and Laddie Nicks, to receive \$250,000.00 for future wrongful death non-economic damages and an additional \$150,000.00 for economic damages in association with the future wrongful death claim and as compensation for extraordinary nursing services provided to minor Releasor, Elizabeth Nicks, and hereby completely release and forever discharge Defendant from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Releasors now

have, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the subject of the Complaint (and all related pleadings) including, without limitation, any and all known or unknown claims for bodily and personal injuries to Releasers, or any future wrongful death claim of Elizabeth Nicks representatives or heirs, which have resulted or may result from the alleged acts or omissions of the Defendant.

2.2 Periodic payments made according to the schedule as follows (the "Periodic Payments"):

Periodic payments payable to
Elizabeth Nicks Special Needs Trust ("Payee")

The following benefits will be provided by Metropolitan Life Insurance Company.

Lifetime Income:

Commencing 11/01/2010, \$4,061.76 is payable every month for the life of Elizabeth Nicks with 40 years guaranteed.

The following benefits will be provided by John Hancock Life Insurance Company (U.S.A.).

Lifetime Income:

Commencing 11/01/2010, \$4,268.83 is payable every month for the life of Elizabeth Nicks with 40 years guaranteed.

The following benefits will be provided by New York Life Insurance Company.

Lifetime Income:

Commencing 11/01/2010, \$3,907.20 is payable every month for the life of Elizabeth Nicks with 40 years guaranteed.

All sums set forth herein constitute damages on account of personal physical injuries or physical sickness, within the meaning of Section 104(a)(2) of the *Internal Revenue Code* of 1986, as amended.

2.3 In addition, Defendant agrees to assume the Medi-Cal lien in the amount of \$50,205.89.

3.0 **Releasers' Right to Payments**

Releasers acknowledge that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the Releasers or any Payee; nor shall the Releasers or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

4.0 Releasors' Beneficiary

Any payments to be made after the death of Elizabeth Nicks pursuant to the terms of this Settlement Agreement shall be made to her estate and the representative of the estate shall be designated in writing by Releasors to the Defendant or the Defendant's Assignees. No such designation, or any revocation thereof, shall be effective unless it is in writing and delivered to the Defendant or the Defendant's Assignees. The designation must be in a form acceptable to the Defendant or the Defendant's Assignees before such payments are made.

5.0 Consent to Qualified Assignment

5.1 Releasors acknowledge and agrees that the Defendant may make three "qualified assignments", within the meaning of Section 130(c) of the *Internal Revenue Code* of 1986, as amended, of the Defendant's liability to make the Periodic Payments set forth in Section 2.2 to MetLife Tower Resources Group, Inc., John Hancock Assignment Company and New York Life Insurance and Annuity Corporation, ("the Assignees"). The Assignees' obligations for payments of the Periodic Payments shall be no greater than that of Defendant (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

5.2 Any such Assignments, if made, shall be accepted by the Releasors without right of rejection and shall completely release and discharge the Defendant from the Periodic Payments obligation assigned to the Assignees. The Releasors recognize that, in the event of such an assignment, the Assignees shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the Defendant shall thereupon become final, irrevocable and absolute.

6.0 Right to Purchase an Annuity

The Defendant itself or through its Assignees, reserves the right to fund the liability to make the Periodic Payments in Section 2.2 through the purchase of annuity policies from Metropolitan Life Insurance Company, John Hancock Life Insurance Company (U.S.A.) and New York Life Insurance Company. The Assignees shall be the sole owners of the annuity policies and shall have all rights of ownership. The Defendant or the Assignees may have Metropolitan Life Insurance Company, John Hancock Life Insurance Company (U.S.A.) and New York Life Insurance Company mail payments directly to the Payee(s). The Releasors shall be responsible for maintaining a current mailing address for Payee(s) with Metropolitan Life Insurance Company, John Hancock Life Insurance Company (U.S.A.) and New York Life Insurance Company.

7.0 Discharge of Obligation

The obligation of the Defendant and/or Assignees to make each Periodic Payment shall be discharged upon the mailing of a valid check in the amount of such payment to the designated address of the Payee(s) named in Section 2 of this Settlement Agreement. However, if a payment is lost, the Payor, upon notification of such lost check, transfer, or payment, shall reissue said check, transfer, or payment, subject to verification by "stop payment", that the Payee had not negotiated said check, transfer, or payment.

8.0 Attorney's Fees

Each party hereto shall bear all attorney's fees and costs arising from the actions of its own counsel in connection with this Settlement Agreement, the matters and documents referred to herein, and all related matters.

9.0 Delivery of Dismissal with Prejudice

Concurrently with the execution of this Settlement Agreement, counsel for the Releasors shall deliver to counsel for the Defendant an executed Dismissal with Prejudice of the Complaint. Releasors hereby authorizes counsel for the Defendant to file said Dismissal with the Court and enter it as a matter of record.

10.0 Novation

In recognition of the obligation of the Defendants specified above and the Release of all claims by Claimant, the parties further agree as follows:

It is agreed that the Defendant will assign the obligation to make the specified periodic payments to the Assignees. The obligation of the Defendant to make periodic payments shall, by this novation, become the sole and exclusive duty of the Assignees, and the terms and conditions of payments shall remain unchanged in lieu of the substitution of the Assignees for the obligations of the Defendant.

Execution of the assignment will absolutely and completely discharge the Defendant from any further payment obligation. If either the Assignees or the issuers of the annuity contract purchased by Assignees to make the payment obligation specified above, fail to make payments or become insolvent or bankrupt, Releasors or Releasors' heirs or representatives' sole remedy to enforce payment obligations assigned shall be against either Assignees, guarantor and/or other responsible party other than the Defendant. The Defendant will have absolutely no obligations to Releasors under those circumstances.

11.0 Representation of Comprehension of Document

In entering into this Settlement Agreement the Releasors represent that Releasors have relied upon the advice of their attorneys, who are the attorneys of their own choice, concerning the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to Releasors by their attorneys; and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by Releasors.

12.0 Warranty of Capacity to Execute Agreement

Releasors represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that Releasors have the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; and that Releasors have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

13.0 Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.

For the protection of the undersigned Releasors, California law requires the following to appear on this form:

"IT IS UNLAWFUL TO (A) PRESENT OR CAUSE TO BE PRESENTED ANY FALSE OR FRAUDULENT CLAIM FOR THE PAYMENT OF A LOSS UNDER A CONTRACT OF INSURANCE AND (B) PREPARE, MAKE OR SUBSCRIBE ANY WRITING WITH INTENT TO PRESENT OR USE THE SAME, AND TO ALLOW IT TO BE PRESENTED OR USED IN SUPPORT OF ANY SUCH CLAIM. ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS PUNISHABLE BY IMPRISONMENT IN THE STATE PRISON OR BY FINE NOT EXCEEDING FIFTY THOUSAND DOLLARS (\$50,000) OR BOTH."

14.0 Additional Documents

All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

15.0 Entire Agreement and Successors in Interest

This Settlement Agreement contains the entire agreement between the Releasors and the Defendant with regard to the matters set forth in it and shall be binding upon and inure to the benefits of the executors, administrators, personal representatives, heirs, successors and assigns of each.

16.0 Liens and Other Claims

Releasors hereby agree and acknowledge that they are responsible for any and all liens which exist, may exist, or in the future may exist, on any of the proceeds of the settlement. Releasors warrants that they has advised Defendants its attorneys or agents of any liens of which Releasors are aware, and that in the event any claim is made against Defendants, or any subsumed health care entity or provider of Defendants by any third party on account of a lien which exists, may exist, or in the future may exist, Releasors agree to hold harmless, defend and indemnify, if requested, Defendants, including the payment of reasonable attorney's fees, for any and all such claims which Defendants may be forced to defend. This paragraph applies to, but is not limited to, liens asserted by health care providers, medical insurance carries, or governmental entities which might have any interest in or claim against the proceeds of this settlement.

17.0 Medicare

It is not the purpose of this settlement Agreement to shift responsibility of medical care in this matter to the Medicare program. Instead, this settlement is intended to resolve a dispute between the

Releasors and Defendant.

- a) **Conditional Payments.** Releasors have been advised and fully understands that conditional payment information (any benefits paid by Medicare up to date of settlement), if any, are the responsibility of the Releasors and must be satisfied out of these settlement proceeds.
- b) **Future Medicals Not Set Aside.** The parties have appropriately considered Medicare's interest and have concluded that no funds should be set aside for the Releasors' future medical care based on (1) the disputed nature of the claim, and (2) the lack of anticipated medical care. Releasor agrees to indemnify, defend and hold Defendant harmless from any action by Medicare seeking payment for future medical expenses for the Releasors.
- c) While it is impossible to accurately predict the need for future treatment, this settlement is based upon a good faith determination of the parties in order to resolve a questionable claim. The parties have attempted to resolve this matter in compliance with both state and federal law and it is believed that the settlement terms adequately consider Medicare's interest and do not reflect any attempt to shift responsibility of treatment to Medicare pursuant to 42 U.S.C. Sec. 1395y(b). The parties acknowledge and understand that any present or future action or decision by CMS or Medicare on this settlement to Medicare or Medicare payments will not render this release void or ineffective, or in any way affect the finality of this liability settlement.
- d) **Hold Harmless.** Releasor agrees to indemnify, defend and hold Releasees harmless from any action by Medicare seeking payment of past, current, or future medical expenses for the Releasor. Releasor shall further hold Defendant harmless from any and all adverse consequences in the event this settlement results in the loss of right to Social Security and/or Medicare benefits in the absence of this Settlement Agreement.

18.0 Proof of Living Affidavit

All periodic payments to be paid by Metropolitan Life Insurance Company, John Hancock Life Insurance Company (U.S.A.) and New York Life Insurance Company shall be payable to the Elizabeth Nicks Special Needs Trust. By signing below, Releasors, Releasors' Guardian ad Litem, or Releasors' Trustee of the Special Needs Trust agree to complete annually a Proof of Living affidavit that requires a

notarized statement by a physician acknowledging the annuitant is still living. These terms are understood and hereby acknowledged.

Releasor: Elizabeth Nicks, a minor, by and through her Guardian ad Litem, Gerry Nicks

By: Gerry Nicks
Gerry Nicks

Date: 8/4/2010

19.0 Effectiveness

This Settlement Agreement shall become effective immediately following execution by each of the parties.

Releasor: Elizabeth Nicks, a minor, by and through her Guardian ad Litem, Gerry Nicks

By: Gerry Nicks
Gerry Nicks

Date: 8/4/2010

Releasor: Gerry Nicks, individually

By: Gerry Nicks
Gerry Nicks

Date: 8/4/2010

Releasor: Laddie Nicks, individually

By: Laddie Nicks
Laddie Nicks

Date: 8/4/10

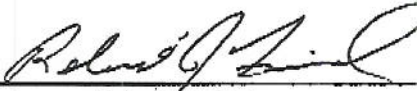
Approved as to form and content:

Releasers' Attorney:

By: 
William M. Karns, Esq.

Date: 8/4/10

Defendant: County of Los Angeles

By: 
Robert J. Frick
Assistant Vice President
Sedgwick, CMS
Authorized Representative

Date: 8/4/10