

Longo/UCSF Settlement Agreement

This Settlement Agreement (hereinafter “Agreement”) is entered into as of the Effective Date, as defined below in Section 2.6, by and between the following parties: August Longo (“Claimant”) and the Regents of the University of California, on behalf of the University of California, San Francisco, and UCSF Medical Center (herein “UCSF”). Claimant and UCSF are at times referred to collectively herein as the “Parties.”

1. Recitals.

WHEREAS, a dispute has arisen between the Parties concerning whether UCSF provides to Claimant and other persons with disabilities legally required access to the premises, patient care facilities, equipment, programs and services of UCSF Medical Center;

WHEREAS, on November 2, 2006, the Parties entered into a Structured Negotiations Agreement and a Tolling Agreement to preserve the Parties’ respective rights during negotiations, to toll the statute of limitations on Claimant’s federal and state law claims, and to provide the opportunity to resolve the dispute without the need for litigation;

WHEREAS, negotiations between the Parties have resulted in the alteration of certain patient toilet rooms in Long Hospital to make them accessible to patients with mobility disabilities;

WHEREAS, the Parties have jointly met with experts regarding removal of architectural barriers at UCSF Medical Center, modification and enhancement of UCSF Medical Center’s policies, procedures and training programs to improve patient care services to persons with disabilities, and installation and use of accessible medical equipment (“AME”); and

WHEREAS, the Parties have a shared goal of enhancing UCSF’s wide ranging program regarding the provision of accessible patient care services to persons with disabilities at UCSF Medical Center, and this Agreement, which among things establishes a framework for the enhancement of policies, procedures, and training programs, the purchase and use of accessible medical equipment,

architectural barrier removal, and ongoing cooperation between UCSF and Claimant, is intended to assist in achieving that goal;

NOW, THEREFORE, in order to avoid the burden and expense of litigation, to agree upon and implement a plan to effectuate the intent of the Parties, and for good and valuable consideration, the receipt of which is hereby acknowledged, including the representations, warranties, and covenants contained in this Agreement, the Parties hereby agree as follows:

2. Definitions.

2.1 Alteration means and refers to any change to a building or facility that affects usability thereof. Alterations may include but are not limited to remodeling, renovation, rearrangements in structural parts, and changes or rearrangement of walls and full-height partitions. The Standards for Accessible Design (also commonly referred to as “Americans with Disabilities Act Accessibility Guidelines” or “ADAAG”) and materials interpreting them may provide guidance in interpreting the definition of “Alteration.”

2.2 Auxiliary Aids and Services means and refers to services, equipment and devices necessary for ensuring effective communication with individuals with visual impairments, hearing impairments, speech impairments, and other disabilities that limit or make difficult the major life activities of seeing, hearing, speaking, reading, and communicating. Auxiliary Aids and Services include but are not limited to qualified sign language interpreters, qualified readers, taped texts, audio recordings, Braille materials, large print materials, accessible websites, and audible prescription labels.

2.3 Claimant’s Counsel means and refers to Goldstein, Demchak, Baller, Borgen & Dardarian and The Law Office of Lainey Feingold, and the attorneys practicing law therein.

2.4 Disability Access Laws means and refers to Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, et seq., its implementing regulations, 28 C.F.R. section 35, and the following, where applicable: Sections 504 and 508 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701, et seq.; the Standards for Accessible Design, Appendix A to 28 C.F.R. Part 36; California Civil Code §§ 51, et seq. (“the Unruh Act”),

54, et seq. (“the Disabled Persons Act”), California Government Code § 11135, et seq., California Health & Safety Code § 19955, et seq.; and those portions of the California Building Code setting forth California’s disability access requirements, located at Title 24 of the California Code of Regulations.

2.6 Effective Date means May 15, 2008.

2.7 New Construction means and refers to any facility or part of a facility, including any structures, complexes, walks, passageways, or other facilities designed or constructed after the Effective Date. For guidance in interpreting the definition of “New Construction,” the Parties shall refer to the Standards for Accessible Design and materials interpreting them.

2.8 Patient Areas means and refers to all portions of the UCSF Medical Center premises to which the public is invited, which may include, but is not limited to, (a) the physical structures, such as hospital buildings, clinics, and medical office buildings, and their entrances, waiting areas, examination rooms, treatment rooms, laboratories, diagnostic areas, restrooms, patient bedrooms, pharmacies, cafeterias, gift shops, and areas containing public telephones or drinking fountains within those hospitals, clinics; (b) all paths of travel serving these physical structures; and (c) parking facilities, transportation areas, and structures serving those hospital buildings, clinics, and medical office buildings.

2.9 Program Access means and refers to actions and efforts to ensure that each of the programs, services, and activities that are provided by or held in UCSF Medical Center facilities, when viewed in their entirety, are readily accessible to and usable by persons with disabilities. For guidance in interpreting the definition of “Program Access” or “Programmatic Access,” the Parties shall refer to the American with Disabilities Act Title II, its implementing regulations and materials interpreting them.

2.10 UCSF Medical Center means and refers to the Parnassus Medical Center located at 505 Parnassus Avenue which encompasses the Moffitt and Long Hospitals and the UCSF Children’s Hospital; the Ambulatory Care Center clinics at 400 Parnassus Avenue; and the Medical Center at Mt. Zion at 1600 Divisadero Street. Excluded is any space not owned or operated by The Regents of the University of California (i.e.,

space that is rented, leased or shared and over which UCSF does not maintain custody and control). Also excluded are public walkways, streets, thoroughfares, private parking areas, and/or contiguous property not owned or maintained by The Regents of the University of California.

3. Policy, Program, Training, Procedural Enhancements and Accessible Equipment.

3.1 Consultant Plan.

3.1.1 Prior to March 1, 2008, UCSF Medical Center engaged mutually agreeable Access Policy/Training/Accessible Medical Equipment (“AME”) Consultants to work with appropriate and identified UCSF personnel on accomplishing the objectives specified below. If at any time the mutually agreed upon Access Policy/Training/AME Consultants become unavailable, the Parties will agree on a substitute to serve as the Access Policy/Training/AME Consultants. If the Parties cannot agree on a substitute(s), they will submit the issue to Dispute Resolution pursuant to the process set forth in Section 6, below.

3.1.2 The Access Policy/Training/AME Consultants and UCSF will develop a comprehensive Timetable and Implementation Plan for all reviews, evaluations, assessments, changes and enhancements including, but not limited to:

- (a) Reviewing and enhancing access policies and procedures regarding care for patients with disabilities;
- (b) To ensure effective delivery of health care prior to completion of the Timetable and Implementation Plan, establishing Interim Measures, such as, for example, the sharing of equipment or space or creation of an interim accessible suite;
- (c) Purchasing, installing, and using additional AME, and identifying and implementing any facility and policy modifications for proper implementation of needed AME;
- (d) Reviewing and enhancing patient registration systems;
- (e) Reviewing and enhancing existing New Employee Orientation, Cultural Competency; and
- (f) Enhancing and expanding existing lift and transfer technique training program.

3.1.3 UCSF has adopted the following proposed schedule for the initial Timetable and Implementation Plan recommended by the Access Policy/Training/AME Consultants. UCSF will use good faith efforts to work with the Access Policy/Training/AME Consultants to complete the following tasks on the following schedule:

- (a) By June 15, 2008: UCSF to provide Access Policy/Training/AME Consultants with complete list of Patient Areas;
- (b) Between June 1, 2008 and July 15, 2008: UCSF and Access Policy/Training/AME Consultants to make arrangements for Consultants' Site Visit (which will include surveying UCSF Patient Areas, surveying Inpatient and Outpatient AME, and conducting Department Head and Facility Manager Interviews);
- (c) By July 15, 2008: UCSF and Access Policy/Training/AME Consultants to complete arrangements for Consultants' Site Visit;
- (d) By July 15, 2008: UCSF to provide Access Policy/Training/AME Consultants with UCSF's Draft Access Policies, Procedures and Practices;
- (e) By July 31, 2008: UCSF to implement Access Policy/Training/AME Consultants' recommendations for interim measures, as set forth in their April 2008 report to UCSF, based upon Consultants' March 27, 2008 visit to UCSF;
- (f) By August 4, 2008: Access Policy/Training/AME Consultants to commence Site Visit;
- (g) By August 31, 2008: Access Policy/Training/AME Consultants to complete Site Visit;
- (h) By October 31, 2008: Access Policy/Training/AME Consultants to provide UCSF with draft Site Visit Report containing Recommended Accessible Medical Equipment List, and draft Final Access Policies, Procedures and Practices;
- (i) By January 31, 2009: Access Policy/Training/AME Consultants and UCSF to complete Final Site Visit Report, including dates for purchase and installation of recommended AME, and Final Access Policies, Procedures and Practices;
- (j) By January 31, 2009: UCSF to provide on-line "Disability 101" Training Package to staff;

(k) By March 31, 2009: UCSF and Access Policy/Training/AME Consultants to complete Disability Overview and Access Policies and Procedures Training to Managers and Supervisors;

(l) By September 1, 2009, complete enhancement of Patient Registration System.

The Parties recognize that due to the nature of this work, and the inevitable collaboration between the Access Policy/Training/AME Consultants and UCSF operational managers, these groups may need to proceed on a different schedule and/or need additional time in which to complete the tasks outlined in paragraphs (g) through (l) above. In the event that UCSF or the Access Policy/Training/AME Consultants determine that it is necessary to extend any of those deadlines, change the order of the priorities set forth above, or otherwise modify the proposed schedule so that any of those deadlines is extended for a period of sixty (60) days or less, UCSF shall notify Claimants' Counsel of the new deadlines in writing. If UCSF or the Access Policy/Training/AME Consultants propose to extend any of those deadlines for a period of more than 60 days, UCSF will provide Claimants' Counsel with the new deadline(s) and the reason(s) for the extension in writing. Any disagreements about the new deadline(s) or the described reason(s) for the extension shall be subject to the Dispute Resolution Procedures set forth in Section 6.2-6.4, below.

3.2 Areas for Review and Development.

3.2.1 With the Access Policy/Training/AME Consultants, UCSF will: (a) evaluate all existing policies and procedures relating to the services, treatment and care provided to patients with disabilities to determine additional policies or procedures, and availability of accessible medical equipment ("AME"), and (b) make changes to existing policies and procedures and purchase and install AME that are necessary to ensure compliance with Disability Access Laws. UCSF will incorporate where appropriate, provisions of the Access Policy/Training/AME Consultant's model access policies and procedures. Such policy and procedural evaluation will encompass:

3.2.1.1 Access – including alternative formats for printed materials; web accessibility; communication access for deaf and hard of hearing patients; other Auxiliary

Aids and Services; use of service animals; access to and within exam rooms and patient rooms; location, maintenance and use of accessible medical equipment including weight scales; establishment of interim procedures (as needed) for AME sharing and assignment of available accessible patient rooms; and maintenance of accessible features and equipment;

- 3.2.1.2 Patient Registration – including capture and retention of patient-specific disability-related needs information at registration; access to Auxiliary Aids and Services and/or assignment to accessible rooms and/or interim measures; communication of disability-related needs data within and across the hospitals and clinics, and retention of that information for future patient visits;
- 3.2.1.3 Accessible Medical Equipment Needs and Purchase Priorities – including determination of accessible medical equipment needs to provide effective medical services to UCSF’s patients with disabilities, both in-patient and out-patient; assessment of potential facility modifications necessary to ensure proper use and placement of needed AME; assessment of accessible medical equipment modifications in areas included in the Accessibility Improvement Proposed Five Year Project Plan as described in Section 5.1 herein.
- 3.2.1.4 Training and Education – including enhancement of existing New Employee Orientation content regarding access, accessible medical equipment, the needs of patients with disabilities, and UCSF policies addressing these issues; enhancement of existing Cultural Competency and Diversity training programs intended to educate staff about treating patients with disabilities and UCSF policies addressing these issues; provision of training for health care providers to enhance awareness and responsiveness to the needs of people with disabilities; and enhancement of

existing lift and transfer training to educate UCSF staff about proper lifting and transferring techniques.

Every effort will be made by UCSF to encourage UCSF Medical Center staff (including health care providers) to participate in trainings. UCSF will make its best effort to enable its doctors to earn Continuing Medical Education credits for participating in trainings.

3.2.1.5 Complaint Procedures – including evaluation and enhancement of existing mechanisms for receiving and responding to complaints and other input regarding access needs from UCSF patients with disabilities.

4. UCSF Internal Oversight Committee.

4.1 Oversight Committee. As soon as practicable, but no later than March 15, 2008, UCSF will appoint an internal ADA access oversight body, to be known as the UCSF Internal Oversight Committee. An appropriate representative of the UCSF Internal Oversight Committee shall act as the liaison between UCSF management and the Claimant and his Counsel to facilitate fulfillment of the terms of this Agreement. The UCSF employee designated pursuant to 28 C.F.R. section 35.107 to be the UCSF ADA coordinator shall be a member of this Committee, and that person's name and contact information shall be made available to the public.

4.2 Ongoing Monitoring and Reporting. The function of the Internal Oversight Committee will be to track progress of UCSF's access improvement efforts with the Timetable and Implementation Plan regarding policies, procedures and training, provision of accessible medical equipment, and compliance with the Disability Access Laws. The Internal Oversight Committee will report in writing to the Parties and Claimant's Counsel on progress implementing the Timetable and Implementation Plan, as outlined therein, regarding each of items discussed in Section 3.2, above, on the following schedule:

(a) November 1, 2008 (in this initial report, UCSF and the Access Policy/Training/AME Consultants will also provide Claimants'

Counsel with the Draft Final Access Policies, Procedures and Practices)

(b) February 1, 2009 (in this report, UCSF and the Access Policy/Training/AME Consultants will provide Claimants' Counsel with the Final Site Visit Report)

(c) September 1, 2009.

4.3 Obligations of Parties. If Claimant and Counsel have comments upon the initial report or the Draft Access Policies, Procedures and Practices, they will submit their comments to the Internal Oversight Committee in writing by no later than 15 days after they are transmitted. UCSF shall have 15 calendar days to evaluate any proposed modifications and notify Claimant's Counsel in writing regarding agreement or disagreement with proposed modifications. If Claimant and Counsel have comments upon the content of subsequent reports, they will submit their comments to the Internal Oversight Committee in writing by no later than 30 calendar days after each milestone reporting date. If Claimant and Counsel propose modifications to UCSF's efforts described in the subsequent reports, UCSF shall have 30 calendar days to evaluate any proposed modifications and notify Claimant's Counsel in writing regarding agreement or disagreement with proposed modifications. Any remaining disputes regarding the proposed modifications shall be submitted to Dispute Resolution pursuant to the process set forth in Section 6, below.

5. Architectural Accessibility Improvements at UCSF Medical Center.

5.1 Planned Alterations and New Construction. UCSF Medical Center conducts a capital project and equipment renewal process each year. Based on the overall capital projects priorities of the Medical Center, UCSF has developed, and Claimant and Counsel have reviewed, the Accessibility Improvement Proposed Five Year Project Plan, which includes barrier removal and access projects associated with capital projects currently funded through 2008 and projects that UCSF will fund in the future through five years from the Effective Date. The Accessibility Improvement Proposed Five Year Project Plan is attached hereto as Exhibit A. The Department Location Diagrams of all Medical Center Facilities and Accessibility Reference Guide, dated June 1, 2006, may assist in locating and understanding these planned architectural and access improvement projects.

5.2 Compliance. All New Construction and Alterations undertaken at UCSF after the Effective Date shall be designed and constructed in accordance with the Disability Access Laws.

5.3 Review of Access Projects. On a mutually agreed upon date in 2008, and once annually throughout the term of the Agreement, the Parties shall meet in person to discuss progress toward completing the Accessibility Improvement Proposed Five Year Project Plan and any additional architectural work, beyond that listed in information provided pursuant to Section 5.1, that either party believes is necessary to provide Program Access at UCSF in accordance with Title II of the ADA and its implementing regulations. Upon reasonable request of either Party, the Access Policy/Training/AME Consultants will also participate in these meetings. If the Parties have not reached agreement on these issues within sixty (60) days of the meeting, the matter will be handled pursuant to the Dispute Resolution provisions set forth in Section 6, herein.

5.4 In-Patient Toilet Rooms. As a result of the Parties' negotiations, UCSF has constructed, or is in the process of constructing, accessible in-patient restrooms on each floor of Long Hospital. The schedule for constructing additional accessible in-patient restrooms is included in the Accessibility Improvement and New Construction Projects noted in Section 5.1.

6. Dispute Resolution.

6.1 Notice. In the event of: (a) a claim by one of the Parties that the other party is in breach of the Parties' settlement agreement; or (b) any other dispute between the Parties over the construction, application, implementation or modification of this Agreement, or (c) failure of the Parties to reach agreement on the terms of the policies and procedures, the Timetable or Implementation Plan, or any additional accessibility improvements discussed pursuant to Sections 3-5, the party alleging breach, UCSF in seeking the modification, or any party engaged in the dispute, will provide written notice of its position to the other party. Such Notice shall include the following information: (i) the Section or term of the Agreement alleged to be breached or proposed to be modified or the issue on which the Parties have not reached agreement; (ii) any proposed modification, or amendment; (iii) the specific reasons underlying and/or supporting the

proposed breach, modification, or position, including a brief statement of the specific facts, circumstances and legal argument supporting the party's position.

6.2 Meet and Confer. Within two weeks of the date of delivery of the Notice, the Parties will engage in a meet-and-confer process to resolve the dispute.

6.3 Mediation. If the dispute remains unresolved after a reasonable period of meeting and conferring, the Parties will resort to mediation to resolve the dispute.

6.4 Arbitration. If mediation fails to resolve the dispute, the Parties then will settle the dispute finally by means of arbitration conducted by the Judicial Arbitration and Mediation Service (JAMS) pursuant to its Streamlined Arbitration Rules and Procedures. The arbitration will take place in the San Francisco Bay Area. The award of the arbitrator will be enforceable in a court of competent jurisdiction.

7. Monetary Compensation for Claimant. [Not posted for confidentiality and privacy reasons]

8. Release and Waiver. [Not posted for confidentiality and privacy reasons]

9. Attorney's Fees, Expenses and Costs. [Not posted for confidentiality and privacy reasons]

10. Miscellaneous Provisions.

10.1 Term of the Agreement. The terms of this Agreement shall remain in effect from the Effective Date until January 31, 2010.

10.2 Force Majeure. The performance of UCSF under this Agreement shall be excused during the period and to the extent that such performance is rendered impossible, impracticable or unduly burdensome due to acts of God; riots; civil commotions; wars; hostilities between nations; acts of terrorism; government laws, orders or regulations; actions by

the government or any agency thereof; storms; fires; strikes or lockouts; unavailability of technology or parts, equipment or materials through normal supply sources; or any other contingencies beyond the reasonable control of UCSF. If UCSF seeks to invoke this Section, it shall notify Claimant and his Counsel in writing as soon as reasonably possible, specifying the particular action that could not be performed and the specific reason for the non-performance. Claimant and UCSF will thereafter meet and confer regarding an alternative schedule for completion of the action that could not be performed, or an alternative action. Any dispute regarding the applicability of this Section, or any future action to be taken, that remains after the meet and confer process will be handled as a dispute pursuant to Section 6 of this Agreement.

10.3 Notice or Communication to Parties.

Any notice or communication required or permitted to be given to the Parties hereunder shall be given in writing by email and first class United States mail, addressed as follows:

To Claimant:

Linda M. Dardarian
c/o Goldstein, Demchak, Baller, Borgen & Dardarian
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
E-mail: ldardarian@gdblegal.com

Lainey Feingold
Law Office of Lainey Feingold
1524 Scenic Avenue
Berkeley, CA 94708
E-mail: lf@lflegal.com

To UCSF:

Bruce G. Flynn, M.S., Director
UCSF Risk Management and Insurance Services
3333 California Street, LH 325
Box 1338
San Francisco, CA 94143
E mail: bflynn@finance.ucsf.edu

Greta W. Schnetzler
Deputy Campus Counsel
Office of Legal Affairs
Faculty Alumni House
University of California, San Francisco
745 Parnassus Avenue
Box 0986
E mail: gschnetzler@legal.ucsf.edu

10.4 Modification in Writing. No modification of the Agreement shall be effective unless in writing and signed by authorized representatives of all Parties.

10.5 No Other Representations. Each party to the Agreement warrants that he, she or it is acting upon his, her or its independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in the Agreement.

10.6 Agreement Has Been Read. The Agreement has been carefully read by each of the Parties, or their responsible officers, and its contents are known and understood by each of the Parties. The Agreement is signed freely by each party executing it.

10.7 No Assignment. No party to the Agreement has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands, or cause or causes of action disposed of by the Agreement.

10.8 Agreement Binding on Assigns and Successors. The Agreement shall bind any assigns and successors of the Parties. Counsel shall be notified in writing within thirty (30) days of the existence, name, address and telephone number of any assigns or successors of UCSF.

10.9 No Admission of Liability. In entering into the Agreement, UCSF does not admit, and specifically denies, that it has violated or failed to comply with any Disability Access Laws.

10.10 Authority. The persons executing the Agreement each represent and warrant that he or she has the authority to enter into the Agreement, and to resolve the matters set forth in the Agreement, on behalf of the Party for whom he or she is executing the Agreement, and that no further approval is necessary in order for the Agreement to be binding on the Party for whom he or she is executing.

10.11 Integrated Agreement. The Agreement constitutes the entire agreement relating to the subject matters addressed therein.

10.12 Rules of Construction. Each party and its legal counsel have reviewed and participated in the drafting of the Agreement; and any rule of construction to the effect that ambiguities are construed against the drafting party shall not apply in the interpretation or construction of the Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of the Agreement. The Recitals are integral to the construction and interpretation of the Agreement and are therefore incorporated into the Agreement in their entirety.

10.13 Triplicate Originals/Execution in Counterparts. All Parties and their respective counsel shall sign three copies of this document and each such copy shall be considered an original. This document may be executed in counterparts.

10.14 Signature Lines

PARTIES:

The Regents of the University of
California

Dated: _____

By: _____
Norman J. Hamill, University
Counsel

Dated: _____

By: _____
August Longo, Claimant

ACKNOWLEDGED:

Dated: _____

By: _____
Grace Crickette, Chief Risk
Officer

APPROVED AS TO FORM:

GORDON & REES, LLP

By: _____
Michael D. Bruno, Counsel for The
Regents of the University of California

GOLDSTEIN, DEMCHAK, BALLER,
BORGEN & DARDARIAN

By: _____
Linda M. Dardarian
Counsel for Claimant

LAW OFFICE OF LAINEY
FEINGOLD

By: _____

Lainey Feingold
Counsel for Claimant