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January 22, 2021

Attorney General Xavier Becerra
California Department of Justice
1300 I Street, Suite 1740
Sacramento, CA 95814-2954

Re: Request for Enforcement and Extension of Conditions of Sale of Keiro Nursing Home, South Bay Keiro Nursing Home, Keiro Intermediate Care Facility, and Keiro Retirement Home, adopted September 2, 2015, by Attorney General Kamala D. Harris

Dear Attorney General Becerra:

As California Assemblymembers representing the 53rd and 66th Assembly Districts, which include the four Los Angeles County senior residential healthcare facilities at issue, we respectfully request that you enforce and extend the conditions of sale adopted September 2, 2015, by Attorney General Kamala Harris. The four facilities were sold by nonprofits Keiro Services, Keiro Nursing Home, and Japanese Home for the Aged, (hereinafter “Keiro”) to for-profit Pacifica Companies LLC, Pacifica SL Lincoln LLC, Pacifica SL Boyle LLC, and Pacifica SL Vermont LLC (hereinafter “Pacifica”).

This is an urgent matter requiring your immediate intervention. The conditions of sale requiring the continued operation of the two skilled nursing facilities, one intermediate care facility, and one residential care facility for the elderly will terminate in February 2021. These four senior residential healthcare facilities are the last remaining facilities in Southern California that provide culturally sensitive services for aging Japanese immigrants and Japanese Americans. In September 2020, Pacifica submitted a proposal to the City of Los Angeles to convert the Boyle Heights intermediate care facility into an apartment building. At immediate risk are 68 seniors who currently reside at the intermediate care facility and may be transferred to the two skilled nursing facilities, portions of which have been repurposed as designated COVID-19 facilities. According to one report, 313 residents and 227 staff have tested positive for COVID at these two facilities, with 96 COVID-related deaths.

Failure to enforce and extend the conditions of sale that the Attorney General’s Office (AGO) required in 2015 may put the lives of the seniors at these four facilities at further risk during this pandemic. As we all know, seniors in residential care facilities are among the most vulnerable to COVID-19. We have a moral obligation to do everything we can to protect these seniors from eviction or transfer trauma, at least during the COVID state of emergency period. We should provide these seniors and their families the peace of mind knowing that their current homes will not be taken away from them during a pandemic.

Legal authority exists for the AGO to enforce and extend the conditions of sale. First and foremost, Pacifica has failed to comply with the Conditions of Sale, as required by the AGO. Pursuant to Condition X, Pacifica and Keiro agreed to the formation of a Community Advisory Board (CAB), which is charged with the duty,

among others, to “approve all reports submitted to the Attorney General regarding compliance with these Conditions.” According to a CAB letter dated November 18, 2020, to Senior Assistant Attorney General Tania Ibanez and Deputy Attorney General Scott Chan, the CAB refused to certify Pacifica’s two most recent compliance reports. The letter states, “CAB recommends the Office of the Attorney General find the conditions unmet for a second consecutive year and amend the conditions for an additional five years.” Pursuant to Condition XIII, “[t]he Attorney General reserves the right to enforce each and every Condition set forth herein” Pacifica should not be rewarded for noncompliance with the AGO required conditions of sale. Failure to enforce the conditions of sale would essentially reward Pacifica’s mockery of the Attorney General’s jurisdiction and oversight over the sale of healthcare facilities from not-for-profit ownership to for-profit owners.

Second, Pacifica has failed to comply with the Conditions of Sale by redesignating portions of their two skilled nursing facilities as designated COVID-19 facilities. As indicated earlier, Pacifica’s decision has resulted in 313 residents and 227 staff-testing positive for COVID at these two facilities, with 96 COVID-related deaths. According to a CAB letter to Keiro Services dated January 17, 2021, “[t]he safety of residents in multiple former Keiro facilities is being impacted by the current COVID-19 pandemic.” The CAB concludes, “An extension on the Conditions on Sales is necessary to appropriately manage immediate risks to the residents, patients, staff, administration, facilities, and community posed by the COVID-19 and novel Coronavirus pandemic.”

Finally, California Code of Regulations section 999.5(h) grants the Attorney General the authority to amend the conditions:

(1) Either the selling or acquiring corporation or entity, or their successors in interest, may request Attorney General approval of any amendment of the terms and conditions of any agreement or transaction for which the Attorney General has given consent or conditional consent under Corporations Code section 5915 or 5921. The sole basis for such a request shall be a change in circumstances that could not have reasonably been foreseen at the time of the Attorney General's action.

Clearly, the COVID-19 pandemic should constitute a reasonably unforeseen change in circumstances that should justify an extension of the conditions of sale to prevent the closure of the intermediate care facility, at least during the duration of the COVID state of emergency period.

In conclusion, we respectfully request your immediate intervention in this urgent matter to protect seniors and frontline healthcare workers already struggling to stay safe and healthy. We plan to introduce legislation to protect seniors and frontline healthcare workers statewide during this pandemic, not just at the four facilities at issue here. While our bill is pending, we request that your office enforce and extend the conditions of sale to ensure that the four facilities provide safe and culturally sensitive services, as originally agreed pursuant to Attorney General oversight, at least during the COVID-19 state of emergency period.

Sincerely,



Al Muratsuchi
Assemblymember, 66th District



Miguel Santiago
Assemblymember, 53rd District