

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

HELABA INVEST)
KAPITALANLAGEGESELLSCHAFT mbH,)
on behalf of itself and all others similarly)
situated,)
)
Plaintiff,)
)
v.) C.A. No. 2683-VCL
)
FREDERICK H. FIALKOW, STEVEN)
FIALKOW, BERNARD LEVINE, IRA)
GREIFER, ROBERT C. PORDY, HAROLD)
SHULMAN, and NATIONAL HOME)
HEALTH CARE CORP.,)
)
Defendants.)
)

**[PROPOSED] FINAL JUDGMENT AND
ORDER OF DISMISSAL WITH PREJUDICE**

This matter came before the Court for hearing pursuant to the Order of this Court, dated January 24, 2008 (the "Order"), on the application of the Settling Parties for approval of the Settlement set forth in the Stipulation of Settlement dated as of January 3, 2008 (the "Stipulation"). Due and adequate notice having been given to the Settlement Class as required in said Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefor, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation.
2. This Court has jurisdiction over the subject matter of the Stipulation.
3. In full compliance with Court of Chancery Rule 23 and the requirements of due process, Defendants or their successors in interest mailed the Notice of Pendency of Class

Action, Proposed Settlement of Class Action and Settlement Hearing (the “Notice”) by first-class mail to the Members of the Settlement Class who were stockholders of National Home Health Care Corp. (“NHHC” or the “Company”) at any time during the period from August 4, 2004 through the date of the consummation of the Merger, as shown in the stock records maintained by or on behalf of the Company.

4. Pursuant to Rule 23 of the Court of Chancery Rules, the Court hereby certifies, for purposes of effectuating this Settlement only, a Settlement Class of all record and beneficial owners of NHHC common stock during the period beginning on August 4, 2004 through the date of the consummation of the Merger, including any and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, and excluding the Defendants and members of the immediate family of any Defendant, any entity in which a Defendant has or had a controlling interest, officers of NHHC and the legal representatives, heirs, successors or assigns of any such excluded person or entity.

5. With respect to the Settlement Class, this Court finds and concludes that: (a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of Plaintiff are typical of the claims of the Settlement Class; (d) Plaintiff and their counsel have fairly and adequately represented and protected the interests of all of the Settlement Class Members; (e) the prosecution of separate actions by members of the Settlement Class would create a risk of inconsistent or varying adjudications with respect to individual Settlement Class Members which

would establish incompatible standards of conduct for Defendants; (f) the Defendants have acted or refused to act on grounds generally inapplicable to the Settlement Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class as a whole; and (g) the Settlement Class may be maintained as a non-opt out class pursuant to Rules 23(a), 23(b)(1) and (b)(2) of the Court of Chancery Rules.

6. Due and adequate notice of the proceedings having been provided to the Members of the Settlement Class and a full opportunity having been offered to them to participate in this Hearing, it is hereby determined that they are bound by the Order and Final Judgment entered herein.

7. This Court hereby approves the Settlement set forth in the Stipulation and finds that said Settlement is, in all respects, fair, just, reasonable and adequate to each of the Settling Parties, and the Settling Parties are hereby directed to perform its terms.

8. This Court hereby dismisses the Action with prejudice and without costs taxed to Defendants (except as otherwise provided below).

9. Upon the Effective Date hereof, Plaintiff and each of the Settlement Class Members for themselves and their respective heirs, executors, administrators, predecessors, representatives, agents, successors and assigns shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Persons. Upon the Effective Date hereof, Plaintiff and each of the Settlement Class Members, for themselves and their respective heirs, executors, administrators, predecessors, representatives, agents, successors and assigns shall have waived, and shall be deemed to have waived, any and all rights and benefits which they now have, or in the future may have by virtue of the provisions of § 1542 of the California Civil Code and any

other similar law or provision with respect to the Released Claims, which section provides 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 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

10. Plaintiff and the Members of the Settlement Class are hereby, individually and severally, permanently barred from instituting, commencing, prosecuting, participating in or continuing any action or other proceeding in any court or tribunal of this or any other jurisdiction, either directly, representatively, derivatively or in any other capacity, based upon, arising out of, or in any way relating to any Released Claim, all of which Released Claims are hereby declared to be compromised, settled, released, dismissed with prejudice and extinguished by virtue of this Final Judgment and Order against any of the Released Persons.

11. Upon the Effective Date hereof, each of the Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of the Settlement Class Members and counsel to Plaintiff from all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims.

12. The Notice of Settlement of this Action given to the Settlement Class was the best notice practicable under the circumstances, including the individual notice to all Members of the Settlement Class who could be identified through reasonable effort. Said Notice provided the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Stipulation, to all Persons entitled to

such notice, and said Notice fully satisfied the requirements of Rule 23 of the Delaware Chancery Court Rules and the requirements of due process.


13. The Court having considered Plaintiff's application for attorneys' fees and expenses and Defendants' objections thereto, hereby determines to award Counsel for Plaintiff *Reserved* \$_____, inclusive of all costs and fees, which amount the Court determines to be fair and reasonable. NHHHC or its successor shall pay or cause to be paid to Counsel for Plaintiff on behalf of all Defendants, such attorneys' fees and expenses.

14. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (i) is or may be deemed to be, or may be used by any Person, including, but not limited to, the Settling Parties and their counsel as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of the Released Persons; or (ii) is or may be deemed to be, or may be used by any Person, including, but not limited to, the Settling Parties and their counsel, as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Released Persons may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this Settlement; and (b) all parties hereto for the purpose of construing, enforcing and administering the Stipulation. In the event

that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

IT IS SO ORDERED this 12th day of March, 2008.


Stephen P. Lamb
Vice Chancellor

*The court has reserved decision as to
the application for fees and expenses.*

