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7 Attorneys for the United States

8  
 9 IN THE UNITED STATES DISTRICT COURT  
 10 EASTERN DISTRICT OF CALIFORNIA

11 I. P., A MINOR, BY AND  
 12 THROUGH HER GUARDIAN AD LITEM,  
 FACUNDO PALACIO DIAZ; MICAELA  
 13 PALACIO,

14 Plaintiffs,

15 v.

16 UNITED STATES OF AMERICA,

17 Defendant.

CASE NO. 2:13-CV-01012 JAM-CKD

**SECOND JOINT STIPULATION AND  
 ORDER REGARDING DAMAGES**

**JUDGE: HON. JOHN A. MENDEZ  
 CTRM.: 6, 14th Floor**

**TRIAL DATE: SEPTEMBER 24, 2015**

18 Defendant the United States and Plaintiffs I.P. and Micaela Palacio respectfully submit the  
 19 following further Joint Stipulation and Proposed Order regarding damages. The Court previously  
 20 approved the parties' first Joint Stipulation Regarding Damages. [Dkt 126] The parties have met and  
 21 conferred to narrow the damages issues in order to streamline trial proceedings and conserve the parties'  
 22 and the Court's time and resources. In the event of a liability finding following trial, the parties further  
 23 stipulate to the following:

- 24 A. Plaintiffs and the United States have each submitted life care plans for Plaintiff I.P.'s future  
 25 care. Plaintiffs submitted the life care plan from its expert, Karen Preston. Plaintiffs' life  
 26 care plan is comprised of the last 7 pages of Exhibit 16, titled "Life Care Plan Tables." The  
 27 United States submitted the life care plan from its expert, Tim Sells. Defendant's life care  
 28 plan is Exhibit 247.

- 1 B. The life care plans of Plaintiffs and the United States both identify specific items of care, the  
2 costs for each item of care, and the frequency and/or quantity for each item of care for  
3 Plaintiff I.P.
- 4 C. Attendant care is one component of the parties' life care plans. Both parties' life care plans  
5 provide for 24-hour attendant care. The difference is between the type of attendant care and  
6 the quantity of Case Manager hours.
- 7 1) Plaintiffs' life care plan provides for 24-hour agency Licensed Vocational Nurse  
8 ("LVN") attendant care and 24 hours per year of Case Manager time. Exh. 16 at p.2  
9 ("Case Manager" entry in table titled "Future Ancillary Care & Periodic  
10 Evaluations") and p.11, for "Home/ Facility Care."
- 11 2) The United States' life care plan provides two proposals for attendant care: (a) 24-  
12 hour private hire Home Health Attendant ("HHA") care, two weeks of 24-hour  
13 agency LVN care to account for time off for the HHA, 48 hours per year of Case  
14 Manager time, annual Payroll Services, and 100 hours for the first year of  
15 Conservator-Fiduciary time (and 60 hours per year thereafter); (b) 18-hour private  
16 hire LVN care, 6-hour private hire HHA, two weeks of 24-hour agency LVN care to  
17 account for time off of the private hire LVN or HHA, 48 hours per year of Case  
18 Manager time, annual Payroll Services, and 100 hours for the first year of  
19 Conservator-Fiduciary time (and 60 hours per year thereafter). Exh. 247 at p18.
- 20 D. The United States designated and disclosed an insurance expert, Paul Adams. The United  
21 States life care plan takes into consideration insurance for the costs for certain items of care,  
22 as provided by Mr. Adams. Plaintiffs' life care plan (Preston) did not take insurance into  
23 account. Plaintiffs agree that the United States is entitled to an offset for insurance.
- 24 E. Except for attendant care, Plaintiffs accept all the items of care and costs as presented in the  
25 United States' life care plan (Sells), which includes costs that have taken insurance into  
26 account. Plaintiffs also accept the United States' life care plan (Sells) recommendation for  
27 48 hours per year of Case Manager time and 100 hours for the first year of Conservator-  
28 Fiduciary time (and 60 hours per year thereafter). Therefore, insurance-related issues are no  
longer in dispute and the United States will not present testimony at trial from its insurance  
expert, Mr. Adams.
- F. Plaintiffs and the United States have each disclosed and designated one life expectancy  
expert for trial. Plaintiffs' life expectancy expert, Dr. Ira Lott, submits a life expectancy  
opinion for Plaintiff I.P. to age 28. The United States' life expectancy expert, Steven Day,  
submits a life expectancy opinion for Plaintiff I.P. to age 20-24.
- G. Plaintiffs and the United States have each disclosed and designated an economist who has  
submitted damages calculations for the present cash value for Plaintiff I.P.'s future medical  
expenses using the parties' respective life care plans and life expectancy opinions. Plaintiffs'  
economist, Peter Formuzis, has submitted damages calculations for the present cash value for  
Plaintiff I.P.'s future medical expenses using Ms. Preston's life care plan and Dr. Lott's life  
expectancy opinion and a calculation using a 20 year additional life expectancy (to age 23).  
The United States' economist, Erik Volk, has submitted damages calculations for the present

1 cash value for Plaintiff I.P.'s future medical expenses using Mr. Sell's life care plan and Dr.  
2 Day's life expectancy opinion. Mr. Volk also included the cost of insurance premiums and  
3 out-of-pocket costs so that Plaintiff I.P. could purchase insurance and pay out-of-pocket costs  
in the event that she lost her current health insurance for some reason

4 H. As part of the stipulation, the parties agreed to include in Plaintiff I.P.'s agreed-upon future  
5 medical expenses, the cost of insurance premiums and out-of-pocket costs so that she could  
6 purchase insurance and pay out-of-pocket costs in the event that she lost her current health  
insurance for some reason.

7 I. Because Plaintiffs accept all the items of care and costs as presented in the United States' life  
8 care plan (Sells) except for attendant care, the parties have reached agreement on the present  
9 cash value amount for all of I.P.'s future medical expenses except for attendant care as  
follows:

10 1) If the Court determines that Plaintiff I.P. has a life expectancy to age 23, and the  
11 Court applies the net discount rate offered by the United States' economist Erik Volk,  
the present cash value for I.P.'s future medical expenses for all items except for home  
attendant care would be \$517,882.

12 2) If the Court determines that Plaintiff I.P. has a life expectancy to age 23, and the  
13 Court applies the net discount rate offered by Plaintiffs' economist Peter Formuzis,  
14 the present cash value for I.P.'s future medical expenses for all items except for home  
attendant care would be \$544,139.

15 3) If the Court determines that Plaintiff I.P. has a life expectancy to age 28, and the  
16 Court applies the net discount rate offered by the United States' economist Erik Volk,  
17 the present cash value for I.P.'s future medical expenses for all items except for home  
attendant care would be \$635,815.

18 4) If the Court determines that Plaintiff I.P. has a life expectancy to age 28, and the  
19 Court applies the net discount rate offered by Plaintiffs' economist Peter Formuzis,  
20 the present cash value for I.P.'s future medical expenses for all items except for home  
attendant care would be \$676,471.

21 J. If the Court determines that Plaintiff I.P. has a life expectancy to an age other than to age 23  
22 or to age 28, the parties will need to submit to the Court revised damages figures based on  
the Court's life expectancy finding and respectfully request the opportunity to do so.

23 K. The remaining damages issues to be tried at trial are the following:

24 1) Plaintiff I.P.'s life expectancy;

25 2) What type of attendant care Plaintiff I.P. needs;

26 3) The present cash value for this future attendant care;

27 4) The amount of Plaintiff I.P.'s projected lost earnings; and

28 5) The net discount rate(s) to apply.

1 L. The parties will present testimony at trial on these remaining damages issues from the  
2 following experts: Dr. Luis Montes (Plaintiffs' medical expert), Ms. Karen Preston  
3 (Plaintiffs' life care planner), Dr. Peter Formuzis (Plaintiffs' economist), Dr. Ira Lott  
4 (Plaintiffs' life expectancy expert), Dr. Joseph Capell (Defendant's medical expert), Mr. Tim  
Sells (Defendant's life care planner), Mr. Erik Volk (Defendant's economist), and Dr. Steven  
Day (Defendant's life expectancy expert).

5 M. In the event of a liability finding and imposition of judgment against the United States, the  
6 United States will not request that the Court impose a reversionary trust that pays medical  
expenses only as they are incurred in structuring the damages payment.

7 Respectfully submitted,

8 BENJAMIN B. WAGNER  
9 United States Attorney

10 Dated: September 29, 2015

By: /s/ Victoria L. Boesch  
11 VICTORIA L. BOESCH  
Assistant United States Attorney

12 /s/ Chi Soo Kim  
13 CHI SOO KIM  
Assistant United States Attorney  
14 Attorneys for Defendant United States of America

15  
16 LAW OFFICE OF BRUCE G. FAGEL & ASSOCIATES

17 Dated: September 29, 2015

By: /s/ Bruce G. Fagel  
18 BRUCE G. FAGEL  
Attorneys for Plaintiffs

19  
20  
21 **IT IS SO ORDERED.**

22 DATED: September 29, 2015

23 /s/ John A. Mendez  
24 HON. JOHN A. MENDEZ  
UNITED STATES DISTRICT JUDGE