



1 counsel for defendant Banner Health. After hearing and submission  
2 of additional papers by the parties, the court makes the following  
3 amended findings and orders:

4 I. JURISDICTION/VENUE

5 Jurisdiction is predicated upon 28 U.S.C. §§ 2674, 1346(b),  
6 and has previously been found to be proper by order of this court,  
7 as has venue. Those orders are confirmed.

8 II. JURY/NON-JURY

9 This will be a court trial.

10 III. UNDISPUTED FACTS

11 1. Micaela Palacio presented to BLMC late in the evening on  
12 April 29, 2012, in active labor. She was at 39 weeks of gestation  
13 and had delivered two prior children vaginally without  
14 complications.

15 2. Banner Health is a nonprofit corporation that owns BLMC,  
16 a 25-bed hospital that provides medical care in Lassen County.

17 3. In April 2012, Dr. Paul Davainis and Dr. Paul Holmes were  
18 Northeastern Rural Health Clinic employees.

19 4. Northeastern Rural Health Clinic is located in  
20 Susanville, California and is a Federally Qualified Health Center.

21 5. Dr. Davainis and Dr. Holmes are doctors with a specialty  
22 in Family Medicine who were in April 2012 deemed federal employees  
23 pursuant to the Federally Supported Health Centers Assistance Act.

24 6. In April 2012, Kelley DelCarlo was a registered nurse and  
25 a Banner employee.

26 7. Ms. DelCarlo and Ms. Ginger Leeth were working at BLMC  
27 the evening of April 29, 2012 and provided nursing care to Micaela  
28 Palacio.

1           8.     Dr. Davainis was on call for Obstetrics during the  
2 evening of April 29, 2012. Dr. Davainis was at his home when he  
3 was called by the nursing staff and arrived at the hospital in the  
4 early morning of April 30, 2012.

5           9.     Dr. Holmes was at his home when he was called at 5:00  
6 a.m. on April 30, 2012, to assist with the delivery of I.P.

7           10.    Dr. Davainis performed a c-section on Micaela Palacio and  
8 was assisted by Dr. Holmes in performing the c-section.

9           11.    Dr. Davainis delivered I.P. via c-section on April 30,  
10 2012, at BLMC. I.P. had APGAR scores of 0, 2 and 3, at 1, 5 and 10  
11 minutes, respectively.

12          12.    After I.P. was delivered, Dr. Holmes resuscitated I.P.  
13 and was assisted by hospital staff in the resuscitation.

14          13.    I.P. was later transferred to U.C. Davis Medical Center  
15 NICU.

16          14.    I.P. was cared for at U.C. Davis Medical Center from  
17 April 30, 2012 to June 5, 2012.

18          15.    I.P. was diagnosed with a hypoxic brain injury and has  
19 been diagnosed with spastic quadriplegic cerebral palsy, cortical  
20 visual impairment, and severe global developmental delay.

21          16.    I.P.'s medical condition will prevent her from being able  
22 to work.

23          17.    I.P. will be three years old on April 30, 2015.

24          18.    Micaela Palacio is 37 years old.

25          19.    Facundo Palacio Diaz is 37 years old.

26          20.    Facundo Palacio Diaz is I.P.'s father and Micaela  
27 Palacio's husband.

28        ///



1           5.     Whether the BLMC Staff who assisted Dr. Holmes met the  
2 standard of care in resuscitating I.P. after her birth on April 30,  
3 2012.

4           6.     Whether Banner Health is vicariously liable for the  
5 alleged negligence of Ginger Leeth.

6           7.     What are the nature and extent of Plaintiffs' claimed  
7 injuries?

8           8.     What is I.P.'s life expectancy?

9           9.     What medical care and supplies will I.P. reasonably  
10 require in the future and what is a reasonable projection of the  
11 likely cost of such future medical care?

12          10.    What assumptions should be used in calculating a  
13 reasonable present value for the projected likely cost of I.P.'s  
14 future medical care?

15          11.    What assumptions should be used in calculating reasonable  
16 projected lost earnings for I.P.?

17          Plaintiffs: Plaintiffs offer the following additional  
18 disputed factual issue.

19          1.     What assumption should be used in calculating the  
20 inflation factor concerning general damage cap of \$250,000 per  
21 Civil Code Section 3333.2 since its enactment in 1975? The  
22 California Supreme Court in *Salgado v. County of Los Angeles*  
23 (1998) 19 Cal.4<sup>th</sup> 629 stated Civil Code Section 3333.2 "should be  
24 interpreted to provide a uniform limit of \$250,000 in *current*  
25 dollars at the time of judgment, regardless of when the damages  
26 are actually to be paid." Any lower limit simply provides the  
27 defendant with a windfall . . . " *Id.* 642.

28 ///

1 Inflation is a matter of judicial notice. *Kirchner v.*  
2 *Atchison, T. & F.F. Ry. Co.* (1948) 32 Cal.2d. 178, 187.

3 United States: The United States submits that the proper  
4 application of Civil Code Section 3333.2's general damages cap is a  
5 legal issue appropriately dealt with in the parties' trial briefs.  
6 The United States disagrees with Plaintiffs' analysis of this issue  
7 and intends to address that disagreement in its trial brief.

8 Banner Health: Banner Health submits that the proper  
9 application of Civil Code Section 3333.2's general damages cap is a  
10 legal issue appropriately dealt with in the parties' trial briefs.  
11 Banner disagrees with Plaintiffs' analysis of this issue and  
12 intends to address that disagreement in its trial brief.

13 V. DISPUTED EVIDENTIARY ISSUES

14 Stipulated Briefing Schedule for Motions In Limine

15 To conserve resources and time for the Court and the parties,  
16 the parties have stipulated to a briefing schedule for their  
17 motions in limine. The parties to this complex medical malpractice  
18 action have designated 30 experts for trial, most of whom reside  
19 outside this district. Motions in limine may reduce the number of  
20 experts and narrow the issues and evidence for trial. While the  
21 parties have requested that these motions in limine be decided by  
22 April 15, the Court has informed the parties that it is unable to  
23 agree to this request given the Court's current trial schedule and  
24 caseload. The Court will attempt to issue its decision on these  
25 motions before the first day of trial.

26 The parties stipulate to the following motion-in-limine  
27 schedule, designed to correspond to the Court's briefing schedules  
28 for motions in limine in other civil cases:



1 This is not a final lien.

2 **(B) General damages**

3 6. Plaintiff I.P. has a separate general damage claim for  
4 \$250,000.

5 7. Plaintiff Micaela Palacio has 2 separate claims for  
6 negligence and a *Burgess* claim for negligent infliction of  
7 emotional distress. Each claim has a separate maximum potential  
8 recovery under California substantive law of \$250,000, for a total  
9 maximum recovery of \$500,000.

10 8. Plaintiff Facundo Palacio Diaz has a separate loss of  
11 consortium claim with a maximum potential recovery under California  
12 substantive law of \$250,000.

13 **(C) Inflation and Non-Economic Damages**

14 9. Plaintiffs contend that the general damages damage cap of  
15 \$250,000 per Civil Code Section 3333.2 since its enactment in 1975  
16 has eroded because of inflation. The California Supreme Court in  
17 *Salgado v. County of Los Angeles* (1998) 19 Cal.4<sup>th</sup> 629 stated Civil  
18 Code Section 3333.2 "should be interpreted to provide a uniform  
19 limit of \$250,000 in *current* dollars at the time of judgment,  
20 regardless of when then the damages are actually to be paid." Any  
21 lower limit simply provides the defendant with a windfall . . . "  
22 *Id.* 642. Indexed for inflation the current dollar value of  
23 \$250,000 awarded in 1975 is at least \$1,087,000. The value of the  
24 1975 \$250,000 is less than \$58,000.

25 United States:

26 1. The United States seeks a judgment finding no liability  
27 because Dr. Davainis and Dr. Holmes met the standard of care. In  
28 accordance with 28 U.S.C. § 2675(b), the Plaintiffs' damages, if



1 any, are limited to the amount of the sum certain demanded in the  
2 administrative claim.

3 Banner Health:

4 1. Banner Health seeks a judgment finding no liability  
5 because Ms. DelCarlo, Ms. Leeth, and hospital staff met the  
6 standard of care.

7 VII. POINTS OF LAW

8 Trial briefs shall be E-filed with the court no later than  
9 seven (7) days prior to the date of trial, i.e., May 19, 2015. Any  
10 points of law not previously argued to the Court should be briefed  
11 in the trial briefs.

12 VIII. ABANDONED ISSUES

13 The parties are not aware of any abandoned issues in this  
14 case.

15 IX. WITNESSES

16 Plaintiffs' Witness List is attached to this Pretrial  
17 Conference Order as Exhibit A.

18 Defendant's Witness List is attached to this Pretrial  
19 Conference Order as Exhibit B.

20 Defendant Banner Health's Witness List is attached to this  
21 Pretrial Conference Order as Exhibit C.

22 Each party may call a witness designated by the other.

23 A. No other witnesses will be permitted to testify unless:

24 (1) The party offering the witness demonstrates that the  
25 witness is for the purpose of rebutting evidence which could not be  
26 reasonably anticipated at the Pretrial Conference, or

27 (2) The witness was discovered after the Pretrial  
28 Conference and the proffering party makes the showing required in

1 "B" below.

2 B. Upon the post-Pretrial discovery of witnesses, the  
3 attorney shall promptly inform the court and opposing parties of  
4 the existence of the unlisted witnesses so that the court may  
5 consider at trial whether the witnesses shall be permitted to  
6 testify. The evidence will not be permitted unless:

7 (1) The witnesses could not reasonably have been  
8 discovered prior to Pretrial;

9 (2) The court and opposing counsel were promptly  
10 notified upon discovery of the witnesses;

11 (3) If time permitted, counsel proffered the witnesses  
12 for deposition;

13 (4) If time did not permit, a reasonable summary of the  
14 witnesses' testimony was provided opposing counsel.

15 X. EXHIBITS, SCHEDULES AND SUMMARIES

16 Plaintiffs' Exhibit List is attached to this Pretrial  
17 Conference Order as Exhibit D.

18 Defendant's Exhibit List is attached to this Pretrial  
19 Conference Order as Exhibit E.

20 Defendant Banner Health's Exhibit List is attached to this  
21 Pretrial Conference Order as Exhibit F.

22 Each party may use an exhibit designated by the other.

23 A. No other exhibits will be permitted to be introduced  
24 unless:

25 (1) The party proffering the exhibit demonstrates that  
26 the exhibit is for the purpose of rebutting evidence which could  
27 not be reasonably anticipated at the Pretrial Conference, or

28 (2) The exhibit was discovered after the Pretrial

1 Conference and the proffering party makes the showing required in  
2 paragraph "B," below.

3 B. Upon the post-Pretrial discovery of exhibits, the  
4 attorneys shall promptly inform the court and opposing counsel of  
5 the existence of such exhibits so that the court may consider at  
6 trial their admissibility. The exhibits will not be received  
7 unless the proffering party demonstrates:

8 (1) The exhibits could not reasonably have been  
9 discovered prior to Pretrial;

10 (2) The court and counsel were promptly informed of  
11 their existence;

12 (3) Counsel forwarded a copy of the exhibit(s) (if  
13 physically possible) to opposing counsel. If the exhibit(s) may  
14 not be copied, the proffering counsel must show that he has made  
15 the exhibit(s) reasonably available for inspection by opposing  
16 counsel.

17 As to each exhibit, each party is ordered to exchange copies  
18 of the exhibit not later than fourteen (14) days before trial.  
19 Each party is then granted five (5) days to file and serve  
20 objections to any of the exhibits. In making the objection, the  
21 party is to set forth the grounds for the objection. The parties  
22 shall pre-mark their respective exhibits in accord with the Court's  
23 Pretrial Order. Plaintiffs shall number their exhibits 1-100. The  
24 United States shall number their exhibits 200-300. Banner Health  
25 shall number their exhibits 400-500. Exhibit stickers may be  
26 obtained through the Clerk's Office. An original and one (1) copy  
27 of the exhibits shall be presented to Harry Vine, Deputy Courtroom  
28 Clerk, at 8:30 a.m. on the date set for trial or at such earlier

1 time as may be agreed upon. Mr. Vine can be contacted at (916)  
2 930-4091 or via e-mail at: hvine@caed.uscourts.gov. As to each  
3 exhibit which is not objected to, it shall be marked and may be  
4 received into evidence on motion and will require no further  
5 foundation. Each exhibit which is objected to will be marked for  
6 identification only.

7 XI. DISCOVERY DOCUMENTS

8 See Section XV regarding the identification and use of  
9 discovery documents at trial.

10 XII. FURTHER DISCOVERY OR MOTIONS

11 Pursuant to the court's Status Conference Order, all discovery  
12 and law and motion was to have been conducted so as to be completed  
13 as of the date of the Pretrial Conference. That order is  
14 confirmed. The parties are free to do anything they desire  
15 pursuant to informal agreement. However, any such agreement will  
16 not be enforceable in this court.

17 XIII. STIPULATIONS

18 The parties have made no stipulations regarding trial.

19 XIV. AMENDMENTS/DISMISSALS

20 No amendments of pleadings or dismissals, additions, or  
21 substitution of parties are permitted, absent a stipulation or  
22 showing of good cause.

23 XV. FURTHER TRIAL PREPARATION

24 A. Counsel are directed to Local Rule 285 regarding the  
25 contents of trial briefs. Such briefs should be E-filed seven (7)  
26 days prior to trial, i.e., May 19, 2015.

27 B. It is the duty of counsel to ensure that any deposition  
28 which is to be used at trial has been lodged with the Clerk of the

1 Court pursuant to Local Rule 133(j). The depositions shall be  
2 lodged with the court clerk seven (7) calendar days prior to the  
3 date of the trial. Counsel are cautioned that a failure to  
4 discharge this duty may result in the court precluding use of the  
5 deposition or imposition of such other sanctions as the court deems  
6 appropriate.

7 C. The parties are ordered to E-file with the court and  
8 exchange between themselves not later than one (1) week before the  
9 trial a statement designating portions of depositions intended to  
10 be offered or read into evidence (except for portions to be used  
11 only for impeachment or rebuttal).

12 D. The parties are ordered to E-file with the court and  
13 exchange between themselves not later than one (1) week before  
14 trial the portions of Answers to Interrogatories and/or Requests  
15 for Admission which the respective parties intend to offer or read  
16 into evidence at the trial (except portions to be used only for  
17 impeachment or rebuttal).

18 XVI. SETTLEMENT NEGOTIATIONS

19 No further formal Settlement Conference will be set in this  
20 case at this time.

21 XVII. AGREED STATEMENTS

22 See paragraph III, *supra*.

23 XVIII. SEPARATE TRIAL OF ISSUES

24 Trial will not be bifurcated nor will there be a separate  
25 trial of issues.

26 XIX. IMPARTIAL EXPERTS/LIMITATION OF EXPERTS

27 The Court will not appoint any impartial experts but may limit  
28 any cumulative testimony by experts.

1 XX. ATTORNEYS' FEES

2 The matter of the award of attorneys' fees to prevailing  
3 parties pursuant to statute will be handled by motion in accordance  
4 with Local Rule 293.

5 XXI. MISCELLANEOUS

6 None.

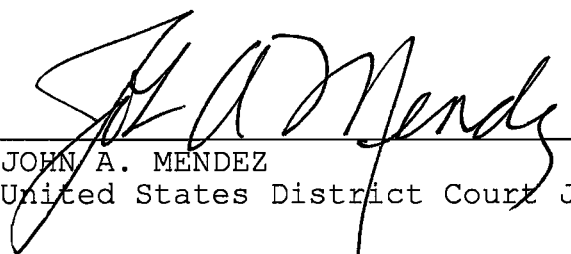
7 XXII. ESTIMATE OF TRIAL TIME/TRIAL DATE

8 The parties estimate eighteen (18) to twenty (20) court days  
9 for trial. Trial will commence on May 26, 2015, at 1:00 p.m.

10 Counsel are to call Harry Vine, Courtroom Deputy, at  
11 (916) 930-4091, one week prior to trial to ascertain the status of  
12 the trial date.

13 IT IS SO ORDERED.

14 DATED: March 23, 2015.

15   
16 \_\_\_\_\_  
17 JOHN A. MENDEZ  
18 United States District Court Judge  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

## **Exhibit A - Plaintiffs' Witnesses**

### **Plaintiffs' Non-expert Witnesses**

1. I.P.
2. Micaela Palacio
3. Facundo Diaz Palacio
4. Paul Davainis, MD
5. Paul Holmes, MD
6. Kelley DelCarlo RN
7. Ginger Leeth, RN
8. Stephen Braatz, MD
9. Dawn Ammick, RN
10. Lin Ross, RN
11. Drondee Perez, RT
12. Arlene Acosta, RN
13. Joel Paoner, CRNA
14. Catherine Jamieson, RN

### **Plaintiffs' Expert Witnesses**

1. Laura Mahlmeister, PhD
2. Richard H. Paul, MD
3. William Rhine, MD
4. Michael Sherman, MD
5. Frank Manning, MD
6. Jerome Barakos, MD
7. Patrick Barnes, MD
8. Peter Formuzis, PhD
9. Ira Lott, MD
10. Donald Olson, MD
11. Luis Montes, MD
12. Karen Preston, RN



**EXHIBIT B**

**Exhibit B**

1 BENJAMIN B. WAGNER  
United States Attorney  
2 VICTORIA L. BOESCH  
CHI SOO KIM  
3 Assistant United States Attorneys  
501 I Street, Suite 10-100  
4 Sacramento, CA 95814  
Telephone: (916) 554-2700  
5 Facsimile: (916) 554-2900  
6 Attorneys for the United States

7  
8 **IN THE UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**

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

13 Plaintiffs,

14 v.

15 UNITED STATES OF AMERICA,

16 Defendant.

17 I.P., A MINOR, BY AND THROUGH HER  
18 GUARDIAN AD LITEM, FACUNDO  
19 PALACIO DIAZ; MICAELA PALACIO,

20 Plaintiffs,

21 v.

22 BANNER HEALTH, AN ARIZONA CORP.,  
23 doing business as BANNER LASSEN  
MEDICAL CENTER; DOES 100- 200,

24 Defendants.

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

**UNITED STATES' WITNESS LIST**

Pretrial Conference: March 12, 2015

Time: 10:00 a.m.

Courtroom: 6, 14th floor

Judge: Hon. John A. Mendez

**TRIAL: May 11, 2015**

25  
26 Pursuant to the Court's Status (Pre-trial Scheduling) Order of October 3, 2013 [Document 14]  
27 and Local Rule 281, Defendant United States of America presents its witness list.  
28

**Exhibit B**

**Fact Witnesses**

- 1) Paul Cameron Davainis, M.D.  
Shasta Community Health Center  
2801 Silver St.  
Anderson, CA 96007
- 2) Kelley DelCarlo, R.N.  
c/o Thomas J. Doyle, Esq.  
Schuering Zimmerman & Doyle  
400 University Ave.  
Sacramento, CA 95825
- 3) Paul W. Holmes, M.D.  
Banner Lassen Medical Center Emergency Room  
1800 Spring Ridge Dr.  
Susanville, CA 96130
- 4) Joel D. Paoner, CRNA  
c/o Thomas J. Doyle, Esq.  
Schuering Zimmerman & Doyle  
400 University Ave.  
Sacramento, CA 95825
- 5) Drondee Perez, R.T.  
c/o Thomas J. Doyle, Esq.  
Schuering Zimmerman & Doyle  
400 University Ave.  
Sacramento, CA 95825

**Expert Witnesses**

- 6) Paul Adams  
Moss Adams LLP  
2030 Main Street, Suite 1400  
Irvine, CA 92614
- 7) Joseph T. Capell, M.D.  
A Professional Corporation  
5550 N. Palm Avenue, Suite 101  
Fresno, CA 93704
- 8) Steven M. Day, PhD  
Mortality Research & Consulting, Inc.  
17700 Castleton Street, Suite 586  
City of Industry, CA 91748

**Exhibit B**

- 1           9)     Maurice Leslie Druzin, M.D.  
2                 Stanford University Medical Center  
3                 300 Pasteur Drive, Room HH333  
4                 Stanford, CA 94305-5317
- 5           10)    Philippe Friedlich, M.D. MS Epi. MBA  
6                 Children's Hospital Los Angeles  
7                 USC Division of Neonatal Medicine  
8                 4650 Sunset Blvd, MS 31  
9                 Los Angeles, CA 90027
- 10          11)    Michael Patrick Nageotte, M.D.  
11                Long Beach Memorial Medical Center  
12                2801 Atlantic Avenue  
13                Long Beach, CA 90801
- 14          12)    Daljeet S. Rai, M.D.  
15                455 O'Connor Drive, Suite #210  
16                San Jose, CA 95128
- 17          13)    Timothy R. Sells, MA, CRC, CLP  
18                Sells and Associates, Inc.  
19                791 University Avenue  
20                Sacramento, CA 95825
- 21          14)    Gordon Sze, M.D.  
22                Yale University School of Medicine  
23                Section of Neuroradiology  
24                333 Cedar Street  
25                New Haven, CT 06510
- 26          15)    Karl Erik Volk  
27                Cohen-Volk Economic Consulting Group  
28                1155 Alpine Road  
               Walnut Creek, CA 94596
- 16)    Yvonne W. Wu, M.D.  
                  University of California, San Francisco  
                  350 Parnassus Ave, Suite 609  
                  San Francisco, CA 94143-0137

Respectfully Submitted,

DATED: March 6, 2015

BENJAMIN B. WAGNER  
United States Attorney

/s/ Victoria L. Boesch  
VICTORIA L. BOESCH  
CHI SOO KIM  
Assistant United States Attorneys

**EXHIBIT C**

**Exhibit C**

**BANNER HEALTH'S WITNESS LIST  
FOR JOINT PRE-TRIAL STATEMENT**

- 1. Kelly Del-Carlo  
c/o Thomas J. Doyle, 400 University Ave, Sacramento CA 95825**
- 2. Drondee Perez  
c/o Thomas J. Doyle, 400 University Ave, Sacramento CA 95825**
- 3. Joel Paoner, c/o Thomas J. Doyle, 400 University Ave, Sacramento CA 95825**
- 4. Linda Ross, c/o Thomas J. Doyle, 400 University Ave, Sacramento CA 95825**
- 5. Catherine Jamieson, c/o Thomas J. Doyle, 400 University Ave, Sacramento CA 95825**
- 6. Dr. Paul Davainis, c/o Assistant US Attorney, 501 I Street, Ste. 10-100, Sacramento, CA 95814**
- 7. Dr. Paul Holmes, c/o Assistant US Attorney, 501 I Street, Ste. 10-100, Sacramento, CA 95814**
- 8. Tracy Weeber, RN  
3 Marlin Court  
Chico, CA 959734**
- 9. Michael Ross, M.D.  
Harbor-UCLA Medical Center  
1000 W. Carson Street, Box 3  
Torrance, CA 90509-2910**
- 10. Jay Goldsmith, M.D.  
1625 Joseph Street  
New Orleans, LA 70115**
- 11. Kimberly BeDell, M.D.  
2801 Atlantic Avenue  
Long Beach, CA 90801-1428**
- 12. Scott Kush, M.D., JD, MPH  
Life Expectancy Group  
1370 Willow Road, 2<sup>nd</sup> Floor  
Menlo Park, CA 94025**

- 13. Constantine Boukidis**  
**Vavoulis Weiner & McNulty**  
**455 South Figueroa St., Ste. 3700**  
**Los Angeles, CA 90071-1641**
- 14. Linda Olzack, R.N.**  
**Olzack Healthcare Consulting**  
**2092 Peace Court**  
**Atwater, CA 95301**
- 15. Dr. Murice Druzin**  
**Stanford University Medical Center**  
**300 Pasteur Drive-Room HH333**  
**Stanford, CA 94305**
- 16. Dr. Philippe Friedlich**  
**Children's Hospital Los Angeles**  
**Division of Neonatology**  
**4650 Sunset Blvd., MS 31**  
**Los Angeles, CA 90027**
- 17. Dr. Gordon Sze**  
**Yale University School of Medicine**  
**333 Cedar Street**  
**New Haven, CT 06510**
- 18. Dr. Yvonne Wu**  
**University of California – San Francisco**  
**350 Parnassus Avenue, Ste. 609**  
**San Francisco, CA 9143**
- 19. Dr. Joseph Capell**  
**5550 N. Palm Ave., Ste. 101**  
**Fresno, CA 93704**
- 20. Dr. Stephen Day**  
**Mortality Research & Consulting, Inc.**  
**17700 Castleton St., Ste. 586**  
**City of Industry, CA 91748**
- 21. Erik Volk**  
**Cohen/Volk Economic Consulting Group**  
**1155 Alpine Road**  
**Walnut Creek, CA 94596**

**22. Timothy Sells  
Sells & Associates, Inc.  
765 University Ave., Ste. 100  
Sacramento, CA 95825**



**EXHIBIT D**

**Exhibit D - Plaintiffs' Exhibits (##1-100)**

1. Medical Records of Micaela Palacio from Northeastern Rural Health Clinics, including, but not limited to, billing records, all OB ultrasounds, Fetal Heart Tracings for all Prenatal Clinic Appointments, and Laboratory Values for all Prenatal Appointments
2. Medical Records of Micaela Palacio from Banner Lassen Medical Center, including, but not limited to, billing records, Multidisciplinary Admission records, Labor & Delivery nursing progress notes, L & D triage record, Fetal Monitor Tracing, Operative Record by Paul Davainis, MD, Delivery Report, Admission Orders, anesthesia records, and Dr. Davainis's progress notes
3. Medical Records of I.P. from Banner Lassen Medical Center, including, but not limited to, notes by Paul Holmes, MD, laboratory values, x ray reports, and medication administration records, billing records, and blood gas reports
4. Medical Records of I.P. from UC Davis, including billing records, brain MRI reports and imaging from May 7, 2012, all brain imaging studies, admission summary, discharge summary, operative reports including gastrostomy tube placement, medication orders, medication administration records, physician progress notes, all therapeutic intervention notes and reports, and physician consultations
5. Medical Records of I.P. from Children's Hospital Central CA, including billing records, admission summary, discharge summary, genetic testing reports, brain MRI reports and images, all brain imaging studies and reports, blood gas reports, all physical, occupational and speech therapy reports and progress reports,

physician consultations and operative reports, and all Charlie Mitchell Clinics  
physician reports

6. Medical Records of I.P. from Eye & Vision Central CA
7. Medical Records of I.P. from United Cerebral Palsy
8. Medical Records of I.P. from Central Valley Regional Center
9. Medical Records of I.P. from Children's Retina Institute
10. Medical Records of I.P. from Blind Babies Foundation
11. Medical Records of I.P. from Children's Home Care
12. Medical Records of I.P. from REACH Air Medical Services
13. Medical Records of I.P. from King's County Children's Services
14. Photographs and videotape of IP
15. Expert report of Jerome Barakos, MD
16. Supplemental Expert report of Jerome Barakos, MD
17. Expert report of Frank Manning, MD
18. Supplemental Expert report of Frank Manning, MD
19. Expert report of Peter Formuzis, PhD (20 year Life Expectancy)
20. Expert report of Peter Formuzis, PhD (26 year Life Expectancy)
21. Supplemental Expert report of Peter Formuzis, PhD dated Feb. 25, 2015
22. EPS Settlements Report on Cost of Funding Life Care Plan
23. EPS Life Care Plan Worksheet for Funding Life Care Plan dated Feb. 18, 2015
24. US Department of Treasury Daily Treasury Yield Curve Rates
25. Analysis by Dr. Formuzis on Loss of Earnings Calculations by Eric Volk
26. Net Discount Rate Analysis by Dr. Formuzis on Nursing Home Services based on  
CPI

27. CPI - All Urban Consumers produced by Dr. Formuzis in his Deposition Major Sector Producers and Costs
28. Excerpt from "Assumptions and Methods" produced by Dr. Formuzis
29. Annuity Life Company Tables for Costs per Thousand for I.P.
30. Expert report of Ira Lott, MD
31. Supplemental Expert report of Ira Lott, MD
32. Expert report of Luis Montes, MD
33. Supplemental Expert report of Luis Montes, MD
34. Expert report of Patrick Barnes, MD
35. Supplemental Expert report of Patrick Barnes, MD
36. Expert report of Laura Mahlmeister, PhD
37. Supplemental Expert report of Laura Mahlmeister, PhD
38. Expert report of Michael P. Sherman, MD
39. Supplemental Expert report of Michael P. Sherman, MD
40. Expert report of William Rhine, MD
41. Supplemental Expert report of William Rhine, MD
42. Expert report of Karen Preston, RN
43. Supplemental Expert report of Karen Preston, RN
44. Expert report of Richard Paul, MD
45. Supplemental Expert report of Richard Paul, MD
46. Expert report of Donald Olson, MD
47. Supplemental Expert report of Donald Olson, MD

**EXHIBIT E**

**Exhibit E (##200-300)**

1 BENJAMIN B. WAGNER  
2 United States Attorney  
3 VICTORIA L. BOESCH  
4 CHI SOO KIM  
5 Assistant United States Attorneys  
6 501 I Street, Suite 10-100  
7 Sacramento, CA 95814  
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10 Attorneys for the United States

11 **IN THE UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**

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

16 Plaintiffs,

17 v.

18 UNITED STATES OF AMERICA,

19 Defendant.

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

**UNITED STATES' AMENDED EXHIBIT  
LIST**

Pretrial Conference: March 12, 2015

Time: 10:00 a.m.

Courtroom: 6, 14th floor

Judge: Hon. John A. Mendez

**TRIAL: May 11, 2015**

20 I.P., A MINOR, BY AND THROUGH HER  
21 GUARDIAN AD LITEM, FACUNDO  
22 PALACIO DIAZ; MICAELA PALACIO,

23 Plaintiffs,

24 v.

25 BANNER HEALTH, AN ARIZONA CORP.,  
26 doing business as BANNER LASSEN  
27 MEDICAL CENTER; DOES 100- 200,

28 Defendants.

Pursuant to the Court's Status (Pre-trial Scheduling) Order of October 3, 2013 [Document 14]  
and Local Rule 281, Defendant United States of America presents its exhibit list.

**Exhibit E (##200-300)**

- 1 200. Medical Records of Micaela Palacio from Northeastern Rural Health Clinics.
- 2 201. Medical Records of Micaela Palacio from Banner Lassen Medical Center including without  
3 limitation Provider H & P Report, Admission Summary, Labor and Delivery progress  
4 notes, Fetal Monitoring strip, Physician Progress Notes, Delivery Report, OR Nursing  
5 Report, Discharge Summary Report, medical imaging report, Anesthesia Record
- 6 202. Medical Records of I.P. from Banner Lassen Medical Center including without limitation  
7 History and Physical, Orders, chest x-ray films, chest x-ray reports, Neonatal Flowsheets,  
8 Physician Progress Record, Operative Note, blood gas records, temperature records
- 9 203. Medical Records of I.P. from U.C. Davis Medical Center including without limitation  
10 medical imaging
- 11 204. Banner Lassen Medical Center policies
- 12 205. Summary of I.P. insurance records
- 13 206. Blue Shield Benefits Summary
- 14 207. Blue Shield Records
- 15 208. Anthem Blue Cross Records
- 16 209. Medi-Cal Records
- 17 210. Medicare Pricing, Data Analysis and Coding
- 18 211. Centers for Medicare and Medicaid Services, Fee Schedules
- 19 212. Affordable Care Act Pricing, California Exchange
- 20 213. Certifications for Dr. Paul Davainis and Dr. Paul Holmes
- 21 214. Certification for Drondee Perez
- 22 215. Expert Report of Maurice L. Druzin, MD
- 23 216. Supplemental Expert Report of Maurice L. Druzin, MD
- 24 217. Expert Report of Daljeet S. Rai, MD
- 25 218. Rebuttal Expert Report of Michael P. Nageotte, MD
- 26 219. Expert Report of Philippe S. Friedlich, MD
- 27 220. Supplemental Expert Report of Philippe S. Friedlich, MD
- 28 221. Second Supplemental Expert Report of Philippe S. Friedlich, MD
222. Expert Report of Erik Volk, Cohen Volk Economic Consulting Group
223. Supplemental Expert Report of Erik Volk, Cohen Volk Economic Consulting Group
224. Second Supplemental Expert Report of Erik Volk, Cohen Volk Economic Consulting  
Group
225. Erik Volk Deposition File
226. Expert Report of Yvonne Wu, MD
227. Articles cited in Expert Report of Yvonne Wu, MD
228. Expert Report of Gordon Sze, MD

**Exhibit E (##200-300)**

- 1 229. ACOG publications
- 2 230. Notes by Philippe S. Friedlich, MD
- 3 231. Excerpts from 2012 Neonatal Resuscitation Handbook
- 4 232. Excerpts from *Pediatric Neuroimaging* by A. James Barkovich textbook
- 5 233. Excerpts of Neonatal Encephalopathy and Neurologic Outcome, Second Edition
- 6 234. Articles by Richard Paul, MD
- 7 235. Fetal Heart Rate Strip exhibits used at depositions
- 8 236. Expert Report of Stephen Day, PhD
- 9 237. Supplemental Expert Report of Stephen Day, PhD
- 10 238. References cited in Expert Report of Stephen Day, PhD
- 11 239. Life Tables for U.S. Females (Arias et al, United States life tables, 2009)
- 12 240. Life Tables for U.S. Males (Arias et al, United States life tables, 2009)
- 13 241. Life Tables for I.P.
- 14 242. Percentage Surviving by Hispanic Origin, Race, Age, and Sex: United States, 2009 (Arias et al, United States life tables, 2009)
- 15 243. Kaplan–Meier survival curves (Reid SM et al., "Survival of individuals with cerebral palsy born in Victoria, Australia, between 1970 and 2004." Developmental Medicine & Child Neurology, April 2012)
- 16 244. Survival in Sweden and California, Gross Motor Function Classification System level IV (Brooks JC et al., "Survival in children with severe cerebral palsy: a further international comparison." Developmental Medicine & Child Neurology, April 2012)
- 17 245. David Strauss, Lewis Rosenbloom, Robert Shavelle, and Jordan Brooks, "Improved survival in cerebral palsy in recent decades?" Developmental Medicine & Child Neurology (2012)
- 18 246. Expert Report of Timothy R. Sells
- 19 247. Life Care Plan Comparison for I.P. by Timothy R. Sells
- 20 248. OES Data for Fresno County
- 21 249. Expert Report of Joseph T. Capell, MD
- 22 250. Review of Records by Joseph T. Capell, MD
- 23 251. Supplemental Review of Records by Joseph T. Capell, MD
- 24 252. Expert Report of Paul A. Adams
- 25 253. Micaela Palacio's Administrative Claim
- 26 254. I/P.'s Administrative Claim
- 27 255. Photographs of Banner Lassen Medical Center
- 28 256. Medical Records of I.P. from Blind Babies Foundation



**Exhibit E (##200-300)**

- 1 257. Medical Records of I.P. from California Children's Services (King's County Children's  
Services)  
2 258. Medical Records of I.P. from Children's Hospital Central California  
3 259. Medical Records from Children's Home Care  
4 260. Medical Records of I.P. from Children's Retina Institute  
5 261. Medical Records of I.P. from Central Valley Regional Center  
6 262. Medical Records of L.P. from Eye & Vision Central California, Inc.  
7 263. Medical Records of I.P. from United Cerebral Palsy  
8 264. Medical Records of I.P. from Dr. Wood (Eye-Q)

8 Respectfully Submitted,

9  
10 DATED: March 20, 2015

BENJAMIN B. WAGNER  
United States Attorney

/s/ Victoria L. Boesch

VICTORIA L. BOESCH

CHI SOO KIM

Assistant United States Attorneys

**EXHIBIT F**

**Exhibit F (##400-500)**

**BANNER HEALTH'S EXHIBIT LIST  
FOR JOINT PRE-TRIAL STATEMENT**

- 400. Micaela Palacio's medical records from Banner Lassen Medical Center**
- 401. I.P.'s medical records from Banner Lassen Medical Center**
- 402. I.P.'s chest x-rays from Banner Lassen Medical Center**
- 403. Paper copy of the fetal monitor strip**
- 404. Electronic copy of the fetal monitor strip**
- 405. Linda Olzack's life care plan**
- 406. Constantine Boukidis' economic report**
- 407. Policies from Banner Lassen Medical Center**
  - a) WIS: Maternal and Fetal Assessment Guidelines**
  - b) WIS: Electronic Fetal Monitoring**
  - c) WIS: Cesarean Section: Surgical Preparation for Scheduled, Unscheduled, Emergent Procedures**
  - d) Clinical Chain of Command for Patient Care Issues**
- 408. Expert report of Tracy Weeber, RNC**
- 409. Expert report of Michael Ross, M.D.**
- 410. Expert report of Jay Goldsmith, M.D.**
- 411. Expert report of Scott Kush, M.D.**
- 412. Expert report of Kimberly BeDell, M.D.**
- 413. Supplemental expert report of Kimberly BeDell, M.D.**
- 414. Cost Comparison report of Linda Olzack**