

1 MELINDA HAAG (CABN 132612)
 United States Attorney
 2 JOANN M. SWANSON (CABN 88143)
 Chief, Civil Division
 3 JENNIFER S WANG (CABN 233155)
 Assistant United States Attorney
 4
 5 U.S. Attorney’s Office/Civil Division
 450 Golden Gate Avenue, 9th Floor
 San Francisco, California 94102-3495
 6 Telephone: (415) 436-6967
 Facsimile: (415) 436-6748
 7 Email: jennifer.s.wang@usdoj.gov

8 Attorneys for the United States of America

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN FRANCISCO DIVISION**

12 JASPER GONZALES, by his Guardian Ad)
 Litem, JENNA GONZALES,)
 13)
 Plaintiffs,)
 14)

15 v.)

16 RICK SIMONS, FURTADO, JASPOVICE)
 & SIMONS, a law corporation, SUTTER)
 BAY HOSPITALS dba SUTTER)
 17 MEDICAL CENTER OF SANTA ROSA,)
 and DOES 1 through 20,)
 18)
 Defendants.)

19)
 20 SUTTER BAY HOSPITALS dba SUTTER)
 MEDICAL CENTER OF SANTA ROSA,)
 21)
 Cross-Complainant,)

22 v.)

23 TRINA BOWEN, M.D., WEST COUNTY)
 HEALTH CENTERS, INC., and ROES 1-)
 24 10,)
 25)
 Cross-Defendants.)

Civil Action No. C11-4319 SC

**STIPULATION AND [PROPOSED]
 ORDER OF DISMISSAL OF TRINA
 BOWEN, M.D. AND WEST COUNTY
 HEALTH CENTERS, INC. WITH
 PREJUDICE**

26 Subject to the approval of the Court, the parties, by and through their counsel of record, stipulate

27
 28 STIP. & [PROPOSED] ORDER DISMISSING TRINA BOWEN, M.D.
 & WEST COUNTY HEALTH CENTERS WITH PREJUDICE
 C11-4319 SC

1 as follows:

2 1. This is a legal and medical malpractice action related to the birth of Jasper Gonzales in
3 August 2004. Plaintiff is Jasper Gonzales, a minor, by and through his Guardian Ad Litem, Jenna
4 Gonzales. Plaintiff filed a complaint alleging legal malpractice by defendant Rick Simons and
5 Furtado, Jaspovice & Simons on or about December 21, 2010. On or about February 2, 2011,
6 plaintiff filed an amended complaint alleging medical malpractice by defendant Sutter Bay
7 Hospitals dba Sutter Medical Center of Santa Rosa (“Sutter”).

8 2. Around June 17, 2011, defendant Sutter brought a third-party complaint naming Trina
9 Bowen, M.D. and West County Health Centers, Inc. as third-party defendants.

10 3. Sutter’s third-party complaint is an action against a federally funded health center and
11 health center doctor. The plaintiff and Sutter allege in this action that third-party defendant Trina
12 Bowen, M.D. was at the time of the events alleged in the amended complaint and third-party
13 complaint acting in the scope of her employment at West County Health Centers, Inc. Under the
14 Federally Supported Health Centers Assistance Act (“FSHCAA”), 42 U.S.C § 233(g)-(n), third-
15 party defendant West County Health Centers, Inc. is deemed part of the Public Health Service of
16 the United States Department of Health and Human Services (“HHS”), and the Federal Tort
17 Claims Act, 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680 (“FTCA”), is the exclusive remedy for
18 alleged torts committed by health center employees while acting within the course and scope of
19 their employment. *See* 28 U.S.C. §§ 1346(b)(1), 2676, 2679.

20 4. The FTCA provides an exclusive remedy for Sutter, if there is any at all, and limits
21 Sutter to an action against the United States of America, not against the individual federal actor
22 or agency. 28 U.S.C. §§ 2679, 2676.

23 5. As a result of the foregoing, the parties hereby stipulate and agree that (1) Trina
24 Bowen, M.D. and West County Health Centers, Inc. shall be dismissed with prejudice from the
25 action; and (2) the United States of America shall be substituted into the action as the third-party
26 defendant.

27 6. The caption for the third-party complaint shall be changed to SUTTER BAY

28
STIP. & [PROPOSED] ORDER DISMISSING TRINA BOWEN, M.D.
& WEST COUNTY HEALTH CENTERS WITH PREJUDICE
C11-4319 SC

1 HOSPITALS dba SUTTER MEDICAL CENTER OF SANTA ROSA, Third-Party Complainant
2 v. UNITED STATES OF AMERICA, Third-Party Defendant.

3

4 Dated: April 30, 2012

Respectfully submitted,

5

MELINDA HAAG
United States Attorney

6

/s/ Jennifer S Wang
JENNIFER S WANG
Assistant United States Attorney

7

8

9 Dated: April 27, 2012

TEAL MONTGOMERY & HENDERSON

10

/s/ Michael S. Henderson
MICHAEL S. HENDERSON
Attorney for Plaintiff Jasper Gonzales, by
his Guardian Ad Litem, Jenna Gonzales

11

12

13 Dated: April 30, 2012

MURPHY PEARSON BRADLEY & FEENEY

14

/s/ Arthur J. Harris
ARTHUR J. HARRIS
Attorneys for Defendants Rick Simons and
Furtado, Jaspovice & Simons

15

16

17 Dated: April 30, 2012

LA FOLLETTE, JOHNSON, DE HAAS,
FESLER & AMES

18

19

/s/ Larry Thornton
BARRY VOGEL / LARRY THORNTON
Attorneys for Defendant and Third-Party
Complainant Sutter West Bay Hospitals dba Sutter
Medical Center of Santa Rosa

20

21

~~—[PROPOSED] ORDER~~

22

IT IS SO ORDERED.

23

Dated: 5/1/12

24

HON. SAMUEL CONTI
United States District Judge

25

26

27

28

