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10 Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

14 ESTATE OF DONALD NELSON, by and
 15 through ELLEN AUGUSTINE, FLORENE
 16 NELSON-WARREN, JIMMIE NELSON, LEE
 17 NELSON, LUGENE NELSON, NORMA
 18 NELSON, OTHA NELSON, PEARL
 19 NELSON, EFFIE POWELL-ROSS, AND
 20 DOROTHY RICHARD, and DONNA TRIGG,
 21 as successors in interest,

19 Plaintiffs,

20 vs.

22 COUNTY OF ALAMEDA, DEPUTY TRAVIS
 23 EGAN, LIEUTENANT B.D. BARKER,
 24 CALIFORNIA FORENSIC MEDICAL
 25 GROUP, , DOES 1 THROUGH 20,
 26 INCLUSIVE,

25 Defendants

Case No.: 3:21-cv-03225-CRB

**JOINT STIPULATION OF VOLUNTARY
 DISMISSAL OF THE PLAINTIFFS'
 FIRST AMENDED COMPLAINT
 ORDER**

Fed. Rule Civ. Proc. 41(a)(1)(A)(ii)

1 TO THE HONORABLE CHARLES R. BREYER, UNITED STATES
2 DISTRICT JUDGE:

3 Plaintiffs Estate of Donald Nelson, by and through Ellen Augustine, Florene
4 Nelson-Warren, Jimmie Nelson, Lee Nelson, Lugene Nelson, Norma Nelson, Otha
5 Nelson, Pearl Nelson, Effie Powell-Ross, Dorothy Richard, and Donna Trigg,
6 successors in interest to Donald Nelson (collectively Plaintiffs), and Defendant
7 County of Alameda, Defendant Deputy Travis Egan, Defendant Lt. B.D. Barker,
8 and Defendant California Forensic Medical Group (collectively Defendants)
9 hereby submit this Stipulation of Voluntary Dismissal of the Plaintiffs' Federal
10 Law Claims pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) as follows:

11 1. On April 30, 2021, Plaintiffs filed a Complaint in the above captioned
12 action in the Northern District of California. The action was timely filed. (Docket
13 #1)

14 2. On July 30, 2021, Plaintiffs filed a timely First Amended Complaint.
15 (Docket #29)

16 3. On August 13, 2021, Defendant CFMG answered Plaintiffs' First
17 Amended Complaint ("FAC"), admitting that jurisdiction and venue were properly
18 pled.

19 4. On August 13, 2021, Defendants County of Alameda and Deputy
20 Egan filed a Motion to Dismiss Plaintiffs' First Amended Complaint pursuant to
21 FRCP 12(b) (Docket #30). Although Lt. B.D. Barker was named as a Defendant in
22 the FAC, he was not listed as a party on the Court's docket. Nevertheless, the
23 County advanced arguments on his behalf in the Motion (collectively, "County
24 Defendants").
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1 5. On October 14, 2021, this court granted the County Defendants’
2 Motion to Dismiss (“Order”) and permitted Plaintiffs until November 19, 2021 to
3 file an amended complaint consistent with that Order.

4 6. The FAC alleges federal claims for relief pursuant to 42 U.S.C. §
5 1983 for constitutional violations for denial of medical care, denial of medical care
6 and safe conditions, *Monell* liability, and supervisor liability.

7 7. The FAC also alleges claims under state law for relief for Negligence
8 and a violation of Government Code §845.6.

9 8. No depositions have been taken. No written discovery has been
10 conducted.

11 9. The parties agree and stipulate that any and all federal claims,
12 including the claims for relief asserted in the FAC pursuant to 42 U.S.C. § 1983 for
13 constitutional violations for denial of medical care, denial of medical care and safe
14 conditions, *Monell* liability, and supervisor liability will be dismissed with
15 prejudice and that such dismissal is not on the merits and will have no effect on the
16 state claims for relief.

17 10. The parties agree and stipulate that any and all state claims for relief,
18 including without limitation the claims for Negligence, and violations of
19 Government Code §845.6 will be dismissed without prejudice, except as discussed
20 in paragraph 11 herein.

21 11. Notwithstanding the provisions of paragraphs 9 and 10 above, to the
22 extent that Order dismissed certain claims with prejudice, they remain dismissed
23 with prejudice.
24

25 12. The parties agree and stipulate that within thirty (30) days following
26 the dismissal of the above-captioned action, Plaintiffs will file a Complaint against
27 any and all Defendants in the Alameda County Superior Court pursuant to 28

1 U.S.C. §1367(d). Such complaint will only include claims for Negligence and
2 violations of Government Code §845.6.

3 13. Plaintiffs and County Defendants have a disagreement regarding
4 whether Plaintiffs have previously asserted a wrongful death claim under state law.
5 In sum, and without waiving additional arguments in the future, Plaintiffs contend
6 that they have sufficiently alleged wrongful death and that a claim of insufficiency,
7 if one existed, should have been raised in its 12(b) motion or is otherwise waived.
8 County Defendants disagree and contend, in sum and without waiving additional
9 arguments, that no such claim has ever been asserted by Plaintiffs and that the
10 statute of limitations for asserting such claim has expired. The County Defendants
11 further contend that Plaintiffs failed to include any such claim in their Government
12 Claim. The parties agree that such disagreement is not resolved by this stipulation
13 and may be raised and disputed in future motions.

14 14. The parties agree and stipulate that such new complaint may include
15 additional facts, corrections, edits, identification of parties including Does, or other
16 amendments so long as such amendments do not add additional causes of action
17 beyond those identified in ¶12.

18 15. The parties agree and stipulate that, with the exception of Plaintiffs
19 state law claim for wrongful death discussed in ¶ 13, all statutes of limitations for
20 Plaintiffs' state law claims for relief as asserted in the FAC have been complied
21 with and will not form a basis for dismissal in state court, assuming Plaintiffs file a
22 Complaint in state court no later than 30 days following the dismissal of the above-
23 captioned action. Except as to Plaintiffs' state law claim for wrongful death,
24 Defendants will not assert defenses claiming violations of statutes of limitations,
25 and agree that, so long as the state action is filed within thirty (30) days of the
26

1 federal Court’s dismissal of the state claims, said state claims as asserted in the
2 Fifth and Sixth claims in the FAC will be deemed to have been timely filed.

3 16. The parties agree and stipulate that each party shall be responsible for
4 its own costs and attorneys’ fees associated with the dismissal of the federal
5 claims.

6 **IT IS SO STIPULATED.**

7 **LESSEM, NEWSTAT, & TOOSON, LLP.**

8 DATED: November 17, 2021

9 By:

10 */s/ Jeremy Lessem*

11 _____
12 Jeremy I. Lessem
13 Attorney for Plaintiffs

14 **JOYNT LAW**

15 DATED: November 17, 2021

16 By:

17 */s/ Karen Joynt*

18 _____
19 Karen Joynt
20 Attorney for Plaintiffs

21 Dated: November 17, 2021

22 **ORBACH HUFF + HENDERSON LLP**

23 By: */s/ Kevin E. Gilbert*

24 _____
25 Kevin E. Gilbert
26 Attorney for Defendants
27 COUNTY OF ALAMEDA and
28 DEPUTY TRAVIS EGAN

1 Dated: November 17, 2021

2 **LAW OFFICES OF JEROME M.**
3 **VARANINI**

4 By: _____ */s/ Jerome Varanini*

5 Jerome M. Varanini
6 Attorney for Defendant
7 CALIFORNIA FORENSIC MEDICAL
8 GROUP, INC.
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5 UNITED STATES DISTRICT COURT
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7 ESTATE OF DONALD NELSON, by and
8 through ELLEN AUGUSTINE, FLORENE
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20 GROUP, DOES 1 THROUGH 20,
21 INCLUSIVE,

22 Defendants

Case No.: 3:21-cv-03225-CRB

~~PROPOSED~~ ORDER DISMISSING
PLAINTIFFS' FEDERAL LAW CLAIMS
WITH PREJUDICE AND STATE CLAIMS
WITHOUT PREJUDICE

Fed. Rule Civ. Proc. 41(a)(1)(A)(ii)

23 Having reviewed the Joint Stipulation to Voluntarily Dismiss Federal Law
24 Claims and finding good cause therefor, the following is hereby ORDERED:

25 (1) All federal claims in Plaintiffs' First Amended Complaint shall be
26 dismissed *with* prejudice.


27 (2) All state claims in Plaintiffs' First Amended Complaint shall be
28 dismissed *without* prejudice.

1 (3) Plaintiffs have thirty (30) days to refile state law claims in the
2 Alameda County Superior Court upon this Court's dismissal.

3 **IT IS SO ORDERED.**

4
5 DATE: November 19, 2021

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

6
7 By 
8 Honorable Charles R. Breyer
9 United States District Court Judge