

1 Christopher B. Dolan (#165358)  
2 **THE DOLAN LAW FIRM**  
3 1438 Market Street  
4 San Francisco, California 94102  
5 Telephone: (415) 421-2800  
6 Facsimile: (415) 421-2830

7 Attorneys for Plaintiff

**E-Filing**

**FILED**

DEC 30 2013

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

8 **UNITED STATES DISTRICT COURT OF CALIFORNIA**  
9 **OAKLAND**

10 LATASHA WINKFIELD, as an Individual,  
11 and as Guardian Ad Litem and mother of Jahi  
12 McMath,

13 Plaintiff,

14 v.

15 CHILDREN'S HOSPITAL & RESEARCH  
16 CENTER AT OAKLAND; DR. DAVID  
17 DURAND, and  
18 Does 1-100, Inclusive

Case No. **13-5993**

**SBA**

Ex Parte Application for a Temporary  
Restraining Order to Enjoin Defendants from  
Ending Life Support, Memorandum of Points  
and Authorities in Support Thereof, Declaration  
of Christopher B. Dolan Re Notice and  
Proposed Order

[Filed Concurrently with Plaintiff's Complaint]

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD IN THIS ACTION:

20 YOU ARE HEREBY NOTIFIED that on December 30<sup>30</sup>, 2013, at \_\_\_\_\_, or as soon  
21 thereafter as this matter may be heard in Courtroom \_\_\_\_\_ of the United States District Court,  
22 Northern District of California, located at 1301 Clay Street, Oakland, CA, Plaintiff LATASHA  
23 WINKFIELD, will hereby move this Court ex parte for a temporary restraining order restraining  
24 Defendant CHILDREN'S HOSPITAL & RESEARCH CENTER AT OAKLAND; and DR. DAVID  
25 DURAND from ending Life Support for the minor Jahi McMath and request for provision of  
26 nutrition and other medical treatment to provide optimize her physical condition and avoid  
27 conditions like hypothyroidism, while the Court makes its ruling. Plaintiff also seeks an order  
28

1 compelling placement of a tracheostomy tube and gastric feeding tube into Jahi McMath so that she  
2 can be provided proper respiratory support and nutrition and so that she can meet the conditions  
3 required for transfer to another facility.

4  
5 This application is made pursuant to Federal Rules of Civil Procedure Rule 65(b) and U.S.  
6 Dist. Court, Northern District of California, Local Rule 65-1. The ex parte relief requested is  
7 appropriate because, absent an injunction prohibiting Defendants from proceeding with ending life  
8 support measures, Defendants are going to terminate Jahi McMath's ventilator support at 5:00 p.m.  
9 on December 30, 2013 (this day) thereby leading to the inevitable, and immediate, cessation of the  
10 beating of her heart. Plaintiff will likely suffer irreparable harm in that her daughter will die, whereas  
11 the only harm to Defendants will be the resulting continuation of the status quo of allowing the  
12 minor to remain on life support.

13  
14 Further, Plaintiff has a likelihood of succeeding on the merits of her case because, inter alia,  
15 Defendants proposed action, i.e., removal of cardio pulmonary support, over the objection of Nailah  
16 Winkfield, the health care decision maker for her minor child Jahi based upon the classification of  
17 Jahi as brain dead pursuant to California Health and Safety Code 7180 & 7821 and against her  
18 religious principals, is unconstitutional in so far as it interferes with Plaintiff's exercise of her rights  
19 to freedom of religion under the first amendment and interference with her privacy rights under the  
20 Fourth and Fourteenth Amendments recognized rights to privacy in health care decisions and  
21 determination over ones medical treatment. The Plaintiff is actively seeking alternate arrangements  
22 for her daughter and failure to institute a TRO and Injunction will make the matter moot as Jahi  
23 McMath will cease to have a heart beat and will have expired. Also, the public interest will be  
24 served, as granting this Temporary Restraining Order will allow the public to have a clear  
25 understanding as o the rights of a parent to continue mechanical support of the life of a loved one as  
26 defined by their religious.

**THE  
DOLAN  
LAW  
FIRM**  
TRIAL LAWYERS  
THE DOLAN BUILDING  
438 MARKET STREET  
SAN FRANCISCO, CA  
94105  
TEL: (415) 421-  
2800  
X: (415) 421-2830

1 Counsel for Plaintiff properly provided Defendant CHILDREN'S HOSPITAL &  
2 RESEARCH CENTER AT OAKLAND, and DR. DURAND with ex parte notice pursuant to  
3 Federal Rules of Civil Procedure Rule 65(b)(1). (See, The Declaration of Christopher B. Dolan  
4 (hereinafter "Dolan Decl.") ¶ 2.)  
5

6 This ex parte application is made pursuant to Federal Rules of Civil Procedure Rule 65(b)  
7 and U.S. Dist. Court, Northern District of California, Local Rule 65-1, and is based upon this notice,  
8 the attached memorandum of points and authorities, the attached Declaration of Christopher Dolan,  
9 the complete records, pleadings, documents and papers on file, and upon such other matters which  
10 may properly come before this Court at the hearing of this application.  
11

12 Dated: December 27, 2013

THE DOLAN LAW FIRM

13  
14 By: \_\_\_\_\_  
15 Christopher Dolan, Esq.  
16 Attorneys for the Plaintiff

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19  
20 On December 9, 2013, Jahi McMath went in for a routine procedure to have her tonsils  
21 removed in hopes that it would assist with her sleep apnea. Jahi is 13 years old, and is in the 8<sup>th</sup>  
22 grade. On December 12, 2013 the Defendants declared Jahi brain dead after her tonsil surgery ended  
23 with her bleeding profusely, going into cardiac arrest, and needing life-support. Currently, Jahi  
24 McMath remains on life-support at Defendant's Hospital. (See, Dolan Decl. at ¶ 3.)  
25

26 Initially, a TRO was obtained in the Superior Court of the State of California for the County  
27 of Alameda pending a hearing on a finding of "brain death" pursuant to California Health and Safety  
28 Code 7180 & 7181. On December 24, 2013, the Hon. Evelio Grillo, in and for the Superior Court

1 for the County of Alameda, found that Jahi McMath was brain dead pursuant to California Health  
2 and Safety Code Section 7080 & 7081 and extended a temporary restraining order requiring that the  
3 Defendant continue to provide ventilator support and maintain the status quo of medical treatment  
4 through December 30, 2012. After such time the Hospital is free to remove the ventilator support  
5 from Jahi McMath and, without such support her heart will cease beating.  
6

7 Prior to the filing of this action Plaintiff's Counsel informed Defendant that the family is  
8 undertaking efforts to locate an alternate placement for Jahi so that she can be removed from the  
9 facility. Plaintiff is currently awaiting response from one or more facilities but, given the holidays,  
10 reaching key personnel has been very difficult. Plaintiff has asked her daughter's health care  
11 providers to provide continued ventilator support, nutritional support, a gastric feeding tube,  
12 tracheostomy tube, and other medical support to optimize Jahi's chances for survival. Those health  
13 care providers have refused to do so and have indicated an intent to withdraw said support at the  
14 expiration of the State issued TRO at 5:00 on Monday December 30, 2013.  
15

## 16 **II. LEGAL DISCUSSION**

### 17 **A. Federal Law Authorizes the Relief Requested.**

18 "The purpose of a temporary restraining order is to preserve an existing situation in status  
19 quo until the court has an opportunity to pass upon the merits of the demand for a preliminary  
20 injunction." (*Pan American World Airways, Inc. v. Flight Engineers' Int'l Assoc.*, (2nd Cir.1962) 306  
21 F.2d 840, 842.) Federal Rules of Civil Procedure Rule 65(b)(1) permits a temporary restraining order  
22 to be granted ex parte if:  
23

- 24 (A) Specific facts in an affidavit or a verified complaint clearly show that  
25 immediate and irreparable injury, loss, or damage will result to the movant  
26 before the adverse party can be heard in opposition; and  
27

- 28 (B) The movant's attorney certifies in writing any efforts made to give notice

1 and the reasons why it should not be required.

2 A temporary restraining order is appropriate if there is proof of: (1) a likelihood of success  
3 on the merits; (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is  
4 denied; (3) the threat of injury outweighs any damage the injunction might cause defendant, and (4)  
5 the injunction will not disserve the public interest. (See Sugar Busters, LLC v. Brennan (5th  
6 Cir.1999) 177 F.3d. 258, 265; CityFed Fin'l Corp. v Office of Thrift Supervision (DC Cir. 1995) 58  
7 F.3d. 738, 746.)

9 **B. Plaintiff Will Suffer a Great Or Irreparable Injury Before This Matter Can Be Heard**  
10 **On Notice Motion.**

11 Absent an injunction, 13 year old Jahi McMath will be taken off life-support immediately by  
12 the Defendants. There can be no greater irreparable harm than death. (See, Dolan Decl. at ¶ 4.) This  
13 is even more troublesome when Plaintiff is exploring viable options to continue life support outside  
14 of the facility that she has alleged injured her daughter. These efforts have proven difficult given the  
15 holidays.  
16

17 **C. Plaintiff Will Succeed On the Merits of Her Case**

18 The Ninth Circuit Court of Appeals provides that only a reasonable probability of success is  
19 required to support a preliminary injunction. (Gilder v. PGA Tour, Inc., 936 F2d 417, 422 (9th Cir.  
20 1991).) In fact, a “fair chance on the merits” is sufficient for preliminary injunction purposes. (See  
21 Johnson v. Cal State Fort of Accounting, 72 F. 3d 1427, 1429 (9th Cir. 1995).) The trial court may  
22 give even inadmissible evidence some weight, when doing so serves the purpose of preventing  
23 irreparable harm before trial. (See Flynt Distributing Co., Inc. v. Harvey, 734 F.2d 1389, 1394 (9th  
24 Cir. 1984).)

25 At the very least, the Plaintiff enjoys a “fair chance” of success on the merits, if not a  
26 reasonable possibility of prevailing.  
27

1 Further, "Though it is not apparent from the face of 28 U.S.C. § 2284(b)(3), some courts  
2 have emphasized that a temporary restraining order will issue only when the party seeking it is likely  
3 to succeed on the merits. ... This court thinks that the better-reasoned view, however, is that the  
4 likelihood of success on the merits should be a minor factor, especially where the potential injury is  
5 great." (Palmigiano v. Travisono, 317 F. Supp. 776, 787 (D.R.I. 1970)). Here, the same hospital that  
6 is alleged to have cause harm to this little girl seeks to proceed unilaterally with ending her life  
7 without an opportunity for the only Court with Jurisdiction considering whether or not the  
8 Constitution has been violated and taking a careful look at legislation who's purpose was never to  
9 limit damages in a situation where a hospital is alleged to have rendered a little girl gravely injured. .  
10

11  
12 **D. The Threatened Injury Outweighs any Damage That the Injunction Might Cause to**  
13 **Defendants.**

14 A balancing of the relative hardships on the parties favors granting the requested temporary  
15 restraining order. There is absolutely no damage that the Defendants can claim that would override  
16 improperly ending life-support measures on 13 year old Jahi. (See, Dolan Decl. at ¶ 5.) Further,  
17 because Plaintiff seeks to discharge her daughter to an alternate environment there is absolutely no  
18 legitimate argument Defendants can make regarding damages they will suffer.  
19

20 **E. The Public Interest is Served by Allowing Plaintiff's Claims to be Fully Heard.**

21 The issues raised in Plaintiff's Complaint and in this restraining order are matters of great  
22 public concern as indicated by the amount of media coverage which has been generated by this case.  
23 This is an issue of first impression; does a parent, once a legal determination of brain death is made,  
24 lose all rights concerning the care to be provided to their child who's heart still beats assisted by a  
25 ventilator. Does a parent of such a child have a right to object and resist a hospital's decision to  
26 withdraw life support over and against her objections and religious beliefs? Does the proposed  
27 conduct of the Defendant's violate the rehabilitation act and/or the ADA? How much time should a  
28

1 family be provided to locate alternate arrangements that are consistent with their religious beliefs?

2 **F. Plaintiff Should Not Be Required to Post a Security Bond as Defendant Would Suffer**  
3 **No or Little Injury as a Result of the Institution of the Temporary Restraining Order**

4 Though Federal Rules of Civil Procedure Rule 65(c) asks courts to require a security bond  
5 in conjunction with a temporary restraining order, courts are given wide discretion in the form the  
6 bond may take. (Continental Oil Co. v. Frontier Refining Co., (10th Cir. 1964) 338 F.2d 780, 783.)  
7 In fact, in situations where the likelihood of harm to defendant is small, courts are not obliged to  
8 require a bond to be issued at all. (*Id.*) Presently, the only harm that would come to Defendants  
9 should the temporary restraining order be granted would be the minimal cost continuing life-support  
10 measures. (See, Dolan Decl. at ¶ 6.)  
11

12 **III. CONCLUSION**

13 Based on the foregoing, Plaintiff respectfully requests that this Court issue a temporary  
14 restraining order and an order to show cause why a preliminary injunction should not be issued  
15 against Defendants as detailed herein.  
16

17 Dated: December 23, 2013

THE DOLAN LAW FIRM

19  
20 By:   
21 Christopher Dolan, Esq.  
22 Attorney for PLAINTIFF  
23  
24  
25

26 **THE**  
27 **DOLAN**  
28 **LAW**  
**FIRM**  
TRIAL LAWYERS  
THE DOLAN BUILDING  
438 MARKET STREET  
SAN FRANCISCO, CA  
94105  
TEL: (415) 421-  
2800  
X: (415) 421-2830

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2 **THE DOLAN LAW FIRM**  
3 1438 Market Street  
4 San Francisco, California 94102  
5 Telephone: (415) 421-2800  
6 Facsimile: (415) 421-2830

7 Attorneys for Plaintiff

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9 **OAKLAND**

10 LATASHA WINKFIELD, as an Individual,  
11 and as Guardian Ad Litem and mother of Jahi  
12 McMath,

13 Plaintiff,

14 v.

15 CHILDREN'S HOSPITAL & RESEARCH  
16 CENTER AT OAKLAND CHILDREN'S  
17 HOSPITAL & RESEARCH CENTER AT  
18 OAKLAND; DR. DAVID DURAND, and  
19 Does 1-100, Inclusive

Case No.:

Declaration of Christopher B. Dolan In Support  
of Plaintiff's Ex Parte Application for a  
Temporary Restraining Order to Enjoin  
Defendants from Ending Life Support

20 I, CHRISTOPHER B. DOLAN, declare as follows:

- 21 1. I am counsel of record for the Plaintiff, and a member in good standing with the State of  
22 California Bar and The Federal Court for the Northern District of California. I make this  
23 declaration in support of Plaintiff's Ex Parte Application For A Temporary Restraining Order  
24 And Order To Show Cause Re: Preliminary Injunction. The facts stated herein are known to  
25 me personally and, if called as a witness, I could and would testify competently thereto.  
26  
27 2. I provided actual notice of my intent and served this Ex Parte Application and the Compliant  
28 on counsel for the Defendants this morning. I presume they will oppose this Ex Parte and

**THE  
DOLAN  
LAW  
FIRM**  
TRIAL LAWYERS  
THE DOLAN BUILDING  
438 MARKET STREET  
SAN FRANCISCO, CA  
94105  
TEL: (415) 421-  
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1 will be attending the hearing. Accordingly, proper notice was provided under the Federal  
2 Rules of Evidence.

- 3 3. On December 9, 2013, Jahi McMath went in for a routine procedure to have her tonsils  
4 removed in hopes that it would assist with her sleep apnea. Jahi is 13 years old, and is in the  
5 8<sup>th</sup> grade. On December 12, 2013 the Defendants declared Jahi brain dead after her tonsil  
6 surgery ended with her bleeding profusely, going into cardiac arrest, and needing life-  
7 support. Currently, Jahi McMath remains on life-support at Defendant's Hospital.
- 8 4. Plaintiff is actively seeking alternate placement for her child. I myself have tried to assist in  
9 that endeavor and have been informed that sub-acute facilities require that a patient have a  
10 tracheostomy tube and a gastric tube inserted prior to transfer and admission.
- 11 5. Defendant has refused to follow the directions of Plaintiff to insert such tubes so she can  
12 transfer her daughter because they "won't provide medical treatment to a dead person."
- 13 6. Absent an injunction, this 13 year old girl will be taken off life-support immediately by the  
14 Defendants. There can be no greater irreparable harm than death.
- 15 7. A balancing of the relative hardships on the parties favors granting the requested temporary  
16 restraining order. There is absolutely no damage that the Defendants can claim that would  
17 override improperly ending life-support measures on child.
- 18 8. I have informed the Hospital Defendants that the family is actively seeking to re-locate their  
19 daughter to an alternate care facility but, given the holidays, and the emotional difficulties  
20 accompanying this most critical and catastrophic injury, and the relative naiveté of the  
21 Plaintiff over medical issues, the family, despite best efforts, has been unable to locate  
22 alternate arrangements. All facilities which I have spoken to have stated that as a  
23 precondition of transfer they would require that a tracheostomy tube and gastric tube be  
24 placed into Jahi McMath.
- 25  
26  
27  
28

1 9. I am currently in discussions with healthcare facilities in New York and Phoenix Arizona. I  
2 have provided Dr. Fisher's most recent neurological evaluation to these facilities. I can  
3 provide, in camera, correspondence with that Phoenix facility. I do not wish to reveal the  
4 name of the facility publically as they are concerned about the large media interest and do not  
5 want a horde of reporters descending on their facility. This prospect of media attention has  
6 already led to two facilities informing me that a factor in their withdraw of their original  
7 tentative agreement to accept Jahi was the potential for disruption and invasion of the privacy  
8 rights of their current patients and their families. Additionally, I have provided the family  
9 with information on how to apply for In Home Support Services IHSS through the state of  
10 California.  
11

12  
13 10. Attached as Exhibit A is a letter from a facility in New York willing to accept Jahi.

14 11. Attached as Exhibit B are two Declarations filed by Angela Clement attesting that she has  
15 located a facility which will accept Jahi McMath documenting that arrangements have been  
16 made to transport Jahi to New York if necessary.  
17

18 12. Attached as Exhibit C is a true and correct copy of an estimate demonstrating that an air  
19 ambulance has been arranged to transport Jahi to New York and a letter attesting to the  
20 services to be provided in the transport of Jahi. I am aware that sufficient funds exist to pay  
21 for the cost of this flight,  
22

23 13. I am in possession of a video taken within the last 24 hours showing Jahi moving her head  
24 and leg while her mother's voice is nearby. This, according to Dr. Byrne, demonstrates that  
25 she is not dead. I will present a copy of that video to the court and counsel.

26 14. Additional time is needed to execute on these plans. The Holidays have made the making of  
27 arrangements very difficult. The family only had six days to execute on the very difficult  
28 series of negotiations and arrangements. This time will result in meeting the hospital's

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objectives of having Jahi removed from their facility and will meet the family's objectives of keeping Jahi's physical body intact so that recovery may take place.

15. On behalf of the family, as their designated legal representative, I have requested that measures be taken to allow ventilation support to continue and to support the physical health of Jahi McMath by installing a feeding tube, provide nutrition and place a more permanent measure to allow oxygen to be delivered.

I declare that the foregoing is true and correct under the penalty of perjury under the laws of the State of California. Executed on December 24<sup>th</sup> 2013, in San Francisco, California.

By:  \_\_\_\_\_

CHRISTOPHER B. DOLAN  
DOLAN LAW FIRM  
Attorney for Plaintiff

**THE  
DOLAN  
LAW  
FIRM**  
TRIAL LAWYERS  
THE DOLAN BUILDING  
438 MARKET STREET  
SAN FRANCISCO, CA  
94105  
TEL: (415) 421-  
2800  
X: (415) 421-2830

Exhibit A



New Beginnings Community Center  
12-B Platinum Court  
Medford, NY 11763

*"In each loss there is a gain as in every gain there is a loss and with each ending comes a new beginning"*

December 29, 2013

Dear Attorney Dolan,

New Beginnings is an outpatient severe traumatic brain injury center. We are currently building and near completion of The Brendan House which will be a long-term private inpatient center that will act as a long term subacute care inpatient center caring for the severely brain injured patients.

We are aware of Jahi McMath's dire situation and we are willing to open our outpatient facility to provide 24 hour care as an inpatient long-term facility for Jahi with the required and appropriate medical staff that she depends upon. When the Brendan House is completed which will be very soon we will be able to transfer her to our Brendan House facility.

We will be providing Jahi McMath 24 hour licensed nursing staff and licensed respiratory therapists. We are also hiring a pediatrician who will accept her as his patient.

If you identify any additional needs that we have not addressed in this letter please notify us immediately so that we can take care of any further requirements that are needed for your clients and Jahi McMath.

Please contact me at your earliest convenience so that we can further discuss this with you and your clients.

We appreciate the opportunity to assist you and your clients in this dire situation.

Respectfully Submitted,

*Allyson Scerri*

Allyson Scerri  
Founder & President

**(631) 286-6166 phone**

**Allyson Scerri**  
Founder, CEO, President

**www.nbli.org**

**Steve Scerri**  
Executive Vice President

**(631) 286-6168 fax**

**Kate DiMeglio**  
Executive Director

Exhibit B

**EXHIBIT B**

## **DECLARATION OF ANGELA CLEMENTE**

I, Angela Clemente, declare and state the following:

1. On December 17, 2013 I was made aware of Jahi McMath delicate medical situation and the treating hospital's position. On that same day I contacted Chris Dolan the attorney representing her interests and offered my assistance and explained to Mr. Dolan that I can pull a team of specialized experts on this type of subject matter both legally and medically to assist him with his client's needs.
2. I then immediately began to notify each party whose expertise handles the life flight transportation needs, forensic, legal, medical and death experts, housing needs for the family, fundraising, media relations and both acute care and sub-acute care facilities that are open to accepting Jahi McMath into their facility for placing a PEG and Tracheostomy and for long-term care.
3. As an experienced expert in the subject matter of legal, medical, congressional and judicial issues surrounding patients in these similar situations I understand that courts, hospitals, and attorneys are not always aware that there are teams of skilled and specialized experts who specifically step in as a team effort to address the needs of medically vulnerable patients who face the same obstacles as Jahi McMath is facing now. This declaration serves as a formal notice to the court that Jahi McMath does indeed now have a full team of experts supporting all her needs identified in paragraph 2. I will outline within this declaration for the court the expertise and organization[s] and/or individuals who are now working on her behalf.
4. The medically appropriate life flight transportation needs for Jahi McMath from California to New York will be fully covered through our teams efforts.
5. We currently have one confirmed long term care facility that has offered to care for Jahi McMath and we have an additional potential long term care facility. The accepting facility's formal written acceptance letter will be provided to the court with this declaration as an additional exhibit identified as exhibit A.
6. The housing needs for the family of Jahi McMath has also been provided by our team. The address for their residence in New York is as follows: 4079 Sound Avenue Riverhead, New York 11901.



7. Our team will continue to follow through with other unanticipated needs that may arise for Jahi McMath and her family.

Hereafter is a summary of our team of specialized experts:

- David Hammons MD is a retired Emergency Medicine specialist, previously board certified. He has more than 20 years' experience on his hospital's ethics committee and took the National Catholic Bioethics Center's one year certification course in Catholic Bioethics. He taught for 9 years on the faculty of the Kaiser-Stanford University Emergency Medicine residency program. He has given talks on end of life care from a medical, legal, and ethical perspective.
- Steve Sanborn has extensive experience with life flight transportation needs, emergent fundraising, and media relations. Mr. Sanborn and I handled in full one of the most significant and successful cases in the United States related to out-of-state transfers and acceptance of a critical patient receiving blood and respirator dependent who was declared medically futile. Prior to the patients release and move from the hospital whose care the patient was under we successfully launched a federal investigation into the county hospital's substandard care and fraudulent Medicare practices resulting in Medicare forcing the hospital to return \$284,106.20 back into the patients Medicare account and escalating the federal violation against the hospital under Part A Tier 2 as "severe" and sending a federal investigator in to the hospital to initiate and force "provider education" without which the hospital's doors would be closed.
- Angela Clemente is a Forensic Intelligence Analyst, Congressional Consultant and Paralegal. I have worked with the executive, judicial, and legislative branches of the government on many high-profile cases on criminal violations related to federal crimes in both medical and criminal cases. I have twenty years' experience in the field of pathology, clinical laboratory, and emergency medicine. Additionally, I have extensive experience working with the Department of Justice Office of Inspector General, the U.S. House of Representatives and U.S. Senate on legislative needs, congressional investigations pertaining to systemic criminal and medical problems and advising on and launching state and federal prosecutions against official misconduct. In the year 2008 to the present date I launch and lead the team efforts with uniquely qualified experts in the fields

identified in paragraph 2 for assisting vulnerable patients in identical and similar medical states as Jahi McMath. Additionally, I assess, review, identify and advise on medical negligence cases also aiding in the launch of forensic criminal investigations on these same subject matters.

- Bobby Schindler and The Terri Schiavo Life & Hope Network is a national enetwork of resources and support for the medically-dependent, persons with disabilities and the incapacitated who are in or potentially facing life-threatening situations. It has communicated with and supported more than 1,000 families, and has been involved in hundreds of cases since Terri's March 2005 death.
- Dana Cody- Life Legal Defense Foundation is a public interest law firm that provides resources to defend the lives of vulnerable human beings who are under threat of death because life-sustaining care is not being provided. LLDF provides continuing legal education on the issue of forced death. Notably, LLDF helped support the defense of Terri Schindler Schiavo's life. LLDF has been a part of the effort to defend Jahi McMath's life and continues to support efforts to see Jahi moved to a facility that will treat her with the dignity she deserves.
- The Wrongful Death and Injury Institute is multifaceted organization that specializes in the unethical and unprincipled practices of the healthcare industry and unregulated death investigation system nationwide within hospitals, prisons, jails, nursing homes, and assisted living residences.
- Dr. Paul A. Byrne is a neonatologist and a Clinical Professor of Pediatrics. He is past President of the Catholic Medical Association. He is the producer of the film Continuum of Life and the author of Life, Life Support and Death, Beyond Brain Death, and Brain Death is Not Death. Dr. Byrne has presented testimony on life-death issues to nine state legislatures beginning in 1967. He opposed Dr. Jack Kevorkian on Cross-Fire, and has appeared on Good Morning America, the British Broadcasting Corporation (BBC) documentary, "Are the donors really dead?", and public Television in Japan. He is the author of many articles in medical and law journals and the lay press.

I declare under penalty of perjury that the foregoing information is true and correct.  
Executed this 29<sup>th</sup> day of December 2013.

Angela Clemente

Angela Clemente

## **DECLARATION OF ANGELA CLEMENTE**

I, Angela Clemente, declare and state the following:

1. On December 17, 2013 I was made aware of Jahi McMath delicate medical situation and the treating hospital's position. On that same day I contacted Chris Dolan the attorney representing her interests and offered my assistance and explained to Mr. Dolan that I can pull a team of specialized experts on this type of subject matter both legally and medically to assist him with his client's needs.
2. I then immediately began to notify each party whose expertise handles the life flight transportation needs, forensic, legal, medical and death experts, housing needs for the family, fundraising, media relations and both acute care and sub-acute care facilities that are open to accepting Jahi McMath into their facility for placing a PEG and Tracheostomy and for long-term care.
3. As an experienced expert in the subject matter of legal, medical, congressional and judicial issues surrounding patients in these similar situations I understand that courts, hospitals, and attorneys are not always aware that there are teams of skilled and specialized experts who specifically step in as a team effort to address the needs of medically vulnerable patients who face the same obstacles as Jahi McMath is facing now. This declaration serves as a formal notice to the court that Jahi McMath does indeed now have a full team of experts supporting all her needs identified in paragraph 2.
4. I am personally coordinating all efforts on Jahi McMath's transfer and required medical care.
5. My background is the following- Angela Clemente is a Forensic Intelligence Analyst, Congressional Consultant and Paralegal. I have worked with or assisted the executive, judicial, and legislative branches of the government on many high-profile cases on criminal violations related to federal crimes in both medical and criminal cases. I have twenty years' experience in the field of pathology, clinical laboratory, and emergency medicine. Additionally, I have extensive experience working with the Department of Justice Office of Inspector General, the U.S. House of Representatives and U.S. Senate on legislative needs, congressional investigations pertaining to systemic criminal and medical problems and advising on and launching state and federal prosecutions against official misconduct. In

the year 2008 to the present date I launch and lead the team efforts with uniquely qualified experts in the fields identified in paragraph 2 for assisting vulnerable patients in identical and similar medical states as Jahi McMath. Additionally, I assess, review, identify and advise on medical negligence cases also aiding in the launch of forensic criminal investigations on these same subject matters.

6. I have spoken with Dr. Paul Byrne who assessed Jahi McMath's medical condition this morning and he is currently working with assisting New Beginnings a long-term care facility that is willing to accept and care for Jahi McMath immediately and indefinitely.
7. My team has also coordinated an appropriate medical flight and we have an estimate and documentation to provide this court and Oakland Hospital upon request.
8. We have housing being provided to Jahi McMath's family upon their arrival in New York. We can provide the court with the address upon request.

I declare under penalty of perjury that the foregoing information is true and correct.  
Executed this 30<sup>th</sup> day of December 2013 under penalty of perjury pursuant to the laws of the State of California.

  
\_\_\_\_\_  
Angela Clemente

EXHIBIT C



Date: December 29, 2013

To: Chris Dolan

From: Medway Air Ambulance, Inc.

Re: Air Ambulance – Jahi McMadh

MedWay Air Ambulance makes the following proposal for air ambulance transport from Oakland, Ca to Long Island, NY:

Aircraft: Private Lear Jet Aircraft - 5:35 hours 1 stop  
Medical: ICU RN / Respiratory Therapist  
Equipment: AIS incl oxygen and ventilator  
Ground Transportation: included in Oakland and Long Island  
Passengers: 2  
Luggage 3 medium size suit cases

Cost of the transport : \$31,910.00USD.

Discount Available: 12/31- \$27,950.00.

All licenses, insurance, and information available at  
[www.medwayairambulance.com](http://www.medwayairambulance.com)

Thank you for the opportunity to quote this transport, and should you or the family have any further questions please contact us at 800-233-0655 24hours a day 7 days a week.

Sincerely,  
Rick Moore  
President

PO Box 490907  
Lawrenceville, GA 30049-0907  
800-233-0655 770-963-1412 Fax 770-962-3253  
Email: medwayair@aol.com

1 Christopher B. Dolan, Esq. (SBN 165358)  
 2 THE DOLAN LAW FIRM  
 3 1438 Market Street  
 4 San Francisco, California 94102  
 5 Tel: (415) 421-2800  
 6 Fax: (415) 421-2830

7 Attorneys for Plaintiffs  
 8 LATASHA WINKFIELD

9  
 10 UNITED STATES DISTRICT COURT  
 11  
 12 NORTHERN DISTRICT OF CALIFORNIA

13	LATASHA WINKFIELD, an individual	)	Case No.
14	parent and guardian of Jahi McMath, a	)	
15	minor	)	<b>Declaration of Paul Byrne M.D.</b>
16		)	
17	Plaintiff,	)	
18		)	
19	v.	)	
20		)	
21	CHILDRENS HOSPITAL OAKLAND, Dr.	)	
22	David Durand M.D. and DOES 1 through	)	
23	10, inclusive	)	
24		)	
25	Defendants	)	
26	_____	)	
27		)	
28		)	

1). I Dr. Paul Byrne am a medical doctor, Board Certified in Pediatrics with a sub-board in Neonatal-Perinatal Medicine of American Board of Pediatrics.

- 1 2). I have served in many academic positions including as the Director of  
2 Neonatology, St. Charles Mercy Hospital, October 2000-2012, Oregon, OH  
3 Neonatologist, St. Charles Mercy Hospital, 1991-2012, Oregon, OH.
- 4 3). I am licensed to practice medicine in Ohio, Nebraska and Missouri.
- 5 4) I have published articles on brain death and related topics in the medical literature,  
6 law literature and the lay press for more than thirty years.
- 7 5). I have been qualified as an expert in matters related to central nervous system  
8 dysfunction in Michigan, Ohio and Virginia.
- 9 6). I have examined and treated children that have been diagnosed as "brain dead" and  
10 have, with proper treatment, seen them recover from Brain death to varying degrees  
11 including one patient which recovered to finish school, get married and have children  
12 and live an otherwise productive life.
- 13 7). Although not licensed in Virginia, I provided expert testimony in the case of the  
14 Matter of Baby K, 832 F.Supp 1022 (E.D.Va.,1993), wherein the issue of brain death in  
15 a child was the central issue. In Baby K the Hospital sought declaratory relief that it  
16 had no obligation to continue to provide respiratory support to an anencephalic child  
17 (congenital defect where there is a brain stem but cerebral cortex is absent). The  
18 hospital in Baby K., like the hospital here, encouraged her mother to remove her from a  
19 ventilator stating that such treatment was "futile" and decided to "wait a reasonable  
20 time for the caregiver to terminate aggressive therapy." The court in Baby K, stated,  
21 Reflecting the constitutional principles of family autonomy and the presumption in  
22 favor of life, courts have generally scrutinized a family's decision only where the family  
23 has sought to terminate or withhold medical treatment for an incompetent minor or  
24 incompetent adult. See, e.g., Cruzan, 497 U.S. at 270-75, 110 S.Ct. at 2847-49 (and  
25  
26  
27  
28



1 cases cited therein). In a recent case in which a hospital sought to terminate life-  
2 supporting ventilation over the objections of the patient's husband, a Minnesota state  
3 court refused to remove decision making authority from the husband. In re Wanglie,  
4 No. PX-91-283 (Prob.Ct., Hennepin Co., Minn., June 28, 1991). Likewise, where  
5 parents disagreed over whether to continue life-supporting mechanical ventilation,  
6 nutrition, and hydration for a minor child in an irreversible stupor or coma, a Georgia  
7 state court gave effect to the decision of the parent opting in favor of life support.  
8  
9 (Matter of Baby K 832 F.Supp. 1022, 1031.

10 8) I have personally seen, but have not conducted a full physical examination of Jahi  
11 McMath because I am not licensed to practice medicine in California. I have also e  
12 reviewed Dr. Fischer's medical examination record dated 12/23/2013. I have read  
13 excerpts of Dr. Shannahan's deposition testimony including the following;  
14

15 Q. . If you look at your second examination, please,  
16 12/12/2013. The third paragraph down you wrote in the  
17 last two sentences: Her diabetes insipidus suggests  
18 hypothalamic death; can you tell us what that means,  
19 please.

19 A. So she was excreting much more urine than a  
20 normal person should and not being able to retain a normal  
21 amount of water, which indicates that she was missing a  
22 hormone excreted by the hypothalamus and that the  
23 hypothalamus was not working correctly.

22 Q. Is there an examination that can measure that in  
23 some sort of a device, machine or otherwise?

23 A. Yes, it's blood tests measuring the sodium level  
24 and the concentration of the urine, so it's an inability  
25 to concentrate the urine, and then there is rising sodium  
26 blood levels as a consequence, and that can be treated  
27 with a medication and corrected.

25 Q. Did you examine any of the blood tests to see  
26 whether or not there was confirmation of your  
27 suggestion?

27 A. Yes.

27 Q. Is that reported in here?

28 A. No, it is not.

- 1 Q. What tests did you review?  
2 A. The urine concentration and sodium levels that  
3 were part of her lab tests.  
4 Q. In the -- did you request any type of medications  
5 to be given to address that hypothalamic condition?  
6 A. No.

- 7 8). I have reviewed the literature published in the Journal of Neurology including articles  
8 written in 2008 and 2010 which demonstrate that there no consensus in the medical field as  
9 to what constitutes death, whether it is brain death, cessation of the heart, etc.  
10 9). I have, by invitation of the mother been bedside to see Jahi McMath. I personally  
11 observed that when the grandmother stimulated Jahi with her voice and touch, Jahi moved  
12 her arms and legs with a squirming movement- in my opinion this signifies that she is not  
13 dead  
14 10). EEG measurements are measurement of only the 1cm outer region of the brain and  
15 provides no information of the interior function of the brain  
16 11). In my professional opinion she is not a cadaver- her heart beats thousands of times a  
17 day and has done so since this event- she is a living person- she is not dead  
18 12). She should receive treatment as she is alive just like anyone else with severe head  
19 injury. Jahi has not had nutrition for two weeks she needs nutrition, proteins necessary for  
20 the recovery of the brain- thyroid and adrenal hormones and evaluations for blood gasses  
21 and electrolytes and have necessary adjustments made to help her get well  
22 13) If she gets treatment she will have a chance to recover brain function.

23  
24 Signed under penalty of perjury this 30<sup>th</sup> day of December, 2013, in Oakland California.

25  
26 *Paul A. Byrne MD 12/30/2013*  
27 Dr. Paul Byrne  
28