

1
2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION

5
6 LATASHA WINKFIELD, an individual
parent and guardian of Jahi McMath, a minor,

7 Plaintiff,

8 vs.

9 CHILDREN'S HOSPITAL OAKLAND, Dr.
10 David Durand M.D. and DOES 1 through 10,
inclusive,

11 Defendants.
12

Case No: C 13-5993 SBA

**ORDER TO SHOW CAUSE RE
DISMISSAL**

13
14 Plaintiff Latasha Winkfield filed the instant declaratory and injunctive relief action
15 in this Court seeking an order requiring Defendants Children's Hospital Oakland ("CHO")
16 and its Chief of Pediatrics, Dr. David Duran, to maintain her daughter Jahi McMath ("Jahi")
17 on a ventilator until such time as she is transferred from CHO to another care facility, and
18 to install gastric and tracheostomy tubes to facilitate the transfer. On January 5, 2014, Jahi
19 was transferred from CHO to Plaintiff. For the reasons that follow, the Court hereby
20 directs Plaintiff to show cause why the instant action should not be dismissed for lack of
21 subject matter jurisdiction.

22 **I. BACKGROUND**

23 On or about, December 9, 2013, Jahi went into cardiac arrest shortly after
24 undergoing a tonsillectomy and related procedures at CHO. Thereafter, Jahi was placed on
25 a ventilator. Tragically, the resulting lack of oxygen to Jahi's brain resulted in irreversible
26 brain death, and she was declared legally deceased by two CHO physicians within days of
27 her surgery. Over Plaintiff's strenuous objection, CHO sought to remove Jahi from the
28 ventilator, claiming that she was "dead" and that no further medical treatment was

1 warranted. Upset with the treatment Jahi was receiving, Plaintiff sought to transfer Jahi
2 from CHO and requested that the hospital maintain her on a ventilator until such time as an
3 alternative facility could be secured. In addition, Plaintiff requested that CHO perform a
4 tracheostomy on Jahi and fit her with a gastric tube to facilitate the transfer. CHO refused
5 these requests, which prompted Plaintiff to file suit.

6 On December 20, 2013, Plaintiff filed a Complaint in the Alameda County Superior
7 Court against CHO and Dr. Duran along with an ex parte application for temporary
8 restraining order (“TRO”) to enjoin CHO from removing Jahi from the ventilator and to
9 compel CHO to install a gastric tube and tracheostomy tube. Alameda Cnty. Case No. RP-
10 13-707598. The superior court granted the injunction to maintain Jahi on a ventilator, but
11 denied Plaintiff’s other requests. The court subsequently conducted an evidentiary hearing,
12 which included testimony from an independent, court-appointed physician from the
13 Stanford University School of Medicine, and ultimately concluded that Jahi was legally
14 deceased. Separately, the court extended the TRO until December 30, 2013.

15 On December 30, 2013, during the pendency of the state court action, Plaintiff filed
16 the instant action in this Court against CHO and Dr. Durand. The Complaint alleges five
17 claims for relief: (1) violation of the free exercise clause of the First Amendment;
18 (2) violation of the right to privacy under the Fourth Amendment; (3) violation of the right
19 to privacy under the Fourteenth Amendment; (4) violation of section 504 of the
20 Rehabilitation Act of 1973 (“RA”), 29 U.S.C. § 794; and (5) violation of the Americans
21 with Disabilities Act (“ADA”), 42 U.S.C. § 12101, et seq. The Complaint seeks
22 declaratory and injunctive relief to preclude the “removal of ventilator support and
23 mandating introduction of nutritional support, insertion of a tracheostomy tube, gastric
24 tube, and to provide other medical treatments ... to promote [Jahi’s] maximum level of
25 improvement and provision of sufficient time for Plaintiff to locate an alternative facility to
26 care for her child in accordance with her religious beliefs.” Compl. at 15.

27 On January 2, 2014, Plaintiff filed a motion for preliminary injunction seeking to
28 maintain Jahi on a ventilator and to compel CHO to insert Jahi with a gastric tube and a

1 tracheostomy tube. On the same date, the Court referred the parties to a Magistrate Judge
2 of this Court for an emergency mandatory settlement conference to take place on January 3,
3 2014, at 11:00 a.m. Dkt. 10, 11.

4 Early in the day on January 3, 2014, the parties appeared in state court in connection
5 with Plaintiff's parallel state court action, and reached an agreement to transfer custody of
6 Jahi to Plaintiff. Thereafter, the parties attended the settlement conference with the
7 Magistrate Judge, and, after extensive negotiations, reached an agreement to effectuate the
8 transfer of Jahi from CHO. Pursuant to the parties' agreements, CHO released Jahi to
9 Plaintiff, who accepted custody and responsibility for Jahi on the evening of January 5,
10 2014. Dkt. 16.

11 **II. DISCUSSION**

12 "Federal courts are courts of limited jurisdiction." Kokkonen v. Guardian Life Ins.
13 Co. of Am., 511 U.S. 375, 377 (1994). "It is to be presumed that a cause lies outside this
14 limited jurisdiction . . . and the burden of establishing the contrary rests upon the party
15 asserting jurisdiction." Id. (internal citations omitted). A federal court has an independent
16 duty to assess whether federal subject matter jurisdiction exists, whether or not the parties
17 raise the issue. See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960,
18 967 (9th Cir. 2004).

19 **A. MOOTNESS**

20 Under Article III of the United States Constitution, judicial power is limited to
21 "Cases" and Controversies." Summers v. Earth Island Inst., 555 U.S. 488, 492-93 (2009).
22 "The doctrine of standing is one of several doctrines that reflect this fundamental
23 limitation." Id. For constitutional standing to exist, there must be the "irreducible
24 constitutional minimum" of an injury-in-fact. Lujan v. Defenders of Wildlife, 504 U.S.
25 555, 560 (1992). An injury-in-fact is "an invasion of a legally protected interest which is
26 (a) concrete and particularized ... and (b) actual or imminent, not conjectural or
27 hypothetical." Id. (internal citations and quotation marks omitted). While standing is
28 determined based on the facts as they existed at the time the complaint was filed, an actual

1 controversy must exist at all stages of review, and a claim becomes moot and non-
2 justiciable if the requisite personal interest captured by the standing doctrine “ceases to
3 exist at any point during the litigation.” Jacobs v. Clark Cnty. Sch. Dist., 526 F.3d 419, 425
4 (9th Cir. 2008).

5 In the instant case, it is questionable whether a live controversy remains in this case.
6 The only relief sought in the Complaint is to compel CHO to maintain Jahi on a ventilator
7 and to perform certain medical procedures to facilitate her transfer from CHO. On January
8 5, 2013, CHO transferred custody, care and control of Jahi to Plaintiff. Now that Jahi no
9 longer is at CHO, the relief sought by Plaintiff appears to be moot. See, e.g., Dilley v.
10 Gunn, 64 F.3d 1365, 1368 (9th Cir. 1995) (holding that the transfer of an inmate to a
11 different prison facility mooted his individual equitable claims absent a showing that there
12 is a reasonable expectation that the inmate would return to the facility).

13 **B. ROOKER-FELDMAN**

14 Separate and apart from the issue of mootness, the Court may lack jurisdiction under
15 the Rooker-Feldman doctrine. “Rooker-Feldman is a powerful doctrine that prevents
16 federal courts from second-guessing state court decisions by barring the lower federal
17 courts from hearing de facto appeals from state court judgments[.]” Bianchi v. Ryaarsdam,
18 334 F.3d 895, 898 (9th Cir. 2003). “It is a forbidden de facto appeal under Rooker-
19 Feldman when the plaintiff in federal district court complains of a legal wrong allegedly
20 committed by the state court, and seeks relief from the judgment of that court.” Noel v.
21 Hall, 341 F.3d 1148, 1164 (9th Cir. 2003)). The fact that plaintiff is bringing constitutional
22 claims does not preclude application of the doctrine where the claims are “inextricably
23 intertwined” with the state court’s ruling. See Bianchi, 334 F.3d at 900 n.4 (“It is
24 immaterial that Bianchi frames his federal complaint as a constitutional challenge to the
25 state courts’ decisions, rather than as a direct appeal of those decisions. The Rooker-
26 Feldman doctrine prevents lower federal courts from exercising jurisdiction over any claim
27 that is ‘inextricably intertwined’ with the decision of a state court, even where the party
28

1 does not directly challenge the merits of the state court’s decision but rather brings an
2 indirect challenge based on constitutional principles.”).¹

3 Here, the state court ruled that CHO had shown by clear and convincing evidence
4 that Jahi “had suffered brain death and was *deceased* as defined under Health and Safety
5 Code 7180 and 7181,” and on that basis, denied Plaintiff’s request for a TRO. Straus Decl.
6 Ex. 26 at 14 (emphasis added). Although this action does not directly challenge that
7 finding, it appears to do so indirectly. Plaintiff alleges that section 7180 is unconstitutional
8 because it deprives her of the right to render medical decisions affecting her child. To the
9 extent that this Court agrees with Plaintiff, such a finding would seriously undermine the
10 state court’s ruling, which expressly relied on section 7180 to find that Jahi is deceased and
11 correspondingly deny Plaintiff’s request for immediate injunctive relief. At a minimum,
12 the claims herein appear to be “inextricably intertwined” with the state court action, thereby
13 triggering application of the Rooker-Feldman doctrine.² Doe v. Mann, 415 F.3d 1038,
14 1041 (9th Cir. 2005) (where Rooker-Feldman applies, a federal court “must also refuse to
15 decide any issue raised in the suit that is ‘inextricably intertwined’ with an issue resolved
16 by the state court in its judicial decision.”).

17 C. STANDING

18 Finally, it appears that Plaintiff lacks standing to bring claims under section 504 of
19 the RA or the ADA, which proscribe discrimination on account of the plaintiff’s disability.
20 In her Complaint, Plaintiff does not allege that *she* is disabled. Rather, the pleadings allege
21 that *Jahi* is disabled due to her brain injury, and that Defendants are violating the respective
22 Acts through their attempt to remove Jahi from the ventilator. Compl. ¶¶ 60, 65, 76. Thus,
23 the only person alleged to have a disability is Jahi, who is not a party. Though Plaintiff

24 ¹ The Ninth Circuit has applied the Rooker-Feldman doctrine to interlocutory state
25 court decisions. Doe & Associates Law Office v. Napolitano, 252 F.3d 1026, 1030 (9th
26 Cir.2001) (applying doctrine to state court denial of motion to quash.

27 ² The fact that the relief sought by Plaintiff from this Court is identical to relief
28 sought in state court also supports application of the Rooker-Feldman bar. Bianchi, 334
F.3d at 900 (noting that in determining the applicability of Rooker-Feldman, the court must
pay close attention to the relief sought by the federal-court plaintiff.”).

1 identifies herself in the pleadings as Jahi's mother and guardian, she has neither requested
2 to be nor been appointed by the Court as Jahi's guardian ad litem and therefore cannot
3 assert any claims vicariously on Jahi's behalf. See Fed. R. Civ. P. 17(c)(2) (requiring a
4 court to "appoint a guardian ad litem—or issue another appropriate order—to protect a
5 minor or incompetent person who is unrepresented in an action."); Prince v. Fremont Police
6 Dept., No. C 13-1366 SBA, 2013 WL 3157925 (N.D. Cal. June 20, 2013) (dismissing §
7 1983 claims filed by parents based on violations of their children's constitutional rights
8 because parents were not appointed as guardians at litem). Thus, Plaintiff appears to lack
9 standing to bring claims under the RA and ADA.


10 **III. CONCLUSION**

11 The record suggests that the Court may not or no longer have subject matter
12 jurisdiction to consider the merits of Plaintiff's claims. Before dismissing the action,
13 however, the Court will afford Plaintiff an opportunity to demonstrate why the instant
14 action should not be dismissed for lack of jurisdiction. Accordingly,

15 IT IS HEREBY ORDERED THAT the parties shall meet and confer regarding the
16 issues discussed above. To the extent that the parties agree that subject matter jurisdiction
17 is lacking, or if Plaintiff no longer desires to pursue her claims in this action, the parties
18 shall submit a stipulation for dismissal, pursuant to Federal Rule of Civil Procedure 41. If
19 no agreement is reached, Plaintiff shall show cause, in writing, why the instant action
20 should not be dismissed for lack of subject matter jurisdiction, as set forth above. The
21 stipulation for dismissal or Plaintiff's written response to this Order shall be filed by no
22 later than February 7, 2014. Defendant shall file its response to Plaintiff's memorandum, if
23 any, by February 14, 2014. The parties' respective memoranda shall not exceed ten (10)
24 pages in length. The Court will deem the matter under submission upon the filing of
25 Defendant's memorandum.

26 IT IS SO ORDERED.

27 Dated: January 22, 2014

28 
SAUNDRA BROWN ARMSTRONG
United States District Judge