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9 LATASHA WINKFIELD

10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

12 LATASHA WINKFIELD, an individual
13 parent and guardian of Jahi McMath, a
14 minor

15 Plaintiff,

16 v.

17 CHILDREN'S HOSPITAL & RESEARCH
18 CENTER AT OAKLAND, Dr. David
19 Durand M.D. and DOES 1 through 10,
20 inclusive

21 Defendants.

Case No. PR13-707598

DECLARATION OF CHRISTOPHER B.
DOLAN IN SUPPORT OF PLAINTIFF'S
WRIT OF ERROR CORAM NOBIS AND
REQUEST FOR REVERES OF JUDICIAL
DETERMINATION OF BRAIN DEATH
OF JAHl McMATH

22 I, Christopher B. Dolan, declare as follows:

23 1. I am an adult natural person, the owner of the Dolan Law Firm, and the attorney of
24 record for Jahi McMath and Nailah Winkfield. The following facts are known personally to me
25 and I am competent to testify upon them if I am called to do so.

26 2. In December of 2013, I began representing Jahi McMath and her mother Nailah. In a
27 very short time period, a series of hearings were held, including one that involved testimony from
28 several neurologists as to whether or not Jahi McMath met the standard and criteria to be
determined brain dead, and, therefore, have the total and irreversible cessation of all neurologic

1 activity, including in the brain stem. At such time, I had only been involved in the case for a very
2 short time. The hearings were happening on nearly a daily basis, and, it being the holiday season,
3 it was difficult to locate any neurologist who could examine Jahi. This was compounded by the
4 fact that Children's Hospital Oakland had taken the position that no physician who was not
5 already credentialed at Children's Hospital Oakland could examine Jahi or perform any type of
6 procedures upon her.

7
8 3. As the court is aware, Petitioner sought to have Jahi receive surgery to undergo a
9 tracheotomy and to receive placement of a feeding tube and to prevent Children's Hospital
10 Oakland from removing Jahi from a ventilator. Petitioner was successful in obtaining several
11 injunctions, but was denied its request to have a feeding and trache tube placed in Jahi. The
12 hospital also refused to provide any new and/or curative treatments to Jahi. As such, Jahi's health
13 was declining rapidly.

14
15 4. In early January, Jahi McMath was successfully removed from Children's' Hospital
16 Oakland and transferred with the permission of the coroner to be taken out of state. In order to
17 move Jahi, who had been declared dead by Children's Hospital Oakland, I needed to obtain a
18 disposition permit to allow Jahi to traverse the roads and otherwise be moved from the hospital.
19 The hospital demanded as a condition of the release of Jahi that a death certificate be created.
20 When I sought to obtain the disposition permit, there was a requirement that a death certificate be
21 on file. When I talked to the medical director at Vital Statistics, so as to get the disposition permit,
22 she was very confused as they had never issued a death certificate for someone on a ventilator.
23 Nailah took the death certificate under protest. The cause of death on the death certificate, I
24 understand, is labeled "pending."

25
26 5. Jahi was treated at a facility in another state. When she arrived at that facility her health
27 was poor from the lack of nutrition and care.

28

1 6. She was treated at that facility for approximately eight months, and then discharged to a
2 home environment. She is in a home environment now with 24 hour nurse,,her mother, stepfather
3 and little sister, Her mother Nailah, who has 4 other children besides Jahi, a house, mortgage, car,
4 job, family and social support here in the Bay Area, has stated she wants to bring her child home
5 to California but can't because the moniker of "brain dead" hangs over her daughter so that no one
6 would have to treat her if she needed medical attention. This court ruled that Children's Hospital
7 did not need to treat her because of her brain death determination so it predictable that others
8 would use that ruling to deny treatment.
9

10 7. During the time she was in that facility in New Jersey I visited Jahi, Nailah and Marvin
11 several times. I saw Jahi move when asked to by her mother. I saw her move when her mom
12 would enter the room and talk. I have seen Jahi's skin and, unlike when she was at Children's
13 hospital being neglected, her skin is clear, warm to touch and in tone, and without any bedsores.
14

15 8. Despite numerous requests by me to the facility that they do so, they would not perform
16 any diagnostic testing on Jahi, such as EEG or MRI. They indicated that they did not wish to be
17 drawn into this controversy. Likewise, despite my request to have board certified neurologists,
18 EEG technicians and other doctors examine Jahi in the hospital, and to do the testing themselves,
19 this was not permitted.
20

21 9. I could not get this EEG or MRI testing until Jahi was discharged from the hospital, which
22 was less than six weeks ago. As soon discharge had occurred, I accepted the offer from the
23 International Brain Research Foundation (IBRF) to have testing done to see if Jahi was brain dead.

24 10. This testing was done over two sessions, once on September 1, 2014 (EEG) and again on
25 September 26, 2014 (MRI/MRA). I was present for both and photographed the studies to
26 unequivocally demonstrate that it was Jahi being tested in a manner which is widely accepted
27 within the medical and scientific community.
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11. Jahi was tested.

12. I personally viewed the tests as they were performed and I, from a layman's perspective, surely see brain structure. Attached as Exhibit A is a true and correct copy of photograph of Jahi being placed in the MRI suite. Exhibit B is a true and correct copy of a photograph showing the MRI of Jahi being conducted with Dr. Machado explaining to me the results. Exhibit C are true is a true and correct copy of two slides from the MRI/MRA which Dr. Machado used in his analysis of whether there was brain structure or not. I personally watched this part of the MRI/MRA. If so requested by the Court, Counsel will provide the entire MRI/MRA for review.

13. If the court goes to the internet and to

<https://www.youtube.com/watch?v=jsSeM0RVKuA> &

<https://www.youtube.com/watch?v=hFIRQMf2D6U>

it will find true and correct copies of two videos taken by Jahi's family members, showing Nailah and Jahi in the hospital taken within the last two months (before the confirmatory testing) wherein Nailah asks Jahi to move her foot and Jahi does so, slightly (moving her toes) and after Nailah says "do it harder," Jahi noticeably moves her foot, In the other video Jahi is asked to move her hand. She moves her hand. He mother asks her to move it harder, and Jahi does. These are true and correct copies of the videotape of Jahi McMath which are unaltered.

14. Knowing that I was going to have testing done, I e-mailed the court indicating that I was expecting to have new information to present to the court and that I believed I would be seeking to have the court reverse its brain death finding. A court date was scheduled for Tuesday September 30, 2014.

15. Neither myself, the Court, my clients, or even, apparently Dr. Fischer could have known, in December of 2014, that Jahi would live this long and show signs of improvement. Indeed, I

1 could not have known at any point before the Entry of Judgment, in January, or for that matter
2 before the time for post-trial motions and the filing of an appeal, and therefore jurisdiction, had
3 expired.

4 16. The issue of "total and irreversible cessation of brain function" has been shown by
5 independent medical experts, and objectively verifiable diagnostic measurements, to have been a
6 fact which was erroneous at the time it was given. There was simply no patient, such as Jahi,
7 whose family resisted removing the ventilator and was successful in keeping their loved one alive
8 for this period of time. She is truly unique in this and many ways.

9 17. What may have appeared to be fact was actually prediction which has turned out to be
10 wrong. Therefore the critical facts underlying the Court's Judgment, as to the issue of total and
11 irreversible cessation of neurological function are, in the light of our current, unequivocal
12 evidence (and by implication the rest of the orders re whether Children's Hospital had a duty to
13 provide ventilator support and care for Jahi) are erroneous and, as a result, the orders issued, and
14 the Judgment entered, by the court are flawed, unjust, and need to be corrected.

15 18. If these facts had been known, that Jahi's brain inactivity was not total, and was reversible,
16 the court would have been required, by law, to reach a different conclusion and find that Jahi was
17 not brain dead.

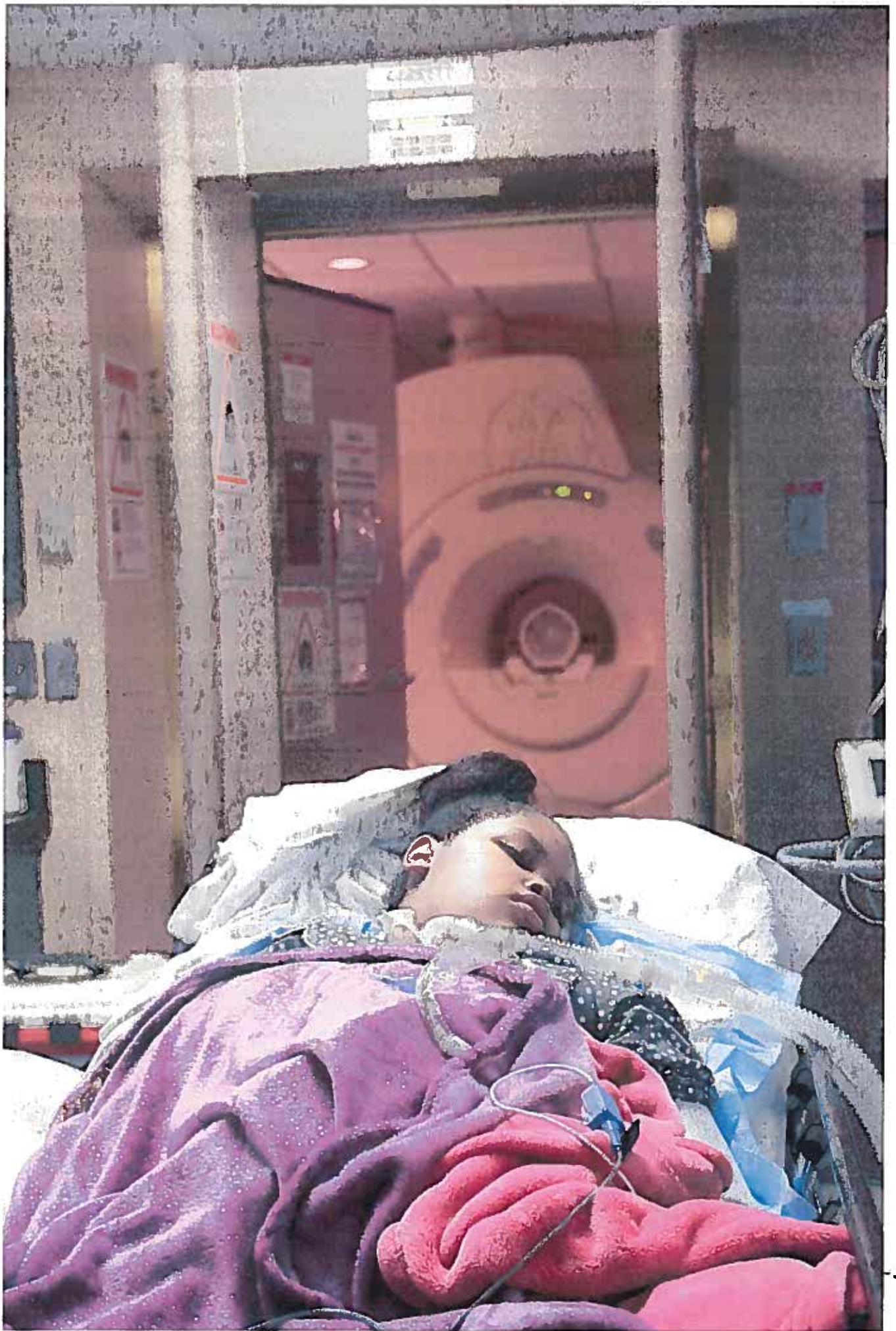
18 I declare under the penalty of perjury under the laws of the State of California that the forgoing is
19 true and correct.

20 Signed October 3, 2014, in San Francisco.

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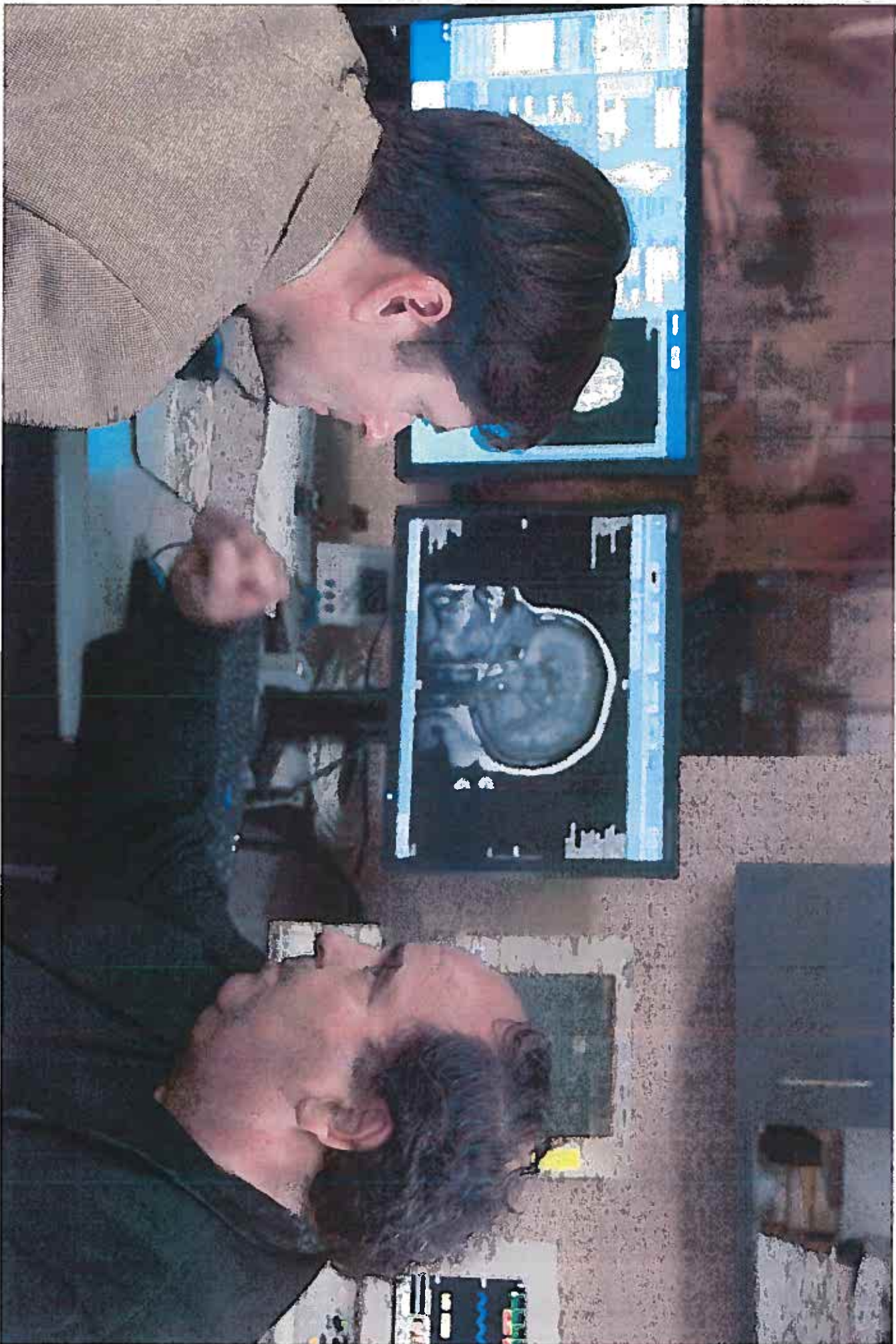

Christopher B. Dolan, Esq.

Exhibit A



A

Exhibit B



B

Exhibit C

3 Image size: 256 x 256

View: size: 2338 x 1318

WL: 267 WW: 476

X: -84 px Y: 3 px Value: 0.00

X: 2.84 mm Y: -206.43 mm Z: 112.40 mm

5

McCrath Jahn 014397763 (13 y , 13 y)

Mri Head Without Contrast

3 BRAIN C+--3

4

Zoom: 51.5% Angle: 0
Im: 54/106 (L->R)
Uncompressed
Thickness: 1.50 mm Location: 2.58 mm



NOT FOR MEDICAL USAGE

1

TE: 7.824 TR: 433.336

FS: 1.5

9/26/14, 8:45:44 AM

Made In Osirix

C

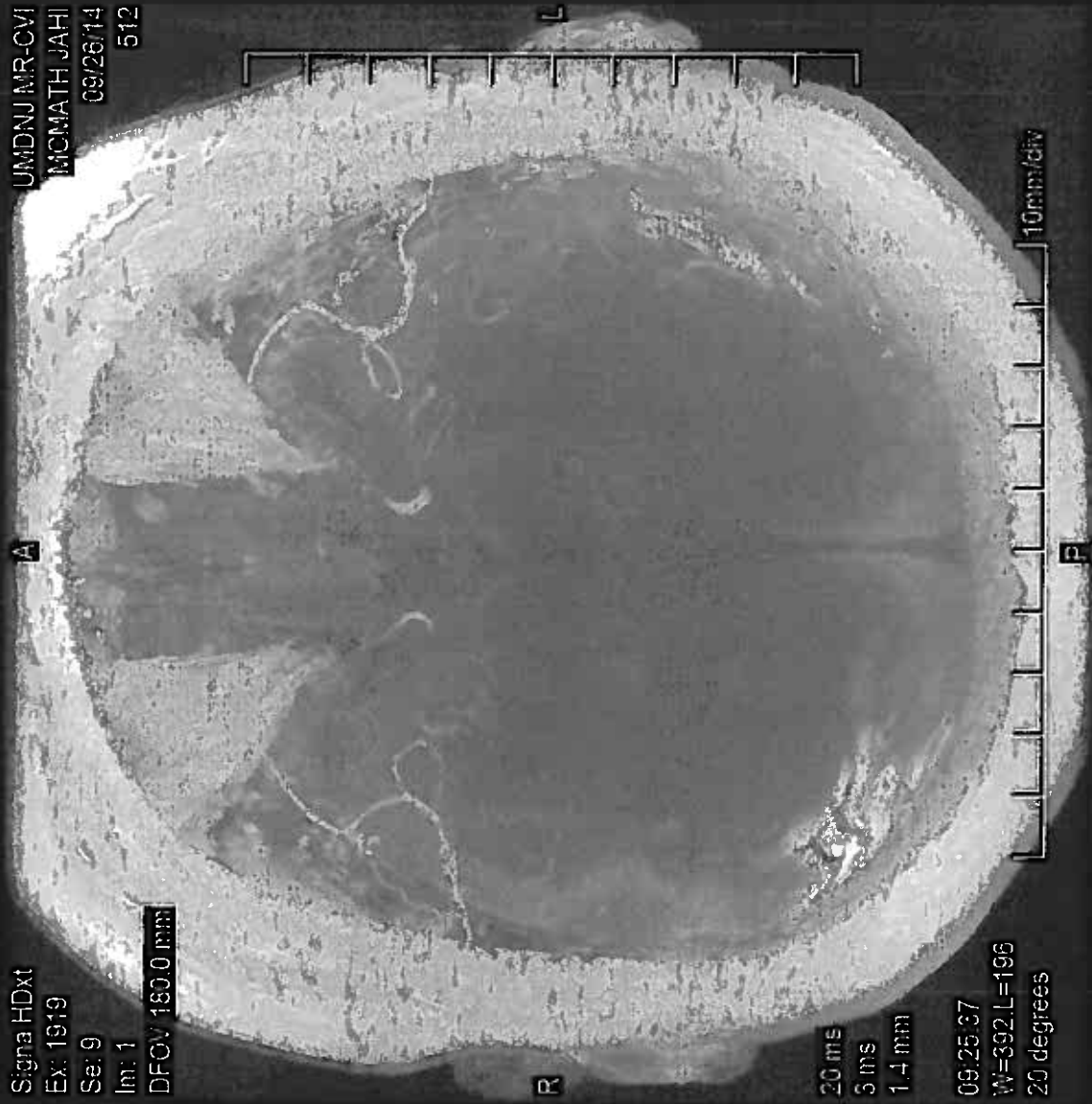
Exhibit D



Win/Lay
Cine
Tool
Frames
WL Presets

Signa HDxt
Ex: 1919
Ser: 9
Im: 1
DFOV 180.0 mm

UMDNJ MR-CVI
MCMATH JAH
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512



20 ms
5 ms
1.4 mm

09:25:37
W=392.L=196
20 degrees

10mm/div