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8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

11 **JAHl MCMATH, et al.,**

12 Plaintiffs,

13 v.

14 **STATE OF CALIFORNIA, et al.,**

15 Defendants.

Case No. 15-CV-06042-HSG

**STATE DEFENDANTS' NOTICE OF
 MOTION AND MOTION TO DISMISS
 OR, IN THE ALTERNATIVE, TO STAY
 PLAINTIFFS' COMPLAINT**

Date: May 12, 2016
 Time: 2:00 p.m.
 Courtroom: 10, 19th Floor
 Judge: The Honorable Haywood S.
 Gilliam, Jr.
 Action Filed: 12/23/2015

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NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE that on May 12, 2016, at 2:00 p.m., or as soon thereafter as the matter may be heard before the Honorable Haywood S. Gilliam, Jr., in the United States District Court for the Northern District of California, Courtroom 10—19th Floor, located at 450 Golden Gate Avenue, San Francisco, California, Defendants State of California; California Department of Public Health; Tony Agurto, MPA, individually and in his capacity as State Registrar and Assistant Deputy Director at the Center for Health Statistics and Informatics, California Department of Public Health; and Karen Smith, MD, MPH, individually and in her capacity as California Department of Public Health Director and State Public Health Officer (collectively State Defendants), will and hereby move the court to dismiss this action under Federal Rules of Civil Procedure 12(b)(1) and (6). In the alternative, State Defendants request that this action be stayed pending resolution of the concurrent state court proceedings.

This motion seeks dismissal of the complaint because (1) the court lacks subject matter jurisdiction over the complaint; and (2) the complaint fails to state a cause of action upon which relief may be granted. In the alternative, State Defendants request that this action be stayed pending resolution of the concurrent state court proceedings involving an identical issue. This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, State Defendants' Request for Judicial Notice, all papers submitted in support thereof, the pleadings and papers filed, and the argument of counsel at the time of the hearing.

ISSUES TO BE DECIDED

(1) Whether the court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine.

(2) Whether the court lacks subject matter jurisdiction under the Eleventh Amendment to the U.S. Constitution due to the lack of a sufficient connection between State Defendants and the challenged acts.

(3) Whether the complaint fails to state a claim under 42 U.S.C. § 1983, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUPA).

1 (4) Whether the case should be stayed pending the resolution of related state court
2 proceedings as permitted by the *Colorado River* abstention doctrine.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **INTRODUCTION**

5 While the facts in this case are unusual, the applicable law is straightforward. Plaintiffs
6 originally adjudicated whether Jahi McMath (JM) is deceased in the Alameda County Superior
7 Court (Superior Court) and are continuing to challenge this finding in the Superior Court;
8 therefore, the Superior Court is the appropriate forum to hear plaintiffs' various claims, all of
9 which flow from the dispute over JM's status. State Defendants' motion to dismiss must be
10 granted because the *Rooker-Feldman* doctrine deprives this court of subject matter jurisdiction.
11 Moreover, due to the tenuous connection between State Defendants and the acts challenged by
12 plaintiffs, the Eleventh Amendment to the U.S. Constitution also deprives the court of subject
13 matter jurisdiction over the complaint. Additionally, plaintiffs' various causes of action are
14 legally deficient and fail to state a claim. Finally, to the extent State Defendants' motion to
15 dismiss is not granted, principles of judicial economy warrant staying this matter pending the
16 outcome of the proceedings currently taking place in the Superior Court.

17 **FACTUAL BACKGROUND**

18 On December 9, 2013, JM, a minor, went into cardiac arrest after undergoing a
19 tonsillectomy and related procedures at Children's Hospital Oakland (CHO). JM was placed on a
20 ventilator but the lack of oxygen to her brain resulted in irreversible brain death and she was
21 declared legally deceased by two CHO physicians within days of her surgery. CHO sought to
22 remove JM from the ventilator because no further medical treatment was warranted. JM's
23 mother, Nailah (Latasha) Winkfield, disagreed and sought to transfer JM from CHO. To facilitate
24 this transfer, Ms. Winkfield requested that CHO: (1) maintain JM on a ventilator until such time
25 as JM could be transferred to another facility; (2) perform a tracheostomy on JM; and (3) fit JM
26 with a gastric tube. CHO declined these requests and Ms. Winkfield filed suit in the Superior
27 Court.

28 ///

1 **I. AN OVERVIEW OF THE FIRST SUPERIOR COURT PROCEEDING**

2 On December 20, 2013, *Winkfield v. Children's Hospital Oakland*, Case No RP13707598
3 was filed in the Probate Division of the Superior Court (First Superior Court Proceeding). Styled
4 as a petition for a temporary restraining order (TRO)/preliminary injunction, Ms. Winkfield
5 sought an order requiring that CHO comply with her three requests. (Request for Judicial Notice
6 (RJN), Ex. A.) The same day, the Superior Court partially granted the TRO as to maintaining JM
7 on a ventilator, but denied Ms. Winkfield's two other requests. (RJN, Ex. B.) The Superior
8 Court then ordered that JM be examined and evaluated "in accordance with the generally
9 accepted medical standards for determining brain function/brain death." (*Ibid.*) On December
10 23, 2013, the Superior Court appointed Dr. Paul Graham Fisher, the Chief of the Division of
11 Child Neurology at the Stanford University School of Medicine, as an independent expert to
12 conduct this examination and evaluation. (RJN, Ex. C, 5:10-23.) Dr. Fischer examined and
13 evaluated JM later that day. (*Id.*, 5:23-24.)

14 On December 24, 2013, the Superior Court held an evidentiary hearing regarding JM's
15 status.¹ (RJN, Ex. D, 6:4-7:2.) The court received testimony from two medical doctors (Dr.
16 Fisher and Dr. Robin Shanahan) and entered the notes of their respective examinations of JM,
17 along with several treatises regarding the standards for determining brain death in infants and
18 children, into evidence. (*Ibid.*) During this evidentiary hearing, the Superior Court provided
19 counsel for Ms. Winkfield the opportunity to cross examine both Drs. Fisher and Shanahan. Both
20 Drs. Fisher and Shanahan opined that JM was brain dead under accepted medical standards.
21 After taking the matter under submission, the Superior Court denied Ms. Winkfield's petition for
22 a preliminary injunction and ordered that the TRO be dissolved on December 30, 2013. (*Ibid.*)

23 The Superior Court issued a written order on December 26, 2013.² (RJN, Ex. D.) In this
24 written order, the Superior Court outlined the level of judicial review and due process applicable

25 _____
26 ¹ Due to the sensitive nature of the case, this evidentiary hearing was partially conducted
in closed session.

27 ² An amended order was issued on January 2, 2014 to correct typographical errors and
28 address several factual corrections requested by counsel. As the changes were non-substantive,
we have only included the amended order in State Defendants' Request for Judicial Notice.

1 to contested determinations of brain death. (*Id.*, 8:11-15:5.) Finding that “a focused proceeding
2 that permits limited discovery and presentation of evidence” was appropriate under the
3 circumstances, the Superior Court outlined the due process afforded to Ms. Winkfield. (*Id.*, 11:4-
4 5, 11:17-12:11, & 13:20-14:22.) Ultimately, the Superior Court found by “clear and convincing
5 evidence” that JM had “suffered brain death and was deceased as defined under Health and Safety
6 Code sections 7180 and 7181.” (*Id.*, 16:20-22.) On January 3, 2014, the Superior Court held a
7 case management conference and the parties agreed to a protocol under which JM would be
8 removed from CHO. (RJN, Ex. E.) As required by the parties’ stipulation, the Alameda County
9 Corner needed to “sign something” (*i.e.* a death certificate) in order to accept JM’s body from
10 CHO. (*Ibid.*) A death certificate was issued for JM later that day. (Compl., ¶¶ 66-73, Ex. A.)
11 On January 17, 2014, judgment was entered against Ms. Winkfield. (RJN, Ex. F.)

12 Ms. Winkfield did not appeal this final judgment. Instead, in September 2014, Ms.
13 Winkfield requested that the Superior Court reopen the case, so that she could present new
14 evidence about JM’s condition and seek an order reversing the prior determination of death.
15 (RJN, Ex. G.) On September 30, 2014, the Superior Court held a case management conference.
16 (*Ibid.*) On October 1, 2014, the Superior Court set a briefing schedule on Ms. Winkfield’s
17 request and provided the parties with its tentative thoughts on jurisdiction, notice of claims
18 against the proper respondents, access to the courts and due process. (*Id.* at 4:8-8:4.) On October
19 3, 2014, Ms. Winkfield submitted her petition for relief, which was supported by declarations
20 from Charles J. Pretigiaco, M.D., Elena B. Labkovsky, Ph.D., Calixto Machado, M.D., and
21 Philip De Fina, Ph.D. On October 6, 2014, the Superior Court reappointed Dr. Fisher as an
22 independent, court appointed expert witness. (RJN, Ex. H.) On October 8, 2014, Ms. Winkfield
23 objected to the reappointment of Dr. Fischer and elected to withdraw her petition. (RJN, Ex. I.)

24 **II. AN OVERVIEW OF THE SECOND SUPERIOR COURT PROCEEDING**

25 On March 3, 2015, *Winkfield v. Rosen*, Case No. RG15760730 was filed in the Civil
26 Division of the Superior Court (Second Superior Court Proceeding). Styled as a medical
27 malpractice complaint against Dr. Frederick Rosen and CHO, Ms. Winkfield requests damages
28 for JM’s personal injuries or, in the alternative, wrongful death. (RJN, Ex. J.) Dr. Rosen and

1 CHO demurred. On October 20, 2015, these demurrers were sustained with leave to amend.
2 (RJN, Ex. K.) On November 4, 2015, Ms. Winkfield filed a First Amended Complaint, which
3 again requests damages for JM's personal injuries or, in the alternative, wrongful death. (RJN,
4 Ex. L.) Moreover, the First Amended Complaint described JM's current status and Ms.
5 Winkfield's efforts to invalidate JM's death certificate. (*Id.*, ¶¶ 27-36.) Dr. Rosen and CHO
6 again demurred. After considerable briefing, the Superior Court issued a tentative ruling on
7 January 8, 2016, indicating that it was inclined to revisit JM's current status. (RJN, Ex. M.) As
8 of the date of this filing, Dr. Rosen and CHO's demurrers remain under submission with the
9 Superior Court.

10 **III. SUMMARY OF THIS PROCEEDING**

11 On December 23, 2015, Ms. Winkfield filed the current proceedings before this court.³ In
12 her complaint, Ms. Winkfield pursues three causes of action for various violations of her and
13 JM's constitutional rights under 42 U.S.C. § 1983, a claim under the Rehabilitation Act, a claim
14 under the ADA, and two ancillary claims for declaratory relief. State Defendants now move to
15 dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim upon
16 which relief can be granted. In the alternative, State Defendants request that this matter be stayed
17 pending the outcome of the Second Superior Court Proceeding.

18 **LEGAL STANDARDS**

19 The party asserting federal subject matter jurisdiction bears the burden of establishing its
20 existence. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A
21 jurisdictional challenge under Rule 12(b)(1) may be made either on the face of the pleadings or
22 based upon extrinsic evidence. *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th
23 Cir. 2003).

24 ³ This is not the first time Ms. Winkfield has filed suit in federal court. On December 30,
25 2013, *Winkfield v. Children's Hospital Oakland*, Case No. C13-5993 SBA was filed in the U.S.
26 District Court for the Northern District of California. The complaint alleged violations of: (1) the
27 First Amendment; (2) the right to privacy under the Fourth Amendment; (3) the right to privacy
28 under the Fourteenth Amendment; (4) section 504 of the Rehabilitation Act of 1973; and (5) the
Americans with Disabilities Act. After the First Superior Court Proceeding was concluded, Judge
Armstrong issued an order to show cause why the federal case should not be dismissed for lack of
jurisdiction. On January 29, 2014, Ms. Winkfield voluntarily dismissed this prior federal case.

1 A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim “where there
2 is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable
3 legal theory.” *Zamani v. Carnes*, 491 F.3d 990, 996 (9th Cir. 2007). In considering whether a
4 complaint states a claim, a court must accept as true all of the material factual allegations in it.
5 *Hamilton v. Brown*, 630 F.3d 889, 893 (9th Cir. 2011). However, the Court need not accept as
6 true “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
7 inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

8 ARGUMENT

9 Plaintiffs’ claims are barred entirely under the *Rooker-Feldman* doctrine. Moreover,
10 plaintiffs’ claims are legally deficient because they fail to state a claim. Finally, if plaintiffs’
11 claims are not dismissed, this case should be stayed pending the outcome of the Second Superior
12 Court Proceeding under the *Colorado River* abstention doctrine. For these reasons, State
13 Defendants’ motion to dismiss should be granted or, in the alternative, this matter should be
14 stayed.

15 I. THE COMPLAINT IS BARRED BY THE *ROOKER-FELDMAN* DOCTRINE

16 Under the *Rooker-Feldman* doctrine, federal courts generally lack subject matter
17 jurisdiction to review final state court judgments. *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 416
18 (1923); *District of Columbia Ct. of App. v. Feldman*, 460 U.S. 462, 482 (1983). “*Rooker-*
19 *Feldman* is a powerful doctrine that prevents federal courts from second-guessing state court
20 decisions by barring the lower federal courts from hearing de facto appeals from state court
21 judgments[.]” *Bianchi v. Ryaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003); *Noel v. Hall*, 341 F.3d
22 1148, 1163 (9th Cir. 2003) (“It is a forbidden de facto appeal under *Rooker-Feldman* when the
23 plaintiff in federal district court complains of a legal wrong allegedly committed by the state
24 court, and seeks relief from the judgment of that court.”) Moreover, the assertion of “new”
25 constitutional claims by a litigant does not preclude application of *Rooker-Feldman*, so long as
26 the claims are “inextricably intertwined” with the state court’s ruling. See *Bianchi*, 334 F.3d at
27 900 n.4 (“The *Rooker-Feldman* doctrine prevents lower federal courts from exercising
28 jurisdiction over any claim that is ‘inextricably intertwined’ with the decision of a state court,

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

3 Here, the complaint and each of its causes of action directly challenges the Superior Court’s
4 finding that JM “had suffered brain death and was deceased as defined under Health and Safety
5 Code sections 7180 and 7181.” (RJN, Ex. D, 16:20-22; Compl., ¶¶ 54, 110, 116, 204, 219, 227,
6 233-235, 249-250, 263-264, 277-278, 287, 289-291, 297-299.) Throughout the complaint,
7 plaintiffs repeatedly request that this court declare that JM “was not ‘ever dead’ by [the] pertinent
8 California statute [*i.e.* Health and Safety Code, section 7180].” (Compl., ¶¶ 235, 250, 264, 278,
9 291, 299, 303.) Moreover, plaintiffs’ desire for an independent administrative process for
10 invalidating the allegedly erroneous death certificate, is an indirect challenge to the findings of
11 the Superior Court in the First Superior Court Proceeding. JM’s death certificate was only issued
12 because the Superior Court found by clear and convincing evidence that JM “had suffered brain
13 death and was deceased as defined under Health and Safety Code sections 7180 and 7181.”
14 (RJN, Ex. D, 16:20-22.) Therefore, plaintiffs’ current attempts to invalidate JM’s death
15 certificate are “inextricably intertwined” with the judicial findings made in the First Superior
16 Court Proceeding and barred by the *Rooker-Feldman* doctrine. *Doe v. Mann*, 415 F.3d 1038,
17 1042 (9th Cir. 2005) (noting that where *Rooker-Feldman* applies, a federal court “must also
18 refuse to decide any issue raised in the suit that is ‘inextricably intertwined’ with an issue
19 resolved by the state court in its judicial decision.”).

20 **II. THE COMPLAINT IS BARRED BY THE ELEVENTH AMENDMENT TO THE U.S.**
21 **CONSTITUTION BECAUSE OF AN INSUFFICIENT NEXUS BETWEEN STATE**
22 **DEFENDANTS AND THE CHALLENGED ACTS**

23 A suit against a state official for prospective injunctive or declaratory relief is barred by the
24 Eleventh Amendment’s guarantee of state immunity from suit in federal court unless the official
25 has “some connection with the enforcement of the act.” *Ex parte Young*, 209 U.S. 123, 157
26 (1908); *National Audubon Soc’y, Inc. v. Davis*, 307 F.3d 835, 847 (9th Cir. 2002) (finding action
27 for injunctive and declaratory relief against California Governor and Secretary of Resources
28 barred by Eleventh Amendment “as there is no showing that they have the requisite enforcement

1 connection” to challenged ballot proposition).⁴ Absent the officials’ connection with the
 2 allegedly wrongful act, the suit “is merely making him a party as a representative of the State, and
 3 thereby attempting to make the State a party.” *Ex parte Young*, 209 U.S. at 157. Thus, “when a
 4 state officer is sued to enjoin enforcement of state law, he must have ‘some connection’ with
 5 enforcement or suit against him would be equivalent to suit against the state and would violate the
 6 Eleventh Amendment.” *Southern Pac. Transp. Co. v. Brown*, 651 F.2d 613, 615 (9th Cir. 1980).

7 The nexus required to overcome Eleventh Amendment immunity “must be fairly direct; a
 8 generalized duty to enforce state law or general supervisory power over the persons responsible
 9 for enforcing the challenged provision will not subject an official to suit.” *Snoeck v. Brussa*, 153
 10 F.3d 984, 986 (9th Cir. 1998) (quoting *Los Angeles County Bar Ass’n v. Eu*, 979 F.2d 697, 704
 11 (9th Cir. 1992).) Here, plaintiffs are challenging the determination that JM is deceased and that a
 12 death certificate was issued to her. State Defendants, however, did not make any determination
 13 regarding JM; instead, in a lawsuit brought by Ms. Winkfield, the Superior Court declared JM
 14 brain dead. (RJN, Ex. D, 16:20-22.) Moreover, State Defendants did not issue JM’s death
 15 certificate; the Alameda County Coroner did at plaintiffs’ request. (RJN, Ex. E; Compl., ¶¶ 66-
 16 73.) State Defendants are merely the repository for vital statistics in the State of California and
 17 have no other linkage to plaintiffs. Therefore, as there is only a highly tenuous connection
 18 between State Defendants and the acts challenged by plaintiffs, the Eleventh Amendment to the
 19 U.S. Constitution deprives this court of subject matter jurisdiction over the complaint.

20 **III. THE COMPLAINT’S FIRST, SECOND, THIRD, FOURTH, FIFTH, AND SIXTH CAUSES OF**
 21 **ACTION FAIL TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED**

22 Plaintiffs’ First, Second, and Third Causes of Action are deficient because State Defendants
 23 are not “persons” for the purposes of 42 U.S.C. § 1983 and the allegations are not plead with
 24 sufficient particularity with respect to Dr. Smith and Mr. Agurto. Similarly, plaintiffs’ Fourth and

25 ⁴ Like the case or controversy requirement, the Eleventh Amendment operates as a limit to
 26 the court’s subject matter jurisdiction. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 64
 27 (1996) (“[T]he Eleventh Amendment [stands] for the constitutional principle that state sovereign
 28 immunity limit[s] the federal courts’ jurisdiction under Article III. The text of the Amendment
 itself is clear enough on this point: ‘The Judicial power of the United States shall not be construed
 to extend to any suit’”)

1 Fifth Causes of Action under the Rehabilitation Act and ADA fail to identify what program or
2 services JM was denied access to based on her disability. Finally, plaintiffs' Sixth Cause of
3 Action does not state a claim under RLUPA because CHO is not an "institution."

4 **A. The First, Second, and Third Causes of Action Fail to State a Claim Under**
5 **42 U.S.C. § 1983**

6 State entities, such as the State of California and the California Department of Public
7 Health, are not considered "persons" for the purposes of 42 U.S.C. § 1983. *Bennett v. California*,
8 406 F.2d 36, 39 (9th Cir. 1969). Moreover, claims against state officials, such as Dr. Smith and
9 Mr. Agurto, must be plead with particularity. Vague and conclusory allegations concerning state
10 officials' involvement in civil-rights violations are insufficient. *Ivey v. Regents of the Univ. of*
11 *Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Here, the complaint fails to make a single factual
12 allegation concerning Dr. Smith's personal involvement and only alleges that Mr. Agurto signed a
13 letter. (Compl., ¶ 158.) Without more concrete allegations of personal involvement by Dr. Smith
14 and Mr. Agurto, plaintiffs cannot state a claim under 42 U.S.C. § 1983 against them. Therefore,
15 plaintiffs' First, Second, and Third Causes of Action fail to state a claim upon which relief may
16 be granted.

17 **B. Plaintiffs' Claims Under the Rehabilitation Act and ADA Are**
18 **Inadequately Pled**

19 To assert a claim under either the Rehabilitation Act or ADA, plaintiffs must plead: (1) JM
20 is disabled under the Act; (2) JM is "otherwise qualified" to participate in a program (*i.e.*, she can
21 meet the essential eligibility requirements of this program, with or without reasonable
22 accommodation); (3) JM was excluded from participating in this program solely because of her
23 disability; and (4) the program receives federal financial assistance (for the Rehabilitation Act
24 claim), or is a public entity (for the ADA claim). *Zukle v. Regents of Univ. of Cal.*, 166 F.3d
25 1041, 1045 (9th Cir. 1999). While the complaint discusses JM's disability, it fails to identify
26 what program JM was "otherwise qualified" to participate in and was excluded from participating
27 in based solely on her disability. Dismissal is proper where there is either a "lack of a cognizable
28 legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri*

1 *v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Without these necessary factual
 2 allegations, plaintiffs' Fourth and Fifth Causes of Action fail to state a claim upon which relief
 3 may be granted.

4 **C. RLUPA Does Not Apply Because CHO is Not an "Institution"**

5 For the purposes of this case, RLUPA only applies to individuals "residing in or confined to
 6 an institution" that is: (1) "owned, operated, or managed by, or provides services on behalf of any
 7 State or political subdivision of a State" and (2) the services provided are "skilled nursing,
 8 intermediate or long-term care, or custodial or residential care." (42 U.S.C. §§ 1997, 2000cc-
 9 1(a).)⁵ Here, the complaint fails to allege how CHO qualifies as an institution under both of these
 10 prongs. Instead, the complaint merely asserts that CHO is an "institution." (Compl., ¶ 45.) "To
 11 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true,
 12 to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 13 (2009). Pleadings that "are no more than conclusions," however, are "not entitled to the
 14 assumption of truth." *Id.* at 679. Therefore, State Defendants' motion to dismiss should be
 15 granted as to plaintiffs' Sixth Cause of Action.

16 **IV. IN THE ALTERNATIVE, THE COURT SHOULD STAY FURTHER PROCEEDINGS UNDER**
 17 **THE COLORADO RIVER ABSTENTION DOCTRINE**

18 When an identical issue is raised in concurrent state and federal court proceedings, it is
 19 consistent with "wise judicial administration" for the federal court to stay its hand pending the
 20 outcome of the state court proceeding. *Colorado River Water Conservation Dist. v. United*
 21 *States*, 424 U.S. 800, 817 (1976). This is particularly true when (1) the issue is one of state law,
 22 (2) the state court proceeding is procedurally more advanced than the federal court proceeding,
 23 and (3) the federal proceeding includes a request for declaratory relief. *Id.* at 818; *R.R. Street &*
 24 *Co. v. Transport Ins. Co.*, 656 F.3d 966, 980-981 (9th Cir. 2011); *Snodgrass v. Provident Life &*
 25 *Accident Ins. Co.*, 147 F.3d 1163, 1167-1168 (9th Cir. 1998).

26 ///

27 ⁵ RLUPA also applies to incarcerated individuals and certain land-use decisions, neither
 28 which are relevant to this proceeding.

1 Here, Ms. Winkfield is actively contesting JM’s death certificate in the Second Superior
 2 Court Proceeding because this issue will determine whether the case is characterized as either a
 3 personal injury or a wrongful death action. (RJN, Ex. L, ¶¶ 27-36.) The validity of JM’s death
 4 certificate is an issue of state law and, from its recent tentative ruling, it appears that the Superior
 5 Court is inclined to revisit JM’s current status and address the validity of her death certificate.
 6 (RJN, Ex. M.) Moreover, the Second Superior Court Proceeding is at a procedurally advanced
 7 stage because there have already been two rounds of briefing regarding JM’s status. Finally, the
 8 Seventh and Eighth Causes of Action in the complaint seek declaratory relief on the issue being
 9 addressed in the Second Superior Court Proceeding. Therefore, State Defendants request that this
 10 proceeding or, at least the complaint’s Seventh and Eighth Causes of Action, be stayed pending
 11 the outcome of the Second Superior Court Proceeding.

12 **CONCLUSION**

13 For the foregoing reasons, State Defendants respectfully request their motion to dismiss be
 14 granted or, in the alternative, that this matter be stayed pending the outcome of the Second
 15 Superior Court Proceeding.

16 Dated: March 11, 2016

Respectfully Submitted,
 KAMALA D. HARRIS
 Attorney General of California
 SUSAN M. CARSON
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/s/ Charles J. Antonen
 CHARLES J. ANTONEN
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CERTIFICATE OF SERVICE

Case Name: McMath v. California No. 15-CV-06042-HSG

I hereby certify that on March 11, 2016, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **State Defendants' Notice Of Motion And Motion To Dismiss Or, In The Alternative, To Stay Plaintiffs' Complaint**
- **State Defendants' Request for Judicial Notice**
- **[Proposed] Order Granting State Defendants' Motion To Dismiss Plaintiffs' Complaint**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 11, 2016, at San Francisco, California.

R. Manalastas

Declarant



Signature