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14
15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

| | | | |
|----|--|---|------------------------------------|
| 17 | Jonee Fonseca, an individual parent |) | Case No.: 2:16-cv-00889-KJM-EFB |
| 18 | and guardian of Israel Stinson, a |) | |
| 19 | minor, Life Legal Defense Foundation, |) | |
| 20 | Plaintiffs, |) | Third Amended Complaint for |
| 21 | |) | Equitable Relief |
| 22 | v. |) | REQUEST FOR JURY TRIAL |
| 23 | Karen Smith, M.D. in her official |) | |
| 24 | capacity as Director of the California |) | |
| 25 | Department of Public Health; and Does |) | |
| 26 | 2 through 10, inclusive, |) | |
| 27 | <u>Defendant.</u> |) | |

1 **INTRODUCTION**

2 A toddler, Israel Stinson, was declared brain dead pursuant to the California
3 Uniform Determination of Death Act (“CUDDA” or “Act”) on April 14, 2016. In
4 fact, the child remained alive until life-support was removed on August 25, 2016, by
5 medical providers at Children’s Hospital of Los Angeles (“Children’s Hospital”) in
6 reliance on a death certificate signed under the requisites of CUDDA. This action
7 is brought through his mother to expunge all records archived or under the control of
8 the Director of the California Department of Public Health that state that the child
9 died on April 14, 2016. To this end, the Plaintiffs challenge the constitutionality of
10 the Act.

11 **JURISDICTION**

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13 1. This Court has federal question jurisdiction over Plaintiff’s claims
14 arising under the Fifth and Fourteenth Amendments of the United States
15 Constitution and 42 U.S.C. §1983. Jurisdiction is therefore proper under 28 U.S.C.
16 §1331. This Court has supplemental jurisdiction over Plaintiff’s claims arising
17 under the Constitution of the State of California pursuant to 28 U.S.C. §1337.

18 **VENUE**

19 2. Venue is proper in the United States District Court for the Eastern
20 District of California, pursuant to 28 U.S.C. sections 84 and 1391. The events that
21 gave rise to this complaint occurred primarily in Sacramento and Placer Counties, in
22 the State of California, and the Defendant has her principal place of business in
23 Sacramento, California.

24 **PARTIES**

25 3. Plaintiff, JONEE FONSECA (“Ms. Fonseca”), a resident of the State of
26 California. She is the mother of Israel Stinson (“Israel”) and the healthcare decision
27 maker for him. Ms. Fonseca is a devout Christian and believes in the healing power
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1 of God. She also believes that life does not end until the cessation of biological
2 functioning. In all interactions with medical providers as described more fully
3 below, she consistently requested that her son not be removed from life support. She
4 believed that removing him from such would be tantamount to ending his life.

5 4. Life Legal Defense Foundation (“LLDF”) is organized under section
6 501(c)(3) of the Internal Revenue Code. The mission of LLDF focuses on
7 preservation of the lives of the most vulnerable members of society, including the
8 very young and those facing the end of life. LLDF closely assisted the family of
9 Israel in the present matter. Sadly, the facts presented in this case are not an outlier
10 for LLDF. The organization attempts to protect members of the public facing
11 withdrawal of life-support from loved ones. Due to the CUDDA protocol described
12 herein, LLDF’s work in this regard has been profoundly frustrated. CUDDA has
13 caused a significant drain on LLDF’s time and resources to address the burdensome
14 undertaking of resisting attempts by medical facilities to remove life-support for
15 members of the public whose loved ones are declared brain dead, though they are
16 not biologically dead. This includes counseling the families, negotiating with
17 hospitals, litigation, and raising funds for these purposes.

18 5. Defendant, KAREN SMITH, M.D., serves as the Director of the
19 California Department of Public Health. The Department which she heads has
20 supervisory, regulatory and enforcement roles over California hospitals. Further,
21 the Department issues death certificates, requires compliance by hospitals and
22 physicians in the manner in which death certificates are filled out and recorded. Dr.
23 Smith’s Department enforces the requirement that hospitals, physicians, and
24 coroners use California’s definition of death and that the determination of death be
25 performed in a manner consistent with the State’s statutory protocol. The
26 definitions and protocol are part of CUDDA. The Department that she heads has
27 created and dispatched to physicians and hospitals, a mandatory form known as a
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1 Certificate of Death – State of California. Acting pursuant to the Act, she requires
2 that medical doctors and hospitals use the operational definition of death found in
3 Health & Safety Code §7180 and that procedures are followed under Health &
4 Safety Code §7181 and that recordation be provided on the Certificate of Death.
5 Pursuant to Health & Safety Code §7183 she requires that medical providers
6 maintain records, in accordance to regulations that her Department adopts, regarding
7 individuals who have been pronounced dead under the definition of death found in
8 CUDDA. Further, her Department also requires that medical providers fill out the
9 Certificate of Death within 15 hours after death under (Health & Safety Code
10 §102800) and that medical providers register the death with local officials (Health &
11 Safety Code §102775). All of the conduct is done under color of law. Dr. Smith is
12 sued in her official capacity.

13 6. Plaintiff is ignorant of the true names and capacities of defendants sued
14 herein as Does 2 through 10, inclusive, and therefore sue these defendants by such
15 fictitious names and capacities. Plaintiff is informed and believes and thereon
16 alleges that each fictitiously named defendant is responsible in some manner for the
17 occurrences herein alleged, and that Plaintiff's injuries as herein alleged were
18 proximately caused by the actions and/or in-actions of said Doe defendants. Plaintiff
19 will amend this complaint to include the true identities of said doe defendants when
20 they are ascertained.

21 **FACTS**

22 7. On April 1, 2016, Ms. Fonseca took her son to Mercy General Hospital
23 ("Mercy") with symptoms of an asthma attack. The medical personnel in the
24 emergency room examined him and placed him on a breathing machine. He
25 underwent x-rays. Shortly thereafter he began shivering, his lips turned purple, his
26 eyes rolled back and he lost consciousness. He had an intubation performed on him.
27 Doctors then told Ms. Fonseca they had to transfer her son to the University of
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1 California Davis Medical Center in Sacramento (“UC Davis”) because Mercy did
2 not have a pediatric unit. He was then taken to UC Davis via ambulance and
3 admitted to the pediatric intensive care unit.

4 8. The next day, the tube was removed from the child at UC Davis. The
5 respiratory therapist said that the patient was stable and that they could possibly
6 discharge him the following day, Sunday April 3. The doctors at UC Davis put him
7 on albuterol for one hour, and then wanted to take him off albuterol for an hour.
8 About 30 minutes later while off the albuterol, Ms. Fonseca noticed that he began to
9 wheeze and have trouble breathing. The nurse came back in and put him on the
10 albuterol machine. Within a few minutes the monitor started beeping. The nurse
11 came in and repositioned the mask, then left the room. Minutes after the nurse left
12 the room, the child started to shiver and went limp in his mother’s arms. He
13 suffered a bronchospasm (squeezing of the airway, preventing air from passing).
14 Ms. Fonseca pressed the nurses’ button, and screamed for help, but no one came to
15 the room. A different nurse entered, and Ms. Fonseca asked to see a doctor.

16 9. The doctor, Stephanie Meteev, came to the room and said she did not
17 want to intubate the child to see if he could breathe on his own without the tube. The
18 child was not breathing on his own.

19 10. Ms. Fonseca had to leave the room to compose herself. When Ms.
20 Fonseca came back into the room five minutes later, the doctors were performing
21 CPR on him. The doctors dismissed Ms. Fonseca from the room again while they
22 continued to perform CPR. The doctors were able to resuscitate him. Dr. Meteev
23 told Ms. Fonseca that the child was “going to make it” and that he would be put on
24 Extracorporeal Membrane Oxygenation (“ECMO”) machine to support his heart and
25 lungs. Initially, doctors thought the patient might have a lung blockage, but no such
26 blockage was found by the pulmonologist who examined him.

27 11. Dr. Meteev then indicated that there was a possibility that the child will
28

1 have brain damage. Israel was sedated twice due to his blood pressure being high,
2 and was placed on an ECMO machine and a ventilator machine.

3 12. Two tests were performed on April 3 and 4 respectively. The tests
4 included touching his eye with a Q-tip, striking his knee, shining a light in his eye,
5 flushing cold water down his ear, and inserting a stick down his throat to check his
6 gag reflexes.

7 13. On Sunday April 3, 2016, a brain test was conducted to determine the
8 possibility of brain damage while Israel was hooked up to the ECMO machine.

9 14. On April 4, 2016, the same tests were performed when he was taken off
10 the ECMO machine.

11 15. Prior to the first brain death examination, a UC Davis nurse contacted
12 an organ donor company.

13 16. California Health and Safety Code §7180, which was in force and
14 effect at all times material to this action, provides that “An individual who has
15 sustained either (1) irreversible cessation of circulatory and respiratory functions, or
16 (2) irreversible cessation of all functions of the entire brain, including the brain
17 stem, is dead. A determination of death must be made in accordance with accepted
18 medical standards.” Section 7180 is part of CUDDA and UC Davis medical staff
19 conducted the tests for death pursuant to that section.

20 17. California Health and Safety Code §7181 provides that an individual
21 can be pronounced dead by a determination of “irreversible cessation of all
22 functions of the entire brain, including brain stem.” CUDDA requires
23 “independent” confirmation by another physician. Section 7181 is also part of the
24 Act.

25 18. On April 6, 2016, the child was taken off the ECMO machine because
26 his heart and lungs were functioning on their own. The next day, a radioactive test
27 was performed to determine blood flow to the brain.

1 19. On April 7 a radionuclide test was performed to determine the blood
2 flow to the brain; doctors claimed the test showed very little uptake of oxygen or
3 nutrients in the child’s brain.

4 20. On April 10 a magnetic resonance imaging (“MRI”) and computed
5 tomography (“CT”) scan were performed on the patient; doctors asserted the MRI
6 and CT scan confirmed “diffused brain swelling,” “severe global injury,” and
7 transforaminal herniation across the foramen of the brain stem. As a result of these
8 tests, physicians at UC Davis found that the patient’s condition was consistent with
9 brain death.

10 21. On April 11, 2016, Israel was transferred via ambulance from UC
11 Davis to Defendant Kaiser Permanente Roseville Medical Center – Women and
12 Children’s Center (“Kaiser”) for additional treatment. Upon his arrival at Kaiser,
13 another reflex test was done, in addition to an apnea test. On April 14, 2016, a
14 further reflex test was performed for determination of brain death in conjunction
15 with protocol directed by the State of California and enforced by Defendant Smith’s
16 Department.

17 22. Dr. Myette of Kaiser testified in Superior Court that the hospital
18 followed all procedures recommended by the American Academy of Pediatrics, the
19 Society of Child Neurology, and the Society of Critical Care Medicine. This
20 included regulating Israel’s body temperature and sodium levels prior to testing.

21 23. The apnea test lasted for seven and a half minutes, and Israel was on
22 100 percent oxygen; the carbon dioxide level in his blood at the beginning of the test
23 ranged between 35 and 45, and at the end of the test his carbon dioxide level was
24 85. In court, Dr. Myette testified that such a level would cause “anybody with any
25 function of their brain stem” to breath. Dr. Myette testified that no brain activity
26 was found, and had he “discovered that there was some activity in [the patient’s]
27 brain” doctors would not have declared him dead.

1 24. Dr. Myette testified that a second confirmatory exam was performed by
2 his colleague Brian Masselink. (The Physician in Chief, Shelly Garone, was present
3 along with the child's great aunt and one of his grandmothers). Dr. Masselink is a
4 pediatric neurologist. Medical records state that Dr. Masselink found no evidence of
5 any brain function. However, no Kaiser physician performed electroencephalogram
6 ("EEG") tests to see if Israel had brain waves. (Ct. doc. 14-4, p. 17-36).

7 25. That same day, April 14, 2016, a Certificate of Death was issued. The
8 Certificate of Death reveals that in fact Israel was last seen alive on April 12, 2016
9 (Ct. doc. 43-3, #114), a date *after* he was transferred to Kaiser from UC Davis.

10 26. That notwithstanding, at the time of the issuance of the Certificate of
11 Death, with pulmonary support provided by the ventilator, the child's heart and
12 other organs functioned well, and continued to function until August 25, 2016. He
13 also began moving his upper body in response to his mother's voice and touch.

14 27. After signing the Certificate of Death, Dr. Myette gave testimony in the
15 Superior Court for the County of Placer in support of an attempt to remove life-
16 support from the child. Dr. Myette testified that "in situations where families wish
17 organ donation, often when someone has been declared brain dead, we, intensivists,
18 as a bridge to get these organs to transplant, will work very hard to keep a patient
19 alive..." (Ct. doc. 43-2, 33:6-10). He then said, "Scratch that...to keep a patient's
20 organs functioning and keep a heart beating." *Id.*

21 28. Ms. Fonseca has knowledge of other patients who had been diagnosed
22 as brain dead, using the same criteria as in her son's case. In some of those cases,
23 where the decision makers were encouraged to consent to the withdrawal of life
24 support, the patients emerged from legal brain death to where they had cognitive
25 ability and some even fully recovering. Such cases are fully medically documented.

26 29. Plaintiff is a Christian with firm religious beliefs that as long as the
27 heart is beating, her child is alive. These religious beliefs involve providing all
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1 treatment, care, and nutrition to a body that is living, treating it with respect and
2 seeking to encourage healing.

3 30. Kaiser informed Ms. Fonseca that it intended to disconnect the
4 ventilator that her son was relying upon to breathe claiming that he was brain dead
5 pursuant to California Health and Safety Code §7180.

6 31. Kaiser claimed that, since its medical doctors have declared the child as
7 brain dead, his mother had no right to exercise any decision making authority
8 relative to maintaining her son on a ventilator.

9 32. Ms. Fonseca contacted Paul Byrne, a board certified neonatologist,
10 pediatrician, and Clinical Professor of Pediatrics at University of Toledo, College of
11 Medicine. However, Kaiser would not allow Dr. Byrne to examine Israel or even be
12 present during an examination, as he is not a California licensed physician. In other
13 words, his independence from Kaiser was the reason that Dr. Byrne was prevented
14 from examining the child.

15 33. Ms. Fonseca repeatedly asked Kaiser's medical staff that her child be
16 given nutrition, including protein and fats. She also asked that he be provided
17 nutritional feeding through a nasal-gastric tube or gastric tube to provide him with
18 nutrients as soon as possible. She further requested that care be administered to her
19 son to maintain his heart, tissues and organs. Kaiser refused to provide such
20 treatment stating that they do not treat or feed brain dead patients. Dr. Myette stated
21 that any attempt to feed Israel would be "catastrophic." Because of this Kaiser
22 denied her ability to make decisions over the health care of her son. Ms. Fonseca
23 therefore sought alternate placement of her son, outside a Kaiser facility.

24 34. Ms. Fonseca vehemently opposed the efforts to exclude her from the
25 decision-making regarding her son and Kaiser's insistence that she has no right
26 concerning the decision to disconnect the ventilator that provides oxygen necessary
27 for her son's heart to beat and his organs to be kept profuse with blood. She
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1 expressly forbade the hospital from removing life support. Kaiser refused her
2 requests for nutritional support and the placement of a tracheostomy tube and a
3 gastric tube stating that she has no rights to request medical care for her son as he is
4 brain dead. Kaiser's position is that under California law, the removal of
5 mechanical life support does not require consent by the patient's advocate – the
6 parent in this case – if there has been a declaration of brain death under CUDDA.

7 35. Two weeks after Kaiser declared Israel brain dead, Israel began moving
8 his upper body in response to his mother's voice and touch. Ms. Fonseca also
9 observed fluctuations in Israel's rate of respiration, indicating that Israel was taking
10 breaths over the ventilator.

11 36. Despite these developments, Kaiser continued its insistence that Israel
12 was dead. Dr. Byrne was in the child's room and observed Israel moving in
13 response to his voice. He communicated to the parents that the child was alive. In
14 view of her child's movements and a physician's opinion that the boy was alive, Ms.
15 Fonseca believed that she had a moral and spiritual obligation to give her child the
16 benefit of the medical doubt.

17 37. The State definition of death is the "irreversible cessation of all
18 functions of the entire brain, including the brain stem." This definition of "dead" is
19 in stark and material difference to the religious beliefs of Ms. Fonseca. She believes
20 that the disconnection of life support would be tantamount to killing her son.

21 38. The State of California, acting by and through the Department of Public
22 Health, has not authorized physicians to exercise independent professional judgment
23 regarding determination of death. The State specifically defines *brain death* and
24 declares such as *death*. This requires physicians to practice medicine in accordance
25 to that definition, regardless of medical opinion or evidence to the contrary.

26 39. In accordance to the definition of death under CUDDA, on April 14,
27 2016, Dr. Myette filled out and signed a Certificate of Death which declared that
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1 Israel was deceased. (Ct. doc. 43-3) The Certificate of Death was provided by the
2 California Department of Public Health. Additionally, the Certificate of Death was
3 subsequently submitted to the Department of Vital Statistics, which is a subdivision
4 of the Department of Public Health and under the supervision of Defendant, Dr.
5 Smith.

6 40. Per the requirements of the laws of California, Kaiser communicated to
7 the Placer County Coroner's office that Israel was dead.

8 41. Despite an official determination that Israel was dead, subsequent to
9 that declaration, the child showed movement in direct response to the voice and
10 touch of his mother.

11 42. Since the issuance of the Certificate of Death, three physicians,
12 independent of Kaiser and UC Davis, gave their medical judgment that Israel was in
13 fact alive.

14 43. Because Kaiser insisted that Israel was dead according to the Act,
15 Kaiser sought to remove life support from him. On April 14, in an act of
16 desperation, Ms. Fonseca filed – in pro per – papers in the Superior Court, in and for
17 the County of Placer, in which she pleaded with the Court to spare the life of her
18 child.

19 44. The Superior Court granted temporary relief. However, based upon the
20 testimony of Dr. Myette, the Superior Court determined that all medical protocols
21 were met and the child was dead pursuant to the definition of brain death under
22 CUDDA.

23 45. Ms. Fonseca retained new counsel and filed this action in this Court.
24 She received temporary relief in this Court against Kaiser, but her request for a
25 preliminary injunction was denied. This Court granted her a stay while emergency
26 relief was sought in the Ninth Circuit Court of Appeals. Days later, the Ninth
27 Circuit granted an emergency stay and requested further briefing by the parties.

1 While the emergency motion was still under review, Ms. Fonseca communicated
2 with a pediatric specialist, Juan Zaldana, at Sanatorio Nuestra Señora del Pilar in
3 Guatemala City, Guatemala. Dr. Zaldana agreed to admit Israel. Israel was flown
4 to the facility for examination and treatment on May 21, 2016. This resulted in the
5 withdrawal of the emergency motion to the Ninth Circuit.

6 46. A tracheotomy was performed and a feeding tube inserted at the
7 facility. Kaiser physicians refused to provide this very treatment because they claim
8 it unethical to treat a dead person and further asserted that Israel's digestive system
9 was dead. That proved to be untrue. Israel stabilized and gained weight.

10 47. Dr. Zaldana and a pediatric neurologist, Dr. Francisco Montiel,
11 performed numerous examinations on Israel including an EEG. The EEG revealed
12 that he had brain waves. The presence of brain waves is inconsistent with brain
13 death. Physicians informed the parents that Israel was not dead, but was in a
14 persistent vegetative state. The results were confirmed by another physician, Dr.
15 Rubén Posadas.

16 48. The parents remained with Israel in Guatemala for approximately 2½
17 months.

18 49. After treatment, Israel began to increasingly have more purposeful
19 movements. In addition to the prior movements that he had at Kaiser in April, he
20 began to move his arms, hands, legs and toes. Further, these movements were not
21 random. They occurred primarily in response to voices and music. As a song that
22 the child knew was played, he would begin to move at the sound of the music.

23 50. He was placed on a portable ventilator and increasingly would begin to
24 take breaths off of the ventilator.

25 51. In July, Ms. Fonseca was told that Children's Hospital of Los Angeles
26 consulted with Dr. Zaldana regarding Israel's condition. After speaking with
27 medical professionals from Children's Hospital, Children's Hospital agreed to
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1 accept Israel as a transfer patient for treatment.

2 52. On August 6, 2016, Israel was transported by air ambulance from
3 Guatemala City and was admitted to Children's Hospital the following day.

4 53. Over the next few days, Israel's face and torso became increasingly red
5 and swollen. Ms. Fonseca was told that medical staff stopped feeding Israel because
6 of his sodium levels.

7 54. On August 16, Children's Hospital informed Ms. Fonseca of their
8 intent to remove Israel's ventilator.

9 55. Because of this, Ms. Fonseca filed, in pro per, an ex parte petition for a
10 temporary restraining order ("TRO") in the Superior Court, in and for the County of
11 Los Angeles, to keep Israel on life-support. The order was granted and a
12 preliminary injunction hearing was scheduled for September 9.

13 56. Ms. Fonseca began to make plans for Israel at home. Patients with
14 severe brain injuries are often transferred to home care with a portable ventilator.
15 Israel was a good candidate for home care, as he required very little medical
16 intervention apart from the ventilator and feeding tube.

17 57. Ms. Fonseca also requested that the hospital allow her to bring in a
18 neurologist to conduct an independent examination. She had made arrangements for
19 Dr. Alan Shewmon, a neurologist at UCLA Medical Center, to examine Israel.
20 Children's Hospital refused.

21 58. Armed with the Certificate of Death signed by Kaiser, attorneys for
22 Children's Hospital filed a request to dissolve the TRO. Attorneys for Children's
23 Hospital objected to the evidence from physicians in Guatemala proving that Israel
24 was alive. They further objected to allowing Dr. Shewmon from examining the
25 child.

26 59. Seeing the death certificate, the Judge of the Superior Court declined to
27 entertain any evidence that Israel was alive or to allow the neurologist from UCLA
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1 to examine the child in order to ensure that an innocent life would not be taken.

2 60. On August 25, 2016, based solely on the Certificate of Death issued
3 pursuant to CUDDA, the Superior Court granted the request to dissolve the TRO.

4 61. After the hearing, Ms. Fonseca called the undersigned and informed
5 him of the situation. A frantic effort was made by attorneys to file papers in the
6 California Court of Appeal. Unlike the Ninth Circuit, there is no mechanism in
7 place to get an emergency stay, e.g., lawyers assigned by the appellate court to
8 handle emergencies by accepting calls and directing e-filing. Tragically as the
9 emergency writ was being filed that afternoon, medical personnel entered Israel's
10 room, stood next to his bed, disconnected his ventilator – and they killed him.

11 62. There is an actual dispute between the parties. California officially
12 certified that Israel died on April 14. Plaintiff asserts that he was alive until August
13 25, 2016. This is a dispute of fact.

14 63. The continued existence of government documents that certify that
15 Israel died on April 14 causes actual injury. This results in the loss of medical
16 insurance coverage and government benefits to the child and his family.

17 64. The definition of brain death is fallacious. In essence, the
18 presupposition is that the cessation of all functions of the entire brain – including the
19 brain stem – is per se irreversible. However, brain waves return in rare cases after
20 having disappeared. Nonetheless, California law directs that such a person be
21 deemed dead. CUDDA requires independent confirmation by another physician.
22 But that confirmation is exclusively confined to the definition of brain death in the
23 statute. Hence it is a tautology. On its face and as applied, under CUDDA an
24 advocate for a patient is not allowed to bring in their own physician to contest the
25 findings. In this case, Kaiser used two of its own doctors for the tests. As such, it
26 asserted in Superior Court that it is the independent evaluation under CUDDA. Ct.
27 doc. 14-4, 36:12-24.

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1 65. In the alternative, Plaintiff alleges that even if hypothetically the
2 definition of brain death under CUDDA is correct as understood in the branch of
3 natural science of biology, the medical protocol at times results in a misdiagnosis of
4 brain death. The Act, either on its face or under its application, does not provide for
5 an advocate of the patient to retain a doctor, at the advocate's own expense, to
6 examine the patient and contest the findings. This deprives a patient of life without
7 the safeguards necessary to satisfy the federal and state constitutional requirements.

8 66. Seeking an emergency writ of mandate in Superior Court is not
9 generally a viable option when hours matter and the family cannot leave the bedside
10 of the loved one lest life support be removed while rushing to court.

11 67. CUDDA states that brain death is to be declared according to accepted
12 medical standards. The Act does not delineate such standards. There are multiple
13 types of protocols for brain death used in the medical community. The
14 determination of brain death can differ from patient to patient depending on the
15 protocol chosen. As a result, the law subjects persons to a loss of life based upon
16 medical standards that are not universally recognized within the medical
17 community. For example, the Nevada Supreme Court reviewed a statute nearly
18 identical to CUDDA. The State's high court found that the Harvard Criteria for
19 brain death and the American Association of Neurology Guidelines were not the
20 same. See, *Gebreyes v. Prime Healthcare Servs., LLC (In re Estate of Hailu)*, 361
21 P.3d 524 (Nev. 2015).

22 68. *Biology* is a branch of natural science. This branch has identified
23 certain basic characteristics of living organisms such as nutrition (the process by
24 which organisms obtain energy and raw materials from nutrients such as proteins,
25 carbohydrates and fats); respiration (release of energy from food substances in all
26 living cells); movement; excretion (the cells get rid of waste products); growth;
27 reproduction; and sensitivity. Death is the cessation of biological life. CUDDA's
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1 definition of brain death stands in defiance of these universally agreed upon criteria
2 for life. In other words, the accepted medical standards define brain death such that
3 it can be coextensive with biological life. This matters because *life* is a legal right.
4 The understanding of *life* recognized at the time the Declaration of Independence
5 was signed (1776), the Fifth and Fourteenth Amendments were ratified (1791 and
6 1868) had a meaning which was more expansive than the definition of brain death
7 found in CUDDA.

8 69. There is verifiable evidence that persons who have been declared brain
9 dead have in fact not died. Some have recovered.

10 70. The aforementioned conduct was done under color of state law and by
11 state actors. Such includes the implementation and enforcement of CUDDA.

12 **FIRST COUNT**

13 **Deprivation of Life and Liberty in Violation of Due Process of Law under the** 14 **Fifth and Fourteenth Amendments (42 U.S.C. §1983)**

15 71. The Plaintiff incorporates by reference as if fully set forth herein the
16 foregoing paragraphs.

17 72. Under the Fifth and Fourteenth Amendments, a citizen cannot be
18 deprived of life or liberty without due process of law. Historically, death has been
19 defined as the cessation of breath and the beating of the heart. Such understanding
20 was true at the ratification of said Amendments. The State of California has defined
21 death in a matter that is broader than the historical definition. The State's statutory
22 scheme related to the definition of death and how it is determined have provided no
23 procedures or process by which a patient or their advocate can independently
24 challenge the findings of death. Further, the statutory scheme removes the
25 independent judgment of medical professionals as to whether a patient is dead.

26 73. Under the facts described herein, there is a medical dispute of fact as to
27 whether Israel Stinson was dead or alive on April 14, 2016. On this Earth, there can
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1 be few rights more precious than the liberty interest in life. Life is a fundamental
2 right that finds explicit protection in the U.S. Constitution.

3 74. The enactment and enforcement of CUDDA deprived Israel of his right
4 to life without due process of law. The Act defines brain death and requires that
5 physicians declare a person as dead when the conditions found in the definition are
6 met. In essence, the Act speaks death into existence – and the patient out of
7 existence – when biologically the individual is alive. But because a patient is
8 declared brain dead by California, the patient does not become biologically dead.
9 Death is the cessation of biological functioning. By State action, the Act requires a
10 declaration that a person is deceased at a point in time earlier than the cessation of
11 biological functioning. This is what happened to Israel. Through the use of *brain*
12 *death*, lawmakers have created a legal fiction. Such a premature official
13 certification of death deprives an individual of the liberty interest in life in a manner
14 that is inconsistent with the Fifth and Fourteenth Amendments.

15 **SECOND COUNT**

16 **Deprivation of Parental Rights in Violation of Due Process of Law under the**
17 **Fifth and Fourteenth Amendments (42 U.S.C. §1983)**

18 75. Plaintiffs incorporate by reference as if fully set forth herein the
19 foregoing paragraphs.

20 76. As the fit parent of Israel, Ms. Fonseca has plenary authority over
21 medical decision relative to her 2-year-old child.

22 77. In addition to the natural profound bounds of affection between parent
23 and child, Ms. Fonseca believes that she has a moral and spiritual obligation to give
24 her child every benefit of the medical doubt before disconnecting life support.

25 78. On its face and as applied the Act provides no due process for a parent
26 to contest the medical findings by bringing in her own physician for a second
27 opinion. Because as a fit parent she is completely cut off under the State's protocol,
28

1 she is being deprived of her parental rights.

2 79. In addition and in the alternative, there is a close nexus between the
3 conduct of Kaiser, Dr. Myette and the State of California. The child was deprived
4 of medical treatment because medical professionals at Kaiser asserted that treating a
5 dead person allegedly violates medical ethics. In essence, based on CUDDA
6 deeming brain death as legal death, Israel was denied treatment. There was a direct
7 and proximate cause between the denial of treatment to Israel – who was
8 biologically alive – and CUDDA which doctors relied on to declare him legally
9 dead.

10 **THIRD COUNT**

11 **Deprivation of Life**

12 **CA Const. Art. I §1**

13 80. Plaintiff incorporates, herein by reference, the foregoing paragraphs.

14 81. This count arises under the right to life enumerated in the California
15 Constitution which provides as follows: “[a]ll people are by nature free and
16 independent and have inalienable rights. Among these are enjoying and defending
17 life... .” CA Const. Art. I §1.

18 82. The State of California has defined death in a matter that is broader
19 than the historical definition. The State’s statutory scheme related to the definition
20 of death and how it is determined have provided no procedures or process by which
21 a patient or their advocate can independently challenge the findings of death.
22 Further, the statutory scheme removes the independent judgment of medical
23 professionals as to whether a patient is dead.

24 83. Under the facts described herein, there is a medical dispute of fact as to
25 whether Israel died on April 14, 2016. Life is a fundamental right that finds explicit
26 protection in the California Constitution.

27 84. The enactment and enforcement of CUDDA deprived Israel of his right
28

1 to life. The Act defines death and requires that physicians declare a person as dead
2 when the conditions found in the definition are met. But because a patient is
3 declared dead does not make the patient become biologically dead when in fact the
4 person was and is alive. By State action, the Act requires a declaration that a person
5 is deceased at a point in time earlier than the cessation of biological functioning.

6 **FOURTH COUNT**

7 **Violation of Privacy Rights**

8 **(42 U.S.C. §1983)**

9 85. Plaintiff incorporates, herein by reference, the foregoing paragraphs.

10 86. This count arises under the right to privacy protected by the United
11 States Constitution.

12 87. Under the penumbra of rights guaranteed under the United States
13 Constitution, health care decisions are part of the right to personal autonomy and
14 privacy. As a fit parent, Ms. Fonseca had plenary authority over the health care
15 decisions of her child.

16 88. As a direct and proximate cause of compliance with the Act, health care
17 treatment was denied to Israel because he was declared dead.

18 89. His mother was deprived of the rights of privacy that she enjoys and
19 seeks to exercise on behalf of her child, relative to medical decisions.

20 **FIFTH COUNT**

21 **Violation of Privacy Rights**

22 **CA Const. Art. I §1**

23 90. Plaintiff incorporates, herein by reference, the foregoing paragraphs.

24 91. This count arises under the right to life enumerated in the California
25 Constitution which provides as follows: “[a]ll people are by nature free and
26 independent and have inalienable rights. Among these are... privacy.” CA Const.
27 Art. I §1.

REQUEST FOR A JURY TRIAL

Plaintiff hereby respectfully requests a jury trial.

S/ Kevin Snider
Kevin T. Snider
Attorney for Plaintiffs

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