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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12) Case No.:
13 Jonee Fonseca, an individual parent)
and guardian of Israel Stinson, a minor,)
14 Plaintiff,)
15) **Complaint for Declaratory Relief and**
Plaintiffs,) **Request for Temporary Restraining Order**
16) **and Injunctive Relief**
17)
v.)
18)
Kaiser Permanente Medical Center)
19 Roseville, Dr. Michael Myette M.D. and)
Does 1 through 10, inclusive,)
20)
21 **Defendants.**)

1 **INTRODUCTION**

2 This action seeks emergency relief to save the life of a two-year-old child,
3 Israel Stinson. (FRCP 65) The causes are as follows:

4 1. Violation of the Free Exercise Clause of First Amendment of the United
5 States Constitution

6 2. Violation of the Right to Privacy Guaranteed Under the Fourth Amendment
7 of the United States Constitution

8 3. Violation of the Right to Privacy Guaranteed under the Fourteenth
9 Amendment of the United States Constitution

10 4. Violation of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §
11 794)

12 5. Violation of the American’s With Disabilities Act 42 U.S.C. § 12101 et
13 seq.

14 **JURISDICTION**

15 1. 1.Counts in this Action arise out of the First, Fourth and Fourteenth
16 Amendments to the United States Constitution, The Rehabilitation Act of 1973 (29
17 U.S.C. § 794) and The American’s With Disabilities Act 42 U.S.C. § 12101 et seq.
18

19 **VENUE**

20 2. Venue is proper in the United States District Court for the Eastern
21 District of California, pursuant to 28 U.S.C. sections 84 and 1391. The events that
22 gave rise to this complaint are occurring in Roseville, Placer County, in the State of
23 California, and one or more of the defendants has its Principal Place of Business in
24 Roseville, Placer County, California.
25

26 **PARTIES**

27 3. Jonee Fonseca is an adult and a resident of the State of California. She
28

1 is the mother of Israel Stinson. Pursuant to the California Family Code § 6910 she is
2 the healthcare decision maker for Israel Stinson, a minor.

3 4. Defendant KAISER PERMANENTE ROSEVILLE MEDICAL
4 CENTER—WOMEN AND CHILDREN’S CENTER (KPRMC) is a non-profit
5 hospital corporation with its principal place of business in Roseville, California.
6 Plaintiff is informed and believes, and on the basis of said information and belief,
7 alleged that KPRMC receives funding from the state and federal government which
8 is used to directly and indirectly provide healthcare services to individuals including
9 but not limited to Israel Stinson.

10 5. Plaintiff is informed and believes that Defendant DR. MICHAEL
11 MYETTE is a resident of Placer County in California. He is a Pediatric Intensivist at
12 Kaiser Permanente Medical Center Roseville.

13 6. Plaintiffs are ignorant of the true names and capacities of defendants
14 sued herein as Does 1 through 10, inclusive, and therefore sue these defendants by
15 such fictitious names and capacities. Plaintiffs are informed and believe and based
16 thereon allege that each of the fictitiously named defendants is responsible in some
17 manner for the occurrences herein alleged, and that plaintiffs’ injuries as herein
18 alleged were proximately caused by the actions and/or in-actions of said Doe
19 defendants. Plaintiffs will amend this complaint to include the true identities of said
20 doe defendants when they are ascertained.

21 7. At all times mentioned, each of the defendants was acting as the agent,
22 principal, employee, and/or employer of one or more of the remaining defendants
23 and was, at all times herein alleged, acting within the purpose, course, and scope of
24 such agency and/or employment for purposes of respondent superior and/or
25 vicarious liability as to all other defendants.

26 8. At all times mentioned herein, the defendants, and each of them,
27 employed, hired, trained, retained, and/or controlled the actions of all other
28

1 defendants, and each of them.

2 **FACTS**

3 9. On April 1, 2016 Plaintiff Fonseca took Israel to Mercy General
4 Hospital with symptoms of an asthma attack. The Emergency room examined him,
5 placed him on a breathing machine, and he underwent x-rays. Shortly thereafter he
6 began shivering, his lips turned purple, eyes rolled back and he lost consciousness.
7 He had an intubation performed on him. Doctors then told Ms. Fonseca they had to
8 transfer Israel to UC Davis because Mercy did not have a pediatric unit. He was
9 then taken to UC Davis via ambulance and admitted to the pediatric intensive care
10 unit.

11 10. The next day, the tube was removed from Israel at UC Davis. The
12 respiratory therapist said that Israel was stable and that they could possibly
13 discharge him the following day, Sunday April 3. The doctors at UC Davis put
14 Israel on albuterol for one hour, and then wanted to take him off albuterol for an
15 hour. About 30 minutes later while off the albuterol, Israel's mother noticed that he
16 began to wheeze and have trouble breathing. The nurse came back in and put Israel
17 on the albuterol machine. Within a few minutes the monitor started beeping. The
18 nurse came in and repositioned the mask on Israel, then left the room. Within
19 minutes of the nurse leaving the room, Israel started to shiver and went limp in his
20 mother's arms. She pressed the nurses' button, and screamed for help, but no one
21 came to the room. A different nurse came in, and Ms. Fonseca asked to see a doctor.

22 11. The doctor, Dr. Meteev, came to the room and said she did not want to
23 intubate Israel to see if he could breathe on his own without the tube. Israel was not
24 breathing on his own. Ms. Fonseca had to leave the room to compose herself. When
25 Ms. Fonseca came back into the room five minutes later, the doctors were
26 performing CPR on Israel. The doctors dismissed Israel's mother from the room
27 again while they continued to perform CPR. The doctors were able to resuscitate
28

1 Israel. Dr. Meteev told Ms. Fonseca that Israel was “going to make it” and that he
2 would be put on an ECMO to support his heart and lungs.

3 12. Dr. Meteev then indicated that there was a possibility Israel will have
4 brain damage. He was sedated twice due to his blood pressure being high, and was
5 placed on an ECMO machine and ventilator machine.

6 13. On Sunday April 3, 2016, A brain test was conducted on Israel to
7 determine possibility of brain damage while he was hooked up to the ECMO
8 machine. On April 4, 2016, the same tests were performed when he was taken of the
9 ECMO machine. According to Israel’s medical records, Israel was not in a coma at
10 the time these tests were performed. American Academy of Neurology guidelines
11 require that patients be in a coma prior to performing a brain death exam.

12 14. On April 6, 2016 Israel was taken off the ECMO machine because his
13 heart and lungs were functioning on their own. The next day, a radioactive test was
14 performed to determine blood flow to the brain.

15 15. On April 11, 2016, Israel was transferred via ambulance from UC
16 Davis to Kaiser Permanente Women and Children’s Medical Center in Roseville for
17 additional treatment. Upon his arrival at Kaiser, another reflex test was done, in
18 addition to an apnea test. On April 14, 2016, an additional reflex test was done.

19 16. Jonee Fonseca is a devout Christian and believes in the healing power
20 of God. She also believes that life does not end until the cessation of
21 cardiopulmonary function. She has repeatedly requested that Israel not be removed
22 from life support. She believes that removing Israel from the ventilator is
23 tantamount to ending his life.

24 17. With pulmonary support provided by the ventilator, Israel’s heart and
25 other organs are functioning well. Israel has also begun moving his upper body in
26 response to his mother’s voice and touch.

27 18. Israel has undergone certain tests which have demonstrated brain
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1 damage from the lack of oxygen. He is totally disabled at this time and is severely
2 limited in all major life activities. Other than the movements in response to his
3 mother's voice and touch, he is unable to do feed himself or do anything of his own
4 volition.

5 19. California Health and Safety Code § 7180. In force and effect, at all
6 times material to this action provides that "An individual who has sustained either
7 (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible
8 cessation of all functions of the entire brain, including the brain stem, is dead. A
9 determination of death must be made in accordance with accepted medical
10 standards."

11 20. California Health and Safety Code § 7181 provides that an individual
12 can be pronounced dead by a determination of "irreversible cessation of all
13 functions of the entire brain, including brain stem." It requires "independent"
14 confirmation by another physician.

15 21. Defendants Kaiser Permanente Medical Center Roseville, by and
16 through its pediatric intensivist Defendant Myette, has informed Plaintiff Jonee
17 Fonseca that Israel is brain dead, utilizing the definition of "brain death" derived
18 from Cal. Health & Safety Code § 7180.

19 22. Plaintiffs are Christians with firm religious beliefs that as long as the
20 heart is beating, Israel is alive. Plaintiff Fonseca has knowledge of other patients
21 who had been diagnosed as brain dead, using the same criteria as in her son's case.
22 In some of those cases, where the decision makers were encouraged to "pull the
23 plug" yet they didn't, their loved one emerged from legal brain death to where they
24 had cognitive ability and some even fully recovering. These religious beliefs involve
25 providing all treatment, care, and nutrition to a body that is living, treating it with
26 respect and seeking to encourage its healing.

27 23. Defendants have informed Jonee Fonseca that they intend to disconnect
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1 the ventilator that Israel Stinson is relying upon to breath claiming that he is brain
2 dead pursuant to California Health and Safety Code § 7180.

3 24. Defendants claim that, since they have pronounced Israel brain dead
4 that Jonee Fonseca has no right to exercise any decision making authority vis-a-vis
5 maintaining her son on a ventilator.

6 25. Defendants have indicated that they wish to remove life support within
7 the next 24 hours.

8 26. To stop Defendants from terminating Israel's ventilator support, on
9 April 14, 2016, Plaintiff Fonseca filed a verified petition and ex parte application
10 with the Superior Court of California in Placer County seeking an order (1)
11 enjoining Kaiser Permanente Medical Center Roseville from withholding life
12 support from Israel. The court set the application for hearing at 9:00 am. on April
13 15, 2016 in Department 43.

14 27. On April 15, 2016, the court heard testimony from Defendant Dr.
15 Myette. The court temporarily restrained KPRMC from changing Israel's level of
16 medical support. The order stated in part: "a) Kaiser shall continue to provide
17 cardio-pulmonary support to Israel Stinson as is currently being provided; b) Kaiser
18 shall provide medications currently administered to Israel; however, physicians or
19 attending staff may adjust medications to the extent possible to maintain Israel's
20 stability, given his present condition; c) Kaiser shall continue to provide nutrition to
21 Israel in the manner currently provided to the extent possible to maintain Israel's
22 stability, given his present condition." The order continued the hearing to Friday,
23 April 22, 2016.

24 28. After the April 15 hearing, Plaintiff Fonseca made numerous efforts to
25 secure an independent neurologist or other physician to examine Israel, pursuant to
26 California Health and Safety Code § 7181. Dr. Michel Accad, a cardiologist with the
27 California Pacific Medical Center in San Francisco agreed to examine Israel on
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1 April 23 or 24, 2016. However, on April 23, he notified Ms. Fonseca that he would
2 not be able to conduct the exam. Plaintiff Fonseca had contacted Dr. Paul Byrne, a
3 board certified neonatologist, pediatrician, and Clinical Professor of Pediatrics at
4 University of Toledo, College of Medicine. However, KPRMC would not allow Dr.
5 Byrne to examine Israel or even be present during an examination, as he is not a
6 California licensed physician.

7 29. On April 22, 2016, Judge Jones extended the order to allow for Israel's
8 transfer to another hospital. Arrangements were made to transfer Israel to Sacred
9 Heart Hospital in Spokane WA and a life flight via AirCare¹ was reserved to
10 transport Israel to Spokane. The order continued the hearing to Wednesday, April
11 27, 2016. For reasons unknown to Plaintiff Jonee Fonseca, Sacred Heart Hospital
12 later decided not to receive Israel.

13 30. On April 27, 2016 the court extended the order to provide a religious
14 accommodation under California Health and Safety Code § 1254.4 (c)(2). Plaintiff
15 Fonseca provide declarations by Dr. Byrne and Angela Clemente, who can provide a
16 continuing care plan for Israel with a team of specialists in New Jersey. The order
17 continued the hearing to Friday, April 29, 2016 at which time the temporary
18 restraining order prohibiting KPRMC from removing Israel's life support will
19 dissolve.

20 31. Plaintiff Jonee Fonseca has repeatedly asked that her child be given
21 nutrition, including protein and fats. She has also asked that he be provided
22 nutritional feeding through a nasal-gastric tube or gastric tube to provide him with
23 nutrients as soon as possible. She has also asked for care to be administered to her
24 son to maintain his heart, tissues, organs, etc. The Defendants have refused to
25 provide such treatment stating that they do not treat or feed brain dead patients.
26 They have denied her ability to make decisions over the heath care of her son.
27 Plaintiff Fonseca has sought alternate placement of her son, outside the Defendant's
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1 facility but, because of her unfamiliarity with such matters, and the requirement that
2 Israel have a tracheostomy tube and a gastric tube inserted for stable delivery of air
3 and nutrition to Israel. Plaintiff has secured alternate placement and transportation
4 but requires time for that to occur. If the defendants proceed with their plans, Israel
5 will expire.

6 32. Plaintiff Jonee Fonseca vehemently opposes the efforts of the
7 Defendants to exclude her from the decision making regarding her son and their
8 insistence that she has no right vis-a-vis the decision to disconnect the ventilator that
9 provides oxygen necessary for her son's heart to beat and the organs to be kept
10 profused with blood. Plaintiff Jonee Fonseca has expressly forbidden the defendants
11 from removing life support. Defendants have refused her requests for nutritional
12 support and the placement of a tracheostomy tube and a gastric tube stating that she
13 has no rights to request medical care for her son as he is brain dead. She has video
14 evidence demonstrating Israel moving his upper body in response to his mother's
15 voice and touch. She also has a declaration from Dr. Paul Byrne that Israel is alive
16 and not dead.

17 33. The State definition which Defendants are relying upon is in stark and
18 material difference to the religious beliefs of Jonee Fonseca. Jonee believes that
19 disconnection of the ventilator is tantamount to killing Israel.

20 **FACTS WARRANTING EMERGENCY TEMPORARY RESTRAINING**
21 **ORDER AND INJUNCTIVE RELIEF**

22 34. There is a substantial likelihood of success on the merits given the
23 wealth of decisional authority, both in the Court of Appeal, and the U.S. Supreme
24 Court demonstrating the constitutional rights people have over their decision making
25 role in their healthcare and for parents over the healthcare decisions concerning their
26 children

27 35. The injuries threatened of the conduct is not enjoined will be
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1 irrevocable and irreparable, Israel Stinson will be taken off a ventilator, his heart
2 will stop beating and he will cease to show any signs associated with a living body.
3 If Ms. Fonseca is prohibited from making healthcare decisions re nutrition,
4 medications, etc., her son will starve and the electrolytes will get out of balance and
5 other complications will arise that will hasten, and ultimately lead to, Israel's death.

6 36. The threatened injury is death to Israel and loss of a son to Jonee.
7 Defendants have stated no reason they would suffer a loss.

8 37. This case is one of national interest and the issue of the right to
9 participate in healthcare decisions is one of great public concern. Therefore,
10 granting of preliminary injunction is in the public interest.

11 **TERMS OF THE PROPOSED RESTRAINING ORDER**

12 38. Plaintiffs seek to have defendants be restrained from removing the
13 ventilator.

14 39. Plaintiffs seek to have defendants initiate the provision of nutrition to
15 Israel.

16 40. Plaintiffs seek to have to take all medically available steps/measures to
17 seek to improve Israel's health and prolong his life, including nutrition and
18 including the insertion of a tracheostomy tube and a gastric tube.

19 41. Plaintiff seeks to be provided ample time and support (including the
20 placement of the tracheostomy tube and the gastric tube) to try and locate a facility
21 that will accept Israel as a patient to treat him and provide him vent support

22 **FIRST COUNT**

23 **(Violation of First Amendment Rights - Free Exercise of Religion)**

24 42. Plaintiffs incorporate by reference as if fully set forth herein the
25 foregoing paragraphs.

26 43. This action arises under the United States Constitution, particularly
27 under the provisions of the Free Exercise Clause of the First Amendment to the
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1 Constitution of the United States.

2 44. The acts complained of herein are being committed by the Defendants,
3 and are depriving Plaintiff Fonseca of her right to freely express her religious
4 beliefs. The denial of these rights threatens the very existence of Israel and will
5 completely sever the relationship that still endures between Jonee and Israel.

6 45. The Defendants, and each of them, knowingly and willfully conspired
7 and agreed among themselves to violate Plaintiffs' civil rights so as to injure
8 Plaintiffs, and each of them.

9 46. As a proximate cause of the Defendants' conduct, Plaintiffs, and each
10 of them, are incurring attorney fees and litigation costs, including the costs of
11 retaining experts.

12 47. Plaintiffs pray for relief in the form of a declaration of the right of
13 Plaintiff Jonee Fonseca to exercise control over the determination of the healthcare
14 to be provided to and received by Israel Stinson and a declaration that the
15 application of California Health and Safety Code § 7181, as defendants seek to do,
16 giving them the right to discontinue ventilator support over the objection of Plaintiff
17 Fonseca, is unconstitutional as an interference with Plaintiff's exercise of her
18 religious beliefs.

19 48. Plaintiff prays for an injunction prohibiting Defendants from removing
20 ventilator support and an order that they institute nutritional support and other
21 medical treatments to as to provide him with proper care and treatment designed
22 promote his maximum level of medical improvement, to insert a tracheostomy tube
23 and a gastric tube, and to provide Plaintiff a reasonable time to locate an alternate
24 facility to care for her child in accordance with her religious beliefs.

25 **SECOND COUNT**

26 **(Violation of Fourth Amendment Rights - Privacy Rights)**

27 49. Plaintiffs incorporate, herein by reference, the foregoing paragraphs.
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1 50. This action arises under the United States Constitution, particularly
2 under the provisions of the Privacy Rights established and recognized as existing
3 within and flowing from Fourth Amendment to the Constitution of the United
4 States.

5 51. Each of the acts complained of herein was committed by the
6 Defendants, and each of them, and by seeking to deny Jonee Fonseca and Israel
7 Stinson of the rights to privacy including but not limited to their rights to have
8 control over their health care, by refusing to provide health care to them, and by
9 denying them the right to have control over the health care decisions affecting Israel,
10 which are recognized under the Fourth Amendment of the U.S. Constitution.

11 52. The conduct of the Defendants, and each of them, has deprived
12 Plaintiffs of the rights of privacy that they have over their medical decisions.

13 53. As a direct and proximate result of the Defendants' conduct, as alleged
14 herein, Plaintiffs are in great risk of the death of Israel Stinson occurring. She has
15 been suffering, as has Jonee Fonseca by being prohibited from obtaining proper care
16 for Israeli and by being deprived of the right of knowing that Israel was being cared
17 for and, instead, fearing that he was becoming weaker and dying because of the
18 refusal of the defendants to provide treatment.

19 54. As a direct and proximate result of the Defendants' conduct, the
20 Plaintiffs have suffered past and future general damages in amounts to be
21 determined by proof at trial.

22 55. As a proximate cause of the Defendants' conduct, Plaintiffs, and each
23 of them, are incurring attorney fees and litigation costs, including the costs of
24 retaining experts.

25 56. Plaintiffs pray for relief in the form of a declaration of their rights of
26 privacy relating to their rights to control over their medical decisions and choices.
27 Plaintiff further request declaratory relief that the application of the determination of
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1 the healthcare to be provided to and be received by Israel Stinson and a declaration
2 that the application of California Health and Safety Code § 7181, in the manner in
3 which Defendants seek to do so, so as to deprive Plaintiffs of their ability to choose
4 to remain on ventilator support is an unconstitutional interference with Plaintiffs
5 exercise of rights to privacy.

6 57. Plaintiff prays for an injunction prohibiting Defendants from removing
7 ventilator support and an order that they institute nutritional support and other
8 medical treatments to as to provide him with proper care and treatment designed to
9 promote him maximum level of medical improvement, to insert a tracheostomy tube
10 and a gastric tube, and to provide Plaintiff a reasonable time to locate an alternate
11 facility to care for her child in accordance with her religious beliefs.

12 **THIRD COUNT**

13 **(Violation of Fourteenth Amendment Rights to Privacy)**

14 58. Plaintiffs incorporate, herein by reference, the foregoing paragraphs.

15 59. This action arises under the United States Constitution, particularly
16 under the provisions of the Fourteenth amendment and its right to privacy.

17 60. Each of the acts complained of herein was committed by the
18 Defendants, and each of them, and by seeking to deny Jonee Fonseca and Israel
19 Stinson of the rights to privacy including but not limited to their rights to have
20 control over their health care, by refusing to provide health care to them, and by
21 denying them the right to have control over the health care decisions affecting Israel,
22 which are recognized under the Fourteenth Amendment of the U.S. Constitution.

23 61. As a proximate cause of the Defendants' conduct, Plaintiffs, and each
24 of them, are incurring attorney fees and litigation costs, including the costs of
25 retaining experts.

26 62. Plaintiffs pray for relief in the form of a declaration of their rights
27 Privacy over the healthcare decisions concerning Israel's rights to exercise control
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1 over his medical decisions and that the efforts to/ decision of CHO to unilaterally
2 remove Israel from the ventilator under California Health and Safety Code § 7181,
3 are an unconstitutional interference with Plaintiff's Privacy rights.

4 63. Plaintiff prays for an injunction prohibiting Defendants from removing
5 ventilator support and an order that they institute nutritional support and other
6 medical treatments so as to provide him with proper care and treatment designed to
7 promote him maximum level of medical improvement, to insert a tracheostomy tube
8 and a gastric tube, and to provide Plaintiff a reasonable time to locate an alternate
9 facility to care for her child in accordance with her religious beliefs.

10 **FOURTH COUNT**

11 **(Violation of the Federal Rehabilitation Act)**

12 64. Plaintiffs incorporate, herein by reference, the foregoing paragraphs.

13 65. Israel Stinson is a handicapped and/or disabled individual as that term
14 is defined under both the Rehabilitation Act of 1973.

15 66. Section 504 of the Rehabilitation Act prohibits discrimination against
16 an "otherwise qualified" handicapped individual, solely by reason of his or his
17 handicap, under any program or activity receiving federal financial assistance.

18 67. Hospitals such Defendant Kaiser Permanente Roseville Medical
19 Center—Women and Children's Center, that accepts Medicare and Medicaid
20 funding, are subject to the Rehabilitation Act.

21 68. The Hospital has admitted that the sole reason it wishes to withhold
22 ventilator treatment and the sole reason that it refuses to provide nutrition and other
23 medical treatment for Israel Stinson over his mother's objections, is because of
24 Israel's brain injury-her handicap and disability.

25 69. Israel is "otherwise qualified" to receive treatment dismal long term
26 prospects of living.

27 70. Thus, the Hospital's desire to withhold ventilator treatment, nutritional
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1 support, and other medical treatment, from Israel over his mother's objections,
2 violates the Rehabilitation Act.

3 71. As a proximate cause of the Defendants' conduct, Plaintiffs, and each
4 of them, are incurring attorney fees and litigation costs, including the costs of
5 retaining experts.

6 72. Plaintiffs pray for relief in the form of a declaration the effort to
7 remove Israel from his ventilator under California Health and Safety Code § 7181,
8 and their refusal to provide him with medical care and nutritional support violates
9 the Rehabilitation Act and, therefore, Defendants should be ordered to continue said
10 support and to provide nutritional support and other medical support designed to
11 allow Israel to continue existing and to have a best chance of regaining some brain
12 function.

13 73. Plaintiff prays for an injunction prohibiting Defendants from removing
14 ventilator support and an order that they institute nutritional support and other
15 medical treatments so as to provide him with proper care and treatment designed to
16 promote him maximum level of medical improvement, to insert a tracheostomy tube
17 and a gastric tube, and to provide Plaintiff a reasonable time to locate an alternate
18 facility to care for her child in accordance with her religious beliefs.

19 **FIFTH COUNT**

20 **(Americans with Disabilities Act)**

21 74. Plaintiffs incorporate, herein by reference, the foregoing.

22 75. Section 302 of the Americans with Disabilities Act ("ADA") prohibits
23 discrimination against disabled individuals by "public accommodations." 42 U.S.C.
24 § 12182.

25 76. A "disability" is "a physical or mental impairment that substantially
26 limits one or more of the major life activities" of an individual. 42 U.S.C. §
27 12102(2). This includes any physiological disorder or condition affecting the
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1 neurological system, musculoskeletal system, or sense organs, among others. 28
2 C.F.R. § 36.104 (definition of “physical or mental impairment”).

3 77. Brain damage from lack of oxygen is a disability, because it affects
4 Israel’s neurological functioning, ability to walk, and ability to see or talk.

5 78. “Public accommodation” is defined to include a “professional office of
6 a health care provider, hospital, or other service establishment.” 42 U.S.C. §
7 12181(7). The Hospital is a public accommodation under the ADA. 28 C.F.R. §
8 36.104.

9 79. Section 302(a) of the ADA states a general rule of nondiscrimination
10 against the disabled: General rule. No individual shall be discriminated against on
11 the basis of disability in the full and equal enjoyment of the goods, services,
12 facilities, privileges, advantages, or accommodation of any place of public
13 accommodations by any person who owns, leases (or leases to), or operates a place
14 of public accommodation. 42 U.S.C. § 12182(a).

15 80. In contrast to the Rehabilitation Act, the ADA does not require that a
16 handicapped individual be “otherwise qualified” to receive the benefits of
17 participation. Further, section 302(b)(1)(A) of the ADA states that “[i]t shall be
18 discriminatory to subject an individual or class of individuals on the basis of a
19 disability... to a denial of the opportunity of the individual or class to participate in
20 or benefit from the goods, services, facilities, privileges, advantages, or
21 accommodations of an entity.” 42 U.S.C. § 12182(b)(1)(A)(i).

22 81. The Hospital seeks to deny Israel Stinson the benefits of ventilator
23 services, nutrition and other medical treatment to Israel Stinson by reason of his
24 disability. The Hospital’s claim is that it is “futile” to keep alive a “brain dead”
25 baby, even though the mother has requested such treatment. But the plain language
26 of the ADA does not permit the denial of ventilator services, and other medical
27 services such as the provision of nutrition and medical treatment that would keep
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1 alive a brain injured child when those life-saving services would otherwise be
2 provided to a baby without disabilities at the parent's request. The Hospital's
3 reasoning would lead to the denial of medical services to brain injured individuals as
4 a class of disabled individuals. Such discrimination against a vulnerable population
5 class is exactly what the American with Disabilities Act was enacted to prohibit.
6 The Hospital would therefore violate the ADA if it were to withhold ventilator
7 treatment, nutrition and other medical treatment to Israel Stinson.

8 82. As a proximate cause of the Defendants' conduct, Plaintiffs, and each
9 of them, are incurring attorney fees and litigation costs, including the costs of
10 retaining experts.

11 83. Plaintiffs pray for relief in the form of a declaration that the efforts of
12 Defendants, and each of them, to remove Israel from his ventilator under California
13 Health and Safety Code § 7181, and their refusal to provide him with medical care
14 and nutritional support violates the ADA and, therefore, Defendants should be
15 ordered to continue said support and to provide nutritional support and other
16 medical support designed to allow Israel to continue existing and to have a best
17 chance of regaining brain function.

18 84. Plaintiff prays for an injunction prohibiting Defendants from removing
19 ventilator support and an order that they institute nutritional support and other
20 medical treatments so as to provide him with proper care and treatment designed to
21 promote his maximum level of medical improvement, to insert a tracheostomy tube
22 and a gastric tube, and to provide Plaintiff a reasonable time to locate an alternate
23 facility to care for her child in accordance with her religious beliefs.

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PRAYER

Wherefore, Plaintiffs pray for judgment against the Defendants as follows:

1. An emergency order, temporarily restraining Defendants from removing of ventilator support and mandating introduction of nutritional support, insertion of a tracheostomy tube, gastric tube, and to provide other medical treatments and protocols designed to promote his maximum level of medical improvement and provision of sufficient time for Plaintiff to locate an alternate facility to care for her child in accordance with her religious beliefs.

2. Injunctive relief including, but not limited, to injunctions precluding removal of ventilator support and mandating introduction of nutritional support, insertion of a tracheostomy tube, gastric tube, and to provide other medical treatments and protocols designed to promote his maximum level of medical improvement and provision of sufficient time for Plaintiff to locate an alternate facility to care for her child in accordance with her religious beliefs.

3. Declaratory Relief.

4. Plaintiffs also request that the Court issue whatever additional injunctive relief the Court deems appropriate; and

5. Any and all other appropriate relief to which the Plaintiffs may be entitled including all “appropriate relief” within the scope of F.R.C.P. 54(c).

6. Costs and attorney fees

Dated: April 28, 2016

/S/ Kevin Snider
Kevin T. Snider
Attorney for Plaintiffs